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# Constitutionalism and the Politics of Democracy in Hong Kong

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The 1984 Sino-British Joint Declaration<sup>1</sup> launched one of the most intriguing political endeavors of the late twentieth century, the return of freewheeling capitalist Hong Kong to communist China under China's notion of "one country, two systems." The Joint Declaration asked the world and Hong Kong's people to accept a new status for Hong Kong, that of a highly autonomous Special Administrative Region in the People's Republic of China (PRC). Observers wondered not only whether Hong Kong could survive such a transition but also how this endeavor might affect China itself. More than two decades have passed since that momentous agreement. The Hong Kong Basic Law,<sup>2</sup> required by the agreement, was enacted in 1990, not long after China's tragic events of 1989. This legislation of China's National People's Congress (NPC) has become the constitution of Hong Kong. As required by the Joint Declaration, the Basic Law specifies the roadmap for Hong Kong's long-term democratic development and the security of autonomy, human rights, and the rule of law. Countries around the world, accepting China's commitment to Hong Kong's autonomy, have entered into numerous international agreements with and about Hong Kong.

Just short of a decade has now passed since Hong Kong was handed back to China in 1997, and the notion of "one country, two systems" has been put to the test. Hong Kong has survived, but there have been a number of vociferous debates over the pace of democratization and related Chinese commitments to Hong Kong. While allowing liberal human rights protec-

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tion and a reasonably stable rule of law to flourish in Hong Kong, China has assertively resisted democratization. In the years since the handover, the contradiction between liberal human rights protection and authoritarian rule has produced a series of crises. Debates over Beijing's interference in Hong Kong and its restraints on democratic development have often inspired international concern. Beijing and its supporters have often argued that implement-

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ing true democracy in Hong Kong would lead to instability. However, it appears that the *failure* to implement democracy in Hong Kong has caused the very instability they fear. We have been left to assess the costs of running a free society under the thumb of China. Will a system of direct Beijing control undergirded by a network of political influence by Beijing supporters continue to be the dominant

form of politics in Hong Kong, or will the constitutional democratic order promised in the Joint Declaration and the Basic Law be permitted to emerge? Past practice indicates the former, while wisdom may suggest the latter.

In the past several years, pro-Beijing attacks on democracy and China's interpretations of the Hong Kong Basic Law have sought to displace Hong Kong's democratic reform agenda. Various official interpretations by Beijing have scotched any serious efforts at political reform and put human rights and the rule of law under stress. As democratic institutional commitments are expressly provided in both the Sino-British Joint Declaration and the Basic Law, it is apparent that attacks on political reform challenge the very foundation of the "one country, two systems" model. Will the democracy promised under the "one country, two systems" formula in Hong Kong be achieved? Does Beijing's constant interference pose a grave risk to the rule of law and related stability in Hong Kong?

The approaching end of the first decade since the handover offers an opportunity to assess Hong Kong's democratic development. The analysis below first lays out the Basic Law roadmap for democratization. Sections that follow then consider the Beijing interpretation of the Basic Law democracy requirements, the Hong Kong government's efforts at compliance, and political battles that have shaped this debate. After nearly a decade of Chinese rule, the urgency of China relaxing its grip on Hong Kong and allowing normal political development has become apparent. Failure to move forward in this regard will surely put a cloud over the future of both China and Hong Kong.

## THE ROADMAP FOR HONG KONG'S CONSTITUTIONAL DEVELOPMENT

To appreciate the centrality of democratic development in the Hong Kong political formula, it is important to consider the foundational democratic requirements spelled out in the Sino-British Joint Declaration and the Hong Kong Basic Law. The 1984 Sino-British Joint Declaration put in play China's design of "one country, two systems." It signalled the democratic road ahead by providing that the legislature would be chosen by elections and the Chief Executive by elections or local consultations. The "one country, two systems" model obviously aimed to promote confidence in Hong Kong's "high degree of autonomy," and the people of Hong Kong were encouraged by Beijing to "put their hearts at ease."<sup>3</sup> It is important to emphasize that the Joint Declaration is an international treaty ratified by both governments and registered with the United Nations as such. As part of a great effort to garner international support, the PRC spoke to foreign governments, encouraging their reliance on the "one country, two systems" framework. Foreign governments were asked to establish separate economic, social, and cultural relations with Hong Kong and to recognize Hong Kong as a distinct customs and immigration territory.

