

BUILDING DEMOCRACY

Creating Good Government for Hong Kong

Edited by
Christine Loh & Civic Exchange



香港大學出版社

HONG KONG UNIVERSITY PRESS

Hong Kong University Press

14/F Hing Wai Centre
7 Tin Wan Praya Road
Aberdeen
Hong Kong

© Hong Kong University Press 2003

ISBN 962 209 667 0

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

Secure On-line Ordering

<http://www.hkupress.org>

Printed and bound by Speedflex Co.Ltd; in Hong Kong, China

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Introduction

Enhancing Democratic Participation in Hong Kong

Christine Loh

This volume provides a collection of short essays about democracy and democratic participation written by a group of local experts as part of Civic Exchange's *Enhancing Democratic Participation Project* and aimed at a general audience. The Project was put together in 2002 at a moment when Hong Kong people appeared to have regained their interest in democratic development. Since 1997, the Government of the Hong Kong Special Administrative Region (HKSAR) has shown little interest in discussing constitutional reform and the public seemed to have lost heart for pursuing the subject vigorously. However, due to the inexperience of the current administration and a series of policy failures in various areas over the last six years, Hong Kong now faces a crisis of governance, which may be curable only with fundamental reform of the political system.

It is appropriate at this point to provide a basic definition of what is meant by the terms "democracy" and "democratic participation." Democracy entails the twin principles of *popular control* over collective decision-making and *equality of rights* in the exercise of that control.¹ Thus, a democracy is a jurisdiction practising government by the people through elected representatives chosen by a universal suffrage system. To the extent that the principles of popular control and equality of rights are realised in the decision-making of any association and gathering, we may refer to this as "democratic participation." Thus, democracy can also be seen as a way of life that can be practised every day in the activities of groups and organisations. In other words, democracy is a culture with a specific set of values that shape our mentality and attitudes towards issues

¹ Beetham, David and Kevin Boyle (1995), *Introducing Democracy – 80 Questions and Answers*. Polity Press, UNESCO Publishing, p. 1.

and give rise to constitutions, laws, institutions and elections. A political system cannot be said to be democratic unless it incorporates the political instruments and institutions needed to give expression to this democratic culture. At the same time, instruments such as constitutions, laws and elections provide only the semblance of democracy if they are not underpinned by a culture of practising democracy.

Political development in Hong Kong

Hong Kong's current political system was designed in the 1980s with heavy influence from the British and Chinese Governments, who essentially sought to preserve a colonial governance model – which they saw as key to Hong Kong's economic success. The design concentrates power in the hands of a Chief Executive who cannot claim to have the public mandate to govern, and provides business and professional elites with functional representation in the legislature to ensure that business interests are well represented. At the same time, the system does provide for an element of universal suffrage in legislative elections, meaning that a minority of legislators can claim a greater legitimacy than the Chief Executive or their functionally elected colleagues. Those who designed Hong Kong's political system sought to provide a semblance of democracy by allowing elections to take place but were not prepared to give real political power to elected representatives. On an international level, Hong Kong's political system is certainly unique in terms of the fact that elections are designed to return the opposition rather than the government. The question now is whether this system has outgrown its usefulness. The Principal Officials Accountability System (POAS) implemented by the Chief Executive in July 2002 has so far failed to convince people that strengthening of the executive by changing the civil service and appointing ministers represents sufficient reform of the political system.²

The present political system has been justified as right for Hong Kong because the city has been so successful economically. Indeed, Hong Kong was an anomaly – a society that seemingly did well without democratic development. In examining whether political reform is needed, and if so, what type of reform is needed, it is necessary to understand why until recently, Hong Kong was able to make substantial advances notwithstanding its obvious democratic deficit. This term indicates a hollow citizenship under which people do not have full rights and entitlements

² For a full discussion of the Principal Officials Accountability System, see Civic Exchange & the National Democratic Institute (US) (Sep 2002), *Accountability without Democracy: The Principal Officials Accountability System in Hong Kong*, available online at www.civic-exchange.org/n_publications.html.

because of the paucity of legal and constitutional guarantees as reflected in the election and voting systems.

