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NORTH CAROLINA JOURNAL OF
INTERNATIONAL LAW AND
COMMERCIAL REGULATION

Volume 19 | Number 1

Article 6

Fall 1993

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Recommended Citation

Bryan A. Gregory, *Envisioning Futures: The Battle over Democracy in Hong Kong*, 19 N.C. J. INT'L L. & COM. REG. 175 (1993).
Available at: <http://scholarship.law.unc.edu/ncilj/vol19/iss1/6>

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Cover Page Footnote

International Law; Commercial Law; Law

Envisioning Futures: The Battle Over Democracy in Hong Kong

I. Introduction

Hong Kong has entered its last years under British administration, and the dramatic final act is being played out.¹ When Hong Kong reverts to Chinese rule, it will do so under the protection of the Basic Law,² a mini-constitution created pursuant to a Joint Declaration³ between the United Kingdom and the People's Republic of China (PRC) that delineates the principles under which Hong Kong will be governed. The former and future rulers of the city diverge widely in their political, economic, and social systems, and despite the elaborate detail of the relevant treaties providing for the transfer,⁴ there have been disagreements during the period of transition. Without a doubt, the most publicly acrimonious debate has concerned the fairly recent proposal by the last British Governor of Hong Kong, Chris Patten, to expand democratic practices in the Colony.⁵

This debate over the possibility of expanded democracy in Hong Kong is important because of the city's unique role in international trade and commerce. From a "barren rock,"⁶ Hong Kong has grown into one of the premier centers of manufacturing, international trade and finance.⁷ Besides the enormous amount of trade that passes

¹ Under the agreement between the United Kingdom and the People's Republic of China, Hong Kong will become a Special Administrative Region of the People's Republic of China on July 1, 1997. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, September 26, 1984, 23 I.L.M. 1366 (1984) [hereinafter Joint Declaration].

² The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, *reprinted in* NORMAN MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG* 267 (5th ed. 1991) [hereinafter Basic Law].

³ Joint Declaration, *supra* note 1.

⁴ Ironically, the Basic Law, authored by the National People's Congress, may contain the most extensive description and codification of pro-capitalist features ever recited in a constitution. *See* Basic Law, *supra* note 2, arts. 105-135 (requiring, among other things, that personal property rights be protected; that the Hong Kong Special Administrative Region (SAR) must avoid budget deficits; that the government of the Hong Kong SAR must take steps appropriate to maintain Hong Kong's status as a leading center in finance, shipping, and aviation; that the Hong Kong dollar will be fully convertible; and that the Hong Kong SAR will be a free port).

⁵ *See infra* part III.

⁶ *See infra* note 16 and accompanying text.

⁷ With a total trade of HK\$1,544,868 in 1991, Hong Kong is one of the top 11 traders in the world. HONG KONG 1992, at 88 (David Roberts ed., 1992). Hong Kong is the second

through the city, its legal system is highly developed and well suited for the stability required by international businesspersons, thus making it a favorite conduit for regional investment. In addition, the United States in particular is heavily invested in Hong Kong and derives a huge amount of income from exports to the city.⁸

From a legal perspective, the issue of democracy in Hong Kong is important because of the manner of the transfer that is going to take place: the Hong Kong situation represents a relatively rare form of nineteenth-century statecraft, where one state has agreed to cede territory and citizens to another, very different state.⁹ This kind of diplomacy may have been both common and generally accepted at the previous *fin de siècle*, but is unusual, and some have suggested illegitimate, as the next century approaches.¹⁰ The importance of this point becomes evident when one considers that the execution of a smooth and legitimate transfer is essential if the stability upon which the city's prosperity rests is to be maintained.

Most importantly, however, the democracy debate uniquely reveals two opposing visions of Hong Kong's future. One sees a Hong Kong that will preserve its autonomy, and presumably its prosperity, by expanding democratic practices and thus foreclosing possible avenues for Chinese meddling in the functioning of the city. The alternative vision is one where the Hong Kong Special Administrative Region (SAR) will continue to function under the benign governance of a removed authority, free from the demands of a democratic society that some believe reduce economic efficiencies.¹¹ This potential clash of ideologies is fascinating because it is likely that the outcome will affect Hong Kong's post-1997 future in ways that are difficult to predict

largest exporter by value of watches and clothing, and the third largest exporter of toys. *Id.* at 81. As a financial center, Hong Kong also racks up impressive numbers: a US\$49 billion per day currency market, and the Hang Seng Index, Hong Kong's principal stock market, averaged a daily turnover of US\$1.3 billion in 1991. *Id.* at 67, 74.

⁸ The United States has more than US\$7.1 billion invested in Hong Kong and in 1989, sold US \$46 billion in American goods to Hong Kong citizens, making this tiny city America's fourteenth largest market. Furthermore, many of America's largest corporations have substantial interests in Hong Kong. WILLIAM MCGURN, *PERFIDIOUS ALBION: THE ABANDONMENT OF HONG KONG* 1997, 116-17 (1992).

⁹ Article 24(6) of the Basic Law provides that persons who had the right of abode in Hong Kong only will be deemed permanent residents of the Hong Kong Special Administrative Region. Basic Law, *supra* note 2, art. 24(6). This means that approximately four million Chinese residents of Hong Kong who are British Dependent Territories Citizens will be stripped of their British passports and become PRC citizens. Nihal Jayawickrama, *Hong Kong: The Gathering Storm*, 22(2) BULL. PEACE PROPOSALS 157, 158 (1991).

¹⁰ See Jayawickrama, *supra* note 9 (discussing the international law ramifications of the transfer of Hong Kong by the United Kingdom to the PRC, with emphasis on the right of self-determination).

¹¹ Note that for purposes of this Comment, the names "Hong Kong Special Administrative Region" or "Hong Kong SAR" refer to Hong Kong under the administration of the People's Republic of China. The term "Hong Kong" denotes the city as it is until July 1, 1997—a colony of the United Kingdom.

now.¹²

The purpose of this Comment is to examine an issue that is still very far from decided: whether there will be greater democracy in Hong Kong, and how the relevant parties have approached this debate. To this purpose, the Comment will begin with a survey of the most relevant legal background, including an overview of the foundation and rule of the Colony by the British, and the provisions of the Joint Declaration and the Basic Law. Next, attention will be given to the often dramatic and always fascinating debate between the United Kingdom and the People's Republic of China, which ensued after the last British Governor of Hong Kong proposed greater democracy.

Finally, the ultimate goal of this Comment is to analyze some of the recurrent themes and patterns in this debate, and from this analysis, attempt to extract an understanding of the British and Chinese aims and strategies. Even though it is possible to discern some consistency in the fluid discussions between the United Kingdom and the People's Republic of China, ultimate conclusions are difficult to draw, especially when there is some likelihood that the issue will not be permanently resolved until after the British have withdrawn. Nevertheless, the debate has progressed far enough that possible outcomes suggest themselves, and this Comment will conclude with an overview of the wider ramifications of this struggle.

II. Legal Background

A. Cession by China

Because the area currently known as Hong Kong is composed of separate areas that were acquired by the British under different terms, it is necessary to understand the Colony's creation and expansion.

By the middle of the 19th century, Britain and China had developed an extensive trading relationship, primarily based upon the trade of British-owned opium for Chinese silver.¹³ The two nations' trading relations were somewhat unstable, so Lord Palmerston, Britain's Foreign Secretary, determined a British trading station was needed which would be free from Chinese intervention.¹⁴ As part of an apparently temporary settlement of the First Opium War, China ceded Hong Kong island to the British under the Convention of Chuenpi, January 20, 1841.¹⁵ Though neither side was pleased with this arrangement—Lord Palmerston described Hong Kong as “a barren island with hardly

¹² See also *HK Needs Democracy to Preserve Freedom—Report*, The Reuters Library Report, Jan. 22, 1993, available in LEXIS, Nexis Library, Reuter File (indicating concerns that without democratic election of legislative representatives, Hong Kong will be unable to preserve the level of autonomy necessary for freedom of speech).

¹³ HONG KONG 1992, *supra* note 7, at 372-73.

¹⁴ *Id.* at 373.

¹⁵ *Id.*; see map *infra* p. 207.

a house upon it"—the British took possession on January 26, 1841.¹⁶ One year later, the Treaty of Nanking confirmed the cession of Hong Kong island to the United Kingdom.¹⁷

Hostilities between the Chinese and Britain resumed in 1856 following disputes about the correct interpretation of previous treaties.¹⁸ After a brief interlude, fighting once again resumed in 1859, and the British acquired the Kowloon peninsula by cession in 1860 under the Convention of Peking, which ended the Second Anglo-Chinese War.¹⁹ In order to enhance the defensibility of the Kowloon peninsula and Hong Kong harbor, Britain later demanded the surrounding land. A convention signed on June 9, 1898, gave the British the desired control over the New Territories and 235 islands, under a ninety-nine year lease.²⁰ Under the convention, the Chinese were to have continued military access to the wharf at Kowloon City, but Britain revoked this provision on December 27, 1899, and assumed control of Kowloon City as well.²¹

B. *The British Government of Hong Kong*

Throughout its history under British rule, Hong Kong has experienced substantial economic growth based on the *entrepôt* trade with China and administered under the "benign neglect" of a *laissez-faire* government.²² Hong Kong's governmental structure has remained essentially the same during the years of British rule, although there have been occasional alterations. There are three branches in the British government of Hong Kong: the executive branch, composed principally of the Governor and his advisory Executive Council; the legislative branch, known as the Legislative Council, or LegCo; and the judicial branch.²³ The most powerful figure in Hong Kong's government has always been a London-nominated Governor who has extensive influence over policy.²⁴ The Governor is advised by the cabinet-like Executive Council, which helps to develop policy and legislation through a consensus process.²⁵ The role of LegCo is to enact the legislation presented by the Governor, including the appropriation of funding.²⁶ LegCo may also initiate legislation of its own.²⁷

¹⁶ HONG KONG 1992, *supra* note 7, at 373.

¹⁷ *Id.* at 374.

¹⁸ *Id.*

¹⁹ *Id.*; see map *infra* p. 207.

²⁰ *Id.*; see map *infra* p. 207.

²¹ *Id.*

²² The old joke is that "Hong Kong is run by the Jockey Club, Jardine Matheson, the Hong Kong Shanghai Bank, and the Governor—in that order." NORMAN MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG* 46-47 (5th ed. 1991) (citing R. HUGHES, *HONG KONG: BORROWED PLACE, BORROWED TIME* 17 (1968)).

²³ HONG KONG 1992, *supra* note 7, at 17.

²⁴ *Id.*

²⁵ *Id.* at 18.

²⁶ *Id.* at 19.

The method for electing LegCo representatives is the primary subject of the democracy debate between Britain and the PRC.²⁸ As of 1991, there were sixty members of LegCo who were selected as follows: three members of the Executive Council are also *ex-officio* members of LegCo; eighteen legislators are appointed by the Governor with the approval of the Secretary of State; and thirty-nine LegCo members are "elected."²⁹ Twenty-one of the "elected" members are selected by fifteen so-called "functional constituencies," representing various economic interests;³⁰ the nine geographical constituencies select two members each to make up the remaining elected members.³¹

The two different types of constituency representatives—functional and geographical—are each elected under a different regime. For functional constituencies, an elector is a corporate individual or member of one of the professional or occupational sectors who is also registered for the direct elections.³² In elections for representation within a geographical constituency, one may vote if one has registered for the District Board direct elections where one lives.³³ The effect of the constituency system has been to limit severely the number of eligible voters. The electors for the functional constituencies have been particularly limited.

