

1-1997

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Recommended Citation

Hamlett, T. and Clarke, J., The law and Hong Kong news media after July 1997, *Asia Pacific Media Educator*, 2, 1997, 4-21.

Available at: <https://ro.uow.edu.au/apme/vol1/iss2/2>

The Law And Hong Kong News Media After July 1997

Journalism educators in Hong Kong will find themselves in a state of confusion over what to teach students for whom familiarity with the law is a professional necessity. The law-making structure during the handover of Hong Kong to China has become so unpredictable that little firm instruction can be attempted. This article traces the development of new laws impinging on the media in Hong Kong. It argues that without a clear legal framework, journalism instructors may end up teaching students to consider the consequences to themselves of what they write, which is hardly an appropriate approach to a competent education in journalism.

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Media educators in Hong Kong face an unprecedented problem when teaching students the law relevant to journalism. Owing to Hong Kong's unique situation and recent events, legal changes have been coming thick and fast as British rule comes to an end, and there is no certainty what the law will be after China takes over the colony on July 1, 1997. One cannot resort to that venerable standby, teaching common law principles. Whether common law principles will still be relevant is one of the debatable points.

The Joint Declaration on Hong Kong's future signed by the leaders of Britain and China in 1984 envisaged Hong Kong remaining much the same in its legal and economic systems, with transitional issues being resolved by a Joint Liaison Group (JLG) of the two governments. It appears with hindsight that the difficulties of this approach were underestimated. What is in fact required is that Hong Kong's legal system should be cut off from its British roots and grafted on to a Chinese-drafted Basic Law which operates on completely different assumptions.

The JLG proved an imperfect method of resolving difficulties, because if the two governments fell out on one matter then all progress tended to stop. It is understandable that the Chinese side should find delay a tempting tactic, because any

matters not jointly decided before the handover will presumably no longer require the participation of the British side at all. Equally understandable the Hong Kong government tended to respond by changing laws which might allow human rights abuses and then categorising such changes as marginal items not requiring consultation. These disagreements have created a large back-log of work which is unlikely now to be dealt with on a joint basis. In the meantime, China has set up a shakily based provisional legislature which started passing post-handover laws in May.

The uncertainty and confusion has been compounded by other kinds of changes taking place in Hong Kong. The Hong Kong government has been carrying out a programme to deal with laws of the British Parliament which apply in Hong Kong. These need replacing before they lapse with the change in sovereignty. Many local laws needed textual amendments to remove references to "the Colony", the Queen and other imperial vestiges.

Meanwhile, a separate programme to translate the Laws of Hong Kong into Chinese finished in May. The translated texts do not go through a legislative process but they have the effect of legislation because defendants and litigants can resort to the version which is most favourable to them. An early case involving health regulations suggested that this might be a potent source of unintended changes.¹

Hong Kong's legal system, long a matter of contention, thus became the major issue between the two sides in the period before the handover. The British/Hong Kong government side was hastily finishing off its belated effort to bring the law into line with contemporary standards of human rights while the Chinese government wanted generally to maintain the status quo.

The consequence for the news media has been an atmosphere of increasing uncertainty. The guarantee in the Basic Law, the China-drafted constitution which comes into effect on July 1, that Hong Kong will have "freedom of speech, of the press and of publication", is of little comfort given the current fluidity and, more importantly, the fact that such freedoms are hardly consistent with Beijing's own tradition of suppression.

The Chinese constitution has a similar guarantee, saying, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration" (Article 35), and yet this clearly is not so. Although Hong Kong, according to the Joint Declaration, was to retain its separate identity and lifestyle for 50 years, recent developments suggest that China's influence in the territory will

be far greater than that implies.

In these circumstances many journalists are wary of annoying the powers in Beijing. Self-censorship has been in evidence since the early 1990s,² and the growing legal impasse can only encourage second-guessing of what the Chinese authorities want published, reinforcing the trend.