Factors that helped Hong Kong in the past included:

- Gradual development over a long period of time under a genuine rule of law system and tradition;
- Over time, the development of respect for individual rights and freedoms and a free press;
- Since the 1970s, successful control of corruption in law enforcement and public administration by the Independent Commission Against Corruption (ICAC);
- Economic benefits of the “closure” of China during the Cultural Revolution (1966-1976) and its re-opening in 1978;
- A highly motivated population, including the large number of refugees from the mainland, that was generally law-abiding, thrifty and able to rely on family and clan networks for social support;
- A population that by and large, did not demand political change, as alternatives to the status quo were either not yet available (emigration to the West) or worse (returning to the mainland), while the rule of law system allowed Hong Kong residents to work hard and accumulate wealth; and
- The population’s ability to self-organise in solving its own problems took pressure away from the Government, which, coupled with the colonial strategy to marginalise politics, emphasise commerce, hire the “best and the brightest” as civil servants and co-opt community leaders into the governing apparatus, allowed the colonial administration to create “consensus” that the political system did not need fixing.

While rising GDP figures told one story, the colonial model came at a considerable cost. The lack of real participation by Hong Kong people in political life meant that decisions were not always taken at the optimal time or with the long-term future in mind. For example, the colonial administration did not provide universal education until 1978, was unwilling to raise debt to finance capital works and created a tax system that although favourable for business, failed to raise sufficient recurrent

revenue to sustain long-term social investments in such areas as education and the environment. The colonial government did not take the decision to build a sewage disposal programme for the harbour area, the district with the highest population density in Hong Kong, until 1992. Although there were improvements in public housing as well as hospital care and welfare services, a number of key areas, such as care for the elderly, young children and those with disabilities, were neglected.

Moreover, the colonial governing system of training efficient bureaucrats did not extend to training politicians. The colonial apparatus also failed to devote resources to developing local think tanks and policy-making expertise as Hong Kong could always call on British experts for help when needed. Thus, Hong Kong had strong implementation abilities but low policy-making capacity. This system left Hong Kong in a weak position to manage the transition to becoming a Special Administrative Region (SAR) in 1997. Beijing had few credible candidates to choose from for the post of Chief Executive as China was unwilling to pick a civil servant and there was no one else in Hong Kong with significant governing experience. However, an assumption was made that inexperience at the top level could be compensated for by the retention of the administrative bureaucracy that had served Britain with distinguished efficiency. What Beijing did not foresee was that the governing style of the Chief Executive; his lack of understanding of policy-making, politics and management of public expectations; and the lack of competency among those he trusted to support him would debilitate the bureaucratic machinery, leading to a series of missteps during his first term of office.

Difficulties during the Chief Executive's first term of office included the avian flu outbreak in 1997 that necessitated the slaughter of 1.3 million chickens and ducks and subsequent outbreaks since then; the premature, chaotic opening of the new airport in 1998; the Chief Executive's handling of his own housing policy, which has been blamed for destroying the property market; the discovery of piling defects in several public housing blocks, which led to calls for the resignation of housing officials; the decision to bypass standard tendering procedures in awarding the Cyberport development to one company, which led to allegations of favouritism; the exposure by pollster Robert Chung of the University of Hong Kong that the Chief Executive's aide had put pressure on the vice-chancellor of the University to stop Chung's work because it was perceived as being unfavourable to the Chief Executive; the raising of a legislative motion of no confidence in 1999 over the decision by the Secretary of Justice not to prosecute Sally Aw, a newspaper proprietor whose staff was prosecuted for corruption; the decision to take the right of abode decision

to the Standing Committee of the National People's Congress for re-interpretation; and the staging of a series of public protests in 2000 by different groups with various grievances. These local problems took place against the backdrop of the Asian financial crisis (1997-1999) and the opening of Chinese markets, meaning that the new administration was immediately forced to deal with deflation, unemployment and increased regional competition. Political scientists have suggested that the Chief Executive was reluctant to reach out to the public during these difficulties because of his personal anti-political bent. Government policies were poorly explained and the Chief Executive saw no need to consult the public on major policy decisions.³

