

The Hong Kong Lawyer Controversy and Self-Censorship in Hong Kong

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By Thomas E. Kellogg

Longtime Hong Kong barrister and human rights activist Paul Harris is used to the give-and-take of public life. He has written countless articles criticizing not just the local government in Hong Kong, but also the actions of senior officials in Beijing, London, and Washington. One of the founders of the Hong Kong Human Rights Monitor and a regular litigator on behalf of Hong Kong citizens who have had their rights infringed by the SAR government, Harris is no stranger to controversy. He has regularly spoken out on issues considered by some too sensitive to touch.

Sadly, then, perhaps Harris was not surprised when he received an email from Brendan Clift, editor of the magazine *Hong Kong Lawyer*, just days before his article on Tibet was scheduled to go to press. In the email, Clift asked Harris to ring him, which Harris promptly did. Over the phone, an embarrassed Clift explained that, after an extraordinary editorial board meeting called specifically to discuss his article, the magazine had decided not to publish. Harris' piece, which had already made it to page proofs after minimal editing by Clift, was dead.¹

What happened? Given the refusal of anyone on the board to offer a full explanation, a full accounting is impossible, but it seems clear that Harris fell victim to self-censorship. Although the editorial board of *Hong Kong Lawyer* has refused to explain its reasons for killing the piece, the circumstantial evidence is too strong to avoid the conclusion that political factors played a significant – if not exclusive – role in the board's decision.

It started with a short opinion piece written by Harris for the *South China Morning Post*, published April 1.² In that piece, written in response to the rioting that took place in Tibet starting from mid-March, Harris argued that real autonomy of the sort enjoyed by Hong Kong might be the answer for Tibet.³ Under a Hong Kong-style autonomy agreement, Harris suggested, Tibet might well be "transformed," its political dynamics a far cry from the very tense situation of today.

Harris' piece caught the eye of Clift, the editor of *Hong Kong Lawyer*, a monthly magazine which serves as the official journal of the Hong Kong Law Society. Soon after the article appeared, Clift got in touch with Harris, asking him if he would like to contribute an expanded piece to *Hong Kong Lawyer*, focusing on the legal aspects of the Tibet situation. Clift asked for 4500 words, and indicated that he hoped it could be the cover story for the May issue. Harris agreed to do the piece, and, shortly thereafter, set about putting the article together.

Harris' draft, which he turned over to Clift on April 21, sailed through the editing process. Clift gave every indication of being satisfied with what Harris had produced. In an email to Harris, Clift wrote, "as expected, this is very good." Clift asked for only minor changes, all of them linguistic rather than substantive. The article quickly went to page proofs, which were sent to Harris to review.

There was one small but telling sign that the article might run into trouble. On April 8, Clift phoned Harris to say that Lester Huang, the President of the Law Society, had asked for an advance copy of the article in order to review it before publication. Concerned about possible censorship, Harris declined, offering instead to send a short abstract describing the article's

overall content. Cliff pledged to get back to him, and soon came back with good news: the President had changed his mind, and no longer felt that he needed to see it.

The finished article is notable for its cool approach to a hot topic. Academic in tone, and loaded with somewhat obscure references to traditional theories of state sovereignty, early international law theorist Hugo Grotius, and even the 17th century European royal Catherine of Braganza, Harris' piece, titled "Is Tibet entitled to self-determination?," makes a similar argument to the original Morning Post op-ed. After a careful and qualified run-through of the relevant international law on self-determination, Harris concludes that autonomy might be the best answer. According to Harris:

In many situations, autonomy within a larger nation state offers the best of both worlds, combining the benefits of being part of a large state in terms of defense, foreign relations and economic opportunity, with preservation of local laws, customs and culture from outside interference. Hong Kong is a good example.⁴

A few elbows are thrown: Harris unflatteringly compares Chinese claims that Tibet was saved from backwardness to Kipling's "White Man's burden." References to "gross oppression" in Tibet and to the "second class citizen status" of Tibetans under Chinese rule would also rankle many Chinese readers. Perhaps the most difficult verbiage to swallow from the Chinese point of view would be Harris' suggestion that, if meaningful autonomy is not put on offer soon, then Tibetans may end up asking for more political authority, not less.

Overall, however, its academic tone, its refusal to fully embrace one side or the other, and its detailed and thoughtful analysis of the relevant international law make the piece a meaningful contribution to public discussion in Hong Kong on the Tibet issue.

