

# The Public Sector in Hong Kong

Second Edition

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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, or the sale of state-owned assets.<sup>1</sup> The agencies include bureaus, departments, the judiciary and funded statutory bodies, and fully or partly subsidised organisations such as publicly owned corporations, social welfare agencies, schools, and universities. They do not include private companies or voluntary associations. In Hong Kong, the civil service consists of 13 policy bureaus and almost 70 departments.<sup>2</sup> At the end of March 2021, the bureaus and department employed around 178,000 people, approximately 4.6% of the Hong Kong labour force.<sup>3</sup> The 70 “related organisations”, which range from small tribunals to large statutory bodies and public corporations, such as the Hospital Authority and the Airport Authority, employ at least as many people as the civil service. The Hospital Authority alone employs 88,000 people.<sup>4</sup> Most tertiary institutions and many welfare organisations are also largely funded by the taxpayer.

### Government and the Public Sector

#### The Issue of Autonomy

In recent decades, relationships between governments and their public sectors have become much more complex. Two factors have contributed to this complexity. The first is that many governments have given executive agencies outside the civil

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1. In Hong Kong, the sale of land, which is owned by the government, has been an important source of revenue. The conventional definition of the public sector as those organisations funded through taxation has been amended accordingly. See Wegrich, K. (2007). Public sector. In M. Bevir (Ed.), *Encyclopedia of governance* (Vol. II, pp. 776–777). Thousand Oaks: Sage.
  2. Hong Kong Government (2018, 1 July). *Organisation chart of the Government of the Hong Kong Special Administrative Region*. <https://www.gov.hk/en/about/govdirectory/govchart/index.htm>. See Figure 4.1.
  3. Legislative Council Panel on Public Service (2021, 17 May). An overview of the civil service: establishment, strength, retirement, age profile and gender profile. LC Paper No. CB(4) 986/20-21(03). The figures are for people in position (the “strength”) rather than the number of funded posts (“the establishment”), which in March 2021 was approximately 192,000.
  4. Hong Kong Hospital Authority. (2021). *About us*. [https://www.ha.org.hk/visitor/ha\\_visitor\\_index.asp?Content\\_ID=10008&Lang=ENG&Dimension=100&Parent\\_ID=10004](https://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=10008&Lang=ENG&Dimension=100&Parent_ID=10004)

service a greater degree of autonomy. The second is that the delivery of public goods and services has become much more of a partnership between government, the private sector, and voluntary social organisations.

In Western countries, governments have widely adopted private sector practices, leading to a distinction between “core government”, comprising important centralised functions such as finance, security, and overall policymaking responsibility, and decentralised government agencies or other public sector organisations which are often concerned with the delivery of social policies such as education and welfare. Underlying decentralisation is the notion that, if public sector organisations are given autonomy from central control, they may better utilise private sector methods to provide more efficient services.

Figure 1.1 shows a possible relationship between core government and the public sector, assuming that some power has been divested to decentralised public sector organisations. The autonomy from core government that these bodies can exercise will depend on their functions, level of public funding, perceptions of their need for independence, and often on the political circumstances that led to their creation. In many cases, autonomy is limited to the performance of very specific functions. For example, regulatory agencies, fully funded by the government, may be set up to control, say, the stock market or to protect consumers from inferior or dangerous products. These agencies have autonomy because 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 coordinate economic policy. The funding of a service often determines the organisation’s autonomy. The greater the funding, the more likely it is that the government will insist on close scrutiny of the organisation. Some agencies, however, such as an Audit Commission or an Ombudsman, are set up as fully funded, oversight bodies. In these cases, the organisation’s function to act as a check on government requires independence. Many governments also own public corporations that generate revenue and are intended to make profits. Public corporations usually have greater autonomy than other public bodies although there are normally provisions for ultimate central government control.

In Hong Kong, unlike many developed countries, devolution of responsibilities sometimes has little to do with the merits of private sector practices.<sup>5</sup> It is not always about the supposed private sector virtues of efficiency, productivity, and less hierarchical structures but more frequently about political convenience. The Hong Kong civil service has long taken pride in its efficiency and is not always convinced that public bodies with some degree of autonomy are equally efficient. When those bodies are established outside direct government control, the government normally retains a watching brief over their policies through the appointment of chief

5. Cheung, A. B. L. (2016). NPM in Asian countries. In T. Christensen & P. Lægreid (Eds.), *The Ashgate research companion to new public management* (pp. 132–144). New York: Routledge.

## The Functions of the Public Sector

The principal function of the public sector is to provide goods and services<sup>8</sup> for the community. These goods and services could potentially cover the whole range of human needs and desires from education to childcare to medical services to clean air to a safe environment. But there are always questions about how 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 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 public goods and services jointly. Figure 1.2 could be redrawn to show a smaller government and a larger market and/or society. Services could be divested from government to the private sector or voluntary organisations, and government could be reduced to core functions. Alternatively, Figure 1.2 could be redrawn to show a dominant government providing most goods and services with a smaller role for the market and societal organisations.

For many years in Hong Kong, the government’s philosophy was “big market, small government”.<sup>9</sup> In line with this principle, most public goods and services should be provided by the private sector or by voluntary associations. Historically, public expenditure as a percentage of Gross Domestic Product (GDP) has suggested as much. Until recently, it has been below 20%; the public expenditure percentage in most developed countries is often over twice as much.<sup>10</sup> The Basic Law, Hong Kong’s constitution, specifies that government should “keep the budget commensurate with the growth rate of its gross domestic product”.<sup>11</sup> That would seem to imply a commitment to a small public sector and the notion that government should not intervene directly in the market or society.

But that is a misleading impression. “Small government” in Hong Kong certainly does not mean limited government. The government is ubiquitous. In 2019, there was approximately one civil servant for every 42 citizens, one of the highest ratios in Asia and even higher if the employees of fully or largely funded public

8. Public goods and services are commonly defined as those goods and services that are provided by governments because the market cannot allocate them efficiently. See Srinivasan, K. (2007). Public goods. In M. Bevir (Ed.) op. cit., pp. 765–766.

9. Tsang, D. Y. K. (2006, 18 September). Big market, small government. <https://www.ceo.gov.hk/archive/2012/eng/press/oped.htm>

10. Wong, W., & Yuen, R. (2012). Economic policy. In W. M. Lam, P. L. T. Lui, & W. Wong (Eds.), *Contemporary Hong Kong government and politics* (2nd ed., p. 257). Hong Kong: Hong Kong University Press.

11. *The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (2020). Article 107. <https://www.basiclaw.gov.hk/en/basiclaw/index.html>



budgeting for the largest deficit in Hong Kong's history and said that it expected to be in deficit for the next five years; public expenditure as a percentage of GDP was forecast to rise to over 26% (see Chapter 7).<sup>14</sup>

How, then, should we characterise the role of the government in relation to the private sector and society? 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.<sup>15</sup> In that sense, the government ideally acts to preserve the long-term interests of capitalism but does not necessarily always serve the short-term interests of capitalists.<sup>16</sup> It may, for example, regulate the labour market rather than permit firms to pay low wages in unsafe working conditions. It may provide social services to satisfy citizens' needs even if this means that funding comes in part from company taxation. In its efforts to maintain the capitalist system, the Hong Kong government often seeks to lead rather than simply to facilitate, but to do so successfully requires a degree of relative autonomy from the market, society, and the Chinese government.

The relative autonomy of the Hong Kong government has been shrinking over the past two decades. Its ability to introduce new policies has been significantly constrained by almost continual opposition from many civil society organisations, such as political parties, unions, and a multitude of specific interest groups.<sup>17</sup> Many of these organisations did not believe that the public interest could be fully addressed under the existing political system and they looked for more democratic solutions. The Chinese government, too, had an agenda that it wished to see implemented. This resulted in measures promoting greater integration with the Mainland, interventions on matters within the Hong Kong government's jurisdiction, and public expenditure in line with Beijing's policies (see Chapter 10).<sup>18</sup> For many Hong Kong people, the high degree of autonomy promised to the post-1997 government in the Joint Declaration and the Basic Law was undermined.<sup>19</sup> Increasingly, the Hong Kong government was caught between two conflicting forces: democrats who wanted greater autonomy, even independence from China, more democracy, and a stop to the erosion of civil liberties, and a Chinese government that wanted more rapid integration of the Hong Kong Special Administrative Region (HKSAR) into

14. Financial Secretary (2020a). *The 2020–21 budget* (para 168, Appendix B). <https://www.budget.gov.hk/2020/eng/budget33.html>

15. Lee, E. W. Y. (1998). The political economy of public sector reform in Hong Kong: The case of a colonial-developmental state. *International Review of Administrative Sciences*, 64(4), 625–641; Scott, I. (1989). Administration in a small capitalist state. *Public Administration and Development*, 9(2), 85–199.

