

THE PUBLIC SECTOR IN HONG KONG

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HKU
PRESS
香港大學出版社

Hong Kong University Press
The University of Hong Kong
Pokfulam Road
Hong Kong
www.hkupress.org

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ISBN 978-962-209-172-6

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British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

10 9 8 7 6 5 4 3 2

Printed and bound by CTPS Digiprints Ltd., Hong Kong, China

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1

The Public Sector: An Overview

The public sector may be defined as those government agencies and related organisations that are funded by revenue raised from taxes, fees and charges or from the sale of state-owned assets.¹ The agencies include bureaus, departments, the judiciary, funded statutory bodies, publicly-owned corporations, and fully or partly-subsidised organisations such as social welfare agencies, schools and universities. They do not include private companies or voluntary associations. In Hong Kong, the government agencies (the civil service) consist of the offices of the Chief Executive, Financial Secretary and Secretary for Justice, twelve policy bureaus and almost 60 departments.² In September, 2008, they employed 153,477 people, approximately 4% of the labour force.³ A further 1200 people worked for the Independent Commission Against Corruption (ICAC).⁴ The 70 “related organisations”, which range from small tribunals, to statutory bodies such as the Hospital Authority, to very large public corporations such as the Airport Authority, employ at least as many people as the civil service.⁵ There were, in addition, eleven tertiary institutions which are partly funded by the taxpayer.

Government and the Public Sector

The Issue of Autonomy

In recent decades, the relationship between the government and the public sector has become much more complex. Two factors, in particular, have contributed to this complexity. The first is that many governments have given public sector organisations outside the civil service a greater degree of autonomy. The second is that the delivery of public goods and services has become, to a greater extent, a partnership between government, the private sector and voluntary social organisations.

Under the influence of New Public Management doctrines, private sector practices have been widely adopted in government which itself has been increasingly divided into “core government” — comprising important centralised functions such as finance, security and overall policy-making responsibility — and decentralised government agencies or other public sector organisations which are often concerned with the delivery of social policies such as education and healthcare. Underlying decentralisation is the

notion that, if public sector organisations are given greater autonomy from central control, they may be able to cut through red tape, deliver services in a more efficient and cost-effective manner and better meet the needs of the public they serve.

Figure 1.1 shows a possible relationship between core government and the public sector, assuming that power has been divested, in varying degrees, to decentralised public sector organisations. The degree of autonomy of those bodies from core government will depend on their functions, the extent of public funding, public perceptions of their need for independence, and on the political circumstances which led to their creation. In many cases, autonomy is limited to the performance of very specific functions. For example, regulatory agencies, fully funded by government, may be set up to control, say, the stock market or to protect consumers from inferior or dangerous products. These agencies have autonomy in that they can administer existing legislation independently but they do not make the ultimate decisions on what that legislation should be. Similarly, central banks may be given autonomy to determine interest rates but they may need to work closely with government and legislatures to co-ordinate economic policy. Whether the taxpayer funds a service is an important determinant of the organisation's autonomy. The greater the level of funding, the more likely it is that government will seek to control it. With some agencies, however, such as the Audit Office or the Ombudsman, governments do set up fully funded, independent public bodies. In these cases, the function of the organisation, to act as a check on government, overrides the fact that it is entirely paid for by the taxpayer. Many governments also own public corporations which generate their own revenue and which are intended to make profits. Public corporations usually have greater autonomy than other public sector organisations although there are often provisions for ultimate central government control.

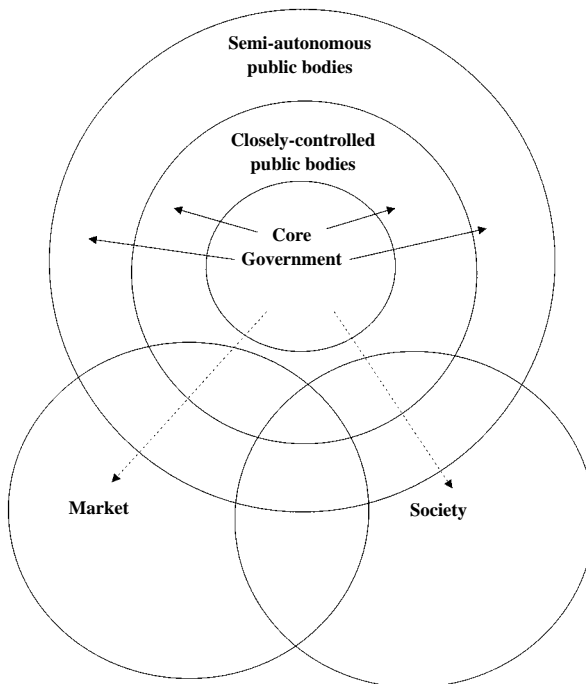


Figure 1.1 The Public Sector

The Hong Kong government's relationship with the rest of the public sector should be seen in the context of why power has been devolved to the public sector outside the civil service in the first place. In Hong Kong, unlike many developed countries, the reason for devolution of responsibilities often has little to do with the prescriptions of New Public Management.⁶ It is not always about creating greater efficiency — senior civil servants are sometimes scathing about the way in which statutory bodies perform — but rather about political convenience or commercial practices. Where public sector organisations have been set up, the Hong Kong government has usually sought to retain a final say through membership on the board and in such matters as the appointment of the Chief Executives of statutory bodies. The government is particularly concerned with whether statutory bodies and public corporations are acting consistently with its overall policy; it has argued, for example, that it has the right to intervene in tertiary institutions to ensure that government policy is implemented.⁷ And, although the public transport corporations, the Mass Transit Railway Corporation (MTRC) and the Kowloon-Canton Railway Corporation (KCRC) operated on commercial principles, the government had no compunction in initiating a merger of the two organisations.⁸ Where the government has been scrupulous in respecting the autonomy of public sector organisations is where they act a check on government itself. The Independent Commission Against Corruption (ICAC), the Direct of Audit, the Ombudsman and the Privacy Commissioner have all been able to fulfil their functions without overt interference from the government.

The Functions of the Public Sector

The principal function of the public sector is to provide goods and services for the community. These goods and services⁹ could potentially cover the whole range of human needs and desires, from education, to child care, to medical services, to clean air, to a safe environment. But there are always questions about how these demands should be met. Should the public sector provide most of the desired goods and services? What role should the market and the private sector play? Should voluntary organisations be involved in the provision of more services? Figure 1.2 illustrates a possible relationship between government, market and the society.

Public goods and services provided by the government alone fall within the unshaded area marked “government” while the shaded areas represent partnerships between the government and market and government and voluntary organisations to deliver services jointly. Figure 1.2 could be re-drawn to show a much smaller government and a much larger market and/or society. Services could be divested from government to the private sector or to voluntary organisations and government could be reduced to core functions. Alternatively, Figure 1.2 could be re-drawn to show a dominant government which provided most goods and services with a much smaller role for the market and for autonomous societal organisations.