And yet, even despite its moderate tone, the article was spiked by Hong Kong Lawyer's editorial board. The decision not to publish was reached at a hastily-arranged meeting of the board just days before the magazine's May 2 publication date. Although the membership of the editorial board, including Cecilia Wong, the board's chair, has refused to comment on its decision, it is believed that a desire not to offend Beijing guided the board's decision. As someone all too familiar with local politics, Harris related the spiking of his article to "this very Hong Kong feeling of we don't want to rock the boat," and concerns that "this might just get us in trouble."⁵

The internal debate over Harris' piece was playing out against a charged political backdrop. Riots in Tibet and in ethnic Tibetan areas of Sichuan province – the very incidents that led Harris to write the article in the first place – may have made the board even more wary of publishing a piece on autonomy for Tibet.⁶ As the board was meeting to discuss the draft article, the Hong Kong government had already barred from entry into Hong Kong a handful of pro-Tibet activists, perhaps creating the inference that the government preferred more cautious parties in Hong Kong to stay away from the Tibet issue altogether.⁷ Finally, the Olympic torch was scheduled to pass through Hong Kong on May 2, the very day that Hong Kong Lawyer was to go to press, and tensions were already emerging between would-be demonstrators and the government officials responsible for organizing the torch relay.⁸

It is hard to guess at any more specific concerns that may have influenced the board. As the house organ of the Law Society, Hong Kong Lawyer is not dependent on advertising revenue to stay afloat, and so is not vulnerable to the swaying of local advertisers that has apparently cost the outspoken Apple Daily dearly.⁹ Nor is it likely, given Harris' long record of speaking his

mind on human rights issues, that Beijing would impute his views to the Hong Kong Law Society or the staff or board of the magazine.

As a general matter, the Law Society has been much more cautious on human rights issues than the Hong Kong Bar, which has repeatedly spoken out against government proposals and actions insufficiently protective of basic liberties in Hong Kong. The reason for this difference is, in the view of one longtime Hong Kong academic, very easy to explain: “solicitors have to do business in China, and barristers don’t.”¹⁰

Instead, it seems that the board was trying to be more Catholic than the Pope, killing an article that, if published, would have drawn little notice or comment from Beijing. In an interview with the Wall Street Journal, Harris hypothesized that “they did it because they did not want to offend the Beijing government.”¹¹ But it is difficult to imagine the central government responding directly to the piece.

While the board may have been extremely over-zealous in its actions, its approach was not without cost. The decision to kill the piece for political reasons does not reflect favorably on the magazine, and the Law Society is itself also scuffed, if only slightly, by association. Harris himself called the incident “a terrible example to the legal profession,” and concluded that the magazine’s handling of the matter “made them look extremely shabby.”¹²

Self-censorship in Hong Kong: a perennial problem?

In the run-up to 1997, both censorship and self-censorship were key concerns. Senior mainland officials did little to quell fears on this front, repeatedly making statements that could be described as inflammatory at best.¹³ The government’s views were encapsulated in what came to be referred to as the “three no’s” for the Hong Kong media: no advocacy of independence for Taiwan or Tibet, no attacking the central government leadership, and no engaging in subversive activities.¹⁴

Of these out-of-bounds areas, Taiwan has taken pride of place. Chinese officials have reserved most of their strongest rhetorical slaps at the Hong Kong media for warnings on the Taiwan issue. Before the handover, Lu Ping, then a senior official in charge of Hong Kong affairs, told journalists that certain reportage on Taiwan would not be covered by legal protections for free expression:

I don’t want to create any illusions for you. After 1997, it will not be possible for you to advocate two Chinas, or one China and one Taiwan, or Hong Kong independence, or Taiwan independence... The press will not be allowed to do so. It is a different issue from press freedom.¹⁵

This has led, perhaps not surprisingly, to a higher level of scrutiny within media organizations to their own reporting on Taiwan:

Taiwan is a topic where Hong Kong news organizations, with rare exceptions, take special care. Reporters sent there are cautious when they write any story that might draw a negative reaction from Beijing, which means second-guessing themselves. If reprimanded for a judgment error, they will be told, ‘You should have known.’¹⁶

Although coverage of Taiwan is the area in which self-censorship is practiced most heavily, it is very much a generalized phenomenon within the media. As Mak Yin-ting, the former head of the Hong Kong Journalists Association, has noted, the process is very much a subtle one:

