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**THE HONG KONG SPECIAL ADMINISTRATIVE REGION UNDER  
"ONE COUNTRY, Two SYSTEMS": DESIGN FOR PROSPERITY OR  
RECIPE FOR DISASTER?**

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# THE HONG KONG SPECIAL ADMINISTRATIVE REGION UNDER “ONE COUNTRY, TWO SYSTEMS”: DESIGN FOR PROSPERITY OR RECIPE FOR DISASTER?

## I. INTRODUCTION

After almost a century and a half of British rule, the Crown Colony of Hong Kong will return to Chinese rule at midnight on June 30, 1997<sup>1</sup> to become a Special Administrative Region (“SAR”) of the People’s Republic of China (“PRC”). The return of sovereignty will be a novel experiment<sup>2</sup> under the scheme of “one country, two systems,”<sup>3</sup> in which the SAR will be allowed to remain as a pocket of capitalism with a high degree of autonomy in the PRC’s socialist system for fifty years.<sup>4</sup>

This Note will assess the probable success or failure of the “one country, two systems” scheme. Additionally, this Note will consider the history and the possible future of Hong Kong through an examination of the relevant legal documents that have governed and those that will guide the lives of nearly six million Hong Kong citizens. The conflicts and tensions inherent in the unification of the two seemingly incompatible

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1. The Joint Declaration of the Government of the People’s Republic of China and the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, Sept. 26, 1984, U.K.-P.R.C., 1984 Gr. Brit. T.S. No.20 (Cmd.9352) *reprinted in* THE HONG KONG BASIC LAW, BLUEPRINT FOR ‘STABILITY AND PROSPERITY’ UNDER CHINESE SOVEREIGNTY? 259 (Ming K. Chan & David J. Clark eds., 1991) [hereinafter Joint Declaration].

2. Albert H. Y. Chen, *From Colony to Special Administrative Region: Hong Kong’s Constitutional Journey*, in THE FUTURE OF THE LAW IN HONG KONG 76, 102 (Raymond Wacks ed., 1989) (“The problem of Hong Kong knows no historical precedent. In groping for answers, everyone is a novice.”).

3. Expressed as *yige guojia, liangge zhidu* or *yigou liangzhi*.

4. The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic Of China art. 5 [hereinafter Basic Law] (adopted on Apr. 4, 1990 by the Seventh National People’s Congress of the People’s Republic of China). *See generally* Raymond Wacks, *Introduction*, in THE FUTURE OF THE LAW IN HONG KONG (Raymond Wacks ed., 1989).

systems, as well as suggestions to ease this tension to safeguard prosperity, will also be discussed.

## II. THE BEGINNINGS OF HONG KONG

The British empire aggressively exported opium to China during the 1830s.<sup>5</sup> Resistance by Chinese officials to the opium trade sparked the retaliation of the British in what was to become known as the Opium War of 1839-42.<sup>6</sup> The victorious British forced the Chinese Government to cede Hong Kong Island in perpetuity under the 1842 Treaty of Nanking.<sup>7</sup> Sixteen years later, hostilities arising from the attempts to open Canton (Guangzhou) to foreign trade culminated in the attack of Peking by an Anglo-French expedition.<sup>8</sup> In the 1860 Treaty of Peking, China was forced to cede the Kowloon peninsula, which is directly across from the Hong Kong Island.<sup>9</sup> Finally, in 1898, Britain took advantage of China's weakness and forced China to "lease" a larger area north of Kowloon, which was physically connected to the Mainland. This area became known as the New Territories. The "lease"<sup>10</sup> made no provisions for the payment of rent and was to last for ninety-nine years,<sup>11</sup> that is, until

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5. Shawn B. Jensen, *International Agreements Between the United States and Hong Kong*, 7 TEMP. INT. & COMP. L.J. 167, 168 (1993).

6. Hungdah Chiu, *Introduction*, 20 CASE W. RES. J. INT'L L. 1 (1988).

7. Treaty of Nanking, Aug. 29, 1842, Gr. Brit.-P.R.C., art. III, 93 Consol. T.S. 465, 467.

8. Terry Cunnew, *Hong Kong: Estates Gazette Focus on Hong Kong*, Reuter Textline Est. Gazette, Nov. 12, 1988, available in LEXIS, News Library, TZPRIM File.

9. Convention of Friendship, Oct. 24, 1860, Gr. Brit.-P.R.C., art. VI, 123 Consol. T.S. 71, 73-74.

10. Convention of Peking Respecting the Extension of Hong Kong Territory, June 9, 1898, Gr. Brit.-P.R.C., reprinted in THE GOVERNMENT AND POLITICS OF HONG KONG 246-247.

11. English legal thought at the time probably intended ninety-nine years as being "in perpetuity"; however, the fact that the lease expires is probably irrelevant to the question of return of sovereignty of Hong Kong, given China's bargaining power in recent years. Furthermore, no serious thought is ever given to returning the New Territories to China and retaining the ceded parts of the Colony, as the tiny, overpopulated ceded part can never survive on its own today. See Wendy Dullea Bowie, *The Effect of the Tiananmen Square Massacre upon Negotiations for the Draft Basic Law of the Hong Kong Special Administrative Region*, 8 DICK. J. INT'L L. 245, 249 (1990).

1997.<sup>12</sup> The Hong Kong Island, the Kowloon Peninsula, and the New Territories collectively constitute the territory of Hong Kong.

The Crown Colony, which was at the time little more than some farmland and a barren, rocky island off the southern coast of China, saw its beginning as a strategic outpost for the British to expand its interests into China.<sup>13</sup>

### III. THE CONSTITUTIONAL STRUCTURE OF HONG KONG AS A BRITISH CROWN COLONY

British colonies acquired during the Empire's expansionist stage can typically be classified according to the manner by which they were acquired: either colonies settled by British subjects in territories where there was no population or organized society or colonies acquired by conquest or cessation.<sup>14</sup> Hong Kong falls into the second category.<sup>15</sup> From the outset, elaborate rules governing the distribution of power and the structure of the local government were mandated by London.<sup>16</sup> The constitutional structure was defined in prerogative legislative instruments issued by the Crown: Orders in Council, the Letters Patent, and the Royal Instructions.<sup>17</sup> These instruments mandate that London, through the Governor, retain overwhelming powers of control over the Colonial government.<sup>18</sup> Surprisingly, this structure saw little significant change and was still largely in force until a certain degree of democratization began to take place in the early 1980s.<sup>19</sup>

12. See Joint Declaration, *supra* note 1, at Annex III.

13. G.B. ENDACOTT, A HISTORY OF HONG KONG 38 (2d ed. 1973)

14. Chen, *supra* note 2, at 76.

15. *Id.* at 77; see also Andrew Dicks, *Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong*, 95 CHINA Q. 427 (1983); Basic Law, *supra* note 4, art. 40 (wherein the rights of the indigenous inhabitants of the New Territories are recognized and protected to this day and beyond 1997).

16. Chen, *supra* note 2, at 77, 79.

17. *Id.* at 77.

18. For example, the chief executive, known as the Governor, is appointed directly by London. The legislature, known as the Legislative Council, is primarily advisory in nature. *Id.* at 77-78.

19. *Id.* Changes include the implementation of consultation bodies called "district boards" at the local district level. *Id.*; see also Nihal Jayawickrama, *Economic, Social and Cultural Aspect*, in THE BASIC LAW AND HONG KONG'S FUTURE 231, 234 (Albert Chen & Peter Wesley-Smith eds., 1988) (comparing the stage of constitutional development of Hong Kong today to that of Ceylon in 1910).

Although notions of representative and democratic government are still largely absent, the Hong Kong system has reflected British legal principles that are based on the Rule of Law,<sup>20</sup> not arbitrary rule. This has allowed the government to evolve into a "paternalistic, benevolent bureaucracy,"<sup>21</sup> not just for the British nationals residing in Hong Kong, but also for the growing Chinese population in the territory.

By the 1980s, Hong Kong had become something quite unique in the world—a contemporary metropolis ranking among the top in the world in many of its financial achievements<sup>22</sup>—yet its people had never known any real political democracy. Although the idea of a British colonial government ruling over a population which is 98 per cent Chinese<sup>23</sup> may carry with it notions of oppression, the Hong Kong people had for over a century overwhelmingly accepted the government as legitimate.<sup>24</sup> Save for a few episodes in its history,<sup>25</sup> there had been no demand from the local populace for representative government, for independence, or for a return to China.<sup>26</sup> Instead, the distinctive society has largely focused its attention on the pursuit of economic ends. Although in recent years a limited degree of democracy has been introduced and greater attention is now focused on the rights of Hong Kong residents, the general apathy of the population towards self-government<sup>27</sup> makes Hong Kong ill-equipped to protect its own rights when the British flag is lowered.

What is important in the study of the future of Hong Kong is not that British rule will be thrown out, but what part of British rule will remain. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China "Basic Law", which is to become the supreme law for the post-1997 Hong Kong SAR, will preserve, basically

20. Peter Wesley-Smith, *The Present Constitution of Hong Kong*, in *THE BASIC LAW AND HONG KONG'S FUTURE* 6 (Albert Chen & Peter Wesley-Smith eds., 1988).

