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"Setting Up the New Stove"  
Sino-British Row Over the Election  
of the Hong Kong Legislature*

Lau Siu-kai

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**Hong Kong Institute of Asia-Pacific Studies**  
The Chinese University of Hong Kong  
Shatin, New Territories  
Hong Kong

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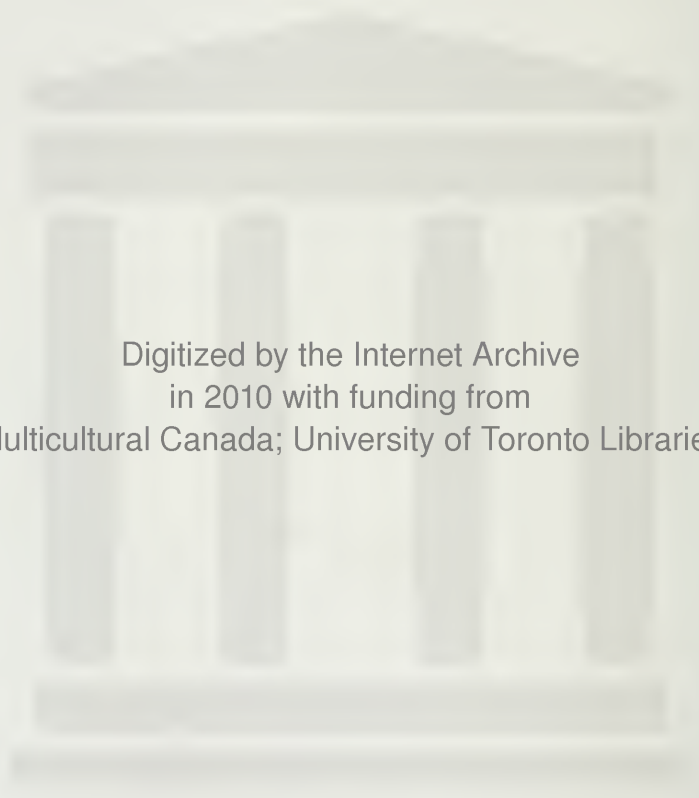
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館獻文港加

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Shatin, New Territories  
Hong Kong

## About the author

Lau Siu-kai is a graduate of the University of Hong Kong (B.Soc.Sc. 1971) and the University of Minnesota (Ph.D. 1975). He began his teaching career at The Chinese University of Hong Kong in 1975 and is currently Professor of Sociology and Chairman of the Department of Sociology. In addition, he is Associate Director of the Chinese University's Hong Kong Institute of Asia-Pacific Studies. In 1993-1995, he was a member of the Preliminary Working Committee of the Hong Kong Special Administrative Region (HKSAR). In 1996-1997, he was a member of the Preparatory Committee of HKSAR, as well as a co-convenor of its Subgroup on the Electoral Methods for the First Legislative Council of the HKSAR. He specializes in Hong Kong's social and political development. Among his publications are *Society and Politics in Hong Kong* (1982) and *The Ethos of the Hong Kong Chinese* (co-authored with Kuan Hsin-chi, 1988).

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## From the "Through Train" to "Setting Up the New Stove"

### Sino-British Row Over the Election of the Hong Kong Legislature

In Annex I of the Sino-British Joint Declaration, which spells out the basic policies of the Chinese government regarding Hong Kong, there is this seemingly innocuous sentence: "The legislature of the Hong Kong Special Administrative Region shall be constituted by elections." Even though no specific electoral methods have been prescribed, observers in 1984 — when the Joint Declaration was signed — tended to believe that there should be some sort of Sino-British consensus on the matter. But, events afterwards proved otherwise. Leaked information from both British and Chinese sources seems to confirm that this short sentence was inserted at the very last moment of Sino-British negotiation over Hong Kong's political future. Some Chinese officials confided to me that they even had no idea that "elections" meant popular elections. They further pointed out that the Chinese government back then had explicitly indicated to the British side that China was against the introduction of popular elections of any kind into Hong Kong. Furthermore, elections should be introduced into Hong Kong only by China and after the restoration of Chinese sovereignty over Hong Kong. Apparently, China's understanding of this sentence differed drastically from Britain's. Nevertheless, since 1984 Britain had taken this sentence to mean that Britain was empowered to introduce elective elements into Hong Kong's legislature phase by phase, despite its awareness of China's strong opposition.<sup>1</sup> In retrospect, the failure of Britain and China to reach an understanding on the elections of the legislature proved to be fatal, for it led eventually to the breakdown of Sino-British cooper-

ation, not only on matters of political reform, but also on almost all important matter in relation to regime transition.

