

Legislative Rules in Electoral Authoritarian Regimes

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June 2016

ABSTRACT: This paper focuses on the constraint of legislative processes in authoritarian states. While electoral liberalization in authoritarian regime creates the capacity for opposition forces to win legislative seats, it does not ensure voice in the policy process. The literature on institutional authoritarianism points to co-optation, dominant parties and redistribution as mechanisms to control policy outcomes in authoritarian legislatures, we investigate an additional possibility: that EARs select legislative institutions that allow free debate and unconstrained voting, yet decouple electoral success from policy influence. Our analysis centers on the EAR in Hong Kong and its legislature, the Legislative Council (LegCo). We find that the LegCo's rules of procedure interact with electoral institutions to create considerable roadblocks to opposition initiatives, while at the same time facilitating the enactment of regime policies. In this way, the authoritarian government in Hong Kong has managed electoral liberalization while preserving its ability to control the policy-making process.

In September 2014, Hong Kong's (HK) activists took to the streets against a proposed state-run screening process for Chief Executive elections – and suggestions that a similar process might be used for the Legislative Council (Ortmann 2015; Chan 2016). These events highlight Hong Kong's position as an anomaly in theories of electoral authoritarian regimes (EARs). Previous work shows that durable EARs combine electoral liberalization and delegation of power to elected officials with mechanisms that preserve the regime's control over legislative proceedings, such as screening procedures for candidates, a hegemonic state party, opposition cooptation. But in Hong Kong, the regime appears to be in firm control of the Legislative Council (LegCo) without these control mechanisms. Has the regime accepted the risk that a future election might elect a hostile legislative majority – or does something else preserve their veto over LegCo proceedings?

Our premise is that theories of how EARs preserve their status as legislative veto players (Tsebelis 2002) should move beyond electoral arrangements to consider how these regimes use legislative rules. While some EARs are known to use institutions such as bicameral legislatures (Tsebelis and Money 1997) to delay, weaken, or block the decisions of wayward legislative coalitions, little work has focused on the rules that determine how these legislatures operate – whether the opposition can enact policy changes in the first place. Such rules, we argue, can have a profound affect on the representativeness of an EAR and its control over policy, regardless of the restrictions it places on candidates and elections.

To establish this point, we analyze the interaction between two features of Hong Kong's system: (a) the practice of electing LegCo members from a combination of geographic districts and so-called functional seats, and (b) the procedure we label as split voting, whereby member's proposals require majorities from both geographic and functional seats to be enacted, but government proposals only require a chamber majority. Given the

current division of pro- and anti-government factions across geographic and functional seats, these rules allow the regime to enact its agenda while preserving its veto over member proposals. In this way, LegCo procedures are key to the survival of Hong Kong's EAR.

More generally, these findings suggest the need to appreciate how EARs differ in their broader representative structures. While a willingness to hold meaningful elections distinguishes EARs from other authoritarian regimes, EARs can vary in terms of the restrictions they place on candidates and elections, their use of non-majoritarian legislative rules, and in the interactions between these two kinds of mechanisms. An EAR that appears relatively liberal from one perspective may look quite different when considered in total. Particularly in complex societies, where EARs face threats from opposition forces as well as from dissident regime elements, the details of legislative procedure may play a crucial role in determining how citizen demands are translated into government policy.

Finally, our findings explain the HK's regime's attempt in 2014 to impose litmus tests on the Chief Executive and LegCo candidates. Ironically, this move appears to be driven by the recent electoral successes of pro-government LegCo candidates. Because these gains are concentrated in geographic LegCo districts (pro-government candidates have always won the bulk of functional seats), they are narrowing the policy differences between legislators representing functional and geographic seats -- differences that make split voting effective in maintaining state control over the LegCo. With this backstop in danger, the regime appears to see nomination controls as an alternate strategy for preserving its position.

Authoritarian Institutions and Regime Stability

Electoral authoritarian regimes (EARs) feature regimes that have no intention of ceding control of the state, but which nonetheless hold regular elections to a legislature or other political offices. Many studies show that EAR longevity is enhanced by the

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combination of electoral liberalization and a legislature invested with law-making powers (Boix and Svobik 2012, Gandhi 2008, Geddes 1999, Svobik 2011, Przeworski and Gandhi 2007).¹ Elections where candidates are free to campaign and votes are counted as cast provide information on true social preferences and create a venue for debating new policies, highlighting bureaucratic malfeasance, and helping the regime to anticipate challenges, respond to new problems, and evaluate existing policies (Wintrobe 1998, Magaloni 2008). Electoral competition can institutionalize succession rules and force repeated interactions among political elites, facilitate political bargains by increasing transparency and creating a publically observable signal of the regime's commitment to such bargains (Boix and Svobik 2014), and generate a legislature populated by professionalized politicians whose policy expertise and skills lead to more effective legislation and oversight (Schuler 2013, Truex 2013, for dissent, see Reuter and Roberson 2012).

However, having ceded significant control over both election outcomes and legislative proceedings, EARs face a new problem: they must ensure that the winners of elections, once ensconced in the legislature, cannot contravene regime policy goals. In the language of Tsebelis (2002), the EAR wants to retain its status as a veto player in legislative deliberations. Of course, the EAR can strip the legislature of significant decision-making power, or make threats against renegade legislators, but these moves work against all of the benefits described earlier. One well-documented solution is to form a hegemonic or dominant state party (Brownlee 2007; Geddes 2005). Dominant state parties such as the PRI in Mexico (1929 to about 2000) and the KMT in Taiwan (1950 to about 2000) recruit, fund, and mobilize support for candidates who share the regime's goals. After the election,

¹ Recent studies (Gates et al 2016, Strom et al 2016) on institutionalized power-sharing arrangements in post-civil war societies arrive at similar conclusions: such arrangements are more likely to persist when they constrain the actions of the dominant party or group. In the context of EARs, these findings support the idea of a positive relationship between electoral liberalization and EAR longevity.

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these parties provide disciplinary mechanisms that motivate legislators to support regime goals during debates and votes, thereby ensuring that the regime enjoys the benefits of free elections without risking its control over policy or its position in power. These parties also afford political leaders control over the state bureaucracy through appointments of ministers and senior managers.

