Customary Law in the New Territories, Hong Kong: A Century of Change

Patrick H. HASE

Customary Law in Hong Kong

The Ch'ing dynasty had a sophisticated Code of Imperial law. Foreign lawyers in the nineteenth century expressed considerable interest in this Code. The Code was largely penal and administrative, but included other aspects of the law as well. Many of these foreign lawyers admired a number of aspects of the Code, especially the care and lucidity with which decisions in complex cases were reached and expressed.

Within the Imperial Code, foreign observers often admired particularly the land-law, that is, the law regarding the land-tax and the registration of land-tax payers. The criminal part of the Imperial Code was less admired by foreign observers, but even here the Code was detailed and sophisticated, and judgements often carefully made and lucidly expressed.

The British divided their colonised peoples into "civilised" and "simple": the presence of written legal, philosophic, and ethical texts, and a school system to teach these, were the main factors in having any particular people declared "civilised". There was never any question that the people of the New Territories were "civilised", and the existence of the sophisticated legal concepts and fine written legal texts of the Imperial Code was a significant factor in the understanding of the British that the people of the New Territories were part of a "civilized" society.

Normally, in "civilised" areas, the British assumed that the local indigenous people would continue to run their own affairs according to their own "customary law", supervised by British administrators, and that British law would be introduced where indigenous

customary law was lacking, or inadequately sophisticated to meet the newer conditions of increased international commercial and personal contacts which British colonisation could be expected to bring. The British tended to assume that, following exposure to the Common Law, the indigenous customary law would slowly reformulate itself towards Common Law norms.

It should be stressed that "customary law" in these circumstances essentially meant "pre-British law", and not necessarily "unwritten" or "unsophisticated", although it could stretch to unwritten customs in some circumstances. The concept had been born in India, where the "customary law" of both the Hindu and Muslim communities was enshrined in hundreds of sophisticated written texts, with a history of many centuries. It is thus not surprising that, in 1898, the British proposed to have the New Territories administered by local customary law, supported by metropolitan Hong Kong law as necessary to fill gaps in the traditional system, but it is probable that, before 1898, the British assumed that, in general, the "customary law" they would find in the New Territories would be primarily enshrined within the texts of the Ch'ing Code, subject to local unwritten custom as to certain details.

The Order-in-Council under which the New Territories were legally incorporated into Hong Kong stated that:

> *(Clause 1) [The New Territories were to be] part and parcel of the Colony of Hongkong in like manner and for all intents and purposes as if they had originally formed part of the Colony.*
> *(Clause 2) The Governor, by and with the advice of the Legislative Council of the Colony, is empowered to make laws for the peace, order, and good government of the said Territories as part of the Colony.*
> *(Clause 3) All laws and ordinances which shall ... be in force in the Colony of Hongkong shall take effect in the said Territories and shall remain in force until altered or repealed.*

The Governor, by Proclamations of 8th and 9th April, 1899, appointed 17th April 1899 as the date on which the Order-in-Council

was to take effect. In the Proclamation of 8th April, the Governor added:

> *I expect you to obey the laws that are made for your benefit, and all persons who break the law will be punished severely*[1].

The metropolitan laws of Hong Kong thus extended to the New Territories consisted of those laws of England in force in 1843, and any subsequent Ordinances passed in Hong Kong amending that body of law. It thus would appear, at first sight, that the Order-in-Council required the New Territories to be administered in accordance with metropolitan Hong Kong law, but this was not the intention.

The Attorney-General of Hong Kong at the time, Meigh

---

[1] The information in this section is taken primarily from the Government Reports on the New Territories, 1899-1912, which contain several substantial discussions of the customary law, particularly the customary land-law. These Reports include:

(i) *Extracts from Papers Relating to the Extension of the Colony of Hongkong* ("The views of Her Majesty's Government as to the future administration of the territory ... which has been added to the Colony of Hong Kong", and also "A Report by Mr. Stewart Lockhart on the Extension of the Colony of Hongkong", with Appendices, including "A Memorandum on some Legal Aspects of the Hongkong Extension", by W. Meigh Goodman, Attorney-General, Hong Kong), Sessional Papers, Hong Kong, 1899, No. 9.

(ii) *Despatches and Other Papers Relating to the Extension of the Colony of Hongkong* (Papers relating to the "Disturbances on the Taking Over of the New Territory"), Sessional Papers, Hong Kong, 1899, Nos 27, 32, 34, and 35.

(iii) *Report on the New Territory during the First Year of British Administration* (with Appendices including "Memorandum on Land", and the Proclamation of 8th April 1899), Sessional Papers, Hong Kong, 1900, No. 15.

(iv) *Report on the New Territory for the Year 1900* (with Appendices including "Some Notes on Land Tenure in the New Territory"), Sessional Papers, Hong Kong, 1901, Nos 28, 30, 31, 35.

(v) *Report on the New Territory for the Year 1901*, Sessional Papers, Hong Kong, 1902, No. 22.

(vi) *Report on the New Territory for the Year 1902*, Sessional Papers, Hong Kong, 1903, No. 27.

(vii) *A General Report on the Survey of the New Territory, from November 1899 to April 1904*, Sessional Papers, Hong Kong, 1904, No. 31.

(viii) *Report on the New Territories, 1899-1912* (the "Orme Report"), Sessional Papers, Hong Kong, 1912, No. 11.

Goodman, noted that the reception of English law in Hong Kong in 1843 had an exception:

> *Except so far the said laws are inapplicable to the local circumstances of the Colony or its inhabitants.*

Meigh Goodman gave a legal opinion (December 1898) to the effect that the local circumstances of the New Territories being so different from those of the City, this exception should be read as exempting the New Territories from the operation of any point of English law which differed from the local customary law, except where the Governor felt that the local circumstances were such that English law should prevail.

This exception did not apply to any Ordinances which had been enacted in Hong Kong subsequent to 1843. Meigh Goodman, however, noted that, in practice, only about twenty Hong Kong Ordinances were likely to be of significance in the then completely rural New Territories: he suggested that a new Ordinance be prepared such that, immediately the Hong Kong law was extended to the New Territories on 17th April 1899, this new Ordinance should be passed exempting the New Territories from the operation of them. This was done, and the exempting Ordinance became law on 17th April 1899.

This legal opinion of the Attorney-General was accepted by the Secretary of State for the Colonies (Joseph Chamberlain), who instructed the Governor (Sir Henry Blake) (6 January 1899) that:

> *It is desirable that as many of the existing laws of Hongkong as are applicable to circumstances [of the New Territory] should be at once applied, the administration of the laws being carried out with tact, discretion, and sympathy with native custom and prejudice.*

In accordance with these instructions and legal opinions, the Governor felt able to say, in a speech at the Raising of the Flag on 17th April 1899:

I, the Governor, by Command of Her Majesty's Government, hereby declare that all your customs and usages will be respected

and, again, in speeches to New Territories leaders on 2nd and 4th August, 1899:

I wish to interfere as little as possible with your good customs.

It will at once be seen that these decisions of 1898-1899 gave considerable scope to the continuing operation of the customary law within the New Territories, but equally that the legal basis of that customary law was left extremely vague and ill-defined.

In the first place, the Proclamation of 8/9 April 1899 by which Hong Kong law was extended to the New Territories was a formal statutory instrument which the Courts would recognise, whereas the speeches of the Governor on 2/4 and 17 April 1899 had no formal legal effect, and would not be recognised by the Courts: in the event of any dispute as to whether customary law should be accepted, the Courts would, without doubt, thus be biased towards the metropolitan law of Hong Kong. The exempting Ordinance of 17th April 1899 also set down no legal principles by which Ordinances "*inapplicable to the local circumstances*" would be exempted for the future. Ordinances not exempted by this Ordinance would be valid, but might well be in conflict with the local customary law, and no mechanism was put in place to adjudicate such problems.

Then again, the whole basis of the continuing operation of the customary law was the legal opinion of Meigh Goodman that, where the law of Hong Kong was "*inapplicable to the local circumstances*" of the New Territories, it should be held to be inoperative. Clearly, Government's view as to the circumstances of the New Territories could change with great ease and speed. The customary law was thus not in any way entrenched into the legal system, but existed only as long as, and to the extent that, Government felt that its continuing existence was appropriate. If Government felt that any part of the customary law should be done away with, it could achieve this without requiring any legislative process, merely by an internal

decision that this custom was no longer "*applicable to the local circumstances*". At the same time, Clause 2 of the Order-in-Council allowed Government to amend local custom through the normal legislative process: this required the Governor to take the advice of the Legislative Council, but not that of the affected New Territories residents.

Finally, and perhaps most importantly, no attempt was made in 1898-1899 to codify, or even to define, the local customs which the Governor wanted to keep. Doubtless this was due to the underlying Government assumption that the written Codes of Ch'ing Imperial law - which were well known to the Hong Kong Government lawyers - would form the essential basis of the New Territories customary law, and therefore need not be defined, as it was available in excellent published texts.

In fact, it was immediately found that the local customary law of the New Territories was totally distinct from Ch'ing Imperial law. The County Magistrate of Hsin An County (of which, before 1898, the New Territories had formed a part) had confirmed in 1898 to the Government of Hong Kong that the Codes of Imperial Law were enforced in his Court, and it had been, above all, this statement that had led the Hong Kong authorities to the belief that Imperial law would be found to have been the core of the local "customary" legal system. What the Magistrate had not said, however, was that the local villagers almost never brought cases to his Court[2]; preferring to decide matters extra-judicially, and in accordance with their own, widely divergent customs.

Thus, certain acts which were considered criminal in the Imperial

[2] An Assistant Magistrate stated, in the middle nineteenth century, that not one single case had been brought before him during the whole of the term of his posting, and much the same seems to have been the case with the other County courts, although the District Magistrate's yamen doubtless heard a few cases, although most seem to have been initiated by the Magistrate himself. Cases initiated by the people were very rare indeed, it would seem. See *Journal* of the Royal Asiatic Society, Hong Kong Branch, Vol. 7, 1967, "A Notice of the Sanon District", Rev. Krone, p. 125 (this article is a reprint of one originally published in 1859).

law were either positively required under the customary law[3], or at least were regarded as quite acceptable[4]. Other acts, quite acceptable in the Ch'ing Codes, were forbidden in the customary law[5].

