

“One Country, Two Systems”: Human Rights Protection and Political Development in Hong Kong

PART II - A History of Democratic
Developments in Hong Kong

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The colonial constitution

- Constitutional instruments: Letters Patent (英皇制誥), Royal Instructions (皇室訓令) - issued by the Crown
- British Empire: settled colonies; colonies acquired by conquest or cession
- Authoritarian (non-democratic) form of government (unlike that in Britain itself)
- Transplant of English tradition & institutions of the common law, Rule of Law, & judicial independence

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The colonial political system

- Governor
- Executive Council (ExCo)
- Legislative Council (LegCo)
- Civil service bureaucracy
- Courts; Judicial Committee of Privy Council
- Britain: Colonial Office (subsequently renamed Foreign and Commonwealth Office)

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Evolution

- ExCo and LegCo: at first only a few government officials; no unofficial members; no Chinese
- 1850: 1st appointment of 2 unofficial members to LegCo
- 1858: LegCo proceedings open to the public, records published for 1st time

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Evolution (cont'd)

- 1880: 1st Chinese unofficial LegCo member appointed on temporary basis
- 1884: 1st Chinese unofficial LegCo member appointed for fixed term
- 1894: unofficial ExCo members appointed for 1st time
- 1926: 1st Chinese unofficial ExCo member appointed

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Hong Kong Before World War II

- 1925-26: general strike and boycott by workers (省港大罷工) - widespread protest in China against shooting of Chinese student demonstrators by British-officered police in Shanghai (the "May 30 Incident" (五卅慘案))
- Loyalty of majority of Chinese population (pop'n) in HK - to China; identity as Chinese

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Hong Kong and mainland China before World War II

- "Right up to the 1940s governors of HK feared that any extension of democracy to the Chinese pop'n would produce a majority in favour of the return of the territory to Chinese rule." (Norman Miners, *The Government and Politics of Hong Kong*, 4th ed 1986, p 16)

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Chinese migration to Hong Kong

- 1845: pop'n of Colony of HK - 24,000, including 600 Europeans; if include areas of land subsequently incorporated in the Colony - pop'n of 100,000
- Waves of migration to HK - when Mainland suffered from political instability, economic crisis, social unrest, civil war or foreign invasion - HK as place of shelter

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Chinese migration to Hong Kong (cont'd)

- 1850s (Taiping Rebellion in China): rapid pop'n increase in HK, 1861: 165,000 in Colony (HK Island and Kowloon)
- 1901-1921 (1911 revolution in China): pop'n increased from 300,000 to 625,000
- 1931: 850,000
- 1937 (War): 100,000 refugees entered HK
- 1938: 500,000 refugees
- 1939: 150,000

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Chinese migration to Hong Kong (cont'd)

- 1941: pop'n at 1,639,000
- Dec 1941 - Aug 1945: Japanese occupation of HK
- Aug 1945: pop'n at 600,000
- After the War: pop'n influx, 100,000 per month (including former residents returning)
- Late 1940s (civil war): another wave of migration

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Chinese migration to Hong Kong (cont'd)

- Sept 1945 - Dec 1949: 1,285,000 migrants
- Jan 1949 - spring 1950: 776,000 refugees entered
- 1950: pop'n at 2,360,000
- 1950s, 1960s: PRC imposed stringent exit control, HK-PRC border closely watched on both sides
- Exception - 1962 - "great exodus" - influx of 200,000 refugees in one year - pop'n of 3.5 m

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Post-War Hong Kong

- British colonial policy elsewhere in the Empire - development of "responsible self-government" - "decolonisation"
- 1945-52: 3 plans for constitutional / electoral reforms in HK - none was implemented
- The "China factor"
- 1950: PRC entered Korean War; UN trade embargo on China; HK (entrepot trade) - economic stagnation

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The 1950s

- 1956: riots arising from conflict between Kuomintang and Communist factions over flying of Nationalist Government (Republic of China) flags on 10 October - one of three large-scale riots in post-War HK (otherwise enjoyed political stability and rapid economic growth)

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The 1960s

- 1966 (April): riot sparked off by proposed fare increase for travel on Star Ferry
- 1967: several months of civil unrest - riots instigated by local communists under influence of the "Cultural Revolution" in mainland China - protests and demonstrations against colonial rule, planting of bombs, arson

