

# **A Research on the Value Objectives of the Executive-led Structure of the SAR: Taking the Hong Kong SAR as an Example**

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The adoption of the executive-led political structure of the Hong Kong Special Administrative Region (SAR) is influenced by historical traditions, but fundamentally it is the result of purposeful design according to actual needs. The motivations of adopting the executive-led structure include: first, to resist the parliament-led structure promoted by the British, because opposing the parliament-led structure and safeguarding national sovereignty and territorial integrity is the logical starting point of adopting the executive-led structure; second, to maintain prosperity and stability of Hong Kong, because the executive-led structure is an effective governance structure; third, to avoid despotism of the executive, because the executive power under the necessary restraints of the legislative and judicial powers can perform its duties of protecting the rights and freedoms of Hong Kong people without the danger of having grave wrongdoings, providing the priceless legitimacy for the adherence and functioning of the executive-led structure after the handover.

## **I. The Combination of Triple Value Objectives**

There are three value objectives for the adoption of the executive-led structure in the Hong Kong SAR, namely to safeguard the sovereignty and territorial integrity, to maintain the prosperity and stability of Hong Kong, and to protect the rights and freedoms of Hong Kong people. There is a dialectical unity between those three objectives, which constitute the value objective system for the establishment and functioning of the executive-led structure in the Hong Kong SAR.

### **1.1 Safeguarding the sovereignty and territorial integrity**

National sovereignty is the inherent power of a country to independently handle the internal and external affairs according to the international law. As the inherent rights of sovereign nations, sovereignty is embodied in three aspects: internally the supreme authority, externally the right of independence and the right of self-defense for preventing aggression. In accordance with the “One Country, Two Systems” policy, the Hong Kong SAR enjoys a high degree of autonomy under the unified sovereignty of the People’s Republic of China (PRC). Such high degree of autonomy cannot get out of the control of national sovereignty and can only be realized under the precondition that the state enjoys and exercises the sovereignty over the Hong Kong SAR. In the design of the political structure in the Hong Kong SAR and handling of the relationship between

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Central Authorities and the local government, the achievement of national sovereignty should be considered. To safeguard the sovereignty and territorial integrity is the value objective of adopting the executive-led structure in the Hong Kong SAR, which is achieved through opposing the parliament-led structure and adhering to the leadership of the Central Authorities.

### **1.1.1 The executive-led structure can effectively oppose the parliament-led structure**

After becoming aware of China's determination to recover Hong Kong in 1997, the British decided to promote "decolonization" in Hong Kong and establish representative democracy. In July 1984, the British Hong Kong Government issued a Green Paper, *The Further Development of Representative Government in Hong Kong*, which stated that the main aim was "to develop a system of government which is firmly rooted in our community; on which the views of the community are fully represented; and which is more directly accountable to the people of Hong Kong."<sup>1</sup> To achieve the above aim, the Green Paper proposed a series of reforms in terms of the functions of the Legislative Council and the Executive Council and the means of their creation. The White Paper on representative government released in November of the same year confirmed the aims and direction of the constitutional reforms proposed by the Green Paper, and suggested that developing the method of selecting the Unofficial Members from functional groups into a formal representative system in order to elect one or more representatives from functional constituencies to serve as the members of the Legislative Council. According to the 1984 reform plan for representative government, in 1985, the Hong Kong Legislative Council conducted the first elections, including elections by Electoral College and by functional constituencies. The 1985 Legislative Council election "is the first election of the Legislative Council in Hong Kong since its inception. Although it was only the partial implementation of indirect elections, it was very significant because it marked the beginning of the introduction of election into the formation of the Legislative Council. It is not only a new chapter in the history of Hong Kong's constitutional development, but also a new milestone for the development of Hong Kong's 'representative government'."<sup>2</sup>

With the signing and entry into force of the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (the Sino-British Joint Declaration), the United Kingdom was more determined to carry out the scheme of "decolonization" in Hong Kong and accelerated the pace of implementing a representative government. In 1987, the British Hong Kong Government conducted a review of the constitutional system and released a Green Paper: *The 1987 Review of Developments in Representative Government*, which proposed the introduction of direct elections to the Legislative Council in 1988, but such proposal was opposed by many related parties. After the Tiananmen Square Protests of 1989, the British policy towards Hong Kong moved farther toward the direction of non-cooperation with China. After Chris Patten took up appointment as Governor of Hong Kong in 1992, he made his policy address in the Legislative Council titled "Our Next Five Years: the Agenda for Hong Kong". In the address, he launched a comprehensive reform package, attempting to change the executive-led structure of Hong Kong and make Legislative Council the center of power, so that in the future Chief Executive would not be accountable to the Central Government, but be accountable to the legislature of Hong Kong. This package shook the basis of the Sino-British Joint Declaration and the Hong Kong Basic Law, and changed the political structure of Hong Kong and the space of political development in Hong Kong after 1997 provided for in these legal documents.<sup>3</sup> Due to the opposition and resistance of the Chinese Government and

many Hong Kong people, some of the aspirations of the British Hong Kong Government did not materialize, but the political reform made some changes in the Legislative Council. On 19<sup>th</sup> January 1993, John Swaine became the President and Elsie Tu became the acting President of the Legislative Council through the first direct election in history. And a Hong Kong newspaper reported that this was a milestone marking the independence of the legislature from the executive. In March 1994, the Legislative Council set up a separate secretariat to replace the OMELCO (Office of the Members of the Executive and Legislative Councils). In 1995, the Legislative Council canceled all the appointed seats, so that all the members were returned by direct election or direct election in disguised, and the President was elected by Members of the Legislative Council, completely separating the Legislative Council and the Executive Council. The aims of the British Hong Kong Government's vigorous promotion of "representative reform" could be divided into two levels: the basic aim and the ultimate aim. The basic aim was to enhance the political aspiration of the Hong Kong people, and encourage the residents to participate in politics, shaking the colonial political structure that had been highly centralized. In the short term, the British side would suffer from adverse impact, but in the long run, such measures would prevent the handover of a highly centralized structure to China that can be made use of by China.<sup>4</sup> The ultimate aim was to gradually evolve the Legislative Council into the center of decision-making, in order to make the future Chief Executive of Hong Kong accountable to the Legislative Council rather than to the Central Government, leading Hong Kong to a road of independence or semi-independence. In fact, this was consistent with the long-standing British policy towards Hong Kong. In January 1983, Margaret Thatcher wrote in her diary that she had made some fundamental considerations about the aims of the British Government. In view of the lack of progress in the negotiations between Britain and China, the United Kingdom must develop a democratic framework in Hong Kong, in order to achieve the aim of independence or autonomy in the short term, as it had done in Singapore.<sup>5</sup>

