

## **Legislative Council Panel on Constitutional Affairs**

### **Relationship between the Executive Authorities and the Legislature**

#### **Introduction**

This paper provides relevant information on the relationship between the executive authorities and the legislature for Members' reference.

#### **Relationship between the executive authorities and the legislature**

2. Under the framework of the Basic Law, the executive authorities and the legislature are constituted through two different routes. According to the constitutional arrangements, the executive authorities and the legislature exercise their respective functions, complement each other, and operate with due checks and balances.

3. According to the design of the Basic Law, the Chief Executive ("CE") is the head of the Hong Kong Special Administrative Region ("HKSAR"), and the political structure is an executive-led system. The more important relevant provisions in the Basic Law include the following:

- (a) the CE shall be the head of the HKSAR (Article 43 of the Basic Law);
- (b) the CE is at the same time the head of the HKSAR Government (i.e. the executive authorities) (Article 60 of the Basic Law);
- (c) the CE is responsible for the implementation of the Basic Law (Article 48 of the Basic Law);
- (d) the CE leads the government of the Region, decides on government policies, issues executive orders, nominates and reports to the Central People's Government (CPG) for the appointment of principal officials and recommends to the CPG the removal of them, and conducts, on behalf of the HKSAR, external affairs and other affairs as authorised by the Central Authorities, etc (Article 48 of the Basic Law);

- (e) the CE leads the Government of the HKSAR to exercise relevant powers and functions, which include formulating and implementing policies, conducting administrative affairs, drawing up and introducing budgets, drafting and introducing bills, motions and subordinate legislation (Article 62 of the Basic Law);
- (f) the land and natural resources within the HKSAR shall be state property. The Government of the HKSAR shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organisations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region (Article 7 of the Basic Law);
- (g) the CE plays an important role in the legislative process, including the signing of bills and the promulgation of laws (Articles 48 and 76 of the Basic Law), as well as other relevant provisions (Articles 49, 50 and 51 of the Basic Law);
- (h) Members of the Legislative Council (“LegCo”) may not introduce bills relating to public expenditure or political structure or the operation of the government. The written consent of the CE shall be required before bills relating to government policies are introduced by members (Article 74 of the Basic Law).

4. The powers and functions of LegCo are clearly stipulated in Article 73 of the Basic Law: to enact, amend or repeal laws in accordance with the provisions of the Basic Law and legal procedures, to examine and approve budgets introduced by the government, to approve taxation and public expenditure, to receive and debate the policy addresses of the CE, to raise questions on the work of the government, to debate any issue concerning public interests, and to receive and handle complaints from Hong Kong residents, etc.

5. On the other hand, Article 64 of the Basic Law stipulates that the Government of the HKSAR must abide by the law and be accountable to the LegCo of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and

it shall obtain approval from the Council for taxation and public expenditure.

6. According to the above Basic Law provisions, whilst the executive authorities and the legislature have their respective functions and powers, they should complement each other, and operate with due checks and balances. The bills and budgets proposed by the Government of the HKSAR must be examined and approved by LegCo before they are implemented. The executive authorities and the legislature play their respective roles.

7. On 15 January 2005, the Secretary for Constitutional Affairs, a member of the Constitutional Development Task Force, attended the meeting of the LegCo Panel on Constitutional Affairs to listen to views of the deputations on the issue of the relationship between the executive authorities and the legislature (relevant meeting notes can be referred to LC Paper CB(2)1166/04-05).

8. Currently, the Commission on Strategic Development (“the Commission”) is having substantive discussion on possible models for selecting the CE and for forming LegCo. In its previous discussion on the principles and concepts relating to universal suffrage, the Commission recognized that an executive-led system was an important principle underlying the political structure of the HKSAR, and that the relationship between the executive authorities and the legislature should be one of mutual regulation and coordination (please refer to paragraphs 12-13 of LC Paper CB(2)519/05-06(01)). On the issue of the relationship between the executive authorities and the legislature, some members of the Commission, as well as various individuals and organizations, have put forth their views. The relevant submissions are provided at Annexes 1-16 for Members’ reference.

Constitutional Affairs Bureau  
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呈交策略發展委員會  
管治及政治發展委員會的意見書  
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政制改革的原則

普及而平等的選舉權利，是《世界人權宣言》與《公民權利和政治權利國際公約》確認的一項基本人權，除非反對實行普選的一方能夠提出確實和具凌駕性的論據，否則任何個人或組織（包括政府）不得剝奪、限制、拖延或以任何其他形式阻撓市民行使這項權利。單是意見分歧並非否決普選的充分理由，而政府以社會未有共識而不肯訂立實行普選的時間表，亦不符合人權公約的精神。

2. 當局在管治及政治發展委員會 CSD/GC/1/2005 號文件中提出，在討論香港政制發展時，須考慮「兼顧社會各階層利益」、「有利資本主義經濟發展」和「行政主導」等原則。我們認為，在草擬《基本法》時，這些原則已被反覆考慮，並已寫成《基本法》的具體條文，只要嚴格按照《基本法》的條文處理政改問題，即可充分體現有關原則。

兼顧社會各階層利益

3. 我們認為，「兼顧各階層利益」是指來自不同階層的每一個個人，都享有平等的政治權利。可是現時的政制安排，令某些階層（特別是工商界）享有政治特權，不完全符合「兼顧各階層利益」。

4. 普選行政長官和立法會是《基本法》訂明的最終目標，證明全國人民代表大會（人大）在通過《基本法》時，已確認普選是最能「兼顧各階層利益」的政制安排。事實上，由於商界擁有雄厚的經濟實力，任何執政者或政黨都必須照顧商界的需要，維持營商信心；因此，普選是最能夠兼顧商界和普羅市民利益的選舉方法。

有利資本主義經濟發展

5. 普選行政長官和立法會是《基本法》訂明的最終目標，證明人大在這

過《基本法》時，已確認普選是最「有利資本主義經濟發展」的政制安排。事實上，所有發達的經濟體系，都是由普選產生行政機關和立法機關，由此可見，普及而平等的選舉制度，是最有利於經濟發展。

6. 主要是來自商界的人士認為，倘若實行民主，香港必定變成福利社會，令經濟崩潰。這些論據純屬荒謬。指直選必然導致福利開支大增，是毫無事實根據。不少實證研究均指出，民主與福利開支並沒有必然關係，反而是一些並非透過普選產生的政府，需要大灑金錢以收買人心。而美國傳統基金會的研究亦明確指出，所有人均產值較香港高的國家，其政府開支佔生產總值的比例亦遠較香港的高，證明增加政府開支令經濟受損的論調，只是一派胡言。我們認為，福利政策、社會政策和財政政策等等，是重要的選舉議題，但決不是實行普選的前提。倘若策略發展委員會認為需要探討香港的福利、社會和財政政策，應交予社會發展及生活質素委員會處理；而香港應實行哪些政策，最終應由市民在選舉時投票定奪。

## 行政主導

7. 所謂「行政主導」，只是一個籠統的概念，沒有明確的定義。有關行政和立法的關係，在《基本法》中已有具體條文，界定行政長官、行政機關和立法機關的職權，以及三者之間的關係。改變選舉方法，並不涉及修改上述條文，也不影響該等條文的實施。例如，無論行政長官是由小圈子抑或是由普選產生，又或者立法會有部分議員是由功能組別產生抑或是全部由普選產生，根據《基本法》的規定，都是由行政機關提出法律草案或者撥款建議，由立法會或財務委員會通過。《基本法》並沒有規定立法會必須通過行政機關的提案，在現行的憲政安排下，所謂「行政主導」，應理解為行政機關有較大的憲政責任，確保符合香港利益的提案獲得通過。

## 在 2012 年或之前實行兩個普選

### 符合香港的實際情況和循序漸進的原則

8. 《基本法》第四十五和六十八條規定，行政長官和立法會的產生方式，須根據香港的實際情況循序漸進，最終達至由普選產生。我們認為，「實際情況」和「循序漸進」應一併理解，其意思是指政制設計必須跟香港的實際情況協調和相適應。倘若香港的社會和經濟結構已出現根本性的轉變，政制發展亦必須加快腳步，作出相應的改動，再不能一步一步地走，否則會導致不協調的情況，輕則影響社會和諧及經濟發展，嚴重的更可能引起動蕩。

9. 根據香港的實際情況循序漸進發展政制時，我們需要處理兩方面的問題：

- 現行的政治制度是否跟香港的社會和經濟情況協調和相適應；及
- 香港是否具備實行某種選舉安排（例如普選）的客觀條件。

現行政制跟不上香港的實際情況

10. 回歸後，香港不時出現管治危機，主要是源於政治制度跟不上社會和經濟情況的轉變。現行的政制設計，基本上是承襲上世紀 80 年代殖民地統治的一套，其特點是透過委任或有限度的選舉（例如功能團體選舉），吸納資本家和精英階層的代表進入建制，換取他們支持（或者最低限度不公開反對）殖民地官僚的施政。可是，20 多年以來，香港的經濟結構和社會狀況已出現了根本的變化。隨著華資和中資的興起，以及經濟多元化發展，資本家和精英階層的組成，以及他們之間的利益關係，已變得極為複雜，政府希望以殖民地年代的方式贏取精英階層的支持，也變得愈來愈困難。事實上，被特區政府吸納進入建制的人士，根本不能代表資本家和精英階層的整體利益，而政府更不時因為「分贓不均」而被指摘厚此薄彼。在「西九龍」事件中，有大資本家赤膊上陣，公開指摘政府官商勾結，偏袒某一財團，正是一例。

11. 不管是由於港人的難民心態、政治冷感，抑或是所謂「功利家庭主義」、「低度整合的社會政治體系」，殖民地政府只要成功籠絡精英階層，已基本上解決統治合法性的問題。可是，在回歸後這個情況已不再復見（或者更準確點說，這種管治模式在殖民地統治的最後數年已開始動搖）。這不僅是由於特區政府再難以取得精英階層的支持，更重要的是香港社會出現的轉變，令政府即使取得精英階層的祝福，也不能確保統治的認受性。如果在殖民地年代，港人是沒有需要、沒有意願、沒有能力向政府提出訴求，隨著經濟急速轉型、貧富差距擴大、更多土生土長的新一代視香港為家、政府在教育、醫療、房屋、福利等方面的社會介入，以至壓力團體、政治組織和大眾傳媒的發展，今日已有相當部分的市民，是有需要、有意願和有能力（親身或透過代理人）向政府提出種種訴求。香港社會已起了不可逆轉的變化，但政治制度卻未有跟上這個轉變，仍舊向資本家和精英階層傾斜，是導致特區政府認受性低落、權威受損的根本原因。

12. 誠然，《基本法》並非完全漠視香港須發展民主的客觀需要，否則也不會有最終達至普選的規定；不過，由於既得利益者（主要是工商界）反

對普選的壓力，《基本法》有關特區政制的安排只能夠是妥協的「半民主」產物。可是，當年的草擬者似乎低估了「半民主」政制的內在矛盾的嚴重性，他們也可能沒有預料到，在沒有明確普選時間表的情況下，既得利益者不停阻撓香港的民主進程，令「半民主」政制的內在矛盾無限期延續，造成香港社會無休止的內耗。

13. 概括而言，現行「半民主」政制的內在矛盾包括：

- 開放選舉增加了市民對民主的期望，可是現行的政制設計，卻令社會上的多數派變成建制內的少數派，經常出現多數人服從少數人的矛盾，造成市民「期望愈大、失望愈大」的負面效果（不幸地，第一任行政長官施政連番失誤，卻仍然獲得 700 多名選舉委員會成員提名，自動當選連任，這不僅令小圈子制度徹底破產，強化了市民對普選的訴求，同時亦加劇了普羅市民和既得利益者之間的矛盾）；
- 行政長官和立法會議員的產生方式（即選舉委員會、功能組別和分區直選），各有不同的社會基礎，不同界別或階層的利益衝突，不僅未能透過公平、公正的選舉得以化解，反而將矛盾直接移植至政治體制內，令行政與立法關係，以至立法會內部，經常出現緊張的情況，影響政府運作；及
- 政治本是妥協的藝術，但現行的政制安排卻沒有為行政長官和議會內各黨派提供妥協的誘因。例如功能組別選舉，將從政人士和界別利益緊緊扣在一起，局限了妥協的空間。而更重要的是，行政機關繼續壟斷制定政策的權力，議會內不同黨派只需繼續堅持原有立場，好向選民交代，根本沒有需要求同存異，跟行政當局磋商聯合綱領，共同執政。

14. 我們認為，香港現行的政制設計，跟香港的社會和經濟狀況已出現極嚴重的脫節，只有盡快實行普選，才能夠令香港的政制與香港的實際情況相適應，才能夠化解「半民主」政制的內在矛盾。

香港已具備實行普選的客觀條件

15. 根據香港的實際情況循序漸進發展政制時，我們需要處理的另一個問題是，香港是否具備實行某種選舉安排（例如普選）的條件。我們認為，需要考慮的條件，必須與選舉制度有直接關係，並且是可客觀量度或評估

的。某個別參政人士或組織的信念、取向或者當選機會，不應在考慮之列，因為這些是企圖預知、影響或限制選舉的結果，並不符合公平、公正的民主選舉原則。

16. 在討論實行普選時，需要考慮香港是否具備的客觀條件包括籌辦全民選舉的經驗和能力是否足夠、法律和司法制度是否健全，以及資訊是否流通等。自 1980 年代開始至今，香港已有超過 20 年籌辦全民選舉的經驗，而每次選舉過程均大致順利，證明我們在這方面有足夠的能力；此外，香港不僅擁有健全的法律和司法制度，更「勝在有 ICAC」，而且法治觀念深入民心，再加上發達和蓬勃的大眾傳播媒介，香港早已具備實行普選的所有客觀條件。

17. 有的意見認為，由於香港缺乏政治人才，政黨表現有欠成熟，因此不適宜進行普選。這種講法是不合邏輯的，因為，倘若香港真的沒有政治人才，無論用任何方法（例如以小圈子抑或是普選）產生行政長官和立法會，都不可能無中生有，選出治港人才。除非我們認為只有在普選制度下才需要政治人才，而在小圈子制度下可以由庸才治港，否則以缺乏政治人才否決實行普選的論點，是完全站不住腳的。另外一些人認為，香港是有政治人才，但他們不願意參與普選，或未必可以在普選中勝出。這種講法也是自相矛盾的，因為，一個政治人才必須有誠意和能力與民眾溝通，贏取公眾的信任；換言之，如果一個有意從政的人士不願意或者沒有能力跟市民溝通，贏取公眾的信任，這人一定不會是政治人才。倘若有個別人士或政黨認為，本身未有足夠準備或能力參與普選而反對普選，這是最要不得的「輸打贏要」心態。事實上，透過普選的鍛練，反而更有利培養政治人才和政黨發展。

18. 綜合上文第 8 – 17 段所述，我們認為在 2012 年或之前實行兩個普選，是跟香港的社會和經濟狀況協調和相適應，而且香港亦早已具備實行普選的一切客觀條件，亦即符合《基本法》第四十五和六十八條，行政長官和立法會的產生方式，須根據香港的實際情況循序漸進的規定。

## 在 2012 年或之前實行雙普選的準備工作

19. 雖然普選是解決香港政治困局的必需條件，但我們亦得承認普選並不能解決香港所有的管治問題。正因為普選是改善管治的必需但非充分條件，我們更應立即就 2012 年或之前普選行政長官和立法會作出定案，並把握時間，盡早研究普選的具體方案和其他改善管治的配套改革。政府在管



治及政治發展委員會 CSD/GC/2/2005 號文件中，介紹了兩個普選的可能模式，我們嘗試在下文作出初步回應，並提出其他值得討論的相關議題。

### 提名委員會的組成

20. 選舉是包括提名和投票程序，而民主的選舉權利，是包括普及而平等的提名權、被提名權和投票權，因為只有如此，公眾的意志才可在定期的選舉中獲得充分表達。《基本法》第四十五條訂明，提名委員會須按民主程序提名行政長官候選人，說明提名委員會的組成方式，必須體現公民擁有普及而平等的提名權和被提名權的原則。目前《基本法》附件一規定的選舉委員會的組成方式，明顯不符合普及而平等的原則，若以此作為提名委員會組成方式的藍本，是抵觸第四十五條有關「民主程序」和「最終達至普選」的規定。

### 普選行政長官的投票方式

21. 我們需要考慮普選行政長官的投票方式，是採用簡單多數制，抑或是兩輪投票（即在第一輪投票時，如沒有候選人獲得過半數有效票，需要進行第二輪投票，讓選民在第一輪投票中得票最多的兩名候選人中，選出一人出任行政長官）。實行簡單多數制的一個缺點是，當有多名實力相當的候選人角逐時，得票最多的候選人可能只獲少數選民授權，影響當選者的認受性，例如 2000 年台灣總統選舉。不過，實行簡單多數制，亦有利政治立場相近的黨派整合，以避免彼此分散票源、影響勝算。

### 功能組別選舉的未來路向

22. 正如上文第 11 – 13 段所述，功能組別選舉是導致目前政治困局的其中一個最重要原因，我們應盡快廢除這個制度。在未廢除功能組別選舉之前，政府應引入下列兩項改革：

- 擴大功能組別的選民基礎 —— 將公司票或團體票轉為個人票（例如將勞工界的選民基礎擴大至所有註冊職工會的會員），此舉可減低小圈子選舉出現操控或舞弊的可能性；及
- 檢討競爭偏低的功能組別的存廢 —— 在過去 3 屆選舉，有多個功能組別（例如商界二）都只有 1 名候選人，政府應研究這些組別競爭情況偏低的原因，並考慮廢除這些組別或與其他組別合併。

23. 另外，有的人建議，在立法會全面由普選產生時，全部或部分候選人應由功能組別提名，再由選民一人一票選出。這個建議並不符合《基本法》第六十八條的規定，因為普選是包括普及而平等的提名權、被提名權和投票權，由功能組別提名候選人，並不符合普選的原則。

## 兩院制

24. 當局在管治及政治發展委員會 CSD/GC/2/2005 號文件中，花了大量篇幅介紹外國實行兩院制的方式。不過，我們對在港實行兩院制有很大的保留，原因如下：

- 香港立法會只是一個地方議會，一些國家（特別是聯邦制國家）實行兩院制以平衡中央和地方利益的考慮，並不適用於香港；
- 設立上議院的其中一個目的，是希望在少數服從多數的制度下，仍有機制保障少數人的權益，例如英國上議院多次拖延侵犯人權的法案。不過諷刺的是，在香港，由功能組別選出的議員，卻經常支持違反人權的議案，例如支持剝奪港人在內地所生子女的居港權。倘若將來設立的特區上議院，大致上參照現時功能組別選舉的模式，將很大可能無法達到保障少數人利益的目的；
- 倘若上議院全部或部分議員由政府委任，很容易滋生私相授受的問題，令議席淪為政客獎賞親信的禮物，有數百年議會傳統的英國亦深受這個問題困擾；
- 《基本法》並沒有兩院制的安排。根據特區政府過往的行事方式推斷，當局為避免打開修改《基本法》的缺口，又會想盡辦法鑽空子，設計出非驢非馬的兩院制，然後辯稱方案符合《基本法》的規定；倘若不幸言中，這只會為香港添煩添亂；及
- 當局提出研究兩院制，似乎是認為這方案較易獲得公眾和既得利益者的支持，但我們卻認為這個如意算盤很大可能會落空。一方面，如果實行兩院制是讓功能組別選舉借屍還魂，上議院的權力跟普選產生的下議院相若，公眾根本不會接受。另一方面，如果上議院的實際權力有限，並由政府委任德高望重的人士出任議員，即意味大部分現時循功能組別選舉進身議會的人士將會失去議席，這些既得利益者是否支持，是一大疑問。

## 立法會議席數目

25. 除國防和外交政策外，特區立法會需要處理的事務與外國的議會相若，但議席數目卻少得多，令立法會議員需要同時兼顧多個政策範疇，影響議政素質。我們應探討是否需要大幅增加立法會的議席，以分擔議員繁重的工作。倘若最終決定立法會議席數目維持在與現時相若的水平，當局亦應考慮增加議員工作開支的津貼額，讓議員有足夠的支援處理議會事務（目前，25 名泛民主派議員合共所得的津貼額，較工作量最小的政策局（例如政制事務局）一年的經常開支還要少，但議員卻要同時兼顧所有政策範疇，以及處理地區或業界事務）。

## 行政長官和立法會議員任期

26. 現時，行政長官和立法會議員的任期分別是 5 年和 4 年，兩者的改選年份有時只相差 1 年，可能影響政府的立法工作。例如 2007 年行政長官上任後，立法會只剩下 1 年會期，一些較複雜、需用較長時間審議的法案，很可能要押後推出，否則立法會改選後又要推倒重來。我們建議當局檢討是否劃一行政長官和立法會議員的任期，例如自 2012 年起，行政長官的任期改為 4 年。倘若最終決定兩者的任期維持不變，我們亦可考慮取消立法會「換屆」的安排，並引入中期選舉，讓立法會審議法案的工作可以延續，不會因為議會改選而必須中斷。

## 其他配套改革

27. 正如上文第 19 段指出，普遍是突破香港目前政治困局的必需條件，但不是解決所有管治問題的充分條件。因此，我們在研究普選的具體方案時，亦應同時考慮其他有利改善管治的配套改革，包括：

- 行政立法關係 — 例如研究是否需要建立慣例，行政長官須與立法會內的多數派組成執政聯盟，商議共同政綱；
- 促進政黨發展的措施 — 例如容許同一政黨的議員共用工作開支津貼、在選舉期間容許符合某客觀標準（如議席數目達 20% 以上）的政黨進行電視辯論等；
- 立法會及轄下委員會的運作方式 — 例如加強事務委員會參與制訂政策的角色、委員會組成大致反映各黨派的議席分布等；

- 政治任命官員和公務員的分工 —— 例如研究公務員應否繼續參與推銷政策的工作；若否，政治任命官員隊伍是否需要加強；及
- 公務員的培訓 —— 例如實行普選後，可能會出現政黨輪流執政，公務員隊伍需要有足夠的訓練和經驗，以規劃和執行可能截然不同的政策。

## 結語

28. 有關香港政制設計的原則，在草擬《基本法》時已被反覆考慮，並已寫成《基本法》的具體條文，只要嚴格按照《基本法》的條文處理政改問題，即可充分體現這些原則。普選行政長官和立法會是《基本法》訂明的最終目標，證明人大在通過《基本法》時，已確認普選是最能「兼顧各階層利益」、最「有利資本主義經濟發展」，以及最有效貫徹「行政主導」的政制安排。

29. 《基本法》第四十五和六十八條規定，政制發展須根據香港的實際情況循序漸進，意思是指政制設計必須跟香港的社會和經濟情況協調和相適應。現行的政制設計，明顯跟不上香港社會和經濟結構在近 20 年間出現的根本變化，與香港的實際情況脫節，只有盡快實行普選，才能夠令香港的政制與香港的實際情況相適應。此外，香港亦早已具備實行普選的一切客觀條件，在 2012 年或之前實行普選，是完全符合《基本法》第四十五和六十八條的規定。

30. 我們期望管治及政治發展委員會在下次會議起，即開始探討在 2012 年或之前實行普選的具體方案，以及研究其他有利改善管治的配套改革，並在今年 10 月《施政報告》發表前，向行政長官提出建議。

Submission provided by Mr Philip Chen  
on 10 January 2006

(Chinese version only)

有關本月的《策發會》議議程，本人謹建議如下：

1. 實現全面普選，並非政改的唯一內容。在討論香港特區未來的政治發展和改革時，除了研究選舉模式和議會制度之外，同樣重要的是政治架構的設計及運作方法，包括行政與立法之關係等等。現行的模式是否需要作出相應的改革和調整，以達至一個既符合《基本法》規定，又真正適用於香港，並能保持香港的優勢及不違背香港核心價值的政治模式？

