

# Accountability must be put into practice

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NOW that the Legislative Council (Powers and Privileges) Bill has become the Legislative Council (Powers and Privileges) Ordinance, it may be appropriate to conduct a post-mortem and see just what went wrong.

The Government has acknowledged that it erred by not consulting the public properly before the Bill was introduced and by not providing sufficient information.

That is a step in the right direction. But what did the Government do to rectify the situation after it recognised that the public had not been properly consulted or informed?

And was insufficient consultation the only thing that was wrong about the Bill? Was that the cause of the public outcry?

No. What caused the public outcry was the content of the Bill, even more than the lack of consultation. Bodies ranging from the Hong Kong Federation of Students to the Bar Association had pointed out the threat posed by the proposed Bill to long recognised rights and freedoms in Hong Kong.

The Bill, as originally proposed, would have eroded such basic rights as freedom of speech and freedom of the press, as well as circumscribed the role of the courts.

It is not sufficient for the Government to have consented to the deletion of these objectionable clauses. An attempt must be made to uncover who was responsible for putting them there in the first place.

We are not suggesting a witchhunt; we are suggesting that the Government put into practice the concept of accountability of Government officials to the public.

Otherwise, the Government would be seen as a pickpocket who, having been caught red-handed, was let off by merely agreeing to return the wallet to its owner. The question is, who in the Government was responsible?

Members of the Legislative Council had ascribed the Government's actions to "drafting errors." If so, who was responsible for the drafting? And who was responsible for approving the draft? Why was it that clauses fraught with peril for the people of Hong Kong, evident even to individuals not trained in the law, went undetected by the professionals in the Government and in the Legislative Council?

The Chief Secretary, Sir David Akers-Jones, said on June 12 during the second reading of the Bill that it was only an attempt to codify existing parliamentary practices and was not meant to curb basic freedoms in Hong Kong.

"I am advised and I accept that in the context of Hong Kong this Bill is a faithful reflection of that (parliamentary) law and the existing situation; it does not introduce new law."

The Chief Secretary was saying, in effect, that the purpose of the Bill was not to introduce new law, but merely to codify the existing situation. He said he had been "advised," presumably by the Attorney-General, and that the Bill did not do any more than this, and that he accepted such advice.

If the Bill went beyond the stated purpose, presumably it was a drafting error and not the result of a policy decision.

Yet, only six days later, the Attorney-General told reporters that the drafting of the Bill was sound. "It's a question of what you want to get in the Bill," he said. "That's not drafting, it's a political decision."

Mr Michael Thomas appeared to be contradicting the Chief Secretary. He implied that a political decision had been made, and all his department did was implement that decision.

It was unfortunate that the Attorney-General, by defending his department, should have made such a statement. By saying that the problem was not one of drafting but was the result of a "political decision," he was adding fuel to the multiplying conspiracy theories, which are so damaging to Hong Kong's political stability and hence its economic prosperity.

If a political decision was indeed made to gradually limit rights and freedoms enjoyed by the Hong Kong public, it would have ominous implications.

But the Chief Secretary has repeatedly assured us that there is "no hidden agenda, no concealed motive." He has said that the decision to enact such an ordinance was merely to define the powers of the Legislative Council in view of the upcoming indirect and functional constituency elections to that body, and to strengthen the concept of a Hong Kong identity.

We do not believe in any of the conspiracy theories. Rather, we believe the Powers and Privileges Bill was a manifestation of gross neglect of duty, incompetence and malfeasance on the part of the Attorney-General, "a cockup."

But it was a "cockup" of massive proportions, introducing such atrocious concepts as limiting the right of the press to report on the affairs of the council, the provision of a 12-month prison sentence for "intentional disrespect," and making it a crime to "insult" a member of the Legislative Council. The Chief Secretary, not being a lawyer, can plead ignorance. But can Mr Thomas?

Since the Green Paper on Representative Government has stated that the ultimate purpose is to produce a government that is rooted in the Hong Kong people, it is extremely important that Government officials be held accountable for their actions.

If the Government is not accountable to the people, it cannot be rooted in the people. Even if the Bill was not his idea, the Attorney-General cannot escape a large share of responsibility.

As a member of the Executive Council, he presumably took part in the original "political decision" to draft such a Bill. As the Attorney-General, he was directly responsible for supervising the work of the law draftsmen in the drafting section of the Legal Department.

Moreover, after the Bill was drafted, it had to receive his approval before it went to the Executive Council.

There, he again presumably took part in discussing and approving the Bill. And finally, as a member of the Legislative Council, he helped to shape it and approve it.

