

## **THE BASIC LAW AND THE DEVELOPMENT OF THE POLITICAL SYSTEM IN HONG KONG\***

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### **INTRODUCTION**

Since February 2007, three proposals for political development in Hong Kong have been put forward by pro-democracy politicians in Hong Kong. They include Mr Alan Leong, candidate in the election for the Chief Executive for the term 2007-2012,<sup>1</sup> 21 pro-democracy legislators,<sup>2</sup> and former Chief Secretary Mrs Anson Chan and her core group.<sup>3</sup> The publication of and the wide media coverage given to the three political reform proposals have brought about a revival of public interest in and the debate on political reform in Hong Kong, a debate which was at least on two occasions (in late 2003 to early 2004 and in late 2005) heated and vigorous in post-1997 Hong Kong and which subsided after the veto by the Legislative Council in December 2005 of the Government’s political reform proposal in the Fifth Report of the Constitutional Development Task Force. This article attempts to describe the context and history of the discourse of political reform and constitutional development in Hong Kong, and explores the possibilities and limits of Hong Kong’s political development in the foreseeable future.

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<sup>1</sup> See various Hong Kong newspapers of 12 Feb 2007; [www.competitionforce.hk/democrat\\_chn.php](http://www.competitionforce.hk/democrat_chn.php). The election took place on 25 March 2007. Mr Alan Leong was defeated by Mr Donald Tsang by votes of 649 to 123 in the Election Committee for the Chief Executive.

<sup>2</sup> See various Hong Kong newspapers of 3 March 2007. The full text of the document is entitled “Towards Full Universal Suffrage: A Proposal on Political Reform in 2012 for Public Consultation” (in Chinese). It has been submitted to the Committee on Governance and Political Development of the Commission on Strategic Development of the HKSAR Government.

<sup>3</sup> See various Hong Kong newspapers of 6 March 2007. The full text of the document is entitled “The Road to Universal Suffrage”. It has been submitted to the Committee on Governance and Political Development of the Commission on Strategic Development of the HKSAR Government.

This article is divided into the following parts. Part I reviews briefly the history of the design of the political order for post-1997 Hong Kong, examines the nature of this political order and its operation since 1997. Part II reviews developments since the march of half a million people on 1 July 2003, particularly the short-lived democracy movement in 2003-04 and its aftermath. Part III considers the prospects of political reform and further democratization in Hong Kong in the years ahead.

## I

The point of departure of our discussion must necessarily be the constitutional design for the political order of the Hong Kong Special Administrative Region (HKSAR) as embodied in the Basic Law, which in turn is partly derived from the Sino-British Joint Declaration signed in 1984, at which time Hong Kong was a British colony with no democracy and no elected legislators but enjoying the Rule of Law, judicial independence and a reasonable degree of civil liberties. Paragraph 3(4) of the Joint Declaration provides as follows: “The Government of the HKSAR will be composed of local inhabitants. The chief executive will be appointed by the Central People’s Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the HKSAR for appointment by the Central People’s Government.” Further provisions on the political system of the HKSAR may be found in Annex I to the Joint Declaration. For example, “The legislature of the HKSAR shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.”<sup>4</sup>

As the provisions in the Joint Declaration on the political order of the HKSAR are general and vague, the task of designing a workable system of government for the HKSAR was left to the draftsmen of the Basic Law of the HKSAR. The drafting of the Basic Law was a long process that started in 1985 with the establishment of the Basic Law Drafting Committee and ended in 1990 with the enactment of the Basic Law by the

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<sup>4</sup> Section I of Annex I to the Joint Declaration.

National People's Congress of the PRC.<sup>5</sup> The drafting of, consultation on and debates about the Basic Law were contemporaneous with efforts by the British Hong Kong government to start dismantling the authoritarian elements of the colonial political order in Hong Kong and to develop what it termed "representative government" in Hong Kong.<sup>6</sup> In 1985, a portion of seats in the Legislative Council (LegCo) was opened to electoral competition for the first time in Hong Kong's constitutional history. The election to fill these seats was not by universal suffrage but was confined to "functional constituencies" such as chambers of commerce, industrialists' federations, trade unions and professions such as lawyers, doctors and teachers. The first great debate on democratization in Hong Kong took place in 1987 regarding whether direct election (election by universal suffrage) should be introduced for a portion of LegCo seats in 1988. At the same time, there were debates on what kind of electoral arrangements should be stipulated in the Basic Law for the Chief Executive and members of the Legislative Council. The actual course of political reform in Hong Kong in the second half of the 1980s and the final content of the Basic Law as promulgated in 1990 were both the outcomes of compromises imposed by the British Hong Kong Government and the Chinese Government respectively between conservatives (including business elites in Hong Kong, the Chinese Government itself and its supporters in Hong Kong) and democrats (including some pro-democracy legislators, a minority of "pro-democracy" members of the Basic Law Drafting Committee, and various NGOs, pressure groups and nascent political parties in Hong Kong).<sup>7</sup>

The compromises include, for example, not introducing direct election for LegCo in 1988 but introducing it for the first time in 1991 (for a portion of LegCo seats). The text

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<sup>5</sup> See generally Peter Wesley-Smith and Albert Chen (eds), *The Basic Law and Hong Kong's Future* (Hong Kong: Butterworths, 1988); Wang Shuwen (ed), *Introduction to the Basic Law of the Hong Kong Special Administrative Region* (Beijing: Law Press, 2000).

<sup>6</sup> See Green Paper, *The Further Development of Representative Government in Hong Kong* (Hong Kong: Government Printer, 1984).

<sup>7</sup> See generally Albert H.Y. Chen, "From Colony to Special Administrative Region: Hong Kong's Constitutional Journey", in Raymond Wacks (ed), *The Future of the Law in Hong Kong* (Hong Kong: Oxford University Press, 1989), chap 3.

of the Basic Law also evidences a compromise. The Basic Law affirms that the “ultimate aim”<sup>8</sup> of the political evolution of the HKSAR is the election of both the Chief Executive and all members of LegCo by universal suffrage. However, it is also provided that such political evolution depends on “the actual situation in the HKSAR” and “the principle of gradual and orderly progress”.<sup>9</sup> The Basic Law itself provides for a progressive increase in the number of directly elected members of LegCo from 20 (out of a total membership of 60) in the first LegCo to 24 in the second LegCo, and then to 30 in the third LegCo. As regards the selection of the Chief Executive, it is provided that the first Chief Executive would be chosen by a Selection Committee of 400 members, and the second and third Chief Executives elected by an Election Committee of 800 members. Given that the Joint Declaration provided that the Chief Executive may be chosen either by election or consultation, and did not make it clear that the elections to the legislature must be direct election rather indirect election, the gains for democracy in the making of the Basic Law should be recognized. It is also noteworthy in this regard that in the Basic Law of the Macau SAR which is in most respects almost identical to the Hong Kong Basic Law, there is no mention whatsoever of the direction of political evolution or any eventual destination of universal suffrage for the election of the Chief Executive and all members of the legislature. This testifies to the relative strength of the democracy movement in Hong Kong in the 1980s.

