

Procedural fairness under test

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The Basic Law is a mini-constitution governing Hong Kong under “one country, two systems”. Should its provisions be interpreted in the light of China’s legal and political convention? Or should the common law tradition in Hong Kong be followed? This crucial question is essentially the crux of the matter in the present brewing controversy about the two-year versus five-year term of the new SAR CE to be elected in replacement of Tung Chee-hwa.

The legal problem is complicated by the political manoeuvring of various parties, whose positions keep on shifting. Personally, I think that there are areas of ambiguity and gaps in the Basic Law, reflecting both its status and the era of uncertainty and suspicion in which it was drafted and enacted. An objective analysis of the experience since the 1997 transition testifies that the Mainland’s forward planning about the SAR was far from perfect, and the rule of the game for the historical experiment remains a subject of contention. Remedying the defects requires not just decisive yet even-handed political moves but also legal transparency and procedural fairness, as I emphasised in two earlier pieces: [“Hong Kong on the edge of a slippery path”](#) and [“Politics: Hong Kong style”](#).

It has been little joy for most local people, except probably demagogues, in going through the past years and now watching the unfolding saga. Nevertheless, an attempt to return quickly to stability and to reinstall hopes, or to start a new game, must not be an excuse for resorting to tactical expediency. We have had to pay too much for it already.