

GIVE ME LIBERTY ... OR A HOUSE IN THE COUNTRY !

While hundreds of thousands of protestors of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) have let it be known that they are not happy with their lot, politically, there remain, in positions of power, those people who make the claim that Universal Suffrage is not, yet, appropriate for the territory.

And it is clear that those people, involved in cranking up and keeping the lubricating oil, flowing throughout the moving parts of the propaganda machine of the HKSAR Government, are winning the battle, thus guaranteeing that absolute despotism in the HKSAR, or a form of paternalistic despotism, will remain long, strong and healthy.

Mr Tung Chee Hwa, the Chief Executive of the HKSAR, claims to embrace some democratic principles, but his actions, since July 1, 1997, following his appointment to the top job in the HKSAR by the National People's Congress (NPC) of the Government of the PRC, after what could only be described as a mock election in the HKSAR, has been anything but democratic.

In fact, Chief Executive Tung Chee Hwa has shown that he prefers and, indeed, advocates autocracy to democracy – by his very actions in leading the human population of the 416 square miles that constitute the sovereign Chinese territory of Hongkong.

His Cabinet, known in the HKSAR as the Executive Council, comprises, mainly, Mr Tung Chee Hwa's sycophants and pro-Beijing supporters.

Some of Mr Tung Chee Hwa's sycophants are intelligent people; some are not.

One of them is Mr Tsang Yok Sing.

Mr Tsang Yok Sing is a leftist of the best kind; and, he does not hesitate to let this leaning be known.

In **TARGET** Intelligence Report, Volume V, Number 237, published on December 10, 2003, this medium asked: **[WILL TSANG YOK SING BE THE SUCESSOR TO TUNG CHEE HWA?](#)**

The hook for that report was a radio interview, at which time, Mr Tsang Yok Sing made it very clear that Universal Suffrage was not the preferred way for the electorate of the HKSAR at this juncture in the political development of the territory.

During the course of that interview, it was made very apparent, by innuendo, that Mr Tsang Yok Sing, as with Mr Tung Chee Hwa, advocated despotism as the preferred political system for the overwhelming number of people of the territory, who were demanding the right to choose their own leaders, not have certain people thrust upon them by the NPC, or members of that one percent, being among the richest men in the HKSAR.

Mr Tsang Yok Sing was the Chairman of the **Democratic Alliance for the Betterment of Hongkong (DAB)** until, in the District Board Elections of December 2003, the people of the HKSAR turned their backs on the DAB candidates in what must surely have been an open display of displeasure of the mandate of this political party.

As the Chairman of the DAB, Mr Tsang Yok Sing was asked to join the Cabinet of Chief Executive Tung Chee Hwa and to lend support to the policies of the NPC's Chosen One.

Mr Tsang Yok Sing has said, on numerous occasions, that he supports the Government of the PRC, right or wrong.

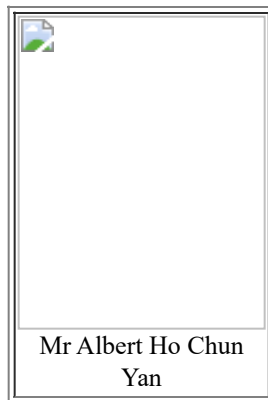
Mr Tsang Yok Sing, although he resigned as Chairman of the DAB, following the poor showing in the December District Board Elections, continues to sit at the right hand of The Chosen One.

But there are those politically motivated people of the HKSAR, who maintain that Mr Tsang Yok Sing is way off base.

TARGET attempted to interview 10 Legislative Councillors, picked at random from the list, supplied by the HKSAR Government.

Only one of those Legislative Councillors agreed to be interviewed by **TARGET**: Mr Albert Ho Chun Yan, a member of the High Court of the HKSAR.

This is that interview, edited only slightly in order to make readable and to delete repetitious statements. It was taped in the offices of this solicitor.



Question Number One

TARGET

Would you agree, Mr Ho, that, once a person has discharged himself of his original power by an habitual delegation, no occasion can occur which may justify the resumption of it?

Mr Albert Ho

This is a very intellectual question. Now, it seems to be suggesting that once a power is delegated to other persons, he (the delegator) should not resume this power. It is not an unqualified statement, I believe, because delegation can be revoked on some occasions. So, this is more of a legal question, isn't it? It does not appear to be a political question or a moral question. Is it intended to be a legal question?

