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**Challenges of Regulatory Theory and Practice:
A Study of Hawker Control in Hong Kong**

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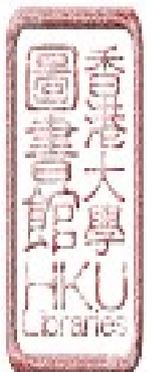
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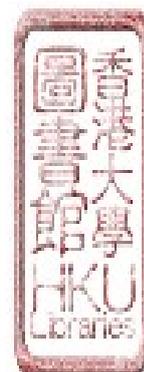


Abstract

On 2 March 2015, the Secretary for Food and Health (SFH), Dr KO Wing-man, went in person to the Legislative Council (LegCo) Subcommittee on Hawker Policy (HP) meeting to propose on the future direction of domestic hawker management.¹ Surprisingly, in contrast with existing direction of hawker control, all of his five proposals were rather supportive than coercive. This has at least two implications for academic research as well as practice. On the one hand, it is intriguing to explore why and how the Administration has arrived at such a paradigm shift, and at that particular moment of time. On the other hand, it is necessary to assess and compare the proposals, existing practices, and the relevant overseas experience in Singapore to evaluate the appropriateness and effectiveness of the proposed direction.

The present project addresses these two implications through an analytical framework consisting of the following elements: the two main public regulatory policy paradigms (punitive and supportive); the different people and entities of people in the society; the values, cultures, and contexts of the society; and a 5W1H (Why, What, Who, When, Where, How) assessment scheme. Inspiration of this framework comes from classical, Western regulatory literature, including "tactics of execution" by Simon, Smithburg, and Thomson (1958), "street-level bureaucracy" by Lipsky (1980), "enforceability analysis" by Hood (1986), and "responsive regulation" by Braithwaite (2011). Instead of applying this literature directly, the present framework is devised because, first, each of the aforementioned theories focus on particular "tips of an iceberg" of the overall public regulatory

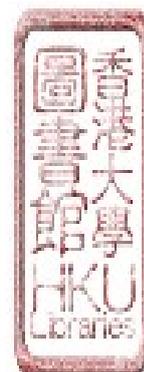
¹ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, pp.7~11)



policymaking; second, they underestimate the importance of aligning policy design with the values, contexts, and cultures of the regulatees, clients, clienteles, organizations, institutions, communities, and the society at large; and, third, their applications are culturally and contextually limited as they are evolved in Western jurisdictions.

The empirical analysis of the project is based on desk-and-computer research methodology. Through the analysis, it is found that when the culture and context of the society are against hawker activity, hawker control policy tends to be more punitive than supportive. Later on, when the social atmosphere begins to treasure hawker activity, a discrepancy in aspiration between the Administration and the public appears and this drives policy direction the other way round. Nevertheless, the validity of such inference is also subject to district-level differences in context. In the analysis, the effectiveness and appropriateness of policy formulation and implementation would be evaluated in term of 5W1H.

Singapore experience is recommended to be referred to in formulating domestic hawker management policy due to similarity in historical background on street vending activities. The experience reflects much room for improvement in the areas of self-regulation, coproduction, outsourcing, and revitalization. Accordingly, advice to the Administration is provided: to set up more and better communication channels, to evolve hawker policy in tandem with social values, to release the issue of licenses, to collaborate with the police, to assist elder and unemployed illegal hawkers, to involve more stakeholders like the business and the Non-governmental organization(NGO)/ Nonprofit organization(NPO), to consider district-based options such as flea markets and district planning and activity initiatives, and ultimately to



ameliorate the Administration's hawker management mentality from controlling to facilitative.



Declaration

We declare that this thesis represents our own work, except where due acknowledgement is made, and that it has not been previously included in a thesis, dissertation, or report submitted to this University or to any other institution for a degree, diploma, or other qualifications.

Signed: Original Signed Original Signed

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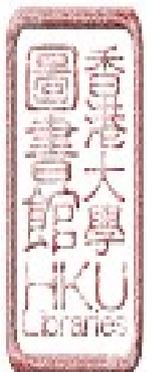
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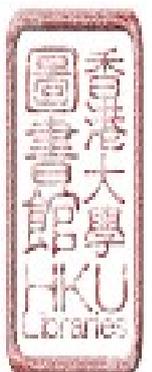
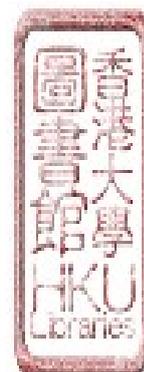
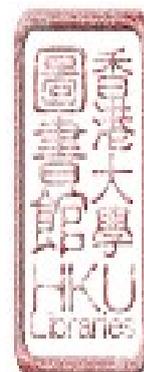


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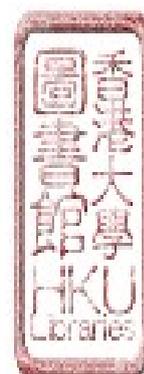
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CHAPTER 1: Introduction

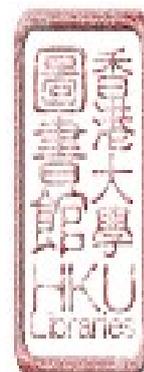
Focus, Objectives, and Background of the Project

This project addresses the regulatory policy of hawker control in Hong Kong. Its prime objectives include: (i) to study the rationale in formulating regulatory policy and its strategies for hawker control, (ii) to analyze the appropriateness and effectiveness of policy implementation, and eventually (iii) to make recommendations for hawker control management.

Hawking had been a local phenomenon in Hong Kong for over 100 years. Despite its historical background, the Administration at colonial period has seen “*rising community expectations favouring modern city management and a reduction in haphazard on-street hawking.*”² Hence, after it put on-street licensed hawkers into public market buildings or fixed pitches in the early 1970s, it generally took sanction approaches to strike for a pleasant environment, including enforcement actions against illegal hawkers, termination of licence issues, restriction of succession rights. To justify its sanction approach, the Administration usually reiterated the negative impact of hawking activities, including poor food safety, environmental hygiene and noise problems, obstruction to public passageways, nuisance to residents and pedestrians, fire hazards, etc. As at early 2015, the total number of licenced hawkers was reduced to about 6,300, compared with about 20,000 in the late 1980s.³

² Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)] 2015 March 02, pp.7~11)

³ Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)] 2015 March 02, pp.7~11)



The community expectation changed at post-colonial period, in particular when media widely reported the elderly hawkers being mal-treated by Hawker Control Officer (HCO) in several incidents after 2000s⁴, in which the community showed respect to the elderly hawkers who earned their lives with their own efforts. Meanwhile, the demand for hawking products increases when the domestic stores at the LINK's managed malls were gradually replaced by chain stores, which sold more expensive domestic products.⁵ These intensified the conflict between the Administration's regulatory practices and the community expectation with respect to hawking activities and hawker control.

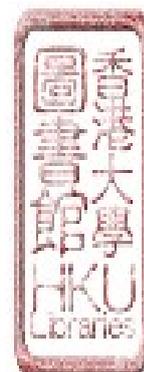
On the other hand, the Hawker Management Consultative Committee was formed in 2012 to promote good practices among hawkers, with an objective of reducing the negative impacts of hawking activities. Furthermore, the LegCo's panel on Food Safety and Environmental Hygiene had kept criticizing the Administration's short-sight on its incomprehensive sanction approach on hawker control in the past two decades. As a result, the Subcommittee on Hawker Policy was appointed by the LegCo panel in 2013 to study and review the hawker policy. Upon the request from the Subcommittee to formulate hawker policy from a "development" perspective rather than that of "management and control" in 2015,⁶ the Secretary for Food and Health (SFH), Dr KO Wing-man, raise in 2015 five schematic proposals on the future direction of domestic hawker management, which were inclined to be more

⁴蘇偉明, 吳淑姬, 陳道明, 何裕恒, and 朱嘉欣 (2006年), and 劉卓瑩. (2014年, 04月29日).

⁵教區勞工牧民中心 (新界), (2012年01月01日) 小販是對抗地產霸權的堡壘, 公教報 011

⁶ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, para.10); and

Paper on "Proposed extension of period of work of the Subcommittee on Hawker Policy" prepared by the Legislative Council Secretariat [LC Paper No.CB(4)598/14-15] 2015 March 10, para.4)



supportive than coercive.⁷

It is observed that the Administration tried their best endeavor in upkeeping their sanction approach for the past two decades, irrespective of the obvious change of the community expectation. Though its stance started to change in recent years and introduced some supportive measures like pilot flea market at Tin Shui Wai, the Administration's devoted effort and resources of support was in doubt when the pilot scheme turned out to be a failure eventually. In this regard, the workability implementing the new five proposals are yet to be observed.

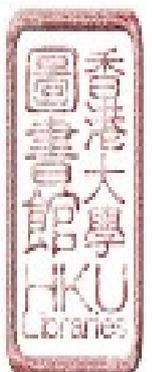
This project analyzes the current discrepancies between the Administration and the community in formulation and implementation of hawker control policy from different perspectives. The analysis also covers why and how the Administration has arrived the paradigm shift from punitive to supportive, and why at that moment of time. After the empirical comparison of the proposals and existing practices, the appropriateness and effectiveness of the proposed direction are evaluated. Finally, for the purpose of betterment of hawker management, recommendations are given with reference to overseas experience.

Research Questions and Propositions: Theory and Practice

The project addresses the following research questions:

1. What types of regulatory strategies could a government adopt to oversee and control significant socioeconomic activities in a community?

⁷ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, pp.7~11)

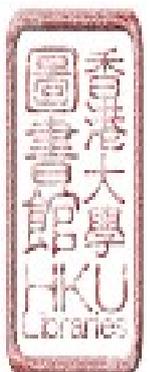


2. According to what criteria can the appropriateness and effectiveness of various regulatory strategies be evaluated?
3. What particular regulatory strategies has the Hong Kong Government actually adopted to oversee and control hawker activities?
4. How appropriate and effective have these strategies been?
5. What other regulatory strategies could be adopted by the Hong Kong Government to oversee and control hawker activities more appropriately and effectively?

The questions above are not straight-forward yes-no questions nor simply asking which tool or strategy is the best regulatory control. Instead, the questions are related to the degree or extent of appropriateness and effectiveness. Also, tools and strategies are not exclusive, and can be applied simultaneously at different timing with special combined effect. For example, punitive and supportive tools can be applied together in order to strengthen the attractiveness of supportive measures.

The first two questions set out the strategies and evaluation criteria for general regulatory control. The third and fourth questions would cover the strategies and evaluation specifically for the hawker control management in Hong Kong context. The last question gives recommendation so as to rectify the deficiencies identified in the third and fourth questions.

In finding the answers for the above questions, this project not only studies the existing phenomenon, practices and policy formulated, but also goes deeper to its rationale behind and develops a full story of current hawker control policy formulation. Upon the evaluation, the utmost purpose is to give recommendations

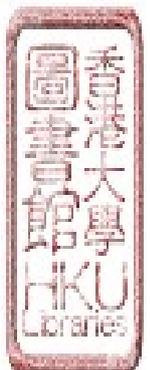


for formulating a better policy so as to resolve the conflict of the Administration and the community on hawker management.

Overview of Analytical Framework

In addressing the above research questions, the project uses a more humane approach with consideration of regulatees and flexibility, and devise an originated “paper and plastic” metaphor in the analytical framework. This humane metaphor is so devised because the current policy is generally formulated and implemented in a top-down approach, but without much consideration from the viewpoint of regulatees and community. This further widens the discrepancies between the Administration and community expectation in hawker control policy and worsens the problem.

In the metaphor, the regulatory policy formulation and implementation is represented by a simple “paper rolling” process, which everyone usually does in daily life. A sheet of paper, which is apparently being passive in the process, is resistant to be rolled and has a tendency to return to its flat shape. This is similar to the regulatees being reluctant to be controlled and inclined to be free from regulation within a society. The extent of such reluctance is dependent on the community value, which is similar to the paper characteristics in the metaphor. To maintain the rolled shape, tools like plastic bands and glues are needed. Similarly, to sustain the regulatees’ controlled behavior, suitable punitive and supportive regulatory tools are essential to exert external binding coercive force and internal bonding adhesive force. The crux of effective tools application would lie on the consideration of community values in the whole process. In this regard, to evaluate how well the

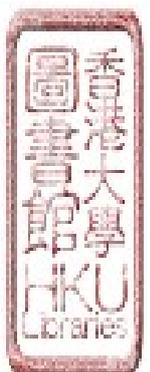


policy is formulated, a “plastic application” in relation to paper characteristics and plasticity would be assessed in six different aspects ‘why’, ‘what’, ‘who’, ‘when’, ‘where’, and ‘how’ (5W1H). With this metaphor, the essential criteria of regulatory policy formulation can be vividly illustrated, in particular on how to apply regulatory tools flexibly and with the consideration of community values so as to achieve an effective control management.

This framework, though original, is well supported by classical, Western regulatory literature, including the "tactics of execution" by Simon et al. (1958), "street-level bureaucracy" by Lipsky (1980), "enforceability analysis" by Hood (1986), and "responsive regulation" by Braithwaite (2011). While those literatures complement each other and is evolved from Western culture and context, the project with the new literature analyzes the local hawker control policy comprehensively from standpoints of different stakeholders, at different periods, and in Hong Kong context. While eventually recommendations would be given with reference to practices in Singapore where has similar culture and value with Hong Kong and its high relevance are worthy of the Administration’s consideration.

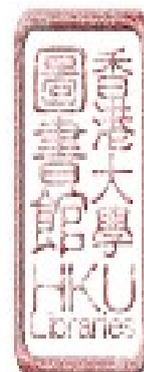
In all, this project uses a new framework and metaphor to analyze the hawking control phenomenon and challenges in policy formulation. From another point of view, throughout the analysis of the hawking control management, it can be illustrated how well the metaphor fits with the hawker regulatory policy formulation in a comprehensive way, which indeed can be applicable to other regulatory policy areas.

Research Methodology



The empirical analysis of the present study is based on a desk-and-computer research methodology, with the focus on the policy of hawker control in Hong Kong, as well as the practices of overseas countries with similar culture. The data sources mainly rely on primary sources from departmental data/websites, court cases, LegCo papers, background briefings, minutes of meetings, questions from LegCo members and answers from Administration. As these information is factual and reliable in nature, formally scrutinized by the Administration and LegCo members, and most importantly, opened to the public and even reported by the media, these information is essential to build up a convincing analysis on the policy, and also for the review on the rationale in policy formulation. Furthermore, as LegCo members being elected by the public would usually represent the community to supervise and challenge the Administration, LegCo members' criticism against the Administration could to certain extent reflect the community expectation, cultural values, and dissatisfaction against the Administration's current practices. This is particularly essential when the LegCo discussion on hawker control had lasted for decades, and this long-history conflict on hawker issue gives an insight to the latest development of the regulatory policy.

In addition, this project also uses secondary sources from newspaper clips, articles, books, and related reviews. Apart from the LegCo documentation, newspaper clips of cases reporting and editorials' comments are strong evidence of community values. On the other hand, in addressing the question about "what types of regulatory strategies could be adopted by the Hong Kong Government to oversee and control hawker activities more appropriately and effectively", [this project made reference and comparison to the practices of hawker management in four Asian](#)



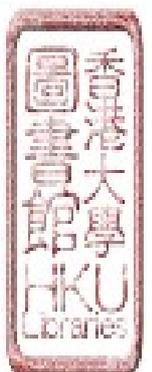
countries: Taiwan, South Korea, Thailand and Singapore,. In addition to the formal information posted in these countries' departmental websites, newspaper clips are strong and reliable support about their policy and practice which could be a good reference in making recommendation in Hong Kong context.

Ideally, for the practices of hawker control in Hong Kong, survey or interview with the existing hawkers control officers and the hawkers would provide the first hand information about their opinions on their real experience, which may support the argument on regulatee's responses against the punitive policy. Nevertheless, it would be difficult to interview them because of the lengthy administrative procedure to seek official approvals from Food and Environmental Hygiene Department (FEHD). Furthermore, different officers exercise subjective discretion during operation, and with different practices and experience at different districts. A large sampling size of surveys or questionnaires would therefore be required so as to make a fair and objective summary, but this would be too difficult on account of the limited resources of the project.

Chapter Outline

This report consists of five chapters, including this Introduction Chapter.

In Chapter 2, founded on four traditional regulatory literatures, an analytical framework with the “paper and plastic” metaphor is devised so as to visualize the policy formulation with consideration of the criteria of “regulatees” and “flexibility”. In this chapter, every process of metaphor would be tightly correlated to and supported by different literatures so as to render the analytical framework more

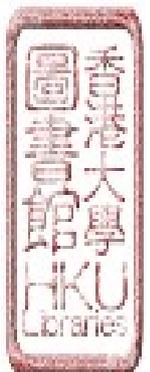


conscientious and comprehensive.