Shortly following confirmation of his second term of office (2002-2007) and the establishment of the POAS, the competence of the Chief Executive's new ministers was called into question. For example, the reputation of the Secretary for Financial Services and the Treasury was seriously damaged by his poor management of the penny stocks incident. The Secretary for Security handled the proposal to pass Article 23 legislation⁴ so poorly that her reputation was also severely dented. The attempt by the Secretary for Education and Manpower to force a "shotgun" merger between two universities caused disquiet throughout the tertiary education sector. Other stumbling blocks during the first year of the Chief Executive's second term included the "Lexus-gate" scandal concerning the Financial Secretary. The integrity of the Financial Secretary came into question when it was reported by the media that he had failed to declare the purchase of a new car that would have been subject to increased vehicle tax under the 2003 budget. He was reprimanded by the Chief Executive, who noted that the Financial Secretary's behaviour was "highly inappropriate," that he was "grossly negligent" and that there had been a "breach" of the ministerial code of conduct. However, the Chief Executive concluded that these were not sufficient grounds for removing the Financial Secretary from office. More recently, the March 2003 outbreak of Severe Acute Respiratory Syndrome (SARS) in Hong Kong and the seeming inability of the Chief Executive and the ministers responsible for health and the environment to handle the crisis and address public concerns further eroded confidence in the Government. In addition, the Government continues to confront a ballooning budget deficit that stemmed from over-spending during the first term.

³ Lau Siu-kai (2002), "Tung Chee-hwa's Governing Strategy: The Shortfall in Politics," Lau Siu-kai, ed., *The First Tung Chee-hwa Administration: The First Five Years of the Special Administrative Region*, Hong Kong: The Chinese University of Hong Kong, pp. viii-ix

⁴ Article 23 of the Basic Law requires that the HKSAR pass laws on its own to prohibit treason, secession, subversion, secession, theft of state secrets and links between local and foreign political bodies

Thus, the first year of the Chief Executive's second term proved far from auspicious. With a lacklustre first term of office and a troubled and taxing start to the second term it is not surprising that people are beginning to conclude that the problems are not due to individual performance but rather to systemic failings within the political system itself.

The role of Beijing

An important factor in Hong Kong's future democratic development is Beijing's attitude towards further reform. Beijing's official view on this issue is outlined in the Basic Law. The next round of reforms will occur in 2004 when the number of directly elected seats in the Legislative Council (LegCo) increases from 24 to 30, equalling the number of functional constituency seats. On the question of additional political reform, the Basic Law is open to interpretation. While the constitutional blueprint does not mandate a transition to universal suffrage for the election of the Chief Executive and LegCo in 2007, the Law can be interpreted to mean that moves towards universal suffrage are expected in 2007 or shortly thereafter.⁵ This is essentially the hook on which Hong Kong hangs its democracy hat.

However, the occasional statements by senior Chinese officials on Hong Kong's democratic development are nothing if not vague and unhelpful. During an interview in June 2002, China's former vice-premier, Qian Qichen, commented:

"To promote democracy in Hong Kong, one cannot have Hong Kong emulate the system of other regions ... Hong Kong is a commercial city and it is one of our country's special administrative regions. This determines that it cannot copy the political systems of another country. The past practices have shown that the model based on functional constituency elections is an effective way to ensure that people from various walks of life can have balanced participation in political life. As a result, this should be kept intact. Other systems that also conform to Hong Kong's characteristics should also be retained."⁶

⁵ See Articles 45 and 68 as well as Annex I of the Basic Law

⁶ Edited transcript of Qian Qichen's statement, "HK Democracy Must Forge Own Path, Not Emulate Others," *South China Morning Post*, 26 June 2002, p 6

Despite Beijing's apparent reluctance to commit to more fundamental reform of Hong Kong's political system, there are good reasons why Hong Kong should not abandon efforts to create a better system:

- Life does not stand still.

Incremental reform of Hong Kong's political system, including the next round of reforms in 2004, will continue to impact the existing system and create demands for more fundamental changes to correct the legitimacy deficit. One of the Chief Executive's biggest headaches today is that even if he makes a good decision, he cannot claim to represent the majority view. It is important to note that a political system based on universal suffrage does not guarantee good and wise government. However, the answer is not to support non-democratic systems and hope for benevolent leaders but rather to strive for a system under which a government that has lost the public trust can be removed and replaced peacefully via open and fair elections.

- Political reform is occurring on the mainland.