As of 1990, the understanding between the Chinese and British Governments was that members of the last LegCo of colonial Hong Kong would almost automatically become members of the first LegCo of the HKSAR. This was known as the “through train” arrangement, which was based on the theory of convergence: the political reforms introduced by the colonial government would result in a model for the Hong Kong’s political system that converged with that prescribed by the Basic Law which would come into effect in 1997. However, the political reform introduced in Hong Kong by Governor Christopher Patten who arrived in Hong Kong in 1992 led to the derailing of

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<sup>8</sup> Basic Law, arts 45, 68.

<sup>9</sup> Basic Law, arts 45, 68.

the through train, as the Chinese Government considered the political reform package which Governor Patten unilaterally announced in 1992 a radical departure from the model for the political system prescribed in the Basic Law.<sup>10</sup> The Chinese Government adopted the policy of “setting up another stove”, leading to the establishment of a Provisional Legislative Council which came into operation in 1997. In 1998, one year after the handover, the first LegCo of the HKSAR was duly elected in accordance with the Basic Law and the election law enacted by the Provisional Legislative Council.<sup>11</sup>

The most interesting feature of the political system prescribed by the Basic Law is that it is not a static one but an evolving one, and the logic and mechanism of its evolution is provided for in the Basic Law itself. The ultimate aim of universal suffrage, the principle of gradual and orderly progress and the phased increase in the number of directly elected legislators have been mentioned above. Another important characteristic of the political system established by the Basic Law is its openness to change after 2007. Annexes I and II to the Basic Law expressly provide that the methods for electing the Chief Executive and LegCo may change after 2007. They also expressly provide for the procedure for such constitutional change, which involves the support of a two-thirds majority in LegCo, the Chief Executive’s consent and the approval of (in the case of a change in the electoral method for the Chief Executive) or “reporting for the record” to (in the case of a change in the electoral method for LegCo) the National People’s Congress Standing Committee (NPCSC).

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<sup>10</sup> The most “radical” feature of the Patten reform was that the number of voters in the functional constituencies would be increased from approximately 70,000 (in the 1991 LegCo election) to 2.7 million. See Lam Wai-man et al (eds), *Contemporary Hong Kong Politics: Governance in the Post-1997 Era* (Hong Kong: Hong Kong University Press, 2007), p 4; Alvin Y. So, *Hong Kong’s Embattled Democracy: A Societal Analysis* (Baltimore: John Hopkins University Press, 1999), p 189.

<sup>11</sup> See generally Benny Tai Yiu-ting, “The Development of Constitutionalism in Hong Kong”, in Raymond Wacks (ed), *The New Legal Order in Hong Kong* (Hong Kong: Hong Kong University Press, 1999), chap 2.

It has been pointed out that one of the contradictions in the “politics of multiple contradictions”<sup>12</sup> in Hong Kong is that the Basic Law promises the people of Hong Kong “a democracy that might never come”.<sup>13</sup> “An authoritarian regime which has pre-committed itself to democracy is an inherently unstable regime, because it will be taken to task to deliver.”<sup>14</sup> Such instability was demonstrated in the case of Hong Kong when a democracy movement emerged in the wake of the march of half a million people on 1 July 2003 against the proposed bill to implement article 23 of the Basic Law. Before turning to developments after July 2003, let us first consider the nature and operation of the political system established by the Basic Law which came into force in July 1997.

The colonial political order has been described as an “administrative no-party state”,<sup>15</sup> a “secluded bureaucratic polity”<sup>16</sup> or a “gubernatorial government”,<sup>17</sup> with a high degree of concentration of power in the hands of the Governor appointed by London who in turn appointed both the official and unofficial (non-government) members of the Executive and Legislative Councils. Some scholars<sup>18</sup> have stressed that the design of the political order embodied in the Basic Law follows closely the logic of the colonial political system. This may be true insofar as the power vested in the Chief Executive of the HKSAR is similar in scope to that vested in former Governors. But a most significant difference between the political system of the HKSAR and the colonial

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<sup>12</sup> Ma Ngok, *Political Development in Hong Kong: State, Political Society, and Civil Society* (Hong Kong: Hong Kong University Press, 2007), p 223.

<sup>13</sup> Ibid, p 225.

<sup>14</sup> Kuan Hsin-chi, “Escape from Politics: Hong Kong’s Predicament of Political Development” (1998) 21: 10 *International Journal of Public Administration* 1423 at 1444, quoted in *ibid*, p 226.

<sup>15</sup> Peter Harris, *Hong Kong: A Study in Bureaucracy and Politics* (Hong Kong: Macmillan, 1988), p ix.

<sup>16</sup> Lau Siu-kai, *Society and Politics in Hong Kong* (Hong Kong: Chinese University Press, 1984), p 25.

<sup>17</sup> Peter Wesley-Smith, *Constitutional and Administrative Law in Hong Kong: Text and Materials*, Vol 1 (Hong Kong: China and Hong Kong Law Studies, 1987), pp 163-4.

<sup>18</sup> See, eg, Eliza W.Y. Lee, “Governing Post-Colonial Hong Kong: Institutional Incongruity, Governance Crisis, and Authoritarianism” (1999) 39: 6 *Asian Survey* 940; Anthony B.L. Cheung, “Hong Kong’s Post-1997 Institutional Crisis: Problems of Governance and Institutional Incompatibility” (2005) 5 *Journal of East Asian Studies* 135; Ma (note 12 above).

system (i.e. the colonial system as it existed before 1995, the first year in which appointed members of the Legislative Council completely disappeared) is that the legislature of the HKSAR is completely elected -- partly by direct election (universal suffrage) and partly by functional constituencies (and, until 2004, also partly by an election committee).<sup>19</sup>

Thus in the political order of the HKSAR, although the basic powers of the legislature remain largely the same as in colonial times – powers of law-making, financial control and scrutiny of the administration, there is no longer any constitutional power (i.e. the power of appointment) by which the executive may ensure that the legislature would be a subservient, compliant and cooperative one. As events turned out, the post-1997 legislature has been “a highly robust, assertive and autonomous legislature”.<sup>20</sup> The executive has to conduct “government by perpetual intensive lobbying, horse-trading and playing one political party or grouping off another”<sup>21</sup>; “despite spending an inordinate amount of resources lobbying for the necessary votes and constant politically maneuvering, the HKSAR Government still faces an uphill task getting LegCo’s approval for controversial legislation or large-scale infrastructural projects.”<sup>22</sup>

Apart from the fact that there are no longer any appointed LegCo members, it should also be noted that the express provisions of the Basic Law provide for checks-and-balance mechanisms as between the executive and the legislature that did not exist in any degree under the colonial constitution.<sup>23</sup> For example, it is provided

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<sup>19</sup> See the Basic Law, art 68 and Annex II.

<sup>20</sup> Suk Yee Regina Ip Lau, *Hong Kong: A Case Study in Democratic Development in Transitional Societies* (MA thesis, Stanford University, 2006), [www.savantas.org](http://www.savantas.org), p 37. Mrs Regina Ip formerly served as Secretary for Security in the HKSAR.

