

Policy, Action and Theory: Tensions in Hong Kong's Response to
Educational Provision for Ethnic Minority Students¹

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Joppke (2004, p. 451) has pointed out that liberal democratic states support opposing responses to cultural diversity:

Abolish it by means of ‘antidiscrimination’ policy, and protect or promote it by means of ‘multiculturalism’ policy. In other words, liberal-democratic norms require the simultaneous rendering invisible *and* visible of ethnic diversity.

This formulation raises interesting questions about the relationship between the two kinds of policies and the extent of their dependence on each other. This issue will be explored later in the paper. Initially, however, the distinction is particularly relevant to the current context in Hong Kong as it grapples to put into effect its first Racial Discrimination Ordinance. It is Joppke’s ‘antidiscrimination’ element that characterizes the Bill that was introduced to the Legislative Council in December 2006. The Bill regards “race” as “the race, colour, descent or national or ethnic origin of a person” (Home Affairs Bureau, 2006: Clause 8(1)). The objectives of the Bill are (Legislative Council, 2006c, pp. 1-2).

- to make racial discrimination and harassment in prescribed areas and vilification on the ground of race unlawful and to prohibit serious vilification on that ground;
- to extend the jurisdiction of the Equal Opportunities Commission to cover racial discrimination

Yet there is no attempt in the proposed legislation to promote multiculturalism so that Joppke’s description of practices in liberal democracies needs to be modified in the case of Hong Kong. It makes sense to do so because Hong Kong’s government is executive-led and non-elected, although it has to survive in a community with democratic aspirations. Thus the rationale for introducing anti-discrimination legislation did not reside in democratic theory or commitment. Rather, it resided in external pressures and a certain kind

of pragmatism that often characterizes policy making in Hong Kong (Home Affairs Bureau, 2004, p.1):

to fulfill Hong Kong's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ...

This pressure was given greater salience by reports from ethnic community members of discriminatory practices in housing, employment and education. In an important sense the legislation came about not out of commitment to a set of principles and certainly not out of a need to pacify an important electoral constituency as might be expected in a liberal democracy. Rather, it grew out of necessity that nevertheless propelled the government to action. A key question is how successful has this action been in addressing the issues that necessitated the action?

The rationale for legislating to proscribe racial discrimination in Hong Kong was first introduced to the public in November 2004 in the form of a consultation paper (Home Affairs Bureau, 2004) with the consultation period ending in February 2005. The proposed Bill was finally passed by the Executive Council on 21 November 2006, and was officially introduced to Legislative Council for the first reading on 13 December 2006. Yet by February 2008 it has still not been passed into law. Unless this happens before July, the entire legislative process will lapse since elections will take place for a new Legislative Council in September (*South China Morning Post*, 11 February 2008, *Lawmakers face daunting burden of bills to pass*).

Why has this Hong Kong initiative proven so difficult to implement? The remainder of this paper will focus on this question with particular reference to educational provision for ethnic minority students. This is only one area in which the Bill is likely to impact, but it is an important one in both recognizing and addressing current issues to do with provision for ethnic minority students in Hong Kong's schools. Illuminating the specific problems related to the elimination of discrimination in education may also highlight some of the more general problems with the Bill itself.

Education and the proposed Racial Discrimination Ordinance

In the area of education the Bill states that no educational establishment is allowed to discriminate against any person on the ground of race in terms of admission and students' treatment.

It is unlawful for the responsible body for an educational establishment to discriminate against a person ---

(a). in the terms on which it offers to admit that person to the establishment as a student;

(b). by refusing, or deliberately omitting to accept, an application for that person's admission to the establishment as a student; or ---

(c). where the person is a student of the establishment ---

(i). in the way it affords the person access to any benefits, facilities or services, or by refusing or deliberately omitting to afford the person access to them; or

(ii). by expelling the person from the establishment or subjecting him or her to any other detriment (Home Affairs Bureau, 2006: Clause 26(1)).

Nevertheless, the Bill notes that it is not mandatory for schools to make any change or special arrangement for people of any race.

