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The Rule of Law in
Hong Kong in the Run-Up
To 1997 and Beyond

By Daniel R. Fung, Q.C., J.P.



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By Daniel R. Fung, Q.C., J.P.

It is a rare privilege and a real pleasure for me personally to be asked to address you today. I am honored to see before me a galaxy of experts not just on Hong Kong and China issues specifically, but also on East Asian affairs in general.

May I begin by briefly outlining the duties and powers of my present office. Next I shall proceed to canvass what we as a government have done to entrench the rule of law in Hong Kong, after which I will talk about the inculcation in our community of legal culture and human rights values. Finally, I will address the question foremost on everyone's minds and offer a prognosis as to whether the foregoing legal and cultural construct will survive the transition to Chinese sovereignty.

The office of Solicitor General for Hong Kong differs substantially from that of my counterpart in the United States federal government. While your Solicitor General acts as the government's principal advocate responsible for determining which issues warrant determination in the United States Supreme Court and the federal Appeals Courts, my portfolio covers the Hong Kong government's legal policy. In the context of the run-up to 1997 and beyond, my brief is to ensure that Hong Kong's legal system remains true to the spirit of the common law before as well as after the reversion to Chinese sovereignty. I carry also a number of sub-portfolios, including the legal protection of human rights, constitutional and electoral law, the law of the People's Republic of China (in terms of advising my government on PRC law as well as monitoring its growth and development), and, finally, law reform in Hong Kong.

HONG KONG'S COMMON LAW HERITAGE

The common law is arguably Britain's greatest and proudest legacy bequeathed to Hong Kong. We are poised to emerge from just over a century-and-a-half of British rule. As a direct result, we enjoy a legal system which is based on the doctrine of case precedent, or *stare decisis*. The way the common law operates is illustrated in the immortal words of one legal commentator who observed that it "stands as a monument slowly raised, like a coral reef, from the minute accretions of past individuals, of whom each built upon the relics which his predecessors left, and in turn left a foundation upon which his successors might work."

The growth and development of the common law depends on input from and cross-fertilization with other common law jurisdictions. No common law system can, by definition, survive in a vacuum. Accordingly, we cite in our courts on a regular, if not actually daily, basis decisions not merely of our own jurisdiction, but also those of the House of Lords in England, the Privy Council, the High Court of Australia, the Court of Appeal in New Zealand, the Supreme Court of Canada, and last, but by no means least, the United States Supreme Court and the United States Appeals Courts, to pick but a few prominent exam-

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ples from the extensive reach of the common law patrimony. The continuation of this system is guaranteed both by international treaty (the Sino-British Joint Declaration) and by constitutional provisions (the Basic Law), which form the twin cornerstones of our future legal edifice. Hong Kong will remain locked into the international grid as a member of the common law family, wherefore, after 1997, we will continue to cite in our courts in appropriate cases the decisions of your superior courts.

The provisions girding our future have been erected and can be viewed structurally at a number of different levels, at the international legal or treaty level as well as at the domestic constitutional level. Before we embark on this survey, we should remind ourselves that Hong Kong's transition towards resumption of the exercise of Chinese sovereignty has been an extremely long one. Our odyssey began over 12 years ago, at the end of 1984, when the treaty known as the Sino-British Joint Declaration was signed between the outgoing and the incoming sovereign powers. It will be complete on June 30, 1997.

We have entered the last 500 days of this long journey. We have reached, in other words, the home stretch of our unique thirteen-and-a-half year marathon. Such a long transition holds certain advantages. It allows us periodically to pause and take stock of our progress, to look back over the long road down which we have travelled. And when we undertake this retrospective, we see four major milestones which mark, like rites of passage, our oft-times arduous trek towards resumption of the exercise of Chinese sovereignty over Hong Kong. These milestones can be represented temporally by the years 1984, 1990, 1991 and 1995.

THE SINO-BRITISH JOINT DECLARATION

Our story begins in 1984. In that *annus mirabilis*, the People's Republic of China and the United Kingdom, following two years of hard negotiations inaugurated in 1982 by British Prime Minister Margaret Thatcher's visit to Beijing, entered into a solemn agreement known as the Sino-British Joint Declaration (the Joint Declaration). The Joint Declaration is a bilateral treaty enforceable under international law and registered with the United Nations. It binds the outgoing sovereign, Britain, on the one hand into transferring sovereignty over Hong Kong to China, subject to certain specified conditions and safeguards, and the incoming sovereign, China, on the other, upon resumption of the exercise of sovereignty over Hong Kong in 1997, into giving her people "a high degree autonomy" under Deng Xiaoping's famous twin dicta "One Country, Two Systems" and "Hong Kong People Ruling Hong Kong."

