

Some Suggestions for Research Studies in the Present Day New Territories of Hong Kong

(in connection with my Response to the Citation at the ceremony to award me

Honorary Fellowship of The Hong Kong University of Science and Technology on 4 June 2008)

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編者按

許舒博士 (Dr. James Hayes) 於1956年來香港，1988年退休，服務香港政府32年。他除了是政府公務員外，還是研究香港新界社會歷史的學者。許舒博士於2008年6月4日接受了香港科技大學頒授的榮譽大學院士。許舒博士撰寫這篇文章回應他的院士讚詞。許舒博士的院士讚詞收錄本文之後。

中文撮要

對「研究今日香港新界」的一些建議

許舒

香港新界的歷史為今天新界的鄉村生活帶來了一些問題。「小型屋宇政策」（亦稱為「丁屋政策」）於1972年開始在新界施行，管理新界原居民的建屋安排。今天，很多屋宇都是建築在原來的耕地上，但明顯地，建築安排是沒有計劃的，地方設施也頗為缺乏。有人認為這些隨意的鄉村規劃是一個災難，而香港政府似乎是把鄉村視為異域，置於政府控制之外。

要明白今天香港行政機關所面對的問題，就必要考慮歷史。當年（1972），因很多新市鎮的發展，新界的村民對很多限制他們建屋的措施，感到非常憤怒。這個新的政策容許居民在他們的一生中，就可以一次以低於市場的價格，購買一幅在認可的鄉村擴展範圍內的官地，興建自己的屋宇。他們也可以將私人耕地轉換為可建屋的土地。同時，工務局也批准了一個新型的標準屋宇建築圖則，村民也就不需要另外聘請建築師設計屋宇建築圖則。

政府視丁屋政策為一個讓步，對象只限於新界的村民。村民則視之為一項與生俱來的權利，成為可以兌現的資產。當丁屋政策被視為「原居民的合法傳統權利及利益」，且由香港特別行政區基本法第40條所保護時，事情變得複雜。若果維持丁屋政策，一方面要得到地方居民及領袖的接受，而又同時照顧到公眾利益的話，一些改變是必要的。但強行取消現時的小型屋宇政策，並不可行，而且只會帶來大規模的對抗。

一些讀者相信可以用金錢購買「權利」。但依我的經驗，妥協是有可能達到的。一些能夠促成協商的因素依然存在，這些包括對詳細背景知識的掌握。但今天很多行政及處理土地的官員都可能缺乏這方面的條件來啟動對話，這些官員需要某些幫助去辨認現今鄉村及宗族的需要，從而找出重要而合理的鄉村所需，在公眾利益前提下出力協商。

陳國成博士曾對粉嶺彭氏家族如何運用「丁屋政策」作過研究。他的研究更顯示新界條例對原居民仍有相當重要及有連貫性的影響。依循中國習慣法，土地由宗族持有或以信託形式存在，而現在新界，情況也大都如此。雖然在1994年開始，女性可以繼承家庭財產，新界條例基本上在1905年之後並沒有改變，仍然是新界鄉村組織與社會的核心，受到新界居民堅決的維護。

除了其他學者的工作外，香港科技大學人文學部正面對著一個非常好的機遇，提供研究成果，解決現在的問題。人文學部學者持續對新界社區更新儀式「太平清醮」的興趣，讓他們有機會與鄉村領袖建立起密切的聯繫。他們處於一個理想的位置去研究個別鄉村的情況，去探討原居民及地方領袖對丁屋政策的態度。他們可以研究居民對新界條例的看法，尤應關注年青一代，包括那些由海外回來的，或間歇回鄉的一群，他們的視野比較廣闊，且對地方事務比較有影響力。人文學部學者也可以研究鄉村管理及在2003年開始施行的「雙村長制」，在一些逐漸擴展的鄉村裡，「外來」屋主及住客的增加，有可能會引致鄉村內的意見的不一致。

總括來說，我們要把這些工作延續，我希望香港的大學及機構聯同有興趣的學者，繼續這些對今天鄉村生活的重要研究。這些研究成果對參與在今天新界公共行政的人士，必定有實際用途。

I have been reading the late Kevin Sinclair's new book, *Living Villages, How Modern Hong Kong's Rural Legacy is being Kept Alive*, published by the South China Morning Post last December [2007]. This is a fascinating look at how some twenty New Territories village communities, with their now mixed and larger populations, have been responding to change, as seen through the eyes of the persons who are driving improvements in the villages. They are a varied group, and even include an expatriate Briton. Some of their ideas are novel. They have put a great deal of heart into their projects, and I found myself wishing that similar progress could be made with some of the underlying problems which, **left over from history**, still lie at the heart of New Territories village life today.