EARs can also require would-be candidates to gain approval from state parties or other regime-controlled bodies, weeding out potential regime opponents before the campaign begins. For example, candidates to the Cuban National Assembly of People's Power are nominated by local organizations or by electoral committees, both firmly controlled by the Communist Party of Cuba.² EARs can also coopt the opposition or dissident elements in the regime by providing them with proximity to power and perks of office (Gandhi 2009, Lust-Okar 2005, Gandhi and Przeworski 2006, Reuter and Robertson 2011, Wright 2008; Reuter and Gandhi 2011). For example, Russia's EAR has used gubernatorial appointments to secure the loyalty of notables in the regions who hold valuable electoral resources (Reuter and Robertson 2011).

Mechanisms of EAR Control: Looking Beyond Electoral Mechanisms

While it is easy to see how a building hegemonic party, implementing controls on candidacy, or coopting the opposition or dissident elements would help to preserve an EARs veto over legislative deliberations, it is also easy to imagine situations where these mechanisms would prove insufficient. For one thing, hegemonic parties are not inevitable outcomes of controlled electoral competition. Moreover, cases such as Korea, Mexico, and Taiwan illustrate that changes in citizen demands, international pressures, or a drop-off in an EAR's popularity due to incompetence or corruption can abruptly change the legislative

² For details see the articles in the 2016 special issue of the *Socialism and Democracy* (Volume 30, Number 1).

balance of power in favor of the opposition or dissident regime elements. Given these possibilities, legislative rules may be part of a defense-in-depth of the regime's veto power.

Other EARs, such as in Hong Kong, simply lack hegemonic parties because of other constraints. While the formation of a regional hegemonic party would seem the obvious way to control the LegCo, such a development is problematic because it would create an alternate center of power to the Chinese Communist Party that controls the People's Republic. This reality sharpens the problem for Hong Kong's EAR: while they can normally count on votes from the DAB, smaller parties, and independents, they have no way to guarantee this support. For example, the regime's proposals to screen Chief Executive candidates (the proposals which triggered the Umbrella Revolution) were ultimately defeated in the LegCo, as many nominal regime allies refused to cast a recorded vote (Chan 2016). We argue that this inability to determine who gets elected to the LegCo or how they behave in office drives Hong Kong's EAR to manipulate voting rules as a way of preserving their veto over LegCo outcomes.

At the level of broad-scale constitutional provisions, there are many examples of legislative arrangements that sustain an EAR's veto power. For example, the 45-seat Advisory Council in Qatar is comprised of 30 members elected by the people, with an additional 15 members appointed by the Emir (Ramady 2013). Enacting legislation requires a 2/3rds majority and the Emir's consent – giving the Emir a firm veto over the Council's actions. Moreover, the Emir's appointees can prevent the Emir from having to cast unpopular or controversial vetoes by voting as a bloc to defeat such proposals in the first place. Another strategy used by the Cambodian and Russian EARs involves a bicameral legislature (Tsebelis and Money 1997), with the lower house popularly elected and the upper house firmly controlled by the regime and able to block legislation enacted by the lower

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house.³ Other EARs (e.g. China and Cuba) implement veto power by using standing committees to control the agenda and manage policy for a largely part-time chamber.

Building on these results, we argue that legislative rules of procedure deserve additional scrutiny to assess their role in preserving an EAR's veto power. Countless studies of legislatures in democracies have shown how policy outcomes are shaped by manipulation of legislative procedures (Cox 2005; Gamm and Huber 2002). Thus, if we only explain EAR survival and control over policy as a consequence of electoral or party-based mechanisms, our accounts may be missing a crucial explanatory variable. Moreover, among the various control mechanisms discussed here, legislative rules are the most likely to be little-known and poorly-understood by the average citizen, possibly allowing an EAR to control policy-making without arousing public ire or giving the opposition an issue it can use in the next election. Legislative rules can also be used to give political cover to pro-regime legislators, giving them the opportunity to take politically valuable positions without jeopardizing the regime's preferred policy outcomes.

The Hong Kong EAR and its Legislative Council (LegCo) is an ideal venue to explore this hypothesis about legislative rules. The LegCo is relatively powerful: on a 9-point scale of legislative powers (Fish and Kroenig 2006), the chamber's ranking is comparable to many legislatures in democratic systems, including South Korea, Brazil, and France.⁴ LegCo

³ The Cambodian EAR has formed a state party, the Cambodian People's Party (CPP). In Cambodia's Parliament, the National Assembly (lower house) is elected in multi-member districts using party-list proportional representation, while the composition of the Senate (upper house) is determined by local commune council elections and a small number of royal appointments. However, most commune councilors are members of the CPP. As a result, while the CPP did not win a majority of seats in the last National Assembly election, it dominated elections to the Senate, meaning that even if the opposition manages to build majority support in the Assembly for a reform proposal, there is little chance that it will survive Senate consideration. Russia's United Russia EAR exercises similar control through a (nominally) popularly elected Duma and a Federation Council appointed by regional governors, virtually all of whom are loyal to UR.

⁴ The variables used to construct the legislative powers scale include whether the legislature can replace the chief executive, whether they can vote no confidence in ministers, whether legislators can serve as ministers, whether the executive can rule by decree, whether legislators can amend the constitution, whether legislative

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elections are free of fraud or intimidation of opposition candidates and voters. However, Hong Kong's EAR does not have a hegemonic state party, has not (up to now) moved to vet LegCo candidates, and does not appear to coopt legislators with financial or other rewards. Thus, the Hong Kong EAR is not using any of the canonical EAR strategies for preserving control over the legislature, even though scholars of Hong Kong politics have long argued (Lau and Kuan 2000; Scott 2000) that the chamber is firmly subordinate to the executive branch. How does Hong Kong's EAR preserve this outcome?

The Hong Kong EAR

Hong Kong's (HK) EAR emerged from the British Colonial period and was institutionalized in the "one country, two systems" bargain that transferred political control from the UK to the People's Republic of China. A Crown colony until the handover to China in 1997, Hong Kong is unique in that the authoritarian government is dependent not only on citizen support but also on the ongoing approval of the central government in Beijing. Beijing's policy toward Hong Kong has been motivated by both the fear of a "demonstration effect" for dissidents in Mainland China (Ma 2011) as well as the vulnerability of the city to political interference by foreign interests (Sing and Tang 2012). Beijing "wants the legitimacy of an electoral democracy, but does not want to give up control and accept the uncertainty that elections bring" (Ma 2011, 66). These constraints explain the absence of a hegemonic state party in Hong Kong.⁵ While HK's pro-government forces (led

enactments are subject to veto, whether all legislators are elected rather than appointed, whether budgets approved by the legislature are subject to impoundment, and whether there are regular legislative sessions.

