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## Post-1997 Hong Kong: Will Sufficient Educational Autonomy Remain to Safeguard Academic Freedom?

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# Post-1997 Hong Kong: Will Sufficient Educational Autonomy Remain to Safeguard Academic Freedom?

## INTRODUCTION

On July 1, 1997, Hong Kong, currently a British colony, is slated to become a Special Administrative Region (SAR) of the People's Republic of China (PRC).<sup>1</sup> When this news first reached the people of Hong Kong, over ninety-five percent of the people disclosed in a survey that they preferred not to be under the government of the PRC.<sup>2</sup> Given the fact that a majority of Hong Kong residents have experienced some form of oppression by the Communist government of the PRC, this widespread disdain is not surprising.<sup>3</sup>

Cognizant of their unpopularity, the PRC has instituted a campaign to assure Hong Kong residents that their personal freedoms will not be curtailed.<sup>4</sup> The government has propagated the slogan of "One Country, Two Systems," which promises that the people of Hong Kong will rule Hong Kong with a high level of autonomy.<sup>5</sup> As further assurance, the PRC has also drawn up for the future Hong Kong SAR a constitution, known as the Basic Law, for the future Hong Kong SAR.<sup>6</sup>

Nonetheless, as the arrival of PRC rule approaches, much discussion about the future of personal freedoms and civil rights has arisen.<sup>7</sup> One

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<sup>1</sup> Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, *initialed* Sept. 26, 1984, Gr. Brit.-P.R.C., paras. 2, 3(1), 23 I.L.M. 1371, 1371 [hereinafter Joint Declaration].

<sup>2</sup> NORMAN MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG* 239 (1991).

<sup>3</sup> *Id.* A majority of Hong Kong residents are aware of the oppressive acts of the Communists either through firsthand experience or through family stories. *See id.* Many Hong Kong residents either fled from the PRC's Communist Party in 1949, experienced persecution from the Red Guards during the Cultural Revolution in the 1960s, or some have experienced other campaigns against the bourgeoisie. *Id.*; *see also* Edward A. Gargan, *Britain Says It Will Monitor China's Rule of Hong Kong*, N.Y. TIMES, Mar. 5, 1996, at A3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 10.

<sup>7</sup> *See generally* CIVIL LIBERTIES IN HONG KONG (Raymond Wacks ed., 1988); THE FUTURE OF

essential personal freedom is the right to education.<sup>8</sup> The PRC's state-monopolized education system explicitly indoctrinates political views so as to produce supporters of its socialist ideals.<sup>9</sup> Given this backdrop, whether the PRC will allow Hong Kong to operate its education system free of the PRC's political agenda remains to be seen.

At first glance, guarantees for educational autonomy under the Basic Law appear to safeguard the right to education.<sup>10</sup> The Basic Law clearly provides that the future Hong Kong SAR will be able to continue to enjoy a high level of autonomy.<sup>11</sup> This autonomy encompasses the control of the education system.<sup>12</sup> In fact, the Basic Law explicitly provides that schools may continue to provide religious education and students may continue to choose educational institutions freely.<sup>13</sup> The history of the PRC's treatment of civil rights, the tension arising out of Taiwan's alleged move for independence, and the PRC's averse reaction to democratic reforms in Hong Kong raise serious doubts, however, as to the sincerity of these promises.

This Note sets out to evaluate whether sufficient educational autonomy will exist to safeguard the right to education. Section I provides the reader with the legal context out of which the question of educa-

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THE LAW IN HONG KONG (Raymond Wacks ed., 1989); HUMAN RIGHTS IN HONG KONG (Raymond Wacks ed., 1992).

<sup>8</sup> Throughout this Note, the right to education and academic freedom is defined as one's right to pursue an education that is free of a political agenda and free of government censorship. Where there is such an academic freedom, the government is to respect the wishes of parents and students to obtain teaching that is in conformity with their own religious and philosophical convictions. *See* BELG. CONST. (Coordinated Constitution of Belgium, Feb. 17, 1994) art. 24, § 1, *reprinted in* 2 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gilbert H. Flanz eds., 1994) [hereinafter BELG. CONST.]; *see also* *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). The *Keyishian* Court provides the following:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us . . . [and] is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom . . . . The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."

*Keyishian*, 385 U.S. at 603.

<sup>9</sup> EDUCATION AND SOCIETY IN HONG KONG: TOWARD ONE COUNTRY AND TWO SYSTEMS app. E (Gerard A. Postiglione ed., 1992) [hereinafter EDUCATION & SOCIETY].

<sup>10</sup> Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, arts. 136-37, 29 I.L.M. 1520, 1541 (1990) [hereinafter Basic Law].

<sup>11</sup> *Id.* art. 12.

<sup>12</sup> *Id.* art. 136.

<sup>13</sup> *Id.* art. 137.

tional autonomy arises. This section provides the reader with a history of Hong Kong and a discussion of the Joint Declaration and the Basic Law. Section II outlines Hong Kong's education system, including its organizational structure, current changes in the system, and the system's significance to the PRC. Section III of this Note, titled the "Modern Context," offers the reader circumstances and events contemporaneous to and relevant to the situation in Hong Kong. This section covers the PRC's historical and present treatment of civil liberties, the PRC's reaction to Governor Patten's democratic reforms in 1992, its treatment of Taiwan's 1996 presidential elections, and current business and social attitudes of the people of Hong Kong. Section IV analyzes whether sufficient autonomy exists to safeguard academic freedom by evaluating several factors. The language of the provisions found in the Joint Declaration and the Basic Law, set against the PRC's treatment of civil rights, autonomy, and democracy, rings hollow for assuring educational autonomy and academic freedom. The highly centralized nature of the education system and its strong dependence on economic prosperity bode unfavorably for educational autonomy as well. Although interdependence between Hong Kong and PRC academicians is promising for education, this evidence is offered with caution. This Note concludes that the PRC's track record of safeguarding civil rights and its hostility towards events in Hong Kong and Taiwan undermine its promises to Hong Kong of educational autonomy and academic freedom.

## I. LEGAL CONTEXT

### A. *Hong Kong's Path to the Present*

Modern day Hong Kong,<sup>14</sup> once China's "barren island with hardly a house upon it,"<sup>15</sup> came into British possession in various phases. From 1839 to 1842, the Chinese<sup>16</sup> and the British were engulfed in what was

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<sup>14</sup>In this Note, unless otherwise stated, the term "Hong Kong" refers to the entire region comprising Hong Kong Island, Kowloon, and the New Territories. See Joint Declaration, *supra* note 1, para. 1, at 1371. The PRC will regain sovereignty over this entire region on July 1, 1997. *Id.*

<sup>15</sup>JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 156 (1990) (quoting the British Lord Palmerston who was furious with Charles Elliot for not exacting "better" terms from the Chinese).

<sup>16</sup>For the purpose of this Note, the terms "Chinese" or "China," unless otherwise stated, will refer to the people, culture, or region of the modern PRC. In differentiating the geographic

to become the First Opium War.<sup>17</sup> The Second Opium War occurred from 1858–1860.<sup>18</sup> Then, in 1894–1895, when China suffered defeat from the Japanese, the British took advantage of the situation and sought additional concessions of Chinese territory.<sup>19</sup>

During the early 1800s, the ever-expanding opium trade had both deleterious economic and social effects on China.<sup>20</sup> Its momentum had risen to a level where the amount of Chinese silver diverted for this trade was harming the national economy.<sup>21</sup> Moreover, smoking opium had become so widespread that over one million people were addicted.<sup>22</sup>

China's unsuccessful attempts to curb the trade only aggravated its relations with the British.<sup>23</sup> Unsuccessful negotiations brought about fighting and blockades, which resulted in the First Opium War.<sup>24</sup> In 1842, both parties ended the war with the signing of the Nanking Treaty.<sup>25</sup>

Of particular relevance to this Note is Article III of the Nanking Treaty, which concerns the island of Hong Kong.<sup>26</sup> This article provides that China is to cede the island of Hong Kong to the British “in

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region of the PRC from Hong Kong and Taiwan, this Note will refer to it as “the mainland” or “mainland China.”

<sup>17</sup> SPENCE, *supra* note 15, at 152–58.

<sup>18</sup> MINERS, *supra* note 2, at 3.

<sup>19</sup> *Id.*

<sup>20</sup> SPENCE, *supra* note 15, at 129, 149.

<sup>21</sup> *Id.* at 149.

<sup>22</sup> *Id.* at 129. Users of opium included people from all walks of life—eunuchs in the imperial courts, wealthy women confined to the walls of their households, soldiers on their way to combat, coolie laborers, and peasants in the countryside. *Id.* at 131.

<sup>23</sup> *Id.* at 152–58.

<sup>24</sup> SPENCE, *supra* note 15, at 152–58. In response to China's trade blockades and opium seizures, the British launched a campaign against China. *Id.* at 154–56. Under the direction of George Elliot, a full British fleet arrived in Canton in 1840. *Id.* at 156. This fleet blockaded coastal harbors and seized the main town on the island of Zhoushan. *Id.* Subsequently, Sir Henry Pottinger led forces that launched a more forceful attack on the Chinese. *Id.* at 157. His forces attacked and captured cities such as Ningbo, Xiamen, and Zhoushan. SPENCE, *supra* note 15, at 157. As he captured Shanghai and Zhenjiang, he approached the former Ming dynasty capital of Nanjing. *Id.* At this time, the Qing officials had already been pleading for peace and, thus, a treaty was signed in 1842. *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Treaty at Nanking, Aug. 29, 1842, China-Gr. Brit., art. III, 93 Consol. T.S. 465, 467 [hereinafter Nanking Treaty].

It being obviously necessary and desirable that British subjects should have some port wherewith they may careen and refit their ships when required, and keep stores for that purpose, His Majesty the Emperor of China cedes to Her Majesty the Queen of Great Britain, &c., the Island of Hong Kong, to be possessed in perpetuity by Her Britannic

perpetuity.<sup>27</sup> The Treaty of Nanking laid the foundation for Chinese concession of territory to the British.

Further concessions of Chinese territory to the British followed. In 1860, after the British victory during the Second Opium War, the British forced the Chinese government to cede the peninsula of Kowloon.<sup>28</sup> Subsequently, in 1895, following China's loss to Japan, the British took advantage of the situation and demanded a ninety-nine year leasehold for the New Territories, the region attached to the Kowloon Peninsula on the southeastern tip of mainland China.<sup>29</sup> On June 9, 1898, both the British and the Chinese formalized the lease in the Convention of Peking, which became effective on July 1, 1898.<sup>30</sup> Thus, in three phases, the British gained control of the Island of Hong Kong, the Kowloon Peninsula, and the New Territories, which make up modern day Hong Kong.

Since the establishment of the current PRC government in 1911, the PRC has left Hong Kong relatively undisturbed.<sup>31</sup> No official reasoning exists for this policy.<sup>32</sup> The unofficial assumption, however, is that the economic benefits of Hong Kong's autonomy have persuaded the PRC to permit Hong Kong to maintain its independent course.<sup>33</sup> One commentator suggests that during the 1950s an informal agreement must have occurred between the governments of the PRC and the United Kingdom.<sup>34</sup> Conditions of this possible informal agreement were likely

Majesty, her heirs and successors, and to be governed by such laws and regulations as Her Majesty the Queen of Great Britain, &c., shall see fit to direct.

*Id.* In referring to the treaty, scholars have used both "Nanking" and "Nanjing." *See id.*; SPENCE, *supra* note 15, at 157. "Nanking" and "Nanjing" are the names of the same city. The difference is in the romanization of the Chinese name. "Nanking" is most likely based on the Cantonese dialect of Southern China and the dialect used in Hong Kong.

<sup>27</sup> Nanking Treaty, *supra* note 26, art. III, at 467.

<sup>28</sup> MINERS, *supra* note 2, at 3.

<sup>29</sup> *Id.* The British had originally wanted a full concession of the New Territories from the Chinese, but because other nations, such as Russia, France, and Germany, were seeking like concessions and settled for similar leaseholds, the British decided to take the same. *Id.* This last lease was confirmed at the Convention of Peking in 1898. The Convention of Peking, June 9, 1898, China-Gr. Brit., *reprinted in* MINERS, *supra* note 2, app. A at 246-47 [hereinafter Convention of Peking]. The relevant portions of the Convention state, "[t]he term of this lease [respecting the extension of Hong Kong Territory] shall be for ninety-nine years . . . [and] shall come into force on the 1st day of July, 1898, being the 13th day of the 5th moon of the 24th year of Kuang Hsü." *Id.* at 247.

<sup>30</sup> Convention of Peking, *supra* note 29, at 246-47.

<sup>31</sup> MINERS, *supra* note 2, at 5.