<sup>21</sup> *Op cit.*

<sup>22</sup> *Ibid*, p 39.

<sup>23</sup> Ji Pengfei, Chairman of the Basic Law Drafting Committee, explained to the National People’s Congress in 1990 when the Basic Law was enacted that the executive and legislature of the HKSAR should both mutually cooperate with and mutually provide a check against one another: see *The Basic*

that if the Chief Executive refuses to assent to a bill passed by LegCo, he may return it to LegCo for reconsideration. If LegCo then passes the original bill again by a two-thirds majority, the Chief Executive must either sign the bill into law or dissolve LegCo.<sup>24</sup> If LegCo is dissolved and the re-elected LegCo again passes the bill by a two-thirds majority, the Chief Executive must either sign it or resign.<sup>25</sup> The Chief Executive's power to dissolve LegCo is also exercisable where the latter refuses to pass the budget or "any other important bill introduced by the government".<sup>26</sup> Again the Chief Executive must resign if the new legislature elected after the dissolution still refuses to pass the budget or the bill.<sup>27</sup> These provisions mean that the Chief Executive may not persistently resist the will of the legislature, particularly after he has dissolved it and the re-elected legislature insists on the will of its predecessor.

In two important respects, however, the post-1997 legislature is subject to more constraints than its pre-1997 predecessor. Under the colonial constitution, individual members of LegCo may propose motions and bills without the Governor's prior approval so long as the motions or bills do not have the effect of disposing of or charging government revenue.<sup>28</sup> However, under article 74 of the Basic Law, all private members' bills "relating to government policies" may only be introduced with the Chief Executive's consent; private members' bills "relating to public expenditure or political structure or the operation of the government" may not be introduced at all.

The second constraint which did not exist before 1997 is commonly known as the "split voting mechanism" or "separate counting mechanism". This is provided for in Annex II to the Basic Law. Private members' motions, bills or proposed amendments to

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*Law of the Hong Kong Special Administrative Region of the People's Republic of China* (Beijing: Foreign Languages Press, 1991), pp 68 (in Chinese) and 178 (in English).

<sup>24</sup> Basic Law, arts 49, 50.

<sup>25</sup> Art 52.

<sup>26</sup> Art 50.

<sup>27</sup> Art 52.

<sup>28</sup> See clause XXIV of the Royal Instructions and order 39(2) of the Standing Orders of the Legislative Council in Hong Kong's pre-1997 constitutional law.



government bills can be passed only if they obtain majority support in each of two groups of LegCo members: those elected directly by universal suffrage (plus those elected by the Election Committee before the latter is phased out in the third LegCo), and those elected by functional constituencies. This makes it more difficult for such motions, bills or amendments to be adopted by LegCo.<sup>29</sup>

The Basic Law was drafted in the second half of the 1980's when neither direct elections by universal suffrage to the legislature nor political parties had yet emerged in Hong Kong. Various political scientists and political sociologists have pointed out that the institutional design of the Basic Law is not conducive to the development of party politics in Hong Kong.<sup>30</sup> The multiple channels of getting elected into LegCo, which correspond to different kinds of power base, actually encourage the fragmentation and dispersal of political forces. Furthermore, the fact that the centre of political power – the political executive (the Chief Executive, offices of principal officials, and the Executive Council) – is not open to mass electoral competition means that no strong incentive exists to induce people to join and pursue careers in political parties. Political parties can at most exercise their influence in LegCo by monitoring the government's performance and criticizing it; even if a political party wins the majority of the popular votes in a LegCo election or even captures the majority of LegCo seats, it is not entitled to form or take over the government. Insofar as political parties with a strong social base and mass mobilization power play an important role in a political system for the purpose of articulation, representation and aggregation of interests, the disincentive towards party development implicit in the political system established by the Basic Law is itself an important cause of the governance problems that have plagued the HKSAR since 1997.

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<sup>29</sup> The cumulative effect of the constraints mentioned in this paragraph and the preceding paragraph may be seen as follows: "Between mid-1997 and 2002, no single private member's bill relating to the public sector has ever been passed, posing a sharp contrast with the two-year period immediately before the handover." (Ming Sing, "Origins of Anti-Partyism in Hong Kong" (2004) 21: 3 East Asia 37 at 40.)

<sup>30</sup> See, eg, Lau Siu-kai, *Decolonization Without Independence and the Poverty of Political Leaders in Hong Kong* (Hong Kong: Hong Kong Institute of Asia-Pacific Studies, Chinese University of Hong Kong, 1990); Lau Siu-kai and Kuan Hsin-chi, "Hong Kong's Stunted Political Party System" (2002) 172 China Quarterly 1010; Ming Sing (note 29 above).

It has also been pointed out that as the formal institutional design of the political system embodied in the Basic Law does not provide adequate means for the aggregation of interests and power, a kind of “extra-constitutional political arrangements” is necessary for this purpose.<sup>31</sup> Writing in the late 1980’s when the draft Basic Law was taking shape, Professor Lau Siu-kai termed this arrangement a “governing coalition”.<sup>32</sup> He predicted that it would be based on a kind of pact among strategic elites, particularly established interests and pro-China forces, and that the Chinese government would play a critical role in the formation of such a governing coalition: it would be a guarantor to facilitate collaboration between elites who might otherwise not come together. This conception has, after 1997, proved to be both descriptive and explanatory of the pattern of governance in the HKSAR.

The post-1997 experience, particularly that of the Tung Chee-hwa administration, shows that although a governing coalition consisting of pro-China and pro-Hong Kong government forces is practicable at least for the purpose of ensuring that most government bills and budget proposals would be passed by LegCo,<sup>33</sup> it suffers from major limitations which give rise to various problems of governance in the HKSAR.<sup>34</sup> First, whether a governing coalition can hold together, how extensive and effective it is, and whether it has sufficient support from society, depend crucially on the political skills and acumen of the Chief Executive, which in the case of Mr Tung seemed to have been deficient.<sup>35</sup> Secondly, insofar as the governing coalition (even though it covers a majority of LegCo seats) does not include the political grouping which captures the

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<sup>31</sup> Lau Siu-kai, *Basic Law and the New Political Order of Hong Kong* (Hong Kong: Institute of Social Studies, Chinese University of Hong Kong, 1988), p 2.

<sup>32</sup> Ibid, p 33.

<sup>33</sup> See Lau and Kuan (note 30), especially pp 1017-18.

<sup>34</sup> See generally Ma (note 12 above); Lam Wai-man et al (eds), *Contemporary Hong Kong Politics: Governance in the Post-1997 Era* (Hong Kong: Hong Kong University Press, 2007); Lau and Kuan (note 30 above); Regina Ip (note 20 above).

