interpretation of the Basic Law, decide this issue? The Standing Committee is obliged to authorise the courts of the SAR to interpret 'on their own' provisions of the Basic Law which are within the limits of the autonomy of the Region, and a somewhat awkward scenario is easily imagined: a pre-1997 judge refuses to step down, despite not being re-appointed, and when his authority is challenged by a party in proceedings before him he interprets the Basic Law so as to give priority to article 93 (and thus preserve his own position). The matter is presumably within the limits of the Region's autonomy. Thus he is entitled so to decide, and he is not required to seek an interpretation from the Standing Committee. Will the Standing Committee be able to overrule him, and if it does, will the judgment in that case stand?

More important than these intriguing issues is the effect that Mr Lu's pronouncement may well have on pre-1997 judicial attitudes. Can any judge now sitting who is desirous of keeping his job through 1997 dare to offend pro-China sympathies?

What price the independence of the judiciary?

Peter Wesley-Smith[*]

Back to Basics: The Provisional Legislature and the Basic Law

The decision of the Preliminary Working Committee ('PWC') established by the National People's Congress ('NPC') of the People's Republic of China ('PRC') early in 1994 that an interim legislature for one year for the Hong Kong Special Administrative Region ('HKSAR') be established by China on 1 July 1997[1] was undoubtedly influenced by its view of what is best for Hong Kong. It is, however, a decision which violates the letter as well as the spirit of the Sino-British Joint Declaration and the Basic Law of the HKSAR.

Against the spirit of the Basic Law

The purpose of the Basic Law is to provide for a high degree of autonomy for Hong Kong and for the people of Hong Kong to rule themselves. Hong Kong becomes entitled to this autonomy on 1 July 1997, with the establishment of a new political system, more democratic than its people have hitherto enjoyed. The composition of the first legislature, with all its sixty members elected by the residents of Hong Kong in one form or another (twenty of them directly

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1 The decision was taken at the plenary meeting of the PWC on 8 December 1994 in Beijing. From newspaper accounts it would appear that the powers and functions of the interim legislature remain to be resolved. See South China Morning Post and Eastern Express, both of 9 December 1994.

through geographical constituencies), attempts to give them one of the first opportunities for the exercise of autonomy with candidates and their parties presenting their political platforms. The legislature will, under these arrangements, become a forum for the discussion and enactment of legislation as well as supervising and criticising the executive.

The participation of the people of Hong Kong in the autonomous political processes of the HKSAR immediately on the termination of colonial rule not only underlies the Basic Law, but is central to its success. The denial of that opportunity will inevitably confuse and demoralise the community, sap the vitality of its public life, upset the balance of political forces through outside intervention, and destroy the status of the Basic Law. Many other negative consequences will follow, inconsistent with the goal of maintaining the stability and prosperity of Hong Kong proclaimed in the Joint Declaration and the Basic Law.

It would appear that no decision has yet been taken in respect of the precise powers of the interim legislature, but it will undoubtedly have law-making power, which is among its principal justifications. It is not unlikely that it will pass a great deal of legislation, both to modify the previous law and to establish key framework legislation for the HKSAR, including perhaps giving effect to article 23 of the Basic Law concerning the enactment of laws to prohibit 'any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets ...' It may also prescribe qualifications for the status of a permanent resident of the HKSAR, and determine the tenure of judges of the Court of Final Appeal.

The wider and more significant the scope of its legislation, the more it will intrude upon the autonomy of future HKSAR legislatures, whose members will find themselves unable to repeal or amend them. Under the Basic Law, they cannot introduce bills which 'relate to public expenditure or political structure or the operation of the government' (article 74). Nor can they propose bills which relate to 'government policies' without the written consent of the Chief Executive (ibid). These are vague and broad terms, and even if a member's bill were validly introduced, it would have to be voted on separately by functional constituency members and the rest (giving effectively a veto to what are expected to be a rather conservative group).[2]

In the space of a year the interim legislature (under the tutelage of China) could irremediably amend key laws and initiate an HKSAR with greatly diminished autonomy. This would also involve China extensively in the internal affairs of Hong Kong in a manner incompatible with the Basic Law.

