

## **Response to Green Paper on Constitutional Development (July 2007)**

We must admit to having considerable difficulty in responding to the Green Paper. A range of questions are posed in Chapter 6 but there remains an unwillingness to discuss constitutional design openly.

Civic Exchange has already conducted extensive research on many aspects of the current constitutional model and has offered extensive responses in the past to various Task Force reports.<sup>1</sup> Repeating them does not appear to be useful.

As such, we would like to offer a critique of the way the Green Paper has been framed and point out its underlying assumptions. We very much regret Hong Kong people are not given a more honest way to discuss such an important issue.

### **1. Baseless constitutional ‘principles’**

We are extremely concerned with the addition of new ‘principles’ that are not in the Basic Law but are given constitutional meaning by mere assertion.

The Green Paper asserts that there are four principles on constitutional development under the Basic Law (2.10 and Chapter 6). With respect to two of the ‘principles’ – namely ‘meeting the interests of different sectors of society’ and ‘facilitating the development of the capitalist economy’, they are in fact not found in the constitution, raising the question of whether they have any constitutional status.

The Green Paper attempts to justify the inclusion of these two phrases as constitutional ‘principles’ on the basis that they ‘can be derived from’ a speech delivered by the former Chairman of the Basic Law Drafting Committee in reference to Articles 45 and 68 of the Basic Law (footnote 2, page 9). They can just as well be not so ‘derived’.

The impression arising from the Green Paper is that the principles that are in the Basic Law – ‘gradual and orderly progress’ and ‘appropriate to the actual situation’ in Hong Kong – have been demoted in importance. Why? It seems to us that it is because they can no longer be used to defend inaction. Thus, two other reasons have to be alleviated to the height of ‘principles’ to buttress failed arguments.

After all, as time passes, it becomes less and less convincing to assert reforms are moving too quickly. Indeed, when the authorities are unwilling to commit to a time table for achieving universal suffrage, it is best not to raise too much noise on a principle that essentially relates to timing. While the Green Paper raises the issue of a roadmap and timetable for implementing universal suffrage (6.13-6.17) this is not the same as identifying a specific timeframe for the community to respond to.

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<sup>1</sup> Carine Lai and Christine Loh, *From Nowhere to Nowhere: A Review of Constitutional Development Hong Kong 1997 – 2007*, Civic Exchange, 2007.

As past efforts with the five Task Force reports issued by the authorities have shown, they have also failed to convince the people of Hong Kong that universal and equal suffrage is inappropriate for this society.

## **2. Corporatist approach is socially divisive**

The Green Paper, in expanding upon these ‘principles’, takes a corporatist approach to interpreting Hong Kong history and society, where society is sorted according to class and function (2.11), and asserts this is the way for a capitalist economy to be maintained (2.13), emphasizing Articles 107 and 108 of the Basic Law in particular (2.13 and 2.15). We find this assertion both troubling and highly incorrect. Out of the twenty-five wealthiest countries in the world in terms of GDP per capita, virtually all (except for Hong Kong and two oil-rich Gulf States) are constitutional democracies elected by universal suffrage. The Green Paper fails to explain why, in light of this fact, the corporatist model should still be appropriate for Hong Kong.

We are concerned with the continuing acceptance of the corporatist approach to designing Hong Kong’s political system because it has the effect of pitching ‘class’ vs. ‘class’ or group interest vs. group interest (‘industrial and business sectors, the middle class, the professionals, the working class’), which heightens social conflict. Nevertheless, the drafters of the Green Paper assume the currently political system is effectively in maintaining ‘prosperity and stability’ (6.04), when in fact it sows the seeds of conflict.

Civic Exchange’s extensive research into functionally-based politics points to the danger of the current political design.<sup>2</sup> The HKSAR Government has often called for social ‘harmony’ but we fear this can be hard to achieve if a corporatist political design continues to be constitutionally entrenched and the government continues to frame politics within such a divisive construct.

## **3. Green Paper’s framing of issues makes it hard for public to respond**

The Green Paper uses the corporatist approach to justify both the current Election Committee election system to select the Chief Executive, as well as the Functional Constituency election system to choose half the members of the Legislative Council. The election systems are described to be ‘broadly representative’, which we find misleading.