16. To paraphrase Miliband, it acts on behalf of capitalists but not necessarily at their behest. Miliband, R. (1977). *Marxism and politics* (p. 74). Oxford: Oxford University Press.

17. Chan, J., & Chan, E. (2017). Hong Kong 2007–2017: A backlash in civil society. *Asia Pacific Journal of Public Administration*, 39(2), 132–152.

18. Scott, I. (2017). One country, two systems: The end of a legitimating ideology? *Asia Pacific Journal of Public Administration*, 39(2), 83–99.

19. *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* (1984). <https://www.refworld.org/docid/3ae6b525c.html>

China and an end to the protests that rocked the polity.<sup>20</sup> The Chinese government's enactment of national security legislation for Hong Kong in 2020 represented what it thought was a final solution to the impasse.

In the following pages, the Hong Kong public sector is analysed in the context of its political, economic, and social environment. The purpose of the book is twofold:

- to describe and analyse how the public sector works and to examine its relationships with the polity, society, and the market; and
- to assess its attempts to overcome problems of accountability, autonomy, and legitimacy; its reduced capacity to formulate and implement policy; and the continuing pressure to deliver goods and services efficiently and in response to expressed needs.

## The Colonial Inheritance

Over the period 1841 to 1997, when Hong Kong was a British colony, the government acquired organisational and policymaking characteristics and relationships with the public that were designed to maintain political stability and to perpetuate colonial rule. In 1984, the Sino-British agreement preserved many of these features in the post-handover political system. They were incorporated in the Basic Law, which became the constitution of the HKSAR after the resumption of Chinese sovereignty in 1997. 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 structure of the civil service retains the form and functions that were characteristic of colonial administration. Public bodies, many created in the last two decades before the handover, have remained in place.

### Organisational Characteristics

The principal organisational characteristics of colonial administration were:

- centralised government;
- hierarchically organised departments;
- “small” government and fiscal frugality;
- recruitment by merit, political neutrality, commitment to the rule of law; and
- “clean” government.

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20. Cheung, T. (2020, 13 January). Beijing's top official in Hong Kong pledges deeper integration. *SCMP*. <https://www.scmp.com/news/hong-kong/politics/article/3045777/beijings-top-official-hong-kong-pledges-deeper-integration>

### *Centralised Government*

Centralised government was a feature of colonial administration from the outset. Initially, centralisation met the need to maintain political control, to allocate scarce resources, and to administer a small area. With the acquisition of the New Territories on lease in 1899 and with the creation of the Urban Council, some decentralisation of authority was permitted.<sup>21</sup> 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 of the centralised nature of government, the emergence of public bodies was a relatively late development. Even with the eventual establishment of many statutory bodies, such as the Hospital Authority, the government often strongly influenced their policies and practices.

### *Hierarchically Organised Departments*

Consistent with centralised government, the departments were organised on strongly hierarchical lines. The Police Force was established as a paramilitary body and other uniformed services—Correctional Services, Customs, Fire Services, and Immigration—were set up with a similar emphasis on strict discipline and obedience to orders. Within the non-disciplined departments, organisational structures were also strongly hierarchical. Departments consequently tended to develop independently from each other and to focus on top-down implementation rather than on horizontal coordination. While such a system was appropriate for maintaining political control, it was not entirely suitable when the government under an active Governor, Sir Murray MacLehose (1971–1981) attempted to expand education, housing, health, and welfare provision. In 1973, the McKinsey consultants recommended structural changes which have remained the basic structural form of the civil service ever since.<sup>22</sup> The Government Secretariat was reorganised into specific policy branches (later called bureaus) with responsibility for a cluster of related departments. Headed by a senior civil servant usually from the administrative grade, the branches were responsible for formulating policy which was then expected to be implemented by the departments. In practice, this politics/administration dichotomy did not always work smoothly and some departments, such as the Police Force, retained a good deal of autonomy.

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21. Wesley-Smith, P. (1980). *Unequal treaty: China, Great Britain and Hong Kong's New Territories*. Hong Kong: Oxford University Press.

22. McKinsey and Company (1973). *The machinery of government: A new framework for expanding services* (pp. 14–17). Hong Kong: mimeo.

### *Small Government and Fiscal Frugality*

Until the 1950s, when a public housing programme was introduced, the colonial government was small and provided only minimal services. Its 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 entrepreneurs to ensure that there were no budget deficits and that public expenditure was carefully scrutinised. Taxes were kept low. As the economy prospered, government revenue from company tax and the sale of land grew substantially. The government began to accumulate large surpluses. Although “small government” remained an important formal objective, the government eventually became large, complex, and differentiated with a major impact on the market and society. Expanded social services, increasingly delivered by the government or by subvented organisations, were seen as an important means of reducing the legitimacy deficit. By 1997, to meet this expanding role, the civil service establishment had risen to 190,000.<sup>23</sup>

### *Recruitment by Merit, Political Neutrality, and Commitment to the Rule of Law*

British expatriates occupied all the senior positions in the colonial administration until after the Second World War. The government then adopted a policy of localisation whereby an expatriate would be employed only when there was no qualified local candidate. Localisation was nonetheless very slow. Even in the 1980s, most directorate-level positions and senior positions in the Police Force were still held by expatriates. Thereafter, with the impending transfer of sovereignty, localisation was accelerated so that, by 1997, only 1,200 or so expatriates remained in the civil service. Appointments and promotions based on the merit principle are monitored by a Public Service Commission which was established in 1950 and continued to function after the handover.<sup>24</sup>

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 Hong Kong system of government, most senior positions were held by civil servants, taking the final political decision as well as advising themselves on the most appropriate measures. The concept of political neutrality was adapted accordingly to mean that civil servants would take decisions in the public interest and that they were accountable to the public to act impartially in taking

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23. Civil Service Branch (1997). *Civil service personnel statistics 1997* (p. 12). Hong Kong: Civil Service Branch.

24. Public Service Commission (2021). *Annual report 2020* (p. 1). [https://www.psc.gov.hk/eng/ann\\_rep/files/20rep.pdf](https://www.psc.gov.hk/eng/ann_rep/files/20rep.pdf)

decisions.<sup>25</sup> Political neutrality survived the handover, but its original meaning was fundamentally undermined by those who believed that civil servants' loyalty to political office holders should override any notion of accountability to a wider public.<sup>26</sup> The *Civil Service Code*, introduced in 2009, states that “[c]ivil servants shall serve the Chief Executive and the Government of the day with total loyalty and to the best of their ability, no matter what their own political beliefs are.”<sup>27</sup> In August 2019, after thousands of civil servants demonstrated against its strong-arm tactics towards protesters and questioned its interpretation of political neutrality,<sup>28</sup> the government stressed the provision in the code, emphasising that political neutrality meant loyalty to the government.<sup>29</sup>

The colonial government frequently claimed that the rule of law was the cornerstone of good governance. 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 incident in Beijing in June 1989 and the subsequent enactment of a Bill of Rights, 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.<sup>30</sup> The government also set 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.

### *Clean Government*

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, nightclub owners, taxi drivers, and small businesses. In 1970, the government passed a more stringent corruption law, the *Prevention of Bribery Ordinance*, although it was still administered by the police.<sup>31</sup> After a public scandal when a senior police officer, Peter Godber, who had been charged with corruption offences, managed to escape from Hong Kong, the

25. Scott, I. (1996). Civil service neutrality in Hong Kong. In H. K. Asmeron & E. P. Reis (Eds.), *Democratization and bureaucratic neutrality* (pp. 277–293). Basingstoke: Macmillan.

