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Law and Opinion in Hong Kong in 1988

by

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Table of Contents

Chapter	Page
Abstract	i
Acknowledgments	iii
I. The Introduction of the Common Law to Hong Kong	1
A. A Brief History of Hong Kong	1
B. The Arrival of Common Law in Hong Kong	2
C. A Dual Legal System in Hong Kong	6
Introduction	6
Legal Pluralism in Hong Kong	6
Historical Background	8
A Fused Common Law System	12
D. Chinese Law and Custom in Hong Kong	15
The Authority in Applying Chinese Law and Custom	15
The Application of Chinese Law and Custom in Hong Kong	16
The Diminishing Role of Chinese Law and Custom in Hong Kong	20
E. Conclusion	22
II. The Reception of the Common Law in Hong Kong	25
A. Introduction	25
B. Traditional Attitudes towards the Judicial System	25
Introduction	25
Social Structure	25
Patriarchal System	27
Barriers to Obtaining Justice in Hong Kong	28
The Case of Corruption in Hong Kong	29
"Face" in Hong Kong	31
Conclusion	33
C. Evidence of Confidence in the Common Law Judicial System	34

D.	The Impact of Colonisation on the Chinese Population of Hong Kong	35
	Introduction	35
	The Industrialization of Hong Kong	35
	The Diminishing Family and Patriarchal Authority	36
	The Westernization of the Chinese Population	38
	Religious Factor	39
	Conclusion	40
III.	The Contrast between Chinese Culture and a Standard Model Common Law Judicial System	41
A.	Introduction	41
	Standard Model Common Law Judicial System	42
	Judicial System in Traditional China	42
B.	Judicial Machinery	43
	Introduction	43
	Separation of Powers	44
	Examination System and Judicial Appointments	46
	Censorate and Remonstrator Systems	48
	The Superior Court System	49
	The System of Courts	51
	The Automatic Review and Appeal Systems	53
	Judicial Accountability	55
	Conclusion	57
C.	Procedures	58
	Introduction	58
	Proceedings	59
	Checks and Balances	61
	Conclusion	63
D.	Adversary System and Independent Legal Profession	64

Introduction	64
Adversary System	64
Background of the Legal Profession in England	65
Legal Services in Traditional China	66
The Need for Legal Services	67
Legal Training	69
Conclusion	71
E. The Jury System	71
Introduction	71
Common Law Conception	71
Absence of a Jury System in Traditional China	73
Conclusion	73
F. The Right of Silence and Presumption of Innocence	74
Introduction	74
Scientific Methods	75
Conclusion	76
G. General Conclusion	77
IV. Research in Jurisprudence	79
A. Introduction	79
B. The Scope of this Research	80
Law and Social Change in Hong Kong	80
Law and Social Reality in Hong Kong	81
C. Evaluating the Application of Common Law in Hong Kong	83
Introduction	83
The Case for Survey Data in Jurisprudential Research	83
Historical, Anthropological and Sociological Jurisprudence in Hong Kong	85

Early Studies on the Reception of European Legal Systems in Asian Societies	86
D. The History and State of the Art of Statistical Techniques in Jurisprudence	87
Introduction	87
Research in Law and Society	88
Recent Surveys in Hong Kong	90
E. Conclusion	91
V. Design, Methodology and Procedure	93
A. Introduction	93
B. The Chinese Population of Hong Kong	93
C. Design	97
Introduction	97
Age and Sex Variables	97
Income Variable	98
Education Variable	100
Sub-cultural Differences	101
Chinese Traditionalism	101
Individual and Legal Rights	103
The Rule of Law	106
Judicial Independence	108
Adversary System and Independent Legal Profession	109
The Jury System	113
The Right of Silence and Presumption of Innocence	115
D. Methodology	117
Introduction	117
The Materials	117
The Pilot Phase	118

Questionnaire Revision	119
Survey Technique	121
The Sample Groups	122
Test of Generalizability of Data	123
E. Procedure	124
Introduction	124
The Chinese Population Sample	124
The Legal Profession Sample	130
The Hong Kong Visa Students and Canadian Students Samples	133
The Norwich Sample	133
VI. Law and Opinion in Hong Kong in 1988	136
A. Introduction	136
B. Data Analysis Procedure	137
Scaling and Adjustments	137
Applicable Statistical Techniques	137
C. The Prestige of Law in Hong Kong	139
Introduction	139
Comparative Studies	139
Demographic Analysis	142
Inter-Group Analysis	144
The Prestige of Law in Hong Kong	145
General Discussion	146
D. Individual and Legal Rights	150
Introduction	150
Cooperation with the Legal System	150
Confidence in the Administration of Justice	152
General Discussion	155

E.	The Rule of Law	157
	Introduction	157
	<i>Nullum Crimen Sine Lege</i>	157
	Exercise of Arbitrary Power by the Police	158
	Equal Opportunity before the Court	162
	General Discussion	166
F.	Judicial Independence	168
	Introduction	168
	Attitudes towards Judicial Independence	168
	Attitudes towards the Judiciary	170
	Judicial Accountability	173
	Separation of Judicial Power	174
	General Discussion	175
G.	Adversary System and Independent Legal Profession	178
	Introduction	178
	Integrity of the Prosecution	178
	Integrity of the Legal Profession	181
	Economic Barriers to Obtaining Legal Services	183
	Necessity of Lawyers in Court	185
	General Discussion	186
H.	The Jury System	188
I.	The Right of Silence and Presumption of Innocence	191
	Introduction	191
	Right to remain Silence and Presumption of Innocence	191
	The Onus of Proof for Grave Offences	192
	General Discussion	194
J.	Conclusion	195

VII. The Extent to which the Common Law has taken Root in Hong Kong	198
A. Introduction	198
B. Cross-sectional Analyses of Legal Concepts	199
Methodology	199
Across Population Groups	199
Income and Educational Levels	201
Westernization, Chinese Traditionalism, and Religion	203
Age and Sex	205
C. Conclusion	206
VIII. Legal Development in Hong Kong before and after 1997	208
A. Introduction	208
B. Common Law in Hong Kong Prior to 30th June, 1997	209
C. The Constitutional Position of Hong Kong after 30th June, 1997	210
The 1984 Sino-British Joint Declaration	210
The Implementation of the Basic Law of Hong Kong	211
The Jurisdiction of Courts in Hong Kong under the Chinese Constitution	212
Administrative Control of Judicial Process under the Draft Basic Law	214
The Question of Judicial Interpretation	216
Common Law under the Socialist Legal System	218
D. The Legal Perceptions of the Chinese Population	219
Introduction	219
Legal Pluralism in the Hong Kong Special Administrative Region	220
Legal Awareness of the Chinese Population of Hong Kong	221
E. The Framework for a Localized Common Law Judicial System	222
Introduction	222
Judicial Independence	222

Democracy in Hong Kong	225
The Freedom of the Press	227
An Independent Prosecuting Authority	228
An Independent Legal Aid Board	229
Human Components in the Common Law Judicial System	230
The Doctrine of <i>Stare Decisis</i> and Codification	232
A School of Jurisprudential Thought in Hong Kong	235
F. Basic Legal Rights in Hong Kong	236
G. Conclusion	240
IX. Conclusion and the Future of Common Law in Hong Kong	243
A. Conclusion	243
Introduction	243
Research Issues	243
Methodological Issues	250
Summary	251
B. The Future of Common Law in Hong Kong	253
Introduction	253
Forecasting Future Events	253
Summary	257

Abstract

Many jurisprudential researchers have developed generalized theories but these theories have seldom been subject to empirical verification. Theoretical jurists also make assumptions and conjectures as to why and how the law functions and how the law should function based on observations and historical analysis. Each of their theses is usually biased towards the economic, social, political and religious environment of a particular era, and it may appear appropriate for that era. In the absence of verification based on scientific methods, these theses are merely conjectures which cannot be proved, and are often difficult to measure objectively. The use of information technology and statistical techniques should alleviate some of these problems.

The reception of the Common Law in Hong Kong and Singapore and the successful adoption of the German Civil Code in Japan are evidence of supranational adaptability. The experiences of Hong Kong and Singapore can provide some useful information and data in analyzing the degree of success of the application of the Common Law in a different cultural setting. As schools of jurisprudence seldom explain the outcome of transplanting a dominant legal system to a society whose culture is foreign to it, it is submitted that information technology and statistical techniques can provide a better solution.

This thesis consists of nine chapters. The first three chapters provide the cultural, historical and jurisprudential background relevant to the investigation of the application of English Common Law in contemporary Hong Kong. It is believed that an understanding of the cultural and historical past is the key to contemporary issues. The writer does not hold himself out as an expert in traditional Chinese jurisprudence and legal history, nor of Chinese law and custom in Hong Kong. Much of the information presented in the first three chapters was derived from published works.

Chapters IV and V discuss the methodology in investigating the acceptance of the Common Law judicial system in Hong Kong, and Chapters VI and VII analyse the results

of the investigations. The confidence of the people in the Common Law judicial system is directly correlated to the degree of success of transplanting a Common Law culture into Hong Kong as a dominant legal culture. Using selected methodologies, empirical data is analysed to determine the attitudes and values of the people towards the Common Law judicial system in Hong Kong. For the Common Law judicial system to be successfully maintained in Hong Kong after it becomes a special administrative region of the People's Republic of China on 1st July, 1997, the confidence of the Chinese population in its fairness and reasonableness is vital.

Chapters VIII and IX are concerned with the future of the Common Law judicial system in Hong Kong after 30th June, 1997, and the recommendations for judicial development in the meantime. As this is a law thesis, the writer does not attempt to forecast the political developments of Hong Kong at that time, but relies on published works based on well established forecasting techniques.

The law is stated as at 31st December, 1988.

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I. The Introduction of the Common Law to Hong Kong

A. A Brief History of Hong Kong

The colonisation of Hong Kong by the British¹ marked the beginning of a fundamental transformation in the structure of the indigenous Chinese society. In 1841, the colony had a population of approximately 90,000². The economy was predominantly based on agriculture and fishing. In 1871, the population was 180,000, and by 1901, Hong Kong had a population of 300,000³. Internal strife and unrest in China brought waves of immigrants to Hong Kong, notably during the Taiping Rebellion (1851 - 1864), during the unrest that followed the first Republic in 1911, and as a result of the political strife during the late 1940s. Following a setback that occurred during the Japanese occupation of Hong Kong between 1941 - 1945, there has been continuous population growth in Hong Kong. Some of the refugees who entered Hong Kong were academics, professionals, and prosperous businessmen who contributed much to the development of contemporary Hong Kong. At present, Hong Kong has a population of over five million people and is a leading commercial and industrial center in the world.

The introduction of Common Law to Hong Kong provided the population with a stability leading to an economic and social revolution that set the colony on a course towards becoming a modern city state. The Common Law, the dominant legal culture, both contributed to and was affected by economic and social changes and cultural conditions. The transformation of the economy contributed much to development in the Common Law of Hong Kong. The most notable development was the corruption prevention legislation, introduced in 1971⁴, enacted to meet the modern economic

¹ Hong Kong was never really colonised so much as a movement of population took place towards Hong Kong.

² Adjusted to include all population in the areas subsequently incorporated into Hong Kong. See David Podmore, 'The Population of Hong Kong', in Keith Hopkins (ed.), Hong Kong: The Industrial Colony (Hong Kong, 1971), p.21-9.

³ The population includes the New Territories.

⁴ Peter Harris, Hong Kong: A Study in Bureaucratic Politics (Hong Kong, 1978), p.140-61; Henry Lethbridge, Hong Kong: Stability and Change (Hong Kong,

environment and promote international investors' confidence¹. The needs of business entrepreneurs also caused the government to propose changes to the trial procedures for commercial crimes by eliminating juries in complicated civil cases, amidst protest from the legal profession². The impact of the economic changes had been the urbanization of the New Territories and the Westernization of the Chinese population, both of which led to the end of recognizing Chinese law and custom³ as a source of law in the 1970s⁴.

B. The Arrival of Common Law in Hong Kong

Even prior to the British claim of Hong Kong in 1841, Common Law had been introduced in China. On 9th December, 1833, an Order in Council was passed under the authority of "An Act to regulate the Trade to China and India" to create "a Court of Justice, with Criminal and Admiralty Jurisdiction, for the offences committed by His Majesty's subjects within the dominions of the Emperor of China", and the jurisdiction of the court was extended to the "high seas within one hundred miles of the coast of China". As Hong Kong was then still part of China, this court had jurisdiction over the British population there only.

In 1731, the import of opium was declared illegal in China⁵, and in 1839, Lin Tse-hsü (1785 - 1850), an Imperial Commissioner, confiscated opium smuggled to

⁴(cont'd) 1978), p.215-37.

¹ But, the established business community was not content about the prohibition of kick-backs under the Prevention of Bribery Ordinance, 1971. See, Rance P.L. Lee, 'Incongruance of Legal Codes and Folk Norms', in Corruption and Its Control in Hong Kong (Hong Kong, 1981), p.92-101.

² This proposal has been shelved. For comments, see Henry Litton, 'Trial of Complex Commercial Crimes Bill', (1986) 16 Hong Kong Law Journal 189-93.

³ If a custom is enforced as law, then the word "custom" is redundant, and if it is not law, it cannot be enforced as law. See Antony Allott, Essays in African Law (London, 1960), p.156, and 165-6.

⁴ See *infra*, 'The Diminishing Role of Chinese law and Custom in Hong Kong', this chapter.

⁵ Jacques Gernet, A History of Chinese Civilization (trans. by J.R. Foster, Cambridge, 1985), p.534.

Canton, China, and this led to military confrontations between Great Britain and China¹. On 7th January, 1841, after losing a few battles, and without any lawful authority, Chi-shan, an Imperial Commissioner, signed the Convention of Chuan-pi with Captain Charles Elliot, the British Plenipotentiary in China². On 30th January, 1841, the Chinese government repudiated this agreement as being *ultra vires*, and Chi-shan was reprimanded accordingly³. On 30th April, 1841, the British Cabinet also repudiated this agreement⁴ as Elliot acted without authority and because the Emperor of China had not signed the agreement⁵.

On 24th January, 1841, Elliott declared the cession of the island and harbour of Hong Kong to Great Britain, and took formal possession on 26th of the same month⁶. On 2nd February, 1841, Elliott issued the first proclamation on Hong Kong, in his capacity as "Her Majesty's Commissioner, Procurator, and Plenipotentiary in China", which provided *inter alia* "pending Her Majesty's further pleasure, the natives of the island of Hongkong, and all natives of China thereto resorting, shall be governed according to the laws and customs of China, every description of torture excepted". This proclamation also declared that all other persons were to be governed under the British law. Another proclamation to the Chinese population of Hong Kong declaring their rights to be governed according to Chinese law and custom by the "elders of villages, subject to the control of a British magistrate" was issued as a second proclamation although dated one day earlier⁷.

The British Foreign Office regarded the proclamations as premature as no territory could be ceded except by a formal treaty ratified by the sovereign by whom

¹ Gernet, *op.cit.*, p.537.

² Ting-i Kuo, A History of Modern China (*chin-tai chung-kuo shih-kang*) (Hong Kong, 1980), p.66-7.

³ *Ibid.*

⁴ *Ibid.*, p.69.

⁵ Charles Collins, Public Administration in Hong Kong (London, 1952), p.20-1.

⁶ James Norton-Kyshe, Vol.I, The History of the Laws and Courts of Hong Kong (Hong Kong, 1898), p.4.

⁷ Norton-Kyshe, Vol.I, *op.cit.*, p.5-6.

the cession was made¹. As the Emperor of China had never made the cession, Elliot could only claim Hong Kong as a conquered colony.

On 29th August, 1842, the Treaty of Nanking was signed, and was ratified in 1843. Hong Kong was then ceded to Great Britain². The Charter of Hong Kong was declared on 5th April, 1843, under Letters Patent of Queen Victoria pursuant to the Treaty of Nanking.

On 21st August, 1844, Ordinance No. 15 of that year was enacted declaring that "the law of England shall be in full force in the said Colony of Hongkong except where the same shall be inapplicable to the local circumstances of the said Colony or of its inhabitants"³. This was the first statutory mention of the application of Common Law in Hong Kong. Prior to the Treaty of Nanking, Hong Kong had never been legally ceded to Great Britain. In 1841, Elliot could only claim Hong Kong as a conquered colony under the Common Law rule regarding conquered colonies⁴. Later, Hong Kong became a ceded colony under the Treaty of Nanking. Therefore, the law in force was governed by the Common Law rule regarding conquered or ceded colonies. Accordingly, Chinese law and custom should remain in force unless and until it was altered by or under the authority of the Crown, by legislation, or was found to be repugnant to the fundamental principles of Common Law⁵. As Hong Kong was not a settled colony, Common Law could not have arrived by operation of law⁶. The only way Common Law could arrive in Hong Kong was by the exercise of Royal prerogative or by legislation⁷.

Although it was well established in English constitutional law that the Crown had

¹ Collins, *op.cit.*, p.20 and 24.

² Kuo, *op.cit.*, p.72.

³ This is also known as the Supreme Court Ordinance.

⁴ See Kenneth Roberts-Wray, Commonwealth and Colonial Law (New York, 1966), p.106.

⁵ Roberts-Wray, *op.cit.*, p.541-2.

⁶ Roberts-Wray, *op.cit.*, p.539-41.

⁷ Roberts-Wray, *op.cit.*, p.544-5. For related cases and statutes, see Peter Wesley-Smith, Vol.I, Constitutional & Administrative Law in Hong Kong (Hong Kong, 1987), p.51-81.

plenary prerogative legislative powers with respect to a conquered or ceded colony¹, the authority of Elliot to exercise Royal prerogative by virtue of his two declarations in Hong Kong, a British colony rather than part of China, was questionable as being *ultra vires*². Even a Hong Kong government committee on Chinese law and custom was uncertain about the exact authority of Elliot to exercise prerogative legislative powers³. According to *Ho Tsz Tsun v Ho Au Shi and Others*⁴ and *In the Estate of Chak Chiu Hang*⁵, Elliot's proclamations recognised a dual prospective system of law in Hong Kong: Chinese law and custom for the Chinese and Common Law for the British. This was based on the assumption that Elliot had the authority to exercise prerogative legislative power. Otherwise, Elliot could only confirm that Chinese law and custom was applicable to the Chinese population of Hong Kong until Her Majesty's pleasure was known⁶. If, however, Elliot did not have any prerogative legislative powers, then martial law would have to operate as a form of military rule over enemy territory occupied by British forces. Such operation of law is regulated by the international law of war⁷.

Subsequently, the territory of Hong Kong was extended under the Convention of Peking in October, 1860, under which the lease of part of Kowloon peninsula on 26th March of the same year was cancelled, and that area was ceded to Great Britain⁸. An Order in Council was passed on 4th February, 1861, to extend the Common Law

¹ Harry Street and Rodney Brazier (ed.), deSmith's Constitutional and Administrative Law (5th edn., London, 1985), p.660.

² D.M. Emrys Evans, 'Common Law in a Chinese Setting - The Kernel or the Nut?', (1971) 1 Hong Kong Law Journal 13n.

³ At best, the committee used the wording, "even if Captain Elliot had been given authority to qualify such right in any way". See George Strickland, Committee Chairman, Chinese Law and Custom in Hong Kong (Hong Kong, 1950), p.96.

⁴ [1915] Hong Kong Law Reports 76 and 79.

⁵ [1925] Hong Kong Law Reports 5.

⁶ Also see Strickland, *op.cit.*, p.4 and 96-7 for a discussion of the authority and effect of Elliot's two proclamations.

⁷ deSmith, *op.cit.*, p.524. For another viewpoint, see Henry Jenkyns's British Rule and Jurisdiction beyond the Seas as quoted by Havilland de Sausmarez in *Ho Tsz Tsun v Ho Au Shi and Others*, *op.cit.*

⁸ G.B. Endacott, A History of Hong Kong (London, 1973), p.110.

jurisdiction to this newly annexed territory¹. It should be noted that, during the transitional period, the colonial authority also used Chinese law and custom as far as possible on this newly annexed territory².

After the exchange of the ratifications of the Convention of 1898 on 6th August of that year, under which the area now known as the New Territories was leased to Great Britain for ninety-nine years, an Order in Council³ was enacted on 20th October of the same year. This Order in Council provides *inter alia* that the New Territories were to be "part and parcel of Her Majesty's Colony of Hong Kong in the like manner and for all intents and purposes as if they had originally formed part of the said Colony", and all laws and ordinances in force in Hong Kong were also after a proclaimed date to apply to the New Territories. Accordingly, the Common Law jurisdiction was extended to this newly annexed area although various ordinances provided certain exceptions that were in line with the British policy not to interfere with local custom⁴.

C. A Dual Legal System in Hong Kong

Introduction

At the time of colonisation, there was an interest in keeping both Common Law and Chinese law and custom under a dual legal system. Subsequently, there was a change of heart, and Common Law and Chinese law and custom have been administered by a fused Common Law system.

Legal Pluralism in Hong Kong

In every society, customary law is a natural product of its civilization. A legal system which is based on the needs of a society under its cultural conditions is more

¹ Also known as the Kowloon Order in Council.

² Endacott, *op.cit.*, p.110.

³ Also known as the New Territories Order in Council.

⁴ See *infra*, next section.

acceptable to the population than a legal system dictated by the ideals of a few individuals. If the law is not in accord with the culture, law can hardly survive, nor can law meet the needs of the people. The early application of Common Law in Hong Kong was not possible without some variation to account for local conditions. The reception of Common Law in Hong Kong and Singapore did not completely contradict the idea that the nature of a legal system is a reflection of the culture of the population. The common consciousness of Chinese culture was preserved to a certain extent through the retention of some Chinese customary law by the authorities in these colonies¹.

In traditional Chinese jurisprudence, foreign nationals who committed crimes against each other would be tried according to their own law by the Chinese courts². Likewise, the general reception of Roman Law in Europe did not include Roman family law. Perhaps, the national character of law is stronger in some areas than in others. As M.B. Hooker wrote (with reference to the introduction of the Common Law in South East Asia):

"Even though English law was introduced as common law, there always remained substantial exceptions, as to both content and procedure, in favour of the indigenous populations. This was specially true in the areas of most direct conflict: family law, the law of property, and, to a lesser extent, criminal law"³.

Therefore, Chinese family law, succession law, and even concubinage were retained⁴ under the Common Law system of Hong Kong until the early 1970s, and the courts often take judicial notice of local customs and ways of life⁵. It was observed in

¹ See *infra*.

² Article 48, General Principles (*ming-li*), Tang Code (*tang-lu shu-yi*), 653 A.D.

³ Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws (Oxford, 1975), p.182.

⁴ It should be noted that succession and concubinage were mostly the subject matters for the upper class. An ordinary middle class Chinese could not afford to have concubinage.

⁵ See Kemal Bokhary, 'Judicial Notice and Other Facts of Life in Hong Hong', (1975) 5 Hong Kong Law Journal 178.

the late 19th century that English criminal law was not suitable for the Chinese population of Hong Kong¹. This might be attributed partly to the technical nature of Common Law whilst traditional Chinese law has always been less technical and more closely linked to morality².

Historical Background

In his proclamations, Elliot had promised that the Chinese population of Hong Kong would be governed according to the Chinese law and custom³. His successor, Sir Henry Pottinger, had also agreed to this in principle during the negotiations that followed the Treaty of Nanking⁴. Originally, Pottinger's intention was that the Chinese be "governed by their own laws, and Mandarins were to be stationed at Kowloong [*sic*] for that purpose"⁵. The British Colonial Office, the British Foreign Office, and the Chinese government disagreed over who should administer the Chinese law and custom in Hong Kong and how⁶. The Chinese government took the view that Chinese should be tried by Chinese and British by British. The Foreign Office concurred to this view because British people in China were exempt from Chinese courts but the Colonial Office was concerned with the possibility that the Chinese government might claim that Hong Kong

¹ Norton-Kyshe, Vol.I, *op.cit.*, p.264-88.

² a) However, Norton-Kyshe appears to have overlooked the social and cultural backgrounds of the Chinese population, as evidenced by his remarks: "Like other heathen, the Chinese have very loose notions of the obligations of an oath, and in the ordinary affairs of life they tell an untruth without hesitation, nor are they ashamed if detected..... Their system of morality which, in China, is religion, does not enforce upon them the importance of truth, and an oath sits very lightly upon the conscience of those who have no conception of the deity, and care very little for the future". See *op.cit.*, p.275.

b) Also see D.M. Emrys Evans, 'Book Review on the History of the Laws and Courts of Hong Kong', (1972) 2 Hong Kong Law Journal 379; For Norton-Kyshe's life, see Peter Wesley-Smith, 'James William Norton-Kyshe', *op.cit.*, p.278.

³ *Supra*, p.3.

⁴ Endacott, *op.cit.*, p.40.

⁵ *Ibid.*

⁶ *Ibid.*

had been transferred in occupancy and not in sovereignty¹.

It should be noted that both the British and Chinese governments attempted to pacify the Chinese population over the cession of Hong Kong. The peasant militias had been most effective in combating the British troops, but the Chinese government feared that their success would turn into another revolution². The resistance movement carried on again in 1898 when the British tried to occupy the New Territories³.

The Chinese representatives negotiating the Treaty of Nanking demanded that Chinese in Hong Kong should be governed by Chinese law and tried by Chinese officials⁴. After much correspondence between the British Colonial Office, the British Foreign Office, and the Chinese government, it was decided that Chinese should be subject to Chinese law and custom, but it would be up to the Legislative Council of Hong Kong to make the arrangements⁵. This was in line with the British policy that whenever Common Law was applied in a colony, it should be applied subject to local circumstances; and, in consequence, Common Law which was related exclusively to conditions in England should have no operation in a colony⁶. At that time, Evangelicals were influential in the British Parliament and in the Colonial Office itself, and they were instrumental in implementing a humanitarian policy to safeguard the interests of the people in the colonies⁷.

In 1844, Ordinance No. 10 of that year was enacted by the Legislative Council of Hong Kong. Section 25 of that Ordinance provided that Chinese offenders were to be punished according to Chinese usage before the Justices of the Peace⁸. In the same

¹ *Ibid.*

² Gernet, *op.cit.*, p.538.

³ Peter Wesley-Smith, Unequal Treaty 1898-1997 (Hong Kong, 1983) p.57-67.

⁴ G.B. Endacott, Government and People in Hong Kong 1841-1962 (Hong Kong, 1964), p.28.

⁵ G.B. Endacott, A History of Hong Kong (London, 1973), p.41.

⁶ See Antony Allott, The Limits of Law (London, 1980), p.109-16; Roberts-Wray, *op.cit.*, p.544.

⁷ G.B. Endacott, Government and People of Hong Kong 1841-1962 (Hong Kong, 1964), p.28-9.

⁸ This ordinance was repealed by Ordinance No. 16 of 1875. See

year, Ordinance No. 13 of 1844 was enacted which provided for the appointment of native Chinese peace officers (*paouchong* and *paoukea*)¹. This was the first attempt at legislation to create a separate judicial administration for the benefit of the Chinese², but these officers were unpaid and only had the role of an auxiliary peace officer³. It was reported that this ordinance was never put into effect⁴.

Later that year, Ordinance No. 15 of 1844 which imposed Common Law upon the Chinese population of Hong Kong, except where it should not be applicable to the local circumstances of Hong Kong or its inhabitants, was enacted. This ordinance further provided that, in criminal proceedings within the jurisdiction of the Supreme Court, the Court could exercise its discretion to impose punishment according to Chinese law. The provision to punish Chinese according to Chinese law met with skepticism from the Colonial Office for fear of a hazardous discretion⁵. Ironically, punishments according to Chinese law were more severe and English penalties appeared to be more lenient⁶. In a face saving attempt, this ordinance was upheld by the Colonial Office, but the then Governor, Sir John Davis stated that such provision was unlikely to be exercised by the court, and, hence, better expunged⁷. This ordinance was repealed by Ordinance No. 6 of 1845. Section 4 of the new ordinance provided similar terms and conditions for the application of Common Law to Hong Kong, but the provision as to criminal proceedings on the Chinese was omitted.

There was one final attempt to patch up a separate judicial administration for the Chinese population of Hong Kong. British lawyers had exploited the situation by charging

³(cont'd) Norton-Kyshe, Vol.I, *op.cit.*, p.20.

¹ Also known as *pao-chang* and *pao-chia* in standard romanization. For a discussion of this system, see Tung-tsu Chü, Local Government in China under the Ching (Cambridge, Mass., 1962), p. 3, 40, 150-4, and 183.

² Norton-Kyshe, Vol.I, *op.cit.*, p.338.

³ Endacott, *op.cit.*, p.37.

⁴ *Ibid.*

⁵ Endacott, *op.cit.*, p.36.

⁶ *Ibid.*

⁷ Endacott, *op.cit.*, p.37.

expensive fees to the Chinese who were ignorant of the law and the English language¹. Some Chinese abused the legal system by filing law-suits to extort money from other Chinese² which would be tantamount to committing common barratry³. The Chinese population petitioned to the Governor to be allowed to settle civil cases to which only Chinese were parties⁴. In 1853, Ordinance No. 3 of that year was enacted "to extend the duties of the Chinese *Tepos* appointed under Ordinance No. 13 of 1844..... to provide for the amicable settlement of civil suits among the Chinese population of Hongkong"⁵, if the parties were willing to submit to the *Tepos*' decisions. But the British population could not tolerate any attempt to provide a separate judicial administration to the Chinese⁶. Eventually, in 1858, Ordinance No. 8 of that year reduced the authority of the *Tepos* to that of the constables, and, hence, came an end to any attempt for a separate judicial administration for the Chinese population of Hong Kong with the exception of the later annexed New Territories⁷.

Since it had been a British policy not to interfere with local custom insofar as it was practicable, such policy was repeated in 1860 when part of Kowloon peninsula was ceded by the Convention of Peking⁸. After the Convention of 1898, the colonial administration in Hong Kong soon discovered that the Chinese in the New Territories needed a more personal form of government, and felt that it was impossible to govern them in the same manner as those on Hong Kong island due to their different economic, social and geographical development⁹. An "Ordinance for the Better Regulation of the

¹ G.B. Endacott, A History of Hong Kong (London, 1973), p.84; Norton-Kyshe, Vol.I, *op.cit.*, p.219.

² *Ibid.*

³ An old Common Law offence committed by one who frequently incited or maintained quarrels at law.

⁴ *Ibid.*

⁵ Norton-Kyshe, Vol.I, *op.cit.*, p.338.

⁶ Norton-Kyshe, Vol.I, *op.cit.*, p.338-9.

⁷ D.M. Emrys Evans, 'Common Law in a Chinese Setting - The Kernel or the Nut?', (1971) 1 *Hong Kong Law Journal* 20.

⁸ G.B. Endacott, Government and People in Hong Kong 1841-1962. (Hong Kong, 1964), p.129.

⁹ *Ibid.*

New Territories", Ordinance No. 10 of 1899, was enacted which exempted the New Territories from the operation of certain ordinances of Hong Kong so that certain Chinese customs could be maintained¹. This would allow the gradual application of Common Law in the New Territories. Ordinance No. 11 of 1899² provided geographical divisions of the New Territories, and also provided local tribunals composed of elders to deal with petty cases³. In effect, some sort of separate judicial administration was established. Although the original intention was to be a temporary measure, it did not turn out to be the case⁴. This ordinance was, however, repealed in 1910⁵. The reason provided by the Hong Kong government was "the easy access to the stronger authority of the British magistrates"⁶.

A Fused Common Law System

There were various factors leading to the departure from the original intention to keep a dual legal system for the benefit of the Chinese population of Hong Kong. The attitudes of the British population seemed to be a factor that influenced the colonial administration in Hong Kong towards such a change of heart. The British population was mistrustful of the Chinese, and their own opinions were regarded by them as the only public opinions⁷. The main problems of the British population seemed to be a misunderstanding of the Chinese. According to a sociological analysis of the British population in Hong Kong during the nineteenth century, it was reported that few spoke any Chinese; "few were scholars with a scholarly interest in Chinese society, culture and civilization; and nearly all carried with them to Hong Kong class notions derived from their own very class-conscious society"⁸. It was also observed that the British population

¹ Endacott, *op.cit.*, p.132-3.

² Local Communities Ordinance, 1899.

³ Endacott, *op.cit.*, p.130-1.

⁴ Endacott, *op.cit.*, p.133-4.

⁵ James Hayes, The Hong Kong Region 1850-1911 (Hamden, 1977), p.194-5.

⁶ Hayes, *op.cit.*, p.240.

⁷ Norton-Kyshe, Vol.I, *op.cit.*, p.19, 338-9.

⁸ Lethbridge, *op.cit.*, p.167.

tended to be ethnocentric. The opinion of James Norton-Kyshe, who was the Registrar of the Supreme Court of Hong Kong from 1895 to 1898, illustrates this attitude:

"it was admitted to have been a capital error in English policy to have guaranteed the maintenance of the laws, franchises, and customs, besides the authorized official use of the languages, of conquered countries"¹.

Firstly, in 1858, the British government issued a statement of non-discriminatory policy which prohibited the creation of "a dominant race or class" in the colonies². The doctrine of equality before the law provided by this statement involved the abandonment of the intention stated by Elliot in his two proclamations for a dual legal system³. In 1866, the Governor, Sir Graves MacDonnell, was instructed not to agree to any ordinance which would subject the Chinese population to any disabilities or restrictions which Europeans would not be subjected to⁴, but, Chinese law and custom would remain as a source of law in Hong Kong⁵.

Secondly, as discussed earlier⁶, the Evangelicals were instrumental in implementing a humanitarian policy to safeguard the interests of the people in the colonies. Their influence was rising from the beginning of the nineteenth century, and reached its peak in about 1835⁷. However, by 1870, it was evident that Evangelicalism had lost much of its influence over British policy⁸.

Thirdly, the attempt to have a separate judicial administration for the Chinese population broke down because of the difficulty in administering fair trials. The Chinese *Tepos* had little authority to administer justice, but they had to face the prevalence of crime⁹. Furthermore, they were poorly paid by a levy on the Chinese population which

¹ Norton-Kyshe, Vol.I, *op.cit.*, p.19.

² G.B. Endacott, A History of Hong Kong (London, 1973), p.124-5.

³ *Supra*, p.3.

⁴ Endacott, *op.cit.*, p.125.

⁵ *Ibid.*

⁶ *Supra*, p.9.

⁷ A.V.Dicey, Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century (London, 1905), p.398.

⁸ *Ibid.*

⁹ Endacott, *op.cit.*, p.124.

did not contribute to their popularity¹.

Fourthly, Chinese law and custom might not have even been suitable to most of the Chinese population of Hong Kong because they did not conform to the normal pattern of Chinese culture². There was a lack of traditional family life because most Chinese men in Hong Kong were alone. Hence, the patriarchal system³, the foundation of the administration of Chinese law and custom, broke down. Perhaps more serious was the presence of a large lawless element of people who did not submit to any form of authority even in China⁴.

Fifthly, the increasing number of Chinese from various sub-cultural backgrounds made it more difficult to create a governing body. The Taiping Rebellion (1851 - 1864) led to an influx of refugees from various parts of China⁵. The disputes among Chinese sub-cultures posed a graver problem for a separate judicial administration for the Chinese.

Sixthly, the British had established a firm presence in Hong Kong by then. Resistance against British rule by peasant militias had calmed down because it had become a reality that Hong Kong would remain a British colony. The colonial government appeared to be a more favourable option than the Manchu government. Also, as China was occupied with civil unrests, Hong Kong became a haven for the refugees. Therefore, it would be unnecessary to placate the Chinese in Hong Kong and surrounding areas.

Lastly, having Chinese law with Chinese magistrates would contradict British interests because of the rebellion by the peasant militias as discussed. There appeared to be a sudden realization by the British administration that the Chinese population were never willing to accept British occupation. Therefore, allowing the Chinese population to

¹ *Ibid.*

² *Ibid.*

³ *Infra*, 'Patriarchal System', Chapter II.

⁴ Endacott, *op.cit.*, p.124.

⁵ Collins, *op.cit.*, p.85-6.

have a leader of their own would pose some danger to the British rule.

D. Chinese Law and Custom in Hong Kong

The Authority in Applying Chinese Law and Custom

Since colonisation, Chinese law and custom have remained applicable to the Chinese population in Hong Kong by operation of law¹. The statutory authority for the application of Chinese law and custom was provided by Ordinance No. 15 of 1844, which was over the years replaced by a series of ordinances², and eventually replaced by Ordinance No. 2 of 1966 as amended by Ordinance No. 58 of 1971³. The qualification for the application of Chinese law and custom by these ordinances is "local circumstances". Section 3 of the 1966 ordinance stated that "the common law and the rules of equity shall be in force in Hong Kong, so far as they may be applicable to the circumstances of Hong Kong or its inhabitants and subject to such modifications thereto as such circumstances may require, save to the extent that such common law or any such rule of equity may from time to time be modified or excluded by" any Order in Council, Act of Parliament, or ordinance.

Chinese law and custom applies in situations where English law, the dominant legal culture, is inapplicable to the local circumstances of Hong Kong or its inhabitants. In *Wong Kam Ying and Ho Po Chun v Man Chi Tai*⁴, it was held that where English law is inapplicable to the local circumstances, Chinese law is preserved.

In *In the Estate of Chak Chiu Hang*⁵, it was held that the "local circumstances" would be those that existed on 5th April, 1843. But, in *In re Tse Lai-chiu*⁶, it was

¹ *Supra*, p.4.

² Ordinance No.6 of 1845, Ordinance No. 2 of 1846, and Ordinance No.12 of 1878.

³ Also known as the Application of English Law Ordinance, 1966, as amended by Application of English Law (Amendment) Ordinance, 1971.

⁴ [1967] Hong Kong Law Reports 201.

⁵ *op.cit.*, p.11.

⁶ [1969] Hong Kong Law Reports 187-8.

held that the "local circumstances" would be those of the present time, and the ruling in the former case was not followed.

In *In the Estate of Chak Chiu Hang*¹, it was also held that Chinese law and custom would continue to operate unless it was "repealed or modified by legislation", or "set aside by reason of the operation of part of the Law of England as it existed on April 5, 1843, which was not inapplicable to the local circumstances" of Hong Kong. Therefore, the Common Law appeared to supplement and supplant Chinese law and custom². But, in *Wong Yu Shi and Others v Wong Ying Kuen*³, it was held that "Chinese law and custom prevails only if the corresponding English law is inapplicable in the sense that it cannot be applied without injustice or oppression and if it is not shown to be excluded by Hong Kong legislation". Accordingly, the burden of demonstrating the inapplicability of Common Law was shifted from the party claiming it to the party claiming Chinese law and custom⁴. The real test, therefore, is whether Common Law would lead to injustice or oppression or lead to some result that is fundamentally inequitable in the current circumstances of Hong Kong⁵. Chinese law and custom applies only if the test is satisfied.

The Application of Chinese Law and Custom in Hong Kong

In *Lui Yuk-ping v Chow To*⁶, it was held that the Chinese law and custom was part of the "Common Law of Hong Kong". However, the court of Hong Kong incorporated the Chinese law and custom into the Common Law of Hong Kong on a case by case basis⁷.

¹ *op.cit.*, p.9.

² D.J. Lewis, 'A Requiem for Chinese Customary Law in Hong Kong', (1983) 32 *International and Comparative Law Quarterly* 353.

³ [1957] *Hong Kong Law Reports* 421.

⁴ Lewis, *op.cit.*, p.353.

⁵ Strickland, *op.cit.*, p.5 and p.83-4. Also, see Roland St. John Braddel, The Law of the Straits Settlements (3rd edn., Oxford, 1982), p.73.

⁶ [1962] *Hong Kong Law Reports* 524.

⁷ Strickland, *op.cit.*, p.37.

The application of Chinese law and custom has occurred most often in the area of family and succession law. This does not preclude the courts from taking into consideration cultural factors when deciding a case in criminal law where the only source of law has been Common Law.

The scope of applying Chinese law and custom centered mostly on family and succession law. A few pieces of legislation have incorporated Chinese law and custom in family¹ and succession matters². The New Territories Regulation Ordinance, 1910, incorporated some Chinese customs in dealing with land in the New Territories³.

In the absence of sufficient legislative authority⁴, the Common Law courts of Hong Kong have encountered difficulties in establishing what, in fact, are Chinese law and custom.

Firstly, there are many Chinese sub-cultures and customs which grew out of the economic and geographical environment of particular districts and times. What Chinese law and custom should be recognized is not clear because the economic and social circumstances in Hong Kong have changed. In *E.R. Belillos v Ng Li Shi*⁵ and *Ho Tsz Tsun v Ho Au Shi and Others*⁶, the courts said that "local circumstances" meant the circumstances of Hong Kong on 5th April, 1843. This is not significantly different from *In the Estate of Chak Chiu Hang*⁷, where it was held that "local circumstances" meant the circumstances of Hong Kong on the dates of Elliot's proclamations (i.e. 1st and 2nd of February, 1841), when Hong Kong was declared a colony of Great Britain. But, *In re Wong Choi-ho and Wong Yuk-shu*⁸, it was held

¹ Strickland, *op.cit.*, p.108-11. Also see Chinese Marriages in Hong Kong (Hong Kong, 1960).

² Strickland, *op.cit.*, p.9.

³ Strickland, *op.cit.*, p.7 and 100.

⁴ Some of the Chinese law and custom have been codified in the ordinances of Hong Kong. See *infra*, this section.

⁵ Hong Kong Daily Press, 26th January, 1893. Reproduced in (1969) Supplement of Hong Kong Law Reports 205.

⁶ [1915] Hong Kong Law Reports 69.

⁷ *op.cit.*, p.11.

⁸ [1969] Hong Kong Law Reports 394.

that the correct law to apply to an intestacy case is the Ching law (*ta-ching lü-li*) and custom as it existed in 1843 with "such modifications in the custom and in the interpretation of the law as have taken place in Hong Kong since that period". This followed the earlier assertion of H. McAleavy that the Chinese law and custom meant "traditional Chinese law, the principles of which are tolerably well known"¹. McAleavy clearly took the view that the Chinese law and custom of 1843 was "the starting point"², and he went on to quote George Staunton's comment which stated that the Ching law (*ta-ching lü-li*) left "ample scope for its amplification by local custom"³. Other writers had erroneously suggested that the geographical district for Chinese custom would be Kwangtung province⁴.

Secondly, most of the expatriate judges in Hong Kong have not informed themselves about Chinese culture prior to their appointments, and this is true of most foreign members of the legal profession over many years⁵. The traditional Chinese legal system has its own vernacular and has different concepts and roles of law⁶. To express Chinese technical rules in terms of juristic English has not always been feasible. Even in contemporary Hong Kong, there is still a shortage of legal translators⁷. There has always been a subconscious risk of resorting to English legal reasoning and English cultural

¹ 'Chinese Law in Hong Kong: The Choice of Sources', in J.Norman Anderson (ed.), Changing Law in Developing Countries (London, 1963), p.260.

² *op.cit.*, p.261.

³ *op.cit.*, p.262.

⁴ The criticism by Lewis on McAleavy and E.S. Haydon appeared to be ill-founded. See Lewis, *op.cit.*, p.356-7. McAleavy's article was published in 1963 and in *In re Wong Choi-ho and Wong Yuk-shu*, a 1969 case, which Lewis quoted, most of Haydon's article was expressly agreed by the court, which was in line with McAleavy save the difference on Kwangtung custom. See McAleavy, *op.cit.*, p.259-60 and E.S. Haydon, 'The Choice of Customary Law in Hong Kong', (1962) 11 *International and Comparative Law Quarterly* 231. Interestingly enough, D.M. Emrys Evans's article which Lewis praised was published in 1973. Also see D.E. Greenfield, 'Marriage by Chinese Law and Custom in Hong Kong', (1958) 7 *International and Comparative Law Quarterly* 442.

⁵ See Evans, *op.cit.*, p.12.

⁶ George Staunton's translation of the Ching Code, Ta Tsing Leu Lee, was commented as flawed and incomplete. See Jerome Cohen, Contemporary Chinese Law: Research Problems and Perspectives (Cambridge, Mass., 1970), p.9.

⁷ See Sing Pao Daily, American Edition, 4th June, 1986.

values in interpreting Chinese law and custom¹. Moreover, expert evidence on Chinese law and custom does not always seem to agree², although there have been very few experts of Chinese law and custom in Hong Kong. In *Lui Yuk Ping and Chow To*³, the court cast doubt on the expert witness in Chinese law and stated that "law is a matter for counsel, who will state their authorities, it is not a matter for witnesses, unless it be foreign law".

Thirdly, there is very little judicial authority on the application of Chinese law and custom⁴, as there has not been much litigation that involved only Chinese as opposing parties, because it was government policy that the Chinese look after their own affairs in civil matters⁵, and litigation was very expensive. Moreover, the Chinese have always preferred to settle disputes among themselves without resort to the courts in family and inheritance matters⁶.

In the sphere of criminal law, Chinese law and custom has practically no influence on the judicial process, although briefly there had been a form of separate judicial administration and provision for the punishment of offenders according to Chinese law and custom⁷. From the enactment of the first Supreme Court Ordinance in 1844⁸, the criminal jurisdiction has been subject to the Common Law, and Chinese law and custom has been inapplicable in criminal matters. However, the Common Law judges of Hong Kong inevitably have to take judicial notice of Chinese customs and way of life⁹. In *Lui Yuk Ping and Chow To*¹⁰, the court also stated that judicial notice should be taken in civil matters to decide whether Chinese law and custom could be accepted as the law of Hong Kong.

¹ Also see Lewis, *op.cit.*, p.378.

² Strickland, *op.cit.*, p.67.

³ *op.cit.*, p.530-4.

⁴ Strickland, *op.cit.*, p.6.

⁵ See Evans, *op.cit.*, p.12-3.

⁶ Strickland, *op.cit.*, p.6-7.

⁷ *Supra*, p.10.

⁸ Ordinance No. 15 of 1844.

⁹ Bokhary, *op.cit.*

¹⁰ *op.cit.*, p.530.

The Diminishing Role of Chinese Law and Custom in Hong Kong

The general rule is that Common Law applies unless it is inapplicable¹, and it is well established that Chinese law and custom can be replaced by normal legislation². Theoretically, a Common Law rule, which may have been inapplicable in the past, may become applicable because of changes in local circumstances³. It is arguable, therefore, that the Chinese law rule with regard to concubinage⁴ could have been abolished even without the passage of the Marriage Reform Ordinance, 1971. While the Common Law rule of monogamy was initially regarded as an "injustice and oppression", later changes in the local circumstances may be regarded as having introduced the Common Law rule.

In October, 1948, a committee chaired by George Strickland, was appointed by Alexander Grantham, the then Governor of Hong Kong, to consider and make recommendations on the application of Chinese law and custom in Hong Kong. The committee released its report in December, 1950, after collecting evidence from a list of ten elite organizations⁵, which were referred to as public bodies. These organizations' views were accepted as the public opinion. The doctrine of monogamy and equal distribution of estate upon intestacy to sons and daughters was accepted favourably by the majority of the respondents⁶. Interestingly, the only person who consistently insisted upon the practice of concubinage, and unequal treatment of women in other areas, was a representative of the legal profession, Sir Man Kam Lo⁷.

The committee made a few recommendations to modernize Chinese law and custom to enable a more equitable share for women in a Chinese family and to modernize other areas of law while still maintaining some of the features of Chinese law

¹ *Supra*, p.15.

² See *Lui Yuk Ping and Chow To, op.cit.*, p.524.

³ See *In re Tse Lai-chiu, op.cit.*, p.187-8.

⁴ In *In the Estate of Chan Yan alias Chan Yung*, the status of a concubine was acknowledged by the court. [1925] Hong Kong Law Reports 35.

⁵ Strickland, *op.cit.*, p.32-3.

⁶ Strickland, *op.cit.*, p.233-54.

⁷ The first president of the Law Society of Hong Kong, 1948-9.

and custom¹. The committee asked for implementation of these by codification, modification, or supercession by statute, of acceptable Chinese law and custom with regard to land matters, family law, and succession. The public was indifferent to the recommendations of the committee, and the Strickland report was eventually shelved². The number of people actually affected by the Chinese law and custom is relatively insignificant³. In practice, the Chinese law and custom in concubinage and succession matters would have only been of concern to affluent families. The courts have been called upon in only a few cases to decide which Chinese law and custom applies⁴, due to the exorbitant legal expenses. However, a significant minority of the Chinese population of Hong Kong still believed in celebrating marriage according to Chinese law and custom⁵.

After 1950, various women's organizations in Hong Kong called for abolition of concubinage and for new marriage laws⁶. In 1958, Robert Black, the then Governor, directed the Attorney General and the Secretary for Chinese Affairs to re-examine the legal problems arising from marriages under Chinese law and custom in Hong Kong. In December, 1960, a report on 'Chinese Marriages in Hong Kong' was submitted. Some of the recommendations departed quite substantially from those of the Strickland report⁷. In 1965, the *McDouall-Heenan Report 1965* was submitted to the Government of Hong Kong after another re-examination of the problems. This investigation paved the road for the reforms in Chinese law and custom in the 1970s.

In the early 1970s, the Chinese law and custom on marriage, concubinage, divorce, adoption and succession was abolished as the "Common Law of Hong Kong" by

¹ Strickland, *op.cit.*, p.36-81.

² White Paper on Chinese Marriages in Hong Kong (Hong Kong, 1967), p.2.

³ According to the writer's observations in the absence of field research.

⁴ Strickland, *op.cit.*, p.6.

⁵ White Paper on Chinese Marriages in Hong Kong (Hong Kong, 1967), p.6.

⁶ *Ibid.*

⁷ M. Heenan and J.C. McDouall, The McDouall-Heenan Report (Hong Kong, 1965), p.1-3.

a series of legislation¹. The legislative reforms have provided grace provisions so that existing rights remain valid. However, the Application of English Law Ordinance, 1966, is still in operation. Therefore, the applicable Chinese law and custom, insofar as it had not been abolished by these reforms, still survives.

In light of economic and social developments in Hong Kong, the traditional family pattern has changed. During the course of industrialization, modern management techniques have replaced traditional Chinese family management in order to survive in the competitive Hong Kong society. The diminishing authority of the family unit in urban Hong Kong has made customary Chinese law in family and succession matters irrelevant today. The inhumane practice of concubinage² was finally abolished by legislation to conform to the spirit of sexual equality and personal freedom. In the absence of survey data, the attitudes of the Chinese population towards these reforms cannot be stated conclusively, even though there have been various attempts by government committees to solicit public opinion.

E. Conclusion

The introduction of Common Law to Hong Kong was a historical event on Chinese soil. From the time of colonisation of Hong Kong, the Common Law system in Hong Kong adhered closely to the British policy not to interfere with local custom and usage insofar as it was practicable. Therefore, Chinese law and custom has become part of the "Common Law of Hong Kong". The Chinese law and custom applied in Hong Kong had been mostly in the area of family and succession matters. With minor exception in the New Territories, there was no separate judicial administration according to Chinese usage. The traditional Chinese judicial system has been almost forgotten altogether as part of the original Chinese law and custom in Hong Kong. It is this system which

¹ Marriage Reform Ordinance, 1971; Intestates' Estates Ordinance, 1971; Adoption Ordinance, 1972. See Lewis, *op.cit.*

² *Supra*, this section.

highlights the sharp differences between Chinese legal culture and Common Law culture. From the outset, the court procedures have been in English, and the judges would inevitably apply English legal reasoning and English cultural values in interpreting Chinese law and custom.

The economic and social developments in Hong Kong sparked a few government investigations into the retaining of Chinese law and custom in Hong Kong. Therefore, the attitudes of the Chinese population towards family and succession matters were studied by a few government committees. No research has been conducted into the differences between Chinese culture and the Common Law judicial system other than with regard to the mediation process.

On the eve of the resumption of the sovereignty of Hong Kong by the People's Republic of China in 1997, the attitudes and values of the Chinese population towards the Common Law judicial system have to be investigated as the Common Law judicial system will remain in Hong Kong at least until 2047 under the terms of the 1984 Sino-British Joint Declaration. The respect for individual rights, the rule of law, judicial independence, the adversary system, an independent legal profession, the jury system, and the right of silence and presumption of innocence are cardinal features of a standard model Common Law judicial system which have no counterparts either in the traditional Chinese judicial system, or in the imported Socialist legal system of the People's Republic of China.

The administration of justice in Hong Kong will face a major crisis if the attitudes and values of the Chinese population of Hong Kong are negative towards the Common Law judicial system. After 30th June, 1997, all of the resident Chinese population of Hong Kong will become citizens of the People's Republic of China, and the Hong Kong Special Administrative Region will be part of the the People's Republic of China. Regardless of what the British government may have intended and the type of travelling documents the Chinese population are holding, international law simply cannot extend its

jurisdiction over any agreement¹ so as to interfere with the internal affairs of a sovereign state without that state's consent. Therefore, there is a need to ascertain the attitudes and values of the Chinese population of Hong Kong towards the Common Law judicial system in the hope that the Basic Law of the Hong Kong Special Administrative Region will incorporate the "local circumstances" of Hong Kong.

Huang Tsung-hsi (1610 - 1645), a neo-Confucianist, wrote:

"Only if there are laws which govern well, will there later be men who govern well. Since 'un-lawful laws' fetter men hand-and-foot, even a man capable of governing well cannot overcome the handicaps of senseless restraint and suspicion..... Therefore, I say we must first have laws which govern well and later we shall have men who govern well"².

In Hong Kong, this would be the law suitable to the Chinese population. If there is good law, then the population will have more confidence that there will be men who govern well after 30th June, 1997.

¹ including the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (1984).

² 'On Law', A Plan for the Prince (*ming-i tai-fang lu*) (New York, 1953), translated by William deBarry, Ph.D. thesis, Columbia University, p.243-4.

II. The Reception of the Common Law in Hong Kong

A. Introduction

This chapter provides a brief discussion of the socio-historical development of the changes in legal attitudes and values of the Chinese population of Hong Kong. Some of the discussions in this chapter do not proceed into detail as they will be elaborated on in the later chapters when appropriate.

B. Traditional Attitudes towards the Judicial System

Introduction

James Norton-Kyshe wrote that, in the 1850's, the Chinese population of Hong Kong were apathetic towards law enforcement¹. In judicial proceedings, this would imply, for example, that they would have been reluctant to act as witnesses². This might be a natural, social-psychological disposition of people who are raised in a patriarchal system in an agrarian society. The prevalence of such attitudes could adversely affect the successful operation of the Common Law judicial system in Hong Kong.

Social Structure

In an agrarian society, the people are less mobile, and the economy provides them some degree of security. The family is important since family size is the basic economic resource for farming, and the resulting security in food supply contributes to

¹ a) The History of the Laws and Courts of Hong Kong (Hong Kong, 1898), Vol.1, p.334, 451, and Vol.2, p.324.

b) But, in traditional China, failing to assist the victim of a robbery without reasonable excuse could incur liability. See Article 6, Arrest and Flight Provision (*pu-wang*), Tang Code (*tang-lu shu-yi*), 653 A.D. This offence can be compared with Common Law misprision.

² In traditional China, witnesses were usually put into a humiliating position in court. See *infra*, 'Proceedings', Chapter III.

larger family systems¹. Consequently, patriarchal authority in traditional China began to develop, and this is reflected in the recognition of such authority by law². The fatherly patriarchal head was regarded as a man of wisdom. This system profoundly influenced interpersonal relationships. Respect towards a person of higher status in the same patriarchal unit³ and courtesy towards other members of equal or higher status in other patriarchal units was the foundation of concern for self-respect and courtesy in inter-personal relationships⁴.

Contemporary psychologists have observed that, from childhood, a Chinese in Hong Kong is conditioned to preserve harmony by not interfering with others⁵. The system of collective responsibility in traditional China encouraged individuals only to care for the peace in his own turf. This can be best explained by Herbert Giles (1845 - 1935):

"One difference between life in China and life in this country [*England*] may be illustrated to a certain extent in the following way. Supposing a traveller, passing through an English village, to be hit on the head by a stone. Unless he can point out his assailant, the matter is at an end. In China, all the injured party has to do is to point out the village - or, if a town, the ward - in which he was assaulted. Then the headman of such town or ward is summoned before the authorities and fined, proportionally to the offence, for allowing rowdy behaviour in his

¹ Weston LaBarre, 'Some Observations on Character Structure in the Orient', (1946) 9 *Psychiatry* 215 and 375.

² S.Y. Teng, 'The Role of the Family in the Chinese Legal System', [1977] *Journal of Asian History* 121. Also see Tung-tsu Chü, Law and Society in Traditional China (Paris, 1961), p.37.

³ According to Confucius, "If each man would love his parents and show the due respect to his elders, the whole land would enjoy tranquility."; translated by James Legge.

⁴ Mousheng Hsien Lin, 'Confucius on Interpersonal Relations', (1939) 2 *Psychiatry* 475.

⁵ Beryl Wright, 'Some Aspects of Change in the Chinese Family Pattern in Hong Kong', (1964) 63 *The Journal of Social Psychology* 33.

district"¹.

Passing the civil service examination was normally a prerequisite to becoming a government official, and in a vast territory such as traditional China, the ratio of population per bureaucrat was rather high². The maintenance of social order was left to the patriarchal unit which imposed discipline, maintained law and order³, and provided education and welfare to its members⁴. Tight control of family members might explain the low delinquency rates in traditional China, as well as in the Chinese population overseas⁵. Resorting to formal judicial process was usually unnecessary.

Patriarchal System

Under the patriarchal system in traditional China, disputes within the family were settled by the family head and among families in a clan (*tsu*)⁶ by the clan head⁷. The authority of the family and clan heads was recognized in law, and they acted both as judge and arbitrator to settle disputes⁸. Most of the clan rules forbade members to engage in litigation in a court of law before submitting their case to the clan head⁹. As filial impiety could be punishable by death¹⁰ and listed as one of the ten unpardonable offences (*shih-o*), an individual would not dare to disobey his parents or grandparents by laying information of any kind against anyone in court if doing so was against their wishes. Only in grave offences, such as treason, could a person legally bring his parents

¹ Civilization of China (London, 1911), p.53-4.

² According to 1812 statistics, there was one magistrate for every 200,000 people. The magistrate also had full administrative as well as judicial duties. Shuzo Shiga, 'Criminal Procedure in the Ching Dynasty', (1974) 32 *Memoirs of the Research Dept. of the Toyo Bunko* 11.

³ See Chü, *op.cit.*, p.37, for means to carry these out.

⁴ Chü, *op.cit.*, p.15-41.

⁵ Wright, *op.cit.*, p.31.

⁶ Clan consists of a relative large economic unit of families of partial-lineage.

⁷ Sybille van der Sprenkel, Legal Institutions in Manchu China (1st edn. reprinted, London, 1971), p.80-96.

⁸ Chü, *op.cit.*, p.37.

⁹ van der Sprenkel, *op.cit.*, p.84.

¹⁰ Chü, *op.cit.*, p.43.

or grandparents to the magistrate¹, and China was probably the only country where being a police informer could be illegal². So powerful was the authority of the patriarchal authority upon the individual that the normal judicial process would be superceded.

The collective responsibility³ would bring shame upon the whole family, clan, and village of an individual if he was liable in a civil suit or even being sued. Therefore, the elders or heads were more inclined to compromise than to contest in courts.

According to the Confucian principle of harmony, conflict had to be brought to an end⁴. Confucian values taught that once the social order had been disturbed it could best be restored through compromise and that moral men did not insist on their rights⁵. A solution which allowed the vying parties to save face and was acceptable to them should be found. Arbitration and mediation might be a better solution⁶. A person would use various ways, including bribery, to avoid law-suits.

Barriers to Obtaining Justice in Hong Kong

In Hong Kong, the limited number of lawyers⁷, the exorbitant legal fees, the official language⁸, and the technicalities of Common Law have created a barrier between

¹ The relation between emperor and subjects was the most important in the natural order of relationship. It was followed by father-son, brothers, husband-wife, and friends.

² Bodde and Morris, Law in Imperial China (Cambridge, Mass., 1967), p.40.

³ *Supra*, p.26.

⁴ Chinese proverbs:

"Win your law-suit and lose your money".

"It is better to be vexed to death than to bring a law-suit".

"Of ten reasons which a magistrate may decide a case, nine are unknown to the public".

⁵ Jerome Cohen, 'Chinese Mediation on the Eve of Modernization', (1966) 54 California Law Review 1207.

⁶ van der Sprenkel, *op.cit.*, p.101-2.

⁷ In 1986, there were 1,518 practising solicitors and 277 barristers in Hong Kong.

⁸ Under the Official Languages Ordinance, 1974, Chinese language has very limited application in judicial proceedings and as a legal language, although it is an official language for "the purposes of communication between the Government or any public officer and members of the public".

the courts and most of the population. With regard to the official language, there is a shortage of Chinese speaking judicial officers for proceedings to be conducted in Chinese as permitted by the Official Languages Ordinance, 1974¹. The mostly non-Chinese speaking judiciary might often have been influenced by court translators, whose values are likely to be closer to their expatriate superiors than to those being judged². The jury trial is often complicated by the limited ability of the Chinese population to comprehend the English language. This can cause grave miscarriages of justice even when acting in good faith³.

The present Legislative Council of Hong Kong is made up of senior civil servants and appointed citizens as well as members of district councils and representatives of various elite groups. There is no directly elected legislator. Due to the nature of the government, the majority of the Chinese population in Hong Kong have little influence on the judicial system. However, they have to confront it whether by compliance, evasion, or other modes of acceptance or resistance.

The Case of Corruption in Hong Kong

The corruption at the end of the Ching Dynasty partly accounts for the apathy of the population towards law at that time. Traditional Chinese jurisprudence expressly prohibited corruption⁴ and officials were supervised by the Censorate (*tu-cha yuan*), which had autonomy and some functions similar to the Independent Commission Against Corruption of contemporary Hong Kong⁵. However, as in other civilizations, there is a

¹ Albert Chen, '1997: The Language of the Law in Hong Kong', (1985) 15 Hong Kong Law Journal 24-5.

² S. Davies, 'One Brand of Politics Rekindled', (1977) 7 Hong Kong Law Journal 57.

³ In an appeal to the Privy Council from Trinidad, it was stated that some members of the jury failed to distinguish an unanimous verdict from a majority verdict because of their inability to comprehend English. See *Nanan v The State* [1986] 3 All E.R. 248.

⁴ Ironically, the intimate interpersonal relations, promoted by Confucianism, inadvertently foster corruption. In Chinese society, connections (*kuan-hsi*) count more than the rule book.

⁵ See H.J. Lethbridge, 'Corruption, White Collar Crime and the I.C.A.C.', (1976)

gap between theory and practice. This is very much dependent upon whether opportunities for corruption exist. This practice was particularly evident in Chinese history when the authority of the central government was weakened at the end of the Ching Dynasty.

Although the Government of Hong Kong operates within the Rule of Law, its legitimacy is questionable to the Chinese population. Government service is considered to be less prestigious than other forms of work. Unlike in traditional China, wealth is more important than holding public office¹. Corruption, particularly within the law enforcement agencies, which have the opportunity to exercise discretionary powers over the public, is an essential chapter of the history of Hong Kong². This practice has always been a way of life in Hong Kong, as there have been ample opportunities for corruption by both British and Chinese officials. This was particularly true when British officials were not easily accessible to the majority of Chinese citizens of Hong Kong.

Traditional Chinese attitudes towards men in uniform discouraged better people from joining the police force³, and the quality of the British police officers was not better⁴. Honest and dedicated individuals are known to have been pressured to leave the Royal Hong Kong Police⁵ as they might blow the whistle. The recruitment of better qualified youths to become police in contemporary Hong Kong is still a problem⁶.

⁵(cont'd) 6 Hong Kong Law Journal 177.

¹ Wong Siu-lun, 'Modernization and Chinese Culture in Hong Kong', (1986) 106 The China Quarterly 322-3.

² Peter Harris, Hong Kong: A Study in Bureaucratic Politics (Hong Kong, 1978), p.140-61; Henry Lethbridge, Hong Kong: Stability and Change (Hong Kong, 1978), p.215-37.

³ a) Police in traditional China were recruited from the very lowest caste of the population and were often feared and despised by the people, and were mistrusted even by their own superiors. See R.H. Van Gulik, Parallel Cases from under the Pear Tree (tang-yin pi-shih) (Leiden, 1956), p.55.

b) Chinese proverb: "Good male does not become police. Good female does not become prostitute". To counter this proverb, a recruitment poster of the Royal Hong Kong Police read: "To become a constable means to be a man".

⁴ Lethbridge, *op.cit.*, p.165-6.

⁵ 'The Yacub Khan Case', South China Morning Post, 16th March, 1987.

⁶ This can be seen from the fact that Form V graduates are eligible to join

Although the government refuses to admit that a number of members of the police force have gangster connections¹, a government committee has recently recommended that there should be special provision to govern the amnesty of members of the police force who are gang members².

Even in the judicial system, there were reports that one had to bribe the supposedly better-educated court translators in order to obtain proper translation services³. This matter is aggravated by the fact that the non-Chinese speaking judges would often act on false or misleading information.

An honest person, at times, would have to bribe officials in order to ensure his rights or to obtain government services. Although the public has often accused the police of corruption, it has also induced the police to accept bribes⁴. Under such circumstances, evidence submitted by police in courts has seldom been viewed as credible. Consequently, the public has rarely had any confidence in the justice system.

"Face" in Hong Kong

As observed by sinologists, "face" (*mien* or *lien*) is an important social institution in Chinese society⁵. This is subconsciously implanted in the minds of the Chinese people so that most of them are often unaware of its existence⁶. The fear of losing "face" and the desire to gain it are deeply entrenched in their way of life. In contemporary Hong Kong, "face" is a crucial consideration in many situations⁷. In England, civil servants and

⁶(cont'd) the force as direct entry inspectors. See Royal Hong Kong Police, Your career as a Police Inspector (Hong Kong, 1987). In fact, a greater number of police inspectors in Hong Kong do not even meet the minimum requirements of a constable in many North American cities.

¹ Members of the Triad.

² Sing Pao Daily, American Edition, 17th August, 1987.

³ According to this researcher's interview with a few former Hong Kong police officers and court clerks who now reside in Canada, this practice has become the topic of a few Chinese novels and movies.

⁴ Far Eastern Economic Review, 16th August, 1951, p.196.

⁵ van der Sprenkel, *op.cit.*, p.99-100; Joseph Agassi and I.C. Jarvie, Hong Kong: A Society in Transition (London, 1969), p.138-41.

⁶ Agassi and Jarvie, *ibid.*

⁷ Agassi and Jarvie, *ibid.*

politicians are loath to admit their mistakes. For them, it is a matter of status alone, and not dignity¹. In Chinese culture, however, it is both a status symbol and a sign of dignity².

In the judicial process, losing a court case would result in a loss of "face". Therefore, disputes are often settled confidentially and informally. It is not unknown that some prominent Chinese barristers refuse to accept an instruction when there is a chance to lose, although theoretically a barrister is bound to accept a brief for anyone who comes before the courts. In this type of cultural environment, witnesses might be reluctant to admit their mistakes in order to save "face". Although there is no evidence to suggest that the desire to save "face" outweighs the risk of a perjury conviction, the tendency to preserve one's dignity is undoubtedly present.

A recent incident in Singapore, an independent Common Law state where the majority of the population are Chinese, is a case in point. On 25th October, 1988, the Privy Council described the convictions which led to the disbarment of a Mr. J.B. Jeyaretnam as a "grievous injustice"³. However, the government still considered Mr. Jeyaretnam guilty as charged because the Privy Council had not specifically overturned his convictions as his appeal was only against the Singapore Law Society for disbarring him⁴. The Privy Council could not have ruled against Mr. Jeyaretnam's convictions because leave to appeal was refused⁵. The government insisted that Mr. Jeyaretnam should appeal for a pardon instead of granting one to him⁶. "Face is important"⁷.

In a densely populated city like Hong Kong, where word can spread easily and very quickly, "face" saving is more important for professionals, such as lawyers, and civil servants, such as the police. As police have to give evidence in courts more often

¹ Agassi and Jarvie, *ibid.*

² Agassi and Jarvie, *ibid.*

³ N. Balakrishnan, 'Fatal flaws, legal lacuna', Far Eastern Economic Review, 15th December, 1988, p.14-6.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

than other citizens, it is almost certain that they attempt to save "face" more often. Any honest mistake one admits to would cause one to lose "face".

Conclusion

The industrialization of Hong Kong society and the increasing number of educated Chinese¹, have brought some changes in attitudes and values towards law. Traditionally the Chinese have been relatively resigned towards governmental institutions². Most would feel that filing a complaint would be meaningless, and often risky³. This was partially the result of the poor quality of law enforcement personnel and of the complaint channels, even in contemporary Hong Kong⁴. Fortunately, the educated generation is moving towards a more accountable form of government⁵. The introduction of legal aid in 1966⁶, the establishment of a law department (now law faculty) at the University of Hong Kong in 1969⁷, and the increasing number of better qualified and socially conscious local lawyers since the late 1960s have contributed

¹ Norman Miners, The Government and Politics of Hong Kong (Hong Kong, 1981), p.47.

² Harris, *op.cit.*, p.142.

³ According to a survey conducted in 1966-7, it is evident that the Hong Kong police were generally regarded by the public as a powerful force. See J. Stephen Hoadley, 'Hong Kong is the Lifeboat', (1970) 8 Journal of Oriental Studies 211-2. Also, see Miners, *op.cit.*, p.44. Most North American law enforcement agencies are reluctant to share information with the Hong Kong police because they do not trust them. See Globe and Mail, 16th December, 1986.

⁴ a) The Complaint Against Police Office and complaint channels were recently a topic of academic and judicial criticism. See (1984) 14 Hong Kong Law Journal 240.

b) In Hong Kong, the former Anti-corruption Branch of the Police Department was known as the "Corruption Branch". Also see Jeremiah K.H. Wong, 'The ICAC and Its Anti-corruption Measures', in Rance P.L. Lee (ed.), Corruption and Its Control in Hong Kong (Hong Kong, 1981), p.61. Their inefficiency can be seen in the Godber Case, Harris, *op.cit.*, p.145-6.

⁵ Miners, *op.cit.*, p.47.

⁶ A financial means test is applied and the types of cases are restricted. See Albert Chen, 'Legal aid in Hong Kong: the way ahead', (1988) 18 Hong Kong Law Journal 1-5.

⁷ A law department has now been founded at the City Polytechnic of Hong Kong.

greatly to an improving image of the legal system in Hong Kong.

C. Evidence of Confidence in the Common Law Judicial System

In February, 1974, the Independent Commission Against Corruption was established, with better-educated personnel than the Royal Hong Kong Police. The increasing number of complaints to this commission¹ is an indication that the Chinese population has begun to have confidence in the administration of justice.

The Chinese population of Hong Kong would resort to the use of the courts to settle disputes if the judicial system was better. The introduction of quasi-judicial tribunals and informal procedures in the 1970s, wherein the presence of lawyers is discouraged or prohibited, has enhanced access to judicial services for the people of Hong Kong. The following figures² illustrate this:

Table 2.1: Cases per 1,000 Population in Hong Kong

Year	Supreme Court All Jurisdictions	Labour Tribunal	District Court	
			Civil	Small Claims
1960	0.846	n/a	1.762	n/a
1962	0.967	n/a	2.609	n/a
1974	1.790	0.449	4.900	n/a
1978	2.284	0.762	3.713	2.518
1980	2.940	0.890	5.465	3.441
1982	4.290	1.040	7.758	4.821
1984	3.074	0.738	9.558	5.854
1985	2.758	0.858	8.251	6.017

As Supreme Court proceedings are usually quite expensive, these increases are a strong indicator of a positive change in attitude towards the legal system in Hong Kong. Such increases might also indicate a higher level of affluence. The increase in Labour Tribunal cases indicates an improvement in labour legislation and an enhanced awareness by workers of their rights, although it can also indicate worsening labour relations. Also, various volunteer agencies, run mostly by an increasingly better educated younger generation, including some members of the legal profession, provide counselling

¹ Harris, *op.cit.*, p.148-9.

² Raw data from Hong Kong annuals, Government Information Services. A comparative study of litigation rates with other countries is inappropriate as there are differences in the availability of legal aid, judicial decision-making process, political climate, and proceedings.

services to the workers and the general public. The decline of the Labour Tribunal cases between 1982 and 1984 may possibly reflect an improvement of labour relations in Hong Kong amidst the changing political environment.

The drop in cases of the civil jurisdiction of the District Court between 1974 and 1978 is, apparently, due to the introduction of the Small Claims courts. However, the total number of cases per 1,000 of population in the District Court was actually increasing during the same period. The increase in Small Claims cases, where lawyers are not usually involved, indicates that the increasingly well-educated population is more inclined to seek legal remedies when other channels, e.g. arbitration and mediation, fail.

D. The Impact of Colonisation on the Chinese Population of Hong Kong

Introduction

The application of Common Law in Hong Kong has provided the population with the type of stability which promotes economic growth and social development. There are a few factors which affect the attitudes and values of the Chinese population towards law in Hong Kong.

The Industrialization of Hong Kong

The industrialization of Hong Kong resulted in the need for other forms and devices of social control. The jurisprudence in traditional China was based on an agrarian society, marked by homogeneity. The agrarian society of traditional China was dominated by Confucian moral doctrines while the present industrial and commercial society of Hong Kong is more inclined towards profit making and individualism. Such conflicts have been the subject of debate in China since 81 B.C. (during the Han Dynasty), or even earlier¹. Law reforms in China after the 1911 revolution and during the Nationalist era

¹ Huan Kuan, Debates on Salt and Iron (*yen-tieh lun*).

moved China towards the Western industrialized and commercially based model¹. In 1981, about half of the Hong Kong labour force was engaged in manufacturing and construction and about forty-seven per cent was in commerce and various lines of services².

As most disputes in traditional China were settled through arbitration and mediation³, civil law, in the Common Law sense, was not well developed⁴. The need of the law to protect business interests and commercial transactions with formal legal machinery, which was previously not part of the custom, is today becoming more evident. The concept of the corporation in company law would mean multiple interests are considered, including those outside of the family, in the running of a business. Hence, the legal rights of the corporation rather than the traditional family ties would be of paramount interest. Litigation would be resorted to if the outcome would benefit the corporation⁵. Social pressures to abide by the moral aspects of a case would not therefore be as compelling.

The Diminishing Family and Patriarchal Authority

The diminishing family and patriarchal authority in Hong Kong, partly as a result of industrialization, has had a direct effect on the social order. Moreover, the influx of mostly male immigrants to Hong Kong from China to be employed in the trade and commerce sector has altered the traditional Chinese family pattern of those families⁶.

¹ Wang Chung-hui, 'Law Reform in China', (1917) 2 *The Chinese Social and Political Science Review* 13.

² See Hong Kong Government, Vol.1, Hong Kong 1981 Census Main Report, p.33.

³ Jerome Cohen, 'Chinese Mediation on the Eve of Modernization', (1966) 54 *California Law Review* 1201.

⁴ Contrary to some writings, there were some distinctions between civil and criminal law. See Bodde and Morris, Law in Imperial China (Cambridge, Mass., 1967), p.118-9.

⁵ Even as early as in the 19th century, Chinese in Hong Kong would use the courts for their own advantage. See D.M. Emrys Evans, 'Common Law in a Chinese Setting - The Kernel or the Nut?', (1970) 1 *Hong Kong Law Journal* 20.

⁶ As G.B. Endacott noted, "the Chinese society in Hong Kong did not conform

The family in an agrarian society is a economic unit of its own, and as such provides labour, capital and land. If the family is engaged in business, security is also provided because the younger generation is expected to succeed the older¹. Industrialization means that young people and women could find employment outside the family and, hence, would be less dependent on the family². Modern management techniques rely more on individual merit when recruiting staff than on family relationships.

In traditional China, only wealthy families had the resources to have several generations living under the same roof. The average size of traditional Chinese families was quite small, before being influenced by Westernization and industrialization³. The Intestates Estates Ordinance, 1971, contains provisions similar to the English law of succession. Under this ordinance, the Chinese law and custom with regard to intestacy became obsolete. As a result, male descendants no longer have any advantage over females, and the estate is divided equally among all descendants with the surviving spouse taking a larger share. Consequently, this has effected the diminishing role of the family unit.

The authority of the family and the kinship relation in the patriarchial system have been diminished by industrialization. Naturally, this would also depend on its members having to rely on the unit for their livelihood. Notwithstanding this, it has been reported in a recent study that the Chinese population of Hong Kong is still familistic⁴.

⁶(cont'd) to the normal Chinese pattern of society since there was little family life and it contained a large lawless element which was against all authority of any kind". See A History of Hong Kong (London, 1973), p.124.

¹ Wright, *op.cit.*, p.31.

² Wright has suggested several social aspects of the change in the Chinese family pattern in Hong Kong. See *ibid.*

³ David Podmore, 'The Population of Hong Kong', in Keith Hopkins (ed.), Hong Kong: The Industrial Colony (Hong Kong, 1971), p.47-8.

⁴ Wong Siu-lun, *op.cit.*, p.313.

The Westernization of the Chinese Population

The system of education in Hong Kong under British influence has reshaped the cultural values of the younger generation. Education in Hong Kong is geared to the needs of the modern commercial and industrial environment¹. The result has inevitably been a departure from Chinese traditions². As the commercial and official language in Hong Kong is English, the younger generation has to learn it to earn high salaries and prestigious jobs. It has been observed that studying a language involves some acceptance of the cultural influences associated with that language³. The younger people are also more ready to accept Western culture through the media and education. The Westernization of the Chinese population inevitably results in some acceptance of the Common Law culture which is the product of an English culture.

The influence of Western culture is partly tied to the development of Hong Kong as a center of international banking, shipping, trade and commerce. An understanding of Western ideological atmosphere is essential for import and export trades. As a city whose economy is based on industry, trade and commerce, with very limited natural resources, Hong Kong is highly competitive. One result of this is that a person is more esteemed by his visible success and competence than by his private life. The society is moving towards individualism.

The acceptance of Western culture by the Chinese population of Hong Kong appears to be for practical reasons. Western practices are followed if they are effective in the circumstances, and Chinese practices are retained for similar reasons⁴. Contemporary sociologists consider this as "incorporative cosmology" as a result of the absence of a personalized god in the role of the creator in traditional China⁵. As such,

¹ Wright, *op.cit.*, p.35.

