Colonial Administration in British Hong Kong and Chinese Customary Law*

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My purpose today is to review the period of British rule in the New Territories from 1899 (the actual take-over date) to 1997: in particular, tracing the changes that overtook the administration and the indigenous population in the course of massive urbanization during the second half of this century. The talk will have special reference to the land-related Chinese customary law provisions of the New Territories Ordinance, Cap. 97 of the Laws of Hong Kong, and to their continued protection of a way of life that has been vastly altered by the impact of modernization.

It is important to note that these changes were mirrored in attitudinal shifts. In government circles, the special treatment formerly accorded the indigenous population was altered by degrees as the “New Towns” programme brought ever increasing numbers of newcomers into the New Territories and paved the way for the introduction of the “more representative government” policy typified by the District Boards. In the public arena, there was a parallel, equally gradual, shift in the way in which urban people came to view their country cousins, moving from the good-natured if patronizing humour of the past to the more critical approach, not untinged by envy at their privileges, more common in the 1990s.

Since the reversion of Hong Kong to Chinese sovereignty in 1997, the pace at which the indigenous population of the New Territories has been under siege has accelerated. The private interests of the traditional family and lineage are being threatened by the

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inroads made by Western law into customary practices of succession to property, notably in regard to the rights of females. Its more recent impingement into the arena of village elections, with reference to the voting and candidacy rights of non-indigenous residents, is also menacing for the indigenous population. This has caused so much alarm that its leaders have stated their intention to apply to the Beijing authorities for an upholding of the rights promised to it in the Sino-British Joint Agreement of 1984, and subsequently incorporated into the Basic Law of the Hong Kong Special Administrative Region.

The essential background to today’s more complex situation lies in the colonial record, without which much will be obscure. A restatement may be useful, both as an explanation of how the present situation has come about, and for its own sake. Save in regard to fundamentals, I shall be dealing with the postwar period up to 1997, for much of which I was a player as well as an interested onlooker.

The Nature of Local Society in 1899

When it came under the management of the Hong Kong Government in 1899, the NT population was long-settled, closely-organized and essentially rural. The pattern of life was mainly agricultural, dictated by the seasons and the two annual rice crops. It was lived largely within the narrow confines of the village, but some wider perspective was provided by the marketing areas that formed around each of the market towns. The traditional groupings of villages for mutual protection and ritual safeguards against the supernatural, bound communities together and also helped to widen horizons. However, the bulk of the rural population kept within its immediate vicinity, and in many areas, the generally mountainous terrain also restricted movement.¹

Geographical containment was perhaps the least of the factors contributing to the highly integrated nature of local society.² Traditional education and upbringing also had a great influence on the village people. Rooted in the teachings of Confucius, they injected a strong element of ethical indoctrination, uniformly applied and felt across the territory. This was an attribute that anyone with
even a basic village education shared with the highest officials, the
difference being one of degree only, a point made by the 19th century
American sinologue S. Wells Williams.3

The ancestral cult was another unifying force. Much land was
set aside in lineage trusts linked to its requirements: principally to
provide funds for carrying out the customary sacrifices to the
founding ancestors of the lineage and its branches, and for
maintaining their graves in good repair. The other crucial element in
the cult, the continuance of the male line to ensure the performance
of the ancestral rites — and thereby secure the survival of the
lineage — was met by the common practice of adopting sons from the
same or other branch of the lineage whenever necessary. Much of the
customary law related to these important concerns.

This recapitulation is general and well known. However, its
validity and applicability have been proved time and time again in
my own enquiries into village life.

**The Important Place Occupied by Custom and
Customary Law in Chinese Local Administration**

These various moulding and constraining factors created a
favourable climate for the operation of an accepted body of
customary practices in each locality. Indeed, the American historian,
H.B. Morse, with his long experience of government service in China,
estimated in 1908 that eighty percent or more of the Chinese
population “live their daily lives under their customs, the common
law of the land, interpreted and executed by themselves”.4

Overall, the customary law catered for most situations arising in
the family, the village and the market. It provided a highly effective
means of carrying out local administration without the presence of
imperial officers in the village, or even in the sub-districts. Up to a
point, one could even say that communities ran themselves. So long
as they kept the peace and paid the land-tax, enabling the District
Magistrate and his superiors in the provincial administration to fulfil
their prime obligations to the central government in Beijing, they
were generally left alone. Application of the customary law rested upon public opinion. The consensus view was a powerful force in each place. People were usually acquainted with each other, and everyone was presumed to know the rules. Deviations from accepted practice were soon known and usually condemned. Social and economic sanctions of different degree were applied to offenders, including the ultimate deterrent of expulsion from the lineage or village, or even execution. They were administered by the elders and local gentry, with public consent and official support, and carried much weight within what was virtually a closed society.\(^5\) Behind the elders stood the more fearful figure of the county magistrate, to whom serious offenders could be referred, or in some cases even conveyed bodily.\(^6\)

**Adoption of a (Modified) Chinese System of Management**

The incoming British administrators saw the value of this traditional system of rural management. “We should govern somewhat in the present Chinese system”, the Officer Administering Government in the absence of the Governor advised London.\(^7\) With certain important modifications to land tenure and taxation, it was more or less taken over as it stood in 1899. Enhanced by the administrative, judicial and police systems introduced by the colonial government in the early years of its rule in the New Territories, it continued to operate in its full vigour there, under government’s feet and within the British system, until the onset of widespread development in the postwar years.\(^8\)

The British decision to govern lightly, through a small number of officials, continuing to leave everyday matters in the hands of the local leaders, meant recognizing and protecting many customary practices. This applied particularly to those which regulated land ownership, social organization and the authority of the elders. As mentioned above, special legislation was required to make this possible in a British Colony, where normally the laws of England were applied.
The NT Land Ordinance 1905 and the NT Regulation Ordinance 1910

Designed to assist the district officers, village leaders and lineage elders alike in continuing to manage the New Territory along traditional lines, a special ordinance dealing with the New Territories was first enacted in 1905. Another, revised and extended, was passed in 1910.

The titles and descriptions of these two ordinances indicate their purpose. The first, whose short title was stated to be the “New Territories Land Ordinance, 1905” was intended “to facilitate the transfer of land in the New Territories and for settling disputes in respect thereof and for other purposes”. The second was “An Ordinance to consolidate and amend the laws relating to the administration and regulation of the New Territories”, albeit it also provided for the same purposes described in the title of the first. 9

The second of these Ordinances, for long known simply as The New Territories Ordinance, Cap. 97 of the Laws of Hong Kong, has continued in being ever since, though subject to periodic amendment and major revision as the century progressed.

The District Administration NT up to 1960

Under the New Territories Ordinance, rules made under it, and certain powers delegated to them from other Ordinances, the District Officers carried out a multiplicity of duties with a small outdoor and indoor staff. When I first joined the District Administration in 1957, it was organized and still functioning along much the same lines as in prewar days. Our duties were described in the Hong Kong Annual Report for that year as follows:

District Officers hold land and small-debt courts, and arbitrate in all kind of disputes, including family and matrimonial cases; they control Crown land and buildings, register documents and deeds relating to private land, assess and collect stamp duty, and administer a vote for small public works undertaken by villagers to improve
irrigation, potable water supplies and communications. Close cooperation is maintained between the Administration and all other departments with interests in the New Territories.

Other duties were performed with specialist advice where required. The district officers also collected Crown rent and fees for occupying Crown land under license or permit. But most relevant of all for the subject matter of this paper, as Assistant Land Officers they approved and registered successions and trusteeships over land and the managerships of land-owning lineage trusts under the authority delegated to them by the New Territories Ordinance, in accordance with the customary law practices of the region.\[10\]

By the late 1950s, still very modest in size, the indoor and outdoor establishment of the district administration had become quite inadequate for the burdens then being thrust upon it. The government had major development projects in hand, and there was a building boom. A continuing influx of immigrant farmers and squatters was bedevilling land controls and administration, and had created major problems for the colonial government itself. But this is to anticipate.