You always have to ask, 'what's more important? The one country or the two systems?' Journalism is not a black and white matter. It is a cultural matter, and it is hard to measure things like expression or intention. We all know the handover has taken place. We all know we are now 'one country.' So we all auto-adjust. You see your boss adjusting, your colleagues adjusting, and there will inevitably be an effect when you put your own pen to paper.¹⁷

Reflecting the almost intrinsic nature of self-censorship in the Hong Kong media, one leading expert on press freedom in Hong Kong has noted that self-censorship is both "subtle" and "comes with the job."¹⁸

Perhaps the low point of self-censorship occurred in 2004. That nadir, which featured unprecedented hardline rhetoric from the central government in Beijing and threats of violence against two radio talk show hosts by triad elements claiming to be acting with the imprimatur of Beijing, took place in the run-up to the bitterly-contested 2004 Legislative Council elections.¹⁹ While the threats of violence have, thankfully, not been repeated, nonetheless their impact was significant: the two journalists, Albert Cheng and Wong Yuk-man, walked away from their radio talk show programs. Neither would return to the airwaves during the election cycle. If the goal was to keep the two men off the air during the campaign, then that goal was achieved.

While self-censorship is perhaps most difficult for the media – who have, to some extent, a responsibility to cover that which is controversial – it is by no means limited to that sector, as Harris' experience indicates. Academics have seen publications killed over sensitivity concerns: in 2002, for example, senior American expert on Chinese law Jerome Cohen was informed by an editor of the Hong Kong-based *China Law and Practice* that his piece on Chinese criminal law had been scrubbed. As with Harris, Cohen's piece had reached the late stages of the editorial process before being killed. In an email exchange with Prof. Cohen, the publication's editor noted that *China Law and Practice* had to engage in certain "trade-off(s) between political realities ... and the viability of our commercial enterprise."²⁰ While the publication's lawyers later denied that substantive concerns played a role, nonetheless the facts spoke for themselves. The decision to torpedo the piece was not reversed.

A number of pan-democratic politicians and local activists have also made the strategic decision, perhaps wise given the potential repercussions, to stay away from Taiwan and Tibet. Even those who are outspoken on human rights and the rule of law in Hong Kong, take a pass on Taiwan and Tibet, essentially adhering to the "three no's" caveat in their own work. As Mike Davis, a law professor at Chinese University of Hong Kong who has himself written on Tibet, put it, there is a sense that "we're fighting for democracy in Hong Kong, we don't need to take on the Tibet issue, or the Taiwan issue."²¹ Speaking out on Taiwan or Tibet, the argument goes, would unduly burden either the speaker or the cause with the considerable political baggage that these issues carry.

The experience of those in the pan-democratic camp who have spoken out on Taiwan or Tibet has not been encouraging. In September 2003, longtime pro-democracy advocate and LegCo member Emily Lau had her Sha Tin office vandalized after she participated in a conference organized by a pro-Taiwan independence group in Taipei. In 2004, Lau's office was hit again after her comments on Taiwan were reported in the local media. The overall situation in Hong Kong today remains serious, even if no dramatic changes are in

the offering. Longtime Hong Kong-based journalist Ching Cheong of the Straits Times, who was imprisoned as a result of his reporting work on the mainland, expressed regret over the decline in freedom of expression since 1997. “I don’t think that press freedom in Hong Kong will collapse overnight,” Cheong said. “But there has been a gradual erosion. And that is disturbing.”²²

Comparative solutions?

Most observers agree that the problem of self-censorship in Hong Kong is significant. The question is, what, if anything, can be done about it?

Because self-censorship happens by and large outside the realm of law, and often involves journalists or academics acting on their own rather than directly responding to a government order, there is often little that the law can do to address the problem of self-censorship. This lack of a clear legal answer to the question is reflected in the lack of international or comparative law norms that can be drawn upon when trying to fashion a response to self-censorship.

One of the few attempts to address indirect censorship – the umbrella term used to cover various forms of censorship that fall short of direct censorship of speech by a government actor – can be found in the 1969 American Convention on Human Rights:

(t)he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.²³

More recently, the African Commission on Human and People’s Rights has adopted similar language. According to the 2002 Declaration of Principles on Freedom of Expression in Africa, “states shall not use their power over the placement of public advertising as a means to interfere with media content,” and also have a positive obligation to “promote a general economic environment in which the media can flourish.” (25)

If information comes to light which implicates central government officials in the withholding of advertising dollars from Apple Daily or other media outlets, then such language, creatively stretched to cover indirect government influence over private funds, could become relevant.²⁴ However, it seems unlikely that such a scenario would come to pass.