（我認為討論香港政治體制改革，不應該單是爭論議會和行政長官的選舉產生方法，還應該研究政治體系的設計與運作，包括行政、立法與司法等機關的關係。否則的話，這個討論將是片面和不健康的。）

2. 我們今後討論政治制度的改革時，應如何保證一些香港長期賴以成功的基本因素及核心價值不會被削弱及破壞？

（這些因素及核心價值應該包括以下多點：

廉潔及高效的行政運作  
嚴謹及公平的法治體系  
個人權益和選擇備受尊重  
政府提供具競爭力及可持續發展的投資環境及平台  
靈活及具高度適應性的經濟活力  
具備國際城市的條件等等

故此，香港的政治發展和改革，必須以這些核心價值作為依據和準則。任何削弱這些價值的決定，即使一時間會為部分市民所接受，但最終將對香港造成不可逆轉的損害。香港目前與周邊地區及國家處於競爭劇烈化的階段，作為真正對香港負責任的政府，在這個問題上必須小心謹慎。）

(Chinese version only)

#### 四. 建立行政向立法負責的關係

在現時的政治架構下，政府是「有權無票」；政府在立法會推銷政策時，除了政治議題可靠中央政府干預，由保皇黨為政府「護航」外，其他的社會政策，政府只能向立法會各政黨及議員逐一求票，沒有穩定的“票源”可讓政府順利施政。

但是，立法會也好不了多少，它是「有票無權」，當立法會通過議員議案或議員法案時，政府又不會承諾執行。有時，政府更會拒絕提供議員需要的資料(近期例子有西九文娛藝術區發展計劃)。凡此種種，都反映出行政機關並不尊重立法機關，甚至不願意向立法機關負責，令行政立法關係相當惡劣。

要體現行政機關向立法機關負責的關係，政府應盡快落實問責制度。我們建議要逐步建立一套憲制慣例，當立法會通過對政府或問責官員“不信任”議案時，政府或相關官員便需要自動辭職，以及政府盡量接納立法會通過的法例及議員議案，據此制訂政府政策。我們並建議政府制訂《資訊自由法》，規定政府及公營機構須公開它們擁有的資料和文件，確認公眾知情權，增加政府透明度。

其次，現時《基本法》附件二規定，議員議案需經分組點票，並在兩組別的投票中分別取得過半數通過。這規定令議員議案難以通過，扭曲民意之餘，亦令立法會無法有效監察政府。我們建議取消分組點票制度，令立法會有效監察政府。

現時《基本法》第七十四條規定，議員提草案的權利大受限制，包括凡涉及政府政策，在提出前必須得到行政長官的書面同意。這規定令議員難以提出議員議案，推行議員倡議的建議，窒礙議員參政。我們建議取消第七十四條的部分限制，令議員可像以往一樣提出議員草案，推動民意支持的立法建議。

民主黨建議當立法會通過對政府或問責官員“不信任”議案時，政府或相關官員便需要辭職，加強問責制度；制訂《資訊自由法》，增加政府透明度；取消分組點票及《基本法》對議員提案權的部分限制，以建立互相制衡的行政立法關係。



策略發展委員會  
田北俊委員  
2006.1.20 發言稿

(Chinese version only)

(由於田北俊委員離港公幹，以下由李大壯委員代表宣讀。)

1. 自由黨一向認為，本港的政制發展需要符合三大基本原則：均衡參與、循序漸進以及合乎香港社會的實際情況。這些都是人大和《基本法》，為香港政制發展所定下的基本原則。
2. 其實，五號報告書所提出的政改方案，已經在這三大原則之間取得了很好的平衡，但很可惜遭到泛民主派議員的否決，令 07 年行政長官和 08 年立法會的產生辦法，未能向前發展。
3. 根據香港研究協會在事後所做的民調發現，51%市民對政改方案遭到否決感到失望，58%受訪者對反對政改方案的做法感到不滿，51%認為會影響香港的民主進程。中大去年 12 月底完成的民調，亦有 41.3%受訪者認為香港的民主步伐將因此而「減慢」。而自由黨在政改方案遭到否決後，亦第一時間做了一次民調，由去年 12 月 22 日一直訪問至 30 日，共訪問了 2,798 名市民，41.2%被訪市民認為，政改方案被否決，會阻礙香港的民主發展，只有 19.0%認為有利民主發展。可以見到，政改方案被否決，感到失望的市民是佔多數的。
4. 而在自由黨同一項調查中，47.6%受訪市民認為，政改方案被否決「泛民主派」應該要負上最大責任，這一項調查的結果，所代表的社會態度是不容大家忽視的。
5. 既然有這麼多市民對政制發展原地踏步感到失望，也認為泛民主派應該負責，我們希望泛民主派人士，能夠好好利用策發會這個平台，跟各界人士就政制如何向前推進，衷誠謀求共識，不要令市民再度失望。
6. 對於政制發展，自由黨認為始終要依循開首所提及的三大基本發展原則。首先，在均衡參與方面，我們要確保社會各界別、各階層，都有均衡的參政機會，尤其是確保工商界的意見和訴求得到公平反映。

7. 其次，循序漸進方面，我們認為由於立法會的選舉較行政長官複雜，所以應該先處理普選行政長官的問題。況且為着鞏固行政主導的原則，並加強特首的認受性，自由黨期望，最快可以在 2012 年達到《基本法》規定，經過一個具有廣泛代表性的提名委員會提名，普選產生行政長官的目標。至於全面普選立法會，則可以分階段逐步處理，向最終達致普選的目標進發，過程中必須顧及其他配套的發展，與及議會中應有的制衡，以防民粹主義引致不理智的後果，包括大派免費午餐等。
8. 至於實際情況方面，我們認為應該顧及多方面的因素，例如怎樣達至一個健康的行政立法關係？再者，社會是否有足夠的政治人才執政議政，而政黨又是否做好準備等，都是考慮政制如何向前發展的同時，不可忽略的重要因素。
9. 展望將來，除了策略發展委員會可以作為一個平台，讓社會各界就普選路線圖和時間表的問題謀求共識外，特區政府也要努力爭取中央的支持，因為香港的政制發展不單是香港的內部事務，《基本法》作為全國性法律，政制發展牽涉到《基本法》的修改。且按人大常委前年四月釋法的決定，首先會由特首向中央提交報告，只有中央認為有需要修改的前提下，修改基本法的機制才能夠正式啟動。所以，沒有中央的同意，香港的政制是難以穩步向前發展的。
10. 對於香港的政制發展未能向普選邁出重要一步，自由黨也和大部分市民一樣，感到非常遺憾。不過，我們仍然會積極努力創造條件，好讓香港可以早日實現雙普選。例如自由黨將積極參與 2007 年底舉行的區議會選舉，鼓勵工商界參政，身體力行，創造環境，推動香港的民主發展。
11. 所以，自由黨希望，社會各界、各階層也能夠更多進行理性、務實的探討，更廣泛地凝聚共識，更多、更積極地創造有利條件，好讓香港的民主能夠不斷地發展，也好讓香港能夠早日達到《基本法》所規定，最終達至雙普選的目標。

(1,380 字)



(Chinese version only)

## 香港政制民主化的困難與出路

劉迺強

從上世紀八十年代中期，中央設計界定九七回歸之後在香港實行制度的《基本法》，在香港進行諮詢開始。政制的設計，主要是要解決兩個問題：一個是中央和特區關係，另一個是香港內部的權力和利益分配。前者主要關乎特首的產生，後者則是與立法會議席選舉的主要考慮。

因為在改革開放剛開始時，整個中國近九成的貿易和創匯都通過香港，中國根本沒有打算改變香港的現狀。很明顯，英國人看透了中國這一弱點，趁中國最需要香港配合改革開放總策略的時候，於一九七八年派當時的香港總督麥理浩訪問北京，向鄧小平提出要解決香港前途問題。實用主義傳統的英國人萬萬想不到中國領導人會死抱民族主義原則，堅持要於一九九七年收回主權的。但是當時中國處於被動狀態，就把本來打算實施於和平統一之後的台灣的「一國兩制」模式，急就章的首先套用在香港。在最初「一國兩制」、「港人治港」的粗糙構思中，收回主權就是簡單的「換國旗、換總督」，而以中國當年對資本主義的簡單理解，資本主義就是資產階級統治，在本地華人大資本家中間找一個人出來，委任他出任特別行政區的首長，便是「港人治港」。中央政府萬事待舉，自顧不暇，也根本不懂怎樣管治一個現代化的資本主義國際城市，所以完全不想介入香港事務，未來的特別行政區的首長，就像當時的總督一樣，大權獨攬，行政主導，實行「高度自治」。

這一想法明顯是脫離香港的政治現實。首先，資本主義社會從來都不會由大資本家赤膊上陣，自己來當首長管理的。對資本家來說，他們最重要的目標是賺錢，錢權勾結，也是為賺錢服務，自己坐莊，機會成本太高。況且香港華人大資本家誰也不服誰，彼此處於競爭狀態，任何一方出來掌權，其他華人財團都會認為有損其利益，大力反對。雖然資本家對此方案興趣不高，但中央從未放棄這思路，而許家屯在回憶錄中說，他在上世紀八十年代來港出任新華社社長，其中一個重要任務是團結和培植華人大資本家和他們的下一代。顯而易見，董建華、吳光正、唐英年等，都是這一政策的成果，並且形成了回歸八年「商人治港」的局面。「商人治港」成績如何，大家已經有目共睹。

鄧小平大概預料不到的是，當中國決定收回香港主權，實行「一國兩制，港人治港」的決策在港公佈之，不但「投資者」表示不「放心」，市民之間的主流意見竟然是支持英國殖民地政府繼續管治至一九九七之後。這主要是因為當年香港市民主流是反共的，而且「文革」剛結束，由一個七十多歲的老共產黨員主持的改革開放才開始，荊棘滿途；大家對中國的前途，中共政策會否反覆，都沒有信心。而且因為當時中國貧窮落後，香港有的是錢，所以不少人提議向中國進行贖買。

英國交出香港和九龍的主權，以換取香港、九龍和新界治於九七之後的治權，延續殖民地管治的壽命。當時非親共的只主流社會中，只有前大學生學運中「社會派」分子組成的新成立論政團體「匯點」，以及港大學生會。兩者都要求「港人民主治港」，港大學生會更去信當時的國家總理趙紫陽，直接提出這主張，並且得到總理正面的回應，承諾九七之後會實行民主治港，更清楚表達這將會是西方的民主。「民主」這旗幟一揮動，給戰後新一代港人知識分子很大的鼓舞，和給予「匯點」等人數以十計的報章地盤與反對收回主權的論者筆戰很多彈藥，終於在輿論上大獲全勝，壓倒了反回歸的氣勢。而中央亦信守其承諾，「港人民主治港」這原則，一再在《中英聯合聲明》中方文本和後來的《基本法》中具體落實。

通過民主制度，落實「港人治港，高度自治」，就牽涉到政制和選舉方法的設計。我們要明白，中英談判時在中央領導層心目中的「行政主導」，亦即是一九八四年港英推行「植根於香港」的代議政制之前的殖民地模式。港督會同他委任的行政局議員作決策，立法局過半議員由官員出任，少數「非官守議員」亦全部由港督委任，基本上只是一個諮詢機構。行政立法的關係是諮詢和配合，而非監督和制衡；兩局議員聯合設辦事處。「行政主導」也者，基本上是港督說了算，行政局議員的少許制衡作用，也只是保障英國的宗主權和利益，與市民利益無關。市民如有任何非份之想，很快便會碰到如政治部、警察、移民局、稅務局、廉政公署等一大堆專政工具和《公安法》等峻法的鐵腕。在一九八四年《中英聯合聲明》簽署之後，港英政府有步驟地把這個「行政主導」的配套架構拆除。中方指責英方於九七年前大變，然後要求九七之後不變，但英國在十三年過渡期間，從未改變其既定的撤退部署，而中方亦無奈之何。

當時的「民主回歸派」組織如「匯點」和「新香港學會」等，都主張在九七年實行全面普選，並要求自八四至九七這十三年過渡期中，中英政府和香港市民都要做好各種相關的配套和準備（亦即等於今天炒得熱烘烘的「路線圖」），向九七倒數叩接。這些組織更不約而同的建議未來政制應採英國「西敏寺模式」，亦即是由取得立法機關的多數黨議員組閣，並由多數黨議員互選特首的間接選舉制度。今天回頭再看，這依然是一個簡單容易操作，而且由此產生的特首素質較有保證的制度。因為根據這個制度，特首是由他的多年共事的同輩小圈子選出來，他們在投票時，深知候選人的德才長短，而不像現時反對派要求的一人一票直選特首，選民只憑候選人在近一個月短短競選期間，以大量資源營造出來，許多時跟事實有很大距離的形象來投票，結果十分不可靠。

「西敏寺模式」今天看來最明顯的優點是執政集團已經佔了立法機關多數，政府的法案一定能有足夠票數通過，因而更能體現「行政主導」的原則，能夠保持回歸之前港英政府的效率。但吊詭的是，因為特首由立法機關中產生，這個實際上更能體現「行政主導」原則的制度，表面上卻是「立法主導」的。而且真要有效

運作，更要求政黨政治。眾所周知，「立法主導」和政黨政治，長期都是禁區，結果便採取了接近美國總統制的政體。

表面看來，美式統總制的首長權力十分大，而且香港的特首，除了在國防外交事務上無權過問之外，在處理香港本地事務，比美式統總權力更大。這主要體現在兩方面：在日常立法，承襲港英政府傳統，法案草擬權全部掌權在行政部門手上，立法會議員的「私人法案」局限性十分大。在非常時期，香港的行政長官可以在立法會不通過其提出的重要法案之後，解散立法會，而在重選之後的新立法會仍然不通過其本來的法案之後，才要自動辭職。在《基本法》中，完全沒有對特首罷免的機制。但在實際的執行層面來說，美式總統制恰恰就落於鄧小平害怕的「三權分立，互相制衡，互相扯皮」的構陷。事實上，美國的政制設計，本來也是想避免通過政黨運作的，但實踐下來，沒有政黨不行，結果成了兩黨制。即使如此，美國的行政立法機關的關係也不穩定，於甲黨執政，但乙黨在議會中佔多數時，曾經出現多次財政預算未能及時通過，連公務員的薪水也發不出，政府部門被逼關門數天的僵局。最近一次，就在克林頓第一任時發生。可見美式總統制，縱使在美國本土運作了二百多年，在兩黨政治成熟的狀態，也不易運作，更何況香港這政治幼嫩、情況複雜、政黨不成熟的環境？再加上香港這個美式總統制是在一個特首與政黨絕緣的環境之中運作，再加上立法會直選議席採取比例代表制，即使他日全部議席由直選產生，也不可能有任何一黨能佔超過一半議席；行政部門提交立法會審議的法案，完全沒有保證能得到立法會足夠票數通過，亦不可能只與一黨合作，結執政聯盟。

另一方面，因為執政與政黨政治絕緣，各政黨和政客只能局限於在立法會中發展，永無坐莊執政的日子。議會的功能只在於監督制衡政府，立法會議員們成了永遠的反對派；更因為他們毋須為其反對的理據和後果負責任，所以更慢慢養成了為反對而反對的歪風。議員只要罵政府、投反對票，就受市民歡迎，就容易再當選；行政部門要做事的話，大錯難免，小錯不斷，尤其是在經濟不景、特首和政府部門民望低時，支持政府的，成了「保皇黨」和「票房毒藥」。行政立法關係型成了結構性的對立，朝小野大的局面長期化。再加上因為行政長官要由中央任命，向中央和香港市民負責，反對派更往往以打倒這代表中央權威的象徵為務，成了逢中必反、逢特首必反的局面。

這樣的政制設計，要求一個毫無政治經驗、沒有政黨關係的商人或其代理人，在只有數十萬個選民的薄弱基礎中產生，能在一個複雜的環境中，駕馭一個有一百五十年殖民地傳統和一套僵化了的思維和工作方法的公務員系統，面對以監督制衡為務的立法會和當中一部份反對派議員，擁有廣大受眾，但以嘩眾取寵為務的傳媒、以及民主意識，和對政府施政要求日高的市民，但手上卻早沒有以往殖民地政府的專政手段，如何實現「行政主導」，的確是一個難度極高的挑戰。有學

者斷定，「行政主導」已經一去不能再返，特首政府大不了只能做到「行政主動」，並且做出實事。這大概就是曾蔭權上任以來宣稱的「強政勵治」。

面對這一困局，現在採取的方法是選公務員出身的曾蔭權來代替過去毫無政治經驗的董建華來當特首，嘗試通過提高行政部門對社會事態作快速反應，以及其執行力，做到議而能決、決而能行、行而有果，並且降低行政失誤，提高政府管治能力的「勵治」，以特首和問責官員的高民望，以及短期只推行少爭議性的政策，得到市民的普遍支持，達到反對派議員如反對特區政府和它所推行的政策，等於間接與民為敵這「強政」的效果。

在目前的情況之下，這大概是最快能收效的對策。在最近政改事件中，初步顯示了「強政」的威力。政改方案得到超過六成市民的支持，雖然在反對派廿五名議員綑綁的策略之下，不獲通過，但反對派卻因此要為拂逆民意而付出巨大的代價，民主黨主席高呼「進入漫長嚴冬」。

但是香港的行政長官如長期得不到市民一次性的通過選舉程序，對他在任期之內作出無可爭議的認受，而只憑飄忽難以捉摸和維持的民意，為其政策作個別性和非正式的背書，「強政」也很難長期維持。理想的行政主導，要嗎特首能像以前的總督一樣，他的權威認受是外來的，香港沒有人能加以質議。雖然反對派聲稱香港特首是「中央委任的」，甚至是「由英國殖民地轉變為中國殖民地」，但根本不是這樣的一回事，香港特首沒有這樣的外來權威認受。另外一個可能性是像新加坡政府，首長是由市民以一人一票，在公開、公正、公平的選舉中，高票產生，其認受性十分穩固的確立，他可以直面反對派：「我是由三百萬個香港市民授權我推行我的政綱的，我就代表了市民的意志，你若反對我推行的政策，便是反市民。我若做得不對，下次選舉，市民自會投票給別人，讓我下台，現在輪不到你來阻擋，請讓開。」這才是理想中的「強政」。但是在香港目前的體制之下，立法會議員同樣也可以說：「我是九萬名市民選出來的，要是他們不同意我投反對票，下一次選舉時可以不選我。」

這說明了，在目前的政制底下，甚至特首在一人一票中高票當選，也難以「強政」，反對派的「普選萬能論」可以休矣。況且「行政主導」的目標，並非單單是「強政」，最終的意義是不論對內對外，行政長官是香港特別行政區的唯一代表，而並非像美國，行政和立法機關都代表美國，許多時有如兩個政府。中央於委任行政長官之後，只認他一個人，與特區的往來，理想的做法基本上是只通過行政長官。最近的政改，反對派認為這只須立法會三分之二通過，交中央批准及備案便成，完全是香港內部的事情。這是完全不了解「行政主導」的原意，因為不管反對派如何理解，根據《基本法》，政改法案並非由立法會自把自為，一定要由行政部門草擬，而且事先要與中央溝通，就政改修改，是否有「必要」達成共識。

這簡單而清晰的原理，反對派竟然故意裝作不懂，鬧到滿城風雨，最後要人大釋法，非常具體的定了整個過程的程序，於是反對派又說中央以釋法為名，實際上修改了《基本法》。對外事務也是一樣，只有行政長官一人能最後代表香港，他說了算，其他人都不算。

根據在內外只有行政長官一個人能代表香港這種「行政主導」思路，行政長官是中央授權實際掌握香港政權的人，地位非常重要和關鍵。中央在委任之前，一定要十分慎重的把好這一個關，所以自始至終，都堅持對行政長官「實質性任命」。那即是說，中央要把好關，這主要包括品格審查和政治審查。品格審查表面上比較簡單，並且素有既定程序，市民一般接受。在政治審查方面，特首一定要是鄧小平所說的「愛國者」。而根據二零零四年初在香港進行的一輪圍繞著「愛國者」的論爭當中，我們可以發現中央對「愛國者」要求的底線只有三條：不能鼓吹「結束一黨專政」，意圖或企圖顛覆內地社會主義這一制；不能與外國反共反對勢力勾結，損害國家民族利益；不能支持台灣獨立，分裂國土。這三條底線不但簡單、合理、而且寬鬆、易明。事實上，我們不但難以想像任何一個違反了這任何一條底線的人應該當上特首，而且可以試想，一旦台灣當局搞修憲獨立，香港特首如公開聲言這是合理行動，並且會得到香港廣大市民的祝福的話，將把中央置於何等尷尬的地位；今天依然擁有英國爵位的曾蔭權於二零零四年當上了香港行政首長，這事實雄辯地證明中央的底線是何等寬鬆的。

但是在候選人毋須自我申報，而中央在香港又沒有調查、核實等機制的情況之下，中央落實品格和政治審查也有一定的難度。雖云中央堅持對特首進行實質性任命，亦即有不任命的可能性，但是《基本法》這有關條文實行起來，便意味中央與香港選民的意志對抗，香港立即進入十分嚴重的政治危機。尤其是當有了全民直選之後，中央否決一個由香港市民一人一票選出來的特首，除非有能公開和有明顯說服力的理由，不然的話，「高度自治」又如何說得過去？因此，以中國人傳統的做事作風，這一條殺著說到底只可能備而不用，中央一定要事先保證由香港市民選出來的行政長官是它能接受和任命的。

《基本法》規定，將來香港行政長官由普選產生時，候選人是由一個提名委員會提名的。換句話說，提名委員會已經就候選人的品格和政治要求先把了關，將來不管那個候選人勝出，中央都能接受和任命。可以想像，提名委員會如何構成、提名的要求如何、提名委員是否擁有足夠資訊去把好這個關等，都會是下一階段政制發展的爭論重點。由此觀之，行政長官普選產生，還需要經過一番周折，以及起碼有如《國家安全法》、《政黨法》、《政治捐獻法》等法律及其他必要配套建設，才能具體實施。

話說回來，如上分析，既然美式總統制操作起來問題多多，我們是否可以趁現在

這個轉折期間，從新考慮類似英國西敏寺模式的政制呢？值得指出的是，目前我國內地實行的政制，國務院總理和內閣成員，是由全國人民代表大會選出和任命的；省市級領導，同樣由該級人大選舉產生。香港實行接近的制度，短期有利保證行政長官的素質，有利行政立法協調，長遠來說，更有利與國家體制接軌。不過這一巨大的轉變不單要在香港市民和中央之間取得共識，更需要對《基本法》作大幅度的修改，難度也是很大、很大。

假定保持政制維持美式總統制不變，立法會的改革只在於如反對派的訴求，局限於何日全面實行普選的話，考慮的問題其實不比行政長官選舉簡單。行政長官代表的是中央和香港整體利益，這比較簡單和容易處理。立法會中的每一個議席，都分別代表不同的利益，任何轉變，都是一場權力和利益的再分配，必然有一些人得益，也同時有另一些人利益受損害，基本上是一個零和遊戲。受損者必然會抗拒轉變，甚至進行抗爭和抵制。形勢更加複雜的是香港的立法會中，有一半是功能團體議席，這裡每一個議員都明顯的代表香港某一種利益集團，很容組織反對聲音。走向立法會全部議席由普選產生，亦即意味著功能團體議席全部消滅，這些利益集團在議會中再沒有專注的代理人去保護他們的特殊利益。這些功能團體議員，不管在公在私，都要盡量拖延立法會全部議席由普選產生的實現。最近政改方案被否決這不幸事件說明，任何改變，要得到立法會三分之二多數通過，是何等困難的事情；再想想要求三十個功能團體議員當中有十一個投票贊成自我毀滅，便知難度如何了。

