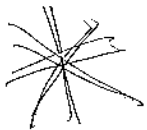


**Preparatory Courses for PCLL  
Admission Conversion  
Examinations (2012/2013)**

**Hong Kong Constitutional Law**

**Lecture notes 3**



**Framework of the Hong Kong Basic Law**

## Framework of Hong Kong Basic Law

### Important Issues to Revise

Please note here important issues to revise.

These will be identified during the lectures.

- ① One country, two systems.
- ② Special features of HK's autonomy.

### Relevant Past Exam Questions:

Please note here relevant past exam questions.

These will be identified and answered during the lectures.

April 2007 Q1

Aug 2007 Q1

Jan 2008 Q1

July 2008 Q3

June 2009 Q2

Jan 2010 Q1

June 2010 Q1

Jan 2011 Q2

June 2011 Q1

Jan 2012 Q4

## Reading Materials

- 1) George Brunner, *The Functions of Communist Constitutions: An Analysis of Recent Constitutional Developments* (1977) 3 Rev. Soc. Law 12 1-153
- 2) Johannes Chan SC and Lison Harris, *Hong Kong's Constitutional Debates* (Hong Kong Law Journal Limited, 2005), Chapter 4
- 3) Denis Chang, *The Imperatives of One Country, Two Systems: One Country Before Two Systems*, (2007) 37 HKLJ 2, pp 407-448
- 4) Yash Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (HKU Press, 2<sup>nd</sup> edition 1999), Chapter 4
- 5) Hurst Hannum, *Autonomy, Sovereignty and Self-Determination* (University of Pennsylvania Press, 1990), Chapters 7, 19
- 6) Hurst Hannum and Richard B. Lillich, *The Concept of Autonomy in International Law*, 74 A.J.I.L. 858. Also in Dinstein (ed.), *Models of Autonomy* (1981).
- 7) Elsie Leung Oi-sie, *Understanding One Country, Two Systems through Hong Kong's Constitutional Development* (Basic Law Seminar Presentation, May 29, 2004). Available at <http://www.doj.gov.hk/eng/archive/pdf/sj20040529e.pdf>.
- 8) B.O. Nwabueze, *Constitutionalism in the Emergent States* (C. Hurst & Co. 1973), Chapter 1
- 9) Stanley de Smith and Rodney Brazier, *Constitutional and Administrative Law* (Penguin, 7th ed. 1994), p3-13
- 10) Benny Tai, *One country, two systems: the two perspectives* (2002) Macau Law Journal (Special Issue) pp 143-163

## Models of Autonomy and One Country, Two Systems



"Autonomous areas are regions of a state, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are part."

J. Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) at pp 211-12.

Many different models of autonomy, including:

Parl. sov.

### Autonomous Provinces/Regions in unitary countries. e.g. UK, China

Autonomous provinces/regions are created by the central government, which authorizes a local government to exercise some autonomy over affairs in that province/region, subject to the ultimate control of the central government. These are often known as examples of autonomy within what are called "unitary countries."

NPC

Examples include Hong Kong and various areas in China, such as Tibet, that are inhabited by ethnic minorities and known as National Autonomous Areas.

Another example is the Åland Islands, which are part of Finland but used to belong to Sweden and have a predominantly Swedish-speaking population. These islands enjoy a very high degree of autonomy, and are often cited in academic studies into how much autonomy Hong Kong exercises in practice.

## Federations

Individual states/provinces enter into a constitutional framework with a federal/central government that results in a division of power between the individual states/provinces and the federal/central government. Often this division of power is set out in a federal constitution.

Powers start at local level

Residual power

→ local

Examples of federations include the United States, Canada and Malaysia.

Individual states within a federation often have a higher degree of autonomy than autonomous provinces/regions, especially when they were involved in negotiating the division of power.

## Associated States

Associated states are when a small state (that is usually too small to survive on its own) is linked with a large, and usually, neighbouring state. Some of the smaller state's powers are exercised by the larger state (often including defence, foreign affairs, currency). However the smaller state retains a high degree of autonomy and either side can usually dissolve the relationship at any time.

Examples include the Holy See/Vatican (in association with Italy), Bhutan (in association with India) and the Federated States of Micronesia (in association with the U.S.)

HK - unique → NOT a country but given autonomous power

→ current issues (China taking away some power)

(HKBL)

Powers start from centre.