Local custom in the New Territories, just as in the Ch'ing Code, provided for a full legal system, covering civil, personal, criminal, and land law, and the law controlling public acts, although the customary legal system was noticeably more complete in the areas of land-law and personal law, and was definitely unsophisticated in particular in the area of control of public acts. But the two systems, customary and Imperial, were almost completely separate. There is, however, no time here to discuss at length the differences between Ch'ing Imperial law and New Territories customary law; suffice it to say that the two systems were almost totally distinct and separate.

The Customary Land-law of the New Territories

As noted above, among the aspects of Imperial Ch'ing law which were most frequently admired by foreign observers was the Imperial land-law. This started with the premise that all land was ultimately the Emperor's. Individuals, groups, or communities, might seek the Imperial consent to use land: that consent would be given, if there were no other claimant to the use of the land, subject to the individual agreeing to pay land-tax to the Emperor. Consent would

---

[3] Eg the local requirement that bodies be buried twice, once at death, and then again seven years later, when the bones were to be dug up, cleaned, arranged, and placed on a completely separate site, against the Imperial law, which made it a capital offence to disturb a grave after a body had been laid in it.

[4] E.g. the right to sell children (girls usually as *Mui Tsai*, 妹仔 , indentured personal servants: boys more often to families who wished to adopt a son) was well entrenched in the local customary law - texts of deeds of sale of children are commonly found, and actually executed deeds for such sales are not uncommon - but the practice was probably illegal under the Ch'ing Code. The British attitude to Mui Tsai and the sale of boys, and servitude generally, is discussed further below.

[5] E.g. wills and divorce, both well understood in the Ch'ing Code, but which were effectively forbidden in the customary law. Divorce, in the Ch'ing law, was very easy to the man. Educated elders in the New Territories knew of the Imperial rules on divorce, but surrounded them with so many requirements as to make divorce effectively impossible in this area. No early District Officer known to me knows of any divorce as such in the New Territories in villager families. If there were any, they were very few indeed.

be given in the form of registration of the claimant to land-tax for the land in question within the local County Magistracy. No land could have two persons legally interested in it, but only the registered tax-payer[6]. Land-owners were thus in fact merely tax-paying usufructuaries, with permanent right to the use of the land subject to the tax being paid on time. Succession to registration was required on every occasion the land passed to another holder. An *ad valorem* duty was charged whenever land was sold to a new holder. It was a criminal offence to occupy or use land without registration having been completed and the land-tax paid[7]. Certificates were issued by the Land-Tax Registry as to the registered particulars of every piece of land when it was first registered, and when any change in ownership was registered. There was a clear legal concept of individual ownership of land, as well as clear legal concepts of joint and common ownership. The law stipulated that surveys of all land in use would be conducted regularly, to check that no-one was using land without paying the land-tax due. The Imperial law recognised that customary law existed throughout the Empire in the area of land-law, but this customary law was required to operate within the confines of the Imperial law, and especially within the parameters of the basic legal principles that only the tax-paying registered owner or his representative could legally use land, and that only one person or group could legally act as the land-owner. This Imperial land-law was confirmed by the Hsin An County Magistrate as being in force in his Court in 1898.

The British found, after the New Territories had been taken over in 1899 that the local New Territories customary land-law was totally different from the Imperial law. Furthermore, the County Magistrate was being less than truthful as to the land-law operated in his Court, since both he and everyone else knew that the Imperial

[6] And his short-term tenants-at-will, who, of course, had only restricted rights of use.

[7] There was a single exception: people who made "new land", ie, cut new fields from the wilderness, or reclaimed new fields from the sea, were allowed to occupy them for a short period before registering them for land-tax, to allow the fields to become fertile before the tax was demanded.

land-law was not in practice enforced there: the system only seemed to come into line with the Imperial law by elaborate systems of legal fiction and by turning a blind-eye to the actual facts on the ground.

The major factor which had allowed a distinctive customary local land-law to develop in the New Territories was the lack of the regular surveys which the Imperial Code required. In the New Territories area, as in much of China, the last such general survey had been carried out in the very early years of the Ming Dynasty - five hundred years and more before the British took over the New Territories[8]. In North China, where every usable piece of land had been occupied well before the early Ming Dynasty the lack of any recent general Survey was not too serious a matter - over much of North China every field, or almost every field, had been registered to the land-tax well before the mid-fourteenth century. But the New Territories were only just being settled in the early Ming. In some parts (the most fertile and earliest settled) of the New Territories a third or even a half of the land was registered for tax, but, over most of the New Territories only a tiny percentage was - in many places only 1% or so.

This allowed a system to develop which the villagers called the "One Field Two Lords (一田兩住)" system, or the "*Tei Kwat Tei Pei* (地骨地皮)" system. In any area there would be at least one registered tax-payer, even if he was registered to pay tax on perhaps just one field. The traditional land-law, however, gave this registered tax-payer ownership of all the land "from the mountain to the sea", and, on either side, to a convenient point separating that land from the area subject to the next tax-payer. When others came into the area looking for land to farm, the registered tax-payer would require the newcomer to take a perpetual tenancy, paying the tax-payer a rent-charge. From the income of this rent-charge, the tax-payer

[8] There had been a few partial surveys, which had resulted in land being confiscated by the Government, but these were universally regarded by the villagers as evidence of corruption of the officials, it being assumed that only cronies of the Magistrate would get any land so confiscated.

would meet the taxes due from the area[9]. If the tenant took in land from the wilderness, or from the sea-bed, the registered tax-payer would charge a rent-charge there as well. In other words, the traditional land-law assumed that the wilderness was not owned by the Emperor, but by the oldest established family in the area, who had the right to charge rent for the use of this land.

The registered tax-payer was called the *Tei Kwat* ("Bones of the Land", or Subsoil) landowner. Since he alone appeared on the tax registers, he alone could appear in the County Magistrate's Court, which would, if any formal Court case came up, regard the tenants as tenants-at-will in accordance with the norms of the Ch'ing Code (in practice, the County Magistrate would usually go to great lengths to avoid having to make any formal decisions on such cases). This gave the *Tei Kwat* landowner an advantage, and was instrumental in developing the strong local New Territories reluctance ever to go to law.

The customary law, however, gave the tenants far more than they would get if they appealed to the Magistrate. They were the *Tei Pei* ("Skin of the Land", or Topsoil) landowners. They could sell[10], rent out[11], divide, mortgage[12], change the use of, or in any other way

---

[9] I.e., the tax from his field or fields, and possibly from a few other lots where the tax-paying families had disappeared at the time of the Coastal Evacuation (1662-1668), when many tax-paying families did disappear. This statement, with others in this section, is taken from unpublished oral statements and replies given to questions posed to village elders by the author."

[10] Under very significant restrictions discussed further below.

[11] *Tei Pei* perpetual tenants could not establish new *Tei Pei* tenancies, but could let tenancies-at-will. The traditional tenancy-at-will was for a year, and was automatically renewed unless the *Tei Pei* landowner gave notice of his intention to end the tenancy. Notice of ending a tenancy-at-will had to be given at or before the Winter Solstice Festival (December 21st), and would become effective on the 15th Day of the First Moon following (about the end of February).

[12] Traditional mortgages were of two kinds. In the first, land was offered as security for a loan of cash. Interest in cash would be required, with the land held as security against any default in payment of the interest. In this kind of mortgage the owner of the field retained the right to till the field, so long as he paid the interest due. In the second kind of traditional mortgage, money was passed to the owner, and the fields were passed to the mortgagor, who would till them, the harvest standing in lieu of interest. In this second kind of mortgage the possibility was held out of an eventual redemption of the debt, but, in practice, such mortgages were often indistinguishable from straightforward alienations in perpetuity.

change the terms of their ownership, without any reference to the *Tei Kwat* landowner, so long as the *Tei Kwat* landowner got his annual rent, which was, effectively, the limit of his interest in the land[13]. This gave the *Tei Pei* landowners their great advantage: the *Tei Kwat* landowner rarely knew anything about his land, and was entirely at the mercy of the *Tei Pei* landowner as to what was actually happening on the land (few *Tei Kwat* landowners even knew where their land was situated). At the same time, the *Tei Pei* landowner could not push the *Tei Kwat* landowner too far, because of the risk of being brought to Court, where the registered tax-payer would always have an advantage.

The traditional land-law also insisted that land inherited from an ancestor must pass to the next generation in the male line (females could not inherit land or houses). The implication was that the landowners, (both *Tei Kwat* and *Tei Pei*) owned the land in trust, from their ancestors, for their male descendants. British officials came to the conclusion that the traditional land-law forbade any attempt to bequeath land by will[14]: the traditional succession rules could not be broken by the will of individuals[15].

The British found in 1899 that this land-law system had given rise to great confusion. Inter-village wars had allowed *Tei Pei* landowners in some places to eject the *Tei Kwat* landowners[16]: in other areas two or three rival groups claimed the *Tei Kwat* rights, and the *Tei Pei* landowners were paying rent to whichever of them

---

[13] Thus, the *Tei Kwat* landowner could not raise the rent, or in any other way change the terms of the perpetual tenancy, although he could resume the land in the unlikely event of the land becoming waste, without any *Tei Pei* landowner in place.

[14] Brian Wilson, District Officer in 1955, considered that all that was allowed in the customary law to a will was "moral advice to the next generation". See *Journal* of the Royal Asiatic Society, Hong Kong Branch, Vol. 23, 1983, "Notes on Some Chinese Customs in the New Territories", B.D. Wilson, p. 43."

[15] This was a major difference from both Ch'ing Imperial and British law, both of which had sophisticated concepts of the rights of individuals to land. It also made investment in land, as understood in British law (ie the purchase of land as a means to gain income when that was financially desirable instead of investing in stocks or bonds or whatever) a completely foreign concept in the New Territories.

[16] As, for instance, in the Sha Tau Kok area about 1820, and the Ping Che area about 1860.

was the strongest at the time[17]. The distinction between *Tei Kwat* and *Tei Pei*, however, was so strongly entrenched in local customary law that, in those places where the *Tei Kwat* landowner actually farmed his own land rather than renting it out to perpetual tenants, the villagers considered that "the *Tei Kwat* owner owns the *Tei Pei* rights here as well". Where the *Tei Pei* landowners had ejected the *Tei Kwat* landowners there was no attempt to do away with the *Tei Kwat* rights: it was, in those areas, assumed that the *Tei Kwat* rights were now owned by the *Tei Pei* landowners communally. Newcomers could only take in land if the community agreed, and the community might well charge a perpetual *Tei Kwat* rent-charge for their consent. In every case, it would seem, the local villagers assumed that there were two rights to land, and either those rights were held by separate people, or if held together by one person, this was always subject to the possibility that they might be divided in the future. There was no concept of a single, undivided right of landownership.