<sup>32</sup> *See id.* at 6.

<sup>33</sup> *Id.* at 5.

<sup>34</sup> *Id.* at 6.

that the PRC would not disturb British rule so long as the British did not interfere with the Chinese interests in Hong Kong.<sup>35</sup>

The existence of the Convention of Peking necessitated formal action on the part of the governments of the PRC and the UK as the ninety-nine year lease was coming to an end.<sup>36</sup> Additionally, the British government feared that an uncertain future would deter investors from Hong Kong.<sup>37</sup> Despite the PRC's attempts to postpone the inevitable, it had to make a decision regarding Hong Kong.<sup>38</sup>

In 1982, the first formal outline of Hong Kong's future appeared.<sup>39</sup> In an audience with Deng Xiaoping, former British Prime Minister Edward Heath discussed Hong Kong's future with Deng.<sup>40</sup> At first, Deng proposed to treat Hong Kong as a Special Economic Zone (SEZ) in which inhabitants of Hong Kong would rule and the present capitalist system would remain.<sup>41</sup> Subsequently, the PRC adopted its 1982 Constitution which provided for a Special Administrative Region (SAR) with a high level of autonomy.<sup>42</sup> The government adopted this provision with Hong Kong's future in mind.<sup>43</sup>

After two years of negotiations, heads of both governments came to an agreement and initialed the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Joint Declaration) in September 1984, and ratification

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<sup>35</sup> *Id.* Particularly, conditions may have included that the British not institute democratic processes in Hong Kong, that Taiwan not be allowed to set up any official post in Hong Kong, and that China be allowed to continue to benefit from the Hong Kong economy. MINERS, *supra* note 2, at 6.

<sup>36</sup> *Id.* at 7. Technically, the Convention of Peking only applies to the New Territories. *See supra* note 29 and accompanying text. Both the island of Hong Kong and the peninsula of Kowloon may continue under British sovereignty. Nanking Treaty, *supra* note 26, art. III, at 467; *see also* MINERS, *supra* note 2, at 3. Nonetheless, the British have decided to return Hong Kong in its entirety to the PRC at the end of the 99 years. Joint Declaration, *supra* note 1, paras. 1–2, at 1371.

<sup>37</sup> MINERS, *supra* note 2, at 7. Land investors in the New Territories of Hong Kong had contracts that were set to expire on June 27, 1997. *Id.* This did not deter investors at first, but the imminence of 1997 stirred some anxieties. *Id.*

<sup>38</sup> *See id.* at 6–8.

<sup>39</sup> *Id.* at 8.

<sup>40</sup> MINERS, *supra* note 2, at 8.

<sup>41</sup> *Id.* Currently, the PRC has established certain areas as SEZs in order to encourage free markets and some level of economic autonomy. *Id.* One of these SEZ is Shenzhen, sandwiched between Hong Kong and Guangdong province, which has experienced phenomenal economic success. SPENCE, *supra* note 15, at 673–74, 703.

<sup>42</sup> XIANFA [Constitution] (1982) art. 31, *reprinted in* 4 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein and Gilbert H. Flanz eds., 1995); MINERS, *supra* note 2, at 8.

<sup>43</sup> MINERS, *supra* note 2, at 8; *see also* Joint Declaration, *supra* note 1, para. 3(1), at 1371.

followed in June, 1985.<sup>44</sup> Subsequently, on April 4, 1990, the PRC adopted the Basic Law of the Hong Kong SAR (Basic Law) which elaborates the general principles of the Joint Declaration and serves as the constitution of the Hong Kong SAR.<sup>45</sup> Both the Joint Declaration and the Basic Law serve as the foundational legal documents of the future Hong Kong SAR.<sup>46</sup>

### B. *The Joint Declaration*

As the official document that resolves the question of Hong Kong's future, the Joint Declaration outlines the administration of the Hong Kong government after July 1, 1997.<sup>47</sup> In this document, the British have stated their agreement to return Hong Kong to the PRC on July 1, 1997.<sup>48</sup> Once the British leave, the PRC will resume sovereignty over Hong Kong and govern it as a SAR.<sup>49</sup> The Joint Declaration specifically provides that the Hong Kong SAR, although under PRC sovereignty, will still enjoy a "high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government [of the PRC]."<sup>50</sup>

The Basic Law offers autonomy to the people of Hong Kong through independent powers and maintenance of the status quo.<sup>51</sup> Hong Kong will have its own executive, legislative, and independent judicial pow-

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<sup>44</sup> MINERS, *supra* note 2, at 9–10.

<sup>45</sup> Basic Law, *supra* note 10; MINERS, *supra* note 2, at 10.

<sup>46</sup> Joint Declaration, *supra* note 1, para. 3(12), at 1372; MINERS, *supra* note 2, at 10.

<sup>47</sup> Joint Declaration, *supra* note 1, para. 3, at 1371–72.

<sup>48</sup> *Id.* para. 2, at 1371.

<sup>49</sup> *Id.* paras. 1, 3(1), at 1371. Paragraph 3 of the Joint Declaration sets out in twelve subparts the crux of Hong Kong's future: (1) Hong Kong will be a Special Administrative Region; (2) the Hong Kong SAR will be under the governance of the Central People's Government of the PRC, with a high level of autonomy, except for foreign and defensive affairs; (3) current laws in Hong Kong will remain and Hong Kong will be vested with its own executive, legislative, and adjudicatory functions; (4) elections by local inhabitants of Hong Kong or consultations will choose the office of the chief executive; (5) social and economic systems, as well as personal freedoms, will remain unchanged; (6) Hong Kong will remain a free port and a separate customs territory; (7) Hong Kong will remain an international trade center with its own currency; (8) Hong Kong will have independent finances with no taxes levied by the PRC; (9) Hong Kong may enter into mutually beneficial commercial relationships; (10) under the name of "Hong Kong, China," it may develop and maintain cultural and economic relations and issue travel documents; (11) maintenance of order will be the responsibility of the government of the Hong Kong SAR; and (12) implementation of the above will be stipulated in the Basic Law and will remain unchanged for fifty years. *Id.* para. 3, at 1371–72.

<sup>50</sup> *Id.* para. 3(2), at 1371.

<sup>51</sup> Joint Declaration, *supra* note 1, paras. 3(3), 3(5), at 1371–72.



ers.<sup>52</sup> Although Hong Kong's Chief Executive will be appointed by the PRC, this appointment will be based upon elections by the people of Hong Kong.<sup>53</sup> Furthermore, the Basic Law has provided that the office of the Chief Executive will be filled by someone chosen from among the Hong Kong people, as opposed to someone from the PRC.<sup>54</sup> The Joint Declaration purports to allow all current social and economic institutions, including the current educational system, to remain untouched by the PRC for the next fifty years.<sup>55</sup> This fifty year protection extends to the implementation of a Basic Law to be drawn up for the Hong Kong SAR of the PRC.<sup>56</sup>

### C. *The Basic Law*

The Basic Law sets forth in detail the proposals found in the Joint Declaration.<sup>57</sup> The Basic Law consists of nine chapters and three annexes.<sup>58</sup> Within these chapters, the Basic Law discusses the general principles of the SAR, describes the relationship between Hong Kong and the PRC, and lays out the SAR's political and economic structure.<sup>59</sup> It also enumerates the fundamental rights and duties of the Hong Kong people and provides that they will eventually enjoy universal

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<sup>52</sup> *Id.* para. 3(3), at 1371.

<sup>53</sup> *Id.* para. 3(4), at 1372. The Chief Executive of the Hong Kong Special Administrative Region is the head of the Hong Kong SAR and is accountable to the CPG. Basic Law, *supra* note 10, art. 43. Some of the responsibilities of the Chief Executive include implementation of the Basic Law, signing and promulgating laws passed by the Legislative Council, nomination for appointment and suggestions for removal of chief officials, appointment and removal of judges and public officials, and approval of motions on budgetary finances. *Id.* art. 48. The process for choosing a Chief Executive, which is a five-year post, for the SAR is set forth under Annex I of the Basic Law. *Id.* annex I. Eventually, this post is to be the result of universal suffrage. *Id.* art. 45.

<sup>54</sup> See Basic Law, *supra* note 10, arts. 3, 44; Joint Declaration, *supra* note 1, para. 3(4), at 1372.

<sup>55</sup> Joint Declaration, *supra* note 1, para. 3(5), annex I, § 1, at 1372-73.

The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.

*Id.* para. 3(5), at 1372.

<sup>56</sup> *Id.* para. 3(12), at 1372.

<sup>57</sup> *Id.*

<sup>58</sup> See generally Basic Law, *supra* note 10.

<sup>59</sup> *Id.* chs. I, II, IV, V.

suffrage.<sup>60</sup> Guidelines for the interpretation and amendment of the Basic Law are also included.<sup>61</sup>

Chapter VI specifically addresses the area of education.<sup>62</sup> Under the Basic Law, the current education system will remain untouched.<sup>63</sup> Hong Kong's own department of education will retain autonomy in formulating its own policies.<sup>64</sup> This autonomy extends to educational institutions as well.<sup>65</sup> In fact, schools that are currently run by religious organizations may continue to provide religious education.<sup>66</sup>

Religious schools find further comfort in the same chapter of the Basic Law, which proposes no changes to religious organizations.<sup>67</sup> Not only will they remain intact, but religious organizations may also be able to maintain their ties to foreign counterparts under the Basic Law.<sup>68</sup>

<sup>60</sup> *Id.* ch. III, arts. 45, 68.

<sup>61</sup> *Id.* ch. VIII.

<sup>62</sup> *Id.* arts. 136–37, 148–49.

<sup>63</sup> Basic Law, *supra* note 10, arts. 136–37.

On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications.

Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organizations may continue to provide religious education, including courses in religion.

Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Hong Kong Special Administrative Region.

*Id.* arts. 136–37.

<sup>64</sup> *Id.* art. 136.

<sup>65</sup> *Id.* art. 137.

<sup>66</sup> *Id.*

<sup>67</sup> Basic Law, *supra* note 10, art. 141.

The Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the region . . . .

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere.

*Id.*

<sup>68</sup> *Id.* arts. 141, 149.

Article 141 of the Basic Law specifically affirms the exercise of free religion in the Hong Kong SAR.<sup>69</sup> Furthermore, Articles 32 through 34 state that Hong Kong residents have freedoms of conscience, of occupation, and of engaging in academic and cultural pursuits.<sup>70</sup>

## II. EDUCATIONAL CONTEXT

### A. *Organization of the Hong Kong Education System*

Given the premise that the current education system will remain intact, a look at the present system is helpful in determining the nature of the educational system. A student in Hong Kong starts her formal education at the age of six with six years of primary school.<sup>71</sup> Subsequently, she proceeds to three more years of schooling through a junior secondary program.<sup>72</sup> These first nine years make up the compulsory educational requirements in Hong Kong, which have been in place since 1978.<sup>73</sup> After these required nine years, a student may continue her education with a two-year senior secondary course.<sup>74</sup> Successful completion of this course allows a student to continue on to a one- or two-year sixth form course, the duration of which is dependent upon a student's tertiary education plans.<sup>75</sup>

The overall governing structure of Hong Kong's education system is a centralized system, with decentralized components at the lower lev-

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Non-governmental organizations in fields such as . . . religious organizations in the Hong Kong Special Administrative Region may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations. They may, as required, use the name 'Hong Kong, China' in the relevant activities.

*Id.* art. 149. This language departs from that of the PRC's own constitution which states that "religious bodies and religious affairs are not subject to any foreign domination." XIANFA art. 36. In practice, the PRC language has meant that religious organizations must discontinue relations with their foreign counterparts. *See infra* notes 195–204 and accompanying text.

<sup>69</sup> Basic Law, *supra* note 10, art. 141.

<sup>70</sup> *Id.* arts. 32–34.

<sup>71</sup> Paul Morris, *Preparing Pupils as Citizens of the Special Administrative Region of Hong Kong: An Analysis of Curriculum Change and Control During the Transition Period*, in EDUCATION & SOCIETY, *supra* note 9, at 117, 119.

<sup>72</sup> *Id.*

<sup>73</sup> Gerard A. Postiglione, *The Decolonization of Hong Kong Education*, in EDUCATION & SOCIETY, *supra* note 9, at 3, 11.

<sup>74</sup> Morris, *supra* note 71, at 119.