C. *The Joint Declaration*

Under this relatively undemocratic system, Hong Kong has experienced remarkable growth and prosperity throughout its history as a Colony of Britain. Hong Kong's status became unclear, however, in 1984 when Britain and the PRC entered negotiations concerning its future. These talks were precipitated by the pending expiration of the ninety-nine year lease on the New Territories.³⁴ From the beginning, the Chinese were adamant that the lease on the New Territories would not be renewed. Even though Britain owns Hong Kong island and

²⁷ *Id.*

²⁸ There have been some additional concerns over the fact that the Governor of the Hong Kong SAR will be appointed by the PRC, but this arrangement has not been seriously challenged yet.

²⁹ HONG KONG 1992, *supra* note 7, at 19.

³⁰ There are two types of functional constituencies, a group of six that each elect two representatives and the balance of nine who select one each. The following are the functional constituencies which may select two LegCo members each: commercial; industrial; finance and financial services; labor; medical and health care; engineering, architectural, surveying and planning. The other nine functional constituencies, each of which elect one representative, are social services; teaching; legal; accountancy; real estate and construction; tourism; Urban Council; Regional Council; and rural. *Id.* at 19.

³¹ Each of the nine geographical constituencies elects two LegCo members. The nine geographical constituencies are Hong Kong Island East, Hong Kong Island West, Kowloon East, Kowloon Central, Kowloon West, New Territories (NT) North, NT South, NT West and NT East. *Id.*

³² *Id.* at 27.

³³ *Id.* at 26-27.

³⁴ See *supra* note 20 and accompanying text; see map, *infra* p. 207.

Kowloon in perpetuity under the 19th century treaties of cession, the British believed these areas could never be severed from the mainland territories and they felt compelled to negotiate the cession of the entire colony back to the PRC.³⁵

The Joint Declaration, a fairly extensive statement outlining the principles by which Hong Kong's future will be decided, was the fruit of those negotiations and was issued by the People's Republic of China and the United Kingdom on December 19, 1984.³⁶ As the predecessor to the Basic Law, the Joint Declaration and its Annexes provided the skeleton upon which the Basic Law was built and are essential tools for interpreting the Basic Law. To understand the Joint Declaration, it is helpful to divide it into three different sections: two sets of unilateral statements by the respective parties and a series of joint statements.³⁷

The second paragraph of the Joint Declaration is the unilateral statement issued by Britain providing that all of Hong Kong will return to the People's Republic of China on July 1, 1997.³⁸ The first and third paragraphs contain unilateral statements made by the PRC. In these, the PRC emphasizes that "to recover the Hong Kong area . . . is the common aspiration of the entire Chinese people."³⁹ Next, the third paragraph recites an extensive list of the PRC's policies towards Hong Kong, the most significant being that the PRC would have responsibility for the promulgation of Hong Kong's Basic Law.⁴⁰ In addition,

³⁵ Whether or not there is an agreement between Her Majesty's Government and the Chinese Government, the New Territories will revert to China on July 1, 1997, under the terms of the 1898 Convention. The remainder of Hong Kong (Hong Kong Island, Kowloon, and Stonecutters Island) would not be viable alone. Hong Kong, including the New Territories, has since 1898 become an integral whole and Her Majesty's Government is satisfied that there is no possibility of dividing the New Territories which revert to China on July 1, 1997, from the remainder. The choice is therefore between reversion of Hong Kong to China under agreed, legally binding international arrangements or reversion to China without such arrangements.

Jayawickrama, *supra* note 9, at 159 (quoting the Joint Declaration, para. 29).

³⁶ Joint Declaration, *supra* note 1.

³⁷ Liu Yiu Chu, *Interpretation and Review of the Basic Law of the Hong Kong Special Administrative Region*, 2 J. CHINESE L. 49 (1988).

³⁸ "The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997." Joint Declaration, *supra* note 1, para. 2.

³⁹ *Id.* para. 1. Note that for purposes of the Joint Declaration, the term "Hong Kong" includes Hong Kong island, Kowloon, and the New Territories; *see supra* notes 15-21 and accompanying text (describing the legal differences between the cession of Hong Kong and Kowloon, and the ninety-nine year lease of the New Territories).

⁴⁰ In twelve subparts, the third paragraph of the Joint Declaration states China's basic policies towards Hong Kong: (1) "uphold[ing] national unity and territorial integrity"; (2) Hong Kong will be a Special Administrative Region under the authority of the People's Republic of China; (3) "[t]he laws currently in force in Hong Kong will remain basically unchanged," and the Special Administrative Region will be self-governing; (4) "[t]he Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally"; (5) the social and economic systems, the life-style, and the basic rights and freedoms currently enjoyed in Hong Kong will remain unchanged; (6) Hong Kong will continue to be a free port; (7) Hong Kong will

subpart three of paragraph three of the Basic Law states that the "current" laws in Hong Kong will remain "basically unchanged" and that the Hong Kong SAR will be "self-governing."⁴¹

The true "joint declarations" are contained in paragraphs four through eight.⁴² The fourth paragraph provides that Britain will continue to administer Hong Kong during the transitional period, "with the object of maintaining and preserving its economic prosperity and social stability," and that the government of the People's Republic of China will "cooperate" in this endeavor.⁴³ Paragraph five establishes the Sino-British Joint Liaison Group (JLG), which is to function under the auspices of Annex II to the Joint Declaration.⁴⁴ The sixth paragraph states that land leases in Hong Kong are dealt with in Annex III,⁴⁵ while paragraph seven provides that both parties are to implement the Annexes to the Joint Declaration.⁴⁶ The eighth and final paragraph provides that the Joint Declaration and its Annexes shall become binding with the exchange of instruments of ratification to have taken place in Beijing before June 30, 1985.⁴⁷

The three Annexes to the Joint Declaration substantially elaborate on that instrument's eight paragraphs. Annex I defines the nature of the relationship that will exist between the Hong Kong SAR and the People's Republic of China. One of its most significant provisions, for purposes of this Comment, is that "the legislature of the Hong Kong Special Administrative Region shall be constituted by election."⁴⁸ The other important stipulation is that, after the establishment of the Hong Kong SAR, the current laws in Hong Kong will remain in force unless they contravene the Basic Law, subject to amendment by the Hong Kong SAR legislature.⁴⁹ Annex II to the Joint Declaration states the duties and powers of the Sino-British Joint Liaison Group,⁵⁰ while An-

continue as a center of finance, gold and securities trading, and its dollar will remain freely convertible; (8) Hong Kong will have independent finances and will not be taxed by the People's Republic of China; (9) the Hong Kong SAR may establish economic relations with other countries; (10) the Hong Kong SAR will use the name "Hong Kong, China"; (11) the government of the Hong Kong SAR will have responsibility for maintaining public order; (12) these principles will be elaborated and stipulated in a Basic Law, to be drafted and promulgated by the National People's Congress, and will remain unchanged for 50 years." *Id.* para. 3.

⁴¹ *Id.*

⁴² *Id.* paras. 4-8.

⁴³ *Id.* para. 4.

⁴⁴ *Id.* para. 5; see *infra* note 50 and accompanying text (describing Annex II).

⁴⁵ Joint Declaration, *supra* note 1, para. 6. Note that no land in Hong Kong is privately owned, with the exception of one plot; instead, it is held through long-term leases with the government. Consequently, one major concern has been the security of those leases after the Chinese take over the city on July 1, 1997.

⁴⁶ *Id.* para. 7.

⁴⁷ *Id.* para. 8.

⁴⁸ *Id.* Annex I (I).

⁴⁹ *Id.* Annex I (II).

⁵⁰ The JLG is charged with smoothing the period of transition by conducting negotiations and exchanging information. *Id.* Annex II (3). Special matters for consideration by

nex III addresses issues involving land leases.⁵¹

D. *The Basic Law*

The Basic Law is the mini-constitution, promulgated and adopted by the National People's Congress on April 4, 1990, under which the Hong Kong SAR is to be governed.⁵² Modeled on the Joint Declaration,⁵³ the Basic Law incorporates many of the principles of that document and seeks to give effect to its intent. In structure, the Basic Law consists of 160 Articles, followed by three Annexes. Because of the breadth of the Basic Law, this Comment can survey only those Articles which are most relevant to the issue of democracy in Hong Kong.⁵⁴

Article 2 states that the "National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a *high degree of autonomy*."⁵⁵ The significance of this Article is that it employs highly ambiguous terminology that could be subjected to differing interpretations. Even more ambiguous is Article 68, which describes how members of the Legislative Council are to be elected.⁵⁶ It states that

the Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election. The method for forming the Legislative Council shall be specified in light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all members of the Legislative Council by universal suffrage.⁵⁷

Article 68 contains some ambiguous terminology. For example, though it alludes to universal suffrage as an ultimate aim, there is no firm time frame for its implementation. Instead, Article 68 says that suffrage will be increased "in light of the actual situation" in the Hong

the JLG include the maintenance of Hong Kong's economic status and its membership in the General Agreement on Tariffs and Trade (GATT). *Id.* Annex II (4) (a), (b). Annex II specifically provides that the JLG is not, in any manner, an organ of governance. *Id.* Annex II (6). The JLG is to meet at least three times each year, and each delegation shall include a senior representative of Ambassadorial rank, four other members, and up to twenty supporting staff. *Id.* Annex II (9), (7); *see infra* note 123 and accompanying text.

⁵¹ Joint Declaration, *supra* note 1, Annex III; *see supra* note 45.

⁵² Basic Law, *supra* note 2.

⁵³ *But see* Robin Fitzsimons, *Whose Law Will Rule Hong Kong?*, THE TIMES, June 22, 1993, available in LEXIS, Nexis Library, Current File (quoting commentators who indicate that the Basic Law is not faithful to the Joint Declaration and that it must be amended to afford Hong Kong the full measure of promised autonomy).

⁵⁴ For more on the Basic Law and its effects in Hong Kong, see BASIC LAW, BASIC QUESTIONS: THE DEBATE CONTINUES (William McGurn ed., 1988) [hereinafter BASIC QUESTIONS]; HONG KONG: THE CHALLENGE OF TRANSFORMATION (Kathleen Cheek-Milby and Miron Mushkat eds., 1989); HONG KONG'S BASIC LAW: PROBLEMS & PROSPECTS (Peter Wesley-Smith ed., 1990); Liu Yiu Chu, *Interpretation and Review of the Basic Law of the Hong Kong Special Administrative Region*, 2 J. CHINESE L. 49 (1988); Patricia Homan Palumbo, *Analysis of the Sino-British Joint Declaration and the Basic Law of Hong Kong: What Do They Guarantee the People of Hong Kong After 1997?*, 6 CONN. J. INT'L L. 667 (1991).

⁵⁵ Basic Law, *supra* note 2, art. 2 (emphasis added).

⁵⁶ *Id.* art. 68.

⁵⁷ *Id.*

Kong SAR, and according to a goal of "orderly progress."⁵⁸ One might suggest that these terms allow so much leeway as to be meaningless, beyond any palliative value they might have.

