

9-1-1999

Law-ing the Harmonic Familial Relationship: Development of an Indigenous Feminist Legal Political Discourse on Child Domestic Abuse

Andy Man Chung Chiu
City University of Hong Kong

Vera Moon Hing Lam
Harmony House

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bwlj>



Part of the [Comparative and Foreign Law Commons](#), [Family Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Chung Chiu, Andy Man and Hing Lam, Vera Moon (1999) "Law-ing the Harmonic Familial Relationship: Development of an Indigenous Feminist Legal Political Discourse on Child Domestic Abuse," *Buffalo Women's Law Journal*: Vol. 8 , Article 14.

Available at: <https://digitalcommons.law.buffalo.edu/bwlj/vol8/iss1/14>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Women's Law Journal by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

Law-ing the Harmonic Familial Relationship

Development of an Indigenous Feminist Legal Political Discourse on Child Domestic Abuse[▲]

Dr. Andy Man Chung Chiu[†]

Vera Moon Hing Lam[♦]

Introduction

The number of child abuse cases¹ in Hong Kong has increased over the last nine years.² What is worth our attention is that most of them happen in a domestic context.³ These alarming statistics have mobilized a number of activists in Hong Kong to address child domestic violence. However, the continuous growth in the number of child abuse cases gives rise to a series of questions: is the present law effective in stopping child (domestic) abuse? If not, then under what circumstances should the legal system (courts,

[▲] This is a substantially revised version of a paper that was presented in the ISPCAN 5th Asian Conference on Child Protection, organized by ISPCAN, Department of Social Welfare of Hong Kong SAR and Against Child Abuse (Hong Kong), on November 26, 1999. The paper is the product of the research project "Controlling Domestic Violence and Wife Abuse in Hong Kong: A Plea for Mandatory Counselling for Wife Abusers", which is jointly funded by City University of Hong Kong and Rotary Club of Kingspark, Hong Kong.

[†] Assistant Professor, School of Law, City University of Hong Kong.

[♦] Member, Service Development Committee of Harmony House; Legal Adviser, Single Parent Association.

¹ "Child abuse" is not given a proper definition by law in Hong Kong, but the Social Welfare Department defines it as "any act of omission or commission that endangers or impairs a child's physical/psychological health and development, emotional health and development." See Patricia Ip, *Social and Cultural Factors Leading to Child Abuse in Hong Kong* (visited Aug. 13, 1999)

<http://www.urmc.rochester.edu/IPA/pubs/inches/inch8_3/ip.htm>.

² See *infra* p. 25 tbl. 1.

³ Wai Man Sin, *Law Against Child Abuse*, in *LAW FOR SOCIAL WORKERS IN HONG KONG 281* (Man Chung Chiu & Moon Hing Law eds., 1999); Alison Nadal & Anthony Woo, *Patterns of Violence*, *SOUTH CHINA MORNING POST*, Mar. 31, 1996.

legislature and police) and social workers work together to stop the violence against children?

This article presents an alternative response to the problem – a mandatory order that places the child abusers, who are the family members of the victims and who commit a lesser degree of violence, under a counseling program. Since family and harmonic relationships are the cores of the Han-Chinese culture,⁴ should the law try its best to reestablish the harmonic relationship after the occurrence of the child domestic abuse? From the experience gained from the overseas countries and the introduction of feminist ideology in the legal discourse, we believe that a localized and an indigenous court-mandated counseling program could work effectively in Hong Kong. We would start with the introduction of the general legal protection of children in Hong Kong.

While the legal protection of children is scattered among different ordinances,⁵ the main stipulations can be found respectively in Offences Against Persons Ordinance⁶ and Protection of Children and Juveniles Ordinance.⁷ Section 26 of Offences Against Persons Ordinance states that any person, who unlawfully exposes any child under the age of two years, to a situation whereby the child's life is endangered, is guilty of an offence and shall be liable on conviction or indictment for ten years in prison or on summary conviction for three years in prison. Section 27 states that any person, who ill-treats, neglects, abandons or exposes, causes or procures child to be assaulted, ill-treated, neglected, abandoned or exposed to suffering or injury, will also be guilty of an offence and shall be subjected to the same punishment as stated in Section 26. The Protection of

⁴ In Mainland China, there are more than 19 races with over 1 million populations, and Han is the dominant group in terms of number. Most of the people in Hong Kong are also Han-Chinese.

⁵ See *infra* p. 25 tbl.1.

⁶ Cap 212 LHK.

Children and Juveniles Ordinance provides the Director of Social Welfare with the power to investigate the child abuse cases⁸ and to bring the victims to the place of refuge⁹. Section 34 of the Ordinance also allows the juvenile court to appoint the Director to be the legal guardian of the victims. In sum, we can see that while criminal law focuses on the punishment of the abusers, the civil law emphasizes the separation of the abusers from the young victims. Further we should also note that domestic violence is not yet criminalized in Hong Kong.

Feminist discourse on child domestic abuse – can Mandatory Counselling be an alternative?

In the eyes of the Anglo-American feminists, violence against children (and women) is a function of the fact that children and women were historically the legal property of fathers and husbands. The patriarchal law did not and does not care how men deal with such property. The law also sees no difference between such property and any other forms of property over which they had rights of ownership: the existence of marital rape exemptions is a very good example. The law would also simply turn a blind eye if the husband or father extended his property right to include his children as well.¹⁰

⁷ Cap 213 LHK.

⁸ § 35.

⁹ *Id.*

¹⁰ English common law clearly delineated a husband's rights regarding his wife:

He was able to exercise total control over her person and property, and chastise and correct her using physical force at will. These rights were predicated on the concept of marriage unifying the spouses. Therefore, if they were one in the eyes of the law, the woman's legal existence had to be suspended. Courts continued to support the right of the husband to beat his wife until 1891 when this right was abolished through the efforts of the British suffragette movement.

See LORNA SMITH, *DOMESTIC VIOLENCE: AN OVERVIEW OF THE LITERATURE* (1989). See also Diane Dwyer, *Response to the Victims of Domestic Violence: Analysis and Implications of the British Experience*, 41 *CRIME & DELINQUENCY* 527, 529 (1995) (Note: although the exemption was totally eliminated in England in 1994, it still exists in Hong Kong).