<sup>75</sup> *Id.* at 119–20. Tertiary education takes place at the few universities and polytechnic institutes in Hong Kong. *Id.*

els.<sup>76</sup> All of the decision-making power is concentrated at the head of the system in the governor-in-council, who is appointed by the Queen.<sup>77</sup> In practice, however, members of the Executive Council (ExCo) are the actual decision-makers.<sup>78</sup> The next level in the structure consists of four subcommittees, which advise the ExCo.<sup>79</sup> These four subcommittees make up the decentralized components of the system.<sup>80</sup> The Board of Education oversees kindergarten through the sixth form.<sup>81</sup> The Universities and Polytechnics Grants Committee funds and develops education at the university level and preserves institutional autonomy.<sup>82</sup> The Vocational Training Council supervises all technical education.<sup>83</sup> The Education Commission consists of members from the general community and members from each of the other three advisory committees.<sup>84</sup> This committee oversees the overall educational policies and the interactions among the various sectors.<sup>85</sup> With such committees in place, despite the centralized decision-making power at the top level, people are more willing to accept the decisions made.<sup>86</sup> The consultative functions of these committees legitimize the centralized decisions of the governor-in-council.<sup>87</sup>

Control over the area of school curricula stems from Hong Kong's Education Regulations.<sup>88</sup> The Education Regulations limit instructions to those that comply with a syllabus approved by the Director.<sup>89</sup> The Director must also approve any document used in any class in any school.<sup>90</sup> Moreover, pursuant to these regulations, the content of curricula must exclude political education in Hong Kong schools.<sup>91</sup>

<sup>76</sup> See Postiglione, *supra* note 73, at 13.

<sup>77</sup> Cheng Kai Ming, *Educational Policymaking in Hong Kong: The Changing Legitimacy*, in EDUCATION & SOCIETY, *supra* note 9, at 97, 107.

<sup>78</sup> *Id.*

<sup>79</sup> See Postiglione, *supra* note 73, at 13; see also Cheng Kai Ming, *The Policymaking and Administrative Bodies of Education*, in EDUCATION & SOCIETY, *supra* note 9, app. B.

<sup>80</sup> See Postiglione, *supra* note 73, at 13.

<sup>81</sup> *Id.*

<sup>82</sup> Cheng, *supra* note 77, at 108; Postiglione, *supra* note 73, at 13.

<sup>83</sup> Postiglione, *supra* note 73, at 13.

<sup>84</sup> Cheng, *supra* note 77, at 109; Postiglione, *supra* note 73, at 13.

<sup>85</sup> Cheng, *supra* note 77, at 109.

<sup>86</sup> See Postiglione, *supra* note 73, at 13.

<sup>87</sup> *Id.*

<sup>88</sup> Morris, *supra* note 71, at 121.

<sup>89</sup> *Id.* (citing Education Dept., Education Regulations, cap. 279, § 84, 92(1) (Hong Kong: Government Printer, 1971) [hereinafter Education Regs.]).

<sup>90</sup> Education Regs., *supra* note 89, cap. 279, § 84, 92(6).

<sup>91</sup> Morris, *supra* note 71, at 121; see also Education Regs., *supra* note 89, cap. 279, § 84, 92(6).

In practice, two central organizations, the Curriculum Development Committees (CDC) and the Hong Kong Examination Authority (HKEA), control the overall curriculum in Hong Kong.<sup>92</sup> The CDC is responsible for the design of curricula and the approval of school textbooks.<sup>93</sup> Execution of such duties is in the form of formal curriculum mandates that specify the range of subjects to be studied and the list of textbooks to be used.<sup>94</sup> The HKEA is an independent statutory body.<sup>95</sup> As the organization administering all of Hong Kong's public examinations, the HKEA exercises much de facto authority over what is taught in the classrooms.<sup>96</sup> The HKEA dictates specifically what materials the exams cover and in what manner the examinations will test students.<sup>97</sup> Since success on these examinations translates into high economic benefits, teachers and students have strong incentives to comply with HKEA's syllabi.<sup>98</sup>

### B. *Changes in Curriculum Content*

Recent political changes in Hong Kong have caused educational institutions to rethink their stance on education and politics.<sup>99</sup> In response to the imminent return to Chinese sovereignty, both legislative councilors and public pressure groups have voiced their desire to introduce a political education.<sup>100</sup> The driving force behind a political education is the aim to ensure a more politically literate and active citizenry.<sup>101</sup> The purposes behind achieving such a citizenry differ,

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No instruction, education, entertainment recreation or propaganda or activity of any kind which, in the opinion of the Director, is in any way of a political or party political nature and prejudicial to the public interest or the welfare of the pupils or of education generally or contrary to the approved syllabuses, shall be permitted upon any school premises or upon the occasion of any school activity.

*Id.*

<sup>92</sup> Morris, *supra* note 71, at 120.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 122.

<sup>95</sup> *Id.* at 120.

<sup>96</sup> *See id.* at 120–21.

<sup>97</sup> Morris, *supra* note 71, at 121.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 129. Support for teaching politics in the Hong Kong education system is not new. *See id.* In the 1970s, the Education Department dismissed several attempts to have a political education. *Id.* The Department argued that teaching vulnerable children at such a young age about politics would be risky and subject children to undue political pressure. Morris, *supra* note 71, at 129.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 123.

depending on whether one consults the Hong Kong government or local communities.<sup>102</sup> The government hopes that such an education will prepare students to become better citizens of the PRC.<sup>103</sup> On the other hand, local communities desire to prepare the Hong Kong people for and to promote a more representative form of government.<sup>104</sup> Implicitly, this latter purpose aims to safeguard people from any intrusive governmental actions in the future.

The return to Chinese sovereignty has made impacts on the three mechanisms which influence Hong Kong's curriculum: the examination syllabi via the HKEA, curriculum guidelines by the CDC, and classroom textbooks.<sup>105</sup> The HKEA has changed selected syllabi to accommodate political education.<sup>106</sup> On the other hand, the CDC has issued curriculum guidelines that remain apolitical.<sup>107</sup> Textbooks have responded by casting a different light on history in the form of self-censorship.<sup>108</sup>

In particular, the HKEA has introduced a Government and Public Affairs (GPA) syllabus in 1989.<sup>109</sup> Prior to the GPA syllabus, HKEA had a syllabus for Economics and Public Affairs (EPA) which covered the fundamentals of the Hong Kong government as well as Hong Kong's relationships with other governments.<sup>110</sup> The difference in the GPA is that it stresses the political processes and concepts central to Western democracies—the rule of law, representation, consultation, and elections.<sup>111</sup> Nonetheless, instead of carrying a political doctrine, the political education offered by the HKEA teaches about the political concepts in democracies.<sup>112</sup> Other syllabi, such as Chinese history and geography, remain apolitical.<sup>113</sup> Chosen texts from the PRC under these syllabi are distinctly apolitical and are balanced by texts written by Taiwanese authors.<sup>114</sup>

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<sup>102</sup> See *id.*

<sup>103</sup> *Id.*

<sup>104</sup> Morris, *supra* note 71, at 123.

<sup>105</sup> See *id.* at 120, 122.

<sup>106</sup> See *id.* at 124–28.

<sup>107</sup> *Id.* at 131.

<sup>108</sup> *Id.* at 137.

<sup>109</sup> Morris, *supra* note 71, at 127.

<sup>110</sup> See *id.* at 124–27.

<sup>111</sup> *Id.* at 129.

<sup>112</sup> See *id.*

<sup>113</sup> *Id.* at 130.

<sup>114</sup> Morris, *supra* note 71, at 130.

Curriculum guidelines have been modified differently.<sup>115</sup> In an effort to conform with the status quo, the CDC has issued guidelines that place greater emphasis on government institutions and on rights and responsibilities of a good citizen, rather than on particular political concepts.<sup>116</sup> The concept of democracy is specifically avoided, because the CDC posits that the concept means different things to different people.<sup>117</sup> In trying to focus on good citizenry, the curriculum guidelines attempt to remain apolitical.<sup>118</sup>

Textbook publishers have also made changes based on the current Hong Kong government's suggestions or far-sighted economic practicality.<sup>119</sup> At the government's suggestion, publishers have rewritten some of their texts to cast China in a positive light.<sup>120</sup> Furthermore, for fear of future censorship, publishers have also avoided including controversial topics, such as the PRC's bloody suppression of student protests for democracy in 1989, in their texts.<sup>121</sup>

### C. *In the Eyes of the PRC*

Hong Kong's education system serves the Chinese favorably in a number of ways. In economic terms, it is in the best interest of the Chinese to preserve Hong Kong's internal systems, which include the education system, as they now stand.<sup>122</sup> As an international city, Hong Kong also plays a role in the PRC's push for modernization.<sup>123</sup> Moreover, Hong Kong's education system may well be a valuable resource for the training of the PRC's future political leaders in Hong Kong.<sup>124</sup>

Commentators have pointed out that the economic interests of the PRC safeguard the preservation of Hong Kong's education system.<sup>125</sup>

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<sup>115</sup> *Id.* at 131.

<sup>116</sup> *Id.* at 130.

<sup>117</sup> *Id.* at 131.

<sup>118</sup> *Id.*

<sup>119</sup> Morris, *supra* note 71, at 136–37.

<sup>120</sup> *Id.* at 137.

<sup>121</sup> *Id.*

<sup>122</sup> See MINERS, *supra* note 2, at 240; W.O. Lee, *Pressure for Educational Excellence in China: Implications for Education in Hong Kong*, in EDUCATION & SOCIETY, *supra* note 9, at 235, 244–45, 248.

<sup>123</sup> Lee, *supra* note 122, at 243.

<sup>124</sup> See Postiglione, *supra* note 73, at 19–20; see also Basic Law, *supra* note 10, arts. 44, 61, 71, 90. Under the Basic Law, high level public offices require candidates to have a residency requirement. See Basic Law, *supra* note 10, arts. 44, 61, 71, 90. As these requirements run up to twenty years in length, it is not unlikely that these leaders have also gone through the education system in Hong Kong. See *id.*

<sup>125</sup> See MINERS, *supra* note 2, at 240; Lee, *supra* note 122, at 245.

The PRC gains one-third of its foreign exchange earnings through Hong Kong each year.<sup>126</sup> Hong Kong is a vital channel between the PRC and the rest of the world for state-of-the-art foreign technology.<sup>127</sup> Against this setting, the education system in Hong Kong has also gained significance because the Chinese view it as a “model of excellence” for economic contribution.<sup>128</sup>

Formal attempts to study Hong Kong demonstrate the PRC’s interest in Hong Kong, and especially in Hong Kong’s education system.<sup>129</sup> Since 1980, the Chinese have set up numerous institutes for the research and study of Hong Kong.<sup>130</sup> The Academy of Social Sciences of China in Guangzhou, the Shanghai Academy of Social Sciences, and the Hong Kong and Macao Research Institute at Zhongshan University are just some examples.<sup>131</sup> Research centers and institutes have also extensively published studies on Hong Kong and Macao since the 1980s.<sup>132</sup> Although Hong Kong’s economy has received the most attention, the PRC has also paid special attention to Hong Kong’s education system.<sup>133</sup>

In addition to its relationship to economic prosperity, Hong Kong’s education system is important to the PRC because it serves the PRC’s ideological purposes.<sup>134</sup> The PRC has given praise to Hong Kong’s education system as effectively catering to the needs of society.<sup>135</sup> As such, the education system could potentially be an effective channel for promoting the PRC’s socialist ideals.<sup>136</sup> Furthermore, the education system serves as a training ground for the future leaders of the Hong Kong SAR.<sup>137</sup>

Additional evidence of the important role of Hong Kong’s education system in the eyes of the PRC is the increased academic interdepend-

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<sup>126</sup> Lee, *supra* note 122, at 243; *see also* Lo Ka-shui, “One Country, Two Systems” Concept Will Ensure Status as International Offshore Hub for Mainland; Territory must Strive for Key Role as China’s Finance Centre, S. CHINA MORNING POST, July 15, 1996, available in LEXIS, News Library, Majpap File (noting Hong Kong as “capital formation centre” for China’s economic modernization programs).

<sup>127</sup> Lee, *supra* note 122, at 243.

<sup>128</sup> Julian Y.M. Leung, *Education in Hong Kong and China: Toward Convergence?*, in EDUCATION & SOCIETY, *supra* note 9, at 265, 267.

<sup>129</sup> *See* Lee, *supra* note 122, at 243.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 244.

<sup>133</sup> *Id.*

<sup>134</sup> *See* Lee, *supra* note 122, at 245.

