



Birdcage or Framework?

Considering what comes next in constitutional reform

A Report for the
National Democratic Institute for International
Affairs and
Community Development Initiative Foundation
by
The Hong Kong Transition Project

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Background to the principals

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Since 1997, NDI has conducted a series of assessment missions to Hong Kong to consider the development of the HKSAR's "post-reversion" election framework, the status of autonomy, rule of law and civil liberties under Chinese sovereignty, and the prospects for democratization beyond the 10-year transition period set forth in the Basic Law. In 2002, NDI established a field office in Hong Kong. NDI works with political parties and democratic activists to encourage public discussion and debate on political reform. The Institute shares information with and provides technical assistance to Hong Kong political parties, political groups, and civil society organizations seeking to increase their ability to increase citizen participation in the HKSAR's political life. NDI does not provide funding to any political party or political group in Hong Kong.

Since 2002, NDI has provided technical assistance to Hong Kong's political parties and political groups to address issues such as: membership recruitment; media relations; communicating with constituents; voter contact; and fundraising. Through multi-party and single-party workshops, as well as consultations with party leaders, NDI has worked with all of the HKSAR's major parties to discuss the external political environment and the parties' internal structural weaknesses. Participating parties and political groups have included the Democratic Alliance for the Betterment and Progress of Hong Kong, the Democratic Party, the Liberal Party, The Frontier, the Hong Kong Progressive Alliance, the Citizens Party, and the Civic Party.

Community Development Initiative Foundation (CDIF) is a nonprofit organization that incubates ventures facilitating community and social development. It provides a platform for NGOs, think-tanks and activist groups to collaborate for a common purpose of enhancing the well-being of citizens in the community. CDIF engages in both research and education, by designing, hosting, and facilitating creative programs to support its community partners with the training, tools and resources necessary to facilitate the social development process in Hong Kong.

The Hong Kong Transition Project¹ is a long-term study of Hong Kong people's transition from British subjects to SAR citizens. Citizenship requires citizens have the power to elect their leaders and amend or approve their constitutional documents. The project focuses on the period beginning in 1982, when negotiations for Hong Kong's return commenced without Hong Kong people's participation as British colonial subjects, until when under the Basic Law, elections under new election rules decided by Hong Kong people themselves are scheduled to take place. This is expected to be 2017 for Chief Executive and 2020 for all members of the Legislative Council.



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Analytical Framework of the Report

Demographic details are listed at the end of this report.² Significant association of these variables with selected questions will be indicated with cross-tabulations.³ Some sets of questions will be further analyzed for correlation and are labeled as **CORRELATION** tables. Correlation measures the strength of the association between variables, in other words, how consistently responses to one question line up with another. For example, height and weight are strongly correlated, that is, taller people are almost always heavier than shorter people. Heavier cars always get lower fuel efficiency than lighter ones. In the case of the variables in this survey, for example, correlation measures the strength of the relationship between birthplace and political attitudes or satisfaction with life in Hong Kong and satisfaction with government performance. **COMPARISON** tables do not indicate statistical tests of significance, but do show significant variation between the Geographic Constituency voters (GC voters) and the Functional Constituency voters (FC voters) or other groups as indicated. Significant findings will also be marked by the label **FINDINGS** and in italics. There is also a section titled SUMMARY OF FINDINGS BY CHAPTER that list all findings but without their data tables or contexts. The Table of Contents lists sections, tables and charts. The main tables, usually the May results or **TREND TABLE** contain the question asked in the surveys in full form, with shortened forms used in subsequent tables.

Questions have been analyzed with five main sets of variables:

Political system variables include Functional Constituency, Geographic Constituency, or non-registered status to vote, status as having a job requiring a government recognized or stipulated certification, registration or license, belonging to a union, association or other professionally related group

Demographic variables include: birthplace, years residence in Hong Kong for non-Hong Kong born residents, gender, age, marital status, children, education, occupation, work sector, living quarters, religion, and monthly family income.

Associational variables include: experience living abroad, identity.

Participatory variables are: attendance at meetings of community/interest groups, contacting government and civil society groups for help or to express concern, demonstrating, petition signing and donating to political groups, and membership or support of political parties or advocacy groups

Key attitudinal variables include: patriotism, satisfaction with life in Hong Kong, support or opposition in principle to direct election of the CE and of all members of Legco, worry about free press, employment, air and water pollution, rule of law, and social unrest and street

² See Analytical Variables section below for comparative profiles of the two surveys. The variability of responses falls within the normal range of random error, +/-4 points at the 95% confidence interval, in surveys of this size, (approximately 700 respondents for the GC survey). The FC survey of 400 respondents, being smaller but also more homogeneous in terms of demographics (male, older, born in Hong Kong, wealthier and more highly educated on average) varies approximately +/- 8 points in the 95% confidence interval. See table of respondents per survey at end of report.

³ Chi-square is a measure of association. The lower the Chi-square number, i.e., the nearer zero in the number after the symbol p under each table, the less likely that the distribution of responses is a result of just random variation. Chi-square reliably shows an association at .05 or less. However, Chi-square is less useful when only small groups show wide variation from the results of other groups.

protests, positive or negative assessment of effect of political parties in Hong Kong and optimism or pessimism about Hong Kong's future prospects as part of China.

Many of these variables will be included in **TREND TABLES**. **Trend Tables** show changes over time in responses to questions, which have been posed over a number of years by the Hong Kong Transition Project. Significant differences over time between previous surveys and the survey from 2009 will be indicated. Variables without a sum indicated (100) are in column format (read numbers in each column). Normally, independent variables are listed at the top of a table with dependent variables listed in the rows. Tables with 100 indicated to the side are **ROW** totals which read across the rows from left heading to distribute by columns. If a sum of 100 total is indicated at bottom, these are **COLUMN** totals summing up the distribution across the variable listed at the top column heading. These are usually good indicators of being association tables testing whether the responses are sufficiently in a pattern as to preclude a distribution of the responses as a matter of chance. The closer to zero (0) the less the distribution of responses could be by chance, and thus the higher the likelihood that responses are associated with one another significantly.

Executive Summary

As Hong Kong approaches another attempt to achieve a consensus on constitutional reform, it faces the question of whether this time will be different from the failed effort in 2005. Then many pro-democracy advocates felt government offered too few details, too little progress, and made an attempt both too late and too little to amend the proposed package. Constitutionally protected interests in the functional constituencies felt, on the other hand, that the package changed the nature of their half of the legislature too much and that demands to end the practice of appointees to the District Councils would too drastically damage the patronage system—prevalent in Hong Kong since the beginning of colonization—that preserved their influence and rewarded their members. Pro-democracy advocates demanded both a timetable—a specified process with a certain ending point—and a roadmap with the directions and details spelled out on how and when full direct universal suffrage elections of both the Chief Executive and all members of the legislature would be achieved. Since that failed attempt, Beijing officials have delivered a specific timetable and broad guidelines on the roadmap, proclaiming in December 2007 that:

- The Chief Executive may be directly elected in 2017
- All members of the Legislative Council may be directly elected in 2020
- Progress toward these dates must be “gradual and orderly”
- The form of Hong Kong’s democratic system may not simply copy western models but must build on its unique circumstances and history

This report examines not only the current state of public opinion on constitutional reform and the present system. It also examines and proposes new ways to achieve the gradual and orderly progress toward a fully directly elected governance process built upon Hong Kong’s unique circumstances and history as the NPC requires. Demanding changes to the timetable by making full democracy by 2012 the only acceptable reform proposal guarantees that no progress will be made by 2012. *This report assumes that all parties wish to make progress in 2012 and beyond, and that the timetable set down by Beijing is a concession by central authorities that will not be reconsidered without a significant nation-wide upheaval resulting in change in the central government for which for now there is little prospect.*

The problem of how to move from current franchise and elective systems in the Functional Constituencies (FC) to their abolition has so far stymied reforms. Most approaches propose reducing the number of FCs by consolidating current FC voters into fewer seats while adding geographic elected seats to replace them. This introduces the problem of which FCs give up influence first, a move most FC Legco representatives are reluctant to vote for. An alternative would be to dilute the power of FC representatives and their voters by diluting the power of individuals in each FC by greatly increasing the voter numbers in each existing FC, but do so within the original intentions of the FCs as privileging groups crucial to governance, thus achieving both a gradual modernization and democratization of the FCs toward majority inclusion. If properly designed, the exclusion of most voters as now would gradually become the inclusion of most voters by 2016, with a small step required to include all voters in 2020. *This report proposes and launches the first research into such an alternative approach.*

Summary of Findings by Chapter

Part One: Macroanalysis of Past and Future Governance Systems

II Key aspects of the current system

- *The vast majority of Hong Kongers feel they know enough about government policy making to have an opinion. A strong majority of two thirds think abolishing Functional Constituencies (FCs) would make a difference in the fairness of policy making.*
- *The results show even in such straits as the worst global recession since the Great Depression, the vast majority support direct election and believe it would help governance.*

III Investigating views toward the Functional Constituencies

- *Functional Constituency (FC) voters feel abolishing their disproportionate power would make government policies fairer, more than any other group. This is a clear recognition by those most empowered by the current system, that the FC structure is a fundamental flaw.*
- *If abolishing FC seats was a matter of all FC voters voting as a bloc to abolish or not, the vote would go the same way as among the Geographic Constituency (GC) voters or all voters combined: to abolish functional constituencies.*
- *In terms of constitutional reform, there is a consensus among more than two thirds of respondents from the key groups concerned –including both Liberal and Conservative FC voters -- that full direct election of all members of Legco would make policy making more fair, more accountable, and more effective.⁴*
- *If the number of voters in FCs were expanded, it would have a moderate beneficial effect on fairness of policy making according to a plurality, but would not solve the policy making unfairness problem according to a majority.*
- *Increasing the FC franchises in voter numbers would most likely NOT increase resistance to abolition of FCs.*

IV Imagining alternative approaches to “gradual and orderly change”

- *Is it possible in 2012 to increase FC constituency franchises and broaden their representativeness at reasonable cost and without complex negotiations requiring drastic rearrangement of the present FCs? The research team has arrived at a solution that is not costly to achieve as government already maintains the name lists. This solution adds significantly to present FC franchises, is comprehensive in that most new voters will readily fit into existing FCs, and these new FC voters will very likely be as or more supportive of abolishing the FCs in 2020. Their inclusion as FC voters would be updating the FCs rather than drastically changing them.*
- *While number of FC voters overall and in each franchise will significantly increase, the type of voter and type of representative will not radically change, thus meeting 2007 NPC instructions that change toward 2020 must be gradual and orderly. We designate potential new FC voters for the professional FCs as “new professionals” and new certified and registered trades (NPR), comprised of people required by government to obtain a certification or qualification to practice their livelihood.*

⁴ “Liberal” FCs are those seats held by pro-democrats. “Conservative” FCs all other seats. This division used to test attitudes in the FCs below.

