

Chapter 2

An Open and Responsible Government: The Seedbed of “One Country, Two Systems”

As earlier mentioned, this dissertation is about the implementation of the principle of “one country, two systems” in the Hong Kong Special Administrative Region (HKSAR). I believe that a responsible and open government will facilitate the implementation of this principle. The aim of this chapter is to examine relevant literatures and core concepts applied in this study. The literature to be reviewed below is discussed under four themes, namely, Hong Kong’s system of government, meanings of open and responsible government, the nature of governmental autonomy and substances of political culture. Before going into these themes, let us first review literature on Hong Kong itself.

Hong Kong

Prior to 1997, Hong Kong, in Richard Hughes’ words, was “a borrowed place living on borrowed time.”¹ As Hughes put it, Hong Kong was “the only human habitation in the world that knows when it will die--1997.”² Yet Chinese from the mainland China were, and still are, eager to emigrate to Hong Kong. The Chinese who emigrated to Hong Kong asked “only to be left alone and thrived under a liberal British rule.”³ After the Second World War, an outbreak of civil war in China forced thousands of people to flee to Hong Kong. As a result, Hong Kong’s population increased from 1.8 million in 1947 to 2.2 million by mid-1950.⁴ No wonder Hughes

¹. Richard Hughes. *Borrowed Place, Borrowed Time: Hong Kong and its many faces*. London, UK: André Deutsch Limited, 1976, p.13. Hughes attributes the root of the phrase, “borrowed place, borrowed time,” to one of Han Suyin and Tom Wu.

². *Ibid.*, pp.13-14.

³. *Hong Kong 1997: A Review of 1996*. Hong Kong: The Government Printer, 1997, p.407.

⁴. These figures are from *Hong Kong 1997*, p.409.

labels Hong Kong's population as "a race of refugees." These new immigrants were content with the colonial government's performance so far as their conditions in Hong Kong were better than staying in the mainland China. This kind of mentality helped the rule of the Hong Kong government--it governed residents who were relieved to be in the territory, not citizens who were anxious for reform. Or, at least this is the case until the mid-1980s.

Hong Kong Before the 1980s

Before the 1980s, it mattered little whether Hong Kong was a democratic society or not. As John Rear commented, "Hong Kong is not a democracy. Power, both administrative and executive, is in the hands of civil servants who are in law primarily responsible, through the Governor, to the United Kingdom. The people of Hong Kong can neither appoint these public servants to office nor remove them."⁵ Rear further pointed out that Hong Kong "purports to have no politicians, only bureaucrats."⁶ In general terms, Fred W. Riggs has observed that the bureaucratic apparatus in a colony was "not subject to political control within the dependent territory, so that administrative institutions proliferated while political structures remained embryonic and largely extra-legal, hence unable to relate themselves effectively to control over the bureaucracy."⁷

Riggs' observation applies well to Hong Kong. Its administrative and political powers were centralized at the "central" government under the leadership of the Governor. This phenomenon, in the words of Lau Siu-kai, is "bureaucratic centralism." Under bureaucratic centralism, bureaucrats view "politics and political activities outside the bounds of the bureaucracy with abhorrence and consternation."⁸ A closely related idea is the notion of

⁵. John Rear, "One Brand of Politics," in *Hong Kong: The Industrial Colony--A Political, Social and Economic Survey*, ed. Keith Hopkins (Hong Kong: Oxford University Press, 1971), pp.55-125, p.55.

⁶. *Ibid.*, p.60.

⁷. Fred W. Riggs, "Bureaucrats and Political Development: A Paradoxical View," in *Bureaucracy and Political Development*, ed. Joseph LA Palombara (Princeton, NJ: Princeton University Press, 1963), 120-167, p. 125.

⁸. Lau Siu-kai. *Society and Politics in Hong Kong*. Hong Kong: The Chinese University Press, 1987, p. 36.

bureaucratic paternalism. The essence of this concept is that bureaucrats will consciously safeguard the ultimate interests of their “subjects.” As James C. Scott points out, the idea of paternalism “embraces not only paternal discipline but also the maternal functions of protection and support.”⁹ In sum, the nature of colonial administration leads to “a preference for paternalistic, administrative rule, which was then fortified both by the actual gap between the Westernized elite and the masses, and by the virtual bureaucratic monopoly of knowledge and skills.”¹⁰

Since Hong Kong does not have a group of professional politicians and well organized political parties, its senior civil servants play the dual roles of administrator and politician. The Hong Kong people were indifferent to the phenomenon of powerful civil servants if their daily life were not negatively affected. According to Catherine Jones, the colony’s “frenetically hard-working, hard-saving, hard-speculating and self-absorbed masses showed little beyond a purely instrumental interest in ‘its’ colonial government.”¹¹ Furthermore, the Chinese emphasis on family¹² and self-help not only have weakened people’s demands on the government, but have also generated a favourable condition for the government to adopt a non-intrusion policy in governing Hong Kong. In Steve Tsang’s assessment, the British administration was merely interested in providing the basic political and legal infrastructure for all residents, not directing the economy.¹³

Parallel to the laissez-faire policy in the economic realm is non-interventionism in the

⁹. James C. Scott. *Political Ideology in Malaysia: Reality and the Beliefs of an Elite*. New Haven, CT: Yale University Press, 1968, p. 220.

¹⁰. Ibid., p. 214.

¹¹. Catherine Jones. *Promoting Prosperity: The Hong Kong Way of Social Policy*. Hong Kong: The Chinese University Press, 1990, p. 20.

¹². It is worth noting that most of the Hong Kong Chinese feel uneasy in having to receive help from strangers, including the government. For example, Lau Siu-kai and Kuan Hsin-chi found that “when the Hong Kong Chinese are in trouble, and help from both government and relatives is available, they are more willing to accept help from the latter” (Lau Siu-kai and Kuan Hsin-chi. *The Ethos of the Hong Kong Chinese*. Hong Kong: The Chinese University Press, 1988, p.61).

¹³. Steve Tsang, ed. *Government and Politics*. Hong Kong: Hong Kong University Press, 1995, p.5.

social realm. Above all, the government encouraged citizens to rely on their families for support in time of crises. For example, in a White Paper, the government stated that: “everything possible must be done to support and strengthen the sense of family responsibility, since the family can deal with needs arising from poverty, delinquency, infirmity and natural disaster.”¹⁴ All in all, the marriage of bureaucratic mentality and traditional Chinese values gave birth to a bureaucratic state that could direct its energies in a focused way, without the pressures of interest group liberalism. For over a century, the Hong Kong bureaucracy had a free hand in concentrating its powers.

Hong Kong From the 1980s Onwards

Political developments since the 1980s have dramatically changed the context within which the bureaucracy operates. The year 1984 marked the beginning of a new era in Hong Kong’s history. In that year, the British and Chinese governments signed the Joint Declaration that settled Hong Kong’s future. People began to realize that participating in politics and public affairs was the best way for them to ensure that their government was truly fighting for their interest. The Hong Kong public’s increasing political awareness had induced a high demand for a faster pace of democratization. This demand in turn created a dilemma for the Hong Kong government. As Ian Scott notices, “any changes which disturbed the existing power structure were likely to be met with fierce opposition from the Chinese government and the conservative groups in Hong Kong which supported it. Yet, in failing to meet democratic aspirations and using dubious methods to do so, the government created a crisis of legitimacy for itself.”¹⁵ Nevertheless, the government managed to slow the pace of democratization by opening only some of the Legislative Council’s (LegCo) seats for direct elections in 1991 and 1995.

The public also demanded the government to bear more responsibilities regarding the provision of social services and welfare. To this demand the government responded by steadily increasing the spending on social welfare. The government also initiated a review of the public

¹⁴. *White Paper: Aims and Policy for Social Welfare in Hong Kong* (1965), Quoted in Jones, *op.cit.*, p.171.