Only mention if asked in class

Jan 2008 Q1

### Residual Powers

Basic Law explicitly gives some powers to Hong Kong SAR, while it explicitly reserves other powers for the central authorities. How about those powers not mentioned in the Basic Law?

During drafting of Basic Law, many argued these residual powers should also be exercised by the Hong Kong SAR → 105F → Art 20 HK drafters e.g. Szeto Wah

Argument

1

But Chinese legal experts rejected because of the unitary nature of the Chinese state. In countries with one central government, such as China and Britain, all powers originate with this central government. Central government can choose to give some powers to local governments within the country. But all other powers remain with the central government. So Hong Kong only enjoys those powers it has been given under the Basic Law

Other powers have to be explicitly given to it by the central authorities under Article 20 of the Basic Law. This states that:

*The Hong Kong SAR may enjoy other powers granted to it by the National People's Congress, the National People's Congress Standing Committee or the Central People's Government.*

Zhang Youyu states in the Journal of Chinese law, April 1988:

2

*China does not have a federal system but has a unitary system. A locality's powers are not inherent in themselves, but are conferred by the state. Neither before nor after the establishment of the Hong Kong SAR does it possess independent sovereignty. The Hong Kong SAR's high degree of autonomy is conferred by the state through the Basic Law, and it cannot enjoy powers that were never conferred. So how can there be any residual powers?*

Jan 2008 Q1

3

In a speech on June 6, 2007 to mark the 10<sup>th</sup> anniversary of the Hong Kong SAR, NPCSC Chairman Wu Bangguo reiterated that Hong Kong does not enjoy any residual powers, and that any powers additional to those already contained in the Hong Kong Basic Law would have to be explicitly granted to Hong Kong by the central authorities using their power to do this under Article 20 of the Hong Kong Basic Law.

→ Related to debate over Constitutional Reform (HK has no power).  
- elections.

## Autonomy Elsewhere in China

July 2008 @ 3.

Degree of autonomy exercised by different autonomous areas varies widely. See, in particular, the big differences between the degree of autonomy exercised by National Autonomous Areas, such as Tibet, elsewhere in China, and the Hong Kong Special Administrative Regions.

### Hong Kong Special Administrative Region

Art 31 ~~of the~~ PRC Constitution.

- Has a "high degree" of autonomy;
- Operates under a separate system from mainland China;
- Can pass its own laws on most matters (even including criminal and national security laws);
- Does not apply most national Chinese laws (only the small number listed in Annex III of the Hong Kong Basic Law);
- Can conduct a wide range of "external affairs" with foreign countries and international organizations;
- Has its own Court of Final Appeal, which reaches the final decision on cases;
- Uses a separate currency that is not linked to the national currency.

### National Autonomous Areas

Art 112-122

- Have "ordinary" autonomy; ethnic groups
- Are part of the Communist system in mainland China;
- Have limited law-making powers;
- Must apply most national Chinese laws;
- Use China's national currency.

### Tibetan Autonomous Region

Tibet was an early example of one country, two systems under a 17 point agreement for the peaceful liberation of Tibet reached between the central authorities and representatives of the Dalai Lama in 1951.

Article 4 of this agreement included a commitment to "not alter the existing political system" or the "status, functions and powers of the Dalai Lama."

However the experiment was abandoned in 1959, when the Dalai Lama fled to India, and Tibet was placed under the Communist system applying in the rest of the country.

Since then, Tibet has been ruled as a National Autonomous Area under the Law on Regional National Autonomy.

China argues that it is not appropriate to make Tibet a Special Autonomous Region under Article 31 of the PRC Constitution 1982 because Tibet has already been integrated into the Communist system and (unlike Hong Kong) there is no capitalist system to preserve.

For more on comparisons between Hong Kong and Tibet, see the following articles:

- 1) Paul Harris, *Is Tibet entitled to self-determination* (Centre for Comparative and Public Law, University of Hong Kong, August 2008).
- 2) Suzanne Pepper, *A Hong Kong-style solution for Tibet?* (Hong Kong Journal, Fall 2008).

E.g. of  
HK's  
autonomy

VS

## Some Special Features of Hong Kong's Autonomy

Some aspects of Hong Kong's autonomy are very rare elsewhere in the world, including in federations where the individual states/provinces normally enjoy a higher degree of autonomy.