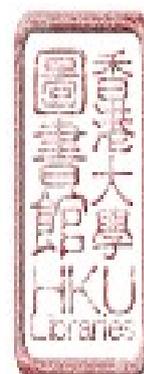
In Chapter 3, a comprehensive empirical analysis on the development of hawker control policy is delivered in terms of the metaphor process. While the policy formulation and implementation is correlated to the metaphor terms of “paper characteristics”, “binding by plastic band” and “bonding by plastic glue”, this chapter would be mainly descriptive on the development of policy along the timeline.

Chapter 4 evaluates the performance of the Administration and the appropriateness of the policy in the metaphor term of “plastic application”. In brief, the analysis is divided into six subsections, including “Why”, “What”, “Who”, “When”, “Where”, and “How”. In each subsection, the metaphor would be correlated, followed by analysis of current practice and finally an evaluation of the performance of the Administration in the area. These six factors are so fundamental that they should be included in any policy formulation.

The last chapter comprises a conclusion with recommendations. With reference to selected overseas experience in the areas of coproduction, outsourcing, revitalization, a number of advices to the Administration are worked out: to set up more and better communication channels, to evolve hawker policy in tandem with social values, to license hawkers, to collaborate with the police, to assist elder and unemployed illegal hawkers, to involve more stakeholders like the business and the NGO/NPO sectors, to consider district-based options such as the flea market and other resources allocations, and ultimately to ameliorate the Administration's hawker management mentality from regulatory to facilitative.



Upon the analysis of the current hawker control policy with the aids of an originated metaphor, it is hoped that the Administration can further adjust the orientation of policy formulation and consider the recommendations made in the last chapter. In all, a more flexible approach with consideration of regulatees' feedback would be indispensable to ease the conflict between the Administration and the community on the hawker control management.

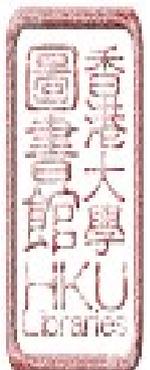


CHAPTER 2: Analytical Framework

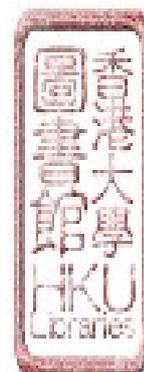
Introduction

This chapter establishes the analytical framework for the project, which is built on traditional regulatory theories but with particular cultural and contextual considerations not readily found in them. The framework addresses the first two research questions of the present study: What types of regulatory strategies could a government generally adopt to oversee and control socioeconomic activities? According to what criteria can the appropriateness and effectiveness of various regulatory strategies be evaluated?

Though most mainstream regulatory theories do have some similar contents, more often they have different packaging and foci, with only particular "tips of an iceberg" of overall public regulatory policymaking. At the same time, though traditional regulatory theories do commonly talk about rewards and punishments and how to use these regulatory tools appropriately and effectively to achieve demanded outcomes, more often they undermine the fact that the design of these tools also needs to align with the values of the regulatees, clients, and clientele; the contexts and cultures of the corresponding organizations, institutions, and communities; and the society's preset rules of game on rewards and punishments to respectively the right- and the wrong-doers. Even if they do acknowledge all these, their applications are often culturally and contextually limited as they are typically evolved in Western jurisdictions.



So to study local regulatory policies, an analytical framework that is both more encompassing in application on one hand and more adaptable to diverse cultures and contexts on the other needs to be devised. In response, the discussion here reframes traditional regulatory theories using a combined "paper and plastic" metaphor, where "plastic" represents regulatory policies and corresponding policy tools and "paper" represents concerned regulatees, clients, clientele, organizations, institutions, communities, and society at large. The terms "paper" and "plastic" are chosen primarily because they together can be analogized with the necessary flexibility and adaptability needed for regulatory policies and policy tools to be successfully applicable to the individual-society continuum. The analogue is as follows. In essence, from daily experience, when one tries to mould a pile of *paper* (cf. the individual-society continuum) into paper rolls, additional forces such as *binding by plastic band* (cf. sanctions) and *bonding by plastic glue* (cf. supports) need to be imposed to retain shape. Then according to the corresponding *paper characteristics*, e.g. strengths and weaknesses, stiffness and softness of the papers (cf. social values, contexts, and cultures), one has to decide the most appropriate and effective *plastic applications* (cf. regulatory policies and policy tools choice). For examples, *why* we need to roll the paper, *what* types of plastic band and glue are available; *what* are their individual natures and possible interactions; *where*, *when*, and *how* to apply each of them separately; *who* have the corresponding skills for maneuvering each of these tools, etc.? Similarly, when regulators or policymakers want to ameliorate existing behaviors or values of individuals, organizations, institutions, communities, or the society at large (cf. paper) within their community values, contexts, and cultures (cf. paper characteristics), additional momenta such as regulations and sanctions (binding by plastic band) and encouragements and supports (bonding by plastic glue) are combined and connected together by the appropriate criteria and the



effective practices (plastic applications) to ensure individuals either satisfactorily attain the new set of behaviors and values or significantly reinstate and reinforce the attachment to existing core values.

Inspiration of this framework comes from regulatory literature including "tactics of execution" by Simon et al. (1958), "street-level bureaucracy" by Lipsky (1980), "enforceability analysis" by Hood (1986), and "responsive regulation" by Braithwaite (2011).

The "Paper and Plastic" Model

The "paper and plastic" model developed here has five elements analogous to a typical regulatory system: paper, binding by plastic band, bonding by plastic glue, paper characteristics, and plastic applications. These five elements correspond respectively to the individual-society continuum; the sanctions; the supports; the values, cultures, and contexts; and an appropriate and effective public policymaking process in a regulatory system. Details of the elements are as follows.

"Paper" as the individual-society continuum

From daily life experience, when one wants to mould a pile of papers into paper rolls, there are at least two types of material to be understood, the pile of papers itself and the suitable material(s) which can mould that pile of papers appropriately and effectively. Similarly, in a regulatory system, when policymakers or regulators want to rectify existing behaviors of individuals in a society, there are at least two factors to be comprehended, what the subjects are and what appropriate and effective

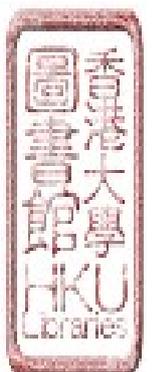


regulatory strategies that can be suitably applied to these subjects. Subjects of a regulatory system are thus analogous to papers in the "paper and plastic" model. They may include such individuals as regulatees and clients; as well as such social entities as clienteles, organizations, institutions, communities, and the society at large.

Hence, classical studies of regulatory system inevitably need to investigate the significance of various social entities though their focus, breadth, and depth often vary appreciably. For example, tactics of execution focus more or less on the two extremes of the individual-society continuum. At the individual level, they realize that regulatory plans need to have different devices when directed towards distinct groups of regulatees like educated *vs* illiterate; elderly *vs* adult *vs* juvenile; foreign *vs* local *vs* indigenous; high *vs* middle *vs* low socioeconomic classes, etc. At the clientele level, they also find that regulatory agencies need to on the one hand elicit from concerned clienteles expected behaviors and on the other hand handle possible political influence and pressures that the clienteles may exert back on them. At the society level, the degree of compliance of a regulatory plan in a society depends appreciably on the ethical climate of inducement of that particular society.⁸

While the tactics of execution study how public regulatory agencies interact with social groups mainly at the "office"-level, the ground-breaking theory of street-level bureaucracy investigates more frontline interactions. At one end at the society level, he discovers that the role of street-level bureaucrats unavoidably conflicts over interactions with the general citizens and taxpayers in the society. At the other end at the client level, street-level bureaucrats make decisions about people, deal with

⁸ Simon et al. (1958, pp.451~452,461,483~486)



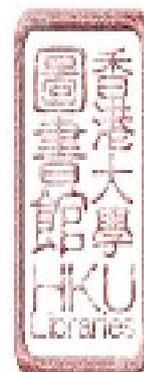
clients' personal reactions, and in return often become focus of these reactions. This actions and reactions eventually influence their client-processing mentality and inevitably lead to such psychological coping strategies as modifications of client demands, modifications of conceptions of clients, and even modifications of their conceptions of work. In between at the communal, institutional, and organizational levels, situation becomes even more complicated. First, dominant institutions in communities shape community identity and character; these identity and character shape community actions focused on street-level bureaucrats; and these actions in turn shape responses of the street-level bureaucrats. Second, the relations between a street-level regulatory organization and its clients are closely related to the institutions of the organization, the supposed role(s) the clients learn from (or "taught by") these institutions, the willingness/unwillingness of the clients, the social construction of the clients, and the actual or psychological benefits or sanctions they are to receive.⁹

In contrast, the related studies in enforceability analysis are very limited and restricted almost entirely to the regulatees. He only identifies four categories of rule breakers: incompetent, opportunistic, principled, and antiauthoritarian in general.¹⁰ The theory nevertheless manages to deduce some enforcement options for each of these categories and these will be discussed under the topic of plastic application.

In responsive regulation, the analysis is basically as confined as the theory further simplifies the classification into only three categories of lawbreakers: virtuous,

⁹ Lipsky (1980, pp.8~12,59~70,140~156)

¹⁰ Hood (1986, pp.51~60)



rational, and incompetent or irrational.¹¹ Tools choice for each of them will also be discussed under the topic of plastic application.

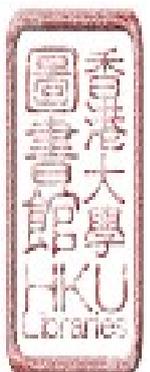
“Binding by plastic band” as sanctions

Binding by plastic band represents regulations and the corresponding sanctions. A plastic band restricts papers from returning into their original free forms. Similarly, regulations and sanctions impose external coercive restrictions on individual to prohibit some undesirable behaviors by setting external boundary. A plastic band's capacities depend on its size, thickness, elasticity, rigidity, and durability (it will be more brittle after long period and need to be replaced). This is similar to regulation's features for covering scope, severity of penalty, seriousness of enforcement (degree of coercion), and whether it is in pace with the change of the core community values.

Classical literatures have also made some contributions here though their foci are often scattered. For instance, tactics of execution mentions about informal and formal penalties for detracting undesirable behaviours. Policy tools for informal penalties can be communal disapproval including social sanctions and stigmatizations. If the particular policy tool is effective, the binding effect of the policy may even make clients "voluntary" without the need of any formal sanction. Informal penalties can also be socioeconomic such as loss of patronage, "yardstick" regulation, coupon flowback system, etc. Formal penalties on the other hand may include licensing, public contracts, allocation controls, and eventually legal sanctions (e.g. fines and imprisonment).¹²

¹¹ Braithwaite (2011, pp.484~466)

¹² Simon et al. (1958, pp.472~479)



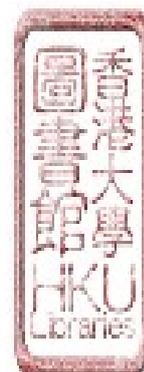
The unconventional street-level bureaucracy also has its binding implication. By asserting that street-level bureaucrats are inherently superior and potentially powerful to their clients and regulatees, he boldly reveals that street-level bureaucrats are able to cue or even to teach these clients and regulatees, who are often in disadvantaged position, to behave or to comply "properly", even though their instructions may not necessarily or entirely stem from their official authority.¹³ Although his theory does not prescribe any formal coercive policy tools, it can be argued that street-level bureaucrats modify and create their own sanctions from the formal ones by their immense power to help them gain more and better compliances from their clients and regulatees. In addition, different types of street-level bureaucrats have different coping strategies which are also related to their approach to enforcing sanctions. This is a distortion of policy at street-level, which in turn is related to "how" to effectively implement a policy.

The analysis on rules and regulations enforceability identifies some common "hard" enforcement tools, which are somewhat equivalent to binding by plastic band. These tools include detection of, pursuit of, and punishment for rule breakers (e.g. fines and imprisonment) and making violation of rules physically more difficult, impossible, or inconvenient (e.g. physical barrier, invisible or indirect tax, etc.).¹⁴

The notion of "pyramid of sanctions" introduced in responsive regulation is also similar to that of binding by plastic band, particularly those regulatory tools higher up in the hierarchy like shaming for inaction, deterring sanctions, escalated

¹³ Lipsky (1980, pp.57~59)

¹⁴ Hood (1986, pp.51~60)



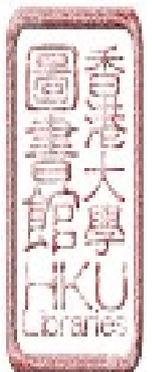
sanctions, criminal prosecutions, and suspension or revocation of license, etc.¹⁵

“Bonding by plastic glue” as supports

While binding by plastic band is similar to external coercive controls in a regulatory system, bonding by plastic glue is something applied softly and internally and that is similar to rewards and supports. The main function of glue is to "attract" by its adhesion. Bonding by plastic glue not only helps maintaining the roll shape by adhering paper sides appropriately but also strengthen the overall integrity in long term. Similarly, the purpose of supports is to encourage individual to do something in order to achieve a desirable consequence, and in turn render individuals' behaviors be more coherent to expected values or moral standards and eventually improve community harmony. Also, bonding by plastic glue may be applied with some degree of flexibility initially but once applied, are difficult to withdraw. In the same manner, supports could easily be incremented, but difficult to withdraw.

Classical literatures have also made some fragmented contributions here. Tactics of execution, for example, mention about policy tools for reducing costs of change, including reducing inertia costs by making compliance easier and non-compliance harder or shifting the costs strategically; reducing moral costs by adjusting or identifying plan to prevailing values or value symbols; reducing self-interest costs by weakening disturbances or offering compensations; reducing rationality costs by lowering requirements or establishing and communicating acceptable justifications; and reducing subordination costs by harnessing motivations; etc. There are also policy tools for enlisting supports of existing values to secure compliance, including

¹⁵ Braithwaite (2011, pp.481~482)



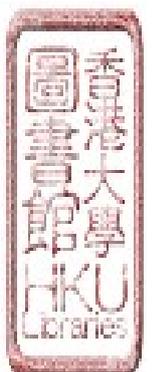
propaganda; sanction of legitimacy; and various kinds of awards. For awards in particular, they can be in concrete form like citation and certificates; in indirect form like cost-plus system and wage-ceiling manipulation; in intangible form like e-award; with actual monetary outlay like cash prizes and coupons; and without direct monetary outlay like relaxation of prohibition by licensing.¹⁶

Street-level bureaucracy also has its bonding implications. By unveiling enormous discretions possessed by street-level bureaucrats, he reveals that street-level bureaucrats are able to select the nature, quantity, and quality of supports provided by their frontline agencies to their clients and regulatees, even though their selection criteria may not necessarily or entirely stem from the official standards. Although his theory does not prescribe any formal supportive regulatory instruments, it can be argued that street-level bureaucrats modify or create their own support measures from the formal ones through their tremendous discretions to assist them win more and better compliances from their clients and regulatees.¹⁷ Furthermore, different types of street-level bureaucrats have different coping strategies which are also related to their ways of offering clients or regulatees supports to realize their needs or expectations. This once again is a distortion of policy at street-level, which in turn is related to "How" top management should engage street-level bureaucrats in formulating and implementing supportive policy on one hand, and "How" to ensure their accountability and co-productivity on the other.

Enforceability analysis also identifies some "soft" enforcement instruments which have bonding characteristics. These include abolishment or alternation of original

¹⁶ Simon et al. (1958, pp.451~473,468~473)

¹⁷ Lipsky (1980, pp.13~16)



rules and regulations, mediation or negotiation with clients or regulatees, rewarding the obedient, or launching some promotional campaigns (e.g. by posters, propagandas, or other publicity activities).¹⁸

The idea of the "pyramid of supports" in responsive regulation is also similar to that of bonding by plastic glue. The array includes such regulatory instruments as sermons, compliments, subsidies and prizes, patents or copyrights, and eventually national or international awards and recognitions.¹⁹

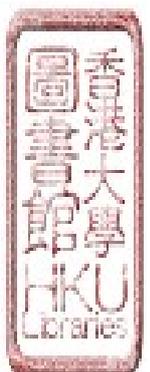
“Paper characteristics” as values, contexts, and cultures

When one tries to mould a pile of papers into paper rolls by a combination of binding by plastic band and bonding by plastic glue, one needs to know how to use each of them in the right place, with the right amount, at the right moment, etc. This cannot be achieved effectively without at least some understanding of the natures and characteristics of the papers being rolled. Similarly, when regulators or policymakers want to ameliorate existing behaviors or values of individuals in the community by a combination of regulations and encouragements by the right people, criteria, practices, timing, etc., they also need to know about the characteristics of their subjects (regulatees, clients, clientele, etc.), and the existing natures and contexts of the corresponding organization, institution, and community they belong to, and the culture of the society at large they are brought up in.