² *Ibid.*

³ *Ibid.*

⁴ Majorie Topley, 'Some Basic Conceptions and their Traditional Relationship to Society', in Some Traditional Chinese Ideas and Conceptions in Hong Kong Social Life Today (1966), p.19.

⁵ Wong Siu-lun, *op.cit.*, p.309.

the Chinese are more adaptable to the eclecticism of cosmology in their religious world view¹. In Hong Kong, this incorporative attitude seems to facilitate a flexible acceptance of Western culture².

The moral values of the Chinese population have changed as a result of Western influence and the breakdown of the patriarchal system. This is reflected in the following table of divorce statistics³:

Table 2.2: Divorce Cases per 100,000 Population in Hong Kong

Year	Supreme Court	District Court
1958	1.200	n/a
1962	1.970	n/a
1974	1.176	18.57
1978	1.280	37.51
1980	1.508	48.05
1982	1.508	59.55
1984	0.168	88.81
1985	0.166	92.92

The small variation in the number of Supreme Court cases can be explained by the expense involved. The sharp decline between 1982 and 1984 is partly due to the sharp decline in the value of real estate which might not be worth the legal fees incurred. It should be noted that appeals to the Supreme Court usually involve property issues. The stress caused by the uncertainty of Hong Kong's political future may partly explain the sharp increase in divorces between 1980 and 1985⁴. These figures do not distinguish between the Chinese and European populations.

Religious Factor

In any culture, the religious influence on legislation is always present, and is often far from slight⁵. There is no state religion as such in Chinese history. Chinese

¹ *Ibid.*

² *Ibid.*

³ Raw data from Hong Kong annuals, Government Information Services.

⁴ From the researcher's own observations, the political uncertainty may have increased the divorce rate. For many couples, one spouse has gone to live outside Hong Kong prior to 1997, while the other remains there. This inevitably places pressure on some marriages.

⁵ Max Weber, *Law in Economy and Society* (2nd edn. (1925), trans. by Edward Shils and Max Rheinstein, Cambridge, 1954), p.236-7.

traditionalism is not marked by religiosity. Neither the belief in the divine origin of law nor, with minor exceptions, any form of state religion had a place in traditional China. This is partly attributed to the subordinate position of law in traditional China¹.

Common Law culture, which has adhered closely to Christian values², is more likely to be accepted by Chinese Christians in Hong Kong than the general Chinese population. Thus, the religious values of the Chinese people are expected to influence attitudes and values towards law in Hong Kong. Only about ten per cent of Hong Kong population is Christian³.

Conclusion

The colonisation of Hong Kong has reshaped the attitudes and values of the Chinese population towards the law. The diminishing role of the patriarchal system and Westernization of the population are factors that have influenced the change in legal attitudes and values in contemporary Hong Kong. These factors are not exhaustive, and extensive sociological inquiries are required to provide a better answer. As a result of industrialization, dispute settlement in Hong Kong has reached a point where it can no longer rely on informal means of settlement. The Chinese population has little choice but to rely on the Common Law judicial system in order to advance their interests in industry, trade and commerce.

¹ See Derk Bodde, 'Basic Concepts of Chinese Law', in Essays on Chinese Civilization (Princeton, 1981), p.193.

² Basil Mitchell, Law, Morality, and Religion in a Secular Society (Oxford, 1970), p.126.

³ Hong Kong Government, Hong Kong 1986 (Chinese version), p.195.

III. The Contrast between Chinese Culture and a Standard Model Common Law

Judicial System

A. Introduction

This chapter analyzes Chinese legal tradition in general, with emphasis on the contrast between Chinese culture and a standard model Common Law judicial system¹. The purpose is to explain the traditional Chinese approaches to law which this research wishes to test. The concepts and roles of law in traditional China have been reflected in its judicial system. For centuries, the Chinese had been conditioned to live under this system. The authority, fairness and reasonableness of the judicial machinery, the efficiency of the judicial procedures to protect individual rights, the quality of the judicial officers and of the legal profession, and the peoples' ability to participate in the judicial process have had a direct influence on the attitudes the people have towards law. Criminal jurisprudence, to a certain extent, is dependent on how the judicial system functions. A seemingly harsh criminal law for example can be tempered by the frequent exercise of amnesty and pardon², or by a reluctance to enforce such a law by the authority³ or the court⁴.

¹ For discussion on "a standard model Common Law judicial system", see *infra*. Unlike other colonial powers, such as France or Germany, Great Britain has never developed a model for the systematization of the local customary laws for the purpose of determining how a system of law should be implemented in its colonies.

² For example, it appears uncivilized to have the death penalty in Hong Kong. In practice, the Governor always exercises the royal prerogative of pardon to commute a death sentence. But see Norman Miners, 'The Governor, The Secretary of State and The Prerogative of Mercy', (1987) 17 Hong Kong Law Journal 77.

³ For example, the Lord's Day Act is rarely enforced in Great Britain. The royal prerogative of *nolle prosequi* can be exercised by the Attorney General.

⁴ a) Certain sections of the Import and Export (General) Regulations, Cap.60, Laws of Hong Kong (1983 Edition), were considered to be "an ass" by a judge in Hong Kong recently. See 'Strip off, all ye travellers', (1985) 15 Hong Kong Law Journal 135. Also see *Dr. Bonham's Case* (1610) 8 Co.Rep. 118; *Day v Savadge* (1615) Hob. 86-7; *City of London v Wood* (1701) 12 Mod. 686.

b) Common Law juries are often annoyed by the unreasonable enforcement

Standard Model Common Law Judicial System

The important features of a standard model Common Law judicial system are the judicial machinery, the procedures for implementing the law, the legal profession, and the jury system. The essence of a legal system is not so much its legal rules at any given time, but rather the supporting framework. A legal rule can be amended or repealed by the legislators, but a legal framework will not be so easily amended or repealed. These features are products of one of the most basic Common Law doctrines which hold that the protection of individual rights is paramount and hence prevails over the interests of the state¹. The Common Law has been exported by colonisation or imported by reception throughout the world. Its features have been observed only partially in many countries, and in such cases, the fundamental rights which the Common Law sought to protect were often eroded.

Judicial System in Traditional China

The judicial system in traditional China was based on the Confucian doctrine² of rule by a morally educated elite class³. This doctrine had the effect of subordinating the importance of law to that of morality and it was well suited to the highly centralized state system of government. The absence of a private legal profession and jury system are also features of a traditional Confucian society. This chapter compares and contrasts

⁴(cont'd) of the criminal law by the state. The recent acquittal of Clive Ponting, a civil servant charged under the Official Secrets Act for leaking confidential government documents concerning the Belgrano Affair to a member of Parliament, by a jury at the Old Bailey, notwithstanding his "technical guilt", might serve as an example. A jury verdict need not be supported by reasons. See The Times, February, 1985.

¹ For example, see the leading case, *Entick v Carrington* (1765) 19 State Tr. 1030.

² It must be noted that Confucius (551-479 B.C.) was merely a preacher of the doctrines handed down from the illustrious past. See Derk Bodde, 'Basic Concepts of Chinese Law', in Essays on Chinese Civilization (Princeton, 1981), p.178; G. Ohlinger, 'Some Leading Principles of Chinese Law', (1909-10) 8 Michigan Law Review 200.

³ For Confucianization of Law, see Tung-tsu Chü, Law and Society in Traditional China (Paris, 1961), p.267-79.

the judicial machinery, the procedures, the legal profession, the jury system and the rules of evidence in both the Common Law system and the system in traditional China¹.

B. Judicial Machinery

Introduction

The differences between the judicial systems of traditional Chinese legal culture and Common law culture reflect the fundamental differences that exist in the historical development of the two civilizations. The development of judicial independence and immunity in Common Law culture can be traced to the thirteenth century. In 1215, the dominant class of barons obtained a guarantee of rights² in the *Magna Carta* from King John³. The evolution of Parliament into the House of Lords and Commons, the conflict between the Church and state⁴, the control of royal courts over inferior courts⁵, the separation of the Common Law court⁶ from the King's council, the conflicts between Chancery and Common Law courts⁷, and the struggle between the House of Commons and the judiciary⁸ were all historical developments which would be unthinkable in the homogeneous and hierarchically structured society of traditional China under

¹ The terms used in this thesis with respect to the Chinese legal system are generally those applied during the Ching dynasty unless otherwise stated.

² The founder of the Han Dynasty (206 B.C.-277 A.D.), Emperor Kao, had voluntarily granted a type of constitutional guarantee to his people in protecting their lives and property. The appreciation for such a guarantee by the commoners was doubtful as most of them took it for granted. Conversely, the U.S. constitution was a result of bloody revolution by the American people. John Wu, 'Chinese Law and Legal Ideas', (1921) 19 Michigan Law Review 519.

³ W.J.V. Windeyer, Lectures on Legal History, (2nd edn., Sydney, 1957), p.79-83.

⁴ Such as the murder of Sir Thomas Becket (1118?-1170), the benefit of the clergy, and the execution of Sir Thomas More (1478-1535).

⁵ Geoffrey Radcliffe and Geoffrey Cross, The English Legal System (5th edn., London, 1971), p.52-65.

⁶ Here, Common Law refers to the law common in England as opposed to equity.

⁷ A. Kiralfy (ed.), Potter's Historical Introduction to English Law (4th edn., London, 1958), p.157.

⁸ Such as in *Stockdale v Hansard* (1839) 9 A.&E. 1.

Confucianism¹.

The exposure to such different ways of thinking in England through a series of struggles promoted the concept that individuals should be respected. As there were no other competing civilizations in traditional China until the end of the Ching Dynasty (1644 - 1911), the judicial system remained almost intact for over two thousand years. With the exception of periodic partition, traditional China had always been a highly centralized state governed by a hierarchically structured and morally trained ruling class. Its judicial system had never been intended for application to an individualistic society.

The differences between the traditional Chinese concept and the Common Law concept of judicial machinery which need to be examined are:

- a. Attitudes towards judicial independence.
- b. Attitudes towards the judiciary.
- c. Separation of judicial power.
- d. Judicial accountability.

In order to analyse the traditional Chinese attitudes and values towards these dimensions, an examination of judicial structure is essential.

Separation of Powers

Although the separation of powers² has never been formally adopted as a special feature of the British system of government, this doctrine has been so deeply entrenched in the Common Law world³ and the writings of English and other Common Law jurists that it is indeed a Common Law doctrine. This doctrine prohibits the concentration of more than one class of governmental function, such as legislative,

¹ The choice of political machinery rather than philosophical ideas, the emphasis on authority and legality over ideas of natural law and morals, the prevalence of procedures over principles, and the acceptance of legislative supremacy of Parliament over judicial authority are all historical developments contributing to the attitudes of the English people towards law.

² This doctrine was propagated by Baron de Montesquieu (1689 - 1755), a French citizen.

³ Montesquieu's doctrine is carried furthest in the U.S.A.

administrative or judicial, in any one person or organ of government in order to prevent any threat to individual liberty. In Great Britain, this doctrine has been primarily observed through conventions rather than by constitutional guarantees.

With the exception of the Lord Chancellor¹, who is also a politician, there is a separation of powers between the judiciary and other organs of government according to the British constitutional convention. In all other Common Law countries, e.g. Australia, Canada and the United States of America, the judiciary is a separate organ of the government².

In China, the concept of separation of governmental functions, as distinguished from powers, can be traced back to the Chou Dynasty (1122-129 B.C.) when reportedly the government was divided into six ministries: Heaven, Earth, Spring, Summer, Autumn and Winter³. Although under various names, the division has always been retained. In ancient China, there existed a full-time judicial officer for each district (*ssu*) who had exclusive jurisdiction over his own district and had no other functions⁴. It was suggested that the combination of the judicial and administrative functions in one office was a later day product⁵. For one thing, China's territory has always been vast and the number of people who could be appointed officials, even at the lowest level, was limited, since passing the civil service examination⁶ was generally a prerequisite. Under the system of government in traditional China, there was, to a certain extent, a doctrine of separation

¹ The law lords generally abstain from politically controversial debate in the House of Lords.

² One may argue that there is no absolute separation of powers as judges are often appointed because of their political affiliation, and also paid and promoted by the government. However, once they have been appointed, they are part of a separate organ. In the Watergate tape case (1974), the U.S. Supreme Court voted unanimously against President Richard Nixon. One of the four justices appointed by Mr. Nixon disqualified himself.

³ In the Rites of Chou (*chou-ii*), compiled around 1115 B.C. See Jaryen Dang, 'Ancient Chinese Constitution', 3:4 Chinese Culture 59-63.

⁴ To a lesser extent, Common Law judges exercise certain administrative functions. See Ronald Jack Walker (ed.), Walker and Walker's The English Legal System (6th edn., London, 1985), p.237.

⁵ Yu Chuan Chang, 'The Chinese Judiciary', (1917) 2 The Chinese Social and Political Science Review 71.

⁶ *Infra*, 'Examination System and Judicial Appointments', this chapter.

of powers. The examination authority¹ and the Censorate (*tu-cha yuan*)² had exclusive jurisdiction over their functions, and they were answerable only to the emperor³.

Examination System and Judicial Appointments

In traditional China, the moral education of the judicial officers was valued higher than a better legal system⁴. Confucian philosophers have always emphasized the doctrine of government for (not by) the people, and in order to counter absolutism of the state, a morally-educated non-hereditary bureaucracy was essential⁵. This doctrine was originally implemented by selecting officials mainly on the basis of recommendation in the Han Dynasty (206 B.C. - 220 A.D.). The civil service examination was later instituted but available only to those who were recommended⁶. As a preventive measure for candidates being recommended only from elite families, the Tang (618 - 907) government began to open the examination to almost anyone⁷. The significance of the civil service examination to the Chinese governmental system was illustrated by Chien Mu:

"Traditional recruitment in China, whether by recommendation or examination, was always a matter of grave importance that had to follow accepted procedure. Even the emperor in his most important appointments was constrained by it. To this degree, we can say a rule of

¹ The civil service examination was normally administered by the Ministry of Rites. All officials in active service and new appointments were under the jurisdiction of the Ministry of Personnel (*li-pu*). Appointments were preceded by civil service examination.

² See *infra*, 'Censorate and Remonstrator Systems', this chapter.

³ For ancient Chinese conception, see Dang, *op.cit.*, p.62-3.

⁴ Bodde and Morris, Law in Imperial China (Cambridge, Mass., 1967), p.21.

⁵ Derk Bodde, 'Authority of Law in Ancient China', (1954) *Journal of American Oriental Society* (Supplement No. 17) 54.

⁶ Chien Mu, Traditional Government in Imperial China (Hong Kong, 1982), p.48.

⁷ It should be noted that some schools of thoughts in early China believed that all men are "naturally equal", and that inequalities existed because some men could utilize their potential better. See Donald Munro, The Conception of Man in Early China (Stanford, 1969), p.1-22.

law rather than of men existed in imperial China"¹.

Ultimately, the desire to preserve the integrity of this system led to the result that, in the Ming Dynasty (1368-1644), the Hung-wu emperor discouraged members of the royal families from taking the civil service examination². Except for a short period³, the examination system of traditional China has never been discontinued and it became the responsibility of a separate organ of government under the doctrine of separation of five powers advocated by Dr. Sun Yat Sen⁴. As most judicial officers of all ranks in traditional China were selected on the basis of their performance in the civil service examination, the significance of this system to the Chinese judicial process, as well as its influence on the British governmental system during the nineteenth century can be easily seen⁵. This system won the support of almost the entire population in traditional China. There was always the possibility that a man of humble background might pass the civil service examination and eventually become a high ranking judicial officer or even the prime-minister⁶.

Although passing the civil service examination did not necessarily imply the judicial and administrative competence of an individual, the appointed candidate could, at

¹ Chien, *op.cit.*, p.52.

² See Albert Chan, S.J., The Glory and Fall of the Ming Dynasty (Norman, 1982), p.275, who suggests other motive.

³ In 1905, the Empress Dowager's government abolished the traditional civil service examination. See Wang Te-chao, A Study of the Civil Examination of Ching Dynasty (Hong Kong, 1982), p.345-6.

⁴ This separation is guaranteed by the constitution, and is practised by the Nationalist government in Taiwan. After a decade of turmoil during the Cultural Revolution, the People's Republic of China has re-introduced some kind of examination through a gradual process.

⁵ The civil service examination in traditional China was adopted by other parts of Europe, including Great Britain, in the 19th century. See Hansard Parliamentary Debates, CXXVIII, 13th June, 1853, p.38; Hsiang-lin Lo, Hong Kong and Western Cultures (Honolulu, 1963), p.285.

⁶ a) Edwin Reischauer and Mifflin Fairbank, A History of East Asia Civilization (Boston, 1960), p.165-6.

b) A survey on judicial appointments in England between 1951 to 1968 indicated that 76.8% of judges came from upper and upper-middle classes, and only 1.2% came from the working class. See J.A.G. Griffith, The Politics of the Judiciary (London, 1979), p.25.

least, be confident that he did not owe anyone a favour¹, and the public could be assured that he had some intellectual faculty². One of the objectives of the examination system was to attract into the system intellectuals who might otherwise attack the government. At the same time, judicial officers who came from all classes of society would represent their habitual thoughts and independent viewpoints³.

Censorate and Remonstrator Systems

In traditional China, the concepts of criticizing the policy and operation of governments were instituted under the influence of Confucianism and Legalism⁴. The Censorate (*tu-cha*) system was developed as an imperial control over the bureaucracy, and the Remonstrator (*chien-i*) system was developed as a bureaucratic control over the emperor. There were special sanctions devised for the performance of the rights and

¹ But, it was not unusual for a family unit to sponsor one of its members to take the civil service examination. However, an official was often assigned to a jurisdiction far away from his home. The individual often ran up high debts while studying for the civil service examination.

² a) Appointments of judges in England are made either by or on the advice of the Lord Chancellor or by the Prime Minister after consultation with the Lord Chancellor depending on the level of the courts. Since the Lord Chancellor and Prime Minister are politicians, political patronage can be assumed. In Common Law countries, such as Canada, it is not uncommon for Members of Parliament or party loyalists belonging to the party in office to be appointed to higher judicial positions, and, unlike in England, judges in Canada are not mostly appointed from Queen's Counsel whose appointments may also reflect political patronage.

b) Tung-tsu Chü has noted that during certain periods, some people were appointed officials through family connection rather than passing the civil service examination. See Law and Society in Traditional China (Paris, 1961), p.88.

c) With the exception of periodic corruption, the examination system seems to have functioned fairly well as evidenced repeatedly by the number of brilliant officials selected throughout Chinese history. However, during the Yuan (1271-1368) and Ching (1644-1911) Dynasties, the examination system had differed fundamentally from the traditional Chinese pattern. Under the Ching system, there were quotas for Manchus officials to prevent Chinese from seeking all the higher offices. Unfortunately, most contemporary scholars, when criticizing the Ching system, often generalize it with the traditional Chinese system.

³ This system was uniform in the sense that the examination was based on Confucian classics and moral values.

⁴ Charles O. Hucker, 'Confucianism and the Censorial System', in David Nivison and Arthur Wright (ed.), Confucianism in Action (Stanford, 1959), p.182-208.

duties under these systems¹.

The Superior Court System

Since the time of the Tang Dynasty, the judicial hierarchy in China had become increasingly specialized, and with some modifications, these specializations remained almost intact until the beginning of the first Republic. As Sybille van der Sprenkel wrote:

"Its [*Ching*] institutions deserve interest as being the culmination of the Chinese imperial system"².

The upper echelon in general comprised the Ministry of Justice (*hsing-pu*)³ and the Grand Court of Revision (*ta-li ssu*). Their functions were as follows.

The Ministry of Justice was one of the traditional six departments of the state. Its minister was an official of the third degree (*shang-shu*), and he was assisted by a number of subordinates who were well educated in law⁴. This Ministry was in charge of the judicial machinery including law enforcement and judicial appointments⁵.

The Ministry of Justice had always been an independent department. Within the Ministry, there were specialist officials in charge of civil and criminal cases, but they normally had other administrative functions as well. It must be noted that a government

¹ *Ibid.*

² Legal Institutions in Manchu China (1st edn. (1962) reprinted, London, 1971), p.2; R.H. Van Gulik, Parallel Cases from under the Pear Tree (*tang-yin pi-shih*) (Leiden, 1956), p.52.

³ As the term indicates, traditional Chinese jurisprudence was more active in chastening the people for violating the law than dispensing justice to the plaintiff.

⁴ a) During the Ching Dynasty, this Ministry was divided into departments as judicial districts, and each department could also be vested with some particular areas of law, e.g. amnesty and pardon were under the jurisdiction of one department. See Chang, *op.cit.*, p.83.

b) The system of Doctor of Law (*lu-pu shih*) was instituted during the Wei Dynasty (220-265). For further discussions of the legal profession and law training, see Shen Chia-pen, Part I, The History of Judicial Officers (*li-tai hsing-kuan kao*), p.33, and *infra*, 'The Legal Profession', this chapter.

⁵ The functions of what would in Great Britain be the Lord Chancellor, Home Office, Attorney General, and Solicitor General in Great Britain were all under this ministry.



official acting in his judicial capacity was ultimately accountable only to the Ministry of Justice, and was only accountable to other appropriate ministries for his other functions.

The Grand Court of Revision provided a final check on the judicial system¹. In the Ming Dynasty (1368 - 1644), all civil and criminal cases which could not be finally settled in the lower courts could be appealed to this Court. Whenever there was a dispute between this Court and the Ministry of Justice, or when an urgent and important case arose, or when a case was beyond the jurisdiction of both organs, the emperor would direct this Court, the Ministry of Justice, and the Censorate to conduct a joint session of judicial commission, known as the Three Judicial Offices (*san-fa ssu*)².

In the Ming Dynasty, the Ministry of Justice held its own trial for all cases submitted to it. After the trial, the cases were referred to the Censorate for investigation and to the Grand Court for revision³. These were the procedures designed to check the judicial hierarchy in traditional China. This sort of check of the judicial process might go beyond what Montesquieu's separation of powers could have achieved. However, there was no evidence that these checks were intended to protect civil liberty. Rather, they were designed to protect the interest of the emperor so that no ultimate authority could be vested in one organ.

The Chinese legal tradition never separated the office of judiciary and administration in the Common Law sense⁴. The emperor, being the fountain of justice, was always the last person to whom resort was made on appeal, at least theoretically. However, on the whole the judiciary in traditional China was independent in the sense that even the emperor did not seem to make unfettered interventions in their judicial

¹ Under the Hsia Dynasty (2100-1600 B.C.), the chief judge was called *ta-li*. This title reappeared again in 1928 for the justices of the Supreme Court. Under the Tsi Dynasty, it was known as *ta-li ssu-ching*.

² Chang, *op.cit.*, p.73; Chien, *op.cit.*, p.92.

³ Chang, *op.cit.*, p.77.

⁴ In traditional China although judicial and administrative functions were combined in one office, a government official acting in his judicial function was ultimately accountable only to the Minister of Justice.

verdicts¹.

The System of Courts

Under the Chinese legal tradition, the court hierarchy² remained virtually the same from the Tang to the Ching Dynasties (618 - 1911). Unlike most Common Law proceedings, a court of competent jurisdiction which tried a case in traditional China did not necessarily have the authority to pronounce the judgement. The court system³ in the Ching Dynasty (1644 - 1911) was as follows:

1. The court of first instance (lowest level) was held by a magistrate (*chih-hsien* or *chih-chou*)⁴. He was vested with full judicial authority to inquire into almost all types of cases, including murder, but only had authority to dispose of minor offences with a maximum sentence of bambooing⁵. For graver offences, e.g. homicide, the magistrate was required to submit a preliminary report (*tung-ping* or *tung-hsiang*) on his investigation to the next higher level within a prescribed time limit. This requirement was partly enacted to prevent concealment of a case and to avoid malpractice⁶.
2. The court of second instance, held by the prefect (*tao-tai*), had jurisdiction over

¹ a) This might be attributed to the fact that some emperors who inherited their ancestor's victory were so ignorant that they were dependent on the well educated officials intellectually. See Albert Chan, S.J., *op.cit.*, p.160.

b) See Case 147.2 of 1796, reported 9.18/13a, *Hsing-an hui-lan* in Bodde and Morris, *op.cit.*, p.298-300.

² Tai Yen-hui, Chinese Legal History (*chung-kuo fa-chi shih*) (4th edn., Taipei, 1981), p.145-51. Also Bodde and Morris, *op.cit.*, p.115-9.

³ There were other special courts organized for particular classes of people.

⁴ Tai, *op.cit.*, p.145-51; Shuzo Shiga, 'Criminal Procedure in the Ching Dynasty', (1974-75) 32-3 *Memoirs of the Research Department of the Toyo Bunko* p.1 and 115.

⁵ The classification of offences in traditional China had always been related to the Five Punishments (*wu-hsing*). Chinese tradition always regarded these punishments as the barbarian's contribution to Chinese civilization. See Derk Bodde, 'Basic Concepts of Chinese Law', in Essays on Chinese Civilization (Princeton, 1981), p.176. The Five Punishments during the Ching Dynasty were: light bamboo, heavy bamboo, penal servitude, life exile, and death.

⁶ Shiga, (1974) 32, *op.cit.*, p.27.

offences not involving death. This court transmitted cases submitted to it to the judicial commissioner (*an-cha shih*) for trial, and it also served as a court of first revision. All the bambooning cases were collectively reported to it by the magistrate.

3. The court of third instance was held by the judicial commissioner who was a full time legal expert. Each province had one such commissioner to handle its legal affairs. Although he was subordinate to the provincial governor (*tsung-tu*), he was only answerable to the Ministry of Justice in the capital. He had jurisdiction to try all cases subject to the review, judgment, and confirmation of higher level courts. His court served as the court of second revision. Cases of purely civil nature commonly passed instead to another official of equal rank, the financial commissioner (*pu-cheng shih*).

4. The court of fourth instance was held by the provincial governor. It served as the court of third revision. It confirmed all cases tried by the judicial commissioner subject to the final judgment and review by the Ministry of Justice. All capital cases¹ were automatically reviewed by the Ministry of Justice, and the final judgment was made by the Three Judicial Offices subject to the ratification of the emperor². The review was held once a year in the eighth month and was known as the Autumn Assize (*chiu-shen*)³.

The careful scrutiny of every capital case was a distinct feature of Confucian jurisprudence⁴. Confucius preached that it would be a real tyranny if the emperor punished his people by death without teaching them virtue beforehand. The date of sentence was in Autumn, and the date of execution was in Winter, because the

¹ There were exceptions to the rule in that, during emergency periods, bandits and rebels were executed on the spot. See Bodde and Morris, *op.cit.*, p.142-3.

² As Joseph Needham remarked, "This is hardly in accord with the commonly held belief that human life has always been cheaper in China than in Europe". See Volume 2, Science and Civilization in China (Cambridge, 1962), p.525n.

³ or a special trial known as Palace Assize (*chao-shen*) which was held by the nine chief ministers.

⁴ Chin Kim and Theodore R. LeBlang, 'The Death Penalty in Traditional China', (1975) *Georgia Journal of International and Comparative Law* 82.

weather had been so cruel as to wither trees and grass¹.

The Automatic Review and Appeal Systems

A special feature in the traditional Chinese judicial process was the automatic review of all but minor cases at various stages of the judicial process. This system can trace its roots to the Han Dynasty and was incorporated in the traditional Chinese codes since the Tang Dynasty². The graver an offence, the more channels it had to pass through before a final judgment could be pronounced. This process did not imply red-tape delays. The judicial officers at all levels would have to meet deadlines depending on the gravity of each offence, otherwise they would be subjected to administrative penalty. Confucianism emphasizes collective responsibility³ and individual obligations to the community. As such, the concept of individual rights was unheard of. Therefore, the automatic review system could supplement the absence of such rights.

On appeal by the accused or his relative, a trial *de novo* would take place at a court of higher instance than the original trial. Theoretically, an appeal could go as high as the emperor⁴. However, the system of automatic review did not make too many appeals necessary as incorrect judgments were often reversed. A judicial officer could earn promotion for discovering mistakes⁵, and, naturally, the higher the level of the system, the better legal training the judicial officer would have. However, filing an appeal was uncommon and often risky⁶ as the appellant would be subjected to

¹ Cheng Chi-Yu, 'The Chinese Theory of Criminal Law', (1948) 39 Journal of Criminal Law 463.

² Shiga, (1974) 32, *op.cit.*, p.16.

³ *Supra*, p.26.

⁴ Bodde and Morris, *op.cit.*, p.118.

⁵ Van Gulik, *op.cit.*, p.61.

⁶ It is natural human behaviour that people belonging to a certain peer group attempt to cover each other up. A case in a democratic society such as Great Britain may exemplify this. It was evidenced in *Maynard v Osmond* ([1977] Q.B. 240; See (1977) 36 The Cambridge Law Journal 205-8) where a young police constable was charged with making a false report because he had reported a police sergeant for assaulting a private citizen. After no fewer than eight officers had refused to represent him, Constable Maynard resigned. He was later vindicated because the private citizen won his civil action for assault

punishment arising from the appeal¹ if he either failed to exhaust all available channels at the lower level or had his case dismissed².

In traditional China, judicial officers were punished for misinterpreting the codes or applying the law incorrectly³, but a judicial officer who corrected his mistake before it was discovered could have his punishment mitigated⁴. As *ultra vires* acts were punishable, judicial officers confronting difficult cases might prefer to pass them on to the next higher level so as to avoid discharging their responsibility. Judicial officers were punished for their mistakes under the principle of retributive punishment (*fan-tso*)⁵ as their incompetence brought shame upon the whole hierarchy of bureaucracy. These ruling elites were expected to set a moral example to those beneath them⁶, and for certain offences they would be exposed to heavier punishments than were prescribed for the mass of commoners⁷.

⁶(cont'd) against the police sergeant.

¹ It was suggested by Bodde and Morris that whenever someone appealed a sentence of bambooing, a stay of sentence would automatically result until the appeal was decided. Otherwise the appeal was pointless. See Law in Imperial China (Cambridge, Mass., 1967), p.118.

² In Common Law countries, a portion of actual court costs are usually awarded against the unsuccessful party.

³ William Jones, 'Studying the Ching Code: The Ta Ching Lu Li', (1974) 22 The American Journal of Comparative Law 340.

⁴ For a detailed analysis of the punishment system for officials, see Thomas Metzger, The Internal Organization of Ching Bureaucracy (Cambridge, 1973), p.235-417. Also, see Geoffrey MacCormack, 'Liability of Officials under the Tang Code', (1987) 17 Hong Kong Law Journal 142-62.

⁵ A judicial officer who wrongly punished a person should suffer the same punishment as, or the difference between what he inflicted and what should have been the reasonable punishment on, the victim. But, there were mitigative circumstances. See Tung-tsu Chü, Local Government in China under the Ching (Cambridge, Mass., 1962), p.128-9. The emperor had to ratify all sentences given to officials before they could be carried out. See Bodde and Morris, *op.cit.*, p.117.

⁶ Compare with the "professional misconduct" provision of various professional bodies, e.g. the Law Society and the Bar.

⁷ However, there were eight privileged groups of persons, including the bureaucrats, qualified for special judicial process and consideration (*pa-yi*). See Bodde and Morris, *op.cit.*, p.34-5.

In a standard model Common Law judicial system, appeals are based mostly on points of law¹. Leave is in certain cases necessary for appeal². Only in exceptional circumstances would an appeal court admit fresh evidence³. The principles for imposing such conditions are to expedite the administration of justice and to avoid the appeal court being inundated with hopeless applications⁴. However, appeals are quite common in most Common Law countries. This system of appeals based on public policy is fundamentally different from the traditional Chinese concept based on mistrust of inferior judicial officers by the central government.

Judicial Accountability

The independence of the judiciary is a cardinal doctrine of the Common Law judicial system. A judge in carrying out his judicial function is not answerable to or under the control of another organ of government, and should be free from other pressure or influence⁵. In England, judges of the superior courts (other than the Lord Chancellor) can only be removed on an address by both Houses of Parliament unless they are guilty of serious neglect or misconduct. In the latter case, they can be removed by the Crown⁶. In *Sirros v Moore*⁷, Lord Denning stated in the Court of Appeal that:

"Each [*judge*] should be protected from liability to damages when he is acting judicially..... So long as he does his work in the honest belief that it is within his jurisdiction, then he is not liable to an action..... What he does may be outside his jurisdiction in fact or in law, but so long as he honestly believes it to be within his jurisdiction, he should not be liable".

¹ A trial *de novo* takes place on appeal from a magistrates' court to the Crown Court. See Walker, *op.cit.*, p.550-1. In Hong Kong, all the depositions taken in the magistrates' courts are admissible as evidence in the High Court.

² Walker, *op.cit.*, p.423-37, p.528-9, p.540-1, and p.544-56.

³ Walker, *op.cit.*, p.432-3 and p.536-7.

⁴ The judicial process in England has at times been very slow.

⁵ In the U.S.A., the majority of the judges may be under pressure from public opinion as most of them are elected.

⁶ *Earl of Shrewsbury's Case* (1611) 9 Co.Rep. 42a, p.50.

⁷ [1975] Q.B. 118; [1974] 3 All E.R. 776.

This Common Law doctrine of judicial immunity is vital to judicial independence as judges should be permitted to exercise their judicial functions freely. In England, the prerogative writs¹ under the Common Law system could all be traced back to the control of the inferior courts by the King's Bench. In traditional China, judicial officers were under tight scrutiny. Governments in China have always been highly centralized². At each level, detailed reports had to be submitted for review by the next higher level, and so forth up to the central government. Promotion was largely based on actual merit. Favouritism existed mainly in the higher level of government where inferior and superior officials had more opportunity of contact with each other³. A conscientious and diligent judicial officer could expect his regular promotion, but an incompetent one could be punished as well⁴.

The traditional Chinese judicial system worked to the satisfaction of the people in times of prosperity. However, in times of turmoil when the authority of the central government was weakened, these forms of checks often ceased to operate. Failure was particularly evident towards the end of the Ching Dynasty. This system reflected the doctrine of patriarchal authority grounded on the basis of filial piety (*hsiao*)⁵. The Confucian idea of rule by an elite hierarchy is still a living ghost in contemporary China under the Communist Party.

On the surface, there seems to be a conflict between judicial accountability in traditional China and the doctrine of separation of powers widely accepted in a standard model Common Law judicial system. However, both the Common Law and traditional Chinese judicial systems have aimed at providing checks in the judicial process⁶. The

¹ The writs of certiorari, mandamus, and habeas corpus etc.

² Major cities in the People's Republic of China and Taiwan (R.O.C.) are still under the direct jurisdiction of the central rather than provincial authorities.

³ Van Gulik, *op.cit.*, p.62.

⁴ *Ibid.*

⁵ From the duty of children to submit to their parents to the duty of subjects to submit to the emperor who is *in loco parentis* to his people.

⁶ Malicious prosecution, common barratry, false imprisonment, perjury, and obstruction of justice are all applicable to prevent the abuse of judicial process at Common Law.

safeguards against the abuse of judicial process in traditional China did not require an outright separation of powers.

Conclusion

Unlike Common Law development, the judicial officers in traditional China were not vested with much authority from the outset. They were regarded as part of a hierarchical system operating under strict rules and complex administrative regulations. The system was rather mechanical in nature, although the judicial officers were present as human components. Not only had the judicial officers no bargaining power, as the Common Law courts had with Parliament, they were not entrusted with wider adjudicative authority. The censorate, automatic review and appeal systems were designed to check their errors to ensure a peaceful empire for the ultimate interest of the emperor.

In Christian Europe, the authority of the papacy in each individual Roman Catholic state created a form of separation of power. The clergy was protected by the papacy which most emperors avoided challenging¹. This might have accelerated the development of the concept of separation of powers in Catholic France by Baron de Montesquieu (1689 - 1755). In Anglican England, there is still no exact separation of powers.

In a Christian society, judges were regarded as human components guided by a divine power to exercise their own conscience to do justice. The ultimate justice was provided by God. In traditional China, the ultimate justice was provided by the emperor, who was a human being. He had no divine power to help him guide the officials. Therefore, the only means of ensuring that justice was done was through checks which existed in the hierarchical structure.

¹ In England Sir Thomas More was executed in 1535 for refusing to acknowledge Henry VIII as the Supreme Head of the English Church. He was canonized by the Pope Pius XI in 1935 for his defence of the papacy's authority over the king.

There was no belief in a divine origin of law in traditional China¹, and unlike Common Law development, ordeal was not a formal legal procedure. Rather than attributing the origin of law to god as did the Romans and the eighteenth century Common Law jurisprudence², the origin of law in the traditional Chinese view was attributed to a barbarian people (*the miao*)³. The traditional Chinese looked upon law with contempt and abhorrence. In their mind, all laws were subject to error. "Help me God" was unheard of in traditional Chinese courts, but rather the judicial officers, as human components in the judicial system, were required to discover the truth by whatever means available under the system or they faced punishment. More likely, they would find reasons for not concluding a case in order to pass it to the next level in the judicial hierarchy so as to minimize personal risk. The higher up the hierarchical level, the better educated the judicial officers would be, and, hence, more virtuous as the Confucianists believed. Naturally, higher level judicial officers did not trust the lower level judicial officers who were considered to be less virtuous and less educated. Therefore, all cases were subject to review and sentences were provisional.

Hence, the social, political and religious environment was a factor contributing to the different historical development of traditional Chinese legal culture and Common Law culture.

C. Procedures

Introduction

One of the cardinal features of the Common Law judicial system is the rule of law. This doctrine demands the general acceptance of law by the government. Albert

¹ Derk Bodde, 'Basic Concepts of Chinese Law', in Essays on Chinese Civilization (Princeton, 1981), p.193.

² Sir William Blackstone, author of Commentaries (1765), "regarded divine law as the corner-stone of the whole legal edifice". See William Robson, Civilization and the Growth of Law (New York, 1935), p.47-8.

³ Bodde, *op.cit.*, p.176.

Venn Dicey (1835 - 1922) outlined this doctrine by stating the predominance of law over the exercise of arbitrary power, equality before the law, and the derivation of law from individuals' rights as decided by the courts¹. Therefore, in discussing the supremacy of the law, it is essential to examine the following dimensions:

- a. *Nullum crimen sine lege.*
- b. Equality before the law.
- c. The exercise of arbitrary power.

The fairness and reasonableness of the judicial process also affects the degree to which the people accept the following dimensions:

- a. Insistence on legal rights.
- b. Resorting to court to settle disputes.
- c. Cooperation with the judicial system.
- d. Attitudes towards law suits.
- e. Respect for other's legal right.
- f. Confidence in the administration of justice.

In contrasting the traditional Chinese concepts and the Common Law concepts of trial procedures and checks and balances, the above dimensions can be examined from a historical perception.

Proceedings

Judicial procedures in traditional China reflected the mentality of a highly centralized state ruled by a class constituted by a morally educated elite. Since the interests of the state were the ultimate aim, conflicting interests of the individual had to give way. But, the emperor was under a patriarchal duty to provide justice for his people.

¹ Roger Cotterrell, The Sociology of Law (London, 1984), p.168-9; O. Hood Phillips and Paul Jackson (ed.), Constitutional and Administrative Law (7th edn., London, 1987), p.33-9.

The trial procedures in traditional China as represented by the Ching legal system were generally as follows. All proceedings were open to the general public with the exception of certain types of offences (e.g. rape and high treason), and all business was conducted before the people. Criminal cases, especially if serious, would, unlike civil cases, be investigated and tried even in the absence of a complaint (*fang-na*)¹. Administrative penalty would ensue against the responsible officials if serious crimes were unresolved². The parties to a trial including the plaintiff and witnesses were usually put into a humiliating position as every one involved was regarded as a party to a breach of peace or a troublemaker³. If there was a complaint, the complainant was questioned on three separate days (*san-shen*) before the case would be investigated. A firm commitment was essential as retributive punishment⁴ could be imposed against the complainant unless he was a victim or his relative was reporting certain serious crimes.

Legal torture⁵ within certain limits could be used for extracting a confession from a suspect who stubbornly refused to admit guilt⁶, but only if there were sufficient and plain evidence against him and within the legal limit and format prescribed⁷. A confession⁸ was considered essential as no sentence could be passed without the

¹ This might be parallel to the distinction made between criminal and civil laws at Common Law. Crime is a breach of the King's peace. See Potter, *op.cit.*, p.350-1.

² Chapters 41-43, Imperial Administrative Rules for the Six Boards (*ching-ting liu-pu chu-fen-tse-li*).

³ R.H. Van Gulik, 'Court Procedure in Ancient China', (1970) 5 *The Criminologist* 110.

⁴ See *supra*, p.54.

⁵ a) Contrary to some writings, it must be noted that secret interrogations and torture inside the prison, although they existed, were branded as an evil practice and were condemned. See R.H. Van Gulik, Parallel Cases from under the Pear Tree (*tang-yin pi-shih*) (Leiden, 1956), p.60-1.

b) See 'Lu Wen-Shu's Memorial Remonstrating Against the Use of Torture in Trials'; translated by John Wu, *op.cit.*, p.523.

⁶ Judicial torture was not foreign in English legal history, and came to the English judicial proceedings from the Roman civil law via the Canon Law. See Potter, *op.cit.*, p.137 and Glanville Williams, The Proof of Guilt (3rd edn., London, 1963), p.40-2.

⁷ Lewis Gen, 'Some Characteristics of the Ancient Chinese Law', (1952) 48 *The Asiatic Review* 239.

⁸ In the early Ching period, there were two kinds of confession, which were deposition (*kung-chuang*) and formal confession (*chao-chuang*). See Shiga, (1975)

confession of the accused¹, and passing sentence solely on the basis of evidence was allowed only in exceptional cases². All confessions were subject to review, and if they were not consistent with other evidence, they would be rejected on review. The judicial officer would then be liable for passing careless judgment (*tsao-shuai ting-an*), which might negatively influence his career³. Moreover, an accused could deny his original confession at any stage of the judicial review process (*fan-i*). This would provide an opportunity to expose the illegal or arbitrary practices of the lower judicial level⁴.

Checks and Balances

There were certain measures adopted to prevent conflict of interest and limit the discretionary power of the judiciary in traditional China. It was reflected in the Ching legal system. Firstly, should a judicial officer find a party to a trial having a close relationship with him (which included family relatives, teachers, former superiors), he was required to disqualify himself⁵. Otherwise, there would be an administrative penalty imposed even he had acted in good faith. The case was then transferred to another appropriate jurisdiction for trial⁶.

Secondly, judicial officers in traditional China were often assigned to districts far away from their home provinces as a preventive measure that they might become too powerful locally. In addition, the number of persons who could pass the civil service examinations was limited. Therefore, a vacancy often had to be filled from far away. Similar to the position of expatriate magistrates in contemporary Hong Kong, magistrates in traditional China might not speak the local dialects⁷. Therefore, they would have a

⁸(cont'd) 33 *op.cit.*, p.120.

¹ Wu Ting Fang, 'Chinese Jurisprudence', (1901) 35 *American Law Review* 356.

² Articles 6 and 8, Judgment and Prison (*tuan-yu*), Tang Code (*tang-lu shu-yi*). The Ching Code (*ta-ching lu-li*) had a similar provision as Article 6.

³ Shiga, (1975) 33, *op.cit.*, p.122.

⁴ Shiga, (1974) 32, *op.cit.*, p.25.

⁵ Bodde and Morris, *op.cit.*, p.118.

⁶ *Ibid.*

⁷ David Buxbaum, Traditional and Modern Legal Institutions in Asia and Africa (Leiden, 1967), p.4-5.

difficult time to adjust to local circumstances. Consequently, their impartiality was developed.

Thirdly, a judicial officer was bound by law¹, and the punishments were fixed by law for all offences. All analogous cases (*pi-chao* or *pi-yin*)² had to be submitted to the emperor for final judgment³. All sentences in traditional China had to be accompanied by a statement of their legal authority⁴. The judicial officer was not entrusted with wider judicial decision making authority as the interest of the centralized state prevailed⁵. But, in Common Law countries, some of the judicial decisions have been criticized as judge-made law⁶. Under the guise of the declaratory theory of Common Law, the English courts could create new criminal offences by upholding the moral welfare of the state⁷. Such decisions can lead to abuse of judicial power and to uncertainty in the law.

Fourthly, under traditional Chinese codes, all interrogations should be confined according to the circumstances of the accusation⁸; an inquiry made into irrelevant matters in order to impute additional charges on the defendant would result in punishment on the judicial officer. Only offences accidentally exposed, or accusations made by the victim or his relatives for certain serious crimes, could be excepted from this rule⁹. Therefore, the doctrine of *nemo iudex sine auctore* (do not judge without

¹ M.J. Meijer, The Introduction of Modern Criminal Law in China (2nd edn., Hong Kong, 1967), p.67.

² Analogy was the selection of the statute which seemed closest to the circumstances of the given cases, and was primarily used to devise the punishment deemed most appropriate in the particular circumstances of each case. Only rarely was it used to create a new crime. See Bodde and Morris, *op.cit.*, p.32; Fu-Mei Chang Chen, 'On Analogy in Ching Law', (1970) 30 *Harvard Journal of Asiatic Studies* 212.

³ Bodde and Morris, *op.cit.*, p.175-6 and p.530.

⁴ Shiga, (1975) 33, *op.cit.*, p.124.

⁵ An exception can be found in "catch all" offences. See MacCormack, *op.cit.*, p.144.

⁶ See *Shaw v D.P.P.* [1962] A.C. 220, [1961] 2 All E.R. 446; *Kamara v D.P.P.*, [1974] A.C.104. Also see Walker, *op.cit.*, p.232-6.

⁷ H.L.A. Hart, Law, Liberty and Morality (Oxford, 1962), p.11-2.

⁸ Article 12, Judgment and Prisonment (*tuan-yu*), Tang Code; Ching code had similar provision.

⁹ Article 10, Judgment and Prisonment, and Article 54, Assault and Accusation (*tou-sung*), Tang Code.

authority) existed in traditional China¹.

Lastly, as rites (*li*) were quoted to fill the gap when codes were not applicable, the Ministry of Justice would have to ask the Ministry of Rites for an opinion if no written authority² about rites was available. The jurisdiction of each ministry was clearly independent³. The certification of another ministry within its jurisdiction was conclusive.

Conclusion

The trial procedures in traditional China did not encourage people to insist on their legal rights, to resort to courts to settle disputes, to cooperate with the judicial system, and to respect the legal rights of others. These procedures fostered a negative attitude towards law suits. However, the tight scrutiny within the hierarchical structure, and the checks used during trials are likely to have given the people confidence in the administration of justice.

The traditional Chinese practice was devised to prevent the exercise of arbitrary power by the judicial officers and to provide a fair trial to the people. The absence of a legal profession⁴ had put all accused on the same disadvantaged footing. With the exception of certain privileged groups⁵, there was generally equality before the law and *nullum crimen sine lege* existed but operated under strict procedures. To a certain extent, the rule of law existed in traditional China.

¹ Shiga, (1975) 33, *op.cit.*, p.116-7.

² Such as the Book of Rites (*li-ki*), first compiled in the second century B.C.

³ Tung-tsu Chü, 'The Qing Law: An Analysis of Continuity and Change', (1980) 3 Social Science in China 112-113.

⁴ *Infra*, 'Adversary System and Independent Legal Profession', this chapter.

⁵ Bodde and Morris, *op.cit.*, p.34-5.

D. Adversary System and Independent Legal Profession

Introduction

The adversary system and the independent legal profession are distinguishing features of a Common Law judicial system. An independent legal profession very much depends on public confidence. The confidence of the people partly depends on their cultural experience which can be examined from an historical perspective. By contrasting the differences between the traditional Chinese concept and Common Law concept of the adversary system and independent legal profession, the following dimensions can be examined:

- a. Economic barriers to obtaining legal services.
- b. Attitude towards the legal profession.
- c. Necessity of lawyers in courts.

Adversary System

Through historical accident¹, the adversary system² has been used in England whereby the parties, whether in civil or criminal proceedings, have to present evidence to support their claims. The standard of proof in a criminal case is usually beyond reasonable doubt whilst in civil cases it is the balance of probability. This type of system naturally requires an independent private legal profession, whose advocacy is important to the interests of its clients. The following passage from *Lao Tzu* might explain the traditional Chinese attitude:

"That system of law which gives full play to the inarticulate dictates of nature is most conducive to the people's welfare. Laws that are over specific and inflexible often result in injustice"³.

¹ This can be traced back to trial by battle. See Potter, *op.cit.*

² The procedures in the Court of Star Chamber were inquisitorial.

³ John Wu, *op.cit.*, p.513.

The procedures in the Chinese judicial system have always been more inquisitorial in nature. In a society where the vying parties were expected to live in harmony according to Confucian teachings, the adversary system might not be the best means of resolving their dispute. Mediation has always been resorted to in traditional China. In contemporary Confucian societies, such as Taiwan, mediation is still a popular extra-judicial process for social control and is required by law under certain circumstances¹. Moreover, there was no private legal profession in traditional China to support an adversary system.

The adversary system is expensive and time consuming, and the court almost entirely relies on the material presented to it by the vying parties and their advocates². The memory feat of the witnesses examined orally has an important role in the outcome of the case. However, the memory feat can fade with time and is subject to human fallibility³. The automatic review system in traditional China might achieve the same type of checks as the adversary system. However, the absence of advocates and an opportunity to cross-examine the witnesses might work to the detriment of the accused. Relevant information concerning facts in issue favourable to the accused might not come to light, and, even if in doubt, the accused cannot inquire further.

Background of the Legal Profession in England

Prior to the introduction of legal aid concepts in Common Law countries, the judicial system was chiefly only accessible to those who could afford the service of a lawyer⁴. An accused in a criminal case often had to face the prosecution lawyer without

¹ a) 291 Chinese Legal News (*Zhongguo Fazhi Bao*), p.4; Michael Moser, Law and Social Change in a Chinese Community (London, 1982), p.39-53.

b) In the People's Republic of China, the mediation process is recognized by Article 111 of the Constitution of the People's Republic of China, 1982. See 292 Chinese Legal News (*Zhongguo Fazhi Bao*), p.3.

² In the adversary system, the prosecution is obliged in theory to provide investigative results which are in favour of the accused.

³ Williams, *op.cit.*, p.86-182.

⁴ Although a person might apply *in forma pauperis*.

any legal assistance¹. Before the turn of this century, the adversary system had not been fully developed in England². Theoretically, the judge had a duty to ensure that the trial proceeded according to the law, and the counsel had a duty to assist the court³. In medieval England, the presence of lawyers in a criminal case was not tolerated as their presence might contradict the Crown case⁴.

In earlier times, the Common Law actions⁵ were very technical and any error made in the proceedings could be very costly and might lead to undesirable results. Legal fictions⁶ were used to get modern results out of medieval premises. Thus, a layman could hardly commence an action without the assistance of a legal expert. The costs were so expensive that even a successful party was at a disadvantageous position, notwithstanding that court costs were awarded to him⁷.

Legal Services in Traditional China

In earlier times, only the nobility was permitted to hire agents to represent them⁸. In later years, the aged and infirm could also be represented by an agent. During the Ching Dynasty, there were litigation tricksters (*sung-kun*) who often incited litigation,

¹ This was partly because the law did not allow defence counsel. Until 1696, the prisoner was not allowed counsel nor allowed to call witnesses in felony case - see A. Kiralfy (ed.), Potter's Historical Introduction to English Law (4th edn., London, 1958), p.365.

² Counsel were not permitted in most capital cases until 1837. See Windeyer, p.227.

³ In criminal proceedings, the prosecuting counsel is to assist the court and not to press for a conviction. In civil cases, a barrister is under a duty to draw to the court's attention precedents which do not support his client's case. Moreover, counsel must not mislead the court and conceal facts.

⁴ J.H. Baker, An Introduction to English Legal History (London, 1971), p.278.

⁵ Forms of action were finally abolished by the Judicature Act, 1873-5.

⁶ See F.W. Maitland, The Forms of Action at Common Law (1st edn. (1909) reprinted, Cambridge, 1971).

⁷ William Shakespeare wrote about the reputation of the legal profession: "The first thing we do, let's kill all the lawyers". See Henry VI, Part II. After working in a solicitor's office and later as a law reporter, Charles Dickens wrote: "The law is an ass". See Oliver Twist.

⁸ Hsu Chao-yang, History of Law of Litigation in China (*chung-kuo su-sung fa so-yuan*) (Taipei, 1973), p.58.

and distorted and fabricated facts for their clients¹. Furthermore, they often found channels to bribe government officials. Their activities were forbidden by law². As most of the people were illiterate, the scriveners (*tso-shu*)³ were permitted to draft petitions in accordance with the full instructions of their clients. Any addition or omission could result in punishment as scriveners were not permitted to give any advice. However, they had to pass a test of their ability at the magistrate's office⁴. There simply was no legal profession in traditional China.

The Need for Legal Services

In England, the public view of the legal profession has traditionally been somewhat jaundiced⁵. The position in traditional China was not much better. Some of the reasons for the absence of a private legal profession and the need of the people for legal services in traditional China may have been as follows. It should be noted that the demand for legal services is often related to the litigiousness of the people.

Firstly, the majority of the population were illiterate, and those who eventually passed the civil service examination became the elite, and were eligible for government employment. The upper echelon was not ready to admit ignorance or mistake. Naturally, the judicial system did not permit any challenge from a private legal profession. The absence of an adversary system did not encourage an advocacy profession.

Secondly, the automatic review system and the cautious but complex procedures in capital cases meant that a legal profession was not essential. Furthermore, no judicial officer would risk punishment for not interpreting the law correctly and trying the cases

¹ Bodde and Morris, *op.cit.*, p.189.

² *Ibid.*

³ Bodde and Morris might have overlooked this profession in their criticism of the prohibition against the litigation tricksters. See Law in Imperial China (Cambridge, Mass., 1967), p.189.

⁴ Tai, *op.cit.*, p.160.

⁵ Morris Finn, Q.C., 'The Legal Profession', in Michael Zander (ed.), What's Wrong with the Law (Montreal, 1970), p.45; Also see (1984) Vol.81 No.10 The Law Society's Gazette 700.

properly (particularly in time of peace and prosperity when the central government had full control over inferior authorities).

Thirdly, in traditional China, conveyancing matters were not dealt with by lawyers. This is still true in contemporary China and Taiwan as well as other civil law countries. Registration of land titles was also performed by administrators as this was essential for tax collections. The government had an interest to confirm all transactions¹. Matchmakers who dealt with marriage had to be familiar with family law and cases prohibiting illegal marriage. As most laymen handled their own legal affairs, a solicitor profession could not prosper.

Fourthly, the patriarchal system, the collective responsibility, and the Confucian principle of harmony² limited the scope of the need for legal services. The role of lawyers would be diminished in an arbitration or mediation process³.

Fifthly, a magistrate could be punished for interpreting the law incorrectly. In civil cases, he would encourage the parties to go to arbitration and mediation according to the Confucian doctrine of harmony, although it was an offence to refuse to receive a complaint⁴. The humiliating treatment of parties in a trial⁵ certainly did not encourage an individual to seek a legal remedy. During the period when farmers were busy, certain types of civil suits were brought to a halt except those which were regarded as urgent⁶. According to Confucius, "In hearing and deciding cases which have already arisen, I am not a bit better than other judges. But I consider it the paramount function of a judge to see to it that under his jurisdiction there be no occasions for going to law"⁷.

¹ John Cook, 'Chinese Conveyancing', (1902) 36 American Law Review 825-39.

² *Supra*, p.28.

³ Even in quasi-judicial tribunals in England, lawyers are usually discouraged, and legal aid is not usually available in those tribunals. Harry Street and Rodney Brazier (ed.), deSmith's Constitutional and Administrative Law (5th edn., London, 1985), p.561.

⁴ Chang, *op.cit.*, p.79.

⁵ See *supra*, p.60.

⁶ Bodde and Morris, *op.cit.*, p.119.

⁷ 'Yen Yüan', The Analects; translated by John Wu, *op.cit.*, p.515.

Lastly, as people in traditional China were discouraged from seeking judicial remedies and the judicial process was criminal in nature, a barrier was created between the government and the people. Moreover, the mass of commoners had different social values from the Confucian-trained judicial officers, and they preferred to resort to their own peers who would be more sympathetic to their problems. This further enhanced the remoteness of the judicial system.

Legal Training

While litigation was not an acceptable social norm in traditional China, legal training could not be ignored in the bureaucracy¹ as rules and regulations had to be followed rigidly in government administration and laws had to be observed to keep the peace². In analyzing Chü's *Law and Society in Traditional China*, Geoffrey Sawyer discovered "examples of criminal equity, and discussions of the relation between legal rules and social policy, which could not have been conceived by men indifferent to analysis and systematization"³. Theoretically, under the Ching codes, a knowledge of the law was a great advantage. A first time offender who had a good knowledge of the law would be pardoned⁴ if the offence resulted only from accident or was imputable to him from the guilt of others⁵.

¹ In the Wei Dynasty (220-265), the doctor of law (*lu-pu shih*) was instituted. In the Tang Dynasty, a department of law (*lu-hseuh*) was initiated at the State University (*kuo-tzu chien*) and law examinations were given. In the Ching Dynasty, law studies became practical in nature. The law students received their apprenticeship in the Ministry of Justice and the courts. See Jean Escarra, *Le Droit Chinois* (Seattle, 1936, trans. by G. Browne for Works Progress Administration, W.P. 2799, University of Washington), p.466-81.

For legal education and law examination in the Tang and Sung Dynasties (618-1279), see Dau-lin Hsu, *Discussions on Chinese Legal History* (*chung-kuo fa-chih-shih lu-chi*) (Taipei, 1975), p.178-229.

² C.K. Yang, 'Some Characteristics of Chinese Bureaucratic Behavior', in David Nivison and Arthur Wright (ed.), *Confucianism in Action* (Stanford, 1959), p.147.

³ *Law in Society* (Oxford, 1965), p.109.

⁴ Compare with the benefit of clergy at old Common Law.

⁵ Wu Ting Fang, *op.cit.*, p.347.

However, in traditional China, the indoctrination of Confucian morality through the civil service examination and the emphasis of Confucian morality in the rating system for promotions dominated the entire bureaucracy¹. Therefore, the key to success was to learn and practise Confucian classics. With the exception of specialist judicial officers, legal training was the lowest priority as morality was regarded as dominant over law. The study of law was not part of the civil service examinations, and specialized officials were inferior to generalists in traditional China². Law was above all for administrative purposes³. Although they had the same ranks, financial commissioners enjoyed higher prestige than judicial commissioners⁴. The non-civil service law secretary⁵, who advised the judicial officer, was usually recruited from those who could not pass the civil service examination.

It should also be noted that, in such a homogeneous society⁶ as traditional China, ideas among the people were often similar. Therefore, there was no need to develop better and logical methods to convey different views to each other. Consequently, legal methods were never much elaborated as in Western civilization. As Joseph Needham wrote:

"And this is echoed by the fact that, though a nation of scholars, China produced relatively few famous judges, fewer commentators and

¹ James Liu, 'Some Classifications of Bureaucrats in Chinese Historiography', in David Nivison and Arthur Wright (ed.), Confucianism in Action (Stanford, 1959), p.165-81.

² Yang, op.cit. p.136-46.

³ Joseph Needham, Vol.1, The Shorter Science and Civilization in China (Cambridge, 1978), p.279.

⁴ *Supra*, p.52.

⁵ Compare with the lay magistrates in England. In traditional China, this created a class of people who served the appointed officials as non-civil service private staff. The law secretaries (*hsing-ming*) were persons who were well versed in the technicalities and intricacies of the law. As most officials were educated only in Confucian classics, these law secretaries had a major role to play in the judicial process.

⁶ In this thesis, the term homogeneous society is used to indicate the fact that, in traditional China, one ideology - that of Confucianism was dominant for many centuries. While any society contains many interest groups, the influence of Confucius was to give a homogeneous veneer to traditional China.

theoreticians of legal matters, and no celebrated advocates at all"¹.

Conclusion

The differences in the traditional Chinese concept and Common Law concept in the adversary system and independent legal profession reflect the differences in the ways of thinking of the two cultures. The traditional Chinese legal system was hierarchically structured and deeply influenced by the Confucian principle of harmony, and this has no parallel in the historical development of the Common Law judicial system. Traditional China had never been a legalistic society, and the people looked upon law with contempt and abhorrence. Therefore, the issue was not whether there was any need for legal services, but rather whether the law clerks of the magistrates and litigation tricksters were honorable professions.

E. The Jury System

Introduction

In a society where morality (reflecting the elite class social values) had a dominant role, the mass of uneducated commoners were naturally not allowed to participate in judicial decision-making as common sense could not prevail over morality². Thus in traditional China, no jury system or its equivalent existed.

Common Law Conception

The jury trial is a special feature of the Common Law system which has been regarded as "the proud right of the Englishman". In *Ward v James*³, Lord Denning said:

¹ *op.cit.*, p.279.

² The dominant class would naturally like to be privileged. In the *Magna Carta*, 1215, the English barons were guaranteed that no freeman should lose his liberty except by the lawful judgment of his peers.

³ [1966] 1 Q.B. 295; [1965] 1 All E.R. 571.

"It [the jury system] has been the bulwark of our liberties too long for any of us to seek to alter it. Whenever a man is on trial for serious crime or a man's honour or integrity is at stake trial by jury has no equal".

The development of the modern day jury system in a standard model Common Law judicial system can trace its roots to the inquests used by the Frankish kings. The first English juries were used for administration rather than for judicial inquiries. Although this system originally existed only in the Common Law world, it appears to be continental in nature¹. Prior to this century, the jury system was the chief safeguard of the individual against the abuse of prerogative and judicial powers. The presence of a lay element in a trial might enhance the common sense aspect of a judgment.

The development of the modern day jury depends very much on the willingness of the people to participate in the judicial decision-making process. In England, the status of the merchants grew to the extent that the barons had to give way and allow political participation of the wealthy class of merchants².

As discussed, in traditional China arbitration and mediation were the only acceptable social norms to settle a dispute. The arbitrators and mediators were not related to the government. Therefore, most of the disputes would be settled by commoners among themselves. The practice of using a jury in civil cases was, therefore, never able to develop. In England, the decline of the civil jury is partly due to the success of modern law reform which brought the civil law in line with social interests³. Therefore, the common sense of jurors would be unnecessary because presumably the judge would base his decisions upon these progressive laws. In traditional China, the culture of the educated class of the population was reflected in its

¹ Potter, *op.cit.*, p.240. But, Athens also had juries. See Will Durant, The Life of Greece (New York, 1966), p.259-60.

² S.A. deSmith, Constitutional and Administrative Law, (2nd edn., London, 1974), p.229-31.

³ Geoffrey Sawer, Law in Society (Oxford, 1965), p.79.

law codes. The civil service examination attracted those of talent into the government, and the law codes were in line with their thoughts. As mentioned, there was no flexibility for any means to circumvent the traditional Chinese law. Therefore, there was no such interest in demanding a say in the judicial decision-making process.

Absence of a Jury System in Traditional China

Confucian philosophers believe that in order to achieve the highest aim of the people's welfare, the leadership of an elite class should be relied upon. As the majority of the people were illiterate, the ideal trial could be best conducted by the well-educated officials who were indoctrinated in the Confucian classics. Moreover, the automatic review and appeal system might make any other form of checks unnecessary. There was some evidence that the people were consulted in ancient times¹.

In a primitive kinship or patriarchal society, such consultation would not contradict the rule of the educated elite as the elders would be in a better position to advise upon the local folklores and customs. Moreover, local officials might be appointed from another locality. However, there is no trace of citizens acting in a role similar to the jury or assessor, although some writers have attempted to establish some sort of connection with the jury system.

Conclusion

In traditional China, there was no jury system. The absence of such a system meant there was no cultural influence on the people as to whether they would be willing to participate in judicial decision making or to serve jury duty. The safeguard of trial by jury was also unknown in traditional China.

¹ John Wu, *op.cit.*, p.511; Van Gulik, *op.cit.*, p.61; Ernest Alabaster, 'Notes on Chinese Law and Practice Preceding Revision', (1906) 37 *Journal of the North China Branch of the Royal Asiatic Society* 87.

F. The Right of Silence and Presumption of Innocence

Introduction

The attitude towards the right of silence and presumption of innocence can be influenced by the rules of evidence. The early introduction of scientific methods to the judicial process in traditional China mitigated the demand for a better developed judicial system. Appeals would have been fewer if judgments were based on convincing logical reasoning supported by scientific methods. However, the early scientific methods¹ were subject to error as some of them were merely hypotheses which could not be proved further in the absence of modern apparatus.

At Common Law, an accused person is generally presumed innocent until the prosecution has proved the case against him beyond a reasonable doubt. Although traditional Chinese codes were not expressly clear, the guiding principle, unlike that in Common Law countries², is that every accused is guilty unless proven otherwise³. Factors such as the use of judicial torture point to the lack of a right of silence in

¹ One can see the advanced psychological knowledge and humanity in traditional China from the treatment of lunatics, invalid persons, and negligents according to the substantive law. The definitions of mental elements and capacity of the parties can be traced back to the Rites of Chou (compiled around 1115 B.C.), and the statutory distinctions between invalidity of various degrees can be found in the law even before the Tang Dynasty (618-907). This discredited the writings of certain sinologists. See Karl Bünker, 'The Punishment of Lunatics and Negligents According to Classical Chinese Law', (1950) 9:2 *Studia Serica* 1. But, other methods and tests were also used in traditional China, and the scientific standard then available was often insufficient to distinguish between the sound and the superstitious ones.

² But, see s.10, Prevention of Bribery Ordinance, 1971 (Hong Kong); S. 5 and 28, Misuse of Drugs Act, 1971.

³ According to R.H. Van Gulik's analysis of case books. See Parallel Cases from under the Pear Tree (Leiden, 1956), p.56. Although this book was based on the period from 206 B.C. to 1127 A.D., it can be safely assumed that the analysis would not be out-dated as there had been little change in jurisprudence from the Tang to the Ching Dynasties.

However, the *Book of History (shu-king)* said, "Between the possible alternatives of shedding innocent blood and releasing a guilty person, you prefer the latter". See 'The Counsels of Ta Yu', Book of History (shu-king) [Compiled by Confucius; it contains historical records covering the period from 2355 to 719 B.C.], See John Wu, *op.cit.*, p.506.

traditional China.

Scientific Methods

In traditional China, advanced medical techniques¹ were introduced to the judicial process around 1241 A.D. or earlier. This was in conformity with the spirit of the rites (*li*) which emphasized that utmost effort should be made to prevent fixing of guilt on the innocent. The manual, 'Instruction to Coroners' (*hsi-yuan lu*)², was popular among the judicial officers and coroners (*wu-tso*), and it was made an official guide to them in discharging their duties. This work was the first on forensic medicine known in the world³. The scientific methods mentioned in the manual evidenced that advanced forensic medicine was part of the judicial process. Detailed reports, diagrams, and causation of injuries had to be recorded in a prescribed format. If there was delay or error, the parties responsible would be punished. The manual went so far as to include guides to prevent corruption in the judicial process⁴.

Confucian teachings emphasized that human nature is good. Therefore, when a person had done something evil or was lying, he would behave differently. A judicial officer would probe the real sentiments of the person appearing before him. He had to examine the five expressions (*wu-ting*): speech, facial expression, breathing (giving clues as to emotions), hearing (reaction to what the judicial officer said), and eye contact⁵ as recommended by the *Rites of Chou* (*chou-li*)⁶ as factors to decide the innocence or guilt

¹ It should be noted that the science of finger-printing had been known to the Chinese since ancient time, but there is no trace that the results of this had ever been admissible as evidence in court. Perhaps this method was not recommended by any book of rites whilst medical science being a necessity of life could not be ignored.

² compiled around 1241 A.D. See H.A. Giles, 17 Proceedings of the Royal Society of Medicine 59-107; Sung Tzu, *Hsi Yuan Lu: The Washing Away of Wrongs* (trans. by Brian McKnight, Michigan, 1981).

³ Needham, *op.cit.*, p.247.

⁴ Giles, *op.cit.*, p.87.

⁵ Compare with contemporary Common Law proceedings where counsel often advises the defendant to be well dressed.

⁶ Compiled around 1115 B.C.

of the accused. This methodology may be better known as the science of physiognomy (*hsiang-fa*). A parallel can be found in Darwin's "Expression of the Emotion in Men and Animal" which was recommended by Gross's *Criminal Psychology* as being worthy of serious consideration by criminologists¹. The features of the prisoner under ordinary circumstances and changes due to consciousness might indicate his guilt. In England, it has been held that the court can infer guilt if the prisoner exercised his right to remain silent in special circumstances where the questions were put by someone on the same level². However, it should be noted again that individual rights had never been of paramount consideration in traditional Chinese jurisprudence. The duty of the judiciary was to ensure that there was equal justice for all according to Confucian benevolence (*jen*) rather than tyranny. Arguably, lie-detector or psychological tests are as much subject to error as physiognomy. The following passage from the *Book of History* (*shu-king*), compiled by Confucius³, stated the traditional Chinese jurisprudence:

"When you have any doubts as to the existence of the crime you should acquit the prisoner yet you must not make a hasty conclusion, but form a judgment from studying the appearance of the criminal. Any prosecution which is not substantiated by evidence should be dismissed immediately"⁴.

Conclusion

The differences in the traditional Chinese concept and Common Law concept of the right of silence and presumption of innocence may be the results of early introduction of medical methods and the general acceptance of physiognomy in trial procedures in China. Both traditional Chinese and Common Law rules of evidence are

¹ Chang, *op.cit.*, p.70-1.

² Also see *R v Mitchell* (1892) 17 Cox's C.C. 503; *Parkes v R* [1976] 3 All E.R. 380.

³ Translated by John Wu, *op.cit.*, p.508.

⁴ Wu Ting Fang, *op.cit.*, p.344.

aimed at providing justice to their people, and the question is one of approach.

G. General Conclusion

There are certain identifiable differences between the traditional Chinese attitude towards law and the Common Law attitude towards law. An examination of the history of Chinese law and the history of Common Law reveals that there are certain concepts that are diametrically opposed. By measuring whether or not somebody possesses one view or another, we can test the extent to which they have the Chinese view of law or a Common Law notion of law.

From the foregoing discussion, the traditional Chinese judicial system and the Common Law judicial system are marked by sharp differences with respect to individual rights, the rule of law, judicial independence, the adversary system, an independent legal profession, the jury system, and the right of silence and presumption of innocence. Acceptance of these concepts can be measured.

Modern statistical methods and survey techniques in sociological research can assist in determining present thought, attitudes and values towards law, local customs, and the culture of a specific area. Furthermore, criticism that legal research is a reflection of elitist values can be minimized. However, this methodology involves direct human contact, and, hence, is restricted to contemporary events.

As Justice Oliver Wendell Holmes (1841 - 1935) put it:

"History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know..... For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and master of economics"¹.

¹ 'The Path of the Law', in Collected Legal Papers (London, 1920), p.186-7.

When Hong Kong was ceded to the British in 1842, the Chinese population was governed according to the traditional system. As discussed in Chapter I¹, the early British administration in Hong Kong intended to govern the Chinese population by their own laws and try them by their own judges from China. However, these intentions never materialized. After one hundred and forty-odd years of Common Law culture in Hong Kong and on the eve of the resumption of sovereignty over Hong Kong by the People's Republic of China, it is now timely to investigate the extent to which the Common Law has taken root in Hong Kong.

¹ *Supra*, p.8.

IV. Research in Jurisprudence

A. Introduction

In *Constitutional and Administrative Law*¹, S.A. deSmith observed that the outlawing of racial discrimination in England in fact reduced the incidence of discriminatory conduct. This reduction was explained as the result of law-abiding citizens' desire to be respectable and respected. Although unrelated to the theme of his book, his observation has raised the question: To what extent can law change the social values of an individual? There is always a limit to what law can do to change values of people, but successful change very much depends on the attitudes and values of the people towards the law.

When the Common Law was introduced to Hong Kong in 1843, no attempt was made to consider its impact on the Chinese population there. The early colonial administration contemplated that the Common Law would bring justice to the Chinese population subject to "local circumstances" as a general pattern of British policy. The only possible outcome was the use of the Common Law as an instrument of social control in order to submit the Chinese population of Hong Kong to the new colonial order. The result was expected because the Common Law judges of Hong Kong would inevitably use English legal reasoning and English cultural values when interpreting Chinese law and custom.

The anthropological jurists would assert that laws could not change the values of the people but rather should fit into their values. However, various studies have shown that law in fact can change the values of people². One explanation of the results of these studies is that when the people regard their beliefs and values as a lost cause,

¹ (2nd edn., London, 1974), p.448.

² William M. Evan, 'Law as an Instrument of Social Change', in The Sociology of Law (New York, 1980), p.554-62; Robert Kidder, Connecting Law and Society (Englewood, 1983), p.118-9.

prohibited by law, they abandon them and readjust to the new ones¹. After all, some form of social control is necessary for any society to function. The confidence of the Chinese population of Hong Kong in the Common Law judicial system strengthens the legitimacy of the law. Although the legitimacy of the Hong Kong government is questionable in the mind of most of the Chinese population in Hong Kong², there is no evidence that the legitimacy of the law has ever been challenged.

B. The Scope of this Research

Law and Social Change in Hong Kong

The regular application of law and the use of judicial proceedings to settle disputes should be expected to influence the behaviour and social attitudes of the people³. Since colonisation by the British, Common Law has become the dominant legal culture in Hong Kong. An ideal question is, therefore, to what extent has the Common Law judicial system actually shaped the Chinese cultural behaviour? If Common Law is a successful instrument of social control, its prevalence in Hong Kong as the dominant legal culture for over one hundred and forty years should now be reflected in the general consciousness of the people.

The Common Law culture, the English governmental and educational systems, and the environment in Hong Kong may have influenced and altered the commercial and other structures of the society. As discussed in Chapter II, Hong Kong society has become more industrialized and modernized. As a result, heterogeneity supplanted homogeneity. Therefore, it is not feasible to measure the extent to which the Common Law culture

¹ Kidder, *ibid.*

² Joseph Y.S. Cheng, Hong Kong: In Search of a Future (Hong Kong, 1984), p.78.

³ For theoretical discussions on law and social change, see Evan, *ibid.*; and Roger Cotterrell, The Sociology of Law (London, 1984), p.48-72. For methodological discussions on law and social change, see Kidder, *op.cit.*, p.112-43.

alone has changed the values of the Chinese population in Hong Kong as the population has undergone other environmental changes as well. This research is concerned with the effect these changes have on the attitudes and values towards law in Hong Kong. If the attitudes and values of the people towards the law tend to conform to Common Law culture, then we can conclude that the application of Common Law in Hong Kong may be maintained after 30th June, 1997, when the People's Republic of China resumes sovereignty over Hong Kong¹. Otherwise, there will be a conflict between the dominant legal culture and the continuous, but changing, servient legal culture of the population.

Law and Social Reality in Hong Kong

There is a difference between the values and perceptions of Common Law lawyers and the Chinese population of Hong Kong². A judicial decision might well be legally sound, but it could also be condemned as harsh by the public if it does not conform with social reality³. Thus, the second question this study must address is: how and to what extent does the disparity between legal principles and practices, and social norms affect the successful application of the Common Law judicial system in Hong Kong?

The confidence of the people in the judicial process is vital to its success. A lack of confidence in the legal system may yield a lack of cooperation. A lack of trust is believed to be the main reason for the failure of the Common Law system in some former British colonies. At Common Law, the doctrine of *nemo iudex in causa sua* is

¹ The interventions from the People's Republic of China cannot be ignored after 30th June, 1997. See *infra*, Chapter VIII.

² One legal scholar, however, suggested that "[t]he recognition of the importance of legal concepts and symbols in the thinking of people at all levels of society has been indicated by influential jurists to be a prerequisite of an adequate understanding of the role of law as a social institution and of the mechanisms by which it directs behavior." See Roger Cotterrell, 'Jurisprudence and Sociology of Law', in William Evan (ed.), The Sociology of Law (New York, 1980), p.23.

³ At Common Law, there is a doctrine of public policy which operates to take account of social interests. See Roscoe Pound, 'A Survey of Social Interests', (1943) 57 Harvard Law Review 4-8; M.P. Furmston (ed.), Cheshire, Fifoot, and Furmston's Law of Contract (11th edn., London, 1986), p.376-409.

one of the two rules of natural justice. In *R v Sussex JJ, ex.p. MacCarthy*¹, Lord Hewart said that it was "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done". Thus, one needs to know the opinions the Chinese population hold towards the judicial system in order to: (1) determine how successfully the Common Law is applied in Hong Kong and (2) consider whether the judicial system can be maintained when the People's Republic of China resumes sovereignty over Hong Kong in 1997. The attitudes and values of the Chinese population towards judicial proceedings, the adversary system, the judiciary, the legal profession, and the jury system, as well the attitudes and values of the legal profession will be investigated. As Justice Oliver Wendell Holmes (1841 - 1935) said, "Every opinion tends to become a law"².

However, there are certain circumstances in which it may be argued that law should not conform to public opinion. The legislatures in most developed countries have abolished the death penalty, despite acting contrary to public opinion in some cases. There are circumstances where equity should dictate. Albert Venn Dicey (1835 - 1922) cited the Roman Catholic Relief Act, 1829, as an example of how the British Parliament abolished some penal provisions against Roman Catholics to protect their rights of citizenship, contrary to public opinion³. Conversely, public opinion can provide a check and balance on the authority of the state. Shortly after the Second World War, MacKenzie King, Prime-Minister of Canada, and his Liberal government decided to deport nearly half of the entire Japanese Canadians (including those born in Canada) to Japan⁴. Although the deportation orders were upheld by the Supreme Court of Canada in 1946, public opinion forced King to abandon this law, as Canada was a country of immigrants⁵.

¹ (1924) 1 K.B. 256.

² See *Lochner v New York* (1905) 198 United States Supreme Court 76.

³ Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century (London, 1905), p.11-2.

⁴ W.Peter Ward, The Japanese in Canada (Ottawa, 1982), p.15.

⁵ *Ibid.*; Also, see Toyo Takata, The Story of Japanese Canadians from Settlement to Today (Toronto, 1983), p.148.

However, such checks and balances can only successfully operate in a democratic country.