The Chinese Government was well aware of the intention of the British Hong Kong Government. The legislative-led structure was not the best choice for safeguarding national sovereignty and territorial integrity in a complex political environment. In addition, based on the principle of "One Country, Two Systems" and the content of the Sino-British Joint Declaration, the Hong Kong SAR enjoys a high degree of autonomy. In terms of national sovereignty, the Central Government gave up the judicial power of final adjudication and tax authority. Moreover, the Legislative Council of Hong Kong has the legislative power and only national laws listed in Annex III of the Hong Kong Basic Law are implemented in Hong Kong. In this situation, "besides the station of military forces, the power to appoint the Chief Executive is the most specific embodiment of national sovereignty". If the legislative-led structure is adopted in Hong Kong, and the Chief Executive is to be elected by the legislature, it would be difficult to maintain national sovereignty. By contrast, the executive-led structure is necessary for the embodiment and safeguarding of national sovereignty. After China resumed sovereignty over Hong Kong, it implemented the policy of "Hong Kong people ruling Hong Kong", which was a step of great significance for the Hong Kong people on their road toward becoming the master of their own affairs and a milestone for the development of democracy in Hong Kong. The Chinese side naturally would not be submissive to the British Hong Kong's acceleration of the implementation of "decolonization". The Chinese Government rejected Chris Patten's political reform package, cancelled the so-called "through train" of the Legislative Council in 1997, and set up a brand new legislature, the Provisional Legislative Council. "In the dispute over Hong Kong's constitutional reform, our Central

Government followed the instructions of Deng Xiaoping, firmly adhered to the executive-led structure, and opposed the introduction of a parliamentary system in Hong Kong. The Hong Kong Basic Law provided for this issue clearly, successfully foiling the British plot.”<sup>6</sup>

### **1.1.2 The executive-led structure can facilitate the realization of the leadership of the Central Authorities**

China is a unitary sovereign state with only one constitution and one Central Government. Although the Hong Kong Basic Law clearly provides that “Hong Kong people ruling Hong Kong” and a high degree of autonomy, these governing authorities or autonomy are granted by the Central Government according to law. “The Hong Kong SAR enjoys a high degree of autonomy, independent executive and administrative power, legislative power, judicial power and the power of final adjudication, but this does not mean that there is a sovereign legislature in the Hong Kong SAR. The Hong Kong SAR Government is a local government that does not enjoy sovereignty.”<sup>7</sup> As a local administrative region of the PRC, Hong Kong, just like other provincial regions, must adhere to and accept the leadership of the Central Government, which is the requirement and embodiment of national sovereignty and the political responsibility of Hong Kong as an SAR to the Central Government. From the perspective of Hong Kong, the leadership of the Central Government is also necessary. Deng Xiaoping once pointed out that: “Don’t ever think that everything would be all right if Hong Kong’s affairs were administered solely by Hong Kong people while the Central Government had nothing to do with the matter. That simply wouldn’t work – It’s not a realistic idea. The Central Government certainly will not intervene in the day-to-day affairs of the special administrative region, nor is that necessary. But isn’t it possible that something could happen in the region that might jeopardize the fundamental interests of the country? Couldn’t such a situation arise? If that happened, should Beijing intervene or not? Isn’t it possible that something could happen there that would jeopardize the fundamental interests of Hong Kong itself? Can anyone imagine that there are in Hong Kong no forces that might engage in obstruction or sabotage? I see no grounds for taking comfort in that notion. If the Central Government were to abandon all its power, there might be turmoil that would damage Hong Kong’s interests. Therefore, it is to Hong Kong’s advantage, not its disadvantage, for the Central Government to retain some power there.”<sup>8</sup> Therefore, it is not only necessary, but also right and proper for the Central Government to retain certain powers over Hong Kong, and intervene in some major issues. The constitutional design of the Hong Kong SAR must consider how to facilitate the leadership of the Central Authorities over Hong Kong and the safeguarding of national sovereignty.

In Hong Kong, among the executive, legislative, and judicial authorities, members of the Legislative Council are selected through local elections and the appointment of the Central Government is not required. They are only accountable to the electorate, rather than to the Central Authorities. Hong Kong has independent judicial power, and the Court of Final Appeal of the Hong Kong SAR has the authority of final adjudication. Therefore the judiciary is not an institution that can realize the leadership of the Central Government over the Hong Kong SAR. In the end, within the framework of the Hong Kong political structure, only the executive authorities headed by the Chief Executive can become an organ of power that implements the policy of the Central Government. In this case, if a legislative-led structure is adopted and the executive authorities headed by the Chief Executive are created by the Legislative Council, the Chief Executive would be subordinate to the legislature. Then the Chief Executive could ignore the Central Government and needs not to implement “directives issued by the Central People’s Government in respect of the

relevant matters provided for in this Law” provided for in Article 48 of the Hong Kong Basic Law. Implementation of the legislative-led structure in a local government is prone to result in localism and cannot ensure that national sovereignty can be safeguarded.

Unlike the legislative-led structure, the executive-led structure is a political structure in which the executive authorities led by the Chief Executive are the center of public power. That is reflected in two aspects: First, it was unnecessary for the government headed by the Chief Executive to rely on the Legislative Council politically, as in the executive-led structure, the Chief Executive is not elected by the Legislative Council, but elected through a method independent of the method for electing members of the Legislative Council and appointed by the Central Government, and key government officials are nominated by the Chief Executive and appointed by the Central Government; second, the Chief Executive enjoys major powers and a high position and the powers of the executive authorities headed by the Chief Executive are relatively superior to the powers of the Legislative Council and they can exert major influences on the legislative activities of the Legislative Council. Thus, “in the executive-led structure, the executive authorities play an active role in its relationship with the legislature. It not only has great independence from the legislature, but also influences and even dominates the operations of the legislature. In terms of the functioning of power, the relationship between various levels of legislature generally is not one of affiliation; by contrast, it is more likely that lower-level executive authorities accept the influence of higher-level executive authorities. Therefore, the implementation of executive-led structure in the local government is conducive to the management and control of the local area by the Central Authorities and conducive to the realization of the supreme will of the state.”<sup>9</sup> As Chen Zuo'er pointed out in the seminar on the Basic Law held in Beijing in March 2004, “the Hong Kong SAR must adopt the executive-led political structure, not only because this system is proven effective, but also because only the executive-led political structure can ensure the requirement of the Basic Law that the Chief Executive be accountable to the Central Authorities.”<sup>10</sup> The Constitutional Development Task Force also stressed that: “Executive-led is an important principle underlying the design of the political structure in the Hong Kong SAR, and is a crucial feature for giving effect to State sovereignty.” It “facilitates the exercise of sovereignty by the State. The State exercises its sovereignty over the Hong Kong SAR through the Chief Executive, and requires the Chief Executive to be accountable to both the Central Government and the Hong Kong SAR. The Chief Executive is the head of the Hong Kong SAR. At the same time, he leads the Hong Kong SAR Government.”<sup>11</sup>