<sup>135</sup> *Id.*

<sup>136</sup> *See id.*

<sup>137</sup> *See supra* note 124 and accompanying text.



ence between Hong Kong and the PRC.<sup>138</sup> In recent years, many PRC students have enrolled in Hong Kong's higher education institutions.<sup>139</sup> Via the State Education Committee, the PRC has sent secondary school principals and teacher trainers into Hong Kong for training.<sup>140</sup> Chinese bankers, international traders, hotel managers, and even mayors have arrived in Hong Kong for training in courses set up by Hong Kong industrialists.<sup>141</sup> Conversely, Hong Kong scholars have gone into mainland China for study.<sup>142</sup>

In addition to the flux of scholars going in either direction, Hong Kong-PRC joint ventures in science have been growing.<sup>143</sup> The Biotechnology Institution of the Chinese University of Hong Kong has been cooperating with Shanghai counterparts in the PRC to disseminate biotechnical innovations throughout the world.<sup>144</sup> There has also been Hong Kong-PRC cooperation in the area of electronics.<sup>145</sup> It is likely that this academic interdependence will continue as 1997 approaches.<sup>146</sup>

### III. MODERN CONTEXT

In examining the question of educational autonomy and academic freedom, sole reliance on the texts of the Joint Declaration and the Basic Law offers limited assistance. A more in-depth analysis necessitates an examination into the surrounding context that gives life to the words in the documents. Looking at the PRC's own treatment of civil rights and liberties, its reaction to democratic reforms in Hong Kong, its treatment of the autonomy question for Taiwan, and current attitudes and business trends in Hong Kong are all relevant to questioning the future of educational autonomy and academic freedom in Hong Kong.

#### A. *PRC's Treatment of Civil Rights*

An understanding of the PRC's current treatment of civil rights and liberties, among which is the right to education, requires a historical

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<sup>138</sup> Leung, *supra* note 128, at 266-67.

<sup>139</sup> *Id.* at 267.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> See Leung, *supra* note 128, at 267.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 267-68.

perspective of the Chinese treatment of individual rights.<sup>147</sup> The idea of individual rights is Western in origin and does not necessarily coincide with Chinese cultural and political thought.<sup>148</sup> The Western concept of individuality sees the person and her rights as sovereign.<sup>149</sup> As Deng Xiaoping pointed out, however, the Communist Party's "concept of human rights is different from that of the Western World, because [the Communist Party] see[s] the question from a different point of view."<sup>150</sup> Instead of having a place of sovereignty, an individual and her rights must be viewed within the context of her place in the family, the community, the country, and in ancient times, even in relation to heaven and earth.<sup>151</sup>

### 1. Historical Perspective

The traditional Chinese approach to individual rights arises from the Confucian idea that an individual is not free-standing, but is always perceived as a member of a group.<sup>152</sup> As a result, an individual's rights and interests are connected to and subject to the group's interests and priorities.<sup>153</sup> In the family, filial piety is of first priority.<sup>154</sup> At the state level, absolute loyalty and obedience to the ruler are the key tenets.<sup>155</sup> Confucianism places people and their rights in a hierarchical structure: rulers over their subjects, husbands over their wives, and parents over their children.<sup>156</sup>

As China has moved into its modern age of thought, despite hopeful aspirations for individual rights, the interest of the greater society has remained the dominant force.<sup>157</sup> During the early twentieth century,

<sup>147</sup> Albert H.Y. Chen, *Civil Liberties in China: Some Preliminary Observations*, in CIVIL LIBERTIES IN HONG KONG 107, 107 (Raymond Wacks ed., 1988).

<sup>148</sup> Anne Carver, *Freedom of Religion*, in HUMAN RIGHTS IN HONG KONG 350, 356 (Raymond Wacks ed., 1992); see also Tsang Yok-Sing, *Remaining Problems Must Be Addressed*, S. CHINA MORNING POST, July 2, 1996, available in LEXIS, News Library, Majpap File (reporting Hong Kong people fear "what China means by those promises [in Basic Law which includes personal freedoms] is drastically different from what Hong Kong people would want to understand").

<sup>149</sup> Carver, *supra* note 148, at 358.

<sup>150</sup> *Id.* at 356 (citing DENG XIAOPING, *FUNDAMENTAL ISSUES IN PRESENT DAY CHINA* 115 (1987) [hereinafter DENG XIAOPING]).

<sup>151</sup> See Chen, *supra* note 147, at 108–09.

<sup>152</sup> *Id.* at 109.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 108. In the traditional Chinese sense, filial piety involves respect of and submission to elders in the family.

<sup>155</sup> *Id.*

<sup>156</sup> SPENCE, *supra* note 15, at 60.

<sup>157</sup> See generally Chen, *supra* note 147, at 109–13.

Dr. Sun Yat-Sen, considered the founding father of the Republic of China, created an influential ideology which offered hope for individual civil rights.<sup>158</sup> Full implementation of this ideology would establish a constitutional government under which a separation of powers existed and sovereignty of government rested in the people.<sup>159</sup> The road to such a government consisted of a stage, however, which granted the Kuomintang (KMT)<sup>160</sup> a more dominant position over other political parties.<sup>161</sup> Unfortunately, it was at this second stage that the KMT stopped.<sup>162</sup>

The subsequent rise of the Chinese Communist Party (CCP) in China did not offer more concrete hope for individual rights either.<sup>163</sup> Fueled by the Communist Party's belief that it was the "supreme and infallible custodian of truth,"<sup>164</sup> the government of the PRC openly and severely violated Western ideas of individual liberties and human rights.<sup>165</sup> While striving for a "classless society" during the Cultural Revolution of 1966, Mao and his followers branded human rights and dignity as bourgeois and antithetical to the revolution.<sup>166</sup> As the driving force and cultic figure of the Communist Party, Mao advocated that "enemies"<sup>167</sup> to the Party were to be given "severe sanctions and de-

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<sup>158</sup> *Id.* at 110–11.

<sup>159</sup> *Id.* at 111.

<sup>160</sup> *Id.* at 110. Kuomintang (KMT) or Guomindang is the romanized Chinese name for the Nationalist Party. *Id.* Sun was also considered the founding father of this party. Chen, *supra* note 147, at 110. Later, Chiang Kai-shek led the KMT when they withdrew to Taiwan in the 1940s. SPENCE, *supra* note 15, at 525.

<sup>161</sup> Chen, *supra* note 147, at 111. Sun saw this as a necessary step, because he feared that people unfamiliar with the exercise of democratic rights would create chaos. *Id.*

<sup>162</sup> *See id.* at 112.

<sup>163</sup> *See id.*

<sup>164</sup> *Id.* at 115. In 1955–1956, when Hu Feng, a poet and literary theorist, criticized the Party and demanded a greater amount of literary and artistic freedom, he became the object of persecutory campaigns. Chen, *supra* note 147, at 117. In 1956, the Party encouraged people to speak out in criticism of the Party in its "Hundred Flowers Movement." *Id.* The subsequent persecutions of critics, including judges on the Supreme People's Court, rendered the call for criticism dubious at best. *Id.*

<sup>165</sup> *See, e.g., infra* notes 195–204 and accompanying text.

<sup>166</sup> *See* Chen, *supra* note 147, at 118–19.

<sup>167</sup> *Id.* at 115. In his speech, "On the Correct Handling of Contradictions Among the People," Mao purported that there were two "contradictions" that needed to be addressed. *Id.* at 114–15. One existed among the "people," loosely defined as those for the Party, and the other among the "enemies," who were against the Party. *Id.* at 115. The definition of "enemies" was vague and varied from time to time. *Id.* Nonetheless, it is safe to say that the Communists perceived anything Western, such as human rights, to be the "enemy." Chen, *supra* note 147, at 115, 119.

prived of all their rights.”<sup>168</sup> The Communists faithfully carried out Mao’s desires with severe repression.<sup>169</sup>

Since the tumultuous Cultural Revolution, many improvements have been made to the legal structure of the Chinese government that offer some hope for human rights.<sup>170</sup> Law schools and lawyers have reappeared and the government encourages people to exercise their legal rights.<sup>171</sup> Furthermore, the idea of ruling the country “by law” and “according to law” serves as a departure from the previous authoritarian attitudes of the CCP.<sup>172</sup> Nonetheless, the existence of a constitution does not guarantee human rights.<sup>173</sup> In fact, the 1982 Constitution is the PRC’s fourth constitution; the prior three were in 1954, 1975, and 1978.<sup>174</sup>

Despite the years of human rights and individual liberties’ rhetoric, this historic backdrop provides the necessary lens through which we should view the present “rights” granted to the citizens of the PRC. As a result, this Note’s examination of the rights guaranteed to the people under the 1982 Constitution looks beyond the words of the text and considers the context as well. Insight gleaned from such an examination lends focus to the question of whether or not educational freedom and other such rights, although “guaranteed” in the Basic Law, will likely survive in post-1997 Hong Kong.

## 2. Current Civil Rights in the 1982 Constitution

Chapter Two of the Constitution of the People’s Republic of China of 4 December 1982 (PRC Constitution or 1982 Constitution) enumerates citizens’ rights under “The Fundamental Rights and Duties of Citizens.”<sup>175</sup> The PRC Constitution provides that all people are equal under the law.<sup>176</sup> Political rights and freedoms, religious freedom, personal freedom, and the freedom of speech, publication, assembly,

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<sup>168</sup> *Id.* at 115.

<sup>169</sup> *Id.* at 116. During the PRC’s campaigns to purge itself of “enemies,” *ad hoc* tribunals accused and subjected “enemies” to physical and verbal abuse without a chance to defend themselves. *Id.* Invariably, the end result of such trials were the death penalty or lengthy sentences to labor camps. *Id.*

<sup>170</sup> See Chen, *supra* note 147, at 120.

<sup>171</sup> See *id.*

<sup>172</sup> *Id.*

<sup>173</sup> See *id.* at 121; *supra* notes 164–69 and accompanying text.

<sup>174</sup> Chen, *supra* note 147, at 121.

<sup>175</sup> XIANFA ch. 2.

<sup>176</sup> *Id.* art. 33.

association, procession, and demonstration are in the PRC Constitution.<sup>177</sup> The right to make complaints and charges against the government for state infringement of civil rights also exists.<sup>178</sup> Of relevance to this Note is the PRC's constitutional "right to receive education," as stated in Article 46.<sup>179</sup>

The presence of such an extensive list of citizens' rights is a welcome departure from past constitutions.<sup>180</sup> Taken literally, such guarantees would appear to grant citizens individual liberties that are comparable to those found in the United States and other Western nations.<sup>181</sup> The context surrounding these rights would prove otherwise.<sup>182</sup>

### 3. Rights with Strings Attached

Limitations to the enumerated citizens' rights under the 1982 Constitution arise from the difference in perspective and attitude towards human rights.<sup>183</sup> Chinese jurists argue that Western notions of human rights benefit the capitalists who have the property and power; working people have no such guaranteed rights.<sup>184</sup> Jurists in the PRC allege that it is only under a socialist system that constitutional rights can be guaranteed even to the working classes.<sup>185</sup> It is within the framework of

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<sup>177</sup> *Id.* arts. 34–40.

<sup>178</sup> *Id.* art. 41.

<sup>179</sup> *See id.* art. 46. Article 46 of the PRC Constitution provides that "Citizens of the People's Republic of China have the duty as well as the right to receive education. The state promotes the all-round moral, intellectual and physical development of children and young people." XIANFA art. 46.

<sup>180</sup> Chen, *supra* note 147, at 121.

<sup>181</sup> *See* U.S. CONST. amend. I.; BELG. CONST. tit. II; CONST. (1958) pmb. (Fr.), *reprinted in* JOHN BELL, FRENCH CONSTITUTIONAL LAW 245 (1992) [hereinafter FR. CONST.]; THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, 1789 arts. 10–11, *reprinted in* BELL, *supra*, at 261 [hereinafter DECLARATION]. Much of the language found in this list echoes the language of rights found in the constitutions of the United States, Belgium, and France. The First Amendment of the U.S. Constitution contains similar rights: "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I. Also, in the Belgian Constitution, the fundamental rights and freedoms of the people include rights to respect for private and family life, freedom of worship and its public exercise, the right to education, and freedom of assembly and association. BELG. CONST. arts. 19–24. In France, the religious freedom and freedom of communication of ideas and of opinions are also guaranteed. FR. CONST. pmb.; DECLARATION, *supra*, arts. 10–11.

<sup>182</sup> *See generally* Chen, *supra* note 147, at 121–26.

<sup>183</sup> *See id.* at 120, 122.

<sup>184</sup> *Id.* at 120–21.

<sup>185</sup> *Id.* at 121.

a socialist society, then, that this Note should examine the rights under the 1982 Constitution.

