

Rule of Law in Hong Kong

Rule of law is a popular phrase in Hong Kong. It is also a concept which is considered important and has widespread support.

The rule of law is the foundation of social order. Numerous conflicts exist within any society, arising out of a variety of causes. However, we must be able to co-exist in peace before we can be constructive and make progress. As a member of society, we must work ceaselessly to reduce and remove conflicts, so that the forces within our society could be put to positive use.

A principal benefit of the rule of law is the provision of a just and civilized means of resolving conflict.

At present Hong Kong has a system of rule of law, and a consensus as to the benefit of the rule of law. We should use this foundation as a basis to resolve the conflicts which we face.

Hong Kong is in a special situation. In 1997 its status changed from being a British Colony to a Special Administrative Region of China. The Basic Law set out arrangements for this change, including provisions for the future development of Hong Kong, the most important of which is constitutional development.

In discussing constitutional development, we must not forget the relevant antecedents. The change of status from being a Colony of Britain to a Special Administrative Region of China has been smoothly effected. This was due to a political arrangement acceptable to all parties. Similarly, the orderly progress of constitutional development is also reliant on a political arrangement acceptable to all parties.

The features of such a political arrangement has given rise to much dispute. This is not surprising, because this is a question which involves important matters such as beliefs, interests and distribution of power. The provision of the Basic Law in relation to such a situation is that without a consensus there should be no change.

Such a consensus must be reached between the Central People's Government, the SAR Government and the Legislative Council of Hong Kong. This is the requirement of the Basic Law. When we approach the question of constitutional development from a legal standpoint, we must not ignore the provision of the Basic Law in this respect.

In individual or commercial matters, where a dispute cannot be resolved by negotiation, the parties could resort to the courts. However, constitutional development is a different kind of matter. The Basic Law requires that there must be a consensus; otherwise the status quo is maintained. The matter cannot be resolved by conventional legal means, but only in accordance with the provisions of the Basic Law. The process might be protracted, and the constraints imposed by the Basic Law might give rise to dissatisfaction. But we must appreciate that the arrangements provided by the Basic Law is a political reality arising out of a set of historical circumstances, and is also part of our rule of law, and we should approach the matter from a standpoint of adherence to the law.

We should examine the historical circumstances. When the Basic Law was being drafted, there was a common understanding that Hong Kong and the Mainland would continually evolve. Article 5 of the Basic Law contains the words "shall remain unchanged for 50 years". What do they mean? Do they mean that there shall be absolutely no change before 2047 and that everything will be changed thereafter? I do not believe this will be an acceptable interpretation, and in fact no issue has ever been raised as to what these words mean. The reason for this is that there is a common understanding that the 50 years is a transitional period, and what is contemplated by the Basic Law is that the Hong Kong and the Mainland will evolve in a manner which will complement one another to their mutual advantage. Fifty years ago today, nobody could have foreseen the extent to which Hong Kong and China have now developed. Similarly, we cannot really foresee what will be the situation of Hong Kong and China in 50 years. However, what we see everyday is that great developments are taking place. Making an overall assessment, I think we should be optimistic.

The process of constitutional development is likely to be protracted, but our future is still in our own hands. The reason is Hong Kong has a role and status in the overall development of China. For example, Hong Kong's legal system and the practice of the rule of law is regarded with importance and appreciation by the

Mainland. At the same time, if we observe the Mainland, we find that many developments which were unimaginable not long ago have now become reality. We must work in accord with the great mainstream of development on the Mainland, make good use of our systems to consolidate our success and promote our own development, and increase the importance of Hong Kong to the Mainland. With substantive success and influence, we will be in an improved position to obtain the necessary consensus to determine our own future.