Physical beatings of both wives and children were justified as "discipline."¹¹ Such a theory also explains why child (domestic) abuse was always neglected by the law, as Bart Rwezaura and Athena Liu point out respectively: "[law] has no history of recognizing children's rights specially. There is indeed evidence pointing to a time when English common law considered a child to be rather like the property of his father."¹² The law has paid little attention to it [child abuse]."¹³

As Katherine O'Donovan said, "children's *subjectivity* is denied by legal discourse,"¹⁴ and that is why children's *rights* have always been denied. O'Donovan uses the British White Paper *Children Come First*¹⁵ as an illustration. In the report, no such concept as "children's rights" exists:

[The language of rights is] being replaced instead by terms such as: "it is nevertheless right that a child should look first to his own natural parents for his maintenance" (3.19); "personal responsibility towards children is too important a principle to be ignored" (3.30); ... The "rights of children" are only mentioned in the context of opposition to the wishes of the caring parent who declines to claim maintenance because she wishes to avoid contact with the absent parent (5.31). There is no discussion of the wishes of children or of how they might enforce their rights of maintenance against parents.¹⁶

The situation is the same in Hong Kong, a former colony of the British Empire. The law does not provide a consistent definition for "child", "juvenile" or "young person."¹⁷

Many criminal laws relating to children do not particularly or necessarily protect them.¹⁸ There are also conflicts of ideologies between criminal law and civil law. "For example, psychological abuse can be a reason for protection under the amended

¹¹Lorrene Clark, *Feminist Perspectives on Violence Against Women and Children: Psychological, Social Service, and Criminal Justice Concerns*, 3 CJWL/RIFD, 420, 424-25 (1989).

¹² Bart Rwezaura, *The Legal and Cultural Context of Children's Rights in Hong Kong*, in CONFERENCE PROCEEDINGS OF 1993 AND 1995 ON CHILDREN'S RIGHTS IN HONG KONG at 48 (Nancy Rhind ed., 1997).

¹³Athena Liu, *Family Law for the Hong Kong SAR* (1999), quoted in Alison Nadal & Anthony Woo, *Patterns of Violence*, SOUTH CHINA MORNING POST, Mar. 31, 1996.

¹⁴KATHERINE O'DONOVAN, FAMILY LAW MATTERS 90 (1993).

¹⁵Cmnd 1264.

¹⁶See *supra* note 12, at 96.

Protection of Women and Juveniles Ordinance, but the psychological abuse may not be an offence under [Section 27 of] the Offences Against the Person Ordinance.”¹⁹ It is in this context that some feminists refuse to trust that the legal system can provide legal protection for the victims of domestic abuse against children and women: “[w]e cannot refocus the criminal justice system and make violence against women and children the central target of control until the criminal justice system...”²⁰

In addition, recent research shows that although arrest, in the cases of domestic violence, may have short-term deterrent effects, such effects may decay over time.²¹ Thus, the importance of inter-agency cooperation has been stressed in the investigation and identification of child abuse and neglect.²² It is in this context that several measures, that do not rely exclusively on criminal legal strategies, have been implemented in some

¹⁷ See *infra* p.29 tbl.4.

¹⁸ See *infra* p.26 tbl. 1.

¹⁹ See Patricia Ip, *Social and Cultural Factors Leading to Child Abuse in Hong Kong* (visited Aug. 13, 1999) <http://www.urmc.rochester.edu/IPA/pubs/inches/inch8_3/ip.htm>. See also Wai Man Sin, *Law Against Child Abuse*, in *LAW FOR SOCIAL WORKERS IN HONG KONG* 281 (Man Chung Chiu & Moon Hing Law eds., 1999).

²⁰ See *supra* note 9, at 429.

²¹ LAWRENCE SHERMAN, *POLICING DOMESTIC VIOLENCE: EXPERIMENTS AND DILEMMAS* (1992). The debate on whether criminal sanction / police intervention is effective in stopping the re-occurrence of the domestic violence still goes on. Although Lawrence Sherman and Richard Berk find that arrest was far more effective than other actions in reducing recidivism in Colorado Springs, (Colorado) and Metro-Dade (Florida) (see Lawrence Sherman & Richard Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOCIOLOGICAL REV. 261,261-72 (1984)), researchers have different observations in three United States' communities— Omaha (Nebraska), Charlotte (North Carolina), and Milwaukee (Wisconsin). For details, please see Franklyn Dunford et al., *The Role of Arrest in Domestic Assault: The Omaha Police Experiment*, 28 CRIMINOLOGY, 183-206 (1990). See also David Hirschel et al., *The Failure of Arrest to Deter Spouse Abuse*, 29 J. RESEARCH CRIME AND DELINQUENCY, 7-33 (1992).

²² ATHENA LIU, *FAMILY LAW FOR THE HONG KONG SAR*, at 456 (1999).

common law jurisdictions such as:²³ Dade County (Florida, United States),²⁴ Duluth (Minnesota, United States),²⁵ Iowa (United States),²⁶ and Hamilton (New Zealand).

Treatment programs, adopted in the above-mentioned jurisdictions, have become the sanction of choice for domestic offenders without lengthy abuse histories and extreme violent behavior. These programs, which typically combine instruction and discussion formats, ranged in length from six to twenty-six weeks. Components normally include anger control, stress management, and communication skills.²⁷

The underlying principle for these programs is that the abuser is violent because he or she is frustrated or depressed, has poor impulse control or some other psychological problems that cannot be dealt with. If he or she could become more aware of how he or she has been affected by past experience, and become more insightful into his or her own problems, then he or she could learn to respond less violently to his or her current situation.²⁸ As Rebecca and Russell Dobash argue in their book *WOMEN AND SOCIAL CHANGE*, the North American approach of "therapeutic society" has a tendency to regard most social and economic problems as faulty traits in people's personalities that require therapy to be put right. For example, when discussing the societal context where the male violence happens, Jeff Hearn writes: "[f]or some men, there is the complex of

²³ Linda Mills, *Empowering Battered Women Transnationally: The Case for Postmodern Intervention*, 41 (3) *SOCIAL WORK*, 263 (1996).

²⁴ In Dade County (Florida), a Domestic Violence Court has been launched in November 1992. Although the court focuses exclusively on issues of child (and woman) abuse and provides only criminal strategies, it also makes the treatment available for the abusers.

²⁵ A combined criminal and therapeutic model has been adopted in Duluth (Minnesota) – while police are instructed to arrest abusers, representatives from the batterers' treatment programs would also talk with the victims and the batterers immediately after the arrest; batterers are often ordered by courts to undergo treatment as an alternative to serving time in prison.

²⁶ Section 708.2 of Iowa Code states that a "person convicted of, or receiving a deferred judgement for, domestic abuse assault shall report to the district department in order to participate in a batterer's treatment program for domestic abuse offenders."

²⁷ See Robert Davis & Barbara Smith, *Domestic Violence Reform: Empty Promises or Fulfilled Expectations*, 41 *CRIME & DELINQUENCY* 541-52 (1995).

circumstances and experiences whereby they both have a multiplicity of problems of their own and have been violent to others.”²⁹

There is much research showing that the treatment programs could be effective.³⁰ For instance, Maryanne Syers and Jeffery Edleson found that a combined method of court-mandated treatment and police home visits or arrests of the perpetrator is successful in ending repeated incidents of violence.³¹ Assuming mandatory treatment can work effectively in the White societies, could this method also work effectively in Hong Kong, a predominantly Chinese society?