In Hong Kong, the philosophy of the government has always been, in the words of the Chief Executive, Donald Tsang, “Big Market, Small Government.”¹⁰ In line with this principle, it might be expected that most goods and services would be provided by

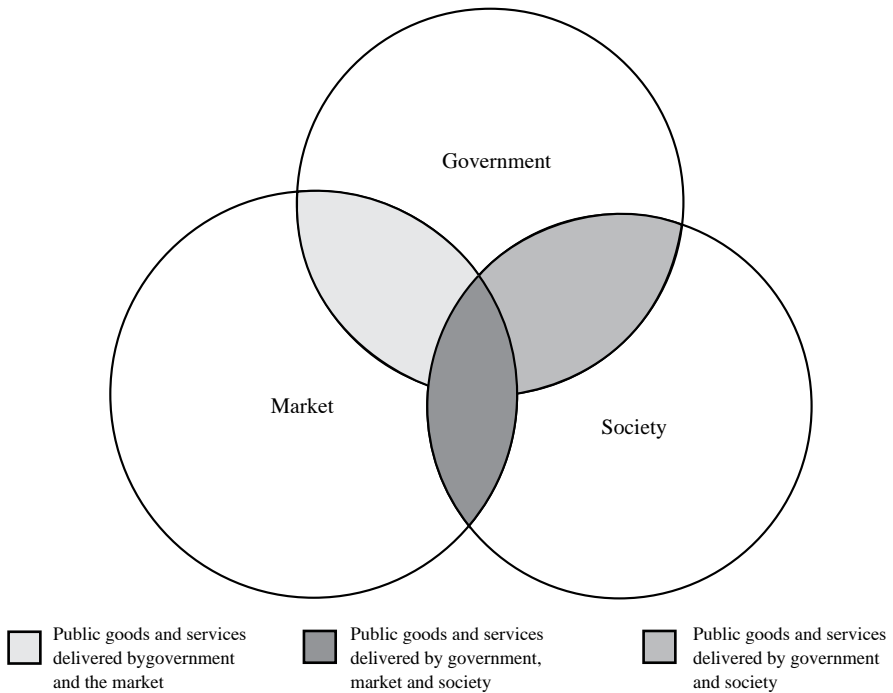


Figure 1.2 Government, Market and Society

the private sector or by voluntary associations. It is true that, in comparison with other developed countries, public expenditure as a percentage of Gross Domestic Product (GDP) is comparatively low; in 2008, it was about 19%¹¹ whereas public expenditure in most other developed countries is two to three times higher.¹² That would seem to imply that government in Hong Kong is a residual force, that it does not intervene directly in either the market or society. As a recent Financial Secretary put it, reflecting the views of his predecessors over the previous fifty years, “market leads, government facilitates.”¹³ While there is some truth in this picture, it does not entirely convey the full role played by the government and the public sector and the scale of the services that they deliver to the public. Although public expenditure as a percentage of GDP is low, it should be remembered that Hong Kong does not have an army or a significant agricultural sector and that, because it is a small place, there are probably economies of scale. Certainly, “small government” does not mean limited government. In fact, the government is omni-present in Hong Kong. It intervenes in the economy in many different ways, not simply to facilitate but also to regulate. It plays a critical role in the delivery of services through the public sector and through social welfare agencies. And it delivers frequent sermons, in the form of announcements of public interest, on how its citizens ought to behave.

How, then, should we characterise the role of the government in relation to the private sector and to society? It has been suggested that we might see the Hong Kong government as a developmental or capitalist government rather than as one which is essentially a behind-the-scenes facilitator.¹⁴ In this sense, the government acts to preserve the longer term interests of capitalism but does not necessarily act in the short-term interests of capitalists.¹⁵ It may see the need, for example, to regulate the labour market to some degree rather than to permit firms to pay low wages in unsafe working conditions. It may provide social services to satisfy citizens' needs even if this does mean that the funding comes in part from company taxation. Government in Hong Kong seeks to play a proactive role in the economy. Very often, occasionally in contradiction of its own professed principles and sometimes against the wishes of the business community, it leads rather than facilitates. It does not always succeed in realising its agenda, however. In recent years, particularly following a massive demonstration against the government on 1 July 2003, its ability to introduce new policies has been considerably circumscribed. It has faced effective opposition on the streets, in the courts, and in the media from civil society organisations which do not believe that their interests are being fully recognised in the present political system.

In the following pages, we consider in greater detail the ways in which internal and external relationships and the political and economic environment have affected the performance of the Hong Kong public sector. The purpose of the book is two-fold:

- to describe and analyse the way in which the public sector works and to examine its relationships with the market and with society; and
- to assess the performance of the public sector measured against its claims to be accountable, its capacity to formulate and implement policy, and its ability to deliver goods and services efficiently and in a manner which is responsive to expressed needs.

Initially, we examine the factors and defining events which have shaped the public sector over time and which have contributed to its particular characteristics.

The Colonial Inheritance

Over the period 1841 to 1997, when Hong Kong was a British colony, the government acquired organisational and policy-making characteristics and relationships with the public that were designed to maintain political stability and to perpetuate colonial rule. In 1984, the Sino-British agreement sought to preserve many of these features in the post-handover political system and they were incorporated in the Basic Law which became the constitution of the Hong Kong Special Administrative Region of the People's Republic of China in 1997.¹⁶ The present structure of the government and the public sector consequently owes much to its colonial origins. Although the political and economic environment has changed considerably since 1997, the machinery of government retains the form and functions that were characteristic of colonial administration. In addition, the public sector organisations outside the civil service, many of which were created in the last two decades before the handover, have remained in place.

Organisational Characteristics

The principal organisational characteristics of colonial administration which were inherited in 1997 were: centralised government; strong, hierarchically-organised, departments; “small” government and fiscal frugality; recruitment by merit; political neutrality; commitment to the rule of law; and “clean” government.

Centralised government was a feature of colonial administration from the outset. It was centralised initially to maintain political control, because resources were limited, and because, since it was a small territory, there was no immediate need for decentralisation. There were partial exceptions to the rule with the acquisition of the New Territories in 1899 and with *de facto* devolution of responsibility to the District Commissioner for the New Territories and his staff and to the Urban and Regional Councils.¹⁷ But these bodies had only limited autonomy; their funding came directly from the government and their policies were ultimately subject to its approval. Partly because government was so centralised, the emergence of a public sector beyond the civil service was a relatively late development. Even with the eventual establishment of many statutory bodies outside the civil service — the Housing Authority, the Hospital Authority and the Airport Authority, for example — the government reserved the right to intervene in their operation and often sought to influence their policies and practices.

Consistent with centralised government, the departments, which were responsible for policy implementation, were organised on strongly hierarchical lines. The Police Force was established as a para-military body and retained that character until the final years of colonial rule. Other disciplined services — Correctional Services, Customs, Fire Services, and Immigration — were set up in similar fashion. Within the non-disciplined departments, there was also considerable emphasis on hierarchy. The consequence was that departments tended to develop autonomously from each other and to focus on top-down implementation rather than lateral co-ordination. While a strongly hierarchical system was appropriate for maintaining political control, it was not entirely suitable when the government, on the directions of an active Governor, Sir Murray MacLehose (1971–1981), expanded education, housing, health and social welfare provision. In 1973, the McKinsey consultants made recommendations for change which have been the basis for the organisation of government since that time.¹⁸ The Secretariat was re-organised into specific policy branches (later bureaus) with responsibility for a cluster of related departments.¹⁹ The branches were headed by a senior civil servant, usually a member of the elite administrative grade, which formulated policy that the departments were then expected to implement.

