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Dear reader:

The attached Word file above contains a short draft of my suggestions for the elections in 2007 and 2008. I apologize for sending it a few days past the Oct 15 deadline.

cc

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Constitutional Affairs: 2007 & 2008

Dear reader:

In the interest of time, allow me to be informal as I outline several sensible options regarding the elections of 2007 & 2008. They are drafted with the interests of the incumbents as well as the people in mind. I must add that the bureaucratic, economic, and civil structures of Hong Kong are adequately mature and sophisticated to handle any process by which the next Chief Executive and Legislative Council will be elected.

The most popular method to elect the Chief Executive in 2007 is by popular referendum. In addition to popular support, it has the advantage that counterproductive, i.e. the aggressively partisan, interests will be dwarfed by the popular vote, despite that the referendum is no guarantee the next CE will be effective.

My preference would be to maintain a small electorate, either the current size of 800 (796, actually) or a number not too much larger. However, this is conditional on a revision of the current roster to include characters who have a noticeable, and public influence, at the expense of nefarious figures who have neither publicity, reputation, nor credentials. For example, the head of Hong Kong Monetary Authority, Cyd Ho (who just lost the elections to the legislative assembly), and Anson Chan (former Chief Secretary) should not be excluded. I can nominate many more worthy candidates. It is hard to argue that the current appointments to the electorate are not arbitrary, despite that some members have electoral ties to the public; but this would not be a problem if the arbitrarily appointed electorate is palatable to the public, and sensible in their actions.

Lastly, the nomination threshold should be lowered considerably: anyone from the privileged electorate should be able to nominate a candidate to Chief Executive. The current requirement of (100?) endorsements to nominate candidate, out of an 800 electorate, is grossly excessive; a crude design to winnow down the number of non-incumbent candidates. As a result, the last Chief Executive election was uncontested, and the Chief Executive had another public relations disaster in his hands. This shall be easily avoided.

The making of an enlightened electorate is a delicate operation, but as an electoral procedure it is a good one: lots of empires, bureaucracies, large institutions and corporations depend on small, privileged electorates to produce their equivalents to the chief executive. The popular referendum is a secondary choice; but generally a popularly elected Chief Executive is not more reliable or more able than a well-selected one. Historically, the best executives in the most established jurisdictions tend to originate from well-selected candidates from well-organized groups, with an impressive background, and then endorsed by the public; but many candidates have been produced by similar procedures who turned out to be quite poor at their work, because the steps were badly done. Hence, discretion is key.

Regarding the organization of FCs: they fulfill a compositional quota to the Legislative Council, under Basic Law, but their *raison d'être* is to serve a broad and arbitrary spectrum of professions, and it is doubtful under the current configuration of FC seats whether their members are acting for their constituents. a) Since each FC member is only one out of 60 (except labour), not one FC member has the resources actually to represent a cross section of their industry, to push bills respected by the respective industries, or to do anything different from their EC counterparts. In order to be of use to anybody the FC members must tie up with each other, but in doing so they become partisan constituencies (PC) at the expense of their constituents. b) The accountability of FCs to their constituents is not addressed by their singular position in the Council, so members can take prolonged absences from council meetings, submit their legislative work to their other commitments, and treat their legislative position as a perk. This is true at least of the Tourism constituency, but the number of empty chairs during many council meetings is telling enough.

Even as a constitutional cushion against unwanted legislative activism, the FC members should reorganize for the benefit of their industries. As of today, the electors of FCs generally have little acquaintance of their representatives, there is very little contest in FC elections, and the pool of electors is small, with few exceptions.

The simplest, cost-effective solution would be to group functional constituencies together: to have a larger electorate vote for more positions must broaden the bargaining power, accountability, capability, and competition among incumbent and prospective FC members. Members can be chosen from their groups by first-past-the-post or prioritized-vote elections. I propose the following groupings (current number of FC seats); of which some sectors should not be merged as they provide critical services to the Legislative Council itself:

Legal (1)

Accountancy (1)

Health (2) : Medical; Health Services

Services (6): District Council; Heung Yee Kuk; Social welfare; Labour; Education

Infrastructure (6): Architectural, surveying and planning; Real estate and construction; Engineering; Transport; Sports, performing arts, culture and publication; Transport;

Trade (7): Catering; Agriculture and fisheries; Textiles and garment;

Wholesale and retail; Information technology; Tourism; Import and export;

Business (7): Finance; Financial services; Commercial (first and second);

Industrial (first and second); Insurance

The reconfiguration of FC seats inevitably change the dynamics of FC members: a) members will certainly be contested every election; b) since the electorate will be larger, members must maintain an image to the industries as well as the public (including the electorate of constituents of the same bloc) in order to sustain their incumbency; c) on the plus side, members can pool

resources for research and for coordinated action, as blocs (eg. Services) can vote together to compound their weight and push through resolutions. The grouping of functions encourages FC members to vote as a bloc, according to the functions they represent, and so to counteract partisan influences.

Having proposed grouping FCs into groups, my second recommendation is to open the possibility to redistribute the number of seats between groups. In the current (2004) configuration, it would be awkward to change functional constituencies because doing so may well eliminate some electorates. If FCs were grouped, the weighting between groups could be shifted according to recent circumstances; in turn, new constituencies could be added, strengthened, weakened and taken away without changing the number of FC seats. At the moment (2004), there are at least 20 seats directly related to commerce (Business + Trade + Infrastructure), 10 times more than Health, but none related to environmental protection. The Legal constituency, which should ensure that the decisions of the Legislative Council are indeed legal, only has one seat, of the same weighting as Infotech. Accountancy, which should examine the budgetary effects of fiscal resolutions, has the same importance as Heung Yee Kuk. I wish six seats be moved from Business and Trade to Legal (2), Accountancy (2), Services (1) and Health (1); and environmental protection be considered a constituency under Health or Services. Commerce-related constituencies should not have a clear majority of FC seats. I have no problem with the arbitrary nature of functional constituencies and their electorates, but even arbitration should be pursued with discretion, intelligence, and some concern for fairness, as well as to the purposes of the Legislative Council more generally.

My third recommendation relates to the role of bureaucrats in the Legislative Council. At the moment, bureaucrats are excluded from representation in the Legislative Council because there is a general understanding that bureaucrats should not undertake political activities. 'Political' has two broad meanings: the first is 'partisan', and bureaucrats should not be partisan because partisanship clearly benefits some more than others while bureaucrats should be of assistance to everybody; the second meaning is 'organizational', meaning the making of groups from individuals out of some purpose, and clearly bureaucrats are deeply involved in the organizational processes in Hong Kong, ranging from trade regulations to health care to welfare. As long as bureaucrats are not affiliated with partisan groups, it would be wasteful to ignore 160,000 executors of government functions from the legislative process: governmental departments relevant to FC positions should be included by their respective electorates; officials should be allowed to run for FCs if the relevant electorates give sufficient endorsement; if nothing else, bureaucrats to the FC become formal liaisons between the government and other legislators, who will help to explain government policies to the public.

v): Nationality does not guarantee anything: having only a Hong Kong passport does not mean one would be more loyal, patriotic, or able than someone with multiple passports. Members serve a function, and their selection should not be predicated on their singular nationality, so not to prevent qualified candidates from otherwise pursuing public service. The

Legislative Council Ordinance seems to be much stricter about nationality than my understanding of the Basic Law, and should be amended.

I would be happy to explain the above outline in much greater detail. It would be an honor, really, to assist in the delicate organizations of governmental procedures.

Sincerely,
Clint Cheung