If any one person was intimately involved with this Bill, it was the Attorney-General. Now, instead of accepting responsibility for the major shortcomings of the Bill, the Attorney-General passes it off as being the result of a political decision made by higher authorities than he himself.

Indeed, at a forum on the Bill held at the Foreign Correspondents Club on July 8, he went out of his way to say "this was not my Bill." The Bill, he said, had originated with the former Chief Secretary, Sir Philip Haddon-Cave, who is no longer in Hong Kong, to defend himself.

Whatever happened to the old-fashioned idea of acceptance of responsibility for one's actions, and taking the consequences?

This Attorney-General has brought us a series of "cockups," such as the Trial of Commercial Crimes Bill, in which he sought to limit the role of juries, the pornography tribunal, in which he sought to limit the role of the judiciary, and now the Powers and Privileges Bill.

In none of these instances has he accepted personal responsibility. He is oblivious to criticism and sheds responsibility as smoothly as a duck sheds water.

In a democracy, there would have been loud calls for his resignation. In a more responsive and more responsible government, he would have offered his resignation.

Now let us turn to the Government's admission that it had erred by not consulting the public ahead of time and by providing sufficient information for the public to comprehend the purpose and significance of the Bill. That admission was made by the Chief Secretary during the Bill's second reading on June 12.

Yet, how did the Government behave after this admission?

Instead of beginning the consultation process and explaining why the Bill was drafted in this particular way, the Government pushed for it to be adopted.

The machinery of consultation lay idle. Even a Chinese version of the Bill was not made available until days before the deadline set for the passage of the Bill, and the Government adamantly refused to budge from that deadline.

How did the Government expect the public to react? On the one hand, the Government acknowledged its mistake; on the other hand, it was continuing to deny the vast majority of the public any reasonable chance to assess the merits of the Bill.

Is it any wonder that the public did not take seriously the Government's admission of error?

This was a classic case of persevering in a mistake even after having publicly acknowledged that mistake.

The Governor has to bear his share of the responsibility. In this case, as in the case of the Commercial Crimes Bill, he attempted to push the Bill through in the face of widespread public criticism.

In all this, what role did the Legislative Council play? The council's members, presumably are appointed for a two-fold purpose: to make available to the Government their expertise and to enable the Government to better understand the public mood.

On both counts the Legislative Council failed. Its members — including those with legal training — did not detect the pitfalls in the proposed legislation. And its members were also so alienated from the public that they failed to properly assess the public mood and give the Government appropriate advice.

Instead, when the big guns in the Legislative Council were brought out, they were trained not on those responsible for this atrocious piece of legislation, but trained directly on those members of the public who had the courage to speak out.

Mr Stephen Cheong, who is seen by some as a leading light within Legco, said that if Legco had bowed to demands to delay the third reading, "we would run a real risk of selling Hong Kong down the path of inefficient administration with pressure groups happily blaming their so-called wishes of the people on every single issue of the day."

This is a comment that deserves examination. Of course, if different sectors of the public were calling for conflicting courses of action, the Government would be paralysed if it attempted to heed each and every public voice.

In this case, however, all the comments were calling for one thing: the deferral of the Bill.

It would be very wrong for the Government — and for the Legislative Council — to argue that the public should not stick its nose into public affairs. The premise that the public should stay out of public issues is incompatible with the principle of having a Government rooted in the people.

Mr Cheong wrongly and irresponsibly confused the public outcry for the reservation of their rights with any "issue of the day" that did not affect the majority of the people of Hongkong.

Furthermore, Mr Cheong should have understood that the call for delay was justified. A Bill that had been studied by the Legislative Council for nine months and then was almost entirely rewritten in six weeks as a result of public scrutiny deserved much more detailed re-examination.

It was indeed the duty of the Legislative Councillors to halt the proceedings then and to call for public hearings on the "cockup." To ram the Bill through and to lightly brush off public sentiments smacked of a paternalistic attitude that has no place in Hongkong when it is preparing for a post-colonial period.

The convener of the ad hoc group, Miss Maria Tam, also let loose a barrage on the public. "I trust it is not the public wish that the Legislative Council must respond to publicised pressure," she said rhetorically.

In making this statement, she was deliberately differentiating "the public wish" from "publicised pressure," assuming that those who speak out publicly to put pressure on the Government do not represent "the public wish."

We wonder how Miss Tam would go about gauging "the public wish," if not by listening to groups and individuals who care enough about Hongkong to examine issues conscientiously and speak out on them publicly, as well as reading newspaper editorials and commentaries.

Or has she discovered her own means of determining the "public wish?" If so, and she has not taken out a patent on the discovery, then she should share this with the rest of the public.