## **1.2 Maintaining the prosperity and stability of Hong Kong**

### **1.2.1 In the executive-led structure, the efficiency of governance in Hong Kong can be improved**

The choice of Hong Kong's political structure is mainly based on the reality of Hong Kong. Hong Kong is located in a strategic position in Southeast Asia and is a hub for the exchange between China and the world. As an open and free international city, there are various groups, institutions and media under the direct or indirect influence of forces from various political backgrounds. Among the complex mix of people, there have been various rampant alien forces and destructive forces against the fundamental interests of China and Hong Kong. Overseas hostile forces have made Hong Kong the bridgehead to infiltrate the mainland. Hong Kong is an international financial, shipping, trade and tourist center. The rapidly changing economic

environment in turn requires that the executive branch can put forward legislative proposals in a timely manner, and the Legislature cooperate with the executive branch to pass legislations according to the legislative procedures, so as to cope with the rapidly changing environment and achieve effective management and governance.<sup>12</sup> With a population of about 700 million people in a relatively small area of about 1,103 square kilometers, Hong Kong has always been troubled by the tension between the demand of its population and the supply of resources, for most of its resources are imported. Thus, the executive-led structure is suitable with the “preference” of Hong Kong for efficiency. The implementation of the executive-led structure can ensure the rapid decision-making by the SAR government, and improve the efficiency of governance, in order to meet the needs of the Hong Kong society for governance and economic development as an international city. Practice has proved that the executive-led structure indeed can meet the requirement for governance of the Hong Kong society. In 2004, the sensational “Kwong Hing case”, the “corruption case of Chan Kau Tai”, and the “Mao Yuping case”, the Independent Commission Against Corruption (ICAC) suffered a series of consecutive setbacks. The main reason is that the investigations of the Commission was criticized as violating of relevant provisions of the Hong Kong Basic Law and infringing the freedom of communication of the residents. In the “corruption case of Chan Kau Tai”, the ICAC installed cameras in Chan’s office, shooting the whole process of Chan’s taking bribes and even his counting of money. So there was conclusive evidence of the facts of bribery. But the District Judge held that the ICAC method of investigation violated the Hong Kong Basic Law, and the only thing could be done at the current stage is to permanently terminate the hearing. The judge even criticized the ICAC’s practice as shameless and heinous. On 5<sup>th</sup> August 2005, the Chief Executive of Hong Kong issued an administrative instruction for covert surveillance, authorizing four law enforcement agencies to conduct covert surveillance, which is a timely solution to the problem of legal vacuum.

### **1.2.2 In the executive-led structure, the public policy of Hong Kong can be optimized**

The public policy is a program chosen and made by a public authority through the political process to solve public problems, to achieve public goals and public interests. Public policy is related to values, especially interests. Most public policies involve the distribution of social values centered on interests. Public policies tend to achieve the aim of adjusting the relationship between social interests and promoting social harmony by protecting and meeting the interests and needs of some group of people, while suppressing and weakening the interests and needs of another group of people.

Restrictions on the motions introduced by individual members of the Legislative Council and the “split voting” mechanism in the Legislative Council are important institutional arrangements for ensuring the executive-led structure and avoiding the privatization and localization of public policy. Annex II of the Hong Kong Basic Law provides that: “The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.” Split voting mechanism in the Hong Kong Legislative Council greatly reduces the policy-making power of members of the Legislative Council, preventing “pork barrel” proposed by individual members.<sup>13</sup> It should be ensured that public policy is not privatized and localized.

There are specialized institutions, personnel, and advisory mechanisms that provide assistance

on matters of public policy-making in the Hong Kong SAR Government. The executive-led structure can make better use of such help. Following are the specific names and functions of institutions and mechanism that assist the Chief Executive and the executive authorities in policy-making: First, the Executive Council. The Hong Kong SAR Executive Council is the highest-level government organization assisting the Chief Executive in decision-making. The Chief Executive presides over the Executive Council and appoints its members. At present, there are a total of 32 members, including the Chief Executive (the President), 15 serving principle officials (official members) and 16 non-official members (some of them are members the Legislative Council). The Hong Kong Basic Law stipulates that the Chief Executive shall consult the Executive Council before making any important decisions. If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record, which is a mechanism that supervises the policy-making of the Chief Executive. After Donald Tsang was elected the Chief Executive, he reformed the Executive Council by increasing the number of non-official members, and requiring that except the Chief Executive, the Chief Secretary, Financial Secretary and Secretary for Justice, official members only sit in meetings that are related to their portfolio, which increases the influence of non-official members on government policy-making. Second, the Central Policy Unit (CPU). The CPU was established in 1989, and after the handover of Hong Kong to China, it retained its structure. Its major function is to provide advice on policy matters to the Chief Executive, the Chief Secretary for Administration and the Financial Secretary. The CPU has a simple and flexible organization to act quickly on requests for analysis and recommendations. Policy research undertaken by the CPU covers the social, political and economic spheres. It includes specific topics assigned by Chief Executive, the Chief Secretary for Administration and the Financial Secretary, and particularly those affecting "cross bureaux" policies. The CPU has a broad network of contacts and consults different experts, scholars, and in particular its part-time consultants before tendering policy advice. The CPU is responsible for coordinating the drafting of Chief Executive's annual Policy Address, working closely with policy bureaux during the process. The CPU assesses public opinions for Government's reference in decision making, through public opinion polls, focus group discussion, social networking and dialogue. In addition, the CPU encourages, through various means, community discussion and participation in public policy formulation. It organizes public forums to focus attention on issues of public concern and involves experts and scholars from different places to share their views and experience with their local counterparts, members of the public as well as civil servants and related front-line staff. Third, the Commission on Strategic Development (CSD). The CSD is an advisory body established in 1998 to explore the way forward for Hong Kong's long-term development strategies. The CSD provides a platform for various sectors of the community to explore with the Government major issues pertaining to Hong Kong's long-term and overall development. The objective is to gauge a wide range of community views at the early stage of policy formulation to be considered by the relevant policy bureaux, thereby laying the foundation for formulating specific policies. The CSD's work can help make policy formulation more scientific and transparent, backed up by enhanced public participation and acceptance. The Commission will be chaired by the Chief Executive. There are four ex-officio members and 66 non-official members. The four ex-officio members include the Chief Secretary for Administration, the Financial Secretary, the Head of the Central Policy Unit, and Director of the Office of the Chief Executive. The CSD will be served by a Secretariat established within the Central Policy Unit, which provides secretariat as well as research

support to the CSD. Fourth, the District Council. Article 97 of the Hong Kong Basic Law provides that district organizations which are not organs of political power may be established in the Hong Kong SAR, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation. The District Councils are the local councils for the 18 Districts of Hong Kong, elected for a term of four years. The councils advise the Government on the following: matters affecting the well-being of people in the District; the provision and use of public facilities and services within the District; the adequacy and priorities of Government programmes for the District; public works and community activities within the respective districts with its available funds allocated by the Government. In the new century, the Government has adopted a series of measures to strengthen the role of District Councils, such as strengthening the communication between the Government and the District Councils, enhancing the supervisory role of District Councils etc. With the creation of five new District Council sector seats, the District Councils are playing an increasingly significant role in the supervision of government and in local public administration and services.