Colonial government was expected to be small and to provide only minimal services. Government’s role was to maintain law and order and support the growth of a capitalist economy. There was pressure from both the British government and from local businessmen to ensure that there were no budget deficits and that all public expenditure, and especially recruitment to new positions, was carefully scrutinised. Taxes were to be kept low. These policies ensured that, rather than simply balancing the budget, the government in fact began to accumulate large surpluses. Although “small government”

remained an important formal objective, political and economic factors meant that government eventually became a very large, complex and differentiated organisation with a major impact on the market and on society. As the economy prospered, government revenue from company tax and from the sale of land grew substantially. Political factors, especially after the 1966–1967 riots and disturbances and during the transition to Chinese rule, meant that expanded social services were necessary and were increasingly delivered by the government or by organisations funded by it. By 1997, the strength of the civil service establishment was 184,000.²⁰ A further 180,000 were estimated to work in other public sector organisations.²¹ Overall, the public sector employed approximately one in nine of the labour force.

Until the Second World War, British expatriates occupied all the senior positions in the colonial administration. The government thereafter adopted a policy of localization whereby non-local officers would only be employed when there was no qualified local candidate to fill the position. Localisation was nonetheless very slow. Even in the 1980s, most of the directorate level positions and senior positions in the police force were still held by expatriates. With the impending transfer of sovereignty, however, there was a rapid acceleration of localisation so that, by 1997, there were only about 1200 expatriates remaining in the civil service. Appointments and promotions in the civil service are monitored by a Public Service Commission, established in 1950, which continued to function after the handover.²²

The concept of political neutrality was inherited from Britain where it meant that senior civil servants would give advice to ministers without fear or favour and would implement impartially any course of action which the minister decided to take. In the fused system of Hong Kong, those holding the most senior positions were in effect both ministers, taking the final political decision, and civil servants, advising themselves on the most appropriate measures. The concept was adapted, accordingly, to mean that civil servants would take decisions in the public interest and that, in some sense, they were accountable to the public to act impartially in taking those decisions.²³ Political neutrality survived the handover, but it came under pressure from those who believed that civil servants' loyalty to political office-holders should override any notion of accountability to a wider public.

The colonial government placed great emphasis on the rule of law although in practice the tightly-knit relationship between the executive, the Legislative Council, the civil service and the judicial system meant that the courts were not always as independent as the government claimed. After the Tiananmen Square massacre in June 1989, the maintenance of the rule of law became something of a mantra for those who feared that the Chinese government would violate their civil liberties after 1997.²⁴ The government responded by passing a Bill of Rights in 1991 and by setting up statutory bodies that protected individual rights. These included the Equal Opportunities Commission, the Privacy Commissioner, and an ombudsman with strengthened powers, all of which continued to function after the transfer of sovereignty.

Corruption was a perennial problem in the colonial administration. By the 1960s, it was particularly prevalent in the police force where syndicates operated to extract bribes

from drug traffickers, prostitutes, night club owners, taxi drivers and small businesses. In 1970, the government passed a more stringent corruption law, the *Prevention of Bribery Ordinance*, but there was concern about how effectively it would be enforced since it was still administered by the police.²⁵ After a senior expatriate police officer, Peter Godber, who had been charged with corruption offences, managed to escape from Hong Kong, the government appointed a judge to investigate the circumstances of the escape and the effectiveness of the ordinance.²⁶ Godber was extradited, tried and convicted. The Governor decided to remove the administration of the ordinance from the police and set up the Independent Commission Against Corruption (ICAC) which began work in 1974. The Commission eventually proved to be extremely effective in reducing corruption in the public service to minimal levels and it has remained an important feature of the post-handover system.

Colonial Policy Formulation and Implementation

The significant features of the colonial system of policy formulation and implementation were: minimal basic functions provided by the government; social policy provision by non-government organisations; policy formulation within very restricted circles; and top-down policy implementation with a focus on outcome rather than process.

In the late 1970s, the economist Milton Friedman said that he thought the Hong Kong government most closely resembled Adam Smith's prescription for the functions of government in a capitalist system: that it should only be concerned with law and order, the administration of justice and some public works.²⁷ Friedman added a fourth responsibility: that of protecting those who could not protect themselves.²⁸ The description does not entirely fit Hong Kong since the government, by that stage, was providing some 40% of the population with public housing²⁹ and had also considerably expanded its education, health and social welfare programmes and built three new towns in the New Territories. But it does convey something of the ethos of the Hong Kong government. The belief from the beginning of colonial times, which was supported by the British government and businessmen, was that it was better that the Hong Kong government should stick to the minimal functions that it did best and not become involved in social policy provision which required both a different organisational structure and more direct contact with the people.

The traditional government view was that social services should be provided by voluntary organisations. It was prepared to give subsidies of various kinds, land as well as grants, to churches and charitable organisations which provided the bulk of education and health services.³⁰ The structure of the government was not suited to social policy delivery and, when it became directly involved in provision, reforms were necessary to speed up decision-making and recruitment and to introduce more planning.³¹ While the changes did improve performance, they did not resolve the problem of lateral co-ordination between strong government departments or provide solutions to long-standing policy dilemmas. Housing and education were constant sources of concern. Healthcare financing began to become problematic in the 1980s. And social welfare policy was

politically contentious, caught between the belief, entrenched in policy, that the able-bodied should work and the views of social workers and unions that the government had the means to fund more comprehensive social security benefits.

The colonial government's policy-making was conducted in-house in the Government Secretariat. Occasionally, powerful Governors would take action after consulting only a few senior civil servants. More often, policies would be devised after what amounted to an extended conversation, conducted by memorandum, between the most senior civil servants in the Secretariat. Some consultation would then take place with committees of prominent figures, usually themselves appointed by the administration. Green papers, usually with a clear indication of the government's preferred position, were sometimes then distributed to the public for comment. Subsequently, a white paper containing the definitive policy would be issued, the policy would be approved by the Executive Council, and, if necessary, legislation would be passed by the Legislative Council.

The government saw policy implementation as a matter of targets which had to be met on time and within budget. It was not particularly concerned with the process of how these targets were achieved. Those opposed to its proposals were regarded as obstacles to implementation. The government was sensitive to matters that might involve traditional Chinese customs and practices but it was also prepared to act quite forcefully when objectives had been set and there were deadlines to be met. In constructing public housing and building the new towns in the New Territories, for example, squatters were moved off the land, sometimes physically, to make way for the new estates. When the estates in the new towns had been completed, it was discovered that insufficient attention had been paid to the provision of social services and that, in their absence, people were reluctant to move from other urban areas.³² This reflects the traditional colonial attitude towards policy implementation. The focus was on the efficient and cost-effective achievement of the objective. There was little consultation with those whom the policy was designed to benefit; they were expected to be grateful recipients of whatever was provided.

The Colonial Government and the Legitimation of Power

A major feature of the colonial government's relationship with the people was a continuing legitimacy deficit and attempts to reduce it, *inter alia*, by claims that rule was based on a "tripod of consents"; by arguing that the government had performed well; by civil service reform; and by asserting that the government was accountable.

