

Chapter 5

Implementing the Principle of “One Country, Two Systems”: Some Suggestions

In the last chapter I postulated a rather bleak picture of the Hong Kong Special Administrative Region’s (HKSAR) future political stability and social harmony. Yet, the principle of “one country, two systems” definitely does not intend to create a HKSAR characterized by a progressively clear division of the society into the haves and the have-nots; an increasingly imperious and despotic government; and a steadily growing level of social discontent and sense of powerlessness among the public. Conversely, the principle envisions a HKSAR earmarked by an open and autonomous government, an economically prosperous and culturally pluralistic society, and a participative citizenry.

However, to realize such a vision, several fundamental questions must be answered. Specifically, how should we prevent a further deterioration of conditions in Hong Kong? What could be done to secure the future that the principle of “one country, two systems” promises? What kinds of conditions would be favorable to implementation of the principle?

This chapter is devoted to a detailed analysis of a series of proposals aimed at tackling these questions. Four proposals are advanced: (1) electing the Chief Executive by universal suffrage as soon as possible; (2) instituting a system of ministerial responsibility in Hong Kong; (3) enacting a freedom of information act in Hong Kong; and (4) strengthening the operation of Hong Kong’s legislature, the Legislative Council (LegCo). The ultimate goal of these proposals is to ensure a successful application of the principle. I now examine the content of each proposal, as well as speculate on whether they might be implemented.

Electing the Chief Executive by Universal Suffrage

As the Basic Law did not specify a timetable of direct election of the Chief Executive, when Hong Kong should directly elect its Chief Executive has become a vigorously discussed issue. Predictably, liberal political parties argue that it should begin early, as soon as 2002 (the

second term of the Chief Executive). Conservative political parties assert that Hong Kong's political development should follow the stipulation of the Basic Law--that is, before making any changes in the method of selecting the Chief Executive, a review of the issue should first be conducted, in year 2007. In essence, this study asserts that Hong Kong should begin electing its Chief Executive by universal suffrage no later than the Basic Law allows. Before detailing the rationale for this assertion, an examination of the topic of direct versus indirect electoral systems is in order.

An Overview of Direct and Indirect Elections of a Chief Executive

Noting that the American president is not elected by universal suffrage but by an indirect electoral device, the Electoral College, conservative elites in Hong Kong often argue that indirect election too can be democratic. They maintain that electing a Chief Executive by an 800-member Election Committee (EC) is as democratic as returning him or her by popular vote. Do they have a valid argument here? Before answering this question, let me first present some facts on the American Electoral College.

Today, the American Electoral College has 538 members.¹ These members are chosen in the direct election held in November every four years. Under the winner-take-all principle, all of the electoral votes of a state go to the presidential candidate who wins the largest popular vote in the November election. Every four years, the electors meet in the states from which they were selected to cast their ballots for the president and vice president. If a presidential candidate receives a majority of the electoral votes (270), he or she is elected president. The same is true for the election of the vice president. If no presidential candidate receives a majority of the electoral votes, the House of Representatives elects the president from the three candidates that obtain the greatest number of electoral votes.²

In fact, the historic origin of the Electoral College, the way it works nowadays, and the

¹. There are 435 Representatives, 100 Senators, plus three electoral votes from the District of Columbia as a result of the 23rd Amendment to the Constitution (*1995 Information Please Almanac*. Boston, MA: Houghton Mifflin Company, 1995, p. 637).

². For details, see Michael J. Glennon. *When No Majority Rules: The Electoral College and Presidential Succession*. Washington, D.C.: Congressional Quarterly Inc., 1992, pp. 19-22.

American constitutional context, made it a unique electoral system that functions in no other country but America alone. It was created in the eighteenth century where the necessary communication network for direct election has not been built. As Martin Diamond points out, in a country as large as the United States, without today's advanced communications, the American founding fathers feared that "people simply could not have the national information about available candidates to make any real choice, let alone an intelligent one."³ The founding fathers also rejected the idea of electing the president by Congress, the American legislature. They believed that under the principle of separation of powers, the American president, as the head of the executive branch, should be chosen independently of the legislative branch. Therefore, having the president chosen by a group of electors was seen as a compromise between electing the president by popular vote and Congress.

Moreover, in practice, like a direct election system, the Electoral College has effectively reflected the will of the American people. As mentioned, members of the Electoral College are now directly elected by the people. Although the American people are voting for electors on voting day, most of them think that they are voting for the president and vice president. Such a belief is credible because, for over 200 years, only once did the Electoral College returned a president that did not win the largest popular vote (the so-called "runner-up president").⁴ In modern times, it is very unlikely that electors would vote in contradict with the intention of the general public. Thus, in reality, popular voting decides who would be the president and vice president of the United States.

In addition, that the American people believe in "constitutional supremacy" instead of "electoral supremacy"⁵ has also made the Electoral College acceptable as a way to elect the president. As John A. Rohr contends, "Elections do, of course, express the will of the people but

³. Martin Diamond. *The Electoral College and the American Idea of Democracy*. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1977, p.4.

⁴. In the 1888 presidential election, Grover Cleveland had more popular votes than Benjamin Harrison but the latter was elected as the president for he had won the majority of the electoral votes.

⁵. John A. Rohr. *Founding Republics in France and America: A Study in Constitutional Governance*. Lawrence, KS: University Press of Kansas, 1995, p. 65.

they do so in fulfilling the design of our Constitution, which is the object of the primordial expression of the will of the people.”⁶ Furthermore, “[in] American constitutional theory, elections do not confer power on anyone. They merely determine who will occupy a particular office that the Constitution has already endowed with certain powers.”⁷ Simply put, unlike some other western democracies such as France, an American president’s legitimacy is not primarily determined by whether he or she is directly elected by the people.

Considering that the American Electoral College was created to overcome the problem of poor communication of the eighteenth century, to uphold the notion of separation of powers, and in accord with the American political and constitutional contexts, it is a distinctive example that would not be an appropriate point of reference for Hong Kong. By contrast, the case of France is more instructive. The French president (the President of the Republic) was first elected by an electoral college⁸ but later by universal suffrage. Unlike the American Electoral College system which was a product of the eighteenth century, the French case represents a modern example of how a country had changed its electoral system in order to maintain a contemporary democracy. In short, Hong Kong can learn more from the experience of France, not America, on the issue of whether its Chief Executive should be returned by direct or indirect electoral mechanisms.

After the Second World War, the French, haunted by the experience of Louis Napoleon Bonaparte, who was elected by popular vote as the president of the Second Republic but created a quite authoritarian regime, opposed the idea of electing the president by popular vote. Popular election of the President was also rejected because of the fear that the influence of the Frenchmen would be easily marginalized by the large number of non-French voters residence elsewhere in the French Empire other than France. According to Michel Debré (who led the working group

⁶. Ibid..

⁷. Ibid., p. 66.

⁸. The 1958 electoral college consisted of all members of both houses of Parliament, county councillors, representatives of overseas territories, and a number of delegates from municipalities determined by size of commune and chosen by the municipal council. The number of members of the electoral college is about 80,000 (John Frears. *Parties and Voters in France*. London, UK: C. Hurst & Co. (Publishers) Ltd., 1991, p. 142).

which drafted the text of the 1958 French Constitution), “[a]s long as the [French] Community was made up of French citizens, as long as Algeria was a land under French sovereignty, the election of the president of the Republic by universal suffrage was out of the question: the electors in France would have been very much in the minority.”⁹ As a result, the first President of the Republic of the Fifth Republic was not elected by popular vote but by an electoral college.

However, in France, the President of the Republic functions like the steward of the state.¹⁰ Therefore, as Jack Hayward argued, direct election was the logical step to end the anomaly by which “a President exercising extensive responsibilities did not have the legitimacy conferred by being the chosen of universal suffrage.”¹¹ Moreover, knowing that probably none of his successors would command the same degree of popularity and charisma as he did, President de Gaulle believed that direct election was the only way to empower his successor to discharge his or her constitutional duties effectively. De Gaulle asserted that “the President of the Republic must be elected by universal suffrage. Elected in this way, whatever his personal qualities, he will nevertheless have some semblance of authority and power when in office.”¹² François Luchaire has argued that “if the president is to play an effective role vis-à-vis the members of Parliament, he must be elected directly by the people as they are. Any other solution deprives him of the base of *legitimacy* which he must have in order to balance the legislative power.”¹³ Finally, by 1962, the French Empire was collapsed when Algeria became a fully independent nation. This removed the fear that the French voters would be in a minority in selecting the President of the Republic

⁹. Cited in Rohr, *op.cit.*, p.89.

¹⁰. As William Safran has noted, the President of the Republic is the “highest authority of the state; the guarantor of national independence; the individual chiefly responsible for seeing that the Constitution is observed; the person who ensures the functioning of governmental authorities; the arbiter of political and institutional conflicts; the principal appointing officer and diplomatic negotiator; and the commander-in-chief of the armed forces” (William Safran. *The French Polity*. 4th ed. White Plains, NY: Longman Publishers USA, 1995, p.162).

¹¹. Jack Hayward, “The President and the Constitution: Its Spirit, Articles and Practice,” in *De Gaulle to Mitterrand: Presidential Power in France*, ed. Jack Hayward (New York, NY: New York University Press, 1993), pp. 36-75, p.46.

¹². Cited in *ibid.*, p.51.

¹³. Cited in Rohr, *op.cit.*, p.87, italics in original.

by the means of popular vote. Subsequently, a constitutional amendment regarding the method of selecting the president was passed on 5 October 1962. Thus, from 1965 (when de Gaulle's first seven-year term expired) onwards, the President of the Republic has been selected by direct election.

Electing the Chief Executive in Hong Kong

Arguments for electing the president by universal suffrage in France are also applicable to the case of Hong Kong. As mentioned, Hong Kong is a highly westernized city and its people are readily receptive to western ideas. The Hong Kong people are familiar with the idea that it is the right of the people to vote out an unaccountable government. However, they do not have the means to exercise this unalienable right when the time comes. An often heard saying after the establishment of the HKSAR is that the Hong Kong people are now the true masters of Hong Kong. But, unless they can elect and vote out their leader freely, they will never be the true masters of their homeland. Put differently, a direct election of the Chief Executive would provide a mechanism for the Hong Kong people to do so.

Also, a directly elected Chief Executive would command more legitimacy than the one elected by the 800-member Election Committee. He or she can also proclaim himself or herself as the true representative of the Hong Kong people. Thus, in cases where there are disputes between the HKSAR and the Central People's Government, the Chief Executive will be in a better position to fight for the interest of the HKSAR. Also, like the case of France, in order for the Chief Executive to play an effective role vis-à-vis members of the LegCo, he or she must be elected directly by the people as they are.

This is particularly true in the present-day Hong Kong. It is common to hear complaints from directly elected legislators that the Chief Executive, Mr. Tung Chee-hwa, being less representative than they are,¹⁴ has not been paying enough attention to their views on government policies. Although political powers are mostly vested with Tung and his government, he obviously lacks the moral legitimacy that most of the legislators possess. Indeed, this fact is also

¹⁴. Tung, as the first term HKSAR Chief Executive, was elected by a 400-member Selection Committee. A 800-member Election Committee would be set up later to handle the elections of the second and third terms of the Chief Executive.

recognized by pro-China political parties. As Mr. Ip Kwok-him of the Democratic Alliance for the Betterment of Hong Kong (DAB) has noted, a one-man-one-vote direct election would definitely increase the Chief Executive's legitimacy. Therefore, his party supports the idea of electing the Chief Executive by universal suffrage. However, he did not say when the Chief Executive should be directly elected except that it should not be before year 2007 (the Basic Law would not permit this change before year 2007).¹⁵

Furthermore, considering the development of Hong Kong's political parties and their increasing importance in the LegCo, Hong Kong should elect its Chief Executive by universal suffrage when possible. Presently, the government can rely on the support of conservative political parties such as the DAB and the Liberal Party for the passage of legislation or funding requests. Nonetheless, eventually these parties also need to appeal to the public for reelection. Their support for government policies, not to mention unpopular policies, is anything but certain. Only with a majority in the LegCo, or a coalition of parties led by the Chief Executive's own party, can the Chief Executive be sure that his or her policies will be supported by the LegCo.

