

A Brief Analysis of the Indirect Election System of the Legislative Council from the Perspective of Pluralism

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I. The Theoretical Significance of the Indirect Election System of the Legislative Council

1.1 The proposal of political pluralism and its defects

In contemporary democratic theory, Robert Dahl, a key representative figure of pluralistic democracy, has proposed the theory of polyarchy after noticing the importance of interest groups in influencing decision-making and participating in politics. Dahl believes that power is competitively arranged in the society as an integral part of the constantly bargaining process among numerous groups representing different interests, such as business organizations, labor unions, political parties, women's organizations, and religious organizations. Political decision-making is the result of the government's executive branch attempting to reconcile the demands of these groups and the grass-roots participation in democratic politics is realized through becoming members of these groups. The democratic system is "ruled by multiple minorities."¹

While political pluralism has received lots of attention upon proposal, subsequent theoretical and empirical studies have also exposed some of its defects, which can be summed up in five points: a) the issue of collective action, in which many organizations value special interests more than collective interests; b) the possible requirement of external assistance, such as political foundations, government agencies, economic organizations, large corporations, and so on when organizing associations; c) the unequal distribution of organizational skills that entitles people with tremendous resources to even greater share while some interests may not get the government's attention due to their inability to form or maintain associations; d) the potential inverting of causality, in which government officials' policies incentivize the formation and responses of groups rather than the opposite; e) different interests' reaching mediation through compromises because of reliance on the rationality of individual government structure rather than the collision among pluralistic interests per se.²

Cohen and Rogers point out that "in the day-to-day political course of contemporary democratic system, associations continue to frustrate some norms of the democratic order... The format in which civilian associations have emerged reflects the fact that various conditions benefiting associations are very unequally distributed in the society, including control of strategic resources, the size of the population with common interests, the interaction opportunity among those sharing common interests, and the degree of concern for interests. In the system of

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associations, citizens of certain categories are overrepresented with their influence exceeding the proportion they deserve while some citizens (usually the impoverished) are underrepresented.”³ There are actually oppressed and powerless groups in the society. The genuinely disadvantaged, such as the utterly discriminated and marginalized Gypsies in Europe, have been unable to raise these issues since they have little organizational structure and political power required.⁴

1.2 The theoretical opportunity of indirect elections to supplement direct elections

Macao has neither relevant legislations governing the establishment of political parties nor legalized political parties or groups. As a result, party politics does not exist here. The Freedom of Association Law has relevant provisions regarding the establishment of political associations, but no groups have been registered as political associations so far. In Macao’s political ecology, which has no political parties or associations, ordinary associations have actively participated in politics and joined direct and indirect elections of the Legislative Council. The members of the Election Committee for selecting the Chief Executive are also selected from recognized associations of relevant sectors. Therefore, associations have become one of the most important participating units in Macao’s political life as well as a major feature of its political ecology.

Judging from the actual situation in Macao, the Legislative Council’s direct and indirect elections are conducted with associations as the basic participating unit. Although the Legislative Council’s current electoral law does not specify the status of associations in direct elections, the constituencies participating in direct elections generally have the background of associations. The traditional leftist forces, democratic factions, or the native-born Macanese people usually accumulate political and social capital through relevant activities of their associations. The leaders and active members of these associations will form electoral constituencies to compete for directly-elected seats of the Legislative Council. Moreover, rules have clearly stipulated that indirect elections should be conducted through the electorate consisting of juridical persons, whose eligibility as legally registered voters must be associations and organizations. The indirectly-elected members are selected from the associations of sectors with relevant interests. As associations, they are civilian and social organizations like those interest groups representing employers, employees, rural ethnicity, and industries that proactively carry out activities to solidify power, aiming to increase the benefits and welfare of their own associations as well as relevant stakeholders. They resemble typical interest groups. The very emphasis of pluralism is on the role of interest groups in political life. Due to the inseparable participation of interest groups in the Legislative Council elections in Macao, an analysis from the perspective of pluralism will therefore carry a certain degree of insight into the understanding of Macao’s electoral system.