**Institutions and Leadership at the Local Level**

Well-equipped with legal powers and administrative authority, the district administration had nonetheless always relied heavily on the goodwill and cooperation of the local leaders. In this they were no different from their Chinese predecessors: and like them, they did not interfere with village management which was left entirely to the inhabitants. Prewar, the group comprised village headmen and the managers of lineage trusts, together with a small body of leading elders from the Territory who formed a loose consultative group of senior councillors. This later evolved into the Heung Yee Kuk (xiang yiju), mentioned below.\[11\]

It was not until the early postwar years that the Hong Kong Government institutionalized local leadership by establishing a formal system of Village Representatives in 1948, and then by setting up 27 Rural Committees in the traditional sub-districts or heung
(xiang) by degrees in the 1950s. In taking these steps, they had been anticipated by the measures adopted for local management by the Japanese during their wartime occupation of Hong Kong.

The Heung Yee Kuk originated with a society under another name founded in 1924 to defend rights to land in the face of government expropriation of village properties in New Kowloon. As a formalized body, representative of and speaking for all parts of the indigenous New Territories community, the Kuk was essentially a postwar development, tied into the reorganized system of village representatives and provided with a constitution to regulate its membership and activities. However, it ran into internal difficulties in 1958 and was deregistered; but in the following year it was reconstituted and made a statutory body under the Heung Yee Kuk Ordinance, Cap. 1097 of the Laws of Hong Kong. The history of its interaction with government over the next thirty years is an integral part of the development story, but is much too complex and detailed to be recounted here.

These early postwar measures were not really innovative. As we have seen, the headmen and elders at village, clan and sub-district level had always been present. It was simply that the prewar district administration had not found it necessary to formalize its links with them: “We accepted whatever leadership we found in the villages and market towns,” as one former district officer informed me by letter in 1958. In times of greater challenge, the postwar government had deemed it necessary to create a more formal structure for information, liaison and two-way assistance. However, as in the take-over of the New Territory in 1899, it is more than likely that the same men remained in positions of authority after these changes were made.

This combination of officials and local leaders facilitated colonial administration, and ensured the continued operation of the customary law. Casual or formal, the link with local leaders in country and market town was useful and comfortable for those on each side.
In the still largely old-fashioned times of the 1950s, the government’s seemingly undue reliance on gentry and headmen was balanced by two quite different factors. First, there was the egalitarian base to local authority in Chinese rural life. Leaders were subject to the pressures of public opinion in the villages and sub-districts in which they lived. Authoritative and influential when acting in concert with other leaders, they were yet quite decidedly under local scrutiny and persuasion. Most had to operate as *primus inter pares*, and were far from being free agents.

Secondly, there was the benevolent paternalism of British rulers, which focussed on the people as individuals. As late as the early 1960s this was still being carried to an outmoded extreme. It is quite clear from the printed reports of the District Administration, New Territories that villagers were expected to make use of the district officers in approaching other departments of government, in obtaining government and other employment, in obtaining public relief for the sick and needy, and the like.\(^{17}\)

The villagers made good use of this foible. As with their former imperial officials, and using the same terminology, they characterized the British district officers as “father-mother officials” (*fumu guan*).\(^ {18}\) Young as I was, I was expected to behave like one: my petitioners made it clear that they expected help when required and a righting of wrongs. Use of the term was often to be viewed as a broad hint to “do the right thing” by the speaker, however unwarranted. I remember my colleague John Walden once saying at a DOs’ Meeting, “I get visits from Mr. Iu (*yao*) and Mr. Kau (*qiù*) but none from Mr. Doh (*duò*) and Mr. Tse (*xie*)” [= plenty of requests but no thanks]. Expectations were high and applications never diminished by refusal!

The same approach to the people was to be found in the Secretariat for Chinese Affairs, the much older department which looked after the general interests of the urban population.\(^ {19}\) Its annual reports echoed the benevolence of the District Administration, and its clients were prone to express their hopes and requirements in similar terms to their rural cousins.
There was a gradual shift in these respects, in town and countryside, as the years passed and Hong Kong's situation changed.

It was, one could say, a retreat from innocence. The government grew in size. Its work expanded in scope and was subdivided among more departments, many of them professionally staffed and working to higher but narrower standards of excellence. The public found that it could seldom go to one place for help, and had to run around. This process affected country people too, as the government's development programme expanded and spread everywhere. A good friend has often commented on the loss of that close connection and friendly concern that marked the relations of local people (and especially their leaders) with the police and the district administration in the early postwar decades.

**The Impact of Development on the Indigenous Population**

Even from the start, British rule had encouraged immigration and enterprise in the New Territory. Improved communications and greater internal security under the new administration aided confidence in the new order of things. These innovative changes began to alter the milieu in which the customary law operated.

However, up to the Pacific War, change was generally minor and gradual. It did not influence the lives and outlook of the rural population to anything like the degree that massive urbanization and redevelopment was to do in the early postwar decades, motored by the steady rise in the Hong Kong population owing to continuous immigration from the Mainland.20

A series of large reservoir projects, together with “New Town” development for planned populations of between half to three-quarters of a million persons each, was largely responsible for transforming the face of the New Territories and, in the process, the lives of those villagers affected. Invariably, these had required the removal and re-siting of old villages.
Village Removals and Resittings

Village removals were handled by the District Administration in the New Territories, and by the Secretariat for Chinese Affairs in Hong Kong and Kowloon. During my service with these departments, I dealt with two village removals in 1957-60 (Shek Pik and Fan Pui), one in 1966 (Ngau Tau Kok in East Kowloon), and five out of thirteen more in Tsuen Wan District between 1975-82. By the time I retired at the end of 1987, out of a total of around 700 old villages, there had been about fifty re-sittings for New Town development, and around twenty-five for reservoir schemes. The process continued as development proceeded, the latest example (1990s) being those villages required to move for the replacement airport and New Town project at Tung Chung on Lantau Island.

Despite its importance, little work has been done on this topic to date. It is especially relevant to say something about it here, in the context of colonial administration and the land-related customary law. An essential element in the government’s village removal policy in the New Territories was that the villages concerned should not lose their identity. They were to remain in being in a new place, and to be given a fresh start.

Both removal and resiting were achieved by negotiation within a framework of conditions and provisioning approved by the Executive Council and reviewed periodically. The removal process was painful and lengthy for all concerned – to be likened to drawing old teeth, I always thought – and it was subject to variables not always within the control of the parties concerned. An obvious one was the varying requirements of the engineering and development programmes, where the staging of work put constraints on the negotiation period and the timing of removal and resiting – and gave the unfortunate DO concerned stomach ulcers.

The long negotiations required in these cases left me with the deepest impression of the conservatism of the established village populations. This extended to some of its younger members as well
as the older ones. I experienced at first hand the strength of their attachment to the lineage and its institutions, and the degree of belief in traditional ideas, especially in regard to *fung shui* and the popular religion. Over 30 years, there had been little or no difference in the responses and requirements of each of the re-sited village communities concerned.

In the removal process, the re-sited villagers lost most if not all of their agricultural land, and were left with only new houses and ancestral halls. In lieu of crops or rentals from land or buildings, their livelihood now came from compensation monies paid by government, income from renting out surplus floors or entire new houses, and from the regular employment of family members.

**Urban Lives for Re-sited Villagers**

Practically all these former village communities are located in one or other of the New Towns. Although still separate and distinct communities, residing in three-storey houses and not in high-rise apartments, in most other respects they have become urban people. They now live in modern dwellings provided with all services and located within a new town boundary, in a modern city setting in which facilities and amenities of all kinds are all around.23

Bringing comfort and economic prosperity to many, the removals have also resulted in the urban villagers having a completely different lifestyle from their ancestors. The effect of this change upon lineage and village organization and leadership is discussed in a later section.

**A Different Catalyst for the Remainder: Changes in Agriculture**

Meantime, remaining village populations all over the NT—the great majority—had experienced change of a different but equally fundamental kind. Gaining great momentum in the 1970s, this decade saw the abandonment of the twice yearly rice cropping and the subsistence farming that had shaped their ancestors' lives and thinking for centuries. This was indeed a momentous break with the
past.