去年底香港特區政府提出的政改方案，是一個基於種種現實考慮之下的過渡方案。它嘗試以區議會議員互選產生的議席作為功能團體議席，逐步取代傳統功能議席；下一步可能的發展，是把區議會這些分區間選議席，再改變為分區直選議席。無論如何，根據循序漸進這政制發展原則，某種過渡性安排看來是無可避免的，時下議論得最多的是「兩院制」。

「兩院制」在《基本法》草議時曾經討論之後沒有被採用。於兩年前由我重新提出，後來香港工商專聯亦分別作出類似的建議，最近在行政長官直屬的「策略發展委員會」中，被列為一個討論方案。按道理說，香港一個城市，毋須多搞一層議會，因此在《基本法》制訂期間，「兩院制」被修改為直選議席和功能團體議席分別投票的機制。如要再實行「兩院制」，便要修改《基本法》多條條文。以上基本是目前反對「兩院制」的主要論點。這些論點，提出「兩院制」的人都明白，但是經過回歸之後八年的實踐，我們更明白某些利益，包括中央在香港的利益，是需要長期受到保障的。目前的機制是通過功能團體議席來保護，但現在功能團體的議席面臨萎縮，最後要消滅，這些利益需要以某種新的方式來保障。另一方面，功能團體議員在立法會及其屬下的委員會中的參與和出席率都一向偏低，在將來退縮的過程中，更明顯是次等議員的地位，積極性更會日趨下降，是

否有足夠的力量和意志去履行其保障特定利益的任務也成疑問。

香港工商專聯的兩院制方案，主張把功能團體議席改為立法會上議院議席，立法會下議院便可馬上實行全面直選。上議院十分清閒，只對政制改革和中央特區關係有關法案進行審議，對下議院的決議有否決權。到某一階段，上議院解散，全面落實《基本法》立法會全部議席由普選產生的要求。這方案分兩個階段消滅功能團體議席：第一階段功能團體議席數目不變，職能萎縮，第二階段取消功能團體議席，目標只在於順滑過渡，中間採取迂迴方式。

我提的兩院制方案，是正面承認香港某些利益，包括中央在港的利益，需要得到長期特殊保障，兩院制將會長久存在。因此，上議院會有較廣泛的否決權，起碼包括上述的政制改革和中央特區關係有關法案、下議院議員私人法案和其他目前需要三分之二議員通過的重要法案。為了達到最終立法會全部議席由普選產生的要求，其中一個可行的辦法是上議院議席分別由不同功能組別提名，一人一票選出。這樣一來，大有可能毋須修改《基本法》。

香港自回歸以來，政制出現的各種問題，和政制改革的種種波折，歸根到底都在於香港市民對國家認同有分歧。台灣的經驗證明，市民在這一個最基本問題之上沒有共識的話，全面實行一人一票普選，社會將被撕裂。嚴重政治內耗不但扭曲了民主的過程，同時也拖慢了經濟和社會的發展，整個社會被泛政治化和鼓吹對立和仇恨的民粹主義折騰得奄奄一息。這是香港最基本的深層結構性矛盾，可幸的是香港的病態比台灣較輕，但這矛盾不會在短期內得以順滑消弭，香港的政制民主化改革，因此將不能一蹴即就，需要一個稍長的和解過程。在今天，香港政制民主化的速度掌握在反對派手中，他們早一點接受共產黨在中國的執政地位，接受香港是中國的一個部份，並且接受無可避免的互相影響，香港的民主化步伐便會加速。

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(Chinese version only)

策略發展委員會  
管治及政治發展委員會

有關普選原則和概念討論的總結

民主黨主席 李永達

引言

今次會議是就委員會過去討論有關普選原則和概念的內容作總結，以為策發會下半年展開有關行政長官和立法會普選制度可能模式的討論奠下基礎，使策發會可於明年初就上述兩個普選制度可能模式的討論作總結。

為此，民主黨必須重申我們對普選的立場，以及提出民主黨對普選行政長官和立法會的具體方案，讓委員會日後可詳細考慮民主黨建議的行政長官和立法會普選產生辦法。

特區的政治制度

就姬鵬飛主任提出的四項有關政制發展的原則，包括兼顧社會各階層利益、有利於資本主義經濟發展、循序漸進及適合香港實際情況，我們認為這與普選並無衝突。《基本法》已確立最終達致普選的目標，即已肯定普選符合有關四項原則。

就「兼顧社會各階層利益」而言：環顧世界各地的民主國家，由普及而平等的選舉制度產生出來的政府及立法機關大都可以兼顧資本家、專業人士及基層市民等各階層的利益，反映他們的意見，為推動社會發展謀福祉。

就「有利資本主義經濟發展」而言：先進國家包括美、英、歐洲多國、日本、南韓等均實行民主制度和資本主義經濟，近年英國工黨政府上台，亦已放棄福利主義，可見普選與資本主義經濟並無衝突，反而由於民主社會在法治水平、政策持續、社會穩定方面相對較優勝，往往吸引更多投資，有利經濟發展。

從香港實際情況考慮，善用政府稅收以提供社會建設及公共服務是社會共識，港人亦普遍接受「低稅率和簡單稅制」及「量入為出」的理財原則。香港人一向勤奮拼搏、自食其力，社會固然有小部份不幸的人士需要政府提供福利，但很難相信，以福利主義為綱領的候選人或政黨能獲得多數市民支持。

民主黨透過普選進入議會，我們主張政府減稅，逐步將政府資產私有化，例如出售領匯、機場、五隧一橋，福利開支則維持合理水平，公共開支維持在本地生產總值 20% 之下。以今年度財政預算案為例，民主派以至其他政黨均沒有要求政府大幅增加福利開支，只是批評政府撥款一億元扶貧極不足夠。職工盟李卓人倡議撥款三億元的交通津貼，也是鼓勵就業的措施，並非福利主義抬頭。



我們相信普選只會對善用政府資源，「小政府、大市場」構成壓力，而非走向福利主義。

就「循序漸進」而言：自 1982 中英談判至今，民主政制已發展二十多年，區議會從當初沒有民選議席，逐步加入民選議席，到回歸前已取消全部委任議席。立法會亦是逐步發展到回歸前已全部沒有委任議席，只是仍有功能議席有待取消。

從正常的民主發展路向來說，香港在回歸後理應順利成章取消區議會的當然議席、立法會的功能界別，以及制訂行政長官由普選產生的政治體制。回歸後，由於有《基本法》的規定，行政長官和立法會的普選前路受到限制，五年、十年仍未能有進展。到 2012 年，將是回歸十五周年了，走了三十多年民主路，實無理由仍以「循序漸進」為藉口，阻撓香港實行普選。

就「香港實際情況」而言：一方面，目前的小圈子特首選舉及功能組別選舉制度欠認受性，社會各階層利益和矛盾無法妥善處理，例如廿三條、政改、西九等議題，政府均無法取得足夠票數，打擊政府管治。另一方面，香港經濟發展成熟，享有法治和言論自由，社會廉潔和港人教育水平與民主國家相若，實際上早已適合全面推行普選。

因此，就算在兼顧上述四項政制發展原則之下，廣大市民的共識仍然是盡快有普選，特區應盡快確立一個民主憲制的政治體制，讓香港人可透過公平、公開及公正的選舉制度，選出港人屬意的行政長官和全體各級議員，落實《基本法》承諾給港人高度自治，而不是拖延普選。我們認為，最遲到 2012 年香港也要落實普選行政長官和立法會，才能符合港人的期望和市民的訴求。

## 普選的原則和概念

民主黨重申普選的概念應包括「普及」和「平等」的原則，港人應有權在公平、公正及公開的選舉中投票及被選，自由選擇我們的政府及民意代表。

就政府首長而言，不論是在君主立憲或非君主立憲的國家，負責管治國家的政府元首都由選舉產生。雖然普選方式不同，共通點是國民有公平的選擇權利，或是直接透過選舉，或是直接透過選舉國會或地方議會或選舉人作為代表，以選出管治社會的領導。

就立法機關而言，在單院制的國家，除新加坡的國會仍保留部分官委議席外，新西蘭的議院全部普選產生，一票是選區選票，一票是政黨選票。而在兩院制的國家中，大部份海外國家包括美國、法國和日本的上、下議院都是由選舉產生，只有英國和德國的上議院由委任產生，而下議院亦是一人一票或一人兩票直選產生。

雖然各國的普選方式不同，共通點是國民有公平的選擇權利，或是透過直接選舉，或是透過選舉國會或地方議會的代表，以

選出立法機關代表他們訂立法例和監察政府。

我們同意不應將任何特定的選舉制度強加於任何地方，但就香港而言，若我們要落實推行普選，我們必須取消目前的小圈子式選舉制度，包括只有 800 人的選舉委員會才有權投票選出行政長官，以及只有二十多萬人的功能界別便可選出 30 名立法會議員的制度，以讓廣泛的香港人可透過公平的選舉制度，選出行政長官和立法會全體議員。

世界各地尚存功能界別成分的議會，只有愛爾蘭及斯洛文尼亞。愛爾蘭的國會憲法委員會已先後發表多份報告，指出用行業元素的做法不切實際，並建議摒棄功能團體代表的概念。愛爾蘭政府已成立工作小組推動報告的建議。

香港的功能界別選舉制度長久以來備受社會批評，有指功能界別的定義欠缺公平和客觀的準則，難達到均衡參與的目的；有指功能界別選舉本質上是選行業利益代表，而不是選行內專業。最大問題是造成市民權利不平等，票值不平等的情況，有些人可以有兩票、三票，而大部份市民只得一票。功能界別選民基礎狹窄，造成認受性及代表性的問題，幾十至幾百人選出來的代表，卻可與數萬至數十萬人選出來的代表共同透過投票，影響所有政策。

早於 1995 年，聯合國人權委員會已指出香港的立法會功能界別選舉制度不符合《公民權利和政治權利國際公約》第 2(1) 條，第 25 條及第 26 條。因此，我們認為應盡快取消功能界別，落實普選的選舉制度。

### 行政長官普選模式

就未來的行政長官普選模式，民主黨建議由立法會作為提名委員會，另由一人一票選出行政長官。

《基本法》第四十五條訂明：「行政長官的產生辦法根據香港特別行政區的實際情況和循序漸進的原則而規定，最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生的目標。」

讓立法會議員負責提名工作，優點是立法會議員具廣泛代表性，可代表市民的意願。其次，這可改善行政與立法關係，藉着行政長官候選人須得到立法會議員提名，確保行政長官候選人在提出選舉承諾時須顧及立法會議員的意願。

具體而言，我們建議五名立法會議員便可提名行政長官候選人，每位立法會議員只可提名一位候選人，因此候選人數最多為十二人。一個「門檻」較低的提名方法，可容許更多社會人士有機會參與競選行政長官。詳見〈民主黨對特首產生辦法的建議〉。

### 立法會普選模式

就香港應採用何種議會制度而言，我們認為香港作為中國的一個地方特別行政區，特區立法會採用單院制的簡單模式比較適合，港人亦易於適應和接受。

就未來的立法會普選模式，民主黨建議採用混合模式，由市民一人兩票選出全體立法會議員，即半數由單議席單票制的地方分區選出，半數由比例代表制的全港選區選出。

在這模式下，立法會全體議席平均分為兩組，第一組是單議席單票制，全港按人口比例基於議席數目劃分為若干個分區選區，以單議席單票制選出議員；第二組是比例代表制，全港為一個大選區，以比例代表制選出立法會半數議員。

這模式之優點是透過在選舉制度中採用比例代表制，有利少數政黨或組織或獨立人士，包括工商界、專業人士、弱勢社群等均有機會參與名單制選舉，並有機會當選，以達到均衡參與的目的。詳見〈民主黨對立法會產生辦法的建議〉。

民主黨

二零零六年五月

Submission provided by Ms Wendy Chow  
on 26 June 2006

Annex 7

(Chinese version only)

致：管治及政治發展委員會主席及各委員

本人未能出席今天下午的會議，因此以書面表達本人對普選立法會的概念和原則，以下兩點意見：-

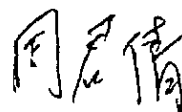
1. 概念 - 我們討論的是普選立法會，並不是普選政府，基本法已明確規定立法會最終由普選產生，而立法會的職能及權限在基本法第73條已清楚列明。普選立法會的概念也不能偏離基本法的規定，那就是說普選立法會其中的一個重要概念是：立法會最終由普選產生以履行其在基本法第73條下的職能及權責，而並不是普選立法會管治香港。

現行的基本法並未授予立法會管治香港的權力，也不包括立法會運作為影子政府的涵義，因此政黨政治，行政長官候選人應否退黨等討論與立法會在現行基本法規定下的職能及權責有著微妙的關係。

2. 原則 - 因立法會肩負基本法第73條的責任，因此立法會必須有廣泛代表性，以反影及顧及各階層的利益及保持香港繁榮穩定。其它在策發會文件編號：CSD/GC/6/2006所討論的，本人也是認同。

本人也認同上述策發會文件第二十三項所述的「普選」概念。但是如何落實普選、制度的設計、一人一票、兩院制或其它的討論，本人認為必須顧及並以上述的概念及原則為依歸以附合現行基本法的規定。

此致



周君倩

2006年6月26日

Extract from submission provided by Mr Tam Kwok-kiu  
on 19 July 2006

(Chinese version only)

建議方案二

26. 就廣泛代表性而言，立法會作為民意機關，其龐大地方選民基礎，代表性實不容置疑，以它作為將來的提名委員會，亦是另一個可行方案。

27. 民協建議以全體立法會議員組成將來的提名委員會，此舉既符合廣泛代表性原則，委員會成立的過程亦相對清晰和簡單，基本上只借用現有選舉機制，而無須另闢多重選舉，減低社會成本，令資源更有效運用。此外，對政黨政治發展，同時產生積極和正面的作用，而現時行政和立法的緊張關係，亦可透過此提名過程得到調解和紓緩，重新建立相互配合和協調關係。

28. 就提名程序方面，民協建議要正式成為行政長官候選人，最少要獲得10%(即6名)立法會議員的提名，而每一位立法會議員只可提名一位候選人，因此候選人數目最多只有10人。採取這種較低門檻提名的方式，既可為社會各界和不同政治背景的人提供參選機會，亦符合《公約》提出保障市民有被選舉的權利。

29. 同樣亦要取消現時規定政黨人士在獲選為行政長官後必須退黨的做法。

30. 正式獲提名委員會提名的候選人，會經由全港合資格的選民，以「一人一票、簡單多數票」方式選出。獲選者最後經中央人民政府任命，正式成為特區行政長官。

31. 上述提出行政長官普選模式方案，既符合《基本法》中廣泛代表性原則，以及《公民權利及政治權力國際公約》要求保障市民參選和選舉的權利等，亦做到真正公平兼顧社會各個階層利益。

香港民主民生協進會  
2006年7月19日

## 策略發展委員會 管治及政治發展委員會

### 有關普選原則和概念討論的補充意見

#### 引言

策略發展委員會管治及政治發展委員會（委員會）先後召開三次會議，討論普選的原則和概念。政制事務局在今年六月提交文件(CSD/GC/6A/2006)，總結委員會的討論，並建議以此作為討論普選行政長官和立法會的可能模式的基礎。

2. 其實，國際人權組織和政治學者，早已對普選的原則和概念作出權威的詮釋和結論；而自上世紀八十年代開始，香港已就普選問題反覆討論二十多年，盡快普選行政長官和立法會，已成為民間的主流意見。可是，當局的總結報告不僅漠視這些事實，當中部分論點更是有違常理、不合邏輯，若以此作為日後的討論基礎，恐怕只會徒增不必要的爭拗，令委員會的工作事倍功半。

3. 有鑑於此，我們七位委員會成員聯合提交本意見書<sup>\*</sup>，以補充總結報告的不足，並希望當局接納我們的意見，修正總結報告的內容，讓委員會日後的討論重拾正軌。

#### 政制發展的指導原則

##### *以市民的意願為依歸*

4. 香港的政治制度直接影響市民的福祉，因此，香港的政制發展應以港人的意願為依歸。特區政府不斷強調尊重民意，總結報告理應清楚提及市民希望盡快實行普選，並確定委員會的首要工作，是將市民的意願變為事實，盡快就二〇一二年或之前實行兩個普選提出具體方案。

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\* 本意見書主要是逐點回應當局的總結報告，有關我們對香港政制發展的完整意見，請參閱我們各自向委員會提交的意見書。

## 中央政府的角色

5. 總結報告第 7 段指出，「中央在特區政制發展上，包括達至最終普選的時間與及普選的模式及設計，擁有最終決定權力。香港特區不是一個獨立的政治實體，不能自行決定其政治體制」。就這方面，我們留意到：

- 《基本法》附件二規定，修改立法會的產生辦法，「須經立法會全體議員三分之二多數通過，行政長官同意，並報全國人民代表大會常務委員會（人大常委）備案」，毋須人大常委批准；
- 國務院港澳辦公室前主任魯平於一九九三年三月十八日在《人民日報》撰文，指修改立法會的產生辦法毋須中央政府批准，香港將來怎樣發展民主，完全是香港自治範圍的事；及
- 中國外交部在一九九四年二月二十八日發表聲明，指二〇〇七年以後立法會全部議員由普選產生的問題，由香港特區根據《基本法》第六十八條和附件二的規定自行決定，不需要中國政府作出保證。

6. 中央政府有關修改立法會產生辦法的立場，是在二〇〇四年四月人大常委重新演繹《基本法》時才被修改。但無論如何，我們理解中央政府對香港未來的政制發展有一定的角色，並期望有關當局充分考慮和尊重港人的意願，與港人展開理性的對話，就二〇一二年或之前實行雙普選的具體方案尋求共識。

## 四項主要原則

7. 總結報告第 11 段提出，香港的政制發展須符合四項主要原則，包括兼顧社會各階層利益、有利資本主義經濟發展、循序漸進和適合香港實際情況。我們認為，在草擬《基本法》時，兼顧社會各階層利益和有利資本主義經濟發展兩項原則已被反覆考慮，並已透過具體條文予以落實，只要嚴格按照《基本法》的條文處理政改問題，即可充分體現有關原則。事實上，《基本法》已確立最終達致普選的目標，證明全國人大通過《基本法》時，已確認普選並不抵觸上述兩項原則。

## 兼顧社會各階層的利益

8. 環顧世界各地的民主國家，由普及而平等的選舉制度產生出來的政府及立法機關，都可以兼顧工商界、中產階層、專業人士、勞工階層

和社會其他各階層的利益，反映他們的意見，為推動社會發展謀福祉。可是現時的政制安排，令某些階層（特別是工商界）享有政治特權，不完全符合「兼顧社會各階層利益」的原則。

#### 有利資本主義經濟的發展

9. 現時所有先進國家包括美、英、歐洲多國、日本、南韓等，均實行民主和資本主義制度，可見普選與資本主義經濟不僅沒有衝突，反而由於民主社會在法治水平、公平的營商環境和社會穩定等方面相對較優勝，往往吸引更多投資，有利經濟發展。

10. 總結報告第 16 段提及，落實普選的同時不應影響特區一直以來奉行的「低稅率和簡單稅制」和「量入為出」的理財原則，以及「小政府、大市場」的經濟政策。《基本法》第一百零七及一百零八條規定，特區的「財政預算以量入為出為原則」，並實行「低稅政策」。無論以甚麼方式產生行政長官和立法機關，所有從政者都必須遵守《基本法》的有關規定。至於是否實行「小政府、大市場」或其他經濟和社會政策，只要有關政策沒有抵觸《基本法》上述兩項規定，都應由選民在選舉時投票定奪。

#### 循序漸進

11. 根據字面解釋，「循序漸進」應理解為有秩序地向前發展，不能過急，也不能過慢。不過，民主步伐是快是慢，根本不能抽象地討論，必須結合香港的具體情況一併考慮，才有現實意義。況且，自一九八二年中英談判至今，香港的民主政制已發展了四分一個世紀，在二〇一二年或之前實行雙普選，從任何角度看也不能說過於急進，政府實無理由再以「循序漸進」為藉口，阻撓香港全面實行普選。

#### 適合香港實際情況

12. 在討論是否實行普選時，首要考慮的實際情況是港人希望盡快實行普選，其次應該從兩方面研究香港的實際情況，包括現行的政治體制是否存在根本問題，以及香港是否具備實行普選的客觀條件。目前的小圈子特首選舉和功能團體選舉制度缺乏認受性，社會各階層利益和矛盾無法妥善處理，打擊政府管治，港人普遍要求盡快實行民主改革。倘若當局仍然堅持香港的普選步伐必須一步一步慢慢走，結果只會適得其反，令政治制度和社會狀況脫節，不利有效施政和社會穩定。另一方面，香港經濟發展成熟，享有法治和言論自由，社會廉潔和港人教育水平跟其他民主國家



相若，再加上香港已有多次籌辦全民選舉的經驗，實際上早已具備實行普選的所有客觀條件。

### 行政主導

13. 總結報告第 22 段指出，香港的政制發展設計，不應偏離行政主導這項原則。我們認為，「行政主導」只是一個籠統的概念，沒有明確的定義。有關行政和立法的關係，在《基本法》中已有具體條文，界定行政長官、行政機關和立法機關的職權，以及三者之間的關係。

### 普選的原則和概念

14. 我們認同普選的概念，應包括普及和平等兩項原則。總結報告第 25 及 26 段提及，平等投票權的原則「並不是要求每一票的效力必須達致數字上精確的平等」，亦「沒有一套選舉制度能適合所有地方」，令人憂慮當局是為保留功能團體選舉留下伏筆。

15. 我們必須指出，地方選舉中議席數目和選民人數有所差異，純粹因應選區的地理位置和完整性等技術因素而作出調整，而且有關差距訂有合理的限制（例如香港立法會的分區選舉，法例規定有關差距必須在百分之十五以下），這跟功能團體制度是兩碼子的事。

16. 至於各地可因應本身的情況發展其選舉制度的論點，亦不能將功能團體選舉曲解為符合普選的原則。事實上，聯合國人權委員會早於一九九五年已裁定，現行的功能團體制度，抵觸《公民權利和政治權利國際公約》第二(一)、二十五及二十六條，並不符合普及和平等的原則。

### 行政長官普選模式

17. 《基本法》第四十五條訂明，提名委員會須按民主程序提名行政長官候選人，說明提名委員會的組成方式，必須體現民主選舉的原則。我們認為，民主選舉的原則應符合國際人權憲章的有關規定。《世界人權宣言》第二十一條明確指出，人民的意志是政府權力的基礎，而這一意志應在定期的選舉中獲得充分表達。《公民權利和政治權利國際公約》第二十五條訂明，所有公民享有在定期選舉中選舉和被選舉的權利和機會，不分社會出身、財富、政治或其他見解等而有任何區別，而這項權利和機會亦不受不合理的限制，因為只有如此，公眾的意志才獲得充分表達。

18. 現行《基本法》附件一所載的選舉委員會組成方式，偏袒工商和專業階層，明顯抵觸被選舉權利和機會不分社會出身和財富等而有所區別的原則，亦令其他階層的被選舉權利和機會受到不合理的限制，若以此作為提名委員會組成方式的藍本，是抵觸《世界人權宣言》第二十一條和《公民權利和政治權利國際公約》第二十五條的規定，亦不符合《基本法》第三十九條（人權公約繼續有效）和第四十五條（民主程序）的原則。