The other provisions of the Basic Law that are most relevant to this Comment outline the nature of the Hong Kong SAR's autonomy in its relations with the People's Republic of China. As a starting point, Article 8 stipulates that all laws previously in force in Hong Kong shall remain so in the Hong Kong SAR unless they contradict the Basic Law.⁵⁹ Furthermore, Article 17 endows the Standing Committee of the National People's Congress with the authority to invalidate any law passed by the legislature of the Hong Kong SAR that is determined to contradict the Basic Law.⁶⁰ Thus, one concern is the extent to which the Basic Law guarantees of legal continuity in Article 8 are undercut by the Standing Committee's powers to invalidate laws it determines are in contradiction with the Basic Law. Given the ambiguity of the Basic Law's terms with respect to the election of LegCo representatives—particularly with regard to the time frame for universal suffrage—it is possible that the Standing Committee could legally implement or rescind democratic procedures almost at will.

III. The Democracy Debate

Having surveyed the relevant legal background to the current situation in Hong Kong, the next step is to examine the actual controversy which has ensued between the PRC and Britain over the prospect of increased democracy. Perhaps the most relevant period to examine, if one wishes to understand the proposed changes in Hong Kong's government, begins when Chris Patten took over as the last British Governor of Hong Kong.⁶¹

In his first policy address as Governor, given on October 7, 1992, Chris Patten indicated his specific desire to increase democracy in Hong Kong.⁶² The specific goal of the proposals—to increase direct representation—would be effected by raising the number of directly

⁵⁸ *Id.*

⁵⁹ *Id.* art. 8.

⁶⁰ If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authority or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.

Id. art. 17.

⁶¹ Chris Patten took over as Governor on July 9, 1992. Philip Bowring, *Hong Kong Elite Shifts Loyalty to Future Patrons in Beijing*, THE GUARDIAN, July 7, 1992, at 9.

⁶² *Beijing Rejects Proposed Democratic Reform for Hong Kong*, AGENCE FRANCE PRESSE, Oct. 8, 1992, available in LEXIS, Nexis Library, International File [hereinafter *Beijing Rejects Reform*].

elected LegCo representatives⁶³ and expanding the number of eligible voters from 110,000 to 2.7 million by lowering the voting age from 21 to 18; by implementing new procedures for the indirectly elected LegCo members; and by electing members of municipal boards and district boards rather than appointing them.⁶⁴ Most significantly, by creating nine new functional constituencies, the proposals would enfranchise all of Hong Kong's workers.⁶⁵ At the same time Chris Patten announced these proposals, the British Prime Minister John Major met with Hong Kong's outspoken critic of the PRC and proponent of democracy, Martin Lee.⁶⁶ Because Mr. Lee's views have made him highly unpopular with the Chinese, this meeting was probably held to indicate to the Chinese that Britain would not back down on its proposals merely to avoid offending the Chinese.

The PRC responded in a manner and form that would become somewhat typical as the rhetorical debate and political posturing on this issue continued: Chinese foreign affairs spokesman Wu Jianmin issued a prepared statement broadly condemning Patten's proposals as violating the provisions of the Joint Declaration and the Basic Law.⁶⁷ The response may be termed "typical" because it has a number of features that have recurred during the ongoing debate. For example, the Chinese statement followed a British initiative—here Patten's proposals during his first policy address—and condemned the British suggestions as violative of the spirit of the agreements between the two nations. In addition, Mr. Wu's statement alluded to a legal underpinning suggesting that the proposed changes might be invalid because they were inconsistent with the Basic Law.⁶⁸ Naturally, this position raises a number of subissues. The primary ones are whose interpretation of the Basic Law applies, and which provision should take precedence if there is a conflict. Both of these important questions must be reserved, however, for later consideration.⁶⁹

Mr. Wu's press briefing contained one further aspect that has

⁶³ Bowring, *supra* note 61, at 9-10.

⁶⁴ *Legislature Approves Patten's Plan*, FACTS ON FILE WORLD NEWS DIG., Nov. 19, 1992, at 885.

⁶⁵ *Hong Kong: 'Hsin Pao' Interview With Governor Patten*, THE BBC SUMMARY OF WORLD BROADCASTS, June 28, 1993, available in LEXIS, Nexis Library, International File. This proposal was a drastic change from the existing system in Hong Kong, where a relatively narrow group of elite businesspersons and professionals had the sole right to vote in the functional constituency elections. Essentially, the Patten proposals would extend a right which had previously only been held by the company owner down to the construction workers. For more on the role of the functional constituencies, see *supra* notes 29-33 and accompanying text.

⁶⁶ Bowring, *supra* note 61.

⁶⁷ *Beijing Rejects Reform*, *supra* note 62.

⁶⁸ Wu restated the Chinese position that the Basic Law constrains Britain not to alter the government of Hong Kong prior to 1997, indicating that "[t]he Chinese side always maintains that there should not be major changes in the current political system in Hong Kong and that the evolution of the political system should converge with the Basic Law. . . ."

Id.

⁶⁹ See *infra* part IV.

since appeared repeatedly in the PRC's response to British initiatives. It is the implicit threat that any changes regarded as illegal by China under the Basic Law will be reversed when the PRC takes over.⁷⁰ Essentially, this response reminds the British authorities, in case they might have forgotten, that in the end China will be able to resolve any disputes to its own satisfaction.

Despite this implicit warning, the press statement also was worded to indicate that the Chinese position was not completely inflexible. For example, Mr. Wu stated that the Chinese would oppose any "major changes,"⁷¹ thus implying at least some willingness to accept minor changes to the existing governing system. It should also be noted that China declined to clarify, at this point, the actual measures that would be taken should a disfavored change be made.⁷²

Following the Chinese broadside directed against the proposed democratic changes, Mr. Patten responded to the allegations that the proposals violated the Joint Declaration and the Basic Law.⁷³ In a speech before Hong Kong businesspersons, Mr. Patten stated "[i]f people say that what I've set out isn't in conformity with the Joint Declaration and the Basic Law, I think it is incumbent upon them to indicate why. . . ."⁷⁴ More than a rhetorical flourish, this response sought to avoid some of the vitriol that began to pour forth from various Chinese sources by focusing the debate on the Basic Law's provisions regarding changes made to Hong Kong's government.⁷⁵ As such, it indicates the ostensible British position that the disagreement should be settled in a legalistic manner by referring to the provisions of the source documents. This response would also come to be characteristic of Britain's handling of the democracy debate.

Mr. Patten next undertook to argue the British position by visiting the PRC and meeting with various officials. The meeting does not appear to have been particularly productive for either side, however. While in China, Mr. Patten was denied a meeting with the Chinese Prime Minister Li Peng.⁷⁶ It had been customary for the governor of Hong Kong to meet with a high level official, and this apparent diplo-

⁷⁰ Mr. Wu stated that if "the evolution of the political system in Hong Kong during the transitional period would not consist with the Basic Law, the Chinese side shall not be held responsible . . ." *Beijing Rejects Reform*, *supra* note 62. "By then, the Hong Kong special administrative region of the People's Republic of China and concerned organisations will be set up in accordance with the Basic Law and related regulations passed by the National People's Congress . . ." *China Repeats Opposition to Patten Hong Kong Plan*, The Reuters Library Report, Oct. 9, 1992, available in LEXIS, Nexis Library, Reuter File.

⁷¹ See *supra* note 68.

⁷² *China Repeats Opposition to Patten Hong Kong Plan*, *supra* note 70.

⁷³ *Patten Challenges China to Say How He Violates Pact*, INT'L HERALD TRIB., Oct. 10, 1992.

⁷⁴ *Id.*

⁷⁵ Despite increasingly hostile attacks by the Chinese, Mr. Patten never publicly strayed from his focus on the validity of the actual proposals.

⁷⁶ Carrie Gracie, *Patten Impatient as Beijing Snubs his Political Reforms for Hong Kong*, THE GUARDIAN, Oct. 22, 1992.

matic snub was probably intended to indicate official Chinese displeasure with Mr. Patten's proposals.⁷⁷ If the goal was to dissuade the governor from pursuing the issue, however, it did not have that effect. In fact, Mr. Patten heightened his rhetoric by indicating his intention that the proposals would be presented, on schedule, for LegCo consideration.⁷⁸

This suggestion was not received favorably by the Chinese. Rather, it was quickly assaulted by a variety of official, quasi-official and supposedly private rhetorical attacks on the proposals and, with increasing frequency, on Mr. Patten himself. An official Chinese news magazine vilified the proposals, saying "[t]his goes against the will of the people . . . [,]damages Hong Kong's social stability, constitutes an obstacle to the smooth transition and represents a fundamental violation of the Sino-British Joint Declaration."⁷⁹ At the same time, Lu Ping, Director of China's Hong Kong and Macau Affairs Office held a news conference where he intimated that if democracy were pressed in Hong Kong, China might withdraw its support for the new airport under construction in Hong Kong.⁸⁰ As China's guarantees are necessary to secure much of the funding for the HK\$ 163.5 billion⁸¹ airport project, Lu Ping's remarks brought a new level of immediacy to the debate.⁸² Predictably, Chris Patten responded by issuing a statement that the airport project would go forth with or without China's support, to which Lu Ping countered by threatening that if that were the case, planes using the airport would be barred from flying in Chinese airspace.⁸³

The media onslaught followed less official channels as well. One

⁷⁷ Avid R. Schweisberg, *Hong Kong Governor Hangs Tough on Democracy Plan*, UPI, Oct. 22, 1992, available in, LEXIS Nexis Library, Current File.

⁷⁸ *Id.*

⁷⁹ *Patten to Argue for Hong Kong Democracy with China*, The Reuters Library Report, Oct. 19, 1992, available in LEXIS, Nexis Library, Reuter File; see also *Hong Kong Governor's Proposals Could Cause "Chaos,"* THE BBC SUMMARY OF WORLD BROADCASTS, Oct. 12, 1992, available in LEXIS, Nexis Library, International File (quoting former member of LegCo Maria Tam Wai-chu as saying the proposed changes violate the Basic Law).

⁸⁰ Andrew Boone, *China Warns Hong Kong's Patten Over Democracy*, Reuters Library Report, Oct. 23, 1992, available in LEXIS, Nexis Library, Reuter File.

⁸¹ Simon Holberton, *Patten Raises Stakes over Hong Kong's Future: An Unprecedented Contest is Looming*, FIN. TIMES, Oct. 26, 1992, at 4.

⁸² Much of the funding for the new airport is through long-term debt instruments. As most of this debt will extend beyond the turnover in 1997, it has been necessary to get the Chinese government to guarantee it. A removal of Chinese guarantees and, even worse, the possibility that China might dishonor the debt, could devastate the project. Andrew Boone, *China Warns Britain Against Hong Kong Democracy*, The Reuters Library Report, Oct. 23, 1992, available in, LEXIS, Nexis Library, Reuter File.