A market gardening industry had developed earlier in the century. Space does not permit me to go into details, but the main point to make here is that it was carried out by immigrants. The majority of indigenous farmers had not made the changeover but either continued to grow rice and operate their land in the old way, or in areas favoured by immigrant cultivators had rented it out. However, the demise of rice farming was inevitable. It had become uneconomic by comparison with vegetable and market gardening, and with paid employment in factories or service industries in the city. In any case, the local crop had never fed the ever-swelling urban population. Rice imports were always a feature of the port city.24

Since the late 1950s, labour, too, had become a problem on the family farm. Increasing numbers of younger New Territories’ men went to work abroad, mainly to the United Kingdom, to assist in Chinese restaurants operated by family members, clansmen or fellow villagers. The younger women soon followed suit by looking to factory employment in the nearby market towns, or in Kowloon.25 Thus labour and incentives were both lacking in the villages.

Whereas in 1970 the production of unhusked rice was still as high as 16,000 metric tons – it had been 18,000 in 1956 – by 1979 it was down to a mere 70. Only in a very few remote areas was rice growing still to be found, and there it was in the hands of the older women or a few enthusiasts.26

Influence of the New Hong Kong

However, for re-sited villagers and the rest of the rural population alike, the most compelling among the various catalysts for change was the modernization and transformation of Hong Kong as a whole through the development of its modern economy and infrastructure, including its housing and new town, education and recreation programmes. This new “Hong Kong” possessed its own unique nature and an international identity, and has brought all sorts of modern influences to bear on the indigenous population, not all of
them welcomed by the older generation. The powerful centrifugal forces ever present in Hong Kong also contributed to strengthen the centre and weaken the village.

The New Territories in 1985-87

In January 1985 I returned to the NT, to serve as head of the NT Region in the combined City and New Territories Administration (afterwards retitled the Home Affairs Department and Branch). For the next three years, I was able to assess what was happening to the indigenous population and the land-related customary law. Moreover, I was in a position to do something about it, should this seem advisable. But first, a word on the NT situation at that time.

By the mid-1980s, the process of urbanization in the New Territories had gone a long way. Though at varying stages of their development, the seven New Towns had already a combined population of some 1.6 millions. Outside them were wide areas with a still large if less numerous population. Their residents' needs were liable to be overlooked in senior officials' preoccupation with continuous fast-track development and the new and additional distractions arising from the extension of more representative government.

Over the previous thirty years, development had not been uniform in the NT. It had taken place in different areas at different times for different purposes. One could say that development had tended to be in the New Territories, rather than for the New Territories. Practically everywhere, environmental conditions continued to deteriorate. The wide spectrum of situations to be encountered soon became evident from my out-of-office visits.

Firstly, the undeveloped former rural areas lying between and round the New Towns were a cause for concern. They were now being used intensively for a variety of industrial and commercial undertakings for which the existing infrastructure was quite inadequate. In contrast, still flourishing pockets of rural-type activities were to be found in interior valleys, but there were others in
outlying locations where poor communications were preventing rural development and encouraging their residents to go elsewhere. This picture of a New Territories in flux was completed by many abandoned old settlements, most of them in remote upland areas.30

The government had had good intentions over the years,31 but the promise of balanced treatment had not been matched by performance. The ever-growing size and scope of the government’s commitment to the urban majority had meant that, in practice, their needs would take precedence over those of the population in rural areas. Secondly, resources being finite, it was the inability to apply them to both tasks, rather than neglect, that had widened the gaps created by the development programme. However, our visits provided us with the information we needed to expose problems, and to devise solutions for them if we could.32

**Change and the Land-related Customary Law**

After a year or two in the post, I was better equipped to start assessing the effect of political, social and economic change on the indigenous population: and, in particular, on the operation, appropriateness and viability of the customary law provisions of the New Territories Ordinance.

Standing well to the fore was the weakened status of those who administered it. This was clearly a major consideration, since the effectiveness of customary law is partly determined by the leadership and the degree of respect in which it is held. The most important element in rural leadership comprised the village representatives, lineage heads and the managers of village and lineage trusts, with the senior officers of the 27 rural committees in a supporting role.

*Village Representatives’ Diminished Status in District Administration*

The urbanization of the New Territories necessitated a much larger, more diversified bureaucracy. Among the changes made in 1982 had been the creation of a Lands Department which unified the
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hitherto separate land administrations in Hong Kong, Kowloon and the NT, removing most of the powers of the District Officers in the process. Up till then, the relationship between the District Offices and local leaders had always been close, but it soon became clear that the transfer of land administration away from the District Administration had dealt the old contacts and former close liaison a near-mortal blow.33

The separation of land and political liaison stood in sharp contrast with the days when District Officers had wide-ranging powers over land, when access to them was direct, and prompt action was taken on legitimate requests. Whereas the old system had boosted the position of the headmen and served to strengthen their authority, the new one led to slower, less certain results and greatly weakened it.

The land work of the District Offices had always been of vital importance to the villages. Whilst the land executives and their junior staff who undertook these duties had been transferred en bloc to the new department, they were under new direction. The days of friendly chatting over a cup of tea with a land inspector or land executive, calling in on more senior officers if available, were largely over. Unlike the DO, the District Lands Officer (and his professional colleagues) had little knowledge of village complexities, nor the time or taste for them. He was, in consequence, a distant figure to the Village Representatives who were mostly unknown to him.

Even on the administrative and political scene, times had changed for the Village Representatives. The new style District Officers had major new preoccupations and little time for village affairs. They were tied to urban management and to the coordination and monitoring of district services in pace with development. They were also tasked with servicing the District Boards and their committees, now with a partially elected element and an unofficial chairman. Their much reduced powers and authority were not lost on the Village Representatives, some of whom summarized their new situation contemptuously in characteristically earthy terms – the more telling because they themselves realized they had also lost out.
The link with the police authorities was also less close and cooperative than in the past. Hitherto, the Commissioner had occasionally imposed upon them the powers of a junior police officer, as provided for in section 20 of the Police Force Ordinance, Cap 232, but I was told that this was something which was seldom if ever done at that time. By 1985, local police had come to make less use of Village Representatives, save in rural areas, and even there they seemed generally less tolerant of certain village practices than before. This relationship, too, was in decline.

In short, the Village Representatives were finding themselves increasingly disadvantaged in the new, expanded organisation for managing the New Town districts with their large and ever-increasing populations. Henceforth, and in general, they would face an unfamiliar and less friendly bureaucratic world. As if this was not enough, the development of representative government from 1977 onwards had been another major factor in diminishing the former status and influence of the village leadership.

Many Village Representatives pointed to a reduced status now that district boards and area committees had become major institutions at the district level. For instance, the area committees set up to support and work with the Boards in the New Towns might include villages within their boundaries, but not all Village Representatives were appointed to them. Again, whereas all Village Representatives were once invited to the District Commissioner’s lunar new year gatherings, not all were now invited to even the District Officers’ functions. It is mainly Rural Committee executive members who receive such invitations today. This change of emphasis by the administration was noted and felt by representatives and villagers alike. Some felt it was deliberate policy.

Clearly, each of the new, directly elected District Board and Regional Councillors would have more “pull” with government departments than a Village Representative. The few exceptions were those among their number who had reached the level of Rural Committee chairman or executive councillor of the Heung Yee Kuk and had thereby secured positions on the District Boards and the
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Regional Council, with a few others who had successfully contested direct elections. Such men found their status enhanced thereby, but they were in a small minority.

"Knock-on" Effect of Change on Village and Lineage Management

The effects of the steadily accumulating, weakening influences accruing from development and administrative and political change had already made themselves felt by the time I became Regional Secretary in 1985. In village and lineage, I was told, even well-meaning and competent men were finding it more difficult to secure solutions to problems, even where a sensible line of action was being attempted through the time-honoured explanation, discussion and compromise. This had led to a growing reluctance on the part of some leaders to act in the public interest.

This was all very different from earlier this century when – as I have been assured by many aged and experienced persons from all over the New Territories – the leadership was strong with real authority and the customary law was at its most effective, inside the family, the lineage and the village.

