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PUBLIC ADMINISTRATION AND POLICY
An Asia-Pacific Journal

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PUBLIC ADMINISTRATION AND POLICY

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Mr. Alan K.L. Lung was born and educated in Hong Kong. He was also educated at the University of Wisconsin in the USA and Wilfrid Laurier University in Canada. He chairs the Hong Kong Democratic Foundation (www.hkdf.org), a political and public policy think tank founded in 1989. Alan is skilled in converting his knowledge of governments and public policies into practical steps to move forward "Knowledge Economy" initiatives. He is a member of the Innovation and Technology Advisory Committee of the Hong Kong Trade Development Council (HKTDC) and he has been promoting innovation and technology practices in Hong Kong, Guangzhou and Beijing through the Asia Pacific Intellectual Capital Centre (www.apicc.asia) (where he is Director and General Manager), since 2006.

Hong Kong at the Crossroad

Chung-nan Chang

Hong Kong Chu Hai College of Higher Education

From the view of an outsider who shares the same Chinese heritage, Hong Kong to me is a society full of extremes. It's a rich society yet one out of every seven citizens is below the poverty line; it has vigorous free market capitalism but with little democracy; it was under British colonial rule for one and half centuries but had never developed an East/West melting culture; its identity for a number of its citizens, at least for the time being, does not associate with a nation and its power to withstand the economic downturn is magically resilient. Such extremes have a lot to do with Hong Kong people's Chinese heritage but they also have a lot to do with the unique position Hong Kong is at historically.

Unlike other places in the world, Hong Kong did not sweep by the nationalism after the Second World War and had remained rather calmly under British colonial rule till 1997. There are many reasons for this particular situation but probably the most prominent one is afraid of Chinese Communist taking over. Such fear makes Hong Kong people choosing the lesser evil, in their perception, to tolerate British colonial rule over the risk of Communist invasion. Hong Kong people had made a deliberate choice to secure British protection to fend off their northern communist neighbor by giving up democracy, personal privacy, and the right to engage political decisions. They tolerate a privileged class among them as the British representative. On the other hand, Hong Kong enjoyed being the only window to China and made some unique financial gain out of this position. This kind of "tough love" still remains today. Because of this psychological complex, the middle class in Hong Kong is ready to flee on the sign of the risk that might threaten their security. This kind of exudes indeed happened around 1997 out of fear of such. In other words, a decent amount of the energy or effort of the middle class are diverted to set up an escape route rather than devoted to build up a better society.

Under the above-described sense of insecurity, making sacrifice to share burden is not an obligation to Hong Kong citizens. The Civil Service suing the SAR government over the proposition on pay cut in the 2004 economic crisis is one such evidence. Even today large number of the upper middle class, including many high-ranking civil service officials, has possession of estate in Europe, North America, or Australia. Their claim of "Loving HK" seems a lip servicing empty promise.

Thirty years after the Economic Reform of China, this situation has taken a twisted turn. Hong Kong is trying to adjust to a rapidly changing China. Though Hong Kong

still benefits economically from China's rising to the second economic power of the world but must absorb the consequences it brings. Such as higher costs of produce, building materials, and necessities like electricity and water. Hong Kong must also adjust to the social change of China. The improving mobility together with escalated economic strength in China adds pressure for HK to meet the demand on tourists, immigration and social differences. It is apparent that the recent problems of overcrowding public transportation system in holidays, high costs of rent, hotels and convention facilities, sky rocketing of housing price, shortage of beds for pregnant women in the public hospitals, shortage of daily goods like milk powders, and occasional bickering incidences out of behavior difference are all originated on the large influx of Chinese from Mainland.

Hong Kong needs to deal with it psychologically that the previous poor, passive and ready to serve neighbor of the north all of a sudden becomes a rich, aggressive and demanding customer. Hong Kong has little problem to build the physical infrastructure to meet the demand but Hong Kong must also be psychologically prepared for dealing with the consequence when soliciting business with China. In addition, fifteen years after the People's Liberation Army established its base in Hong Kong under the promise of "One Country Two Systems", people in Hong Kong is gradually losing the fear of the Communist. Some HK people began to lash out their economic and political frustrations toward the Central Government by waving British flag ignoring the fact that they could never get so much power sharing under the British rule.

Hypocrisy of the upper middle class is another issue in that they do not provide good leadership by setting examples for the society. Their apathy toward HK society not only is reflected in their building of escape hatches as mentioned before but also in many other areas. On education, for example, they will publicly cite the amount of public investment and ranking evaluation to preach HK citizens to use HK's education system but they will send their offspring overseas for education with no hesitation instead. They will use their power to secure influential positions for their children upon returning from studying abroad. Such a half-hearted attitude toward the society robs off to their children who are becoming the elite for HK society of the future. This kind of apathetical and monopolistic vicious cycle gobbles up the lion share of the wealth of the society and limits the chance for common folks. The illegal construction issue before, during and after the recent Chief Executive election clearly exposed such hypocrisy. Many of these offenders, who are supposed to be the leaders of the society, set bad examples as law-biding citizens and ICAC seems always reacting passively with a dubious standard.

Hong Kong people are at a crossroad. For too many years HK is able to stay at the crossroad joint reaping benefits and tolerating the aftermath from decisions made in London. Hong Kong people have lost their sense and courage of making decisions and shouldering the consequences. The former Chief Executive, the Honorable Mr. Tung

Chee-hwa, once termed the HK government being “ All talk but no action ” is still true today. The world outside is changing fast; it demands timely action or loses out. HK people need to have the courage to make their own decision and shoulder the consequence rather than waiting someone else making decisions for them.

HK does not have a status as an independent nation, it is part of PRC; therefore HK people cannot dodge the issue of national security and the nationalism education. Remember that HK is no longer a British colony; it is PLA garrison in HK to provide the protection nowadays. If HK fails to make the right choice, what waits for them is a region of colony ruled by PRC instead of a region that enjoys autonomous special administration.

World Trends: Sun Yat-sen & The International Development of China

Charles Wong

Sun Yat-sen Foundation for Peace & Education

Dr. Sun Yat-sen is recognized by both the Chinese Communist Party on mainland China and in Taiwan by the Nationalist Party as the Father of Modern China.

After failing to persuade the corrupt and inept Qing Dynasty to reform, Dr. Sun embarked on his revolutionary career to "Save China" from destruction by the establishment of the Xing Zhong Hui, "Revive China Society" as his first revolutionary organization in Honolulu, Hawaii on November 24, 1894, thus making Honolulu the birthplace of the Modern Chinese Revolution.

Even until this very day, the only thing which unites all Chinese, on the Mainland, Taiwan, and Overseas is the memory and legacy of Dr. Sun Yat-sen's Revolution to transform China from a poor and backward country, into a modern, powerful and prosperous republic which would shape the course of human history and the world.

In 1919, Dr. Sun published his Chinese edition of Jianguo Fanglue, "The Plans for National Reconstruction" which was composed of three sections, Social Reconstruction, Psychological Reconstruction, and Plans for Industry and Commerce.

One section, Plans for Industry and Commerce, was translated and published in English in 1920 as **The International Development of China**. The International Development of China was written by Dr. Sun in reaction to the Paris Peace Conference and the Treaty of Versailles, which concluded World War One. At the time, China was a divided country ruled by warlords, who ruled their separate regions like fiefs, and were supported by different imperialist countries into what Dr. Sun called Hypo-Colonies or Spheres of Influence.

Dr. Sun was the head of a Military Government headquartered in Canton (Guangzhou) in the South, as opposed to warlord clique based in Beijing, called the Peking Government in the North.

Although the Allies Powers had sent emissaries to both the Peking Government and Dr. Sun's Military Government in Canton, requesting China to join the war on side of the Allies, Dr. Sun wanted to remain neutral. The Peking Government on the other hand declared war against Austria-Hungary on August 14, 1917. The British sent a representative to meet Dr. Sun in Canton to ask his government to join the Allied cause, but Sun refused stating that the British themselves were imperialists inside of China. Hong Kong had been taken from China as a result of the Opium War, and Burma which had been a tributary state of China had become a British colony, as well as Vietnam which had also been another tributary state of China had become a French colony.

Nonetheless the Peking Government in the North sent hundreds of thousands of Chinese labourers to assist both England and France in the war effort. By some estimates these Chinese labourers known as the Chinese Labor Corps, numbered as many as 100,000, 50,000 labourers for each England and France. The male populations of England and France having been decimated by the First World War and were in desperate need of skilled manual labour.

The Chinese Labor Corps were employed as skilled dock workers and stevedores, who were instrumental in the loading and unloading of war supplies and materials from America, to supply the Allied war effort, as well as in the construction of trenches and blockhouses on the Western Front. Certainly without the invaluable contribution of the hundreds of thousands of Chinese laborers, whom composed the Chinese Labor Corps, the Allied victory in the war would not have been possible.

During the conclusion of World War One, at the Paris Peace Conference, China was not officially recognized and did not have any formal status. Nonetheless, the Peking Government sent Wellington Koo as its Ambassador and representative, whilst Dr. Sun's Military Government sent Eugene Chen as its Foreign Minister.

Despite the Chinese Labor Corps tremendous contribution to the Allied War Effort, the Allies betrayed China by giving the Shandong Peninsula, which had previously been a German territorial concession to Japan, instead of returning it to China. Ironically, the majority of the Chinese Labor Corps came from Shandong, making the Allied betrayal even more tragic. Although the Chinese were not soldiers, thousands of them had died as war casualties on the war front, and from diseases such as the Spanish Flu of 1918.

When Eugene Chen uncovered this betrayal by the Allied Powers, he cabled the information to Dr. Sun in Canton, who then published the news in a journal called the Young China Daily. The news of China's betrayal coupled with Japan's 21 Demands upon China sparked the May 4th, 1919 Student Movement in which 2,000 students from different universities in Beijing, came out to Tiananmen Square to protest.

The May 4th Movement was to become China's first nationalistic mass movement in modern history. Whilst Dr. Sun supported the nationalistic cause of the students, he also cautioned that such a movement could also degenerate into anarchy.

In Dr. Sun's *The International Development of China*, he clearly states imperialism as the cause of the First World War, industrialized countries raising militaries to conquer foreign countries in order to exploit their land, labor, natural resources and markets. The Paris Peace Conference and the Treaty of Versailles did nothing to change this fact. War reparations were imposed on Germany as the loser, and its territories including the Shandong Peninsula were given to Japan who had sided with the Allies, but contributed almost nothing to the Allied War Effort.

Dr. Sun warned that if imperialism was not changed from the mind frames (paradigm) of the leaders of the industrialized nations (Western European imperial powers and Japan), it would create the coming of the Great Second World War, which Dr. Sun predicted would begin in China at the hands of the Japanese Militarists, who had

come to emulate their European counterparts, and believed war to be a profitable venture towards accumulating national wealth.

Dr. Sun writes in *The International Development of China*,

As soon as the Armistice was declared in the recent World War, I began to take up the study of the International Development of China, and to form programmes accordingly. I was prompted to do so by the desire to contribute my humble part in the realization of world peace. China, a country possessing a territory of 4,289,000 square miles, a population of 400,000,000 people, and the richest mineral and agricultural resources in the world is now a prey of militaristic and capitalistic powers - a greater bone of contention than the Balkan Peninsula. Unless the Chinese question can be settled peacefully, another world war greater and more terrible than the one just past will be inevitable.

Dr. Sun had spent almost half of his life outside of China, traveling the world and living on three different continents, Western Europe, North America and Asia drumming up support from overseas Chinese communities to support his revolution. Dr. Sun was warmly welcomed by the overseas Chinese communities in the United States and Canada, the vast majority of whom were Cantonese from the west bank of the Pearl River Delta, like Sun himself, in an area which is known today as Zhongshan. Many of the Chinese in the United States and Canada had come as contract laborers to work on building the trans-continental railways in both countries, in the 1860s and 1880s.

The trans-continental railways in both the United States and Canada were instrumental in the nation building of both countries, by uniting the East Coast with the West Coast thus facilitating the development of transportation and commerce. Tens of thousands of Chinese laborers were imported into the United States and Canada for the purpose of constructing the railways, and many thousands of them gave their lives braving bitter conditions, but after they were finished, not only did they not receive proper recognition for their invaluable contributions, but were discriminated against, by Chinese Exclusion Acts, and were chased out of their homes by mobs and pogroms.

Perhaps one of the reasons why the Chinese were so discriminated against despite their enormous contributions was the state of China itself, as a poor backward country unable to stand up for, or to speak out against the mistreatment of its people. For the imperialist powers, China was just another large continent like Africa to be carved up into different colonies and to be exploited for the mother country's industrialization. In other words China and the Chinese people did not have any equal standing with the other countries of the world, and as a matter of fact, had limited rights in their adopted countries, and even in their own country, as a result of the Unequal Treaties.

So when Dr. Sun traveled to these overseas Chinese communities in the United States and Canada, and preached of a new strong modern China characterized by freedom, equality and social justice he was given a triumphal welcome. Dr. Sun's speeches so inspired people, that there are even stories of how some families, overnight would sell their businesses and even their houses to contribute everything to Dr. Sun to

support his revolution.

Dr. Sun was always on the run because he was a wanted man, with a big price on his head. He often described himself as "a vagabond without a home." However, the more than 20 years of international travel and experience was to give Dr. Sun a unique and very keen insight into future world trends.

In 1916, Dr. Sun traveled to Hangzhou, capital of Zhejiang province to witness the tidal wave on the Qiantang River. The tidal wave is created by the moon's gravitational pull on the waters of the Earth, creating an annual tidal surge on Hangzhou Bay that back flowed into the Qiantang River. As Dr. Sun watched the tidal wave pass through Hangzhou Bay up the Qiantang River, he was inspired with the saying, **World Trends powerful and enormous, those who follow them will prosper, but those who resist will perish.**

Dr. Sun was a keen observer of world affairs stated in *The International Development of China* that international economic cooperation was the key to world peace and to prevent future World Wars. At the time, Dr. Sun was heavily criticized and laughed at by his contemporaries as being an idealistic and impractical dreamer, earning him the nickname Sun Da Pao, which roughly translates into "Sun the Loose Cannon." Sun states,

International war is nothing more than pure and simple organized robbery on a grand scale, which all right-minded people deplore. The world has been thrown back to the pre-war condition again. The scramble for territories, the struggle for food, and the fighting for raw materials will be anew. So instead of disarmament there is going to be a greater increase in the armies and navies of the once allied powers for the next war. China, the most rich and populous country in the world, will be the prize. Some years ago there was great inclination among the Powers to divide China and Imperial Russia actually took steps to colonize Manchuria. But the then chivalrous Japan went to war with Russia and thus saved China from partition. Now the militaristic policy of Japan is to swallow China alone. So long as China is left to the tender mercy of the militaristic powers she must either succumb to partition by several powers or be swallowed up by one power.

Dr. Sun passed away on March 12, 1925 from liver cancer. Yet 15 years after Dr. Sun published *The International Development of China*, true to Dr. Sun's remarkable prediction, the Japanese Militarists began their full-scale invasion of China on July 7, 1937 thus marking the beginning of World War Two in the Pacific!

World History books often cite Hitler's invasion of Czechoslovakia and Poland on September 1, 1939 as the beginning of World War Two. This history is incorrect because it is only Eurocentric history. World War Two had two theaters, the Pacific Theater and the European Theater. The Pacific Theater started on July 7, 1937 more than two years before the beginning of the European Theater, and the two regional wars were merged into World War with Japan's attack on the American naval base at Pearl Harbor, Hawaii

on December 7, 1941. However, Japan's attack on Pearl Harbor was an extension of the Pacific War onto American shores.

Just as World War Two had begun with Japan's full-scale invasion of China on July 7, 1937, it also ended in Japan with the American atomic bombing of Hiroshima and Nagasaki on August 15, 1945.

It was only after the massive devastation and incredible loss of life during the Second World War, that American President Harry S. Truman realized that international economic cooperation was the key to world peace, and the only way to prevent future world wars, echoing Dr. Sun Yat-sen more than two decades before. America established the Marshall Plan to rebuild its former enemies Germany and Japan, and created the Breton Woods system and international organizations such as the International Bank for Reconstruction and Development (World Bank) and the International Monetary Fund to facilitate world trade and to foster mutual interdependence through international economic cooperation.

In 1922, after Dr. Sun had published *The International Development of China*, he sent a number of copies of his book, to leaders and governments of the United States, England and other European powers, enthusiastically searching for a positive response. Sadly, Dr. Sun's vision only met with skepticism and even fear. The British feared that if Dr. Sun would succeed in garnering foreign loans and assistance, his plans for Canton to become the Great Southern Port, would threaten Hong Kong's position as the pre-eminent deep water port in the region.

Thomas Lamont, Managing Director of the American financial powerhouse J.P. Morgan together with the Bank of England had formed what was known as the "China Banking Consortium." The explicit purpose of the China Banking Consortium was to further the imperialist interests of the European, British and American commercial interests in China, whereas the implicit purpose was actually to prevent any foreign loans from reaching Sun Yat-sen Military Government in Canton.

Sun Yat-sen was desperate to unite China under the leadership of his Nationalist Party, because he believed that a weak and divided China made it extremely vulnerable to foreign intervention and colonization by the imperialist powers. This is where Dr. Sun's interests ran contrary to those of the imperialist powers who wanted China to remain weak and divided and open to foreign exploitation.

Rather than assist Dr. Sun in his vision of international economic cooperation to develop China's resources for the benefit of both China and the industrialized countries, the China Banking Consortium made a secret loan of US\$500,000 to Dr. Sun's rival and opponent, the warlord Chen Jiongming of Guangdong. Chen Jiongming at times had been allied with Dr. Sun, but opposed Dr. Sun's plans to use Guangdong as a revolutionary base from which to unite all of China by a Northern Expedition.

The US\$500,000 loan from the China Banking Consortium to Chen Jiongming was for the purposes of purchasing weapons, to strengthen Chen's position in the South and to effectively undermine Dr. Sun's plans for national reunification. Furthermore, this

US\$500,000 loan was forgivable if Chen were to succeed in assassinating Dr. Sun. On June 16, 1922 this plan to assassinate Sun was put into action, with Chen Jiongming's troops shelling Sun's Presidential Mansion on Guanyin Shan in Canton.

Sun had just completed his manuscripts on his Three Principles of the People that was to be his master blueprint for the political, economic and social restructuring and modernization of China which he had been working on since 1905, almost two decades of work, with thousands of books in his own private library as his resource. Dr. Sun had 50 body guards to protect him, all of whom fought to the death to save his life, in which Sun himself narrowly escaped. All of Sun's thousands of books, manuscripts and writings were destroyed by the fire that engulfed his house. Although Sun survived it was a devastating loss of nearly two decades of thought and vision for the future of China.

In 1918, the Bolshevik Revolution succeeded in overthrowing the Romanoff Dynasty in Russia and establishing the Soviet Union, based on the Karl Marx's theory of Communism. Vladimir Lenin, the leader of the Bolsheviks established an organization called the Communist International (Comintern) in order to propagate Marxism and Leninism in other countries under the domination of foreign powers. China, the Soviet Union's giant neighbor to its south caught Lenin's attention, and he sent a representative by the name of Adolf Joffe to seek an alliance with Sun Yat-sen's Nationalist Party.

Having been rejected by the United States and England, Sun was desperate for foreign assistance. Sun always in lack of funds needed to raise his own army to bring his vision of a Northern Expedition to unite China to fruition. In January 1923 Sun Yat-sen and Adolf Joffe concluded the Sun-Joffe Declaration which stated that the Communist Order and the Soviet System were not suitable to China conditions, however, the Soviet Union in an alliance with Sun's Guomintang would provide assistance to Sun to establish a military academy to train and build a new army to unite China under Sun's ideology and vision for a New China.

Under the alliance with the Soviet Union, members of the Chinese Communist Party (CCP) were allowed to join Sun Yat-sen Guomintang (GMD) as individuals. As a matter of fact all of the early members of the Chinese Communist Party were also members of the Guomintang under Sun Yat-sen, which include Chen Duxiu, Li Dazhao, Zhou Enlai, Mao Zedong, Liu Shaoqiu, Deng Xiaoping, Lin Biao and Ye Jianying whom were to latter become famous marshals in the Red Army and later People's Liberation Army.

In January 1924, Sun began his lectures on his Three Principles of the People, from what he could recall from his memory, with no notes or manuscripts to assist him. From the outset Sun admitted that it was not his finest work, as all of his manuscripts and resources had been destroyed in Chen Jiongming's attempt to assassinate him, a year and half earlier.

Sun health had already begun its decline and he knew that he was a dying man, desperate to leave his vision for his comrades to follow. In the next eight months from

January until August 1924, Dr. Sun was to make 600 lectures on his Three Principles of the People which were recorded and written down by his assistants. 600 lectures in the span of approximately 200 days, is an average of three lectures per day. As Dr. Sun mounted the platform from which he would give his speeches, he would often be seen carrying a cane. At times, he would twist this cane between his hands and jab into his back to create a diversion to the pain he was suffering in his body. By August 1924, Sun grew so exhausted and his vision blurred that he could no longer continue with his speeches.

Each of Dr. Sun's Three Principles contained six lectures. Dr. Sun had finished six lectures on Nationalism, six lectures on Democracy, but only four lectures on the People's Livelihood. When asked by his comrades about the last two lectures on the People's Livelihood, Sun replied that he had already finished his treatise on the People's Livelihood and to refer to his writings on his Plans for National Reconstruction (Jianguo Fanglue) and The International Development of China.

On June 16, 1924 Sun Yat-sen officially opened the Huangpu Military Academy, with Soviet assistance in terms of funds, arms, and military advisers. The cadets were all members of Sun's Guomintang, and had to swear their loyalty to Dr. Sun's Three Principles of the People as their guiding ideology, including all of the members of the Chinese Communist Party, whom were all individual members of the Guomintang.

Sun Yat-sen appointed Jiang Jieshi (Chiang Kaishek) as the Commandant of the Huangpu Military Academy, Zhou Enlai, Hu Hanmin and Wang Chingwei were instructors in the Political Department. Even Mao Zedong was an instructor in the Propaganda Department specializing in peasant revolution. Both He Yingqin, who was Jiang Jieshi's Chief of Staff and CCP Marshal Ye Jianying were once both military instructors at the Huangpu Military Academy.

In the Huangpu Military Academy, members of both the Guomintang and Chinese Communist Party, worked together, studied together, trained together, and ate and slept together as brothers and as comrades, under the leadership of Sun Yat-sen for the cause of the National Revolution. Later these comrades were to become bitter enemies in the Chinese Civil War following the death of Dr. Sun Yat-sen.

Whilst Dr. Sun was considered idealistic in his vision, he was very practical in his methods. The establishment of the Huangpu Military Academy highlights Dr. Sun's pragmatism, whereas in *The International Development of China*, Dr. Sun preached international economic cooperation as the key to world peace, he realized that as long as China remained weak and divided, and China's weakness would encourage the Japanese Militarists to invade China. Above all else, Sun believed that China needed to be united in order to become a strong and powerful nation.

In many respects, Dr. Sun's achievements in the establishment of the Huangpu Military Academy have been under recognized, for without the Huangpu Military Academy China would have had no modern National Army to unite the China under the Northern Expedition, and more importantly to defend itself during eight years of

resistance against Japan, during World War Two.

The Japanese Militarist had boasted that they could conquer China within a period of three months; however, in more than eight years the Japanese Militarists were not able to fully conquer China, in part due to China's vast territory. In the International Development of China, Dr. Sun clearly stated that Japan could invade China, but as China's territory was so vast, it could never control China and to exploit it profitably, and the Japanese Militarists inevitably would be doomed to failure. Needless to say, the Japanese Militarists did not heed Sun Yat-sen's warnings; their army became bogged down in China, eventually leading to their defeat.

