

Copy for Office  
NOT TO BE  
TAKEN AWAY!

*Hong Kong after 1997*

THE FIRST  
1000  
DAYS

*Kwok Nai-wang*



Hong Kong *after* 1997

THE FIRST  
1000  
DAYS

Kwok Nai-wang



Hong Kong Christian Institute



Asian Human Rights Commission

(c) 2000 by the Hong Kong Christian Institute and Asian Human Rights Commission

Material contained in this book may be reproduced. In any reproduction, an acknowledgement of the authors and the publisher would be greatly appreciated.

ISBN 962-7471-50-X

Published by  
Hong Kong Christian Institute  
11 Mongkok Road 10/F  
Kowloon  
Hong Kong  
Telephone: (852) 2398-1699 Fax: (852) 2787-4765  
E-mail: [hkci@netvigator.com](mailto:hkci@netvigator.com)  
Web site: [www.freeway.org.hk/hkci](http://www.freeway.org.hk/hkci)

Asian Human Rights Commission  
Unit D, 7/F, Mongkok Commercial Center  
16 Argyle Street  
Kowloon  
Hong Kong  
Telephone: (852) 2698-6339 Fax: (852) 2698-6367  
E-mail: [ahrchk@ahrchk.org](mailto:ahrchk@ahrchk.org)  
Web site: [www.ahrchk.net](http://www.ahrchk.net)

August 2000

Edited by Bruce Van Voorhis  
Design and layout by Bruce Van Voorhis

Printed by Clear-Cut Publishing and Printing Co.  
B1, 15/F, Block B, Fortune Factory Building  
40 Lee Chung Street  
Chai Wan  
Hong Kong

# Table of Contents

---

Foreword .....	v
Preface .....	vii
<b>1 A Precarious Beginning .....</b>	<b>1</b>
<i>The Shaking of Foundations</i> .....	1
<i>Citizens' Fleeting Exhilaration</i> .....	5
<i>The First Tests</i> .....	9
<b>2 A Less Credible Administration .....</b>	<b>14</b>
<i>Perimeters Set by Beijing</i> .....	14
<i>Tycoons' Conservative Outlook</i> .....	24
<i>A Dispossessed Civil Service</i> .....	31
<b>3 Erosion of the Rule of Law .....</b>	<b>39</b>
<i>No Respect for the Law</i> .....	39
<i>Violating the Basic Law</i> .....	45
<i>Threats to the Judicial Process</i> .....	50
<b>4 Rolling Back Democracy .....</b>	<b>61</b>
<i>Curtailment of People's Voices</i> .....	61
<i>The Rationalizations of Tung and the Tycoons</i> .....	66

	<i>Alienation of the Masses</i> .....	73
<b>5</b>	<b>Human Rights Redefined</b> .....	79
	<i>Crucial Rights Taken Away</i> .....	79
	<i>Living in China's Shadow</i> .....	87
	<i>The Problem of Self-Censorship</i> .....	92
<b>6</b>	<b>The Widening Rich-Poor Gap</b> .....	101
	<i>The Poor Get Poorer</i> .....	101
	<i>Government by and for a Few</i> .....	106
	<i>Contending Forces Absent</i> .....	115
<b>7</b>	<b>Quality People, Quality Home?</b> .....	121
	<i>Decline of Human Quality</i> .....	121
	<i>Failure in Education</i> .....	127
	<i>A Highly Polluted Environment</i> .....	133
<b>8</b>	<b>A Less-Privileged Church</b> .....	142
	<i>A Shift of the Church-State Relationship</i> .....	142
	<i>A Victim of Its Own Success</i> .....	149
	<i>The Church Reformed, Ever Reforming</i> .....	154
<b>9</b>	<b>What Shall Hong Kong Do?</b> .....	165
	<i>Forging a Practical Vision</i> .....	165
	<i>Strengthening the Hong Kong System</i> .....	176
	<i>Creating a Participatory Culture</i> .....	183

# Foreword

---

3  
9  
9  
7  
2  
1  
1  
6  
5  
1  
1  
2  
7  
3  
4  
2

Kwok Nai-wang has been a well-known voice in Hong Kong for many decades. He is a frank, open, and forthright speaker. Such speakers are a blessing in any society. For a society to look beyond its narrow limits to what is the common good, there need to be thinkers and writers who probe deeply and who express their views and ideas sharply, even provocatively. This is the true price that needs to be paid for humanly worthwhile progress and genuine non-violence. An average citizen is fortunate when they find in their society people who speak their minds, debate issues, and help forge a consensus to emerge among all issues that matter to people. In such a society, there will be less nihilism among the young and more creativity among all. Where good thinking is freely discussed, there will be less drugs, less suicides, and less overall negative behavior.

4  
2  
9  
4  
6  
5  
6  
7  
8

In this global information age, it is not possible to progress or even to survive without respecting and promoting free speech. I can bear witness to the ill effects of neglecting free speech from the example of my own country, Sri Lanka, which also was previously a British colony like Hong Kong. Sadly, this beautiful country with many resources is today very much in peril. The most important factor which has contributed to this situation is that the country's elites, who mostly come from ancient feudal and caste-ridden families, have resented free speech and have subdued it in every possible way. Having sowed silence, they have reaped an abundant harvest of violence that has now gone out of control. Likewise, Surharto's controls have

produced the sad situation in present-day Indonesia; and in Malaysia and Singapore, people speak of a crisis of creativity. The latest court verdict against Malaysia's former deputy prime minister, Anwar Ibrahim, reveals how the deprivation of freedom of speech finally affects the independence of the judiciary and the ability to have a fair trial.

Memory is an important part of a good society. This book records important events of the first 1,000 days of Hong Kong's history under the sovereignty of modern-day China. Perhaps they are the most important 1,000 days thus far for the people of Hong Kong, from the point of view of their new identity. The writer's recollections from his point of view may evoke memories in others and thus help develop a collective memory. Such collective memories are the real core of a good society. It is retained memories on which creative imagination grows and develops.

The author's new book, *Hong Kong after 1997: The First 1,000 Days*, should spark a fruitful discussion among its readers. Hopefully, it will help to improve the next 1,000 days and beyond.

Basil Fernando  
Asian Human Rights Commission  
Hong Kong  
August 21, 2000



# Preface

---

After more than 150 years of colonial rule under Britain, Hong Kong returned to the motherland of China on July 1, 1997. To date, it has been exactly 1,000 days. It is long enough for the new administration to find its own pace and tone. It is also a reasonable period of time for us to assess where Hong Kong is heading under the leadership of the new administration.

Tung Chee-hwa, the chief executive of the new government, spends much of his valuable time assuring the international community that Hong Kong is doing well since the handover despite a few minor problems. Indeed, on the surface, Hong Kong continues to thrive. If the stock market's Hang Seng Index is any indication, it is now 50 percent higher than at the time of the handover in spite of the Asian financial crisis that began three years ago.

This assessment, however, is superficial. Deep down, Hong Kong has changed a great deal after the handover. Indeed, these changes may affect the foundations on which Hong Kong has been built, at least in the past 40 or 50 years.

The intention of this book is not to denigrate the new administration, however. Rather, it tries to point out that Hong Kong is not moving in the right direction, that it is not going in a direction which will benefit the people of both Hong Kong and China, for Hong Kong's fundamentals have been shaken. This book also attempts to offer a few suggestions for Hong Kong's future development.

Much of the reference material used for this book was gathered from a variety of publications generated on a regular or annual basis by the Hong Kong government—the Hong Kong monthly digest of statistics, the Hong Kong annual digest of statistics, and the Hong Kong annual report. In addition, *The Other Hong Kong Report*, published annually by the Chinese University of Hong Kong, was also a valuable source of information.

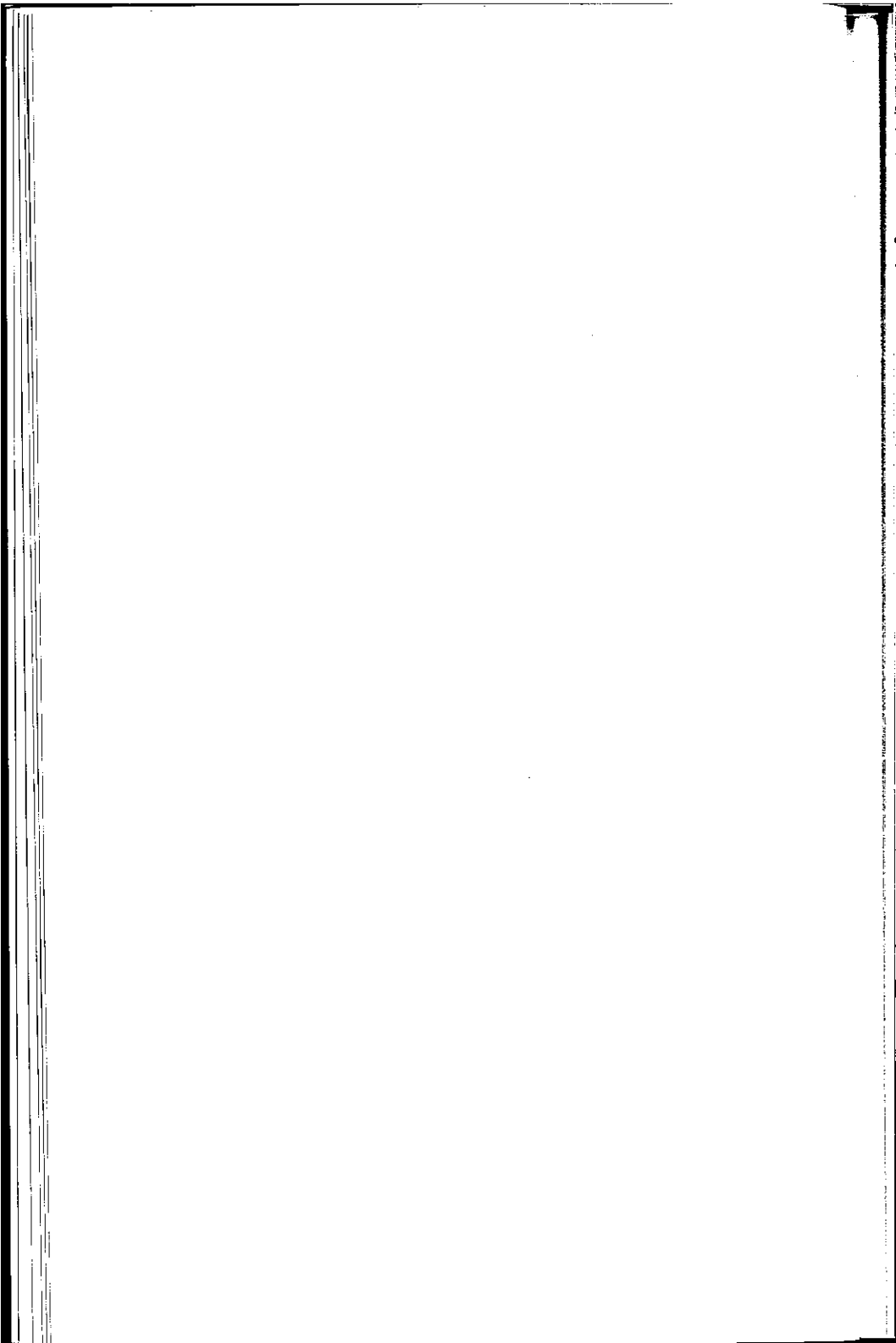
In order to complete this book, I am indebted to Brenda Tam, my long-time secretary, who ably assisted me in transferring my manuscript into the computer, and especially to Bruce Van Voorhis, who took up the responsibility of editing and producing this book.

It is my honor that this book is being co-published by the Hong Kong Christian Institute (HKCI) and the Asian Human Rights Commission (AHRC). AHRC has an excellent record of promoting human rights in Asia while HKCI remains an important witness of God's love and justice in Hong Kong.

Finally, I wish to dedicate this book to HKCI's overseas partners: Basel Mission; Berliner Missionswerk; Bread for the World; Christian Aid; The Christian Church (Disciples of Christ), U.S.A.; the Church of Scotland; the Church of Sweden Mission; the Council for World Mission (CWM); the Evangelical Lutheran Church in Bavaria; Evangelisches Missionswerk (EMW); Evangelisches Missionswerk in Sudwestdeutschland (EMS); International Ministries of the American Baptist Churches; the National Council of the Churches of Christ, U.S.A. (NCCCUSA); the Northelbian Evangelical Lutheran Church (NMZ); the Presbyterian Church, U.S.A.; the Swiss Protestant Missionary Council; the Department for Global Ministries of the Uniting Churches in the Neth-

erlands; the Methodist Church, U.K.; the United Reformed Church, U.K.; the United Methodist Church, U.S.A; the United Church Board for World Ministries (UCBWM), U.S.A.; the United Church of Canada (UCC); and the World Council of Churches (WCC).

Kwok Nai-wang  
Hong Kong Christian Institute  
Hong Kong  
March 26, 2000



# A Precarious Beginning

---

# 1

## *The Shaking of Foundations*

The destiny of Hong Kong beyond 1997 was sealed in 1984. During the 13-year transition period, China's top leaders, including Deng Xiaoping himself, tried to assure the people of Hong Kong, as well as the international community, that the handover in Hong Kong would only involve a few minor changes, such as the flag, the garrison, and the governor. In other words, everything else would continue as it had under British rule, particularly the Hong Kong system and way of life. Lu Ping, the former head of the Hong Kong and Macau Office of the State Council, even jokingly said that people in Hong Kong could continue to enjoy their horseracing and dancing after the handover.<sup>1</sup>

Indeed, between midnight of June 30 and the first hours of July 1, British flags and the colonial Hong Kong flag with Victoria Peak on the Union Jack were replaced all over the territory by the Chinese flag and the new Hong Kong Special Administrative Region (HKSAR) flag with its white bauhinia flower on a red background. Meanwhile, at around 2:00 a.m. on July 1, Hong Kong's first chief executive, Tung Chee-hwa, was sworn in by Premier Li Peng after the last British governor, Chris Patten, left by ship with Prince Charles, who represented the queen at the handover ceremony. The People's Liberation Army (PLA) marched in, and its navy sailed in hours

later.

