

## Chapter 3

# Birds in a Cage: Political Institutions and Civil Society in Hong Kong

All political systems have some kinds of institutions, under which political agents interact with each other and learn how to play by the rules over time. Although institutions are not immutable, changing them is often difficult due to the resistance of vested interests, who have benefited from the existing institutions after spending years learning how to exploit the system (Olson 2008). Given the importance and stickiness of institutions, when there is a chance to change them, rational political agents have a strong incentive to design the rules to maximize their long-run interests.

When Great Britain ended its colonization of Hong Kong in 1997, all political rules of the city had to be rewritten. Not surprisingly, the formal political institutions of postcolonial Hong Kong are a piece of political craftsmanship of Beijing. The Basic Law, the mini-constitution of the Hong Kong Special Administrative Region, which provides the foundation of all political institutions established after 1997, offers plenty of examples that illustrate how Beijing maximized its interests under various constraints in the 1980s when the Basic Law was drafted and adopted. In particular, Beijing's main interest was to entrench the colonial political order characterized by executive dominance and low democratic accountability, while preserving the city's prosperity grounded in a robust free market economy (Scott 2000; Lee 1999; Xu 1993).

The rest of this chapter consists of three parts. First, I will discuss the historical background of Hong Kong's sovereignty transfer and the challenges Beijing faced while negotiating Hong Kong's handover with the Great Britain. Then, I will provide an overview of major political institutions in postcolonial Hong Kong. Finally, I examine how Hong Kong's civil society developed under the postcolonial political system.

### 3.1 Historical Background

Hong Kong's reunification issue emerged in the 1970s, when the lease of a certain part of the territory (the New Territories) was due to expire. While the British government was eager to keep Hong Kong, the PRC at that point showed little interest in extending what was considered "unequal treaties" which the Qing court signed at gunpoint in the mid-nineteenth century.<sup>1</sup> In fact, in his New Year's message of 1979, Deng made national reunification one of the three top political agendas for China (Vogel 2011, p. 479). Beijing was therefore pleased to discuss Hong Kong's sovereignty issue with Great Britain.

From Beijing's perspective, Hong Kong's retrocession had at least two important values to the PRC. First, successful reunification with Hong Kong would establish a precedent, or at least suggest a solution, to deal with reunification with Taiwan. Second, Hong Kong by that time had already achieved great economic success and became one of the major sources of foreign direct investment to China.<sup>2</sup> Some even compared Hong Kong to "the goose that laid the golden eggs" (Lieberthal 1992, p. 671). Getting Hong Kong back would certainly help the PRC pursue another of its top political agenda: Four Modernizations.<sup>3</sup>

However, the retrocession of Hong Kong had been a challenging task to Beijing from the outset for several reasons. First, politically, the city had been separated from the mainland for over a century. The population had developed its unique way of life in the postwar era, largely unscathed from the political turbulence that engulfed the Communist China. This is not to say that the influences of communism had never reached the city. In fact, as early as 1938, the Central Committee of the Chinese Communist Party set up an office of the Eighth Route Army in Hong Kong. After the Second World War, the CCP further established various agencies, including the Hong Kong Federation of Trade Unions (FTU) and the Xinhua News Agency, as part of its united front work. In addition, some pro-Communist groups have attempted a few times to subvert the colonial administration (e.g., the 1967 Leftist Riots). Despite all these covert infiltration and overt subversion attempts, the political influences of pro-Communist leftists were severely limited by the colonial government's heavy-handed controls and a lack of support from Beijing.<sup>4</sup>

---

<sup>1</sup>Before Deng took the helm, Beijing had declined Portugal's requests to return Macao in 1967 and 1974. Mao Zedong also indicated to a former British Prime Minister in 1975 that the time for resolving the Hong Kong issue was not ripe (Vogel 2011, p. 488).

<sup>2</sup>In 1985, Hong Kong's investment in China accounted for 49% of the country's total FDI (State Statistical Bureau, the People's Republic of China 1987, p. 221).

<sup>3</sup>The goal of Four Modernizations was to promote the country's agriculture, industry, science and technology, and national defense.

<sup>4</sup>After the CCP took over China, it decided to adopt a pragmatic policy, known as "long-term planning and full utilization" (*changqi dasuan, chongfen liyong*), to deal with Hong Kong (Yep 2009, p. 86). This is because the CCP saw Hong Kong as a British colony had certain strategic value to Beijing. For instance, during the Korean War, when the PRC faced Western trade embargoes,

Hong Kong had a highly developed and globally integrated economy, touted by many, economist Milton Friedman included, as an exemplar of free market capitalism. In particular, it had already transformed itself into a modern business metropolis and an emerging world financial center by the 1980s. Two decades of spectacular growth, with a per capita GDP that leapfrogged from HK\$2,300 in 1961 to HK\$23,000 in 1979 (Census and Statistics Department, 2013), made the city internationally known as one of the “Four Little Dragons” in Asia. By contrast, until the mid-1970s, the socialist economy of mainland China had mired in long-term economic stagnation.

Socially, Hong Kong has long been known as a “refugee society” (Miners 1995; Hughes 1968), as a significant portion of the population were mainland Chinese who came to Hong Kong to seek refuge from political unrest. Of the Chinese immigrants, many were former victims of the CCP’s suppression or supporters of the Kuomintang. With their deep-seated suspicion of and antagonism toward the CCP, they constituted a potent social force in opposition to the authoritarian state of the PRC.

That said, there were also people critical of British colonialism as well as Western-style capitalism. To these people, the Communist China had once presented an attractive ideological alternative. However, it had lost much of its appeal by the 1970s, in part because political turmoil at home and in the mainland triggered widespread disillusionment with the CCP (Mathews et al. 2007; Scott 1989) and also because the colonial administration began to engage in community development to meet rising local demands (Lui et al. 2005). Most notably, the government started implementing a nine-year compulsory education in 1978. The expansion of education opportunities helped spread the ideas of Western democracy and human rights that gradually took root in Hong Kong society.

In short, when the PRC and Great Britain negotiated Hong Kong’s sovereignty in the early 1980s, the city had already achieved a high degree of affluence, developed a mature free market economy, and had fostered an increasingly assertive civil society. None of these factors seemed favorable to Hong Kong’s reunification with an economically backward mainland China that was still under the authoritarian rule of the CCP. Indeed, within a year after then British Prime Minister Margaret Thatcher’s visit to Beijing to discuss Hong Kong’s future, the colony’s currency lost one-third of its original value, as the local people began to dump the Hong Kong dollar in exchange for foreign currencies that they felt to be safe. To contain the financial crisis, the colonial government announced in 1983 the implementation of a fixed exchange rate by pegging the city’s currency to US dollar.

Although the new exchange rate system helped stabilize the financial market, it failed to solve the confidence crisis that struck the former colony. Most notably, in 1984, Jardine Matheson, a huge British business conglomerate based in Hong

---

Hong Kong served as an important back door for Beijing to acquire foreign resources (Carroll 2007, p. 142).

Kong for more than a hundred years, announced the change of its legal domicile to Bermuda. The confidence crisis was not confined to the British business community. Prominent local families such as the Hotungs and the Cheung Yuk-leungs also gradually sold off their Hong Kong assets (Feng 1997).