The Japanese invasion of China was however the perfect opportunity that Mao Zedong was waiting for to recruit hundreds of thousands of new soldiers into the ranks of the Red Army, under the egis of resisting Japan's aggression in China. Mao and the CCP used Dr. Sun's slogan of "Land to the tiller" (under Sun's Principle of the People's Livelihood) to institute land reform to gain the support of the peasants, and as a matter of fact Mao Zedong himself claimed that the CCP was the legitimate heirs of Dr. Sun Yat-sen's Revolution, and the true practitioners of his Three Principles of the People. This is one of the reasons why Dr. Sun's widow, Madame Soong Qingling supported Mao and the CCP, although she was never a member of the Chinese Communist Party.

After Mao and the CCP had won the Chinese Civil War and proclaimed the founding of the People's Republic of China on October 1, 1949, Mao was to take China on a new radical course by implementing Marxist-Leninist theories and Mao Zedong's Thought. From 1952 the initial land reforms were reversed into cooperatives, then into larger collectives, and still yet even larger communes, cumulating into the Great Leap Forward, in which Mao believed that China could achieve industrialization through increasing steel production and agricultural production through mass movements, which he called his Theory of Productive Forces, devoid of any scientific or technological knowledge.

The Great Leap Forward lasted from 1959-1961 and ended as an economic catastrophe. Liu Shaoqi who had criticized the Great Leap Forward said that it was due to 70% human error, and 30% natural causes. It is estimated that approximately 40-60 million people, mostly peasants starved to death as a result of famine during those three bitter years.

In 1962 Mao stepped down as Chairman of the Government replaced by Liu Shaoqi and Deng Xiaoping who were successful in reviving the economy with market oriented reforms. Jealous of Liu and Deng's success, Mao launched the Cult of Personality and the Great Proletarian Cultural Revolution in 1966, which only ended with Mao's death in 1976. The Cultural Revolution was described by Marshal Ye Jianying, as an appalling holocaust. Ye Jianying who a powerful Marshal in the People's Liberation Army then supported Deng Xiaoping to become China's pre-eminent leader in China in 1978.

China's three decade experiment with Marxism, Leninism and Mao Zedong's Thought had ended in disaster. With the Communist ideology bankrupted, China's

communist leadership had no other modern leader in Chinese history to turn to with a complete vision for the future of China, other than Sun Yat-sen.

In the late 1970s with the beginning of Deng Xiaoping's Open & Reform Policy, China began to rehabilitate and raise Sun Yat-sen's position to support their policies. In 1981 Madame Soong Qingling, widow of Dr. Sun Yat-sen passed away. She was a lonely voice in China through the Mao years, who consistently pleaded with Zhou Enlai for China to study Sun Yat-sen's Thought.

During the State Funeral of Soong Qingling my mother met with Madame Deng Yingchao, the widow of Zhou Enlai who told her a small (Communist) Party secret that they were beginning to "use" Dr. Sun Yat-sen's teachings.

In November 1986 in a celebration to commemorate the 120th Anniversary of Dr. Sun Yat-sen's birth, Madame Deng Yingchao made a keynote address in the Great Hall of the People, openly stating that the Communist Party was borrowing Dr. Sun's ideas (for their Open & Reform Policy).

An often quoted saying of Deng Xiaoping's Open & Reform Policy is that it does not matter whether it is a Black Cat or a White Cat; the Good Cat is the one which can catch the mice. The hallmark feature of Deng Xiaoping's Open & Reform Policy is using international capital, technology and foreign experts to develop China's economy. This was not only a 180 degree turn from Mao Zedong's Thought, but was directly from Sun's The International Development of China and Plans for National Reconstruction. It is not so much that the Communist Party was simply using Sun Yat-sen to justify Deng's Open & Reform Policies during its initial years, the obvious fact of the matter is that they were finding ways to actually implement Dr. Sun's theories on using international capital, technology and foreign experts to develop China.

In 1989, the Hardliners had once again regained control of the Communist Party following the June 4th Tiananmen Incident, and had begun to reverse Deng's Open & Reform Policy. Then in 1992 Deng Xiaoping made a visit to the Special Economic Zones of Shenzhen and Zhuhai to once again jump start his Open & Reform Policy.

Deng triumphed and later that same year, in November 1992 during the 14th Party Congress Deng Xiaoping was able to officially change China's Constitution from a Soviet Planned Economy into a "Socialist Market Economy." Market Economy refers to none other than capitalism co-existing side by side with Socialism, what Deng called Socialism with Chinese Characteristics.

In the last paragraph of The International Development of China, Sun Yat-sen states, "In building this nation, I wish to bring foreign capitalism along side Chinese socialism, harmonizing the two economic systems which humanity has evolved so that they may become each other's complements, thus contributing to the world's future civilizations."

In the Principle of the People's Livelihood, Sun explains this concept saying that China lacked its own capital, technology and experts and therefore had to rely on foreign capital, technology and experts as a much quicker and easier way for China to achieve

industrialization (so as not needing to reinvent the wheel). Furthermore, capitalism was the fastest vehicle for economic growth and development, but it was very unequal in which the rich got richer and the poor got poorer, so China needed socialism to balance out the iniquities of capitalism, by instituting land reform "Land to the tiller" in order to increase agricultural production, limiting private capital and fostering the formation of state capital. Sun clearly states that there should be large scale enterprises which would be owned by the state and as well as private enterprises, to encourage the full range of small, medium and large scale enterprises.

Starting in 1978, Deng Xiaoping began to open Special Economic Zones in Shenzhen, Zhuhai, Shantou and Xiamen to attract foreign capital, technology and foreign experts from Hong Kong and Taiwan, as well as other overseas communities. Once these developed critical mass, greater and greater foreign capital and technology started to flow in from other industrialized countries.

Today, the Pearl River Delta region has developed and expanded upon Dr. Sun's vision of the development of Southern China through the opening of a Great Southern Port, connected to the interior via a network of canals and waterways, railroads and highways.

Then in 1990, Deng Xiaoping launched the second phase of his Open & Reform Policy with the Pudong initiative which required billions of US Dollars in foreign investment. At first foreign investors were skeptical that such an ambitious plan could succeed, but today Shanghai-Pudong has become the head of the Yangzi Delta Region, which develops and expands upon Dr. Sun's concept of the Great Eastern Port to develop China's Eastern Coast and central interior by using the Yangzi River as an artery for transportation and commerce into China's vast hinterland and interior.

Central to Dr. Sun's plan to develop Central China was the construction of the Three Gorges Dam, to facilitate water borne transportation all the way up the Yangzi River to the city of Chongqing. In 1992 the Central Government and Chinese Communist Party began the construction of the Three Gorges Dam, the largest hydroelectric dam in the world, which was one of Dr. Sun's dreams has become a reality today.

In the third phase of the Open & Reform Policy, the Chinese Central Government begun the Bohai Rim Economic Development Zone in 2006, which develops and expands upon Dr. Sun's vision of the Great Northern Port to open and develop China's North, centered around the Port of Tianjin.

Step by step, Dr. Sun Plans for National Reconstruction and The International Development of China are being realized.

In 2008 with the onset of the Global Financial and Economic Crisis, Premiere Wen Jiabao launched China's massive stimulus package with a focus on developing China's industrial and economic infrastructure. Part of Premiere Wen's plan is to build 75,000 miles of new railway, much of it high speed rail by the year 2020. China's existing rail network is woefully inadequate, with only 49,000 miles of railway in the past 60 years.

In *The International Development of China*, Dr. Sun called for the development of 100,000 miles of new railways within a 10 year period. Whilst this may have been an overly optimistic figure, China will certainly achieve Dr. Sun's envisioned target within the next 10 years! By 2020 China will have approximately 125,000 miles of railway. Furthermore, Dr. Sun advocated using the latest train technology from around the world and then building the locomotives and cars in China.

In Dr. Sun's blueprint map for his Plans for National Reconstruction, he advocates building a railway to Lhasa, Tibet. This plan was laughed at as being "impossible" and "ridiculous" yet in July 2006 the Beijing-Qinghai-Tibet Railway opened, once again bringing Dr. Sun's impossible dream to reality and fruition! The Qinghai-Tibet Railway is a remarkable feat of engineering, where elevated tract was built across the permafrost of the Tibetan Plateau.

Today, China is manufacturing high speed trains using the most advanced technology, from not only one country or partner, but many countries and partners from around the world, for example Siemens in Germany, Bombardier Canada, German Maglev technology, Japanese Shinkansen technology, and Pendolino high speed tilting train technology from Italy.

Dr. Sun was also the first person to advocate the development of China's auto industry using foreign capital, technology and experts in *The International Development of China*. Today, China has already become the largest auto manufacturing country and market in the world, with every major international brand.

In 2008 China became the third largest economy in the world, behind the United States and Japan. According to World Bank estimates, despite the Global Financial and Economic Crisis, China's economy is expected to surpass Japan's economy to become the second largest economy in the world in 2010.

It is also anticipated that China's high rate of growth will continue for decades to come, and if this trend continues, China is expected to become the largest economy in the world in 20-30 years time.

The past 30 years have shown that what Dr. Sun advocated 90 years ago (Plans for National Reconstruction in 1919) have become very much a startling reality of today. During Dr. Sun's time, only few people could understand the profound depths of his tremendous and remarkable vision for the future of China and the world. The year 2011 marked the 100th Anniversary of the Xinhai Revolution of 1911. As we now stand on the centennial threshold of Dr. Sun's Revolution, almost everyone can look back and understand Dr. Sun's saying, **World Trends mighty and enormous, those who follow them will prosper and those who resist them will perish.**

Today, China is following world trends and it is prospering like nothing prior human history has ever witnessed before. It is often said that the measure of a leader, is the greatness of his/her vision. What can we say about Dr. Sun vision for the future of China and the world?

Combating Corruption in Asian Countries: What Lessons Have We Learnt?*

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Abstract

Corruption remains a serious problem in many Asian countries today in spite of the various anti-corruption measures introduced by them during the past six decades. Except for Singapore and Hong Kong, which are perceived to be the least corrupt countries in Asia, many countries have failed to curb corruption effectively. There are seven lessons to be learnt from the experiences of Asian countries in curbing corruption namely: (1) the critical role of political will; (2) reliance on a single anti-corruption agency instead of multiple agencies; (3) do not rely on the police to curb corruption; (4) prevent corruption by paying civil servants and political leaders adequate salaries; (5) enforce the anti-corruption laws impartially, not selectively; (6) do not use corruption as a weapon against the political opponents of the incumbent government; and (7) punish those found guilty of corruption instead of rewarding them. In short, to combat corruption effectively, Asian countries must adopt these seven lessons as part of their anti-corruption strategies.

Introduction

More than 40 years ago, Gunnar Myrdal (1970, pp. 230-231), the Swedish economist, focused on the research taboo on corruption in South Asian countries, which was responsible for the substantial research gap, to "explain why the taboo should be broken" by analyzing the "folklore of corruption," the causes of corruption, and anti-corruption campaigns in these countries. While the research taboo on corruption in Asian countries has been gradually eroded since the 1990s by the proliferation of country studies, the fact is that corruption remains a serious problem today in many Asian countries in spite of their attempts to curb it during the past six decades.

An analysis of the corruption studies in Asia in 2009 found that "country studies dominate the literature as only 93 (7.15 per cent) of the 1,312 studies are comparative in nature." Furthermore, most of the country studies were conducted on China (14.23 per cent), Japan (11.38 per cent), Philippines (10.92 per cent), India (10.53 per cent), and Indonesia (9.23 per cent). Surprisingly, only 56 studies (4.30 per cent) were done on Hong Kong, and 60 studies (4.46 per cent) on Singapore, even though they are the most effective Asian countries in curbing corruption (Quah, 2009a, pp. 18-19)

* This is the revised version of the author's Keynote Address delivered at the Eighth Annual Conference of the Asian Studies Association of Hong Kong at the Hong Kong Institute of Education in Hong Kong on March 8, 2013.

What lessons can we learn from the experiences of the Asian countries in combating corruption during the past 60 years? This article contends that seven lessons can be learnt from an analysis of the successes and failures in the various attempts by Asian countries to curb corruption. However, before identifying these lessons, it is necessary to demonstrate that corruption is a serious problem in many Asian countries by referring to their performance on five direct and indirect indicators of corruption.

Corruption is Widespread in Many Asian Countries

These five indicators will be used to confirm that corruption is a serious problem in many Asian countries: (1) Transparency International's Corruption Perceptions Index (CPI) in 2012 covering 176 countries; (2) Political Economic Risk Consultancy's (PERC's) 2012 annual survey of 16 countries; (3) World Bank's Control of Corruption governance indicator in 2011 covering 215 countries; (4) World Bank's *Doing Business Survey* in 2012 covering 183 economies; and (5) *Global Competitiveness Report's* indicator on the Public Trust of Politicians in 2012 covering 142 countries.

Corruption Perceptions Index of 2012

Table 1: Corruption Perceptions Index 2012 for 26 Asian Countries

Country	CPI Rank (1-176)	CPI Score (0-100)
Singapore	5 th	87
Hong Kong SAR	14 th	77
Japan	17 th	74
Bhutan	33 rd	63
Taiwan	37 th	61
South Korea	45 th	56
Brunei Darussalam	46 th	55
Malaysia	54 th	49
Sri Lanka	79 th	40
China	80 th	39
Thailand	88 th	37
India	94 th	36
Mongolia	94 th	36
Philippines	105 th	34
Timor-Leste	113 th	33
Indonesia	118 th	32
Vietnam	123 rd	31
Nepal	139 th	27
Pakistan	139 th	27
Bangladesh	144 th	26
Papua New Guinea	150 th	25
Cambodia	157 th	22
Laos	160 th	21
Myanmar	172 nd	15
Afghanistan	174 th	8
North Korea	174 th	8

Source: <http://cpi.transparency.org/cpi2012/results/>.

Table 2: 26 Asian Countries by 2012 CPI Scores

CPI Score	Countries	Number (%)
80-100 (A)	Singapore (87)	1 (3.8%)
70-79 (B)	Hong Kong (77) Japan (74)	2 (7.7%)
60-69 (C)	Bhutan (63) Taiwan (61)	2 (7.7%)
50-59 (D)	South Korea (56) Brunei (55)	2 (7.7%)
40-49 (E)	Malaysia (49) Sri Lanka (40)	2 (7.7%)
30-39 (F)	China (39) Thailand (37) India, Mongolia (36) Philippines (34) Timor-Leste (33) Indonesia (32) Vietnam (31)	8 (30.8%)
20-29 (F)	Nepal, Pakistan(27) Bangladesh (26) Papua New Guinea (25) Cambodia (22) Laos (21)	6 (23.1%)
0-19 (F)	Afghanistan, North Korea (8) Myanmar (15)	3 (11.5%)

Source: Compiled from Table 1.

Tables 1 and 2 confirm that 19 of the 26 Asian countries (or 73.1 per cent) included in Transparency International's 2012 CPI have high levels of perceived corruption as their CPI scores are below 50. Of the remaining seven countries, Singapore is ranked 5th with a CPI score of 87, followed by Hong Kong (14th, 77), Japan (17th, 74), Bhutan (33rd, 63), Taiwan (37th, 61), South Korea (45th, 56) and Brunei (46th, 55).

PERC's 2012 Survey on Corruption

Similarly, PERC's 2012 survey on corruption shows that among the 16 countries surveyed, only four Asian countries—Singapore, Japan, Hong Kong and Macao—have scores ranging from 0.67 to 2.85. The other 10 Asian countries have higher levels of perceived corruption varying from Taiwan (7th with a score of 5.45) to the Philippines (16th with a score of 9.35). The remaining two countries are Australia (2nd with a score of 1.28) and the United States (4th with a score of 2.59).

Table 3: PERC Survey of 16 Asia-Pacific Countries, 2012

Country	PERC Rank (1-16)	PERC Score (0-10)*
Singapore	1 st	0.67
Australia	2 nd	1.28
Japan	3 rd	1.90
USA	4 th	2.59
Hong Kong	5 th	2.64
Macao	6 th	2.85
Taiwan	7 th	5.45
Malaysia	8 th	5.59
Thailand	9 th	6.57
Cambodia	10 th	6.83
South Korea	11 th	6.90
China	12 th	7.00
Vietnam	13 th	7.75
Indonesia	14 th	8.50
India	15 th	8.75
Philippines	16 th	9.35

Source: PERC (2012, p. 4).

* The score ranges from 0 (least corrupt) to 10 (most corrupt).

Control of Corruption, Ease of Doing Business, and Public Trust of Politicians

The same trend can be observed in the performance of the Asian countries on the other three indicators, as shown in Table 4. According to the World Bank's 2011 Control of Corruption governance indicator, only seven countries (Singapore, Hong Kong, Japan, Taiwan, Brunei, Bhutan and South Korea) have a percentile rank above 70. The other 19 Asian countries (73.1 per cent) have percentile ranks ranging from 57.8 (for Malaysia) to 0.5 (for Myanmar).

For the World Bank's Ease of Doing Business Rank in 2012, the seven Asian countries which have performed well are: Singapore (1st), Hong Kong (2nd), South Korea (8th), Thailand (17th), Malaysia (18th), Japan (20th) and Taiwan (25th). On the other hand, Brunei and Bhutan have not performed well as they are ranked 83rd and 142nd respectively in terms of the ease of doing business in 2012.

Finally, the 20 Asian countries included in the *Global Competitiveness Report's* indicator of Public Trust of Politicians in 2012, have not performed well with the exception of Singapore, which is ranked first among 144 countries with a score of 6.3. The second best-performing Asian country is Brunei (14th with a score of 4.9), followed by Malaysia (17th with a score of 4.4), Taiwan (20th with a score of 4.3), Hong Kong (24th with a score of 4.1) and China (26th with a score of 4.1). In contrast, the level of public trust of politicians in Japan and South Korea is very low, as reflected in Japan's 57th ranking and score of 3.1 and South Korea's 117th ranking and score of 2.1.

Table 4: Performance of Asian Countries on Control of Corruption 2011, Ease of Doing Business 2012, and Public Trust of Politicians 2012

Country	Control of Corruption 2011 (percentile rank)	Ease of Doing Business Rank 2012	Public Trust of Politicians Rank & Score 2012
Singapore	96.2	1 st	1 st (6.3)
Hong Kong	94.3	2 nd	24 th (4.1)
Japan	90.5	20 th	57 th (3.1)
Taiwan	77.7	25 th	20 th (4.3)
Brunei	77.3	83 rd	14 th (4.9)
Bhutan	73.9	142 nd	NA
South Korea	70.1	8 th	117 th (2.1)
Malaysia	57.8	18 th	17 th (4.4)
Sri Lanka	40.8	89 th	112 th (2.1)
China	28.9	91 st	26 th (4.1)
Thailand	44.5	17 th	107 th (2.2)
India	44.5	132 nd	106 th (2.2)
Indonesia	35.1	129 th	60 th (3.0)
Mongolia	27.5	86 th	114 th (2.1)
Philippines	27.0	136 th	95 th (2.4)

Timor-Leste	22.7	168 th	56 th (3.1)
Vietnam	29.9	98 th	42 nd (3.4)
Nepal	23.7	107 th	125 th (1.9)
Pakistan	15.6	105 th	99 th (2.3)
Bangladesh	16.1	122 nd	124 th (1.9)
Papua New Guinea	11.4	101 st	NA
Cambodia	12.8	138 th	34 th (3.7)
Laos	13.7	165 th	NA
Myanmar	0.5	NA	NA
Afghanistan	1.4	160 th	NA
North Korea	2.8	NA	NA
Sample size	215	183	144

Sources: http://info.worldbank.org/governance/wgi/mc_chart.asp; World Bank (2012, p. 6); and Schwab (2012, p. 391).

In sum, according to the five indicators above, corruption is a serious problem in many Asian countries because: (1) only seven countries (Singapore, Hong Kong, Japan, Bhutan, Taiwan, South Korea and Brunei) or 26.9 per cent have attained a CPI score of above 50 in 2012, which means that the remaining 19 countries (73.1 per cent) have CPI scores below 50; (2) only Singapore, Japan, Hong Kong and Macao have PERC scores ranging between 0.67 to 2.85 in 2012; (3) only seven countries (Singapore, Hong Kong, Japan, Taiwan, Brunei, Bhutan and South Korea) have percentile ranks above 70 on the World Bank's control of corruption indicator in 2011; (4) only Singapore, Hong Kong, South Korea, Thailand, Malaysia, Japan and Taiwan are among the top 25 economies on the World Bank's ease of doing business rank in 2012; and (5) the top five Asian countries on the *Global Competitiveness Report's* public trust in politicians indicator in 2012 are: Singapore (1st); Brunei Darussalam (14th); Malaysia (17th); Taiwan (20th); and Hong Kong (24th).

Lesson 1: Political Will is Critical for Success in Combating Corruption

The success of Singapore and Hong Kong in combating corruption has shown clearly the critical importance of political will in curbing corruption. Indeed, political will is important in the war on corruption because:

The principal people who can change a culture of corruption if they wish to do so are [the] politicians. This is because they make the laws and allocate the funds that enable the laws to be enforced. If, however, politicians at the top of the hierarchy have routinely worked their way up by accepting bribes to fund their parties and themselves, there is little prospect that they will wish to cleanse their colleagues or their nation of corruption... The very people who are the greatest beneficiaries of corruption have the greatest power and use the corrupt nature of government to maintain that power (Senior, 2006, pp. 184 and 187).

Defining political will as "the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, stakeholder groups, etc.) to attack perceived causes or effects of corruption at a systemic level," Sahr J. Kpundeh (1998, p. 92) contends that it is "a critical starting point for sustainable and effective programmes" because "without it, government's statements to reform civil service, strengthen transparency and accountability and reinvent the relationship between government and private industry remain mere rhetoric."

Political will is the most important prerequisite as a comprehensive anti-corruption strategy will be doomed to failure if it is not supported by the political leadership in a country. Without political will, inadequate personnel and budget will be allocated to the anti-corruption effort, and the anti-corruption laws will not be enforced impartially by the anti-corruption agencies (ACAs) (Quah, 2011, p. 454). To assess the political will of a government in curbing corruption, these two indicators can be used: (1) the per capita expenditure of the lead ACA (if there are many ACAs) is calculated by dividing its budget for a selected year by the population in the country for the same year; and (2) the staff-population ratio for the same ACA by calculating the ratio of the population in the country for the selected year that are served by the number of personnel in the ACA for the same year (Quah, 2009b, pp. 181-182).

Table 5: Per Capita Expenditure of Nine Asian ACAs in 2008

ACA	Budget (US \$ million)	Population (million)	Per Capita Expenditure	Rank
ICAC (Hong Kong)	97.7	7.3	13.40	1
CPIB (Singapore)	11.2	4.83	2.32	2
ACRC (South Korea)	61	48.4	1.26	3
IAAC (Mongolia)	3.1	2.7	1.15	4
NACC (Thailand)	21.3	64.3	0.33	5
OMB (Philippines)	19.6	89.7	0.22	6
MJIB (Taiwan)	4.02	22.9	0.18	7
KPK (Indonesia)	31.8	234.3	0.14	8
CBI (India)	52.1	1,186.2	0.04	9

Source: Quah (2011, p. 455).

Table 5 shows that among the nine countries, only the ACAs in Hong Kong, Singapore, South Korea and Mongolia have per capita expenditures exceeding US\$1.00. Hong Kong's Independent Commission Against Corruption (ICAC) is ranked first with a per capita expenditure of US\$13.40, followed by Singapore's Corrupt Practices Investigation Bureau (CPIB) (US\$2.32), South Korea's Anti-Corruption and Civil Rights Commission (ACRC) (US\$1.26) and Mongolia's Independent Authority Against Corruption (IAAC) (US\$1.15).