But all of this and the picture which the Chinese and Hong Kong leaders drew were extremely misleading. Their motive was obvious. They wanted to lessen the impact of the change of sovereignty from Britain to the People's Republic of China (PRC). While Britain is the oldest practising democracy in the world, present-day China is generally considered one of the most repressive regimes in modern times. The change from Britain to China, therefore, had to be monumental.

However, as the saying goes, governments are not honorable. It is only fair to say that leaders of both the British and Chinese governments care a lot more about how to hold onto power, and thus derive ways and means to fulfill their ambitions, than they care about the general welfare of the people they are mandated to serve. Moreover, they do this often with the pretext of enhancing their national interests.

First of all, in comparison, Britain has a built-in system of checks-and-balances. The British people are given the power, not only to monitor the performance of their government, but also the power to remove it through periodic elections. In China, however, people do not have the same power. Moreover, up to the present moment, constitutionally, the Chinese Communist Party (CCP) is the only legitimate ruling party in China. Secondly, as a democratically elected government, the British government is more rational, more predictable, and the rule of law is highly honored throughout the country. As for China, its government is more irrational and authoritarian. It still practices rule *by* law. In Britain, when Tony Blair, head of the Labor Party, won the general election in April 1997, John Major, the Conservative Party prime minister, immediately gave up power, moved out of 10 Downing Street, and has since become an or-

dinary citizen. In China, when Deng Xiaoping gave up all of his official positions in 1989, mainly because of advancing age, he still held onto ultimate power in the party and government and was even considered by his successors—Zhao Ziyang, party chief from 1985–1989, and Jiang Zemin, from 1989 to the present—as the “paramount leader.”

Over the past 50 years, but especially after the riots in Hong Kong in 1967, the British style and substance of government has been extended to Hong Kong. Essentially, this is based on the rule of law, a relative clean and efficient civil service, and broad freedoms for citizens which are undergirded by a democratically elected government in London. After the handover though, these essential ingredients of governing Hong Kong are no longer underpinned in Beijing by a similar kind of system and political culture.

Historically, Hong Kong has always been very much a part of China. Recent archeological finds in some parts of the New Territories have shown that Chinese settlements were built in Hong Kong several hundred years ago (one near the new Chek Lap Kok Airport was found to be 4,000 years old). Even after the Second World War in 1945, people living in Hong Kong and southern China went back and forth. The standard of living in both Canton and Hong Kong was about the same; but since the CCP took control of the mainland, Hong Kong and mainland China have taken their own course of development. The communist government decided to close its doors and built a “Bamboo Curtain” around it so that nobody from outside could see what went on in the mainland and, similarly, nobody from the mainland could see the developments of the outside world. It also adopted a very rigid model of control by taking away practically all freedoms of the people. In addition, its economy

was planned and state-controlled.

Since then, Hong Kong has taken a very different course. The British-Hong Kong government adopted a *laissez-faire* policy, encouraging entrepreneurism and free competition. In 1974, the high-powered Independent Commission against Corruption (ICAC) was founded and soon eliminated all organized corruption in Hong Kong. In general, Hong Kong has a free press, and citizens enjoy a broad spectrum of freedoms, except the right of self-determination and the right to elect their government. It was often said during colonial rule that Hong Kong had freedoms, but no democracy. Many worry that after China's takeover many freedoms will gradually disappear as well.

Because Hong Kong has embraced its own particular path since 1949, culturally, it has moved further and further away from China. During this time, it has been greatly influenced by Western lifestyles—predominantly that of America. The emerging generation is more at home with Western or Japanese (which is semi-Western) music, movies, fast food, etc., than Chinese. Chinese living in Hong Kong have been cut off from their cultural roots and deprived of their own heritage. One vital change which is taking place because of Hong Kong's return to China is that people in Hong Kong now have a better chance to find their own cultural roots again. This must not be seen as parochial. On the contrary, until people find their own cultural roots, they will not be able to fully appreciate another culture. For instance, before I become a world citizen, I must first of all learn to become a genuine Chinese. The return of Hong Kong to China gives all Hong Kong Chinese an opportunity to be rooted in Chinese culture and history rather than floating, living superficially and as semi-Westerners.



*Citizens' Fleeting Exhilaration*

More than 95 percent of Hong Kong's citizens are ethnic Chinese. Superficially, most of them welcome the return of Hong Kong to China. At any rate, the fact that Hong Kong must go back to China was a *fait accompli*. The Sino-British negotiations regarding the future of Hong Kong were only about how China would take back Hong Kong. That explained why at the time there were only strong voices about how Hong Kong's system and way of life should be safeguarded but no significant opposition of Hong Kong returning to China; there was never any independence movement in Hong Kong.

The governments of China, Britain, and Hong Kong really staged a grand show in celebrating Hong Kong's return to China. The Hong Kong government alone spent HK\$1 billion (US\$128 million) for the occasion, and Victoria Harbor was turned into a stage. At this historic event, China was represented by President Jiang Zemin and Premier Li Peng while Britain was represented by Prince Charles and Prime Minister Tony Blair. Hong Kong's citizens were given a four-day holiday, ironically June 29 and 30 to celebrate the queen's birthday and July 1 and 2 for Hong Kong's return to China.

The people's exhilaration was temporary and superficial though. Deep down in their hearts, there were still serious doubts. After all, the general tendency is that people are reluctant to change. As this author's father put it so very well: if he was used to sleeping in a dog's kennel, he would rather not change and sleep on an emperor's bed in spite of the fact that he knows that it is far more comfortable to be in the emperor's bed. Likewise, people in Hong Kong were used to being ruled by the British, despite the fact that the whole colonial system and co-

lonial status were far from perfect. Compared with the mainland, however, Hong Kong offered them more freedoms and better living conditions. Yes, Hong Kong was rather poor in the 1950s; but since the 1960s, Hong Kong has become one of the richest cities in Asia. Affluence is what most people want. So why change? Change invariably involves risks and uncertainties.

Let us look at Taiwan. In the early 1970s when this author visited the island, he was appalled to see the repressive measures introduced by the Chiang Dynasty. There was feeble opposition. Moreover, this opposition was not well-supported because, to many Taiwanese and mainlanders living in Taiwan alike, despite the lack of freedom, they still could work hard and enjoy material comfort to a high degree. Consequently, the anti-Chiang independence movement, later taken over by the Democratic Progressive Party (DPP) in 1986, never gained wide support until the mid-1990s when Lee Teng-hui democratized Taiwan.<sup>2</sup>

People in Hong Kong always look at modern China with fear and fascination—fascination because China provides many commercial opportunities for Hong Kong and sustains its people by providing cheap clothing, food, and water—and fear because China is a large country; the sheer size of China is intimidating. China's land area is 9,500,000 square kilometers; Hong Kong's is 1,096. China's population is approximately 1.25 billion; Hong Kong's is 6.9 million. Moreover, it is ruled by the overpowering CCP, which is synonymous with authoritarian rule. China also has one of the world's largest militaries, and its national control machine is one of the most deeply rooted and pervasive in the world.

Hong Kong certainly is not used to the Chinese system of

control. In China, the people are less important than the State; the State is ruled by the CCP; the party is controlled by its Central Committee, which, in turn, is controlled by the seven Politburo Standing Committee members. Moreover, the CCP has adopted a rigid motto of "You can only survive if you agree with the supreme leader (or leaders) of the party. You will perish if you disagree." This explains the fall of Hu Yaobang and Zhao Ziyang, both of whom were the general secretary of the party when they were forced out of office by Deng Xiaoping. Consequently, in general, the people of Hong Kong are afraid of direct or even indirect rule by the CCP.

It must also be mentioned that almost half of the people living in Hong Kong fled China after 1949. They all have had first-hand knowledge of what it means to live under communist rule. Indeed, the political movements in the 1950s that ended with the Great Leap Forward were extremely frightening.<sup>3</sup> Again, the Cultural Revolution between 1966 and 1976 was equally dehumanizing.

Since Deng Xiaoping took over from the Great Helmsman in 1978, things should have gone better for the country. The 10 years of the open door and reform policies benefited the livelihood of thousands of people on both sides of the border. Unfortunately, Deng's crackdown on the students' patriotic and pro-democracy movement in June 1989 once again plunged people into exasperation and despair.

During the period of 1979–1989, many Hong Kong entrepreneurs went to the mainland to seek new commercial opportunities. Factory after factory was relocated across the border in Shenzhen in the early 1980s. Soon they expanded elsewhere on the mainland because of the ever increasing land and labor costs in Hong Kong. Whether they were successful or failed,

one key lesson they learned was that corruption is rampant on the mainland. This author has a relative who attempted to build a factory in Dong-guan. His story can be likened to the famous story of the "Three Kingdoms." In order to reach his destination, the famous Gen. Quankung had to overcome five fortresses and kill six generals. Likewise, in order to do business on the mainland, one has to go through five offices and bribe at least six officials. Many Hong Kong businessmen are worried that this kind of corrupt practice will seep through the border and come to Hong Kong after 1997.

After the celebrations and the exhilaratory mood of the handover, some sense of worry has returned to the psyche of many people in Hong Kong. Will the rule by *guanxi*,<sup>4</sup> or personal contacts, that is prevalent on the mainland replace the rule of law in Hong Kong? Will Tung Chee-hwa, the new chief executive, and his team be able to govern Hong Kong like the British did for the past 150 years? Will the chief executive be able to work with leaders of the civil service who were trained and nurtured by the British? What will China do? Will China be able to leave Hong Kong alone? Will the British fully cooperate with the new administration? Finally, the people in Hong Kong tend to use English as the official or business language. After the handover, the use of Chinese is being encouraged. How will the shift from using English to Cantonese and Putonghua affect transactions in the courts, in business, in government, etc.? As a result, people in Hong Kong have been anxious about all of these changes and uncertainties. Later this book will show that, as always, people in Hong Kong are very resilient. They have tried hard to rise to the occasion of facing these major changes. Because of many external as well as internal factors, however, they sometimes have succeeded, but other times they have failed miserably.

*The First Tests*

It did not take Tung Chee-hwa long to assemble his team in the new government. It was always Beijing's wish to have a smooth transition. Consequently, Beijing might have suggested to Tung that all top officials should get onto the through train. As an extremely cautious person, Tung definitely would want to present a picture that, despite the change of sovereignty, continuity in the territory was the order of the day. Therefore, except for the attorney general, Tung kept all top officials, which included the chief secretary, the financial secretary, and 14 policy secretaries. Since the post of attorney general was held by Jeremy Matthews, a British citizen, and since, according to the Basic Law, the SAR's mini-Constitution, all policy secretaries, deputy secretaries of departments, directors of bureaus, and the four commissioners of the law enforcement bodies have to be permanent residents with no right of abode in a foreign country, Tung took the opportunity to appoint Elsie Leung, a long-time friend and a member of the National People's Congress (NPC), as the new attorney general. Thus, the basic question at the time was not how an inexperienced new team would take over the whole government but rather how Tung and the old team would work together. Later this book will explain that, because of very diverse backgrounds and working styles, Tung and his senior officials have had a serious problem of working together as a team.

In a way, the SAR government is not Tung and the administration's approximately 20 most senior officials. Its operation relies heavily on all 190,000 civil servants.

It became an open secret in the months before the handover that the morale of the whole civil service in Hong Kong was

very low. At the time, it was primarily due to the uncertainty caused by the imminent change of the big boss, from the British Crown to the Chinese Communist Party.

A great many civil servants from the middle echelon asked for early retirement or resigned throughout the 1990s. Many local officials felt that the issue of 1997 presented lots of uncertainties for them. Expatriates were especially depressed because, after the reversion of Hong Kong to China, promotion prospects for them would become extremely limited. The problem of a brain drain within the civil service meant the loss of a lot of very valuable experience. It was under such circumstances that the new administration was put to the test time and time again during the first year of its existence.

First, it was the outbreak of the bird flu epidemic. On August 20, 1997, the Department of Health announced that a boy, infected with H5N1 bird flu virus, had died. This was the first case ever in human history. Three more cases were reported between November 28 and December 6. Instead of taking it with utmost seriousness, the department at the time still maintained that there was no evidence of human-to-human transmission and that chicken was still safe to eat. However, on Christmas Eve, the government finally came to its senses and decided to suspend the importation of chickens from the mainland. Two days after Christmas the order to slaughter all of the 1.25 million chickens in the territory was issued. Taxpayers had to foot the billion-dollar bill for overtime as well as compensation pay. It took weeks for the government and the general public to recover fully from this panic.

Then came the new airport fiasco. In just six hours between midnight to 6:00 a.m. on July 6, 1998, the operations of Kai Tak Airport were moved to the new Chek Lap Kok Airport that

had been built at a cost of HK\$160 billion (US\$20.51 billion). Then, suddenly, it was discovered that the new airport was not ready. Arriving passengers lost their luggage, and departing passengers did not know which gate to go to. The air cargo terminal was a bigger mess.<sup>5</sup> Finally, it took a whole month for the new airport to swing into full operation. In the meantime, it was estimated that Hong Kong lost HK\$2 billion (US\$256 million) per day in business or 0.2 percent of its gross domestic product (GDP) for the entire year. Yet nobody, including the chairman of the Airport Authority, the executives of the authority, nor the chief secretary, who gave the signal to open the new airport, claimed responsibility. Other than the fact that there were inadequate preparations and tests, it was later discovered that for such a big move (it was the biggest project the Hong Kong government had ever undertaken) no thorough assessment had ever been carried out.