The local customary law required, as noted above, land to descend in the male line only. This was because of the need to preserve the unity and position of the clan[18]. If daughters could, in even extreme cases, inherit from their fathers, then the clan would be weakened (eg, in a single clan village, if the daughters were to inherit, then, when they married, the village would no longer be a single-clan village, as the daughter's husband would own land there as well, through his wife[19]).

Sale of land by individuals was frowned on, but was possible. Where a man sold land he had inherited to some other member of his own descent line, then this was usually not a problem. Sale to

[17] As, for instance, at Cheung Sha Wan.

[18] The clan is all those males (and their wives and unmarried daughters) descended from a single common ancestor.

[19] So powerful was this legal concept that, where a villager had no sons, but did have a daughter, the only way of giving the daughter inheritance rights in the father's estate was for the father to buy a boy, subject to a condition that the boy marry the daughter, and take the daughter's surname. But it will be seen that this was sleight-of-hand: it effectively was an adoption, with the daughter inheriting through her adopted brother/husband. Only the very poorest of the poor would sell their sons into a different clan like this, and the villagers at large did not approve of the practice, although it happened (they felt it smacked of incest, and was generally improper).

outsiders was only allowed where the seller's relatives had refused to buy. Land bought with the purchaser's own savings, or cut by his own labour from the wilderness was not inherited land, and could be sold while the original purchaser was alive. If he died, however, so that the land was inherited by his sons, it was, in that generation, inherited land and so inalienable from the clan unless there was no-one in the clan willing to buy when the land was offered.

The traditional land-law allowed a great variety of types of communal land-holding, by trusts of all possible sorts. Many trusts from the larger and older clans held *Tei Kwat* rights, many more held *Tei Pei* rights only. Some were Ancestral Trusts, others communal, commercial, family, religious, or investment trusts. Customary rules for the control of trusts were few, and rather weak, and there were many ill-run or confused and tangled trusts, at all dates. Some trusts were treated as perpetual, others were not, and it is not always clear which was which. There is no time to discuss the issue of traditional trusts more fully here: this is a matter for separate treatment.

There were some steps taken to clarify the parameters of the customary law. The Colonial Secretary, J.H. Stewart Lockhart, administered the New Territories personally for the first year of British administration (1899-1900), and he produced a fine survey of both the Imperial and New Territories traditional land-law, which remains to this day the best single study[20]. Little else, however, was done.

Two major changes to the customary land-law were enforced by the British in the first years of their administration. The earliest were the new rules on resumption. The British were satisfied, following their study of the Imperial law, that there had always been a residual Imperial right to resume land for any Imperial purpose, since the land was, in the last resort, Imperial land, and the rights of "landowners" were, in the last resort, the rights of usufructuaries only. Furthermore, the Imperial Government had in fact exercised this right, resuming land, for instance, for building several of the Coastal Defence Forts, which were sited on land that had been private land. The British therefore claimed for themselves the same

[20] In *Report on the New Territory during the First Year of British Administration*, op. cit.

rights. In his Proclamation of 9th April 1899, the Governor said:

> *Should any land be required for public purposes it will be paid for at its full value.*

However, the Hong Kong Government used its powers of resumption far more frequently than the Imperial Government had ever done, for building new roads, and the railway, Police Stations, and various public offices. The villagers saw all this with reluctance, and have always felt that resumption was improper[21]. Particular problems arose when the Government started to resume private land for the extension of market towns, and the development of new residential districts. Even up to today, the villagers dispute that these can be called "*public purposes*", and this has, at times, led to vigorous opposition to Government plans by villagers. Certainly, the British practice on resumption represented a major change to the customary situation. The British also kept the Ch'ing imperial provision that non-payment of the Land-Tax would lead to resumption of the land with no further ado: in the early years after 1899 a number of lots were thus resumed for non-payment of Crown Rent, and others were in the immediate post-War years.

The second change to the customary land-law, and undoubtedly the most significant was the decision (1905-6) that the *Tei Kwat Tei Pei* system was "*not compatible with the principles of British administration*". This decision, which made the cultivators of the soil the sole group with legal rights to ownership, was the first major Land Reform anywhere in China, since it wiped out, at one blow, all the old landlord-tenant relationships, and replaced them with a single system, in which the cultivators of the soil had over them only the Government[22]. This decision was done administratively: no

[21] At least until the post-War years when compensation was set at levels which were genuinely advantageous to the villagers.

[22] Except on Cheung Chau Island where, to the annoyance of the residents, the old *Tei Kwat* landowner, the Wong Wai Chak Tong Trust, was registered as the single landowner, with all the many thousands of residents in that major fishing port being considered (even up to today) as only tenants of the Tong. Attempts are periodically made by the Cheung Chau residents to have the Tong's rights done away with, but so far without avail.

legislation was needed, and no statutory action - the Government in this case made use of the vagueness of the customary-metropolitan interface to make the biggest social change the New Territories area had known for many hundreds of years[23].

Also in these early years the Government established a new Land Registry system for the New Territories. It differed in a substantial number of ways from the Land Registry system in the city: in particular, the system ran to far simpler procedures, and did not require the involvement of lawyers. It was, in many respects, copied from the better aspects of the old Ch'ing Registry practice, although the Government hoped that the old practice of legal fiction would not appear in it[24].

---

[23] This apparently high-handed action by the Government was, however, very much welcomed by the majority of New Territories residents. The old *Tei Pei* relationships had always been objected to. The *Tei Pei* tenants were well aware that the Ch'ing Imperial law did not allow any sort of *Tei Kwat Tei Pei* system. Once the British came, and they began to pay Crown Rent to the Government (the New Territories equivalent of the old Ch'ing Land Tax), they felt that there was no longer any justification for the *Tei Kwat* landowners continuing to collect rent. It was widely believed that the *Tei Kwat* landowners could only justify their rent where they were paying the Land Tax. There was, as a result, a major rent-strike in 1900, and, in the attempts to end it, the Government decided that only cancellation of the *Tei Kwat* system would work. There had been major revolts by *Tei Pei* tenants against their *Tei Kwat* landowners on many occasions before 1899 (for instance, between 1708 and 1777 at Tung Chung on Lantau Island, where the dispute went to the District Magistrate, Prefect, and even the Provincial Governor, no less, indeed than eighteen times - the officials always trying to avoid making decisions so as not to have to rule on the legality of the *Tei Kwat* claims, since these were, in this case, backed up by an Imperial grant), including cases where the *Tei Pei* tenants ejected the *Tei Kwat* owners, often in the context of inter-village warfare, as at Sha Tau Kok in 1820, and Ping Che in 1860. The Government specifically referred to Ch'ing law, and its absence of any reference to *Tei Kwat* rights, when it cancelled the system. The Government in 1905 called the *Tei Kwat* landowners "Taxlords". 14 of them were compensated (not very lavishly), but most were not.

[24] In fact, legal fiction appeared in it at once, and has remained a marked feature of it ever since. In particular, New Territories registered land-owners have, in practice, very rarely bothered to register regular succession to title. Since land customarily had to descend in equal shares to the sons of any landowner deceased, what point was there in registering succession when the sons had in fact succeeded in accordance with custom? When the Government was resuming land for the New Towns developments in the New Territories in the 1970s and 1980s, it was frequently the case that a significant percentage of the lots resumed would be found to be still registered in the then holder's father's or grandfather's name, and it was common to find the Block Crown Lease lessee's name still registered - often by the time of the resumption the then holder's great-grandfather. Working out exactly who had a right to a share was one of the last major exercises conducted entirely in accordance with customary law.

The District Officers had very early come to fear lawyers, since lawyers invariably caused problems to the District Officers' often doubtfully legal actions. Some District Officers feared that, if any studies or Codes of the customary law were produced, then lawyers would use them as weapons, treating the Code as if it was a statutory document, and arguing to the letter rather than to the spirit. It was for fear of this that the big volume of precedents which the Government gathered together from decisions of District Officers in customary law cases was never published, and was thus lost when the single copy was destroyed by the Japanese[25].

In 1903 (amended in 1910) an Ordinance was passed which specifically required District Officers to take account of custom in settling land cases. They had been doing this anyway, but this cleared up any questions as to the legality of what they were doing. These Ordinances also set out procedures for District Officers to follow, both in the Land Registries, and in the hearing and determining of disputes over land. These procedures gave the District Officers a huge amount of discretion, and required only the simplest and most informal procedures. Most importantly for the District Officers, the Ordinance forbad lawyers to appear before the District Officers in land cases, unless the District Officer gave specific consent (which he did rarely, if ever).

Administration of the Customary Law by the District Officers

It will be seen that, with the British so publicly promising to run the New Territories according to customary law, and then finding that the written texts of Ch'ing law were inapplicable, the problems of the weak and vague interface between the customary and metropolitan law of Hong Kong could be expected to become very serious. In the realm of land-law, the 1903 Ordinance demanding that the customary law be followed, given that there was no attempt to codify that law, might well be expected to have led to very serious problems. In fact few major problems did arise.

In 1898-1899 the Government had identified this problem, and

[25] Called "the Bible" by generations of New Territories officers.

proposed to get around it by establishing a system of Village Tribunals (with a Council of Elders as the judges) in each village, with a right of appeal to a Tribunal of the *Tung* (洞), or district, where the judges would be the most senior elders of the district. These Tribunals would decide on all cases, including land, criminal, and civil cases of all kinds. Every decision of these Tribunals was to be written down, with the grounds of the decision, and would have required confirmation by a British Magistrate or Magistrates. There would be a further right of appeal to the High Court. This system would have provided a body of precedent very quickly, and would have had the effect of defining the boundary between the metropolitan and customary by convention and usage.

The village elders, however, refused to man these Tribunals. They preferred the Magistrates (renamed District Officer and Assistant District Officers from 1907) to hear the cases at first instance. The elders did not want to face the political problems they would have had to face if they had ruled formally against their village brethren. They were happy to advise the District Officers, but preferred these foreigners to make the decisions. As was noted at the time, this attitude by the elders was a sign of the very quick acceptance by the New Territories indigenous community of British rule: the District Officers almost immediately achieved amicable and intimate relations with the elders they worked with[26]. Nonetheless, with foreigners declaring the customary law (even with advice), the interface with metropolitan law remained unclear. The District Officers, despite their close relationship with the indigenous elders, had prejudices of their own which stemmed from the middle-class British background from which they sprang, and these inevitably affected their decisions[27]. The Government did collect precedents from decisions by the District Officers, as noted above, but the great

[26] It certainly helped that almost all the early District Officers (and, indeed, down to 1960, and even later) were passionately sympathetic to the indigenous community. Many of the District Officers came to love the New Territories deeply, and not a few became significant scholars of the culture and traditions of the area.