### **立法會普選模式**

19. 總結報告第 40 段列出多個立法會達致普選前的過渡方案，我們認為，委員會不應排除在二〇一二年或之前，立法會所有議席由普選產生的可能性。另外，總結報告第 41 段指出，先由功能團體提名候選人，再讓全港選民投票，亦是「達致最終普選時的可能模式」。如上文第 17 和 18 段所述，由功能團體提名候選人的安排，偏袒工商和專業階層，明顯抵觸被選舉權利和機會不分社會出身和財富等而有所區別的原則，亦令其他階層的被選舉權利和機會受到不合理的限制，不符合《基本法》第三十九條（人權公約繼續有效）和第六十八條（最終達致普選）的規定。

### **下一步工作**

20. 正如上文第 4 段所述，超過六成市民期望在二〇一二年或之前，由普選產生行政長官和立法會所有議員，委員會的首要工作是令市民的願望成真。我們相信，只要政府當局和委員會成員尊重市民意願、尊重客觀事實，委員會必定可以就二〇一二年或之前實行雙普選的具體方案達成共識。

### **策略發展委員會**

#### **管治及政治發展委員會成員**

周奕希	關信基	李卓人	李永達
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## 政制結構所出現的問題

特區面對的政治困局的主因在於行政及立法機關的民意認受不足，且偏袒專業人士及工商界，讓普通市民對整個制度欠缺信心，削弱政府的權威及進行決策的正當性。在欠缺民意基礎及政治力量支持下，強勢的政府未能建立，政府要按《基本法》保留過去的行政主導模式也十分困難。另一邊廂立法會及區議會議員有票無權，立法機關不能參與制定政策，唯有通過否決議案向政府討價還價，展示政治肌肉，形成如黃建民所形容的「簡單的對抗式政治文化」，例如剛不獲通過的政制改革方案，政府與民主派議員政各走各路，受害的最終是香港市民。

從整個中國的層面而言，香港一直是中國的一把雙刃劍。作為一個背靠祖國、面向世界的城市，香港既是中國對外的門戶，也是外國勢力影響中國國策的主要缺口。如何平衡市民的訴求及國家安全的考慮，是中央政府對香港民主化的兩難。而在政治文化上，中央政府自經濟改革開放以來一向奉行「摸著石頭過河」的策略，任何的施政皆以循序漸進的方式逐步實行。這種文化與香港盡快實行普選的訴求出現矛盾，更引導兩地政治關係一度陷入低潮。政治文化及願景的差異也成為了困局的主因。

根據《基本法》，特首的權力是同時來自選舉及中央政府的任命，缺一不可。如剛才引述，特首的權力應來自選舉及中央政府的任命，而中央政府也一直堅持任命是具有實質意義的。

### 1. 特區政府欠缺認受性

著名社會學家伯(Webber)認為，政權的合理性(legitimacy)源自領袖的魅力(charismatic authority)、傳統的權威性(traditional authority)及約定的權威性(legal authority)。這概念正好描述了過去百多年的殖民專政制度。港英政府強調以法治港，而且所委任的港督大多具豐富的外交和行政經驗，易於建立相對強勢政府，平衡各方利益。儘管香港在百多年殖民統治曾經歷不少的陣痛，市民普遍仍對港英政府抱有信心，願意甘苦與共。

其實，所謂的強勢管治是對社會一種去政治化過程，根本是以「天下太平」蓋過殖民統治的政治不正當性。弔詭的是，回歸前夕，港英政府一改去政治化的作風，並在末代港督彭定康的領導下加速民主化的過程。香港內部也因此變得高度政治化，香港人的政治參與意識也開始被喚醒。

民主化從來是一條不歸路。中央及特區政府竟然從回舊路，以去政治化方式蓋過小圈子選舉的不正當性。董建華政績乏善可陳，中央便以 CEPA、自由行等經濟措施改善市民對政府的觀感。但正如引言所述，香港人對民主化的訴求一直沒有減退。

然而就算沒有彭定康這興風作浪之人，缺乏治港經驗的中央及特區政府，也未有足夠的實力及條件於香港建立政權的合理性。這除了是特首個人魅力及管治經驗的問題，也是中國及香港兩個政制結構的問題。由於兩地法律結構存在差異，而連繫中港兩地的《基本法》也有不少可爭議的地方，讓政治與法律混在一起，削弱政府以法治港的能力。

面對社會政治化的趨勢，欠缺民選基礎的政權猶如曾蔭權所說是「戰戰兢兢」，每一個政策的推行也可以說是舉步為艱。因此近年曾蔭權提出「強政勵治」，以「順從民意」為施政的基本教義，不斷以民意調查支持政府施政的合理性。例如在備受爭議的添馬艦方案，政府一直強調民意調查顯示七成多市民支持。但其後多個調查發現支持與反對各佔一半，而政府又解釋不到民意調查的數據來源，最後演變成一場羅生門。但是政府及社會也明白，民意的取向如流水，而民意調查的準確度亦各有不同。民意只可是施政的參考，絕不可能補足欠缺認受性的問題。

## 2. 不健全的行政主導

《基本法》列明香港需要實行行政主導，但這是延續昔日殖民地時期總督專制下的官僚行政主導模式。即政府的施政以行政機關為主導，社會的政策和法例草案主要由行政部門負責提出，立法機關則扮演一個諮詢和背書的角色。憑藉香港專業、高效率的公務員團隊，行政主導成為了香港有效的管治模式。因此，過往的民意調查顯示，香港各界支持實行行政主導，以強勢政府維持社會穩定和經濟繁榮。

然而，在民主化的過程之中，行政主導的模式及內涵也相應改變。過去行政立法兩局均屬港督權力下的諮詢機構，而立法及行政會議的組成，其實也是盡量分配給不同的既得利益者，以讓各方勢力在政府的主導下通過議會化解矛盾。回歸後，前特首董建華引入「高官問責制」政治任命的部長制，把「行政主導」定位於由特首及其委任的管治班子所構成的行政機關去主導。行政會議由昔日的諮詢性質升格為類同總統制中的政府內閣，而立法會亦順利成為監察管治班子的機關。

高官問責制的引入讓行政及立法機關擁有明確的分工。但須要留意的是，立法會內一半的議員由香港近三百萬的合資格選民直接選出，而行政長官只由八百人選出，兩者的民意基礎差距之大，削弱行政體的權威。而且特首需要政治中立，不能有任何政黨背景，於政治中求一些政黨支持，每次要討價還價。面對民意認受問題及立法會的角力，特區政府難於實行《基本法》定下的行政主導。

### 3. 中國實行主權問題及中港關係

從建制而言，《基本法》這個法律文件既確認了中國對香港擁有主權，並規範中央政府在香港的權限。然而《基本法》是一本小憲法，當中一些方針如港人治港、高度自治等其實也沒有說得明白，因此實際的操作存在不少問題。而問題的背後，其實是兩地不同的政治文化及不同的政治期望，讓中港兩地對主權的具體實行存在爭議。而在釋法及普選議題上，對主權詮釋的差異更尖銳化社會內部矛盾。

中央政府因《基本法》有關政制的設計陷入兩難之處，一方面強調港人治港，在不少事務上也要求相關部門克制、小心言行，以保障香港相對的獨立性。但另一方面，中央政府也希望香港政治發展能受到一定的控制，確保特首是他們相信的人，並要在香港社會上保留支持北京政府的聲音。這明顯是一個矛盾，因為要在香港進行高度自治，意味著中央政府需要在香港事務上保持政治中立。但是作為一個擁有主權的政府，在整體國家發展及國家安全的考慮下，它可以不染指香港事務？所以中央政府要處理的是，如何在高度自治的政策及維護主權中取一平衡。

在這樣的背景下，中央政府選擇了以非透明方式發動親建制陣營支持特區及中央政府。但這種政治動員往往涉及了利益關係，根本不能獲得市民的認同。需要知道現在親建制陣營是以工商界、民建聯、工聯會及眾多社團為骨幹。其中工商界人士根本是通過維護現在不健全的制度，以捍衛個人既得特權及利益。部分人士的言論更每每引起香港市民強烈反彈，影響兩地關係。這種動員方式既沒有維持高度自治的原則，更使人覺得有偏聽現象，讓香港市民的聲音未能如實被反映，無法鞏固中國對香港的主權。

中央政府對香港的政制發展的思路從來也是「循序漸進」。它們認為任何的政制應該是以「揆著石頭過河」的態度面對，一步一步走向最終目標。而且民主政制一定涉及放權，對於香港這樣一個開放形社會，如何在民主發展與保護國家安全取得平衡也是北京重要考量。但是這種政治思維不能被香港主流所接受。其主要原因是香港社會自上世紀八十年代已開始民主發展，而且從經濟及

教育水平而言，香港也具備實行民主政制的條件。因此，香港民主派否定中央政府的「循序漸進」的對策，並認為這只是中央政府打壓香港政治發展的工  
具。

其實，現在的政治矛盾只是兩地民主發展時差所致。因此香港人必須具備全國視野，觀察中國現在的困難，把中國因素列入民主化的考慮。而中央政府能體察香港民主化的歷史背景，承認香港社會在民主進程上相對成熟，兩地才能建立互信，並以互信鞏固中國在香港的主權。

#### 4. 民意詮釋的落差

政改方案不能通過，一個重要的啟示是行政及立法機關對民意的不同詮釋。政府一直指民意調查反映近六成人支持政改方案，但這邊廂民主派發動近十萬人的遊行，反以民意向政府施壓。

明顯地，不同的政治勢力在政制改革的問題上，對民意的詮釋出現嚴重差異。這主要有兩個原因：一是在政制改革這種重大議題上，香港社會未有主流的共識，因此大家以自己的主觀願望對社會的主流作出不同的理解。而這其實赤裸地反映了香港欠缺討論的平台。例如一些主流的傳媒大多向兩個不同的政治陣營靠攏，露骨地表達政治立場並排斥對方的立場。這種非黑即白的文字空間，讓市民未能理解重大問題的矛盾所在。

但是這種現象背後，其實是政府人物在政改問題上不願作出政治妥協，因此互相擺出民意作武器。民主派的議員一直憑爭取民主這個道德光環作為政治本錢，對香港民主發展的速度問題自然寸步不讓；而對於親建制的民建聯而言，他們的責任只是執行中央政府的意志阻止零七、零八普選，完全沒有提出其他可行的政改方式的動力。兩大陣營在既定的政治立場下可改變的空間很少，可見立法會的討論最後只淪為互相的責罵。而這種低質素的討論，讓香港欠缺民主化的整體圖象。

#### 5. 議會功能問題

事實上，民主及親建制陣營所欠缺的是不是政治智慧，而是政治本錢。現在香港的議會包括立法會及區議會的功能十分有限，政府在公共行政上高度集權，並傾向以諮詢架構作為施政的「大腦」，議會只能扮演「把關」的角色，即有能力否決議案，但提出議案非常困難。政府有權而無票，而立法會卻有票而無權，以至行政機關和立法機關的政治能量互相抵消。

正是由於排斥政黨制度而導致行政立法關係的不穩，行政立法機關各走各路，反映了特區政制的深層缺陷。沒有穩定的管治和公眾支持，政府根本沒有能力去處理社會進一步發展和經濟轉型，令香港走出目前的悶局。

## 政制改革的目標

香港及中國各自對民主政制有不同的考量，但《基本法》已清晰列明行政長官的權力源自選舉及中央政府的任命。因此，中港兩地能否通憲制改革的首要目標，就是要提高政府的代表性和民意授權，同時加強政府的施政和領導社會的能力。要理順政治體制，才能理順管治，才可達致政通人和。

### 1. 落實從下而上的民主政制

如前所述，香港民主化進程是不可逆轉的。隨香港人對公民意識的醒覺，市民會繼續要求進一步參與香港的管治。民意調查顯示，市民對普選的期望並不會因經濟的復甦而減退，佐證了政制民主化的迫切性。

民主化的最終目標是落實從下而上的全民政治參與模式。因此，香港的民主化目標，應包括選舉制度的開放、政府資訊的開放、增加政府與民間的溝通渠道。

從政治學理上，從來只有民選及替換的政權才具認受性。在香港而言，進一步開放選舉，可讓特區民眾通過選舉，將自己和特區政府直接聯繫起來，解決民眾認同和信任問題，讓特首在民意支持下，得以一定的空間和時間施展才能，強化了「行政主導」的合理性。生活方式上，假如香港實施普選，很多生活方式會出現變化，特別是普選特首會面對更大民意壓力，屆時社會辦事方式會有所改變，香港需要足夠時間接受新的生活方式。

而在制度以外，市民也需要足夠的資訊，才能對不同的事作出恰當而理性的抉擇。但是特區政府仍然沿用殖民政府的模式，將不少資訊列作保密處理，讓市民沒有足夠的資訊理解政府的運作。近期最重要的例子是添馬艦工程爭議，政府一直不肯公開測量的估價單，引來公民黨的抨擊，也無法讓市民辨別工程是否物有所值。雖然要對保密文件的類別作出定義有一定困難，但政府也至少嘗試解密政府過去機密文件。讓市民及學者可通過了解政府過去運作，對行政有進一步的認識，才能給予有效的建議，以不斷優化政府制度。

更重要的是，選舉其實只是一個簡單及單向式的民意收集方式。而現行政府的書面諮詢方式也是以單向形式進行，根本不能讓政府與市民建立有機連結及互動，也不能讓市民即時向政府表達他們對政策的意見。而貼近市民的區議員及立法會議員因權力所限，對市民的訴求也愛莫能助。因此香港的市民需要的不單是選舉的機制，更是與政府進行互動的恆常平台及渠道。

## 2 維護中國在香港的主權

簡單而言，現在香港的民主化路程可沿兩個方向進行。一是以革命形式全盤否定中央及特區政府，去除權力的障礙實現香港民主。二是承認中央政府的主權，並在《基本法》的框架下追求民主。顯然香港主流社會及民主派的政治人物也傾向後者，希望以非革命方式達至民主。根據社會契約的概念，香港既要獲得民主政制的權利，社會及市民也有義務維護國家主權。因此，爭取民主及維護主權是必須相輔相承的。

雖然中港兩地仍然對主權的實行存在爭議，但是大家也認同《基本法》已列出了中港的關係，現歸納基本法設計中體現主權的幾個範疇：

- 政治上，除社會各界要認同普選外，這個認同也要取得中央的認可（根據《基本法》附件一及附件二）
- 經濟方面，保證香港資本主義經濟的發展（根據《基本法》）
- 法律方面，必須先完成保護國家安全立法工作（根據《基本法》二十三條）

雖然不少人認為這三個議題是中央為阻延香港推行直選而設的路障。但是我們又應該如何履行維護主權的義務呢？雖然各人意見不同，但這問題必定是香港民主進程的核心所在。

## 3 重塑行政與立法機關功能

在國家的層面上，香港只屬一個擁有高度自治的「行政區」，特區政府這個「行政體」的主要功能應該是分配政府資源，為社會提供最具效益、最適切、且最合理的公共服務。此外，近年國際局勢波動很大，對香港這樣一個經濟開放型社會帶來重大影響。因此，香港政府也有必要提高決策的速度以保障香港的穩定。



單從制度而言，現行的「行政主導」模式將決策大權放在行政機關，保障決策速度，其制度的優點得以保留。而為加強政府的民意認受性，香港的行政體系應參考總統制。特首經由人民普選產生後，他通過政治任命真正建立向人民問責的班子。

在這個目標下，香港的政治體制將是「類總統制」，在三權分立之餘，也設置互相懲治（sanction）的機制。這制度最主要好處，是行政主導能進一步得到市民認可，而另一邊廂，立法會應繼續維持其監察及制定法律的角色。

此外，立法會議員提出法案的憲制上的限制必須被解除，讓立法會能在政策制訂的過程中扮演更積極和具有建設性的角色，而非只是質詢和批評的角色。在《基本法》第七十四條仍未修改之前，行政長官應表明，樂於同意代立法會議員提出有關公共政策的法案。

#### 4. 增加政治培訓

香港許多在殖民統治時期的高級公務員，在回歸後在香港的政治擔任舉足輕重的角色。這些高級公務員多年來積累了豐富的工作經驗、社會資源，固然有利管治香港。但現在負責核心政策的政務官（Administrative officer）只有五百多人，若繼續依賴公務員擔任政治角色，參政只會成為小部分人的特權。

縱觀世界，政黨政治始終是民主社會的主流政治生態。通過政黨政治，社會不同的聲音才能具體表現及進行磨合。而在香港，行政機關其實也需要政黨的支持以鞏固它們的勢力。因此，香港需要有執政能力的政黨，逐步取代公務員治港的形式。

但是現存政黨仍未脫離殖民統治的陰霾，核心政治人物被困在沒實權的立法會中，欠缺管治香港的經驗。另一方面，要改善立法及行政關係，行政會議分權予部分立法會議員，籍以建立執政聯盟。只有政府體系撥出空間，讓政黨人士參與部分行政事務，政黨才能理解政府的運作及實踐政治理想，有利立法會內討論。

#### 6. 中港兩地落實對話政治

現在不少政治團體為自身短期利益，因此通過「喊口號」、「搏出位」突出他們的訊息。其主要原因是特區及中央政府未能提供更多公平、公開的「場合」，讓不同團體的代表能彼此真誠「對話」。因此，中央政府應廣開門路，

建立兩地的「對話政治」，接收不同政治團體(包括民主派)的訊息，才能更立體了解香港的情況。

這種「對話政治」的重要性，是中央政府能扮演政府「中介者」的角色。中央政府不可能在香港事務上保持政治中立，但通過接納不同人的意見，中央政府能夠更徹底考慮社會上各階層、各利益團體的處境，為香港政治環境製造公平的氣氛。

通過對話政治對資本家來說，他們應重新反省自己的「商業倫理價值」，在賺錢之餘，同時提供社會效益。對工人階級來說，他們應重視自己的政治參與，理性地發表意見，團結地有效地表達自己利益意願，讓政府聽到他們的聲音。

## 2. The Legislative Council

The most controversial stipulation in the Basic Law with regard to the composition of the Legislative Council is Article 68, which states that "the ultimate aim is the election of all the members of the Legislative Council by universal suffrage." Without a concrete timetable of democratization, direct election of the entire LegCo is constantly a bone of political contention in the HKSAR.

### Structural Reforms

#### (a) Option 1: Increasing the Members of Directly Elected Members and Functional Constituency Members Proportionately

In 2005, the HKSAR government's proposal of widening the LegCo composition from 60 members to 70 failed to obtain two-thirds majority support of the legislators. The proposal intended to allow 5 new members returned from District Councils and the other five returned from direct elections. Apparently, the proposal was a progressive one. Unfortunately, due to insufficient time and inadequate dialogue between the HKSAR Government and the political opposition, the proposal became abortive. The implication is that any further reform of the LegCo will be very difficult.

This proposal can surely be reconsidered in the future with better explanation and promotion on the part of the HKSAR Government. Although critics see this proposal of increasing the number of directly-elected members and functional constituency members as a stagnant democratizing formula, it does represent a very small step toward democratization of the legislature.

#### (b) Option 2: Adopting Two Houses with a Fully Directly-Elected Lower House

To break the current political *cul-de-sac* regarding LegCo's composition, this paper will propose a bicameral system suitable for both the HKSAR and the PRC. Arguably, a bicameral system with two chambers—the upper and lower ones—will on the one hand maintain an executive-dominant system and on the other hand achieve the objective of having a legislature fully directly elected. The next section will provide further justifications for the proposed bicameral model.

#### (c) Option 3: Reforming the Functional Constituencies

While the enlargement in the number of LegCo members became abortive in 2005, reform of the functional constituencies can perhaps be deepened. The ways in which functional representatives are elected can be democratized further, including (1) the possibility of widening the franchise of electors eligible to vote for their functional representatives, (2) the enlargement of the number of electors beyond those executive committee members in corporate organizations eligible to vote in functional constituencies elections, and (3) the consideration of co-opting new functional groups, particularly women groups, ethnic minorities and youth organizations that are relatively under-represented in the existing LegCo or (4) transforming the existing functional constituencies into a smaller number of multi-seat constituencies to reduce the likelihood of uncontested seats, provide functional constituency voters with broader candidate choice and better facilitate political party participation in the functional constituencies.

#### (d) Option 4: Abolishing Functional Constituencies

The eventual abolition abolishing functional constituencies is required by the Basic Law, yet has become extremely controversial in the HKSAR, given their nature of protecting the vested interests of various groups, ranging from business organizations to labor groups. However, as will be proposed in the next section, having a bicameral system with an upper house protective of the interest of the business sector will arguably maintain the general political *status quo* in Hong Kong while maximizing the available space for the direct election of the entire legislature. Hence, the option of abolishing the functional constituencies will perhaps be politically acceptable to the vested interest groups in the event that a bicameral system is adopted.

#### (e) Option 5: Maintaining the Number of Legislative Councilors as 60 but fully democratizing the election of functional constituency representatives

A final democratizing model for Hong Kong's Legislative Council is to maintain the existing way of 30 directly elected representatives through geographical constituencies while democratizing the elections of the functional constituency representatives to the fullest extent. This means that functional constituency groups can nominate representatives to run in territory-wide direct elections. They can put forward candidates to participate in functional constituency sectors, such as education, law, commerce, accounting, and other existing professions as stipulated in the Basic Law. However, after the nomination process, the candidates will compete in territory wide elections in which each citizen will have two votes, one voting for a representative in his or her geographical constituency and the other voting for another

representative in his or her occupational sector. In this way, democratization of the entire Legislative Council will be in conformity with the principle of achieving universal suffrage for the whole legislative body. While functional constituencies will be maintained, their electoral method will be democratized to the fullest extent.

### Process Enhancements

#### (a) Constantly Reviewing and Increasing the Number of Legislators in Light of Population Changes

However, the people of Hong Kong will have to decide whether they would like to see a larger legislative chamber with more representatives articulating their interest. As the population of Hong Kong is gradually increasing, it will be necessary for the HKSAR Government to constantly review the proportion of LegCo members to the entire population. Some adjustments will perhaps be necessary to reflect demographic changes. Those constituencies that deserve to have more directly elected members will have to be revamped and expanded, while the implications for the number of functional constituency members will also have to be taken into consideration.

#### (b) Reforming the Legislative Council's Scrutinizing Capacity

In the medium term, the LegCo will still be an evolving institution in which several reform areas can be considered to enhance its scrutinizing capacity.

#### (c) Reviewing the Passage of Private Member's Bills (Article 74 of the Basic Law)

First, the process of private member's bills, which require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections (Annex II of the Basic Law), can be reviewed. While not many legislators have advocated a change to this voting procedure, a few have expressed their reservations about the power and discretion of the LegCo President in determining whether their bills can be initiated. According to Article 74, LegCo members "may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced." By convention, the LegCo President decides whether such private member's bills are related to public expenditure or political structure or the operation of the government—wordings that are ambiguous and can

be interpreted very broadly. From this perspective, any review of the private member's bills in LegCo should reconsider the ambiguous wordings and determine whether more concrete guidelines can be advanced to decide bills that "are related to public expenditure or political structure or the operation of the government."

(d) Setting Up LegCo's Standing Committees Parallel to Ministerial Portfolios

Second, to empower LegCo and to ensure its monitoring role vis-à-vis the executive branch, the LegCo can reconsider an idea floated in the 1990s that standing committees parallel to governmental secretaries could be established. In light of the establishment of the POAS in July 2002, the LegCo can reformulate the idea of setting up standing committees that correspond to the ministerial portfolios of the POAS. In this way, a better checks and balance system can be instituted.

(e) Harmonizing Executive-Legislative Relations through Formal and Informal Meetings

Ideally the ExCo can harmonize its relationships with the LegCo. In fact, such harmonization process can take the form of not only reinstituting a body similar to the former UMELCO but also conventionalizing the existing communication channels. It is common that ExCo members meet LegCo members in various occasions, such as informal and formal gatherings. Nevertheless, regular meetings between ExCo and LegCo members, between Principal Officials and LegCo members should ideally be held so that better communications will hopefully bridge any political gap between the executive and the legislative branches.