Unfortunately, it seems that mainstream regulatory theories often undermine the

¹⁸ Hood (1986, pp.51~60)

¹⁹ Braithwaite (2011, pp.480~481)



significance of aforementioned factors; at the least they are not much discussed in depth in the classical literatures reviewed so far. In tactics of execution, for instance, the importance of prevailing values and value symbols in the reduction of moral costs is observed but neither the discussion nor the examples provided is detailed.²⁰ In street-level bureaucracy, how occupational and community norms, natures of citizens and clientele, human dimensions of situations, etc. shape the power and discretions of street-level bureaucracy is noticed but the theory fails to formulate a right balance between humanity and flexibility on the one hand, and impartiality and unequivocality on the other.²¹

In addition, it seems as if the authors presume in their respective theory that all societies have the same public (liberal, democratic) and private (business-oriented) contexts and cultures as the Western countries. For instance, in tactics of execution, the liberal/democratic tradition is sketched out plainly in the study of "sanction of legitimacy":

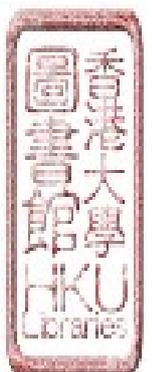
*There is a strong tradition in American society of disregard for laws that run contrary to popular opinion. This "frontier" tradition - whether or not it really emanated from the Western frontier - is still strong, and is reinforced by institutions like the lay jury, and by a widespread belief in a natural law that transcends man-made law.*²²

A businesslike perspective, which is basically an overall calculation of costs and benefits for both the regulating and the regulated sides, is also adopted in the theory.

²⁰ Simon et al. (1958, pp.456~457)

²¹ Lipsky (1980, pp.14~16,58~59)

²² Simon et al. (1958, p.470)



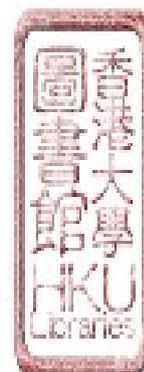
Similar perspective is also found in enforceability analysis and responsive regulation respectively:

In a world of scarce resources, enforcement costs may determine acceptable compliance standards, rather than vice versa. ... A simple, conventional, and down-to-earth economic criterion would be to stop enforcement activity at the point where the cost of adding an extra unit of labour or equipment to the enforcement apparatus is greater than the money value of non-compliance which that extra unit will detect. ... A slightly more sophisticated one, in principle, would count as 'benefits' of the marginal unit of enforcement activity not only the money value of non-compliance which is directly detected in flagrante by that unit, but also the money value of non-compliance which would take place in the absence of that unit of enforcement activity but is deterred by it.²³

and:

The pyramidal presumption of persuasion gives the cheaper, more respectful option a chance to work first. More costly punitive attempts at control are thus held in reserve for the minority of cases where persuasion fails. When it does fail, the most common reason is that an actor is being a rational calculator about the likely costs of law enforcement compared with the gains from breaking the law. Escalation through progressively more deterrent penalties will often take the rational calculator up to the

²³ Hood (1986, pp.62~63)



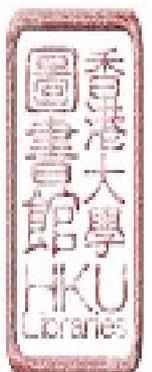
*point where it will become rational to comply.*²⁴

However, the present study manifests just the contrary. Local values, cultures, and contexts are very unique and different from those of its Western counterparts but this is virtually unexplored in classical Western regulatory theories. Since regulatory policies are highly value-, context-, and culture-sensitive, due consideration of local settings is deemed necessary or else direct, uncritical application of Western regulatory measures to domestic situations would be extremely prone to policy failure (though of course all these theories still provide important references as they investigate public regulatory systems from different perspectives). This will be vividly demonstrated in the forthcoming chapters on empirical analyses.

“Plastic applications” as regulatory policies

The relationships amongst binding by plastic band, bonding by plastic glue, and paper characteristics are interactive and the respective actions and reactions on and from the papers would be related to the capacity of bands and glues and the stiffness and softness of the papers. Similarly, rewards and punishments are regulatory tools; and yet how to apply them appropriately and effectively on clients and regulatees is crucial to a successful regulatory policy. Furthermore, it is a well-known daily experience that papers can be "pre-treated" (pre-roll the paper with smaller forces) before taking the binding or bonding actions so that they can be shaped up more readily. Analogously, regulators could also pre-treat their subjects "incrementally" before taking formal regulatory actions so that the implementation of the formal actions could be easier in the future. This pre-exercise could be some education,

²⁴ Braithwaite (2011, p.484)

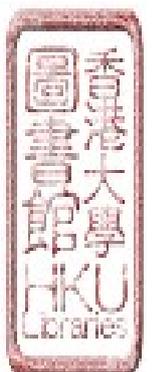


guidance, or counselling for the corresponding subjects to understand the rules of the game, to realize the embedded values of the new regulatory policy, to appreciate or even celebrate the new culture, to recognize the possible consequence(s) of their behaviors/ misbehaviors under the new regulation, etc.

In these two respects, a "plastic applications manual" is then needed for the proper application of binding by plastic band and bonding by plastic glue according to individual paper characteristics. To construct such manual, the 5W1H framework is chosen because the six questions being asked are so fundamental but so comprehensive that they are applicable to virtually every stage of the problem solving strategy, ranging from problem identification, information gathering, options formulation, decision making, implementation, to evaluation. Similarly, the framework is also applicable to every stage of a typical public policy process, ranging all the way from agenda setting, policy tools formulation, civic engagement, policy implementation, and eventually to policy review.

Nonetheless, for any particular problem, there are many possible ways to construct the 5W1H questions. Furthermore, these questions often have overlapping meaning (e.g. "how much" and "to what extent") in their daily usage. So to be more specific, the following operational definitions for each of the 5W1H are adopted:

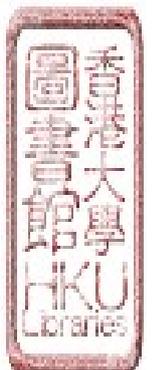
Why?	Why should the respective socioeconomic activities be regulated?
What?	What socioeconomic activities should be regulated?
	What policy tools / government instruments can/should be used?



Who?	Who should formulate/implement/review the respective regulations? Whom should be regulated/engaged?
When?	When should the respective regulations be carried out?
Where?	Where should respective regulations be put in place?
How?	How should the respective regulations be formulated/implemented/advocated/sustained?

The 5W1H are the basic objectives to be fulfilled, or criteria required in policy formulation. Nevertheless, to assess the performance of implementation, it is necessary to evaluate if the 5W1H preset at policy formulation stage can be fulfilled or executed effectively and appropriately by the policy tools during implementation, i.e. whether the purpose of the policy can be fulfilled, the originally targeted activities can be properly regulated with little side-effect, etc. In other word, in addition to "good", "humane" policy tools (binding by plastic band *vs* bonding by plastic glue), a good implementation plan (plastic applications with proper considerations of paper characteristics) is also crucial. This is illustrated in Chapter 4.

Traditional regulatory literatures do attempt to answer these questions for their applications but the efforts are once again mostly incomplete. In tactics of execution some factors affecting the effectiveness of the tactics for reducing costs of change, including political relations amongst authorities, agencies and clientele, consents of and controls by the clientele and regulatees, forms of and reasons for civic engagement or public consultation, etc., are identified. This framework is essentially a framework of "who". At the same time, some indicators of the effectiveness of the tactics for securing compliance, including degree of compliance, ethical climate and



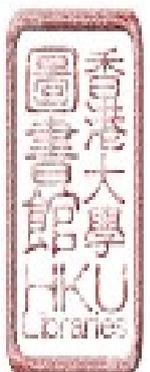
social atmosphere of inducements, all intermediate and final behaviors and activities of all employees in all regulatory agencies involved and throughout the whole policy process, etc. are also identified. This, in contrast, is essentially a framework of "what" (pp.461~467,479~487).²⁵ However, the "when", "where", "why", and "how" questions are barely attended.

For street-level bureaucracies, as mentioned before, first, their power and discretion, with consideration on their clients' and regulatees' nature and responses (paper characteristic), are means to enforce sanctions and supports. Second, street-level bureaucrats are frontline policymakers; and third, street-level activities are the specific activities to be regulated. The theory also illustrates why there are street-level bureaucratic coping strategies in a regulatory system. It can thus be argued that street-level bureaucracy is an example simultaneously demonstrating several criteria, respectively the "how", "who", and "what" in the aforementioned three factors, that need to be considered in the present "paper and plastic" framework.

On the other hand, there are more types of 5W1H questions being raised in enforceability analysis. In the theory, the author first asks, "Why rules?" Then he asks, "What are the basic characteristics and preconditions of formal regulations?" Subsequently, four basics and six preconditions respectively are identified, namely:

- basic characteristics:
 - aim at modifying behaviors, command, prohibit, or permit specific behaviors and prescribe the requirements
 - embody a certain degree of generalizability

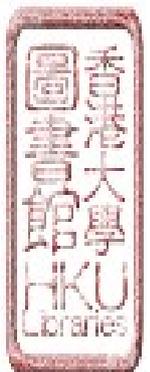
²⁵ Simon et al. (1958, pp.461~467,479~487)



- can be changed
- preconditions:
 - openness and knowability
 - rationale and causal validity absence of contradiction
 - specification of rule protases
 - objective standards
 - robust rule categories

The author even "marries" the "who" and the "what" together and asks two more questions: "who should enforce what" and "what should be enforced to whom". To answer the first question, a public-private continuum is introduced and it is suggested that governments should put "harder" enforcements tools more in the hands of public bureaucracies but the "softer" ones more in the hands of private individuals. To answer the second question, it is suggested that unprincipled rule breakers should be regulated by harder enforcements and the principled ones by softer ones. Next, two bases for determining level of enforcement activities are identified:

- standards-based enforcements:
 - target at complete conformance
 - target at satisfactory conformance
- costs-based enforcements
 - aim to match marginal cost against benefits of detecting non-compliance
 - aim to meet marginal cost with benefits of detecting non-compliance *and*



detering evasion

which the author claims is a framework of "how much" or "to what extent" (Though of course "how much" is different from "how" which is the way to achieve policy objective(s). The author seems to talk about the conformance with respect to standards/costs but this is different from how to achieve objectives.). Then he further asks "what" factors affect bureaucratic enforcement, and "what" possible regulatory tools are available for self-enforcement, and finds the followings respectively:

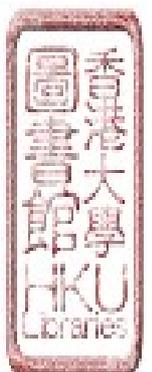
- bureaucratic enforcement:
 - cadasterability/listability
 - conduitability/canalizability
 - standard unequivocality
 - reinforceability
 - cross-sanctions

- self-enforcement:
 - enforcement physically built in to a structure
 - communal solidarity
 - private enforcement by victims or agents
 - enforcement through membership institutions²⁶

but still, his analyses leave behind the "when" and the "where".

In responsive regulation, a similar question is also asked, "What should be enforced

²⁶ Hood (1986, pp.17~20,22~42,74~84)



to Whom?" It is then argued that different types of justice options should be applied to different kinds of lawbreakers: restorative justice to the virtuous lawbreakers, deterrence to the rational ones, and incapacitation to the incompetent or irrational ones.²⁷ Later on, in seeking "how" to avert incompatible combinations of regulatory strategies and at the same time craft synergetic ones, nine principles for responsive regulation are formulated:

- think in context
- listen actively
- engage the resistant ones with fairness and respect
- praise the committed ones
- signal preference on support, education, and capacity building
- signal concretely possible range of escalated punishments
- network pyramidal governance for escalation
- elicit active responsibility over passive responsibility
- evaluate outcomes and communicate lessons learnt²⁸

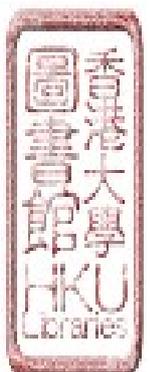
but as such, the formulation focuses chiefly on "how" only.

Summary

Each of the abovementioned mainstream regulatory theories has its own foci, strengths, and weaknesses but they can still be integrated, systematized, and further enhanced using the "paper and plastic" model. The tactics of execution covers

²⁷ Braithwaite (2011, pp.484~486)

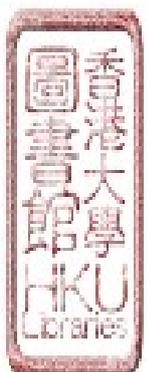
²⁸ Braithwaite (2011, pp.490~518)



comprehensively the possible tactics public bureaucracies may employ to reduce costs of change and securing compliance when enforcing regulatory measures. It also suggests on factors affecting the effectiveness of these tactics and advises on ways to assess their effectiveness. However, it relies heavily on the initiative of the central authority and underestimates the usefulness of the other stakeholders (the papers) of the regulatory system, including the private sector, the professional groups, the press and media, the interest groups, the clientele, the individuals, and even the victims, in enforcing rules and regulations.

The enforceability analysis is even more all-embracing in a sense that it attempts to cover, apart from the central authority, all possible contributors (the papers) to regulatory enforcement in the society. It prescribes four characteristics and six features of formal rules and regulations, four categories of basic enforcement options, and three methods of enforceability analysis (including five public- and four self-enforceability factors). Nonetheless, it biases strongly on enforcing rules and regulations (binding by plastic band) instead of offering supports (bonding by plastic glue). At the same time, it is very "nitty-gritty" and lacks the simplicity and neatness an overarching theory needs.

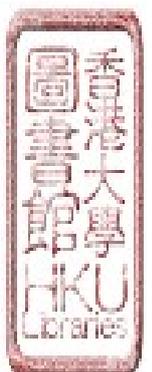
The street-level bureaucracy critically uncovers the hidden power (binding by plastic band) and discretion (bonding by plastic glue) of frontline civil service and how they affect or even distort public policies. Due to this particular perspective, it is amongst the very few regulatory theories that recognize the strong significance of the regulatees, clients, and clientele (papers) and their behaviors and psychologies (paper characteristics) on public policy implementation at the street-level. However, it makes few inferences to the design of public regulatory policies and the choice of



policy instruments.

The more recent responsive regulation seems to be able to strike a much better balance between binding and bonding forces and also most approximate to the "paper and plastic" model, with the pyramid of sanctions correspondent with the binding by plastic band, the pyramid of supports with the bonding by plastic glue, and the responsive regulation as a whole with the plastic applications. Nevertheless, it still fails to recognize the importance of elements of values, cultures, and contexts (paper characteristics) to a regulatory system/policy. Also, unlike the pyramids of supports and sanctions which work separately at a time in his model, both binding by plastic band and bonding by plastic glue in the "paper and plastic" model can be applied simultaneously as they are in fact positively supplementary to each other.

In the forthcoming chapters, the "paper and plastic" model is used to analyze domestic hawker control system. After exploring the system in terms of paper, paper characteristics, binding by plastic band, and bonding by plastic glue, evaluations and recommendations are made based on the principles of plastic applications.



CHAPTER 3: Background and Current Situation of Domestic Hawker Control

Introduction

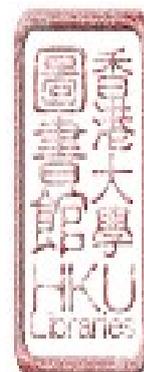
This chapter answers the third research question of the study: What particular regulatory strategies has the Administration actually adopted to oversee and control hawker activities? By conducting a longitudinal analysis of the trend of hawker regulatory approach adopted by domestic Administration and how it changes over time, it is found that these approach and trend are closely related to respectively the condition and shift in local values, contexts, and cultures of the society towards hawker activities. These important findings provide the foundation for the analysis in Chapter 4.

Paper Characteristics and Binding by Plastic Band

Development of hawking activities in Hong Kong

Hong Kong, a small sized city with dense population, nurtured the business of street hawker, a hundred year ago, when on-street hawkers were regarded as grassroots who made their livings for the whole families by conducting small scale business.

In days of old in Hong Kong, street hawkers mainly sold sundry items on top of a piece of card board or trading of seasonal and festive items on a wheeled cart. Some of them would earn their livings by offering their particular skill such as shoe



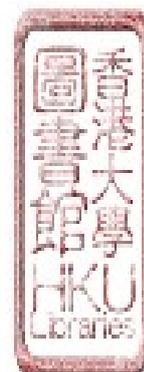
polishing, fortune selling, letter writing etc. Cooked food stall hawkers had a long history in Hong Kong as well and the number boomed after the Second World War.²⁹ Later on, temporary hawker licensing have been introduced and the hawkers would do their business within the designated stall size and the stall should be put on wheels for easy vacant for cleansing after close of business. With further improvement in economy, most mobile hawkers have become fixed stalls and sold a wide variety of products.³⁰

At the time that social welfare policies were not comprehensive, hawker activities were popular for less educated parents to earn income for raising the whole family. They only needed limited amount of capital to start up the business, which was easy to operate and did not require profound knowledge and techniques. It could be run by only one person so that the other parent could spare his or her time for another job or family matters. The flexible working hour also allowed the parents to look after their children or elderly family members at the same time. Indeed, many social elites or successful businessmen were raised up by hawkers parents. The former Secretary of Justice, Wong yan-lung, SC, revealed his childhood story in a forum.³¹ Wong, who was born in 1963, stayed in a tiny sub-divided flat with his parents and siblings when he was small. His father raised Wong up by selling ice cream in a mobile truck. He said the tough days trained him into a diligent student with firm determination to endeavor academic achievement. His story received positive feedback widely and was praised as a typical case to demonstrate the "Lion Rock Spirit".

