

# REVIEW



## Hong Kong's Legislative Council as a Symbol of Political Development

### Introduction

For those who want to study the evolution of the Hong Kong Legislative Council ('LegCo'), Kathleen Cheek-Milby's work is informative and indispensable.<sup>1</sup> However, there are organisational problems in the book, and some of her major arguments are by no means clearly, systematically, and convincingly presented.

Cheek-Milby's book is divided into eight chapters. Chapter One outlines some of the research questions that the author attempts to answer. Her objective is to employ 'role analysis to reveal the beliefs and behaviour of legislators.'<sup>2</sup> And in doing so, Cheek-Milby hopes that her findings 'will provide guidance to those who must determine the optimal functioning and framework of the future special administrative region.'<sup>3</sup> She also claims that the book is 'the first comprehensive study' of Hong Kong LegCo, a study which 'provides not only an historical and institutional summary of [LegCo's] parameters, but affords a new focus of analysis by deriving much of its insights from the views of the legislators themselves.'<sup>4</sup>

Chapters Two, Three, and Four adopt a historical approach to describe the evolution of LegCo. Chapter Two attempts to provide an analytical framework for Chapters Three and Four by focusing on the functions of colonial legislatures, namely law-making, representation, and system maintenance. System maintenance, according to Cheek-Milby, refers to the consolidation of a regime's legitimacy; the recruitment of political élite; the integration of individuals and groups into the political system; and the resolution of political conflicts.<sup>5</sup> The analytical framework of Chapter Two is an elaboration on the author's brief discussion on the functions of legislatures in Chapter One.

Chapter Three is a historical account of LegCo's development from 1844 to 1984. Nevertheless, this chapter is not written in a way that matches the analytical framework discussed in Chapter Two. Nor does the conclusion of Chapter Three answer precisely the question whether the colonial legislature in Hong Kong from 1844 to 1984 served various functions, such as enhancing legitimacy and integration. Instead, the conclusion of Chapter Three merely emphasises that by 1984 LegCo 'had not progressed beyond' the stage in which

<sup>1</sup> Kathleen Cheek-Milby, *A Legislature Comes of Age: Hong Kong's Search for Influence and Identity* (Hong Kong: Oxford University Press, 1995).

<sup>2</sup> *Ibid.*, p 6.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, p 13.

the British colonial administrators established legislative and executive councils, and in which unofficial (non-civil servant) members were nominated to the legislature.<sup>6</sup> Here, Cheek-Milby tends to concentrate on LegCo's historical development at the expense of her framework of analysis discussed earlier.

The over-emphasis on the historical evolution of LegCo can be seen again in Chapter Four, which fails to relate the rich description to the analytical framework outlined in Chapter Two. Strictly speaking, readers who go through the early chapters will find it relatively difficult to understand the major arguments of the book.

The organisational confusion of the book stems from Chapter Five, which suddenly discusses the staff of LegCo (the Office of the Members of the Executive and Legislative Councils, or OMELCO). None of the earlier chapters discusses the importance of staff support to the legislature. Hence, the sudden insertion of the staff of LegCo into this chapter is not only confusing, but it also buries the major arguments and focus of the entire book. Organisationally and logically speaking, Chapter Five should follow Chapters Six and Seven, for the latter two deal with 'legislative functions' and 'legislative roles' which are actually the major focus of Cheek-Milby's work. In any case, as a separate chapter, Chapter Five offers some useful insights on the OMELCO's operation and weaknesses, including its independence from the government.<sup>7</sup>

### Typology of legislatures

Chapter Six, entitled 'Legislative Functions,' suddenly provides another analytical framework which has not been discussed in either Chapter One or other earlier chapters. Cheek-Milby briefly discusses the typology of legislatures proposed by Michael L Mezey,<sup>8</sup> and later she argues that the pre-1984 LegCo could be classified as a 'minimal' legislature.<sup>9</sup> She goes on to contend that LegCo 'today must be classified as a marginal legislature,' saying that it is neither supported by China nor popularly valued by citizens.<sup>10</sup> Yet, at the end of Chapter Six, Cheek-Milby expresses her reservation about her application of Mezey's typology of legislatures, saying that 'while most indicators suggest that the Legislative Council best fits the marginal classification, the fit is imperfect.'<sup>11</sup> Here, readers get confused about Cheek-Milby's arguments. If she finds Mezey's typology a bit simplistic, then she should have introduced this typology much earlier in Chapter One and refined or updated it further. For

<sup>5</sup> Ibid, pp 31-2.