C. Evaluating the Application of Common Law in Hong Kong

Introduction

In an authoritarian state, public opinion can hardly be measured. The People's Republic of China will resume sovereignty over Hong Kong on 1st July, 1997. Therefore, it is now timely to capture the attitudes and values of the Chinese population of Hong Kong towards the Common Law judicial system while Hong Kong is still a quasi-police state¹ under the direct rule of a democratic government in Great Britain.

The Case for Survey Data in Jurisprudential Research

In a theoretical approach, conclusions are formulated based on observations and historical analysis. The generalized theories cannot be verified and are often difficult to measure objectively. Although statistical methodology in jurisprudence is not perfect, the reliability and validity of the information collected is subject to objective review. One of the pioneers in the field of law and public attitudes is the famous jurist, Albert Venn Dicey. But, his leading work, *Lectures on the Relation between Law and Opinion in England during the Nineteenth Century*², was regarded as flawed as his discussion based on speculation rather than on empirical data has been criticised³.

A reliable and valid set of data, whether documentary or empirical, is one which is accurate, verifiable, free from bias, and of the proper time frame. To establish such a

¹ See *infra*, 'The Chinese Population of Hong Kong', and 'Income Variable', Chapter V. Also, according to the Economist's World Human Rights Guide (London, 1986), Hong Kong (rating 83%) was ranked slightly ahead of Panama (rating 81%) but behind Dominican Republic (rating 84%).

² (London, 1905).

³ Dale Gibson and Janet Baldwin (ed.), Law in a Cynical Society? Opinion and Law in the 1980's (Calgary, 1985), p.5.

set of data from documentary source and to analyse the results, it is necessary to filter valid data from the mass of documentary information and historical records, i.e. to distinguish between formal and informal information. After establishing a valid set of data, analysis can be performed. This goal may be difficult as the quality of the data is dependent upon the techniques of the researcher who has limited control over its reliability and validity.

The limited ability to record observed events accurately and the selective perception and memory of the observer may bias the conclusion drawn. There is also a problem of idiosyncrasy in observation as well as selectivity in the collection of data. Unfortunately, opinions, hearsay, and personal experiences often are the only sources of information on which most jurisprudential schools have relied. Adam Podgorecki pointed to the following factors in using survey data to study the acceptance of the law: "(1) lip-service and declaration (purely external endorsement of certain values often made to meet clearly perceived social expectations); (2) internal acceptance (commitment to internalized values which sometimes are not externally expressed; for example, in cases where values could be regarded as deviant or where there is a commitment to values which is not strong enough to be a vehicle for corresponding behavior); and (3) behavior that is consistent with the expressed values"¹.

Documentary or historical data can provide some clues about the success of the introduction of a legal system in a different cultural setting, if a reliable source of data is not available from interviews and surveys. However, a more reliable and valid set of data can be obtained through current interviews and surveys using proper sampling techniques. The results can be measured using statistical procedures to verify the accuracy of the data and to determine whether it is free from bias. Often this is essential as documentary data have only limited applications, and sometimes do not serve the purpose of a specific study. Appropriateness and time frame are the key

¹ Law and Society (London, 1974), p.40.

factors to be considered in designing such interviews and surveys. The final conclusions are more reliable than the assumptions and conjectures of the traditional jurists.

Historical, Anthropological and Sociological Jurisprudence in Hong Kong

The major difficulty involved in surveying historical attitudes towards the law in Hong Kong is the absence of reliable and valid data. Law reports are often confined to points of law. Insofar as attitudes and values towards law are concerned, law reports provide few clues. A review of some scholarly works¹ has shed very little light on the attitudes of the population towards law in Hong Kong². It has been reported that facilities for renrenren historical, anthropological and sociological legal studies on Hong Kong are not impressive³. The difficulty with this type of research in Hong Kong appears to be that the majority of the mostly expatriate legal researchers are reluctant to learn Chinese or to become familiar with other disciplines related to such research⁴. This matter is compounded by the promotional system in higher educational institutions which rewards volume rather than quality of publications⁵. Quality projects of such nature require an

¹ G.B. Endacott, A History of Hong Kong (London, 1973), Government and People in Hong Kong 1841-1962 (Hong Kong, 1964); D.M. Emrys Evans, 'Common Law in a Chinese Setting - The Kernel or the Nut?', (1971) 1 Hong Kong Law Journal 9; Peter Harris, Hong Kong: A Study in Bureaucratic Politics (London, 1978); James Hayes, The Hong Kong Region 1850-1911 (Hamden, 1977); Keith Hopkins (ed.), Hong Kong: The Industrial Colony (Hong Kong, 1971); Henry Lethbridge, Hard Graft in Hong Kong (Hong Kong, 1985), Hong Kong: Stability and Change (Hong Kong, 1978); Hsiang-Lin Lo, Hong Kong and Western Cultures (Honolulu, 1963); Norman Miners, The Government and Politics of Hong Kong (Hong Kong, 1981); James Norton-Kyshe, Vol.I and II, The History of the Laws and Courts of Hong Kong, (Hong Kong, 1898); Alvin Rabushka, The New China (Boulder, 1987); John Rear, 'The Power of Arrest in Hong Kong', (1971) 1 Hong Kong Law Journal 142; Peter Wesley-Smith, Vol.I and II, Constitutional and Administrative Law in Hong Kong, (Hong Kong, 1987/8), Unequal Treaty 1898-1997 (Hong Kong, 1979), 'Discriminatory Legislation in Hong Kong', (1987) Academic Symposium, "The Historic Triangle of Britain, China and Hong Kong: A Sixty-Year Retrospective 1927-1987".

² The absence of such studies might be attributed to the fact that there was no recognized school of law in Hong Kong until 1967.

³ According to Dr. Peter Wesley-Smith, Professor of Law, University of Hong Kong. See Legal Literature in Hong Kong (Hong Kong, 1979), p.27.

⁴ *Ibid.*

⁵ Wesley-Smith, *op.cit.*, p.25. Such system would match those of the third rated universities in North America.

extended period of commitment, unsuitable to transient researchers.

Studies of legal cultures have been conducted by Adam Podgorecki and others in Europe and the United States of America¹. There is no reason why such previous studies of other legal cultures cannot be replicated in a Hong Kong setting, as they can be completed in a short period of time. H.C. Kuan and S.K. Lau published their pioneering work in the study of the legal culture of Hong Kong in June, 1987, based on a 1985 survey². This is an excellent starting point. The data they collected is not only useful for cross-cultural comparisons with other published results, but for some future study of the application of Common Law in Hong Kong. However, their study was not designed to cover the application of the Common Law judicial system in Hong Kong. An instrument for the study of Common Law judicial system has to be developed. Such an instrument will be prepared in the following analysis.

The technical nature of the Common Law restricts the access of the population to the legal system, and, consequently, affects their concern for a better system. Since colonisation, the cost of private legal services in Hong Kong have become so high that they are perceived as being available only to the wealthy few. In the absence of more reliable documentary data³, the application of statistical techniques to survey data is the only source of formal information.

Early Studies on the Reception of European Legal Systems in Asian Societies

The application of continental legal systems to Asian societies has been the topic of numerous studies. There were studies on this during the late Ching law reform movements in imperial China⁴. After the establishment of the first Republic, the

¹ Podgorecki's Law and Society (London, 1974) and (ed.) Knowledge and Opinion about Law (London, 1973).

² 'Hong Kong Legal Culture', (1987) 22:6 *Ming Pao Monthly* 3-12.

³ See Berry Hsu, 'Comments on "Law and Social Attitudes in 1920s Shanghai"', (1985) 15 *Hong Kong Law Journal* 86.

⁴ See Joseph K.H. Cheng, Chinese Law in Transition: The Late Ching Law Reform, 1901 - 1911 (New York, 1976), Ph.D. thesis, Brown University, p.180.

Nationalist Government commissioned Jean Escarra (1885 - 1955) to study the functioning of the transplanted judicial system in China in 1933¹. Roscoe Pound (1870-1964) also carried out the same study in 1948². In Japan, the sociology of law was developed as a result of the conflict between the transplanted continental legal system and Japanese culture during the Meiji Era³. Yet, advanced empirical studies were not carried out in Japan until after World War II when better research methods were developed. Although the transplantation of Common Law to Asian societies has been the topic of a few post-war academic studies⁴, there is no evidence that empirical studies have been conducted. Consequently, there is no measuring instrument which this research can rely upon.

D. The History and State of the Art of Statistical Techniques in Jurisprudence

Introduction

There is ample historical evidence of the use of numerical data, e.g. census data. The Chinese are one of the world's most inveterate compilers of records, and their use of census data in formulating tax law can be traced to the Tang Dynasty (618 - 907)⁵. The use of empirical data in other disciplines can be traced to earlier periods⁶. The manipulation of numbers (*shu*) was one of the six basic arts (*liu-yi*) which aristocratic children in the pre-Han period (before 206 B.C.) were required to learn⁷ as a governing

¹ See Le Droit Chinois (Seattle, 1936, trans. by G. Browne for Works Progress Administration, W.P.2799, University of Washington).

² Arthur von Mehren, 'Roscoe Pound and Comparative Law', (1965) 78 Harvard Law Review 1592-3.

³ Zensuke Ishimura, 'Empirical Jurisprudence in Japan', in Glendon Schubert, Comparative Judicial Behavior: Cross-Cultural Studies of Political Decision-Making in the East and West (New York, 1969),p.50.

⁴ M.B. Hooker, Legal Pluralism: An Introduction to Colonial and Neo-Colonial Law (Oxford, 1975); A.J. Harding, The Common Law in Singapore and Malaysia (Singapore, 1985).

⁵ Chien Mu, Traditional Government in Imperial China (Hong Kong, 1982), p.55.

⁶ The use of empirical data to study astronomy can be found in the legendary period of *Fu-xi*. See Peng Yoke Ho, The Astronomical Chapters of *Chin Shu*.

⁷ Peng Yoke Ho, An Introduction to Science and Civilization in China (Hong

tool.

In the British analytical school, Jeremy Bentham (1748 - 1831) advocated the use of judicial statistics as a measurement of the morality of the society¹. In the nineteenth century, Andre-Michel Guerry, Lambert-Adolphe-Vacques Quetelet and others applied national judicial statistics to the study of the administration of justice in France². In the American school of Realism, statistical methodology in legal research is used. John Dewey (1859-1952) was emphatic about the study of logic based on an investigation of probabilities³. Glendon Schubert has pioneered the work on the use of multivariate statistics in predicting judicial decisions⁴, and also has conducted various cross-cultural studies of judicial behavior in the East and West⁵. Statistical techniques have been used in the study of jurimetrics, judicial behaviour, administration of criminal justice, criminology, and in other areas in legal research.

Research in Law and Society

In the sociological school of jurisprudence, Adam Podgorecki advocated the use of statistical techniques to investigate the functioning of law although the application of statistical techniques is limited⁶. Attitudes towards the judicial system and public opinion on law have been researched since World War II⁷, and much of the development has occurred since the 1970s⁸.

⁷(cont'd) Kong, 1985), p.55.

¹ Leon Radzinowicz, Vol.1, A History of English Criminal Law and its Administration from 1750 (London, 1948), p.395.

² Paul and Patricia Brantingham, Patterns in Crime (New York, 1984), p.38.

³ 'Logical Method of Law', (1924) 10 Cornell Law Quarterly 17.

⁴ His leading writing is Quantitative Analysis of Judicial Behavior (Glencoe, 1959).

⁵ See Glendon Schubert, Comparative Judicial Behavior: Cross-Cultural Studies of Political Decision-Making in the East and West (New York, 1969).

⁶ Law and Society (London, 1974), p.162-75.

⁷ Adam Podgorecki and Others (ed.), Knowledge and Opinion about Law (London, 1973).

⁸ Dale Gibson and Janet Baldwin (ed.), Law in a Cynical Society? Opinion and Law in the 1980's (Calgary, 1985).

The use of survey data for the study of jurisprudence cross-culturally has appeared since World War II. In the area of Asian studies, studies exist on the attitudes of the Korean population towards morality and the authority of the law¹. Hideo Tanaka used documentary statistical data to delineate the attitude of the Japanese people towards law in the 1970s². Advanced statistical techniques to measure legal attitudes have been introduced to Japan under foreign scholarship since the early 1950s³. Although Michael Moser⁴ used government record data to show the shift in attitudes towards law in Taiwan in the 1970s, Marlene Hsu had conducted a cross-cultural survey on the attitudes towards criminal offences in Taiwan using applied statistical procedures in 1968⁵. In Canada, with the increasing number of Chinese immigrants, particularly those from Hong Kong, Chinese attitudes towards the Canadian judicial system have become a topic of recent research⁶.

Notwithstanding the above developments, Dale Gibson has documented the reluctance or ignorance of lawyers towards law and public opinion, and asserted that "to many lawyers, the sociology of law is an arcane and alien discipline"⁷. Gibson gave the example that, in 1957-8, the University of London sponsored an excellent series of seventeen lectures "on the subject *Law and Opinion in England in the 20th Century*, but not one of the lectures relied on opinion poll data"⁸.

¹ Pyong-choon Hahm, 'The Decision Process in Korea', in Schubert, *op.cit.*, p.19-48.

² The Japanese Legal System (Tokyo, 1976).

³ Ishimura, *op.cit.*, p.49-70.

⁴ Law and Social Change in a Chinese Community (London, 1982), p.27-33.

⁵ 'Cultural and Sexual Differences on the Judgement of Criminal Offences', 64 (1973) *Journal of Criminal Law and Criminology* 348-53.

⁶ Janet Chan and John Hagan, Law and the Chinese in Canada: A Case Study in Ethnic Perceptions of the Law (Toronto, 1982).

⁷ Gibson and Baldwin, *op.cit.*, p.8-10.

⁸ *Ibid.*

Recent Surveys in Hong Kong

The Hong Kong government has been using survey methods to measure public attitudes before enacting certain legislation¹ because of a lack of democratic representatives who reflect public opinion. However, some government survey results are kept in confidence and their access restricted, except to a few in the Hong Kong government and members of the Executive Council².

On the eve of the resumption of the exercise of sovereignty of Hong Kong to the People's Republic of China, an Assessment Office has been established by the Hong Kong government³. The whole exercise for the Assessment Office appears to be aimed at maintaining economic and social stability and avoiding civil disobedience during this transitional period. The raw data of such surveys, even if they were available to the public, would certainly contain some element of bias, have limited application, and not be suitable for some specific studies. Moreover, it is doubtful if the respondents would express their honest opinion to such government surveys.

In May, 1988, the Draft Basic Law⁴ was released by the Beijing government. In view of the critical reception of a previous survey conducted by the Hong Kong government on representative government⁵, the Consultative Committee for the Basic Law has decided not to survey public opinion on the draft⁶. Another reason advanced by the Consultative Committee is that the one hundred and seventy-two articles in the draft render it impracticable for a survey to be conducted⁷. Such problems can be overcome

¹ See Hong Kong Government, Hong Kong 1983, p.14-5.

² This information was obtained through a personal interview with Mr. John Griffiths, Q.C., former Attorney General of Hong Kong (1982 - 1984), on 11th May, 1987.

³ Sing Pao Daily, American Edition, 3rd March, 1986.

⁴ The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

⁵ Such critical reception was confirmed by Gallup International, a reputable survey firm, in a study commissioned by the *Far Eastern Economic Review*. See Norman Webb, Appraisal of Surveys and Other Material Relating to the 1987 Review of Developments of Representative Government in Hong Kong (Hong Kong, 1987).

⁶ Sing Pao Daily, Hong Kong Edition, 15th May, 1988.

⁷ *Ibid.*

by any reasonable survey designer¹. However, an independent survey firm in Hong Kong has decided to conduct a survey on the Draft Basic Law in July, 1988². As every submission on the draft sent to the Consultative Committee has to include name, age, identity card number, address, and telephone number³, the opinions obtained by this means can hardly be as unbiased as a properly conducted survey.

E. Conclusion

In traditional Chinese legal culture, as well as in the Common Law, jurisprudence is formulated by a group which makes up a small portion of the population. In one case, the group consists of ruling elites educated in Confucian classics, and in the other of judges and legislators trained at Oxbridge⁴. Therefore, laws in these cultures have often been said to reflect the desire of the ruling classes to maintain the *status quo*⁵. Their attitudes and values towards law may be formed by self-interest. A study of the legal culture of Hong Kong must therefore consider the values of the Chinese population in order to ascertain how law can serve the interests of the people.

In this study, most of the information was collected through interviews and statistical surveys. The resumption of the exercise of sovereignty over Hong Kong by the People's Republic of China in 1997 provides a limited opportunity to examine these matters. Although the methodology used here is somewhat exploratory and speculative, the historical moment would be missed forever if the opportunity to conduct such a

¹ The questions asked by the Hong Kong government survey were considered by Gallup International as inadequate and flawed as they had been designed to achieve political objectives. As to the Draft Basic Law, its 172 articles can be divided and transformed into different sets of questionnaire.

² Sing Tao Daily, European Edition, 14th-15th May, 1988.

³ The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (For Solicitation of Opinions) (1988).

⁴ Harry Street and Rodney Brazier (ed.), deSmith's Constitutional and Administrative Law (5th edn., London, 1985), p.269; J.A.G. Griffith, The Politics of the Judiciary (London, 1979), p.25-6. But, this is not necessarily true for the Common Law judges of Hong Kong.

⁵ For the problem of legal values, see Roscoe Pound, Social Control Through Law (Hamden, 1968), p.103-34.

study was not now taken.

V. Design, Methodology and Procedure

A. Introduction

This chapter discusses the instrument for the research, the instrument design, the variables chosen for the study, the dimensions for each of the variables, and the survey procedure. The design and selection of the items has been tailored to measure the attitudes and values of the Chinese population of Hong Kong.

B. The Chinese Population of Hong Kong

The Chinese population of Hong Kong is diverse. Its members can be divided into groups on the basis of age, income, education, Chinese sub-culture, religion, sex, length of exposure to Common Law culture, and previous political culture¹. According to the 1986 census², the estimated population of Hong Kong on 11th March, 1986, was 5,431,200. About sixty per cent of the population were born in Hong Kong, thirty-seven per cent of the population were born on the Chinese mainland, and less than four per cent were born elsewhere. About thirty-five per cent of the population live in the New Territories. At the time of the survey, the median monthly household income was HK \$5,160 per month³, and the average size of a household was 3.7 persons⁴. Only fourteen per cent of the population did not have formal schooling, and fifty-one per cent of the population had at least secondary schooling. Six per cent of the population had attended a post secondary institution, and less than four per cent of the population had a degree. Relative to the poverty line monthly income level of HK\$2,200⁵ per average household, the majority of the population of Hong Kong appear to enjoy a

¹ See David Podmore, 'The Population of Hong Kong', in Keith Hopkins (ed.), Hong Kong: The Industrial Colony (Hong Kong, 1971), p.21-54.

² Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.7 and 13.

³ i.e. about 100 sterling per week. *ibid.*

⁴ 72.1% of the households are nuclear families with no other relatives residing in them.

⁵ Based on social welfare figures.

moderate standard of living¹.

Historically, the general attitude of the Chinese population of Hong Kong towards politics has been one of resignation². The majority of its population are refugees from the civil wars in mainland China and their descendants³. To the majority of the Chinese population, Hong Kong is a "political lifeboat". Thus, most Chinese residents see themselves as willing subjects of British colonial rule rather than involuntary subjects of a conquering foreign power⁴. Since the government limits the freedom of the media⁵, and does not encourage public criticism⁶, the Chinese population, in the past, were reluctant to discuss politics, which is in line with Chinese tradition⁷. Moreover, the majority of the adult population are eligible to be deported by the government under the Immigration Ordinance, which empowers deportation orders to be executed on those members of the population not born or naturalized in Hong Kong⁸. In the past, the government has executed deportation orders to expel those engaged in political

¹ Only 9.7% of the households have an income of less than \$2,000.

² But, the original inhabitants of Hong Kong were very active in resisting the British colonisation. See Peter Wesley-Smith, Unequal Treaty 1898 - 1997 (Hong Kong, 1983), p.57-87. In 1925, the Chinese population in Hong Kong expressed patriotic feelings when the workers staged a general strike to protest the shooting of 12 Chinese students on 30th May, 1925, by the British officered police in Shanghai. See Rosemarie Chung Lu-see, A Study of the 1925-6 Canton - Hong Kong Strike and Boycott (Hong Kong, 1969), M.A. thesis, University of Hong Kong. There also were outbreaks of rioting in 1956, 1966, and 1967, motivated by political beliefs and/or discontents with the Hong Kong government.

³ See Podmore, *op.cit.*

⁴ J. Stephen Hoadley, 'Hong Kong is the Lifeboat', (1970) 8 Journal of Oriental Studies 212. Also see James Rusk, 'Colony's defender is sorely missed', Globe and Mail, 15th December, 1986.

⁵ S.27 of Control of Publications Consolidation Ordinance, as amended by the Public Order (Amendment) Ordinance, 1987, was repealed in January, 1989. Certain provisions of the former ordinance were transferred into the later ordinance.

⁶ The Hong Kong government, however, has been reluctant to admit this. In lieu of a democratic government, the Hong Kong government claimed to reconcile different public opinions in formulating its policy. See Hong Kong Government, Hong Kong 1983, p.14-5.

⁷ Hoadley, *op.cit.*

⁸ W.S. Clarke, 'Freedom of Movement', in Raymond Wacks (ed.), Civil Liberties in Hong Kong (Hong Kong, 1988), p.348-50; Norman Miners, The Government and Politics of Hong Kong (Hong Kong, 1981), p.44 and 28n of p.50.

activity¹. Therefore, mainland China-born parents are likely to condition their Hong Kong-born children not to discuss politics.

Indeed, now that the People's Republic of China will govern Hong Kong in 1997, the local media tend not to report on issues which are unfavourable to the Beijing government². The Beijing government has made it clear that there will not be absolute freedom of the press in Hong Kong after 30th June, 1997³, and the press has been suspicious of the Hong Kong government's motivation for controlling the media⁴. After censoring films for political reasons for thirty-four years without any legal authority, the Hong Kong Legislative Council rubber-stamped interim regulations to legalize censorship on 8th July, 1987⁵. It has been suggested that film censorship in Hong Kong might contravene the International Covenant on Civil and Political Rights⁶, which was ratified by Great Britain in 1976 with certain reservations for Hong Kong⁷. Under public pressure, the Hong Kong government, eventually, has agreed to amend the censorship law by requiring the censors to take into account Article 19 of the Covenant⁸, which provides *inter alia* the right to hold opinions without interference and the right to freedom of expression. Such wording, however, makes judicial review almost impossible, and was criticized by a Swedish member of the Human Rights Committee of the United Nations as

¹ Clarke, *op.cit.*, p.326.

² Already, the local press has begun to shift its stance to please the Beijing government. See (1986) Vol.83 No.26 The Law Society's Gazette 2171-2; Emily Lau, 'The Right to Write', in William McGurn (ed.), Basic Law, Basic Questions (Hong Kong, 1988), p.74-6.

³ *Ibid.*

⁴ The recently repealed S.27 of the Public Order (Amendment) Ordinance, 1987, was enacted to retain the provision against the spreading of false news. The burden of proof under this provision is on the defendant. See (1987) Vol.84 No.18 The Law Society's Gazette 1419. Also see Chris Pomery, 'Censorship: opening up, clamping down', Far Eastern Economic Review, 7th April, 1988, p.79-81.

⁵ 'Sense and censorship', Far Eastern Economic Review, 23rd July, 1987; Johannes Chan, 'Freedom of Expression: Censorship and Obscenity', in Wack, *op.cit.*, p.208-42.

⁶ Albert Chen, 'Some Reflections on the 'Film Censorship Affair'', (1987) 17 Hong Kong Law Journal 356n and 358.

⁷ Nihal Jayawickrama, 'The case for a Hongkong bill of rights', Far Eastern Economic Review, 18th February, 1988, p.28.

⁸ Sing Pao Daily, American Edition, 22nd April, 1988.

having no "firm binding force"¹.

In retrospect, the majority of the population were apathetic towards any attempt to gain political rights². To the majority of the Chinese population, British rule is more acceptable than the rule of the People's Republic of China³. Nevertheless, the majority of the Chinese population of Hong Kong expressed their nationalism in a 1984 survey when they agreed that Hong Kong should revert to China although they were not impressed by the Beijing government⁴.

The respondents to our survey must not, therefore, be in any way identifiable. The respondents may be confident, not only that the data they gave will remain confidential, but that their own anonymity will be preserved. The data collected has been used only for this research project. Accordingly, only the researcher had direct access to and control over the data, and only the results and analysis of the data will be published⁵.

¹ David Porter, 'A blast from Geneva', Far Eastern Economic Review, 24th November, 1988, p.27.

² There are certain pressure groups in Hong Kong, e.g. the Hong Kong Observers, whose members are mostly local Chinese intellectuals who were educated overseas and second generation British expatriates. Although their views are often reported in the press, they are in the minority. Mr. John Walden, a former Director of Home Affairs, alleged that the Hong Kong government used smear tactics against the Hong Kong Observers, while he was a director. See South China Morning Post, 1st May, 1985,

³ Alvin Rabushka, The New China (Boulder, 1987), p.155; Hoadley, *op.cit.*, p.210-1.

⁴ 'Editorial', Ming Pao Daily, 25th November, 1984; Joseph Y.S. Cheng, Hong Kong: In Search of a Future, (Hong Kong, 1984), p.78.

⁵ See Stella Y. Cunliffe and H. Goldstein, 'Ethical Aspects of Survey Research', (1979) 28 Applied Statistics 219-22.

C. Design

Introduction

The focus of the research is restricted to certain special features which distinguish the Common Law from the traditional Chinese legal system. Acceptance by the population of Common Law principles and practices is vital to the successful application of Common Law in Hong Kong. Respect for individual rights, the rule of law, judicial independence, the adversary system, an independent legal profession, the jury system, and the right of silence and presumption of innocence are all cardinal features of a standard model Common Law judicial system. These principles do not have counterparts in the traditional Chinese judicial system. To be successful in Hong Kong, Common Law depends upon the population's acceptance of these features, and upon public belief in the fairness and reasonableness of the judicial system. In addition, much of the English cultural heritage embodied in the Common Law judicial system is alien to Chinese culture. Common Law culture is not influenced by the Chinese concepts of harmony, individual submissiveness before an elite ruling class, patriarchal authority, and private justice¹. The mistrust of police officers², the low esteem of lawyers³, and the propensity towards settlement rather than adversarial conflict are part of traditional Chinese legal culture. The extent to which the Common Law judicial system has changed these attitudes and values will have implications on whether the application of the Common Law judicial system to Hong Kong has been positive or negative.

Age and Sex Variables

Results of various studies have revealed that age is an important variable to consider when assessing attitudes towards the judicial system. Most studies have shown

¹ *Supra*, Chapters II and III.

² *Supra*, p.30.

³ *Supra*, p.66.

that younger people's attitudes tend to deviate from the population norm¹.

When investigating the differences in legal attitudes between age groups, the sex of the respondent must also be considered. For example, younger women are more likely to have a far better education than older women, and younger men are more likely to have a better education than older men. Younger people tend to adapt to changing values more rapidly than older people, and appear to be more willing to accept the Common Law values than older people. As Hong Kong is moving rapidly towards industrialization, the post-war generation has had more opportunity to become involved in trade and commerce, and, hence, has been forced to acquire more knowledge of the law. The attitudes of the young people of Hong Kong are very important to this survey because by June, 1997, they will be approaching middle-age.

Income Variable

In some districts of Hong Kong, law enforcement is nearly absent. Within these districts, most of the inhabitants are underprivileged², and are somewhat sequestered from the commercial district. Unlike the blacks in South Africa, the residents of the poorer communities in Hong Kong have complete freedom of movement under the spirit of the Common Law. But, there is an unwritten law that, after regular working hours, the police are entitled to harass those who are not well-attired in upper-class districts³. The rationale behind the police action is that, after regular working hours, workers no longer have a legitimate reason to be in upper-class districts. The police in Hong Kong have

¹ Bert Kutchinsky, 'The Legal Consciousness: A Survey of Research on Knowledge and Opinion about Law', in Adam Podgorecki and Others (ed.), Knowledge and Opinion about Law (London, 1973), p.123-4.

² For a report of life in Hong Kong, see Hugh D.R. Baker, 'Life in the Cities: The Emergence of Hong Kong Man', (1983) 95 *The China Quarterly* 469-79.

³ In the twelve month period ending October, 1987, more than two million people, or over one third of the Hong Kong population, were stopped by the police for checking. During the same period, approximately 1,000 people were prosecuted for loitering. See (1988) Vol.85 No.6 *The Law Society's Gazette* 33.

considerably wider powers of arrest and of entry than the police in England¹.

Educated persons and those with large incomes are more likely to complain to the authorities, to resort to formal legal means, and to have more confidence in the judicial machinery than the underprivileged because they are more likely to have knowledge of how the system operates². Unfortunately, the underprivileged in Hong Kong are more likely than the elites to view the law as a bureaucratic tool to control them. Studies in the United States of America have shown that the "urban poor and minority" groups believe that equality before the law is dependent upon the amount of wealth, power, and other financial considerations³.

The concept of deviant behaviour of the underprivileged in Hong Kong is more likely to differ not only from the Common Law culture, but from the traditional Chinese legal culture as well. It might be expected that lower income parents are less likely to have extensive education and are less likely to exert traditional controls over their children. To the children of lower income parents, peer pressure may be a more

¹ Compare the general power of the Hong Kong police to arrest without warrant for "any offence" under Section 50(1) of the Police Force Ordinance and the general power of the English police to arrest without warrant for "specified offences", usually series, under Sections 24 and 25 of the Police and Criminal Evidence Act, 1984. The provision for "preventive arrest" under Section 54 of the Police Force Ordinance does not contain the word "reasonably", or some equivalent. Under Section 50(3) of the above Ordinance, the Hong Kong police can enter into any place if there is a reasonable belief that a person "to be arrested" is in that place. Section 17C(1) Immigration Ordinance, 1984, provides very wide power to the Hong Kong police to demand proof of identity from any person. Also see, John Rear, 'The Power of Arrest in Hong Kong', (1971) 1, Hong Kong Law Journal 142; Peter Wesley-Smith, Vol.II, Constitutional and Administrative Law in Hong Kong (Hong Kong, 1988), p.380-92; Peter Morrow, 'Police Powers and Individual Liberty', in Wacks, *op.cit.*, p.243-77; W.S. Clarke, 'Freedom of Movement', in Wacks, *op.cit.*, p.321-56; Emily Lau, 'Policing the police', Far Eastern Economic Review, 14th July, 1988, p.31; The comments of Justice Blair-Kerr in *R v Luk Ming-hong* (1963) Hong Kong Law Reports 390.

² In a study of Chinese businessmen in Canada, it was found that those in higher structural positions are more committed to formal legal processes than those in lower positions. See Janet Chan and John Hagan, Law and The Chinese in Canada: A Case Study in Ethnic Perceptions of the Law (Toronto, 1982), p.65-6.

³ Stan Albrecht and Miles Green, 'Attitudes toward the Police and the Larger Attitude Complex', (1977) 15 *Criminology* 77.

effective form of social control than ethical teaching. Common Law culture simply does not reach far enough to influence them. In theory, everybody is equal under the law, but, in practice, there is a two-tier system based on economic class¹.

Education Variable

Secondary education also influences a person's readiness to accept Common Law culture. Studies in European cultures have shown that education level is positively correlated with confidence in the judicial system². A school leaver from an elite English-speaking grammar school in Hong Kong will not only fare better economically than a graduate of a less prestigious post-secondary institution, but is more likely to accept Common Law culture. Similarly, given that university graduates are educated in an English-speaking milieu³ they are more likely to accept Common Law culture than are graduates of other post-secondary institutions. Lawyers are also likely to favour the Common Law culture in which they were educated, and on which their livelihood relies. It is no coincidence that the proposals made at the start of the century to reform the legal system in China towards Common Law lines, came from Chinese lawyers trained in England⁴ and other Common Law countries, while lawyers trained in Japan, France and Germany advocated changes along the continental legal model⁵.

Studies have shown that education is an important intervening variable in legal attitudes⁶. Although findings about the impact of education on attitudes are somewhat

¹ Roger Cotterrell, *The Sociology of Law* (London, 1984), p.169.

² Kutchinsky, *op.cit.*, p.125.

³ The only two universities in Hong Kong, the University of Hong Kong and the Chinese University of Hong Kong, use English as the medium of instruction. The former university uses English exclusively.

⁴ For example, Wu Ting Fang, the first Chinese barrister, advocated the introduction of the jury system in China. See Bernard Hung-kay Luk, 'A Hong Kong Barrister in Late-Ching Law Reform', (1981) 11 Hong Kong Law Journal 339. The jury system has no historical root in China as Wu and Luk claimed. See *supra* p.73.

⁵ Wang Chung-hui, 'Law Reform in China', (1917) 2 The Chinese Social and Political Science Review 13.

⁶ Kutchinsky, *op.cit.*, p.125.

inconsistent, several studies have indicated that level of education is a better predictor of attitudes than other socio-economic variables¹.

Sub-cultural Differences

Sub-cultural comparisons can be made between the various Chinese populations of Hong Kong. The population of Hong Kong has been undergoing constant change. The majority of the Chinese population who were not born in Hong Kong, came from the Chinese mainland². Therefore, their previous political culture is fundamentally different from the Common Law culture. On the one hand, those who were born in Hong Kong and have no experience with other legal cultures may take the Common Law for granted. On the other hand, refugees from the Chinese mainland often have had to risk their lives to escape to Hong Kong in order to live in a Common Law culture. Therefore, the length of exposure to the Common Law culture is a variable to be considered when measuring the attitudes of the population towards the Common Law judicial system.

Chinese Traditionalism

Although Hong Kong is a modern city, its Chinese population is westernized only in a "superficial sense". Studies have shown that although western folkways have been adopted, a substantial number of people still adhere to Chinese traditionalism in various aspects of their life³. After prevailing in Hong Kong as the dominant legal culture for over one hundred and forty years, Common Law is expected to have changed the values of the Chinese population of Hong Kong.

It is not suggested that Hong Kong in 1988, nor even in the 1940s or 1898, was a perfect example of a traditional Chinese society. Nevertheless, Hong Kong in 1988 has developed from a society which, in the period before 1842, reflected many of the

¹ *Ibid.*

² *Supra*, p.93.

³ Wong Siu-lun, 'Modernization and Chinese Culture in Hong Kong', (1986) 106 *The China Quarterly* 307.

factors of Chinese traditionalism. Certain of these factors may still have been present in the 1940s. This thesis seeks to test the extent of these factors still influence individual attitudes towards the law and the legal system in Hong Kong in 1988.

Studies have shown that Chinese traditionalism is positively correlated with age¹, and negatively correlated with education levels². As discussed, age and education levels are important variables in attitudes towards law³. Therefore, Chinese traditionalism is also a factor in legal attitudes. Demographic data will provide a measure of Chinese traditionalism by ages, income levels and education levels.

Attitudes towards the features of a Confucian society should provide us with some indication about which variables influence the beliefs of the Chinese people. Arthur Wright pointed out that the authority of *The Analects* has not been seriously challenged in traditional China⁴ although later thinkers elaborated Confucius' principles with varying emphases and categorized them in diverse philosophical and discursive contexts. The following are examples of Wright's *approved attitudes and behaviour patterns in a standard model Confucian society*:

1. submissiveness to authority - parents, elders and superiors;
2. submissiveness to social mores and norms (*li*);
3. reverence for the past and respect for history;
4. primacy of broad moral cultivation over specialized competence;
5. preference for non-violent moral reform in state and society;
6. prudence, caution, preference for a middle course;
7. punctiliousness in treatment of others.

The degree of a person's attachment to traditional values varies in proportion to his or her indoctrination in Confucian moral values and reveals itself in the approved

¹ Rance P.L. Lee, 'Incongruence of Legal Codes and Folk Norms', in Corruption and Its control in Hong Kong (Hong Kong, 1981), p.92-101.

² Lee, *op.cit.*, p.85-6.

³ See *supra*, p.97 and 100.

⁴ 'Values, Roles, and Personalities', in Confucian Personalities (Stanford, 1962), p.3-23.

attitudes and behaviours outlined above. It is worthwhile to mention that the above key features of a Confucian society as suggested by Wright have been widely accepted by scholars of Chinese culture both in Taiwan and overseas¹.

The development of a set of dimensions to measure Chinese traditionalism is confounded by the various definitions of Chinese traditionalism. One study² used six items to measure the degree of Chinese traditionalism, and three of the items referred to traditional Chinese superstition³. Although superstition was an important aspect of life in traditional Chinese society, it is common to life, not only in contemporary Hong Kong but also in England, the United States of America and Canada⁴. Moreover, some Chinese in contemporary Hong Kong accept the concept of "lucky" days as a matter of social etiquette rather than as an attachment to any form of traditionalism.

In measuring Chinese traditionalism, Wright's value dimensions are used to determine any modifications and transformations of these values among the Chinese population of Hong Kong. A cross-cultural comparison of these features with an English population who live under Common Law culture in England will be conducted. This comparison will be used to study the validity of these items as a measure of the cultural gap between the Chinese culture in Hong Kong and Common Law culture in England.

Individual and Legal Rights

In a model Confucian society, legal sanction is often viewed as a last resort in dispute settlement and seldom encouraged since it indicates a failure to follow the

¹ For example, see Chen-lou Chu, 'On the Shame Orientation of the Chinese', in *Symposium on the Character of the Chinese: An Interdisciplinary Approach* (Taipei: Academic Sinica, 1971), p.116-7. Also, a survey of Professor D.E. Pollard, Dr. Sarah Allan, Dr. P.M. Thompson, and Dr. Andrew Lo, scholars of Chinese culture at the School of Oriental and African Studies has reached consensus with most of Wright's suggested features.

² Lee, *op.cit.*, p.75-104.

³ E.g. "unlucky words", "lucky day for home moving", and "lucky day for one's wedding". See Lee, *op.cit.*, p.84.

⁴ Friday the 13th is a Western concept of an "unlucky day for home moving" in Chinese superstition. Local newspapers in Western countries which do not have a horoscope column are an exception, rather than a norm.

dictates of rites (or propriety) (*li*) as a civilized and virtuous person. As discussed earlier¹, the Confucian principle of harmony states that conflict must be brought to an end. Therefore, arbitration and mediation, not law-suits, provide the best means to reach a settlement in a dispute. Most people in a traditional Chinese society would, if involved with the law, avoid going to court, regardless of the nature of the case. Until recently, the Chinese in North America still had their own mediation machinery to settle civil disputes². Such a method of dispute settlement was also part of the original intention of the earlier colonial administration in Hong Kong³. Therefore, the people were reluctant to cooperate with the judicial system or to defend the legal rights of others.

In a Confucian society, a person is not at liberty as he wishes to act without thought for others. The ownership of property is associated with the family rather than with the individual⁴. The family is an institution of the state, and the state is thought of as a larger family⁵. Therefore, it is the group, rather than the individual that is protected. Yet, although individuals can survive without being a member of a group, no group can exist without cooperation of its individual members. Consequently, the society is based upon mutual trust among individuals in groups. A person might win his law-suit, for example, but he would lose if his own community were to censor him. His legal rights would seldom be respected.

In Common Law cultures, where a jury trial is available, the jury often imposes communal values and ignores the legality of the case. However, in individualistic societies, such as Great Britain and the United States of America, a person seldom worries about any social sanctions that might arise due to public disapproval of his

¹ *Supra*, p.28.

² See Leigh Wai Doo, 'Dispute Settlement in Chinese American Communities', (1973) 21 *The American Journal of Comparative Law* 627. Also see Jerold Auerbach, Justice without Law (New York, 1983), p.73-76.

³ *Supra*, p.11 and 12.

⁴ S.Y. Teng, 'The Role of the Family in the Chinese Legal System', (1977) *Journal of Asian History* 121. Also, see Tung-tsu Chü, Law and Society in Traditional China (Paris, 1967), p.37.

⁵ According to Mencius, "The root of the kingdom is in the state. The root of the state is in the family".; translated by James Legge.

resorting to the courts to settle a dispute. In both traditional Chinese and Common Law societies, a declaration of legal proceedings indicates a breakdown of interpersonal relationships. However, both types of societies tolerate disruption in different ways and varying degrees.

In a 1982 study of a Canadian Chinese business community¹, whose members were primarily former residents of Hong Kong, it was suggested that the adaptive use of cultural traditions and established social bonds rather than attempts to override them for modernism and individualism may best serve their interests.

The dimensions used to measure values towards individual and legal rights are:

- a. insistence on legal rights.
- b. resort to court to settle disputes.
- c. cooperation with the judicial system.
- d. attitudes towards law-suits.
- e. respect of other's legal rights.
- f. willingness to defend legal rights of others.

The extent to which Common Law culture has shaped the values of the Chinese population of Hong Kong in these dimensions must be investigated to determine whether these people accept the individual and legal rights of others, which Common Law was founded upon. In the absence of such values, the spirit of the Common Law could hardly reach the Chinese population in Hong Kong. Another dimension to be investigated is the attitudes of the Chinese population towards the administration of justice in Hong Kong. It has been shown that the Chinese people in Hong Kong would resort to using the judicial system to settle disputes if it was better², and a previous study in Taiwan had reached a similar conclusion³. The findings of the present research will help to explain the reasons for any change in values towards individual and legal rights.

¹ Chan and Hagan, *op.cit.*, p.64-9.

² *Supra*, p.34.

³ Michael Moser, Law and Social Change in a Chinese Community (London, 1982), p.182.

The Rule of Law

Dicey's rule of law is a cardinal feature of the Common Law judicial system. In a Confucian society, morality dominates the law. Therefore, "catch all" statutes are enacted¹ and analogous cases (*pi-chao* or *pi-yin*)² are decided so that an accused with a guilty mind could not escape from punishment because of a legal technicality. Such traditional Chinese jurisprudence was advocated during the late Ching law reform movement³. The Common Law doctrine of *nullum crimen sine lege* is not compatible with such traditional Chinese jurisprudence. The proverb, "the law should not go beyond the reason of the people" (*fa-lü pu-wai jen-cheng*), however, expresses another part of Chinese morality when law is regarded as unreasonable. In medieval England, the judiciary was known to encourage juries to return verdicts that defied the evidence to avoid passing the death sentence in petty cases⁴. Therefore, unjust laws are not necessarily obeyed in any culture.

From childhood, Chinese people in Hong Kong are conditioned to the patriarchal system⁵. Individuals brought up in this manner tend to submit to all authority just as they would to parents or grandparents⁶. In traditional China, there was no equality under the law since elders enjoyed special privileges⁷. In addition, there were eight privileged groups of persons (*pa-yi*) qualified under the law for special judicial process and

¹ i.e. "doing what ought not to be done" was generally applied to cases of breach of public order or offences against morality not specifically codified. Article 62, Miscellaneous Provision (*tsa-lu*), Tang Code (*tang-lu shu-ye*), 653 A.D. Also, see Fu-Mei Chang Chen, 'On Analogy in Ching Law', (1970) 30 Harvard Law Journal of Asiatic Studies 213-4.

² Articles 50.1 and 50.2, General Principles (*ming-li*), Tang Code (*tang-lu shu-yi*). See Wallace Johnson, Vol.1, The Tang Code (Princeton, 1979), p.254-6; Also see Fu-Mei Chang Chen, *op.cit.*, p.212.

³ Joseph K.H. Cheng, Chinese Law in Transition: The Late Ching Law Reform, 1901 - 1911 (New York, 1976), Ph.D. thesis, Brown University, p.164.

⁴ Geoffrey Radcliffe and Geoffrey Cross, The English Legal System (5th edn., London, 1971), p.202.

⁵ Beryl Wright, 'Some Aspects of Change in the Chinese Family Pattern in Hong Kong', (1964) 63 The Journal of Social Psychology 33.

⁶ Mousheng Hsities Lin, 'Confucius on Interpersonal Relations', (1939) 2 Psychiatry 475.

⁷ Derk Boode, 'Age, Youth and Infirm in the Law of Ching China', in Jerome Cohen (ed.), Essays on China's Legal Tradition (Princeton, 1980), p.140.

consideration¹. In contemporary Hong Kong, one hurdle to the successful operation of equality before the law is the economic factor in obtaining equal justice. The people cannot be said to believe in equality before the law when such a hurdle remains in their mind. Consequently, they do not have any confidence that the rule of law works for them.

Successful application of a judicial system depends in part upon the cooperation of those people involved in enforcing the law. The judiciary, as well as the police and the prosecutors, have an impact on how the Common Law judicial system works. The rule of law can hardly prevail if the public tolerate the exercise of arbitrary power by the police even to a limited extent. Once such arbitrary power is exercised and tolerated, a line can hardly be drawn. The due process of the law must be observed strictly. Otherwise, there is no rule of law.

The value dimensions used to measure the acceptance of the rule of law and the authority of law by the Chinese population of Hong Kong are:

- a. *nullum crimen sine lege*.
- b. exercise of arbitrary power by the police.
- c. should an unjust law be observed?

The successful operation and continuance of the rule of law in Hong Kong depends upon the extent to which the Chinese population struggle for their rights both before and after the People's Republic of China resumes sovereignty over Hong Kong. According to a 1986 survey, the majority of the respondents favoured abridging the civil liberties of members of organized crime because of the gravity of the problem². Although there are doubts about the respect towards the rule of law, one can safely assume that nobody, in their right mind, would disagree with the notion of equality before the law. Another dimension to be measured is attitudes towards the question whether there is equal

¹ See Bodde and Morris, Law in Imperial China (Cambridge, Mass., 1967), p.34-5.

² Sing Pao Daily, American Edition, 2nd July, 1986.

opportunity before the courts. This should be measured in order to determine the confidence in the operation of the rule of law in Hong Kong.

Judicial Independence

Judicial immunity is designed to safeguard judicial independence on the assumption that judges are appointed from among those honest, fair and impartial members of the society. But, the legal system is not always free from extra-legal influences. In the adversary system, the influence of prominent advocates and their performance in court have been known to work against the cause of justice. The relationships between some members of the legal profession and some judges may also lead to miscarriages of justice¹. The significance of relationship in Chinese society², as discussed earlier³, can only aggravate these problems as many transient members of the judiciary depart Hong Kong.

One prerequisite for Hong Kong to remain successful as a special administrative region after 30th June, 1997, is to have a completely independent judiciary whose integrity the Chinese population can rely on. However, if the Chinese population is apathetic towards an independent judiciary, it will not be very encouraging for maintaining the Common Law judicial system in Hong Kong when it becomes a special administrative region.

Since most magistrates in Hong Kong are employed on "contract terms" as civil servants, the judiciary is not completely independent⁴. However, notwithstanding that

¹ Hong Kong has a small legal community in which people know each other. Lawyers sometimes contact judges to explain the mitigating circumstances of a case, and do not even believe they were doing anything wrong. Such practice is so prevalent that it could have been abused by people using the telephone and seeing people in private. The Far Eastern Economic Review reported that "members of the [*Hong Kong*] judiciary and the socially prominent constantly rub shoulders". See 'Scandals dog the colony's judiciary', 20th April, 1989, p.23.

² E.g. connections (*kuan-hsi*).

³ See *supra*, p.27 and p.36.

⁴ See Eric Barnes, 'The Independence of the Judiciary in Hong Kong', (1976) 6 *Hong Kong Law Journal* 22n. Also see 'Showdown looms for magistrate', South China Morning Post, 20th December, 1987.

judges of the inferior courts in Hong Kong are appointed on either "permanent and pensionable" or "contract" terms¹ and that appointments are frequently made from the ranks of Crown counsel with a system of promotion within the judiciary², on the whole, the judiciary is independent of the government. This is especially true of the higher level courts³, as judges of the Supreme Court and District Court are irremovable unless and until the Judicial Committee of the Privy Council advises the Queen that the particular judge ought to be removed from office for inability arising from infirmity of body or mind, or for misbehaviour⁴.

The attitudes of the Chinese population towards judicial independence reflect their confidence towards the Common Law judicial system. Judicial independence is meaningless if the public does not have confidence in it. The values of the population towards judicial accountability and separation of judicial power are expected to correlate with their acceptance of the Common Law culture.

Adversary System and Independent Legal Profession

The successful introduction of the adversary system depends on an independent legal profession. This system provides a check and balance for both parties. But, at the same time, in criminal cases, it relies on restraint by the prosecution. In theory this seems to operate well. In practice, the number of successful convictions is not disregarded when determining the promotion of a prosecutor. Consequently, it is questionable whether the prosecution would reveal evidence that favoured an accused in court. A high degree of confidence in the adversary system implies that the people believe that the administration of justice is fair and impartial.

¹ Their tenure of office is no more secure than that of those in the civil service. See Barnes, *ibid.*, p.14 and 21-2.

² Valerie Ann Penlington, Law in Hong Kong (Hong Kong, 1981), p.40.

³ Peter Wesley-Smith, Vol.I, Constitutional & Administrative Law in Hong Kong (Hong Kong, 1987), p.209-13; Penlington, *op.cit.*, p.39-40.

⁴ Articles XVIA (4) and (5), Letters Patent 1917-1986 (dated 14th February, 1917 [amended 12 times]; passed under the Great Seal of the United Kingdom.

It is not unusual for lawyers to be viewed as making their livelihood by relying on red-tape and technicalities which they are reluctant to change¹. Naturally, the public image of prosecutors would not be better if the public were to be suspicious of their motives. In criminal cases, it is the liberty of the defendant and not merely his property which is at risk. The issue will become more sensitive when the People's Republic of China resumes sovereignty over Hong Kong as it has a history of arbitrary state power.

There have been few attempts to abolish the legal profession in France, Russia, and some parts of the United States of America². The reasons cited³ seem to have some application to Hong Kong. They are that lawyers rely on technicalities, that they preserve their selfish interests in an inferior system, and that they serve the powerful most of the time⁴. As mentioned earlier⁵, traditional Chinese people viewed lawyers as those people who often incited litigation, and distorted and fabricated facts for their clients. For the same reasons, the adversary system might not be the best means to resolving their dispute. Under the British policy not to interfere with local custom⁶, certain New Territories officials were given wide powers to settle land disputes, and lawyers were not allowed in their courts without permission⁷.

The success of an independent legal profession relies, to a certain extent, on public confidence in the legal profession and its integrity. Solicitor-client privilege cannot operate without such confidence. Because the colony's future is uncertain, the Faculty of Law at the University of Hong Kong cannot recruit well qualified students⁸, despite

¹ Geoffrey Sawer, Law in Society (Oxford, 1965), p.123.

² Sawer, *op.cit.*, p.124-5.

³ *Ibid.*

⁴ In a recent survey in Canada, 75% of the respondents answered that the law favours the rich. 87% agreed that the system is too complicated. 75% still believed that the system is fair to the average person. See Edmonton Journal, 11th March, 1987.

⁵ *Supra*, p.66.

⁶ New Territories Land Ordinance, embodied in the New Territories Consolidation Ordinance, 1910.

⁷ G.B. Endacott, Government and People in Hong Kong 1841-1962 (Hong Kong, 1964), p.134.

⁸ The Registry of the University of Hong Kong refused to release the related figures. But, according to an article written by W.S. Clarke, Senior Lecturer of

the fact that lawyers on the average have large incomes¹.

Hong Kong, like other Common Law countries, has become a rather legalistic society. As a result, one may be uncertain at times of the legality of one's acts. Indeed, even learned members of the legal profession often cannot be too sure what the law is. In a recent survey in Great Britain, one-third of solicitors admitted that they had on occasion been seriously worried about the advice they had given to clients because they could not even ascertain what the law in force was². A Common Law court does not adjudicate upon hypothetical disputes³. As legal costs are high⁴, and legal aid is not universally available, most people would rely on the integrity of the law enforcement machinery in exercising its discretions.

The successful operation of an independent legal profession not only indicates the success of a Common Law judicial system, but also furthers the rule of law. Equality before the law implies that citizens have the right to have their cases heard before the court. This can only be achieved if there is universal access to legal services. Cynics would say that the number of lawyers in Hong Kong has been deliberately kept to a very low level so that justice can be seen to be done in a show trial. At the same time the interests of the rich and powerful can be secured because only they have the economic opportunity to obtain better legal services. The extent to which the Chinese residents of

³(cont'd) Law, University of Hong Kong, the LL.B. course is a second or third choice for many University of Hong Kong students. See (1987) 17 Hong Kong Law Journal 287.

¹ The Legal Department has been unable to recruit as many local candidates as it would wish to be lawyers although the salaries offered are high.

² Colin Campbell, 'Computers: A panacea or a deadly weapon?', (1983) Papers of the 7th Commonwealth Law Conference 195.

³ But, a declaration can be made in relation to future rights. However, it is only so made in exceptional cases, e.g. where future rights effect the present situation. See *Ealing London Borough Council v Race Relations Board* [1972] 1 All E.R. 105; *Mellstrom v Garner* [1970] 2 All E.R. 9.

⁴ In criminal proceedings, the court often orders the convicted person to pay all or some of the costs of the prosecution, but, in summary proceedings, it is possible to order the prosecution to pay defence costs on acquittal if just and reasonable to so order. See A.K.R. Kiralfy, *The English Legal System* (7th edn., London, 1984), p.271. It should be noted that malicious prosecution is so narrow that it rarely offers an innocent accused any protection.

Hong Kong have confidence in the legal profession and their access to it either builds or destroys their trust in the Common Law judicial system and either attracts people to the study of law or repels them from it¹.

During court proceedings in Shataukok, Guangdong province, a defense lawyer said that after going through all of the evidence gathered by the prosecution, he found his client guilty too, without casting any doubts on the prosecution's allegations². In this case, a Hong Kong merchant was accused of fraud. He admitted defrauding state businesses, and, under the law of the People's Republic of China, he did not have the right to refuse to answer any relevant questions put to him by the state³. After denouncing him in court, his lawyer asked for mitigation by suggesting that officials of the defrauded companies were responsible for being lax and that the defendant was under pressure to raise a family in the rich man's paradise of Hong Kong⁴.

An independent legal profession is essential to maintain the public confidence in any judicial system. Studies have shown that where lawyers are not independent from the state, they tend to compromise with those in power for convenience or otherwise⁵, as the state can make the life of a lawyer difficult if its authority is challenged. A relatively independent legal profession can sometimes provide a check on the state power⁶, and the Spanish experience has proven this statement⁷. Therefore, an independent legal profession is essential in Hong Kong after 30th June, 1997.

For the adversary system and an independent legal profession to operate successfully in Hong Kong, public faith and trust in the legal profession to defend their

¹ On the practical side, there is a severe shortage of lawyers in Hong Kong. According to a statement made by Mr. Thomas, Q.C., Attorney General of Hong Kong, to the Legislative Council in 1986, there are 1,518 solicitors and 277 barristers in Hong Kong, i.e. 3.3 per 10,000 of the population in Hong Kong compared with 9 per 10,000 of the population in Great Britain.

² See South China Morning Post, 15th January, 1986.

³ *Ibid.*

⁴ *Ibid.*

⁵ David Sudnow, 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office', (1965) 12 *Social Problems* 255.

⁶ Cotterrell, *op.cit.*, p.190.

⁷ Robert Kidder, Connecting Law and Society (Englewood, 1983), p.226.

rights and the willingness of the population to challenge the authority of the state are essential. The dimensions to measure these attitudes are:

- a. integrity of the prosecution.
- b. integrity of the legal profession.
- c. economic barriers to obtaining legal services.

If the attitudes of the Chinese population of Hong Kong are negative towards these dimensions, the adversary system and an independent legal profession are meaningless. It will also be necessary to measure the perceptions of the Chinese population towards the duty of the prosecution and towards the necessity of lawyers in order to determine whether personal attitudes influence values.

The Jury System

At Common Law, the power of jurors to decide on findings of fact is so great that they can circumvent the function of the trial judge on points of law. The success of the jury system depends very much upon the willingness of the citizens to participate in it, as well as on the general education level in the population and on the disposition, favourable or not, towards the use of juries. Hong Kong has no directly elected legislative body, and, according to a 1984 study, the Chinese population there are reported to be apathetic towards politics and politically impotent¹. One famous jurist in the late Ching law reform movement, Chang Chih-tung (1837-1909), submitted that trial by jury could only be used in countries where the people observed public duty (*kung-te*) and could govern themselves (*tzu-chih*)². Therefore, the attitudes of the population of Hong Kong towards the jury system need to be examined.

In Hong Kong, juries are empanelled from amongst those people who have a sufficient understanding of English in order that they comprehend the proceedings which

¹ Joseph Y.S. Cheng, Hong Kong: In Search of a Future, (Hong Kong, 1984), p.81.

² Joseph K.H. Cheng, Chinese Law in Transition: The Late Ching Law Reform, 1901 - 1911 (New York, 1976), Ph.D. thesis, Brown University, p.180.

are conducted in English¹. Accordingly, only three per cent of the Hong Kong population are eligible to serve as jurors². In view of cultural differences, there is always a risk that some jurors cannot comprehend English completely. At Common Law, the court would not inquire into a jury deliberation³. A nominal allowance is paid to jurors while they sit on a case. Judges are reluctant to excuse them from their duty, unless there is good cause. In a commercialized and industrialized city as Hong Kong, where time is precious, jury duty is a burden for some⁴.

In a Confucian society, individuals are taught to obey authority and learned elites⁵, but, trial by jury, with the authority it gives jurors, is alien to this type of conditioning. In addition, the government cannot be assured that its authority will lend its case prestige in the eyes of jurors, for at Common Law, the defendant is presumed to be innocent unless proven guilty⁶. Therefore, the prosecution often spends substantial amounts of time, before juries, trying to prove their cases. In complicated commercial cases, the matters involved often exceed the capability of the jury members to comprehend. In fact, the jury system has been abolished in Singapore, an independent Common Law state where the majority of the population are Chinese. In Hong Kong, recent proposals to restrict the use of trial by jury for certain commercial crimes⁷ have been criticized by the legal profession and the media⁸. Their concerns seem to be more

¹ Penlington, *op.cit.*, p.61-2.

² Emily Lau, 'The judiciary faces major task in 1997 run-up', Far Eastern Economic Review, 20th April, 1989, p.22.

³ In *Nanan v The State*, the Privy Council held that the court could not inquire into the misunderstanding of the English language which led to a wrong verdict. See [1986] 3 All E.R. 248.

⁴ In a fraud trial arising from the winding up of Carrion Corporation in 1985, four of the nine jurors were serving civil servants, one was a retired civil servant, two were housewives, and two were bank employees. The trial commenced on 19th February, 1986, and ended on 16th September, 1987.

⁵ *Supra*, p.73.

⁶ save certain, e.g. drug related, offences.

⁷ The Trial of Criminal Crime Bill which would abolish jury trials for complex commercial case has been abandoned by the government. See Sing Pao Daily, American Edition, 2nd June, 1986.

⁸ South China Morning Post, 2nd May, 1986. It should be noted that the opinions of the media towards the jury system are influenced by the outspoken legal profession. See Henry Litton, 'Trial of Complex Commercial Crimes bill',

towards being suspicious of the government in Hong Kong after 30th June, 1997, than with the rationale behind the arguments¹. In the absence of a democratically elected government, a jury drawn from a wider representative list of citizens is essential.

Therefore, the following perceptions of the Chinese population of Hong Kong are important value dimensions to be measured:

- a. participation in judicial decision-making.
- b. willingness to serve jury duty.
- c. safeguards provided by the jury system.
- d. limitation of trial by jury.

The Right of Silence and Presumption of Innocence

One basic feature of the Common Law system is the right of silence and the presumption of innocence of the accused. In principle, the defendant usually cannot be held liable for an offence if he does not answer questions raised by the police, unless the police have independent evidence. At Common Law, such right is limited². Some statutory offences now require the defendant to perform certain acts or otherwise he can be found guilty for not doing so³.

As discussed earlier⁴, in traditional China, legal torture, within certain limits, could be administered to suspects who stubbornly refused to admit guilt. In contemporary Hong Kong, secret torture by police officers is not unknown⁵ to help extract evidence from suspects for administrative expediency. The extent to which the Chinese population of Hong Kong sympathizes with police officers who resort to secret torture is a reflection of their attitudes towards the right of silence and presumption of

³(cont'd) (1986) 16 Hong Kong Law Journal 189-93.

¹ See 'Editorial', *Sing Pao Daily*, American Edition, 19th June, 1986.

² See *R v Mitchell* (1892) 17 Cox's C.C. 503; *Parkes v R* [1976] 3 All E.R. 380.

³ E.g. Road Traffic Ordinance.

⁴ *Supra*, p.60.

⁵ See (1984) 14 Hong Kong Law Journal 239.

innocence¹ and the rule of law.

The converse of presumption of innocence is an onus on the defendant to prove his innocence. As mentioned², this seems to have been the traditional attitude in China. Confucius said that a man of virtue need not have worry or fear. Therefore, a person brought before the court should have to prove his defense. At Common Law, although innocence is presumed, the onus of proof is on the defendant in certain offences as enacted by statutes³. In both Common Law culture and traditional Chinese culture, people tend to accept the "no smoke without a fire" analogy to a certain extent⁴.

By reporting court decisions and by educating elementary school students, the media and the educational system in Hong Kong have impressed upon the Chinese population the doctrines of the right to remain silent and the presumption of innocence. For the jury system to operate successfully and for the rule of law to be observed, results of measuring this value dimension should be positive overall.

¹ Amazingly, two solicitor friends told the researcher that police officers in Hong Kong seldom arrest and torture the wrong people because they are not as corrupt as in the past.

² *Supra*, p.74.

³ E.g. Dangerous Drug Ordinance.

⁴ In *Lewis v Daily Telegraph Ltd.*, one of the arguments advanced by the plaintiff was precisely this. See [1964] A.C. 234; W.V.H. Rogers (ed.), Winfield and Jolowicz on Tort (12th edn., London, 1984), p.305.

D. Methodology

Introduction

There is no prior measuring instrument for this research to build upon. Therefore, an instrument has been developed for this purpose. Appropriate procedures were taken to prevent ambiguity, and to ensure that the instrument was clear and easily readable¹.

The Materials

The instrument for this study consisted of a questionnaire² to be administered to a random sample of the Chinese population of Hong Kong. The items in the questionnaire were derived from the attitude and value dimensions discussed in the preceding section³. Measurement of some of the dimensions required more than one survey question. The questionnaire is divided into two parts. The first part contains questions that relate to the socio-economic status and demographic background of the respondents and will be referred to as the demographic part. This data was used to test the representativeness of the sample, and also for later cross-tabulation. As much as possible, the questions were designed to correspond to the format presented in the 1986 Hong Kong census⁴. The second part of the questionnaire contains items designed to obtain a rating of respondents' Chinese traditionalism and attitudes and values towards law. These will be referred to as the attitude and value items. The questionnaire has been kept as simple as possible to accommodate the varying education levels of the Chinese population of Hong Kong. The questions, which had been translated into Chinese⁵, were designed to be clear and concise to avoid ambiguity⁶.

¹ *Infra*, this chapter.

² See Appendix A-1.

³ Appendix A-3 provides the tables of dimensions and corresponding items.

⁴ Hong Kong Government, Hong Kong 1986 By-census Summary Results.

⁵ Appendix A-2.

⁶ Delbert Miller, Handbook of Research Design (4th edn., New York,

A Likert scale is used to scale the respondents' degree of agreement and disagreement to each question of their values and attitudes¹. This scale can generally be said to be a highly reliable instrument to order people's values and attitudes².

The instrument was pre-tested on a sample of Hong Kong visa students at the University of Alberta³. The responses from the test sample were used to evaluate the various items used. Adjustments were then made to the instrument.

Although one hundred and four items were used in the pilot phase, the final version of the instrument⁴ for this research consisted of seventy-nine items. The first twelve items are the demographic data, the next eleven items are the Chinese traditionalism and religiosity items, and the last fifty-six items are the legal attitude and value items which measure the attitudes and values towards law and confidence in the Common Law judicial system. After the pilot phase⁵, these seventy-nine items were selected as they revealed the most variation of the one hundred and four items originally designed.

The Pilot Phase

In October, 1986, a questionnaire with one hundred and four items was designed and pre-tested on a group of one hundred and fifty Hong Kong visa students, enrolled in a second year Mandarin language course for students with a background in Chinese language, at the University of Alberta⁶. Another set of seventy questions, modified for the Canadian environment (the questionnaire excluded the demographic and Chinese traditionalism items) was pre-tested on a group of one hundred and ten Canadian

⁶(cont'd) 1983),p.98-100.

¹ Allen L. Edwards, Techniques of Attitude Scale Construction (New York, 1957), p.149-71.

² *Ibid*, p.151.

³ See *infra*, 'The Pilot Phase', this chapter.

⁴ Appendix A-1.

⁵ See *infra*, 'The Pilot Phase', this chapter.

⁶ This course, CHINA 312 has three different sections. Mrs. Hui Ling Mao, the course instructor, has been very helpful for this pre-test survey.

students taking a first course in legal relations at the Faculty of Business. The questionnaire was administered early in the course before the students were introduced to any legal topics¹. The respondents were asked to return the questionnaires directly to the researcher. Ninety-two Hong Kong students from the Mandarin course and seventy-seven students from the legal relations course duly completed their questionnaires². The response rates of sixty-one per cent and sixty-nine per cent for the two groups of students are satisfactory. The results of the pilot testings enabled the items to be assessed for ambiguity, clarity, readability and amount of time necessary to complete the questionnaire, with regard to the education levels of those respondents. It should be noted that the respondents in the pilot phase are not representative samples. However, the results permit analysis of the reliability and validity of the items constructed. The respondents were instructed not to respond to the items unless they clearly understood the questions, and to provide comments on the questions if possible. The analysis of the results³ showed that only a few responses⁴ were missing for each item. This suggests that the questions were clearly worded. The few comments were taken into consideration.

It is of interest to note that when asked to respond to the statement, 'I honestly answered all the above questions', all of the respondents answered either 'Strongly agree' or 'Agree'. Also an average of twenty minutes was taken by the Hong Kong visa students to complete the questionnaire.

Questionnaire Revision

First, the items on Chinese traditionalism were revised on the suggestions of

¹ The students are mainly second year B.Comm. students. Professor Bob Gateman, the instructor of the course, offered very valuable assistance.

² About 10% of the students in the legal relations course are of Chinese ancestry.

³ *Infra*, next section.

⁴ On the average, two or three per items.

several scholars of Chinese culture at the School of Oriental and African Studies¹. The items which pertained to attitudes towards law and confidence in the Common Law judicial system were also revised based upon the comments of Dr. Philip Baker², legal scholars at the School of Oriental and African Studies³, and a legal scholar, a psychologist and a sociologist at the University of Alberta⁴.

The number of respondents in the pilot phase restricted the choice of statistical procedures to analyse the pilot data⁵. The RELIABILITY and the T-TEST routines of the SPSSx⁶ were used to analyse the pilot data. For the visa student data, only responses of those who had lived in Hong Kong for at least fifteen years were included in the analysis. Item correlations that were different than expected, and mean comparisons between the two groups that were different than expected⁷, were reviewed more carefully than other items⁸. This analysis of outliers is a valuable tool to help understand the range of variation. After revision, the final version of the questionnaire consisted of seventy-nine items⁹.

It is interesting to note that the Student's t-test results revealed significant differences between the Hong Kong visa students and the Canadian students on twenty-five items¹⁰. Appendix D provides a listing of the items whose means indicate such differences. It is expected that the differences would be much greater had the sample been drawn from the Chinese population of Hong Kong rather than the Hong

¹ Professor D.E. Pollard, Dr. Sarah Allan, Dr. P.M. Thompson and Dr. Andrew Lo provided extremely useful comments.

² Supervisor of this thesis.

³ Professor Anthony Dicks, Ms. Jill Barrett and Mr. Michael Palmer provided very helpful suggestions.

⁴ Professor Ivan Ivankovich, Dr. Gary Wells, and Dr. James Creechan.

⁵ The factor analysis procedure requires ten times the number of subjects as the number of items to avoid chance results. See Jum Nunnally, Psychometric Theory (New York, 1967), p.257.

⁶ Statistical Package for the Social Scientists, Release 2.1.

⁷ The Student's t-test was used to compute the confidence interval of the mean difference.

⁸ Items with very low intercorrelations can also provide interpretable results.

⁹ Appendix A-1.

¹⁰ At 1% level of significance.

Kong visa students in Canada.

The Chinese traditionalism items are a homogeneous group of items, and the "correlation alpha" provides an indication of their reliability and validity by testing the internal consistency across these items¹. The results of the reliability analysis on the Chinese traditionalism provides a "coefficient alpha" of 0.6, which is at a reliable level. The correlation table shows that Item 17 is negatively or lowly correlated with a few other items. This item measures values towards non-violent reform. One explanation for these results is that the respondents were mostly young people aged between eighteen and nineteen years old, and a few of them might hold radical views.

Survey Technique

The goal of this survey, as with other statistical surveys, is to have a representative sample. It would also be ideal for each respondent to have an equal opportunity to be drawn. However, to ensure the representativeness of the sample without reducing the credibility of the data collected, stratified, quota and cluster sampling methodologies were used, within the available financial resources. These limitations will be taken into account when analyzing the results to ensure the quality of this research. Statistical analysis was conducted to test whether the data is representative of the entire Chinese population of Hong Kong.

The quality of the samples will be maintained by using small-scale sampling techniques. Statistically speaking, a sample should have at least one hundred respondents in each major category, and a minimum of at least thirty respondents in the minor categories. The maximum number of categories for this research is five. Therefore, a sample size of one hundred and fifty respondents meets the minimal requirement. As a general rule, a sample size of five hundred falls within the twenty-fifth percentile of a literature review of survey studies in measuring attitudes on a national basis in the United

¹ Lee J. Cronbach, 'Coefficient Alpha and the Internal Structure of Tests', (1951) 16 *Psychometrika* 297-334.

States of America¹.

The Sample Groups

There are nineteen district boards in Hong Kong². In order to achieve generalizable results, a random sample of respondents was drawn from each of several groups. The demographic part of the questionnaire was adjusted for each group of respondents. The survey was administered to subjects drawn randomly from the following groups:

1. Four hundred respondents³ from the urban district boards in Kowloon and Hong Kong Island. Four district boards were selected from the urban area⁴.
2. Chinese members of the legal profession. Due to their training, the values of the legal profession sample were expected to conform to the Common Law culture. Certain defects of the Common Law judicial system in Hong Kong, which are not easily detected by laymen, were best explained by members of the legal profession.
3. One hundred Hong Kong visa students in attendance at the University of Alberta. Only those who lived in Hong Kong for more than fifteen years were included. As a rule, college students are more politically and socially active than the general population⁵.

¹ Seymour Sudman, Applied Sampling (New York, 1976), p.86-7.

² Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.9.

³ With a confidence level of 90%, the difference in standard errors between a sample size of 2,000 and 1,000 is 0.76%. [Using the conservative test for the binomial distribution $p*(1-p)$, the standard error is $k*((p*(1-p))/n)**0.5$ where n is the sample size and $p=0.5$ is the maximum value for the function $p*(1-p)$, and $k=1.645$ is the value which gives the confidence level of 90%. See John Boot and Edwin Cox, Statistical Analysis for Managerial Decisions (New Delhi, 1979), p.220-34.] The general rule is that to halve the sampling error, we have to quadruple the sample size. The standard error for a sample size of 400, with a confidence level of 90%, is 4.1%, and with a confidence level of 70%, is 2.5%.

⁴ Without loss of generality, the district of Kwun Tong will be included in this research. To a large extent, this community is similar to Hong Kong society as a whole. See Rance P.L. Lee, 'The State of Affairs in a Chinese Satellite Town', (1974) *Chung Chi Journal* 1720.

⁵ Originally, this survey was planned to be conducted on the students of the Chinese University of Hong Kong and the University of Hong Kong. But, the large number of recent surveys on campus in regard to the future of Hong Kong resulted in the cynical attitudes towards survey research by the students.

Given that they have been educated in an English-speaking milieu, they are more likely to accept Common Law culture than the general population.

One hundred Canadian students at the University of Alberta for the purpose of a cross-cultural comparison to Hong Kong visa students.

4. Eighty respondents from the English population in Norwich for the purpose of a cross-cultural comparison to the Chinese population of Hong Kong. This would allow measurement of certain values which were presumed to be culturally different. Four electoral wards were selected from the city area.

Norwich, a city one hundred and fifteen miles northeast of London with a population of about one hundred and twenty thousand, was selected because, unlike London, which is a cosmopolitan city, it is a traditional English city. Although it is not one of the largest towns in England, it is of considerable cultural and commercial importance¹.

Test of Generalizability of Data

After collecting all of the data, an analysis of the latest census figures of the Hong Kong government was carried out to test the generalizability of the data. The Chi-square test was used for this purpose in order to determine whether "proportionate adjustment" method was required². The data collected from the four district boards was compared before they were combined. This procedure would ensure that concealed side effects³, if any, were revealed. The analysis of the responses to the survey included the demographic items in order to obtain a profile of the respondents.

¹ Peter Trudgill, The Social Differentiation of English in Norwich (Cambridge, 1974), p.6.

² See *infra*, 'The Chinese Population Sample'.

³ For example, there may be differences between education and income levels in these district boards which can affect the results.

E. Procedure

Introduction

In this survey, respondents were randomly selected from each district board in Hong Kong or electoral ward in Norwich. Prior to each interview, they were advised of the selection procedure, and told that the confidentiality of their responses and their anonymity were assured. Also, the respondents were told of the purpose of this survey from the outset. Although the survey touches on sensitive issues, no subterfuge was used to elicit participants' responses.

The Chinese Population Sample

Although it involves more effort, it is believed that tighter controls can be maintained over small samples in several locations than over a larger interviewing group in one location¹. In this survey, the locations were the district boards. Assigning a number to each urban district board, the APL² random number generator selected the district boards in the following tables. There were a total four hundred respondents in this survey. Within each district board, the size of the sample interviewed was in proportion to the actual population of the district board.

Table 5.1: District Boards Selected

District Board	Population	Sample Size
Kwun Tong	678,200	130
Eastern	490,200	96
Shum Shui Po	424,700	82
Wong Tai Sin	429,500	82

Within each district board, the population was divided into strata for the purposes of making the sample more efficient³. There were five types of housing categories in the 1986 census data provided by the Hong Kong government⁴. In reality,

¹ Sudman, *op.cit.*, p.26-8.

² A Programming Language.

³ Sudman, *op.cit.*, p.107-30.

⁴ Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.27.

two types of housing were used as those who were living in temporary housing or institutions were most unlikely to cooperate. There is only four per cent of the housing in the home ownership programme of the Housing Authority. The temporary housing and institutions are classified into 'public or aided' type while the home ownership programme housing is classified into 'private' type. Accordingly, forty-nine per cent of the housing was in the 'public and aided' type, and fifty-one per cent was in the 'private' type. Varying income levels are more likely to be reflected in the housing type. The interviewers were required to meet the following quotas for each housing type:

Table 5.2: Respondents Selected by Housing Type

District Board	Public and Aided	Private
Kwun Tong	63	67
Eastern	47	49
Shum Shui Po	40	42
Wong Tai Sin	40	42

The survey was conducted between 8 p.m. to 9 p.m. during week days and from 1 p.m. to 5 p.m. on Sundays. This eliminated some of the biases towards the most accessible respondents. These respondents were more likely to be housewives, the unemployed and the elderly. Therefore, the interviewers had to meet certain quotas to minimize the biases. The time of the day is important as people are less likely to be cooperative during prime time television programming.

It was expected that the level of education and income of the respondents would be related to the type of housing they resided in. Only one person in each household was interviewed to prevent contamination of the responses. The interviewers also had to meet age and sex quotas, e.g. each interviewer would not interview more than fifty per cent of the male respondents nor more than eight per cent of those over sixty-five years old¹. The cluster sampling technique² is particularly favourable in Hong Kong where most of the population live in apartment flats. Each interviewer could interview as many households as possible evenly spread out within three buildings to ensure that quotas

¹ The percentage of males and females and of age groups are based on Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.10.

² Sudman, *op.cit.*, p.69-84.

were met. As only fifty-one per cent of the female population are employed, interviewers again had to meet a quota to ensure the generality of the data as unemployed women are more likely to cooperate¹.

The interviewers were recruited from social work students of the Hong Kong Baptist College², education students of the Chinese University of Hong Kong³, and law students of the University of Hong Kong⁴. Their honesty and integrity were assumed. However, in order to assure the reliability of this data, which might be very sensitive to the political environment in Hong Kong, each interviewer was assigned not more than twenty-two respondents. They were paid twenty Hong Kong dollars for each respondent they interviewed. A training session for the interviewers was held at the Hong Kong Baptist College on 15th December, 1987, and another at the Chinese University of Hong Kong on 19th December, 1987. No training session was provided to the law students. They were briefed over the phone, as they had the legal knowledge to comprehend the questionnaire.

The survey of the Chinese population of Hong Kong was conducted between December, 1987 and January, 1988 in accordance with the procedures set out above. Appendix B-1 provides the names, institutions, and districts assigned to the twenty-seven interviewers recruited. Each interviewer was required to sign a form confirming that they had followed the interview guidelines⁵. A total of four hundred and twenty-five respondents were interviewed, which included an additional ten per cent for

¹ For quota sampling techniques, see Sudman, *op.cit.*, p.191-99.

² Dr. Henry Mok, Fieldwork Supervisor and Lecturer, Department of Social Work, Hong Kong Baptist College, was very helpful in recruiting interviewers and the sampling for this survey.

³ Dr. Stephen Chung, Lecturer, School of Education, Chinese University of Hong Kong, and his research assistant, Miss Sui-Chu Ho, were very helpful in co-ordinating the survey and recruiting the interviewers from the education students.

⁴ Dr. Peter Wesley-Smith, Professor of Law, University of Hong Kong kindly recruited the interviewers from the third year law students. Dr. Joseph Lee, Lecturer, Department of Civil Engineering, collected the responses from the law students.

⁵ Appendix B-2.

errors and omissions during the survey. All interviews were conducted in Chinese.

According to the interviewers, only a few difficulties were encountered in surveying the general population, and one out of every three people they contacted cooperated with them. Those who live in private housing were more cooperative with the interviewers than those in the public housing. All interviewers were able to meet the quotas on age, sex and housing type as instructed.

One problem with the accuracy of the responses given is with reference to occupation and income, as respondents may have wished to impress the interviewers. However, a cross check of the income data of each respondent with their education, occupation and housing type did not reveal anything suspicious. Therefore, the responses on these items were taken as provided.

