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## NOTE DE L'ÉDITEUR

Translated from the French original by Peter Brown

- 1 Works in French on the intricacies of Chinese politics and law are sufficiently few and far between that we herald those that are published. Guobin Zhu has a doctorate in law from the University of Aix-Marseilles and is an Assistant Professor at the City University of Hong Kong and is one of the all too scarce French-language specialists in Chinese law. His work *The Status of Hong Kong*, published to coincide with the fifth anniversary of the former British colony's handover to the People's Republic of China, sets itself the task of clarifying in a little under 300 pages, half of which are in the form of annexes, the island's new relation to the mother country.
- 2 Within the Chinese world in the full flight of change and tempted at its fringes by democratisation, Hong Kong was centre stage in 1997. It was about to break with more than a century of colonisation in order to accept control by a China pumped up with nationalism through the apparent success of its policy of reform and opening up. What had at first been perceived as a mere transposition of legal norms and practices unconnected to Chinese reality soon became a deep attachment for Hong Kong, which had to provide for the defence of its heritage in terms of the rule of law and protection of individual freedoms. Article 2 of the Basic Law of the Special Administrative Region sets this out thus: "The National People's Congress authorises the Special

Administrative Region of Hong Kong to exert a high degree of autonomy and to enjoy independent executive, legislative and judicial powers, including that of final judgment, in accordance with the provisions of the present Law". Article 4 goes on to stipulate: "It will be incumbent on the Special Administrative Region of Hong Kong to safeguard the rights and freedoms of its residents and of other people from this region in accordance with the law". In fact, a new constitutional framework had been drawn up point by point during the endless debates over a period of four years and eight months in the National People's Congress until the adoption, on April 4th 1990, of a mini-Constitution that came into effect on July 1st 1997<sup>1</sup>.

- 3 Zhu Guobin asks the question whether the slogan "One country, two systems" is a political idea or pragmatic view. This raises the whole issue of autonomy and its limits. The work gives a detailed analysis of the problems raised by clashes of law and their resolution in the context of two legal systems that are theoretically distinct and yet broadly speaking subject to a harmonisation in both substance and form in the name of a single sovereignty.
- 4 *The Status of Hong Kong* makes for a rather dry read at times and lacks concrete examples and case studies that would allow the non-specialist reader to get his or her bearings amidst the complexity of this normative quasi-merger that is subject to political intentions that Peking has never denied having. It would have been useful to cast light on a number of topical issues such as the Big Spender<sup>2</sup> affair, the Sally Aw case, questions relating to the right of abode of children born in China of Hong Kong parents, the constitutional authority of the island's courts and the implementation of Article 158 of the Basic Law, according to which the power of interpretation is entrusted to the Permanent Committee of the National People's Congress.
- 5 It is similarly regrettable that Guobin Zhu did not pay more attention to those matters concerning the organisation of the executive, legislative and judicial powers and their interactions. The great democratic aspiration brought about by the debates over the adoption of Article 23 has shown, with a force few observers anticipated, how attached the population of Hong Kong is to its fundamental rights, at the same time as exalting its legitimate hopes for a move towards representative democracy<sup>3</sup>.
- 6 A few words need to be said about the wealth of annexes provided. Guobin Zhu should be praised for translating a whole set of little-known and fascinating texts for the comparative scholar keen to grasp the relations between law and politics, common law and the civil law tradition, and who is curious about uncovering, in a complex, normative and ostensibly well-guarded system, any possible openings which could allow for the introduction of democracy. In this connection, most of the documented exchanges between the governments of Britain and the People's Republic of China and the detailed text of the Basic Law are to be found amongst the annexes. It is to be regretted, however, here as in the work overall, that certain passages have not been sufficiently polished to better take account of linguistic subtleties.
- 7 Although there may well have been continuity rather than any break in the Hong Kong judicial system, the latter is evolving between the rule of law and a state of exception. What, one may ask, are the implications, for those Chinese drafting it, of the preservation of a capitalist system towards which mainland China itself is today leaning, if not to administer "the Territory as if it were a business", as a handful of entrepreneurs with a thirst for power once reportedly suggested to Deng Xiaoping<sup>4</sup>? The extreme vigilance of a civil society underpinned by brilliant legal and political

professionals can alone ensure that Hong Kong will remain a “China Special Democratic Zone”<sup>5</sup>.

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## NOTES

1. Refer, in this connection, to the comments by Ji Pengfei, Chairman of the Committee responsible for drafting the Basic Law of the Special Administrative Region of Hong Kong within the People’s Republic of China, presented as an appendix, pp. 249-265.
2. On the Big Spender case, see Kam C. Wong, “Legal and Political Implications of a ‘Cross-Border Crime’”, *China Perspectives*, No. 22, March-April 1999, pp. 41-53; Richard Cullen and H. L. Fu, “Some Limitations in the Basic Law Exposed”, *China Perspectives*, No. 22, March-April 1999, pp. 54-57.
3. For an engaged and critical view of the events that shook Hong Kong in the context of the proposed Article 23, see for example the website of the “Global Coalition Against Article 23”, <http://www.againstart23.org>, and Amnesty International’s submission to the Hong Kong government during the consultation phase in the autumn of 2002: “Response to Hong Kong SAR Government on Proposals to Implement Article 23 of the Basic Law, submitted to Legco, December 12th 2002”, <http://www.amnesty.org>.
4. See p. 27.
5. According to the expression used by Human Rights in China, “China Special Democratic Zone”, *China Rights Forum*, No. 3, 2003. <http://www.iso.hrichina.org>.