21. Nihal Jayawickrama, *The Basic Law and Human Rights*, 2(4) *L. SOC'Y HONG KONG GAZETTE* 22 (Aug. 1988).

22. *See generally* HONG KONG 1990 (David Roberts ed., 1991).

23. Chen, *supra* note 2, at 92.

24. *Id.*

25. There were only three large scale riots in Hong Kong after the Second World War. The most serious, in 1967, was instigated by local communists influenced by the Cultural Revolution in China at the time. The small group of communists in Hong Kong, with the support of the CCP, demanded the Colony be returned to Chinese rule immediately. The movement did not gain wide support. *See* Chen, *supra* note 2, at 82-83.

26. *Id.* at 92.

27. Siu-Kai Lau, *The Political Values of the Hong Kong Chinese*, in *THE BASIC LAW AND HONG KONG'S FUTURE* 19, 21-23 (Albert Chen & Peter Wesley-Smith eds., 1988).

unchanged, the common law legal system.<sup>28</sup> How Western views of the common law might be influenced by Chinese legal thought and politics will be examined further below.

#### IV. CHINESE POLICY TOWARDS THE QUESTION OF HONG KONG

The Chinese have always viewed the three treaties through which Great Britain gained sovereignty over Hong Kong as "unequal treaties."<sup>29</sup> This dogma of "losing face" has haunted the Chinese through three successive regimes and continues to this day to influence the Chinese attitude towards its handling of Hong Kong matters.<sup>30</sup>

The Ching Dynasty, with which the British signed the original treaties, was overthrown by the Chinese Nationalist Party ("CNP") in 1911. The CNP formed the Republic of China ("ROC") government thereafter. There were attempts to recover the Colony during the Second World War, but the issue of the leased territories was dropped by the ROC government in favor of inducing the British to agree to give up extraterritorial and special rights in China.<sup>31</sup> In 1949, the ROC government was defeated by Communist forces and was forced to flee and re-establish itself in Taiwan. Since fleeing Mainland China and re-establishing itself in Taiwan, the ROC government has not been in a position to negotiate the problem of Hong Kong. The People's Republic of China ("PRC") was formed under Chinese Communist Party ("CCP") rule.

Although the PRC government has a strong nationalistic, revolutionary, and anti-imperialistic policy,<sup>32</sup> it has been willing to

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28. "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." Basic Law, *supra* note 4, art. 8; *see also* Denis Chang, *In Search of Pragmatic Solutions, in THE BASIC LAW AND HONG KONG'S FUTURE* 271, 275 (Albert Chen & Peter Wesley-Smith eds., 1988).

29. Dullea Bowie, *supra* note 11, at 249.

30. *See Defeat with Grace*, S. CHINA MORNING POST, Sept. 25, 1993, available in LEXIS, News Library, SCHINA File.

31. Treaty for the Relinquishment of Extra-Territorial Rights in China and the Regulation of Related Matters, Chung King, Jan. 11, 1943, U.K.-China 1943 Gr. Brit. T.S. No.2.

32. Chiu, *supra* note 6, at 2; *see* Zhonghua Renmin Gongheguo Xianfa [Constitution of the People's Republic of China] (1982), reprinted in THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Beijing, Foreign Language Press ed., 1983), Preamble

maintain the status quo on Hong Kong.<sup>33</sup> When it declared its intention in 1984 to resume sovereignty over the territory, it devised the plan of "one country, two systems," which it believed would promote confidence in the future of Hong Kong and help to maintain stability and prosperity in the territory. The scheme would allow the capitalist system to continue, even after Hong Kong becomes a part of Communist China.

The PRC has an important stake in maintaining the prosperity of Hong Kong because it generates a substantial amount of foreign exchange for the PRC through its re-export of Chinese products. Hong Kong has also been an outlet for Chinese political dissidents and serves to reduce the political tension on the Mainland.<sup>34</sup> Hong Kong also remains the indirect tie with Taiwan for trade and mail. It was due largely to the wish of the PRC government to re-absorb Taiwan that the idea of "one country, two systems" first arose.<sup>35</sup> The wish for unification with Taiwan will remain an important motivation for the PRC to maintain the stability and prosperity of Hong Kong, in order to attract the ROC government to agree to integrate with the Mainland.<sup>36</sup>

Undoubtedly, the future success or failure of Hong Kong will be largely dependant on the actions of the PRC government. In any study of the future of Hong Kong, one must begin with the assumption that China

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[hereinafter PRC CONSTITUTION].

33. *But see supra* note 23.

34. This reduction of tension is an important function that would invariably will be lost if not greatly reduced in the future. The population of Hong Kong grew by leaps and bounds during periods of unrest in China. It would be a simple matter for the PRC government to demand return of its dissidents, but it has instead chosen to turn mostly a blind eye. David A. Jones, Jr., Note, *A Leg to Stand On? Post-1997 Hong Kong Courts as a Constraint on PRC Abridgement of Individual Rights and Local Autonomy*, 12 YALE J. INT'L L. 250, 252 (1987).

35. The idea was first enumerated by Deng Xiaoping in 1982. Edward J. Epstein, *China and Hong Kong: Law, Ideology, and the Future Interaction of the Legal Systems*, in THE FUTURE OF THE LAW IN HONG KONG 37, 49 (Raymond Wacks ed., 1989). See also Denis Chang, *Towards a Jurisprudence of a Third Kind: "One Country, Two Systems,"* 20 CASE W. RES. J. INT'L L. 99, 100 (1988).

36. Michael C. Davis, *A Common Law Court in a Marxist Country: The Case for Judicial Review in The Hong Kong SAR*, 16 DENV. J. INT'L L. & POL'Y 1 (1987). For its part, the ROC government has resisted talks with the PRC government on reunification. Taiwan's government has denounced the Joint Declaration as invalid. For a discussion of the relevance of the Hong Kong problem to Taiwan, see Byron S. J. Weng, *The Hong Kong Model of "One Country, Two Systems": Promises and Problems*, in *The Basic Law and Hong Kong's Future* 73, 84-88 (Albert Chen & Peter Wesley-Smith eds., 1988).

is sincere about maintaining and furthering the prosperity of Hong Kong.<sup>37</sup> There are very compelling reasons for keeping Hong Kong prosperous, and the CCP has been willing to re-examine its socialist doctrines to justify the re-union under the scheme of "one country, two systems."<sup>38</sup>

In one such area, the international scene, the PRC has been unwilling to acknowledge that the issue of Hong Kong falls under the jurisdiction of the United Nations. On March 8, 1972, the Permanent Representative of China to the United Nations sent a letter to the Chairman of the Special Committee on Decolonization, asserting that the problem of Hong Kong was a local matter entirely within China's sovereign right.<sup>39</sup> There were no protests from Britain or the Committee. The future of Hong Kong has been allowed to proceed contrary to global trends of de-colonization as required by the United Nations charter.<sup>40</sup> Instead of evolving from a colony of the United Kingdom (UK) into a self-governing territory, it is turning into a "colony" of the PRC.<sup>41</sup>

#### V. NEGOTIATIONS BETWEEN THE UK AND THE PRC GOVERNMENTS

In 1982, the British government, seeing the impending end of the 1898 "lease," sought to open negotiations with the PRC government to

37. Chen, *supra* note 2, at 106.

38. Chang, *supra* note 35, at 104; *see also* Epstein, *supra* note 35, at 49-51.

39. Nihal Jayawickrama, *Drafting a Bill of Rights*, in *HUMAN RIGHTS IN HONG KONG* 37 (Raymond Wacks ed., 1992).

40. Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the *interests of the inhabitants of these territories are paramount . . .*, and to this end . . . *develop self-government*, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . . .

U.N. Charter art. 73 (emphasis added); *see also* *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/4684 (1961); *see generally* Jones, *supra* note 34, at 256-63.

41. Jayawickrama, *supra* note 39, at 64 (calling the denial of self-determination for the Hong Kong people a violation of what is a peremptory norm of contemporary international law). For an account of the decolonization of Britain's other colonies, see Norman Miners, *The Normal Pattern of Decolonisation of British Dependent Territories*, in *THE BASIC LAW AND HONG KONG'S FUTURE* 44 (Albert Chen & Peter Wesley-Smith eds., 1988).



secure its interests in Hong Kong. The British Prime Minister, Margaret Thatcher, went to Peking (Beijing) and met with Premier Zhao Ziyang and Chairman of the Military Affairs Commission, Deng Xiaopeng. China insisted on regaining the sovereignty of Hong Kong but promised that it would take steps to ensure its prosperity.<sup>42</sup> The British stressed the importance of maintaining its ties with Hong Kong if Hong Kong were to retain its global importance.<sup>43</sup> At the end of Thatcher's visit, a joint communique was issued stating that both countries "agreed to enter talks through diplomatic channels . . . with the common aim of maintaining the stability and prosperity of Hong Kong."<sup>44</sup>

The precise details of the closed negotiations that followed remain largely unknown.<sup>45</sup> The Hong Kong people were neither a party to nor consultants in the discussions,<sup>46</sup> and many of the Hong Kong people felt that they were sold short by the British in their time of need. These feelings contributed greatly to the general apathy towards politics; the people felt that what was done was done. Land values, stock prices and the Hong Kong dollar plunged dramatically which called for drastic measures to stabilize the economy.<sup>47</sup> This episode demonstrates just how fragile the Hong Kong economy can be and how important the people's confidence is to maintaining stability in Hong Kong.