The government suffered from a legitimacy deficit throughout the period, principally because, as a colonial regime, it had difficulty in generating consent for its rule. In common with British colonies elsewhere, the Hong Kong government would have preferred to rule with the support of traditional elites. On Hong Kong island, however, there were hardly any people, let alone traditional leaders, when the occupation took place. The first Chinese member was nominated to the Legislative Council in 1880.³³ Thereafter, the government, through the boards of the District Watch Committee and the Tung Wah and Po Leung Kuk charitable organisations, gradually began to incorporate

Chinese elites into its decision-making processes. The implicit bargain was that in exchange for direct access to government the elites would maintain social order.³⁴ There was little interaction between the government and the majority of the Chinese population. The system worked well enough until after the Second World War when the population quadrupled within six years and new social problems meant that the District Watch Committee was no longer as influential as it had been. There were riots in 1956, which left 59 people dead, and again in 1966–1967.³⁵ In 1966, the government appointed a Commission to investigate the riots which found that there was a “gap” between the government and the public, resentment towards the police, and the need for labour reform and improvement in social services.³⁶

Much of the next decade was devoted to bridging the gap, to reducing the legitimacy deficit, and to generating more support for the system without introducing elections. A variety of methods were employed. The government’s rationale for exercising authority was that it was based on a “tripod of consents”, — the consent of the local people and of Britain and China.³⁷ This was a convenient myth since the consent of the people could not be expressed through elections or any institutional mechanisms, the consent of Britain was purely that of a colonising power, and the Chinese government had already said that it would take Hong Kong back when the time was appropriate.

A more powerful argument was that the government deserved to rule because it had performed well. It claimed credit for Hong Kong’s economic prosperity which saw GDP growth rates, for example, running at 12% per annum between 1976 and 1981.³⁸ It also argued, implicitly, that it deserved to govern because it was able to assess what people wanted and to deliver appropriate goods and services efficiently and cost-effectively. Education, health and housing services had been in short supply. Their rapid expansion in the 1970s satisfied considerable demand and gave some credence to the argument that good performance generated support for the system. But once those basic needs had been met, it became more difficult to use the same means to reduce the legitimacy deficit.

In the 1990s, the government was faced with the problem that it could not change the political system to increase the legitimacy of the government. The last Governor, Chris Patten, did expand the franchise for the 1995 election but the political system had been set in stone by the Sino-British agreement and by the Basic Law and could not be changed to accommodate growing democratic sentiment. What the government did instead was to provide the civil service with a more human face. Performance pledges stressed service to the customer, offices were painted, and the police force was reformed.³⁹ The civil service benefited from changed public perceptions. It was seen to be less distant than in the past, to be more efficient, and to be staffed by competent, well-educated officers.

In the final years of colonial rule, the government made yet another attempt to present itself as an accountable government. In 1995, it published a booklet entitled “*Serving the Community*” in which it argued that accountability was “the fundamental principle which drives the public sector.”⁴⁰ Civil servants were seen to be accountable in three respects. They were answerable to the Legislative Council, the Director of

Audit, the Commissioner Against Corruption and the Commissioner for Administrative Complaints (later called the Ombudsman); they were required to keep the community informed of government's decisions and actions; and they were expected to provide, "within reason", access to information about these decisions and actions.⁴¹ This definition of accountable government is perhaps most remarkable for what it excludes rather than what it includes. The Legislative Council had no powers to dismiss the government if it proved to be incompetent and the community was expected to serve only as the passive recipient of information which the government deemed fit to give it. At the time of the transfer of sovereignty in 1997, the government continued to subscribe to the version of accountability presented in the "Serving the Community" document; the legitimacy deficit remained a problem.

The Government and the Public Sector after 1997

The structure and functions of the government and public sector remained largely unchanged after the handover. The most senior civil servants retained their positions as Policy Secretaries (later called Directors of Bureaus) and the civil service was promised conditions of service no less favourable than before 1997.⁴² Statutory bodies, for the most part, continued to operate as they had done before 1997. There were, however, significant differences in the interaction between the major executive, legislative and bureaucratic institutions. Prior to 1997, the government had been unified and had worked closely with other major institutions; after the handover, it became much more disarticulated with the major institutions acting independently and often in an unco-ordinated manner.⁴³

Even more important were the changes in the economic and political environment. On 2 July 1997, the day after the new Chief Executive, Tung Chee-hwa, assumed office, the Thai government decided to float the baht, an event which in Tung's opinion and that of many economists triggered the Asian financial crisis.⁴⁴ As the economy began to slow, property prices plummeted and negative equity and unemployment began to rise. Following the Asian financial crisis, another economic recession further damaged the economy. By 2003, when an outbreak of atypical pneumonia, Severe Acute Respiratory Syndrome (SARS), killed nearly 300 people and seriously affected many businesses, the economy was reeling. Unemployment had reached a record 8.7%, some property prices had dropped by as much as 70%, and bankruptcies had increased from 600 cases in 1997 to 24,922 cases in 2003.⁴⁵ The huge surpluses of colonial days were gone and the budgetary deficit was seemingly spiralling out of control. The government blamed external factors for the territory's problems. But many of its critics maintained that a major reason was poor management. The government's credibility in managing economic affairs had been significantly undermined.⁴⁶

The political environment was equally volatile. The Chinese government dissolved the Legislative Council immediately after the transfer of power and re-constituted it without the democratic parties. When new elections under a more restricted franchise were held in 1998, there was a substantial increase in turnout and democratic candidates were returned to the Council. In 2003, the government, probably at the behest of the

Chinese government, decided to introduce legislation to enact Article 23 of the Basic Law which required that the Special Administrative Region should prohibit “any act of treason, secession, sedition, subversion against the Central People’s Government...”⁴⁷ The proposed legislation sparked concerns about civil liberties, in an atmosphere in which there was already considerable disaffection with Tung’s administration, and eventually resulted in a demonstration against the government of an estimated 500,000 people on 1 July 2003.⁴⁸ The national security legislation was withdrawn and Tung eventually resigned in March 2005. However, this did little to improve either the government’s capacity to introduce new policies, which was severely constrained after the demonstration, or to resolve the impasse over constitutional reform.

The effects of these changes on the organisation of the government and the public sector, on policy formulation and implementation, and on the legitimisation of power are summarized below.

Organisational Characteristics

The major organisational characteristics of government and the public sector after 1997 were: continued centralisation of government and firm control of the remainder of the public sector; the disarticulation of the major institutions; some largely unsuccessful efforts at civil service reform; attempts to assert greater political control over the civil service with the introduction of the Principal Officials Accountability System; and various measures aimed at implementing a “big market, small government” policy.

The government remained highly centralised after 1997 and took steps to increase its authority by abolishing the Urban and Regional Councils, which had an elected membership, and by bringing the departments which had served those councils, the Urban Services Department and the Regional Services Department, back into the mainstream of government. Its rationale was that Hong Kong had no need for this middle tier of government between the government and the District Councils although the decision may also have been sparked by the failure of the Urban and Regional Services departments to slaughter 1.2 million chickens effectively after an outbreak of avian influenza.⁴⁹ The government showed, too, that it did not regard the remainder of the public sector outside the civil service as autonomous, intervening in their affairs and seeking to bring them into line if there were any inconsistencies with government policy.