²⁹ *Administration's paper on "Cooked food stall hawker licences" [LC Paper No.CB(2)2296/01-02(06)]* 2002 June 24)

³⁰ *Submission from Ir Peter Y. WONG on management of fixed pitch hawker areas: Consultation on the Mechanism for Cancellation of Hawker Licences - The city is dying [LC Paper No.CB(2)1620/11-12(02)]* 2012 April 11, p.4)

³¹ "黃仁龍住板間房發憤圖強成長故事勉青年：物質非成功標準" (2007年)



However, when the economy of Hong Kong started to boom, people had less demand in on-street trading, both conducting and consuming. With the population booming, complaints concerning street trading increased. Retail business and food stalls moved into commercial premises. People found hawkers generated environmental nuisances, road obstruction, and unfair competitions.

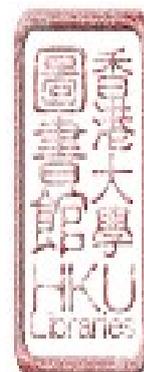
Policy and practice

In late 1590, the colonial government started to launch policies to control the growing numbers of hawkers and to regulate their business activities. The tactic, at first, was leaning to a facilitating approach. The Administration proposed to build fixed-pitch bazaars off-street to accommodate peddler hawkers.³² And in 1973, a new Hawker Permitted Area Scheme was introduced to allow trading activities in designate areas.

The policies helped the Administration to control the number of hawkers, by only giving permission to some of them. Rationale in legalizing street trading was established during the set up of allocation systems for fixed pitches and permission licenses. The system also performed as a platform in tackling disputes and justifying law enforcement action in banning illegal hawking.

After the facilitative strategies were introduced, the Administration applied a tighten wrist in forbidding illegal hawking. The purpose was mainly to control, or even, to

³² *Administration's paper on Issues relating to Hawkers and Hawking [LC Paper No.CB(4)566/13-14(01)]* 2014 April 15)



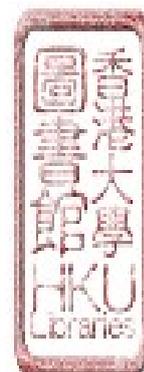
minimize the street business in Hong Kong. The regulating approach, in the form of "plastic band", reduced the number of hawkers, particularly the unlicensed ones. There are two kinds of hawker licenses in force, the fixed-pitch and itinerant one. Since 1970, the Administration stopped issuing new hawker license and applied strict requirements in succession or transfer of licenses. The number of licensed hawkers has dropped from 49,000 in 1971 to 20,000 in the late 1980s.³³

To further reduce the number of licenses, the Administration launched a voluntary surrender scheme in 2002 to encourage license owners returning their licenses in exchange for an one-off payment or other economic incentives. The "facilitating" approach attracted elderly hawkers to relinquish their licenses for the retirement money. People who did not need the hawker jobs to earn their living returned the licenses for the bonus money as well. Without a system to reallocate the licenses, the Administration showed his intention to minimize the street trading business, instead of redistributing the opportunities to other needed ones. As at 31 December 2014, number of fixed-pitch and itinerant licensed hawkers were 5,905 and 442 respectively.³⁴

In spite of the long history of street trading in Hong Kong, the Administration did not strike a balance between social order and hawking activities. Before the launch of surrender scheme, the Administration set up the hawker control team (HCT) in 2000, under the FEHD to regulate the licensed hawker activity and take law enforcement action against the illegal ones.

³³ *Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)]* 2015 May 12)

³⁴ "FEHD > Statistics > Pleasant Environment Statistics" 2015)



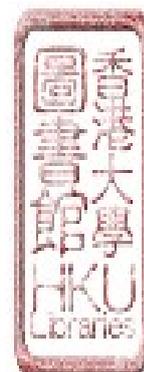
The introduction of HCT performed as another "binding" strategy in regulating hawker activities. The ICAC and the FEHD separately conducted studies on the operation of HCT, with the former one focused on anti-corruption and the latter on the operation efficiency.³⁵

The FEHD study was headed by the department director, who led 46 group discussions, involving over a thousand staff members, mainly from the HCT, to make sure the review focused on operation level of the law enforcers. Without the participation of hawkers and their representatives, the social values and the market demand of street retailers could not be reflected during the discussion. Hence, the study ended up with concrete recommendations on HCT's daily operation, such as forming sector patrol teams, designing new shift patterns, to ensure the law enforcement duties could be more efficient and effective. The study lacked a broader perspective in reviewing hawker control policies, but only encouraged a more forceful thumb on law enforcement to punish the illegal hawkers, without facilitating the society's need in conducting and receiving street trading services.

At the end of December 2014, HCT had an establishment of some 2,200 officers in different ranks to execute the Administration's hawker management policy and enforcement actions.³⁶ For licensed hawkers, HCT inspected licensed fixed-pitch hawker stalls regularly and regulate the operation of itinerant hawkers whenever they found hawking in the streets. HCT would take enforcement action against them if irregularities were found. There were 5,064 convictions in 2013 against licensed hawkers. A sanction mechanism on fix-pitched hawkers leading to

³⁵ *Administration's paper on comprehensive review of hawker control operations [LC Paper No. CB(2)2097/00-01(03)]* 2001 July 17)

³⁶ *Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No. CB(2)1394/14-15(07)]* 2015 May 12)



suspension and cancellation of hawker licenses has been implemented in November 2012 to enhance deterrence against repeated offenders.³⁷

For unlicensed illegal hawking, the HCT carried out regular patrols and raids at hawker black-spots. The HCT would take stringent enforcement action against illegal hawkers selling prohibited/restricted food or cooked food. They would immediately arrest and seize their commodities and equipment without prior warning. There were 26,294 convictions of unlicensed hawker or hawker-related offences in 2013. With the strict enforcement actions against unlicensed hawking activities, the number of unlicensed hawkers have been decreasing from more than 5,500 in 1995 to around 1,500 as the end of December 2013.³⁸

Evaluation of policy implementation

In the past, the Administration implemented various measures and adopted strict enforcement actions against hawking activities. However, FEHD still received on average about 28,000 complaints a year relating to street hawking activities in the past 5 years.³⁹

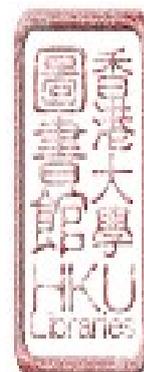
The binding strategy reached a huge rebound from the society owing to a tragedy. In 2006, an unlicensed elderly hawker, who sold Chinese medicine on the street was accidentally drown to death while ducking the chase by a HCO.⁴⁰ The case stirred

³⁷ Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)] 2013 June 21)

³⁸ "FEHD > Pleasant Environment>Hawker Control > Control of Licensed and Unlicensed Hawkers > unlicensed_chart.jpg" 2014)

³⁹ Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)] 2015 May 12)

⁴⁰ 蘇偉明, 吳淑姬, 陳道明, 何裕恒, and 朱嘉欣 (2006年)



up society anger. Criticism blamed the law enforcer ruthless and inconsiderate, as the unfortunate deceased hawker was at retired age. It was also reported that the officer did not try to save him while he was sinking.

Though the hawker activity was illegal, the general public did not perceive it as a crime, as some of them were benefited from illegal hawker. Also, the general public also appreciated the intention of illegal hawkers, that they refused to receive social welfare but insisted earning income by their own effort. The general public felt that a hawker did not deserve such cruel arresting approach, as they were not thief who conducted serious crimes.

Negative image of HCOs further consolidated and drove to more vigorous public reaction, that the citizen acted up to stop "injustice" law enforcement. Citizens would gather up, blame and stop the control officers to arrest elderly illegal hawkers, on scene.⁴¹

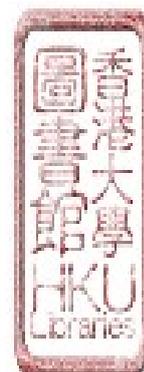
Paper Characteristics and Bonding by Plastic Glue

Changes in local values, contexts, and cultures of the society

The plastic band strategies effectively reduced the number of hawkers, both licensed and illegal one, and the strategy eventually drove the social atmosphere to the other side. After the preservation movement of the Queen's Pier⁴², collective memory, cultural value and heritage reservation gained more attention in public agenda.

⁴¹ 婦未開檔遭檢控 半百人圍販管隊. (2013年, 02月07日)

⁴² 雷子樂, 吳國威, and 劉永明 (2007年)



Generations of hawkers witnessed the development of Hong Kong, which was one of the major option of grassroot jobs before the community went prosperous and international. Hawkers symbolized the "Lion Rock Spirit", reminded us how some of the elites, whose parents were poor and inferior, climbed up the social ladder. The local business connected residents in neighborhood and helped building up the local network.

The demand for hawkers was not solely market driven, but also a part of the pursuit of history, values and beliefs among the society. The society opposed the declining development of hawkers and requested revitalization of the industry. The shutting down of local old restaurants and hawker markets often became public concerned issues.⁴³ Pressure groups were formed to preserve hawker markets and demanded the issue of new hawker licenses.⁴⁴

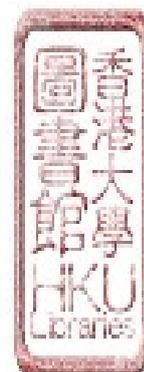
The hatred towards "Land Monopoly" also drove public voices to retain street hawkers for providing wider shopping varieties. Tin Shui Wai was a typical case of this. Though the district was classified as one of the poorest district in Hong Kong, the local consumer price index did not tell the same tune.⁴⁵ The shopping areas in Tin Shui Wai were mostly operated by property developers and the LINK. No wet and food market was operated by the government, to provide cheaper choices for food and groceries. The lack of competition explained why groceries were comparatively expensive in the district.

Thus, different forms of illegal hawkers submerged in the district. "The Dawn

⁴³ "市建局：物華街小販檔陸續遷出" (2014年)

⁴⁴ "抗衡領匯遭販管隊狂掃天光墟爭取「見光」" (2012年)

⁴⁵ "探射燈：貨車賣糧油 平霸天水圍" (2015年)



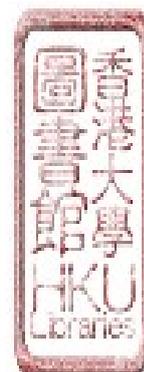
Market" which was right next to Tin Yan Estate, was a popular gathering spot of illegal hawkers. At peak hours, there could be up to 50 hawkers, gathering there to sell cheap grocery products, herbal tea, garments and mobile phone accessories for lower income residents. To avoid the arrest of HCOs, some hawkers operated grocery business in vans, selling eggs, rice, bottled oil and toilet papers, with prices lower than local supermarkets by half.

The "Land Monopoly" could come from public sector. The urban renewal project, by Urban Renewal Authority, in Kwun Tong, shut down over a hundred hawker stalls.⁴⁶ Though some of them were moved to a new temporary site to continue business, their revenue dropped drastically and residents were dissatisfied with the relocation. The Administration, instead of facilitating the survival of hawkers, accelerated the vanishing of old market, which turned out further enraged the public.

The strategies developers adopted to kick out small sized business were despised by many Hong Kong people. Some shopping malls only leased the stalls to chain stores to maximize rent incomes. Turns out, different large shopping malls provided similar brands, narrowed down the choices of consumers, suffocated the business opportunities of new comers and most importantly, suppressed the business development possibilities of Hong Kong. Conspiracies of the government colluding with the business tycoons were accused and received severe criticism. Introduction of fair competition policies were demanded to break the monopoly situation.

People who had limited capital would like to start up small scale business, such as hawking. They regarded it as a way-out option to bypass expensive rent of

⁴⁶市建局：物華街小販檔陸續遷出。(2014年，02月05日)



commercial premises. Foreign successful night markets in Taipei and Singapore proved the hawkers could be successfully operated and turned into internationally known tourism attractions.⁴⁷

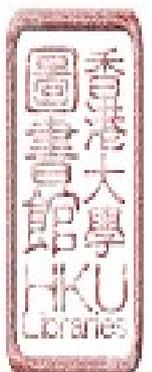
Indeed, street food could turn into huge business in Hong Kong. The former Miss Hong Kong, from TVB annual beauty pageant, Tam siu-wan set up a cooked food store in Causeway Bay and was claimed to earn \$40,0000 revenue monthly.⁴⁸ Her achievement was well acclaimed, helping her to build a more independent, courageous image. Selling fish balls was no longer regarded as lower grade than her former actress career.

Even hawkers mostly remained as local and small business, the attractiveness to public never faded. The former street vendor of Egg Puff, Mr Ng suk-fai, was well renowned by his charcoal grilled egg puffs, which were difficult to be found in town, as charcoal grills were under strict supervision in the restaurant ordinances. Mr Ng was once arrested in 2011 but gathered more than seventy neighbors' autographs to support him afterwards.

Another example was the Gulin night market, which emerged annually during the Chinese Lunar New Year. The market, which mostly consists of cooked food hawkers, often attracted large crowd to consume. Owing to the ban from the Administration, some street artists and protestors organized petition named "I want genuine hawkers" to fight for the right to operate. They set up temporary carpet vendor to sell books or snacks as a protest. More than a hundred people joined to

⁴⁷ FACT SHEET - Hawker policy in Taiwan [LC Paper No.FS09/13-14]. (2014 May 26). and FACT SHEET - Hawker policy in Singapore [LC Paper No.FS10/13-14]. (2014 May 26)

⁴⁸ 梁子康, 林寶莉. (2014年08月16日)



request for suspension in law enforcement during the new Lunar Year festival.⁴⁹

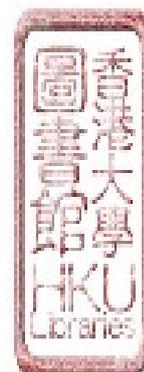
There are almost one million low income people in Hong Kong. Hawker activities used to be an option for them. With inflation rate skyrocketed in recent years, particularly in public transportation, food and accommodation, people who lived in remote area found it hard to work and take care of the family at the same time. Local economic activities were suggested as a solution for them. It was hoped the residents could find a job or operated a small business in local, to save their transportation cost and time. Hawker activities were claimed to be a suitable option. The Tin Sau Market, suggested by government, was originated from similar idea.

Further to the incomprehensive design of hawker control policy, the attitude of the street level buearcrats enraged the public as well. The cases of arresting retired, grassroots elderly ignited public empathy. The public blamed the officers for bullying elderly hawkers but let go the organized hawkers with suspected triads background. The unfairness in law enforcement weakened the public trust in HCT. Thus, the department delivered more discretion to the street level officers. They could let go the elderly illegal hawkers when potential danger existed. The safety of the hawkers sometimes could overrode the necessity of law enforcement.

Policy and practice

The purposes of regulating hawkers have been changed in recent years to tackle with the change in the paper characteristics. The paper, used to be a sole concern upon public nuisance and food hygiene has turned to be more complex. The system was

⁴⁹ 深水埗百人擺地攤撐小販（2015年02月21日）



extended to tackle the public demand of cultural reservation, respect towards social inferiors, economic development, prevention of fire hazards and varieties in business models. To cope with the changes in community needs and aspirations on hawking activities, the Administration conducted review on hawker licensing policy in 2008 and 2009 and carried out two public consultations on management of fixed-pitch hawker in 2011 and 2012.⁵⁰ The Administration has consulted District Councils, hawker associations and other stakeholders in the review and public consultations and aimed to formulate the hawker policy with the support for the public, local community and other stakeholders. In other words, more "plastic glue" oriented policies appeared to be adopted in recent years.