Certainly, many senior officials were at fault. The efficiency of the civil service in Hong Kong is world-renowned. However, from the bird flu saga and the new airport blunder, one can judge that the crisis management expertise of senior officials was below par.

Why was this so? It was the same group of people who managed Hong Kong before the handover. We do not have to look very deep to locate the fact that there was a big difference. This big difference lies in the fact that when Hong Kong was under British rule the British governor had a host of experts in London on which to rely. After the handover, this protective umbrella was gone. Senior officials had to stand on their own feet.

While the administration was recovering from these first crises, the Asian economic crisis was looming. Even as late as May 1998, the Hong Kong financial secretary still maintained

that the economic fundamentals in Hong Kong were sound and that Hong Kong would be immune from this Asian economic “melt down” that began in Thailand in July 1997 and that then sped through Asia and affected Indonesia, Malaysia, and South Korea. Hong Kong also could not escape. In October 1998, the stock market, as well as the property market, in Hong Kong crumbled. The impact was tremendous. Soon the unemployment rate skyrocketed to its highest level in about 30 years. The general public blamed it all on Tung and his administration. Tung became even more withdrawn. His inability to feel for the people and to communicate with the people made him a very unpopular chief executive. In a way, Tung Chee-hwa and Hong Kong were unlucky. Before the new administration was able to stand on its own feet, serious crises exploded one after another, despite the good will and support of top Chinese leaders.

For certain, Tung and his team failed their first tests. In looking back, it may not be totally negative. Tung and his senior officials needed to learn in order to succeed. In addition to their efforts, they have to rely on the people they seek to serve and govern. They have to take the people of Hong Kong into their confidence. They have to make their government more transparent so that people in Hong Kong know what really is taking place in the community and can support the moves made by the government. Tung’s government must strive to serve the people. This is a fundamental lesson that Tung and his lieutenants must learn—the sooner the better.

### *Notes to Chapter 1*

<sup>1</sup> Horseracing is the leading gambling pastime in Hong Kong. In the 1998–1999 season, each person in Hong Kong spent



HK\$20,000 (US\$2,564) on average in betting. Not too many people in Hong Kong like dancing. Lu Ping used the phrase figuratively, meaning the capitalist way of life could continue after 1997.

<sup>2</sup> Before the March 18, 2000, presidential election in Taiwan, Lee Teng-hui was dubbed as the Father of Democracy in Taiwan. It was under his leadership that people in Taiwan could choose their president through a direct election.

<sup>3</sup> Mao Tse-tong engineered the Great Leap Forward in 1958. Everyone was encouraged to go to factories and produce iron and steel for heavy machines and armories. Many farmers were forced to leave their fields unattended. People were forced to live in communes. The movement lasted for two years. Reportedly, as many as 30 million Chinese starved to death.

<sup>4</sup> In Chinese, *guanxi* means “human relationships.” On the mainland, good *guanxi* between a government official and businessman means that one’s business will flourish regardless of the soundness of the business and its products or services. Bad *guanxi*, on the other hand, translates into obstacles to the company’s operations—again, regardless of other business factors.

<sup>5</sup> Hong Kong Air Cargo Terminal Co. Ltd. (HACTL) handles more than 80 percent of the air cargo in Hong Kong. On the first day of operations at the new airport, its highly sophisticated computer system broke down. It took two weeks to bring the air cargo flow under control and another two weeks for the general operation to return to normal.

# 2 A Less Credible Administration

---

## *Perimeters Set by Beijing*

In the past 1,000 days, there has been no hard evidence showing that the central government in Beijing has interfered in Hong Kong's affairs. In a way, Beijing did not need to because, long before the handover, China had derived a master plan of how to make Hong Kong behave without having to give instructions on the day-to-day running of Hong Kong.

First of all, since 1984, China has laid down in no uncertain terms its two basic policies on Hong Kong, namely: all efforts must be made to maintain Hong Kong's stability and prosperity, and Hong Kong must not be turned into a subversive base against China.

Regarding Hong Kong's prosperity, superficially, there are not many things China can do for Hong Kong, but it was widely reported that China had promised the tycoons in Hong Kong that China would make every effort to stabilize Hong Kong's economy and stock market. China assured Hong Kong that, if necessary, China would use its huge foreign reserves to assist Hong Kong. It turned out that this kind of assurance for Hong Kong was necessary with the onslaught of the Asian economic crisis. Because of this pledge, local tycoons and businessmen from around the world could put their hearts at rest and continue to invest in Hong Kong.

There has been no substantive evidence showing that in the past three years China has had to boost Hong Kong's prosperity. One thing which China might have done was to fence off Singapore Telecom (SingTel) in the takeover battle of Cable and Wireless-Hong Kong Telecom (CW-HKT).<sup>1</sup> For months in late 1999, intense negotiations went on between SingTel and CW-HKT in a bid to merge. When China discovered that it might not be in the best interests of Hong Kong and China to have Singapore in control of one of the largest telecommunications conglomerates in Hong Kong, it started its campaign. Within days, key directors of CW-HKT, including David Li (head of the Bank of East Asia), Sir Chung Sze-yuen (former convener of the Executive Council [Exco]), and Victor Fung (head of the Trade Development Council), used microphone politicking to say that they were strongly against SingTel's bid. Finally, after a lot of behind-the-door canvassing, Pacific Century CyberWorks, controlled by Li Ka-shing's second son Richard, made a last-minute bid and won. The elder Li is the richest tycoon in Hong Kong and is a close friend of top Chinese leaders, like Jiang Zemin and Zhu Rongji, as well as Hong Kong's chief executive, Tung Chee-hwa. After the battle, senior officials in Hong Kong spoke out and denied that leaders of China and Hong Kong had intervened. They maintained that it was purely a business deal. Nobody believed them. The more they denied, the more people in Hong Kong, Singapore, and the international community believed otherwise, that China and Hong Kong had, in fact, intervened.

China went all out to make sure that officials in Hong Kong attached great importance to maintaining Hong Kong's political stability. China itself adhered to this principle closely. Before Tung Chee-hwa took over, he had drafted a shortlist of a few candidates for the post of chief secretary, his chief aide and

the head of the SAR's 190,000 civil servants. Tung had always dreamt of using a great deal of talent from the business community to form his own team in the new administration. Finally, however, at the suggestion of Beijing, Tung appointed Anson Chan, the chief secretary of the former British administration. Chan though would have to retire at the age of 60 in early 2000. Again, however, after consulting Beijing, Tung extended her service until June 30, 2002, the day when Tung would finish his first term (1997–2002). Beijing's wish to maintain Hong Kong's stability was never clearer.

Beijing continues to look at those who do not tow the official line as enemies. This stance explains why legislators Cyd Ho and James To, representing the Frontier and Democratic Party, who wanted to travel to Beijing to explain to Chinese leaders why Beijing should refuse Hong Kong's request to reinterpret Articles 22 and 24 of the Basic Law regarding the right of abode, were not allowed to board any Beijing-bound flight. Later Margaret Ng, another legislator representing the legal profession in Hong Kong, was also barred from joining scores of Hong Kong barristers and lawyers who wanted to go to Beijing University to become more familiar with the Chinese legal system. Ng had spoken eloquently against Beijing's accession to the Hong Kong government's request to reinterpret the Basic Law in 1999.

The Hong Kong government has bent over backward to accommodate Beijing's wish to prevent Hong Kong from becoming a subversive base to destabilize the CCP's rule in China. Tung's administration has been unnecessarily hostile, for instance, to the Democratic Party, the most heavily supported political party in Hong Kong, because, not only did the party consistently serve as an opposition party, but also because many

key members of the party serve concurrently as the core members of the Hong Kong Alliance in Support of the Patriotic and Democratic Movement in China (the Alliance), which was formed in response to the violent crackdown of the patriotic and democratic movement in China in June 1989. Its fundamental stance has been greatly tempered as the years have gone by, however, from demanding the ousting of Deng-Li-Yang<sup>2</sup> to the re-evaluation of the students' requests against corruption and cronyism and the crackdown. On one occasion, Tung even suggested to Szeto Wah, a legislator from the Democratic Party and the chairperson of the Alliance, that the Alliance should stop holding candlelight vigils to commemorate the 1989 crackdown on the evening of June 4 every year.<sup>3</sup>

Since the early 1950s, there have been two thorny issues which consistently have threatened the CCP's rule: the separatist movement in Tibet and Taiwan's unwillingness to reunite with the Chinese mainland.

Fortunately, Hong Kong has never had to deal with the Tibetan issue. Taiwan, however, is an important trade partner with Hong Kong; and in terms of numbers, Taiwanese tourists are the third largest. Consequently, Hong Kong has to deal with the Taiwan issue. This is why one of the first actions Tung took when he assumed his office as the chief executive was to appoint Paul Yip as his political advisor. There was only one major responsibility for Yip though, i.e., to handle the Taiwan issue on behalf of Tung.

The basic philosophy for Tung and Yip is that, as long as Taiwan factions maintain a low-key presence, they will be allowed to function in Hong Kong. This unofficial policy was breached though in 1997 and subsequent years when a few Nationalist flags were put up on October 10 when the pro-Tai-

wan Nationalists celebrate the founding of the Republic of China by Dr. Sun Yat-sen. In no time, they were taken down by plain-clothes officers.

A real test came in the summer of 1999 when Lee Teng-hui, the Taiwanese president, openly advocated his state-to-state concept for defining relations between China and Taiwan.<sup>4</sup> As Lee's new formulation had profound ramifications, the government-funded Radio Television Hong Kong (RTHK) invited the Taiwanese representative in Hong Kong to explain what Lee meant by state-to-state relationship. This angered Beijing. The Hong Kong government was extremely nervous, and the work visa of Cheng An-kuo, Taiwan's representative in Hong Kong, was not extended when it expired in early December 1999. This incident also prompted a delay in issuing a work visa to Cheng's successor, Chang Liang-ren. Reportedly, the Hong Kong government wanted Cheng to sign an undertaking that he would not repeat what his predecessor did, namely, to openly defend the "two-China" policy.

Thus, Beijing has set strict perimeters. The Hong Kong administration has to act within these limits. As long as it does, China will not interfere. This is a reason why Tung has been extremely cautious and reserved. He certainly does not wish Hong Kong in general and his administration in particular to go beyond the boundaries set by Beijing.

Superficially, Beijing has strictly adhered to the "Hong Kong people ruling Hong Kong" principle. It did not send any person to govern Hong Kong like London did during the colonial period. In a way, it did not need to. Long before 1997, it had already built its power base—all consisting of local citizens in Hong Kong.

Early in the negotiations with Britain regarding Hong Kong's future, China had already thought of how to build its government in Hong Kong without having to infiltrate it with its own cadres. Therefore, in early summer of 1983, it sent Xu Jiatun to Hong Kong to be the head of the Hong Kong branch of the New China News Agency (NCNA).<sup>5</sup> Xu was a senior party member. His last posting was as the party secretary of Jiangsu Province.

Xu was sent to Hong Kong with only one important mission: to win friends for the CCP and to neutralize any opposing forces to the party. Day and night, Xu would dine with influential business people and community leaders in the territory. He played down the fact that Hong Kong would have to work under the CCP. His selling point was simple and straightforward: whoever contributed to the stability and prosperity of Hong Kong would be welcome by China. In a way, Xu's job was not difficult. Business and community leaders all wanted to get close to the new "masters." Xu was highly successful. Not only was he able to win many important friends for China, but he was also able to neutralize a lot of hostile feelings toward the mainland among the general public.

The crackdown of the democratic movement in China in June 1989, however, was a serious setback. But it was temporary. When Deng Xiaoping and Li Peng did not fall as predicted or expected by the people in Hong Kong, business leaders and community leaders, including many former pro-British personalities, soon rallied behind the Beijing leadership. As they often said at the time, one needs to get on with life; people should be pragmatic and forget the past. Zhou Nan, who succeeded Xu in 1990, continued to use local community and business leaders to build its own "stove" in Hong Kong.<sup>6</sup>

First, China appointed 93 Hong Kong affairs advisors and about 400 district affairs advisors in 1993. Then, of these, 30 were appointed to serve on the Preliminary Working Committee (PWC) in July of that year alongside 27 senior Chinese officials and/or party members. This became the alternative power center in Hong Kong. Later this panel expanded itself, and the Preparatory Committee (PC) was formed in January 1996. The PC consisted of 95 members from Hong Kong and 56 from the mainland. The PC then appointed the 400-member Selection Committee in 1996, and Tung Chee-hwa, a vice chairman of the PC, was eventually elected as the first chief executive by this committee in December 1996. Under these arrangements, it was incorrect for China to argue that Tung was elected by Hong Kong's representatives. Actually, it would not be too far from the truth to say that Tung was indirectly appointed by Beijing.

As Beijing's appointee, it is natural that Tung would want to put the heart of Beijing's leadership at rest. Thus, in making key decisions, Tung always looks at, or second-guesses, the likes and dislikes of Beijing's leaders.

For example, top leaders in Beijing do not like people demonstrating against them. Consequently, whenever they come to Hong Kong, Tung's administration invariably makes every effort to keep demonstrators away from them, despite the fact that these actions violate citizens' basic rights as provided in the International Covenant on Civil and Political Rights (ICCPR) as well as Hong Kong's Bill of Rights.