Save only in respect of defense and foreign affairs, Hong Kong after 1997 will be designated a Special Administrative Region (SAR) of China and be self-governing. In short, it will be self-governing at least to the same extent as it is self-governing today. As I shall endeavor to demonstrate later, in certain specific areas, Hong Kong will actually enjoy a degree of autonomy after 1997 even higher than that which it enjoys today.

Under the Joint Declaration, Hong Kong will maintain her present freedoms and lifestyle as well as her own political, economic, social, cultural, legal, and judicial systems fundamentally different and separate from those of the rest of China. Capitalism will continue to be practiced as the order of the day. Socialism as state policy will not be applied. We will maintain our own currency, the Hong Kong dollar: a hard currency, freely convertible, a tool of international trade, different from the *renminbi*, pegged to the U.S. dollar, and backed up by US\$49 billion of reserves. Hong Kong will remain a separate customs territory. We will remain a separate fiscal area and a tax haven. No taxes will be remitted to the Central People's Government. We will practice fiscal conservatism and expend strictly within the limits of our revenue income. We will keep our own shipping and aircraft registers.

Hong Kong will maintain its own international persona separate from the rest of China. For example, we are a founder-member of the World Trade Organization (WTO). China is not. Hong Kong will retain its status in the WTO post-1997, whether or not China becomes a member of that body. We are a member of the Asia-Pacific Economic Council (APEC), sitting alongside China in that forum. After 1997, we will retain our seat on APEC. We will continue to participate at international activities and conferences under a new name, Hong Kong China.

Last but not least, the Joint Declaration specifically provides for our existing legal system to survive unchanged. In particular, it provides for the common law to continue to be applied. Hong Kong will maintain her own legal system based on the common law, which will be quarantined from that of the rest of China. PRC laws will not be applied in Hong Kong. We will have our own self-contained judicial system with the ability to exercise, for the first time in our history, power of final adjudication. Our very own Court of Final Appeal will be established in Hong Kong on July 1, 1997, to replace the Privy Council in London as the ultimate arbiter of disputes within the Special Administrative Region. No PRC court will occupy such a position. There will be no overarching supreme court established to oversee the operations of the Court of Final Appeal.

The implications of the Joint Declaration are far-reaching. It adumbrates the beginnings of an experiment by the PRC with a form of government that has gone way beyond the federal model. No federal state of which I am aware would tolerate a similar degree of separateness or autonomy on the part of any one region within the same country.

The Joint Declaration is striking in yet another respect: It contains an annex. By Annex I to the Joint Declaration, a document longer than the Joint Declaration itself but which forms part and parcel of the treaty and is also registered with the United Nations, the People's Republic of China commits to writing its basic policies governing Hong Kong after 1997. It fleshes out the provisions of the Joint Declaration proper and reiterates, among other matters, the separateness of Hong Kong's legal and judicial systems from those of the mainland and the continued application of the common law to Hong Kong with all that that implies.

In Part XIII of Annex I, the People's Republic of China made plain that the provisions of the two principal international human rights covenants sponsored by the United Nations—namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—which have been applied to Hong Kong since 1976 will continue to be applied to Hong Kong post-1997. And that is not all. In the context of fundamental common law doctrine that international legal and treaty rights and obligations do not automatically become justifiable domestically, China also made plain that those international legal provisions will be enforceable domestically in Hong Kong through Hong Kong law. And this is so despite the fact that China is not yet a signatory to either multilateral treaty.

Finally, the Joint Declaration is remarkable in yet another respect: It obliges the People's Republic of China to reduce its stated policies and treaty obligations to an enforceable domestic form. In other words, it obliges China to enact a future mini-constitution for Hong Kong. This has now become a reality. The Joint Declaration was signed in December 1984, and was ratified by the U.K. Parliament in May 1985. In mid-1985, an unprecedented process of drafting the Basic Law in consultation with the people of Hong Kong commenced and lasted for five years until April of 1990, when the process was complete and the Basic Law promulgated.