Nothing in subsection (1) is to be construed as requiring the responsible body for an educational establishment ---

(a). to modify for persons of any racial group arrangements of the establishment regarding holidays or medium of instruction; or

(b). to make different arrangements on those matters for persons of any racial group persons (Home Affairs Bureau, 2006: Clause 26(2)).

In addition, exception for use or failure to use a particular language is allowed as mentioned in Clause 58.

(1). Nothing in section 20, 21, 26, 27, 28, 29, 35 or 36 renders unlawful the use of, or the failure to use, any language in any circumstances relevant for the purposes of the section.

(2). For the avoidance of doubt, nothing in subsection (1) affects the Official Languages Ordinance (Cap. 5) or provisions on the use of language contained in any other enactment.

(3). In this section, a reference to the use of, or failure to use, a language includes a reference to the provision of, or failure to provide, a translation, interpretation or transcription into the language.

Loper (2007) has pointed out that that Section 26 (1) is very similar to other anti-discrimination legislation in Hong Kong by proscribing discrimination in admission, access to services and benefits and expulsion. This is not unimportant in the Hong Kong context since there is evidence of such discrimination in the past, especially in relation to admission (Loper, 2004). Yet the provisions of Section 58, that refer to exemptions in terms of language, were considered to be too onerous by Loper (2007) and she pointed to a range of international case law that highlighted the centrality of language to successful educational experience. Yet Section 58 meant that Hong Kong schools were not required to make any modifications to the language of instruction or take into consideration the language needs of ethnic minority students in the course of their instruction. At its most extreme, this meant that while schools could not discriminate against ethnic minority students in terms of admission, they were not required to do anything once students entered the school to support their particular learning needs.

This restriction seems to support Peterson's (2007, p.17) comment that "the Hong Kong government has taken a step backward and proposed that Hong Kong's ethnic minorities should be content with a far weaker definition of discrimination than the definition enacted in 1995 in the SDO and the DDO²". Chan (2005, p.605) has also been critical of the proposed legislation but from the perspective of its exclusion of Mainland Chinese from the provisions of the proposed Ordinance. These criticisms suggest that from the perspective of some community members the proposed legislation has not gone far enough and as the ongoing community discussion will show, this perception was not

² Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO).

limited to academic commentators. There are thus tensions within the proposed legislation that to some extent may explain its slow passage through the Legislative Council. These tensions, generated largely from the community, will be discussed in the following section.

Providing for the needs of ethnic minority students: Government provision

Both before and after the formal promulgation of the Bill, the government's Education and Manpower Bureau (now Education Bureau – EDB) sought to address a range of issues affecting ethnic minority students. These measures are outlined below.

1. Initiation programme

Since 2000, EDB has supported a 6-month full-time initiation programme supported. Its purpose is to provide an alternative support service for newly arrived children before they join mainstream schools in Hong Kong. As an integrated programme, it aims to enhance the children's Chinese and English language abilities, to help them in adapting to the new learning and classroom environment in Hong Kong, and to facilitate their personal development and social adaptation. The programme is operated in a school setting, and the school can use the grant to design their own curriculum to meet their students' needs (Education and Manpower Bureau, 2004b). Since 2004, five schools have joined the programme; one school is in Hong Kong Island, three in Kowloon and one in New Territories. Three schools provide primary level and two have secondary level for newly arrived children from Mainland, whereas only two offer primary level and one has secondary level for newly arrived non-Chinese speaking children and returnee children (Education and Manpower Bureau, 2004c).

2. New admissions scheme

Prior to the 2004/05 school year, ethnic minority children suffered from limited choice of schools. There were only 4 public sector schools with 2 primary and 2 secondary schools providing non-Chinese curriculum (Ku et al.,

2005). Under a new school placement policy, ethnic minority families children can approach schools by themselves, as long as the schools can provide support for them in learning Chinese.

