Democracy in Hong Kong: A work in progress

Ronald Joseph Arculli, Gail S. Schoettler, Martin Chu Ming Lee

Ronald Joseph Arculli, OBE, JP, is the founder of Arculli & Associates, and a director of several private and public listed companies in Hong Kong. In 1988 he became a member of the Legislative Council and represented the Real Estate and Construction functional constituency from 1991 to the end of June 2000. He is a board member of the Securities and Futures Commission and the Hong Kong Mortgage Corporation. He is also a member of the Global Advisory Board of CU-Denver's Institute for International Business. Arculli received his education at St. Joseph's College in Hong Kong and at Lincoln's Inn in London. He was called to the English and Hong Kong Bars in 1961 and admitted as a solicitor in England and Hong Kong in 1976.

Gail S. Schoettler served as U.S. Ambassador to the World Radio communication Conference until July 1, 2000. Schoettler's public service career includes serving as Colorado's Lt. Gov. (1994-1998), State Treasurer (1986-1994), and executive director Colorado Dept. of Personnel. Prior to this she was trustee, Public Employees Retirement Association. She has served on and chaired numerous boards, among them: Equitable Bank of Littleton; Women's Bank, and Douglas County Board of Education. French President Jacques Chirac awarded Schoettler the French Legion of Honor, France's top civilian honor, and she has received an Outstanding Alumni Award from the University of California at Santa Barbara. She holds a B.A. in economics from Stanford University, and an M.A. and Ph.D. in history from UC Santa Barbara.

Martin Chu Ming Lee is chairman of the Democratic Party, which was founded in 1994, and serves as legal adviser to a number of professional bodies. He has been a member of the legislative council since 1985. A barrister, Lee was appointed Queen's Counsel in 1979 and served as chairman of the Hong Kong Bar Association. In Jan. 2000, he was awarded the Schuman Medal by the European People's Party and European Democrats in the European Parliament. He received the Claremont Institute of Los Angeles' Statesmanship Award in 1998, and the Democracy Award from the National Endowment for Democracy on Capitol Hill in 1997. He holds a Bachelor of Arts degree from the University of Hong Kong and a law degree from Lincoln's Inn in London.

Imbalance of power

Ronald Joseph Arculli

"Perpetual opposition" characterizes the relationship between the government and the legislature, said Ron Arculli. "The major challenge for Hong Kong so far is that there is a power struggle between the legislative council and the chief executive, and most power still resides with the executive."

Article 75 of the Basic Law gives the legislature the power to propose or amend laws. But the legislature has been circumvented in its desire to do so. What happens, said Arculli, is that" Chief Executive Tung simply comes to the legislature and briefs them about what the laws will be. Though members can comment both to him and to the press, they often have only about five to ten minutes prior notice to be able to read and develop comments on the laws."

The legislature has the authority to oppose laws, but the government needs only 31 votes out of 60 to prevail. And the government can effortlessly get 30 votes, said Arculli. For a member's bill to become a law, the bill would need to pass both the legislative council and the executive council; this is an unlikely scenario. Since many of the members are appointed, it is not in their best interests to unite in opposition to the chief executive.

"The legislature, through the finance committee, has budget approval authority, but in truth it is difficult to vote against the budget," said Arculli. "Consensus is a requirement in the legislature. When there is
consensus, we are able to propose and effect change. But we must set aside any areas of disagreement to ensure that consensus is achieved."

To date, there have been only two times when the two bodies opposed the chief executive, said Arculli. "One was over a bill on the economic crisis, and the other on pollution. Otherwise, the executive has been able to ignore the legislature due to the split voting that takes place there."

The judicial branch of the government was able to achieve a seamless transition from the U.K. to the new Special Administrative Region under China, said Arculli. "The former judges have stayed on and Hong Kong continues to be under a rule of law."