Journalism educators too find themselves in a state of confusion over what to teach students for whom familiarity with the law is a professional necessity. The situation is not just that there are no suitable textbooks on media law (a perennial problem) but that the whole law-making structure has become so unpredictable that little firm instruction can be attempted. The worry is that this leaves any journalist, prospective or already working, insecure and opens the way to possible disruptions, as discussed at the end of this article.

Problems With The Basic Law

The Basic Law and several annexed decisions on handover arrangements were passed by the National People's Congress in April 1989 on the basis of the Joint Declaration. Article 27 contains the guarantee of press freedom cited above. As with all other freedoms provided for in both documents, there is no elaboration on its possible clashes with other areas of the law, and there are some in the Basic Law itself.

Of greatest concern is Article 23, which requires the Special Administrative Region (SAR) government to "enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

In the draft version of the Basic Law this had read simply, "The Hong Kong Special Administrative Region shall prohibit by law any act designed to undermine national unity or subvert the Central People's government".³ The re-wording was done after Tiananmen in 1989 and ensuing protests in Hong Kong. It requires the replacement of Hong Kong's existing legislation on such matters. The haste with which the clause was changed left it ambiguous. The intention of the restriction on "foreign political organisations" was to cover pro-democracy exile groups, but this provision could be used to cover Amnesty International, human rights organisations, or even the YMCA.

Concern about this article has become even greater recently because of the Chinese government's refusal to recognise after the handover the current Hong Kong Legislative Council, which was elected to a four-year term in 1995. Beijing's opposition stemmed from reforms introduced by the Hong Kong governor, Chris Patten, under which seats assigned to functional constituencies were arranged so as to include every working person in Hong Kong. Patten argued that the 1995 election did not contravene the Basic Law or the Joint Declaration and the Council could continue until the end of its term.

However, China disagreed vehemently. In March 1995, the Preparatory Committee (PC), the body appointed by Beijing to prepare for the transition according to one of the Basic Law annexes, passed a resolution on a provisional legislature, something which was not provided for in any law at all. The new council was to be chosen by the Selection Committee, a 400-member organ created by the PC in accordance with the 1990 law but which was supposed only to select the first chief executive. The provisional legislature was formed in December 1996, the Chinese government insisting that it was legal but failing to explain the obvious contradictions. The move was doubly alarming.

The bigger issue was that China had so blatantly contravened the Joint Declaration, the Basic Law and its own legislation on Hong Kong even before the handover. The narrower issue, which has direct relevance to journalists, is that the drafting of the sedition legislation seems to have been put in the hands of an illegal body.

Another problem that has arisen with the Basic Law is that, while other Hong Kong legislation is required not to clash with it, no mechanism was decided on for actually passing such changes or removals into law until it actually goes into effect. The Hong Kong government's programmes of amendments did not include this area, on which its views would certainly not have been accepted as authoritative by China.

The job of checking for accord with the Basic Law was done originally within the Preliminary Working Committee (PWC), which itself was non-constitutional, being set up by China in mid-1993 to pave the way for the PC. The PWC's legal sub-group worked in secret and recommended changes to 25 of Hong Kong's approximately 600 laws when it finished in December 1995, somewhat fewer than the changes being undertaken by the Hong Kong government to prepare local laws for post-colonial purposes.

In early January this year the PC approved as from July 1

the total or partial repeal of 25 laws, including the sensitive Public Order Ordinance and Societies Ordinance, which had recently been amended by the Hong Kong government to make them more liberal. In late February the NPC's Standing Committee seems to have adopted these repeals. No specific reasons for variance with the Basic Law were given.

The process was extremely odd because it was happening before the handover; the Basic Law only allows the post-July 1 legislature to enact laws, and such laws need only be reported to the NPC Standing Committee and not approved by it. The current Legislative Council had no part in the process. The repeals meant that on July 1 some laws would cease to exist, and an ad hoc process had to be set up to establish replacement laws.