26. Cheung, J. (2003, 17 October). Civil service neutrality is a British thing: State leader. *SCMP*.

27. Civil Service Bureau (2009). *The Civil Service Code* (Section 3.7). [https://www.csb.gov.hk/english/admin/conduct/files/CSCode\\_e.pdf#page=3](https://www.csb.gov.hk/english/admin/conduct/files/CSCode_e.pdf#page=3)

28. Chung, K., Su, X., & Lum, A. (2019, 3 August). Hong Kong civil servants embarrass the government with protest against the extradition bill and determination to “stand together as citizens.” *SCMP*. <https://www.scmp.com/news/hong-kong/politics/article/3021276/hong-kong-civil-servants-embarrass-government-protest>

29. Hong Kong Government (2019, 3 August). Civil service neutrality restated. [https://www.news.gov.hk/eng/2019/08/20190803/20190803\\_205232\\_873.html](https://www.news.gov.hk/eng/2019/08/20190803/20190803_205232_873.html)

30. Jones, C. A. G. (2015). *Lost in China: Law, culture and identity in post-1997 Hong Kong* (pp. 63–65). Cambridge: Cambridge University Press.

31. McWalters, I., Fitzpatrick, D., & Bruce, A. (2015). *Bribery and corruption law in Hong Kong* (3rd ed., pp. 18–21). Singapore: LexisNexis.

governor decided that the ordinance should be administered by an independent commission and set up the Independent Commission Against Corruption (ICAC), which began work in 1974.<sup>32</sup> The commission soon proved to be extremely effective in reducing corruption in the civil service to minimal levels. By the 1990s, it was receiving more complaints about private sector corruption than about public sector corruption. It has remained an important feature of the post-1997 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 focused on outcomes rather than process.

### *Minimal Basic Functions*

In 1980, the economist Milton Friedman wrote that the Hong Kong government was the closest in the world to meeting Adam Smith's prescriptions for the appropriate functions of government in a capitalist system.<sup>33</sup> Smith believed that government should only be concerned with law and order, the administration of justice, and some public works. Friedman added a fourth responsibility: that of protecting those who could not protect themselves.<sup>34</sup> The description does not entirely fit Hong Kong since, by 1980, the government was providing some 40% of the population with public housing,<sup>35</sup> had expanded its education, health, and welfare programmes, and had built three new towns in the New Territories. But Friedman's description does convey something of the ethos of the Hong Kong government. From the earliest times, government and business believed that it was better to stick to minimal functions and not to become involved in social policy provision which would require raising taxes and a different organisational structure.

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32. See Lethbridge, H. J. (1985). *Hard graft in Hong Kong: Scandal, corruption and the ICAC*. Hong Kong: Oxford University Press; Manion, M. (2004). *Corruption by design: Building clean government in Mainland China and Hong Kong* (pp. 27–83). Cambridge, MA: Harvard University Press; Scott, I., & Gong, T. (2019) *Corruption prevention and governance in Hong Kong* (pp. 27–34). Abingdon: Routledge.

33. Friedman, M. (1980). *Free to Choose* (pp. 47–49, 54–55). Harmondsworth: Penguin.

34. *Ibid.*, p. 53.

35. Hong Kong Government (1981). *Hong Kong 1980* (p. 91). Hong Kong: Government Printer.

### ***Social Services Provision***

Until the 1950s, the colonial government thought that social services should be provided by voluntary organisations. It gave land and grants to churches and charitable organisations but only slowly began to deliver social services directly.<sup>36</sup> When it did become more directly involved, organisational reforms were necessary to speed up decision-making and to introduce more planning.<sup>37</sup> While the changes improved performance, they did not resolve the problem of lateral coordination between strong departments or policy issues about which the government and the society sometimes held opposing views. The education curriculum was a constant source of concern. Health care financing began to become problematic in the 1980s. And 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.

### ***Policy Formulation within Restricted Circles***

The colonial government's policymaking was conducted in-house in the Government Secretariat. Policies would usually be devised after an extended conversation conducted by memorandum between the most senior civil servants. Some consultation would then take place with committees of prominent figures appointed by the administration. Green papers with a clear indication of the government's preferred position were then sometimes 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. This style of top-down policy initiation, followed by varying degrees of consultation, has continued into the post-handover era although the government has been much less able than its colonial predecessor to insist that its proposals should be implemented.

### ***Top-Down Policy Implementation***

The colonial government saw policy implementation as a matter of targets that 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

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36. Sinn, E. (1989). *Power and charity: The early history of the Tung Wah Hospital, Hong Kong* (p. 13). Hong Kong: Oxford University Press.

37. McKinsey and Company (1973) op. cit.

to be met. In constructing public housing and building the new towns, for example, squatters were moved off the land to make way for the new estates. Colonial government attitudes towards policy implementation focused on the efficient and cost-effective achievement of the objective. The public was expected to be grateful recipients of whatever benefits were 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 that occasionally escalated into a crisis. Attempts were made to reduce this deficit by claims that government was based on the rule of the most able, on a "tripod of consents", and on good performance. In the 1990s, it also attempted to make the civil service more user-friendly and argued, against the evidence, that the government was accountable.

The government suffered from a continuing legitimacy deficit because, as a colonial regime, it had difficulty in generating consent for its rule. In common with colonies elsewhere, it would have preferred to rule with the support of traditional elites. But in Hong Kong, when the occupation took place in 1841, there were hardly any people, let alone traditional leaders. For the next 40 years or so, there were no institutional means of expressing the views of a public who were seen as sojourners who would return to China or migrate elsewhere.<sup>38</sup> Thereafter, the government, through the boards of the District Watch Committee and the Tung Wah and Po Leung Kuk charitable organisations, consulted Chinese elites on some matters affecting the people. The implicit bargain was that in exchange for direct government access, the elites would maintain social order.<sup>39</sup>

The system worked well enough until the communist takeover in China in 1949. Within six years, there was a fourfold population increase as migrants streamed into Hong Kong. New social problems, particularly the housing shortage, meant that advice from charitable organisations was no longer as relevant as it had been. There were riots in 1956, which left 59 people dead, and again in 1966 and 1967.<sup>40</sup> 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 of the police, and the need for labour reform and improvements in social services.<sup>41</sup>

Much of the next decade was devoted to bridging the gap, reducing the legitimacy deficit, and generating more support for the system without introducing

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38. Sinn, E. (2013). *Pacific crossing, California gold, Chinese migration and the making of Hong Kong* (p. 9). Hong Kong: Hong Kong University Press.

39. Lethbridge, H. J. (1978). *Hong Kong: Stability and change* (p. 117). Hong Kong: Oxford University Press.

40. Hong Kong Government (1956). *Report on the riots in Kowloon and Tsuen Wan October 10th to 12th 1956 with covering despatch dated 23rd December 1956 from the Governor of Hong Kong to the Secretary of State for the Colonies* (p. ii). Hong Kong: mimeo.

41. Commission of Inquiry (1967). *Kowloon disturbances 1966: Report of the Commission of Inquiry*. Hong Kong: Government Printer.



## Government and Public Bodies

Over the years, the Hong Kong government has created and funded many different types of organisation to provide advice or deliver services. These quasi-government public bodies have varying degrees of formal autonomy to run their affairs. Their complex relationship with core government raises important questions about whether the extent of their autonomy, their organisational structures, their funding, and their methods of coordination are appropriate for the functions they are expected to perform and for their accountability.<sup>1</sup> Although public bodies are not part of the civil service, they have become an established part of the governance framework and of public expectations about service delivery. Their relationship with core government has gradually changed. Until the 1950s, the government relied mainly on churches and charitable organisations to supply social services. When the government itself became more involved in social policy provision, it decided to establish more public bodies, such as the Hospital Authority, to deliver some services. The Tung administration took this a step further by supporting privatisation, public-private partnerships, outsourcing, and greater devolution of government functions. With the failure of many of these initiatives, several scandals, and more concern with centralisation and political unrest, the enthusiasm for creating new public bodies or expanding the functions of existing organisations declined. In 2008, a government survey found that there were 509 advisory and statutory bodies.<sup>2</sup> By 2018, the Home Affairs Bureau estimated that there were about 490.<sup>3</sup>

What explains these shifts in the government's attitudes towards public bodies? Underlying the fluctuations have been different conceptions of the functions that government should perform. Changing beliefs about what core government should do and how much should be left to public bodies or the private sector have affected

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1. Thynne, I. (2018). Fundamentals of government structure: Alignments of organizations at and beyond the center of power. In W. R. Thompson (Ed.), *Oxford research encyclopedia of politics*. New York: Oxford University Press. <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-128>
  2. Home Affairs Bureau (2005). *Legislative Council Panel on Home Affairs: Review of advisory and statutory bodies: Interim Report No. 14. Review of the classification system of advisory and statutory bodies in the public sector* (Annex 1). Hong Kong: The Bureau.
  3. Hansard, 31 October 2018, 869–872.

the size, autonomy, legal status, and funding of the public bodies. Shifting concepts of the appropriate relationship between government and non-government providers of public services have also raised important questions about the accountability, transparency, and representativeness of quasi-government organisations. In this chapter, we consider, first, how the public bodies have evolved; second, their legal status and funding; third, their representativeness, autonomy, and accountability; and, finally, contentious issues arising from the composition of their boards and the remuneration of their senior executives.