According to the aforementioned summary about pluralism’s possible defects, direct elections may not necessarily achieve the selection of representatives of all interests in the society for two main reasons. Firstly, certain interests are caught in the difficulty of collective action and thus unable to form organizations to express their interests. Secondly, some interests may not be able to form organizations due to the lack of organizational resources. Even if an organization is formed for them, it may not be able to garner enough attention amid pluralistic interests. In direct elections, the interests of these two cases are very likely to face difficulty winning competitive elections and thus unable to produce representatives. The original rationale of the indirect election system aims to allow equal reflection of pluralistic views in the society while promoting balanced participation of all sectors, classes and social interests in the Legislative Council. In theory, this goal exactly

compensates for the inadequacy of direct elections.

Since direct elections may have the defects of pluralism, the indirect election system must be designed to avoid such defects so as to create advantages for the important social values facing disadvantages in direct elections and supplement the inadequacy of direct elections. Specifically, two pitfalls must be avoided: the difficulty of collective action and the difficulty of upholding interests because of the lack of organizational resources. Only the avoidance of both can prevent the probable occurrence of excessive representation of special interests belonging to minorities in direct elections while realizing more pluralistic and extensive representation of the interests in the Legislative Council with full expression of pluralistic interests in the hall of the assembly.

II. Debates on the Indirect Election System of the Legislative Council

2.1 The Basic Law stipulates the indirect election system

While still under the governance of the Portuguese Macao Government, Macao established the Legislative Council of the first term in 1976, which already designed association-based indirect elections so that Chinese leaders could join the Legislative Council.

The *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (hereinafter as “the Macao Basic Law”) retains the system in which direct elections, indirect elections, and appointed members coexist. Article 68 stipulates that the majority of the members of the Legislative Council shall be elected. In addition, the provisions of Annex II stipulate that the Legislative Council of the Macao Special Administrative Region (SAR) shall be composed of directly-elected members, indirectly-elected members and appointed members. This affirms the legislative seat structure of the Legislative Council of the Macao SAR. In 1999, the Macao SAR was established upon Macao's handover. The Legislative Council of the first term was mostly composed of the members of pre-reunification Legislative Council in a “through-train” fashion, with eight directly-elected members, eight indirectly-elected members, and seven appointed members. The Legislative Council of the subsequent second and third terms were formed in accordance with the provisions of Annex II to the Basic Law. The Legislative Council of the second term increased directly-elected and indirectly-elected members by two people respectively while appointed members remained unchanged. The Legislative Council of the third term added two directly-elected members while indirectly-elected and appointed members remained unchanged. This is the composition structure that the Basic Law has set up for the Legislative Council of the Macao SAR between the first and third terms.

Annex I and Annex II to the Macao Basic Law also respectively stipulate a mechanism for amending the methods for selecting the Chief Executive of the Macao SAR and forming the Legislative Council of the Macao SAR in and after 2009. In order to promote the sound development of Macao's political system, Fernando Chui Sai On, the Chief Executive of the Macao SAR, in late 2011 proposed the idea of constitutional development, which would be implemented in strict accordance with the provisions of the Basic Law and the principle of “One Country, Two Systems”. Under the leadership of the Chief Executive, the Macao SAR Government strictly complied with the decision power of the Central Authorities and relevant laws and regulations as well as listened extensively to the public opinion throughout the process of advancing the constitutional development, thus successfully completing the entire process of constitutional

development in August 2012. The main gist of the constitutional development program included: increasing the members of the Election Committee for selecting the Chief Executive by 100 people, increasing directly-elected members by two people, and increasing indirectly-elected members by two people. This was the first time for the Macao SAR Government to start the "five-step" political reform since its establishment, amending the methods for selecting the Chief Executive and forming the Legislative Council. Under the premise of full respect of the decision power of the Central Authorities and extensive collection of the public opinion, pushing forward Macao's constitutional development is one of the SAR Government's initiatives with constitutional significance to earnestly implement the principle of "One Country, Two Systems" and correctly practice the Macao Basic Law.

2.2 Disputes over the indirectly-elected seats of the Legislative Council

During the drafting and consultation phases of the Basic Law, there were some discussions on the continuation and abolition of indirect elections as well as the system's number of seats and selection method. Still, the system was retained for its proven effective design. After the establishment of the SAR, there were also some views believing that indirectly-elected members would enable powerful associations to enjoy privileges⁵ as they were selected in internal consultations of associations, casting doubt on its democracy.