(f) Consolidating the Constitutional Conventions in LegCo

The LegCo's scrutinizing capability can be enhanced through the consolidation of some existing conventions adopted in the legislative chamber. These conventions governing the LegCo include (1) the good practice of the LegCo President to explain in black and white why he or she disallows a private member's bill to be initiated, (2) the convention of government officials attending LegCo meetings and giving testimony before legislators, (3) the convention of the Chief Executive's question and answer sessions that are regularly held in LegCo, and (4) the convention of government officials communicating with legislators on various matters pertaining to bills and policies. These conventions are extremely important to the healthy and successful operation of the LegCo.

(g) Each Elected LegCo Members Nominating an Ad Hoc Member to Work in LegCo

One neglected area of reform in LegCo is the possibility of nominating ad hoc LegCo members to assist elected legislators. At the level of District Councils, ad hoc members have been injected into these advisory bodies since their inception. These ad hoc members play a critical role in alleviating the work load of the elected and appointed District Councilors. So far, surprisingly, little discussion has been engendered to consider the likelihood of each LegCo member nominating one assistant as ad hoc members, who may not have voting rights as with the elected legislators. In some District Councils, the number of ad hoc members is restricted in such a way that they cannot outvote the elected and appointed colleagues in a sub-committee. This practice of having ad hoc members working at the District Councils level remains quite successful. In order to train political talents and leaders in the HKSAR, the idea of injecting ad hoc members without voting rights, or with limited voting rights, should be considered by the LegCo. It is important to note that allowing each legislator to nominate one ad hoc member will by no means upset the current functioning of the legislative chamber. Instead, with proper restrictions, such as limiting the number of ad hoc members in LegCo's panels and perhaps limiting their voting rights as well, ad hoc members will be able to assist LegCo and reduce the tremendous workload on their elected colleagues. In short, the idea of nominating an ad hoc member by each elected legislators can be considered, although the LegCo can discuss the voting power and limitations of ad hoc members in the future.

## 建立真正問責政府

(Chinese version only)

# 建立真正問責政府

締造公平競爭 提倡優質教育  
解決醫療融資 改善貧富懸殊  
妥善保障勞工 積極保護環境

1. 曾蔭權先生接任行政長官一職後，轉眼已接近年半。曾先生任內，政制在原地踏步，西九龍計劃的鴻圖一籌莫展，添馬艦政府工程也是在幾經爭議下，才勉強通過。其他很多重要的民生課題，例如醫療及教育等政策的推行，更未能符合市民期望。
2. 雖然各項的民意調查都顯示，現任行政長官的民望較前任優勝，但是這無法改變行政長官並無民意授權的事實，我們認為，這個政治制度上的缺陷，不會因換人而解決。市民仍然無法透過公開公平的選舉，選擇合適的人選管治香港。
3. 在政治訴求上，民主黨促請政府建立一個全面民主的政治制度，唯有如此，香港的政府才可以此為基石，令政府可以向市民問責，解決深層次的社會矛盾。
4. 另外，一如往年，我們亦會繼續各項社會政策發表意見，今年，在公平競爭、教育、醫療、社會福利、勞工及環保方面，都會提出一些具體建議供政府參考。
5. 成為民主社會，其中一個最重要的特徵是政府對人民負責，當中是透過選舉，令政府獲得管治的認證性。可惜香港仍然是一個不民主的政體，民主黨認為，當普選出現時，一個真正向市民負責的政府，才會誕生。

民主黨認為，當普選出現時，一個真正向市民負責的政府，才會誕生。

6. 因此，民主黨提出了下述建議，讓政府走向真正問責之路。

## 建立真正問責政府

### 實踐民主普選 體現問責

7. 《基本法》第45條及第68條訂明，特區的行政長官和立法會最終由普選產生。二零零四年，全國人大常委會在未諮詢港人的情況下，斷然否決零七零八年雙普選。但是，市民仍然希望普選可以早日落實。
8. 香港人的教育水平不比其他民主國家低；社會的公民意識亦越趨成熟；而每年都有很多來自不同界別的組織及人士，參加七一遊行，爭取盡快普選；政黨及民間智庫紛紛成立，有助推動政黨政治，鞏固民主的政治體制。我們認為，香港早已有條件落實普選行政長官和立法會，以回應港人對民主普選的熱切期望。
9. 就普選行政長官方面，我們具體建議，由立法會議員組成提名委員會，再由市民以一人一票





## 建立真正問責政府

方式選出行政長官，由中央人民政府任命。提名方面，只需5名立法會議員，每位議員只可提名一位候選人。政黨候選人獲選勝出後亦不用退出所屬政黨。

10. 就全面普選立法會方面，我們具體建議，採用一個混合單議席單票制及比例代表制的選舉模式，由市民一人兩票選出全體立法會議員。
11. 在這模式下，立法會全體議席平均分為兩組，第一組是單議席單票制，全港按人口比例基於議席數目劃分為若干個選區，以單議席單票制選出議員；第二組是比例代表制，全港為一個大選區，以比例代表制選出。

**我們具體建議，由立法會議員組成提名委員會，再由市民以一人一票方式選出行政長官，立法會方面採用一個混合單議席單票制及比例代表制的選舉模式，由市民一人兩票選出全體立法會議員。**

12. 我們建議方案的主要特點包括：

- (a) 符合港人對民主普選的訴求，市民有公平及平等的選舉及被選舉權；
- (b) 符合《基本法》第45條的規定，由一個有廣泛代表性的提名委員會按民主程序提名後普選產生，由中央人民政府任命；
- (c) 兼容議會制的優點，藉行政長官選舉的候選人須得到立法會議員提名，使行政長官制訂政策時更能顧及立法機關的關注，容易建立一個緊密的行政立法關係；及
- (d) 比例代表制及一人兩票的選舉制度，增加獨立人士或組織規模較細的政黨、工商界、專業人士，以至弱勢社群的當選機會，有半數議席由比例代表制選出的選舉模式很大程度兼顧「均衡參與」。

13. 我們反對以兩院制來保留「功能界別」的建議，透過在選舉制度中設定比例代表制或其他有利少數政黨或組織人士參選及獲選的方式，才是公平的做法。聯合國人權委員會已指「功能界別」不符合《公民權利和政治權利國際公約》第2(1)條、第25條及第26條。

14. 地方行政方面，我們亦認為應盡快全面取消區議會委任及當然議席，實踐以民為本的地方行政計劃、增加公民參與及更好地培育政治人才。

15. 當行政長官及兩層議會架構都由市民授權產生，才可以令政府向市民問責。

### 讓立法會真正地發揮監察政府的功能

16. 在選舉制度以外，我們建議政府應仔細檢討《基本法》第74條<sup>1</sup>及附件二<sup>2</sup>中對議員提案權及立法會投票機制的限制，因為有關限制嚴重削弱立法機關的權力，窒礙建立正常的行政立法關係。自回歸以來，立法會議員多次因行政機關不接納議員的建議而提出私人議員草案，但卻因涉及政府政策又不獲行政長官的同意而未能讓立法會審議，這與回歸前的情況截然不同。我們建議取消這些限制，讓立法會擁有全面的立法權力，及有更大空間，發揮監察政府的功能。

1 《基本法》第74條限制立法會議員提出與政府私人議員有關的私人議員草案，凡涉及政府政策者，必須先向行政機關提出諮詢。

2 《基本法》附件二則限制由議員提出的法案，法案原則必須與政府政策一致，且不得涉及政府政策及行政機關的職責。



Extract from Civic Party's Policy Expectations of the  
HKSAR Government submitted on 4 September 2006

(Chinese version only)

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## 政制

### 就普選開展公眾諮詢

- 香港早已具備實施雙普選的條件，平等而普及的民主選舉，是任何自稱為「國際都會」城市的基本條件。行政長官雖以全數成員為委任的策發會，作為討論普選路線圖和時間表的主要平台，但策發會的結論不能代替替羅大眾的意願。十月發表的施政報告，應宣佈就有關問題立即展開公眾諮詢。

### 行政立法關係

- 《行政長官選舉條例》第三十一條規定，行政長官不得有政黨連繫。特區政府堅持不修改此規定，理由是行政長官必須政治中立和持平。基於立法會由不同政黨及政見的議員組成，行政當局明顯地須就其政策及法案，向所有議員游說爭取支持。換句話說，行政當局必須一視同仁與各黨各派保持溝通。
- 行政長官在其第一份施政報告中似乎確認了這個制度，他表示：「我和政府的同事充份尊重立法會的地位和職權，會加強與議員們溝通，盡早讓大家了解政府的立法和政策設想，聽取議員的意見，促進衷誠合作。」
- 然而，曾特首在上任後對政黨的態度，已令人質疑行政長官在政治上是否中立持平。不斷有事例證明，特首只是選擇性地與個別議員和黨派溝通，而漠視其他議員在行使其憲制職能時發表的意見及訴求。今年四月，曾特首透過報章及電台訪問，表明其立場為對不同的政黨有親疏之分。在五月十八日的立法會行政長官答問會上，曾特首進一步正式闡明其「親疏有別」的立場與政策。

- 簡言之，曾蔭權政府已改變了過去的行政與立法之間互相合作而又互相制衡的遊戲規則，在《截取通訊及監察條例草案》的立法過程，曾特首展示了他引入的行事方式，其特色如下：
  - 辯論過程中，特首只發信給親政府議員要求支持，作「網綁式」投票，否決一切其他議員提出的修正案及支持政府的所有議案；
  - 親政府的議員坦白承認：「我們這三十幾人，你說保皇黨又好，你說支持政府又好，你說支持香港治安的力量、支持香港穩定的力量都好，就是要站在這裏，寸步不移，一條修訂都不能通過……」
- 整個程序，儼如行政機關已在立法會中建立了一個佔大多數的「政府黨」，屬政府黨的議員按特首的指示投票，特首實際上是政府黨的「黨魁」，利用政府官員為「黨鞭辦事處」的人員，監察政府黨員的行蹤及投票。
- 在憲制之下的行政與立法關係，公民黨並不以「反對黨」自居，更從未嘗「為反對而反對」。然而，行政長官既在理論及行動上都採取了「政府黨」與「反對黨」的角色分野，我們必須要求特首清晰界定新形勢下的一套公平及公開的遊戲規則，以保障議會的運作合理及符合公眾利益，否則議會將不可能有理性及有意義的辯論，反而進一步發展為政治的私相授受，利益交換。
- 在有「政府黨」及「反對黨」角色分野的民主政制的規章制度之下，政府對在野的反對黨有明確的義務，必須盡責履行，包括以下數點：
  - 政府必須尊重在野黨派的知情權，在重大政策上及時知會，提供所有重要資料，以便在野黨能作出回應；
  - 政府必須提供足夠資源，令在野黨派能進行獨立的政策研究及調

查；

- 建立憲制慣例，確保若干對政府制衡的立法會委員如政府帳目委員會及財務委員會及屬下委員會，主席均由非政府黨議員擔任；
- 政府建議增設兩層政治任命職位，包括設立副局長及局長助理，以完善問責制。但是，委任及增加政府官員人數，與發展民主普選背道而馳。若政府一意孤行要壯大「政府黨」，則必須履行以下基本責任：
  - 為確保政府整體的透明度和問責性，應盡早制訂「資訊自由法」；
  - 按照公平及透明的原則，向所有参政團體一視同仁地提供資源，而非以掩耳盜鈴的方式向「政府黨」輸送資源；
  - 採取一切有效措施，包括通過《非牟利組織法例》，為政黨的發展提供良好的基礎。
- 為實踐上述建議，政府應與立法會議員合作成立工作會議。



## 有關普選行政長官的政治配套建議

### 前言

1. 早前，策略發展委員會(下稱“策發會”)已就行政長官普選的模式達成共識，即日後行政長官的產生辦法，應按照《基本法》第 45 條的規定，由一個具廣泛代表性的提名委員會，按照民主程序提名候選人，再經由市民普選產生。
2. 至於社會上有不少意見認為，應在 2012 年普選產生行政長官，策發會對此暫時並未達成任何共識。但自由黨認為，只要在合適的相關條件配合下，包括做好政治配套工作，這未嘗不是一個最早實行普選特首的日子。
3. 所謂政治配套工作，應該包括如何改善行政和立法機關的關係，以確保兩者能夠互相配合，及令行政主導的原則得以貫徹。我們相信，只要做到上述各點，將有助釋除中央對香港特別行政區普選行政長官的疑慮，為早日達到普選的目標，奠定穩固的基礎。

### 行政及立法關係之不足

4. 環顧全球，不論是那一套政治體制，每個政府都需要所屬政黨或友好政黨的支持，才能確保有效管治，才能確保政策得以順利推行，香港在這方面亦不例外。
5. 然而，本港目前的政治制度，行政及立法機關卻往往未能有效配合。負責管治工作的行政機關，雖然掌握行政大權，有責任推動良好施

政，但卻因為在立法會內沒有席位，難以確保其推出的每一項政策或法案，每次均可在立法會內得以順利通過，實為「有權無票」；而立法會雖有權投票通過或否決財政預算案及法例，但在政府決策過程中卻往往只起着微不足道的角色，正是「有票無權」。

6. 在這種權責錯配的現象下，加上現時特區政府並非經由選舉產生，政策制訂過程又缺乏作為民意代表的政黨和議員的參與，使當局容易「把錯脈」，政策無法緊貼民情，自然容易影響政策的認受性。
7. 結果，政府往往需要花上幾倍的時間和精力，去游說政黨及議員的支持。一旦游說過程出現甚麼差池，當局所欲推動的政策或法例，便無法在立法會內取得足夠的支持而觸礁。這除了會打擊政府的管治威信，更會癱瘓施政，所帶來的後果可以是十分嚴重的。
8. 由於政府未有跟立法會內，與政府友好的政黨組成執政聯盟，這也就造成所謂「鋪鋪清」的局面，即與政府的合作關係，會因應個別事件作個別處理，反而削弱了行政主導的模式。
9. 所以，自由黨認為，行政長官由普選產生之前，必須先行理順行政立法之間的合作關係，而組成執政聯盟，確保政府的政令在立法會內，經常取得足夠的支持，也就顯得十分重要。要是經由普選產生的特首，在立法會內連基本的政治盟友也沒有，要確保施政暢順，也會流於空談。

## 行政會議的組成

10. 雖然行政會議內，已有兩名與政府友好政黨的成員在內，即自由黨的周梁淑怡議員及民建聯的曾鈺成議員，若連同泛聯盟的陳智思議員，也不過是三名成員，佔所有非官守成員才五分之一，若連同其他十五名官守成員，影響力更是不成比例。

- 11.其次，現時政黨成員都只是以個人身份參與行會的工作，雖然在行會集體負責制下，行會成員有義務支持政府施政，但對相關政黨的其他成員來說，則沒有相同的責任或約束力。這對政府爭取立法會內政黨的支持，無法起到太大的作用。

### 有關增設政治任命職位的建議

- 12.最近，當局推出了《進一步發展政治委任制度諮詢文件》，提出了增設副局長和局長助理的建議，希望加強與立法會的政治聯繫工作。但單靠增設副局長及局長助理，雖或有助加強對局長工作上的支援，但其在加強與政黨聯繫工作方面，對於完善政策建議，及提升政策的推銷工作上，可以起到的實際作用有多大，我們實不無疑問。因為政府與立法會政黨間的關係，並未出現實質性的轉變，彼此並未組成堅實的執政聯盟。
- 13.其次，多了這些新設的政治層級，不但未能提升政府與政黨間的溝通渠道，反而隨時會令政黨或議員與當局之間的溝通層次，變得愈來愈低，對暢順施政一點幫助也沒有。

### 組「執政聯盟」可解決問題

- 14.要是上述的政治配套不足問題，不早日解決，將無助於提升特區政府的管治效能、暢順施政和提升中央對香港於 2012 年實行行政長官普選的信心。
- 15.有見及此，自由黨認為，特區政府首要推行的，是與理念相近的友好政黨，例如自由黨、民建聯和泛聯盟等，盡量拉在一起，組成一個擁有共同政治理念的「執政聯盟」，來協助當局推行政策。
- 16.事實上，世界各地的政府，都是按照類近的模式，即依靠執政黨，或由多於一個政黨所組成的執政聯盟，來支持政府施政。要是政府在立

法會內，未能取得足夠的支持，很多時施政就會變得舉步維艱，更遑論要推行甚麼雄心萬丈的大計。

### 政策諮詢過程應「多上多落」

17. 因此，當局應與立法會內的友好黨派，組成執政聯盟，讓執政聯盟內的成員，盡量參與政府的決策過程，讓相關政黨和議員能把市民或業界的意見，在政策制訂的過程中，及早向政府反映。
18. 為了令執政聯盟的運作更為暢順，政府在推出政策前，應要有一個「多上多落」的諮詢過程，即容許政策內容有改動的空間，容許執政聯盟的成員在初步諮詢選民和業界代表後，再與當局反映意見，從而完善政策的內容。
19. 由於政府制訂政策時吸納了友好政黨的意見，令到市民和社會各界的利益在事前均得到充分考慮，政策的認受性自必大大加強，政策在立法會內獲得通過的機會也會大為提高。如此一來，行政立法關係得以改善之餘，也會大大提升政府的施政效率，對提升政府威望亦大有幫助，則市民、立法會和政府之間，也能做到多贏局面。

### 結語

20. 自由黨相信，只要特區政府積極做好上述的政治配套，改善行政立法關係，從根本上解決政府與立法會之間的矛盾關係，並且與政府友好黨派組成執政聯盟，則屆時在條件成熟下，本港要推動 2012 年普選行政長官，也就自然容易得多了。

二〇〇六年九月八日

策略發展委員會

管治及政治發展委員會成員田北俊



## 行政長官產生辦法

中大政治與行政學系高級導師 蔡子強 建議

- 1 特首的產生辦法，應根據基本法四十五條的規定：由一個具廣泛代表性的提名委員會提名，由全港選民普選產生。我們認為如果提名委員會成員經由民主程序產生，而候選人提名的門檻不會太高，用提名委員會作提名機制，不會違反民主原則。
- 2 特首候選人的提名制度，應根據下列原則：
  - 2.1 提名原則應以民主政治的「不排拒」(non-exclusive)為原則，即提名制度的設計不應為排拒某些政治力量參選而作出。
  - 2.2 提名方法應該有合理的機會，給有一定公眾支持度的候選人獲得提名。
  - 2.3 提名方法及提名委員會的組成，應確保不同社會階層或政治勢力，都有機會提名代表自己的候選人
- 3 提名委員會組成：
  - 3.1 可以大致沿用現行選舉委員會的界別分類，即如果提名委員會有 800 人，其成員可以有 200 名來自工商、金融界、200 名來自專業界別、200 人來自政界、及 200 人來自社會各界等。
  - 3.2 提名委員會各界別的委員應盡量以民主選舉方式產生（見附件），以增強提名委員會的代表性及公信力。
- 4 提名辦法的設計原則：
  - 4.1 改善行政立法關係：希望產生的特首候選人和立法會有一定聯繫，不會出現一位與立法會內各政黨完全沒有政治聯繫，但由於個人民望很高因而在普選中得以當選的特首，令行政立法關係出現緊張。
  - 4.2 均衡參與：特首候選人應在各不同界別和階層有起碼支持，因而不受個別階層仇視，而令其後施政出現困難。
  - 4.3 循序漸進：提名的規定應逐步放寬。放寬的方式可包括：
    - 4.3.1 減低每個界別所需的最低提名人數；或
    - 4.3.2 擴大每個界別的選民基礎。

4.3.3 精神是，如果要以一個「門檻」方案來換取各方共識，容許 2012 年進行普選行政長官，那麼這個「門檻」也應同時明確設有一個時間表，在兩、三屆內撤銷。

## 5 提名具體辦法（2012 年）：

- 5.1 例如第一屆普選特首可以要求由較多提名委員提名（例如 100 人），而其後逐漸減少提名所需人數。
- 5.2 任何特首候選人應至少獲得 100 名提名委員提名，才可成為特首候選人；
- 5.3 100 名提名委員內，應在四個不同大組別，均至少可獲得 10 名提名委員提名。這樣可確保該候選人在各不同階層均有最起碼的支持程度，例如起碼可獲得百分之五的工商界提名委員支持等。
- 5.4 100 名提名委員內，應包括起碼 15 名立法會議員。這樣可確保選出的特首至少可獲立法會相當部份議員支持（四份一），亦會令特首候選人不會太多——最多只會是三至四個——避免票數及政治利益過於分散。

## 6 選舉方法

- 6.1 普選投票辦法：採用兩輪投票制。如果第一輪投票，有任何候選人取得過半數的選票，則會當選。如果沒有候選人取得過半數選票，則由得票最高的兩位候選人進入第二輪決選；第二輪決選得票多者勝。
- 6.2 這個制度的優點是可確保最後當選者必然得到過半數票支持，避免出現得票不及一半的少數派行政長官（例如像零零年的陳水扁），而令認受性或立法會內的支持不足。確保行政長官在第二輪投票得過半數票支持，有助提高公信力及增加施政的認受性。此外，外國經驗顯示兩輪投票可容許各政黨候選人在兩輪選舉間協調，有利產生較溫和及較為廣泛接受的當選者，有利加強政黨合作之餘，增強與中央的溝通，也令政見較極端的候選人較難「偷襲」成功。

## 7 中央對行政長官的任命權

如今香港很多人士，對中央政府對香港行政長官任命權的性質，仍未有統一的理解。儘管中央官員多次反覆強調這屬於一種「實質性」任命，但不少香港人士包括部份法律界，仍堅持那應是一種「名義上」的任命權。而如今香港有關的選舉法律，也未有明確針對這一點作出補充，只是一般提及特首出缺後的補舉辦法。如果要在 2012 年實行補選，如何減低北京對此的疑慮和保留，十分重要，因此行政長官任命權的性質，將成了一個不能迴避的問題。

### 附註 提名委員會組成

#### 現時選舉委員會八百人的名額分配

工商金融界 (200 席)	工業一(12) 飲食界(11) 香港僱主聯合會(11) 工業二(12) 酒店界(11) 中國企業協會(11) 進出口界(12) 商界一(12) 金融界(12) 地產及建造界(12) 航運交通界(12) 商界二(12) 保險界(12) 紡織及製衣界(12) 批發及零售界(12) 旅遊界(12) 金融服務界(12)
專業界 (200 席)	會計界(20) 中醫界(20) 教育界(20) 高等教育界(20) 工程界(20) 醫學界(20) 法律界(20) 資訊科技界(20) 建築、測量及都市規劃界(20) 衛生服務界(20)
勞工、社會服務、宗教界(200 席)	漁農界(40) 宗教界(40) 體育、演藝、文化及出版界(40) 勞工界(40) 社工界(40)
原政界 (200 席)	全國人大代表(36) 市區區議會(21) 立法會議員(60) 全國政協代表(41) 新界區議會(21) 鄉議局(21)

建議：

1. 原有工商界、人大代表、政協代表、立法會議員、鄉議局等界別，其名額保持不變。工商界內各界別分組的選舉方法和名額保持不變(共 358 人)。
2. 現時在勞工、社會服務及宗教界內的社工界本質上屬專業人士，建議將其改劃入專業界別，令專業界別共有 11 個小分組，各專業界別比例約佔 18 席。
3. 保持區議會共 42 席，不需界分市區與新界，由所有民選區議員（即委任區議員無投票權）投票選出 42 人。選舉方法建議將所有區議會按立法會選區分為五大組，每組選出代表人數按區議員比例劃定，區議員以單一可轉移票制（single transferable vote）選出代表。此制度會令到選出的代表的黨派成份，會大致與區議會內的黨派勢力均衡接近，即某政黨如果在區議會拿得約十份一議席(約 40 名區議員)，則可獲得約四個提名委員席位。
4. 第三界別的 200 席，可擴闊其代表性，按行業選出提名委員，以增強整個提名委員會的代表性和認受性。除了(1)漁農、(2)體育／演藝／文化／出版、(3)宗教外，加入公營機構僱員、學生、持家及退休人士、及其他行業等，平分 200 個名額。所有選民不可重複在專業界別及此界別有選舉權。
5. 如果希望保持一些社會組織的影響力，例如工會、宗教界等，則可以考慮部份席位由這些中介組織選出：例如如果所有註冊工會以單一可轉移票制選出 30 人的話，不同政治傾向的工會都有機會獲得代表。在這方案下，建議組織代表只佔 100 人，例如宗教界 30 人、工會 30 人、漁農、體育及其他組織佔約 40 人等，其餘 100 名提名委員由分行業普選產生。

## Chapter IV

### Conditions Making for Democracy in Hong Kong and Some Key Issues

#### Conditions Making for Democracy in Hong Kong

At the time of its publication in October 1992, public attention focused on the way the electoral proposals in the Patten package attempted to force the pace of democratic development in Hong Kong, and the political storm which his proposals unleashed. Yet there were other things on the mind of Mr. Patten than electoral reform. A seasoned politician well versed in parliamentary institutions and politics, Mr. Patten's Policy Address broached two issues fundamental to the successful implementation of representative democracy in Hong Kong: what are the conditions making for democracy and what kind of representative system should be devised that would strike a balance between *popular participation* (rule by the people, as the Greek root of the term democracy suggests) and *efficient government*? It is a pity that public preoccupation with the electoral dispute overshadowed the importance of these two key issues, and that time did not allow Mr. Patten and his experienced British team time to develop solutions.