[2] Procedures for voting on bills and motions in the Legislative Council are set out in Part II of Annex II of the Basic Law.

Against the letter of the Basic Law

A decision of the NPC, which it has expressly declared to be part of the Basic Law,[3] provides that the first legislature of the HKSAR would consist of sixty members, thirty of them elected from functional constituencies, twenty elected from geographical constituencies, and ten by an election committee. The composition of the election committee is not specified (but by analogy with the election committee for the second legislature, it may be assumed that it should be broadly representative and in turn elected by corporate bodies in the various sectors specified in the Basic Law). The tenure of the first legislature is specified to be two years (article 69), but otherwise it is to enjoy the full powers and functions of the legislature under the Basic Law. There is no provision in the Basic Law for a legislature with restricted powers.

It is clear that the proposed interim legislature is a very different creature. It will be constituted by a committee of the PRC. The people of Hong Kong will not elect any of its members. Individuals, groups, and political parties will not be able to campaign. Electoral rights of potential candidates and voters, entrenched in the Basic Law, will be violated.[4] The life of the legislature will be one year. Its powers are still undecided, although an influential lobby argues that it should have the full powers of a legislature under the Basic Law. Despite its title, it is obvious that the interim legislature is in effect the first legislature of the HKSAR. Its establishment would therefore be a violation of the Basic Law.

Amending the Basic Law

In order to validate the interim legislature, it would be necessary to amend the Basic Law. China has said repeatedly that the Basic Law cannot be amended now. Nor, even if she wanted to, would China be able validly to amend the Basic Law to legalise the interim legislature. While article 159 of the Basic Law does enable the NPC to amend the Basic Law, there are restrictions on such powers. Before a bill for an amendment of the Basic Law can be submitted to the NPC, the 'Committee for the Basic Law of the HKSAR shall study it and submit its views.' This committee, of which six Hong Kong members are to be

[3] The decision is entitled 'Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region.' It was adopted on 4 April 1990 by the Seventh National People's Congress. Another Decision proclaimed that 'The Basic Law of the Hong Kong Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China and in the light of specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region.' The NPC adopted the Basic Law, including Annex II, 'Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures.' This Annex provides that the formation of the first Legislative Council of the HKSAR will be formed in accordance with the first-mentioned Decision (para 1).

[4] Article 26 provides: 'Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with the law.'

nominated by the HKSAR Chief Executive, President of the Legislative Assembly, and Chief Justice of the Court of Final Appeal, has not been established, nor is it likely to be until the transfer of sovereignty.[5]

But there is an even greater obstacle to such an amendment. The Basic Law stipulates quite clearly that no amendment 'shall contravene the established basic policies of the People's Republic of China' (article 159). The basic policies of China are set out in the Joint Declaration and reiterated in the Basic Law. One of these policies is that 'the legislature of the HKSAR shall be constituted by elections' (Section I, Annex I, Joint Declaration). Another policy is that legislative power for the HKSAR shall vest only in such legislatures (Section II of the same Annex).

Underlying these policies is the fundamental policy of the autonomy of Hong Kong (which includes the right of its people to choose their own representatives). It is hard to see how the establishment of the interim legislature would not contravene China's basic policies entrenched in the Basic Law.

Justified by necessity?

If it is clear that the interim legislature cannot be validly established under the Basic Law or even a purported amendment of it, is there some other legal principle which would justify it? An attempt has been made to invoke the doctrine of necessity, principally on the basis that without a legislature on 1 July 1997 there would be a 'legal vacuum.'

The doctrine of necessity is indeed now a well-established principle of most legal systems and has been endorsed by the Privy Council itself.[6] The doctrine justifies in certain exceptional and unforeseen circumstances the exercise of power by a body or person when it is not lawfully vested with that power. An obvious example is when there is a national emergency and there is no adequate law to deal with it. Or when there is a coup d'état after which certain acts of the usurpers or of someone who takes over power temporarily are upheld. The justification for giving legal validity to the exercise of powers in these situations is that they are used to fill a gap in the law in circumstances where public safety or welfare would otherwise be seriously endangered.