### **The Evolution of Government's Relationship with Service Providers**

Under colonial rule, the Hong Kong government's involvement in social policy was initially restricted to regulating education and health care, making occasional benevolent donations and grants of land to schools and hospitals, and providing limited support for the destitute and for refugees. The colonial government was strongly disinclined to develop social policy programmes for two reasons. First, the prevailing philosophy was that government should be kept small and its functions should be limited. Business leaders believed that any social policy programmes could only be funded by increased taxes, to which they were fiercely opposed. Second, the British government put pressure on the Hong Kong authorities to balance the budget and there was little slack for expenditure on social policy. Instead, the government monitored providers to prevent schools from becoming hotbeds of political dissent or condoning unhygienic health practices causing epidemics.

After the Second World War, regulation of the social policy system alone could no longer adequately address the colony's problems. The influx of refugees from China created major housing problems, led to communist activities in the schools and labour unions, and aggravated economic difficulties. The government began to reconsider its relationship with service providers. In 1947, it set up a Social Welfare Office and supported the creation of the Hong Kong Council of Social Service, which was incorporated in 1951 and has since served as the peak organisation and mediator between the government and the welfare providers. There was little funding support for welfare; the government's view was that any aid that recipients received should be used to encourage them to return to the workforce as quickly as possible.

In two other areas, the government was more interventionist. The housing problem was acute; there were thousands of squatters and the constant danger of fire. Despite some pressure from Britain, the government was reluctant to intervene, believing that it did not have sufficient capacity to resolve the problem.<sup>4</sup> In December

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4. Ure, G. (2012). *Governors, politics and the Colonial Office: Public policy in Hong Kong, 1918–58* (pp. 135–161). Hong Kong: Hong Kong University Press.

1953, the Shek Kip Mei fire finally led to government action. The land occupied by the squatters was resumed and a public housing programme was started that eventually provided accommodation for nearly half the population.<sup>5</sup> In education, fear of communist activities in the schools led to a greatly expanded public primary education programme.<sup>6</sup> By the 1960s, the government was providing important housing and education benefits, but it did so grudgingly under pressure from social and political forces that it could not entirely control.

After the riots of 1966 and 1967, there was a sea change in attitudes. Policy outputs—more housing, better education, better health facilities, more social welfare—provided the underpinning for the administration's attempt to bolster its legitimacy. Ancillary changes to devolve responsibilities to government-owned public corporations occurred at the same time. In 1973, the government introduced a new *Housing Authority Ordinance* which established the Housing Authority as a public corporation responsible for the construction and management of public housing estates. The housing powers and functions of the existing Housing Authority, the Housing Board, the Urban Council, and the Commissioner for Resettlement were consolidated in a single body, but the government did not see the Housing Authority as a new form of organisation.<sup>7</sup> The Housing Department, which was the executive arm of the authority, remained part of the civil service.

In 1975, the government did believe that it was breaking new ground when it established the MTRC as a wholly owned public corporation to build and then run Hong Kong's underground railway system.<sup>8</sup> The principal reason for setting up the MTRC lay in its commercial possibilities. It followed that Hong Kong's other railway, the KCRC, which had been a government department since 1910, should also be set up as a public corporation and an ordinance was passed in 1982. Measures were also introduced to provide for government regulation of the electricity companies and the bus companies, which operated under schemes of control that capped their charges and required that certain performance standards be met.<sup>9</sup>

Increasing social policy outputs had considerable political advantages.<sup>10</sup> It enabled the government to claim that it deserved to rule because it was an efficient government and provided the kind of services that people wanted. The government began to look more favourably at other means of providing these services. In 1985, consultants were appointed to investigate more cost-effective ways of delivering health services. Their recommendation was to establish a single authority because

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5. Smart, A. (2006). *The Shek Kip Mei myth: Squatters, fires and colonial rule in Hong Kong, 1950–1963* (Ch. 6). Hong Kong: Hong Kong University Press.
  6. Sweeting, A. (1993). *A phoenix transformed: The reconstruction of education in post-war Hong Kong* (pp. 218–219). Hong Kong: Oxford University Press.
  7. Hansard, 14 February 1973, 440.
  8. Hansard, 2 April 1975, 658.
  9. Lam, P. L. (1996). *The scheme of control on electricity companies* (pp. 17–29). Hong Kong: City University of Hong Kong Press.
  10. Scott, I. (1989). *Political change and the crisis of legitimacy in Hong Kong* (pp. 152–165). London: Hurst; Lee, J. (1999). *Housing, home ownership and social change in Hong Kong* (p. 13). Aldershot: Ashgate.

“the current system of medical services delivery will become increasingly . . . costly to maintain and less able to cope with the demands placed upon it”.<sup>11</sup> When the Hospital Authority was created in 1990, the model adopted, after some years of contentious debate, was similar in form to the Housing Authority.<sup>12</sup> The Hospital Authority was given overall responsibility for the management of public hospitals although public health remained under departmental control. In 1988, the government also made further changes to the Housing Authority, permitting greater financial flexibility for the implementation of its long-term housing strategy.<sup>13</sup>

There were good political reasons for strengthening the powers of the authorities. Complaints about the quality of social policy outputs were rising and added to the pressures on government. Demands for more representative political institutions, fears about the Chinese resumption of sovereignty, and the Tiananmen Square incident all meant declining legitimacy for the government. To deflect complaints to public bodies outside government was politically desirable because criticism was directed away from what was becoming an overloaded government. The Broadcasting Authority was set up as a statutory body in 1987 and was made responsible for answering complaints about radio and television. To deal with complaints more broadly, a Commissioner of Administrative Complaints was established in 1989, predictably receiving the largest number of complaints about housing.

In the 1990s, the government began to devolve even more responsibilities to statutory bodies and to allow them to charge more for their services. These measures were driven by both commercial considerations and wider political concerns. A strongly expressed fear during the transitional period was that a centralised bureaucracy with the autocratic powers held by the colonial regime could be used to suppress civil liberties after 1997. Consequently, there was support in government for spreading more of the public sector beyond the traditional civil service. The powers of the Commissioner of Administrative Complaints were strengthened and an Equal Opportunities Commission was established. An attempt was also made to corporatise Radio Television Hong Kong although this was abandoned after opposition from the Chinese government.<sup>14</sup> In similar vein, the government passed legislation to protect the privacy of individual data and to provide access to information.

On the commercial side, the government began to experiment with changing the ways departments conducted their business. A *Trading Funds Ordinance* was passed in 1993, which enabled government departments to operate in a commercial manner, provided that they were efficient and effective and had “the capacity

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11. W. D. Scott & Company (1985). *Report on the delivery of medical services* (pp. 2–3). Hong Kong: The Company.

12. Gauld, R., & Gould, D. (2002). *The Hong Kong health sector: Development and change* (pp. 51–73). Hong Kong: The Chinese University of Hong Kong Press.

13. Hansard, 9 March 1988, 899.

14. Cheung, A. B. L. (1997). Reform in search of politics: The case of Hong Kong's aborted attempt to corporatise public broadcasting. *The Asian Journal of Public Administration* 19(2), 276–302.

to meet the expenses incurred in the provision of the government service".<sup>15</sup> Six trading funds were eventually established: the Lands Registry, the Companies Registry, the Office of the Telecommunication Authority, the Post Office, Electrical and Mechanical Services, and Sewage Services. In 1998, the Sewage Services Fund was terminated after members of the Legislative Council criticised it for raising charges.<sup>16</sup> The funds were not usually given the liberty to set their prices, continued to operate as monopolies, and they did not live up to the expectations of those who wanted to see more commercial activity in government.<sup>17</sup> Another major commercial venture was the building of an international airport at Chek Lap Kok. The government established an Airport Authority, drafting the legislation along similar lines to that of the MTRC.<sup>18</sup> This raised concerns that there was insufficient government control over the new public corporation, a fear that seemed justified after the disastrous opening of the airport when the Legislative Council's investigation laid some of the blame for inadequate monitoring of the authority at the door of senior officials.<sup>19</sup>

After the handover, the Tung administration based its commitment to small government on the belief that the private sector could undertake many public functions in more efficient ways than the civil service. The measures that were taken mostly involved public-private partnerships, establishing government-owned public corporations and subvented bodies. Outsourcing also occurred, but it was mainly for public works or government services such as cleaning or parking. There were cross-cutting values at work. Although the government wanted to devolve some of its responsibilities, it also wanted to strengthen its grip on subvented organisations to make them financially accountable for taxpayers' money and to retain control of service delivery. Many senior civil servants believed that statutory bodies and subvented organisations were inefficient.