The Basic Law provided for a government that was more articulated and less fused than it had been under colonialism. The political office-holders, the Chief Executive and the Principal Officials, were clearly intended to be separated from other senior civil servants who were not appointed by the Central Government but who might be designated by them “to speak on behalf of the government” to the elected members of the Legislative Council.⁵⁰ Soon after the handover, there was an evident political divide between senior civil servants and the Chief Executive and some of his advisers on the Executive Council and in the Electoral College. Some of Tung’s advisers and some Chinese government officials believed that the civil service, having served a British administration, was not entirely to be trusted.⁵¹ The Executive Council, which had

previously usually approved the measures proposed by senior civil servants without much dissent, now became a potentially hostile forum, sometimes pushing its own uncosted political proposals. The close-knit collaboration between Governor, Executive Council, and the senior civil service that had characterised colonial rule began to dissipate. There were also problems in the relationship between senior civil servants and the Legislative Council with members of all parties in the Legislative Council becoming concerned that the government was using them as a rubber stamp, failing to brief them properly, and expecting legislation to be passed quickly without appropriate review. There were also the problems between the government and the courts over who should have right of abode in Hong Kong and over the interpretation of the Basic Law. The result was a system that was disarticulated and which lacked unity and co-ordination in its decision-making.⁵²

In 1999, the Chief Executive launched a reform programme which was intended to improve efficiency in the civil service and to change some of the fundamental assumptions on which it was based.⁵³ There had been some evidence of inefficiencies, including the botched slaughtering of the chickens, a public housing corruption scandal and the chaotic opening of the new airport, for which the civil service bore some responsibility.⁵⁴ But there was also the notion that it should become more like the private sector with more civil servants on contracts, performance pay, and enhanced performance management systems. If the reforms had been implemented in their entirety, it would have fundamentally undermined the principle that the civil service should be based on a permanent establishment with fixed salary scales. But the government was only partially able to implement its proposals. Changes to the recruitment and appointment system were introduced, making it more difficult for new recruits to obtain a permanent position. However, resistance from the civil service associations and the difficulty of implementing proposals, such as performance pay, meant that many proposals were either unsuccessfully introduced or were not introduced at all.

The reform proposals may have had the underlying objective of increasing political control over the civil service. A more fragmented civil service on contract terms might, as has occurred in other countries, lead to greater direct influence on the way that the civil service operated. Perhaps with this in mind, Tung Chee-hwa devised and introduced the Principal Officials Accountability System in 2002. Up to that point, Principal Officials, with one exception, had all been senior civil servants. They could be moved from one position to another in the civil service or as Principal Officials but they could not be dismissed. Under the new system, some Principal Officials (the three policy secretaries and the heads of the policy bureaus) were to become political appointees on contract and could be dismissed by the Chief Executive. They were, in that sense, more accountable to the Chief Executive. But their accountability to the Legislative Council remained as weak as it had been before the change.

Where the government did succeed was in downsizing the civil service. The difficult economic circumstances of the first six years after the handover led to considerable pressure from business groups and from the Legislative Council to reduce the size of the civil service and to cut salaries. The government responded by enacting a freeze on

recruitment and, in 2002, began a process which eventually resulted in reductions in salaries and conditions of service for all civil servants to June 1997 dollar levels. At the same time, it reduced the size of the civil service, transferring some to other parts of the public sector, but cutting back particularly on artisans and labourers who had formed such a large part of the colonial civil service but whose work was now outsourced to the private sector. In 1997, 12% of the civil service (22,883 people) was on Model Scale 1, the salary scale for artisans and labourers; by 2008, this had been reduced to 6.8% (10,506 people) although some of the shortfall was made up by employing non-civil service staff on contract.⁵⁵ There were other significant drops in some departments, notably in housing, where estate management had been contracted out. An enhanced productivity scheme and voluntary retirement schemes also contributed to the drop in numbers. Overall, the strength of the civil service declined from 184,639 in 1997 to 153,477 in 2008.⁵⁶

Policy Formulation and Implementation after 1997

The main features of policy formulation and implementation after 1997 were: policy-making was constrained by economic circumstances; policy co-ordination was adversely affected by the introduction of the Principal Officials Accountability System; the consultative system broke down and the growth of civil society organisations made policy implementation more difficult; and some critical policy problems remained unresolved because of the political climate.

The first budget of the Special Administrative Region was expansionary and sought to address the backlog of problems that had built up in the last years of colonial rule. Thereafter, the budgetary deficit and the need for cost-cutting meant that the government could not afford to take many new initiatives. When the economy improved after 2004, the problem was not that the government could not afford to take new initiatives but rather that its low credibility meant that it did not wish to spark confrontations with the many civil society organisations who were opposed to new measures such as the introduction of a goods and services tax, changes to the healthcare financing system and various infrastructural developments.

There were also problems with policy co-ordination which were exacerbated by the introduction of the Principal Officials Accountability System. Part of the rationale for the new system was that Directors of Bureaus, who were now drawn in greater numbers from outside the civil service, were expected to take new initiatives and to cut through red tape. Some of these proposals foundered because they were announced without proper consultation or costing. In addition, the Principal Officials Accountability System in effect downgraded the roles of the Chief Secretary for Administration and the Financial Secretary in the hierarchy. Both officials previously had the power to control public expenditure. Under the new arrangements, they were implicitly equal in status with their fellow Principal Officials. The system encouraged Director of Bureaus to act more autonomously and to reduce co-ordination with other bureaus. When Donald Tsang succeeded Tung Chee-hwa as Chief Executive in March 2005, he reverted to previous

practice, in which the Chief Secretary and the Financial Secretary had exerted stronger financial control over new expenditure, and brought back more former civil servants as Directors of Bureaus.⁵⁷

The consultative system, which had been an integral part of policy-making under colonialism, quickly broke down after 1997. The major reason was the growth of civil society organisations which worked outside formal political structures and often took their grievances to the streets rather than channelling them through the Legislative Council or bringing their demands directly to the government. This made it difficult for the government to try to deal with them and, on many issues, it did not even try to do so.⁵⁸ In other cases, pressure groups were created to oppose the policy after it had been announced which resulted in problems with implementation.

The groups also employed increasingly sophisticated tactics, using court action and forming coalitions with other groups to try to prevent implementation. The opposition to the national security legislation in 2003 illustrated the way in which the consultative system was failing and, conversely, that the way in which the strength of civil society organisations outside the formal political structure was growing. The initial consultation with the public over the changes that would be made under Article 23 led the government to believe that it enjoyed majority support for its proposed measures. Public opinion polls, to the contrary, showed that a majority were actually opposed to the legislation. As opposition began to build, a coalition, the Civil Human Rights Front, brought together disparate groups who believed that their civil liberties were threatened or who were opposed to the government on other grounds. The eventual mass demonstration resulted in the withdrawal of the legislation but left open the possibility that such mass action might occur again if government policies alienated a sufficient number of people.

The consequence was that the government found itself in a serious dilemma over policy. If it were to introduce new policies, it had to be certain that there would not be substantial opposition to their introduction. But the existing consultative mechanisms were clearly an inadequate guide to whether a policy would meet with public approval. The government, accordingly, formulated and implemented policy with extreme caution. The goods and service tax, which economists had long agreed was the best way of broadening Hong Kong's revenue base,⁵⁹ was abandoned when there was some evidence of opposition to it. Other policies, such as the reform of healthcare financing and social security benefits, were made so slowly that the problems gradually became worse. By 2008, there were substantial policy backlogs in many areas.

Government and the Legitimation of Power after 1997

Fractious relations between government and the public over policy issues were part of the larger problem of how to reduce the legitimacy deficit and obtain a mandate to govern effectively. The difficulties of legitimating power were related to: problems associated with constitutional reform and the introduction of universal suffrage; the position of the Chinese government; and the unresolved problem of changing the system in a polarised polity.