3. Induction programme

A 60 hour induction programme for newly arrived children, including both Chinese and non-Chinese-speaking, EDB has been operating since 2005. Its purpose is to assist students adapt to the new social and schooling environment. With EDB's subsidy, the programme aims mainly to strengthen children's personal development, social adaptation, and basic learning skill. The programme is operated by non-government organizations (Education and Manpower Bureau, 2004a).

4. Designated schools for ethnic minority students

In the 2006/2007 school year, EDB designated 10 primary and 5 secondary schools to receive intensive on-site support in order to enhance the teaching of ethnic minority students. The support includes regular visits by professional officers to schools, providing help to schools in developing school-based Chinese language curricula, teaching and learning strategies and other school-based teaching resources (Education and Manpower Bureau, 2006 and 2007).

5. Teaching Chinese to Non-Chinese Speaking Students

The teaching of Chinese to students for whom Chinese is not their first language emerged as a significant issue following the introduction of the Bill into the Legislative Council. Ethnic minority groups wanted an alternative Chinese curriculum for non-Chinese speaking students. EDB insisted that the standard Chinese curriculum, with suitable school-based adaptations, would be appropriate. It took a resolution of the Legislative Council to force the issue: (Legislative Council, 2007, p.5):

That this Panel urges the Government to immediately formulate an alternative Chinese Language curriculum for non-Chinese speaking students and establish another open examination which is recognized by local universities as a channel for non-Chinese speaking students to enter universities and receive post-secondary education in Hong Kong.

Some twelve months later EDB has released its “alternative curriculum” for consultation. It is actually not an alternative curriculum but a “Supplementary Guide to the Chinese Language Curriculum for Non-Chinese Speaking (NCS) Students” (Education Bureau, 2008). It proposes a range of teaching strategies and organizational arrangements for the teaching of Chinese, but it does not set out a new curriculum for second language learners. Ironically it was been produced in Chinese and not English, much to the consternation of ethnic minority groups (*South China Morning Post*, 26 January 2008, ‘Minorities allege indirect racism in language row’) and it will be under consultation until March.

The various support schemes offered by EDB were clearly designed to improve learning opportunities for ethnic minority students while at the same time ensuring that the government could be accused of any form of discrimination.³ Yet community advocates have constantly challenged EDB’s prescriptions and sought to improve provision further. It is of some interest to note that ethnic community advocacy groups used and avowedly political process to try and secure their ends. Thus on 9 October 2006 Hong Kong Christian Service, an NGO supporting ethnic minority families, wrote to the Chair of the Legislative Panel on Education requesting him to seek further clarification on the following issues that they felt had not been adequately addressed by EDB (Legislative Council, 2006a):

- Additional designated schools in areas of need;

³ The extent to which government agencies come under the provisions of the Bill is not clear. For example, Loper (2007, p3) has commented that “Clause 3 of the RDB ... provides for very limited application of the bill to governmental acts and policies (far more limited than provided in the SDO and DDO). As drafted, the RDB will only apply to government acts that are similar in nature to acts by private persons – such as when the government is an employer. The RDB will not bind the government in its truly “governmental” responsibilities – such as policing, correctional services, taxation, licensing, and most regulatory responsibilities.” If educational provision falls into the category of ‘governmental responsibilities’ then it seems that EDB would not be liable for discriminatory practices as long as it is exercising its role as a government agency.

- Additional ethnic minority staff for designated schools especially to support after school tutorials;
- Lengthening of the summer bridging programme; and
- A “standardized alternative Chinese language curriculum” as well as “a tailor made public examination”

EDB responded to these issues through the Legislative Council Panel on Education (Legislative Council, 2006b). On each point it disagreed with the ethnic minority group’s requests pointing out its rationale for maintaining the current position. The issue at hand was always on the extent of provision and whether “special conditions” could be created for ethnic minority students. For example, on the issue of a ‘tailor made examination’, EDB replied that “we are of the view that the standards referenced language paper under Hong Kong Certificate of Education and the future Hong Kong Diploma of Secondary Education will illustrate different proficiency levels better are suitable for both native and non-native speakers aspiring to get a qualification in Chinese language” although added in a final sentence “in the longer term we shall continue to explore the need for bringing in additional qualifications and deploying a local-based examination for non-native speakers”. On the surface, it is not clear why EDB always appears reluctant to grant ethnic community groups their requests. It is certainly not funding, that is abundant in Hong Kong. It is not because the government is unwilling to acknowledge the needs of ethnic minority students. It has worked on a broad front with schools, vocational education and universities to make extra provision. Yet there is clearly reluctance of some kind to meet the full demands of ethnic minority students. This issue will be addressed in the following section through a consideration of external factors that appear to influence the specific issues discussed so far.