As with other surveys, it was unavoidable that certain groups of individuals were more willing respondents than others, and it would have been unreasonable to ask the interviewers to meet quotas in addition to those stated in the instruction sheet. Results revealed that those with a higher level of education and those persons born and raised in Hong Kong with more freedom of expression than the People's Republic of China were more cooperative with the interviewers than the rest of the population. Comparisons of the demographic data from this survey with the by-census data confirmed this¹. In addition, only those who were over eighteen years old were interviewed.

An analysis of the survey data confirm that income level is associated with education level². A Chi-square test of the income levels from this survey³ with the expected income levels from the by-census report⁴ indicate that the null hypothesis that all samples were drawn from populations with the same characteristics has to be

¹ Compare Items 4 and 7 with 'Place of Birth of Population' and 'Educational Attainment of Population', Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.13 and p.15.

² Appendix C-1.

³ Item 10, Appendix A-1.

⁴ 'Income from Main Employment', Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.21.

rejected¹. It should be noted that the 1986 by-census report is the most current one available, and the changes in income classifications should be minimal over the one year period. In addition, those with higher levels of education are more likely to respond to the survey. Therefore, adjustments have to be made to ensure the representativeness of the data.

The method of "proportionate adjustment"² was used to obtain consistency between the data obtained from this survey and the established census data to reflect the attitudes and values of all sectors of the population³. A simplified procedure was developed and programmed by this researcher. The nine income classifications in the questionnaire⁴ correspond to the by-census report and were collapsed into four classifications for computing the "proportionate adjustments"⁵. A review of all related previous studies, which may be used for comparison to the present research, revealed that no test of generalizability of data had been conducted⁶. Therefore, it has cast doubt on the representativeness of the previous studies.

The analysis also indicates that the items which measured Chinese traditionalism are related to the item which asked the respondent if he agreed that he was a traditional Chinese⁷. This suggests that the questions measuring Chinese traditionalism also met the approval of the sample. The respondents were, however, rated to be less traditionally Chinese than they thought they were according to the regression equation⁸. The results

¹ Appendix C-2.

² If the sample size of the population group of a particular category is disproportionate to its actual distribution in the entire population, i.e. it is either under-represented or over-represented, then the sample is adjusted to reflect its representativeness.

³ See W. Edwards Deming and Frederick F. Stephan, 'On a Least Squares Adjustment of a Sampled Frequency Table when the Expected Marginal Totals are Known', (1940) 11 *Annals of Mathematical Statistics* 427-44.

⁴ Item 10, Appendix A-1.

⁵ The last three classifications were collapsed into one, and the other six classifications were collapsed on a two to one basis.

⁶ This seems to follow a general pattern in most sociological research. In other disciplines, such as drug-testing, the method of "proportionate adjustment" is often used.

⁷ Appendix C-3.

⁸ *Ibid.*

of the analysis confirm that Chinese traditionalism is related to age¹, although the relationship is not as linear as a previous study would predict². It is interesting to note from the analysis³ that the post-war Hong Kong generation is not as traditionally Chinese as those born before then.

Most of the questions in this survey were designed to accommodate the varying education levels of the Chinese population of Hong Kong. Therefore, they were written as clearly and concisely as possible. For a few questions, which required specific knowledge or experience, there was a rather low response rate⁴. However, there was a very high response rate for most of the items from the Chinese population of Hong Kong. This suggests that the present Chinese population of Hong Kong has a higher mentality than they did in 1982⁵. Some of the interviewers of this survey who had previous survey experience during the past two years made similar observations intuitively. The legal profession sample, however, took a cautious approach in that they were more ready to provide a no-response to certain attitude items which require first-hand experience and knowledge to provide an unbiased response⁶.

Since the Sino-British negotiations on the future of Hong Kong, which commenced in late September, 1982, a wide raft of issues ranging from economic, legal, political and social have been addressed not only by the Beijing and Westminster governments, but also have received extensive coverage from the local Chinese media in Hong Kong. Consequently, the general awareness and political consciousness of the Chinese population of Hong Kong should have increased, as they should have realized that they could no longer remain politically and socially apathetic. As *The Economist* reported:

¹ Appendix C-4.

² Rance P.L. Lee, 'Incongruence of Legal Codes and Folk Norms', in Corruption and Its control in Hong Kong (Hong Kong, 1981), p.85.

³ Appendix C-4.

⁴ For example, see Item 70, Appendix E-2.

⁵ Joseph Y.S. Cheng, Hong Kong: In Search of a Future, (Hong Kong, 1984), p.82.

⁶ For example, see Item 70, Appendix E-2.

"The people of Hongkong learn fast. They used to be famous for making money. Since Britain agreed to hand over the colony to China in 1997, they have become persistent and astute experts in democracy"¹.

The Legal Profession Sample

One special group of respondents were taken from the Chinese members of the legal profession. Studies have shown that those who have more education and are most interested in the topic are more likely to cooperate in a mail survey². Therefore, a mail survey was conducted on the Chinese members of the legal profession from the lists of members provided by the Law Society of Hong Kong and the Hong Kong Bar Association³. Their responses were expected to reflect some bias. As lawyers in Hong Kong maintain extremely busy schedules, personal interviews were not feasible.

On 25th September, 1987, three hundred and eighty-four questionnaires were mailed to Chinese members of the Law Society of Hong Kong. The members were randomly selected from a list of solicitors provided by the Law Society. Those solicitors who were not in private practice and those whose names did not appear to be Hong Kong Chinese were excluded from the list of eligible respondents⁴. Another one hundred and forty-one questionnaires were sent to all the Chinese members of the Bar from the list provided by the Hong Kong Bar Association. The questionnaire was modified so that the demographic part and the Chinese traditionalism and religiosity items were deleted. As the respondents were expected to strongly agree to it, Item 78 was changed to ask if the members of the legislative council should be elected directly by the general population of Hong Kong. The original Item 78 asked if the present legal system should remain in Hong Kong after June, 1997. The survey included a covering letter informing

¹ 'Hong Kong: Quiet now, we know best', 23rd January, 1988.

² Sudman, *op.cit.*, p.30.

³ The Attorney General of Hong Kong and the Law Society of Hong Kong kindly offered their assistance to this survey.

⁴ The 384 solicitors who were surveyed were drawn at random from a total of 853 practising solicitors.

the respondents of the purpose of the survey. Each respondent was required only to return the optical response sheet. A total of eighty-two optical response sheets were returned from the two legal professions, including forty-five solicitors and thirty-seven barristers¹.

The response rate of about sixteen per cent is low, but with regard to the length of the questionnaire and the busy schedule of most members of the legal profession in Hong Kong, it is acceptable compared to other surveys conducted in Hong Kong during the same time period². It is noteworthy that all but one of the returned questionnaires was duly completed with few omissions. Moreover, over one-quarter of the entire Chinese barrister population responded to our survey. This represents about eight per cent of the practising Chinese lawyer population in Hong Kong. While this survey sample may appear to be small, statistical tests indicate that such a sample may still be relatively reliable where the individuals surveyed have a substantial number of similarities (e.g. educational background, social class background), and no factors are present which might distort the reliability of the survey³.

Because of the relatively small number of responses, a danger was perceived that the responses might reflect the view of those lawyers who were more politically active or had other reasons for expressing particular views about the legal system. Initially, it was thought there was no possible way of compensating for this possible bias. Unexpectedly, one method of checking whether bias was present did become available. Nineteen respondents wrote their names on the optical response sheets even though they were expressly instructed not to do so. These nineteen represent just under

¹ I would like to expressly thank Mr. Michael Rutter, Barrister, Law Reform Commission, for his co-ordination of this survey and the use of his private mail box for collecting the responses. Another person who assisted in this survey requested that his name be kept anonymous. Without their assistance, this survey would not have been successful.

² Mail surveys by other organizations during the same period that included even shorter questionnaires, have an average response rate of less than 10%. See Sing Pao Daily, American Edition, 30th September, 1987.

³ At 95% level of confidence with approximately 4% acceptable sampling error. See D.A. deVaus, Surveys in Social Research (London, 1986),p.63-4.

one-quarter of the eighty-two responses received. It was decided to check the available background information to see whether any of these nineteen individuals were known to be politically active¹. Having regard to the ethical issues involved, the checking was done exclusively by the researcher. Of the nineteen respondents, only one was known to be politically active. The question which then arises is whether these nineteen responses were similar in content to the other sixty-three responses where the individual concerned had not written his/her name. A Student's t-test was used to compare the means of the responses from these nineteen respondents with all the respondents. The results² did not reveal any real difference in the responses. Therefore, the idea that the respondents may be more politically active can be rejected. The nineteen names were also cross-checked with the mailing lists, and all of them correspond. It may also be assumed that the responses were the true responses of the Chinese members of the legal profession rather than responses of their assistants or clerks.

During the researcher's field trip to Hong Kong, Dr. Philip Baker, was also in Hong Kong teaching Part I students of the University of London's external LL.B. programme. With the kind permission of the Department of Extra-mural Studies, University of Hong Kong, a survey questionnaire was administered to the one hundred and twenty students enrolled in the course. A total of thirty students completed the questionnaire. Although the number of responses is barely adequate, these respondents can be used as a control group. The demographic analysis revealed that most of the respondents are in the upper-middle income level, and have a post-secondary education.

¹ The following might be the only available means of checking without breaching the confidentiality of the respondents. This researcher has read nearly all Chinese magazines published in Hong Kong over the past five years, and politically active lawyers usually speak out on at least one occasion. The legal profession in Hong Kong is generally rather conservative.

² Appendix C-5.

The Hong Kong Visa Students and Canadian Students Samples

Two other special groups of respondents were from the Hong Kong visa students and Canadian students of the University of Alberta. These groups' responses were subject to biases, as was intended for these groups. To ensure that an authority relation did not exist that adversely effects the responses, the students were asked to complete the questionnaires at home, and to return them directly to the researcher.

The data of the Hong Kong visa students and the Canadian university students was collected in October, 1986, as part of the pilot phase of this research¹. Although the data was not to be included in the analysis, subsequent statistical analysis has shown that the data is valid.

As the Hong Kong visa students did not have much experience and knowledge of Hong Kong society², their responses could only be used as a control group to measure the acceptance of the values of the Common Law judicial system in Hong Kong.

The Norwich Sample

A cross-cultural comparison was conducted by surveying the population in Norwich, England. One previous survey done in Norwich, for linguistic research, had a sample size of sixty people. The present survey replicated the sampling method and survey methodology of the previous survey³ with minor modifications and a sample size of eighty respondents.

The sample was drawn from four city electoral wards: Eaton, Lakenham, Henderson and Mile Cross. Twenty respondents were randomly selected from each ward. The four wards were chosen to represent Norwich as a whole in terms of social and economic characteristics⁴. The unemployment rate in Norwich in 1987 is slightly

¹ *Supra*, p.118.

² Most of them had never worked in Hong Kong.

³ Trudgill, *op.cit.*, p.20-30.

⁴ In this survey, Henderson and Mile Cross replaced Helledon and Westwick. See Trudgill, *op.cit.*, p.22-3.

over fifteen per cent, and the average unemployment rate of the four wards during the same period is fifteen per cent¹.

Four students with Norwich accents were recruited from the population of law students of the University of East Anglia to conduct the interviews². They were paid three pounds for each completed interview plus travelling allowances and meals. The interviewers were briefed by the researcher at the University of East Anglia on 9th May, 1988.

The survey of the English population of Norwich was conducted in May, 1988. The questionnaire was modified for the Norwich conditions. Each interviewer was required to write a report outlining his/her observations and confirming that the guidelines had been followed as instructed. A total of eighty respondents were interviewed.

The interviewers reported that there were complaints about the length of the questionnaire and possible bias in the questions³. There was a certain amount of antagonism towards the question of whether or not the respondents can read an English newspaper, as Norwich has a very small immigrant population⁴. This reinforces the choice of Norwich as a city with traditional English culture and an homogeneous population. The results of the analysis reveal that all the respondents are British citizens with only one person born outside of Great Britain⁵. The Norwich sample is not intended to represent the entire English population. The objective is to survey the Common Law culture from a population which is traditionally English.

The results of the analysis also show that the average education level of the Norwich population sample is at the secondary level⁶. This is slightly higher than, but not

¹ City of Norwich, Norwich City Labour Market Information (Norwich, 1988).

² Dr. Robert Burgess, Dean, School of Law, University of East Anglia, was very helpful in recruiting the interviewers.

³ Letter from Dr. Burgess, 26th May, 1988.

⁴ *Ibid.*

⁵ Item 4, Appendix A-1.

⁶ at a scale 3.5 out of 5. Item 7, Appendix A-1.

inconsistent, with the results of the previous Norwich linguistic study¹. The average weekly income of the sample is one hundred and sixty pounds² which can be compared with the 1985 official rate of one hundred and forty-eight pounds³. It is also of interest to note that the average income of each ward is related to the unemployment rate⁴.

¹ Trudgill, *op.cit.*, p.29-30.

² Item 10, Apendix A-1. Adjusted for unemployment.

³ for average males and females. See City of Norwich, Norwich City Labour Market Information (Norwich, 1988),

⁴ Henderson (20.68%: 6.3), Mile Cross (19.21%: 6.69), Lakeham (14.72%: 7.16%), and Eaton (5.11%: 7.69%). The first number in brackets is the reported unemployment rate. The second number is taken from Item 10, Appendix A-1 with a scale of 1 to 9.

VI. Law and Opinion in Hong Kong in 1988

A. Introduction

This chapter discusses the analysis of the results of the survey data collected from the Chinese population of Hong Kong, and a comparison of that sample with the samples of the Chinese members of the legal profession in Hong Kong, Hong Kong visa students in Canada, Canadian university students, and the English population in Norwich. The similarities and differences in attitudes and values towards the Common Law judicial system between the samples will be discussed, as well as the demographic analysis of the Chinese population of Hong Kong.

This research focuses on attitudes and values towards the cardinal features of the Common Law judicial system: individual and legal rights, the rule of law, judicial independence, the adversary system and independent legal profession, the jury system, and the right of silence and presumption of innocence¹. These will be referred to as *the six legal concepts* as tabled in Appendix A-3². As discussed in the preceding two chapters, previous studies of other legal cultures have measured a few dimensions of the first two and the last legal concepts investigated in the present research. There is only one known study of the Hong Kong legal culture³. Previous studies, however, did not evaluate the application of the Common Law judicial system, but instead measured respondents' attitudes and values towards the administration of justice as a form of social control⁴. In the following analysis, comparison with results from researches in other legal cultures will be made insofar as this is practicable, having regard to the practical differences between the judicial systems, such as the availability of legal aid

¹ See *supra*, 'Design', Chapter V.

² Concepts III-VIII.

³ H.C. Kuan and S.K. Lau, 'Hong Kong Legal Culture', (1987) 22:6 *Ming Pao* Monthly 3-12.

⁴ with particular reference to knowledge of the law, evaluation of the effectiveness of the law, prestige of the law, and moral attitudes. See Steven Vago, *Law and Society* (Englewood, 1981), p.331.

and the judicial decision-making process.

B. Data Analysis Procedure

Scaling and Adjustments

There are nine concepts measured in this study, and thirty-nine dimensions associated with these concepts¹. For some dimensions, more than one question is required to measure the relevant attitudes and values. Appendix A-3 is a table of how the questions and dimensions are nested. The questions are assigned equal weight using the Likert scale. In the summing, only two weights are used: 1 for overall agree and 2 for overall disagree. A composite score of each dimension was computed for each respondent by averaging the scores in percentage of the relevant questions of the dimension. The negative questions² were adjusted accordingly.

Appendices E and F detail the results of the computations. As Appendix F provides Chi-square cross-tabulations, no "proportionate adjustment" is necessary³. Therefore, the percentage in the "ROW TOTAL" column of Appendix F does not correspond to computed percentage in the "Overall Agree" and "Overall Disagree" categories of Appendix E.

Applicable Statistical Techniques

The first part of the analysis related the legal attitude and value items and variables to the demographic items. The second part of the analysis consisted of an analysis of the responses to the legal attitude and value items.

The statistical procedures used include Chi-square test, analysis of variance, regression, and correlation. These tests reveal the relationships between the variables.

¹ Appendix A-3.

² Those which ask the items negatively.

³ *Supra*, p.128.

The correlation coefficient measures the strength of a linear relationship. Therefore, other tests are required if the relationship is non-linear. The SPSSx software¹ is used for most of the analysis. The results are interpreted using the *SPSS Guide to Data Analysis*². Only a level of less than 0.05 is accepted as significant to reject the null hypothesis³. Accordingly, only statistically acceptable Chi-square cross-tabulations are used in the interpretation of the demographic data as provided in Appendix F.

¹ Statistical Package for the Social Scientists, Release 2.1.

² (Chicago, 1986), Marija J. Norusis.

³ A null hypothesis is rejected whenever the outcome has a probability equal to or less than 0.05.

C. The Prestige of Law in Hong Kong

Introduction

One condition that must be present for a judicial system to be successful in influencing the behaviour and social attitudes of the population is its prestige¹. As noted², the confidence of the Chinese population of Hong Kong in the Common Law judicial system might strengthen the prestige of the law, although the legitimacy of the government itself may be questionable. The survey results of the attitudes towards the prestige of law across the population groups are summarized as follows³:

Table 6.1.1: Prestige of Law in Hong Kong and England

Item 24: Not to obey an unjust law (**note: this item was asked negatively)	One should respect the law even if unjust	
	Overall Agree (%)	Overall Disagree (%)
Population Groups		
Hong Kong Chinese Population	48.17	51.83
Legal Profession	64.18	35.82
Hong Kong Visa Students	44.64	55.36
Canadian Students	71.11	28.89
English Population	63.38	36.62

Comparative Studies

There have been numerous studies of the prestige of law in other legal cultures and under other political systems. The Polish experience, however, seems appropriate for a comparative study. Adam Podgorecki suggested that the law in Poland did not enjoy high prestige in the mind of the population⁴. Some of the reasons he suggested for this are applicable to the Hong Kong circumstance. He wrote that: a) the law was regarded as "a symbol of a foreign state"⁵, b) there was "no effective school of government and administrative management developed"⁶, and c) there was

¹ William M. Evan, 'Law as an Instrument of Social Change', in The Sociology of Law (New York, 1980), p.557-8.

² *Supra*, p.80.

³ Item 24, Appendix E-1.

⁴ Law and Society (London, 1974), p.80.

⁵ *Ibid.*

⁶ *Ibid.*

"neighbourhood-oriented mutual aid"¹. It is also a reality that like Hong Kong the authority of the state in Poland is not designed for a democratic setting².

Podgorecki reported that, according to the Polish data, age, income, education and profession were related to attitudes towards the prestige of law, as well as personality traits³ and parental attitudes⁴. The results of a similar Hong Kong study, which asked almost identical questions, were consistent with Podgorecki's conclusions⁵, although the trends were somewhat different. A Canadian survey also confirmed Podgorecki's findings⁶. In a cross-cultural comparison, which asked if the laws should be obeyed even if they were not right, forty-five per cent of the Polish sample agreed⁷, and forty-seven per cent of the Hong Kong sample shared the same view⁸. It was also reported that forty-seven per cent of the Hong Kong respondents disagreed with the notion that Common Law was not suitable to the Chinese population⁹. The survey results of three western democratic countries varied. A Dutch survey showed that forty-seven per cent of the sample respected the authority of the law¹⁰. The results of a West German survey showed that sixty-six per cent of the sample respected the authority of the law¹¹, and a Canadian survey showed that eighty-seven per cent of the sample respected the authority of the law¹². The explanation which has been given for the West German results is that the German people are still very attached to state authority¹³, and

¹ *Ibid.*

² The Hong Kong government is answerable to a democratic government in London.

³ *op.cit.*, p.94 and p.97.

⁴ Knowledge and Opinion about Law (London, 1973), p.77.

⁵ Kuan and Lau, *op.cit.*, p.10-1.

⁶ Dale Gibson and Janet Baldwin (ed.), Law in a Cynical Society? Opinion and Law in the 1980s' (Calgary, 1985), p.48-9.

⁷ Podgorecki, Law and Society (London, 1974), p.95. Data collected in 1966.

⁸ Kuan and Lau, *op.cit.*, p.10-1.

⁹ Kuan and Lau, *op.cit.*, p.6.

¹⁰ Wolfgang Kaupen, 'Public Opinion of the Law in a Democratic Society', in Adam Podgorecki and Others (ed.), Knowledge and Opinion about Law (London, 1973), p.46.

¹¹ *Ibid.*

¹² Gibson and Baldwin, *op.cit.*, p.72.

¹³ Kaupen, *op.cit.*, p.46.

the explanations which have been given for the Canadian results are that the law generally stands for the needs of the people and that the people consider the law to be generally just¹.

Interpretation of these comparisons is limited, and does not explain the attitudes of the Hong Kong Chinese towards the prestige of the Common Law judicial system. The traditional Chinese values should have some relationship to the degree of respect towards the law, as do the religious values in Roman Catholic Poland. In traditional China, moral convictions, according to Confucius teachings, are valued higher than legal obligations. The early Christian martyrs founded the Catholic church by disobeying the Roman law², and similarly the seventeenth century Puritans laid the foundations for the Anglo-American law of civil liberties by disobeying the English law³. In his *Commentaries on the Laws of England*⁴, William Blackstone wrote that laws were invalid if they were contrary to the law of nature⁵. His words are still taken seriously by Roman Catholic jurists⁶.

The data from the previous study, however, indicate that the prestige afforded the law in Hong Kong is as low as in Communist Poland. But, as many as thirty-seven per cent of the Chinese population of Hong Kong were born on the Chinese mainland⁷, and almost all the Chinese population have their roots or relatives there. This would suggest that the word "law" to them has a wider connotation than just Common Law.

¹ Gibson and Baldwin, *op.cit.*, p.48.

² Harold Berman, 'Influence of Christianity on Western Law', in William Evan (ed.), *The Sociology of Law* (New York, 1980), p.432.

³ *Ibid.*

⁴ Vol.1, p.41.

⁵ Also see *Dr. Bonham's case* (1610) 8 Co.Rep. 118.

⁶ Dennis Lloyd, *The Idea of Law* (London, 1977), p.79-80 and 92-3; Roger Cotterrell, *The Sociology of Law* (London, 1984), p.181.

⁷ Hong Kong Government, *Hong Kong 1986 By-census Summary Results*, p.13.

Demographic Analysis

The data collected from the Chinese population of Hong Kong indicate that the pre-war generation is more negative towards the authority of the law than the post-war generation¹. As the older generation is more likely to have experienced the breakdown of governmental systems and corrupt practices in both China and Hong Kong during part of their life, these results were not unexpected. These findings, however, do not reconcile with the previous Hong Kong study², which did not provide information as to how their conclusion was reached. Those who are in the age group of over forty-seven years old are more likely to have experienced both the legal systems in China during the Nationalist and Communist periods and the Common Law system in Hong Kong. Past experience with the former systems strengthens confidence in the latter system. Those in the age group between thirty-eight and forty-seven were less likely to have experienced the legal systems in China, but witnessed the widespread corruption that occurred in Hong Kong up until the mid-1970s³. Therefore, the older generation tends to disrespect the authority of the law based on past personal experiences.

The data also reveals that Chinese traditionalism is negatively associated with attitudes towards the authority of the law⁴. In a previous study of corruption in Hong Kong, it was reported that Chinese traditionalism was positively correlated with acceptance of corruption⁵, i.e. negatively associated with obeying anti-corruption law. However, the measurements used for Chinese traditionalism differ from the present study. In traditional China, morality dominates over law, and the inner conscience is more important than any form of legal control.

This survey reveals that religiosity and education are positively associated with

¹ The age classifications were collapsed into four from the previous eight. Appendix F-1(a).

² Kuan and Lau, *op.cit.*, p.10-1.

³ See *supra*, p.30.

⁴ Appendix F-1(b).

⁵ Lee, *op.cit.*, p.85.

attitudes towards the authority of the law¹. The previous Hong Kong study could not draw conclusions about the relationship, if any, between education and attitudes towards the prestige of law². The different views asked for by their questionnaire required the respondent to be highly educated in order to make a choice³. The results of this survey, however, are inconsistent with a previous Canadian study that revealed that higher levels of education are correlated with less willingness to comply with the law⁴. The social environment in Hong Kong is different from other Western countries. Less than four per cent of the Hong Kong population have taken a degree course⁵. Naturally, those with higher education are most likely to be employed in administrative and professional positions in the government, industry, trade and commerce, and enjoy a higher standard of living. It would, therefore, be unusual for most of the elites in Hong Kong society to show disrespect towards the authority of the law. The statistical results confirm this⁶.

The higher a person's education, the more likely that person is in a higher income group⁷. The analysis indicates that there is a positive relationship between income and attitude towards the prestige of law⁸. However, the Chi-square test has failed to reject the null hypothesis that income levels are independent at a significant level⁹, i.e. it is unlikely that income and attitude towards the authority of law are related in the population, but the correlation indicates that there is a linear relationship at a significant level¹⁰.

¹ Appendices F-1(c) and F-1(d).

² Kuan and Lau, *op.cit.*, p.10-1.

³ The second view respondents were asked to choose is: 'when one is confronted with a regulation one considers wrong, one should only appear to conform to it, but in practice one should violate it'. See Kuan and Lau, *op.cit.*, p.11 and Podgorecki, *op.cit.*, p.93.

⁴ Gibson and Baldwin, *op.cit.*, p.49.

⁵ Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.15.

⁶ Appendix F-1(d).

⁷ Appendix C-1.

⁸ Appendix F-1(e).

⁹ *Ibid.*

¹⁰ *Ibid.*

Inter-Group Analysis

The results of the analysis show that over forty-eight per cent of the Chinese population sample agreed to the statement that the law should be obeyed even if it is unjust¹. This figure is unexpectedly very similar to the figure reported in the previous Hong Kong study². A wider discrepancy between this study and the previous Hong Kong study was expected as "proportionate adjustment" had not been used in the previous study, and, as discussed, the answers were presented to the respondents in a different form. There is, for example, a difference between asking a person if "he should obey an unjust law" and "he would disobey an unjust law if he can".

Only forty-four per cent of the Hong Kong visa students agreed that the law should be obeyed even if it is unjust³, and this figure is about nine per cent lower than the general Chinese population in the same age group⁴, while seventy-one per cent of the Canadian students expressed the same opinion⁵. It would appear that the younger students who have limited life experiences tend to be relatively more radical in their thinking than the rest of the population. A comparison of the results from the Canadian students of this survey and the previous Canadian survey also reinforces this suggestion⁶.

It is interesting to note that a substantial minority (thirty-five per cent) of the legal profession sample expressed the view that unjust laws should not be obeyed if they could⁷. This finding is interesting because any lawyer who publicly stated such a view might expose himself to disciplinary actions⁸ for advocating civil disobedience, and risk losing his livelihood⁹. The results suggest that the prestige of the law is higher in England

¹ *Supra*, Table 6.1.1.

² See Kuan and Lau, *op.cit.*, p.10-1.

³ *Supra*, Table 6.1.1.

⁴ Compare with figures in Appendix F-1(a).

⁵ Only those respondents who have an opinion were considered.

⁶ Compare Table 6.1.1 with Gibson and Baldwin, *op.cit.*, p.72.

⁷ The assumption is that the law is *intra vires*.

⁸ Presumably through the local law society or bar council.

⁹ C.D. Evans, 'On the Duty of Advocating Civil Disobedience', (1980) 18 Alberta Law Review 520-36.

than Hong Kong. The Hong Kong visa students have a less respect for the law than Canadian students. Chinese members of the legal profession are expected to respect overwhelmingly the law on which their livelihood depends, but they fare worse than the Canadian students. One explanation is they to some extent share the common consciousness of the Chinese population of Hong Kong rather than the Common Law culture.

The Prestige of Law in Hong Kong

The results of the survey of attitudes towards maintaining the present Common Law judicial system across the population groups are summarized as follows¹:

Table 6.1.2: Maintaining the present legal system

Population Groups	Overall Agree (%)	Overall Disagree (%)
Hong Kong Chinese Population	93.33	6.67
Legal Profession	79.66	20.34
English Population	52.00	48.00

Taken together Tables 6.1.1 and 6.1.2 may be regarded as giving some support to the view that the English population surveyed was more willing to comply with the law than the Chinese population of Hong Kong. Sixty-three per cent of the English population agreed that one should submit to the authority of the law even if unjust, while only forty-eight per cent of the Chinese population took the same view². At the same time, only fifty-two per cent of the English population agreed that the Common Law judicial system was satisfactory, while ninety-three per cent of the Chinese population took this view³. This latter figure is consistent with the criticism sometimes expressed in the British press that the Common Law judicial system is archaic⁴. The ninety-three per cent of the Chinese population who agreed that the present legal system should be

¹ The question asked was: 'The present legal system should remain in Hong Kong after 1997. ('in England' for English sample)'. See Item 78, Appendix E-1.

² *Supra*, Table 6.1.1.

³ *Supra*, Table 6.1.2.

⁴ 'A legal system under stress', (a series of six articles), The Economist, 30th July to 3rd September, 1983.

maintained indicates overwhelming support for the Common Law judicial system and they wish to maintain it after 30th June, 1997. The question is whether or not they will have an opportunity, like the English population, to look at alternatives. The only alternative choice for the Chinese population of Hong Kong is the socialist legal system in the People's Republic of China.

General Discussion

There are a number of lawless subcultures in Hong Kong. Gang members are very active even within law enforcement agencies¹ and large law firms², not to mention other sectors of the Hong Kong society. The prestige of the Hong Kong government has never been high as it is a foreign government³, even though it has always respected the Rule of Law. Consequently, wealth is more important than holding public office, and corruption has been a way of life in Hong Kong for many years. However, corrupt practices have become more subtle since the establishment of the Independent Commission Against Corruption in February, 1974. In the minds of the Chinese population of Hong Kong, if the authority cannot be respected, then neither can its law. Studies in the United States of America have shown that any evidence of corruption or hypocrisy on the part of the justice machinery undermines the prestige of the law and its effectiveness⁴. A Supreme Court judge in Hong Kong, Mr. Patrick O'Dea, made international news after admitting reading a book while presiding over a robbery trial⁵. Incidents of this nature only reinforce public cynicism that the expatriate judges in Hong Kong are only there for the money⁶.

¹ *Supra*, p.31.

² Bill Radcliffe, an official of the Law Society of Hong Kong, said that "he was sure many solicitors' clerks have triad connections but did not think solicitors themselves are involved". See Emily Lau, 'Under a dark cloud: The territory's legal system leaves a lot to be desired', Far Eastern Economic Review, 6th October, 1988, p.26.

³ *Supra*, p.30.

⁴ William M. Evan, *op.cit.*, p.559.

⁵ Edmonton Journal, 29th November, 1988.

⁶ For other criticism of Mr. Justice O'Dea, see Sing Pao Daily, American

During recent court proceedings, a senior officer of the Royal Hong Kong Police testified that there is an estimated one hundred and sixty thousand people in Hong Kong who are gang members¹, and this figure represents three per cent of the Hong Kong population. The number of gang members has increased from one and one half per cent in 1958². The proportion is nine per cent if only the male adult population are considered. The actual percentage could be much higher as official figures are conservative³. According to a sociological study conducted in 1975, as many as one hundred thousand females were engaged in prostitution⁴. One Hong Kong night club with women for hire made international news for issuing shares on the Hong Kong stock exchange⁵, and a former senior British civil servant of ministerial rank in Hong Kong accepted an offer to be a manager of the same night club⁶. As living on the earnings of prostitution is illegal, it raises a question about the number of lawless elements in this trade alone⁷. It is not unknown that law firms in Hong Kong lavishly entertain estate agents and bank managers in those expensive night clubs in lieu of kickbacks, which are illegal, to get work in the generally buoyant property market⁸. The prostitution trade is

⁶(cont'd) Edition, 30th November, 1988.

¹ Sing Pao Daily, American Edition, 30th November, 1987.

² *Ibid.*

³ Although the Royal Hong Kong Police asked for draconian measures against alleged triad members, the Commissioner of Police still claimed that Hong Kong has "one of the lowest crime rates of any big city in the world". See Henry Litton, 'So-called 'triad experts'', (1986) 16 Hong Kong Law Journal 7.

⁴ This figure came from the Students' Union of the University of Hong Kong. Compared with 50,000 in the whole United Kingdom at that time, the Hong Kong figure might be exaggerated. See Henry Lethbridge, 'Prostitution in Hong Kong: A Legal and Moral Dilemma', (1978) 8 Hong Kong Law Journal 159.

⁵ See Globe and Mail, 12th October, 1987.

⁶ Sing Pao Daily, American Edition, 4th November, 1987. Also see Derek Davies, 'The apple of Peking's eye', Far Eastern Economic Review, 7th April, 1988, p.51.

⁷ Any barrister can safely ask a judge to take judicial notice about what is happening inside these premises. Also, according to his research paper, 'Elite Behaviour in the People's Republic of China and the Process of British Hong Kong's Reversion to Chinese Sovereignty' (Edmonton, 1988), Dr. Charles Burton, University of Alberta, considered these night clubs as "centers for prostitution (which is without any question)".

⁸ Lau, *op.cit.*, p.26.

also associated with drug trafficking and gambling¹. Even government figures have conceded in 1985 that the number of drug addicts in Hong Kong was around thirty-seven thousand, and the actual number could be higher, as only reported cases were included in the government figures². The recent crash of the Hong Kong stock market causes concern about the extent to which the law of Hong Kong serves to protect the interests of ordinary citizens against unfair practices of financial elites, practices which are illegal in England and most other Common Law countries³.

Amidst public protest, the Public Order (Amendment) Ordinance was enacted on 11th March, 1987⁴. Not only the local Chinese press, but also the international press community, gave extensive coverage to this issue⁵. The passage of the Ordinance had been completed a few months before the surveys of this research was conducted. The second and third readings of a law, which curtails civil liberties and is contrary to the spirit of Common Law by shifting the burden of proof to the defendant, was passed by the Legislative Council in only one day⁶. The majority of the Council's members were appointed by the Hong Kong government. The Hong Kong government stated that this ordinance would be used sparingly and with particular care only as a measure of last resort⁷. However, under pressure both at home and abroad⁸, the controversial Section 27 of this Ordinance was repealed in January, 1989, but only after the Hong Kong

¹ Many prostitutes are also drug addicts.

² Hong Kong Government, Hong Kong 1986 (Chinese version), p.100.

³ See John Mulcahy, 'No-confidence trick', Far Eastern Economic Review, 5th November, 1987, p.60-2 and p.69-71. On other matters, the Attorney General of Hong Kong has refused to enforce criminal laws against financial elites because it might jeopardise commercial stability. See Philip Bowring, 'Ear to Peking, an eye on Whitehall', Far Eastern Economic Review, 7th March, 1988, p.54.

⁴ Sing Pao Daily, American Edition, 13th March, 1987. This Ordinance shifts the onus of proof onto the defendant in cases of spreading rumours or false news.

⁵ 'Hong Kong law like a gift to Reds', Globe and Mail, 16th March, 1987.

⁶ Sing Pao Daily, American Edition, 13th March, 1987.

⁷ (1987) Vol.84 No.18 The Law Society's Gazette 1419.

⁸ David Porter, 'A blast from Geneva', Far Eastern Economic Review, 24th November, 1988, p.26-7.

government had an opportunity to display its authority.

As Roscoe Pound (1870 - 1964) wrote:

"there has been a continual movement in legal history back and forth between wide discretion and strict detailed rule, between justice without law, as it were, and justice according to law"¹.

Regardless of the attitudes towards the prestige of law, it is clear from the results of the analysis that an overwhelming majority of the Chinese population of Hong Kong believe that the present Common Law judicial system should remain in Hong Kong after 30th June, 1997². This view is also shared by an overwhelming majority of other control groups from the Hong Kong population. Some members of the Chinese population did not respect the authority of the law, but the Common Law judicial system was, nevertheless, their ultimate choice.

¹ An Introduction to the Philosophy of Law (New Haven, 1922), p.112.

² *Supra*, Table 6.1.2.

D. Individual and Legal Rights

Introduction

According to the results of the data analysis, among a clear majority of the Chinese population, the perceptions of individual and legal rights are positive. Some of the dimensions reflect such overwhelming support that demographic analysis is unnecessary. The following table illustrates values the population groups hold towards cooperation with the legal system¹:

Table 6.2.1: Cooperation with the Legal System

Dimensions	Agree		
	Chinese Population	Legal Profession	English Population
One should insist on his legal rights	87.16	90.40	84.63
The court can be resorted to to settle disputes if other channels fail	74.86	93.85	76.36
One should cooperate with the justice system	92.44	97.22	90.77
One should respect other's legal rights	63.51	81.90	82.59
One should defend others' rights	90.92	97.22	86.89

Cooperation with the Legal System

The above table shows that the Chinese population of Hong Kong overwhelmingly accept the notion of insisting upon legal rights. There are no practical differences between the population groups in accepting this notion. Cultural factors do not seem to affect this dimension. The data from the Chinese members of the legal profession, however, reflects the highest rate of agreement to this dimension². Professional attitudes might explain this trend although they have first-hand information on the delays and expenses of obtaining justice.

Consensus was reached among all groups regarding resort to the courts to settle disputes, cooperating with the judicial system, and defending the rights of others³. A

¹ The table of the items measuring each dimension is provided in Appendix A-3, and the raw data is provided in Appendix E-2.

² *Supra*, Table 6.2.1.

³ *Ibid.*

substantial majority of the Chinese population of Hong Kong and the English population of Norwich hold a positive value towards the use of the courts to settle disputes¹, whereas virtually all of the Chinese members of the legal profession hold a positive view. This confirms the judicial statistics that the Chinese people in Hong Kong have increasingly resorted to courts to settle disputes².

A clear majority of the Chinese population accept the notion of respecting others' legal rights³, but a substantially higher majority of Chinese members of the legal profession hold the same view. As lawyers, they have to respect others' legal rights, and they do tend to conform to Common Law culture as do the English population of Norwich⁴. Cultural factors appear to have some effect on the values of the Chinese population with regard to the respect for others' legal rights. Level of education and income, however, are positively related to the values held by the Chinese population of Hong Kong towards respecting others' legal rights⁵. Education appears to play a role in the difference between the Chinese population sample and the English sample in acceptance of this dimension, as the level of education in Hong Kong is lower than England⁶.

A study of Chinese Canadian businessmen, most of whom are former residents of Hong Kong, has shown that there is a definite preference for the use of extra-judicial solutions to their disputes⁷. The findings of the present research do not contradict this attitude. There is always a difference between avoiding seeking a cause of action and respecting the rights of others. This previous study did not investigate people's ultimate preference if all established cultural means of settlement failed⁸. The results of the

¹ *Ibid.*

² *Supra*, p.34 and Table 2.1.

³ *Supra*, Table 6.2.1.

⁴ *Ibid.*

⁵ Appendices F-2(a) and F-2(b).

⁶ See UNESCO, Statistical Yearbook, 1986 (New York, 1986), Sec.1.3 and 1.4.

⁷ Janet Chan and John Hagan, Law and the Chinese in Canada: A Case Study in Ethnic Perceptions of the Law (Toronto, 1982), p.38.

⁸ Chan and Hagan, *op.cit.*, p.73.

analysis have shown that the Chinese population of Hong Kong will resort to the court for help, if their disputes cannot be settled through mediation or other means¹.

From this survey, it is clear that the Chinese population of Hong Kong have expressed a positive value towards the notions of individual and legal rights, both rights which Common Law insists upon. They have also shown a willingness to cooperate with the judicial system and to serve as witnesses. It is always dangerous to make claim to show a shift in attitudes and values from a single survey conducted at one point in time. However, these results do suggest that the Hong Kong population displayed views different from the traditional Chinese views. This would tend to suggest a shift in Hong Kong towards the acceptance of Common Law principle.

Confidence in the Administration of Justice

The following table is a summary of the analysis of the attitude and value items that measured confidence in the administration of justice across the population groups²:

Table 6.2.2: Confidence in the Administration of Justice

Items: 38, 40, 70, and 72.	Agree		
	Chinese Population	Legal Profession	English Population
One should not be afraid of reprisals for testifying in court	62.26	85.19	55.17
A person is well protected for testifying in court	80.01	27.45	34.69
Police often fabricate evidence to earn their promotion	36.48	47.37	60.47
A person is free to criticize the police without fear of reprisals	70.82	78.13	69.84

Although over seventy-one per cent of the Chinese population sample expressed their confidence in the administration of justice³, only a marginal majority (fifty-two per cent) of the legal profession sample and a marginal minority (forty-eight per cent) of the English sample expressed a similar opinion⁴. The questions asked which were to measure

¹ Item 28, Appendix E-2.

² Appendices A-3 and E-2.

³ Mean (Items 40, 70 and 72), Appendix E-2. Item 70 taken negatively.

⁴ *Ibid.*

this dimension are attitude-related, and the respondents' education, experience, first-hand knowledge, and personal judgment influenced responses. Studies in the United States of America have shown that those who have more knowledge of the judicial system are more dissatisfied with it¹. The salient presence of gang members in the Royal Hong Kong Police² and the suspicious circumstances surrounding the death of Mr. J.R. Wimbush, a former president of the Law Society of Hong Kong, who voluntarily returned from his retirement in England to assist in the investigation of the Carrrian case³, could hardly be erased from the memory of the Chinese members of the legal profession. As discussed, the level of education in Hong Kong is lower than in England. Although the police in England are not the same as in Hong Kong, the attitudes of the English population of Norwich towards the administration of justice might be explained by their higher level of civic knowledge.

The results of the analysis indicate that levels of education and income are positively related to the confidence in the administrative of justice as illustrated in the following two tables computed from the Chi-square cross-tabulations⁴.

Table 6.2.3: Confidence in Administration of Justice

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Agree with this dimension	56.30	64.00	71.70	87.20	70.50
Disagree with this dimension	43.80	36.00	28.30	12.80	29.50

Table 6.2.4: Confidence in Administration of Justice

	Salary in Hong Kong dollars			
	Under 2,000	2,000-3,999	4,000-5,999	6,000 & over
Agree with this dimension	65.00	68.20	69.90	87.90
Disagree with this dimension	35.00	31.80	30.10	12.10

Unlike the Chinese members of the legal profession, those people with higher levels of education and income in Hong Kong will not necessarily have first-hand

¹ Austin Sarat, 'Support for the Legal System', in William Evan (ed.), The Sociology of Law (New York, 1980), p.168-9.

² *Supra*, p.31.

³ Philip Bowring, 'The drowning pool: The bizarre death of a leading lawyer appears to have links with the investigation into the Carrrian empire', Far Eastern Economic Review, 26th April, 1984, p.20-1.

⁴ Appendix F-2(c) and (d).

experience and knowledge of the judicial system when rendering an opinion. It is a phenomenon that most of those in the upper middle-class level in Hong Kong consider themselves to be conservative elites and rarely concern themselves with social issues. This is apparently not the case, even for the Chinese population, in some other cultures. A Canadian study reported that higher levels of education are positively correlated with the view that abuse of state authority is serious¹. The previous study of Chinese Canadian businessmen has also revealed that those in professional practice are more likely than those in commercial or service businesses to believe that there are abuses of the administration of justice². The same study also revealed that those with higher levels of education and income and more knowledge of the English language were more likely to have negative thoughts towards the administration of justice.

A significant minority of the Chinese population of Hong Kong, as well as the Chinese members of the legal profession, are mistrustful of the Royal Hong Kong Police³. Therefore, there appears to be a flaw in the system. Many people believe that the Royal Hong Kong Police often fabricate evidence to earn their promotions. The English population though have a far more negative attitude towards their local police⁴. One possible explanation is that the British media is more critical of the British police than the Hong Kong media. Unlike Great Britain, the freedom of the press in Hong Kong is limited⁵. However, a study in London has noted that "outright fabrication of evidence" by police is probably rare⁶.

In the same study of Chinese Canadian businessmen, it was reported that over eighty-eight per cent thought that the Canadian police were better than the police in their home cities⁷. The Chinese members of the legal profession do not express their

¹ Gibson and Baldwin, *op.cit.*, p.49.

² Chan and Hagen, *op.cit.*, p.35.

³ Item 70, *supra*, Table 6.2.2.

⁴ *Ibid.*

⁵ *Supra*, p.94.

⁶ Cotterrell, *op.cit.*, p.292.

⁷ Chan and Hagen, *op.cit.*, p.34.

confidence in being protected against reprisals for testifying in court¹, even though they do not fear reprisals for doing so². This indicates their mistrust of the Royal Hong Kong Police. The English population of Norwich also have similar attitude towards their local police.

However, the Chinese population of Hong Kong, as well as the Chinese members of the legal profession, do express their confidence in the integrity of the system, in their belief that the Royal Hong Kong Police do not have a free hand to harass people³. They share the same degree of confidence in the integrity of the system as the English population of Norwich. In a 1966 survey, only twenty-seven per cent of the population shared the same view⁴. That survey was conducted shortly after the Star Ferry incident⁵ in April, 1966, and a subsequent judicial inquiry confirmed that the Hong Kong police had used smear tactics⁶. Since then, the governmental system has been gradually improved, and the Independent Commission Against Corruption was established in February, 1974. Now the number of policemen actually convicted for corruption has helped to dispell the fear that the Royal Hong Kong Police is above the law⁷. This has provided the Chinese population with some confidence in the administration of justice. This attitude suggests that it is the human components in the system that they are mistrustful and not the system itself.

General Discussion

In a previous study of Chinese Canadian businessmen, it was reported that, in Hong Kong, where laws were modelled after the British tradition, it was difficult to

¹ *Supra*, Table 6.2.2.

² *Supra*, Table 6.2.2.

³ *Supra*, Table 6.2.2.

⁴ *The Star*, 24th July, 1966 and 12th November, 1966.

⁵ This incident was the rioting in Kowloon on the nights of 5th to 8th April, 1966, which was inspired by the increase in fares by the Star Ferry Company. See Henry Lethbridge, *Hard Graft in Hong Kong* (Hong Kong, 1985), p.54-61.

⁶ Lethbridge, *op.cit.*, p.57-61.

⁷ Peter Harris, *Hong Kong: A Study in Bureaucratic Politics* (Hong Kong, 1978), p.148-9.

estimate whether or not some residual influence of traditional Chinese legal orientations might be found¹. That study was conducted in 1982, and most of the Chinese population surveyed had immigrated to Canada earlier than that year. It is apparent that the political and social mentality of the Chinese population of Hong Kong have changed since that time. Therefore, estimating the influence of traditional Chinese legal orientations would be more difficult now. However, the results of the analysis suggest that Chinese traditionalism does not have a significant influence on the Chinese population of Hong Kong's attitudes and values towards cooperation with the Common Law judicial system. The most influential factors appear to be education and income.

¹ Chan and Hagan, *op.cit.*, p.38.

E. The Rule of Law

Introduction

The results of the analysis indicate that education and income have an important influence on people's attitudes and values towards the rule of law¹. A detailed analysis of the items suggest that views held by the Chinese population are more related to their levels of education². The theoretical backgrounds of the rule of law are complex. Most of the respondents, including some legal profession members, were not expected to render their opinion intellectually.

The following table provides a summary of the attitudes and values of the population groups towards the three dimensions used in this study³:

Table 6.3.1: The Rule of Law

Dimensions	Agree		
	Chinese Population	Legal Profession	English Population
<i>Nullum crimen sine lege</i>	54.15	86.61	70.95
Exercise of arbitrary power by police is acceptable	34.37	37.50	13.43
There is equal opportunity before the court	77.47	68.75	43.53

Nullum Crimen Sine Lege

Almost half of the Chinese population sample expressed negative values towards the doctrine of *nullum crimen sine lege*⁴. But, in addition to the legal profession sample who were expected to respond overall positively to this doctrine, the English sample also shared the same opinion that morality is not an important aspect in the determination of criminal liability.

The results of the analysis show that education and income are variables which

¹ Appendices F-3(a) to (g).

² *Infra*.

³ Appendices A-3 and E-3.

⁴ *Supra*, Table 6.3.1.

are related to values towards *nullum crimen sine lege*¹. This dimension requires some knowledge of the operation of the legal doctrine, or an analytical mind, for a person to fully appreciate it. The high rates of approval for this dimension from the Chinese members of the legal profession and the London External LL.B. students reinforce this assertion². The results of the analysis also indicate that Chinese traditionalism has no effect on the responses of the Chinese population sample³. Therefore, one possible explanation for the difference between the Chinese population of Hong Kong and the English population of Norwich in their levels of acceptance of this doctrine is the levels of education of the two population groups as discussed earlier⁴.

It is not unknown that the English judiciary has at times taken the view that law has the duty of enforcing general societal consensus⁵. It should be noted that, at Common Law, conspiracy to corrupt public morals was a crime⁶ under the doctrine of *contra bonos mores et decorum* (against good morals), although the act in itself might not be illegal⁷. Such practice defies the principle of legality, and creates uncertainty as to whether an act is criminal⁸.

Exercise of Arbitrary Power by the Police

The following table summarizes the findings of the items which measure attitudes and values towards the concepts of due process and the exercise of arbitrary power by the police⁹:

¹ Appendices F-3(b) and F-3(c).

² The composite score for the LL.B. students is 86%. Appendices A-3 and E-3.

³ Appendices F-3(a).

⁴ *Supra*, p.151.

⁵ Cotterrell, *op.cit.*, p.107.

⁶ *Shaw v D.P.P.* [1962] A.C. 220.

⁷ This has been changed by statute in England. See S.5, Criminal Law Act, 1977.

⁸ H.L.A. Hart, *Law, Liberty and Morality* (Oxford, 1962), p.12.

⁹ Appendices A-3 and E-3.

Table 6.3.2: Exercise of Arbitrary Power by Police

Items: 32 and 58.	Agree		
	Chinese Population	Legal Profession	English Population
Police seldom arrest or interrogate the wrong person	18.49	14.04	25.81
Sometimes, secret torture by police is essential to extract evidence	34.37	37.50	13.43

The results have shown that an overwhelming majority of all population groups disagreed that the police seldom arrest and interrogate the wrong person¹. Therefore, the populations are aware that police procedures are not perfect. But, a substantial minority of the Chinese population sample agreed with police using secret torture as a means to investigate crimes². As noted, a 1986 survey has shown that the majority of the respondents favoured abridging the civil liberties of members of organized crime because of the gravity of the organized crime problem³. Culture may be an important factor here because a substantial majority of the Canadian students and the English sample rejected this practice⁴. Conversely, a clear majority of the Hong Kong visa students approved of this practice. Surprisingly, a slightly higher proportion of the legal profession sample than the Chinese population sample also agreed with this practice. It is very disappointing to find these opinions coming from a group expected to defend the civil rights of the Chinese population of Hong Kong after 30th June, 1997. Perhaps the quality of law enforcement in Hong Kong is so inferior that no other effective means is available to collect evidence for the prosecution. This was indeed the argument advanced for the retaining of torture during the late Ching law reform⁵.

The use of torture by the Royal Hong Kong Police is so prevalent that the percentage of cases in which confession statements are excluded by the courts would

¹ *Supra*, Table 6.3.2.

² *Ibid.*

³ Sing Pao Daily, American Edition, 2nd July, 1986.

⁴ Item 58, Appendix E-3.

⁵ Joseph K.H. Cheng, Chinese Law in Transition: The Late Ching Law Reform, 1901 - 1911 (New York, 1976), Ph.D. thesis, Brown University, p.136-7.

tend to suggest that there is a lack of confidence in them by the judiciary¹. It should be noted that the majority of the judges in Hong Kong are expatriate, and most will depart Hong Kong prior to 1st July, 1997. In addition, it is expected that the quality of the Royal Hong Kong Police will be reduced when the majority of the expatriate officers (those with rank of inspector or above) will follow the path of the expatriate judges. The police have many justifications for their abuse of authority². But, their quality and mentality are important factors. One can assume that if a substantial minority of the population and a substantial minority of lawyers believe that the police can take the law into their own hands, as is the case in Hong Kong, their society might be heading towards a dictatorship.

It should be noted that the Chinese members of the legal profession and the Hong Kong visa students are primarily middle class or higher, and have, on the average, higher levels of education than the general population. The police are more likely inclined to exercise arbitrary powers against underprivileged people as they are less likely to file complaints³. Studies conducted in the United States of America revealed that the police were more likely to arrest an underprivileged person, the prosecutor was more likely to prosecute him, the judge was more likely to convict him⁴, and the jurors were more biased against him⁵. The Chinese population who have higher levels of education and

¹ T.S. Lo, 'Interrogation and the admissibility of confessions', (1983) Papers of the 7th Commonwealth Law Conference 331. A 1984 Hong Kong Government's Law Reform Commission report on confessions stated that in about 90% of court cases, the defense alleged that confessions had been unlawfully or unfairly obtained and that these claims were upheld in up to 34% of these cases. See Emily Lau, 'Policing the police', Far Eastern Economic Review, 14th July, 1988, p.31. In England, a Home Office study showed that only 25% of all contested trials in the magistrates' courts resulted in acquittal. See Doreen McBarnet, 'Magistrates' Courts and the Ideology of Justice', (1981) 8 British Journal of Law and Society 181.

² Cotterrell, *op.cit.*, p.289-94.

³ Donald Black, The Behavior of Law (New York, 1976), p.27.

⁴ Black, *op.cit.*, p.71. However, in some jurisdictions, such may not be necessarily true. See David Greenberg, 'Donald Black's Sociology of Law: A Critique', (1983) 17 Law and Society Review 357.

⁵ Stephen J. Cragg, 'Police misconduct litigation in the U.S.A.', (1987) Vol.84 No.23 The Law Society's Gazette 1801.

income know this is the case in Hong Kong as they are more likely to have knowledge of the operation of the justice system. After all, they are the people whom the police are protecting, and are the people who are more likely to be empanelled as jurors¹.

The due process of law, however, serves to protect the underprivileged population². During the course of the Sino-British negotiation on the future of Hong Kong, the business community appeared to willing to grant concessions on the safeguards for civil liberties in return for preserving commercial freedoms from the Beijing government³. It is a matter of priority, motivated by self-interest.

The following two tables prepared from Chi-square cross-tabulations provide a breakdown of the level of acceptance of secret torture by police according to education and income levels⁴:

Table 6.3.3: Exercise of Arbitrary Power by Police

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Acceptance of police torture	36.40	40.40	47.30	16.30	43.50
Disagree with police torture	63.60	59.60	52.70	83.70	56.50

The results of the above analysis support the earlier suggestions. Although the majority of the Chinese population sample across all education classifications disapproved of the exercise of arbitrary power by the police, results indicate that those respondents who had lower levels of education were consistently opposed to this practice.

¹ Knowledge of English is required for a person to serve as a juror. See Valerie Ann Penlington, Law in Hong Kong (Hong Kong, 1981), p.61-2.

² It is likely that the positive value towards the due process of the law by the underprivileged is a result of their negative attitude towards the abuse of power by the police.

³ Brice Bueno de Mesquita, Forecasting Political Events: The Future of Hong Kong (New Haven, 1985), p.126.

⁴ Appendices F-3(d) and F-3(e).

Table 6.3.4: Exercise of Arbitrary Power by Police

	Salary in Hong Kong dollars			
	Under 2,000	2,000- 3,999	4,000- 5,999	6,000 & over
Acceptance of police torture	29.00	23.40	67.00	56.60
Disagree with police torture	71.00	76.60	33.00	43.40

The breakdown in responses by income classifications are marked by a clear difference. A substantial majority of those in lower levels of income disapproved of the exercise of arbitrary power by the police¹. A previous study of the Hong Kong legal culture did not reveal any findings inconsistent with the above results², although the authors of the study stated surprise at the amount of respect towards due process of the law by underprivileged people. Interestingly, the approval rates for this practice drop at the upper ends of the levels of education and income³. This is not surprising, as this population group is assumed to have better reasoning capabilities.

Equal Opportunity before the Court

The results of the analysis reveal that a significant majority of the Chinese population sample accepted the notion that there is equal opportunity before the courts⁴. The legal profession sample, but not the English sample, also accepted this dimension. Only level of education, not income, is related to the acceptance of this dimension⁵. People with higher levels of education tend to have few barriers to the judicial system, and this is especially true in Hong Kong where the language of the courts is usually English. The following table shows the results of the analysis of the items that measured this dimension⁶:

¹ *Supra*, Table 6.3.4.

² Kuan and Lau, *op.cit.*, p.10.

³ *Supra*, Tables 6.3.3 and 6.3.4.

⁴ *Supra*, Table 6.3.1.

⁵ Appendices F-3(f) and F-3(g).

⁶ Appendices A-3 and E-3.

Table 6.3.5: Equal Opportunity before the Court

Items: 35 and 36.	Agree		
	Chinese Population	Legal Profession	English Population
Every one has equal opportunity to obtain justice before the courts	82.42	62.50	39.13
The court serves only the rich and those who can afford a good lawyer	27.48	25.00	52.08

A previous Canadian study¹ revealed that only thirty-seven per cent of the Canadian population thought that all people were equal before the law, while sixty-two per cent thought that the legal system favoured the rich and the powerful. On the surface, the Chinese population of Hong Kong appear to have far more confidence that they have equal opportunity before the courts than the Canadian population. Eighty-two per cent hold the former view, while only twenty-seven per cent hold the latter view². However, the respondents in that Canadian study were only given the option to choose between "all people are equal before the law" or "the legal system favours the rich and the powerful". The present study offered the respondents more options. A respondent may consider the law to be just, but still regard the rich as having unfair advantages. If everything is equal, the rich can always afford to have a Queen's Counsel to defend a parking ticket in the magistrates' court.

The results from the English sample, however, show that thirty-nine per cent of the population thought that all people were equal before the law, while fifty-two per cent thought that the legal system favoured the rich and the powerful³. This suggests that the Chinese population of Hong Kong have far more confidence that there is equal opportunity before the court than do the English population of Norwich. As the English population of Norwich do not have the language barrier that the Chinese population of Hong Kong have, they are less likely to rely on lawyers. The negative attitude held by the English population of Norwich might be attributed to the more open criticism of the

¹ Gibson and Baldwin, *op.cit.*, p.72.

² *Supra*, Table 6.3.5.

³ *Ibid.*

judicial system by the British media¹.

In view of the availability of legal aid², the economic barrier to obtaining legal counsel has partially diminished in Hong Kong. The previous Hong Kong study used questions and techniques similar to the previous Canadian study³, and showed that only nineteen per cent of the Hong Kong population thought that all people were equal before the law, while seventy-three per cent thought that the legal system favoured the rich and the powerful. These findings are inconsistent with the results of this survey, having regard to the different type of questions used by the previous Canadian and Hong Kong studies which have limited interpretation.

Although one-quarter of the legal profession sample felt that economic factors were still a barrier to obtaining justice⁴, their feelings were not inconsistent with the studies in the United States of America, where Common Law is highly developed⁵. In all cultures, the rich and the educated population have always benefited from some sort of advantage⁶. It should be noted that there was a smaller percentage of the Chinese members of the legal profession who agree that everyone has an equal opportunity before the court than the general Chinese population⁷. As the Chinese members of the legal profession have actual knowledge of the operation of the judicial system, the attitudes of the Chinese population might be partially attributed to misconceptions about the operation of the judicial process.

There was, however, a significant minority of Chinese members of the legal profession who cast doubt on whether or not there is equal opportunity before the court⁸. There were various factors leading to these feelings, but they could not be

¹ *Supra*, p.154.

² See *infra*, this section.

³ Kuan and Lau, *op.cit.*, p.5.

⁴ Item 36, Appendix E-3.

⁵ Black, *op.cit.*, p.25.

⁶ The benefit of clergy at old Common Law and the eight privileged groups of persons (*pa-yi*) in traditional China.

⁷ Item 35, *supra*, Table 6.3.5.

⁸ *Ibid.*

reasonably investigated in this survey. The most likely factor though may be the way in which justice is delivered at magistrates' court level where over ninety-five per cent of criminal cases are tried¹, and where a prison term of three years can be ordered². Legal aid is not available for magistrates' court cases³, and the Duty Lawyer Scheme⁴ normally provides free legal representation to only nine types of more serious offences tried in magistrates' courts⁵. The Free Legal Advice Scheme⁶ and Tel-law Scheme⁷ do not offer anything more than legal counselling. In addition, an underprivileged defendant would have difficulty tracing witnesses, collecting information, and paying experts and investigators. Consequently, most unrepresented defendants are handicapped by the complex court procedures⁸. A previous study in England found that most defendants in magistrates' court plead guilty, partly due to the defendants' expectations that they have little chance in the magistrates' court⁹. In Hong Kong, although most of the magistrates are stipendiary and have legal training, as discussed, unlike England, they are not completely independent¹⁰. There is no evidence to change the early observation of Max Weber (1864-1920) that the magistrates' courts deal with the masses, most of whom cannot afford to purchase legal services¹¹.

¹ Hong Kong Government, Hong Kong 1987, Appendix.

² Magistrates Ordinance.

³ Legal Aid Ordinance, 1966, and Legal Aid in Criminal Cases Rules, 1969.

⁴ Some 500 paid lawyers in private practice rotate to provide legal representation funded by the government.

⁵ In addition, extradition proceedings and limited juvenile offences are also eligible under this scheme.

⁶ Some 350 non-paid volunteer lawyers provide free legal advice during the evenings in district administrative offices.

⁷ The recorded advice available by phone in both Cantonese and English from a wide range of legal topics.

⁸ Pat Carlen, 'The Staging of Magistrates' Justice', (1976) 16 *British Journal of Criminology* 48-55.

⁹ McBarnet, *op.cit.*, p.181-2.

¹⁰ *Supra*, p.108.

¹¹ Economy and Society (edited by Guenther Roth and Claus Wittich, New York, 1968), p.814.

General Discussion

The above analysis suggests that the Chinese population of Hong Kong marginally accept the doctrine of *nullum crimen sine lege*. The other two population groups, however, share the same view, with a far higher majority¹. Common Law in Hong Kong has to pass its survival test after 30th June, 1997. As discussed, the successful operation and continuance of the rule of law in Hong Kong depends upon the extent to which the Chinese population struggle for their rights both before or after that date. Therefore, marginal acceptance of this doctrine by the Chinese population of Hong Kong is barely sufficient.

Protection of the population in Hong Kong against torture after 30th June, 1997, has been one concern expressed by Amnesty International² and also by an academic lawyer at a SOAS seminar³. This concern, however, is compounded by the fact that a significant minority of both the Chinese population and lawyers agree with the exercise of arbitrary power by police to extract evidence from hardened criminals. This later belief, dangerous as it is, is not conducive to the judicial development of Hong Kong. Hong Kong is in a transitional period. The maintenance of law and order will be a problem as the morale of its civil servants and peace officers is diminishing⁴, providing an opportunity for this type of attitude to flourish⁵.

¹ *Supra*, Table 6.3.1.

² Globe and Mail, 27th July, 1988.

³ Peter Duffy, 'The protection of fundamental freedoms', Seminar on the Draft Basic Law for Hong Kong, School of Oriental and African Studies, 15th June, 1988.

⁴ The number of officers in the Royal Hong Kong Police with the rank of inspectors or above who left the force in 1986 was 122, in 1987 was 134, and in 1988 was 180. The number of applicants to the force declined during the same period, although police inspectors have been relatively well paid. See Sing Pao Daily, American Edition, 26th January, 1989; Asian Magazine (Yazhou Zhoukan), 5th February, 1989, p.15.

⁵ In their frustrated campaign to combat the Irish Republican Army, the British forces had used inhuman and degrading methods in interrogation, and was condemned by the European Court of Human Rights and not tolerated by British Attorney General, Sam Silkin. See Edmonton Journal, 18th January, 1978; Catherine Scorer, The Prevention of Terrorism Acts, 1974 and 1976 (London, 1976); Tom Hadden and Paddy Hillyard Justice in Northern Ireland (London, 1973); J.A.G. Griffith, The Politics of the Judiciary (London, 1979), p.46-8.

In a speech delivered in Hong Kong in 1983, Lord Scarman said:

"At the end of the day standards of police conduct and the proper use by the police of their powers mean more to society than the theoretical state of the law"¹.

Therefore, for the rule of law to operate successfully, the accountability, training and supervision of police are important factors².

¹ 'The Conflict in Society: Public Order and Individual Liberty', (1983) Papers of the 7th Commonwealth Law Conference 203.

² *Ibid.*

F. Judicial Independence

Introduction

The following table is a summary of the results of the survey of the dimensions used to measure judicial independence across the three population groups¹:

Table 6.4.1: Judicial Independence

Dimensions	Agree		
	Chinese Population	Legal Profession	English Population
The judiciary is independent	65.74	77.19	54.98
Is the judiciary fair and honest?	49.65	52.08	58.18
Judicial accountability	37.81	83.49	40.53
Separation of judicial power	26.57	84.03	40.24

The above table suggests that the Chinese population of Hong Kong have misconceptions about the operation of judicial independence. However, judicial accountability and separation of judicial power are difficult dimensions for laymen to accept. The results from the English population of Norwich indicate that the acceptance rate is not high even in Common Law culture. The results from the Chi-square cross-tabulations reveal that education, but not income, is a good predictor of attitudes towards judicial independence² by the Chinese population of Hong Kong. This variable is, however, related to the value put on judicial accountability³ and separation of judicial power⁴.

Attitudes towards Judicial Independence

The results of the analysis reveal that the judiciary of Hong Kong is conceived to be independent⁵. The following table indicates the degree of acceptance by the three population groups of the items measuring this dimension⁶:

¹ Appendices A-3 and E-4.

² Appendices F-4(a) and F-4(b).

³ Appendices F-4(c) and F-4(d).

⁴ Appendices F-4(e) and F-4(f).

⁵ *Supra*, Table 6.4.1.

⁶ Appendices A-3 and E-4.

Table 6.4.2: Attitudes towards Judicial Independence

Items: 42 and 48.	Agree		
	Chinese Population	Legal Profession	English Population
A judge's career is in jeopardy if his decision does not please the government	47.50	14.71	44.44
Judges are free to perform their duties without fear of any outside pressures	78.98	69.09	54.39

The above table shows that, compared to the experience in England, the Chinese population of Hong Kong share a higher degree of confidence in the independence of the judiciary. In view of the responses from the Chinese members of the legal profession, who have first-hand knowledge of the judicial system, it can be concluded that the judiciary in Hong Kong is viewed as independent from the government.

Although over three-quarters of the Chinese population sample believed that judges in Hong Kong enjoy judicial independence in that they are free to perform their duties without fear, only a marginal majority of them took the view that a judge's career is not in jeopardy if his decisions do not please the government¹. However, a substantial number of the legal profession sample supported the latter view². During the interview period, there was a news report about a complaint made by a magistrate who alleged that the Attorney General was harassing him because of disagreements over his judicial decisions³. This dispute might well be an isolated incident⁴, but could have affected this survey result. In view of the attitudes conveyed by the Chinese members of the legal profession⁵, it is suggested that the Chinese population of Hong Kong may have

¹ *Supra*, Table 6.4.2.

² *Ibid.*

³ 'Showdown looms for magistrate', South China Morning Post, 20th December, 1987.

⁴ It was reported that some magistrates complained of interference from the Legal Department and phone calls criticising their performance. The Attorney General is a member of the Judicial Service Commission and its advice to renew magistrates' contracts must be unanimous. See Emily Lau, 'Sharpening up the beaks: Magistrates come under pressure to step up conviction rate', Far Eastern Economic Review, 3rd November, 1988, p.29-30; *Supra*, p.108. There is, however, no admissible evidence to substantiate these allegations in the Review article.

⁵ Item 42, Appendix E-4.

misconceptions about the operation of the judiciary.

Attitudes towards the Judiciary

Attitudes towards judges differ from the favourable attitudes expressed towards judicial independence. More than half of the Chinese population sample had negative attitudes towards the judiciary in Hong Kong¹. The results of the analysis reveal very little difference in overall attitudes towards the judiciary between the Chinese population sample and legal profession sample, but the English judiciary enjoys a much higher prestige with the approval of a clear majority of the English sample². The judiciary is the human component of the judicial system. As such, human errors are not completely unavoidable. Studies in the United States of America and other countries have shown that judicial bias exists in favour of certain cultural groups³.

The following table shows the results of the analysis of the items which measured attitudes towards the judiciary⁴:

Table 6.4.3: Attitudes towards the Judiciary

Items: 53, 57, and 67.	Agree		
	Chinese Population	Legal Profession	English Population
Judges are fair and impartial	50.98	64.44	60.38
Judges treat English more favourably than Chinese (For English sample, 'other races' was used)	42.05	46.30	29.17
Only honest people are appointed judges	40.02	38.10	43.33

There is no evidence of judicial bias prevailing in England. Only a minority of the English sample felt that judges in England are not fair and impartial⁵. But, the early retirement of Lord Denning in July, 1982, rather than of at the end of 1982 as he had planned, due to controversy about prejudicial observations in his book, *What Next in the Law*, may be seen as evidence of the existence of such bias. In 1901, Lord Haldane

¹ *Supra*, Table 6.4.1.

² *Ibid.*

³ Black, *op.cit.*, p.69-72.

⁴ Appendices A-3 and E-4.

⁵ The average of Items (53 and 57), *supra*, Table 6.4.3. Item 53 taken negatively.

(1856-1928), who was Lord Chancellor, wrote:

"I fought my hardest for the Dutch prisoners before the Privy Council this morning, but the tribunal was hopelessly divided, and the anti-Boers prevailed over the pro-Boers. It is bad that so much bias should be shewn, but it is, I suppose, inevitable"¹.

In the earlier Hong Kong study², it was revealed that while over seventy-five per cent of the population felt that the Common Law system was just, only nineteen per cent of the same population agreed that the trials were fair. The latter finding is far more negative than the findings of this survey, which reveal that only forty-five per cent of the Chinese population sample felt that judges in Hong Kong were not fair and impartial³. The different results might be explained by the questions used to measure attitudes towards fair trials in the previous study⁴. In view of the high proportion of expatriate judges in Hong Kong, a remarkable proportion of them have served in other British overseas colonies⁵, and due to their middle and upper-class values and ideals⁶, the results of the present survey were not unexpected⁷. This is borne out by the fact that over forty-six per cent of the legal profession sample took the position that judges in Hong Kong treated the English more favourably than the Chinese when making judicial decisions⁸. The *Far Eastern Economic Review* has also reported that certain magistrates

¹ Quoted by Griffith, *op.cit.*, p.30.

² Kuan and Lau, *op.cit.*, p.5.

³ The average of Items (53 and 57), *supra*, Table 6.4.3. Item 53 taken negatively.

⁴ *Supra*, p.163. In measuring whether trials were fair in Hong Kong, the respondents in the previous study were asked to choose between "all people are equal before the law" or "the legal system favours the rich and the powerful".

⁵ In 1977, 42.8% of the entire judiciary in Hong Kong had previous colonial experience. See S. Davies, 'One Brand of Politics Rekindled', (1977) 7 Hong Kong Law Journal 56.

⁶ *Ibid.*

⁷ Historically, the Hong Kong government and the British population in Hong Kong were rather prejudiced against the Chinese population. See Peter Wesley-Smith, 'Discriminatory Legislation in Hong Kong', (1987) Academic Symposium, "The Historic Triangle of Britain, China and Hong Kong: A Sixty-Year Retrospective 1927-1987".

⁸ Item 57, *supra*, Table 6.4.3.

in Hong Kong were regarded as "indolent, racist and impolite" by some barristers who had appeared before their courts¹. As lawyers have first-hand experience and expert knowledge of the Common Law judicial system in Hong Kong, it is reality, rather than a lack of knowledge and alienation of the law by the Chinese population, which contributes to such attitudes and values.

The most distressing point is that a clear majority of both the Chinese population and legal profession samples disagreed that only honest people are appointed as judges in Hong Kong, but the English sample were equally as cynical². Harsh criticism of a few judicial decisions recently, by both the media and leading lawyers in Hong Kong³, is not conducive to a good image of the judiciary. The most notable one is the *Carrian* case⁴, in which the *Hong Kong Law Journal* described how the trial judge had made "errors no first year law student would have made"⁵, and questioned his fitness "to continue serving as a Justice of Appeal"⁶. As the *Far Eastern Economic Review* remarked:

"Public cynicism [*towards the judiciary in Hong Kong*] is high"⁷.

The trial judge of the *Carrian* case, Mr. Justice Barker, eventually submitted his resignation⁸. Although the reasons for Mr. Justice Barker's resignation are unknown, the events that occurred prior to his decision were undesirable for the future of judicial independence in Hong Kong⁹.

¹ Emily Lau, 'Sharpening up the beaks: Magistrates come under pressure to step up conviction rate', 3rd November, 1988, p.30.

² Item 67, *supra*, Table 6.4.3.

³ Philip Bowring, 'Roughing up justice', *Far Eastern Economic Review*, 3rd March, 1988, p.22-3.

⁴ The original decision was overruled, not reversed, by the Court of Appeal. The appeal ruling, however, has no effect upon the acquittal in that case as the court only considered points of law referred to by the Attorney General.

⁵ Henry Litton, (1988) 18 *Hong Kong Law Journal* 8.

⁶ *Ibid*, p.10.

⁷ Bowring, *op.cit.*, p.22.

⁸ *Sing Pao Daily*, American Edition, 18th March, 1988.

⁹ The people of Hong Kong should be able to exercise their democratic rights by expressing their views freely. As the article in the *Hong Kong Law Journal* above implicitly suggested that the trial judge might be guilty of serious neglect, the people should be entitled to a public inquiry from the government.

In the past two years, there was a series of scandals in the Hong Kong judiciary, leading to the resignations of three High Court judges¹. Commenting on these, Sir Ti-liang Yang, Chief Justice of the Supreme Court of Hong Kong, said:

"Almost everybody within the legal profession feels very strongly that the image of the judiciary has suffered in Hongkong and in the international business community"².

Judicial Accountability

A clear majority of the Chinese population sample took a negative view over the question whether judges are accountable to public opinions³. Analysis of this dimension reveals distinct differences between the Chinese population of Hong Kong and the Chinese members of the legal profession⁴. This is a value item on which responses depend upon the civic and social knowledge of the respondents. Although a clear majority of the Hong Kong visa students and the Canadian students considered that public opinion should be taken into consideration by the judiciary, a substantially lower proportion, and in the case of Canadian students, barely over twenty-eight per cent, were in favour of overruling a judicial decision which did not conform to public opinion⁵. The latter responses indicate that judicial authority is respected by Canadian students. These findings suggest that civic and social knowledge are important factors in the influence of respondents' values. The overwhelming acceptance of this dimension by the legal profession and London External LL.B. samples⁶ and higher degree of acceptance by those members of the Chinese population sample with higher levels of education as shown in the following table from the Chi-square cross-tabulation reinforce

¹ Emily Lau, 'Scandals dog the colony's judiciary', Far Eastern Economic Review, 20th April, 1989, p.23.

² Emily Lau, 'The judiciary faces major task in 1997 run-up', Far Eastern Economic Review, 20th April, 1989, p.20.

³ *Supra*, Table 6.4.1.

⁴ *Ibid.*

⁵ Items 30 and 66, Appendix E-4. Taken negatively.

⁶ *Ibid.*

these findings¹. Therefore, in order for Common Law values to prevail in Hong Kong, the rationale behind this doctrine needs to be understood by the general population.

Table 6.4.4: Judicial Accountability

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Agree	13.30	14.60	25.10	41.70	42.70
Mid-way	6.70	14.60	23.40	18.80	25.80
Disagree	80.00	70.80	51.50	39.60	31.50

Separation of Judicial Power

The results of the analysis show that the legal values towards the dimension of separation of judicial power are negative among the Chinese population of Hong Kong². This is not the case among the Chinese members of the legal profession. As in the analysis of the preceding dimension, these findings are evidence of the absence of civic and social knowledge among the Chinese population of Hong Kong, as levels of education positively influence values towards this dimension as shown in the following table from the Chi-square cross-tabulation³:

Table 6.4.5: Separation of Judicial Power

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Agree		8.90	11.60	28.30	35.20
Mid-way	27.30	11.10	17.70	21.70	19.80
Disagree	72.70	80.00	70.70	50.00	45.10

The difference between the Hong Kong visa students and the Canadian students also reinforce this suggestion⁴. In Canada, the doctrine of separation of judicial power is widely propagated. The Chinese population of Hong Kong appear to be confused between the democratic process, which is absent in Hong Kong, and the concept of the separation of powers. Although seventy-seven per cent of the Chinese population

¹ Appendices F-4(c).

² *Supra*, Table 6.4.1.

³ Appendices F-4(e).

⁴ Items 39 and 64, Appendix E-4. Taken negatively.

sample took the view that the Governor should be allowed to dismiss a judge if his decision is unreasonable, only sixty-nine per cent took the view that the Legislative Council should overrule an unreasonable judicial decision.

General Discussion

Although the Chinese population of Hong Kong believe that the judiciary is independent, they are cynical about the integrity of the judiciary. Their opinion about judicial integrity is shared by a visible proportion of the Chinese members of the legal profession. The Chinese population also have misconceptions about judicial accountability and separation of judicial power, which are interwoven with attitudes towards the judiciary. As discussed¹, the traditional Chinese concept of judicial accountability and separation of judicial power under the hierarchical system operates differently than at Common Law. The values of the Chinese population of Hong Kong towards these two dimensions appear to conform to the traditional Chinese concept of checks and balances². Nevertheless, the Chinese members of the legal profession, who are trained in the Common Law tradition, overwhelmingly accept the notion of judicial independence³. This suggests that education has shaped the values of those who accept this notion.

In Malaysia, the separation of powers is an alien concept under its feudal traditions⁴. Notwithstanding this, its constitution at the time of independence from Great Britain has enshrined judicial independence. Its judiciary has also enjoyed a reputation of judicial integrity⁵. In the past two years, the Malaysian government has lost a few cases in court. This led to tension between the executive and the judiciary, and eventually

¹ *Supra*, p.56.

² This might be a result of their attitudes towards the judiciary. Their attitudes strengthen their belief that some form of control over the judiciary is necessary.

³ *Supra*, Table 6.4.1.

⁴ Suhaini Aznam, 'A judicial shake-up', Far Eastern Economic Review, 14th January, 1988, p.27.

