

...In the months before the beginning of Tung's second term, several serving and former officials in Beijing gave Hong Kong gentle reminders that it had some unfinished business, namely the implementation of Article 23 of the Basic Law, which stated

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

In an earlier draft of the Basic Law, the article referred only to treason, secession, sedition and theft of state secrets, but the Chinese authorities had broadened it after the Tiananmen massacre in 1989, in direct response to Hong Kong's support of the student movement. Predictably, it had long sent a shudder down the spines of human rights lawyers, the Bar, free speech advocates, churches and others, and Tung had held off taking any action after taking office because of the sensitivity of the topic and the international attention it would attract. Now, he had to get on with it.

In theory, it didn't need to cause a great fuss. A self-confident leadership would have taken a relaxed, open approach, inviting the more qualified and sober potential critics in the pro-democracy ranks to share views with the law drafters and maybe even giving them some ownership of the bill, taking away its sinister mystique and sensitivity. But after five years of economic trauma and blundering, the government was in siege mode: public opinion was the enemy, and opponents had to be overcome head-on. The government unveiled a consultation document in late September, but there would be no white (draft) bill for anyone to see during the three-month period. This meant the bill would go straight into Legco, where the inbuilt government majority could prevent amendment and ram it through. Still, the consultation material gave the impression of a law designed to appease Beijing rather than persecute the Hong Kong people. Treason and secession would involve making war or helping others do so; sedition would involve inciting others to commit the first two acts; subversion meant undermining or overthrowing the central government by force or other already-illegal means. In the cases of treason and sedition, the offences would be more tightly defined than under existing law. Theft of state secrets would be broadly in line with existing official secrets law (though the draft bill's wording was to be a bit loose). The ban on overseas political groups would largely be in line with existing laws on registering societies and would apply only to groups engaged in treason, secession and so on (though again some of the eventual wording was a bit hazy). It was possible to take a sanguine view. At no time since the handover had the Hong Kong government abused any of its existing, colonial-era powers to silence critics, suppress the media or infringe rights of assembly, so why would it do so under the new law, which was in some ways less draconian than existing legislation and mainly focused on criminal behaviour under theoretical, not to say extreme, circumstances like war? Perhaps Tung's people were slightly lacklustre, but did the proposed law really give anyone with a modicum of confidence in their decency and integrity anything to worry about?

The human rights lobby was far more sceptical. First, the mainland laws on these subjects also sounded reasonable, but in practice they could be used to persecute anyone. At any given time, mainland journalists were in prison for espionage, when all they had done was research economic or public health data. How could Hong Kong people be sure that pressure from Beijing wouldn't result in similar abuses in Hong Kong? Second, not many people did have a modicum of confidence in the administration...