An important obstacle to greater privatisation has been actual or prospective political opposition. There were many fronts on which the government has had to battle to win or retain support. To introduce further controversial measures would have aroused the ire of the unions, members of the Legislative Council, and perhaps civil servants. The Chinese government, too, has favoured the centralisation of functions and opposed both the corporatisation of government broadcasting and the

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15. *Trading Funds Ordinance*, Cap 430, S.3(2).

16. Cheung, A. B. L. (2001). The "trading fund" reform in Hong Kong. In A. B. L. Cheung & J. C. Y. Lee (Eds.), *Public sector reform in Hong Kong: Into the 21st century* (p. 204). Hong Kong: The Chinese University of Hong Kong Press; Lam, P. L., & Chan, Y. C. (1997). *Privatising water and sewage services* (p. 3). Hong Kong: City University of Hong Kong Press.

17. Cheung (2001) op. cit., pp. 218–220; Huque, A. S., Hayllar, M. R., Cheung, A. B. L., Flynn, N., & Wong, H. K. (1999). *Public sector reform in Hong Kong: The performance of trading funds* (p. 1). Occasional Papers Series. Hong Kong: Department of Public and Social Administration, City University of Hong Kong.

18. Cheung, A. B. L. (2006). How autonomous are public corporations in Hong Kong? The case of the Airport Authority. *Public Organization Review* 6(3), 221–236.

19. Legislative Council (1999). *Select committee inquiry report on the new airport* (Vol. 1, pp. 187–191). <https://www.legco.gov.hk/yr98-99/english/sc/sc01/papers/chapter7.pdf>

partial privatisation of the Airport Authority.<sup>20</sup> Politicians and academics also questioned whether privatisation and devolution were more efficient and cost-effective than the services provided by the government. Legislative Councillors were critical of the lack of accountability of public bodies, outraged over the large salaries paid to their senior executives, scandalised over the misuse of public money, fearful of possible job losses in the civil service, and concerned about the seemingly inevitable increase in fees for public services that were once free or relatively inexpensive.

Many of these concerns were raised in a debate in the Legislative Council in 1999 on the privatisation of government departments. Lee Cheuk-yan, the head of the Hong Kong Confederation of Trade Unions, introduced a motion urging the government to oppose privatisation.<sup>21</sup> He said that the government was ignoring

the five big evils accompanying the privatisation of government services, namely a drop in service quality; heavier burden for the people as a result of loss of control on the monitoring of charges; retrogression in democracy due to dwindling accountability; adverse effects . . . from piecemeal implementation of government policies; and the smashing of the “rice bowls” of staff that might lead to unemployment, social unrest and suppressed wages.<sup>22</sup>

Against the “five big evils”, the then Financial Secretary, Donald Tsang, posited what he saw as the four virtues. Corporatisation, he said, had distinct commercial advantages. The service providers could develop a customer-oriented culture. The cost-effectiveness of services could be more accurately assessed. Corporations would no longer be subject to government rules and could adjust to changing market conditions. Private sector organisations could take part in offering services previously provided by government.<sup>23</sup> Tsang noted that staff would be consulted on changes, redundancies would be avoided as far as possible, service quality would be enhanced, and the level of charges would be monitored or included in the operating agreement with the new public body.<sup>24</sup>

The Asian financial crisis increased the pressure on the government to do more for business and to decrease the cost of running the civil service. In the heyday of its support for privatisation, the government had an extensive agenda of assets that it intended to sell off to the private sector. In the 2003 budget, the Financial Secretary announced that the government would sell \$112 billion in assets over the following five years.<sup>25</sup> In 2004, his successor noted that about \$21 billion had been realised through selling housing loans to the Hong Kong Mortgage Corporation and the securitisation of revenues from government toll tunnels and bridges.<sup>26</sup> There were

20. Cheung (1997) op. cit.; Cheung (2006) op. cit.

21. Hansard, 16 June 1999, 8791.

22. *Ibid.*, 8787–8788.

23. *Ibid.*, pp. 8855–8856.

24. *Ibid.*, p. 8858.

25. Financial Secretary (2003). *The budget 2003–04* (p. 25). Hong Kong: Printing Department.

26. Financial Secretary (2004). *The 2004–05 budget* (p. 25). Hong Kong: Government Logistics Department.

## Efficiency, Responsiveness, and Transparency

What do people expect of their government? How does the government seek to meet those expectations? For any government that is not solely based on the coercive power of the state, these are important questions. In Hong Kong, where the government cannot be removed by elections and where there are few other justifications for its continuing rule, the ability to respond to people's needs and expectations is critical. Both the colonial and the post-handover regimes have rested their claims to rule on performance legitimacy, the belief that, if the government delivers the public goods and services that people want, then *ipso facto* it will also have political support and a rationale for exercising its authority. There are two critical assumptions underlying this claim: that the government can determine what those expectations are and that it has the capacity to meet them. If demands are relatively simple, then this may not be problematic. But if they are complex, expensive, or conflicting, then the government's ability to deliver may be in question. In Hong Kong, low capacity to implement policy has meant that the government has had difficulty in introducing new policies even when there are clear demands for them. The government has aimed at increasing efficiency not only because this accords with its traditional beliefs, such as "value for money" and fiscal frugality, but also because an efficient government, at least in its own eyes, is a legitimate government.

Although the government has always believed that efficiency is central to meeting people's expectations, it has not been the only value that it has sought to promote. A non-democratic government might still win popular support and reduce its legitimacy deficit if it acted responsibly and responsively. If relations between government and the public could be conducted courteously, quickly, and with attention to specific needs and if the government was able to assess public demands for policy changes and was transparent about its intentions, then it might benefit from increased political support. In this ideal world, efficiency, responsiveness, and transparency might be regarded as compatible values. If, for example, a department can make clear to its clients what its requirements and their entitlements are and serve them quickly and pleasantly, it may be acting transparently, efficiently, and responsively. But it is also possible that the values may be incompatible. A department that tells people what it is going to do, and why, is acting transparently, but

if it fails to deliver, it loses credibility. A department that spends too much time looking after the diverse needs of citizens might be responsive without being efficient. Conversely, a department may deliver services efficiently but without much regard to the views or needs of its clients.

The balance between efficiency, responsiveness, and transparency is difficult to achieve. For the most part, the Hong Kong government has regarded efficiency as the overriding legitimating value. The argument that government should be cost-effective and efficient has usually won out over the view that it should listen to what people want and then deliver services appropriately, if perhaps less cost-effectively. At times, however, responsiveness has been seen as an alternative means of legitimation. In the last years of colonial rule, it was central to the government's objective of changing the culture of the civil service and "re-legitimizing" the bureaucratic polity.<sup>1</sup> After 1997, this approach fell out of favour because Tung's initial stress was on the importance of managerialism, efficiency, and "executive-led" government. The mass demonstration against the national security legislation in 2003 persuaded the government that it should be more concerned about "people-based governance"<sup>2</sup> and more responsive to their policy demands. But this was essentially a formal commitment and did not lead to many new ways of improving its relationships with the public. The growing impasse in policymaking reflected the fact that, although the government provided its citizens with extensive information on its activities and its civil servants were often responsive and efficient, there were no easy ways to convert public expectations into policy outputs. In this chapter, we examine the attempt to use efficiency, responsiveness, and transparency to reduce the legitimacy deficit.