- *Reform for business dominated FCs and FCs with social or charitable register related membership is to extend voting to all listed officers and trustees of registered firms and charitable boards, whose board members qualify for voting in Hong Kong. These members will be restricted to voting in one FC, however many boards upon which they sit.*
- *Labor related FCs extend the vote to recognized union members.*

V Investigating “gradual and orderly change”

- *A majority of “new professionals” surveyed support getting a vote in FCs. Only one in five opposes.*
- *All groups form near-majorities believing that broadening the representativeness of the FCs would increase fairness of policy making. The ratio of those deeming it producing fairer decision making to those calling it less fair is over two to one. The balance are undecided.*
- *There is broad agreement by those surveyed on expanding FC franchises. This is one alternative to meet NPC decisions that there must be “gradual and orderly progress” from the present system to fully direct elections of all members.*

VI Imagining governance structures build on Hong Kong’s unique heritage

- *How then to step from 2012 to 2016? If, in 2016 all workforce members were enfranchised in an FC according to the type of business registration of their employer, then all workforce members would be eligible to vote in FCs, raising FC voters to about 2.5 million permanent residents registered to vote, or two thirds of the GC registered voter roll.⁵ The FCs were designed primarily to protect interests of the business and working sector as there are only two seats, the Heung Yee Kuk and District Council, that have substantial numbers of retirees and housewives as voters, and those are both indirect votes. Including all working persons in expanded FCs seems a natural expansion of the original intent of the FCs.*
- *Abolishing FCs by dilution via expansion of voters in the FCs according to present characteristics of the FCs, rather than attempting to eliminate some FCs by abolishing firms, unions, or profession’s right to vote, is more acceptable to current FC Legco members and their voters than other options.*
- *All multiple voting beyond an FC vote and a GC vote should end to promote equity and improve perceptions of fairness and transparency. The reforms examined substantially correct these inequities in 28 FC seats. This leaves two government-related FCs the District Council and Heung Yee Kuk seats to reform.*
- *There are four solutions to expanding the Heung Yee Kuk and District Council FCs by 2020. Enfranchise all qualified voters directly in both. Enfranchise new voters, in the DC seat, with students as best option. Restore the Urban and Regional Councils, and enfranchise voters to elect a Legco FC each, replacing the DC and Heung Yee Kuk seats. Transfer the two seats to the GC elective system in 2016.*

⁵ Many firms require staff to carry employee identification cards. These ID cards could be confirmed with firms and cross-checked according to GC voter registration rolls to confirm registration and eligibility to vote, and with all firms classified by type, FCs could be set for one election according to type of firm at relatively low cost. The Inland Revenue Department requires all businesses to state the “description and nature of business” while the Trade and Industry Department and Census and Statistics Department maintain massive amounts of data classifying types of businesses.

- *Among students surveyed, nearly two to one favored a student FC seat. This move empowers new voters, while creating a group most willing to surrender its FC vote in 2020. It should boost turnout among younger voters. Research shows once a habit of voting is established, it tends to persist. This effect might be a positive legacy of the FCs, a gift to increase participation in voting in the full direct elections and thus an increase in legitimacy of government after so long damaging it.*
- *The District Councils now have little connection with either a representative legislature or policy-making executive institutions. This was not the case prior to 1999. This contrasts with most states where lower level governments exercise policy making, tax and administrative supervisory powers over civil services, and where it is an assumption politicians will start at lower levels and move up the ladder of representative government until reaching state- or province-wide, then nation-wide, office. Lacking such connective structures results in constant problems of legitimacy and coordination as well as of how to develop political expertise and administrative skills. The final structure of direct elections attained in 2020 should address these problems.*
- *One approach: look at current problems, look elsewhere for good models, and look back on our historic legacy to see what can be made of it to solve problems in governance. One means: borrow from German experience that mixes geographic constituencies elections with state-level list system elections. In 2020 FC seats might be replaced by awarding seats according to percentage of votes for a party overall. When tested, nearly a fourth had not heard of it. It was favored by nearly two to one by those who had a view.*
- *A better approach: Use three forms of election for Legco. One of proportional seats as now. One of a list system wherein all voters indicate their preference from a list of candidates, with the top 12 returned. One of 18 seats returned by first past the post elections in each District Council area. There would be pressure on the parties to coordinate campaigning and candidature across the proportional elections, the DC first past the post elections, and at large list elections. This would reward a stronger party policy and leadership profile, building the political structures needed for strong, executive led, fully elective governance. It would also be reflective of our historic structures and integrative of current international standards of democratic best practices.*
- *While a combined 12/18 format to replace the 30 FCs in 2020 might be closest to a format erected on our history as well as based on successful practice elsewhere, it would need a strong campaign to explain its benefits over alternatives. If the outcome of the roadmap is fully agreed this far ahead of 2020, having an executive who can see the benefits of such an integrated structure and mount a persuasive campaign for it is likely lacking. But scheduling the Chief Executive to be returned by full direct election in 2017 prior to the 2020 Legco may provide an opportunity for the final structure to be reconsidered. The first directly elected Chief Executive will have more reason and capability to solve governance problems in the more competitive environment for Chief Executive which will arrive in 2017. If the FC expansion until abolition approach is taken, there may be advantages to waiting until 2016 to agree the final legislative structure of 2020.*
- *While a majority support direct CE election, less agreement appears on the nominating process. Perhaps most acceptable: combine on a CE Nominating Committee all directly elected DC members, all Legco members, all NPC members, and a number of members returned by the reformed, expanded, and more broadly representative FCs. If so, reforming FCs by expanding voter numbers and ending corporate and duplicate votes is vital for legitimacy of the CE election process.*

- *While a majority of all surveyed support direct election of the Financial Secretary, only 40 percent of those making over \$50,000 per month support while 57 percent of those under that mark do.*
- *While 50 percent of men support and 37 percent oppose direct election of the FS, opening a 13 point gap between support and oppose, 57 percent of women support and 32 percent oppose, a gap of 25 points, nearly double that of men. There may be evidence here of strong disagreement between men and women on spending priorities, with women thus favoring direct election of the FS as a means to pressure government to address their concerns.*
- *Two thirds favor requiring Legco to approve all Chief Executive appointments by majority vote. There is no difference by work sector or gender. Minor differences by occupation and income. Those under 40 support requiring Legco to approve the CE's appointments by better than 7 in 10. There appears to be considerable concern over the CE's power to appoint and perhaps the quality of his appointees.*
- *While directly electing the CE is uncontroversial for the vast majority, there is no consensus on extending direct election further into the executive branch. There is, however, clear support for increasing the power of Legco over executive appointments, and evidence that women feel their issues are not being accorded the priority they prefer by the Financial Secretary. These questions indicate problems in the present Executive policy making processes and in Executive-Legislative relationship that need repair. They are not meant as suggested solutions.*

VII Influencing Hong Kong's political development

- *While a vast majority thought Top Beijing officials HAD the most influence, only 55 percent thought Top Beijing officials SHOULD have the most. It is this considerable difference between assessments of who has the most influence and of who should that most clearly indicates the basis for care in the reform process. When set beside the assessments of unfairness of the policy making process, these differences could be explosive if mishandled.*
- *While 75 percent of those making over \$50,000 per month thought Top Beijing officials should have the most influence over Hong Kong's development of democracy, only 57 percent of the more numerous lower income group agreed.*
- *Just 13 percent of public sector thought public opinion and parties should have most influence, 22 percent of the non-working sector made that choice. While 71 percent of the public sector thought Top Beijing officials should have most influence, just 61 percent of the private sector, and only 53 percent of the non-working sector, agreed.*
- *The gap between the business and professional occupations which dominate the FCs, who cast the critical votes on democratization, on whether public opinion or Beijing should have most influence on Hong Kong's development of democracy, is largest with students, unemployed, retirees and blue collar workers, the groups historically more likely to react with demonstrations.*

PART TWO: Microanalysis of the current governance system

VIII Problem solving in the current system

- *There is no significant difference in distribution of type of problems of most concern by birthplace in Hong Kong, Mainland China or Elsewhere. However, women and men have different areas of concern, with women more focused on social problems.*

- *Those over 50 are significantly more concerned about political problems. However, contrary to supposition that conservatism increases with age, those over 50 more strongly support direct election of the Chief Executive than those under age 50.*
- *While those who strongly support all Legco members' direct election are significantly higher in the over 50 age group, at 17 percent versus 13 percent, combined "strong support" and "support" for full direct Legco elections is 65 percent in the over 50 versus 71 percent in the under 50.*
- *Those making above \$50,000 per month family income and those likely making more (who refused to say but whose response pattern is almost the same as the higher income group) are more likely to name a political issue as their problem of greatest personal concern.*
- *Of those whose job requires no certification or license to practice, fewer cite a political or social problem as their top personal concern. Professionals and certified persons whose jobs entail interaction with government and in associations of certified persons tend to be more politically and socially conscious. However, those professionals and certified persons not presently in an FC who cite an economic problem as their primary concern, tend to support a vote for their FC more than those who cite political or social problems.*
- *Professionals and unemployed are significantly less satisfied with government performance on their problem of greatest concern.*
- *The most intense dissatisfaction with government performance in addressing a problem of greatest concern is among those citing a political issue.*
- *Dissatisfaction with Government performance on handling their primary problem of concern has dropped among GC voters while satisfaction has improved from an August 2008 bottom of barely 15 percent satisfied to 21 percent satisfied.*
- *In September 2008, and for the first time, a majority saw political parties as having a good or very good effect on their problems. In May 2009 that proportion dropped by more than half, from 53 percent believing parties had a good effect in September 2008 to 24 percent.*
- *Political parties of either pro-government or pro-democracy leaning gain more from criticizing Hong Kong Government performance than they would lose, given the present preponderance of dissatisfaction with Government's handling of respondent's problem of greatest personal concern.*
- *Among registered voters the DAB does less well among FC voters than GC voters while the Civic Party does significantly better among FC than GC voters. The five parties are chosen by half the registered voters in both blocs as representing them best, leaving half of all registered voters saying no one or they Don't Know who represents them best.*
- *The political parties gain significantly less support in the public sector than private or non work sectors, by a margin of 10 points.*
- *Occupationally, 61 percent of students cite a party as best representing them, followed by Managers and Administrators at 56 percent, retirees at 54 percent and 49 percent of professionals. The League of Social Democrats does better among service workers and unemployed, leading all other parties among the unemployed with 13 percent, nearly twice the DAB's 7 percent. The Civic Party leads all parties among business and professionals,*



while the Democratic Party outpaces by far all other parties among students, “representing” nearly one in four.

- *Democratic Party and Civic Party support tends to rise with education.*
- *Among all parties, those who cite economic issues as their top concern outnumber those who say that party best represents their interests. Only Liberal Party shows no respondents with political problems.*
- *There is no statistical difference between parties among those who have lived outside Hong Kong for a year or more. There is no difference between parties of those having Right of Abode abroad or not. “Foreign influence” in this sense is completely missing from the politics of Hong Kong.*
- *There is a difference by incomes above or below \$50,000 per month, with those earning higher amounts saying no party represents their interest by 46 percent to 36 percent of those earning less. The Civic Party portion, 22 percent of such respondents, matches those of higher incomes citing all other parties combined.*
- *Though half of respondents cited a party as representing their interests best, and though a third of respondents named a political party, group or person in open ended questions as representing their interests best, only 12 percent of respondents considered themselves a member or a supporter of a political party. Just 12 percent of respondents gave money to a political group or party in the previous year.*

IX Satisfaction with the current system

- *The DAB marginally improved in public sentiment. The DAB is the only party showing an improvement between the September 2008 Legco election and May 2009. The LP shows the steepest drop in satisfaction, down 34 points, CivP shows the second steepest drop in satisfaction, at 20 points down but still in positive territory while LSD shows a close third steepest drop in satisfaction at 19 points down from September 2008. LSD is bottom of the chart with 46 points more dissatisfied than satisfied.*
- *The Liberal Party, which lost its GC seats in 2008 and then split, leaving it with 3 Legco seats, is at a negative 61 point margin more dissatisfaction than satisfaction among FC voters, once its major support base. At negative 39 points among GC voters, its margin is better but still deeply negative. Among non-voters, it has a 16 point gap of more dissatisfied than satisfied.*
- *The Civic Party shows a 20 point positive margin with GC voters, but just 14 points positive margin among non-voters. With FC voters it shows 42 points more satisfied than dissatisfied with its performance. It is the only party with a positive margin among FC voters, and that margin is the largest margin of satisfaction over dissatisfaction of any party among any voting or non-voting group.*
- *The post-election tactics of the LSD have badly damaged its standing with voters, with the party showing 46 points more dissatisfied than satisfied among GC voters, 56 points negative difference among FC voters, and 40 points more dissatisfied than satisfied among non-voters. The LP and LSD are the only parties showing a negative margin with both GC and FC voters and also non-voters.*
- *Satisfaction with life in Hong Kong is now at the lowest mark under Chief Executive Donald Tsang, though that mark of 72 percent satisfied was the high point for his predecessor.*