TARGET

No.

Mr Albert Ho

Well, I think it all depends on the situation. Those, who delegate powers to other people, have a genuine duty to ensure that the delegated powers are properly exercised. So, in fact, the delegate is under a duty to ensure that those, who have his delegated power, properly exercise those powers. Those, with those delegated powers, will discharge them properly and reasonably. And so, in that sense, should that delegated power be abused or misused, so far as the law permits, I think he should have a look and see whether or not the power should be revoked.

TARGET

What about the original power, which was delegated by an habitual delegation, as opposed to an ad hoc delegation?

Mr Albert Ho

Now, I think one has to be very cautious in doing things habitually and without periodic re-examination of the situation. One should not rely on habit; sometimes, people may take advantage of your habit. And so, even if delegation is, by practice, habitual, that would not absolve the duty or the liability of the person with delegated power. So, though in short, one should always re-examine the position to see whether or not the delegated power has been exercised, properly and reasonably ...

TARGET

Exercising a delegation, properly and reasonably?

Mr Albert Ho

Yes, yes ...

TARGET

... Using your words, does not mean the resumption of that power?

Mr Albert Ho

May not be, but does not exclude that. So one, of course, should not resume the power, easily, and without good reason, but that doesn't mean that one is not under any duty to monitor and to oversee the exercise of that power and to ensure that the continued delegation is proper.

TARGET

Once a person has been appointed as a judge of the highest Court of the Hongkong Special Administrative Region of the People's Republic of China, that is, I believe, a delegation to that person, de jure, is that correct?

Mr Albert Ho

No. It is not a delegation: It is an appointment by virtue of its office. He (the delegated one) would be enjoying a certain power. That power is vested upon him by law. It is not a delegation. It is power. That is, power enjoyed under the law.

TARGET

Then, it is power, vested in an individual in accordance with the law (of the Hongkong Special Administrative Region of the People's Republic of China)?

Question Number Two

TARGET

In respect of the Chief Executive of the Hongkong Special Administrative Region of the People's Republic of China, Mr Tung Chee Hwa, there have been numerous instances of interference, directly or indirectly, in the affairs of various departments of Government. Interference in the affairs of The Judiciary, probably, is the best example of The Executive, profaning the inviolable concept of the separation of powers. You will recall that there was that controversial matter with regard to the Right of Abode Issue, which was sent to Beijing by the Chief Executive for a final determination – after the Court of Final Appeal had, already, made its findings. Beijing overturned the decision of the Court of Final Appeal, you will recall, Mr Ho. Do you think that the Chief Executive acted correctly? Wisely? Impartially? Or would you take the position that he acted on direct instructions from Beijing?