Above all, to secure social stability, the development of political parties should be encouraged. Political parties, according to Lo Shiu Hing, help to narrow the communication gap between the elites and masses by aggregating and representing the interests of citizens. They play a crucial function of stabilizing a regime. On the other hand, if political parties are incapable of functioning as an intermediary institution between the ruling elites and the masses, the elite-mass gap will be widened, which in turn will precipitate a crisis of political turbulence in Hong Kong in the future.¹⁶ An effective way to encourage the growth of political party is to open the post of the Chief Executive for direct election. The case of France shows how changes in the method of selecting a chief executive will affect the development of political parties.

In France, political parties with similar political orientations merged with each other when it became clear to them that by so doing, their chance to capture the presidency would be greatly increased. As Howard Machin has observed, before 1958 alliances between political parties had

¹⁵. Interview with Mr. Ip Kwok-him on 10 January 1998.

¹⁶. Lo Shiu Hing, "Political Parties, Elite-Mass Gap and Political Instability in Hong Kong," *Contemporary Southeast Asia* 20(1) (April 1998):67-87, 67-68.

been post-election, parliamentary creations, essentially short-lived, fragile and undisciplined. But when the President of the Republic was returned by universal suffrage, alliances between political parties became pre-election, national, long-term and disciplined.¹⁷

In his study of Hong Kong's political parties, Lo argued that strategic differences between the Democratic Party and the Frontier and mutual jealousy and rivalry between the Liberal Party and the Hong Kong Progressive Alliance (HKPA) made the amalgamation of these parties impossible.¹⁸ However, as in the case of France, when the Chief Executive is returned by popular vote, political parties with similar orientations will find a great incentive to combine to increase the chance of winning the election. Naturally, discipline and cohesiveness of political parties which have nominated candidates to run for the post of the Chief Executive will be increased. In all, having the Chief Executive elected by universal suffrage fits well with the future development of Hong Kong's political parties. Thus, there is no reason to require that the Chief Executive should not be a member of a political party.¹⁹ A partisan Chief Executive is something inevitable and will not pose threats to Hong Kong's social and political stability. To the contrary, it will help enhance government efficiency and social stability.

Overall, to give the Hong Kong people a tool to hold the Chief Executive and the government accountable; to make the Chief Executive a genuine representative of Hong Kong; to assure readily that the Chief Executive will fight faithfully and fearlessly for the interest of Hong Kong; to ensure that he or she can play an effective role vis-à-vis members of the LegCo; and to match with the future developments of the political parties, Hong Kong's Chief Executive should be directly elected by the people of Hong Kong, not by an Election Committee.

¹⁷. Howard Machin, "The President, the Parties and Parliament," in *De Gaulle to Mitterrand: Presidential Power in France*, ed. Jack Hayward (New York, NY: New York University Press, 1993), pp. 120-149, p.120.

¹⁸. For details, see Lo, *op.cit.*, pp. 68-72.

¹⁹. Before the selection of the first Chief Executive, the Preparatory Committee, the body which specified the qualifications of candidates running for the post of the Chief Executive, decided that all candidates should not be members of any political parties. This requirement was laid down because China feared that partisan considerations of a Chief Executive might induce he or she to compromise the overall interest of the HKSAR when he or she makes policy decisions.

The Concern of a Runaway Executive

As election adds moral legitimacy to the Chief Executive and the government, how could Hong Kong avoid a runaway executive? In fact, there are formal and informal mechanisms to hold the government accountable for its behavior. As a formal mechanism, election itself is a powerful tool for the public to check the government. Moreover, under Article 73(9) of the Basic Law, the LegCo may impeach the Chief Executive if he or she has committed “serious breach of law or dereliction of duty.”²⁰ After all, the principle of rule of law and the existence of an independent judiciary can ensure that the government’s day-to-day activities and its policies, rules and regulations, are following the laws of Hong Kong.

Regarding informal mechanisms, as noted earlier, Hong Kong has rather well-developed mass media. Like their counterparts in western countries, most of Hong Kong’s journalists and press see reporting and exposing mistakes of the government as an important duty of their profession. Furthermore, during Hong Kong’s 13-year long transition period, there has been a growing public awareness and intolerance of government failures. Obviously, the people of Hong Kong are no longer like their ancestors who would readily submit to the government’s authority without question. In sum, there do exist formal and informal mechanisms to prevent the phenomenon of runaway executive from happening.

An Electoral System for Hong Kong’s Chief Executive Election

At this juncture I need to address what kind of electoral system should be used in electing Hong Kong’s Chief Executive. My position is that France provides a good model for Hong Kong. France is using a two-ballot electoral system in most of its public elections. The essence of the system, as John Frears points out, is that “if no candidate at the first ballot has an absolute majority over all others added together, a second ballot is held (a fortnight later in Presidential elections, a week later in all others) and the candidate who comes to the top is the winner whether

²⁰. The adoption of an impeachment motion does not automatically lead to the removal of the Chief Executive. The final decision is with the Chinese government. However, as Yash Ghai points out, it is hard to see how the Chinese government could disregard the overwhelming majority of LegCo without causing a major crisis in Hong Kong and in the relationship of the Central Authorities with the residents of Hong Kong (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. 256).

obtaining an absolute majority or not.”²¹ Only the two candidates who receive most votes at the first ballot are allowed to proceed to the second ballot. As votes of the second ballot are divided by only two candidates, the winner, in fact, would have an absolute majority (that is, at least 50% +1). In sum, Frears asserts that the advantage of this system is that “electors can express a wide choice at the first ballot. They can vote for any candidate, however extreme, who takes their fancy knowing there is a chance for second thoughts.”²²

The two-ballot system is not new to Hong Kong. It was used to return legislators from the two functional constituency seats reserved for the municipal councils in the 1998 LegCo election. It will be easy for the government to use this system in the Chief Executive election, and Hong Kong’s political parties are familiar with its operation. As for the people of Hong Kong, a good public education program will be adequate to introduce this system to them. Of course, Hong Kong can always opt for other electoral systems. But whatever system the HKSAR chooses, it must be a system that is open and fair to every candidate running for the post of the Chief Executive.

Feasibility of this Proposal

If the HKSAR wanted to amend the current method of electing the Chief Executive for terms following year 2007, the amendment must be endorsed by a two-thirds majority of the members of the LegCo and obtained the consent of the Chief Executive. After that, it has to be reported to the Standing Committee of the National People’s Congress for approval (Basic Law, Annex I, para.7). In other words, to introduce direct election to the post of the Chief Executive, a “yes” vote must be won from 40 members of the LegCo. Today, major political parties like the Democratic Party (13 seats), the Frontier (3 seats), the Liberal Party (10 seats), the DAB (10 seats), and the HKPA (4 seats) together hold 40 seats in the LegCo. If a vote were held today, would a direct election amendment be passed by the LegCo?

²¹. Frears, *op.cit.*, p.126.

²². *Ibid.*, pp.126-127.

Except the HKPA,²³ representatives from all other political parties noted above told this author that their parties would support such an amendment. The only difference between these parties is that the liberal political parties favor an immediate introduction of direct election of the Chief Executive while the conservative political parties support a review of the matter first and make changes after year 2007 if that is the wish of most of the Hong Kong people. From these conservative political parties' positions, one can conclude that it is very unlikely for any amendment to the election method of the Chief Executive be passed soon.

Moreover, since a majority of the LegCo's 60 seats (36 in total) in the next LegCo election (to be held in year 2000) are returned by functional constituency and Election Committee elections, they are likely to be captured by conservative political parties. Therefore, it is not probable that a proposal to begin directly electing the Chief Executive by year 2002 will be endorsed by a two-thirds majority of the members of the second LegCo (2000-2004). Most importantly, any amendment to the election method needs the consent of the Chief Executive. Mr. Tung is clearly not an enthusiastic supporter of such a change. In his second annual policy speech, he discussed many programmes of his administration in detail but spoke only in abstract terms about direct elections. He said his administration is "fully committed to developing further our democratic institutions in accordance with the Basic Law. We need to develop a model suitable for Hong Kong, one which promotes stability and prosperity and is in line with the ultimate aim of having a Legislative Council and a Chief Executive elected by universal

²³. The author interviewed Mr. David Chu Yu-lin of the HKPA on 30 December 1997. However, he was being interviewed on his own capacity, not as a spokesman for the party. From the interview, it is clear to this author that the HKPA is a loosely organized party without a coherent platform on major political issues. As whether the Chief Executive should be selected from the year 2007 onwards, Mr Chu said that it is possible to amend the Basic Law by then, but it would be many decades before the Hong Kong people can select their Chief Executive by universal suffrage. He commented that Hong Kong needs to maintain its stability to prove to the Chinese government that it can manage itself competently. After that, the chance to directly elect the Chief Executive will improve significantly. From a recent speech made by the HKPA's chairman, Mr. Ambrose Lau Hon-chuen, we can conclude that the HKPA will not support an amendment to the Basic Law regarding the method of selecting the Chief Executive before year 2007. He said that "[w]ith reference made to the history of various countries in the world, especially the election history of western countries with relatively stable political systems, the principle of gradual and orderly democratic progress and the specific provisions of the Basic Law are extremely reasonable. Without special reasons, they should not be lightly amended" ("Motion debate on direct election," *The Hong Kong Hansard*, 15 July 1998. Internet edition). "Motion debate" is a means for members of the LegCo to express their views on certain issues or to call on the government to take certain actions. Since motions passed by the LegCo have no legal effect, the government can simply ignore them if it wishes to do so.

suffrage.”²⁴

I have discussed to this point what it will take for an amendment on this subject to be initiated from Hong Kong. I have not mentioned that without China’s approval, such an amendment would never be realized. As Dr. Lo Shiu Hing, a political scientist at the University of Hong Kong points out, whether Hong Kong would be allowed to elect its Chief Executive by popular vote depends very much on China’s own pace of democratization. If the political condition in China is stable, and economic reforms are going well, then the Chinese leaders would have more confidence to let Hong Kong manage its own domestic affairs, including the election of the Chief Executive. On the other hand, if reforms (both political and economic) in China are not going well, then the chance for Hong Kong to elect its Chief Executive by universal suffrage will be greatly reduced.²⁵ Lo also points out that as long as Taiwan is not united with China, Hong Kong will still serve as a good model of the principle of “one country, two systems” to Taiwan. In other words, the chance for Hong Kong to have a faster pace of democratization will be increased.

Another political scientist at the University of Hong Kong, Dr. John P. Burns, stresses that the process followed to nominate candidates for the post of the Chief Executive will significantly affect the chance of amending the method of its election.²⁶ Currently, candidates for the office of the Chief Executive are nominated “jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate” (Basic Law, Annex I, para. 4). As it is easy for China to control the membership composition of the EC, China does not worry that candidates it deems as unfit for the post of the Chief Executive could stand a chance to be nominated. Once the election is open for every eligible voter of the HKSAR, how could China be assured that the post of the Chief Executive will not fall in the hands of the radicals?

As pointed out in the previous chapters, a majority of the Hong Kong people put more weight on social stability than on a quicker development in Hong Kong’s political system. Thus,

²⁴. Tung Chee-hwa. *From Adversity to Opportunity*. 8 October 1998, para. 159. Internet edition.

²⁵. Interview with Dr. Lo Shiu-hing on 18 December 1997.

²⁶. Interview with Dr. John P. Burns on 7 January 1998.

they are inclined to vote for moderate than radical candidates. Besides, the ideologies of Hong Kong's political parties are not as drastically opposed to each other as is commonly found in western countries. Above all, no major political party in Hong Kong is advocating the overthrow of the Chinese communist regime or the independence of Hong Kong. Hence, there is really no harm to let the Chief Executive be elected by universal suffrage before year 2007, let alone after it.

Nonetheless, considering the opposition from the conservative political parties and the Chief Executive, it is almost certain that Hong Kong would not be able to amend the election method of the Chief Executive before year 2007. In any event, before Hong Kong can directly elect its Chief Executive, the EC's 800 members should be selected as democratically as possible. According to the Basic Law, the EC shall be composed of 800 members from the following four sectors: "Industrial, commercial and financial sectors (200), the professions (200), labour, social services, religious and other sectors (200), and members of the Legislative Council, 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 (200)" (Annex I, para. 2). As for the selection of representatives of these four sectors, the Basic Law leaves it to the HKSAR to decide on its own.