- *A majority are now dissatisfied with the general performance of the Hong Kong Government.*
- *There is deterioration in satisfaction with the Hong Kong Government's handling of relations with Mainland China. But whereas once these were largely attributable to issues of political reform, today they are more matters of Hong Kong being left out of mainland economic planning and the Government not being aggressive enough in cooperating with mainland development. There has been no drop in satisfaction, for example, with how Beijing handles Hong Kong affairs or in how it rules China. The problem appears to be on the Hong Kong side.*
- *The concern ranked number one, Hong Kong's economic prospects, and the concern ranked number two, the rule of law (with crime and corruption rankings last by a negligible number) indicate great anxiety about the Hong Kong Government's primary claim to legitimacy: ensuring rule of law and economic opportunity for its citizens. Consequently, for the Government and people of Hong Kong, working out how to cooperate with mainland China on constitutional reform to protect and promote rule of law and achieving cooperation with the only major economy growing significantly despite the greatest global economic crisis since the Great Depression are both challenges and opportunities of paramount importance.*

X Participation and Patriotism: Citizenship and Identity in Hong Kong

- *Those who vote and particularly those who are members of the FCs and new professions show a higher propensity to participate in the organized civic life of the community.*
- *Choosing to describe one's identity as Chinese correlates most strongly with descriptions of feeling proud and excited on China's National Day. However, even among those saying they are Chinese, such feelings are in the minority with 37 percent of self-described Chinese identity feeling proud and excited. Among those describing themselves as a Hong Kong person such feelings occur among 13 percent.*
- *There appears to be a very limited degree of identity politics going on in Hong Kong. There is no "Chinese" identity party or "Hong Kong person" identity dominated party.*
- *The pro-government parties DAB, FTU and LP show some relationship between satisfaction with their performance and feelings on China's National Day, with those describing themselves proud or excited tending to be more satisfied. The opposite is the case for pro-democracy parties except Civic Party, where there is no effect of National Day feelings on satisfaction.*
- *Retirees feel most proud on National Day, Students feel least pride and excitement. There is no relationship between feelings on National Day and income.*
- *Feelings on National Day of Pride and Excitement tend to be associated with higher levels of satisfaction with the performance of the Government and with the CE.*
- *Feelings of patriotism are currently narrowly based and most prominent among the aged, less educated, and retired. This is not a base for future growth. By promoting fair, frank negotiations of the final form of democracy and fully backing the timetable for direct elections it set down in December 2007, the local and national governments could go some way toward encouraging feelings on China's National Day of pride and excitement among the young, the educated, and the workers: the base of Hong Kong's and China's future.*

PART ONE: Macroanalysis of past and future governance systems

I Introduction

Like the television show *Life on Mars* Hong Kong's development of democracy has been trapped in a timewarp. It was back in the age of Ronald Reagan and the Cold War, before the Fall of the Berlin Wall, the unification of Germany and major expansion of the EU, before the invention of the Euro and the collapse of the Soviet Union –and even long before Google or the Internet transformed our lives and work –that the drafters of the Basic Law settled on a partial roadmap and incomplete timetable taking Hong Kong part of the way along the road to democracy. The constitutional design adopted of a legislature divided between members elected by huge numbers of voters from large geographic constituencies and members elected from tiny "functional" franchises with secret corporate voters or very limited franchises of narrowly interested groups was a compromise never meant to prevail forever.

The inventor of functional constituencies, Sir David Akers-Jones, borrowed the idea from Great Britain's distant, pre-democratic past. In theory, by giving business and professionals greatly disproportionate influence in Legco, any threat of socialism or Cultural Revolution-style populist "democratic" mob rule could be prevented, at least until Hong Kongers matured enough in the ways of liberal democracy to realize on their own that populist demagoguery led only to immiseration. This is why periodically, discussions of voter "maturity" pop up in Hong Kong.

Since universal suffrage elections started in Hong Kong just in 1982, and since, unlike Britain, the incoming sovereign, China had no long tradition of elections and democracy to help guide the nascent democracy of Hong Kong, the mid-1980s drafters of the Basic Law stipulated a gradual process of increased popular power over government. China itself had only begun to open up to the world just over a decade before the Basic Law was promulgated in early 1990. It had only drafted and implemented a post-Mao constitution in 1982 and started limited village elections in rural zones that same year. Under Mao there had been no lawyers, no trained judiciary and no constitutional protections of economic or political freedoms at all. The first functional constituency elections to Legco began in 1985, a full generation ago, about the same time that the Basic Law began its drafting process. The first partial direct elections to Legco took place in 1991, a year after the Basic Law was promulgated by the National Peoples Congress and just six years before the return to China. There was a widespread assumption before 1997 that taking things slowly -- feeling the stones while crossing the river, as Deng Xiaoping put it -- was the wiser course.

Things have certainly changed since then. The whole Cold War framework vanished along with the Soviet Union in December 1991. "Communist" China joined Hong Kong in the World Trade Organization in 2001 and became a champion of free trade and entrepreneurship. China is now America's major source of finance whereas in 1985, America was its major source of Foreign Direct Investment. China now has as many lawyers as America, though they do not yet have the influence on the Chinese government that they have in the US. Chinese firms are listed on stockmarkets in New

York as well as Hong Kong and Shanghai, and a Chinese firm just bought the Hummer brand from GM. The Chinese car market is booming while the American car industry is collapsing. Yes, things have certainly changed. On his election in March 2007 Chief Executive Donald Tsang announced that Hong Kongers were mature enough to proceed to full democracy. Most, according to polls, agreed. And most also agreed changes to the plan and pace set down in the Basic Law back in the 1980s were more than needed.

The Basic Law drafters' promise and hope of strong, dynamic Executive-led government foundered on the interim practice of an executive election process dominated by 800 elites, with about three fourths of that small number of executive electors returned by barely 200,000 voters out of a population of over 7 million. The rest were government appointees and ex officio representatives. The views of almost all of Hong Kong's 7 million people were represented on this committee by the 30 Legco members directly returned in contested elections. So while Hong Kong's 800 strong Executive Election Committee was much larger than America's 535 member Electoral College that technically elects the US president, the vast bulk of its membership represented the votes of very few, and not the votes of the majority (in each state) as in the US practice.

Unlike all other democratic systems, the people never got to express their preferences or give their consent to policy platforms by casting a vote. This lack of clear connection between a vote, a policy program and a leader resulted in a the lack of a clear connection between an act of consent and an act of government on policy. This is Hong Kong's key legitimacy gap, one created by an interim system never meant to last long in the first place. The Chief Executive has even been forbidden from being a member of a party, not by constitutional restriction, but by legislative preference, still further hobbling the executive's ability to garner support and votes in the legislature.

Not surprisingly, the system hasn't worked very well, with the first Chief Executive not even finishing his second term before resigning amidst a widely declaimed failure of governance. The second Chief Executive, who began his sole full term in 2007 after Hong Kong's first contested Chief Executive election, appears increasingly mired in troubles. Hong Kong's incomplete, partially democratic interim system of government suffers from a visible lack of leadership. It appears more deeply flawed than a simple change of executives can cure. The promises in the Basic Law of full direct legislative and executive elections in future never seemed more apt nor more needed.

Not that there have been no attempts to fix what's wrong with Hong Kong's system. The first Chief Executive "reformed" the heads of government departments in the Principal Accountability System of 2002. That mainly administrative reform failed spectacularly and led to massive protest marches in 2003 and 2004. It also saw several ministers resign in disgrace and the departure of the first executive before his term ended. The second Chief Executive, Donald Tsang, revoked most of the Principal Accountability System in early 2005, restored the hierarchy of the ministerial system, and booted nearly all department heads out of the Executive Council to be replaced by appointed leaders from the community. This partial move to widen representation in the highest councils of government helped stem the crisis of governance, but it has not addressed the root systemic flaws.

Recognizing this, Tsang presented further reform proposals to Legco members in late 2005 and came very close to achieving a compromise that would have seen the

legislature expanded and the power of the tiny franchises diluted. But the compromise was too much for some and not enough for others and it failed to get the mandated 40 votes out of 60 in a Legco divided between elites and populists and independents and party members. Democrats demanded both a timetable and a roadmap: and this time, timetables and roadmaps with final destinations described and arrival times designated. They wanted to know what steps would be taken when, and in what form and when they could expect the full democracy promised in the Basic Law.

In contrast, as earlier surveys conducted by the Hong Kong Transition Project for the National Democratic Institute showed, some 15 percent of the population does not wish to ever have direct elections of all Legco members and the Chief Executive, whatever Beijing leaders support or the Basic Law mandates. Beijing refused to give either a timetable or a roadmap at the time. However, in 2007 leaders in Beijing made a concession of providing a timetable for reform, indicating that if Hong Kong amended its Basic Law to permit direct election of the Chief Executive in 2017 it would be acceptable, and if it did so to permit all members of Legco to be directly elected in 2020 that too would get approved.

The earliest dates Hong Kong can arrive at what the Basic Law envisioned in the Age of Star Wars "long ago and far away" have been set down. Sometime in late 2009 another proposal for constitutional reform is expected. That proposal is expected to specify steps to take toward meeting the agreed timetable. Now, it is up to Hong Kong citizens to work out the roadmap to full democracy. *Demanding changes to the timetable by making full democracy by 2012 the only acceptable reform proposal guarantee that no progress will be made by 2012. This report assumes that all parties wish to make progress in 2012 and beyond, and that the timetable set down by Beijing is a concession by central authorities that will not be reconsidered without a significant nation-wide upheaval resulting in change in the central government of which now there is little prospect.* There must be a recognition by all parties that negotiation is not a matter of drawing lines in the sand. Negotiation in good faith is an attempt to reach an agreement that solves more problems than it creates, reduces the impact of those that remain, and renders solutions that everyone tries to keep rather than undermine or repudiate.

By 2010 the required minimum of 40 Legco members may agree on just how to get to direct elections in 2017 and 2020, and what steps to take in 2012 and 2016. But difficulties in reaching compromises and specifying the details of these steps loom large. Successful reform is by no means certain, and the 2007 Beijing decision specifying "gradual, orderly progress" in reforms means that neither standing still nor taking a great leap directly to full democratic elections will get approval. The small franchise Functional Constituencies dominating half the Legislature must change, but how and when in 2012 and 2016 to meet the goal of full direct elections in 2020 is the crucial barrier in the way of getting the 40 Legco votes needed to amend the Basic Law.

There is broad consensus among Hong Kongers that Functional Constituencies should be replaced with a fully directly elected legislature and that the Chief Executive should be directly elected. The major stumbling blocs appear attached to legislative reform rather than executive reform, perhaps explaining why Beijing agreed that direct elections for Chief Executive precede the full direct elections for all members of the legislature. This report focuses on the most difficult area to form a clear way forward, legislative reform and the shape of the final structure of governance. It tests some of

these new ideas with the public in this survey. The report particularly focuses on functional constituency voter's views in contrast to the general public's views. It identifies a new group of potential functional constituency voters that are easy to identify, obviously the sort of voters meant by the original Basic Law drafters to participate in the functional constituencies, and of sufficient number to represent a gradual but nevertheless substantive move toward full direct elections. And it probes the views of this new group on the present system and possible ways forward in comparison with the current functional and geographic voters. This report also proposes new options in the final form of the legislative system, one uniquely Hong Kong's but clearly and fully democratic.

In America it took 45 years from the first voting rights act in Congress of 1963 to the election of the first black President in 2008. It took even longer—and a civil war—for the American system to become fully federal, then even more to become fully democratic in both representative chambers, with direct elections to the Senate beginning only in 1914. And still longer to include women as voters, in 1920 and until 1963 to become, in all senses of the word, fully democratic with all adult citizens having the effective right to vote and participate in government. In Hong Kong it will take 35 years from the first low level universal suffrage election to the first universal suffrage direct election of a Chief Executive and the same number of years from the first elites-only elections to Legco in 1985 to the full direct election of all members in 2020. It was not an easy process to achieve fully democratic elections in the US, nor has it been nor will it be an easy process in Hong Kong to achieve genuinely universal suffrage elections. It takes dedication, determination, some sacrifice, selflessness, trust and hope. And it takes information, education, legislation and some imagination as well. This is the spirit and intent of this report.