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Unquestionably, this treaty internationalized the Hong Kong issue and encouraged subsequent international concern.

As stipulated in the Joint Declaration, the Basic Law takes up Hong Kong's democratic promise in Articles 45 and 68, supplemented by Annexes I and II respectively. These articles specify that full democracy can be instituted after 2007 through elections for both the Chief Executive and the Legislative Council (LegCo).<sup>4</sup> Basic Law Article 45 provides as follows:

The method for selecting the Chief Executive shall be specified in light of the actual situation . . . in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

Triggering the recent reform debate, Basic Law Annex I specifies election of the Chief Executive by a "broadly representative" election com-

mittee in the first two terms but provides in Annex I, Article 7 for potentially changing the method of election, as follows:

If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

Taking such action would move the system toward the specified "ultimate aim" of "universal suffrage."

Article 68 provides essentially the same procedure for forming the Legislative Council, except that there is no need for a nominating committee and the provision on changing the method in Annex II, Article III specifies that the change should only be reported to the Standing Committee of the NPC "for the record."<sup>5</sup> Under Basic Law Annex II, after several expansions of the number of directly elected seats in steps during the first ten years, by 2007 there will be 30 sitting LegCo members who are directly elected (in 2004) and 30 members representing various functional constituencies—from business, social, and professional groups. The recent rejection of the government's "reform" proposals suggests this 30-30 formula will remain operative.

### **BEIJING INTERPRETS THE BASIC LAW**

On April 6, 2004, the Standing Committee of the National People's Congress (NPCSC) reacted to calls for democracy in Hong Kong, offering its own interpretation of the above noted Annex I, Article 7 and Annex II, Article III in relevant parts as follows:

The Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People's Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People's Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law . . . , make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principles of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method of forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government . . . into the Legislative Council.<sup>6</sup>

This language essentially accepts that the Basic Law language “subsequent to the year 2007” and “after 2007” encompassed the scheduled election for the Chief Executive in 2007 and of the LegCo in 2008.<sup>7</sup> By specifying that the Chief Executive is required to issue a report to the Central Government on the need for change in the electoral system, this interpretation of the Basic Law puts the agenda-setting power to initiate any reform squarely in the Beijing-appointed Hong Kong Chief Executive’s hands.

The NPC Standing Committee was widely criticized both for intervening in this way, by making an interpretation, and for effectively revising the order of decision specified in the Basic Law. The interpretation, which is binding on Hong Kong, effectively amounted to an amendment of the Basic Law. It gives the central government, through its appointed Chief Executive, to the exclusion of the Legislative Council, complete control of any initiation of democratic reform. This has generated concern because the Basic Law in Article 159 specifies its own method of amendment, requiring approval by the full NPC and specifying that amendments not contravene the basic policies of the PRC listed in the Joint Declaration. Under the formula articulated in the interpretation, the Legislative Council can, at best, serve as a source of political pressure, perhaps by resolution, and approve or disapprove any final change to the methods of selection—an option the LegCo embraced in rejecting the late 2005 government proposals.

The PRC government had not always taken the view that it could intervene so readily in this democratic reform decision. In a comment in the *People’s Daily* on March 18, 1993, the then-director of the Hong Kong and Macau Affairs Office, Mr. Lu Ping, stated: “As for how the legislature will be constituted after its third term, all that is needed is for two-thirds of legislators to approve, the chief executive to give his consent, and then report to the Standing Committee of the NPC for the record. There is no need for Central Government approval. How Hong Kong develops democracy in the future is entirely within the autonomy of Hong Kong.”<sup>8</sup> This statement from the leading Beijing official responsible for Hong Kong seemed to put the initiative and final decision for reforming the election of the LegCo squarely on the local Hong Kong government.