Mr Albert Ho

Now, to start with, I think there are great differences between interference with department decisions (of the Government of the HKSAR) and interference, or intervention, in the administration of justice, because The Judiciary is constitutionally separate and independent from The Executive (branch of Government). The Government departments are constitutionally under the leadership of the principal officials, who are all accountable to the Chief Executive. So, constitutionally, the Chief Executive is entitled, is empowered, to lead the Government departments, whose decisions the Chief Executive is, ultimately, responsible. Now, whether or not the intervention, unsystematic, intervention by the Chief Executive, is wise or not is a separate matter. That is, you know, a political judgment. Intervention in the affairs of The Judiciary is something that is totally unacceptable. For instance, there have been suggestions – there have been suspicions – that the CE (Chief Executive) might have exercised certain influence on the prosecution, or the decision not to prosecute, (Ms) Sally Aw [Sally Aw Sian, the former Chairperson of Sing Tao Holdings Ltd]. Now, that is, again, another matter, because, although the prosecutorial power is vested in The Secretary of Justice, who is a member of the Executive Council, but, again, the decision to prosecute or not to prosecute, or the prosecutorial discretion is supposed to be exercised, independently. Now, the administration of justice is even more obvious because, constitutionally, structurally, it is entirely independent. Of course, now, having said that The Judiciary is independent, it doesn't mean that there is no interface of power. For instance, the Chief Justice is entitled to appoint judges under The Basic Law (of the HKSAR), but he has to abide by certain procedures and certain conventions. Now, I must say that it is blatantly wrong and unacceptable to see that there is any intervention in the administration of justice or with The Judiciary. Should there be any instances that come into public knowledge, I think there would be strong demand for the Chief Executive to resign. There is no doubt about it. The question about the re-interpretation of The Basic Law by the Standing Committee of the National People's Congress (of the Government of the PRC) which, eventually, led to the de facto overturning of the decision of the Final Court of Appeal (of the HKSAR) is, arguably, something different. Now, of course, the fact that the Chief Executive had, on his own, presented the matter, or made the presentation, or made the request, for assistance to the State Department of the Central Government (of the PRC), which, in turn, tabled the matter before the National People's Congress, had led to the Chief Executive to have been criticised, both locally and internationally. I attended before the Human Rights Committee of the United Nations. Nearly all of the members took a very critical attitude of the Chief Executive, saying that he should not have done it (interfered in the workings of the HKSAR Judiciary) because it would cause irreparable damage to the Judicial independence of Hongkong and, also, to the Final Court of Appeal, being the highest Court of adjudication. But, on the other hand, the arguments, being presented by those who support the Chief Executive, that this is a constitutional arrangement as modeled in The Basic Law, because they, strongly, rely on the provisions in The Basic Law, stipulating that the final power to interpret it rests in the Standing Committee of the National People's Congress ... The Chief Executive has done no more than to invite them to exercise their power ... But, eventually, that interpretation by the Standing Committee stems from The Basic Law, itself ... Even the Court of Final Appeal has accepted that (situation), unfortunately, in a subsequent decision, saying that it (the Government of the PRC) is entitled to do it (what it considers appropriate) and it (the Court of Final Appeal) has to abide by whatever interpretation is issued by the Standing Committee ...

TARGET

The fallacy in your argument, Sir, if I may be so bold, is that the determination of the Court of Final Appeal is one, based upon law, not based upon politics.

Mr Albert Ho

Yes. True, true. But, what I said is not an expression of my conviction that what has happened is right. OK? Now, I am only explaining to you as to what, actually, transpired and, also, the arguments that were mounted by those who support the school of thought that the Standing Committee has the final authority to interpret The Basic Law and, as a matter of political reality, the Standing Committee did exercise, or did purport to exercise, that power. And, the exercise of that power, as a matter of political reality, has been accepted by The Judiciary (of the HKSAR) ... One has to ... I don't want to use the word, accept, but one has to see what has, actually, happened. Now, unless we take unilateral action on our side, to say that we sever our ties with the National People's Congress and the Standing Committee, what else can we do? But secession is very dangerous. That is tantamount to, more or less, that we are somehow independent from the (Chinese) Sovereign. That, itself, is unrealistic. So, as I have said, earlier, the position has been subject to strong criticism by the Human Rights Committee. You know, most of the members have expressed concern that the Judicial independence and the final power of judicial adjudication in Hongkong has been tarnished – the reputation has been tarnished – but the members are, also, aware of the fact that the Standing Committee is now claiming to exercise its power under The Basic Law. That power is the manifestation of the Sovereign. That power has been imposed on Hongkong and the consequence has been accepted. And that's it!

TARGET

So, the Court of Final Appeal is actually, from what you have just said, the National People's Congress.

Mr Albert Ho

Yes. Yes.

TARGET

Is that acceptable to you as a Legislative Councillor?

Mr Albert Ho

Well, we have expressed our strong disapproval of the Government's decision ... I think that it is totally wrong. Totally unacceptable! Under The Basic Law, there is certain regime for the exercise of power, but that has to be after the conclusion of the Hearing of a Court of Final Appeal, which is not subject to further appeal. Then, the Government may, should there be any issue, concerning the relationship of the Central Government and the Hongkong Special Administrative Region, take the matter to the National People's Congress for interpretation. OK, so the scope for determination is limited: It has to be issues, relating to the relationship between the Central Government and the Hongkong Special Administrative Region. Secondly, procedurally, it is limited and can only occur after the conclusion of a Court Hearing, which is not subject to further appeal.

Question Number Three

TARGET

When the British governed, what was, then, known as Hongkong, the Government made determinations in respect of the administration of the territory. Today, it would appear that Mr Tung Chee Hwa is, personally, administering the HKSAR. Would you agree? That would suggest that he has omnipotent power. Would you agree?