Yet the use of advertising dollars to reward or punish is only part of the problem. Such dynamics do not cover the “hidden hand” of self-censorship, of editors killing pieces for fear of tackling politically sensitive issues, as happened in the Paul Harris case. As a result, legal remedies would seem elusive.²⁵

Yet even in the absence of any potential legal response, there are steps that can and should be taken. First, the Hong Kong Lawyer episode highlights the need for approaching national security legislation in Hong Kong with extreme care. Although the government’s efforts to pass new national security laws under Article 23 of the Basic Law failed miserably, that does not mean that the government might not move again on this issue when it finds the political climate more favorable for doing so. As journalist and commentator Lau Nai-keung recently noted, “Nowadays, no one in Hong Kong wants to mention national security legislation stipulated by

Article 23 of the Basic Law. Sooner, rather than later, it will come, and probably in a more stringent form.”²⁶

More stringent national security legislation would be a huge mistake. Hong Kong already has an array of strong legal tools to deal with legitimate security threats. Further movement in this area could well make a bad self-censorship situation even worse.

Second, the Hong Kong government needs to stop barring from Hong Kong individuals whose only crime is the holding of views that Beijing views as an anathema. In early May 2008, Danish sculptor Jens Galschiot was kept out of Hong Kong over his planned artistic activities related to Tibet. Tiananmen Square activist Wang Dan has also been denied entry to Hong Kong. An uncountable number of other, less prominent individuals have suffered the same fate. But visits by such individuals can serve an important purpose: they can trigger discussions that otherwise wouldn't be had. And they can serve as a useful shield for the media, which can cover their statements without being so easily accused of “advocating” instead of merely “reporting.”

Third, the government should zealously protect judicial independence against any encroachments by Beijing, however minimal, incidental, or even accidental they may seem. The judiciary is the primary line of defense against threats to free expression by the government, and government censorship and self-censorship go hand in hand. By most accounts, the Hong Kong judiciary has been active in protecting free expression over the past few years, and there is no evidence to suggest that this trend is at risk.²⁷

Nonetheless, one sometimes questions whether Beijing fully understands the role and importance of the independent judiciary in Hong Kong. In a comment that raised more than a few eyebrows in the SAR, visiting Vice President Xi Jinping, widely believed to be in line for the top job when the Hu-Wen team steps down, made a plea for “mutual understanding and support among the executive authorities, the legislature, and the judiciary” in order to ensure continued stability and prosperity.²⁸ This statement was viewed by some as indicating an insufficient understanding of the position of the judiciary as separate from the government, and having less of a role in implementation of policy than in interpretation of law and protection of basic rights.

In a press statement made just days after Xi's speech, the Hong Kong Bar Association highlighted the importance of judicial independence in light of Xi's somewhat ill-phrased remarks. “The Bar does not attribute to Vice President Xi any intention to interfere with the independence of our judiciary,” it said. “However, the Bar believes it is important to recognize, reiterate, and affirm the importance of an independent judiciary.” The Bar's statement was a welcome reminder that Beijing's hands-off approach to the SAR judiciary in recent years cannot be taken for granted.

Some jurisdictions have experimented with various forms of self-regulation, including autonomy pacts between editors and ownership. Such pacts usually publicly guarantee editors full editorial control, job security, and freedom from inappropriate outside influence. The most prominent example of such a pact in the US, the one signed by media baron Rupert Murdoch when he bought Dow Jones, which publishes the Wall Street Journal, is viewed as somewhat less than a full success.²⁹ Nonetheless, such agreements could have a positive impact in Hong Kong, where newspaper owners' business interests on the mainland too often have an impact on the day-to-day work of newsgathering and reporting.

Last but not least, continued efforts to document the costs of self-censorship can have a positive impact. Such studies can be useful both in terms of reminding the community that they

are paying a price in terms of public awareness, diversity of debate, and support for non-mainstream voices, and in terms of perhaps stiffening the spine of those editors, journalists, and academics hoping to ensure that a significant problem does not get any worse.

Conclusion: more good than harm?

While the decision of the editorial board to kill Harris' article was a regrettable one, nonetheless it did have some unforeseen positive effects. The article was published online immediately after it was killed, and then reprinted in modified form by the Financial Times and the Far Eastern Economic Review, thus ensuring a much wider readership than would have been possible through Hong Kong Lawyer.