Difficult Position of Managers of Lineage Trusts

Few positions had now become as unenviable! So much village land had been resumed and compensated by government in the process of development that the disposal of the proceeds had given rise to a great deal of dissension and acrimony in some places. In order to meet competing claims and considerations, the managers had been obliged to contrive all kinds of concessions and expedients not hitherto covered by customary practice. This was also true when the opportunity to sell or rent out trust land advantageously had presented itself.

The uncompromising attitudes and suspicion manifested by younger members of lineages in regard to such business will be mentioned below.
Internal Factors Affecting the Operation of Custom in Village and Lineage

The new difficulties were compounded by factors at work inside the indigenous community, especially among its younger members.

The Generation Gap

Much more so than in the past, the generation gap had become acute. The vastly changed circumstances of life for young persons rendered the old dichotomy between age and youth, father and son, more serious than in the past. Once masked by deference to age, the difference was now compounded by the better education and the often wider experience of life of sons over fathers and grandfathers. They became impatient and critical of their elders. On the other hand, the autocratic manner of some paterfamiliases, elders and managers that was the norm in the past did not go down well with the present generation. It could stand in the way of solutions and cause trouble that might otherwise be avoided.

The Younger Generation’s Different Approach

A different approach now characterizes many of the younger village people, whether they live in the village or not. Pushy assertive specimens of that modern phenomenon, “Hong Kong man”, many of them see no special virtue in “yielding” or in compromise, though these traditional Chinese qualities are often still necessary for accommodation in and between individuals, families and villages, as in the past. The complete absence of these qualities was specially noticeable in some disputes over the distribution of compensation for lineage trust land resumed by government.39

The work of village and lineage leaders was also being rendered more difficult and unenviable because (I was informed) of a greater readiness among villagers to reject unpleasing outcomes, leading to complaints to all and sundry. This includes the Independent Commission Against Corruption, whose offices tend to be used as the
receptacle for all sorts of appeals unrelated to corruption.

Wives and Daughters More Independent in Spirit

Wives were ever a potential source of friction between father and son. This was now even more the case, with probably the majority of today’s wives coming from the city and possessing more education than their parents-in-law. The general emancipation of young females from the tyranny and undue expectations of their husbands’ families, so often experienced in the past, was another major change. There was now much more scope for disagreement at home over what was formerly accepted meekly, whether the older generation liked it or not.

Some Opposition to Customary Succession from Widows and Daughters

Opposition sometimes arose out of fear that maintenance for life, to which widows and unmarried daughters were entitled, would not be forthcoming. In other cases it arose out of the view that times have changed, and that female members, married as well as unmarried, should have a share in a father’s estate or even be entitled to receive benefits during his lifetime. Antagonisms inside the family, and any unusual or special circumstances, could also prompt action by widows and daughters, leading them to seek legal assistance for the widow to obtain Letters of Administration for the estate, though this was not of itself a bar to customary succession.

Preliminary Assessment of the Operation of the Customary Law Provisions of the NT Ordinance

The crucial areas of the New Territories Ordinance in 1985 were, and are today, the application of customary male succession to land and property, and the managerships and management of customary landed trusts. Meshed in with them is the mediation of disputes, formerly such an important element in customary law practice, which has also been subject to the effects of change.
Whilst I have covered these debilitating effects in some detail, it must not be supposed that they were necessarily crucial or felt everywhere. Perhaps because there was (and is) such a wide spectrum of situations, and because there had always been considerable variation between villages, the general picture provided by our field visits and other enquiries on the subject was more encouraging than might have been supposed.

In regard to succession, it did not appear that the traditional practice of male succession was under serious strain, or even attack, from within the indigenous community. Claims by widows or adult daughters for shares in or succession to a husband’s or father’s estate, did not seem to be numerous – even in modern Tsuen Wan where some dispute cases had occurred in the 1970s. We were told that more fathers were leaving wills or were otherwise making some kind of financial provision for their daughters, and that this served to cushion any latent dissatisfaction. There were no expressions of concern from the village representatives and elders with whom we spoke.

With regard to trust property, some cases were before the Courts, mainly arising from failure to agree on the distribution of proceeds after resumption of some of the holdings. However, these had to be viewed against the much larger number where it had been possible to reach agreements of one kind or another. In such instances, distribution did not always follow the orthodox practice of restricting it to adult males, since children of both sexes and even babies were sometimes being included. Flexibility and ingenuity were the order of the day. Of course, in places where there was as yet no development, no such difficulties had arisen.

In many villages, it seemed that the majority of households were able to carry on their family and public business without undue difficulty or aggravation. We were also advised that few family or dispute cases were being brought forward for adjudication to the concerned departments or to the courts.

Despite these favourable indications, it was clear that we had to
find out a great deal more before we could be sure we had the full picture. In any case, villagers’ needs and opinions were not the only aspects to be taken into consideration.

Other Interested Parties

In a territory simply humming with development, all sides of the customary law situation needed to be examined. Land was crucial for private development schemes. Realtors were buying up much village land. Hence there were parties other than government and the villagers to consider.

From time to time, solicitors would complain to District Offices or the Headquarters about delays or difficulties in obtaining title for land already purchased by their developer clients from individuals or the managers of lineage trusts. Members of the Judiciary also had their problems in dealing with cases of succession and managership, being handicapped by the paucity of reliable information in this field and their unfamiliarity with its operation in the past.

For these and all the other reasons adduced above, as Regional Secretary, New Territories, I sought and obtained agreement for the formation of an inter-departmental Working Group in October 1986.

The Inter-Departmental Working Group on the New Territories Ordinance

The Working Group was charged with looking into the application of Chinese custom or customary right to New Territories exempted land with the help and advice of all knowledgeable parties, including solicitors and other professionals dealing with NT land matters; and with reviewing the content and operation of the New Territories Ordinance.42

Four departments sent one or more representatives to the Working Group. These were the City and New Territories Administration, which supplied the Convenor and Secretary and a Senior Liaison Officer with long experience in this area of work; the
Building and Lands Department; the Registrar General's Department (Land Office); and the Corruption Prevention Department, Independent Commission Against Corruption (ICAC).

The Working Group held 15 meetings between 19 February 1987 and 22 March 1988. First, the Group studied the Ordinance and arrived at conclusions on the need for its revision, after taking into account the views of District Officers, submissions from legal practitioners, the Judiciary and the public. The group then proceeded to direct research and fieldwork to facilitate an in-depth study of Chinese custom and customary right relevant to land.

Village elders from different parts of the New Territories and New Kowloon were interviewed, experts on Chinese customary law, history and sociology were consulted and a number of written sources were studied. Information relevant to the New Territories was finally put together into working papers to be considered at meetings and canvassed among known experts for correction and further advice. The Working Group acted upon views offered by the Land and Works Working Group of OMELCO* on the urgency of completing the task and of obtaining views from the public; and members of the Heung Yee Kuk and rural leaders provided valuable first-hand information at interviews in different districts.

In the event, the Working Group recommended retention of the customary law provisions of the New Territories Ordinance, coupled with revisions (such as the exemption of land no longer in possession of indigenous residents from the compulsory application of the NTO, particularly in regard to succession) and certain administrative measures designed to support the continued operation of the land-related customary law.

It should be noted that there was a marked difference of views among those consulted. Members of the legal profession and government professional staff felt that Chinese customary land management practices were outmoded and served NT people badly.

* Official Members of the Executive and Legislative Councils.
On the other hand, the overwhelming majority of New Territories people interviewed felt that their practices were simple, well-understood by ordinary people, and were better suited to their situation than Western usages.

Some of My Thoughts at the Time

At this point, I shall include some observations that I made about the time of my retirement which took place in November 1987, some months before presentation of the Working Group’s report.

Believing myself that it was essential to retain the New Territories Ordinance for the foreseeable future, I had been strongly in favour of one of the supporting measures being recommended for its more successful operation. This was to build up a reliable corpus of information on the functioning of the land-related customary law over the previous forty years and more.