### Sino-British Struggle Over Legislative Electoral Systems

Even before the Joint Declaration was officially signed, Britain proposed unilaterally a package of reform of the Legislative Council in a *Green Paper* in 1984, which would be implemented step-by-step during the transitional period.<sup>2</sup> The main aim of the reforms smacked of development into "self-government." The path of constitutional development as suggested in the *Green Paper* was reminiscent of the "theory of preparation" for the Westminster model, which involved the aggrandizement of the legislature as the centre of power and the source of legitimacy for other institutions, including possibly even the Governor of Hong Kong.<sup>3</sup>

How determined Britain was on carrying out these proposals is difficult to gauge even in retrospect. In any event, most probably because of ferocious opposition by China and British apprehension about the loss of political control and political instability before departure, Britain suddenly underwent an abrupt turn-about. In the *White Paper*,<sup>4</sup> issued several months later, Britain undertook a strategic retreat in its political reform "offensive." While some concessions were made to the democratic activists, the determination to institute medium- and long-term reforms effectively evaporated. Aside from introducing 24 indirectly elected unofficial members to the Legislative Council (divided equally between the electoral college and the functional constituencies), which had a membership of 56 (*not* including the Governor as the President of the Legislative Council), no definite promise was made as to future reforms. The enthusiasm for direct election was dampened. No plan was afoot to expand significantly the role of the legislature in the political system.

Shortly before the implementation of the proposals of the *White Paper* in 1985, measures were taken by China to take over



the initiative in shaping the electoral system for the legislature. There was a two-pronged approach. On the one hand, China made explicit its objection to any attempt by Britain to turn the legislature into a centre of power and subordinate all other political and administrative institutions to it. Britain was asked to abandon any plan for further reforms until China's design for the legislative electoral system was made known, or unless they facilitated the "convergence" between the present and future systems, and only if they were endorsed by China. On the other hand, China immediately went into the drafting of the Basic Law — the future constitution of Hong Kong, which would be promulgated in 1990 and applied to the territory in 1997.

China's strategic offensive to pre-empt the initiative of political reform landed Britain into a serious dilemma. To conform to China's intentions would erode the credibility of the Hong Kong government. To do otherwise would run the risks of antagonizing China and having the reforms dismantled after 1997. Conflictual relationship with China would also undermine Hong Kong's stability and rendered colonial rule in its last days all the more difficult and place long-term British interests in the territory in jeopardy. Eventually, Britain decided to resolve its dilemma by appeasing China.

Even before 1987, the year scheduled by the Hong Kong government to review the progress of political reforms, and possibly initiate further reforms, it seemed that Britain was prepared, willy-nilly, to grant China an influential or even decisive role in the planning of political reform in Hong Kong. First of all, Timothy Renton, the British Foreign Office minister responsible for Hong Kong, disassociated Britain from political reform in Hong Kong, claiming that it was a matter for the government and the people there.<sup>5</sup> Then the issue of political reform became a topic to be discussed regularly by the British and Chinese governments through the Joint Liaison Group created by the Joint Declaration.<sup>6</sup> This was commonly interpreted to be a victory for China. Later, the Hong Kong government hinted that China would be consulted on future reforms.<sup>7</sup> Finally, when he was on an official trip

to China, Renton asserted that the recently introduced political reforms in Hong Kong needed time to settle down and emphasized the need for convergence between the political system evolving in Hong Kong and the system to be laid down in the Basic Law. Renton's conciliatory position tended to indicate that China had more or less veto power over Hong Kong's pre-1997 political development.<sup>8</sup>

The strategic retreat by Britain was on full display in the *White Paper* issued by the Hong Kong government in February 1988.<sup>9</sup> The government rejected the demand of the pro-democratic groups to introduce a number of directly elected members into the Legislative Council in 1988, the reason cited being "that opinions in the community on this issue are so clearly divided."<sup>10</sup> This reason however was only supported by evidence which was widely seen to have been fabricated and distorted by the government. Instead, the government decided to delay the introduction of 10 directly elected members to 1991. In order to mollify its critics, the government increased the number of indirectly elected members in the 1988 Legislative Council to 26 (14 elected by functional constituencies and 12 by the electoral college).

The *White Paper* was interpreted at the time of its issuance as the *last* attempt by the departing colonial regime to propose and introduce political reform in Hong Kong. Absent from the *White Paper* was any mention of the direction and programme of future institutional development, thereby rendering it primarily as a one-shot attempt at tinkering with the system.

Thus, by 1988 the principle of convergence regarding the legislative electoral system was firmly established. And, it was justified in the name of smooth transition.<sup>11</sup> The extolment of the idea of convergence of Hong Kong's political system with the Basic Law by Britain in effect meant that it had virtually surrendered the initiative on political reform to China.