¹⁵. Ian Scott. *Political Change and the Crisis of Legitimacy in Hong Kong*. Hong Kong: Oxford University Press, 1989, p. 31.

sector's operation in 1989. As Donald Tsang, then Director of Administration, pointed out, the reform aimed to "achieve more results with less spendings, so that the Government can take on extra commitments essential to Hong Kong with as little extra demand for new resources as possible."¹⁶ In mid-1992, a special unit called the Efficiency Unit was set up under the Chief Secretary's (head of the civil service) office with the aim to "pursue the government's commitment to improve services to the community."¹⁷

Two Recent Studies on Hong Kong

Recent studies on Hong Kong can be roughly divided into two groups: one is pessimistic about Hong Kong's future and the second is optimistic. Let us examine a representative work in each of these two groups.

Bruce Bueno de Mesquita *et al.*, in their *Red Flag Over Hong Kong* assert that the fundamental institutions of Hong Kong's government, society, and economy will be shaped by Chinese interests. The authors base their conclusions on interviews with experts on China and Hong Kong. They predict that "China is soon to embark on a wrenching political transition. . . . Energy will be expended in the struggle between those who want money and those who want power. Hong Kong will be a pawn in that conflict."¹⁸ Overall, the authors foresee that: "Hong Kong will not be as tightly controlled as the rest of China, but neither will it be the free and vivacious place it has been for the past half a century. The political and economic landscape will be filled with uncertainty, cronyism, lost freedoms, and more corruption than has been known in the recent past."¹⁹

By contrast, studies like Michael Yahuda's *Hong Kong: China's Challenge* hold a different view. Yahuda's study is based on a qualitative examination of factors that might affect

¹⁶. Donald Tsang, "Public Sector Reform: Key Issues and Future Directions," in *Public Sector Reform in Hong Kong: Key Concepts, Progress-to-Date and Future Directions*, eds. Jane C. Y. Lee and Anthony B. L. Cheung (Hong Kong: The Chinese University Press, 1995), pp.3-14, p.13.

¹⁷. *Hong Kong 1997: A Review of 1996*. Hong Kong: The Government Printer, 1997, p.16.

¹⁸. Bruce Bueno De Mesquita, David Newman, and Alvin Rabushka. *Red Flag Over Hong Kong*. Chatham, NJ: Chatham House Publishers, Inc., 1996, p. 123.

¹⁹. *Ibid.*, p.119.

China's policy toward Hong Kong. Because of the potential benefits that China will gain if it respects Hong Kong's high degree of autonomy, Yahuda believes that "there are real grounds to be optimistic about the future of the HKSAR."²⁰ For example, Hong Kong "not only provides China with the facility for myriad economic exchanges with the outside world, but it is also a major center of learning where China's key international trade and investment organizations acquire expertise and invaluable experience in dealing with the many facets of the international economy."²¹ Moreover, Hong Kong will be an excellent case to show Taiwan that the principle of "one country, two systems" really works. Conversely, if the principle was to be seen as having failed in Hong Kong, as Yahuda argues, "Beijing would lose the only policy for peacefully reuniting with Taiwan that it has advocated consistently for the last seventeen years since 1978. It would be left with only the military option."²²

The HKSAR has been established for more than one year. So far, evidences seem to support the optimists' observation instead of the pessimists' prediction about Hong Kong's future. As the *United States Hong Kong Policy Act Report* points out, there is no sign of interference from the Chinese government in Hong Kong's local affairs. In sum, the report states that: (1) Hong Kong's civil service remains independent, (2) Hong Kong continues to play an important role as a regional finance center, (3) the Hong Kong press remains free and continues to comment critically on China and its leaders, (4) demonstrations--often critical of China--continue to be held, (5) mainland Chinese companies are subject to the same laws and prudential supervision as everyone else, and (6) the rule of law and the independent judiciary remain in place as guarantees of Hong Kong's free and open civil society.²³

²⁰. Michael Yahuda. *Hong Kong: China's Challenge*. London, UK: Routledge, 1996, p. 150.

²¹. Ibid., p. 25.

²². Ibid., p. 27.

²³. United States Department of State. *United States Hong Kong Policy Act Report*. Released by the Bureau of East Asian and Pacific Affairs, 2 April 1998, Internet edition. This report is published annually by the U. S. State Department. As required by Section 301 of the "United-States-Hong Kong Policy Act of 1992," each year, the State Department will submit a report to Congress detailing its evaluation of events happened in Hong Kong, particularly those that it believes would affect the United States' interest in Hong Kong.

In all, we can agree with Yahuda that there are grounds to be optimistic about the future of the HKSAR.

System of Government

Presidential and parliamentary rule are the world's two major systems of government.²⁴ Exemplars of these two systems are America and Britain, respectively. As Ali Farazmand points out, "A presidential system is generally characterized by a strong executive power, often vested in the president, with strong constitutionally granted authority, whereas the parliamentary system generally has a stronger legislature whose majority party leader is also the chief executive leader or prime minister or chancellor."²⁵

Another main difference between parliamentary and presidential systems lies in the relationship between the executive and legislative branches. R. Kent Weaver and Bert A. Rockman describe it this way: the difference is "[i]n parliamentary systems, the head of government is chosen by the legislature and is dependent for continuation in office on maintaining the confidence of the legislature. . . [in presidential] systems, the chief executive is chosen independently of the legislature--usually by direct election--and serves a fixed term of office."²⁶ Likewise, Leon D. Epstein asserts that parliamentary government is "the form of constitutional democracy in which executive authority emerges from, and is responsible to,

²⁴. The semi-presidential system of government is another form of government, of which, France is a well-known example. In this system, a president is elected by universal suffrage and co-existed with a Prime Minister and Cabinet responsible to the legislature. The president is broadly responsible for foreign policy while the prime minister is generally responsible for domestic policy (Vernon Bogdanor, "Semi-presidential systems" in *The Blackwell Encyclopedia of Political Science*, ed. Vernon Bogdanor (Oxford, UK: Blackwell Publishers, 1993), pp.561-562).

²⁵. Ali Farazmand, ed. *Modern Systems of Government: Exploring the Role of Bureaucrats and Politicians*. Thousand Oaks, CA: Sage Publications, 1997, p. xiv. However, whether this characterization fits with the American presidential system is not without a dispute. As Ann Stuart Anderson argues, "[t]he American Constitution creates three *coordinate* branches, which means three branches of the same rank, equally national, not three of the same weight of power. The legislature is preeminent; the executive and judiciary are genuinely independent of it and were given sufficient strength to prevent being overwhelmed by it" (Ann Stuart Anderson, "A 1787 Perspective on Separation of Powers," in *Separation of Powers--Does It Still Work?*, eds. Robert A. Goldwin and Art Kaufman, (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1986), pp. 138-167, pp. 147, 151. Italics in original).

²⁶. R. Kent Weaver and Bert A. Rockman, eds. *Do Institutions Matter? Government Capabilities in the United States and Abroad*. Washington, D.C.: The Brookings Institution, 1993, p. 12.

legislative authority.”²⁷

On the contrary, in a presidential system, the executive does not emerge from the legislature but is elected by the people for a fixed term of office. The electoral mechanism makes the president the sole executive of his or her country. However, under a parliamentary system, the Primer Minister is merely first among the equals. As Douglas V. Verney points out, “it is a hallmark of the parliamentary system that the Government shall be collective.”²⁸ Moreover, the president is not responsible to the legislature, but to the people. For example, in America, the President is not responsible to Congress but to the Constitution.²⁹ This can be done by two means—the judiciary can declare acts of the President as unconstitutional; and the legislature can hold the President ultimately responsible to the Constitution by the impeachment process.³⁰

Another common way to distinguish these two systems is applying the notion of “separation of powers.” A presidential system is said to be based on this notion. Thus, in a presidential system, legislative, executive and judiciary powers are separated. In a parliamentary system, there is a fusion of the executive and legislative powers. However, when examined carefully, the concepts of “separation of powers” and “fusion of powers” are not helpful in differentiating these two systems of government. As William B. Gwyn observes, “[i]n a parliamentary system, the legislative assembly and the government maintain separate existences, and each, through withdrawal of confidence or dissolution, is able to check the actions of the other. There is thus some separation of legislative and executive power in the parliamentary type

²⁷. Leon D. Epstein, “Parliamentary Government,” in *International Encyclopaedia of the Social Sciences*, vol.11, ed. David L. Sills (New York, NY: Macmillian and Free Press, 1968), pp. 419-426, p. 419.