It was not only the business elite that lacked confidence in their city's future. As mentioned, a sizable population of Hong Kong had been former mainland refugees, and they were gripped by the fear that their refuge would soon become part of the state from which they fled. In one public opinion survey conducted in 1982, only 2% of the respondents preferred the mainland to Hong Kong as their place of residence, while 86% preferred otherwise (Cheng 1984). For this reason, starting from the mid-1980s, more and more people began to vote with their feet in response to the uncertain future of their city. A massive wave of emigration emerged. Conceivably, those who had the financial means to acquire a foreign nationality were also economically productive. Their departure meant not only a brain drain but also a great loss of capital, as these people had brought their assets abroad. According to one estimate, each outgoing family took HK\$1.5 million away from Hong Kong (Lam 1989), resulting in a total capital outflow of HK\$160 billion between 1982 and 1992.

These negative developments deeply troubled Beijing (Xu 1998). Deng Xiaoping was fully aware of the challenges of taking back Hong Kong. He saw that the Hong Kong problem was not only about gaining its sovereignty from Great Britain<sup>5</sup> but also about securing a smooth transition, in order to avoid jeopardizing the city's prosperity (Deng 2004). A smooth transition required restoring the city's confidence in its future. Deng opined that the greatest chasm between the PRC and Hong Kong lay in their economic systems. The following comment Deng made to Thatcher in 1984 succinctly summarized his view:

If we had wanted to achieve reunification by imposing socialism on Hong Kong, not all three parties would have accepted it. And reluctant acquiescence by some parties would have led to turmoil. Even if there had been no armed conflict, Hong Kong would have become a bleak city with a host of problems, and that is not something that we would have wanted (cited in Ghai (1999, p. 140)).

Unusual as it was, Deng's candor was understandable. The target audience of his speech was probably not only Thatcher but also the citizens of Hong Kong themselves. He wanted to convey a clear message that Beijing had no intention of tampering with the way of life Hong Kong people had enjoyed. Meanwhile, Beijing accelerated its united front work to mobilize support from Hong Kong society. In particular, thanks to the colonial administration's initiation of limited political liberalization, the early 1980s witnessed the emergence of a new generation of political leaders, who entered politics through grassroots elections. Although they

---

<sup>5</sup>The British government was reluctant to return Hong Kong to the PRC. Margaret Thatcher once made a proposal that separated sovereignty from administration: while the mainland resumed Hong Kong's sovereignty, Great Britain would continue to keep the city's administration. Deng firmly rejected her proposal.

represented only a narrow constituency in Hong Kong, some of these grassroots leaders were invited to visit Beijing to meet top leaders such as Deng and to review the National Day military parade (Ma 2012, p. 12). Another example was that some Hong Kong student activists wrote a letter to Zhao Ziyang, then the Premier of the PRC, calling for “reunification with democratization” (*minzhu huigui*), i.e., allowing Hong Kong to have democracy at the time of reunification. Zhao not only gave them a reply but also affirmed that democratic governance of Hong Kong was beyond doubt (*lisuo dangran de*) (Ma 2012, p. 56). All these moves demonstrated how anxious Beijing was in courting the Hong Kong people’s political support.

These political gestures were nothing but cheap talk, however. Deng knew that there was no way to convince Hong Kong people unless the CCP tied its own hands. Against this background, Deng proposed an unprecedented idea: one country, two systems.<sup>6</sup> The “one country, two systems” principle guarantees that Hong Kong can preserve its own capitalist system, which would be separate from the socialist system of the PRC. As will be discussed, this principle actually goes beyond the economic realm, as Hong Kong after the transition was also allowed to keep political institutions distinct from the rest of China. Deng further pledged to apply the “one country, two systems” principle in Hong Kong for 50 years.<sup>7</sup> But most remarkably, Hong Kong as a Chinese city was permitted to have its own mini-constitution, namely, the Basic Law, which contains the aforementioned pledges made by Deng. Because the Basic Law provides a contractual basis that delimits the power relationship between the central authorities and Hong Kong, it can be considered as a good example to illustrate how an authoritarian ruler uses political institutions to establish a credible commitment not to abuse his subjects (Gehlbach and Keefer 2011; Magaloni 2008).

While seeing the necessity of making concessions, Beijing was conscious of the importance to defend its own political interests. It carefully designed the Basic Law in order to reconcile these conflicting objectives. Beijing’s political craftsmanship manifests itself in postcolonial Hong Kong’s institutional arrangements, which I will examine in detail in the following section.

## 3.2 Major Institutional Arrangements Under the Basic Law

As discussed, Hong Kong experienced a massive outflow of both capital and talent in the 1980s due to a widespread confidence crisis. The most important task for Beijing was to convince the runaway economic elite that Hong Kong was safe to stay even

---

<sup>6</sup>The “one country, two systems” principle was originally designed for the reunification with Taiwan.

<sup>7</sup>What would happen after 50 years? Deng suggested that there was no need to worry, as the two systems would gradually converge after 50 years (Deng 2004, pp. 18, 38, and 64).

after the sovereignty transition. For this reason, many provisions of the Basic Law were intended to preserve the economic system that existed in colonial Hong Kong.

The colonial economic system was worth preserving because Hong Kong achieved its prosperity under this very system. Many touted the colonial government for its adherence to free market capitalism, characterized by a balanced budget, low taxation, and a small and noninterventionist government, which, as some believe, underpinned the city's miraculous growth in the postwar period. Nevertheless, more and more academic studies point out that Hong Kong's *laissez-faire* capitalism is a myth at best. In particular, some argue that "*laissez-faire*" is simply an euphemism for the colonial government's lack of commitment in the long-term development of the colony (Goodstadt 2005; Ngo 2002), while others point out that government intervention was very much alive in major factor markets such as housing (Schiffer 1991; Fong and Yeh 1987; Youngson 1982).

Even if the colonial government did intervene in the market more frequently than some thought, no one can dispute that its intervention still paled in comparison with that of the PRC. To Hong Kong's economic elite, therefore, they strictly preferred entrenching the existing economic order to experimenting with some unknown arrangement imposed by the PRC. In addition, the *laissez-faire* model, however inaccurate a description of the colonial economic system it may be, is inherently pro-capitalist. If the members of Hong Kong's economic elite were to select one economic system to protect their business interests after 1997, apparently the *laissez-faire* model would be their safest bet.

### ***3.2.1 Relationship Between the Central Government and the HKSAR***

First and foremost, Article 5 of the Basic Law spells out the separateness between the system in Hong Kong and in the PRC:

The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

Capitalism, of course, is a malleable concept, as its practice varies from country to country. To further allay worries, Article 6 states explicitly that the HKSAR government needs to protect private ownership. And what about public ownership? Article 7 stipulates that the land and natural resources of Hong Kong are exclusively at the disposal of the HKSAR, rather than the Beijing government.

Levi (1989) points out that the extent to which a ruler can tax his subjects depends on their relative bargaining powers. Hong Kong's remarkable bargaining power – at least during the time when the Basic Law was being drafted – is evident in the taxation arrangements between Hong Kong and the Central Government. Unlike other Chinese subnational governments that need to submit part of their incomes to the Central Government, the HKSAR government can keep all the revenues for its

own use (Article 106). Nor can Beijing levy any tax in the HKSAR. Departments of the Central Government and other subnational Chinese governments are not allowed to interfere in the HKSAR's affairs (Article 22). More remarkably, the HKSAR is allowed to keep its own currency (Article 111), set its own monetary policies (Article 110), sign international trade agreements, and maintain a customs territory separate from that of the PRC (Article 116).