Under the 1982 Constitution, the exercise of individual freedoms and rights are not unfettered, but are tied to performances of prescribed duties.<sup>186</sup> Instead of a sole individualistic perspective of these rights, the emphasis is on the government—the greater society.<sup>187</sup> Thus, the PRC Constitution refers to “work and receiving an education as both a right and a duty of citizens.”<sup>188</sup> Such a treatment of individual rights is characteristic in socialist nations.<sup>189</sup> This is consistent with China’s historical treatment of individual rights as well.<sup>190</sup>

In addition to being coupled with a duty, individual rights in the Constitution are only as good as the legislation that enforces these rights.<sup>191</sup> The existence of statutes can bolster the constitutional guarantees of individual rights.<sup>192</sup> The lack of legislation, however, frustrates the implementation of individual rights.<sup>193</sup> Without legislation, there is no statutory basis for a cause of action to be brought when these rights are not enforced.<sup>194</sup>

#### 4. Freedom of Religion as an Example

Similar to the right to education, the freedom of religion is a guaranteed right.<sup>195</sup> In practice, however, it is fettered, and not an absolute right.<sup>196</sup> Article 36 of the 1982 Constitution states that citizens have the right to “enjoy freedom of religious belief.”<sup>197</sup> It continues, however, to

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<sup>186</sup> *Id.* at 122.

<sup>187</sup> Chen, *supra* note 147, at 122.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> See *supra* notes 152–74 and accompanying text.

<sup>191</sup> Chen, *supra* note 147, at 123.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> XIANFA art. 36.

<sup>196</sup> See Carver, *supra* note 148, at 354–56.

<sup>197</sup> XIANFA art. 36. Article 36 states:

Citizens of the People’s Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

say that “the state protects *normal* religious activities.”<sup>198</sup> Further, the constitution makes it clear that “religious bodies and religious affairs are not subject to any foreign domination.”<sup>199</sup> These two points raise doubts of whether or not religious freedom truly exists.

Language in Article 36 defines “normal” to exclude “activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.”<sup>200</sup> Thus, one’s right to practice any religion seems to be limited to what religious practices the government would define as “normal.”<sup>201</sup> In 1990, a newspaper article reported that religion posed a threat to the “physical and psychological health” of students.<sup>202</sup> Additionally, the report stated that “[c]hurch attendance harms students’ concentration and leads to dropping grades.”<sup>203</sup> This report, in conjunction with the language of Article 36, leaves one wondering what types of religious practice are “normal,” and naturally, what, if anything, remains of the right to “enjoy freedom of religious belief.”<sup>204</sup>

### B. PRC’s Reaction to Democratic Reforms

The Basic Law provides for a democratic government and universal suffrage for electing the Chief Executive of the Hong Kong SAR and all the members of the LegCo.<sup>205</sup> When the Governor of Hong Kong advocated for democratic reforms that edged towards universal suf-

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Religious bodies and religious affairs are not subject to any foreign domination.

*Id.*

<sup>198</sup> *Id.* (emphasis added).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> See Carver, *supra* note 148, at 362–63.

<sup>202</sup> *Id.* (quoting an article in the *S. China Morning Post* on Sept. 4, 1990).

Religion poses a danger to students’ physical and psychological health. The Worker’s Daily expressed alarm yesterday at the growing number of Chinese students who admit to holding religious beliefs and called for authorities to “take effective measures.” [Sic] A recent survey in the eastern province of Zhejiang found that 871 students of 6,400 polled said they believed in God. Of the believers, 627 were regular church-goers. The numbers are increasing. This belief in religion poses a danger to students’ physical and psychological health. Church attendance harms students’ concentration and leads to dropping grades. “Because of their belief in religion, a lot of students accepted idealism and theism which affected their healthy growth.”

*Id.*

<sup>203</sup> *Id.*

<sup>204</sup> See XIANFA art. 36; *infra* notes 304–09 and accompanying text.

<sup>205</sup> Basic Law, *supra* note 10, arts. 45, 68.

frage in 1992, however, the PRC's response was less than positive.<sup>206</sup> Such a response also sheds light onto the PRC's sincerity in upholding other promises, including that of educational autonomy and academic freedom in the future Hong Kong SAR.

On July 9, 1992, Chris Patten assumed the office of the Governor of Hong Kong.<sup>207</sup> In his very first public address on October 7, 1992, Patten made it clear to the people that his goal was to increase democracy through more direct representation.<sup>208</sup> His democratic reforms included lowering the voting age from twenty-one to eighteen, changing the electoral process of the indirectly elected legislators, and having the appointed municipal and district board members elected.<sup>209</sup> Patten also suggested creating "single vote, single-seat constituencies" which would expand the franchise in so-called functional constituencies.<sup>210</sup>

The PRC responded to Patten's address with threats and insults.<sup>211</sup> The foreign ministry spokesman for the PRC, Wu Jianmin, said that these reforms would obstruct a smooth transition of governments in 1997.<sup>212</sup> He asserted that the PRC maintains that the current Hong

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<sup>206</sup> *Beijing Rejects Proposed Democratic Reforms in Hong Kong*, Agence Fr. Presse, Oct. 8, 1992, available in LEXIS, News Library, Int'l File [hereinafter *Beijing Rejects*].

<sup>207</sup> *Patten's Stormy Two Years in Office—A Chronology*, Reuters World Serv., June 30, 1994, available in LEXIS, News Library, Non-US File [hereinafter *Patten's Stormy Two Years*].

<sup>208</sup> Bryan A. Gregory, *Envisioning Futures: The Battle Over Democracy in Hong Kong*, 19 N.C. J. INT'L L. & COM. REG. 175, 183 (1993).

<sup>209</sup> *Id.* at 183–84.

<sup>210</sup> *Beijing Rejects*, *supra* note 206. Functionary constituencies represent occupational groups ranging from workers in the textile industry to financial services. Edward A. Gargan, *Pro-China Party Appears Big Loser in Hong Kong Election*, N.Y. TIMES, Sept. 18, 1995, at A8 [hereinafter Gargan, *Pro-China Party*].

<sup>211</sup> *Patten's Stormy Two Years*, *supra* note 207. Further evidence of the PRC's negative reaction to Patten's democratic reforms are its daily launches of verbal attacks and its threat to disregard any contract extending beyond 1997 which was entered into without its approval. David Stamp, *China Threat Triggers 5.3 Percent Drop in Hong Kong Shares*, Reuters Bus. Rep., Dec. 1, 1992, available in LEXIS, News Library, Non-US File [hereinafter *China Threat*]. This threat sent the Hong Kong stock index, the Hang Seng, plunging 433 points on December 3, 1992. *Patten's Stormy Two Years*, *supra* note 207. This was the largest drop since the 1989 Tiananmen Square massacre of students. *Id.* Between November 30 and December 3, the Hang Seng Index dropped 1,008 points, or 16.8 percent. Gregory, *supra* note 208, at 190. One economist commented that such threats from the PRC were no surprise: "I wouldn't be surprised if the Chinese side is willing to allow the Hong Kong economy to deteriorate to such an extent that China wins that political battle and then it will do whatever it can to recover these losses." *China Threat*, *supra*. The PRC had hoped to persuade the business sector to pressure Patten into retreating from his democratic reforms. *Id.*

<sup>212</sup> *Beijing Rejects*, *supra* note 206.



Kong political system should not undergo major changes.<sup>213</sup> Furthermore, he said that the proposed changes did not comply with the Basic Law, and hence, violated a provision of the Joint Declaration that requires the British to consult with the PRC before such changes are implemented.<sup>214</sup> He further hinted that the PRC would not be responsible for any changes not consistent with the Basic Law.<sup>215</sup> Some commentators have interpreted this comment to mean that the PRC would reverse any changes made by the British once 1997 arrives on the grounds that such developments are contrary to the Basic Law.<sup>216</sup>

Throughout the debate over the democratic reforms, the PRC repeatedly alleged that these reforms were in violation of the Basic Law.<sup>217</sup> In fact, the PRC had gone as far as saying that the Basic Law may no longer be valid.<sup>218</sup> The PRC has even vowed to move ahead with its own plans for post-1997 Hong Kong, regardless of British efforts.<sup>219</sup> Specifically, the PRC's Foreign Ministry and its Hong Kong and Macao Affairs Office pledged that any system created, including the legislature, in the twilight years before 1997 would be "scrapped" on July 1, 1997.<sup>220</sup>

After almost two years of unresolved confrontation with the PRC, the Hong Kong Legislative Council passed Patten's proposals on June 30, 1994.<sup>221</sup> The Council passed the democratic reforms with a vote of thirty-two to twenty-four.<sup>222</sup> In response, the PRC vowed to dismantle the Legislative Council once the PRC takes over on July 1, 1997.<sup>223</sup>

The PRC's threats to dismantle what would be Hong Kong's newly elected Legislative Council were not empty ones.<sup>224</sup> Only one week after Patten's victory, the PRC government charged an advisory committee

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<sup>213</sup> *Id.*

<sup>214</sup> *Patten Challenges China to Say How He Violates Pact*, INT'L HERALD TRIB., Oct. 10, 1992, available in LEXIS, News Library, Non-US File [hereinafter *Patten Challenges*].

<sup>215</sup> *Beijing Rejects*, *supra* note 206.

<sup>216</sup> *Id.*; Gregory, *supra* note 208, at 185.

<sup>217</sup> Gregory, *supra* note 208, at 184.

<sup>218</sup> *Id.* at 190 n.108.

<sup>219</sup> *China Steps Up Attack on Patten's Hong Kong Plan*, Reuters, Dec. 4, 1993, available in LEXIS, News Library, Non-US File [hereinafter *China Steps Up Attack*].

<sup>220</sup> Diane Stormont, *HK Governor Presses on with Democratic Reforms*, Reuters, Feb. 24, 1994, available in LEXIS, News Library, Non-US File.

<sup>221</sup> *HK Legislature Approves Patten's Reforms*, Reuters World Serv., June 30, 1994, available in LEXIS, News Library, Non-US File [hereinafter *HK Legislature*].

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *China Again Denounces Hong Kong Democratic Reforms*, Reuters, July 7, 1993, available in LEXIS, News Library, Non-US File [hereinafter *China Again Denounces*].

to put together a new legislature for the Hong Kong SAR once the PRC regains sovereignty.<sup>225</sup> On August 31, 1994, the PRC issued a legal regulation which would abolish Hong Kong's political structure.<sup>226</sup> The regulation states, "[T]he last legislative council, city government, district government and district board will be terminated on June 30, 1997."<sup>227</sup> The PRC justified this regulation on the grounds that Patten's democratic reforms were against both the spirit and the letter of the previous Sino-British agreements, including the Joint Declaration and the Basic Law.<sup>228</sup> As further confirmation of this act, on March 24, 1996, the advisory committee put together by the PRC also voted to replace the democratically elected legislature once Hong Kong returns to the PRC.<sup>229</sup>

### C. PRC's Treatment of Taiwan and its Autonomy

North of Hong Kong, up along the eastern coast of the PRC is the island of Taiwan.<sup>230</sup> As with Hong Kong, the government of the PRC has considered Taiwan a part of its own territory and has plans to

<sup>225</sup> *Id.*

<sup>226</sup> David Schlesinger, *China Approves Measure to Abolish HK Legislature*, Reuters World Serv., Aug. 31, 1994, available in LEXIS, NEWS Library, Non-US File [hereinafter Schlesinger, *China Approves Measure*].

<sup>227</sup> *Id.* Despite the threats of the PRC, 35.8 percent of registered voters showed up for Hong Kong's first full election on September 17, 1995 to elect the very "last" government which the PRC will be terminating. Gargan, *Pro-China Party*, *supra* note 210, at A8. Under Governor Patten's democratic reforms, this was the first election where all sixty of the Legislative Council members were elected: twenty directly by the people, thirty from members of thirty occupational groups, and ten chosen by a committee of local district officials. *Id.* Martin C.M. Lee, chairman of the Democratic Party, hailed the results of the election as "a mandate for democratic government in Hong Kong and real constitutional, legal and human rights reform to ensure basic freedoms in Hong Kong after 1997." Edward A. Gargan, *China and Hong Kong Victors Square Off After the Election*, N.Y. TIMES, Sept. 19, 1995, at A8. Regardless of the results, the PRC government announced its firm stance in disbanding this legislature once July 1, 1997 arrives. *Id.*; see also *China Says Door Closed to Debate on HK LegCo*, Reuters, Jan. 11, 1996, available in LEXIS, News Library, Non-US File.

<sup>228</sup> Schlesinger, *China Approves Measure*, *supra* note 226.

<sup>229</sup> *Elected Legislature in Hong Kong to End*, N.Y. TIMES, Mar. 25, 1996, at A9 [hereinafter *Elected Legislature*].

<sup>230</sup> SPENCE, *supra* note 15, at 53–54. As early as the seventeenth century, Chinese pioneers from the Guangdong and Fujian provinces crossed the straits into the island of Taiwan. *Id.* In 1683, Emperor Kangxi, the second emperor of the Qing dynasty, defeated the Zheng forces and annexed Taiwan to his empire. *Id.* at 56. It was not until 1885, however, that the Qing government officially recognized Taiwan as a province. *Id.* at 210.