Table 6: Staff-Population Ratios of Nine ACAs in 2008

ACA	Personnel	Population (million)	Staff-Population Ratio	Rank
ICAC	1,263	7.3	1: 5,780	1 st
MJIB	840	22.9	1: 27,262	2 nd
IAAC	90	2.7	1: 30,000	3 rd
CPIB	86	4.83	1: 56,163	4 th
NACC	740	64.3	1: 86,892	5 th
OMB	1,007	89.7	1: 89,076	6 th
ACRC	466	48.4	1: 103,863	7 th
CBI	4,874	1,186.2	1: 243,373	8 th
KPK	540	234.3	1: 433,888	9 th

Source: Quah (2011, p. 456).

Table 6 shows that the staff-population ratios of the nine Asian ACAs range from 1: 5,780 for the ICAC in Hong Kong to 1: 433,888 for the *Komisi Pemberantasan Korupsi* (KPK) in Indonesia. Taiwan's Ministry of Justice Investigation Bureau (MJIB) has the second most favourable staff-population ratio of 1: 27,262, followed by Mongolia's IAAC's staff-population ratio of 1: 30,000, and Singapore's CPIB's staff-population ratio of 1: 56,163.

Lesson 2: Rely on a Single ACA, not Multiple ACAs

In my 2006 regional overview report prepared for Transparency International, I observed that among the nine Asian countries surveyed, Singapore, Hong Kong, Thailand and South Korea have relied on a single ACA, while Cambodia, China, Philippines and Vietnam have depended instead on multiple ACAs. Japan is the only country which does not rely on any ACA to curb corruption (Quah, 2007a, pp. 4-6).

Asian countries have relied on three patterns of corruption control, depending on the anti-corruption measures employed. The first pattern, which is the least popular and ineffective, is employed by Japan, which does not rely on any ACA to implement the anti-corruption laws. The second pattern of corruption control relies on multiple ACAs to implement the anti-corruption laws and is practiced in Cambodia, China, India, Laos, Philippines, Taiwan and Vietnam. The third and most popular pattern of corruption control is the reliance on a single ACA to implement the anti-corruption laws in 15 Asian countries, as shown in Table 7.

Table 7: Patterns of Corruption Control in 23 Asian Countries

Pattern of Corruption Control	Countries
Anti-corruption laws without an independent ACA	Japan
Anti-corruption laws with multiple ACAs	Cambodia, China, India, Laos, Philippines, Taiwan and Vietnam
Anti-corruption laws with an independent ACA	Singapore, Malaysia, Hong Kong, Brunei, Nepal, Sri Lanka, Pakistan, Thailand, Macao, South Korea, Indonesia, Bangladesh, Bhutan, Mongolia, and Timor-Leste

Source: Quah (2009b, p. 175).

The first pattern of corruption control is the least effective as the absence of an ACA in Japan has resulted in Global Integrity (2004) awarding a "very weak" score of 54 for Japan's integrity scorecard. Instead of initiating concerted action against the "structural aspects" of corruption in Japan, the Japanese government has adopted an incremental anti-corruption strategy by "haphazardly taking measures when scandals involving public officials or politicians emerged" (O'uchi *et al.*, 2006, p. 15). Bribery, breach of trust, tax evasion, securities exchange violations, and the circumvention of laws are viewed as crimes and investigated by the Special Investigation Departments (SIDs) in the public prosecutors' offices in Tokyo, Osaka and Nagoya. The Lockheed scandal of 1976 and the Recruit scandal of 1988 were investigated by the public prosecutors in Tokyo's SID (Tachi, 2002, p. 120). It is not surprising that there were 52 corruption scandals in Japan from 1948-2008 as there is no incentive for the "rotten triangle" of politicians, bureaucrats and businessmen, who benefit from the structural corruption, to undermine the status quo and their predominance in the political system, especially when corrupt offenders are not always punished severely (Quah, 2011, pp. 44 and 72).

The third pattern of corruption control is more effective than the first two patterns if there is political will and a favourable policy context. This explains why Singapore and Hong Kong are the only two Asian countries among the 15 countries adopting pattern 3, which have been effective in curbing corruption. On the other hand, the other 13 Asian countries have failed to curb corruption effectively because of their lack of political will and unfavorable policy contexts.

ACAs constitute an important institutional pillar of a National Integrity System (Pope, 2000, pp. 36-37, 95-104). As "watchdog" agencies, ACAs are specialized agencies formed by governments for the specific purpose of minimizing corruption in their countries by focusing on the prevention, investigation and prosecution of corrupt offences, and the education of the public on the adverse consequences of corruption (Meagher, 2005, p. 70). Consequently, an ACA has these advantages over other less-specialized agencies established to deal with corruption: reduced administrative costs; reduced uncertainty over the jurisdiction by avoiding duplication of powers and work; a high degree of specialization and expertise; a high degree of autonomy; separateness from the agencies and departments that they will be investigating; considerable public credibility and profile; established security protection; political, legal and public accountability; clarity in the assessment of its progress, successes and failures; and swift action against corruption because task-specific resources are used and officials are not subjected to the competing priorities of general law enforcement, audit and similar agencies (Nicholls *et al.*, 2006, p. 476; and UNODC, 2004, pp. 89-90).

The second pattern of relying on multiple ACAs to curb corruption is less effective because the abovementioned advantages of an ACA are eroded by the competition and conflict between the multiple ACAs. The Philippines provides the best illustration of the ineffectiveness of multiple ACAs because it has relied on seven laws and 19 ACAs since the 1950s. It now relies on these five ACAs: the Office of the Ombudsman (OMB), which is the lead ACA, the Presidential Commission on Good Governance (PCGG), the Inter-Agency Anti-Graft Coordinating Council (IACC), the Presidential Committee on

Effective Governance (PCEG) and the Governance Advisory Council (GAC) (Quah, 2011, pp. 26 and 151). Indeed, the reliance on multiple ACAs has not benefited the Philippines because the proliferation of these agencies has led to "resource and effort-dilution in the anti-corruption efforts due to duplication, layering and turf wars" (Quimson, 2006, p. 30). Furthermore, there is also no coordination or cooperation among the various ACAs, which compete for recognition, staff, and resources because they are understaffed and poorly funded. Even though their basic mandates are defined, these ACAs have overlapping jurisdiction, which diffuses anti-corruption efforts, and results in "poor coordination in policy and programme implementation, weak management and wastage of resources" (Oyamada, 2005, p. 99).

Similarly, in China, the many departments involved in anti-corruption work lack a proper coordination mechanism. Consequently, since 1993, the Chinese Communist Party (CCP), the Central Commission for Disciplinary Inspection, the Supreme People's Procuratorate and the Ministry of Supervision have enhanced cooperation among themselves. In the case of Vietnam, the National Anti-Corruption Steering Committee was formed in 2006 to coordinate the anti-corruption efforts of the six ACAs (Quah, 2007a, pp. 4-6).

In short, to combat corruption effectively, a government should establish a single ACA and provide it with sufficient manpower, budget, and autonomy to implement the anti-corruption laws effectively instead of relying on ineffective multiple ACAs.

Lesson 3: Do not Rely on the Police to Curb Corruption

Singapore was a British colony for nearly 140 years until it attained self-government in June 1959. As the British colonial government viewed corruption as a crime, it made the Anti-Corruption Branch (ACB) of the Criminal Investigation Department (CID) in the Singapore Police Force (SPF) responsible for corruption control when the Prevention of Corruption Ordinance (POCO) was enacted in December 1937. The British colonial government's decision to make the ACB responsible for corruption control in Singapore was a serious mistake for three reasons.

First, the ACB was a small unit of 17 men who were given a difficult task to perform: the eradication of corruption in the civil service in Singapore. Second, as the CID's top priority was to solve serious crimes like homicide, the task of fighting corruption received lower priority as the ACB had to compete with other branches in the CID for limited resources.

The third and most important reason for the ACB's ineffectiveness was the prevalence of police corruption in colonial Singapore. The Commissions of Inquiry of 1879 and 1886 found that police corruption was a serious problem in Singapore (Quah, 1979, pp. 24-26). However, the British colonial government ignored the findings of these two Commissions when it made the ACB responsible for curbing corruption in December 1937. The folly of making this decision was revealed in October 1951, when a consignment of 1,800 pounds of opium worth S\$400,000 (US\$133,333) was stolen by a gang of robbers, which included three police detectives. The British colonial government appointed a special team

led by a senior ACB officer to investigate the robbery. Investigations revealed that some senior police officers were also involved in the racket with both the hijackers and importers of the opium. The opium hijacking scandal made the British colonial government realize the importance of establishing an independent ACA that was separate from the police. Accordingly, it replaced the ACB with the CPIB in October 1952 (Quah, 2004, p. 1).

The same story applies to Hong Kong too, which was a British colony from 1841 until its handover to China on July 1, 1997. Like the ACB in Singapore, the ACB of the CID in the Royal Hong Kong Police Force (RHKPF) was also responsible for curbing corruption in Hong Kong from 1948 until 1971, when it was upgraded into the Anti-Corruption Office (ACO), which was also ineffective in dealing with the rampant police corruption. The escape of a corruption suspect, Chief Superintendent Peter F. Godber, on June 8, 1973, to the United Kingdom angered the public and undermined the ACO's credibility. Consequently, Governor MacLehose was compelled by public criticism to accept the Blair Commission of Inquiry's recommendation to establish an independent ACA, separate from the RHKPF, to fight corruption. The ICAC was formed on February 15, 1974 (Quah, 2004, p. 1).

In sum, Singapore's breakthrough in its fight against corruption came with the British colonial government's realization that it had made a serious policy mistake in making the ACB responsible for curbing corruption when police corruption was rampant in Singapore. Similarly, the escape of Peter Godber on June 8, 1973, also made the British colonial government in Hong Kong realize that the ACO was ineffective in curbing police corruption and had to be replaced by the ICAC in February 1974. Thus, Singapore's and Hong Kong's success in combating corruption can be attributed to their rejection of the British colonial method of relying on the police to curb corruption and their reliance instead on the CPIB and ICAC, respectively. Singapore took 15 years (1937-1952) while Hong Kong took 26 years (1948-1974) to learn this important lesson. However, some countries like the United Kingdom and India have still not learnt this lesson as they continue to rely on police agencies such as the Serious Fraud Office (SFO) and the Central Bureau of Investigation (CBI), respectively, to curb corruption.

Lesson 4: Pay Civil Servants Adequate Salaries to Prevent Corruption

In his book, *The Russians*, Hedrick Smith (1976, pp. 116-117) recounted what a computer specialist told him:

No one can live on his regular pay. You know, in Odessa [Ukraine], they have a saying that if you get really mad at another person, you put a curse on him—let him live on his salary. It's a terrible fate. No one can imagine it.

In his comparative study of the control of bureaucratic corruption in Hong Kong, India and Indonesia, Leslie Palmier (1985, p. 2) has identified low salary as one of the three causes of corruption: "If the official is not to be tempted into corruption and disaffection, clearly there is an obligation on the government to provide or at least allow such benefits as will ensure his loyalty; one might call it an implicit contract."

Consequently, Palmier (1985, p. 6) contends that "adequate pay" is "an essential ingredient in reform." In the same vein, Paulo Mauro (1997, p. 5) has argued that "when civil service pay is too low, civil servants may be obliged to use their positions to collect bribes as a way of making ends meet, particularly when the expected cost of being caught is low."

Civil servants and political leaders are more vulnerable to corruption if their salaries are meager or not commensurate with their positions and responsibilities. It is unrealistic to expect them to remain honest if they are paid low salaries which are inadequate for meeting their daily needs. Indeed, the low salaries of civil servants and political leaders constitute an important cause of the corruption in many Asian countries. For example, Theodore M. Smith (1971, pp. 28-29) found that in Indonesia, "there is not a single official who can live by his government income alone" because the "official income amounts to approximately half of [his] essential monthly needs." Similarly, Stephanie McPhail (1995, p. 45) reported that in the Mongolian countryside, "one out of three judges does not have an apartment. Consequently, some judges live in their office, which is clearly not desirable and does not enhance the status of the judiciary." Civil servants in the Philippines describe their low salaries as "starvation wages" that are inadequate to meet the daily needs of their families. As the salaries of South Korean civil servants are equivalent to 70 per cent of private sector wages, some scholars have recommended that bureaucratic corruption can be reduced by increasing the salaries of civil servants (Quah, 2011, p. 465).

Table 8: Salaries of Political Leaders in 11 Asian Countries, 2010

Country	Annual Basic Salary (US Dollar)	Rank
Singapore	2,183,516	1
Hong Kong SAR	513,245	2
Japan	273,676	3
Taiwan	184,200	4
South Korea	136,669	5
Indonesia	124,171	6
Thailand	32,200	7
Philippines	24,000	8
China	10,663	9
Mongolia	9,132	10
India	4,106	11

Sources: *Economist* (2010); Backman (2004, p. 27) for the salaries of the Thai Prime Minister and the Philippines President; and the IAAC for the Mongolian President's salary.

Table 8 shows that the annual basic salaries of Singapore's Prime Minister and Hong Kong's Chief Executive are among the highest in the world. On the other hand, the annual basic salaries of the political leaders in Thailand, Philippines, China, Mongolia and India are very low, with India's Prime Minister being among the poorest paid political leaders in the world with an annual basic salary of US\$4,106 in 2010.

Accordingly, political leaders and civil servants in Asian countries should be paid decent salaries instead of "starvation wages" to insulate them from bribery and patronage. However, three qualifications must be made. First, as increasing salaries is

expensive, only countries that have sustained economic growth can afford to do so. In Singapore's case, the People's Action Party (PAP) government could not afford to raise the salaries of the political leaders and civil servants from June 1959 to February 1972. Hence, the focus of Singapore's anti-corruption strategy during this period was the impartial enforcement of the Prevention of Corruption Act (POCA) by the CPIB.

Singapore's experience shows that it is possible to curb corruption by impartially enforcing the anti-corruption laws without raising the salaries of the civil servants and politicians. The salaries of the latter were increased from March 1972 onwards to prevent the brain drain of talented civil servants to the private sector, rather than as a mechanism to curb corruption. However, the PAP leaders have stressed the need to pay the senior bureaucrats and ministers competitive salaries to attract the "best and brightest" and to keep those who have been attracted to the Singapore Civil Service and the government, honest and incorruptible.

The second qualification is that increasing salaries minimizes petty corruption by reducing the incentive for corruption among junior officials but does not eliminate grand corruption among the senior civil servants and politicians. In other words, salary revision is ineffective in curbing grand corruption, which is motivated by greed and not need, when it is prevalent among the political leaders and senior bureaucrats.

Finally, raising salaries alone is ineffective in solving the problem of corruption if the incumbent government lacks the political will to do so, if the ACA or ACAs are ineffective, if corrupt officials are not punished, and if opportunities for corruption are not reduced in vulnerable public agencies. Thus, salary revision is a necessary but insufficient condition for curbing corruption if other reforms are not undertaken also (Quah, 2007b, pp. 42-43).

Lesson 5: Enforce the Anti-Corruption Laws Impartially, not Selectively

To combat corruption effectively, the anti-corruption laws in a country must be enforced by the ACA impartially as those found guilty of corruption offences must be punished, regardless of their status or position. If the "big fish" (rich and famous) are protected and not prosecuted for their corrupt offences, the credibility and efficacy of the country's anti-corruption strategy will be undermined. In other words, corrupt individuals should be punished according to the law, regardless of whether they are "big fish" or "small fish." Furthermore, rich and powerful individuals should not be immune from investigation and prosecution for corruption offences.

A major reason for the rampant corruption in the Philippines is the lack of impartial enforcement of the anti-corruption laws. Eufemio Domingo, who was appointed by President Fidel Ramos to chair the Presidential Commission Against Graft and Corruption (PCAGC), lamented after three years on the job, that "the system is not working" because the many anti-corruption laws, rules and regulations are "not being faithfully implemented" (quoted in Balgos, 1998, pp. 267-268). Similarly, Edna Co *et al.* (2007, p. 11) have attributed the Philippines' ineffectiveness in curbing corruption to the

lack of enforcement of the numerous anti-corruption laws and policies.

On September 11, 2007, former President Joseph Estrada was found guilty by the *Sandiganbayan* (Anti-Graft Court) of receiving payoffs and kickbacks before his ouster from office and sentenced to a maximum of 40 years imprisonment (Conde, 2007, p. 3). On October 25, 2007, President Arroyo pardoned Estrada six weeks after his conviction even though anti-corruption advocates and state prosecutors have urged her not to do so (*Deutsche Presse-Agentur*, 2007). Arroyo's pardon of Estrada was criticized by the *Economist* (2007) because it renews "concerns in many quarters that the rich and powerful remain immune from punishment" and fails "to dispel concerns about entrenched corruption in the Philippines."

In contrast, Singapore's success in combating corruption can be attributed to the CPIB's adoption of a "total approach to enforcement" by dealing with both "big and small cases" of public and private sector corruption, "both giver and receiver of bribes" and "other crimes uncovered in the course of [the] corruption investigation" (Soh, 2008, pp. 1-2). According to Soh Kee Hean (2008, pp. 2-3), a former CPIB Director, the CPIB has succeeded in its enforcement efforts because of its reliance on skilful interview techniques, careful planning and execution of field operations, and computer forensics. Indeed, the CPIB's effective enforcement capacity is the result of its threefold emphasis on the capability building of its enforcement officers, building networks and partnerships with other public agencies in Singapore, and organizational excellence.

Furthermore, unlike the OMB in the Philippines, the CPIB has enforced the POCA impartially by not hesitating to investigate allegations of corruption against political leaders and senior civil servants in Singapore. The CPIB has investigated these four PAP leaders for corruption: (1) Tan Kia Gan, the Minister for National Development, in 1966 for assisting his friend in the sale of Boeing aircraft to Malaysian Airways; (2) Wee Toon Boon, Minister of State, in 1975 for accepting bribes from a property developer; (3) Phey Yew Kok, a Member of Parliament (MP) and trade union leader, in 1979 for criminal breach of trust; and (4) Teh Cheang Wan, Minister for National Development, in 1986 for accepting bribes of S\$1 million from two property developers. Tan was stripped of all his public appointments as the witnesses did not give evidence against him. Wee was found guilty and sentenced to four and a half years of imprisonment. Phey jumped bail and fled abroad and remains a fugitive. Teh committed suicide before he could be charged in court (CPIB, 2003, pp. 6.45-6.47).

Similarly, the CPIB has also investigated Glenn Knight, Director of the Commercial Affairs Department, and he was sentenced to three months' jail in October 1991 for attempted cheating and giving false information to obtain a government car loan. In 1993, Yeo Seng Teck, the Chief Executive Officer of the Trade Development Board, was investigated for cheating offences and charged for 22 counts of forgery, cheating, and using forged invoices involving the purchases of Chinese antiques worth S\$2 million. Yeo was found guilty and sentenced to four years imprisonment. In 1995, Choy Hon Tim, the Deputy Chief Executive (Operations) of the Public Utilities Board, was investigated for receiving kickbacks from some contractors. He was convicted for

receiving bribes amounting to S\$13.85 million and sentenced to 14 years' imprisonment (CPIB, 2003, pp. 6.48-6.49).

On December 19, 2011, Ng Boon Gay, the Director of the Central Narcotics Bureau (CNB), was arrested by the CPIB for "serious personal conduct" and was charged on June 12, 2012 with four counts of corruptly obtaining sexual favours from a former information technology (IT) sales manager, Cecilia Sue. Ng's trial began on September 25, 2012 and he was acquitted on February 14, 2013 by District Judge Siva Shanmugam because there was no evidence to show that Ng was aware that Cecilia Sue's employer, Hitachi Data Systems, was involved in a contract that he had approved as the CNB's Director (Tham and Lim, 2013, p. A1). The second recent high profile case was the arrest by the CPIB of Peter Lim, the Director of the Singapore Civil Defence Force, on January 4, 2012, and he was charged on June 6, 2012 on 10 counts of corruption involving sex with three female IT executives, who were seeking government contracts for their companies (Lim and Tham, 2012, p. A1). Lim's trial began on February 18, 2013 and is expected to continue for several weeks.

At the CPIB's 60th anniversary celebrations in Singapore on September 18, 2012, Prime Minister Lee Hsien Loong contended that "incorruptibility has become ingrained in the Singaporean psyche and culture" because of the CPIB's impartiality in enforcing the anti-corruption laws, its thorough and efficient investigation of corruption cases, and the punishment of those found guilty of corruption offences (Lee, 2012, p. A23).

Lesson 6: Do not Use Corruption as a Weapon against Political Opponents

As an ACA is a powerful agency, its powers should not be abused by the government or political leaders by using corruption as a weapon against their political opponents. However, in reality, many corrupt political leaders have frequently employed corruption as a weapon against their political rivals. In her review of the corruption situation in Southeast Asia for Transparency International's *Global Corruption Report 2001*, Dini Djalal (2001, pp. 32-33) has observed that "the tendency to use corruption charges to settle political scores is widespread" as such charges are "increasingly used as a means to discredit rivals, rather than as an effort to clean up politics" in Cambodia, Indonesia, Malaysia and Vietnam.

In Cambodia, Prime Minister Hun Sen used the campaign against illegal logging to remove those military officers who posed a threat to him. In Indonesia, President Abdurrahman Wahid's allies initiated corruption investigations against those opposition legislators who had targeted Wahid. In Malaysia, corruption charges were used to silence the opposition leader and former deputy prime minister, Anwar Ibrahim. In Vietnam, the Communist Party relied on its three-year-old "self-criticism" campaign to "lick official boots and kick their colleagues" and to enable the "conservatives to weed out the reformers" (Djalal, 2001, p. 32).

In China, anti-corruption campaigns have been used to "bring down the opposing forces" as illustrated in the sentencing of the former Beijing party chief, Chen Xitong,

to 16 years imprisonment for graft of 555,000 Yuan and dereliction of duty on July 31, 1998. Chen's sentence was lenient as more junior party cadres were given life imprisonment or the death penalty for corruption involving smaller sums exceeding 100,000 Yuan. Nevertheless, his imprisonment on corruption charges has been viewed as a successful attempt by his political foes to undermine his power as more than 170 corrupt senior party officials have been protected from criminal punishment (Zou, 2003, p. 86; Quah, 2011, p. 19). Furthermore, it was earlier reported that Chen Xitong's prosecution was delayed because the CCP was afraid that he would "expose in public the identity of other high-ranking corrupt officials" if he had to appear in court (Lo, 1999, p. 59).

Referring to the arrests of the Shanghai party chief and two members of the CCP's Political Bureau on corruption charges in the fall of 2006, and the removal from office of the mayors of Shenzhen and Chongqing in 2009, John Bryan Starr (2010, pp. 80-81) noted that "anti-corruption campaigns often have as much to do with settling intra-party rivalries as they do with reasserting public probity."

The most recent illustration of the reliance on corruption as a political weapon by China's political leaders was the sacking and detention of Bo Xilai, Chongqing's party chief, on March 15, 2012. He was suspended on the evening of April 10, 2012 from his Politburo and Central Committee positions for "serious" but unspecified violations of party discipline (Garnaut, 2012, pp. 120-124). According to John Garnaut (2012, pp. 18 and 129-130), the China correspondent for the *Sydney Morning Herald* and *The Age*:

The political explosion of Bo Xilai is blowing open the black box of Chinese politics and laying bare a world of staggering brutality, corruption, hypocrisy and fragility. ... The demise of Bo Xilai has opened cleavages in the Party along factional, ideological and personal lines. ... Destroying Bo would give Xi [Jinping] a weapon with which he could taint Bo's associates and accelerate the consolidation of his power.

Similarly, Professor Steve Tsang, Director of Nottingham University's China Policy Institute, claims that the Bo Xilai scandal is "a political rather than a legal case." Professor Willy Lam of the Chinese University of Hong Kong has emphasized the importance of the CCP's dominant faction to control the judicial apparatus so that "it's then easy to use the law to attack your opponents." Bo Xilai's downfall as a victim of the factional in-fighting within the CCP in the lead-up to the 18th Party Congress in November 2012 reminded Willy Lam of the "old-style back-stabbing under Mao Zedong" (Bristow, 2012).