### **1.3 Protecting the rights and freedoms of Hong Kong people**

Chapter III of the Hong Kong Basic Law contains specific provisions about basic rights of Hong Kong people and the content is very extensive. There is a close relationship between Hong Kong's executive-led political structure and the realization of those rights of the Hong Kong people: on the one hand, Hong Kong's political structure is well designed and can effectively prevent the wrongdoings of the public powers, providing the necessary monitoring of the executive power; on the other hand, the executive-led political structure is designed to promote good governance in the Special Administrative Region.

#### **1.3.1 There is separation of powers in Hong Kong's executive-led structure, which prevents the wrongdoing of the public powers**

In the executive-led structure, the enhancement of the capabilities of governance may induce imperious and arbitrary use of power, and cause the loss of social benefits. A strong government without adequate oversight and checks and balances might cover up the risks by taking advantage of the executive-led structure, damaging the legitimacy of the structure. The public powers are derived from the private rights, but there has been tensions between public powers and private rights, especially that the public powers could easily violate private rights. Therefore, the sages had always advocated the imposition of restrictions on public powers.

The monitoring of public powers after the return of Hong Kong is fully reflected in the contents of the Hong Kong Basic Law. First, the designers of Hong Kong's political structure divided the public powers into the executive, legislative and judicial authorities, clearly reflecting the ideas of separation of powers. Separation of powers is the most basic feature of the Hong Kong political structure and the foundation of the executive-led structure. The separation of executive, legislative and judicial powers is the premise of the executive-led structure, because without the separation of powers, the issue of which power leads does not exist.<sup>14</sup> The separation of executive, legislative and judicial powers avoids the danger of "freedom has ceased to exist" because the "legislative and executive powers are concentrated in the hands of the same person or the same authority" or "the judicial power is not separated from legislative and administrative powers, in the words of Montesquieu. Secondly, the executive-led structure in Hong Kong is neither executive



despotism, nor executive supremacy, and is quite different from the executive-led structure in British Hong Kong because the executive powers are constrained by the legislative and judicial powers.” There are specific provisions in the Hong Kong Basic Law about the checks of the Legislative Council on the Chief Executive and the SAR Government, and about the review of the Chief Executive’s misconduct by the Hong Kong Courts. So the dominant position of the executive powers is not the absolute dominant position of the executive powers over the legislative and judicial powers in a structure of “executive dominance”. Even when there are conflicts between the executive power and the legislative and judicial powers, they must be handled in accordance with the Hong Kong Basic Law and relevant laws, rather than always let the legislative and judicial powers defer to the executive power.<sup>15</sup> Moreover, the executive power of Hong Kong are not only monitored by public powers such as the legislature and the judiciary, but also monitored by private rights in the Hong Kong community. Article 27 of Hong Kong Basic Law confirms the rights and freedoms the Hong Kong people, such as the freedom of the press. The media give full play to the role of the “fourth power” in monitoring government behaviors so that they have become a strong instrument for restricting the executive power. Paragraph 2 of Article 35 of the Hong Kong Basic Law provides that “Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.” This provision often transforms the flexible constraints of rights on the executive power into rigid constraints of the judiciary powers on the executive power.

In short, as for the powers of the executive authorities, it is necessary to “retain their powers”, but also to “limit their powers”. To “retain their powers” is to ensure that the executive power can be implemented, realize its full potentials in doing good things, and be able to handle a variety of pressing social issues in a timely manner. To “limit their powers” is to impose strict supervision and constraints on the executive powers and prevent them from doing bad things or infringing on civil rights. In fact, judging from the design for the political structure in the Hong Kong Basic Law, the balance between both requirements has been achieved. The design not only ensures that the executive authorities have sufficient power to deal with the complexities of contemporary social issues, but also ensures that the executive authorities will not abuse their power. As for the oversight of executive power, there are still problems in Hong Kong. Hong Kong’s problems are unique. They are related to too much oversight, rather than inadequate oversight. Some Members who oppose for the sake of opposition are irrational “opposition for opposition”, and the news media are “politicized”, resulting in many obstacles for the executive-led structure and making it difficult for the Chief Executive to implement his policies.

### **1.3.2 The executive-led structure in Hong Kong is an effective design that contributes to a government of good governance**

“Good governance is a social management process that maximizes the public interest. Good governance has six elements, namely legitimacy, transparency, accountability, the rule of law, responsiveness, and effectiveness.”<sup>16</sup> If the government’s policy has those six elements, it is up to the standard of good governance, and such a government is the government of good governance that fully protects the rights and freedoms of citizens.

Good governance involves not only the government, but also the private organizations and members of society that are subject to governance. However, the handling of major issues, such as public facilities and public safety, has to be led by government agencies. Among the six elements of good governance, i.e., legitimacy, transparency, accountability, the rule of law, responsiveness, and

effectiveness, to achieve effectiveness is most challenging to a country or region that has achieved democracy and the rule of law. That is because the design of democratic institutions tends to focus more on fairness and overlook effectiveness. From the perspective of regime design, the executive-led structure in Hong Kong is just a good solution to the problem of administrative effectiveness. Effectiveness “has two basic connotations. Firstly, it means a reasonably structured administrative agencies, scientific management procedures, and flexible administrative activities. Secondly, it means the minimization of administrative costs. The concept of good governance is completely incompatible with ineffective or inefficient management activities. The higher the level of good governance is, the higher the effectiveness of administration is.”<sup>17</sup> The executive-led structure in Hong Kong is an effective design that meets the standards for effectiveness in terms of the structure of government agencies, and the costs of governance. In terms of the structure of administrative agencies, the Hong Kong SAR Government is clearly structured laterally into A Department of Administration, a Department of Finance, and a Department of Justice and vertically into three levels of Departments- Bureaux- Commissions (divisions). The Chief Executive and the three Secretaries are in charge of strategic decisions; bureaux are in charge of policy-making in specific areas; and the commissions and divisions are responsible for implementation. The benefit of such a political structure is that there is no need for many deputies, reducing the number of positions for officials. Although Hong Kong is an international city of more than 7 million people, there is only one level of government. The whole of Hong Kong is divided into 18 districts, and there are a District Council, a Home Affairs Department and a District Management Committee in each district. However, the “district” does not constitute a level of government and there are no government agencies in a Hong Kong district similar to those in a district of mainland China. “As functional agencies, the divisions, commissions, bureaux, and branches do not suffer from the problem of dual leadership as our functional agencies in Mainland do, because they are directly affiliated with the higher level and not subject to horizontal management.”<sup>18</sup> In such a government structure, each functional agency of the SAR Government shoulders full responsibilities for all the matters in a certain field, improving governance efficiency and reducing the cost of governance. “Authoritative reports noted that for two consecutive years Hong Kong was ranked second in Global Competitiveness, only behind the United States, which was ranked first in global government efficiency.”<sup>19</sup> The executive authorities in Hong Kong are not only efficient but also thrift, which is ensured by institutional design. There is a Commission of Audit in Hong Kong that report directly to the Chief Executive, and the commission can adequately supervise the use of funds in government agencies. The Commission of Audit has a broad range of powers, such as access to records of government agencies, and it does not take orders from any individual or organization when it is carrying out its relevant duties and exercising its powers. The Director of Audit submits three annual reports to the President of the Legislative Council, one on accounts of the SAR Government and the other two on the audit results of government agencies. The focus of the audit on government agencies is which government agencies have squandered resources and the operations of which agencies are inefficient. The annual audit reports by the Commission of Audit are by no means gobbledygook. The agencies and civil servants with offending behaviors will be severely punished.