⁵ The government has argued that party politics would give rise to populist agendas, threatening Hong Kong's market-oriented and pro-business policy (Lau and Kuan 2002). More importantly, Beijing sees political parties as potential "vehicles for the mobilization of the anti-communist passions of Hongkongers" (Lau and Kuan 2002). Centripetal electoral rules ensured that seats would be dispersed among small parties that remain weak (Ma and Choy 1999). Most of the dozen or so parties active in the LegCo at any given time tend to be transitory candidate-centered organizations (Leung 1997). Weak parties limit the potential for collective action within the legislative body, protecting Beijing from the emergence of strong opposition leadership, or the potential of a cross-factional alliance demanding regional autonomy. Party development is also limited by the

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by the Democratic Association for the Betterment of Hong Kong, or DAB) are nominally Beijing's allies, their policy preferences are not necessarily or inevitably identical. A hegemonic state party might provide a mechanism for blocking Beijing's future policy or constitutional initiatives. Moreover, even if such disagreements did not exist, the Beijing government would prefer to keep all political organizations in HK weak and disorganized, to reinforce the perception that party politics is no viable alternative to centralized state control, both in Hong Kong and in China itself.

The outlines of Hong Kong's government were codified in the quasi-constitutional document known as the Basic Law (Scott 2000). While Article 68 of the Basic Law contained provisions for the "gradual and orderly progress" towards "the election of all the members of the Legislative Council by universal suffrage," compliance with these goals was left to Hong Kong's government. Almost 20 years after the handover, the current HK government features a strong chief executive who is selected by Beijing loyalists in a small electoral college (Scott 2000). The current LegCo (the Fifth Council, elected 2012 and serving until 2016) is comprised of 70 members, 35 elected from five multi-member districts (geographical constituencies or GCs), and 35 elected by designated professional and business sectors (functional constituencies or FCs, including 5 seats for the so-called District Council constituency that are voted on by HK residents not otherwise represented by an FC).⁶ This structure increases the range of interests in the LegCo and, in particular, ensures the representation of pro-business and pro-China interests (Loh 2006).

rule requiring the chief executive-elect to break off any existing party affiliation before taking office and the prohibition on parties developing ties with foreign political organizations, arrangements inserted into the Basic Law on Beijing's demand (Lau and Kuan 2002).

⁶ Appendix A provides details on the GC and FC seats in the 2012 LegCo elections, showing how the post-handover legislative mandate has changed since 1997. Election Committee seats (ECs) were filled by candidates chosen by a body of mostly business-friendly and pro-Beijing electors.

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Figure 1 shows the number of pro-regime and opposition legislators elected over time to the LegCo: pro-government candidates dominate FC seats while opposition candidates have gradually lost ground in GC contests, although all elections have produced a significant number of legislators who openly oppose the government's policy initiatives.⁷

Figure 1 Here

These results reflect electoral rules designed to increase the number of candidates and minimize incentives for candidate investment in strong party organization. The GC contests involve party-list proportional representation in multi-member districts using the largest remainder method and the Hare Quota and a low electoral threshold. This system lowers barriers to entry and encourages large numbers of parties—and therefore a large number of candidates—to enter the race, and creates a high level of disproportionality that favors the better-organized pro-government candidates.⁸ FCs use either first-past-the-post or preferential elimination rules that create significant barriers to entry and dissuade marginal challengers. FC rules also embody significant restrictions on candidacy (Young and Law 2004) that undermine political parties' capacities to field appropriate candidates. FC constituencies represent relatively small numbers of voters, enhancing the value of personal connections and networks and weakening the viability of party-sponsored and opposition candidates (Lau and Kuan 2002).

In the 2012 elections, this combination of rules produced a LegCo with a relatively large number of parties (18, including 12 with one or two officeholders) and a significant

⁷ Our classification of legislators into of pro- and anti-government groups is based on their voting behavior, particularly on measures related to democratization and universal suffrage. We discuss this measure in detail later in the paper. Our characterization is consistent with other analyses of Hong Kong politics (Scott 2000).

⁸ Lower electoral thresholds also enhance the value of state resources in contesting the GCs affording the government significant advantage over the opposition. State resources can be channeled to a relatively limited proportion of the constituency to win seats for pro-government forces. Likewise, government resources can be mobilized to serve as campaign resources for state-sponsored candidates. As a result, the currency of electoral competition has shifted from universalist policies such as economic growth versus democratization to patronage (Ma and Choy 2003).

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percentage of independents (12/70, ~17%). A third of FC seats were uncontested. The party closest to the regime, the DAB, holds less than 20 percent of LegCo seats. These outcomes are exactly what we would expect given the electoral institutions described here, and are consistent with the regime's overarching goal of preventing the formation of political organizations that might challenge Beijing's control over the territory.

Given the disparity of FC and GC results, it is no surprise that opposition forces often call for the FC to be eliminated. Pro-regime forces typically respond the FC should be retained because of the need to keep different interests and policy preferences represented - something that a LegCo dominated by GC members might not achieve (Scott 2007; Young and Law 2004). More importantly, as we demonstrate later, FC seats play a crucial role in the state's efforts to control LegCo proceedings. The point is not that FC seats provide a secure base of regime support, although they currently do. Rather, as we show in the next section, LegCo voting rules exploit the differences in the kinds of candidates elected to GCs and FCs in a way that preserves the regime's status as a veto player in the legislature.

Legislative Rules and LegCo Outcomes.

At first glance, the HK's veto power is the product of agenda control (Cox and McCubbins 2005), specifically the regime's monopoly power over LegCo proposals.⁹ In particular, while LegCo rules give the government the power to initiate proposals, it also stipulates that members may not introduce a proposal that affects public expenditure or that, in the opinion of the LegCo president, would affect the structure or operation of government agencies. Exceptions require the written consent of the chief executive, which

⁹ We use the term "measure" to describe anything voted on during LegCo proceedings. Following usage in the LegCo, "proposals" are measures that alter government policies or budgets, while "motions" are measures that have no policy effects.