The Public Order Ordinance and Societies Ordinance were put in the hands of the chief executive designate, who published drafts for public consultation in April. Many responses were sent in, and amended versions were passed to the provisional legislature for processing. Members of the Democratic Party said they would challenge in the courts this and any other legislation passed by the provisional legislature, making the legal situation even more fluid.

Bill of Rights Ordinance

The Hong Kong Bill of Rights Ordinance (BORO) was passed in 1989 in the wake of the Tiananmen Square killings and it incorporates word for word the expansively phrased aspirations of the International Covenant on Civil and Political Rights (ICCPR). This allowed the Hong Kong government to set about repealing and adjusting antiquated colonial legislation of a repressive nature on the grounds that it conflicts with the Bill. Such legislation can also be struck down by the courts.

Freedom of the press is protected in the BORO exactly as in the ICCPR's Article 19: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The ICCPR itself was extended to cover Hong Kong in 1976 when Britain became a signatory, and both the Joint Declaration and the Basic Law allow it to continue on the same terms after 1997, even though China itself is not a signatory. The ICCPR's Human Rights Committee, in its recent concluding observations on the four Hong Kong reports which have been

submitted to it, included a reminder that rights given under the covenant could not be denied just because of dismemberment of territory or the transfer of its sovereignty.⁴

China opposed the BORO from the beginning, complaining that agreement to the preservation of such rights did not mean agreement to alter existing legislation on the matter, since such changes had not been considered necessary before. In October 1995 more detailed objections emerged from the PWC's legal affairs sub-group, which advised the Chinese government that sections concerning the interpretation of the ordinance itself, the incorporation of the provisions of the ICCPR into Hong Kong's domestic law and the requirement that all existing and future legislation must comply with the BORO were contrary to the Basic Law. It also advised that changes made to six ordinances to bring them in line with the bill were inconsistent with the Basic Law and should be reversed.⁵ These included the Public Order Ordinance and the Societies Ordinance, mentioned above, and several other laws that deal with freedom of the news media (see below). It cited as grounds that the Joint Declaration's guarantee of Hong Kong's law applied to the law as it stood in 1984 and said that the amendments "will hamper the administration of Hong Kong and are not conducive to the maintenance of stability in Hong Kong".⁶

Thus something envisaged as the straightforward implementation of a law that was in accord with the Joint Declaration and Basic Law became a major point of argument. The Hong Kong Journalists Association criticised the Hong Kong government for dragging its feet and not making suitable changes to the current laws, but also blamed Beijing for not being willing to carry out its obligations:

"In practice, China remains intransigent on this issue, and has yet to be persuaded by Britain either to accede to the ICCPR in its own right (and, by extension, to include Hong Kong) or to agree to allow another mechanism whereby Hong Kong can submit reports directly to the UN Human Rights Committee, as Britain is presently obliged to do under Article 40 of the ICCPR".⁷

Experience with the Bill of Rights has revealed another problem, which is that Hong Kong judges have generally escaped the increasing emphasis on human rights protection provided in other Common Law countries by experience with local Bill of Rights or (in Britain) the European Convention on Human Rights.

Local judges have faced the sort of discomfort with the Bill of Rights Ordinance's resounding declarations of principle that

British judges used to have with the European Convention. Unfortunately Hong Kong judges are not temperamentally well-equipped to innovate in this area. Most of the colony's more senior judges are foreigners imported either through the old Colonial Legal Service or more recently on a contract basis. Colonial judgeship as a career does not appeal to ardent legal innovators. Increasingly desperate attempts have been made to recruit more local judges but the role does not generally appeal to Hong Kong lawyers. Judges were not consulted about the Bill of Rights and viewed it with some trepidation.