Mr. Patten raised at the outset the question of whether Hong Kong was ready for democracy, having regard to "Hong Kong's obvious sophistication and maturity, whether measured in terms of economic achievement, educational standards, or any other index of development."<sup>13</sup> The relationship between economic development and democracy is a

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<sup>13</sup> *Hong Kong Legislative Council, 7 October 1992 (Hansard), 39.*

subject of extensive debates in the West, starting with Seymour Martin Lipset's seminal essay "Some Social Requisites of Democracy: Economic Development and Political Legitimacy" in 1959. In his article "Economic Development and Democracy Reconsidered" published in *American Behavioral Scientist* in 1992, Larry Diamond points out that since Lipset's essay, a vast amount of quantitative studies on the relationship between democracy and many different dimensions of socioeconomic development have found a positive relationship.<sup>14</sup> The relationship between democracy and socioeconomic development is even stronger if the Human Development Index (HDI), a measure developed by the United Nations Development Program (UNDP) to measure a country's mean level of "human development" or physical quality of life, is used as the development indicator.<sup>15</sup> It is interesting to note that in the *Human Development Report 2005* published by the UNDP, Hong Kong is ranked 22<sup>nd</sup> in the group of "High Human Development" countries or territories while Singapore is ranked 25<sup>th</sup>. (See Appendix.) Hong Kong and Singapore are the only two economies regarded as "non-democratic" by western scholars. Singapore is commonly regarded by western scholars as "not democratic" because of its lack of competitive elections, while Hong Kong's awkward start in democratic development is mainly due to its colonial legacy.

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<sup>14</sup> *American Behavioral Scientist*, Vol. 35 No. 4/5, March/June 1992, 450-499.

<sup>15</sup> The UNDP defines the HDI as a summary measure of three dimensions of human development: leading long and healthy life, measured by life expectancy at birth; being knowledgeable, measured by literacy and school enrolment; and having a decent standard of living, measured by GDP per capita (PPP US\$).

It would be useful to examine the various indicators of development used by the scholars who undertook the studies to determine to what extent Hong Kong is ready for democratic development.

The key variables adopted by the scholars include the following: national wealth as measured by per capita national income, industrialization, urbanization and education (Coleman 1960); communication development (Cutright 1963); participation and freedom of the press (Jackman 1973); and ethnic pluralism, the percentage of population that is Protestant, prior history as a British colony, and recent passage to nationhood (Bollen and Jackman 1985). Regarding the importance attached to the percentage of population that is Protestant, scholars such as Huntington have argued that Protestantism encouraged democracy by its emphasis on the dignity of the individual and the separation between the church and state.<sup>16</sup> On all these counts, Hong Kong stands out as an eminently suitable candidate for democratization, by virtue of it being an urbanized, post-industrial society without any sharp ethnic, linguistic or religious divisions; the presence of a substantial and sophisticated middle class; a vibrant free press; strong Protestant influence and rule of law as part of the British heritage; and its position as a Special Administrative Region of China, giving Hong Kong people the new-found opportunity to rule themselves.

An examination of the historical and socioeconomic processes brought about by

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<sup>16</sup> Samuel Huntington, *The Third Wave* (Oklahoma: University of Oklahoma Press, Norman, 1991), 72 -85.

economic development however shows Hong Kong to be lacking or lagging in some respects. Take, for example, the question of Hong Kong's political culture. Lipset was one of the first to point out that a higher level of education, which would foster a more tolerant, moderate, and restrained political culture, would help to moderate conflict and encourage the citizens to adopt a more informed and rational attitude toward political participation.<sup>17</sup> Almond and Verba, in their comparative study of the political culture conducive to democratic development in *Civic Culture*, emphasize the importance of fostering "a balanced political culture in which political activity, involvement, and rationality exist but are balanced by passivity, traditionality, and commitment to parochial values."<sup>18</sup> Unfortunately, since the onset of direct elections to the legislature in 1991, politics in Hong Kong have been marked by a preponderance of public vituperation, a coarsening of the political rhetoric, intolerance of opposing views, rigidity and shallowness of policy positions, and the adoption of zero-sum tactics of outbidding and the politics of personal destruction. An explanation which has been advanced is the deep-seated frustration on the part of democracy advocates with the lack of prospect of direct elections that would open up channels to the highest positions of power. Be that as it may, democratization in Hong Kong would benefit from the nurturing of a political culture which encourages greater tolerance, inclusion, mutual trust and accommodation. This is an important factor to be taken into account in designing Hong's democratic infrastructure.

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<sup>17</sup> Lipset, *Political Man: The Social Bases of Politics* (Baltimore, Maryland: the Johns Hopkins University Press, 1981), 338-40.

<sup>18</sup> *Civic Culture* (Boston and Toronto: Little, Brown and Company, 1965), 30.



## **Key Issues of Democratic Development**

In his 1992 LegCo Policy Address, Mr. Patten also raised another key issue of democratic development: to what extent and how can one balance popular participation against efficiency and effectiveness of governance? The quotation from Isaiah Berlin cited by Mr. Patten – “the promotion of social justice and liberty does not necessarily mean the end of all efficient government; that power and order are not identical with a straitjacket of doctrine, whether economic or political; that it is possible to reconcile individual liberty – a loose texture of society – with the indispensable minimum of organising and authority” – largely neglected by the Hong Kong audience at that time, encapsulates the inherent tension between popular participation and efficient and authoritative government, and between individual liberty and social order. Mr. Patten was clearly aware of the tension between these opposing forces and the need to strike a balance, but in his haste to broaden public participation he put into effect a model of government that was to cause severe governance problems for the HKG. Mr. Patten declared, “My intention is to ensure that we have vigorous and effective executive-led government that is properly accountable to this Legislative Council.” In this statement lies the central paradox of the Patten reform: the impossibility of maintaining an executive-led government after the executive branch had taken decisive action to sever the links between the executive and legislative branches, and significantly weaken the executive branch’s ability to control the government’s policy and legislative agenda. By removing all Official Members from the legislature in 1995, the Patten reform left the

executive branch without a single assured vote in the legislature and hostage to multiple, aggressive, politically driven demands from the legislature.

### **The Relationship between the Executive and Legislative Branches**

The grave governance problems experienced by the HKG in the final days of the colonial administration and which deteriorated after 1997 were not unanticipated by the departing British leaders. As democratization of the legislature went underway in the 1980s, the British leaders agonized over the viability of introducing a ministerial system so as to resolve the disconnect between the appointed executive and the elected legislature. *Hong Kong 1985* has the following to say about the option of introducing a ministerial system:

32. In response to the Green Paper, a substantial number of suggestions were made that unofficial members of the Executive Council should be given more power and authority to control and supervise the policies and the operations of the government through some form of ministerial system in future.

33. The issue, like that concerning the position of the Governor, raises important constitutional questions. It is not a matter that needs to be decided in the immediate future nor is it the only way of proceeding. The whole subject will be addressed further at a later stage.

The British leaders at that time, led by then Governor Sir Edward Youde, did not pretend to have the answer and left it to be resolved at a later time. The rapid structural changes generated by democratization of the legislature did not leave the administration much time or room for maneuver. Troubles for the executive branch started to brew as soon as directly elected members were returned to LegCo in 1991. On December 4, 1991, LegCo, led by the lawyers and the newly elected members, flexed its muscle

and voted against the Sino-British agreement to establish a Court of Final Appeal in Hong Kong as required by the Basic Law on the ground that only one overseas judge could sit on the Court comprising five judges. LegCo's motion rejecting the Sino-British deal put the establishment of the Court on the back burner for almost four years.<sup>19</sup>

Similarly, Baroness Dunn, a Chinese businesswoman who had risen to the top echelon of the British-dominated business sectors and was then serving as Senior Member of the Executive Council, put forward a plan to co-ordinate the business of the Executive Council and LegCo by forming an incorporated company comprising all Non-Official Members of the two Councils and to be presided by her. The plan was quickly shot down by the newcomers to the legislature. On learning Governor Patten's preference for separating the Executive Council from the legislature, Baroness Dunn retired from the

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<sup>19</sup> The passage of a LegCo motion rejecting the 4 (local judges)+1 (overseas judge) formula for the Court of Final Appeal of the HKSAR in December 1991 threw the HKG back on the preparations for the establishment of the highest court for several years. After the British Government finally succeeded in securing Chinese agreement to a draft bill for the establishment of the Court of Final Appeal in the HKSAR after the transfer of sovereignty, a motion was passed in LegCo on May 3, 1995, stating –

“That this Council, having considered the present situation regarding the establishment of a Court of Final Appeal and having regard to the most recent comments and views of members of the Hong Kong Law Society, the Bar Association of Hong Kong and others concerned with this matter, urges the Government to set up the Court of Final Appeal at the earliest opportunity, in alignment with the obligations set out in the Joint Declaration and the Basic Law.”

At no time was there a consensus in LegCo, since members of the Democratic Party and their allies voted against the 4+1 formula and many other aspects of the bill.

political scene in 1992, marking the end of the “elite-consensual” era of Hong Kong politics.<sup>20</sup> Hailing from the Westminster tradition of parliamentary supremacy, Mr. Patten put strengthening the autonomy and independence of the Hong Kong legislature above all other political goals. Control of government business in LegCo was further weakened following the retirement of all Official Members from the legislature in October 1995. In the final days (and nights) of LegCo sittings just before the handover of sovereignty, a large number of bills were rushed through in the security and labor areas on the initiative of the legislators, which had to be held in abeyance by the HKSARG because the hastily put together laws were considered ill-conceived, impracticable or unacceptable. Some of them were further amended or not put into operation until the HKSARG was legally challenged.

As an indication of the severity of the problem, Mr. Peter Lai, who was one of the chief architects of Patten’s political reform and served as Secretary for Security until the end of August 1998, is reported to have said in one of his farewell interviews that “the relationship between the executive and the legislative branches is the *most important* component in designing Hong Kong’s future constitutional system.” He added that arguments about Hong Kong’s constitutional development in the past years had focused on the number of seats for direct elections but had overlooked the long-term relationship

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<sup>20</sup> Ambrose King, in *The Administrative Absorption of Politics in Hong Kong, with Special Emphasis on the City District Scheme*, points out that for over a hundred years the British rulers succeeded in securing political stability by providing opportunities for political participation in the administrative process via the elites. Yet this elite-consensual model only worked when the political stratum was small; once there had been “social mobilization, whereby the apolitical strata transform into politically relevant strata, then, it is not elite consensus or integration, but elite-mass consensus or integration which becomes necessary for a stable political system.” (36)

between the executive and legislative branches, and hoped that Hong Kong's 6.5 million citizens would reflect on this.<sup>21</sup> Mr. Lai, regarded as one of the best brains in the HKG, was uncannily accurate in anticipating the HKSARG's constitutional and governance problems.

## **The Paradoxes of Democracy**

The governance problems experienced by Hong Kong since the democratization of the legislature is a good illustration of the paradoxes of democracy discussed in Larry Diamond's essay "Three Paradoxes of Democracy".<sup>22</sup> In this essay, Diamond points out that popular understanding of democracy as "government by the people" masks the inherent contradictions within a democratic system of government between *conflict* and *consensus*, *representativeness* and *governability*, and *consent* and *effectiveness*. The three paradoxes of democracy identified by Diamond crystallizes the forces pulling in opposite directions in a democracy and which need to be carefully balanced – the need for competition, broad representativeness and popular support on the one hand, and the countervailing need for the government's ability to act decisively on the other. Democracy hinges on popular consent and institutionalized competition for power, but it also requires an effective and authoritative government. As Alexander Hamilton and other Federalists took pains to explain in arguing for a strong central government in America, a representative government represents; but it is imperative also that it is able to

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<sup>21</sup> Report on interview with Mr. Peter Lai in *Wen Wei Po*, July 30, 1998.

<sup>22</sup> Larry Diamond and Marc F. Plattner, eds., *The Global Resurgence of Democracy* (Baltimore and London: Johns Hopkins University Press, 1996), 111-123.

govern. John Jay, one of the Federalists, pointed out that:

Nothing is more certain than the indispensable necessity of government; and it is equally undeniable that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers.”

In Paper No. 37 “Concerning the Difficulties of the Convention in Devising a Proper Form of Government”, Madison further explained that:

Among the difficulties experienced by the convention, a very important one must have lain in combining the requisite stability and *energy* in government with the inviolable attention due to liberty and to the republican form. ... Energy in government is essential to that security against external and internal danger and to that prompt and salutary execution of the laws which enter into the very definition of good government.<sup>23</sup>

The American experience of framing their constitution and vesting the federal government with adequate powers to enable it to function *energetically* underscores the importance for Hong Kong to devise democratic institutions that strike a balance between *representativeness* and *effective government*.

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<sup>23</sup> Charles R. Kesler, Intro and Notes, Clinton Rossiter, ed., *The Federalist Papers* (New York: New American Library, 2003), 31, 222-223. Italics added.

## Chapter V

### Attempts at Democratization by the Hong Kong Special Administration

#### The Tung Administration's Search for a New Paradigm

First-term Chief Executive Mr. C. H. Tung inherited from Patten a semi-democracy without realizing that the center of gravity had shifted to the legislature, upon which the SARG depended for the passage of legislation and financial proposals. Continuing the British myth of maintaining an “executive-led government”, *The Second Report of the Constitutional Task Force* of the HKSARG published in April 2004 cited the maintenance of an “executive-led” system as one of the “Basic Policies and Design of the Political Structure”.<sup>24</sup> While the desire to maintain authoritative decisiveness is thoroughly understandable, neither Mr. Tung nor his politically inexperienced team had any real comprehension of the constitutional and institutional changes that were necessary to enable the SARG to function effectively.

Recognizing the twin problems of lack of party support and of direct popular mandate, Mr. Tung in his second term adopted measures aimed at strengthening both performance and legitimacy. With regard to the Executive Council, an archaic institution inherited from the colonial era, Mr. Tung appointed to it leaders of two major political

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<sup>24</sup> Paragraph 3.25 of *The Second Report of the Constitutional Task Force* (Hong Kong: The Government Logistics Department, Hong Kong Special Administrative Region Government, April 2004, 19) describes the political structure in Hong Kong as an “executive-led system headed by the Chief Executive.” Such a description merely follows the historical fact during the British era, but fails to take account of the fundamental political changes which have taken place in the last 20 years of British rule, and which have stripped the government of structural control over the legislature.

parties in the legislature. While the move was manifestly adopted to strengthen support from LegCo, the alliance collapsed when the Chairman of the Liberal Party appointed to the Executive Council, on the advice of his colleagues, withdrew support for the controversial national security legislation pending legislative approval and resigned from the Council in July 2003.

Separately Mr. Tung sought to strengthen the credibility of his administration by turning the senior officials filling the minister-equivalent positions into “accountable officials”, who were to be hold office at the confidence of the Chief Executive, similar to Presidential appointees in the U.S. Before the introduction of the “accountability system”, those senior positions were filled by career civil servants who enjoyed security of tenure. While on the face of it, this system would enhance the accountability of the SARG by holding senior officials accountable for the performance of their duties, it falls short of the democratic ideal of creating “a system of government in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the *competition* and *cooperation* of their elected representatives.”<sup>25</sup> The accountability of senior officials is a poor proxy for holding the SARG accountable to the community by regular elections. It fomented the blame culture in Hong Kong which already took a toll on several senior members of the community holding responsible positions in the public sector, and created more problems than answers to the question of accountability in a

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<sup>25</sup> Philippe C. Schmitter and Terry Lynn Karl, “What Democracy Is ... And Is Not”, in *The Global Resurgence of Democracy*, 50.



semi-democratic system.

Apart from launching these piecemeal measures, Mr. Tung stalled and stonewalled on the question of further democratic development for Hong Kong. Yet time was becoming short for the Chief Executive to propose amendments to the *method* for selecting the Chief Executive and for forming the legislature beyond 2007. Annex I and Annex II to the Basic Law provide that the *method* for selecting the Chief Executive for the terms subsequent to the year 2007, and the *method* for forming the Legislative Council and its voting procedures for the years subsequent to the year 2007 may be amended in accordance with a procedure which requires the endorsement of a two-thirds majority of all the members of the LegCo and the consent of the Chief Executive, and referral to the Standing Committee of the National People's Congress of China for approval or for the record. In discharging his constitutional obligation to be accountable to the HKSAR, the Chief Executive has a responsibility to initiate discussions with the authorities in Beijing about possible amendments to the *methods* for selecting the Chief Executive and for forming the Legislative Council beyond 2007. In his Policy address on January 7, 2004, the Chief Executive finally undertook to "actively promote constitutional development in Hong Kong on the basis of maintaining the "One Country, Two Systems" and adhering to the Basic Law." He set up a Constitutional Task Force headed by Chief Secretary Mr. Donald Tsang to commence consultations with the authorities in Beijing. In accordance with the principle of "gradual and orderly progress" as stipulated in the Basic Law, on April 6, 2004, the Standing Committee of the National

People's Congress made a legislative interpretation of the relevant provisions of Annexes I and II to the Basic Law to provide that the *methods* referred to above may be amended subject to full compliance with the procedures stipulated in the two Annexes; but if the *methods* are not amended the selection of the Chief Executive and the formation of the Legislative Council beyond 2007 will follow the existing provisions in the two Annexes. On April 26, 2004, the Standing Committee made a further Decision to the effect that the selection of the Chief Executive for the Third Term in 2007 will not be by universal suffrage; nor will the formation of the Fourth Term of the Legislative Council in 2008. Subject to these provisos, the *methods* for selecting the Chief Executive for the Third Term and for forming the Legislative Council for the Fourth Term may be amended in accordance with the relevant provisions of the Basic Law and Annexes I and II.

### **The New Chief Executive's Quest for a Workable Model**

As time was running short for changes to the *methods* to be made, the new Chief Executive Mr. Donald Tsang, who took over from Mr. Tung in June 2005, moved quickly to put forward proposals for amending the *methods*. The SARG's Constitutional Development Task Force proposed, in its Fifth Report published in October 2005, to double the size of the Election Committee for electing the Chief Executive to 1,600 members, and to significantly increase its popularly elected element by including *all* District Council members. With regard to the Legislative Council, the Task Force proposed that the number of seats in the Council be increased from 60 to 70; the number of seats to be returned by geographical constituencies through *direct elections* to be increased from 30 to 35; and the number of seats to be returned by functional constituencies to be increased from 30 to 35, with the number of seats returned by the

District Council Functional Constituency to be increased from 1 to 6. By incorporating District Councilors into the electorate for the Election Committee and the District Council Functional Constituency of the Legislative Council, the SARG argued that they would expand the electorate of the Election Committee and the Functional Constituencies of the Legislative Council to over 3 million voters. The expansion in the electorate would exceed that proposed by Mr. Patten in 1993, which would have expanded the electorate of the so-called “new nine Functional Constituencies” to 2.7 million voters. In accordance with the *methods* stipulated in Annexes I and II to the Basic Law, the SARG’s package required approval by a two-thirds majority in the Legislative Council, i.e. 40 votes.

The incorporation of all District Councilors in the Election Committee and the substantial increase in the number of seats to be returned by the District Council Functional Constituency would bring Hong Kong closer to universal suffrage by significantly increasing the electorate for the selection of the Chief Executive and the election of the Legislative Council. Nevertheless, the government’s proposals failed to win the support of a hard-core faction of legislators who insisted on the immediate promulgation of a time-table for holding direct elections. On December 4, 2005, the opponents organized a mass rally to press for agreement to a specific time-table for direct elections. Independent observers estimated that up to 100,000 people participated in the demonstration.<sup>26</sup> Despite intense lobbying by the government, the government’s

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<sup>26</sup> Although the organizers of the mass rally claimed that 250,000 people participated in it, independent observers put forward various estimates with none exceeding 100,000.

package of proposals, which were debated by LegCo on December 21, 2005, failed to secure the necessary two-thirds majority required by the Basic Law.<sup>26</sup> In the absence of the necessary LegCo approval and in accordance with the legislative interpretation of the Standing Committee of the National People's Congress made on April 6, 2004, the selection of the Chief Executive and the formation of LegCo beyond 2007 will follow the existing provisions in the Basic Law. In other words, no progress in democratization will be made until a two-thirds majority on the way forward emerges in LegCo.

The SARG suffered another major setback in early 2006, when it had to abandon its proposals for a multi-billion-dollar West Kowloon Cultural Development project after their rejection by LegCo. Although the much more politically and PR savvy Chief Executive Tsang has succeeded in stabilizing Hong Kong and won consistently high popular approval of his performance, repeated defeats by LegCo drive home the severe structural governance problems of a semi-democracy. Whether as a matter of practical necessity to break out of the current gridlock or to implement the constitutional arrangements in the Basic Law, it would be in Hong Kong's interest to move forward and transform itself into a full-fledged, representative democracy as soon as practicable.

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<sup>27</sup> After many hours of debate in the legislature, on December 22, 2005, 34 legislators voted for the government's constitutional reform package, 24 against and 1 abstained. It failed to secure the necessary two-thirds majority from the legislature.

## Chapter VI

### **Beyond Slogans – Building a Democratic Polity – Fundamental Principles and Essential Components of a Democratic Political Infrastructure**

#### **The Constitutional Design in the Basic Law**

There is no doubt that the Basic Law provides for the ultimate establishment of a representative form of government in Hong Kong. Article 45 of the Basic Law provides that “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.” (Italics added.) Article 68 of the Basic Law makes similar provisions regarding the method for forming the Legislative Council.

Nevertheless, as it has now become clear with hindsight, as the Basic Law drafters of the 1980s lacked in-depth understanding of the theory and practice of representative government, they basically cobbled together a constitutional system based on existing practice, and incorporated features borrowed from western systems of representative government. For example, the constitutional arrangements for the HKSAR as provided for under the Basic Law contain elements of checks and balance characteristic of the American system, such as LegCo’s ability to pass a motion of impeachment of the Chief Executive, in the event of serious breach of the law or

dereliction of duty on his part, by a two-thirds majority (Article 73(9)), and the provision for LegCo to endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court (Article 90). The irony is that while the Basic Law drafters incorporated many elements of the American model into the Basic Law possibly with a view to strengthening the executive branch, in the last 17 years of British rule fundamental constitutional changes were steadily introduced by the British to bring the system of government as close to the British parliamentary model as possible. Following the implementation of the Basic Law in Hong Kong in 1997, the reality is that Hong Kong has a highly robust, assertive and autonomous legislature operating along British parliamentary lines, while the executive branch still labors under the fiction of an “executive-led” government. Even though the concept of “executive-led” government is not written into the Basic Law, that was regarded by Basic Law drafters as a key component of the success of the colonial administration. Little did they realize that once democratization of the legislature had gone underway and the executive branch stripped of direct control over the legislature, government by perpetual intensive lobbying, horse-trading and playing one political party or grouping off another would make “executive-led” government a non-starter.