Mr Albert Ho

Constitutionally, Mr Tung Chee Hwa has, I would not say, unlimited power, but he has enormous power in administering Hongkong. So that is why he is not shy from saying that he relies heavily on an Executive-led system. So far as Mr Tung Chee Hwa vis-à-vis the Hongkong Special Administrative Region is concerned, he has enormous power, subject to very limited checks under The Basic Law. Now, to start with, all of the principal officials were nominated by him, although subject to the approval of the Central Government (of the PRC). The Legislative Council, we all know, is designed ... that the Election Committee was made in such a way as to ensure that the result (of an election), (which) is predictable, and is subject to manipulation. And I have good reason to believe that the choice (of any candidate) is, of course, the choice of Beijing. So the choice of the Chief Executive is the choice of Beijing. The so-called election by the Election Committee is an appointment system under disguise. Secondly, since Mr Tung Chee Hwa is the choice of Beijing, and Beijing has reposed a lot of trust in him, so, by and large, he has a free hand to administer the affairs of Hongkong. But I think on crucial matters, on critical matters, he would be listening to Beijing. Whether or not Beijing would be interested to give him specific instructions on specific matters is a separate topic. In the last 6 to 7 years, I don't think Beijing is really interested so much in the internal affairs of the Hongkong Government except that Beijing is interested in the choice of principal officials. So they (Beijing) would be exercising substantive power of appointment ... who are acceptable and who are not acceptable ... Any suggested change in the voting method of the Chief Executive and the Legislative Councillors would be subject to, and certified by, Beijing ... On domestic policies, he (Mr Tung Chee Hwa) has, virtually, unlimited power.

TARGET

Then, why do you continue, being a Legislative Councillor?

Mr Albert Ho

Because we believe that a sustaining campaign for democracy has to be sustained. And, as we see it, seeking elections to become a legislator is part of the campaign. I don't see myself and my party as being a very effective opposition, but we see ourselves as effective players of a continued and sustainable political campaign for democracy. And we have to work in close collaboration with the people, outside the Legislative Council chambers.

Question Number Four

TARGET

Executive Councillor Tsang Yok Sing has stated that Universal Suffrage could be disruptive to the Hongkong Special Administrative Region, at this time, and, it follows, that it could affect the peace and tranquility of the territory. That being the case, would you advocate despotism – that is, absolute power or authority in the hands of one man or a group of men, appointed by one man – as an alternative to Universal Suffrage? For that would appear to be the situation in the HKSAR, today.

Mr Albert Ho

I think the suggestion of Mr Tsang Yok Sing insults the intelligence of himself and all the people who are sufficiently educated in an open and cosmopolitan society like Hongkong. The value of liberal democracy should, no longer, be subject to debate: It is, already, well recognised. History has proven that only liberal democracy can sustain and protect human values, human life, the rule of law, and, also, afford level playing fields ... It is the only system that is compatible with long-term economic development. What he (Mr Tsang Yok Sing) said is no more than serving those who are in power and continue to cling to power for their own advantage. So you see, that is the reason that the DAB has already been perceived, and is seen as a pro-Government party. I am very surprised to see that an educated person, such a Mr Tsang Yok Sing, would have advocated despotism, albeit benign despotism. I won't say that democracy would ensure that the choice, exercised by the electorate, is a wise one, all the time. Mistakes may be made, but the mistakes will be contained. The wrong choices of people, elected to office, (will result in) them, being sacked – they will be driven out of office, from time to time. Democracy may not be the best form of government, but all of the other systems are

worse ... I would not say that all despots are all bad people, but one has to rely on luck (if one is to be governed by a despot). One should rely on the rule by man (not rule by luck). I think that when we come to our age, we are, now, in a modern age, we should rely on systems – structural and systematic, designed to protect our basic rights ...

Question Number Five

TARGET

Would you say that the people of Hongkong want democracy?

Mr Albert Ho

I would say that for the last 2 decades of periodic opinion polls, released by scholars and independent agencies, I think the trend is very clear: Over two thirds of the Hongkong people ... have sounded out their expectations that we should enjoy democracy; and democracy should be put in place as promptly as possible...

Question Number Six

TARGET

In the United States, there are checks and balances to Executive Power, as you must be aware. There is, even, a means to impeach the President of the US if there are seen to be sufficient grounds for such a Motion. In the Hongkong Special Administrative Region, even if Universal Suffrage were to be introduced, there is no mechanism for the checks and balances as the people of the US enjoy. Therefore, would you advocate that, perhaps, there should be a revamping of the Legislative Council, the Executive Council, etc? If so, what would you propose?

