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Seminar on The Youth and The Basic
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Summary of the report ...
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香港基本法諮詢委員會
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SUMMARY OF THE REPORT ON
THE SEMINAR ON "THE YOUTH AND THE BASIC LAW"

Foreword

The seminar was held on 16 November, 1986 with about 120 participants who attended as individuals or representatives of youth organizations. Participants were divided into 15 groups for discussion. Christina Wai Mui Yu, Fung Wai Kwong and Li Siu Kei, the 3 CCBL members who had proposed to organize this seminar prepared a report by collating the reports of the 15 groups.

Assumptions concerning the future political structure

1. Participants mainly favoured a legislature-led political structure for two reasons:
 - 1) Confidence in collective wisdom
 - 2) Safeguard against abuse of power
2. On the other hand, some participants proposed that the executive authorities and the legislature should have equal status for the sake of checks and balances. Effective communications between the executive and the legislature should be ensured.

Composition of the legislature

1. Participants unanimously agreed that the legislature should not include any principal officials of the government but principal officials should be allowed to be in attendance at the meetings of the legislature in order to answer enquiries about policies.
2. After 1997, principal officials may not propose bills at the legislature. Legislative Councillors may need the assistance of professional bodies(e.g. political parties) in proposing bills.

Formation of the legislature

1. Direct elections
Definition -- Some participants held that based on the principle of fair participation, direct elections should refer to the one-man-one-vote elections without any restrictions on nomination. But there were participants who favoured nomination by a special body to guarantee the quality of the candidates.
 - 1.1 Favouring direct elections -- Four groups of participants agreed that the legislature should be constituted by direct elections while the remaining eleven groups agreed that not

less than half of the legislature should be directly elected in 1997. The reasons are as follows:

- 1) To be accountable to and be supervised by the people.
- 2) To balance the interest of the various sectors.
- 3) To prevent excessive intervention from China as the directly elected members will only be accountable to the public.
- 4) Professionals and businessmen will not be in a position less favourable than before because with their resources and social prestige, they are bound to secure a considerable number of seats.
- 5) With the rise in education standard and GNP; the development in communications and the cultivation of civic sense, the conditions required for direct elections can be met.
- 6) The public will have more confidence in the promise of "one country, two systems" and "a high degree of autonomy".
- 7) It plays a demonstrative role in the political reforms in China. Election in itself is an important part of civic education.

2. Indirect elections -- Participants held that indirect elections mainly referred to the functional constituencies elections.

2.1 Pros

- 1) To facilitate a smooth transition.
- 2) To ensure that a certain number of professionals are admitted to the legislature.
- 3) To win the confidence of the businessmen as they are allocated a definite number of seats in the legislature.

2.2 Cons

- 1) It leads to the emergence of a politically privileged class.
- 2) It involves a lot of problems e.g. how the seats are to be fairly divided among the functional constituencies.

2.3 Others

Some participants proposed that there should be more functional constituencies (e.g. the cultural sector and the broadcasting sector) and that the seats allocated to the labour constituency should be increased.

3. Direction of development -- It should be more democratic and more open with overall direct elections as the final target.

Age of electors

Nine groups of participants were for the proposal that the age criterion for electors should be 18. The reasons are as follows:

1. Rise in education standard.
2. To promote the youth's concern in public affairs and their sense of political responsibility.
3. If one-man-one-vote elections are practised now, by 1997 the younger generation will have developed sufficient understanding in political affairs and commitment to society.

Terms of reference of the legislature

Participants unanimously agreed that the existing terms of reference of the legislature should be retained after 1997.

On the terms of reference of the future legislature, the participants had the following proposals:

1. Power of moving bills -- Some participants agreed that the legislature should have this power. But some held that both the chief executive and the legislature should enjoy this power and should the executive and the legislature disagree, the final decision will be made by a three-fourths majority vote of the members of the legislature.
2. Power of financial control -- Some participants held that to enable the executive authorities to enjoy autonomy financially, the legislature should not be vested with the power of financial control. On the other hand, some held that the legislature may revise the budget in accordance with the needs of society.
3. Power of impeachment -- Participants agreed that the legislature should have the power to impeach the chief executive as well as principal officials to ensure that the government is subject to effective democratic supervision provided that this power would not be exercised at the expense of the continuity and stability of the government. Some participants held that the legislature should not have the power to impeach principal officials and report to the Central for removal because principal officials appointed by the chief executive would only be accountable to the chief executive. There was a view that whether or not the chief executive was elected by the legislature, the latter should have the power to impeach the former.
4. Access to information -- Members of the legislature may have access to files of varying degrees of confidentiality through certain procedures.
5. Power to pass the list of principal officials nominated by the chief executive -- If the chief executive is too pro-Central, the principal officials nominated by him will most probably be also pro-Central. Thus this power vested in the legislature will provide some checks and balances.

