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Convergence and Divergence — A Preliminary Comparative Analysis of the Singapore and Hong Kong Legal Systems[*]

Andrew B L Phang[†]

I Introduction and Scope

Both Singapore and Hong Kong are similar in very many respects: both are city states, although the former is now independent; both have legal systems that derive from English law; and both are devoid of natural resources, dependent upon the industry of their people for economic survival. Indeed, the similarities, even in the more narrowly legal sphere, go into specifics: both, for example, have benefited from the industry of J W Norton-Kyshe in the context of legal literature;[1] and both have extremely idiosyncratic problems relating to the legislative reception of

* A version of this article was delivered as a lecture at the University of Hong Kong on Oct 31, 1991. The emphasis then was, naturally, on the Singapore legal system, although the comparative aspects also figured prominently. I would like to express my deepest gratitude to the Faculty of Law, University of Hong Kong, not only for its generous financial support but also (and more importantly) for the warm friendships and stimulating academic interaction that made my stay a pleasant as well as fruitful one. I am also grateful for the very helpful comments by the reviewers of this article. However, all errors must, of course, remain my own.

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1 In Singapore, Norton-Kyshe's principal legacy is in the form of the four volumes of reported cases which are invaluable, having regard (especially) to the paucity of early printed legal materials (see *Cases Heard and Determined in Her Majesty's Supreme Court of the Straits Settlements, 1808–1890* (in four volumes — Singapore: Singapore and Straits Printing Office, 1885–1890; reprinted — England: Legal Library (Publishing) Services), popularly referred to as *Kyshe's Reports*). Of significance, too, is the detailed and informative preface to those reports, now more readily accessible after being reprinted: see 'A Judicial History of the Straits Settlements 1786–1890,' (1969) 11 Mal LR 38. Norton-Kyshe's principal contribution in the Hong Kong context is his *The History of the Laws and Courts of Hong* Kong (London: T Fisher Unwin; Hong Kong: Noronha and Company, 1898; reprinted Hong Kong: Vetch and Lee Ltd, 1971). Professor Emrys Evans observed (in his book review of the reprinted edition: (1972) 2 HKLJ 379, 380) that '[i]t probably stands second in importance only behind *Kyshe's Reports*,' probably because under the common law system, case reports, being primary material, are considered more valuable, at least by practising lawyers and judges. However, Norton-Kyshe's own personal story is less encouraging: see the very useful and informative article by Peter Wesley-Smith, 'James William Norton-Kyshe,' (1972) 2 HKLJ 278.

English law[2] as well as the binding effect (or otherwise) of decisions emanating from both overseas (principally English)[3] as well as local jurisdictions.[4] A comparative analysis of both legal systems is thus long overdue.[5] However, a comprehensive analysis is a daunting one, requiring much research, reflection and, perhaps most importantly, collaboration between Singapore and Hong Kong academics. There are several reasons for this. First, a comparison that goes beyond superficialities must take into account the broader social contexts of both countries which, in turn, engenders a triple-hazard: the perennial problems arising from multi-disciplinary research; the related difficulty of correlating huge amounts of material into coherent theoretical propositions;[6] and the (also related) difficulty of engaging in comparative analysis, given the difficulties of analysing even a single legal system.[7] This article makes no pretensions to even coming close towards engaging in such a complex discourse. It has

[2] See, eg (with regard to Singapore), Andrew Phang Boon Leong, 'Reception of English Law in Singapore: Problems and Proposed Solutions,' (1990) 2 S Ac LJ 20 (and the literature cited therein); G W Bartholomew, 'English Statutes in Singapore Courts,' (1991) 3 S Ac LJ 1; and the very comprehensive work by Michael Rutter, *The Applicable Law in Singapore and Malaysia — A Guide to Reception, Precedent and the Sources of Law in the Republic of Singapore and the Federation of Malaysia* (Singapore: Malayan Law Journal Pte Ltd, 1989). See, eg (with regard to Hong Kong), Peter Wesley-Smith, 'The Reception of English Law in Hong Kong,' (1988) 18 HKLJ 182; and, by the same author, 'The Effect of Pre-1843 Acts of Parliament in Hong Kong,' (1984) 14 HKLJ 142. For good introductions to the Hong Kong legal system, see Peter Wesley-Smith, *An Introduction to the Hong Kong Legal System* (Hong Kong: Oxford University Press, 1987); and Albert H Y Chen, 'The Legal System,' in Joseph Y S Cheng (ed), *Hong Kong in Transition* (Hong Kong: Oxford University Press, 1986) ch 4.

[3] See, eg, Andrew Phang Boon Leong, '"Overseas Fetters": Myth or Reality?,' [1983] 2 MLJ cxxxix; Peter Wesley-Smith, 'The Effect of *De Lasala* in Hong Kong,' (1986) 28 Mal LR 50; and, by the same author, *Case Comment* (second commentary), (1977) 7 HKLJ 380, 381–82; 'The Status of English Decisions in Hong Kong,' (1979) 9 HKLJ 327; 'Recent Decisions on Precedent in Hong Kong,' (1986) 16 HKLJ 268; John Rear, 'Pak Pais and Precedent,' (1971) 1 HKLJ 80 and (by the same author), 'Hire and Reward: More About Pak Pais and Precedent,' (1972) 2 HKLJ 216; *Case Comment*, 'Of Concubines and Precedent,' (1974) 4 HKLJ 303; and Robert C Beckman, 'Divergent Development of the Common Law in Jurisdictions which Retain Appeals to the Privy Council,' (1987) 29 Mal LR 254. See also the interesting argument by Clarke to the effect that the Privy Council has adopted a more flexible approach towards the courts of independent countries, as opposed to Hong Kong courts which are still colonial in nature: see W S Clarke, 'The Privy Council, Politics and Precedent in the Asia-Pacific Region,' (1990) 39 ICLQ 741.

[4] See, eg, Peter Wesley-Smith, *Case Comment*, (1987) 17 HKLJ 114; and Walter Woon, 'The Doctrine of Judicial Precedent,' in Walter Woon (ed), *The Singapore Legal System* (Singapore: Longman, 1989) ch 8, and the literature cited therein.

[5] Cf, Peter Wesley-Smith, *Book Review*, (1985) 15 HKLJ 435, 436.

[6] See, generally, Phang, *The Development of Singapore Law — Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) 8–13.

[7] Indeed, the present writer's own experience in his first efforts at researching and writing in such a manner in the Singapore context bears ample testimony to this fact: see Phang, n 6 above.

a much narrower and clearly more speculative purpose: to paint in extremely broad brushstrokes what might be both convergences and divergences in both legal systems, taking into account the wider societal context. In order to achieve this within reasonable boundaries, I have utilised my previous work on Singapore as a framework for this initial analysis.[8] This may not, understandably, be the best route to take, simply because the framework itself might not appeal to the reader; nor would the reader necessarily agree with the substantive analyses (with regard to Singapore) contained therein.[9] However, because such a framework does encompass, in its broadest and most general terms, the linchpins of the Anglo-American legal tradition which are the foundations of both the Hong Kong and Singapore legal systems (viz, the common law and statute law, respectively), the present approach, taken only as a point of departure, might prove at least minimally tenable. I expect, in fact, most (if not all) of the tentative propositions to be at least somewhat off the mark. As already mentioned, however, it is hoped that the crude and initial analysis in this article may serve as a point of departure for further discussion, research and collaboration in the future. There will, having regard to what has just been mentioned, be a heavy dependence (in so far as the Singapore perspective is concerned) on one of my works.[10] This is necessary for reasons of convenience; citation of the work, however, must be taken as the automatic inclusion of all other relevant legal as well as extra-legal material cited in the notes in that work.

One final preliminary point is, perhaps, in order: in so far as 1997 looms over the Hong Kong horizon, there is more apparent divergence than convergence.[11] But this is too simplistic an approach to take because there is much that both Singapore and Hong Kong can learn from each other in

[8] See n 10 below.

[9] See Phang, n 6 above, at v.

[10] See Phang, n 6 above.

[11] On July 1, 1997, Hong Kong will revert back to the People's Republic of China. Much uncertainty surrounds this changeover and will undoubtedly have an impact on the legal system. At the time of writing, the *Basic Law* has already been promulgated, and will serve as the Constitution for Hong Kong after the changeover. For a perceptive analysis of implications in the sphere of constitutional law in general and the underlying relations of power, economics and sovereignty in particular, see Yash Ghai, 'The Past and the Future of Hong Kong's Constitution' (An Inaugural Lecture from the Sir Y K Pao Chair of Public Law delivered on Mar 4, 1991), *University of Hong Kong, Supplement to the Gazette*, Vol XXXVIII, No 1, May 6, 1991, pp 21–33. The present as well as possible future developments resulting from the handover in 1997 will, of course, figure in the discussion that follows. An excellent, albeit pessimistic, analysis of the situation in the context of political legitimacy is Ian Scott's *Political Change and the Crisis of Legitimacy in Hong Kong* (Hong Kong: Oxford University Press, 1989). As an aside, it should be mentioned that I do not intend the term 'convergence' as a pun; cf, also, the title of this article.

the spirit and content of *interaction*, even in this, the legal sphere, which lessons would be invaluable for the future — which is no more predictable in Singapore than in Hong Kong.

The scope of the instant article is broadly as follows. I examine, first, the development of the *common law* in both Singapore and Hong Kong, and the possible (especially extra-legal) reasons for the manner in which this English importation has developed in each country. I then consider the issue of law and order in the third part of the piece. In the fourth part, I proceed briefly to compare the development of legislation in arguably unique local areas of *private* law — family law, labour law and public housing law — focusing, in the main, on whether there has, in each country, been a 'top-down' imposition. The fifth part concludes this article.