Mr Albert Ho

I would like to see that the Legislative Council would be constituted fully by democratically elected members, and that the Chief Executive should be elected by Hongkong people. I think that that would, by itself, constitute sufficient checks and balances on the exercise of Executive Power. Now, at present, under The Basic Law, there is a certain regime, governing the removal of the Chief Executive by the Legislative Council. But to achieve that is, virtually impossible.

TARGET

And, the Executive Council: What would you propose?

Mr Albert Ho

I don't mind. If the Executive Council (members) are supposed to be intelligent, and all the principal officials are to be the appointees of the Chief Executive and, provided that the Chief Executive, himself, is directly elected, then, I don't mind. Then, it would be just like the US system where the President is entitled to select his own Cabinet members. So, provided that the Chief Executive, himself, is accountable to the public, through democratic elections, I don't mind.

Question Number Seven

TARGET

It is held, and this must be true, Sir, that liberty enfeebles Executive Power. That is to say that, in a free society where Universal Suffrage is adopted and accepted by the electorate, the Chief Executive is not unrestrained in the use of his powers because the electorate has the power to restrain him by lawful means in accordance with the constitution of the country/territory. Would you agree that such a state, where liberty has the inalienable right

to erode the power of a Chief Executive, is a better form of government than one finds in the Hongkong Special Administrative Region, today?

Mr Albert Ho

Now, I think that history has, already, shown to us that the only correct answer is that democracy, where there is a good system of checks and counter-checks on power, is a long-term viable system, compatible with protection of human rights, the rule of law, effective government and long-term economic development ... The reason that we need to have checks and counter-checks on Executive Power is that power, itself, is dangerous. Power, itself, is vulnerable. Power leads to corruption. Of course, we have seen instances where unchecked powers would lead to a very efficient government, but, unfortunately, it, also, paves the way to Hell. We have seen what happened in Nazi Germany. We have, also, seen what happened in China where the omnipotent Chairman Mao (Ze Dong) had led the country to disaster ... Absolute power would stifle an open society where no people can even have the courage, not to mention, liberty, to speak the truth.

Question Number Eight

TARGET

Would you agree, Sir, that liberty is not unconnected to honesty and justice?

Mr Albert Ho

Yes, of course, it is connected.

Question Number Nine

TARGET

Then, is liberty the cornerstone to the inalienable Rights of Man?

Mr Albert Ho

Liberty, itself, is the inalienable Rights of Man.

Question Number Ten

TARGET

Is it proper that Beijing should have the right to interfere in the peaceful affairs of the Hongkong Special Administrative Region, considering that the former Paramount Leader of the People's Republic of China, Mr Deng Xiao Ping, promised the human population of the territory that there would be no appreciable interruption to the way of life of the people for 50 years, following the assumption of sovereignty by the Government of the PRC on July 1, 1997?

Mr Albert Ho

The answer is, categorically, yes. The Beijing Government should not interfere with the domestic affairs of Hongkong.

Question Number Eleven

TARGET

Should the Hongkong Special Administrative Region be governed by the rule of law? Or Law by Rule, the accepted manner of the Government of the People's Republic of China? Or Law by Complaint?

Mr Albert Ho

Hongkong should be governed under a democratic system, in which the rule of law, the free Press, individual liberties and judicial independence are inseparable parts of the system.

TARGET

Then, it should not be Law by Rule?

Mr Albert Ho

Law by Rule? Of course not! Then, you would be saying that the ruler is entitled to dictate the law to the people – to Rule by Decree is the most dangerous form of government.

TARGET

And Law by Complaint?

Mr Albert Ho

Then, you have to rely on a benign dictator because, even if you have a benign dictator, then, he has to lend his ears to the people. But how can you rely on one of two persons? Why don't you have a system, which can take care of all of the people?

-- E N D --

***While TARGET makes every attempt to ensure accuracy of all data published,
TARGET cannot be held responsible for any errors and/or omissions.***

If readers feel that they would like to voice their opinions about that which they have read in TARGET, please feel free to e-mail your views to editor@targetnewspapers.com or targnews@hkstar.com. TARGET does not guarantee to publish readers' views, but reserves the right so to do subject to the laws of libel.