<sup>35</sup> See Lau Siu-kai, “Tung Chee-hwa’s Governing Strategy: The Shortfall in Politics”, in Lau Siu-kai (ed), *The First Tung Chee-hwa Administration: The First Five Years of the Hong Kong Special Administrative Region* (Hong Kong: Chinese University Press, 2002), chap 1.

majority of the popular votes in elections by universal suffrage (which is the case in post-1997 Hong Kong where the pro-democracy politicians rather than the pro-China/pro-Hong Kong government politicians have consistently captured such majority<sup>36</sup>), it suffers from legitimacy deficit. Thirdly, the governing coalition is only loosely held together by a pro-China and pro-Hong Kong government mentality, and lacks internal coherence, effective organization and a common political platform or ideology. It suffers from internal fragmentation and is incapable of aggregating interests and inculcating a consensus within itself on many policy issues. Fourthly, although the coalition includes some political parties with representatives in LegCo, each of these parties

“does not become a stakeholder in the discharge of executive responsibility even if one or some of its leaders serve in ExCo, because the electoral success of these leaders and their parties is not tied to the Government’s performance. In other words, the inchoate system does not rope in party members to the extent that they all feel they have a vested interest in the success and perpetuation of government policies; in fact, they must often take an opposition stance when the Government puts forward unpopular proposals in order to consolidate their constituents’ support.”<sup>37</sup>

Fifthly, the governing coalition, which includes legislators elected by functional constituencies representing narrow sectional interests (particularly business interests) and weak political parties which only capture a minority of popular votes, is unable to serve as an effective intermediary between the government and the people.<sup>38</sup> Thus

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<sup>36</sup> See part III below.

<sup>37</sup> Quotation from answer to question 3 in the Executive Summary and Questions and Answers relating to Mrs Regina Ip’s thesis cited in note 20 above, published in [www.savantas.org](http://www.savantas.org).

<sup>38</sup> See, eg, Ma (note 12 above); Kuan Hsin-chi, “The Next Stage of Constitutional Reform in Hong Kong”, Hong Kong Democratic Foundation Newsletter, Sept 2003, pp 1-3. The website of the Foundation is [www.hkdf.org](http://www.hkdf.org).

scholars and observers point to a widening gap<sup>39</sup> in the HKSAR between state and society in Hong Kong – a civil society that is increasingly vocal, making increasing demands on the government and with increasing aspirations for governmental accountability and democracy. What is lacking is an active political society (consisting of political parties and elected politicians)<sup>40</sup> that can mediate between state and civil society, some kind of “institutionalized bargaining mechanisms between the state and major social groups”,<sup>41</sup> or a “new state-society contract”<sup>42</sup> between the government and people of the HKSAR.

Another perspective from which to view the political order of the HKSAR is to understand it as a “semi-democracy”.<sup>43</sup> It is a half-way house between soft and benevolent authoritarianism on the one hand and Western-style liberal democracy on the other hand. This political system consists of two main components which confront and interact with one another. On the one hand is the civil service bureaucracy, inherited from colonial times, led by the Chief Executive and the principal officials. This can be called the bureaucratic component of the political system. It is ultimately responsible to Beijing, and Beijing through the appointment process<sup>44</sup> tries to ensure that it is trustworthy. On the other hand are the elected legislators and political parties. This can

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<sup>39</sup> Lau and Kuan (note 30 above), p 1026; Ma (note 12 above), pp 2, 222; Cheung (note 18 above), p 136.

<sup>40</sup> Ma (note 12 above), p 10.

<sup>41</sup> Ibid, p 14.

<sup>42</sup> Ibid, p 228.

<sup>43</sup> The concept of “semi-democracy” is used to describe Hong Kong’s current political system in Ming Sing (note 29 above) and William H. Overholt, “Hong Kong: The Perils of Semidemocracy” (2001) 12:4 *Journal of Democracy* 5. Professor Lau Siu-kai (Lau (note 31 above), p 17) describes the political order established by the Basic Law as follows: “As Hong Kong is denied the more internally consistent options of hard authoritarianism or democracy, what results is a soft authoritarian system with a number of inherent contradictions and difficulties.” Professor Ma Ngok (note 12 above, p 226) analyses as follows: “Post-1997 Hong Kong belonged to a group of political systems that are neither totally authoritarian nor democratic. These systems are ‘democracy with adjectives,’ with different scholars giving different terminologies: hybrid regimes, competitive authoritarianism, semi-democracies, semi-authoritarianism, pseudo-democracies, and the like. The current state of Hong Kong is akin to Levitsky and Way’s ‘competitive authoritarianism’ or Case’s ‘semi-democracy’.” (Citations in parentheses have been omitted from this quotation.)

<sup>44</sup> See the Basic Law, arts 45, 48(5).

be called the democratic component of the political system. It is responsible to the electorate of Hong Kong in both the geographical and functional constituencies. The two components operate according to different principles and logic. Here lies the main contradiction within the political system of the HKSAR. To quote from Professor Yash Ghai: "the political structure which is an uneasy blend of democracy and authoritarianism, the former reflected in the legislature (albeit in an attenuated form) and the latter in the executive and the national interventions, is burdened with contradictions which compromise both democracy and autonomy."<sup>45</sup>

Another insightful analysis is provided by Professor Ma Ngok: "A weak legislature does not necessarily bring a strong executive, and vice versa. Similarly, a weak government does not imply a strong opposition, and vice versa; a weak state does not necessitate a strong society, and vice versa. The story of post-1997 Hong Kong was a weak or constrained state facing a weak or constrained civil society, with a weak political society in between."<sup>46</sup> Most scholars writing on the topic consider that full democratization is the way out of the predicament of governance in the HKSAR.<sup>47</sup>

## II

After the march of an estimated half a million people on 1 July 2003 in demonstration against the Tung Chee-hwa administration and its proposed law to implement article 23 of the Basic Law (on treason, subversion, etc),<sup>48</sup> a strong

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<sup>45</sup> Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (Hong Kong: Hong Kong University Press, 2<sup>nd</sup> ed 1999), p 301.

<sup>46</sup> Ma (note 12 above), p 229.

<sup>47</sup> See, eg, Ma (note 12 above), Overholt (note 43 above), Ip (note 20 above), Kuan (note 38 above).

<sup>48</sup> See generally Fu Hualing et al (eds), *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (Hong Kong: Hong Kong University Press, 2005); Ngok Ma, "Civil Society in Self-Defense: The Struggle Against National Security Legislation in Hong Kong" (2005) 14:44 *Journal of Contemporary China* 465: the author points out that "The 1 July protest had profound implications for future political development of Hong Kong. ... In the long run, the movement encouraged local political participation and breathed new life into the democracy movement. ... The struggle against Article 23 ... witnessed an unprecedented mobilization by professionals and the middle class. ... the democratic genre is definitely out of the bottle after 1 July, which promptly brings the struggle over a full-fledged

democracy movement<sup>49</sup> emerged quickly and manifested itself in a number of assemblies and demonstrations attended by tens of thousands of people. Pro-democracy politicians found in the Basic Law a powerful source of legitimacy for their demands. The Basic Law itself allows change to the existing “undemocratic” system for the election of the third-term Chief Executive in 2007 and the fourth-term LegCo in 2008. Thus the democrats’ slogan was “double universal suffrage”: the introduction of universal suffrage for the election of the Chief Executive in 2007, and universal suffrage for the election of all legislators in 2008.