II THE COMMON LAW

There is, arguably, apparently at least, very little that one can say by way of a description of the common law systems of both countries, although each constitutes a foundational aspect of everyday legal life.[12] It would, I think, be no exaggeration to state that in both Singapore and Hong Kong, the respective common law systems are mere 'carbon copies' of the English common law, with but only the slightest of variations.[13] I have argued elsewhere that, in so far as Singapore is concerned, this is (in the 'modern period' at least[14]) due to a 'functionalist' view of the law — adherents to which do not see any need to develop an autochthonous or indigenous Singapore legal system, independence notwithstanding, simply because of the pragmatic attitude that the (here, common law) system works and is relatively problem-free.[15] There is no reason to believe why the same situation does not obtain in Hong Kong. Indeed, quite apart from the fact

[12] No attempt will be made to describe the processes of reception and the details of any particular area of the law as such (save a fleeting reference to the contract law of both countries). For general background, see the works cited at nn 2–4 above. Needless to say, even those works are not exhaustive.

[13] Principally in the sphere of customary law. But even customary law, as we shall see, is in irreversible decline.

[14] The 'modern period' for Singapore stretches from 1959 to date. The former date is when Singapore first achieved internal self-government. After a brief but rather acrimonious 'sojourn' in Malaysia between 1963 and 1965, Singapore attained (reluctantly, then) complete independence. Hong Kong is, of course, still a British colony, but not for long, having regard to the handover in 1997 (and see n 11 above).

[15] See Phang, n 6 above, at 91.

that Hong Kong is still a British colony, there is an even greater pragmatism which is a result of not only the relatively extreme form of *laissez faire* practised by the colonial government[16] but also the (perhaps concomitant) utilitarianistic familism practised by the general population itself.[17] Professor Lau Siu-kai has defined 'utilitarianistic familism' as follows:[18]

> 'Briefly, utilitarianistic familism can be defined as a normative and behavioural tendency of an individual *to place his familial interests above the interests of society or any of its component individuals and groups*, and to structure his relationships with other individuals and groups in such a fashion that the furtherance of his familial interests is the primary consideration. Moreover, among the familial interests *materialistic interests take priority over all other interests.*'

He later observes thus:[19]

> '... utilitarianistic familism ... does not value very much the non-material rewards which society can proffer; rather, society is considered to be largely insignificant, and the family is to "exploit" society for its own utilitarian purposes.'

This need for a highly materialistic pragmatism is not surprising in view of the fact that there are no holds barred, so to speak, in an essentially capitalist market system where, as one writer has persuasively argued, the policy process is, in actuality, in the hands of a relatively small collection

[16] See, eg, Norman Miners, *The Government and Politics of Hong Kong* (Hong Kong: Oxford University Press, 5th ed 1991) 47, where the learned author states thus: ' ... the colonial government is more firmly committed to nineteenth century policies of allowing free play to market forces than is the case anywhere else in the world.' Indeed, as we shall see, although social disturbances in 1966–67 necessitated a re-evaluation of such an approach and consequently some legislative interference, the Hong Kong situation is still oriented very much towards the free market system (see also Miners, above, at 52–53). Reference may also be made to Lau Siu-kai, *Society and Politics in Hong Kong* (Hong Kong: The Chinese University Press, 1982) 40–42 and Lau Siu-kai and Kuan Hsin-chi, *The Ethos of the Hong Kong Chinese* (Hong Kong: The Chinese University Press, 1988) 22–23.

[17] See Lau Siu-kai, 'Utilitarianistic Familism: The Basis of Political Stability,' in Ambrose Y C King and Rance P L Lee (eds), *Social Life and Development in Hong Kong* (Hong Kong: The Chinese University Press, 1981) ch 10. See also Lau, n 16 above, at ch 3; Lau and Kuan, n 16 above, at 53–56; and William Rich, 'Hong Kong: Revolution without Change,' (1990) 20 HKLJ 279, 292.

[18] Lau, 'Utilitarianistic Familism: The Basis of Political Stability,' n 17 above, at 201 (emphasis added).

[19] ibid, 202. See also n 34 below. But, whilst dominant, utilitarianistic familism is not the only factor (see Lau and Kuan, n 16 above, at 54–55) and may, indeed, be declining somewhat: see Lau, n 16 above, at 187. See also Lau and Kuan, n 16 above, at 54 on the slight abatement in materialism.

of homogeneous elites,[20] and where there is gross inequality in income distribution.[21]

This is not, of course, to argue that excessive materialism was not a factor in the Singapore context. Indeed, a key argument I proffered was precisely the fact that excessive materialism amongst lawyers was one of the main causes of not only such pragmatism but also of the consequent impoverishment of the common law in Singapore during the 'modern period' via its adverse effects on the legal profession.[22] The reasons for such materialism were, however, different, reflecting the crucial attention that has to be paid to cultural as well as societal differences. Briefly put, excessive materialism arose out of a concern for the survival of Singapore as a *nation* after its independence in 1965. Economic survival being the order of the day, the government set about reweaving the social fabric into an integrated whole. This was not an easy task, and continues to be a problem till this day. Not least amongst the various difficulties was the fact that Singapore was, and continues to be, a pluralistic society, comprising three main ethnic groups (the Chinese, who comprise a majority; the Malays; and the Indians) and a host of other smaller ones. The fact that the major ethnic groups were not themselves homogeneous merely exacer-

[20] See S N G Davies, 'One Brand of Politics Rekindled,' (1977) 7 HKLJ 44. He states, for example, thus (ibid, 71–72): 'The Hong Kong system ... is controlled by a narrow elite whose wealth and life-style isolates it from those whom it rules. Further, this elite is mainly from a different culture and cannot speak the language of the overwhelming majority of those whose lives its decisions ultimately affect. Those of the elite who are from the same culture as the ruled are themselves culturally disposed to tell the ruled what is good for them rather than to listen to what it is that they might want. This narrow elite is almost exclusively supported, in the policy process ... by others who, whilst neither as powerful nor as wealthy, are clearly immeasurably better off than the average citizen of Hong Kong.' See also Miners, n 16 above, especially at 191–92.

[21] See Benjamin K P Leung, 'Poverty and Inequality,' in Benjamin K P Leung (ed), *Social Issues in Hong Kong* (Hong Kong: Oxford University Press, 1990) ch 4, where (at 71–73) the author notes that whilst the poor were earning more in absolute terms, they were still *relatively* worse-off. He pertinently observes (at 81) that '[t]he problem of poverty and inequality in Hong Kong is an inherent part of Hong Kong's capitalist system which places the interests of the capitalists and the concern for prosperity above considerations for a more equitable distribution of resources.' See also Lau and Kuan, n 16 above, at 38. On Hongkongers' perceptions, see, generally, Lau and Kuan, n 16 above, at 58, 64–65, 90–91, 150 and 177–78.

[22] See, generally, Phang, n 6 above, at ch 3, and, in so far as materialism is concerned, at pp 138–46. The account that follows draws on this material. I hypothesised that, in so far as the 'colonial period' was concerned, the impoverishment of the common law was due more to several so-called 'narrower' factors, including the lack of local law reports; the system of binding precedent; language (which is, arguably, also a 'broader' factor: see n 24 below); the emaciation of custom (which, as we shall see, continued, a fortiori, during the 'modern period'); and the approach of the colonial bench and bar: see generally, Phang above, at 66–71. 'Broader' factors, whilst not unimportant, were not that crucial: see Phang, above, at 64–66. And, as for the 'colonial period' generally, see Phang, above, at ch 2.

bated the problem; the Chinese, for example, comprised a veritable plethora of different dialect groups, thus necessitating the continuous 'Speak Mandarin' campaigns which have become very much part of the Singapore scene. The government could not, for fear of resurrecting racial riots, look to any one (or more) ethnic groups as a source for national values; nor could it look to the common ideology of communism, which was, and continues to be, anathema to it.[23] It thus adopted, in the main, the goal of economic pragmatism with the concomitant emphasis on social discipline. This tied in well, of course, with the goal of economic survival and future prosperity. However, coupled with a host of other factors,[24] excessive materialism aided in engendering a general uninterest in the development of the law in general and the common law in particular. Symptomatic of this general malaise was an apparent, and worrying, increase in breaches of legal ethics and a (then) reluctance by leading members of the bar to sit on the Supreme Court bench, both instances of which were noted at various times by both the previous Prime Minister and Chief Justice in important speeches delivered over a period of some two decades or so.[25] I also observed that there might have been countervailing factors in so far as excessive materialism was concerned, but that they did not, in the final analysis, help: one was the recourse to 'traditional cultural values' which has caused a not insignificant amount of ambiguity, thus reducing the efficacy of such an approach;[26] a second has been the very recent recourse to the development of a national ideology, which is too recent a development for any realistic assessment to be made;[27] and, finally, the establishment of the Singapore Academy of Law which is intended to be an institution akin to the Inns of Court in the United Kingdom in order that a collegiate spirit fostering improved standards of learning and conduct might emerge, which is, once again, a fairly recent development.[28] But, these developments notwithstanding, the 'functionalists' are still in an apparent ascendancy.

[23] See, in particular, the very perceptive and valuable discussion in Chan Heng Chee and Hans-Dieter Evers, 'Nation Identity and Nation Building in Singapore,' in Peter S J Chen and Hans-Dieter Evers (eds), *Studies in ASEAN Sociology — Urban Society and Social Change* (Singapore: Chopmen Enterprises, 1978) 117. See also Phang, n 22 above.

[24] Eg, paternalism and depoliticisation; the lack of a tradition; the primacy of the English language; the training and profile of the local profession; and the general development of the law in Singapore: see, generally, Phang, n 6 above, at 146–60.