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has never happened.¹⁰ However, LegCo members are permitted to propose amendments to government proposals without germaneness restrictions. Thus, members are essentially guaranteed debate and a vote on whatever policy changes they wish to offer, as long as they frame them as amendments to government-sponsored proposals. LegCo members can also offer motions or amendments to motions, with the restriction that these measures cannot alter policy or spending. Even so, motions allow proposers to signal their positions on controversial issues, force opponents to reveal their positions, or highlight governmental corruption, policy failures, or other unpopular outcomes.¹¹

Our investigation shows that the key to the HK regime's control over LegCo proceedings lies in the voting procedures used on government and member-sponsored measures. LegCo measures offered by the government are voted on using majority rule – they are enacted if they receive a majority of yeas (abstainers and those present but not voting are counted as nays, while the votes of absent members do not count) from the chamber as a whole. However, measures offered by LegCo members are decided by a procedure we label split voting: votes are tallied separately for FC and GC members, and passage requires a majority of yeas from members in each of the two groups. Put another way, member-initiated measures can be rejected even when they receive the support of a chamber majority, but government-initiated measures can secure passage with a chamber majority even if a majority of FC or GC members oppose passage.

¹⁰ *Legislative Council Procedures on Members' Bills*. <http://www.LegCo.gov.hk/general/english/bills/mem-bill.pdf>. Accessed Aug 10, 2014.

¹¹ Another possibility is that LegCo members could use amendments as a way to delay government initiatives. Ma (2009) reports that the legislative process has become more 'viscous' as lawmakers spend more time scrutinizing and deliberating bills in the hope that the government will trade concessions for time. Individual cases reveal that high legislative viscosity and political miscalculations on the part of the government can lead to serious public opposition to government bill proposals (Ma 2005). Indeed, at two times in the 4th and 5th LegCo sessions in our data, a small number of legislators proposed hundreds of amendments to government bills, including those for budget appropriations, although eventually the presiding officer ended debate and moved for a vote on government proposal, which was enacted.

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[This combination of legislative rules creates an important paradox. At one level, the LegCo is the model of an open, democratic legislature. LegCo members can offer motions or amendments, there are no official or unofficial restrictions on the content of these measures, votes are counted as cast (and cast without coercion), and the full record of LegCo proceedings is publically available. Moreover, the split voting procedures is arguably a variation on bicameral legislative institutions that are used in one form or another by many democracies. However, as we show in the next section, the split voting procedure interacts with electoral institutions in a way that gives Hong Kong's EAR a veto over legislative policy changes. In this way, split voting in the LegCo is a canonical example of how an authoritarian regime can create legislative rules that allow for open debate in the chamber and even the theoretic possibility of opposition success while maintaining firm control over the process.]

The Uncovered Set and LegCo Outcomes

Our analysis of the impact of split voting in the LegCo relies on the uncovered set (UCS), an analytic tool that identifies the possible outcomes of majority rule decision-making (Miller 1980; Shepsle and Weingast 1984; McKelvey 1986; Cox 1987). The authors of this paper and others have developed a method for estimating UCSs (Bianco, Sened, and Jeliaskov 2004), and tested the concept's predictive power using experiments (Bianco et al. 2006, 2008a, 2015) and real-world data (Kam et al. 2010; Jeong et al. 2009a; Jeong, et al. 2009b; Smyth et al. 2010). These papers show that given data on legislators' preferences, the UCS identifies a set of outcomes that are the potential results of majority-rule voting by these individuals, given all possible proposals, amendments, and agendas (the order in which measures are voted on) that could be devised. In essence, given a specification of covered and uncovered outcomes, we can say that covered policy outcomes cannot occur, while an

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uncovered policy outcome might occur, given the right combination of proposals, amendments, and agenda.

We use the UCS to verify our suspicions that split voting in LegCo, coupled with the differences in preferences held by FC and GC legislators, creates a barrier against policy change by LegCo members. Figure 2 shows ideal points and uncovered sets for the current (Fifth session, elected 2012) LegCo.

Figure 2 Here

In the figure, each legislator's preferences are represented as a point in the two-dimensional space.¹² A legislator's position on the (horizontal) x-axis describes their preferences regarding democratic reform and universal suffrage in Hong Kong – legislators on the left-hand side (opposition) favor less control by Beijing and expanding the franchise, while legislators on the right-hand side (pro-regime) favor a restricted franchise. The (vertical) y-axis gives a legislator's views on issues relating to economic liberalism, such as the provision of social benefits or the emphasis on redistribution.

This distribution of ideal points confirms the overall fragmentation of the LegCo party system. LegCo members are divided according to their beliefs about democratic reform, with the pro-government DAB and its allies favoring the Beijing position of tighter controls on political outcomes in Hong Kong, and the Civic Party, Democratic Party, and other "pan-democrats" favoring moves toward universal suffrage and less control from Beijing. However, there is considerable disagreement within the pro-government faction. Members of the Liberal Party hold strong pro-market positions, while members of the DAB and various small parties and independents favor higher levels of government intervention and pro-labor regulation.

¹² These estimates of legislator preferences are developed using Optimal Classification (Poole 2000), where a legislator's roll call voting record is used to determine their underlying policy preferences.

Figure 2 also shows the uncovered sets for FC and GC members, along with the UCS for the chamber as a whole. The GC uncovered set shows the set of measures (relatively pro-democratic reforms, relatively liberal on social policy) that would receive a majority of yeas from GC members. Similarly, the FC uncovered set shows the set of measures (less sympathetic to democratic reforms and redistribution than in the case of the GC's UCS) that would gain majority support from FC members. However, these two UCS do not overlap – meaning that it is impossible to devise a measure that will attract majority support simultaneously from both groups. This situation is created by the difference in preferences between FC and GC members – the uncovered sets capture the impact of these differences at the level of majority coalitions. Coupled with the requirement for split voting, the distance between the two uncovered sets should make it all-but-impossible for LegCo members to enact measures that change government policies or budgets.

Figure 2 also shows the UCS for the entire LegCo – labeled the chamber uncovered set. This area contains measures that are enactable when the chamber votes on the measure using simple majority rule – that is, the procedure used for government-sponsored measures. Note that the right-hand edge of the chamber UCS is close to the preferences of legislators from the pro-regime DAB. In other words, given member preferences and LegCo voting procedures, Figure 2 shows that the regime's preferred policies and spending proposals are enactable, in that they lie in the chamber UCS. This disparity between the constraints faced by the government and by LegCo members is consistent with the logic of EAR, that electoral and legislative institutions will be chosen to allow unfettered elections while preserving the state's control over policy outcomes.