<sup>6</sup> Ibid, p 62.

<sup>7</sup> Ibid, pp 134-9.

<sup>8</sup> Ibid, pp 143-4.

<sup>9</sup> Ibid, p 179.

<sup>10</sup> Ibid, p 181.

example, both Taiwan and South Korea have been democratising their political systems since the late 1980s, and thus Mezey's typology which was designed in 1979 needs to be updated. In practice, the legislatures in Taiwan and South Korea appear to transform from 'minimal' or 'marginal' type to a more 'reactive' one that can check the power of the administration.

Strictly speaking, Mezey's typology is problematic when it is applied to the Hong Kong case. The criteria that Mezey used in categorising legislatures as 'more supported' and 'less supported' ones included (1) whether 'the legislature is looked upon as a valued and popular institution,' and (2) 'events and the public statements of political actors.'<sup>12</sup> Cheek-Milby correctly notes the fact that 'in the absence of specifically tailored public opinion polls' it is extremely difficult to measure whether 'the legislature is looked upon as a valued and popular institution.'<sup>13</sup> She also states that

élite support in Hong Kong for the Legislative Council appears to be waning, and China remains hostile if not threatening. So, the Legislative Council today must be classified as a marginal legislature.<sup>14</sup>

It is debatable whether the élite's support of LegCo is 'waning,' given the fact that different political parties, including the pro-China Democratic Alliance for the Betterment of Hong Kong (DAB), actively participated in the 1995 LegCo's direct elections. Although the People's Republic of China (PRC) has set up a provisional legislature to replace the 1995 LegCo, both the Patten administration and the British government fully support the current (pre-1 July) legislature in Hong Kong. If so, it is simplistic to classify the present LegCo as a 'less supported' legislature. The support for legislatures in Mezey's typology needs to be refined further. In the case of Hong Kong, such support is complicated by not only the attitude of ordinary citizens and China, but also by the attitude of the Hong Kong administration, the British government, and members of the Hong Kong élite whose opinion toward LegCo appears to be divided. While the pro-democracy élite support the current LegCo and opposes the establishment of the provisional legislature this year, the pro-China élite has reservations about the present LegCo and views the provisional LegCo as an inevitable outcome of Patten's political reforms, which in the official Chinese perspective violated the Basic Law and the Sino-British Joint Declaration.

<sup>11</sup> Ibid, p 183.

<sup>12</sup> Ibid, pp 143-4.

<sup>13</sup> Ibid, p 143.

<sup>14</sup> Ibid, p 181.

*A Typology of Legislatures*

| Policy-Making Power | Less Supported Legislatures  | More Supported Legislatures   |
|---------------------|--|---|
| Strong              | <i>Vulnerable Legislatures</i><br>Philippines, Chile,<br>Italy, France                           | <i>Active Legislatures</i><br>US Congress,<br>Costa Rican Congress                            |
| Modest              | <i>Marginal Legislatures</i><br>Thailand, Kenya,<br>South Korea, Malaysia,<br>Nigeria, Argentina | <i>Reactive Legislatures</i><br>United Kingdom,<br>Canada, Australia,<br>New Zealand, India   |
| Little or None      |  | <i>Minimal Legislatures</i><br>Former Soviet Union,<br>Poland, Tanzania,<br>Singapore, Taiwan |

Source: Adapted from Michael L Mezey, *Comparative Legislatures* (Durham, NC: Duke University Press, 1979), a table printed in Cheek-Milby, *A Legislature Comes of Age: Hong Kong's Search For Influence and Identity* (Hong Kong: Oxford University Press, 1995), p 144.