Because Hong Kong people can continue to enjoy a capitalist system distinctive from the PRC's socialist system, it is important to define who the Hong Kong people are. Article 24 provides a detailed definition of "Hong Kong residents," while Article 22 stipulates that Chinese nationals who are not Hong Kong residents must apply for approval prior to their entry to the HKSAR.<sup>8</sup>

The desire to embrace free market capitalism had been so strong that some provisions of the Basic Law may appear a bit too rigid, if not dogmatic. For instance, Article 114 stipulates that Hong Kong should not impose any tariff unless prescribed by law. Similarly, Article 115 states that Hong Kong should pursue free trade and safeguard the free movement of capital and goods.

### 3.2.2 *Judiciary*

Free market capitalism requires an independent judiciary capable of enforcing contracts, protecting private property rights, ensuring unfettered market competition, and observing the rule of law (Hayek 1960). Although the colonial government was undemocratic, the principle of the rule of law was largely upheld, thanks to the colonial administration's respect for judicial independence (Tsang 2001, p. 1). So what is the "rule of law?" One can find an official definition on the Web page of the HKSAR's Department of Justice:

Its principal meaning is that the power of the government and all of its servants shall be derived from law as expressed in legislation and the judicial decisions made by independent courts. At the heart of Hong Kong's system of government lies the principle that no one, including the Chief Executive, can do an act which would otherwise constitute a legal wrong or affect a person's liberty unless he can point to a legal justification for that action. If he cannot do so, the affected person can resort to a court which may rule that the act is invalid and of no legal effect.

In other words, the rule of law prevents the exercise of arbitrary power by the state, which was precisely what Hong Kong people wanted written into the Basic Law. For this reason, to convince Hong Kong people that capitalism can truly survive after 1997, Beijing also provides in the Basic Law the institutional arrangements that safeguard the rule of law. Most notably, while the legal system of the PRC comes from civil law tradition, Article 8 prescribes that the HKSAR can maintain its common-law system inherited from Britain. Trial by jury, a notable

---

<sup>8</sup>Right of abode in Hong Kong has continued to be a contentious issue since the handover, as a number of court cases challenged the constitutionality of the government's immigration policies.

common-law feature, which is considered an important judicial mechanism to return power from the state to the people (Hamilton et al. 2008), is preserved under Article 86. Article 84 expressly provides that all courts can refer to precedents of foreign common-law jurisdictions. In addition, the HKSAR can continue to enjoy independent judicial power, including the power to make final adjudication (Article 19). Article 18 further states that laws in force in the HKSAR come from domestic legislation, and national laws of the PRC would not be applied to the HKSAR, except for a few laws such as those concerning national flag and national anthem.

The job security of judges is central to judicial independence. A fair number of provisions in the Basic Law are concerned with the security of tenure of members of the judiciary. For example, according to Article 88 and 89, the appointment and removal of judges require the recommendation of an independent commission composed of judges. For senior judges, their appointment and removal have to fulfill an additional requirement: the endorsement of the Legislative Council (Article 90 and 73(7)). All these articles help reduce the government's interference in the judicial process. Also, Article 85 prescribes that judges can enjoy judicial immunity.

### ***3.2.3 Civil Liberties***

Free market capitalism also requires the free flow of information, which would allow economic agents to receive accurate price signals and make judicious decisions. Freedom of speech and freedom of the press are both essential to safeguard the freedom of information. It is difficult to convince Hong Kong people that freedom of speech or freedom of the press can survive when other civil liberties are left unprotected. Therefore, the Basic Law also includes a whole gamut of articles in its Chapter III that aims to protect the general human rights of Hong Kong people against the powers of the government. In particular, Article 27 prescribes that

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 32 provides that Hong Kong people enjoy freedom of conscience as well as religious freedom. Freedom of choice of occupation and academic freedom are also guaranteed by Article 33 and 34, respectively. Article 39 stipulates that international human rights instruments including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are still applied to the HKSAR. These provisions, together with a few additional ones, establish the fundamental rights of Hong Kong residents, who are able to enjoy no fewer civil liberties than what the colonial government provided in the last decades of its rule. As Ghai (1999, p. 156) observes, not all of these rights exist in Western democracies where capitalism is in place.

The discussion thus far indicates that Beijing yielded substantial concessions to Hong Kong people, as the Basic Law has preserved not only the former colony's



economic system based on free market capitalism but also a high degree of policy-making and judicial autonomy. Indeed, leaders in Beijing took pride in their institutional creation, which has given Hong Kong far greater autonomy than any Western democracy has provided for its subnational unit (Vogel 2011, p. 508).

While one may marvel at the extensive concessions Beijing made to Hong Kong, it is important to note that the Basic Law is also designed to ensure that Beijing has the ultimate control over the HKSAR's political system. The Basic Law, for instance, promises that both the Chief Executive and the legislature will eventually be elected by universal suffrage, and it has provided the prodemocracy opposition a focal point as well as a constitutional basis to fight for political liberalization. Yet, the Basic Law offers neither a specific time frame nor a clear road map for achieving this ultimate aim. Such ambiguity has given Beijing room to delay Hong Kong's political liberalization. In the succeeding section, I will discuss the major constraints the Basic Law has imposed on Hong Kong's political system.

### ***3.2.4 Chief Executive***

A good starting point to understand Beijing's subtle controls over Hong Kong's political system is Article 45, which deals with the selection procedure of the Chief Executive:

The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region."

This article states clearly that the Chief Executive has to be elected and that eventually universal suffrage would be adopted as the election method. However, however, the article is also fraught with obscurely worded terms that permit flexible interpretations. For one thing, the meaning of "gradual and orderly progress" is unspecified. Any political liberalization reform, no matter how insignificant, should be consistent with the principle of "gradual and orderly progress." The meaning of "democratic procedures" is also open to interpretation. Without clearly defining "democratic procedures," it is possible that the nominating committee would lapse into becoming Beijing's gatekeeper to screen out unwanted candidates. In addition, since the Chief Executive has to be appointed by Beijing, it possesses the ultimate veto power over leadership selection.

Before reaching the ultimate aim of universal suffrage, the Chief Executive has to be elected in accordance with the method specified in Annex I of the Basic Law.

According to Annex I and its amendments, the Chief Executive is selected every five years by a constitutional body known as the Election Committee, which consists of 1,200 members<sup>9</sup> representing four major social sectors: (a) industrial, commercial, and financial sectors; (2) the professions; (3) labor, social services, religious, and other sectors; and (4) the political sector, including Legislative Councillors, District Councillors, Hong Kong deputies to the National People's Congress, and Hong Kong representatives to the Chinese People's Political Consultative Conference. It has been widely observed that these members are predominantly pro-Beijing figures, many of whom are members of the local business elite (Cheung 2000, p. 303).