[27] District Officers, for instance, tended to have a prejudice in favour of a free market in land, and tended to make decisions on sale of land which reduced to a minimum consonant with custom the restraints on sale which there had previously been.

file in which they were held was available only to District Officers, and seems to have covered mostly land and land-related cases.

The system really only managed to continue to work because it was quickly found that the indigenous community was exceptionally non-litigious. In the first years of British rule in the New Territories it was noted that, of all law suits in Hong Kong, less than half of one percent originated in the New Territories, although that area had over a quarter of the population. Of the cases (other than criminal) brought to the District Officer, the great majority were agreed by the parties before him, or compromised out of Court following his advice, and so never came to a formal decision[28]. Appeals from the District Officer were almost non-existent[29]. Villagers found, at a very early date, that, while the District Officers might have their prejudices, and while their decisions might not be always exactly as the villagers would have decided them, nonetheless they were able to live with them, and were happier doing so than facing the difficulties and complexities of working with lawyers. But this reduced the number of precedents set to a very low level. The High Court, in particular, developed no expertise in the customary law, and almost always floundered badly when it was faced with customary law in Hong Kong.

Between 1899 and about 1960 the New Territories were run by the District Officers with very little interference from the administration or law courts in Hong Kong. They were the only judicial officers in their areas (they held both civil and criminal courts, and were also Coroners). They were the heads of the civil administration in the districts. It is lucky that they were all men of probity: none left a bad reputation behind them with the elders, and some are still remembered with respect even sixty years after their death.

---

[28] While statistics do not survive it seems certain that normally only one-tenth (at most) of the cases brought before the District Officers by villagers (ie not including criminal cases brought by the Police) proceeded to a formal decision, and it may well have been far less than that.

[29] Again, statistics are difficult to come by, but the number of appeals to the High Court, especially after 1903, were far less than one a year.

The District Officers, throughout the period to 1960, operated customary law procedures and gave judgements which, had the High Court even heard about, would indubitably have been struck down. Throughout the period, for instance, District Officers allowed Trial by Ordeal in certain circumstances[30], which it is extremely unlikely would have been allowed by the High Court, but no such case was ever appealed.

District Officers even went as far as making judgements which were unquestionably illegal, in the happy knowledge that the likelihood of their decision being questioned in any higher court was extremely remote. From 1899 to 1908, for instance, they adjudicated many cases of debt, although the law to allow them to do so legally was only passed in the latter year. District Officers similarly adjudicated questions of the legality of marriage (usually in the context of decisions on succession to land), although, without any doubt at all, the metropolitan law on marriage had not been exempted in 1899, and was legally in force throughout the period in the New Territories. District Officers thus often allowed the children of unions which would undoubtedly have been considered illegitimate in the High Court, but which were acknowledged by the village elders, to succeed to land equally with the children of more legitimate unions.

All this apparently high-handed and extra-legal action was continued for so long because the great majority of cases which came to the District Officer (again, except for criminal cases brought by the Police) came with all the parties knowing what the decision ought to be. So long as the District Officer took advice, and thus gave the decision everyone wanted, then no complaints would arise. The villagers merely wanted the "Father and Mother Official (父母官)" to give them face by announcing the decision for them.

[30] The District Officer would take the parties to their local temple, and there, assisted by Taoist priests, would order one of the parties to kneel before the God, and there to kill a white cock by cutting off its head. The blood would be sprinkled on the statue of the God, and the party concerned would beg the God to deal with him as he had dealt with the cock, should he be in the wrong. Most guilty parties declined to put themselves at risk of divine vengeance in this way, and surrendered their case rather than face the ordeal, but one case was conducted to the end as late as 1957.

Other cases came where any decision within a band would be acceptable, and, again, usually, the District Officer would give a decision, after taking advice, which lay within the bounds of the acceptable, and so, again, there would be no complaint. Even those who were defeated in a case brought before the District Officer rarely appealed, since that would have meant him going to court in the City, and since, usually, the defeated party knew the decision reached was the correct one - or at least that the public opinion of his village thought so.

There were some cases, of course, which were bitterly divisive, and where there was no consensus as to the proper decision needed. In most such cases, however, the District Officer's decision was usually accepted, since the alternative - appeal to the High Court - was out of the question to most villagers[31].

Customary Criminal Law

Of course, the criminal law that the District Officers enforced was in a somewhat different category. Most cases were brought by the Police, and the decisions on them were normally made in accordance with Common Law and Hong Kong metropolitan law.

The relations between the New Territories Police and the villagers was generally amicable from very soon after 1899. The old village constabulary (the *Tipo* or *Tei Po* 地保) disappeared within a year or two after 1899, although it had been proposed by the Government in 1899 to keep them as auxiliaries to the Police. Villagers would, it is true, often refuse to give information to the Police about crimes within the village, if the culprit made restitution

[31] Among such cases which came up quite frequently were cases where communal trusts were dissolved, and the proceeds distributed among beneficiaries: division *per stirpes* (分家) and *per hominem* (分丁) were equally acceptable in the customary law, and, whenever a division came up the two methods would be argued passionately - no clear decision on what was the more customary procedure was ever made. This problem was exacerbated since the elders preferred *per stirpes* (which was in their financial interests), but the greater part of the villagers preferred *per hominem* (which was in their interests). In 1910, dissolution and division of proceeds was forbidden by statute except with the prior consent of the District Officer: one of the reasons for this statutory change was to allow the District Officer to refuse consent until after the beneficiaries had decided among themselves which method to use.

considered appropriate by the villagers[32]. In general, the villagers were content to let the Police prosecute crimes, while they themselves dealt with minor misdemeanours within the village using their own traditional practices[33], which, while probably illegal, were not interfered with so long as the District Officers were sympathetic with the villagers. Few acts were considered criminal by the villagers which were not also criminal under the broader Hong Kong law, and so the villagers' wish to see criminals punished was usually met. The Common Law concepts of presumption of innocence, standards of proof, and the use of a jury, were quickly understood by the villagers, although, in some areas, villagers felt the Common Law was unacceptably lax.

One area of problem where the villagers considered Hong Kong law as administered by the District Officers too lax was "Runaway Wives". Under the customary law, adulterous women were drowned in public. They were pushed into pig-baskets and thrown into a river or the sea. Where a woman were found guilty of being in suspicious circumstances[34] she might be put into the pig-basket and thrown in, but pulled out before she drowned, as a warning. All this was not possible (at least in most cases) after the coming of the British: it was unacceptable to the District Officers. The result was that a number of village wives, unhappy in their marriages, ran off with

---

[32] "Why wash our dirty linen in public" was (and is) the normal village reaction. I know of a case where a villager raped an under-age girl in his village, and this only came to light a decade later when the District Officer unfortunately wanted to make the man Village Headman.

[33] Among criminal sanctions known to have been still enforced by the villagers during the 1920s and 1930s (and possibly even after the War) were having the culprit beaten before the assembled village, or taken around all the villages of a district in turn to be abused (and, sometimes) beaten in village after village. Sometimes culprits were required to burn strings of fire-crackers as a punishment, before the assembled village. Most village criminal sanctions were for such misdemeanours as stealing vegetables from fields, diverting irrigation water, and so forth. The villagers knew that the District Officer would never treat these as seriously as they did, and the culprits generally preferred to have their punishment left within the village than for them to loose the vast amount of face that a formal trial before the District Officer would entail.

[34] For instance, in one case known to me, when a married women had a workman in her house mending a damaged section of the roof, and the woman shut the street-door.

other men after 1899.

The elders constantly pressed the District Officers to come up with a solution to this problem which met the customary law requirement that any such woman be returned to her husband, for his clan to punish as they saw fit, but, although the District Officers were sympathetic to the elders, not much could be done. The Hong Kong metropolitan law included provisions on divorce and separation which had not been included in the exempting Ordinance of 17th April 1899, and which thus formed part of the law the District Officers had to enforce, and the Common Law also had rules on the rights of women which could not be ignored. The District Officers could not go beyond the law, and return "Runaway Wives" to their husbands extra-legally, since this was one area where recourse to appeal was likely, not least by the men the wives had run off with, many of whom were city men, and thus less afraid of the Courts[35]. In 1911 the District Officer was instrumental in getting an Ordinance passed making it a criminal offence to "*harbour a married woman*", but this, while it allowed the District Officer to fine the man the wife had run off with, did not allow him to force the woman back to her husband[36], and the punishment that would inevitably have been imposed by the villagers thereafter. This is a good example of the problems the vague interface between customary and metropolitan law caused.

Villagers were under constant temptation to risk problems by punishing the adulterous in the customary way, because of "lax" Hong Kong law, and the District Officers had to keep a tight eye on this. There are many stories in all parts of the New Territories, suggesting that some adulterous women were indeed drowned by the elders of their clans after the coming of the British, but in no case

[35] Also, of course, had the District Officer returned a woman to her husband, and then the husband's clan had drowned the woman, the District Officer would himself have been in great peril.

[36] It is, however, clear from the District Officer's Report on the New Territories in 1912 that the District Officer considered that it was disgraceful that he could not force the women back, and thus take the line village custom demanded of him. The District Officers prosecuted under this Ordinance once a year or so. See the "Orme Report" op. cit, para 93, "the evil has not been remedied".

has any proof come down to the present. Certainly it did happen that occasionally women found in suspicious circumstances were dunked, and sometimes almost to the point of drowning. In 1930 one village caught one of their menfolk committing adultery with his son's wife. He was executed by being buried alive (the record does not say what happened to the woman). In this case the District Officer was forced to prosecute the villagers for murder, although it is clear that he sympathised with them[37].

The customary law also allowed the villagers to kill anyone found red-handed committing burglary or banditry. This certainly continued after the coming of the British. The District Officers clearly felt that this was not something to be strongly put down. Usually, it would seem, the District Officers took no action on such cases, unless they got out of hand. In 1937, however, the District Officer mentioned one fracas, in which three fishermen set on five robbers who had attacked their boats: in the fight three robbers were killed with fish-spears, and one fisherman was killed - the District Officer's only comment was that the affair showed the "typical courage of the local people"[38]. Also in 1937, there is a reference to villagers coming across chicken-thieves in the night and beating them to death - in this case the District Officer had had to prosecute, but was clearly delighted when the jury found the case one of "justifiable homicide"[39].

