

Functional constituencies after 2012?

- biting the “balanced participation” bullet

James J. Lee

Pan-democrat legislators have vowed to exercise their one-third veto power over constitutional initiatives¹ to block the Government’s 2012 election proposals, unless offered a roadmap to universal and equal suffrage that abolishes functional constituencies. In effect, they oppose “balanced participation”², the principle under the Basic Law whereby the business and professional sectors are effectively over-represented: they make up half of the Election Committee that elects the Chief Executive, and, in the Legislative Council, some two-thirds of the 30 functional constituency seats that hold equal veto power as the 30 geographical constituency seats returned by one person one vote.

The rationale for balanced participation is that business and professionals are the sectors best guided by their own interests and knowledge to make choices that foster “prosperity and stability”, which the Basic Law deems paramount for Hong Kong’s success as a capitalist society. At the same time a broad representation including labour and other sectors provides checks and balance.

Developments in recent years in Taiwan and Thailand³ have highlighted the importance of having adequate constitutional safeguards to prevent universal suffrage being exploited or devolving in ways detrimental to long-term prosperity and stability.

Hence Beijing has indicated its belief – quite possibly shared by a majority of Hong Kong people – that balanced participation should stay. Proponents contend that balanced participation is an instance of the “reasonable restrictions” to universal suffrage that Article 25 of the International Covenant on Civil and Political Rights allows for⁴ But

¹ Amendments to the methods for electing the Chief Executive, methods for forming the Legislative Council and procedures for voting on bills and motions must be made with the endorsement of two-thirds of all Legislative Council members. Pan-democrats hold 23 out of the 60 Council seats, enough for a veto.

² The term “balanced participation” appears, for instance, in the 2004 Decision of the Standing Committee of the National People’s Congress concerning Hong Kong’s political development: “Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the *balanced participation* of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong” (*italics added*).

³ Considerable strife arose during and as a result of the tenures of Chen Shui-bian in Taiwan and Thaksin Shinawatra in Thailand, whose parties won popular elections.

⁴ Article 25 of the International Covenant on Civil and Political Rights states: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without

what form should it take, to be consistent with universal and equal suffrage, at least in the restricted sense?

One option is bicameralism⁵. That might involve, say, hiving off functional constituencies to form a second chamber of the legislature, with powers differentiated from and perhaps lesser than those of the chamber returned entirely by universal suffrage. Bicameralism is found in many democracies.

A second option is to keep functional constituencies, which is a form of *de facto* bicameralism. New functional constituencies would be created for housewives, young people not yet in the labour force, etc. so that every voter can be represented through and vote in a functional constituency, in addition to voting in a geographical constituency, thus having two votes. The influence of the business sector would be diluted. Corporate votes could be transformed into votes by persons, namely directors.

Functional constituencies is more efficient than bicameralism. Issues would be threshed out and all perspectives brought to bear on one floor. Bills would not have to pass two chambers successively and then be reconciled⁶. Polarizing standoffs between chambers could be avoided.

Both options represent democratization – with restrictions. Most elements of the second option – democratizing the composition of functional constituencies – are consistent with the National People’s Congress Standing Committee’s 2007 Decision

unreasonable restrictions: ... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage ...” (italics added). According to the *South China Morning Post* (8/6/2010), Qiao Xiaoyang, the Deputy Secretary-General of the Standing Committee of the National People’s Congress, said on 7/6/2010 that it was a norm internationally that laws could be passed imposing “reasonable restrictions” on the right of universal suffrage.

⁵ In 2004, Qiao Xiaoyang, Deputy Secretary-General of the NPC’s Standing Committee, implied that bicameralism could be an alternative to functional constituencies. Speaking in Hong Kong after the 2004 Decision of the Standing Committee of the NPC concerning Hong Kong’s constitutional development was pronounced, he said, “Rashly abolishing the functional constituency electoral system in the absence of a bicameral system or political parties that can adequately represent them will surely fail to realise the principle of balanced participation or reflect the interests, opinions and demands of this group of people on which capitalism depends.” (source: translation of Qiao’s speech ‘Striving in a pragmatic spirit to find the right path to political development’, *South China Morning Post*, 29/4/2004, as cited by the Civic Exchange).

Qiao Xiaoyang thus seemed to imply also that the presence of a political party that broadly represents commercial and economic interests, such as the Conservatives in England, might also be a condition for phasing out functional constituencies. However, the setbacks suffered by the Liberal Party in the 2008 Legislative Council elections suggest that this condition may not be realized any time soon in Hong Kong.

⁶ For instance, in the US, there may be a House version of a bill. Once passed, it goes to the Senate, but perhaps only months later. The Senate may pass its own version, which then has to be reconciled with the House version. In a Hong Kong bicameral system, the ideological differences between the two chambers would likely be sharper than those between the US House and Senate.

concerning Hong Kong's political development⁷, and could be implemented for the 2012 elections, or even before. However, as pan-democrats have rejected changes that help perpetuate functional constituencies in any form, the Government was left with proposing, as the principal way forward for 2012, putting geographically elected District Councilors in newly created functional constituency seats. Beijing has conceded its support for this option, though that means stretching the interpretation of the 2007 Decision, which requires maintaining in 2012 the half-and-half ratio between functionally and geographically elected seats.