[5] A decision of the NPC dated 4 April 1990 provides for the establishment of the Committee for the Basic Law 'when the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China is put into effect': para 2 of the Decision of the National People's Congress approving the Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress. The NPC Decision adopting the Basic Law provides that 'The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be put into effect as of 1 July 1997.'

[6] See, for example, *Usif Patel v Crown* (Pakistan) PLD 1955 Federal Court 387, *Attorney General v Mustafa Ibrahim* (Cyprus) (1964) Cyprus Law Reports 195, *Madzimbamuto v Lardner-Burke* (Privy Council from Rhodesia) [1968] 3 All ER 561, especially Lord Pearce's speech, and *Mitchell v DPP* (Grenada) [1986] LRC (Constl) 35.

However, because of the exceptional nature of these powers, there are various criteria which restrict their scope. First, it must be established that there was a gap in the law or that the authority which was vested with the power was unable to act. Second, the extra-legal power must be exercised for purposes which are essential to the maintenance of public order or state security, not just for the convenience of the executive. Third, the acts in question must be no more than strictly necessary for these limited purposes. Fourth, steps must be taken speedily to return to the established legal institutions and procedures, and previous laws ratified if they are to continue in effect.[7] It is therefore plain that deviations from legality are not lightly tolerated.

Applying the necessity doctrine to the Hong Kong situation gives rise to two questions. One is whether the consequences of not having a legislature on 1 July 1997 will indeed be so catastrophic as to justify deviations from the Basic Law. But an even more fundamental (and prior) question is whether there is any insurmountable obstacle to the establishment of a duly constituted legislature in accordance with the Basic Law at the transfer of sovereignty.

China has alleged the impossibility of a legislature on 1 July 1997 owing to Mr Patten's amendments to the electoral system for the 1995 legislature, which has destroyed the basis of the 'through train'[8] under which that legislature, in accordance with the Basic Law, would have become the first legislature of the HKSAR. It is not necessary here to enter into the controversy on the so-called Patten reforms (which have stuck to the letter of the Basic Law but perhaps not to its spirit). From a careful analysis of the Basic Law it is clear that the 'through train' is only *one* (even if the preferred) option for the first legislature of the HKSAR.

The responsibility for the establishment of the first legislature in accordance with the provisions of the Basic Law lies with the Preparatory Committee to be set up in 1996.[9] If it decides that the 1995 legislature does not meet the conditions for the 'through train,' it must specify alternative arrangements for the election of the first legislature. Therefore the 'through train' is an *option* but by no means an imperative, and does not absolve the Preparatory Committee of its responsibility for the election of the first legislature.

7 See for example *Jilani v Government of Punjab* (Pakistan) PLD 1972 SC 139, *Lakanmi v Attorney General* (Nigeria) [1971] University of Ife Law Reports 201, and (for extensive and learned judgments) *Mitchell v DPP* (Grenada) [1986] LRC (Constl) 35.

8 The concept of a 'through train' is incorporated in the NPC Decision on the formation of the first legislature: 'If the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of the Hong Kong Special Administrative Region, those of its members who uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and pledge allegiance to the [HKSAR of the PRC], and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region' (para 6).

9 Given that it is the responsibility of the Preparatory Committee to decide whether there should be a 'through train' or alternative arrangements for elections, the 'decision' of the PWC to set up an interim legislature is, to say the least, of dubious validity.

There is ample time for the organisation of these elections. The composition of the legislature is laid down in the Basic Law. The Committee has been authorised by the NPC to make the necessary arrangements. The co-operation of the Hong Kong administration may be required for the implementation of some of these arrangements, but that co-operation is mandated in the Joint Declaration. There is no reason why during 1996 the Committee cannot draw up electoral regulations, including constituencies. Elections can then be held shortly before 1 July 1997, under international supervision if necessary, in case China has doubts about the integrity of their administration. It would also be possible to have elections immediately after 1 July 1997 if the regulations are in place by then.