In 1895, as a result of the Sino-Japanese War from 1894 through 1895, the Qing ceded Taiwan, along with other territories, to the Japanese "in perpetuity." *Id.* at 223. For almost fifty years, Taiwan developed and prospered economically as a colony of Japan. SPENCE, *supra* note 15, at

reunify<sup>231</sup> the island of Taiwan with the mainland.<sup>232</sup> In an address, PRC Prime Minister Li Peng announced that China's approach to reunification with Taiwan would mirror the same "one country, two systems" approach that is to govern the Hong Kong SAR.<sup>233</sup> Implicit in this statement is that both Hong Kong and Taiwan will enjoy the same level of autonomy under the PRC.<sup>234</sup> Thus, the military exercises of the PRC against Taiwan are relevant in forecasting what level of autonomy the future Hong Kong SAR will enjoy.<sup>235</sup> This level of autonomy will also determine whether educational autonomy and academic freedom will continue in Hong Kong.

Almost fifty years since the civil war between the two governments, the PRC and Taiwanese governments are still grappling with the question of reunification.<sup>236</sup> Despite successful talks between the two gov-

509. It was not until 1945 that the Chinese under Chiang's KMT regained control of Taiwan. *Id.* at 509-10.

In 1949, when Mao and his Communist forces ousted the KMT from mainland China, Taiwan became the new base for the KMT. *Id.* at 509-10, 525.

<sup>231</sup> Commentators have used both terms "reunify" and "unify" to refer to the PRC's desire to gain complete sovereignty over Taiwan in the near future. *Taiwan: Mainland's Plan for Reunification Sparks Jitters*, S. CHINA MORNING POST, Jan. 30, 1996, available in LEXIS, Asiapc Library, Txtfe File [hereinafter *Taiwan: Mainland's Plan*]. For the sake of consistency, this Note will use the term "reunify" and its derivatives. Justification for this choice lies in the fact that during the Qing dynasty, Taiwan was a formal province of China until its cession to Japan in 1895. SPENCE, *supra* note 15, at 210.

<sup>232</sup> *Text of Joint Communiqué Issued at Shanghai*, 131 DEP'T ST. NEWSL. 10, 10-11 (Mar. 1972) [hereinafter *Shanghai Communiqué*]; Patrick E. Tyler, *China Hints at a Timetable To Take Control of Taiwan*, N.Y. TIMES, Jan. 31, 1996, at A2 [hereinafter Tyler, *China Hints at Timetable*]. On February 28, 1972, the PRC and the U.S. governments issued a joint communiqué in Shanghai. *Shanghai Communiqué, supra*, at 10. In addressing the question of Taiwan, the communiqué stated the following:

The Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities which aim at the creation of "one China, one Taiwan," "One China, two governments," "two Chinas," and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

*Id.* at 10-11 (emphasis added).

<sup>233</sup> Tyler, *China Hints at Timetable, supra* note 232, at A2.

<sup>234</sup> See *id.*

<sup>235</sup> See *China: Taiwan Move "Would Put HK At Risk"*, S. CHINA MORNING POST, Feb. 7, 1996, available in LEXIS, Asiapc Library, Txtfe File.

<sup>236</sup> *Taiwan: A Chronology of Mounting China-Taiwan Tensions*, Reuters News Serv.-Far East, Mar. 11, 1996, available in LEXIS, Asiapc Library, Txtfe File [hereinafter *Taiwan Chronology*].

ernments in May 1995, recent events have put a snag in the reunification talks.<sup>237</sup> In June of 1995, Taiwan's President Lee Teng-hui arrived in the United States in order to attend a reunion at his alma mater, Cornell University.<sup>238</sup> The PRC interpreted this visit as an attempt by President Lee to promote the independence of Taiwan.<sup>239</sup> As a result, the PRC postponed further talks on the reunification process and disclosed its ill feelings towards Taiwan's alleged insincerity in the reunification process.<sup>240</sup>

In subsequent months, the PRC threatened Taiwan with military action.<sup>241</sup> The PRC fired six missiles just north of Taiwan, held a series of missile tests, and broadcasted scenes of threatening military exercises over national television on more than one occasion.<sup>242</sup> All of these attempts, analysts argue, resulted in a victory for the party most sympathetic to the PRC in the parliamentary elections on December 2, 1995.<sup>243</sup> Meanwhile, the PRC announced that it would not tolerate any action taken by the Taiwanese to declare their own independence.<sup>244</sup> The PRC continued to strongly affirm that Taiwan is an inalienable part of the PRC.<sup>245</sup> It further announced that although it hopes to attain reunification through peaceful means, nothing precludes application of force.<sup>246</sup>

As Taiwan's first direct presidential elections approached on March 23, 1996, the tension in the Taiwan Strait mounted.<sup>247</sup> The PRC saw the presidential election as a legal cover for Taiwan President Lee Teng-hui's move towards Taiwanese independence.<sup>248</sup> The PRC affirmed that any move towards Taiwanese independence would encounter a military response from the mainland.<sup>249</sup> On March 8, 1996, the PRC launched

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<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *China: China Gives No Timetable on Taiwan Unity*, Jan. 30, 1996, Reuter News Serv.—Far East, available in LEXIS, Asiapc Library, Txtfe File [hereinafter *China: China Gives*]; *Taiwan Chronology*, *supra* note 236.

<sup>240</sup> *Taiwan Chronology*, *supra* note 236; *see also* Tyler, *China Hints at Timetable*, *supra* note 232, at A2.

<sup>241</sup> *Taiwan Chronology*, *supra* note 236; Tyler, *China Hints at Timetable*, *supra* note 232, at A2.

<sup>242</sup> *Taiwan Chronology*, *supra* note 236.

<sup>243</sup> *Id.*

<sup>244</sup> *See Taiwan: Mainland's Plan*, *supra* note 231.

<sup>245</sup> *China: China Gives*, *supra* note 239.

<sup>246</sup> *Id.*

<sup>247</sup> Patrick E. Tyler, *War Games Off Taiwan To Expand*, *Beijing Says*, N.Y. TIMES, Mar. 10, 1996, at 12.

<sup>248</sup> Patrick E. Tyler, *China Says Maneuvers Will Last Through Taiwan's Elections*, N.Y. TIMES, Mar. 16, 1996, at 5 [hereinafter Tyler, *China Says*].

<sup>249</sup> Tyler, *China Hints At Timetable*, *supra* note 232, at A2.

three unarmed ballistic missiles at Taiwan.<sup>250</sup> The next day, it announced that additional war games would continue from March 12 to 20.<sup>251</sup> On March 15, however, the PRC extended its exercises by announcing that it would conduct joint ground, naval, and air exercises on a large scale from March 18 to 25, 1996.<sup>252</sup> For the PRC to stop such exercises, it told the Taiwanese government that they would have to abandon dreams of independence.<sup>253</sup> As with the previous round of military exercises, analysts argue that the PRC once again was trying to influence the presidential elections.<sup>254</sup>

Analysts point out that this series of threats from the PRC to Taiwan arose from principles of sovereignty and nationalism.<sup>255</sup> After a “century of humiliation” from losing Hong Kong, Macao,<sup>256</sup> and Taiwan, the PRC government was out to avenge its humiliation and to regain its sovereignty.<sup>257</sup> In defense of the PRC’s exercises, Foreign Ministry spokesman Shen Guofang said, “There is nothing more important than safeguarding the nation’s sovereignty.”<sup>258</sup> Analysts point out that for the sake of nationalism, the PRC would be willing to overlook any economic costs and disregard any detrimental political aftermath.<sup>259</sup> This attitude of suppressing the PRC’s subordinates bodes unfavorably for Hong Kong’s future autonomy.

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<sup>250</sup> Joyce Liu, *Taiwan: China Starts Missile Tests Off Taiwan*, Reuter News Serv.—Far East, Mar. 8, 1996, available in LEXIS, Asiapc Library, Txtfe File.

<sup>251</sup> *China: China Tells Taiwan to Drop Independence Dreams*, Reuter News Serv.—Far East, Mar. 11, 1996, available in LEXIS, Asiapc Library, Txtfe File [hereinafter *China Tells Taiwan*].

<sup>252</sup> Tyler, *China Says*, *supra* note 248, at 5.

<sup>253</sup> *China Tells Taiwan*, *supra* note 251.

<sup>254</sup> Kwan Chooi Tow, *Hong Kong: China Plans to Scare, Not Invade Taiwan—Experts*, Reuters News Serv.—Far East, Feb. 5, 1996, available in LEXIS, Asiapc Library, Txtfe File; see also Seth Faison, *Tensions Seen as Receding as China Ends War Games*, N.Y. TIMES, Mar. 26, 1996, at A8. On March 23, 1996, the elections proceeded as planned and yielded a victory for the incumbent President Lee. Patrick E. Tyler, *Taiwan’s Leader Wins Its Election and a Mandate*, N.Y. TIMES, Mar. 24, 1996, at 1. On March 25, 1996, the PRC announced that its military exercises against Taiwan had ended. Faison, *supra*. With the elections over, both sides showed conciliatory gestures as the tension between the two governments receded. *Id.*

<sup>255</sup> Paul Eckert, *China: Sovereignty Obsession Makes China Tough on Taiwan*, Reuter News Serv., Mar. 6, 1995, available in LEXIS, Asiapc Library, Txtfe File.

<sup>256</sup> *China: China Gives*, *supra* note 239. Macao is a region currently run by the Portuguese government. *Id.* In 1999, however, the Portuguese will return Macao to the PRC, just as the British will return Hong Kong in 1997. *Id.*

<sup>257</sup> Eckert, *supra* note 255.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

#### D. *Current Economic Trend and People's Attitudes*

Hong Kong's recent attitudes, especially those of people in business and education, towards the PRC's return to sovereignty, potentially impacts the question of educational autonomy and academic freedom as well. The education system is closely tied to the economic success of Hong Kong.<sup>260</sup> Additionally, academic freedom is dependent, in part, on the presence of scholars and educators.

As 1997 approaches, with the Basic Law guarantees in place and with steady economic numbers, the Hong Kong economy appears unaffected.<sup>261</sup> The Basic Law guarantees that the current economic systems in Hong Kong will remain unchanged.<sup>262</sup> Laws will protect private property and international investments.<sup>263</sup> Hong Kong will retain the status of a free port, continue to operate as an international financial center, and circulate its current convertible currency.<sup>264</sup> Furthermore, the Hong Kong SAR will retain its own finances.<sup>265</sup> As for numbers, the Gross Domestic Product in Hong Kong has increased every year since 1986 and the incorporation of new companies in Hong Kong outnumber those shutting down.<sup>266</sup>

The reality of recent business attitudes in Hong Kong paints another picture.<sup>267</sup> The imminent return to PRC sovereignty, coupled with a general mistrust of the PRC, has brought about an exodus of resources from Hong Kong.<sup>268</sup> A substantial outflow of capital—up to an annual rate of \$3 billion (U.S.)—has been leaving Hong Kong.<sup>269</sup> There has also been a mass exodus of high level management, which has encouraged less qualified people to move up the ranks and has brought about a deterioration in Hong Kong's standards of efficiency.<sup>270</sup> Furthermore, some major businesses have relocated their headquarters from Hong Kong to other places so as to be out of the PRC's reach.<sup>271</sup>

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<sup>260</sup> See *supra* notes 125–28 and accompanying text.

<sup>261</sup> See MINERS, *supra* note 2, at 240.

<sup>262</sup> Joint Declaration, *supra* note 1, para. 3(5), at 1372.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.* para. 3(6)–(7), at 1372.

<sup>265</sup> *Id.* para. 3(8), at 1372.

<sup>266</sup> MINERS, *supra* note 2, at 240.

<sup>267</sup> See *id.* at 240–41.

<sup>268</sup> *Id.* at 240.

<sup>269</sup> *Id.* (citing an article by John Greenwood in the *Asian Wall Street Journal* on Mar. 14, 1990).

<sup>270</sup> MINERS, *supra* note 2, at 241.

<sup>271</sup> *Id.* In light of what happened to their properties after the Communist takeover in 1949, firms such as Jardine Matheson and the Hong Kong and Shanghai Banking Corporation have moved their domicile holding companies to places such as London and Bermuda. *Id.*

Despite the guarantees of autonomy and capitalism set forth in the Basic Law, the business people in Hong Kong evince a general sense of mistrust and anxiety as 1997 approaches.<sup>272</sup> Emigration trends show that up to 45,000 people left Hong Kong in 1989 and 62,000 left in 1990.<sup>273</sup> An additional estimated 66,000 people left in 1992 and 53,000 left in 1993.<sup>274</sup> At least a quarter of these emigrants includes entrepreneurs, managers, graduates, and professionally qualified staff.<sup>275</sup> This outflow of highly qualified professionals from Hong Kong, or "brain drain," has alarmed the government to the point of actively expanding the universities and polytechnics.<sup>276</sup> The government hopes that such efforts will increase the annual output of college graduates.<sup>277</sup> A dearth of professionals and academicians could pose a threat to the field of education on the whole.