This was an unprecedented exercise in both the Chinese and Hong Kong context. Unprecedented in the Chinese context since they have never before drafted a constitution for a particular region about to be incorporated into the country. Unprecedented in the Hong Kong context because we have never before possessed a comprehensive written constitution: Our closest present equivalent to a written constitution are the Letters Patent, cast in general terms, which constitute instructions from Her Majesty the Queen to the Governor. Unprecedented also by reason of the open manner in which the exercise was carried out: It embraced people from all walks of life, both expert and non-expert, lawyers as well as laymen. The process was carried out by two committees—the Basic Law Drafting Committee and the Basic Law Consultative Committee. The Basic Law Consultative Committee comprised exclusively Hong Kong persons; the Basic Law Drafting Committee comprised partly mainland and partly Hong Kong members. Wearing a different hat as a practicing member of the private bar (as I then was), I participated in that process as a member of the Consultative Committee.

Hong Kong's Future Mini-Constitution: The Basic Law. As a result of that exercise, a 160-article mini-constitution was promulgated in April 1990. Article 8 of the Basic Law makes it plain that the pre-existing legal system—that is to say, the common law, rules of equity, pre-existing legislation, subsidiary legislation, customary law—will all be preserved post-1997, save only for those which contravene the mini-constitution. In Chapter 3 of the Basic Law, 19 articles are set out, and they lay down specific and discrete guarantees of human rights protections in specific areas.

One article among the 19 stands head and shoulders above the rest. It is more pregnant with meaning than the rest. That is Article 39. It provides that the provisions of the two international human rights covenants, the ICCPR and ICESCR, will continue to apply to Hong Kong through the laws of Hong Kong. The Basic Law realizes the promises and guarantees made in the Joint Declaration at the domestic level. It will be enforceable as law interpreted by our courts, and challenges can be made in accordance with our system of common law challenges.

HONG KONG'S BILL OF RIGHTS

The third milestone along the road to Chinese sovereignty is 1991. In 1991, we enacted for the first time a bill of rights. Those of you who are familiar with British constitutional history and development will appreciate that written constitutions and written bills of rights were and, to a certain extent, still are regarded as anathema by traditionalists in the United Kingdom. That attitude stems historically from the fact that England, as the *fons et origo* of the common law, considered the system of practices, conventions, and case law constituting the common law to be so ingrained and entrenched in their psyche and culture that there was no need for that body of jurisprudence to be reduced to a comprehensive written form.

In other words, the proposition was “If it ain't broke, don't fix it.” This philosophy, if it ever gained currency within metropolitan soil, translates less happily to dependent territories because it is supposed, with some justification, that the common law enjoys a degree of entrenchment and impregnation into the psyche of dependency communities altogether more shallow than that of the mother country. That is why one finds that, as dependent territories evolve away from the colonial mold to a state of either independence (the standard model) or subsumption under a different sovereignty (in the case of Hong Kong), they have invariably been given written constitutions with bills of rights incorporated.

The same approach was taken in Hong Kong's case when we as a government sponsored and enacted a bill of rights after a gestation period of four-and-a-half years which commenced in 1987. Again, wearing a different hat as a practicing member of the private bar, I played a small role in that process. Hong Kong's Bill of Rights is unique in more senses than one. Unique since we have never had a bill of rights before. Unique also because we have replicated in our Bill almost verbatim the exact same provisions of the ICCPR.

Of the 130-odd countries around the world which have acceded to the international covenant, we are unique in being the only place that has domesticated those provisions. Our continuing dialogue with the United Nations Human Rights Committee and other U.N. agencies dealing with human rights reveals that no other country or territory has ever done so. Being an international covenant, it is free of so-called Asian values. We have a unique, universalist, culturally bias-free Bill of Rights.

Our Bill of Rights is interesting in another respect, inasmuch as we have lifted the provisions of the ICCPR and placed them in a common law context. Being a common law jurisdiction, we regularly interpret the provisions of our Bill of Rights and amplify, explain, interpolate, and extrapolate from those provisions so as to render the Bill a living body of jurisprudence instead of merely a piece of paper expressing platitudes. In the course of interpretation, we rely on decisions from other common law jurisdictions, including those I have previously mentioned such as the House of Lords in England, the Privy Council, the High Court of Australia, the New Zealand Court of Appeal, the U.S. Supreme Court, the Supreme Court of Canada, and the Supreme Court of India.