The Green Paper does not bother to explain why universal and equal suffrage is less worthy in terms of representativeness. At best, it has so far enabled only about 200,000 individuals and companies to vote to form the Election Committee and elect half the members of the legislature. Leaving aside the many problems inherent in corporate voting, those 200,000 individuals and companies are not even represented evenly; some seats have electorates numbering in the tens of thousands, while others are chosen by just a few hundred. Despite the embarrassment of the limited franchise, the Green Paper attempts to justify how its presentation of a corporatist

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<sup>2</sup> See Christine Loh and Civic Exchange (eds.), *Functional Constituencies: A Unique Feature of the Hong Kong Legislative Council*, Hong Kong University Press, 2006.

approach does not contravene ‘universal suffrage’ principles (2.18 to 2.28). We do not regard such avoidance as an honest way to deal with a critical aspect of the political reform.

Instead, the Green Paper merely points to how hard it will be to depart from the current election systems because to amend the Basic Law, amendments must gain majority support in the legislature and be accepted by the Central People’s Government (2.31).

The drafters of the Green Paper show no appetite for changing the corporatist construct of the current system. The Green Paper does not discuss the problems of the current system but merely asks: universal suffrage ‘aside, should the system be designed having regard to Hong Kong’s unique circumstances?’ (6.03). What is a member of the public to say?

It seems the uniqueness of the situation is that the authorities are unwilling or unable to depart from the corporatist approach and thus the Green Paper attempts to raise a range of questions on ‘principles’ by asking the public to respond to a series of reminders of the importance of ‘prosperity and stability’, ‘capitalist economy’, ‘gradual and orderly progress’, ‘actual situations’ and also ‘executive-led government’ and ‘one country’ (6.03-6.07).

Such a way of public consultation makes the public feel they are not really invited to discuss constitutional design and how to create a new design that results in good governance and a democratic political life in Hong Kong. The Green Paper is explicit that the system is hard to change because of entrenched interests in Hong Kong – so what is an ordinary citizen to say in response?

#### **4. The challenge that cannot be named**

In considering Article 45 on how the future Chief Executive is to be elected, and that there must be a ‘broadly representative Nominating Committee’, the Green Paper focuses much more on the size of the Nominating Committee rather than how it is formed. While Chapter 6 asks whether the Nominating Committee is to be formed by modeling on the composition of the Election Committee (6.08), the Green Paper has already spent much ink on explaining the corporatist approach and reminding the public of what are the ‘principles’ to keep in mind.

The same can be said in considering Article 68 on how the future Legislative Council is to be elected.

Our view is unless the authorities are prepared to truly deliberate and debate the problems of the Election Committee and Functional Constituency elections systems as we have described above, it is very difficult to explore creating a nominating process that is democratically inclined, as well as to consider replacing the functional election system.

While the Green Paper does not admit the nominating process is there to provide an effective filter for candidates that the Central People’s Government cannot accept, this is in fact the daily discussion within the community and well-reported in the media.

As for functional election, the Green Paper asks whether functionally elected legislators have ‘made contributions’ (6.12) but does not point out what systemic problems there are with the system.<sup>3</sup> This is a way the Green Paper deliberately seeks to gain positive feedback on the work of functional members in order to avoid discussing the merits of the system itself.

The question that gives the true intention of the Green Paper away is whether the public thinks ‘there may be any chance that different sectors can reach a consensus’ on which sector should be abolished first (6.12, vi, b). The Green Paper re-emphasizes yet once more the ‘reality’ of how difficult it is to change the system. If the authorities take no position, how is a member of the public to answer this?

### **Concluding remarks**

We very much regret not to be able to respond to the questions in Chapter 6. We have difficulty because the questions are framed in a way not to open but to close discussion. We do not regard the Green Paper as a genuine consultative document.

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<sup>3</sup> See Christine Loh and Civic Exchange (eds.), *Functional Constituencies: A Unique Feature of the Hong Kong Legislative Council*, Hong Kong University Press, 2006; and Marcos Van Rafelghem and P Anson Lau, *Past and Future Justifications for Functional Constituencies – An Analysis through Performance of Constituency Legislators in 2004-2006*, Civic Exchange, 2006.