The first, and greatest of these, to my mind, is the Small House Policy, first introduced by the former Hong Kong Government in 1972.*

On a visit to Hong Kong in 2005, its originator, the late Denis Bray (formerly District Commissioner New Territories), was shocked at the state of villages where there had been much building of houses on former agricultural land under the Policy. An apparent lack of planning, and the absence of services for much larger populations than in the past, [quite apart from the seemingly endless commitment: JH] seemed to him to cry out for action with the mutual agreement of those involved.¹

There has long been public concern, but as far as I am aware, the situation has not yet been squarely addressed. Typical of the adverse views which continue to appear in the media has been the article which appeared in the South China Morning Post, Friday, April 4, 2008 ("Departments lack vision, means and will") in which the writer states that "the random layout of villages can only be described as planning disasters", and accuses the government of "acting as if villages are foreign soil outside its control".²

Yet the problems facing the Administration today are complex, and cannot be understood – let alone solved - without a look into the past.

At the outset, the Small House Policy was meant to counter the rising anger of villagers across the NT at the many restrictions on rural building imposed by cumbersome regulations, and at the prohibition on building village houses inside statutory "New Town" planning areas during the opening decades of rapid development. The policy promised, and still does, "once in a lifetime" grants of Crown land sites at reduced market rates to male villagers to permit village extension within agreed boundaries, or else by conversions of private land in agricultural status upon payment of premia on concessionary terms. Most importantly, for villagers, a standard plan for a new-style village house had been agreed with the Public Works Department, which made it unnecessary to

employ an architect. The new policies were a major advance in what had become an unsatisfactory and unfair situation.³

But whereas the authorities viewed it as a concession, restricted to villagers, for their use only, and at need, the never ending flood of applicants (and their leaders) have always seen it as **a right** - one might almost say, a **birth** right. It was viewed as a way to capitalize on their principal asset, land, by selling approved sites and houses to developers and city folk, regardless of all regulations, restrictions, and financial penalties. In December 2002, for instance, a private property consultant told a South China Morning Post reporter that more than 80 per cent of the small houses then under construction were being built for sale rather than for “own use”.⁴

The situation is complicated by the fact that the Small House Policy may be seen as being among the ‘lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” which shall be protected by the Hong Kong Special Administrative Region [Government]’ under Article 40 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China adopted at the Third Session of the Seventh National People’s Congress on 4 April 1990. This reflects the more general statements made in the Sino-British Joint Agreement of 1984.⁵

Yet the problems of planning and services noted by Denis Bray will only get worse if the main problem is not addressed: how to get the New Territories indigenous population and its leaders to accept that, if the Small House Policy is to remain, some changes to it are essential, in their own as well as the public interest.⁶

A mutual resolution of present difficulties seems to be necessary, given that an imposed abolition of the Small House Policy without consultation is hardly a practicable step for the Administration to consider without having regard to

the likely consequences, since it could be expected to bring on a major confrontation and widen all the existing rifts.

Some of my readers, deeply sceptical, will argue that money alone will be needed to buy out “rights”, and that negotiations for anything less will be impossible. But having negotiated many village removals and resittings for reservoirs and “New Town” development in my time, I do not necessarily agree, having always found that compromises were always possible if logic proved that they were needed.⁷

However, times have changed, and the situation facing leaders on both sides is now vastly complicated by many factors which did not exist earlier. Is it even possible to negotiate a solution that will be acceptable to all parties on each side of the divide?

Too long retired, I cannot presume to offer any detailed suggestions. But since, in the past, successful outcomes were, on the government side, dependent in part upon the negotiators having the detailed background knowledge and understanding of the position, as seen from the other side of the conference table, there is every need for today’s negotiators to ensure that they, too, are equally well-informed. This applies not only in regard to the application of the Small House Policy in the variety of situations to be found in the villages, but also to the underlying question of the operation of the New Territories Ordinance, and the extent to which it is still needed by the indigenous community today.⁸

Yet for perfectly valid reasons, many of today’s administrators and land professionals may - indeed probably do - need help with identifying the basics of village and lineage needs at the present time.⁹ And also the needs of the village communities as a whole with their many new “outsider” residents.¹⁰

This is where recent academic research has been useful, and as I shall be suggesting below, researchers can assist further.

For instance, Dr Chan Kwok-shing, an

anthropologist now at the Hong Kong Baptist University, has shown how the Pangs of Fanling have differentiated sharply between their ancestral houses inside the original settlement and those built outside it under the Small House Policy. Under lineage rules, the first may only pass by inheritance or by sale to lineage members, the second (as and when sites are granted by government) may be sold to all comers if their owners so wish.¹¹ How widespread is this practice, and are there useful inferences to be drawn?