The most democratic way to return these 800 EC members is by popular vote. In essence, individual voting should replace all forms of corporate voting. For example, all the directors of companies that are members of the General Chamber of Commerce, instead of just the companies themselves, can vote to decide who should represent them in the "Industrial, commercial and financial sectors." The same is true for the election of members of the "professions," "labour, social services, religious and other sectors." This is not so, however, for the fourth sector which consists of members of the LegCo, representatives of district-based organizations, Hong Kong deputies to the National People's Congress (NPC) and the National Committee of the Chinese People's Political Consultative Conference (NCCPPCC). For the election of members of district-based organizations such as the District Boards, before the handover, they were all directly elected by the public. The direct election system can be easily restored for their selection. However, presently, the people of Hong Kong cannot elect their representatives to either the NPC

or the NCCPPCC.²⁷ After Hong Kong became a special administrative region of China, it would be unjustifiable to forbid the Hong Kong citizens to directly elect their representatives to these two Chinese political institutions.

So far, I examined the cases of America and France and concluded that the latter case provides a better model for Hong Kong on the subject of electing the Chief Executive by universal suffrage. Applying the case of France to Hong Kong, this study argues that: to make the Chief Executive the real representative of Hong Kong and its people; to put him or her on the equal footing with the directly elected legislators; and above all, to hold his or her government responsible for its performance, Hong Kong should select its Chief Executive by popular vote, not by an Election Committee. The sooner Hong Kong's Chief Executive is elected by universal suffrage, the better the chance for the realization of the principle of "one country, two systems."

Creating a System of Ministerial Responsibility

In essence, the lack of a system of ministerial responsibility has caused three problems. First, Hong Kong does not have a unified government. Powers are divided among the Chief Executive (and his Executive Council, ExCo) and senior civil servants. Because of the unclear division of responsibilities and authorities between the Executive Councillors and senior civil servants, in the past year, when encountered with various social and economic crises, the Hong Kong government could not provide a strong leadership in resolving those crises. Worse still, without a unified government, the government often could not speak with one voice.²⁸ Consequently, it became very confusing to the public how and what the government were planning to do to resolve those crises. Second, there is no effective mechanism for the public to hold the senior civil servants responsible for their performance. Third, there is an increasing

²⁷. Hong Kong deputies to the National People's Congress are selected by an election organization composed of the following categories of individuals: Chinese citizens of the Selection Committee, representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) and members of the Provisional Legislative Council. Regarding the selection of members of the CPPCC, they are nominated and appointed by the Chinese government.

²⁸. For instance, in November 1998, the Secretary for Security Regina Ip Lau Suk-yea said the government would not ask the mainland China to return a suspected murderer to Hong Kong for trial. But on the same day, the ExCo convener, Chung Sze-yuen, said the government had yet to decide on the matter (Cited in Steven Ribet, "Tung: a make-over challenge," *The Hong Kong Standard*, 3 December 1998. Internet edition).

doubt about the responsiveness of the civil service to policy missions of the government of the day and the needs of the Hong Kong society.

The Lack of a Unified Government

On paper, the Hong Kong government is under the leadership of the Chief Executive. He or she is aided by the ExCo which members served at the pleasure of the Chief Executive. Subordinate to the Chief Executive is the Administrative Secretary²⁹ who is the head of the civil service (and a member of the ExCo). However, it turns out that such a clear line of hierarchy does not exist. What compounds the problem is the destructive tension between the Chief Executive and his principal officials. His ExCo members too are not working well with senior civil servants, who are skeptical of whether Executive Councillors should become their superiors.

Before the handover, to ensure a smooth transition of sovereignty from Britain to China, Mr. Tung appointed all seating senior civil servants to be the principal officials of the HKSAR.³⁰ Both the Hong Kong people and the civil service welcomed this decision. Nonetheless, rumours were soon heard that Tung was having difficulties in working with the Administrative Secretary, Mrs. Anson Chan, and the civil service under her leadership. Although Tung and Chan publicly denied there was conflict between them, it was clear to observers of the Hong Kong government that Tung did not build up a harmonious relationship with his principal officials. As Chris Yeung reports, many political observers believed the rift between Tung and the senior civil servants to be true, at least to some degree.³¹ Yeung notices that there were “sharp differences in

²⁹. The title “Administrative Secretary” was changed by the government’s Gazette Extraordinary No. 2 to “the Chief Secretary for Administration” shortly after the handover. A government secretariat spokeswoman said retaining the title “Chief Secretary” did not breach the Basic Law because the term “Administrative Secretary” stated in the Basic Law was only a rank, not a title. She said the title was retained because “Chief Secretary” was an internationally recognized title. Thus, in English, the current Administrative Secretary, Mrs Anson Chan, is publicly addressed as “the Chief Secretary for Administration.” However, as the Basic Law has not been amended regarding this issue, here we use the title of “Administrative Secretary” instead of “the Chief Secretary for Administration.”

³⁰. Except the Attorney General, Mr. J. F. Mathews, who being a British, did not meet the Basic Law’s nationality requirement of principal officials. A Hong Kong Chinese lawyer, Miss Elsie Leung was appointed to replace him. The title of the Attorney General was also renamed as the Secretary of Justice.

³¹. Chris Yeung, “Chief and Anson forge uneasy alliance,” *Hong Kong Review* ’97. Hong Kong: South China Morning Post, 12 January 1998, p.12.

backgrounds, mind sets and work styles” between Tung and the senior civil servants.³²

Likewise, DAB’s Ip Kwok-him commented that it was natural for conflicts to exist between Tung and his senior officials for the political orientations of the latter were quite different from Tung’s.³³ Ip remarked that it would take a while for them to establish a cooperative relationship. However, Dr. Burns of the University of Hong Kong holds a different opinion. He argues that there is no big difference between the ideology of Tung and the senior civil servants. Instead, their differences were in the perceptions of roles, power, styles and networking.³⁴ The last colonial Governor, Chris Patten, having been absorbed in carrying out his political reforms, had allowed the senior civil servants to run Hong Kong’s domestic affairs with a high degree of latitude. Unlike Patten, Tung is not concerned with any grand plans of political reform. He wanted Hong Kong to focus less on politics but more on economic and social issues. His top priorities therefore are on housing, education and Hong Kong’s economic competitiveness. To accomplish his agenda, Tung adopts a hands-on governing style, which as noted, is very different from Patten’s. Moreover, unlike Patten, Tung is a native Hong Kong citizen; he can form his own networks and therefore does not need to rely on the senior civil servants as much as Patten.

Above all, if the practice of confining the Chief Executive to choose his or her principal officials from the career civil servants remains, there will always be an underlying tendency for conflicts in the relations between the Chief Executive and senior civil servants. To enhance the responsiveness of the civil service to the Chief Executive’s policy agenda, senior government positions should be staffed by the Chief Executive’s people, not just members of Hong Kong’s higher civil service. Presently, without a ministerial system in place, whenever there are vacancies in the senior government positions, they are usually filled by career civil servants. Subsequently, a new chief executive always selects his or her governing team from a limited pool of talent--the career civil servants. Such a restriction on a chief executive’s discretion to pick his or her governing team is not found in other advanced democracies.

³². Ibid..

³³. Interview with Ip Kwok-him on 10 January 1998.

³⁴. Interview with Dr. Burns on 7 January 1998.

In western countries, it is a normal practice for a new chief executive to bring his or her people to office. There is thus no question of whether the work styles or political orientations of the chief executive and the principal government officials fit with one another. Of course one still see tensions between senior government officials and the chief executives, but they are not as unexpected or destructive as occurs in Hong Kong nowadays.

Another problem is the lack of a mutual trust between the Executive Councillors and senior civil servants. Articles 54 and 56 of the Basic Law stipulate that the ExCo “shall be an organ for assisting the Chief Executive in policy-making” and “except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.” This description of the ExCo’s function is similar to the one before Hong Kong’s handover.³⁵ Why are there more conflicts and mistrust between members of the ExCo and senior civil servants now?

A contributing factor to this problem is the background of the Executive Councillors. When Hong Kong was a British colony, it was the practice of the Governor to name senior, appointed Legislative Councillors to serve in the ExCo concurrently (except Governor Patten who had stopped this practice). Since these individuals were part of the establishment and were acceptable to senior government officials because of their similar political orientations, there was not much conflict between them. However, when Tung formed his ExCo, he included many pro-China individuals, whom many people regarded would not have a chance to serve in the ExCo if the British administration were still in power.

Furthermore, when Tung appointed three ExCo members to study on three policy areas-- education, housing and the provision of social welfare to senior citizens, senior civil servants had

³⁵. Strictly speaking, the colonial ExCo had more power than the HKSAR ExCo in the sense that when a colonial Governor acted in opposition to the advice given to him by the members of the ExCo, he was required to report the matter to the British Secretary of State on the grounds and reasons for his action (*Hong Kong Royal Instructions 1917*, Article XII) but a Chief Executive of the HKSAR only needs to put his or her reasons for doing so on record (Article 56).

great concern about the possibility that these ExCo members might become their boss.³⁶ Understandably, senior civil servants objected to this practice for it was seen as a prelude to the introduction of a ministerial system. As both the ExCo and senior civil servants are crucial to the formulation and implementation of public policy, if the problem prolonged any further, the government's operational efficiency and effectiveness would no doubt be undermined.

In short, to tackle this problem, a system of ministerial responsibility should be created. Such a system would make the ExCo a genuine cabinet of the Chief Executive.³⁷ It would also legitimate the role of the ExCo members--as ministers who are responsible for formulating and making policy decisions.

Poor Coordination and Non-accountability of the Senior Civil Servants

In the Hong Kong context, without a unified government and proper institutional mechanisms to check on the powerful senior civil servants, they are becoming increasingly unaccountable for mistakes that they have committed in discharging their duties. To illustrate the negative result of the lack of a unified government, I shall use the bird flu crisis. It illustrates well the poor coordination that exists in government operations, as well as the non-accountability of Hong Kong's senior civil servants. It is my contention that if Hong Kong has a unified government, the coordination between different government agencies in handling the bird flu crisis would be greatly improved. They would have tackled the problem more competently and thus reduce its damage to Hong Kong. Moreover, if there were a clear line of responsibility, Hong Kong people would know who should be held responsible for the poor performance of the government in the handling of the crisis. To this I now turn to the detail of the bird flu crisis.

The first stage of the bird flu crisis can be traced back to April 1997 when an epidemic of the influenza A (H5N1) virus in Hong Kong caused the deaths of 4,500 chickens. In May the

³⁶. When Hong Kong was a British colony, individual non-official (there were three *ex officio* members--the Chief Secretary, the Financial Secretary and the Attorney General) ExCo members do not hold personal responsibility for given subjects or portfolios. That was a matter for the senior civil servants.

³⁷. Dr. Anthony Cheung Bing-leung of the City University of Hong Kong holds a different view. His conception of a ministerial system is to open all the principal official posts for political appointment. These appointees need not become Executive Councillors too. Instead, the ExCo should become an advisory body to the Chief Executive. It should provide advice and staff support to the Chief Executive rather than operate like a cabinet we commonly found in western democracies (Interview with Dr. Cheung on 13 January 1998).

first human case was confirmed. A three-year-old boy was infected with the H5N1 virus and died of severe pneumonia and multiple organ failure.³⁸ Government officials routinely dismissed the existence of a health crisis and declared the boy's death as an isolated incident. In November two more human cases of avian influenza were confirmed. With increasing cases of avian influenza being confirmed (18 confirmed cases in total), the government could no longer dismiss the existence of a fatal health crisis. But, from the first human case found in May to November when two more cases were reported, the government let more than six months slip away without taking any serious precautionary measures.

On December 29, to stop the spread of the disease, the government decided that the carriers of the H5N1 virus, about 1.3 million chickens and an unknown number of ducks, geese and pigeons in local markets and farms, should all be slaughtered. Various government departments, including the Health Department, the Urban Services Department, the Regional Services Department, and the two municipal councils, were involved in the "chicken slaughtering operation," with the Agriculture and Fisheries Department as the agency in charge of the operation. Since the Agriculture and Fisheries Department was under the Economic Services Bureau, Mr. Ip Shu-kwan, the Secretary for Economic Services, was responsible for a task force (formed by representatives from the relevant government departments) to oversee the efforts to solve the problem.

It was definitely not a pleasant experience for the Hong Kong people to see more than one million of chickens being slaughtered within a week. One has to ask "Would the situation be less catastrophic had the government treated the early warning signs more seriously?" Also, "Would the slaughtering operation be conducted more smoothly and effectively had the government planned more carefully beforehand?"