Additionally, we have gone beyond the common law world. We have looked at the decisions of the European Court of Human Rights, as well as those of the U.N. Human Rights Committee, in coming to our own conclusions. Over the four-and-a-half years since the passage of the Bill of Rights, we have built up a sizeable corpus of jurisprudence which renders meaningful and real the provisions of the Bill. Our body of case law is home-grown, yet saturated with international learning. It is a unique synthesis of local and international common as well as non-common law jurisprudence. I have it on good authority that our experiment is looked upon with great interest by many other common law as well as non-common law jurisdictions around the world.

Before I leave this subject, it is important to bear in mind that our Bill of Rights dovetails neatly with both the international treaty, the Joint Declaration, and our future mini-constitutional law, the Basic Law. Bearing in mind that both the Joint Declaration and Article 39 of the Basic Law provide for the provisions of the international covenants being applied and enforceable through the laws of Hong Kong, our Bill of Rights realizes that promise. It has actually completed the task of domesticating those provisions. The Hong Kong Bill of Rights constitutes, in essence, a domestic amplification of the corresponding mini-constitutional and international treaty provisions.

HONG KONG'S COURT OF FINAL APPEAL STATUTE

Last year we passed the last milestone. 1995 was the date when the Court of Final Appeal Ordinance was enacted by a landslide vote of our legislature. It makes our judicial system complete and repatriates our court of last resort to Hong Kong in the form of the Court of Final Appeal, replacing the Privy Council in London. The significance of this development cannot be overestimated, because we have hitherto always had the Privy Council in London as our court of last resort.

Between 1982 and 1984, the solution to this particular conundrum was much debated in the course of Sino-British dialogue over the future of Hong Kong. One obvious and logical solution placed on the agenda was “mirror-imaging,” which would require replacing the Privy Council in London with a Court of Final Appeal in Beijing after 1997. However, after two years of hard negotiations, the architects of the Joint Declaration—both Britain and China—are to be congratulated in arriving at a uniquely Hong Kong solution to a Hong Kong problem, which is to establish the Court of Final Appeal as a common law court physically located in Hong Kong as opposed to Beijing.

The Court of Final Appeal has five seats. Led by the Chief Justice, it comprises three other permanent appointees, with the fifth slot being filled on invitation, on an ambulatory and ad hoc basis, by invitees selected from one of two panels, a panel of local jurists and a panel of overseas jurists. Such invitation may be made as the nature of the case may require so that if, say, a maritime dispute were on the agenda, an Admiralty expert may be invited from London to assist the court. In terms of membership of the court, the overriding consideration is that all the members must be common lawyers. No PRC judge would be admitted. On the overseas panel, we expect to have eminent common law jurists from all over the world. I suppose if we should be lucky enough, we might have one or more justices, either serving or retired, of the U.S. Supreme Court sitting on that panel. We would almost certainly have members of the House of Lords, as well as Privy Councillors from the Antipodes, sitting on the overseas panel.

So far as concerns the permanent appointees, there is no nationality requirement, save only for the Chief Justice, who must be a Hong Kong Chinese individual with no foreign nationality. The other three permanent appointees need not be Chinese nationals at all, and if the present composition of our Court of Appeal should offer any guide, I would anticipate the majority of the Court of Final Appeal judges to be non-nationals. Of all countries in the world, only China has allowed for such an open system. I know of no other jurisdiction that allows for non-resident aliens giving an input at the highest level of the judicial machinery. This would rightly reflect the reality of Hong Kong as an international, cosmopolitan city.

HONG KONG - A CIVIL SOCIETY

So much for the structural underpinnings of the rule of law in Hong Kong. However, as all of us are well aware, structural underpinnings are a necessary but by no means a sufficient element for guaranteeing the preservation of the rule of law or of a civil society in Hong Kong after 1997. We must probe further. One has to examine how the law operates in action. One has to look also at the culture of the relevant society. One has to inquire whether the population regards the rule of law as an invisible but indispensable aspect of their everyday lives in much the same way as people in the United States or the United Kingdom take the rule of law for granted. The question, in other words, is whether Hong Kong is a civil society.