Inserting Mezey's typology of legislatures suddenly in Chapter Six not only confuses Cheek-Milby's original analytical framework, but it also leaves the following methodological question unanswered: different examples selected by researchers who compare Hong Kong's LegCo with other places could have different results. For instance, one could argue that Hong Kong's LegCo is far more powerful in terms of policy-making than Macau's Legislative Assembly, where the power of legislators in checking the Portuguese administration is often limited. Similarly, Hong Kong's LegCo is far more powerful than China's National People's Congress (NPC) in terms of law-making, financial control, and checking the administration. However, in the event that Hong Kong's LegCo is compared with Taiwan's Legislative Assembly, the former appears to be much weaker than the latter where the policy-making power is relatively stronger and where physical violence is commonplace. If the examples of comparison matter, would Cheek-Milby still categorise Hong Kong's current LegCo as a 'marginal' type in comparison with its counterparts in Macau and China? One could also argue that Hong Kong's LegCo in the transitional period can be classified as a weak 'reactive' legislature which becomes far more assertive than ever before.<sup>15</sup>

<sup>15</sup> Examples of the 'reactive' type include Britain, Canada, Australia, New Zealand, and India. See *ibid*, p 144.

In short, an in-depth analysis and refinement of Mezey's typology of legislatures could have been conducted in Chapter One or Chapter Two, instead of introducing it abruptly and briefly in Chapter Six. What is more, the author subsumes the discussion of Mezey's typology under footnotes 139 and 140 in Chapter Six.<sup>16</sup> As a result, the entire framework of Mezey was not treated in a serious and effective way by the author, whose analytical approach tends to fluctuate from Chapter One to Chapter Six.

Chapter Seven in fact constitutes the major focus of the entire book, using the rich data from interviews and surveys to discuss the role perception of LegCo members. Cheek-Milby identifies five major roles of LegCo members: (1) 'Ritualist,' (2) 'Tribune,' (3) 'Broker,' (4) 'Inventor,' and (5) 'Opportunist.'<sup>17</sup> Her major argument is that the way in which legislators are selected determines their role perceptions. While appointed LegCo members tended to view their role as Broker who balances the interests of different groups and individuals, directly elected legislators tended to perceive themselves as Tribune who defends and articulates the interests of the populace. Then she analyses different representational roles of legislators: (1) 'Trustee' who sees himself or herself as a free agent to determine what is right or wrong; (2) 'Delegate' who follows 'the dictates of constituents'; and (3) 'Politico' who oscillates between the roles of 'Trustee' and 'Delegate.'<sup>18</sup> Cheek-Milby finds that while directly elected members were 'more constrained by the views of their constituents than their functional constituency counterparts,' appointed members tended to display the Trustee orientation.<sup>19</sup> Actually, the finding that the directly elected members tended to show more emphasis on LegCo's policy-making and representational functions is not surprising. As directly elected members have to consider the likelihood that voters may not support them in the next elections, the former must have orientations that are relatively assertive, active, and aggressive.

### Is LegCo transformed from 'consensus' to 'confrontation'?

Cheek-Milby asserts that 'the interaction between the executive and the legislature has recently been confrontational rather than co-operative.'<sup>20</sup> Indeed, judging the changes in the internal operation of LegCo, such as the transformation from the closed in-house meetings in the past to the open House Committee meetings in the present transition, LegCo has been undergoing gradual changes. Also, while meetings of LegCo's panels and ad hoc groups in

<sup>16</sup> *Ibid*, p 297.

<sup>17</sup> *Ibid*, pp 189-96.

<sup>18</sup> *Ibid*, pp 205-9.

<sup>19</sup> *Ibid*, pp 210-11.

<sup>20</sup> *Ibid*, p 221.

the pre-1985 period tended to hammer out solutions to solve any internal disagreement amongst LegCo members, opinion differences amongst legislators have become open since 1988.<sup>21</sup> This transformation is partly due to the necessity of elected members to show that they speak for the interests of the public, and partly because of the fact that the mass media are far more concerned about LegCo than ever before.

Yet, is LegCo really transformed from co-operation to confrontation as suggested by Cheek-Milby? Arguably, there are both co-operation and confrontation inside the reformed LegCo. On the one hand, there is compromise between political party members and independent legislators, and also amongst members from different parties. That motions are often amended by legislators in exchange for possible support or concession from other LegCo members or political parties is a commonplace in LegCo, a phenomenon which has not been analysed by Cheek-Milby. Having said that, from a historical viewpoint, LegCo has been evolving from consensus, co-operation, and harmony to confrontation.