One hopes that the 1997 pre-transfer budget would still be effective, and the regular machinery of the government, police, judiciary, etc will carry on normally. The analogy will then be with the period in between the dissolution of one legislature and the convening of another, for which the Basic Law itself allows a period of three months (article 68).

A 'legal vacuum'?

The idea that in the absence of a legislature there might arise a 'legal vacuum'[10] is fallacious, although this does not necessarily mean that Hong Kong will have an unambiguous and comprehensive body of laws as at present. The Basic Law provides for the continuation of previous laws and legal transactions — except those declared by the NPC to be inconsistent with the Basic Law (article 160). It had been assumed that the localisation and adaptation[11] of laws will have taken place before then, through discussions in the Joint Liaison Group ('JLG') and enactment by the Legislative Council. Some progress was indeed made in this regard before political difficulties between Britain and China began and the subsequent espousal by the Chinese of the position that the adaptation of laws is a matter for its own sovereignty, a position which it would seem is at odds with the assumptions of the Joint Declaration and the early practice of the JLG.[12]

[10] Public, indeed even professional, discussions of the 'legal vacuum' have been marked by an extraordinary degree of misunderstanding and confusion, and a great deal of (unjustified) anxiety about the breakdown of law and order and the disintegration of the machinery of law enforcement.

[11] Adaptation of laws refers to amendments to Hong Kong ordinances and subsidiary legislation to conform to the new authorities and structures of the HKSAR, while localisation refers to the incorporation in Hong Kong via local ordinances of British legislation or prerogative orders that now apply here, as such legislation or orders will not become part of the law of the HKSAR (art 8).

[12] It is worth emphasising that the Basic Law does not give the NPC or its Standing Committee any power to amend the law in Hong Kong at the transition or subsequently. Article 160 says that laws which the Standing Committee declares to be in contravention of the Basic Law will not continue in force — indicating that it is a power of veto rather than of enactment. Nor is the power of veto arbitrary; it cannot be exercised unless the law is indeed inconsistent with the Basic Law (rather than any vague notions of 'sovereignty'). The Basic Law is careful to circumscribe Chinese legislative power in the Region. Under the HKSAR system, the Standing Committee has no power to veto laws within Regional autonomy passed by the Hong Kong legislature. As for laws which it considers inconsistent with the Basic Law provisions 'regarding affairs within the responsibility of the Central

It is unlikely to matter a great deal if not all the laws are adapted before or on 1 July 1997; we can rely on the good sense of administrators and judges to make the necessary adaptations in due course. It is, however, incorrect to assume that an interim legislature will cure all ills, quite apart from doubts of its own validity. China appears to underestimate the technical legal skills necessary for the adaptation and localisation of laws. Moreover, without British co-operation, the machinery of laws, particularly the host of matters connected with treaty succession, including international economic relations and extradition arrangements, will remain incomplete, Chinese sovereignty notwithstanding. For those apprehensive about the fact and consequences of a 'legal vacuum' the wiser counsel is to operate within the machinery of the Joint Declaration, particularly the JLG, and the norms of the Basic Law, instead of embarking on a unilateral and uncharted path.

Concluding reflections

There is unquestionably an advantage in having a properly constituted legislature in accordance with the Basic Law on 1 July 1997. It is obviously possible to have one. Recourse to alternative arrangements, like the interim legislature, requiring the NPC to legislate for Hong Kong in a way unauthorised under the Basic Law, denying the people their electoral rights, and defying the Basic Law and putting in jeopardy its very status, will set unnecessary and dangerous precedents which will surely undermine the promised autonomy of Hong Kong. The failure to constitute the first legislature in accordance with the Basic Law will reflect no credit on China which will stand accused of incapacity — if not actually of bad faith — to implement its own Basic Law that it has so carefully negotiated and enacted. Moreover it could be deemed to be in violation of an international obligation (under the Joint Declaration) as well as an obligation to the people of Hong Kong (under the Basic Law). It is hard to imagine a worse start to Hong Kong as a Special Administrative Region, with large sections of its people demoralised or disenchanted, with legal and political uncertainties — the very antithesis of prosperity and stability which are supposed to be guaranteed to the people of Hong Kong during the transitional period and thereafter.