The election of the Chief Executive is also governed by the Chief Executive Election Ordinance, which contains more detailed provisions than what is covered in Annex I. A noteworthy provision of the Ordinance is that the Chief Executive cannot be a member of a political party (Section 31). Although candidates can always quit their parties before standing for the election, this particular provision reflects Beijing's aversion to party politics or the potential threat of opposition parties (Ta Kung Pao 2013; Hong Kong Economic Journal 2012).

Beijing's vigilance is understandable, considering that the Chief Executive is vested with substantial political powers. The Chief Executive has powers to make policies and issue executive orders (Article 48(4)); nominate principal officials including, but not limited to, the Commissioner Against Corruption, the Director of Immigration, and the Director of Audit (Article 48(5)); and dissolve the Legislative Council in times of legislative impasse (Article 50).

### 3.2.5 *Legislature*

The powers of the Legislative Council are modest compared with those of the Chief Executive. For one thing, Article 74 stipulates that the LegCo is not permitted to introduce any bill related to (a) public expenditure, (b) political structure, and (c) the operation of the government. Bills concerning government policies can be raised – but only upon the approval of the Chief Executive. The institutional weakness of the legislature again reflects Beijing's political preference; the legislature had never been intended to check the executive branch. Deng mentioned more than once that the concept of the separation of powers does not apply to Hong Kong (Deng 2004, p. 56). Those who drafted the Basic Law also believed that colonial Hong Kong's economic success stemmed from a dominant and efficient bureaucracy (Lee 1999, p. 943), rather than from a representative government.

The LegCo is not completely toothless, however. It does possess powers to authorize government expenditure and budgets, to endorse the appointment and removal of senior judges, to question government policies, and to impeach the Chief

---

<sup>9</sup>The membership size has expanded twice, from 400 to 800 and then from 800 to 1,200.

Executive (Article 73). In other words, given that the opposition can gain control of the LegCo, it would have opportunity to constrain the executive branch. Perhaps for this reason, Beijing has installed additional “safety valves” in the Basic Law to prevent opposition parties from controlling the legislature. In particular, Article 68, which deals with elections of the LegCo, is a parallel version of Article 45:

The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

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

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures”.

Universal suffrage is again the ultimate aim for electing all LegCo members. But before reaching this lofty aim in a “gradual and orderly” fashion at some point in the future, elections are conducted using a method outlined in Annex II. According to Annex II, the Legislative Council is composed of two distinct groups of members. One group is elected from functional constituencies, while the other group from geographical constituencies. Since the third term, both groups have had the same number of seats.

Functional constituencies represent a variety of professions, economic sectors, and social groups. By contrast, geographical constituencies are popularly elected. For this reason, LegCo members elected from functional constituencies tend to serve a narrower constituency than those elected from geographical constituencies. The total number of eligible voters for functional constituencies before the 2010 political reform was 240,735<sup>10</sup> or about 7% of the voting-age population.<sup>11</sup> As for the electoral formula, right after the retrocession, the HKSAR government replaced the plurality rule, which had been introduced by the last colonial governor Christopher Patten, with proportional representation (PR). The PR electoral formula has significantly benefited pro-Beijing parties, because these less popular parties would be hard put to compete in a winner-take-all system created by the plurality rule (Ma and Choy 1999).

In his study of local people’s congresses in China, Cho (2010) points out that local Chinese legislatures perform four functions: legislation, supervision, representation, and regime support. The first three functions have attracted increasing scholarly attention (Manion 2014; Cho 2010; Xia 2007), as local people’s congresses became more institutionalized and professional. Interestingly, in Hong Kong, the “regime support” function, which is performed essentially by functional

---

<sup>10</sup>The figure comes from the HKSAR Electoral Affairs Commission. <http://www.elections.gov.hk/legco2012/chi/facts.html>. Accessed May 26, 2014.

<sup>11</sup>The 2010 political reform produced five new functional constituencies representing the District Councils. Unlike the remaining 30 seats for functional constituencies, these 5 seats have an electorate that encompasses about 93% of the total voting-age population.

constituencies, seems to be an outstanding feature of the postcolonial legislature. Functional constituencies help protect Beijing's interests because they have been controlled predominantly by pro-Beijing politicians. No matter how popular opposition parties are among the general public, they have great difficulty cracking into these sector-based constituencies. Their stronghold remains in geographical constituencies, which account for only half of the LegCo seats. Functional constituencies, therefore, act as the gatekeeper for Beijing. Their existence effectively relegates opposition parties to a minority position in the LegCo. Annex II of the Basic Law further strengthens the gatekeeping function of functional constituencies by requiring all motions, bills, or amendments raised by Legislative Councillors (or private bills) to be voted separately in the two groups of constituencies. The passage of a private bill requires the support of both functional and geographical constituencies. On the other hand, Annex II also provides that bills proposed by the government require only a simple majority vote of the entire legislature. This mixed voting system favors the government but disadvantages minority interests, including the prodemocracy opposition.

Thanks to these functional constituencies, many bills that would embarrass Beijing or attempt to accelerate political liberalization are defeated. For instance, every year prodemocracy politicians propose a motion to call for a vindication of the 1989 prodemocracy movement in Beijing. This motion has never gotten passed in the postcolonial legislature. Functional constituencies are gradually seen as a stumbling block to political liberalization. Not only is their *raison d'être* questioned. Some functional constituencies, such as the labor constituency, exclude individual electors, and their electorate is based entirely on corporate bodies. The reason why only certain economic sectors or social groups are recognized as a constituency remains unclear. For example, there is no functional constituency for college professors, although "higher education" is recognized as a sector in the Election Committee for the Chief Executive.<sup>12</sup> In addition, malapportionment is not only a problem that sets geographical and functional constituencies apart from each other but is also a problem of functional constituencies themselves. The functional constituency for "financial services," for instance, has only one seat, the same as another constituency for "agriculture and fisheries," although the former profession outweighs the latter in terms of employment size and economic outputs by orders of magnitude. However odd these arrangements appear, it is arguably the combination of these irregularities,<sup>13</sup> namely, malapportionment, arbitrary functional representation, and uneven electoral bases, that ensures the overrepresentation of pro-Beijing politicians in functional constituencies.

---

<sup>12</sup>Prior to the retrocession, Beijing and the British government had a heated discussion about the scope and franchise of functional constituencies. See, for example, Lo (1994).

<sup>13</sup>For a detailed discussion of the problems of functional constituencies, see Young et al. (2004) and Ma and Choy (2003).

### 3.2.6 *Interpretation and Amendment of the Basic Law*

Confusion sometimes arises when a constitution is put into practice. Under such circumstances, constitutional interpretation or even an amendment is necessary. The issues of interpretation and amendment are particularly relevant to the Basic Law because many of its provisions contain obscurely worded terms (Ghai 1999, p. 185), as attested by Articles 45 and 68 concerning the elections of the Chief Executive and the legislature.

Because the authority which possesses the power to interpret and amend the Basic Law has the final say in the law's application, not surprisingly, Beijing keeps this last line of defense firmly under its control. Article 158 stipulates that the power of interpretation is vested with the Standing Committee of the National People's Congress (NPCSC), while Article 159 provides that the power of amendment is controlled by the National People's Congress. Note that although Hong Kong has its own deputies to the NPC, they have never been democratically elected. Instead, they are chosen mainly by the members of the Election Committee of the Chief Executive.<sup>14</sup> As such, Beijing can ensure that election outcomes would not go awry. But this also implies that the political representation of these NPC members is even lower than that of some local people's congresses in China (Kamo and Takeuchi 2013; Manion 2008).