**HONG KONG COMPLIES AND BEIJING REPLIES,  
STOPPING DEMOCRACY**

The unseemly haste of a series of official reports and further interpretations that followed the April 6 NPC Standing Committee Interpretation left little doubt as to the outcome of the dispute over the pace of democratization. The April 6 Interpretation was quickly followed in just ten days' time by a report from a government task force on constitutional reform and the indicated report by then-Hong Kong Chief Executive Tung Chee Hwa, specifying that there was a need to change the method for selecting the Chief Executive and forming the Legislative Council.<sup>9</sup> Though the Chief Executive's Report acknowledged that there was a need for change in the methods for electing the Chief Executive and the LegCo, the report expressed concern about Hong Kong's political maturity and offered little hope for substantial democratization. Nine conditions listed in the Chief Executive's Report and elaborated in the Second Task Force Report signaled to the public that any change in methods of selection would be minimal. By specifying how the "actual situation" would be evaluated, the Chief Executive's report appeared to add conditions and factors to consider that were in no way apparent in the Basic Law. Both reports emphasized the lack of political maturity of Hong Kong politicians and political groups, the need for different sectors of society to be represented (code for functional constituencies) and that "the pace should not be too fast." They also emphasized that changes should not have any adverse economic effect.

The NPCSC quickly replied to the Chief Executive's Report with a decision on April 26, 2004, expressly prohibiting expansion of direct elections in 2007 and 2008.<sup>10</sup> In this decision, the NPCSC specified that the Chief Executive must continue to be selected by the existing Election Committee in 2007—though the size of the Election Committee could be expanded—and that the ratio of directly elected to functional legislators must be maintained at the same 50-50 ratio for the 2008 LegCo election.<sup>11</sup> This decision allowed some room for tinkering but effectively prevented any serious democratic reform. The only reform options left open for the 2007–2008 elections were to increase the size of the Election Committee and the LegCo while essentially not advancing democratization.

In October 2005, this was precisely what the Government proposed: doubling the Election Committee membership to 1600, with the bulk of such additions coming from members of the District Councils, and adding five directly elected and five functional seats to LegCo, with the functional

seats all to be chosen by the District Council members.<sup>12</sup> The democratic camp's outcry with respect to such token reforms was to be expected.<sup>13</sup> With reform requiring a two-thirds vote in LegCo, rejection of the government's reform proposal came in December 2005.

#### 2004–2005 CONSTITUTIONAL POLITICS

These interpretations and reports took place in an environment that conveyed Beijing's extreme hostility toward democratization in Hong Kong—a hostility that met with considerable local and international objection. The first step on the path to this confrontation had actually taken place in early to mid-2003 when Hong Kong government proposals over national security legislation met with strong public objection. These government proposals were made pursuant to Article 23 of the Basic Law, which requires the Hong Kong government to enact “on its own” legislation regulating various aspects of national security and secrecy. The content of these proposals and the high-handed manner in which they were presented ultimately drew a half-million protestors to the streets on July 1, 2003.<sup>14</sup> The government then withdrew its legislative proposals. These demonstrations meant that there was already available a highly mobilized and skeptical public when the democracy debate came up on the Basic Law calendar in early 2004.

Prior to April 2004, Hong Kong democracy supporters had been subject to a two-month barrage of severe criticism. Beijing officials responsible for Hong Kong and “legal experts,” as well as their local Hong Kong leftist supporters,<sup>15</sup> subjected the calls for democracy to a variety of attacks that sought to set the stage for importing the above-noted other requirements for reform.<sup>16</sup> In thinking about the relationship between democracy and constitutionalism in Hong Kong, it is important to consider the gap in interpretation of the Basic Law formula between the two sides and the strength of conviction that divides them. In 2004–2005, this was on display more clearly than it had been at any time since the 1997 handover. Beijing initiated what was essentially a five-stage attack on the democratic camp.