Customary Law and the Control of Public Acts in the New Territories

After 1899 there had had, of course, to be many changes in the law administered in the New Territories. The earliest stratum of such change was with reference to the control of public acts. The Hong Kong Government, like all British Colonial Governments, was very careful about income, and it was not prepared to exempt the New Territories in 1899 from those Ordinances which had financial

[37] *Administration Reports for the Year 1930*, "Report on the New Territories for the Year 1930", p. J2.

[38] *Administration Reports for the Year 1937*, "Report on the New Territories for the Year 1937", p. J4.

[39] *Administration Reports for 1937*, loc. cit.

effects. While the protection of potential income was undoubtedly the main aim of the extension of these Ordinances to the New Territories, they had the effect of greatly extending and making more sophisticated the law on public acts in the area.

In accordance with this development Harbour Dues were collected in the New Territories from 1899, fees were charged for Stake-Nets and Pile-Houses, and licences required to sell spirits or kerosene. Pawnbrokers and Money-Lenders also had to take out licences. Licences were required for theatrical performances, including those at temples. Graves were required to be registered (from 1909). Water-wheels, ferries, oyster-beds, matsheds, pineapple fields, and stone quarries, all had to pay fees[40], and permits were required to make cuttings in the earth. From 1913, wild trees could only be cut and sold if a permit from the District Office was taken out[41]. Firearms also required a license issued by the District Officer, although the District Officer was sympathetic with the wish of the villagers to be able to defend themselves against bandits (which were common, especially in the period before 1926, when many bandits crossed into the New Territories from the chaos of Warlord Kwangtung), and was usually willing to license guns for village elders. Some of these payments were taken over from old Ch'ing Government fees[42], but most were extensions to the New Territories of fees charged on similar activities in the urban area. From a very early date, land-deeds referring to mortgages and sales presented to the District Officer for registration were required to pay Stamp Duty[43]. From 1937, Estate Duty was charged on villager estates on

[40] In 1924, the Ferries Ordinance was extended to the New Territories. This demanded a far higher safety standard than before, and, within a few years, led to most of the major New Territories ferries being taken over by urban limited companies.

[41] This was to stop the then increasing practice where city con-men would try and buy up the big camphor trees in the village Fung Shui woods, a development which had been causing serious friction in a number of villages.

[42] For instance, the ferry fees, quarry fees, and the payments for salt-fields.

[43] At first, postage stamps had to be bought and fixed to the deed: later on the District Office would sell pre-prepared embossed paper on which deeds could be written, and which contained the stamp already pre-fixed. Because of the generally low value of New Territories property, it was normal to charge only the minimum Stamp Duty.

succession as well[44].

A number of acts not illegal under the customary law were made illegal in the early years after the coming of the British. Thus, gambling was forbidden, since the Gambling Ordinance was not included in the exempting Ordinance of 17 April 1899[45]. The New Territories was also not exempted from the Opium Ordinance (although Meigh Goodman had originally proposed that it should be), and thus all opium sold in the New Territories had to be sold through the Opium Monopoly: all the New Territories opium divans were closed down in 1909, after which opium could only legally be smoked if bought at the Monopoly's high price, and smoked at home. From 1909 a new Ordinance stiffened the law on the licensing of distilleries and spirit merchants, and this caused a good deal of problems. In 1919 tobacco began to be taxed, and thus tobacco duties were collected from New Territories shops: in 1921 the duty on "native tobacco" (the sort of tobacco mostly used in the New Territories) was raised, and this led to a wave of smuggling of tobacco from China[46]. Also in 1919, rice controls were introduced, to enable the District Officers to stop free trade in rice (and, specifically, to forbid rice to be exported from the New Territories to Hong Kong) - this was a reaction to the famine years 1916-1919, and the controls were lifted in 1921, although the power to reimpose them was retained. Deliberately setting hill-fires was also made illegal: a system of Police enquiries into suspicious fires was set up

---

[44] This, of course, strengthened the tendency of villagers not to register normal changes in ownership.

[45] The Governor pointed out in his speeches to New Territories elders in April 1899, that gambling had in fact been illegal under Ch'ing Imperial law, although not enforced: "The Chinese law against gambling is very strong, but the officials have neglected it. In British territory all laws must be equally respected". Even so, the villagers saw the extension of the Gambling Ordinance as making illegal what had previously been, effectively, legal.

[46] Throughout the period from 1909 to about 1936, offences against the Liquor Licensing Ordinance, and the Opium Ordinance, formed the bulk of the criminal cases heard by the District Officer as Magistrate. In 1932 out of 452 cases heard in North District other than Traffic cases, 206 cases were Opium or Liquor cases (46%), and in 1933 381 cases out of 776 (49%). *Administration Reports*, "Reports on the New Territories", passim.

in 1926[47]. Dynamiting fish (which had become a favourite fishing method in the decades immediately before the coming of the British) was also banned, on safety grounds[48]. From 1914 controls were imposed step by step on the sale of fresh meat outside licensed markets[49].

The status of the Triad Society under the customary law is unclear. It was probably not illegal, although any criminal acts conducted by it would have been. When the British came to the New Territories, the Triad Society was very active in the market towns, and one of the earliest legal decisions taken by the British was to ensure that the metropolitan Hong Kong law banning the Triad Society was extended to the New Territories. Vigorous action against the Triad Society was taken in the New Territories on a number of occasions, especially in 1899-1900 and 1923.

The taking of sand from beaches for construction was legal under the metropolitan law, but illegal under customary law[50]. Fights - sometimes serious - were continuously breaking out between villagers and the men of the Sand Monopoly, and Triad Society involvement was an added complication. The District Officer was strongly in support of the villagers, but much of the central Government supported the Sand Monopoly, because of the ever-

---

[47] Even though there were only five or six hill-fires a year then rather than the many hundred of today. Deliberate starting of hill-fires was customary whenever it was feared that tigers might be on the hill. Villagers also thought that the ashes from fires would bring nutrients to their fields when they were washed down with the summer rains.

[48] Not very effectively. Even today there are few fishing communities without numbers of men with a hand lost to dynamite accidents. Dynamiting fish remained a problem to the Police right down to the 1970s. It was banned because of the danger to the fishermen and others. The dynamite had been sold openly in the market towns, with no safety rules at all.

[49] The full urban Public Health law, however, was only enforced in the New Territories from the 1970s.

[50] There was a Sand Monopoly which provided sand for construction projects. It had the right to take sand from beaches (all of which would be in the New Territories), under certain conditions, which were, however, usually disregarded in practice. In the customary law, beaches were owned by the villages behind them, and no-one could take sand there except the villagers themselves. The beaches were normally higher than the fields behind them, and if sand was taken from them, the defence of the village against the sea was weakened, sometimes very seriously.

present shortage of sand for construction. The District Officer usually refused to prosecute villagers who defended their beaches against the Sand Monopoly: when the central Government insisted on prosecution, the District Officer was usually able to ensure that only minor penalties were exacted. After several decades of pressure, the District Officer was able to get the Sand Ordinance passed in 1935, which required a permit from the District Office before sand could be taken from any New Territories beach. This brought the law closer to what the villagers felt it should be, and reduced both the taking of sand from the beaches, and the number of cases of dispute markedly, although defence of beaches remained a minor problem for another twenty years.

A number of Ordinances which were extended to the New Territories were left as dead letters, and not enforced. The Registration of Births and Deaths Ordinance (1911) was one of these. It was ignored entirely in the New Territories until 1932[51], when a better Ordinance, with better administrative provisions, was introduced. Another initially ignored Ordinance was the Cats and Dogs Ordinance[52], which was only enforced from 1935, several years after it was first theoretically extended to the New Territories. The Chinese Wills Validation Ordinance was also extended to the New Territories from 1899, but the customary law which made the issue of wills impossible left it as more or less a dead letter[53].

---

[51] The only birth registered in the first year was that of the son of the District Officer's Interpreter. In the South District of the New Territories the District Officers seem not even to have been aware that the 1911 Ordinance had theoretically been extended to the New Territories, since they several times noted that "Registration began in 1932".

[52] It required that dogs be licensed and was essentially a piece of legislation against rabies.

[53] Very occasionally, when the family circumstance of some family had become so entangled that no-one could decide for sure who had the right to inherit, wills were issued as a last resort. In many cases, however, the will proved in the end only to add another complicating factor to the existing entanglement. Very rarely did a will proceed quietly to probate and then to a settlement of the estate as it stipulated. I know of no case before about 1980.

Customary Law: Slavery

It will be seen that none of these Ordinances, other than those involving changes to the land-law struck at anything very central in the customary legal system. But they had a pronounced knock-on effect. Although each of them was considered to be "applicable to the local circumstances", and while few gave rise to any political or communal problems, nonetheless, taken together, the New Territories was far more tightly controlled by the Government in 1910 than it had been in 1899, and far less was being administered by the elders within the village in accordance with custom, and far more being decided by the District Officers, albeit usually with the advice of the elders. The years 1899-1910, in fact, saw much of the customary law disappear for ever, especially in the fields of crime and public acts.

There were a few Ordinances which were extended to the New Territories which were recognised at the time as constituting a major change to local custom. Perhaps the most controversial was the banning of the sale of girls as *Mui Tsai* (妹仔). It had long been common, and was quite acceptable under the customary law, for parents to sell their infant children[54], and for wealthy families to buy them. Sale of infant boys for adoption, and sale of infant girls with a view to their later marrying the son of the house which bought them, were very common[55]. Also common was the sale of infant girls (usually of about five or six years of age) to women for use as hand-maids, or *Mui Tsai*. Customarily, the owner of a *Mui Tsai* was required to release her when she reached marriageable age, and find a home for her. Some were decently married, others sold off as concubines, and many were sold as prostitutes. The abuses of the *Mui Tsai* system led to its being banned in the City in 1923 by the

[54] The customary law not only accepted this, it had standard forms of words, and standard forms of deeds, for the sale, and such deeds, properly executed, are not at all rare. I have come across no case where a child of over about seven years old was sold, except where the sale was of a boy for adoption as the heir of a childless family.