The proposed arrangement is rather tenuous longer term. District Councils, unlike all other functional constituencies, are not socio-economic groupings. Hong Kong being just one city, its people are too busy to care much about administrative affairs in each of 405 small area constituencies. So District Council elections – some with only one candidate running – attracted low turnouts. Pan-democrats often charged that the pro-establishment camp exerts undue influence at these levels. Moreover, one can hardly keep on adding more District Council seats to “traditional” functional constituency seats. And the latter would still exist, contrary to pan-democrats’ goals.

So even if the Government’s package is passed, the real differences may remain unbridgeable⁸. Should that be confirmed – and early confirmation is preferable – a democratic mechanism may be the sword to slice the Gordian knot. To establish the relevant mandate once and for all, an election can be held by one person one vote to choose, from between competing proposals by the two camps, the composition of the legislature in 2020⁹. No doubt Hong Kong people would choose wisely¹⁰.

⁷ The NPCSC’s 2007 Decision stipulates that, for the 2012 Legislative Council elections, the half-and-half ratio between functional constituency and geographical constituency seats shall remain unchanged, as shall the veto arrangement, viz. the requirement that members’ bills and motions be passed by a majority of each of the two groups of members present. (By implication, both the half-and-half ratio and the veto arrangement can be changed for elections after 2012. This suggests a third option: democratizing the functional constituencies by changing rules other than those affecting, as in the second option, the *composition* of functional constituencies.)

⁸ Even if pan-democrats accept a degree of balanced participation, that degree or level may be too low for a compromise to be reached. For instance, one further option for the formation of Legislative Council is for the functional constituencies to become just nominating mechanisms. i.e. there would be two rounds of functional constituency elections, one for constituency members to elect their candidates and the other for all Hong Kong electors to choose from among those elected candidates. This level of balanced participation may be considered too watered down to be effective.

⁹ The election can probably be initiated, like the 2012 package of proposals, “with the endorsement of a two-thirds majority of all the members of the (Legislative) Council and the consent of the Chief Executive”, per Annex II of the Basic Law. The Government might call for proposals from the Legislative Council.

¹⁰ In the 2008 Legislative Council elections, the pan-democrats won 4 out of 30 functional constituency seats and 19 of the 30 geographical constituency seats. Some electors who voted for pan-democratic candidates in the geographical elections might have been motivated by the

PostScript

The above is the full version of an article published in the South China Morning Post, under the title “District council route a bridge to nowhere” on 17/6/2010. The next few days saw indications from leading pan-democrats on what roadmap to universal suffrage they might accept. Audrey Eu, leader of the Civic Party, appeared amenable to the democratization of functional constituencies¹¹. Albert Ho, leader of the Democratic Party, which proposed the modified District Council option for 2012 that the Government formally accepted on 21/6/2010, seemed to have in mind something like the option mentioned in Footnote 8 above.

The move toward greater democracy is clear. For instance, in 2017, there will almost certainly be a pan-democratic candidate running for Chief Executive and selection will be by one person one vote. Nevertheless, pan-democrat leaders need to weather a transition: from demanding the purest and most absolute form of democracy, to likely having to accept some compromise in the eventual blueprint.

The least strife-ridden way forward is to hold an election as described in the last paragraph of the main text, just before this PostScript. It would establish where the majority mandate lies, thus avoiding fruitless standoffs, as well as endless allegations – e.g. that the over-representation of pro-establishment sectors affected the final vote in Legislative Council, or that pan-democrat leaders betrayed ideals. Perhaps each political party might present up to two proposals, or two variations of the same proposal: one moderate, one radical. This would reduce inter-party strife. Overall, focus would be on offering designs that are more middle-of-the-road and thus acceptable to more voters.

29/6/2010

James J. Lee writes as an independent commentator on www.hongkongbetter.com.

wish to achieve balance and diversity in the legislature, given the expected preponderance of the pro-establishment camp in the functional constituencies. So the pan-democrats’ share of votes in any election entirely by one person one vote may be somewhere between 19/30 and 23/60.

¹¹ For instance, in her televised debate with the Chief Executive on the evening of 17/6/2010, Audrey Eu said at one point, “I am glad you don’t know what to do and are asking me (to provide a roadmap)... Actually there are now lots of things about functional constituencies that you can do by local legislation, but you didn’t do them! You could abolish corporate votes... There are some (functional constituency) seats with small numbers of constituents that you could merge. You could expand the electorate for some (functional constituency) seats.” In concluding remarks, she also said, “I am very pragmatic. I know that politics calls for compromise” (this author’s translations).