Authorities or regarding the relationship between the Central Authorities and the Region,' it has first to consult the Committee for the Basic Law, and only then 'may return the law in question but shall not amend it.' In these circumstances the law becomes void, but only prospectively (art 17). Even when national laws in areas fully within the competence of the PRC are to be extended to Hong Kong, they have first to be referred for consideration to the Committee for the Basic Law, and then applied 'by way of promulgation or legislation by the Region.' The only instance when Chinese legislation may be applied directly is when the Standing Committee 'decides to declare a state of war or, 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, decides that the Region is in a state of emergency' (both references are to art 18).

The creation of a provisional legislature may be taken as an obvious sign of the nervousness of the Chinese authorities about the application of the concept of 'Hong Kong people ruling Hong Kong,' a central constituent of the philosophy of 'one country, two systems,' widely hailed as a triumph of the genius of Deng Xiaoping. Under these circumstances some may wonder whether there is a hidden agenda behind the claim of legal necessity.

It is appropriate to conclude with some reflections on the nature and function of the Basic Law (with has the full authority of the NPC as well as that of the Joint Declaration). But, as a preliminary, it is necessary to analyse briefly the consequences of the establishment of the Preliminary Working Committee. Presented as a precursor of the Preparatory Committee, it advances by two years an active involvement of China in the domestic affairs of Hong Kong. Free of the principles and constraints on the Preparatory Committee, it has engaged China in a highly visible and partisan manner in Hong Kong politics, further polarising and fragmenting issues and leadership. Through the politics of nomination and patronage — learnt so well from the departing colonial authorities — it is emasculating whatever political and organisational steps towards democracy Hong Kong has, or might have, achieved before the transfer of sovereignty. The prospect of power, authority, or prestige that must have attracted many of China's advisers to the membership of the PWC reinforces the belief that political success comes, not from political processes and organisations involving the people of Hong Kong, but through the patronage of China. But by the same token it breeds dependence on mainland authorities (especially in an 'executive led system'), detaches 'leaders' from popular politics and pressures, and undermines norms and structures for the autonomy of the HKSAR.

Already China has taken the lead in identifying candidates for the post of the Chief Executive and the members of the interim (but effectively the first) legislature, functions which are vested in the HKSAR by the Basic Law. The temptation for China to intervene in some form in elections (when they do take place) to ensure the success of its protégés will be irresistible. More than 'face' is at stake. Meanwhile it will rely on the device of nomination to this end (at the same time promoting conditions which will remove the uncertainty of elections). Guidance or reassurance has already been sought by Hong Kong individuals or groups from the PWC or Chinese authorities on matters that are securely within the autonomy of the HKSAR. Such matters include the status in Hong Kong of Chinese academic qualifications, the persistence of a free economy, and the requirements to qualify as a permanent resident under the Basic Law.

There are at least two implications of these developments that have a fundamental bearing on the Basic Law. The first is a massive assault on the autonomy of the future HKSAR by China. While its justification may be the

need to protect Hong Kong from the machinations of wicked imperialists,[13] few believe that this is its sole reason or that its consequences will not be a pattern of similar interventions in the future.

The second consequence is the free-wheeling way in which the provisions of the Basic Law have already begun to be interpreted. These interpretations have become part of the stock of public abuse and polemic. Made in a highly politically charged environment, and driven by the expediency of the moment, they show a startling disregard for the history, purpose, and scope of the provisions of the Basic Law.[14] Even more damaging, attempts are being made to subject the structures and norms of the Basic Law to the 'brooding omnipresence' of Chinese sovereignty and the PRC Constitution. The effect is to place a question mark over the meaning and scope of every provision of the Basic Law. These developments reinforce the doubts expressed by many in the 1980s about the relationship of the PRC Constitution to the Basic Law[15] as well as the ability or the willingness of China to accept the status of the Basic Law as a constitutional instrument allocating powers and establishing procedures, and governed by distinctive modes of argumentation and interpretation:[16] a foundation for the rule of law.