### ① External Affairs *Executive Power*

See handout on International Aspects of the HKSAR. — *Topic 8*

- In any autonomous area, foreign affairs are almost always the responsibility of the national government;
- Article 13(1) of the Hong Kong Basic Law reiterates this in the case of Hong Kong;
- But Article 13(3) allows Hong Kong to conduct "external affairs" on its own;
- Article 151 generously defines these to include economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports;
- That means Hong Kong can negotiate directly with foreign governments in all these areas, and even join international organisations as a separate member;

### ② Court of Final Appeal *Judicial Power*

- Even in states/provinces in a federal system, there is normally a right of appeal from a state court to a national court (e.g. the Supreme Court in Washington, D.C.)
- A study by the International Committee of Lawyers for Tibet (ICLT) found only three other autonomous areas with totally independent judiciaries: Andorra, Liechtenstein and the Federated States of Micronesia, all of which are associated states.  
(Eva Herzer, *The Practice of Autonomous Areas and Self-Government Arrangements* (Paper presented at Conference on Autonomy and Self-government, New Delhi, November, 1999).)
- But Hong Kong's Court of Final Appeal does not have the final power to interpret the Hong Kong Basic Law.

### Separate Currency

- States/provinces in a federal system, normally use the national currency (e.g. U.S. states can not issue their own currency without consent of national government);
- Even when autonomous areas are allowed to issue their own currency, it is almost always linked to the national currency (e.g. Scotland issues its own pounds);
- Hong Kong, by contrast, is linked to the U.S. dollar instead of the Chinese yuan.
- ICLT study found Hong Kong was only one of 34 autonomous areas surveyed with a local currency that is not linked to the national currency.

### ③ Legislative Power to make almost all its own laws (Art 17(1)) - very restrictive rules on application of Chinese national laws (Art 18).

## Conclusion

These kind of powers have led some Chinese legal scholars to argue that Hong Kong has changed conventional constitutional theory on what model of autonomy offers the highest degree of autonomy:

*The high degree of autonomy enjoyed by the HKSAR has broken through the common constitutional theory, that is, the powers enjoyed by a member state of a federal country is more than those of an administrative region in a unitary country. The HKSAR enjoys a higher degree of autonomy in many respects than a member state of a federal country.*

(Xiao Weiyun, *One Country, Two Systems: An Account of the Drafting of the Hong Kong Basic Law*, Peking University Press, English edition, 2001).

However note the comments of Professor Jerome Cohen:

"1997 marks the start of the PRC's experimentation with federalism"

(in Roda Mushkat *One Country Two International Legal Personalities: The Case of Hong Kong* (Hong Kong University Press, 1997)

## Reunification with Taiwan

One Country, Two Systems was originally designed for Taiwan NOT Hong Kong—Article 31 of the PRC Constitution 1982 was written with this purpose in mind.

Origins of One Country, Two Systems go back to a nine-point plan issued by the National People's Congress Standing Committee for Taiwan to become the first Special Administrative Region of the People's Republic of China.

This nine-point plan was later adapted into the 12 Basic Policies of the People's Republic of China Regarding Hong Kong that are listed in Article 3 of the Sino-British Joint Declaration 1984.

Even in the 1980s, China was prepared to offer more generous terms to Taiwan than Hong Kong (e.g. Taiwan would be allowed to keep its armed forces).

Any reunification formula for Taiwan today would most likely involve even more generous concessions. Perhaps one country, two governments? Or some kind of federal system?



## Criteria for Autonomy

## Features of Autonomy

Difficult to find any generally accepted definition of autonomy in international law. However Professors Hannum and Lillich have put forward a widely-quoted list of five powers that a fully-autonomous territory is expected to have:

- 1) A locally elected legislature with the power to make laws on all areas that fall within its authority; ✓
- 2) A locally-selected Chief Executive whose appointment may be subject to approval by the central government; ✓
- 3) An independent local judiciary with full jurisdiction over local matters; ✓
- 4) An independent mechanism for resolving disputes with the national authorities; and X
- 5) An absence of general discretionary powers in the centre.

No protection against the taking away of powers.

Hannum and Lillich, *The Concept of Autonomy in International Law* at pp 886-887, and Hannum, *Autonomy, Sovereignty and Self-Determination* at pp. 467-468.

### Question

How far does Hong Kong meet these criteria?

↓ committee for the RL (see topic 6).

