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CANADA

IN

ASIA

ACCOUNTABILITY IN HONG KONG

Transiting from Colony to Democracy

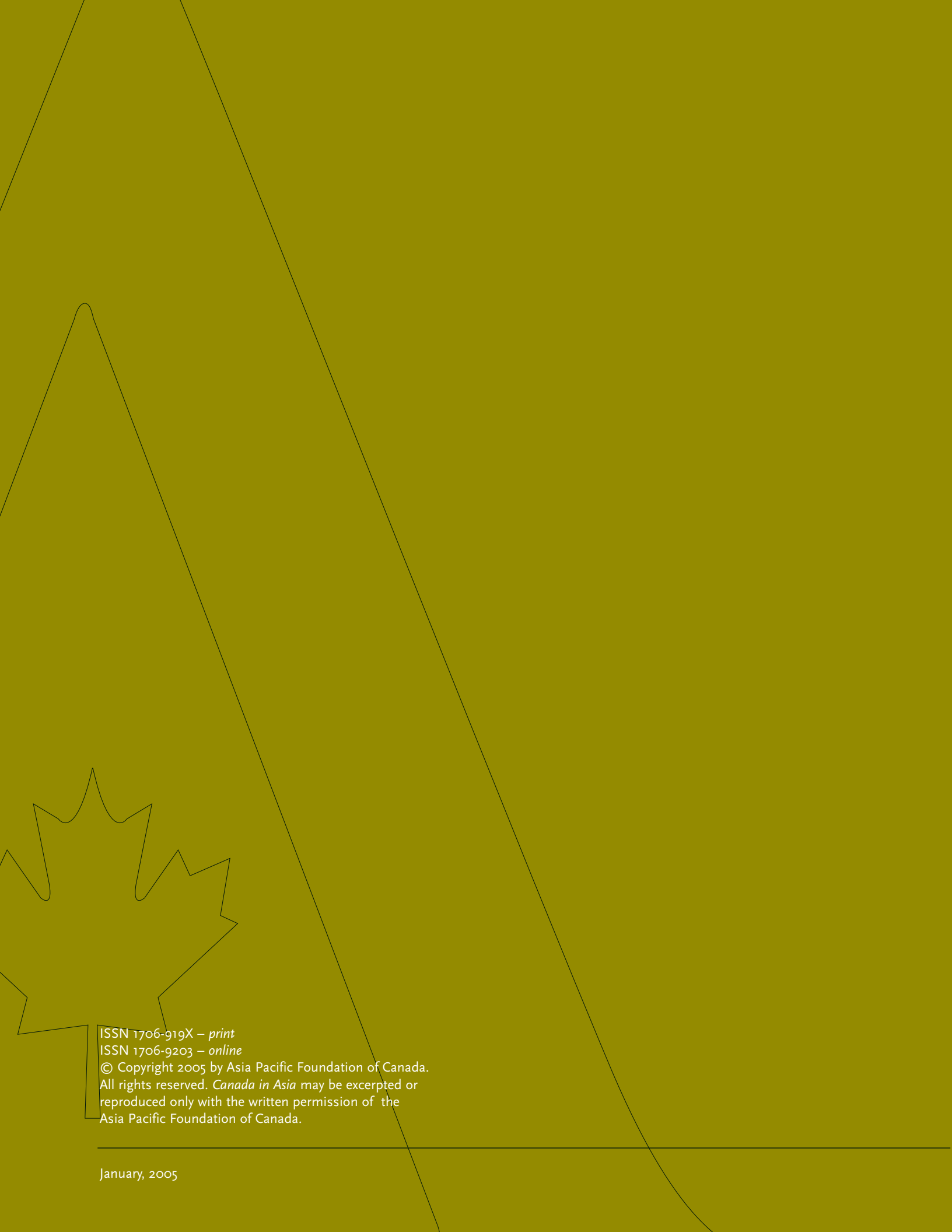
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INTRODUCTION



Avowedly apolitical, Hong Kong is in the midst of the most rapid political transition in China and the success of this transition is crucial not only for the seven million residents of Hong Kong, but also for the future of China itself. How the authorities in Beijing respond to democratic demands from Hong Kong, and how the government of Hong Kong treads a democratic pathway within the boundaries of the Basic Law, are two of the most important questions in international politics today. China's decisions about Hong Kong will tell us much about the possibility of reunification between China and Taiwan and about the prospects of democratic transformation in China itself, and on that crucible the future of the 21st century might turn.

Hong Kong was once an island of political stability punctuated by occasional bursts of tumult, as in the 1967 riots.¹ Today Hong Kong is in perpetual political motion punctuated by short timeouts to catch its political breath. Becoming a British colony after the 1840 Opium War, Hong Kong grew slowly as a port and commercial entrepot, ruled by a British governor. The economic transformation of Hong Kong into a world-class city was given a mighty push after the Second World War as the Chinese Communist Party won the civil war against Chiang Kai-shek. Hong Kong became a refuge from the communists as entrepreneurial talent, capital and large numbers of people flowed into the island from south China after 1949. To its everlasting credit, Britain encouraged a strong civil society and built an impressive liberal state. An impartial, honest and competent civil service, the rule of law, autonomous unions, churches, the press, and an economic strategy of minimal interference in the capitalist economy are all part of Hong Kong's impressive inheritance from Westminster. In particular, with the creation of the Independent Commission Against Corruption in the 1970s, Hong Kong became a leader in creating a professional non-partisan civil service. Hong Kong became an island of freedom, civility and stability in a very tough neighborhood. A substrate consisting of the rights and institutions that underlie democracy — freedoms of speech, of association, of religion, of

assembly; a vibrant free press; a tolerance of political criticism and debate about government and other issues — was gradually laid down and over time grew deeply ingrained. Hong Kong thus developed what we might call a strong “culture of liberty” — which by itself does not constitute or provide democracy, but which is a necessary foundation for any democratic institutions worthy of the name. What Britain did *not* attempt — at least until 1992, when it sent Chris Patten, the first governor from a political background (and, some would say, even thereafter) — was any serious development of locally-based institutions of direct democracy. The British Foreign Office and the local economic elite were content to portray Hong Kong as an economic oasis, uninterested in politics, so that when Mrs. Thatcher's government negotiated the return of Hong Kong to China, one sovereign power simply replaced another. The people of Hong Kong had no say in the matter. Patten himself made a valiant effort to create a more democratic culture and a new set of institutions (over the opposition of the Foreign Office) but it was too little and too late to have much impact on the basic structure of the system in place at the time of the handover.² Britain bequeathed liberty but it did not bequeath democracy.