In 2012, the SAR Government organized a number of seminars to seek views from associations and citizens of all sectors on Macao's constitutional development. Due to the relatively consistent views of associations of all sectors on constitutional development, some attendees believed that a "mainstream program" had emerged during the third of the eight forums.⁶ The core of the program focused on continuing the method for nominating and selecting the Chief Executive through the Election Committee while adding 100 new members to the Committee. The Legislative Council elections, meanwhile, would maintain the three selection methods of direct elections, indirect elections, and appointment, increase directly-elected and indirectly-elected members by two people respectively, as well as optimize some aspects of the indirect election system. After securing the recognition of the Central Authorities for the SAR Government's constitutional development report, this program, as one of the proposals, was written into the consultation document for constitutional development published by the Government for public consultation. The program was finally approved by the two-thirds majority of all the members in the Legislative Council with the consent of the Chief Executive, who then reported to the Central People's Government for the record. The Legislative Council election in 2013 and the Chief Executive election in 2014 were implemented in accordance with this program. Until the successful conclusion of constitutional development in 2012, all the indirectly-elected members of the Legislative Council of the SAR were selected by the internal consultations of associations. Compared to directly-elected members selected by popular votes, the proposal of the "mainstream program" on adding more directly-elected seats was easily accepted by the residents. Nevertheless, the proposed increase of indirectly-selected seats attracted criticisms for "regression of democracy." As a result, issues pertaining to the number of indirectly-elected seats, division and allocation of sectors in indirect elections, and the system's electoral process received a great deal of attention again.

This constitutional reform program has been proposed by the SAR Government after two rounds of consultation, which contains a certain level of popular support. However, individual

residents and associations have also expressed different views. The criticism of the indirect election system mainly revolves around the issue of inadequate representation since the Legislative Council's current indirect election system does not grant people of different sectors a chance to voice their views.⁷ Moreover, it is difficult to reflect the views of people of different professions as well as the grass roots as the majority of the indirectly-elected seats belong to employers.⁸ In other words, the supporters and opponents of the increase of indirectly-elected seats both agree that the Legislative Council needs to ensure balanced participation of all sectors. The supporters' belief in indirect elections as an effective means of ensuring balanced participation is indeed theoretically correct. In contrast, the opponents believe that indirect elections have failed to achieve the goal of balanced participation, allowing the employers to receive excessively crucial influence as indirectly-elected members have been selected from the internal consultations of associations since the beginning of the SAR's implementation of indirect elections, resulting in the status quo of inadequate representation.

The main reason for supporting the expansion of indirectly-elected seats is based on the notion that indirect elections can ensure balanced participation. Some views believe that the system design of combining direct and indirect elections has embodied balanced participation. Even though the degree of voters' participation in indirect elections does not match that of direct elections, the system can avoid certain defects of direct elections in a greater aspect. For instance, it can prevent powerful groups or interest groups from exclusively occupying the Legislative Council while looking after minorities. "Indirect elections can guarantee that different sectors in the society can voice their views and requests"⁹ and "benefit the expansion of democratic participation with adequate representation of the interests of all sectors while embodying the principle of balanced participation in the society."¹⁰ "The mainstream opinion helps expand participation and promote balanced participation, benefitting the stable and orderly implementation of Macao's democratic development under the consensus reached by most of the residents."¹¹ The emphasis on indirect elections' contributions to balanced participation is synonymous to the belief that balanced participation cannot be achieved through direct elections alone due to the dominance of powerful groups and groups with vested interests. Theoretically, it is considered that direct elections have the defects of pluralism. Therefore, indirect elections existing as a system designed to supplement direct elections must avoid the defects of pluralism. If indirect elections share the same defects of direct elections, the system may not necessarily be able to supplement the inadequacy of direct elections and achieve the goal of balanced participation.