Can mandatory counselling work in a Han-Chinese Confucian context?

Besides the Judeo-Christian ideology and liberal legalism, Han-Chinese convention is another significant force shaping the socio-legal discourse in Hong Kong; “[i]t is of course difficult to make a very general statement about the historically extensive Han-Chinese views, it will, however, be quite safe to say that the ideological roots of the Han-Chinese views are found mainly in Confucian thinking.”³² Indeed, the impact of Confucianism permeates the legal, political, cultural, familial, and personal discourses in Hong Kong, a predominantly Han-Chinese society.³³ Many scholars and activists even claim that traditional Confucianism leads to the continual existence of child

²⁸ GILL HAGUE & ELLEN MALOS, *DOMESTIC VIOLENCE – ACTION FOR CHANGE* at 175 (2d ed.1998).

²⁹ JEFF HEARN, *THE VIOLENCE OF MEN: HOW MEN TALK ABOUT AND HOW AGENCIES RESPOND TO MEN'S VIOLENCE TO WOMEN* at 74 (1998).

³⁰ Please note that the evaluation research studies are always being criticized for their accuracy. For details, please see RICHARD GELLES & CLAIRE CORNELL, *INTIMATE VIOLENCE IN FAMILIES* (1996).

³¹ Maryanne Syers & Jeffery Edleson, *The Combined Effects of Coordinated Criminal Justice Intervention in Woman Abuse*, 7 J. INTERPERSONAL VIOLENCE 490-502 (1992).

³² Man Chung Chiu, *Contextualizing the Same-Sex Erotic Relationship – Postcolonial Tongzhi Political Discourse on Marriage Law of Hong Kong and Mainland China* (1999) (This is a paper presented in the Conference of Legal Recognition of Same-Sex Marriage, organized by King's College).

³³ SIU-KAI LAU & HSIN-CHI KUAN, *THE ETHOS OF THE HONG KONG CHINESE* (1988).

domestic abuse cases in Hong Kong: "Confucian philosophy which stresses filial piety of submission to one's superiors still survives here together with its emphasis on obedience and respect to one's parents."³⁴

"The body with its hair and skin is received from the parents," according to the Classic of Filial Piety...Parental guidance for children is embodied in "Guan jiao." "Guan" means governing, monitoring interfering, and controlling, which comes before "jiao," which means training and teaching. Physical punishment was used much more frequently by...mothers...as the chief method discipline, and significantly more...parents received physical punishment during childhood.³⁵

"The use of force was a common punishment in Chinese societies."³⁶ From their points of view, Confucianism means that children have to absolutely obey their parents' orders. It is true that in ancient China when the Confucianism had its greatest influence, the parents would remain legally "innocent" even though they "accidentally" killed their children while "teaching" them³⁷. Parents also believe that under Confucian teaching, "the ugliness of a family should not be exposed to the public," and that very often stops the families and the victims of domestic violence from reporting abuse.³⁸ They assume that the emphasis on harmonic familial relationship would also explain why the victims of the domestic violence are so hesitant when they are asked to proceed with the legal procedure:

Victims often are torn by the decision to arrest or prosecute abusers for a variety of complicated, and often interrelated, reasons. These reasons may include victims' fear of reprisal; hope that their relationship can be salvaged...During a violent incident, even victims may like to see the police to step in and stop the abuse, but once the violence has stopped, they may wish no further intervention from the criminal justice system in the form of either arrest or prosecution.³⁹

³⁴ See *supra* note 10, at 50.

³⁵ See Patricia Ip, *Social and Cultural Factors Leading to Child Abuse in Hong Kong* (visited Aug. 13, 1999) <http://www.urmc.rochester.edu/IPA/pubs/inches/inch8_3/ip.htm>.

³⁶ Catherine So-Kum Tang, *quoted in* Sanna So, *Child Abuse Cases Soar to New High*, HONG KONG STANDARD, Oct. 22, 1996.

³⁷ TUNG TSU CHU, CHU, TUNG TSU READER (trans. 1998).

³⁸ Yvonne Lo (Chief Inspector of Child Protection Policy Unit), *quoted in* MING PAO, Jan. 7, 1997.

Lastly, the experts argue that Confucianism would oppose the usage of law in domestic context. However, would that mean that we have to desert the Confucian theorem, which *treasured a harmonic familial system* totally? Or should we construct a legal system that is totally different from the Confucian value system? We must remember that law is a social construction and cannot work in a vacuum: “[i]t is sufficient merely to mention that law cannot ignore the social context in which it finds itself.”⁴⁰ It merely means that a legal system must be designed to engage with local context. Put simply, in order to develop an indigenous socio-legal policy of child domestic abuse, we have to understand the position of “family” in a matrix that is constructed by morality and law within Confucianism. Within the Confucian school of thought, an individual is not defined by his or her “isolated” personality, but rather by his or her position within a web of interpersonal relationship. In this context, the basic principle of “good being” – “Jen” – is considered as the most important theory of Confucianism. When asked what “Jen” means, Confucius said: “love others.”⁴¹ Confucius also made it clear that “Jen” can only be substantiated through “filial piety” in the context of family: “[a]re no filial piety and *obedience to elders* fundamental to the enactment of jen!”⁴² “A young man should serve his parents at home and be respectful to elders outside his home. He should be earnest and truthful, loving all, but become intimate with jen.”⁴³

Hence, “filial piety” in Confucianism does not mean “obedience” or following the order of the seniors or parents *in all situations*. The underlying thesis of “filial piety” is

³⁹ See *supra* note 24.

⁴⁰ See *supra* note 10, at 49.

⁴¹ *The Analects of Confucius* (trans. Ch. 12) (visited Aug. 27, 1999) < <http://www.human.toyogayuen-u.ac.jp/~acmuller/contao/analects.htm> >.

“respect”, and the underlying principle is a harmonic personal relationship. As, Yeung, Shik (trans.) writes:

[Filial piety] does not only mean the supply of rich material life; the difference between animals and human is that the latter are able to show *respect* to their parents; we should not only take the literary meaning of “respect”...it is in fact a very tendering concept, it has to be demonstrated through the caring of the parents...*even if the parents had done something wrong, children have to provide advice in a very tender and respectful way...*⁴⁴ (emphasis added).

On the other hand, parents, or fathers also hold relative load of duties towards the children or son; for example: they have to be *kind* to the children, they need to support the children materially, and they need to teach them how to follow the moral rules.⁴⁵ If the parents violate the rules or do not carry out their duty properly, then they would have broken the moral rules and would be punished or criticized. For example, when a jobless father, Sun Shiu Kwan, killed his autistic son Sin Yiu Chung before committing suicide, his action was severely censured by the Chinese mass media in Hong Kong:

Sun Shiu Kwan being the designer of the incident and the murderer, had to be responsible for it absolutely, even though he chooses not to live and commit suicide, why did he have to die with his son? The [social security] system in Hong Kong is not perfect, children without parents would have a difficult life, *but that does not mean the parents have the right to take away the right to live from the children, it is totally a kind of patriarchal ideology which should be given up and ashamed of*⁴⁶. (emphasis original).