Constitutions are intended to reflect some measure of political reality, of how the people wish to see their affairs arranged and the conditions under which they accept that a government has a legitimate right to rule. The Basic Law was never approved by the Hong Kong people. It was imposed after a drafting process, dominated by the Chinese government, which led to the entrenchment of many of the former authoritarian colonial provisions. It did, however, include two possibilities for progress towards more democratic elections. The first was that specific provisions for the election of the Chief Executive in 2007 and the Legislative Council in 2008 were to be reviewed, raising the prospect of introducing universal suffrage or, at least, a faster pace of democratic reform. In 2004, the Chinese and Hong Kong governments closed the door on this avenue for constitutional change. The government's Task Force laid down nine conditions which had to be met before constitutional change could be considered, including taking the views of the Chinese government into consideration, doing nothing to abrogate the Chinese government's right to appoint the Chief Executive, ensuring that any amendments to the Basic Law should strengthen the executive-led system, and that "the maturity of political talents and political groups" should be taken into account.⁶⁰ This was a scarcely-disguised code for the maintenance of the status quo and of the continuing opposition of the Chinese and Hong Kong governments to any immediate increase in democratic numbers in the Legislative Council. When, in December 2005, the Chief Executive offered a sop in the form of a proportionate balanced increase in numbers in the Legislative Council, and of expanding the size of the electoral college for the Chief Executive elections, the democratic members used their votes to prevent the government from obtaining the two-thirds majority it needed to pass the amendment.⁶¹

The second possibility for constitutional reform was contained in the provisions in the Basic Law that stipulated that both the Chief Executive and the Legislative Council should ultimately be elected by universal suffrage.⁶² At each election since 1991, approximately 60% of the electorate have consistently voted for democratic parties who stand for the introduction of universal suffrage as soon as possible.⁶³ There have also been street demonstrations in favour of universal suffrage, some of which have attracted hundreds of thousands of protesters. Opposition to rapid progress towards universal suffrage has come from the Hong Kong government itself, from the business-based Liberal Party, from the pro-Beijing Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and, especially, from the Chinese government. Although both governments and all political parties now favour the eventual introduction of universal suffrage, the question of when it should be introduced and the form that it should take has been at the heart of political debate since 1997.

Between September and December 2007, a critical by-election campaign was fought on Hong Kong island which focused on the democracy issue. Because it was a by-election, the entire 618,000-strong electorate on the island was entitled to vote for a single candidate, in contrast to the list proportional system, which applies at general elections, where voters select six members for the whole of Hong Kong island. The democrats billed the by-election as a referendum on universal suffrage and chose to support the former Chief Secretary for Administration, Anson Chan, as its candidate.⁶⁴ The DAB

threw its support behind Regina Ip Lau Suk-ye, the former Secretary for Security, who had been responsible for the introduction of the national security legislation under Article 23 of the Basic Law. Chan won the election by a convincing margin, receiving 55 % of the vote to Ip's 43% on a 52 % turnout.⁶⁵ In the 2008 Legislative Council elections, the democrats won 23 of the 60 seats, sufficient to retain a blocking percentage on constitutional issues. The election saw two prominent members of the Liberal Party lose their seats, weakening the government's support and giving the legislature a slim majority of left-of-centre members. On most issues, the government continued to rely on the DAB, the remaining Liberals and independents with the democrats providing the opposition. The election did nothing to resolve the constitutional issue.⁶⁶

Following his election as Chief Executive in 2007, Donald Tsang said that his foremost objectives in office would be to seek a consensus on constitutional reform. A Green Paper was issued in 2007⁶⁷ but gave no clear indication of how universal suffrage might be achieved, although Tsang said he was willing to accept 60% in favour of any proposal as a basis for progress.⁶⁸ When he reported to the Chinese government on the response to the Green Paper, Tsang said that there was a consensus that universal suffrage should be introduced in 2017 with the Chief Executive elections to be held in advance of those for the Legislative Council, possibly in 2012 but no later than 2017.⁶⁹ He warned, however, that as far as models for elections to the Legislative Council were concerned "no mainstream view could be formed at this stage."⁷⁰ By the end of December, the Standing Committee of the National People's Congress had announced that the Chief Executive "may" be elected by universal suffrage in 2017 and that the Legislative Council "may" be elected under universal suffrage in 2020.⁷¹

The devil continues to lie in the details. The Chief Executive is currently elected by an electoral college of 800 delegates. A candidate requires the signature of one hundred delegates to be nominated. In the 2007 election, the democratic candidate, Alan Leong Kah-kit, did manage to obtain the necessary number of nominations but had no real chance of winning the elections.⁷² In the schemes that have been suggested by some pro-Beijing figures, the Chinese government, or a nominating committee reflecting its views, would have the final say on which candidates would be permitted to run in the Chief Executive elections. Leaving aside the Basic Law provision that the Chief Executive is appointed by the Chinese government, universal suffrage would then mean a choice between two or more Beijing-approved candidates. Similarly, elections to the Legislative Council might depend on the interpretation of what universal suffrage means. In January 2006, for example, the Constitutional Affairs Bureau produced a paper which in effect argued that universal suffrage did not mean one person, one vote.⁷³

The Chinese government does not always appear to act in a co-ordinated manner on Hong Kong issues. Some of its views may be driven by particular factions within the government in Beijing or in the region; others may come from the Chinese government's local Hong Kong and Macao Affairs and Ministry of Foreign Affairs Offices. On constitutional issues, however, at least publicly, the Chinese government has spoken with one voice. Its position has always been that progress towards universal suffrage should be slow and orderly. Its suspicion of the democrats dates from their support for students

and workers during the Tiananmen Square demonstrations in 1989 and their subsequent annual commemorations of the massacre. The Chinese government has clearly indicated that it will not permit the democrats to exercise power in Hong Kong and that it will use its constitutional powers to prevent them from doing so. In early 2004, for example, when the review of the arrangements for the 2007 and 2008 elections was underway, a former mainland Basic Law drafter said that he did not expect to see universal suffrage in Hong Kong until 2030 or 2040.⁷⁴ Another drafter, and former New China News Agency representative in Hong Kong, Zhou Nan, was quoted as saying that the democrats were “dangerous elements” and puppets of the British government and that only patriotic Hong Kong people should rule Hong Kong.⁷⁵ The Deputy Secretary-General of the Standing Committee of the National People’s Congress, Qiao Xiaoyang, in explaining why the Committee had not changed the electoral rules, argued that over-representation of business interests was necessary to protect capitalism, that the Basic Law was not yet fully accepted by the Hong Kong people and that there were major disagreements over the implementation of universal suffrage in 2007 and 2008.⁷⁶

Despite the concession of universal suffrage for the 2017 Chief Executive election and the 2020 Legislative Council elections, the Chinese government’s stance does not appear to have changed greatly since those statements were made. The conditions laid down for universal suffrage in the Chief Executive’s letter on the Green Paper on constitutional development to the Secretary of the National People’s Congress in December 2007 are essentially the Chinese government’s conditions. They include, for example, “the four principles on constitutional development, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress, and being appropriate to the actual situation in Hong Kong.”⁷⁷ Any one of these conditions might be used to veto future constitutional models even those which had the support of a majority of Hong Kong people. In essence, the Chinese government seeks to ensure that the government of Hong Kong remains in the hands of those whom it thinks will maintain stability and prosperity. For the present that does not include the Democratic Party although there may be room in the future for accommodation with more moderate democrats.