The NPCSC exercised its power of interpretation soon after the retrocession. On January 29, 1999, the HKSAR's Court of Final Appeal ruled in *Ng Ka Ling v. Director of Immigration* that people born outside Hong Kong have the right of abode in the special administrative region, even though their parents had not been Hong Kong permanent residents at the time of their birth. The government and many Hong Kong people feared that the court's decision would open the floodgates to hundreds of thousands of mainland immigrants, depleting Hong Kong's public resources, if not also jeopardizing its prosperity (Chan et al. 2000, pp. 222–224). The Chief Executive later submitted a request to the NPCSC for an interpretation of the relevant provisions of the Basic Law. The NPCSC ruled that the Court of Final Appeal's interpretation is inconsistent with the legislative intent and thereby overrode the court's decision.<sup>15</sup>

The power of interpretation is also useful for dealing with the highly contentious democratization issues. Annex I and II expressly provide the methods for the formation of the legislature and for the selection of the Chief Executive prior to 2007, which are not universal suffrage. In 2004, the NPCSC again exercised its power of interpretation, in the absence of a request from the HKSAR authorities, ruling out the application of universal suffrage in the 2007 Chief Executive Election

---

<sup>14</sup>For a detailed discussion of the composition of the Hong Kong deputies to the NPC, see Young and Cullen (2010).

<sup>15</sup>The NPCSC ruled that people born outside Hong Kong do not have the right of abode unless their parents had already become Hong Kong permanent residents at the time of their birth. This interpretation drastically reduced the number of potential right of abode holders.

and in the 2008 LegCo election. Moreover, the interpretation also changed the procedure for initiating political reforms stipulated in Annex I and II by adding two new steps extraneous to any provision of the Basic Law.<sup>16</sup> This arrangement allows the NPCSC to intervene in any proposed political reform of Hong Kong at an early stage. The NPCSC did, in fact, exercise its self-imposed authority by making a decision in 2007 to rule out the possibility of amending the methods for selecting the Chief Executive and for forming the LegCo in 2012.

In addition to the power of interpretation and the power of amendment, the NPCSC also has the power to nullify the HKSAR's domestic legislation (Article 17). Article 18 also stipulates that the NPCSC may declare a state of emergency, when the HKSAR government fails to contain turmoil that endangers national unity. Under such circumstances, the Central Government can apply national laws in Hong Kong.

### 3.3 Last Years of the Colonial Administration

Chinese officials have taken pride in Deng Xiaoping's creative institutional design of the "one country, two systems" principle, manifested itself in the Basic Law (Xiao 1990). Indeed, as demonstrated in the foregoing discussion, the Basic Law has produced a postcolonial political system that curiously combines a high degree of economic freedom, as well as civil liberties, with subtle and all-encompassing top-down controls. Hong Kong observers aptly dub such a system "birdcage democracy" (Weng 1998; Kuan et al. 1999).

This institutional birdcage has ancestral roots in the British colonial administration. Chinese officials in the 1980s were deeply impressed by the colonial political system in Hong Kong, which was characterized by strong executive authority and a small but efficient government. This system, as many believed, underpinned Hong Kong's great economic success in the postwar era. The Basic Law was therefore modeled upon that very system, except changing the name of the sovereign (Scott 2000; Lee 1999). Xu Jiatusun, the highest ranking Chinese government official stationed in Hong Kong in the 1980s, pointed out, "when designing the Basic Law . . . we ought to . . . utilize the British system of administration" (Xu 1993).

Note that democratic accountability was never part of the equation in the highly esteemed colonial administration. One major reason is that the popular demand for democratic accountability was relatively low. As previously mentioned, Hong Kong had long been a "refugee society." The refugees had greater tolerance of colonial rule or at least found it bearable; otherwise, they would not have chosen themselves

---

<sup>16</sup>See "The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China," adopted at the eighth session of the Standing Committee of the tenth National People's Congress on April 6, 2004.

to arrive in Hong Kong in the first place. In addition, such a migrant population tended to be more individualistic, self-reliant, and pragmatic (Lau and Kuan 1988). They were more interested in making money than making their voices heard. Political apathy, as many believed, is a defining feature of the people of colonial Hong Kong (Miners 1995; Lau 1984). Although this view has been challenged in more recent studies (Lam 2004; Degolyer and Scott 1996), evidence from public opinion surveys does show that local support for democratization was feeble prior to 1989 (Sing 2004). Elite newspapers such as the *Hong Kong Economic Journal* and the *Ming Pao Daily News* were also skeptical at universal suffrage, fearing that it would favor the poor and give rise to a welfare state and class politics (see, e.g., Lam (1984, p. 449) and Cha (1984, pp. 248–251)).

This is not to say that the colonial government ignored the voices of its subjects completely. On the contrary, the colonial government did make an effort to incorporate local views into the policy-making process by establishing grassroots government offices to improve state-society communication. However, the colonial administrators' attempt was not to integrate ordinary people into the political system but to depoliticize their rising demands by converting them into administrative problems to be tackled by bureaucrats. King (1975) names such co-optation effort the "administrative absorption of politics." King's account is consistent with the blueprint of Beijing, who believed that transplanting the colonial political order to postcolonial Hong Kong will work just as fine.

The fact that the colonial administrators were able to use administrative means to solve political problems may not necessarily imply the superiority of the colonial political system. Rather, it may well be the case that the problems they faced were not acute enough. Real tests emerged in the 1980s, when Hong Kong witnessed dramatic social transformations and political challenges unseen in the previous decades. First and foremost, a younger generation of Hong Kong people with different thinking emerged. Unlike their parents, many of whom were former refugees, this younger generation had a stronger attachment to the city and did not identify themselves as sojourners. They were more educated, more vocal, and more conscious of their rights, creating pressure for the government to improve its service provision in both qualitative and quantitative terms.

Starting from the 1970s, the colonial administration did expand its welfare provision. For example, Governor MacLehose announced in 1972 an ambitious ten-year housing program, aiming to construct enough public housing to accommodate 1.8 million Hong Kong citizens within ten years.<sup>17</sup> Then in 1978, the government offered a nine-year free and compulsory education for Hong Kong residents. The welfare expansion provided residents more direct experiences with government bureaucracy, further raising the public's demands for better governance (Lau 1981).

To Hong Kong people, the greatest stimulant to political participation in the 1980s was the issue of reunification. Hong Kong people were not formally consulted

---

<sup>17</sup>The population of Hong Kong in 1971 was 3.94 million (Census and Statistics Department of Hong Kong 2012).

during the Sino-British negotiation over Hong Kong's future due to Beijing's rejection of the British government's request to include Hong Kong representatives in the talk. Feeling betrayed and uncertain about the future,<sup>18</sup> some Hong Kong prodemocracy activists advocated the "use of democracy to counter the Communist" (*minzhu kanggong*). That is, instead of counting on the outgoing British colonists to protect Hong Kong, they endorsed that Hong Kong people should help themselves by pushing for democratization, because democratic institutions would be the most powerful bulwark against the Chinese authoritarian state after the retrocession.