Had that question been put to me in 1984 at the time of the signing of the Joint Declaration, I would have had to couch my answer with considerable reservations. The same question asked of me today would elicit a much more categorical, positive response. I suppose that, because we have a set transition of finite duration with a scheduled target date, it has the effect of concentrating the mind immensely: not unlike the old adage of a condemned man’s mind being wonderfully concentrated upon being informed of his scheduled date of execution!

Back in 1984, we were fully aware that in 13 years' time, the resumption of the exercise of Chinese sovereignty over Hong Kong will take place, wherefore it was necessary to put our house in order. What has happened over the last 12 years is that, as a result of a process of public education which we as a government have sponsored, we have witnessed a sea change in the attitude of the people of Hong Kong towards the importance of the rule of law as an indispensable underpinning of a civil society.

Statistics on the numbers of writs issued, cases decided, or legal principles laid down by our courts tell, perhaps, a less eloquent story than an examination of our popular culture. Since the mid-1980s, we have enjoyed in Hong Kong a number of hugely successful television series as well as feature films, being homegrown equivalents to "L.A. Law." These portray bewigged and begowned barristers cross-examining witnesses in court, solicitors taking instructions from lay clients: in short, the lives and loves of lawyers which constitute the very stuff of legal soap opera.

These are not propaganda pieces produced by the government. And if we were to attempt anything of that ilk, they would not sell! On the contrary, these are commercially viable programs and movies that have been devised to show the machinery of justice in action, breathing life into the related themes of justice pursued and justice denied. And if the man or woman in the street cannot readily identify with the issues explored on celluloid, then these ventures would surely flop. The fact that they have not done so but have, on the contrary, broken box office records speaks volumes.

So far as human rights culture is concerned, we have also embarked since 1991 on an ambitious program whereby we supply, free of charge, to all secondary schools in Hong Kong human rights teaching kits which are used by the teachers to teach schoolchildren human rights in lay terms as part of their civic education curriculum. We have also produced video tapes and cartoon booklets on human rights. So successful has this been that the United Nations Committee on Economic, Social, and Cultural Rights, when they examined Hong Kong in 1994, paid us the ultimate compliment of pronouncing Hong Kong as having done more in propagating and educating its population on human rights than any other country or place that has acceded to the Covenant.

SURVIVAL OF THE RULE OF LAW IN HONG KONG AFTER 1997

So much for the structures, the practices, the culture. Will all this survive the transition? Will we still see the same dynamics at work post-1997? This is the ultimate question to which I adverted at the outset. In advancing a cautiously optimistic prognosis, may I cite seven principal factors.

Structural Underpinnings. First of all, the existence of the structural underpinnings, being the foundations of our system, should not be underestimated. They are not meaningless pieces of paper. The treaty (the Joint Declaration) is registered with the United Nations. There exists also the mini-constitution (the Basic Law), which will become a living law because it will be part of a common law system.

The System's Track Record Throughout the Transition. The proof of the pudding lies, of course, in the eating of it, which leads onto my second factor, which is that our system works and has worked in Hong Kong and has been seen to work throughout the transition. We have been undergoing 12 consecutive years of transition to conclude in a reversion to Chinese sovereignty, and the process has been nothing if not traumatic. It would be disingenuous of me to pretend otherwise. And it would be surprising were that not the case,

because we are dealing with real people, people with families and children who worry about their future as well as their children's future.

However, despite the unavoidable uncertainties, despite the worries and concerns, Hong Kong has not gone the way of, say, the former Yugoslavia. There is no bloodshed on our streets. On the contrary, we have not merely survived, we have flourished. So much so that for every single year since 1984, Hong Kong experienced real growth, in double-digit terms throughout the 1980s and in single-digits throughout the 1990s. And the only reason for the deceleration in real growth is that, as the economists tell us, we have now reached a stage of development whereby single-digit figures are something for which any developed economy would be grateful.

We have a standard of living which exceeds that of Britain, Sweden, and most Western European nations. We are the fourth-biggest trading power in the world after the European Union, the United States, and Japan. If European Union countries are to be split up into separate sovereign states, we then are the sixth-largest trading power in the world. We are the world's fourth-largest financial center after London, New York, and Tokyo. We have the world's largest container port. We are the premier services center in East Asia and the Western Pacific. None of the above would be the case if Hong Kong were not served by a viable, mature, efficient, and incorrupt legal and judicial system. Those facts stare China in the face.