Finally, after two years of hard negotiations, the United Kingdom and the PRC came to an agreement which was formally ratified in the Joint Declaration on the Question of Hong Kong.<sup>48</sup>

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42. Chiu, *supra* note 6, at 2.

43. *Id.* at 4.

44. *Id.*

45. Under §2 of the Official Secrets Act 1911, the right to official information is almost non-existent. This British Act applies to Hong Kong by Order in Council. Johannes Chan, *Protection of Civil Liberties, in THE BASIC LAW AND HONG KONG'S FUTURE* 196, 205 (Albert Chen & Peter Wesley Smith eds., 1988).

46. The United Nations Human Rights Committee expressed concern over this matter when it met in November 1988 to examine the Hong Kong report. Nihal Jayawickrama, *Protecting Civil Liberties, in THE FUTURE OF THE LAW IN HONG KONG* 148, 155-57 (Raymond Wacks ed., 1989).

47. The HK dollar, which lost at least half of its value, was pegged to the US dollar at 1:7.8. See *HONG KONG 1990, supra* note 22, at 78.

48. Joint Declaration, *supra* note 1.

## VI. THE JOINT DECLARATION

The Joint Declaration, which contains more than 8,000 words, spells out in detail the PRC's policy towards Hong Kong. The highlights of the declaration are as follows:<sup>49</sup>

1. The sovereignty of Hong Kong will return to China. It will become a Special Administrative Region of the PRC under article 31 of the PRC's Constitution,<sup>50</sup> and "will enjoy a high degree of autonomy<sup>51</sup> except in foreign and defense affairs . . . .";<sup>52</sup>

2. The capitalist economic and trade systems will remain in place for fifty years after 1997.<sup>53</sup> The socialist systems and policies of the PRC will not be practiced in the Hong Kong Special Administrative Region ("HK SAR");<sup>54</sup>

3. Hong Kong "will be vested with executive, legislative, and independent judicial power, including that of final adjudication";<sup>55</sup>

4. The existing social system will remain unchanged. Freedom of speech, of movement, of the press, of assembly, to strike, of religion, of private property, and other freedoms will be protected by law.<sup>56</sup>

5. The International Covenant on Civil and Political Rights ("ICCPR") promulgated by the UN, to which China is not a signatory,<sup>57</sup> will remain applicable to Hong Kong.<sup>58</sup>

49. Chiu, *supra* note 6, at 5; *see also* Dullea Bowie, *supra* note 11, at 252-53; *Promises, Promises, Promises . . .*, *ECONOMIST*, May 11, 1985, at 6..

50. "The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of the specific conditions." PRC CONSTITUTION, *supra* note 32, art. 31; *see also id.* art. 62 (13).

51. Joint Declaration, *supra* note 1, ¶¶ 1-3(2).

52. *Id.*

53. *Id.* ¶ 3(5); *id.* Annex I, § I.

54. *Id.* Annex I, § I, ¶ 1.

55. *Id.* ¶ 3(2)-(3); *id.* Annex I, § I.

56. *Id.* ¶ 3(5).

57. Dullea Bowie, *supra* note 11, at 253.

58. *Id.* With the issuing of the Joint Declaration, Hong Kong residents and scholars became aware that the ICCPR was already applicable to Hong Kong. When the United Kingdom ratified the Covenant in 1976, it automatically became applicable to all dependent UK territories as well. The UK government, in a report to the UN Human Rights Committee in 1988, admitted that it did inform the people of Hong Kong of their rights under the Covenant. Jayawickrama, *supra* note 39, at 37.

6. The National People's Congress of the PRC will enact a Basic Law to implement the Joint Declaration in accordance with the Constitution of the PRC;<sup>59</sup> and

7. The laws previously in force in Hong Kong will be maintained except where they contradict the Basic Law.<sup>60</sup>

As provided by the Joint Declaration, the Basic Law would flesh out the vague provisions of the Joint Declaration and become the supreme law for the HK SAR.<sup>61</sup>

However, the Joint Declaration has, in the years after its signing, lost a significant amount of importance. Although it is an international agreement,<sup>62</sup> fully ratified by both countries,<sup>63</sup> it "is more an announcement of intention rather than a binding treaty with clear obligations that the parties must perform."<sup>64</sup> Furthermore, the document is primarily a unilateral declaration of policy by the PRC.<sup>65</sup> As the interests of the UK in Hong Kong slowly diminish,<sup>66</sup> the British government will be in no position to help the people of Hong Kong, should Beijing renege on its promises.<sup>67</sup>

## VII. DRAFTING THE BASIC LAW

The PRC government controlled the drafting of the Basic Law of the HK SAR from the outset; this control was provided for by the Joint Declaration.<sup>68</sup> The PRC government employed an elaborate system, embodying both a Basic Law Drafting Committee<sup>69</sup> ("BLDC") and a

59. Joint Declaration, *supra* note 1, ¶ 3(12); *see id.* at Annex I.

60. *Id.* Annex I, § II, ¶ 1.

61. *Id.* Annex I, §§ I, II.

62. Joseph Y. S. Cheng, *The Constitutional Relationship Between the Central Government and the Future Hong Kong Special Administrative Region Government*, 20 CASE W. RES. J. INT'L L. 65, 73 (1988).

63. Joint Declaration, *supra* note 1 (ratified Dec. 19, 1984).

64. Weng, *supra* note 36, at 77.

65. *Id.*

66. Jardines, the largest British conglomerate, was among the first Hong Kong companies to re-locate its headquarters to Bermuda.

67. Weng, *supra* note 36, at 77. *But see* Cheng, *supra* note 62, at 73.

68. Joint Declaration, *supra* note 1, at Appendix A.

69. Dullea Bowie, *supra* note 11, at 255. "The BLDC consist[s] of 40 Chinese members appointed by the PRC government and 23 Hong Kong members selected by the initial 40 Chinese members." *Id.* (quoting Jackson, *The Legal Regime of Hong Kong After 1997: An Examination of the Joint Declaration of the United Kingdom and the People's*

Consultative Committee.<sup>70</sup> The BLDC was made up of members from China and members appointed by the PRC government from Hong Kong. Both committees also set up working groups to tackle various topic areas of the Basic Law.<sup>71</sup> The process was intended to provide consultation with a cross-section of the Hong Kong populace.<sup>72</sup> However, it soon became obvious that the Hong Kong representatives on the BLDC functioned as little more than tokens because the PRC government could remove them at will when they were considered to be politically unsuitable.<sup>73</sup>

Concurrent with the drafting process were campaigns for and against the development of a democratic, representative government in pre-1997 Hong Kong.<sup>74</sup> The Joint Declaration provided for the Hong Kong Legislature to be fully elected after 1997.<sup>75</sup> The Chinese authorities interpreted this provision as allowing for many types of electoral arrangements,<sup>76</sup> the least acceptable one to the PRC being universal franchise and direct elections.<sup>77</sup> This interpretation sparked many

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*Republic of China*, 5 Int'l Tax & Bus. L. 379, 380 (1987)). The members are chosen, of course, for their pro-PRC views. Furthermore, "[t]he ratio of Chinese and Hong Kong members makes it likely that PRC views will prevail." Dullea Bowie, *supra* note 11, at 255.

70. Dullea Bowie, *supra* note 11. The Hong Kong public, fearful that the Chinese view would dominate in the drafting process, insisted that they be allowed to participate. *Id.* As a result, 180 residents were selected in 1985 from a cross-section of the community to act as liaison between the BLDC and the Hong Kong people. *Id.*

71. Michael C. Davis, *Where Two Legal Systems Collide: An American Constitutional Scholar in Hong Kong*, 20 CASE W. RES. J. INT'L L. 127 n.1 (1988) (The BLDC had six sub-groups: (1) economic system, (2) rights and duties of the HK inhabitants, (3) culture, technology, education and religion, (4) political structure of the SAR, (5) relationship between the Central Government and the SAR, and (6) law. The Consultative Committee for the Basic Law had eight subgroups: (1) political structure of the SAR, (2) the structure of the Basic Law, (3) law, (4) inhabitants' and other persons' rights, freedom, welfare, and duties, (5) finance, business, and economy, (6) culture, technology, education, and religion, (7) external affairs, and (8) the relationship between the Central Government and the SAR).

72. Davis, *supra* note at 36, at 2.

73. Ming K. Chan, *Democracy Derailed: Realpolitik in the Making of the Hong Kong Basic Law, 1985-90*, in THE HONG KONG BASIC LAW: BLUEPRINT FOR 'STABILITY AND PROSPERITY' UNDER CHINESE SOVEREIGNTY? 3, 9 (Ming K. Chan & David J. Clark eds., 1991).

74. *Id.*

75. *Id.* at 10.

76. See *id.* at 13-17, for a discussion of the models for implementation of elections proposed by both sides of the debate.