⁵ *Ibid.*

ended up with the removal of the right of High Courts or subordinate courts to interpret the law enacted by parliament¹. It also resulted in the suspension of six of the ten Supreme Court judges for "gross misbehaviour" by the king (who had been successfully prosecuted for manslaughter by one of them as a solicitor general)².

Judicial independence in Malaysia was destroyed on 6th August, 1988, when its Supreme Court Lord President, Mr. Tun Mohamed Salleh Abas, was dismissed by the king on the recommendation of a special investigation tribunal³. The chairman of the tribunal was not only a leading candidate for the Lord President's position, he also elevated three High Court judges to hear legal arguments on the legitimacy of the tribunal⁴. The elevation itself, was, however, necessary after five of the above six Supreme Court judges were suspended after making an interim injunction prohibiting the tribunal from making any recommendation to the king over Salleh's case⁵. Two of the other three suspended judges were later sacked on the recommendation of another tribunal amidst protest from the Malaysian Bar Council⁶.

The Malaysian experience indicates that the doctrine of *nemo iudex in causa sua* was not observed. The different views about the separation of powers is partly rooted in the conflict between traditional Malaysian culture, under which most of the legislators have been educated, and Common Law culture, under which most of the senior judges are trained⁷. If recent developments in Malaysia are an indication, it is not very promising

¹ 'The tile of power: Mahathir moves to place parliament over courts', Far Eastern Economic Review, 31st March, 1988, p.15-6; 'Sending off the umpire', Far Eastern Economic Review, 9th June, 1988, p.12-3.

² Suhaini Aznam, 'Judges in the firing line', Far Eastern Economic Review, 14th July, 1988, p.10-1; 'The king's bench', Far Eastern Economic Review, 23rd June, 1988, p.22; 'The judge in the dock', Far Eastern Economic Review, 30th June, 1988, p.12-3.

³ Suhaini Aznam, 'Judgement week', Far Eastern Economic Review, 18th August, 1988, p.22.

⁴ Suhaini Aznam, 'No more options', Far Eastern Economic Review, 4th August, 1988, p.17.

⁵ Aznam, 'Judges in the firing line', *op.cit.*, p.10.

⁶ Suhaini Aznam, 'A divided judgment', Far Eastern Economic Review, 20th October, 1988, p.14-5.

⁷ Aznam, 'A judicial shake-up', *op.cit.*, p.27.

for Hong Kong.

The results of the analysis reveal that only thirty-seven per cent of the legal profession sample indicated affirmatively that they will stay in Hong Kong after 30th June, 1997¹. As many of the expatriate judges will depart from Hong Kong prior to that date, it appears that the choice of local appointees to the bench, in whom the Chinese population of Hong Kong have confidence, will be limited. The decline of the British empire has contributed to the relatively good quality of some of the judges in Hong Kong, as some of the best judges from other British overseas colonies had to look elsewhere for positions². As noted, a good number of the judiciary in Hong Kong were recruited in this manner³. Their replenishment is a problem even without the 1997 issue which calls for the localization of the judiciary. Hong Kong requires an extremely sound judiciary, with the utmost integrity, if the Common Law judicial system is to pass the test after 30th June, 1997.

¹ Item 79, Appendix E-8.

² Davies, *op.cit.*, p.55.

³ Davies, *op.cit.*, p.56.

G. Adversary System and Independent Legal Profession

Introduction

The following table shows the attitudes and values of population groups towards the adversary system and independent legal profession¹:

Table 6.5.1: Adversary System and Independent Legal Profession

Dimensions	Agree		
	Chinese Population	Legal Profession	English Population
Integrity of the prosecution	61.62	47.51	45.32
Integrity of the legal profession	60.17	81.11	43.66
There are economic barriers in obtaining legal services	59.29	32.49	65.89
Lawyers are necessary in courts	63.72	95.74	80.93

The results of the analysis of the dimensions on the adversary system and the legal profession indicate that these dimensions have the support of the Chinese population of Hong Kong. The Chinese population sample were more positive towards the integrity of the prosecution than were the legal profession sample and the English sample, and they expressed far more confidence in the legal profession than did the English sample². A clear majority of the Chinese population sample and a greater majority of the English sample felt that there were economic barriers to obtaining legal services in their countries³. This feeling was also shared by almost one-third of the legal profession sample. These, however, are attitude-related dimensions, of which most of the Chinese population of Hong Kong have no first-hand knowledge.

Integrity of the Prosecution

The following table shows the results of the analysis on the items measuring the integrity of the prosecution⁴:

¹ For the first three dimensions, only the attitude items (as indicated by an '*') in Appendix A-3 are used. For data, refer to Appendix E-5.

² *Supra*, Table 6.5.1.

³ *Ibid.*

⁴ Appendices A-3 and E-5.

Table 6.5.2: Attitudes towards the Integrity of the Prosecution

Items: 47, 65, 69, 73, and 74.	Agree		
	Chinese Population	Legal Profession	English Population
Crown prosecutor's promotion depends on number of successful convictions	42.89	28.33	46.34
Prosecutors always cooperate with defense to discover the truth	75.50	27.27	35.00
Prosecutors always reveal evidence in favour of the defendant	74.65	18.75	21.28
Prosecutors are under pressure to secure a conviction	50.20	45.45	47.62
Prosecutors treat English more favourably than Chinese (For English sample, 'other races' was used)	48.94	34.69	35.71

The legal profession sample believed that the promotion of Crown prosecutors is not determined by the number of successful convictions¹. This view was also shared by a lower majority of the Chinese population sample². At the same time, a substantial majority of the legal profession sample did not agree that Crown prosecutors always cooperated with defence lawyers to discover the truth of a case and to reveal evidence in favour of the defendant³. These findings portray a rather bleak picture of the operation of the adversary system in Hong Kong. It is fortunate that over three-quarters of the Chinese population sample, who do not have first-hand experience with the courts, did not share such views⁴. This type of misconception has a positive outcome, as it implies confidence in the Common Law judicial system.

The perceptions of the Chinese members of the legal profession are evidence of internalized values which should be reflected in the actual practice of the Crown prosecutors of Hong Kong. It is difficult to obtain admissible evidence to prove that a Crown prosecutor did not cooperate with the defense to secure a fair trial. As defense lawyers rely on the cooperation of Crown prosecutors, particularly in discretionary cases, complaints to the Attorney General are counter-productive. The Crown has the available resources and legal authority to investigate its cases, while they are not usually

¹ Item 47, *supra*, Table 6.5.2.

² *Ibid.*

³ Items 65 and 69, *supra*, Table 6.5.2.

⁴ *Ibid.*

available to the defense. These types of unfair practices by Crown prosecutors are putting the adversary system into disrepute. As a result of such perceptions, it is not surprising that over seventy-three per cent of the legal profession sample showed their support for an independent judicial authority to supervise criminal investigations¹, and the same view was accepted by a slightly higher majority of the Chinese population sample. In the inquisitorial system, practised in continental civil law countries, the judge who supervises an investigation will attempt to discover the whole truth, or what appears to be the whole truth. The duty of lawyers should be to assist the court and to act in the best interest of their clients. Pressing for a conviction should not be the objective of the Crown.

Forty-five per cent of the legal profession sample believed that Crown prosecutors are under pressure to secure a conviction without consideration for the ethical and moral aspects of a case². It is not an insignificant minority, and when professionals express such opinions they should hardly be ignored.

The results of the analysis reveal that almost half of the Chinese population sample held the view that Crown prosecutors often give more favourable treatment to the English over Chinese³, and over thirty-four per cent of the legal profession sample shared the same view. This is consistent with the results of the analysis of the attitudes towards the judiciary⁴. However, the legal profession sample were more mistrustful of the judiciary than the Crown prosecutors⁵. Lawyers regard Crown prosecutors as their peers, and they share a mutual understanding more so than with judges. It is rather difficult, however, to document any evidence of the existence of bias. A complaint filed by a Hong Kong Chinese to the authority, which has been dismissed by a Crown prosecutor, but subsequently results in a conviction only by laying information to a

¹ Item 71, Appendix E-5.

² Item 73, *supra*, Table 6.5.2.

³ Item 74, *supra*, Table 6.5.2.

⁴ *Supra*, p.170.

⁵ Item 57, *supra*, Table 6.4.3 and Item 74, *supra*, Table 6.5.2.

magistrate, does not prove anything. The Crown prosecutors are burdened with a large number of cases, and oversights can easily occur. These results reflect the mistrust of the expatriate Crown prosecutors, who form a majority. Although these perceptions will be irrelevant after 30th June, 1997, it does have a bearing on the fairness of the adversary system, as an innocent defendant suffers in any event.

Integrity of the Legal Profession

The following table summarizes the results of the analysis of the items measuring the integrity of the legal profession¹:

Table 6.5.3: Attitudes towards the Integrity of the Legal Profession

Items: 29, 45, 54, and 52.	Agree		
	Chinese Population	Legal Profession	English Population
Lawyers often incite litigation	34.80	5.08	76.00
Lawyers are trustworthy people	62.96	57.50	64.44
Lawyers help criminals fabricate evidence	47.65	9.09	57.45
Complaint against lawyers should be handled by an independent body	81.79	66.10	97.06

Contrary to traditional Chinese beliefs about the legal profession, the majority of the Chinese population sample did not express the view that lawyers often incite litigation². The majority of the Chinese population sample believed that lawyers are trustworthy people, but almost half of them believed that lawyers often help criminals to fabricate evidence³. This may reflect misconceptions on the part of the Chinese population of Hong Kong as to the activities of the legal profession. By comparison, only a very insignificant minority of the Chinese members of the legal profession (nine per cent) hold the view that lawyers often help criminals to fabricate evidence⁴. Members of the legal profession are more likely to have definite knowledge of the activities of their colleagues (through, equally, lawyers might have reason for not answering this question truthfully). A much higher proportion of the English sample also

¹ Appendices A-3 and E-5.

² Item 29, *supra*, Table 6.5.3.

³ Items 45 and 54, *supra*, Table 6.5.3.

⁴ *Ibid.*

held such misconceptions, but they were generally more cynical towards the legal profession¹.

It is interesting to note that the Chinese population sample expressed more confidence in the trustworthiness of the legal profession than the legal profession sample². A clear majority of the legal profession sample held the opinion that complaints against lawyers should be handled by an independent body. The latter view was shared overwhelmingly by all other population groups³, and it confirms the experience of other Common Law countries where it has been shown that the professional bodies are seen as symbolic organizations which serve to down-play client demands for accountability on the parts of lawyers⁴. In regard to the former view, mistrust within a professional group is not unusual in the highly competitive society of Hong Kong. At the same time, it is difficult for a profession to operate efficiently if its members do not trust each other.

As with their English counterparts, the Law Society of Hong Kong and the Hong Kong Bar Association have established ethical guidelines and procedures, which are a fundamental part of their image. However, there is a limit as to how these guidelines and procedures operate to protect public interest. As the *Far Eastern Economic Review* reported:

"[In Hong Kong], criminal law is plagued by manipulative solicitors' clerks who, on commission, obtain business for the employers and wield control over fees - often abusing their position by overcharging clients and pocketing earnings which should go to barristers..... Some law firms are even infiltrated by criminal triad society members"⁵.

The results of the analysis indicate that attitudes towards the legal profession

¹ *Supra*, Table 6.5.3.

² Item 45, *supra*, Table 6.5.3.

³ Item 52, *Supra*, Table 6.5.3.

⁴ Gibson and Baldwin, *op.cit.*, p.101-5.

⁵ Emily Lau, 'Under a dark cloud: The territory's legal system leaves a lot to be desired', 6th October, 1988, p.25-6.

vary positively depending upon education. Income is not an important factor¹. A previous study of Chinese Canadian businessmen, however, reported that those with higher incomes and fluent in the English language were more critical of the legal profession than the rest of the sampling group². It should be noted that most of the Chinese population in Hong Kong do not seek legal services. As businessmen, the Chinese Canadians inevitably have to use legal services for business transactions. In North America, the Chinese are one of the better-educated minority groups, and ranked only behind the Japanese and Jewish population³. Therefore, a comparison of the two studies indicates that the more often higher-educated persons seek legal services, the more cynical they become towards the legal profession.

Economic Barriers to Obtaining Legal Services

The results of the analysis of the items measuring the attitudes towards economic barriers to obtaining legal services are shown in the following table⁴:

Table 6.5.4: Economic Barriers to obtaining Legal Services

Items: 76 and 77.	Agree		
	Chinese Population	Legal Profession	English Population
Lawyers serve the rich as priority	28.11	17.91	33.33
Legal fees are too expensive	90.46	47.06	98.44

The Chinese population sample expressed their concern that there is an economic barrier to obtaining legal services. They felt overwhelmingly that legal fees are too high⁵, although they did not believe that lawyers have a priority to serve the interests of the rich and powerful⁶. Laymen are usually unaware of the amount of work by lawyers, and, as in the case of Hong Kong and England, they are more inclined to view

¹ Appendices F-5(a) and F-5(b).

² Chan and Hagen, *op.cit.*, p.36-7.

³ Time Magazine, 31st August, 1987, p.46-53.

⁴ Appendices A-3 and E-5.

⁵ Item 77, *supra*, Table 6.5.4.

⁶ Item 76, *supra*, Table 6.5.4.

legal fees as too expensive. A comparative study, however, showed that only twenty-six per cent of Canadians considered their legal fees to be too expensive¹. But, almost twice the number of the Hong Kong legal profession sample expressed the same view². Accordingly, the legal fees in Hong Kong can be considered to be too expensive in comparison with Canada (which has a fused legal profession).

Although the legal profession sample did not hold the view that it is their priority to serve the interests of the rich and the powerful³, a substantial number admitted that legal services are too expensive⁴. There is a shortage of lawyers in Hong Kong, and the situation is expected to be more serious in 1997. Pecuniary reward is one of the means used to attract talented young people to the legal profession. The legal fees in Hong Kong reflect the demand and supply side of the economy.

The introduction of legal aid in Hong Kong has made legal services available to those who otherwise cannot afford them. Studies in England and the United States of America discovered that the demand for lawyers is correlated with level of wealth rather than with the law⁵. The results of the analysis indicate that education, but not income, has an important influence on attitudes towards economic barriers to legal services⁶. The following table from the Chi-square cross-tabulation illustrates the level of acceptance of this dimension by level of education⁷:

Table 6.5.5: Economic Barriers in Obtaining Legal Services

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Agree: there is a barrier	46.70	53.10	34.30	18.40	16.70
Mid-way	46.70	32.70	43.40	49.00	54.40
Disagree: there is no barrier	6.70	14.30	22.30	32.70	28.90

¹ Gibson and Baldwin, *op.cit.*, p.79.

² Item 77, *supra*, Table 6.5.4.

³ Item 76, *supra*, Table 6.5.4.

⁴ Item 77, *supra*, Table 6.5.4.

⁵ Cotterrell, *op.cit.*, p.201.

⁶ Appendices F-5(c) and F-5(d).

⁷ *ibid.*

The more educated a person is, the more civic knowledge he will have of available legal aid, the Duty Lawyer Scheme, and the Free Legal Advice Scheme. Consequently, education is negatively associated with a belief in the existence of economic barriers to legal services. However, if the legal profession is independent, it is inevitable that the wealth of an individual will correlate with the quality of legal services he receives.

Necessity of Lawyers in Court

All population groups expressed the view that a good barrister could make a difference to the outcome of a case in court¹, and that a person could consult a lawyer even if there is something to hide². The Chinese population of Hong Kong express their need for proper legal services. An independent legal profession has the support of the majority of the Chinese population. However, economic barriers to legal services are still a problem. In theory, a judge has a duty to clarify the points of fact and law submitted, and the duty of counsel is to assist the court. In reality, over ninety-five per cent of the legal profession sample agreed that a good barrister could affect the outcome³. As the fee of a good barrister is usually higher, this implies that wealth is an important factor for obtaining justice or satisfaction in courts.

For an independent legal profession to operate, economic barriers to obtaining justice are inevitable. Studies have shown that in criminal trials where legal aid is involved, counsel for the defendants may, for economic reasons, be influenced by the state agency which pays their fees and which directs work to them⁴, even if the state agency does not share the common interests of the government. Many empirical studies suggest that the conduct of the adversary process of trial is an area which the client

¹ Item 60, Appendix E-5.

² Item 75, Appendix E-5.

³ Item 60, Appendix E-5.

⁴ Cotterrell, *op.cit.*, p.203.

cannot appreciate¹. Therefore, it is more likely that the interest of the underprivileged client rather than that of the counsel is at stake. It is necessary to balance the need for an independent legal profession to counter the arbitrary power of the state against the economic barriers to obtaining justice.

General Discussion

From the foregoing analysis, it is evident that the adversary system and an independent legal profession can operate in Hong Kong with the support of the Chinese population. As discussed, only a minority of Chinese lawyers indicated affirmatively that they will stay in Hong Kong after 30th June, 1997², and the majority of the expatriate lawyers, particularly the Crown counsel, will also leave Hong Kong³. The recruitment crisis for solicitors in England makes it hard for Hong Kong to keep its expatriate lawyers⁴. The legal profession in Hong Kong has provided checks and balances for the administration of justice in the past. The legal profession's criticism of the number of young people unnecessarily charged with being gang members has led to a "welcome decrease in the number of such charges"⁵. Their role should be expanded. However, it is only practical if there is a sufficient number of lawyers. It is interesting to note that eighty per cent of the legal profession sample agreed that there should be an elected Legislative Council⁶. This is an indication that the legal profession is deviating from the beliefs of the business community, which has actively campaigned against an elected Legislative Council⁷, as they are concerned about the financial burden of the social

¹ *Ibid.*

² Item 79, Appendix E-8.

³ Although some expatriate lawyers still have confidence in their future in Hong Kong. See Margaret Rutherford, 'Hong Kong: a personal impression', (1988) Vol.85 No.1 The Law Society's Gazette 13.

⁴ John Hayes, 'The Recruitment Crises', (1987) Vol.84 No.19 The Law Society's Gazette 1454.

⁵ Report by the Management & Administration Committee of the Law Society Legal Advice & Duty Lawyer Scheme, 1986, p.3.

⁶ Item 78, modified for legal profession sample, Appendix E-1.

⁷ (1987) 10 The Nineties Monthly 39-47.

welfare policy which it entails. The pro-Communist organizations have also expressed concern about having an elected Legislative Council, which contradicts the governmental system of the People's Republic of China¹. The legal profession in Hong Kong have confidence in the Chinese population, and consequently have expressed concern for the rights of the Chinese population.

¹ *Ibid.*

H. The Jury System

The following table is a summary of the results of the analysis of the dimensions used to measure acceptance of the concept of the jury system across the population groups¹:

Table 6.6.1: Jury System

Dimensions	Agree		
	Chinese Population	Legal Profession	English Population
A citizen should participate in the judicial decision-making process	72.27	58.80	92.02
One should serve jury duty	84.58	89.39	91.67
Safeguard of trial by jury is necessary	78.41	78.75	76.54

The results from the above table show that all population groups overwhelmingly support the jury system. The Chinese population sample expressed the need for a jury system. They viewed the jury system as the fairest method for disposing of a criminal case, and as a safeguard against the arbitrary power of the state².

By far the majority of the Chinese population support the jury system and dismiss the notion (with seventy-five per cent) that the jury system protects only the interests of the middle class³. These results reflect the strength of the Common Law system in Hong Kong. This is also reflected in the fact that the Chinese population of Hong Kong are willing participants in the process as jurymen⁴. The majority also hold the view that all adults who have a good conduct record should be allowed to serve on a jury⁵. Some legal scholars in the late Ching law reform movement expressed concern that the Chinese people were reluctant to observe public duty and that their reluctance might impede the implementation of a jury system in China⁶. Their concern, however, is not applicable to contemporary Hong Kong.

¹ Appendices A-3 and E-6.

² Items 50 and 55, Appendix E-6.

³ Item 56, Appendix E-6.

⁴ Items 46 and 49, Appendix E-6.

⁵ Item 59, Appendix E-6.

⁶ *Supra*, p.113.

It was observed by a legal scholar in Hong Kong that, in recent years, the Chinese population of Hong Kong have shown an increasing willingness to lend support to community-wide objectives¹. This partly was a result of the question of the future of Hong Kong after 30th June, 1997 and the decision to build a nuclear power-plant at Daya Bay². Such observation is consistent with the present study and deviates from a 1982 sociological study which suggested that the Chinese population of Hong Kong had low attitude toward social participation under 'utilitarianistic familism'³.

The survey of respondents' level of agreement to trial by judges alone in complex commercial cases across the population groups is summarized as follows⁴:

Table 6.6.2: Complex commercial cases should only be tried by the judges

Item: 51		
Population Groups	Overall Agree (%)	Overall Disagree (%)
Hong Kong Chinese Population	41.45	58.55
Legal Profession	44.64	55.36
English Population	67.65	32.35

The above table shows that a substantial minority of the legal profession sample supported this notion of trial by judges alone in complex commercial case. The responses from the legal profession sample appear to be cause for concern after 30th June, 1997. A substantial minority of the Chinese population sample also shared the view of the legal profession sample. However, a clear majority of the English sample shared this notion. In England, the judiciary is generally well respected, and the English population have greater confidence in the English judiciary than the Chinese lawyers and Chinese population have in the Hong Kong judiciary⁵. Only twenty-one per cent of the Chinese population sample did not respond to this item, but over fifty-five per cent of the English sample did not respond to this item⁶. This is evidence that the Chinese

¹ Roda Mushkat, 'Freedom of Association and Assembly' in Raymond Wacks (ed.), Civil Liberties in Hong Kong (Hong Kong, 1988), p.154-5.

² *Ibid.*

³ S.K. Lau, Society and Politics in Hong Kong (Hong Kong, 1982), p.92-3.

⁴ Item 51, Appendix E-6.

⁵ *Supra*, Table 6.4.1.

⁶ Item 51, Appendix E-6.

population of Hong Kong are becoming more concerned about current issues, such as the proposal to have complex commercial cases tried by a judge alone. Most respondents who agreed with this notion ought to be able to understand the reasons behind this proposal.

Results of the analysis suggest that the support of the jury system is not a cultural effect. The Chinese population of Hong Kong have almost the same positive attitudes and values towards the jury system as do the English population of Norwich. The absence of the jury system in traditional China does not appear to have any effect in contemporary Hong Kong. The support of the Chinese population of Hong Kong for the jury system will enable it to operate after 30th June, 1997.

I. The Right of Silence and Presumption of Innocence

Introduction

The following is a table of results of the analysis of the items which measured the acceptance level of the concept of the right of silence and presumption of innocence¹:

Table 6.7.1: The Right of Silence and Presumption of Innocence

Items: 27, 43 and 25.	Agree		
	Chinese Population	Legal Profession	English Population
A person is not guilty unless proven beyond a reasonable doubt he is guilty	67.70	97.26	94.59
A person is somewhat guilty if he is prosecuted even though the court finds him not guilty	42.82	13.56	31.37
The onus of proof is on the person being seized with 2 ounces of opium	64.77	50.77	76.12

Right to remain Silence and Presumption of Innocence

The above table shows that the majority of the Chinese population of Hong Kong accept the Common Law doctrine that a person should not be regarded as guilty unless it is proven beyond a reasonable doubt in a court of law that he is guilty. The English population of Norwich and the Chinese members of the legal profession overwhelmingly support this doctrine. This does not, however, necessarily imply that there is a general consensus that the accused's right to remain silent is strictly respected, as guilt may be inferred from an accused who refuses to cooperate with the authorities.

A substantial minority of the Chinese population sample took the view that a person is somewhat guilty if he is prosecuted for an offence even though the court finds him not guilty². In a densely populated city like Hong Kong, word can spread easily and very quickly. An innocent accused person can be tarnished regardless of the outcome of the verdict, and the result of the present survey supports this suggestion. A

¹ Appendices A-3 and E-7.

² Item 43, *supra*, Table 6.7.1.

smaller minority of the English sample shared that view. Due to their training, rejection of this notion by an overwhelming majority of the legal profession sample were expected. Results of the analysis reveal that levels of education are positively related to rejection of this notion by the Chinese population sample, as shown in the following table from Chi-square cross-tabulation¹. Culture is not a related variable².

Table 6.7.2: The Right of Silence and Presumption of Innocence

	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
A person if prosecuted is:					
somewhat guilty even if acquitted	70.00	51.10	52.50	34.90	22.50
not guilty unless convicted	30.00	48.90	47.50	65.10	77.50

The difference in the results of the cross-cultural comparison between the Chinese population and English samples over the above item may be due to differences in levels of education. Those who rejected this notion did not necessarily reject the use of secret torture by police to extract evidence from an accused person³. This may be because law and order might be another concern. In a 1982 survey, it was discovered that more people were concerned with the high crime rate than other social problems in Hong Kong⁴. As noted, although an overwhelming majority of the Chinese population of Hong Kong disagree with the statement that police seldom arrest or interrogate the wrong person⁵, a substantial minority still take the view that those arrested are "somewhat not innocent".

The Onus of Proof for Grave Offences

It is interesting to note that a previous Hong Kong study found that only forty-four per cent (or fifty-one per cent of those who actually responded to the

¹ Appendix F-7(a).

² Appendix F-7(b).

³ *Supra*, p.159.

⁴ Joseph Y.S. Cheng, Hong Kong: In Search of a Future, (Hong Kong, 1984), p.88 and p.102.

⁵ Item 32, Table 6.3.2.

survey) insisted on the notion that a person should be considered innocent unless proven guilty¹. Their findings are inconsistent with the results of the present research. A clear majority of the Chinese population sample (sixty-eight per cent) expressed the view that the onus of proof should be on the prosecution². However, public interest seems to outweigh the onus of proof on the prosecution in certain grave offences. A clear majority of the Chinese population sample, almost half of the legal profession sample, and a clear majority of the English sample³ agreed that the burden of proof should be on the accused in grave offences, e.g. drug trafficking. This is consistent with the experience in Northern Ireland, where the right to trial by jury has been suspended, where the magistrates will be able to draw "whatever inferences seem proper" from a refusal to answer questions, and where the burden of proof is reversed for those found with weapons near the scene of an atrocity⁴. Mrs. Margaret Thatcher, the Prime Minister of Great Britain, simply reminded the British people of the murderous tactics of the Irish Republic Army to win their approval⁵.

The strength of the population's commitment to basic civil liberties is best gauged in times of instability, and Hong Kong is in a transitional period. It should be noted that recent legislation which curtails the freedom of the press by shifting the onus of proof for publishing false news⁶ has provoked an unusually widespread outcry in Hong Kong⁷. As the onus of proof for drug trafficking has been codified in Hong Kong⁸, the opinions of the Chinese members of the legal profession might be a reflection of the state of the law. This attitude is not healthy, as lawyers might subconsciously impart this value while defending their clients.

¹ Kuan and Lau, *op.cit.*, p.9.

² Item 27, *supra*, Table 6.7.1.

³ Item 25, *supra*, Table 6.7.1.

⁴ 'Northern Ireland: Whose Oxygen', The Economist, 22nd October, 1988; 'A half-Bill of Rights', The Economist, 29th October, 1988, p.15.

⁵ 'Magna Carta Amended', Globe and Mail, 28th November, 1988.

⁶ Public Order (Amendment) Ordinance, 1987.

⁷ (1987) Vol.84 No.18 The Law Society's Gazette 1419; 'Hong Kong law like a gift to Reds', *op.cit.*

⁸ S.47, Dangerous Drugs Ordinance.

General Discussion

The acceptance of the Common Law doctrines of the right of silence and presumption of innocence by the Chinese population of Hong Kong is marginal (fifty-three per cent)¹. As discussed, there are other concerns which influence the support of these Common Law doctrines in Hong Kong. These doctrines are there to protect individuals against abuse by the state. The above analysis, however, suggests that the Chinese population of Hong Kong are shifting towards the Common Law culture by their acceptance of the presumption of innocence². The traditional Chinese practice of assuming guilt unless proven otherwise³ does not seem to be relevant in contemporary Hong Kong except where public concern for grave offences is involved. It is necessary to balance these doctrines with the need of society to combat prevailing crimes. There is a "give and take" for the Chinese population of Hong Kong to enjoy the full protection of the Common Law. After 30th June, 1997, when Hong Kong becomes a special administrative region, these doctrines will be more important than ever.

¹ Items (27, 43, and 25), *supra*, Table 6.7.1. Items 43 and 25 taken negatively.

² Item 27, *supra*, Table 6.7.1.

³ *Supra*, p.74 and p.116.

J. Conclusion

The results of the analysis in this chapter show that an overwhelming majority of the Chinese population in Hong Kong accept the Common Law judicial system, although only a marginal minority would obey a law even if it was unjust¹. Such attitudes suggest the Chinese population are cynical towards law in general, but they nevertheless believe that the Common Law judicial system is better than the alternative socialist legal system in the People's Republic of China. It is this belief that strengthens the view that the Common Law judicial system should operate in Hong Kong after 30th June, 1997. These results do not reveal any evidence that Chinese culture is a barrier to the Common Law judicial system operating in Hong Kong save one minor exception², but it is believed that this can be remedied.

The results of the analysis in this chapter indicate that there is strength for the Common Law judicial system to operate. The Chinese population express their cooperation with the legal system in that they insist on their legal rights, resort to courts to settle disputes, respect others' legal rights, and are willing to defend others' legal rights³. They express positive values towards the adversary system and an independent legal profession⁴, the jury system⁵, and the right of silence and presumption of innocence⁶.

The results of the analysis in this chapter also reveal some weaknesses in the Hong Kong legal culture. A substantial minority of both the Chinese population and Chinese members of the legal profession in Hong Kong tolerate secret torture by police to collect evidence in a specified field or range of cases⁷, and the values of judicial accountability and separation of judicial power are not positive among the Chinese

¹ *Supra*, Tables 6.1.1 and 6.1.2.

² (The use of torture) - *Supra*, p.159.

³ *Supra*, Table 6.2.1.

⁴ *Supra*, Table 6.5.1.

⁵ *Supra*, Table 6.6.1.

⁶ *Supra*, Table 6.7.1.

⁷ *Supra*, Table 6.3.2.

population¹. Fortunately, corrective measures can be taken to remedy such weakness through educational campaigns, and will be discussed in Chapter VIII.

There are a few empirical studies which suggest that the relative stability of institutions depends on apathy or ignorance among the population². Studies have shown that knowledge and support of a legal system are inversely related³. As such, lawyers are traditional critics of law⁴. To prevent abuse of power by police, Blackstone remarked that it would be "a good thing that they were generally ignorant of the extent of their powers"⁵.

However, it can also be argued that ignorance breeds distrust. The results of the analysis in this chapter indicate that education is a very important variable in influencing attitudes towards the concepts of the Common Law judicial system. Levels of acceptance of the Common Law values towards the rule of law, judicial independence, and the right of silence and presumption of innocence are positively related to the knowledge of the respondents⁶. The differences in opinions between the Chinese population of Hong Kong, the Chinese members of the legal profession, and the English population of Norwich are marked by differences in experience and training. The legal profession population have first-hand experience and expert knowledge of the Common Law judicial system. Their knowledge of the rationale behind the different concepts of the Common Law judicial system serves to promote acceptance of the system.

Conversely, this study shows that the Chinese members of the legal profession are more cynical towards the administration of justice, the judiciary, and the integrity of the prosecution than the general Chinese population of Hong Kong⁷. This is consistent with previous studies in Western societies which suggest that experience and support

¹ *Supra*, Table 6.4.1.

² Cotterrell, *op.cit.*, p.182.

³ Sarat, *op.cit.*, p.168-9.

⁴ Cotterrell, *op.cit.*, p.184.

⁵ Geoffrey Radcliffe and Geoffrey Cross, The English Legal System (5th edn., London, 1971), p.197.

⁶ *Supra*, Tables 6.3.3, 6.4.4, 6.4.5 and 6.7.2.

⁷ *Supra*, Tables 6.2.2, and 6.4.3, and 6.5.2

of a legal system are inversely related¹. There is a distinction between knowledge of the rationale behind a judicial system and knowledge of the operation of a judicial system. This study has shown that different types of knowledge would result in different directions of acceptance.

The following chapter discusses the cross-sectional analysis of *the six legal concepts* and delineates the relationship between knowledge and acceptance of the Common Law judicial system in greater detail.

¹ Sarat, *op.cit.*, p.168-9.

VII. The Extent to which the Common Law has taken Root in Hong Kong

A. Introduction

It is obvious from the discussion in the preceding chapter that the Chinese population of Hong Kong have expressed positive attitudes and values towards the Common Law judicial system. This chapter discusses the cross-sectional analysis of the legal concepts on the Chinese population, legal profession, and English samples. It also discusses whether a test of legal cultural compatibility can be passed for continuation of the Common Law judicial system after 30th June, 1997, when the system is exclusively localized.

Although the Common Law system has been under numerous criticisms at home, it is true that the Common Law countries which observe its doctrines are in the developed world. The experiences of Australia, Canada, England, Ireland, New Zealand¹ and the United States of America speak for themselves. The question in Hong Kong is how the Common Law doctrines should be observed. Individual and legal rights, the rule of law, judicial independence, the adversary system and independent legal profession, the jury system, and the right of silence and presumption of innocence are cardinal features of the Common Law judicial system and are somewhat inter-dependent. Individual and legal rights can hardly be protected without the rule of law, and the rule of law would be difficult to operate without an independent judiciary. An independent judiciary is not feasible without an independent legal profession. An independent legal profession, however, relies on the public's confidence in the profession itself, the quality of the lawyers, and an independent judiciary. The successful operation of the rule of law and the jury system depend partly on public acceptance of the concepts of the right of silence and presumption of innocence.

¹ The judicial independence of New Zealand was weakened during the "Rainbow Warrior Affairs" in 1985. See The Sunday Times Inside Team, Rainbow Warrior (London, 1986), p.280-2. Eventually, its government acceded to France's demand by releasing two convicted French secret agents to French custody.

B. Cross-sectional Analyses of Legal Concepts

Methodology

A composite score was computed for each of *the six legal concepts* measured in this study by averaging the scores of the dimensions associated with each of the concepts¹. The score of each dimension was computed by averaging the percentage of overall acceptance of the items related to the dimension². The purpose of the study is to measure and compare the legal cultural compatibility of the population groups. Although attitudes may influence values, it is the principle held rather than the feeling towards a particular state of affairs, which is relevant. Therefore, only the value items were included in the computation. In Appendix A-3, the attitude items are denoted by an asterisk (*).

If the Chinese population of Hong Kong share the Common Law values, then the Common Law culture in Hong Kong can be said to be controlled by a "thermostat", i.e. it will maintain the *status quo*, independent of the political environment. If the Chinese population only hold positive attitudes towards the Common Law judicial system, but do not share its values, then, Common Law culture will act like a "thermometer", i.e. it will adjust to the political environment³. There is little doubt that the political environment of Hong Kong will be different after 30th June, 1997. The question is whether its legal culture will maintain its *status quo*.

Across Population Groups

A cross-sectional analysis of the acceptance of the Common Law values among the Chinese population of Hong Kong, Chinese members of the Legal Profession, and

¹ Appendix A-3. For the concept of the right of silence and presumption of innocence, all dimensions were considered as one.

² Appendix E. Negative items were adjusted accordingly.

³ Acknowledgment is given to Professor Peter Bowal, University of Alberta, for this characterization.

the English population of Norwich is provided in the following table:

Table 7.1: Acceptance of Common Law Values across Population Groups

Concepts	Chinese Population	Legal Profession	English Population
Individual and Legal Rights	72.44	92.02	80.47
Rule of Law	59.89	74.55	78.76
Judicial Independence	32.17	83.76	40.39
Adversary System and Legal Profession	77.17	82.01	87.47
Jury System	73.45	70.58	73.14
Presumption of Innocence	53.37	77.64	62.36
Overall Acceptance	61.42	80.09	70.43

The above table indicates that overall a majority of the Chinese population sample shared the Common Law values. As expected, the legal profession sample expressed an overall acceptance of the Common Law values by a much wider margin than the Chinese population. The English population sample clearly falls in between the Chinese population and legal profession samples. The acceptance of the jury system clearly demonstrates the desire of the Chinese population to participate in the decision-making process on the eve of the resumption of the sovereignty of Hong Kong by the People's Republic of China¹.

The major obstacle to the operation of Common Law is the low level of acceptance of the concept of judicial independence by the Chinese population of Hong Kong. As discussed², the values related to judicial independence of the Chinese population are affected by negative attitudes towards the judiciary and a lack of civic and social knowledge. However, in general, the English population, who have a better attitude towards the judiciary³ and a higher level of education than do the Chinese population of Hong Kong⁴, have a higher but overall negative acceptance of the values related to judicial independence. Montesquieu's separation of power appears to be a

¹ In the People's Republic of China, the people's assessors system provides lay people to sit with judges in deciding a complete case, and not merely the verdict on guilt or innocence. In theory the people's assessors who have a majority can out-vote the judges, but in practice all decisions must be approved by the chief justice.

² *Supra*, p.169.

³ *Supra*, Table 6.4.1.

⁴ *Supra*, p.134.

concept alien to most laymen. The question is one of degree of acceptance.

A minor obstacle is the attitudes towards the concept, presumption of innocence. As discussed¹, this attitude arises from a concern about law and order in view of the prevalence of crime in Hong Kong. This is a concern even among less likely crime victims from upper income levels².

Although, it is obvious that the Common Law judicial system has support from the majority of the Chinese population to operate in Hong Kong after 30th June, 1997, the one major obstacle must be overcome. Without judicial independence, it will be difficult to operate other legal concepts successfully.

Income and Educational Levels

The following tables represent the level of acceptance of Common Law values across income and education levels by the Chinese population of Hong Kong:

Table 7.2: Acceptance of Common Law Values across Income Levels

Concepts	Salary in Hong Kong dollars			
	Under 2,000	2,000-3,999	4,000-5,999	6,000 & over
Individual and Legal Rights	66.89	73.17	77.52	78.09
Rule of Law	58.39	65.27	45.26	58.68
Judicial Independence	24.29	32.33	34.77	46.86
Adversary System and Legal Profession	77.45	77.14	78.06	75.30
Jury System	69.31	75.69	74.42	72.64
Presumption of Innocence	55.72	51.90	52.47	54.07
Overall Acceptance	58.68	62.58	60.42	64.27

The above figures indicate that there are very few differences in the overall acceptance of Common Law values across income levels. A majority of the Chinese population across all income levels accept the overall Common Law values. In the absence of scientific evidence, laws have often been said to reflect the desire of the elite class to maintain the *status quo*³. There is a concern that their attitudes and values towards law may be formed by self-interest⁴. The results of the above analysis dispel

¹ *Supra*, p.192.

² *Infra*, Table 7.2.

³ *Supra*, p.91.

⁴ *Ibid*.

the fear that this would be the case for the Common Law judicial system in Hong Kong. The following table indicates that the Chinese population of Hong Kong have not been misled into accepting the Common Law judicial system as the acceptance of the Common Law values is positively correlated with the level of education and those with higher level of education generally have better analytical capability. The majority of those who do not have a post-secondary education are not in the elite class.

Table 7.3: Acceptance of Common Law Values across Educational Levels

Concepts	Education Level				
	No Educa	Prim-ary	Second-ary	Matric-ulation	Post-second
Individual & Legal Rights	69.43	63.91	74.89	73.99	79.29
Rule of Law	56.98	59.17	53.60	66.78	63.19
Judicial Independence	13.90	17.89	27.36	42.73	49.45
Adv. System & Legal Prof.	80.53	78.60	77.35	77.11	75.78
Jury System	58.41	66.98	74.97	78.12	76.96
Presumption of Innocence	47.78	60.64	47.51	53.76	57.42
Overall Acceptance	54.50	57.87	59.28	65.41	67.01

The above table indicates that level of education is an important influence on the acceptance of Common Law values. A previous Hong Kong study has shown that level of education correlates positively with acceptance of the legal system in Hong Kong¹, although only four questions were used to measure this value and the design was different from the present survey². Although a majority of the Chinese population, with primary education or less, generally accept Common Law values, the majority is marginal. As more than forty-nine per cent of the general Chinese population only have primary education or less³, these findings reveal the need for special attention to education.

Tables 7.1 and 7.3 reveal that the level of acceptance of Common Law values is almost the same between the Chinese population of Hong Kong, who have a post-secondary education, and the general English population of Norwich. As the

¹ H.C. Kuan and S.K. Lau, 'Hong Kong Legal Culture', (1987) 22:6 Ming Pao Monthly 6.

² *Supra*, p.163 and p.171 and *ibid*, p.5-6.

³ Hong Kong Governmnet, Hong Kong 1986 By-census Summary Results, p.15.

average education level of the English population is at the secondary level¹, the overall acceptance of Common Law values does not depend on education alone. However, it is evident that there is a need to educate the general Chinese population with sufficient civic and social knowledge and the spirit of Common Law particularly in the area of judicial independence.

Westernization, Chinese Traditionalism, and Religion

The following is a table of the level of acceptance of Common Law values by knowledge of the English language in the Chinese population of Hong Kong²:

Table 7.4: Acceptance of Common Law Values by English Comprehension

Concepts	Read English newspaper	Cannot read English newspaper
Individual and Legal Rights	76.79	69.73
Rule of Law	58.87	58.25
Judicial Independence	41.26	17.06
Adversary System and Legal Profession	76.96	78.58
Jury System	76.99	68.66
Presumption of Innocence	52.05	53.87
Overall Acceptance	63.82	57.69

The above table indicates that knowledge of the English language is a factor which correlates with acceptance of the Common Law values. This confirms a previous study which reported that studying a language involves some acceptance of the cultural influences associated with that language³. The concept of judicial independence reflects the sharp difference in acceptance of Common Law values by the two population groups. The above table reveals that the Chinese population of Hong Kong who have knowledge of the English language share the same level of acceptance of judicial independence as do the English population of Norwich⁴. This is consistent with the results of the analysis across education levels⁵, as those with higher levels of education

¹ *Supra*, p.134.

² Item 8, Appendix A-1.

³ *Supra*, p.38.

⁴ *Supra*, Table 7.1.

⁵ *Supra*, Table 7.3.

in Hong Kong are more likely to comprehend the English language.

The following is a table of the acceptance of Common Law values by levels of Chinese traditionalism. Chinese traditionalism is measured by computing a composite score from the seven items measuring Chinese traditionalism¹.

Table 7.5: Acceptance of Common Law Values by Chinese Traditionalism

Concepts	High	Medium	Low
Individual and Legal Rights	77.53	75.85	70.54
Rule of Law	57.29	58.43	59.36
Judicial Independence	44.10	30.27	37.89
Adversary System and Legal Profession	73.58	79.40	73.74
Jury System	71.50	74.12	73.53
Presumption of Innocence	39.29	52.44	53.97
Overall Acceptance	60.55	61.75	61.51

The above table indicates that the level of Chinese traditionalism does not influence overall acceptance of Common Law values. In the preceding chapter, the Chi-square cross-tabulations between Chinese traditionalism and most concepts and dimensions used in this study failed to show any acceptable level of significance. Therefore, Chinese traditionalism is not a variable in the acceptance of Common Law values in Hong Kong. The cultural difference in acceptance of Common Law values between the Chinese population of Hong Kong and the English population of Norwich appears to be a mixed effect of education and social environment rather than attachment to traditional thought.

The following is a table of acceptance of the Common Law values by Christian and non-Christian religions of the Chinese population of Hong Kong².

Table 7.6: Acceptance of Common Law values between Christians and Non-Christians

Concepts	Christian	Non-Christian
Judicial Independence	76.36	73.86
Adversary System and Legal Profession	59.67	57.55
Jury System	46.53	29.38
Adversary System and Legal Profession	77.70	77.13
Jury System	75.37	73.50
Presumption of Innocence	49.46	53.54
Overall Acceptance	64.18	60.83

¹ Items 13 to 19, Appendix A-1.

² Item 11, Appendix A-1.

The above table indicates that Chinese Christians overall accept Common Law values by a larger majority than those members of the Chinese population who are not Christians. Although the difference is marginal, it does not contradict the assertion of some legal scholars that religion is a factor that influences legal attitudes and values¹.

Age and Sex

The following tables outline the overall acceptance of Common Law values by age and sex:

Table 7.7: Acceptance of Common Law Values by Age

Concepts	Age			
	18-27	28-37	38-47	over 47
Individual and Legal Rights	75.89	73.58	74.10	68.78
Rule of Law	59.77	54.66	60.28	59.03
Judicial Independence	37.72	29.98	30.15	21.70
Adversary System and Legal Profession	74.69	81.82	75.93	76.46
Jury System	76.46	73.90	70.02	63.15
Presumption of Innocence	53.47	49.28	56.85	58.45
Overall Acceptance	63.00	60.54	61.22	57.93

Previous studies of other legal cultures have shown that younger people tend to deviate from the population norm². The above table indicates that the younger generation in Hong Kong is more inclined to accept Common Law values. On the surface, this is inconsistent with previous studies. However, as the younger generation in Hong Kong has more education than the older generation³, this result is consistent with the results of the analysis of the influence of education on acceptance of Common Law values. However, as the younger people grow older, they are more likely to find Common Law values more acceptable. Aside from the education factor, there will be a tendency to conform to the social norm as they grow older. According to the above table, a majority of the younger generation accept the overall Common Law values. This is very positive to the future of Common Law in Hong Kong as they will form the core of society by June, 1997.

¹ *Supra*, p.40.

² *Supra*, p.97.

³ Hong Kong Government, Hong Kong 1986 By-census Summary Results, p.15-6.

Table 7.8: Acceptance of Common Law Values by Sex

Concepts	Male	Female
Individual and Legal Rights	75.49	72.57
Rule of Law	60.07	57.34
Judicial Independence	37.32	28.10
Adversary System and Legal Profession	75.59	79.36
Jury System	75.96	71.45
Presumption of Innocence	53.40	51.31
Overall Acceptance	62.97	60.02

The above table reveals very little difference in the overall acceptance of Common Law values by sex for any consideration.

C. Conclusion

The three major barriers for an imported judicial system to operate successfully in a society are the elite class value of the judicial system, the cultural conflict with the local population, and the public ignorance of the judicial system. The results of the above analysis show that a clear majority of the Chinese population of Hong Kong accept the Common Law values¹, and the results are not significantly different across all the income groups². It is a positive indication that the Common Law judicial system in Hong Kong does not merely reflect elite class values.

Presently, the Common Law concepts are not difficult to observe because the judicial system in Hong Kong is mainly run by expatriate judicial officers, who are influenced by Common Law culture. However after 30th June, 1997 the judicial system in Hong Kong will be run by local judicial officers, who are trained under the Common Law judicial system. As they are part of the Chinese population of Hong Kong, they inevitably and subconsciously share some of the population's attitudes and values. Therefore, it is important not only that members of the legal profession should observe the Common Law doctrines, but also that the attitudes and values of the Chinese population should have matured along this line for the Common Law judicial system to survive after Hong Kong becomes a special administrative region. From the results of

¹ *Supra*, Table 7.1.

² *Supra*, Table 7.2.

the foregoing analysis, Hong Kong is heading in the right direction. It is also evident that Chinese traditionalism does not affect the acceptance of Common Law values¹.

The results of the analysis indicate that the level of education and English comprehension are factors which influence the acceptance of Common Law values². One means to overcome the ignorance of the Common Law judicial system is through educational campaigns. This is an area which requires the effort of the educators and government funding. Although an overwhelming majority (ninety-three per cent) of the Chinese population of Hong Kong have positive attitudes towards the Common Law judicial system³, less people (sixty-one per cent) share the Common Law values⁴. This discrepancy suggests that the spirit of the Common Law has not been fully entrenched in the minds of the Chinese population. However, the Common Law has indeed taken root in Hong Kong to a considerable extent⁵.

¹ *Supra*, Table 7.5.

² *Supra*, Tables 7.3 and 7.4.

³ *Supra*, Table 6.1.2.

⁴ *Supra*, Table 7.1.

⁵ *Supra*, Tables 7.1 to 7.8.

VIII. Legal Development in Hong Kong before and after 1997

A. Introduction

In May, 1984, a delegation of unofficial Chinese members of the Executive and Legislative Councils of Hong Kong expressed their concern in London about the continuation of the economic, political and social systems in Hong Kong after 30th June, 1997¹. Their concerns included the commitment of the Government of the People's Republic of China to the political philosophy of Communism². Although their concern is well grounded, the question is to what extent the delegation represented the Chinese population of Hong Kong, as none held an elected office. Throughout the Sino-British negotiations on the future of Hong Kong, the Beijing government took the view that no British officials nor their appointees represented the interests of the Chinese population of Hong Kong³. One of the interests agreed upon is that the Common Law judicial system should be maintained in Hong Kong after China resumes its sovereignty. This may be for commercial reasons as much as anything else⁴.

In the preceding chapters, the results of the analysis clearly indicate a consensus in the opinion of the Chinese population of Hong Kong that the Common Law judicial system is acceptable. An overwhelming majority of the Chinese population of Hong Kong believe that the Common Law judicial system should be retained in Hong Kong after 30th June, 1997⁵. Their support is necessary for the future success of the Common Law in Hong Kong. The judicial development of Hong Kong prior to 1st July, 1997, is vital to the successful maintenance of the Common Law judicial system. Another important factor is the implementation of the 1984 Sino-British Joint Declaration⁶, which

¹ Financial Times, 10th May, 1984.

² *Ibid.*

³ David Bonavia, Hong Kong 1997 (Hong Kong, 1983), p.121-2; The Times, 25th and 26th June, 1984.

⁴ Alvin Rabushka, The New China (Boulder, 1987), p.152-3; Ian Kelly, Hong Kong: A Political-Geographic Analysis (Honolulu, 1986), p.101-3.

⁵ Item 78, Appendix E-1.

⁶ The Joint Declaration of the Government of the United Kingdom of Great

includes the enactment of the Basic Law of Hong Kong by China¹. This very much depends on the modernization within China prior to and after 1997.

B. Common Law in Hong Kong Prior to 30th June, 1997

Since the signing of the 1984 Sino-British Joint Declaration, the authority of the British administration in Hong Kong has been diminishing, and will become the lamest of "lame-duck" governments in contemporary time². On 21st November, 1985, the Beijing government expressed its concern over the British government's tendency to deviate from the 1984 Sino-British Joint Declaration, and stated that the future political system of Hong Kong was an internal affair of China³. Since then, in October, 1987, Sir David Wilson, Governor of Hong Kong, stated that the Basic Law⁴ will "influence the evolution of our own systems before 1997"⁵. Consequently, the British administration in Hong Kong has shown signs of increasing insecurity and low morale amidst criticism by a few outspoken members of the Legislative Council⁶. This has also been reflected in recent government moves to further restrict the freedom of expression⁷.

In spite of the setbacks, the British administration has attempted to establish an independent political system in Hong Kong which can resist China's influence. But, the

⁶(cont'd) Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (1984).

¹ Article 3(12) and Paragraph I, Section I, Annex I of the 1984 Sino-British Joint Declaration.

² Emily Lau, 'Peking rules out British role in formation of future government', Far Eastern Economic Review, 22nd October, 1987, p.21; Philip Bowring, 'Ear to Peking, an eye on Whitehall', Far Eastern Economic Review, 7th April, 1988, p.54; Asian Magazine (Yazhou Zhoukan), 5th February, 1989, p.13-4.

³ Emily Lau and Philip Bowring, 'Laying down the law', Far Eastern Economic Review, 5th December, 1985, p.12-5.

⁴ This future mini-constitution of Hong Kong has yet to be enacted by the People's Republic of China.

⁵ Lau, *op.cit.*

⁶ Bowring, *op.cit.*, p.53-4; Also, the Chief Secretary of Hong Kong, David Ford, accused two legislators who criticized the Hong Kong government as "lame-duck", and warned them that they will "have a tiger by the tail". See Sing Pao Daily, American Edition, 13th November, 1987.

⁷ *Supra*, p.94. The whole episode regarding the Public Order (Amendment) Ordinance, 1987, is merely a display of authority by the Hong Kong government.

judicial development of Hong Kong clearly depends on the outcome of the forthcoming Basic Law of Hong Kong. In April, 1988, the Draft Basic Law of the Hong Kong Special Administrative Region was released by the Beijing government for solicitation of opinions.

C. The Constitutional Position of Hong Kong after 30th June, 1997

The 1984 Sino-British Joint Declaration

On 1st July, 1997, when the People's Republic of China resumes sovereignty over Hong Kong, it will cease to be a British Crown colony¹. Accordingly, the application of Common Law in Hong Kong will lapse by operation of law, as the Royal prerogatives and acts of the British parliament will lose force in Hong Kong. The 1984 Sino-British Joint Declaration was ratified by the Standing Committee of the National People's Congress for China². The implementation of the Joint Declaration on the Hong Kong Special Administrative Region will be carried out by the Basic Law of Hong Kong³, which has yet to be enacted by the People's Republic of China. Therefore, the operation of the Basic Law will decide the fate of the Common Law system in Hong Kong after 30th June, 1997.

International law has no force within the jurisdiction of any sovereign state without that state's consent. As the Basic Law will be a statute enacted by China, its interpretation will inevitably be carried out in accordance with the legal practice of China. Therefore, any international adjudication over the violation of the Joint Declaration is seemingly unrealistic.

¹ The Hong Kong Act, 1985, makes provision for and in connection with the ending of British sovereignty and jurisdiction over Hong Kong on 1st July, 1997.

² as empowered by Article 67(14) of the Constitution of the People's Republic of China, 1982. Also see Beijing Review, 'The Hong Kong Solution', China & The World (Beijing, 1985), p.47.

³ Article 3(12) and Paragraph I, Section I, Annex I, 1984 Sino-British Joint Declaration.

The Implementation of the Basic Law of Hong Kong

China's only legislative obligation under the Joint Declaration is to enact and promulgate a Basic Law of Hong Kong "in accordance with the Constitution of the People's Republic of China" stipulating that Hong Kong's previous capitalist system and life-style, including the laws in force, shall remain unchanged for fifty years and also stipulating other basic policies of China regarding Hong Kong as provided thereunder¹. Article 5 of the Constitution of the People's Republic of China, 1982, provides *inter alia* that "no law or administrative rules and regulations shall contravene the Constitution", and nothing in the Constitution indicates that this article can be exempted or suspended². Articles 31 and 62(13) of the same Constitution under which the Hong Kong Special Administrative Region is created is rather vague³. However, it is clear and unambiguous that this article, and any statute enacted in China, including the Basic Law, are subject to the rest of the Constitution by virtue of Article 5⁴.

The laws in the Hong Kong Special Administrative Region cannot contravene the Basic Law⁵, and the Basic Law cannot contravene the Chinese Constitution⁶. Therefore, in case of conflict between the Common Law judicial system in the Hong Kong Special

¹ *Ibid.*

² Paragraph 3 of this section provides *inter alia* "all acts in violation of the Constitution and the law must be looked into". This imposes a constitutional duty to investigate any possible violation. Articles 62(2) and 67(1) of the Constitution provide constitutional power to enforce the constitution.

³ Article 31 provides: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions". Article 62(13) provides: "The National People's Congress exercises the functions and powers to decide on the establishment of special administrative regions and the systems to be instituted there".

⁴ Notwithstanding this, it has been argued that it is inappropriate to adopt a strict approach in interpreting the Chinese constitution. *A fortiori* the Common Law notion of *ultra vires* should not be applicable. See W.S. Clarke, 'Hong Kong under the Chinese Constitution', (1984) 14 Hong Kong Law Journal 77-9. Such argument is not supported by Professor William Wade, Q.C., in his opinion on The Draft of Hong Kong Basic Law (Cambridge, 1988), p.4-5.

⁵ Paragraph I, Section II, Annex I, 1984 Sino-British Joint Declaration; Article 10, Draft Basic Law.

⁶ Paragraph I, Section I, Annex I, 1984 Sino-British Joint Declaration; Article 5, Constitution of the People's Republic of China; Clarke, *op.cit.*, p.74-7.

Administrative Region and the Chinese Constitution, the latter prevails. The National People's Congress can always amend the Basic Law or enact a statute to be applied in the Hong Kong Special Administrative Region¹.

The Jurisdiction of Courts in Hong Kong under the Chinese Constitution

The Standing Committee of the National People's Congress², not the judiciary, has the constitutional authority to interpret the Constitution and statutes of the People's Republic of China³, including the Basic Law of Hong Kong. The National People's Congress can in turn alter or annul decisions of its Standing Committee⁴. Therefore, the power of final judgment vested in the Court of Final Appeal of the region can only be qualified. This alone immediately raises the issue of conflict of laws in which the socialist legal system in China will be dominant over the Common Law judicial system in Hong Kong.

The Standing Committee can declare a statute enacted by the National People's Congress to be unconstitutional, but the National People's Congress, in its judicial capacity, can reverse the decision of its Standing Committee by the same simple majority vote as enacting a statute⁵. There is always a possibility that no provision in the Basic Law will be considered unconstitutional by the Standing Committee⁶.

It was suggested that the constitutionality of laws passed by the legislature of the Hong Kong Special Administrative Region should be adjudicated conclusively by the

¹ Article 17, Draft Basic Law, if enacted can always be amended by virtue of Article 170.

² The Standing Committee is also an administrative and legislative body. See Article 67, Constitution of the People's Republic of China.

³ Article 67(1) and (4), Constitution of the People's Republic of China, 1982. Philip Baker, 'Theories of Legislation, Codification, and Interpretation in China and the West', (1986) *The Symposium on Chinese and European Concepts of Law*. Also see Albert Chen, 'The Developing Legal System in China', (1983) 13 *Hong Kong Law Journal* 307-10.

⁴ Article 62(11), Constitution of the People's Republic of China, 1982.

⁵ Articles 62(11), 64, and 67(1) and (4), Constitution of the People's Republic of China, 1982.

⁶ Wade, *op.cit.*, p.5.

Court of Final Appeal of the region¹ in accordance with the Common Law tradition as provided by the Joint Declaration². This would require constitutional changes in the People's Republic of China³. There is no provision in the Joint Declaration which requires China to amend its Constitution in preserving the Common Law judicial system in Hong Kong, but, rather, the Basic Law shall be enacted in accordance with its Constitution⁴. Accordingly, the authority of the Standing Committee over the courts of the Hong Kong Special Administrative Region has been intended by the Joint Declaration. This major constitutional issue may well have been overlooked by the legal officers of the Crown.

It was suggested that some sort of constitutional court or arbitral tribunal can be set up in the region with British and Chinese judges to decide the questions arising from the Joint Declaration⁵. Such suggestion is out of touch with the reality that no Chinese government will hurt the pride of its citizens by this arrangement and will attract criticism from nationalists regardless of political belief. A better solution was proposed by Jill Barrett at a SOAS seminar:

"The danger of conflict could be greatly reduced if the Standing Committee were to delegate its power to interpret the *Basic Law* (except those provisions relating to defence and foreign affairs) to the Court of Final Appeal in Hong Kong..... A national judicial or mediation body capable of resolving such disputes [*i.e. those on foreign or defence concerns of the central government*] is crucial. It must be truly national..... and it must enjoy the confidence of both sides"⁶.

¹ Martin Lee, 'How Much Autonomy?', in William McGurn (ed.), Basic Law, Basic Questions (Hong Kong, 1988), p.45.

² Article 3(3); Paragraph II, Section I, Annex I; and Section III, Annex I.

³ The Standing Committee, however, has delegated some of its judicial authority to subordinate judicial organs by virtue of its Resolution on Strengthening the Legal Interpretation of Law (10th June, 1981).

⁴ Article 3(12) and Paragraph I, Section I, Annex I.

⁵ Wade, *op.cit.*, p.20.

⁶ 'The relationship between the two legal systems', Seminar on the Draft Basic Law for Hong Kong, School of Oriental and African Studies, 15th June, 1988.

Administrative Control of Judicial Process under the Draft Basic Law

The Draft Basic Law provides that the Standing Committee of the National People's Congress has the statutory authority of interpreting it¹. It can make an interpretation of a provision of the Basic Law, at any time, which will bind the the courts of the Hong Kong Special Administrative Region, but does not affect judgment already rendered². This allows possible intervention by the Standing Committee in any judicial process as the courts of the region are bound by the interpretation of the Standing Committee, which can be made at any time prior to or after all the appeal channels are exhausted. In the task of interpreting the Basic Law, the courts of the region have some final authority, as their final judgment rendered prior to an interpretation made by the Standing Committee is not affected.

As Philip Baker asked:

"how willing will mainland [*Chinese*] officials be to accept the exclusive role of the courts in interpreting laws and regulations?"³

Articles 16 and 172 of the Draft Basic Law empowers the Standing Committee to adjudicate, at any time, on any law of the Hong Kong Special Administrative Region, and to return it for reconsideration or to revoke it if it is not in conformity with the Basic Law or legal procedures. Although the jurisdiction of the courts of the region is not ousted, the Standing Committee can intervene at any stage of the legal proceedings. Moreover, Article 172 can operate retroactively to render void existing legal arrangements⁴ if they contravene the Basic Law.

All cases involving the interpretation of the provisions of the Basic Law concerning defence, foreign affairs and other affairs which are the responsibility of the Beijing government are referred to the Standing Committee by the courts of the region

¹ Article 169.

² *Ibid.*

³ Baker, *op.cit.*, p.19.

⁴ documents, certificates, contracts, and rights and obligations.

for an "interpretation"¹ before making their final judgment on the case. In the task of interpreting these matters, the courts of the region no longer have any final authority². The Draft Basic Law also provides that the courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to *inter alia* the "executive acts" of the Beijing government³. The Standing Committee of the National People's Congress or the State Council⁴ has the ultimate right to certify whether an act is an "executive act" of the Beijing government⁵. At present, the meaning of an "executive act" is far from clear, but may well be based on existing Common Law practice with regard to Acts of State.

The provisions of the Draft Basic Law discussed above are related to "defence and foreign affairs, which are the responsibility of the Central People's Government"⁶. At Common Law, Acts of State, which include the declaration of war and the field of external affairs, are prerogative acts⁷. But, the judges of the Common Law courts have the right to determine the limits of the prerogative⁸. Once the prerogative is established, the Common Law courts cannot further inquire into the matter. However, the Crown is entitled to determine conclusively matters of State (i.e. executive acts), and the court accepts as conclusive a certificate entered by the Crown on these matters⁹. Therefore, the protection of State interest in the sphere of defence and foreign affairs is sufficient at Common Law as the State can act freely without any judicial review once the prerogative is established by the court.

¹ Article 169, Draft Basic Law.

² Compare with the place of the European Court of Justice in the English legal system. See L. Neville Brown and Francis Jacobs, The Court of Justice of the European Communities (London, 1977), p.131-49; Ronald Jack Walker, Walker and Walker's The English Legal system (6th edn., London, 1985), p.183-6.

³ Article 18.

⁴ This is an administrative branch of the Beijing government.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Harry Street and Rodney Brazier (ed.), deSmith's Constitutional and Administrative Law (5th edn., London, 1985), p.157-63.

⁸ *Case of Proclamations* (1611), 12 Co. Rep. 74.

⁹ deSmith, *op.cit.*, p.154-7.

The Question of Judicial Interpretation

Under the Draft Basic Law, the administrative branch of the Beijing government, the State Council¹, can issue directives to have laws enacted by the National People's Congress or its Standing Committee to be applied to Hong Kong under certain circumstances, which include *inter alia* "national unity and territorial integrity"². There is no provision in the Joint Declaration which restricts the inclusion of such provision in the Basic Law. As the Joint Declaration provides that the laws of the Hong Kong Special Administrative Region shall include the Basic Law³, such provision, if enacted in the Basic Law, can be a source of law in the Hong Kong Special Administrative Region.

It was argued that the Joint Declaration does not allow for any extension of the laws of China to Hong Kong, except in relation to foreign and defence affairs⁴. This argument is not tenable as the Joint Declaration merely provides the Hong Kong Special Administrative Region with executive, legislative and independent judicial power⁵, which has never been intended to be exclusive. The "high degree of autonomy" provided by the Joint Declaration⁶ means that the "autonomy" is not absolute⁷. Powers are still subservient to the Constitution of the People's Republic of China⁸. This seems to be a concession intended by the Westminster government, more than an oversight by the legal officers of the Crown.

¹ Article 85, Constitution of the People's Republic of China, 1982.

² Article 17.

³ Paragraph III, Section II, Annex I.

⁴ Lee, *op.cit.*, p.46.

⁵ Section 3(3) and Paragraph II, Section I, Annex I.

⁶ Section 3(2) and Paragraph II, Section I, Annex I.

⁷ See Hungdah Chiu, 'The 1984 Sino-British Agreement on Hong Kong and Its Implications on China's Unification', (1985) 21 *Issues and Studies* 13-20. For other views, see Georg Ress, 'The Hong Kong Agreement and Its Impact on International Law', in Jurgen Domes and Yu-ming Shaw (ed.), Hong Kong: A Chinese and International Concern (Boulder, 1988), p.142-3; Roda Mushkat, 'The Transition from British to Chinese Rule in Hong Kong: A Discussion of Salient International Legal Issues', (1986) *Denver Journal of International Law and Policy* 181-3; Also Mushkat, 'The International Legal Status of Hong Kong under Post-Transitional Rule', (1987) *Houston Journal of International Law* 1-24.

⁸ For another viewpoint, see Wade, *op.cit.*, p.2-6. Wade suggested that the constitutional difficulties can simply be obviated by amending the Constitution of the People's Republic of China, which is wishful thinking.

This raises the concern as to the meaning of "national unity and territorial integrity". It is wide enough to include any issue which the State Council thinks fit¹. It should be noted that "national stability and unity" has been invoked by the Beijing government in the condemnation of the January, 1987 demonstrations and the anti-government rioting in the Tibet Autonomous Region last year². However, the interpretation will more likely be in accord with the prevailing government policy of the time³. China's approach to the interpretation of statutes differs fundamentally from the Common Law approach, and the doctrine of *stare decisis*, generally speaking, has not been formally accepted by the socialist legal system in China⁴. Moreover, judicial decisions in any country are inevitably influenced by political ideology⁵.

For the time being, the meaning of "laws previously in force in Hong Kong"⁶ and "the judicial system previously practised in Hong Kong"⁷ under the Joint Declaration and the Draft Basic Law are questionable. Are the customary law and judicial system stated therein intended to be those at the time of the 1984 Sino-British Joint Declaration, or those on 30th June, 1997? This is somewhat similar to the question of what Chinese law and custom should be recognized as the law of Hong Kong, which has been the topic of several cases⁸.

¹ Lee, *op.cit.*, p.46.

² Robert Delfs, 'Talking out of school' and 'Repression repeated', Far Eastern Economic Review, 16th June, 1988, p.18, and 16th March, 1989, p.10-11; Asian Magazine (Yazhou Zhoukan), 14th February, 1988, p.53.

³ Chen, *op.cit.*, p.309.

⁴ Baker, *op.cit.*, p.6-7; Jeanette Pinard, The People's Republic of China: A bibliography of Selected English-Language Legal Materials (Washington, 1985), p.11-2; Tao-tai Hsia and Constance Johnson, Law Making in the People's Republic of China: Terms, Procedures, Hierarchy, and Interpretation (Washington, 1986), p.19-23; and Standing Committee of National People's Congress, Resolution on Strengthening the Legal Interpretation of Law (10th June, 1981).

⁵ Dennis Lloyd, The Idea of Law (London, 1977), p.212, and p.219-20; Glendon Schubert, 'Political Culture and Judicial Ideology', (1977) 9 Comparative Political Studies 363-408; J.A.G. Griffith, The Politics of the Judiciary (London, 1979), p.187-216; Roger Cotterrell, The Sociology of Law (London, 1984), p.228-58.

⁶ Paragraph III, Section II, Annex I, 1984 Sino-British Joint Declaration; Article 8, Draft Basic Law.

⁷ Paragraph I, Section III, Annex I, 1984 Sino-British Joint Declaration; Article 80, Draft Basic Law.

⁸ *Supra*, p.17.

Common Law under the Socialist Legal System

The socialist legal system, which the Common Law judicial system in Hong Kong will be subservient to after 30th June, 1997¹, adheres to the leadership of the Communist party, the guidance of Marxism-Leninism and the thought of Mao Tse-tung, the people's democratic dictatorship, and the socialist road². Accordingly, the dominant legal system should reflect the state's ideology of class struggle between the thesis, represented by the people, which gives rise to the anti-thesis, represented by the enemy of the people³, under the Marxist doctrine of dialectical materialism⁴. According to Marxist jurists, law serves class interest⁵. As such, the Common Law judicial system in Hong Kong serves the interest of capitalists. After 30th June, 1997, it will be under the Basic Law of Hong Kong, which is a statute enacted under the Chinese Constitution⁶.

The practicality of the supremacy of the Chinese Constitution over Hong Kong has been queried by some legal scholars in mainland China⁷, but no solution has been suggested. There does not seem to be any unless the present Chinese Constitution is amended or interpreted unconventionally by the National People's Congress⁸. In resolving the issue of the conflict of law between the Hong Kong Special Administrative Region and mainland China, it appears that the paramount consideration is the supremacy of Chinese sovereignty⁹. Article 2 of the present Chinese Constitution provides that "all

¹ Paragraph I, Section I, Annex I, 1984 Sino-British Joint Declaration.

² Preamble, Constitution of the People's Republic of China, 1982.

³ The preamble of the Constitution of the People's Republic of China, 1982, reaffirms the state's ideology of class struggle and considers the enemy of the people as those elements in the world that try to undermine China's socialist system.

⁴ R.N. Carew Hunt, The Theory and Practice of Communism (London, 1971), p.39-67.

⁵ Chang Yu-yü, A Few Questions on the Socialist Legal System (kuan-yu she-hui chu-i fa-chih te jo-kang wen-ti) (Beijing, 1982), p.8-9 and p.32-63; R.W.M. Dias, Jurisprudence (5th edn., London, 1985), p.398.

⁶ Article 31, Constitution of the People's Republic of China, 1982.

⁷ Hsu Chung-te, 'One Country, Two Systems (*i-kuo liang-chih te hsin-ke-ti*)', (1987) 10 *Law (fa-hsueh)* 24-5.

⁸ Barrett, *op.cit.*; Clarke, *op.cit.*, p.77-9.

⁹ Xu, Guo Jian, 'My Humble Opinion on Resolving the Conflict of Law between the Interior of our Country and Hong Kong', (1987) 32:2 *Law Science Quarterly* 36-8.

power in the People's Republic of China belongs to the people". The question is how will the minority interest of the capitalists be allowed to encroach on the socialist sovereignty of China? The Common Law judicial system is a product of a capitalist society, and its doctrine of precedent is flexible and adaptable to the changing needs of such society¹. On the other hand, the socialist legal system in China is dogmatic and ideological. Its preliminary objective is to serve the interest of the Communist party². In view of the differences between the Common Law and China's socialist judicial systems, their coexistence under the same Constitution is doubtful³. As Raymond Wacks wrote:

"on the basis of the present draft of the *Basic Law*, the Common Law lamb may, with reasonable equanimity, lie down with the *Basic Law* lion"⁴.

D. The Legal Perceptions of the Chinese Population

Introduction

The readiness of the Chinese population of Hong Kong to accept the Common Law doctrines is not enough to ensure the success of Common Law in Hong Kong. There is little doubt that the greatest asset to the maintenance of the Common Law judicial system in Hong Kong is that a large proportion of the Chinese population are refugees and the descendants of refugees from mainland China, and their experience with the Common Law system and the socialist legal system has strengthened their desire to live under the former system.

¹ Walker, *op.cit.*, p.143.

² Preamble and General Principles, Constitution of the People's Republic of China, 1982.

³ Timothy Gelatt, 'Review of Amnesty International's China - Violations of Human Rights', in James Seymour, *China Rights Annuals* (New York, 1985), p.183-4.

⁴ 'Can the Common Law Survive the Basic Law?', (1988) 18 Hong Kong Law Journal 444.

Legal Pluralism in the Hong Kong Special Administrative Region

Under the 1984 Sino-British Joint Declaration¹, the agreement to retain the Common Law judicial system in Hong Kong after 30th June, 1997 for fifty years is the result of negotiations between the Beijing and Westminster governments, and should not be taken for granted. The application of the socialist legal system in Hong Kong after 30th June, 2047 will not be an overnight affair. After 30th June, 1997, the Common Law judicial system in Hong Kong will be subservient to the socialist legal system in China.

It can be safely assumed that the Beijing government is waiting for the time when the Common Law culture in Hong Kong will be assimilated into the socialist legal culture in China. The principle of "one country, two systems"² is merely a transitional formula. The following passage from Professor Rui Mu of Beijing University provides some indication as to the intention of the Beijing government:

"Every separate system of law in this modern world is presently, I would say, undergoing an evolution or change on its own socio-economic basis, at the same time as it is also receiving outside influences at the impact of new international, interregional and national relationships"³.

Naturally, after 30th June, 1997, the national and political relationships with China will be stronger than other relationships. Therefore, unlike other independent Common Law countries, the support and sharing of the Common Law values by the Chinese population of Hong Kong are important.

¹ Sections I and III, Annex I.

² See 'Preamble', Draft Basic Law, p.29.

³ 'The Chinese Conception of Law and Its Meeting with that of Corresponding Legal Systems', (1986) The Symposium on Chinese and European Concepts of Law 15.

Legal Awareness of the Chinese Population of Hong Kong

The results of the analysis in the preceding two chapters have shown that the Chinese population of Hong Kong are satisfied overall with the Common Law judicial system, although they have some reservations about its human components. However, the results of the analysis and discussions in the preceding two chapters also indicate that they have difficulty sharing some of the spirit of the Common Law because of specific myths and misconceptions¹. For the Common Law to operate successfully in Hong Kong after 30th June, 1997, corrective measures are desirable.

The results of the analysis indicate that education is positively related to the acceptance of the Common Law concepts. Therefore, one way to correct the legal misconceptions of the Chinese population is through the media and mass education in the areas which can be improved by these means, as discussed in the preceding two chapters.

In addition, law can be incorporated as a Chinese language subject for the fifth form and matriculation examinations² and court proceedings could be televised and carried out in Chinese. The Law Society of Hong Kong and the Hong Kong Bar Association would benefit from creating a legal education foundation to educate the Chinese population on the merits of the Common Law judicial system. In anticipation of a few elected Legislative Council seats in 1991³, an educational program is more important than ever, as the people require sufficient common knowledge to know for whom they vote.

It is timely for the Law Society of Hong Kong and the Hong Kong Bar Association to enhance public awareness of the contributions of their members to the community. The Free Legal Advice Scheme and Tel-law Scheme of the Law Society of Hong Kong and Hong Kong Bar Association are all contributions of the legal profession to the

¹ *Supra*, p.200.

² Law is a G.C.E. subject in England at ordinary and advanced levels.

³ The government's survey office reported that 75% of the population favour direct election. Sing Pao Daily, American Edition, 6th November, 1987.

community¹. These services can build public confidence in the legal profession to ensure the successful operation of an independent legal profession.

E. The Framework for a Localized Common Law Judicial System

Introduction

The present Hong Kong government has seldom exercised its power in an arbitrary and authoritarian way, as it has to account to a democratic government and parliament in Great Britain². British constitutional conventions are practised in Hong Kong. After 30th June, 1997, there is no guarantee that such conventions will be observed, as the government of the Hong Kong Special Administrative Region will account to a highly centralized socialist government in China. The political developments within China at that time can only be forecast.

The defects of the present Common Law framework should be addressed. Otherwise, they may be considered as part of "the laws previously in force in Hong Kong" under the 1984 Sino-British Joint Declaration³, and may set an undesirable precedent for the government of the Hong Kong Special Administrative Region to follow.

Judicial Independence

The present system of government in Hong Kong is very archaic by Western standards⁴. However, in keeping with the spirit of the Common Law, judicial

¹ *Supra*, p.165.

² N.J. Miners, 'Disallowance and the Administrative Review of Hong Kong Legislation by the Colonial Office 1844-1947', (1988) 18 Hong Kong Law Journal 218-48.

³ Paragraph III, Section II, Annex I; Article 8, Draft Basic Law.

⁴ Kelly, *op.cit.*, p.12-5; John Walden, 'Accountability: Past, Present and Future', in William McGurn (ed.), Basic Law, Basic Questions (Hong Kong, 1988), p.53-68.

independence has been preserved to a certain extent¹. Under the Judicial Service Commission Ordinance², although there is a consultative process, there is no independent body which can ultimately decide on judicial appointments. The presence of the Attorney General on this Commission was criticized as being inconsistent with the concept of judicial independence³. The majority of the magistrates are employed on "contract terms" as civil servants⁴. As there is a lack of tenure for most magistrates, their independence is observed only by convention. Prior to 1st July, 1997, it is unlikely that this convention would be breached, as Hong Kong is under the direct control of a democratic government in Great Britain. The 1984 Sino-British Joint Declaration makes provisions for an independent commission for judicial appointments and the chief executive of the Hong Kong Special Administrative Region will be bound to act in accordance with the commission's recommendations⁵. This framework can be solidly established prior to 1st July, 1997.

As over ninety-five per cent of criminal cases are tried by magistrates⁶, the impartiality of the majority of judicial decisions is at least open to question, if not openly doubted. This is reflected in the opinion of sixty per cent of the Chinese members of the legal profession⁷. Although there is a perception of judicial partiality, the judiciary as a whole is conceived to be independent⁸. As in any jurisdiction, administrative

¹ Eric Barnes, 'The Independence of the Judiciary in Hong Kong', (1976) 6 Hong Kong Law Journal 7-26.

² S.3-5, Cap.92, Laws of Hong Kong, 1984(ed).

³ Henry Litton, Q.C., 'Editorial', (1983) 13 Hong Kong Law Journal 129-32; Albert Chen, 'Editorial' (1988) 18 Hong Kong Law Journal 364-9.

⁴ Barnes, *op.cit.*, p.22n; *Supra*, p.109.

⁵ Paragraph III, Section III, Annex I; Article 87, Draft Basic Law.

⁶ Hong Kong Government, Hong Kong 1987, Appendix.

⁷ In answering whether judges in Hong Kong are fair and impartial, thirty-eight per cent of the Chinese members of the legal profession were not sure ("neither nor") and over twenty-one per cent positively disagreed with this notion. Only forty per cent of them did not believe affirmatively that judges in Hong Kong treated English more favourably than Chinese when making judicial decisions. See Items 53 and 57, Appendix E-4.