Hong Kong's Economic Integration with China. The third factor is China's self-interest, based on Hong Kong and China's ever-closer economic integration. I am often asked the question what will happen in 1997. The answer is that 1997 will come as something of an anticlimax. This is because economically we are already integrated with China, so that 1997 will present itself as a date when the political forms catch up with the economic reality. China has enormous stakes in Hong Kong. We still account for 40 percent of China's hard currency earnings. We are by far China's biggest trading partner. Figures for the year ending September 1995 show trade between Hong Kong and China in the region of HK\$731 billion, which is just under US\$100 billion. We are also the largest single foreign investor in China. The capital value of our investments is US\$66 billion. This dwarfs anything invested by the United States, Japan, or the European Union.

If you were to trace Hong Kong's economic development from a light manufacturing center in the 1970s into a services center by the mid-1980s, you will see our curious metamorphosis into a post-industrial society. Although rising labor and housing costs rendered it no longer economic to manufacture in Hong Kong, we have paradoxically not lost our manufacturing base. We merely relocated our factories north of the border. In the Pearl River Delta area of Southern Guangdong Province alone, you will find 4,000 manufacturing concerns established with Hong Kong capital. Economists talk accordingly of Greater Hong Kong as a cohesive economic unit of 70 million people, which is about the size of West Germany before unification and larger than the present-day France. Little wonder, then, that we are able to maintain our position as the fourth-biggest trading power anywhere in the world.

China happens also to be the biggest single investor in Hong Kong. China has capital investments in Hong Kong valued at US\$31 billion. Again, this dwarfs investment by any other country. Hong Kong's financial markets are a natural vehicle for the raising of capital by Chinese companies by the so-called H shares. Hong Kong's banking system which is the best in Asia is a natural haven for Chinese savings.

The point of this argument is that increasing economic integration between Hong Kong and China makes for a "soft landing" in 1997. Conversely, if Hong Kong and China's respective economies were not even on speaking terms with each other, then we may be in for rather a rude shock come 1997. German unification following the demolition of the Berlin Wall holds a salutary lesson. Germany today is paying the price for want of economic integration between the two territories during the period of division, and looks set to continue to pay such price for a generation to come.

Existentializing Hong Kong's Legal Values. I have already canvassed the domestic existentializing of legal culture which led to the creation of a civil society in Hong Kong. Looking at the Hong Kong-China relationship, if one were to ask the question in 1984, at the time of the signing of the Joint Declaration, whether China truly understood what made Hong Kong tick and whether they appreciated the value of our system, only a dyed-in-the-wool optimist would give a positive response. Even if experts such as economists could glimpse at the argument, it was unlikely that party leaders could existentialize it in their everyday lives. In those days, contact between the mainland and Hong Kong was sparse at best.

Today, however, the psychological landscape has changed beyond recognition. The sons and daughters of the Party elite live and work in Hong Kong. They put their savings in our banks; they buy our stocks; they speculate on our financial markets; they drive our cars; they punt on our racetracks: They live the Hong Kong life and they enjoy it! The degree of qualitative as well as quantitative understanding in China of Hong Kong's system and what makes it work has increased exponentially. Little wonder that in the Chinese blueprint, we are slated to become the Manhattan-cum-Switzerland for China post-1997.

The Taiwan Factor. Let us turn now to the Taiwan factor. I do not believe this consideration can ever be swept aside. It operates as a negative disincentive. By that, I mean that if the transition for Hong Kong were to proceed smoothly, it does not mean that Taiwan will come running back to the Chinese fold. Beijing knows that; Taipei knows that; Hong Kong also knows that.

But the three of us are also well aware that, if the transition for Hong Kong were to proceed badly, if Hong Kong should stumble, then the chances for peaceful reunification between the mainland and Taiwan become eliminated entirely. And for all the saber-rattling that has been going on across the Taiwan Strait over the last four months, which I daresay will reach a climax by March this year to coincide with the Presidential election in Taiwan, I for one do not think that peaceful reunification is off the agenda for China. Jiang Zemin cannot afford to take it off the agenda, wherefore it is a factor which must be weighed in the balance.