There are two caveats to this argument. First, LegCo members could enact measures despite the split voting constraint by trading votes, where some FC legislators vote for a GC-

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avored measure in return for votes by some GC members on an FC-favored measure, creating an outcome where both measures are enacted – an outcome located in the chamber UCS somewhere in between the FC and GC uncovered sets. However, as we show later, there is no evidence of vote trading in the LegCo, a fact which is not surprising given the fragmentation of the LegCo party system and the relatively large number of independents, both of which would make it difficult to negotiate and implement vote trades

Another caveat concerns LegCo motions (or amendments to motions), which by definition cannot affect expenditures or government policy. Because motions are purely advisory, the various uncovered sets for the LegCo (which are a function of members' policy preferences) might not constrain legislative outcomes. Put another way, even with split voting, LegCo members might be able to enact some motions, particularly those that advocate universally preferred outcomes (such as a strong economy, educational opportunities for young people, or the virtues of Confucian medicine). However, enactments of more controversial motions, such as those concerning press freedom or relations with Beijing, should be relatively rare. We will test this conjecture in our empirical analysis.

The Policy Hypothesis

Based on our analysis of LegCo preferences and institutions, our hypothesis predicts a sharp difference in the probability of enactment for policy-relevant LegCo measures (proposals and amendments to proposals) offered by the Government and by LegCo members:

Policy Hypothesis (PH). Given the current disparity in preferences between FC and GC legislators, the probability that a LegCo proposal or amendment to a proposal is enacted will be high (~ 1) for Government-sponsored measures and low (~ 0) for member-sponsored measures.

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In words, we expect that the government will always be able to enact its preferred proposals – as shown in Figure 2, the LegCo chamber uncovered set (which defines the set of outcomes that can be obtained through majority rule) almost touches the ideal points of legislators from DAB, which is a plausible proxy for the government’s preferences. Thus, in equilibrium, the government can offer proposals or amendments to proposals that are close to their ideal and yet enactable given majority rule voting in the LegCo, resulting in high rates of enactment for these measures. In contrast, proposals or amendments to proposals offered by LegCo members must receive majority support from both FC and GC legislators. However, given the current distribution of LegCo members, the FC and GC uncovered sets (which define the set of outcomes that majorities in each group will support) do not overlap – meaning anything that is enactable in one group is not enactable in the other. Given these constraints, members of the current LegCo should be unable to enact any proposals or amendment to proposals (subject to the vote trading caveat mentioned earlier).

Analyzing LegCo Enactments

Our test of the Policy Hypothesis focuses on measures that were voted on during the first half of the fourth (March 2008 – December 2010) and the fifth (March 2012 - July 2014) LegCo sessions. We use a multivariate analysis to assess the difference in enactment rates between the four types of LegCo measures: proposals, amendments to proposals, motions, and amendments to motions. The unit of analysis is a recorded vote in the LegCo on a single measure, with the dependent variable equaling 1 for enacted measures and 0 for defeated measures. Figure 3 gives statistics on the different kinds of measures in our data.¹³

****Figure 3 Here****

¹³ As noted earlier, we exclude opposition motions offered as part of filibuster strategies.

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The most common case (about 70%) involves votes on motions offered by LegCo members or amendments to these motions. About a quarter of these measures are decided using voice votes. LegCo members also offer a number of amendments to government proposals. The government-proposed measures include appropriations bills and substantive proposals, all of which involve recorded votes. In all, opposition legislators offer about 50 percent of the measures in figure 2 (including virtually all of the amendments to proposals), with pro-regime legislators offering about 30 percent and the government about 20 percent of the totals.

Table 2 defines our exogenous variables and gives predictions about the sign and magnitude of the parameters for each variable.

Table 2 Here

The Government Proposal variable equals 1 for proposals or appropriations offered by the Government and 0 otherwise; the PH implies that the parameter for this variable should be positive and significant.¹⁴ The next variable, Amendment to Government (also 1/0), accounts for cases where a LegCo member offers an amendment to a government proposal. Here, the PH predicts a negative parameter. Next, there are two variables that describe the preferences of the proposer of a non-government motion or amendment: Opposition, which equals 1 for a regime opponent (defined based on their NOMINATE scores) or Distance to DAB, which is the distance between the proposer's ideal point and the average ideal point of DAB legislators. This variable is included to control for the possibility that the prospects for enacting a measure might be higher for pro-Government legislators. Finally, we include

¹⁴ Note the default or omitted type of measure is member-sponsored motions. We exclude voice votes from the analysis – since all measures decided using voice votes were enacted, there is no variation in outcomes to analyze.

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two 1/0 control variables, accounting for vote involving amendments to motions and a few miscellaneous votes.

Table 3 gives the parameters and significance levels for two logit regressions with the 1/0 enactment measure as the dependent variable. The left-hand column contains our preferred model; the right-hand column substitutes the Opposition variable for the DAB Distance variable. The signs, magnitudes, and significance of the parameters across the two estimations are remarkably stable and consistent with our hypothesis.

Figure 4 interprets these parameters, showing the predicted probability of enactment for different types of LegCo measures. This figure is constructed using the parameters in the left-hand column of Table 3, comparing the government's success rate with two hypothetical LegCo members: a member of the pro-opposition Democratic Party, and a member of the pro-regime DAB (the ideal points are the average for each party).

Figure 4 Here

Consistent with the PH, the analysis shows that government proposals have a high probability of enactment enacted, while amendments to these proposals offered by LegCo members have an extremely low probability of enactment. These results confirm our suspicions about the impact of LegCo procedures on policy outcomes – and on the Hong Kong EAR's ability to control these outcomes consistent with their policy goals.¹⁵

Figure 4 also reveals variation in the predicted probability of enactments of motions and amendments to motions: about .50 for those proposed by pro-government DAB legislators and about .20 for opposition Democrats. Additional analysis (available on request) shows that this variation is due to the different types of motions offered by each group. Pro-government legislators are more likely to offer noncontroversial motions (such

¹⁵ The parameters also confirm our expectations about the absence of vote trades or side payments.

as one extolling the virtues of Confucian medicine), while regime opponents are more likely to offer motions dealing with polarizing topics (such as universal suffrage, relations with Beijing, press freedom, or no-confidence motions). Thus, when motions are voted on, those offered by pro-government legislators are more likely to be successful.

