

Custom, Land and Livelihood in Rural South China

The Traditional Land Law of Hong Kong's
New Territories, 1750–1950

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Introduction

The Traditional New Territories, Land and Society

Preamble: Words and Terms

A problem which arose in preparing this book requires discussion right at the start. The problem is that the book is written in English. English has a rich legal vocabulary, but that vocabulary is a Common Law vocabulary. Furthermore, as time has passed and society has become more complex, that Common Law vocabulary has become ever more precise and exact. The Customary Land Law of the New Territories of Hong Kong was not in any way based on the Common Law, and the society in which it grew up and flourished was a simple and unsophisticated one. The only words available in English for discussing the traditional Land Law, however, are words with precise Common Law meanings, which do not fit the local Customary Law concepts exactly.

The Customary Land Law of the New Territories grew up in a simple rural area of subsistence rice-farmers, a society without lawyers or legal textbooks, and almost entirely without formal litigation. Its concepts thus lack the subtlety of sophisticated modern legal systems, since they grew up in a far simpler society. The English words used to analyse this traditional Land Law have therefore to be read with broader meanings than in a modern Common Law situation.

“Mortgage”, “foreclosure”, “sale” (and “absolute sale”), “landowner” (and “ownership”), “trust”, “deed”, “interest” (in land), “land tax”, “warranty”, “heir”, (and “next heir”), and many other terms are thus used here with meanings which differ, at least in detail, from the normal meanings as used in modern legal English. The differences are, to a large degree, immaterial in the context of discussions of broad principles, but difficulties will arise if readers attempt to press the terms towards their exact modern Common Law meanings.

Many of these differences are discussed below, to clarify the meaning the terms bear in this book, but the indulgence of readers is sought in advance for any terminological difficulties which they may encounter.

The Importance of the Study of the Customary Land Law

For the villagers of the traditional society of the New Territories of Hong Kong, there was nothing more important than the ownership and control of rice-land. Rice-land adequately supplied by water gave the family owning it access to rice, the staff of life. Villagers were overwhelmingly subsistence farmers. There were shops in the local market towns where rice could be bought, but these were designed essentially to serve the artisans of the market towns, the fishermen, and others with no access to rice-land. They dealt in only relatively small quantities of rice: for most villagers, either rice was grown on the family rice-land, or the family went hungry. With rice-land and water, the family would survive; without it, survival was, at the least, problematic.

The ownership and control of rice-land required there to be a system of Land Law. It was essential that everyone knew what rice-land was owned by each villager family, under what legal conditions, and who the owner of every tiny patch of rice-land was. Disputes about ownership, inheritance, partition, mortgage, sale, or rental; problems as to the payment of taxes due on the land, or about local levies; questions about rights to dispose of the land, or the rights of heirs – all these and much else required there to be a workable system of Land Law known to everyone by which the problems could be adjudicated and resolved.

The Chinese state had had written codes of Land Law with, by the nineteenth century, a history of well over a thousand years. These codes of Land Law were, however, pre-modern, underpinned by concepts of law which differed significantly from modern ideas. In particular, they did not systematically articulate the land rights of individuals in any given circumstances, although they did lay down criminal penalties for certain infringements. Furthermore, over much of China, this Imperial Land Law was not, in practice, enforced, or enforced only partially, but instead systems of local traditional and Customary Land Law were in place, differing from district to district in China, although often with only slight variations.

To understand the life of the traditional villagers, it is essential to understand the Land Law under which they owned and controlled land, the most vital of all resources. This requires studies to be undertaken area by area, region by region, of the local Customary Land Law, so that a fuller understanding can be had of the totality of the rules by which villagers lived and operated.