#### *A Five-Stage Attack on Democracy*

First, Beijing launched the so-called patriot debate, taking a swipe at foreign interference. Hong Kong was told that under any democratic reform, “patriots must be the main body of those who govern Hong Kong.”<sup>17</sup> While the late paramount leader Deng Xiaoping was cited for this

requirement, Deng was also frequently on record as indicating that people in Hong Kong who criticize the Communist Party could also be considered patriots.<sup>18</sup> Categories of democracy activists labeled unpatriotic in this campaign included, as paraphrased in various media reports: those who are subversive of mainland authorities, those who support Taiwan independence, those who raise the flag of democracy but are in fact running dogs

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for Western forces, and those who opposed Article 23 national security legislation.<sup>19</sup> The patriot debate reached its zenith when the former Democratic Party chair Martin Lee was criticized for testifying before a U.S. Senate hearing on Hong Kong.<sup>20</sup>

The second stage of the attack on democracy was to offer a steady diet of quotes from the late Deng Xiaoping, arguing the meaning of "gradual and orderly progress." These were cherry-picked to suit the moment, and without support in the Basic Law.<sup>21</sup> As it became apparent that Deng's statements could be used by either side in the debate, this barrage slowed down.

The third stage of this attack on democratic reform became even more aggressive when Beijing officials and media started publishing threats to take emergency action. At this stage, NPC Vice Chairman Sheng Huaren delivered a long lecture on Beijing's power to declare a state of emergency in Hong Kong.<sup>22</sup> The *China Daily* hinted at the possibility that the central government would dismiss the Legislative Council if democrats were to take more than 30 seats in the September 2004 elections—an electoral feat that is nearly impossible under the current electoral formula.<sup>23</sup> The *China Daily* warned, "If those who try to use democracy to exclude the Communist Party of China and 'respect Taiwan self-determination' take the majority of seats in LegCo, Hong Kong's executive-led government will collapse and the central authority and national security will be severely challenged."<sup>24</sup> The local pro-Beijing paper *Wen Wei Po* quoted an unnamed Beijing official as saying, "I have a knife. Usually it is not used but now you force me to use it."<sup>25</sup> These statements were locally understood to threaten dissolution of the Legislative Council if pro-Beijing parties lost control in the next election.

The fourth stage in the crisis was for mainland experts to lecture Hong Kong on the "spirit" of the Basic Law and the demerits of "fake democracy." Hong Kong was told by mainland legal expert Xiao Weiyun



that spirit, not words, was the key to interpreting the Basic Law.<sup>26</sup> The spirit in question appeared to offer little regard to the long ago assurances that Hong Kong people should put their hearts at ease and that the rest of the world might rely on Hong Kong's autonomy. The pro-Beijing business elite also weighed in on this spirit, worrying about a welfare state.<sup>27</sup>

The fifth and final stage in this effort to contain calls for democratic reform was embodied in the NPC Standing Committee Interpretations and the ultimate "reform" the Hong Kong government put forward. Having used two months of vociferous attacks to push the goalpost back, mainland officials began to sound more conciliatory in mid-2004, even sending a team of mainland officials to Hong Kong to explain the first interpretation. Few were convinced. Regarding the interpretation, mainland officials emphasized that ultimate authority rests with Beijing. There has been little indication as to the limits of this power and how it maintains China's commitments under the Joint Declaration.