In response to the comments in the hawker licensing policy review in 2008 that "the hawking trade should be retained and revitalized because of its traditional characteristics",⁵¹ the Administration re-issued 61 new Itinerant (Frozen Confectionery) and 218 new Fixed Pitch (Other Classes) Hawker Licenses during the period from July 2009 to April 2012 to retain hawking with traditional characteristics.⁵² The Administration has also launched a five-year financial assistance scheme for licensed hawkers operating in 43 fixed-pitch hawker areas since September 2012 and aimed to improve the fire resisting capability and design of hawker stalls.⁵³

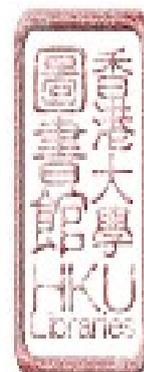
As the HCT will take enforcement actions against hawkers without prior warning at

⁵⁰ *Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)]* 2013 June 21)

⁵¹ *Paper on hawker policy prepared by the Legislative Council Secretariat (Background brief)[LC Paper No.CB(2)1374/12-13(02)]* 2013 June 21)

⁵² "FEHD > Pleasant Environment>Hawker Control >Overview" 2014)

⁵³ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02)



hawker black spots, in order to reduce the operational difficulties of itinerant hawkers and provide support on hawking activities, the Administration had provided a list of hawker black spots to District Councils and the hawker associations and the information has been available for the public at FEHD offices and websites as well since April 2007.⁵⁴

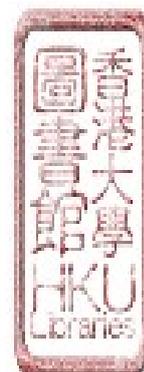
To establish a partnership and collaborative relationship with stakeholders, Hawker Management Consultative Committees (“HMCCs”) covering all hawker areas have also been set up in 2012. Members include representatives of licensed hawkers, the Fire Services Department, relevant DC and District Fire Safety Committee members. The HMCCs provide a platform for two-way communication and for the FEHD district staff to discuss day-to-day management, regulatory and safety issues, as well as to encourage self-compliance and good practices among hawkers.⁵⁵

Evaluation of policy formulation

The Administration repositioned the policy from elimination of hawkers to the development of street trading business. The Administration offered public market vacancies for individual cooked food vendors, considered the issue of new "Dai Pai Tong" licenses and set up district-led open-air hawker bazaars markets. In 2012, the Administration launched a pilot scheme, Tin Sau Market, in Tin Shui Wai, to allow low income individuals opening stores in flea market to make profit by providing venues with low rent. However, the project is far from success and many

⁵⁴ *Paper on hawker policy prepared by the Legislative Council Secretariat (Background brief)[LC Paper No.CB(2)1374/12-13(02)]* 2013 June 21)

⁵⁵ *Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)]* 2013 June 21)



retailers said they suffer from business loss.⁵⁶

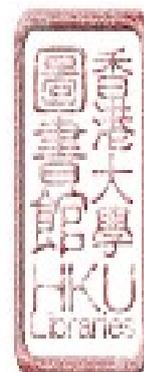
To develop more "plastic glue" strategies and to encourage hawking trade, the Administration has conducted researches on management strategies on hawking activities in overseas practices recently. In Taiwan (Taipei City)⁵⁷, hawkers are categorized into (a) government-licensed hawkers who apply for a hawker license from the Taipei City government; (b) government-condoned hawkers who are unlicensed hawkers with permission to operate stalls in temporary centralized fields for vendors, and whose rights and interests are represented by hawker association; (c) undocumented hawkers who may be prosecuted by police if they obstruct traffic flow or create too much inconvenience to the public. The Taipei City government uses tolerant approach and does not need to deal with individual hawker directly. Instead, it relies on self-regulated and self-managed hawker associations to manage the hawkers. In South Korea⁵⁸, there is no licensing regime for hawkers. Street hawking activities are allowed unless they cause traffic obstruction or endanger pedestrian safety. In any cases, verbal warnings will be given to hawkers before using prosecution and fine. The local government manages street hawking activities at district level. The district office allows self-regulated hawker association to manage hawkers in tourist zones such as Myeong-dong. In Thailand⁵⁹, trading activities can be operated in designated areas such as Government-run Market. Some vending activities are also conducted along the streets ("on-street vending") such as Day or Night Market. Some trading activities can take place on a vacant land or in a covered complex ("off-street vending"). There are some regulatory

⁵⁶ "天秀墟管理差 麥美娟促正視" 2014年)

⁵⁷ *FACT SHEET - Hawker policy in Taiwan* [LC Paper No.FS09/13-14] 2014 May 26)

⁵⁸ *Food and Health Bureau's further response to issues raised at the meetings on 15 April and 16 June 2014: Management and Control of Hawkers in Selected Jurisdictions* [LC Paper No.CB(4)994/13-14(01)] 2014 August)

⁵⁹ *FACT SHEET - Hawker policy in Thailand* [LC Paper No.FS12/13-14] 2014 June 12)



controls on street hawking activities such as restrictions on trading hours in the designated areas. The local government is responsible for managing street vending in Bangkok. Street hawkers have to make registration with the local government. To regulate trading activities in unauthorized public areas such as bus stops and pedestrian bridges, enforcement action will be taken by the local government against unauthorized trading activities. Turning to the experience in Singapore⁶⁰, hawkers operating from stalls in any street, premises or public place, and itinerant hawkers are required to hold a hawker license. Unlicensed hawkers will be subject to fine or imprisonment. In the early 1970s, the Singaporean government started to relocate licensed hawkers from the streets to "market and hawker centres" facilities ("hawker centres"). From 1971 to 1986, hawker centres were built with amenities and infrastructure to enable hawkers to conduct their business under a clean and hygienic condition. Each hawker centre has a hawker association comprising representatives of hawkers. The Singaporean government maintains regular communication with hawker associations to resolve their problems in the centres.

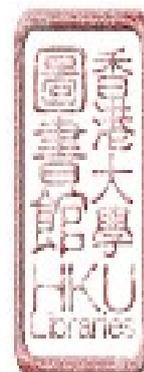
To promote on-street small business in Hong Kong, according to the Financial Secretary in his speech for the 2015-2016 Budget that the government is considering introduction of Food Truck. Also, licensing for small food carts will be considered at the same time.⁶¹

Summary

It becomes apparent that direction of domestic hawker control policy (plastic

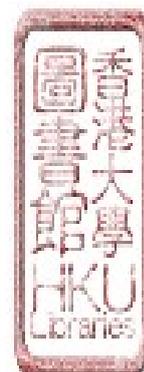
⁶⁰ *FACT SHEET - Hawker policy in Singapore [LC Paper No.FS10/13-14] 2014 May 26)*

⁶¹ "The 2015~2016 Budget" 2015)



applications) is closely related to the value, culture, and context of the individual-society continuum (paper characteristics). During the colonial period when quality of life was improving, social atmosphere tended to reject such public nuisances as pollution, obstruction, noise, etc. but embrace such life qualities as hygiene, safety, tranquility, etc. Consequently, hawker control policy became more binding and included more binding options like stringent enforcements, heavy penalties, de-licensing, etc. However, after the preservation of Queen's Pier movement, it happened that there was a change in social climate and the general public now tends to despise powers and authorities (including the property hegemony) but cherish a more preservative lifestyle commonly abstracted as the Lion Rock spirit. Subsequently, the Administration is now revising existing direction of hawker management and this may include more bonding approaches like relicensing, revitalization, partnership, etc.

In the following chapter, the empirical analysis will change from descriptive to prescriptive. Domestic hawker control policy, including the policy itself and the overall policy process, will be assessed and evaluated. Considering this together with the selected overseas experience, recommendations will then be made on the new direction of domestic hawker control in the concluding chapter.



CHAPTER 4: Administration's Performance in Managing Hawking

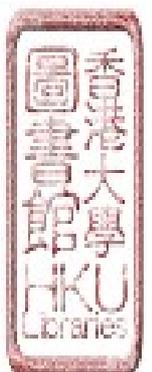
Introduction

Chapter 3 describes the development of regulatory control on hawking activities in terms of the framework on rolling paper with plastic band and glue. It is a comparison, or a trend, of domestic administrative approaches to the use of binding sanction and bonding support tools that evolves interactively with local values, cultural, and contextual characteristics along the timeline. This chapter further analyzes how well the Administration has performed with respect to the paper rolling principles, in terms of plastic applications -- why, what, who, when, where, and how. At the same time, it answers the fourth research question: How appropriate and effective have these strategies been?

Why? Reasons to Regulate: Paper Shape to be Formed

Correlation of "paper and plastic" metaphor and hawking policy objective

Before rolling a paper and applying band or glue, it is crucial to get a full picture of the final shape, so that appropriate rolling orientation and tools of band or glue can be chosen effectively. On the contrary, if the paper characteristics were not fully analyzed and the final paper form was unclear before rolling, the paper could not be rolled in a proper direction effectively whatever plastic band or glue to be used. Similarly, only when the root causes of problems are identified accurately, the

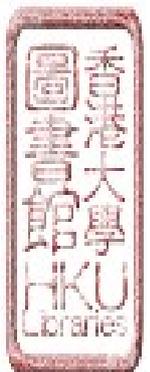


solutions could be developed with correct focus and orientation, otherwise, the policy would be formulated in a mis-aligned direction, defeating the original objectives.

In general, the ultimate objective of public regulatory policy is usually among: (1) to reinforce or reinstate the existing community value or culture; or (2) to mould a new community value. The first one implies the sanction or support would be determined on the existing community value, while the second implies a new or revised community value or culture form would be moulded gradually by the new tools, for example, prohibit smoking at indoor venue changed the smoking culture of the community. While sanction or support is interim tools controlling behavior of the community, the fundamental objective of formulating policy must be set clearly at the beginning such that the policy being implemented can eventually safeguard the human life and property right.

Current policy and practice

Chapter 3 had demonstrated the evolution of hawking culture in recent decades, as well as the regulatory policy on hawker control in a sanction approach and the public's view for and against eradicating hawker industry from the street. In practice, the Administration allocated resources in the regulatory control of hawking because they received criticism or complaint from LegCo or District Councils that hawking would generate social problems such as environmental hygiene concerns, nuisance of noise and pests, food safety, traffic congestion on emergency access path, fire risks, etc. This became even critical after two major fires at hawker stall in Fa Yuen Street in 2010 and 2011, which caused injuries to residents in the vicinity and



triggered requests for a stricter hawker control and the launching of an assistance scheme.⁶² To combat these problems, the Administration simply took the sanction approach to deplete illegal hawkers, or reduce legal hawker license by cease issuing new hawker licence.⁶³ While some residents in the vicinity complained about the nuisance caused by the hawkers, the hawking activities were to certain extent welcomed by grassroots who would like to purchase food or products at a lower price.⁶⁴ From another point of view, hawking can survive because there is a market demand for cheap products⁶⁵ and the current food hygiene of hawking could apparently be acceptable. In particular, the LINK managed the shopping stalls in public housing estates and rent to ‘chain’ store at a higher price. Traditional or cultural products or services were therefore sold in the cheaper hawking market, so as to bypass LINK’s high rent.⁶⁶

With respect to the hawker policy, the public had an expectation on developing the hawking industry in long-term, rather than solely regulation and control management in the manner of sanction. This had been raised by LegCo members in 2013⁶⁷ and 2015⁶⁸. Nevertheless, the Administration stated in 2013 LegCo paper that the hawker policy is “*to strike a proper balance between allowing legal hawking activities on the one hand and maintaining environmental hygiene and protecting the public from*

⁶² Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)] 2013 June 21, para.7)

⁶³ Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)] 2015 May 12, para.2)

⁶⁴ Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)] 2015 March 02, para.4)

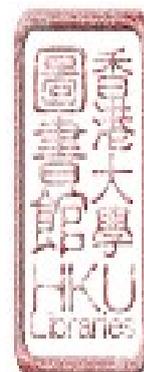
⁶⁵ Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15] 2015 March 02 Monday HKT 14:30, Annex pp.2~3: Professor LUI Tai-lok's speech)

⁶⁶ 教區勞工牧民中心（新界），(2012年01月01日) 小販是對抗地產霸權的堡壘，公教報 011

⁶⁷ Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)] 2013 June 21)

⁶⁸ Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)] 2015 March 02, para.10); and

Paper on "Proposed extension of period of work of the Subcommittee on Hawker Policy" prepared by the Legislative Council Secretariat [LC Paper No.CB(4)598/14-15] 2015 March 10, para.4)



undesirable effect on the other.”⁶⁹

This passive approach of ‘allowing’ legal hawking was only improved in 2015 and upon the request of LegCo’s Subcommittee on Hawker Policy, the Administration laid out 8 principles for evolution of local hawker policy, including “(i) ...*Regulatory and supportive measure should be put in place...*(v) *the Government should keep an open mind towards district-led proposals on local bazaars and their mode of their operation ...*(viii) *if district-led proposals with community consensus are put up, we are happy to facilitate liaison with relevant bureaux and departments.*”⁷⁰ In this regard, the Administration set out 5 proposals in a supportive way for long-term development of hawking, relating to (i) review case for issue of new fixed-pitch hawker licences, (ii) enhance operating environment of existing hawker areas; (iii) consider issue of new “Dai Pai Tong” licences; (iv) consider converting existing public market with low occupancy into off-street cooked food centre; (v) set up district-led open-air hawker bazaars and night markets.⁷¹

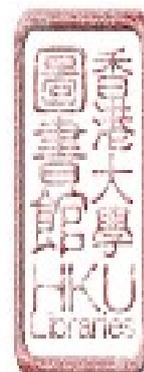
Evaluation of implementation practice

It appears that the Administration has been shifting correctly from the solely sanction approach to a supportive long-term development in recent years. As observed from the LegCo paper and minutes, the stance of the Administration was softened. In the past, the Administration would mostly focus on the negative impact of the hawking trade, i.e. fire tragedies at Mong Kok were caused by the poor

⁶⁹ *Administration’s paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)]* 2013 June 21, para.3)

⁷⁰ *Administration’s paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, para.13)

⁷¹ *Administration’s paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, para.14~24)

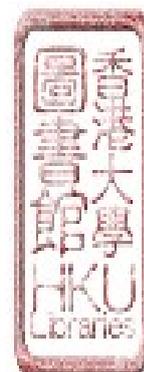


arrangement of hawker stalls. These cast a negative image against hawkers, which on the other hand, purposely supported the government in imposing a sanction approach. The Assistance Scheme launched in 2013 on one hand would provide financial assistance for stall reconstruction and relocation, but on the other hand, promoted voluntary surrender of hawker licences by *ex-gratia* payment.⁷² This scheme was supportive superficially, but the fundamental objective was punitively reducing the number of hawkers. In brief, the Administration regulates for the purpose of abating problems arising from hawking, but without much consideration on the community values/culture, or even the benefits of their development. If hawking is regarded as a private market in line with community culture and deserved respect and promotion, more supportive measures should be explored. Otherwise, the pre-judgement with focus on hawking's negative impact would lead to sanction direction which would be incomprehensive to the community development.

From another perspective, the root cause of hawking is the market demand for cheaper services or products for the grassroots. The generated nuisances are only side products which could somehow be minimized by other means. If the hawking culture and the free market economy mechanism are respected, long-term development with minimum nuisance should be the prime objective of policy that the public actually desires for. Proposals in 2015, particularly the improvement of hawking environment, conversion of existing market with low occupancy into off-street cooked food centre and district-led open-air hawker bazaars and night markets, were along the right direction.⁷³ The crux of the success of these proposals rests on

⁷² *Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)]* 2013 June 21, para.11)

⁷³ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15]* 2015 March 02 Monday HKT 14:30, Annex pp.1~2: Professor NG Mee-kam's speech)



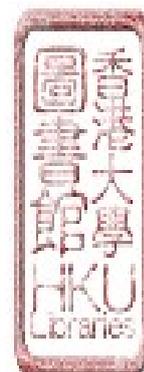
the capacity of the Administration to collaborate with districts to explore means to minimize the nuisance/hazards of the new hawking area. Furthermore, to achieve a win-win situation upon local consensus, it also relies on the adequacy of Administration's efforts and resources deployed so as to proactively initiate the scheme, i.e. to collaborate with other Bureaux to lower hurdles of existing standard in a flexible manner; or otherwise, the scheme would be defamed as a stance of window dressing or a sign of Administration shirking responsibility to District Council.⁷⁴

In short, the original objective of imposing sanction should be restricting illegal or improper activities in the community in order to abate their negative impacts. It is not comprehensive enough if the government only stresses on the negative sides of hawking activities so as to justify their disciplinary sanction against the whole hawking industry. On the other hand, when the Administration proposes any supportive measures encouraging the hawking industry, such as flea market or relocated hawkers to off-street market, they should take a further step by considering their sustainability, i.e. facilitating the increase of visitor flow at low occupancy food centre.⁷⁵

What? Activities to be Regulated and Tools Available: Paper, Paper Characteristics, Bands, and Glue

⁷⁴ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15] 2015 March 02 Monday HKT 14:30, Annex p.4: pt.(e) of Mr WONG Yuk-man's speech)*

⁷⁵ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15] 2015 March 02 Monday HKT 14:30, Annex p.5: pt.(f) of Mr WONG Yuk-man's speech)*

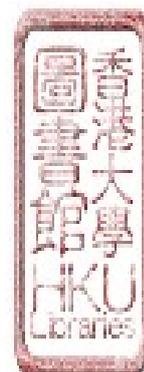


Correlation of "paper and plastic" metaphor and hawking activities, culture and regulatory tools

After determining the final rolled shape, the Administration should find out what materials it has: the paper and the band/glue. As mentioned in Chapter 2, paper is the one to be controlled and plastic band and glue are the tools to retain its shape. The paper thickness, stiffness, size, pre-treatment experience would determine the rolling difficulties, and also the potential for rebound. The availability of tools and their capacity or characteristics would determine the sustainability of the rolled shape.