After the return of Hong Kong, although there were scandals undermining the image of the government, such as the “Public Housing Short-piling Scandal”<sup>20</sup>, and the resignation of a new government official due to illegal activities.<sup>21</sup> Generally speaking, the Hong Kong SAR

Government is not only a clean government, but also a government of good governance. The clean government of good governance is achieved due to the effective institution, rather than preaching. The executive-led structure of Hong Kong itself is a democratic system with separations of powers, avoiding and minimizing the tyranny and corruption of those wielding powers by emphasizing oversight and constraints on powers. There is no denying the fact that the Chief Executive and the executive authorities led by him or her have been serving the people of Hong Kong whole-heartedly. This is not only the value objective of the executive-led structure in Hong Kong, but also the source of the legitimacy for the implementation of the executive-led structure.

## II. The Relationship between the Triple Value Objectives

There is a dialectical unity between the triple value objectives of the executive-led structure in the Hong Kong SAR, namely to safeguard the sovereignty and territorial integrity, to maintain the prosperity and stability of Hong Kong, and to protect the rights and freedoms of Hong Kong people, which constitute the value objective system for the establishment and functioning of the executive-led structure in the Hong Kong SAR. In the value objective system, the positions of the triple value objectives are different, with the safeguarding of the sovereignty and territorial integrity as the initial value objective, the maintaining of the prosperity and stability of Hong Kong as the intermediary value objective, and the protection of the rights and freedoms of Hong Kong people as the ultimate value objective. However, the triple value objectives are highly coherent in the executive-led structure of the Hong Kong SAR and they are equal in terms of importance. It is usually the case that the relationship among them is coherent, i.e. "If Hong Kong goes well, the country goes well; if the country goes well, Hong Kong goes better." But sometimes there are some tensions among those value objectives and sometimes even conflicts over specific interests. After all, different subjects have their own special interest demands and different considerations of their own interests. Since the prosperity and stability of Hong Kong is mainly an intermediary value objective, the relationship among the triple value objectives can be simplified as the relationship between national sovereignty and human rights in Hong Kong. Maybe it is difficult to convince the public by handling the conflicts among those value objectives adhering to the principle of "sovereignty above human rights" or that of "human rights above sovereignty". There must be a balance between sovereignty and human rights.

### 2.1 The initial value objective

The formation of the Hong Kong Question is entirely the result of the war of aggression launched by the British imperialists, namely the *Treaty of Nanking*, the *Convention of Peking*, and the *Convention for the Extension of Hong Kong Territory*. They were unequal treaties imposed on the Chinese people by the British Imperialism. Although the contents of the three unequal treaties vary, they all seriously damaged China's national sovereignty. "The history of the British seizure of Hong Kong is a good example of the jungle law, and a history about China's loss of independent sovereignty. This is the starting point in the history of the Hong Kong question between China and Britain."<sup>22</sup> In 1982, in the discussion on the Question of Hong Kong during British Prime Minister Margaret Thatcher's visit to China, the Chinese side made it clear that China would recover its sovereignty over Hong Kong in 1997. In other words, China would recover not only the New

Territories, but also the entire region of Hong Kong, including the Hong Kong Island. Deng Xiaoping clearly pointed out: “On the question of sovereignty, China has no room for maneuver. To be frank, the question is not open to discussion.”<sup>23</sup> Deng Xiaoping made it very clear that If China failed to recover Hong Kong in 1997, no Chinese leaders or government would be able to justify themselves for that failure before the Chinese people or before the people of the world. It would mean that the present Chinese Government was just like the government of the late Qing Dynasty and that the present Chinese leaders were just like Li Hongzhang! When Margaret Thatcher said that the announcement of the recovery of Hong Kong by China would have “a disastrous effect”, Deng said firmly that “we shall face that disaster squarely” and solemnly warned the British side that if serious disturbances occurred in Hong Kong during the 15-year transition period, the Chinese Government would then be compelled to reconsider the timing and manner of the recovery. Later, the British side gave way on the issue of sovereignty, but came up with the unreasonable proposal of exchanging sovereignty for administration. In September 1982, when Deng Xiaoping met with former British Prime Minister Edward Heath during his visit to China, Deng advised the British side to change attitudes, in order to avoid the situation that China had to announce its resolution of the issue of Hong Kong sovereignty unilaterally in September 1984. Under such circumstances, the British side was forced to agree to go back to the negotiating table and take the basic policies of the Chinese Government on resolving the question of Hong Kong as the basis of the negotiation. After 22 rounds of arduous negotiations, the heads of the Chinese and British governments signed the Sino-British Joint Declaration in December 1984 in Beijing. The Sino-British Joint Declaration, along with its annexes, was an international treaty that provided for the rights and obligations of China and Britain toward Hong Kong. In the form of an international agreement, it solemnly declared that in 1997 Britain would return Hong Kong to China, and China would recover its sovereignty over Hong Kong. Although the Sino-British Joint Declaration about China’s resumption of sovereignty over Hong Kong had been signed and entered into force, Hong Kong’s road of return was eventful. During the transition period of more than ten years, the British Hong Kong authorities continued to create disturbances in an attempt to push Hong Kong on the road of independence or semi-independence, which posed a major threat to the coming resumption of sovereignty by China. The Chinese Government made an active response to the conspiracy of the British Hong Kong Government. In the drafting of the Hong Kong Basic Law, China insisted on some necessary powers of the Central Government, in order to safeguard national sovereignty, and in the design of the political structure in the Hong Kong SAR, China emphasized the executive structure to avoid parliament-led structure and facilitate leadership by the Central Authorities. Therefore, to safeguard national sovereignty and territorial integrity is the initial value objective of the executive-led structure.