Initially, the government announced that the operation would be finished within 24 hours. But it turned out that the government spent more than five days to complete the operation. The reasons for the delay were laughable. For instance, the government blamed the delay on the fact that government employees were not experienced in killing chickens; and the number of poultry

³⁸. Oliver Poole, "Desperate means used to combat bird flu," *Hong Kong Review* '97. Hong Kong: South China Morning Post, 12 January 1998, p.28.

farms that the government needed to take care of was greater than the original estimation. However, if the government's record of Hong Kong's poultry farms were kept up to date, it would have a better estimate of its workload and the time needed to finish the operation. In addition, it should have been clear to the government officials (as it was to the citizens of Hong Kong) that employees of the Agriculture and Fisheries Department were not professional butchers. The government had to recruit employees of the poultry vendors to help kill the chickens when it became clear that the operation could not be completed on time.

But the worse was yet to come. Bags of chicken carcasses were supposed to be covered with chlorinated lime powder and buried several meters deep at landfills. Instead they were left unburied on the grounds of the landfills. The public was horrified when the television screens showed wild dogs tear chicken carcasses apart, with some chickens still alive, wandering around the landfills. Although the situation was corrected shortly after the news broadcast, the public naturally would think that their government really did not deliver what it had promised publicly a few days ago.

The Director of Agriculture and Fisheries, Mrs. Wei Chui Kit-ye, was under the spotlight. When a reporter asked whether she would resign because of the poor coordination and organization shown in the operation, she replied that she would consider it if her resignation would help the resolution of the problem. Some commentators said that she should not be the one to bear all the blame. More senior officials like Mr. Ip, it was said, should bear the ultimate responsibility for the government's incompetent performance. Nonetheless, no matter how dissatisfied the Hong Kong people were with the government's performance, no officials were being disciplined for mistakes made in the handling of the crisis.

Could we rely on the government to check on itself, to reflect from the whole incident and learn from it? Apparently not. Both the Chief Executive and the Administrative Secretary praised the civil service for handling an unprecedented crisis well. Clearly, there is a huge gap between the public's and the government's evaluation of the performance of the civil service, particularly the senior civil servants. It is indisputable that the public should have the final word on whether the government has performed satisfactorily. But in Hong Kong, there is no mechanism for the people to deliver their verdict on the government's competence.

In all, one notices that despite the creation of a task force comprised of different government agencies, coordination and organization among various government agencies involved in resolving the bird flu crisis were seriously defective. Had there been a unified government to provide a strong leadership, the crisis would no doubt have been resolved earlier. Amid numerous civil servants blunders, there was no way for the people to hold the government officials accountable. No senior civil servants were being punished for the government's incompetent performance. This was so because although everyone knew that senior civil servants played a primary role in formulating plans to address the crisis; in theory, it was the Chief Executive and the ExCo that decided how the government would approach the crisis. In other words, it is the Chief Executive and the ExCo, not the senior civil servants, that would be accountable for the government's bad performance. The problem is, at the present time, the Chief Executive is not directly elected by the Hong Kong people. Undoubtedly, the poor status of civil service accountability would hardly aid the implementation of the principle of "one country, two systems."

An Outdated Understanding of Bureaucratic Responsiveness

Hong Kong's civil service has developed a reputation of being professional and efficient by overseeing Hong Kong's rapid economic growth after the Second World War. As a result, whether it is appropriate for the civil service to act as the primary representative of the public and respond directly to the public's needs has not been seriously discussed. That there was no profound change in the nature of the colonial administration's governing philosophy in the past 156 years also led to the unquestioning of the civil service's responsiveness to the wishes of an incoming government. But these all changed after Hong Kong became a special administrative region of China.

Unlike an appointed colonial governor whose primary duty was the maintenance of the British administration in Hong Kong, the HKSAR Chief Executive has the responsibility to implement the principle of "one country, two systems" which, as noted earlier, calls for the construction and preservation of a democratic and highly autonomous HKSAR. This fundamental change in the nature of the Hong Kong polity requires its bureaucracy to start thinking about how it can be responsive to the political agenda of the new government. The corollary of this is that

the bureaucracy should no longer consider itself as the principal representative of the public. Now the principal representatives of the public are the native Chief Executive and members of the LegCo, not the civil service.

This study asserts that if the issue of bureaucratic responsiveness were left unaddressed, the effectiveness and accountability of the government would be adversely affected. Under such circumstance, the prospect of a successful execution of the principle of “one country, two systems” would not be bright. Precisely, what is bureaucratic responsiveness? What makes a bureaucracy responsive to the government of the day? Why is the issue of civil service responsiveness becomes a problem in today’s Hong Kong?

In general, one can examine the concept of bureaucratic responsiveness with three perspectives. The first perspective sees that bureaucracy “provides no independent assessment of public wishes; responsiveness to the public is provided solely through the bureaucracy’s faithful adherence to elected officials’ interpretation of public wishes.”³⁹ This traditional view of responsiveness treats the bureaucracy as a force that would serve the government of the day faithfully and is ready to shift to a different spectrum of political orientation if an incoming government so required. In the pre-handover Hong Kong, without a group of elected officials, this traditional understanding of bureaucratic responsiveness did not exist.

Conversely, the second perspective of bureaucratic responsiveness, was and still is, prevailed in Hong Kong. This perspective “holds that the bureaucracy legitimately exercises independent representational functions that are equivalent to the functions performed by elected officials.”⁴⁰ As Grace Hall Saltzstein suggests, this perspective contends that a bureaucracy is being responsive if it has directly and independently responded to the public needs.⁴¹ This perspective was accepted by Hong Kong without any question before the 1980s when the bureaucracy was Hong Kong’s only mature political institution.

³⁹. Grace Hall Saltzstein, “Explorations in Bureaucratic Responsiveness,” in *The State of Public Bureaucracy*, ed. Larry B. Hill (Armonk, NY: M. E. Sharpe, Inc., 1992), pp. 171-189, p. 172.

⁴⁰. Ibid., p. 173.

⁴¹. Ibid..

However, political events occurred in the past decade have generated other political forces to compete with the bureaucracy in the governing of Hong Kong. Simply put, the civil service is no longer an unparalleled political force in Hong Kong's politics. The further democratization of the LegCo and the foreseeable direct election of the future Chief Executives no doubt will reinforce the strength of the group of elected officials. In other words, unlike the colonial Hong Kong, the contemporary Hong Kong demands its civil service to be responsive in term of the traditional perspective, not in the sense as the second perspective prescribes. In fact, the civil service should also consider the third perspective of bureaucratic responsiveness when developing a new understanding of this concept. The third perspective emphasized the neutral competence of the civil service. As Saltzstein points out, responsiveness is assessed according to how well the bureaucracy meets various standard of good administration, such as efficiency and fiscal integrity.⁴² Thus, when the bureaucracy accomplished its responsibilities proficiently, it is said to be a responsive bureaucracy.

I would argue that a system of ministerial responsibility could help the civil service to form a new sense of bureaucratic responsiveness. With politically appointed ministers, the original principal officials can function as career civil servants both in name and in reality. Subsequently, the civil service would not be responsive to the public directly but indirectly through the ministers. By giving policy advice that is based on the best technical knowledge it possesses along with prevailing community sentiment, the civil service can be seen as truthfully responsive to policy goals of the government of the day. This new sense of bureaucratic responsiveness is precisely what Hong Kong needed to implement the principle of "one country, two systems."

A System of Ministerial Responsibility for the HKSAR

The most notable model of ministerial system is the British Whitehall Model. Nonetheless, as its functioning depends on a parliamentary system of government, it would not be fit with Hong Kong's political system which, as mentioned earlier, resembles that of a presidential system. Although the British model is not suitable for Hong Kong to copy, its interpretation of

⁴². Ibid., p. 174.

ministerial responsibility is instructive. In a House of Commons debate on this subject, Roger Freeman, a cabinet minister, declared that

Ministers take personal responsibility for five fundamental areas: the policies of their Departments; the framework within which those policies are delivered; the resources allocated; such implementation decisions as the framework documents for agencies may require to be referred to them or agreed with them; and their response to major failures or expressions of parliamentary or public concern, in the sense of demonstrating what action they have taken to correct a mistake and prevent its recurrence.⁴³

Substituting “LegCo” for “parliamentary” in the above quotation, we get a basic definition of what Hong Kong’s future ministers should be responsible for personally.

Moreover, the British ministerial system has very few layers of political appointees. In Britain, minister and deputy minister are political appointees. Under them is the level of permanent secretaries who are invariably career civil servants. As we have no intention to “thicken” the Hong Kong government by creating unnecessary layers of political appointees, the British practice in this aspect is insightful for Hong Kong. The simplest way to institute a ministerial system in Hong Kong is to make the present principal officials as ministers and members of the ExCo. Posts of permanent secretary with a pay package which is comparable to that of the ministers should also be created. For those principal officials who would not like to leave the civil service to become ministers, they should be allowed to take up the posts of permanent secretary.⁴⁴

Besides Britain, Hong Kong can also learn from France.⁴⁵ In France where career administrators, like their counterparts in Hong Kong, have long been playing a prominent role in the governance process, the directorship of certain departments are reserved for several

⁴³. Quoted in Vernon Bogdanor, “The Scott Report,” *Public Administration* 74(4) (Winter 1996): 593-611, 603.

⁴⁴. This is what Mr. Andrew Wong had proposed a few years ago in a LegCo’s motion debate. See “Motion debate on political appointment of the principal officials,” *op.cit.* p. 2439.

⁴⁵. Of course this study does not suggest that the French model is the perfect case that Hong Kong should embrace without question. For instance, the French bureaucracy’s elitist mentality and its lack of responsiveness to the elected officials are the two dark side of the French model that Hong Kong should beware of when it learns from the case of France.

categories of higher civil servants. For instance, higher civil servants who come from the *grandes écoles* monopolize the majority of managerial positions in ministries like the Industry and Transportation.⁴⁶ Likewise, Hong Kong should reserve certain directorships for members of the senior civil service. The director of Health Department should be reserved for a senior doctor coming from within the department, for example. This arrangement, along with the creation of the post of permanent secretary, will help the reduction of senior civil servants' opposition to the introduction of a ministerial system, and the preservation of their continuing contribution to the running of the HKSAR.

This system would allow the Chief Executive the greatest latitude in forming his or her own governing team, on the one hand. On the other hand, as the principal officials would be hand-picked and served at the pleasure of the Chief Executive, they would no doubt be more responsive to the policy agendas of the Chief Executive. Moreover, this system would also enable the ExCo to operate like a real cabinet. Executive Councillors would be legitimately entrusted with the responsibilities to head government departments, study and formulate public policies, promote and defend government policies, and shoulder responsibility for policy failure (or take the credit for policy success). Above all, ministerial responsibility, both collective and individual, could be realized.⁴⁷

Regarding where possible recruits would come from besides the civil service, like the American system where many top posts are filled by lateral entry, Hong Kong may recruit talented individuals from the private sector. Indeed, this practice is hardly new. For example, the current Secretary of Justice, Miss Elise Leung, was practicing law in a private law firm before being appointed to lead the Justice Department. Furthermore, like the case of France where

⁴⁶. Bernard Gournay, "The Higher Civil Service of France," in *The Higher Civil Service in Europe and Canada: Lessons for the United States*, ed. Bruce L. R. Smith (Washington, D.C.: The Brookings Institution, 1984), pp. 69-86, p. 73.

⁴⁷. Presently, the so-called collective responsibility of the ExCo exists in the name only. An unnamed supporter of Mr Tung recently commented on Mr. Tung and his ExCo team as follows: "Can you recall how often ExCo members come out to rally support for government policies? Some of them are too smart not to distance themselves from controversial issues" (cited in Chris Yeung, "It is time for Tung to lead the way," *South China Morning Post*, 19 September 1998. Internet edition).

members of parliament are eligible for cabinet appointment,⁴⁸ the Chief Executive should also consider appointing members of the LegCo to the ministerial positions if they are the best qualified persons for the jobs. In fact, such appointments were foreseen by the drafters of the Basic Law. Article 79(4) stipulates that a legislator will lose his or her LegCo seat “[w]hen he or she accepts a government appointment and becomes a public servant.”

Selecting ministers from the LegCo would expand the pool of competent minister candidates. This would also offer incentives to legislators to act more responsibly in monitoring the government and/or making policy suggestions. As Ernest Wing-tak Chui points out, as legislators nowadays are not ministers of specific policy areas, they are free to challenge the administration without shouldering the ultimate policy responsibilities.⁴⁹ With the prospect of being appointed as ministers, ambitious legislators need not make rhetorical policy comments or suggestions to attract the public and the government’s attention. The fact that they might be appointed to take charge of what they are advocating would no doubt force them to think twice before promoting their plans publicly.