The establishment of an ACA sends a powerful signal to the citizens in a country that their government is committed to fighting corruption (UNODC, 2004, p. 90). However, the reliance on an ACA to combat corruption is a double-edged sword because it can be used by the incumbent government for good or for evil. In the hands of a clean government, the ACA can be an asset and a powerful weapon against corrupt politicians, civil servants and business persons. Conversely, a corrupt government will

make a mockery of its anti-corruption strategy by using the ACA to victimize its political foes instead (Quah, 2010, p. 51).

Lesson 7: Punish Corrupt Offenders Severely to Deter Corruption

As corruption is a crime, the most effective way to curb it is to punish those found guilty of corrupt offences. However, in reality, the probability of detection and punishment of corrupt offences varies in the different Asian countries.

In Asian countries afflicted with rampant corruption, corruption is viewed as a "low risk, high reward" activity as the probability of being detected and punished for corrupt offences is low because of the ineffective anti-corruption measures and weak political will. For example, Thais tolerate corruption and do not view it as being harmful to the public interest as no one is hurt by it. More specifically, they have identified seven levels of corruption, ranging from the less severe form of misconduct, *sin nam jai* (gift of goodwill), to the most severe form of misconduct, *kan khorrapchuan* (corruption). The first three levels are viewed as acceptable practices, with the remaining four levels considered as unacceptable ones. Furthermore, apart from tolerating corruption, many Thais are embarrassed if prominent individuals are humiliated. This explains why unsuccessful coup leaders are usually ignored and not punished for their illegal actions (Quah, 2011, pp. 290-292).

In South Korea, those found guilty of corrupt offences are not punished severely as they are usually pardoned by the President before the completion of their prison terms. The most recent example of this practice is the special pardon granted by President Lee Myung-bak on January 29, 2013, to 55 persons who were imprisoned for bribery. Among those pardoned were Lee's confidant and former minister, Choi See-joong; his friend and businessman, Chun Shin-il; former parliamentary speaker, Park Hee-tae; and Lee's former senior political affairs aide. This latest round was the seventh time that President Lee had exercised his right to pardon those found guilty of corrupt offences during his five-year term of office (*Straits Times*, 2013, p. A12). Yoon Gwan-seok, spokesperson for the Democratic United Party, criticized President Lee's action because "using pardons to let off friends and family at the end of one's presidency is more than shameless it is a deliberate insult to the Korean people" (Ahn, 2013).

On the other hand, corruption is not a serious problem in Singapore and Hong Kong where corruption is perceived as a "high risk, low reward" activity because those involved in corrupt activities are likely to be caught and severely punished. Singapore's experience demonstrates the importance of punishing corrupt offenders, regardless of their status or position, in order to deter others from being involved in corruption. During the British colonial period, corruption was perceived by the population as a "low risk, high reward" activity as the probability of being detected and punished for corrupt offences was low because of the ineffectiveness of the ACB. However, the empowerment of the CPIB by the enactment of the POCA in June 1960 by the PAP government, which was committed to eradicating corruption, led to the transformation of the public perception of corruption in Singapore to a "high risk, low reward" activity.

The POCA's deterrent effect was enhanced by increasing the penalty for corrupt offences to imprisonment for five years and/or a fine of S\$10,000. In 1981, the POCA was amended to increase its deterrent effect by requiring those convicted of corruption to repay all the money received in addition to facing the usual court sentence (section 13). Offenders who could not make full restitution were given heavier court sentences. In 1989, the fine for corrupt offences was further increased by 10 times from S\$10,000 to S\$100,000 to further enhance the POCA's deterrent effect. Sections 11 and 12 further stipulate that Members of Parliament and members of public bodies found guilty of corrupt offences would be fined S\$100,000 and imprisoned for a term of seven years (Quah, 2011, pp. 219-221).

Perhaps the best way to illustrate the impact of punishment as a deterrent to corrupt behavior is to refer to a comparative analysis of successful prosecution of corrupt offenders in Hong Kong and the Philippines in 1997. Robert Beschel, Jr., (1999, p. 8) found that a person committing a corrupt offence in Hong Kong was 35 times more likely to be detected and punished than his counterpart in the Philippines. The more effective detection and punishment of corrupt individuals in Hong Kong is an important factor why corruption is a less serious problem in Hong Kong than in the Philippines. In his memoirs, the former Prime Minister of Singapore, Lee Kuan Yew (2000, p. 342) has attributed the lack of punishment against President Marcos, his family, and cronies for their corrupt activities to the "soft, forgiving culture" of the Philippines.

Thus, to minimize corruption and to deter those who are not involved in corrupt practices from doing so, honesty and incorruptibility among civil servants and political leaders must be recognized and rewarded instead of being punished. The lack of punishment of corrupt civil servants and political leaders in a country sends the wrong signal to their honest counterparts and the population at large because it makes a mockery of the anti-corruption laws and encourages others to become corrupt as the probability of being caught and punished is low. In other words, the political system in a country plagued with corruption rewards those who are corrupt and punishes those who are honest. Needless to say, this system of reward and punishment must be reversed by punishing the corrupt offenders and rewarding those who have abstained from being corrupt (Quah, 2007b, p. 45).

Edward Banfield (1975, p. 605) concluded his article on "Corruption as a Feature of Governmental Organization" by highlighting the adverse consequences of a society that promotes dishonesty thus:

In a society in which *dishonesty* is the best policy, will not the individual feel contempt for himself and for his fellows and will he not conclude—rightly perhaps—that he and they are "not worth saving"?

Conclusion

The difficult task of eliminating corruption has been highlighted by Christian Gobel (2004), who has described the tasks of combating political corruption, organized

crime or *heijin* ("black gold"), and vote-buying in Taiwan as "beheading the Hydra," the Greek mythical creature with several heads that grew again when cut off. More recently, Laurence Cockcroft (2012, pp. 231-232) has emphasized the need for a sustained campaign against corruption to assure victory because corruption is like "a snake which will frequently respond with poison, and will only die with repeated attack" and "only if severed at the head."

Why is it so difficult to eliminate corruption? Corruption is a formidable foe to defeat because corrupt individuals are highly intelligent and capable of finding legal loopholes or other methods to circumvent the anti-corruption laws. For example, Bernard Madoff was "smart, savvy, and experienced at bucking the system" (Sander, 2009, p. 223).

Furthermore, as they have a great deal to lose if they are detected and caught, corrupt persons have developed many safeguards and defence mechanisms to avoid detection, investigation, arrest and prosecution. Alexandra Wrage (2013) has recently described "five schemes for creative corruption" which corrupt individuals have devised to circumvent sophisticated internal controls in a company. Consequently, as corrupt operators today show considerable ingenuity, she advises that those persons responsible for combating corruption in both public and private organizations must also show considerable sophistication and "think like a criminal to stay ahead of the bad guys."

Thus, to combat corruption effectively, those Asian countries which are plagued with rampant corruption can enhance their anti-corruption efforts by applying the seven lessons highlighted above, assuming that their political leaders and citizens have the political will to do so. Failure to do so, however, will mean that the political leaders of these Asian countries will continue to pursue "hopeless" anti-corruption strategies that will perpetuate corruption instead of stifling it (Quah, 2006, p. 179). Indeed, when corruption becomes a way of life in a country, "predatory, value-destroying behavior" becomes "systematically more profitable than honest, productive work" and its citizens "would not enjoy living in a society dominated by cynicism and dishonesty" (Ferguson, 2012, p. 324).

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Defending the Rule of Law and the Role of Civil Society

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Abstract

From Britain's last colony to China's first Special Administrative Region, Hong Kong has been synonymous with the rule of law. Fifteen years after the handover, a metaphorical "ferocious storm" hanging over this defining institution illuminates the fundamental precariousness of "One Country, Two Systems". Since Beijing's first interpretation of the Basic Law in 1999, society has witnessed its "high degree of autonomy" gradually slip away as democratisation stalled and judicial independence under threat. So much so that the reformist-minded increasingly looked to the court as an alternative battlefield against an unpopular government alongside street politics. A politicised judiciary, however, does not bode well for the rule of law. At stake is a societal consensus over the value of judicial process in defending the constitution, not confronting or assisting the administration. That requires a vigilant public versed in the idea of rule of law, and faith in the integrity of the constitutional gatekeeper. Despite the gloom cast over Hong Kong's political future, its thriving civil society and maturing civic activism attest to the enduring strength of this dynamic people. Come what may, their unwavering commitment of the rule of law will see Hong Kong through the most ferocious of storms.

Introduction

1 July 1997, the return of Hong Kong to Chinese rule, marked a watershed for Hong Kong's collective legal consciousness. Its mostly law abiding but politically aloof residents found themselves instantaneous participants of the unprecedented "One Country, Two Systems" experiment premised upon "a high degree of autonomy". The ensuing years witnessed a series of constitutional disputes-turned-crises, deadlocks in political reforms, and most worrying of all, perceived erosions into Hong Kong's vaunted judicial autonomy. At the same time, there emerged a more alert citizenry who are becoming ever more vigilant in defending their rights against a government devoid of a popular mandate. That saw a steady rise, on the one hand, in the number of organised mass protests and assemblies, and judicial reviews challenging the law or official acts, on the other. Politics in both the street and the court bear witness to a post-colonial liberal society in search of its place as a Special Administrative Region (SAR) under Chinese rule.

Its blossoming civil society contrasts a less promising development. A series of incidents in the SAR's formative years raised questions about government's sincerity in defending Hong Kong's "high degree of autonomy". Concerns arose following the decision of *HKSAR v Ma Wai Kwan David* [1997] 2 HKC 772 [*David Ma*], where an act of the Central People's Government (CPG) was challenged a week after the

handover. Holding a narrow view of Hong Kong's autonomy, the SAR government argued that local courts have no power to review acts of or legislation passed by the PRC which reigns over all affairs of Hong Kong (with which the Court of Appeal agreed, only to be overruled two years later, as discussed below). The following years saw all manner of controversy in which government was seen either second-guessing the CPG in cross-border jurisdictional matters or going soft on state agents or Beijing-friendly individuals suspected to be in breach of the law (Ghai, 2000, pp.7-8); so much so that its political will in defending the rule of law has been thrown into question (Tsang, 2001, pp.1-12; Tai, 2010, pp.303, 306). But the gloom cast over the fate of "two systems" under "one country" should come with a caveat: the success of this "barren-island-turned-prosperous-town" (Ghai, 1999, p.25) has always lay in the strength and resilience of its people. Hence, I argue that it is the "collective commitment of the people to the rule of law" that helps to sustain Hong Kong's "high degree of autonomy" (Bokhary, 2012, p.374). Such a commitment can only be found in an educated public versed and confident in the idea of the rule of law.

Rule of Law under Trial (again)

One and a half decades after reunification, the precariousness of "One Country, Two Systems" remains the phantom lying in the depth of Hong Kong politics. Its shadow emerged as the superior court, the Court of Final Appeal (CFA), in a controversial decision, *Ng Ka Ling v Director of Immigration* [1999] 1 HKLRD 315 [*Ng Ka Ling*], granted the right of abode to Mainland-born children of Hong Kong permanent residents based on its interpretation of the Basic Law, the SAR's constitution. Besides, the CFA's bold declaration of judicial mandate to review even acts of the CPG, effectively overruling *David Ma*, offended the Chinese authorities. But it was the reaction of the SAR government — asking China's top political body, National People's Congress Standing Committee (NPCSC), to (re)interpret the relevant Basic Law provisions pursuant to Art 158, so as to overturn the decision that shook the rule of law to its core two years after return to Chinese rule.

Fast forward to 2012; this time, the phantom lurked at the background of passing remarks from Elsie Leung, vice-chairwoman of the Basic Law Committee and former Secretary for Justice. During a seminar, she reportedly opined that the legal profession - judges included - failed to understand the relationship between Beijing and Hong Kong, resulting in flawed court rulings and usurpation of the central government's power (Chiu, *SCMP*, 11.10.12). She went on to say that Hong Kong government should seek NPCSC to interpret the Basic Law, so as to plug a legal gap and fix a host of social problems arising from a skyrocketing number of Mainlanders giving birth in the city. The influx of the so-called "double negative" pregnant Mainland women - where neither themselves nor their spouses are Hong Kong permanent residents - was widely attributed to the CFA's decision in *Director of Immigration v Chong Fung Yuen* [2001] 2 HKLRD 533 [*Chong Fung Yuen*] that upheld the right of abode of Chinese nationals born in Hong Kong (disregarding a comment the NPCSC made after *Ng Ka Ling*). Leung's remarks brought to mind the spectre of the 1999 right-of-abode saga,

prompting the two professional bodies, the Bar Association and the Law Society, to go on the defensive, which in separate statements cautioned against seeking another NPCSC interpretation of the Basic Law (Ng, *SCMP*, 13.10.12). Yet it was only the beginning.

Three weeks later, in his farewell speech, retiring CFA judge Kemal Bokhary spoke of "a storm of unprecedented ferocity" clouding the rule of law in Hong Kong (Chiu, *SCMP*, 25.10.12). He was apparently referring to the call for reviewing the judgment of *Chong Fung Yuen* (Ng, *SCMP*, 13.3.12), alongside the "atmosphere created by the mere fact that this call is being made." Then, in a rare television appearance, Bokhary — famous for his vigorous dissenting judgments and whose departure was rumoured to be linked to his known liberalism — admitted, "If you were asking if I believe that the reason why I wasn't extended is because of my liberal judgments, then I would tell you that I do believe that." (Ng, *SCMP*, 5-11-12).

In the gathering storm, two Beijing-friendly Basic Law experts reportedly endorsed a Chinese nationals-only CFA to reflect its status as a "national court" (Lee, *SCMP*, 5.11.12)¹, only to be promptly refuted by the Secretary for Justice that such a move would contravene the Basic Law². Later, Andrew Li, retired Chief Justice who presided over the right-of-abode decisions in the past decade, spoke at the city's oldest law school of Hong Kong's political challenges under the Basic Law, and urged everyone in society, the legal profession in particular, to be vigilant in defending the rule of law³. On the same day, a state-controlled newspaper *Global Times* published an interview with Elsie Leung over "One Country, Two Systems", in which Leung reportedly said that the Basic Law does not rule out changes in Hong Kong. She said, the "legal system itself is ever changing" (*Global Times*, 8.11.12). That reminded one to revisit Deng Xiaoping's 50-year "unchanged" promise the proviso of which finally reared its head⁴. Deng said in 1984, "not all changes are bad". "If some people say there will be no changes whatever, don't believe them." Referring to Hong Kong people's worry about "intervention" from the central authorities, he said, "again, we should not fear all interventions; intervention in some cases may be necessary."

The row continued in relation to the more recent controversy over the right of abode for foreign domestic helpers. In an unprecedented move, the Secretary for Justice asked the CFA to seek an NPCSC interpretation of the Basic Law in order to resolve, once and for all, the right-of-abode disputes for both foreign domestic helpers and Chinese nationals born in Hong Kong of Mainland parents. As expedient such a move may appear, objection lay in the fact that the requested interpretation would affect provisions not being immediately argued and the latter group who was not legally represented in the case (Moy & Chiu, *SCMP*, 19.10.13). At the end, the CFA refused to seek an interpretation while ruling against the domestic helpers, giving a momentary sigh of relief as far as Hong Kong's judicial autonomy is concerned (Moy, *SCMP*, 26.3.13).

This latest round of legal dramas illuminates the high stakes which rule of law continues to yield in the *laissez faire* former colony fifteen years into its reunion with

its communist one-party-rule motherland. Can a judicial storm ruin Hong Kong, as an editorial of a leading local newspaper once headlined? (*Ming Pao*, 6.11.12) The answer, to a large extent, lies in whether or not its people continue to trust - and support - the rule of law, the viability of which under Chinese rule has always been questioned (Berring, 1997). To advocates of constitutionalism, it entails two fundamental concerns. First, the public must put trust in those who are obliged to uphold the rule of law without fear or favour. Further, this people must be prepared to "act in some way to force those custodians to keep to their trust." (Parry, 1976, p.140). To achieve this, it requires "some consensus that the rule of law is valuable and is to be made effective"; it requires some agreement among a broad spectrum of society over "the value of constitutional procedures". Fundamentally, it comes down to instilling in the public the idea of the rule of law, and for them to make an informed decision in which direction society should go.

Public Trust in the Rule of Law

A people amid a changing mindset

It is no exaggeration to say that Hong Kong was founded on the rule of law (Beatty, 2003, p.93). In colonial times, the transplant of the British common law system helped create the lure of this barren rock to overseas traders and its transformation into a major financial centre (Ghai, 1999, p.25). Back then, the rule of law — practised as a doctrine of procedural fairness — was an effective governing tool when democracy and political accountability ran short⁵. It was also an anchor securing the hearts and minds of a hardworking people largely made up of Chinese migrants fleeing across the border yearning for a better life (Hsu, 1992, p.21). But its ideology is even more powerful (Cottrell & Ghai, 1999, p.127). Emphasising the unique status of rule of law in Hong Kong community, the last colonial governor Chris Patten said this: "It is the Rule of Law which provides a safe and secure environment for the individual, for families and for businesses to flourish. This is the best safeguard against arbitrary and overbearing government. It is the very essence of our way of life." (Patten, 1995, para.6). For all the limits inherent in a colonial common law system, it, in tandem with the rule of law, established an enduring norm that law keeps the state in check and protects people's lives (Ghai, 1999, pp.24-26).

As change of sovereignty neared, the ideology of the rule of law played a role in raising "public consciousness of rights and the value of fair administration" (Ghai, 1999, p.26). Central to this ideology is a view that sees law as "an instrument of justice and not merely an instrument of power" (Bokhary, 2004, p.135). In the run-up to the handover, it helped set a benchmark of a credible legal system to pacify an unsettled population as well as skeptical local and international business and political leaders amid continued wrangles between the Chinese and British governments, for example, over the establishment of the CFA as the SAR's final appellate court (Lo, 2000, pp.226, 230). To a large extent, the ideology of rule of law helped lay the foundation for Hong Kong's legal system post-1997 that is the rising assertiveness of its people (Bokhary, 2012, pp.383-384), who not only expect "more of the government and more from the

government" (Bokhary, 2012, p.379), but are also "sensitive to legal issues and interested in discussing and debating them." (Chen, 2006, p.682) On the other hand, this ideology is probably one of a few things that unite political elites of all stripes. As a study conducted during 1997-2002 found, legislators across the political spectrum "were unwilling to make any compromise regarding the rule of law" (Beatty, 2003, p.97). Together, they are telling signs of a society not yet fully democratic but having virtually all the trappings of a liberal rule-of-law polity (Chen, 2006, p.682). Despite qualms about the snail's pace of democratisation, one may take solace in the recent "upgrading" of Hong Kong's democratic rating from a "hybrid regime" to a "flawed democracy", being on a par with Taiwan and a far cry from China's "authoritarian" status (*Economist*, 2013).

To most common law lawyers, the rule of law is "closely linked with the values of a liberal democracy" (Steyn, 2004, p.133). Yet, for decades, Hong Kong has bucked this conventional wisdom as being liberal but undemocratic. That had Chris Patten conclude that Hong Kong was the only place he has yet been able to call "liberal but not (alas) democratic" (Patten, 2006, p.284). This situation went largely unchallenged in the erstwhile *laissez-faire* colonial society, where individuals ceded democracy for liberty under a fairly clean and efficient government. But regime change came with it a fundamental shift in people's mindset about what they expect of a leader purportedly from one of their own (Bokhary, 2012, pp.378-379). Deng Xiaoping's notion of "Hong Kong people running the affairs of Hong Kong" (Deng, 1994, p.70), under the auspices of the Basic Law's "high degree of autonomy", appeared to have upped public expectations on political liberalisation after reuniting with the motherland in 1997. The mindset is of a people who could finally be "the master of their own destiny" in a once borrowed land they have long called home. Hong Kong's democratic deficit, with which veteran activists have been grappling for decades (Sing, 2004), awaited a final solution under the promise of "universal suffrage" according to Arts 45 and 68 of the Basic Law.

Yet, genuine progress was sparse. An electoral reform package was vetoed by all pan-democratic legislators in 2005 for want of a roadmap for universal suffrage (Chen, 2005). Five years later, a twist of events led to a dramatic compromise from the Democratic Party (DP), and a split within itself and the pan-democratic force as a whole. That happened in early 2010 when core members of DP met Chinese officials at the PRC's Hong Kong Liaison Office behind the door over electoral reform. The resulting compromise package — which increased the number of directly elected Legislators but retained the controversial functional constituencies — won DP's backing that saw its passage in the Legislative Council but at a huge cost. DP's unilateral U-turn bitterly divided the then loosely aligned pan-democrats as well as the Hong Kong public (Cheung, Wong & Fung, *SCMP*, 25.6.10). Frustrations over the deadlock of democratisation prompted certain segments of society to radicalise. DP's image of capitulating to Beijing was etched onto the minds of many supporters, resulting in a heavy trouncing by the rising radical forces in the following election, and a society getting increasingly polarised (Ma, 2011).

Today, gathering clouds over the city's political future have thrown society into

increasing disarray. Universal suffrage becomes a dream ever more elusive despite Beijing's initial promise for it to be held in 2017 and 2020 respectively for electing the Chief Executive and all members of the Legislative Council. The 2013 maiden Policy Address of the beleaguered Chief Executive C.Y. Leung, who has weathered one scandal after another since taking up office in July 2012, made little mention of the electoral arrangements come 2017°. Meanwhile, a constitutional law expert threw down the gauntlet, boldly espousing civil disobedience based on his idea of "justice through law" as a last resort to achieve universal suffrage. (But, *SCMP*, 16.2.13). That apparently touched the raw nerve of the CPG, who, through various Mainland officials, reiterated that only patriots, defined as those who "love the country and Hong Kong", are eligible to rule Hong Kong (But & Lee, *SCMP*, 25.3.13). Such rhetoric culminated in comments made by the NPC Law Committee chairman Qiao Xiaoyang in March 2013 that, consultation on political reforms should not begin until society agreed that those who confront the CPG should not become Chief Executive (Lee, *SCMP*, 29.3.13).

Perceived threats to Hong Kong's "high degree of autonomy" and deadlocks in democratisation coincided with increasing public frustrations over public governance. A yawning wealth gap, escalating cross-border tensions, and an identity crisis are but some of the acute challenges facing Hong Kong ever since the handover (Cheung, 2009). At the same time, a societal transformation is underway. A series of social malaises helped catalyse the emergence of various grassroots groups taking the task of changing society into their own hands (Chen, 2009; M Chan, 2009). Over the past decade, Hong Kong people have become increasingly at ease with the idea of staging mass protests and assemblies to air grievances and demand government accountability (Drew, *NY Times*, 1.7.11). Their diverse concerns range from publicly funded projects seen as surrendering local interests for the rich and powerful such as the construction of the Hong Kong segment of the Mainland's high-speed rail networks (Lee, *China Post*, 16.1.10) and development of the North-East of the New Territories (Lai, *SCMP*, 21.9.12), to introduction of an allegedly "brain-washing" national education curriculum to local schools (Chen, *WSJ*, 2.9.12), and demanding resignation of an unelected and unpopular Chief Executive (*Aljazeera*, 1.1.13). It saw the total number of mass rallies and assemblies rise from below 2000 in 1997 to nearly 7000 in 2011, a threefold jump in 14 years (Lam, *SCMP*, 6.1.13). What's more, the anniversary marking reunification with China has turned into a yearly civic ritual to demand full democracy for Hong Kong (*BBC*, 1.7.12).

Changing society through law?