Similarly, for the hawking policy, it should define what activity to be controlled and what tools are available. The regulatory control is imposed to manage or alter a specific behavior of the community, rather than to restrict a group of individuals. In this case, what are to be controlled should be the hawking activities, rather than hawker individuals or association. As quoted from Professor Lui Tai Lok in 2015, *“hawking was emerged as a kind of urban informal economy which was not contained within the existing legal framework, and its growth usually brought about various social impacts including hygienic issues and traffic chaos.”*⁷⁶ To further extent, if hawking activity is regarded as a community culture worthy of preservation, what should be regulated is solely the negative impact of hawking activity, rather than all kinds of hawking activity. This logic had been illustrated in the previous section, and the following would therefore focus more on the community values and the Administration’s practice of hawker control executed in

⁷⁶ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15] 2015 March 02 Monday HKT 14:30, Annex pp.2~3: Professor LUI Tai-lok's speech)*



recent years.

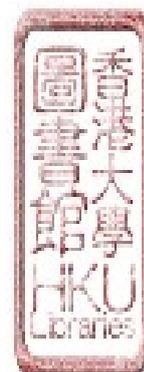
While the paper represents hawking activities, paper characteristics represent the community value or culture, which is related to the public's attitude for or against the hawking activities and the enforcement taken. The band or glue represents regulatory tools, including sanction and support measures. The questions here would be whether these tools can be appropriately implemented so as to achieve the objective effectively.

Current policy and practice

For what activities are to be 'managed', the Administration should cover all hawking activities, including illegal hawking by unlicensed itinerant hawkers and legal hawking by those hawkers with licenses at designated spots, fixed-pitched, or open bazaar, etc. The development of hawking activities and culture had been illustrated in Chapter 3 and the details would not be repeated here.

For what attitudes the community had taken on hawking activities and the enforcement action, the Administration stated recently in the 2015 LegCo paper that “[t]here have been strong demands from local residents for more stringent enforcement actions against such activities. On the other hand, there exists a general sentiment in the community which recognizes on-street hawking as a form of economic activity that provides a convenient means for the grassroots to earn a living, and as part of Hong Kong's way of life.”⁷⁷ Professor NG Mee-kam also

⁷⁷ Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)] 2015 May 12, para.8)



expressed that “hawking activities provided a good opportunities for people to gather and exchange valuable resources to place-making an area with its own distinct features.”⁷⁸ The press and the internet media also widely covered cases that HCT of FEHD mal-treated elderly hawkers during operation.⁷⁹ These cases not only aroused the public’s empathy and respect on the illegal hawkers who earn for their living with their own efforts, but also triggered the adverse impression against frontline officers. The Administration also admitted the need to strike a balance between different interests and “drew members’ attention to the opposing and supporting views on the recent enforcement actions against hawking activities in Kweilin Street.”⁸⁰ The pendulum of community value had shifted more to the recognition of the existence of hawking and its culture.

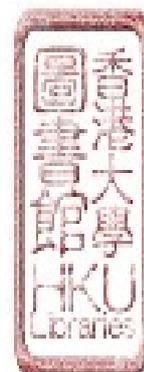
For what sanction tools had been taken, the Administration ceased the issuance of new hawker licences since 1970s and restricted their succession rights for legal hawking. For enforcement against illegal hawking since 2001, FEHD immediately arrests and seizes commodities and equipment without prior warning for (i) sale of prohibited or cooked foods and (ii) hawking in major thoroughfares, areas of high pedestrian flow and places under repeated complaints. For other areas, the ‘disperse or else we would arrest’ tactic is adopted and the Administration claimed “Such a tactic calls for vigilance, flexibility and irregular patrolling to keep the hawkers from taking root.”⁸¹

⁷⁸ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15]* 2015 March 02 Monday HKT 14:30, Annex pp.1~2: Professor NG Mee-kam's speech)

⁷⁹ 劉卓瑩。(2014年, 04月29日)

⁸⁰ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15]* 2015 March 02 Monday HKT 14:30, Annex p.1: SFH's speech)

⁸¹ *Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)]* 2015 May 12, para.6)

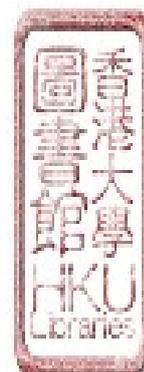


For what extent these actions being executed effectively and strictly on illegal hawking, HCTs were criticized of being street-level bureaucrat with misuse of discretion during enforcement. They usually operate against illegal hawking when they received complaints from District Council members or from the public, including the shopkeepers selling competitive products in the vicinity. Such passive operation, together with the dispersing tactic, had limited deterrent effect. As confessed by the Administration, when the hawker patrol team left the scene, hawkers would return to the major hawker black spots or locations with heavy pedestrian flow.⁸²

For what support tools had been applied in the past, the Administration had constructed public markets to resite on-street hawkers, designated hawker permitted places and bazaars, launched the Assistance Scheme for Hawkers in fixed-pitch hawker area to improve fire safety environment, established a pilot flea market at Tin Shui Wai, etc. in the past, and raised 5 proposals in 2015 including (i) issue of new licences, (ii) facelift to hawker areas, (iii) issue of new “Dai Pai Tong” licences, (iv) utilize existing public market with low occupancy for cooked food centre, and (v) set up bazaars and night markets. In general, regulatees would prefer the Administration adopting the supportive tools more than sanction because this can reduce their operational cost and increase their profit. Nevertheless, the effect of supportive measures depends on several factors, for example, the bazaar at Tin Shui Wai was a failure because it could not attract customers due to its remoteness.⁸³ LegCo member WONG Yuk Man raised a similar concern of lack of visitor flow when the existing market with low occupancy was to be converted to be off-street

⁸² *Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)]* 2015 May 12, para.9)

⁸³ 天秀墟管理差 麥美娟促正視。(2014年, 01月30日)



cooked food centre.⁸⁴

Evaluation of implementation practice

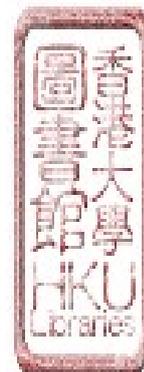
While the Administration was still enforcing against illegal hawking, it occasionally introduced some supportive policies on legal hawking in recent years. This correctly addressed the community value or culture, which was tally with the messages dispersed by the media and the LegCo members' strong request. As quoted by the Administration in a LegCo paper, *"At meetings with the Subcommittee, members have urged the Government to formulate its hawker policy from a "development" perspective rather than of "management and control". They suggest that a comprehensive and long-term hawker policy to improve the management and operating environment of hawker areas and revitalize the hawking trade."*⁸⁵ This was further reinstated by Professor NG, who expressed support on formulating the hawker policy from a 'development' perspective, which should *"refer to social sustainability, including preservation of local environment and social assets, in addition to the development of a market economy...social development could be boosted through, among others, the adoption of the principle of reciprocity which was also an important element for the development of hawking activities."*⁸⁶

For the effectiveness of sanction approach, the public affected by the nuisance only complained about the negative impacts arising from improper controlled hawking

⁸⁴ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15]* 2015 March 02 Monday HKT 14:30, Annex p.5: pt.(f) of Mr WONG Yuk-man's speech)

⁸⁵ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02, para.10)

⁸⁶ *Subcommittee on Hawker Policy, Panel on Food Safety and Environmental Hygiene: Minutes [LC Paper No.CB(4)769/14-15]* 2015 March 02 Monday HKT 14:30, Annex p.1: pt.(a) of Professor NG Mee-kam's speech)



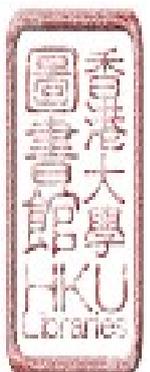
activities. They did not expect to control illegal hawking without causing nuisance. For example, no one would complain on the elderly selling daily necessities in a silent manner with a devotion for earning their living cost by own efforts. Hence, media's reporting on the mal-practices of HCT on elderly hawkers is totally against public's expectation. Furthermore, for those hawkers managed by triad networks shouting loudly, public is disappointed that HCT is usually unable to arrest them. HCT's discretion in taking enforcement action is therefore always being criticized.

There are actual discrepancies of expectation between the Administration and the public for the activities to be controlled. While the root problem is the negative impact, rather than the whole hawking activity, the direction of solution should fall on mitigating the negative impact rather than developing mechanism to eradicate the hawking activity. On the contrary, supportive approach of formalizing or standardizing hawkers can reduce the negative impact and should be encouraged.

In brief, the previous practices of sanction on hawking can be visualized as a wrong and unnecessary imposition of too many thick plastic bands onto the wrong position of a thin sheet of paper, leading to a local rupture of the paper roll. On the other hand, the plastic glues take time to gain strength and the supportive schemes raised recently will take time to develop comprehensively.

Who? Parties to Formulate and Implement policy: Paper Roller and Tools Applier

Correlation of "paper and plastic" metaphor and hawking policy formulator and



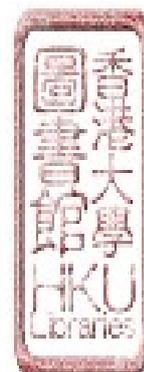
implementer

With all materials available, the next step should be to determine “who” should roll the paper and apply tools. It would be most appropriate for the client to roll it because he determines the rolled shape, but does he fully realize the characteristics of paper and band/glue? In reality, these tasks could be taken by different parties: the first realizing the objective will determine the rolled shape, the second being familiar with the paper characteristics will roll the paper, and the third being familiar with the tools characteristics and paper responses will apply tools.

For policymaking, it should be the Administration to determine the policy objective, because it realizes the need or demand for change in the community and it desires to change the community’s behavior. For the second role of formulating a policy with reference to the community value/culture, the Administration should be able to gauge and realize the community values. Lastly, in implementing the policy with the aids of regulatory tools, the frontline officials would take enforcement action with individual discretion and make different decisions with different standards with reference to the potential responses of regulatees. This is just similar to application of different plastic bands with different characteristics to different papers.

Current policy and practice

Officially, the Administration formulates the hawking policy with the objective of assuring public health and safety. However, it was noted that different Secretary of Food and Health Bureau (SFH) took slightly different approaches.

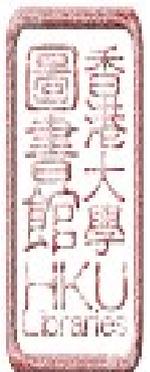


At the time of Dr. CHOW Yi Ngou, the ex-SFH, he reinforced the existing regulatory rules and was reluctant to make any improvement. This can be observed in the stance it took in replying Legislative Councillors' questions and responding to the media's enquiries⁸⁷. During his period, he intended to further reduce the number of hawker licenses. He reiterated the problems of illegal hawkers and the need of statutory control, but refused to review the root causes of problems. He solely exercised as a policy executor by adopting the existing regulatory sanction approach and simply applying the plastic band without understanding the paper characteristics. Though consultation and opinion surveys had been conducted on some specific issues in 2008, the so-called consultation was based on a formulated punitive regulatory policy, but not on the overall policy of hawker management. For Dr. KO Wing Man, the current-SFH, he met with the hawker association in developing the dawn market, realizing their needs and considered their opinions. The approach was welcomed by the hawker associations and the public.⁸⁸ It is a more realistic public engagement expected from the public.

Apart from the Administration, LegCo members played an important role in formulating the policy, which was particularly strengthened with the establishment of the Subcommittee on Hawker Policy in 2013. The Subcommittee would focus its works on *“(a) setting the policy framework for the revitalization and long-term development of the hawking trade; (b) examining the need and arrangement for the issue of new hawker licences; (c) improving the management and operating environment of hawker areas; and exploring the feasibility of establishing hawker bazaars on a district basis; and recommending initiatives for the further*

⁸⁷香港政府新聞- 中文版 (2012年6月12日)

⁸⁸ Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)].



*development of the hawking trade.*⁸⁹ In response to Subcommittee's request, the Administration provided a paper in 2015 covering (a) evolution of hawker policy in Hong Kong; (b) overseas experience; (c) 8 principles for policy formulation; and (d) 5 proposals for developing hawking industry in long term.⁹⁰ This arrangement switched LegCo members' role from a policy supervisor to a direct participant in formulating policy.

Media also indirectly alter the policy formulation. Its reporting focus shapes public expectation. In the past, it usually reported negatively against HCT for mal-treating elderly hawkers.⁹¹ But recent reporting of HCT being attacked by South-Asian hawker had triggered public's empathy and concerns to HCT's operation, i.e. LegCo's discussion for improving their training and safety of law enforcement officers for hawker management in 2015.⁹² The degree of influence of mass media was further increased recently because each citizen can use the smartphone to capture video during HCT operation and post it in the internet directly.⁹³

For the policy implementer, HCT of FEHD is the frontline parties enforcing the policy. With limited resources and the fundamental dispersal tactic, they can seldom arrest trouble-making hawkers. Instead, they were always criticized of arresting the elderly hawkers. This is related to Lipsky's coping strategies of altering client demand for making an easier life,⁹⁴ which to certain extent, distorted the policy

⁸⁹ Paper on "Proposed extension of period of work of the Subcommittee on Hawker Policy" prepared by the Legislative Council Secretariat [LC Paper No.CB(4)598/14-15] 2015 March 10, para.2)

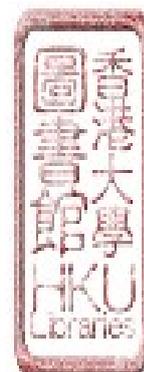
⁹⁰ Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)] 2015 March 02)

⁹¹ 劉卓瑩. (2014年, 04月29日)

⁹² Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)] 2015 May 12)

⁹³ 食環署, 警察, 救護員, 如何「處理」一個地攤姨姨 (2014.11.19)

⁹⁴ Lipsky's Street Level Bureaucrats: coping strategies for SLB



objectives at street level.

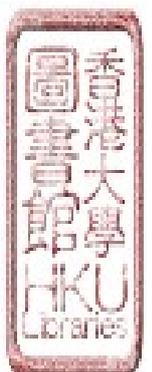
In addition to HCT, judiciary is another policy executor in enforcing the regulation for the punishment level to those accused hawkers. For example, for the case in 2012, an elderly hawker was heavily fined due to light encroachment into government land during running its small stall. The judge was criticized of imposing an unreasonably heavy penalty to the defendant, in comparison with the degree of law breaking.⁹⁵

Evaluation of implementation practice

It was noted that different stakeholders have different interests, influence, stances and approaches for handling the issues. While Dr. Chow tried to act as the policy maker, he attracted criticism from LegCo, media, hawker association because (i) his policy intended to eradicate hawker industry; (ii) he was not fully aware of the operation of hawking industry and the needs of the citizens; and (iii) he consulted the public only after the regulatory policy was formulated. On the other hand, Dr. KO engaged LegCo, media and hawker association in formulating the long term development policy and listed only the general principles of controlling hawking for the sake of public interest. That, to certain extent, collaborate all stakeholders as a team for formulating the policy, which could eventually render the developed policy receiving well support from public no matter if it is a sanction or support.

While HCT and judiciary are policy executors, they are acting like the plastic band. Theoretically, they should act in strict compliance with the regulation/law. But

⁹⁵文章編號: 201212200060266 (2012 年 12 月 20 日)



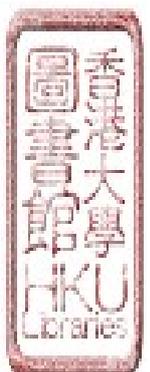
practically, they were given certain degree of discretion. For example, HCT were given guidance and training for handling elderly cases with special care; when hawkers at non-business district were eager to leave, HCT might take enforcement action at their discretion. For the judiciary, the penalty of sanction would rely on the judge's discretion upon consideration of the background and attitude of defendants in different scenarios. These are well represented by the strength and tightness of the plastic band, which should be well corresponding to the paper characteristics.

Paper could be, and sometimes should be, rolled jointly by different hands, instead of solely by the Administration. Surely, the paper rolling is a process after a thorough deliberation with stakeholders such that the paper can be rolled in an agreed direction and form. Furthermore, in rolling the paper, the policy maker should fully understand the paper characteristics and what tools they acquired to sustain the desired paper form. In term of hawking policy formulation, public engagement/ consultation with regulatees, LegCo, DC, media and other stakeholders at an early stage can strengthen the legitimacy of the policy and the accountability of both Administration, working level officers and the regulatees.