Beijing has approved plans for Shenzhen to experiment with political reform. The model being developed in Shenzhen is based on the administrative model implemented in Hong Kong under the colonial administration. Shenzhen officials have visited Hong Kong, Singapore and Britain to study this model in practice. The Shenzhen experiment is intended as a pilot initiative that could eventually be introduced in other large cities on the mainland. Shenzhen's mayor has noted that political reform is needed to create the type of environment increasingly required by overseas investors – a system that is transparent, accountable and law-abiding.⁷ The ultimate aim of the Shenzhen reforms is to experiment with the separation of powers in order to create a better system of checks and balances. For example, the reforms will place limits on the power of the Chinese Communist Party vis-à-vis those of the executive, the legislature and the judiciary. While these reforms cannot be described as democratic, they are revolutionary for the mainland. And although Hong Kong's political system is more developed than Shenzhen's, the potential positive

⁷ Kyngé, James "ASIA PACIFIC China to Launch Programme of 'Western' Reforms," *Financial Times*, 13 Jan 2003

energy unleashed by the experiment could be significant in helping Hong Kong to continue to push for further reform of its own system.

- Hong Kong people have an obligation to prepare for the time when change can occur.

While it is easy to call for change, it is much more difficult to draw up a new constitutional blueprint. A first step must be to generate more public awareness and interest in democratic development. Thinking about future political reform is demanding and complex – many issues beyond devising a new election system are involved. There is little time to waste. If Hong Kong people do not take charge of the process of planning for future reform, it will be difficult to prevent changes from being imposed on Hong Kong.

Enhancing Democratic Participation Project

It was with these factors in mind and with the aim of enabling Hong Kong people to start deliberating issues relative to democratic development that Civic Exchange put together the *Enhancing Democratic Participation Project*. The goal of the Project is to involve a wide cross-section of Hong Kong people in discussions about democracy and democratic participation. Activities include publication of this book of short essays on different aspects of Hong Kong's democratic development, written by a number of political scientists, scholars and experts. In parallel, a set of pamphlets that summarise the key points of each essay has also been produced for wider distribution. In addition, the Project involves assisting a wide variety of community groups to organise discussions on democratic reform and create a record of these discussions for future reference. The Project enlisted the help of professional facilitators in Hong Kong to assist groups in designing and conducting discussions in the hope that the gatherings themselves would enable participants to experience democracy in practice.

The essays in this book are intended to provide readers with a basic framework for understanding some of the key issues relating to democratic development in Hong Kong. While this book cannot claim to cover every aspect of the discussion on this important subject, it does provide a quick reference for the interested reader and for students. The references and suggested reading list provided will enable readers to explore specific issues in greater depth.

Michael Davis begins by outlining a theory of liberal constitutionalism and examining the health of basic constitutional elements such as democracy, human rights and the rule of law in the Hong Kong context. Davis notes that although Hong Kong's constitutional system has suffered damages, these are not irreparable, and concludes that the opportunity still exists to build a stronger constitution for the HKSAR. **SING Ming's** discussion of the relationship between the legislative and executive branches of government focuses on the limited power of Hong Kong's Legislative Council (LegCo) and the further erosion of this power since 1997. Sing argues that Hong Kong' legislature should be strengthened to allow it to play its role as an effective watchdog of the executive branch of government. **Cheung Chor-yung** addresses the issue of government accountability and looks specifically at the concept of accountability as provided in the Basic Law and in the Principal Officials Accountability System (POAS). Cheung makes the case that in the absence of democracy, it is extremely difficult if not impossible for the executive to be held accountable for policies and actions.

Raj Kumar provides an overview of various election and voting systems and a critical analysis of the HKSAR's current electoral arrangements. Kumar sees voting systems as integral to the process of democratic reform and emphasises the need for Hong Kong to develop a system that enhances government accountability and is reflective of its particular constitutional and political realities. **Ray Yep** discusses the role of political parties in contributing to effective democratic governance and explores the factors that have hindered political party development in Hong Kong. With an eye to the promise of universal suffrage contained in the Basic Law, Yep calls for a specific law to govern the operation and structure of political parties and assist in their development.

Anthony Cheung provides a summary of the evolution of Hong Kong's civil service and highlights the importance of civil service neutrality in serving the executive. Cheung advocates the enactment of a civil service law that would more clearly define the role of civil servants and principal officials and demarcate their political and administrative responsibilities. **Sonny Lo** deals with the subject of constitutional conventions and argues the HKSAR should develop conventions that are conducive to political reform by building on the political traditions and habits of the colonial administration. Lo also comments on the significance of constitutional conventions in upholding the "one country, two systems" principle.