77. *Id.* at 3.

confrontations between the supporters of the pro-democracy movement in Hong Kong and the PRC's local establishment, the New China News Agency ("NCNA"), Hong Kong branch.<sup>78</sup> The PRC wanted, and still wants, a stable and prosperous Hong Kong under its rule, not a runaway Hong Kong that may become anti-Communist.<sup>79</sup> It soon became clear that the PRC establishment, in its determination to pre-empt any local push towards implementation of direct elections, destroyed any pretense of a fair, open, and proper drafting procedure.<sup>80</sup> This discrimination, coupled with the inability of the British to stop interference by the Chinese even before the take-over,<sup>81</sup> led to wide-spread disillusionment in the populace.

While the Basic Law was being drafted, the PRC's efforts to suppress the drive for democracy in Hong Kong found an even more brutal expression on the Mainland. The events of May and June 1989 help to highlight the tensions inherent in the upcoming reunification. The Hong Kong people have been, from the beginning, very attentive to developments in the student movement in China.<sup>82</sup> The population of Hong Kong voiced their strong support for the protesters,<sup>83</sup> realizing that their own fate was inevitably linked to the Mainland.<sup>84</sup> Almost overnight, many people in Hong Kong were transformed from being apolitical to being committed to the fight for their own freedoms.<sup>85</sup> On May 21, 1989, one million people took to the streets of Hong Kong in support of the student protest in Tiananmen Square in Beijing, followed by another march of one and one-half million people on May 28, 1989.<sup>86</sup> When the military

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78. *Id.* at 7-8.

79. Weng, *supra* note 36, at 81. Both during and after the pro-democracy uprising, Beijing has continuously warned Hong Kong that it will not allow it to become a "base for counter-revolutionary subversion." See, e.g., *Hong Kong Law Drafting Team Arrives in Peking*, FIN. TIMES, July 10, 1989.

80. Chan, *supra* note 73, at 15.

81. *Id.* at 10. On May 27, 1987, the Hong Kong government issued its policy decision on limited democratization leading up to 1997 in the Green Paper entitled *The 1987 Review of Developments in Representative Government*. The PRC authorities immediately expressed their opposition to direct elections and castigated the British attempt to develop representative government in Hong Kong before 1997 as a violation of the Joint Declaration.

82. *Id.* at 17.

83. John Greenwald, *Next Door and Eight Years Away: Hong Kong Demands Greater Freedom from China—and Itself*, TIME, June 5, 1989, at 29.

84. Chan, *supra* note 73, at 17.

85. *Id.* at 17-18; see also Dullea Bowie, *supra* note 11, at 247-48.

86. Chan, *supra* note 73, at 18.

crackdown on the protesters was finally ordered on June 4, for many in Hong Kong, the action was the last straw. The crackdown resulted in widespread distrust, even hostility, towards the Chinese leadership.<sup>87</sup> The Hong Kong people could only wonder about their own fate after reunification, and about the degree of faith they could place in China's promises.<sup>88</sup>

In the year that followed, the UK government rushed to restore confidence in the territory,<sup>89</sup> but it appeared that the scars ran too deep for any miracle cures. When the Basic Law was finally promulgated by the National People's Congress ("NPC") on April 4, 1990, it was greeted with indifference or by bitter denunciations from many Hong Kong people.<sup>90</sup> There was a strong feeling of pessimism about a future under Chinese rule.<sup>91</sup> Nonetheless, for the Chinese leadership, the Basic Law was seen as a major victory for China, a "creative masterpiece" with historical and international significance "for the whole of mankind."<sup>92</sup>

### VIII. THE NATURE OF THE BASIC LAW

The Basic Law<sup>93</sup> is an unusual document. It has the formidable task of being the supreme law in Hong Kong, and yet it is subordinate to the PRC Constitution. It is a Chinese socialist legal document<sup>94</sup> which is intended to maintain the capitalist way of life in Hong Kong. It purports to govern the relationship between the PRC and the HK SAR,<sup>95</sup> and all aspects of life in the SAR for the fifty years after 1997, including the

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87. *Id.* at 21.

88. Dullea Bowie, *supra* note 11, at 247.

89. The measures introduced include the go-ahead for the enactment of a Bill of Rights for Hong Kong.

90. Chan, *supra* note 73, at 28.

91. See *The Hong Kong Legislative Council Debate on the Basic Law of the Hong Kong Special Administrative Region*, (Apr. 4, 1990), in *THE HONG KONG BASIC LAW: BLUEPRINT FOR 'STABILITY AND PROSPERITY' UNDER CHINESE SOVEREIGNTY?* 223-35 Ming K. Chan & David J. Clark eds., 1991).

92. Chan, *supra* note 73, at 28.

93. Basic Law, *supra* note 4.

94. The language and legal terms were borrowed largely from Chinese statutes.

95. Basic Law, *supra* note 4, Ch. II (relationship between the Central Authorities and the Hong Kong Special Administrative Region).

economy,<sup>96</sup> the political structure,<sup>97</sup> education, culture, sports, and social services.<sup>98</sup>

The intended purpose of the Basic Law may be better considered in light of the general aspirations of the drafters.<sup>99</sup> A commitment to economic and political stability is strongly and frequently emphasized. Maintaining a capitalistic economy and implementing a system of law and government that best facilitates Hong Kong's capitalist dynamic is also stressed.<sup>100</sup> Furthermore, sustaining a significant degree of political autonomy is recognized as an important aspect of Hong Kong's continued success.<sup>101</sup>

In the study of the Basic Law, many scholars have referred to it as a "mini-constitution" for the HK SAR.<sup>102</sup> However, this designation can be misleading. A brief comparison with the United States Constitution points out significant gaps in the Basic Law. In his treatise on the American Constitution and the Bill of Rights,<sup>103</sup> Judge Learned Hand begins with the premise that all political power emanates from the people and that the Constitution gains its legitimacy from the people.<sup>104</sup> The Basic Law, on the other hand, is imposed on the people of Hong Kong without their choice or consensus.<sup>105</sup> It is hard to argue that it contains the aspirations of the people condensed in written form. Secondly, although the Basic Law states that it is supreme law, it does not have the force of supreme law and is legitimate only by virtue of the PRC Constitution, which is itself easily amended.<sup>106</sup> "[The Basic Law] is an NPC law which can extend or restrict the application of the Chinese legal system as the NPC

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96. See generally *id.* at Ch.V (Economy).

97. See generally *id.* at Ch. IV (Political Structure).

98. See generally *id.* at Ch. VI (Education, Science, Culture, Sports, Religion, Labour and Social Services.)

99. Davis, *supra* note 72, at 4, 5.

100. Joint Declaration, *supra* note 1, at Annex I, Art. VI.

101. Joint Declaration, *supra* note 1, at ¶ 3(2).

102. See, e.g., Brian Z. Tamanaha, *Post-1997 Hong Kong: A Comparative Study of the Meaning of "High Degree of Autonomy"*, 20 CAL. W. INT'L L.J. 41 (1989).

103. LEARNED HAND, *THE BILL OF RIGHTS* (1958).

104. JOHN H. GARVEY & T. ALEXANDER ALEINIKOFF, *MODERN CONSTITUTIONAL THEORY: A READER 2* (2d ed., 1991).

105. *Id.*

106. See generally Hsin-Chi Kuan, *Chinese Constitutional Practice, in THE BASIC LAW AND HONG KONG'S FUTURE 55* (Albert Chen & Peter Wesley-Smith eds., 1988).

sees fit. Like any NPC law, the Basic Law cannot bind its successors, and thus, it can be amended or repealed at any time."<sup>107</sup>

### IX. THE BASIC LAW: CONFLICTS WITH THE PRC CONSTITUTION

The Basic Law is, in essence, a statute of the PRC.<sup>108</sup> Legitimacy flows from the PRC Constitution.<sup>109</sup> To predict the effectiveness and strength of the Basic Law in performing its objectives, its inherent conflicts with the PRC Constitution and possible resolutions of these conflicts must be examined.

There are fundamental differences in the perspectives that each side takes,<sup>110</sup> despite the fact that both China and the people of Hong Kong share a common interest in seeing Hong Kong succeed after 1997. This issue is especially relevant because the interpretation of the Basic Law will undoubtedly be determined by Chinese socialist principles.<sup>111</sup> If left unreconciled, these differences could upset the delicate balance upon which Hong Kong is built.<sup>112</sup>

#### A. Capitalism Within Socialism: One Country, Two Systems

The dichotomy between a socialist and capitalist system is, of course, the most striking feature of the imminent re-union. The PRC Constitution clearly states that "the Chinese people of all nationalities will continue to . . . follow the socialist road."<sup>113</sup> The idea of "one country, two systems," however, is to allow Hong Kong's capitalistic, social and economic systems to remain unchanged.<sup>114</sup> The two systems are expected to co-exist in the same country. The PRC Constitution itself shows internal contradictions. An examination of the following articles of the PRC Constitution brings out the internal conflict of the PRC Constitution in allowing the co-existence of the capitalist and the socialist systems in China. The Preamble states: "This Constitution affirms the achievements of the struggles of the *Chinese people of all nationalities* and defines the

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107. Epstein, *supra* note 35, at 56.