This report directly addresses the difficulty of exploring and developing incremental but real steps forward toward the fully elective democracy promised in the Basic Law and set for completion respectively in 2017 and 2020. *This report differs from "attitudes toward constitutional reform" surveys conducted by the HKTP and other researchers in the past in that it actively tests not just current attitudes toward democracy and reform, but also support for possible incremental steps forward. It examines the nature of, and attitudes of, possible groups to include in moves toward full direct elections.* It assesses the state of public opinion and the means to move public opinion toward a system of incremental changes and ultimate democratic outcomes fully based on Hong Kong's own history and unique characteristics. It is not just a survey report; it is an analysis of the holes and gaps in the interim governance system and of the possible means of getting Hong Kong's democratic development out of its Cold War era, pre-Internet, 1980s timewarp.

II Key aspects of the current system

The fundamental division in Hong Kong is over the deliberately disproportionate legislative power of elites over that of the average voter. Half the 60 seats in the legislature (Legco) are determined by universal franchise elections from geographic constituencies (GC) or districts. The other half are returned from among a much smaller number of electors qualified by various criteria. These are not deemed

universal suffrage elections according to UN standards. And therein lies the constitutional conundrum. How can the universal suffrage elections promised for all Legco members in the 1990 Basic Law, and set for 2020 by the December 2007 timetable proclamation of the National Peoples Congress, be achieved?

The functional constituency (FC) system ensures elite dominance of political affairs and government, especially over the election of the Chief Executive. The disproportionality of power can be seen readily in the comparative number of voters involved in returning each half of Legco. FCs had a total franchise in the 2008 elections of 229,861 voters, including corporate voters, whereas the GC franchise had 3,372,007 registered voters.⁶ Even worse for the legitimacy and fairness of policy making, the vast majority of FC voters –150,000 out of 230,000—are concentrated in just 3 FC seats, further distorting voter power and accountability among the tiny elites. Fully 27 out of 60 Legco members are elected by barely 80,000 people. And when it comes to amending legislation (the government drafts all legislation; the legislature can only advise and propose changes though they can propose legislation that has no effect on taxation or incurrence of costs), the FC members vote separately from the GC members, with bills required to gain a "majority" in both halves to pass. Thus 15 members out of 60 can block an amendment. The number required to elect a blocking vote of 15 seats among the FCs can be fewer than 7,000 voters, and 8 of those seats are returned by corporate votes by voters largely designated by the captains of industry. Large firms routinely cast hundreds of votes each in several of the small corporate-voting FCs. Further, Legco elections routinely see about a third of the 30 FC seats returned uncontested.

As seen in Table 1 below, the sense of unfairness in policy making is widespread.⁷ The chart shows that 24 FC seats are returned by a miniscule portion of voters. Even though Legco appears "fairly" divided --half functionally elected, half directly elected-- in reality voters have dramatically different levels of voting power. One voter in the smallest FC constituency of 140 voters had the same effect on the election of a legislator as 1,819 voters in the GCs. It is as though one FC voter cast 1,819 ballots for the same candidate, a case of legitimized but deligitimating ballot-box stuffing.

Belief corruption intrudes in FC voting has eroded once-invincible public support for and general admiration of developers, bankers and tycoons. Since 1997, and not before then, many development projects have run into repeated public distrust. Delays of over a decade for major projects are now routine. So deep has distrust of business in policy-making become that many legislators propose a delay of several years before a retiring senior civil servant can work in any business related to their area of decision-making. Clearly, the present system is directly contributing to the impairment of policy making and building a consensus on direction and leadership. Just as clearly, it is damaging the legitimacy of the government itself. It is, in essence, a growing cancer on the body politic, a direct threat to the development of good governance and orderly progress.

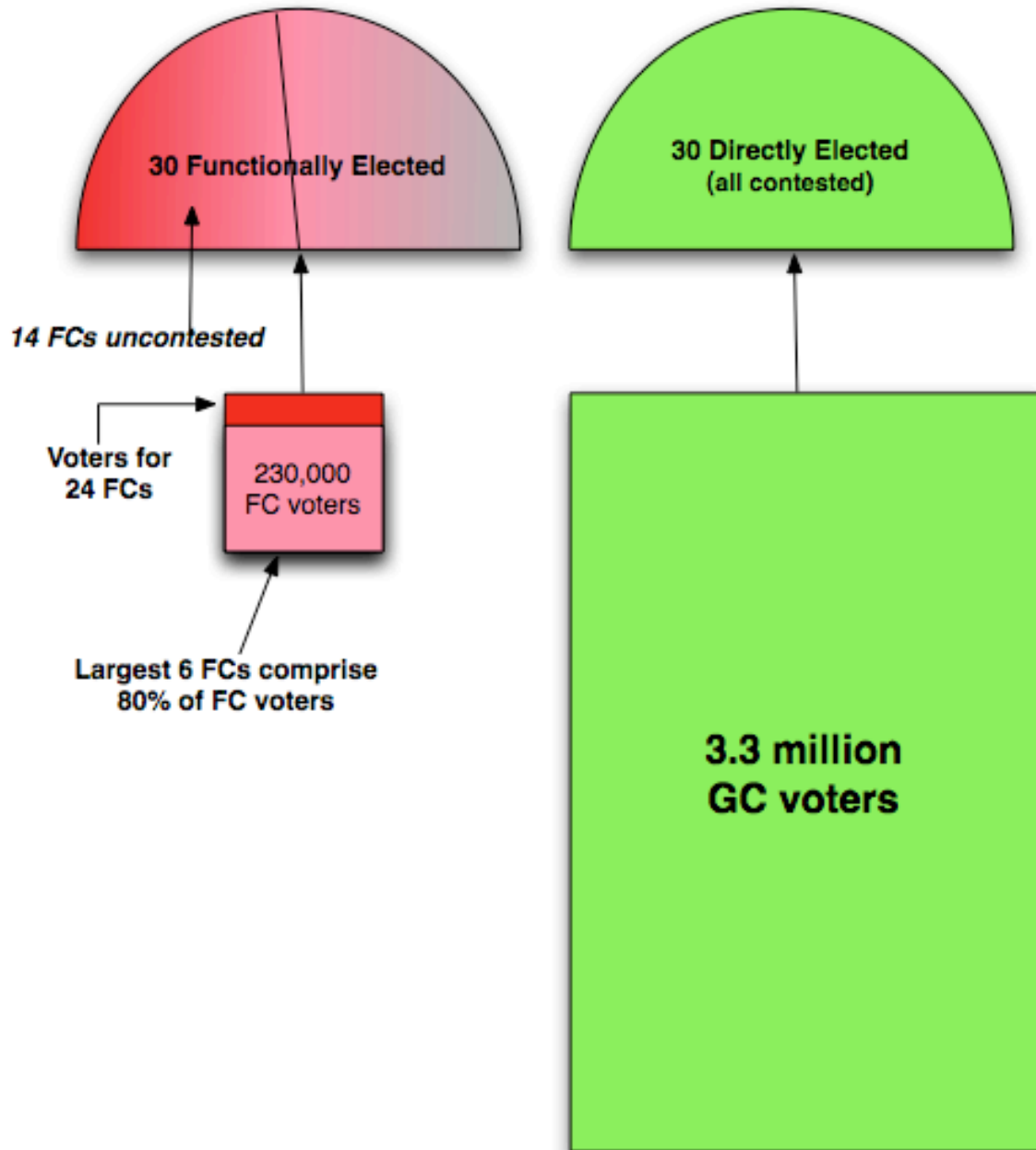
⁶ See <http://www.voterregistration.gov.hk/eng/statistic.html> for details

⁷ All Figures are in percentages unless otherwise stated in the tables and charts below. The HKTP report for NDI in 2008, *Timetables and Destinations: Hong Kong perceptions and politics after the 2017-2020 time frame ruling* (on the NDI website) addressed income and other objective criteria of inequality, but did not go into depth on perceptions of unfairness (see p. 7 of the 2008 report). This report does.

Hong Kong Legislative Council

Functional Constituency

Geographic Constituency



*** Figures proportional in size
to number of voters**

The extraordinary structural inequities shown in the Chart above are impacting public opinion, as seen in Chart/Table 1.⁸

⁸ All numbers are rounded off to the nearest whole number, following AAPOR and WAPOR recommendations. Tables with question marks are the full text of the survey questions asked. Tables without question marks indicate data that has been amended for clarification, consolidation of categories or cross-tab analysis.

Chart/Table 1 Do you think the government currently makes policies in general fairly, helping or hurting all parties equally, or unfairly, favoring the interest of some over others?

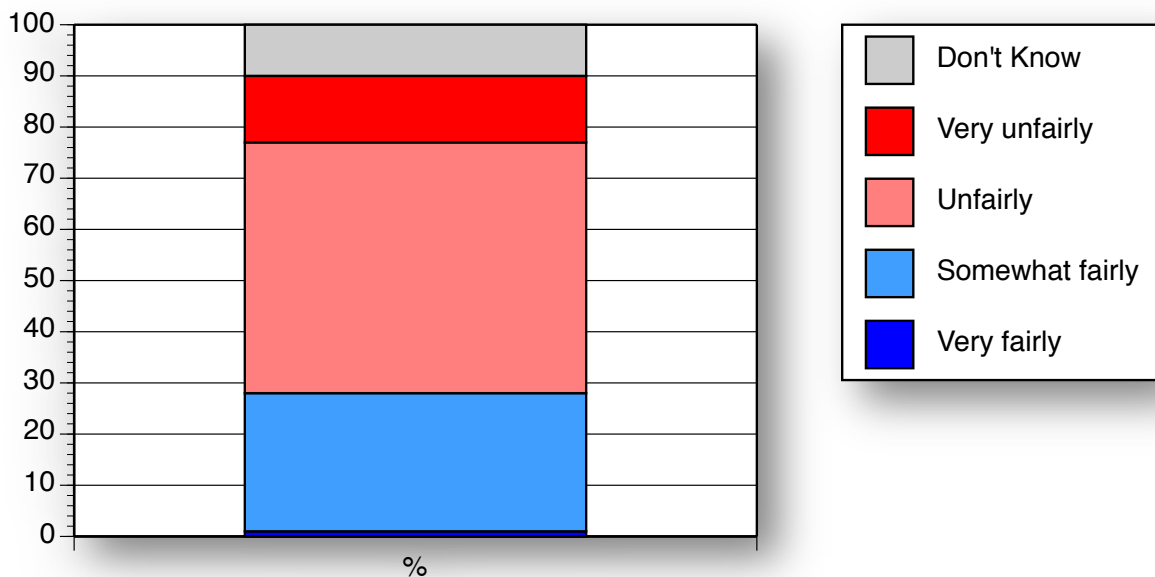


Table 1

Group	Count	%
Very fairly	14	1
Somewhat fairly	320	27
Unfairly	591	49
Very unfairly	152	13
Don't Know	127	10
Total Cases		1204

Clearly, at 62 percent of respondents believing the government makes policies in general unfairly, and with the proportion who say “very unfairly” to “very fairly” being 13 to 1 leaning toward “very unfairly”, there is a deep and widespread sense that policies made in the present system are unfair. This strikes at the heart of the legitimacy of governance and severely undermines the stability and eventually threatens the prosperity of Hong Kong.

As Chart/Table 2 shows, there is also very strong belief that abolishing the FCs would make policy-making much fairer. Fully two thirds believe this move would address the problem while only 11 percent, about one in ten, thinks abolishing the FCs would make policy-making less fair.

Chart/Table 2 Would the following make government policies fairer or less fair: Abolish all FCs and elect all Legco members directly from geographic constituencies?