In short, the parent – child, or father – son, relationship is in fact a symmetrical (not equal) relationship, and hence the claim that Confucianism puts the children in a totally powerless position and that such thinking leads to child domestic abuse, is not justified.

As no one can break away from the personal relationship, person should not have the intention to escape the duties induced by the position within the personal relationship. Seriously speaking, the parties within the relationship web would share symmetrical duties – father should be kind to the sons and the sons have to obey his father...In other

⁴² See *id.* at Ch.1.

⁴³ See *id.*

⁴⁴ SHIK YEUNG, POLITICS OF HUMAN RELATIONSHIP AND FREEDOM (Shik Yeung, trans. 1991).

⁴⁵ Qing-xia Xia, 3 COLLECTION OF WOMEN'S STUDIES 36-40 (1999).

⁴⁶ HONG KONG DAILY NEWS, Aug. 27, 1999.

words, within the personal relationship web, if the blood relationship is in conflict with the moral duties, the latter prevails and, it is called "The great morality kills the blood relationship..."⁴⁷

In other words, a harmonic familial or personal relationship enjoys a very important status in the Confucian teaching, as it means the most significant interpersonal relationship: throughout Chinese history, there were a lot of important [political] reforms, but blood relationship [i.e. familial relationship]⁴⁸ remains as a vital discourse within traditional Chinese culture. Being an important element of the Chinese culture, blood relationship or familial concept can resist the impacts brought by all the [political] reforms, it would not be affected by social changes either.⁴⁹

Family is so important that Confucians develop a set of rules called *li* so as to guarantee its smooth operation. "*Li*", which means "any action proper and appropriate to the situations", contains the qualities of "righteousness, filial piety, fraternal respect, familial affection."⁵⁰ The foundations of *li* are the famous 3 Cardinal Guides: Emperor guides ministers, Father guides sons, and Husband guides wife wives; and five constant virtues (benevolence between father and son, righteousness between Emperor and ministers, differences between husband and wife, hierarchy between elder and the young, fidelity between friends). *Li* also has significant impacts on the legal system.

Firstly, the ethical law of Confucianism views familial ethics as the thematic legal cultural system; and secondly, within this system, familial ethics is treated as the source of *fa* (i.e. law), the highest value of *fa*, familial ethics has a higher position than

⁴⁷ FU-BIN CHEN, ETHICS AND CHINESE CIVILIZATION 181-82 (Fu-Bin Chen, trans. 1998).

⁴⁸ The relationship between familial relationship and blood relationship is a very complicated one – although it is commonly stated that blood relationship forms the base of the familial relationship, there are exceptions – the relationship between husband and wife / concubine and the relationship between parents-in-law and the son/daughter-in-law. But, we cannot deny that, though with exceptions, the blood relationship still forms the center of the familial relationship, which in turn is the basis of all personal relationships. For details, please see *infra* note 46.

⁴⁹ TIE-CHUAN HAO, RESEARCH OF CHINESE LEGAL SYSTEM 242 (Tie-Chuan Hao, trans. 1997).

⁵⁰ See *The Analects of Confucius supra* note 38.

fa...legislation and judicial administration would be changed because of the familial ethics...⁵¹

As Sin Wai Man and Chu Yiu Wai argued, *qing*, which generally refers to “the appeal to the other’s feeling, emotions, sense of humanity, or common decency,”⁵² is also part of the Confucian morality. *Qing*, *li* and law (in Chinese, we call it “*fa*”) exist as a coherent entity⁵³ - they all carry the function of moral education.⁵⁴ In Han-Chinese Confucian culture, there are certain limitations on the usage of *fa* or law: it would only be used: (1) when *qing* and *li* fail to cope with the situation; (2) as a tool to penalize those who act against morality (i.e. *qing* and *li*); and (3) when the personal relationship totally collapses.⁵⁵ The making and interpretation of *fa* must be grounded upon morality, i.e. *qing* and *li*.⁵⁶

We can say that the judges [in traditional China] were very loyal to the moral values. At the end of the day, the law they executed was controlled by the moral rules; in other words, no matter how strict or relaxed the law has been interpreted, the interpretation itself would in turn be restrained by the morality.⁵⁷

In view of the complicated matrix of Confucian *qing - li - fa* / law, we therefore argue that the proverb, “the ugliness of a family should not be exposed to the public,” merely means that people should put the harmonic familial relationship in the prime position and family members should not publicize the trivial familial disputes (especially in legal context), since that would only cast adverse effect on the relationship. However, we have

⁵¹ RONG-GEN YU, SYSTEM OF TAO AND SYSTEM OF LAW 200 (Rong-Gen Yu, trans. 1999).

⁵² R. P. PEERENBOOM, LAW AND MORALITY IN ANCIENT CHINA 268 (1993).

⁵³ Wai Man Sin & Yiu Wai Chu, *Whose Rule of Law? Rethinking (Post-)Colonial Legal Culture in Hong Kong*, 7(2) J. SOCIO AND LEGAL STUDIES 147 (1998). See also Wai Man Sin & Yiu Wai Chu, *Between Legal and Cultural Colonialism: The Politics of Legitimation of Cultural Production in Hong Kong*, 15 (3/4) TAMKANG REV. 49 (1996).

⁵⁴ See *supra* note 34, at 318.

⁵⁵ Wah Shan Chou, & Man Chung Chiu, *Re-structuring Feminism & Postcolonialism – Re-analyzing PRC Law of Marital Rape*, 3 JURISPRUDENCE FRONTIER 62 (1999).

⁵⁶ See Sin & Chu, *supra* note 50.

⁵⁷ ZHI-PING LIANG, LOOKING FOR THE HARMONY WITHIN THE RULE OF NATURE – THE RESEARCH OF CHINESE TRADITIONAL LEGAL CULTURE 288 (Zhi-Ping Liang, trans. 1997).

to stress that if the familial relationship has already be destroyed, Confucians would not obstruct the usage of *fa*, or law as the last resort in settling familial disputes, provided that *fa*, or law, also has the function of education. *Fa* does not employ the most significant role in Confucianism, but the Confucians have not underestimated the power and function of *fa*:

Although Confucianism advocates the usage of the rule of ethics and the rule of people in education of *li*, if education by legal sanction would not harm the spirit and existence of *li*, and the target (of *li* education) could also be achieved, *Confucianism would never marginalize fa / law and legal sanction...*⁵⁸

Engaging the Confucian perspective on harmonic familial relationship and *fa*, or law, with child domestic abuse, we would find that the abusers would not be simply marginalized as “criminals,” but people who need further education or assistance.⁵⁹ It is in this context that we would like to argue for a mandatory counseling order; that is, the abuser who breaks the law would be re-educated and/or counseled. That could, if the suitable approach is adopted, solve the root problems and the harmonic familial relationship could be re-established. This goal would not be materialize simply by imposing stricter punishment on child (domestic) abusers: “[t]he epidemic proportions of battering and the reluctance to imprison offenders have produced a growing consensus that diversion into some sort of treatment or reeducation process is the most humanitarian alternative.”⁶⁰ “Bringing police in and criminalizing all cases regardless of severity and circumstances is inappropriate”⁶¹

⁵⁸ See *supra* note 34, at 362.