When the drafting of the Basic Law entered into the final stage, the Tiananmen Incident in Beijing erupted in the spring of 1989. The distraught Hong Kong people demanded a speeding-up of the pace of democratization. Even then, the principle of conver-

gence was still the centrepiece of British approach to political reform. Britain continued to seek compromise and agreement with China while at the same time trying to put pressure on China to grant more directly elected seats in the legislature. In view of the intense public antipathy against the Chinese government in Hong Kong, the latter was willing to give way to popular demands, but only in a limited manner, for Hong Kong people's reaction to the Tiananmen Incident and their sympathy with the Beijing demonstrators had convinced the Chinese leaders that Hong Kong could be a political threat. As a result of Sino-British compromise, in 1991 the number of directly elected seats in the Legislative Council was increased to 18, and the total membership of the legislature was enlarged to 60. In addition, through secret negotiation in early 1990, the two governments were able to agree upon the electoral system for the 1995 Legislative Council election.<sup>12</sup> Britain and China also agreed that the legislature elected in 1995 should have 60 members, among whom 20 would be directly elected, 30 elected by functional constituencies and 10 chosen by an electoral college. China in addition agreed to allow that legislature to straddle 1997 to ensure a smooth transition of the political system. Accordingly, a "through train" arrangement for the legislature was made through Sino-British joint efforts.

The "through train" arrangement was subsequently enshrined in a decision of the National People's Congress, the highest power organ of China. It is contained in paragraph 6 of "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region": "The first Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members, with 20 members returned by geographical constituencies through direct elections, 10 members returned by an election committee, and 30 members returned by functional constituencies. If the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of

the Hong Kong Special Administrative Region, those of its members who uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and pledge allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region." It is however noteworthy that a condition was attached to the "through train." It was that the electoral methods used in the 1995 Legislative Council election should be those agreed upon by the British and Chinese governments through their secret negotiation. This "escape clause" proved eventually to be momentous to the de-railing of the "through train."

After John Major took over the Prime Ministership from Margaret Thatcher, there was a turn-around in British policy toward China and Hong Kong. The replacement of David Wilson by Chris Patten as the Governor of Hong Kong presaged the adoption of a hard-line stance toward democratic reform of the Legislative Council, to the extent of denying any agreements Britain had signed with China.<sup>13</sup> As announced by Patten in October 1992,<sup>14</sup> the reform of the legislative electoral system included *inter alia*: (1) The reduction of the voting age from 21 to 18. (2) The introduction of nine new functional constituencies designed in such a way as to include the entire working population. As such the nature of functional election was transmogrified from election within the elites to popular election. (3) The composition of the Election Committee, which would elect 10 members to the Legislative Council in 1995, was also conceived in a manner different from what was envisaged by the drafters of the Basic Law. The Election Committee would include all or most members from the directly-elected District Boards. Thus constituted, election by means of the Election Committee would become a disguised form of popular election.

Together with the 20 directly elected seats and the 21 "old" functional constituencies seats, the Legislative Council after the

1995 elections would be a completely elected body with 60 members.

The primary objective of the reforms of the electoral system harked back to the goal of the 1984 *Green Paper*, which was to build up the elected legislature as the keystone of the political system and the embodiment of political autonomy in Hong Kong after 1997. Thus, the reforms were not as innocuous as Britain pretended them to be. As noted by an astute observer, "[c]onsidered as a whole, the Patten reforms are actually far from modest. They emerge instead as a concerted eleventh hour attempt to promote the cause of autonomous self-government and Western-style direct democracy for Hong Kong by introducing a comprehensive set of adjustments throughout the system."<sup>15</sup>

The initial reactions of China to the new British "offensive" were disorganized and confused. Gradually, China recovered its poise and went on the offensive. The violent stance of China even surprised Britain, who expected the Chinese government, immersed in internal and external crises, to succumb, however reluctantly, to British determination. China mobilized all the economic and political pressures at its disposal against Britain. To Britain, the political and economic price of Patten's reforms became increasingly unbearable. Nevertheless, because Britain had over-committed British prestige and honour to the Patten reform, it was difficult for it to take an abrupt retreat without incurring huge political costs. Britain thus attempted to settle the matter with China through mutual concessions. Even before Patten's reforms were implemented, Britain had already shown a willingness to talk with China on the matter. However, the differences of views between the two countries were so wide, and the mutual trust between them so low, that eventually the talk broke down.<sup>16</sup> Subsequently, Britain implemented Patten's proposals in the 1995 Legislative Council election.

Apparently not sanguine about the results of the talk, China, ignoring vociferous opposition by Britain, set up the Preliminary Working Committee (PWC) in 1993 to devise the electoral arrangements for the first legislature after 1997 only several months



after Sino-British talk had started. One of the responsibilities of the PWC was to recommend to the Preparatory Committee for the establishment of the Hong Kong Special Administrative Region (HKSAR) the specific method for forming the first Legislative Council of the HKSAR. As soon as the talk between the two governments broke down, the PWC pushed full steam ahead to study the matter. The Preparatory Committee was established in January 1996. In November 1996, it set up a Subgroup on the Electoral Methods for the First Legislative Council.