⁸³ Boone, *supra* note 80, available in LEXIS, Nexis Library, Reuter File. Note that from the time the new airport was proposed, there has been a fair amount of dispute concerning the project. The Chinese have alleged that the multi-billion dollar project was conceived as a vehicle through which the British government could drain Hong Kong's substantial foreign currency reserves and throw lucrative contracts to British construction companies. At the time Lu Ping gave this statement, the Hong Kong government had already let contracts worth HK\$19 billion. Holberton, *supra* note 81.

report indicates that in the week following Chris Patten's first post-proposal meeting with Chinese officials, more than seventy "attacks" on him and his plans were printed in the pro-Beijing press in Hong Kong.⁸⁴ These attacks took a variety of forms, one of the most extreme being an allegation that Chris Patten actually desired to prevent the turnover in 1997, or make Hong Kong into an independent state.⁸⁵ At the same time, the semi-official Chinese sources reiterated the threat to reverse any democratic changes, while characterizing Chris Patten's proposals as "improper" and "illegal."⁸⁶ Much to the chagrin of Chinese authorities, on November 11, 1992, the Hong Kong Legislative Council approved in a vote of 32-21 a motion supporting Patten's proposals.⁸⁷ Once again, the Chinese responded with renewed allegations that this evidenced British intentions to ignore the Joint Declaration and Basic Law,⁸⁸ and the PRC issued its most blistering attack yet on Chris Patten.⁸⁹ Furthermore, the PRC indicated its opinion that LegCo could not even be involved at this point.⁹⁰ This reaction pointed up the fundamental difference between the British and Chinese views on the legality of democratic changes in Hong Kong: the British believe that the terms of Joint Declaration and the Basic Law

⁸⁴ Holbertson, *supra* note 81.

⁸⁵ Zhou Nan, the director of the Hong Kong branch of China's Xinhua News Agency, stated that "[a]nyone who dreams of turning Hong Kong into an independent or semi-independent state or to retain the colonial rule in disguise will never get his way." Although this statement did not name Chris Patten specifically, it seems likely that it was implicitly intended as a warning to him. *China Accuses Patten of Seeking Independent Hong Kong*, PRESS ASS'N NEWSFILE, Nov. 7, 1992, available in LEXIS, Nexis Library, Current File. Another report of the same press conference quotes Zhou Nan as further stating that:

The Hong Kong British authorities are confronted with two choices. One is to leave the Basic Law aside and continue to go their own way, which will inevitably infringe upon the interests of the Hong Kong residents and undermine the territory's stability and prosperity. The Chinese government will not bear any responsibility for all the consequences arising therefrom. The other choice is to return to the course of the Joint Declaration and the Basic Law and abide by the understanding reached by the Chinese and British governments.

China Vows it Will Dismantle any Hong Kong Reforms, The Reuters Library Report, Nov. 7, 1992, available in LEXIS, Nexis Library, Reuter File.

⁸⁶ One Beijing-controlled radio station aired a statement that "[i]f [Patten] continues to break his promises and stubbornly press his own ideas and make improper arrangements contravening the Basic Law and sabotage the peaceful transition of power, then in 1997 . . . the Chinese side will establish its own legislature, judicial and administrative organs." Gareth Hewett, *Democracy Dispute To Spur Volatility*, SOUTH CHINA MORNING POST, Nov. 9, 1992, available in LEXIS, Nexis Library, Current File.

⁸⁷ Jeremy Wagstaff, *Hong Kong Calls for More Democracy from China, UK*, The Reuters Library Report, Nov. 12, 1992, available in LEXIS, Nexis Library, Reuter File; Denise Young, *China Blasts H.K. Legislators for Pro-Reform Vote*, The Reuters Library Report, Nov. 12, 1992, available in LEXIS, Nexis Library, Reuter File.

⁸⁸ Young, *supra* note 87.

⁸⁹ Zhang Jusheng, Vice Director of the Hong Kong branch of China's Xinhua news agency stated that "[Patten] has always been irrational." Jeremy Wagstaff, *China Calls Patten Irrational Over HK Reforms*, The Reuters Library Report, Nov. 13, 1992, available in LEXIS, Nexis Library, Reuter File.

⁹⁰ "The Hong Kong issue is a matter between China and the United Kingdom before July 1, 1997. . . . It is inappropriate for any third party to make irresponsible remarks on the Hong Kong issue." Young, *supra* note 87.

allow alterations to be made until the Chinese takeover; the Chinese interpret the agreements as requiring that, from the moment they come into force, no more alterations could be made by Britain to the system of governance in Hong Kong.⁹¹ As such, the Chinese understanding would seem to be that LegCo can currently have no role in the discussions between the two nations on the proposed changes to Hong Kong's electoral system because no changes are permitted until China has agreed to allow them.

At this point, a brief period of reconciliation between Britain and the People's Republic of China occurred. On November 17, 1992, British Prime Minister John Major met with the Chinese Vice-Premier Zhu Rongji in London and conducted discussions, which were characterized as "very amiable."⁹² In the meeting, both sides apparently reemphasized their respective desires that the transition phase go forth in accordance with the Basic Law.⁹³ Such statements do not necessarily indicate that the parties had reached any substantive agreement, however, since it seems that each side felt as though the Basic Law supported their position only. The depth of the rapprochement should also be doubted because the Chinese Vice-Premier asked whether the "[Joint Declaration] should go with the wind," apparently suggesting that Britain's position might cause the PRC to withdraw entirely from the legal arrangements governing Hong Kong's future.⁹⁴

Any hopes raised by the cordial London meeting were quickly dashed when a high ranking Chinese official attacked Patten's proposals. Speaking in Beijing, Chinese Premier Li Peng said on November 23, 1992, that "[democracy in Hong Kong] is a matter of principle The Chinese government will never compromise or make any concession on matters of principle Any counter-proposal or any compromise plan on the basis of the Hong Kong governor's plan is unacceptable."⁹⁵ Besides emphasizing a very hard-line position, Li Peng's statement gave an answer to Chris Patten's repeated requests that if China opposed his package it should suggest a compromise.⁹⁶ It left no doubt that, at least publicly, the Chinese government was unwilling to use Chris Patten's proposals as a base from which a dialogue on possible democratic alterations might be started.⁹⁷

⁹¹ See *infra* notes 168-171 and accompanying text.

⁹² Alexander Nicoll & Ivor Owen, *Britain Tells China It Supports Greater HK Democracy*, FIN. TIMES, Nov. 18, 1992, at 20.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Li Peng Condemns Hong Kong Democracy Plans*, AGENCE FRANCE PRESSE, Nov. 23, 1992, available in LEXIS, Nexis Library, International File.

⁹⁶ Andrew Browne, *China Accuses Patten of Gambling with Hong Kong*, The Reuters Library Report, Nov. 24, 1992, available in LEXIS, Nexis Library, Reuter File.

⁹⁷ The Chinese intransigence on this point may be a result of a belief that the Joint Declaration froze into place the existing form of government in Hong Kong, and therefore, there can be no alterations. See also *infra* notes 168-171 and accompanying text.

Shortly thereafter, Chinese officials took a different tack in their effort to increase pressure on the British authorities. In a statement released on November 30, 1992, China's Hong Kong and Macau Affairs Office warned that "[c]ontracts, leases and agreements signed and ratified by the Hong Kong British government which are not approved by the Chinese side will be invalid after June 30, 1997."⁹⁸ The nature of the statement makes it difficult to be certain what prompted it. To the extent that it explicitly threatens long-term contracts, the statement may have been directed towards the airport project, but given the context of the furious debate over the introduction of greater democracy in Hong Kong—and the fact that such a statement could be calculated to pressure the British by upsetting conditions in the city—it also seems very possible that it was just the latest step in China's continued opposition to the democracy proposals.⁹⁹ The British authorities downplayed the statement, emphasizing that contracts legally made prior to the changeover in 1997 would continue to be enforceable under the Basic Law.¹⁰⁰ Nevertheless, the rumor-driven Hong Kong stock market experienced a minor crash the following business day¹⁰¹ which was probably largely attributable to the Chinese statement. Not willing to miss any opportunity, Chinese officials took issue over the cause of the crash, blaming Chris Patten's democratic proposals for destabilizing the market.¹⁰²

The struggle had reached such a peak by this point that the Prime Minister's Policy Advisor, Sir Percy Craddock, characterized it "as the most serious crisis we have had over Hong Kong over the last 10 years. . . . To find anything like the same state of tension, I think I'd have to go back to the cultural revolution in the 1960s."¹⁰³ If the performance of the stock market is a criterion by which to measure the

⁹⁸ *China Threatens Hong Kong Veto*, PRESS ASS'N NEWSFILE, NOV. 30, 1992, available in LEXIS, Nexis Library, Current File.

⁹⁹ One report quotes British "diplomatic sources" as suggesting that the intent of the statement was to increase pressure on Chris Patten. Sue Baker, *Britain Rejects Beijing Claim of Hong Kong Veto Power*, Reuters Library Report, Nov. 30, 1992, available in LEXIS, Nexis Library, Reuter File. Another commentator emphasized the effect the statement would have on the public, saying "[i]t keeps the pressure on business to support the Chinese side. . . . Politically it's pretty savvy, but from an overall confidence point of view it's not too good." Andrew Roche, *HK Shares Crash, Patten Accuses China*, Dec. 3, 1992, available in LEXIS, Nexis Library, Reuter File.

¹⁰⁰ Baker, *supra* note 99.

¹⁰¹ The Hang Seng index dropped 400.60 points, losing more than 7% of its value. Roche, *supra* note 99. The drop was the largest since the Tiananmen Square massacre in 1989, when the market dropped 581 points. *Id.* In all, share prices dropped 23% since the beginning of the row with China. *Id.* Several days after the crash, Standard & Poor's Corp. lowered its credit ratings of the Hong Kong government, stating that this reflected the deterioration of relations between Britain and China. *Hong Kong Placed on Credit Watch*, UPI, Dec. 7, 1992, available in LEXIS, Nexis Library, Current File.

¹⁰² *China Questions Basic Pact on Hong Kong Handover*, The Reuters Library Report, Dec. 3, 1992, available in LEXIS, Nexis Library, Reuter File.

¹⁰³ *Most Serious Sino-British Crisis in 10 Years, Advisor Warns*, AGENCE FRANCE PRESSE, Dec. 3, 1992, available in LEXIS, Nexis Library, International File.

crisis, then certainly this was a dark hour for Hong Kong. Between November 30 and December 3, the Hang Seng Index lost 1,008 points, or 16.8 percent.¹⁰⁴ At the same time, British Foreign Secretary Dennis Hurd stated "[i]t is a good thing if China and Britain, during the period up to 1997, can work together and would like to do so on this occasion. . . . But that is not the same as saying the Chinese have the right to tell us . . . what we can or cannot do in areas that are our responsibility."¹⁰⁵ This was the first time in the debate that the British implied that they were both empowered and willing to go forth with the changes, with or without the PRC's approval. Until this point, by seeking China's cooperation Britain had given the impression that it regarded China's consent as crucial to implementing Chris Patten's proposals.

December 8, 1992 saw the beginning of yet another three-day meeting of the Sino-British Joint Liaison Group. The meeting began inauspiciously with the Chinese representative stating that China would neither discuss the current democratic proposals nor make counter proposals.¹⁰⁶ Apparently, the negotiators were unable to break the deadlock, and the Chinese refused to enter the customary joint statement at the conclusion of the meeting.¹⁰⁷ In an independent statement, the Chinese reiterated their position that the British proposals were illegal under the Basic Law and consequently, that the Basic Law itself might no longer be valid.¹⁰⁸ Lu Ping stated that "[t]he problem . . . is not the faster pace or slower pace of democratization. . . . The principle is whether one should keep one's promises."¹⁰⁹ Nevertheless, some British commentators were heartened by the fact that the talks took place at all and that neither party walked out.¹¹⁰

The British received some additional encouragement when, shortly after the new year began, China's Premier Li Peng reaffirmed that the PRC was committed to the principles embodied in the Joint Declaration.¹¹¹ The Premier's statement was significant in that it backed away from the previous threat that the Chinese regarded the

¹⁰⁴ Gene Linn, *Stock Market is Casualty in War of Words*, UPI, Dec. 20, 1993, available in LEXIS, Nexis Library, Current File.