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Reforms in the late 1960's and 1970's

- Governmental reform at district and municipal level:
 - 1968 - City District Offices established
 - Urban Council (UrbCo) (originally Sanitary Board)
 - 1973 - reforms - ex-officio members abolished; 12 appointed unofficials and 12 elected members (restricted franchise, educational / property qualifications;
 - in 1979, 440,000 people eligible to vote out of pop'n of 5 m);
 - increased licensing powers & financial autonomy

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Reforms in the late 1960's and 1970's (cont'd)

- New social policies, particularly during governorship of Sir Murray MacLehose (1971-1980)
- Regulation of labour conditions and relations; government provision of social services
 - Labour legislation
 - Public housing
 - Education
 - Social welfare

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Political system in the 1970's

- Expansion of LegCo, particularly no. of appointed unofficial members
- Not only unofficial members from business and professional classes, also small no. reflecting interests of lower income groups
- Some degree of localisation of the civil service

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Nature of the political system in the 1970's

- "administrative no-party state", "secluded bureaucratic polity"
- Governor, senior civil servants, co-option of local elite – ExCo, LegCo, UrbCo, advisory committees and boards
- Government by consultation, compromise and consensus
- Pressure groups; student movement
- Colonial government accepted as legitimate

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Explanations for political stability

- "Economic miracle" and "miracle of social order"
 - The "China factor": incorporation into communist China as only alternative
 - Economic growth (10% annually in 1961-1981); by 1980, per capita income 3 times that of Taiwan, 12 times that of mainland China; social mobility; governmental reforms and new social policies in late 1960s / 1970s

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Explanations for political stability (cont'd)

- Mode of Governance
 - Authoritarianism of soft, benign, enlightened kind
 - Rule of Law
 - Meritocratic civil service (and Independent Commission Against Corruption (ICAC) set up in 1974 to control corruption)
 - Civil liberties (esp. freedom of the press, freedom of speech)

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Explanations for political stability (cont'd)

- Cultural explanation
 - Traditional Chinese political culture: paternalism, bureaucracy, submission to authority, lack of rights consciousness
 - Refugee mentality; alienation towards government; political apathy
 - Concentration on economic pursuits
 - "utilitarian familism" (Lau Siu-kai's concept)

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The beginning of the era of constitutional change

- April 1979: Governor MacLehose's visit to Beijing - Deng Xiaoping's message - HK investors should put their hearts at ease
- June 1980: Green Paper on District Administration (District Boards (DB)); 1981 White Paper
- 1982: 1st election to 18 DBs (broad franchise - residence for 7 years, above age 21) (also appointed members)

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1982-84: Sino-British negotiations on Hong Kong's future

- 1982 (Sept): Prime Minister Margaret Thatcher's visit to Beijing; negotiation initiated on HK's future
- 1983: UrbCo reformed: 15 appointed members, 15 elected members (broad franchise)
- 1984: Government announced that Regional Council (RegCo) (for the New Territories) would be established (1986)

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1984: year of signing of Sino-British Joint Declaration

- July 1984: Green Paper on "The Further Development of Representative Government in HK"
 - far-reaching constitutional reforms
 - "decolonisation"
 - "democratisation"
 - "system of government the authority of which is firmly rooted in HK, ... more accountable to people of HK"

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1984 Green Paper

- 2 modes of election to portion of LegCo seats:
 - I. electoral colleges (UrbCo, RegCo, DBs),
 - II. functional constituencies (chambers of commerce, trade unions, professional groups)
- LegCo electing ExCo members
- Unofficial LegCo / ExCo members as ministers
- More power for ExCo
- Governor elected by LegCo & ExCo unofficials

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Sino-British Joint Declaration 1984

- 26 Sept 1984: Joint Declaration initialed (草簽) in Beijing and published
- Nov 1984: White Paper on the Further Development of Representative Government in HK
- 19 Dec 1984: Joint Declaration signed in Beijing

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Hong Kong enters the period of transition (1984-1997)

- June 1985: Basic Law Drafting Committee (59 members, including 36 from mainland, 23 from HK) appointed by NPCSC
- 1985: 1st election to LegCo
 - 12 elected by electoral colleges
 - 12 elected by functional constituencies
 - 22 appointed unofficial members
 - 3 ex-officio members, 7 appointed officials