²⁸. Douglas V. Verney. *The Analysis of Political Systems*. London, UK: Routledge and Kegan Paul Ltd., 1965, p. 27.

²⁹. For the American people, the Constitution represents the people. As John A. Rohr points out, neither Congress, nor the president, nor the judiciary is sovereign. . . each great institution of the state exercises only *partial*, not plenary power. Plenary power is found only in the Constitution itself, which was ratified by the sovereign people (John A. Rohr. *Founding Republics in France and America: A Study in Constitutional Governance*. Lawrence, KS: University Press of Kansas, 1995, p.39, italics in original).

³⁰. Verney, *op.cit.*, pp.48-49.

of representative government.”³¹ Similarly, in a presidential system, there is no complete separation of legislative, executive, and judiciary power. Again, let us take America as an example. In America, the President wields legislative power when he signs legislation sent to him by Congress. Likewise, Congress exercises the executive authority when it confirms presidential appointments.

Of course there are other systems of government besides presidential and parliamentary. In his study of the 22 democracies in the world, Arend Lijphart notices that although the overwhelming majority of his cases are parliamentary systems, there exists two hybrid forms of government other than parliamentary and presidential.³² “Hybrid form of government I” is a system in which government is selected by the legislature but continuation in office is not dependent on the legislature’s confidence. Switzerland is Lijphart’s sole example for this category. In Switzerland, parliament elects its “cabinet,” the Federal Council, but the seven councillors stay in office for a fixed four-year term and cannot be dismissed by a legislative vote of no confidence.³³ “Hybrid form of government II” is when the chief executive is selected by voters but is still dependent on the legislature’s confidence for continuation in office. Lijphart provides no empirical examples of it. Actually, present-day Hong Kong fits this category.

The relationship of Hong Kong’s Chief Executive to the legislature is complex. Except for the first term, Hong Kong’s Chief Executive will be elected by an 800-member Election Committee (EC), with a fixed term of five years.³⁴ The following four sectors (each returns 200

³¹. William B. Gwyn, “The Separation of Powers and Modern Forms of Democratic Government,” in *Separation of Powers--Does It Still Work?*, eds. Robert A. Goldwin and Art Kaufman (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1986), pp. 65-89, p. 76.

³². Arend Lijphart. *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven, CT: Yale University Press, 1984, p.69.

³³. Ibid.

³⁴. Hong Kong’s first Chief Executive was elected by a 400-member Selection Committee (SC). Members of the SC were elected by the Preparatory Committee (PC) on 2 November 1996. The PC was established in 1995. All of its 150 members were appointed by the Chinese government. Among them, 94 were from Hong Kong and 56 were from the mainland China. Many of the Hong Kong members were from the business community. As China wanted to keep Hong Kong’s capitalistic system intact and control the outcome of the selection, not surprisingly, the business and professional classes constituted a majority in the membership of the SC.

members) would form the EC: industrial, commercial and financial; the professions; labour, social services, religious and other sectors; and members of the LegCo, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (Basic Law, Annex I, section 2).³⁵ Most of the 800 EC members would be returned by elections.³⁶

The Chief Executive is given the power to dissolve the legislature and order fresh elections once in office. The Chief Executive can dissolve the LegCo if he or she “refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations” (Art. 50). But the power to dissolve the LegCo is a two-edged sword. The Chief Executive must resign “when the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it” (Art. 52(2)) and “when, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute” (Art. 52(3)). In sum, although the LegCo does not formally possess the power of vote of no confidence, in reality it can vote out the Chief Executive.

Hong Kong's System of Government Before 1 July 1997

The *Letters Patent*, with *Royal Instructions*, formed the written constitution of Hong Kong before July 1997. The *Letters Patent* established the basic framework of Hong Kong's administration while the *Royal Instructions* laid down procedures that the government must follow, such as the appointment of members of the Executive Council (ExCo) and the nature of the ExCo's proceedings.

³⁵. Among these four sectors, three of them (except the “labour, social services, religious and other sectors”) are reserved for business and professional classes. This composition of membership ensures that business interests will have an influential say in the process of nominating and selecting the Chief Executive.

³⁶. Members of the LegCo, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference are the *ex officio* members of the EC. As for the rest of the EC members, the Basic Law leaves it to the Hong Kong government. The government has the authority to write its own electoral law to stipulate how different sectors of EC should elect their representatives.

The Governor and the Administration

Most of the political powers were centralized at the executive branch. The head of the government was the Governor. The *Letters Patent* created the office of Governor and defined his powers in general terms: to make laws for the peace, order, and good government of the colony, to make grants of land, to appoint judges and other officers of the government, to suspend or dismiss any officer (except judges of the Supreme and District Court, for whom a special procedure applies), and to grant pardons.³⁷ Until 1991, the Governor presided at meetings of both the LegCo and ExCo.³⁸

The ExCo played a role like a Cabinet in a parliamentary system. It consisted of three *ex officio* members--the three most senior government officials, namely, the Chief Secretary, the Financial Secretary and the Attorney General--and other unofficial members appointed by the Governor with the approval of the British Secretary of State. The Governor was required by the *Royal Instructions* to consult the ExCo on all important matters of policy (although he could act against its advice, he seldom did so). The ExCo members were bound by the convention of collective responsibility, that is, they must publicly support and defend decisions made by the ExCo, even if they personally disagreed with those decisions. The ExCo met every week to discuss policy matters, determine appeals, petitions and objections under those ordinances which confer a statutory right of appeal, consider all principal legislation before it was introduced into the LegCo, and make subsidiary legislation. The Governor in Council--the Governor acting after consulting the ExCo--was Hong Kong's central and highest executive authority on policy matters.

Once a policy decision was made and the required legislation and funding were approved by the LegCo, the civil service under the leadership of the Chief Secretary, became responsible

³⁷. Norman J. Miners. *The Government and Politics of Hong Kong*. 5th edition, Hong Kong: Oxford University Press, 1995, p.56. Before the Governor removed a judge of the Supreme or District Court from office, he needed to appoint a tribunal to enquire into the matter. The tribunal shall consist of a chairman and not less than two other members selected by the Governor from among judges from Hong Kong or other Commonwealth countries. The tribunal will report and recommend to the Governor whether a suspension action should be taken or not (*Letters Patent*, Clause XVIA (4), (5), (6), and (7)).

³⁸. Since 1991, the Governor was empowered to appoint a member of the LegCo as his deputy to preside in his absence. In 1993, the Governor ceased to be the President of the LegCo. The President was elected by and among the LegCo members.

for its implementation. The Chief Secretary exercised direction primarily as head of the Government Secretariat, the central organization comprising 15 policy branches, and two resource branches concerned with finance and the Public Service. There were 71 departments and agencies (the 1996 figure) whose heads were, with some exceptions,³⁹ responsible to the policy branches secretaries for the direction of their departments and the implementation of government policy. The Financial Secretary, who reported directly to the Governor, was responsible for the fiscal and economic policies of the government. The Attorney General was the Governor's legal adviser. All government departments requiring legal advice received it from the Attorney General. He was the representative of the Crown in all actions brought by, or against, the Crown. He was also responsible for the drafting of all legislation.

On October 1, 1996, the total strength of the civil service was 184,000, about 6 percent of Hong Kong's workforce. More than 99 percent of the civil servants were local officers.⁴⁰ Local officers constituted about 87 percent of the 3,000 officers at senior management/professional level, and 72 percent of the 1,400 officers at the directorate level.⁴¹ The directorate level officers were, and still are, the most senior group of staff in the civil service, ranging from the posts of chief or principal officers (D1) in departments to the secretary posts (D8-D10) in policy branches at the Secretariat. These senior civil servants were liable to serve in any departments and policy branches. In short, they were expected to both give political direction to and manage their departments.

³⁹. The exceptions are the Audit Department whose director reports directly to the LegCo; the Independent Commission Against Corruption and the Office of the Commissioner for Administrative Complaints, whose Commissioners report directly to the Governor; the Judiciary, which is the responsibility of the Chief Justice; and the Legal Department, which is the responsibility of the Attorney General (*Hong Kong 1997: A Review of 1996*. Hong Kong: The Government Printer, 1997, p. 16).