According to the decisions of the Preparatory Committee, the electoral system of the legislature designed by Britain would be totally dismantled in 1997. Legislators elected in 1995 would not be allowed to straddle 1997. As such the "through train" arrangement, previously agreed to by Britain and China after extremely difficult negotiations, was dead. A new legislative election would be held in the first half of 1998 based on the electoral system decided by the Preparatory Committee. Before the election of the first HKSAR legislature, a provisional legislature was elected on 21 December 1996 to prevent the existence of a legislative void.<sup>17</sup> In China's colourful jargon, this series of measures represented the "setting up of the new stove."

The electoral methods for the first legislature of the HKSAR have a number of principal features. For the 20 directly elected seats, either the "multiple-seat, one vote" (multiple-member constituencies) system or a form of proportional representation system would be adopted. The "first-past-the-post" system ("one-seat, one vote" or single-member constituencies) used in the 1995 system was discarded. Either the "multiple-seat, one vote" system or the proportional representation system will presumably increase the probability for smaller political parties or independents to win seats in the direct election.

In the 1998 election of the first legislature of the HKSAR, the nine new functional constituencies created by the Patten reform would be eliminated. In their place would be nine new functional constituencies established in the spirit of the original "old" functional constituencies (with a total of 21 seats). Therefore, the pop-

ulist elements contained in Patten's reforms will be removed from functional constituencies elections.

The composition of the Election Committee, which would elect 10 members, would conform with the principles agreed upon by Britain and China in their secret negotiations in early 1990, and Patten's conception of the Election Committee would be abandoned. The Election Committee would consist of four categories of members: (1) industrial, commercial and financial sectors (25 per cent); (2) the professions (25 per cent); (3) labour, grass-roots, religious and other sectors (25 per cent); and (4) former political figures, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (25 per cent).

Altogether, the electoral system to be used in the 1998 Legislative Council election would produce a legislature tilted in favour of the conservative business and professional interests.

Furthermore, in the 1998 legislative election, Article 67 of the Basic Law would apply, which stipulates that "permanent residents of the [Hong Kong Special Administrative] Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 per cent of the total membership of the Council."

The election in 1998 would be an open one. No one would be banned from contesting the election because of political reasons. In other words, there would be no political vetting of the participants in the election to determine their candidacy.

### **Similarities and Differences in British and Chinese Approaches**

Despite the row between Britain and China over the method of formation of the Legislative Council and the eventual breakdown

of cooperation on the matter, it is definitely not true that the two of them took widely divergent and, hence, unbridgeable approaches toward the electoral system for the legislative. As a matter of fact, behind their differences we can detect some similarities in their electoral designs for the Legislative Council.

In the first place, both Britain and China displayed a positive attitude toward electoral reform. On the part of Britain, electoral reform served several important political purposes. Firstly, by coupling electoral reform with the Sino-British Joint Declaration (which surrendered Hong Kong to a communist regime), the British government intended to make it easier for the British Parliament and the British people to accept the latter. The British government could then convince the Parliament and the people in Britain that the Hong Kong people would be given the necessary political power to protect themselves against the Chinese government after the change of sovereignty over Hong Kong. Secondly, electoral reform was supposed to fulfil Britain's moral and political responsibility to its colonial subjects. The establishment of a representative government in Hong Kong was part and parcel of the process of *exit with glory* from the territory. To exit with glory was the motif of decolonization *à la* Britain. Finally, electoral reform of the legislature was construed as a way to garner political support for the departing regime from the people of Hong Kong. Through a voluntary sharing of power with the colonial subjects, Britain hoped to slow down the pace of decline of authority of a government whose days were numbered.

On the part of China, after initial resistance to political reform of any kind, a reluctant willingness to tolerate a degree of democratization in Hong Kong came about. China's change of attitude was the result of popular pressure by the Hong Kong people, a realization that public confidence in Hong Kong's future would increase if the people were granted some political influence, an inability and reluctance to roll back all the reforms introduced by Britain, and an increasing awareness that to implement the formulae of "Hong Kong people ruling Hong Kong" and "a high degree



of autonomy" entailed some form of transfer of power to the Hong Kong people.

Therefore, after a short period of wrangling over the need for electoral reform of the legislature by Britain and China in the mid-1980s, both of them eventually agreed that it was inevitable that a degree of democratization was inevitable in Hong Kong.

Secondly, both Britain and China took a very prudent approach toward electoral reform of the legislature. Undeniably Britain, in the first *Green Paper* on political reform issued in 1984, intended to complete the process of making a fully popularly elected legislature as the kingpin of Hong Kong's political system, but it reversed itself in no time. China preferred a gradualist approach almost right from the very beginning. Even though the time frames of the two governments were never the same, eventually the distance between them had shortened to such an extent that both of them could endorse the principle of "convergence." The distance between the two time frames suddenly widened after 1992, with Britain trying to speed up the process of democratization in Hong Kong and with China having more reservations about the process in the aftermath of the Tiananmen Incident. Even so, Britain's approach was still, by and large, one of incrementalism rather than that of radical transformation.