Such was the changing mindset of a people whose assertiveness grows as society's democratic deficit exacerbates — largely a result of Hong Kong's underdeveloped electoral system, the reform of which has been held back by institutional barriers under the Basic Law and the close watch of Beijing (Ghai, 2007, pp.403-404; Ma, 2008, pp.158-163), which favours neither western-style multi-party politics nor separation of powers (*China Daily*, 10.3.09). With a chief executive produced by a "controlled" small-circle election and a dysfunctional legislature institutionally designed to

disempower its members (Ghai, 1999, Ch.7), let alone those returned by popular votes, there is little surprise that aspiring reformists turned to the most "undemocratic" of the three institutions — the judiciary — to challenge the government by way of judicial review (Chan, 2007, pp.409-410; Ghai, 2007, pp.373-374).

The right to challenge executive acts in court had long existed under colonial rule. But it was after the enactment of the 1991 Bill of Rights Ordinance incorporating international human rights standards into domestic law, that ushered in an era of judicial review on grounds of constitutional rights well into Hong Kong's new constitutional order (Chen, 2006, pp.653-656). Article 39 of the Basic Law ensures the continued application of international human rights law in Hong Kong under Chinese rule. That opened a legal channel through which disfranchised ordinary people take part in addressing Hong Kong's democratic deficit. In Geraint Parry's words, it is to force the custodians of government to keep to their trust. While judicial review cases had averaged around 70 annually in the few years before return to Chinese sovereignty, its number soared steadily after July 1997. According to statistics, on average 100 to 120 judicial review cases reached the CFA every year in the decade between 1998 and 2008, after the peak of nearly 4000 cases plateaued in 2002 when right-of-abode litigations were at their height (C Chen, 2009, p.8). Today, "public interest litigation" by way of judicial review remains a popular idea among NGOs and social activists in their political manoeuvring with government (Kong, 2009, p.328).

That "the legitimacy of an unelected judiciary to strike down legislation properly enacted by the Legislature has never been questioned" (Chan, 2007, p.410) speaks volumes about the state of political community in Hong Kong. The result is what Yash Ghai perceptively described: "There is a tendency to convert political and social issues into legal issues, due to the weakness of the political structure and the relative strength of the legal system." (Ghai, 2000, p.8) It handed the conventionally politically aloof judiciary an unenviable task of having to confront the executive, and sometimes, the CPG (Ghai, 2000, pp.8-10). On the one hand, the court found itself grappling, with both activism and restraints (Chen, 2006, pp.629-630), a plethora of policy and moral issues concerning, for example, resources allocations⁷ and rights of sexual minorities⁸, that make for political deliberation both in depth and in width; and on the other, it must navigate, with great delicacy, between two inherently conflicting legal systems and political cultures (Weng, 2001, pp.69-70), when adjudicating over the extent of CPG's powers under the Basic Law as seen in the right-of-abode controversies since 1997.

Needless to say, there has been incremental pressure on the judiciary to delve in an expanding variety of political-dressed-as-legal matters. While it might well be a positive sign of civic engagement⁹, the court was certainly aware, as then Chief Justice Andrew Li has spoken in two consecutive annual judicial ceremonies, of the pitfalls of habitually bypassing the political process¹⁰. For one, the court can never provide a panacea for the various political, social, and economic problems society constantly faces. As Li reiterated in his 2006 speech, "It is only through the political process that a suitable compromise may be found, reconciling the conflicting interests and

considerations in question and balancing short term needs and long term goals. The responsibility for the proper functioning of the political process in the interests of the community rests with the Administration and the Legislature." In concurrence, Johannes Chan shared his concern that the continued "politicisation" of the judiciary might one day wreak havoc upon itself. It is because the judicial process does not always produce a result that finds favour with the litigants. Once court decisions fail to meet popular demands, its own integrity and independence, and even the rule of law, will likely suffer (Chan, 2007, pp.446-447).

Undesirable as the situation may be, it does indicate a substantial degree of trust which the court, arguably the only and remaining independent branch in Hong Kong government (Martin, 2004, p.475), commands. Of course, one should not idealise the judicial process, not only because it is not a panacea to all social ills, but also because it is also "never perfectly objective or completely constrained by pre-existing law, and judges are necessarily influenced by all kinds of extra-legal factors, of which 'political reality' is perhaps the most significant." (Wesley-Smith, 2003, p.172) Yet, for all its limitations, the court provides an alternative forum, besides the streets, for citizens to raise concerns and garner support over issues of public interest (Chen, 2009, p.72), and subject the executive to rigorous scrutiny through an open and reasoned process (Ghai, 2000, p.9). Since reunification, Hong Kong courts, in particular, the CFA, have articulated human rights and constitutional principles in a long line of cases that established the judiciary as the bastion of rule of law (most notably in the series of right-of-abode decisions), and in some cases, a springboard of social reforms (Bokhary, 2010, pp.228-232). The enfranchisement of non-indigenous villagers in electing village representatives in the New Territories (*Secretary for Justice v Chan Wah* (2000) 3 HKCFAR 459), and harmonising treatment between heterosexuals and homosexuals under the Crimes Ordinance (*Secretary for Justice v Yau Yuk Lung* (2007) 10 HKCFAR 335) on the grounds of equality, are but some of the prominent examples where the judicial process helped accomplish what government has not accomplished due to inertia or politics.

Paying the Price for Rule of Law

Its myriad achievements notwithstanding, the judicial process can be a double-edged sword for the rule of law. While it can strengthen support to the legal system, for example, as a result of a generally well-received court decision, it can also invite attack when it fails to deliver what people desired. No matter how proud one may be of Hong Kong's judicial independence and sophisticated civil society, it is when a principled court decision falls short of public demand that the people's commitment to the rule of law is put to the test (Tsang, 2001, p.12). A willingness to challenge government policies through the judicial process, therefore, is not conclusive as far as the degree of civic commitment to the rule of law is concerned. From a social activist's perspective, the law is itself "a medium and arena of social struggles" with its accompanying legal norms and rights discourse. In that sense, litigation is an important "institutional" channel for social movements to publicise their causes, mobilize support, and arouse discussions, in addition to street politics in the form of protests and assemblies (Chen,

2009, p.71). A thriving scene of public interest litigations, therefore, does not necessarily translate into a strong rule of law culture for society as a whole. At stake is whether society is prepared to pay the price for commitment to the rule of law, that is, to respect a decision made in accordance with sound legal principles, even though it means accepting results that one may not want to see, be it mere inconveniences or undesirable social or economic eventualities (Tsang, 2001, p.12).

In this light, how has Hong Kong fared so far? Despite its reputation as an exemplar of rule of law, over the past one and a half decades, society has experienced occasional lapses when its commitment to it was under challenge. The first test arrived as soon as the former colony returned to Chinese rule, when the right of abode for tens of thousands of Mainland-born children of Hong Kong permanent residents immediately became a question. Before 1997, their entries were subject to restrictions from both Mainland and Hong Kong authorities. Upon handover, foreseeing a possible influx of migrants across the border, the SAR government swiftly amended the Immigration Ordinance imposing restrictions on those children including the requirement of a "one-way permit" issued by Mainland authorities. Nevertheless, they counted on Art 24(2)(3) of the Basic Law which, in plain language, unconditionally confers permanent residency on Chinese nationals born outside the territory of Hong Kong Chinese permanent residents. A series of right of abode litigation ensued and culminated in the landmark case, *Ng Ka Ling*, in which the CFA in January 1999 declared unconstitutional the amended immigration provisions and upheld the claimants' right of abode.

That rattled the SAR government. Going on the offensive, it claimed that, on the basis of its own surveys undertaken immediately after the judgment, an estimated 1.67 million Mainlanders would be eligible to settle in Hong Kong at a whopping public cost of \$710 billion (plus an annual \$33 billion for related services) in the coming decade (Lo, 2008, p. 98) — an unbearable price for society. If that was not burdensome enough, then Secretary for Security, Regina Ip, reportedly suggested that such an influx of migrants might bring more crimes and plunge the SAR into chaos. The government's doomsday lyrics, controversial in themselves (Fung, 2004, pp.107-108), reverberated through the scores of pro-establishment press (Bernama, 29.4.1999), Beijing-loyalist Legislators, Executive Councilors, and to some extent, the Law Society (Lo, 2008, p. 101; Ghai, 2000, pp. 398-399), gradually drumming up public support as it prepared to make the case in seeking an NPCSC interpretation of the Basic Law so as to overturn CFA's decision.

Despite warnings from legal experts and pan-democratic Legislators (including two former Hong Kong members of the Basic Law Committee) on the likely damage to Hong Kong's judicial independence (Lo, 2008, p. 99)¹¹, the government's scare tactics apparently pulled the public on its side, as indicated by several public opinion polls conducted at the time. According to one commissioned by the Chinese University in early May 1999, 78.5% of respondents found the CFA judgment wrong because of its adverse effects to society (Wen, 2001). A month later, the same pollster found that 60.1% supported the government's move while 32.9% opposed it. When asked to choose from a list of factors the principal of which determines whether Mainland

children of Hong Kong parents should have the right of abode, the majority, 63.3%, chose "the collective interest of society", while only 12.2% picked "the legal viewpoint" and 11.7% "human rights." Other surveys conducted during the same period saw similar results, in which the general public appeared to care more about the immediate result than principle in the face of an imminent influx of Mainland migrants, and its nightmarish consequences (Wen, 2001). That provided explanation to a high level of public support to inviting Beijing's interference with the court decision (Cheung & Chen, 2004, p. 82; Ren, 2007, pp. 310-311).

The dynamics in public opinion in the right-of-abode saga also says something about the ethos of Hong Kong society, especially its juxtaposition with a colonial-turned-Chinese-SAR regime yet to find a firm footing (Ku, 2000, p.354). In a way, a strengthening notion of "Hong Kong Identity" (Chan et al., 1999, pp. 16-17), coupled with an embedded "hegemonic discourse of success" that features a tendency to disparage the inferior "others" — back then, new Mainland migrants (Ku, 2002, p.355), somehow played into the hands of a novice administration dogged by "a certain degree of idiosyncrasy, inconsistency, and bias in its interpretation of the meanings of rule of law, individual freedom, and democracy without showing a genuine commitment to such principles." (Ku, 2002, p.354) At the same time, steeped in the mantra of an "executive-led government" — a colonial inheritance which the CPG favours (Delisle & Lane, 2004, p.1681; Tai, 1999, pp.43-44), the SAR leadership bent on steering public discourse towards the ideas of stability, prosperity, and administrative efficiency. Although not undesirable in nature, the dominance of this pragmatist ideology has the effect of undermining alternative discourses such as democracy, especially when the latter entails unwelcome consequences (Ku, 2002, p. 357).

Such was in full display in the right-of-abode narrative in the aftermath of *Ng Ka Ling*. At its core were two seemingly competing discourses, in the form of "stable and prosperous governance" and "judicial autonomy (rule of law)". As spokesperson for the former, the government succeeded not only in stoking fear through the doomsday imaginations of Hong Kong public of an "invasion" of Mainlanders, but also in aggravating the deep-seated prejudice against this group by painting them as unruly and parasitic — in parallel to a present-day narrative where the same group is seen by many as "locusts" in their insatiable craze for the city's consumer goods and daily necessities (Chow, *WSJ*, 1 Feb 12). In all that, the ideology of "stable and prosperous governance", crafted as the key to Hong Kong's success, overshadowed that of the rule of law, and possibly reduced it to a means of resolving a social crisis (Ku, 2002, p.356). The resulting high support to the SAR's decision to invite NPCSC interference can be seen through this lens of "prosperity and stability over all else", in resonance with Deng Xiaoping's immortal thesis "the need for stability overwhelms everything else" (He, 2001, p.471-472) that undergirds PRC policies over all else, including that of Hong Kong (Cheung & Lee, *SCMP*, 18.3.13).

If that "inconvenient" judgment was a litmus test for Hong Kong's rule of law, this episode did not bode well in terms of the commitment of the public. For one, it revealed

the existence of an instrumentalist view of law that stresses "consequentiality", i.e. the outcome, over "appropriateness", i.e. compliance with legal norms and principles (Ng & Kuan, 2006, pp.34-35). This tendency is more obvious when adherence to the latter means advancing the rights of minority groups at the expense of the majority (Wen, 2001). In this connection, the mostly adverse response over foreign domestic helpers' claim for the right of abode under the Basic Law on grounds of equality becomes strikingly familiar. Soon after several applicants filed their judicial reviews in 2010, the government announced that approximately 125,000 foreign domestic helpers, mostly of Southeast Asian origins, have been living in Hong Kong for at least seven years, essentially hinting at the number of potential immigrants (Cheung & Chiu, SCMP, 15 Aug 12). Pro-establishment politicians waded in after the Court of First Instance ruled in an applicant's favour, in *Vallejos Evangeline Banao v Commissioner of Registration and Another* (30/09/2011 HCAL124/2010). Members of the Federation of Trade Unions (FTU) protested outside the High Court (Guo, *China Daily*, 27.10.11). The Democratic Alliance For the Betterment and Democracy of Hong Kong (DAB) went further, warning that unemployment rate would rise from 3.5% to 7% should all these people enter the job market at the same time, and skyrocketed to 10% if their families were included, with the estimated number of immigrant intake totalling 500,000. It followed that such an influx of people would incur huge burden on welfare, education, housing, and healthcare (Li, *China Daily*, 27.7.11). Suggestions of seeking Beijing's intervention were floated by a major employers' group (Drew, *NY Times*, 30.9.11), and alas, a legislator with a law background (Guo, *China Daily*, 27.10.11).

Public opinion, in *déjà vu*, was drawn to the government side, and sentiment flared up following an applicant's initial triumph. In a political twist, the Civic Party, a popular party founded by several senior lawyers, shouldered much of the blame. It suffered a sudden plunge in support as one of its founders was found to have represented the successful domestic helper, adding to the simmering antagonism against the party as a result of its earlier support to the applicant of another controversial judicial review case, that had briefly halted the construction of Hong Kong-Zhuhai-Macau Bridge and allegedly "wasted" tens of millions of public money (Chong, SCMP, 14.8.12). Sensations surrounding the domestic helpers' cases saw 10,000 people from a band of obscured groups take to the street, targeting the Civic Party for having "imposed the opinion of a minority onto the general public". (Li, *China Daily*, 10.10.11) That prompted the party into a damage-control mode, and its leaders to distance themselves from the lawsuits by reiterating the party's non-involvement in the matter (Civic Party, 9 Aug 11).

The list could go on, in which judicial reviews concerning matters of social significance were criticised as harming sectorial interest. *Lo Siu Lan v Hong Kong Housing Authority* [2005] 2 HKLRD 208 (CFA), a pensioner's eleventh-hour legal challenge against the initial public offering (IPO) of Link Reit in 2004, is another classic example. Widely anticipated as a lucrative investment opportunity, the ensuing disruption to Link Reit's public listing attracted overwhelming attacks targeting Madam Lo and her supporters. The unsuccessful challenge was later vindicated, as tenants

suffered skyrocketing rents in formerly government-owned commercial properties, now under the management of the eventually listed Link Reit trust¹². In this case and others, law was regarded as a means to an end and valued for its functionality instead of normality. This rather "positivist" view - that sees law as partly policy (Fiss, 1998, p.496) - contrasts a "naturalist" view whereby law is to be applied in accordance with "substantive standards of what justice demands of a sovereign" (Delisle & Lane, 2004, p.1469).

The tendency to see law's role as fulfilling majority expectations further illustrates why its double-edged-sword nature can undermine the rule of law, when judgments, however principled, fail to satisfy the "instrumental" demands of the public. If the rule of law is indeed a value Hong Kong people hold dear, it pays to articulate what a commitment to the rule of law really means. At this point, worth-pondering is what Mark Daly, lawyer representing the domestic helper litigants who lost their final appeal for the right of abode, said after the judgment: "While we respect the judgment we disagree with it", and it is "not a good reflection of the values we should be teaching youngsters and people in our society." (*BBC*, 25.3.13).

Fostering a Rule-of-law Culture Through Education

Law is fundamentally about values. Values interlock with culture. With Hong Kong's continued democratic deficit amid ever-growing civic activism, it is imperative to foster a rule-of-law culture. Facing an administration devoid of a popular mandate and a semi-democratic legislature with limited clout, powerless citizens can only look to the court to keep the government in check. However incompetent the judiciary may be in resolving society's myriad problems, it is constitutionally obliged to ensure that "the political agenda is not hijacked by the majority in parliament so as to prejudice the legitimate rights and interests of the minorities." (Chan, 2007, p.446) But as the court of law, there remains a limit as to how far it can go in addressing public expectations, especially when society becomes ever more pluralistic and interests ever more diverse.

In those right-of-abode cases, for example, be it concerning Mainland born children of Hong Kong permanent residents, Chinese nationals born in Hong Kong of Mainland parents, or foreign domestic helpers having lived in Hong Kong for seven years, there are genuine rights and interests on both sides of the disputes worthy of considering, however selfish or parochial some of them appear to be. Under the adversarial nature of the judicial process, one of the parties is bound to be disappointed. When this happens to be a party having a lot of interests under its belt, or whose claims the majority backs, an unfavourable judgment may in some cases backfire in the court of public opinion. That in turn puts the judiciary in a difficult position, to the point that its decision may be considered to be against public interest albeit sound from a legal perspective. What happened in the aftermath of *Ng Ka Ling* and in the lead up to the final appeal of the domestic helper's case perhaps show just that.

A vital element of the rule-of-law culture is an appreciation of the court's role in defending the constitution and people's rights, not assisting or confronting the

administration. On this account, Hong Kong people appear to be at a crossroads in endorsing one or the other. In a 1990 survey, respondents were asked to choose from three purposes of law: (1) to facilitate the rule of the government, (2) to protect citizens' rights, and (3) both. 1% of them chose (1), 22.8% chose (2), and an overwhelming 70% went for both (Kuan, 1992, p.163). Not a surprising outcome given Hong Kong people's pragmatism. The same questions asked by the same researcher five years later yielded a mixed result. This time, 2.9% chose (1), and a higher proportion, 43.9% chose (2), while 42.2% opted for both (Kuan, 1997, p.173). Interpreting the 1995 findings, Kuan Hsin-chi wrote that given the plurality of respondents sitting on the fence, they might not represent an "outright rejection of political expediency in favour of civil rights" (Kuan, 1997, p.173). More revealing was what Kuan said of his 1990 findings: "when citizens' rights are juxtaposed with the need for administrative convenience in simple terms, the people of Hong Kong would definitely go for the former. It is only when adversary implications of 'protecting citizens' rights' in terms of public order become obvious, that the people of Hong Kong have second thoughts." (Kuan, 1992, p.164) Looking back at a decade of right-of-abode controversies, his comment encapsulated Hong Kong people's ambivalence towards the rule of law and the rule of expediency.

What is the court's role in defending rule of law in the face of expedient demands? In a famous footnote in constitutional law, the U.S. Supreme Court stated the value of judicial review in reining in the power of the majority. In *U.S. v Carolene Products Co* 304 US 144, 152 n. 4 and accompanying text (1938) (Stone J.), said that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities". What Hong Kong faces nowadays is more than inequality of the minorities. At issue is a perpetual imbalance of political powers between the elite and the citizenry. At the core is a chief executive election that excludes the majority of the population; a legislature skewed towards the establishment under the auspices of functional constituencies that prevents those popularly elected from holding any sway. While it is understandable then for people to treat the court as the last bastion of rights protection, it is important for society to reach a consensus over "the value of constitutional procedures" and their proper functioning, so that judicial review would be seen as it is. In any case, the judicial process is not the proxy of the legislature and incapable of resolving problems the political process could not.

Culture evolves over time. In the process, education is the key to instilling ideas and nurturing consciousness. While Hong Kong people have always been proud of this defining feature of their society, the articulation of the idea of rule of law is a totally different matter. Its being the exclusive realm of judges, legal practitioners, law students, and politicians is an untenable situation in the face of an increasingly sophisticated and rights-conscious society (Kuan, 2005, p.40). In this regard, the government has an undeniable duty in promoting the rule of law in schools and the wider community. Yet, its lack of commitment in strengthening human rights awareness in its three decades of promoting civic education mirrors the meagre attention given to that of rule of law. (Chong, Kwok & Law, 2010, pp.11-15) An overhaul of the secondary school

curriculum in 2009, that introduced Liberal Studies as a mandatory subject to broaden student learning including legal knowledge, could have been an educational opportunity on the rule of law for all. Regrettably, research found that many Liberal Studies teachers lacked sufficient understanding of, or even held biased views against the rule of law. (Centre for Governance & Citizenship, HKIED, 2011, Ch. 5; Ho, *SCMP*, 12.2.12) Under this circumstance, what becomes of their students is a topic that educators and all concerned parties should address post haste. A vibrant civil society powered by the growing league of grassroots and student-led organizations will no doubt play an active role in nurturing a culture of rule of law and rights discourse.

Social scientists have long acknowledged the "ideological" function of civil society (Ma, 2008, p.156). As a "counter-image of the state", a strong civil society "alters the balance of power between the state and society, disciplines and monitors the state, redefines the rules of the political game along democratic lines, and acts as an intermediary between the state and society." (Ma, 2008, p.157). Since emerging in the 1970s, civil society organizations in Hong Kong have been characterised as being largely *ad hoc*, topical, and apolitical (Ma, 2008, pp.161,163). Detachment from mainstream politics, however, helped preserve their autonomy, flexibility, and after 1997, immunity from state encroachment (Ma, 2008, p.167). Their *ad hoc* nature broadened participation from all walks of life, as seen from the mass protest against national security legislation on 1 July 2003, to the city-wide campaign against national education in 2012. United by an overriding concern, for example, civil liberties in both cases, the respective movements succeeded in mobilising those who would normally shy away from anything political. While spontaneity may mean limited staying powers, both campaigns, a decade apart, played an educational role in enlightening the public by encouraging discourse and countering official narratives.

The 2012 campaign, in particular, revealed Hong Kong's civic strength. Remarkable was how an initial alliance of anonymous secondary school students and concerning parents catapulted into an united societal front, leading to an abrupt government compromise (Lau, Nip & Wan, *SCMP*, 9 Sep 12). Instead of fading away, members of the spearheading students' group, *Scholarism*, remain active, ensuring the staying powers of their cause while pressing for other social and political reforms (Lau, *SCMP*, 30.12.12). In many ways, this anti-national education movement is a collective educational experience for all. Incessant media coverage and Internet communications spawned intensive and extensive public discourse over the subject matter. Students, teachers, parents, NGOs, religious groups, novice and veteran social activists lobbied alongside concerning citizens, making it a city-wide movement. Their accomplishment went beyond an official back-down. More profound was the resulting sense of vigilance over government's future endeavours, as its insidious efforts in steering civic education towards a nationalistic course over the past 15 years were thrown into the spotlight (Tse, 2007, pp.163-166).

Likewise, civil society serves an important "ideological function" in fostering a rule-of-law culture in Hong Kong (Ma, 2008, pp.156,175; Tse, 2007, p.162). Standing between society and the state, it plays an important role in disseminating alternative

discourses other than the propaganda of "prosperity over all else". Schools, families, communities and civil society organizations are places where such education begins. Of course, every free-thinking citizen is allowed to reject the morals of rule of law and embrace those of expediency; "but his education should be such that, if he does so, he does it by deliberate choice, with awareness of the consequence for himself and others, and not by sluggish self-deception." (Lasswell & McDougal, 1943, p.212)

Conclusion

One may have many reasons to worry about the "ferocious storm" hanging over Hong Kong's rule of law. Its maturing civil society and civic consciousness provide other reasons for one to stay positive. From NPCSC's first Basic Law interpretation in 1999, to 2003's mass protest against national security legislation, and the all-out movement against national education in 2012, Hong Kong people have weathered one storm after another; their quest for rule of law ever stronger. At times, they might lose "their bearings" when political expediency got the better of them (Cheung & Chen, 2004, p.82). Yet, they will keep defending this defining trait of Hong Kong. There is a saying: "the price of freedom is constant vigilance" (Luk, *Standard*, 7.1.13). For Hong Kong, survival of the rule of law demands both constant vigilance and a rule-of-law culture.