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Hong Kong 1985-1989

- Feb 1988: White Paper on The Development of Representative Government: The Way Forward - 10 directly elected LegCo seats in 1991
- LegCo in 1988 (2nd election to LegCo):
 - 12 elected by electoral colleges
 - 14 elected by functional constituencies
 - 22 appointed unofficial members
 - 3 ex-officio members, 7 appointed officials

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Hong Kong 1985-1989 (cont'd)

- April 1988: 1st draft of Basic Law published for consultation
- Great debate on draft Basic Law
- February 1989: 2nd draft of Basic Law published for further consultation
- April - June 1989: student democracy movement in Beijing; big demonstrations in Beijing and HK (biggest demonstrations in HK's history)
- 3-4 June 1989: Military entered Beijing, takeover of Tiananmen Square

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Hong Kong 1989-1992

- After June 1989: crisis of confidence in HK; demands for speedier democratisation
- 4 April 1990: Basic Law of HKSAR enacted by the NPC in Beijing
- [1993: Basic Law of Macau SAR also enacted]
- Understanding reached between PRC and Britain regarding "through train" (直通車) arrangement for last colonial LegCo elected in 1995

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Hong Kong 1989-1992 (cont'd)

- LegCo in 1991 (3rd election; 1st direct election by universal suffrage)
 - 18 (instead of 10 as promised in 1988 White Paper) directly elected by universal suffrage [landslide victory for the "democrats" (民主派)]
 - 21 elected by functional constituencies
 - 17 appointed unofficial members
 - 3 ex-officio members

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Hong Kong 1989-1992 (cont'd)

- June 1991: enactment by HK LegCo of Hong Kong Bill of Rights Ordinance; corresponding amendment to the Letters Patent; inaugurating era of constitutional judicial review of legislation in HK
- Sept 1991: 1st major case on the Bill of Rights – *R v Sin Yau-ming* (《洗有明案》)
[1992] 1 HKCLR 127 (Court of Appeal)

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Hong Kong 1992-1997

- July 1992: Christopher Patten took up Governorship of HK (succeeding David Wilson)
- 7 Oct 1992: Patten announced controversial constitutional reform proposal
 - Voters in functional constituency increased from 70,000 (in 1991 LegCo election) to 2.7 m (in 1995 election)
 - Abolition of appointed seats in DB, UrbCo, RegCo

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Hong Kong 1992-1997 (cont'd)

- Apr - Nov 1993: 17 rounds of negotiations between the Chinese and British governments on political reform in HK - failed to reach agreement
- Feb 1994: HK Government White Paper on Representative Government in HK
- 30 June 1994: LegCo by narrow majority passed bill to implement Patten's political reform package

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Hong Kong 1992-1997 (cont'd)

- China's reaction to Patten reform:
 - "through train" arrangement no longer possible;
 - "setting up another stove" (另起爐灶)
- 31 March 1993: NPC Decision on the establishment of a Preliminary Work Committee of the HKSAR Preparatory Committee (香港特別行政區籌備委員會預備工作委員會) (PWC appointed in July 1993)
- 31 Aug 1994: NPCSC Decision on impossibility of "through train"

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Hong Kong 1992-1997 (cont'd)

- LegCo elected in 1995 (4th election) in accordance with Patten reforms:
 - 20 directly elected by universal suffrage
 - 30 elected by functional constituencies
 - 10 elected by electoral committee (consisting of elected members of DBs)

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Chinese preparation for establishment of HKSAR 1996-97

- End of 1995: work of Preliminary Work Committee completed
- 26 Jan 1996: Preparatory Committee (PC) for the HKSAR (香港特別行政區籌備委員會) established (150 members, including 56 from mainland and 94 from HK)
- 24 Mar 1996: PC's Decision on the establishment of the Provisional Legislative Council (PLC) of the HKSAR (香港特別行政區臨時立法會)

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Chinese preparation for establishment of HKSAR 1996-97 (cont'd)

- 5 Oct 1996: PC enacted Measures for the Election of the First Chief Executive (CE) of the HKSAR (by a 400-member Selection Committee), and Measures for the Election of the PLC of the HKSAR
- 2 Nov 1996: Selection Committee elected by PC

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Chinese preparation for establishment of HKSAR 1996-97 (cont'd)