Thirdly, Britain and China were strikingly similar in their insistence on the executive-led government and restricting reforms only within the legislative institution. Both of them had no plan to democratize the executive branch of the government. Even though they required the executive to be *responsible* to the legislature (the term "responsible" however meant different things to the two governments), they had absolutely no intention to allow the government of Hong Kong to be produced by the legislature. Instead, either the Governor or the Chief Executive of Hong Kong was independently produced. As it was only the legislature that was the subject of political reform, and in view of the fact that the legislature was basically a powerless and reactive body, Hong Kong's democratization can only be described as *partial* in nature.

Fourthly, both Britain and China had no intention to enlarge significantly the powers of the legislature constitutionally. Admittedly, the enactment of the Legislative Council (Powers and Privileges) Ordinance in 1985 did enhance the investigative capacity of the legislature, but the government always had the means to escape meaningful investigation. Needless to say, the expansion of the elective elements in the legislature did increase the political status and influence of the body, but it still lacked the power to make and un-make governments, to propose and formulate policies, or to play a significant role in the appointment or dismissal of top officials.

Finally, Britain also shared with China an anti-political party bias, though of course to a lesser degree. Both governments realized that the appearance of political parties was inevitable whenever there were elections, particularly popular elections. They nevertheless did not want to see the domination of the legislature by a powerful political party, which then could use the veto powers at the legislature's disposal to "blackmail" the executive or to bring about stalemate between the executive and legislative branches. Both governments, in devising the electoral arrangements for the legislature, strove to prevent such scenarios from taking place.

These similarities between Britain and China, however, had failed to bring about close cooperation between them on the electoral system for the legislature. The primary difference between them, which eventually led to the breakdown in cooperation, lay in the difference in their views as to which should be the major political forces in the elected legislature. In fact, in designing the legislative electoral arrangements, both Britain and China were concerned about who would benefit from the electoral system and who would not. Naturally, there had never been consensus between Britain and China as to who should replace the legislators previously appointed by the colonial regime.

Initially, between the mid-1980s and 1992, despite differences of view, both Britain and China had similar preference for the politically moderate or conservative politicians, particularly the

businessmen and the professionals employed in the private sector. Even though direct elections would unavoidably bring the "radicals" and "populists" into the legislature, both governments intended to leave them only in a minority position. Naturally, Britain would have liked to see these moderates and conservatives who were also supportive of its position dominating the legislature, whereas China would have liked to have China-sympathizers in command. Still, the gap between the two was narrow.

This common position between Britain and China explained the ease with which China accepted the idea of functional constituencies election, which was originally proposed by the Hong Kong government in 1984 and was subsequently recommended to China. The definition of functional constituencies election was very clear in the government's policy papers. In 1984, the meaning of functional constituencies was spelled out explicitly:

The main guidelines which have been applied in determining the composition of these functional constituencies and eligibility to vote in them are as follows: (a) In the case of economic and social constituencies, these will be based on well-recognized major organizations, associations, and institutions with a territory-wide coverage. The lists of the voting members of these organizations will be adopted as the electoral rolls for these constituencies. Corporate members will nominate representatives to vote on their behalf. (b) In the case of professional constituencies, these will be based on membership of those professions with well-established and recognized qualifications. The electoral rolls for these constituencies will be based on either the membership lists of the various major professional bodies and institutions or on the statutory registers of members of those professions.<sup>18</sup>

The 1988 *White Paper* further spelled out the guidelines whereby functional constituencies were to be delineated: "(a) [F]unctional constituencies should be substantial and of importance in the community; (b) any new constituency should be clearly defined to avoid difficulties over who qualifies for inclusion and how the electorate is prescribed; (c) constituencies

should not be based on ideology, dogma or religion; (d) particular groups or bodies should not be represented in more than one functional constituency."<sup>19</sup>

Despite the clarity of the definition, still some functional constituency seats were given to political bodies (such as the two municipal councils and the Heung Yee Kuk [Rural Consultative Committee]). This could be treated as functional constituencies only by the wildest stretch of political imagination and could only be interpreted as an act of political expediency. Still, the inescapable conclusion is that functional constituencies elections were meant to be elitist elections which placed Hong Kong's socio-economic elites in a particularly privileged position. By doing so, Britain wanted to allay the elites' fear of democratization. In addition, as direct election of some legislators could not be avoided and the right of all adults to vote in direct elections could not be denied, the inclusion in the legislature of legislators returned by functional constituencies elections in fact played the role of slowing down the pace of introduction of popular democracy in Hong Kong.