⁴⁰. Local officers are referred to individuals whose habitual place of residence is Hong Kong, Macau, China or Taiwan; whose background and social ties fall within the above mentioned places, and upon their appointment on local terms, they did not suffer a substantial degree of dislocation or uprooting from the environment to which they belong. For details, see Lui Ting Terry, "Recruitment and Selection," in *The Hong Kong Civil Service: Personnel Policies and Practices*, eds., Ian Scott and John P. Burns, (Hong Kong: Oxford University Press, 1984), pp.59-95.

⁴¹. *Hong Kong 1997*, pp.19-20. Although the Hong Kong government adopted localization of the civil service as official policy in 1947, by the mid-1980s, a significant number of senior positions were still held by the expatriates, not the local officers.

In addition, there was a system of advisory bodies. These advisory bodies covered a wide-range of areas. Some dealt with the interests of a particular industry, such as the Fishing Market Advisory Board. Others dealt with a particular area of government policy, such as the Transport Advisory Committee. Government officials and members of the public were represented on about 290 advisory boards and committees (the 1996 figure). As for the criteria of appointment, the government claimed that members were appointed for their specialist knowledge or expertise, or for their record interest in contributing to community service.⁴²

However, the background of unofficial members that sat on these boards and committees tells a different story. These members were mostly from “financial, industrial, and real estate circles, and the various professions that service these interests.”⁴³ In other words, the government had utilized the system of advisory boards and committees to co-opt elites into the governing process. Ambrose King calls this process of co-optation the “administrative absorption of politics.” It is a process “by which the government co-opts the political forces, often represented by elite groups, into an administrative decision-making body, thus achieving some level of elite integration; as a consequence, the governing authority is made legitimate, a loosely integrated political community is established.”⁴⁴

The Legislative Council

The main functions of the LegCo were to enact laws, control public expenditure and monitor the government’s performance. Major legislation was enacted in the form of bills. Though legislators could initiate legislation through the mechanism of private member’s bill, they were not allow to introduce bills that would impose financial obligations on the government. Since almost any change in the existing law would involve additional public expenditure, most

⁴². Ibid., p.15.

⁴³. Miners, *op.cit.*, p.108.

⁴⁴. Ambrose Yeo-chi King, “Administrative Absorption of Politics in Hong Kong: Emphasis on the Grass Roots Level,” in *Social Life and Development in Hong Kong*, eds. Ambrose Y. C. King and Rance P. L. Lee (Hong Kong: The Chinese University Press, 1984), pp.127-146, p.130.

of the bills considered by the LegCo were initiated by the government.⁴⁵

The LegCo, through its Finance Committee, approved or rejected all items of government funding requests. The Finance Committee consisted of all the unofficial members of the LegCo,⁴⁶ plus the Chief Secretary, the Financial Secretary and the one other official member nominated by the Governor. The Chief Secretary was the chairperson of the committee, but neither he or she and nor the two other official members had a vote. In other words, the government had no formal means to influence the committee's decision. The Finance Committee was an effective tool for the LegCo to check on the government because it had the final say on all items of government expenditure. Put simply, if the LegCo had the will to monitor the government's performance seriously, it had the means to do so.

Hong Kong's System of Government After 1 July 1997

The new system of government is not radically different. The overall theme of the Basic Law is to maintain Hong Kong's capitalist system, which in the eyes of the Chinese officials, works better under an executive-led political system. As Yash Ghai contends, Hong Kong's political structure is designed to "ensure the dominance of the business and professional classes, the principal devices being the system for the appointment of the Chief Executive, functional constituencies, and the system of voting in the legislature which seeks to give the business community a veto over initiatives of more democratically elected members."⁴⁷

The Chief Executive and the Administration

The powers and functions of the Chief Executive as listed in the Basic Law are similar to Hong Kong's former Governors, except in the power to dissolve the legislature. For the former

⁴⁵. Most of the government bills were concerned with matters of minor administrative detail, a part of the continuous process of keeping the law up to date with changing social circumstances, administrative needs, and the latest decisions of the courts. As Miners points out, of the 103 bills considered by the LegCo in the 1989-90 session, about 75 were of this nature and all passed through the LegCo with the minimum of debate (Miners, *op.cit.*, p. 121).

⁴⁶. The term "unofficial members" is used to distinguish members from the official members--the full-time civil servants. Before 1995, the Governor had the authority to appoint government officials to seat in the LegCo as official members.

⁴⁷. Yash Ghai. *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law*. Hong Kong: Hong Kong University Press, 1997, p. 260.

Governors, they could dissolve the legislature and order fresh elections at any time and as often as they deemed such action was necessary. But for the Chief Executive, he or she can only dissolve the LegCo once in office. Moreover, unlike the former Governors who did not need to resign even if the new LegCo was still hostile to the government, the Chief Executive has no choice but to resign. For the former Governors, they could simply dissolve the new LegCo and order a new election. But for the Chief Executive, if he or she still refuses to sign a bill passed again by the new LegCo, or cannot get the new LegCo to pass an important bill or the government budget, he or she must resign.

Subordinate to the Chief Executive is the public service led by the Administrative Secretary (formerly known as the Chief Secretary), Financial Secretary and Secretary of Justice (formerly known as the Attorney General). Functions and powers of the offices of the Chief Secretary and Attorney General remain the same but their names are changed to eliminate the vestiges of British colonialism. Likewise, powers and functions of the former government policy branches, departments and agencies remain the same. But the 15 policy branches, and two resource branches concerned with finance and the Public Service are now renamed as bureaux, and policy secretaries are now called directors. For example, the head of the Constitutional Affairs Branch was formerly called the Secretary for Constitutional Affairs. Now, the branch is renamed as the Constitutional Affairs Bureau and its head is now called Director of Constitutional Affairs in Chinese (although in English, the title is still the Secretary for Constitutional Affairs).

All of the 23 principal officials serving in the British administration were allowed to become the principal officials of the HKSAR after the handover. This arrangement was to ensure the continuity of administration and to show the Hong Kong people that no dramatic changes would occur after the establishment of the HKSAR. Public servants served in all Hong Kong government departments prior to the handover were also allowed to “remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favorable than before” (Art. 100). In addition, the previous system of advisory bodies is also maintained.

The HKSAR Legislative Council

The HKSAR LegCo’s powers and functions are similar to its predecessors. But the Basic Law has imposed a restriction on the nationality of the LegCo’s membership. Only 20% of the

LegCo's total membership is allowed to be filled by individuals with right of abode in foreign countries (Art. 67). Restriction like this did not exist before the establishment of the HKSAR. Moreover, the LegCo's institutional powers are obviously less than before. Restrictions on private members' bills and the LegCo's voting procedures are much more conservative than before.

All in all, Hong Kong's system of government is neither parliamentary nor presidential. In terms of the concentration of executive power, presidential authority rests solely with the Chief Executive. In this sense, Hong Kong somewhat resembles the American presidential system. As for the executive-legislative relationship, Hong Kong is largely parliamentary. As discussed earlier, although the LegCo does not formally possess the power of vote of no confidence, in reality it could vote out the Chief Executive. Despite that, Hong Kong's system of government is not parliamentary overall because its executive authority does not emerge from the legislative authority, a distinctive feature of the parliamentary system.

Open and Responsible Government

Responsible Government

With the increasing complexity in governmental affairs, it becomes very difficult for every piece of legislation to cover all the aspects of a program or policy. Inevitably, there are occasions in which the bureaucrats will need to make discretionary judgments. Here lies the core part of the responsibility issue: how to ensure that bureaucrats will not abuse their discretionary power and behave responsibly.

The Friedrich-Finer debate

A well-known exchange between Carl J. Friedrich and Herman Finer in the early 1940s reveals all the basic elements of the responsibility issue. Friedrich asserts that administrators' technical knowledge and their sensitivity to the popular sentiment of the society are two important factors to assure that they would behave responsibly. Put differently, we can call a public policy irresponsible if "it can be shown that it was adopted without proper regard to the existing sum of human knowledge concerning the technical issues involved . . . [or] if it can be shown that it was adopted without proper regard for existing preferences in the community, and

more particularly its prevailing majority.”⁴⁸ In other words, bureaucrats should ground their decisions on the basis of their technical knowledge and comply with the prevailing community sentiment.