⁸ Items 42 and 48, Appendix E-4.

interference with the judiciary is not unknown in contemporary Hong Kong¹. It is, however, the responsibility of the present Hong Kong government to ensure the full impartiality of the judiciary. The burden of the present Hong Kong government is greater as the level of acceptance of the concept of judicial independence by the Chinese population of Hong Kong is rather low².

It should be noted that the doctrine of separation of powers has been rejected by Marxist jurists in the People's Republic of China. They view judicial independence as an outcome of the victory in the power struggle between capitalists and feudal rulers, and as capitalist machinery to adjust the distribution of benefits so that the working class can be more effectively subdued³. Although Article 126 of the Chinese Constitution⁴ provides for judicial independence, Article 128 of the same Constitution requires the Supreme People's Court to be responsible to the National People's Congress and its Standing Committee. The Draft Basic Law does not provide full judicial independence for the magistrates, as they are not considered as judges⁵, but includes a provision to retain the present system for their appointments⁶, which contravenes the principle of judicial independence. At Common Law, appeals from magistrates' courts are expensive and rare. The decisions of the magistrates are often conclusive. Therefore, their independence is necessary.

¹ 'Showdown looms for magistrate', South China Morning Post, 20th December, 1987; Emily Lau, 'Sharpening up the beaks: Magistrates come under pressure to step up conviction rate', *Far Eastern Economic Review*, 3rd November, 1988, p.39-30; and Barnes, *op.cit.*, p.15n.

² Table 7.1, *supra*.

³ Gu Chunde, 'Why the System of Separation of Powers is Not Being Implemented in China', (1987) 6 *Studies in Law* 25; Tao-Tai Hsia, 'The Concept of Judicial Independence', (1986) *The Symposium on Chinese and European Concepts of Law*; Asian Magazine (Yazhou Zhoukan), 15th May, 1988, p.7.

⁴ Constitution of the People's Republic of China, 1982.

⁵ Articles 87 and 88, and Note 7, p.90.

⁶ Article 90.

Democracy in Hong Kong

A democratically elected legislature is an important check and balance for judicial independence. The American experience during the Watergate crisis in the early 1970's has proved the importance of a directly elected congress to ensure the integrity of the judiciary, and an independent judiciary to uphold the privilege of the congress. At present, all Common Law countries which have full judicial independence are democratic¹. This is a rule rather than an exception. In Hong Kong, the problem of judicial independence does not arise as the Hong Kong government is accountable to a democratic government in Great Britain. The successful operation of the 1984 Sino-British Joint Declaration on judicial appointment and removal² relies on the future of democracy in Hong Kong, as well as the document of the Basic Law of Hong Kong.

In its editorial of May, 1987, the *Hong Kong Law Journal* called for "direct elections to the Hong Kong legislature by means of universal adult suffrage"³. The editor considered "such elections are an essential element of the rule of law, they are consistent with the terms of the Joint Declaration on Hong Kong, and they are an effective means of preserving public order in a free society". The International Commission of Jurists, in its 1965 Declaration of Bangkok, laid down *inter alia* that "The Rule of Law can only reach its highest expression and fullest realization under representative government"⁴.

According to the *White Paper on Democratisation* released on 10th February, 1988, the present Hong Kong government has made it clear that there will only be partial democracy⁵. In keeping with the policy of the Beijing government, only ten of the fifty-six members in the local legislature will be elected in 1991⁶. As *The Economist*

¹ The list is limited and includes only Australia, Canada, England, Ireland, New Zealand and the United States of America.

² Paragraph III, Section III, Annex I.

³ W.S. Clarke, p.139.

⁴ *Ibid.*

⁵ Sections 27-9, Chapter III, Hong Kong Government, The Development of Representative Government: The Way Forward (Hong Kong, 1987).

⁶ Section 29, *ibid.*; Emily Lau, 'The grey paper', Far Eastern Economic Review,

noted, "it [*the white paper*] could have been written in Beijing"¹. On a more positive side, the results of the present study show that a directly elected local legislature has the support of eighty per cent of the Chinese members of the legal profession² although the present Legislative Council reserves one seat to be elected by the legal profession. Even the Hong Kong government's survey office reported that seventy-five per cent of the Chinese population favour direct elections³.

The meaning of "constituted by elections"⁴ under the Joint Declaration is also subject to different interpretations. Although one can safely assume that the word, "elections", mean universal adult suffrage, some groups in Hong Kong have suggested that, in preserving the present system, direct elections have to be ruled out⁵. Article 67 of the Draft Basic Law provides that "the Legislative Council of the Hong Kong Special Administrative Region shall be constituted by a combination of direct and indirect elections". The Draft Basic Law has failed to provide an alternative for all members of the legislature of the Hong Kong Special Administrative Region to be directly elected in a general election⁶.

In the meantime, the conservative business groups in Hong Kong have done their very best to please the Beijing government⁷. In alliance with the pro-Beijing labour unions, they lobby against universal suffrage, which they claim would threaten the stability and prosperity of Hong Kong⁸. There is evidence to suggest that the business tycoons in Hong Kong are vying for positions of influence and power, particularly after the Chief Executive position of the Hong Kong Special Administrative Region⁹. Universal

⁶(cont'd) 18th February, 1988, p.14; 'A mixed review', Far Eastern Economic Review, 25th February, 1988.

¹ 'The other, better Chinas', The Economist, 13th February, 1988.

² Item 78, Appendix E-1.

³ Sing Pao Daily, American Edition, 6th November, 1987.

⁴ Paragraph III, Section I, Annex I.

⁵ Clarke, *op.cit.*, p.140.

⁶ Annex II of the draft.

⁷ Emily Lau, 'The political line-up', Far Eastern Economic Review, 9th February, 1989, p.16-7.

⁸ *Ibid.*

⁹ *Ibid.*

suffrage will defeat their intention. Their anti-democracy campaign is well financed¹.

However, the reality was stated by a Taipei opposition leader:

"No one in Hong Kong would devote all his time and energy to politics because there is no future in it."².

The Freedom of the Press

The freedom of the press is a powerful check on the administration of justice. The press can protect the public by exposing abuses of power by the authority, and enhance public awareness towards the rule of law. An independent press is essential for the judicial development of Hong Kong, and should be well established prior to 1st July, 1997. Presently, there are limits to the freedom of the press in Hong Kong. An example is the Royal Hong Kong Police's suppression of a news report criticizing their fairness just two days after the Public Order (Amendment) Ordinance, 1987, was enacted³. This type of action is counter-productive to future judicial development in Hong Kong.

Additional doubts concerning the observance of the rule of law by the present Hong Kong government arose when the Attorney General refused to grant leave to prosecute a pro-Beijing magazine which had obviously violated the above Ordinance only a few months after the above action of the Royal Hong Kong Police⁴. There is mounting concern arising from the contrasting government reactions to wrongdoings by politically influential groups and its approach to illegal conduct by others. This double standard does not produce positive attitudes towards the Common Law judicial system by the Chinese population of Hong Kong. It is, therefore, undesirable for this type of selective application of the law to recur, although the pressure from the Beijing government is understandable.

¹ *Ibid.*

² *Ibid.*

³ This ordinance apparently was not even invoked. See Philip Bowring, 'Start shredding the news', Far Eastern Economic Review, 26th March, 1987, p.12.

⁴ Emily Lau, 'Sense and censorship', Far Eastern Economic Review, 23rd July, 1987.

An Independent Prosecuting Authority

The present Prosecutions Division in Hong Kong is part of the Attorney General's Chambers¹. As such, it is not independent from administrative and political influences. Faced with the uncertainty of Hong Kong's future, the Attorney General was recently criticized for refusing to enforce criminal laws against the financial elite because of possible adverse effects on commercial transactions². To avoid the public perception that there may be political motivation in the administration of justice, there is a need to ensure a minimum level of independence for Crown counsel in the conduct of criminal prosecutions. An independent prosecuting authority would make it more difficult for the administration of justice to be meddled with on political grounds³.

The results of the analysis suggest the need to enhance the prosecuting procedures for a better adversary system⁴. The results of the present study indicate that the majority of the Chinese members of the legal profession do not believe that Crown counsel cooperate with the defense and reveal evidence which favour the defense, and a substantial minority of them take the view that Crown counsel are under pressure to secure a conviction and that they treat English more favourably than Chinese⁵. As such, the independent prosecuting authority of the Hong Kong Special Administrative Region under the 1984 Sino-British Joint Declaration⁶ should be created as soon as it is practical under the model of United States District Attorney. Although this model has its weaknesses, it is a step towards impartial criminal investigations.

¹ David Lyons, 'The Role of the Attorney General's Chambers in Hong Kong', (1983) 13 Hong Kong Law Journal 188-90.

² Philip Bowering, 'Ear to Peking, an eye on Whitehall', Far Eastern Economic Review, 7th April, 1988, p.54.

³ The Attorney General has to publicly exercise his prerogative power, e.g. *nolle prosequi*.

⁴ *Supra*, p.179.

⁵ *Supra*, Table 6.5.2.

⁶ Paragraph V, Section III, Annex I; Article 63, Draft Basic Law.

An Independent Legal Aid Board

It may be better for legal aid to be administered by the law society or an independent body rather than by the government. In England, legal aid has been administered by the Law Society for over forty years, with funding from the government. Its Legal Aid Act of 1988 provides for the setting up of the Legal Aid Board with mostly lay members¹. Thus, the legal aid administration in England and Wales can ensure its independence from the government and the legal profession, and it is essential particularly in cases where the interest of the state or the legal profession is involved. In 1986, a working party of the Hong Kong government recommended that the Legal Aid Department be transformed into an independent Legal Aid Commission², but there has been no further progress since then.

Although legal aid can be viewed as lawyer's aid by some³, one way to eliminate the economic barrier to obtaining justice is to raise the income and property qualifications, i.e. the means test, for legal aid eligibility, and to introduce the pro-rata concept so that middle income people can obtain legal aid for all cases by paying a reasonable fee. The state would then have to subsidize the market adjustments between actual and reasonable legal fees. This cost to society would have to be endured if an independent legal profession is to be maintained and economic barriers to obtaining justice are to be eliminated until the demand and supply side of the economy can be resolved.

Presently, the legal profession in China is not completely independent from the state⁴. A defence lawyer is regarded as an independent party representing the administration of justice to protect his client's legitimate interest, and cannot be dictated

¹ Section 3 and Schedule 1.

² Albert Chen, 'Legal aid in Hong Kong: the way ahead', (1988) 18 Hong Kong Law Journal 1-2.

³ *Ibid.*, p. 3-5.

⁴ Jenkin Chan Shiu-fan, 'The Role of Lawyers in the Chinese Legal System', (1983) 13 Hong Kong Law Journal 157-73.

to by his client¹. Article 34 of the Draft Basic Law provides the people in the Hong Kong Special Administrative Region the right to confidential legal advice, choice of lawyers for timely protection of their legitimate rights and interests, and for representation in the courts. The rights to legal advice can only be guaranteed by widespread legal aid for all types of legal advice.

Human Components in the Common Law Judicial System

The human elements in the administration of justice and the quality of the legal profession have a major role to play. The results of the survey of the Chinese members of the legal profession indicate that only thirty-seven per cent of the sample stated positively that they will stay in Hong Kong after 30th June, 1997². This is not a very promising figure in view of the present shortage of lawyers in Hong Kong, and may create a vacuum when most of the expatriate members of the legal profession and judiciary depart³. Consequently, the choice of qualified individuals for judicial appointments, particularly those whom the Chinese population of Hong Kong will have confidence in, will be further limited.

In November, 1988, Mr. Simon Li, a retired judge of the Hong Kong Court of Appeal and a member of the Basic Law Drafting Committee, expressed his concern about the quality of the judiciary in the Court of Final Appeal of the Hong Kong Special Administrative Region because of the quality of the present legal profession in Hong Kong⁴. He estimated that it would take at least twenty years to produce a good quality judiciary in Hong Kong among the Chinese lawyers⁵. Sir Ti-liang Yang, Chief Justice of the Supreme Court of Hong Kong, was also concerned with "whether suitable ethnic

¹ *Ibid*, p.165.

² Item 79, Appendix E-8.

³ Only 34 out of 135 members of the judiciary are Chinese-speaking. See Michael Thomas, 'The Development of a Bilingual Legal System in Hong Kong', (1988) 18 Hong Kong Law Journal 20.

⁴ Sing Pao Daily, American Edition, 26th November, 1988.

⁵ *Ibid*.

Chinese candidates can be found to fill these [*judicial*] positions by 1997"¹.

The creation of a law department at the City Polytechnic of Hong Kong and the increased intake of undergraduates by the Faculty of Law of the University of Hong Kong are positive steps. In England, conveyancing services can be provided by licensed conveyancers under the Administration of Justice Act, 1985. Hong Kong may consider following this English practice in order to alleviate the work load of the practising solicitors. In view of the uncertainty of the future of the judicial system of Hong Kong, the *Hong Kong Law Journal* expressed concern about the quality of the law students². In January, 1987, the then Attorney General of Hong Kong, Michael Thomas, admitted that there is a shortage of experienced lawyers in Hong Kong³, and that the government would attempt to attract qualified overseas lawyers who can contribute to Hong Kong. He also stated that the interests of young lawyers should be protected. Unfortunately, the "overseas lawyers", according to past practice, refers to those trained in British Commonwealth countries. The Hong Kong Bar Association, however, has been concerned with the influx of English lawyers who are less permanent than those whose roots are in Hong Kong, and may not be there after 30th June, 1997⁴.

According to rough estimates, there are over two thousand Chinese practising lawyers and over thirty Chinese judges in the United States of America⁵. There is no reason, other than professional protectionism, that these talents are not welcome in Hong Kong⁶. It should be noted that a number of Crown counsel in Hong Kong are not

¹ Emily Lau, 'The judiciary faces major task in 1997 run-up', Far Eastern Economic Review, 20th April, 1989, p.21.

² (1987) 17, p.287. Also see *supra*, p.110n.

³ Sing Pao Daily, American Edition, 14th January, 1987.

⁴ W.S. Clarke, 'Overseas barristers and the independence of the Bar', (1986) 16 *Hong Kong Law Journal* 1.

⁵ Edmonton Chinese Times, July, 1987.

⁶ Edward J. Epstein, 'One law for them...' and Philip Bowring, 'The politics of greed: Hongkong lawyers play with fire to preserve the status quo', Far Eastern Economic Review, 8th December, 1988, p.7 and 72-3; The Vice-president of the Hong Kong Law Society considered the interests of the Hong Kong lawyers as one of the reasons for his opposition against the Hong Kong government's decision in principle to allow foreign law firms to hire local solicitors. Sing Pao Daily, American Edition, 16th December, 1988.

qualified barristers or solicitors¹. American lawyers have to undergo far more training and pass much more rigorous examinations than their Hong Kong counterparts². This leaves little doubt about the competency of the Chinese lawyers who have made their way to sit on the bench in the United States of America.

The present Hong Kong government may consider selecting promising young lawyers to assist or undergo articles under the judges at High Court or higher levels of courts in England for a number of years, with a view that they will eventually be appointed to the judiciary in Hong Kong prior to 1st July, 1997. The valuable experience they will bring back to Hong Kong will enrich the delivery of Common Law justice. At the same time, more extensive training courses for the judiciary should be offered locally by prominent members of the judiciary from the Common Law world. This production line approach is not unreasonable in view of the severe shortage of Chinese judges in Hong Kong.

The Doctrine of *Stare Decisis* and Codification

The doctrine of *stare decisis* which is essential to the notion of Common Law has a historical root at Common Law³. Most of the Common Law doctrines were developed when the judiciary was small in number and homogeneous in thought⁴. As a result, the Common Law doctrines from England were not necessarily sufficient for the new colonies' different cultural circumstances. In the United States of America, the doctrines underwent separate judicial development⁵. After 30th June, 1997, Hong Kong

¹ William Turnbull, 'What can Hong Kong do for the Overseas Lawyers?', (1983) Papers of the 7th Commonwealth Law Conference 478.

² According to an international review, 32 of the top 65 law schools in the world are in the United States of America. See Jack Gourman, Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities (2nd edn., Los Angeles, 1983), p.76-7, and (4th edn., Los Angeles, 1987), p.71-8.

³ A. Kiralfy (ed.), Potter's Historical Introduction to English Law (4th edn., London, 1958), p.274-80.

⁴ Griffith, *op.cit.*, p.25-6.

⁵ See William Nelson, Americanization of the Common Law (Cambridge, 1975).

will undergo its own separate judicial development. It is doubtful if Hong Kong will have enough "legal minds" to distinguish new cases from the precedents.

Although under the 1984 Sino-British Joint Declaration, English may be used in the courts of the Hong Kong Special Administrative Region¹, Chinese will become the dominant legal language. The use of English in the courts of the region to resolve points of law² or "the creation of a bilingual legal system in which the Chinese and English languages share equal status"³ is too idealistic to materialize. Like the use of French as the professional language of English lawyers prior to the fifteenth century, the use of English in Hong Kong "is much unknown in the realm"⁴. In addition to "the concepts of nationalism and national language", most people in Hong Kong, including a number of graduates of English speaking universities, are not proficient in the English language⁵, and this is true of some Chinese members of the legal profession over many years. The situation is worsening as the Education Department now gives emphasis to the Chinese language in preparation for 1st July, 1997⁶.

The problems of translating English case law into Chinese will pose a greater problem than statutory law because of the difference between English and Chinese cultures. In the meantime, translating statutes from English into Chinese has encountered technical difficulties⁷. At Common Law, there are far more cases than statutes⁸. On a practical side, Hong Kong does not even have enough translators with sufficient legal

¹ Paragraph IV, Section I, Annex I; Article 9, Draft Basic Law.

² Michael Thomas, then Attorney General of Hong Kong, 'Closing Address', (1986) *The Symposium on Chinese and European Concepts of Law* 10.

³ Albert Chen, '1997: The Language of the Law in Hong Kong', (1985) 15 *Hong Kong Law Journal* 19-47.

⁴ W.J.V. Windeyer, Lectures on Legal History (2nd edn., Sydney, 1957), p.151.

⁵ Chen, *op.cit.*, p.28; Robert Lord and Helen Cheng, Language Education in Hong Kong (Hong Kong, 1985), p.9.

⁶ Asian Magazine (*Yazhou Zhoukan*), 8th May, 1988, p.49.

⁷ Yuen Chi-Wing, 'The Chinese Language Legislation Scheme and the Problem of Judicial Gloss', (1987) 17 *Hong Kong Law Journal* 89-99; Henry Litton, Q.C., 'The Law: A question of interpretation', Far Eastern Economic Review, 7th April, 1988, p.82-5.

⁸ Walker, *op.cit.*, p.154-61.

knowledge to translate the statutes from English into Chinese¹.

In Canada, a Common Law country, the criminal law was codified in 1892 under the Criminal Code, and the code provides that no person shall be convicted of an offence outside the code with the exception of provincial statutes². A codified criminal law in Hong Kong is conducive to the certainty of the law and will reduce the reliance on case law³. Therefore, it is desirable to have all laws in Hong Kong codified prior to 1st July, 1997, with criminal law as a priority⁴. As Roscoe Pound wrote:

"It [*codification*] is a phase of the demand that every man shall be assured of knowing what he may do and what he may not do. It is related to the idea behind our bills of rights"⁵.

In a lecture delivered at the School of Oriental and African Studies on 28th May, 1986, Mr. Michael Thomas, then Attorney General of Hong Kong, claimed that codification of the entire law of Hong Kong would be impossible to undertake⁶. Although the Attorney General admitted that "criminal offences must be defined precisely"⁷, there is no evidence that Hong Kong intends to follow the Canadian model on criminal liability⁸, nor to consider the successful codifications of laws in other Common Law countries⁹. However, the Hong Kong government is considering codification of decisions and principles on the law of arrest¹⁰. Such a task is a step in the right direction. The present

¹ Chen, *op.cit.*, p.27.

² Section 8.

³ Dias, *op.cit.*, p.324-7, 383, and 388.

⁴ Codification has its weakness, but its benefits outweigh its disadvantages. Moreover, the objections do not stand. See Roscoe Pound, Vol.3, Jurisprudence (St. Paul, 1959), p.728-32.

⁵ *op.cit.*, p.679.

⁶ This speech is almost identical to the 'Closing Address'. See Thomas, *op.cit.*, p.11.

⁷ Thomas, *op.cit.*, p.4.

⁸ Mr. Thomas said, "To a limited extent, areas of the Common Law have been codified and refined in Statute Law. But of the most part we still rely upon the precedents reaching back hundreds of year for our law governing crimes," *op.cit.*, p.6.

⁹ For examples, see Pound, *op.cit.*, p.705-23.

¹⁰ Thomas, *op.cit.*, p.11.

Hong Kong government may consider establishing a commission to study the feasibility of codifying all the laws of Hong Kong.

A School of Jurisprudential Thought in Hong Kong

In 1934, Hessel Yntema called for "institutes of legal research" to be wholly devoted to "a fundamental and persistent examination of the administration of justice"¹. Later, Roscoe Pound and Arthur Vanderbilt also proposed that modern law should borrow truths from the political, social and economic sciences as it became vast and complex². As a consequence, law centers were established by associating the law schools with experienced lawyers and judges and experts from other related disciplines³. This role for legal research was recognized in Great Britain when the Institute of Advanced Legal Studies was established at the University of London in 1947.

As noted⁴, there is an absence of a school of jurisprudential thought in Hong Kong. This partially contributes to the low prestige of the law. An authoritative law journal should be developed in Hong Kong in order to enhance the intellectual atmosphere. The *Hong Kong Law Journal* has made substantial contributions in the past, and can be upgraded. A research fund can be established to reward international legal scholars who contribute to the localized jurisprudence in Hong Kong. Although, in the late 1970's, there was concern about the legal complexities in Hong Kong after 1997⁵, it is no coincidence that this issue was first raised in an article published in London in 1980 rather than in Hong Kong⁶. It is also no coincidence that the Law Society of Hong Kong instructed an English academic, Professor William Wade, Q.C., to prepare their

¹ Julius Stone, Law and the Social Sciences in the Second Half Century (Minneapolis, 1966), p.22.

² *Ibid.*

³ *Ibid.*

⁴ *Supra*, p.85.

⁵ 'The Background to the Negotiations', in A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong.

⁶ Alan Williams, 'Hong Kong: 1997 and After', (1980) Vol.77 No.35 The Law Society's Gazette 964-6.

opinion on the Draft Basic Law of Hong Kong¹.

For the Common Law judicial system to survive after 30th June, 1997, a number of changes are necessary. A local school of jurisprudence should be developed, research on the localization of Common Law should be extended, academic leadership should be promoted, and, more important, a theoretical framework for the local legal system should be built. There should be a locally developed jurisprudence for the reference of the judiciary. These changes are necessary to balance the ideological approach of the bureaucrats from mainland China.

An institute, similar to the Institute of Advanced Legal Studies, can be established in Hong Kong, and world class legal scholars should be recruited to the faculties of higher educational institutions. The School of Oriental and African Studies has a greater collection of Chinese legal materials than all libraries in Hong Kong combined. The Hong Kong government might wish to consider financing such research in Hong Kong, and the long term benefits of requiring a well developed local jurisprudence despite the short term financial burden associated with its development.

F. Basic Legal Rights in Hong Kong

Under the socialist legal system in China, the rights of the people cannot be taken for granted as they can only be provided by laws or by the state in order to fulfill the state's ideology of class struggle and people's democratic dictatorship². For the localized Common Law system to operate successfully under the Basic Law of Hong Kong, some changes are now necessary to protect the basic legal rights of the population.

The Draft Basic Law of the Hong Kong Special Administrative Region provides that the International Covenant on Civil and Political Rights and the International Covenant

¹ Letter from Professor William Wade dated 2nd September, 1988.

² Chang Hsin, 'The Influence of Chinese Legal Perceptions on the Basic Law', (1988) 23:2 *Ming Pao Monthly* 33-6; Chapter II, Constitution of the People's Republic of China, 1982.

on Economic, Social and Cultural Rights shall be implemented through legislation by the region¹. As such, these covenants have no constitutional effect, and judicial review of legislation which contravenes these covenants is almost impossible². Article 26 of the Draft Basic Law provides certain fundamental freedoms to the people of the Hong Kong Special Administrative Region. But, Article 39 of the same draft provides that freedoms of speech, the press, assembly and religion may be restricted when necessary to maintain national security, public order, public health and morals. It is evident that the Draft Basic Law provides legal authority for the Legislative Council of the Hong Kong Special Administrative Region³ to act arbitrarily without the supervision of a democratic government. As Nihal Jayawickrama put it:

"it [*the Basic Law Drafting Committee*] has attempted to transplant in Hong Kong the non-enforceable principles of state policy contained in a political document of a socialist state [*The Constitution of the People's Republic of China*] marching under strict regimentation towards the ideological goal of communism"⁴.

Great Britain is a signatory state to both the above covenants, and they are applicable to Hong Kong subject to certain expressed reservations⁵. However, the provisions of these two covenants have never been incorporated into the constitutional law of Hong Kong through amendment to the Letters Patent or Royal Instructions, nor have these covenants been incorporated as the laws of Hong Kong. They are observed

¹ Article 38.

² Albert Chen, 'A disappointing draft of Hong Kong's bill of rights', (1987) 17 Hong Kong Law Journal 135-6. Also see Nihal Jayawickrama, 'The case for a Hongkong bill of rights', Far Eastern Economic Review, 18th February, 1988, p.28.

³ Annex II of the draft.

⁴ 'Human Rights in the Draft Basic Law', (1988) 18 Hong Kong Law Journal 394.

⁵ Nihal Jayawickrama, 'Hong Kong and the International Protection of Human Rights', in Raymond Wacks (ed.), Civil Liberties in Hong Kong (Hong Kong, 1988), p.38-9; Albert Chen and Johannes Chan, Human Rights and the Rule of Law - The Challenges of Hong Kong's Transition [in Chinese] (Hong Kong, 1987), p.64-8.

by convention and, arguably, by domestic reception of customary international law¹. The general rule is that subscription to any international covenants is regarded at Common Law as giving rise to a moral, rather than strictly legal obligation², although the court takes these covenants into account in interpreting a statute as it is presumed that statutes should not conflict with treaties³. Only a signatory state to the above covenants, and not an aggrieved individual, can file a complaint of a violation of the covenants to the Human Rights Committee of the United Nations unless the state adopts the protocol on direct application⁴.

Under the auspices of the International Covenant on Civil and Political Rights, a signatory country must make regular reports. During the hearings on 3rd and 4th November, 1988 concerning the report on Hong Kong, the Human Rights Committee of the United Nations sharply criticized the British government for lack of direct elections in Hong Kong, excessive police powers, restrictions on freedom of press, and film censorship⁵. It should be noted that after 30th June, 1997, there will be no mechanism for continued monitoring of this covenant by the United Nations in Hong Kong as the People's Republic of China is not a signatory state to this covenant.

"The rights and freedoms as provided for by the laws previously in force in Hong Kong" in the 1984 Sino-British Joint Declaration are less than impressive⁶. Although the Joint Declaration provides the democratic right to freedom of speech, of the press, of assembly, and of association⁷, it is uncertain whether all peaceful organizations can

¹ W.S. Clarke, 'Messrs Wong and Ng and the Universal Declaration of Human Rights, (1985) 15 Hong Kong Law Journal 139-41.

² Norman Anderson, Liberty, Law and Justice (London, 1978), p.66-7.

³ *R v Secretary of State for Home Affairs, ex parte Bhajan Singh* [1976] Q.B. 198-207.

⁴ Great Britain did not sign the Optional Protocol to the covenant which would allow individuals to file direct complaints. See Jayawickrama, *op.cit.*, p.34; Chen and Chan, *op.cit.*, p.66.

⁵ David Porter, 'A blast from Geneva', Far Eastern Economic Review, 24th November, 1988, p.26-7.

⁶ Paragraph I, Section XIII, Annex I. For detailed discussions, see Wacks *op.cit.*

⁷ The question still remains how they are to be interpreted and what they mean in practice. See Paragraph I, Section XIII, Annex I. Also see Article 35, Constitution of the People's Republic of China, 1982.

survive after 30th June, 1997¹. The restrictions on fundamental rights provided by Article 39 of the Draft Basic Law do not contravene the Joint-Declaration nor the laws currently in force in Hong Kong.

Since the signing of the Joint-Declaration, the Government of Hong Kong has placed further restrictions on the existing limited civil liberties in Hong Kong under the guise of maintaining stability². Freedom of speech and freedom of the press have diminished in Hong Kong³. Such measures have set an undesirable precedent for the government of the Hong Kong Special Administrative Region to follow.

The localized Common Law of Hong Kong can fill in the gaps as to what has been absent in Hong Kong in order to prove its effectiveness. Some of the archaic features of Common Law, which tolerate the abuse of police power can be expressly excluded by the localized Common Law of Hong Kong. For example, illegally obtained evidence is admissible at Common Law⁴. Most Common Law countries, e.g. the United States of America, have abandoned such practices⁵, and, to a degree, Great Britain has followed the same path⁶.

Both the present Laws of Hong Kong and the Basic Law of Hong Kong should incorporate provisions against retroactive legislation. Otherwise, judicial independence cannot operate and the law cannot be certain. The War Damage Act, 1965, was passed

¹ The Societies Ordinance provides that every society in Hong Kong is required to be registered. Otherwise, it is unlawful. The pro-Nationalist party has been denied registration. A society is normally not allowed to be registered unless the application is reviewed by the Special Branch of the Royal Hong Kong Police (The Commissioner of Police is also the Registrar of Societies). According to Dr. Kar-Ping Shum, President of the Hong Kong Mathematical Society (1986-87), he was interviewed by agents of the Special Branch when the Society applied for registration.

² The Hong Kong government, however, has repealed the controversial S.27 of the Public Order (Amendment) Ordinance, 1987, in January, 1989, under pressure at home and abroad. See Chris Pomery, 'Censorship: opening up, clamping down', *Far Eastern Economic Review*, 7th April, 1988, p.79; Porter, *op.cit.*, p.26-7.

³ *Supra*, p.94.

⁴ *Kuruma, Son of Kanui v The Queen* [1955] A.C. 197.

⁵ *Collidge v New Hampshire*, 1964.

⁶ Section 78, Police and Criminal Evidence Act, 1984.

by the British Parliament to reverse a judicial decision of the House of Lords¹ with retroactive effects. Had there been a written constitution in Great Britain guaranteeing the existence of certain rights, the reversal of judicial decisions by legislative process would have had to pass a judicial review.

The Common Law doctrine of Crown privilege of withholding documents or refusal to answer any questions in judicial proceedings on the ground that disclosure or answer would be injurious to public interest has established undesirable precedents for Hong Kong², although the courts have residual power to inspect documents privately in order to determine whether the interests of the parties to proceedings and unfettered administration of justice should be outweighed³. The *ratio decidendi* for Crown privilege is not very clear⁴. Although there are exceptions to the rule, the authority of the Hong Kong government has seldom been challenged in courts⁵. Therefore, the extent of abuse of Crown privilege in Hong Kong is difficult to measure. The localized Common Law of Hong Kong can clearly set out provisions to protect the interests of the state and the civil liberties of the individual as Crown privilege will become State privilege⁶.

G. Conclusion

The Common Law judicial system has the support of the Chinese population of Hong Kong for its continued operation after 30th June, 1997. During the transitional period prior to that date, corrective measures through mass education should be taken to enhance its spirit among the Chinese population. The confidence of the Chinese population in the Common Law judicial system should be complemented by their

¹ *Burmah Oil Co. v Lord Advocate* [1965] A.C. 75; Also see deSmith, *op.cit.*, p.34.

² See *Duncan v Cammell, Laird & Co.*, [1942] A.C. 624; *Ellis v Home Office* [1953] Q.B. 135.

³ *Conway v Rimmer* [1968] A.C. 910.

⁴ See deSmith, *op.cit.*, p.639-40.

⁵ See the few cases in which Crown privilege was challenged in Peter Wesley-Smith, Vol.II, Constitutional and Administrative Law in Hong Kong (Hong Kong, 1988), p.296-7.

⁶ See also "executive acts" under Article 18 of the Draft Basic Law.

enthusiasm for its successful operation.

The judicial development of the Common Law system depends very much on the present Hong Kong government. If a strong legal framework and a healthy localized Common Law are established prior to 1st July, 1997, it will at least not be easily meddled with by the executive branch of government in the Hong Kong Special Administrative Region. Conversely, if the present legal framework and Common Law continue after China resumes her sovereignty, opportunities for interference will undoubtedly arise.

The Basic Law of Hong Kong is part of the implementation of the 1984 Sino-British Joint Declaration. It is an important factor for the successful operation of the Common Law judicial system after 30th June, 1997. Much will depend on the resolve of the Beijing government to implement the declaration. The document of the Basic Law will serve as a barometer for the future of the Common Law in Hong Kong. Regardless of what the Basic Law will guarantee the people of Hong Kong, mutual trust becomes the decisive factor. As *The Economist* remarked:

"Everybody knows that a written constitution can be violated. But the sincerity and understanding that China shows in drafting the Basic Law is the best measure Hongkong people have of how much confidence they can reasonably have in the future of their capitalist economy and way of life"¹.

The Draft Basic Law seems to be the best document which the Beijing government can reasonably offer the Chinese population of Hong Kong within its power under the Chinese Constitution. The Beijing government is already running a risk that its citizens in the Chinese mainland would demand similar rights. Although some of the provisions of the draft contradict the spirit of the Common Law, they are nevertheless in harmony with the Joint Declaration. From the outset, the "high degree of autonomy"

¹ 5th November, 1988, p.22.

provided by the Joint Declaration¹ to the Hong Kong Special Administration Region depends on how the Chinese Constitution is interpreted². Under the Joint-Declaration, the Westminster government expressly agreed that the Basic Law cannot contravene the Chinese Constitution³. The People's Republic of China has the exclusive right to interpret its Constitution.

¹ Section 3(2) and Paragraph II, Section I, Annex I.

² *Supra*, p.211n, p.212, and p.218.

³ Paragraph I, Section I, Annex I.

IX. Conclusion and the Future of Common Law in Hong Kong

A. Conclusion

Introduction

This research has discussed the methodology of measuring the attitudes and values of the Common Law judicial system. The purpose is to analyse the extent to which Common Law has taken root in Hong Kong, i.e. how successful has Common Law been transplanted to a Chinese society. A comparison of the Common Law attitudes and values among the Chinese population of Hong Kong, the Chinese members of the legal profession in Hong Kong, and the English population has been conducted. Similarities and differences among these population groups were analysed. The results show that Common Law has established itself in Hong Kong to a considerable extent.

Research Issues

I. Cultural Factor

This research discovered that the influence of traditional Chinese attitudes towards dispute settlement has diminished in Hong Kong. Survey results indicate overwhelming insistence on legal rights and resort to the courts to settle disputes by the Chinese population. This research explains the increase in the use of the courts to settle disputes by the Chinese population of Hong Kong in the official statistics and confirms an earlier study that Chinese people in Taiwan would resort to courts when the system improves. The colonization of Hong Kong has transformed it into an industrial-based economy. This has contributed to the diminishing of family and patriarchal authority and to the Westernization of the Chinese population.

The cross-cultural comparison found an unexpectedly small difference in acceptance of Common Law between the Chinese population of Hong Kong and the

English population of Norwich. The perceptions of the two population groups were essentially comparable, i.e. a margin of less than ten per cent, in regard to individual and legal rights, judicial independence, the adversary system and independent legal profession, the jury system, and the right of silence and presumption of innocence. A wider margin was revealed with regard to the rule of law. The findings are significant in that all these concepts are different in traditional Chinese legal culture.

This research revealed that Chinese traditionalism does not affect the overall acceptance of Common Law values. According to the demographic analysis, culture was a variable with an impact only in the respondents' attitude towards respecting others' legal rights and using secret torture by police in investigating crimes.

Wider margins resulted in the perceptions between the Chinese population of Hong Kong and the Chinese members of the legal profession with regard to individual and legal rights, the rule of law, judicial independence, and the right of silence and presumption of innocence. Narrower margins were found with regard to the adversary system and independent legal profession and jury system.

This research showed that the acceptance rates of the Common Law values among the legal profession, English population, and Chinese population samples are eighty, seventy, and sixty-one per cent respectively. The legal profession sample were expected to have a higher level of acceptance of Common Law values than other population groups due to education and livelihood. As predicted, the acceptance of the Common Law values by the English population sample falls between the legal profession and Chinese population samples. It is, however, unexpected that the difference in overall acceptance of Common Law values between the Chinese population and English population samples is not significant with a clear majority of the Chinese population accepting these values.

This research discovered that over ninety-three per cent (an overwhelming majority) of the Chinese population of Hong Kong want the present Common Law

system maintained whilst only eighty per cent and fifty-two per cent of the Chinese members of the legal profession and the English population of Norwich share a similar opinion. The Chinese population do not have an opportunity, like the English population, to look at alternatives. The present Common Law system is their best choice, and there is no evidence that traditional Chinese culture is a barrier for their acceptance of the Common Law culture.

II. Rule of Law

Although the concept of the rule of law is accepted by the Chinese population of Hong Kong with a clear majority, it is surprising to find a higher proportion of the legal profession sample than the Chinese population sample agreed that the police should be able to use secret torture as a means to investigate crimes. The proportions of the legal profession and Chinese population samples agreeing to such practice are thirty-seven per cent and thirty-four per cent respectively, a substantial minority. Nevertheless only thirteen per cent of the English population sample agreed to such practice. Of some relevance to this is that, although a majority of the Chinese population sample accepted the right of silence and presumption of innocence, the majority is only marginal.

The present judiciary in Hong Kong is more ready to exclude statements made by the accused by reason of unlawfully or unfairly obtained confessions. The majority of the judges in Hong Kong are expatriate, and most will return to their home country prior to 1st July, 1997. They will be more likely to be replaced by the Chinese members of the legal profession. A substantial minority of the legal profession sample expressed their tolerance of the use of secret torture by the police in investigating crimes. This should not be taken lightly.

Tolerance of the use of torture by police in Hong Kong is at an alarming level. It is a dimension which no right thinking member of a civilized society can tolerate. There is no guarantee that such practice will not be legitimated after 31st June,

1997. The reality is that it is a thorny issue which has to be tackled.

This research showed that there is a concern for economic barriers to obtaining legal services. Over forty-seven per cent of the legal profession sample agreed that legal fees in Hong Kong are too expensive. This confirms the overwhelming view of the Chinese population that legal fees are expensive. When members of a professional group consider their fees are too expensive, such fees are indeed unreasonable. The dilemma is that there is a shortage of lawyers in Hong Kong, and the shortage is expected to be more grave in 1997. Alternative means, e.g. through expanding legal aid, should be explored to rectify this situation.

III. Administration of Justice

This research demonstrated that there is a low acceptance of the concept of judicial independence by the Chinese population of Hong Kong. The English population, however, are not much higher. The Chinese members of the legal profession accept this concept with an overwhelming majority. This shows that the concept of the separation of power is a concept alien to most laymen.

It was also discovered that there was cynicism among the Chinese members of the legal profession towards the judiciary and the Crown counsels, the majority of whom are expatriate. Over forty-six per cent of the sample believed that judges treat English more favourably when making judicial decisions, and over thirty-four per cent of the sample believed that the Crown prosecutors often give favourable treatment to English over Chinese. Lawyers regard Crown prosecutors as their peers, and they share a mutual understanding more so than with judges.

The majority of the legal profession sample believed that the Crown prosecutors do not cooperate with the defense to discover the truth of the case and reveal evidence in favour of the defendant, but a substantial minority believed that the Crown prosecutors are under pressure to secure a conviction without considering the ethical and moral aspects of the case. The perceptions of the Chinese members

of the legal profession cannot be ignored as they have first-hand experience and knowledge of the system. It is fortunate that the Chinese population who do not have first-hand experience and knowledge do not share such a view.

The attitude towards the judiciary by the Chinese population is not much different than the Chinese members of the legal profession. These two population groups have far more negative attitudes towards the judiciary in Hong Kong than the English population of Norwich have towards the judiciary in England. Nevertheless, the Chinese population express their strong desire to have the Common Law system maintained after 1st July, 1997. This suggests that it is the human component in the judicial system which is a subject matter of concern.

Amidst the resumption of sovereignty over Hong Kong by the People's Republic of China, the morale of the expatriate judges and Crown counsel is bound to be affected. The transitional period has eight more years to run. This research is the only investigation into the attitudes of the legal profession towards the administration of justice in Hong Kong to date. An area of concern has been raised. It would be conducive to the judicial development of Hong Kong to study this matter further with a view to improvement if necessary.

IV. Human Resources

This research has discovered that a substantial number of the Chinese members of the legal profession will leave Hong Kong prior to 1st July, 1997¹. This raises a serious concern about the future of Common Law in Hong Kong as the quality of law students in Hong Kong is declining amidst the uncertainty of their future role. The quality of the judiciary, the successful operation of the adversary system and independent legal profession, and the integrity of the Common Law judicial system in Hong Kong rely on the human components.

¹ Appendix E-8.

The Chinese members of the legal profession who will depart from Hong Kong prior to 1st July, 1997 are most unlikely to have any confidence in the new government nor to agree on ideological terms with the Beijing government. Those thirty-seven per cent of the the legal profession sample who indicated positively that they will stay in Hong Kong after 30th June, 1997, are likely to have confidence in the future of Hong Kong, to be in line with the Beijing government, or stay there to defend the principles and ideals for the Chinese population. It should be noted that twenty-three per cent of the legal profession sample indicated positively that they will leave Hong Kong prior to 1997, and another forty per cent who had no opinion are likely to be uncertain about the future of Hong Kong and take a "wait and see" attitude¹.

The following table indicates that the Chinese members of the legal profession who will stay in Hong Kong after 30th June, 1997, are stronger believers in Common Law doctrines than those who will not. This finding indicates that those who will stay in Hong Kong are more serious about their role as Common Law lawyers.

Table 9: Comparison of Common Law Values among Legal Profession Members

Concepts	Leave H.K. prior 7/97	Wait and See	Remain H.K. after 6/97
Individual and Legal Rights	91.90	91.80	91.92
Rule of Law	64.52	77.20	78.48
Judicial Independence	75.94	85.29	87.43
Adversary System and Legal Profession	87.00	75.80	84.68
Jury System	71.39	74.67	67.33
Presumption of Innocence	65.27	82.34	79.96
Overall Acceptance	76.00	81.19	81.63

It would be the last resort that members of the legal profession would want to emigrate. They have to give up not only the attractive incomes but also have to face competition in a new environment. It is a reality which has to be faced by the present Hong Kong government. This finding raises a serious issue as to the replacement of the expatriate judges and Crown attorneys prior to and after 1st July, 1997.

¹ *Ibid.*

V. Corrective Measures

The demographic and cultural characteristics of the Chinese population sample relating to their acceptance of the Common Law judicial system were also examined. Chi-square tests were used in analysing the data. Level of education is definitely related to the acceptance of the Common Law judicial system in Hong Kong. Level of income was a variable with a significant impact only in the respondents' values towards the exercise of arbitrary power by the police, but it had little impact on the acceptance of the overall Common Law values.

The impact of education is particularly significant in the confidence in the administration of justice, disagreeing with secret torture by police in investigating crimes, judicial independence, and the presumption of innocence. The higher the education level, the higher the rate of acceptance of these Common Law values. This indicates that corrective measures through educational campaigns can be taken to make good the defects.

This research discovered that there is a low level of acceptance of the concept of judicial independence by the Chinese population of Hong Kong. One minor area where there is less acceptance of the Common Law judicial system in Hong Kong is the concept of the right of silence and presumption of innocence. These defects can be corrected by education.

The lack of confidence in the Beijing government by the Chinese population of Hong Kong can be shown from a recent survey which has reported that over thirty per cent desire to emigrate overseas before 1st July, 1997¹. According to recent studies, the core of the middle-class Chinese in Hong Kong will emigrate overseas prior to 1st July, 1997². Another survey has shown that over forty-seven per cent of the Chinese professionals will leave Hong Kong prior to that date³. They are most

¹ Sing Pao Daily, American Edition, 21st March, 1989.

² Asian Magazine (*Yazhou Zhoukan*), 5th February, 1989, p.13-5.

³ Sing Tao Daily, Alberta Edition, 8th & 9th April, 1989.

likely to have a higher level of education and a skill which qualifies them for an immigration visa¹. This research has shown that the better educated sector of the population is the strongest supporter of the Common Law values. As level of education is an important influence on the acceptance of Common Law values, corrective measures through educational campaigns should be taken to strengthen the Common Law values in the Chinese population.

Methodological Issues

The results of this research have a number of implications for future research in the field of legal culture in Hong Kong and in other Common Law jurisdictions. The comparative study of the Chinese population, legal profession, and English samples has revealed a number of patterns which warrant further investigation. The most remarkable result of this research has been the small difference between the Chinese and English samples in their acceptance of the Common Law judicial system. The Chinese population accept this imported legal system with a clear majority.

This research addressed some major methodological issues in measuring the Common Law judicial system which had not been addressed in literature up to this time. These major issues included the design of the measuring instrument and data analysis procedures. This research also has implications for an earlier (and only) article on Hong Kong legal culture² which was not specifically written for a Common Law setting. Some of the results reported in that article are different from the results of this research. A competing explanation offered is the way in which the survey questionnaire was designed.

This research is a pioneering work in measuring the acceptance of a Common Law judicial system. Hong Kong was chosen as a case study because it is on the eve of

¹ *Ibid.*

² H.C. Kuan and S.K. Lau, 'Hong Kong Legal Culture', (1987) 22:6 *Ming Pao Monthly* 3-12.

the resumption of the exercise of sovereignty by the People's Republic of China. Methodological problems in this area can be improved upon. Future research in this area needs to consider the issues of instrument design and data analysis procedures. Further research in Hong Kong is also required on a timely basis prior to 1st July, 1997 and after. Additional research in regard to cross-cultural comparison in other Common Law jurisdictions is essential to the development of this area of research.

Studies should be conducted to examine the respondents' characteristics in their cultural settings. In particular, research should focus on educational and income levels, as well as cultural backgrounds. It is desirable to have this type of research carried out by a team consisting of legal scholars, political scientists, sociologists, economists, educators and experts from other related disciplines. The scope of this thesis is limited by available human and financial resources. It is hoped that this thesis will be merely part of a series of similar studies and that the research herein will provide a useful reference for comparative studies in the future.

Summary

The Common Law experience in Hong Kong is evidence of its supranational adaptability over cultural heritage. The Chinese population of Hong Kong have demonstrated their willingness in accepting a judicial system which they consider as the best and which has brought them economic prosperity and stability.

When Hong Kong was first colonized by the British in 1841, there was resistance to the foreign power by the Chinese population due to their nationalistic feelings. A dual legal system was instituted partly to pacify the Chinese population. This system was shortlived, but Chinese law and custom was recognized as a source of law in Hong Kong until the early 1970s. In the meantime, the Chinese population have gradually accepted the dominance of the Common Law culture while Hong Kong transformed itself into a modern city state. These all have taken place in over one

hundred and fifty years. The economic prosperity in Hong Kong, which the Chinese population enjoy, cannot exist without a sound legal system to protect investors' confidence.

The acceptance of the Common Law culture in Hong Kong does not signal the decline of nationalistic feelings among the Chinese population. Hong Kong has always been a haven for refugees fleeing the Chinese mainland during internal turmoils since its colonization by the British. The Common Law system provides these refugees and their descendants with the type of security which they cannot find elsewhere. Survey results have shown that an overwhelming majority of the Chinese population favour the resumption of the sovereignty of Hong Kong by China, but at the same time they prefer rule by London over rule by Beijing.

As 1st July, 1997 is approaching, the Chinese population of Hong Kong have broken their traditional apathy towards politics. Hong Kong is their last haven unless they can emigrate overseas. The only option the Chinese population has is to ensure that the Common Law judicial system can be maintained for fifty years under the 1984 Sino-British Joint Declaration. Their acceptance of the Common Law judicial system is vital to its successful operation in the Hong Kong Special Administrative Region under the Constitution of the People's Republic of China.

B. The Future of Common Law in Hong Kong

Introduction

On 28th March, 1987, Simon Keswick, of Jardine, Matheson and Company, an influential and powerful Hong Kong trading firm¹, cited the uncertainty of the future of the Common Law system in Hong Kong as the main reason for changing its registration from Hong Kong to Bermuda². The future of the Common Law system of Hong Kong rests with its political system. Maintaining the Common Law judicial system and the economic system cannot lead Hong Kong into prosperity if political confidence is at risk. There is no reason to believe that the Beijing government wishes to expose Hong Kong to such a political risk. In determining the future of the Common Law in Hong Kong, forecasting of political events cannot be ignored.

Forecasting Future Events

The political stability of Hong Kong is determined by the ultimate interests of the various groups struggling to advance their causes. Bruce Bueno de Mesquita developed an "expected utility model of policy analysis" to forecast future political events³. His model required the assistance of experts who have studied particular problems or regions, as their understanding of the facts and judgments are expected to be more accurate than the average person's⁴. The model assumes that policy decisions are "the product of competition among various groups on issues of concern"⁵. It has an overall success rate exceeding ninety per cent in forecasting several important political events,

¹ This former opium trading house is the only firm of 'pre-treaty days' to survive. See Michael Greenberg, British Trade and the Opening of China 1800-1842 (Cambridge, 1951), p.x, 22, 34, and 137.

² The Economist, 31st March, 1984, p.69-70.

³ Forecasting Political Events: The Future of Hong Kong (New Haven, 1985), p.11-54.

⁴ de Mesquita, *op.cit.*, p.13.

⁵ de Mesquita, *op.cit.*, p.85.

including the 1984 Sino-British Joint Declaration¹. In consultation with several experts, the major actors were identified for the model to forecast the political events in the future of Hong Kong². These include the international context, the Chinese government, the Chinese military, Guangdong faction, British government, Hong Kong Association, British traders, Hong Kong local business community, Hong Kong foreign business community, Hong Kong Executive Council members, and the United States of America and other countries. Assigning scores to these actors, the future political events of Hong Kong were forecast³ using mathematical equations⁴.

It is in the interest of the People's Republic of China to maintain the *status quo* of Hong Kong. However, after 30th June, 1997, the present judicial and political systems in Hong Kong will inevitably be shifting towards those in existence in China, at least as a role model. The local politicians and local press, which already have displayed a shift towards the Beijing government, may not wish to contradict its wishes. However, a sound legal system has to be maintained if Hong Kong is to remain as a leading banking and commercial center in the Pacific Rim, and the present system has to be maintained in order to prevent the outflow of capital and human resources.

It has been forecast that the Chinese population of Hong Kong will control the courts⁵. The localization of the judiciary is consistent with the resumption of sovereignty by China⁶. However, this has little meaning when the sovereignty of Hong Kong is China's⁷. The future of the Common Law in Hong Kong depends on how its jurisprudence is interpreted by the courts. There is little doubt that some of the local lawyers, whose ideology is in line with the Beijing government, will have a better chance than those whose reputation rests only on their professionalism as lawyers to be

¹ de Mesquita, *op.cit.*, p.ix and 28.

² de Mesquita, *op.cit.*, p.86.

³ The methodology can be referred to in de Mesquita's book, *op.cit.*

⁴ de Mesquita, *op.cit.*, p.49-54.

⁵ de Mesquita, *op.cit.*, p.140 and p.151-2.

⁶ *Ibid.*

⁷ *Ibid.*

appointed to the judiciary. In democratic Common Law countries, such as in Canada and the United States of America, political favouritism in judicial appointments is not novel, although the appointees are usually under very tight scrutiny by legislatures¹. Research findings in other political cultures have indicated the importance of political ideology as a correlate of difference in judicial decisions². At Common Law, it is not unknown that judicial declaration has been used to enact new law under the guise of expounding existing law, and that the courts can always distinguish the rulings from their predecessors. *A fortiori* the National People's Congress of the People's Republic of China or its Standing Committee which has the authority to interpret or adjudicate on certain laws of the Hong Kong Special Administrative Region³ can hardly be independent from political ideology.

However, much will depend on liberalization within China. If China continues to advance its political goals through the judicial system, the judiciary of Hong Kong will be pressed to follow. It has also been forecast that civil liberties will be eroded as contemplated by the 1984 Sino-British Joint Declaration⁴, although not as severely as in China. The people of Hong Kong will not be freely allowed to criticise the Beijing government. With limited civil liberties, the future function of the judiciary in Hong Kong will be reduced to the level of their counterpart in the Republic of South Africa⁵.

For the Common Law judicial system to be successfully maintained in Hong Kong after 30th June, 1997, the standard of the judicial decisions should be respected, even if not necessarily agreed to, by the Beijing government. Otherwise, the central administration will not have any confidence in the judiciary. This is not very conducive to

¹ For a discussion of the English tradition, see J.A.G. Griffith, The Politics of the Judiciary (London, 1979), p.23-4.

² Glendon Schubert, 'Political Culture and Judicial Ideology', (1977) 9 Comparative Political Studies 363-408; Roger Cotterrell, The Sociology of Law (London, 1984), 228-58; Griffith, *op.cit.*, p.187-216.

³ Articles 62(11) and 67(1) and (4), Constitution of the People's Republic of China, 1982; Articles 16, 17, 169, and 172, Draft Basic Law.

⁴ de Mesquita, *op.cit.*, p.151.

⁵ South Africa, however, has some of the best "legal minds" who have defended civil liberties.

a positive future for Common Law in Hong Kong. The provision to invite judges from other Common Law jurisdictions to sit in the court of final appeal of the Hong Kong Special Administrative Region, as required under the 1984 Sino-British Joint Declaration¹, will not resolve the problem. This practice will undoubtedly hurt the pride of the Chinese unless these judges are of overseas Chinese extraction². These invited judges may be appointed as required by the Court of Final Appeal, whose members will more likely be in line with the Beijing government³. Therefore, it casts doubt on whom will be invited⁴. To forecast the quality of the judicial decisions in Hong Kong after 30th June, 1997, the shortage of qualified counsel in Hong Kong must be taken into consideration. In 1987, there were less than twenty practising Queen's Counsel in Hong Kong, and over half of them were expatriates. It should be noted that even in Great Britain, there is only a very small group of qualified lawyers to select from when making judicial appointments to the High Court or above⁵.

Assuming that the Hong Kong Special Administrative Region has a very high quality judiciary, well respected by the Beijing government, will judicial decisions of general public importance contrary to officially adopted policies be tolerated⁶? The likelihood is small. There is no government which, without risk to its own survival, can afford to allow this to happen⁷.

¹ Section III, Annex I; Article 81, Draft Basic Law.

² Moreover, the only authentic version of the proposed Basic Law will be in Chinese. This makes such practice almost meaningless. See Emily Lau, 'Doubts emerge on degree of real autonomy', Far Eastern Economic Review, 7th April, 1988, p.58; Martin Lee, 'How Much Autonomy?', in William McGurn (ed.), Basic Law, Basic Questions (Hong Kong, 1988), p.51-2.

³ as discussed *ibid*.

⁴ See the case in Malaysia, Suhaini Aznam, 'The king's bench', Far Eastern Economic Review, 23rd June, 1988, p.22; 'The judge in the dock', Far Eastern Economic Review, 30th June, 1988, p.12-3.

⁵ See Griffith, *op.cit.*, p.24. The short list was estimated as small as half a dozen.

⁶ Henry Ehrmann, Comparative Legal Culture (Englewood, 1976), p.136-8.

⁷ See the recent development in Malaysia. 'A judicial shake-up' and 'The tilt of power: Mahathir moves to place parliament over courts', Far Eastern Economic Review, 14th January, 1988, p.27, and 31st March, 1988, p.15-6.

Summary

The future of the Common Law judicial system in Hong Kong depends on the perceptions of the Chinese population of Hong Kong towards it, judicial development prior to 1st July, 1997, and the implementation of the 1984 Sino-British Joint Declaration. The successful implementation of the Joint Declaration will be the direct result of the political developments within China itself, and this can only be forecast. The present Beijing government is endeavouring to modernize the economic and political systems of China. It is, therefore, within the realm of probability that the Common Law judicial system will successfully operate in the Hong Kong Special Administrative Region. In any event, it is possible and vital to improve the perceptions of the Chinese population and to ensure a quality control over judicial development in Hong Kong prior to 1st July, 1997.

Postscript

Introduction

On 21st February, 1989, the Standing Committee of the National People's Congress passed a resolution on the publication of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Draft)*. This is the second draft of the the Basic Law for Hong Kong, and the first time it was passed by such a high level state organ in Beijing¹. In this draft, certain issues over judicial authority and human rights have been improved.

The Jurisdiction of Courts in Hong Kong under the Chinese Constitution

As discussed earlier², the conflict of laws in which the socialist legal system in China will be dominant over the Common Law judicial system in Hong Kong was a concern. Under Article 67(1) and (4) of the Chinese Constitution³, the Standing Committee of the National People's Congress, not the judiciary, has the authority to interpret the Constitution and statutes of the People's Republic of China, including the Basic Law. Accordingly, Article 169 of the first draft provided that the power of interpretation of the Basic Law should be vested in the Standing Committee. Therefore, the power of final judgment vested in the Court of Final Appeal of the Hong Kong Special Administration region can only be qualified⁴.

Article 157 of the second draft appears to have resolved the technicality involving the jurisdiction of the Court of Final Appeal in the region⁵. This article provides a mechanism whereby the Standing Committee "shall authorize the courts of the Hong Kong Special Administrative Region to interpret the provisions of the Basic Law which

¹ The first draft had been endorsed only by the Basic Law Draft Committee for solicitation of opinions.

² *Supra*, p.213.

³ Constitution of the People's Republic of China, 1982.

⁴ *Supra*, p.213.

⁵ *Ibid.*

are within the limits of the autonomy of the Region". The power of the Standing Committee, however, is limited. Under Article 62(11) of the Chinese Constitution, all decisions of the Standing Committee which are inappropriate can be altered or annuled by the National People's Congress. The National People's Congress will more likely take political considerations into account in exercising its "legislative interpretation" power, and the outcome will very much depend on the political developments.

Administrative Control of Judicial Process under the Draft Basic Law

As discussed earlier¹, Articles 16 and 172 of the first draft empowers the Standing Committee to adjudicate, at any time, on any law of the Hong Kong Special Administrative Region, and to return it for reconsideration or to revoke it if it is not in conformity with the Basic Law or legal procedures. The Standing Committee can then influence any stage of the legal proceedings even though the jurisdiction of the courts of the region is not ousted².

Articles 17 and 159 of the new draft appears to be the best effort the Beijing government can offer to the people of Hong Kong without giving up national unity. Under this draft, the Beijing government can intervene in the law of the region only if it is "not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or relationship between the Central Authorities and the Region", and not on any law of the region if it is not in conformity with the Basic Law or legal procedures as provided by Articles 16 and 172 of the first draft³.

Article 19 of the second draft purports to correct the ambiguity of the wording "defence and foreign affairs, which are the responsibility of the Central People's Government"⁴ in Article 18 of the first draft by transplanting the Common Law doctrines of Acts of State and Facts of State. However the Standing Committee failed to adopt

¹ *Supra*, p.214.

² The cessation has no retroactive effect.

³ *Supra*, p.214.

⁴ *Supra*, p.215.

this Article by two votes short of a two-thirds majority¹.

The Question of Judicial Interpretation

As discussed², there was concern as to the extent which the laws of the China can be applied to the Hong Kong Special Administrative Region. Under Article 17 of the first draft, the wording "defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity" has not been defined. It can be wide enough to cover any ground the Beijing government thinks fit.

Article 18 of the second draft dispels the fears of some in Hong Kong as to the meaning of the above wording in the first draft³. This phrase was replaced by a list of national laws stated in Annex III of the new draft. Annex III merely concerns matters such as national anthem, territorial sea, nationality, and diplomatic privileges and immunities. However, under the new draft, the Standing Committee "may make additions to or deletions from the list of laws in Annex III". Much will depend on political developments in China.

Democracy in Hong Kong

As discussed⁴, there was concern about the future of democracy in Hong Kong when it becomes a special administrative region. A democratically elected legislature is an important check and balance for judicial independence. The Beijing government, however, has repeatedly stated that full democracy is not conducive to the political development of Hong Kong.

Article 67 of the new draft provides that "the ultimate aim shall be the selection of all the members of the Legislative Council through general election". On the surface, this is an improvement over the first draft which provides that the "Legislative Council of

¹ Footnote of this Article.

² *Supra*, p.216.

³ *Ibid.*

⁴ *Supra*, p.226.

the Hong Kong Special Administrative Region shall be constituted by a combination of direct and indirect elections"¹. However, under Annex II of the new draft, the first four terms of the Legislative Council are still constituted by a combination of direct and indirect elections. Therefore, a direct election is not possible until 2011². This will materialize only if a referendum favouring a directly elected Legislative Council is endorsed by the Legislative Council, consented to by the Chief Executive, approved by the Standing Committee of the National People's Congress, and voted for by more than thirty per cent of eligible voters³. The flaw is that there is no guarantee of a direct election.

Basic Legal Rights in Hong Kong

Articles 27 and 39 of the new draft are also improvements over Articles 26, 38 and 39 of the previous draft in protecting basic rights. Under the first draft, rights and freedoms can be restricted when necessary to maintain national security, public order, public health and morals. Under the new draft, the restrictions imposed against the rights and freedoms cannot contravene the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international labour conventions as applied to Hong Kong. It should be noted that the application of these covenants in Hong Kong at present is, however, not satisfactory⁴. The future development in Hong Kong with regard to the protection of basic rights prior to 1st July, 1997, has yet to be seen.

Conclusion

The second draft of the Basic Law is an indication that the Beijing government wishes to maintain the Common Law judicial system in Hong Kong within the ambit of its

¹ *Ibid.*

² Article 68 of the new draft.

³ Section 3, Annex II of the new draft.

⁴ *Supra*, p.237.

constitutional authority. As discussed in Chapter VIII, the first draft of the Basic Law is in compliance with the 1984 Sino-British Joint Declaration. The document of the Basic Law very much depends on how the Chinese Constitution is interpreted. It has provided Hong Kong with a greater degree of autonomy than provided by the first draft. The concessions given to the people of Hong Kong by the Beijing government may be more than reasonably expected.

Bibliography

- Agassi, Joseph, and Jarvie, I.C., *Hong Kong: A Society in Transition* (London: Routledge and Kegan Paul, 1969).
- Alabaster, Ernest, 'Notes on Chinese Law and Practice Preceding Revision', (1906) 37 *Journal of the North China Branch of the Royal Asiatic Society* 87.
- Albrecht, Stan, and Green, Miles, 'Attitudes toward the Police and the Larger Attitude Complex', (1977) 15 *Criminology* 77.
- Allott, Antony, *Essays in African Law* (London: Butterworths, 1960).
The Limits of Law (London: Butterworths, 1980).
- Anderson, J.Norman D. (ed.), *Changing Law in Developing Countries* (London: Allen and Unwin, 1963).
Liberty, Law and Justice (London: Stevens and Sons, 1978).
- Auerbach, Jerold, *Justice without Law* (New York: Oxford University Press, 1984).
- Aznam, Suhaini, 'A divided judgment', *Far Eastern Economic Review*, 20th October, 1988, p.14-5.
'A judicial shake-up', *Far Eastern Economic Review*, 14th January, 1988, p.27.
'Judgement week', *Far Eastern Economic Review*, 18th August, 1988, p.22.
'Judges in the firing line', *Far Eastern Economic Review*, 14th July, 1988, p.10-1.
'No more options', *Far Eastern Economic Review*, 4th August, 1988, p.17.
'Sending off the umpire', *Far Eastern Economic Review*, 9th June, 1988, p.12-3.
'The judge in the dock', *Far Eastern Economic Review*, 30th June, 1988, p.12-3.
'The king's bench', *Far Eastern Economic Review*, 23rd June, 1988, p.22.
'The tile of power: Mahathir moves to place parliament over courts', *Far Eastern Economic Review*, 31st March, 1988, p.15-6.
- Baker, Hugh, D.R., 'Life in the Cities: The Emergence of Hong Kong Man', (1983) 95 *The China Quarterly* 469-79.
- Baker, J.H., *An Introduction to English Legal History* (London: Butterworths, 1st edn., 1971).
- Baker, Philip, 'Theories of Legislation, Codification, and Interpretation in China and the West', *The Symposium on Chinese and European Concepts of Law* (Hong Kong, 1986).
- Balakrishnan, N., 'Fatal flaws, legal lacuna', *Far Eastern Economic Review*, 15th December, 1988, p.14-6.
- Barnes, Eric, 'The Independence of the Judiciary in Hong Kong', (1976) 6 *Hong Kong Law Journal* 22n.
- Barrett, Jill, 'The relationship between the two legal systems', *Seminar on the Draft*

- Basic Law for Hong Kong* (London: School of Oriental and African Studies, 15th June, 1988).
- Basic Law, The Consultative Committee for the, *The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (For Solicitation of Opinions)*, 1988.
- Beijing Review, *China & The World* (Beijing, 1985).
- Black, Donald, *The Behavior of Law* (New York: Academic Press, 1976).
- Blackstone, William, *Commentaries* (Chicago: University of Chicago Press, Reprint of 1st edn. dated 1765-79).
- Bodde, Derk, and Morris, Clarence, *Law in Imperial China* (Cambridge, Mass.: Harvard University Press, 1967).
- Bodde, Derk, *Essays on Chinese Civilization* (Princeton: Princeton University Press, 1981).
'Authority of Law in Ancient China', (1954) *Journal of American Oriental Society* (Supplement No. 17) 54.
- Bokhary, Kemal, 'Judicial Notice and Other Fact of Life in Hong Kong', (1975) 5 *Hong Kong Law Journal* 178.
- Bonavia, David, *Hong Kong 1997* (Hong Kong: South China Morning Post, 1983).
- Boot, John, and Cox, Edwin, *Statistical Analysis for Managerial Decisions* (New Delhi: Tata McGraw-Hill, 2nd edn., 1979).
- Bowring, Philip, 'Ear to Peking, an eye on Whitehall', *Far Eastern Economic Review*, 7th April, 1988, p.54.
'Roughing up justice', *Far Eastern Economic Review*, 3rd March, 1988, p.22-3.
'Start shredding the news', *Far Eastern Economic Review*, 26th March, 1987, p.12.
'The drowning pool: The bizarre death of a leading lawyer appears to have links with the investigation into the Carrrian empire', *Far Eastern Economic Review*, 26th April, 1984, p.20-1.
'The politics of greed: Hongkong lawyers play with fire to preserve the status quo', *Far Eastern Economic Review*, 8th December, 1988, p.7 and
- Braddell, Roland St. John, *The Law of the Straits Settlements* (Oxford: Oxford University Press, 3rd edn., 1982).
- Brantingham, Paul and Patricia, *Patterns in Crime* (New York: MacMillan, 1984).
- Brown, Neville, and Jacobs, Francis, *The Court of Justice of the European Communities* (London: Sweet and Maxwell, 1977).
- Bueno de Mesquita, Brice, *Forecasting Political Events: The Future of Hong Kong* (New Haven: Yale University Press, 1985).
- Bünger, Karl, 'The Punishment of Lunatics and Negligents According to Classical Chinese Law', (1950) 9:22 *Studia Serica* 1.

- Burton, Charles, *Elite Behaviour in the People's Republic of China and the Process of British Hong Kong's Reversion to Chinese Sovereignty* (Edmonton: Unpublished paper, 1988).
- Buxbaum, David, *Traditional and Modern Legal Institutions in Asia and Africa* (Leiden: E.J. Brill, 1967).
- Campbell, Colin, 'Computers: A panacea or a deadly weapon?', (1983) *Papers of the 7th Commonwealth Law Conference* 195.
- Carlen, Pat, 'The Staging of Magistrates' Justice', (1976) 16 *British Journal of Criminology* 48-55.
- Chan, Albert, S.J., *The Glory and Fall of the Ming Dynasty* (Norman: University of Oklahoma Press, 1982).
- Chan, Janet, and Hagan, John, *Law and the Chinese in Canada: A Case Study in Ethnic Perceptions of the Law* (Toronto: University of Toronto Centre of Criminology, 1982).
- Chan, Jenkin Shiu-fan, 'The Role of Lawyers in the Chinese Legal System', (1983) 13 *Hong Kong Law Journal* 157-73.
- Chang, Yu Chuang, 'The Chinese Judiciary', (1917) 2 *The Chinese Social and Political Science Review* 71.
- Chen, Albert, 'A disappointing draft of Hong Kong's bill of rights', (1987) 17 *Hong Kong Law Journal* 135-6.
 'Editorial', (1988) 18 *Hong Kong Law Journal* 364-9.
 'Legal aid in Hong Kong: the way ahead', (1988) 18 *Hong Kong Law Journal* 1-2.
 'Some Reflections on the 'Film Censorship Affair'', (1987) 17 *Hong Kong Law Journal* 356n and 358.
 'The Developing Legal System in China', (1983) 13 *Hong Kong Law Journal* 307-10.
 '1997: The Language of the Law in Hong Kong', (1985) 15 *Hong Kong Law Journal* 24-5.
- Chen, Albert, and Chan, Johannes, *Human Rights and the Rule of Law - The Challenges of Hong Kong's Transition* (Hong Kong: Wide Angle Press, in Chinese, 1987).
- Chen, Chang Fu-Mei, 'On Analogy in Ching Law', (1970) 30 *Harvard Journal of Asiatic Studies* 212.
- Cheng, Chi-Yu, 'The Chinese Theory of Criminal Law', (1948) 39 *Journal of Criminal Law* 463.
- Cheng, Joseph K.H., *Chinese Law in Transition: The Late Ching Law Reform, 1901-1911* (New York: unpublished Ph.D. thesis, Brown University, 1976).
- Cheng, Joseph Y.S. (ed.), *Hong Kong: In Search of a Future* (Hong Kong: Oxford University Press, 1984).
- Cheshire, G.C., Fifoot, C.H.S., and Furmston, M.P., *Law of Contract* (London: Butterworths, M.P. Furmston (ed.), 11th edn., 1976).

- Chien, Mu, *Traditional Government in Imperial China* (Hong Kong: Chinese University Press, 1982).
- Chiu, Hungdah, 'The 1984 Sino-British Agreement on Hong Kong and Its Implications on China's Unification', (1985) 21 *Issues and Studies* 13-20.
- Chu, Chen-lou, 'On the Shame Orientation of the Chinese', *Symposium on the Character of the Chinese: An Interdisciplinary Approach* (Taipei: Academic Sinica, 1971)
- Chü, Tung-tsu, *Law and Society in Traditional China* (Paris: Mouton & Co., 1965).
Local Government in China under the Ching (Cambridge, Mass.: Harvard University Press, 1962).
 'The Qing Law: An Analysis of Continuity and Change', (1980) 3 *Social Science in China* 112-113.
- Chung, Rosemarie Lu-cee, *A Study of the 1925-6 Canton-Hong Kong Strike and Boycott* (Hong Kong: unpublished M.A. thesis, University of Hong Kong, 1969).
- City of Norwich, *Norwich City Labour Market Information* (Norwich, 1988).
- Clarke, W.S., 'Editorial', (1987) 17 *Hong Kong Law Journal* 287.
 'Hong Kong under the Chinese Constitution', (1984) 14 *Hong Kong Law Journal* 77-9.
 'Messrs Wong and Ng and the Universal Declaration of Human Rights, (1985) 15 *Hong Kong Law Journal* 139-41.
 'Notes of Cases', (1984) 14 *Hong Kong Law Journal* 239.
 'Overseas barristers and the independence of the Bar', (1986) 16 *Hong Kong Law Journal* 1.
- Cohen, Jerome, *Contemporary Chinese Law: Research Problems and Perspectives* (Cambridge, Mass.: Harvard University Press, 1970).
- Cohen, Jerome, Edwards, R., and Chen, Chang Fu-Mei (ed.), *Essays on China's Legal Tradition* (Princeton: Princeton University Press, 1980).
 'Chinese Mediation on the Eve of Modernization', (1966) 54 *California Law Review* 1201 and 1207.
- Collins, Charles, *Public Administration in Hong Kong* (London: Royal Institute of International Affairs, 1952).
- Constitution of the People's Republic of China 1982.*
- Cook, John, 'Chinese Conveyancing', (1902) 36 *American Law Review* 825-39.
- Cotterrell, Roger, *The Sociology of Law* (London: Butterworths, 1984).
- Cragg, Stephen J., 'Police misconduct litigation in the U.S.A.', (1987) Vol.84 No.23 *The Law Society's Gazette* 1801.
- Cronbach, Lee J., 'Coefficient Alpha and the Internal Structure of Tests', (1951) 16 *Psychometrika* 297-334.
- Cunliffe, Stella Y., and Goldstein, H., 'Ethical Aspects of Survey Research', (1979) 28 *Applied Statistics* 219-22.

- Davies, Derek, 'The apple of Peking's eye', *Far Eastern Economic Review*, 7th April, 1988, p.51.
- Davies, S., 'One Brand of Politics Rekindled', (1977) 7 *Hong Kong Law Journal* 56-7.
- deBarry, William, *The Plan for the Prince*, (New York: unpublished Ph.D. thesis, Columbia University, 1953).
- Delfs, Robert, 'Talking out of school', *Far Eastern Economic Review*, 16th June, 1988, p.18.
- Deming, W. Edwards, and Stephan, Frederick F., 'On a Least Squares Adjustment of a Sampled Frequency Table when the Expected Marginal Totals are Known', (1940) 11 *Annals of Mathematical Statistics* 427-44.
- deSmith, Stanley A., *Constitutional and Administrative Law* (London: Penguin Books, Harry Street and Rodney Brazier (ed.), 5th edn., 1985).
- deVaus, D.A., *Surveys in Social Research* (London: Allen and Unwin, 1986).
- Dewey, John, 'Logical Method of Law', (1924) 10 *Cornell Law Quarterly* 17.
- Dias, R.W.M., *Jurisprudence* (London: Butterworths, 5th edn., 1985).
- Dicey, Albert V., *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London: MacMillan & Co., 1905).
- Dickens, Charles, *Oliver Twist*.
- Domes, Jurgen, and Shaw, Yu-ming (ed.), *Hong Kong: A Chinese and International Concern* (Boulder: Westview Press, 1988).
- Doo, Leigh Wai, 'Dispute Settlement in Chinese American Communities', (1973) 21 *The American Journal of Comparative Law* 627.
- Duffy, Peter, 'The protection of fundamental freedoms', *Seminar on the Draft Basic Law for Hong Kong* (London: School of Oriental and African Studies, 15th June, 1988).
- Durant, Will, *The Life of Greece* (New York: Simon and Schuster, 1966).
- Eberhard, Wolfram, *Guilt and Sin in Traditional China* (Berkeley: University of California Press, 1967).
- Economist, The, *World Human Rights Guide* (London, 1986).
- Edwards, Allen L., *Techniques of Attitude Scale Construction* (New York: Appleton Century-Crofts, 1957).
- Ehrmann, Henry, *Comparative Legal Culture* (Englewood: Prentice Hall, 1976).
- Endacott, G.B., *A History of Hong Kong* (London: Oxford University Press, 1973).
Government and People in Hong Kong 1841-1962 (Hong Kong: Hong Kong University Press, 1964).

- Escarra, Jean, *Le Droit Chinois* (Seattle: University of Washington, 1936, trans. by G. Browne for Works Progress Administration, W.P. 2799)
- Evan, William (ed.), *The Sociology of Law* (New York: Free Press, 1980).
- Evans, C.D., 'On the Duty of Advocating Civil Disobedience', (1980) 18 *Alberta Law Review* 520-36.
- Evans, D.M. Emrys, 'Book Review on the History of the Laws and Courts of Hong Kong', (1972) 2 *Hong Kong Law Journal* 379.
'Common Law in a Chinese Setting - The Kernel or the Nut?', (1971) 1 *Hong Kong Law Journal* 13n.
- Gen, Lewis, 'Some Characteristics of the Ancient Chinese Law', (1952) 48 *The Asiatic Review* 239.
- Gernet, Jacques, *A History of Chinese Civilization* (Cambridge: Cambridge University Press, trans. by J.R. Foster, 1985).
- Gibson, Dale, and Baldwin, Janet (ed.), *Law in a Cynical Society? Opinion and Law in the 1980's* (Calgary: Carswell Legal Publications, 1985).
- Giles, Herbert, *Civilization of China* (London: Williams and Norgate, 1911).
'The "Hsi Yuan Lu"', 17 *Proceedings of the Royal Society of Medicine* 59-107.
- Gourman, Jack, *Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities* (Los Angeles: National Education Standards, 4th edn., 1987).
- Greenberg, David, 'Donald Black's Sociology of Law: A Critique', (1983) 17 *Law and Society Review* 357.
- Greenberg, Michael, *British Trade and the Opening of China 1800-1842* (Cambridge: Cambridge University Press, 1951).
- Greenfield, D.E., 'Marriage by Chinese Law and Custom in Hong Kong', (1958) 7 *International and Comparative Law Quarterly* 442.
- Griffith, J.A.G., *The Politics of the Judiciary* (London: Fontana/Collins, 1979).
- Hadden, Tom, and Hillyard, Paddy, *Justice in Northern Ireland* (London: Cobden Trust, 1973).
- Harding, A.J., *Common Law in Singapore and Malaysia* (Singapore: Butterworths, 1985).
- Harris, Peter, *Hong Kong: A Study in Bureaucratic Politics* (London: Heinemann, 1978).
- Hart, H.L.A., *Law Liberty and Morality* (Oxford: Oxford University Press, 1963).
- Haydon, E.S., 'The Choice of Customary Law in Hong Kong', (1962) 11 *International and Comparative Law Quarterly* 231.
- Hayes, James, *The Hong Kong Region 1850-1911* (Hamden: Archon Books, 1977).