The democracy movement was met with Beijing’s most significant intervention on Hong Kong affairs since the establishment of the HKSAR in 1997. Departing from its normal practice of holding one session of meetings once every two months, the NPCSC held two successive sessions in April 2004. At the end of the first session, the NPCSC on 6 April issued its (second ever) Interpretation of the Basic Law. It elaborates upon Annexes I and II to the Basic Law by stipulating a procedure for initiating changes to the relevant electoral methods: the Chief Executive should first submit a report to the NPCSC on whether there is a need to introduce electoral change, whereupon the NPCSC will decide the matter in accordance with articles 45 and 68 of the Basic Law. After this interpretation, Chief Executive Tung Chee-hwa submitted a report to the NPCSC on 15 April.<sup>50</sup> Another session of the NPCSC was immediately convened to consider the report, and on 26 April the NPCSC promulgated its Decision on the matter. The Decision rules out the introduction of universal suffrage for the Chief Executive

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democracy to the center stage again from 2004 to 2007.” (pp 481-2)

<sup>49</sup> See generally Ming Sing, “Public Support for Democracy in Hong Kong” (2005) 12:2 Democratization 244 (explaining the upsurge in public support for democracy in Hong Kong since the rally of 1 July 2003).

<sup>50</sup> *Report by the Chief Executive of the Hong Kong Special Administrative Region to the Standing Committee of the National People’s Congress on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008* (Hong Kong Government, 2004); the *Second Report of the Constitutional Development Task Force: Issues of Principle in the Basic Law Relating to Constitutional Development* (Hong Kong Government, 2004). See also [www.cab.gov.hk/cgi-bin/cab/en\\_future\\_deve.cgi](http://www.cab.gov.hk/cgi-bin/cab/en_future_deve.cgi).

and all legislators in 2007 and 2008 respectively, but permits political reforms in 2007 and 2008 within certain parameters (e.g. the proportion of directly elected legislators to those elected by functional constituencies shall remain unchanged).<sup>51</sup>

The reasons behind the Decision were given by Mr Qiao Xiaoyang, Deputy Secretary-General of the NPCSC, in a speech delivered in Hong Kong on 26 April 2004.<sup>52</sup> They may be briefly summarized as follows. (1) Many people in Hong Kong did not have a sufficient understanding of “one country, two systems”, particularly the “one country” concept. In these circumstances, radical changes to the electoral system might prejudice national sovereignty and the overall interests of the State. (2) The authority of the Basic Law was not yet sufficiently established. There was in Hong Kong society insufficient respect for the Basic Law. (3) The hasty abolition of functional constituencies might prejudice business interests and capitalism in Hong Kong, and would be contrary to the principle of balanced political participation by various classes and interests in Hong Kong society. (4) Hong Kong must preserve a good investment environment for international business. (5) The practice of “executive-led government” had not been sufficiently developed, and the relationship between the executive and the legislature was still evolving. The effect on executive-led government of the increase of directly elected legislators to 50% of the membership of LegCo in 2004 still needed to be observed (this point was mentioned in the text of the NPCSC Decision itself). (6) There was no yet consensus in Hong Kong society on the question of when full universal suffrage should be introduced. Among these reasons, (3) and (4) relate to the oft-expressed concern that democracy would lead to populist politicians pursuing re-distributivist agendas and introducing social welfare and services that necessitate high tax and discourage business investment. Reason (5) relates to the viability of the governing coalition mentioned in part I above, and the relative numerical

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<sup>51</sup> See generally Albert H.Y. Chen, “The Constitutional Controversy of Spring 2004” (2004) 34:2 Hong Kong Law Journal 215; Johannes Chan and Lison Harris (eds), *Hong Kong’s Constitutional Debates* (Hong Kong: Hong Kong Law Journal Limited, 2005).

<sup>52</sup> The full Chinese text of the speech is available at [www.cab.gov.hk/cd/chi/media/s042604-1.htm](http://www.cab.gov.hk/cd/chi/media/s042604-1.htm) (last visited 9 April 2007).

strengths of the pro-China and pro-democracy camps in the legislature mentioned in part III below. Reasons (1) and (2) relate to issues of patriotism mentioned in part III below. Qiao's speech is quite revealing though it has generally been ignored by legal and political science scholars studying the NPCSC's interventions in 2004.

After the NPCSC Decision, the Constitutional Development Task Force of the Hong Kong Government conducted public consultations on political reform for 2007-08, leading to the publication of its Fifth Report in October 2005.<sup>53</sup> This was a major initiative on the part of Mr Donald Tsang, who had succeeded Mr Tung Chee-hwa following the latter's resignation from the office of Chief Executive in spring 2005. The Fifth Report proposed the election of the Chief Executive in 2007 by an Election Committee of 1600 persons (which would include, inter alia, all members of the District Councils), and the expansion of LegCo in 2008 from 60 members to 70 members (including 5 new seats to be directly elected by universal suffrage and 5 new seats elected by District Councillors). Under Annexes I and II to the Basic Law, the adoption of the proposed reform would require the support of a two-thirds majority in LegCo. On 21 December 2005, the proposal was defeated by 24 "democrats" in LegCo voting against it, mainly on the ground that it was not democratic enough (e.g. the District Councillors entitled to vote under the proposed system included not only elected Councillors but also appointed Councillors), and that the Government failed to provide a timetable for the introduction of universal suffrage.<sup>54</sup>

After the defeat of the political reform proposal in December 2005, discussion on political development continued to be carried out in the Committee on Governance and Political Development of the Commission on Strategic Development of the Hong Kong

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<sup>53</sup> *The Fifth Report of the Constitutional Development Task Force: Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008* (Hong Kong Government, 2005). On the 3<sup>rd</sup> and 4<sup>th</sup> reports, see generally Chan and Lison (note 51 above) and the website mentioned in note 50 above.

<sup>54</sup> See generally Albert H.Y. Chen, "The Fate of the Constitutional Reform Proposal of October 2005" (2005) 35: 3 Hong Kong Law Journal 537.



Government. The Committee was established by Tsang in late 2005 partly in response to criticisms that the Government was not able to provide any timetable for the introduction of universal suffrage. The Committee, which comprises persons from across the political spectrum, was supposed to work on the institutional design for the elections of the Chief Executive and LegCo by universal suffrage so as to contribute to the development of a road map for the introduction of universal suffrage. By the time of its eighth meeting on 25 January 2007 and ninth meeting on 12 April 2007, the work of the Committee seemed to be nearing its end. On 1 March 2007, Mr Donald Tsang promised during his election campaign for the third-term Chief Executive that a Green Paper for public consultation on political reform would be published in mid-2007, and that he would try to “resolve” the issue of universal suffrage within the next five years.<sup>55</sup>

This, then, is the context in which the three political reform proposals referred to at the beginning of this article should be situated. Although the three proposals differ in their details, they are broadly similar in that they all advocate the election of the Chief Executive by universal suffrage (after nomination by a nomination committee as required by article 45 of the Basic Law) in 2012, and the abolition of all legislators elected by functional constituencies and their replacement by legislators elected by universal suffrage either in 2012 or 2016. These proposals of the pro-democracy camp lie at one end of the spectrum of various proposals received by the Commission on Strategic Development.<sup>56</sup> In the papers for the meeting of 12 April 2007 of the Committee on Governance and Political Development of the Commission, the issue was raised as to whether universal suffrage for the election of the Chief Executive should be introduced before universal suffrage for the election of all legislators. The papers identified 3 types of proposals regarding the respective modes of election of the Chief Executive and LegCo by universal suffrage.

