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From: "Professor S Fung"  
Date: 2004/03/06 Sat AM 11:19:46 CST  
To: <views@cab-review.gov.hk>  
Subject: additional views, constitutional development

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Constitutional Development Task Force Secretariat  
Constitutional Affairs Bureau  
3/F, Main Wing  
Central Government Offices  
Lower Albert Road, Central  
Hong Kong

Dear Sir,  
Please see attached.  
Regards  
Professor S Fung, D.Sc. (Oxon)

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From Professor S Fung  
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6 March 2004

Constitutional Development Task Force Secretariat  
Constitutional Affairs Bureau  
3/F, Main Wing  
Central Government Offices  
Lower Albert Road, Central  
Hong Kong

Dear Sir,

### **CONSTITUTIONAL DEVELOPMENT**

I have already given by email my twelve answers to your twelve standard questions. The following are my additional comments:

#### 1. "GRADUAL AND ORDELY PROGRESS", "ACTUAL SITUATION"

This sentiment was very much a means of containing any over fast/ambitious development of politics in HK in the first ten years. This is no longer relevant and should not be used as an excuse for delaying universal suffrage. Surely, by 2007-08, ten-eleven years is long enough for establishing political maturity and order. The "actual situation" is that HK is ready for it and the people want it.

#### 2. REPRESENTING DIFFERENT INTERESTS

Again, as point 1 above, this was very much a device to slow down the process of accomplishing universal suffrage. With the same argument, I feel that, in a matured democracy, there is no need for functional constituencies or similar type of representation. A properly constituted legislature by universal suffrage should automatically ensure broad representation. If one looks around, no well established systems in the whole world have legislators for different professions and interests. This mode of representation is outdated and definitely belongs to the colonial days of the last century. The fact that a Chinese leader mentioned this aspect in 1990 does not mean that these representations have to be effected in the future legislature.

#### 3. INVOLVEMENTS OF BEIJING

Of course, Beijing has a constitutional role to play with regard to the Basic Law. However, in keeping with the concept of "high degree of autonomy" and "HK people ruling HK", their role should only be confined to making sure that HK people's views are properly counted and the Basic Law is strictly adhered to and of course the granting of final constitutional approval.

In involving and consulting Beijing, I would not wish the HKSAR to compromise in any way our "high degree of autonomy" which was promised to us solemnly by the Joint Declaration.

#### 4. ANY BASIC LAW AMENDMENTS NEEDED

In my opinion, Annex I and II are very well equipped for what we wish to achieve. There is definitely no need to invoke article 159 at all. Any hesitation would just represent diversion from the central debate. In other words, if HK people have the genuine wish for democratisation and there is a political will to do it, the legal instruments are already in place and are straightforward.

#### 5. PATRIOTISM

This is no less than a smoke screen. It is so abstract and subjective that should have no place in a "rule of law" society like HK. Such discussion, interesting though it is, seems to be futile and is certainly taking away our focus on the real and pressing issue of constitutional development. Of course to many, this may be a means to marginalise certain individuals. For a healthy place ruled by law (and the Basic Law) like HKSAR, a law abiding citizen working for the good of HK should be good enough to hold any office. The notion of patriotism is so subjective (and potentially dangerous) that one might only invoke in times of war (or Cultural Revolution!).

#### 6. FACILITATE THE DEVELOPMENT OF THE CAPITALIST ECONOMY

A healthy environment afforded by universal suffrage and rule of law will automatically foster good capitalist development. Stifling democracy is not the way to do it and we do not need 21st century slavery to accomplish this.

#### 7. INTERNATIONAL INVOLVEMENT

I am most distressed to hear the CE's condemnation of the trip to the US Congress by some legislators. Right from the outset (prior to 1984), in order that the "One Country Two Systems" vision of Mr Deng Siao Ping could be realised, the support from the international community was sought and secured by both China and Britain. Indeed the Joint Declaration and its implementation were very solemnly noted by the US Congress and United Nation. The matter of HK reverting to China in 1997 was never a purely internal affair of the PRC anyway. Thus, it seems to me that when it suits the authority, foreigners' support can be solicited but if it does not suit, the people involved are branded traitors. I find it totally unacceptable that individual freedoms are curtailed in this manner only 6.5 years after reunification with the "Motherland".

#### 8. THE WAY FORWARD

I hear people quoting the speeches of certain ex/present Chinese leaders in order to justify certain regressive points of view. HK is governed by the rule of law and the Basic Law! I would have thought that the way to honour the late Mr Den Siao Ping's good vision of (One Country Two Systems) is to observe the Basic Law which is really the essence of this vision. Quoting any speech (often out of context) only has the effect of undermining the rule of law. Let us, instead, spend our energy on seeing what HK is allowed to do by the Basic Law.

In conclusion therefore, the HKSAR should now reach an understanding with China quickly and start work earnestly on the technical matters of introducing universal suffrage so as to meet the 2007-08 deadlines.

Yours faithfully

(Signed)

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