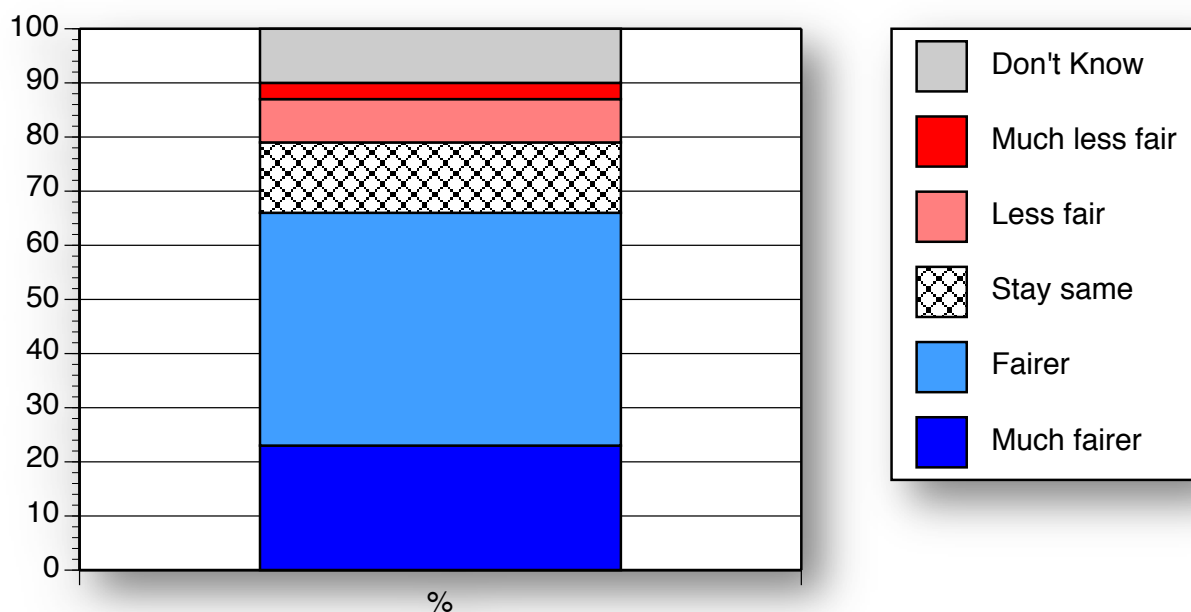


Table 2

Group	Count	%
Much fairer	271	23
Fairer	515	43
Stay same	156	13
Less fair	97	8
Much less fair	33	3
Don't Know	132	11
Total Cases	1204	

Another interesting aspect of Chart/Tables 1 and Chart/Table 2 is that 9 in 10 respondents have views on the fairness of policy making and on the effects of directly electing legislators. This means notions that most Hong Kongers are apathetic about politics and policy making are simply wrong. Apathy means one does not know about an issue, and doesn't care enough to know or have an opinion. **FINDING:** *The vast majority of Hong Kongers feel they know enough about government policy making to have an opinion on it, and a strong majority of two thirds think abolishing FCs would make a big difference in the fairness of policy making. Barely 1 in 10 think abolition of FCs would make policy making less fair.*

But that 1 in 10 proportion is the same as that between the GC voters and FC voters in this sample (See Table 4 below). This could be a more ominous outcome than it initially appears since it is clear that if going to full direct elections and abolishing all FCs were put to the whole electorate, unquestionably voters would pass the proposition by a large margin: 7 in 10 for, about 2 in 10 against, as Chart/Table 3 shows.⁹ Rejecting

⁹ The phrasing of the question in Chart/Table 3 was from a bank of possible reform options (discussed below). The question was meant to test whether, in times of crisis such as the current one in the global economy, there would be more or less resistance to reforms. The phrasing also reflects the assumption that reforms are meant to improve accountability and performance, which was a common theme of discussion in both the 2002 Principal Officials Accountability Scheme and the failed 2005 reform proposals.

these reforms, then, may be taken as strong support for the current system. Thus a reader can see from comparing Chart/Table 2 above and Chart/Table 3 below that while just 11 percent think abolition of FCs would make policy making fairer, 17 percent oppose doing so and directly electing all Legco members. In times of distress, fairness as a personal and social value often suffers. **FINDING:** *But the results show, in Hong Kong, even in such straits as the worst global recession since the Great Depression, the vast majority support direct election and believe it would help rather than hurt governance.*

Chart/Table 3 In light of the global economic crisis, how much support or opposition would you have to the following reforms to improve accountability and performance:
Directly elect all members of Legco?

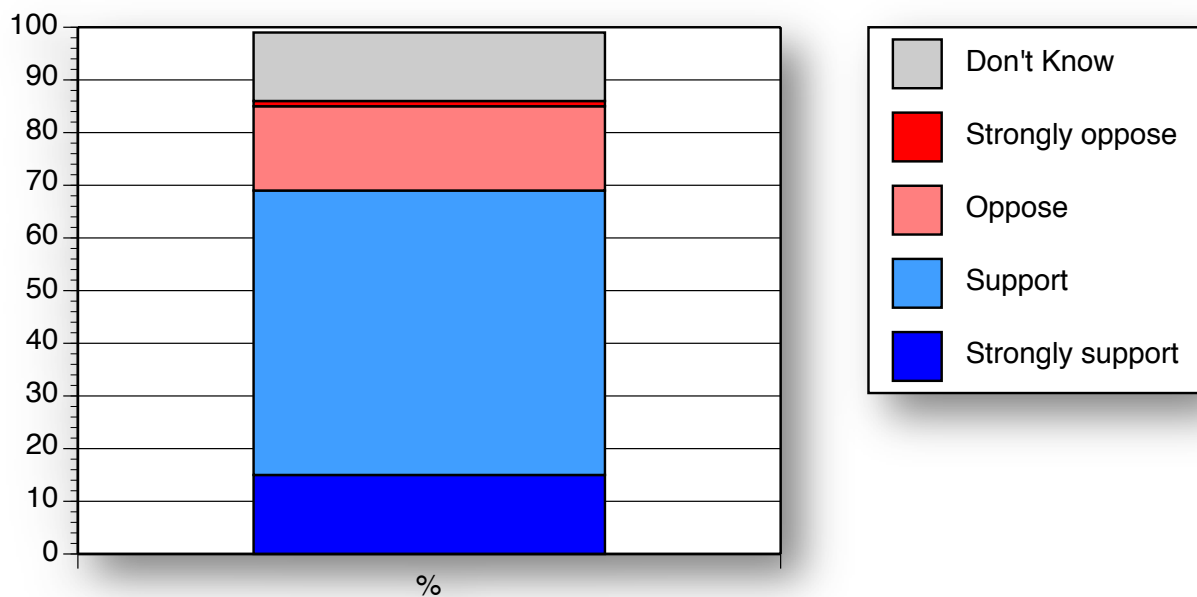


Table 3

Group	Count	%
Strongly support	175	15
Support	654	54
Oppose	198	16
Strongly oppose	15	1
Don't Know	162	13
Total Cases	1204	

So there is overwhelming support for direct elections. However, this is an issue of constitutional change, and FC voters have the position of being a protected minority. Amending the Basic Law requires that at least one third or 10 of the 30 FC members in Legco vote with all 30 directly elected members to achieve the required two thirds, or 40 votes out of 60, to pass an amendment.

And so the critical question in constitutional reform is: *What do current FC voters think about ending their special protections?*

III Investigating views toward Functional Constituencies

The special position and protections of the FC voters under the Basic Law, and the requirement that at least one third of their representatives in Legco vote in support of their abolition or any amendment of the composition of their franchise, makes them the key variable in progress toward full democracy. Every poll conducted in Hong Kong over the past 15 years has shown a majority of the population and a majority of voters registered to vote in geographic constituencies (GC) support full direct election of all members of Legco.¹⁰ And as seen above, even in times of severe distress a strong overall majority still does. This section investigates FC voter's attitudes toward the present system and possible reforms.

Table 4 shows about two thirds of survey respondents reported being GC voter registrants only, while 10 percent were FC voters. This is roughly proportionate to actual voter turnout (not registration), though most FC voters are also voters in the GCs.

Table 4 Constituency status

Group	Count	%
GC Voters	800	67
FC Voters	117	10
Non-Registered	270	23

Total Cases 1187 (about 1% did not know their status and were dropped)

Elite FC voters are more informed about policy making. Only 3 percent of FC voters said "Don't Know" in Table 5, while 10 percent of GC voters and 16 percent of non-registrants gave that response. **FINDING:** *FC voters feel ending their disproportionate power would make government policies fairer, more than any other group.*

Three in four FC voters said abolition of FCs would make policies fairer while 68 percent of GC voters agreed. Just 54 percent of non-registrants thought abolition would have a positive effect. This is a clear recognition by those most active in, and most empowered by the current system, that the FC structure is a fundamental flaw.

¹⁰ See NDI reports from 10 June 1997 at: http://www.ndi.org/hong_kong?page=0%2C1#SelectedPublications

Chart/Table 5 Would the following make government policies fairer or less fair: Abolish all FCs and elect all Legco members directly from geographic constituencies?¹¹

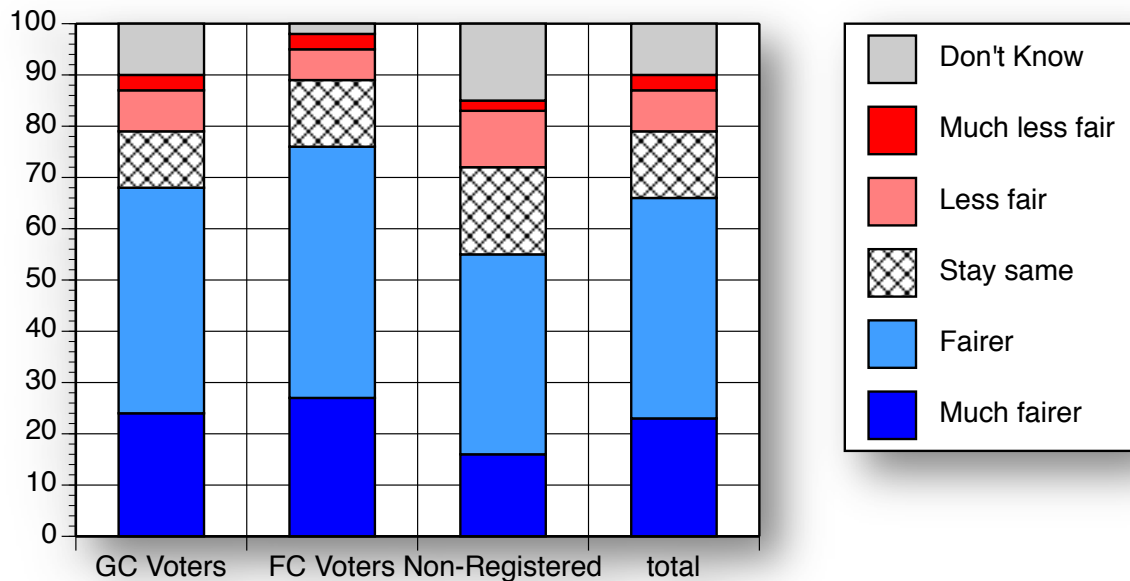


Table 5

	GC Voters	FC Voters	Non-Registered	total
Much fairer	24	27	16	23
Fairer	44	49	39	43
Stay same	11	13	17	13
Less fair	8	6	11	8
Much less fair	3	3	2	3
Don't Know	10	3	16	11
total	100	100	100	100

table contents: Percent of Column Total N= 1187

Chi-square = 31.78 with 10 df p = 0.0004

Despite the results of Table 5 showing FC voters as the group most convinced that abolishing the FCs and directly electing all Legco members would be fairer, do FC voters actually support direct election of all members of Legco? Chart/Table 6 shows they do. In fact, while “strongly support” is less among FC voters than GC voters, overall support (combining “strongly support” and “support” options) to directly elect all Legco members is strongest among FC voters. The greatest amount of opposition is found among non-registrants, people who stand aside from, and a portion of whom oppose, the entire Basic Law system of elections and representation.