A senior judge opened a local Bill of Rights conference by warning that the Ordinance was the "gateway to an uncharted sea where the court would be the foremost victim to be hit by the coming storms."⁸ More succinctly, one of his colleagues described the Ordinance as a "can of worms."⁹ Under these circumstances it has been unusual for Bill of Rights arguments to sway Hong Kong courts.

Yan Mei Ning analysed 132 reported Bill of Rights cases and found that "many judges adopt a narrow and legalistic approach towards the Bill of Rights" and "it is common among judges of the lower courts to hold that the Bill of Rights is declaratory of Common Law principles only and adds nothing new."¹⁰ The one area where the Bill of Rights has produced a substantial change is in the scepticism which now greets "reverse onus" provisions, where the presumption of innocence is eroded by an ordinance.¹¹

One reason cited for judges' lack of enthusiasm is the expectation that the Bill of Rights will be a temporary visitor, or at least would soon lose its special status. The expressed desire was to enact an ordinance which would continue after 1997. But the Basic Law contains no provision for special or entrenched legislation, other than the Basic Law itself. So the Hong Kong Government was constrained to adopt a two-phased approach.

The Bill of Rights Ordinance was entrenched by amending the Letters Patent (Hong Kong's colonial constitution) to prevent the Legislative Council from passing any Ordinance which conflicts with the Bill of Rights Ordinance. This is effective enough up to the 1997 hand-over, after which the Letters Patent will be of no further significance.

However the Bill of Rights Ordinance is a word-by-word copy of the ICCPR. This is in itself an inconvenience, because incorporation in this fashion has been adopted nowhere else.¹²

This was done to fit into the Basic Law, as mentioned above, and the courts could accordingly regard the Ordinance as a sort of extension of the Basic Law. This would mean that conventional legislation conflicting with the Bill of Rights was *ultra vires*¹³ and amendments required the special procedure laid down in Basic Law Article 159. This is an ingenious arrangement, but seems to demand a measure of judicial goodwill which has so far been lacking.

A number of the changes in progress under the Hong Kong government's programme to bring laws into line with the Bill of Rights have significance for freedom of the news media.

1. Emergency Regulations Ordinance

Introduced to combat labour unrest in the 1920s, this allows the governor, after consulting his Executive Council, to "make any regulations whatsoever which he may consider desirable in the public interest" whenever he considers an occasion to be one "of emergency or public danger", and authorises emergency regulations to be made, including "censorship, and the control and suppression of publications...and means of communication." This does not fit with the Basic Law, which puts the declaration of an emergency in the hands of the Chinese government.

The ordinance is arguably compatible with the Bill of Rights, which has a list of rights which may not be derogated in emergencies. Freedom of opinion and expression are not among them. The Hong Kong government reviewed the ordinance and in the 1994-1995 legislative session repealed all the regulations which had been made under the ordinance in various past times of crisis. But the original "parent" ordinance was left intact, still allowing for censorship though not providing the administrative machinery to impose it.

The government has commented that, "If an emergency arose in future, new regulations would have to be made", adding rather hopefully that the Basic Law would not allow such regulations to be inconsistent with the Bill of Rights or the ICCPR.¹⁴

The PWC's recommendations included restoring all the subsidiary regulations, but they were not mentioned in the PC's changes in February.

2. The Television Ordinance, the Telecommunications Ordinance and the Broadcasting Authority Ordinance

Hong Kong's broadcast and cable stations are regulated by these three ordinances, the telecommunications legislation

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covering radio. The legislation enjoins franchise holders to follow regulations made by the governor in consultation with the Executive Council, but this does not in practice cover radio completely because it is not all run by franchise. The largest radio broadcaster, RTHK, is in fact a government department. Attempts to corporatise the station along BBC-like lines were vigorously opposed by China and have been dropped.

Broadcasters must follow Codes of Practice set by the Commissioner for Television and Entertainment Licensing. Three codes have been issued for television,¹⁵ two for radio.¹⁶ These generally contain the usual platitudes about sex, violence and children's programming, but both include a vague prohibition of material "undesirable in the public interest".