THE STRUCTURE OF GOVERNANCE IN HONG KONG

1

Starting in 1997, then, Hong Kong has had to develop its political institutions on the fly. There has been almost constant political change since the handover and the pace of democratization, though gradual, has been steady. When Britain began to negotiate with China over the Basic Law in the 1980s, for example, 100% of the legislators were appointed by the British governor. Since the September 2004 election, none of the legislators are appointed. The main institutional elements can be succinctly sketched: the Basic Law makes clear that Hong Kong is a part of China, albeit with a 50-year window until 2047 in which the city will enjoy special status as a Special Administrative Region (HK SAR), keeping both liberty and a capitalist economy. The Basic Law outlines the rights and duties of the Chief Executive, the legislature and judiciary. There is unlikely to be any mistake about the ultimate arbiter of Hong Kong's fate — in March 2004, the Standing Committee of China's National People's Congress unilaterally interpreted the Basic Law to circumscribe Hong Kong's debate on democratic reform. Reform toward universal suffrage in selecting the Chief Executive in 2007 or the legislature in 2008 would proceed only if a "need" was demonstrated and then in a "gradual and orderly manner." Both the schedule and substance of democratic reform will require support of two-thirds of the Legislative Council (LegCo), consent of the Chief Executive and the approval of the Standing Committee. To pre-empt the democratic forces months before the September 2004 LegCo election, Beijing made it clear in April 2004 that any reforms in 2007 or 2008 will be incremental and within the existing spirit of the Basic Law.

The Chief Executive is selected by an Election Committee of 800, which itself is determined by a complicated formula involving 180,000 voters. Limited to two five-year terms, in 1996 shipping magnate Tung Chee Hua won an easy victory (320 votes) over Ti Lang Yang (42 votes) and Peter Woo (36 votes). In 2002 Tung was re-elected unopposed. In 2002 Tung initiated a major change in the executive system of Hong Kong. Prior to 2002 the functions of policy-making

and administrative communication had been based in the Hong Kong public service, with the policy secretaries of the departments and bureaus the key executive actors. The Executive Council, a hold-over from its days as the main advisory body to the Colonial Governor, was composed of civil servants, LegCo members, and representatives of the "great and good" of Hong Kong, i.e.: academics, business people and community activists. In 2002, Tung proposed and the legislature agreed to change this system by appointing 14 principal officials as the political heads of the departments and bureaus or de-facto ministers, serving at the pleasure of the Chief Executive. Called the "Accountability System for principal officials," the accountability of the officials is to the Chief Executive, not to the legislature or people of Hong Kong. In the current 21-member Executive Council, these 14 principal officials or ministers are joined by seven other nominees drawn from the Legislature or the wider community. In Canada, such members of the Cabinet without departmental authority are called "ministers without portfolio." Representatives of parties in the Legislature sit on the Executive Council, but have not yet served as principal officials or political heads of the departments or bureaus.

LegCo has 60 members, 30 directly elected by a proportional representation system based on universal suffrage, and 30 elected from functional constituencies of business groups, accountants, and so on—a limited franchise (similar to the franchise that selects the Election Committee that chooses the Chief Executive). The Legislature passes laws proposed by the Chief Executive and its approval is required to authorize the budget. LegCo has the right to debate policy and question the principal officials, but it has no role in the Executive, and private member bills require concurrent majorities among both the geographic members elected on universal suffrage, and of the functional constituencies. In the September 2004 election, democratic reform advocates won 62% of the vote and 25 seats in the 60-seat legislature. Turnout was a healthy 55%. Democratic advocates are proposing that a referendum be held on whether the functional seats' limited voting system

should be replaced by universal suffrage, but this initiative is opposed both by the Chief Executive and Beijing. In January 2004, the Chief Executive created a Task Force on the Constitution, headed by the Chief Secretary Donald Tsang, to suggest institutional reforms. Changes there may be, but universal suffrage in 2007 for the Chief Executive and 2008 for the legislature will not be among them.

A final point of reference is the engagement and the expectations of the citizens of Hong Kong. On July 1, 2003, a massive demonstration of 500,000 citizens opposed the government's proposed legislation on internal security. The legislation was withdrawn and the principal official responsible for the legislation resigned. On July 1, 2004, another huge demonstration of approximately 200,000 people demanded advancement of democracy in Hong Kong. With 3.2 million voters, demonstrations of such magnitude comprise 10-15% of the voting base, while parties in North America and Europe are happy to have 1-2% of their membership turn out for a major event. Public criticism by LegCo members, supplemented by a hyper critical media, have already forced the resignations of three principal officials in the short time since the accountability system was introduced. Moderation is still the centre of political gravity in Hong Kong: democrats won most of the votes in September 2004, but the pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB) party won the most seats (12). Yet far from its reputation of political apathy, Hong Kong is in a democratic boil. Expectations are high and the public is aroused. All parties support democratization. Both Beijing and the government of the Special Administrative Region will have to handle the Constitutional file with great finesse.



PRINCIPLES OF GOVERNANCE AND ACCOUNTABILITY

2

As a background to our examination of the governance and accountability system in place in Hong Kong, it is useful first to establish some general principles as a point of departure. All societies face the challenge of organizing and legitimating collective activities — identifying public interests, setting priorities for public action, designing ways in which the prioritized interests can be advanced, collecting the necessary resources and carrying out the decided programs. The challenge of governing can be divided into two broad areas:

1) legitimate political decision-making that recognizes and sets priorities among competing public interests; and 2) competent, efficient, and effective design and administration of the legitimately chosen public actions.

A good governance system must thus provide effectiveness both for political decision-making and for competent execution. In addition, it needs to provide some sort of evidence (to whom) about their performance on the public's behalf...and what sanctions can be applied to them (and by whom) if their performance is found wanting.

Accountability systems answer the question: "Who is responsible to whom for what?" It is about responsibility, the responsibility of those using delegated authority to answer for their actions. Government accountability frameworks concentrate on two main questions: what is the system by which the government is accountable to the citizenry, and what is the system by which the public service is accountable to the political leadership? The new accountability system of Hong Kong tries to address the question of how the public service can be made accountable to the Chief Executive, but it is silent on the prior question of how the government as a whole is to be made accountable to the citizens of Hong Kong.

In full democratic electoral accountability systems, citizens through their vote legitimize and formally give authority to leaders to act on their behalf. In their turn, those who have been delegated the power to make decisions — prime ministers, presidents, permanent secretaries, directors-general, etc. — must answer for

how they have discharged the duties that they have been delegated. As Adam Przewonski emphasizes in *Sustainable Democracy*,

"The conditions under which democratic institutions generate incentives for government to be accountable are quite stringent; they are not met by all institutional frameworks. Governments are accountable only when voters can clearly assign the responsibility for performance to competing teams of politicians, when the incumbents can be effectively punished for inadequate performance in office, and when voters are sufficiently well-informed to accurately assess this performance."³

Therefore, there are three A's in any democratically viable system: authority, accountability, and answerability.

Authority is the formal power to act. But how does it happen that one person has authority over others? This is one of the perennial questions in political philosophy. As humankind progressed from the family to the tribe, to the city, to the state, force was the initial source of authority. We obeyed because others were stronger. But those who held power because of the sharpness of their swords soon discovered that force was not enough. Willingness to obey was better if freely given, so divine right was brought into play. Authority was found in God and interpreted by his delegates on earth. Emperors and kings were happy to promote their divinity. Yet, starting in Athens in the 5th century and slowly gaining momentum through the ages until it was proclaimed as a new principle of authority in Britain's Glorious Revolution of 1688, and America's Revolution in 1776, was the idea that human beings are free agents, bound only by conscience, so that political authority exists only because we consent to obey it. What is critical is not force but the psychological disposition that it is right to obey. According to Pierre Trudeau, in an essay written prior to becoming Prime Minister of Canada, "Human Societies, then, differ from bee hives in that men are always free to decide what forms of authority they will adopt, and who will experience it. And it is really men who have the

responsibility of taking these decisions — not God, Providence or Nature.”⁴

Willing obedience — as contrasted with begrudging compliance — then, depends upon the perception that authority has legitimacy. There are many different ways for governments to earn legitimacy. Competence and effectiveness in understanding and advancing the public’s interests can confer legitimacy to a degree — for example, the Allied administration of postwar Germany came to be regarded by most as a legitimate system of governance, even though it was initially imposed by force, because it manifestly was designed to be (and was in practice) competently serving the interests of those it governed. But in the 21st century, for most people, more complete legitimacy will have to be earned by facing an electoral test — a process of one person and a vote. Elites that rely on force or a rigged electoral process will eventually face a legitimacy crisis because sooner or later their citizens will choose not to obey.

Democratic electoral legitimacy is obviously the biggest challenge for the Hong Kong accountability framework because neither the governance structure of the Hong Kong Special Administrative Region nor that of the People’s Republic of China relies on direct election with universal suffrage. The Chief Executive is selected by a committee of 800, not the 3.2 million voters of Hong Kong, and the Basic Law is interpreted by a political body of the National People’s Congress (not a court) which itself is the product of a one-party system that does not face a broad electoral test. The Basic Law itself acknowledges the authority-legitimacy dilemma and Hong Kong, since Article 68, proclaims that “The ultimate aim is the election of all members of the Legislative Council by universal suffrage.” The Basic Law states the aim but not the timetable and is hedged with restrictions.

The impact of this structure is profound: the intent of the Basic Law is to have an executive-led system. The passage of a government bill requires a simple majority of the legislative body while bills on amendments introduced by LegCo members require majorities both

from the democratically elected members and the functional constituencies. LegCo cannot introduce measures pertaining to public expenditure (although its approval is required for the Executive Committee’s budget), and the Chief Executive has the power to decide whether government officials must give evidence to LegCo. But in the exercise of those strong theoretical powers has made plain the real weakness of the HK SAR’s executive-led government because in any conflict with the legislature it is the LegCo members who have democratic legitimacy, not the Chief Executive. After the July 1, 2003 massive demonstration the Chief Executive had to withdraw his legislation on internal security because the Liberal party head, James Tien, resigned from the Executive Committee in protest and with the loss of the Liberal party’s eight votes, the legislation would have been voted down. LegCo routinely attacks the principal officials, who resign because the government does not have enough democratic legitimacy to withstand negative bursts of public opinion. Despite having party representatives from the Legislature as members of the Executive Council, the government cannot count on a guaranteed base of party support. Stephen Lam, the Secretary for Constitutional Affairs, joked in a July 30, 2004 speech to the Hong Kong Democratic Foundation that, “The Hong Kong government is the most effective minority government on earth. We do not have even one member in the Legislative Council, but we manage to get most of our work done.” Echoing Lam, Mrs. Rita Fan, the President of the Legislative Council, said in an October 26, 2004 speech to the same audience that, “The Government has the power but no votes, while the Legislature has the votes but no power.” For enduring stability in Hong Kong, if that is the predominant aim of Beijing, this legitimacy-authority gap must be closed.

Accountability is the requirement to account for the authority delegated by the legitimate source of authority. Public servants, for example, should treat their clients or the public fairly and efficiently, but the civil service is not accountable to the public. They are accountable to the permanent secretary, who is accountable to the

principal official, who is accountable to the Chief Executive. Who is responsible to whom, and for what, is the central question in any accountability framework.

Here, too, the HK SAR has much work to do. Principal officials are political appointments responsible to the Chief Executive but they are not political party appointments as in most other systems. They are individuals, some from the public service, some from business, civil society and the social sector, brought together temporarily to do a critical job. But what is the glue that holds the team together? There is none, because in every other system, the organizing force comes from the party (or parties). Hong Kong is so anti-party that the legislature passed a bill requiring the Chief Executive to forgo any party affiliation. Yet it is party membership and experience that gives ministers the political skills they need to communicate, organize, plan political strategy, advocate and lead. If the principal officials do not really operate like a political party then this task falls to the permanent public service. But politics runs against the ethic of partisan neutrality that every public service holds dear. In China the party is dominant and that country is striving to build an autonomous civil service. In Hong Kong, the public service has historically been unusually dominant in public affairs, responsible *de facto* for managing *both* sides of the governance coin — the politically neutral administration that is the traditional task of a professional civil service *and* the political balancing of competing public interests that, in electoral political systems, is the domain of elected officials and their political appointees.

We believe that the professional civil service of Hong Kong cannot permanently continue to be simultaneously responsible — as it has in effect *de facto* been at least for the last 50 years — for both politically neutral administration and for managing the political discourse and balance in a society that faces increasingly complex political issues. Neutral administrative capability is a great asset for Hong Kong; its reputation for competent and honest administration makes it an attractive location for business, investment and commerce. Maintaining competent and politically neutral

administration — and answering for administrative competence (rather than for political policy-making) — requires a degree of insulation from political matters. But dealing competently and effectively with the political questions of balancing interests and setting priorities among competing demands for public attention — development, immigration, health, education, transportation, equity, justice, liberty, security — is also crucial for the continuing success of Hong Kong. Hong Kong must, therefore, in our view, begin systematically to separate the administrative challenges from the political challenges, and begin building a cadre of politically-minded and experienced people with the inclination and the skills to help navigate the waters of political decision-making in a free and open society. The most obvious (though perhaps not the only) way to do this would be by beginning to develop some form of party system.

Answerability requires that an account be tendered to those to whom an account is due. In most political systems it is the politicians who do the heavy lifting on political communication. Ministers answer questions in parliament, presidents hold regular press conferences, etc. In Hong Kong much of the communication function is carried out by the public service in terms of responding to media inquiries; civil servants are known to the public in a way that is astonishing to outside observers (in contrast, Franklin Roosevelt said his advisors and officials must have a passion for anonymity!), and principal officials are often faulted for communication lapses. Hong Kong's Health Minister, Yeoh Eng-kiong, resigned after the SARS crisis of 2003 largely because of legislative criticism about his communication efforts. The vibrant media of Hong Kong is hyper critical of the government (as is the legislature), and communication skills — most importantly, the ability to answer well — have been sorely lacking. But is it fair to blame the public service or principal officials? In other systems it is the politicians who communicate, and they do it well because they have years of practice and it is their main job — and those who rise in the political system tend to be those who are differentially good at it.

INTERNATIONAL COMPARISONS

3

Hong Kong has only been dealing with these democratic accountability issues for a few years. Other countries have been dealing with them for centuries. Great Britain, the United States and Canada have all responded to the accountability question in different ways, and these precedents may be useful to Hong Kong.

England's first Parliament was in 1265, but it was not until the 14th century that Parliament began to assume its characteristic form due to the insatiable demands of the English Monarchs for money to finance wars.⁵ The early parliaments had many similarities to LegCo: the King-Chief-Executive chose his ministers from a personal court, they reported only to him and Parliament's main role was to pass budgets. In the 18th century, the House of Commons even resembled LegCo by having both directly elected and "functional" constituencies. A great many "rotten" boroughs represented very narrow constituencies: the clothing trade dominated certain seats; ridings in the British coast preferred naval officers; and so on. The largest category of constituencies, 160 seats, were patronage boroughs in which the Monarch had governing influence on who was elected. Hong Kong's governing structure in 2005 in many ways resembles Britain's in 1750. Starting in 1768 reformers began to agitate for reform in the House of Commons and the process took 65 years until the famous 1832 Reform Act, largely eliminated functional constituencies. In the 18th century, too, gradually the Monarch began the practice of forming a Ministry, not based on personal favourites, but based on leading figures in the House of Commons who could manage or control the House. Parties came to Britain in the 18th century with the Tories and Whigs, and the leader of parties like the Whig Sir Robert Walpole began to be recognized as the "Prime Minister." In forming a Cabinet, 18th and 19th century Britain began the process of choosing powerful legislators to fill executive posts. This is an option still open to Hong Kong.

The American experience with the Electoral College may have lessons for Hong Kong's Election Committee.⁶ The American Founding Fathers began with the same

suspicious about parties as many have today in Hong Kong. The Electoral College in 1789 was just that — a small committee of leading citizens — who chose the best man for the Presidency, George Washington. But by 1800, the small number of electors who voted for the President were themselves selected from party lists — that is, parties had begun to organize around the presidential contest. By the 1820s, the number of voters eligible to vote for the Electoral College who would in turn vote for the President had been increased to approximate universal suffrage (except for African-Americans and women!). The evolution of the American style system may be suggestive for Hong Kong — the Basic Law provision of an election committee could be retained, but the method of choosing that committee can be widened considerably, even to include universal suffrage. It took the United States about 12 years to change the nature of the electoral college. If Hong Kong moved as quickly, 2012 would be a target date for significant reform.

The Canadian experience also has relevance for Hong Kong, because Canada, too, was a colony.⁷ In 1791 Britain introduced a system familiar to anyone from Hong Kong: a Legislative Council, a British appointed governor, and an Executive Committee filled with the friends of the Governor. As early as 1810 Canadian reformers were agitating to have the Executive Council composed of legislators who commanded a majority of the House (Pierre Bedard who championed this theory was thrown into jail for his efforts). For many years both in Lower and Upper Canada (today's Quebec and Ontario) there was an alliance between the local business-oriented elite and the British appointed governor to keep the reformers at bay. In 1837 the patience of the Canadian reformers had finally grown so thin that there were armed revolts (which Britain and the local militia easily quelled). Canada had to wait until the colonial Master was ready. But with the passage of the Reform Bill of 1832, reformers eventually came to power in Britain and in 1848 the North American colonies were finally granted responsible government. It had taken about 50 years for British acceptance of

responsible government to catch up with Canadian eagerness to have it: The Basic Law, of course, also has 50 years to run.

Much more recently Canada also innovated around the question of civil service through developing ministerial accountability. Canada developed a strong party system but it inherited a Westminster civil service model of non-partisan neutrality. By the mid 1960s the two systems were in growing conflict. The civil service was in danger of being overly political with senior ministers like Lester Pearson (who eventually became prime minister) coming from the public service, and the Canadian version of administrative officers veering into partisan roles. In 1968, Prime Minister Pierre Trudeau rationalized the system: A partisan Prime Minister's Office was created to work in tandem with the civil service cabinet secretariat. This 100-person strong office quickly became the political centre of the Liberal government. Each minister also had a personal political stable of "exempt staff." A political bureaucracy funded by taxpayers but without the job security of the public service became responsible for functions like political strategy, coalition building, media communication, and so on. Trudeau's government also funded for every party not only a portion of election expenses, but also the creation of caucus research offices, or political "think-tanks" that served as an alternative home for opposition political staff. Politically minded individuals could now gain experience (and have careers) outside the civil service. The Trudeau government also funded independent, non-partisan think-tanks on economics, science, and foreign policy to give the civil service competition in the realm of ideas and policy science. In short, the Trudeau system demanded a partnership between policy and politics: the cabinet secretariat was policy proficient but politically sensitive, while the Prime Minister's Office was politically proficient but policy aware.

As stated previously, accountability — that central question of who is responsible to whom for what — is at the heart of any truly democratic system of governance. Because "democracy" demands more than simply casting

a ballot at regular intervals, citizen engagement will be contingent upon a series of structural requirements, which suggest some semblance of accountability within the larger system. Before casting their ballot, citizens must be able to recognize a set of laws that are equally applicable to those being governed and those doing the governing: in addition, citizens must have sufficient information to assess performance, they must be able to assign responsibility for performance or non-performance, and the system must reflect voters' intentions in rewarding or punishing performance.

TAIWAN: THE EMERGENCE OF DEMOCRATIC ACCOUNTABILITY

4

Taiwan is the silent partner in the debate over Hong Kong's political future. The peaceful reconciliation of Taiwan with the mainland will likely occur only if China moves more steadily toward an open society and if China is sincere about making the Hong Kong model of "one country – two systems" work. In turn China's reluctance to allow universal suffrage may have much to do with its unhappiness over the evolution of Taiwanese democracy which has sporadically veered toward independence. But the case of Taiwan provides an Asian illustration of the evolution of a system of accountability within an emerging democracy. Indeed, even without Hong Kong's advantage of the British inheritance of common law, a non-partisan civil service, and an ethos of anti-corruption, within a seemingly short period of time, the Republic of China (Taiwan) has moved from a one-party system under military rule, to a stable multi-party democracy. Although Taiwan continues to grapple with issues of party and government corruption, constitutional reform and the ultimate consolidation of its democracy, its remarkable achievements over the past 50 years cannot be understated.

In his article, *Taiwan's Unique Challenges*, author Yun-Han Chu provides a succinct and forceful assessment of Taiwan's history with democracy and accountable government:

"Taiwan is a society with no prior democratic experience. Its history has been one of imperial control, colonial administration, and one-party authoritarian rule. It had lacked the institutions — a free press, an independent judiciary, autonomous civic associations — required for liberal democracy. (...) Martial law was in effect for almost four decades. The Kuomintang (KMT) party-state maintained a corporatist grip on society."⁸

Following the departure of Japanese colonial administration and the installation of Chiang Kai-shek and his KMT in the latter half of the 1940s, Taiwan would enter into a repressive era of one-party authoritarian and military rule. Despite the KMT's

promise of a constitution and eventual democracy, state repression was justified by the communist threat, according to one analyst.⁹

International and domestic pressures would lead to some limited (albeit self serving) freedoms for the Taiwanese; the decision of the KMT and General Chen Yi to initiate local elections in 1946 would be the first such concession. Although local elections were introduced as a means by which national authoritarian leaders could procure fledging public support and circumvent opposition, its consequences would be far more diffuse. In Taiwan, the holding of local elections would serve as a training ground for both political leadership and the electorate. Despite the limited nature of the initial franchise, these early elections introduced the Taiwanese people to the concept of regular, peaceful political participation. Political candidates were likewise provided with a forum in which to foster valuable political skills, such as the ability to mobilize support, advocate a public position and work within a party system. Local factions would not, initially, exist autonomously from the national leadership — patronage was rampant and opposition parties were heavily constrained by the powerful ruling KMT. However, the autonomy of local politics would eventually grow, and the creation of local political structures and processes would become a pivotal step in the consolidation of democracy and accountable government within Taiwan.

The capacity of Taiwan's written constitution to structure and limit the powers of the various branches of government was likewise heavily constrained in the early decades of KMT rule, due to the implementation of a series of "Temporary Provisions" which gave the ruling party unfettered discretion to deal with issues of national security, constrained opposition parties and stifled dissent. The lifting of martial law in 1987 and a series of constitutional amendments, starting with the 1991 abolition of the Temporary Provisions, would go a long way toward creating democratic accountability in Taiwan.

AMENDING THE BRANCHES OF GOVERNMENT

5

The National Assembly began as a powerful entity, with the capacity to elect (and recall) the president and vice-president, amend the constitution and approve presidential appointments. Up until the first round of constitutional amendments in 1991, the Assembly was in essence an arm of the ruling nationalist party, lacking any semblance of true electoral democratic legitimacy, independence or professional merit. Although the body gained greater legitimacy in 1991 with the election of new members, the body's loss of power over presidential appointments would foretell its demise and by 2000 it would become an ad hoc body.

The 1991 set of constitutional amendments would also have a significant impact on the Legislative Yuan, Taiwan's parliament. The direct elections to the Legislative Yuan in 1992 would be the first time that the ruling KMT allowed a truly open and democratic process, with the ensuing parliament being completely chosen by the residents of Taiwan. Subsequent amendments would give the body, among other things, powers to act as a check on the Executive Yuan (appointed by the president). In its current incarnation, the legislative body approves budgets, recommends constitutional amendments and can dismiss the premier in a no-confidence vote. The legislature retains the power of impeachment and is further able to call the executive to task, through its powers to conduct inspections and request documents from government agencies.¹⁰

The office of President also became a directly elected position in March of 1996, representing a substantial step toward the consolidation of democracy in Taiwan — the nation's highest post had become fully accountable to the general electorate.

Although the right to vote is a necessary pre-condition for a full democracy, it is the existence of opposition that makes a system truly democratic and responsible. The power of the vote is rendered moot if the electorate does not have viable candidates to choose between at the ballot box; the essential element of giving citizens the capacity to punish or reward those in power is only activated when a series of parties have a reasonable

chance of becoming elected. Such was not always the case in Taiwan.

In September of 1986 a disparate group — the Tangwai movement — came together to create the Democratic Progressive Party (DPP), contrary to the constitutional prohibition on opposition parties. This would mark a significant milestone toward the consolidation of democracy in Taiwan. The ban on opposition parties has now been abolished, and in 2000 a further milestone was reached, with the election of DPP candidate Chen Shui-bian, as President. By the end of the 1990s, the various branches of the national government had become increasingly transparent and accountable to the electorate. Not only were there direct elections, there were checks and balances on the Executive and the Legislative Yuan, as well as on the office of the President. By 2001, the Judicial Yuan, an independent committee named to decide judicial appointments and promotions, had also increased its independence, diminishing political control over the judiciary.

There still remained, in the late 1990s, charges of vote buying at the local level and charges of obfuscation and inefficiency in the overlapping roles and responsibilities of the Taiwan provincial government. Such critiques were responded to through a series of constitutional amendments in 1997 which served to streamline and eliminate much of the provincial system of government as well as turning many local posts into appointed (rather than elected) positions. The consolidated impact of these democratic reforms — both constitutional and structural — has been an increase in the sense of legitimacy among the Taiwanese people. While citizens are reportedly still cynical about the responsiveness of the political system to their concerns, two-thirds (65%) of the population believes that their votes have an effect.¹¹

As Taiwan's system of governance has continued to evolve, so too has the role of the media. Although Taiwan's media is not yet seen as a truly independent actor — laws against “libel, defamation and insult” remain on the books and many television stations remain

subject to some political influence — unfiltered information is readily available to Taiwanese citizens regarding the actions of their government. The media has been a vocal critic of the so-called “black gold” politics — reporting on numerous charges of vote-buying in recent elections. In March of 2004, in the run up to the presidential election, the *Taipei Times* reported that the Ministry of Justice was investigating some 800 cases of suspected vote-buying. The international organization ‘Freedom House’ has similarly reported that Taiwan’s Justice Department had indicted more than 3,700 people for vote buying related to the 2001 legislative and local elections. An article in the *Taipei Times* in October of 2004 reported that Taiwan’s High Court was set to deliver a verdict on charges of widespread voter fraud in the March 2004 presidential elections.

Such reports might lead one to deduce substantial flaws in the accountability systems within Taiwan’s nascent democracy — voter fraud and corruption still widely exist. However, viewed through a different lens, one could focus on the core system of accountability which has been implemented to deal with such flaws: government actions have been reported upon by local and foreign media sources; the Department of Justice has a process whereby instances of fraud can be investigated; and the judiciary has the capacity to act as a control on malfeasance within the government. Taiwan’s democracy may not be, as Larry Diamond charges, a fully liberal democracy, but its experiences are instructive on the consolidation of a democracy and the installation of systems of accountability toward that end.¹²



CHINA BROODS

6

Since Hong Kong began its transition from a colony in the 1980s to an emerging democracy in the 1990s and 2000s, it has experienced three transformations in Chinese leadership. For the aging generation of Deng Xiaoping that had participated in the Long March, Hong Kong was the symbol of one of China's greatest 19th century defeats, the Opium War of 1840. Margaret Thatcher may have initially hoped that Deng might allow some form of British administration under Chinese sovereignty to continue after 1997, but that was a pipe dream. As Deng and Ms. Thatcher negotiated in Beijing in 1982, an exasperated Deng told the Iron Lady according to her recollections, "look, I could walk in and take the whole lot this afternoon."¹³ Jiang Zemin became General Secretary of the Chinese Communist Party in June of 1989 and throughout his tenure, Jiang had to cope with the aftermath of the party's brutal crushing of dissent in Tiananmen Square. Jiang continued and even accelerated the economic policies of Deng, but after Tiananmen the party leadership felt threatened by enemies from within and without. Stability was the mantra and the war of words with Chris Patten in 1995-97 reflected the trauma that the senior Chinese leadership felt at even the hint of democratic change. Hong Kong's misfortune was to be a liberal oasis naturally seeking to make a logical transition to one person one vote at a time when the Chinese authorities were most sensitive about political reform. On the other hand, if political space does eventually open up in China, Hong Kong provides a convenient test tube of reform.

In the winter of 2002, the Chinese Communist party appointed a new General Secretary, Hu Jintao, the fourth leadership cadre since the 1949 revolution, joining Mao Zedong, Deng Xiaoping and Jiang Zemin. President Hu Jintao and his Premier, Wen Jiabao, lead a technocratic elite educated in the 1960s, and there are grounds for cautious hope that this leadership might be open to political change, unlike the Long March gerontocracy, or those who reacted with such overwhelming force against the Tiananmen protesters. Of particular note is that recently there have been serious

attempts to make the state sector public service autonomous from the party and within the party Hu is demanding greater accountability. But the President also opined publicly on September 12, 2004, that democracy is a "blind alley," and in the winter and spring of 2004, Beijing fired what Christine Loh has called the "Patriot Missives," attacking the democratic movement in Hong Kong, and short-circuiting the electoral reform process for LegCo and the Chief Executive. So far there has been little evidence that on political reform, Hu differs much from Jiang.

China, then, is the brooding presence overseeing Hong Kong's political development. Calls for referendums on democracy may worry the Chinese leadership, but they also demonstrate that there is a real desire for change.¹⁴ The leadership of the Special Administrative Region may be able to use the local pressures to push Beijing farther and faster than the Communist Party might otherwise like to go. The key to moving forward in Hong Kong is to have a practical program that is fast enough to show democrats that reform is on its way, but is incremental enough so that Beijing's worries about stability are not stoked to a fever pitch.

CONCLUSION

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International comparisons have a variety of lessons for Hong Kong but the main one should be optimism. Many other societies faced similar issues and Hong Kong's progress so far has been quicker than most. A logical starting point is to aim toward a fully considered democratic accountability system, pick a date that seems reasonable (say, 2012), and work incrementally from now to then to build a system that is coherent and interconnected. Eventually, as in Canada during the colonial era, there will be a change of attitude in the sovereign government, and when that occurs there should be a well thought-out plan ready to go. Meanwhile, steps can be taken to advance the agenda without unduly threatening those in Beijing who are concerned about the implications of democratic reforms in Hong Kong.

For the immediate agenda we would make five suggestions:

- (1) The next Chief Executive should come from the ranks of the principal officials. Government is a very complicated undertaking and the next Chief Executive should have practical experience in the arts of communication, politics, and governance. Principal officials who aspire to the top job will therefore have to demonstrate to the Election Committee and to Beijing that they have the skills for the post.
- (2) As in the American example, the electoral base of the Election Committee should be broadened. Without changing the Basic Law, the numbers of the Committee (800) could be expanded to 1,200 and the franchise to select these 1,200 could be expanded considerably. This would be a move in the direction of universal suffrage and toward closing the electoral legitimacy gap.
- (3) To achieve a better relationship between the Executive Council and the Legislative Council, some principal officials should be drawn from the legislature and the existing parties. Party leaders, for example from the Liberal Party, have sat on the

Executive Council, but they have never administered a department. As it stands, the government has no party to defend it or to organize the business of LegCo – why not appoint LegCo members of the Executive Council as principal officials and give them executive authority? Parties will act responsibly only if they are given real responsibilities. Hong Kong is a system of government with a weak base of support in the legislature. Britain's precedent of having ministers come from the legislature should be tried.

- (4) The Canadian precedent of an "exempt" political staff should be implemented both for the Chief Executive and for the personal offices of the principal officials. At present the Chief Executive has a Central Policy Unit and some personal assistants. This should be broadened into a full-fledged political secretariat. Principal officials should also have a much expanded political office: the political offices would take over most of the political work of the Civil Service such as political strategy, communications strategy, coalition building, relations with the Legislative Council, etc. But either through the Principal Official of the Civil Service or the Chief Secretary, the Civil Service (one of Hong Kong's greatest strengths) should be protected and its integrity kept intact. Most of the policy work and all the administrative work would be done by the Civil Service but political strategy and communication would become a dedicated function of people who specialize in such areas.
- (5) Hong Kong must develop a competitive party system. Parties are the essential ingredient that make the British, American and Canadian systems operate. It is the party glue that connects the pieces. Hong Kong already assists parties with election expenses: like Canada there could also be grants to create party think-tanks or research bureaus that do political thinking. Independent non-partisan think-tanks could also be seeded with government money to provide policy competition

to the Civil Service and educate the wider public. The restriction on party membership for the Chief Executive should be dropped. Hong Kong should invest in party development just as it does in skills development. The Democratic Party, for example, only has 638 members (July 2004 figures) out of a voting population of 3.2 million. Parties need to become Hong Kong's vehicle for change and political engagement. Weak parties are the weakest link in Hong Kong's emerging system of democracy.

The "people power" demonstrations of July 1, 2003 and 2004 were political earthquakes. The aftershocks demand that the existing government structure must evolve to adapt to today's new reality of an engaged citizenry. Hong Kong is no longer only a model of laissez-faire economic development. It is now a test case for peaceful political transition. On the issue of Hong Kong's democracy, the whole world is watching.



NOTES



1. The view of Hong Kong as a politically indifferent economic city has long prevailed. The best-known advocate of this position is Siu-Kai Lau, who has written extensively on the subject. See his *From Traditional Familism to Utilitarianism Familism*, (Hong Kong: Social Research Centre, Chinese University of Hong Kong, 1978). In a 1995 article Lau and Hjin-chi Kuan described the people of Hong Kong as “the attentive spectators.” *Journal of Northeast Asian Studies*, No. 1, (Spring, 1995), pp. 3-24. This view is robustly contested by Lam Wai-Man, in *Understanding the Political Culture of Hong Kong*, (London, England: M.E. Sharpe, 2004).
2. Chris Patten describes his experience as the last governor of Hong Kong (and his frustration with the lack of British government support in disputes with China prior to the 1997 handover) in *East and West*, (Toronto: McClelland and Stewart, 1998). Britain only began introducing democratic reforms after it had initiated discussions with Beijing over the handover. Thus talks began in 1979, and elections for District Council were not introduced until 1982. In 1984, the governments of Britain and China reached an agreement to return Hong Kong to Chinese sovereignty in 1997, but the people of Hong Kong had no say in the matter. There was no vote, only a consultation with those who were affected most. In 1985, an indirect election component of functional constituencies was added to the Legislative Council, only after the 1984 Joint Declaration was signed. In 1991, for the first time, there were direct elections for 18 of the 60 LegCo seats. Patten’s travails are described in Jonathan Dimbleby, *The Last Governor*, (London: Warren Books, 1997).
3. Adam Przewonski, *Sustainable Democracy*, (Cambridge: Cambridge University Press, 1995), p. 108.
4. Pierre Elliott Trudeau, *Approaches to Politics*, (Toronto: Oxford University Press, 1970), p. 31.
5. For a description of early English parliaments see Ronald Butt, *A History of Parliament; The Middle Ages*, (London: Consable, 1989). The classic work on the 18th century parliamentary system is Lewis Namier, *The Structure of Politics at the Accession of George III*, (London: St. Martin’s Press, 1929). For contemporary Britain, see Venon Bogdanor, ed., *The British Constitution in the Twentieth Century*, (Oxford: Oxford University Press, 2003).
6. In 1789 the Electoral College of the United States was composed of electors from states equal to the State’s number of Senators and members of the House of Representatives. There were 69 electors in 1789 and George Washington was elected unanimously. Hong Kong’s election committee in 1996 had some 400 members and C.H. Tung’s election was contested. In 1792 Washington was again the unanimous choice for President. The number of electors per state was decided by a formula but the method of their choosing was left to the states. Some states chose electors by popular vote. In other states, the legislators chose. By 1836 all states except South Carolina chose electors by direct state-wide vote. The Electoral College operated without controversy in 1789, 1792 and 1796. By 1800, however, the states began selecting electors based on party lists and the 1800 election was one of the most bitter in American history. In 1800, the sitting President John Adams, of the Federalist party, was defeated by Thomas Jefferson, a Republican, in an election that finally had to be decided by the House of Representatives. See David McCullough, *John Adams*, (New York: Simon and Schuster, 2001).
7. Canada’s constitutional history is well described in Janet Aizenstat, *Once and Future Canadian Democracy: An Essay in Political Thought*, (Montreal: McGill-Queen’s University Press, 2003). On Pierre Trudeau’s introduction of the modern Prime Minister’s office see Gordon Robertson, “The Changing Role of the Privy Council Office,” *Canadian Public Administration*, Vol 14, No 4, (Winter 1971) and Marc LaLonde, “The Changing Role of the Prime Minister’s Office,” *Canadian Public Administration*, Vol 14, No 4, (Winter 1971). For a description of how the Prime Minister’s Office operated see Thomas S. Axworthy, “Of Secretaries to Princes,” *Canadian Public Administration*, Vol 31, No 2, (Summer 1988). For a general description of the Trudeau government see Thomas S. Axworthy and Pierre Trudeau, eds. *Towards a Just Society*, (Toronto: Penguin Ltd, 1990).
8. Yun-han Chu, “Taiwan’s Unique Challenges,” *Journal of Democracy*, Vol 7.3, (1996), pp. 69.
9. Shelley Rigger, *Politics in Taiwan*, (London: Routledge, 1999), pp. 55-59.
10. Freedom House, *Freedom in the World 2003: Taiwan*. <www.freedomhouse.org/research/freeworld/2003/countryratings/taiwan.htm>.
11. *Ibid.*
12. Larry Diamond, Yun-han Chu and Don Chull Shin, “How People View Democracy,” *Journal of Democracy*, Vol 12.1, (2001), pp. 132.
13. Quoted in Dimbleby, *The Last Governor*, p. 55.
14. Civic Exchange, an independent think-tank, headed by former LegCo member Christine Loh has commissioned a report “Half Way to Where” written by the Hong Kong Transition Project. <<http://www.hkbu.edu.hk/~hkt/halfway/halfway.pdf>>. Surveys from January 2004 show that 73% of the sample were dissatisfied with the performance of the Hong Kong government and 53% were dissatisfied with relations between Hong Kong and the People’s Republic. A succinct up-to-date overview of development in China can be found in Tony Saich, *Governance and Politics of China*, (London: Palgrave MacMillan, 2004).

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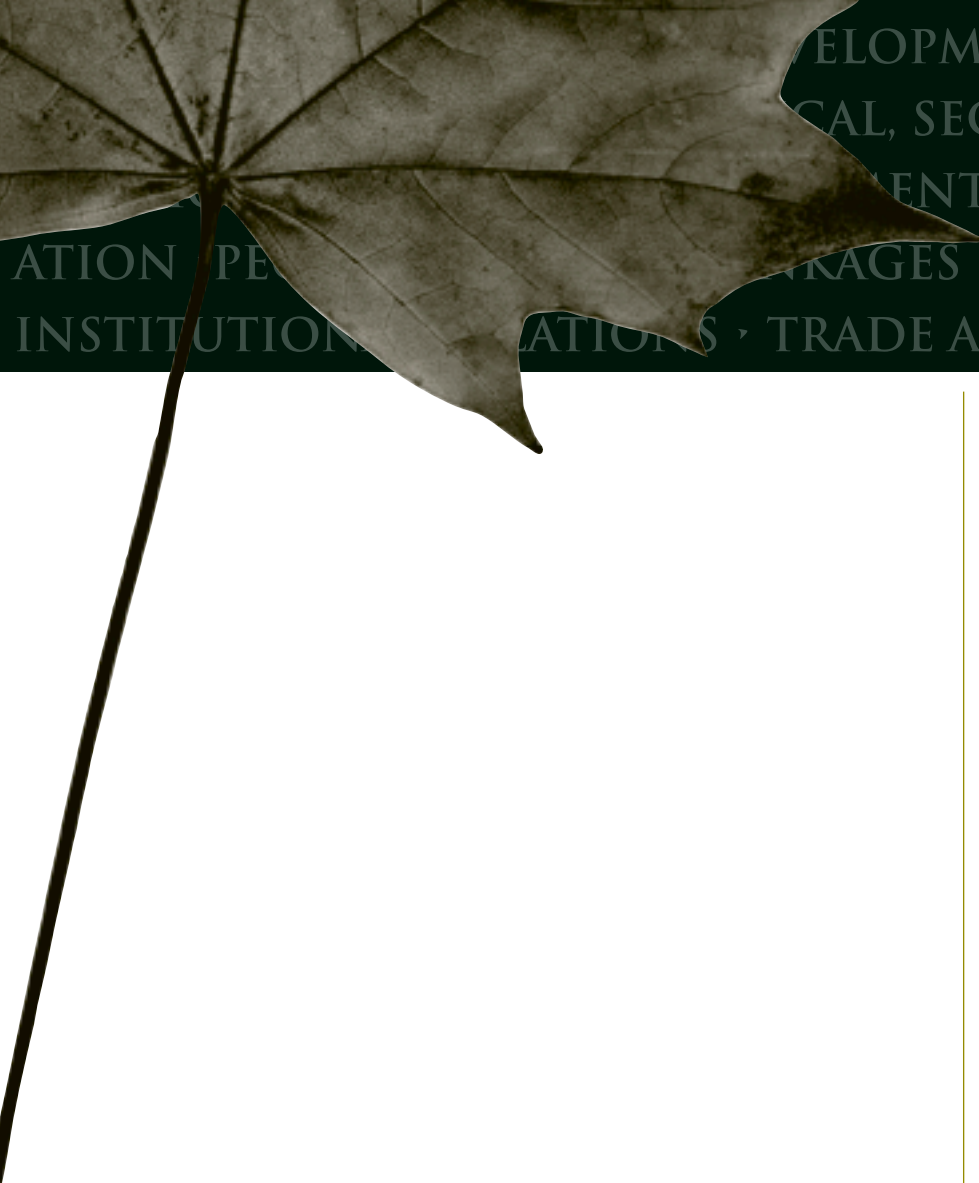
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