Nonetheless, it can be argued that LegCo members, regardless of their political orientation and background, have been adapting to democratisation of the legislature successfully. Unlike Taiwan, where the Legislative Assembly often becomes an arena for fist-fighting amongst legislators, LegCo appears to have adapted to the democratising experiment peacefully. Above all, government officials under the Patten administration are forced by the democratising circumstances to learn the skill of lobbying LegCo members for support of government policies and bills. From the perspective of democratisation, the changes inside LegCo are not only a mirror of successful democratisation, albeit limited, in Hong Kong during the twilight of the colonial era, but they also represent a gradual transformation of political culture on the part of colonial bureaucrats. Government officials are becoming more tolerant of public criticisms, more willing to accept the reality of having to revise Bills in such a way as to make them acceptable to LegCo members. In short, bureaucrats have been forced to adapt to an increasingly pluralistic polity in Hong Kong during the late transition period. It is this silent transformation of the bureaucratic ethos that Cheek-Milby appears to underestimate. While it is natural that some bureaucrats tend to resist democratising changes, as Cheek-Milby points out in her book, one cannot deny the fact that some bureaucrats have become the successful actors adapting to democratisation. If such democratising bureaucratic culture persists in Hong Kong after 1997, the future of LegCo will probably be not so pessimistic as Cheek-Milby suggests. She writes:

<sup>21</sup> Norman Miners, 'The Transformation of the Hong Kong Legislative Council 1970-1994: From Consensus to Confrontation' (1994) 16 *Asian Journal of Public Administration* 228, 232.

What [LegCo members] indicate is an increasingly fractious, divisive body, lacking in shared values over their method of operation, their priorities, their roles, and their function. Until some consensus can be reached over these vital components, the legislature will continue to operate as a marginal institution in Hong Kong's political system.<sup>22</sup>

Perhaps one crucial value shared by LegCo members and government officials is that compromise is necessary to keep LegCo a productive law-making body. In the long process of democratisation, the political élite must learn the skills of compromise, which after all constitute an indispensable ingredient in the art of politics. In brief, confrontation can coexist with co-operation amongst LegCo members and, most importantly, compromise has become the new politics inside the legislature since the injection of directly elected seats in 1991.

### **Ministerial system for Hong Kong after 1 July 1997: advantages and disadvantages**

One thought-provoking and controversial point raised by Cheek-Milby in Chapter Six is that she proposes a ministerial system as a 'remedy' that would probably 're-integrate' the executive-legislative relations.<sup>23</sup> She writes:

[C]onsidering the aspirations of many of the Legislative Council members to be more active at the formative stage of policy making, those legislators who sit on Executive Council should be given ministerial portfolios, responsibility over a defined area of public policy. This move would not only strengthen the relationship between the branches but fulfil the aspirations of some of the Legislative Council members to be more intimately involved in the formation of government policy. This initiative would not only be popular with the newer members of the legislature but would also be applauded by 82 per cent of the official respondents. This reform in turn could enhance accountability and ensure that the Legislative Council not only behaves responsively but responsibly.<sup>24</sup>

The suggestion of the ministerial system has also been made by Sir S Y Chung, a former senior member of LegCo and Executive Council, and Mr Siu Sin-por, the Secretary-General of the Preparatory Committee.<sup>25</sup> There are indications that Mr Tung Chee-hwa, Chief Executive-designate, might agree.

<sup>22</sup> Cheek-Milby (note 1 above), p 228.

<sup>23</sup> *Ibid.*, p 223.

<sup>24</sup> *Ibid.*

<sup>25</sup> Hong Kong Standard, 18 October 1996, p 3.

Arguably, there will be advantages and disadvantages in implementing the ministerial system in Hong Kong, details of which have not been discussed in detail by Cheek-Milby. In terms of advantages, top civil servants would not be removed or reshuffled under a new Chief Executive. In the case of Macau, a new governor usually brings new under-secretaries and this could affect the stability and continuity of government policies. Thus, in order to avoid the Macau scenario, establishing a ministerial system in which the Chief Executive has his or her political appointees as 'ministers' could protect senior civil servants, who will not be politicians but just formulators and implementors of government policies. Moreover, political appointees could come and go whenever there is a new Chief Executive, thus maintaining the political neutrality of senior civil servants to a large extent. In short, establishing the ministerial system could be beneficial to senior civil servants, whose current job of being politicians will be transferred to political appointees who assist the Chief Executive and who defend government policies.