The Hong Kong government also acted in an irresponsible manner when an academic institution wanted to hold a seminar to commemorate the 80th anniversary of the May Fourth Movement in 1999<sup>7</sup> and wanted to invite 11 mainland scholars and



dissidents to participate and present papers, all of whom were denied entry visas. It was because among these 11 scholars, many of whom had visited Hong Kong previously, were Wei Jingsheng and Wang Dan—two of China's most well-known dissidents. The drastic action taken by the Tung administration was seen by many as unwarranted, but Tung's decision obviously was to avoid any possible embarrassment to China.

In yet another case, the Tung administration pondered whether to introduce new legislation to allow the chief executive to implement trade sanctions "upon the instruction of the sovereign government [in Beijing]." This was, indeed, controversial as Hong Kong was given independent trade status. As such, Hong Kong does not have to follow the mainland when it engages in a trade war with another country. The proposal for such a move certainly pleases Beijing, but it is at the expense of Hong Kong.

A similar issue arose when Tung's senior officials sent out feelers that they will soon consult Beijing regarding enactment of laws pertaining to Article 23 of the Basic Law.<sup>8</sup> To many observers, however, there are already adequate laws preventing Hong Kong's citizens from engaging in sedition or secession against the central government. New laws are not necessary. Even if new laws should be enacted, it is entirely up to the local administration. Officials' suggestion to consult Beijing on the matter is therefore highly inappropriate.

Thus, it is not incorrect to define Tung as a pro-Beijing leader. His appointment and his mandate have come from Beijing. In addition, his family's shipping conglomerate was once rescued by China in the 1980s.

His political life is further defined for him by the encircle-

ment of pro-Beijing business and community leaders. Leading tycoons are given access to top Chinese leaders. Li Ka-shing, the richest tycoon in Hong Kong, for example, went to Beijing to ask for assistance and revenge when his older son Victor was kidnapped. Another prominent local figure, Xu Zimin, the most senior member of the Chinese People's Political Consultative Conference (CPPCC) from Hong Kong, lambasted RTHK in Beijing rather than in Hong Kong over its often critical remarks about government leaders in both Hong Kong and Beijing.

Then there are China's official and unofficial representatives in Hong Kong. Leading businessmen from the mainland, headed by those at CITIC-Pacific and the Bank of China, have become a formidable force in Hong Kong. The People's Liberation Army has a presence in Hong Kong as does China's Foreign Ministry, and the former NCNA, now renamed China's Liaison Office, continues to work in the territory.

Since the early 1950s, the NCNA has played a key role in rallying the support of local citizens for China and its positions and policies. The NCNA was not only China's *de facto* representative in colonial Hong Kong, but it represented the CCP as well. Traditionally, the head of the NCNA in Hong Kong also served as the secretary of the CCP's Hong Kong and Macau Working Committee. Xu Jiatus in his memoirs asserted that there were between 500 and 600 cadre members under his command. Thus, the CCP has had a presence in Hong Kong for decades. Few people know the details of its operation though because it operates secretly, never in the open.

The NCNA has always played a prominent role in Hong Kong's politics too. Pro-Beijing political groups and labor organizations are very well-organized and funded. Reportedly, the NCNA performed a key role in helping to build up these

“pro-Beijing elements.” The NCNA also has taken an active part in local elections, especially in coordinating candidates, such as by ensuring that two pro-Beijing candidates will not vie for the same seat, and mobilizing people to vote for candidates favored by the NCNA.

It must be said that sometimes the NCNA also tried its best to reflect what went on in Hong Kong to China’s leaders in Beijing. When Beijing pondered who should be Hong Kong’s first chief executive, the NCNA suggested Yang Ti-liang, the highly respected former chief justice. The NCNA reasoned that if Beijing appointed a tycoon, like Tung Chee-hwa, both the general public and many other tycoons might not accept the decision. Unfortunately, Beijing finally settled for Tung because Tung was the person Beijing could trust.

The NCNA is definitely a second power center in Hong Kong. Its influence in Hong Kong’s affairs is far greater than most people imagine. A case in point was in 1998 when Hong Kong was given a chance for the first time to elect its own representatives to the National People’s Congress (NPC).<sup>9</sup> The 424 voters were handpicked by the NCNA. The person who topped the polls was no other than Jiang Enzhu, head of the NCNA in Hong Kong. Jiang was not a Hong Kong citizen. As a matter of fact, he was a senior state official. How could he represent Hong Kong, and how could he sit in the NPC, the lawmaking body which supposedly monitors the performance of the national government? Furthermore, of the 36 NPC members elected, another local official of the NCNA, its deputy director, Li Waiting, was elected as well.

In sum, Tung Chee-hwa is under tremendous pressure, not only from Beijing to whom he has to answer, but also from the NCNA and the pro-Beijing elements it represents. For certain,

business tycoons in Hong Kong also have great expectations of Tung. He was one of them before he took the office of chief executive.

### *Tycoons' Conservative Outlook*

Britain came more than 10,000 kilometers (or 6,000 miles) to establish a colony in Hong Kong for one, and only one, purpose: to use Hong Kong as a stepping stone as well as a supply base for its trade with China, the largest potential market in the world and a country full of resources. Consequently, Hong Kong was established as an *entrepôt* to primarily serve British traders.

Ever since its beginning as a British Crown Colony in 1843,<sup>10</sup> there have always been only two classes of people—the rulers and the ruled. The British traders and British civil servants who came to constitute the colonial government in Hong Kong were the rulers; the Chinese who came from the mainland to look for jobs were the ruled. The British were the masters, and the Chinese were the servants. Of course, in a more detailed analysis, among the servants, there were a few who did well. They knew the English language. They knew how to serve their masters better. They were the “compradores” or middlemen. The British had to rely on them to negotiate with Chinese traders on the mainland. These compradores were handsomely rewarded. The most successful compradores included Sir Robert Ho-tung and Sir Shousan Chau.

The separation between the rulers and the ruled was very distinct. The rulers made all of the key decisions. They could do whatever they liked. The ruled took whatever was given to them without any questions. The rulers enjoyed tremendous privileges. To reinforce this distinct separation between the two

classes, Chinese people were not allowed to live on Victoria Peak and its surroundings. Membership in the exclusive Hong Kong Club was open only to expatriates. This scenario changed somewhat by the turn of the century, however. As more and more Chinese became richer and more powerful, the British had to include them in their social life as well.

Another major change came in the 1970s when the traditional British hong, or commercial firms, were taken over by influential Chinese tycoons, notably Wharf and Wheelock Marden by Sir Pao Yue-kong and Hutchison Whampoa by Li Ka-shing. Meanwhile, another dominant British hong, Jardines, has decided to reduce its exposure in Hong Kong and is now listed on the Singapore Stock Exchange instead of the Hang Seng Index in Hong Kong, and the Hong Kong and Shanghai Bank has gone global with its head office now in London. The only formidable British hong still controlled by the British is Swire Pacific. However, despite this change of hands—from the British to local Chinese—one fundamental factor has remained unchanged, namely: Hong Kong is still controlled by its most powerful and influential tycoons. The only difference is their ethnicity and nationality.

Regarding Hong Kong's power structure, it is worth reading once again Richard Hughes's book *Hong Kong: Borrowed Time, Borrowed Place* published in 1968. According to Hughes, the most influential and powerful institution at the time was the Hong Kong Jockey Club where the rich and powerful gathered. This was followed by Jardine Matheson and Co., the Hong Kong and Shanghai Banking Corp., and then the governor of Hong Kong.

This analysis provides, indeed, an interesting perspective. One would have thought that the governor of Hong Kong would be

the most powerful and influential person in the colony. He was the chief executive. The tycoons who served on Exco, in essence the governor's cabinet in Hong Kong, were all appointed by him. He also appointed all legislators, and he had an important role in the appointment of the chief justice. Moreover, he was the commander-in-chief of the British armed forces in Hong Kong. Yet the governor of Hong Kong was always subject to the influence of the tycoons.

For instance, Chris Patten, the last governor of Hong Kong, was an extremely powerful politician from Britain. He was a personal friend of John Major, the prime minister, and Douglas Hurd, the foreign minister. When William Purves, the Hong Kong Bank chief, moved his office to London in December 1992, his Exco seat was vacated. After months of consideration, Patten appointed John Gray, Purves' successor. Yet Gray did not see eye to eye with Patten on many vital issues. He had earlier spoken against Patten's constitutional reform package. Why would Patten appoint a political foe to be one of his key advisors? It was because, behind the scenes, the tycoons had lobbied hard and pressured Patten to appoint a person who would represent their interests.

Indeed, as an *entrepôt* and as one of the liveliest commercial centers in the world, Hong Kong was, and still is, dominated by its tycoons and their executives. In fact, Hong Kong is ruled by its business tycoons; the government has only played a supportive role. Business tycoons always have had only one goal: to secure more power, more privileges, and more money. This is one reason why Hong Kong in general and the government in particular are so reserved.

Rule by tycoons seems to have changed a little in the 1970s, however. The British governor at the time, Murray MacLehose,

had aspirations to make Hong Kong into a caring community, and he pushed hard on ambitious plans to build more homes for the poor, to improve the welfare system, to emphasize health care, etc. One outcome was that nine years of compulsory education was introduced in 1978.

As for MacLehose's successors, Edward Youde and David Wilson spent a great deal of time and effort on matters related to the transfer of Hong Kong's sovereignty, and Patten was anxious to make the Hong Kong government more transparent and accountable. The influence of tycoons decreased in these years simply because the last four governors who were sent to Hong Kong had specific instructions about how to make preparations for returning Hong Kong to China.

As we look back over the past 25 years before 1997, we can say that, despite the fact that the tycoons had tremendous influence on public policies and affairs, the governors acted as buffers. They were all outsiders and had little or no vested personal interests. After the handover, however, this picture has changed drastically. Tung Chee-hwa himself is a business tycoon. As a tycoon, Tung naturally finds it difficult not to stand on the side of the rich. Moreover, because of his affluent background, it is almost impossible for him to understand the predicament of the poor and the downtrodden.

Tung fails to understand that Hong Kong is a complex metropolis. It simply cannot be run like a business conglomerate. In any business empire, decisions are often made behind closed doors; but in public administration, both transparency and accountability are of utmost importance. Tung fails to grasp this. This shortcoming is why he awarded the construction of the Cyberport to Richard Li, the younger son of Li Ka-shing, without any open tenders. Consequently, when 10 other property

tycoons marched to Tung's office to protest, Tung promised them a telecoms policy in their favor!

When Tung made key appointments, his first consideration was whether the appointees were like-minded people, i.e., whether they were conservative in their outlook. This was fully reflected in his appointment of all 11 Exco members and seven new members of the Law Reform Commission. This guiding principle was also evident when Tung appointed Leung Chun-ying, a chartered surveyor heavily involved in the property market, to be responsible for mapping out long-term housing policy, an appointment that caused an uproar in Hong Kong. Yet Tung failed to see that there was a serious conflict of interest in this decision.

Tung only uses a very small circle of people that he has come to know personally. This predilection for familiar associates explains why he brought the general manager of the Oriental Group, Tung's family business, to be his special assistant. He also uses the same driver—rather than a government driver—and lives in the same apartment as he has for the past two decades or so rather than Government House, the residence of the British governors.

Tung's conservative mindset is rooted in his family's background. Tung's father, Tung Ho-yung, was a shipping magnate; and like his father, Tung is a Confucian disciple. He is both authoritarian and kind. He holds onto the "father knows what's best for the children" dictum. He believes children should be obedient and do whatever they are told or take whatever they are given. As a tycoon, Tung sits in an ivory tower, rather isolated from the real needs of the people. He makes decisions mainly advantageous to the rich and powerful and believes that once the rich get what they want they will funnel something to



the poor. Tung does not genuinely see the social role of the people at the bottom. Tung ignores the fact that Hong Kong is constituted by nearly seven million citizens who are the masters of the land, so to speak. It is the responsibility of Tung's administration to serve the people. Since Tung shows little or no respect for the community's ordinary citizens, his entire administration follows his lead.

Moreover, Tung does not like people challenging his decisions. He does not want to get too close to the press and Legislative Council (Legco). The more he withdraws, the more people fail to understand him. Consequently, tremendous gaps exist between him and the people. Furthermore, since Tung does not like opposition, subconsciously, he wishes he could adopt the mainland model in which everything is under the control of the party leadership. He believes that when everything is under his control it will be easy for him to govern. This is basically why, under Tung, it is difficult to make genuine progress in advancing the rights and freedoms of the community's citizens.

Consequently, Tung wants to create an executive-led and strong government. During the past 1,000 days, he has introduced many policy initiatives, especially related to housing, health, education, and social welfare. He has begun the long process of reform of the entire civil service. He has abolished the Urban Council and Regional Council. He has launched ambitious projects, like construction of the Cyberport on the southern coast of Hong Kong Island, a Silicon Valley in Tsuen Kwan O in the eastern part of the New Territories, and a Disney theme park on Lantau Island. He wants to make Hong Kong a regional center for information technology, Chinese medicine, and fashion. He also wants to turn Hong Kong into the most cosmopolitan city in Asia, enjoying a status similar to that of

New York in North America and London or Paris in Europe.

Unfortunately, many of his ideas have not been well-thought out. He often has bypassed senior officials on his staff and, therefore, has made them very annoyed. His inability, or unwillingness, to communicate explains why Financial Secretary Donald Tsang in his 2000–2001 budget laid out a philosophy that contradicted Tung's. This lack of consultation also explains why Tung's policy initiatives have often backfired. For instance, he suggested that in order to solve the city's housing problems 85,000 flats per year should be built over the next few years. This immediately caused the property market to tumble. On average, a residential flat today is worth only 60 percent of its value in the summer of 1998. Moreover, in dealing with the economic crisis, Tung decided to cut welfare expenses. In addition, many new recruits in the social work field now receive 30 percent less than new social work recruits previously earned.