The fact that the article was published by these other outlets undercut Hong Kong Lawyer's presumed fears of repercussions for running the piece. As CUHK academic Mike Davis put it, "this reflects badly on the Law Society, but it reflects well on Hong Kong that the article was published."³⁰

A number of journalists, editors, and private individuals also got in touch with Harris over email to express their own opinions over what had happened, many of them expressing support for his right to air his views. Interestingly, a former editor of Hong Kong Lawyer emailed Harris, pointing to numerous published stories on controversial subjects on his watch and stating that, a few years back, Harris' piece would have run. Straits Times journalist Ching Cheong dropped Harris a line, expressing his own view that the piece should not have been killed. In a later conversation, Cheong described the matter in the simplest of terms: "In an open society like Hong Kong, everyone should have the right to express their views."³¹

Harris himself was philosophical over the incident. Pointing to the wider discussion that was sparked by the incident, he noted that, "ultimately, quite a lot of good may have come out of this."³² Perhaps. But how many authors could only nurse unproven and ultimately unprovable suspicions over editorial misconduct, their efforts never to see the light of day?

Thomas E. Kellogg is Program Officer and Advisor to the President at the Open Society Institute in New York.

1. This episode was not Harris' first brush with self-censorship: in April 2007, Hong Kong printer RR Donnelley Roman Financial refused to honor its contract to print Harris' book, *The Right to Demonstrate*, which was being published by Rights Press. RR Donnelley backed away from the book, which covered the 1989 Tiananmen Square protests in addition to other subjects, over concerns that its content was "too sensitive." Another printer, Cre8, stepped into the breach, and the book was released in early May 2008. "Hong Kong printer drops book that discusses Tiananmen, author alleges self-censorship," *Associated Press*, May 26, 2007.
2. Paul Harris, "Hong Kong-style autonomy could solve the Tibet issue," *South China Morning Post*, April 1, 2008.
3. Other observers have also called on Beijing to consider the Hong Kong model as a potential solution to the Tibet problem. Former British Foreign Secretary Malcom Rifkind, for example, has argued that "the best option is for a Tibetan province to be granted cultural freedom and a significant degree of political autonomy," which, after all, "is no more than is currently enjoyed by Hong Kong and Macao." Malcolm Rifkind, "A pragmatic solution," *International Herald Tribune*, March 24, 2008. For a more pessimistic view of Hong Kong's autonomy and its meaningfulness to the Tibet question, see Suzanne Pepper, "A Hong Kong-style solution for Tibet?," *Hong Kong Journal*, July 2008.
4. Paragraph 39.
5. Author interview, July 3, 2008.