However, some senior civil servants may be psychologically resistant to the 'ministerial system,' which means that the political appointees will have far more power and say in the policy-making process than ever before. In a traditionally bureaucratic polity where civil servants are both formulators and implementors of government policies, any introduction of the 'ministerial system' into Hong Kong must arouse the bitter, albeit private, feelings of senior bureaucrats who usually enjoy a considerable degree of autonomy in policy-making.

Cheek-Milby and those supporters of the 'ministerial' system appear to underestimate the disadvantages of implementing such a system in a semi-colonial political system which is by no means a Western-type democracy. First, without sufficient checks and balances from political parties inside LegCo after 1997, a ministerial system would be superficial and would not be able to consolidate the government's legitimacy. Second, if the Chief Executive does not appoint any political party member into the Executive Council ('ExCo'), as is Patten's policy, any post-1997 ministerial system would still have a party shadow in ExCo where the 'ministers' would be expected to defend government policies and thus act like a pro-administration political party — a scenario slightly reminiscent of the Co-operative Resources Centre under the Wilson administration (although Governor Wilson did not really implement the 'ministerial' system). On the other hand, if the Chief Executive appoints political party members into ExCo, the 'ministerial system' will fail to make ExCo relatively autonomous from various political parties — a scenario that Governor Chris Patten has been keen to avoid since his arrival in Hong Kong in 1992. Finally, as long as ExCo members are non-elected, the ministerial system cannot really make the executive branch of the government accountable to the legislature. Therefore, while implementing the ministerial system



may apparently improve executive-legislative relations as Cheek-Milby suggests, the reality is far more complicated because a ministerial system, if implemented, would be constrained by the semi-colonial structure, unlike the British parliamentary system where the cabinet is composed of members of the House of Commons who are directly elected by citizens.

Recent events have shown that the Chief Executive-designate, Mr Tung Chee-hwa, toyed with the idea of appointing some members of political parties, including the Democratic Alliance for the Betterment of Hong Kong (DAB), into ExCo. Both before and after a meeting with Mr Tung on 16 January 1997, the DAB leader Mr Tsang Yok-shing said that his party would devise a solution of dealing with any appointee's conflict of roles, an implication that there would be a likelihood of temporarily terminating the work and responsibilities of the ExCo appointee in the DAB. Clearly, the DAB fears that ordinary citizens would probably regard the appointee as a supporter of some unpopular government policies formulated by ExCo, thus undermining the party's image. On the one hand, the DAB wishes to preserve the separate membership between ExCo and LegCo. On the other hand, it tries to avoid any public dissatisfaction with the DAB. However, one cannot exclude the possibility that some voters will still view an ExCo appointee as an active DAB member instead of an independent councillor. From a critical perspective, any solution devised by the DAB will be a camouflage which cannot really hide the fact that ExCo will still have political party members, although they may try their best to avoid any party affiliation in public. As long as the Hong Kong ExCo is composed of appointees rather than councillors elected either by LegCo or by ordinary citizens, any remedy to the imperfect ministerial system is bound to have severe constraints, and it cannot guarantee that the image of political parties which have former or current members appointed to ExCo will not be tarnished, especially when ExCo formulates an unpopular policy.

Finally, Cheek-Milby concludes in her book that the transformation of Hong Kong's LegCo actually symbolizes 'the globalization of political values.'<sup>26</sup> This is true in view of the fact that the confrontation between Patten and China over Hong Kong's political reforms demonstrated a clash between Western and Chinese values. Patten stresses the significance of citizen participation, an open government, and a pluralistic policy-making style, whereas PRC officials tend to favour elite participation, a relatively paternalistic government, and a top-down policy-making process. To put it in another way, while Western political culture emphasises the possession of civil liberties by individuals, Chinese political culture tends to see these rights as being granted by the state.<sup>27</sup> Cheek-Milby concludes that:

<sup>26</sup> Ibid, p 229.

<sup>27</sup> See Michael C Davies, *Constitutional Confrontation in Hong Kong* (Hong Kong: Macmillan, 1989), ch 2, pp 14-38.