There were plans to combine and update the three laws into an omnibus broadcasting bill, but these were dropped in early 1996 because of opposition from the Chinese government¹⁷ and individual amendments were taken up instead. The Television Ordinance, updated in 1993 to incorporate specific provisions for cable, was shorn of the more sweeping Broadcasting Authority powers to interfere in programming, and the governor was required to seek an order from the High Court before censoring or suppressing items.

The Telecommunications Ordinance was similarly amended for radio. A section of the Television Ordinance allowing the governor and Executive Council to dictate to the Broadcasting Authority the standards and content of television programmes was repealed, as was a similar section in the Broadcasting Authority Ordinance covering radio.

The Television Ordinance was amended so that it no longer allows as a reason for revoking licences "the security of Hong Kong", and requires the governor and Executive Council before any revocation to seek a recommendation from the Broadcasting Authority, which would have to conduct an inquiry in certain circumstances. Another change abolishes the requirement for television licensees to use only news reports from sources approved by the Broadcasting Authority.

The government also planned to repeal a regulation excluding certain material from being broadcast on television, as well as legislation allowing the Broadcasting Authority to stop radio stations from broadcasting programmes that might contravene directions of the governor and Executive Council and regulations made under Section 130.¹⁸

These amendments are also among those that have been

challenged by the PWC, which wants the old laws to stand, but again they have not been altered by the PC.

3. The Newspapers Registration and Distribution Regulations and News Agencies Registration Regulations

These regulations allowed the registrar "unfettered discretion" to ask for particulars from anyone who wants to register a local newspaper or news agency. Amendments were made in May 1995 restricting them to "specified information which is necessary for the purpose of identifying those responsible".¹⁹

4. Defamation Ordinance

The law on defamation is not touched on in the Basic Law at all, although it is referred to indirectly in the Bill of Rights. Actions for defamation are comparatively rare in Hong Kong; the usual reasons given are the difficulty of litigation in a foreign language where a case may turn on the meaning of a particular expression,²⁰ and the comparatively low level of damages awards.²¹

The libel law consists mostly of the British common law on the subject. There is no protection for errors made in good faith, particularly in the context of "political speech", like reports of public speeches which turn out to be defamatory. There is no specific provision for political controversy or a class of people who might be considered in other jurisdictions as public figures requiring a lower degree of protection from adverse publicity. Actions for defamation are discouragingly expensive for both sides.

Hong Kong has a Defamation Ordinance loosely modelled on the UK Defamation Act of 1953. Colonial law draftsmen often took advantage of opportunities to codify segments of the common law and here incorporated a section on criminal libel. In May 1995, amendments were introduced to remove Section 6, by which anyone who maliciously published a defamatory libel could face a year in prison as well as an unlimited fine. That would leave the measures in Section 5, which refers to defamatory libel published with the knowledge that it is false, and allows for two years in prison.²²

HKJA has demanded that defamation no longer be a criminal offence punishable by imprisonment, and be left as a civil matter, as it is in most common law jurisdictions. When the association put this to the government the first reply was that it would be considered, but subsequently the governor, in a letter to the HKJA, ruled it out.²³

5. Official Secrets Act and Crimes Ordinance

Certain parts of the 1989 Official Secrets Act were extended to Hong Kong in 1992, although the rest of the 1901 act as well as those of 1920 and 1939 still apply. The legislation emanates from the British Parliament and so will no longer apply to Hong Kong after June 30.

However, the possibility of localising it was suggested in the PWC's legal sub-group in February 1995.²⁴ In July 1995 the British government submitted to Beijing proposals on the OSA, saying that they were compatible with the Joint Declaration, Basic Law and Bill of Rights. Proposals were also submitted for the Crimes Ordinance, which contains the existing legislation on sedition and treason.²⁵ The PWC legal sub-group was reported to have said that the Crimes Ordinance was satisfactory.²⁶ The adapted Crimes Ordinance if accepted by both sides would obviate the need for the SAR legislature to draft its own legislation, or at least function as a stopgap.