## Performance Legitimacy and Efficiency

The legitimacy of a government (as distinct from that of a state) may rest on all or some of four measures: process (input) legitimacy; performance (output) legitimacy; shared beliefs; and international recognition.<sup>3</sup> In the Hong Kong context, three of these measures are either missing or have been compromised. Process legitimacy involves citizens' determination of how a government exercises power, often expressed through elected governments and the right to vote.<sup>4</sup> In Hong Kong, it has foundered on the failure to introduce direct elections for the Chief Executive and the legislature as provided for in the Basic Law. Legitimacy may also rest on

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1. Cheung, A. B. L. (1996). 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), 37–50.
  2. Tsang, D. Y. K. (2005). *Strong governance for the people*. Hong Kong: Government Logistics Department; Tung, C. H. (2004). *Seizing opportunities for development, promoting people-based governance* (pp. 22–24). Hong Kong: Government Logistics Department; Tung, C. H. (2005). *Working together for economic development and social harmony* (pp. 9–10). Hong Kong: Government Logistics Department.
  3. Dagher, R. (2018). Legitimacy and post-conflict state-building: The undervalued role of performance legitimacy. *Conflict, Security and Development*, 18(2), 85–111.
  4. Beetham, D. (2013). *The legitimation of power* (2nd ed.). Basingstoke: Macmillan.



an assumption about shared values and beliefs: that those of the government are congruent with those of the people and that therefore it has a legitimate right to rule. The attempts to promote shared values with the Mainland through the education system, however, have not succeeded in attaining this objective and may have helped spark protests that represented a very different set of values. International recognition is not relevant since Hong Kong was previously a British colony and is now part of the People's Republic of China.

That leaves performance legitimacy as the basis for the Hong Kong government to seek to legitimise its rule. Performance legitimacy may be defined as the provision of desired and delivered goods and services in exchange for citizens' recognition of the government's right to exercise power.<sup>5</sup> If a government can meet citizens' daily needs, especially health, housing, education, welfare, and transport, then it may be recognised as a legitimate provider of desired goods and services. But two caveats are important. First, perceived needs may change over time. Expectations may rise and change and new demands may become more salient. The government must have sufficient capacity and flexibility to accommodate both gradual change within well-established parameters and the delivery of new goods and services that may require imaginative policy responses. Second, access is an important element of performance legitimacy. The presumption is that the whole population will benefit from good performance. But if access to public goods and services is unequal or compromised by poor delivery, the division between the beneficiaries and the excluded may have adverse political consequences.

In the absence of democratic legitimation, performance legitimacy has taken on important political as well as administrative significance. Lui observes that the credibility of the colonial government hinged almost entirely on bureaucratic performance; inefficiency was not simply administratively undesirable, it also threatened the political authority of unaccountable civil servants.<sup>6</sup> In the post-handover era, the POAS was expected, *inter alia*, to improve the government's ability to deliver goods and services more efficiently. Efficiency has remained politically important because the government has been unable to supplement its right to exercise power with other forms of legitimation.

Efficiency relates to at least three aspects of administrative performance. First, costs should be kept under control and new expenditure should meet the criterion of the greatest output for the least resources expended. Governments must be careful that what they deliver does not fall too far below citizens' expectations. The cheapest goods and services are not necessarily always the solution to the problem. Second, efficiency means rapid decision-making. Since the McKinsey recommendations, the disaggregation of the Government Secretariat into discrete policy bureaus

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5. Dagher (2018) op. cit.

6. Lui, T. T. (1994). Efficiency as a political concept in the Hong Kong government: Issues and problems. In J. P. Burns (Ed.), *Asian civil service systems: Improving efficiency and productivity* (p. 18). Singapore: Times Academic Press.

and the decentralisation of some functions to the departments have allowed more decisions to be taken at a relatively lower level.<sup>7</sup> In post-handover Hong Kong, the problem has not been a lack of efficiency in responding to demands within existing programmes as much as securing support for new programmes that address pressing issues. Third, efficiency involves delivering services through an appropriate structure with qualified personnel. The government's hierarchical structure means that it can deliver some services efficiently. With the expansion of the education system, it has not been short of qualified personnel except in some professional areas where salaries in the private sector far exceed those in the public sector.

The idea that the government can acquire legitimacy through the efficient delivery of services is a thread that runs through Hong Kong's history, but there are significant differences between its earlier and later forms. In the 1970s, the government based its right to rule on the provision of much-expanded services, such as public housing, education, health care, welfare, and transport, and took credit for the territory's economic prosperity. This success encouraged the belief, particularly held by business and pro-Beijing groups, that Hong Kong people would be satisfied with any government that provided such goods and services, regardless of how it was selected. From this perspective, regime legitimacy was subsumed under the managerialist assumption that outcomes and ends, not means or process, mattered in securing political support. If this were so, then the only problem for a government was whether it could deliver what the people wanted. Tacit support would obviate the need for expressed consent. In both the transitional and post-handover periods, the evidence suggests that this approach oversimplifies the legitimacy problem, underestimating the complex support required to maintain consent and the legal and moral authority necessary to rule in a non-democratic system.

During the transitional period, the government was able to maintain its established record for service delivery. However, the Sino-British negotiations and the realisation that the British and Chinese governments would determine the fate of Hong Kong reduced the authority of the colonial administration. The retrocession to China also sparked demands for the protection of civil liberties and the rule of law after 1997, which neither the British government nor the colonial administration could guarantee. There were growing demands for representative government and pressure groups began to lobby for qualitatively better social policy outputs. As civil organisations gathered momentum, the predominance of a paternalistic civil service elite declined<sup>8</sup> even though senior civil servants themselves continued to believe that what the people wanted was best determined by the bureaucracy.<sup>9</sup>

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7. McKinsey and Company (May 1973). *The machinery of government: A new framework for expanding services* (p. 5). Hong Kong: mimeo.

8. Painter, M. (2005). Transforming the administrative state: Reform in Hong Kong and the future of the developmental state. *Public Administration Review*, 65(3), 335–346.

9. Burns, J. P. & Li, W. (2015). The impact of external change on civil service values in post-colonial Hong Kong. *The China Quarterly*, 222, 522–546.

Towards the end of the colonial administration, some difficult decisions were postponed although the government still attempted to maintain stability by expanding social policy outputs. There were efforts to increase health care services and expand public housing.<sup>10</sup> To answer demands for qualitatively better social policies, the government set up an Environmental Protection Department, tried to reform the social welfare system, to resolve transport problems, and to improve teaching practices and learning.<sup>11</sup> A science and technology university was established to help meet demands for more tertiary-level education.

In 1995, the Efficiency Unit produced a document, *Serving the community*, which formally remains a template for government objectives.<sup>12</sup> The government committed itself to protecting individual rights and freedoms, maintaining the rule of law, improving the quality of life, fostering stability and prosperity, and encouraging participation in the community. The document also contained a section on efficiency, which provided for reviews of departmental programmes, advice on how departments were to be managed, “value for money” studies, and the promotion of new technology to improve services.<sup>13</sup>

In October 1997, Tung delivered the first post-handover policy address. There were promises of an even greater expansion of social policy outputs and rail and road services. Tung said his administration would increase the supply of land and ensure the construction of 85,000 public housing flats per year and the sale of 250,000 units. There were additional CSSA payments, more hospital beds, a new \$5 billion Quality Education Fund, another review of health care, and more elderly care centres, all aimed at improving the quality of life. It proved impossible to deliver on the promise of 85,000 flats per year and other initiatives were affected by the Asian financial crisis and the subsequent economic recession.<sup>14</sup> Yet, like his predecessors, Tung was committed to legitimising his government by performance legitimacy and ensuring that his administration was efficient.

Although he praised the civil service in the policy address, Tung’s view was that it needed substantial reform to make it more innovative, more attuned to business practices, and more cost-effective. Tung’s public sector reforms were not successful (see Chapter 5), but they did temporarily reduce the size of the civil service and may have laid the foundation for a more professional civil service because the disproportionately large numbers of workers and labourers on the Model Scale 1 pay scale

10. Hutcheon, R. (1999). *Bedside manner: Hospital and health care in Hong Kong* (Ch. 3 & 4). Hong Kong: The Chinese University of Hong Kong Press; La Grange, A. (2007). Housing (1997–2007). In J. Y. S. Cheng (Ed.), *The Hong Kong Special Administrative Region in its first decade* (p. 701). Hong Kong: The City University of Hong Kong Press.

11. Bray, M. (1997). Education and colonial transition: The Hong Kong experience in comparative perspective. *Comparative Education*, 33(2), 157–169; Working Party on Social Welfare Policies and Services (1990). *Social welfare into the 1990s and beyond*. Hong Kong: Government Printer.