While Friedrich calls for the development of a sense of professionalism and personal conscience as the basis of responsibility, in Finer’s view such a call relies too much on subjective aspects of responsibility, which would constitute a danger to a democratic polity. Finer believes that it is too shaky for a democratic polity to build on the good intention of bureaucrats. He asserts that “We in the public administration must beware of the too good man as well as the too bad; each in his own way may give the public what it doesn’t want.”⁴⁹

According to Finer, the difference between him and Friedrich, is: “my insistence upon distinguishing responsibility as an arrangement of correction and punishment even up to dismissal both of politicians and officials, while he believed and believes in reliance upon responsibility as a sense of responsibility, largely unsanctioned, except by deference or loyalty to professional standards.”⁵⁰ To enhance the responsibility of the public servants, external devices are much more dependable than the bureaucrats’ professional standards, Finer argues. External devices, in Finer’s own words, are “the law courts, the procedure of criticism, questions, debate, and fact-finding, and parliamentary control of the purse within the assembly, and, in the U.S.A., the election of executive or administrative officials and their recall.”⁵¹ As for professional standards, duty to the public, and pursuit of technological efficiency, Finer sees them as factors in sound administrative operation and sound policy. To Finer, no doubt these factors require public and political control and direction.⁵²

⁴⁸. Carl J. Friedrich, “Public Policy and the Nature of Administrative Responsibility,” reprinted in *Public Administration and Policy*, ed. Peter Woll (New York, NY: Harper Torchbook, 1966), pp. 221-46, p. 232.

⁴⁹. Herman Finer, “Administrative Responsibility in Democratic Government,” *Public Administration Review* 1 (Summer 1941):335-50, 338.

⁵⁰. *Ibid.*, p. 335.

⁵¹. *Ibid.*, p.338.

⁵². *Ibid.*, p.350.

Frederick C. Mosher on responsibility

Another effort to clarify what “responsibility” means is offered by Frederick C. Mosher. He claims that responsibility may be the most important word in all the vocabulary of administration, public and private. However, the word’s meaning is rather confusing. Mosher identifies two possible meanings of responsibility. The first, objective responsibility, connotes the responsibility of a person or an organization to someone else, outside of self, for some thing or some kind of performance. It is closely akin to “accountability” or “answerability.”⁵³ The second, subjective responsibility, focuses “not upon to whom and for what one is responsible (according to the law and the organization chart), but to whom and for what one *feels* responsible and *behaves* responsibly. This meaning is more nearly synonymous with identification, loyalty, and conscience than it is with accountability and answerability.”⁵⁴

When one re-examines the Friedrich-Finer debate with Mosher’s conceptualization of responsibility, one will notice that Friedrich focuses on the subjective aspect of the concept whereas Finer concentrates on the concept’s objective side. Mosher also touches on the exchange between Friedrich and Finer. He says that the rise of the professional state since the Second World War appears to give support to Friedrich’s view. In other words, to have responsible bureaucrats serve in our government, there is a necessity to develop a sense of professional responsibility among bureaucrats. It might be true that we are now depending much more on the contributions of professional bureaucrats in running our government. Nonetheless, merely relying upon bureaucrats’ good conscience as a safeguard against bureaucratic malpractice is far from enough.

This study argues that Friedrich and Finer’s conceptions of responsibility are not mutually exclusive but complementary to each other. As will be shown later in Chapter 5, the institutional mechanisms proposed in this study aim at securing objective responsibility from the government, that is, holding the government answerable to its behaviour. These institutional mechanisms are supported by Hong Kong’s emerging participant political culture, which no doubt will affect the

⁵³. Frederick C. Mosher. *Democracy and the Public Service*. 2d ed. New York, NY: Oxford University Press, 1982, p. 9.

⁵⁴. *Ibid.*, p. 10, italics in original.

bureaucrats' conception of subjective responsibility.

Responsible government in practice--presidential and parliamentary systems

There is a sharp contrast between the manner that governments are held responsible to the public in presidential and parliamentary systems. Broadly speaking, there are more players involved in holding the government responsible for its action in the former system than there are in the latter. In a parliamentary system, the public can hold their government accountable to them through the parliament. For example, in Britain, as Philip Norton suggests, "the House [of Commons] itself is not the government but government is drawn from it and remains answerable to it. The House is thus uniquely placed to subject government to scrutiny, and to seek to influence it, on behalf of the citizenry."⁵⁵

A notable feature of the parliamentary system is its provision of a clear line of democratic accountability. As Colin Campbell and Graham K. Wilson point out, in Britain ministers are "individually accountable to Parliament for the work of their departments, and collectively responsible for all major government policies; civil servants were accountable to ministers."⁵⁶ By contrast, in a presidential system such as the United States, there is no clear lines of accountability. Campbell and Wilson observe that "American officials could be said to be accountable to their departmental, politically appointed superiors, to the president, to the relevant committees and subcommittees of Congress, and, increasingly in the last three decades, to the courts."⁵⁷

Below we use the case of Britain to illustrate how the parliamentary system held its government accountable. Britain is chosen here because (1) it is the mother of modern parliamentary government and (2) as a former British colony, the present HKSAR's administrative culture has been significantly influenced by the British conceptions of responsible and open government.

⁵⁵. Philip Norton. *The British Polity*. 3rd ed. New York, NY: Longman, 1994, p.272.

⁵⁶. Colin Campbell and Graham K. Wilson. *The End of Whitehall: Death of a Paradigm*. Oxford, UK: Blackwell Publishers, Inc., 1995, p. 249.

⁵⁷. *Ibid.*, p.252.

The notions of ministerial responsibility and bureaucratic anonymity form the bedrock of governmental responsibility in a parliamentary system. What is ministerial responsibility? Simply put, it means that “the government is accountable through its ministers to Parliament.”⁵⁸ There are two dimensions to the idea of ministerial responsibility. The first dimension is individual ministerial responsibility. Ministers are expected to be responsible and accountable to Parliament for all that occurs within their departments. It followed from this that if a significant mistake were made by the department, the Minister should resign.⁵⁹ The accepted constitutional position, as Colin Turpin has noted, is that the minister as the head of a department “has entire responsibility to Parliament for the department’s functions, including any parts of its work for which the immediate, ‘day-to-day’ responsibility is entrusted to subordinate ministers.”⁶⁰

The second dimension is collective ministerial responsibility. It implies that all cabinet ministers should assume responsibility for cabinet decisions and actions taken to implement those decisions. Ministers must collectively resign if their cabinet loses a vote of confidence in parliament. Moreover, a minister must first resign if he or she wants publicly to express a dissenting voice against a cabinet decision. As Sharon L. Sutherland argues, the collective “shield” has great legitimacy in a parliamentary system: “the government must be able to control and protect its own membership *to be able* meaningfully to accept responsibility for its direction and impact as a government. It would not be able to govern as one administration if the cabinet’s membership could be changed by the House of Commons exercising an authoritative veto on individual minister.”⁶¹

In practice, the convention of ministerial responsibility helps generate another

⁵⁸. Diana Woodhouse. *Ministers and Parliament: Accountability in Theory and Practice*. Oxford, UK: Clarendon Press, 1994, p. 3.

⁵⁹. Treasury and Civil Service Committee. *Civil Servants and Ministers: Duties and Responsibilities*, 1986, I, paras. 3.14-3.17. Quoted in Ann Robinson, “What are the implications of devolved budgeting for ministerial responsibility?” *Public Administration* 65 (Spring, 1987):62-68, 63.

⁶⁰. Colin Turpin, “Ministerial Responsibility: Myth or Reality?” in *The Changing Constitution*, eds. Jeffrey Jowell and Dawn Oliver (Oxford, UK: Clarendon Press, 1989), pp. 53-85, p.62.

⁶¹. Sharon L. Sutherland, “Responsible Government and Ministerial Responsibility: Every Reform is its Own Problem,” *Canadian Journal of Political Science* 24(1) (March 1991):91-120, 96, italics in original.

constitutional convention in Britain--the anonymity and non-accountability of civil servants. Civil servants, although internally responsible up the lines of the official hierarchy to the minister, are not held to be responsible to parliament, other than indirectly through the minister.⁶² The rationale for this convention is to preserve the impartiality of the civil servants. Civil servants are required to be politically neutral. They are supposed to serve the government of the day, whatever its political identity.