## ~~Relationship between Central Government and HKSAR:~~ China's Powers under HK Basic Law

Jan 2011 Q 2

Hong Kong is part of China, (HKBL, Article 1):

*The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.*

Hong Kong only enjoys those powers expressly given to it by the National People's Congress (HKBL, Article 2):

*The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.*

China exercises control over foreign affairs, but Hong Kong is allowed to conduct many types of external affairs (HKBL, Article 13):

- (1) *The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region.*
- (2) *The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Hong Kong to deal with foreign affairs.*
- (3) *The Central People's Government authorizes the Hong Kong Special Administrative Region to conduct relevant external affairs on its own in accordance with this Law.*

China exercises control over defence, but Hong Kong exercises control over public order (HKBL, Article 14):

- (1) *The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region.*
- (2) *The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in the Region.*
- (3) *Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief.*
- (4) *In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.*
- (5) *Expenditure for the garrison shall be borne by the Central People's Government.*

The Central People's Government appoints the Chief Executive and principal officials of the Hong Kong SAR Government but this is on the basis of a selection process in Hong Kong (in the case of the Chief Executive) and the nomination of the Chief Executive (in the case of principal officials) (HKBL Articles 15):

*The Central People's Government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law.*

See also HKBL, Articles 45, 48(5)

All new Hong Kong laws must be reported to the National People's Congress Standing Committee, which can return and invalidate certain categories of laws. But it can not amend these laws, and this power does not apply to all new laws—a significant change from the first draft of the HKBL (HKBL, Article 17):

- (1) *The Hong Kong Special Administrative Region shall be vested with legislative power.*
- (2) *Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the National People's Congress Standing Committee for the record. The reporting for record shall not affect the entry into force of such laws.*
- (3) *If the National People's Congress Standing Committee, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the National People's Congress Standing Committee shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.*

The National People's Congress Standing Committee had the power to decide which of Hong Kong's pre-1997 laws were against the HKBL and were not adopted as the laws of the Hong Kong SAR (HKBL, Article 160(1)):

*Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the National People's Congress Standing Committee declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.*

See "National People's Congress Standing Committee Decision on Treatment of Laws Previously in Force in Hong Kong under Article 160 of the Basic Law (February 23, 1997).

Qu: Can this provision be used by the National People's Congress Standing Committee to invalidate further laws after July 1, 1997.

The National People's Congress Standing Committee can apply some national laws to Hong Kong but in normal circumstances these are limited to "defence, foreign affairs, and other matters outside the autonomy of the region." (HKBL Articles 18(2)(3)):

- (2) *National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.*
- (3) *The National People's Congress Standing Committee may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.*

Qu.: Could China's Military Service law fall within the definition of defence?

Qu.: What are "other matters outside the autonomy of the region"?

In exceptional circumstances, the Central People's Government can apply any national law to Hong Kong (HKBL, Article 18(4)).

*In the event that the National People's Congress Standing Committee decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.* *See Article 18.*

Qu: Who would enforce these laws?

See Article 6 of the Law on the Garrisoning of the Hong Kong Special Administrative Region:

*In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the Government of the Region, decides that the Region is in a state of emergency, the Hong Kong Garrison shall perform its duties in accordance with the provisions of the national laws that the Central People's Government decides to apply in the Region.*

Hong Kong Courts are vested with the power to hear all cases of the region (HKBL, Article 19(1)), subject to the restrictions in HKBL Articles 19(2) and 19(3).

Hong Kong courts generally continue to be subject to the same restrictions which applied before July 1, 1997 (HKBL Article 19(2)):

*The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.*

Acts of State lie outside the jurisdiction of the Hong Kong courts (HKBL, Article 19(3)): *Constitution (Topic 5)*

*The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.*

Qu: What do the words "such as" mean? Do they allow for a much broader definition of acts of state than defence and foreign affairs?

Hong Kong is required to enact laws protecting national security (HKBL, Article 23): *Article 23*

*The Hong Kong Special Administrative Region shall 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*

The National People's Congress Standing Committee has the final power to interpret the Hong Kong Basic Law (HKBL Article 158(1)): *Article 158*

*The power of interpretation of this Law shall be vested in the National People's Congress Standing Committee.*

★ Final Interpretation of BL

Only the National People's Congress can amend the Hong Kong Basic Law (HKBL, Article 159):

- (1) *The power of amendment of this Law shall be vested in the National People's Congress.*
- (2) *The power to propose bills for amendments to this Law shall be vested in the National People's Congress Standing Committee, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.*
- (3) *Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.*
- (4) *No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.*

Qu. Why is it so difficult to amend the Hong Kong Basic Law?

Qu.: What are "the established basic policies of the People's Republic of China regarding Hong Kong"?

Qu. How can the restriction in Article 159(4) be enforced?