Politics, Theory and Policy: Intersections and Interventions

The extent to which the passage of the Racial Discrimination Ordinance is enmeshed in local politics cannot be over stated. Hong Kong’s non-democratic executive led government has the capacity to initiate legislation but all legislation is reviewed by the partially democratically elected

Legislative Council⁴. Normally, the government has the “numbers” to ensure passage of its legislative programme but not before it has been tested in the Committee system that characterizes the Legislative Council and through public consultation. Legislative Council Committees hold public hearings and take public submissions and they are made up of members from different parties. This ensures that the government’s agenda will be well tested. Such hearings attract a great deal of public, including media, attention.

It was within this political framework that ethnic minority groups pursued their advocacy for greater support for ethnic minority students. As simple as some of those requests seemed (extended hours for the induction programme, more designated schools etc) they were made within a political context. When EDB responded it was as a civil service agency responding on behalf of government. Thus the process was adversarial rather than cooperative. EDB’s role was to support the government. Thus it consistently argued that one Chinese curriculum was good for all students accompanied by with school based adaptations because this has been the mantra of the entire education reform agenda (Kennedy, 2005). To admit otherwise was to roll back the rationale of half a decade of reform. This is not to underestimate the common ground between EDB and ethnic minority groups – gains have most certainly been made. Yet these gains have not been made in the spirit of commitment to a common principle but rather, on the part of EDB at least, out of necessity to protect a government facing new requirements in terms of possible antidiscrimination action. This assessment is supported by two further considerations.

Hong Kong’s commitment to anti-discrimination has been enshrined in specific legislation related to sex and disability discrimination, a local Bill of Rights and the adoption of international covenants on anti-discrimination

⁴ The Legislative Council contains members democratically elected from residential/population based electorates from across Hong Kong as well as members elected from functional constituencies that represent business, industry and education interests. Some, although not all, people in Hong Kong have two votes – one for their residential electorate and the other for their functional constituency, if their occupation happens to be so represented.

(Kennedy, 2005). The Racial Discrimination Ordinance, however, is the government's first attempt to enter the area of cultural diversity. While this continues an impressive record in legislating against antidiscrimination it has also entered a new and more challenging arena, and it has done so without a great deal of preparation. There is not, for example, recognition, in Joppke's (2004) terms that "multiculturalism" is the obverse side of "antidiscrimination". Thus antidiscrimination measures that recognize cultural diversity in Hong Kong have been pursued outside of a broader framework acknowledging the value of this diversity within the broader society. Apart from the values inherent in ant-discrimination practices themselves, there is no commitment to a broader set of values in which antidiscrimination might be located.

One reason for the lack of attention to multiculturalism may be the composition of the Hong Kong population. 95% of people are Chinese leaving just a small segment making up other groups. When this 5% is broken down, the majority are Filipinas who work in Hong Kong largely as domestic helpers (32.9% / around 112583) with the next majority being Indonesians (25.7% around 87945). The third largest groups made up of Indian, Pakistani and Nepalese people (6%, 3.2% and 4.7% respectively consisting a total of 13.9%, around 47566.). Westerners make up an even smaller group (10.6% around 36273) (Census and Statistics Department 2007, p. 5). Of course, such numbers, by definition, constitute the multicultural nature of Hong Kong and they are reflected in Hong Kong's school population with some 2.9% of students under the age of 15 being ethnic minorities (Census and Statistics Department 2007, p. 51). Yet the numbers are such that they can render these groups almost invisible. In addition, because of the geographic concentration of these groups, it is entirely possible to live in Hong Kong without being aware of its diverse population.