The Dragon Wakes. The sixth factor is the most far-reaching. China is a country that has undergone double digit real growth for the last ten consecutive years. In the southernmost provinces which abut Hong Kong such as Guangdong and Fujian, real growth for the last four years had been over 30 percent, which has hitherto been unheard of in recent human history. What this means is that the lives as well as expectations of a quarter of humanity have been transformed, together with the buildup of attendant pressures for economic liberalization and political reforms on the Central People's Government and the provincial authorities which have only partially been met. We are not able to grasp the full consequences of this change because we are much too close to the trees to see the wood. All we say with reasonable certainty is that the economic transformation of China is an event of significance to be compared to the coming of the Industrial Revolution in 19th century Europe.

Hong Kong's Role as Interpreter and Mentor for China. Hong Kong stands at the vortex of this radical metamorphosis. We do so as dictated by history and geography. Hong Kong acts not merely as the bankers for China's modernization and the engine for her economic growth; we form also the natural interface between China and the international community. Hong Kong is the obvious interpreter for China in her dealings with the outside world. We do not throw up the same sort of cultural and linguistic barriers which China encounters when dealing directly with the outside world. Conversely, the international community tends to encounter less pain when they deal with China via Hong Kong than if they were to deal with China directly. Those among you who engage in or advise on China trade know the story full well.

So we play this role of interpreter and mentor. What this means in the legal sphere is that China looks to us for guidance and for advice. Since about the mid-1980s, China has been fascinated by the common law. Why the common law? Because China can appreciate it as the instrument for dispute resolution *par excellence*. The common law, with its doctrine of binding precedent, is able to project a degree of precision and predictability to dispute resolution which is absent from the continental system.

Since about 1987, at least three different law schools in China have been studying Hong Kong law as a specialty and translating our laws into Chinese. Why Hong Kong law? Perhaps because Hong Kong law is the most user-friendly of the common law systems from the Chinese perspective. They can see it operate in the Hong Kong context. They can see its successes. They can measure its effectiveness. They encounter less of a cultural and linguistic barrier when studying Hong Kong law than that of another common law system such as the American model. Last but not least, we happen conveniently to be the most politically acceptable member of the common law family since we will soon be part of the one sovereign state.

We have actually overtaken these mainland law schools in the translation of our laws into Chinese. We now draft all our present and future legislation bilingually, in Chinese and in English, with two teams working in tandem. The end-product we supply to our Chinese counterparts, principally the Legislative Affairs Commission of the National People's Congress, not because we are obliged to but in order to stimulate their interest and often at their request. We have supplied the NPC Legislative Affairs Commission with our bankruptcy law, our companies legislation, and other commercial legislation which they have consulted in drafting their own laws.

At the regional level, the degree of influence we exercise is more striking. Let us consider, for example, Shenzhen, which is our immediate northern neighbor. Shenzhen is the first of the special economic zones established by China in 1979. At the time, Shenzhen was a sleepy border town with a string of paddy fields. It is now a bustling city of 3 million. Since 1992, Shenzhen has been given legislative autonomy.

This means that Shenzhen can pass its own laws, different and separate from those of the rest of the country, through its own Shenzhen People's Congress. In the last three-and-a-half years, Shenzhen has enacted approximately 250 pieces of primary and subsidiary legislation, of which fully two-thirds are plagiarized from the Hong Kong statute books with our blessing and cooperation and without charge for copyright royalties! They are highly appreciative of our efforts. The Standing Committee Shenzhen People's Congress has indicated to me, shortly before I commenced this speaking tour, that Shenzhen wants to achieve legal parity with Hong Kong, leading eventually to economic integration with us.

That aspiration constitutes, at the moment, little more than a pipedream. It is also moot whether such a scheme would be permissible under the Basic Law. However, the more important fact to bear in mind is that the common law is not, of course, just a collection of statutes. The common law is a living body of case law. It is also a set of practices and values. The common law partakes of a certain spirit, a certain philosophy, a certain approach which respects the principle of the independence of the judiciary, which respects the independence of the legal profession, and which demands a minimum degree of objectivity and professionalism.

Perhaps not surprisingly, the Shenzhen government is interested in having their lawyers trained by the Attorney General's Chambers in Hong Kong, and we have commenced a dialogue on this issue. In the same manner, we have commenced a dialogue on training lawyers at the level of both the Central People's Government and provincial governments.