[25] See, generally, ibid, 118–38.

[26] See ibid, 142–46.

[27] See ibid, 161–62.

[28] See ibid, 160–61. And cf the advocating of a similar institution way back in 1971: see *Editorial*, 'The future of the legal profession in Hong Kong,' (1971) 1 HKLJ 241, 243 (by Henry Litton).

Quite apart from reasons of national pride, however, I have argued that the development of an indigenous Singapore legal system would serve several other purposes: the building as well as reinforcement of a spirit of professionalism and service (admittedly idealistic but wholly in accordance with the traditional ideals of the legal profession); and to develop the common law generally in ways that would more truly reflect the needs, mores and aspirations of the wider Singapore context.[29] Indeed, in so far as the lastmentioned point was concerned, I have demonstrated that there were numerous opportunities during both the 'colonial' as well as 'modern' periods in the sphere of contract law to develop the local law in a direction different from that of the English.[30] To be sure, not all the points of departure were intended by the local judiciary, but, then again, the common law has never developed in an altogether systematic or even logical fashion.[31] Indeed, there are at least two broad avenues for local departure: first, and on a more general level, that pertaining to general reasoning and logic; and, secondly, on a more specific level, that pertaining to the placement of the rule against the wider societal context and evaluation of it accordingly. It must, of course, be noted that there will be inevitable overlaps between these two levels of analyses, but as rough guides, they are, it is submitted, helpful.[32] To return to the need for indigenous development, it is submitted that there is all the more reason for adopting such an approach simply because the apron strings of English law do not sit at all well with either general or particular aspirations as briefly set out above. There appears to be an acknowledgement of this need, albeit more in a symbolic fashion for the present at least: the very recent inauguration, on the initiative of the present Chief Justice, of a separate series of law reports for Singapore.[33] This is a start and perhaps an indication on the part of the Singapore judiciary that it is ready to tangibly walk the long road towards ultimate legal autochthony.

Would similar reasons and aspirations apply in the Hong Kong context? As already seen, the general ethos does not appear to support such a move towards an indigenous legal system. The 'functionalists' would, on the face of things, have an even easier time justifying their stand vis-à-vis the

[29] See, generally, Phang, n 6 above, at 91–96.

[30] See ibid, 61–84 and 96–118, respectively. And cf Peter F Rhodes, 'The Law of Contract in a Hong Kong Setting,' (1981) 15 UBC L Rev 431.

[31] See, eg, S F C Milsom, 'Reason in the Development of the Common Law,' (1965) 81 LQR 496.

[32] See, generally, Andrew Phang Boon Leong, 'Of Generality and Specificity: A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System,' (1989) 1 S Ac LJ 68.

[33] See the *Sunday Times*, Oct 20, 1991.

Hong Kong context. After all — so the argument would run — is not the lack of a cohesive identity one of the hallmarks of the economic system? What stake, then, would local lawyers have in desiring local development of the common law, a fortiori the many expatriate lawyers? Would not the Hong Kong legal profession be even more influenced by materialism? These questions would have been unanswerable even a decade ago. Indeed, Singapore's former Prime Minister, Mr Lee Kuan Yew, observed as late as 1984:[34]

> 'In Hongkong, because it is not allowed to develop a separate national identity, there is no civic pride, no sense of ownership, no feeling of community achievement, no feeling of group accomplishments. The British government believed, after World War II, that they had little choice other than a policy of minimum intervention. People do not feel the place belongs to them. So Hongkong workers have concentrated on and excelled in individual and family enterprises and made great economic progress.
>
> On the other hand, active nation-building has given Singaporeans a deep sense of personal pride in the progress of Singaporeans as a whole, not just of their own families.'

It is, however, submitted that there is every reason now for the spirit of indigenous development to take root in the Hong Kong legal system — and the overarching rationale would appear to centre on the impending handover of Hong Kong by the British government to the People's Republic of China (hereafter PRC) with effect from July 1, 1997. To be sure, the prognosis generally is not at all encouraging. A study conducted in 1987 indicated that not a few Hong Kong people were likely to emigrate before 1997;[35] indeed, the same author observed:[36]

> 'The greatest risks involve brain-drain emigration and capital flight from Hong Kong with temporary economic consequences to be offset in part by new immigrants, internal increases in education, and new multinational investment.'

Indeed, the author's findings supported the view that foreign multinational corporations were likely to dominate, even as British and Hong Kong Chinese interests increasingly diversified *out* of Hong Kong.[37] The latter

[34] 'Prime Minister's National Day Rally Speech,' *Speeches, Singapore*, Vol 8, No 4, July/Aug 1984 (Singapore: Ministry of Culture) 6.

[35] See Charles F Emmons, *Hong Kong Prepares for 1997 — Politics and Emigration in 1987* (Hong Kong: Centre of Asian Studies, University of Hong Kong, 1988), especially at 61, 64 and 120.

[36] ibid, 124.

[37] ibid, 121.

development might conceivably be accelerated by distrust and fear of the PRC government following the infamous Tiananmen Square incident.[38] Even before this incident, there were doubts expressed on various aspects of the handover.[39] This is not at all conducive to the wholly contrary approach dictated by indigenous development. However, there are other factors that, it is submitted, support the move towards indigenous development.

First, a recent empirical survey has shown 'that the common law has established itself in Hong Kong and to a considerable extent.'[40] Indeed, this particular study also revealed what were the inexorable effects of modernisation and industrialisation, viz, more insistence on legal rights as well as referral of disputes to courts.[41] Indeed, in surveying the population of Norwich in England, the study found that there was not a great difference at all between the Hong Kong Chinese population and the English population with regard to receptiveness to the common law — all this despite the fact that there were indications that they had a relatively low acceptance of judicial independence![42] Whilst the Chinese members of the Hong Kong

[38] Of June 4, 1989. See also Scott, n 11 above, at ix; and *Editorial*, 'The Suppression of China's Democracy Movement and Hong Kong's Future,' (1989) 19 HKLJ 283 (by Albert H Y Chen).

[39] See, eg, W S Clarke, 'Hong Kong under the Chinese Constitution,' (1984) 14 HKLJ 71; Albert H Y Chen, 'Further Aspects of the Autonomy of Hong Kong under the PRC Constitution,' (1984) 14 HKLJ 341; *Editorial*, 'A disappointing draft of Hong Kong's Bill of Rights,' (1987) 17 HKLJ 133 (by Albert H Y Chen); and *Editorial*, 'The Basic Law, the Bill of Rights and the British Citizenship Scheme,' (1990) 20 HKLJ 145 (by Albert H Y Chen). Though cf Berry F C Hsu and Philip W Baker, 'The Spirit of the Common Law in Hong Kong: The Transition to 1997,' (1990) 24 UBC L Rev 307, where the authors express general satisfaction with the *Basic Law* and argue for strong judicial development to fulfil the confidence of the Hong Kong people in the common law, as to which see n 40 below.

[40] Berry Fong-Chung Hsu and Philip W Baker, 'Law and Opinion in Hong Kong in the Late 1980s,' (1990) 20 HKLJ 342, 348. A broadly similar (but clearly not identical) conclusion with regard to the legal system (at least in an overall sense) was arrived at by Lau and Kuan: see, generally, n 16 above, at ch 4, 168, 171, 174, 176 and 177. The authors state (at 192): 'The highly autonomous judiciary of Hong Kong and the central role of the legal system in society have, to a fairly large extent, endeared the law to the Hong Kong Chinese. They have learnt to susbtantially differentiate the legal system from the political system and to respect the integrity and value of law. Nevertheless, many of the Hong Kong Chinese still approach law in an instrumental manner, placing more stress on its regulative and stabilizing functions than on its role in upholding justice, the latter term being not quite well-understood. An emphasis on the utility of law inevitably makes its reception by the people contingent upon its performance: positive judgment of the legal system by the Hong Kong Chinese is closely related to satisfaction with one's life, with society and with the government. Thus, there is a limit to the autonomy of the law in the ethos of the Hong Kong Chinese.'

[41] Hsu and Baker, n 40 above, at 348. Not surprisingly, perhaps, the authors found that the higher the educational level, the higher the rate of acceptance of common law values: ibid, 354–55.

[42] ibid, 348–49, 351 and 355.

legal profession were no less enthusiastic about the common law,[43] '[a] substantial number of the Chinese members of the legal profession will leave Hong Kong prior to July 1, 1997.'[44] It might be observed, in passing, that this is a shame, simply because the division of labour inherent within the divided profession in Hong Kong does, in fact, have advantages, should an indigenous legal system be desired. This leads to the next point.

Notwithstanding the possible brain-drain from the legal profession, and perhaps because of it, there is all the more reason to develop the common law of Hong Kong in a way that more truly reflects the needs and aspirations of the people as a whole. This is not only to reinforce the legitimacy that already exists (as mentioned in the preceding paragraph) but also to convince the PRC government that the retention of the common law[45] is not merely a paper concession but can, if properly developed, actually benefit Hong Kong and consequently the PRC — inter alia, by contributing towards confidence and a consequent perception of legitimacy in the country itself: both from internal as well as external points of view.[46] But this lastmentioned point is not, of course, unproblematic, simply because, despite the 'one country, two systems' rubric, there *is* a very real difference between the common law (even a modified one) on the one hand and the socialist system of law practised in the PRC on the other.[47] But, as most writers acknowledge, speculation about the precise approach of the PRC is rather difficult. This is probably due to an inherent tension not only in the sphere of law but also in the broader purposes underlying the arrangements desired by the PRC. Professor Ghai has perceptively pointed to the desire of the PRC government to retain the economic strength of Hong Kong on

[43] ibid, 349.