Barry Hsu wrote in 1992: "The successful operation and continuance of the Rule of Law in Hong Kong depends on the extent to which the Chinese population struggles for its rights both before and after the People's Republic of China resumes sovereignty over Hong Kong." (Hsu, 1992, p.54). Three decades on, the rule of law, for all the ups and downs, twists and turns, lives on; and it will, should society refuse to let go of Hong Kong's enduring source of success, that is, "a collective commitment of the people to the rule of law" (Bokhary, 2012, p.374).

Notes

1. Alan Hoo SC has since "clarified" his stance. See Colleen Lee & Lauren Ho, "Basic Law Expert Alan Hoo Clarifies View on Chinese-only Judges", *SCMP* (13 Nov 12).
2. Articles 82 and 92 of the Basic Law authorize the appointment of overseas judges to the CFA and other levels of court. Nationality requirements only apply to the Chief Justice of the CFA and the Chief Judge of the High Court under Art 90. See Rimsky Yuen, SC's statement on 6 November 2012, available at <http://www.info.gov.hk/gia/general/201211/06/P201211060506.htm>.
3. Speech at the Dedication Ceremony for Cheng Yu Tung Tower at the University of Hong Kong, 8 Nov 12. Available at Http://www.cpao.hku.hk/media/121108_LiSpeech_E.pdf See para 5.
4. "Maintain Prosperity and Stability in Hong Kong (Oct 3, 1984)" 80-84, 80-81 in

Selected Works of Deng Xiaoping Vol III (1982-1992)(Beijing: Foreign Languages Press, 1994).

5. For an updated and comprehensive definition of the rule of law, see Mark David Agrast, Juan Carlos Botero, Joel Martinez, Alejandro Ponce & Christine S. Pratt, *WJP Rule of Law Index@2012-1013* (Washington D.C.: The World Justice Project); http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf.
6. "Administration and Constitutional System" features in the penultimate chapter (before Conclusion) of the Chief Executive's 2013 Policy Address, comprising only two short paragraphs with a vague promise of initiating public consultations and constitutional procedures over electoral reform "at an appropriate juncture". See paras. 194-195 of the 2013 Policy Address, available at <http://www.policyaddress.gov.hk/2013/eng/p194.html>
7. *Ho Choi Wan v Hong Kong Housing Authority* (2005) 4 HKLRD 706.
8. *Leung T.C. William Roy v Secretary of Justice* (2006) 4 HKLRD 211.
9. *Building Trust Through Civic Engagement* (New York: United Nations, 2008); <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan028357.pdf>
10. The Chief Justice's Speeches at the Ceremonial Opening of the Legal Years 2005 And 2006 are available at <http://www.info.gov.hk/gia/general/200502/17/02170118.htm> ; <http://www.info.gov.hk/gia/general/200601/09/P200601090137.htm>.
11. For an official account of the heated discussions in the Legislature, see *Council Meeting (Hansard)* 19 May 99. Available at <http://www.legco.gov.hk/yr98-99/english/counmtg/hansard/990519fe.htm>.
12. Alex Lo, "Ugly Side of the Link Reit", *SCMP* (11 Aug 12).

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The Ombudsman and Stakeholder Engagement in Hong Kong : An Initial Assessment

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Abstract

This paper examines the practice of stakeholder engagement in the work of The Ombudsman Hong Kong since Ombudsman Alan Lai formally adopted it as an official policy. Specifically it focuses on the two major initiatives of topical seminars and direct investigation. It was found that topical seminars are organized to engage Justices of the Peace and his advisors with a view to cultivate among them a stronger sense of identity to serve as a bridge between The Ombudsman and the general public. As for direct investigation, it was re-invented to leverage individual stakeholders' expertise and secure their input in the process in an interactive manner with the objective of improving the validity of the findings, increasing the acceptance of the recommendations, and enhancing the legitimacy of the investigation report. These two initiatives have achieved initial success as evidenced by their ability to engage the targeted stakeholder groups and to impact the Office's operation and decisions. However, stakeholder engagement in the work of The Ombudsman is still at an early stage of development and awaiting institutionalization and internalization. An engagement strategy with strong institutional support is critical in order to maintain the momentum and to introduce more good practices for enabling individual stakeholders to engage in the work of the Office at both the operational and policy levels, thereby shaping its policy outcomes and service quality.

Introduction

What distinguishes Mr. Alan Lai, The Ombudsman of Hong Kong from his three predecessors is his official adoption of stakeholder engagement as a progressive approach to strengthening the institution of Ombudsman in the redress of grievances and the addressing of maladministration issues in the public sector (Lai, 2011). Indeed, there has been a growing trend of involving a wider range of stakeholders in the work of The Ombudsman, emerging under Ombudsman Andrew So and becoming increasingly visible under Ombudsman Alice Tai, with a view to improving the quality of service. Among these efforts were the introduction of the Justice of the Peace Assistance Scheme, the organization of outreach talks for government and public organizations, and meetings with legislative councilors. These initiatives and the growing influence of civil society in the process of democratization provided a proper strategic orientation and a solid institutional foundation for Ombudsman Alan Lai to take his Office formally out of the bureaucratic tradition of agency domination through the practice of stakeholder engagement.

"Stakeholder engagement" in the public sector has been strongly advocated under the notion of new governance (Bringham, Natatchi and O'Leary, 2005). It has increasingly been seen as a proactive mechanism to improve the quality and legitimacy of the work of government, including management, policy process, and service delivery. The concept has broadened the narrow horizon of citizen and community participation to allow the active involvement and interactions of a full range of stakeholders (Rowly, 2011; Thomas and Poister, 2009).

The progressive idea of stakeholder engagement as a service enhancement mechanism in public sector management has been recognized by Lai and his senior officers. Its limited practices owes much to the restriction of the secrecy provision in The Ombudsman Ordinance which has prevented him and his office from actively engaging stakeholders at both policy and operation levels. The propelling force for his determination to break this institutional barrier came from a recent study commissioned by the Asian Ombudsman Association (AOA) to explore the possible use of stakeholder engagement as an innovative policy instrument for building the capacity of Asian ombudsman institutions to "proactively redress administrative grievances of the general public, improve public services and management, and enhance the accountability of the government" (Lo *et al.*, 2011). This study has enabled him to understand the emerging consensus among members on the desirability of stakeholder engagement in the work of ombudsman institutions, learn some of the good practices of stakeholder engagement already undertaken, obtain empirical support for its effectiveness, and most important of all, realize the growing demands from local stakeholder groups for greater engagement in his work.

Noticing that stakeholder engagement has become increasingly popular in public sector management, he sees it as functionally important for the continuous improvement of the Office's efficiency and quality of services. From his perspective, regular communication with individual stakeholders would enable him to gauge the pulse of community, to understand their demands, and to properly incorporate their opinions into The Ombudsman's works. He was aware that engagement activities undertaken by The Ombudsman's Office in the past were barely adequate and mostly served public relations purposes. This approach was ineffective in terms of strengthening interactions between his Office and the various stakeholder groups, increasing their participation in Ombudsman activities for promoting mutual trust, and forging a close and constructive working relationship. His recognition of the merit of reaching out to stakeholders has convinced him that a stakeholder engagement approach has to be gradually phased in through the adoption of a more liberal interpretation of the confidentiality and privacy requirements.

This article examines and assesses the organized effort of The Ombudsman's Office with regard to stakeholder engagement for improving the service quality of redressing administrative complaints. It begins with a review of the concept of stakeholder engagement and its practice in the public sector. It then identifies major stakeholder engagement initiatives undertaken by The Ombudsman's Office in the last two decades

and summarizes individual stakeholders' critical opinions before analyzing two recent initiatives in stakeholder engagement. It will conclude by assessing the achievements and limitations of the Office's engagement effort.

A Stakeholder Perspective on Ombudsman Institutions

Originating in business management, stakeholder engagement has become increasingly important in governments and public organizations as they seek to improve their quality of decision making and services (Ansell and Gash, 2008; Bingham and Nabatchi, 2005; Edelenbos and Klijn, 2005; Bovaird, 2005). "Stakeholder" refers to "any group or individual who can affect or is affected by the achievement of the organization's objectives (Freeman 1984: 46)." In this study, "organizations" will refer to ombudsman institutions. Stakeholder engagement in ombudsman institutions can be defined as the active involvement of individual stakeholders in the work of the Ombudsman to deliver the core services of redressing administrative grievances and improving public administration that lead to an enhancement of government accountability. The objective of stakeholder engagement is to leverage the resources and expertise of individual stakeholders to improve the processes within and enhance the performance of ombudsman institutions.

The fundamental question is who or what are the major stakeholder groups of ombudsman institutions? Generally speaking, there are various ways to identify stakeholders, based on the agency, behavioral, institutional, resource dependence, and transaction cost theories (Mitchell 1997). In regard to the institution of ombudsman, its stakeholder map should be similar to that of a government and its functional authorities (Edelenbos and Klijn, 2005; Weible, 2007). Conceptually, stakeholders can be classified into two groups. The primary group consists of government and public organizations, the general public, and nongovernment organizations and community groups. These stakeholders are directly affected by the core functions of ombudsman institutions, acting either as complainants or as those about whom complaints are received. The secondary group consists of media, assembly representatives, and political parties. These stakeholders have a considerable interest in keeping a close eye on ombudsman institutions and in seeking improvement in these institutions, mostly on behalf of the primary group but also for the wider public interest in social justice. These two apparently distinct stakeholder groups are in fact interconnected via various types of relationships. A more sophisticated perspective should take contextual variations into consideration when figuring out the stakeholder map of an ombudsman institution, and should also assess the stakeholders' balance of power. Regime types, administrative ethos, and political cultures are among the most important institutional factors.

Following the principle of "Who or What Really Counts" is how to engage individual stakeholder groups in the work of an ombudsman. The impact and contribution of stakeholder engagement depends very much on the depth and quality of the engagement arrangements. The engagement approaches that are open to ombudsman institutions range from inactive, reactive, and proactive to interactive

(Crane and Matten, 2007). The inactive approach, which ignores and appears apathetic to stakeholder concerns, is now seldom practiced. The reactive approach, a passive way to act on stakeholder concerns under pressure, is the typical mode of reactive behavior in bureaucratic and public organizations. The proactive approach, which anticipates stakeholder concerns and takes actions to address them, is more commonly adopted today. Finally, the interactive approach, which actively engages with stakeholders in an ongoing relationship of mutual respect, openness, and trust, is the ideal form of the new public management. For instance, many local governments in the Netherlands have experimented with interactive decision making to improve public policy making by adopting the information and solutions offered by various stakeholders (Edelenbos and Klijn, 2006).

In addition, there are different levels of involvement for each approach, including the operational, policy, and systemic levels. The content of engagement ranges from words to deeds in terms of quality and depth; from publicity and community relations (mostly one-way), communication (two-way), and dialogue (interactive) to collaboration, partnership, and coproduction. In a nutshell, the conceptual purpose of engagement is to inform, involve, and empower individual stakeholders in the work of ombudsman institutions in order to build or enhance their administrative capacity for improving service delivery. The engagement concept in capacity building is summarized in Table 1:

Table 1 The Engagement Concept in Capacity Building

Act of engagement	Inform	Involve	Empower
Content of engagement	Communication	Participation	Action
Objective of engagement	Basis for engagement	Exchange of viewpoints	Problem-solving

The last but not the least issue in stakeholder engagement concerns the proper assessment of its effectiveness. Measuring the performance and outcomes of stakeholder engagement is challenging and daunting in both the public and business sectors. There are two theoretical perspectives on the effectiveness of public participation — one considers that there is a trade-off between democratic and administrative decision making and the other advocates the contribution of citizen engagement to more efficient and effective public programmes (Neshkova and Guo, 2012). The crux of the matter is the lack of a set of commonly accepted assessment criteria. A practical way to measure the impact is to assess the performance of key stakeholder programmes adopted or major actions taken. Based on the current literature on performance assessments in the public sector, assessments can be made of improvements in ombudsman-public communications, the promotion of ombudsman-public relations, The Ombudsman's image, the promotion of mutual trust, the degree of stakeholder involvement, and the ability to leverage stakeholder inputs (Lo and Cheuk,

2004).

Specific institutional arrangements should be adopted for effective stakeholder engagement. Nevertheless, research on proper engagement arrangements and on best practices at a generic level is still developing, and there is little relating specifically to ombudsman institutions. One may conceptualize engagement arrangements in terms of their degree of formality (formal or informal) and regularity (regular or ad hoc). In general, a formal arrangement organized on a regular basis is more desirable than, and superior to, an informal arrangement on an ad hoc basis.

Indeed, there has been a growing tendency of practicing stakeholder engagement among Ombudsman institutions in Asia. A recent study (Lo, et al., 2011) has revealed an emerging consensus among members of the Asian Ombudsman Association on the desirability of stakeholder engagement in the works of ombudsman institutions. It is increasingly being recognized as a policy instrument for capacity building for performance enhancement and service quality improvement. Common practices adopted include periodic meetings and conferences on administrative complaints, and involving stakeholders in the process of investigating administrative complaints. In the process; some best practices have already been developed to progressively engage both primary and secondary stakeholder groups. However a strong message was conveyed that there are no best forms of stakeholder engagement. Ombudsman institutions' shortage of resources and inadequate power, stakeholders' limited knowledge of engagement, and the lack of trust between the Ombudsman institution and individual stakeholder groups have been identified as the major institutional factors preventing them from actively pursuing stakeholder engagement (Lo et. al., 2011).

Accordingly, The Office of The Ombudsman Hong Kong should be in an advantageous position to employ stakeholder engagement for capacity enhancement, as it was found that an institutional environment with a higher degree of democracy and greater economic development is more conducive to the practice of stakeholder engagement (Lo et. al., 2011).

Ombudsman and Stakeholder Engagement in Hong Kong: Past Practices and Stakeholder Opinions

Although there was no clear policy statement making stakeholder engagement an orientation until 2011, The Office of The Ombudsman has in the last two decades increasingly acted in an unbureaucratic manner to connect itself with a variety of stakeholders (Cheung, 2009; Wong and Yuen, 2009). The amendment of the Commissioner for Administrative Complaints Ordinance in 1994, which replaced the referral system with a direct complaints arrangement for the public, and which empowered direct investigation, has opened the way for The Ombudsman's Office to be active in framing its relationship with different stakeholder groups.

Past Practices under Ombudsmen Andrew So and Alice Tai

Probably due to his political career as a legislative councilor, Andrew So displayed an unbureaucratic style of ombudsmanship from the beginning of his tenure. On the one hand, he endeavored to build a popular image for himself to make his Ombudsman's Office more approachable. Thus, the focus of the publicity effort at that time was on familiarizing the public with the role of The Ombudsman and the services provided by the Office. In addition, he extended his reach to society by including nonofficial justices of the peace in the Justices of the Peace Assistance Scheme. On the other hand, he adopted a cooperative approach when dealing with government departments subject to complaints, in order to secure their support for investigations and make them less resistant to his recommendations. The introduction of The Ombudsman Awards for acknowledging public organizations' positive handling of complaints was a friendly gesture that helped to achieve this purpose (Lo, et al., 2011).

In contrast, Alice Tai ran the office with an administrative style that emphasized the professional handling of complaints in terms of processing time and acceptance of recommended improvement measures, that is, the core value of "upholding professionalism in the performance of their functions" (Hong Kong Ombudsman). This results-oriented approach, built around the Performance Pledge adopted by The Office of The Ombudsman, made communication with various stakeholders a major effort of the Office. To promote a positive culture for processing complaints, the resource center was used and publications were prepared to enable the public to develop a proper understanding of the role and work of The Ombudsman. To cultivate a positive service culture, outreach talks were delivered to government departments and public organizations to clearly convey to them the key message that improvement in the quality of public services is the essence of redressing grievances concerning maladministration. As an encouragement, The Ombudsman Awards were extended in 2000 to acknowledge the contribution of individual public officers to better services, and then to the professional performance of those handling complaints. As for the secondary stakeholders, seminars about the mission of the office were conducted for district councilors, meetings were arranged with legislative councilors to obtain their views on the operations and the future development of The Ombudsman, and visits to government departments and public organizations were organized for justices of the peace to enable them to observe administrative realities at close quarters (Lo, et al., 2011).

We may consider that the involvement of all stakeholders in the work of The Ombudsman in these two periods was quite restricted in scope, as The Ombudsman-stakeholder relationship was mainly promoted under the bureaucratic mindset of publicity and external relations. Thus there remained much scope for The Ombudsman to be more aggressive in stakeholder engagement through the formulation of a coherent strategy for stakeholders and through the development of major programmes to

leverage the resources of individual stakeholders more effectively for the enhancement of The Ombudsman's work.

Opinions of Stakeholders on Engagement with the Work of The Ombudsman

How did individual stakeholder groups see these engagement practices? Our interviews of major stakeholders of The Ombudsman in 2010 indicated that there was a widespread impression of a lack of in-depth stakeholder engagement and a strong consensus on the desirability and the benefit of active stakeholder engagement in the work of The Ombudsman and his office. Interviewees in different stakeholder groups had indeed addressed their respective grievances. Citizens saw the limited contact between The Ombudsman and the general public. The community groups found the engagement to be a one-off without much continuity. Both the legal advisors and JPs were critical of the one-way engagement without a clear purpose; the media were unhappy with the limited reach to The Ombudsman and his leading officials. The legislative councilors complained that there were limited opportunities to conduct in-depth conversation with The Ombudsman. Finally the government departments and public organizations expressed that the predominance of case-based and formal approach may not be conducive to promoting mutual understanding.

Specifically, stakeholders were different in their purpose of engagement. The sense of purpose was particular strong and clear among the two primary stakeholders. The governments and public organizations endeavored to turn The Ombudsman from being biased against them in handling the complaints, to understanding their operational constraints, and co-producing the recommendations for improvement. As for the general public, they took the perspective of the complainants to obtain favorable verdicts in their cases and get their grievances addressed in the engagement process. All the stakeholders in the secondary groups saw their possible contribution to The Ombudsman in the engagement: the media can be a bridge for enabling The Ombudsman to engage the public; the community groups can expand their relationship network in a way that is helpful to achieve their causes; the Legislative Council can be the ally of The Ombudsman in monitoring the improvement of public management; and the legal advisors and JPs can provide their expertise to strengthen the capacity of The Ombudsman. In particular, they can all serve as a source of input for The Ombudsman in planning for direct investigation. All these suggest that there is no "one-size-fits all" for stakeholder engagement strategy and practice.

On the whole, the interviews showed that individual stakeholders were not aggressive in pushing for their engagement, indicating that stakeholder engagement was a relatively new concept to them at that time. Only the government departments and public organizations had a clearer idea of cooperative partnership and coproduction in stakeholder engagement, with remaining stakeholder groups taking communication and constructive working relations as the frame of reference.

Stakeholder Engagement under Ombudsman Lai

How far has Ombudsman Alan Lai gone beyond the narrow horizon of public relations to practice engagement in interacting with his stakeholders since his assumption of office in 2009? There was a noticeable continuation of the pragmatic strategic direction initially, as Ombudsman Alan Lai shared a similar career path and comparable administrative experiences with his immediate predecessor. As indicated by the Office, "stakeholder engagement practices have evolved over the years in the natural course of delivering" their service. With predominantly a get-things-done mindset, all the efforts of stakeholder engagement are geared to enabling them to "fulfill their role and mission in improving public administration". Major stakeholder engagement programmes and initiatives for individual stakeholder groups were listed as follows (Lo, et al., 2011):

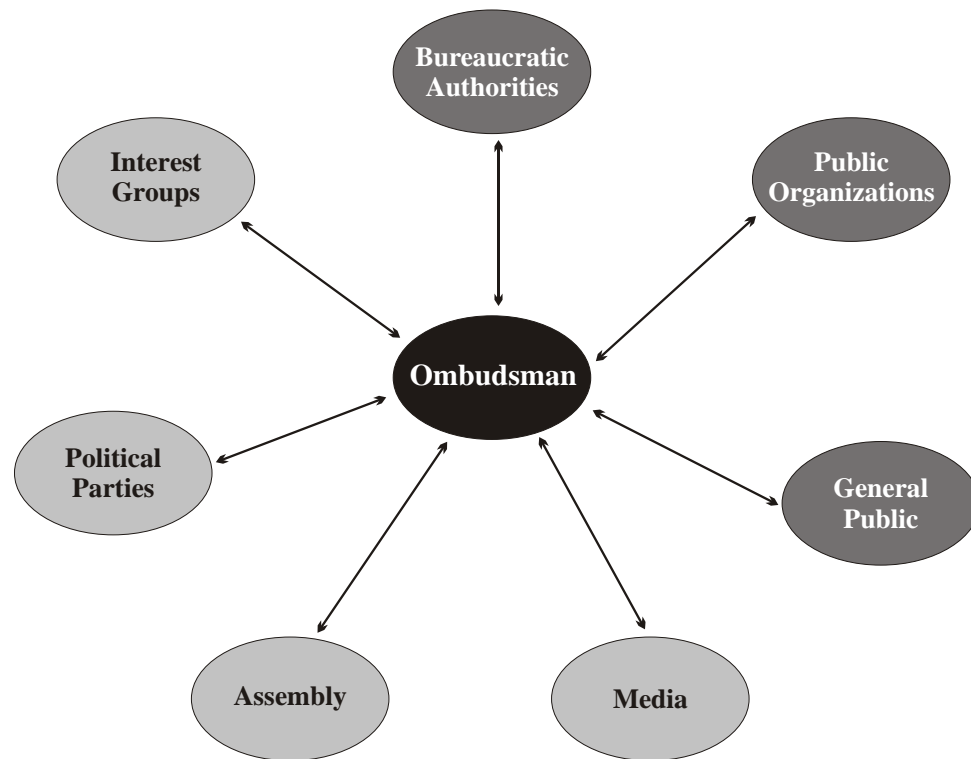
1. *General public*: The Client Opinion Survey (COS) has been periodically administered among citizens that have lodged complaints to The Ombudsman, in order to seek their views on the quality of services provided. The survey was first introduced in 1998, with the second and third rounds conducted in 2001 and 2004 respectively. The latest was completed in June 2010.
2. *Related Government departments / public bodies*: Meetings are held from time to time with their directorates on general issues rather than individual complaint cases to enhance their operations and handling of public complaints and to listen to their feedback on The Ombudsman's investigations.
3. *People / organizations in the same sector(s) as the complainants or related sectors*: Consultations with such people / organizations are conducted on an as-needed basis in order to help The Ombudsman understand cases under investigation.
4. *Concern groups*: Consultations with individual concern groups are conducted to seek their views and opinions on cases under investigation, allowing The Ombudsman to get a better understanding.
5. *Politicians and legislators*: Regular meetings are held with Legislative Councillors and Chairpersons of District Councils to exchange views on The Ombudsman's work and to gain input for possible improvements.
6. *Honorary professional advisers*: Consultations are organized where necessary to seek their advice for the improvement of the work of The Ombudsman or for a better understanding of specific cases under investigation, particularly those involving legal issues.
7. *Justices of the Peace*: Visits of government departments and public

organizations are arranged periodically to promote understanding of the work of such departments / organizations. Such occasions also allow The Ombudsman to listen to JP's feedback on his/her work.

8. *The media:* Press conferences, press releases, interviews and broadcasts are organized regularly to publish investigation reports and promote The Ombudsman's work.

On this basis, the stakeholder map of The Ombudsman Office can be presented as follows:

Figure 1 A stakeholder Map of Ombudsman



Accordingly, government departments, public organizations and the complainants are their principal stakeholders, with all others secondary.

New Initiatives of Stakeholder Engagement

Following the formal adoption of an explicit stakeholder engagement policy, two major new initiatives were introduced, namely, the use of topical seminars as a stakeholder engagement avenue and the adoption of a stakeholder approach to direct investigation.