12. Efficiency Unit (1995). *Serving the community* (p. 5). Hong Kong: Government Printer.

13. *Ibid.*, p. 47.

14. Tsang, C. K. (1999). The Hong Kong economy: Opportunities out of the crisis? *Journal of Contemporary China*, 8(20), 29–45.

were gradually replaced with more skilled and qualified personnel. In 1997, 12.3% (22,883) of the strength of the civil service was on Model Scale 1; by 2020, this had been reduced to 4.1% (7,432).<sup>15</sup> Although the government gradually increased its capacity, deploying resources to introduce major new programmes proved difficult. Success in basing legitimacy on performance and output was much more constrained by a contentious environment than it had been under colonialism.

The colonial government successfully addressed the task of meeting pent-up demands for basic goods and services. But it had several advantages: a balanced budget backed by substantial and usually increasing reserves, almost no opposition to its proposals, and an efficient, cost-effective, and expanding civil service. The converse applied in the post-handover period. Demands for services grew and were more complex, the budget was at times in deficit, and although, after 2007, the civil service expanded, its cost eventually became unsustainable. The government gradually became weaker and less credible, caught between Mainland government influence over its policies and democratic opposition in the legislature and on the streets.

The failure to satisfy demand on many issues led to dissatisfaction with government performance. Figure 11.1 shows HKUPOP/PORI survey responses to the question “Are you satisfied with the performance of the HKSAR government?” over the period 1997 to 2020. At only two points over those years does satisfaction with the performance of the government rise above 50%: in 1997 and at the start of the Tsang administration in 2005/2006. The percentages in Figure 11.1 for the satisfied and dissatisfied respondents conflate the views of the “very satisfied”/ “satisfied” and those who were “very dissatisfied”/ “dissatisfied” and represent the average of two polls taken annually. The number of respondents who were “very satisfied/ positive” ranged from a low of 0.7% in 1999 to a high of 7.7% in 2017.<sup>16</sup> Those who were “very dissatisfied”/ “dissatisfied” ranged from 1.9% in 1997 to 59.9% in 2019; on a single poll in 2019, the number who were “very dissatisfied” or “dissatisfied” reached 75.8%.<sup>17</sup> A government cannot base its right to rule on performance legitimacy with numbers like these.

Responses to HKUPOP/PORI polls show that, if the government is viewed unfavourably on the political dimension, it will be perceived to have performed unfavourably on all other dimensions.<sup>18</sup> A PORI question, for example, on the sufficiency of social welfare provision showed a sharp drop in levels of satisfaction with government performance once the 2019 protests began. Access to social services could also be an important factor in determining satisfaction. In a study of over

15. Civil Service Bureau (1997). *Civil service personnel statistics 1997* (p. 15). Hong Kong: Government Printer; Civil Service Bureau (2020). Strength of the civil service (as at 30 June 2020). <https://www.csb.gov.hk/english/stat/quarterly/541.html>

16. PORI (2020). People’s satisfaction with the HKSAR government. <https://www.pori.hk/pop-poll/government-en/h001.html?lang=en>

17. *Ibid.*

18. *Ibid.*; Wong, M. Y. H. (2020). Welfare or politics? A survey experiment of political discontent and support for redistribution in Hong Kong. *Politics*, 40(1), 70–89.

## The Public Sector in Its Political Setting

This concluding chapter is an assessment of how contested values in a changing political environment have affected the public sector, particularly its accountability, policy formulation and implementation, and legitimacy. While there have not been many major changes to structure or procedures in the public sector since the handover, there has been a gradual shift away from traditional values accompanied by a decline in the authority and accountability of the Hong Kong government. A significant change in the location of power has sharply reduced the government's autonomy from Beijing and its capacity to make and implement public policy has been diminished by prolonged contention with civil society. Values have been at the centre of this conflict. The perception that civil liberties and the rule of law are in jeopardy has fuelled huge street protests and has been coupled with calls for a future democratic Hong Kong based on very different values from those on offer from the Chinese government.

It is possible to trace these changes over five sequential periods in which the common thread is a Hong Kong government increasingly caught between a disaffected public and a Chinese government intent on asserting greater control over the affairs of the SAR. At stake have been the protection of civil liberties and the extent to which constitutional reform could meet the democratic claims of civil society organisations. In the event, the assertion of the Chinese government's view of what the Joint Declaration and the Basic Law meant and the decision to enact national security legislation for Hong Kong saw the eclipse of traditional values and the inception of a new political order. In the following sections, these developments are analysed in greater detail.

### **The Transitional Period (1984–1997)**

The critical feature of colonial administration in Hong Kong was that it was coterminous with the state. The integration of administrative and political functions, the absence of direct control from London, and public acceptance of the bureaucratic order meant that it was possible to create a system that developed in ways that were unique to Hong Kong and quite different from the usual constitutional evolution

of British colonies. By the time negotiations took place with the Chinese government on the future of the territory, it was possible to envisage that the change of sovereignty might not lead to a change of system. On the Chinese side, the concept of “one country, two systems” gave recognition to the importance of capitalism to Hong Kong but also to the political, administrative, and legal supports that made such a system possible. On the British side, there was a clear intention to write into the Joint Declaration the essential values which gave Hong Kong, as the British Foreign Office diplomats saw it, freedom without democracy, executive government without the embarrassment of many legislative controls, and the continuing dominance of an efficient civil service. The Chinese government was willing to write those provisions into the Basic Law. Colonial political and administrative arrangements had the backing of the business community and could be changed after 1997 if they proved to be inappropriate. The consequence was that the political framework laid down in the Basic Law, except for some vague concessions to future democratic development, strongly resembled the pre-1997 political order.

There were three problems. The first was that the population had become much more politicised as a result of the agreement and subsequent developments, such as the Tiananmen Square incident, and began to demand more representative government and more protection for their civil liberties. Just before the retrocession in 1997, Patten observed that whenever there was a fair test of public opinion “approaching two-thirds of the electorate support a democratic agenda”.<sup>1</sup> Every subsequent poll has shown that a majority of Hong Kong people were not happy with the existing system and that they had declining levels of trust in their government.<sup>2</sup> The measures introduced in the latter stages of the transitional period to the handover in 1997 were, in part, responses to that dissatisfaction. And, although the electoral reforms introduced in 1995 did not survive the retrocession, and the measures designed to protect civil liberties were seen to be fragile, they created expectations of progress towards a more representative system. When the incoming post-handover government dissolved the Legislative Council and announced more restrictive electoral procedures, support for the new political order, which appeared to be more autocratic than the departed colonial administration, was eroded from the outset.

A second problem was that the position of Chief Executive did not equate as easily with the position of Governor as had been anticipated. In colonial Hong Kong, the Governor tended to meld with the civil service rather to stand apart from it. There were, it is true, Governors, such as MacLehose, who sought to bring about fundamental change, but they tended to be the exception rather than the rule. When Tung came to office in 1997, there was little doubt that he wanted to bring about major changes. Some of his problems were inherited from the transitional period

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1. Patten, C. (1996). *Hong Kong: Transition*. Hong Kong: Government Printer.

2. PORI (2020). On the whole, do you trust the HKSAR? <https://develo.pori.hk/pop-poll/government-en/k001.html?lang=en>

where difficult decisions were sometimes postponed to avoid political unrest, but most of the impetus for change probably came from his desire to stamp his imprint on the administration and from the Chinese government. Whatever the cause, there was tension between Tung and his senior civil servants, especially when his policies could not be implemented. This may have set the political stage for public sector reform. Even if the unreformed colonial system had been a model for the post-1997 government, it was no longer seen as appropriate for the public service that Tung wanted to create.

A third problem was that the values that underpinned the civil service, critical as they were, were not formalised into the constitutional arrangements. Neither the Joint Declaration nor the Basic Law captures the intricate relationship between the values which the civil service held dear and the construction of its dominant position within the polity. There is no mention in the Basic Law of such values as the public service vocation, meritocracy, and political neutrality. A civil service that exercises political power, such as that in colonial Hong Kong, requires a justification for its right to do so. The colonial administration had continuing problems justifying its right to rule although it did claim to have the consent of the people. What evidence supported that claim? How could consent be justified in a system which provided no means of democratic legitimation? The colonial administration offered several elaborate answers to those questions, including its performance, its efficiency, and various other values, such as meritocracy and political neutrality, none of which were entirely convincing. Perhaps the most pressing of its claims was that it had the right to rule because its most senior civil servants were the best and most able people available and because they also were imbued with a public service ethos which meant that the decisions that they took, as far as they were able to ensure, were in the best interests of the people of Hong Kong.