At some future stage when full direct elections are back on the agenda, opportunities for mischief loom large. Even in late 2003, various pro-Beijing Hong Kong political sectors had already begun to hint at their substantive positions on the ultimate shape of Hong Kong democracy. For any future direct election of the Chief Executive, Article 45 of the Basic Law requires that the candidate be nominated by a broadly representative nominating committee before going before the voters. While the democratic camp has insisted that the nominating committee not be used as a device to screen out democratic candidates from a popular election, their stance faces strong resistance from Beijing supporters.<sup>28</sup> Progovernment/pro-Beijing political parties will urge Beijing to do just that—use the future nominating committee as a screening device. The progovernment Liberal Party has generally refused to endorse democratization or has favored it at some future date. The leftist pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB), while saying that it supports democracy, has staked out only a quasi-democratic position, frequently arguing for a "restrictive nomination committee."<sup>29</sup> Prior to Beijing's interference, the government was noncommittal on the nominating committee, though the government's Secretary for Constitutional Affairs, Stephen Lam, had indicated that the government would not block democrats from running for Chief Executive.<sup>30</sup> Of course, running and actually having a chance at nomination are two different things. More recently, Secretary Stephen Lam has appeared to try to make the case that even functional constituencies do not contradict the requirement of "universal suffrage."<sup>31</sup>

In the early discussions, before reforms were taken off the table, the democratic camp, in a spirit of compromise, had offered at least two possibilities on how to form the nominating committee for direct elections of the Chief Executive. One possibility suggested by both the Democratic Party, the leading prodemocracy party, and the Article 45 Concern Group, which has won four seats in LegCo and is in the process of becoming a party, would be to use the Legislative Council as the nominating committee. This method was considered acceptable as long as only a small number (five had been suggested) of nominators were required, so as not to block democratic candidates. A second alternative offered by the Article 45 Concern Group was to use the existing Election Committee structure as the nominating committee for the 2007 election—with a direct election then to follow. Democrats would likely have accepted this highly unrepresentative body if only nomination by about five percent of its members were required for a candidate to be nominated for direct public election. With the government having prevented real democratic reform for 2007–2008, these debates over what shape direct elections may ultimately take await the next potential elections in 2012.

#### THE ROAD AHEAD, THROUGH BEIJING

This debate is not just about what democratic reform the Basic Law may allow in Articles 45 and 68 and Annexes I and II; larger issues of Hong Kong's constitutional development are at stake. Government by expediency and crisis, and public action by shaming, are inherent features of a constitutional system that cherishes liberty and the rule of law but fails to afford democracy. Such an authoritarian system may frequently put important constitutional institutions at risk. Such actions may engender

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public indignation and criticism, which may in turn lead to governance by expediency or even by crisis, an inherently unstable political course. Liberal constitutionalism assumes democracy, but pro-Beijing and progovernment leaders in Hong Kong frequently worry that democracy poses a risk to stability. The opposite may be true in Hong Kong. The lack of democracy in Hong Kong's liberal constitutional system may pose the greatest risk to stability, as the gov-

ernment veers from crisis to crisis. A system that undermines orderly constitutional channels for public action may simply result in greater confrontation and disorder.

As this plays out in the next several years, up to and beyond the tenth anniversary of the handover, several key actors in this process can make a positive contribution to securing a stable democratic future for Hong Kong. The current Chief Executive Donald Tsang is probably in the best position to move the process forward. He has already shown greater political skill and sensitivity than the previous Chief Executive, Tung Chee Hwa. Leadership on his part in responding to public concerns over political development is a minimum requirement if the pattern of government by expediency and crisis is to be broken. It would help to encourage local confidence if he can be seen to fully represent Hong Kong views on political development in his public comments and representations to Beijing. A Chief Executive who only represents Beijing can only undermine the "one country, two systems" model.

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Beijing is an even more critical actor. If the cycle of government by crisis is ultimately to be broken, Beijing officials need to consult more widely in Hong Kong and show greater willingness to address popular concerns over political development. Such an approach would promote greater trust on both sides. A historical tendency to favor those unpopular Hong Kong elites that have supported the least popular Beijing policies has not encouraged public confidence that anointed Beijing officials can be relied on to understand local concerns. If these matters are handled more generously in Beijing, more democratization need not mean more animosity toward Beijing. Democratic reform may also promote a more measured approach from local democratic leaders facing the real possibility of a substantial role in governance. This may in turn encourage the business community to more fully engage the local democratic process. Probusiness parties usually do very well in a democracy. The diplomatic community and international investors should support such efforts at reform, as such development will only increase confidence in Hong Kong and Hong Kong's constructive role in China. As the above analysis suggests, continuing the current patterns of crises and mistrust is a costly alternative. ■