Topical Seminars as an Avenue of Stakeholder Engagement

Seminars on topical issues were selected as The Ombudsman's initial proactive effort as an avenue to reach the stakeholders. They basically consist of private sessions with JPs and The Ombudsman's advisers selected as the major targeted stakeholder groups to engage in this first wave of engagement initiative. The topical seminar serves as a platform for The Ombudsman to bring representatives of government departments and public organizations concerned to brief the advisers and JPs on a specific topic of administrative complaint, which in turn forms the basis for all participants to exchange views and share ideas on how the problem could be effectively tackled. Specifically, since most JPs and advisers are opinion leaders, they can bring public opinions to these seminars and at the same time, feed the messages and standpoints of The Ombudsman and government departments/public organizations concerned back to the public. The topic selected for a seminar is usually a widespread, chronic, or complex administrative problem that has been a frequent subject of complaint and into which The Ombudsman's Office has already conducted investigation or inquiries. Professionals or technical experts will be invited to address the technicalities of the issue presented in order to enable the lay audience to get a clear understanding of the crux of the problem. Each seminar normally lasts for two and a half hours, with a 30-minute questions and answers session arranged to ensure ample time for stakeholder interactions. A lunch is usually organized after the seminar to allow participants to carry on the discussion in a less formal way, at the same time, The Ombudsman can establish closer contact with advisers and JPs to strengthen their sense of identity and engagement. Since its introduction in 2010, this topical seminar has become an annual stakeholder engagement practice of The Ombudsman.

Case One: Seminar on Water Seepage

The first of such stakeholder engagement seminars was held on 12 December 2010 from 9:30am to 12:00pm, signaling the launch of this progressive approach. The topic of water seepage was selected since it was a widespread problem that had been affecting many households in Hong Kong for a long time. Indeed it had been one of the hottest issues in administrative complaints and a relatively complex grievance to resolve. Over 60 participants from the stakeholder groups of JPs and advisers attended the seminar, which was chaired by an Assistant Ombudsman. The opening remark was delivered by The Ombudsman, who highlighted the Office's decision to shift from passive to active stakeholder engagement with the seminar as an arrangement for promoting stakeholder communications and interactions to enhance the quality of The Ombudsman's work.

The seminar started with a briefing by a Chief Investigation Officer of The Ombudsman's Office on the Office's findings concerning the causes of water seepage complaints, the complexity of identifying the sources of water seepage, and the reasons

for time-consuming actions by the FHD-BD Joint Office (JO), which was especially established in 2006 to handle these complaints. He ended his presentation by advancing The Ombudsman's judgement that it is JO's duty to employ a proper testing method to identify the source of water seepage and the party liable to fix the seepage problem concerned.

It was followed by the joint presentation from two Assistant Directors (ADs) of the FHD and BD. They began their part with an introduction to the JO, including the background for its establishment, functions, structure, operations, and power in handling water seepage complaints. The three stage investigation procedure for handling water seepage complaints was then described, followed by identifying difficulties that the JO has encountered that constituted the grounds for administrative grievances: the number of complaint cases had increased at a rate that had already exceeded JO's work capacity, the loss of JO's contracted workers had been quite serious, the monitoring of contractors for performing water seepage detection had not been properly conducted, and the source of water seepage had not been identified by current detection methods in a significant number of the cases handled. On this basis, they expressed their full understanding of public expectations of JO in handling the complaints, namely, the duration of the investigation should be reduced, high tech should be used for detecting water seepage, the repair order to stop the water seepage should be issued to the property owner in a timely fashion, the investigation report should be provided to the complainants, the origin of the water seepage should be identified even if the seepage has appeared to have stopped, the duty to identify the origin of water seepage rests with the government, and the investigation should be conveniently arranged. They concluded their presentation by sharing with the audience the JO's improvements in performance: the number of cases handled had consistently increased every year and the non-detection rate had been greatly reduced from 86% prior to JO's establishment to currently 15%.

The Ombudsman's Office invited two guest speakers among the JPs and advisers to supplement these official presentations. One was a surveyor who addressed the audience regarding the technical dimensions of water seepage and the proper methods for detecting its origin. The other was a lawyer who was the Chairman of a working committee of mediation under the Secretary of Justice, to talk about the possible use of mediation as an alternative but effective way to resolve conflicts of water seepage between parties concerned in order fix the problem more rapidly.

In the Q&A part, the participants showed their interest in the proper handling of the water seepage complaints by asking questions, expressing their concerns, and making suggestions, while the speakers, particularly the two ADs, endeavored to answer their questions, clarify their doubts, and assess the feasibility of all suggested actions. For example, one JP asked the JO to give complainants more information about the handling process by a better use of the progress monitoring system (PMS), and the two

ADs indicated that they would consider the greater use of mediation for conflict settlement in water seepage cases. This part overran its allotted time and the Assistant Ombudsman had to step in to close the enthusiastic discussion.

The seminar ended with a concluding remark from The Ombudsman who pointed out that the main purpose of this seminar was not for problem-solving, that is, the redress of water seepage grievances. It served more as a platform for representatives from the FEHD and BD to clarify doubts and answer questions, the professional and specialist to provide their expert opinions, and participants to raise questions and make suggestions. At the same time, he expressed his disappointment that the government has not accepted his suggestion to adopt the Singaporean model for solving water seepage conflicts. Finally, he summed up the seminar with a positive assessment of this stakeholder engagement session. A significant number of JPs and advisers stayed behind for lunch and continued their conversations with The Ombudsman and his officers, the government officials, and the two guest speakers concerning how grievances on water seepage could be effectively redressed.

Cases Two and Three: Seminars on "Street Obstruction by Shops and Food Establishments" and "Special Grounds for Public Rental Housing/Rehousing"

The second seminar was organized on November 25, 2011, while the third took place on October 2012, indicating the regularization of this practice as an annual event. The topics of "Street Obstruction by Shops and Food Establishments" and "Special Grounds for Public Rental Housing/Rehousing", were picked for the 2011 and 2012 events respectively. In the one on street obstruction, representatives from the Home Affairs Department (HAD), Food and Environmental Hygiene Department (FEHD), and Land Department (Lands D) were invited to update the progress of their work and share their experiences in handling this problem to redress related complaints with The Ombudsman's advisers and JPs. It was chaired by an Assistant Ombudsman. In his welcoming remarks, The Ombudsman reiterated the importance of engaging stakeholders in his Office's work, as well as the good value of the seminar in enabling JPs and advisers to gain a stronger sense of involvement and to seek their input on specific administrative complaints. In the latter seminar on rehousing, to enable participants to gain a sufficient understanding of the topic and its complexity involved, the Social Welfare Department, the Housing Department and the Hospital Authority were invited to send their representatives to clarify their individual roles, the division of work, and their operations in considering cases related to housing allocation. Chairing the seminar was an Assistant Ombudsman, who briefly introduced The Ombudsman's jurisdiction, investigation power and the process of handling complaints and redressing grievances before giving the audience an update of the work of The Office of The Ombudsman. Before that, The Ombudsman in his welcoming remarks stated that if the criteria and procedures were widely understood and with more community-level assistance, applications for housing and rehousing could be handled better. He also

found it worthwhile to provide a forum for JPs and advisers to exchange views with the relevant authorities.

These two seminars proceeded in similar fashion. The 2011 seminar began with a presentation on "Public Complaints on Street Obstruction by Shops and Food Establishments" by a Chief Investigation Officer of The Office of The Ombudsman. It was intended to provide the participants with an overview of the issue and communicate to them the findings of The Ombudsman's investigation. After the above background presentation a Deputy Director of HAD introduced the enforcement actions taken against street obstruction by shops and restaurants and the positive results achieved in the last few years, with the focus on HAD's leading role in the inter-agency approach adopted since 2009. Speaking for the FEHD, one of the two major enforcement departments, was an AD who confirmed the need for joint enforcement action. An AD of Lands D was the final speaker on this topic. She noted that Land D's major enforcement target in street obstruction was the unauthorized fixed structures built by shops and restaurants outside and linked to their premises for storage and display of their products.

The 2012 seminar began with a presentation by a Chief Investigation Officer of The Office of The Ombudsman on their investigation findings concerning administrative complaints related to applications for rehousing. A Chief Social Work Officer of SWD was the first invited speaker. He clarified the role of SWD in processing applications for compassionate rehousing and other housing assistance. A Chief Manager of HA then spoke and explained that HA doctors certify applicants' special need for housing purely on the basis of their medical condition. HA and HD were working to enhance their communication in this regards. In response to The Office's investigation report, Assistant Director of HD focused his presentation on clarifying the mechanism for the application of rehousing with special grounds and its successful factors. Another HD Assistant Director talked specifically about the handling of applications for public rented housing on special grounds, indicating how an applicant could get public rental housing allocated in a shorter period notwithstanding the long waiting list.

In the ensuing Q&A session of both seminars, participating JPs and advisers took an active part in dialogue with the speakers. Quite a few of the participants took advantage of the subsequent lunch to further exchange ideas with The Ombudsman and government officials.

Based on the opinions and feedback collected from the participants in the seminar on street obstruction, The Ombudsman decided to conduct a direct investigation into the Administration's regulatory measures and enforcement actions against unauthorized extension of business areas of restaurants in February 2012.

Stakeholder Engagement in Direct Investigation

The Ombudsman's Office has extensively used the practice of stakeholder engagement in its direct investigation of the conveyance of patients by ambulance to the accident and emergency departments of "area hospitals" for the first time, in the belief that the engagement of major stakeholder groups in the investigation process can reinforce the investigation, enhance the legitimacy of the ensuing report, and increase the acceptance of recommended administrative improvement measures. A more open and transparent operation will enable the leverage of the resources, expertise, and support of relevant stakeholder groups. Hence, it was the deliberate effort to engage various stakeholders in this investigation throughout the entire process.

The Case of Conveyance of Patients by Ambulance to "Area Hospitals"

Stakeholder engagement started after the completion of the preliminary round of information collection and data analysis to examine the inadequacies of current arrangements and practice of ambulance services to convey patients to a designated area hospital without due consideration for their critical condition. This routing of ambulances had neither been a topic widely reported by the media, nor a maladministration case attracting frequent complaints. Since the designated hospital in the patients "catchment area" under the current arrangement might not be the nearest hospital, the core puzzle here was the hypothetical scenario in which a patient in critical conditions could be saved or have a better chance of survival if he/she were sent to a hospital closer than the one prescribed in the guidelines but further from the patient's place. Consultation with medical experts and a local medical association enabled the investigation team to conclude that the distance from the designated hospital and the time of travel are crucial, causing possible delays and leading to serious consequences in cases where patients are in urgent need of immediate medical care. The opinions and viewpoints collected from the communication with patient groups, medical associations, and medical doctors helped the team to confirm that there was an issue of maladministration in the current conveyance arrangement that The Office of The Ombudsman should investigate and seek to improve. The inquiry with HA and the Fire Service Department confirmed that it was the joint duty of these two organizations to designate different area hospitals for organizing ambulance services and set the guidelines paramedics to follow with a view to providing "total care service" to affected patients. They came to understand that the scale, equipment and intake capacity of the hospitals carried greater weight than the travel distance and the travel time in this demarcation of catchment areas and the formulation of the procedure for taking patients to area hospitals.

In wrapping up their investigation, they shared their findings with all the stakeholder groups engaged in the earlier stage to seek their comments and support. At the same time, the team discussed with them possible measures for improving the

flexibility of the current standard operation procedure. In particular, they proactively fed their conclusions back to the HA and FSD that the current system needed to be revised in order to avoid delays and take patients in critical conditions to the nearest hospital. Once the leading officials of these two organizations became aware of the broad-based support and endorsement of the investigation team's observations and suggested improvement measures obtained from all major stakeholders, they became less defensive and counter-proposed a gradual step-by-step reform of the current rigid arrangement. In return, the team was convinced of the infeasibility of any radical changes by HA and FSD because of various institutional constraints, namely, resource availability, paramedic training, and the preparation of clear guidelines.

The investigation report, released by Mr. Alan Lai, The Ombudsman, in a press conference held on January 9, 2013, was received positively. In general, the media considered that the report had been able to raise an important administrative issue in the ambulance service, identify the root cause of the problem, and propose an appropriate course of action. Specifically, the HA and FSD acknowledged that the report was constructive and the recommendations helpful in enabling them to improve the existing ambulance system and give patients in critical condition due care in the provision of ambulance service.

In concluding the experience from this stakeholder engagement approach to direct investigation, The Ombudsman's Office and its investigation team envisages that it has helped to build trust with different stakeholder groups, reach consensus on controversial issues, enhance the legitimacy of the investigation, and improve the acceptance of its findings. In particular, their active and timely involvement has greatly moderated the hostility and anxiety of HA and FSD to the investigation, rendering them less resistant to and more cooperative with the investigation team and enabling The Ombudsman's Office to work out a mutually agreed problem-solving alternative. The special arrangement whereby patients in critical condition should be taken to the nearest hospital will start with cases of "cardiac arrest" and "respiratory arrest" which are more easily identifiable. It will be extended to include more types of critical conditions once the ambulance team has become better equipped, acquired adequate experience, and been provided with clear guidelines. In this way, The Ombudsman's investigation and stakeholder engagement have produced direct and immediate positive effects.

Analysis and Evaluation

In addition to the above two major initiatives, The Ombudsman and his leading officers have been receptive to opportunities provided by educational institutions to familiarize both university and secondary students with the work of his Office. In the last few months, these have included a visit to the STFA Leung Kau Kui College to speak to a group of students on the role and jurisdiction of The Ombudsman in relation to their career planning, the arrangement of a visit by students from St. Paul Co-

education College to The Ombudsman's Office, a talk on public accountability and to a group of MPA (Master of Public Administration) students at the University of Hong Kong, and a visit to the Alumni Association of the Arts Faculty at the University of Hong Kong to speak about The Ombudsman's work.

How should we analyze and evaluate these two major initiatives of stakeholder engagement undertaken by The Office of The Ombudsman? The following section examines the stakeholder groups being engaged, the level of engagement, the depth of engagement, the achievement of engagement, and the impact of engagement.

Stakeholder groups engaged. Given the different nature of topical seminars and direct investigation, they are targeted at different stakeholder groups in order to serve their respective engagement purposes. Topical seminars are organized exclusively for Justices of the Peace and their advisers with the objectives of promoting their closer touch with the work of The Ombudsman, cultivating a stronger sense of their identity in regard to their connection with The Ombudsman, and empowering them as ambassadors of The Ombudsman. Direct investigations allow the engagement of both primary and secondary stakeholder groups, namely, the government and public bodies concerned (FSD and HA), interest groups (medical associations and patient groups), professional advisers (medical doctors), and media, with the objectives of seeking advice and obtaining opinions from various stakeholder groups, working together with core stakeholder groups concerned to improve the legitimacy of the investigation, and improving the operational transparency of direct investigation from a stakeholder perspective. In combination, these two initiatives have significantly helped to lift The Ombudsman's stakeholder engagement profile and strengthen his engagement capacity by actively involving six out of the nine stakeholder groups in the activities of his Office. Further there remains much room for improving their engagement capability.

Mode of engagement. The topical seminar and direct investigation represent two different modes of engagement. On the one hand, the seminars are basically consultative and communicative in nature. In essence, the act of engagement is a mixture of informing and involving, the content is a combination of communication and participation, the objectives are to form the basis for engagement and provide an occasion for exchange of viewpoints, and the approach adopted is interactive. The direct investigation, on the other hand, is operational in nature. Accordingly, its mode of engagement is a mixture of involving and empowering, the content is a combination of participation and action, the objectives served are exchange of viewpoints and problem-solving, and the process is interactive. One may observe that the Office of Ombudsman can exercise greater control over the institutional arrangements for conducting topical seminars, the engagement process, and the outcomes. However, with problem-solving as the core of engagement, the Office has to be more flexible in its arrangements for stakeholder engagement in direct investigation, contingent on the maladministration issue involved, most notably in the selection of individual stakeholder groups to be

engaged as well as that of the format and the degree of involvement. On the whole, the adoption of these two different modes of engagement indicates the growing complexity of stakeholder engagement in the work of The Ombudsman's Office, which has to be aligned with the diverse purposes of engagement.

Achievement of engagement. The Ombudsman has achieved positive results from these two different types of engagement. The topical seminar provides an occasion for The Ombudsman and his officers to gather together the Justices of the Peace, their advisors, senior government officials, and representatives from public organizations to share ideas, exchange viewpoints, and promote mutual understanding on a particular administrative issue in an informal and relaxed setting. In the absence of a specific business agenda, The Ombudsman can personally reach these different stakeholder groups in an open and amicable way. The high attendance rate, the quality of the presentation, and the participants' enthusiastic participation in the Q&A session, as well as the constructive follow-up discussion during the lunch are good performance indicators of its receptivity and initial success. As for direct investigation, it provides a proper venue for the affected stakeholder groups to contribute and become involved, giving the investigation a collaborative outlook in coproducing the investigation report. Although much must be done to confirm its engagement effectiveness, the ability of the investigation team to consult patient groups and medical associations, seek advice from senior medical doctors, communicate with the media, interact with FSD and HA and obtain their feedback in the investigation process has reflected stakeholders' positive response to this participatory approach. Most important of all, The Ombudsman and his investigation officials have assessed the engagement experience in the ambulance investigation as positive and constructive, helping to build their confidence in the contribution of stakeholder engagement at the operational level. In short, these engagement practices have helped The Ombudsman to achieve the purposes of bringing individual stakeholder groups closer to the work of his Office and leveraging this social capital to improve the legitimacy of its services.

Impact of engagement. The impact of the engagement practices of the topical seminar and direct investigation on the work of The Ombudsman's Office is inevitably the core concern. In fact, the impact of engagement depends much on whether The Ombudsman and his leading officials take stakeholder engagement seriously. The topical seminars represent Ombudsman Lai's organized effort to engage the Justices of the Peace and advisors in a more constructive way, that is, from superficial to more substantive involvement in his work. Through the seminars, these two stakeholder groups are given opportunities to influence the work of The Ombudsman and his Office by conveying their opinions and concerns through personal and direct contact. Its impact tends to be more long-term and indirect at the policy level. However, the strong effect can be seen in The Ombudsman's decision on the direct investigation into restaurants' unauthorized extension of their business areas after considering the opinions collected from the seminar on street obstruction. In the direct investigation of

the ambulance case, the investigation team had aggressively engaged stakeholders in the investigation process and the preparation of the report, as evidenced by their disclosure of the topic, content and initial findings of the investigation to relevant stakeholder groups earlier than in the past; their active seeking of opinions and discussion with a wider range of stakeholder groups, including the media, on related sensitive issues and provocative questions; their invitation of advice and comments from vocal stakeholder groups (e.g. the patient groups and out-spoken medical doctors); the validation of their initial findings and suggestions with medical experts, patient groups, FSD, and HA; their working together with FSD and HA to find out an acceptable solution for administrative improvement; and most important of all, their incorporation of the opinions, viewpoints and suggestions of different stakeholder groups in the final report. The impact was immediate and direct, as reflected in stakeholders' warm acceptance of the investigation report. Most notably, in contrast with their hostile attitude to an earlier investigation, the FSD did not in this case contend with the investigation team's findings and recommendations on the improvement of ambulance services. This gives us an empirical basis to tentatively advance the view that these two stakeholder engagement initiatives gave the affected stakeholder a sense of participation and enabled them to observe the impact of their participation on the work of The Office of The Ombudsman.

However, the positive experiences initially achieved from these two initiatives do not conceal their limitations. For example, the topical seminars, with some modifications, may be able to open to a wider range of stakeholder groups, in particular, the media, in order to serve their relationship building, communication, and socialization purposes more effectively. In addition, a summary of each seminar with possible follow-up action should be provided to the stakeholder groups involved to convey a stronger sense of engagement. As for direct investigation, it is more desirable to institutionalize the engagement arrangements and make them known to individual stakeholders in order to facilitate effective engagement. Finally, a review mechanism should be designed in order to assess the performance and seek continuous improvement.

Conclusion

This paper examines the practice of stakeholder engagement in the work of Ombudsman Hong Kong since Ombudsman Alan Lai formally adopted it as an official policy. Although the Office under his two predecessors had been steadily increasing the engagement of individual stakeholder groups in its activities and operations, opinions were generally critical of its conservative approach and public relationship orientation. Inspired by a recent AOA report on service improvement through the greater practice of stakeholder engagement, Ombudsman Alan Lai has made a courageous and determined effort to break away from the bureaucratic mode and secrecy constraints by introducing two major initiatives. Topical seminars are organized to engage Justices of the Peaces

and their advisors with a view to cultivating among them a stronger sense of identity in serving as a bridge between The Ombudsman and the general public, while the format of direct investigation was re-invented to leverage individual stakeholders' expertise and secure their input in the process in an interactive manner with the objective of improving the validity of the findings, increasing the acceptance of the recommendations, and enhancing the legitimacy of the investigation report. These two initiatives have achieved initial success, as evidenced in their ability to engage the targeted stakeholder groups and to have an impact on the Office's operations and decisions.

However, stakeholder engagement in the work of The Ombudsman is still at an early stage of development and awaiting institution alization and internalization. Although there are signs that the topical seminar has now become a regular event, its closed-door format has constrained much of its engagement potential and effectiveness. As for direct investigation, the arrangement is informal and engagement practice is *ad hoc*, enabling it to be easily abridged and bypassed in subsequent operations. Ultimately, an engagement strategy with strong institutional support is desperately required to drive the effort forward and to introduce more good practices for facilitating individual stakeholders' engagement in the work of the Office at both the operational and policy levels with the effect of shaping its policy outcomes and service quality.

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Realizing Hong Kong's Knowledge-based Economy Potential as Part of a Rising China

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By the end of this decade, four out of every 10 of the world's young graduates are going to come from just two countries— China and India.¹ This fact has significant consequences for China which is projected to create 29% of new graduates in the world by the year 2020.

We live in a time of growing importance of the knowledge rich economy to business and to daily life. As knowledge becomes more and more an important factor of production within the traditional land, labour, enterprise and capital framework, significant changes to the way business is conducted result. The intangible nature of knowledge means that: i) the same knowledge can be used in various applications simultaneously, and ii) the same knowledge will have a different value in use depending on the context of its application.

The knowledge rich economy places a more demanding environment on companies and this is at least in part driven by the fact that consumers, with improved access to information, are more discerning. We in fact are moving from an era in which businesses sought to maximize their product and service offerings into an era in which businesses seek to maximize the value streams they can create, and to do so in a socially responsible way.

A rude awaking awaits Hong Kong if we continue to ignore this globalized trend and no new economic development initiative is introduced in the next few years. It is true that Hong Kong does not have all the success factors needed or any experience in building a "Silicon Valley" type of Knowledge-based Economy, but inertia is not the answer either.² While we don't seem to recognize our unique position and economic potential in the context of Hong Kong as part of China that operates under a different legal and administrative system because of our own inexperience, there is wide community consensus that economic diversification is needed in Hong Kong.

This paper seeks to explore the growth of a knowledge corridor spanning Beijing, Guangdong and Hong Kong. It seeks to highlight some progress already made and seeks to explore future opportunities. It also seeks to point out the danger of inaction that needs to be avoided for Hong Kong as a community and to show how companies, especially SME companies, can be helped to help themselves become more and more successful in this new globalized knowledge-based business environment.

Somehow, a strong and credible argument that does not contradict Hong Kong's tradition, economic philosophy, social and political values that will enable us to build

stronger economic links with mainland China has yet to emerge. Some solid and practical proposals that have potential to win support from a broad sector of the business community and consensus from the Hong Kong community as a whole are needed. Hong Kong needs to move forward and not be left behind as mainland China and the rest of Asia continues to develop.