108. Cheng, *supra* note 62, at 66-67.

109. See generally Davis, *supra* note 72, at 4-7.

110. *Id.* at 7.

111. *Id.*

112. *Id.* at 6.

113. PRC CONSTITUTION, *supra* note 32, at Preamble.

114. Joint Declaration, *supra* note 1, at ¶ 3(5).



basic system and basic tasks of the state in legal form; it is the fundamental law of the state and has *supreme legal authority*."<sup>115</sup> (emphasis added).

Article 1 states, "The People's Republic of China is a *socialist state* under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."<sup>116</sup> (emphasis added).

Article 5 states, "The state upholds the *uniformity* and dignity of the socialist legal system. *No law or administrative or local rules shall contravene the Constitution*."<sup>117</sup> (emphasis added).

Article 6 states, "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people."<sup>118</sup>

However, Article 31 provides that: "The State may establish special administrative regions when necessary. The *systems* to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress *in light of the specific conditions*."<sup>119</sup> (emphasis added)

This conflict troubled both Chinese and Hong Kong scholars during the drafting of the Basic Law.<sup>120</sup> The Basic Law expressly excludes the socialist system and policies from Hong Kong, and by implication, also excludes those constitutional provisions which impose a socialist system. The question is how the Basic Law can exclude provisions in the very Constitution under which it is promulgated without self-contradiction.<sup>121</sup> Hong Kong scholars, afraid that the guarantee of a capitalist system might be a violation of the PRC Constitution, suggested the revision of Article 31.<sup>122</sup> However, the PRC leadership was unwilling to amend its constitution,<sup>123</sup> especially since it had only been recently adopted.<sup>124</sup> The

115. PRC CONSTITUTION, *supra* note 32, at Preamble.

116. *Id.* art. 1.

117. *Id.* art. 5.

118. *Id.* art. 6.

119. *Id.* art. 31.

120. Cheng, *supra* note 62, at 68.

121. Chang, *supra* note 35, at 108.

122. Cheng, *supra* note 62, at 68; see also *Xianfa Xiugai, Tiyi ji Jibenfa Dagang (Cao'an) (Proposal on the Revision of the Constitution and a Draft Outline of the Basic Law)* May 1984 (the position paper of Meeting Point, a HK political group).

123. Cheng, *supra* note 62, at 68; Shao Tianren, co-convenor of the Sub-group on the Relationship between the Central Government and the SAR of the Basic Law Drafting

PRC leadership was aware that some reassurances were necessary.<sup>125</sup> Chinese scholars and government officials set out to provide justifications for the co-existence of the two systems.<sup>126</sup> These experts attempted to explain the role of Hong Kong in the future of socialist China by offering a theoretical explanation in terms of socialist ideology to justify the policy of "one country, two systems" within the PRC Constitution.

The Chinese, while experimenting with various modes of capitalist production<sup>127</sup> within their economic structure, still adamantly adhere to the socialist scheme.<sup>128</sup> However, current thinking has come to view socialism "as a fairly long historical stage [and] in this historical stage, there is a process in which the capitalist and the socialist systems co-exist."<sup>129</sup> According to the prevailing party line of the CCP,<sup>130</sup> China is now passing through the stage of "early socialism," which is estimated to last another sixty years.<sup>131</sup> The principal task of the Four Modernizations (i.e., agriculture, industry, national defense and science) is better served by multiple tiers and modes of economy. The CCP therefore accepts that the doctrine of socialism allows the co-existence of various economic forms so as to develop socialist productivity.<sup>132</sup>

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Committee, indicated after a May-June 1986 meeting of the sub-group that any proposal to amend the PRC Constitution would not be accepted. It was suggested that the refusal to amend the Constitution is largely related to "saving face" because amendment would mean that the Joint Declaration was in violation of the Constitution as it stood. *Id.* at 71.

124. Chang, *supra* note 35, at 103; *see also* Cheng, *supra* note 62, at 68 (the current PRC Constitution, adopted in 1982, is the PRC's fourth; the three previous PRC Constitutions were adopted in 1954, 1975 and 1978, respectively).

125. *Id.*

126. Cheng, *supra* note 62, at 68; *see also* Chang, *supra* note 35, at 103.

127. These include limited private ownership and the Special Economic Zones. For an account of China's economic developments, *see* L. Hongui, *Developments in the Reform of China's Banking and Financial System*, 2 J. CHINESE L. 324 (1988).

128. Cheng, *supra* note 62, at 68-69.

129. *Id.* at 69 (containing a statement by Huan Xiang, advisor to the Hong Kong and Macau Affairs Office and the Chinese Academy of Social Sciences, that China would have three tiers of economic forms: the reforming socialist economy, the special economic zone economy; and the specific capitalist economy).

130. Chang, *supra* note 35, at 102 (the prevailing political line, introduced in the Third Plenary Session of the 11th CCP Central Committee in December 1978, was confirmed and reinforced by the 13th National Party Congress of the CCP held in October-November 1987).

131. *Id.*; *see generally* Nigel Rosser & Anna Fenton, *Hurd Urged to Renegotiate Appeal Court*, S. CHINA MORNING POST, Nov. 3, 1987, at 20.

132. Cheng, *supra* note 62, at 70.

Although the Chinese have been willing to re-examine their socialist doctrines to justify the re-union, their explanation brings out the inherent danger and fragility of any guarantees since it means that Hong Kong is allowed to remain unchanged only because of *current* policies.<sup>133</sup> There are no long-term, unchangeable guarantees. The Chinese leadership, it would appear, views the HK SAR's political system as being of a temporary and ad hoc nature, and not protected by the Constitution.<sup>134</sup> In the short history of the PRC, there have been many violent upheavals because of changes in party lines.<sup>135</sup>

Under the current Party line, Hong Kong's capitalist productive forces are seen as a useful tool in reforming China's economy during the "early stage of socialism."<sup>136</sup> This explanation must mean that a capitalist Hong Kong is allowed to exist only for a limited period of time, which will end when the CCP finds *China to be ready to enter a second stage*.<sup>137</sup> At a meeting with the BLDC in April 1987,<sup>138</sup> Deng Xiaopeng said that, under the policy of "one country, two systems," Hong Kong would not change for fifty years after 1997 and added that there would be no need for it to change for even an additional another fifty years.<sup>139</sup> Deng's statement caused little joy in Hong Kong; instead the local community was uneasy with the fact that a simple statement from the leader could easily alter what had been promised by an international agreement after two years of negotiations.<sup>140</sup>

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133. *Id.* at 73.

134. *Id.* at 75.

135. Kuan, *supra* note 106, at 60-61.

136. *Id.* at 64.

137. This prediction may be why Hong Kong will be allowed to remain unchanged for fifty years after 1997. The time period is roughly equal to current predictions of the length of the early stage of socialism. See *Deng Says "Problems in History" Not to Dictate Personal Selection*, BBC SUMMARY OF WORLD BROADCASTS, June 18, 1992, available in LEXIS, News Library, BBCSWB File.

138. Cheng, *supra* note 62, at 73.

139. *Id.*

140. *Id.*

### B. Shortcomings of the Basic Law

#### 1. Contrasting Views of Rights and Duties

For Hong Kong to continue to succeed, the rights and freedoms currently enjoyed by the populace need to be preserved.<sup>141</sup> Although the rights and freedoms of Chinese citizens are said to be protected under the PRC Constitution,<sup>142</sup> violations of these rights are prevalent in China.<sup>143</sup> One possible explanation is that the Chinese socialist view of the rights of its citizens differs markedly from the Anglo-American viewpoint.<sup>144</sup> A fundamental tension exists between liberal conception of *natural* rights and a contingent, policy-based conception of rights.<sup>145</sup> In the socialist view, an individual's rights are dependent on the performance of his imposed duties.<sup>146</sup> In contrast to the notion of natural rights of Western liberalism, the rights of the individual under a socialist regime are more easily surrendered to the prevailing governmental policy or the collective interest.<sup>147</sup>

This tension seems to have been resolved largely in favor of the Chinese approach,<sup>148</sup> and it would appear that the liberal notion of rights

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141. While this view is certainly held by the Hong Kong people (and the author), it is necessarily true for the Chinese leadership as well. It has already been discussed that the primary goal of all parties involved in the re-unification is to ensure the economic success of Hong Kong. All the parties agree that the local populace must be able to enjoy essentially the same level of freedom for the continued success. The Chinese leadership, therefore, is willing to allow Hong Kong to enjoy this freedom as long as it does not interfere with the Mainland.

142. See generally Kuan, *supra* note 106, at 60-61.

143. *Id.* (During the Cultural Revolution in China, it was reported that about one million people were killed, twenty million people were arrested for "counter-revolutionary" crimes, and 100 million people suffered politically. Today, many violations are still reported regularly by the press and Amnesty International).

144. Davis, *supra* note 71, at 135 (attention to Western notions of fundamental rights is considered to be an important part of Hong Kong's success).

145. Michael C. Davis, *Anglo-American Constitutionalism with Chinese Characteristics*, 36 AM. J. COMP. L. 761, 772 (1988).