## ENDNOTES

- 1 *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong*, September 26, 1984, 23 ILM 1371 (Joint Declaration).
- 2 *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, April 4, 1990, 29 ILM 1511 (1990) (Basic Law). See Johannes Chan and Lison Harris, eds., *Hong Kong's Constitutional Debates* (Hong Kong: University of Hong Kong Centre for Comparative and Public Law, 2005).
- 3 Michael C. Davis, "Constitutionalism in Hong Kong: Politics Versus Economics," *Journal of International Economic Law* 18 (March 1997): 155.
- 4 Basic Law, Articles 45 and 68 and Annexes I and II.
- 5 Annex II, Article III provides, "With regard to the method for forming the Legislative Council . . . and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record."
- 6 *The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (adopted by the Standing Committee of the Tenth National People's Congress at its Eighth Session on April 6, 2004), L.N. 54 of 2004 of the Hong Kong Gazette, L.S. No. 12 to Gazette Ext. No. 5/2004 (reproduced in Chan and Harris, *supra* note 2) (April 6 NPC Standing Committee Interpretation), paragraph 3.
- 7 April 6 NPC Standing Committee Interpretation.
- 8 Frank Ching, "Be Consistent," *South China Morning Post*, March 30, 2004 (pointing out this earlier statement).
- 9 *The Second Report of the Constitutional Development Task Force, Issues of Principle in the Basic Law Relating to Constitutional Development*, April 16, 2004 (reproduced in Chan and Harris, *supra* note 2) (Second Task Force Report); *Report 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*, report of the Chief Executive, Hong Kong Special Administrative Region, Hong Kong, April 15, 2004 (reproduced in Chan and Harris, *supra* note 2) (Chief Executive's Report).
- 10 *Decision of the Standing Committee of the National People's Congress on Relevant Issues Concerning Methods for Selecting the HKSAR Chief Executive in 2007 and for Forming the Legislative Council in 2008*, April 26, 2004 (reproduced in Chan and Harris, *supra* note 2).
- 11 Note that the Chief Executive is currently selected by an 800-member Election Committee and functional constituencies are currently used to fill half the seats in the 60-member LegCo. The 800-member Election Committee is itself chosen mostly by similar functional categories of electors. The progovernment and pro-Beijing orientation of these categories is evident in the fact that only one candidate was nominated in the last two selection processes for the current Chief Executive and for his predecessor. Regarding functional legislators, there is again a progovernment orientation, in that the government can nearly always count on their support. For Hong Kong, electoral reform ultimately aims at direct election of the Chief Executive and abolition of functional constituencies, which Beijing has now barred for the 2007 to 2008 period.
- 12 *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*, October 2005 paras 5.04 and 5.17 (Fifth Task Force Report) <[www.cab.gov.hk/cd/text/eng/report5/index.htm](http://www.cab.gov.hk/cd/text/eng/report5/index.htm)> (accessed March 7, 2006). For the Election Committee to choose the Chief Executive, the government recommended that 800 seats be added with approximately 500 including all members of the District Councils and the additional 300 seats coming from existing functional categories—with the details to be supplied later in a legislative amendment bill. For LegCo, all five new functional seats were to be elected by the District Councils, with the method of this likewise to be determined in subsequent legislation. The proposals were rejected by LegCo.
- 13 K.C. Ng and Philip Pan, "Hong Kong Democrats Blast Reform Plan," *Washington Post*, October 13, 2005.