[55] In neither case did the practice become illegal before 1960, but both practices died away during the 1950s and early 1960s. Both are probably now illegal under recent consolidating Ordinances relating to Social Welfare.

Mui Tsai Ordinance[56]. The District Officer had defended the buying and selling of children in 1912 as part of local custom. The opposition of the local New Territories community to the ban on *Mui Tsai* led to the Ordinance not being extended to the New Territories until 1930, when something over four hundred *Mui Tsai* were registered there[57].

The customary law also included provision for boys to be sold into perpetual servitude, not only for their lifetimes, but also for their descendants' lifetimes for ever. Sometimes adult men would sell themselves in this way as well. Such people, whether they sold themselves, or were sold, or had this status by descent, were called *Sai Man*, 細民 or *Ha Fu*, 下夫 . In 1899 there were several hundred *Sai Man* families in the New Territories. They were usually owned communally by the major ancestral trusts of the great Punti[58] families in the western parts of the New Territories, especially the Tangs (鄧), Mans (文), Haus (侯), Lius (廖) and Pangs (彭). Despite the long-standing British legal tradition against slavery, the District Officers took no steps against the ownership of *Sai Man*. No cases are known of sales of males as *Sai Man* after 1899, but no-one who then had that status was emancipated[59]. Had any *Sai Man* run away, it is doubtful how far the District Officers would have

[56] The Ordinance required existing Mui Tsai to be registered, and allowed the Government to inspect the conditions in which they were living, but allowed no further Mui Tsai to be created.

[57] In fact, relatively few New Territories land villagers sold their daughters in this way, but it was not uncommon among boat-people's families. The richer New Territories families had long been accustomed to take concubines from Tanka girls sold either as Mui Tsai or at puberty. In 1930 far fewer than one in 250 New Territories families had Mui Tsai, a figure much less than had been found in the city in 1923.

[58] "Cantonese-speaking".

[59] In 1912 the District Officer merely said, about the Sai Man: "Hereditary slavery, equivalent to our old 'villeinage' has been abolished in China by imperial edict on several occasions and is now practically extinct, as far as the New Territories is concerned", which certainly does not suggest a burning desire to eradicate the remains of an evil custom! The "Orme Report", op. cit, para 94. The rituals of sales as Sai Man are still remembered, however. For sale of a boy, the usual sale deeds were issued, without any restriction on the sale. For adults selling themselves, they had to present their new owner with the pot containing their ancestors' bones (or something to represent them), since no Sai Man in the customary law was allowed to have any ancestors. The bones would then be buried by the new owner, but where the new Sai Man did not know.

gone to find them and return them to their owners, however, and several did run away in the early years of the British administration. The *Sai Man* all disappeared under the Japanese, not because of any emancipation instituted by the Japanese, but because the owners of *Sai Man* were obliged to feed them, and, in the starvation of those years, the owners could not afford to do so[60].

Customary law: Money-lending and Bankruptcy

There were a number of areas where the District Officers considered the customary law seriously lacking, but where they were unable to achieve reforms (or where they were unwilling to interfere so much with the local custom) before the War. One was the control of traditional Money-Loan Associations (*Wui* 會)[61]. The District Officers took a very jaundiced view of *Wui*. Many of them were,

---

[60] Most Sai Man families died out because of starvation under the Japanese, but there are still some families whose origin was Sai Man. Even today, to accuse a New Territories villager of being Sai Man risks a full-scale fight.

[61] There is not space here for a full discussion of the complexities of Wui. They usually consisted of a fixed number of members, who agreed together to pay a fixed sum - say $1 - a month for a fixed number of months equal to the number of members - say 10. On the first month, the organiser took all the money paid in, and so received $9. In subsequent months, the other members would bid for the money. Taking as an example, if, for the second to sixth months, the highest bid was 15%, then, for those months, the winning bidder got ¢85 from each member, and so received $7.65. If, in the seventh and eight months the winning bid was 10%, then the winners in those months got ¢90 from the nine members paying, or $8.10. In the ninth month, if the winning bid was 5%, then the winner got ¢95x9, or $8.55. In the tenth month, as there was no one left to bid against the last member, he, like the organiser, got the whole $9. So the first and last member paid in $8 and received $9 (11.25% profit): the ninth member paid $8.05, and received $8.55 (6% profit); the seventh and eight members paid in $8.1, and received $8.1, and so neither gained nor lost, and members two to six paid in $8.15, and received $7.675 (interest paid of 6%). The interest charged to members was sharply less than had to be paid to money lenders, and the pay-back period was longer, and so Wui were very popular. Since Wui were entirely legal under the customary law, debts owed to a Wui were legally reclaimable. However, problems abounded, as the customary law had no structures of control. Even with well-run Wui problems arose when members died or became bankrupt during the life of a Wui. Where, however, a Wui was ill-run, where the organiser was not a man of probity, or where poor accounts were kept, or the monthly payments allowed to be deferred, then the affairs of the Wui could very quickly become extremely entangled, and the poorer members of it driven into financial difficulties.

they thought, merely disguised gambling operations, and others had been allowed to fall into extreme confusion, the organisers relying on the District Officer's Small Debts Court to haul everything out of the mire. Exasperation with *Wui* and their organisers are an almost annual complaint of the District Officers, at least from 1913 to the War[62]. Between 1919 and 1921 the District Officers took extra-legal action to attempt to instill some sense of efficiency into *Wui*: they refused for instance, to allow *Wui* to prosecute cases in the Small Debts Court unless prior investigation by the District Officer showed that the *Wui* was generally well-run[63]. But further restraints on cases brought by *Wui* were necessary in 1928, and these associations continued to be a problem for many years after that. *Wui* died out in the years immediately after the War, and are now illegal.

Another traditional custom disliked by the District Officers were the rules for debtors of bankrupt shops. Once a shop was shown to be unable to pay its creditors, then the business became dead. As a result, all the debts owed to the shop died, and the debtors walked free of the debt (the shopkeeper also walked free of his debts, too, but would loose all his stock). The District Officer in 1916 objected strongly to this custom, as it was so unfair to the owner of a shop where there was only a temporary cash-flow problem, and where the shop had more debts owed to it than it owed to its creditors. It was this customary practice which made the interest rates charged so high, as the risks of money-lending in the area were very high. The custom also made collusive fraud between groups of debtors too easy. But, again, nothing was done, except that the District Officer would, extra-legally, try to delay decisions that shops were bankrupt to give the shopkeeper time to call his debts in. This customary

[62] The problem was, that money-lenders charged very high interest, and there were no banks in the New Territories until the 1950s (Tsuen Wan) and 1960s (elsewhere). The District Officers did not feel they could close off this customary method of raising cash when there was no real alternative available.

[63] An interesting example of developing custom was that well-run *Wui* began to bring their members to the Small Debts Court at the beginning of the life of the *Wui*, where the members would all admit the debts, and so the *Wui* would secure a judgement, but where the judgement was then used solely as a written and legally indefeasible proof of debt. Other debtors began to do the same. This new custom is mentioned in 1916.

practice also became illegal shortly after the War.

The Customary Law and Metropolitan Hong Kong Law

Thus, under the aegis of the 1903-1910 Ordinance, and the vague interface established in 1899 between metropolitan and customary law, the District Officers were able to continue to enforce customary law throughout the period to 1960, although the customary law they administered was always corrupted here and there with Common Law and Hong Kong law. The law on public acts was the area where the changes in the direction of general Hong Kong law had gone furthest, the land-law and the personal law where it had changed the least. They were able to do so only because of their close and amicable relations with the villagers, and the villagers' extreme unwillingness to go to law, or to appeal against the District Officer's decisions. For sixty years the system operated (although it always had places where it ran less than smoothly, and it began to creak alarmingly during the 1950s), but it was never entrenched, and never had a secure place in the legal system in Hong Kong, and was never understood by the formal legal system.

The Chief Justice of Hong Kong, Sir Francis Piggott, said in 1911:

> *No enquiry has ever been made to ascertain what Chinese law is. It is an extraordinary fact that the Court of this Colony ... should be entirely in ignorance of Chinese law on any subject which concerns the family life and family law of those who form the bulk of its inhabitants ... - its marriage law, and the rights of property it gives; its law applicable to children. We are in the dark as to the law of majority. As to the customary law of China generally, and above all as to its law of succession, the attitude of the Court has been to let the troublesome question wait until it is definitely raised by the parties.*

This would still have been true in 1960, even though the District Officers had been deciding these questions freely since 1899, or at

least 1903[64].

It is interesting to note that the Japanese colonial administrators on Taiwan were faced with problems very similar to those faced by the British in the New Territories. While the solutions found differed in many respects, in other respects they were similar. A comparative study of the two colonial reactions to Chinese local customary law would be of considerable interest.

When the British took over the New Territories in 1898, it was predominantly a subsistence rice monoculture area[65]. There were some six hundred rice-growing villages, and half a dozen or so small market towns which serviced them. There were no cash crops, and essentially no industry, no roads, no trade beyond the market-town area, and no integration into any wider community. The British built roads and schools and a railway, and made it easier for New Territories boys to find jobs outside the New Territories, as seamen or labourers or shop-keepers, but the area remained in 1941 essentially what it had been in 1898, albeit a little more prosperous. Along the railway and the Tai Po Road there was, by 1941, a trickle of suburban developments, and a small market-gardening industry had begun. But, for almost all the people of the New Territories life in 1941 still revolved around the seasons of the rice-growing year.

Under the Japanese, the comfortable relationships between villagers and officials came to an abrupt end. Starvation, cruelty, and harshness became common. Theft of vegetables (which the British

---

[64] Even in the 1970s the question of what is meant by custom was still being debated by the High Court -was custom static (ie was the custom which had to be enforced that in place in the New Territories on 17 April 1899), or was it dynamic (ie was custom whatever the villagers at the date of the act considered it to be). Was custom simple (ie, was there a single rule of custom which was to be enforced throughout the New Territories), or complex (ie, might custom differ from village to village, or clan to clan). The problems were not helped by the High Court tending to go for the static and simple concept of custom, and the District Officers (much more reasonably) for the dynamic and complex.

[65] The southern parts of the New Territories, that is, New Kowloon and the Islands, have a different history from the rest of the New Territories. New Kowloon, immediately to the north of the City was mostly quietly swallowed up by the City between 1913 and 1941. The Islands were predominantly a fishing and trading community. This paper only discusses the mainland New Territories, north of the Kowloon hills.

had not considered significant enough to bother with at all, and left to the villagers to deal with) was punished by execution. Villagers suspected of being opposed to the Japanese were tortured - often to death - drowned, hung, or shot. Japanese gendarmerie stole and harassed: many villagers set up watch systems so that the villagers could flee into the hills whenever a Japanese official was spotted. Few villages of the New Territories did not lose some people to starvation, casual beatings, or shooting in these 44 months.