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<sup>55</sup> “Tsang undertook to resolve the question of universal suffrage within five years” (in Chinese), *Ta Kung Pao*, 2 March 2007; “Green Paper on political reform will be released this summer” (in Chinese), *Ming Pao*, 20 March 2007. See also various Hong Kong newspapers on 13 April 2007 (on the proposed Green Paper).

<sup>56</sup> See its website [www.cpu.gov.hk/english/csd.htm](http://www.cpu.gov.hk/english/csd.htm).

On the election of the Chief Executive, the 3 types of proposals were classified according to the number of members of the nominating committee (which, according to article 45 of the Basic Law, would be responsible for nominating candidates for the Chief Executive election): less than 800 (e.g. LegCo serving as the nominating committee), 800 (i.e. modeled on the existing Election Committee for the Chief Executive), and more than 800. A major difference between conservative and liberal proposals for the mode of election of the Chief Executive relates to the nomination threshold, i.e. the minimum number of members of the nominating committee required to make a valid nomination. For example, the more conservative proposals set the nomination threshold at 20% or 25% of the total membership of the nominating committee (note that in the existing Election Committee which both nominates and elects the Chief Executive, the nomination threshold is 100 out of its 800 members), at least for the first-ever election of the Chief Executive by universal suffrage.<sup>57</sup>

As regards LegCo, the 3 types of proposals include the following: (1) complete abolition of all functional constituency seats; (2) retaining the functional constituency seats in some form, but changing the mode of election (either as the ultimate model of universal suffrage for LegCo or as a transitional arrangement before universal suffrage is achieved); (3) phased increases in seats directly elected by universal suffrage. As regards (2), the proposals include (a) ensuring that every resident with the right to vote under the Basic Law can vote for one functional constituency (although there may be great disparity among the sizes of different functional constituencies)<sup>58</sup>; (b) each

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<sup>57</sup> Some of those who advocated such a relatively high nomination threshold also suggested that the threshold may be lowered in subsequent elections after the first Chief Executive election by universal suffrage is held.

<sup>58</sup> Such disparity would probably be inconsistent with the concept of “universal suffrage” which implies equal voting rights and parity of voting power. See Human Rights Committee, General Comment No. 25 (dated 12 July 1996), para. 21, CCPR/C/21/Rev.1/Add.7, [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf); *Reference re Electoral Boundaries Commission Act* [1991] 2 SCR 158 (Supreme Court of Canada); *Mathieu-Mohin and Clerfayt v Belgium* (1988) 10 EHRR 1 (European Court of Human Rights). See also Albert H.Y. Chen, “The Concept of ‘Universal Suffrage’ under the Basic Law”, submission dated 8 January 2006 to the Committee on Governance and Political Development of the Commission on Strategic Development.

functional constituency nominating candidates for election by universal suffrage, with each voter having one vote for a geographical constituency and one vote for each of all functional constituencies; and (c) turning functional constituencies into occupational constituencies in which eligibility for candidature in elections by universal suffrage is defined by occupation.

### III

If Hong Kong were an independent city-state, there is no doubt that the pro-democracy camp's proposals are perfectly viable and may even be ready for immediate implementation so that we do not need to wait until 2012 or 2016. Hong Kong's present level of economic and social development seems to suggest that the people of Hong Kong are educated and mature enough to exercise full political rights. However, the constitutional and political reality is that Hong Kong is not an independent state. The Chinese Government as Hong Kong's sovereign would not only not tolerate Hong Kong becoming an independent state, but would also not tolerate Hong Kong becoming an "independent political entity". It would not tolerate Hong Kong being ruled by people whom it does not consider to be "patriots", or people whom it does not consider to be acceptable and trustworthy for the purpose of forming the government or the majority in the legislature in the HKSAR. This, I believe, is the crux of the problem as far as Hong Kong's political development is concerned.

Since the 1980s, politicians and activists in Hong Kong have been divided into two camps – the pro-China camp and the pro-democracy camp.<sup>59</sup> The division has never diminished, and has only been intensified by the experience of various major political events, such as the Beijing student movement in 1989, the Patten political reform in the 1990s, the establishment of the Provisional Legislative Council, the "right of abode" saga leading to the first-ever interpretation of the Basic Law by the NPCSC, the article

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<sup>59</sup> See generally Lau Siu-kai and Kuan Hsin-chi, "Partial Democratization, 'Foundation Moment' and Political Parties in Hong Kong" (2000) 163 *China Quarterly* 705; Lam (note 34 above), chap 7; Ma (note 12 above), chap 6.

23 saga leading to the abortion of the national security bill, the 2004 interventions by the NPCSC on political reform in Hong Kong, the 2005 interpretation by the NPCSC on the term of office of the Chief Executive, and, most recently, the defeat of Donald Tsang's political reform proposal in December 2005. In each of these events, the pro-democracy politicians opposed the Chinese government's position. The pro-democracy camp is now labeled "the opposition camp" by some pro-China commentators in Hong Kong.<sup>60</sup> They are considered to have consistently opposed the policies of the Chinese Government towards Hong Kong (particularly with regard to the development of the political system in Hong Kong), the Tung Chee-hwa administration and now the Donald Tsang administration. Some of them are considered hostile to communist rule in the mainland or sympathetic to the Taiwanese independence movement. Some of them have been denied the issue of a "huixiang zheng" (回鄉證), a passport-like document which Hong Kong permanent residents who are Chinese nationals need to produce in order to enter mainland China. Some of them are also suspected of having close relationships with foreign governments or foreign NGOs with political interests. And yet, ever since direct election was introduced in Hong Kong in 1991, they have consistently succeeded to capture approximately 60% of the popular votes for that portion of LegCo seats which were filled by elections by universal suffrage.<sup>61</sup> It is therefore feared that if unrestricted elections by universal suffrage were introduced in Hong Kong, the office of the Chief Executive and the majority of LegCo seats would be captured by members of the pro-democratic camp. On the other hand, if the political culture of Hong Kong were such that it is certain that elections by universal suffrage would result in members of the pro-China camp being elected as Chief

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<sup>60</sup> The term "opposition camp" or "opposition faction" (反對派) was first used by Mr Donald Tsang to refer to the pro-democracy camp when the latter vetoed Tsang's political reform proposal in December 2005. The term was popularized among pro-China commentators after the publication of a lengthy article in the pro-China Wen Wei Po: "The Hong Kong 'Democracy Camp' is actually the Opposition Camp" (香港「民主派」實為反對派), Wen Wei Po, 29 Dec 2005, pp A8-A9.

<sup>61</sup> The pro-China camp has consistently captured 30-35% of these popular votes. See generally Lam (note 34 above), chap 7, esp p 129; Ma (note 12 above), pp 154, 223; Ma Ngok, "Pluralization amidst Polarization: The 2004 LegCo Election", in Chan and Harris (eds) (note 51 above), chap 13.