### **Lack of Institutional Provision for “Executive-led” Government**

A major problem of the constitutional design in the Basic Law is precisely the lack of institutional arrangements for “executive-led” government. The Basic Law provides for eventual separate direct elections for the Chief Executive and the legislature, and there is no organic link between the executive and legislative branches of the government. In the colonial era the linkage was provided by the appointment of minister-

equivalent officials as legislators and overlap of membership between the Executive Council and senior non-official members of the legislature. Once that vital link was removed, the executive branch encountered crippling problems in imposing its agenda on the legislature.

In comparison with a fully democratic system of government, whether it be the parliamentary or presidential model, executive-led government is facilitated by the key role played by political parties in forming and sustaining governments in office. For example, in the U.S., although the President and legislators are returned by separate elections and the former by indirect elections, the U.S. has a majoritarian two-party electoral system. The President's party support in Congress provides the vital instrument of control of government business in the legislature. Executive dominance is further assisted by the Vice-President having a tie-breaking vote in the Senate. In the U.K., as the King or Queen is expected to appoint the leader of the majority party in Parliament as the Prime Minister, the Prime Minister is effectively chosen by the legislature. As Arend Lijphart has pointed out in *Patterns of Democracy*, "In theory, because the House of Commons can vote a cabinet out of office, it "controls" the cabinet. In reality, the relationship is reversed. Because the cabinet is composed of the leaders of a cohesive majority party in the House of Commons, it is commonly backed by the majority in the House of Commons, and it can confidently count on staying in office and getting its legislative proposals approved. The cabinet is clearly dominant vis-à-vis Parliament."<sup>28</sup> Such institutional safeguards of executive dominance are conspicuous by their absence

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<sup>28</sup> *Patterns of Democracy* (New Haven and London: Yale University Press, 1999), 11-12.

in the Basic Law or in the political, administrative or legislative set-up in the HKSAR. As the result of this fundamental flaw in the design of the HKSAR's constitutional system, it is not surprising that despite spending an inordinate amount of resources lobbying for the necessary votes and constant politically maneuvering, the HKSARG still faces an uphill task getting LegCo's approval for controversial legislation or large-scale infrastructural projects.

### **Fundamental Principles Governing the Establishment of a Democratic Polity in the HKSAR**

The governance problems arising from the lack of institutional provision for "executive-led" government can only be resolved by speeding up the transformation of the HKSAR into a full-fledged representative democracy. In devising a democratic system that will endure in Hong Kong, it is worth bearing in mind what Schmitter and Karl said in their essay "What Democracy Is ... and Is Not":

One of the major themes of this essay is that democracy does not consist of a unique set of institutions. There are many types of democracy, and their diverse practices produce a similarly varied set of effects. The specific form democracy takes is contingent upon a country's socioeconomic conditions as well as its entrenched structures and policy practices.<sup>29</sup>

In the case of Hong Kong, the construction of a durable democratic system must comply with the following principles:

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<sup>29</sup> *The Global Resurgence of Democracy*, 50.



1) Hong Kong's democratic system must be consistent with its status as "an inalienable part of the People's Republic of China" (Article 1 of the Basic Law) and a Special Administrative Region with "a high degree of autonomy" (Article 2). As the essence of the democratic system, as conceptualized in Robert Dahl's term "polyarchy", hinges on the participation (in the electoral process) and opposition (in contesting for elected offices), implicit in this system is the element of *unpredictability* of outcome, without which meaningful competition would not be possible.<sup>30</sup> As Hong Kong is not and cannot be an independent country, any system of government that could create an element of unpredictability or uncertainty working against the interests of its sovereign country would inevitably be a source of concern to the People's Republic of China. Article 43 of the Basic Law tries to guard against the Chief Executive taking decisions contrary to China's national interests by specifying that "The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law". The vagueness of the latter part of this provision underlines the practical difficulty of ensuring this once a popularly elected chief and a popularly elected legislature are in place. A way needs to be found to assuage China's concerns before its blessing can be given for Hong Kong to have direct elections for both the Chief Executive and the entire legislature.

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<sup>30</sup> Robert Dahl, *Polyarchy* (New Haven and London: Yale University Press, 1971), 1-10.

2) The system must be fully consistent with the underlying principles governing democratic development in the Basic Law. As the source of Hong Kong's separate systems derives from the "One Country, Two Systems" concept enshrined in the Basic Law, the cornerstone of Hong Kong's constitutionalism is the Basic Law. Hong Kong's best chance of reassuring the People's Republic of China of the ultimate identity of interests between its democratic system and the national interest rests on Hong Kong's unswerving commitment to the constitutional system provided in the Basic Law. It is therefore of paramount importance that Hong Kong adheres to the explicit and implicit principles governing Hong Kong's democratic development in the Basic Law. These principles are as follows:

- The principle of gradual and orderly progress (Articles 45 and 68)
- The principle of development in the light of actual situation in the HKSAR (Articles 45 and 68)

And although not specified in the Basic Law, two important principles were enunciated by Mr. Ji Pengfei, then Director (i.e. Minister) of the Hong Kong and Macau Office of the State Council of the People's Republic of China in March 1990, on the eve of the enactment of the Basic Law. These two principles are:

- "Balanced representation" "meeting the interests of different sectors of society"
- "Facilitation of the development of the capitalist economy"

Quaint though the latter two principles might appear to an avowed parliamentarian accustomed to the plural or majoritarian system, these two principles are not that bizarre to one schooled in the more consensual European system of

representative government (grand coalition government encompassing all parties, or “consociationalism” as termed by Arend Liiphart), or a confederal system requiring concurring majorities in several different constituencies, or familiar with the various safeguards built into the U.S. system to guard against “the tyranny of the majority” (Bill of Rights, limiting the franchise to the propertied class for a long period in U.S. history, unrepresentative upper house, unelected Supreme Court judges with life tenure, etc). It has to be recognized though that such safeguards also limit executive energy and decisiveness. For a city such as Hong Kong which has thrived on its freewheeling capitalist system and which has a large percentage of non-tax-paying citizens, the People’s Republic of China has good reasons to worry about the rise of grassroots populism detrimental to Hong Kong’s capitalist system, arising from “representation without taxation”, and skewed representation of its citizenry in the legislature.<sup>31</sup> Historically, because of the emphasis on commercial success, the brightest and best have clustered around commerce and industry and the most lucrative professions. Unless adequate safeguards are built into the system to ensure elitist and balanced participation in managing the affairs of Hong Kong, direct elections to the legislature could deprive Hong Kong of the participation of men and women with the deepest and broadest economic and managerial experience and expertise in leading Hong Kong to overcome its multiple socioeconomic challenges. Seen in this light, the People’s Republic of China’s concerns are consonant with the checks and balances which the constitutional framers of other countries had built into their own systems.

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<sup>31</sup> Hong Kong’s tax base is so narrow that in the year of assessment 2002-03, only 17% of Hong Kong’s total population paid salary tax while only 0.2% paid the standard rate of a maximum of 15%.

3) Beijing would be more confident of a democratic system in Hong Kong functioning in harmony with national interests if Hong Kong people demonstrate a greater sense of national identification and better understanding of the relationship between the whole (China) and the part (Hong Kong).

Possibly because of the long history of colonial rule in Hong Kong which has undermined Hong Kong people's sense of national identification with China, some democracy advocates have manifested a "them-us", "holier-than-thou" syndrome in approaching matters requiring consultation with China. They have tended to adopt hard-line, non-compromising positions, or on occasion high-pressure tactics of mass mobilization. Such mentality and tactics work against the political give-and-take which is essential to hammering out a consensus regarding Hong Kong's democratic development. The ability to accept the totality of China as it is, an understanding of the historical, cultural and political backgrounds to China's current state of development, and of Hong Kong's place and role in today's China, would help to engender the mutual trust and respect necessary for constructing a democratic polity within a non-democratic country.

### **From Liberal Non-Democracy to Democratic Polity**

Even though a colonial form of government is by definition non-democratic, Hong Kong established a reputation for freedom in its colonial days. For many years it has been voted the freest economy by the Heritage Foundation and Fraser Institute, in recognition of its doctrinaire adherence to the market system, facilitation of free enterprise and small and non-interventionist government. In Fareed Zakaria's words, "For decades the tiny island of Hong Kong was a small but revealing illustration that liberty

did not depend on democracy.”<sup>32</sup> The strong tradition of rule of law, independent courts, and application of international covenants on civil, political, economic, social and cultural rights in Hong Kong had provided a high level of protection of personal, civil and political liberties in the absence of representative democracy. Following the assumption of sovereignty by China, Hong Kong continues to flourish as the regional headquarters for non-governmental organizations because of the strong protection of liberty provided by the rule of law, the presence of a vibrant and free press (including the presence of many international media organizations with regional headquarters in Hong Kong) and the free flow of information. At least two longtime expatriate residents, Mr. William Overholt, currently RAND Asia Policy Research Chair at the RAND Center for Asia Pacific Policy, and Mr. Philip Dykes who served as the Chairman of the Hong Kong Bar Association, observed that Hong Kong actually enjoyed a higher level of freedom and tolerance following the entry into force of the Basic Law.<sup>33</sup> Mr. Dykes pointed out that the availability of a written constitution (the Basic Law) with the Bill of Rights entrenched in it, had strengthened human rights protection. Hong Kong’s constitutional liberalism and “republicanism” – a limited government restrained by its own laws, independent courts and mechanisms for horizontal accountability (the

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<sup>32</sup> Fareed Zakarai, *The Future of Freedom – Illiberal Democracy at Home and Abroad* (New York and London: W.W. Norton & Company, 2003), 21.

<sup>33</sup> In his article “Hong Kong: the Perils of Semidemocracy”, Mr. Overholt observes that demonstrations are freer than under the British. The British penchants for omnipresent wiretapping and using the Independent Commission Against Corruption to circumvent due process have been curtailed.” Mr. Dykes cites the effect of the Basic Law in strengthening human rights protection in an interview by Sing Tao Daily News (Hong Kong edition), Jan 31, 2005.

Independent Commission Against Corruption and the Audit Commission) as well as vigorous legislative oversight – provide excellent foundations for the building of a liberal and functional democratic polity.<sup>34</sup>

## **Beyond Slogans – The “Fallacy of Electoralism” and the Institutions and Infrastructure Necessary for Building a Democratic Polity**

### **“Fallacy of Electoralism”**

Whether before or after 1997, democracy advocates in Hong Kong have made early implementation of universal suffrage the centerpiece of their democratization campaign. While the emphasis on universal suffrage may be beneficial to certain political parties or groupings for the purpose of power consolidation, immediate implementation of universal suffrage before key institutions and structures for developing democracy are in place risks further weakening Hong Kong’s already beleaguered executive branch; wrecking effective administration and undermining informed and rational participation in policy formulation, all of which have been the key elements of Hong Kong’s success in the colonial era. The consequences for Hong Kong’s economic and social development would be decidedly unfortunate if a minimalist electoral standard is adopted as the

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<sup>34</sup> In his paper entitled “Can the Whole World Become Democratic? Democracy, Development, and International Policies” delivered at the Center for the Study of Democracy at University of California, Irvine in 2003, Larry Diamond points out that a truly accountable political system requires three elements: *democratic*, enabling citizens to choose their rulers in free and fair elections and to participate and express themselves in the political process; *liberal*, limiting the power of the state to encroach on the basic rights of the person, and *republican*, providing a rule of law and good government through institutions of horizontal accountability that check and balance the executive power. Other than not having a democratic system that enables its citizens to choose their highest leaders in free and fair elections, Hong Kong qualifies as an accountable political system by virtue of its strong liberal and republican institutions.

benchmark for democratic development.

Moreover, as scores of leading scholars of democracy have pointed out, the institution of electoral democracy satisfies only the minimal, procedural requirements of democracy. Huntington argues in *The Third Wave* that:

First, the definition of democracy in terms of elections is a minimal definition. To some people democracy has or should have much more sweeping and idealistic connotations. To them, “true democracy” means *liberté, égalité, fraternité*, effective citizen control over policy, responsible government, honesty and openness in politics, informed and rational deliberation, equal participation and power, and various other civic virtues. These are, for the most part, good things and people can, if they wish, define democracy in these terms. Doing so, however, raises all the problems that come up with the definitions of democracy by source or by purpose. Fuzzy norms do not yield good analysis. Elections, open, free, and fair, are the essence of democracy, the inescapable *sine qua non*. Governments produced by elections may be inefficient, corrupt, shortsighted, irresponsible, dominated by special interests and incapable of adopting policies demanded by the public good. These qualities may make governments undesirable but do not make them undemocratic. Democracy is one public virtue, not the only one, and the relation of democracy to other public virtues and vices can only be understood if democracy is clearly distinguished from other characteristics of political systems.<sup>35</sup>

Even though Huntington adopts for the purpose of his study in *The Third Wave* a procedural approach in defining democracy as a system in which “its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote”, his definition, similar to Robert Dahl’s concept of “polyarchy”, denotes a system which provides a high level of civic and personal liberties – “freedom of thought and expression, freedom of the press, freedom of assembly and demonstration, freedom to form and join associations, freedom from terror and unjustified imprisonment

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<sup>35</sup> *The Third Wave*, 9-10.

– secured through political equality under a rule of law, sufficient to ensure that citizens (acting individually and through various associations) can develop and advocate their views and interests and contest policies and offices vigorously and autonomously.”<sup>36</sup> In other words, the definition of democracy purely by reference to elections leaves out important components of fundamental freedoms which distinguish democracy from other political systems. Such a defective, one-dimensional approach toward defining democracy has been termed the fallacy of “electoralism”, as Schmitter and Karl explain in their essay “What Democracy Is ... and Is Not”:

The most popular definition of democracy equates it with regular elections, fairly conducted and honestly contested. Some even consider the mere fact of elections – even ones in which specific parties or candidates are excluded, or in which substantial portions of the population cannot freely participate – as a sufficient condition for the existence of democracy. This fallacy has been called “electoralism” or “the faith that merely holding elections will channel political action into peaceful contests among elites and accord public legitimacy to the winners” – no matter how they are conducted or what else constrain those who win them.<sup>37</sup>

In the case of Hong Kong, the non-democratic system in the colonial days already guarantees a high level of fundamental rights and freedoms of the person and the protection of such rights has been strengthened by the entry into force of the Basic Law.

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<sup>36</sup> Larry Diamond, Juan J. Linz, Seymour Martin Lipset, eds. *Politics in Developing Countries* (Boulder, London: Lynne Rienner Publishers, Inc., 1995), 7.

<sup>37</sup> *The Global Resurgence of Democracy*, 52.



In the course of transforming Hong Kong into a democratic system in the run-up to Hong Kong's reversion to China and in the absence of a consensus with the PRCG, one of the most palpable consequences of the democratic experiment has been the significant weakening of two vitally important dimensions of any political system – its *efficacy* and *effectiveness*. Juan J. Linz defines efficacy as “the capacity of a regime to find solutions to the basic problems facing any political system (and those that become salient in any historical moment) that are perceived as more satisfactory than unsatisfactory by aware citizens,” and effectiveness as “the capacity actually to implement the policies formulated, with the desired results.”<sup>38</sup> Examples of severe weakening of the HKSARG's *efficacy* and *effectiveness* in tackling the HKSAR's most fundamental problems, including the disproportionate economic dependence on Mainland China, the economy's inability to move up the value ladder by making greater use of technology and innovation, creativity and knowledge, and the general lowering of educational standards, are legion. Given that the *liberal* and *republican* dimensions of a democratic system have been met in Hong Kong, the construction of a functional, quality democracy in Hong Kong would benefit from a more rounded and balanced approach aimed at building a democratic polity with a stronger capacity to govern.

## **Building a Democratic Polity – Institutional and Infrastructural Development**

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<sup>38</sup> Juan J. Linz, *The Breakdown of Democratic Regimes* (Baltimore and London: The Johns Hopkins University Press, 1978), 16-23.

Experience of democratic development in the West since the late eighteenth century and elsewhere shows that the successful development of a democratic polity requires the building of a democratic *infrastructure* embracing key political institutions vital for democratic development, and other facilitating conditions. Although Hong Kong has many pre-conditions favorable to democratic development (urbanization, industrialization, high level of human development, high level of literacy, presence of the middle class and a strong Judeo-Christian religious tradition), several of the institutions vital for democratic development and infrastructural factors are lacking or underdeveloped in Hong Kong at the present stage of democratic development. These are enumerated below.

### **Development of Political Parties**

Political parties have played a pivotal role in the development of liberal democracy in the West. As quoted in Zakaria's book *The Future of Freedom*, the American political scientist Clinton Rossiter is known to have said: "No America without democracy; no democracy without politics; no politics without parties."<sup>39</sup>

In their study *Political Parties and Democracy*, Larry Diamond and Richard Gunther identifies seven functions of parties: the core function of elite recruitment, which can be broken down into 1) candidate nomination (designating contestants representing each party), and 2) electoral mobilization (parties motivating electoral clienteles to support their candidates; 3) issue structuring (structuring the choices and alternatives along different dimensions; 4) societal representation ("either symbolically or

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<sup>39</sup> *The Future of Freedom*, 94.

In advancing specific interests”); 5) interest aggregation (melding the separate interests of individual groups into broader, if not universalistic, appeals); 6) forming and sustaining governments in office and 7) social integration (enabling citizens to participate effectively in the political process).<sup>40</sup> An examination of the actual political scene in Hong Kong will show readily how underdeveloped Hong Kong’s political parties currently are in fulfilling the above functions.

While the relatively short history of Hong Kong’s political parties is understandable owing to the late start in democratization, the low membership of the major parties is disappointing. The oldest political party, the Democratic Party (DP), is estimated to have fewer than 1,000 members; as do the Liberal Party (LP). The Democratic Alliance for the Betterment of Hong Kong (DAB) has around 5,500 in early 2006, and is aiming to increase its membership by 100 per month. The newest political party, the Civic Party (CP), was launched in spring 2006 with 160 members, including 110 Ordinary and Founding Members and other Branch Members. The CP stipulates complicated membership admission procedures, requiring applicants to join as Branch Member for at least 12 months; requiring proposing and seconding by Ordinary Members and approval by the Executive Committee, which are cumbersome and undemocratic by Western standards. In 2006, both the LP and the CP were roiled by reports of refusals to disclose membership details or adopting measures to circumvent legal requirements of disclosure of residential address of members of their party involved in the incorporation

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<sup>40</sup> Larry Diamond and Richard Gunther, eds., *Political Parties and Democracy* (Baltimore and London: The Johns Hopkins University Press, 2001), 7-9.

of the party as a limited company under Hong Kong's Companies Ordinance. In the absence of legislation governing the establishment and operation of political parties, all parties in Hong Kong were established as non-profit limited companies by guarantee under Hong Kong's Companies Ordinance. None of the political parties has shown any enthusiasm for the enactment of legislation to regulate the operations of political parties; and none is willing to disclose the sources of their donations, or accept the very basic requirement in established democracies that political parties should not accept donations from non-nationals or non-permanent residents.

Hong Kong's political parties are also weak in policy research capability. Dr. Robert Ting-yiu Chung who is in charge of the Public Opinion Program of the Faculty of Social Sciences of the University of Hong Kong is reported in April 2006 to have said that after analyzing the websites of the leading political parties, he concluded that Hong Kong's political parties are weak in policy research capability. Their publications comprised in the main public opinion surveys, an indication of their main focus on immediate political interests rather than policy research foundation. He also found from the public opinion surveys undertaken by his Program that public approval ratings of Hong Kong's political parties are consistently lower than the public approval ratings of Hong Kong's political figures, another indication of the inadequate development of political parties in Hong Kong.<sup>41</sup>

In the light of the above facts and findings, it would appear that Hong Kong's

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<sup>41</sup> *Sing Tao Daily News* (U.S. West edition), April 26, 2006.

political parties lag significantly behind political parties in established democracies in discharging any of the seven functions identified by Diamond. Yet this could also be a chicken-and-egg problem in that parties might not be able to develop significantly until there are clearer prospects of democratic development.

## **Development of Political Talent**

Closely related to the underdevelopment of political parties in Hong Kong is the shortage of political talent. As can be expected of city which has thrived on its economic success, traditionally the brightest and best have flocked to business, industry and commerce and the more lucrative professions. At university level, majors in academic disciplines most directly conducive to a political career are not among the more popular choices for top university entrants. It is not surprising that Hong Kong's political parties are characterized by a lack of participation of elites with administrative and management experience, international perspectives, knowledge of economics and technology, the qualifications necessary for the successful management of a sophisticated, open, post-industrialist economy such as Hong Kong's.<sup>42</sup> For Hong Kong's political parties to reach the stage of maturation whereby they would be ready and capable of forming and sustaining governments in office, it is estimated that several hundreds additional political talents with good university or advanced degrees, interest in public policy issues and

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<sup>42</sup> The newly established CP can lay claim to having some overseas educated professionals with advanced degrees among its founders. Yet most core leaders are from the legal professions and few have exposure to the West other than a short duration of study in United Kingdom.

equipped with some administrative and management experience would be required. The number is arrived at by adding up demand for political talents in the following categories of work:

**Forming and sustaining governments in office:** This involves filling the posts of the Chief Executive, the Chief Secretary, the Financial Secretary and the 11 minister-equivalent Principal Official posts. In the case of the posts of Chief Executive, Chief Secretary and Financial Secretary, incumbents would need support from their “private offices” or “cabinets” (easily 5 to 6 political staff in the case of the Chief Executive and another 2 to 3 in the case of the Chief Secretary or Financial Secretary). Existing “Secretaries” (minister-equivalent Principal Officials) are assisted by one Administrative Assistant, one Personal Secretary and one press officer who is required to provide support to the entire bureau (i.e. ministry). Secretaries can benefit from strengthening of their private offices. Already the Chief Executive Mr. Donald Tsang has indicated that Principal Officials need reinforcing at the political level by appointing more deputies (equivalent to junior ministers in a parliamentary system). If a political party or a coalition of political parties are to form and sustain governments in office, the new government would easily require an additional 33 political talents capable of functioning at ministerial level (serving as junior ministers and beefing up the currently politically under-established and over-stressed bureaus); and another 30 plus political talents to reinforce the offices of the Chief Executive, Chief Secretary, Financial Secretary and other Secretaries, all of whom should ideally be well-

educated men and women with interest and experience in public policy deliberation, and formulation of PR, media and political strategies.

**Strengthening of support to Legislative Councilors:** Legislative Councilors are paid an honorarium and an accountable allocation for their expenses in connection with the discharge of their duties, the amount of which is inadequate for the purpose of hiring well-qualified legislative and policy research assistants. Moreover, Legislative Councilors have no pension system, unlike their counterparts in Western democracies. The lack of reasonable remuneration, resource support for the proper discharge of their duties, and a pension system reduce the attractiveness of serving as Legislative Councilor as a career. Legislative Councilors could rely on research and legislative support from the central pool provided by the Secretariat for the Legislative Council, but the resources are equally limited. If the brightest and best are to be encouraged to serve as Legislative Councilors, better remuneration and a pension system would need to be introduced, better research and legislative support would need to be provided, and better qualified professionals and university graduates from a wide diversity of disciplines would need to be encouraged to serve as their staffers.