Dr. Chan's study is also important for another reason. In supplying valuable information on attitudes and identity, he helps to explain **the continuing relevance of the New Territories Ordinance (NTO) for all indigenous villagers.**¹² This, you will remember, still allows (in the main) for title to land to follow Chinese customary law, and for land to be held in common ownership by lineage and other customary trusts – of which there are still a great many in the New Territories.¹³ Despite the changes allowing female succession to family property made in 1994, the basic provisions of the Ordinance have otherwise remained unchanged since their introduction in 1905. **They have for long been at the heart of New Territories village organization and society. But how far are they still needed today?**

Among the scholars working on the New Territories, those in the Humanities Division of the Hong Kong University of Science and Technology in particular have excellent opportunities to carry out **the back-up research which is currently so badly**

needed to help deal with current problems.

Due to their sustained interest in the Jiao protective rituals which have for centuries been such an important part of NT community life, they have developed close contacts with many village leaders. They are well-placed to research individual village situations, and to explore current attitudes to development and the Small House Policy among indigenous villagers and their leaders.¹⁴ **Above all, they may take a look at the New Territories Ordinance, and could provide detailed information on how it is viewed in the villages today,** especially by the younger generation of village people. These include those who have returned from overseas, or are still absent but periodically visit their native places, with their often wider perspectives and considerable influence in local affairs. They could also study **village management and the workings of the “One Village Two Representatives” legislation** introduced in 2003, with its potential for future discord as more and more ‘outsider’ owners and their tenants take up residence in the steadily expanding villages.¹⁵

In conclusion, furthering the good work which has already been done, I hope that they, together with interested scholars in Hong Kong's other universities and institutions, will take up these important aspects of present day village life. Their studies would surely prove to be of practical use to those involved in public administration in the present day New Territories, should they so wish.¹⁶

Endnotes

* As this is an exceedingly complex subject, I have confined the main text to a straightforward exposition of the subject, leaving necessary detail and asides to the footnotes, which are intended to bring out the complexities and (I hope) help to explain them for readers who may wish to follow my suggestions for further research.

1 A copy of his statement on the subject, circulated to friends, is now in the Public Records Office of Hong Kong: ref HKMS 178-1-78.

2 See also note 7 below, which is probably typical of the jaundiced view taken by long-resident expatriate opinion on the present situation and as to [one of] its causes.

- 3 For a statement of its aims, and the situation it was intended to ameliorate, see the late Denis Bray's *Hong Kong Metamorphosis* (Hong Kong University Press, 2001) at pp.163-167. He was District Commissioner, New Territories at the time.
- 4 For this and other background information to the preceding paragraphs, see my recent book, *The Great Difference, Hong Kong's New Territories and its People 1898-2004* (Hong Kong University Press, 2006), particularly at p. 157, with note 60, and, for the Small House Policy, pp. 108-110.
- 5 Notably, at clauses 53 of Part II and 85 of Part VI. The texts of the two basic documents are given in Appendices IV and V to Liu Shuyong's *An Outline History of Hong Kong* (Beijing, Foreign Languages Press, 1997).
- 6 **Overall, current problems are not confined to the present situation of the Small House Policy alone, but affect related issues, such as the evolving debate over the development of the Border Closed Area, with its large acreages of undeveloped village land and the question of villagers' rights versus the public interest. Taken in a still wider perspective, it is to be regretted that the runaway Small House Policy is one of several reasons for the long deteriorating relationship between New Territories natives and the rest of the Hong Kong population, in which – among other issues - the latter has for long questioned the privileged position of the former, and resents their abuse of its provisions. See *Great Difference*, pp. 166-169, and much else in Chapter 12, in which I have discussed relevant aspects on each side of the divide. Further to the above, and based on a talk given to the Reading Club of the Friends of Hong Kong University Library in November 2007, I hope to publish an "in depth" article on this topic in the December 2008 issue of the Asia Pacific Journal of Public Administration.**
- 7 Commenting on an earlier draft of this paper, a friend wrote: "I have to question whether 'compromises are always possible if logic proves that they are needed'. My cynical view is that New Territories villagers have been laughing all the way to the bank, or at least, to quote the statistic you mention, 80% of them have. Once a right is given it cannot be taken away without a lot of pain. And the right to make a lot of money, perhaps as compensation for having been born out in the sticks instead of in a glitzy Island apartment, is one that these folk have been enjoying for years. I heard recently (but forgot the exact number) that there many tens of thousands of outstanding applications by poor hard-done-by villagers wanting to exercise their right and build a house. And the result is an appalling mess of higgledy-piggledy jerry-built houses, thrown up in a hurry and sold before the damp patches appear. I would suspect that there are [now] very few places in the New Territories where the word "village" could happily be applied".
- 8 Respect for who they are is also required in any meaningful dialogue. Also, an awareness of the disruptions and travails endured during the long drawn out development process, and of their major contributions to sport and recreation in the New Territories New Town communities (*Great Difference*, pp.102-110 and 119-125 respectively). **But at the same time, it is crucial for New Territories leaders and public opinion within the indigenous community to recognize, and accept, that they, too, have to have a duty to act responsibly, and help the government to reach solutions which meet their own legitimate and justifiable needs but have a due regard to the interests of the whole community of modern Hong Kong.**
- 9 This is largely due to the major changes in land management made in 1982, when the responsibilities for land and people formerly

