

MECHANISM FOR AMENDING THE BASIC LAW

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The Issues for Public Consultation (Appendix II) seem to me like a case of misdirection. When compared to an unlisted issue that I see as essential, they pale in significance. That unlisted issue is where the final power of amendment is vested, The National People's Congress. In my opinion, this is the crucial question. As far as I am concerned, as long as an amendment proposal does not concern foreign or defense policy, it should be left up to the people of Hong Kong. They are the ones who are directly affected by specifically local issues and nobody else. Fairness, and the high degree of autonomy promised by the 'One Country, Two Systems' formula demand that the power of amendment be left with the Hong Kong people.

Leaving the amendment power where it is vests too much faith in the Communist Party of China, the body which controls the National People's Congress. Even if well-intentioned, the Party's traditions and political culture are alien to those which have developed here in Hong Kong and feature principles such as the rule of law and freedom of speech. It would be unreasonable to expect the members of the National People's Congress to understand and appreciate these values as much as the Hong Kong people do.

Of course this proposed change begs the question of who is to decide whether or not an amendment proposal concerns these issues. I would say that should be left up to the National People's Congress. One may say that this still gives them a role. I would counter that they must have at least this minimal role - Chinese national sovereignty requires at least this much. Of course that still leaves some risk for Hong Kong people but I would say that risk cannot be completely avoided. At least,

officially, Hong Kong people would have the final say in most matters concerning amending the Basic Law.

As for the rest, Article 159 of the Basic Law is very clear and specific about who has a role in approving the amendment prior to its being presented to the National People's Congress. One can discuss modifications to the involvement of these actors in the process. However, I think this pales in significance to the fact that the final power of amendment is vested in the National People's Congress.

One might say that it is hopeless to attempt the modification in the amendment process which I propose. I would most likely agree - in the short run. However, the long run is a different matter. To fail to make the attempt dooms one to a self-fulfilling prophecy of defeat. An expert practitioner of politics named Margaret Thatcher once said, "In politics there are no final victories¹." If she is correct, then one can also say that in politics there are also no final defeats.

¹ Margaret Thatcher quoted in Peter Clarke, "The Rise and Fall of Thatcherism," *London Review of Books*, December 10 1998, 20.