## **2.2 The intermediary value objective**

To maintain the prosperity and stability of Hong Kong can be seen as a stand-alone value objective, but usually it is an intermediary value objective that serves as the intermediary between the interests of the state and Hong Kong. Despite of the differences between these two interests, there are indivisible and interactive relations between them.

Maintaining the prosperity and stability of Hong Kong is related the fundamental interests of China. After all, Hong Kong is part of China, on which the Chinese Government and national leaders have a clear understanding. So they have been paying attentions on maintaining the

prosperity and stability of Hong Kong. In the early 1980s, the Chinese Government formulated the twelve basic policies toward Hong Kong, embodying two basic principles: First, China must recover Hong Kong in 1997, and resume the exercise of sovereignty, which is the main principle; second, with the premise of the resumption of sovereignty, the stability and prosperity of Hong Kong should be maintained in every way possible and its economic position and role should be maintained. A leader at the time once said, the Hong Kong economy cannot be allowed to collapse. (Just in case) it collapsed, this burden is too big to be borne by us. At that time, it was calculated that, the annual revenue of Hong Kong was HKD 36 billion and its expenditure was more than HKD 30 billion. And at prevailing exchange rates, the Hong Kong Government's spending was equivalent to about RMB 10 billion. If Hong Kong's economy collapsed, it was unlikely for the Central Authorities to come up with such a huge sum of money to support the Hong Kong government. Therefore, it is extremely important to maintain the prosperity and stability of Hong Kong.

To maintain the prosperity and stability of Hong Kong is to provide a stable external environment and affluent internal conditions for the Hong Kong people to realize their rights and freedoms. Social stability and economic prosperity is an important basis for the rights and freedoms of the people. To ensure that people enjoy their full rights and freedoms, a crucial prerequisite is to maintain social stability, and human rights and freedoms are non-existent without a stable society. At present, in some countries and regions in the world, thousands of people are displaced and become refugees, suffering from a major loss of life and property and without the slightest protection of human rights due to civil strife, ethnic contradiction, continuous armed conflicts and endless wars; in some other countries, the rapid advance of democracy highlighted contradictions of class, ethnicity etc, deprived the government of authority and capability to control the situation, turned electoral politics into a violent seizure of power, triggering frequent armed conflicts and threw the society into a state of disorder, with the people becoming the biggest victims. Facts have proved that there are no human rights and freedoms without social stability. Since the return of Hong Kong, the SAR government successfully combated the negative effects of the Asian financial crisis on Hong Kong, and effectively controlled the "SARS" epidemic. The Hong Kong society has been in good order and the economic development has been stable, effectively ensuring the unprecedented rights and freedoms of the people of Hong Kong.

### **2.3 The ultimate value objective**

The starting point for the executive-led structure in Hong Kong is to safeguard national sovereignty and territorial integrity, but the end results of the structure are not limited thereto. The protection of the rights and freedoms of Hong Kong people should also be included. In addition, the protection of the rights and freedoms of Hong Kong people should be treated as the ultimate value objective of the executive-led structure. The reason why the protection of the rights and freedoms of Hong Kong people rather than safeguarding national sovereignty and territorial integrity is chosen as the ultimate value objective includes the following aspects: First, the choice of the executive-led structure in order to achieve the value objective of safeguarding national sovereignty and territorial integrity was to some extent intended to oppose the scheme of the British Hong Kong Government to push Hong Kong to the road of independence or semi-independence during the transition period. After the return of Hong Kong, although there were oppositions to national security legislation and the interpretation of the law by the NPC Standing Committee etc, these acts

on the whole did not go beyond the limits of the freedom of expression, and did not cause social upheavals. Although there are still a few forces in Hong Kong attempting to subvert the Chinese Government led by the current ruling party, and the SAR government still shoulders the sacred mission of safeguarding national sovereignty and territorial integrity, Hong Kong is a society ruled by law, and there are military forces of the Central Government stationed in Hong Kong, ruling out the possibilities of uncontrollable situations. Therefore, the question of how to maintain the prosperity and stability of Hong Kong in order to realize the rights and freedoms of Hong Kong people has attracted more attention, and has become the most daunting tasks of the Hong Kong SAR Government. Second, a human is born with the rights and freedoms. A natural human naturally has the rights of survival and autonomy, including personal dignity, the right to migrate, the right of marriage and childbearing, the right to work, the right to rest, the right to choose lifestyles, the pursuit of happiness by individuals etc. Interpersonal relations and mutual aid produced the society, so people also have social attributes, and the right of autonomy of a natural human was necessarily extended into the rights and freedoms of a societal human. The rights and freedoms of humans are the source of government powers. Fundamentally speaking, the legitimacy of government powers is derived from the aim of realizing the rights and freedoms of humans. The realization of the rights and freedoms of humans is a fundamental issue. The Hong Kong Basic Law confirms that the Hong Kong people enjoy extensive rights and freedoms, and relevant provisions of the “International Covenant on Civil and Political Rights”, “International Covenant on Economic, Social and Cultural Rights” and international labor conventions that applied to Hong Kong shall remain in force, enriching the rights and freedoms of Hong Kong people. It is the obligation of the SAR government and the Central Authorities as the representatives of national sovereignty to ensure these rights and freedoms of the Hong Kong people, and it is the duty of all public powers, including the executive authorities of the Hong Kong SAR to protect those rights and freedoms of the Hong Kong people. The protection of these rights and freedoms of Hong Kong people is an important and integral part of the legitimacy of all the public powers of the Hong Kong SAR and the Central Authorities as the representatives of national sovereignty. Third, there are tensions between public powers and private rights, and the abuse of public powers and corruptions might happen to the detriment of private rights. Among the public powers, the executive power is most active, flexible and most prone to violate private rights. Therefore, the executive-led structure itself increases the tensions between public powers and private rights, and a strong executive power might raise the concerns of the Hong Kong people about their rights and freedoms. In this situation, too much emphasis on the objective of the executive-led structure to safeguard national sovereignty and territorial integrity will inevitably lead to the resistance and opposition of many people in Hong Kong. The reason is that it appears to some people in Hong Kong that China and Hong Kong are two seemingly irrelevant entities, and some people in Hong Kong think that if the Hong Kong government is the representative of the interests of the Central Authorities, it surely will ignore the interests of the Hong Kong people. Therefore, emphasizing the objective of the executive-led structure is to safeguard national sovereignty and territorial integrity will cause panic and opposition in Hong Kong. Making the protection of the rights and freedoms of Hong Kong people as the ultimate value objective of the executive-led structure can solve this problem, not only eliminating the unnecessary concerns about the executive-led structure of some people in Hong Kong, but also increase the legitimacy of the executive-led structure, thereby facilitating the implementation of the executive-led structure.