The British government believes that any exposure of the processes of departmental decision-making to the public will reduce administrative efficiency and weaken the civil service's impartiality. To preserve governmental efficiency and the civil servants' impartiality, officials must not become "personally identified with a particular line of advice on particular issue of policy or [be] exposed to pressure to discuss in what respects their advice has not been accepted by Ministers."⁶³ In short, to maintain the impartiality of the civil servants, they should remain anonymous.

Predictably, the practices of ministerial responsibility and bureaucratic anonymity have generated a culture of administrative secrecy. The essence of ministerial responsibility and bureaucratic anonymity is that the government is held accountable to the people through Parliament rather than directly answerable to them. As the government is not directly accountable to the public, there is little need for the public to be well-informed about the processes of government decision-making and activities of government departments. Similarly, as the civil servants are not answerable to Parliament nor the public but to their ministers, there is no need for the public to know what roles civil servants have played in the formulation and implementation of public policies. However, it is very doubtful that in a complex administrative state, the amateurish politicians can effectively control the professional bureaucrats who are responsible for the day-to-day operation of the government. Thus, there is little assurance that the bureaucracy can be held responsible because it is under the auspices of the ministers.

⁶². Turpin, *op.cit.*, p.64.

⁶³. *White Paper: Information and the Public Interest*. Cmnd. 4089, June 1969, p.10.

Openness and Responsible Government

The ideas of government openness and responsible government go hand in hand. The opposite of an open government--a secretive government--is a concept in contrast with the notion of a responsible government. The nature of a secretive government is to keep the public out of its administrative process. In contrast, an open government will include the public in its policy making process as much as possible.

The notion of openness recognizes that for a society to remain as a free society, the public should have ready access to government information. As William Fitzpatrick once argued, “an uninformed people must, in the end, become a misinformed people. And a misinformed people, while they may be told they are the safest and happiest in their serfdom to secrecy are not a free people.”⁶⁴ It goes without saying that to hold the government accountable for its behavior, the public must first know whether or not the government has done something wrongly. The public also needs to know if the government has tried its best to discharge its duties. All this would not be possible to achieve if there is too much secrecy in the operation of the government. To give an example, in Britain, as Turpin observes, “[t]he most serious obstacle to accountability is the secrecy of government, and the inequality of information between government and Parliament. In the House and its committees the demand for information is unremitting, for ‘the ability of Parliament to make a reality of ministerial accountability depends on the availability of appropriate information.’ Unfortunately, governments are little disposed to volunteer information that may expose them to criticism.”⁶⁵ In short, excessive secrecy can only help the government to cover up its mistakes and incompetence.

As previously mentioned, being heavily influenced by the British philosophy of administration, the Hong Kong government has developed a passion for administrative secrecy. What makes the situation worse in Hong Kong is that unlike Britain which has a strong democratic culture to prevent the government from serious abuse of powers, Hong Kong is a

⁶⁴. Quoted in William B. Eimicke, *Public Administration in a Democratic Context: Theory and Practice*. Beverly Hills, CA: Sage Publications, 1974, p. 46.

⁶⁵. Turpin, *op.cit.*, p.80.

polity that emphasizes on the necessity of maintaining a strong government for the sake of social stability and economic development. Under these circumstances, Hong Kong needs a custom of open government badly. To keep the powerful government in check, both the public and LegCo need to have the information to judge whether a government action or inaction is justifiable. Without the atmosphere of open government, this goal is very difficult to accomplish. To this end, this study suggests that Hong Kong should have a freedom of information act. Such legislation would not only create a custom of open government, but also give the public an effective tool to get information that they would need for a real and meaningful participation in debates on public issues.

Thus far, we have argued that a secretive government cannot be a responsible government.⁶⁶ However, some might still think that an open and responsible government cannot be an efficient government. Let us explore this thought.

Government Efficiency versus Open and Responsible Government

No one will dispute that efficiency is an important criterion for citizens to evaluate the performance of their government. The question here is should it be the primary hallmark of a good government? To evaluate the efficiency of government actions, according to Herbert A. Simon *et al.*, “we must first specify what or whose values we are trying to maximize.”⁶⁷ The problem in measuring efficiency lies in precisely such specifying. Unlike private organizations that are mostly aimed at making profits, government agencies have multiple, sometimes conflicting goals to achieve.

Even if we can decide what goals to achieve, since we lack any objective way for deciding how much money or time should be devoted to achieving them, it is difficult for us to decide the true efficiency of a government agency. Moreover, government agencies operate within many constraints which we imposed on them to insure that they will not act arbitrarily. Thus, as James

⁶⁶. Some might offer Britain, a democratic country with a highly secretive government, as a counter example to this assertion. However, it is clear that the case of Britain shows a democracy under tremendous stress. Fortunately, the long democratic history of Britain saves it from turning into an authoritarian regime. Therefore, Britain is not a good illustration of the right balance between democracy and secrecy.

⁶⁷. Herbert A Simon, Victor A Thompson, and Donald W Smithburg. *Public Administration*. New Brunswick, NJ: Transaction Publishers, 1991, p. 504.

Q. Wilson points out, to improve government efficiency, one must “decide which constraints one is willing to sacrifice.”⁶⁸

As it is difficult to objectively define the concept of efficiency in the public sector, it is natural for us to question its usefulness in judging the government’s performance. As Dwight Waldo has asserted, efficiency cannot itself be a value. Waldo argued that efficiency “operates in the interstices of a value system; it prescribes relationships (ratios or proportions) among parts of the value system; it receives its ‘moral content’ by syntax, by absorption. Things are not simply ‘efficient’ or ‘inefficient.’ They are efficient or inefficient for given purposes, and efficiency for one purpose may mean inefficiency for another.”⁶⁹

The need to prioritize government programs makes governance something more than a management process. Governance is a political process. It is a process through which the government and citizens come together to deliberate and decide how important public issues should be resolved, or which purposes of a public program should be given the priorities. In short, to implement a public policy successfully, efficiency is but one among many factors, not the sole factor. Without getting inputs from the public, without subjecting the government to the public’s scrutiny, government policies and programs will lack the vital information and the legitimacy for their successful formulation and implementation. The “inefficiency and delay” in formulating and implementing public policies are the costs worth paying for a free and well-developed contemporary society. In this new era Hong Kong’s bureaucracy must be more than merely efficient--it must be publicly accountable.

Overall, a responsible and open government is something desirable even if it means government inefficiency in the short run. It is important for citizens to know whom to call to account, and who owes a duty of explanation when things go wrong. As Patricia Day and Rudolf Klein point out, “it is precisely day-by-day accountability, in which the rulers explain and justify their actions directly to the ruled, which distinguishes a democratic society from an elective

⁶⁸. James Q. Wilson. *Bureaucracy: What Government Agencies Do And Why They Do It*. New York, NY: Basic Books, Inc., 1989, p. 331.

⁶⁹. Dwight Waldo. *The Administrative State: A Study of the Political Theory of American Public Administration*. 2d ed. New York, NY: Holmes and Meier Publishers, 1984, p. 193.

tyranny.”⁷⁰

Governmental Autonomy

The term autonomy, as Yoram Dinstein points out, is “derived from Greek: *auto* means self, *nomos* is law; autonomy--in the legal-political vocabulary--denotes self-government.”⁷¹ In international law, full autonomy and self-government refer essentially to the internal government of a territory. In their study of 22 cases of nonsovereign entities, Hurst Hannum and Richard B. Lillich suggest three major characteristics that a fully autonomous government should possess. They are:

1) There should exist a locally-elected body with some independent legislative power, although the extent of the body’s competence will be limited by a constituent document. Within the realm of its competence, the local legislative body should be independent, and its decisions should not be subject to veto by the principal/sovereign government unless those decisions exceed its competence or are otherwise inconsistent with basic constitutional precepts.

2) There should be a locally-chosen chief executive, possibly subject to approval or confirmation by the principal government, who has general responsibility for the administration and execution of local laws or decrees.