exercised by a single department, the former New Territories Administration, were divided, upon the establishment of a new Lands Department: *Great Difference*, pp.161-162 with related notes.

10 In this context, and because by now so much needed in the expanded villages of today, the requisite planning and services suggested by Denis Bray - may be seen as one of the issues in the debate. Of equal benefit to indigenous villagers and "outsider" residents alike, they would require much professional staff time and public expenditure to provide.

11 Kwok-shing Chan, "Negotiating the Transfer Practice of Housing in a Chinese Lineage Village", *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol.37 (1998), pp.63-80.

12 Cap. 97 of the *Laws of Hong Kong*. See *Great Difference*, p.43 with note 4, and also at pp. 37-39 and 167, 170-174.

13 Dr Chan also shows how the compensation for land resumed from lineage trusts – there were 115 at the land settlement in 1904, owing between them one third of the Pangs' registered holdings –

helped fund the construction of small houses by individual trust members in the 1980s. But the number of sites that could be made available by government was very small compared with the number of applicants, even after the lineage elders' screening to select the most deserving according to carefully agreed criteria.

14 Here it should be remembered that there has always been considerable diversity among New Territories villages. To borrow a phrase, **one size does not fit all**.

15 *Great Difference*, pp.174-175.

16 An Inter-departmental Working Party was set up in 1986 to examine the workings of the New Territories Ordinance and consider whether any changes were required. Its report was presented early in 1988, but not published. However, much of its content appeared in an article by its able Chairman, Stephen Selby, then District Officer Tuen Mun, which appeared in the *Hong Kong Law Journal* in 1991: see his "Everything You Wanted to Know about Chinese Customary Law (But Were Afraid to Ask)", *Hong Kong Law Journal*, 45 (1991), pp. 45-77.

附錄：香港科技大學大學院士頒授典禮之許舒博士讚詞 (2008年6月4日)

在有關香港研究工作方面，許舒博士有著非常重要的貢獻。在香港新界原居民的眼中，他是一位會說廣東話、重視中國傳統及地方文化、謙恭而又值得尊敬的政府官員。許舒博士是一位學者官員。

許舒博士於1956年來港，成為前香港政府的「官學生」(Cadet Officer)。他參與香港公務員行列32年，在1988年退休之時是「新界政務署署長」。在這32年中，他除了履行他的日常公職外，還參與、觀察、研究和記錄了過去數十年來急劇改變的香港社會與文化。

許舒博士在任職公務員期間，曾參與多項對

香港民生有重大影響的發展計劃。這些都是十分艱巨的工作——在推動香港發展之同時又能夠保存地方社會組織與文化。當許舒博士在1957至1962年間出任「南約理民官」時，政府正在大嶼山興建當時全港儲水量最大的石壁水塘，他要安排受水塘計劃影響的原居民村落的遷徙工作。三條村落中，兩條在大嶼山覓地安頓，一條則選擇移居荃灣；侯王及洪聖兩間廟宇亦能隨村遷移。村民雖然受到水塘興建計劃而要搬遷，但他們亦慶幸自己的社區可以維持完整。

在1975至1982年間，許舒博士出任荃灣區的「理民官兼市鎮專員」。他的其中一項工作，是

協助發展在當時包括青衣島及葵涌區的荃灣新市鎮，今天的葵青區是在1986年才劃分出來的。這時期的安置工作變得更加複雜，因為受影響的，除了原居民外，還涉及數以千計居住在寮屋的移民。政府為受到新市鎮發展計劃影響的村落覓地重建，而居於寮屋的移民則獲編配公共房屋。同樣地，所有歷史悠久的及一些新建的廟宇，都在新發展區內得到了永久的廟址。今天，這些廟宇成為新市鎮居民宗教崇拜的地方，信眾包括當年的移民，以及他們在香港出生的下一代。