The fact that the law draftsman is concurrently the counsel of the Legislative Council probably did not help. Someone who drafted a Bill is not likely to alert the Legislative Council to pitfalls lurking in its many paragraphs. We suggest that this dual role of the law draftsman is inappropriate. Legco needs a counsel who is independent of the executive arm of Government.

At a time when Hongkong is undergoing a transition from a British colony to a Chinese Special Administrative Region, the public is understandably looking for local leaders to replace the British, who will be departing in 12 years.

It is natural for them to look to the present members of the Executive and Legislative Councils.

It is unfortunate that all the members of Legco saw fit to side with the Government in what they saw as a contest between the Government and the public. They have lost a golden opportunity to demonstrate to the public that, despite the fact that they are appointed by the Government, they are truly independent individuals.

That is really at the core of the problem. The members of the Executive and Legislative Councils, appointed to provide a public dimension to governmental decisions, identify not with the public but with the Government.

They have too much blind faith in the Government, not enough healthy scepticism. This is evident from speeches made inside and outside the Legislative Council chamber. Miss Tam, for instance, responded to critics of the Bill who said that the president of the council might abuse his powers by saying: "We need only look at the real situation. Your Excellency is the president of this council," implying that Sir Edward Youde is a man whose conduct is beyond impeachment.

That may well be so, legally as well as figuratively, but that attitude puts too much onus on the individual and not enough on the legal system.

That attitude of blind faith in an individual was echoed by Mr Allen Lee, who pointed out that the Letters Patent and the Royal Instructions give the Governor dictatorial powers.

But instead of calling for such powers to be moderated, he hastened to voice his confidence in the Governor by saying: "I am sure discretion will be used in any event."

Ironically, references to the Governor and to his integrity may well have been in violation of the Legislative Council's Standing Orders. Paragraph 31 (6) specifically stipulates: "The name of Her Majesty or of the Governor shall not be used to influence the council." And paragraph 31 (8) of the Standing Orders states: "The conduct of the Governor, members of the Executive and Legislative Councils, and judges or other persons performing judicial functions shall not be raised."

Yet both Miss Tam and Mr Lee sought to

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influence their fellow Legco members by referring to the integrity and discretion of Sir Edward.

Since it appears evident that the person of the Governor was specifically referred to in speeches made in the Legislative Council chamber in an attempt to influence the council, we wonder what the Government intends to do about this apparent violation of the Standing Orders.

Will a penalty be invoked? Since the Governor was presiding over the session when this occurred and did not appear to mind being publicly praised, we rather doubt that the Government will take any disciplinary action.

We are afraid that the problem is that members of the Executive and Legislative Councils have too much blind faith in the Government.

Mr Lee gave voice to that sentiment in an interview with a news magazine in May when he said: "If Umelco members had a deep distrust of the Government, that would be a sad day for Hongkong."

To paraphrase Mr Lee, the excessive trust that Legco members have in the Government has caused Hongkong no shortage of "sad days" in the past few months. Unless Legco members act as independent-minded people who have the public's interest at heart, first and foremost, such "sad days" will proliferate.

The combination of the Government's massive "cockup" and Legco's incompetence led to a crisis of confidence in the Government, the first since it became a transitional Government. The damage done by railroading the Bill through despite public protests has widened the gap between the Government and the public, as well as that between the public and Umelco.

Although the Bill has now been passed, it is still unacceptable. It gives the members of Legco powers and privileges but is silent on their duties and responsibilities.

Government and Legco representatives have said that the Bill can be amended by a future Legco. That is true of all legislation, but that is no argument for not giving adequate consideration to a Bill before it is enacted. Why not try to get it right the first time?

Now that the Bill has been pushed through, one of the first tasks of the new Legco ought to be a thorough review of the ordinance, including its philosophy and its purpose.

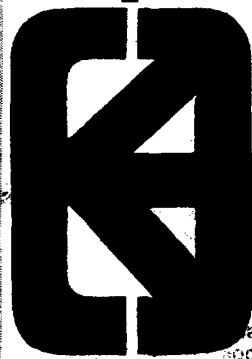
Several Legco members have suggested that the Bill would have been less objectionable if its title had been amended to include the concept of duties and responsibilities. We believe it is not enough to amend the title. The contents should be similarly revised. At present, there is nothing in the ordinance about the duties and responsibilities of Legco members.

The Chief Secretary, in his speech at the third reading, cited the following lines:

"For last year's words belong to last year's language. And next year's words await another voice."

How true. So far, we have been hearing from Legco only the voices of the past. Hongkong desperately needs new voices that can really represent the 5½ million people here.

Hongkong



Observers



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