- 14 See Fu Hualing, Carole J. Petersen, and Simon N.M. Young, eds., *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (Hong Kong: Hong Kong University Press, 2005).
- 15 Such "leftist supporters" include a range of local business elite and pro-Beijing grassroots political parties who have long enjoyed Beijing's favor, especially reflected in various appointments to local and mainland committees and political bodies.
- 16 This barrage began with the visit of several elderly mainland legal experts in mid-January 2004. Gary Cheung, "Universal Suffrage in 2007 Flouts Basic Law," *South China Morning Post*, January 17, 2004.
- 17 Ambrose Leung and Gary Cheung, "Patriots Should Govern Hong Kong," *South China Morning Post*, February 11, 2004.
- 18 "'Selective' Quotes Skew Deng's Words," *South China Morning Post*, March 3, 2004.
- 19 Gary Cheung and Ambrose Leung, "Xinhua Releases Criteria for Being True Patriot," *South China Morning Post*, February 25, 2004.
- 20 Mr. An Min, a PRC vice minister of commerce and leading mainland official, even attacked Martin Lee's father, General Li Yin-wo, a highly regarded KMT military officer who had fought in the resistance against Japan. Cheung Chi-fai, Gary Cheung, and Ambrose Leung, "Beijing Hits at U.S. Over Democrats' Washington Trip, Senate Hearing on Democracy in Hong Kong Draws Fire," *South China Morning Post*, March 3, 2004; Ambrose Leung, "An Min's Wrath Turns to Martin Lee's Father," *South China Morning Post*, March 8, 2004.
- 21 The April 6 NPC Standing Committee Interpretation and the Second Task Force and Chief Executive's Reports offer little hint of what "gradual and orderly progress" means, other than to say it must not go too fast and that this depends on the actual situation. "'Selective' Quotes Skew Deng's Words," *South China Morning Post*, March 3, 2004.
- 22 Gary Cheung, "Beijing Will Step in if Security is Threatened," *South China Morning Post*, March 13, 2004.
- 23 It is true that the Basic Law has provisions allowing for dissolution of the LegCo, but these only provide that the Chief Executive may dissolve the LegCo, after consultations, if it refuses to pass bills proposed by the Chief Executive. Basic Law, *supra* note 2, Article 50. Such provisions require a new election to form a new LegCo and specify that if the LegCo again refuses to pass such bill then the Chief Executive must resign. *Ibid.*, Articles 52, 70. It is seriously in doubt whether a nonelected Chief Executive under the current system would willingly subject himself to what amounts to a referendum.
- 24 Cannix Yau, "Democratic LegCo 'Will See Executive Collapse,'" *The Standard*, March 2, 2004.
- 25 Edward Cody, "Hong Kong Reminded that China is in Charge, Beijing Issues Warning Against Direct Elections," *Washington Post Foreign Service*, February 19, 2004.
- 26 Ambrose Leung and Louisa Yan, "'Spirit, not Words,' is the Key to Basic Law," *South China Morning Post*, March 16, 2004.
- 27 Wilson Wong, "Why Less Democracy Means More Free Lunches," *South China Morning Post*, February 16, 2004 (responding to arguments by business elite).
- 28 See Jimmy Cheung, "Article 45 Group to Push for Democratic Reforms," *South China Morning Post*, November 13, 2003 (citing a new pamphlet, Article 45 Concern Group, Opinion 1, November 2003); Gary Cheung and Raymond Ma, "Democrats Unveil Their Blueprint for 'Balanced Election,'" *South China Morning Post*, April 18, 2004.
- 29 Early in the debate the then-DAB Chair, Mr. Tsang Yok-sing, appeared to suggest that such a restrictive process, which presumably might exclude democrats, would still represent progress over the present small circle election by an 800 member Election Committee. Klaudia Lee, "Former DAB Chief backs Direct Election with 'Filter,'" *South China Morning Post*, November 7, 2003.
- 30 Mr. Lam gave no clear indication of how the nominating committee might function. Klaudia Lee, "Chief Executive Election 'Open to Democracy,'" *South China Morning Post*, November 16, 2003.
- 31 Eddie Luk, "Functional Constituency Elections Do Not Contradict Universal Suffrage," *China Daily*, January 27, 2005.