- Hayes, John, 'The Recruitment Crises', (1987) Vol.84 No.19 *The Law Society's Gazette* 1454.
- Heenan, M., McDouall J.C., *The McDouall-Heenan Report - see Hong Kong Government.*
- Ho, Peng Yoke, *An Introduction to Science and Civilization in China* (Hong Kong: Hong Kong University Press, 1985).
- Hoadley, J. Stephen, 'Hong Kong is the Lifeboat', (1970) 8 *Journal of Oriental Studies* 211-2.
- Holmes, Justice Oliver Wendell, *Collected Legal Papers* (London: Constable and Co., 1920).
- Hong Kong Government, *Chinese Law and Custom in Hong Kong (Strickland Report)* (Hong Kong, 1950).
Chinese Marriages in Hong Kong (Hong Kong, 1960).
Hong Kong annuals.
Hong Kong 1981 Census Main Report.
Hong Kong 1986 By-census Summary Results.
Laws of Hong Kong.
The Development of Representative Government: The Way Forward (Hong Kong, 1987).
The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (Hong Kong, 1984).
The McDouall-Heenan Report (Hong Kong, 1965).
White Paper on Chinese Marriages in Hong Kong (Hong Kong, 1967).
- Hong Kong Law Society, *Report by the Management and Administration Committee of the Law Society Legal Advice and Duty Lawyer Scheme, 1986.* (Hong Kong, 1986)
- Hooker, M.B., *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975).
- Hopkins, Keith (ed.), *Hong Kong: The Industrial Colony* (Hong Kong: Oxford University Press, 1971).
- Hsia, Tao-tai, and Johnson, Constance, *Law Making in the People's Republic of China: Terms, Procedures, Hierarchy, and Interpretation* (Washington: Library of Congress, 1986).
- Hsia, Tao-Tai, 'The Concept of Judicial Independence', *The Symposium on Chinese and European Concepts of Law* (Hong Kong, 1986).
- Hsu, Berry F.C., 'Comments on "Law and Social Attitudes in 1920s Shanghai"', (1985) 15 *Hong Kong Law Journal* 86.
- Hsu, Marlene, 'Cultural and Sexual Differences on the Judgement of Criminal Offences', 64 (1973) *Journal of Criminal Law and Criminology* 348-53.
- Hunt, Carew, *The Theory and Practice of Communism* (London: Penguin Books, 1971).

- International Brief, 'Hong Kong: loitering law review', (1988) Vol.85 No.6 *The Law Society's Gazette* 33.
- Jayawickrama, Nihal, 'Human Rights in the Draft Basic Law', (1988) 18 *Hong Kong Law Journal* 394.
'The case for a Hongkong bill of rights', *Far Eastern Economic Review*, 18th February, 1988, p.28.
- Johnson, Wallace, *The Tang Code*, Volume 1 (Princeton: Princeton University Press, 1979).
- Jones, William, 'Studying the Ching Code: The Ta Ching Lu Li', (1974) 22 *The American Journal of Comparative Law* 340.
- Kelly, Ian, *Hong Kong: A Political-Geographic Analysis* (Honolulu: University of Hawaii Press, 1986).
- Kidder, Robert, *Connecting Law and Society* (Englewood: Prentice Hall, 1983).
- Kim, Chin, and LeBlang, Theodore, 'The Death Penalty in Traditional China', (1975) *Georgia Journal of International and Comparative Law* 82.
- Kiralfy, A.K.B., *The English Legal System* (London: Sweet and Maxwell, 7th edn., 1984).
- Lau, Emily, 'A mixed review', *Far Eastern Economic Review*, 25th February, 1988, p.21.
'Doubts emerge on degree of real autonomy', *Far Eastern Economic Review*, 7th April, 1988.
'Easy targets', *Far Eastern Economic Review*, 5th January, 1989, p.16.
'Peking rules out British role in formation of future government', *Far Eastern Economic Review*, 22nd October, 1987, p.21.
'Policing the police', *Far Eastern Economic Review*, 14th July, 1988, p.31.
'Scandals dog the colony's judiciary', *Far Eastern Economic Review*, 20th April, 1989, p.23.
'Sense and censorship', *Far Eastern Economic Review*, 23rd July, 1987.
'Sharpening up the beaks: Magistrates come under pressure to step up conviction rate', *Far Eastern Economic Review*, 3rd November, 1988, p.39-30.
'The grey paper', *Far Eastern Economic Review*, 18th February, 1988, p.14.
'The judiciary faces major task in 1997 run-up', *Far Eastern Economic Review*, 20th April, 1989, p.20-2.
'The political line-up', *Far Eastern Economic Review*, 9th February, 1989, p.16-7.
'Under a dark cloud: The territory's legal system leaves a lot to be desired', *Far Eastern Economic Review*, 6th October, 1988, p.26.
- Lau, Emily, and Bowring, Philip, 'Laying down the law', *Far Eastern Economic Review*, 5th December, 1985, p.12-5.
- Lau, S.K., *Society and Politics in Hong Kong* (Hong Kong: Chinese University Press, 1982).
- LaBarre, Weston, 'Some Observations on Character Structure in the Orient', (1946) 9 *Psychiatry* 215 and 375.

- Lee, Rance P.L. (ed.), *Corruption and Its Control in Hong Kong* (Hong Kong: Chinese University Press, 1981).
 'The State of Affairs in a Chinese Satellit Town', (1974) *Chung Chi Journal* 1720.
- Lethbridge, Henry, *Hard Graft in Hong Kong* (Hong Kong: Oxford University Press, 1985).
Hong Kong: Stability and Change (Hong Kong: Hong Kong University Press, 1978).
 'Corruption, White Collar Crime and the I.C.A.C.', (1976) 6 *Hong Kong Law Journal* 177.
 'Prostitution in Hong Kong: A Legal and Moral Dilemma', (1978) 8 *Hong Kong Law Journal* 159.
- Lewis, D.J., 'A Requiem for Chinese Customary Law in Hong Kong', (1983) 32 *International and Comparative Law Quarterly* 353.
- Lin, Mousheng Hsiten, 'Confucius on Interpersonal Relations', (1939) 2 *Psychiatry* 475.
- Litton, Henry, 'Editorial', (1983) 13 *Hong Kong Law Journal* 129-32.
 'Editorial', (1988) 18 *Hong Kong Law Journal* 8.
 'So-called 'triad experts'', (1986) 16 *Hong Kong Law Journal* 7.
 'The Law: A question of interpretation', *Far Eastern Economic Review*, 7th April, 1988, p.82-5.
 'Trial of Complex Commercial Crimes bill', (1986) 16 *Hong Kong Law Journal* 189-93.
- Lloyd, Dennis, *The Idea of Law* (London: Penguin Books, 1977).
- Lo, Hsiang-lin, *Hong Kong and Western Cultures* (Honolulu: East West Center Press, 1963).
- Lo, T.S., 'Interrogation and the admissibility of confessions', (1983) *Papers of the 7th Commonwealth Law Conference* 331.
- Lord, Robert, and Cheng, Helen, *Language Education in Hong Kong* (Hong Kong: Chinese University Press, 1985).
- Luk, Bernard Hung-kay, 'A Hong Kong Barrister in Late-Ching Law Reform', (1981) 11 *Hong Kong Law Journal* 339.
- Lyons, David, 'The Role of the Attorney General's Chambers in Hong Kong', (1983) 13 *Hong Kong Law Journal* 374.
- MacCormack, Geoffrey, 'Liability of Officials under the Tang Code', (1987) 17 *Hong Kong Law Journal* 142-62.
- Maitland, F.W., *The Forms of Action at Common Law* (Cambridge: Cambridge University Press, 1st edn. (1909), reprinted in 1971).
- McBarnet, Doreen, 'Magistrates' Courts and the Ideology of Justice', (1981) 8 *British Journal of Law and Society* 181.
- McGurn, William (ed.), *Basis Law, Basic Questions* (Hong Kong: Review Publishing Co.,

1988).

McKnight, Brian, *Hsi Yuan Lu: The Washing Away of Wrongs* (Michigan: Centre for Chinese Studies, University of Michigan, 1981).

Meijer, M.J., *The Introduction of Modern Criminal Law in China* (Hong Kong: Lung Men Bookstore, 2nd edn., 1967).

Metzger, Thomas, *The Internal Organization of Ching Bureaucracy* (Cambridge, Mass.: Harvard University Press, 1973).

Miller, Delbert, *Handbook of Research Design* (New York: Longman, 4th edn., 1983).

Miners, Norman, *The Government and Politics of Hong Kong* (Hong Kong: Oxford University Press, 1981).

'Disallowance and the Administrative Review of Hong Kong Legislation by the Colonial Office 1844-1947', (1988) 18 *Hong Kong Law Journal* 218-48.

'The Governor, The Secretary of State and The Prerogative of Mercy', (1987) 17 *Hong Kong Law Journal* 77.

Mitchell, Basil, *Law, Morality, and Religion in a Secular Society* (Oxford: Oxford University Press, 1970).

Moser, Michael, *Law and Social Change in a Chinese Community* (London: Oceana Press, 1982).

Mulcahy, John, 'No-confidence trick', *Far Eastern Economic Review*, 5th November, 1987, p.60-2 and p.69-71.

Munro, Donald, *The Conception of Man in Early China*, (Stanford: Stanford University Press, 1969).

Mushkat, Roda, 'The International Legal Status of Hong Kong under Post-Transitional Rule', (1987) *Houston Journal of International Law* 1-24.

'The Transition from British to Chinese Rule in Hong Kong: A Discussion of Salient International Legal Issues', (1986) *Denver Journal of International Law and Policy* 181-3.

Needham, Joseph, *The Shorter Science and Civilization in China*, Vol.I and II (Cambridge: Cambridge University Press, 1978).

Nelson, William, *Americanization of the Common Law* (Cambridge, Mass.: Harvard University Press, 1975).

News Articles, *Economist*, *The*.

Edmonton Journal.

Financial Times.

Globe and Mail.

Ming Pao Daily.

Sing Pao Daily (American and Hong Kong editions).

Sing Tao Daily (European edition).

South China Morning Post.

The Star (Hong Kong).

Time Magazine.

Times, The.

- Nivison, David, and Wright, Arthur (eds.), *Confucianism in Action* (Stanford: Stanford University Press, 1959).
- Norton-Kyshe, James, *The History of the Laws and Courts of Hong Kong*, Vol.I & II (Hong Kong: Vetch and Lee, 1898).
- Norusis, Marija, *SPSS Guide to Data Analysis* (Chicago: SPSS Inc., 1986).
- Nunnally, Jum, *Psychometric Theory* (New York: McGraw Hill, 1967).
- Ohlinger, G., 'Some Leading Principles of Chinese Law', (1909-10) 8 *Michigan Law Review* 200.
- Penlington, Valarie Ann, *Law in Hong Kong* (Hong Kong: South China Morning Post, 1981).
- Phillips, O. Hood, and Jackson, Paul, *Constitutional and Administrative Law* (London: Sweet and Maxwell, 7th edn., 1987).
- Pinard, Jeanette, *The People's Republic of China: A Bibliography of Selected English-Language Legal Materials* (Washington: Library of Congress, 1985).
- Podgorecki, Adam, *Law and Society* (London: Routledge and Kegan Paul, 1974).
- Podgorecki, Adam, and Others (ed.), *Knowledge and Opinion about Law* (London: Martin Robertson, 1973).
- Pomery, Chris, 'Censorship: opening up, clamping down', *Far Eastern Economic Review*, 7th April, 1988, p.79-81.
- Porter, David, 'A blast from Geneva', *Far Eastern Economic Review*, 24th November, 1988, p.26-7.
- Potter, Harold, *Historical Introduction to English Law* (London: Sweet and Maxwell, A.K.R. Kiralfy (ed.), 4th edn., 1958).
- Pound, Roscoe, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, rev.edn., 1954)
Jurisprudence, Volume 3 (St. Paul: West Publishing Co., 1959).
Social Control through Law (Hamden: Archon Books, 1968).
 'A Survey of Social Interests', (1943) 57 *Harvard Law Review* 4-8.
- Rabushka, Alvin, *The New China* (Boulder: Westview Press, 1987).
- Radcliffe, Geoffrey, and Cross, Geoffrey, *The English Legal System* (London: Butterworths, 5th edn., 1971).
- Radzinowicz, Leon, *A History of English Criminal Law and its Administration from 1750* (London: Stevens and Sons, 1948).
- Rear, John, 'The Power of Arrest in Hong Kong', (1971) 1 *Hong Kong Law Journal* 142.
- Reischauer, Edwin, and Fairbank, John, *A History of East Asia Civilization* (Boston:

- Houghton Mifflin, 1960).
- Roberts-Wray, Kenneth, *Commonwealth and Colonial Law* (New York: Frederick Praeger, 1966).
- Robson, William, *Civilization and the Growth of Law* (New York: McMillan, 1935).
- Royal Hong Kong Police, *Your career as a Police Inspector* (Hong Kong, 1987).
- Rui, Mu, 'The Chinese Conception of Law and Its Meeting with that of Corresponding Legal Systems', *The Symposium on Chinese and European Concepts of Law* (Hong Kong, 1986).
- Rutherford, Margaret, 'Hong Kong: a personal impression', (1988) Vol.85 No.1 *The Law Society's Gazette* 13.
- Sawer, Geoffrey, *Law in Society* (Oxford: Clarendon Press, 1965).
- Scarman, Lord, 'The Conflict in Society: Public Order and Individual Liberty', (1983) *Papers of the 7th Commonwealth Law Conference* 203.
- Schubert, Glendon, *Comparative Judicial Behavior: Cross-Cultural Studies of Political Decision-Making in the East and West* (New York: Oxford University Press, 1969).
Quantitative Analysis of Judicial Behavior (Glencoe: Free Press, 1959).
 'Political Culture and Judicial Ideology', (1977) 9 *Comparative Political Studies* 363-408.
- Scorer, Catherine, *The Prevention of Terrorism Acts, 1974 and 1976* (London: NCCL, 1976).
- Seymour, James, *China Rights Annuals* (New York: M.E. Sharpe, 1985).
- Shakespeare, William, *Henry VI*.
- Shiga, Shuzo, 'Criminal Procedure in the Ching Dynasty', (1974-5) 32-3 *Memoirs of the Research Dept. of the Toyo Bunko* 1 and 115.
- Standing Committee of National People's Congress (PRC), *Resolution on Strengthening the Legal Interpretation of Law*, 10th June, 1981.
- Staunton, George, *Ching Code: Ta Tsing Leu Lee* (London: T. Cadwell and W. Davis, 1810).
- Stone, Julius, *Law and the Social Sciences in the Second Half Century* (Minneapolis: University of Minnesota Press, 1966).
- Strickland, George, *Strickland Report - see Hong Kong Government*.
- Sudman, Seymour, *Applied Sampling* (New York: Academic Press, 1976).
- Sudnow, David, 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office', (1965) 12 *Social Problems* 255.
- Takata, Toyo, *The Story of Japanese Canadians from Settlement to Today* (Toronto: NC

- Press, 1983).
- Tanaka, Hideo, *Japanese Legal System* (Tokyo: University of Tokyo Press, 1976).
- Teng, S.Y., 'The Role of the Family in the Chinese Legal System', (1977) *Journal of Asian History* 121.
- Thomas, Michael, 'Closing Address', *The Symposium on Chinese and European Concepts of Law* (Hong Kong, 1986).
'The Development of a Bilingual Legal System in Hong Kong', (1988) 18 *Hong Kong Law Journal* 20.
- Times Inside Team, *Rainbow Warrior* (London: Times Newspaper, 1986).
- Topley, Majorie, *Some Basic Conceptions and their Traditional Relationship to Society*, 1966.
- Trudgill, Peter, *The Social Differentiation of English in Norwich* (Cambridge: Cambridge University Press, 1974).
- Turnbull, William, 'What can Hong Kong do for the Overseas Lawyers?', (1983) *Papers of the 7th Commonwealth Law Conference* 478.
- UNESCO, *Statistical Yearbook, 1986* (New York: United Nations, 1986).
- Vago, Steven, *Law and Society* (Englewood: Prentice-Hall, 1981).
- van der Sprenkel, Sybille, *Legal Institutions in Manchu China* (London: Athlone Press, reprinted 1st edn. (1962), 1971).
- Van Gulik, R.H., *Parallel Cases from under the Pear Tree (tang-yin pi-shih)* (Leiden: E.J. Brill, 1956).
'Court Procedure in Ancient China', (1970) 5 *The Criminologist* 110.
- von Mehren, Arthur, 'Roscoe Pound and Comparative Law', (1965) 78 *Harvard Law Review* 1592-3.
- Wacks, Raymond (ed.), *Civil Liberties in Hong Kong* (Hong Kong: Oxford University Press, 1988).
- Wacks, Raymond, 'Can the Common Law Survive the Basic Law?', (1988) 18 *Hong Kong Law Journal* 444.
- Wade, William, *An opinion on The Draft of Hong Kong Basic Law* (Hong Kong: commissioned report of the Law Society of Hong Kong, 1988).
- Walker, Ronald Jack, *Walker and Walker's The English Legal System* (London: Butterworths, 6th edn., 1985).
- Wang, Chung-hui, 'Law Reform in China', (1917) 2 *The Chinese Social and Political Science Review* 13.
- Wang, Te-chao, *A Study of the Civil Examination of Ching Dynasty* (Hong Kong: Chinese University Press, in Chinese, 1982).

- Ward, W.Peter, *The Japanese in Canada* (Ottawa: Canadian Historical Association, 1982).
- Webb, Norman, *Appraisal of Surveys and Other Material Relating to the 1987 Review of Developments of Representative Government in Hong Kong* (Hong Kong: Far Eastern Economic Review, 1987).
- Weber, Max, *Economy and Society* (New York: Bedminster Press, edited by Guenther Roth and Claus Wittich, 1968).
Law in Economy and Society (Cambridge, Mass.: Harvard University Press, 2nd edn.(1925) trans. by Edward Shils and Max Rheinstein, 1954).
- Wesley-Smith, Peter, *Constitutional and Administrative Law in Hong Kong*, Vol.I & II (Hong Kong: China and Hong Kong Law Studies, 1987/8).
Legal Literature in Hong Kong (Hong Kong: University of Hong Kong Press, 1979).
Unequal Treaty 1898-1997 (Hong Kong: Oxford University Press, 1983).
 'Discriminatory Legislation in Hong Kong', *Academic Symposium, "The Historic Triangle of Britain, China, and Hong Kong: A Sixty-Year Retrospective 1927-1987"* (Hong Kong, 1987).
 'James William Norton-Kyshe', *Hong Kong Law Journal* 278.
- William, Alan, 'Hong Kong: 1997 and After', (1980) Vol.77 No.35 *The Law Society's Gazette* 964-6.
- Williams, Glanville, *The Proof of Guilt* (London: Stevens and Sons, 3rd edn., 1963).
- Willoughby, P.G., 'Hong Kong: Public Order', (1987) Vol.84 No.18 *The Law Society's Gazette* 1419.
 'Peking Watching', (1986) Vol.83 No.26 *The Law Society's Gazette* 2171-2.
- Windeyer, W.J.V., *Lectures on Legal History* (Sydney: The Law Book Co., 2nd edn., 1957).
- Winfield, Percy, and Jolowicz, John, *Tort* (London: Sweet and Maxwell, W.V.H. Rogers (ed.), 12th edn., 1984).
- Wong, Siu-lun, 'Modernization and Chinese Culture in Hong Kong', (1986) 106 *The China Quarterly* 322-3.
- Wright, Arthur, *Confucian Personalities* (Stanford: Stanford University Press, 1962).
- Wright, Beryl, 'Some Aspects of Change in the Chinese Family Pattern in Hong Kong', (1964) 63 *The Journal of Social Psychology* 33.
- Wu, John, 'Chinese Law and Legal Ideas', (1921) 19 *Michigan Law Review* 519.
- Wu, Ting Fang, 'Chinese Jurisprudence', (1901) 35 *American Law Review* 356.
- Yuen, Chi-Wing, 'The Chinese Language Legislation Scheme and the Problem of Judicial Gloss', (1987) 17 *Hong Kong Law Journal* 89-9.
- Zander, Michael (ed.), *What's Wrong with the Law* (Montreal: McGill-Queen's University Press, 1970).

Table of Cases

- Borough Council v Race Relations Board [1972] 1 *All E.R.* 105.
- Burmah Oil Co. v Lord Advocate [1965] *A.C.* 75.
- City of London v Wood (1701) 12 *Mod.* 686.
- Conway v Rimmer [1968] *A.C.* 910.
- Day v Savadge (1615) *Hob.* 86.
- Dr. Bonham's case (1610) 8 *Co.Rep.* 118.
- Duncan v Cammell, Laird & Co. [1942] *A.C.* 624.
- E.R. Belilios v Ng Li Shi (1969) *Supplement of Hong Kong Law Reports* 205.
- Ellis v Home Office [1953] *Q.B.* 135.
- Entick v Carrington (1765) 19 *State Tr.* 1030.
- Ho Po Chun v Man Chi Tai [1967] *Hong Kong Law Reports* 201.
- Ho Tsz Tsun v Ho Au Shi and Others [1915] *Hong Kong Law Reports* 76 and 79.
- Kamara v D.P.P. [1974] *A.C.* 104.
- Kuruma, Son of Kanui v The Queen [1955] *A.C.* 197.
- Lewis v Daily Telegraph Ltd. [1964] *A.C.* 234.
- Lochner v New York [1905] 198 *United States Supreme Court* 76.
- Lui Yuk-ping v Chow To [1962] *Hong Kong Law Reports* 524.
- Maynard v Osmond [1977] *Q.B.* 240.
- Mellstrom v Garner [1970] 2 *All E.R.* 9.
- Nanan v The State [1986] 3 *All E.R.* 248.
- Parkes v R [1976] 3 *All E.R.* 380.
- R v Luk Ming-hong [1963] *Hong Kong Law Reports* 390.
- R v Mitchell (1892) 17 *Cox's C.C.* 503.
- R v Sussex JJ, ex.p. MacCarthy [1924] 1 *K.B.* 256.
- R v Secretary of State for Home Affairs, ex parte Bhajan Singh [1976] *Q.B.* 198-207.

Shaw v D.P.P. [1962] *A.C.* 220; [1961] 2 *All E.R.* 446.

Sirros v Moore [1975] *Q.B.* 118; [1974] 3 *All England Report* 776.

Stockdale v Hansard (1839) 9 *A. & E.* 1.

Ward v James [1966] 1 *Q.B.* 273.

Wong Yu Shi and Others v Wong Ying Kuen [1957] *Hong Kong Law Reports* 421.

WORKS IN CHINESE

1. Asian Magazine 亞洲週刊
(*Yazhou Zhoukan*)
2. Chang, Yu-yü, A Few Questions on the Socialist Legal System
(*kuan-yu she-hui chu-i fa-chih te jo-kang wen-ti*) 張友漁，
關於社會主義法制的若干問題
3. Chinese Legal System News
(*Zhongguo Fazhi Bao*) 中國法制報
4. Hsu, Chao-yang, History of Law of Litigation in China
(*chung-kuo su-sung fa so-yuan*) 徐朝陽，中國訴訟法溯源
5. Hsu, Da-lin, Discussions on Chinese Legal History
(*chung-kuo fa-chih-shih lu-chi*) 徐道隣，中國法制史
6. Huang, Tsung-hsi, A Plan for the Prince
(*ming-i tai-fang lu*) 黃宗羲，明夷待訪錄
7. Huan, Kuan, Debates on Salt and Iron
(*Yen-tieh lun*) 桓寬，鹽鐵論
8. Kuo, Ting-i, A History of Modern China
(*chin-tai chung-kuo shih-kang*) 郭廷以，近代中國史綱
9. Law
(*fa-hsueh*) 法律月刊
10. Law Science Quarterly
(*fa-hsueh kuei-kan*) 法律季刊
11. Ming Pao Monthly
(*ming-pao yi-han*) 明報月刊

12. Shen, Chia-pen, The History of Judicial Officers

(*li-tai hsing-kuan kao*) 沈家本，歷代刑官考

13. Studies in Law

(*fa-hsueh yen-chiu*) 法學研究

14. Tai, Yen-hui, Chinese Legal History

(*chung-kuo fa-chi shih*) 戴炎輝，中國法制史

GLOSSARY

1. *an-cha shih* (judicial commissioner) 按察使
2. *chan-kuo* (warring states) 戰國
3. *chao-chuang* (formal confession) 招狀
4. *chao-shen* (palace assize) 朝審
5. *Chi-shan* 琦善
6. *chien-i* (remonstrator) 諫議
7. *chien-i ta-fu* (chief remonstrator) 諫議大夫
8. *Chin-shu* 晉書
9. *ching-ting liu-pu chu-fen-tse-li* 欽定六部處分則例
(Imperial Administrative Rules for the Six Boards)
10. *chih-chou* (magistrate) 知州
11. *chih-hsien* (magistrate) 知縣
12. *chow-li* (rites of Chou) 周禮
13. *fa-lü pu-wai jen-cheng* 法律不外人情
(the law should not go beyond the reasons of the people)
14. *fan-i* (recant one's own testimony) 翻異
15. *fan-tso* (retributive punishment) 反坐
16. *fang-na* (inquisitorial proceedings in absence of complaint) 訪拿
17. *fu-mu kuan* (official in *loco parentis*) 父母官
18. *Fu-xi* 伏羲
19. *hsi-yuan lu* (Washing Away of Wrongs) 洗冤錄
20. *hsiao* (filial piety) 孝
21. *hsiao-ching* (Classic of Filial Piety) 孝經
22. *hsing-an hui-lan* (case book of criminal cases) 刑案匯覽
23. *hsing-ming* (law secretary) 刑名
24. *hsing-pu* (ministry of justice) 刑部

25. *jen* (benevolence) 仁
26. *kuan-hsi* (connection) 關係
27. *kung-chuang* (deposition) 供狀
28. *kung-te* (public duty) 公德
29. *kuo-tzu chien* (state university) 國子監
30. *li* (rites) 禮
31. *li-ki* (Book of Rites) 禮記
32. *li-pu* (ministry of personnel) 吏部
33. *lien* (face) 臉
34. *Lin Tse-hsü* 林則徐
35. *liu-yi* (six basic arts) 六藝
36. *lu-hseuh* (department of law) 律學
37. *lu-hsing* (Punishments of Lu) 呂刑
38. *lu-pu shih* (doctor of law) 律博士
39. *miao* 苗
40. *mien* (face) 面
41. *ming-li* (general principles) 名例
42. *pa-yi* (eight privileged groups) 八議
43. *pao-chang* (Chinese peace officers) 保長
44. *pao-chia* (Chinese peace officers) 保甲
45. *pi-chao* (analogous case) 比照
46. *pi-yin* (analogous case) 比引
47. *ping-fan* (justice given after an investigation) 平反
48. *pu-cheng shih* (financial commissioner) 佈政使
49. *pu-wang* (arrest and flight) 捕亡
50. *san-fa ssu* (three judicial officers) 三法司
51. *san-shen* (treble inquiry) 三審

52. *shang-shu* (third degree officer) 尚書
53. *shih-o* (ten unpardonable offences) 十惡
54. *shu* (numbers) 數
55. *shu-ching* (Book of Document) 書經
56. *shu-king* (Book of History) 史經
57. *sung-kun* (litigation tricksters) 訟棍
58. *ta-ching lu-li* (Ching codes) 大清律例
59. *ta-li ssu* (grand court of revision) 大理寺
60. *ta-li ssu-ching* (chief judge) 大理寺卿
61. *tai-shou* (grand administrator) 太守
62. *tan-lu shu-yi* (Tang codes) 唐律疏議
63. *tang-yin pi-shih* (parallel cases under the pear tree) 棠陰比事
64. *tao-tai* (perfect) 道台
65. *tou-sung* (assault and accusation) 鬪訟
66. *tsa-lu* (miscellaneous provision) 雜律
67. *tsao-shuai ting-an* (careless judgment) 草率定案
68. *tso-shu* (scriveners) 代書
69. *tsu* (clan) 族
70. *tsung-tu* (provincial governor) 總督
71. *tu-cha yuan* (censorate) 都察院
72. *tuan-yu* (judgement and prison) 斷獄
73. *tung-hsiang* (preliminary report) 通詳
74. *tung-ping* (preliminary report) 通稟
75. *tsu-chih* (self-government) 自治
76. *wu-hsing* (five punishments) 五刑
77. *wu-ting* (five expressions) 五聽
78. *wu-tso* (coroners) 仵作

79. *yu-shih tai* (Tang's censorate) 御史台

APPENDIX A-1

The purpose of this survey is to determine the extent to which English Common Law has taken root in Hong Kong. This is an academic research project and the investigators are not associated with any organization other than the University of London. All information will be kept in strict confidence. Nobody will know who you are before, during, or after this interview, and there are no means by which this can be known.

1. What is your present age?
 - a. 18 - 22.
 - b. 23 - 27.
 - c. 28 - 32.
 - d. 33 - 37.
 - e. 38 - 42.
 - f. 43 - 47.
 - g. 48 - 52.
 - h. above 52.

2. Sex.
 - a. Male.
 - b. Female.

3. How many years in total have you lived in Hong Kong?
 - a. 1 - 5.
 - b. 6 - 10.
 - c. 11 - 15.
 - d. 16 - 20.
 - e. 21 - 25.
 - f. 26 - 30.
 - g. 31 - 35.
 - h. 36 - 40.
 - i. 41 - 45.
 - j. more than 45.

4. Place of birth.
 - a. Hong Kong.
 - b. Mainland China.
 - c. Elsewhere.

5. Country of citizenship.
 - a. British Hong Kong citizenship.
 - b. British citizenship with right to reside in Great Britain.
 - c. Canadian citizenship.
 - d. Chinese citizenship (immigrant from mainland China who has not naturalized as a British subject of Hong Kong).
 - e. Other, please specify ____.

6. What type of housing do you live?
 - a. Public and aided.
 - b. Housing Authority home ownership estates.
 - c. Private.
 - d. Temporary.
 - e. Others, please specify ____.

7. Which of the following most accurately describes your education level?
 - a. No schooling/ kindergarten.
 - b. Primary.
 - c. Secondary.
 - d. Matriculation.
 - e. Post-secondary.

8. Can you read an English newspaper?
 - a. Yes.
 - b. No.

9. What is your current occupation? _____

10. What is your current monthly income level (in Hong Kong dollars)?
 - a. under 1,000.
 - b. 1,000 - 1,999.
 - c. 2,000 - 2,999.
 - d. 3,000 - 3,999.
 - e. 4,000 - 4,999.
 - f. 5,000 - 5,999.
 - g. 6,000 - 7,999.
 - h. 8,000 - 9,999.
 - i. 10,000 and over.

11. What is your religious preference, if any?
 - a. Roman Catholic.
 - b. Protestant.
 - c. Buddhist.
 - d. Moslem.
 - e. Taoist.
 - f. Other.
 - g. No religious preference.

12. Have you ever been in court to observe its proceedings for any reason?
 - a. Yes.
 - b. No.

13. Obedience to one's parents and respect for authority are important values which a child must learn.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

14. Young people may have rebellious thoughts, but they have to live with the mores and the norms as they grow up.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

15. Every person should have respect to traditional learning.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

16. One should strive to achieve broad moral cultivation before other competence.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

17. Any social or political reform should ideally be achieved without violence.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

18. In social relationship, one should try to remain polite even under provocation.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

19. Taking the middle course will serve the best interest of all parties in interpersonal relationships.
 - a. Strongly agree.
 - b. Agree.
 - c. Neither agree nor disagree.
 - d. Disagree.
 - e. Strongly disagree.

20. I believe that there is a God.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
21. I do not believe that there is life after death.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
22. I believe that there are evil spirits.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
23. I am a traditional Chinese.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
24. I should not obey the law if I can if I do not think it is just.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
25. A person from whom 2 ounces of opium was seized in his possession should justify to the court that he was not trafficking in drugs.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
26. A person should always insist on his legal rights.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
27. A person shall not be regarded as guilty unless it is proven beyond a reasonable doubt in a court of law that he is guilty.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

28. If my dispute cannot be settled through mediation or other means, I would resort to the court for help.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
29. Lawyers often incite litigation.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
30. A judge should take public opinion into account for his judicial decision.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
31. If my vehicle was hit negligently by another vehicle, I should seek compensation.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
32. Police seldom arrest or interrogate the wrong person.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
33. If I am a witness to an accident, and am asked by the aggrieved party to testify in court, I should cooperate.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
34. I hate people who resort to litigation.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
35. Everyone has an equal opportunity to obtain justice before the courts.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

36. The court serves only the rich and those who can afford a good lawyer.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
37. If I am a witness to the assault of a private citizen on the street by the police, and am asked by the aggrieved party to testify in court, I should cooperate.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
38. I am not afraid of reprisals for testifying in court.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
39. The Governor should be allowed to dismiss a judge if his decision is unreasonable.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
40. I am well protected against reprisals if I testify in court.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
41. I should defend my parking ticket in court if I think I am right rather than pay the fine imposed by the authority (if I have the time to do so).
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
42. A judge's career is in jeopardy if his decision does not please the government.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
43. A person is somewhat guilty if he is prosecuted for an offence even though the court finds him not guilty.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

44. I should continue patronizing a chemist store if the owner caught a person stealing out of necessity and turned him over to the police.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
45. Lawyers are trustworthy people.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
46. A citizen should participate in the judicial decision making process.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
47. The promotion of a Crown prosecutor is determined by the number of successful convictions.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
48. Judges in Hong Kong enjoy their judicial independence in that they are free to perform their duties without fear of any outside pressures, e.g. promotional opportunities.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
49. I should attend jury duty if I am summoned.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
50. Trial by jury is the fairest method for disposing of a criminal case in which jail sentence of six or more months can be imposed on a first time offender.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
51. Complex commercial cases should only be tried by the judges.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

52. Complaints against lawyers should be handled by an independent body.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
53. Judges in Hong Kong are fair and impartial.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
54. Lawyers often help criminals to fabricate evidence.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
55. The jury system is necessary to safeguard the people against the arbitrary power of the state.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
56. The jury is a mechanism whereby upper and middle class interests are protected, as those who do not understand English are not eligible to serve as jurors.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
57. Judges in Hong Kong treat English more favourably than Chinese when making judicial decisions.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
58. Sometimes, secret torture by the police is essential to extract evidence from hard criminals.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
59. Any adult who does not have a conviction should be qualified to be summoned as a juror. (Conviction here refers to being convicted of an offence in which a jail sentence is imposed).
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

60. A good barrister can make a difference to the outcome of a case in court.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
61. A father assaults his dentist son for charging him for dental services rendered, and the evidence is against the father. As a member of the jury, I would find him guilty.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
62. A person should not be found guilty of an offence unless it is written in the law.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
63. An immoral and unethical act should not render a person liable to punishment unless the law requires.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
64. The Legislative Council should overrule a judicial decision if it thinks such a decision is unreasonable.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
65. The Crown prosecutors always cooperate with defence lawyers to discover the truth of the case.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
66. A judicial decision that does not conform to public opinion is unreasonable and should be overruled by some higher authority.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
67. Only honest people are appointed judges in Hong Kong.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

68. The prosecution should reveal evidence in favour of the defendant in court, e.g. a discovery of alibi during police investigation, and not only present evidence in support of the charge.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
69. The prosecution always reveals evidence in favour of the defendant in court, e.g. a discovery of alibi during police investigation, and not only present evidence in support of the charge.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
70. Police often fabricate evidence to earn their promotion.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
71. A criminal investigation is more impartial if supervised by an independent judicial authority.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
72. I am free to criticize the actions of the Royal Hong Kong Police without fear of reprisals.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
73. The Crown prosecutor is under pressure to secure a conviction without considering the ethical and moral aspects of the case.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
74. The Crown prosecutors often give favourable treatment to English over Chinese.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

75. There is no reason why a person should consult with a lawyer if he has nothing to hide.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
76. Lawyers have as their priority to serve the interests of the rich and powerful.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
77. Legal fees are too expensive.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
78. The present legal system should remain in Hong Kong after June, 1997.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.
79. A person should leave Hong Kong before 1997 if he can.
- Strongly agree.
 - Agree.
 - Neither agree nor disagree.
 - Disagree.
 - Strongly disagree.

Appendix A-2

這項調查的目的，是探討英國法律在香港社會的接受程度。這是一項學術性的研究。除了「倫敦大學」外，研究員與其他任何機構均無關係。所有資料將會絕對保密。無人會知道你提供下列資料，亦無任何方法可以知道你所提供的資料。

(調查員注意：第 1 至 12 條，留待最後發問。)

下列數項是關於你的個人資料，以便得悉被訪者的一般情況。

1. 你現年歲數若干？
 - a) 18 - 22
 - b) 23 - 27
 - c) 28 - 32
 - d) 33 - 37
 - e) 38 - 42
 - f) 43 - 47
 - g) 48 - 52
 - h) 53 歲以上

2. 性別 (調查員自行填寫)
 - a) 男
 - b) 女

3. 你總共在香港居住了多少年？
 - a) 1 - 5
 - b) 6 - 10
 - c) 11 - 15
 - d) 16 - 20
 - e) 21 - 25
 - f) 26 - 30
 - g) 31 - 35
 - h) 36 - 40
 - i) 41 - 45
 - j) 45 年以上

4. 你的出生地點。
 - a) 香港
 - b) 中國大陸
 - c) 其他地區

5. 你現屬何國國籍？
 - a) 英籍香港公民
 - b) 英籍公民，有權在英國定居
 - c) 加拿大公民
 - d) 華籍人仕（持有香港永久居留權）
 - e) 其他，請說明：

6. 你現居於何類屋宇（調查員自行填寫）。
 - a) 公共或資助單位
 - b) 房屋委員會「居者有其屋」樓宇
 - c) 私人樓宇
 - d) 臨時房屋
 - e) 其他，請說明：

7. 你的教育程度。
 - a) 沒有入學讀書／幼稚園
 - b) 小學
 - c) 中學
 - d) 大學預科
 - e) 大專或大學

8. 你能否閱讀英文報紙？
 - a) 能
 - b) 不能

9. 你的職業是

10. 你每月收入若干？
 - a) 千元以下
 - b) 1,000 - 1,999
 - c) 2,000 - 2,999
 - d) 3,000 - 3,999
 - e) 4,000 - 4,999
 - f) 5,000 - 5,999
 - g) 6,000 - 7,999
 - h) 8,000 - 9,999
 - i) 一萬元以上

11. 你的宗教信仰是
 - a) 天主教
 - b) 基督教
 - c) 佛教
 - d) 回教
 - e) 道教
 - f) 其他
 - g) 沒有宗教信仰

12. 你會否因為任何理由而到過法庭旁聽審訊過程？
 - a) 曾經
 - b) 未曾

13. 服從父母以及尊重權威是任何兒童都必須學習的重要觀念。
 - a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

14. 年青人的叛逆性心理是難免的，但他們長大後都應按照世俗習慣行事。
 - a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

15. 任何人都應尊重傳統道德禮教。
 - a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

16. 道德教育比一切來得重要。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
17. 任何社會或政治改革最好不以暴力達到目的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
18. 在人際關係裏，一個人在任何情況下（甚至被觸怒）均應保持禮貌。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
19. 人與人之間的接觸，採取中庸之道是最好的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
20. 我相信神的存在。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

21. 我不相信死而復生。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
22. 我相信鬼的存在。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
23. 我是一個傳統的中國人。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
24. 我會盡力不遵守我認為不公平的法律。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
25. 一個人若被搜出藏有兩安士鴉片，他必須向法庭證明他沒有販賣毒品。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

26. 一個人無論在任何時候都應堅持他的法律權利。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
27. 一個人除非經法庭裁定有罪，否則應被視作無罪。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
28. 如果我與別人有糾紛而又不能透過調解或其他方法解決的話，我會向法庭提出訴訟。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
29. 律師經常煽動他人提出訴訟。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
30. 法官作出判決時，應考慮民意。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

31. 如果由於另一輛汽車疏忽而將我的汽車撞倒，我會要求賠償。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
32. 警察很少會錯誤地拘捕或盤問人。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
33. 如果我是一宗意外事件的證人，而受害人要求我上庭作證，我會同意。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
34. 我不喜歡以提出訴訟來解決問題的人。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
35. 任何人都有相等機會在法庭上得到公平判決。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

36. 法庭只為那些有錢及有能力聘請好律師的人服務。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
37. 如果警察毆打市民而我是目擊證人，若受害人要求我上庭作證，我會同意。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
38. 我不會害怕因為上庭作證而被人報復。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
39. 一個法官若作出不合理的判決，港督應有權將該法官撤職。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
40. 若我在法庭作證，我會受到良好保護，以免遭人報復。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

41. 如果當局發給我泊車告票，而我認為自己無錯，（若我有時間）我會出庭抗辯而不會繳交罰款。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
42. 一個法官如果判案不能迎合政府的意思，他的事業將會受到影響。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
43. 一個人若被控告，則縱使法庭判他無罪，他亦必是有若干不當之處。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
44. 一間藥行東主把一個急需救人但無錢買藥因而偷藥的人交給警方處理，雖然如此，我仍會繼續向這間藥行購物。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

45. 律師是可以信賴的人。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
46. 市民應該參與作出司法判決。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
47. 檢控官的晉升，決定於他提出的控告的成功率而定。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
48. 香港的法官享有司法獨立權，因為他們可以不受任何壓力（包括升職的影響）而去判決案件。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
49. 如果我被傳召擔任陪審員，我會履行此項義務。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

50. 陪審團審訊是審訊刑事案件中最公平的方法，在這些審訊中，初犯者可被判入獄六個月或以上。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
51. 複雜的商業罪案只能由法官審訊。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
52. 對律師的投訴，應該由一個獨立（與律師會無關）的機構處理。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
53. 香港的法官是大公無私的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
54. 律師經常幫助罪犯捏造證據。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

55. 陪審團制度是為保障市民，不受政府獨裁統治而設的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
56. 陪審團制度只是保障中上階級的利益，因為不懂英語的市民是沒有資格擔任陪審員。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
57. 香港的法官在判案時對待外國人較對待中國人好。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
58. 有時，警方是需要向重犯毆打迫供的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
59. 任何沒有案底的市民都應有資格被傳召為陪審員。（案底在這裏指曾被判入獄的案底）
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

60. 一個良好的大律師是一件案件的勝敗關鍵。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
61. 一個父親毆打他做牙醫的兒子，因為他的兒子要向父親收取補牙費用。法庭的證供對父親不利。如我是陪審員，我會認為父親有罪。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
62. 一個人不能被定罪，除非法律明文規定他所做的事情是違法的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
63. 除非法例規定，否則一個人作出不道德的行為，不應被罰。
(例如通姦，法律沒有禁止)
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

64. 立法局若認為法庭判案不合理，應該否決該判決。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
65. 檢察官經常聯同辯方律師尋求事情真相。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
66. 不符合民意的法庭判決是不合理及應被高層否決的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
67. 在香港只有誠實的人才會被委任為法官。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
68. 檢察官應該揭露對被告有利的證據而不單是將支持控罪的證據呈堂（例如：警方在調查時發現被告有不在場證據）。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

69. 檢察官必定會揭露對被告有利的證據，而不單是將支持控罪的證據呈堂（例如警方在調查時發現被告有不在場證據）。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
70. 警察經常捏造證據以爭取晉升機會。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
71. 一宗刑事案的調查，若由獨立的司法官（即法官）主持，而非由警官主持，會較為公正。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
72. 我可以任意批評皇家香港警隊而毋須害怕會遭人報復。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
73. 檢察官受到壓力爭取將被告定罪，不會考慮到被告犯罪時的處境（例如：一個小販的全家十口是靠他的收入為生）。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

74. 檢察官對待英國人比對待中國人好。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
75. 一個人如果沒有任何事情需要隱藏是毋須諮詢律師的。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
76. 律師的宗旨是首先為有財有勢的人服務。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
77. 律師費用過於昂貴。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意
78. 現存的香港法律制度一九九七年六月後應要保留。
- a) 絕對同意
 - b) 同意
 - c) 沒有意見
 - d) 不同意
 - e) 絕對不同意

79. 一個人應盡可能在一九九七年前離開香港。

- a) 絕對同意
- b) 同意
- c) 沒有意見
- d) 不同意
- e) 絕對不同意

80. 你的居住地區是：

- a) 官塘
- b) 深水埗
- c) 黃大仙
- d) 葵涌或青衣
- e) 元朗
- f) 其他

APPENDIX A-3

I. Concept: Chinese Traditionalism

Dimension	Item
Submissiveness to authority	13
Submissiveness to social mores and norms	14
Reverence for the past	15
Primacy of broad moral cultivation	16
Non-violent reform	17
Punctiliousness in treatment	18
Middle course	19
General question	23

II. Concept: Religiosity

Dimension	Item
Believe there is a God	20
Believe there is life after death	21
Believe there are evil spirits	22

III. Concept: Individual and Legal Rights

Dimension	Item
Insistence on legal rights	26, 31, 41
Resorting to court to settle disputes	28
Cooperation with the judicial system	33
Attitudes towards law suits	34
Respect for other's legal right	44, 61
Willingness to defend rights of others	37
Confidence in the administration of justice	38, 40*, 70*, 72*

IV. Concept: The Rule of Law

Dimension	Item
<i>nullum crimen sine lege</i>	62, 63
Exercise of arbitrary power by police	32*, 58
Equal opportunity before the court	35*, 36*

V. Concept: Judicial Independence

Dimension	Item
The judiciary is independent	42*, 48*
Is the judiciary fair and honest?	53*, 57*, 67*
Judicial accountability	30, 66
Separation of judicial power	39, 64

VI. Concept: Adversary System and Independent Legal Profession

Dimension	Item
Integrity of the prosecution	47*, 65* 69*, 71, 73*, 74*
Integrity of the legal profession	29*, 45*, 52, 54*
Economic barriers to obtaining legal services	76*, 77*
Perceptions on the duty of prosecution	68
Necessity of lawyers in court	60, 75

VII. Concept: Jury System

Dimension	Item
Participation in judicial decision making process	46, 59
Willingness to serve jury duty	49
Safeguard of trial by jury	50, 55, 56
Limitation on jury trial	51

VIII. Concept: The Right of Silence and Presumption of Innocence

Dimension	Item
Presumption of innocence	27, 43
Onus of proof for grave offences	25

IX. Concept: General Questions

Dimension	Item
Should an unjust law be observed	24
Legal System be retained / Direct Election	78
Confidence in the political future of Hong Kong	79

APPENDIX B-1

A list of interviewers and the areas they conducted the interviews. Their telephone numbers were provided at the time of the survey project.

	Name	Area	Telephone	Institution
1	AU, Man Kit	Eastern	K-504309	HKBC
2	CHAN, Henry Wai Hon	Kwun Tong	K-485841	HKBC
3	CHANG, Pauline	Eastern	H-655147	CUHK
4	CHEUNG, Oi Lun	Kwun Tong	K-475933	HKBC
5	CHOW, Chi Man	Kwun Tong	K-7596796	HKBC
6	FUNG, Cheung Wah	Eastern	H-569473	CUHK
7	KONG, Lai Ching	Eastern	K-211598	Other
8	KWOK, Cheung	Kwun Tong	K-208028	CUHK
9	LAU, Hon Wai	Kwun Tong	K-7553446	HKU
10	LAU, Kwan Wai	Kwun Tong	K-7599921	HKU
11	LAY, Yan Piau	Eastern	K-891491	Other
12	LEE, Thomas Man Kin	Kwun Tong	K-7111168	HKU
13	LEE, Yuk Ching	Eastern	H-8172974	CUHK
14	LEUNG, Hon Keung	Eastern	K-410647	Other
15	LEUNG, Juliet T.L.	Eastern	K-7201076	HKU
16	LEUNG, Thomas S.T.	Eastern	H-616966	HKU
17	LEUNG, Wing Fai	Kwun Tong	K-7591849	CUHK
18	LEUNG, Yim Chee	Shum Shui Po	K-871737	HKBC
19	NG, Mo Ying	Wong Tai Sin	O-212744	HKBC
20	SUEN, Suk Yin	Shum Shui Po	K-7293027	HKBC
21	TAI, David Wing K.	Eastern	K-864352	CUHK
22	TANG, Ivan Yiu Wing	Kwun Tong	H-591011	HKU
23	WAN, Wai Lan	Shum Shui Po	K-937247	HKBC
24	WONG, Sau Kuen	Wong Tai Sin	O-6049664	HKBC
25	WONG, Yung Fong	Wong Tai Sin	O-908623	HKBC
26	YU, Yeuk Mui	Wong Tai Sin	O-249055	HKBC
27	YUM, Wai Ling	Shum Shui Po	K-882677	HKBC

CUHK - Education Students, Chinese University of Hong Kong
 HKBC - Social Work Students, Hong Kong Baptist College
 HKU - Law Students, University of Hong Kong
 Other - Matriculation students recruited by education students of CUHK

Appendix B-2

Legal Attitudes Survey (Check-list)

Name of Interviewer: Mr./Ms. _____

Hong Kong I.D.: _____

Institution: Baptist/CUHK/HKU/Other

Telephone Number: _____

District Assigned: _____

No. of respondents assigned: 8 9 10 11 12 _____

Housing Type: Public and Aided/Private

Instructions for interviewers:

- 1) All respondents must be at least 18 year old, and from the above housing type only.
- 2) Each interviewer should not interview more than one (1) respondent who is over 65 year old.
- 3) The interviews should be conducted between 8:p.m. and 9:p.m. on weekdays and 1:p.m. and 5:p.m. on Sundays.
- 4) Only one person is allowed to be interviewed from each household selected at random.
- 5) The interviews must be evenly spread out across three (3) buildings.
- 6) Please carry your student ID card.
- 7) Please assure the respondent at the beginning of each interview of the confidentiality in accordance to the questionnaire's instruction .
- 8) Items 1 to 12 should always be the last questions to ask.
- 9) Please complete items 1, 3, 10, 11, and 80 on the first 5 columns of the NAME part of the optical sheet .

Please check the following:

Male- 1 2 3 4 5 6 (For male: four or more must be employed)

Female- 1 2 3 4 5 6 (For female: only half must be employed)

Note (during and after the interviews):

- 1) Upon return of the questionnaire and optical sheets, a cheque will be issued for the number of interviews conducted. Please also sign and return this form.
- 2) Please contact the co-ordinator of the interviewers for all questions and payments.
- 3) The co-ordinator of the interviewers is: Stephen Yue Ping CHUNG (Telephone: 0-6952912)
School of Education
Chinese University of Hong Kong
(or Berry Hsu at H-604729)

I confirm that I have conducted the interviews in accordance to the instructions as stated above .

(Date)

(Signature of the interviewer)

APPENDIX C-1

7 JAN 88

The Chinese Population of Hong Kong

CROSS TABULATION OF EDUCATION LEVELS BY INCOME

EDUCA	Education Levels	INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-8K	Over 8K	
		1.00	2.00	3.00	4.00	
	COUNT					
	ROW PCT					
	COL PCT					
EDUCA	1	6	4	2		12
No Educa		50.0	33.3	16.7		3.6
		15.0	3.0	2.1		
EDUCA	2	15	16	4	5	41
Primary		36.6	39.0	9.8	14.6	12.5
		37.5	11.9	4.1	10.5	
EDUCA	3	12	77	37	22	148
Second		8.1	52.0	25.0	14.9	45.0
		30.0	57.0	38.1	38.6	
EDUCA	4	3	29	7	5	44
Matric		6.8	65.9	15.8	11.4	13.4
		7.5	21.5	7.2	8.8	
EDUCA	5	4	9	47	24	84
Post-Sec		4.8	10.7	58.0	28.6	25.5
		10.0	6.7	48.5	42.1	
	COLUMN TOTAL	40	135	97	57	329
		12.2	41.0	28.5	17.3	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
110.69264	12	0.0000	1.459	5 OF 20 (25.0%)

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.50175	
PEARSON'S R	0.37935	0.0000
GAMMA	0.45482	

NUMBER OF MISSING OBSERVATIONS = 52

APPENDIX C-2

7 JAN 88

The Chinese Population of Hong Kong

CHI-SQUARE TEST

INCOME	CATEGORY	CASES		
		OBSERVED	EXPECTED	RESIDUAL
Under 1K	1	17	21.18	-4.18
2K-3K	2	24	72.16	-48.16
3K-4K	3	88	98.64	-10.64
4K-5K	4	47	60.90	-13.90
5K-6K	5	79	27.47	51.53
6K-7K	6	18	15.23	2.77
7K-8K	7	40	14.56	25.44
8K-9K	8	7	6.95	.05
Over 9K	9	11	13.90	-2.90
	TOTAL	331		

CHI-SQUARE	D.F.	SIGNIFICANCE
179.504	8	0.0

APPENDIX C-3

7 JAN 88

The Chinese Population of Hong Kong

*** MULTIPLE REGRESSION ***

Listwise Deletion of Missing Data

Equation Number 1 Dependent Variable.. FEEL Feeling of being traditional

Beginning Block Number 1. Method: Enter

Variable(s) Entered on Step Number 1.. TRAD Chinese Traditionalism

Multiple R	.27282	Analysis of Variance			
R Square	.07443		DF	Sum of Squares	Mean Square
Adjusted R Square	.07199	Regression	1	23.93235	23.93235
Standard Error	.88615	Residual	379	297.61096	.78525
		F =	30.47724	Signif F =	.0000

----- Variables in the Equation -----

Variable	B	SE B	Beta	T	Sig T
TRAD	.461706	.083633	.272818	5.521	.0000
(Constant)	1.349698	.201424		6.701	.0000

APPENDIX C-4

7 JAN 88

The Chinese Population of Hong Kong

----- C R D S T A B U L A T I O N O F -----
 TRAD Chinese Traditionalism BY AGE

	COUNT COL PCT	AGE				ROW TOTAL
		18-27	28-37	38-47	Above 47	
TRAD		1.00	2.00	3.00	4.00	
Strongly Agree	1.00	2	3	1	3	9
Agree	2.00	115	59	30	29	233
Disagree	3.00	80	43	5	5	133
		40.6	41.0	13.9	13.5	35.5
COLUMN TOTAL		197	105	36	37	375
		52.5	28.0	9.6	9.9	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
24.04370	6	0.0005	0.864	4 OF 12 (33.3%)

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.24547	
PEARSON'S R	-0.21599	0.0000
GAMMA	-0.30731	

NUMBER OF MISSING OBSERVATIONS = 6

APPENDIX C-5

Comparison between mean responses of the Chinese members of the legal profession who have provided their names and those who have not. The differences, other than those denoted by asterisks (*), are very insignificant.

Likert's scale 1 to 5 (Strongly Agree to Strongly Disagree).

Item	Mean Name	Mean No Name	Student's t-test
24	3.21053	3.25676	0.16342
25	2.78947	2.93151	0.49900
26	2.36842	2.05405	1.13785
27	1.36842	1.45946	0.64323
28	1.78947	1.87671	0.49403
29	3.68421	3.83784	0.87094
30	3.47368	3.74324	0.82010
31	1.68421	1.63514	0.37607
32	3.68421	3.68919	0.02161
33	1.47368	1.78378	2.17946**
34	3.78947	4.02703	1.21007
35	2.73684	2.64865	0.26390
36	3.42105	3.45946	0.18286
37	1.78947	1.71622	0.36868
38	2.00000	2.29730	1.38473
39	4.05263	4.00000	0.19863
40	3.21053	3.39189	0.66832
41	2.05263	2.10811	0.22086
42	3.89474	3.85135	0.15643
43	3.89474	3.90278	0.02670
44	2.47368	2.58108	0.48655
45	2.89474	2.91892	0.11527
46	2.84211	2.82192	0.09558
47	3.47368	3.55405	0.29902
48	2.57895	2.64384	0.24826
49	2.00000	2.01351	0.04564
50	2.94737	2.54054	1.73074
51	2.57895	3.05479	1.77411
52	2.47368	2.63014	0.54798
53	2.73684	2.79452	0.27366
54	3.73684	3.83562	0.40999
55	2.47368	2.34247	0.49564
56	3.42105	3.60274	0.70426
57	3.10526	3.05479	0.18577
58	3.63158	3.54795	0.24383
59	2.94737	2.78082	0.59746
60	1.89474	1.90411	0.05511
61	1.73684	2.15278	2.83047*
62	2.15789	2.19178	0.13020
63	2.05263	1.97260	0.30963
64	3.63158	3.82192	0.60822
65	3.36842	3.38356	0.05638

(.....continued)

Item	Mean Name	Mean No Name	Student's t-test
66	3.78947	3.93151	0.55980
67	3.26316	3.16438	0.47055
68	1.68421	1.84932	0.84503
69	3.57895	3.47222	0.51346
70	2.89474	2.98630	0.51415
71	2.78947	2.66667	0.62897
72	2.47368	2.41096	0.25307
73	3.15789	3.05479	0.44747
74	3.31579	3.24658	0.30186
75	4.36842	4.21918	1.02039
76	3.94737	3.80822	0.51581
77	3.10526	3.05479	0.17616
78	2.21053	2.30137	0.27776
79	3.36842	3.15068	0.67014

* Denotes at 1% level of significance.

** Denotes at 7% level of significance.

Summary by Likert's Scale

Appendix D-1

Authority of Law in Hong Kong and Canada

DIMENSION: Prestige of Law in Hong Kong and Canada

24 I should not obey the law if I can if I do not think it is just.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.99						
2	Legal Prof	3.26	1.82					
3	LL.B. Pt. I	3.23	1.21	0.10				
4	HK Student	2.87	1.05	2.25**	1.66			
5	Can. Stud.	3.34	2.66**	0.47	0.48	2.87*		

78 The present legal system should remain in Hong Kong after June, 1997. (For legal profession, 'direct election')

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.13						
2	Legal Prof	2.30	1.28					
3	LL.B. Pt. I	1.45	5.12*	4.76*				
4	HK Student	1.83	1.83	2.33**	3.07*			

* denotes at 1% level of significance.
 ** denotes at 5% level of significance.

Appendix D-2
 Individual and Legal Rights

DIMENSION: Insistence on legal right

26 A person should always insist on his legal rights.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	1.91						
2	Legal Prof	2.05	1.07					
3	LL.B. Pt. I	1.77	0.77	1.28				
4	HK Student	1.90	0.14	1.01	0.64			
5	Can. Stud.	1.42	5.07*	4.04*	1.69	3.84*		

31 If my vehicle was hit negligently by another vehicle, I should seek compensation.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	1.83						
2	Legal Prof	1.64	2.48**					
3	LL.B. Pt. I	1.37	4.83*	2.35**				
4	HK Student	1.66	2.03**	0.26	2.53**			
5	Can. Stud.	1.30	7.18*	3.50*	0.63	3.66*		

41 I should defend my parking ticket in court if I think I am right rather than pay the fine imposed by the authority.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.48						
2	Legal Prof	2.11	2.94*					
3	LL.B. Pt. I	1.70	4.65*	2.06**				
4	HK Student	2.26	2.09**	0.98	2.98*			
5	Can. Stud.	2.30	1.25	1.04	2.82*	0.24		

DIMENSION: Resorting to court to settle dispute

28 If my dispute cannot be settled through mediation or other means, I would resort to the court for help.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.47						
2	Legal Prof	1.88	5.29*					
3	LL.B. Pt. I	2.10	2.19**	1.17				
4	HK Student	2.23	2.47**	2.73*	0.74			
5	Can. Stud.	1.66	8.90*	1.73	2.47**	5.09*		

DIMENSION: Cooperation with the judicial system

33 If I am a witness to an accident, and am asked by the aggrieved party to testify in court, I should cooperate.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.03						
2	Legal Prof	1.78	2.80*					
3	LL.B. Pt. I	1.63	4.12*	1.25				
4	HK Student	1.77	2.89*	0.13	1.14			
5	Can. Stud.	1.45	6.40*	2.87*	1.48	2.75*		

DIMENSION: Attitudes towards law suits

34 I hate people who resort to litigation.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.74						
2	Legal Prof	4.03	14.09*					
3	LL.B. Pt. I	3.10	1.44	3.60*				
4	HK Student	3.01	2.33**	7.70*	0.32			
5	Can. Stud.	3.52	7.29*	4.10*	1.61	3.56*		

DIMENSION: Respect of other's legal right

44 I should continue patronizing a chemist store if the owner caught a person stealing out of necessity and turned him over to the police.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.64						
2	Legal Prof	2.58	0.54					
3	LL.B. Pt. I	2.50	0.70	0.35				
4	HK Student	2.49	1.65	0.70	0.06			
5	Can. Stud.	2.50	1.07	0.49	0.0	0.09		

61 As a member of the jury, I would find the father who assaults his dentist son guilty for charging him for dental services.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.72						
2	Legal Prof	2.15	4.92*					
3	LL.B. Pt. I	2.30	2.41**	0.75				
4	HK Student	2.53	1.78	2.63**	1.17			
5	Can. Stud.	1.88	7.84*	1.96	2.21**	4.79*		

DIMENSION: Willingness to defend rights of others

37 If I am a witness to the assault of a private citizen on the street by the police, I should testify.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	1.99						
2	Legal Prof	1.72	2.97*					
3	LL.B. Pt. I	1.60	3.53*	0.88				
4	HK Student	1.86	1.37	1.20	1.94			
5	Can. Stud.	1.47	6.48*	2.28**	1.05	3.54*		

DIMENSION: Confidence in the administration of justice

38 I am not afraid of reprisals for testifying in court.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.74						
2	Legal Prof	2.30	3.72*					
3	LL.B. Pt. I	2.53	0.98	1.04				
4	HK Student	2.39	3.02*	0.63	0.64			
5	Can. Stud.	2.64	0.75	2.17**	0.46	1.61		

40 I am well protected against reprisals if I testify in court.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.36						
2	Legal Prof	3.39	8.72*					
3	LL.B. Pt. I	2.77	1.88	2.62**				
4	HK Student	2.71	3.22*	4.72*	0.26			
5	Can. Stud.	3.08	5.40*	1.90	1.26	2.36**		

70 Police often fabricate evidence to earn their promotion.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.18						
2	Legal Prof	2.99	1.90					
3	LL.B. Pt. I	3.30	0.62	1.54				
4	HK Student	2.97	2.27**	0.10	1.65			
5	Can. Stud.	3.53	3.19*	3.97*	1.12	4.33*		

72 I am free to criticize the actions of the Royal Hong Kong Police without fear of reprisals (RCMP/Police).

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.56						
2	Legal Prof	2.41	1.19					
3	LL.B. Pt. I	2.67	0.48	1.03				
4	HK Student	2.34	1.94	0.46	1.34			
5	Can. Stud.	2.67	0.81	1.50	0.02	1.99		

Appendix D-3
Rule of Law

DIMENSION: nullum crimen sine lege

62 A person should not be found guilty of an offence unless it is written in the law.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.41						
2	Legal Prof	2.19	1.73					
3	LL.B. Pt.I	1.73	3.92*	2.26**				
4	HK Student	3.07	4.64*	4.85*	6.27*			
5	Can. Stud.	2.89	3.12*	3.74*	5.24*	0.89		

63 An immoral and unethical act should not render a person liable to punishment unless the law requires.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.21						
2	Legal Prof	1.97	10.40*					
3	LL.B. Pt.I	2.23	4.35*	1.07				
4	HK Student	2.96	2.14**	6.65*	3.01*			
5	Can. Stud.	3.25	0.28	7.34*	3.95*	1.68		

DIMENSION: Exercise of arbitrary power by police

32 Police seldom arrest or interrogate the wrong person.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.53						
2	Legal Prof	3.59	0.47					
3	LL.B. Pt.I	4.03	2.28**	1.71				
4	HK Student	3.32	3.45*	2.77*	3.83*			
5	Can. Stud.	3.70	0.61	0.09	1.65	2.92*		

58 Sometimes, secret torture by the police is essential to extract evidence from hard criminals.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.18						
2	Legal Prof	3.55	2.22**					
3	LL.B. Pt.I	3.47	1.39	0.33				
4	HK Student	2.75	4.02*	4.46*	3.37*			
5	Can. Stud.	3.64	2.78*	0.43	0.72	4.87*		

DIMENSION: Equal opportunity before the court

35 Everyone has an equal opportunity to obtain justice before the courts.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.23						
2	Legal Prof	2.65	2.86*					
3	LL.B. Pt.I	2.80	1.56	0.18				
4	HK Student	1.77	3.74*	4.94*	3.21*			
5	Can. Stud.	2.34	0.65	1.40	0.89	2.84*		

36 The court serves only the rich and those who can afford a good lawyer.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.51						
2	Legal Prof	3.46	0.40					
3	LL.B. Pt.I	3.37	0.69	0.40				
4	HK Student	3.51	0.02	0.30	0.60			
5	Can. Stud.	3.39	0.84	0.40	0.10	0.65		

Appendix D-4
Judicial Independence

DIMENSION: Attitudes towards judicial independence

42 A judge's career is in jeopardy if his decision does not please the government.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.05						
2	Legal Prof	3.85	6.37*					
3	LL.B. Pt. I	3.73	3.35*	0.52				
4	HK Student	3.55	4.01*	1.84	0.79			
5	Can. Stud.	4.11	8.68*	1.62	1.67	3.50*		

48 Judges enjoy their judicial independence in that they are free to perform their duties without fear...

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.51						
2	Legal Prof	2.64	1.03					
3	LL.B. Pt. I	2.57	0.26	0.34				
4	HK Student	2.53	0.12	0.78	0.19			
5	Can. Stud.	2.66	0.94	0.07	0.37	0.76		

DIMENSION: Attitudes towards the judiciary

53 Judges are fair and impartial.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.99						
2	Legal Prof	2.79	1.75					
3	LL.B. Pt. I	2.87	0.69	0.36				
4	HK Student	2.66	3.65*	1.07	1.11			
5	Can. Stud.	2.89	0.82	0.64	0.12	1.71		

57 The judges treat English more favourably than Chinese when making judicial decisions (in Canada and England, other race...)

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.12						
2	Legal Prof	3.05	0.49					
3	LL.B. Pt. I	3.03	0.50	0.10				
4	HK Student	2.78	3.23*	1.76	1.32			
5	Can. Stud.	3.80	6.19*	4.65*	3.81*	7.50*		

67 Only honest people are appointed judges.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.16						
2	Legal Prof	3.16	0.08					
3	LL.B. Pt. I	2.80	1.64	1.56				
4	HK Student	3.00	1.51	1.23	0.87			
5	Can. Stud.	3.48	2.83*	2.22**	2.90*	3.52*		

DIMENSION: Judicial accountability

30 A judge should take public opinion into account for his judicial decision.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.69						
2	Legal Prof	3.74	7.29*					
3	LL.B. Pt. I	3.33	2.92*	1.64				
4	HK Student	1.83	8.20*	12.38*	6.71*			
5	Can. Stud.	2.50	1.17	6.18*	3.23*	4.01*		

66 A judicial decision that does not conform to public opinion is unreasonable and should be overruled.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.89						
2	Legal Prof	3.93	8.02*					
3	LL.B. Pt. I	3.93	5.42*	0.01				
4	HK Student	2.79	0.83	6.96*	5.27*			
5	Can. Stud.	3.47	3.85*	2.51**	2.00**	3.76*		

DIMENSION: Separation of judicial power

39 The Governor should be allowed to dismiss a judge if his decision is unreasonable.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.44						
2	Legal Prof	4.00	11.88*					
3	LL.B. Pt. I	3.70	5.57*	1.19				
4	HK Student	3.70	9.69*	1.77	0.01			
5	Can. Stud.	4.39	18.46*	2.55**	2.88*	4.56*		

64 The Legislative Council should overrule a judicial decision if it thinks such a decision is unreasonable.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.69						
2	Legal Prof	3.82	7.40*					
3	LL.B. Pt. I	4.17	7.20*	1.41				
4	HK Student	2.80	0.83	5.39*	5.85*			
5	Can. Stud.	3.72	6.74*	0.51	1.83	4.85*		

Appendix D-5
Adversary System and Independent Legal Profession

DIMENSION: Integrity of the prosecution

47 The promotion of a Crown prosecutor is determined by the number of successful convictions.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.17						
2	Legal Prof	3.55	2.72*					
3	LL.B. Pt. I	4.00	5.76*	2.36**				
4	HK Student	3.18	0.11	2.17**	4.72*			
5	Can. Stud.	3.03	1.15	3.03*	5.52*	0.98		

65 The Crown prosecutors always cooperate with defence lawyers to discover the truth of the case.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.67						
2	Legal Prof	3.36	5.97*					
3	LL.B. Pt. I	3.47	4.50*	0.41				
4	HK Student	2.91	2.66*	3.50*	2.97*			
5	Can. Stud.	3.30	5.01*	0.54	0.82	2.77*		

68 The prosecution always reveals evidence in favour of the defendant in court, e.g. a discovery of alibi.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.84						
2	Legal Prof	3.47	7.04*					
3	LL.B. Pt. I	3.20	2.34**	1.04				
4	HK Student	2.84	2.55**	4.88*	1.45			

71 A criminal investigation is more impartial if supervised by an independent judicial authority.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.52						
2	Legal Prof	2.67	1.28					
3	LL.B. Pt. I	2.83	1.16	0.58				
4	HK Student	2.34	2.03**	2.53**	1.78			
5	Can. Stud.	2.41	1.08	1.86	1.51	0.55		

73 The Crown prosecutor is under pressure to secure a conviction without considering the ethical and moral aspects.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.94						
2	Legal Prof	3.05	1.01					
3	LL.B. Pt. I	3.07	0.53	0.05				
4	HK Student	2.88	0.56	1.25	0.74			
5	Can. Stud.	2.52	3.22*	3.38*	2.08**	2.36**		

74 The Crown prosecutors often give favourable treatment to English over Chinese.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.00						
2	Legal Prof	3.25	2.11**					
3	LL.B. Pt. I	3.07	0.39	0.91				
4	HK Student	2.84	1.52	2.88*	1.19			
5	Can. Stud.	3.61	4.88*	2.32**	2.69*	5.22*		

DIMENSION: Integrity of the legal profession

28 Lawyers often incite litigation.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.22						
2	Legal Prof	3.84	6.34*					
3	LL.B. Pt. I	3.60	2.47**	1.39				
4	HK Student	2.92	3.43*	8.17*	4.11*			
5	Can. Stud.	3.03	1.60	5.97*	3.13*	0.88		

45 Lawyers are trustworthy people.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.78						
2	Legal Prof	2.92	1.29					
3	LL.B. Pt. I	2.77	0.06	0.75				
4	HK Student	3.07	2.99*	1.15	1.53			
5	Can. Stud.	2.84	0.55	0.51	0.37	1.62		

52 Complaints against lawyers should be handled by an independent body.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.36						
2	Legal Prof	2.63	2.06**					
3	LL.B. Pt. I	2.27	0.44	1.47				
4	HK Student	2.21	1.74	2.91*	0.25			
5	Can. Stud.	2.11	2.32**	3.29*	0.67	0.81		

54 Lawyers often help criminals to fabricate evidence.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.03						
2	Legal Prof	3.84	6.71*					
3	LL.B. Pt. I	3.53	3.19*	1.63				
4	HK Student	2.82	2.30**	7.38*	4.19*			
5	Can. Stud.	3.60	4.97*	1.53	0.38	5.88*		

DIMENSION: Economic barriers to obtaining legal services

76 Lawyers have as their priority to serve the interests of the rich and powerful.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.53						
2	Legal Prof	3.81	1.98**					
3	LL.B. Pt. I	3.66	0.58	0.61				
4	HK Student	3.28	1.84	2.92*	1.53			
5	Can. Stud.	3.41	0.87	2.21**	0.99	0.77		

77 Legal fees are too expensive.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.20						
2	Legal Prof	3.05	7.15*					
3	LL.B. Pt.I	2.03	1.10	5.58*				
4	HK Student	1.99	2.20**	7.54*	0.28			
5	Can. Stud.	2.18	0.19	5.58*	0.80	1.39		

DIMENSION: Perceptions on the duty of prosecution

68 The prosecution should reveal evidence in favour of the defendant in court, e.g. a discovery of alibi.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.31						
2	Legal Prof	1.85	4.60*					
3	LL.B. Pt.I	2.37	0.22	2.07**				
4	HK Student	2.55	2.77*	5.87*	0.76			
5	Can. Stud.	2.77	2.95*	5.26*	1.45	1.29		

DIMENSION: Necessity of lawyers in court

80 A good barrister can make a difference to the outcome of a case in court.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.75						
2	Legal Prof	1.90	8.04*					
3	LL.B. Pt.I	2.70	0.28	3.47*				
4	HK Student	2.25	5.87*	3.51*	1.94			
5	Can. Stud.	1.73	10.32*	1.48	4.18*	4.95*		

75 There is no reason why a person should consult with a lawyer if he has nothing to hide.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.32						
2	Legal Prof	4.22	8.66*					
3	LL.B. Pt.I	4.30	6.75*	0.49				
4	HK Student	3.59	2.33**	4.46*	4.09*			
5	Can. Stud.	4.25	8.97*	0.24	0.30	4.68*		

Appendix D-6
Jury System

DIMENSION: Participation in judicial decision making process

46 A citizen should participate in the judicial decision making process.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.37						
2	Legal Prof	2.82	3.66*					
3	LL.B. Pt.I	2.10	1.38	3.26*				
4	HK Student	2.27	0.92	3.64*	0.80			
5	Can. Stud.	2.44	0.53	2.21**	1.49	1.05		

59 Any adult who does not have a conviction should be qualified to be summoned as a juror.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.82						
2	Legal Prof	2.78	0.27					
3	LL.B. Pt.I	3.23	1.88	1.89				
4	HK Student	2.55	2.20**	1.36	2.97*			
5	Can. Stud.	2.52	1.82	1.29	2.80*	0.15		

DIMENSION: Willingness to serve jury duty

49 I should attend jury duty if I am summoned.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.20						
2	Legal Prof	2.01	1.58					
3	LL.B. Pt.I	1.53	5.03*	2.91*				
4	HK Student	2.08	1.26	0.46	3.61*			
5	Can. Stud.	1.72	3.61*	1.78	1.05	2.37**		

DIMENSION: Safeguard of trial by jury

50 Trial by jury is the fairest method for disposing of a criminal case.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.73						
2	Legal Prof	2.54	1.61					
3	LL.B. Pt.I	2.53	1.24	0.04				
4	HK Student	2.46	2.86*	0.59	0.43			
5	Can. Stud.	2.59	1.07	0.33	0.32	0.93		

55 The jury system is necessary to safeguard the people against the arbitrary power of the state.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.28						
2	Legal Prof	2.34	0.46					
3	LL.B. Pt.I	2.10	0.93	1.05				
4	HK Student	1.86	5.18*	3.38*	1.17			
5	Can. Stud.	2.58	2.25**	1.34	2.07**	4.86*		

56 The jury is a mechanism whereby upper and middle class interests are protected, as those who do not understand English ...