III. Analysis of Relevant Institutions of Indirect Elections of the Legislative Council

3.1 Inability to break free from the difficulty of collective action

Pluralism assumes all pluralistic interests in the society can organize themselves and these organizations can produce the same effect on the policy-making process. In reality, however, those who share common interests in the society may not necessarily be able to form organizations because of the existence of difficulty of collective action. This is an obvious defect of pluralism, which Mancur Olson has explained through the economic theory of the public goods. A public good is a very special kind of good that one can find its similarity with common interests when used in

the analysis of interest groups. Once offered, everyone in the group can enjoy regardless of their contributions. At the same time, many people hope others would come forward and act while they sit back and enjoy the results because of the prevalent "free-ride" mentality. As a result, it is often difficult to form large groups representing the interests of the majority of the society. Due to the potential of profitability, people in small groups representing special interests are more willing to take the lead action given the groups' relative ease to compose and make an impact. Therefore, there are many small groups representing special interests in the society.¹²

Macao's indirect elections are conducted by juridical persons as voters. Only associations and organizations of relevant interest sectors recognized by the law can become juridical persons with the eligibility to vote in indirect elections. With the associations as the basic electoral unit, indirect elections cannot break free from the difficulty of collective action. Observation of the interest groups in the society allows one to find many examples reflecting the difficulty of collective action. For instance, doctors, nurses, pharmacists, and pharmaceutical companies are all very inclined to establish associations that safeguard the interests of their own sectors. Relatively speaking, associations with the principle of fighting for the interests of patients are not numerous even if everyone in the society is likely to become sick one day. The situation in Macao is also similar. For example, associations actively fighting for the interests of medical professionals far outnumber those fighting for the rights of patients. In addition, it is relatively easy to form groups representing the interests of minorities, such as business groups. In contrast, it is relatively difficult to establish groups representing the majority, such as those protecting consumer rights.¹³ In Macao, there are many associations protecting businessmen and entrepreneurs and actively participating in political and social activities. However, civilian associations with the principle of fighting to protect the interests of consumers are almost nonexistent. This explains why associations and organizations in Macao have also become embroiled in the difficulty of collective action to a considerable degree. It is much easier to form associations representing special interests of minorities, which are more willing to proactively engage in activities to safeguard their own interests. In contrast, associations representing the interests of the majority are less likely to organize themselves and thus less active in fighting for their interests due to the difficulty of collective action. Since Macao's associations and organizations cannot break free from the difficulty of collective action, indirect elections with associations as the electoral unit also share the same defects of direct elections. This is one of the causes preventing the system from achieving balanced participation.

3.2 The imbalanced allocation of organizational resources

Not every group representing special interests in the society can exert the same amount of influence during the policy-making process. It is also false that interests with more importance can exert greater influence on the government. The government does not merely consider the importance of relevant interests during policy-making. The economic, political and social resources controlled by certain interest groups will enable them to have different influence on decision-making. Pluralism's assumption that each association can equally negotiate and enjoy the same amount of influence is its second obvious defect.

Special interests with abundant organizational resources are often also groups with vested interests. They are more likely to gain advantages in competitive direct elections and win enough representative seats, even more seats than the proportion of population they represent. Instead, the interests of the underprivileged and resource-poor are at a disadvantage and face difficulty

obtaining representative seats due to inferior organizational resources and skills to their powerful counterparts. This is the theoretical defect of pluralist democracy. Since the ideal of indirect election system aims to overcome this defect, it is necessary to maximize the exclusion of the influence of groups with vested interests, support the important interests facing disadvantages in direct elections, ensure the realization of the society's public interests, and create conditions for the interests of the minority, the disadvantaged, and those lacking campaign resources in order to ensure the promotion of a number of important and valuable interests.

Nevertheless, these objectives have not been achieved if one examines the relevant provisions of Macao's indirect election system from this perspective, thus triggering the gap between the system's ideal and the reality. First of all, the most obvious aspect is that indirect elections have allocated four seats for the industrial, commercial and financial sectors, which account for two-fifths of the indirectly-elected seats of the fourth term and one-thirds of the indirectly-elected seats of the fifth term in 2013, despite a decreased proportion. Industrial, commercial and financial sectors in the past years have selected members who are mostly businessmen or senior corporate executives. As the groups enjoying greater economic, political and social resources, businessmen and corporate management personnel have advantages in organizational resources and skills, which suffice to help them obtain seats in direct elections. Judging from the past direct-election results of the Legislative Council in Macao, businessmen and those with business background are indeed able to garner seats. Thus, the arrangement of seats for the business community in indirect elections cannot avoid the excessive influence from associations with powerful resources, but increases their influence even further, resulting in the inability of indirect elections to play the role of supplementing the defects of pluralism.