Development and Prospects of Hong Kong as a Knowledge-based Economy

The Global Financial Crisis of 2008 will have far reaching effects. The damage to the world's financial sector is still unfolding. Unemployment in the USA is now at 7.8%: there are 10 million unemployed each in Europe and the USA. Economists now predict that the world economy will have very "gentle growth," a slow recovery that may take six to seven years or more. As a smaller export-dependent economy, Hong Kong is already affected. In the next five to ten years, we would be wise to begin to look into our own unique advantages, to seek other high value-added and sustainable economic activities, to rely less on the traditional "Pillar Industries" and to try to be more innovative in what we do. Hong Kong is a high cost economy and should focus on more high value-added economic activities, regardless of whether they belong to the "Service Sector" or "Industrial Sector." Some call this a "Knowledge-based Economy" strategy. Others call this "Innovation and Technology". What you call it is not important. The important thing is that we have a vision and a strategy that could bring sustainable economic development, job creation and upward mobility amongst us.

The rise of China and finding a new role for Hong Kong

Hong Kong is unique as we are part of China under "One Country, Two Systems." Yet Hong Kong is seamlessly connected to the world economies. In the next five to ten years, winners and losers will emerge from the financial crisis. Those regions and countries which put their money where their mouth is will prosper more than those which do not overcome the inertia and conservatism which inhibits change. Hong Kong's economic diversification process is not an easy one. Hong Kong needs a solid strategy and practical measures that can be turned into action on the ground. Hong Kong must get ahead and stay ahead of the innovation and technology game or risk becoming irrelevant to China and to the rest of the world as China continues to rise.

To transform Hong Kong's economy, a multilateral and multidisciplinary approach is needed. Hong Kong has many commercial talents and many specialists, but probably there are not enough people who have a good overview of Hong Kong, of China and of the world. China does not want to remain a low and mid end "assembler" of goods that other people design and they know Hong Kong can help them. Hong Kong has always thrived on new ideas, not on money or machinery alone. Hong Kong's success was based on "... new ways of thinking and doing" not on hanging onto past success. Hong Kong should be thinking of integrating our "Scientific Innovation," business and professional knowhow and creativity of our people to solve problems. Hong Kong should brand itself as a "Knowledge-based Economy".

"Knowledge-based Economy" is not the same as central economic planning

No one is suggesting that Hong Kong should adopt central economic planning. Hong Kong is a free market and the Government has no direct control over Hong Kong economic activities, so central economic planning is simply not feasible. But I believe the Government should have a strategy and should assist business and industry to adapt to the fast changing world around us. Some have said that Hong Kong has no natural advantage as we do not have the manpower to become a major R&D and technology exchange hub. I tend to disagree with this sentiment as I believe Hong Kong is uniquely placed to make best use of the research outputs from mainland China and turn them into commercial opportunities. In the next five to ten years, there needs to be further collaboration between universities, business and government.

Some have said that spending 0.73% of GDP on R&D is not enough and we should spend more. Hong Kong should support spending more and much more if we knew how to get those investments back. This is why other than focusing on investing in "hard technology" alone, we will need to teach Hong Kong enterprises about the "soft" or business side of "Scientific Innovation," that is, how to build brand names, how to build up their "Knowledge Assets" through R&D, how to acquire technologies and turn them into commercial value and how to get our R&D investment back.

Hong Kong's unique role as bridge and gateway

Hong Kong can look back on a highly successful past which can be the springboard to a future rich in new developments bringing increased prosperity to all its citizens. Our world changes rapidly around us presenting us with new challenges which require strong and intelligent actions in order to meet these challenges and to seize the opportunities which they present. We are in an excellent position to prosper under this environment if we capitalize on our natural advantages and empower each of our citizens to give of their best talents.

We live in a networked world where knowledge becomes an increasingly important part of business and daily life. We live in a time in which direct action is required to build on the clear advantages of Hong Kong, but this is also a time in which some, perhaps through fear of the unknown, prefer inactivity to action. We should not adopt the risky path of watching as the world passes us by but should look into the future, and ask ourselves what actions could and should Hong Kong be taking to build on its strengths in this new world situation. We have skills that have been developed over time. Skills used to build, among others, the real estate, services, financial services and tangible goods trading sectors in the Hong Kong economy are well suited to become transferrable skills to develop knowledge-based economy activities as well.

We have a Networked Economy which presents opportunities for Hong Kong to act as a bridge between China and The Rest of the World. The reasons why both China and the Rest of the World trust Hong Kong are well known and based on our common heritage as part of China and our experience over the years trading in partnership with

China and with The Rest of the World. In this context, the Networked Economy presents specific opportunities for Hong Kong. Our liberal environment and well developed ICT industry in Hong Kong can spur the Creative Industries to grow and flourish. In fact, we should remember that all industries are creative and we would do well to create an environment in which everyone can follow a path of lifelong learning suited to their ambitions, motivation and abilities. In this way, we maximize the pool of skills available in Hong Kong while opening a path for each individual who has the desire to develop new skills, knowledge and experience. All these are already happening but can and should be greatly accelerated and augmented with a clear strategy translated into clearly defined policy measures led by government. A few special new skills and experience borrowed from Europe and other territories that are more experienced in knowledge-based economy implementation will also be required.

Developing the "Guangzhou-Hong Kong Knowledge Corridor" and Extending It beyond Guangdong

In the globalised Knowledge Economy, the battle for competitiveness amongst nations is linked to Intellectual Property Rights and how skilled nations are in managing their intangible "Soft infrastructure." This concept goes beyond "IPR Protection" which is well understood by HKSAR Government officials, and looks at how to make best use of IPR within efficient and effective economic infrastructures, a concept understood by relatively few people in Hong Kong. While Mainland China has considerable strengths in scientific and technology research, the Mainland can best make use of Hong Kong's intangible competitive advantages which are often referred to as "soft power" by Mainland academic: efficient institutions, freest economy in the world, corruption free government, freedom of speech and free flow of information.

The key concept of this unique competitive advantage Hong Kong has is that Hong Kong already has all of the "Soft Power" which Mainland China is still trying to develop. With the small addition of a strategy, more coordinated government policies, and cooperation from the regional economies in Europe that have strong wishes and commitment to work with China in a globalised Knowledge Economy, Hong Kong has everything it needs to turn itself into a world class Knowledge Economy. At the same time, Hong Kong can reap very substantial economic benefit by positioning itself as the Centre of Excellence for technology commercialization for China as a whole. Hong Kong is well placed to transform itself from a traditional "Trading Hub" to become as well a "Knowledge Hub" and a key player in the globalised Knowledge Economy.

Lessons to be learnt from the Oresund Region³

The Danish-Swedish cross-border region has strong historical relations. The Swedish and the Danes always had strong cultural links and the region had switched "nationality" many times since the 15th century. Today, the region has a population of 3.6 million and accounts for 26% of the combined GDP of the two countries. It has 14 universities and a workforce of 1.9 million. In 1991, the governments of Denmark and Sweden agreed to build the Oresund Bridge, linking Copenhagen of Denmark and

Malmö of Sweden. The bridge was opened in 2000 but a 1999 report titled "Oresund: the Creation of a Region" concluded that the greatest barrier to integration in the region is lack of communication between citizens, businesses and government administrations. In 2003, a publicly funded newspaper and television programme was launched to facilitate integration. Other public discussion forums involving citizens of both territories were also launched. Today, the Oresund region is a territory that is poised to move from traditional to knowledge-based industries of the 21st century, and is already recognized as a world hub of excellence in life sciences.

Building presences and capacities in Hong Kong and the Pearl River Delta

There are many other regional knowledge-based economy development examples in Europe and in North America. One major characteristic of this type of economic development is that they are often based on historical economic and cultural ties and they happen gradually over time, but often with some degree of government facilitation. Guangzhou, Hong Kong and the surrounding region is one country, the components of which have a "hard border" between them. It also has strong cultural ties and many similarities with the Oresund Region. A high-speed rail will link Guangzhou and Hong Kong in about one hour. The Guangdong Government also has specific plan to develop Nansha, an area the size of Singapore that is only one hour away from Hong Kong by high-speed ferry. The Pearl River Delta area is also blessed with having a highly educated population and a network of universities, science parks and companies developing leading edge technology and products: the proposed "Guangzhou-Hong Kong Knowledge Corridor" has the potential to become one of the major knowledge regions in the world, similar to Silicon Valley in California or the Oresund Science Region in Scandinavia.

Expanding the concept to form the "Beijing-Guangdong-Hong Kong Knowledge Corridor"

How could this transformation and the accompanying increase in quality of life be achieved? In the mixed economy environment of Guangdong-Hong Kong, it clearly needs coordination at the Governmental level and counseling at individual company level to help companies realize the opportunities afforded to them by their presence in a unique region at a unique time in history. Significant learning can be found from the development of other knowledge regions, but in the final analysis a great deal of work on the ground will need to be done within Hong Kong first.

In the case of Hong Kong, it is the only territory of China that is at "Stage 3" of economic development, along with Japan, Singapore and South Korea in Asia,⁴ Hong Kong ranks as the 9th most competitive economy in the world. It ranks third in the world in terms of meeting "Basic Requirement" (institution, infrastructure, macroeconomic environment, health and primary education) and "Efficiency Enhancers" (of which Hong Kong ranks number one in the world in terms of "Financial Market Development)". According to the World Economic Forum and OECD, this type of economy is "Innovation Driven." Unfortunately, Hong Kong only ranks 22 in the

world in terms of "Innovation and Sophistication Factors" which is among the bottom third amongst OECD countries.

Why Hong Kong is doing so poorly in terms of its innovation factor is difficult to explain. One reason could be the lack of industrial and economic development experience. At a philosophical level, Hong Kong industrial development policy has also remained unresolved. While, Hong Kong's Free Market Economy, Rule of Law, Freedom of Information and the fact that it operates under a government and administration system that is separate from that of mainland China is acknowledged, Hong Kong does not seem to know how to turn those unique advantages into economic and job opportunities for the benefit of Hong Kong and mainland China.

Other than trying to make best use of Hong Kong's uniqueness under "One Country, Two Systems", Hong Kong should also try to maximize Hong Kong's external economy of scale by making best use of Guangdong's strong manufacturing capacity (37% of China's high-tech exports) and Beijing's strong R&D capacity (5% of Beijing GDP— a rate which is four times the national average) and very dominant position in technology transfer (50% of China's capacity).⁵ As the capital city of China, the very dominant position of Beijing as a political and administrative centre of China is difficult to ignore. And since R&D, technology transfer and technology commercialization is a business of transferring of ideas, close proximity to Hong Kong is not a critical factor and Hong Kong could do well by extending the "Guangzhou-Hong Kong Knowledge Corridor" idea to include Beijing from the start.

Innovation is more than R&D

There is growing recognition that innovation encompasses a wide range of activities in addition to R&D, such as organizational changes, training, testing, marketing and design. The latest (third) edition of the Oslo Manual defines innovation as the implementation of a new or significantly improved product (good or service), or process, a new marketing method, or a new organizational method in business practices, workplace organization or external relations.

By definition, all innovation must contain a degree of novelty. The Oslo Manual⁶ distinguishes three types of novelty: an innovation can be new to the firm, new to the market or new to the world. The first concept covers the diffusion of an existing innovation to a firm — the innovation may have already been implemented by other firms, but it is new to the firm. Innovations are new to the market when the firm is the first to introduce the innovation on its market. An innovation is new to the world when the firm is the first to introduce the innovation for all markets and industries.

Innovation, thus defined, is clearly a much broader notion than R&D and is therefore influenced by a wide range of factors, some of which can be influenced by policy. Innovation can occur in any sector of the economy, including government services such as health or education. However, the current measurement framework applies to business innovation, even though innovation is also important for the public

sector. In Europe, but not yet in Hong Kong, consideration is being given to extending the methodology to public sector innovation and innovation for social goals.

Should HKSAR Government facilitate innovation as an economic development tool?

Even though the World Economic Forum reminded us that Hong Kong's economic activities ought to be "Innovation Driven" and more sophisticated business and professional capacities are very much needed in Hong Kong, the message somehow is missed, not understood or ignored. To a very senior civil servant, we suggested that Hong Kong should perhaps look at "Soft Infrastructure" building. We said that the knowhow and systems needed is somewhat like building a road that takes traffic from A) to B). The response was "... It is not so easy to see where this Knowledge-based Economy Road leads to." The intangible connections between "soft" capacity building and further economic development in Hong Kong is not as straightforward to HKSAR Government officials as it seems to people we talked to in Mainland China and around the world.

It does not seem that the "Knowledge-based Economy" as a reciprocal "win-win" strategy was considered as part of Hong Kong's overall economic development strategy by Hong Kong. The *Greater Pearl River Delta Business Council Report*⁷ probably reflects many thoughts of the Hong Kong establishment and therefore the official thinking of the HKSAR Government. The Council had correctly observed the "reciprocity" nature of the relationship between Hong Kong and mainland China—what is good for Hong Kong must also bring benefit to Mainland China. However, the rest of the Report is mostly about enhancing the existing economic strengths (i.e. in logistics, finance and trading and the "Six New Industries" proposed by the HKSAR Government)—not the new economic potential of Hong Kong. The Report recognizes Hong Kong's potential as the regional headquarter for mainland enterprise and their bridge to North and South Asia. The need for some structural change and the need to find new growth engines for Hong Kong were also recognized. However, no specific strategies were offered by the HKSAR Government or the Council.

Lessons from OECD

Economists in the OECD are also continuing to search for other key ingredients for economic growth. They have found that the focus has been shifting from the traditional "factors of production"—capital, labor, raw material and energy, to "intangible factors"—particularly knowledge and technological change. OECD recognizes that the "diminishing return of capital" in the classical production model can be compensated for by a flow of "knowledge." The OECD embraces the Intellectual Capital Management (ICM) view of "Know-what", "Know-how", "Know-why" and "Know-who", but the most significant observations of OECD are:

1. The link between Knowledge-based economy and the creation of high-wage and high-quality employment;
2. Productivity of developed economies is largely determined by the rate of

knowledge accumulation and technical progress;

3. A new emphasis in government policies and support systems is needed, particularly in science and technology, industry, education, knowledge production, knowledge transfer and university/industry collaborations.

The Knowledge Economy is not just about creating or pushing back the frontier of knowledge. It is also about the creation of wealth through commercialization of knowledge. The OECD defined "Knowledge-based Economies" as *economies that are directly based on the production, distribution and use of knowledge and information*. It was estimated that more than 50% of GDP in the major OECD economies is "Knowledge-based." There is a higher demand for highly skilled workers in Knowledge Economies and correspondingly a higher unemployment rate for those with lower secondary education. While OECD countries have been losing jobs in the manufacturing industries, employment is growing in the high technology, high skilled sectors such as computers and pharmaceuticals.

Moving Hong Kong towards knowledge-based production is not a sharp break from the past, nor is it a "sector-based" support strategy as misunderstood by some opponents after hearing "Knowledge-based Economy" or "Innovation and Technology." Facilitation from HKSAR Government is probably necessary. Such a move should not be equated to Hong Kong abandoning the "Free Market" principle. A coordinated policy and some facilitation would support creative and scientific start-ups, R&D outputs from Mainland China and in Hong Kong and would absorb the supply of young university graduates effectively.

A coherent intellectual framework needed

Whether laissez-faire still has a role in Hong Kong's future development is not a black-and-white argument. As a developed and high-cost economy, Hong Kong does not have much choice other than to follow the examples of OECD and EU in climbing up the economic ladder. Hong Kong needs to find a role and a market niche within the context of China's 12th and 13th Five Year Plan and amongst the developed economies and developing economies of the world.

Researcher that looked into innovation systems around the world, including the Taiwan example, has identified the "Macro-Meso-Micro-economic Framework."⁸ Innovation systems around the world are increasingly seen as a system of organization and institutions that deploy resource and therefore capacity to produce new knowledge and drive economic development.

Such systems are closely linked to economic planning and the political economy—how government chooses to use public resource to drive economic development for the benefit of business and the community as a whole. How countries and territories envision their own future and how resources are deployed in a systematic way is clearly a political choice. In a democratic society such as Hong Kong, a strong argument backed by a coherent intellectual framework is needed to push forward such a vision.

The fact is, although Hong Kong has all the fundamental factors needed to transform itself into a world class knowledge-based economy, a strong argument and a coherent intellectual framework that favor deployment of more public resource to assist Hong Kong's next level of economic development is still missing. In the absence of such an intellectually sound argument and the political leadership needed to build consensus amongst the community as a whole, inertia or doing nothing is still the dominant mode of operation with regard to transforming Hong Kong's innovation system and the public policy needed to transform Hong Kong into a world-class knowledge-based economy.

Strategies of Innovation⁹

A common misunderstanding amongst opponents of developing the "Knowledge-based Economy" or "Innovation and Technology" capacity in Hong Kong is that the economic development strategy is sector-specific and involves heavy government investment in R&D that are often wasted. Yes, it is true that one of the "Innovation Strategies" is "Eureka", discovery of new frontiers of knowledge which are often sporadic and difficult to predict. However, mainland China is already investing a huge amount of money and people into original scientific discovery. We are not suggesting that this is the only innovation strategy that Hong Kong should pursue.

Facebook and the early smart phones adopted a "Battle for Architecture" strategy giving away services for free in exchange for market dominance. "System Breakthrough", "New and Improved", "Mass Customization" and "Pushing the Envelope" are other strategies Hong Kong could learn to pick these up eventually. However, innovation strategies that focus on assisting SMEs, including knowledge intensive SME start-ups, is the one that will gain support from Government and from the community. At a practical level, innovation involving SMEs does not involve "Battle for Architecture" and domination of markets. SMEs, however, see their market niche clearly and can benefit from facilitation from governments to make use of existing innovative process or technologies that are readily available. SMEs are particularly good at the "New and Improved" game and at their very specific market niche or local market. With very specific help, such as assisting Hong Kong SMEs to network with and acquire knowledge and knowhow from existing owners of technologies in Europe through Hong Kong's trusted intellectual property platform, we could assist important improvements in the SME sector within Hong Kong's overall economic structure.

Practical Plans and Measures

Some argue that Hong Kong is already a Knowledge Economy and nothing more needs to be done. Yet, businessmen and businesswomen have found that while Hong Kong has good capacity to develop technology in university laboratories, Hong Kong does not have a meaningful critical mass that would allow it to become a technology hub. Hong Kong has made some progress in technology but seems to have fallen into the same trap as Scotland did. Even though Hong Kong should have been better than any cities in China to develop commercialization knowhow, such a capacity cannot be

found in Hong Kong. As a result, university-based researchers keep using government money to invent and develop technologies and end up selling the results cheaply to mainland and international companies. Businesses also take Hong Kong's R&D outputs to have them commercialize elsewhere.

Others have also argued that Hong Kong does not need "technology" but do acknowledge that the capacity to commercialized technology is needed. These sentiments are largely correct, but they do not point Hong Kong towards a useful economic strategy nor do they prescribe the magic key to unlock Hong Kong's economic potentials. The harsh fact is that Hong Kong's economic development has been standing still for a long time. Hong Kong must now focus on developing more high-value added knowledge-based economic activities, regardless of whether these activities are: service, technology, manufacturing, finance or trading to catch up with the rest of the developed world.

"Free Market" versus "Economic Planning"

Prof. Lau Siu-kai, former head of the Central Policy Unit, said that the HKSAR Government is unlikely to be dogmatic on these two subjects and will neither take on a "Free Market Economy" or "Planned Economy" stance on the subject.¹⁰ But as Hong Kong moves forward, HKSARG's role must and will become more and more active. The Government's role in economic development has been changing since the "Laissez-faire" days of Sir John Cowperthwaite and Sir Philip Haddon Cave of the 1960s and 1970s. Prof. Lau said in the past ten years Government's thinking is changing as well, particularly in the development of the "New Industries" and the "Creative Industries." Prof. Lau believes that people are unlikely to oppose HKSARG's economic development initiative; instead they are more likely to say that the HKSARG is not doing enough.

Hong Kong has been participating in China's Five Year Planning cycle since the "11th Five Year Plan" (2006-2010). Hong Kong is now formally written in to the "12th Five Year Plan" (2011-2015) and some people are even demanding that Hong Kong should have its own 12th Five Year Plan. This change is unlikely to be feasible as Hong Kong is fundamentally a free market economy and HKSARG does not have direct control over Hong Kong economic activities. Even though Hong Kong cannot become a planned economy, Hong Kong's participation in the 12th Five Year Plan is important. Hong Kong needs to do well in this area, otherwise the HKSAR Government fears that Hong Kong may not be invited to participate in the "13th Five Year Plan" (2016-2020). Under these perspectives, Prof. Lau believes that the HKSAR Government's participation in economic activities is likely to increase, as in the case of support given to the "Creative Industries."

Enterprise Europe Network working with Europe and Mainland China

A fast track approach to fulfill China's desire to participate fully in the global transaction of IP and technology as part of its innovation push can be realized by

creating an "Enterprise China Network" modeled on a variant of "Enterprise Europe Network." As China is still very much a socialist country, it is more likely to follow the more "socialist", public sector driven approach to economic development than to follow the pure private sector approach as practiced in the USA.

There are many organizations involved in IP and technology across the world today and in order to have access to all the available technology it is important to network with each of these organizations. As we understand it, government units at the Central Government and Provincial Government levels have been pumping resources into this area following exchanges between Premier Wen Jiabao and his counterparts in various European Countries. Many of the required skills do not exist in mainland China or in Hong Kong today. Access to the organizational skills and service approach of Enterprise Europe Network can in a relatively short timescale provide China and Hong Kong with a powerful and functioning inward and outward facing IP and Technology Transfer capability which can network with the rest of the world.

In this respect unity is strength and one central organization representing China would possess the critical mass to interact with all the existing IP and Technology Transfer world centres: this would be a world first that would place China and hopefully Hong Kong included in an advantaged role.

Hong Kong's role and the way forward

There is no question that China can occupy an advantaged position if it is represented in the world IP and Technology Transfer arena by one organization—the proposed Enterprise China Network (ECN). There is also no question that many in the developed economies of the West still distrust the way in which IP is treated in China and fear loss of technology. These two situations provide a unique opportunity for Hong Kong (or even Taiwan if Hong Kong could help resolve the political difference) to play a key role in this aspect of the growth of China. Hong Kong is a market place trusted all over the world for its fairness and for its rule of law and is ideally suited to become a hub of the IP and Technology Transfer business in China.

In order to achieve this, Hong Kong must first come to agreement internally, and then with the relevant government units within the Central Government in Beijing on the role which Hong Kong will play and ideally be given the charter to become the entry node for IP and Technology Transfer on behalf of China. As one of the key nodes of ECN within China, Hong Kong could then coordinate with the other key nodes of Enterprise Europe Network, various IP and Tech-Transfer agencies in the Mainland and in the Rest of the World. Thereafter it is simply an implementation matter and the requirement to assemble the resources, the needed skills and to activate a world class IP and Technology Transfer Centre in Hong Kong in close collaboration with corresponding units in Mainland China.

We in APICC have taken the step of building links with the International Technology Transfer Network (ITTN) in Beijing and officers of the European Union in

Hong Kong and Europe, including the very specific tasks of: Assisting ITTN to build the Enterprise China Network (ECN) with full assistance from the European Union and Enterprise Europe Network (EEN); Linking ITTN to the "soft technology" (business and commercialization know how) from around the world through the APICC's "China Network."

The Enterprise China Network (ECN) project as proposed to ITTN is a very practical project that will eventually link various innovation and technology units throughout China to Europe and to the rest of the world. Hong Kong's participation will help bridge many cultural and business practice differences between China and the West. It has potential to form the foundation capacity to put the "Open Innovation" concept into practice and Hong Kong will also benefit enormously should it decide to participate. Such an approach, however, will require full support from the HKSAR Government even in the absence of the proposed Innovation and Technology Bureau.

Notes

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(Dahl, 1947, p.1) or (Lane, 1993, pp.93-95).

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Lane, J. E. (1993). *The Public Sector: Models and Approaches*, Sage, London.

Where reference is made to more than one work by the same author published in the same year, identify each citation in the text in this way: (Hood, 1981a), (Hood, 1981b).

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