6. For one of the best accounts of what actually happened on the ground in Tibet in mid-March, see Robert Barnett, "Thunder from Tibet," *New York Review of Books*, May 29, 2008. For a very insightful recent review of what has happened in the aftermath of the riots, see "Tibet: the illusion of calm," *The Economist*, July 12-18, 2008.
7. Simon Montlake, "Cheers outweigh protest at Hong Kong's Olympic torch relay," *Christian Science Monitor*, May 2, 2008.
8. The Hong Kong leg of the Olympic torch relay went off relatively smoothly, although the event was marred by police removal of pro-Tibet protestors from the scene of the relay. The police claimed that the protestors – who were surrounded by a much larger number of pro-Beijing demonstrators – were removed solely for their own safety, but the protestors themselves questioned that rationale. See "Rising Nationalism: A potential threat to Hong Kong's freedom of expression," Hong Kong Journalists Association Annual Report, July 2008, p. 7.
9. *Apple Daily* owner Jimmy Lai has estimated that his paper loses HK\$200 million per year in advertising revenues over its critical stance toward Beijing. "Our reporters are not allowed to work in the mainland, we suffer a \$200HK revenue loss a year in advertising because businesses do not want to be seen affiliating with us," Lai said. "But we are never threatened or pressured. The media who have succumbed to self-censorship do it to themselves." "Focus: H. K. press freedom under siege since handover," *Kyodo News*, July 16, 2007.
10. Author interview, July 16, 2008.
11. Wall Street Journal Online, "Second Thoughts," April 29, 2008.
12. Author interview, July 3, 2008.
13. Carol P. Lai, *Media in Hong Kong: Press freedom and political change, 1967-2005*, Routledge, 2007, p. 119. According to Lai:
As 1997 drew closer, China aimed strong rhetoric at certain Hong Kong media organizations and their journalists who continued to be outspoken about China.... The flak directed at the Hong Kong media created psychological pressure on journalists and management alike. This psychological pressure caused writers to limit the legitimate scope of their reporting voluntarily and to set political boundaries.
14. Lee, Lap Fung, et al., "Press Freedom and Politics of Objective Journalism in Post-Handover Hong Kong," paper presented at the annual meeting of the International Communication Association, May 27, 2004.
15. Carol P. Lai, *Media in Hong Kong*, p. 83.
16. Francis Moriarty, "Press Freedom in Hong Kong: the trend is down," *Hong Kong Journal*, Summer 2007. Available online at: [/PDF/2007_summer/moriarty.pdf](#).
17. Joyce Hor-Chung Lau, "The Narrowing Gap: How Hong Kong Media is inching towards the China model," p. 35.
18. Lai, *Media in Hong Kong*, p. 144. See also Joyce Hor-Chung Lau, "The Narrowing Gap: How Hong Kong Media is inching towards the China model," p. 35. Some have cautioned against overstating the case on self-censorship in the Hong Kong media, pointing out that, on many subjects, including ones could be considered sensitive, Hong Kong's electronic and print media has done an admirable job. Lai, p. 144.
19. For more on the government's patriotism campaign, see Human Rights Watch, "A Question of Patriotism: Human Rights and Democratization in Hong Kong," Human Rights Watch briefing paper, September 9, 2004.
20. "Self-Censorship Exposed," *Asian Wall Street Journal*, 24 October 2002.
21. Author interview, July 16, 2008.
22. Author interview, August 4, 2008. More than a few observers have linked the decline in free expression in part to the perceived interests of the owners of Hong Kong's various media outlets. According to longtime Hong Kong-based journalist Willy Lam, the impact is clear:
While the media owners are in some instances Western-educated Hong Kong businessmen, they are anxious to curry favor with Beijing so as to expand their business interests, which range from trading to real estate, in the mainland's market of 1.3 billion people.
Willy Lam, review of *Media in Hong Kong: Press Freedom and Political Change, 1967-2005*, *Far Eastern Economic Review*, March 2008, pp. 68-70.

23. American Convention on Human Rights, Article 13.3.

24. In terms of public advertising dollars, there is at least one Asian precedent on this point: in 1981, the Indian High Court ruled that the government could not use public advertising dollars to reward or punish media outlets. In the case, *Ushodaya Publications Pvt Ltd v. Government of Andhra Pradesh*, AIR (1981) AP 109, the Court also held that the government could only use advertising funds to educate and inform the public about its activities. For more on the *Ushodaya* case, Open Society Justice Initiative, *The Growing Threat of Soft Censorship: a paper on indirect restrictions of freedom of expression worldwide*, December 12, 2005, p. 6. Disclosure: the author works for the Open Society Institute, but was not involved in the production of the “Growing Threat” report, which was published before he joined the organization. For a comprehensive account of soft censorship as practiced in Latin America, see Open Society Justice Initiative, *The Price of Silence: the growing threat of soft censorship in Latin America*, forthcoming.

25. In the absence of well-developed legal norms to address the problem, some have called for the development of “creative remedies”:

Non-traditional abuses require non-traditional remedies. Both international law and most domestic legal systems are less than well-equipped to deal with the various aspects of indirect censorship. For example, while most countries sanction abuse of power generally, these prohibitions do not necessarily cover the various forms of financial or indirect interference with free expression. Similarly, new legal principles and strategies may need to be developed to address the evidentiary and other problems associated with proving that government officials acted with censorial intent.

Open Society Justice Initiative, *The Growing Threat of Soft Censorship: a paper on indirect restrictions of freedom of expression worldwide*, December 12, 2005, pp. 7-8.

26. HKJA annual report.

27. Thomas E. Kellogg, “‘Excessive Deference’ or Strategic Retreat? Basic Law Article 158 and Constitutional Development in Hong Kong,” *Hong Kong Journal*, Spring 2008. Available online at: /archive/2008_spring/5.htm.

28. Chris Yeung, “A gentle reminder on separation of powers,” *South China Morning Post*, July 21, 2008. See also Frank Ching, “Remember: it’s one country, two systems,” *South China Morning Post*, July 22, 2008. On Xi’s place in the political hierarchy, see “Chinese party unveils new leaders,” BBC News, October 22, 2007.

29. Richard Perez-Pena, “Wall St. Journal Editor Expected to Resign,” *New York Times*, April 22, 2008.

30. Author interview, July 16, 2008.

31. Author interview, August 4, 2008.

32. Author interview, July 3, 2008.