Why did the Chief Executive propose that universal suffrage should be granted as early as 2012? Why did Chinese government, despite its misgivings, eventually concede that universal suffrage might be introduced for the 2017 and 2020 elections? When he announced the decision, the Chief Executive claimed that “the Central Government had attached great importance to the wishes of the Hong Kong people.”⁷⁸ But this begs the question of why the Chinese government chose not to attach the same importance to those same views in 2004 or even earlier. A more likely explanation is contained later in the same announcement when the Chief Executive notes that:

Universal suffrage has been a contentious issue ... since [the] 1980s, with diverse views among political parties and within the community. If emotional debate and conflict between political parties drags on over this matter, Hong Kong’s stability and development will be severely hampered.⁷⁹

In other words, the policy impasse will continue, there will be more street demonstrations and the electorate will become increasingly disenchanted. In the face of those problems, the promise of universal suffrage, carefully hedged to ensure that ultimate power remains with the Chinese government and its preferred appointees in Hong Kong, is a palliative designed to sooth a fractious polity and to enable policy to be formulated and implemented more easily.

The task of devising constitutional arrangements broadly acceptable to the public has been devolved to the Commission on Strategic Development, a body which is as divided as the polity. There must be doubts about whether it can come up with a consensus on progress towards universal suffrage or whether the paralysis over the form of elections is set to continue.

Analysing Systemic Problems in the Public Sector

From this brief account of political system and the public sector, three major problems, spanning the colonial and post-1997 periods, may be identified:

- The problem of ensuring that public officials are accountable for their actions (accountability);
- The problem of formulating and implementing policies that are in the public interest (appropriate policy-making);
- The problem of legitimating the use of power and of ensuring that the process of governing is undertaken with the consent of the people (legitimacy)

Each of these problems puts relationships within the public sector and between the public sector and market and society under strain. When there is a smooth working relationship between the political officeholders and bureaus and departments within the civil service, when needs can be identified and appropriate solutions devised, when policies can be formulated and implemented with the support of elected politicians, business and civil society, then government and the public sector can deliver goods and services efficiently and can respond effectively to future problems. While there were periods during colonial rule when those conditions were met, they have not applied in Hong Kong since the handover, to the detriment of public sector performance. To analyse why this has been so, we need to look at each of these problems in their wider conceptual context.

Accountability

The question of how politicians and civil servants will be held accountable for the way in which they exercise power is a central consideration in any political system. Accountability may be defined to include both the external constitutional measures and internal bureaucratic controls that are required to ensure that power is exercised legally, appropriately, and in the public interest.⁸⁰ In its constitutional form — that is, the nature of the accountability of the government to the people and the types of political controls over the public sector — we need also to distinguish between answerability, the willingness

of a government to explain its actions, and political responsibility, where a government accepts the consequences of its mistakes which may mean the resignation of ministers or even of the government itself.⁸¹ The type of political system determines the different ways in which these accountability issues are handled. In parliamentary systems, the government is accountable to the legislature and to voters who may remove it from office at the next election. Accountability for the actions of civil servants is formally vested in the minister in charge of a department who answers questions on its performance in the legislature.⁸² The minister is a member of the legislature and may be held responsible for the inappropriate, illegal or corrupt actions of civil servants in exercising their official functions. Under the American and in some other presidential systems, accountability is vested in cabinet ministers who are appointed by the Congress and who are required to report frequently on the performance of their bureaus and agencies.⁸³ Each presidential and congressional election requires candidates to seek a mandate from the voters. In the Chinese system, the Communist Party is seen to represent the will of the people and thus assumes a direct political responsibility for the way in which the public sector operates. The party's supremacy derives from its revolutionary importance as the vanguard of the proletariat and the "sole interpreter and guardian of the interests of the people and the nation" and is not dependent on legitimation through elections.⁸⁴

None of these systems apply in Hong Kong. While civil servants are bureaucratically accountable for their actions through the internal hierarchy and through such external checks as the Audit Commission, the ombudsman and the Public Accounts Committee, the political accountability of the government to the Legislative Council remains weak and ill-defined.⁸⁵ Principal Officials are not confirmed by the Council and, although they must answer to it, a vote of no confidence in their performance would not necessarily result in their dismissal. The government is similarly unaccountable to the people who do not vote it into office and cannot remove it. The creation of the Principal Officials Accountability System did not resolve these problems and relationships between government and the legislature and between the government and the public consequently represent major hurdles in devising new policies, delivering goods and services, and establishing regulatory processes and institutions.

Appropriate Policy-making

Policy formulation and implementation is a fundamental concern in any system of public administration. Policy choices represent the priorities which government accords to problems and to the opportunities which it wishes to pursue. If those choices are made with only passing reference to the demands of the people, then the government is likely to be accused of insensitivity to their needs and perhaps may also encounter opposition at the implementation stage. Policy choices are always difficult to make. They become even more difficult when financial resources are stretched, when there is vocal opposition to the direction which the government has chosen, and when that opposition is related to governance or legitimacy questions.

Because all of these issues were relevant in post-1997 Hong Kong, the government suffered from weakened policy capacity, especially after the July 2003 demonstration.⁸⁶ It was making policy “without a thorough grasp of the circumstances”⁸⁷ because Principal Officials were encouraged to cut through the Gordian knot of accumulated problems without, sometimes, the prudent costing that had characterised policy-making under its colonial predecessor. If the colonial government had often underestimated its capacity to introduce new policies,⁸⁸ the Special Administrative Region government, in more difficult circumstances, very often over-estimated its ability to do so. The consequent policy failures undermined its credibility and resulted in a situation in which the government was reluctant to introduce new policies for fear of further failure.⁸⁹ Policy problems increased in an atmosphere of rising discontent.

Legitimacy

For the exercise of power to be fully legitimate, three conditions are required: conformity to established rules; the justifiability of laws by reference to the shared beliefs of rulers and ruled; and the express consent of subordinates to the particular power relationship in which they are involved.⁹⁰ It follows that if these conditions are absent, the way in which power is exercised is, to a greater or lesser degree, compromised.

Constant and widespread friction between a government and its people may be symptomatic of more intractable difficulties than simple discontent with particular policies. Because people have multiple roles in life, it is quite conceivable that any individual or group may be dissatisfied or disadvantaged by a specific policy decision but may benefit from government action on another issue. In many political systems, these compensatory rewards even up the policy ledger and serve to relieve pressure on the government. If this does not happen, or if the policy issue assumes such significance that compensatory rewards are unimportant, there may be constitutional remedies to rectify the situation. In democratic systems, for example, the government may be removed at the next election. In more authoritarian systems, such as Hong Kong, where the government is not elected, cannot be removed, and has no mandate from the population, discontent with policy may be coupled with, or become representative of, more systemic problems. If citizens do not hold that the system of power relationships under which they live is legally valid and morally justifiable and if they give no indication of their consent to that relationship, then the regime will suffer from a legitimacy deficit. If it does nothing to correct or reduce that deficit, then it could be faced with a crisis of legitimacy in which its authority to rule is called into question.