Despite the loss of much material through periodic destruction of records to save storage space and accommodate increases in staff numbers, there were still many files in government offices that contained information on cases that had come to official notice in the postwar years. It was likely that solicitors’ offices also contained a good deal of information. The Public Records Office of Hong Kong, established in 1973, was also in possession of relevant documents not only from the postwar years but also from the period after 1899, including land files transferred from the Colonial Secretary’s Office and the Registrar General’s Department. It was possible, too, that some of the 27 Rural Committees of the New Territories established on official initiative in the early postwar years might have some records. If accessible, the family papers of Heung Yee Kuk leaders of yesteryear could also yield useful material.

In my view, such a compilation was highly desirable, because postwar, no attempt had ever been made to gather together available records in order to provide a reference to which all those who have a responsibility in such matters might turn at need. As we have heard, the prevailing situation was such that the Working Group was
obliged to turn to other methods to obtain basic information on the subject of the customary law and the institutions through which it operated before it could proceed with finalizing its report.

Codification, I felt, was not required. Here I had in mind the essential nature of the customary law. In appearing to set rules for specific situations, it would be much too rigid to be effective. Guidance rather than direction was needed. A compilation, with indexing for reference, was more appropriate and would be much more useful all round. In cases where there had been an agreed and implemented outcome, this would show what had occurred where, between whom, and why, and what was done.

To me, the nature of customary law makes the argument for compilation overwhelming. Essentially local in its operation and application, it has always had to rely for its effectiveness upon a supporting consensus within the community to which it is being applied. This applies whether the mediation, arbitration and judgments are given by local elders, outside parties or the Common Law Courts.

I recall a High Court case in 1986 which made this abundantly clear. The judgment could not be enforced for a number of reasons. Not least among them was the fact that the members of the small community in which the defendant lived were as outraged as he was. Outside the appeal period, he incited a grand remonstrance of the kind more suited to the Qing dynasty than the present day. Posted up in the village and outside the rural committee office concerned, its main theme was that “the Law is an Ass”.

In short, where customary law is concerned, the will of the community is a factor that must be taken into account. It always is in mediation by those who know what they are about, but it is more difficult for a judge, unless he can succeed in obtaining such information. Even then, it may complicate rather than sustain his task.
The Changing Scene

After being submitted to my successor as Regional Secretary in early 1988, the Working Group’s report would have had to be considered within the City and New Territories Administration. If the Secretary for District Administration had decided to proceed with its recommendations the next step would have been to obtain the support of the other concerned departments, before taking the matter to the Government Secretariat for consideration within the highest echelons of government. I do not know what transpired at that time, being by then no longer a party to the process.

Meantime, I had organized a panel for an International Symposium of Asian Studies held in Hong Kong in mid-1988, to which papers on the customary law were contributed by two of my friends, and by myself.\(^{44}\) I had also written a longer article on the subject, partly along the lines of this talk, which was published in *Asian Profile*, Vol.19, No.2 in April 1991. In it, I also mentioned some of the extraneous considerations likely to be canvassed during any discussions on what to do with the Working Party’s report.

Firstly, Hong Kong had other laws dealing with the family, succession and trusteeship. These had become essentially westernized since major changes in the legislation dealing with these subjects in the early 1970s, following the reforms in English law a few years earlier.\(^{45}\) They are predominant in nature and mainstream in their application.

Secondly, there was the question of equal rights for men and women. As already mentioned, females were particularly disadvantaged by the continued protection given to the old practices governing succession. None of the International Labour Organization’s Conventions relevant to equality of treatment in this important area of social and economic life was then applied in the NT. However, the international aspect would have to be considered in any review of the New Territories Ordinance that might be undertaken as a consequence of the work done by the Working Group.
Thirdly, many urban residents of a now more sophisticated Hong Kong, but mostly ignorant of the background provided above, had come to view the New Territories Ordinance with its protection of the customary law, as a monstrous and steadily more offensive anachronism.

Fourthly, contemporary events in China in 1989, with the suppression of the Pro-Democracy movement in Beijing and elsewhere, had renewed concern over human rights in Hong Kong after the reversion to Chinese sovereignty in 1997, leading the Hong Kong authorities to introduce a draft Bill of Rights. This was a step which boded ill for the customary law provisions in the New Territories Ordinance, since parts of the draft Bill of Rights ran counter to the guarantees given in the Sino-British Joint Agreement of 1984 and the clauses in the Basic Law of the Hong Kong Special Administrative Region providing for the continuation of existing socio-economic systems in the NT and protection of the other special rights and privileges of its indigenous residents.46

Yet there were contradictions within the Basic Law itself in regard to some of these promises. In guaranteeing continuation of the special rights and privileges of the NT indigenous inhabitants, the drafters appeared to have overlooked the fact that as a signatory to the International Covenant on Civil and Political Rights, China was bound to observe its ban on sexual discrimination. Here was the Basic Law, at one and the same time, agreeing to apply the International Covenant and the continuance of the rules governing customary succession to NT village land.47

Opposed to Change

When my article in Asian Profile was published in 1991, there was still no sign of any desire among the indigenous community and their leaders for changes to the land-related provisions of the New Territories Ordinance. Continuing in line with their responses to the Working Group’s enquiries, maintenance of the status quo up to and after 1997 was fervently desired by indigenous villagers and their spokesmen in the Heung Yee Kuk and the rural committees. This
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was not just for the preservation of material advantages such as the protected Crown rents for village land, the Small House Policy, hill burials and the like, which are generally subsumed under the head “Rights and Privileges of the N.T. Inhabitants”. Their leaders had felt threatened, perceiving that something more fundamental was at stake: namely, their very existence and identity. They had long feared change, which was why they had lobbied so strongly in London and Beijing during the 1980s for a statement on their future to be incorporated into the Joint Agreement and the Basic Law.

During the motion debate on the Bill of Rights on 27 June 1990, leading figures had made their continuing anxiety for their future very plain. In an impassioned speech in the Legislative Council, the Hon. Lau Wong-fat (also Chairman of the Heung Yee Kuk) told his fellow members that he understood from the Kuk’s specially commissioned legal study, “That Articles 1 and 23 [of the draft Bill], which provide for the entitlement to rights without distinction of sex, seemed to be aimed at the destruction of the traditional system in relation to collective possession of land in the NT....”

He concluded by saying: “If they [indigenous villagers] are forced to scrap the traditional arrangements, the result will be innumerable disputes and lawsuits, with damaging effect on the clan system and the harmonious relations among fellow clansmen. This will in turn send shock waves throughout the entire rural community and may eventually shatter the social structure of the villages. This will not be favourable to the stability of Hong Kong, nor will it be in line with the intention of the Bill of Rights. Hence I propose that reservations should be incorporated in the Bill to forestall amendments to the N.T. Ordinance”.

Another rural leader, the Hon. Cheung Yan-lung, sitting as representative of the Regional Council, as the NT equivalent of the Urban Council has been known since its inception in 1985, also spoke on “the implications of Article 23 of the Bill on the customary rights and tradition of land ownership in the New Territories”, and requested that the traditional practice of land ownership there should be made “an exemption” from the Bill.
Their proposals were, however, unavailing.

Communities Still in Being but under Threat

In regard to the likely impact of such changes upon village solidarity and traditional management, I shared Mr. Lau’s apprehensions on that occasion; and especially at the present time, when the steady undermining of the institutional structure of village life is more advanced.

It has to be remembered that, even today, there are still 700 odd villages, and that in most of them village families continue to own land inherited from their ancestors. As Mr. Lau said in 1990, succession by customary law is still fundamental to the solidarity of the village and the lineage. The effect of allowing female succession to land has yet to be seen: it may over time have a major impact. However, a far more devastating step would be to apply this legal principle to membership and management of the common holdings of lineage and village. Commonly described in English as “trusts”, these are known in Chinese by a number of names that more accurately reflect their extent, variety and purpose. All lineages, all villages possess them. Even the modern re-sited villages, stripped of other landed property, maintain their trusts. All stand in need of the customary law to maintain village and lineage solidarity, and these would be likely to disintegrate if the protection afforded by the New Territories Ordinance were to be wholly withdrawn. The management of lineage and village could then present even more problems than at present.