6. Power to initiate proposals --Some participants proposed that the public should be granted this power i.e. proposals may be jointly initiated by a certain number of people.
7. Selection of the chief executive -- Some participants held that the public should have the right to elect or even to nominate the chief executive. But some proposed that the chief executive should be nominated by a representative body such as the legislature.

Conclusion

Participants are exposed to more points of view through this seminar. It is hoped that seminars of a similar nature on other specific issues concerning the Basic Law will be held in the future.

「青年與基本法研討會」 大會報告

整理人：姚偉梅、馮煒光、李紹基

前言

由基本法諮詢委員會舉辦的「青年與基本法研討會」已於1986年11月16日順利完成。是次研討會的參加者約共120人，分別為青年團體的代表及個人參加者。研討會以小組討論形式進行，各參加者被分成15小組，討論完畢後，分別由各組組長就討論內容寫成報告。本份「青年與基本法研討會」大會報告便是由發起是次研討會的三位諮委：姚偉梅委員、馮煒光委員及李紹基委員，以15小組的報告為基礎而整理成的。

未來政制模式的假設

在開始討論立法機關之前，參加者首先討論未來政制模式的假設

1. 參加者主要傾向立法主導，原因有二：
 - ① 信任集體智慧
 - ② 防止權力被濫用
2. 但亦有參加者提出，行政及立法機關的地位應相等，以互相制衡。因為任何一方權力過大，都可能影響未來社會安定；再者，九七年後的香港，既需要保持高效率的行政機關，也要有適當的立法程序及法律條文，以保障「港人治港」這原則，所以兩者實同樣重要，但部份參加者擔心行政、立法機關會由於溝通不足而產生對立，故希望建立行政、立法溝通的制度，以減少衝突。

立法機關的組成

1. 在理解聯合聲明「立法機關由選舉產生」的規定和考慮立法機關應否包括政府主要官員一問題上，參加者一致反對立法機關包括政府主要官員，但贊成主要官員可列席立法機關會議，以回答議員對各政策之質詢。
2. 有參加者提出，現時立法局的法案。大多數是由主要官員提出的，九七年後，主要官員不能在立法機關上提出法案，而由立法議員提出法案，需要有專業組織（如政黨）協助他們提議法案。

立法機關的產生

1. 直接選舉

定義 — 基於公平參與的原則，有參加者認為直選是指無提名權限制的一人一票直接選舉，但亦有參加者顧慮候選人的質素，建議候選人應由特定團體提名，只要這些特定團體是具合法性和認可性的即可，故應有提名權之限制；但亦有參加者認為直接選舉立法機關成員是一個重要及嚴肅的過程，由全民提名，市民會慎重處理，不會出現質素太差的候選人，所以亦建議無限制權，可由全民提名。

1.1 支持直選 — 有四組參加者一致贊成立法機關應由直選產生；其餘十一組贊成在九七年時，有不少於二分一的立法機關成員由直選產生，原因如下：

- ① 直選可確切反映出社會的取向。由直選產生的政府更具權威性和合法性，因此可以達到向人民負責、交待，並受人民監察的目的。
- ② 直選容許各階層公平參與製定決策，均衡社會各階層的利益，避免令某些階層可透過「政治壟斷」來達致「經濟壟斷」，引起其他階層不滿因而做成社會不穩定。
- ③ 直選可防止中國過份干預香港內部事務，因直選選出的議員須對市民負責，「奉旨承風」的情況自然少機會出現。
- ④ 至於選舉的結果，即使是全面直接選舉，所產生的議員都會是有能力，有知識的專業人士及中上層人士，同時，工商界在財力、社會聲望等方面都比其他階層人士優勝，故在一人一票的選舉遊戲規則下，也同樣佔有有利位置。因此立法機構無需要為某一階層人士保留特定席位。
- ⑤ 現時香港人的教育水平、國民收入都漸高，資訊溝通的情況亦很發達，如果政府再大力推行公民教育，定必有足夠實行直接選舉的客觀條件。
- ⑥ 直選可以維繫大部份會繼續留港的市民對實行「一國兩制」、「高度自治」的承諾的信心，因為如果沒有一個能真正代表市民的特區政府，高度自治的基礎是十分脆弱的。
- ⑦ 香港的政治實踐對中國的政制改革起示範作用；值得一提的是不少參加者都提出選舉本身是一項重要的公民教育，透過個人的實踐從而提高政治意識，這對推動整個社會的政治發展起積極作用，所以直選是不容忽視的。

2. 間接選舉 — 參加者認為間接選舉主要指「功能團體」選舉。

2.1 支持間選的原因：

- ① 過渡的功用——由現在到九七年只有十餘年，考慮到從未有自治經驗的市民未必有足够的參選意識，部份工商界人士對民主制度亦有懷疑，而中國政府對香港政制改革的步伐亦有保留，再者「一國兩制」是一個非成功不可的實驗，所以可以接受間選是作過渡期的安排，但最終應為直接選舉。
- ② 功能團體選舉能保證某些擁有專業知識的人士能晉身立法機關，以確保立法機關能得到他們的意見。
- ③ 參加者認為功能團體選舉能為工商界人士在立法機關內設有一定席位，以穩定他們的信心。