In addition to the four seats allocated for industrial, commercial and financial sectors, other sectors in indirect elections have also failed to break free from the influence of vested interests. An example would be the indirectly-elected members of the Legislative Council of the fourth term in 2009. The members elected from sports and cultural sectors all had business background. Given the important role of associations in indirect elections, a lot of associations were registered for the purpose of participating in indirect elections. For example, the establishment of associations surged in 2006 because associations could participate in indirect elections after three years of registration according to the legal regulations during that time. They would have a chance to gain the eligibility to vote in indirect elections in 2009. Such a system design allowed the groups with vested interest to enjoy a lot of advantages. They enjoyed a lot of political and economic resources, which could be used to establish and support associations of other sectors, support the regular activities of these associations, satisfy the need of being those particular sectors' juridical persons and create political support for themselves. This is another possible reason why people from the business community have the opportunity to get involved in the sectors of indirect elections other than industrial, commercial and financial ones.

The newly added sector allocation of the indirectly-elected seats in 2012 also sparked a lot of discussion. "Social services, cultural, educational and sports sectors" sectors originally shared two seats. The Government proposed that one out of the newly added two seats should be allocated to "social services, cultural, educational and sports sectors" so that the original two seats allocated for these sectors would then be increased to three. The Government also proposed to split the four sectors so that after splitting social services and educational sectors would have one seat while cultural and sports sectors would have two seats. When reviewing the Legislative Council's

amended electoral law, Legislative Council member Ho Sio Kam with educational-sector background pointed out that despite the increasing influence of social services and educational sectors in today's society in Macao, the program put the social services and educational sectors under one election constituency with one seat allocated while cultural and sports sectors were allocated two seats. He urged the Government to explain the reasons for such allocations. His remarks suggested that the social services and educational sectors deserve one extra seat. At the same meeting, Legislative Council member Au Kam San said that social services and educational sectors had 79 members in the Election Committee for selecting the Chief Executive, compared to 43 members from cultural and sports sectors so social services and educational sectors had more representation. He also raised the same criticism on the one more seat that cultural and sports sectors gained than the social services and educational sectors. In addressing this question, one of the reasons given by the Secretariat for Administration and Justice is that the social services and educational sectors' juridical persons voters number 141 people and 25 people respectively, with a combined total of 166 people, while the cultural and sports sectors respectively have 152 people and 172 people, reaching a total of 324 people. The cultural and sports sectors (324) outnumber the social services and educational sectors (166) in juridical persons. Therefore, social services and educational sectors are allocated one seat while cultural and sports sectors have two seats. Judging from the Government's argument, one can understand its logic when making recommendation for seat allocations, which makes the number of associations registered as relevant sectors the most important basis for consideration. Since the Government's main consideration for seat allocations in indirect elections centers on the number of associations of relevant interests rather than the population with relevant interests, this paper argues the probability that Macao's protection of freedom of association allows some special interests with abundant political, economic and social resources to establish as many interest groups as possible and create political support for themselves given its advantages in organizational resources and skills.

If direct elections contain the defects of pluralism because resource-rich associations are powerful enough to gain excessive votes and squeeze the resource-poor associations, an important mission of indirect elections is to increase the chances for important interests lacking resources to gain seats. However, the current design for indirect elections' seats and allocations as well as electoral system and arrangement still cannot prevent the possibility of excessive influence from resource-rich interest groups. Therefore, the defects of pluralism in direct elections have extended to indirect elections, which cannot supplement the inadequacy of direct election in this respect.