[44] ibid, 353. See also n 35 above. In fact, many Hong Kong lawyers have sought and gained admission to the Singapore bar (see, generally, s 16 of the *Legal Profession Act*, cap 161, Singapore Statutes, 1990 ed, which provides for the admission of 'Hong Kong practitioners'). For a general account of the profession, see Michael Sandor, 'The Legal Profession,' in Raymond Wacks (ed), *The Future of the Law in Hong Kong* (Hong Kong: Oxford University Press, 1989) ch 8; the author also raises a pertinent point centring on PRC lawyers in Hong Kong after July 1, 1997 (see ibid, 245–46).

[45] See section II of Annex 1 to the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (hereafter '*Joint Declaration*') and art 8 of the *Basic Law* (which was promulgated in its final form in 1990).

[46] Indeed, Professor Wacks has expressed an optimistic view about the fate of the common law in Hong Kong: see Raymond Wacks, 'Can the Common Law Survive the Basic Law?,' (1988) 18 HKLJ 435. Quaere whether the Tiananmen Square incident would change the learned author's views somewhat.

[47] See, generally, Edward J Epstein, 'China and Hong Kong: Law, Ideology, and the Future Interaction of the Legal Systems,' in Wacks (ed), *The Future of the Law in Hong Kong*, n 44 above.

the one hand and the desire to exert sovereignty on the other;[48] as he aptly put it:[49]

> 'Although the Basic Law is highly pragmatic, the Chinese have an old fashioned view of sovereignty, reminiscent of Hobbes or Austin: supreme, unlimited, illimitable. The long, and what the Chinese regard as the illegal,[50] occupation of Hong Kong by the British makes China particularly sensitive to questions of sovereignty.'

Even allowing for the possibility of bad faith on the part of the PRC government, however, would rejecting any attempt to mould the common law of Hong Kong to suit the circumstances of the country and aspirations of the people be merely throwing out the baby together with the bathwater? Could it not, in other words, be argued that such a development is really the only reasonable course of action to take for the benefit of those who have no choice but to remain in Hong Kong and, a fortiori, those who actually *choose* to so remain — not only to increase the chances of real acceptance by the PRC government after 1997 but also to, inter alia, develop at least some safeguards against oppression and general abuse of power?[51] On balance, it is this writer's view at least that an indigenous legal system in general and an indigenous common law in particular ought to be developed. However, the problem of excessive materialism, mentioned earlier, would have to be at least mitigated. At this juncture, it is submitted that, given the impending arrival of '1997,' it might be appropriate also to begin to cultivate a national identity of sorts for Hong Kong, even though it will only have the status of a Special Administrative Region. This will not, of course, be easy, especially since independence is presumably a weighty factor, which factor will be absent in Hong Kong. Yet, such an ideal should not be gainsaid: there appear to be signs of an increasing political awareness,

[48] Cf the Tiananmen Square incident: n 38 above.

[49] Ghai, n 11 above, at 31.

[50] See also Peter Wesley-Smith, *Unequal Treaty 1898–1997: China, Great Britain and Hong Kong's New Territories* (Hong Kong: Oxford University Press, 1980).

[51] And cf Wacks, 'Introduction' to Wacks (ed), *The Future of the Law in Hong Kong*, n 44 above. Compare, also, E P Thompson, *Whigs and Hunters — The Origins of the Black Act* (1975) 258–69 with Morton J Horwitz, *Book Review*, 'The Rule of Law: An Unqualified Human Good?' (1977) 86 Yale LJ 561.

although cultural factors have militated against political *activism* as such.[52] Further, and unlike Singapore, the vast majority of the population is by and large homogeneous in so far as dialect group is concerned (ie Cantonese). This is an important fact and a positive factor that will aid any attempted process of nation-building. The main problem — already alluded to above — is really one of possible oppression and the consequent squashing of such activism by the PRC government itself.[53] For all this, a Bill of Rights has very recently been enacted in Hong Kong. Despite the relatively sceptical prognosis,[54] the symbolic and psychological effect of such a development ought not to be underestimated for reasons already alluded to above.

Thus, even allowing for cultural as well as social differences, there are distinct (albeit overlapping) reasons why there ought to be an indigenous development of the common law in both Singapore and Hong Kong. Indeed — and as we have seen — the need may, in the final analysis, be greater as far as Hong Kong is concerned. Ironically, there may be more obstacles in the way of the development of a truly indigenous Singapore legal system compared to Hong Kong, at least after July 1, 1997. To take but one simple, yet very basic, example, appeals to the Judicial Committee of the Privy Council must perforce be abolished in Hong Kong in the not too distant future. This would free the Hong Kong courts from the fetters of English as well as Privy Council precedents. In Singapore, however, a conscious choice will have to be made. Despite arguments favouring the abolition not only of the binding effect of Privy Council decisions generally but also the 'rule' in *Young v Bristol Aeroplane Co*,[55] the outlook in this regard does not look bright.[56] Yet, freeing the local courts of such fetters is a prerequisite if autonomous and indigenous development is to take

[52] See Emmons, n 35 above, at 121. Two writers have also similarly noted that whilst the ideal of political participation has caught on with the Hong Kong people, the actuality is that the majority still feel a great deal of political powerlessness, with political participation being confined in the way just stated: see Lau Siu-kai and Kuan Hsin-chi, 'The Changing Political Culture of the Hong Kong Chinese,' in Cheng (ed), *Hong Kong in Transition*, n 2 above. See also by the same authors, n 16 above, at 93–103 and Lau, n 16 above, ch 1 at 113–15. But cf Lau Siu-kai, *Decolonization Without Independence and the Poverty of Political Leaders in Hong Kong* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, Occasional Paper No 1, Nov 1990). Yet, if Professor Lau's various arguments on the poverty of, and bleak future for, political leadership in Hong Kong are convincing (and it is submitted that they are), this should, in fact, allay the fears of the PRC government, and allow it to adopt a more flexible stance.

[53] But see Lau, n 52 above.

[54] See James Allan, 'A Bill of Rights for Hong Kong,' [1991] Public Law 175.

[55] [1944] KB 718.

[56] See Andrew B L Phang, V K Rajah and Kenneth W K Tan, 'The Case for a Re-Appraisal and Re-Statement of the Doctrine of Stare Decisis in Singapore' (in three parts), [1989] 2 MLJ lxxi, xcvii and cxiii, respectively.

place. And one ought not to gainsay the enormous *psychological* fetters that would simultaneously be broken by such a reform.

It is hoped that the courts of both countries will take up the challenge of indigenous development. There is all good possible, and nothing bad, for disputes will continue to be resolved, regardless of the approach taken. However, the PRC government is both (paradoxically, perhaps) an incentive as well as a hindrance to indigenous legal development. It is hoped that it will make the correct decision which will not only guarantee Hong Kong's continued economic success but also retain (and even attract back) its own local population. A slight problem might arise with the issue of language, which is not a problem in Singapore since English is the working language in virtually all areas. One writer has proposed a bilingual system for Hong Kong, but, as he quite correctly suggests, a necessary reform would be the codification of the common law, simply because it would be impossible to translate the many thousands of existing cases.[57] But codification is, of course, not an easy task to accomplish. Yet, it is admitted that a bilingual Hong Kong legal system makes for good sense in so far as strengthening the confidence of the PRC government is concerned.[58]

But one thing is clear in both Singapore and Hong Kong: customary law, at least as it originally evolved, will, in all probability, cease to exist.[59]

[57] See, generally, Albert H Y Chen, '1997: The Language of the Law in Hong Kong,' (1985) 15 HKLJ 19. See also *Discussion Paper on the Law in Chinese* (Attorney-General's Chambers, Hong Kong, Apr 1986); Yuen Chi-wing, 'The Chinese Language Scheme and the Problem of Judicial Gloss,' (1987) 17 HKLJ 89 (a perceptive and interesting comment on the preceding publication); Michael Thomas, *Editorial*, 'The development of a bilingual legal system in Hong Kong,' (1988) 18 HKLJ 15 (who at p 23 quite correctly noted thus: 'But bilingual laws will not by themselves render a legal system bilingual. That will only come about with greater use of the Chinese language in the courts, in the law schools and by the legal profession.'); and Tomasz Ujejski, 'The Future of the English Language in Hong Kong Law,' in Wacks (ed), *The Future of the Law in Hong Kong*, n 44 above, at ch 6. And on the interesting issue of the use of Chinese at the stage of pleadings, see Janice Brabyn, 'Using Chinese in the High Court: Constant Law, Changing Practice,' (1989) 19 HKLJ 61. And cf art 9 of the *Basic Law*. Albert Chen has, however, very recently lamented, inter alia, the slow progress made with regard to the production of authentic Chinese texts of *existing* legislation: see *Editorial*, 'The bilingual legal system in Hong Kong: a gloomy future?,' (1991) 21 HKLJ 14.

[58] But cf Ujejski, n 57 above, at 182–85, who points to the fact that the survival of the English language really hinges on the survival of the *common law* itself, which embodies alien social and cultural values in so far as the PRC government is concerned.

[59] See Phang, n 6 above, at 68–69, 76–78, 101–02 and 116–18; D M Emrys Evans, 'Common Law in a Chinese Setting — The Kernel or the Nut?,' (1971) 1 HKLJ 9, 29 and 31–32; and Wesley-Smith, *An Introduction to the Hong Kong Legal System*, n 2 above, at 46, 48. It should, however, be noted that in so far as Hong Kong is concerned, customary law has been preserved: see s II of Annex 1 to the *Joint Declaration* and art 8 of the *Basic Law*. But it is respectfully submitted that customary law as originally conceived will nevertheless undergo fundamental changes for the reasons briefly detailed here. And on modernisation in Hong Kong, see Lau and Kuan, n 16 above, at 33.