Chinese attitudes towards the constitution and law are not grounded in a theory of constitutionalism which provides a secure framework for the allocation and the exercise of power. They do not seek to exercise discipline over government policy or administration. They do not constrain options of the government. Much less do they bind the real rulers of China, the higher echelons of the Chinese Communist Party. Power resides not within the confines of the constitution, but outside it, bending the latter to its will. At best, the Constitution is 'soft law.' Now it could be argued that the Basic Law, being an enactment of the PRC, is of the same genre, susceptible to political convenience and manipulation. Such a reading, however, flies in the face of the antecedents of the Basic Law.

The Basic Law is a formal fulfilment of China's solemn and binding obligations under the Joint Declaration to establish Hong Kong as a distinctive political and economic entity within the People's Republic of China. Although in a broad sense a part of the Chinese constitutional system, the Basic Law is entitled to a special autonomous character, unencumbered by doubts about

[13] In that event it is particularly harsh and irrational to visit the sins of Patten upon the people of Hong Kong!

[14] Interpretations of the most fundamental principles or provisions of the Basic Law are delivered off the cuff, in the heat of political acrimony or the pressure of press conferences. Given present political tensions, especially between the Chinese and the British, these hasty and ill-considered interpretations tend to get cast in stone, but paradoxically are also held out for reconsideration in return for some form of quid pro quo. Either way, the consequence is the undermining of the integrity of the Basic Law as a legal instrument.

[15] See Y Ghai, 'The Past and the Future of Hong Kong's Constitution' (1991) 128 China Quarterly 794, especially at pp 810-11.

[16] See, for example, M C Davis, *Constitutional Confrontation in Hong Kong: Issues and Implications of the Basic Law* (London: Macmillan Press, 1989).

inconsistencies with the PRC Constitution, as is recognised unambiguously by the NPC in its decision on the establishment of the HKSAR, which not only proclaimed the constitutional validity of the Basic Law, but emphasised that 'The systems, policies and laws to be instituted after the establishment of the HKSAR shall be based on the Basic Law of the HKSAR.' Consultations with the Basic Law Consultative Committee and the long and careful negotiations over the terms and phraseology of the Basic Law within the Basic Law Drafting Committee (both with significant membership from Hong Kong) may not be sufficient to convince China that the document is a compact between the people of Hong Kong and the PRC, but it is inconceivable that the different parties to the negotiations thought they were haggling over a scrap of paper. Furthermore, the Basic Law was incubated also in the common law, which it was generally accepted would, for the most part, determine the interpretations of its provisions. Thus, embedded within the framework and traditions of the common law and underwritten by an internationally binding treaty, it was endowed with the qualities of 'hard law.' These legal complexities, hybridisation rather than a single legal gene, lie at the heart of 'one country, two systems.'

These technical points apart, the Basic Law is the centrepiece of the concept of 'one country, two systems.' It can serve that function only if it has the qualities of 'hard law'. No vague doctrines of Chinese sovereignty should overrule it, as recognising that sovereignty, the NPC has, in the Basic Law, adjusted its contours to the premises and promises of 'one country, two systems' (as in the detailed provisions on defence and foreign affairs). Any other view of sovereignty renders the Basic Law otiose and eliminates any distinction between the HKSAR and other provinces or municipalities of China.

China is uncomfortable with analogies of federalism, but 'one country, two systems' is a different kind of animal where the preservation of boundaries and the maintenance of walls is the pre-condition of its viability. The Basic Law not only defines in a detailed and reasonably clear manner the relationship between China and Hong Kong, it also establishes the framework for the exercise of Hong Kong's autonomy as well as for the development of its political processes. These processes are (as guaranteed in the Basic Law) marked by pluralism and competitive politics (free from outside intervention) and debates and compromises within the various HKSAR institutions. A professional and independent judiciary in the HKSAR is charged with the responsibility to ensure the integrity of these processes and the rights and freedoms that are inextricably linked to them. It is this understanding of constitutionalism in which the Basic Law was conceived that the PWC should convey to China instead of conniving at its still-birth.

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