Feasibility of this Proposal

Unlike the question on when the Chief Executive should be returned by universal suffrage, the political parties’ position on whether Hong Kong should implement a ministerial system cannot be divided along the liberal-conservative line. Liberal political parties such as the Democratic Party and the Frontier support the introduction of a ministerial system particularly when the Chief Executive is elected by direct election. As Dr. Anthony Cheung, vice-chairman of the Democratic Party, points out, a ministerial system is appropriate for Hong Kong but probably would not be welcomed by the public before the Chief Executive is directly elected. He observes that as the public generally does not trust the Chief Executive’s appointees (the

⁴⁸. However, a legislator has to give up his or her parliamentary seats before resuming a cabinet position. Besides, under Article 23 of the 1958 Constitution, if a cabinet minister is ousted from the cabinet, he or she cannot automatically return to the legislative chamber from which he or she came. This is known as the “incompatibility rule.” For details, see William Safran, *op.cit.*, pp. 223-224.

⁴⁹. Ernest Wing-tak Chui, “The 1995 Legislative Council Election: Inefficacious Opposition Characterized by Fragmentation,” in *The 1995 Legislative Council Elections in Hong Kong*, eds. Kuan Hsin-chi, Lau Siu-kai, Louie Kin-sheun, and Timothy K. Y. Wong (Hong Kong: Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, 1996), pp. 393-437, p. 396.

Executive Councillors), they would rather let the senior civil servants preform the role of ministers.⁵⁰ However, if the Chief Executive was elected directly by the people, he or she would have the legitimacy to appoint individuals with similar political orientation to the posts of principal officials.

Among the conservative political parties, the Liberal Party also agrees that Hong Kong needs a ministerial system. In a recent LegCo motion debate on legislative-executive relationship, Mr. Ronald Arculli, vice-chairman of the Liberal Party, made a remark which succinctly sums up not only his party's arguments for a ministerial system, but also those of the liberal political parties. Therefore, I quote his remark at length as follows:

The Liberal Party has long advocated for a ministerial system which we believe is the key to an open, responsible and accountable government. Right now, we are supposed to have a Civil Service that is politically neutral, and as past and present Executive Councils did not and do not sell agreed policies of the Administration, our poor Policy Secretaries take on this job voluntarily or otherwise. However, if there is a change of policy, they will be flipping back and forth. This is neither right nor fair. On the other hand, if we have a ministerial system in the Executive Council, then Executive Council Members will have a portfolio for which they will have responsibility and accountability. A ministerial system is absolutely vital if our Chief Executive and this Council are elected under universal suffrage.⁵¹

By contrast, we do not know the positions of the DAB and HKPA on this issue. According to the DAB's Ip Kwok-him, his party has not yet formed a position on this issue. Personally, Ip comments that he is satisfied with the existing system. He believes the senior civil servants are hold accountable to the public through the Chief Executive. Having said that, he agrees that a ministerial system is a workable, though not an indispensable means, to enhance the accountability and responsiveness of the senior civil servants. Overall, he thinks that instituting a ministerial system in Hong Kong will bring significant changes to its civil service system and thus needs a very careful study before any decision on it is make.⁵² For the HKPA's Mr. David Chu Yu-lin, he does not see the need for Hong Kong to implement a ministerial system. In fact,

⁵⁰. Interview with Dr. Anthony Cheung on 13 January 1998.

⁵¹. "Motion debate on direct election," *The Hong Kong Hansard*, 15 July 1998. Internet edition.

⁵². Interview with Mr. Ip Kwok-him on 10 January 1998.

he said that the senior civil servants actually function like ministers. Hong Kong may not have a ministerial system in name, but certainly has one in practice. According to Chu, Hong Kong has a de facto ministerial system.⁵³ As the HKPA is more conservative than other pro-China political parties, one can safely assume that it will not support the introduction of a ministerial system into Hong Kong in the near future.

Not surprisingly, senior civil servants are also objecting to the implementation of a ministerial system. The Secretary for Civil Service, Mr. Lam Woon-kwong, in a newspaper interview, warned against political appointments of senior civil servants. Nevertheless, he did not substantiate his position with any empirical evidence. He said the recent fuss about the discussion on a ministerial system was unnecessary because “under the Basic Law, the Chief Executive was allowed to appoint people from outside the Civil Service to form his team” and he did not agree “a change in the chief executive and policies would embarrass the Civil Service which might have to make a U-turn.” Moreover, he asserted that “I don’t think anyone can accuse the Civil Service of not supporting the Chief Executive’s agenda wholeheartedly.”⁵⁴ I would not comment on Lam’s personal opinions, but would like to point out that although the Chief Executive can appoint people from outside the Civil Service, it is seen as an exception, not a rule. All in all, as mentioned, the civil service’s opposition to a ministerial system could be lessened and therefore should not be the major reason for rejecting the ministerial system.

Some might oppose the importation of such a system on the ground that it introduces uncertainty into the operation of the civil service. The essence of this worry is to question what the relationship between ministers and senior career civil servants would be like. If they compete with each other for policy making power, deadlock could occur. The cases of France and Australia can best address this concern. First, in France, conflicts do arise between ministers and career civil servants; however, as Bernard Gournay has noted, these conflicts did not “prevent the political machine from functioning: laws are voted on; budgets are adopted [and] programs

⁵³. Interview with Mr. David Chu Yu-lin on 30 December 1997.

⁵⁴. Citations are all from May Sin-mi Hon, “Civil Service head warns against political appointments,” *South China Morning Post*, 5 April 1998, p. 2.

are executed.”⁵⁵ Similarly, in Hong Kong, one should not worry too much about the seriousness of the inevitable conflicts between ministers and career civil servants. Moreover, it is very likely that initially many ministers will come from the civil service. In other words, ministers and career civil servants will understand each others quite well because of this common origin.

As for the example of Australia, the Australians have employed a system of “ministerial staff” to facilitate and coordinate the functioning of a minister’s office and his or her departments. From 1970s onwards, more staff resources were provided to ministers to help them secure a greater responsiveness from the civil service. The case of Australia showed that ministerial staff has effectively assisted ministers in directing and communicating with the civil service on a daily basis.⁵⁶ A similar system of ministerial staff can be created in Hong Kong to ease the potential difficulties one would expect to occur in the early operation of the ministerial system. Overall, it is a common misconception that ministers and civil servants are necessarily at loggerheads over the operation of the government. As Delmer D. Dunn observes, in Australia, United States, and Britain, “those who work with civil servants generally come to respect them.”⁵⁷ Likewise, a British Broadcasting Corporation report on civil service summarized the regard that British ministers held for bureaucrats as follows: “Academics, journalists and backbench MPs may castigate the bureaucracy, doubt its competence, question its energy, jealously observe its pretensions to power, but ministers give little hint of this. They tend to marvel at civil servants’ industry, integrity and sheer availability.”⁵⁸

Another often heard argument against the introduction of a ministerial system is that it violates the Basic Law, which stipulates that principal officials should be a part of the civil service (Art. 101). However, a careful reading of Article 101 does not conclusively suggest that

⁵⁵. Gournay, *op.cit.*, p. 71.

⁵⁶. For details, see Delmer D. Dunn. *Politics and Administration at the Top: Lessons from Down Under*. Pittsburgh, PA: University of Pittsburg Press, 1997, chapter 4.

⁵⁷. *Ibid.*, p. 115.

⁵⁸. Cited in *Ibid.*, p.116.

the principal officials must be public servants.⁵⁹ As Yash Ghai, a professor of public law at the University of Hong Kong, points out, there is nothing in the Basic Law that explicitly requires “a principal official to be a public servant.”⁶⁰ Therefore, this argument should not be used as a reason for opposing the establishment of a ministerial system in Hong Kong.

Finally, how about China’s position on this issue? Publicly, China has not spoken on it. From the good record that China has showed thus far in respecting the principle of “one country, two systems” and the Basic Law, it seems that China would let Hong Kong institute a ministerial system if that were something good for Hong Kong. Additionally, although implementing a ministerial system would involve major changes in Hong Kong’s civil service system, one should not presume that China would find this objectionable. The reason is simple. This is a domestic issue. As stipulated in the Basic Law, Hong Kong can decide on its own matters other than foreign or defence affairs. In other words, it is up to the people of Hong Kong to decide if Hong Kong needs a ministerial system. In sum, it makes no sense to reject the ministerial system on the mere speculation that China might object to its implementation.

Until now, all of the liberal political parties and the Liberal Party have pledged their support to the creation of a ministerial system while no major conservative political parties have spoken against it. Also, as this change does not involve the amendment of the Basic Law, the possibility for it to be adopted by the HKSAR is greater than for the first proposal, electing the Chief Executive by direct election in year 2002 (or 2007). In all, Hong Kong needs to establish a ministerial system to give the Chief Executive the authority to select his or her own team of principal officials; to improve the accountability of the senior civil servants to the Chief

⁵⁹. Although the citizenship requirements of the principal officials are set out in the section on Public Servants, and thus suggest that they are to be regarded as public servants, Article 101 does not yield definite evidence to support such a suggestion. Article 101 reads: “The Government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.”

⁶⁰. 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. 266.

Executive and the public; and to create a new sense of bureaucratic responsiveness.

Securing an Open System of Government

In general, an open system of government presumes that the public has every right to access all government information except those which would harm the public interest if disclosed. In countries where the principle of open government is being observed, the public's right of access to official information is usually enshrined in constitutions or in statutes. The principle holds that "disclosure by government is the general rule, not the exception, and that whatever government does is public, unless legally restricted."⁶¹ By contrast, in a closed system of government, the government is not bounded by any statutes or constitutions to disclose any government information. The principle of a closed system of government assumes that the public interest can be best served if the government, not the public, has the final word on whether and to what degree official information should be disclosed.

Access to Public Information in Hong Kong--Time for a Better Way

When one examines Hong Kong's system of government through the lens just noted, one will conclude that Hong Kong has a closed system of government. Hong Kong's current practice on freedom of information is governed by the non-statutory "Code on Access to Information." In it, the government promised that any public requests for information "will be handled as promptly and helpfully as possible"⁶² The fundamental problem of this code, however, is that it gives too much discretionary power to the government in deciding what kinds of public information should be released to the public. This reflects a very different mentality from the principle of open government.⁶³

Nonetheless, "open government" is still a term to which the Hong Kong government has

⁶¹. Itzhak Galnoor, "Government Secrecy: Exchanges, Intermediaries, and Middlemen," *Public Administrative Review* 35(1) (January/February 1975):32-42, 34.

⁶². The Hong Kong Government. *Code on Access to Information*. Hong Kong: The Government Printer, March 1995, p.1.

⁶³. For instance, in countries like Sweden, United States, France, Australia, New Zealand and Canada where the principle is being followed, only some categories of government information, as specified in the freedom of information laws, are shielded from the public.

publicly subscribed. The then Chief Secretary, Sir David Ford, declared in a LegCo motion debate on press freedom that “the Government accepts that it has the duty to explain its decision and policies to the people of Hong Kong. . . . I believe we are an accountable and open administration.”⁶⁴ If what Sir David said was true, why does Hong Kong fail to adopt a freedom of information (FOI) law?

The government, according to Sir David, was far from convinced that a FOI law was the best way for Hong Kong to proceed. He said: “the benefits for the general public from such a law would not, in our view, be commensurate with the costs which all agree are likely to be substantial. We are also concerned to avoid the creation of a new layer of bureaucracy which in the final analysis might do little to enhance the community’s access to information.” Therefore the government was not “convinced that a Freedom of Information Ordinance is the most effective step for Hong Kong.”⁶⁵ Consequently, no FOI statute was enacted in Hong Kong.

My evaluation of whether Hong Kong should adopt a FOI law begins with a discussion of arguments against the enactment of such a law in general, and then turns to the case of Hong Kong in particular.

Some common arguments against the introduction of a FOI statute include: (1) it is too costly to legally ensure the public’s right of access to government files; (2) a FOI law may deter government officials from frankly expressing their views on policy issues and thus compromising their capacity to serve the public; and (3) government efficiency and public interests can better be served if the government maintains its discretion to decide whether certain categories of information should be open for public access.

In reality, it may be quite costly to establish a freedom of information system. Before implementing a FOI law, the government has to set up a new agency, recruit extra civil servants and offer training programs to them. Afterwards the government has to bear the cost of maintaining the freedom of information system the FOI law creates. But, considering the benefits of a FOI law to both the government and the public in the long run, one should not dismiss this

⁶⁴. “Motion debate on press freedom,” *The Hong Kong Hansard*, 26 February 1992, pp. 1902-1946, p. 1942.