There is nothing overtly sinister in the cause of such a consequence: the effects of modernisation, industrialisation and Westernisation all combine to produce such a result. And there can be no denying that modern developments have been embraced by the governments and people of both countries to a very large extent. But this does not necessarily mean that an indigenous law is inapposite; all this means is that the existing law will have to be adapted in a different way, to develop a 'new customary law,' as it were.

III LAW AND ORDER

Singapore

I argued elsewhere[60] that there was an enormous contrast between the colonial and modern governments' responses in every major area pertaining to law and order in general and Singapore criminal law in particular. Chinese secret societies, for example, continued to wreak havoc in the face of legislative indecision and faulty implementation.[61] Modernisation and industrialisation did have an effect on the gradual disintegration of such organisations as they originally existed, but it is also clear that detention without trial was a weighty factor contributing to their downfall — a course of action that was embraced by the present government which decided, in the balance between individual liberty and societal order, to implement a measure utterly alien to British notions of justice. Whatever one's view of such a course of action is,[62] it is clear that without this unusual measure, the back of the secret societies could not have been broken.

The area of drugs is yet another illustration — the obsession with opium revenue on the part of the colonial government as contrasted with the sensitivity and due action taken by the present government.[63] But the present measures are harsh, with the death penalty being introduced in 1975 for trafficking in certain stipulated drugs beyond a certain specified amount. Having one of the most draconian drug laws in the world has, however, apparently engendered a not insignificant amount of success.

Corruption is another illustration: whereas corruption in its various forms was rampant during the 'colonial period,' it has been stringently

[60] See Phang, n 6 above, at ch 4.
[61] See, generally, ibid, 183–225.
[62] See, generally, ibid, 221–24. See also the *Criminal Law (Temporary Provisions) Act* (cap 67, Singapore Statutes, 1985 ed) (as amended).
[63] See, generally, Phang, n 6 above, at 225–37. See also the *Misuse of Drugs Act* (cap 185, Singapore Statutes, 1985 ed) (as amended).

controlled during the 'modern period.'[64] One of the most important factors contributing towards the success in curbing corruption in the Singapore context has been the commitment of the political leadership, who realise that without a corruption-free environment the entire social structure would be put at risk.

Hong Kong

A similar proposition such as that advanced for Singapore, viz, the contrast between the colonial government's and the present government's responses towards various similar issues of law and order is, of course, not possible, simply because of the very status of Hong Kong itself. The proposition itself can, however, be tested, so to speak, for Hong Kong in the more limited context of colonial action in so far as the specific factors of sensitivity and efficacy are concerned.

Turning first to Chinese secret societies, it should first be noted that, unlike Singapore, Hong Kong has no legislation allowing for detention without trial. This is not surprising in view of the fact that the emphasis on individual liberties is very much a part of English law. It is also, however, not surprising that secret societies continue to be an intractable problem in Hong Kong, even today. Writing in 1960, the then Commissioner of Police stated thus in a preface to what is now regarded as a standard local work on Chinese secret societies:[65]

> 'The Triad societies are still with us, numerically stronger today than at any other time in the history of Hong Kong. ... Legal enactments alone cannot destroy an organisation of this magnitude. Haphazard arrests of individual members cannot seriously weaken the societies which are continually recruiting new members. All available resources must be concentrated on curbing its potential for evil and assisting to speed up its own process of self-destruction.'

The learned commissioner proceeded to observe that whilst the original aims and practices were no longer controlling,[66] and the societies no longer under the control of one co-ordinated body as such, they were nevertheless still fairly well-organised.[67] Morgan himself advances an interesting explanation why there was no great public outcry against such societies; he

[64] See, generally, Phang, n 6 above, at 238–43. See also the *Prevention of Corruption Act* (cap 241, Singapore Statutes, 1985 ed) (as amended) and the *Corruption (Confiscation of Benefits) Act* (cap 65A, Singapore Statutes, 1990 ed).

[65] The book is by W P Morgan, *Triad Societies in Hong Kong* (Hong Kong: Government Press, 1960) ix. This is, in fact, a fairly detailed historical study.

[66] Simply because the Ching dynasty had long been overthrown!

[67] Morgan, n 65 above, at x, xiii.

argues that the unsatisfactory economic situation and the consequent fear of loss of livelihood gave credibility to the secret societies which would help establish a place to ply one's trade.[68] What, however, would be the situation today, with the economic situation markedly improved compared to that which existed in the 1950s?

Writing in 1991, Bindzus observed thus:[69]

> 'The triad societies (Chinese crime syndicates) lend a distinctive feature to organised crime in Hong Kong. Their origins and criminal activities reach back into the early part of the last century. They run illegal gambling dens and brothels, are enmeshed in drug trafficking and control the so-called cash transaction businesses such as nightclubs and video-game centres which often function as dirty money laundries. It is estimated that the triad societies have a membership of 160,000, or 3 per cent of the total population. In contrast to the Japanese "Yakuzas", they do not shy away from violent crimes.'

It thus appears that Chinese secret societies will, in the absence of any drastic action on the part of the colonial government, continue with their reign of crime in the not too distant future. However, once the PRC government takes over in 1997, would it insist on the extirpation of such societies? It is entirely conceivable that, having regard to the rather strict approach taken in the PRC, this might be a real possibility.

The history of opium during the earlier decades of this century runs parallel to developments in colonial Singapore. This is not surprising, given the unity of colonial policy in this particular sphere. Once again, revenue was the reason for continuing and legitimising the opium trade.[70] However, as in Singapore, international pressure brought about the end of the opium trade after the Second World War.[71] But the drug problem then shifted, as in Singapore, to narcotics — and much earlier at that.[72] The drug laws in Hong Kong are comparable to Singapore's,[73] but there is at least one

[68] ibid, 88–90.

[69] Dieter Bindzus, 'Criminal Justice in Hong Kong,' (1991) 21 HKLJ 181, 182.

[70] See R J Faulkner and R A Field, 'Vanquishing the Dragon: The Law of Drugs in Hong Kong — Part I,' (1975) 5 HKLJ 134, 136–37. Part II was published in (1975) 5 HKLJ 277. See also the important historical survey by Miners: see Norman Miners, *Hong Kong under Imperial Rule, 1912–1941* (Hong Kong: Oxford University Press, 1987) chs 11 and 12. Material in ch 12 was taken from the following article by the same author: 'The Hong Kong Opium Monopoly 1914–1941,' (1982–3) 11 Jnl of Imperial and Commonwealth History 275.

[71] Faulkner and Field, n 70 above, at 144–45.

[72] ibid, 147.

[73] See, generally, G L Peiris, 'Some Constitutional, Substantive and Evidentiary Aspects of Drug Control Legislation: A Comparative Study of the Law of Singapore, Hong Kong and Canada,' (1982) 24 Mal LR 119. Cf, however, Dr Naranjan Singh, 'Drug Abuse in Hong Kong: A Brief Perspective,' Corrections 82, pp 50, 51: 'The Anti-Narcotic Laws in Hong Kong are not as harsh as in Singapore.'

significant difference — there is no death penalty, which makes, in any event, good sense, simply because, with the abolition of the death penalty in Britain in 1965, all death sentences for murder (which is mandatory, as in Singapore) have, in fact, been commuted by the Governor to life imprisonment.[74] To that extent, therefore, it is suggested that the drug trade is likely to be relatively more of a problem in Hong Kong than in Singapore. However, it is clear that, as in Singapore, draconian legal provisions alone will not effectively combat the drug problem, especially from the perspective of consumption by local citizens: the social causes must be dealt with.[75]

It is in the sphere of corruption (or its combat, rather) that the Hong Kong government has been most effective, if the accounts in the literature are anything to go by.[76] However, one very important point must be mentioned at this juncture: it has been argued that it was relatively easier for the government to introduce the rather strict anti-corruption measures in the 1970s, but that it is, at present, extremely cautious in implementing any draconian measures that have the effect of resisting civil liberties with regard to secret societies, simply because the political climate has changed.[77] This observation clearly supports the points made above with regard to Chinese secret societies — that the lack of draconian measures is premised on an overarching concern with civil liberties and that without such measures (such as exist within Singapore), it is highly unlikely that the secret society menace can be effectively curbed.

Returning to the Hong Kong experience with corruption, it is submitted that the key factor which saw a radical change in the efficacy of anti-corruption measures was precisely the same factor which obtained in the Singapore context, viz, the commitment of the political leadership (in this instance, the colonial government). The reasons for such a sudden shift in commitment are none too clear, although Lethbridge, after canvassing a few possibilities, argues that the main reason centred on political factors — when its mandate to govern was threatened and its legitimacy consequently

[74] See Miners, n 16 above, at 79–80; and Michael I Jackson, 'The Criminal Law,' in Raymond Wacks (ed), *The Law in Hong Kong, 1969–1989* (Hong Kong: Oxford University Press, 1989) 204–05.

[75] See Faulkner and Field, n 70 above, at 334–35. See also Singh, n 73 above, at 50, who refers to the Society for the Aid and Rehabilitation of Drug Abusers.

[76] See, generally, Rance P L Lee (ed), *Corruption and Its Control — Situations Up to the Late Seventies* (Hong Kong: The Chinese University Press, 1981); and H J Lethbridge, *Hard Graft in Hong Kong: Scandal, Corruption, the ICAC* (Hong Kong: Oxford University Press, 1985). See also Bernard Downey, 'Combatting Corruption: The Hong Kong Solution,' (1976) 6 HKLJ 27; and H J Lethbridge, 'Corruption, White Collar Crime and the ICAC,' (1976) 6 HKLJ 150. Cf Lilian Y Y Ma, 'Corruption Offences in Hong Kong: Reverse Onus Clauses and the Bill of Rights,' (1991) 21 HKLJ 289.