Like Britain, China also recognized the instrumental role of functional constituencies election in bringing about gradualism in political reform in Hong Kong. Consequently, China accepted Britain's recommendations and included 30 seats to be returned by functional constituencies elections in the first legislature of the HKSAR, which was nine more than the number (21) in the Legislative Council election held in 1991. Under the "through train" agreement, the Hong Kong government was to add nine more functional constituencies seats in the 1995 election. However, Governor Patten "redefined" the newly-added functional constituencies to include the entire working population of 2.7 million. This was done by following the existing classification of Hong Kong's industrial and commercial sectors, in each of which every worker had a vote.<sup>20</sup> Accordingly, it can be said that through such "redefinition," nine more quasi-directly elected seats were added to the legislature. Britain's adoption of a radically different understanding of functional constituencies as far as the nine newly-

added seats were concerned was seen by China as a blatant violation of previous agreements. Britain could of course point out that the Basic Law had not explicitly spelled out the definition of functional constituencies. China however retorted that since the original definition of the term and its rationale had clearly been laid out by Britain in the first place, and there was such clear-cut common understanding between them as to its meaning, detailed definition of the term in the Basic Law had therefore been unnecessary. From China's point of view, Britain's act represented a deliberate violation of mutual agreement and, hence, an act of bad faith. Patten's challenge to China to show the world in what way his novel redefinition of the term contradicted the Basic Law only rubbed salt into the wound of China and seriously impaired the Sino-British relationship.

Patten's deliberate redefinition of the meaning of functional constituency represented an attempt to accelerate the pace of democratization in Hong Kong, but at the same time feign to abide by the Basic Law and respect the principle of convergence. Behind this policy of confrontation was a new British view as to which political forces should dominate the post-1997 Legislative Council. Since the late 1980s, particularly after the Tiananmen Incident in 1989, Britain had increasingly been suspicious of Chinese intentions and promises regarding Hong Kong and had become more disgruntled with the conservative elites, who were seen to be too subservient to China and were distrusted to maintain Hong Kong's autonomy *vis-à-vis* China after the departure of Britain. Britain thus came to view the anti-Communist and pro-democratic forces in Hong Kong as a more reliable and stalwart defenders of Hong Kong's interests after the change of sovereignty. Furthermore, the political popularity of these forces had soared in the aftermath of the Tiananmen Incident and they had won handsomely in the direct elections to the legislature in 1991. Therefore Britain found it to its interest to develop a constructive relationship with them. The redefinition of functional constituency by Patten could thus be interpreted as the attempt by Britain to make



the electoral system more favourable to the democratic activists in Hong Kong.

China's suspicions of British intentions were aggravated by Patten's proposal regarding the formation of the Election Committee, which would elect 10 legislators in 1995. During the secret Sino-British negotiations in early 1990 on legislative electoral arrangements, both governments had touched upon the methods for the formation of the body. Even though eventually there was no definite agreement on the matter because of difference of views, both governments however saw the Election Committee as a body composed largely of moderate and conservative elites. In fact, the composition of the Election Committee proposed by Britain was quite similar to the composition of that body as contained in Annex I of the Basic Law.<sup>21</sup> Notwithstanding differences between Britain and China on the composition of the Election Committee, it is important to note that in a letter to the Chinese Foreign Minister, Qian Qichen, the Foreign Secretary of Britain, Douglas Hurd, wrote that "I agree *in principle* with the arrangements which you propose for an Electoral Committee, *which could be established in 1995* (italics added)."

China accordingly considered that an agreement on the composition of the Election Committee, which would favour the moderate and conservative elites, had been reached with Britain. Thus, Patten's decision to pack that body only with directly elected Municipal Councillors and District Board members and, by doing so, transforming the Election Committee into a vehicle of popular election, took China by complete surprise. In extreme exasperation, China interpreted Britain's redefinition of the meanings of functional constituency and the Election Committee as a sinister plot to hand the Legislative Council over to the anti-Communist and populist forces of Hong Kong. In China's mind, the consequences of this would be intensified confrontation between the Chinese government and the Hong Kong people, strained executive-legislative relationship after 1997, deterioration of the investment environment in Hong Kong, increase in class conflict, and even transforming Hong Kong into a base of subversion of the

socialist system of China. None of these scenarios could China tolerate in the wake of the Tiananmen Incident and the collapse of communism in the Soviet Union and Eastern Europe.

In retrospect, while both Britain and China took a prudent and gradualist approach to political reform in Hong Kong, it is easy to see that Britain suffered from few restraints and had more incentives to introduce democratic reform. The obsession with exit with glory on the one hand, and the need to maintain public support for a departing regime on the other explained the greater willingness of Britain to introduce changes into Hong Kong's political system. Needless to say, as the years of British rule in Hong Kong were numbered, Britain was not encumbered by any possible long-term negative consequences of the reform. China, however, was very much bothered by Hong Kong people's mistrust of the socialist regime. It therefore was wary about any political reform which would arouse anti-China sentiments and give political channels for their expression. China's Hong Kong policy had an overriding goal, which was to maintain Hong Kong's economic vitality so that it could contribute to China's modernization. To accomplish this goal, the *sine qua non* was that Hong Kong's free-wheeling capitalist system should not be tampered with. In addition, Hong Kong under no circumstance should constitute a political threat to China. China was aware that the capitalist class in Hong Kong was politically highly dependent on China to ward off any political threat from below, and it would be a long time before it could be politically mobilized to fend for its own interests in a competitive electoral game. Furthermore, given China's authoritarian political system, a democratic system in Hong Kong where the popular forces would play a highly significant political role would inevitably produce the undesirable destabilizing demonstration effects in the mainland. With all these considerations in mind, it was natural to find China, as compared with Britain, much less enthusiastic about democratic change in Hong Kong.