¹¹ “Total” is the average of all respondent groups combined

Chart/Table 6 In light of the global economic crisis, how much support or opposition would you have to the following reforms to improve accountability and performance: Directly elect all members of Legco?

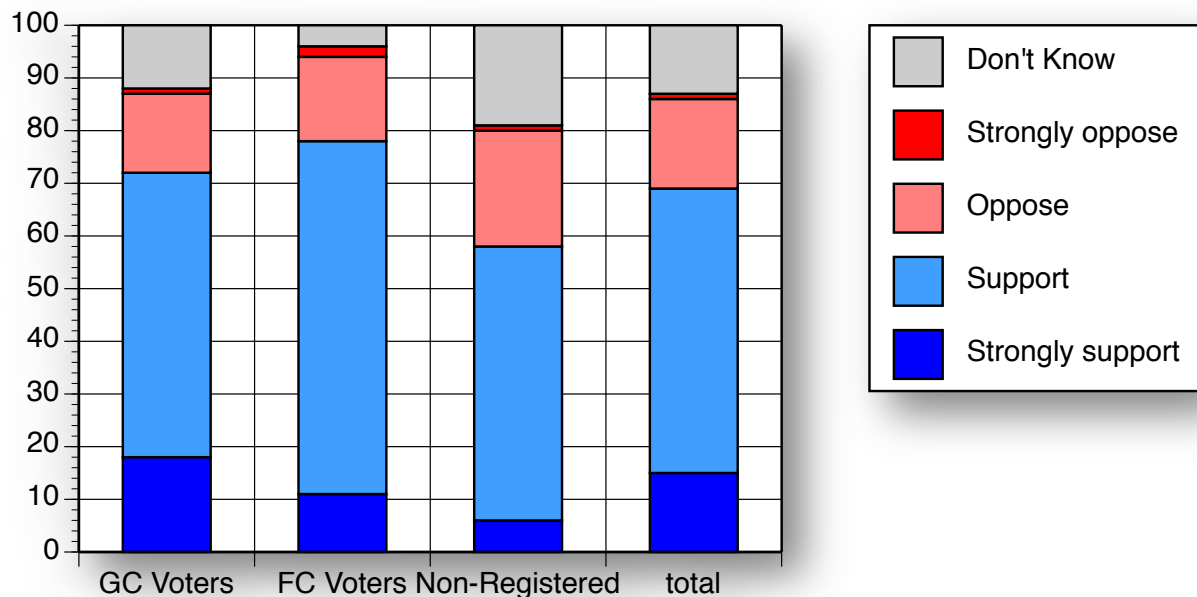


Table 6

	GC Voters	FC Voters	Non-Registered	total
Strongly support	18	11	6	15
Support	54	67	52	54
Oppose	15	16	22	17
Strongly oppose	1	2	1	1
Don't Know	12	4	20	13
total	100	100	100	100

table contents: Percent of Column Total
 Chi-square = 46.88 with 8 df $p \leq 0.0001$

FINDING: *If abolishing the FC seats was a matter of all FC voters voting as a bloc to abolish or not, clearly the vote would go the same way as a similar vote among the GC voters or all voters combined. But, there is an assumption that this decision will be made by the FC representatives themselves rather than their voters, either en bloc or in each separate franchise. But let us suppose that each FC franchise were to make the decision by voting of their enfranchised members. Would we then see the “liberal” pro-democracy held FC seats of Education, Law, Health Services and Social Welfare vote one way while the conservative dominated, mainly business seats vote another way?*

To test this proposition the FC registered voters in the sample were reclassified into a bloc of liberal FC voters and Conservative FC voters, as shown in Table 7.

Table 7 Reclassified FC voters

Group	Count	%
Conservative FC	58	50
Liberal FC	59	50

We test this reclassified set of voters who together make up 10 percent of the sample against the other 90 percent of respondents, and then run the three groups (Liberal FC,

Conservative FC and ALL others including both registered GC voters and non-registrants) against questions of fairness and support of direct election of all Legco members in times of distress. Clearly, the FC seats held by pro-democracy Liberal legislators do think abolishing FCs and directly electing all Legco members will make policy making fairer, but not by a more significant proportion than the Conservative dominated FC seats. Indeed, more in both blocs of FC voters think direct elections are fairer than among all other respondents combined. But all voters of whatever bloc concede the unfairness effect of the FC system on policymaking by large majorities.

Chart/Table 8 Would the following make government policies fairer or less fair: Abolish all FCs and elect all Legco members directly from geographic constituencies BY Conservative/Liberal regrouping

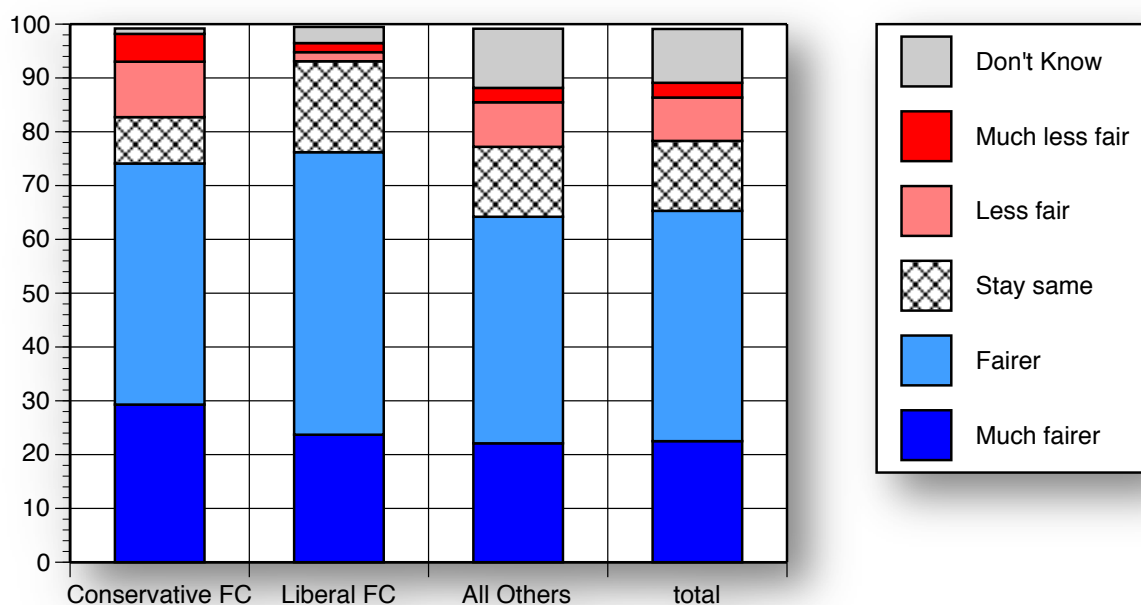


Table 8

	Conservative FC	Liberal FC	All Others	total
Much fairer	29	24	22	23
Fairer	45	53	42	43
Stay same	9	17	13	13
Less fair	10	2	8	8
Much less fair	5	2	3	3
Don't Know	2	3	12	11
total	100	100	100	100

table contents: Percent of Column Total
 Chi-square = 17.69 with 10 df p = 0.0603

The greatest difference between the Liberal and Conservative FC blocs in Chart/Table 8 is the proportion holding abolition of the FCs as making policy making less fair. That proportion is just 4 percent among Liberal FC voters but 15 percent among the Conservative FC voters. But, as Chart/Table 9 shows, well over two-thirds in both FC blocs and more than two thirds overall, the threshold for Legco passage of reform, support directly electing all Legco members.

Chart/Table 9 In light of the global economic crisis, how much support or opposition would you have to the following reforms to improve accountability and performance: Directly elect all members of Legco BY Conservative/Liberal regrouping

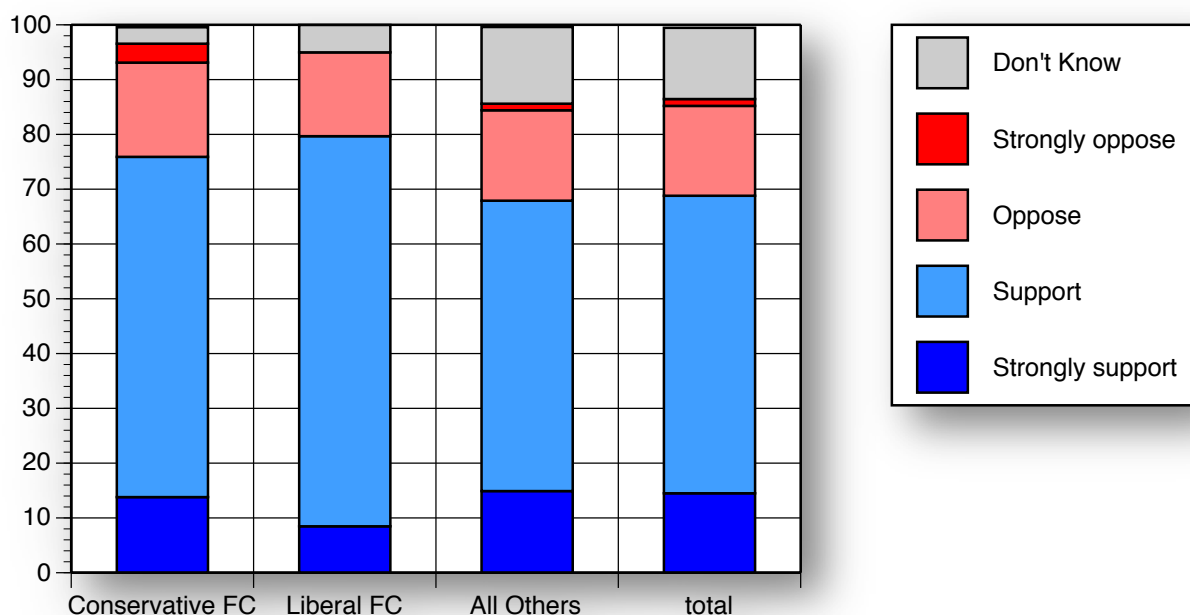


Table 9

	Conservative FC	Liberal FC	All Others	total
Strongly support	14	8	15	15
Support	62	71	53	54
Oppose	17	15	17	16
Strongly oppose	3	0	1	1
Don't Know	3	5	14	14
total	100	100	100	100

table contents: Percent of Column Total

Chi-square = 16.97 with 8 df p = 0.0305

FINDING: *In terms of constitutional reform, there is a consensus among more than two thirds of respondents from the key groups concerned –including and especially both Liberal and Conservative FC voters -- that full direct election of all members of Legco would make policy making more fair, more accountable, and more effective. The key stumbling block appears to be in how this outcome is to be arranged, and whether full direct elections according to the present system of proportional election in five large districts, with no formal connection between Legco, the Executive Council and the Chief Executive or other elective bodies in the present system would address the systemic problems noted in the analysis above and in the many other reports on the shortcomings of the current system by thinktanks and academics.¹² The views of*

¹² The most comprehensive assessment of options and obstacles to systemic reform appears in Sonny Lo Shiu-hing, “The Hong Kong We Want: The Political System You Design from Today to 2047,” Hong Kong Democratic Foundation: http://www.hkdf.org/download/roadmap_english_v3_1.pdf See also Civic Exchange, Hong Kong Policy Research Institute and SynergyNet, “Constitutional Reform: 2007/08 and Beyond” (6 Nov 2004) which summarizes a number of political party and think tanks views on reform options: http://www.civic-exchange.org/eng/upload/files/200412_SumConstitutionalReform.pdf On policy making shortcomings, see, for example, Centre for Civil Society and Governance, University of Hong Kong, “From Consultation to Civic Engagement: The Road to Better Policy-making and Governance in Hong Kong,” (July

Regina Ip, a former minister under Tung Chee-hwa forced out of office during the Article 23 controversies and from September 2008 a directly elected member of Legco, ring with the authenticity of experience on this issue: “One of the greatest challenges in building a democratic system in Hong Kong lies in the current disconnect and power-based contestation between the executive and legislative branches.”¹³ The next section investigates support and opposition for possible steps toward the abolition of FC seats, and how a system incorporating full direct elections might be made to address Hong Kong’s unique systemic and circumstantial problems.