Maintaining the EAR: The Impact of Electoral Change on Legislative Outcomes

The 2014 protests in Hong Kong centered on citizen demands for universal suffrage in light of the government's refusal to carry out commitments to open the nomination process for the office of Chief Executive. Under the current system, nominees for this office are selected a 1200-member Election Council, who are themselves selected by restricted constituencies that resemble FCs. The proposed switch to a new nominating committee would essentially guarantee the election of a pro-Beijing CE whose actions in office are broadly consistent with existing policy. The government's interest in controlling this process is clear: an open process could lead to electing an anti-Beijing CE who could use the Government's procedural advantages in the LegCo to offer opposition proposals for a vote, thereby circumventing the regime's veto power and lowering the bar to enacting these proposals from the dual-majority constraint to a chamber majority.

At the same time, these revisions were debated, some pro-government groups also suggested new procedures to vet LegCo candidates, where bodies similar to the Election Council would decide who could contest FC seats, presumably to ensure the election of pro-Beijing candidates. At first glance, this move contradicts the core finding of our analysis about the importance of split voting as a control on LegCo outcomes – if this procedure makes it nearly impossible for members to enact significant reforms, why would the government need to impose additional restrictions on who gets elected in the first place?

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The answer, paradoxically, is that these proposals reflect the electoral gains by pro-government legislators in GC seats. In the current LegCo (and in all previous sessions), the preferences of GC and FC legislators are sufficiently different that no proposal can gain majority support from both groups. As shown in Figure 1, however, pro-government forces gained GC seats in the 2012 election while maintaining their majority in FC seats. If this trend continues in the 2016 legislative elections, pro-government forces could amass a majority in GC seats, shifting the GC uncovered set towards the FC uncovered set such that the two sets overlap – meaning that it would be possible to devise amendments to proposals that garnered majority support from both GC and FC legislators, and eliminating the regime’s position as a veto player. An example is shown in Figure 5.

Figure 5 Here

Figure 5 shows uncovered sets for a hypothetical post-2016 LegCo, where the DAB (independent legislators with ideal points similar to the DAB) gains two seats, one from the Civic Party and one from the Democratic Party, with all other GC and FC seats reelecting their incumbents, so that pro-regime forces hold a narrow 18-17 majority in GC seats and continue their dominance of the FCs.¹⁶ Figure 5 shows that the DAB's gains translate into a large shift in enactable outcomes: the uncovered set for the GC moves sharply to the right so that it overlaps a large portion of the FC uncovered set. In substantive terms, these pro-regime gains would eliminate the procedural roadblock caused by split voting. As Figure 5 shows, given the shift in the GC uncovered set, some measures would then enactable – those corresponding to the area where the GC and FC uncovered sets overlap. In substantive terms, while opposition forces would still be unable to achieve their most-

¹⁶ Each party’s membership has a tight distribution of ideal points – so to create this hypothetical legislature we randomly delete one member of the Civic group, one from the Democrats, and duplicate the ideal points of two DAB members.

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preferred outcomes, they could devise amendments to proposals that would attract FC majorities without sacrificing a GC majority. At that point, the regime would be faced with a problematic choice: lose a significant measure of control over LegCo policy outcomes, or resort to more draconian tactics, such as curbing the opposition's proposal power, pressuring legislators to vote against these measures – or controlling who is elected to the LegCo in the first place.

These results show that the policy implications of the LegCo's split voting procedure are contingent on electoral outcomes – on the kinds of legislators elected to FC and GC seats. From the Government's perspective, the current distribution of seats, where pro-regime forces hold the balance of power in FC seats, while opposition forces have a narrow margin in GC seats, preserves their status as a veto player in the LegCo. Opposition gains in FC seats would represent an obvious threat to Government control, but so would gains in GC seats by supporters of the regime. While the government did not change LegCo nomination procedures for the upcoming 2016 elections, continued gains by pro-regime legislators may force them to revisit this decision.

Discussion

The principle contribution of our paper is to move beyond the "E" in EAR to assess the broader representative apparatus in these countries, with an eye to understanding the variation in veto powers held by these regimes and the sources of these powers. The point is that not that all EARs manipulate legislative rules, but that ignoring this possibility may give a false sense of an EAR's character. For example, a regime might be seen as more liberal than another if it puts few restrictions on candidacy or party organization and does not try to coopt opposition politicians. However, these observations leave open the question of whether it is possible for the winners of these elections to forge legislative compromises and

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enact these proposals into law. An EAR's apparent electoral liberalism may be matched by highly restrictive legislative rules. More generally, our results confirm that the representative character of an EAR (or any regime) is not just a function of who gets elected to political office – it also depends on the procedures used to construct the legislative agenda, and how these proposals are debated, amended and decided on.

The need to account for variation in the legislative rules used by different EARs is particularly important because these rules can interact with and magnify the impact of electoral arrangements, creating veto players where none ostensibly exist. For example, Hong Kong's electoral system (in particular, the distinction between GCs and FCs) is clearly designed to create a fragmented party system and maximize the number of independent legislators, making it less likely that a pro-democracy or opposition-business coalition will emerge to challenge the regime. However, the requirement that member proposals be decided on using split voting vastly increases the impact of these electoral provisions. While these interactive effects are not inevitable (split voting is beneficial to HK's EAR only insofar as GC and FC legislators have distinct policy preferences), the potential for these effects strengthens our argument for examining how EARs manipulate legislative rules to preserve their veto over policy change.

With regard to Hong Kong's LegCo, the analysis confirms that the requirement for split voting on all non-government measures creates a significant disadvantage for opposition and pro-regime legislators alike: in essence, they must build supermajority coalitions in order to change government policy – coalitions that are extremely difficult to build given the distribution of interests in the chamber. In contrast, LegCo rules give the regime a clear procedural advantage. In fact, in our data, there is only one case of a regime proposal (an amendment to a telecommunications bill) being defeated. In this way, split

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voting is a real-world example of how legislative rules can provide EARs with a crucial second line of defense against both opposition forces and dissident factions within the regime.