146. PRC CONSTITUTION, *supra* note 32, at ch. 2, art. 33, ¶ 3 ("Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.").

147. Davis, *supra* note 71, at 135.

148. Chan, *supra* note 45, at 198 (The restriction on the number of working groups a BLDC member could join (2) resulted in a small number of members for the sub-group

may be endangered in post-1997 Hong Kong. The title and language of Chapter 3 of the Basic Law, "Fundamental Rights and Duties of the Residents," is directly borrowed from the PRC Constitution.<sup>149</sup> The only explicit obligation requires Hong Kong residents and other persons in the Region to "abide by the laws in force" in the SAR.<sup>150</sup> This Charter, by Western notions, seems to state the obvious and does not impose any real obligations. Nonetheless, the Chinese members of the BLDC demanded its inclusion.<sup>151</sup> As the PRC notion of granting rights subject to the state or collective interest appears to have been transplanted into the Basic law,<sup>152</sup> it warrants a brief examination.

## 2. Chinese Socialist Rights

The Chinese socialist rights doctrine, as embodied in the PRC Constitution, has several distinguishing features. One distinguishing feature is that rights are juxtaposed with duties.<sup>153</sup> Furthermore, rights are not inherent as under Western liberalism,<sup>154</sup> but are created by the state.<sup>155</sup> Accordingly, instead of being a limitation on the actions of the government,<sup>156</sup> rights generally take the form of positively worded express grants.<sup>157</sup> These provisions may be expressed as: (1) "citizens enjoy . . .";<sup>158</sup> (2) "citizens have the right to . . .";<sup>159</sup> (3) "are protected by law";<sup>160</sup> or (4) "the PRC protects."<sup>161</sup> Political rights are more

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on fundamental rights and duties of Hong Kong residents. Of the group, there was only one member, Simon Li, a retired judge of the Court of Appeal of Hong Kong, who had expertise in the common law. This lack of expertise was an added push for the BLDC to adopt the Chinese model.).

149. *Id.* at 199. Compare PRC CONSTITUTION, *supra* note 32, at ch. 2 with Basic Law, *supra* note 4, at ch. 3.

150. Basic Law, *supra* note 4, art. 42.

151. Chan, *supra* note 45, at 199.

152. Davis, *supra* note 146, at 775.

153. Davis, *supra* note 146, at 772-73. See also Kuan, *supra* note 106, at 59.

154. Jayawickrama, *supra* note 39.

155. Davis, *supra* note 146, at 773.

156. *Id.* at 774 (maintaining that American notion of rights, rights are often expressed as a negative limitation on the government, e.g. "Congress shall pass no law . . .").

157. PRC CONSTITUTION, *supra* note 32, at art. 35.

158. *Id.* ("Citizens of the People's Republic of China enjoy freedom of speech . . .").

159. *Id.* art. 41 ("Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ . . .").

160. *Id.* art. 40 ("The freedom and privacy of correspondence of citizens of the

restricted. Citizens are given freedom of speech and demonstration,<sup>162</sup> provided that in exercising their freedoms they do not “infringe upon the *interests of the State*, of society . . . or upon the lawful freedoms and rights of other persons.”<sup>163</sup> (emphasis added) In other words, the interests of the state are seen as paramount. This justification grants the Chinese leadership enormous powers that it can use in suppressing the rights of its citizens.

### 3. Can the Tiananmen Square Massacre Happen in Hong Kong?

The Chinese leadership has generally not relied on the PRC Constitution to explain or justify acts that violate the rights of its citizens to the international community.<sup>164</sup> The Chinese government usually refuses to acknowledge that any violations took place.<sup>165</sup> The most notable example would be the Tiananmen Square massacre,<sup>166</sup> in which there were as many as 20,000 casualties.<sup>167</sup> Chinese officials denied the killings and have instead attempted to re-write the history of the event.<sup>168</sup> Nonetheless, “in Chinese communist theory, law is party policy made perfect in legal form.”<sup>169</sup> The Constitution, in order to be legitimate, must inevitably conform to party policies. Studying the written constitution can help to shed light on unwritten party policies. It appears that, at least theoretically, justifications for the massacre can be found in the PRC

People’s Republic of China are protected by law.”).

161. *Id.* art. 50 (“The People’s Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad . . .”).

162. *Id.* art. 39.

163. Dullea Bowie, *supra* note 11, at 250. See PRC CONSTITUTION, *supra* note 32, at art. 51 (“The exercise by citizens of the People’s Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.”).

164. *Right Report Provides Democrats More Ammunition to Denounce Peking*, Cent. News Agency, Feb. 21, 1990, available in LEXIS, News Library, CENEWS File.

165. See, e.g., *NBC Nightly News with Tom Brokaw* (NBC television broadcast, Nov. 14, 1991) (Chinese officials tried to cover up the fact that forced prison labour was used in the manufacturing of goods exported to the US.).

166. See generally Dullea Bowie, *supra* note 11, at 246 (giving a brief account of the massacre).

167. Jill Smolowe, *Deng’s Big Lie: The Hard-Liners Rewrite History to Justify Arrests and Bury Democracy*, TIME, June 26, 1989, at 32.

168. *Id.*

169. Chang, *supra* note 33, at 108-9; see also Kuan, *supra* note 106, at 58.

Constitution.<sup>170</sup> An examination of the text of the Basic Law shows many parallels.

Many people questioned the worth of the Basic Law after the June 4 massacre, saying that it was "not worth the paper it was written on"<sup>171</sup> if the Chinese would not honor its obligations. The truth of the matter is: the Basic Law gives the Chinese leadership so much power that it may be possible to honor the Law to the letter and still allow the same atrocities which occurred in the massacre and its aftermath. In the worst-case scenario, the ingredients may already be present in the Basic Law itself.<sup>172</sup> A short theoretical excursion is warranted because the same tensions are present in the pro-democracy movement in Hong Kong. These sources of potential conflict are those that most threaten the relationship between Hong Kong and the PRC government.<sup>173</sup>

In Chapter I: General Principles, "[t]he National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a *high degree* of autonomy . . . in accordance with the provisions of the Law."<sup>174</sup> (emphasis added). A high degree of autonomy also means limited autonomy. Nowhere is the extent of the autonomy defined in the Basic Law. In Article 18 that "[n]ational laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III<sup>175</sup> . . . [which] shall be confined to those relating to defense and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law . . ." <sup>176</sup> (emphasis added). Also, the Standing Committee of the National People's Congress has the power to decide "by reason of turmoil within the Hong Kong Special Administrative region *which endangers national unity or security* and is beyond the control of the government of the Region . . . that the Region is in a state of emergency"<sup>177</sup> (emphasis added). In such an event, the Central Government "may issue an order applying the relevant national laws in the Region."<sup>178</sup> Furthermore, the power of interpretation of the Basic Law is

170. Dullea Bowie, *supra* note 11, at 251.

171. Wacks, *supra* note 4, at 7.

172. Nichols Bethell, *Parting Shot: D-Day Looms over Hong Kong's Big D*, THE DAILY TELEGRAPH, July 10, 1992.

173. *See supra* note 73.

174. Basic Law, *supra* note 4, at art. 2.

175. Basic Law, *supra* note 4, at Annex III.

176. *Id.* art. 18.

177. *Id.*

178. *Id.*; *see also* David J. Clark, *The Basic Law; One Document, Two Systems*, in

to be vested in the Standing Committee of the PRC National People's Congress.<sup>179</sup> The Chinese leadership would seem to have the power to take any matter into its own hands by declaring that it is outside the scope of Hong Kong's autonomy.

A particularly volatile provision is Article 14, which provides that "[t]he Central People's Government shall be responsible for the *defense* of the Hong Kong Special Administrative Region."<sup>180</sup> (emphasis added). The Chinese have demanded that military forces be stationed in the HK SAR, but "shall not interfere in the *local* affairs of the Region."<sup>181</sup> (emphasis added). Again, what will be considered "local matters" is not explicitly defined. Together with Article 18, this provision would give the Chinese leadership both the military muscle and the legal justification to order a military crackdown should the situation arise.

Furthermore, the Basic Law mandates that the SAR "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government . . . ."<sup>182</sup> This provision, along with the veto power of the Standing Committee,<sup>183</sup> may, as in the PRC, permit the death sentence<sup>184</sup> for "counter-revolutionary" crimes.<sup>185</sup>

THE HONG KONG BASIC LAW: BLUEPRINT FOR "STABILITY AND PROSPERITY" UNDER CHINESE SOVEREIGNTY? 36, 44 (Ming K. Chan & David J. Clark eds., 1991).

179. Basic Law, *supra* note 4, at art. 158.

180. *Hong Kong Talks Fail to Reach Consensus on Basic Law Clauses on "Turmoil"*, BBC SUMMARY OF WORLD BROADCASTS, Nov. 24, 1989, available in LEXIS, News Library, BBCSWB File.

181. *Id.* art. 14.

182. *Id.* art. 23.

183. *Id.* art. 17.

Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws. If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding 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 . . . shall immediately be invalidated . . . [but] shall not have retroactive effect . . . ."

