

The Future of Press Freedom in Hong Kong

Frankie Leung

The freedom of the press in Hong Kong is faced with a number of critical problems. First, both the print and electronic media whose ownership are in private hands have the common dilemma. Insofar as their owner's business interest, existing of potential lies in Mainland China, they have to be cautious not to be critical of those in authorities. Censorship need not take the form of official condemnation. Very often, a word of advice whispered in private from an official to the owner or manager of the media, such an informal advice would pass onto the editor or the relevant employee. The tradition of building a sanitized wall between management and ownership has not taken root in Hong Kong. Besides, the marketplace for employment for journalists is not as extensive and varied as one finds in many other big cities. Therefore a journalist in employment is subject to occupational pressure exerted by the owner of the press.

The only public Hong Kong media, which is not controlled by financial interest, is the Radio Television Hong Kong. Although its funding comes from the government, it tries to maintain editorial autonomy. When its broadcast or televised programs take a satirical spin of or critical stance against the government, it is being blamed or accused of biting the hand which feeds it. In that regard, maintaining editorial independence means that the Radio Television Hong Kong is leading a precarious existence. Before 1997, an attempt was made to convert the Hong Kong government-financed media stations into a British Broadcasting Corporation form of entity. The Chinese government objected to such a proposal and it was dropped. At present, Radio Television Hong Kong operates under a "framework agreement" with the government's Secretary for Information Technology and Broadcasting. Recently, the Radio Television Hong Kong has been repeatedly attacked for broadcasting or televising programs critical or negative about the government of its policies. It is trying to resist being turned into a governmental propaganda machine once it loses editorial or programming independence.

Why the former China editor of the South China Morning post resigned from his job is unknown to the public. However, judging from the chain of events leading to his resignation, it could be surmised that he was subject to pressure from the majority owner of his then employer. It may not be fair to blame the Central Government or the Hong Kong Special Administrative Region Government on imposing censorship on

the media. It is just as plausible that many individuals in Hong Kong who would assume that their views reflect the Central Government's position in silencing oppositions or unpatriotic platforms. It could well be such practices have become a way to please the Central Government and to win favor. May be the Central Government is quite determined to render Hong Kong incapable of being a place to spread separatist views relating to Taiwan and Tibet. Possibly, this governmental stance is equally applicable to explain the recent accusations by many so-called Hong Kong opinion-makers with ties to the Central Government such as the Political Consultative Committee that the supposedly "Evil Cult" of Falun Gong is using Hong Kong as a base to subvert China. In so far as Falun Gong remains a legally registered society in Hong Kong albeit a prohibited sect in China the tolerance of Falun Gong by the Hong Kong Government will remain a litmus test for the survival of the principle of "One Country Two Systems" in Hong Kong.

The business interest of many media groups which control newspapers and radio/television stations are preparing to go into if not already heavily involved in the China market. For example, with the two exceptions, namely the *Apple Daily* and the *Hong Kong Economic Journal*, newspaper owners in Hong Kong are either partially controlled by Mainland interests or looking North to expand their market. It goes without saying that with a China market of 1.2 billion people, the Hong Kong population of 6.8 million would be no comparison in terms of potential for market expansion and magnitude of profits. If in doubt, business interests would bend in favor of not being critical. Freedom of the press would have to be compromised in the interests of business. Knowing that the Mainland Chinese authorities have been suspicious of the media and have exercised tight control over it, people in the media industry would risk on the side of being cautious and politically correct.

Article 23 of the Hong Kong Basic Law, which is the constitution of Special Administrative region stipulates that the regional government enacts law to prohibit treason, secession, sedition, subversion against the Central Government, theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in Hong Kong or Hong Kong organizations to establish ties with foreign political organizations. There has been a delay over three years that the regional government did not enact such laws for political expediency and good reasons. At present, there are statutes in existence proscribing theft of state secrets, secession or subversion. However, the government has chosen not to enforce them to ban, for example, the Falun Gong. Journalists fear that if the Hong Kong Legislature decides to enact local law under Article 23 by following the legalistic and political directions

of the Central Government instead of those of Common Law jurisdictions, they could run foul of such laws in their professional activities. Enactment of local law would have an over-all chilling effect on the future of freedom of expression and other civil rights. Since under Article 158 of the Basic Law the ultimate power of interpretation of the Basic Law lies with the National People Congress Standing Committee, any litigation or criminal prosecution touching on those areas under Article 23 may be subject to the scrutiny of the Central Government rather than the Court of Final Appeal in Hong Kong. Journalists loathe to operating in a political climate, which introduces uncertainty and risk attendant upon their freedom of expression. Particularly so, if the Mainland China standard and modus operandi were to be the norm adopted in the Hong Kong Special Administrative Region. The continuing survival of the capitalistic system in Hong Kong is arguably dependent upon whether an independent press and media could function under laws tolerant if not protective of free expression.

Frankie Leung, Adjunct Professor of Law, University of Southern California Law School. A paper delivered on February 27th 2001 at a conference organized by Asia Society held at Loyola Law School, Los Angeles.