⁵⁹ See *supra* note 27, at 173.

⁶⁰ Evan Stark, *Mandatory Arrest of Batterers – A Reply to Its Critics*, in *DO ARRESTS AND RESTRAINING ORDERS WORK* 140 (Eve S. Buzawa & Carl G. Buzawa, eds. 1996).

⁶¹ Charlotte Parsons, *Abuse of Children on the Increase*, *SOUTH CHINA MORNING POST*, Sept. 12, 1997, at 10 (quoting Priscilla Lui Tsang Sun-kai, Against Child Abuse director).

When analyzing the cases in Hong Kong, a predominantly Han-Chinese society, four underlying reasons of domestic violence and violence against children are found: (1) relationship among the family members is not close enough;⁶² (2) the experience of being abused in the abusers' childhood;⁶³ (3) the poor economic scenario and financial insecurity of the family;⁶⁴ and (4) the Mainland Chinese immigrants' inability to adapt themselves to in the Hong Kong environment.⁶⁵ Given these reasons, we could then question whether the imprisonment of the child domestic abusers or the imposition of monetary penalties would solve the problem or would worsen the situation. Could imprisonment or an expulsion order or injunction (separation of the abusers from the family) make the familial relationship, which is very much emphasized by Han-Chinese and is already poor enough, more harmonic? Would the imposition of penalty aggravate the financial difficulties of the problematic family? Or can the problems be solved by the mandatory counseling programs: would it be more useful if the abusers are asked to attend a carefully designed abuser treatment program, where the abusers are taught how to handle their emotional problems and improve their familial relationship? The answer is quite obvious.

On August 30, 1999, it was reported that a father, who had chained up his daughter, said: "I will never forgive her (the daughter)...even though I have to go to

⁶² APPLE DAILY, May 12, 1998 (quoting Priscilla Lui Tsang Sun-kai, Against Child Abuse director).

⁶³ Alison Nadal & Anthony Woo, *Patterns of Violence*, SOUTH CHINA MORNING POST, Mar. 31, 1996.

⁶⁴ APPLE DAILY, Aug. 21, 1999.

⁶⁵ Paulina Kwok, *Strengthen the Education to Avoid Child Abuse* (trans.), APPLE DAILY, Aug. 24, 1999. See also Po-Yan Wong, *A Lot of Fathers in HK Assault Their Daughters* (trans.), MING PAO, May 13, 1997. After the reunion of Mainland China and Hong Kong, there are an increasing number of immigrants coming to Hong Kong from Mainland China. Quite a number of them are the children of the adults who have been working or living in Hong Kong. Since they had been separated from each other for a long period of time, that would easily, as some experts claim, lead to the poor familial relationship, and finally to child (domestic) abuse. Moreover, some of the children would come with their mothers, and if the mothers fail to adjust themselves to the new environment, they would abuse the child or children as well.

prison!”⁶⁶ On the surface, it was a clear case of child abuse, but the details were: the father cared for the fourteen year old daughter so much that he even quit his job so that he could keep an eye on her, as he worried that the recalcitrant daughter might know some “wicked friends” in the secondary school. On August 26th, the daughter left home without the parents’ permission and did not regret so doing when she went home the next day. The parents were angry, as she did not even answer the phone when she was at home. The father therefore was so angry that he chained her up and beat her hard. The father said that “[I] knew it might be a case of child abuse, but for the sake of preventing [my] daughter from becoming an evil, [I] could only have to use such a poor method.” But what worried the reporters was that it seemed that the daughter did not understand the “good motive of the father.” Under this kind of situation, we would ask: would locking up the father be beneficial to all parties – the daughter, father and the rest of the family? Or should we provide some counseling schemes for the father and let him understand the adverse effects of his method – say, worsening the father –daughter relationship?

However, serious legal sanction should be used when serious abuse, which causes serious physical or psychological harm to the victims, happens. The abuser should be kept away from the victims, since the harmonic familial relationship does not exist anymore. In other words, we are *not* suggesting that legal punishment for the child domestic abusers is useless in a Han-Chinese context, but an indigenous strategy should be developed and devised from the Confucianism in the socio-cultural context of Han-Chinese. “The sanction attached to the legislation reflects the value attached...It shows

⁶⁶ APPLE DAILY Aug. 30, 1999.

the importance of children in our community and the determination to ensure adequate protection and respect of their rights.”⁶⁷

Mandatory counselling in areas of Greater China

Confucianism plays an influential role in the legal discourse of Mainland China as the liberal tradition of the private vs. public split – where family is considered as the private arena headed by the male breadwinner and cannot be freely interfered by the public law – is insignificant, but the harmonic web of personal relationship is emphasized. Because it is the center of the web of the harmonic relationship, family would also become the object under the regulation of law (*fa*). This can be easily traced in the children's law of PRC.

In Mainland China, although there is no specific law on child (domestic) abuse, article 52, paragraph of the Law on Protection of Minors provides that *vicious* abuse of *minor* family members would be subjected to the punishment imposed by the Criminal Law; article 260, of which writes that *vicious* abuse of family members amounts to a criminal offence. The offender may be subjected to two to seven years of imprisonment. It is the so-called "offence of (domestic) maltreatment." Article 182 of the Marriage Law also has the same provision. "Vicious" in this context means that the maltreatment: (1) has an immoral intention; or (2) is conducted in a grave manner; or (3) continues for a long period of time; or (4) is imposed on a minor, the elderly, or a pregnant woman. "Maltreatment" refers to physical abuse and psychological abuse.⁶⁸

⁶⁷ See *supra* note 58.

⁶⁸ GENERAL INTERPRETATION OF NEW CRIMINAL LAW, NEW PROBLEMS AND NEW OFFENCES 681 (Jiu-chen Liu ed. & trans. 1997).