⁶⁵. *Ibid.*.

idea out of hand. Like all other important public programs, cost should not be the sole determinant of whether a FOI law should be adopted. For example, in 1984-1985 some Australians expressed the concern that the costs of running the Australian freedom of information system was too high (the total cost was A\$91.2 million). However, benefits in the operation of the Australian FOI law apparently outweighed the costs. Thus, there was no serious attempt to repeal or curtail the Australian FOI legislation.⁶⁶

Regarding the other two assertions, there is no evidence to support them either. In New Zealand where a FOI statute was in place since 1982, its House of Commons Select Committee on the Parliamentary Commissioner for Administration found that “[s]tandards of administration had improved in that FOI had encouraged objective, reasoned and defensible decision-making. . . . The dire forecasts made at the introduction of FOI as to its effect on candour of advice had not been borne out by events. FOI had also resulted in greater public participation in policy debate.”⁶⁷ After all, besides cost effectiveness and efficiency in government operation, a responsible government should also adhere to some other values, such as respecting the public’s right of access to government information, enhancing government openness, and facilitating public participation.

In fact, no FOI act grants the public unlimited access to government files. No one will dispute that in modern government operations, certain categories of information should be kept secret. Normally, documents and information related to national security, defence, international relations, diplomatic negotiations, cabinet council matters, law enforcement, personal privacy, legal professional privilege are exempted from a FOI legislation. In addition, many statutes include an exception that limits or prevents access to information on public personnel matters. For example, the American FOI Act excludes the disclosure of matters “related solely to the internal personnel rules and practices of the agency.”⁶⁸

⁶⁶. David Clark, “Towards a More Open Administration,” in *The Hong Kong Civil Service and Its Future*, eds. Ian Scott and John P. Burns (Hong Kong: Oxford University Press, 1988), pp.169-203, p. 191.

⁶⁷. Quoted in Bogdanor, *op.cit.*, p. 607.

⁶⁸. Clark, *op.cit.*, p. 191.

I have argued to this point that the opposition to a FOI statute is not supported by facts. Indeed, when one studies the case of Hong Kong, one will find that Hong Kong really need a FOI law to help it implement the principle of “one country, two systems.” This assertion is based on two crucial facts. First and foremost, Hong Kong has inherited both the culture of a secretive government and a harsh official secret act from Britain. The Hong Kong government therefore has a natural tendency to keep government information secret. Due to this government inclination, one cannot help but doubt about the effectiveness of an administrative means, the Code on Access to Information, in protecting the people’s right of access to government information.

Moreover, Hong Kong’s new suzerain, China, is a country that lacks the tradition of open government, and is obviously more secretive than England, Hong Kong’s old sovereign state. As examined in the preceding chapter, government openness since the establishment of the HKSAR is far from satisfactory. Although there was no ground to suggest that China had exerted any pressure on the HKSAR government to become less forthcoming, it is inevitable that public officials will feel less need to open the government under the Chinese sovereignty as they did under the administration of the former Governor, Chris Patten. Although Hong Kong emphatically needs a system of open government the most to realize the principle of “one country, two systems,” its political context is unfortunately conducive to a closed system of government. To shift the Hong Kong government from closed to open, and hence provide a favourable condition for the survival of the principle of “one country, two systems,” this study argues that Hong Kong should adopt a FOI law.

In practice, what should Hong Kong’s FOI statute look like? The ultimate goal of such a law is the recognition of the public’s right of access to government information. The degree and kind of information that may be kept from the public should be clearly defined by the law. As noted earlier, legitimate secrecy involved in government operation has always been respected by a FOI law. Obviously, Hong Kong’s future FOI legislation should allow the government to keep certain categories of government information from public access. When discussing types of information to be exempted from public access, Hong Kong can add or delete categories from the list of exempted information mentioned previously. The most important point is to make sure

that the scope of exemption is explicitly stated.

Regarding who should be allowed to access government files, in countries like Canada and New Zealand access is restricted to citizens and permanent residents. Given that the Hong Kong government has operated as a closed system for such a long time, and China's concern that state secrets (related to both the HKSAR and China itself) might be exposed to hostile foreigners, this study will not oppose having Hong Kong restrict access to Hong Kong citizens and permanent residents only.

In addition, most FOI statutes have set a response time within which the agency must reply to the request, but this varies greatly. For example, the response time set in Hong Kong's Code on Access to Information is within ten calendar days upon the receipt of a written request. This is a reasonable response time that Hong Kong's future FOI law can maintain. However, for complex FOI requests, an extension of the response time should be allowed. Again, whatever the response time is, it should be made clear to the public. This will help the reduction of complaints about the government's delays in processing public requests. The corollary of this is the mechanism that allows the public to appeal against government agencies' refusal to meet their requests. As David Clark observes, most countries provide for internal review followed by some external review. Canada and America allow for appeals to a court while New Zealand relies on the ombudsman.⁶⁹ The present practice of Hong Kong is similar to New Zealand. Again, in what direction should the future Hong Kong FOI statute deal with the "appeal and review" aspect is open for public discussion.

Feasibility of this Proposal

Not surprisingly, liberal political parties are all in support of the enactment of a FOI law while conservative political parties do not see a necessity of such legislation. Conservative political parties do not think that there is any problem in the openness of the HKSAR government. They believe that the HKSAR government has respected the people's right of access to government information. Thus, it is unnecessary for Hong Kong to spend a huge sum of money to maintain a statutory-based freedom of information system. Judging from the fact that

⁶⁹. Ibid., p. 188.

not only the public but also some legislators have found the government more often kept close than open, it seems that the conservative political parties are too complacent about the status of the government's openness.

In fact, a FOI statute can only lessen the government's degree of secrecy, but not eliminate it. Even in the United States where there is a FOI act in place, and its cultural and political contexts are open and free, instances of government wrongdoing (especially in the national security arena) being deliberately covered up are not scarce.⁷⁰ An FOI law and the practice of open government, as Patrick Birkinshaw argues, "would have made the task of concealment that much more difficult. And in a culture of openness it would have made the ultimate revelation that more damning."⁷¹

As a FOI law is essential for safeguarding an open and responsible government, Hong Kong should adopt it without hesitation. This proposal does not require any amendments to the Basic Law. All it takes is for the LegCo to pass the legislation. As for the cost of operating a freedom of information system, it should be much less than big countries like Australia. The system Hong Kong would be less complicated and much smaller than systems operated by western countries. Moreover, once the system is in operation, the costs of running it will be stabilized. Indeed, experiences elsewhere showed that the number of requests for information or appeals against agencies' decisions would fall after the enactment of a FOI statute. For instance, in New Zealand there was a 50 per cent drop in requests for reviews of departmental refusals after the first year of the FOI Act's operation (the Act was enacted in 1982), and of the 174 agencies under the Act, 115 received no requests at all.⁷²

Overall, to take the first step in providing a legal guarantee to the public's right of access to government information; enhancing the government's degree of openness and accountability;

⁷⁰. Thus, Steven L. Katz asserts that: "excessive secrecy is a serious national problem. It permeates most policies under the guise of making our nation secure and effects controls over a vast array of people and practices well beyond the traditional realm of national security" (Steven L. Katz. *Government Secrecy: Decisions Without Democracy*. Washington, D.C.: People for the American Way, 1987, p. 73).

⁷¹. Patrick Birkinshaw, "Freedom of Information," *Parliamentary Affairs* 50(1) (January 1997):166-181, 180.

⁷². Clark, *op.cit.*, p. 189.

and enlightening the public's knowledge about public affairs and increasing their participation in policy debate, Hong Kong should replace its Code on Access to Information with a FOI legislation. If supporters of a FOI law (like the Hong Kong Journalists Association) can generate enough public support, Hong Kong will probably have its long delayed FOI statues right away.

Strengthening the Operation of the Legislative Council

As both the British and Chinese governments believe that a powerful executive branch is the formula of Hong Kong's economic success and social stability, the balance of powers has always been tipped in favor of the executive branch. Moreover, to ensure that potential conflicts between the Chief Executive and the legislature could be contained, and thus preserve the dominance of the executive branch, China and its conservative Hong Kong allies have successfully included restrictions on the LegCo's powers in the Basic Law. As a result, Hong Kong's legislature not only is on an unequal footing with the executive branch, but also is incapable of monitoring the government's operation effectively. As mentioned, a powerful government without checking could be detrimental to the realization of the principle of "one country, two systems."

Articles 66 to 79 of the Basic Law dictate the establishment, formation, functions and powers of the LegCo. Major functions and powers of the LegCo are: to enact laws; examine and approve budgets, taxation and public expenditure; monitor the work of the government; endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and impeach the Chief Executive if necessary. The last two functions are new to the LegCo. They were not entrusted to any previous colonial legislatures. In short, these functions and powers look impressive on paper. But in reality, one would be misled to conclude that Hong Kong's legislature has been given enough powers to check the work of the executive branch.

To empower the legislature to function properly, one has to take a fresh look at the concept of "executive-led" government. Restrictions which the Basic Law has imposed on the legislature's power should also be removed. Moreover, the LegCo's committee and staff support

systems should be strengthened. Unless all these issues are addressed together and promptly, the LegCo will not be able to discharge its duties effectively.

The Idea of “Executive-led” Government and Hong Kong’s Executive-Legislative Relations

The principal value of justifying legislative monitoring of the executive, as Bert A. Rockman puts it, “is to ensure the triumph of representative government by lines of accountability running through the organ that embodies popular sovereignty. Representativeness, rather than effectiveness, is the irreducible core.”⁷³ Yet the principal value treasured by the Hong Kong government is “effectiveness” rather than “representativeness.” Under the principle of “executive-led” government, Hong Kong’s executive branch is very powerful, easily dominating the legislative branch.

Nevertheless, there is no consensus about the meaning of the term “executive-led.” To the government, its meaning is simple: “the Administration is responsible for formulating policies; the Governor [now the Chief Executive], on the advice of the Executive Council, decides on the policies which the Administration will then implement.”⁷⁴ Where does the LegCo come into the process of government? According to the former Secretary for Constitutional Affairs, “[w]hilst our system of government is executive-led, the executive relies on the support of the legislature for the enactment of laws and the provision of funds required to give effect to its policies. Such support cannot be assumed, and is not assumed as a matter of course.”⁷⁵ But the Secretary’s remarks did not tally with the facts.

In practice, the principle of “executive-led” government means that the executive branch is in control of everything. Experiences of the LegCo’s Public Account Committee (PAC) is a good illustration of this point. The PAC had asked the government to release certain ExCo papers so that it could have enough information to evaluate a report sent to it by the Director of Audit.

⁷³. Bert A. Rockman, “Legislative-Executive Relations and Legislative Oversight,” *Legislative Studies Quarterly* 9(3) (August 1984):387-440, 414.

⁷⁴. Remarks made by the former Secretary for Constitutional Affairs in a LegCo motion debate on “executive-legislature relationship” (*The Hong Kong Hansard*, 1 July 1992, pp. 3877-3929, p. 3927).

⁷⁵. *Ibid.*, p. 3928.

Although the PAC was not requesting the ExCo to disclose its papers to the public but to its members alone, the government denied the request anyway. According to the government, “the proceedings of the Executive Council should remain confidential” and that the PAC did not put forward “overriding reason why an exception should be made in this case.”⁷⁶ Indeed, the government’s response in this case was predictable.

Various surveys conducted in the 1990s showed that senior government officials were generally skeptical about the role of the LegCo. A survey of 456 administrative officers conducted by Jermain Lam in 1993 found that most of the respondents favored the existing system of limited accountability of the executive to the LegCo. Most of them believed that the executive should dominate the policy-making processes.⁷⁷ Lam also found that many administrative officers still considered the LegCo as “partly” and “not quite” representative although some of its members were directly elected by the people.⁷⁸ Contrarily, a majority of these administrative officers saw themselves as the genuine vanguard of public interest.

Similar findings were reported in a study conducted in the same year by Joseph Y. S. Cheng and Jane C. Y. Lee. Among the 606 senior bureaucrats they have surveyed, 54.7% and 23.7% of them respectively considered that the LegCo was “too politicized” and “immature” after the 1991 LegCo direct election. As a result, 40.1% and 7.1% of the respondents respectively felt that the LegCo was “fairly unrepresentative” of the interests of the Hong Kong people and “not representative at all.”⁷⁹

Naturally, conflicts are inevitable between an increasingly aggressive LegCo and a government that holds the idea of “executive-led government.” After the establishment of the

⁷⁶. *The Hong Kong Hansard*, 24 April 1996., pp. 215-237, p. 216.