Since Tung does not allow himself and his senior staff enough time to think through his proposals, he has to conduct "politics by deception." Since he does not have a sound reason to support his decisions, he and his staff often have to invent a rationale. An example is the right of abode issue. In order to justify his decision to ask the Standing Committee of the National People's Congress to reinterpret the Basic Law regarding right of abode in Hong Kong, the Tung administration claimed that if the government followed the ruling on January 29, 1999, of Hong Kong's highest court, the Court of Final Appeal, more than 1.67 million mainlanders would flock to Hong Kong in the next seven to 10 years to live. This figure was vehemently challenged by almost every academic.

Overall, Tung's administration has become increasingly more and more conservative. This is primarily due to the "China fac-

tor” and Tung’s tycoon mindset. What Tung’s administration sorely needs now, therefore, is not better packaging, as so many people have suggested, but rather Tung needs to alter his perception of governing the community and make a U-turn, i.e., he must move from alienating the masses to taking the people of Hong Kong into his confidence. After all, his government should not be by a few and for a few. In modern times, it is more difficult for any government to avoid being for all people and by all people.

### *A Dispossessed Civil Service*

When visitors come to Hong Kong, they are often impressed by the efficiency of the immigration officers who only take an average of three minutes to admit a visitor (for a permanent Hong Kong resident only a minute is required). This efficiency was also evident during an incident in August 1999 when a China Airlines jumbo jet overturned on the runway because of extremely strong winds. Within three minutes, the rescue team arrived; and in no time, the first passengers were led to safety. Because of their efficiency, a bigger catastrophe was avoided. Overall performance of Hong Kong’s civil service is world-renowned. In fact, Hong Kong’s success story has been built on four pillars: a relative clean and effective civil service, the rule of law, freedoms granted to the city’s entrepreneurs and citizens, and people’s hard work and creativity.

It must be highlighted that the civil service is the backbone of the Hong Kong government. Inevitably, after being in existence for more than a century, it needs a lot of rethinking and reform as does any institution.

First of all, the civil service has expanded too rapidly in the 1990s. Just before the handover, the strength of the entire civil

service was 180,000. Now it has grown to more than 190,000. The lack of industriousness—i.e., laziness—of some civil servants has also been well-documented. Civil servants with outdoor duties work considerably less than they are expected. In a Mongkok Street market, for instance, groups of hawker control officers gather around talking most of the time instead of walking their beats. Meanwhile, overnight sewage workers have been found spending their time gambling, and it took a Highway Department crew a whole day to clean 1.6 road signs and 24 meters of railing (a non-civil servant in a private firm does 20 times as much, says the Audit Department). Furthermore, because of Hong Kong's rapid development, senior civil servants often fail to be well-versed in new advances in quickly changing fields, such as genetic engineering, information technology, etc. Part of the reason for their ignorance is that they do not bother to keep up with the pulse of the city's citizens, and consequently, there is a mismatch between the thinking of government officials and the aspirations of the people. The housing chief, for example, wanted people to own 70 percent of the city's public housing flats. Yet according to a government survey, only 20 percent of the households that qualify for public housing want to buy a home over the next decade.

In addition to these issues, more and more senior civil servants' credibility and ethics has been called into question in recent years. The wife of Huang Ho-sang, the head of Inland Revenue, operated a tax return firm, and Huang himself dealt with cases submitted by his wife's business. He was promptly asked to retire. Similarly, an assistant police commissioner, Li Ming-kwai, broadcast Beethoven's *Fifth Symphony* to drown out the noise made by protesters in Hong Kong during the visit of Jiang Zemin on July 1, 1997, during the handover. The Police Complaints Council looked at the case and found that Li's

actions contravened Hong Kong's Bill of Rights.

For certain, there are many problems for the civil service to tackle. In a way, Tung's administration has tried hard to address them. For instance, in order to reduce overstaffing, 10,000 posts will be cut in the next three years, and a voluntary retirement scheme has been developed. Generous payments will be offered to entice civil servants to quit, but reducing the number of civil servants does not really mean the problem of overstaffing, the problem of the low performance of the civil service, will be solved.

In addition, there is a general tendency for the Hong Kong government to privatize many of its services. It has done so with the management and maintenance of public housing estates that are part of a special home ownership program. It is planning to do the same with other public housing estates, water treatment facilities, the postal service, etc.

Tung's administration is also eager to slash the benefits of civil servants. It is planning to reduce the salaries for new recruits. Moreover, they will no longer enjoy pension benefits upon their retirement; instead, they will be asked to join a new provident fund scheme. Furthermore, annual salary increments and promotion will soon be linked to the evaluation of performance during the year. The government will also do away with the iron rice bowl concept.<sup>11</sup> All new recruits will have to serve a three-year probation period to be followed by a contract of three years before they are given permanent status.

All of these measures, however, are negative responses. It is doubtful that they will be able to bring about the desired results.

What Tung's administration needs, first of all, is a group of

highly experienced and motivated senior civil servants. This is what is lacking at the moment. Many capable people have unfortunately left the government to work for semiofficial agencies or organizations. The Trade Development Council, for example, is now headed by Michael Sze, the Kowloon Canton Railway by Yeung Kai-yin, Hong Kong Exchange and Clearing by Kwong Ki-chi, the Mandatory Provident Fund Board by Rafael Hui, and the Airport Authority by Billy Lam Chung-lun. These people were some of the brightest and most senior administrative officers in the government. It is widely believed that they wanted to leave the civil service because their new jobs offer them double, or sometimes triple, what they earned in the government, but it might also be true that the Tung administration has purposely put some of these people in key semiofficial positions so that eventually these agencies will not criticize his administration. This is also why former civil servant Lai Nin was appointed ICAC commissioner and Beatrice Tai, another former civil servant, was made ombudsman. In the past, to maintain the independence of these commissions, these posts were traditionally filled by non-civil servants. In a similar fashion, this pattern was repeated to choose someone for the newly created post of tourism commissioner, which was filled by a former director of commerce, Mike Rowse.

What Tung and his most senior officials need to do to revamp the whole civil service is to adopt a more positive approach. People perform better if they are motivated. Consequently, Tung needs to concentrate on how to motivate the officials who are directly under him so that, in turn, these officials are in a better position to do the same for their subordinates. Motivation is about creating a general atmosphere of acceptance and encouragement, a sense of trust and appreciation. Presently, Tung has failed to provide an environment that em-

powers his staff.

In short, in the past decade or so, the civil service has expanded too rapidly. It has become too large and too cumbersome. The way to deal with the problem is to strengthen the civil service's supervisory system. If civil servants in Hong Kong today are viewed as being lazy, it is the result of the inadequacy of the government's monitoring mechanism. This deficiency has become clear in recent months in which several buildings under construction have been found to have serious defects in their pilings. As a result, two blocks of about 30 stories each have to be demolished at a cost of HK\$250 million (US\$32.05 million). The construction company has blamed its subcontractor. Senior officials from the Housing Department have also washed their hands. How could it be possible?

The overall morale in Hong Kong's civil service is at its lowest ebb. Many middle-level officials are thinking of leaving. Out of the seven most senior officials in the Education Department, the director will soon be transferred. Four of the six remaining senior staff members will either retire or resign within the next several months. The morale failure is not only due to a lack of promotion prospects but also, to many, because the sense of achievement and public service in the minds of Hong Kong's civil servants has long disappeared. Even the most senior officials think that their advice is not sought or heard by those at the pinnacle of the administration.

Tung needs to work hard to assure his senior officials that he respects their views and that their services are highly valued. This is the only way Tung can attract good, talented people to join the civil service and to inspire current civil servants to concentrate, work hard, and release their creativity. In undertaking any measures to reform the civil service, Tung must consult

civil servants at all levels. Without their participation, any attempt at reform will not bear fruitful results.

Hong Kong needs an effective and dependable civil service. Without such a foundation, the administration on the whole will remain reserved, and its performance will be substandard. It is worth remembering that one of the pillars of Hong Kong's success in the last few decades has been a basically honest and efficient civil service. Hong Kong's achievements and prosperity of the past can easily be reversed if its civil service becomes known for the opposite characteristics.

### *Notes to Chapter 2*

<sup>1</sup> Cable and Wireless is a British conglomerate that controlled Hong Kong Telecom, one of the largest corporations in Hong Kong. Cable and Wireless wanted to withdraw from Hong Kong and tried to sell Hong Kong Telecom; but because of the sensitivity of the telecommunications business, China and Hong Kong obviously did not want it to be controlled by Singapore, and hence, the corporate battle ensued over its ownership.

<sup>2</sup> China's top leaders Deng Xiaping, Li Peng, and Yang Shangkun were responsible for ordering the crackdown in Tinnemen Square on June 4, 1989.

<sup>3</sup> Year after year since June 4, 1989, the Alliance has continued to hold candlelight vigils on the evening of that tragic night that have been well-attended by the people of Hong Kong. Between 30,000 and 150,000 local citizens have gathered each year to commemorate one of the darkest moments in modern Chinese history.

<sup>4</sup> According to Lee, Taiwan is a sovereign nation. As a result, the China-Taiwan relationship must be defined in terms of



a state-to-state relationship: China should respect Taiwan.

<sup>5</sup> The NCNA's functions far exceed that of a news agency. It has been, in fact, China's *de facto* representative in Hong Kong since the 1950s. At its peak, it had more than 1,000 staff members and occupied two buildings on Queen's Road East. It also opened three branch offices in Kowloon and the New Territories.

<sup>6</sup> During the transition period between 1984 and 1997, what Britain and Hong Kong were most afraid of was China's intention to build an alternative power base, coined the "second stove," in Hong Kong.

<sup>7</sup> The May Fourth Movement marked the beginning of modern China. On May 4, 1919, students from Beijing University took to the streets to denounce Chinese envoys for agreeing to transfer Shangdong Province from the Germans to the Japanese. Later it became a modernization movement in China. This movement advocated that democracy and science were the only two things which could save China.

<sup>8</sup> Article 23 of the Basic Law reads in full: "The HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

<sup>9</sup> Before 1997, certain personalities in Hong Kong were chosen by Beijing as NPC representatives and included in the delegation from neighboring Guangdong Province. After 1997, however, Hong Kong has its own delegation.

<sup>10</sup> The British occupied Hong Kong during the First Opium War in 1841, and Hong Kong Island was ceded to Britain by the Treaty of Nanjing in 1842. The Kowloon Peninsula (south of Boundary Street) was also ceded to Britain in 1860 by the first Beijing Convention. By the second Beijing Convention in 1898, the New Territories and 236 islands were leased to Britain for 99 years. It is this latter treaty that set the stage for the transfer of Hong Kong's sovereignty in 1997.

<sup>11</sup> Presently, it is next to impossible to fire a civil servant. Hence, a civil servant holds a non-breakable, iron rice bowl and knows that they will most likely not lose their job and salary.

# Erosion of the Rule of Law

---

# 3

## *No Respect for the Law*

The rule of law is an important pillar in any modern society. The rule of law can safeguard citizens and their basic rights. It can prevent excessive exploitation and bullying of the weak by the strong and powerful. Finally, it can promote people's participation and enhance overall social development.

Many people attribute Hong Kong's economic miracle in the 1980s to the inception of the Independent Commission against Corruption (ICAC) in 1974. The ICAC represents the enforcement of the rule of law. It dispels the traditional Chinese notion that "*guanxi*"—people's relationships—rules. Before the mid-1970s, life in Hong Kong was dictated by *guanxi* established on monetary terms. When you conducted business privately or with the government in those days, you literally had to buy your way to get anything done. This author has a distant relative who operated a Chinese restaurant in the 1960s. One day a fire broke out in the kitchen. When the firemen arrived, he was asked by one of their representatives to pay. After tough negotiations, the sum was agreed; only then would the firemen begin to put out the fire!

After a long process of advocacy and public education, the rule of law became the order of the day in the 1980s. It was not easy. The colonial government led the way and did a good job,

but the new administration of the HKSAR seems to have a weaker sense of the rule of law.

The SAR government is headed by Tung Chee-hwa whose background is business. As a business tycoon for 25 years, he has had to deal with a host of other business tycoons. Naturally, he has treasured an amicable relationship with these business friends. For him, the rule of law would not apply to his business friends, for their business deals have to be based on mutual trust and *guanxi*. It would only apply to his employees. To him, the rule of law equals "law and order," i.e., a set of strict rules for his subordinates only.

Tung appointed Elsie Leung, a member of the National People's Congress (NPC), to be his secretary of justice, the only important vacant position in the government after the handover. Leung is a solicitor. In Hong Kong, there are two streams in the legal profession—solicitors and barristers. The former are members of the Law Society while the latter belong to the Bar Association. The major functions of solicitors are conveyancing and divorces and other settlements as well as legal paperwork. The most important function of barristers is to act at the instruction of solicitors and represent their clients in the higher courts in civil litigations or criminal cases.<sup>1</sup> They give legal opinions. As a solicitor, the HKSAR's secretary of justice lacks experience in representing clients in the higher courts and is therefore less exposed to the whole legal system. Her background explains why she has seldom argued on behalf of the government for government cases, unlike her immediate predecessors Jeremy Matthews and Michael Thomas.

Her lack of legal as well as political experience also explains why her handling of the Sally Aw case in March 1998 was so poor. In this case, Sally Aw and three senior executives of the

*Hong Kong Standard*, an English newspaper, were discovered by the ICAC to have purposely and consistently inflated the newspaper's circulation figures in order to increase advertising revenues. The case was passed to the director of prosecution. It was widely believed that the director concurred with the ICAC that all four should be prosecuted. Finally, however, Elsie Leung decided to overturn the decision made by the ICAC and her immediate subordinate, the director of prosecution, by charging only three executives of the *Standard*, but not Aw, the owner. It was correct for Leung to claim that it was within her right as the secretary of justice to make a final decision on any case which is of public interest, but it was very sad that she completely misjudged the impact of such a decision in this instance.

