

# Fears dilute democratic hopes

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Democracy!

When at least 500,000 Hong Kongers marched in non-violent protest -- will live long in memory, provided that Hong Kong remains an oasis of freedom set in China's authoritarian sea. But it was also a day that will almost certainly be expunged from the Chinese collective memory if Hong Kong is reduced to just one more city in a dictatorial ocean. First and last, the protest march brought Hong Kong's wheel of fate full circle. The last time there was such a huge disciplined display of people power in Hong Kong was when a million or so Hong Kongers took to the streets in June 1989 to protest the Tiananmen Square massacre, thereby destroying forever the myth that Hong Kong was inhabited by a politically apathetic citizenry.

China's Communist leaders suffered many shocks in the spring of 1989. As demonstrations erupted across the nation following the student protests in Tiananmen Square, the Chinese Communist Party leadership realised it was not as beloved by the people as it had thought it was. Hence the Tiananmen massacre aimed at intimidating and inhibiting the demonstrators' subversive emotions. The other shock was to discover that Hong Kong was not the quiescent colony that Britain had created and was due to hand over in 1997. So, final changes were made to Article 23 of the draft Basic Law for the promised Hong Kong special administrative region. According to an earlier draft in February 1989, the new SAR government was required to make laws that "prohibit any act of treason, secession, sedition, or theft of state secrets." After the events in Hong Kong in June 1989, both subversion and the banning of foreign

political contacts were added to treason, sedition, secession and theft of state secrets, thereby making Article 23 even more of a political poisoned chalice for any government trying to enact it.

A politically inept government in Hong Kong unwisely accepted the poisoned chalice. That questionable decision has had the inevitable effect of arousing popular opposition here in Hong Kong. So the wheel of fate has come full circle. As the wheel of fate turns, it is necessary to stress what Hong Kong seems often in danger of discounting: China caused the problem, China is the problem.

Placing too much blame on SAR Chief Executive Tung Chee-hwa, as many do, is unfair. It was Beijing that put pressure on the Hong Kong government last year to get on with enacting Article 23 legislation.

It was Beijing's collective leadership, most obviously in the person of then-President Jiang Zemin, who made the decision that Tung's form of sycophantic patriotism was the best answer to the problems posed for Beijing by its promise of "Hong Kong people ruling Hong Kong." And it was Beijing that had decided in 1989 to react to all those worrying signs of Hong Kong's political awakening, by decreeing enactment of the draconian Article 23 for Hong Kong.

Faced with the constitutional need to respond to Beijing's pressure, there were several political ways in which the SAR government could have responded to the legal demands of Article 23. First, it could have continued to procrastinate, insisting to Beijing that to push a bill through, amid depressed economic conditions and high unemployment in Hong Kong, would almost certainly be destabilising. To do this would have

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required a greater sense of separate Hong Kong identity under the "one country, Two systems" policy than the Tung administration has ever managed to display.

Second, the government could have done what many governments, faced with a similar problem, would surely have done -- waited until a security crisis came along that made Article 23 requirements more politically palatable, as well as more obviously necessary, in the same way as the 9/11 crisis in the United States has made restrictions on civil liberties more acceptable there. This option would have required Beijing to be more pragmatic than it was prepared to be. An essential element of this current crisis is that there is no apparent reason why anyone needs to be urgently legislating against today in terms of treason, sedition, subversion, and secession in Hong Kong; hence the widespread assumption that curtailment of freedom and human rights is the real objective of China and of the pro-China ruling faction led by Tung.

Another option would have been for the government to divide up the Article 23 requirements, drafting one bill for treason, one bill for sedition, one bill for subversion and so on. Taken one at a time, a more carefully crafted bill in each case could have been tacked onto successive Legislative Council (Legco) agendas. Each bill would have been subject to careful consensus-building and full Legco debate. This option would have required a greater capacity for deft political calculation than the Tung administration has so far displayed.

Last, but not least, the government

could have tried to mix the politically distasteful with the politically attractive. As it happened, the Basic Law gave the government the golden opportunity to do just that, with its promises of democratic advances in 2007 and beyond. Had the government brought forward some projected plans for greater democracy at the same time as it started down the Article 23 legislative road, then there would still have been controversy -- but there would probably have been much less public apprehension and anger.

Instead, the government put all the Article 23 legal changes into one lengthy bill and made only one poor attempt at consensus-building. Then the government ignored the clear warning sign when 100,000 Hong Kongers marched last December in favour of an additional white paper on the draft bill.

The demands were so widespread that it seemed impossible for the authorities to deny them, but the government did just that. When the intense SARS health crisis came along, diverting public attention away from the national security legislation, this obviously made it imperative that the passage of the bill be delayed.

Instead, the government exuded the image of trying to use the preoccupation with SARs to try and sneak the bill through Legco in a hasty final passage. Altogether, it has been a hapless political performance by the Tung administration. The massive July 1 protest march was its deserved reward.

The powers that the Article 23 bill bestows are wide-ranging. Some of the powers are not even required under Article 23. And as the Hong Kong Bar Association pointed out

July 4, "Some legal concepts and definitions in the bill remain imprecise with the result that one may be left in doubt as to whether one's conduct would infringe the law." Despite all these and other failings, initially the government still tried, after July 1, to rush ahead and get the bill through its second and third readings on July 9. It only agreed to defer the bill indefinitely after the pro-government Liberal Party said it would vote against the bill on July 9, thereby giving the opposition a majority.

The hapless handling, plus the bowing to Beijing pressure, has naturally compounded public fears of increased future authoritarianism by the Hong Kong government. Some of the powers bestowed by the bill are deeply disturbing, simply because they seem to reflect more of what happens in China than what has happened in Hong Kong up to now.

The section titled "Investigation Power" (which the government now promises to delete) bestows on any chief superintendent of police the power to order any police officer to enter any premises where it is suspected that evidence relating to acts of treason, subversion, secession or seditions have been or are being committed, and to seize, detain, or remove anything found in those premises.

It is so wide-ranging as to be horrifying. It would abolish the need for a search warrant issued by a judge. Powers for such fishing expeditions belong only in a police state. Will authoritarianism prevail in Hong Kong, or will freedom continue to flourish? The July 1 and subsequent protests sustain hope for the latter. The demonstrations focus both on Article 23, and the need for future democratic change.