This view received immense public support after Beijing's suppression of a peaceful student-led prodemocracy movement in 1989. Witnessing the brutal crackdown through a live TV broadcast, the entire city of Hong Kong was flabbergasted, indignant, and most of all horrified. So (2011) succinctly describes Hong Kong people's anxiety at the time: "Hong Kong people figured that if the Communist Party could send tanks to suppress the peaceful protests of students, they could do the same in Hong Kong." A record-high one million Hong Kong citizens took to the streets in one demonstration to vent their anger at, if not also to express their fear of, the military crackdown. Employees of Chinese state-owned firms based in Hong Kong or pro-Beijing individuals also voiced out their disapproval of Beijing's ruthless measures. Most notably, soon after the crackdown, Leung Chun-ying, who later became Hong Kong's Chief Executive, made public statements in newspapers to condemn the central authorities.

But of all the social repercussions following the 1989 prodemocracy movement, the most far-reaching one was probably the birth of the Alliance in Support of Patriotic Democratic Movement of China (ASPDMC), which is an umbrella organization consisting of over a hundred civil society groups in Hong Kong. At the height of the movement, the ASPDMC provided financial supports for the student protesters in Beijing. After the crackdown, it helped smuggle student leaders out of the country. Every year since 1990, it organizes a candle night vigil in Hong Kong's Victoria Park in commemoration of the victims of the June 4 Incident. As one of the central tenets of the ASPDMC is to "end one-party dictatorship [in China]," some Beijing leaders viewed the ASPDMC as a subversive united front controlled by foreign governments (Xu 1993, p. 395). Major leaders of the ASPDMC later formed a prodemocracy opposition party, the Democratic Party, which had been for many years Hong Kong's flagship opposition party.

The June 4 Incident accelerated the pace of political liberalization by the colonial administration. For much of Hong Kong's colonial history, the colonial administrators had shown little interest to share political power with its subjects. In the 1980s, as the British government prepared for its graceful retreat from Hong Kong, they began to allow for limited political liberalization. The first LegCo election took place as late as in 1985, and the first elected members were selected from functional constituencies that represented no more than 1 % of the population

---

<sup>18</sup>A prevailing view at that time was that "Great Britain is not reliable and the Chinese Communist is not trustworthy" (*yingguo bu kekao, zhonggong bu kexin*) (Lam 1984, p. 461).



(Scott 2000, p. 42). The June 4 Incident created domestic and international pressure for the British government to do something to protect Hong Kong against the authoritarian state of China. For example, in 1991, the colonial legislature passed a bill of rights. From then on, any government agency in violation of human rights can be tried by courts.

The most dramatic change came in 1992, when the British government appointed Christopher Patten as the new – and the last – governor for Hong Kong. Unlike his predecessor, David Wilson, who was a diplomat with training in sinology, Patten was a career politician and a former chairman of the Conservative Party. His unprecedented populist political style impressed the Hong Kong public, who had never seen a governor equally friendly and amicable. In defiance of Beijing's harsh criticisms, Patten implemented what Beijing considered radical political reforms, including the lowering of the voting age from 21 to 18, the extension of the franchise of functional constituencies to 2.7 million eligible voters, and the adoption of the plurality rule as the electoral formula for the election of the last colonial legislature. Moreover, Patten never shied away from confronting with Chinese officials in an open and antagonistic manner.

The Patten administration left two important legacies. The first is that his political reforms significantly empowered the prodemocracy opposition. As discussed, the winner-take-all nature of the plurality rule marginalized the less popular pro-Beijing parties. The flagship opposition party, the Democratic Party (DP), managed to capture the largest number of seats in the last colonial legislature. The second legacy of Patten, which is arguably more far-reaching, is that his populist, prodemocracy stance and willingness to defy the Chinese authorities further politicized Hong Kong's society. Although the majority of the seats were not popularly elected, the last legislative election was the most democratic ever in Hong Kong's entire colonial history. This inevitably raised the public's expectation of the postcolonial political system, particularly because of Beijing's repeated emphasis of how the future of Hong Kong would be brighter after its glorious return to the motherland.

Not surprisingly, Patten's provocative moves met severe criticisms from Chinese authorities. From Beijing's perspective, the political liberalization introduced by the colonial government in its final years was a British conspiracy to turn Hong Kong into an "independent entity" (Qian 2004, p. 293) or an anti-CCP bridgehead after 1997 (Qiang 2008, pp. 176–178).<sup>19</sup> Regardless of what motivated the British government, the aforementioned political changes have fundamentally reshaped Hong Kong's state-society relations. Suffice it to say, by the time the PRC took over Hong Kong, the political landscape of the city witnessed a sea change from what it had been in the early 1980s.

---

<sup>19</sup>There exist other explanations for the colonial government's unlikely political liberalization since the mid-1980s. Some argue that the British government believed the CCP would fall soon after the June 4 Incident (Lu 2009, p. 70). Others point out that Patten had an incentive to present himself as a freedom fighter for Hong Kong, which would bring him considerable political credential back home after 1997 (Lo 1994, p. 194).

First and foremost, Hong Kong people became far less politically apathetic than before, due to the exposure to competitive elections and the experience of mass mobilization in 1989. Second, a popular prodemocracy opposition emerged as a formidable political force in Hong Kong politics. Third, the colonial administration's accelerated political liberalization also facilitated the development of political activism. People became accustomed to expressing their political opinions as well as disapproval of political figures through the media and public demonstrations. *Apple Daily*, a prodemocracy newspaper unabashedly critical of Beijing, was founded in 1995 and has become one of the most popular newspapers in Hong Kong to this day.

The Basic Law was designed in the image of the British colonial administration prior to the mid-1980s, at a time when Hong Kong's civil society and political society were both in their infancy. By the time the PRC gained its sovereignty over Hong Kong – that is, the time the Basic Law came into force – the infants had grown considerably. Postcolonial institutions, originally intended to be bespoke suits, now looked more like a straitjacket. State-society conflicts emerged soon after the retrocession and have plagued the postcolonial administration ever since.

### 3.4 After 1997

On July 2, 1997, the second day after Hong Kong's transfer of sovereignty, Thailand gave up its fixed exchange rate because its government failed to defend its currency after months of speculative attacks. Following the announcement, the value of Thai baht fell precipitously, deepening the country's financial crisis. In the subsequent months, Thailand's crisis propagated to other Asian economies, Hong Kong included, and later culminated into the well-known Asian Financial Crisis.

The Asian Financial Crisis punctured the bubble of Hong Kong's housing markets, which had begun to develop from 1995. Hot money flew out of the economy, followed by a rapid decline in property prices. Many homeowners found their apartments now worth less than their mortgages, becoming the so-called negative equities. Bank foreclosures skyrocketed, as more and more homeowners and home speculators failed to meet their monthly mortgage payments. Private consumption plummeted, while unemployment soared. The newly founded HKSAR government needed to deal with an economy in disarray.

Tung Chee-hwa, the son of a business tycoon, was selected by the Beijing-controlled selection committee as Hong Kong's new political leader. Unlike the last colonial governor Christopher Patten, Tung was neither charismatic nor eloquent, although this nondemocratically elected leader did enjoy considerably high approval rating in the beginning of his term. His political honeymoon ended quickly, however, as he failed to rescue the faltering economy. In fact, some even linked his administration to the worsening economic situations.