2.2 反對間選的原因：

- ① 製造政治特權階級，破壞公平原則
- ② 功能團體選舉充滿問題，例如如何公平劃分功能席位等，都是難以解決的。

2.3 其他

有參加者提出，假如以功能團體選舉作過渡期的安排，應增設更多不同功能組別（如文化藝術界及傳播界），而某些組別如勞工界應獲增分配議席。

3. 發展方向 — 參加者認為九七年後的政制是可以因應當時的情況及視乎公民意識的提高而發展，但是發展的方面應是趨向更民主、更開放。參加者並認為最終應實行全面直接選舉。

選民年齡

有九組參加者贊成將選民年齡降至十八歲，他們認為：

1. 由於教育水平提高，青年已有足夠能力去選擇自己的代言人。
2. 提供參與的機會可提高青年人對社會公眾事務的關心及參與政治的責任感。
3. 如果現在開始實行一人一票選舉，到97年大部份立法議員都由選舉產生；經過長時期的實踐，到時已有足夠基礎培育一群對社會有一定認識及承擔的年青人。所以到九七年時，把選民年齡降至十八歲是適當的。

立法機關的職權

參加者均贊成現時立法機關所有的職權九七年後都該繼續擁有，這些職權分別是：

- ①通過法律；
- ②通過撥款；
- ③設立財務委員會研究開支；
- ④審查政府帳目；
- ⑤就公眾關心的事情質詢政府；
- ⑥動議辯論公眾關心的事務；
- ⑦參加周年辯論；
- ⑧設立小組討論有關政策；
- ⑨設立專責小組調查公眾關心的事情。

就立法機關未來的職權，參加者有下列的建議：

1. 立法動議權 — 有參加者贊成立法機關應有法案動議權，但亦有參加者覺得此權應同時屬於行政長官及立法機關成員，假如在立法過程中出現行政、立法機構各持己見的局面時，只要法案得3/4議員同意便可對通過與否作出最後決定。最後，有參加者提出要如賦與立法機關這方面的權力，需要有其他方面的配合，例如政黨的出現，否則議員有這個權力也難以運用，或者運用不當。
2. 控財權 — 為避免影響行政機關的運作，有參加者認為立法機關不應有控財權，使行政機關有財政上的自主權。相反，亦有參加者同意立法局有視乎社會之需要而增加某方面之開支；但為免權力被濫用，故建議就可增加開支之範圍及程度、作出限制。另有參加者認為，為了避免政府財政負擔過重，但又保障能適應社會的需要，建議賦與立法機關有權在原有的預算案內重新調配開支。

3. 彈劾權 -- 參加者都贊成立法機關可彈劾行政長官（即使贊成行政長官由一人一票選舉產生的參加者也同意此點）及主要官員，既然立法機關是一有充分代表性的機構，賦予它此項權力，確保了政府受到有效的民主監察，體現了行政機關向立法機關負責的精神。但也有意見指出，在肯定立法機關的彈劾權的前提下，要適當處理它行使此項權力時對政府的持續性及穩定性的影響。但有參加者不同意未來立法機關有「彈劾主要官員，再報請中央罷免」的權力，因為由行政長官任命的主要官員只需向行政長官負責，立法機關的干擾會影響行政機關的運作。另一種意見認為無論行政長官是否由立法局產生，兩者地位亦應平等，立法局也應有彈劾權，以制衡行政機關。
4. 知情權 -- 參加者均同意立法機關成員可透過不同程序去翻查不同機密程度的檔案。
5. 通過行政長官提名的主要官員名單 -- 有參加者認為假若行政長官過份偏向中央政府，他提名的主要官員也極有可能偏向中央，故不能全面兼顧民意，立法局若有通過行政長官提名主要官員名單的權力，便可加以制衡。
6. 創議權 -- 有參加者建議人民有創議權，只要得某人數比例，如一千人的聯名便可提交向立法局提交議案，按通過議案程序進行。北歐國家有這樣的例子。
7. 行政長官的產生 -- 有參加者贊成市民有權選舉行政長官，甚至贊成市民有權提名行政長官的候選人；但也有提議由有代表性團體（如立法機關）負責提名行政長官的候選人。

大會總結

參加者認為此次討論相當有益。從參加者的角度來看，他們可面對更多不同的考慮點和看法。大部份參加者對政制都有一定的認識，但他們的考慮點仍不夠廣泛。此次討論正好提供機會使他們接觸到各方面不同的意見。亦有參加者認為這次討論會所涉及的範圍過於廣泛，希望日後能就其他課題舉行類似的研討會。