The Hong Kong government said the two proposals were recommended to "balance the need to protect freedom of expression by the individual with the need to protect public order and security".²⁷ However, when the amended law was introduced into the Legislative Council in November 1996 there was an outcry from "pro-China" legislators,²⁸ who complained that according to the Basic Law this was a matter for the SAR government, and China had not agreed to the proposals.

The amendment Bill remains in the government's programme, but as the queue of items needing legislative attention grows, has shown no sign of reaching the head of it.

6. Prevention of Bribery Ordinance

Section 30 of this ordinance, which prohibited any unauthorised reporting of details of Independent Commission Against Corruption investigations, was amended in 1992 to allow such information to be published once an arrest had been made. But the publisher and three journalists of the newspaper *Ming Pao* were charged under Section 30 in 1994 for reporting that there would be an investigation into collusion by bidders at a government land auction. As the auction had been held in public and the prices had been dramatically lower this was not a very exciting piece of reporting. The newspaper did not name a suspect. The case ended with the judge deciding in February 1995 that the

defendants had no case to answer because the section transgressed the Bill of Rights. The ruling was overturned in July 1995 in the Court of Appeal but the Privy Council upheld the original acquittal as correct in the circumstances, though it did not find that Section 30 contradicted the Bill of Rights.²⁹

7. Police Force Ordinance 50(7)

The Police Force Ordinance (Cap. 232) covers *inter alia* the issuing of search warrants, and was discovered in October 1989 to be capable of interpretations which authorised a police raid on television stations in search of unscreened footage of a violent demonstration. In 1992 the Law Reform Commission recommended that the provisions on "journalistic material" in the UK Police and Criminal Evidence Act 1984 be adopted for Hong Kong. The government said it would consider this. Having done so it has adopted a different approach.

The Police Force Ordinance Section 50(7) was amended so that a magistrate's authorisation did not cover articles that relate to the character or activities of a suspect but only those "likely to be of value to the investigation of an offence".³⁰ A revised section 6 makes it clear that police rights to seek and seize documents apply only to those carried by the arrested person or on the premises at which he is found. Whether these changes will provide a permanent solution to the problem remains to be seen.

Critics of the law have also complained about Part 6 of the Interpretation and General Clauses Ordinance. This part, which deals with powers and their exercise, appears to have been drafted with a view to ensuring that the work of the security forces was not disturbed by fine points of law.

8. Contempt of Court

Contempt of court legislation provides possibilities for restricting freedom of expression in its curbs on the reporting of, or comments on, current legal proceedings. Hong Kong follows the British system,³¹ banning any publicity which may influence a trial. Prosecutions have been sporadic and rare. Problems with pictures are largely prevented by the police habit of putting a bag over a suspect's head at the first opportunity.

The context of the law is so specific that it is unlikely to be used as a major means of controlling the news media, but its implications concerned the Law Reform Commission of Hong Kong enough for it to publish proposals for reform of the law in

1987.³² No legislation ensued. This leaves the law much as it was in England before the passage of the Contempt of Court Act 1981, a state that was held to be a violation of the European Convention on Human Rights.³³ The latter's Article 10 requires that restrictions on free expression meet the standard of being "necessary in a democratic society."³⁴ Although the standard set in the Hong Kong Bill of Rights is not the same, academic lawyers and journalists have urged that the law be reformed, or at least clarified. This has not happened.

9. Other Legislations

In the run-up to 1997 there has been a good deal of searching for neglected legislation which may be put to undesirable uses, and there is no shortage of possibilities. Some of the items are not objectionable in themselves, but the sheer number and variety of provisions presents opportunities for the sort of legal harassment which has been used in other Asian jurisdictions to make life difficult for opposition figures and publications. Such laws include the Crimes Ordinance (Cap. 200), which forbids the publication of the name or anything which might identify the victim in a case of rape or indecent assault. Most cases arise from simple carelessness in court reporting, but there is a trap in that the prohibition does not apply only to court reports – it applies as soon as a complaint is made.