3) There should be an independent local judiciary, some members of which may also be subject to approval or confirmation by the central/principal government, with jurisdiction over purely local matters. Questions involving the scope of local power or the relationship between the autonomous and principal governments may be considered by either local or national courts in the first instance and generally may be appealed to a nonlocal court or a joint commission of some kind for final resolution.⁷²

Hannum and Lillich also identified other criteria to evaluate the autonomy of a government. These are: (1) degree of international personality, including control over foreign relations and defence; (2) police and security arrangements; (3) land and natural resources; (4) social services;

⁷⁰. Patricia Day and Rudolf Klein. *Accountabilities: Five Public Services*. London, UK: Tavistock Publications, 1987, p. 7.

⁷¹. Yoram Dinstein, “Autonomy,” in *Models of Autonomy*, ed. Yoram Dinstein (New Brunswick, NJ: Transaction Books, 1981), pp. 291-303, p.291.

⁷². Hurst Hannum and Richard B. Lillich, “The Concept of Autonomy in International Law,” in *Models of Autonomy*, ed. Yoram Dinstein (New Brunswick, NJ: Transaction Books, 1981), pp.215-254, pp. 250-51.

(5) finance and economy; and (6) cultural, religious, and minority group autonomy.⁷³

Let us apply Hannum and Lillich's framework of an autonomous government to examine the case of Hong Kong. First and foremost, the Basic Law guarantees Hong Kong's possession of the first-mentioned three basic features of an autonomous government. In other words, Hong Kong has a locally-elected legislature with independent legislative power. It also has a locally-chosen Chief Executive and an independent judiciary. Furthermore, the Basic Law assures Hong Kong that it can maintain the six additional criteria that Hannum and Lillich have acknowledged.

Although foreign relations and defence are the responsibilities of the central government, Hong Kong enjoys a high degree of international personality. The central government authorizes Hong Kong to conduct relevant external affairs on its own in accordance with the Basic Law. Besides, just like most of the autonomous non-sovereign entities that Hannum and Lillich have examined, Hong Kong's police force is under the control of the Hong Kong government. The Hong Kong Police is responsible for law and order and internal security matters of the territory. The Chinese People's Liberation Army stationed in Hong Kong is for defence only. Also, the Hong Kong government is responsible for the management, use and development of the land and natural resources within Hong Kong. Additionally, revenues derived from the land and natural resources are exclusively at the disposal of the Hong Kong government.

Predictably, the provision of social services is the responsibility of the Hong Kong government. Moreover, Hong Kong enjoys a very high degree of autonomy in managing its own financial and economic affairs. For example, Hong Kong's finances and taxation system are independent from the Chinese systems. Hong Kong is also given the authority to formulate its own financial and monetary policies; issue its own currency; and maintain as a separate customs territory. Last but not the least, minority groups' cultural and religious rights are also protected by the Basic Law.

Since the autonomy Hong Kong commands is of the nature of a local administrative entity within a sovereign state, it is worthwhile to examine two theories of local autonomy. The first is Ed Page's conception of autonomy. According to Page, the concept of autonomy may provide

⁷³. Ibid., pp. 232-248.

(1) a *criterion* according to which the activities of a central government can be evaluated, and (2) a guide to a *desired state* of the relationship between central and local government.⁷⁴

Applying Page's theory of local autonomy, one can use the autonomous powers granted to Hong Kong by the Basic Law as criteria to evaluate the status of the principle of "one country, two systems." Simply put, if activities, policies, laws and regulations, or orders from the Central People's Government (CPG) are undermining Hong Kong's autonomy, we can conclude that the principle is being violated. Similarly, the notion of "autonomy as the desired state" is useful in establishing a proper relationship between Hong Kong and the CPG. For instance, in cases of disputes concerning the correct interpretation of the Basic Law or restrictions that the Basic Law imposes upon Hong Kong, interpretations should be conducted in a way that leaves maximum room for Hong Kong to manoeuvre. Otherwise, Hong Kong's autonomy in governing its own affairs is not being respected.

Gordon L. Clark provides a second theory of local autonomy. Clark suggests that there are two basic principles of local autonomy, namely, the power of initiation and the power of immunity. The first principle deals with where policies are initiated, while the second principle focuses on whether the localities can act without fear of oversight authority of higher tiers of the state. From these two principles, Clark identifies four types of local autonomy: (1) initiative and immunity, (2) initiative and no immunity, (3) no initiative and immunity, and (4) no initiative and no immunity. Type 1 is essentially the opposite of Type 4, wherein the former situation could be characterized as complete local autonomy and the latter as absolutely no local autonomy. Type 2 autonomy allows local government complete authority to regulate and legislate in their own interests, but makes their decisions subject to review by higher tiers. By contrast, Type 3 autonomy provides no powers of local initiation, implying that whatever local governments do, their agendas are set by higher tiers of the state. However, local immunity allows local governments to operate without fear of review or supervision once their tasks have been set by

⁷⁴. Ed Page, "The Value of Local Autonomy," *Local Government Studies* 8 (July/August 1982):21-42, 22, italics in original.

the higher tier of the state.⁷⁵

Hong Kong fits with Type 2 autonomy. Article 17 of the Basic Law grants the power of initiation to Hong Kong but reserves the power of immunity for the CPG. The relevant clause of Article 17 about this reservation reads as follows:

If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.

Nonetheless, Hong Kong's autonomy is not seriously harmed by the fact that it does not also possess the power of immunity. Article 17 only requires Hong Kong to report laws passed by its legislature to the Standing Committee of the National People's Congress (SCNPC) "for record," not "for approval." In other words, whenever a legislation is enacted by Hong Kong's legislature, it will effect immediately. There is no question that Hong Kong needs the approval of the SCNPC before enacting a new law. It is true that the SCNPC can invalidate a Hong Kong law. What is equally true is that in practice Hong Kong does has some say in the arena of the power of immunity.

As Article 17 stipulates, before the SCNPC invalidating a law enacted by Hong Kong, it has to consult the Committee for the Basic Law.⁷⁶ The committee's function is to study questions arising from the implementation of Articles 17, 18 (about the application of national laws in the HKSAR), 158 (about the interpretation of the Basic Law), and 159 (about the amendment of the Basic Law) of the Basic Law and submit its views thereon to the SCNPC. The committee consists of twelve members, six from the mainland China and six from Hong Kong, including

⁷⁵. For details of these two principles of local autonomy and the four types of local autonomy, see Gordon L. Clark, "A Theory of Local Autonomy," *Annals of the Association of American Geographers* 74 (2) (June 1984):195-208, 198-199.

⁷⁶. The full name of this committee is "The Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress."

persons from the legal profession. The six Hong Kong members are Chinese citizens who are permanent residents of Hong Kong without right of abode in other countries. They are “nominated jointly by the Chief Executive, President of the Legislative Council and Chief Justice of the Court of Final Appeal of the Region” (Appendix of the Basic Law, para. 4). The SCNPC will appoint them for a term of office of five years. Through the committee’s Hong Kong members, Hong Kong can voice its concern before the SCNPC determining whether a particular law enacted by Hong Kong’s legislature contravenes with the Basic Law.

By now, it should be clear that the Basic Law has granted Hong Kong a high degree of autonomy in governing its domestic affairs and some autonomy in managing its external affairs too. Hong Kong, as reviewed above, enjoys a higher degree of autonomy than the existing Chinese autonomous regions. It also meets the criteria of an autonomous government identified by Hannum and Lillich. Though according to Clark’s theory of local autonomy, Hong Kong does not enjoy “complete local autonomy” (Type 1 autonomy), as mentioned, Hong Kong’s lacking of the power of immunity in reality causes no serious threat to its autonomy.

In all, as Page asserts, the concept of autonomy provides a criterion according to which the activities of the CPG can be evaluated. We can therefore use the idea of autonomy to judge whether or not the CPG has respected the principle of “one country, two systems” and the Basic Law. If the CPG allows Hong Kong to enjoy its high degree of autonomy as we examined earlier, we can conclude that the principle is being implemented successfully in Hong Kong. Conversely, if Hong Kong’s autonomy is undermined by the CPG, we can thus judge that the principle is not being honored as it is supposed to be.