Because of a public outcry, she was summoned to the Legislative Council (Legco) to explain her case. She explained that it was difficult to convict Aw (the courts did convict the other three executives), and moreover, she had made her decision because of the public interest, which to her was the fact that the *Standard* was a well-established newspaper. By convicting Aw, Leung argued, it would send a wrong signal to the business community. It also would not help to promote the government's intention to safeguard freedom of the press during this sensitive period of time in Hong Kong less than a year after the handover.

The general public, especially the legal profession, found Leung's arguments unconvincing. Many suspected that the real reason why Aw was not prosecuted was because Aw is a member of the Chinese People's Political Consultative Conference (CPPCC) on the mainland and/or because Aw is a close family friend of the chief executive. As a matter of fact, Tung Chee-hwa was a member of her board before he was chosen as Hong

Kong's chief executive (Tung's younger brother is now a director, succeeding Tung himself).

Margaret Ng, the representative of the legal profession in Legco, then sponsored a no-confidence motion against Leung in the legislature. Because of Tung's hard canvassing, the vote was barely defeated. Since then, many concerned people in Hong Kong have suggested that this administration has two sets of laws: one for the rich and powerful and the other for ordinary citizens. Because of this case, many from the international business community have openly criticized the Hong Kong government for nullifying Hong Kong's level playing field. Despite all of this criticism though, Tung extended Leung's service for two years!

Then came the case of Xinhua or the New China News Agency (NCNA). Emily Lau, an outspoken and popular legislator, had asked the NCNA to see the personal file that the NCNA kept on her. The NCNA showed their usual disdain for all "democrats" by refusing to reply. Lau then took her case to the privacy commissioner. The commissioner found that the NCNA had, in fact, broken the Privacy Ordinance by not replying to Lau's inquiry within the stipulated 40 days. He then passed the case to the secretary of justice for action. Unfortunately, the government decided against prosecution. When questioned by the international media, the chief executive shot back by saying that the NCNA had only committed a technical mistake.

Tung and his secretary of justice have thus shown obvious disrespect for the law. They have failed miserably by not protecting the rule of law, which says very plainly: everybody is equal before the law. No one, including the chief executive, the rich, or China's representatives in Hong Kong, can be above the law.

The most recent controversy in Hong Kong involves a piling scandal in two high-rise residential blocks built for the Housing Authority. Of the 36 piles supporting these two buildings, 29 were not sunk to the required depth—one was 20 meters short, six were 10 meters short, three were of substandard material. Only four reached the correct average depth of 40 to 45 meters. As a result, the government has to demolish both blocks. The demolition will cost HK\$29 million (US\$3.72 million), HK\$186 million (US\$23.85 million) must be spent for building them again, and an additional HK\$35 million (US\$4.49 million) has to be allocated for various forms of compensation, bringing the total bill to HK\$250 million (US\$32.05 million). Many believe that this scandal, reported in March 2000, is merely the tip of the iceberg. Obviously, this shoddy construction occurred because there is a serious monitoring problem within the government. However, it has now been discovered that the Housing Authority is exempt from the Building Ordinance and, therefore, from the usual checking and monitoring by the Building Department.

This incident underlines one of the root problems of the Tung administration, for Tung has consistently refused to create enough check-and-balance mechanisms in the governmental structure to ensure that his administration acts within the law.

In a way, the administration's job of safeguarding the rule of law is not easy. One of the major problems involved is that the legal system in Hong Kong is based on common law—the legal system found in Britain—but China's legal system is very different. In Hong Kong, a person is presumed innocent until proven guilty by the authorities. In other words, the burden of proof lies with the authorities. On the mainland, however, once a suspect is arrested, he has to prove his innocence. Because of

these vast differences between the two systems, the SAR administration has to ensure that the legal system in Hong Kong remains intact and is not allowed to drift toward the Chinese legal system. Unfortunately, Tung and his secretary of justice do not view this as an important task.

This indifference is evident in an incident involving a law firm from the mainland that was found conducting business in Hong Kong without being properly registered in the SAR. The Law Society questioned the government, which confirmed that any practicing lawyer in Hong Kong has to be duly registered with the Law Society, and the government promised to investigate. Many people in the legal profession though believe that the Hong Kong government in the end is not ready to outlaw this Chinese law firm, which belongs to the Judicial Department of the central government.

Unfortunately, this example is not an isolated illustration. In 1999 alone, there were two cases indicating that the Hong Kong government is unwilling to stand up to mainland authorities over Hong Kong's legal jurisdiction. In short, the administration is not aggressive enough in its efforts to protect the integrity of the legal system in Hong Kong.

The first case concerned a gangster nicknamed "Big Spender." He and his gang kidnapped the eldest son of the richest tycoon in Hong Kong, who decided not to report the crime to the SAR police and paid more than HK\$1.3 billion (US\$166 million) in ransom.<sup>2</sup> The Hong Kong authorities knew though about this crime but took no action. Finally, the tycoon went to Beijing and complained. The Beijing authorities set up a massive task force within the Public Security Bureau (PSB). In no time, "Big Spender" and other related gangsters were caught, tried on charges of firearms smuggling, and executed.



The second case involved a mainlanders who came to Hong Kong, murdered five women, and took their money. After months of hiding in China, he was also arrested, tried, and executed on the mainland.

These cases prompted people to ask the SAR administration, Why were these alleged criminals not extradited and brought to justice in Hong Kong since the victims were citizens of Hong Kong?

Throughout the past two-and-a-half years, the overall impression which the administration has given to the public is that, when the government talks about the rule of law, it applies basically to the community's citizens. The administration, however, will honor the rule of law only if it is convenient; otherwise, they will circumvent the law. If the government does not have the will to abide by the law, how do they expect their citizens to do so? Under Tung, the rule of law has been diluted because of the new administration's lack of respect for the legal system of which it is the guardian.

### *Violating the Basic Law*

An even more important sign revealing the new administration's minimal level of respect for the rule of law lies with its repeated violations of the Basic Law, the mini-Constitution of the SAR, that was promulgated by China's National People's Congress on April 4, 1990. It is, therefore, worthwhile to highlight a few of these incidents.

First of all, there was the establishment of the controversial provisional legislative council. In a way, the establishment of this "illegal" legislature had little to do with Tung's administration. It was a decision made by China. China did not like the

manner in which the former Legco was constituted according to Chris Patten's reforms.<sup>3</sup> China's disbanding of the last legislature instituted under the British definitely disrupted Hong Kong's smooth transition. More importantly, the way it brought forth the provisional legislature was against the Basic Law, for the Basic Law does not provide for the establishment of a "provisional legislative council" (it would have been legitimate, however, if China had called for general elections to form a new legislature). The provisional legislature also violated the Basic Law in another aspect, namely, its membership. The Basic Law stipulates that the first SAR legislature must be constituted with 20 directly elected members from the geographical constituencies, 30 indirectly elected from the functional constituencies (or professional and labor groups), and 10 chosen by the Election Committee (cf. Article 68 of the Basic Law and the decision adopted by the NPC on April 4, 1990). The provisional legislative council members, however, were all elected by the Selection Committee composed of 400 appointees—the same body that chose Tung Chee-hwa as the SAR's first chief executive.

Tung Chee-hwa could have used his access to China's top leaders to persuade them not to go ahead with the establishment of the provisional legislative council. No, Tung did not see fit to give this kind of advice to China. Moreover, deep down in his heart, he would prefer to work with the provisional legislature, constituted as it was with all pro-China personalities, than with the last Legco under colonial rule, which was composed of 24 pro-democracy members in the 60-member body. Tung knew very well that the pro-China personalities would support him while pro-democracy leaders would monitor what he did and criticize him if they disagreed with his policies. Indeed, in no time, Tung used the provisional legislature

to pass legislation to suit his style of government by asking it to overturn five crucial labor laws<sup>4</sup> and to enact a new Public Order Ordinance as well as a new Society Ordinance, effectively regulating the voices of dissent in the community and immobilizing labor union activists.

Second, the new Society Ordinance and the new Public Order Ordinance, which Tung pushed the provisional legislature to enact at 3:00 a.m. on July 1, and the repealing of the five labor laws four weeks later contravened the Basic Law. Article 39 of the mini-Constitution states unequivocally that "the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and international labor conventions as applied in Hong Kong shall remain in force." They should never be abolished. The five labor laws were enacted in line with international labor conventions. On the other hand, the new Public Order Ordinance, as well as the new Society Ordinance, are inconsistent with the ICCPR, for these two new ordinances greatly curtail citizens' freedom of speech and freedom of association.

Third, the SAR government, obviously eager to please China, has suggested that China's representatives working in Hong Kong, such as those in the Liaison Office (formerly the NCNA), officers and troops of the People's Liberation Army, and employees of the Hong Kong office of China's Foreign Ministry, should be exempted from Hong Kong's laws. (If this proposal eventually is pushed through and becomes law, the SAR government, as a representative of the central government ruling Hong Kong, can also easily claim exemption!) This directly contravenes Article 22 of the Basic Law, which states in part: "All offices set up in the HKSAR by departments of the Cen-

tral Government, or by provinces, . . . and the personnel of these offices shall abide by the laws of the Region." Because of strong opposition, the government has put this so-called "Adaptation of Laws Bill" on hold. Despite widespread criticism, however, the secretary of justice has pledged to pursue the passage of this legislation at a later date.

Fourth, by not bringing "Big Spender" and Li Yu-hui, the man who killed five women in Hong Kong, back for trial, the Hong Kong government has not only misinterpreted Article 7 of the Chinese penal code but has also violated Articles 18 and 19 of the Basic Law.

Let us examine Article 7 of the Chinese penal code. It stipulates that all Chinese nationals who commit a crime outside of Chinese territory shall be tried in China. Does this include Chinese nationals, either residents of the mainland or of Hong Kong, who commit a crime in Hong Kong? The answer is NO. The Chinese penal code provides for exceptions. Hong Kong is an exception. Hong Kong is not subject to the Chinese penal code.

In addition, Article 18 of Hong Kong's Basic Law establishes distinct parameters: "National Laws shall not be applied in Hong Kong except for those listed in Annex III to this Law" (Annex III pertains to the national capital, anthem, flag, etc.; the Chinese penal code is not included) while Article 19 articulates the general point that "the Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. The courts of the Hong Kong SAR shall have jurisdiction over all cases in the Region."

Thus, Li, though a mainlander, should have been tried in Hong Kong as one charged with committing a serious crime in the SAR. By acceding its jurisdiction to mainland authorities, Hong

Kong officials have done a great disservice to their own community. By misinterpreting the Chinese penal code, the Hong Kong government has jeopardized the legal protection of Hong Kong's citizens. It is not implausible to speculate that one day in the future when a Hong Kong citizen commits a petty crime in Hong Kong that the Chinese authorities may apply Article 7 of the Chinese penal code and bring him or her to justice on the mainland.

Fifth and finally, there is the right of abode issue. On January 29, 1999, the Court of Final Appeal (CFA) delivered a landmark ruling on this controversy. The ruling restores the right of abode to every mainland child who has a parent with Hong Kong resident status, regardless of whether the child was born in wedlock and/or before his or her parent obtained residency status in Hong Kong.

Unfortunately, the ruling immediately drew criticism from mainland authorities who insisted that the CFA had no right to interpret the Basic Law, especially when the court failed to consult mainland authorities about the legislative intent of Article 24 that was at the center of the debate. Thus, the CFA was accused of usurping the power and authority of the Standing Committee of the National People's Congress in Beijing.

Ostensibly, the Hong Kong government was shaken by the reaction of the mainland authorities. In order to rectify the situation, it decided to orchestrate a plan which would reassert the power of the NPC Standing Committee. The end product of this plan, as revealed by the Hong Kong government on May 18, 1999, was to ask the Standing Committee of the NPC to "reinterpret" Articles 22 (Section 4) and 24 (Sections 2 and 3) of the Basic Law. We shall discuss this decision by the government that undermines the judicial independence of Hong Kong

later, but we wish to immediately point out that the government had no legal basis for taking such action. In fact, it contravenes Article 158 of the Basic Law!

The second paragraph of this article reads: "The SC/NPC [Standing Committee of the NPC] shall authorize the courts of the HKSAR to interpret on their own, in adjudicating cases, the provisions of this law which are within the limits of the autonomy of the Region." Since right of abode has nothing to do with defense and foreign affairs, the areas over which Hong Kong defers its autonomy to Beijing, it certainly is within the power of Hong Kong's CFA to interpret Article 24.

Moreover, there are no provisions in the Basic Law that stipulate that the chief executive has the power to ask the NPC Standing Committee to interpret the Basic Law. Article 158 says in no uncertain terms that only the courts in Hong Kong can initiate the process and that the Standing Committee of the NPC shall consult the Basic Law Committee prior to giving its interpretation. The SAR government was wrong in its direct approach to the NPC Standing Committee. By directly asking the NPC Standing Committee to interpret the Basic Law, the SAR government not only broke the law, but it also greatly undermined Hong Kong's autonomy.

### *Threats to the Judicial Process*

The judiciary is the most important vanguard of the rule of law. In Hong Kong, there has been a long tradition of judicial independence. Most of the judges have been expatriates who have come from the British Isles, Australia, or New Zealand. They seldom mixed with the local people. Because of this distance, they were highly respected and were considered impartial and trustworthy.