In the absence of elections that could change the government, or any other means of legitimation, the Hong Kong government, both before and after 1997, has been faced with the need to reduce the legitimacy deficit. Tung Chee-hwa was confronted with the problem that many of his options were precluded by the severe economic difficulties which Hong Kong was then experiencing. His problems were compounded by ill-advised policy initiatives and perceived threats to civil liberties which called his authority into question. His successor was fortunate enough to experience an economic recovery in

his first three years in office. But the legitimacy problem remains. The constitution does not enable the government to demonstrate that it has the consent of the people and an unquestioned mandate to govern. The government has yet to show that it has the capacity to make policy in ways that resolve contentious problems. And the pace of democratic reform continues to divide the polity.

Each of these related problem areas — accountability, policy formulation and implementation and legitimacy — represents a major challenge for the public sector and helps to explain why the post-1997 system has operated with reduced policy capacity and conflictual relationships between political institutions and with the public. Those problems and attempts to resolve them provide a framework for the remainder of this book.

In Part 1 (Chapters 2 and 3), we consider issues relating to the political accountability of public officials: the constitutional and legal framework, the effect of the introduction of the Principal Officials Accountability System, and the political system established under the Basic Law.

In Part 2 (Chapters 4–6), we focus on bureaucratic accountability, the values and structure of the civil service, reform initiatives, public sector organisations outside the civil service, and the problems which government and public sector organisations have faced.

In Part 3 (Chapters 6–9), we analyse the policy-making system. These chapters focus on the budgetary process and policy formulation, the policy process in its political context and policy implementation.

In Part 4 (Chapters 10–12), we focus on the relationship between government and the people and on attempts to reduce the legitimacy deficit by creating a more responsive civil service and establishing organisations designed to protect civil liberties and to redress grievances. The book concludes with an evaluation of the prospects for resolving the current difficulties which the public sector faces and some suggestions for reform.

Notes

Chapter 1

1. This definition is a conventional one which lays stress on the funding of public sector organisations through taxation. In Hong Kong, the sale of Crown land, all of which is owned by the government, has been an important source of revenue and the definition has been amended accordingly. On definitions of the public sector, see Kai Wegrich, “Public Sector” in *Encyclopedia of Governance*, ed. Mark Bevir, Vol II (California: Sage 2007), 776–777 and the discussion in Jan-Erik Lane, *The Public Sector: Concepts and Approaches* (London: Sage, 2000).
2. The government web-site, www.gov.hk, lists 60 departments and agencies but includes the Audit Commission, the Independent Commission Against Corruption, The Office of the Ombudsman and the University Grants Committee and some advisory committees, which, strictly speaking, are not departments but what the government calls “related organisations”. If a department is defined as an agency which has executive powers, the number of departments is smaller. See also Chapter 4.
3. Civil Service Bureau, *Civil Service Personnel Statistics 2008* (Hong Kong: Civil Service Bureau, 2008), Table 1.1. The figures are for the number of people actually in position (the “strength”) rather for the establishment which is slightly higher.
4. Calculated from Independent Commission Against Corruption, *Annual Report 2007*, www.icac.org.hk, Appendix 1.
5. It is difficult to estimate the exact numbers employed in the public sector outside the civil service. If the criterion that defines the public sector organisation is the subsidy that it receives from government, then it would be necessary to determine for each organisation how much of the subsidy is spent on staff and how much comes from fees and charges levied by the organisation itself.
6. A.B.L. Cheung, “Public Sector Reform and the Re-legitimation of Public Bureaucratic Power: The Case of Hong Kong,” *International Journal of Public Sector Management* 9(5–6) (1996), 37–50; Ian Scott, “Organisations in the Public Sector in Hong Kong: Core Government, Quasi-Government and Private Bodies with Public Functions,” *Public Organisation Review* 3(3) (September 2003), 247–267.
7. The Commission appointed to investigate the claim that the government infringed academic autonomy at the Hong Kong Institute of Education found that the government had the right to “encourage, steer or direct” tertiary institutions but that it should use proper channels. The government then asked for a judicial review of the finding. See

Yeung Chun Kuen and Lee Jark Pui, *Report of the Commission of Inquiry on Allegations relating to the Hong Kong Institute of Education* (Hong Kong: Government Logistics Department, June 2007), 101. See also Chapter 3.

8. See Rikkie Yeung, *Moving Millions: The Commercial Successes and Political Controversies of Hong Kong's Railways* (Hong Kong: Hong Kong University Press, 2008), Chapter 11, Epilogue.
9. Public goods and services are commonly defined as those goods and services which are provided by governments because the market cannot allocate them efficiently. They have the important characteristics that they are non-rivalrous, in the sense that “more than one person can derive benefits from [their] consumption when its supply does not change”, and non-excludable, in the sense that consumption does not preclude further use by another person. See Karthik Srinivasan, “Public Goods” in *Encyclopedia of Governance*, ed. Mark Bevir, Vol. II, op. cit., 765–766.
10. Donald Tsang, *Strong Governance for the People*, www.policyaddress.gov.hk (2005), para 71; Donald Tsang, “‘Big market, small government’ key,” www.3.news.gov.hk, September 19, 2006.
11. Financial Secretary, *The 2008–09 Budget* (Hong Kong: Government Logistics Department, 2008), Appendix B.
12. For a comparison of Hong Kong’s public expenditure as a percentage of Gross Domestic Product with that of other developed countries, see Wilson Wong and Sabrina Luk, “Economic Policy” in *Contemporary Hong Kong Politics: Governance in the Post-1997 Era*, eds. Lam Wai-man, Percy Luen-tim Lui, Wilson Wong and Ian Holliday (Hong Kong: Hong Kong University Press, 2007), 187.
13. Quoted in Tsang, “‘Big market, small government’ key,” op. cit.
14. See Eliza W.Y. Lee, “The Political Economy of Public Sector Reform in Hong Kong: The Case of a Colonial-Developmental State,” *International Review of Administrative Sciences* 64(4) (1998), 625–641; Ian Scott, “Administration in a Small Capitalist State,” *Public Administration and Development* 9(2) (April–May, 1989), 185–199.
15. To quote Miliband, it acts “on behalf of capitalists but not necessarily at their behest.” Ralph Miliband, *Marxism and Politics* (Oxford: Oxford University Press, 1977), 74.
16. *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong* (Hong Kong: Government Printer, 1984); *The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (Hong Kong: The Consultative Committee for the Basic Law, April 1990).
17. See Peter Wesley-Smith, *Unequal Treaty: China, Great Britain and Hong Kong’s New Territories* (Hong Kong: Oxford University Press, 1980), Chapter 5; Urban Council, *Annual Report 1978–79* (Hong Kong: Michael Stevenson, 1979), 5–6.
18. McKinsey and Company, *The Machinery of Government: A New Framework for Expanding Services* (Hong Kong: mimeo, May 1973).
19. *Ibid.*, 14–17.
20. Civil Service Branch, *Civil Service Personnel Statistics 1997* (Hong Kong: Civil Service Branch, 1997), 12.
21. This was the rule-of-thumb adopted by government at the time. The precise numbers were not known.
22. Public Service Commission, *Annual Report 2000* (Hong Kong: Printing Department, 2001), 1–2.

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24. Carol Jones, “Politics Postponed: Law as a Substitute for Politics in Hong Kong and China” in *Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions*, ed. K. Jayasuriya (London: Routledge, 1999), Chapter 3; Leo F. Goodstadt, “Prospects for the Rule of Law: The Political Dimensions” in *Judicial Independence and the Rule of Law in Hong Kong*, ed. Steve Tsang (Basingstoke: Palgrave, 2001), Chapter 8.
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Chapter 5

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