But Arculli expressed concern about a few potentially troublesome legal provisions of the Basic Law. He cited Article 23, which makes "subversion" illegal. "But these provisions have not been implemented and Hong Kong has so far seen a very lively political life, with, for example, yearly demonstrations on June 4 commemorating the tragedy of the Tiananmen massacres. These provisions may later be used."

On a more optimistic note, Arculli said, "Everything must have a beginning, and this may be the beginning of the beginning."

Governments evolve
Gail Schoettler

Contrasting the government in Hong Kong today with that of the United States, Gail Schoettler noted that the U.S. has had more than 200 years to evolve, whereas Hong Kong is in its infancy. "We can't expect a fledgling democracy to burst onto the scene and work perfectly," she said.

Schoettler recounted the early days of the U.S. and its ongoing mission to define and refine its doctrines.

On May 10, 1775, the Second Continental Congress drafted the Articles of Confederation. They were debated and revised over the next couple of years before being passed by Congress in 1777 and ratified by all the states in 1781. The Articles were revised again in 1787 as the new federal government adapted to its changing role.

"That second Constitutional Congress was comprised mostly of white male landowners and they found that the Articles of Confederation were too weak to support the ongoing revolutionary war.

"There was a balance of power in that system based on a federal system that was fashioned on a series of last minute compromises," said Schoettler. "Benjamin Franklin was the compromiser who saved the American system because he had a willingness to listen to others and then negotiate his way to win-win solutions," said Schoettler.

The democratic system continued to evolve, but for the first 133 years in the United States only white men were allowed to vote. Women were granted the franchise in 1920, after a contentious suffrage movement highlighted the fallacy of excluding one-half of the country's population because of gender.

After the Civil War, blacks were legally entitled to vote; however, for the next century they were effectively kept out of the process in some states through the imposition of poll taxes, literacy tests and grandfather clauses. It fell to Congress and the Supreme Court to strike down voting rights discrimination. The Civil
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Rights Act of 1957 and the Voting Rights Act of 1965 gave the Justice Department the tools it needed to pursue violators of federal mandates.

"In a democratic system, the people have the right to be heard," said Schoettler. "Today there are various grassroots organizations and special interest groups that wield tremendous influence by virtue of their numbers; for example, the National Rifle Association and the American Association of Retired People. Some special interest groups have been particularly effective on wedge issues such as abortion rights and gun control, which often become polarizing causes at election time.

"Citizens also can express their views through the initiative process, through which new ideas find their way onto the ballot. Ideology is sometimes strong and sometimes weak, but either through special interests or through initiatives, persistence often wins out over time.

"In the case of Hong Kong, there is a slowly emerging democracy. The Democratic Party has won a number of seats in the legislative council and has become a powerful force in Hong Kong. "Time will tell to what extent democracy will evolve."

The rule of law

Martin Chu Ming Lee

Martin Chu Ming Lee entered politics with the goal of "maintaining the rule of law." The rule of law requires not only an independent judiciary, he pointed out, but laws that are good and just. "For if the judges are asked to carry out draconian laws, they either do so or they are themselves punished."

The United Kingdom has the fruits of democracy and a level playing field for its citizens. But it was difficult for Hong Kong to partake in this fruit because the U.K. was 8,000 miles away and Parliament was where problems could be raised. And once the link with the U.K. had been severed, Hong Kong could not look to Beijing for the rule of law and has had to try to grow its own tree (of democracy).

"It has been three years and things are so far not going so well for democracy in Hong Kong," said Lee. "Last year basic freedoms were defended by the courts; the Basic Law also was defended, but the Hong Kong government has chosen not to totally implement it.

"For example, the government told 'the big lie' about the number of children that might be covered by a proposed new immigration law that would allow all children of Hong Kong residents the 'right of abode' in Hong Kong, including those whose parents did not enjoy that right at the time of their children's birth."

The Court of Final Appeal ruled that some Hong Kong immigration regulations were inconsistent with the International Covenant on Civil and Political Rights and confirmed that all children of Hong Kong residents had right of abode. This and two other cases became known collectively as "the Right of Abode" ruling.