MA Ngok provides an essay aimed at those who are sceptical about the economic rewards of democracy. Ma notes that fears about the impact of

democratisation on Hong Kong's economy have provided a significant barrier to political reform in the HKSAR and argues that these fears are generally based on outdated or inaccurate assumptions. **Richard Cullen** discusses the role of the media in society and examines the unique environment in which the Hong Kong media operates. Cullen suggests that in the absence of genuine democracy in the HKSAR, the local media serves as an important forum for political expression and democratic participation.

The last three chapters of this book offer alternative perspectives on the issue of democratisation and democratic participation. **Irene Tong** addresses the role of women in politics and makes the argument that women's interests are best represented under a democratic system where their vote contributes directly to the formation of the government. Tong identifies a number of constitutional and institutional barriers to women's participation in politics in the HKSAR and concludes with a number of suggested reforms to overcome these obstacles. **Christine Loh** discusses the concept of civil society and looks at how civic participation contributes to the experience of democracy within a society. Loh traces the development of Hong Kong's civic culture and stresses the importance of increased civic participation as a way of preparing for future political change. **Ivy Ning** describes ways to practise democracy in group settings and provides practical information on how to organise and run gatherings in a more democratic manner. Ning draws attention to the fact that democracy is not only about reforming constitutional and political systems, but can also be lived on a daily basis by the members of a community.

The way forward

On 8 January 2003, the Chief Executive released the Government's policy agenda for the following 18 months. The Bureau for Constitutional Affairs pledged to "begin to make suitable preparation for the review of constitutional developments after 2007." The review is scheduled to be conducted by the Government in 2004 or 2005. Among the issues still to be determined is whether it will include a review of the method of selection for the HKSAR's third Chief Executive in 2007. The Basic Law provides that there may be a review of "the method for selecting the Chief Executives for the terms subsequent to the year 2007."⁸ However, there is

⁸ Paragraph 7 of Annex 1 to the Basic Law states "if there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval."

apparently a lack of clarity within the HKSAR Government as to whether or not this would include the third term Chief Executive, even though reformers regard the commitment to democratic development contained in the Basic Law to include the third term.⁹ Either way, the discussion in the coming two years will have significant implications for the timing and content of future political reform. We hope the *Enhancing Democratic Participation Project* and this volume of essays will help to make the Government's preparation more meaningful by providing the information and tools for members of the public to engage actively in the discussion on democratic development in Hong Kong.

Suggested further reading

Beetham, David and Kevin Boyle (1995), *Introducing Democracy – 80 Questions and Answers*, Polity Press, UNESCO Publishing.

Civic Exchange & the National Democratic Institute (US) (Sep 2002), *Accountability without Democracy: The Principal Officials Accountability System in Hong Kong*, Hong Kong, available online at www.civic-exchange.org/n_publications.htm

Civic Exchange (Feb 2003), *The Budget and Public Finance in Hong Kong*, Hong Kong, available online at www.civic-exchange.org/n_publications.htm

Ghai, Yash (1999), *Hong Kong's New Constitutional Order*, 2nd ed., Hong Kong: Hong Kong University Press.

Lau, Siu-kai (2002), "Tung Chee-hwa's Governing Strategy: The Shortfall in Politics," Lau Siu-kai, ed., *The First Tung Chee-Hwa Administration: The First Five Years of the Special Administrative Region*, Hong Kong: The Chinese University of Hong Kong, pp. viii-ix.

⁹ A number of the former members of the Basic Law drafting committee have disagreed with the suggestion that the Basic Law is ambiguous on this issue, stating that the method of selection for the third Chief Executive is "open to review and change if the public deemed it necessary." Cheung, Gary, "Basic Law 'Allows New Way of Electing Chief Executive in 2007,'" *South China Morning Post*, 28 May 2003, p. A5.