China remains a hybrid along the lines of capitalist totalitarianism or free-market authoritarianism. Consequently, Hong Kong and China remain the ultimate paradoxes: they have begun to complement each other economically, but politically, culturally, and ideologically, they remain a threat to each other's vital interest.<sup>28</sup>

### Legislative convergence between Hong Kong and China after 1 July 1997?

In the short run, Hong Kong and China do remain 'a threat to each other's vital interest.' In the long run, however, one cannot exclude the likelihood that while Hong Kong is becoming more Sinified, China is also becoming more Hongkong-ised. In short, political, cultural, economic, and even legal convergence could minimise the gap between Hong Kong and China, a scenario that has already taken place silently but has been ignored by many observers.

It is this long and silent process of convergence that will make Hong Kong's LegCo crucial in the political development of China. Cheek-Milby appears to be pessimistic toward China's legislative development. She said:

For Britain and the West, legislative approval is a key requirement to legitimize representative government. For China, the legislature should not have a final say in any determination; rather its purpose is purely to legitimize decisions taken elsewhere, to act as a rubber stamp.<sup>29</sup>

However, China's NPC has been undergoing gradual reforms and NPC members are becoming more critical of the mainland government than ever before. If so, LegCo could provide a model for China's political reforms. After all, some of Hong Kong's deputies to the NPC have displayed their relatively independent attitude, criticising the policies and corruption of the mainland administration.<sup>30</sup> Arguably, a silent and slow process of legislative convergence has already been taking place in Hong Kong and China.

In spite of the various constraints imposed by the Basic Law on LegCo,<sup>31</sup> these constraints may have to be specified on paper in order to appease the anxiety of the central government in Beijing, which has never attempted to grant a scope of autonomy to a place as large as Hong Kong from the mainland Chinese perspective. In terms of constitutional convention, one cannot

<sup>28</sup> Cheek-Milby (note 1 above), p 237.

<sup>29</sup> Ibid, p 235.

<sup>30</sup> See Ng Hong-mun, *A Memoir at the NPC* (Hong Kong: Ming Pao, June 1990), pp 169-70.

<sup>31</sup> Art 74 of the Basic Law says: 'Members of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.'

exclude the possibility that China, including the NPC, and the Chief Executive of the Hong Kong SAR will probably refrain from exercising their constitutional power to interfere with LegCo's operation. If a political culture of restraint and tolerance could develop on the part of PRC officials, the NPC, and the Chief Executive, the autonomy of the SAR may not be so unlikely as conventional wisdom assumes.

### **The provisional legislature and its impact on Hong Kong politics**

After Cheek-Milby's book was published in 1995, events showed that the PRC would establish a provisional legislature in 1997. The provisional legislature is a political product of the breakdown of Sino-British negotiation on Patten's political reform plans. While China argues that the provisional legislature was an inevitable outcome of Patten's 'violation' of the Joint Declaration and the Basic Law, the British side maintains that its establishment was unnecessary and unwise. The legality of the provisional legislature will probably be challenged by some Hong Kong people, especially the Democratic Party whose leader Martin Lee toyed with the idea of seeking a court injunction to prevent it from being established. The most viable alternative is, as Albert Chen Hung-yeek suggested, a 'supplementary resolution' passed by the NPC to confirm the legal status of the provisional legislature;<sup>32</sup> the NPC's recent approval of the work report of the Preparatory Committee may be intended to provide that confirmation.

In view of the fact that members of the provisional legislature were elected by the Preparatory Committee in December 1996, political conflicts will escalate in Hong Kong after 1997. First and foremost, as Cheek-Milby accurately observes, 'China's refusal to recognize the Legislative Council as a legitimate representative body portends serious conflicts in the future.'<sup>33</sup> The reason is that while the current LegCo is elected by citizens and has a mandate from the populace, the provisional legislature is an appointed body without strong legitimacy. Moreover, the legitimacy of the provisional legislature will become questionable when it passes an electoral law which may either reintroduce appointed seats to District Boards and municipal councils or change the current electoral system in such a way as to curb the power of the liberal democrats. In the event that the political space for the liberal democrats were limited by any electoral law enacted by the provisional legislature, political conflicts between pro-democracy demonstrators and the police would probably become more frequent than ever before.

<sup>32</sup> South China Morning Post, 22 October 1996.

<sup>33</sup> Cheek-Milby (note 1 above), p 181.