IV Imagining alternative approaches for “gradual and orderly” change

The links provided in the footnotes are just some of many discussions about designing final outcomes to address recognized systemic governance problems. There have been fewer discussions of the more problematic changes needed to move from the present circumstances to the final governance system in an orderly and gradual fashion as required by the NPC decision of 2007. There are many ways but limited steps to move gradually and orderly toward the 2020 timeframe for fully direct elections. With Legco elections set for 2012, 2016, and then 2020 for the implementation of whatever final form full direct elections take, effectively Beijing’s timeline envisions only three steps from the present system. How a sufficient number of currently deeply entrenched interests in the FCs can be persuaded that sacrifices of power and influence they will be asked to make are fairly imposed on all FCs, and whether they also perceive the final systemic outcome as both fair and protective of their fundamental interests are crucial concerns for getting the votes needed for reform to succeed.¹⁴

To ask Beijing to devise a system and impose it on Hong Kong would make a mockery of the Basic Law’s provisions of a high degree of autonomy to the Special Administrative Region. To expect leaders of a system far less democratic than Hong Kong’s to design a fully democratic system for it is also a considerable leap of faith. And, according to constitutional theory, the act of citizens to forge and amend a constitution is both a fundamental right and a fundamental reaffirmation of the principles enshrined in the constitution.¹⁵ An amendment is a ratification of the constitution by the generation

2007) Bauhinia Foundation Research Centre: <http://www.bauhinia.org/publications/BFRC-CES-Report.pdf> and Christiane Miethe, “A Description and Critical Review of the Policy-Making Process in Hong Kong,” Hong Kong Democratic Foundation: http://www.hkdf.org/download/policymaking%20process_in_hk.pdf and cf to “Survey on Leaders of the Civil Society: Attitude towards Post-Handover Governance,” (Aug 2007) Synergynet: http://www.synergynet.org.hk/pdf/20080212456_en.pdf

¹³ Regina Ip, “MA Dissertation” researched under Larry Diamond, submitted to Stanford University 17 Sept. 2006, at Savantas Policy Institute: http://www.savantas.org/docs/MA_dissertation_English_Final.pdf The quote is on p. 60.

¹⁴ See Alan Hoo, Chairman of the Basic Law Institute and member of the CPPCC National Committee, “The Roadmap towards Universal Suffrage in Hong Kong,” Hong Kong Democratic Foundation: <http://www.hkdf.org/newsarticles.asp?show=newsarticles&newsarticle=213> and cf to Simon N. M. Young, “Can Functional Constituencies Co-exist with Universal Suffrage?” (Jan 2005) Centre for Comparative and Public Law, University of Hong Kong: <http://www.hku.hk/ccpl/pub/occasionalpapers/documents/occasionalpaper14-SimonYoung.pdf> and cf to public views in Hong Kong Transition Project, “Hong Kong Constitutional Reform: What do the People Want?” (Dec 2005) Civic Exchange: http://www.hkbu.edu.hk/~hktp/CR/CR_Dec05.pdf

¹⁵ Carl Schmitt (2007) *Constitutional Theory* translated and edited by Jeffrey Seitzer Duke University Press. See chapters 9 and 10. (you find some of the reasoning in the limited previews provided by Google books: <http://books.google.com.hk/books?id=YEISAevcrdsC&pg=PA138&lpg=PA138&dq=legitimacy+%22constituti>



amending it. Since Hong Kong citizens never drafted the Basic Law by an elected constitutional convention nor ratified the Basic Law by any act than voting under its provisions, the act of amendment to provide for the steps toward and to arrange the system of full direct elections for both Chief Executive (CE) and all members of Legco is a very significant one indeed. In this report we focus primarily on the Legislative Council because it appears to be the more controversial and more difficult step than directly electing the Chief Executive. (For results of survey questions on CE election, see below). There is in this survey, and has been in every survey conducted by the Hong Kong Transition Project, strong support for directly electing the Chief Executive.

The problem of how to move from the current franchise and elective systems in the FCs to their abolition has so far stymied reform proposals. Most approaches reduce the number of FCs by consolidating current FC voters into fewer and fewer FC seats while adding GC seats to replace them. This introduces the problem of which FCs give up influence first, a move most FC Legco representatives are exceedingly reluctant to vote for. It is very difficult to be elected to represent the interests of your members in a particular field, then try to persuade them to surrender their influence (as a proportion of FC voters see it) while other interests retain theirs.

An alternative approach would be to dilute the power of FC representatives and that of their voters by diluting the power of individual voters in each FC by greatly increasing the voter numbers in each currently existing FC. Dictators, who have all power of decision making, are notoriously difficult to persuade to surrender that power. On the other hand, voters in large democracies see themselves as having so little power per vote that many fail to even exercise what power they have to affect decision making. Therefore a dilution of power per vote is more likely to result in less, not more, resistance to full equal enfranchisement.

If, for example, the 140 voters of the insurance or 144 voters of the Finance FC were to be expanded to 40,000 voters or 140,000 voters, the differences in a single voter's "influence" would be considerably smaller, and therefore the sense that they are making a large personal sacrifice to their interests by sharing that voting power with a few thousand more in a universal suffrage franchise election would be diminished. Similarly, if an FC Legco representative is running in a large constituency in 2012, and a still larger one in 2016 that is only slightly smaller than a universal suffrage franchise constituency, then they will be much more likely to regard the addition of a few more voters as much less of a threat to their chances of winning or retaining their seats. If a way could be devised to fill the FC system up with voters in 2012 and 2016 to the point that it is only a small step to move to full universal suffrage elections, then a wholesale replacement of FC seats in 2020 with proportional GC elections or replacing current FC seats with other formats of election such as "at large" list elections or smaller "first past the post" district elections as balancing current proportional GC elections would be much less controversial with current FC voters and representatives.

The all at once abolition of all 30 FCs in 2020, which sounds abrupt or far from gradual and orderly, would actually be instead an extension to erase the moderate differences in franchise sizes. If properly designed, the exclusion of most voters would instead

[onal+theory%22&source=bl&ots=WlbgqV344&sig=mtG3zb_bn8tNzSPXqCd_wQLnhhs&hl=en&ei=804qSru6HKTo6gPfrJDyCA&sa=X&oi=book_result&ct=result&resnum=1#PPA136.M1](http://www.hongkongtransitionproject.org/anal+theory%22&source=bl&ots=WlbgqV344&sig=mtG3zb_bn8tNzSPXqCd_wQLnhhs&hl=en&ei=804qSru6HKTo6gPfrJDyCA&sa=X&oi=book_result&ct=result&resnum=1#PPA136.M1)



gradually become the inclusion of most voters, with a small step required to include all voters in 2020. (Final governance system formats are discussed below.) This is the alternative approach explored below.

Exploring increasing number of FC voters, not decreasing FC seats as an alternative

While survey respondents have no doubt about the fairness effect on policy making abolishing the FCs would have, there is less consensus on whether increasing the number of eligible voters in the FCs would make government policies fairer or not. While a plurality of all groups in Chart/Table 10 believe it would make policies fairer, a minority among FC voters disagrees.

Chart/Table 10 Would the following make government policies fairer or less fair: Increasing number of eligible voters in the FCs?

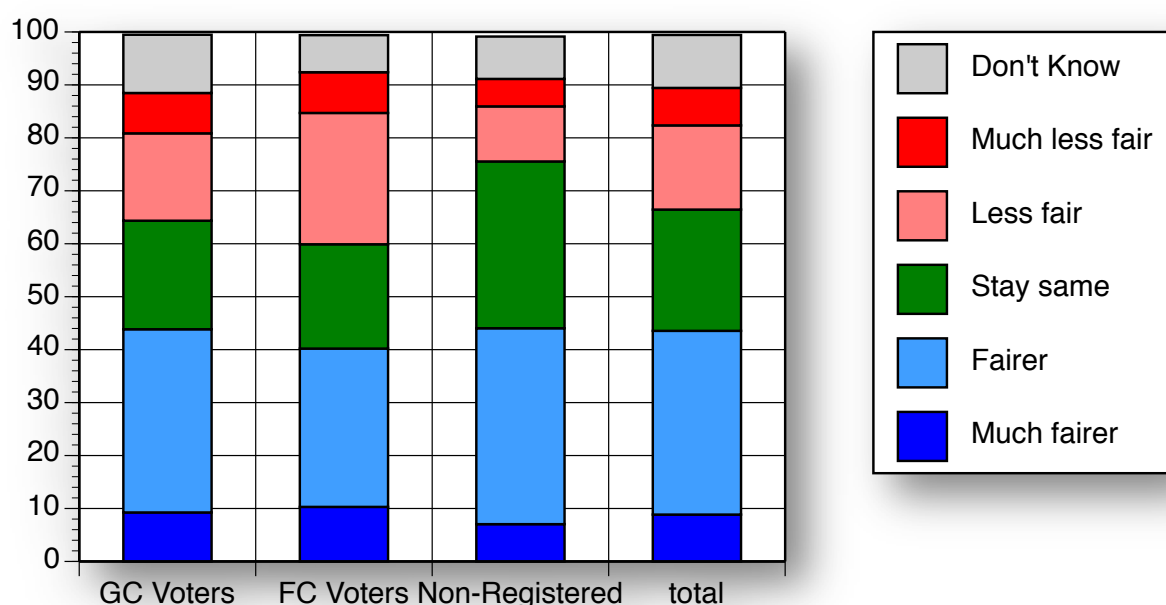


Table 10

	GC Voters	FC Voters	Non-Registered	total
Much fairer	9	10	7	9
Fairer	35	30	37	35
Stay same	21	20	32	24
Less fair	17	25	10	16
Much less fair	8	8	5	7
Don't Know	12	8	9	11
total	100	100	100	100

table contents: Percent of Column Total
Chi-square = 29.07 with 10 df p = 0.0012

However, *Chart/Table 10 must be read keeping in mind that the group of FC voters is the group which has the highest proportion who find policy making under the present system unfair. The FC voters above who by a larger proportion think increasing the number of eligible voters will make it less fair may do so not out a motive to protect their power by refusing to dilute it by sharing it with more people, but out of a conviction that the present divided system cannot be made to solve the problem on unfair policy making. A simple*

increase in FC voters will not change that conviction. Supporting this interpretation, Chart/Table 11 shows that actually the group feeling strongest that increasing FC voter numbers would make policy making much less fair comes from the Liberal, not Conservative, FCs.