Executive and LegCo majority, then the "actual situation" (to use the language of the Basic Law) in Hong Kong would probably be considered by the Chinese government to be ripe for full universal suffrage.

There are two main lines of cleavage among political parties and politicians in Hong Kong. One is the pro-democracy/ pro-China cleavage. The other is the pro-grassroots/ pro-business cleavage. Among these two lines of cleavage, the former has been the dominant one.<sup>62</sup> Since the establishment of the HKSAR, the effectiveness of the "executive-led" government in Hong Kong<sup>63</sup> has depended on a loose coalition of pro-China political parties and independent legislators which occupied the majority of seats in LegCo.<sup>64</sup> The coalition embraces the Democratic Alliance for the Betterment of Hong Kong (DAB),<sup>65</sup> the main pro-China political party in Hong Kong, the Hong Kong Federation of Trade Unions, a pro-China and pro-grassroots civic organization with a long history in Hong Kong, the Liberal Party, the main pro-business political party, and some independent legislators mainly based on the functional constituencies in the business sector.

Beijing's interventions in 2004 (which included a media campaign<sup>66</sup> to promote Deng Xiaoping's original idea of "patriots ruling Hong Kong" which preceded the interventions by the NPCSC) to stem the growing democracy movement campaigning

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<sup>62</sup> See generally Lam (note 34 above), chap 7; Lau and Kuan (note 59 above). However, Ma Ngok points out that "recent years have seen the rise of a social democratic political field. The 2004 election saw a strengthening of this field": Ma, "Pluralization amidst Polarization" (note 61 above).

<sup>63</sup> On executive-led government in Hong Kong, see generally Lam (note 34 above), chap 2; Albert Chen, "'Executive-led Government', Strong and Weak Governments and 'Consensus Democracy'", in Chan and Harris (eds) (note 51 above), chap 2; Joseph Chan (陳祖爲), "Executive-led Government was Not the Original Intent behind the Basic Law" (in Chinese), Ming Pao, 28 June 2004, p A34; Joseph Chan, "Separation of Powers in Hong Kong's Political System" (in Chinese), Ming Pao, 29 June 2007, p A33.

<sup>64</sup> See the works cited in notes 34-35 above.

<sup>65</sup> In 2005 the DAB was re-named the Democratic Alliance for the Betterment and Progress of Hong Kong after its merger with the Hong Kong Progressive Alliance.

<sup>66</sup> See generally Ming Pao Editorial Department (eds), *The Debate on Patriotism* (愛國論爭) (Hong Kong: Ming Pao Press, 2004) (in Chinese).

for “double universal suffrage” in 2007-08 may be interpreted as being designed to maintain the political status quo in Hong Kong at least for a few more years (i.e. the continued dominance of the existing pro-China and pro-Hong Kong government coalition), and to prevent the pro-democracy camp from gaining control of the executive and the legislature of Hong Kong. There is also evidence that the Liaison Office of the Central Government in Hong Kong has played an active role in coordinating pro-China candidates’ participation in District Council and Legislative Council elections and lobbying and mobilizing support for them among pro-China social groups and organizations in Hong Kong.<sup>67</sup> This shows that the Chinese Government is by no means indifferent to the results of these elections.

The results of the LegCo election in September 2004<sup>68</sup> (in which the pro-democracy camp did not manage to gain sufficient seats to become a majority in LegCo) and the general lack since 2005 of large-scale demonstrations for democracy (with the possible exception of the march organized by the pro-democracy camp in December 2005 against Tsang’s political reform proposal) seem to suggest that Beijing’s strategy of containment of the democracy movement in Hong Kong was successful at least for the time being. However, in the election to the Election Committee for the third-term Chief Executive in late 2006, the democrats performed better than expected, with the result that Mr Alan Leong, a democrat, succeeded in obtaining more than 100 nominations (100 being the minimum number required among the 800-member Election Committee) and thus becoming a candidate for the Chief Executive in competition against Mr Donald Tsang.

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<sup>67</sup> See, eg, Yu Wing-yat, “The Democratic Regression in China’s Hong Kong”, in Christian Schafferer (ed), *Understanding Modern East Asian Politics* (New York: Nova Science Publishers, 2005), chap 6; Sonny Shiu-hing Lo, “One Formula, Two Experiences: Political Divergence of Hong Kong and Macao Since Retrocession” (forthcoming in *Journal of Contemporary China*); Sonny Shiu-hing Lo, “The Mainlandization and Recolonization of Hong Kong: A Triumph of Convergence over Divergence with Mainland China” (forthcoming in book edited by Professor Joseph Cheng and published by City University of Hong Kong Press). The author is grateful to Professor Sonny Lo for his making available to the author the works referred to in this note.

<sup>68</sup> See Ma, “Pluralization amidst Polarization” (note 61 above); Albert Chen, “Beijing’s Vindication”, *South China Morning Post*, 15 Sept 2004; Joseph Cheng, “Democrats’ Disappointment”, *South China Morning Post*, 15 Sept 2004.

During his election campaign, Mr Alan Leong came under fire from pro-China commentators and politicians in Hong Kong<sup>69</sup> for including in his political reform proposal the eventual abolition of the requirement (in the Basic Law) that principal officials of the HKSAR should be appointed by the central government (upon nomination by the Chief Executive), the removal of certain restrictions (in the Basic Law) on the power of LegCo, and the ultimate transformation of the political system of the HKSAR into something akin to a parliamentary system. Leong was accused of "challenging" the Basic Law and the legitimate authority of the central government with regard to Hong Kong, and of failing to understand the meaning of Chinese sovereignty over Hong Kong. These criticisms, as well as certain long-existing differences of perspectives between the pro-democracy and pro-China sides of Hong Kong's political spectrum, reveal a fundamental problem of "one country two systems" as practiced in Hong Kong, which, unless ultimately resolved, will pose an almost insurmountable obstacle to full democratization in Hong Kong.

This fundamental problem consists apparently of a fundamental difference in the understanding of "autonomy" and of the relationship between "autonomy" and "democracy" on the part of the Chinese government on the one hand and the pro-democracy political parties, politicians and civil society in Hong Kong on the other hand. The pro-democracy camp's understanding of the autonomy of the HKSAR may be termed a Western liberal democratic and legalistic understanding of autonomy.<sup>70</sup> It is

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<sup>69</sup> See, eg, "Leong Kah-kit's Platform on Political System Challenges the Basic Law" (in Chinese), editorial, *Wen Wei Po*, 12 Feb 2007, p A4; "Seven Violations of the Basic Law: A Critique of Leong Kah-kit's Platform on 'Democratic Government'" (in Chinese), editorial, *Ta Kung Pao*, 13 Feb 2007, p A2; and many other articles in a similar vein published in *Wen Wei Po* and *Ta Kung Pao* between 12 Feb and 9 March 2007.