[77] See Jackson, n 74 above, at 202–03.

also threatened, the colonial government responded.[78] This led not only to legislative reform but also, perhaps more importantly, to the establishment of the Independent Commission Against Corruption (the ICAC) which was officially formed on February 15, 1974. The general view appears to be that, notwithstanding the inevitable hiccups, the ICAC has, in fact, been extremely successful in its fight against corruption.[79] Such success is, perhaps, all the more remarkable simply because corruption has often been considered a way of life. In the words of Professor Lethbridge, for example:[80]

> 'Until a comparatively recent date, it can be confidently asserted that corruption was tolerated as a necessary evil, at its worst as a species of low-level delinquency; it was for many people simply an additional tax or levy imposed on them by the corrupt, a form of exaction that had its roots in traditional Chinese society. Other forms of bribery were often regarded merely as a commission for services rendered, both donor and recipient benefiting from the transaction.'

However, as has already been noted previously,[81] the success in the context of combatting corruption may be an atypical one grounded in the special political circumstances of the day. Arguably, the Singapore government was also motivated by political circumstances (chief amongst which was the concern with the survival of the country), but it is submitted that the concern was nevertheless relatively more systematic, simply because the government was concerned with the *long-term* implications for the country as a whole — not unsurprising in view of the fact that Singapore is, unlike Hong Kong, an independent country, with the existing government risking being voted out at the ballot box should it be perceived by the electorate not to be 'delivering the goods.' Be that as it may, after the PRC takes over Hong Kong in 1997, it will endorse and thereby continue in force the anti-corruption machinery set up by the colonial government, for, as Professor Lethbridge perceptively observes, the PRC itself is all too aware

[78] See Lethbridge, *Hard Graft in Hong Kong*, n 76 above, at 205–07.

[79] See, eg, the works by Lethbridge cited at n 76 above. But cf Downey, n 76 above; and Michael Ng-Quinn, *Bureaucratic Response to Political Change: Theoretical Use of the Atypical Case of the Hong Kong Police* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, Occasional Paper No 2, Jan 1991) 19.

[80] Lethbridge, 'Corruption, White Collar Crime and the ICAC,' n 76 above, at 153. See also Hsin-chi Kuan, 'Anti-Corruption Legislation in Hong Kong — A History,' in Lee (ed), *Corruption and Its Control*, n 76 above, at 40; and Rance P L Lee, 'Incongruence of Legal Codes and Folk Norms,' in ibid, ch 3. The attitudes described in the following quotation were anathema to those held by the British: see Lethbridge, *Hard Graft in Hong Kong*, n 76 above, at 77. This was, of course, by itself, insufficient for more drastic action, as to which see n 78 above and the accompanying main text.

[81] See nn 77 and 78 above.

of the intractable problems of corruption, not least because of its own experiences on the mainland.[82]

Conclusion

It would appear that the general proposition proffered above, to the effect that an independent government is more likely to be sensitive to issues of law and order, is borne out by the necessarily brief discussion above. However, it must also be borne in mind that, unlike an independent country, a colony such as Hong Kong operates under constraints, both tangible and intangible, which emanate from the colonial master (here, Britain). The abolition of the death penalty in England and the concern with individual liberties are but illustrations of such constraints. There is also no doubt that a colonial regime will, ceteris paribus, prefer its own interests to that of the general colonial populace, giving such interests up only when countervailing pressures become too great (see, for example, the opium trade briefly mentioned above). One cannot, however, draw bright lines too readily. There are also constraints even within an independent nation state such as Singapore, some of which will even centre on the vested interest of the government in preserving its legitimacy in the eyes of the general public. But the Singapore government has demonstrated a willingness to go beyond fixed parameters, as evidenced by its continuation of detention without trial which has been a key factor in the rout of Chinese secret societies. It could, of course, be argued that such an approach was desired by the majority of the population — a not implausible contention. However, such governmental action still meant going against hitherto established ideas of individual liberty. Perhaps a clearer case is the opportunity to introduce the death penalty for drug trafficking — an opportunity which was seized upon to great effect by the Singapore government. However, there are, nevertheless, ultimate barriers to excessive instrumentalism, even in the context of law and order. I have argued elsewhere that a balance has to be maintained, and that, in this regard, more

[82] See the references to the Commissioner Against Corruption in arts 48(5) and 101 of the *Basic Law*. See also Lethbridge, *Hard Graft in Hong Kong*, n 76 above, at v–vi.

empirical research is necessary.[83] It is hoped that both the Singapore and Hong Kong governments will bear this caveat in mind. This is especially critical for Hong Kong after 1997, simply because excessive force and coercion would result in disaster for a country that has been one of the economic miracles of this century.

IV LEGISLATION

Introduction

I ventured to suggest, in the context of legislative developments in the Singapore context during the period from 1959 onwards,[84] that the popular perception of 'top-down' control by the government was misconceived inasmuch as success generated by local legislation was due not just to the promulgation of the laws themselves but also to various factors operating specifically in different situations that had their source in the wider societal context. Hence, any assumption that mere 'top-down' imposition of laws would engender success would be to commit a political error of the highest order. It could be argued that the government had borne in mind these factors all along. That it must have had at least *some* of these factors in mind during the process of enactment cannot be denied, but there had hitherto been insufficient explicit enunciation of such factors. Thus, the attempt[85] to describe and analyse the various factors was perceived to be essential to the enterprise of truly understanding the (in this case, Singapore) legal system. Although there will be some comparative analysis undertaken in

[83] See Phang, n 6 above, at 250–51. Cf, also, H J Lethbridge, 'Penal Policy and Crime Rates: Comments on the Hong Kong Experience,' (1972) 2 HKLJ 54, 64–68. And see, eg, the articles by Mary Kao and Bernard Downey, 'Patterns of Homicide in Hong Kong,' (1974) 4 HKLJ 5 and Stanley Yeo Meng Heong, 'Homicide in Singapore — A Study of the Incidence, Nature and Prevention of Culpable Homicide in Singapore,' (1985) 27 Mal LR 113. One useful area of research in the Hong Kong context would be to re-evaluate trial by jury in criminal cases — where the writings are not uniformly in agreement. See, generally, *Editorial*, 'Popular participation in the administration of justice,' (1973) 3 HKLJ 145; *Editorial*, 'Trial by jury,' (1974) 4 HKLJ 217; *Editorial*, 'Trial by jury,' (1984) 14 HKLJ 289 (which argues, inter alia, for a strengthening of legal institutions (including trial by jury) in the face of future developments); Peter Duff, 'The Role of the Jury in Hong Kong,' (1990) 20 HKLJ 367 (pointing out the contrast between perception and practice); and Peter Duff, Mark Findlay and Carla Howarth, 'The Hong Kong Jury: A Microcosm of Society?,' (1990) 39 ICLQ 881 (pointing out that the jury in Hong Kong is not representative of the community and that no attempt has been made to correct such an imbalance). Jury trial in Singapore has been abolished: see Andrew Phang Boon Leong, 'Jury Trial in Singapore and Malaysia: The Unmaking of a Legal Institution,' (1983) 25 Mal LR 50. The problem of localisation of the police force is another possible area of inquiry. (See also Ng-Quinn, n 79 above, on the emergence of a mixed model of police operation in Hong Kong.)

[84] The so-called modern period. See, generally, n 14 above.

[85] In Phang, n 6 above, at ch 5.

the instant part, the underlying lesson rejecting the reductionist tack of 'top-down' control (so simple, yet profound in its practical implications) should constantly be borne in mind: whilst reminding one of the limits of legislative action per se, it also provides a general reference point for the formulation of the outer boundaries beyond which the law will not only be ineffective but may also (and on the contrary) have undesired inimical effects on both governers and governed alike.

In my study of the Singapore context, I proffered three extremely broad (and related) propositions.[86] The first centred on the concept of *legitimacy* as viewed through the lenses of the general public — of the perceived moral authority of the government to enact laws and of the substance of the individual laws themselves. Secondly, the importance of locating a coincidence of interests between the general populace and the government (if any) was stressed. Thirdly, I attempted to demonstrate that the success of law and legislation (as well as other allied measures) could not, in point of fact, be separated from the wider socio-economic as well as political context. These various propositions may appear, and indeed *are*, self-evident. But whilst bandied about to the point of trivialisation, efforts have rarely (in the Singapore context, at least) been made to *demonstrate* their truth. The first step is to engage in *specifics*, in *historical as well as other particular multidisciplinary research*. The tentative results[87] of an initial step in this direction cannot, however, be satisfactorily presented within the relatively narrow compass of an article such as this. Only an extremely brief flavour can be given, if at all. The comparison with the Hong Kong context will, a fortiori, be even more unsatisfactory. However, from the perspective of comparative description and analysis, it is hoped that the albeit brief discussion that follows will point the way towards points of departure for future and much more detailed research.

Singapore[88]

I attempted the demonstration mentioned in the preceding paragraph with a consideration, first, of the political matrix, and argued that notwithstanding a fairly rigid political structure, there were, in fact, many countervailing factors which resulted in flexibility.[89]

[86] See, generally, ibid, 257–58.
[87] ibid, ch 5.
[88] See, generally, Bartholomew, n 2 above.
[89] See, generally, Phang, n 6 above, at 261–71. See also Jon S T Quah and Stella R Quah, 'The Limits of Government Intervention,' in Kernial Singh Sandhu and Paul Wheatley (eds), *Management of Success — The Moulding of Modern Singapore* (Singapore: Institute of Southeast Asian Studies, 1989) ch 5.