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.40						
2	Legal Prof	3.80	1.66					
3	LL.B. Pt.I	3.83	1.56	0.17				
4	HK Student	3.58	1.48	0.07	0.23			

DIMENSION: Limitation on jury trial

51 Complex commercial cases should only be tried by the judges.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.17						
2	Legal Prof	3.05	0.80					
3	LL.B. Pt.I	3.70	2.94*	2.95*				
4	HK Student	2.91	2.44**	0.91	4.01*			
5	Can. Stud.	2.56	4.88*	2.83*	5.48*	2.35**		

Appendix D-7
The Right of Silence and Presumption of Innocence

DIMENSION: Presumption of innocence

27 A person shall not be regarded as guilty unless it is proven beyond a reasonable doubt that he is guilty.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.53						
2	Legal Prof	1.46	10.39*					
3	LL.B. Pt.I	1.73	3.49*	1.17				
4	HK Student	2.36	1.20	6.99*	2.63*			
5	Can. Stud.	1.89	4.50*	2.81*	0.62	3.02*		

43 A person is somewhat guilty if he is prosecuted for an offence even though the court finds him not guilty.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.15						
2	Legal Prof	3.90	5.57*					
3	LL.B. Pt.I	3.90	3.82*	0.01				
4	HK Student	2.94	1.82	5.51*	4.28*			
5	Can. Stud.	4.11	7.62*	1.23	0.95	6.97*		

DIMENSION: Onus of proof

25 A person from whom 2 ounces of opium was seized in his possession should justify he was not trafficking in drugs.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	2.63						
2	Legal Prof	2.93	2.00**					
3	LL.B. Pt.I	2.47	0.75	1.80				
4	HK Student	3.32	5.95*	2.24**	3.53*			
5	Can. Stud.	3.05	2.40**	0.54	2.13**	1.39		

Appendix D-8
General Questions

DIMENSION: Maintaining the present legal system after 1997

DIMENSION: Confidence in the future of Hong Kong

79 A person should leave Hong Kong before 1997 if he can.

	Population	Mean	t-test	Group 1	Group 2	Group 3	Group 4	Group 5
1	HK Chinese	3.62						
2	Legal Prof	3.15	3.39*					
3	LL.B. Pt.1	3.34	1.51	0.90				
4	HK Student	2.95	5.36*	1.18	1.90			

Appendix E-1

Authority of Law in Hong Kong, Canada, and England

DIMENSION: Prestige of Law in Hong Kong, Canada, and England

24 I should not obey the law if I can if I do not think it is just.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.78)	** (33.24)	** (26.65)	** (31.59)	** (3.74)	** (51.83)	** (48.17)
Legal Prof	6 (8.11)	18 (24.32)	7 (9.46)	37 (50.00)	6 (8.11)	24 (35.82)	43 (64.18)
LL.B. Pt. I	2 (6.67)	6 (20.00)	6 (20.00)	15 (50.00)	1 (3.33)	8 (33.33)	16 (66.67)
HK Student	4 (5.13)	27 (34.62)	22 (28.21)	25 (32.05)	0 (0.0)	31 (55.36)	25 (44.64)
Can. Stud.	3 (4.69)	10 (15.63)	19 (29.69)	26 (40.63)	6 (9.38)	13 (28.89)	32 (71.11)
Eng. Popu.	9 (11.25)	17 (21.25)	9 (11.25)	40 (50.00)	5 (6.25)	26 (36.62)	45 (63.38)

DIMENSION: Maintaining the present legal system after 1997

78 The present legal system should remain in (Hong Kong after 1997)/(in England for English sample).
(For legal profession, 'direct election')

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (20.39)	** (57.91)	** (16.10)	** (5.11)	** (0.49)	** (93.33)	** (6.67)
Legal Prof	18 (24.66)	29 (39.73)	14 (19.18)	10 (13.70)	2 (2.74)	47 (79.66)	12 (20.34)
LL.B. Pt. I	18 (62.07)	10 (34.48)	0 (0.0)	1 (3.45)	0 (0.0)	28 (95.55)	1 (3.45)
HK Student	26 (34.21)	31 (40.79)	17 (22.37)	2 (2.63)	0 (0.0)	57 (96.61)	2 (3.39)
Can. Stud.	NA	NA	NA	NA	NA	NA	NA
Eng. Popu.	3 (3.75)	23 (28.75)	30 (37.50)	20 (25.00)	4 (5.00)	26 (52.00)	24 (48.00)

Appendix E-2
Individual and Legal Rights

DIMENSION: Insistence on legal right

26 A person should always insist on his legal rights.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (25.83)	** (82.65)	** (5.87)	** (5.65)	** (0.0)	** (94.00)	** (6.00)
Legal Prof	28 (37.84)	27 (36.49)	8 (10.81)	9 (12.16)	2 (2.70)	55 (83.33)	11 (16.67)
LL.B. Pt. I	15 (50.00)	11 (36.67)	0 (0.0)	4 (13.33)	0 (0.0)	26 (86.67)	4 (13.33)
HK Student	24 (30.77)	41 (52.56)	10 (12.82)	3 (3.85)	0 (0.0)	65 (95.59)	3 (4.41)
Can. Stud.	43 (67.19)	17 (26.56)	2 (3.13)	2 (3.13)	0 (0.0)	60 (96.77)	2 (3.23)
Eng. Popu.	26 (32.50)	29 (36.25)	16 (20.00)	9 (11.25)	0 (0.0)	55 (85.94)	9 (14.06)

31 If my vehicle was hit negligently by another vehicle, I should seek compensation.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (31.31)	** (60.13)	** (4.81)	** (3.75)	** (0.0)	** (96.06)	** (3.94)
Legal Prof	32 (43.24)	37 (50.00)	5 (6.76)	0 (0.0)	0 (0.0)	69 (100.00)	0 (0.0)
LL.B. Pt. I	19 (63.33)	11 (36.67)	0 (0.0)	0 (0.0)	0 (0.0)	30 (100.00)	0 (0.0)
HK Student	33 (42.86)	38 (49.35)	5 (6.49)	1 (1.30)	0 (0.0)	71 (98.61)	1 (1.39)
Can. Stud.	47 (73.44)	15 (23.44)	2 (3.13)	0 (0.0)	0 (0.0)	62 (100.00)	0 (0.0)
Eng. Popu.	36 (45.57)	35 (44.30)	6 (7.59)	2 (2.53)	0 (0.0)	71 (97.26)	2 (2.74)

41 I should defend my parking ticket in court if I think I am right rather than pay the fine imposed by the authority.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (11.83)	** (51.17)	** (11.81)	** (24.84)	** (0.36)	** (71.43)	** (28.57)
Legal Prof	19 (25.68)	39 (52.70)	8 (10.81)	5 (6.76)	3 (4.05)	58 (87.88)	8 (12.12)
LL.B. Pt. I	15 (50.00)	11 (36.67)	2 (6.67)	2 (6.67)	0 (0.0)	26 (92.86)	2 (7.14)
HK Student	33 (42.86)	39 (50.00)	19 (24.36)	7 (8.97)	0 (0.0)	52 (88.14)	7 (11.86)
Can. Stud.	16 (25.00)	28 (43.75)	6 (9.38)	13 (20.31)	1 (1.56)	44 (75.86)	14 (24.14)
Eng. Popu.	15 (19.48)	26 (33.77)	19 (24.68)	12 (15.58)	5 (6.49)	41 (70.69)	17 (29.31)

DIMENSION: Resorting to court to settle dispute

28 If my dispute cannot be settled through mediation or other means, I would resort to the court for help.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (10.13)	** (51.07)	** (18.25)	** (19.37)	** (1.18)	** (74.86)	** (25.14)
Legal Prof	26 (35.62)	35 (47.95)	8 (10.96)	3 (4.11)	1 (1.37)	61 (93.85)	4 (6.15)
LL.B. Pt. I	6 (20.00)	18 (60.00)	4 (13.33)	1 (3.33)	1 (3.33)	24 (93.31)	2 (7.69)
HK Student	8 (10.39)	47 (61.04)	19 (24.68)	2 (2.60)	1 (1.30)	55 (84.83)	3 (5.17)
Can. Stud.	27 (42.19)	32 (50.00)	5 (7.81)	0 (0.0)	0 (0.0)	59 (100.00)	0 (0.0)
Eng. Popu.	7 (8.75)	35 (43.75)	25 (31.25)	11 (13.75)	2 (2.50)	42 (76.36)	13 (23.64)

DIMENSION: Cooperation with the judicial system

33 If I am a witness to an accident, and am asked by the aggrieved party to testify in court, I should cooperate.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (14.75)	** (72.55)	** (5.56)	** (7.14)	** (0.0)	** (92.44)	** (7.5)
Legal Prof	23 (31.08)	47 (63.51)	2 (2.70)	1 (1.35)	1 (1.35)	70 (97.22)	2 (2.7)
LL.B. Pt. I	11 (36.67)	19 (63.33)	0 (0.0)	0 (0.0)	0 (0.0)	30 (100.00)	0 (0.0)
HK Student	29 (37.18)	39 (50.00)	9 (11.54)	1 (1.28)	0 (0.0)	68 (98.55)	1 (1.4)
Can. Stud.	39 (60.94)	23 (35.94)	0 (0.0)	2 (3.13)	0 (0.0)	62 (96.88)	2 (3.1)
Eng. Popu.	11 (13.92)	48 (60.76)	14 (17.72)	6 (7.59)	0 (0.0)	59 (90.77)	6 (9.2)

DIMENSION: Attitudes towards law suits

34 I hate people who resort to litigation.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (4.56)	** (48.62)	** (17.02)	** (28.59)	** (1.21)	** (64.08)	** (35.9)
Legal Prof	0 (0.0)	1 (1.35)	12 (16.22)	45 (60.81)	16 (21.62)	1 (1.35)	61 (98.3)
LL.B. Pt. I	2 (6.67)	13 (43.33)	1 (3.33)	8 (26.67)	6 (20.00)	15 (51.72)	14 (48.2)
HK Student	2 (2.63)	21 (27.63)	32 (42.11)	16 (21.05)	5 (6.58)	23 (52.27)	21 (47.7)
Can. Stud.	0 (0.0)	2 (3.17)	34 (53.97)	19 (30.16)	8 (12.70)	2 (6.90)	27 (93.1)
Eng. Popu.	1 (1.25)	4 (5.00)	42 (52.50)	23 (28.75)	10 (12.50)	5 (13.16)	33 (86.8)

DIMENSION: Respect for other's legal right

44 I should continue patronizing a chemist store if the owner caught a person stealing out of necessity and turned him over

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (3.81)	** (53.98)	** (12.99)	** (24.70)	** (4.52)	** (66.41)	** (33.5)
Legal Prof	6 (8.11)	34 (45.95)	20 (27.03)	13 (17.57)	1 (1.35)	40 (74.07)	14 (25.9)
LL.B. Pt. I	3 (10.00)	17 (56.67)	5 (16.67)	2 (6.67)	3 (10.00)	20 (80.00)	5 (20.0)
HK Student	3 (3.85)	40 (51.28)	30 (38.46)	4 (5.13)	1 (1.28)	43 (89.58)	5 (10.4)
Can. Stud.	6 (9.38)	33 (51.56)	17 (26.56)	3 (4.69)	5 (7.81)	39 (82.98)	8 (17.0)
Eng. Popu.	13 (16.25)	36 (45.00)	22 (27.50)	8 (10.00)	1 (1.25)	49 (84.48)	9 (15.5)

61 As a member of the jury, I would find the father who assaults his dentist son guilty for charging him for dental service

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (3.35)	** (49.20)	** (13.28)	** (31.95)	** (2.22)	** (60.60)	** (39.4)
Legal Prof	10 (13.89)	51 (70.83)	4 (5.56)	4 (5.56)	3 (4.17)	61 (89.71)	7 (10.2)
LL.B. Pt. I	4 (13.33)	11 (60.00)	3 (10.00)	5 (16.67)	0 (0.0)	22 (81.48)	5 (18.5)
HK Student	6 (7.88)	35 (46.05)	24 (31.58)	11 (14.47)	0 (0.0)	41 (78.85)	11 (21.1)
Can. Stud.	19 (29.69)	38 (59.38)	3 (4.69)	4 (6.25)	0 (0.0)	57 (93.44)	4 (6.5)
Eng. Popu.	8 (10.00)	38 (47.50)	23 (28.75)	11 (13.75)	0 (0.0)	46 (80.70)	11 (19.3)

DIMENSION: Willingness to defend rights of others

37 If I am a witness to the assault of a private citizen on the street by the police, I should testify.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (20.99)	** (65.81)	** (4.52)	** (8.17)	** (0.50)	** (80.92)	** (9.0)
Legal Prof	28 (37.84)	42 (56.76)	2 (2.70)	1 (1.35)	1 (1.35)	70 (97.22)	2 (2.7)
LL.B. Pt. I	13 (43.33)	16 (53.33)	1 (3.33)	0 (0.0)	0 (0.0)	29 (100.00)	0 (0.0)
HK Student	26 (33.33)	39 (50.00)	11 (14.10)	2 (2.56)	0 (0.0)	65 (97.01)	2 (2.9)
Can. Stud.	36 (56.25)	26 (40.63)	2 (3.13)	0 (0.0)	0 (0.0)	62 (100.00)	0 (0.0)
Eng. Popu.	17 (21.25)	36 (45.00)	18 (23.75)	7 (8.75)	1 (1.25)	53 (86.89)	8 (13.1)

DIMENSION: Confidence in the administration of justice

38 I am not afraid of reprisals for testifying in court.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (7.74)	** (45.86)	** (13.92)	** (27.80)	** (4.69)	** (62.26)	** (37.7)
Legal Prof	14 (18.82)	32 (43.24)	20 (27.03)	8 (10.81)	0 (0.0)	46 (85.19)	8 (14.8)
LL.B. Pt. I	5 (16.67)	13 (43.33)	3 (10.00)	9 (30.00)	0 (0.0)	18 (66.67)	9 (33.3)
HK Student	10 (12.99)	38 (49.35)	18 (23.38)	11 (14.29)	0 (0.0)	48 (81.36)	11 (18.6)
Can. Stud.	6 (9.38)	23 (35.94)	26 (40.63)	6 (9.38)	3 (4.69)	29 (76.32)	9 (23.6)
Eng. Popu.	8 (10.00)	24 (30.00)	22 (27.50)	25 (31.25)	1 (1.25)	32 (55.17)	26 (44.8)

40 I am well protected against reprisals if I testify in court.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (14.11)	** (51.95)	** (17.43)	** (15.79)	** (0.72)	** (80.01)	** (19.9)
Legal Prof	1 (1.35)	13 (17.57)	23 (31.08)	30 (40.54)	7 (9.46)	14 (27.45)	37 (72.5)
LL.B. Pt. I	4 (13.33)	11 (36.67)	4 (13.33)	10 (33.33)	1 (3.33)	15 (57.69)	11 (42.3)
HK Student	5 (6.41)	27 (34.62)	33 (42.31)	12 (15.38)	1 (1.28)	32 (71.11)	13 (28.8)
Can. Stud.	3 (4.69)	15 (23.44)	25 (39.06)	16 (25.00)	5 (7.81)	18 (46.15)	21 (53.8)
Eng. Popu.	3 (3.80)	14 (17.72)	30 (37.97)	28 (35.44)	4 (5.06)	17 (34.69)	32 (65.3)

70 Police often fabricate evidence to earn their promotion.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (3.22)	** (19.04)	** (38.98)	** (34.83)	** (3.93)	** (36.48)	** (63.5)
Legal Prof	3 (4.11)	15 (20.55)	35 (47.95)	20 (27.40)	0 (0.0)	18 (47.37)	20 (52.6)
LL.B. Pt. I	1 (3.33)	6 (20.00)	8 (26.67)	13 (43.33)	2 (6.67)	7 (31.82)	15 (68.1)
HK Student	0 (0.0)	20 (26.32)	38 (50.00)	18 (23.68)	0 (0.0)	20 (52.63)	18 (47.3)
Can. Stud.	0 (0.0)	7 (10.84)	21 (32.81)	31 (48.44)	5 (7.81)	7 (16.28)	36 (83.7)
Eng. Popu.	5 (6.25)	21 (26.25)	37 (46.25)	13 (16.25)	4 (5.00)	26 (60.47)	17 (39.5)

72 I am free to criticize the actions of the Royal Hong Kong Police without fear of reprisals (RCMP/Police).

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disa
HK Chinese	** (12.48)	** (44.51)	** (19.53)	** (22.14)	** (1.34)	** (70.82)	** (29.1)
Legal Prof	8 (10.96)	42 (57.53)	9 (12.33)	13 (17.81)	1 (1.37)	50 (78.13)	14 (21.8)
LL.B. Pt. I	4 (13.33)	14 (46.67)	2 (6.67)	8 (26.67)	2 (6.67)	18 (64.29)	10 (35.7)
HK Student	10 (13.16)	38 (50.00)	21 (27.63)	6 (7.89)	1 (1.32)	48 (81.27)	7 (12.7)
Can. Stud.	6 (9.38)	28 (43.75)	15 (23.44)	11 (17.19)	4 (6.25)	34 (69.39)	15 (30.6)
Eng. Popu.	10 (12.50)	34 (42.50)	17 (21.25)	16 (20.00)	3 (3.75)	44 (69.84)	19 (30.1)

Appendix E-3
The Rule of Law

DIMENSION: Nullum Crimen Sine Lege

62 A person should not be found guilty of an offence unless it is written in the law.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (8.08)	** (60.11)	** (8.86)	** (18.61)	** (1.34)	** (76.77)	** (23.23)
Legal Prof	17 (23.29)	37 (50.68)	8 (10.86)	10 (13.70)	1 (1.37)	54 (83.08)	11 (16.92)
LL.B. Pt.I	13 (43.33)	15 (50.00)	0 (0.0)	1 (3.33)	1 (3.33)	28 (93.33)	2 (6.67)
HK Student	7 (9.21)	20 (26.32)	17 (22.37)	25 (32.88)	7 (9.21)	27 (45.76)	32 (54.24)
Can. Stud.	6 (9.38)	22 (34.38)	16 (25.00)	13 (20.31)	7 (10.94)	28 (58.33)	20 (41.67)
Eng. Popu.	8 (10.00)	44 (55.00)	13 (16.25)	12 (15.00)	3 (3.75)	52 (77.61)	15 (22.39)

63 An immoral and unethical act should not render a person liable to punishment unless the law requires.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.07)	** (23.54)	** (15.63)	** (51.98)	** (5.77)	** (31.53)	** (68.47)
Legal Prof	20 (27.40)	44 (60.27)	2 (2.74)	5 (6.85)	2 (2.74)	64 (90.14)	7 (9.86)
LL.B. Pt.I	8 (26.67)	15 (50.00)	1 (3.33)	4 (13.33)	2 (6.67)	23 (79.31)	6 (20.69)
HK Student	1 (1.32)	26 (34.21)	27 (35.53)	19 (25.00)	3 (3.95)	27 (55.10)	22 (44.90)
Can. Stud.	3 (4.69)	18 (25.00)	14 (21.88)	24 (37.50)	7 (10.94)	19 (38.00)	31 (62.00)
Eng. Popu.	4 (5.00)	32 (40.00)	24 (30.00)	16 (20.00)	4 (5.00)	36 (64.29)	20 (35.71)

DIMENSION: Exercise of arbitrary power by police

32 Police seldom arrest or interrogate the wrong person.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (0.27)	** (14.75)	** (18.78)	** (54.28)	** (11.94)	** (18.49)	** (81.51)
Legal Prof	2 (2.70)	6 (8.11)	17 (22.97)	37 (50.00)	12 (16.22)	8 (14.04)	49 (85.96)
LL.B. Pt.I	0 (0.0)	3 (10.00)	3 (10.00)	14 (46.67)	10 (33.33)	3 (11.11)	24 (88.89)
HK Student	0 (0.0)	10 (13.15)	32 (42.11)	34 (44.74)	0 (0.0)	10 (22.73)	34 (77.27)
Can. Stud.	0 (0.0)	7 (10.94)	14 (21.88)	34 (53.13)	9 (14.06)	7 (14.00)	43 (86.00)
Eng. Popu.	3 (3.85)	13 (16.67)	16 (20.51)	30 (38.48)	16 (20.51)	16 (25.81)	46 (74.19)

58 Sometimes, secret torture by the police is essential to extract evidence from hard criminals.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.39)	** (26.54)	** (12.92)	** (50.25)	** (6.90)	** (34.37)	** (65.63)
Legal Prof	1 (1.37)	23 (31.61)	9 (12.33)	15 (20.55)	25 (34.25)	24 (37.50)	40 (62.50)
LL.B. Pt.I	0 (0.0)	7 (23.33)	7 (23.33)	11 (36.67)	5 (16.67)	7 (30.43)	16 (69.57)
HK Student	1 (1.32)	34 (44.74)	25 (32.89)	15 (19.74)	1 (1.32)	35 (68.83)	16 (31.37)
Can. Stud.	4 (6.25)	9 (14.06)	11 (17.19)	22 (34.38)	18 (28.13)	13 (24.53)	40 (75.47)
Eng. Popu.	0 (0.0)	9 (11.25)	13 (16.25)	34 (42.50)	24 (30.00)	9 (13.43)	58 (86.57)

DIMENSION: Equal opportunity before the court

35 Everyone has an equal opportunity to obtain justice before the courts.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (20.27)	** (54.63)	** (9.12)	** (13.29)	** (2.68)	** (82.42)	** (17.58)
Legal Prof	13 (17.57)	27 (36.48)	10 (13.51)	21 (28.38)	3 (4.05)	40 (62.50)	24 (37.50)
LL.B. Pt.I	6 (20.00)	12 (40.00)	2 (6.67)	8 (26.67)	2 (6.67)	18 (64.29)	10 (35.71)
HK Student	40 (51.28)	24 (30.77)	7 (8.97)	6 (7.69)	1 (1.28)	64 (90.14)	7 (9.86)
Can. Stud.	24 (37.50)	16 (25.00)	6 (9.38)	14 (21.88)	4 (6.25)	40 (68.87)	18 (31.03)
Eng. Popu.	7 (8.75)	20 (25.00)	11 (13.75)	29 (36.25)	13 (16.25)	27 (39.13)	42 (60.87)

36 The court serves only the rich and those who can afford a good lawyer.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.91)	** (18.40)	** (15.18)	** (47.07)	** (14.44)	** (27.48)	** (72.52)
Legal Prof	2 (2.70)	12 (16.22)	18 (24.32)	34 (45.95)	8 (10.81)	14 (25.00)	42 (75.00)
LL.B. Pt.I	1 (3.33)	7 (23.33)	6 (20.00)	12 (40.00)	4 (13.33)	8 (33.33)	16 (66.67)
HK Student	2 (2.56)	19 (24.36)	15 (19.23)	21 (26.92)	21 (26.92)	21 (33.33)	42 (66.67)
Can. Stud.	4 (6.25)	8 (12.50)	18 (28.13)	27 (42.19)	7 (10.94)	12 (26.09)	34 (73.91)
Eng. Popu.	6 (7.50)	19 (23.75)	32 (40.00)	17 (21.25)	6 (7.50)	25 (52.08)	23 (47.92)

Appendix E-4
Judicial Independence

DIMENSION: Attitudes towards judicial independence

42 A judge's career is in jeopardy if his decision does not please the government.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.33)	** (34.44)	** (22.60)	** (36.71)	** (3.93)	** (47.50)	** (52.50)
Legal Prof	2 (2.70)	8 (10.81)	6 (8.11)	41 (55.41)	17 (22.97)	10 (14.71)	58 (85.29)
LL.B. Pt.I	1 (3.33)	3 (10.00)	7 (23.33)	11 (36.67)	8 (26.67)	4 (17.39)	19 (82.61)
HK Student	2 (2.63)	8 (10.53)	26 (34.21)	26 (34.21)	14 (18.42)	10 (20.00)	40 (80.00)
Can. Stud.	0 (0.0)	5 (7.94)	6 (9.52)	29 (46.03)	23 (36.51)	5 (8.77)	52 (91.23)
Eng. Popu.	1 (1.27)	23 (29.11)	25 (31.65)	27 (34.18)	3 (3.80)	24 (44.44)	30 (55.56)

48 Judges enjoy their judicial independence in that they are free to perform their duties without fear...

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (7.25)	** (51.08)	** (26.15)	** (13.16)	** (2.36)	** (78.98)	** (21.02)
Legal Prof	7 (8.59)	31 (42.47)	18 (24.66)	15 (20.55)	2 (2.74)	38 (59.09)	17 (30.91)
LL.B. Pt.I	5 (16.67)	11 (36.67)	6 (20.00)	8 (26.67)	0 (0.0)	16 (56.67)	8 (33.33)
HK Student	6 (7.89)	32 (42.11)	31 (40.79)	8 (7.89)	1 (1.32)	38 (84.44)	7 (15.56)
Can. Stud.	10 (15.63)	23 (35.94)	14 (21.88)	13 (20.31)	4 (6.25)	33 (65.00)	17 (34.00)
Eng. Popu.	2 (2.53)	29 (36.71)	22 (27.85)	25 (31.65)	1 (1.27)	31 (54.39)	26 (45.61)

DIMENSION: Attitudes towards the judiciary

53 Judges are fair and impartial.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (1.40)	** (32.90)	** (32.72)	** (28.83)	** (4.15)	** (50.98)	** (49.02)
Legal Prof	3 (4.11)	26 (35.62)	28 (38.36)	15 (20.55)	1 (1.37)	29 (64.44)	16 (35.56)
LL.B. Pt.I	1 (3.33)	11 (36.67)	10 (33.33)	7 (23.33)	1 (3.33)	12 (60.00)	8 (40.00)
HK Student	3 (3.95)	26 (34.21)	41 (53.95)	6 (7.89)	0 (0.0)	29 (82.86)	6 (17.14)
Can. Stud.	3 (4.69)	18 (28.13)	28 (43.75)	13 (20.31)	2 (3.13)	21 (58.33)	15 (41.67)
Eng. Popu.	4 (5.13)	28 (35.90)	25 (32.05)	17 (21.79)	4 (5.13)	32 (60.38)	21 (39.62)

57 Judges treat English more favourably than Chinese when making judicial decisions (in Canada and England, other faces).

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (5.79)	** (23.20)	** (31.05)	** (34.49)	** (5.46)	** (42.05)	** (57.95)
Legal Prof	5 (6.85)	20 (27.40)	19 (26.03)	24 (32.88)	5 (6.85)	25 (46.30)	29 (53.70)
LL.B. Pt.I	0 (0.0)	11 (36.67)	8 (26.67)	10 (33.33)	1 (3.33)	11 (50.00)	11 (50.00)
HK Student	6 (7.89)	17 (22.37)	42 (55.26)	10 (13.16)	1 (1.32)	23 (67.65)	11 (32.35)
Can. Stud.	0 (0.0)	0 (0.0)	27 (42.19)	23 (35.94)	14 (21.88)	0 (0.0)	37 (100.00)
Eng. Popu.	2 (2.50)	12 (15.00)	32 (40.00)	24 (30.00)	10 (12.50)	14 (29.17)	34 (70.83)

67 Only honest people are appointed judges.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.32)	** (27.80)	** (22.23)	** (39.81)	** (7.04)	** (40.02)	** (59.98)
Legal Prof	1 (1.37)	15 (20.55)	31 (42.47)	23 (31.51)	3 (4.11)	16 (38.10)	26 (61.90)
LL.B. Pt.I	5 (16.67)	8 (20.00)	11 (36.67)	6 (20.00)	2 (6.67)	11 (57.89)	8 (42.11)
HK Student	4 (5.26)	10 (13.16)	45 (58.21)	16 (21.05)	1 (1.32)	14 (45.16)	17 (54.84)
Can. Stud.	1 (1.56)	5 (7.81)	26 (40.63)	26 (40.63)	6 (9.38)	6 (15.79)	32 (84.21)
Eng. Popu.	3 (3.75)	23 (28.75)	20 (25.00)	28 (35.00)	6 (7.50)	26 (43.33)	34 (56.67)

DIMENSION: Judicial accountability

30 A judge should take public opinion into account for his judicial decision.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (10.81)	** (47.86)	** (10.24)	** (28.94)	** (2.14)	** (65.37)	** (34.63)
Legal Prof	4 (5.41)	10 (13.51)	7 (9.46)	33 (44.59)	2 (2.70)	14 (20.90)	53 (79.10)
LL.B. Pt.I	1 (3.33)	8 (26.67)	6 (20.00)	10 (33.33)	5 (16.67)	8 (37.50)	15 (62.50)
HK Student	22 (28.95)	47 (61.84)	5 (6.58)	2 (2.63)	0 (0.0)	69 (97.18)	2 (2.82)
Can. Stud.	13 (20.31)	26 (40.63)	9 (14.06)	12 (18.75)	4 (6.25)	39 (70.91)	16 (29.09)
Eng. Popu.	3 (3.80)	41 (51.90)	16 (20.25)	14 (17.72)	5 (6.33)	44 (69.84)	19 (30.16)

66 A judicial decision that does not conform to public opinion is unreasonable and should be overruled.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.57)	** (40.45)	** (23.73)	** (28.70)	** (2.55)	** (59.02)	** (40.98)
Legal Prof	3 (4.11)	5 (6.85)	7 (9.59)	37 (50.68)	21 (28.77)	8 (13.12)	58 (86.88)
LL.B. Pt.I	1 (3.33)	3 (10.00)	1 (3.33)	17 (56.67)	8 (26.67)	4 (13.79)	25 (86.21)
HK Student	4 (5.26)	30 (39.47)	24 (31.58)	14 (18.42)	4 (5.26)	34 (65.38)	18 (34.62)
Can. Stud.	3 (4.69)	11 (17.19)	15 (23.44)	23 (35.94)	12 (18.75)	14 (28.57)	35 (71.43)
Eng. Popu.	2 (2.50)	25 (31.25)	25 (31.25)	23 (28.75)	5 (6.25)	27 (48.09)	28 (51.91)

DIMENSION: Separation of judicial power

38 The Governor should be allowed to dismiss a judge if his decision is unreasonable.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (13.11)	** (47.39)	** (21.76)	** (16.22)	** (1.52)	** (77.32)	** (22.68)
Legal Prof	3 (4.05)	5 (6.76)	7 (9.46)	33 (44.59)	26 (35.14)	8 (11.94)	59 (88.06)
LL.B. Pt.I	3 (10.00)	3 (10.00)	0 (0.0)	18 (60.00)	6 (20.00)	6 (20.00)	24 (80.00)
HK Student	2 (2.63)	9 (11.84)	17 (22.37)	30 (39.47)	18 (23.82)	11 (18.64)	48 (81.36)
Can. Stud.	1 (1.56)	0 (0.0)	4 (6.25)	27 (42.19)	32 (50.00)	1 (1.67)	59 (98.33)
Eng. Popu.	3 (3.75)	26 (32.50)	20 (25.00)	25 (31.25)	6 (7.50)	29 (48.33)	31 (51.67)

64 The Legislative Council should overrule a judicial decision if it thinks such a decision is unreasonable.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.43)	** (51.98)	** (18.96)	** (21.17)	** (3.46)	** (69.61)	** (30.39)
Legal Prof	5 (6.85)	8 (10.96)	8 (10.96)	26 (35.62)	26 (35.62)	13 (20.00)	52 (80.00)
LL.B. Pt.I	1 (3.33)	2 (6.67)	3 (10.00)	9 (30.00)	15 (50.00)	3 (11.11)	24 (88.89)
HK Student	5 (6.58)	30 (39.47)	23 (30.26)	11 (14.47)	7 (9.21)	35 (66.04)	18 (33.96)
Can. Stud.	3 (4.69)	8 (12.50)	11 (17.19)	24 (37.50)	18 (28.13)	11 (20.75)	42 (79.25)
Eng. Popu.	10 (12.50)	32 (40.00)	21 (26.25)	15 (18.75)	2 (2.50)	42 (71.19)	17 (28.81)

Appendix E-5
Adversary System and Independent Legal Profession

DIMENSION: Integrity of the prosecution

47 The promotion of a Crown prosecutor is determined by the number of successful convictions.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.48)	** (29.17)	** (26.20)	** (38.04)	** (4.11)	** (42.89)	** (57.11)
Legal Prof	2 (2.70)	15 (20.27)	14 (18.92)	26 (35.14)	17 (22.97)	17 (28.33)	43 (71.67)
LL.B. Pt.I	0 (0.0)	1 (3.33)	5 (16.67)	17 (56.67)	7 (23.33)	1 (4.00)	24 (96.00)
HK Student	1 (1.32)	18 (23.68)	29 (38.16)	22 (28.95)	6 (7.89)	19 (40.43)	28 (59.57)
Can. Stud.	1 (1.56)	18 (28.13)	26 (40.63)	16 (25.00)	3 (4.69)	19 (50.00)	19 (50.00)
Eng. Popu.	2 (2.53)	17 (21.52)	38 (48.10)	15 (18.99)	7 (8.86)	19 (46.34)	22 (53.66)

65 The Crown prosecutors always cooperate with defence lawyers to discover the truth of the case.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.16)	** (46.86)	** (33.75)	** (15.56)	** (0.87)	** (75.50)	** (24.50)
Legal Prof	2 (2.74)	13 (17.81)	18 (24.66)	35 (47.95)	5 (6.85)	15 (27.27)	40 (72.73)
LL.B. Pt.I	0 (0.0)	5 (16.67)	10 (33.33)	11 (36.67)	4 (13.33)	5 (25.00)	15 (75.00)
HK Student	0 (0.0)	21 (27.63)	41 (53.95)	14 (18.42)	0 (0.0)	21 (60.00)	14 (40.00)
Can. Stud.	3 (4.69)	9 (14.06)	21 (32.81)	28 (43.75)	3 (4.69)	12 (27.91)	31 (72.09)
Eng. Popu.	2 (2.50)	12 (15.00)	40 (50.00)	14 (17.50)	12 (15.00)	14 (35.00)	26 (65.00)

69 The prosecution always reveals evidence in favour of the defendant in court, e.g. a discovery of alibi.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (6.38)	** (51.12)	** (22.98)	** (19.26)	** (0.27)	** (74.85)	** (25.35)
Legal Prof	3 (4.17)	6 (8.33)	24 (33.33)	32 (44.44)	7 (9.72)	8 (18.75)	38 (81.25)
LL.B. Pt.I	4 (13.33)	5 (16.67)	7 (23.33)	9 (30.00)	5 (16.67)	8 (39.13)	14 (60.87)
HK Student	0 (0.0)	20 (26.32)	48 (63.16)	8 (10.53)	0 (0.0)	20 (71.43)	8 (28.57)
Can. Stud.	NA	NA	NA	NA	NA	NA	NA
Eng. Popu.	0 (0.0)	10 (12.50)	33 (41.25)	31 (38.75)	6 (7.50)	10 (21.28)	37 (78.72)

71 A criminal investigation is more impartial if supervised by an independent judicial authority.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (8.44)	** (54.52)	** (17.32)	** (18.74)	** (0.98)	** (76.16)	** (23.85)
Legal Prof	5 (6.94)	28 (38.89)	27 (37.50)	10 (13.89)	2 (2.78)	33 (73.33)	12 (26.67)
LL.B. Pt.I	8 (26.67)	8 (20.00)	3 (10.00)	8 (20.00)	4 (13.33)	14 (51.85)	13 (48.15)
HK Student	4 (5.25)	44 (57.89)	26 (34.21)	2 (2.63)	0 (0.0)	48 (96.00)	2 (4.00)
Can. Stud.	4 (6.25)	34 (53.13)	33 (51.88)	2 (3.13)	1 (1.56)	38 (92.88)	3 (7.32)
Eng. Popu.	5 (6.25)	35 (43.75)	32 (40.00)	7 (8.75)	1 (1.25)	40 (83.33)	8 (16.67)

73 The Crown prosecutor is under pressure to secure a conviction without considering the ethical and moral aspects.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.83)	** (34.33)	** (22.01)	** (35.07)	** (2.76)	** (50.20)	** (49.80)
Legal Prof	2 (2.74)	18 (24.66)	29 (39.73)	22 (30.14)	2 (2.74)	20 (45.45)	24 (54.55)
LL.B. Pt.I	3 (10.00)	10 (33.33)	3 (10.00)	10 (33.33)	4 (13.33)	13 (48.15)	14 (51.85)
HK Student	2 (2.87)	22 (29.33)	36 (48.00)	13 (17.33)	2 (2.87)	24 (61.54)	16 (38.46)
Can. Stud.	6 (9.38)	33 (51.56)	13 (20.31)	10 (15.63)	2 (3.13)	39 (76.47)	12 (23.53)
Eng. Popu.	2 (2.50)	18 (22.50)	38 (47.50)	20 (25.00)	2 (2.50)	20 (47.62)	22 (52.38)

74 The Crown prosecutors often give favourable treatment to English over Chinese.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (6.59)	** (27.94)	** (28.45)	** (31.91)	** (4.11)	** (48.94)	** (51.06)
Legal Prof	1 (1.37)	16 (21.92)	24 (32.88)	28 (38.36)	4 (5.48)	17 (38.69)	32 (65.31)
LL.B. Pt.I	1 (3.33)	7 (23.33)	12 (40.00)	9 (30.00)	1 (3.33)	8 (44.44)	10 (55.56)
HK Student	3 (3.95)	22 (28.95)	35 (46.05)	18 (21.05)	0 (0.0)	25 (60.98)	16 (39.02)
Can. Stud.	0 (0.0)	8 (12.50)	20 (31.25)	25 (39.06)	11 (17.19)	8 (18.18)	36 (81.82)
Eng. Popu.	1 (1.25)	14 (17.50)	38 (47.50)	22 (27.50)	5 (6.25)	15 (35.71)	27 (64.29)

DIMENSION: Integrity of the legal profession

29 Lawyers often incite litigation.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.70)	** (21.88)	** (29.35)	** (41.36)	** (4.70)	** (34.80)	** (65.20)
Legal Prof	1 (1.35)	2 (2.70)	15 (20.27)	46 (62.16)	10 (13.51)	3 (5.08)	56 (94.92)
LL.B. Pt.I	0 (0.0)	4 (13.33)	6 (20.00)	18 (60.00)	2 (6.67)	4 (16.67)	20 (83.33)
HK Student	0 (0.0)	17 (22.37)	49 (64.47)	9 (11.84)	1 (1.32)	17 (62.96)	10 (37.04)
Can. Stud.	2 (3.33)	11 (18.33)	31 (51.67)	15 (25.00)	1 (1.67)	13 (44.83)	16 (55.17)
Eng. Popu.	7 (8.75)	31 (38.75)	30 (37.50)	10 (12.50)	2 (2.50)	38 (76.00)	12 (24.00)

45 Lawyers are trustworthy people.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (8.11)	** (39.96)	** (23.65)	** (25.43)	** (2.85)	** (62.96)	** (37.04)
Legal Prof	2 (2.70)	21 (28.38)	34 (45.95)	15 (20.27)	2 (2.70)	23 (57.50)	17 (42.50)
LL.B. Pt.I	1 (3.33)	14 (46.67)	7 (23.33)	7 (23.33)	1 (3.33)	15 (65.22)	8 (34.78)
HK Student	1 (1.32)	13 (17.11)	43 (56.58)	18 (23.68)	1 (1.32)	14 (42.42)	19 (57.58)
Can. Stud.	1 (1.56)	24 (37.50)	26 (40.63)	10 (15.63)	3 (4.69)	25 (65.79)	13 (34.21)
Eng. Popu.	4 (5.00)	25 (31.25)	35 (43.75)	14 (17.50)	2 (2.50)	29 (64.44)	16 (35.56)

52 Complaints against lawyers should be handled by an independent body.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (9.18)	** (54.94)	** (21.60)	** (13.59)	** (0.69)	** (81.79)	** (18.21)
Legal Prof	9 (12.33)	30 (41.10)	14 (19.18)	19 (26.03)	1 (1.37)	39 (66.10)	20 (33.90)
LL.B. Pt.I	10 (33.33)	9 (30.00)	4 (13.33)	7 (23.33)	0 (0.0)	19 (73.08)	7 (26.92)
HK Student	8 (10.53)	46 (60.53)	20 (26.32)	2 (2.63)	0 (0.0)	54 (96.43)	2 (3.57)
Can. Stud.	12 (18.75)	37 (57.81)	12 (18.75)	2 (3.13)	1 (1.56)	49 (94.23)	3 (5.77)
Eng. Popu.	20 (25.64)	46 (58.97)	10 (12.82)	2 (2.56)	0 (0.0)	66 (97.06)	2 (2.94)

54 Lawyers often help criminals to fabricate evidence.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.87)	** (28.97)	** (33.18)	** (33.23)	** (1.75)	** (47.65)	** (52.35)
Legal Prof	2 (2.74)	3 (4.11)	18 (24.66)	32 (43.84)	18 (24.66)	5 (9.09)	50 (90.91)
LL.B. Pt.I	0 (0.0)	4 (13.33)	8 (26.67)	16 (53.33)	2 (6.67)	4 (18.18)	18 (81.82)
HK Student	2 (2.63)	22 (28.95)	40 (52.63)	12 (15.79)	0 (0.0)	24 (66.67)	12 (33.33)
Can. Stud.	0 (0.0)	5 (7.94)	24 (36.10)	25 (39.68)	9 (14.29)	5 (12.82)	34 (87.18)
Eng. Popu.	2 (2.50)	25 (31.25)	33 (41.25)	17 (21.25)	3 (3.75)	27 (57.45)	20 (42.55)

DIMENSION: Economic barriers to obtaining legal services

76 Lawyers have as their priority to serve the interests of the rich and powerful.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (4.14)	** (21.48)	** (8.87)	** (52.75)	** (12.76)	** (28.11)	** (71.89)
Legal Prof	4 (5.48)	8 (10.98)	6 (8.22)	35 (47.95)	20 (27.40)	12 (17.91)	55 (82.09)
LL.B. Pt. I	0 (0.0)	7 (24.14)	4 (13.79)	10 (34.48)	8 (27.59)	7 (28.00)	18 (72.00)
HK Student	1 (1.33)	23 (30.67)	14 (18.67)	28 (37.33)	9 (12.00)	24 (39.34)	37 (60.66)
Can. Stud.	3 (4.76)	9 (14.29)	13 (20.63)	35 (55.56)	3 (4.76)	12 (24.00)	38 (76.00)
Eng. Popu.	4 (5.00)	13 (16.25)	28 (36.25)	27 (33.75)	7 (8.75)	17 (33.33)	34 (66.67)

77 Legal fees are too expensive.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (19.55)	** (52.94)	** (19.86)	** (7.64)	** (0.0)	** (90.46)	** (9.54)
Legal Prof	2 (2.74)	22 (30.14)	22 (30.14)	24 (32.88)	3 (4.11)	24 (47.06)	27 (52.94)
LL.B. Pt. I	7 (24.14)	15 (51.72)	6 (20.69)	1 (3.45)	0 (0.0)	22 (95.65)	1 (4.35)
HK Student	19 (25.00)	42 (55.26)	12 (15.79)	3 (3.95)	0 (0.0)	61 (95.31)	3 (4.69)
Can. Stud.	13 (20.97)	28 (46.77)	16 (25.81)	4 (6.45)	0 (0.0)	42 (91.30)	4 (8.70)
Eng. Popu.	26 (32.50)	37 (46.25)	16 (20.00)	1 (1.25)	0 (0.0)	63 (98.44)	1 (1.56)

DIMENSION: Perceptions on the duty of prosecution

68 The prosecution should reveal evidence in favour of the defendant in court, e.g. a discovery of alibi.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (9.09)	** (64.63)	** (15.29)	** (10.50)	** (0.49)	** (87.02)	** (12.98)
Legal Prof	24 (32.88)	41 (56.15)	3 (4.11)	5 (6.85)	0 (0.0)	65 (92.86)	5 (7.14)
LL.B. Pt. I	8 (26.67)	13 (43.33)	1 (3.33)	6 (20.00)	2 (6.67)	21 (72.41)	8 (27.59)
HK Student	3 (3.95)	32 (42.11)	37 (48.68)	4 (5.26)	0 (0.0)	35 (89.74)	4 (10.26)
Can. Stud.	10 (15.63)	20 (31.25)	12 (18.75)	19 (29.69)	3 (4.69)	30 (57.69)	22 (42.31)
Eng. Popu.	13 (16.25)	49 (61.25)	10 (12.50)	7 (8.75)	1 (1.25)	62 (88.57)	8 (11.43)

DIMENSION: Necessity of lawyers in court

60 A good barrister can make a difference to the outcome of a case in court.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (7.34)	** (45.12)	** (14.04)	** (28.94)	** (3.56)	** (61.03)	** (38.97)
Legal Prof	17 (23.29)	49 (67.12)	4 (5.48)	3 (4.11)	0 (0.0)	66 (85.65)	3 (4.35)
LL.B. Pt. I	5 (16.67)	11 (36.67)	2 (6.67)	12 (40.00)	0 (0.0)	16 (57.14)	12 (42.86)
HK Student	4 (5.26)	49 (64.47)	22 (28.95)	1 (1.32)	0 (0.0)	53 (98.15)	1 (1.85)
Can. Stud.	24 (37.50)	34 (53.13)	5 (7.81)	1 (1.56)	0 (0.0)	58 (98.31)	1 (1.69)
Eng. Popu.	30 (37.50)	37 (46.25)	10 (12.50)	3 (3.75)	0 (0.0)	67 (95.71)	3 (4.29)

75 There is no reason why a person should consult with a lawyer if he has nothing to hide.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (1.40)	** (26.23)	** (17.74)	** (50.90)	** (3.73)	** (33.59)	** (66.41)
Legal Prof	2 (2.74)	1 (1.37)	1 (1.37)	44 (60.27)	25 (34.25)	3 (4.17)	69 (95.83)
LL.B. Pt. I	0 (0.0)	1 (3.33)	2 (6.67)	14 (46.67)	13 (43.33)	1 (3.57)	27 (96.43)
HK Student	1 (1.32)	12 (15.79)	12 (15.79)	43 (56.58)	8 (10.53)	13 (20.31)	51 (79.69)
Can. Stud.	1 (1.56)	1 (1.56)	2 (3.13)	37 (57.81)	23 (35.94)	2 (3.23)	60 (96.77)
Eng. Popu.	4 (5.00)	18 (22.50)	15 (18.75)	32 (40.00)	11 (13.75)	22 (33.85)	43 (66.15)

Appendix E-6
Jury System

DIMENSION: Participation in judicial decision making process

46 A citizen should participate in the judicial decision making process.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (8.38)	** (57.97)	** (21.95)	** (10.30)	** (1.40)	** (85.01)	** (14.99)
Legal Prof	5 (6.85)	27 (36.89)	19 (26.03)	20 (27.40)	2 (2.74)	32 (58.26)	22 (41.74)
LL.B. Pt. I	8 (26.67)	16 (53.33)	2 (6.67)	3 (10.00)	1 (3.33)	24 (85.71)	4 (14.29)
HK Student	12 (15.38)	41 (52.56)	17 (21.79)	8 (10.26)	0 (0.0)	53 (86.89)	8 (13.11)
Can. Stud.	9 (14.06)	32 (50.00)	11 (17.19)	10 (15.63)	2 (3.13)	41 (77.36)	12 (22.64)
Eng. Popu.	20 (25.00)	39 (48.75)	17 (21.25)	4 (5.00)	0 (0.0)	59 (93.65)	4 (6.35)

58 Any adult who does not have a conviction should be qualified to be summoned as a juror.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (5.98)	** (44.58)	** (15.07)	** (31.87)	** (2.50)	** (59.53)	** (40.47)
Legal Prof	8 (10.96)	27 (36.99)	13 (17.81)	23 (31.51)	2 (2.74)	35 (58.33)	25 (41.67)
LL.B. Pt. I	1 (3.33)	10 (33.33)	2 (6.67)	15 (50.00)	2 (6.67)	11 (39.29)	17 (60.71)
HK Student	8 (10.53)	33 (43.42)	21 (27.63)	13 (17.11)	1 (1.32)	41 (74.55)	14 (25.45)
Can. Stud.	12 (19.05)	27 (42.86)	8 (12.70)	11 (17.46)	5 (7.94)	39 (70.91)	16 (29.09)
Eng. Popu.	7 (8.75)	40 (50.00)	28 (35.00)	4 (5.00)	1 (1.25)	47 (90.38)	5 (9.62)

DIMENSION: Willingness to serve jury duty

49 I should attend jury duty if I am summoned.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (13.52)	** (60.27)	** (12.75)	** (12.48)	** (0.98)	** (84.58)	** (15.42)
Legal Prof	22 (29.73)	37 (50.00)	8 (10.81)	6 (8.11)	1 (1.35)	59 (89.39)	7 (10.61)
LL.B. Pt. I	16 (53.33)	13 (43.33)	0 (0.0)	1 (3.33)	0 (0.0)	29 (96.67)	1 (3.33)
HK Student	16 (20.51)	43 (55.13)	16 (20.51)	3 (3.85)	0 (0.0)	59 (95.16)	3 (4.84)
Can. Stud.	33 (51.56)	24 (37.50)	1 (1.56)	4 (6.25)	2 (3.13)	57 (90.48)	6 (9.52)
Eng. Popu.	25 (31.25)	41 (51.25)	8 (10.00)	6 (7.50)	0 (0.0)	66 (91.67)	6 (8.33)

DIMENSION: Safeguard of trial by jury

50 Trial by jury is the fairest method for disposing of a criminal case.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.91)	** (42.28)	** (34.95)	** (17.52)	** (1.34)	** (71.01)	** (28.99)
Legal Prof	8 (10.81)	31 (41.89)	23 (31.02)	11 (14.86)	1 (1.35)	39 (76.47)	12 (23.53)
LL.B. Pt. I	2 (6.67)	14 (46.67)	10 (33.33)	4 (13.33)	0 (0.0)	16 (80.00)	4 (20.00)
HK Student	4 (5.26)	39 (51.32)	27 (35.53)	6 (7.89)	0 (0.0)	42 (80.76)	6 (12.24)
Can. Stud.	9 (14.06)	18 (28.13)	28 (43.75)	8 (12.50)	1 (1.56)	27 (75.00)	9 (25.00)
Eng. Popu.	7 (8.75)	45 (56.25)	21 (26.25)	6 (7.50)	1 (1.25)	52 (88.14)	7 (11.86)

55 The jury system is necessary to safeguard the people against the arbitrary power of the state.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (9.17)	** (63.41)	** (18.50)	** (8.93)	** (0.0)	** (89.04)	** (10.96)
Legal Prof	14 (19.18)	36 (49.32)	9 (12.33)	12 (16.44)	2 (2.74)	50 (78.13)	14 (21.88)
LL.B. Pt.I	8 (26.67)	17 (56.67)	0 (0.0)	4 (13.33)	1 (3.33)	25 (83.33)	5 (16.67)
HK Student	22 (28.57)	44 (57.14)	11 (14.29)	0 (0.0)	0 (0.0)	66 (100.00)	0 (0.0)
Can. Stud.	7 (10.94)	29 (45.31)	13 (20.31)	14 (21.88)	1 (1.56)	36 (70.59)	15 (29.41)
Eng. Popu.	3 (3.75)	42 (52.50)	24 (30.00)	9 (11.25)	2 (2.50)	45 (80.36)	11 (19.64)

56 The jury is a mechanism whereby upper and middle class interests are protected, as those who do not understand English a

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.25)	** (17.66)	** (19.79)	** (54.35)	** (5.95)	** (24.82)	** (75.18)
Legal Prof	2 (2.74)	9 (12.33)	13 (17.81)	41 (56.16)	8 (10.96)	11 (18.33)	49 (81.67)
LL.B. Pt.I	0 (0.0)	4 (13.33)	4 (13.33)	21 (70.00)	1 (3.33)	4 (15.38)	22 (84.62)
HK Student	1 (1.32)	12 (15.79)	19 (25.00)	29 (38.16)	15 (19.74)	13 (22.81)	44 (77.19)
Can. Stud.	NA	NA	NA	NA	NA	NA	NA
Eng. Popu.	1 (1.25)	20 (25.00)	26 (32.50)	27 (33.75)	6 (7.50)	21 (38.89)	33 (61.11)

DIMENSION: Limitation on jury trial

51 Complex commercial cases should only be tried by the judges.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (3.62)	** (28.88)	** (21.58)	** (39.41)	** (6.51)	** (41.45)	** (58.55)
Legal Prof	7 (9.59)	18 (24.66)	17 (23.29)	26 (35.62)	5 (6.85)	25 (44.64)	31 (55.36)
LL.B. Pt.I	1 (3.33)	3 (10.00)	4 (13.33)	18 (60.00)	4 (13.33)	4 (15.38)	22 (84.62)
HK Student	2 (2.63)	23 (30.26)	31 (40.78)	20 (26.32)	0 (0.0)	25 (55.56)	20 (44.44)
Can. Stud.	7 (10.94)	24 (37.50)	24 (37.50)	8 (12.50)	1 (1.56)	31 (77.50)	9 (22.50)
Eng. Popu.	6 (7.79)	17 (22.08)	43 (55.84)	10 (12.99)	1 (1.30)	23 (67.85)	11 (32.35)

Appendix E-7
The Right of Silence and Presumption of Innocence

27 A person shall not be regarded as guilty unless it is proven beyond a reasonable doubt that he is guilty.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (16.73)	** (44.15)	** (10.06)	** (25.08)	** (3.98)	** (67.70)	** (32.30)
Legal Prof	46 (62.16)	25 (33.78)	1 (1.35)	1 (1.35)	1 (1.35)	71 (97.26)	2 (2.74)
LL.B. Pt.I	18 (60.00)	8 (26.67)	0 (0.0)	2 (6.67)	2 (6.67)	28 (86.67)	4 (13.33)
HK Student	11 (14.10)	37 (47.44)	19 (24.36)	11 (14.10)	0 (0.0)	48 (81.36)	11 (18.64)
Can. Stud.	29 (45.31)	21 (32.81)	6 (9.38)	8 (12.50)	0 (0.0)	50 (86.21)	8 (13.79)
Eng. Popu.	28 (35.00)	42 (52.50)	6 (7.50)	4 (5.00)	0 (0.0)	70 (94.59)	4 (5.41)

43 A person is somewhat guilty if he is prosecuted for an offence even though the court finds him not guilty.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (2.94)	** (31.58)	** (19.40)	** (39.49)	** (6.60)	** (42.82)	** (57.18)
Legal Prof	2 (2.74)	6 (8.33)	13 (18.06)	27 (37.50)	24 (33.33)	8 (13.56)	51 (86.44)
LL.B. Pt.I	1 (3.33)	3 (10.00)	2 (6.67)	16 (53.33)	8 (26.67)	4 (14.29)	24 (85.71)
HK Student	6 (7.69)	26 (33.33)	18 (23.08)	23 (29.49)	5 (6.41)	32 (53.33)	28 (46.67)
Can. Stud.	1 (1.56)	3 (4.69)	8 (12.50)	28 (43.75)	24 (37.50)	4 (7.14)	52 (92.86)
Eng. Popu.	1 (1.28)	15 (19.23)	27 (34.62)	20 (25.64)	15 (19.23)	16 (31.37)	35 (68.63)

DIMENSION: Onus of proof

25 A person from whom 2 ounces of opium was seized in his possession should justify he was not trafficking in drugs.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (11.79)	** (39.76)	** (20.42)	** (25.69)	** (2.35)	** (64.77)	** (35.23)
Legal Prof	8 (10.96)	25 (34.25)	8 (10.96)	28 (38.36)	4 (5.48)	33 (50.77)	32 (49.23)
LL.B. Pt.I	5 (16.67)	16 (53.33)	1 (3.33)	6 (20.00)	2 (6.67)	21 (72.41)	8 (27.59)
HK Student	2 (2.63)	11 (14.47)	28 (36.84)	31 (40.79)	4 (5.26)	13 (27.06)	35 (72.92)
Can. Stud.	8 (12.70)	18 (28.57)	9 (14.29)	19 (30.16)	9 (14.29)	26 (46.15)	28 (51.85)
Eng. Popu.	13 (16.25)	38 (47.50)	13 (16.25)	14 (17.50)	2 (2.50)	51 (76.12)	16 (23.88)

Appendix E-8
General Questions

DIMENSION: Confidence in the future of Hong Kong

78 A person should leave Hong Kong before 1997 if he can.

	Strongly Agree	Agree	Neither Nor	Disagree	Strongly Disagree	Overall Agree	Overall Disagree
HK Chinese	** (1.85)	** (10.01)	** (22.21)	** (53.85)	** (12.07)	** (15.25)	** (84.75)
Legal Prof	7 (8.59)	10 (13.70)	29 (39.73)	19 (26.03)	8 (10.96)	17 (38.64)	27 (61.36)
LL.B. Pt. I	1 (3.45)	4 (13.79)	10 (34.48)	12 (41.38)	2 (6.90)	5 (26.32)	14 (73.68)
HK Student	7 (9.21)	15 (19.74)	33 (43.42)	17 (22.37)	4 (5.26)	22 (51.16)	21 (48.84)
Can. Stud.	NA	NA	NA	NA	NA	NA	NA
Eng. Popu.	NA	NA	NA	NA	NA	NA	NA

APPENDIX F-1(a)

7 JAN 88

The Authority of Law in Hong Kong

CROSS TABULATION OF
BY AGE

OBEYLAW Not to obey unjust law

Age Classifications

OBEYLAW	COUNT COL PCT	AGE		Pre-war		ROW TOTAL
		Post-war 18-27	28-37	38-47	Above 47	
		1.00	2.00	3.00	4.00	
Overall Agree	1.00 45.8	66 40.9	36 40.9	20 74.1	21 67.7	143 49.3
Overall Disagree	2.00 54.2	78 54.2	52 59.1	7 25.8	10 32.3	147 50.7
	COLUMN TOTAL	144 49.7	88 30.3	27 9.3	31 10.7	280 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
14.01907	3	0.0028	13.314	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.21474	
PEARSON'S R	-0.16088	0.0030
GAMMA	-0.21383	

NUMBER OF MISSING OBSERVATIONS = 91

APPENDIX F-1(b)

7 JAN 88

The Authority of Law in Hong Kong

CROSS TABULATION OF
BY TRAD

OBEYLAW Not to obey unjust law

Chinese Traditionalism

OBEYLAW	COUNT COL PCT	TRAD		ROW TOTAL
		Traditi- onal	Non-trad itional	
		1.00	2.00	
Overall Agree	1.00 53.7	101 41.5	44 41.5	145 49.3
Overall Disagree	2.00 48.3	87 48.3	62 58.5	149 50.7
	COLUMN TOTAL	188 63.9	106 36.1	294 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
3.57159	1	0.0588	52.278	NONE
4.04548	1	0.0443	(BEFORE YATES CORRECTION)	

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.11650	
PEARSON'S R	0.11730	0.0222
GAMMA	0.24123	

NUMBER OF MISSING OBSERVATIONS = 87

APPENDIX F-1(c)

7 JAN 88

The Authority of Law in Hong Kong

C R O S S T A B U L A T I O N O F
BY RELI Religiosity

OBEYLAW	COUNT COL PCT	RELI		ROW TOTAL
		High	Low	
		1.00	2.00	
Overall Agree	1.00 35 39.8	110 53.4	145 49.3	
Overall Disagree	2.00 53 60.2	86 46.6	148 50.7	
COLUMN TOTAL	88 29.9	206 70.1	294 100.0	

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
4.05081	1	0.0442	43.401	NONE
4.57970	1	0.0324	(BEFORE YATES CORRECTION)	

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.12385	
PEARSON'S R	-0.12481	0.0162
GAMMA	-0.26877	
NUMBER OF MISSING OBSERVATIONS =	87	

APPENDIX F-1(d)

7 JAN 88

The Authority of Law in Hong Kong

C R O S S T A B U L A T I O N O F
BY EDUCA Education Levels

OBEYLAW	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Overall Agree	1.00 6 54.5	25 61.0	75 55.1	16 43.2	23 34.3	145 49.7	
Overall Disagree	2.00 5 45.5	16 39.0	61 44.9	21 58.8	44 65.7	147 50.3	
COLUMN TOTAL	11 3.8	41 14.0	136 46.6	37 12.7	67 22.8	292 100.0	

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
10.75225	4	0.0295	5.462	NONE

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.18845	
PEARSON'S R	0.17910	0.0011
GAMMA	0.28071	
NUMBER OF MISSING OBSERVATIONS =	89	

APPENDIX F-1(e)

7 JAN 88

The Authority of Law in Hong Kong

C R O S S T A B U L A T I O N O F
BY INCOME Income Levels

		INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-6K	Over 6K	
OBEYLAW		1.00	2.00	3.00	4.00	
Overall Agree	1.00	18	48	39	16	122
		64.3	49.0	48.8	38.1	48.8
Overall Disagree	2.00	10	51	41	28	128
		35.7	51.0	51.3	61.9	51.2
	COLUMN	28	100	80	42	250
	TOTAL	11.2	40.0	32.0	16.8	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
4.61532	3	0.2022	13.664	NONE

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.13464	
PEARSON'S R	0.11900	0.0301
GAMMA	0.17578	

NUMBER OF MISSING OBSERVATIONS = 131

APPENDIX F-2(a)

19 JAN 88

Individual and Legal Rights

C R O S S T A B U L A T I O N O F
 DIM2 Respect of Other's Legal Right BY EDUCA Education Levels

DIM2	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00	6 37.5	20 40.8	86 52.1	31 63.3	63 70.0	206 55.8
Mid-way	2.00	7 43.8	14 28.6	44 26.7	9 18.4	17 18.9	91 24.7
Disagree	3.00	3 18.8	15 30.6	35 21.2	9 18.4	10 11.1	72 19.5
	COLUMN TOTAL	16 4.3	49 13.3	165 44.7	49 13.3	90 24.4	369 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
18.64181	8	0.0169	3.122	2 OF 15 (13.3%)

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.21930	
PEARSON'S R	-0.19419	0.0001
GAMMA	-0.27714	

NUMBER OF MISSING OBSERVATIONS = 12

APPENDIX F-2(b)

19 JAN 88

Individual and Legal Rights

C R O S S T A B U L A T I O N O F
 DIM2 Respect of Other's Legal Right BY INCOME Income Levels

DIM2	COUNT COL PCT	INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-8K	Over 8K	
		1.00	2.00	3.00	4.00	
Agree	1.00	13 32.5	74 55.6	58 63.7	42 73.7	187 58.3
Mid-way	2.00	11 27.5	32 24.1	18 19.8	13 22.8	74 23.1
Disagree	3.00	16 40.0	27 20.3	15 16.5	2 3.5	60 18.7
	COLUMN TOTAL	40 12.5	133 41.4	91 28.3	57 17.8	321 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
25.50327	6	0.0003	7.477	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.27130	
PEARSON'S R	-0.26142	0.0000
GAMMA	-0.34195	

NUMBER OF MISSING OBSERVATIONS = 60

APPENDIX F-2(c)

19 JAN 88

Individual and Legal Rights

C R O S S T A B U L A T I O N O F
 DIM3 Confidence in Administration of Justice BY EDUCA Education Levels

COUNT COL PCT	EDUCA					ROW TOTAL
	No Educa	Primary	Second	Matric	Post-Sec	
	1	2	3	4	5	
1.00	9	32	119	41	62	263
Overall Agree	56.3	64.0	71.7	87.2	70.5	71.7
2.00	7	18	47	6	26	104
Overall Disagree	43.8	36.0	28.3	12.8	29.5	28.3
COLUMN TOTAL	16	50	166	47	88	367
	4.4	13.6	45.2	12.8	24.0	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
8.99230	4	0.0613	4.534	1 DF 10 (10.0%)

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.15465	
PEARSON'S R	-0.07547	0.0745
GAMMA	-0.14080	

NUMBER OF MISSING OBSERVATIONS = 14

APPENDIX F-2(d)

19 JAN 88

Individual and Legal Rights

C R O S S T A B U L A T I O N O F
 DIM3 Confidence in Administration of Justice BY INCOME Income Levels

COUNT COL PCT	INCOME				ROW TOTAL
	Under 2K	2K-4K	4K-6K	Over 6K	
	1.00	2.00	3.00	4.00	
1.00	26	88	65	51	230
Overall Agree	65.0	68.2	69.9	87.9	71.9
2.00	14	41	28	7	90
Overall Disagree	35.0	31.8	30.1	12.1	28.1
COLUMN TOTAL	40	128	93	58	320
	12.5	40.3	29.1	18.1	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
9.36660	3	0.0248	11.250	NONE

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.16864	
PEARSON'S R	-0.14624	0.0044
GAMMA	-0.24253	

NUMBER OF MISSING OBSERVATIONS = 61

APPENDIX F-3(a)

19 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F
BY TRAD Chinese Traditionalism

DIM1 Nullum crimen sine lege

DIM1	COUNT COL PCT	TRAD		ROW TOTAL
		Traditi- onal	Non-trad itional	
		1.00	2.00	
Agree	1.00	86 36.6	57 43.5	143 39.1
Mid-way	2.00	99 42.1	45 34.4	144 39.3
Disagree	3.00	50 21.3	29 22.1	79 21.6
	COLUMN TOTAL	235 64.2	131 35.8	366 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
2.35133	2	0.3086	28.276	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.07990	
PEARSON'S R	-0.03825	0.2329
GAMMA	-0.07548	

NUMBER OF MISSING OBSERVATIONS = 15

APPENDIX F-3(b)

19 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F
BY EDUCA Education Levels

DIM1 Nullum crimen sine lege

DIM1	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00	4 25.0	18 38.3	54 33.5	14 29.2	52 56.5	142 39.0
Mid-way	2.00	8 56.3	20 42.6	68 42.2	20 41.7	26 28.3	143 39.3
Disagree	3.00	3 18.8	9 19.1	39 24.2	14 29.2	14 15.2	79 21.7
	COLUMN TOTAL	16 4.4	47 12.9	161 44.2	48 13.2	92 25.3	364 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
18.73413	8	0.0163	3.473	1 OF 15 (6.7%)

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.22124	
PEARSON'S R	-0.12354	0.0092
GAMMA	-0.15421	

NUMBER OF MISSING OBSERVATIONS = 17

APPENDIX F-3(c)

19 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F
 DIM1 Nullum crimen sine lege BY INCOME Income Levels

		INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-6K	Over 6K	
COUNT		1.00	2.00	3.00	4.00	
COL PCT						
DIM1						
	1.00	11	43	34	34	122
Agree		27.5	32.8	36.2	64.2	38.4
	2.00	17	55	38	13	123
Mid-way		42.5	42.0	40.4	24.5	38.7
	3.00	12	33	22	6	73
Disagree		30.0	25.2	23.4	11.3	23.0
COLUMN TOTAL		40	131	84	53	318
		12.6	41.2	28.6	16.7	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
19.20511	6	0.0038	9.182	NONE
STATISTIC		VALUE	SIGNIFICANCE	

CONTINGENCY COEFFICIENT 0.23865
 PEARSON'S R -0.19878 0.0002
 GAMMA -0.25029

NUMBER OF MISSING OBSERVATIONS = 63

APPENDIX F-3(d)

19 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F
 VA58 Exercise of arbitrary power by police BY EDUCA Education Levels

		EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
COUNT		1	2	3	4	5	
COL PCT							
VA58							
	1.00	4	19	70	7	37	137
Overall Agree		36.4	40.4	47.3	16.3	43.5	41.0
	2.00	7	28	78	36	48	197
Overall Disagree		63.6	59.6	52.7	83.7	56.5	59.0
COLUMN TOTAL		11	47	148	43	85	334
		3.3	14.1	44.3	12.9	25.4	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
13.61666	4	0.0086	4.512	1 OF 10 (10.0%)
STATISTIC		VALUE	SIGNIFICANCE	

CONTINGENCY COEFFICIENT 0.19792
 PEARSON'S R 0.02777 0.3065
 GAMMA 0.06161

NUMBER OF MISSING OBSERVATIONS = 47

APPENDIX F-3(e)

18 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F

VA58 Exercise of arbitrary power by police BY INCOME Income Levels

COUNT COL PCT	INCOME				ROW TOTAL
	Under 2K	2K-4K	4K-6K	Over 6K	
	1.00	2.00	3.00	4.00	
Overall Agree	1.00 29.0	9 23.4	29 67.0	59 56.6	127 42.9
Overall Disagree	2.00 71.0	22 76.6	95 33.0	29 43.4	169 57.1
COLUMN TOTAL	31 10.5	124 41.9	88 29.7	53 17.9	296 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
46.71351	3	0.0000	13.301	NONE

STATISTIC VALUE SIGNIFICANCE

CONTINGENCY COEFFICIENT	0.36919	
PEARSON'S R	-0.30292	0.0000
GAMMA	-0.48004	

NUMBER OF MISSING OBSERVATIONS = 85

APPENDIX F-3(f)

18 JAN 88

Rule of Law

C R O S S T A B U L A T I O N O F

DIM2 Equal opportunity before the court BY EDUCA Education Levels

COUNT COL PCT	EDUCA					ROW TOTAL
	No Educa	Primary	Second	Matric	Post-Sec	
	1	2	3	4	5	
Overall Agree	1.00 45.7	7 60.0	30 64.3	108 83.0	38 73.0	249 67.5
Mid-way	2.00 40.0	6 24.0	12 25.0	42 14.9	7 15.7	81 22.0
Overall Disagree	3.00 13.3	2 16.0	8 10.7	18 2.1	1 11.2	39 10.5
COLUMN TOTAL	15 4.1	50 13.6	50 45.5	168 12.7	47 24.1	369 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
14.09331	8	0.0794	1.585	3 OF 15 (20.0%)

STATISTIC VALUE SIGNIFICANCE

CONTINGENCY COEFFICIENT	0.19180	
PEARSON'S R	-0.12078	0.0101
GAMMA	-0.21477	

NUMBER OF MISSING OBSERVATIONS = 12

APPENDIX F-3(g)

19 JAN 88

Rule of Law

----- C R O S S T A B U L A T I O N O F -----
 DIM2 Equal opportunity before the court BY INCOME Income Levels

		INCOME				
COUNT		Under 2K	2K-4K	4K-6K	Over 6K	RDW
COL PCT						TOTAL
		1.00	2.00	3.00	4.00	
DIM2						
	1.00	27	86	65	36	214
Agree		65.9	65.6	69.9	64.3	66.7
	2.00	6	31	20	15	72
Mid-way		14.6	23.7	21.5	26.8	22.4
	3.00	8	14	8	5	35
Disagree		19.5	10.7	8.6	8.9	10.9
	COLUMN	41	131	93	56	321
	TOTAL	12.8	40.8	29.0	17.4	100.0

 CHI-SQUARE D.F. SIGNIFICANCE MIN E.F. CELLS WITH E.F. < 5

 5.37062 6 0.4972 4.470 1 OF 12 (8.3%)

 STATISTIC VALUE SIGNIFICANCE

 CONTINGENCY COEFFICIENT 0.12828
 PEARSON'S R -0.04226 0.2252
 GAMMA -0.03836
 NUMBER OF MISSING OBSERVATIONS = 60

APPENDIX F-4(a)

19 JAN 88

Judicial Independence

----- C R O S S T A B U L A T I O N O F -----
 DIM1 Attitudes towards Judicial Independence BY EDUCA Education Levels

DIM1	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00	4 28.6	20 41.7	80 53.0	24 55.8	49 58.3	177 52.1
Mid-way	2.00	5 35.7	18 37.5	47 31.1	6 14.0	16 19.0	92 27.1
Disagree	3.00	5 35.7	10 20.8	24 15.9	13 30.2	19 22.8	71 20.9
COLUMN TOTAL		14 4.1	48 14.1	151 44.4	43 12.6	84 24.7	340 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
16.41764	8	0.0368	2.924	2 OF 15 (13.3%)

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.21462	
PEARSON'S R	-0.06883	0.1028
GAMMA	-0.10849	

NUMBER OF MISSING OBSERVATIONS = 41

APPENDIX F-4(b)

19 JAN 88

Judicial Independence

----- C R O S S T A B U L A T I O N O F -----
 DIM1 Attitudes towards Judicial Independence BY INCOME Income Levels

DIM1	COUNT COL PCT	INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-6K	OVer 6K	
		1.00	2.00	3.00	4.00	
Agree	1.00	16 41.0	63 54.3	45 51.7	31 57.4	155 52.4
Mid-way	2.00	14 35.9	33 28.4	19 21.8	13 24.1	79 26.7
Disagree	3.00	9 23.1	20 17.2	23 26.4	10 18.5	62 20.9
COLUMN TOTAL		39 13.2	116 39.2	87 29.4	54 18.2	296 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
5.83795	6	0.4416	8.169	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.13907	
PEARSON'S R	-0.03616	0.2677
GAMMA	-0.05301	

NUMBER OF MISSING OBSERVATIONS = 85

APPENDIX F-4(c)

19 JAN 88

Judicial Independence

DIM3 Judicial Accountability C R O S S T A B U L A T I O N O F Education Levels BY EDUCA

DIM3	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00	2 13.3	7 14.6	42 25.1	20 41.7	38 42.7	109 29.7
Mid-way	2.00	1 6.7	7 14.6	39 23.4	9 18.8	23 25.8	79 21.5
Disagree	3.00	12 80.0	34 70.8	86 51.5	19 39.6	28 31.5	179 48.8
COLUMN TOTAL		15 4.1	48 13.1	167 45.6	48 13.1	89 24.3	367 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
31.74344	8	0.0001	3.228	2 OF 15 (13.3%)

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.28215	
PEARSON'S R	-0.27302	0.0000
GAMMA	-0.36615	

CONTINGENCY COEFFICIENT 0.28215
 PEARSON'S R -0.27302
 GAMMA -0.36615
 NUMBER OF MISSING OBSERVATIONS = 14

APPENDIX F-4(d)

19 JAN 88

Judicial Independence

DIM3 Judicial Accountability C R O S S T A B U L A T I O N O F Income Levels BY INCOME

DIM3	COUNT COL PCT	INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-6K	Over 6K	
		1.00	2.00	3.00	4.00	
Agree	1.00	7 18.4	44 32.8	28 30.8	25 43.9	104 32.5
Mid-way	2.00	7 18.4	23 17.2	22 24.2	14 24.6	66 20.6
Disagree	3.00	24 63.2	67 50.0	41 45.1	18 31.6	150 46.9
COLUMN TOTAL		38 11.9	134 41.9	91 28.4	57 17.8	320 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
11.85940	8	0.0652	7.637	NONE

STATISTIC	VALUE	SIGNIFICANCE
CONTINGENCY COEFFICIENT	0.18904	
PEARSON'S R	-0.16258	0.0018
GAMMA	-0.20861	

CONTINGENCY COEFFICIENT 0.18904
 PEARSON'S R -0.16258
 GAMMA -0.20861
 NUMBER OF MISSING OBSERVATIONS = 61

APPENDIX F-4(e)

19 JAN 88

Judicial Independence

C R O S S T A B U L A T I O N O F
BY EDUCA Education Levels

DIM4	COUNT COL PCT	EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00		4 8.9	18 11.6	13 28.3	32 35.2	68 19.0
Mid-way	2.00	3 27.3	5 11.1	29 17.7	10 21.7	18 19.8	65 18.2
Disagree	3.00	8 72.7	36 80.0	116 70.7	23 50.0	41 45.1	224 62.7
	COLUMN TOTAL	11 3.1	45 12.6	184 45.9	46 12.8	91 25.5	357 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
35.69936	8	0.0000	2.003	2 DF 15 (13.3%)
STATISTIC	VALUE	SIGNIFICANCE		
CONTINGENCY COEFFICIENT	0.30151			
PEARSON'S R	-0.29247	0.0000		
GAMMA	-0.40450			
NUMBER OF MISSING OBSERVATIONS =	24			

APPENDIX F-4(f)

18 JAN 88

Judicial Independence

C R O S S T A B U L A T I O N O F
BY INCOME Income Levels

DIM4	COUNT COL PCT	INCOME				ROW TOTAL
		Under 2K	2K-4K	4K-6K	Over 6K	
		1.00	2.00	3.00	4.00	
Agree	1.00	5 13.2	22 17.1	18 18.9	18 34.6	63 20.1
Mid-way	2.00	7 18.4	27 20.9	16 16.8	10 19.2	60 19.1
Disagree	3.00	26 68.4	80 62.0	61 64.2	24 46.2	191 60.8
	COLUMN TOTAL	38 12.1	129 41.1	95 30.3	52 16.6	314 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
9.93140	6	0.1276	7.261	NONE
STATISTIC	VALUE	SIGNIFICANCE		
CONTINGENCY COEFFICIENT	0.17510			
PEARSON'S R	-0.13850	0.0070		
GAMMA	-0.16887			
NUMBER OF MISSING OBSERVATIONS =	67			

APPENDIX F-5(a)

18 JAN 88 Adversary System and Independent Legal Profession
 15:17:53 University of Alberta

C R O S S T A B U L A T I O N O F
 DIM1 Integrity of the Legal Profession BY EDUCA Education Levels

COUNT COL PCT	EDUCA					ROW TOTAL
	No Educa	Primary	Second	Metric	Post-Sec	
	1	2	3	4	5	
1.00	6	26	84	24	60	200
Overall Agree	37.5	52.0	51.9	55.8	71.4	56.3
2.00	10	24	78	19	24	155
Overall Disagree	62.5	48.0	48.1	44.2	28.6	43.7
COLUMN TOTAL	16	50	162	43	84	355
	4.5	14.1	45.6	12.1	23.7	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
11.78753	4	0.0189	6.986	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.17934	
PEARSON'S R	-0.16883	0.0007
GAMMA	-0.24968	

NUMBER OF MISSING OBSERVATIONS = 26

APPENDIX F-5(b)

18 JAN 88 Adversary System and Independent Legal Profession

C R O S S T A B U L A T I O N O F
 DIM1 Integrity of the Legal Profession BY INCOME Income Levels

COUNT COL PCT	INCOME				ROW TOTAL
	Under 2K	2K-4K	4K-6K	Over 6K	
	1.00	2.00	3.00	4.00	
1.00	21	71	49	31	172
Overall Agree	52.5	55.5	55.7	58.5	55.7
2.00	19	57	39	22	137
Overall Disagree	47.5	44.5	44.3	41.5	44.3
COLUMN TOTAL	40	128	88	53	309
	12.9	41.4	28.5	17.2	100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
0.33582	3	0.9532	17.735	NONE

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.03295	
PEARSON'S R	-0.03020	0.2985
GAMMA	-0.04545	

NUMBER OF MISSING OBSERVATIONS = 72

APPENDIX F-5(c)

19 JAN 88

Adversary System and Independent Legal Profession

CROSS TABULATION OF DIM2 Economic Barrier in Legal Services BY EDUCA Education Levels

DIM2	COUNT COL PCT	EDUCA					RDW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
		1	2	3	4	5	
Agree	1.00	7 46.7	26 53.1	57 34.3	9 18.4	15 16.7	114 30.9
Mid-way	2.00	7 46.7	16 32.7	72 43.4	24 49.0	49 54.4	168 45.5
Disagree	3.00	1 6.7	7 14.3	37 22.3	16 32.7	26 28.9	87 23.6
	COLUMN TOTAL	15 4.1	49 13.3	166 45.0	49 13.3	90 24.4	369 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
28.20073	8	0.0004	3.537	2 OF 15 (13.3%)
STATISTIC		VALUE		SIGNIFICANCE

CONTINGENCY COEFFICIENT 0.26646
 PEARSON'S R 0.23533 0.0000
 GAMMA 0.31402

NUMBER OF MISSING OBSERVATIONS = 12

APPENDIX F-5(d)

19 JAN 88

Adversary System and Independent Legal Profession

15:17:54 University of Alberta

CROSS TABULATION OF DIM2 Economic Barrier in Legal Services BY INCOME Income Levels

DIM2	COUNT COL PCT	INCOME				RDW TOTAL
		Under 2K	2K-4K	4K-6K	Over 6K	
		1.00	2.00	3.00	4.00	
Agree	1.00	14 35.0	38 29.7	25 26.3	20 34.5	97 30.2
Mid-way	2.00	22 55.0	54 42.2	50 52.6	26 44.8	152 47.4
Disagree	3.00	4 10.0	36 28.1	20 21.1	12 20.7	72 22.4
	COLUMN TOTAL	40 12.5	128 39.9	95 29.6	58 18.1	321 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
7.75967	6	0.2562	8.972	NONE
STATISTIC		VALUE		SIGNIFICANCE

CONTINGENCY COEFFICIENT 0.15363
 PEARSON'S R 0.01080 0.4236
 GAMMA 0.01155

NUMBER OF MISSING OBSERVATIONS = 60

APPENDIX F-7(a)

20 JAN 88

The Right of Silence and Presumption of Innocence

C R O S S T A B U L A T I O N O F
BY EDUCA Education Levels

		EDUCA					ROW TOTAL
		No Educa	Primary	Second	Matric	Post-Sec	
COUNT	COL PCT	1	2	3	4	5	
VA43	1.00	7 70.0	23 51.1	73 52.5	15 34.9	16 22.5	134 43.5
	2.00	3 30.0	22 48.9	66 47.5	28 65.1	55 77.5	174 56.5
COLUMN TOTAL		10 3.2	45 14.6	139 45.1	43 14.0	71 23.1	308 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
22.51240	4	0.0002	4.351	1 OF 10 (10.0%)

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.26099	
PEARSON'S R	0.25383	0.0000
GAMMA	0.38060	

NUMBER OF MISSING OBSERVATIONS = 73

APPENDIX F-7(b)

20 JAN 88

Presumption of Innocence and Right to Remain Silence

C R O S S T A B U L A T I O N O F
BY TRAD Chinese Traditionalism

		TRAD		ROW TOTAL
		Traditi- onal	Non-trad itional	
COUNT	COL PCT	1.00	2.00	
VA43	1.00	89	45	134
Overall Agree		43.6	42.9	43.4
	2.00	115	60	175
Overall Disagree		56.4	57.1	56.6
COLUMN TOTAL		204 66.0	105 34.0	309 100.0

CHI-SQUARE	D.F.	SIGNIFICANCE	MIN E.F.	CELLS WITH E.F. < 5
0.00007	1	0.9934	45.534	NONE
0.01675	1	0.8970	(BEFORE YATES CORRECTION)	

STATISTIC	VALUE	SIGNIFICANCE
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CONTINGENCY COEFFICIENT	0.00736	
PEARSON'S R	0.00736	0.4487
GAMMA	0.01569	

NUMBER OF MISSING OBSERVATIONS = 72