Political Culture

In their seminal work, *The Civic Culture*, Gabriel Almond and Sidney Verba define political culture as “the frequency of different kinds of cognitive, affective, and evaluative orientations toward the political system in general, its input and output aspects, and the self as political actor.”⁷⁷ Specifically, the cognitive orientation is one’s knowledge of and belief about the political system, its roles and the incumbents of these roles, its inputs, and its outputs; the

⁷⁷.Gabriel Almond and Sidney Verba. *The Civic Culture: Political Attitudes and Democracy in Five Nations*. Boston, MA: Little, Brown and Company, 1965, p.16.

affective orientation is one's feeling about the political system, its roles, personnel, and performance; and the evaluative orientation is one's judgments and opinions about objects that typically involve the combination of value standards and criteria with information and feelings.⁷⁸

The authors identify three ideal-type political cultures characterized by the existence or non-existence of cognitions and positive orientations toward the four objects noted above. J. Stephen Hoadley has nicely summarized the three ideal-type political cultures as follows:

A 'participant culture' is one in which individuals are cognizant of and positively oriented to *all* objects: inputs, outputs, system, and self as actor. A 'subject culture' is one in which individuals are more cognizant of and more positively disposed toward outputs than inputs, and the system rather than the self. And a 'parochial culture' is one in which individuals lack cognition of or positive orientations toward any objects. It is a culture detached, possibly alienated, from the political system in which it exists.⁷⁹

Almond and Verba use the term "civic culture" to discuss their ideal political culture. They assert that a civic culture is political culture "plus something else."⁸⁰ In the civic culture, participant political orientations combine with and do not replace subject and parochial orientations.⁸¹ The focus of their study is on the role civic culture plays in the maintenance of a democratic political system. Such a focus limits the usefulness of the concept of political culture. As Brian Girvin points out, the concept of political culture can be applied more generally than the idea of civic culture which "tends to be limited to the developed liberal democratic states."⁸² The concept of political culture identifies "factors in a political system which have a formative political influence on the individual, the group and the society."⁸³

⁷⁸. Ibid., p.14.

⁷⁹. J. Stephen Hoadley, "Hong Kong is the Lifeboat: Notes on Political Culture and Socialization," *Journal of Oriental Studies* 8(1) (January 1970):206-218, 207, italics in original.

⁸⁰. Almond and Verba, *op.cit.*, p.29.

⁸¹. Ibid, p.30.

⁸². Brian Girvin, "Change and Continuity in Liberal Democratic Political Culture," in *Contemporary Political Culture: Politics in a Postmodern Age*, ed. John R. Gibbins (London, UK: Sage Publications, 1989), pp.31-51, p.32.

⁸³. Ibid., p.33.

Girvin offers a framework of analysis which approaches a society's political culture from three levels, namely, "macro-," "meso-," and "micro." The macropolitical culture is "an irreducible core" of values of a society which is rarely questioned by members of the society. Within this macro area, the rules of the game which prove acceptable to most participants are established. It is at this level that the macropolitical culture and that of the micro begin to interact. Unlike the core values, these rules can and are contested by different groups within the political system. The rules of the game are established at an intermediary level between the macro and micro--which might be characterized as a mesolevel. While the macrolevel is fairly static, that of the meso is open to influence from the day-to-day political debate and struggle at the microlevel.⁸⁴ Two points need to be emphasized on Girvin's conception of political culture. First, it is at the microlevel where changes are most immediately detected. Second, if changes at the microlevel are not absorbed by adjusting the rules of the game, there is a danger of social instability and perhaps a threat to the political culture itself.

In general, Hong Kong's political culture before the 1980s was a parochial one. Most of the Hong Kong people were oriented primarily toward traditional (familistic, religious, neighborhood, and occupational) interaction and social controls.⁸⁵ Precisely, as Hoadley pointed out, a majority of the Hong Kong people shared a parochial culture while the enfranchised adults tended to be relatively participant oriented.⁸⁶ Similarly, Lau Siu-kai and Kuan Hsin-chi, from two surveys conducted in 1985 and 1986, respectively, found that the Hong Kong public still showed a sense of "ambivalence toward the government and the political system of Hong Kong."⁸⁷

Hong Kong went into the 1980s with a major political event--the beginning and conclusion of the Sino-British negotiation on Hong Kong's future. Using Girvin's framework of analysis, this study asserts that negotiations between the British and Chinese governments on the future of Hong Kong had successfully aroused the public's political awareness. People began to

⁸⁴. Ibid., pp.34-35.

⁸⁵. Hoadley, *op.cit.*, p.213.

⁸⁶. Ibid., p.217.

⁸⁷. Lau and Kuan, *op.cit.*, p. 117.

pay more attention to public issues and political events which took place around them. The increase in people's political awareness, which occurred at the microlevel, has generated tremendous pressure for changes in the existing rules of the game at the mesolevel. The Hong Kong government was well aware of the fact that if the demands of change were not absorbed by adjusting the rules of the game at the mesolevel, Hong Kong's social stability and its irreducible core values (at the macrolevel) were very likely to be weakened. Consequently, the government introduced limited representative government into Hong Kong. The introduction of representative government, though limited in scale, had changed Hong Kong's rules of the game at the mesolevel, which in turn, had reinforced people's interest in politics. Subsequently, Hong Kong's parochial political culture was weakened.

What is Hong Kong's macropolitical culture? A fundamental value of the Hong Kong society is its obsession with social stability and economic prosperity. Two means to achieve these goals are the principle of rule of law and a capitalist economic system. As Anson Chan, Hong Kong's Administrative Secretary, recently pointed out, "in Hong Kong, we practice what Adam Smith preached. We believe in the invisible hand of the free market," and "we deliver this within the framework of the rule of law. . . . The rule of law, equality for all before the law, is sacred to Hong Kong people."⁸⁸ Moreover, the Hong Kong people are also overwhelmingly concerned about any inroads into the freedoms that they possess now. For example, in a 1996 telephone survey, Timothy Ka-ying Wong observed that 51% of his respondents saw the enjoyment of different kinds of freedom as the most important civil rights that they would like to preserve.⁸⁹ In other words, the preservation of civic liberties is another component of Hong Kong's macropolitical culture.

The latest LegCo election (held on 24 May 1998) is another significant political event happened at the microlevel. About 1.5 million voters (53% of the registered voters) turned out

⁸⁸. Anson Chan, "Hong Kong: Riding out the Asian Storm," speech before the Asia Society Annual Dinner, Washington, D.C., June 11, 1998, pp.3-4.

⁸⁹. Timothy Ka-ying Wong. *Civic Awareness and National Identity: The Experience of the Hong Kong People during the Late-transitional Period* (in Chinese). Hong Kong: The Chinese University Press, July 1997, Occasional Paper, No. 63, p.7.

to cast their ballots despite that day's vile weather. With support of this record high turnout rate, democratic activists immediately called for a greater pace of democratization. In Hong Kong, such demands mean a change in the timetable of opening all of the LegCo's 60 seats for direct election and electing the Chief Executive by popular election.

Overall, to avoid the danger of social instability, the government is likely to accept certain changes at the mesolevel. This study argues that all changes at the mesolevel should be guided by the principles of open and responsible government and rule of law. Later, in Chapter 5, changes needed to be made at the mesolevel will be discussed in greater detail.

Conclusion

In this chapter we reviewed literature on Hong Kong in general and discussed concepts of system of government, responsible and open government, governmental autonomy, and political culture. In Chapter 1 we said that successful implementation of the principle of "one country, two systems" means more than two separate economic systems. It also means two separate political, legal, and cultural systems. To realize the principle, both the Chinese and HKSAR governments need to recognize that: (1) actions to weaken the separateness of Hong Kong's systems from the mainland China's, or efforts to undermine Hong Kong's high degree of autonomy in governing itself will cause severe damage to actualization of the principle; and (2) even a perception of departure from the principle will be a blow to its implementation.

To preserve this principle that the Chinese government itself has promulgated, and to prevent the above-mentioned actions or perception from happening, or at the very least, minimizing the chance for their occurrence, an open and responsible government must be constructed. The basic premise of this study is that as long as the Hong Kong government is responsible to the people, open for public scrutiny, and acting in accordance with the principle of rule of law, it will function as the natural guardian of the principle of "one country, two systems."