When? Time for Policy Formulation and Implementation: Time to Roll, Bind/Band, and Bond/Glue

Correlation of "paper and plastic" metaphor and time for policy formulation and implementation

“Timing” plays a prime factor in determining when a policy to regulate and/or

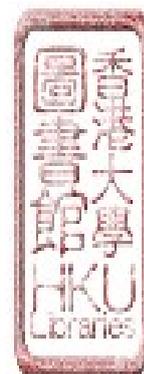


penalize the hawking activities is to be formulated and implemented, which is similar to the appropriate timing of applying tools onto rolling, binding or adhering a stack of paper. It would be necessary to roll the paper at the right time, and apply tools timely and appropriately for the purpose of sustaining the paper roll for a long-period.

When one wants to mould the papers into a desired shape, he should consider the paper characteristic and the timing to apply the tools against the paper so as to minimize difficulties. Then when should he apply binding or bonding to the paper? It depends on the paper characteristics. If the paper is thin, old and fragile, inappropriate time of binding will cause the damage of the paper eventually. If the paper is thick and strong in nature, external extra force should be needed. Besides, the pre-moulding process is one of the vital method for anyone who wants to mould the paper into a desired shape. If the paper is thin and it was feared that the paper will be damaged after the external force, a trial binding force can be applied slightly first to gauge the response. If there is no obvious adverse response, more affirmative binding force can be applied in a final manner.

Unlike a paper with uniform characteristics throughout a sustainable period, society value and community culture are relatively more dynamic with time. Therefore, when should the Administration apply sanction or support would also depend on the community culture at that time interval. In practice, they can gauge the response by presenting the policy as a pilot scheme, which could allow a flexibility for the Administration to improve it upon receiving community's responses.

Current policy and practice

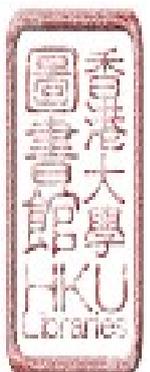


The hawker industry in Hong Kong has a long history.⁹⁶ Except in the earlier period of Hong Kong around 1950, the Administration supported the growing hawker industry as there was a high unemployment rate and few in-store business at that period. After the migration of on-street hawkers to fixed pitch and the rise of supermarket and chain-store, the public demand of illegal hawking dropped. The Administration started to use a sanction approach against the hawker to maintain a hygiene standard and reduce the nuisances aroused from the hawker. An oneness and short term sanction approach appeared to be its only method to tackle the hawker problem in Hong Kong by that time.

The situation lasted until the occurrence of two major fires in Fa Yuen Street in 2010 and 2011, after which the Administration started to shift more from sanction approach to a supportive approach. On 6.12.2010 and 30.11.2011, a No. 3 alarm and a No.4 alarm fire broke out in Fa Yuen Street respectively. After the incidents, the Administration responded in a quick and serious manner, but with the main liability rested on the loose hawker control management.⁹⁷ The outcome on improvement measures therefore lied mainly on tightening the hawker control in order to reduce the fire hazard. Meanwhile, financial assistance scheme was launched to facilitate hawkers to improve safety. HMCC was also established to share good safety practices among hawkers. In other words, these incidents could be regarded as a watershed of introducing supportive measures. Nevertheless, these measures still rest on short-term punitive hawker control, rather than long-term development.

⁹⁶ Lee (2013 April 26)

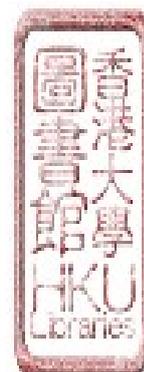
⁹⁷ *Administration's paper on proposals on hawker management [LC Paper No. CB(4)561/14-15(01)]* 2015 March 02)



Under normal circumstance, when do we use binding or when do we use bonding, it always depends on the paper characteristics. In the past, the Administration mainly used the sanction approach to combat the hawker control issue as most people especially the Hong Kong government thought that the Hawker is just like the “devil”, and the sanction approach is a short term tactics to eradicate the hawker industry in Hong Kong. However, after several years, the paper characteristics changed, the Administration found that only the tactics of sanction cannot solve the problems easily and it always arouses the rebound from the public. It appeared that supportive approach is the only way the Administration can choose to tackle the problem with a better effect.

In the past, it was observed that several social problems existed for a long while with accumulated pressure, but the Administration usually only made a policy after incidents occurred and had triggered fierce criticism from the public. For example, the tragedy of fires at Fa Yuen Street bazaar triggered the voluntary license surrender scheme/ sanction system, and the tragedy of a hawker being drowned to dead at the time of HCT’s enforcement in 2006 triggered the review of sanction policy. It was noted that the LegCo and the public tend to be easier to accept imposition of sanction after tragedies because sanction could apparently be effective to resolve the problem in a short time. The so-formulated policy had to be launched within a short period in response to the public criticism and can usually pinpoint at the apparent causes of the incidents, but the root causes and long term development were generally overlooked.

As the community value changes, the Administration nowadays adopt and formulate the policy towards the hawker in long term basis. It is noted that the policy tends to



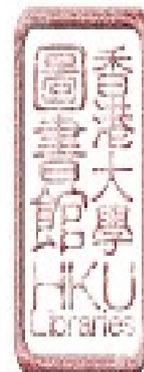
accept the views from town planning, promotion of tourism and local culture, promotion of local economy, creation of employment opportunities and poverty alleviation, etc.⁹⁸ Also, as the public always complain about the Administration deliberately to eradicate the hawker industry recently, the Administration in the recent discussion with the Subcommittee on Hawker Policy meeting emphasized that they do not have a policy bent on eradicating hawker industry. The Administration's current hawker policy is to strike a proper balance between allowing legal hawker activities and maintaining the hygiene and protecting the public from undesirable effect.⁹⁹ These acts significantly showed the Administration policy tended to be soften and not too rigid during different stage.

After the fires occurred in 2011, the public started to concern more about the hawker industry, the Administration concerned about the fire safety of the bazaar and the ex-Chief Executive Donald Tsang pointed out that the management mode of business at the bazaar was unacceptable. Then the Administration started to set up different committee and conducted different consultations so as to find out the root problem and attempted to solve it thoroughly.

The situation was improved when the LegCo had established the Subcommittee on Hawker Policy which set the policy framework for the revitalization and long-term development of the hawking trade. The timeframe for the development is set longer and more consultation and consideration could be included in formulating a long-term policy. It would also be a good timing to review the five-year Assistance Scheme for Hawkers in Fixed-pitch Hawker Areas.

⁹⁸ *Administration's paper on proposals on hawker management [LC Paper No.CB(4)561/14-15(01)]* 2015 March 02)

⁹⁹ *Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)]* 2013 June 21)



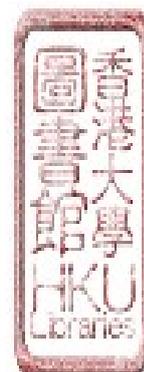
Evaluation of implementation practice

The incident-based approach is shortsighted with focus solely to settle the criticism arisen from the incident. In term of the paper rolling, this approach is similar to rolling just a corner of paper when it started to curl up, without visualizing the final expected form of the whole paper. In fact, the Administration should set a longer timeframe for deliberating and formulating policy, which is similar to allow more time for the glue to gain adhesive strength so that the rolled paper can be well sustained.

It is also observed that the Administration did not engage the stakeholders in formulating a long term policy with an acceptable timeframe. The Administration only uses a short term approach to tackle the hawker issue in Hong Kong which is not good enough to solve the complicated problem nowadays. The Administration should develop some long term regulatory methods so as to establish a better environment between the hawker and the Administration.

Before the policy implementation, the Administration should conduct more talks and campaigns to the public so as to inculcate the good value of the policy to the public, educate them the possible outcome of the policy. Besides, the Administration can fully utilized the mass media to deliver the good image of the Administration and the positive outcome of the policy to the public as well.

For the rapid-changing society like Hong Kong, the Administration should always be alerted of the fast changing environment, i.e. the term of “collective memory”--



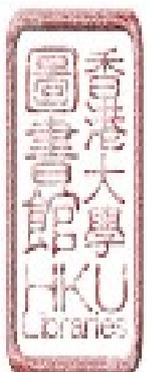
*Collective memory is a representation of the past that is shared by members of a group such as a generation or nation-state.*¹⁰⁰ The removal of the Queen's Pier in 2007 caused a huge dispute. People argued that there was a lot of memory in this pier, the Administration should not remove it without conducting any consent from the Hong Kong citizens. After this incident, conservation of heritage and protection of the collective memory in Hong Kong has raised much public concern. Hawker is an industry with long history and it is understandable for Hong Kong people to blame the Administration's short term approach nowadays. If the Administration is not sensitive to the fast changing environment, the problem will not be solved eventually, worse still, it must be deteriorated and will cause another crisis to the Hong Kong government.

Where? Location of Policy Formulation and Implementation: Location of Bind/Band and BOND/Glue Applications

Correlation of "paper and plastic" metaphor and locations of policy formulation and implementation

When one wants to mould the paper in a desired shape, he should consider where to apply the band or glue so as to form the paper shape, i.e. it is ineffective to apply band to cover 100% area. Each paper has its own paper characteristic, each part of a paper has different characteristics too, just like different districts have different culture alike. Improper location of bands may not bind the paper roll effectively, therefore, if we want to blind the paper in a desired shape, the location of the bands

¹⁰⁰ Wertsch (2008)



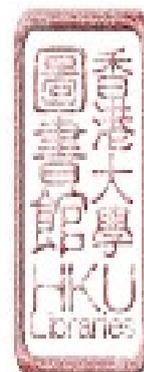
should be used properly. Similarly, different districts should have different culture and their own traditional practices. Therefore, which tool the Administration apply to control the paper shape should also depend on the characteristics of the location.

Current policy and practice

Different districts have different circumstances and with different cultures and demand of hawking activities. Active hawking activities or black spots are usually located at poor districts, such as Tin Shui Wai, Mong Kok or Sham Shiu Po, which cultivate a market with a higher demand of cheap products, in particular LINK's managed shop had mostly been occupied by chain shops. As residents in the vicinity of black spots would have the concept of NIMBY (Not in my backyard), the opposition on hawking activities would depend on how these residents are vocal to District Council and the Administration. Where hawkers were there for years, the opposition against them would be less and residents nearby, in particular for public housing estates, could be more tolerable.

In different areas, different departments have different authorities in enforcement. FEHD, Housing Department, LINK, and Police have different controlling zones in different districts, and hawkers could mobilize among these zones during HCT's operation. This loophole leads to ineffective operations and low prosecution rates.

On the other hand, the location of flea market was also criticized for being too remote from housing estates and with low pedestrian flow. This supportive measure was criticized for not being customer-oriented and thus leading to a failure with unsatisfactory result.

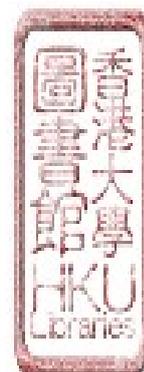


Evaluation of implementation practice

Nowadays, the public have high expectation toward the Administration. The Administration should not only apply sanction as a tool to solve the problem. Besides, the locations of sanction and support should be appropriate in order to maximize their function. Few months ago, there was a hot argument between the public and the Administration about the unlicensed food hawker doing business in Sham Shui Po in the night time of Lunar New Year.¹⁰¹ Some people argued that these unlicensed hawker selling the food in the street would cause the food safety problem and worsen the environmental hygiene. However, some people pointed out that this was a collective memory and the hawking activities can create the job opportunities to the lower class group people. These two conflicting viewpoint caused lots of controversies.

During the above period, the Administration enforced to arrest and disperse the said hawker after receiving the complaint from the resident. The enforcement of the Administration is a short term sanction and the result was worse. Actually, if the Administration can fully understand the characteristics of the hawker in the Sham Shui Po area, they will not only use sanction as a tool to regulate the hawker. Although the hawker was disturbing and creating nuisance to the public, the Administration can use the supportive approach to combat the problem so as to alleviate the grievance from either the hawker or the public. As this kind of hawker industry has its own market, the Administration should consider issuing the license temporarily or even in long term to the hawker so that their business can run in the

¹⁰¹深水埗百人擺地攤撐小販（2015年，02月21日）



area of Sham Shui Po.

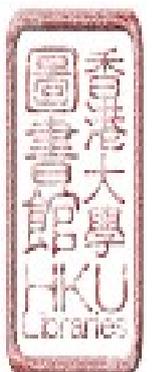
Also, the local tourism industry is monotonous and aging, the Administration can take this opportunity to develop the hawker industry as a landmark in Hong Kong which to attract more tourists visit Hong Kong. District based approach is referring to the paper characteristics.

Last but not least, loopholes of operation are similar to over-flexible bands being not tight enough to hold the paper. Inappropriate location of open bazaar implied that the glue is not attractive enough.

How? Ways of Formulating, Implementing, Advocating and Sustaining Policy: Ways of Applying Rolling, Binding/Banding, and Bonding/Gluing

Correlation of "paper and plastic" metaphor and ways of policy formulation and implementation

When one wants to mould a pile of papers appropriately and effectively into paper rolls, there are at least three steps to be considered. First, before applying any band and glue, one needs to formulate, at least in mind, a blueprint of how to apply the bands and glues appropriately and effectively. Next, the blueprint needs to be put into actual practice, i.e. how to actually apply the band(s) and glue(s) to the pile of papers. Finally, one also needs to devise means to ensure the outcome of the application, i.e. shape of the paper rolls, achieves the expected purpose of the



application in a sustainable manner.

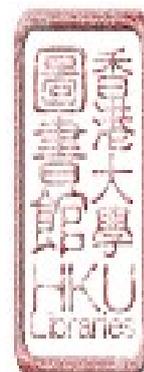
Similarly, when the Administration is contemplating a hawker management policy, they need to think of how to formulate the policy. Should the formulation be top-down or bottom-up? What values should be considered? And so forth. Then, they need to think of how to implement the policy. Should it be rule-based or value-based? How much interagency collaboration is needed? How much discretion can be tolerated? Lastly, they need to think of how to advocate and sustain the policy in the long term. These three factors are further studied in details in the following section.

Current policy and practice

In policy formulation for hawker management, the Administration essentially adopted a top-down approach in the past. They would first set policy agenda according to their judgment/gauging of urgency of the situation but it turned out that such agendas were very often piecemeal and only focused on impacts of negative incidents. For example, the comprehensive review on hawker licensing policy conducted in 2008¹⁰² was a result of a series of incidents which stirred up public anger towards the HCTs, cumulating after the tragic death of an unlicensed elder Chinese medicine hawker in 2006 as described in the previous chapter; whereas the two public consultations on management of fixed-pitched hawkers in 2011 and 2012 were conducted in the wake of the two fatal fires at Fa Yuen Street hawker stall areas.¹⁰³ This would then be followed by a top-down consultation. However, there was not much civic engagement both before and during the formulation process.

¹⁰² Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)] 2013 June 21, para.4)

¹⁰³ Administration's paper on hawker policy and assistance scheme for hawkers in fix-pitch hawker areas [LC Paper No.CB(2)1374/12-13(01)] 2013 June 21, para.7)



Hence, even if the policy was successfully approved by the LegCo, in case of any policy problem appeared during implementation, some LegCo members would dominate the media reporting with series of criticisms,¹⁰⁴ e.g. insufficient consultation, poor policy advocacy, ineffective review to sustain policy. In addition, as discussed in the previous chapter, the values of the policy also inclined more towards public hygiene, safety, and life quality than culture, tradition, and care for the disadvantaged. Furthermore, sanction approach dominated because it had been adopted for years and become practically a policy tradition.

In policy implementation, hawker control at present is chiefly under the administration of the FEHD at the office-level and the management of the HCTs at the street-level. Apart from this, there are few interdepartmental collaborations. At present, there are only three main occasions when an HCO would seek help from another department, the Police Force. First, when a HCO arrests a hawker, the confiscated goods would be conveyed to the nearby police station. Second, when a HCO encounters a mentally unstable hawkers, or third, when a HCO is accused of indecent assault during operation, (s)he may also seek assistance from the Police¹⁰⁵. Indeed, HCOs work mostly on their own with the typical inherent power and discretion. To get things more easily done, they therefore often develop coping strategies to avoid complaints rather than follow strictly to their operational guidelines to accomplish their duties.¹⁰⁶

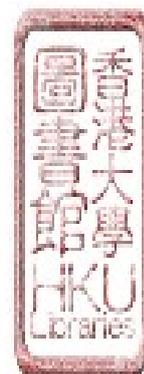
In long-term policy advocacy and sustainability, as mentioned above, it seems that the Administration have had a bad time in gaining supports for their hawker

¹⁰⁴ Numerous media reports, for example:

"貨車熟食檔 晚晚放「炸彈」" 2012年); 何穎賢 (2012年); 劉卓瑩 (2014年)

¹⁰⁵ Lam, Lam, Ng, Tse, and Tsung (2013, pp.20~21,24)

¹⁰⁶ Lam et al. (2013, pp.29~31)



management because on one hand, they have adopted a piecemeal, incremental approach to policy formulation; and on the other hand, their formulations have used to be rule-based instead of value-based.