It must be emphasized that many rural communities still operate effectively at the present time. One sign of their continuing vitality, now well known to many urban dwellers living in the New Towns or in Hong Kong and Kowloon, is the periodic staging of protective rituals to bless and protect the inhabitants by driving away harmful spirits and evil influences. Among the major groupings of old villages, they are the rule rather than the exception. It is not simply the village which is valued, but also the many venerable linkages forged over centuries that still command respect and affection.
The long-established festival cycles best known to me include one dated back to 1685 (Kam Tin) and another to 1785 (Tuen Mun). Villagers and their families working and living abroad subscribe generously to these events, and many return for them, bringing family members along.\textsuperscript{51} The lunar new year is another time of reunion and festivity. There is no sign that these emigrants are ready to relinquish ties with their ancestral villages, and many of them have built new houses against their own or their sons’ return. These positive attitudes bode well for the home communities, so long as other dangers to their continuance can be avoided.

Perhaps it is also worth noting at this point – since I have not mentioned it thus far in so many words – that the British District Administration New Territories did not manage the villages. Everyday management was left entirely to their own leaders. And to my direct knowledge, on the few occasions in the past when District Officers attempted to arrange elections for the election of a new or assistant Village Representative in places where internal disputes made it impossible for villagers to do so unaided, though attended by much effort, the results were invariably unsuccessful.

This makes me wonder about the imposed four-yearly elections of the present day, and the recent Court decisions to enfranchise non-indigenous residents of old villages and make them eligible to stand for election as Village Representatives. True, there are now many villages with a sizeable number of non-indigenous owner or tenant residents, with legitimate concerns in management and services. However, since much of a village’s internal concerns are tied into the private business of families, lineages and village and lineage trusts, there is a problem with bringing them within the purview of non-indigenous voters or a non-indigenous Village Representative. It would be prudent for the Administration to proceed slowly and make itself fully conversant with the situation.

In those settlements where there are significant numbers of non-indigenous residents, some other way should be found to deal with the differing needs of the older and newer parts of the village population. Otherwise, “the baby will surely go out with the bath
water,” and there will be more problems and greater acrimony. But here I am straying outside my direct knowledge and the brief imposed by the title of this series of talks, which is concerned with Hong Kong pre-1997.

Looking Back – and Forward

In conclusion, some brief assessment of the British colonial record in the NT should be attempted. Though admittedly from the pen of a professed “insider”, subject to both the benefits and handicaps accruing to that status, I believe it to be an accurate statement of the essentials.

Initially motivated largely by benevolence, the Hong Kong Government’s attitude towards the indigenous inhabitants had by 1960 turned to one of severe practicality. By then the Administration was being obliged to develop the NT in order to meet the needs of a steadily increasing population. Villagers were thick on the ground, and most level land was in their possession. Many of the old villages themselves, and a great deal of village land, would be needed to implement the development programme.

However, the rural population had rights under the Beijing Convention, by which the NT had been leased to Britain. Moreover, its closely-knit communities were accustomed, and more than able, to stand up for themselves. With the rural committees and the NT Heung Yee Kuk in support, they could protect their own interests.

There ensued, over many years, a series of protracted negotiations with the affected communities over the terms of village removals and land recovery. Yet, despite its many arguments with the authorities over the years, the rural population – especially the resited element – has reason to consider itself well treated by the Administration, in the main.

Initially stingy, the compensation policies evolved to ensure its cooperation became more generous, in line with increased land values and the spirit of changing times. An ever-rising property
market and further development projects have helped to make most of those affected ultimately better-off. Land speculation has made some persons very wealthy indeed.

In the course of development, village customs have invariably been respected and well catered for. The beliefs encapsulated in the popular religion, and villagers’ unvarying attachment to *fung shui*, have invariably been tolerated during site preparation, though nowhere provided for on the statute book. And over the century of British rule, albeit becoming eroded towards the end, the land-related provisions of the customary law within the New Territories Ordinance have preserved their social structure and identity more or less intact.

What was achieved in NT development up to 1997 in regard to villages and village land, was (as I have said) accomplished through interminable negotiation and by mutual restraint. Despite a few hiccups, it does not seem a bad record.

However, on the political and social scene, the catalysts set in train by the colonial government in the last years of its rule over Hong Kong appear to have operated with increased momentum in the rather short period before and after the 1997 “hand-over”. In this time of change and readjustment, it remains to be seen how far they will develop further, and how they will determine the future of the NT’s old village communities.
NOTES

1. A general description of traditional life in the New Territories, together with some place studies, is given in my book, The Hong Kong Region 1850-1911: Institutions and Leadership in Town and Countryside (Hamden, Conn.: Archon Books, 1977). See also my later work, The Rural Communities of Hong Kong, Studies and Themes (Hong Kong: Oxford University Press, 1983). David Faure has provided a detailed study of the development of the main features of the traditional society in his The Structure of Chinese Rural Society: Lineage and Village in the Eastern New Territories, Hong Kong (Hong Kong: Oxford University Press, 1986). This is a path-breaking work of importance to the study of South China society.

2. Nonetheless, its importance before modernization was recalled for me by local elders some years after the opening of the first road on Lantau Island (1956) in regard to the old way of life then being changed by the new highway and some of its consequences. “Distance and terrain were the limiting factors on travel. Any travel took a day and was an event. With improved communications we can go anywhere. But money is needed for everything, to an extent never experienced before, and people are less simple and have higher expectations.”


5. A general account of the practices on which the customary law rested was compiled in the early 1950s (that is, before the onset of major development), by one of the former District Officers of the district administration, Mr. B.D. Wilson, CBE. It has been printed in Journal of the Hong Kong Branch, Royal Asiatic Society, Vol. 23 (1983), pp. 41-61.


7. See my Hong Kong Region, p. 175, n44.

8. The annual Administrative Reports published by the Hong Kong Government 1909-1939 contain the reports of departmental heads. Those of direct interest for the New Territories include the reports of the District Officers and of the Commissioner (for most of the period styled Captain-General) of Police.

9. For the two ordinances see The Hongkong Government Gazette under the appropriate date: namely Government Notification [G.N. hereafter] 425 in the issue of 7 July 1905, and G.N. 338 in that for 28 October 1910. See Hong Kong Hansard for the debates during the passage of the bills, under date of meetings. For 1905, see under 1 and 22 June; and for 1910 under 13, 20 and 27 October.

10. See Hong Kong Annual Report 1957, p. 360 for the quoted passage. A fuller description of the duties of the post is given in paras. 12-17 of Annual Departmental Report, District

11. See the prewar Hong Kong Administrative Reports for 1926, p. J3 for “Tsž Yi” (ziyi 訴議) or senior advisers.


14. For a short official statement on the Heung Yee Kuk’s position vis-à-vis government, before and after the confrontation of 1958-59, see the Annual Departmental Report, District Commissioner, New Territories, 1961-62, p. 15: “The New Territories Heung Yee Kuk was first constituted in 1926 and, except for a period from August 1958 to December 1959 (when official recognition was withdrawn owing to internal dissension) the Government has always sought its advice on New Territories affairs.” For the period of dispute, followed by enactment of the Heung Yee Kuk Ordinance in 1959, see the Commissioner’s Report for 1959-60, pp. 25-28. A brief account of the Ordinance is given in Hong Kong Annual Report 1959 (Hong Kong: Government Printer, 1960), p. 210. On the academic side, there is useful material in the section entitled “Village Representatives, Rural Committees and the Heung Yee Kuk” at pp. 197-205 of N.J. Miners, The Government and Politics of Hong Kong (Hong Kong: Oxford University Press, Third Edition, 1981). His brief statement on the Kuk’s dispute with Government is at pp. 197-8 and note 14 on p. 204, citing the Attorney General speaking in the Legislative Council. The history of the Heung Yee Kuk is traced in a paper by Lee Ming Kwan, “The Evolution of the Heung Yee Kuk as a political Institution”, at pp. 165-177 of David Faure, James Hayes and Alan Birch (eds), From Village to City, Studies in the Traditional Roots of Hong Kong Society (Hong Kong: Centre of Asian Studies, University of Hong Kong, 1984). However, this account did not find favour with one of the principal parties to the 1958 dispute, the then District Commissioner the late K.M.A. Barnett, OBE, who commented in a private letter to me dated 13 August 1986 as follows. “Regarding the Heung Yee Kuk paper, I do not propose to send you anything for publication; rather to suggest sources of information for a more thorough study of the Kuk’s history between 1946 and 1958. The paper presented by Mr. Lee was incompletely researched and instead of trying, from memory, to rebut his astonishingly inaccurate findings I shall suggest a better methodology for him, or some other researcher, to present a more balanced study. All I will mention here is (1) the omission of the all-important Mr. Wong Ping-ying (of Tsung Pak Long) whose untimely death precipitated the crisis (2) the three references to myself, all apocryphal, and (3) the long quotation from the Sing Tao Jih Pao, reporting a meeting which never took place...”. In a later letter of 22 January 1987, with the matter still occupying his mind, Mr. Barnett added that “The author, perhaps inadequately guided, has produced an account which fails to reproduce the truth, while giving currency to fiction.” He then listed the main points in the dispute as he knew them, and said he would try to unearth his
old notes and “knock them into shape”. Alas, he never did, and died in the November of that year. The point of reproducing this comment here is to bring Mr. Barnett’s comments to scholarly attention. However, Mr. Lee was quite unable to place the government’s view alongside the other material used by him, owing to its restricted classification. The published material, such as it is, is insufficient for this purpose. In those days, too, information on the NT and events there appearing in the Chinese press was often supplied by the leading figures to the very few reporters working there. As often as not, the coverage reflected their views and the version of events that they wished to publicise: a fact of life of which we officials of the day were well aware!