IV. Conclusion

The association-based direct elections of the Legislative Council in Macao may have some defects of political pluralism. If indirect elections can avoid the defects of pluralism in direct elections, the system indeed can provide some supplementation, allowing the values the Legislative Council represents to become more pluralistic. The defects of political pluralism are concentrated in two aspects. First of all, some important interests could become embroiled in the difficulty of collective action and unable to form effective organizations to fight for their interests. Under the perspective of pluralism, which values interest groups, direct elections with associations as important participating organizations cannot gain seats. The second is the imbalanced allocation of

organizational resources in different associations. There are the interests of minorities, especially the interests of those with vested interests. Since they have controlled a great deal of political, economic and social resources, they are more adept at organizing, forming and supporting associations to protect their own interests. In contrast, some other interests have been unable to fight for themselves, win competitive elections, and uphold their interests because of the lack of organizational resources. Judging from the indirect election system's concrete system design and implementation up to now, the design of indirect election system and arrangement of seats have both failed to avoid the two aforementioned defects, making the system become even embroiled in them while causing its inability to supplement the inadequacy of direct elections. As a result, the indirect election system contains even more obvious defects of pluralism than direct elections.

The installation of the indirect election system originally aims to promote participation of all classes and sectors of the society in Macao, uphold pluralistic interests, and protect important interests. It is an institutional design with highly theoretical significance as well as an organically integral part of the executive-led system of the Macao SAR. Although the implementation of the indirect election system has contained some flaws so far, it has ensured the balanced participation of the interests of all sectors in Macao and promoted the goal of social harmony, carrying important theoretical and empirical significance. To enable the pluralistic interests in the society of Macao to overcome the theoretical defects of pluralism and equally participate in political life, indirect elections should return to the original institutional rationale with the goal to actively perfect its institutional design in order to constantly enrich Macao's experience in practicing "One-Country, Two Systems" while promoting the further maturity and improvement of the political system of the Macao SAR.

Notes:

- ¹ Dahl, R. (1995). A Preface to Democratic Theory. Hong Kong: Oxford University Press. Chapter 5.
- ² Kasfir, N. (2004). Civil Society, the State and Democracy in Africa. In Peter Burnell and Petre Calvert (Eds). *Civil Society in Democratization*. London: Frank Cass and Company Limited. 117-142.
- ³ Cohen, J. and J. Rogers. (1995). *Associative Democracy. The Real Utopias Projects. Vol.1* London: Verso. Cited from Wu, Nai-The (2004). *Searching for Democratic Citizenship: Theory and Practice of Societal Participation*. In Lee, Ding-Zan (Ed.). *Public Sphere in Taiwan: Predicaments and Possibilities*. Taiwan: Laurel Book Co.
- ⁴ Offe, C. (1998). "Homogeneity" and Constitutional Democracy: Coping with Identity Conflicts through Group Rights. *Journal of Political Philosophy*, Vol. 6. No. 2. 113-141.
- ⁵ Program of the Democratic Development of the Macao SAR. In the website of New Macao Association: http://www.newMacao.org/cms/index.php?option=com_content&view=article&id=1090&Itemid=27.
- ⁶ Political Reform Commission Proposal for Method for Forming the Legislative Council: Adding Two Seats for Both Direct and Indirect Elections; Increasing Members of the Election Committee to Four or Six Hundred People. In the website of *Jornal Va Kio*: <http://www.vakiodaily.com/index.php?tn=viewer&ncid=1&dt=20120107&nid=178777>.
- ⁷ Participants Pointed Out Insufficient Representation with Teachers Leading Students to Attend Forum for Educators. *Macao Daily*. 9th January 2012. C01.
- ⁸ Society Sit-in, Fasting Spark Public Debate on Constitutional Reform. *Jornal Do Cidadao*. 15th April 2012. P02.

- ⁹ Macao Federation of Trade Unions Called on the Youth to Contribute to Constitutional Development. *Macao Daily*. 24th March 2012. A07.
- ¹⁰ Community Initiative to Promote Constitutional Development Gains Support. *Macao Daily*. 19th April 2012. B01.
- ¹¹ ACM Youth Committee: Reject the Mainstream and Disregard Facts. *Macao Daily*. 16th March 2012. B01.
- ¹² Chang, Shih-Ying (2000). The Influence of Interest Groups on Government Policy-Making. *Chinese Public Administration Review*. Volume 3.
- ¹³ Chu, Chih-Hung and Hsieh, Fu Sheng (1989). Taipei: The Research, Development and Evaluation Commission of the Executive Yuan. Cited from Chang, Shih-Ying (2000). The Influence of Interest Groups on Government Policy-Making. *Chinese Public Administration Review*. Volume 3.