*Id.*

184. Dullea Bowie, *supra* note 11, at 252 (discussing how many "counter-revolutionary" crimes in the PRC carry the death penalty).

185. See generally Andrew Scobell, *Strung Up or Shot Down? The Death Penalty in*



Chapter III provides for the "Fundamental Rights and Duties of the Residents."<sup>186</sup> Hong Kong residents "shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike."<sup>187</sup> The rights and freedoms are protected "in accordance with law."<sup>188</sup> "The freedom of the person of Hong Kong residents shall be inviolable . . . [and they shall not be] subjected to arbitrary or unlawful arrest, detention or imprisonment . . . . [t]orture . . . or arbitrary or *unlawful* deprivation of the life of any resident shall be prohibited."<sup>189</sup> The concept of protection in accordance with law is a dangerous one, since fundamental rights and freedoms are then left to the legislature. There would be no restrictions on the enactment of draconian laws anywhere in the Basic Law.<sup>190</sup> The rights of Hong Kong residents are indeed set out, but there is simply nothing to stop them from being amended out of existence post-1997 or at least from becoming highly restricted. Like the power of veto, the power of amendment to the Basic Law is vested in the Standing Committee of the PRC. As already discussed, the rights of citizens are considered to be inferior to the interests of the state, which include preserving the unity of the nation.<sup>191</sup> The Chinese leadership had labelled the open criticism and denouncement of the Tiananmen Square massacre by "Hong Kong citizens as being counter-revolutionary" and "subverting the unity of the nation."<sup>192</sup> China has stressed on many occasions that it will not tolerate such actions.<sup>193</sup> It seems entirely possible that rights such as freedom of speech and freedom of the press would become more restricted post-1997, especially with regard to criticisms of the Chinese leadership.

Finally, the Basic Law provides that "[t]he Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. The courts . . . shall have jurisdiction

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*Hong Kong and China and Implications for Post-1997*, 20 CASE W. RES. J. INT'L L. 147, 148-49 (1988).

186. See *supra* note 45.

187. Basic Law, *supra* note 4, at art. 27.

188. See, e.g., *id.* art. 26.

189. *Id.* art. 28.

190. Chan, *supra* note 45, at 208.

191. PRC CONSTITUTION, *supra* note 32, at art. 4.

192. *Government Statement Blames Counter-Revolutionaries*, UPI, June 4, 1989, available in LEXIS, News Library, UPI File.

193. See generally *id.*

over all cases in the Region, except . . . over acts of state *such as* defense and foreign affairs”<sup>194</sup> (emphasis added). Jurisdiction of the courts could be limited by an arbitrary declaration by the PRC leadership that a particular case falls under an act of state. The people of Hong Kong would then be left without any effective remedy in the courts should their rights be violated.

In light of the perceived weaknesses of the Basic Law in protecting the liberties of the Hong Kong people, further protection was deemed necessary in the form of a Bill of Rights for the SAR.<sup>195</sup>

## X. THE BILL OF RIGHTS FOR HONG KONG

### A. *The Bill of Rights Ordinance and the Letters Patent*

Hong Kong was unique in the British Commonwealth in that it was *the only territory with a substantial population that still relied on the common law alone for the protection of its liberties.*<sup>196</sup> All other territories have turned to alternate methods for securing their rights and freedoms—a justiciable bill of rights. A bill of rights is a statement of precisely defined rights usually embodied in a constitutional instrument.<sup>197</sup> As a result, the people of Hong Kong are generally not knowledgeable about their own rights.<sup>198</sup>

Although the Hong Kong SAR, under the Basic Law, will retain its common law legal system, it is apparent that the Law is capable of taking on completely different meanings under Chinese interpretation. Article 39 of the Basic Law states that “[t]he provisions of the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights . . . as applied to Hong Kong shall remain in force and *shall be implemented through the laws* of the Hong Kong Special Administrative Region.”<sup>199</sup> (emphasis added). Nonetheless,

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194. Basic Law, *supra* note 4, at art.19.

195. Chan, *supra* note 73, at 20 (The British government was quick to acknowledge the existence of a serious crisis of confidence in Hong Kong after the Tiananmen Square massacre. It decided to introduce three measures to restore local confidence: (i) to speed up the pace of democratization before 1997; (ii) to enact a Bill of Rights for Hong Kong; and (iii) to offer UK citizenship as a form of insurance to a very limited number of Hong Kong residents in the business community to encourage them to stay).

196. Jayawickrama, *supra* note 46, at 148.

197. *Id.*

198. Jayawickrama, *supra* note 39, at 64.

199. Basic Law, *supra* note 4, at art. 39.

the Basic Law itself does not provide objective standards, principles, or concepts of human rights and fundamental freedoms to which the laws of the SAR must conform.<sup>200</sup> A catalog of objective rights are crucial in helping to develop a body of human rights case law for Hong Kong. The ICCPR is only an external guideline and does not impose any real obligations.<sup>201</sup> In this way, the rights and freedoms provided in the Basic Law are neither directly enforceable nor justiciable by the courts of law.<sup>202</sup>

The ICCPR, as applicable to Hong Kong, does not include the right of individual petition. The United Kingdom did not ratify the Optional Protocol to the Covenant, and therefore the inhabitants of Hong Kong do not have the right of individual petition to the United Nations Human Rights Committee.<sup>203</sup> In such an instance, one of the primary obligations of the state party to the Covenant is to provide an enforceable remedy within the domestic legal system, since the ICCPR requires that a remedy be available whenever a right or freedom "as herein recognized" is violated.<sup>204</sup> However, in the years since ratifying the ICCPR, the British government has not provided such a remedy for Hong Kong.<sup>205</sup>

Hong Kong scholars and members of the bar have urged the local legislature to enact an enforceable Bill of Rights since the publication of the Draft Basic Law. However, the idea of a Bill of Rights was not warmly received by the legislature or the British government, which viewed it as being redundant to the Basic Law.<sup>206</sup> Following the Tiananmen Square Massacre, attitudes and policies changed dramatically. In light of the atrocities committed in Beijing, a Bill of Rights is seen as crucial to protect the rights of the populace and to maintain their confidence in Hong Kong.<sup>207</sup>

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200. Jayawickrama, *supra* note 39, at 65-66.

201. *See id.* at 66. (Simon Li, chairman of the sub-committee that drafted the chapter on fundamental rights, argued that incorporating the ICCPR into the Basic Law would make it too long and cumbersome, and Lu Ping, Deputy Secretary General of the BLDC, said that "international instruments should not be mixed in with the Basic Law which is a Chinese Law.")

202. *Id.*

203. Jayawickrama, *supra* note 42, at 153 (A state party to the Optional Protocol recognizes the competence of the Human Rights Committee to receive and consider complaints from individuals who claim to be victims of a violation by that state party of any right set out in the ICCPR.). *Id.* at 153 n.26.

204. *Id.* at 159.

205. *See supra* note 54.

206. For an account of the discussions held, see Jayawickrama, *supra* note 39, at 66, 69.

207. *Id.* at 71-72. (In the House of Commons, the Foreign Secretary Sir Geoffrey

The Chinese leadership was strongly opposed to the enactment and entrenchment of a Bill of Rights.<sup>208</sup> In its view, any law which claimed a superior status to other laws would be incompatible with the Basic Law<sup>209</sup> and will not be allowed to remain after the transition.<sup>210</sup> Finally, due to pressure from the Mainland, when the Bill of Rights came into operation on June 8, 1991, it did so through an ordinary enactment of an ordinance of the local legislature.<sup>211</sup> Without entrenchment to give it supremacy over all other laws, the Bill appeared to be vulnerable to amendment or repeal, either expressly or by implication, by subsequent law.<sup>212</sup>

However, some scholars have offered the view that the Bill is indeed entrenched.<sup>213</sup> On the day the Bill of Rights Ordinance was enacted, the Letters Patent (the principal constitutional instrument of the Crown Colony) was also amended to finally include the ICCPR, years after it had been applicable to Hong Kong.<sup>214</sup> The amendment, which was given little publicity at the time, provided:

The provisions of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966, as applied to Hong Kong, shall be implemented through the laws of Hong Kong. No law of Hong Kong shall be made . . . that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with the Covenant as applied to Hong Kong.<sup>215</sup>

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Howe announced that a Bill of Rights 'entrenching the essential freedoms of the people of Hong Kong will be introduced as soon as possible. It will form part of the existing law and be able to continue after the transfer of sovereignty.' In Hong Kong, the Governor, Sir David Wilson, announced the Government's intention to enact a Bill of Rights on October 11, 1989.).

208. Graham Hutchings & Hugo Gurdon, *China Threat to Colony's Bill of Rights*, DAILY TELEGRAPH, June 7, 1991, at 10; Jonathan Braude, *China Threat to Overrule Hong Kong Rights Bill*, THE TIMES (London), June 7, 1991.

209. Basic Law, *supra* note 4, at art. 11 ("No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law. ").

210. Jayawickrama, *supra* note 39, at 74.

211. Hong Kong Bill of Rights Ordinance No. 59 (June 6, 1991).

212. Jayawickrama, *supra* note 39, at 75.

213. *Proposed Legislation 'Secures Bail for Criminal Defendants'*, S. CHINA MORNING POST, July 9, 1993, at 8, available in LEXIS, News Library, SCHINA File.