The colonial administration seldom tampered with the judiciary; all judges were appointed for life. They were paid with taxpayers' money, yet they maintained their own salary and benefit structure. They were not considered civil servants and, hence, not subject to civil service regulations.

However, after the handover, the new administration seems to be less respectful of the judiciary. It was the chief executive who persuaded Andrew Li to become the first chief justice after the handover. Li was highly respected as a senior counsel, but had little or no experience in the judiciary or high government office. It was rumored that the chief executive and his secretary of justice met with the chief justice often, especially during the CFA ruling in January of 1999 and the NPC Standing Committee's reinterpretation in June of that year. This contact was intuited as an attempt to exert pressure on the chief justice.

When the Court of Final Appeal handed down its right of abode ruling, the administration held no particular opinion about it. Its official position was that it respected the court's ruling; but when China expressed its displeasure through its five legal experts,<sup>5</sup> Tung and his aides thought that it was serious enough for them to think of a way to overturn the court's ruling in order to put the hearts of China's leaders at ease. This is what it means when one says that, when Beijing sneezes, Tung and his administration catch a cold.

First, in order to overturn the CFA's ruling, Tung's government mounted a public relations campaign. It purported that Hong Kong could in no way accept the tremendous social pressure and burden resulting from the CFA ruling, for the CFA ruling, the government claimed, would encourage about 1.67 million new immigrants to swamp Hong Kong—692,000 in

the next three years and 983,000 within the next decade. Furthermore, in order to accept so many new immigrants from the mainland, Hong Kong would have to spend an additional HK\$701 million (US\$89.87 million) on housing, education, health, and welfare provisions.

Unfortunately, the general public bought this argument in the midst of the Asian financial crisis without looking at the government's figures as possible gross exaggerations. Consequently, the general public lopsidedly supported the government's move to ask China to override the Court of Final Appeal's decision. Thus, the government not only led the way but also incited the general public to turn against the CFA. The judicial system has suffered as a result of this onslaught from all fronts.

Even if the picture which the government painted is true, in the worst case scenario, the SAR government could have asked China, through the Basic Law Committee, to amend Article 24, especially Section 3, of the Basic Law. It was unfortunate that out of political considerations the government sought to overturn the ruling of the highest court in Hong Kong.

The courts cannot defend themselves; it is the government's duty to defend the judiciary. The Court of Final Appeal was merely upholding Hong Kong's judicial autonomy as provided by Article 82 of the Basic Law. Moreover, it is the Basic Law which stipulates in letter and spirit that the HKSAR has a high degree of autonomy, except for defense and foreign affairs, which are the responsibility of the central government (cf. Articles 12, 13, and 14). The government should have tried its best to uphold the CFA's ruling of January 29, 1999. By taking the action that it did, the SAR government has seriously undermined the respect and trust of the judiciary, both in China and



Hong Kong. Together with the Standing Committee of the NPC, the SAR government has interfered with Hong Kong's highest and final court, thereby, drastically damaging Hong Kong's judicial independence.

Of course, the judiciary has its own problems as well. The judiciary traditionally has the solemn responsibility to ensure that justice is done and, furthermore, that it is done within a reasonable period of time. It was discovered recently, however, that there is a long wait for cases to be heard in the courts. The average waiting time for a civil case is three months and at least one month for a criminal case. Why? It may be because of an administrative problem, for it was revealed that the average time a judge spends in hearing a case is less than four hours per working day. It may also be a question of inefficiency on the part of judges; most judges still take notes in longhand during court proceedings.

A more worrisome trend is reflected in the private complaints of many barristers that the quality of judges is declining. Part of the reason is the fault of the Hong Kong government which began the localization process too late. Consequently, there is a large gap between expatriate judges and local judges as far as experience is concerned. Another explanation for the decline is that the majority of experienced local barristers and lawyers want to serve in the private sector instead of joining the judiciary because the monetary benefits from the private sector far outweigh those of the public, which includes the judiciary.

The rule of law and the state of the judiciary depend also on the quality of the whole legal profession. In the old days, it was a hard and long road for anyone who wished to be admitted to the Bar or to qualify as a solicitor. Now Hong Kong University and Polytechnic University have trained too many lawyers. The

quality of these lawyers has turned from poor to worse in the last three years. Their language skills, especially English on which the profession depends so much, are appalling. How can they perform well in the courts?

Today there is a general belief that the only concern of Hong Kong's citizens is to make money, not just a little money, but lots and lots of money. The legal profession is no exception. Many barristers and lawyers are more interested in making money than defending justice and the rule of law. Large law firms look like business firms. They serve wealthy tycoons and their business empires. Barristers, especially senior counsels, charge exorbitant fees. Recently, for instance, there was a libel case in which the hearing lasted for 20 days. The total bill was well above HK\$20 million (US\$2.56 million). These kinds of fees serve as a deterrent for those who do not have such huge sums of money with which to bring their adversaries to court.

Indeed, there is a saying in Hong Kong nowadays that justice is for the rich only. After the handover, there have been a number of wealthy businessmen who have been arrested and charged with fraud. Most have not been convicted or have received only a light sentence. Their freedom or lenient punishment they owe primarily to their ability to hire the best and the most expensive senior counsels to defend them.

The rule of law also depends a great deal on the community's law enforcement bodies. There is no evidence that the chief executive has given direct instructions to Hong Kong's disciplinary forces—the police, correctional services, customs and excise, immigration, etc.—regarding how they should enforce the law, but front-line officers often behave according to the likes and dislikes of their superiors. By comparison, i.e., compared with previous British governors, Tung Chee-hwa prefers

law and order. In the past two-and-a-half years, there have been a number of serious cases indicating that law enforcement officers have been too eager to maintain law and order. They have even bypassed judicial due process procedures and have taken the law upon themselves.

One case occurred in October 1999 when two illegal immigrants from mainland China successfully secured legal aid to fight the deportation order they had received from the Immigration Department. Their case was to be heard at 3:20 p.m. Having been duly informed by Legal Aid, the Immigration Department, nevertheless, deported the two people at 3:03 p.m. It is an understatement to say that the officers showed little respect for the judicial process, but who gave the order, or who gave instructions that such behavior is acceptable? Should the secretary of security assume some responsibility for this fiasco?

Earlier that year two other serious cases occurred within the week of March 20 to 26 as two people died while in police custody. In the first case, an 18-year-old youth was arrested at the Lowu checkpoint on his way back to Hong Kong. His family claimed that the boy was returning from Shanghai to surrender himself to the police, which had earlier issued a warrant for his arrest on suspicion of stealing. Then, barely a week later, a 27-year-old construction worker from the mainland also died while in custody. He was arrested earlier for allegedly stealing curtains and clothing at a construction site in Tung Chung. The police denied categorically that the two were ever beaten to death by police officers. Later though, because of mounting pressure, the police promised an internal investigation.

These are, indeed, very serious matters. It is the solemn responsibility of the police to ensure the safety and well-being of those who are in their custody. In a recent poll, the general

public believes that the police often use excessive force. It might be accidental and tragic that these two young people died; but as far as police brutality is concerned, it might be just the tip of the iceberg. Many believe that after the handover the overall performance of law enforcement bodies has deteriorated.

Another case about a year after the two deaths in custody offers yet another illustration. In February 2000, it was disclosed that Lin Qiaoying, a 17-year old ethnic Chinese girl, originally from the mainland but now living in New York, was wrongfully jailed for 65 days. She had been convicted by a court in Hong Kong of holding a bogus Chinese passport. After her family learned about her fate weeks after she was sent to prison and after initiating the lengthy appeal process, the Court of Appeal acquitted her on grounds that, in fact, her passport was genuine.

How did this happen?

The Hong Kong authorities maintain that it was partially Qiaoying's own fault since, from the time she was questioned by immigration officers to her appearance in court, she had many opportunities to tell the truth, to launch a complaint, to protest, but she did not. Instead, according to the law enforcement bodies who handled her case, she confessed to the crime with which she was charged.

Before Qiaoying departed for New York, however, she admitted that she had confessed that her passport was a forgery because, as she explained from the very moment she was detained, the interpreter told her that if she did not confess she would be sent back to the mainland to face a firing squad. On the other hand, if she did confess, she would only be required to serve a short jail sentence in Hong Kong. In other words,

Qiaoying was pressured into confessing. To drive home her point, Qiaoying said that at one point an immigration officer even waved a baton at her and said that if she was a boy she would have been beaten.

The handling of this young woman's case has certainly disgraced the entire legal process in Hong Kong. Law enforcement bodies are supposed to safeguard the basic rights of all people, but particularly those like Qiaoying who are not familiar with their rights and who may be extremely scared in a strange land. Furthermore, in a modern city like Hong Kong, people in general are presumed innocent until proven guilty. In other words, the burden of proof that Qiaoying's passport was not genuine should have rested with the Immigration Department. In this case, this simple, but important, principle was not applied. The Immigration Department said that the picture in her passport looked like it had been tampered with and that under "strenuous" interrogation the young girl had confessed. This was sufficient evidence for ascertaining her guilt?!

Moreover, the Immigration Department still maintains that it has done nothing wrong. Rather than apologizing to Qiaoying and her family, it has further justified the actions of its officers by saying that their job of maintaining effective immigration control is not easy, that it is impossible to send every suspicious-looking travel document to the issuing country for verification. This line of argument indicates an attitude in which it is believed that it would be better to jail a few innocent people than to allow a few criminals to go free.

Unfortunately, Qiaoying's case is not unique. Two days after her departure it was discovered that a Taiwanese merchant was arrested in September 1999 for holding a bogus Guatemalan passport. The arresting officer told him that if he confessed

he would be allowed to go back to Taiwan to see his dying wife. It turned out that, although he was granted bail, he was not allowed to leave Hong Kong. During his detention, his wife died. Finally, on February 9 of this year, the prosecution dropped the case after discovering that the Taiwanese businessman had, in fact, obtained the passport legally!

Again, instead of offering a public apology, the director of immigration wrote to a leading local newspaper to try to justify his department's actions. This prompted the defendant's barrister to use an official transcript of the full court proceedings to dispute the director's letter point by point.

These cases justify the concern that a thorough review of the operations of law enforcement bodies in Hong Kong is long overdue; but first of all, the government must be willing to make the procedures and operations of these bodies more transparent. It is often said that justice must be carried out; but more importantly, it must be seen how justice is done.

It is lamentable that the government does not see fit to open its increasingly closed system of operations to the public. For example, to date, it still resists the repeated calls from Legco that the Complaints against Police Office (CAPO) should be made independent. Right now CAPO is a unit within the police force. How though can the "police investigating the police" have any credibility?

Basically, the Tung administration inherited from the British a colonial civil service that is extremely arrogant. They think that their way of doing things is best. Tung Chee-hwa himself has put his seal on this point of view because he shares the same kind of thinking. This mindset certainly reinforces the close-mindedness of senior officials. Because of this intransi-

gence, the government resists all requests to make their way of doing things more transparent and open. Any suggestion to create more independent monitoring mechanisms are therefore deemed unnecessary, all of which is detrimental to the rule of law. This explains why, after the handover, the health of the rule of law is not any better but, on the contrary, much worse than before.

*Notes to Chapter 3*

<sup>1</sup> In Hong Kong, there are five levels of courts—magistries, district courts, supreme or high courts, appeal courts, and the Court of Final Appeal. Only barristers can represent clients in courts higher than the district courts.

<sup>2</sup> Ironically, the richest tycoon—Li Ka-shing—had employed the outgoing police commissioner to advise him on security matters.

<sup>3</sup> Chris Patten's political reforms basically followed the Basic Law and the NPC's decision on April 4, 1990. China was angry at Patten, Hong Kong's last British governor, on two counts: (1) he expanded the franchise of the functional constituencies from 125,000 to 2.7 million voters, literally giving all registered electors a second vote, except housewives, students, and the elderly; (2) he did not give "face" to China and consult the mainland prior to his announcement of these changes.

<sup>4</sup> These five laws were primarily concerned with compensation for occupational deafness, collective bargaining power for trade unions, non-discrimination of workers actively involved in trade union activities, and the right of local trade unions to join international labor organizations.

<sup>5</sup> This is the customary way in which China reacts to deci-

sions or events it dislikes. When it is not certain about people's response, it will speak through anonymous writers or highly respected experts in the field.



# Rolling Back Democracy

# 4

## *Curtailment of People's Voices*

Since 1981, people in Hong Kong have been able to speak out and exert influence on the government over at least some of the less important public policies through the three-tier council system.

First, people could express themselves at the district level through 18 district boards.<sup>1</sup> The major function of the district boards is to advise the Hong Kong government on issues or problems related to their own districts. District board members, initially appointed in the trial period, were gradually directly elected by the residents in each district. Since 1994, with the exception of a few representing the rural interests, all district board members have been returned by universal franchise.

However, since the handover, the new administration under Tung Chee-hwa has decided to reintroduce the appointment system by adding about 25 percent more seats to the boards. Presumably, this move was made to counterbalance the dominance of the pro-democracy members as will soon become evident.

The first district board elections after the handover took place in May 1999. The total number of seats in all 18 districts was increased to 519—390 were returned by direct elections, 27 represented the interests of the rural areas, and 102 were ap-

pointed by the chief executive.

Why were these 102 appointed members added? It is a reflection of the sense of insecurity of the Hong Kong government as Tung wants a firm control of all district boards; for before the handover, whenever there were elections, the pro-democracy candidates would win approximately 60 percent of the votes. This means that, of 390 seats, they would get about 234 seats. In order to maintain control of the district boards, 102 members appointed by Tung, who would then support the government, would be needed.

Since pro-democracy board members shall always be outnumbered, they cannot effectively represent their constituencies. In other words, by controlling the district boards, the government can more effectively control alternative or dissenting voices. As a result, it has become much more difficult for ordinary citizens to pose issues to the government through their elected representatives since 1997.