Christine Loh

On 1 July 2003, a public holiday and the sixth anniversary of the HKSAR, half a million Hong Kong residents joined a protest march against the hasty passage of the HKSAR Government's proposed national security legislation required under Article 23 of the Basic Law that was scheduled for passage in the legislature on 9 July. The number of people who turned out was very much bigger than anyone had anticipated. The organisers never expected such an enormous showing. On the eve of the protest, the Alliance Against Article 23 and the Civil Human Rights Front, which were made up of an assortment of NGOs, expected 150,000 to 200,000 people to join in, which was already considered a very substantial showing. However, when some 7% of the population turned out on a hot and steamy day, the level of public discontent could not be ignored. Indeed, such a large showing of discontent with the government caused an immediate credibility crisis for the Tung Chee-hwa Administration, which officials could not use "spin" to explain away.

The government was stunned. Indeed, so taken aback were Hong Kong's top officials that they could not respond at length until 5 July, when the Chief Executive announced that the government would make three important concessions in the draft legislation, but that the date for passage would be kept. However, on 6 July, when James Tien, a member of the Executive Council (ExCo) and chairman of the Liberal Party, which controlled eight votes in the Legislative Council, handed in his resignation from ExCo, the Chief Executive had no choice but to announce the withdrawal of the national security bill as he could no longer be assured of winning the vote. Tien explained that: "It was impossible that I vote for the resumption of the second reading on July 9 while other members supported a deferral. As a party chief, I cannot use ExCo as a shield to vote otherwise. Resigning was the only choice."¹

¹ Fung, Fanny, "I Had No Other Choice But to Resign," Tien, *The Standard*, 8 July 2003, A2.

Who were the 500,000 people? A survey conducted by the University of Hong Kong's Public Opinion Programme of 1,154 marchers found that nearly 60% of the protesters had university education; 40% were professionals, 60% were considered middle class, and more than 80% of them were aged between 20 and 50. Almost 90% of them were disappointed with the government's performance and felt that they needed to show their discontent so they could make their voices heard. More than 80% of them also thought the Chief Executive should step down. Another survey conducted after 1 July found that 77% of the respondents opposed the passing of the bill on 9 July, with only 10% backing passage as originally set.²

On 9 July, even though the HKSAR Government had already deferred the national security bill, 30,000-50,000 people still gathered around the Legislative Council Building in the evening to call for the Chief Executive to step down and for a faster pace of democratic reform. On 13 July, 15,000-20,000 people gathered at the same spot to specifically call for universal suffrage in the election of the Chief Executive and all members of the legislature. Despite the clear message that Hong Kong people would like to participate in electing their government at the next available opportunity, the official response was a bland: "It is very natural that the public has aspirations about Hong Kong's constitutional development. The Government is willing to listen to the views from different sectors of the community. We have been doing so and will continue to do so."³ The government's timetable for review would remain unchanged — internal research in 2003, conduct consultation in 2004 or 2005, and then consider legislative changes necessary for the selection for the Chief Executive in 2007 and the election of the Legislative Council in 2008⁴ without any commitment or indication that a more representative electoral system was its goal even though the Basic Law provides that the "ultimate goal" is universal suffrage.

Just as the government's plan for Article 23 national security legislation had to be deferred after an unexpected enormous showing of public discontent, its timetable for discussing democracy in Hong Kong may need to be expedited now that there is a clear and unambiguous interest among the city's citizenry. The public's unhappiness with the ruling style of the Tung Chee-hwa Administration for the past six years and the loss of its credibility to govern have galvanised the people to take a greater interest

² The survey results can be found at <http://hkupop.hku.hk>.

³ Chong, Dennis, "20,000 Mass for Democracy Rally," *The Standard*, 14 July 2003, front page.

⁴ *Ibid.*

in the political system. There are likely to be continuing discussions and debates among all sectors of society on what should be the way forward and how it could be achieved.

Hong Kong is aware that the Central People's Government in Beijing has an important role to play in the Special Administrative Region's political development. After all, the Standing Committee of the National People's Congress has the general power to amend the Basic Law, which will be necessary to accommodate future democratic development in Hong Kong. While it may be hard at this moment to envisage wholehearted support from Beijing for a faster pace of reform in Hong Kong, it should also not be assumed that progress towards universal suffrage is not possible, otherwise the assumption would in effect become a debilitating influence on serious thinking about how Hong Kong could evolve politically.

We feel that Civic Exchange's Enhancing Democratic Participation Project has become even more relevant today than when we first started in January 2003. Hong Kong people must take the time and make the effort to understand the many complex issues involved in designing a new constitutional structure with a representative political system. There is no better time to start a community-wide dialogue now.



Authors

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