⁷⁷. Jermain Lam, “Administrative Culture of Hong Kong Civil Servants” (paper presented at the International Conference on The Quest for Excellence: Public Administration in the Nineties, jointly organized by Department of Public and Social Administration, City University of Hong Kong and Hong Kong Public Administration Association, Hong Kong, 24 February 1994), p.6.

⁷⁸. *Ibid.*.

⁷⁹. Joseph Y. S. Cheng and Jane C. Y. Lee, “The Changing Political Attitudes of the Senior Bureaucrats in Hong Kong’s Transition,” *The China Quarterly* No. 147 (September 1996): 912-937, 927.

HKSAR, a motion for debate about the unsatisfactory relations between the executive and the legislature was held in the Provisional Legislative Council.⁸⁰ In response, the government denied there were any great conflicts between the two branches. The government also asserted that the existing system of communication between the two has functioned effectively. Again, the facts are just the opposite. Another LegCo motion debate on the executive-legislature relations was held recently in which legislators complained the lack of communication between the executive and the legislature and the lack of respect of the former to the latter. As Dr. Leong Che-hung (representing the medical functional constituency) said: “It is the attitude not the [communication] channels that count . . . LegCo should be given much more respect.”⁸¹

In summary, the underlying reason for the problems in executive-legislative relations is the government’s narrow understanding of the idea of “executive-led government.” It is wrong for the government to assume that it has an absolute say in the process of government. Rather, a better apprehension of the concept should be adopted. Mr. Andrew Wong provided a broader understanding of the idea several years ago. He suggested that “[w]e do not have to use such terms as ‘executive-led’; indeed, the spirit of the whole system rests with the power to initiate and execute policies and the capability of exercising power generally. It is more oriented towards the executive authorities, but it is also accountable to the legislature.”⁸²

No one will dispute that both the Basic Law and the actual practice of Hong Kong’s governmental system have vested the power to initiate and execute public policies with the executive branch. On the other hand, the Basic Law also explicitly requires the executive branch to be “accountable to the Legislative Council” (Art. 64). The government’s narrow understanding of the idea of “executive-led” government will inevitably induce it to see itself as infallible.

⁸⁰. The motion, moved by Dr. Leong Che-heung, reads as follows: “That this Council urges the Government to consider means to improve the communication and working relationship between the legislature and the executive authorities, so as to ensure effective and efficient governance of the Special Administrative Region and that the executive authorities be made accountable to the legislature in accordance with the Basic Law,” *The Hong Kong Hansard*, 11 February 1998. Internet edition.

⁸¹. Cited in Chris Yeung, “Healing measures’ motion rejected,” *South China Morning Post*, 24 September 1998. Internet edition.

⁸². “Motion debate on executive-legislature relationship” (*The Hong Kong Hansard*, 1 July 1992., pp. 3877-3929, p. 3896).

Subsequently, the government will become less accountable to the legislature. To prevent this from happening, Hong Kong should opt for a broader understanding of the concept of “executive-led government.”

Necessary Amendments to the Basic Law

Two major restrictions on the powers of the LegCo are Article 74 of the Basic Law and the separate vote count mechanism stipulated in Annex II of the Basic Law. It is the argument here that Article 74 imposes too many restrictions on legislators’ power to introduce private members’ bills. Restrictions on legislators’ exercising of such power before the handover were already adequate in limiting irresponsible legislative behavior or preventing the emergence of the legislative-led government. Likewise, a simple majority vote count system as Hong Kong has had before the handover, will not encourage irresponsible legislative behavior nor produce a legislative-led government. On the contrary, to strengthen the operation of the LegCo, the new restrictions on legislators’ power to introduce “private members’ bills” should be removed. Similarly, the new vote count mechanism should be abolished and be replaced by a simple majority vote count system.

Let us first examine the content of Article 74. It reads as follows:

Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.

I argued previously that this Article practically forbids legislators to propose any bills of political significance without the prior consent of the Chief Executive. Naturally, the current Chief Executive and his successors are not likely to approve private members’ bills if they posed serious challenge to government policies, or forced the government to act against its will. The government’s inclination to uphold its authority is understandable. However, it is equally true that the legislature has a solemn duty to see that the government is acting for the best interest of the people. I believe that the mechanism of the private members’ bills provides an effective tool for the LegCo to function properly. This belief is supported by evidence found in Hong Kong’s

colonial history.

The first important private member's bill was introduced in and passed by the LegCo in November 1993. Despite the government's opposition, legislators passed the "Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill." As Norman J. Miner reports, the bill suspended for six months the implementation of a government personnel policy. The original policy allowed certain expatriate officers employed on contract terms to transfer to local terms of employment when their contract expired.⁸³ The government opposed the bill on the ground that public personnel policy was a matter that fell within the prerogative of the executive. Nevertheless, when the bill was passed, the Governor did not veto it but signed it into law. Consequently, the Civil Service Branch was forced to revise its policy. Since then, many other private members' bills were proposed.

The colonial government interpreted the proliferation of private members' bills as a serious threat to the principle of "executive-led government." As Lo Chi-kin has noted, the "idea of introducing further restriction on private members' bills was floated."⁸⁴ Article 74 of the Basic Law provided an example of restriction from which the colonial government could copy. Nonetheless, the political context existing then did not allow the government to introduce any such new restrictions. Having said that, one should not exaggerate the impact of the private members' bills on government policies.

In fact, when Hong Kong was still a British colony, there were sufficient checks and restraints upon legislative power. For example, clause 24 of the *Royal Instructions* (one of colonial Hong Kong's two constitutional documents) required legislators to obtain the Governor's authorization before introducing private members' bills if those bills involved an increase in the public expenditure and/or reduce the government's future revenue. A similar restriction was

⁸³. Norman J. Miners, "Constitution and Administration," in *The Other Hong Kong Report 1994*, eds. Donald H. McMillen and Man Si-wai (Hong Kong: The Chinese University Press, 1994), pp. 3-8, p. 3.

⁸⁴. Lo Chi-kin, "Constitution and Administration," in *The Other Hong Kong Report 1995*, eds. Stephen Y. L. Cheung and Stephen M. H. Sze (Hong Kong: The Chinese University Press, 1995), pp. 1-12, p. 8.

written into the “Rules of Procedure” of the HKSAR LegCo.⁸⁵ I would argue that this is already an adequate measure to ensure that: (1) public expenditure would not be increased (or government revenue would not be decreased) unexpectedly; (2) government policies would not be changed drastically; and (3) the executive’s powers would not be undermined seriously.

In short, under Article 74, members of the LegCo would not be able to initiate bills of any significance. Moreover, as Article 74 forbids legislators to propose bills related to “political structure or the operation of the government,” they would not be allowed to introduce amendments to government legislation for the latter are almost invariably related to “the operation of the government.” To sum up, restrictions listed in Article 74 should all be removed. The sole purpose of removing those restrictions is to restore the LegCo’s capacity to perform its duties efficaciously.

The second restriction on the proper functioning of the LegCo concerns with the vote count system that it should adopt. The system is stipulated in Annex II, section II of the Basic Law, which reads as follows:

Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions:

The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.

It is an open secret to the people of Hong Kong that the separate vote count system was adopted to make it more difficult for the liberal legislators to propose and pass private members’ bills which the government would like to block, or to amend the government’s legislation against its will. As the directly elected legislator, Mr. Leung Yiu-chung has complained, there have been at least seven occasions in which legislators from the functional constituencies have blocked a

⁸⁵. See clause 31 “Restriction on Motions and Amendments” of the *Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region*. 2 July 1998.

member's initiative, although most of the 60 legislative councillors were in favor. He commented that "this is the most absurd brand of democracy, under which the minority has the say over the majority."⁸⁶

No doubt the separate vote count system, as Li Pang-kwong has noted, "has the merit of moderating a radical change of policy direction by imposing a higher threshold of approval and is, thus, conducive to an integrated executive leadership and a higher degree of policy continuity."⁸⁷ But the harmful effect of this system is its capability to defeat every important initiative taken by individual LegCo members, regardless of whether the initiative is coming from a liberal or a conservative legislator. To defeat an initiative taken by any legislator, all it takes is 16 votes out of the 30 votes of either group of legislators, which should not be a difficult threshold for the major political parties to reach. Predictably, a weak legislature, rather than a strong one, would be resulted from this vote count system.

The separate vote count system is also the speedway to legislative gridlock. It is true that conservative legislators can easily block initiatives of the liberal legislators under this new vote count system. However, the reverse is true for the conservative legislators too. A case in point is the defeat of a "motion of thanks" to the Chief Executive, Mr. Tung Chee-hwa, for delivering his annual policy speech to the LegCo. Traditionally, the LegCo will debate policy proposals and programs mentioned in the Chief Executive's speech and conclude the debate with the passage of a motion which states that: "That this Council thanks the Chief Executive for his address."⁸⁸ However, Mr. Tung's policy address was criticized by the political parties for lacking any concrete measures to revive Hong Kong's economy.

The Democratic Party and the Frontier have introduced amendments to the motion of thanks to express their regret at Tung's policy address. Under the separate vote count system, the

⁸⁶. Quoted in Andy Ho, "Complex task of selling policies," *South China Morning Post*, 13 October 1998. Internet edition.

⁸⁷. Li Pang-kwong, "Executive and Legislature: Institutional Design, Electoral Dynamics and the Management of Conflicts in the Hong Kong Transition," in *Political Order and Power Transition in Hong Kong*, ed. Li Pang-kwong (Hong Kong: The Chinese University Press, 1997), pp. 53-78, p. 61.

⁸⁸. Clause 13(2) of the *Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region*. 2 July 1998.

two amended motions were defeated by legislators from the functional group while the original motion of thanks was voted down by directly elected legislators. It might matter little to the overall interest of Hong Kong whether Tung could get a motion of thanks from the LegCo. However, the impact would be very different if important policy issues were being debated and decisions from the LegCo were urgently needed. As the government commands no solid and secure majority support in the legislature, the occurrence of legislative gridlock under the separate vote count mechanism is highly probable. To eliminate this potential threat to the effective governance of the HKSAR, the separate vote count mechanism must be replaced with a simple majority system.

The Legislative Council's Committee System

Around the world, different kinds of committee systems are utilized to help legislatures to cope with their ever increasing workloads. By means of them, legislators can develop specialized knowledge of policy areas by participating in committee activities of their choices. This specialized knowledge in turn enhances a legislature's capacity vis-à-vis the executive branch. Specifically, with the help of committee systems, legislatures can discharge their duties like scrutinizing legislation, controlling public expenditure and overseeing the work of government departments more effectively.

In Hong Kong, the LegCo's committee system is not as well-developed as its western counterparts. This is understandable because up to this point Hong Kong's legislature has played a rather submissive role in the process of government. But present-day Hong Kong, more than ever, needs a properly functioning legislature to support the principle of "one country, two systems." Many other legislatures around the world have shown that strong committee systems are indispensable for them to operate competently. I would argue that it is high time for the LegCo to overhaul its unsatisfactory committee system.

Currently, the LegCo has only three standing committees: the Finance Committee, the Public Accounts Committee and the Committee on Members' Interests.⁸⁹ Considering the

⁸⁹. The Finance Committee consists of every member of the LegCo, except the President. It is responsible for scrutinizing public expenditure proposals. As for the Public Accounts Committee, it consists of seven members and is charged with the responsibility of considering reports of the Director of Audit on the accounts and the results of value-for-money audits of the government and other public organizations which are

growing volume and complexity of legislation and the poor communication between the legislature and the executive branch, this underdeveloped committee system is insufficient to allow the LegCo to conduct its business proficiently. The government and its conservative allies do not think that the LegCo needs to further develop its committee system. They believe the current panel system is already adequate to assist the LegCo in examining and monitoring policy matters referred to it. There are now 17 panels, which although function like committees, do not have the status of standing committees.⁹⁰ At the beginning of a new LegCo session, its House Committee⁹¹ will recommend the number and terms of reference of panels to the whole council for approval. If necessary, a panel may appoint subcommittees to study specific issues and to report to the panel.