The first controversy of his administration was his ambitious housing plan announced two months after he assumed the Chief Executive office. At the height of the housing bubble, many in Hong Kong lamented the soaring housing prices.

In response to their complaints, Tung vowed to provide 85,000 housing units on an annual basis. His plan was ill-timed, because Asian economies at that point were already mired in deep financial troubles. Housing markets in Hong Kong also started to crumble. According to the data of the HKSAR Rating and Valuation Department, housing prices dropped 38 % a year after the announcement of Tung's anachronistic housing plan. Not surprisingly, many pinpointed Tung as the culprit of the housing crisis, if not of other economic problems as well.

It took seven years for the economic downturn to bottom out. Those hard days were punctuated by Tung's incessant policy blunders and political mistakes. In late 1997, Hong Kong went into a public health crisis, as the government decided, after days of delay, to kill all local chickens – one million of them – to contain an unprecedented bird flu that first recorded human infections. The operation was swift, but the chicken carcasses were left unattended for days, causing unnecessary worries, if not also defeating the purpose of the operation. In mid-1998, Hong Kong's new airport went into operation. What made international headlines was not its grand opening but a combination of technical and management problems that resulted in serious flight delays and logistical chaos. It took two months to restore normal airport services. Then in 1999, the Tung administration rode the wave of the global Dot-Com Bubble to announce the plan to build a local Silicon Valley named Cyberport. The Cyberport project was part of Tung's larger plan to revive the city's economy. This supposedly credit-claiming developmental project turned out to become another blame-taking fiasco because the government contracted out the project to a scion of a Hong Kong business tycoon without going through the standard procedure of competitive tendering. Worse still, the media found that the scion could pocket billions from developing a luxurious residential compound in Cyberport, leaving a bad public impression that the technology project was nothing but a collusion between the government and the real estate elite.

There was also Tung's weakness in public communication manifested in his remark on the controversial housing policy during a television interview in 2001. He said that his target of building 85,000 housing units per year had long been shelved. "It ceased to exist because I no longer mentioned it," he had confided. His remark, which was perhaps intended to boost the confidence of the investors in the lackluster housing markets, triggered an immediate public outcry. Many believed that the housing doldrums persisted because of Tung's pledge to maintain abundant housing supply. Now the public came to realize that the government had kept them in the dark all along.

In sum, the first term of the Tung administration exposed the Chief Executive's poor leadership, ineffective communication skills, and lack of political savvy. The executive-led model conferred by the Basic Law turned out to be a curse rather than a blessing, as too much power was vested in an incompetent leader. But to many Hong Kong people's dismay, Tung, despite his low popularity, was able to get reelected in 2002 under Beijing's auspices.

The problems of Tung, together with his uncontested reelection, raised the public's awareness of the importance of universal suffrage, which is promised by the Basic Law as the ultimate method for selecting the Chief Executive but has

never been put into practice. Many were upset by the fact that they had no power to remove a political leader whose incompetence had contributed, directly or indirectly, to their city's long-standing economic plight. Public discontent gradually built up.

Although ordinary people were unable to vote out Tung, thanks to the city's high degree of civil liberties, they could still actively exercise their freedom of speech to vent anger at Tung and at the larger political system through phone-in radio programs and online forums alike. Radio hosts, such as Albert Cheng and Wong Yuk-man, achieved high ratings by inveighing against the government, while newspapers critical of Tung became the most widely read.

Opposition parties tried to turn the growing public discontent to their advantage. Although the Basic Law severely constrained the power of the legislature, whose role became no more than "a talking shop and a rubber stamp" (Scott 2000, p. 36), elected opposition leaders had at least one political asset that should have made Tung jealous: popular mandate.<sup>20</sup> They turned their subdued position into a weapon of the weak by using each legislative session to question, challenge, criticize, and at times, ridicule the Tung administration, in hopes of attracting media coverage and spreading their political message. During elections, they also took advantage of the government's declining popularity by changing their campaign strategies from attacking Beijing, which had been a salient issue in the last colonial legislative elections,<sup>21</sup> to attacking the HKSAR government (Ma and Choy 2003, pp. 103–199).

Suffice it to say, by the time Tung was reelected, Hong Kong's society was engulfed in a deep sense of hopelessness and powerlessness. The economic outlook was bleak, while political accountability was nowhere in sight. Complaints and resentment dominated public discourse. People became more and more restive. Politically, Hong Kong had all the requisite conditions for a perfect storm. All it needed was a trigger, which presented itself in 2003.

### 3.5 July 1, 2003

The first draft of the Basic Law, which came out in April 1988, contained a national security provision (Article 22): "The Hong Kong Special Administrative Region shall prohibit by law any act designed to undermine national unity or subvert the Central People's Government." This version was criticized for being too vague and too broad as to invite arbitrary interpretations. In a subsequent draft released in February 1989, this article was revised to replace the vaguely worded offenses with more specific ones such as treason and secession. After witnessing Hong Kong's massive protest turnout and the emergence of the ASPDMC in 1989, Beijing

---

<sup>20</sup>Most of the elected opposition legislators gained their office popularly elected through geographical constituencies.

<sup>21</sup>For the effects of the "China factor" in pre-transition elections, see Leung (1991, 1996).

decided to toughen this provision by rolling back the concept of “subversion” and adding a reference to “foreign political organizations” (Petersen 2005, pp. 17–18). Article 23 of the Basic Law in its final version states:

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

Article 23 does not specify the time for the enactment of the national security laws. During the first few years after the retrocession, this legislation was also not on Tung’s political agenda. But in 2002, Beijing leaders hinted that the time was ripe during Tung’s second term (Ma 2005). Shortly after his reelection, the Tung administration began the preparation work by announcing a consultation paper that contained some proposed legislations for Article 23. The consultation paper caused an uproar in Hong Kong. There were three major reasons. First, a large portion of Hong Kong people still had a deep-seated distrust of the authoritarian state of the PRC. They saw the related legislations not as a tool to protect national security but more as an instrument for Beijing to limit their civil liberties (Ma 2005, p. 476). Second, the offenses suggested in the consultation paper were largely based on obscurely worded or vaguely defined terms and concepts that allowed for an arbitrary interpretation by the state, leaving individual liberties unprotected (Ma 2005, pp. 467–472). Finally, government officials did a poor job of mobilizing public support for the proposed legislations. For example, on one public occasion, someone asked Elsie Leung, then the Secretary for Justice, whether the legislation of Article 23 would create a “white terror” in Hong Kong. Instead of taking the opportunity to allay public fears, Leung bluntly replied that “a knife has already been hung over your head.” Her reply was taken as the government’s confirmation that the widely perceived threats against civil liberties brought by the national security laws were real.

Civil society mounted strong opposition to the proposed legislation. Journalists, legal professionals, and academics voiced out their worries and disapproval by issuing public statements and organizing concern groups. For instance, a group of the former chairpersons of the Hong Kong Bar Association formed the “Basic Law Article 23 Concern Group,” which frequently challenged the government’s positions on the national security laws. Even the Catholic Church in Hong Kong aired a high-profile objection, because it, too, could fall victim to the offense of having links with the proscribed organizations, given its ongoing communications with many “underground” churches in the mainland. Despite widespread social opposition, the government showed no sign of backing down. The Tung administration and the civil society became locked in a stalemate.