¹⁰⁵ *China Has No Right to Dictate Hong Kong Policy*, AGENCE FRANCE PRESSE, Dec. 4, 1992, available in LEXIS, Nexis Library, International File.

¹⁰⁶ David Stamp, "No Tango," *Says China in Hong Kong Talks*, The Reuters Library Report, Dec. 8, 1992, available in LEXIS, Nexis Library, Reuter File.

¹⁰⁷ Andrew Roche, *Focus—Britain and China Remain Deadlocked Over HK*, The Reuters Library Report, Dec. 10, 1992, available in LEXIS, Nexis Library, Reuter File.

¹⁰⁸ A Chinese representative questioned: "If the agreements arrived at by the Chinese and the British sides can be scrapped, then what's the point for us to continue to discuss and reach agreements within the JLG?" *Id.*

¹⁰⁹ *China Accuses Britain of Diplomatic 'Scam' Over Hong Kong*, AGENCE FRANCE PRESSE, Dec. 22, 1992, available in LEXIS, Nexis Library, International File.

¹¹⁰ Roche, *supra* note 107.

¹¹¹ Speaking through the Xinhua News Agency, Li Peng stated that "[t]he Chinese government, which keeps its promises and good faith, will, as always, act in accordance with the principles and stipulations of the Sino-British Joint Declaration, the Hong Kong Basic Law

Basic Law as invalidated by the British proposals.¹¹² Meanwhile, a note of dissent from Chris Patten's inner circle of advisors was detected when Felice Lih Mak suggested in an interview that the drive for democracy might rebound against Hong Kong's interests.¹¹³ Her concern was that the row with China would hurt Hong Kong's economy, stating that "Hong Kong's economic strength and viability is our one trump card to maintain our autonomy and to really maintain the principle of Hong Kong people governing Hong Kong."¹¹⁴ This particular criticism had been leveled before, most frequently by members of Hong Kong's business community and pro-Chinese groups. Despite this internal criticism, the somewhat changed tone of the Chinese rhetoric seemed encouraging, and plans went forward to present the proposals to the legislature within one month.¹¹⁵

On February 9, 1993, Hong Kong's cabinet, the Executive Council, approved a bill based on Patten's reforms.¹¹⁶ Shortly thereafter, amid rumors that talks with China would resume, the Hang Seng index soared to a record high.¹¹⁷ But when Chris Patten suggested that the proposals would be presented to LegCo on schedule, Lu Ping responded by stating that China would immediately begin preparations to establish a shadow government for Hong Kong if Chris Patten carried out his proposed democratic changes.¹¹⁸ Lu Ping stated that "[s]tarting from now we have to make preparations in all areas. We only have a little more than four years time, so we have to work hard to make preparations."¹¹⁹ Predictably, Mr. Lu did not neglect to include the now customary attack on Chris Patten, in response to his publication of the democratic proposals, branding the Governor "highly irre-

and other relevant agreements." *China Will Stick to Joint Declaration*, The Reuters Library Report, Jan. 8, 1993, available in LEXIS, Nexis Library, Reuter File.

¹¹² See *supra* note 109 and accompanying text.

¹¹³ David Stamp, *Top Patten Adviser Queries HK Drive for Democracy*, The Reuters Library Report, Jan. 11, 1993, available in LEXIS, Nexis Library, Reuter File. Public dissent emanating from the Executive Council is relatively rare, as decisions are taken on a consensus basis and once made, the members typically present an unified front. *Id.*

¹¹⁴ *Id.*

¹¹⁵ Simon Holberton, *HK Delays Democracy Legislation*, FIN. TIMES, Jan. 12, 1993, at 4. *But see Premier Li Peng Reaffirms Tough Line on Hong Kong*, JAPAN ECON. NEWSWIRE, Jan. 23, 1993, available in LEXIS, Nexis Library, International File (quoting Li Peng's somewhat ambiguous statement that "[f]rom first to last, we will consistently devote ourselves to maintaining long-term prosperity and development in Hong Kong and Macao. . . . Recent actions by the Hong Kong and British sides have blocked the way towards Hong Kong's peaceful and stable transition and continued prosperity." Mr. Li's statement certainly blames the British, but also reaffirms China's commitment to a prosperous Hong Kong, which presumably may mean a Hong Kong administered under the Basic Law).

¹¹⁶ *Patten's HK Reform Row with China—A Chronology*, The Reuters Library Report, Apr. 21, 1993, available in LEXIS, Nexis Library, Reuter File.

¹¹⁷ *Id.*

¹¹⁸ *China Threatens Shadow Authority for Hong Kong*, PRESS ASS'N NEWSFILE, Mar. 17, 1993, available in LEXIS, Nexis Library, Current File.

¹¹⁹ *China to Form Own HK Government Amid Democracy Row*, AGENCE FRANCE PRESSE, Mar. 17, 1993, available in LEXIS, Nexis Library, International File.

sponsible" and "an eternal criminal."¹²⁰ Chris Patten issued his standard reply that he would be willing to discuss any proposals China wished to put forward.¹²¹

The next Chinese statement during the standoff indicated another of China's periodic rhetorical retreats. In a press conference on April 1, 1993, recently re-elected Premier Li Peng stated that China would be willing to enter into negotiations if Britain would adhere to the Joint Declaration, the Basic Law, and various private agreements between London and Hong Kong.¹²² This seemingly straightforward position was complicated by Chinese stipulations that Hong Kong officials could not participate in any talks on the same basis as the British officials and that LegCo could not have a voice in approving any agreements.¹²³ Talks were suspended for one month, but on April 13, 1993, Britain and China announced that negotiations concerning the future of Hong Kong would resume on April 22.¹²⁴ The next day, the Hang Seng Index gained 371 points, reaching a record high.¹²⁵ When the talks opened, the Hong Kong officials were not marked with nameplates, which comported with China's requirement that they not be official delegates.¹²⁶ Despite this superficial concession by the British, both sides conceded at the end of the three-day conference that no headway had been made, beyond the fact that the talks themselves had resumed.¹²⁷

Prior to the beginning of the third round of talks, Governor Patten traveled to the United States and met with President Clinton, who praised his efforts to advance democracy in Hong Kong.¹²⁸ While in the United States, Chris Patten seemed to suggest that there should be some linkage between the success of his democratic proposals and the renewal of China's most-favored-nation trading privileges with the United States.¹²⁹ This effort has been characterized as an attempt to play Hong Kong's international card: by emphasizing Hong Kong's status as a major international trading emporium and center of finance, Chris Patten may hope to encourage the industrial democracies to pressure China into relenting.¹³⁰ To all appearances this latest tac-

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Graham Hutchings, *China Has 'Not Closed Door on Hong Kong'*, THE DAILY TELEGRAPH, Apr. 1, 1993, available in LEXIS, Nexis Library, Current File.

¹²³ *Id.*

¹²⁴ *Patten's HK Reform Row With China—A Chronology*, *supra* note 116.

¹²⁵ *Id.*

¹²⁶ David Schlesinger, *Sino-British HK Talks Resume, More Rounds Seen*, The Reuters Library Report, Apr. 28, 1993, available in LEXIS, Nexis Library, Reuter File.

¹²⁷ *China Takes Hard Line Ahead of Hong Kong Talks*, AGENCE FRANCE PRESSE, May 17, 1993, available in LEXIS, Nexis Library, International Library.

¹²⁸ *Paper Says Patten 'Really Became a Whore' During US Visit*, BBC, May 17, 1993, available in LEXIS, Nexis Library, Current File.

¹²⁹ *Id.*

¹³⁰ *Id.*

tic enraged Chinese officials, but knowing they could not afford to lash out against the western leaders who would decide crucial issues involving trade with China, the Chinese restrained themselves and issued only a scathing denouncement of Chris Patten.¹³¹

The round of JLG talks beginning on May 21, 1993 was somewhat more productive than the two that immediately preceded it. The Joint Liaison Group was able to reach agreements concerning electricity franchises and a landfill, as well as setting a schedule for discussions concerning the financing of the airport project.¹³² At this point, some commentators expressed their belief that the relations between Britain and the PRC had resumed their normal form: secret negotiations with the Chinese would be utilized to reach an agreement before the announcement of any proposals to the people of Hong Kong.¹³³

Thus, prior to the next round of talks, there was some indication that substantive issues would finally be discussed.¹³⁴ The British downplayed any firm commitment to the specifics of the Patten proposals, apparently willing to negotiate for a more limited increase in the franchise for Hong Kong citizens. Unfortunately, the anticipated breakthrough failed to materialize in either of the next two rounds of JLG talks. Indicative of the inability to reach any form of agreement was the failure of the meetings to produce a much desired go ahead for a ninth container terminal.¹³⁵ The British team leader Anthony Galsworthy stated that "[t]he results from three days of discussions have been pretty marginal and it is clear to me that the Chinese side approached the meeting with the intention of allowing only minimal progress."¹³⁶

On July 9, 1993, Chris Patten completed his first year as the last British Governor of Hong Kong. In an effort to break the deadlock that had plagued Patten's first year, British Foreign Secretary Douglas Hurd flew to Beijing to discuss some compromise on the proposed democratic reforms.¹³⁷ Despite working under a putative October 1993 deadline set by a previous memorandum of understanding, the Chinese were adamant that Hurd would be unsuccessful if he pushed

¹³¹ One Chinese paper characterized Patten's proposal as the "three violations," and said "[w]hen [Patten] was in the United States, Chris Patten really became a whore. When he met Clinton at the White House on 3rd May, he tried, using his slick tongue, to sell Clinton his 'three violations' package. . . ." *Id.*

¹³² *A Welcome Thaw in Beijing*, FIN. TIMES, May 28, 1993, available in LEXIS, Nexis Library, Current File.

¹³³ *Id.*

¹³⁴ Ian Black, *British Hopeful on Hong Kong Talks*, THE GUARDIAN, June 9, 1993, available in LEXIS, Nexis Library, Current File.

¹³⁵ *Britain Attacks China After Hong Kong Talks Fail*, JAPAN ECON. NEWSWIRE, June 23, 1993, available in LEXIS, Nexis Library, International File.

¹³⁶ *Id.*

¹³⁷ *Hong Kong: Britain Tries to Break Democracy Deadlock*, INTER PRESS SERVICE, July 7, 1993, available in LEXIS, Nexis Library, International File.