15. Following its reorganization, the Kuk played a major role in New Territories development, since owing to its statutory status and functions the District Administration was obliged to inform and consult on all major policy matters affecting the area. This was especially the case in regard to land administration, land resumption and compensation. In any event, the Kuk’s leaders needed no urging to keep abreast of the situation and make their views known, it being often in their own as well as their constituents’ interests to do so. The Kuk’s relations with government and the role its leaders played in the development of the NT is a fit subject for a major study: but researchers are advised that it is (in my view) a particularly difficult field for investigation on account of its complexity and the differences of opinion, outlook and interest that strained relationships and made some of the exchanges with officials difficult and at times distinctly unreal, as between “ships that pass in the night”. There is also a problem with documentation, since the Kuk did not keep an archive. Many important papers may have been kept by its leading players (who helped finance its activities) or have since been lost or destroyed, though some material may be found in its printed reports and miscellaneous papers, including newspapers. Others will be found, with translations from the original Chinese, in government files at the departmental and central levels.

16. Mr. Walter Schofield. For his account of the District Office, South, in his day (the 1920s) see Journal of the Royal Asiatic Society, Hong Kong Branch, Vol.17 (1977), pp. 144-156.

17. In his 1961-62 report, the District Commissioner could yet write, “It is still the custom that a villager wishing to approach the Government on almost any matter should normally do so through the District Officer”: Annual Departmental Report, District Commissioner New Territories 1961-62, para. 56.

18. John R. Watt states that the application of this term to the district magistrates “dates at the latest from the Sung dynasty, and appears to have been customary from then on”. See pp. 85 and 90 of his The District Magistrate in Late Imperial China (New York: Columbia University Press, 1972).

19. See Annual Departmental Report, Secretary for Chinese Affairs 1956-57, paras 1-4, especially para.1, which states, “The Secretary for Chinese Affairs is traditionally the officer through whom the views of the Chinese population may be made known to Government.... He is regarded by the Chinese not only as the officer to whom their views may be expressed and to whom they may look for an explanation of Government policy but also as ‘the father and mother’ of their community to whom they may come for advice in all matters and to whom they may bring their disputes for arbitration. There are no signs that this tradition is weakening - almost the reverse, at any rate as far as family disputes are concerned...”
20. A good example of how traditional NT life was up to the outbreak of the Second World War is contained in an excellent official report published in 1939. Among the 20 case studies undertaken at random was the following: "(19) TANG HO, female, aged 32, (found turning over earth under water before rice planting between Castle Peak and Yuen Long). Married as 'tin fong' or second wife (first wife being dead) to farmer, Lam Tei Village, married four years, one daughter; was born near Castle Peak, New Territories. Has three step sons, all married, and two step daughters; a third step daughter is dead. Family lives together in four village houses which it owns. They own three fields, two bullocks, chicken, vegetables. Supporting themselves on rice of their own growing and sale of surplus crop. Have no pigs this year. Only purchases salt fish, fresh fish, some vegetables, and pork. Wearing clothes she possessed at time of marriage. The wives of the three sons also work in the fields – they have three children. No servants. Cooking done by step daughter, aged 12. Last year two harvests. Cannot read or write. Never been ill. Two meals a day - rice, and congee at midday". Para 214 (19) in Report by the Labour Officer, Mr. H.R. Butters on Labour and Labour Conditions in Hong Kong contained in Hong Kong Sessional Papers (Hong Kong: Government Printer, 1939).


23. Some idea of the appearance of the new towns, and their amenities, can be gained from the photographs in Hong Kong 1988 and earlier annual reports, especially 1979 which has a review chapter on the new town programme.

24. By the early postwar years, the Hong Kong government had devised a rice supply scheme, operated through selected wholesalers who were required to keep certain stocks and to purchase from a number of different countries in order to help guarantee a continuous supply at even prices. For an account of its inception see Hong Kong, Annual Report 1955 (Government Printer, 1956), pp. 5-6. Also, e.g. the brief statement in Hong Kong 1978, A Review of 1977 (Government Printer, 1978), p. 20. The Annual Departmental Reports of the Director of Commerce and Industry, who administered the rice control scheme, give more detailed accounts. There had been earlier controls. For the passage of the Essential Commodities Reserves Bill, 1939, see Hansard 1939, pp. 139-140 and 154-155. Its provisions were to be applied immediately to rice (pp. 139). The “Objects and Reasons” clause of the Bill stated that it supplemented, as it did not repeal, the Rice Ordinance, No. 20 of 1919.

25. This process was observable in the mid 1960s, in even the remoter villages. See Goran Aijmer’s interesting article, “Expansion and Extension in Hakka Society” in Journal of the Hong Kong Branch, Royal Asiatic Society, Vol.7 (1967), pp. 42-79, especially at pp. 69-70.
26. A comprehensive account of agriculture and forestry in the New Territories, with photographs, at the beginning of the changeover to intensive vegetable cultivation, is given by the Director of Agriculture in The Hong Kong Business Symposium (Hong Kong: South China Morning Post, 1957), pp. 206-220. An accompanying account of "The Hong Kong Vegetable Marketing Scheme" is given at pp. 223-229 of the same work. See also C. T. Wong's article, "Uses of Agricultural Land: Some Changes in New Territories Farming Patterns" in The Changing Face of Hong Kong (Hong Kong: Royal Asiatic Society, Hong Kong Branch, 1971), pp. 17-35, together with the regular reports of the Vegetable Marketing Organization included in the director of agriculture's annual reports. The figures for rice cultivation are given in his reports for 1956-57 and 1979-80 respectively. A feature article, "Whatever is happening to HK's Rice Industry?" appeared in the Hong Kong Standard, 3 November 1979.


28. Initially, the need to create prepared sites for industry and resettlement housing and to construct a series of large storage reservoirs and power stations to meet urban demands had dictated where development took place. However, from the early 1970s, the "New Towns Programme", together with the annually adjusted "Ten Year Housing Programme", had been the major determining factor.

29. Pollution from squatter industry and livestock rearing was increasing. In the northern NT, more and more private agricultural land was being filled in and turned over to miscellaneous storage and other purposes connected with the needs of local and cross-border industrial development, adding to the existing environmental degradation and sometimes causing severe flooding. For later accounts see Patricia Tse in SCMP 1 September 1990, and Victoria Finlay in SCMP 13 October 1993. The curbing legislation mentioned by Tse became the Town Planning (Amendment) Ordinance, 1991.

30. The melange of old and new is captured in the aerial photographs provided in the series Over Hong Kong. See the volumes published in 1982 (Hong Kong: Lew Roberts and SCMP) and 1987 (Hong Kong: Magnus Bartlett and Lew Roberts withAndre Deutsch).