I then proceeded to consider the first substantive area, viz, family law.[90] The major legal innovation here was the introduction of a monogamous regime of marriage for all non-Muslims with effect from 1961. There was apparent acceptance of this reform for what I perceived to be the following reasons: that the government itself recognised the wider context; the dictates of economic pragmatism; the general change in attitudes of the population (including the impact of modernisation and Westernisation); and the fact that other countries (principally India and China) had earlier done away with polygamy. Indeed, the divorce law was further liberalised in 1980 with the introduction of the principle of 'irretrievable breakdown' of marriage, although divorce by mutual consent, whilst mooted, was thought to be too radical to implement. I argued that this development was wholly in accord with shifts in societal attitudes, as the values of the general population took on an *even more* modernistic and Westernised cast (evidenced, for example, by the increased divorce rate). However, I did caution that constant monitoring was required, and that success be not taken for granted.

Labour law was another significant area examined.[91] The prominent factor which served to explain why, in the face of (especially) the pro-*employer* legislation of 1968 (amongst other developments), there was little outcry, was, I argued, the coincidence of interests between both government and employees alike that centred on economic survival and progress. It was also pointed out that several pieces of pro-*employee* legislation had also been enacted, especially in later years. It was, however, acknowledged that a stronger case could ostensibly be made for 'top-down' control in the specific area of trade union law. But it was submitted that, on balance, such laws were accepted in the light of the perceived necessity to pursue economic pragmatism and prosperity. There was, in short, political legitimacy established between the government on the one hand and the employees on the other. I argued, however, once again, that a *balance* was required to be struck, especially with regard to the need for detecting gross inequalities in income and remedying them accordingly. Other factors, too, needed to be constantly monitored, lest success be eroded in the long term.

[90] See, generally, Phang, n 6 above, at 271–88. I shall not, in the instant article at least, be considering the rather significant developments in the sphere of family planning and population control, simply because I was unable to locate substantive materials on similar developments in Hong Kong. For an account of this area in the Singapore context, see ibid, 288–310; significant amongst the many general points is the principle of balancing, to be considered later.

[91] See, generally, ibid, 310–30.

Finally, we deal with an area for which the present Singapore government is justly famous — public housing.[92] However, it needs to be pointed out right at the outset that the bulk of the statutory law in this particular area is facilitative in nature. There are the inevitable controversial regulations, but I pointed out that there were exercised voluntary restraints on enforcement by the authorities themselves. It is also an undeniable fact, that despite the inevitable problems produced for some residents on resettlement, the population as a whole has *benefited* from the public housing programme which houses over 80 per cent of the population. I also pointed out that there was a whole host of other extra-legal factors which contributed towards the success of the public housing programme.[93] And this success has garnered an enormous quantum of political legitimacy for the government itself. Further, a Home Ownership Scheme was set up as early as 1964 in order to give each citizen a stake in the country itself, thus encouraging loyalty to the same. All told, the public housing programme has benefited *both* the people *and* the government in different ways — a coincidence of interests, with attendant enhancement of the legitimacy of the government itself.[94] But where an enterprise such as that presently considered affects such a vast majority of the population, a constant balancing is required via an equally consistent monitoring of the wider context.

It will be noticed that all the three broad themes briefly set out in the 'Introduction' to this part have been illustrated, to a greater or lesser extent, in the various specific areas of law considered. It should also be noted that success was engendered not by legislation per se but, rather, by developments in the wider societal context, some of which were indeed beyond the active control of the government of the day.

Hong Kong[95]

The thesis of the lack of 'top-down' control advanced with regard to Singapore is probably even more apparently true in the Hong Kong context where, as we have seen, government interference has been minimal — and, in fact, has only been forthcoming when perceived to be absolutely necessary. At this point, a pertinent question may be asked: is this minimal

[92] See, generally, ibid, 330–43.
[93] See ibid, 339–40.
[94] See Lee Kuan Yew, n 34 above, at 13. Cf, also, Beng-Huat Chua, 'Not Depoliticized but Ideologically Successful: the Public Housing Programme in Singapore,' (1991) 15 Int'l Jnl of Urban and Regional Research 24.
[95] See, generally, Peter Wesley-Smith, 'Legal Limitations upon the Legislative Competence of the Hong Kong Legislature,' (1981) 11 HKLJ 3; and Michael J Downey, 'The Laws of Hong Kong,' (1989) 19 HKLJ 147.

interference always desirable? There is undoubtedly a relatively large amount of inequality in an unbridled capitalist system,[96] which may, perhaps, require more than just minimal intervention. However, as I have sought to demonstrate in the preceding discussion, more than minimal intervention *cannot* be *equated* with 'top-down' coercion. But, whatever the merits (or otherwise) of the present system, it is precisely this fear of 'top-down' coercion by the PRC government after July 1, 1997 that has created a great deal of anxiety in Hong Kong itself. As we have seen, the future is uncertain, with the tendency towards brute force always remaining ominously beneath the surface of the law.[97] The danger is that the PRC government might, despite the *Basic Law*, nevertheless do a volte face. However, the following important point bears repeating: such an approach would be fatal, for it would merely initiate as well as accelerate the renting apart of the social fabric of the country. And no nation is exempt from the need to seek a balance, as I have already sought to explain with regard to the Singapore experience.

Turning to family law,[98] it is pertinent to point out that Hong Kong did, in fact, abolish concubinage and introduce a monogamous regime of marriage with effect from October 7, 1971, some ten years after similar developments had taken place in Singapore. One writer has noted that '[i]n abolishing concubinage, Hong Kong law was belatedly brought into line with other Asian countries such as China, India and Singapore.'[99] There is, however, apparently little or no mention of reactions from the general population. Would there be any difference in this regard compared to Singapore, having regard to the composition of the population (Singapore being rather less homogeneous in nature)? Would the impact of modernisation and Westernisation have been substantially the same compared to Singapore? In this respect, one must bear in mind the intense adaptability of the Hong Kong people. However, there is one clear distinction: divorce by mutual consent is still available with respect to Chinese customary marriages, albeit under statutory regulation.[1] However, even this distinction cannot be taken too far, for regard must be had to the context. The

[96] See Leung, n 21 above.

[97] See, especially, Ghai, n 49 above.

[98] For a good overview, see Leonard Pegg, 'Chinese Marriage, Concubinage and Divorce in Contemporary Hong Kong,' (1975) 5 HKLJ 4. See also the author's *Family Law in Hong Kong* (Singapore: Butterworths, 2nd ed 1986).

[99] Denis K L Chang, 'The New Law of Divorce in Hong Kong — I,' (1973) 3 HKLJ 51, 53, n 22. Part II of the article was published in (1973) 3 HKLJ 187.

[1] However, non-regulated divorce by mutual consent may still exist: see the critique by Pegg, 'Chinese Marriage, Concubinage and Divorce in Contemporary Hong Kong,' n 98 above, at 38. On general attitudes towards divorce, see Lau and Kuan, n 16 above, at 90.

population of Hong Kong is more homogeneous and, more importantly, comprises people from the same ethnic *and* dialect groups, viz, Chinese and (in the main) Cantonese, respectively. Further, divorce by mutual consent is strongly entrenched in traditional Chinese law. Preservation of what would otherwise appear to be an anomalous practice (of divorce by mutual consent) is thus explicable on this basis. The situation in Singapore, however, is quite different, if nothing else, because the society comprises a great many ethnic as well as dialect groups. This plurality renders the entire issue of divorce by mutual consent a rather more thorny one compared to Hong Kong. It is therefore submitted that the Singapore government had to move more swiftly and decisively to establish a regime of marriage that could be accepted across the board, providing for exceptions where (as in the case of the Muslims) radical controversy threatening the political and economic stability of the country might result. As already alluded to above, the situation in Hong Kong is only *apparently* untidy; it works well, having regard to the relative homogeneity of the population itself.

The fairly extreme *laissez faire* approach of the colonial government is, perhaps, most apparent in the sphere of labour law. As one experienced writer put it:[2] 'The cornerstone of labour policy in Hong Kong has been a determination to avoid tampering with the free functioning of the labour economy.' However, the same writer argues that where intervention has taken place, it has been effected without a proper understanding of the needs and aspirations of the general workforce[3] — which contrasts with Singapore, where the government is very much a part of the picture. However, such a situation of relative 'freedom' has not helped, simply because the employees lack power. Several reasons have been advanced for this lack. First, there are cultural factors where traditional ties of loyalty and a basically non-confrontational approach constitute the dominant trend, even where irregularities are perceived; the economic prosperity of recent years has merely entrenched such attitudes.[4] Further, '[c]ultural considerations in Hong Kong arguably dictate that industrial agreements not be formally committed to writing but remain the subject of gentlemen's

2 Ng Sek-hong, 'The Formulation of Labour Policy in Hong Kong,' (1983) 13 HKLJ 174, 175. See also Kevin Williams, *An Introduction to Hong Kong Employment Law* (Hong Kong: Oxford University Press, 1990) 3.