The importance of the public service ethos is a recurring theme in the memoirs and speeches of Hong Kong's senior civil servants. In a farewell speech, for example, Anson Chan said that as a young administrative officer she had been told that:

you have joined a very special service which has an excellent reputation built up by the people who have gone before you. Your obligations as an administrative officer are simple. You must serve the people well and you must serve them with honour.<sup>3</sup>

It was, she said, advice that she passed on to her younger colleagues. When her successor, Donald Tsang Yam-kuen, was asked about the differences between him and Anson Chan, he stressed instead their common commitment to the people.<sup>4</sup> A host of other senior civil servants have testified to the importance of the public service ethos as a value that received constant stress within the government, served as a

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3. Chan, A. (2001, 19 April). *Speech by the Chief Secretary of Administration at an Asia Society luncheon* [Press release].

4. Hong Kong Government (2001, 3 May). *Transcript of Chief Secretary for Administration's media session (Part 2)* [Press release].

bond between administrators, and created public expectations about the role that civil servants would play in the community. In the Civil Service Training Centre, as it then was, new graduates on the first day of their induction course were asked why bright young men and women such as them were prepared to work for a colonial regime.<sup>5</sup> In the embarrassed silence that usually followed, the instructor provided the answer: they were not there to serve a colonial regime; they were there to serve the people of Hong Kong.

To be overly cynical about such professions of the importance of the public service ethos misses a critical point. In any Weberian system of public administration, public service as a vocation, meritocratic recruitment, and political neutrality are central values. But in most Weberian systems, such values did not by themselves legitimate the exercise of power because there was also normally a political order, often democratically legitimated, which gave elected representatives a mandate to decide on what was in the best interests of the people. In Hong Kong, if civil servants were to exercise power, they needed legitimating principles to justify what they were doing. Public service as a vocation provided one such justification. Nor should we be surprised that this justification proved successful. Although it may be argued that Hong Kong's pre-1997 political system was unique, the ideas on which it was based had a long pedigree. Confucius and Plato would both have approved of a system in which able new recruits to the civil service were socialised and trained in a commitment to public service and where popular influence on government was restricted.

Despite the importance of these bureaucratic supports for the system, they were not sufficient to prevent the colonial administration from suffering from periodic crises of legitimacy and from an enduring legitimacy deficit. There remained major problems of consent and of legal and moral authority which the colonial administration could attempt to reduce but could never entirely resolve. The absence of alternative forms of legitimation became even more evident when it became clear that Hong Kong's democratic development was about to be curtailed. The authority of the post-1997 system was undermined by the dissolution of the Legislative Council and it was to be further compromised by the blame that the government received for its handling of the economy and for its policy failures. The question was which values, if any, might replace those of the colonial order.

### **The Post-handover Government: Political Control and Failed Changes (1997–2005)**

The answer to that question was not immediately obvious. If Tung Chee Hwa had assumed the mantle of a colonial governor and defended his civil service against

5. Hayes, J. (1996). *Friends and teachers: Hong Kong and its people 1953–87*. Hong Kong: Hong University Press; Sinn, E. (Ed.) (2001). *Hong Kong: British crown colony revisited* (pp. 7, 126–127). Hong Kong: The University of Hong Kong.



the criticisms of his supporters in the business world, and if the Chinese government had refrained from interfering in the Hong Kong system, as it initially seemed inclined to do, then it is possible that the bureaucratic polity might have continued for some time. But the life of the bureaucratic polity was essentially limited by the political pressures from Tung, his supporters, and the Chinese government, on the one hand, and from the democrats, on the other. There was declining public support for a system based on rule by civil servants. The Tung administration wanted a new order which asserted political control over the civil service. It wanted to bring to government what it regarded as the virtues of private sector practices. The relative autonomy that the civil service had previously exercised in its decisions affecting the business community was diminished. The democrats were looking for a more accountable system, especially following the tensions between the Legislative Council and senior civil servants in the immediate aftermath of the retrocession.<sup>6</sup>

To fill the void, the government proposed two solutions. The first was the introduction of managerialist reforms that either reinterpreted the meaning of old values, such as efficiency, responsiveness, and eventually political neutrality, or sought to establish new values within the civil service that undermined the traditional norm of public service as a vocation. The emphasis was on downsizing, pay reductions, and the ability to implement bright ideas and politically determined ends rather than the notion of the public service ethos. The reforms, introduced in 1999, brought managerialist values to the forefront of future civil service practice,<sup>7</sup> proposing the introduction of more contractual conditions of employment, renewal of contracts to be determined by performance, the use of performance pay as a motivator, performance as the main determinant of promotion, and harsher sanctions for failure to meet minimal standards.

To pursue such an agenda is difficult enough under normal conditions. In Hong Kong, the government introduced its reforms at a time when it was suffering from a significant budget deficit. This was attributed in part to high recurrent expenditure for the civil service which Tung, and many in the business community, believed was too large and too well paid. The post-1999 reform initiatives soon became synonymous with downsizing and salary cuts. It was proposed that employment in the civil service as a lifetime career, an “iron rice bowl”, should be replaced with programmes that brought in new recruits on short-term contracts and offered voluntary retirement to longer-serving officials. As salaries were cut and public and political criticism of the civil service increased, morale in the civil service declined alarmingly.<sup>8</sup> The key values, to which Anson Chan had referred, seemed increasingly under

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6. Scott, I. (2000). The disarticulation of Hong Kong's post-handover political system. *The China Journal*, 43, 29–53.

7. Civil Service Bureau (1999). *Civil service reform: Consultation document: Civil service into the 21st century*. Hong Kong: Printing Department.

8. Cheng, J. (2003, 26 October). Team spirit lacking in demoralized civil service. *SCMP*; Cheung, J. (2003, 30 June). Civil servants' morale in dramatic fall since handover. *SCMP*; Yeung, C. (2002, 16 December). *Observer*. *SCMP*.

threat. And there was nothing to replace them once Tung's managerialist reforms failed except for the government's vague expectation that increased productivity and efficiency would result from a leaner civil service.

The second measure taken to reduce the power of senior civil servants was to shift political control to a new hand-picked political executive under the POAS arrangements. Tung's diagnosis of the problem was probably correct. There were demands for greater accountability after scandals relating to the handling of the avian flu issue, the opening of the airport, and the faulty construction of housing projects. But the POAS did not resolve the problem. Its fundamental weakness was that the principal officials were only accountable to the Chief Executive because only he and the NPCSC could appoint and remove them. To legitimise the system would have required a role for the Legislative Council in the appointment process, but that was not possible under the Basic Law and would not have been approved by the Chinese government even if it had been feasible.

Another weakness was that the POAS was seen as an attempt to undermine the concept of political neutrality. In reiterating the importance of political neutrality, the government shifted ground from the emphasis that Anson Chan had placed on "speaking truth to power" and acting in the public interest to the notion that the civil service should be loyal, first and foremost, to the government in power. The difficulty was that the government itself did not have express consent to exercise power and that the source of its authority, which was the Basic Law, had never been approved by the people of Hong Kong. Yet another weakness was that principal officials had policy and personal scandals with which to contend. Tung contributed to the problem by failing to ask for their resignations, which gave the impression that the system was no more accountable than its predecessor. A final weakness was that some senior civil servants had to choose between becoming principal officials under the new system or remaining as civil servants. The senior civil service was divided into those who were willing to make a political commitment to the government and those who continued to see themselves as career civil servants albeit with reduced powers.

Neither the managerialist reforms nor the POAS answered the problem of providing new values for those that were being discarded. Rather, they contributed to the further disarticulation of the political system. The Basic Law does not specify sufficiently how coordination between the executive, legislature, and civil service will occur; the emphasis is on the powers and duties of the institutions, not on their relationships with one another. It may be surmised that the drafters thought that coordination would probably occur much as it had done in the past: that an "executive-led" government would ensure that other institutions were brought into line and that policy formulation and implementation would consequently be unproblematic. This was a reasonable assumption at the time that the Basic Law was drafted. But it became less plausible as the Legislative Council became more critical of government action, as parties and pressure groups began to emerge, and as senior

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