31. From early on in the post-war period, Government's General Regulations for the guidance and compliance of the Civil Service had clearly stated that it was "the intention of Government that services should be developed as evenly as possible in both the urban areas and the New Territories. It is the duty of Heads of Departments generally to carry out this policy...".

32. Among the more obvious was the pressing need for a much larger and speedier programme for improving the infrastructure in semi-rural areas; making changes to the land-use zoning of some areas that would never be returned to agriculture and could be better utilized for other purposes that would benefit villagers and public alike; the need to re-examine the rural education policies introduced in 1983; and to review the operation of the customary law provisions of the New Territories Ordinance to assess whether they were still valid and accepted in changing times. For detail, see my Friends and Teachers, pp. 349-359; and hereinunder.
33. The District Lands Office has to make use of the village heads in its land management work in the villages, but has no direct interest in the political and social aspects that were the previous concern of the District Office. Inevitably, the Village Representatives no longer have the same access to the heads of the District Land Offices that they enjoyed before 1982.

34. For these and related reasons, the work of the Village Representatives and Rural Committees in the business of managing their own affairs has become more arduous and much less satisfying. I am here speaking of average well-intentioned, experienced and generally competent men. There have always been others at each end of the spectrum.

35. For the area committees, see under “District Administration” at p. 24 of Hong Kong 1988.

36. Some Village Representatives had neither the education nor the inclination to join in area committee work. In any case, the committees dealt mainly with urban problems and seldom place village items on their agendas. It was thought that village affairs are best left to village leaders. This is generally so, but occasionally there is an interface with a wider public need and interest, where the interest and extra pressure of the area committee would assist in getting action.

37. On the face of it, the garden party may not appear to have been of any great moment, yet it is, or was, a measure of the status accorded by government to various institutions and their leaders. For this reason, a brief account may be of some interest. Fortunately, its origins and development can be traced in part in the District Commissioner’s successive annual reports, though not always mentioned in them. Para 40 of the report for the year ended 31 March 1950 states, “An interesting innovation was the garden party held at Island House, Taipo in January last, when the District Commissioner, Mr. John Barrow, entertained selected Village Representatives”. The 1951-52 report mentions 300 guests (para 8), whilst the 1956-57 one states that “900 leading citizens of the NT” and government officials attended on that particular occasion. The numbers swelled subsequently, although the event is not mentioned every year. The next recordings are in the 1959-60, 1960-61, 1961-62 and 1962-63 annual reports, at paras 280, 411, 207 and 151 respectively. By this time it is likely that all were invited and most turned up, judging by the numbers recorded and my memory of occasions between 1957-62. The parties are not mentioned further, and the last published annual departmental report was for 1973-74. However, I do recall very large gatherings in the mid 1970s at the Peninsula Hotel and later at the Oceania Restaurant at Ocean Centre, to which all Village Representatives were probably invited. The district administration still keeps up-dated lists of the representatives, which are used (inter alia) to compile guest lists at the central and district levels, at need.

38. Of course, the explanation is not quite as simple. With regard to major functions, the numbers of persons to be invited nowadays has greatly increased with the growth of population and the introduction of more representative government. Since they are essentially occasions that give recognition and “face”, District Board members, co-opted Board committee members, area committees and many other persons and government staff have to be invited to them. The inevitable result is to crowd out the Village Representatives.

39. For the origin of the term “Hong Kong Man”, see my Tsuen Wan, pp. 179-180. One wonders to what extent the emergence of “Hong Kong Man” is linked with and has its origins in the village, whether in the New Territories or in Guangdong. Young men were expected to
be fierce and to strive for their village goals and its honour. It was the duty of the elders to foster and channel their energies and strength, and to keep them in place. That was the particular responsibility of the village "boxing master" who trained the lion and unicorn dance teams. If young villagers seem to lack restraints today, it can be argued that this is the fault of the times! For an interesting traditional urban aside on restraint, as expected in a lion dance group, see p. 287 of my "Notes on Temples and Shrines, Hong Kong Island" of Journal of the Hong Kong Branch, Royal Asiatic Society, Vol. 27 (1987), pp. 285-291.


41. There is nowadays no real way of checking this, at least not from published documents. The lack of detail in the later reports on the work of the Judiciary, and the lumping together of figures for the magistrates, make it very difficult to ascertain the situation over the period since jurisdiction over land and small debts was transferred away from the District Officers in 1961. See the Annual Reports of the Registrar, Supreme Court up to 1967-68, replaced by Annual Judicial Statistics by Registrar, Supreme Court, 1968-69 to the volume for 1977-80, replaced by the Hong Kong Judiciary Report by the Registrar, Supreme Court for 1980-82, 1983-85 and 1986-88.

42. Under the able chairmanship of Stephen Selby, the District Officer, Tuen Mun, the Working Group produced its report in 1988, after my retirement. As I shall be explaining in the text, its recommendations were not taken up at the time, probably overtaken by consideration of a Bill of Rights and equal opportunities for men and women: see, e.g. SCMP International Weekly, 25-36 June 1994. However, the contents of the Selby Report were made available in his article, “Everything You Wanted to Know about Chinese Customary Law (But Were Afraid to Ask)” in Hong Kong Law Journal (1991) 21, No. 1, pp. 45-77.

43. Prewar, the District Officers are reported to have their "bible" of cases for reference, but I have never seen a copy. My information came from the late K.M.A. Barnett, OBE, District Commissioner NT, 1955-58.


45. They include the Marriage Reform Ordinance, Cap. 78 enacted in 1970, and the Intestates’ Estates Ordinance, Cap. 73 of 1971. An assessment of the impact of these changes on the customary law within the Hong Kong legal system, see D.J. Lewis, “A Requiem for Chinese Customary Law in Hong Kong”, The International and Comparative Law Quarterly, Vol. 32, 1983, pp. 347-379. The article is concerned more with the urban area than the New Territories, and does not address the continuing role of customary law there in regard to land-related matters.

46. The latter were incorporated in the Sino-British Agreement at the request of the Heung Yee Kuk, with the consent of the contracting parties. They were also provided for in the First and Second Drafts of the Basic Law being drafted by China. See A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Future of Hong Kong 26th September
1984, published by the Government Printer, Hong Kong. Para 3 (5) covers current social and economic systems, lifestyle, private property and inheritance, elaborated in Annex I, Section II (Laws, including customary law) and Section VI (Ownership of property rights). Annex III covers Land Leases and their extension to 2047. See also The Draft Basic Law of the Hong Kong Administrative Region of the People’s Republic of China (For Solicitation of Public Opinion) issued by the Drafting Committee for the Basic Law, April 1988, English version, Article 40, together with Note 16 of Chapter III of the Summary. The article remained unchanged in the Second Draft published in February 1989, and has been incorporated into the final text approved by the National People’s Congress at Beijing in April 1990 and promulgated thereafter.

47. Sections 39 and 40 of the Basic Law. China is a signatory to the International Covenant.

48. The “Small House Policy” was introduced in 1972, to counter the rising concern of villagers at the increasing restrictions on rural building necessitated by the development of the NT. It promised, and still does, “once in a lifetime” grants on concessionary terms to male villagers to permit village extension within agreed boundaries. Hill burials for indigenous villagers are a customary right, subject to various restrictions in practice but permitted under the Urban Services Ordinance, Cap. 132. See Chapter One of this book.

49. Translation of Hon. Lau Wong-fat’s speech in the Hong Kong Legislative Council, 27 June 1990, during the Motion debate on the Bill of Rights, kindly provided by the Councils Secretariat.

50. Translation also provided by the Councils Secretariat.

51. David Faure has provided descriptions of decennial daju at pp. 76-79 of his article “Hong Kong and China in the Village World” in Journal of the Hong Kong Branch, Royal Asiatic Society, Vol. 21(1981), and mentions them here and there in his Structure of Chinese Rural Society. A detailed account of these rituals at two village complexes in the NT is given by the eminent Japanese scholar Professor Issei Tanaka in Julian F. Pas (ed.) The Turning of the Tide, Religion in China Today (Hong Kong: Royal Asiatic Society, Hong Kong Branch, in association with Hong Kong Oxford University Press, 1989), pp. 271-298.