Patten's reform plan.¹³⁸ Following the meeting, the apparent failure of Hurd's visit to break the impasse over Hong Kong was evident when the Chinese indicated their intention to link their support for the airport project to the democracy battle.¹³⁹ Meanwhile, rumors began to circulate in Hong Kong that Britain had tabled the democracy proposals during the previous month's discussions.¹⁴⁰ Patten denied that the democracy proposals had been buried in order for an agreement on the airport to be reached, however, and the debate continued.¹⁴¹

IV. Analysis

A. *Understanding the British Position*

In examining the respective positions of both parties to this debate, one is cast into a role not unlike that of an archeologist: with only a handful of relics—primarily press releases—the archeologist must try to extrapolate the underlying assumptions and reveal their meaning. Perhaps the most effective way to begin to understand the British position is to look for recurring themes in Britain's dealings with the PRC on the issue of Hong Kong democracy. The most dominant theme recognizable in British responses has been that the Chinese should be specific in their criticism of the legality of the proposed changes and that the British are willing to negotiate and compromise.¹⁴² A survey of the give and take between the PRC and Britain reveals a pattern whereby following the initial proposal or a period of rapprochement between the parties, there has been a round of criticism from an official of the PRC or some other China-controlled party to which Chris Patten has most frequently responded by calling for productive discussions and by challenging the Chinese authorities to specify the alleged illegalities of his proposal.¹⁴³

Given this as Britain's most frequent posture in the debate, the next issue is to consider what it may reveal. Two possibilities almost immediately suggest themselves. The first is that the British are so confident that the Joint Declaration and the Basic Law support their position that they believe discussions with the PRC will establish the legality of the proposed democratization. The other likely alternative seems to be that believing the PRC will never accede to the suggestion that the parties negotiate some sort of agreement on the issue, the British have

¹³⁸ Wu Jianmin, the PRC's Foreign Ministry Spokesman, stated that "[t]he Basic Law of Hong Kong has sufficient guarantees of the democratic rights of Hong Kong residents after 1997." *Hurd China Visit Attempt to Cut Through Bitter Row*, The Reuter Library Report, July 8, 1993, available in LEXIS, Nexis Library, Reuter File.

¹³⁹ Andrew Wong, *Patten Must Scrap Plan for Airport Deal*, THE REUTER ASIA-PACIFIC BUS. REP., July 16, 1993, available in LEXIS, Nexis Library, Reuter File.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See *supra* notes 74, 121 and accompanying text.

¹⁴³ See *supra* part III.

deliberately utilized this suggestion as a way to delay while the changes to Hong Kong's electoral system are actually implemented.

1. *Legality of the Democratic Changes*

In examining the first proposition—that the British believe in the legality of the proposed changes—the place to look is the Joint Declaration and the Basic Law. The Joint Declaration reiterates that the United Kingdom will continue to govern Hong Kong between the effective date of the Joint Declaration and June 30, 1997.¹⁴⁴ The Joint Declaration places no explicit limitations on the governing authority of the United Kingdom during the transitional period, however, except that the UK is to govern with the object of maintaining stability and prosperity.¹⁴⁵ Most notably, the British are not required to seek Chinese approval in their governing operations.¹⁴⁶

It is clear that this paragraph of the Joint Declaration neither places limits on Britain's governance of Hong Kong during the transitional period, nor gives the PRC a veto over British initiatives. Nevertheless, one might be able to make a case against the British position by asserting that the proposed democratization runs afoul of paragraph four of the Joint Declaration in that the proposals socially destabilize Hong Kong and have injured the city's prosperity.¹⁴⁷ Certainly, the Chinese at least rhetorically claim this is the case, as is evidenced by the frequent warnings that Chris Patten's proposals will lead to social chaos and economic collapse.¹⁴⁸ The Chinese position on this issue has been to insist that Hong Kong has peacefully prospered without democracy and that its late introduction is thus inimical to the Hong Kong way of life.¹⁴⁹ One might point to some of the turmoil which has recently afflicted Hong Kong's Hang Seng Index as evidence supporting this allegation.¹⁵⁰

There is an effective response that can be made, however, to this interpretation of paragraph four of the Joint Declaration and the events surrounding the democracy proposals. The Joint Declaration provides that Britain must maintain stability and prosperity, but even if one concedes that the proposals have jeopardized the stability provision, it is possible that democracy in Hong Kong is now necessary to maintain Hong Kong's booming economy. This position has been advanced by Chris Patten and by others who suggest that Hong Kong has reached a level of affluence and economic sophistication where demo-

¹⁴⁴ Joint Declaration, *supra* note 1, para. 4; *see supra* note 38 and accompanying text.

¹⁴⁵ Joint Declaration, *supra* note 1, para.4; *see supra* note 43 and accompanying text.

¹⁴⁶ The Joint Declaration does state that the PRC is to cooperate in Britain's administration of Hong Kong. Joint Declaration para. 4, *supra* note 1.

¹⁴⁷ *See supra* note 43 and accompanying text.

¹⁴⁸ *See supra* notes 102, 115 and accompanying text.

¹⁴⁹ *See supra* notes 114-115 and accompanying text.

¹⁵⁰ *See supra* notes 101-102, 117, 125 and accompanying text.

cratic government becomes necessary for further growth.¹⁵¹ The argument is that even though the proposals cause some short-term disruption in stability, they accord with the requirement that Britain continue to administer the city in such a way that economic prosperity is ensured and enhanced.

The other provision of the Joint Declaration that is most relevant to the British belief that their democratic proposals are legal is the subsection of paragraph three—an unilateral declaration by the PRC—which provides that “[t]he laws *currently* in force in Hong Kong will remain basically unchanged.”¹⁵² The problem with this provision is determining at what point it freezes the laws of Hong Kong so that they will remain basically unchanged. If the provision went into effect at the signing of the Joint Declaration, then one can see that the British proposals may amount to the kind of change to the laws of Hong Kong that is forbidden. On the other hand, if the provision seeks to freeze the laws of Hong Kong at changeover in 1997, then it will ostensibly bind the PRC to maintaining the democratic system put into place by the British during these last years of British rule.

There is evidence that the latter interpretation should be applied. The majority of the context of the provision seems to support a pro-British interpretation. The relevant subsection is composed of two sentences: the first states that “[t]he Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication”; and the second speaks of the laws in force remaining “basically unchanged.” Clearly, the first sentence is talking of Hong Kong after the changeover because it speaks of the Hong Kong SAR, which will not exist until the changeover has occurred. Thus, it would seem unlikely that the second sentence is meant to refer to some other, previous time frame, since a different time is not stated. Instead, the subsection as a whole reads as though it will come into effect on June 1, 1997. If a different time frame for the second sentence had been intended, it could have been more clearly indicated. This reading is born out by the fact that the entire third paragraph of the Joint Declaration is given over to outlining the PRC’s plans for Hong Kong when the city returns to Chinese control.¹⁵³

The next place to look for guidance when examining the possibility that the British believe that the proposed changes are legal is the Basic Law itself.¹⁵⁴ In doing so, it is important to remember that the Chinese-authored Basic Law applies to Hong Kong after the change-

¹⁵¹ See also George L. Hicks, *Red Capitalism*, in *BASIC QUESTIONS*, *supra* note 54, at 97, 109 “It is an illusion to think that it will be possible to maintain a competitive and prosperous economy without the acceptance of liberal values, including democracy.” *Id.*

¹⁵² Joint Declaration, *supra* note 1, para. 3 (emphasis added).

¹⁵³ *Id.*; see *supra* note 40 and accompanying text.

¹⁵⁴ Basic Law, *supra* note 2.

over, but is still relevant to this issue to the extent that it is based on the Joint Declaration and thus indicates the Chinese understanding of that document. As such, certainly the most facially relevant provision of the Basic Law is that which states that the ultimate aim is to establish universal suffrage for LegCo elections in the Hong Kong SAR.¹⁵⁵

This intention—more ambitious than even Chris Patten's current proposals—is vaguely stated, however, phrased only as an "ultimate goal."¹⁵⁶ Thus, on the point of LegCo elections, the Basic Law contains no truly definite commitment. Given the fact that China's opposition to Chris Patten's proposals has not been based solely on the fact that it is the British who wish to introduce democracy—the Chinese have repeatedly voiced philosophic and economic objections to the British proposals, not just political ones¹⁵⁷—the PRC's commitment to the introduction of universal suffrage for LegCo elections could be doubted.

Nevertheless, the fact of the matter is that the Basic Law does include this goal of democracy in Hong Kong. This would suggest that the Chinese understanding of the Joint Declaration is such that at the least, it does not preclude the eventual introduction of universal suffrage.¹⁵⁸ There is a conceptual chasm, however, between this conclusion and the question of whether the British themselves are prevented from doing so. It may be that this provision of the Basic Law has no direct implication for the British introduction of democracy in Hong Kong, but it does tend to undercut the occasional Chinese position that *any* expansion of democracy in Hong Kong is not feasible. Instead, of necessity, Article 68 of the Basic Law should limit the Chinese to protesting only the introduction of democracy by the British.

Article 68, when read in conjunction with Article 8 of the Basic Law, does reveal one other fact that is relevant to the possible British understanding that their introduction of democracy in Hong Kong is legal. Article 8 states that the laws in force in Hong Kong will remain so, in the Hong Kong SAR, so long as they do not contradict the Basic Law.¹⁵⁹ As such, to the extent that the Basic Law at least contemplates universal suffrage in Hong Kong, the British proposals to introduce greater democracy may be protected under the Basic Law when the city is governed under the Hong Kong SAR.

Finally, there is an additional provision of the Basic Law that bears on the proposal for broader suffrage in LegCo elections. Article 3 of

¹⁵⁵ *Id.* art. 68; *see supra* note 57 and accompanying text.

¹⁵⁶ Basic Law, note 2, art. 68.

¹⁵⁷ *See supra* notes 68, 79, 109 and accompanying text.

¹⁵⁸ As the Joint Declaration was the model for the Basic Law, the assumption is that the provisions of the Basic Law may not contradict those made in the Joint Declaration. A different consideration, however, is the extent to which the Basic Law may exceed the requirements of the Joint Declaration.

¹⁵⁹ Basic Law, *supra* note 2; *see supra* note 57-59 and accompanying text.

Annex I to the Basic Law states that the chief executive officer—the individual who will serve as governor in the Hong Kong SAR—will be elected “in accordance with principles of democracy and openness.”¹⁶⁰ Although this commitment is not directly relevant to Chris Patten’s proposals in that it refers to executive elections and not those in the legislature, it does provide some secondary evidence that democracy is at least comprehensible under the Basic Law. Thus, there are several colorable bases from which the British could have concluded that democracy in Hong Kong is legal under the Joint Declaration and the Basic Law. For this reason, the British have repeatedly stated a desire to enter a dialogue with the Chinese on this issue.

2. *The British Position as a Delaying Tactic*

The next point for consideration, however, is the alternative possibility that the British know the Chinese will never accede to a meaningful discussion on the topic of democracy in British-ruled Hong Kong and thus, have made these repeated attempts at dialogue merely as a delaying tactic while actual democratic change is implemented. The question this interpretation begs is why the British would do such a thing, when it is clearly against Chinese wishes and when the PRC could probably produce a plausible interpretation of the Joint Declaration and the Basic Law that would undo any British expansion of Hong Kong democracy.¹⁶¹

A multi-faceted answer to this enigma suggests itself. The first point to understand is that despite occasional willingness to seek Chinese approval where politic,¹⁶² the British seem determined that, until the changeover, Hong Kong is still subject to their sole rule. As such, the repeated insistence on a desire to negotiate the issue may be nothing more than an effort to maintain a public relations front of apparent willingness to cooperate. Meanwhile, the changes would be implemented and the debate would become moot. In essence, Britain would have acquired democracy for Hong Kong without gaining the permission of the PRC—regardless of whether or not such permission is required by the Joint Declaration and the Basic Law—while making the Chinese officials appear to be unreasonable in their unwillingness to negotiate changes.