**Reinforcement of elite participation in political parties:** It would naturally be up to individual parties to determine their electoral platforms and strategies. But if any party is seriously interested in doing a good job in running Hong Kong on being elected into office, each and every party has a long way to go in beefing up elite participation in the work of their party.

**Reinforcement of civil society organizations:** Among the political parties in Hong Kong, the CP has emphasized the importance of developing a vibrant civil society in Hong Kong, with a view to “contributing to the making of government policies and implementation”, among other goals. Within the realm of civil society, think tanks, or policy research organizations, are particularly important for the purpose of assisting the government in identifying new directions for socio-economic development, formulating policy options, keeping in touch with the latest development in knowledge and ideas; forging international links; and nurturing potential political talents. Think tanks have multiplied in Hong Kong in recent years, but most lack executive and policy research staff with advanced degrees and international exposure. Civil society organizations focused on public policy research also need substantial augmentation in the quality and quantity of key staff.

## **Development of Civil Society**

It is interesting to note the recently formed political party, the CP, has identified the development of a vibrant civil society as one of its core missions. The important role civil society plays in promoting democratic development cannot be over-emphasized. As Larry Diamond explains in his essay “Toward Democratic Consolidation”, “civil society is an intermediary entity, standing between the private sphere and the state. Thus it excludes individual and family life, inward-looking group activity (e.g. for recreation, entertainment, or spirituality), and profit-making enterprise of individual business firms, and political efforts to take control of the state.” Civil society can encompass a wide variety of organizations, whether *economic, cultural, informational and educational*,



*interest-based, developmental, issue-oriented, or civic*, The distinguishing characteristics of civil society organizations are that they must be concerned with *public* rather than *private* ends; they relate to the state in some way but do not seek to win formal power or office in the state (they become *political* rather than civil if they become concerned with winning formal political power or offices). Civil society embraces pluralism and diversity.<sup>43</sup>

As Larry Diamond points out, it would be over-simplistic to regard civil society purely as a countervailing force exercising a restraining influence on the state. Civil society performs other important democratic functions which are particularly relevant in the Hong Kong context, in view of Hong Kong's traditional emphasis on profit-oriented activities, a tendency on the part of the Hong Kong elite to shun political activities independent of the government, and at the other extreme, a perception in some quarters of civil society as engaged in a zero-sum struggle with the state. Diamond enumerates the following democratic functions: 1) providing a basis for control of the state by society, and hence for the flourishing of democratic political institutions as a means of exercising that control; 2) encouraging a rich associational life and supplementing the role played by political parties in stimulating political participation; 3) providing an arena for developing such crucial democratic attributes as "tolerance, moderation, a willingness to compromise, and a respect for opposing viewpoints"; 4) creating channels other than political parties for the articulation, aggregation and representation of interests; 5) generating a wide range of cross-cutting interests that may mitigate the principal

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<sup>43</sup> *The Global Resurgence of Democracy*, 227-240.

polarities of political conflict; 6) recruiting and training new political leaders; 7) performing some explicit democracy-building functions, such as electoral reform; 8) helping to widely disseminate information, thus deepening citizens' knowledge and empowering them to play a more active and constructive role in the civil and political life of a society. It is interesting to note that in the run-up to 1997, formal and informal civil society organizations, some with specific democracy-building purposes, have mushroomed alongside the political parties. The instauration of some of them, such as the One Country, Two Systems Research Institute and the Better Hong Kong Foundation, was stimulated by the political handover of Hong Kong in 1997, which prompted Hong Kong's normally profit-focused elites to spring into action to assuage jitters and defend the unique constitutional arrangements for Hong Kong after 1997. In recent years, more have emerged, with strong middle-class and professional participation, a reflection of the rising concerns of the more thoughtful members of the community about the political and economic stagnation of Hong Kong. Such organizations, including some recently established think tanks, provide a fertile training ground for political talents and augur well for Hong Kong's democratic development.

### **Promotion of a Democratic Political Culture**

No less relevant to the Hong Kong situation is the nurturing of a political culture conducive to the building of enduring democratic structures. It is not doubted that among the democracy advocates, there is strong commitment to the belief in democracy offers the best (or in the view of some renowned theorists and practitioners of democracy, the "least evil") form of government, which provide "the best prospect for accountable,

responsive, peaceful, predictable, good governance.”<sup>44</sup> Yet Hong Kong’s quest for democracy, from the time of its acceleration under Mr. Patten’s governorship, has been marred by convulsive and polarizing debate over a single dimension of democratic development: the formal, procedural aspects of electoral arrangements (seats in the legislature available for direct elections and the timetable for holding direct elections). The cultivation of a distinctive set of political values and orientations which leading scholars of democracy have established to be closely correlated with successful democratic development would help to reduce conflict, extremism and zero-sum tactics of outbidding and confrontation.

Summaries of findings on the centrality of a democratic political culture are available in the chapter on “Political Culture” in Diamond’s *Developing Democracy – Toward Consolidation* (161-217) and in the section under “Political Culture” in the “Introduction: What Makes for Democracy?” in *Politics in Developing Countries* (19-21).

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<sup>44</sup> Larry Diamond, *Developing Democracy – Toward Consolidation* (Baltimore and London: The Johns Hopkins University Press, 1999) 3). Winston Churchill is famous for saying in the House of Commons in 1947 that “No one pretends that democracy is perfect or all wise. Indeed it has been said that democracy is the worst form of government, except for all other forms that have been tried from time to time.” An impassioned advocate of democracy as providing the best long-run prospect for producing good governments, Larry Diamond has repeatedly pointed out that democracy is not an “unmitigated blessing” (*Developing Democracy – Toward Consolidation*, 2). Schmitter and Karl, in their essay “What Democracy Is ... And Is Not”, warn against unrealistically high expectations of democracy. They point out that “There is an understandable temptation to load too many expectations on this concept [democracy] and to imagine that by attaining democracy, a society will have solved all of its political, social, economic, administrative and cultural problems. Unfortunately, “all good things do not necessarily go together.” (*The Global Resurgence of Democracy*, 59)

The values and beliefs identified as crucial for stable and effective democracy are: “belief in the legitimacy of democracy; tolerance for opposing parties, beliefs, and preferences; a willingness to compromise with political opponents and, underlying this, pragmatism and flexibility; trust in the political environment, and cooperation, particularly among political competitors; moderation in political positions and partisan identifications; civility of political discourse; and political efficacy and participation, based on principles of political equality but tempered by the presence of “a subject role (which gives allegiance to political authority) and a parochial role (which involves the individual in traditional, non-political pursuits.)”<sup>45</sup> In December 2005, the Chief Executive’s package of constitutional reform proposals designed to expand the scope for grassroots participation in the legislature failed to secure the necessary two-thirds majority because of hard-line, inflexible opposition from a group of legislators whose parties stood to benefit from the proposals. In “making the best the enemy of the good”, they rejected the package on the ground that an iron-clad time-table for implementing direct elections had not been offered. Nurturing a political culture which places greater emphasis on trust in the authority, the willingness to accommodate and compromise, pragmatism and moderation would increase the chances of Hong Kong reaching a consensus on how to

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<sup>45</sup> *Politics in Developing Countries* (19). In their study of the political culture of democracy in *Civic Culture* (Boston and Toronto: Little, Brown and Company, 1965), Almond and Verba identifies three types of political culture: *parochial* (expects nothing from the political system); *subject* (affectively oriented toward the government and basically passive); and participant plays an “activist” role in the polity). In a balanced political culture political activity, involvement and rationality are balanced by passivity, traditionality, and commitment to parochial values.

to move forward in democratic development.

It should be noted that the colonial government in Hong Kong had sought to promote such values as a means of buttressing British rule. After World War II the HKG gave appropriate recognition to local leaders of *kaifong* (i.e. neighborhood) associations that promoted neighborliness in the local community. After the riots of 1966 and 1967 the HKG launched a Community Building Campaign to keep Hong Kong clean, fight violent crime and to actively promote the formation of mutual aid committees and owners' corporation in high-rise buildings which were perceived as vertical villages in the densely populated urban areas. The purpose was to encourage mutual help, trust and respect, co-operation with the authorities and public participation in urban management, with a view to countering centrifugal forces toward atomization in self-effacing mass communities. *Kaifong* associations, mutual aid committees and owners corporation may be regarded as the earliest forms of civil society organizations in Hong Kong. Going "back to the basics" in promoting such values would help repair the cleavages caused by polarizing debates since the handover on such controversial issues as the implementation of the "One Country, Two Systems" concept and the electoral time-table, and foster a political culture conducive to democratic development.

## **Institutional Design**

One of the greatest challenges in building a democratic system in Hong Kong lies in resolving the current disconnect and power-based contestation between the executive and legislative branches. Despite the much higher popularity ratings of the new Chief Executive Mr. Donald Tsang and much greater effectiveness in leading the senior

government team, the HKSARG continues to be consumed in playing complex political games to lobby for votes from the political parties in LegCo and expending a disproportionate amount of resources on lobbying. Such a disjointed system is structurally anomalous, wasteful of scarce political resources, obstructive of long-term structural reform and not sustainable in the long term.

The Basic Law strives to continue the “executive-led” system of the colonial model but provides for a hybrid, presidential/parliamentary system *without* a critical component of the success of the president or the prime minister under either system: firm party support. Support from a strong, coherent party or a coalition of parties represented in the legislature is indispensable to the implementation of the Chief Executive’s agenda. Although the HKSARG remains in denial about the role of the political parties, it will have to come to terms sooner or later with the reality that the Chief Executive should eventually be a political leader with strong party support in the legislature, preferably a legislator himself or herself.<sup>46</sup> The HKSARG, in consultation with the PRCG, needs to decide in due course whether it should adopt a presidential or parliamentary system.

Seymour Martin Lipset, in discussing the relative strengths of the presidential and parliamentary system, points out that much of the literature on the subject wrongly assumes that the president is stronger than the prime minister. In reality, the opposite is true. As he explains in the extract below:

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<sup>46</sup> The Chief Executive Election Ordinance prohibits the Chief Executive from having political affiliations. However, this can be easily circumvented by the Chief Executive candidate resigning from a political party ahead of his candidature, and does not accord with political reality.

Given the division of authority between presidents and legislatures, prime ministers and their cabinets are more powerful and may pay less attention to the importunings of specific groups. A prime minister with a majority of parliament behind him has much more authority than an American president. Basically, such parliaments vote to support the budgets, bills and policies that the government presents. Government members must vote this way, or the cabinet falls and an election is called. Unlike members of a legislative branch, opposition parliamentarians, though free to debate, criticize, or vote against the policies set by the executive, rarely can affect them.

The situation is quite different in a presidential system. The terms of the president and the cabinet are not affected by votes in the legislature. As a result, party discipline is much weaker in, say, the U.S. Congress than it is in the British Parliament. In the U.S. and other presidential systems, the representation of diverse interests and value groups in different parties lead to cross-party alliances on various issues. Local interests are better represented in Congress, since a representative will look for constituency support to get reelected and can vote against his president or party. An MP, however, must go with his prime minister and his party, even if doing so means alienating constituency support.<sup>47</sup>

Whichever system, presidential or parliamentary, the HKSARG will eventually adopt, the Basic Law will need to be amended to provide for an organic nexus between the executive and legislative branches. As the parliamentary system provides greater assurance of an executive-led government, the Basic Law should be amended to provide for the implementation of the equivalent of a parliamentary system.

## **Electoral System Design**

The design of an electoral system must comply with the two principles stipulated by CPG officials on the enactment of the Basic Law in 1990, that it must ensure “balanced representation” of different interests and sectors of Hong Kong’s society, and “facilitation of the capitalist economy of Hong Kong”. The HKSARG clearly had the

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<sup>47</sup> “The Centrality of Political Culture”, in *The Global Resurgence of Democracy*, 151.

principle of “balanced representation” in mind when it proposed to switch from the “Single Vote, Single Seat” system adopted by Governor Patten in 1992. The rationale for the change was explained by the Secretary for Constitutional Affairs when he moved the Second Reading of the Legislative Council Bill in the Provisional Legislative Council in August 1997 as being more representative of the preferences of voters and more consistent with the long-term objective of constitutional development. As the HKSARG moved toward expanding the number of legislators elected in geographical constituencies, the number could be increased by increasing the number of seats in each constituency without substantially revising electoral boundaries. In the “Administration’s Responses to Written Submissions in respect of the Legislative Council (Amendment) Bill 1999”, the HKSARG explains that:

As we point out in 1997 when we proposed to adopt the proportional representation system in the first LegCo geographical elections, the proportional representation system can more accurately reflect voter preference in terms of allocation of seats than the “single seat-single vote” system which works on a “winner-take-all” principle. The proportional representation system is widely accepted as open and fair, and is adopted by many countries including Austria, Luxembourg, Netherlands, Belgium, Spain and Finland. Moreover, the number of geographical seats will increase gradually in accordance with the provisions of the Basic Law. Adoption of the proportional representation system which allows for multi-seat constituencies will obviate the need for major amendment to the constituency boundaries before every election. After the 1998 LegCo election, the proportional representation system is already familiar to and accepted by the Hong Kong people. The arrangement has worked well. We therefore propose to adopt the same system for the 2001 LegCo election.

As regards the principle of “facilitation of the capitalist economy” of Hong Kong, in submitting the Basic Law (in draft) and related documents to the Third Session of the



Seventh National People's Congress on March 28, 1990, Director of the State Council's

Hong Kong and Macau Affairs Office Mr. Ji Pengfei made the following explanation:

The political structure of the HKSAR should accord with the principle of "One Country, Two Systems" and aim to maintain stability and prosperity in Hong Kong in line with its legal status and actual situation. To this end, consideration must be given to the interests of the different sectors of society and the structure must facilitate the development of the capitalist economy in the Region. While the part of the existing political structure proven to be effective will be maintained, a democratic system which suits Hong Kong's reality should gradually be introduced.

A paper entitled "Provisions in the Basic Law concerning the Capitalist Economy" (Paper No. CSD/GC/2006) submitted by the HKSARG to the Committee on Governance and Political Development of the Commission on Strategic Development in March 2006 explains that a democratic system which facilitates the capitalist economy should safeguard the following key provisions in the Basic Law regarding Hong Kong's capitalist system: protection of the right of private property ownership; maintenance of an independent, prudent financial system; maintenance of a low and simple taxation system; and adherence to the provisions in the Basic Law regarding preservation of the existing systems relating to monetary affairs, trade, industry and commerce, land leases, shipping and civil aviation. This principle is related to the principle of "balanced representation", as only a balanced representation of a wide diversity of interests and sectors in the legislature would prevent distortion of policies and legislation by irresponsible populism or unfettered welfarism. The functional constituencies in the legislature, ensuring representation of businesses, commerce, industry and the professions, is intended to comply with these two principles. Yet functional constituencies will need to be phased out when direct elections by universal suffrage are introduced to the

legislature. The HKSARG and those concerned about Hong Kong's democratic development have agonized over how LegCo elections by universal suffrage could be introduced without infringing these two principles.

Sir David Akers-Jones, one of Hong Kong's senior statesmen who served as Chief Secretary from 1985-87, had in March 2005, in his capacity as the Chairman of the Business and Professionals Federation (BPF) (an association composed of businessmen and professionals dedicated to enhancing the stability and prosperity of Hong Kong), put forward the suggestion of introducing a bicameral system to resolve the conflict between universal suffrage and preservation of the functional constituencies. The BPF's idea was to put all the functional constituencies into a second chamber, after some "tidying up" of the functional constituencies. The first chamber would have directly elected members whose number could be increased. The BPF had not spelt out the powers the second chamber should have, except that it should not have the power of veto.

The BPF's proposal has not met with enthusiasm. Quite apart from the fact that the BPF's idea of a second chamber needs to be further refined in terms of purpose, symmetry (or otherwise) of powers and method of selection, there are doubts as to whether the preservation of functional constituency members in the second chamber would comply with the ultimate goal of universal suffrage in the Basic Law. Moreover, the creation of a second chamber would prolong debates in the legislature on issues and proposals which would benefit from more expeditious resolutions, accentuate cleavages and solidify differences of opinions.

In the meantime, the HKSARG is pushing ahead with proposals to make participation in District Councils, seats on which are open to direct elections, a more

attractive and meaningful political career. In a consultation document entitled *Review of the Role, Functions and Composition of District Councils* released in April 2006, the HKSARG proposes to give District Councils a greater role in managing district libraries, community halls, leisure grounds, sports venues and swimming pools; increase funding provision for district facilities to be managed on the advice of the District Facilities Management Committees of the District Councils; increase funding for District Councils for environmental improvement, community involvement and leisure and sports projects; increase the remuneration and financial support provision for District Councilors; increase the number of elected seats on District Councils in the 2007 elections; and increase the financial assistance for District Council electoral candidates. These proposals were clearly designed to boost public participation in District Councils, which offer a convenient mechanism for broadening the number of *directly elected* members in LegCo and in the Election Committee of the Chief Executive. They are in keeping with the British tradition of enhancing democratization by encouraging grassroots participation. Yet these proposals are problematic in a number of ways: they might infringe the Basic Law requirement that district organizations “are not organs of political power” (Article 97). Given the small size of Hong Kong and the even smaller size of the jurisdictional areas of District Councils, there are limits to devolving meaningful responsibilities to District Councils without undermining the effectiveness of the central administrative infrastructure. That is why the enhancement of the participatory role of the District Councils in managing district facilities as set out in the consultation document is hedged with caveats which would guard against undermining administrative efficiency or cutting across the existing statutory and administrative responsibilities and obligations of the

government departments and agencies involved in delivery of services at district level (paragraphs 1.17 and 2.6(d) of the document). More importantly, because of the narrower, inward-looking district focus of the work of District Councilors, speeding up democratization by providing more elected seats on LegCo to District Councilors will not comply with the principles of “balanced representation” and “facilitation of the capitalist economy”.

Compliance with these two principles can be ensured by the design of a more representative electoral system which provides an attractive avenue for participation by Hong Kong’s elites from a wide diversity of businesses, sectors and professions. Historical development of the democratic system in Hong Kong is such that a multi-party system with legislators in geographical constituencies returned by a more consensual, list proportional representation (list PR) system has already emerged.<sup>48</sup> As Arend Liiphart has observed in *Patterns of Democracy*, in a typical majoritarian two-party representative system such as that in the U.S. or the U.K., political power can be concentrated in a bare majority, “and often even merely a plurality instead of a majority”, and the relationship between the two parties is “exclusive, competitive and adversarial”.<sup>49</sup> In comparison, a consensual form of representation may be adopted which permits broader, more inclusive

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<sup>48</sup> As at spring 2006, there are six parties in the legislature: Democratic Alliance for the Betterment of Hong Kong (10 votes), Liberal Party (10 votes), Democratic Party (9 votes), Civic Party (6 votes), Frontier (2 votes), Association for Democracy and People’s Livelihood (1 vote).

<sup>49</sup> *Patterns of Democracy*, 2.

and proportionate representation of the major parties in the executive branch of the government. Different variations of the more consensual PR system are adopted by a majority of the democracies surveyed by Liiphart in the 1990s. In the latest study of global electoral systems, Soudriette and Ellis point out, in their article “A Global Snapshot” that globally there is a trend away from plurality/majority systems toward proportional-representation systems, and that the most common change was from systems of plurality/majority to mixed systems. Two variations of the “mixed” systems – under which two groups of elected members: one group elected under a plurality/majority system, the other under a PR system (the Mixed-Member Proportional (MMP) and the Parallel System (PS) ) – are in place in 30 countries, including Germany, Italy, Mexico and New Zealand in the case of the former and Japan in the case of the latter<sup>50</sup>. Both systems ensure balanced representation in the legislature.

Building on the list PR system already in place in Hong Kong, the principles of “balanced representation” and of “facilitation of the capitalist economy” can be preserved by the HKSAR adopting a *mixed* system whereby seats in LegCo may be divided into two categories: seats in multi-member geographical constituencies which may be returned by elections in the districts as at present, and seats to be filled by candidates on a party list; and 2) each voter may be given two votes: a vote in a geographical constituency and a vote for a candidate from a party list. In both categories, the number of candidates from each party to be elected will depend on the number of votes cast for

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<sup>50</sup> *Journal of Democracy* Volume 17, Number 2, April 2006, 78-88.

candidates on a party list. For example, if the number of seats in the legislature is expanded to 80 and 40 seats are set aside for election in Hong Kong-wide party lists, each party can put forward no more than 40 candidates for inclusion in the party's list. These "party list" candidates will effectively be standing for elections in a single, Hong Kong-wide constituency.<sup>51</sup>

Such a mixed system, which may be called "parallel geographical-party list" system, would have the advantage of enabling two categories of candidates, those who focus on representation of local interests in geographical constituencies, and those who focus on broader, Hong Kong-wide issues to stand for elections. This system may be described as combining both "vertical" and "horizontal" modes of representation; with the Hong Kong-wide "party list" representatives providing a counterweight to the local and more inward-looking focus of representatives returned from geographical constituencies. This mixed system should facilitate the balanced representation of the interests of diverse sectors of society after functional constituencies (currently comprising half of LegCo seats) have been phased out. It would also help to encourage political participation by members of the community whose experience and expertise transcend geographical constituencies.

### **Preservation of an Effective Bureaucracy**

The prolonged economic decline of Hong Kong since the Asian financial crisis,

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<sup>51</sup> Japan has a parallel plurality-PR system. As the result of the electoral reform introduced in 1996, each voter has a district vote and a PR vote. Three hundred legislators are elected by plurality in single-member district and two hundred are elected by list PR (*Patterns of Democracy*, 149; Jih-wen Lin, "The Politics of Reform in Japan and in Taiwan", *Journal of Democracy* Volume 17, Number 2 April 2006, 118-131.)

the politicization of public policy debates and the outbreak of SARS have led the media and the public to exact from the civil service a level of accountability for whatever mishap, mismanagement or administrative oversight unmatched in established democracies in the West. Notwithstanding the crisis-ridden atmosphere during various periods since 1997 and political changes made at the top, the civil service has undeniably remained the cornerstone of stability in Hong Kong, steadfastly maintaining law and order and security and providing reliable and efficient services to the public. Although public accolades of good quality services rendered by public servants are few and far between, the standard of service provided by the Hong Kong civil service compares very favorably with that provided by their counterparts in Western democracies. The many examples of electoral democracies in turmoil in many parts of the world because of lack of security or poor administrative efficacy highlights the importance of ensuring a high-quality civil service and a good working relationship between the civil service and the political leadership after full-fledged representative democracy has been implemented in Hong Kong.

Moreover, in view of the shortage of political talents at this stage, it is envisaged that future Chief Executives will need to trawl candidates for filling minister-equivalent posts from the senior civil service for many years to come. For a full-fledged representative democracy to function effectively without undermining the administrative efficacy of the bureaucracy, it will be important to 1) clearly delineate the division of responsibilities between the political tier and the bureaucracy; 2) clearly explain to the senior bureaucracy any residual political role they may need to play in the transitional stage, pending the availability of sufficient political talents to fill all posts open to political appointment, and enlist their support for the transition; 3) provide the

bureaucracy with protection against arbitrary political interference with the professional conduct of their duties by establishing independent structures for handling of complaints about undue interference or unfair performance appraisals ; and 4) remove outdated constraints on civil servants' participation in political activities. For example, civil servants should be told in no uncertain terms that they have the right to take part in political activities and express their political preferences in the same way as ordinary citizens, provided that they refrain from doing so during office hours. A rule should be introduced, similar to that in the U.S., requiring that civil servants should not be allowed to make political donations. The new paradigm should seek to combine greater political legitimacy with administrative effectiveness, building on the experience and professional competences of the civil service and introducing policies, procedures and structures that facilitate co-operation between the political leadership and the civil service.