#### IV. ANALYSIS OF THE PROMISE OF EDUCATIONAL AUTONOMY AND ACADEMIC FREEDOM

##### A. *Guarantees in the Law Regarding Education*

According to the guarantees of the Joint Declaration and the Basic Law, the same level of academic freedom experienced under the current education system will remain.<sup>278</sup> The Joint Declaration states that

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<sup>272</sup> *Id.*

<sup>273</sup> *Id.* Emigration numbers are government estimates. MINERS, *supra* note 2, at 241. These do not take into account those who have unofficially emigrated from Hong Kong and those who have taken up foreign citizenship but are back in Hong Kong for business. *Id.*

<sup>274</sup> Scott McKenzie & Wanda Szeto, *Exodus Set to Shift Up a Gear as 1997 Nears*, S. CHINA MORNING POST, Oct. 10, 1994, available in LEXIS, News Library, Non-US File. Hong Kong residents have sought homes in other countries such as Canada, Australia, the United States, and the U.K. Kevin Murphy, *Hong Kong Seems Ripe for Exodus; Wei Trial Further Weakens Trust in Beijing's Rule*, INT'L HERALD TRIB., Dec. 19, 1995, available in LEXIS, News Library, Non-US File. Of these countries, Canada remains a favorite. John Duce, *Door is Still Open for HK Families*, S. CHINA MORNING POST, July 1, 1994, available in LEXIS, News Library, Non-US File. For seven years in a row, Hong Kong residents outnumber all other foreign emigrants to Canada. McKenzie & Szeto, *supra*. Hong Kong émigrés make up about 20 percent of new Canadian immigrants, which is close to 50,000 people. Duce, *supra*. The number of Hong Kong emigrants to Australia has also been significant. See *Australia Reports Surge in Immigrants from Hong Kong*, Agence Fr. Presse, May 28, 1995, available in LEXIS, News Library, Non-US File. Of the people who left Hong Kong between 1985 and 1991, more than one quarter settled in Australia. *Id.* Besides Britain, Hong Kong is the next largest source of immigrants into the country. *Id.* The number of Hong Kong-born residents in Australia increased from 28,293 in 1986 to 57,510 in 1991. *Id.*

<sup>275</sup> MINERS, *supra* note 2, at 240-41.

<sup>276</sup> *Id.* at 241.

<sup>277</sup> *Id.*

<sup>278</sup> Basic Law, *supra* note 10, arts. 136-37; Joint Declaration, *supra* note 1, para. 3(5), at 1372.

the change in sovereignty over Hong Kong will not affect the current social and economic systems.<sup>279</sup> In fact, these systems will remain as they are for the next fifty years until 2047.<sup>280</sup> More specifically, the Basic Law states that the future Hong Kong SAR will be able to run its education system as it currently does.<sup>281</sup> A look at the underlying meanings behind the words found in these Basic Law guarantees shows otherwise.

The Basic Law sets forth more than once that the education system will continue as is.<sup>282</sup> It provides that “[o]n the basis of the previous educational system,” i.e., the system under British rule, Hong Kong may continue to formulate policies regarding the different aspects of its education system.<sup>283</sup> As for educational institutions, they “*may continue* to recruit staff and use teaching materials from outside the Hong Kong [SAR].”<sup>284</sup>

The Basic Law also ensures a high level of educational autonomy.<sup>285</sup> It states that the Hong Kong SAR “shall, *on its own*, formulate policies on the development and improvement of education.”<sup>286</sup> Schools also “may retain their autonomy.”<sup>287</sup> Additionally, the Basic Law guarantees that students in Hong Kong “shall enjoy freedom of choice” and “freedom to pursue their education.”<sup>288</sup>

The language of both the Joint Declaration and the Basic Law assures Hong Kong students and educators the preservation of academic freedom and educational autonomy.<sup>289</sup> Reliance on the words of these provisions would thus necessitate a thorough analysis of their true meanings to properly assess whether enough safeguards really exist. Merely looking at the words of the documents without looking at the context in which the PRC sets forth these promises would be myopic.<sup>290</sup> Promises merely made in documents have historically been insufficient to safeguard the rights purported to be offered.<sup>291</sup>

<sup>279</sup> Joint Declaration, *supra* note 1, para. 3(5), annex I, § 1, at 1372–73.

<sup>280</sup> *Id.*

<sup>281</sup> See Basic Law, *supra* note 10, art. 136.

<sup>282</sup> See *id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* art. 137 (emphasis added).

<sup>285</sup> See *id.* arts. 136–37.

<sup>286</sup> Basic Law, *supra* note 10, art. 136 (emphasis added).

<sup>287</sup> *Id.* art. 137.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* arts. 136–37; see also Joint Declaration, *supra* note 1, para. 3(5), at 1372.

<sup>290</sup> See *supra* notes 183–204 and accompanying text.

<sup>291</sup> See *supra* notes 195–204 and accompanying text.



## 1. Underlying Meaning of Individual Freedoms

Despite the similarities in the words used by the PRC and those used by other Western nations, such as the United States and Belgium, in regard to individual rights, the PRC has a different concept of individual rights.<sup>292</sup> Unlike the West, the PRC perceives these individual rights as subordinate to the interest of the greater society, not as sovereign.<sup>293</sup> The difference in the PRC's meaning of individual rights is relevant to assessing the validity of the Basic Law's promises for academic freedom.

One example is the constitutional guarantee of religious freedom in the PRC, the United States, and Belgium.<sup>294</sup> Under the PRC's 1982 Constitution, Article 36 states that individuals have the right to "enjoy the freedom of religious belief" and that "[n]o state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion."<sup>295</sup> This language is similar to the language found in both the constitutions of the United States and Belgium.<sup>296</sup> The First Amendment of the U.S. Constitution states that Congress shall make no law establishing or prohibiting the free exercise of religion.<sup>297</sup> The Belgian Constitution provides that "[f]reedom of worship and its public exercise . . . are guaranteed," and that the state shall not interfere with religious matters.<sup>298</sup>

The reality of religious exercise in the PRC shows, however, that the context surrounding the guarantee of religious freedom makes a noticeable difference.<sup>299</sup> The PRC limits its protection of religious activities to those that are "normal."<sup>300</sup> According to a newspaper report in

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<sup>292</sup> See Carver, *supra* note 148 (citing DENG XIAOPING, *supra* note 150).

<sup>293</sup> See Chen, *supra* note 147, at 108–09.

<sup>294</sup> See U.S. CONST. amend. I; BELG. CONST. arts. 19–21; XIANFA art. 36.

<sup>295</sup> XIANFA art. 36.

<sup>296</sup> Compare *id.* with U.S. CONST. amend. I and BELG. CONST. arts 19–21.

<sup>297</sup> U.S. CONST. amend. I.

<sup>298</sup> BELG. CONST. arts. 19, 21. Article 19 states, "[f]reedom of worship and its public exercise, as well as freedom to manifest personal opinions in every way, are guaranteed save for the repression of offenses committed in the exercise of these liberties. *Id.* art 19. Article 21 states in relevant part:

The State has no right to intervene either in the appointment or the induction of ministers of any form of worship, not to forbid them to correspond with their superiors and to publish their acts save, in the latter case, for the ordinary responsibility bound up with the press and publishing.

*Id.* art. 21.

<sup>299</sup> See *supra* notes 195–204 and accompanying text.

<sup>300</sup> XIANFA art. 36.

1990, regular church attendance is not a normal activity.<sup>301</sup> In fact, the report stated that holding religious beliefs alone was detrimental to students' physical and psychological health.<sup>302</sup> If holding beliefs in God alone could cause alarm and be a potential violation of PRC law, then the guarantees of religious freedom are dubious.<sup>303</sup>

In addition to limiting religious freedom to normal activities, the PRC demands that religious organizations submit to PRC rules.<sup>304</sup> Article 36 of the PRC Constitution states that religious organizations shall be free from foreign domination.<sup>305</sup> In practice, this requires religious organizations to cut themselves off from their foreign counterparts.<sup>306</sup> If any religious organization wants to survive in the PRC, it must submit to religious organizations that are local and government-approved.<sup>307</sup> Catholics in the PRC may openly practice their faith only in churches subject to the Patriotic Catholic Association, an organization which the PRC created and which forces priests and bishops to sever ties with the Vatican.<sup>308</sup> In the Buddhist faith, the government has prohibited further admissions of monks into the monasteries and further renovations of monasteries without government approval.<sup>309</sup> This additional evidence further undermines the validity of the constitutional protections of religious freedom.

The PRC's treatment of religious freedom under its constitution is relevant to its future treatment of academic freedom under the Basic Law. Although religious freedom carries explicit limitations while the right to education does not, it offers insight into the mind of the same government which proposes to guarantee academic freedom under the Basic Law.<sup>310</sup> Thus, the absence of expressed limitations in the Basic Law for the right to education does not necessarily mean that the PRC

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<sup>301</sup> Carver, *supra* note 148, at 362–63 (citing the *S. China Morning Post* on Sept. 4, 1990).

<sup>302</sup> *Id.*

<sup>303</sup> *See id.*

<sup>304</sup> *See* Carver, *supra* note 148, at 354–55.

<sup>305</sup> XIANFA art. 36.

<sup>306</sup> *See* Carver, *supra* note 148, at 354–55.

<sup>307</sup> *See id.*

<sup>308</sup> *Id.* at 354. Not only did this organization start to supervise priests' ordinations and church activities, it also forced priests and bishops to join the Association while severing ties with the Vatican. *Id.* Those who did not join faced arrest, imprisonment, and labor camps. *Id.* at 354–55. The exercise of religious freedom appeared to be only valid if one was willing to join the official, government-run churches. Carver, *supra* note 148, at 355.

<sup>309</sup> *Id.*

<sup>310</sup> *See* XIANFA tit.; Basic Law, *supra* note 10, tit. The National People's Congress of the PRC adopted both the PRC Constitution as well as the Basic Law. *See* XIANFA tit.; Basic Law, *supra* note 10, tit.

will treat this individual freedom differently than it historically has treated other freedoms.

## 2. Autonomy in the Eyes of the PRC

As the preservation of academic freedom also depends on the level of autonomy granted to the Hong Kong SAR, the PRC's view of autonomy and independence must be examined.<sup>311</sup> If the PRC upholds its promises and allows the Hong Kong SAR to exercise the autonomy set forth in the Joint Declaration and the Basic Law, educators and students may rest assured and continue to enjoy educational autonomy.<sup>312</sup> The PRC's recent treatment of Taiwan, however, stirs suspicions as to whether Hong Kong can truly maintain a high degree of autonomy under the PRC.<sup>313</sup>

Recent military tension arising in the Taiwan Strait between the PRC and Taiwanese governments has eroded the PRC's façade and given way to its views on autonomy and independence.<sup>314</sup> Viewing President Lee's trip to the United States as a promotion of Taiwan's independence<sup>315</sup> and Taiwan's first democratic presidential election as a cover-up for a Taiwanese independence movement, the PRC launched military exercises from the ground, the sea, and the air against Taiwan.<sup>316</sup> Analysts argue that these military exercises stem from the PRC's sense of nationalism and sovereignty.<sup>317</sup> The PRC's statement that it would do anything to safeguard its sovereignty serves as an affirmation of this.<sup>318</sup>

In light of this episode with Taiwan, Hong Kong's future autonomy is questionable. The PRC has always considered the island of Taiwan as its own.<sup>319</sup> To the PRC, it is just a matter of time before it formally reunifies Taiwan to the mainland.<sup>320</sup> Accordingly, in the eyes of the PRC, Taiwan and Hong Kong have much in common.<sup>321</sup> Both were

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<sup>311</sup> See Basic Law, *supra* note 10, art. 136.

<sup>312</sup> See *id.* art. 5.

<sup>313</sup> See *supra* notes 230–59 and accompanying text.

<sup>314</sup> See *id.*

<sup>315</sup> *Taiwan Chronology*, *supra* note 236; Tyler, *China Hints at Timetable*, *supra* note 232, at A2.

<sup>316</sup> Tyler, *China Says*, *supra* note 248, at 5.

<sup>317</sup> Eckert, *supra* note 255.

<sup>318</sup> *Id.*

<sup>319</sup> *Shanghai Communiqué*, *supra* note 232, at 10–11.