At the end of the War, the villagers welcomed the British back with whole-hearted enthusiasm. But the experience of the Japanese had left deep marks. After 1946, the value of a written, clear, legal system staffed with competent lawyers, and sensitive to the rights of ordinary people was more widely appreciated than before. More villagers started to go to law, although most fell back into the old way of a comfortable relationship with a District Officer, who, even if he had vast powers, was usually approachable and amicable.

More importantly, after 1950, the New Territories began to change. Up to 1949, the area remained as much a rice monoculture area as before the War. However, the huge influx of refugees fleeing the Communist Revolution in China (1949-1952) made its mark on the New Territories. From about 1950 in Tsuen Wan, and from about 1955 elsewhere in the New Territories, squatters appeared, newcomers from China. In Tsuen Wan the old rice-fields disappeared below vast new areas of squatter factories: elsewhere in the New Territories rice started to give way to vegetable market-gardening: rice was almost entirely replaced by vegetable market-gardening by 1970.

The New Territories customary law was definitely the law of a quiet, rural, rice subsistence economy. By 1955, however, half the New Territories residents (and well over half in Tsuen Wan and Sha Tin) were working in factories, or were growing vegetables on land rented from villagers. The customary law could not cope with these new developments. Villagers found themselves the prey of con-men who came looking to buy up land which they could use to make easy money developing, without having to go through the tedious safety procedures required in the City. Many villagers were cheated. On

the other side, vegetable squatters were very much at the mercy of their villager land-lords. No matter how much the market-gardeners improved the land, and invested in it, they were always at risk of the villager giving them the traditional two months notice at the Winter Solstice. By the mid-1950s it was clear that there would have to be major changes to the way the customary law was administered in the New Territories.

Customary Law in the New Territories in Recent Years

At the same time, Hong Kong law was changing. From the early 1950s, great efforts were made by the Hong Kong Government to bring Hong Kong metropolitan law up to the highest international standards. Many of the major legal reforms that were introduced in the decades immediately after the law were felt by the Government to be applicable to the whole community. There was no exemption for the New Territories. By 1960 the customary law as still applied was reduced to little more than the land-law and the family law that had immediate effects on the land-law. Almost everything else had disappeared.

The biggest change came during the latter 1950s. A broad distinction was drawn between "the indigenous[66]", and "the outsiders". What was left of the customary law became a personal law, applicable only to the indigenous: outsiders were to be fully subject to the metropolitan law of Hong Kong[67]. As to land, Old Schedule lots, and were still used for village housing or agriculture, would continue to be subject to customary law, but new lots, Crown Land sold to outsiders, would henceforth be covered by the metropolitan land-law of Hong Kong. From being the normal law

[66] "Anyone descended in the direct male line from a villager holding land in the New Territories at the time of the Block Crown Lease." This was the definition used by the District Officers, at least until very recent years.

[67] Fung Shui, for instance, was declared only to subsist in Old Schedule lots, and in traditional village areas ("Old Schedule lots" are those registered in the Block Crown Lease, plus Crown Land sold between 1899 and 1941). New Schedule lots would not have their Fung Shui compensated for in any circumstances. Equally, the only new graves outside public cemeteries which would be allowed would be those of the indigenous.

of the New Territories, the customary law became a privilege, a special arrangement for a specific group of people, and not the law of a district.

It is not surprising that, in these circumstances, the indigenous quickly dropped all those parts of the customary law that were not profitable to them. From about 1960, what was left of the customary law was almost always clearly financially valuable to the villagers, or else was of ritual or religious significance[68].

Ever since the 1950s the mixture of Hong Kong metropolitan and customary law in force in the New Territories has slowly but steadily moved towards the metropolitan law. This process has been an easy one, given the vague and weak interface between the two systems described above. By the 1980s all that was left of the customary law was a rag-bag of disconnected privileges which were held by villagers by right of their indigeneity, and the rules which governed customary trusts and intestate succession to Old Schedule lots held by the indigenous. It is true that, up to about 1980, villagers still occasionally came to the District Officer to arbitrate disputes extra-legally, but usually in accordance with customary law, but this more or less came to a stop in the early 1980s.

Over the last thirty years, the proportion of the population in the New Territories who are indigenous, and who enjoy the privilege of a special personal law, has dropped to a small percentage[69]. The incomers, and the urban residents generally, have become more and more jealous of the special status of the indigenous. Up to about 1980, these jealous attacks on the position of the indigenous were dismissed, as the Government, and especially the District Officers, continued to feel that they had a special relationship with the indigenous, and that the indigenous had a moral right to a special

[68] E.g., the rule that villagers do not need to employ architects or engineers, or to provide building plans for new village houses, or the rule that villagers can bury their dead in the hills near their village, rather than in cemeteries, or the rule that villagers need not pay rates - these are all rules of obvious financial advantage, and e.g. certain rules as to Fung Shui and the siting and ownership of graves, are equally of ritual significance.

[69] In Sha Tin, for instance, the indigenous are now no more than 2% of the total population.

status because they had so many generations of connection with the New Territories. Since the early 1980s, however, this special relationship has withered away.

In 1994 the Government, desirous of showing itself to be politically correct on the wider world stage, enacted legislation to the effect that daughters of New Territories indigenous villagers should have the right to inherit along with sons, in cases of intestate succession. With this new law, the customary law on intestate succession was destroyed at one blow: a recent (January 2000) High Court ruling, to the effect that the election of Village Representatives should be done on a one-man/woman-one-vote basis, with all residents, indigenous and outsider treated alike, and not be, as before, limited to votes by the heads of the indigenous families, is another step in the same direction. Since then, all that is left is the special status privileges, and the indigenous community has been expecting these to be abolished ever since then.

The constitutional changes introduced as part of the change in sovereignty in 1997, and by the Basic Law, have made very few changes to this picture. Indeed, the stress on "no change" as the basis of the transition has been used by the indigenous community to make a strong case for "no change" in what is left of the customary law. Indeed, the Heung Yee Kuk[70] has made a very strong case that, since the law allowing daughters to succeed was passed after the Basic Law, it should be struck down as a major departure from the position of the Basic Law that no major constitutional changes should be made, at least until after 1997. While this argument has some legal force[71], the Chief Executive has shown no signs of heeding it (feminist and other groups would, of course, cause him major political trouble if he were to try). But equally, the Chief Executive has said and done nothing which suggests that he

[70] The Heung Yee Kuk (鄉議局) is the body which represents the interests of the indigenous, and is made up by election from among themselves by the Village Headmen and certain other specified indigenous villagers, especially indigenous villagers honoured with the position of Justice of the Peace.

[71] It is very similar to arguments used by the Government since the Handover to justify striking down the constitutional changes introduced after the Basic Law but before 1991 by the then Government.

proposes to cancel the remaining villager privileges under the Law. As at today, the position of the indigenous community and its customary law is exactly the same as it was in 1996, that is, fragmentary, but still in place.

Further changes will come, and it is difficult not to believe that they will be in the direction of abolishment of the remaining legal privileges. But, if and when this happens, it will not be a result of the change in sovereignity, but will represent the end of the process of assimilation of the New Territories into the city which began in 1899, and which has been a major thread throughout the post-War period, and, in addition to that, the jealousy of the rest of the population to a relatively small group which has privileges denied to them.

Some Indigenous Traditional Land-deeds from the New Territories, Hong Kong

Deeds of the Lei Si-shing Tso (李仕勝祖) Trust, Wu Kau Tang Village, New Territories.

Patrick H. Hase

(1) Deed of Absolute Sale of Fieldland within a clan.

立退斷田。字人李友彩，今因家中少錢應用，先年父遺下有苗田壹處土名淜洋坑苗田貳塊，連面上崙壹塊，又對面方崙貳塊連松，又塔落嶺凹苗田壹塊連*連嘴大斯崙壹塊，苗田共三塊，載種仔七升正。先招房族人等各不連承接。后+請中人送到李仕勝出手承接。時實•價錢捌千文正。李友彩父子情□願過耕管業。不敢祖壹生端異日反應。二家允意並無迫勒。立退斷田字存照。

代筆人。李毓清。「公心」
見字人。李毓彬。「公正」
中人。李毓通。「中心」

道光貳拾六年十貳月十二日

立退斷苗田字人李友彩「公心」祖毓亮「天理心」

* probably for 蓮
\+ for 後
• for 價

(1) Deed of Absolute Sale of Fieldland within a clan.

A Deed for the absolute alienation of fieldland. The undermentioned, Lei Yau-choi, has issued this deed because he has little money within his house to use. He has some seedling beds which he inherited from his ancestors, from past generations. Two of the seedling fields are at one place, called Fei Yeung Hang, together with one field of hill-paddy opposite and higher up. Also, opposite, there are two fields of hill-paddy, including the pine-trees. Also, there is a seedling field at the pass near Tap Lok Teng, together with a field of hill-paddy at Tai Si Che, at Lin Tsui. Altogether, there are three seedling fields, and they jointly measure exactly 7 *shing tsung* (升種)[1]. First of all the men of the seller's own descent line were approached, but none could take these fields on. Then, later, a middleman was asked to approach Lei Si-shing to see if he would take them on. The proper price at the time was exactly 8,000 cash. Lei Yau-choi, father and sons, were agreeable, and the land was handed over for planting and management. They will never dare, throughout their life, to cause problems, nor will they later on raise any disturbances. The two families have agreed, and there has been no pressure applied. This is the written text of a deed for the absolute alienation of fieldland.

Writer of the deed: Lei Yuk-ching: "Just"
Checking of the deed: Lei Yuk-pan: "Fair and Upright"
Middleman: Lei Yuk-tung: "Equitable"

2nd Day, Twelfth Moon, 26th Year of Tao Kuang (1846)

The undermentioned Lei Yau-choi, the maker of this deed of absolute alienation of fieldland: "Just". The Ancestor Yuk-leung: "Conscionable"

---

[1] This is strictly a measure of the quantity of seed-rice required to sow an area properly, but it was used in the New Territories as a measure of area. The *shing* is the tenth part of a bushel (*Tau*, 斗). Seedling fields were sown very thickly, so the *shing tsung* for such fields were tiny.

