

# 论澳门特区立法会间选制度设计及其完善方向

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关键字：澳门特区立法会；间接选举；法人选民

## 摘要/Abstract

本文从分析澳门特区立法会间选实务中的种种现象入手，力避政治纷争和利益格局带来的种种影响，全面梳理了调整立法会间选制度的现行法律规范，指出该制度的核心特征是法定界别内法人选民就特定议席展开的提名和选举，但目前存在着法定议席确定难具客观性、法人选民界别划分缺乏确定性、法人提名和投票制度不公平等制度设计和运作方面的问题，并根据基本法规定的应然逻辑提出修订和完善相关制度的意见建议。

Based on analyzing several phenomena in current indirect suffrage of the Legislative Assembly of Macao SAR, the essay probes into the whole current applying norms on indirect suffrage system, revealing that the so called indirect suffrage is a legal process for candidate nomination and legislative election within legal elective groups by those entities and organizations. Accordingly, and there are critical questions of objectiveness on definition and allocation of seats, classification of the electors collective for suffrage, and unjustified processing systems on candidate nomination and voting. It finally offers those suggestions on adjusting and improving the indirect suffrage system according to the Basic Law of Macao SAR.

# 香港不当得利返还责任的一般构成要件探析

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关键字：不当得利返还责任；一般构成要件；非正当性

## 摘要/Abstract

迄今为止，香港不当得利返还责任法的发展仍然十分依赖其他普通法法域尤其是英国的已有判例和学术研究成果。以返还责任的一般构成要件理论为代表，香港法院基本上采纳了英国学者Peter Birks提出的四要件说，认为返还责任的构成需同时满足被告获得利益、该利益以牺牲原告利益为代价而获得、被告保有该利益不正当、被告没有可主张的抗辩事由四个要件，并在对每一个要件进行分析时都会大量援引其他普通法法域的判例。虽然香港具有本地特色的判决和研究成果并不多，但是面对普通法上日益纷呈的判例和学说，香港法院仍然结合自身情况进行了选择。

So far, the development of the law of restitution in Hong Kong is still severely relied on other common law jurisprudence's cases and research. Represented by the general elements of the liability to restitution theory, Hong Kong's courts have adopted Peter Birks' viewpoints, holding that four general elements must be met to establish any of the restitution claims. First, the defendant must have received a benefit. Second, the benefit is gained at the expense of the plaintiff. Third, the benefit must be unjust in a defined, legal sense. Four, the defendant has no affirmative defense. Although in face of different cases and research in the common law, Hong Kong Courts make choices according to their own circumstances.



# 香港社会关于2017年行政长官普选的争拗回顾

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关键字：香港；行政长官；普选；争拗；回顾

## 摘要/Abstract

反对派形容2017政改对香港前途影响极大，因此分三路争取，最重要的是“占领中环”，“占领中环”的核心是“商讨日”。反对派在行政长官普选方案的立场有分歧，有人主张“公民提名”行政长官候选人，但多数反对派认为“公民提名”可与其他提名方式并用，因“公民联署提名”方法最难操控。真普联从开始提出3个方案到提出三轨方案，激进派坚持必须要有“公民提名”，温和派底线是“有竞争的选举”。不少建制派认同“中央守尾门”方案会造成宪制危机，而守前门的“参选宣誓效忠宪法”则不可靠，建制派基本反对“公民提名”，但有些主张吸纳“公民提名”元素，多数则建议在现有四大界别基础上适当扩大“提名委员会”选民基础。主流反对派与主流建制派均希望落实普选，关键在于如何平衡“一国”与“两制”利益。

The opposition party argued the 2017 constitutional reform would have tremendous impact on the future of Hong Kong, and therefore they would fight in three ways. The first and most important way is the "Occupy Central" movement, with the core of determining "the Day". However, even within the opposition party there are different opinions as to the methods for nomination. Some proposed that nominees should be nominated by all citizens, as it is difficult to be manipulated. "Alliance of Genuine universal suffrage" proposed programs of three tracks. The radical faction insisted there must be civil nomination and the moderate's bottom line is a competitive election. Many government camp opposed civil nomination but accept some factors of civil nomination in election. Many proposed to enlarge the election basis of the selection committee on the basis of the existing four sectors. The mainstream parties all hope to implement universal suffrage, and the key is to balance the benefits of "one country" and "two systems".