<sup>320</sup> Tyler, *China Hints at Timetable*, *supra* note 232, at A2.

<sup>321</sup> See *id.*; see also Eckert, *supra* note 255.

once part of China and are now destined to return to the PRC imminently.<sup>322</sup> Furthermore, the PRC has hinted that under reunification Taiwan would continue to experience the same level of autonomy offered to Hong Kong.<sup>323</sup> Nonetheless, when one of these governments, Taiwan, acted in a manner suggesting a move towards independence, the PRC launched military campaigns designed to intimidate it.<sup>324</sup> Hong Kong rightly must question whether it will receive the same treatment should it exercise its autonomy granted by the Basic Law.

### 3. Upholding the Basic Law on the Whole

In addition to interpreting words in the Basic Law, it is of primary relevance to question whether the PRC will even uphold the Basic Law itself. If the Basic Law means nothing to the PRC government, then little security remains to the education system of Hong Kong after 1997.<sup>325</sup> The PRC's reactions towards Hong Kong Governor Chris Patten's democratic reforms are illustrative in this inquiry.<sup>326</sup>

The Basic Law provides that the people of Hong Kong will eventually enjoy universal suffrage.<sup>327</sup> Instead of lauding Governor Patten's proposed democratic reforms in 1992 as measures in accordance with Article 68 of the Basic Law, the PRC denounced Patten and his reforms vehemently.<sup>328</sup> Moreover, the PRC has been threatening to abolish the existing LegCo once the PRC regains sovereignty.<sup>329</sup>

This episode alone gives rise to suspicions as to whether the PRC will take the Basic Law seriously.<sup>330</sup> The Basic Law clearly states that the people of Hong Kong will choose by universal suffrage not only the legislature, but also the Chief Executive.<sup>331</sup> Destroying Patten's reforms, which move in the direction of universal suffrage, is contrary to the language of the Basic Law.<sup>332</sup> Furthermore, as stated before, both the

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<sup>322</sup> See Tyler, *China Hints at Timetable*, *supra* note 232, at A2.

<sup>323</sup> *Id.*

<sup>324</sup> *Taiwan Chronology*, *supra* note 236.

<sup>325</sup> See Gregory, *supra* note 208, at 190 n.108.

<sup>326</sup> See *supra* notes 211–29 and accompanying text.

<sup>327</sup> Basic Law, *supra* note 10, arts. 45, 68.

<sup>328</sup> *Patten's Stormy Two Years*, *supra* note 207.

<sup>329</sup> *China Again Denounces*, *supra* note 224; *Elected Legislature*, *supra* note 229, at A9; Schlesinger, *China Approves Measure*, *supra* note 226.

<sup>330</sup> See Gregory, *supra* note 208, at 190.

<sup>331</sup> Basic Law, *supra* note 10, arts. 45, 68.

<sup>332</sup> See *id.*

Joint Declaration and the Basic Law guarantee that current social and economic systems will continue unaffected for the next fifty years.<sup>333</sup> The PRC has contradicted itself by voting to abolish the legislature, not fifty years later, but on the very day that the PRC regains sovereignty.<sup>334</sup>

## B. *The Education System Itself*

In addition to looking at the guarantees posed in the Basic Law, an examination of the education system itself shows that the future of educational autonomy and academic freedom is unclear. The highly centralized nature of the system makes it susceptible to political pressures.<sup>335</sup> Moreover, educational autonomy's close ties to and reliance on economic freedom make its survival questionable if the economy falters.<sup>336</sup> This following examination serves as further evidence that the PRC's promise for Hong Kong's educational autonomy is not solid.

### 1. Highly Centralized Nature of the Education System

An additional reason to question the guarantees in the Basic Law is the nature of the current education system. The system remains highly centralized.<sup>337</sup> The three mechanisms that influence Hong Kong's curriculum have already made changes suggestive of their cognizance of the PRC's imminent arrival.<sup>338</sup> Despite traditionally having an apolitical education, a drive for political education is growing.<sup>339</sup>

Although four advisory committees exist, the current educational system is still highly centralized.<sup>340</sup> The ultimate decision-making power rests in the governor-in-council alone.<sup>341</sup> Although the Basic Law does not explicitly provide for the future of this post, there is evidence that such a highly centralized office will continue.<sup>342</sup> The Queen of Eng-

<sup>333</sup> *Id.*, art. 5; Joint Declaration, *supra* note 1, para. 3(5), at 1372.

<sup>334</sup> Schlesinger, *China Approves Measure*, *supra* note 226.

<sup>335</sup> See Cheng, *supra* note 77, at 107.

<sup>336</sup> See MINERS, *supra* note 2, at 240; Lee, *supra* note 122, at 245.

<sup>337</sup> Cheng, *supra* note 77, at 107.

<sup>338</sup> See Morris, *supra* note 71, at 122, 129, 137.

<sup>339</sup> See *id.* at 129.

<sup>340</sup> Cheng, *supra* note 77, at 107.

<sup>341</sup> *Id.*

<sup>342</sup> See Basic Law, *supra* note 10, art. 136. Article 136 sets forth that the education system under the SAR government will continue as "the previous educational system," i.e., the current Hong Kong system. *Id.* Implicitly, the governing structure will remain intact. See *id.*; see also Joint Declaration, *supra* note 1, para. 3(5), at 1372.

land, of course, will no longer have influence over this post as before.<sup>343</sup> Instead, the Chief Executive of the Hong Kong SAR will likely be the one appointing an official to this post.<sup>344</sup> Due to his capacity to appoint and to remove the person in this office, the Chief Executive will therefore have much authority and de facto influence over the decisions of this official.<sup>345</sup> The fact that students and educators may elect their Chief Executive pursuant to the Basic Law offers some assurance of educational autonomy.<sup>346</sup> As seen with the PRC's reaction to Patten's democratic reforms, however, the future of popular elections in the Hong Kong SAR is unclear.<sup>347</sup> The only hope, then, would be to trust that the Chief Executive, or the official overseeing the educational system, will not capitulate to the political pressures of the PRC so as to compromise educational autonomy and academic freedom. Reliance on one person's willpower to resist political pressure is tenuous at best.

Another point of concern is that the people of Hong Kong have been demanding a more political education.<sup>348</sup> The government hopes that such an education would prepare people to become good citizens of the PRC.<sup>349</sup> Local communities hope that a more politically literate and active citizenry will further democracy.<sup>350</sup> Both of these reasons would suggest that the PRC would want to become involved with the educational system as opposed to staying at bay. If the goal of a political education is to raise a citizenry for the PRC itself, it seems highly likely that the PRC would want to have its input as to what defines good citizenry. If the goal is for democracy, then the episode with Patten's democratic reforms suggests that the PRC may want to curb the promotion of democracy.

## 2. Education's Reliance on Economic Prosperity

Beyond the language of the Joint Declaration and the Basic Law, the Hong Kong education system's relationship to the economy poses another potential Achilles' heel for the safeguards of educational autonomy.<sup>351</sup> The PRC's favorable outlook on Hong Kong's current

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<sup>343</sup> Cheng, *supra* note 77, at 107.

<sup>344</sup> See Basic Law, *supra* note 10, art. 48(7); Joint Declaration, *supra* note 1, annex I, § I, at 1373.

<sup>345</sup> See Basic Law, *supra* note 10, art. 48(7).

<sup>346</sup> *Id.* art. 45.

<sup>347</sup> See *supra* notes 211–29 and accompanying text.

<sup>348</sup> Morris, *supra* note 71, at 129.

<sup>349</sup> *Id.* at 123.

<sup>350</sup> *Id.*

<sup>351</sup> See *supra* notes 122–33 and accompanying text.

education system stems from its tight link to Hong Kong's economic prosperity.<sup>352</sup> It is in the PRC's best interest to preserve internal structures, including the education system, in order that Hong Kong's economic growth may continue to benefit the PRC.<sup>353</sup> An underlying premise of the guarantees of autonomy in the Basic Law is that Hong Kong will continue to prosper and benefit the PRC economically.<sup>354</sup> This begs the question of what will happen to the education system should the economy not continue to prosper.

Despite past economic prosperity, the latest trends in the Hong Kong economy undermine thoughts of a continuous prosperity for Hong Kong.<sup>355</sup> Up to \$3 billion (U.S.) in capital have been flowing out of Hong Kong annually.<sup>356</sup> Major businesses have relocated to other places outside of the PRC's jurisdiction.<sup>357</sup> Plus, high level management has been emigrating out of Hong Kong along with other well-qualified and educated people at a mass rate.<sup>358</sup> If these numbers—mass outflow of capital and of people—continually increase, one wonders what would be left of the existing economy when July 1, 1997 arrives.<sup>359</sup>

### C. *Looking on the Bright Side*

On a more positive note, the current level of academic exchange between Hong Kong and the PRC may serve as an indication that the PRC will allow the Hong Kong education system to continue as it is.<sup>360</sup> In addition to previously discussed economic benefits, Hong Kong's educational field serves as a valuable channel for intellectual exchange.<sup>361</sup> Annually numerous scholars from the PRC visit Hong Kong and vice versa.<sup>362</sup> Moreover, there have been several joint projects between institutions in Hong Kong and the PRC.<sup>363</sup> There is potential

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<sup>352</sup> See Leung, *supra* note 128, at 248.

<sup>353</sup> MINERS, *supra* note 2, at 240; Lee, *supra* note 122, at 248.

<sup>354</sup> See MINERS, *supra* note 2, at 240. Miners posits that China's main reason for leaving Hong Kong's economic systems intact is because of the economic benefits. *Id.* By interfering with the internal affairs of Hong Kong, China "would run the risk of killing the goose which has laid such golden eggs." *Id.*

<sup>355</sup> See *supra* notes 272-77 and accompanying text.

<sup>356</sup> MINERS, *supra* note 2, at 240 (citing an article by John Greenwood in the *Asian Wall Street Journal* on Mar. 14, 1990).

<sup>357</sup> *Id.*

<sup>358</sup> *Id.* at 240-41.

<sup>359</sup> *Id.* at 241. Already, Hong Kong's standards have seen a deterioration in efficiency. *Id.*

<sup>360</sup> See Leung, *supra* note 128, at 266-67.

<sup>361</sup> See *id.* at 267.

<sup>362</sup> *Id.*

<sup>363</sup> See *id.*

for more exchange.<sup>364</sup> This would leave one to think that the value of Hong Kong's education system to the PRC does not lie in economic prosperity alone. Nonetheless, stacked against all the other reasons discussed above, one would have to wonder how much weight this last factor has in the preservation of educational autonomy and academic freedom in the future Hong Kong SAR.

### CONCLUSION

As the date on which sovereignty over Hong Kong returns to the PRC approaches, discussion concerning people's individual freedoms and civil rights have arisen. One essential right is the right to education found in the Basic Law. In ensuring that students can enjoy such a right, the education system must maintain a certain level of autonomy so as to be free of government interference, in the form of censorship or infusion of socialist ideas, from the PRC.

Although the words found in the Basic Law provide for educational autonomy and academic freedom and echo the words found in Western constitutions, the surrounding context of these words give them a different interpretation. China's Confucian traditions and historic perspective show clearly that the PRC's concept of civil liberties and personal freedoms departs from the Western concept. This difference is manifested in the fact that the exercise of religious freedom in the PRC today is much more limited than its freedom in Western nations. In addition, if the PRC's recent treatment of Taiwan is indicative of the PRC's reactions towards autonomy and its reactions to Patten's democratic reforms, Hong Kong's level of autonomy under the PRC appears to be limited.

Aside from the dubious safeguards in the language of the official documents, the highly centralized nature of the education system serves as a possible downfall. Political pressures may be too strong for one person as the sole decision-maker to withstand. Some assurance rests in the fact that this person, in theory, will be democratically chosen. Nonetheless, given the PRC's negative reactions to the recent pushes towards democracy in Hong Kong and Taiwan, even the democratic election of the sole decision-maker is questionable.

As a last caveat, one needs to realize that the education system's favorable stance in the eyes of the PRC is very much tied to Hong Kong's current economic prosperity. Against the backdrop of the fears of the people and current outflow of capital and human resources en

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<sup>364</sup> *Id.* at 267-68.



masse, the future of the Hong Kong economy is very uncertain. If the economy falters, the PRC government may no longer favor the Hong Kong education system as it currently does to the level of allowing it to maintain a high degree of autonomy.

In weighing all these factors, this Note concludes that the PRC's track record undermines its promises to Hong Kong. As such, it is dubious as to whether sufficient education autonomy does exist to safeguard academic freedom. The PRC's return to sovereignty over Hong Kong on July 1, 1997 will duly answer the questions raised in this Note.

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