(2) Mortgage with Fieldland as Security, within a clan.

立借銅錢。數人叔子廣父子，今因家中少錢緊用，自
己清身問到侄仕勝身中借出銅錢貳千文。當日二
面言定每年納回利息參分伍算。此契約至本年冬
季頭利一足。還清不得少欠若有拖欠本利子，廣父
子酌議情願收有先年遺下過簡有水芋田壹塊，日
後任仕勝父子或耕或退，作為本利。此係二家允意
兩無迫勒。異日錢到字回。立借錢字存照「公正」。

的筆自己「公正」。

子廣父子立借契存照

咸豐捌年正月廿二日

此契内借明免仕良錢貳千文作為仕勝手交完

(2) Mortgage with Fieldland as Security, within a clan.

A Deed for a loan of copper cash. Younger uncle Tsz-kwong, father and sons, and that group of people, has issued this deed because he has little cash in his house for his urgent needs. He himself approached his nephew Si-shing to ask for a loan of 2,000 copper cash from his personal resources. On that day the two families agreed verbally that three and a half *fan* (分)[2] would be calculated as the annual interest due. This deed confirms that the interest will all be paid in full by the beginning of winter in this year. If the debt cannot be repaid in full, interest and principal, or if there is any delay, then Tsz-kwong, father and sons, have agreed after discussion that they will pass over that field used for growing "water taro" which they inherited from their ancestors, of past generations, so that Si-shing can thereafter either plough it or sell it as he chooses, in lieu of the principal and interest. The two families have agreed this, with no pressure on either side. If the money is paid over, then this writing will be returned. This is the written text of a deed for the loan of copper cash. "Fair and Upright".

The writer of the deed is [Tsz-kwong] himself: "Fair and Upright"

The written text of a deed of a loan to Tsz-kwong.

22nd Day, First Moon, 8th Year of Hsien Feng (1858)

The loan covered by this deed was met in full by the payment of 2,000 cash into Si-shing's hands by Si-leung.

---

[2] The *Fan* is one tenth of a tael of silver, and was, at this date, worth about 14 copper cash: the interest charged, therefore, was about 47 cash a year, or a little above $3^1/_2$% in the case of this loan (where the "year" was only something over nine months - end of February to the Winter Solstice Festival on December 21st) - a very low rate, which must be because of the close family relations involved.

(3) Deed of Absolute Sale of Mortgaged fieldland, within a clan.

立退斷田字。人兄仕亮侄永顯，紹
今因少錢應用，兄弟酌議先侄•
僯祖+遺。下有當田壹處土名早
坑坐頂壹份，又□萬一塊，種仔
壹斗，載納李宅僯祖+租穀二升。
特值價錢壹拾參千文正。其錢
一定交明兄弟清手。接田使用
其田任仕勝子父耕種管業。自
後不得反悔生端租當。此係二
家允意。兩無迫勒。其田一退百
斷。立字存照。

在場人永顯。「天理」「良心」
作中人仕紹。「公正」
的筆人仕亮。「天理」

同治捌年十一月八日
立契十一月二十

• for 仰
+ for 住

(3) Deed of Absolute Sale of Mortgaged fieldland, within a clan.

A Deed for the absolute alienation of fieldland. The undermentioned brothers, Si-leung and Si-shiu, and their nephew, Wing-hin, have issued this deed because they have little cash to spend. The brothers discussed things and decided to rely in the first place on their neighbours. The brothers have one area of mortgaged fieldland, at the place called Hon Hang, with one part at the summit, and the other at - Man[3]. The fields measure one *Tau Tsung*[4], and pay 2 *shing* of rent-grain to the Lei clan neighbours. A specially high value of 13,000 cash exactly was agreed. The cash was all paid into the brothers' hands. The fields were received by Si-shing, father and sons, to use, and all the rights in those fields were passed to them, to plough and plant and manage. There can be no regrets at a later stage, nor may any disturbances be raised about the rent or the mortgage. This has been agreed between the two families, with no pressure on either side. This is an absolute alienation of these fields. This is the written text of a deed.

Witness, Wing-hin: "Conscionable" "Fair"
Middleman, Si-shiu: "Fair and Upright"
Writer of the Deed, Si-leung: "Appropriate"

8th Day, 11th Moon, 8th Year of Tung Tsz (1869)

The deed was issued on the 20th of the 11th Moon.

---

[3] The background to this deed is that the brothers had mortgaged the fields to Si-shing, the latter having the right to plough the fields, and take the crops in lieu of interest. They were now selling their right of redemption.

[4] See above, note 1, deed 1. The two *shing* of rent (= one-fifth of a bushel) is about one percent of the crop. Since these fields are double-cropping fields, the rent is, on an annual basis, about half-a percent, and should better be viewed as a rent-charge.

(4) Deed of Absolute Sale of Fieldland outside the clan.

立退斷崔數。人劉喜昌，今因家中少錢使用，原將先
年此已賈有崔三塊坐落土名應人石，先招房族人
等各不能承頂。+后請中人和彩送與鄰親李仕勝入
手承接。即日二面言定時值崔價同錢捌千文正。期
錢經中分文足與喜昌親手接回應用，並無短少，亦
無債償限期。崔任仕勝父子管業耕種修整。喜昌子
孫不得阻隘生端反悔。允不得加價劃削。期崔退百
斷。上連崔面一切不得收贖。此乃二家允意並無迫
勒恐。口無憑立斷崔數存照。

作中人和彩「本□」

光緒八年十一月廿七日

立退崔數人劉喜昌「良心公正」

+ for 後

(4) Deed of Absolute Sale of Fieldland outside the clan.

A Deed for the absolute alienation of hill-paddy[5]. The undermentioned group of people, including Lau Hei-cheung, have issued this deed because they have little cash to use. They decided to sell those three fields of hill-paddy which they themselves had bought some years before. The fields lie at the place called Ying Yan Shek. They first asked the men of their own descent line if they could take these fields on, but none were able to receive them. Later, they asked a middleman, Wo-choi, to approach their neighbour and relative, Lei Si-shing[6], to see if he would take them into his hands. On the same day, the two parties agreed verbally a price for the hill-paddy of 8,000 cash exactly. The whole of the cash was passed into Hei-cheung's hands for him to use as he wanted, and there was no shortfall, nor was there any cut in the price nor was there any restriction as to any period [for redemption]. The hill-paddy was passed to Si-shing, father and sons, to manage, plough, plant, and maintain. Hei-cheung and his sons and grandsons cannot obstruct or cause disturbances or regret the sale. It is agreed that there will be no raising of the price, nor any cut-back of the boundaries. The hill-paddy has been utterly alienated. None of these hill-paddy fields can hereafter be redeemed. This has been agreed by the two families, with no pressure on either side. Fearing that a verbal agreement would have no force, the group of people have written this deed of alienation of hill-paddy.

Middleman, Wo-choi: "–"

7th Day, 11th Moon, 8th Year of Kuang Hsü (1882)

Lau Hei-cheung and that group of people have issued this deed of alienation of hill-paddy: "Equitable, Fair, and Upright".

---

[5] Hill-paddy (*Che*,) is hill-side land which can only produce one crop of rice a year, because it is irrigated by tiny mountain streams which only have water during the rainy season.

[6] Presumably a relative by marriage, as the surnames differ.

(5) Redeemable Mortgage Sale within a clan.

立當租田數人李永云父子，今因少銀應用，父子酌議願將先年祖父遺下有租田應人石坐落土名壹處實載種仔伍升正，大小拾捌塊每年開納膽學租谷[+]六斗正，允願出當與人。先招房親人等俱各不接，請得中人李永顯送與李富魁入首成當。即日臨田蹈看上連坡圳四至坵塊界限分明，就日憑中三面言明當出時值田價銀壹佰貳拾大員[•]足。即日憑中壹足交到與永云親手接回應使。其田此當以後推過與富魁過耕管業納租。永云父子親等不得異說生端反悔等。敢乃係明賣名買，兩家允意並無迫勒。恐口無憑，今立有當數執照，其限當以後參年方得收贖。異日銀到字回。

銀阮足

作中人永顯中人錢壹千一百一拾「□□」

代筆永普銀佣四毛申□四十七照「天理心」

光緒拾一年十一月十四日五數永云存照

+ for 穀

• for 圓

(5) Redeemable Mortgage Sale within a clan.

A Deed for the mortgage of rented fieldland. The undermentioned group of people, including Lei Wing-wan, have issued this deed because they have little money to spend. They, father and sons, have discussed things, and have decided to mortgage some of the rented fields they inherited from their ancestors of past generations. These fields lie at the place called Ying Yan Shek, and measure exactly five *shing tsung*[7]. Altogether there are eighteen fields, large and small. Every year six *shing* of rent must be paid to the School[8]. They first of all asked the men of their own descent line if they could take these fields on, but none of them could. They asked Lei Wing-hin to act as middleman, to see if Lei Fu-fui could take the fields over by way of mortgage. The same day they visited the fields and conducted a thorough inspection. They looked at the field-banks and watercourses, right up to the four banks which bound the area. In the presence of a witness, the three parties verbally agreed to mortgage the fields. The price of the fields at the time was valued at 120 dollars exactly. The same day in the presence of a witness this sum was all handed over entirely into Wing-wan's hands, for him to spend as he wishes. The fields of this mortgage were then passed over to Fu-fui, for him to plough, manage and pay the rent on. Wing-wan, father and sons and relatives, etc, cannot later say anything, or cause any disturbance, or regret the matter. This is a clear case of buying and selling. The two families have agreed the matter, and there was no pressure on either side. Fearing that a verbal agreement would have no force, the group of people have issued this deed of mortgage. After this mortgage there is a restriction of three years, after which the fields may be redeemed. If the money is later on returned, then this writing will be returned.

The money was handed over in full.
The middleman, Wing-hin; middleman commission 1110 cash; "-"
The writer of the deed, Wing-po; commission 40 cents, 47 cents when the deed was drawn: "Conscionable"

14th Day, 11th Moon, 11th Year of Kuang Hsü (1885): Wing-wan and the group of five people have issued this deed.

[Note: at the top of the deed, and struck through, is a note, dated the same day as the deed, stating that the families had agreed that nine *fan* a year could be paid, presumably as interest, should the arrangement whereby the fields were handed over to Fu-fui in lieu of interest not be agreed]

---

[7] See note 1, Deed 1.

[8] About 3% or a little more.