It is possible to infringe inadvertently either because it is not known that the incident reported has given rise to a complaint of rape, or because a detail which appears to be harmless is actually very revealing of identity.

A similar situation holds with the Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287), which prohibits the reporting of anything but the barest details of divorce proceedings, except for the judge's summing up, the Juvenile Offenders Ordinance (Cap. 226), which forbids the publication of anything which might identify a child accused of a crime or otherwise involved in juvenile proceedings, and the Magistrates Ordinance (Cap. 227), which restricts reporting of committal proceedings (preliminary hearings in magistrates' courts of cases which will later be tried in higher courts).

Conclusion

The volatile situation regarding the laws in Hong Kong that could be used for restrictive purposes is highly unsatisfactory and lends itself to an outcome where the courts may not be able to make proper decisions or, even worse, where they may be open to

pressure. The Hong Kong government, lulled by the progress of democracy in China in the late 1980s, was caught out by Tiananmen and decided very late in the day to ensure that the protection of human rights was enshrined in local law. As Britain had already signed the Joint Declaration allowing existing laws in 1984 to continue, the position of the Bill of Rights was bound to be questioned by an untrusting and defensive China.

The changes in current laws required by the BORO have been implemented only slowly and not always thoroughly, perhaps because of the suspicion that they are not going to last. The dispute over the post-handover legality of the current legislature and the tenuous legal basis of its successor have meant that there has been little time to discuss the issues and uncertainty remains as to whether changes made will stay in force.

China has already made hostile noises towards the Hong Kong news media. Perhaps most frightening have been its actions against Hong Kong reporters in China. Besides such overt actions as the 12-year sentence given to *Ming Pao* reporter Xi Yang in 1994 (Xi was released recently after serving only part of the sentence), Beijing has banned reporters of certain newspapers, most notably the mass-circulation *Apple Daily*. It appears that there are also many unpublicised incidents of temporary detention by the police.³⁵

Beijing has made its views clear in Hong Kong as well. The corporatisation of the government broadcaster Radio Television Hong Kong and the Broadcasting Omnibus Bill were stopped because of Beijing's opposition, ending efforts to upgrade and update the broadcasting industry.

In May 1996 the director of the Hong Kong and Macau Affairs Office, Lu Ping, said in an interview with CNN that the local media would not be allowed to "advocate" two Chinas or write about independence for Taiwan or HK.³⁶ He later differentiated between advocacy and objective reporting, the former being unacceptable.³⁷

In October 1996 the Chinese foreign minister, Qian Qichen, told the *Asian Wall Street Journal* that the Hong Kong media "can put forward criticism, but not rumours or lies. Nor can they put forward personal attacks on the Chinese leaders".³⁸ Such statements do not accord with the guarantee of freedom of the press.

The Chinese stand is comprehensible in the light of the fear that the British government is trying to extend its influence in Hong

Kong beyond 1997. There is some substance to the complaint because the current government is only now trying to change repressive laws that have been on the statute books for decades, and Governor Patten's democratic reforms came only at the very end of colonial rule.

On the other hand the objections to the amendments made for the Bill of Rights are curiously selective. While these changes in the law are singled out as illegal, there have been no detailed explanation. Moreover, there has been no objection to numerous other ordinances and amendments which have been made since the signing of the Joint Declaration, an omission which adds to the image of unpredictability.

The confused situation can only work to the detriment of all members of the community. Hong Kong's laws should have been given attention many years ago and updated alongside Britain's to guarantee the freedoms and rights that people expect in a developed society. The attempt to do so only recently and in such a piecemeal manner leaves the public confused over what the law is, and cases are unlikely to be brought to court to test amendments because of the possibility that they will disappear next year.