Underpinning such a tactic would be the further assumption that

¹⁶⁰ Basic Law, *supra* note 2, Annex 1, art. 3.

¹⁶¹ Under Article 17, and pursuant to Article 8 of the Basic Law, the Standing Committee of the National People’s Congress may overrule any law in the Hong Kong SAR which it decides contradicts the Basic Law. *Id.* arts. 8, 17; see *supra* note 60 and accompanying text. See also *infra* notes 168-169 and accompanying text.

¹⁶² One area where the input and consent of the Chinese has been essential is the massive airport and shipping facility being constructed at Chek Lap Kok. The primary reason for this has been that the funding for the project will extend beyond the changeover, and as such, Chinese approval has been necessary to secure it. Inevitably, this has afforded the PRC a degree of input on the project.

the PRC either could not legally reverse the democratic changes in Hong Kong or would not do so.¹⁶³ There are several reasons why the British might believe the PRC would not reverse the democratic expansion in Hong Kong: international public opinion would be against such an action;¹⁶⁴ the people of Hong Kong might evidence some unwillingness to accept such a change; and most importantly, it might deal a serious setback to Hong Kong's economy. Simply put, the British may be relying on the notion that once a benefit has been conferred, it is usually very difficult to take it away without substantial resistance. The obvious difficulty with this interpretation of the British bargaining position is that the British have to be aware that the PRC has demonstrated its resolve on similar issues in the past, regardless of international pressure and popular disapproval.¹⁶⁵ On the other hand, it may be a concern about just this kind of Chinese intransigence that has motivated the British to push for democratization in Hong Kong in the first place, believing that the potential benefits of broader democracy outweigh the risk of its being rescinded.

B. Understanding the Chinese Position

One might characterize the Chinese side of the democracy debate as consisting of a chorus of different voices hitting seemingly discordant notes, frequently at the same time. At some point, however, these disparate tones begin to merge into some discernible pattern. The PRC has frequently followed a strongly worded attack on the British position with a seeming reduction of rhetoric. This "good cop, bad cop" routine has been conducted by the utilization of many different organs to vocalize the most current Chinese position. Despite this facial inconsistency, however, the PRC's official view of democracy in

¹⁶³ For a discussion of the legal interpretation of the Joint Declaration and the Basic Law which would seem to preclude the PRC from reversing a British broadening of democracy after changeover, see *supra* part IV.A.1. and accompanying text.

¹⁶⁴ One should not assume that because the international community failed to respond effectively to the Tiananmen Square incident, such would be the case if there were to be some sort of "crackdown" in Hong Kong. A more forceful response could be expected because many nations have substantial sums invested in Hong Kong, as well as citizens living and working there. Also, Hong Kong's importance as a center of international trade and finance should encourage the international community to take an interest in the city's treatment by the PRC.

In addition, the United States has already rhetorically pressed the PRC for liberalizations, particularly under the Clinton Administration. It seems likely that if the PRC sought to reverse any increase in democracy in Hong Kong the United States would be particularly unhappy. Given the PRC's annual struggle to renew most-favored-nation trading status with the United States, such a policy towards Hong Kong might have far reaching consequences for China.

¹⁶⁵ On June 4, 1989, following several weeks of pro-democracy student protests in Beijing's Tiananmen Square, the People's Liberation Army forcibly ended the protest, inflicting substantial bloodshed. MCGURN, *supra* note 8, at 81-88 (1991). Despite extensive protests at the time in previously apathetic Hong Kong, as well as almost universal condemnation by the world's leaders, the government of the PRC has never formally indicated that the action taken was extreme, or indeed, the concern of any other party.

Hong Kong may be quite fairly characterized as predominately negative.¹⁶⁶ In some respects, however, it may be that the strategy of the leaders of the PRC is similar to that of the British, even if their positions on the issue seem to be diametrically opposed at this point. For example, at least two alternatives present themselves: the PRC either believes that its position is the one best supported by the relevant law; or the PRC is deliberately engaging in a delaying strategy. Finally, an examination of the form of the Chinese opposition, which has been disproportionately directed against Chris Patten as an individual, raises questions as to what the purpose behind this tactic might be.

1. The Legality of Democratic Changes: The Chinese Perspective

Once again, the beginning point for this analysis is the Joint Declaration. Repeatedly throughout the ongoing debate between the British and the PRC, Chinese officials have alleged that the proposed democratic measures are illegal under the agreements entered into by the two nations.¹⁶⁷ Unfortunately, the Chinese have just as frequently refused to specify which provisions of the agreements are actually violated. As was discussed earlier in this Comment, the provision in the Joint Declaration specifying that the current laws shall remain in force is subject to varying interpretations.¹⁶⁸ If the Chinese were to assert this provision as a shield to prevent British changes to the law in Hong Kong during the years between the signing of the Joint Declaration and the changeover in 1997, then the argument they would likely use is that the Joint Declaration froze the laws in Hong Kong from being changed at the moment the agreement was signed. There does not appear to be anything specific in the Joint Declaration that would belie such an interpretation. In fact, it is contained in one of the unilateral declarations of the Joint Declaration by the Chinese,¹⁶⁹ and the Chinese might attempt to fashion an argument that their interpretation should apply.

Given the PRC's predilection for emphasizing the sole governing authority of sovereigns, however, such a result would seem to be inherently contradictory. The primary reason for this conclusion is that if the Joint Declaration is so construed, it would arguably preclude the present government of Hong Kong from passing any legislation which alters the fundamental character of an existing law.¹⁷⁰ As such, this

¹⁶⁶ Although the question of motivation is one that often cannot be answered, one might consider that the Tiananmen Square incident, as well as the PRC's heated opposition to the possibility of greater democracy in Hong Kong have at their root a common policy. The fact that in both of these cases, the Chinese leadership was willing to take dramatic measures and endure substantial international criticism suggests that an anti-democratic policy may be a high priority.

¹⁶⁷ See *supra* notes 67-68, 79, 86, 84, 108-109, 122 and accompanying text.

¹⁶⁸ See *supra* part IV.A.1. and accompanying text.

¹⁶⁹ See *supra* note 37 and accompanying text.

¹⁷⁰ Note that the Joint Declaration does not apply this prohibition to only "essential"

interpretation could well deprive the government of Hong Kong of its ability to function as an effective administrative and representative body during the years of transition. Although it is possible that the British could have, in essence, contracted away their governing powers in a way that might obliterate their authority, such an interpretation is almost impossible to accept without evidence of a direct intention to do so. The Joint Declaration itself seems to contradict such a conclusion: its requirement that the British continue to govern during the transitional period—placing special emphasis on preserving prosperity and stability—would be rendered inoperative if the British were effectively precluded from responding to changing circumstances by adapting the laws of Hong Kong accordingly.¹⁷¹ It seems highly unlikely that the British would accede to a provision with the understanding that it could effectively liquidate Britain's ability to rule the city.

As for the Basic Law, the article that establishes universal suffrage as an ultimate goal of an evolving political system in the Hong Kong SAR could be interpreted in a manner that would support the Chinese stand against the British introduction of further democracy.¹⁷² The essentials of this interpretation would be that by setting universal suffrage as a future goal, the Basic Law clearly contemplates universal suffrage will not be in place when the changeover occurs in 1997 and the Basic Law goes into effect. This interpretation is highly vulnerable, however, due to the fact that Chris Patten's changes have not proposed granting universal suffrage in Hong Kong.¹⁷³ As such, it would seem that increased democracy in Hong Kong under the British and the Basic Law's future goal of implementing universal suffrage are not necessarily mutually exclusive.

This survey of potential arguments the PRC might make, asserting that the British proposals are illegal under either the Joint Declaration or the Basic Law, indicates the weakness of the likely Chinese interpretations. This may explain the fact that though the Chinese have frequently stated their certitude that the changes are illegal, they have just as often refused to specify the nature of the supposed illegalities.

Nevertheless, there is a point that can still be made that bolsters this Chinese position. It is that the Chinese have resisted being specific on these issues because of a belief that though the British proposals may not violate any single provision of the Joint Declaration or the Basic Law, the proposals taken *in toto* may violate the spirit of those agreements, an unspoken understanding between the parties, or in-

laws. Instead, through the absence of such a modifier, it implies that all laws must remain basically unchanged. Joint Declaration, *supra* note 1, para. 3.

¹⁷¹ *Id.* para. 4.

¹⁷² Basic Law, art. 68, *supra* note 2; see *supra* note 57 and accompanying text.

¹⁷³ See *supra* notes 63-65 and accompanying text (outlining the actual changes Patten did propose).

deed, even some non-public memorandum.¹⁷⁴

2. *The Chinese Position as a Delaying Tactic*

As has been observed earlier in this Comment, the Chinese response to Chris Patten's proposals has followed a pattern where the rhetoric would heat up and the Chinese would indicate that compromise is impossible, followed by a brief cooling period in which various Chinese officials would suggest that negotiations might be useful.¹⁷⁵ If one accepts that this is part of a coordinated strategy, and not the result of various officials and PRC-controlled sources merely sending different signals, then the interesting question of motivation arises. To date, this strategy has not caused the British to withdraw from their proposals, and such a result does not seem likely in the immediate future.¹⁷⁶ Despite this fact, there is at least one interpretation of this pattern which reveals a potential advantage to be gained by the Chinese.

The Chinese may believe that this practice will cause the British to keep seeking some negotiated agreement on the issue of greater democracy in Hong Kong. Presumably, so long as the British believe that such an outcome is possible, they may not push to implement unilaterally the democratic proposals. If the Chinese can keep the British thinking that they might be willing to meet the British part way, the PRC may be able to cause the British to continually postpone further democratization. The benefit of such an outcome would be that the Chinese would receive a Hong Kong in 1997 that would be free of additional democratic structures. As a result, the PRC would not have to run the risk of the adverse publicity that would almost certainly occur if the PRC rescinded the post-Joint Declaration democratic changes currently proposed for Hong Kong.

In addition, there is a more immediate benefit to be gained by the PRC's delaying strategy. By at least periodically appearing willing to enter actual negotiations with the British, the PRC can maintain certain public relations benefits. Even if the Chinese have no intentions to allow further democracy in Hong Kong—a strong possibility when

¹⁷⁴ *China Will Stick to Joint Declaration*, The Reuters Library Report, Jan. 8, 1993, available in LEXIS, Nexis Library, Reuter File.

¹⁷⁵ See *supra* part III.

¹⁷⁶ One commentator has suggested that the PRC's maneuvering on this issue has been to test the British determination to rule Hong Kong effectively during the transitional period, and that Britain has failed to demonstrate the necessary resolve. McGURN, *supra* note 8, at 67. In addition, it is a fact that Chris Patten has tabled four times bringing the proposals before LegCo. *Hong Kong: 'Hsin Pao' Interview with Governor Patten*, THE BBC SUMMARY OF WORLD BROADCASTS, June 28, 1993, available in LEXIS, Nexis Library, International File. Finally, one should recall that the most recent rumor is that the proposals will be scrapped entirely in exchange for the Chinese guarantees necessary for additional financing for the airport project. This rumor almost inevitably raises the question of whether the democracy proposals were conceived of in the first place as an artificial bargaining chip to be used by the British during the last years of their rule.

one considers that some of the PRC's highest officials have emphasized on several occasions that this is a matter of principle which will not be the subject of compromise¹⁷⁷—a facade that indicates a willingness to negotiate prevents one from immediately concluding that the Chinese are being manifestly unreasonable in their treatment of the British proposals. Instead, the occasional indication of a willingness to consider compromise would tend to support the PRC's most frequent portrayal of these events: Britain has victimized the PRC in making these unreasonable and illegal proposals, and the Chinese are merely trying to rectify this unfortunate situation into which they have been so unfairly thrust.