We already administer a program of training young Chinese private sector lawyers, jointly with the Overseas Development Aid Office of the British Government, the British Council, the English bar, the English Law Society, and London University whereby 12 of the ablest young Chinese lawyers are selected every year and sent to be trained in England for ten months. They spend the first four months at the School of Oriental and African Studies in London University, where they are taught the rudiments of the English legal system and the use of legal English, whereafter they spend the next three months attached to leading solicitors' firms, followed by a further three months' attachment with barristers chambers in the Temple and Lincoln's Inn. At the end of their ten months' English experience, the trainees come to Hong Kong, where they spend their final two months working in the Hong Kong private sector milieu before returning to China. As result, we now have an expanding network of alumni spread throughout the country, which will serve us well after 1997.

We also help in the training of Chinese judges, who constitute, of course, key players in the judicial system. It is common ground that, currently, the degree of professionalism of the Chinese judiciary leaves much to be desired. Since 1992, the Supreme People's Court has set up a Senior Judges Training Center. Every year, 120 judges are selected from all over the country, given a year's sabbatical, and sent in two batches of 60 each to, respectively, Peking University Law School and People's University Law School to undergo specialist training. Afterwards the trainees return to the various provinces and cities from whence they came.

We are in the process of negotiating the incorporation of a common law component into that training program. We hope to bring these senior judges down to Hong Kong to undergo training, using funds to be made available in Hong Kong for that purpose. The Supreme People's Court has recently also set up a Senior Judges Educational Foundation, on which I have been asked to sit as one of the founding honorary directors. We hope through this foundation to enhance much-needed professionalism for Chinese judges.

What of the legal profession? Under the common law or in any mature legal system, the legal profession practices independently of government. Currently, Chinese lawyers are licensed to practice by the Ministry of Justice. The Ministry of Justice indicates that they intend to privatize the Chinese bar within 18 months. That was their stated target date in August last year. We can reasonably expect the Chinese bar to be rendered independent of the government sometime before 1997.

At the national level, we see the development of another phenomenon: that is, the beginnings of a case law system in China. Since 1992, the Supreme People's Court has been publishing reports of their case decisions on an annual basis in four volumes. Volume One is

administrative law; Volume Two, criminal law; Volume Three, civil law; and Volume Four, economic law. It would be risible, however, to pretend that by this means, China will shortly be joining the common law family, for these reports have no binding force as we understand that term to be within a common law context, although they are of high persuasive value.

The implications are nevertheless clear; namely, that China is travelling down a road not dissimilar to that taken by France and Germany not so long ago when they started publishing law reports of their superior courts. That took place as a result of the pressures of European economic integration. In the Chinese context, the spur to change has likewise been economic in origin; namely, the Chinese modernization program. Last year, the task of translating into English the China Law Reports was complete and published by Butterworths, the leading publisher of common law legal texts outside of the United States. We in the Attorney General's Chambers in Hong Kong, as well as I personally, have played a small role in this process of preparing the English edition, which will be published on an annual basis.

CONCLUSION

The foregoing are but illustrations of remarkable developments in China in which we play a role, often modest, at times crucial, but all of which will assist in the modernization of the country. Hong Kong stands in the vortex of this process of seminal change in the biggest country in the world. In coming to some sort of prognosis as to what will happen to Hong Kong and to China after 1997, one must weigh in the balance the various provisions we have made for continuation of the system, the economic reality in the case of the Hong Kong-China synergy, *realpolitik* in the case of China's relations with Taiwan and with the outside world—in particular, the United States response to China's changing relationship with Taiwan—and, last but by no means least, self-interest on the part of China.

All of the above will combine to shorten the odds on our system surviving, and not merely surviving *simpliciter*, but also influencing change within China itself. 1997 will present itself as a unique opportunity for engineering positive and constructive change in China for the benefit not just of China and Hong Kong, but also the entire Asia-Pacific Region and, by extension, the rest of the world. This will come about as a natural development, since after 1997 Hong Kong will be able to play the role of mentor and interpreter from the inside, that is to say from within the Chinese body politic.

I often liken Hong Kong's special role to that of playing Virgil to China's Dante, showing Dante the way ahead, in a late 20th century re-enactment of the *Divine Comedy* in an East Asian setting to herald the impending dawn of the Pacific Century. And after traversing Hell and Purgatory, eventually we will hopefully reach also Paradise at the end of our journey.