These findings also suggest why the Hong Kong Government has strongly resisted attempts to democratize the nomination process for Chief Executive, as well as their moves to impose controls on LegCo nominations. Up to now, changes to the distribution of LegCo seats (increasing the number of geographical seats and added functional seats that are selected by citizens who are not part of a recognized business or professional group) have been accomplished without negating the effects of split voting. However, increased electoral support for pro-regime legislators threatens to erode the regime's position as a veto player. These trends underscore the complex interplay between electoral and legislative institutions that keep EARs in power, as well as the measures that these regimes must take to preserve their position in light of changes in public opinion and electoral outcomes

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Figure 1.

Regime Support in the LegCo: Geographical and Functional Constituencies

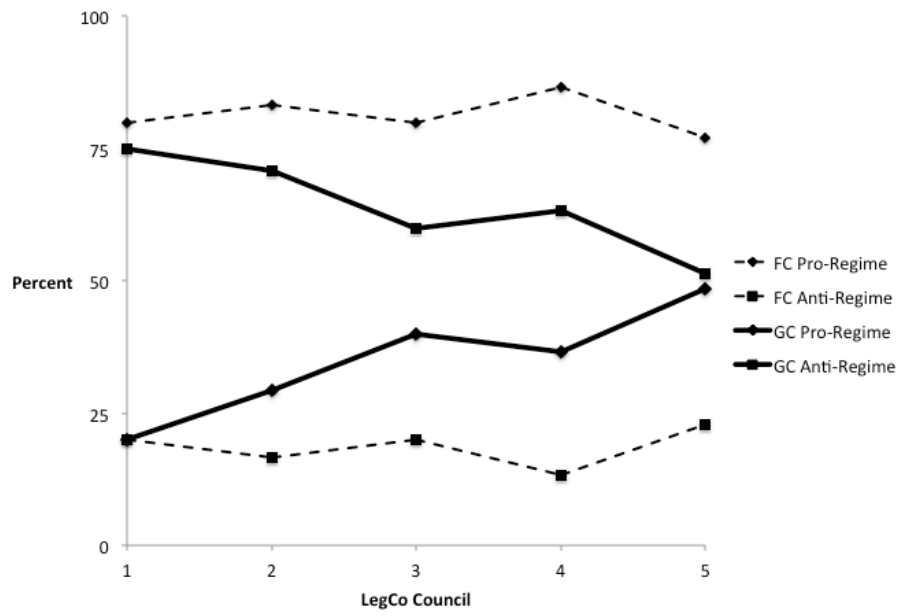


Figure 2.

LegCo Preferences and Uncovered Sets

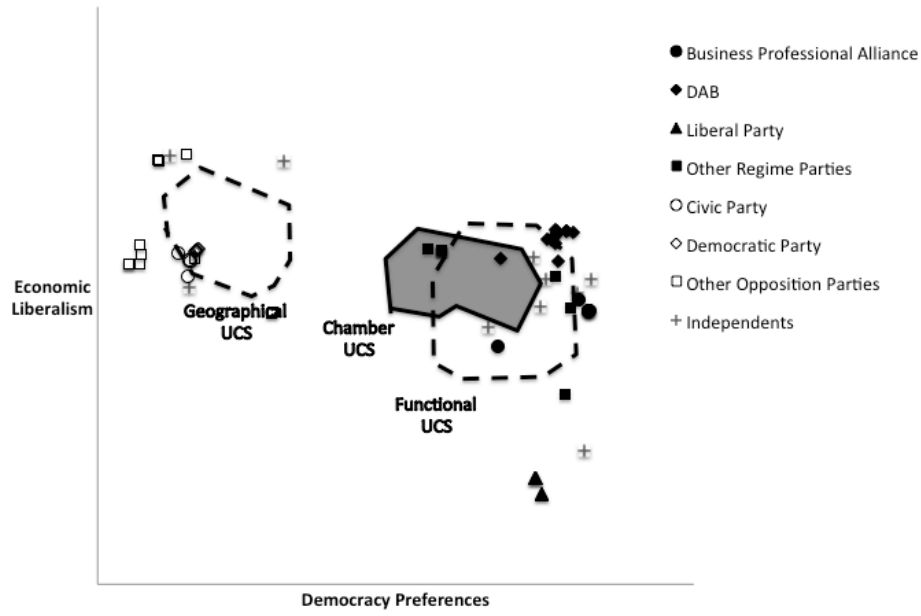


Table 2. Exogenous Variables in LegCo Analysis

Variable	Description	Impact on p(enact)
Measure Variables:		
Government Measure	Government-sponsored proposal or appropriations bill	+
Amendment to Government	Amendment to Government-sponsored measure	-
Proposer Variables:		
Opposition	Proposer of motion or amendment is member of LegCo opposition	-
Distance	Distance between ideal point of proposer and average ideal point of DAB members	-
Control Variables:		
Amendment to Motion	Amendment to motion	
Other	Miscellaneous LegCo measure (e.g. shorten division bells)	