FINDING: *If the number of voters in FCs were expanded, it would have a moderately beneficial effect on fairness of policy making according to a plurality, but it would not solve the policy making fairness problem according to a majority. Increasing the FC franchises in voter numbers would most likely NOT increase resistance to abolition of FCs. This is a finding which must be tested by identifying and investigating such potential FC voters who could be added to the current FC seats. This is done below.*

Chart/Table 11 Would the following make government policies fairer or less fair: Increasing number of eligible voters in the FCs BY Conservative/Liberal regrouping

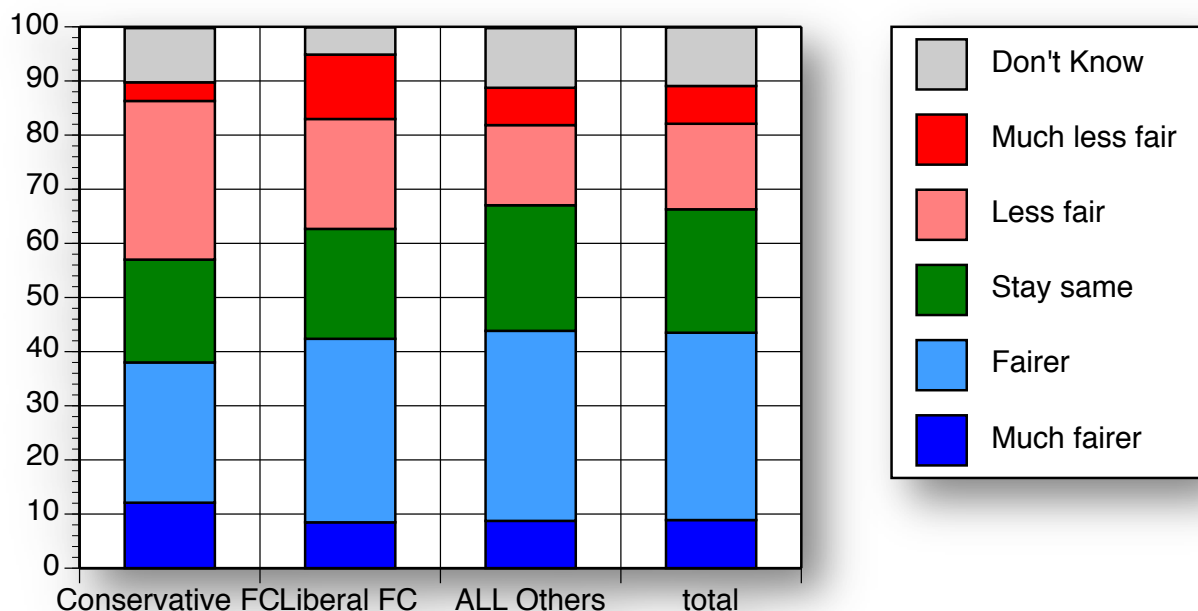


Table 11

	Conservative FC	Liberal FC	ALL Others	total
Much fairer	12	8	9	9
Fairer	26	34	35	35
Stay same	19	20	23	23
Less fair	29	20	15	16
Much less fair	3	12	7	7
Don't Know	10	5	11	11
total	100	100	100	100

table contents: Percent of Column Total
Chi-square = 15.87 with 10 df p = 0.1034

While increasing the number of the FC voters in principle appears to be a step that would not throw new barriers in the way of final abolition, it is not easy, perhaps not even possible, to increase the number of voters in the FCs substantially unless a way can be found to increase the representativeness, ie, broaden the composition, of each FC, particularly if that broadened representation includes compatible or similar types of voters. Chart/Table 12 and Chart/Table 13 test the proposition of broadening each FC

first by voter status, then by dividing the Conservative and Liberal FCs compared to all others. There appears to be broad consensus among the groups about this issue in that there is no significant difference in their response patterns.

**Chart/Table 12 Would the following make government policies fairer or less fair:
Widening the representativeness of each FC BY GC/FC voter/Non-Registered**

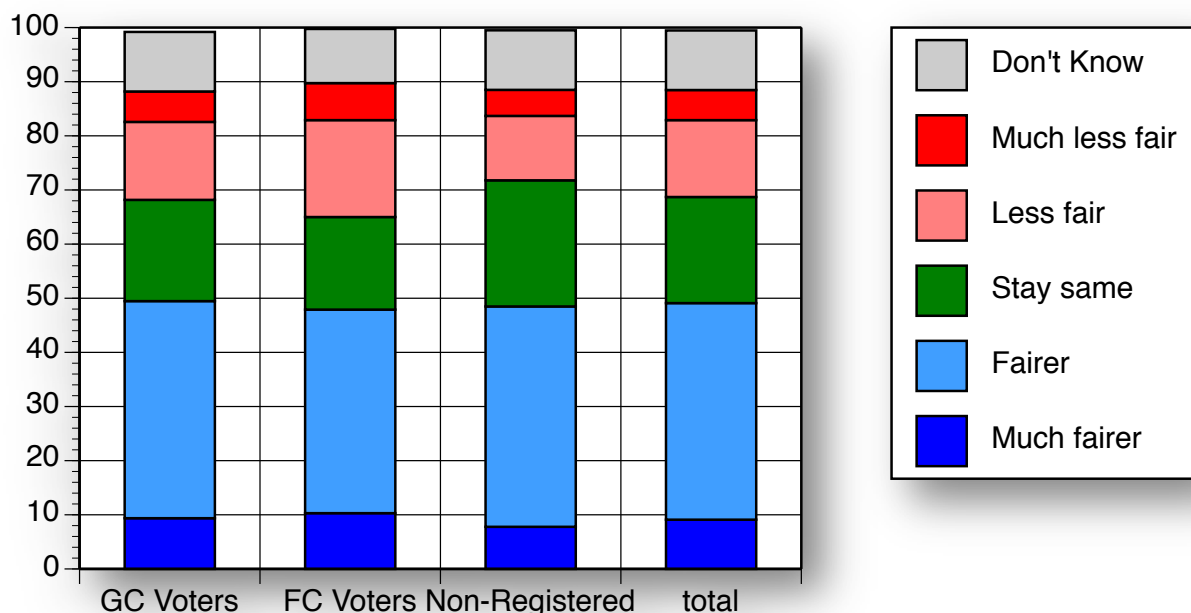


Table 12

	GC Voters	FC Voters	Non-Registered	total
Much fairer	9	10	8	9
Fairer	40	38	41	40
Stay same	19	17	23	20
Less fair	14	18	12	14
Much less fair	6	7	5	6
Don't Know	12	10	12	12
total	100	100	100	100

table contents: Percent of Column Total

Chi-square = 6.597 with 10 df p = 0.7629 NO SIGNIFICANT ASSOCIATION

FINDING: *All groups form near-majorities believing that broadening the representativeness of the FCs would increase fairness of policy making. The ratio of those deeming it producing fairer decision making to those calling it less fair is over two to one. Only the conservative FCs appear somewhat below a majority, though even the conservatives hold by 60 percent that it either improves fairness or has no effect.*

In essence, it appears to most respondents that increasing the franchise sizes and broadening representativeness in the FCs offers some advantage in improving the fairness of policy making. Since the perception of unfairness would remain as long as FC franchises distinguished themselves from GC franchises by voter power disproportions caused by unequal voter franchise numbers, there would likely be little diminishment of support to abolish the FC system even as the FC franchises grew larger.

**Chart/Table 13 Would the following make government policies fairer or less fair:
Widening the representativeness of each FC BY Conservative/Liberal FC/ALL**

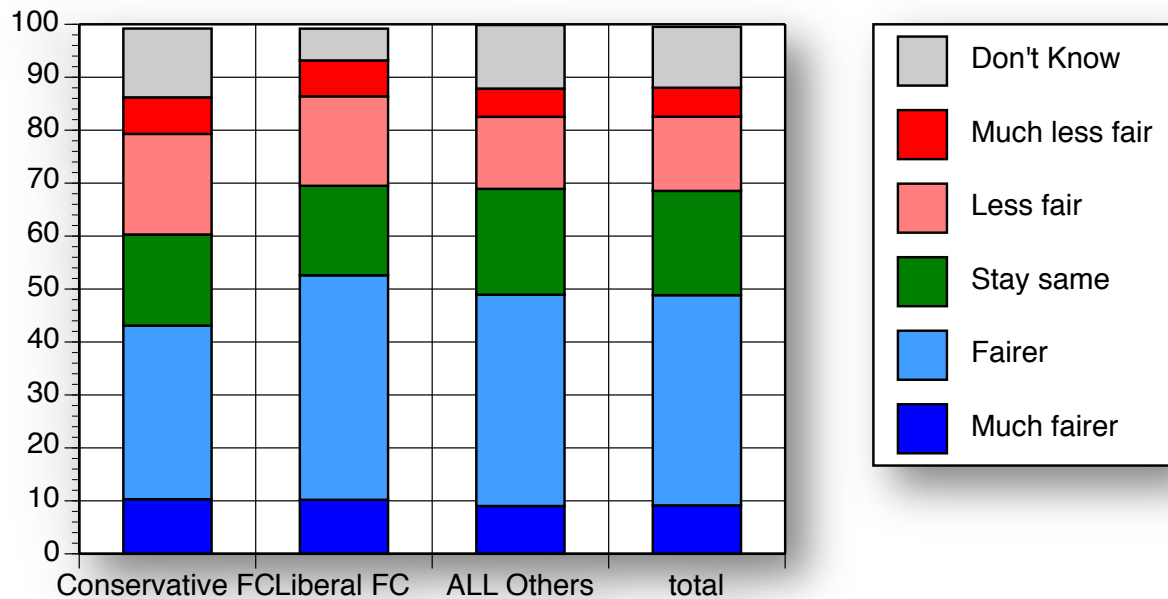


Table 13

	Conservative FC	Liberal FC	ALL Others	total
Much fairer	10	10	9	9
Fairer	33	42	40	40
Stay same	17	17	20	20
Less fair	19	17	14	14
Much less fair	7	7	5	5
Don't Know	14	7	12	12
total	100	100	100	100

table contents: Percent of Column Total

Chi-square = 4.897 with 10 df p = 0.8980 NO SIGNIFICANT ASSOCIATION

So, is there any way to increase the number of voters in the FC constituencies and broaden the representativeness of FCs? One possible criteria to add is that since this is a temporary step, with two increments of increase, one in 2012 and one in 2016, the proposed added and broadened groups must be easily identifiable, easily incorporated, and easily absorbed back into the universal suffrage system in 2020. It would not make much sense to expend a huge amount of money artificially researching, identifying, then organizing or setting up new groups who only exist for one or two elections and at most 8 years. Another criteria to consider is whether those groups are of sufficient numbers to comprise a significant step toward full direct elections when they are added. Yet another criteria is whether those groups are easily incorporated into the present FCs. To have to replace or consolidate FCs may be as difficult to achieve as abolition, so a more doable plan might be to add compatible groups to the present 30 FCs, if such are identifiable. So are there pre-existing groups which meet all of these requirements?

FINDING: *The research team has examined this issue and arrived at a solution that is not costly to achieve as the government already maintains the name lists. This solution adds significant numbers to the present FC franchises, is fairly comprehensive in that most will readily fit into existing FCs, and these new FC voters will very likely be as or more supportive of abolishing the FCs in 2020 as the present FC voters. Their inclusion as FC voters would be a form of updating the FCs rather than drastically changing them. So*

while the number of FC voters overall and in each franchise will significantly increase, the type of voter and the type of representative will not radically change, thus meeting the 2007 NPC instructions that change toward 2020 must be gradual and orderly.

We designate the potential new FC voters for the professional dominated FCs as “new professionals” and as new certified and registered trades, comprised of people required by the government to obtain and maintain a certification or qualification to practice their livelihood.

The second form of expansion for business dominated FCs and FCs with social or charitable register related membership is to extend voting to all listed officers and trustees of registered firms and charitable boards, whose board members already qualify for voting in Hong Kong and who already vote on the interests of their respective firms and organizations. These members will be restricted to voting in one FC, however many boards upon which they sit.

The third type of FC to expand is labor related. This may be done by extending the vote to recognized union members.

The next section examines who these potential voters are for the professional related FCs and what their attitudes toward constitutional reforms and joining the FC voters would be. The business, charity and labor FC expansions are much less problematic in that their means of expansion is readily apparent and much more easily done. There would be no real difference between having one member of a board vote or all officers and trustees vote, as they do so in any case on firm and organization related matters. They are also already reported to the government, so their listings are available and their type of firms are already classified into various FCs. The NDI survey in April 2007 found a majority supported such a proposal for the 2008 elections, as shown in Table 14. It should be even less controversial for the 2012 elections.

Table 14 Do you support or oppose extending corporate voting in the functional constituencies in 2008 Legco election to all company directors and senior management? (April 2007 NDI survey)

Group	Count	%
Strongly support	44	5
Support	450	51
Oppose	228	26
Strongly oppose	36	4
DK	131	15

Section VI investigates the problems posed and proposes and then tests public reaction to alternatives for the two FCs that are government related, the Heung Yee Kuk and the District Council Legco seat, especially the latter.

V Investigating “gradual and orderly change”

The current 30 FCs are made up of professions, businesses of various types, and labor representatives, with two exceptions, the seats for Heung Yee Kuk and District Council