- 11 Dec 1996: Tung Chee-hwa elected as first CE of the HKSAR
- 21 Dec 1996: PLC elected (by Selection Committee)
- 23 Feb 1997: NPCSC's Decision on the treatment of HK's existing laws in accordance with art 160 of the Basic Law

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HKSAR: 1st LegCo election 1998

- May 1998: The 1st LegCo of the HKSAR elected
 - 20 directly elected by universal suffrage
 - 30 elected by functional constituencies
 - 10 elected by election committee (consisting of 800 members from 4 sectors of society, mostly elected by functional constituencies)

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HKSAR in 1999

- *Ng Ka Ling v Director of Immigration*
(《吳嘉玲訴入境事務處處長》);
Chan Kam Nga v Director of Immigration
(《陳錦雅訴入境事務處處長》)
(CFA, 29 Jan 1999)
- “Clarification” by the CFA, 26 Feb 1999
- CE’s request for interpretation of Basic Law
by the NPCSC, 21 May 1999
- NPCSC’s Interpretation, 26 June 1999

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HKSAR: 2nd LegCo election 2000

- The 2nd LegCo of the HKSAR elected:
 - 24 directly elected by universal suffrage
 - 30 elected by functional constituencies
 - 6 elected by election committee (consisting of 800 members from 4 sectors of society, mostly elected by functional constituencies)

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The Article 23 Controversy: 2002-03

- 24 Sept 2002: publication of consultative document on implementation of Basic Law Article 23
- Feb 2003: National Security (Legislative Provisions) Bill introduced in LegCo
- Mar 2003: SARS (severe acute respiratory syndrome) epidemic in HK
- Economic decline and depression in HK (1997-2003)

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The Article 23 Controversy: 2002-03 (cont'd)

- 1 July 2003: demonstration of half a million people in HK
- 5 July 2003: Tung administration decided to go ahead with the Bill and to give three “concessions” on its content
- 6 July 2003: Liberal Party (led by James Tien) withdrew support for the Bill; Government decided to postpone the Bill

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The Basic Law Article 23 Controversy & the Rise of the Democracy Movement

- 17 July 2003: Tung announced that Government would re-open consultation on the Bill
- 5 Sept 2003: Government withdrew Bill from LegCo, implementation of Basic Law Article 23 shelved indefinitely
- Another important development in 2003: CEPA (Closer Economic Partnership Arrangement)
- Autumn 2003 – early 2004: rise of democracy movement (large demonstrations), demand for “double universal suffrage in 2007-2008) ⁴⁵

HKSAR in 2004

- Jan 2004: HK Government established Constitutional Development Task Force (CDTF) (政制發展專責小組)
- 30 Mar 2004: CDTF presented 1st report
- 6 April 2004: NPCSC issued 2nd Interpretation on Basic Law
- 15 Apr 2004: CDTF's 2nd report / CE's report to the NPCSC

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HKSAR in 2004 (cont'd)

- 26 Apr 2004: NPCSC Decision on political reform in the HKSAR
- The 3rd LegCo of the HKSAR elected:
 - 30 directly elected by universal suffrage
 - 30 elected by functional constituencies

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HKSAR in 2005

- 12 Mar 2005: Tung resigned; Donald Tsang as Acting CE;
- Controversy over term of office of new CE to be elected to succeed Tung
- 27 Apr 2005: NPCSC's 3rd Interpretation on the Basic Law
- 10 July 2005: Donald Tsang elected as CE

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HKSAR in 2005 (cont'd)

- 19 Oct 2005: CDTF published 5th report - political / electoral reform package for 2007 CE election and 2008 LegCo election
- 21 Dec 2005: Tsang's political reform proposal failed to secure 2/3 majority vote in LegCo

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HKSAR in 2007-2009

- Contested election for 3rd-term CE: Donald Tsang elected by 800-member Election Committee elected in late 2006
- July 2007: Green Paper on political reform published
- Dec 2007: CE's report to the NPCSC on political reform and NPCSC's Decision
- November 2009: consultation document on political reform in 2012

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HKSAR in 2010

- April 2010: release of "Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2010"
- June 2010: adoption by LegCo of revised package

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Nature of the political system of the HKSAR

- Half-way house between soft and benevolent authoritarianism and liberal democracy
- Co-existence of two components of the political system
 - CE and civil service bureaucracy: trusted by Beijing
 - Elected legislators and political parties: the democratic component

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