Second, the municipal councils were eliminated. The Urban Council has had a history of more than a century. Its counterpart, the Regional Council, which was responsible for the New Territories and outlying islands, was founded in 1986. These two municipal councils not only had advisory functions but executive functions as well. They were responsible for the licensing of restaurants and bars, the operation of public libraries, cultural centers, sports grounds, etc. Since 1994, members of both councils had been directly elected.

However, in recent years, both councils have been accused of being ineffective, full of internal bickering, and wasteful of taxpayers' money. This author concurred with the view that in such a small area in terms of population Hong Kong does not

need, and cannot afford, to have a three-tier council system, but the following is a better way to resolve the problem: before disbanding the two municipal councils, apportion most of their functions to the district boards while at the same time making the Legislative Council more representative of grassroots interests. This is to ensure the strengthening, and not the weakening, of people's voices on public policy matters.

In December 1999, however, Tung's government put an end to both municipal councils. Their functions were taken over by the newly created bureau entrusted with food, environmental, and hygiene issues as well as recreation and culture. Under this new arrangement, people's voices in such crucial areas have been greatly curtailed.

Third, there is the Legislative Council, which is primarily responsible for enacting laws, especially those pertaining to the annual budgets, and monitoring the work of the government. Presently, it has 60 members: 20 are directly elected by geographical constituencies, 30 are indirectly elected by functional constituencies (representing primarily the professional and labor sectors of society), and 10 are chosen by the 800-member Election Committee. Thus, we can say that ordinary citizens in Hong Kong can speak through representatives which constitute only one-third of Legco, and consequently, it is very difficult for the people's voices to be heard by the government.

After the handover though, Tung's government decided to change the voting system in Legco. Legco was divided into two blocs of voters—the functional constituencies comprised one and the geographical constituencies, together with the constituency of the Election Committee, the other—and it was stipulated that the passage of a motion or bill must be carried by both blocs. The intention of this change is crystal clear. The

government wants to control the outcome of Legco's votes, making certain that no bills or motions proposed by Legco members will be passed. In this effort, the government can rely on the support of at least the majority of functional constituency members to thwart any bill or motion of which the government does not approve.

The government's strategy was successful in a debate in Legco over addressing rising unemployment in the community. On July 8, 1998, Leung Yiu-chung, a representative of grassroots interests in Legco, proposed a motion urging the government to take effective steps to help alleviate the unemployment problem caused by the Asian financial crisis. His motion, though not binding on the government, was defeated despite the fact that more members voted for his motion than against (24 for and 18 against). His motion failed, however, because it did not pass in the functional constituencies—7 voted for and 13 against.

In addition to these changes, many other Legco rules have been revised after the handover to suit the wishes of the executive-led government. One crucial rule concerns non-government-sponsored or private members' bills. Presently, no member is permitted to introduce a bill if it involves a financial cost to the government or alters the structure and operation of the government. This rule certainly immobilizes Legco.

Early in 1999, for instance, Lee Cheuk-yan, a directly elected Legco member representing primarily the labor sector, wanted to table two bills, one concerning the collective bargaining power of trade unions and the other about anti-union discrimination. The government objected vehemently on grounds that these bills may commit the government to spend more money to establish additional tribunals to arbitrate workers' disputes. Because of this technicality, Lee's request was disallowed, even though

Lee's bill would bring Hong Kong into line with international labor conventions.

As a result of these changes, Legco has now become a rubber stamp. The government can bulldoze through the legislature whatever bills it wants to enact and block those that it does not.

In 1998, after the debate on Tung's annual policy address, many Legco members felt that Tung did not address seriously enough many livelihood issues, especially unemployment, in his policy address. To show their displeasure, a vote-of-thanks motion to thank Tung for coming to Legco to present his policy address was narrowly defeated. Although Tung and his policy secretaries should take this feedback more seriously and think of ways to improve government policy initiatives, the chief secretary said in a press conference instead that this slap in the face by Legco did not deter the government from doing what it thought was right, i.e., the government-knows-best attitude was evident once again.

Unfortunately, Legco today is definitely less representative than it was under colonial rule. In the 1995 election, although there were functional constituencies, yet 2.7 million citizens could take part to elect their representatives in these constituencies. In 1998, only 180,000 citizens enjoyed the same right. The democratic development of Hong Kong certainly has had a tremendous setback under Tung Chee-hwa, who claimed at the time of the handover that Hong Kong was now the master of its own house after more than 150 years of colonialism. It is a sad statement that Hong Kong had a more representative and responsive government under colonial rule.

*The Rationalizations of Tung and the Tycoons*

The setback of Hong Kong's democratic development is primarily due to the ultraconservatism of Tung Chee-hwa and local business tycoons. Tung Chee-hwa himself was a shipping magnate. His background does not help him grasp what really is going on at the grassroots level. As the chief executive following the personable Chris Patten, the last British governor of Hong Kong, he has to reach out to the people, but his performance appears to be very superficial. From the television, one can easily detect that he is not comfortable and at home with people. No wonder then that when he appeared on a radio phone-in program after the delivery of his second policy address in 1998 a caller confronted Tung and asked him what the chief executive could do for people like himself who have become unemployed, particularly during the Mid-Autumn Festival? Tung answered that he would bring the caller a box of mooncakes, a traditional holiday gift. The caller retorted that what he needed was a job, not mooncakes.

Few tycoons will take employees into their confidence. Tung is no exception. Basically, Tung does not trust the people or senior officials who do not think like him. Tung said at the beginning of his term in office that he wanted to establish a strong executive-led government. What he meant was that he will make all crucial decisions and people must follow him. He expects Legco and the press to serve him and not vice versa. To have Legco and the press scrutinize what he does is not acceptable. In his mind, he is accountable to no one, except Beijing.

Tung Chee-hwa is not a politician, despite the fact that he holds the highest political office in Hong Kong. He never feels at ease with any criticism directed at him. He insists that those

who criticize him are too politicized.

Here lies the crux of the matter. Tung and business tycoons in Hong Kong always advise people to stay away from politics. To them, politics is confrontation. It is synonymous with questioning or even challenging those in authority. Politics is bad, for it questions the status quo and therefore rocks the boat.

On the other hand, tycoons seldom question the status quo. They are pro-establishment because it is the present system which benefits them immensely. This being the case, why change? Why introduce democracy?

Tung and the local tycoons are not ignorant. The majority of them have been educated in either the United States or United Kingdom. They know what democracy is. However, because of their vested interests, they often rationalize Hong Kong's lack of democratic development by either saying that democracy is not good for Hong Kong or that democracy, though it goes hard in hand with the overall development of the community, must be introduced in Hong Kong slowly, step by step.

After Taiwan's highly successful presidential election in March 2000, senior government officials were asked to comment. The secretary for constitutional affairs brushed aside suggestions that Hong Kong should learn from Taiwan, which, according to him, is dominated by "black gold" electioneering.<sup>2</sup> If this were the case, however, the winner would be Lien Chan, who represented the establishment, and not Chen Shui-bian.

During his April visit to North America a month after Taiwan's election, Tung Chee-hwa was asked whether Taiwan is more democratic than Hong Kong. He sidestepped the question by saying that there are different kinds of measurements

regarding democracy. Hong Kong, he said, enjoys the rule of law and judicial independence as well as a free press and accountable government. But the fact remains that in Taiwan people can choose their government while people in Hong Kong cannot.

Pro-establishment figures in Hong Kong often argue that during British rule Hong Kong's people were never given any democracy—why now? Well, the times have changed. During the colonial period, the people of Hong Kong were not “subjects”; they were “objects.” Moreover, Hong Kong is now a modern and cosmopolitan city. It requires fuller participation from its people. Even the conservative Basic Law points toward direct elections for the chief executive and all Legislative Council members:

“The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures” (Article 45).

“The Legco of the HKSAR shall be constituted by election. . . . The ultimate aim is the election of all members of Legco by universal suffrage” (Article 68).

Sensing that a democratically elected government is inevitable some time in the not-too-distant future, local tycoons have decided to start fighting to preserve the status quo, which, of course, is in their favor.

In the past, their first argument was that democracy is not good for society; it will cause social disorder. They would cite fistfighting inside Taiwan's Legislative Yuan and South Korea's National Assembly as illustrations. Yes, in both Taiwan and South Korea in the 1980s, there was a great deal of conflict in



their political arena. The rulers were still in full control of the government. People's elected representatives were utterly frustrated for not being able to change things. However, since Taiwan's first presidential election in 1996 and South Korea's free and fair presidential election in 1997, both by universal suffrage, political life has become much better, much better than under oppressive governments.

There is a great deal of evidence demonstrating that the absence of democracy is the root cause of social instability. How can people feel at home if they have no say whatsoever in their own government? A government by a few is necessarily for a few.

The privileged few in Hong Kong who have large vested interests certainly do not want Hong Kong to become like Taiwan in the pre-Lee Teng-hui era or the pre-Kim Dae-jung era in South Korea; for in those days, both Taiwan and South Korea were under semimartial law. At the pretext of keeping "law and order," Chiang Kai-shek and his son Chiang Ching-kuo ruled Taiwan with iron fists for 40 years; meanwhile, South Korea was ruled by repressive regimes supported by the military for 45 years. Both leaders in Taiwan and South Korea were able to rule so ruthlessly because they claimed that the alternative for Taiwan or South Korea was communist rule.

It is a fact that under such rigid rule both Taiwan and South Korea experienced rapid economic growth between the 1960s and 1990s. But what a dear price their people have had to pay. People had little freedom during this period. Young people had no choice but to be conscripted into the military for two years. Many economists have pointed out though that even without such rigid rule Taiwan and South Korea could have experienced the same economic growth. The rapid economic takeoff of Tai-

wan and South Korea was partly the result of the closed door policies of China and North Korea and partly because ethnic Chinese and Koreans by nature are hard working and enterprising.

For those who argue so strongly against democracy in Asia and especially in Hong Kong, they should look at the most developed countries in the world, such as the United States, Britain, France, Germany, or Scandinavia. All of these countries have democratic governments, for only democratic governments, elected by the people, will work for the best interests of the people. If people do not think that those they have elected have served them well, they will vote them out of office in the next election.

The second argument was put forth by Peter Woo, a contestant in the SAR's first chief executive race, who recently wrote three articles in major Chinese and English newspapers. He argued that, since only 20 percent of the citizens of Hong Kong pay taxes, it would be unfair to adopt universal suffrage and give everyone a vote of equal value.

First of all, it was erroneous for Woo to assert that only 20 percent of Hong Kong's citizens pay taxes. Taxes in Hong Kong certainly do not include only corporate or profits tax and salaries tax. There are hundreds of different direct or indirect taxes. A manual worker who smokes two packs of cigarettes a day, for example, pays more than HK\$40 (US\$5) in taxes each day or roughly HK\$15,000 (US\$1,923) a year. A housewife who likes to gamble may spend HK\$20,000 (US\$2,564) a year on this diversion—the amount that, on average, a person in Hong Kong spent in 1999. A third of this amount, or HK\$6,667 (US\$855), goes into the government's coffers.

Presumably, Woo only thinks about his business associates; but even if they pay on average more taxes than the poor in Hong Kong, they also already have a larger say in Hong Kong's legislature. In the last election, for instance, one legislator in the geographical constituencies represented approximately 140,000 people while in the functional constituencies one legislator represented no more than 4,900 people. It is not an understatement to assert that professionals and business people are already overrepresented.

In the 1998 Legco functional constituency elections, a business tycoon, Robert Ng of the Sino Group, controlled 18 registered companies in the real estate industry. In the real estate constituency, there were only 410 registered voters with Ng holding 18 votes. In the business community, this is the rule rather than the exception. Many "successful" professionals—meaning those who have made a lot of money—have votes in several constituencies since, other than their own profession, they might be heavily involved in several other business sectors. Ironically, most of these people also were "chosen" as members of the Election Committee that had the task of electing 10 Legco members.<sup>3</sup>

In a modern society like Hong Kong, it is long overdue that people should accept that all human beings are born equal. They should enjoy certain inherent rights that cannot be taken away nor diluted by the rich and powerful. The right to participate in shaping the future of the society to which they belong, which is also their own future, is of paramount importance.

Business tycoons often argue that it is because of their investments and skills that Hong Kong has been able to develop into a prosperous region. No, this is another of their mistaken myths. Hong Kong's success was brought about by millions of



Remembering is important to any society. It provides signposts of the past through which a community can better understand the present and make a prognosis of the direction of the future.



This book is about remembering, about remembering the events of the first 1,000 days in Hong Kong under the sovereignty of China. During this period, the author notes that Hong Kong has witnessed a widening of the gap between the rich and the poor in the economic arena and an erosion of the independence of the judiciary in the political sphere. He worries that Hong Kong has become a city of individuals instead of a community of people. For Hong Kong to have a brighter future, he asserts that these trends must be altered from their present course.

The author is an ordained minister of the Hong Kong Council of the Church of Christ in China (CCC) who has been interpreting political and socio-economic developments in Hong Kong for more than a decade through the publications of the Hong Kong Christian Institute (HKCI) of which he is currently the director. After graduating from Hong Kong University and Yale Divinity School, Kwok Nai-wang served as a local church pastor in a slum area of Hong Kong from 1966 to 1977 and as the general secretary of the Hong Kong Christian Council (HKCC) from 1978 to 1988 when he founded HKCI. He has written 20 books in English and Chinese and has edited five others. He is also the editor of *Reflection*, a bimonthly theological journal produced by HKCI, as well as the author of the organization's monthly English newsletter.



**Hong Kong Christian Institute**



**Asian Human Rights Commission**