The problem with the panel system is its lack of a permanent status. Put differently, the existence of panels are anything but certain.⁹² In reviewing studies on eight legislatures located in different parts of the world, Malcolm Shaw observes that “over time, legislatures have tended to progress from a tendency to utilize ad hoc committees to a tendency to utilize permanent committees.”⁹³ A case in point is the development of the American congressional committee

within the purview of public audit. As for the Committee on Members’ Interest, it too consists of seven members. It considers matters pertaining to legislators’ declaration of interests and matters of ethics in relation to their conduct, and makes recommendations relating to legislators’ interests (*Legislative Council Annual Report 1995-1996*, chapter 3).

⁹⁰. These 17 panels are: Administration of Justice and Legal Services; Constitutional Affairs; Economic Services; Education; Environmental Affairs; Financial Affairs; Health Services; Home Affairs; Housing; Information Technology and Broadcasting; Manpower; Planning, Lands and Works; Public Service; Security; Trade and Industry; Transport; and Welfare Services.

⁹¹. The House Committee is not a permanent standing committee. It comprises every member of the LegCo. It will prepare for sittings of the LegCo and consider matter relevant to the work of the LegCo. Bills introduced into the LegCo or subsidiary legislation tabled at a LegCo sitting are normally referred to this Committee. The Committee may form bills committees to scrutinize the bills, or appoint sub-committees to study certain items of the subsidiary legislation in greater detail (*Legislative Council Annual Report 1995-1996*, chapter 3).

⁹². For example, before the handover, the LegCo had 18 panels. The one that was abolished after the handover was the “Panel on Recreation and Culture.”

⁹³. Malcolm Shaw, “Conclusion,” in *Committees in Legislatures: A Comparative Analysis*, eds. John D. Lees and Malcolm Shaw (Durham, NC: Duke University Press, 1979), pp. 361-434, p. 380. Shaw reviews eight studies of committee systems in the United States, Italy, West Germany, Philippine, Canada, Britain, India and

system. In the 1790s, the House of Representatives only had four standing committees but a greater number of ad hoc committees. With the rapid development in the committee system, by 1850 the number of standing committees in the House had increased to thirty-six.⁹⁴ From his review, Shaw generalizes that “strong committee systems tend to be mainly permanent, while weaker committee systems tend to have a larger ad hoc component.”⁹⁵

That the LegCo’s present committee system fails to empower its parent chamber to meet its challenges efficaciously seems to support Shaw’s generalization. Thus, I would argue that the LegCo’s ability to function properly will be weakened unless it has institutionalized a well defined standing committee system. The easiest way to do so is to convert the current panels into standing committees. Under the new system, panels would be replaced by permanent standing committees which would continue to scrutinize corresponding government policy bureaux. The Security Committee will follow closely activities and policy suggestions of the Security Bureau, for example. In short, the committees’ functioning would be similar to their predecessors, that is, examining work of government departments and effects of government policies fall within their jurisdictions.

Experiences elsewhere show that a well-developed standing committee system can strengthen legislators’ and legislatures’ capacity for scrutinizing and influencing the activities of government departments. In the United Kingdom, for example, Michael Jogerst finds that the British House of Commons’ new committee system (which was adopted in 1979) has resulted in an altered relationship between the legislative and the executive branches which was traditionally dominated by the latter branch.⁹⁶ Based on survey research and personal interviews with over one-hundred members of Parliament, committee clerks, and House of Commons staffs, Jogerst finds that the new committee system provided Parliament and its members: (1) Added

Japan.

⁹⁴. Ibid., pp. 405-406.

⁹⁵. Ibid., p. 380.

⁹⁶. Michael Jogerst. *Reform in the House of Commons: The Select Committee System*. Lexington, KY: The University Press of Kentucky, 1993.

opportunities to acquire expertise and specialist knowledge for committee members; (2) more informed debate and discussion in the chamber; (3) and another forum for the Opposition to criticize government policies. Reports of the committees are increasingly referred to in debate because they present a “House view” on a subject which the government cannot easily discredit for representing the views of the minority Opposition. Another gain is (4) an added forum for third parties whose opportunities presenting their views and influencing the policy are sharply curtailed outside of committee activity.⁹⁷

Presumably, a well established standing committee system can bring similar effects to Hong Kong’s executive-legislative relations. Overall, in order to improve the accountability of the government to the LegCo, to create a balanced legislative-executive relations, and to facilitate implementation of the principle of “one country, two systems,” the LegCo must reform its committee system promptly.

Staff Support to the Legislative Council

It goes without saying that no legislature or committee system can work competently without sufficient staff support. The principal goal behind providing staff support to a legislature is to make it less dependent on the executive branch for information and expertise needed in scrutinizing legislation or overseeing activities of the government. To achieve this goal, the number of staff who worked for the United States Congress was increased from 2,000 in 1918 to more than 24,000 in 1991, for example.⁹⁸ Of course I am not suggesting that Hong Kong should provide a similar level of staff support to its legislature. However, it is obvious that the current status of the LegCo’s staff support is insufficient to reach the goal I just noted.

Unlike the United States Congress where committee staff members (about 2,252) and support agency employees (about 4,450)⁹⁹ are two separate groups of personnel, Hong Kong’s

⁹⁷. Ibid., p. 216.

⁹⁸. Frederick H. Pauls, “Staffing” in *The Encyclopedia of the United States Congress*, vol. 4, eds. Donald C. Bacon, Roger H. Davidson and Morton Keller (New York, NY: Simon and Schuster, 1995), pp. 1869-1878, p. 1872.

⁹⁹. Matthew C. Moen and Gary W. Copeland. *The Contemporary Congress: A Bicameral Approach*. Belmont, CA: Wadsworth Publishing Company, 1999, p.164 and pp.168-171, respectively.

Legislative Council Secretariat has a unified staff support system. In 1996, the Secretariat comprised nine divisions employing some 308 staff members. This small Secretariat is all that the LegCo's committees, panels, and members can rely on for staff support. To compensate the inadequacy of staff support to members of the LegCo, each legislator is entitled to a monthly allowance amounted at HK\$118,120 (about US\$ 15,000) for general and district office expenses. This is hardly enough if a legislator wants to hire experienced staffs or maintain a team of researchers to study policy issues of his or her interest.

It is beyond dispute that a modern legislature needs a better co-ordinated and developed system of staff support to meet its responsibilities. The case of America is instructive. In the United States, members of Congress are usually supported by more than ten employees.¹⁰⁰ Buttressing these personal resources are the specialized staffs of committees and the support agencies. As Eleanor G. Lewis and Frederick H. Pauls point out, collectively these staff help to shape legislation, keep members informed, conduct research, inquire and investigate, organize hearings, draft reports, and help legislators to conduct their day-to-day legislative activity effectually.¹⁰¹ I would argue that the United States' three-tier (personal, committee, and support agencies) staff support system is a case worth studying in greater detail. The essence of any reform effort, however, as Michael T. Ryle suggests, is to enable members of the legislature "to perform their functions as members as effectively, efficiently, and conveniently as possible."¹⁰²

Feasibility of this Proposal

Among the above-mentioned changes, the most difficult one to accomplish is amending Article 74 of the Basic Law. To do so, Hong Kong must obtain the approval from the Chinese government. On the other hand, to implement changes like strengthening the LegCo's committee and staff support systems, the formal threshold for Hong Kong to meet is lower than the one

¹⁰⁰. In 1997, as Moen and Copeland point out, on average, representatives have 17 aides while senators have 44 (Ibid., p. 159).

¹⁰¹. Eleanor G. Lewis and Frederick H. Pauls, "Congressional Office Operations," *The Public Manager* (Summer 1992):16-19, 18.

¹⁰². Michael T. Ryle, "The Legislative Staff of the British House of Commons," *Legislative Studies Quarterly* 6 (4) (November 1981): 497-519, 498.

required for amending the Basic Law.

Predictably, whenever the issue of amending the Basic Law is raised, the conservatives will object that we should not approach this possibility lightly because it would undermine the stability of the Basic Law. Moreover, as mentioned, the conservatives are satisfied with the pace of Hong Kong's political development that the Basic Law stipulates. To them, a faster pace of political development will bring too many uncertainties to Hong Kong's politics and economy. Thus, they oppose to amendments initiated by the liberals to speed up the process of Hong Kong's democratization. Most importantly, the conservatives fear that once the process of amending the Basic Law is started, China may be tempted to amend the Basic Law in its favor. The remarks of Mr. James Tien Pei-chun, a Legislative Councillor and the new chairman of the Liberal Party, typify this view. He said: "If the Basic Law is to be changed to alter the pace of democratic development in the SAR, what will be the next challenge to the provisions of the Basic Law, and who will seek to make them? Changes now to our constitution would set a precedent that could result in some unfortunate and unintended consequences in terms of other provisions of the Basic Law."¹⁰³

To these conservative concerns, Mr. Martin Lee, chairman of the Democratic Party, bluntly points out that "[i]n fact, they have virtually no confidence in the Chinese leaders, thinking that the Chinese leaders will behave so badly."¹⁰⁴ Above all, every amendment to the Basic Law, as Article 159 clearly stipulates, should not "contravene the established basic policies of the People's Republic of China regarding Hong Kong." Those basic policies, as discussed in the previous chapters, guarantee the people of Hong Kong that their way of life will remain unchanged. As there are no signs to indicate that China will willingly violate the Basic Law, one should not worry that China will amend the Basic Law in a way that will be detrimental to Hong Kong.

Some conservative politicians also feared that if the Basic Law were amended shortly after the establishment of the HKSAR, its solemnity and stability would be undermined. Hong Kong

¹⁰³. "Motion debate on direct election," *The Hong Kong Hansard*, 15 July 1998. Internet edition.

¹⁰⁴. Ibid..

may also send a wrong signal to the international community and investors that “all the provisions of the Basic Law are nothing but interim measures which can be altered at will,” which in turn, may lead them to “think that the supreme status of the Basic Law as the constitution of Hong Kong no longer exists.”¹⁰⁵ Of course I agree that the Basic Law should not be amended lightly. However, if the Basic Law were amended in accordance with the procedures set in Article 159, no one can possibly accuse the Hong Kong people for disrespecting the Basic Law or undermining its stability.

For an amendment to the Basic Law be approved by the National People’s Congress (NPC), it has to be: (1) endorsed by a two-thirds majority of the deputies of the HKSAR to the NPC and two-thirds of all the members of the LegCo, and obtained the consent of the Chief Executive; (2) after that, it would be sent to the Basic Law Committee (an organization under the NPC. Six of its twelve members are from Hong Kong) for a thorough review; (3) if the Basic Law Committee finds the amendment recommendable, it would send the amendment to the NPC for approval.¹⁰⁶ Obviously, no ill-considered and unreasonable amendment could survive these stringent procedures. In short, it is simply impossible to amend the Basic Law lightly. The conservatives’ objection to the amendment of the Basic Law does not stand the challenge of logic or facts. Despite this, just as with amending the selection method of the Chief Executive, it is not likely that Hong Kong could amend Article 74 before year 2007. However, this is something we should do no later than year 2007.

On the other hand, amending the procedures for voting in the LegCo is easier than amending Article 74. To amend the former, all it takes is the endorsement of a two-thirds

¹⁰⁵. Remarks of a pro-China conservative legislator, Mr. Ng Leung-sing, “Motion debate on direct election,” *The Hong Kong Hansard*, 15 July 1998. Internet edition.

¹⁰⁶. The full text of Article 159 reads as follows: “The power of amendment of this Law shall be vested in the National People’s Congress. The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People’s Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People’s Congress by the delegation of the Region to the National People’s Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People’s Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region. Before a bill for amendment to this Law is put on the agenda of the National People’s Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views. No amendment to this Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong.”

majority of all the members of the LegCo and the consent of the Chief Executive. Moreover, the amendment need not be approved by the Standing Committee of the National People's Congress (SCNPC). After an amendment is passed in accordance with the proper procedures, Hong Kong only has to submit it to the SCNPC "for the record,"¹⁰⁷ not for approval. As an amendment to the voting procedures can facilitate the proper functioning of the LegCo and prevent the emergence of legislative gridlock, it should be carried out as soon as possible.

In sum, the purpose of these changes is not to tip the balance of power in favor of the legislative branch. Instead, they will create a long overdue balance in the powers of the executive and legislative branches. This balance is crucial to the maintenance of Hong Kong's open and responsible governmental system. Such a system, as noted earlier, is the basis of the successful implementation of the principle of "one country, two systems."

¹⁰⁷. The full text of Annex II, section III reads as follows: "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region 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."