## **One Country, Two Systems: Two Perspectives**

See Benny Tai, *One country, two systems: the two perspectives* (2002) Macau Law Journal (Special Issue) pp 143-163 for a very useful analysis of the two perspectives through which one country, two systems is seen.

**You should read this article thoroughly and take additional notes on the key points raised, especially in relation to the one country perspective to one country, two systems.**

Jan 20/2 @ 4.

## One Country, Two Systems: Maintaining Existing Systems

What is the primary purpose of the Hong Kong Basic Law?

One country, two systems?

Or a high degree of autonomy?

### Preamble (Para. 2):

*Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "one country, two systems", the socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration*

### Article 2:

*The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.*

Primary → One country, two systems is the primary goal of the Hong Kong Basic Law, i.e. ensuring that Hong Kong's systems remain separate from those in the rest of China, especially in the economic arena—by ensuring that, even if China remains (at least in theory) socialist, Hong Kong retains the same capitalist economic system that existed when Hong Kong was a British colony.

Secondary goal → A high degree of autonomy is secondary to this, and simply a means of achieving this primary goal of one country, two systems (i.e. by allowing Hong Kong to administer this separate system largely on its own).

Yash Ghai has long argued that this primary goal of one country, two systems makes the nature of Hong Kong's autonomy different from (and, in some respects, weaker than) most other examples of autonomy elsewhere in the world, which are usually about preserving the distinctive ethnic and/or cultural characteristics of a minority people, rather than simply preserving a different economic system.

See, for instance pp 184-185 in Yash Ghai, Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law (HKU Press, 2<sup>nd</sup> edition 1999):

*The primary purposes of the Basic Law, which is to preserve a particular kind of economic and political system in Hong Kong, differs from other instances of autonomy. Autonomy is secondary, and is contingent on the other, larger aim. This is not to deny that that majority of the people would support such a system or that within it there is not considerable scope for such policy, but it highlights the fact that several powers of the HKSAR which are characteristic of sovereign powers are included in the Basic Law only because they were considered essentially to the maintenance and functioning of the economic system of Hong Kong. This factor points to an important distinction between autonomy in Hong Kong and almost everywhere else: the purpose of autonomy elsewhere is to safeguard religious or ethnic traditions of a minority (India, Sri Lanka, Cyprus) or to accommodate a pre-existing sovereignty entity (as in older classical federations or Zanzibar in Tanzania) ... The moral basis for autonomy is weak if its justification*

*is economic, unlike religion, culture or ethnicity (especially as the economic paradigms of the two parts of China converge increasingly).*

In most cases, one country two systems reinforces Hong Kong's autonomy, because it creates the need for Hong Kong to administer this separate system largely on its own.

But, in some cases, one country two systems restricts Hong Kong's autonomy?

e.g. Can Hong Kong adopt the socialist system if it wants to?

Can Hong Kong abandon the Hong Kong dollar and adopt the Chinese renminbi instead?

*A "high degree of autonomy" does not mean complete autonomy. Moreover, that expression must be understood in the context of other provisions in the Basic Law. The Basic Law guarantees the continuity of many of the foundations of Hong Kong's success, including its capitalist system, its independent judiciary, its separate customs territory, its independent taxation system, and its power of immigration controls. Hong Kong's high degree of autonomy is therefore limited to the extent that it cannot unilaterally change any of those systems or principles laid down in the Basic Law.*

[Elsie Leung Oi-sie in "Understanding One Country Two Systems through Hong Kong's Constitutional Development" (May 29, 2004)]

In most cases, these restrictions are widely seen as protecting Hong Kong, and hardly anyone would complain about them.

e.g. Would anyone in Hong Kong want to abandon the capitalist system and adopt the socialist system instead?

But some restrictions can be more problematic e.g. Article 100 prevents civil service salaries being reduced below their level on July 1, 1997:

*Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.*

And Hong Kong SAR Government has argued the fact that Hong Kong Basic Law prevents Hong Kong from unilaterally changing many of its systems, also justifies the National People's Congress Standing Committee's power of veto over any changes to Hong Kong's political system:

*The concept of "one country, two systems" must be understood in the light of the constitutional fundamentals set out in the PRC Constitution and the Basic Law. In particular, "one country, two systems" does not mean that the HKSAR has that power to unilaterally change its constitutional system.*

[Elsie Leung Oi-sie in "Understanding One Country Two Systems through Hong Kong's Constitutional Development" (May 29, 2004)]