Article 261 of the Criminal Law also provides the offence of “desertion”- if the person refuses to support the family members who are elder, minor, sick, and without independent ability to live alone, he or she will be subjected to five years (or fewer) imprisonment, provided that the situation is *flagrant*. The offence indeed echoes with the obligation of support imposed by the Marriage Law. “Flagrant” here means that (1) the victim is seriously hurt, has committed suicide or died as the consequence of offence; or (2) the victim can be a minor, elderly with mental illness or a pregnant woman; or (3) the offender has gone through mandatory re-education or counseling many times; or (4) the offender has abused the victims at the same time.⁶⁹

What treatment would be imposed on the offenders if the offence is not vicious or flagrant? The theme is mandatory counseling. Although there is no national law addressing the issue, different local governments have provided different mandatory re-education or counseling programs for the abusers. Take “Regulations on Protection of Interests and Rights of Women and Minors of Liaoning Province” as an example. Reg. 20 reads: “When dealing with...the child abuse cases, the Gong An (i.e., police) institution should take into account the opinions of people’s organizations, like National Women Association, trade union; and when dealing with the offenders, the Gong An should take into account the seriousness of the case, and they would impose treatment of critical education, administrative punishment *or* legal sanction on the offenders.”

⁶⁹ See *infra*, at 683. The differences between “domestic abuse” and “desertion” are: (1) The offenders of the former offence are the family members; but the victims of the latter must be the family members with the duty to support; (2) The abuse must be actively carried out; the desertion is an escape of duty. For details, please see TALK ON PRC CRIMINAL LAW 178 (Bu Hui Zhao, ed. & trans. 1997).

In Taiwan, the Law Controlling Domestic Violence was enacted on June 24, 1998. Article 50 states that the convicted abuser may be ordered to join the abuser treatment program, where psychological therapy is included.

The existence of the mandatory counseling and the usage of law as a means of education in both Mainland China and Taiwan show that the Confucian perspective in the legal discourse could still be traced in the current legal system – harmonic familial relationship is still very much emphasized and only if it is totally destroyed, serious legal punishment would be imposed; otherwise mandatory counseling and re-education would be adopted as a device to fix the familial web of personal relationship.

In fact, non-mandatory therapeutic service does exist in Hong Kong. According to the annual reports of Against Child Abuse, the therapeutic group has been provided for the parents who “were facing child management problems and who were at risk of abusing their children.”⁷⁰ The therapeutic service is considered as an effective means to prevent child domestic abuse from occurring⁷¹. Actually, Priscilla Lui of Against Child Abuse has already mentioned the holistic approach, which would include the rehabilitation programs for relevant parties in the case of child abuse, including the abusers, as one of the sentencing options.⁷² In other words, even if the mandatory counselling for child domestic abusers would be implemented, we are not starting from a zero ground. What is missing is an effective linkage between the legal system and the social service, and that is exactly what we are arguing for in this paper. The difficulty

⁷⁰ See AGAINST CHILD ABUSE, 1991-1992 ANNUAL REPORT 28 (1992).

⁷¹ See AGAINST CHILD ABUSE, 1985-1986 ANNUAL REPORT 12 (1986). See also AGAINST CHILD ABUSE, 1981-1982 ANNUAL REPORT (1982); AGAINST CHILD ABUSE, 1983-1984 ANNUAL REPORT (1984); AGAINST CHILD ABUSE, 1986-1987 ANNUAL REPORT (1987).

⁷² Priscilla Lui, Violence Against Women and Girls, Presented at the Seminar on Hong Kong and the Convention on the Elimination of All Forms of Discrimination against Women (Nov. 26, 1998) (organized

facing social workers was not lack of knowledge as to the dimensions of the problem [child sexual abuse], but lack of the resources, and of *the mandate* required to deal with it effectively.⁷³ (Emphasis added).

Actually, the linkage could be created without much trouble – (1) by expanding the scope of assault to include psychological abuse; and (2) by issuing an order of mandatory counselling, with or without a probation order, whenever the illegal assault happens in a domestic context and involves the minors. That does not even involve the enactment of a general child protection law. What is needed is the supervising mechanism, which would monitor the attendance of the abusers and the training of the social workers.

Problematizing Confucianism and mandatory counselling: A Foucaultian critique

However, as we have illustrated above, a Confucian familial structure is quite oppressive; in fact, the Confucian structure of family is extremely patriarchal – everyone in the family must obey the order of the male leader, i.e. the father.⁷⁴ Although the duties between father and son are symmetrical, the duties of son always come first – only if the father does not behave, should he be blamed. Also, the female always comes second in the Confucian civilization – the five constant virtues never mention the status of “mother” and “daughter;” the only woman who came onto the scene was “wife” – who had to play a submissive role in the marital relationship.⁷⁵

by the Centre for Comparative and Public Law of the Faculty of Law, and the Women's Studies Research Centre, The University of Hong Kong).

⁷³ See *supra* note 9, at 422.

⁷⁴ See *supra* note 34, at 6.

⁷⁵ See *supra* note 42.

According to feminist theory, this patriarchal structure is the source of all kinds of domestic violence, including child abuse. However, as "family" is the center of the Han-Chinese Confucian culture, overthrowing such a belief would mean the total desertion of Han-Chinese culture.⁷⁶ The Foucaultian perspective on "resistance" provides a possible solution to this dilemma. What Foucault advocates is this: though power is everywhere, it is not a seamless network. An appropriate point from which to proceed is with the statement "where there is power, there is resistance." What Foucault meant by this is that resistance is present everywhere power is exercised, and that the network of power relations is paralleled by a multiplicity of forms of resistance.⁷⁷

As Foucault suggested, spaces of local resistance exists in all discourses of domination, which, of course, includes the Confucian familial structure - a dominating component constituting the Han-Chinese culture. The next question is: "How could we explore the space of resistance?" It is where we should bring in feminism, which demythologizes a universal human subjectivity, and hence could sensitise the Confucianism towards the notion of gender justice. On one hand, contemporary feminism could echo the Confucian stress on relationship - some feminist scholars argue that emphasis should be placed on treatment of victims, survivors and perpetrators⁷⁸. When discussing domestic violence towards women, post-modern-feminist Jane Flax suggested that juristic interventions for women should use *relational notions of justice*, that is, systems that recognize social interaction and intimate relations as their cornerstone. "Many women define themselves, learn, and grow through *relationships* or intimate social *interactions* with others including: mothers, fathers, husbands, lovers, children,

⁷⁶ See *supra* note 29.

⁷⁷ BARRY SMART, MICHEL FOUCAULT, 132-33 (1991).

siblings, and friends.”⁷⁹ The same theory can also be applied in the case of domestic abuse against children. In other words, feminist laws could also focus on *keeping the harmonic familial relationship*.⁸⁰ “Perpetrators should be given suspended sentences if they are willing to go into therapy and otherwise sentenced if they do not, or if they do not continue with their treatment contract.”⁸¹

However, on the other hand, feminism could also destabilise the patriarchal nature of the traditional Confucian family structure, by designing an approach that would be adopted in mandatory counselling. Through this process, feminism could also strengthen the effectiveness of mandatory counselling. Although there is research supporting the effectiveness of the mandatory counselling, the voice of query exists: “[t]reated offenders found treatment helpful in understanding themselves and in taking responsibility for violence. There was little corresponding improvement, however, in getting along with their partners.”⁸²

The problem is: in the vast majority of jurisdictions, if court-mandated counselling is available, most of it would put emphasis on the traditional mental health approaches which do not have the feminist perspective in examining the cases of child (domestic) violence, i.e. they are not sensitised towards the issues of sexual injustice and the imbalance of power within a domestic context, and that would surely affect the effectiveness of the counselling. A feminist model of mandatory counselling would

⁷⁸ See *supra* note 9, at 420.