Figure 3.
Types of Measures in LegCo Analysis

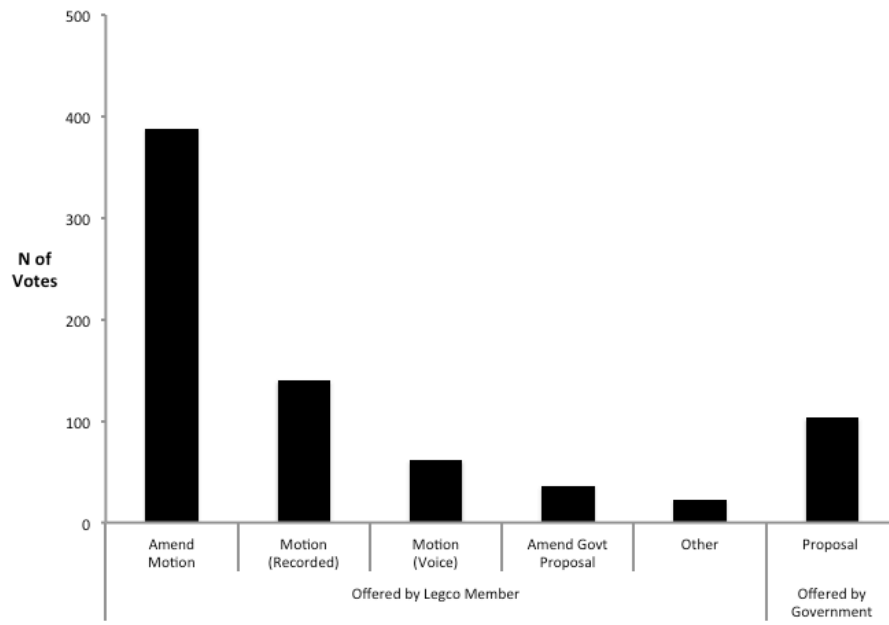


Table 3. Parameters for Analysis of LegCo Enactments

Type of Measure	Dependent Variable: Measure Enacted	
Proposed by Govt	3.9*** (.76)	4.2*** (.76)
Amendment to Govt Measure	-2.6*** (1.05)	-2.7*** (1.0)
Amendment to Motion	-.22 (.25)	-.22 (.25)
Other	-.52 (.51)	-.63 (.53)
Proposer		
(Distance to DAB) ²	-.00045*** (.000009)	-
Member of Opposition	-	-.57*** (.20)
Constant	.03 (.26)	-.32 (.25)
N	629	629
Chi Square	91.6***	61.1***
Pseudo R ²	.29	.27
Cell entries are parameter (robust standard error), * = p < .1, ** = p < .05, *** = p < .01, all two-tail		

Figure 4.
The Fate of Legislation in the LegCo

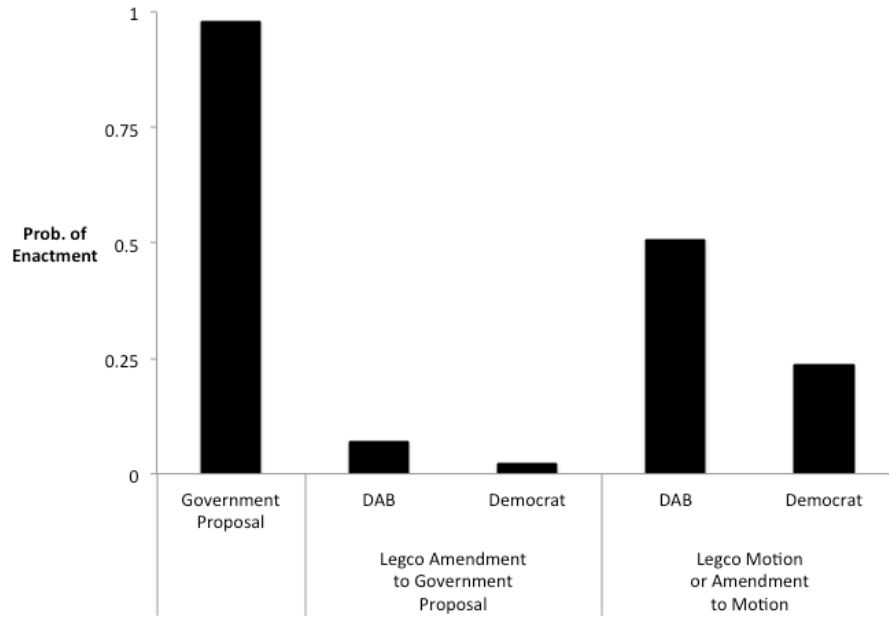
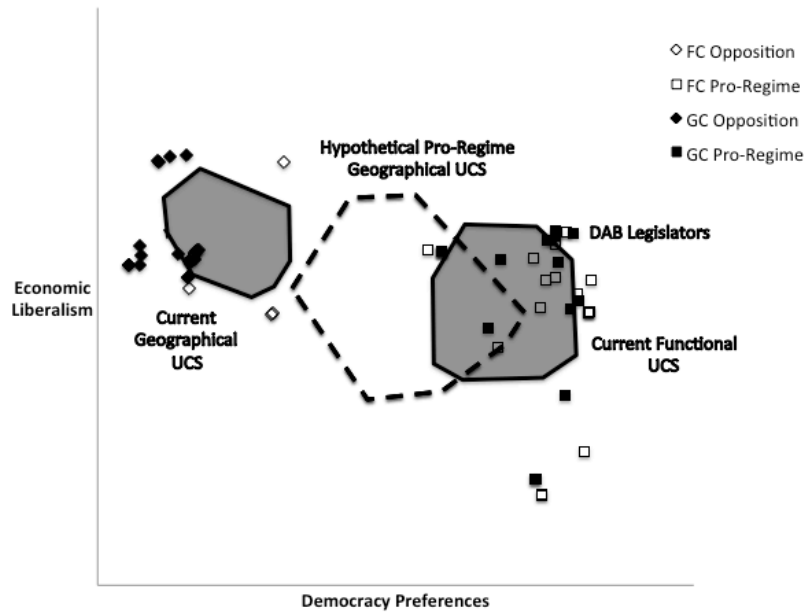


Figure 5.

The Policy Consequences of DAB Electoral Success



Appendix

Table A1. Hong Kong Legislative Council After 2012 Elections

Type	Constituency	Seats	Votes
Geographical	Hong Kong Island	7	330,766
	Kowloon West	5	232,081
	Kowloon East	5	284,782
	New Territories West	9	498,610
	New Territories East	9	464,745
Functional (Contested)	District Council	5	1,591,872
	Agricultural and Fisheries	1	133
	Education	1	61,705
	Legal	1	4,498
	Accountancy	1	16,470
	Medical	1	6,746
	Health Services	1	22,867
	Engineering	1	6,780
	Architectural, Surveying, and Planning	1	4,739
	Social Welfare	1	10,191
	Tourism	1	926
	Financial Services	1	465
	Textiles and Garment	1	1,931
	Information Technology	1	4,891
Functional (Uncontested)	Rural, Insurance, Transport, Labour (3), Real Estate and Construction, Industrial (2), Commercial (2), Finance; Import and Export, Wholesale and Retail, Catering		

Source: <http://www.elections.gov.hk/LegCo2012/eng/results.html>, accessed 10/22/14

Table A2. Seat Allocations in The Hong Kong Legislative Council, 1998 - Present

Council (Term of Office)	Geographical Constituencies	Functional Constituencies		Electoral Committee
		Business Groups	District Council	
First Council (7/1998 – 10/2000)	20	30	-	10
Second Council (10/2000 – 10/2004)	24	30	-	6
Third Council (10/2004 – 10/2008)	30	30	-	-
Fourth Council (10/2008 – 10/2012)	30	30	-	-
Fifth Council (10/2012 – 10/2016)	35	30	5	-

Source: "History of the Legislature," http://www.LegCo.gov.hk/general/english/intro/hist_lc.htm, accessed 1/19/2015