Unhappy with the Court of Final Appeal's ruling, the government went to the Standing Committee of the National People's Congress in Beijing to get a reinterpretation of the Basic Law. The NPC interpretation implied that the Court of Final Appeal erred in not seeking NPC interpretation before it issued its ruling. The effect of the interpretation was to reduce the number of people eligible for Right of Abode in Hong Kong from the government's estimate of 1.6 million to 160,000.
”The interpretation set a dangerous precedent because it super ceded the jurisdiction of Hong Kong courts and rolled back democracy,” said Lee.

“Another problem is that with Hong Kong's functional groups, which are made up of various constituencies, Beijing can put pressure on the constituencies to work their will in Hong Kong. So if I am a representative and I oppose Beijing on some important issue, they could destroy my business.”

Lee is not too hopeful that change will occur. “After 2008, the executive will need two-thirds support, but there will still be a legislature with 50 percent of the members controlled by Beijing. Thus, the government would still have a monopoly in proposing a bill, and private member bills can only be introduced with written consent from the chief executive. If there are no private bills, there can be no change. Therefore, the short-term prognosis for democracy in Hong Kong is bleak indeed, though the long-term outlook is good due to world trends.”

Lee said he would lobby for China's entry to the World Trade Organization because of its support for the rule of law regarding commerce. "Either Permanent Normal Trade Relations (between the U.S. and China) will support the Chinese Communist Party, or it will support change. The difference will be in how much compliance China accepts. If China complies, then the rule of law will be extended to the Mainland."

But there is a possibility that other states may look only at the financial benefits of trade and may not hold China to the WTO rules.

There are two schools of thought on what it will take to bring full democracy to Hong Kong. Some feel that trade will democratize the system, whereas Lee is convinced that economics must not come before political change. "Both must be grown and respected as in India, rather than as in Indonesia and the Philippines, where democracy has not been as respected."

Lee believes that while there is the beginning of democracy in China, it is a very small beginning. Local elections alone are not proof of democracy, at least not so far as practiced in China. However, he recognizes they are better than nothing. "So far, a less than 51 percent vote can turn out a bad candidate and there can be two communist party nominated candidates in these elections."

Because the local elections do offer some choice, however limited, "that's positive and it's a beginning," said Lee. "But there is no timetable for the further development of democracy.

"One possible thing that might bring democracy in the millennium is the Internet. There are currently 15 million users in China and soon there will be 50 million. With more knowledge it will be more difficult for the government to maintain total control."

About the Basic Law

The Basic Law, which sets out the structure of the Hong Kong government, was approved by China in 1990 and went into effect at the time of the U.K. handover in July 1997. The Basic Law calls for a separation of power into legislative, judicial, and executive branches.

The Basic Law vests executive authority in a chief executive, who is under the jurisdiction of the central government in Beijing and serves a five year term. Legislative authority rests with a 60-member legislative council: 30 indirectly elected by functional constituencies, 20 elected by popular vote, and 10 by an 800-member election committee. The chief executive can dissolve the council before the end of a term.
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The Basic Law states that the chief executive and council members ultimately are to be elected by universal suffrage and that these electoral procedures are to be determined before the end of the second term of the chief executive and third term of the Legislative Council, which will be in the year 2007. The newly constituted legislative body will then have 30 of its members elected geographically and 30 elected by functional constituencies.

The judicial branch

Civil and criminal law is derived generally from that of the United Kingdom, and the Basic Law states that this system is to be maintained. The highest court in the judiciary is the Court of Final Appeal headed by a chief justice. This is followed by the High Court, which is headed by a chief judge, and by district, magistrate, and special courts.

The chief executive appoints all judges, although judges of the Court of Final Appeal and the chief judge of the High Court also must be confirmed by the Legislative Council and reported to the Standing Committee of the National People's Congress.

Article 19 of the Basic Law states that the SAR "shall be vested with independent judicial power, including that of final adjudication."

The Article further stipulates that "The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained."