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From: "Tymon Mellor"

Date: 2004/03/02 Tue PM 10:51:47 CST

To: <views@cab-review.gov.hk>

Subject: Comments on CDTS



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Please find attached my views on the Task Force questions.

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Comments on Constitutional Development Task Force

Introduction

Follow your request for view on the development of the constitution as published in the SCMP on the 1 March 2004, I submit my following views for your attention.

To add some context to my comments, I would note that I am a permanent resident and have lived and worked in the SAR since 1993.

General

I find the advert posted a strange selection of confusion and distraction, possibly reflecting the state of the current establishment. The basic parameters or principles, as you describe are already established in the Basic Law along with the methods to be adopted in interpreting them. To recall some of the key feature (see http://www.info.gov.hk/basic_law/facts/index.htm)

- The HKSAR has a high degree of autonomy and enjoys executive, legislative and independent judicial power, including that of final adjudication. (BL Article 2)
- The executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong. (BL Article 3)
- The socialist system and policies shall not be practised in the HKSAR, and the previous capitalist system and way of life shall remain unchanged for 50 years. (BL Article 5)
- The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law and subject to any amendment by the legislature of the HKSAR. (BL Article 8)

It is from these principles that the task force should develop the actual implementation strategy.

Principles

As you are clearly aware, the law in HK is based on the principle of the common law, this allows legal decision to be established on the principles and intent of the written laws and not the ideas and thoughts of the authors. The law establishes the principle of autonomy, self-governance, the right to vote and the adoption of universal suffrage. The only doubt would seem to be the timing, method of election and endorsement by the Central Government.

It is therefore clear that the law provides for the SAR to develop in time with the ultimate goal of universal suffrage. This view is reinforced by the explicit wording of paragraph 7 of Annex 1, referring to selection of the CE that establishes a time frame for the development.

With that in mind, my response to your question posed are noted.

A1 – not an issue, key words are two countries, autonomy. Follow the plan layed down in the Basic Law, using the normal legal principles and this will resolve it's self.

A2 – you are living in the actual situation, the HK population would like to select the CE, thus the actual situation is for early elections. Gradual and orderly progress means that unlike many government policies you need to set out a strategy and how it will be implemented, not open up a Pandora's box of word play.

A3 – The basic law is clear, all people are equal before the law, there is nothing about interests of different sectors of society. Odd that a communist country that proclaims the high ground when it comes to equality is now concerned about sectors of society. I assume they can only be referring to the under privilege and people in need.

HK already has a developed capitalist economy, clearly this must be a reference to the Pearl River Region and not just restricted to the HK SAR.

B1 – follow the basic law, Legco to endorse a proposal, CE sign off and forward to Standing Committee for review. What part do you not understand?

B2 – No, the basic law provides for the amendment.

B3 – Initiations to change will be required when the "actual situation" requires it. When the Government believes it no longer has the legitimacy, respect and support of the SAR population, that's the time to act. The question not asked is how do you know if that has occurred. I would suggest that once you get 500,000 people marching on a hot day in July, it is time to seriously consider a change.

B4 – the law provides for universal suffrage, if that what the population wants, then offer it.

B5 – the dictionary defines subsequent with the word "following", thus you would be on weak ground to suggest it included 2007.

I find this consultation exercise somewhat of a sham as many of the question posed can be addressed by seeking guidance from suitable qualified (in common law) legal advisers or reading a dictionary. The questions asked seem to have been select to confuse the issue and not address the basic issue.

The questions you should be asking is does HK want universal suffrage and how should it be introduced. It is clear that it can not be introduced before 2007 but there would be much groundwork to be undertaken to establish a credible system and convince people that it fits within the one country principle.

Yours,

Tymon Mellor