214. Braude, *supra* note 208.

215. The Hong Kong Letters Patent 1991 (No.2), Art. VII(3), *reprinted in* THE

Although this amendment makes no mention of the Bill of Rights Ordinance, its probable effect is to entrench not only the ICCPR, but the Bill of Rights as well,<sup>216</sup> because the Bill of Rights is nearly identical to the ICCPR.<sup>217</sup> Any law which is inconsistent with the ICCPR would almost certainly be inconsistent with the Bill of Rights.<sup>218</sup> Furthermore, the amendment was modeled on Article 39<sup>219</sup> of the Basic Law so as to not contravene it.<sup>220</sup> The amendment does not purport to claim superiority over the Basic Law.

Nevertheless, the Chinese have remained adamantly opposed to the Bill, and have vowed to examine it after 1997.<sup>221</sup> Only time will tell if the Bill will endure. For the time being, at least, it has already begun to serve its purpose.<sup>222</sup> In the short months since its adoption, there has been a literal explosion in the number of cases brought to challenge the validity of certain statutes and ordinances in the local courts.<sup>223</sup>

### *B. Hong Kong's Bill of Rights: An Expanding Jurisdiction*<sup>224</sup>

The enactment of the Hong Kong Bill of Rights Ordinance and the accompanying amendment of the Hong Kong Letters Patent have ushered in a new chapter in the development of Hong Kong's legal system. From June 8, 1991 forward, all pre-existing Hong Kong legislation—with only

GOVERNMENT AND POLITICS OF HONG KONG 253 (Norman Miners ed., 1991).

216. See generally Jayawickrama, *supra* note 39, at 76.

217. *Id.*

218. *Id.*

219. Compare The Hong Kong Letters Patent, *supra* note 204, with Basic Law, *supra* note 4, at art. 39.

220. See Basic Law, *supra* note 4, at art. 8 ("The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances . . . shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.").

221. Hutchings & Gurdon, *supra* note 210; Braude, *supra* note 210.

222. See generally Jayawickrama, *supra* note 37 (the purposes of the Bill of Rights would include: (a) enabling jurisprudence relating to it to be built up before 1997; (b) assisting in the education of the public; (c) stimulating the creation of pressure groups to lobby for the protection of human rights; and (d) aiding in a smooth transition in 1997.).

223. *A-G to Appeal Over Bill of Rights Cases*, S. CHINA MORNING POST, Oct. 31, 1992, available in LEXIS, News Library, SCHINA File.

224. Andrew Byrnes & Johannes M. M. Chan, *Hong Kong's Bill of Rights: An Expanding Jurisdiction*, BILL OF RTS. BULL., Oct. 1991, at 1.

a few exceptions<sup>225</sup>—are subject to review against the guarantees contained in the Bill of Rights.<sup>226</sup> This review represents a major expansion of the role of the Hong Kong courts.<sup>227</sup> Hong Kong courts, prior to the Bill of Rights, were not empowered to consider the “constitutionality” of legislation. Now they are entrusted with the task of determining whether pre-existing legislation should be repealed because it is inconsistent with the Bill of Rights.<sup>228</sup> The courts will also decide whether legislation passed subsequent to June 8, 1991 is invalid because of inconsistencies with the Letters Patent, which now incorporates the standards of the ICCPR as a limit on the power of the Hong Kong Legislature.<sup>229</sup>

The Bill of Rights has already begun to have an impact, though only in a haphazard, patchwork-like manner. There have already been over 40 cases brought in the various levels of the court system<sup>230</sup> that have raised issues about the guarantees contained in the Bill of Rights. While Bill of Rights issues have been raised in some civil cases, the majority of these cases involved challenges to statutory presumptions in criminal cases.<sup>231</sup> Defense lawyers, in a frenzy of activity, have been invoking the Bill simply as another defense for their clients.<sup>232</sup> It is up to the judges, who are largely inexperienced in this area, to sort out the real issues. Furthermore, a number of these cases were brought in the lower magistrate courts, where judgments have little value as precedent.<sup>233</sup> There were, nonetheless, two noteworthy cases brought before the Court of Appeals, which showed somewhat different approaches in interpreting the Bill.

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225. *Id.*

226. *Id.*

227. *Id.*

228. John Elliot, *Future of Hong Kong: China Digs Its Heels in and Offers Little in the Way of Concessions*, FIN. TIMES, Apr. 5, 1990, available in LEXIS, News Library, FINTME File.

229. *Id.*

230. The levels of the Hong Kong court system, from lowest to highest authority are: Magistrates Courts, District Court, High Court, and Court of Appeal. A final appeal to the Privy Council in London is also possible, but this will be phased out when the Chinese takeover in 1997.

231. Byrnes & Chan, *supra* note 224, at 1.

232. *Stay of Proceedings Under Bill of Rights*, S. CHINA MORNING POST, Oct. 14, 1992, available in LEXIS, News Library, SCHINA File.

233. Most magistrates courts decisions are not reported officially.

In *R v. Sin Yau Ming*,<sup>234</sup> the court ruled that mandatory presumptions contained in the Dangerous Drugs Ordinance<sup>235</sup> were inconsistent with the guarantee of the presumption of innocence contained in the Bill of Rights.<sup>236</sup> If more than 0.5g of heroin was found on the accused, he was presumed to have possessed it for the purpose of trafficking. The Court ruled that the prosecution had not demonstrated that the proven fact of a person's possession of 0.5g of heroin meant that it was more likely than not that he possessed it for the purpose of trafficking.<sup>237</sup> The evidence before the court showed that many drug users who possessed drugs for personal use could be convicted of the more severe offense of drug trafficking.<sup>238</sup> As a result, the sections of the Dangerous Drug Ordinance that were held inconsistent with the Bill of Rights were repealed.<sup>239</sup>

In *Tam Hing-ye v. Wu Tai-wai*,<sup>240</sup> the Court of Appeals took a narrower view of the Bill of Rights. The Court ruled that an ordinance<sup>241</sup> which permits a judgment creditor to obtain a stop order against a debtor and prevent the debtor from leaving Hong Kong did not violate the guarantee of liberty of movement in the Bill of Rights.<sup>242</sup> Compared with *R v. Sin Yau Ming*, the Court used a much less exacting standard in holding that such a measure was "necessary to protect the rights of others," namely, judgment creditors.<sup>243</sup> The Court saw the restriction not as a question of general liberty or freedom, but rather as one of the

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234. Byrnes & Chan, *supra* note 224, at 2 (HC No. 289 of 1990, 30 Sept. 1991).

235. *Id.* at 2-3.

236. *Id.* at 2.

237. *Id.* at 3.

238. *Id.*

239. *Id.*

240. Andrew Byrnes & Johannes M. M. Chan, *The Court of Appeal's Decision in Tam Hing-Yee v. Wu Tai Wai*, BILL OF RTS. BULL., Dec. 1991, at 1.

241. *Id.*

242. Article 8 of the Bill of Rights provides:

(1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.

(2) *Everyone shall be free to leave Hong Kong* (emphasis added).

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.

(4) No one who has right of abode in Hong Kong shall be arbitrarily deprived of the right to leave Hong Kong.

243. Byrnes & Chan, *supra* note 224, at 8.

particular right of the individual to leave Hong Kong if he wished. "Worth little or much, that right is confirmed to the individual by the [Bill of Rights] Ordinance which provides that it shall only be taken away or restricted if that is *necessary* to achieve one of the stated objectives."<sup>244</sup> (emphasis added) The Court went on to hold that, in view of the ease with which debtors who wished to evade their responsibilities could flee to a jurisdiction where a Hong Kong judgment could not be enforced, the ordinance was a measure necessary for the protection of the rights of others.<sup>245</sup>

China is strongly opposed to the proposal that there be more than one judge from a foreign jurisdiction sitting in the future Court of Final Appeal of the SAR.<sup>246</sup> While the Bill of Rights is too recent an enactment to show consistency in its interpretation, it is from within the court system of Hong Kong itself that a body of human rights case law must arise.

## XI. CONCLUSION

Although it may seem that the upcoming reunification of Hong Kong and the PRC will be a clash of political systems and ideology, it need not become a disaster for the people of Hong Kong. What is probably more reassuring than any promises that the Chinese leadership can offer is the very practical need for all involved to have the Hong Kong SAR succeed.

China is already exercising its influence in Hong Kong's affairs, even before the handover in order to gain a secure control come 1997. The Hong Kong community must be built up into one that is aware of, and willing to fight for, its fundamental rights. This awareness will give them a better foundation to resist the tightening grip of the Chinese. The road the people of Hong Kong should take should not be one of antagonism with their new rulers. The people of this "one country" must learn to work with each other. The demands for their rights and freedoms must be made in a steady, consistent manner. Although the handover is only a few years away, patience, in the long run, may be the most valuable asset for the Hong Kong people. Life, after all, goes on after 1997.

*John K. Kwok*

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244. *Id.* at 13.

245. *Id.* at 14.

246. *Id.*