⁷⁹ See *supra* note 20, at 265. See also Jane Flax, *Beyond Equality; Gender, Justice and Difference*, in *BEYOND EQUALITY AND DIFFERENCE: CITIZENSHIP, FEMINIST POLITICS, AND FEMALE SUBJECTIVITY* (Jane Flax ed., 1992).

⁸⁰ Howard Davidson, *Child Abuse and Domestic Violence: Legal Connections and Controversies*, 29 (2) *FAM. L. Q.* 357,361 (1995).

⁸¹ See *supra* note 9, at 431.

⁸² See *supra* note 57, at 140. See also ADRIAN HARREL, *EVALUATION OF COURT-ORDERED TREATMENT FOR DOMESTIC VIOLENCE OFFENDERS (FINAL REPORT)* (1991).

assume that the fundamental cause of domestic violence is the patriarchal family structure, where the child is the most powerless party within the context. However,

Critics are extremely doubtful about the fact that challenging violence is not a central feature of the program—and in fact the abuse may still be going on while the abuser is attempting the sessions. Feminists are also critical of the use of a purely psychological explanation of abuse, which ignores the wider social and political factors.⁸³

In short, an indigenous feminist approach of mandatory counseling in the context of child domestic violence should be grounded in the following beliefs: (1) children are oppressed on the basis of one or more morally irrelevant characteristics (gender, religion, disability, and sexual orientation); (2) this oppression must be exposed and eliminated; (3) it would be best if a harmonic familial relationship would be reestablished or reconstructed; if this is not possible, then a serious sanction, like imprisonment, would be inevitable.

However, from a Foucaultian perspective, feminist discourse on child abuse is not a problem-free zone either – we could easily fall into the trap of essentialism and rigidity of identity; i.e. the subjectivity of children is assumed to be fixed – they are supposed to be both dangerous and vulnerable. The children are considered “as fragile creatures of God who need to be both safeguarded and reformed.”⁸⁴ Foucault makes the point explicitly in his famous HISTORY OF SEXUALITY – the sexuality of children, for example, is considered as problematic and needed to be monitored carefully by schools and doctors.⁸⁵ The reason, as Foucault says, when discussing the dynamics between law and child (sexual) abuse, is:

there are people for whom others' sexuality may become a permanent danger. In this category, of course, are children, who may find themselves at the mercy of an adult sexuality that is alien to them and may well be harmful to them. Hence there is a

⁸³ See *supra* note 25, at 175.

⁸⁴ PHILIPPE ARIES, CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE 133 (1960).

⁸⁵ MICHEL FOUCAULT, THE HISTORY OF SEXUALITY, VOLUME 1: AN INTRODUCTION 99 (1980).

legislation that appeals to this notion of a vulnerable population, a "high-risk population."⁸⁶

The modern (socio-legal) discourse on child, as Lee Tien puts, is constructed on this premise: children are vulnerable because of this sexual potential, and (legal) supervision and protection thus become necessary and desired.⁸⁷ "Today, the pedagogical influence is taken as a given; the premises of the earlier period (that children are vulnerable, possessed of a dangerous sexual potential) have been incorporated into legal discourse and legal practice."⁸⁸

The feminist perspective on child abuse which is based on this modern view of the sexuality of children would easily lead to the unconscious omission and neglect of children's voices and their particular subjectivity or feeling. The assumption may be made that children could not make themselves clear and therefore paternalistic (legal) language is still "considered an appropriate way of talking about children because of their vulnerability."⁸⁹ It is therefore useless even children could be constructed as "rights holders," because they could not effectively assert their rights.

Foucault, who argues that subjectivity is a discursive product,⁹⁰ however, reminds us that a child does have his or her own identity, which would be different from the

⁸⁶ MICHEL FOUCAULT, *FOUCAULT LIVE: COLLECTED INTERVIEWS, 1966 - 1984* 267 (Lotringer & Sylvere eds. 1989).

⁸⁷ Tien Lee, *Children's Sexuality and the New Information Technology: A Foucaultian Approach*, 3 *SOCIAL AND LEGAL STUDIES* 124 (1994).

⁸⁸ *Id.* at 125.

⁸⁹ See *supra* note 12, at 100.

⁹⁰ The Foucaultian perspective on subjectivity is closely engaged with his notion of resistance, as Moira Gatens writes: "One of the main benefits of Foucault's approach is that its emphasis on the body allows one to consider not simply how discourses and practices create ideologically appropriate subjects but also how these practices construct certain sorts of body with particular kinds of power and capacity; that is, how bodies are turned into individuals of various kinds. In short, it allows an analysis of the productiveness of power as well as its repressive functions." See Moira Gatens, *Power, Bodies and Difference*, in *DESTABILIZING THEORY: CONTEMPORARY FEMINIST DEBATES* 128 (Michele Barrett & Anne Phillips eds. 1992).

adults'. He or she could have known clearly his or her own specific sexuality, "with its own forms, its own periods of maturation, its own highpoints, its specific drives, and its own latency periods, too."⁹¹ Only when the adults could feel or understand their feelings, could they start to understand the children's needs – in short, it is not the children who could not speak, but the (powerful) adults refuse to listen to the children and to allow the powerless to speak for themselves. In the case of child abuse, only through "listening to a child, hearing him or her speak, hearing him or her explain what his or her relations actually were with someone, adult or not" with enough sympathy, one can "establish more or less what degree of violence if any was used or what degree of consent was given."⁹²

The post-modern feminists also pose the following questions: (1) Is there a monolithic subjectivity of abuser(s)? There is already research exploring the multiple patterns of sexual prohibition and incitement that are available to males and females.⁹³ (2) Is there any monolithic subjectivity of victim(s)? How would the gender or racial identity affect the feeling and appropriation of childhood in the legal context of child abuse? (3) Are the child-victims totally powerless? "How would they negotiate between and with mothers and fathers respectively?"⁹⁴ (4) How could the feminist perspective engage with the non-White discourse – like Hong Kong? As the mainstream feminist outlook is developed in a White dominating discourse, where there is a very different cultural perspective on families, gender identity, and child rearing, could this examination of child abuse and strategies be applied in Hong Kong? Since these are questions that do

⁹¹ See *supra* note 83, at 267.