Meanwhile, a mysterious epidemic struck Hong Kong. The disease, known as severe acute respiratory syndrome (SARS), was first identified in Hong Kong in February 2003. At the beginning of the outbreak, the public had little knowledge about the disease or its cause, fatality rate, and effective cures. All they knew was

that each day there were dozens more new cases, while the death toll increased. The disease also seemed dangerously contagious, as healthcare workers who were in touch with SARS patients also contracted the disease. On March 12, the World Health Organization issued a global alert. Three days later, the Centers for Disease Control and Prevention of the United States issued a travel advisory for travelers from Hong Kong and the nearby Guangdong Province.

At that point, the city was thrown in a state of panic. People took unusual steps to enhance their daily personal hygiene. Many developed a new habit of rubbing hands with alcoholic sanitizers on a regular basis. Almost everyone put on surgical masks whenever they stayed outdoors. The best way to avoid the invisible killer, of course, was not to go out at all. People reduced social gatherings of all sorts. Streets lost their jostling crowds. Cinemas and restaurants were empty. On March 27, the government even announced a temporary suspension of schools. As no one wanted to visit an epidemic-ridden city, tourism, one of the major pillars of Hong Kong's economy, badly suffered. In sum, the disease disturbed the city's daily social order and brought devastating impacts on its ailing economy.

The epidemic was subdued within two months. On May 23, the WHO lifted the travel advisory against Hong Kong. The metropolis gradually regained its vitality. Yet while new life was breathed into the city, the political deadlock remained unchanged. The Tung administration continued to push for the passage of the National Security Bill, which was scheduled for the Second and Third Reading in the LegCo on July 9, 2003. But the government now faced a society that was no longer the same.

Perhaps having gone through a dreadful epidemic gave citizens new strength and community spirit. Perhaps the way the Tung administration handled the epidemic wiped out Hong Kong people's remaining hope for the government (DeGolyer 2004, pp. 126–127). No matter what the main reason was, suffice it to say, after the SARS outbreak, Hong Kong people could no longer suppress their fury at the Tung administration. Their anger culminated in a massive social outcry. On July 1, 2003, which was the public holiday in commemoration of Hong Kong's return to China, half a million Hong Kong people – or one in ten adults – took to the streets to demand Tung's resignation and the suspension of the National Security Bill.

The Basic Law provides the freedom of demonstration. Hong Kong people did not shy away from exercising this right even after 1997. In the summer of 2000 alone, street demonstrations had been organized by healthcare professionals, teachers, social workers, and civil servants. Protests were so frequent that the *Washington Post* once named Hong Kong the “city of protests” (Washington Post 2000). However, no protest in postcolonial Hong Kong matched the July 1, 2003 protest in terms of the turnout. Indeed, it was the second largest mass mobilization in the history of the city.<sup>22</sup>

---

<sup>22</sup>The largest one took place immediately after Beijing's brutal crackdown on the student-led prodemocracy movement in 1989.

The massive turnout shocked almost everyone, including the protest organizers, who, prior to the March, estimated that the turnout would be 100,000 at most (Lee and Chan 2011, p. 43). Some government official even thought that 30,000 would be the maximum.<sup>23</sup> Caught unprepared, and possibly dumbfounded, Tung had not been ready to take any of the reporters' questions when he showed up in his office the very next day, except to say "Good morning." He called several Executive Council meetings immediately, but to many people's surprise, no official announcement of the meeting's results was released for the following three days. The dissension within the ruling elite gradually surfaced. James Tien, an Executive Council member who was also the chairman of the pro-Beijing Liberal Party, openly supported a postponement of the reading of the bill, while Tung insisted that it would go ahead as scheduled. The political crisis took a dramatic turn on July 6, when James Tien announced his resignation from the Executive Council. The following day, the government, at long last, acquiesced in the postponement. Within ten days, two key ministers of the Tung administration resigned. One of them, Secretary for Security Regina Ip, was responsible for the promotion of the legislation of Article 23. Tung himself stepped down two years later, without finishing his second term. Although he attributed his premature departure to health problems, many believe that his resignation, which required Beijing's ultimate approval, was to a large extent a result of his incompetence, particularly his inability to handle the aftermath of the July 1, 2003 protest.

### 3.6 Conclusion

While many worried that Hong Kong's civil liberties would be suppressed after the city's reunification with the single-party dictatorship of the PRC, it seems that the civil society of postcolonial Hong Kong has survived, if not also thrived. There are two reasons for this positive development. First, when Beijing drafted the Basic Law, the mini-constitution that laid down the fundamental political order of the HKSAR, it had a clear goal in mind: to preserve Hong Kong's prosperity that was largely based on free market capitalism. For this reason, the Basic Law was designed in the image of the late British colonial system, which had been noted for its high degree of civil liberties that were considered essential to the operation of a free market. The second reason is that political developments since the late 1980s have significantly politicized Hong Kong's society. The June 4 Incident, the colonial government's long-overdue political liberalization, and the protracted economic downturn after 1997 all had direct and profound impacts on the Hong Kong people's way of life, forcing them to come to terms with an uncertain future

---

<sup>23</sup>Siu-kai Lau, head of the HKSAR's official think tank, gave that conservative estimate.

and a harsh political reality. It was no longer possible for Hong Kong people to remain silent and docile. As they became significantly more politically active, a vibrant civil society came to life.

The rise of a vocal civil society has clashed with another salient characteristic of the Basic Law: a low degree of democratic accountability. The Basic Law vests a wide range of power with the Chief Executive, who is not popularly elected, while reducing the role of the more democratic legislature to a talking shop. This institutional arrangement was also modeled upon the pre-1984 colonial political order, which was notorious for its lack of democracy. Although the Chinese authorities from time to time emphasize that the HKSAR government is more democratic than the colonial administration in any period,<sup>24</sup> the institutional straitjacket prescribed by the Basic Law no longer satisfied Hong Kong people's rising demand for greater democratic accountability.

At times, the postcolonial administration attempted to tame the assertive civil society. The proposed legislation of Article 23 was a case in point. But the administration ended up suffering a humiliating defeat, as half a million Hong Kong residents took to the streets on July 1, 2003 to protest against the proposed national security laws. After the show of people's power in the historic July 1, 2003 protest, Beijing came to realize that governing Hong Kong is by no means an easy task. Politically, Beijing has constrained itself by designing the Basic Law to confer upon Hong Kong a high degree of civil liberties. Socially, the civil society in Hong Kong has grown increasingly vocal and untamable. Economically, crushing by brute force Hong Kong's civil liberties, including freedom of the press, runs counter to the fundamental objective of preserving the city's prosperity.

Facing all these constraints, what can Beijing do to advance its own interests in Hong Kong? How can it counter the popular pressure for political liberalization? As I discussed in the previous chapter, the key lies in building grassroots political organizations, a skill that the Chinese Communist Party has long mastered. In the next two chapters, I will examine how the prodemocracy opposition coalition changed in the wake of the July 1, 2003 protest and how Beijing-sponsored parties fine-tuned their political strategies in response to the rising challenges of civil society.

---

<sup>24</sup>For instance, the "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008" states: "[S]ince the establishment of the Hong Kong Special Administrative Region, Hong Kong residents have enjoyed democratic rights that they have never had before."