Many nation states have adopted policies to recognize and indeed celebrate the diversity of their population yet motives for doing so are often mixed. Bokhorst-Heng (2007, p. 631), for example, has referred to "statal multicultural narratives" as the ideologies and political constructions made by

nation states to support their version of multiculturalism. She examined specific narratives in relation to both Singapore and Canada to show how contexts, ideologies and politics dictate the form that multiculturalism takes in different jurisdictions. The assumption of a “statal narrative” is that a nation state recognizes the diversity within its borders and seeks to construct narratives that will accommodate it in ways that do not threaten the existence of the state. It is just such a “statal multicultural narrative” that is missing in Hong Kong – a rationale for supporting diversity and an acknowledgement of the value of such diversity. Without such a rationale, it seems antidiscrimination is pursued as a pragmatic policy objective to be pursued with only those concessions deemed reasonable by the bureaucracy and the government. Yet there is a final element that also needs to be considered.

Diversity and multiculturalism in many Western countries are supported by a range of social theories that highlight the centrality of social justice to liberal democratic theory and practice. There is some evidence, however, to suggest that Western conceptions of social justice are not the same as those in Confucian societies such as Hong Kong (Chiu & Hong, 1997; Chan, 2001). For example, it has been argued that “when it comes to matters about people’s well being, material welfare and life chances, Confucian justice seeks to promote sufficiency for all and not equality between individuals” (Chan, 2001). This concept of social justice is expressed through the idea of impartiality (Chan, 2001):

Political rule should be impartial or fair (*gong* in Chinese) to everyone – by that it means political rule should promote the good of everyone without prejudice or favoritism. In other words, it would be a violation of fairness or justice (*gong*) if the ruler were selectively concerned about some people only.

This concept of impartiality can explain EDB’s insistence on a common curriculum, a common examination, limited support for induction programmes and a reluctance to expand the number of designated schools. In terms of the theory outlined here, the principle being used by EDB could be

described as *sufficient* provision rather than *equitable* provision. This means the commitment is not to equal outcomes, as is often the case in many Western countries, but to a level of provision judged to bring educational provision for ethnic minority students into line with the kind of provision that is made for all students. Further work needs to be done to explore this explanation in both a theoretical and practical sense but initially it seems to offer some explanatory potential for the attitudes and behaviours of government officials to educational provision for ethnic minority students.

Conclusion

Progress on extending educational provision for ethnic minority students in Hong Kong has been steady, both immediately prior to and immediately after the promulgation of the Racial Discrimination Bill. Yet the government through the EDB has not been prepared to go as far as many ethnic minority advocacy groups would wish. The explanations offered here have sought to locate the antidiscrimination initiative in broader social, political, and theoretical contexts to try and account for the government's reluctance to meet community expectations. The government's support for antidiscrimination legislation with regards to race lacks a broad multicultural framework, is negotiated through a very public political process and governed by principles that support sufficiency rather than equality. Thus the outcomes for ethnic minority students must be seen as pragmatic rather than principled responses to a public policy issue raised by the Racial Discrimination Ordinance. The extent to which this scenario can be improved for ethnic minority students may well depend on further political developments in Hong Kong. If future governments are to be accountable to an electorate rather than elites, then ethnic minority advocacy groups take on a different complexion and their small numbers may well prove decisive in future democratic contests.⁵ Nevertheless, even in such a government, Confucian values may well predominate so democracy may be a necessary but not sufficient condition to advance the cause of ethnic minority students in Hong Kong. In

⁵ Hong Kong has been promised universal suffrage for election for the Legislative Council in 2017 and for the election of the Chief Executive in 2020.

the meantime, ethnic minority advocacy groups will undoubtedly continue to press their cause in an environment where sufficient educational provision rather than equal educational outcomes appears to be the main value driving attempts at promoting antidiscrimination for Hong Kong's diverse population.

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