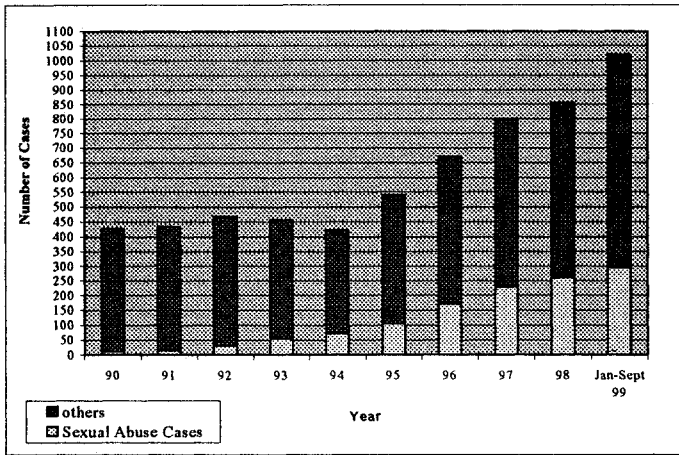
⁹² See *id.* at 272-73.

⁹³ Mark, *Gender, Desire and Child Sexual Abuse: Accounting for the Male Majority*, 10 THEORY, CULTURE AND SOCIETY 103-26 (1993).

not have any simple answers, we therefore hope that the arguments put forward in this article could give rise to a more intensive discussion on the related issues. As Brid Featherstone and Barbara Fawcett put it:

Exploring differences and diversity and the subsequent formulation of social policies is a difficult and complex undertaking. However such questions are being addressed in other areas of social policy. It is important that those involved in child abuse make the requisite links both on a theoretical and a practical level.⁹⁵

Table 1 Number of Child Abuse Cases in HK (1990-Sept/1999)⁹⁶



⁹⁴ Brid Featherstone & Barbara Fawcett, *Feminism and Child Abuse: Opening up Some Possibilities?*, CRITICAL SOCIAL POLICY 75 (1994).

⁹⁵ *Id.* at 77.

⁹⁶ MING PAO, Apr. 12, 1996; MING PAO, Mar. 28, 1996; MING PAO, June 15, 1996; MING PAO Sept. 24, 1996; MING PAO, Jan. 17, 1997; SOUTH CHINA MORNING POST, Sept. 12, 1997; MING PAO, Nov. 8 1997; MING PAO, Dec. 25, 1997; APPLE DAILY, May 12, 1998; SING TAO DAILY, Nov. 20, 1998; APPLE DAILY, Mar. 14, 1999; APPLE DAILY, Aug. 21, 1999.

Table 2 Criminal law

Ordinance		Offences	Sentencing
Offences	Section 2	Murder	Life imprisonment
Against	Section 7	Manslaughter	Life imprisonment and fine
Persons	Section 47C	Infanticide	Life imprisonment
Ordinance	Section 40	Common assault	1- year imprisonment
(Cap 212)	Section 39	Occasionally actual bodily harm	3 -year imprisonment
	Section 19	Wounding or inflicting grievous bodily harm	3 -year imprisonment
	Section 27	Ill-treats or neglects, abandons or exposes, causes or procures child / young person to be assaulted, ill-treated, neglected, abandoned or exposed them to unnecessary suffering, injury to his or her health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement)	10-year imprisonment (on indictment) or 3-year imprisonment (on summary conviction)
	Section 26	Exposing child under the age of 2 years whereby life is endangered	10-year imprisonment (on indictment) or 3-year imprisonment (on summary conviction)
Crimes	Section 118(1)	Rape	Life imprisonment
Ordinance	Section 118(H)	Gross indecency with male under 21	2- year imprisonment
(Cap 200)	Section 146(1)	Gross indecency with male or female under 16	10-year imprisonment
	Section 122(1)	Indecent assault	10-year imprisonment
	Section 135(1)	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16	10- year imprisonment
	Section 47(1)	Incest	Life imprisonment

Table 3 Civil Law

Ordinance		Offences	Children under protection
Domestic Violence Ordinance (Cap.189)	Section 3(1)(b)	Non-molestation order	Children living with married couple or cohabitants with long and permanent relationship
	Section 3(1)(c)	Ouster order (if physical abuse involved)	
	Section 5(1)	Arrest of breach of order	
Protection of Children and Juveniles Ordinance (Cap.213)	Section 34	On application of Director of Social Welfare, brought child / juvenile in need of care and protection to juvenile court to (a) Appoint Director of Social Welfare to be legal guardian; (b) Commit child/juvenile to care of any person whether relative or not who is willing to undertake the care of him or her; (c) Order his or her parent /guardian to enter into recognizance to exercise proper care and guardianship; (d) Place him or her under supervision of person appointed by court for period not exceeding 3 years.	<u>Section 34(2)</u> Child /juvenile being assaulted, ill-treated, neglected or sexually abused; whose health and development or welfare has been or is being, or is likely to be neglected or avoidably impaired, who is beyond control, to the extent that harm may be caused to him or to others
	Section 34E	Person authorized by Director of Social Welfare or police officer takes child / juvenile who appears to be in need of care or being subject of motion or application under Section 34a,b,c to a place of refuge or such place as considered appropriate; such child/juvenile may be detained until he or she can be brought before a juvenile court within 48 hours after detention;	

	<p>Section 35</p>	<p>If Director of Social Welfare reasonably believe child/juvenile has been brought to/about to be taken out of Hong Kong by force, threats, intimidation, false pretences, false representations or other fraudulent means or is in the custody or control or under the direction of another person, or is likely to be exposed to any danger of seduction or prostitution, or is being or likely to be exposed to any danger of seduction or prostitution , or is likely to be exposed to moral or physical danger, he or she may inquire into the case and (a) make any order for removal to and detention in a place of refuge, hospital or any other appropriate place and may require person into whose charge he or she shall place the person endangered to enter into a bond with one or more sureties to treat him or her well ; (b)may enter and visit place where person endangered is and interview the latter</p>	
<p>Tort (Case Law)</p>	<p>Assault, battery and false imprisonment</p>	<p>Damages, injunction</p>	<p>All children</p>

Table 4

Ordinance	'Child'	'Juvenile'	'Young Person'
Crimes Ordinance (Cap 200)	Nil	Nil	Nil
Offences Against Persons Ordinance (Cap 213)	Nil	Nil	Nil
Domestic Violence Ordinance (Cap.189)	< Age 18	Nil	Nil
Protection of Children and Juveniles Ordinance (Cap.213)	Nil	> Age 14 -- < Age 18	Nil
Employment Ordinance (Cap 57)	< Age 15	Nil	Nil
Reformatory Schools Ordinance (Cap 225)	< Age 14	Nil	< Age 18
Juvenile Offenders Ordinance (Cap 226)	Nil	Nil	= Age 16
Drug Addicts Treatment and Rehabilitation Ordinance (Cap 326)	Nil	Nil	< Age 18