Before 1989, the gap between Britain and China, though substantial, was still bridgeable under an amicable Sino-British rela-

tionship, hence the principle of convergence was accepted by both sides. After 1989, however, Sino-British relationship turned sour as a result of the anti-China united front of the Western powers in which Britain played an active part. Patten's reform proved to be the last straw, and Sino-British cooperation to ensure continuity of the legislature before and after 1997 collapsed despite some half-hearted efforts by both sides to salvage it.

### Some Consequences

The breakdown of Sino-British cooperation and the determination of China to "set up the new stove" made smooth transition of the legislature impossible. The legislators elected in 1995 had their term of office terminated on 30 June 1997. The election of the First Legislative Council of the HKSAR was held on May 24, 1998. Before that, the Provisional Legislative Council was elected on 21 December 1996 and started legislative work even before the reversion of sovereignty of Hong Kong to China. While an element of continuity was provided by the fact that 33 people were concurrently members of the legislature under British rule and the provisional legislature of the HKSAR, in fact basically the provisional legislature was devoid of democratic activists and anti-China forces. Even though the democratic activists and anti-China forces did contest the election of the first legislature of the HKSAR, in practice they were only in the minority there. Consequently, the political centre of gravity in the legislatures before and after 1997 changed abruptly in favour of the moderate, conservative and pro-China forces in Hong Kong. This would have serious implications in terms of continuities in public policies, mode of operation of the political system, executive-legislative relationship, and the relationship between legislators and the people. Needless to say, the simultaneous functioning of two legislatures before the transfer of sovereignty, even though the laws passed by the provisional legislature could only take effect on 1 July 1997, had caused



political frictions not only between the two legislatures, but also among various political forces in society.

Discontinuities in the legislative institution also mean that the democratic activists and anti-China forces, which gave an impressive performance in the 1995 legislative election and obtained about half the seats of the legislature, were to be in the political wilderness after 1 July 1997. Since direct elections of a portion of the legislative seats were held in 1991, these political forces have gained political stature and influence in society. Their sudden ouster from the established political institutions also means that the interests and views they represented were no longer incorporated into the decision-making arena. The political discontent and conflict that resulted is likely to haunt Hong Kong in some years to come.

The de-railing of the "through train," the setting up of the provisional legislature and the adoption of an electoral system in the 1998 legislative election which is less "democratic" than the one used in 1995, have led to protests from the governments of a number of Western nations. This series of events unavoidably have tarnished to a certain extent Hong Kong's international image. Even though China can accuse Britain of violating the agreements between them, China and the HKSAR government still face insurmountable difficulties in repelling accusations that they are the culprits in bringing about political retrogression in Hong Kong. Consequently, the ability of both the Chinese and the HKSAR governments to enhance Hong Kong's international reputation has become much complicated.

The reversal of democratic development as a result of the breakdown of Sino-British cooperation on political reform has also produced a higher degree of political disillusionment and alienation among the Hong Kong people. Aside from possible sources of political discontent, such negative political sentiments have also hampered the efforts of the HKSAR government to strengthen its political legitimacy in society and to promote public trust in political authorities.

In a nutshell, the de-railing of the "through train" and China's decision to "set up a new stove" have left all parties concerned weaker and dissatisfied. Looking back, had Britain not taken the initiative to introduce Patten's reforms but, instead, implemented the Sino-British agreement forged in early 1990, Hong Kong's political system would still be more "democratic" than the one that was to be created out of China's "new stove." And, Hong Kong would be relieved of the political turbulence that gripped Hong Kong in the last years of British rule. I leave it to the historians to pass judgement on the wisdom of the British government in launching an offensive against China when it was about to set sail from Hong Kong.

## Notes

1. See for example Mark Roberti, *The Fall of Hong Kong: China's Triumph and Britain's Betrayal* (New York: John Wiley & Sons, Inc., 1994).
2. *Green Paper: The Further Development of Representative Government in Hong Kong* (Hong Kong: Government Printer, July 1984).
3. B.B. Schaffer, "The Concept of Preparation: Some Questions About the Transfer of Systems of Government," *World Politics*, Vol. 18, No. 1 (October 1965), pp. 47-48.
4. *White Paper: The Further Development of Representative Government in Hong Kong* (Hong Kong: Government Printer, November 1984).
5. *South China Morning Post (SCMP)*, 1 November 1985.
6. *SCMP*, 30 November 1985.
7. *SCMP*, 31 December 1985, and *Far Eastern Economic Review*, 2 and 16 January 1986, pp. 10-11 and 37-38, respectively.
8. *Asiaweek*, 2 February 1986, pp. 9-10.
9. *White Paper: The Development of Representative Government: The Way Forward* (Hong Kong: Government Printer, February 1988).
10. *Ibid.*, p. 9.