The dreadful mess the Hong Kong legislature has got into because of China's anger with Chris Patten's reforms only adds to the confusion. Beijing's efforts to support its position have led it to resort to unconstitutional and extralegal means, and this does not inspire confidence in its promise that Hong Kong will be governed by rule of law after the handover.

The message is that what Beijing says, goes, whatever the Joint Declaration and Basic Law say. China's defenders say that her actions are legal under Chinese law. It is submitted that the attempt to preserve a separate legal system in Hong Kong will fail if this argument continues to be heard as often as it has been recently. The seriousness of this situation is not underestimated in Hong Kong, but it is being ignored because Hong Kong continues to function freely and openly and it is difficult to imagine anything else however many warnings are given.

Educating prospective journalists in these circumstances becomes a daunting task. The laws which apply to their profession are vague anyway, even without the fact that they have become a focal point of the British-Chinese power struggle over the handover. The legislation that regulates the field is now open to interpretations that could have serious consequences for

journalists carrying out their work in ways they have got used to.

The fact that the Chinese government has not changed sensitive laws affecting journalists is encouraging, but the unpredictability of the changes and the possibility that Beijing has many more to push after the handover are giving Hong Kong's legal system a shakiness it lacked before. Journalism instructors may end up teaching people to take into consideration the consequences to themselves of what they write, and this is hardly an appropriate approach to a competent education in journalism.

Even more worrying is the concern that current circumstances are taking the profession towards a clash with the rules China wishes to impose. The uncertainties that both British and Chinese governments have visited upon Hong Kong leave open the possibility that interference with the news media could spark the kind of protests that would bring in widespread suppression and a possible consequent overturning of the legal apparatuses upon which Hong Kong's stability is founded. The British government, whatever its transgressions of the past, is irrelevant. Now, if the Chinese government does not act to shore up confidence in the legal system after 1997, it will surely be opening the doors to at least a drop in confidence and possibly a situation that goes out of control. ■

NOTES

1. See leader, *South China Morning Post*, October 31, 1996.
2. See, for instance, *Hong Kong Journalists Association (HKJA) and Article XIX, "Freedom of expression in Hong Kong: 1994 Annual Report,"* Hong Kong, HKJA and Article XIX, June 1994: 19-22.
3. *The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (for Solicitation of Opinions)*", Hong Kong, The Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, 1988.
4. Statement by the International Covenant on Civil and Political Rights Human Rights Committee. November 8, 1996.
5. *Supplementary Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights.* Issued by the Hong Kong government without date, but covers the period up to May 31, 1996. pp. 22-23.
6. *Press Release of the Preliminary Working Committee of the People's Republic of China*, unofficial translation, HKJA and Article 19, 1996, Appendix 1, p.46.

7. HKJA and Article XIX, 1996: 5.
8. Cons, V.P., *Keynote address to the Hong Kong Bill of Rights Conference 1991*.
9. *Rights Bill a 'can of worms'*, South China Morning Post, December 12, 1984: 2.
10. Yan Mei Ning, *"The Bill of Rights and the role of the judiciary: the Hong Kong experience"*, Dissertation submitted to the Faculty of Law at the Queen's University, Belfast, 1994.
11. See Wesley Smith, Peter, *Strict liability in the Hong Kong Courts*, Hong Kong Law Journal 24:1, 1994: pp. 40-55.
12. See Ghai, Yosh, and Johannes Chan, *A comparative perspective on the Bill of Rights*", in Ghai and Chan (eds), *The Hong Kong Bill of Rights: a comparative approach*, Hong Kong, Butterworths, 1993.
13. Basic Law, Article 11.
14. *Fourth Periodic Report by Hong Kong under Article 40 of the International Covenant on Civil and Political Rights*, issued by the Hong Kong Government without date, but covers the period up to June 30, 1995. Page 61.
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