### **III. Handling the Conflicts among the Triple Values**

There is a dialectical unity among the triple value objectives of the executive-led structure in the Hong Kong SAR, i.e. to safeguard the sovereignty and territorial integrity, to maintain the prosperity and stability of Hong Kong, and to protect the rights and freedoms of Hong Kong people which constitute the value objective system for the establishment and functioning of the executive-led structure. There are contradictions in the dialectical unity among the triple value objectives, which is a reality. Thus, how to deal with these conflicts is an inevitable problem in the governance of Hong Kong that emerges sometimes. Since the prosperity and stability of Hong Kong is mainly an intermediary value objective, the relationship among the triple-value objectives can be simplified as the relationship between national sovereignty and human rights in Hong Kong. Therefore, the problem of how to handle the conflicts among the triple values can be simplified as how to deal with the relationship between national sovereignty and human rights in Hong Kong.

The problem of how to handle the conflicts among various values is related to the ranking of various values. The relationship between sovereignty and human rights is a commonplace problem, and there are two opposing views about the ranking of those two factors, namely "human rights above sovereignty" and "sovereignty above human rights". The Chinese Government and the academic mainstream hold a negative view of the idea of "human rights above sovereignty". In response to the arguments of "human rights first" and "human rights above sovereignty" advocated by some Western countries in recent years, Deng Xiaoping put forward the idea that the rights of the state is above the human rights. In October 1989, when Deng Xiaoping met with former United States President Richard Nixon, Deng clearly states that: "People who value human rights should not forget the rights of the state. When they talk about human dignity, they should not forget national dignity. In particular, if the developing countries of the Third World, like China, have no national self-respect and do not cherish their independence, they will not enjoy that independence for long. Speaking of personality, but do not forget there is a national character." He had repeatedly stressed that: "Actually, the rights of the state are much more important than the human rights."<sup>24</sup> Obviously, the term "rights of the state" used by Deng Xiaoping herein actually refers to the "national sovereignty". Some scholars have suggested that the plausible idea of "human rights above sovereignty" does not hold water. First, the idea of so-called human rights above sovereignty severs the relations between human rights and sovereignty and set them against each other. A state belongs to the people of the state, and national sovereignty is the collective human rights of the people of a state. The loss of sovereignty means the loss of human rights. Therefore, to ensure human rights, first the sovereignty should be ensured. People in China and other developing countries have experienced the painful experience of no human rights without sovereignty, and walked together along the road of winning national sovereignty before improving human rights.<sup>25</sup> In addition to the idea of "human rights above sovereignty" advocated by some Western countries and the idea of "human rights above sovereignty" promoted by the academic mainstream in China, we are pleased to find that some scholars have a rational view and analysis of this issue. Guo Daohui pointed out that the propositions of "human rights above sovereignty" or "human rights above sovereignty" were abstract and vague. The ranking of the two factors should be based on the specific analysis of the nature and ranking of human rights in the actual situation of human rights and sovereignty in a country. It is not proper if you put aside the nature of the national government and argue about the abstract proposition of "sovereignty over human rights". Analyses should be

made about whether the “sovereignty belongs to the monarchy” or the “sovereignty belongs to the people”, whether there is democratic politics or dictatorial politics, whether the sovereignty protects human rights within the country, or the sovereignty is used as the excuse of the “power” to trample human rights or even brutally massacre the people, commit crimes against humanity, and carry out genocide, and whether the national sovereignty have the capability or desire to protect the human rights of its own people. It is only possible to make the value judgments about the relationship between sovereignty and human rights and determine how to treat them after making such analyses.<sup>26</sup> Guo Daohui’s point of view does not directly tell us whether “sovereignty is above human rights” or “human rights are above sovereignty”, but he creatively put forward the method of determining the value ranking of sovereignty and human rights, which can be summarized as specific analysis on specific issues. Simple as the method seems, it is actually very valuable and very practical.

There should be a comprehensive understanding of the relationship between national sovereignty and human rights. On one hand, national sovereignty is the supreme power of a country to independently handle its internal and external affairs. Such power means the supreme and absolute authority over domestic issues. The upholding of human rights and the safeguarding of national sovereignty are closely related. National sovereignty determines the existence and development of human rights, and national sovereignty is the basis and prerequisite for human rights. On the other hand, “national sovereignty or the sovereignty of the people is an internal power of ruling, which is a collective power given by the people as a whole rather than a right or the sum of individual rights or ‘the highest form of group rights’”. Instead, national powers are the duty-bearers of human rights: Human rights are primarily a right of resistance against national powers; the national powers should prevent human rights from violation, and create conditions for improving the human rights of the public. Some commentators say that ‘national sovereignty is an important part of human rights’, which in fact equals power with right. National sovereignty as a kind of power is above the power of any other government organizations, social organizations (including the ruling party) and any persons. But this does not mean that national sovereignty and national powers are above the human rights of individuals and the fundamental rights of citizens. By contrast, national sovereignty is given by the people as a whole, and the powers of state organs and state officials are also granted by the power of the people (through the People’s Congress) and created by the rights of citizens (the right to vote).<sup>27</sup> The *Virginia Declaration of Rights* adopted by the State of Virginia in the United States stated that: “That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community.”<sup>28</sup> As of the relationship between national sovereignty and individual rights of citizens, the German jurist Jelinek proposed “the self-limitation of a state”. He believed a state imposes limits on itself during its exercise of internal and external sovereignty, so it can comply with international law in the external affairs, and protect the rights of individual citizens in internal affairs. We should sharply denounced and resolutely resist the practice of power politics by some countries in pursuit of their own national interests with the excuse of “human rights above sovereignty” and “human rights without borders”. But it should be recognized that while there are national differences in human rights, there is also universality in human rights, which is a fundamental attribute of human rights. “The universality of human rights refers to the common bottom line of basic human rights, which is the minimum requirements and minimum standards for the protection of human survival needs and dignity based on common humanity and human sociality. The nobility of human rights is



not because it is a high standard, but because it is the 'common denominator of civilizations' that transcends any differences among cultures or institutional civilizations. Therefore, in respect of the stance on and the attitude toward the protection of fundamental human rights, ethnic particularity is not an excuse for the contempt, denial, or even abuses of human rights."<sup>29</sup>