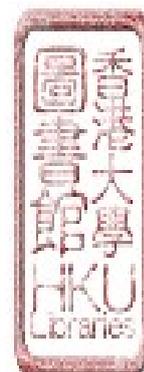
Evaluation of implementation practice

In policy formulation, the Administration should take initiative to resolve problem in developing long-term policy, rather than take a passive approach of responding to LegCo or media criticisms on each negative incident. Top-down approach to consultation can also be upgraded to civic engagement that involves in advance more types of stakeholders such as the hawker associations, the business sectors, the Districts, the NPOs/NGOs, etc. throughout the policy process. Apart from market values, social values of hawking activities like support for the underprivileged, cultural heritage, conservation, benefit to tourism, etc. should also be duly considered. For policy tools choice, a balance should be struck between a rule-based coercive approach and a value-based supportive one, instead of basing on just one approach at a time.

In policy implementation, more interdepartmental collaborations amongst various law-enforcing bureaucracies should be established. In addition, training of law enforcement officers for hawker management should also be strengthened.¹⁰⁷

In-long term policy advocacy and sustainability, Administration should lay out ground rules and principles transparently and take the role of facilitators for long-

¹⁰⁷ *Administration's paper on the measures to enhance training and protection of law enforcement officers for hawker management [LC Paper No.CB(2)1394/14-15(07)]* 2015 May 12)



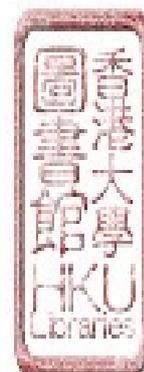
term interest-based collaborations with various interest groups like the hawker associations and the individual Districts. It would be encouraging if the policy also includes a review mechanism so that obsolete policy can be revised to suit the community change.

In fact, the situation had been improved in the most recent LegCo paper in 2015,¹⁰⁸ in which the Administration adopted the bottom-up District-led approach and engaged the stakeholders to formulate the policy. This not only facilitates the policymakers to realize the real needs of the individual communities and their stakeholders, but also assures the legitimacy and sustainability of the policy.

Summary

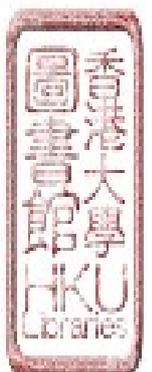
There are certain preferences in current local hawker management practices revealed by the 5W1H framework. In addressing "why" to manage, the Administration prefers maintaining public health, safety, and life quality to preserving collective culture and tradition. In addressing "what" to be managed, "who" to manage and "whom" to be managed, the Administration prefers regulating all hawkers and hawking activities by themselves to delegating some administrative or managerial responsibilities to other social entities like the Districts, NPOs/NGOs, and the hawker associations. In addressing "what" tools to be used, the Administration prefers punitive enforcement options to supportive ones. In addressing "when" to manage, the Administration prefers adopting a piecemeal, incremental approach when critical incidents occur to devising long-term regulatory strategies. In

¹⁰⁸ Administration's paper on proposals on hawker management [LC Paper No. CB(4)561/14-15(01)] 2015 March 02)



addressing "where" to manage, the Administration prefers a territory-wide approach to a District-led one. Lastly, in addressing "how" to manage, the Administration prefers top-down to bottom-up, rule-based to value-based, passive to active, eradicating to revitalizing, limiting to facilitating, coercive to collaborative, and controlling to trust building.

At the turn of the millennium, there is evidently a disparity between the aforementioned management styles (plastic applications) and public aspirations (paper characteristics) leading to increasingly inappropriate and ineffective hawker management. In the last chapter, recommendations to the Administration based on these local findings and selected overseas experience will be devised in the hope that further improvement in the appropriateness and effectiveness of domestic hawker management can be made.

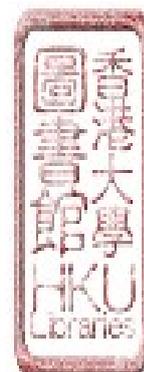


CHAPTER 5: Conclusions and Recommendations

Local Inferences

Through the analysis, a strong correlation amongst the four "Plastic" factors in hawker control is found. When the paper characteristics (e.g. nature of the community, culture and context of the society, etc.) are supportive to the prohibition of hawker activity (e.g. decreased demand in on-street trading (e.g. due to blooming economy), regarding hawker activity as nuisance, regarding hawking as unfair competition to other kinds of business activities, etc.), plastic applications tend to be more binding and less bonding in nature. In contrast, when the paper characteristics are supportive to the promotion of hawker activity (e.g. regarding hawker activity as a collective memory, increased in demand in on-street trading (e.g. due to uprise of land monopoly/), gain in political power of concern/groups, successful experiences in hawker supports in nearby jurisdictions, etc.), plastic applications then tend to be the other way round. Nonetheless, the validity of such inference is also subject to difference in district-based context (e.g. the NIMBY mentality).

It thus seems that domestic hawker control policy has been almost swinging between two extremes of a pendulum. When local economy was blooming in the 2000's, hawker control policy became extremely binding (heavy sanctions, cessation of issuing new hawker license, etc.) but without much bonding to lubricate public concern. Afterwards, when public awareness about the values of existence of street-trading was at its tide in the 2000's, the policy direction started to reverse its

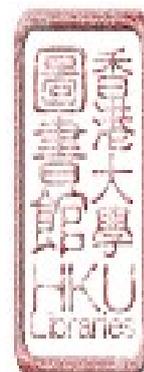


direction by including some apparently supportive measures.

From either a theoretical point of view or the evidence collected in the present research, such great sway between dichotomous policy directions is not an effective way of solving local, increasingly complex hawker issues. This is because a society or a community consists of a mix of diverse, sometimes even conflicting values and cultures, let alone Hong Kong as an international city. This is analogous to a pile of papers with diverse paper characteristics. To roll them into expected shape, one should apply not only both binding by plastic band and bonding by plastic glue together but in line with the different paper characteristics with the right proportion, in the right place, at the right moment, etc.(i.e. according to the 5W1H principle).

It is therefore advisable for the Administration to take more duly two considerations: first, to select successful overseas hawker management experience to enrich her own kit of policy tools; and second, based on such experience as well as local evidences and data collected from surveys and consultations on the diversity and intensity of various attitudes, values, and cultures towards hawker in different organizations, communities, and institutions, and in accordance to the 5W1H principle, to devise more appropriate combination of binding and bonding hawker policy tools.

These two considerations are further elaborated in the next section. As it has already been demonstrated in Chapters 3 and 4 that the Administration has room for improvement in addressing shifting public aspiration and social climate with proper change in regulatory policy direction, due emphasis is paid in this area (though for current policy tools/that are evidently worth preserving will still be suggested to be retained).

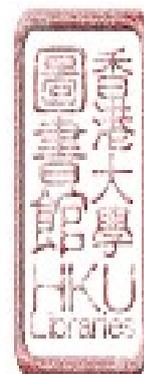


Selected overseas experience

In recent years, it is encouraging to note that the government has taken overseas successful practice as reference to formulate hawker management policy in Hong Kong. The government is on the right track to develop more "plastic glue" strategies. However, different city should adopt different management strategy on hawking activities in different time of the development. Taken foreign city experience, the government should consider physical constraints such as availability of suitable locations, economic situation and the related alternative uses of land, preferences of the community prevailing at the time, etc.¹⁰⁹ when the management strategies are formulated over time.

The government is highly recommended taking Singapore experience to formulate the management policy in Hong Kong. Singapore has similar historical background with Hong Kong on street trading activities. Although Singapore was under the watch of the British in the past, according to 1950 Hawkers Inquiry Commission Report that "84 per cent of the hawkers in Singapore were Chinese". They mainly provided cheap cooked food and other consumer goods and services to the population. Since 1970s, the Singaporean government has started to relocate street hawkers into hawker centres. The Singaporean government has achieved a promising result on hawking management and has built up tourism attractive hawker centres. As at end of 2012, among 14,226 licensed hawkers, 95% of them was operating in hawker centres. The rest of them were selling newspaper, ice-cream

¹⁰⁹ *Administration's paper on proposals on hawker management [LC Paper No. CB(4)561/14-15(01)]* 2015 March 02)



and other less perishable food items in public spaces.¹¹⁰ The critical successful factor on management and relocation of street hawkers in Singapore is to get all stakeholders buy-in. For example, the Singaporean government has to offer lower rent as incentive to encourage relocation of street hawkers to hawker centres. Also, the Singaporean government has to plan and look around for suitable areas for the relocation of street hawkers. The sites must be close to the hawker's original place of business. Hence, the hawkers can retain their existing customer pool. Singapore is a good model for Hong Kong on hawking management and the aforesaid successful factors must be taken into consideration in policy formulation.

Recommendations

Why? Reasons to regulate

When we talk about the regulatory system of hawker activity, the fundamental question is the reasons to regulate. And that is, in the framework of this project, the rolled shape of the paper.

The society of Hong Kong is turning more complicated. As an international financial centre, the wealth gap in Hong Kong is huge, according to the figure of Gini Score¹¹¹. The widening wealth gap generated a more vigorous conflict between the richest, the middle class and the poverty. What they want were very different, yet conflicting to each other, though they all live in the same city, which was a tiny dot on the globe.

¹¹⁰ *FACT SHEET - Hawker policy in Singapore [LC Paper No.FS10/13-14] 2014 May 26)*

¹¹¹ "World Bank Group | Hong Kong SAR, China | Data" 2015)

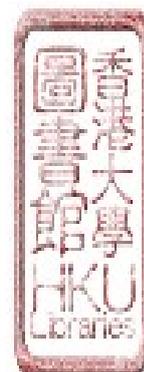


Hawkers generated different problem yet benefits to the society. Business sector irritated by their rent-free, unfair competition; neighbourhood residents claimed about the nuisances, road blockage and hygiene problems. However, the cheap prices did stimulate market competition and offered variety choices for shoppers. The underlying culture values remarked the history of Hong Kong and possessed potential to develop as tourist attractions.

It is important to understand the reasons to regulate hawker activities and try to include and combine different social values into the regulatory system. Nowadays, channels to complain illegal hawkers are very convenient, such as the hotline 1823 and the network of district council. What the system lack is a communication platform for an all rounded review upon the need of street retailers. The platform could be a committee or some regular council meetings in the LegCo, to let the public, particularly the hawker organisations, heritage concerned groups and public to express their demand on hawker activities. And after that, the government should adopt various current values in laws, policies and most importantly, the guidelines for street level bureaucrats, which are comparatively more flexible to amend.

What? Activities to be regulated

In order to widen the options in regulating hawker activities, different approaches should be considered. For minimization of public nuisance and assuring food safety, sanctions are most effective; for preservation of economic opportunities and cultural values, facilitation should be introduced. The government has to face the fact that hawkers are impossible to be eliminated and street retailers have their own



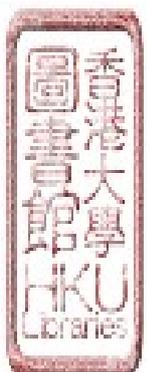
supporters and market demands. The government should adopt tactics to maximize their values. More licenses should be released and facilitation is needed to help the industry sustains.

Taking reference from Singapore, setting up night markets for street food sellers could help developing a new and popular tourism spot. It helps people with limited capital and techniques to establish a small business for making living. By facilitating the survival of hawkers, the number of illegal hawkers could be reduced and also the workload and pressure HCT.

For the sanction team, they should cope with the public anger towards the unfair law enforcement, in which elderly hawkers were more often to be spotted by the officers. More guided discretion and endurance should be granted to them. The government should also provide more work training programs to help the inferiors having more options in job hunting. Social welfare schemes or retirement schemes should be enhanced to assist the needed elderly and unemployed citizens. The government should also collaborate with the police to develop strategies to fight against organized illegal hawkers.

Who? Parties to formulate/implement policy

By knowing the reasons and approaches of the hawker regulatory system, focus could be shifted on the identity of the potential stakeholders. In the old days, when the government leaned on sanctions in handling illegal hawkers, the policies are mainly complaint oriented.

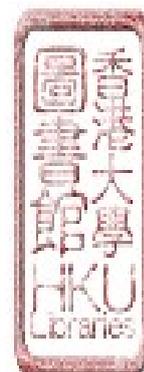


But when the government started to adopt facilitation, more stakeholders' interests have to be taken into account. Except for the opinion of neighbourhood residents and retailers, the government should approach the tourism sector to see how a night market could help boosting up the economic competitiveness of Hong Kong. The conservation groups could deliver views on how to retain the historical and cultural values of hawkers. District opinions could help the government in selecting appropriate sites for fixed stalls or night markets.

The government should take an active role in facilitating hawker activities. Fixed pitches for retailers should be introduced into government premises or projects, such as hospitals, beaches, sport facilities or schools. Small sized operators or non-chain stores could entitle to favourable tendering requirements. Joint projects with business sectors could share similar ideas as well, for example, the Ferris wheel in Central could introduce pitches for food and drinks, or professional photographer services. Non-governmental organization/ non-profit organization could also be collaborated in running hawker business at off-street cooked food centres, or flea markets.

When and Where? Time to implement policy and locations for the policies

The raise of public concern on hawkers was a consequence from the wave of conservation movement of Queen Pier. The government should be political sensitive to grasp the policy window to amend outdated policies. A regular review upon hawker policies should be conducted. Discretion on hawker activities could be granted during specific period of the year. In recent Chinese New Year, some hawkers or even cooked food hawkers often gathered in densely populated districts,



such as Sham Shui Po Gulin Street, Mong Kok Portland Street. The street business attracted crowd gathering and become a popular public holiday leisure spot. The government might consider enduring them for a few days, as most of the shops in the street were closed and street hawkers might not create serious road blockages.

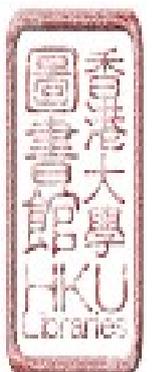
Location is a major consideration in implementing policies. A regular review upon hawker black spots should be conducted and the criteria should be updated to meet current public demand. Limited hawker activities could be carried out during non-peak hour. A bottom-up consultation could be done for the government to fix desirable location for new fixed pitches.

How? Ways to roll, bind/band and bond/glue

By understanding the nature of "paper" and what kinds of approaches could be adopted in the regulatory system, the government should come up with a strategy in application. It is a good start for the government to review upon the current policies and study more facilitative measures to increase the "glue" elements. The reposition of policy objective, from eliminating hawkers to facilitating their survival meets the current public need and political atmosphere. The government should study the effectiveness of different measures to achieve mutual benefits.

Concluding Comments

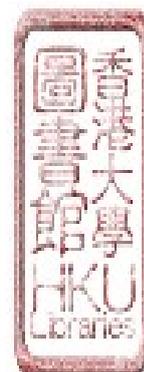
This chapter answers the last research question of this project: What other regulatory strategies could be adopted by the Government to oversee and manage hawker



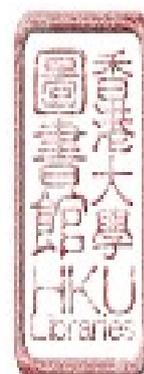
activities more appropriately and effectively? Recommendations are made based on a comprehensive 5W1H framework which on the one hand balances between sanctions and supports and on the other hand is more humane and value-based compared with traditional, Western theoretical frameworks.

While specific recommendations for each of the 5W1H are discussed under the forgoing topics, there are clearly three commonalities to all. First, amidst the uprise of public civic awareness on hawking activities, there is an urge for the Administration to create more and better communication channels with both existing and potential stakeholders. Existing stakeholders include the hawker industry, the retailer sectors, the residential groups, NPO, etc. whereas potential stakeholders may include the tourist industry, the heritage groups, etc. Second, instead of being solely top-down, the Administration should adopt a more bottom-up and district-based approach in both hawker management policymaking and policy review. District Council can play a more important role in facilitating local hawker market. Third, instead of being complaint-oriented, the Administration should devise more holistic, developmental approach towards hawker management.

Hawking activities have been not only part of the everyday life but literally the livelihood of Hong Kong people. Recently, many of them have even become, or are in the way of becoming, intangible cultural heritage. Hawker management nowadays is thus no longer simply a matter of overseeing socioeconomic activities but weighing between important interests and values. If the Administration is to fully recognize all these interests and values in its hawker management, it should either manage to comprehend all of them, or if this is deemed impractical, to involve the community as far as possible in a flexible manner throughout its policymaking

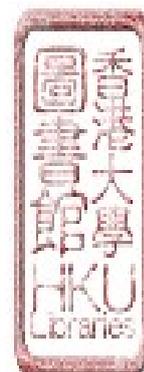


process.



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