雖然荃灣已經成為一個都市，但在地區事務上，原居民及鄉事委員會仍然扮演著一個重要的角色。在1976至1982年間，區議會制度首先在荃灣區試驗推行，其成功有賴當時三個鄉事委員會及地方領袖的支持。當許舒博士在1982年調職時，荃灣社區贈予他「荃灣第一榮譽市民」的美譽；而那些接受搬遷的荃灣村民，為了表彰許舒博士對他們的幫忙，他們把他的名字刻在村口牌樓上，成為村名的題字人。

許舒博士在民政事務署及新界民政署的工作讓他有機會接觸香港不同的地方社會。無論在上班時或下班後，他都勤奮工作。在1988年退休時，他已經出版了兩本書及無數的文章，在繼後的20年裡，他又再完成了四本著作，包括一個南中國鄉村文化的研究及一個1898至2004年間香港新界及其居民的報告。他對地方歷史與文化的好奇心，讓村民認識到自身傳統文化的價值，亦為他的著作找到第一手資料。許舒博士對地方社會的興趣，令到很多鄉村精英對族譜及祖先歷史記錄產生了自豪感。

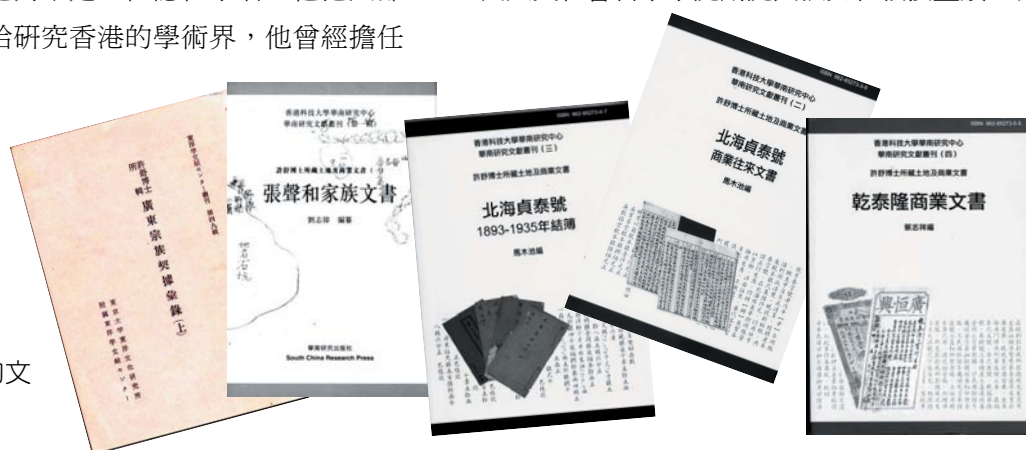
許舒博士絕對不是一位隱世學者，他把大部份時間都貢獻給研究香港的學術界，他曾經擔任

皇家亞洲學會香港分會會長七年，該會籌辦講座、海外及本地田野考察，亦出版一本有著崇高地位的、刊登香港及亞洲研究的學術期刊。自1967至1980的14年間，他擔任期刊的主編。許舒博士亦為有興趣研究香港地方社會及文化的學生及年青學者大開方便之門。多少年來，無數的學者都曾受惠於他的意見及建議。作為一位前公務員，他為學者們提供了如可尋找和使用政府檔案的竅門。

許舒博士一直以來都強調民間資料，特別是地契、族譜及商業記錄等，對歷史研究的重要性。在1970年代及1980年代，他在坊間購買了大量的地方文獻。除了協助美國史丹福大學的胡佛研究所搜集館藏外，他更將個人的收藏開放作學術研究及出版之用。東京大學出版了一套兩冊有關廣東宗族土地文獻的書籍，香港科技大學華南研究中心亦相繼出版了四冊文獻資料叢刊。對從事中國社會與文化研究的學者來說，許舒博士存放在香港及海外的收藏品，提高了他們對這類文獻資料的認識和使用的關注。

總的來說，許舒博士可以說是地方社區及學術界的「維護工程師」。但他並沒有忘記別人對他的幫助，香港大學出版社在1996年出版了他的工作回憶錄*Friends and Teachers*，中文書名取自孔子的說話：「三人行必有我師。」這話道出了他感謝友人，特別是新界的朋友，給予他學習的機會。這本回憶錄的書名亦貼切地描述了我們這位「亦友亦師」的學者官員——許舒博士。

(讚辭由華南研究中心主任廖迪生教授撰寫，並由人文社會科學學院副院長張兆和教授宣讀。)



許舒博士所輯的文獻資料叢刊