3 Ng, n 2 above, esp at 180, 181 and 186.

4 See Joe England, *Industrial Relations and Law in Hong Kong* (Hong Kong: Oxford University Press, 2nd ed 1989) 39–45. The learned author also refers to the 'refugee mentality' of workers: ibid, 45–48.

agreements'[5] — a situation which works against the employee. Indeed, it is generally agreed that power is concentrated in the hands of the employers, with mutual trust between unions and management existing (if at all) at an extremely low level.[6] This explains, also, the virtual absence of collective bargaining,[7] which is, on the contrary, the mainstay of the Singapore industrial relations process. The trade unions themselves are weak and fragmented, not least because of a prior preoccupation with politics as opposed to workers' welfare.[8] England observes that unions attempt, if at all, to meet workers' needs *outside* the workplace instead.[9] In so far as trade union involvement in politics is concerned, it is interesting to note the contrast with the Singapore situation, where the struggle between moderate and leftist unions was symbolic as well as constitutive of the struggle between the non-communists and the communists for political power — a struggle which was ultimately won by the former. The situation in Hong Kong is entirely different: with the advent of 1997, there is little choice but to subscribe to communist principles, the only question — to be briefly considered later — being whether the PRC government will, in accordance with the *Joint Declaration* and the *Basic Law*, allow essentially Western legal principles to continue: a concern that, in fact, can be generalised with regard to all other areas of the law as well.

It is only when things get really out of hand that the colonial government finally steps in. The major legislative reforms in favour of employees, for example, only came about after the 1966/67 disturbances.[10]

Having regard to the foregoing discussion, it is not surprising that there is a relatively low level of industrial conflict, as in Singapore, but for wholly different reasons. England summarizes the reasons well:[11]

[5] Ng Sek-hong, 'Strike at the Mass Transit Railway Corporation: Its Implications,' (1985) 15 HKLJ 76, 85.

[6] See, generally, ibid, esp 80–84.

[7] See England, n 4, p 26 above, at 145–46.

[8] England, n 4, p 26 above, at 1–2 and 12–13. See also Ng, n 2, p 26 above, esp at 184; and, by the same author, 'Labour,' in Cheng (ed), *Hong Kong in Transition*, n 2, p 2 above, at 268; and Williams, n 2, p 26 above, at 4 and 97–98. Political activism is presently relatively low. Indeed, instances of co-operation have occurred amongst the unions themselves: see H A Turner, Patricia Fosh and Ng Sek-hong, *Between Two Societies: Hong Kong Labour in Transition* (Hong Kong: Centre of Asian Studies, University of Hong Kong, 1991) 49–50 (see also ibid, 58–59 (section entitled 'The Decline in Political Unionism')). Trade unions in Hong Kong were not always so quiescent: see England, n 4, p 26 above, at ch 7.

[9] England, n 4, p 26 above, at 145–46.

[10] See, generally, ibid, 14–16; Williams, n 2, p 26 above, at 4–5; and Ng Sek-hong, 'Labour,' n 8 above, at 285–89. Such developments, whilst welcome, were not, however, perceived as radical: see, eg, Turner, Fosh and Ng, n 8 above, at 102 and 106.

[11] England, n 4, p 26 above, at 216, 218.

'[There was a] weak and dispersed union organization, a multiplicity of small firms, tight labour-market conditions which promote industrial mobility between jobs, and the pre-empting of wage demands by employers in the context of rapid economic growth. Also significant has been the influence upon the Federation of Trade Unions (FTU)[12] of events in China and the actions of government in dealing with areas of conflict.'

What of the future? Will there be more government intervention after the PRC assumes sovereignty over Hong Kong in 1997? The answers to these questions really depend upon the general approach that will be adopted by the PRC government — although it should be noted that the Hong Kong Special Administrative Region will itself exercise (apart from foreign and defence affairs) a high degree of autonomy.[13] In the meantime, it has been suggested that the British government ought to take the initiative and further develop Hong Kong's labour law in all its various aspects in as systematic a fashion as possible.[14] Indeed, the recent introduction of trade unionists as official representatives of labour in the Legislative Council has been hailed by at least one writer as a step in the right direction; he states that '[t]he union movement in Hong Kong has for the first time achieved some status and public presence.'[15] It would, however, appear that the best course of action now is to initiate further *systematic* changes, as just suggested. That some government intervention is necessary is evidenced by, for example, the fact that there has been virtually no negative critique of steps taken in 1968 to improve the lot of the average employee. Such a move would also lend some stability to the labour force in the transition towards 1997.

The public housing programme in Hong Kong cannot be considered a failure by any stretch of the imagination, especially if one considers the fact that it has been built up through the efforts of a colonial government. Indeed, even allowing for the difference in timeframes and the then need in Hong Kong to improve the legitimacy of the government, the contrast with colonial efforts in Singapore is great indeed. To be sure, the programme is not as successful as in Singapore in so far as quantum is

[12] Which is communist in orientation.

[13] See, in particular, para 3(2) and s I of Annex 1 of the *Joint Declaration* and arts 2, 12, 13 and 14 of the *Basic Law*.

[14] Williams, n 2, p 26 above, at 13. Cf, also, Turner, Fosh and Ng, n 8, p 27 above, at 107 ff.

[15] England, n 4, p 26 above, at 19. See also, generally, ibid, chs 7 and 8. But this is a view that is not universally shared: see Ng, 'Labour,' n 8, p 27 above, esp at 283–85, where the learned author expresses concern about the possibility of *over*-politicisation to the neglect of workers' welfare.

concerned (at present, approximately 40 per cent of the population of Hong Kong are living in public housing[16]), but two writers have argued that it has been more successful in so far as equity considerations are concerned.[17] However, it has been argued that the requirement that the public housing programme be 'self-financing' has tended to detract from the otherwise bright prospects of the programme.[18] It must, however, be remembered that the public housing programme in Hong Kong really 'took off' only from 1972 when the 'Ten Year Housing Programme' (which effectively commenced from 1973) was announced. Further, the Home Ownership Scheme was introduced only in 1976.[19] It is suggested that, having regard to the Singapore context, the Home Ownership Scheme in Hong Kong should be further developed, especially in the light of 1997 and also taking into account the present high property prices. It appears, however, that, at present, renting is still very popular.[20] The public housing programme, generally, should, of course, continue to be developed. All this would aid in building up national unity at a time when it is really needed. The Singapore experience merely reinforces this suggestion. Indeed, Professor Scott has pointed to the fact that the public housing programme has enhanced the political legitimacy of the colonial government, although such gains have been eroded by events centring around the PRC government's takeover in 1997.[21]

It should also be noted that in the sphere of public housing at least, there does not appear to be a 'top-down' coercive approach; indeed, one writer states that the law's role is 'primarily reactive.'[22] As is the case with

[16] See Ho Shuet Ying, 'Public Housing,' in Cheng (ed), *Hong Kong in Transition*, n 2, p 2 above, at 341, Table 12.3. 'The main problem is still the excess of demand over supply of public housing': ibid, 346.

[17] See Yue-man Yeung and D W Drakakis-Smith, 'Public Housing in the City States of Hong Kong and Singapore,' in John L Taylor and David G Williams (eds), *Urban Planning Practice in Developing Countries* (New York, NY: Pergamon Press, 1982) 230–31. This is an informative (albeit somewhat dated) comparative account. See also by the same authors, *Public Housing in the City-States of Hong Kong and Singapore* (Development Studies Centre, Australian National University, Occasional Paper No 8, 1977); and 'Comparative Perspectives on Public Housing in Singapore and Hong Kong,' (1974) 14 Asian Survey 763; and L H Wang and Anthony G O Yeh, 'Public Housing-Led New Town Development — Hong Kong and Singapore,' (1987) 9 Third World Planning Rev 41.

[18] Ho, n 16 above, at 339–42. See also ibid, 334–36, where the author points out that the primary philosophy of the colonial government was really land development, and ibid, 336–37, where the author points out that there was no direct subsidy in the first years of the public housing programme.

[19] ibid, 340.

[20] See Malcolm Merry, 'Housing' in Wacks (ed), *The Law in Hong Kong, 1969–1989*, n 74 above, at 362. This could also be due to the lack of adequate financing facilities which exist in Singapore in the form of (in the main) the Central Provident Fund scheme.

[21] See, generally, Scott, n 11, p 3 above, at 153–58 and (with regard to 1997) 171 ff.

[22] Merry, n 20 above, at 360.

Singapore, the real success of the programme is heavily dependent on extra-legal factors, not least of which is a commitment towards the development and constant improvement of the public housing programme.[23]

Before concluding the discussion in this part, it must be observed that even this very cursory comparison of Hong Kong with Singapore has revealed, once again, that the broad themes mentioned in the 'Introduction' to this part have been illustrated by the specific factors in the broader societal context.

V CONCLUSION

This article constitutes a very rough and ready preliminary comparative analysis of the Hong Kong and Singapore legal systems. It cannot, therefore, provide even remotely close to definitive answers. As expected, there have been both convergences and divergences. But, as mentioned at the outset, the process is one of *interactive* learning. Indeed, the need for this was recently recognised in the economic sphere in the context of 'twinning.'[24] Quite apart from specific possibilities that emerge from the discussion above, it is suggested that both countries can, on the very broadest level, learn from each other. Singapore should move towards a more flexible system and this appears to be happening even now, with, amongst other things, a desire on the part of the government to relax the more stringent rules and regulations. For Hong Kong, however, a tightening-up of the hitherto *laissez faire* system (especially after July 1, 1997) appears inevitable. Law will inevitably play a key role in the continued development and vibrancy of Hong Kong, and the appropriate modifications will have to be made to various aspects of its legal system. It is hoped that both countries will engage forthwith in both general as well as more specific exchanges and discourse: despite, and perhaps because of, their common English legal heritage.

[23] The previous Governor of Hong Kong, Sir David Wilson, has in fact stated that Hong Kong hoped to send its civil servants to Singapore to study, inter alia, the latter's public housing programme: see the *Straits Times*, Nov 20, 1991, 4.

[24] This refers to an intimate collaboration for the purpose of promoting (here) the mutual economic growth of both Hong Kong and Singapore. A Singapore–Hong Kong 'Globalisation Through Twinning' Conference was held in Hong Kong in Sept 1991 as a follow-up to a similar conference held in Singapore the previous year.