3. *Vilifying Chris Patten*

Finally, anyone who has followed the progression of the debate between these two nations has likely noticed the frequency with which the Chinese have publicly attacked Chris Patten himself, and not necessarily in his capacity as Governor. His actions have been characterized as "illegal" and "unreasonable,"¹⁷⁸ he has been called a "whore"¹⁷⁹ and an "eternal criminal,"¹⁸⁰ and Patten has been accused of intending to derail the changeover itself.¹⁸¹ It would seem that if the PRC genuinely desired some sort of compromise on this issue, it would not pursue such an end by personally vilifying one of the individuals who would be essential to reaching an agreement. Consequently, one wonders what is to be gained by these attacks on Mr. Patten, if there is in fact any intentional thought given to them at all. There are at least two reasons why this may be a useful strategy for the Chinese.

By attempting to focus the debate on Mr. Patten, the Chinese will be able to obscure the real issue—the legality of Britain's proposed changes—or at least detract attention from it. Even if one dismisses out of hand the attacks on Mr. Patten as an individual, one cannot fail to recognize that they have grabbed the headlines in a manner that less enthralling defenses of the merits of the proposals cannot. Furthermore, there may be a certain element of wishful thinking in the Chinese efforts to cast aspersions against Chris Patten's character and intentions. Simply put, the Chinese may believe that if they say it often enough, someone may begin to believe it. The primary benefit which would flow from such an outcome is that the affected people would withdraw their support from Chris Patten and presumably from his proposals as well.¹⁸² This tactic would be most successful if it caused

¹⁷⁷ See *supra* note 79 and accompanying text.

¹⁷⁸ See *supra* note 86.

¹⁷⁹ See *supra* note 131 and accompanying text.

¹⁸⁰ See *supra* note 120 and accompanying text.

¹⁸¹ See *supra* note 86.

¹⁸² The belief that if one repeats a label frequently enough, it will eventually begin to stick in the mind of the hearer who will then come to believe it, may be the guiding principle

the Hong Kong business community to withdraw its support from Mr. Patten.

A closer consideration uncovers the possibility of a more subtle rationale, however. By portraying Mr. Patten as unreasonable, the PRC does not have to recognize the dangerously persuasive premise underlying his proposals: democracy will offer better protections for Hong Kong under the PRC than a non-democratic government. While depicting Mr. Patten as a bad individual, the Chinese are able to attack implicitly his proposals without having to address their value, which is the value of democracy itself. One might suggest that this is the premise that the Chinese must, at all costs, keep from becoming the focus of the debate. Even though some business leaders might grumble that further democracy will decrease their freedom to operate, it seems likely that few would prefer a form of government whose potential for arbitrary action could be even more damaging to the stability necessary for prosperity. So long as the PRC can use its attacks on Chris Patten to divert Hong Kong's people from considering the relative benefits of the actual proposals, it is possible that the public might not support Chris Patten as strongly as it would if only the democracy proposals were discussed.

V. Conclusions

Some believe that the relatively weak protection the Chinese-authored Basic Law offers for Hong Kong's autonomy can only begin to be offset by implementing direct election of LegCo members,¹⁸³ and unless Britain is successful in implementing democratic government in Hong Kong, the potentially capricious rule of the PRC might destroy the stability necessary for the city to continue to flourish.¹⁸⁴ Although such an outcome is far from forgone, it is self-evident that continued wrangling over this issue—and especially the possibility that China might, at some point after 1997, reverse any unilateral changes made

behind modern American political campaigns. It probably should not be dismissed as a transparent and insulting tactic, considering how often it seems that one opponent's characterization has come to be the label by which another candidate is known.

¹⁸³ MCGURN, *supra* note 8, at 71.

¹⁸⁴ "[E]conomics do not exist in a political vacuum, and free economics, far from being simply *laissez-faire*, rest on a political foundation where civil rights, individual worth, and general liberal values are embedded. China's own history, by contrast, shows a 2000-year-old belief in the virtues of benevolent interventionism and a capacity to engineer it, unshaken by a parallel record of failure." Hicks, *supra* note 151, at 108-09. "Without a democratic and accountable government and without the rule of law, Hong Kong will experience a surge in corruption and *guanxi* (dependence on connections) that is endemic across the border and the international business community will lose confidence in our ability to function as a reliable financial center." Gene Linn, *Stock Market is Casualty in War of Words*, UPI, Dec. 20, 1992, available in LEXIS, Nexis Library, Current File (quoting elected LegCo member Martin Lee). See also Robin Fitzsimmons, *Whose Law Will Rule Hong Kong?*, THE TIMES, June 22, 1993, available in LEXIS, Nexis Library, Current File (indicating that some businesspersons and politicians consider greater democracy in Hong Kong a necessity for continued foreign investment).

by the British—cannot fail to have an adverse impact on Hong Kong's economic viability. Consequently, one is ultimately drawn to ask why these nations risk the future of a city in which each has a vested interest in its ongoing prosperity, especially given the less-than-revolutionary nature of the changes proposed.

The difficulty in answering this question arises because either party could be acting out of motives very different from their publicly stated positions. On the British side of the equation, one is tempted to assume that the proposals were put forth because of a sincere belief that Hong Kong both needs and deserves further democracy, and that they are legal under the Joint Declaration and the Basic Law. But it is possible that Britain is motivated by less charitable reasons, perhaps introducing the changes solely to create a bargaining chip to be traded for future cooperation from the Chinese. If one rejects the accepted rationale that the changes were introduced to help ensure Hong Kong's economic future, then it does seem strange that after a century of undemocratic rule Britain has decided to become the champion of political rights.

Similarly, the Chinese have suggested a number of reasons for their opposition to the proposed expansion of democracy in Hong Kong, including their interpretation of the Joint Declaration and the Basic Law, but China's opposition to the proposals could be caused by a number of other factors, including a concern that democracy in Hong Kong might rekindle demands for the same on the mainland. Consequently, one cannot assume that either side is necessarily acting in good faith on this issue.

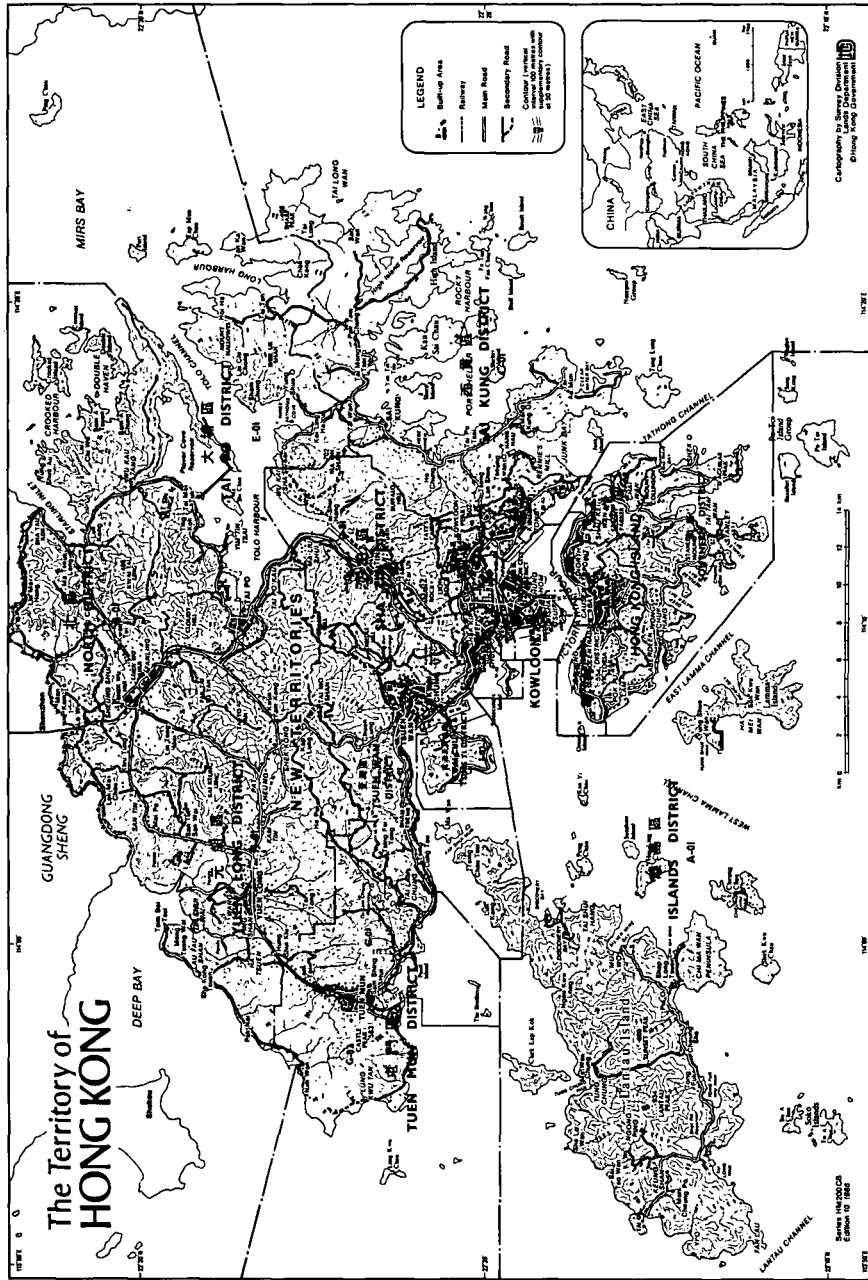
If Britain is seriously committed to expanding democracy in Hong Kong, then it is essential that some negotiated agreement be reached with the PRC, otherwise China could quite easily reverse such an expanded franchise when it takes over in 1997. The most effective incentive the British can offer the Chinese is to emphasize that China's own self-interest will also be affected by the future stability and prosperity of Hong Kong.

For its part, China should recognize that the actual impact of the proposed changes to Hong Kong's electoral system may be illusory—beyond their precedential value—due to the limited role of LegCo under both the present administration and that outlined by the Basic Law. If it is the “precedential value” of near-universal suffrage that the Chinese are most threatened by, they should recall their oft-repeated maxim of “one country, two systems.”

Regardless of either Britain or China's underlying motivation, the city and people of Hong Kong are the ones who have suffered from this protracted debate. If both sides operated under the same set of assumptions about the city's future and truly held the interests of Hong Kong to be paramount, a compromise might have been reached

sooner. Thus, the best solution to this debate is to cease playing games with Hong Kong's future and to reach some compromise which avoids the danger of unilateral action and retaliation. Unfortunately, given that China and Britain do not have the same views on the legality and morality of the proposed increase in democratic institutions—and it is even possible that neither side is really fighting over the proposals, but over some unrevealed agenda—such a resolution does not currently seem likely.

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