Arguably, the origin of the provisional legislature is more a political question than a legal matter. As such, its political legitimacy, such as the question whether its members were really elected by the ordinary citizens of Hong Kong, is far more significant than its 'legal' legitimacy. While local politicians have been debating the legality of the provisional legislature, the body is in fact a political legacy of Sino-British dispute over Patten's constitutional reforms. Those politicians who claim that the NPC already endorsed the setting up of the provisional legislature ignore the fact that, during this entire transition period from 1984 to June 1997 when the Basic Law was not in operation, there was no legal mechanism for the interpretation of the Basic Law. Similarly, those Hong Kong people who argue against the provisional legislature on the grounds that it is not provided for in the Basic Law also neglect the fact that they themselves are actually interpreting the mini-constitution even before 1 July 1997. Without any body that can arbitrate any difference of interpretation on the Basic Law (bearing in mind that the Sino-British Joint Liaison Group cannot solve all the disputes between Britain and China), all the local politicians who have been trapped in the dispute over the legality of provisional legislature in fact act like critics of the yet-to-be-established Committee for the Basic Law, which according to Art 158 of the mini-constitution will give advice to the NPC's Standing Committee on interpretation of the Basic Law. Since the politics of constitutional interpretation is already apparent in Hong Kong before 1 July 1997, the origin of the provisional legislature clearly stems more from politics than from law. After 1 July 1997, the politics of constitutional interpretation will definitely become more fierce in Hong Kong and it will no doubt affect both the overall development and the internal operation of the Legislative Council.

### Conclusion

Overall, Cheek-Milby's work is rich in its materials, providing readers with useful data on the evolution of Hong Kong's LegCo. From a historical perspective, LegCo has changed from a politically weak body to an increasingly assertive one. Although Cheek-Milby tends to be pessimistic toward LegCo's operation after 1 July 1997, the democratising trends that have been unleashed cannot be easily rolled back by either China or the post-1997 Hong Kong government. Any attempt to exert control on LegCo would not only damage the image of Beijing and the SAR government, but it would also force the liberal democrats to resort to street protests outside the LegCo building, thus endangering political stability in Hong Kong. The reforms implemented in LegCo under the administration of Governors Wilson and particularly Patten actually channel the political participation of democrats from street protests in the late 1970s and the 1980s to institutionalisation. Any attempt to

de-institutionalise political participation will merely force the democrats back to extra-institutional demonstration, which poses an ordeal to the street-level police officers who handle petitioners and demonstrators. If the police cannot handle such protests skilfully, political conflicts and turbulence will erupt.

On the other hand, under British rule, the Governor usually refrains from exercising his power over LegCo's operation, including the ability of legislators to initiate a private member's bill, and such restraint has arguably been the hallmark of Hong Kong politics under British rule. Whether China and the Chief Executive will maintain the constitutional convention of minimal intervention in LegCo's operation remains to be seen. Any change within LegCo after 1 July 1997 will become the most prominent indicator showing the degree of political tolerance on the part of PRC officials, the Chief Executive, and, above all, the NPC. In a nutshell, the future development of Hong Kong's LegCo will continue to be a crucial barometer of the political atmosphere of not only Hong Kong but also China.

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**One Country, Two International Legal Personalities: The Case of Hong Kong** by Roda Mushkat [Hong Kong: Hong Kong University Press, 1996. xii + 232 pp, paperback HK\$160]

On 1 July 1997 China will 'resume' sovereignty over the territory of Hong Kong. Many political, social, economic, and cultural issues arise from this situation and law, especially international law, is a central element in respect of each of these issues. This book examines some aspects of international law as it applies to Hong Kong and is authored by Roda Mushkat, who is undoubtedly one of the leading jurists in this area.

As the author notes in her preface: '[t]he concept of "one country — two systems" is without direct parallel in international law and there is an obvious need to determine its formal parameters and examine its practical implications.' The author approaches this task by dealing with a variety of issues affecting Hong Kong for which international law can assist in drawing conclusions about these parameters and practical implications. The first chapter goes to the heart of the title of the book by addressing the status of Hong Kong in international law and thus the extent to which it has an international legal personality. The next four chapters focus on the scope of the territory's jurisdiction (including extradition and exceptions from jurisdiction); Hong Kong's international legal obligations in regard to the treatment of aliens and

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