11. See Percy Cradock, *Experiences of China* (London: John Murray, 1994), p. 218.
12. See the diplomatic letters exchanged between the British and Chinese governments in January and February 1990. They were published only when China accused Britain of violating the secret agreement between the two countries. See *SCMP*, 29 October 1992.
13. See Lau Siu-kai, "Decolonization à la Hong Kong: Britain's Search for Governability and Exit with Glory," *The Journal of Commonwealth & Comparative Politics*, Vol. 35, No. 2 (July 1997), pp. 28-54.
14. Chris Patten, *Our Next Five Years: The Agenda for Hong Kong* (Hong Kong: Government Printing Department, 7 October 1992).
15. Suzanne Pepper, "Hong Kong in 1994: Democracy, Human Rights, and the Post-Colonial Political Order," *Asian Survey*, Vol. 35, No. 1 (January 1995), p. 50.
16. See the accounts issued by the two governments after the breakdown of the talk: Spokesman of the Ministry of Foreign Affairs of the People's Republic of China, *Facts About a Few Important Aspects of Sino-British Talks on 1994/95 Electoral Arrangements in Hong Kong* (Hong Kong: Joint Publishing, 28 February 1994); and *White Paper on Representative Government in Hong Kong* (Hong Kong: Government Printing Department, February 1994).
17. The Provisional Legislative Council was elected by the same 400-member Selection Committee which elected the Chief Executive on 11 December 1996. The Selection Committee was elected by the 150-member Preparatory Committee, which was in turn appointed by the Standing Committee of China's National People's Congress.
18. *White Paper* (1984), p. 6.
19. *White Paper* (1988), p. 13.
20. The nine new functional constituencies included: primary production, power and construction; textiles and garments; manufacturing; import and export; wholesale and retail; ho-

tels and catering; transport and communication; financing, insurance, real estate and business services; and community, social and personal services.

21. Annex I of the Basic Law stipulated that the Election Committee shall be composed of 800 members from four sectors: (1) industrial, commercial and financial sectors (200 members); (2) the professions (200 members); (3) labour, social services, religious and other sectors (200 members); and (4) members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference (200 members). In a paper handed to the Chinese government by Britain on 6 February 1990, the British government suggested the following basis for further detailed discussion of the composition of the Election Committee: (1) industrial, commercial and financial sectors; labour, social services and religious sectors: 25 per cent; (2) senior political figures; including former Executive Councillors, former Legislative Councillors: 25 per cent; (3) members of the Municipal Councils and District Boards: 25 per cent; and (4) representatives of Statutory and Advisory Boards and Committees as listed in the Hong Kong Civil and Miscellaneous List (only those members who are not also civil servants): 25 per cent.

加港文獻館

Canada-Hong Kong Resource C

1001 Crescent Rm 111 • Toronto, Canada • M5S 1A5

## From the "Through Train" to "Setting Up the New Stove"

### Sino-British Row Over the Election of the Hong Kong Legislature

#### Abstract

This paper analyses the history of the row between Britain and China over the way Hong Kong's legislature should be constituted in the transitional period and after 1997. The governments of both countries approached the matter with different motives and considerations. The tortuous path of interaction between the two governments initially produced a fragile compromise in the form of a "through train" for the legislature. Cooperation however eventually broke down, and the two governments parted company. Britain unilaterally imposed its electoral reforms against China's opposition. To counteract Britain's initiative, China resorted to "setting up the new stove" and designed single-handedly the electoral methods for the first legislature of the Hong Kong Special Administrative Region. Before the first legislature was to be elected, a provisional legislature was set up as a stopgap measure. The resulting discontinuity in the legislative institution has produced serious consequences for Hong Kong's development.

# 從「直通車」到「另起爐灶」

## 中英就香港立法機關選舉方式的爭議

劉兆佳

(中文摘要)

本文旨在分析中英兩國就香港立法機關在過渡期內及九七以後的產生辦法的爭議的歷史。兩國政府在這個問題上有着不同的動機及考慮。中英之間迂迴曲折的互動起初達成了一個立法機關「直通車」方案的脆弱妥協。不過，中英合作最終崩潰，而雙方遂各走各路。英國在中方強烈反對下單方面實施選舉方法的改革。中方爲了打擊英方的單方面行動而決定「另起爐灶」，並單獨制訂香港特別行政區第一屆立法會的選舉辦法。在第一屆立法會產生之前，中方則成立臨時立法會作爲應急措施。立法機關的不能順利延續，爲香港的政治發展帶來了嚴重影響。













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