<sup>70</sup> Indeed, as pointed out by Professor Sonny Lo, pro-democracy activists in Hong Kong are often viewed by Beijing and pro-China forces as "pro-Western troublemakers" (Lo, "The Mainlandization and Recolonization of Hong Kong", note 67 above). Lo also points out (in "One Formula, Two Experiences", note 67 above) that "The strong Hong Kong political identity is marked by a demand for more democratic reform and it has clashed with the much stronger Chinese cultural-politico identity held by both the ruling elites and Beijing. ... Conflicts in Hong Kong reflect the clash of its political identity with the ruling elite's political identification with the PRC. ... some Hong Kong people remain politically independent in

believed that as in the case of, say, the people in a state of the USA who can freely elect their state legislature and state governor, the people of Hong Kong should also be able to freely elect by universal suffrage their Chief Executive and all members of their legislature. In a liberal democratic federal state like the USA, the state legislature and state governor may on their own exercise all powers within their constitutional limits, and the federal government may not interfere with the exercise of such powers. In a similar vein, the democrats in Hong Kong believe that so long as the elected government of the HKSAR stays within the scope of its power under the Basic Law, the central government should leave it alone and it is none of the central government's business to intervene or otherwise influence it. Thus there is no legitimate reason why Beijing should oppose full democratization in Hong Kong. And the appointment of the Chief Executive by the central government after his/her being elected by the people of Hong Kong should be no more than a formality.

Beijing's understanding of autonomy is however not the same. It has always been stressed that the power of appointment of the Chief Executive is a substantive power and not merely formal or ceremonial. Since the 1990s and particularly in recent years, it has been stressed that Hong Kong's system of government is an "executive-led" system and must not be allowed to become a "legislative-led" one.<sup>71</sup> The emphasis on executive-led government may be understood in the light of the fact that it is the executive (including the Chief Executive and the principal officials), not the legislature, that is appointed by Beijing and enjoys the confidence and trust of, and derives powers and authority from, Beijing. As is evident in Deng Xiaoping's speeches on "one country two systems" in Hong Kong (which were re-published<sup>72</sup> in 2004 during the campaign<sup>73</sup>

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that their strong Chinese cultural identity does not necessarily translate into blind political loyalty to the Chinese Communist Party."

<sup>71</sup> See the works cited in note 63 above.

<sup>72</sup> *Deng Xiaoping On "One Country, Two Systems"* (Hong Kong: Joint Publishing, 2004), which is the English translation of 《鄧小平論「一國兩制」》 published by the same publisher. See particularly the speeches at pp 13, 23 and 67 of this English book.

<sup>73</sup> See note 66 above.



to stress the idea of "patriots ruling Hong Kong"), China's understanding of Hong Kong's autonomy is that of "Hong Kong people ruling Hong Kong", the majority of those Hong Kong people exercising the power to rule Hong Kong being patriots – people whom the Chinese government and the Chinese Communist Party consider to be patriots and thus their political allies for the purpose of ruling Hong Kong. This kind of thinking should be understood in the context of the Chinese Communist Party's long tradition of "united front work",<sup>74</sup> in which friendly political relations are cultivated between the Communist Party and non-communists whom the Party considers to be trustworthy and reliable for the purpose of forming a political alliance to achieve a common goal. Such united front work has been actively undertaken in Hong Kong by the Chinese authorities both before and after the 1997 handover.<sup>75</sup>

It is noteworthy that Deng Xiaoping said in the context of "patriots ruling Hong Kong" that "direct elections" may not necessary produce the right people for this purpose.<sup>76</sup> Thus democracy is not an ultimate value or goal in itself. It is only a means for the purpose of choosing the right people to rule Hong Kong. And the process of democratization in Hong Kong is subject to the overriding principle of "patriots ruling Hong Kong". Thus the Chinese government's perspective on autonomy, democracy and democratization in Hong Kong may be understood as follows. The HKSAR already enjoys full autonomy in the sense of "Hong Kong people ruling Hong Kong" – not Communist cadres ruling Hong Kong, and the central government not interfering with the administration, policy-making and law-making of Hong Kong. As regards democracy, Hong Kong already enjoys a significant degree of democracy (including the Rule of Law, civil liberties, judicial independence, multi-party competition, direct elections, functional constituency elections, etc). As regards whether Hong Kong is

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<sup>74</sup> See generally Lyman P. Van Slyke, *Enemies and Friends: The United Front in Chinese Communist History* (Stanford: Stanford University Press, 1967).

<sup>75</sup> See Ma (note 12 above), chap 3; Jamie Allen, *Seeing Red: China's Uncompromising Takeover of Hong Kong* (Singapore: Butterworth-Heinemann Asia, 1997), chap 3; Sonny Lo, "One Formula, Two Experiences", note 67 above, esp note 52 thereof.

<sup>76</sup> Deng Xiaoping On "One Country, Two Systems", note 72 above, pp 75-76.

ready for full democratization (in the sense of “double universal suffrage”), this depends on whether the social and political conditions in Hong Kong are such that “double universal suffrage” can produce a government and a legislature dominated by “patriots”.

The conclusion that may be drawn from the preceding discussion may be tentatively stated as follows. While the current discourse on the timetable of “double universal suffrage” and the modes of direct election (by universal suffrage) for the Chief Executive and for all members of LegCo is useful and constructive, it does not really address the main obstacle to the full democratization of Hong Kong. The main obstacle does not lie in the lack of consensus in Hong Kong on the pace and mode of democratization (even though such lack of consensus in Hong Kong at present is real and there are still significant differences of opinion in this regard between the pro-democracy camp and the pro-China camp), but in the ideological divide, the poor political relationship, lack of dialogue and mutual distrust between the pro-democracy camp and the Chinese government. The former's rejection of Tsang's political reform proposal in 2005 (which the Chinese government considered to be a significant step forward in the democratization of Hong Kong) was the last of a series of events (including the article 23 episode) in which the pro-democracy camp's actions only served to aggravate the mistrust and suspicion of the Chinese government. Unless and until there is a significant improvement or breakthrough in the relationship between the pro-democracy camp and the Chinese government and some kind of reconciliation or mutual understanding is achieved, there is little cause for optimism as far as Hong Kong's full democratization is concerned.

Much of the scholarship on Hong Kong's political and constitutional system seems to proceed upon the assumption that to a significant extent the scholarship and literature on the political systems of independent nation-states may be used to analyse Hong Kong. The political and constitutional reality however is that Hong Kong is very far from being an independent city-state. Even though it is an SAR enjoying a high degree of

autonomy, it is still a city within the PRC.<sup>77</sup> The "one country" element in "one country, two systems" is crucial to the study of constitutional and political phenomena in the Hong Kong SAR. Although "one country two systems" has worked reasonably well in the last 10 years, the political domain remains its most problematic dimension. Here lies a contradiction between the logic of communist party rule and the logic of liberal democracy. The interplay of these two kinds of logic has produced the paradox of what has been called "semidemocracy"<sup>78</sup> in Hong Kong. To keep this strange political animal alive, Hong Kong may have to pay the price of having a system of governance that is less than healthy and effective. While we enjoy the benefits of "one country two systems", we should perhaps also be aware of the price which it exacts on us.

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<sup>77</sup> Article 12 of the Basic Law provides: "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government."

<sup>78</sup> See note 43 above.