As for the handling of the relationship between sovereignty and human rights in accordance with the actual situation in Hong Kong, neither the idea of "sovereignty above human rights" nor that of "human rights above sovereignty" might convince the public, and a balance should be struck between sovereignty and human rights. Hong Kong's return is a result of the Sino-British negotiations, rather than the result of the efforts made by the Hong Kong people themselves. In fact, some people in Hong Kong are opposed to the return of Hong Kong to China. For various reasons, there are serious problems in the sense of national identity of the people in Hong Kong. The sense of national identity of the people in Hong Kong has been on the increase, but the overall level is still relatively low. According to the 2009 survey of the University of Hong Kong, the percentage of people identifying themselves as Chinese and Chinese in Hong Kong was only 37.3%, while the percentage of people identifying themselves as Chinese in Hong Kong is only 13.1%, not higher than the figures before the return of Hong Kong.<sup>30</sup> In such a situation, improving the sense of national identity of Hong Kong people, and enhancing their awareness of sovereignty have become a serious, long-term task. But we cannot often interfere in Hong Kong affairs out of the desire to emphasize national sovereignty, although some interventions are necessary. The intervention in Hong Kong affairs by the Central Authorities is conditional. The SAR government deals with the affairs within the scope of autonomy on its own and the Central Authorities are only responsible for the issues that are "difficult to solve" without the "involvement of the Central Authorities."<sup>31</sup> The relationship between state powers and private rights is both consistent and contradictory. It is often the case that the strengthening of state powers would pose a threat to and limit individual rights. The constitutional interpretation organs of various countries generally use some form of the principle of proportionality on the question of how to strike the right balance between state powers and individual rights. In fact, when we deal with the relationship between national sovereignty and the rights of Hong Kong people, we can learn from the principle of proportionality and establish a dynamic balance between the two factors.

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- <sup>1</sup> *Green Paper: The Further Development of Representative Government in Hong Kong.*
- <sup>2</sup> Zhou Jianhua (2003). *Hong Kong's Political Groups and Elections (1949-1997)*. Hong Kong: Mi Da Lei Ke Yi Company. 71.
- <sup>3</sup> Horleman, R. (2003). *Hong Kong's Transition to Chinese Rule*. New York: Routledge. 43.
- <sup>4</sup> Lo Chi-kin (1987). *Who Will Manage Hong Kong*. Hong Kong: Wide Angle Press Limited. 18.
- <sup>5</sup> Margaret Thatcher (1997). *The Downing Street Years* (Chinese translated version). Inner Mongolia: Distant Press. 488.
- <sup>6</sup> Zhu Shihai (2004). "One Country, Two Systems" and the Hong Kong SAR Constitutional Development: an Analysis of Deng Xiaoping's Thought on the Hong Kong SAR Constitutional Design and Its Significance. *People's Political Consultative Daily*. 14<sup>th</sup> June 2004.

- <sup>7</sup> Consultative Committee for the Basic Law of the Hong Kong SAR of the PRC (Ed.) (1988). *Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (for Solicitation of Opinions): Consultation Report (2)*. 26.
- <sup>8</sup> Deng Xiaoping (1993). *The Selected Works of Deng Xiaoping (Volume 3)*. Beijing: People's Publishing House. 221.
- <sup>9</sup> Yang Jianping. (2007). On the Objective Necessity of the Adoption of the Executive-led Structure in Hong Kong. *Chinese Public Administration*, Issue 10. 80.
- <sup>10</sup> Chen, Albert Hung Yee (2010). *Rule of Law in the Hong Kong Special Administration Region*. Beijing: China Democracy and Legal Press. 246.
- <sup>11</sup> Constitutional Development Task Force of the Hong Kong SAR. (2004). *The Second Report of the Constitutional Development Task Force: Issues of Principle in the Basic Law Relating to Constitutional Development*. 36-37.
- <sup>12</sup> Fan Zhenru. (2006). *Electoral System of Hong Kong*. Hong Kong: Joint Publishing (HK) Co., Ltd. 19.
- <sup>13</sup> "Pork barrel" is a common term in the United States politics meaning that everyone has a share.
- <sup>14</sup> Fu Si-ming. (2010). *The Executive-led Political Structure in the Hong Kong Special Administration Region*. Beijing: China Democracy and Legal Press. 35.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> Yu Keping. Introduction to Governance and Good Governance. In the website of National Central University: [http://sex.ncu.edu.tw/course/Michel%20Foucault/link/fou\\_link02.htm](http://sex.ncu.edu.tw/course/Michel%20Foucault/link/fou_link02.htm).
- <sup>17</sup> *Ibid.*
- <sup>18</sup> Li Keyuan. The Government of Hong Kong: the Third Note on a Tour of Study to Hong Kong. In the website of Baidu: <http://wenku.baidu.com/view/4cff366548d7c1c708a1459b.html?re=view>.
- <sup>19</sup> Hu Jiayuan. (2006) The Sword of "Positive Non-intervention". *South Reviews*. No.11.
- <sup>20</sup> In 2000, the public housing short-piling scandal was revealed in Hong Kong. Two blocks of the Yu Chui Court in Yuen Chau Kok, Sha Tin had to be demolished because most of the piles of the blocks did not meet the specifications and public housing with serious short-piling problems, such as the Tin Chung Court, in Tin Shui Wai, Yuen Long, had to undergo piling repairs works.
- <sup>21</sup> In June 2012, Mak Chai Kwong was appointed as the Secretary for Development, the Hong Kong SAR Government. On 12<sup>th</sup> July 2012, both Mak Chai Kwong and Tsang King-man, assistant highways director were arrested by the ICAC because when Mak Chai Kwong was an engineer in the British Hong Kong Government in the early years, the two persons fraudulently claimed housing allowance by cross-leasing of theirs houses. Half an hour later, Mak Chai Kwong resigned as the Secretary for Development.
- <sup>22</sup> Chen Guohua. (1997). On the Education about the Concept of Sovereignty in the Question of Hong Kong. *Teaching Reference for Middle School Politics*, Issue 9. 7.
- <sup>23</sup> Deng Xiaoping (1993). *The Selected Works of Deng Xiaoping (Volume 3)*. Beijing: People's Publishing House. 12.
- <sup>24</sup> *Ibid.*, 345.
- <sup>25</sup> Zhu Muzhi. (2000). Against "Human Rights Above Sovereignty". *People's Daily*. 2<sup>nd</sup> March 2000.
- <sup>26</sup> Guo Daohui. (2004). The Nature and Value Ranking of Human Rights. *Legal Science*, Issue 2. 5-6.
- <sup>27</sup> *Ibid.*, 7.
- <sup>28</sup> Quoted from Author (2006). *We the People: the Citizens and the Constitution* (Chinese version translated by Lao Wa and Xu Xu). Beijing: Tsinghua University Press. pp. 59.
- <sup>29</sup> Guo Daohui. (2004). The Nature and Value Ranking of Human Rights. *Legal Science*, Issue 2. 5.
- <sup>30</sup> Song Sio Chong and Meng Dong. (2010). On HKSAR Constitutional Development in 2012. *Hong Kong and Macao Studies*. Spring. 34.
- <sup>31</sup> Deng Xiaoping (1993). *Deng Xiaoping on the Question of Hong Kong*. Hong Kong: Joint Publishing (HK) Co., Ltd. 36.