This book attempts to sketch the Customary Land Law of the New Territories by an analysis of a little more than 100 traditional land deeds, dating from the mid-eighteenth to the mid-twentieth century.¹ The deeds used are transcribed and

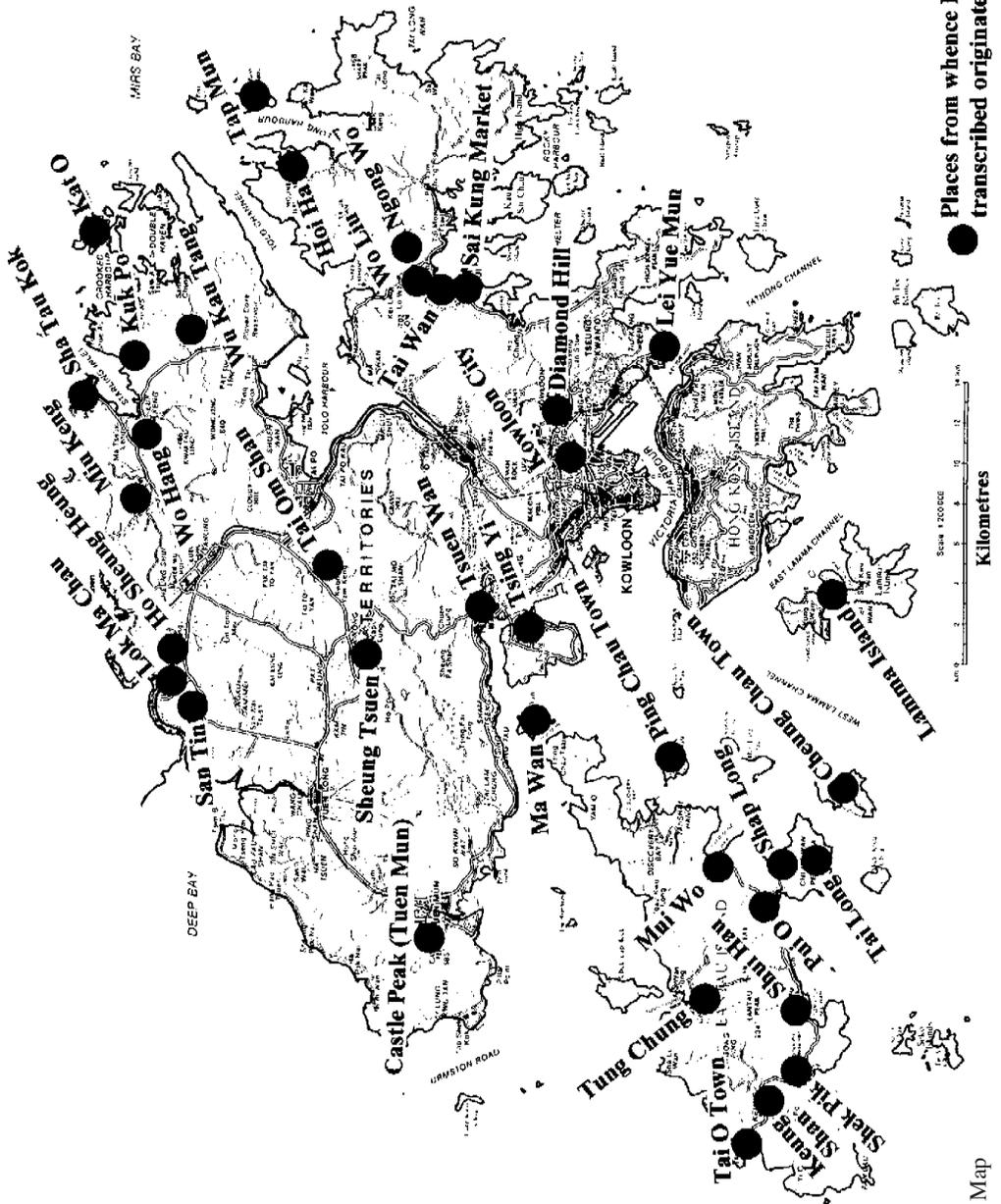
translated as Part 3 of the book. The deeds are a fertile source of information on the attitudes and legal concepts of the men who drew them up. An analysis of the information contained in the deeds is in Part 2 of the book. Part 1 of the book is an overview of the Imperial and Customary Land Laws. It is hoped that this study will provide an initial understanding of the way in which New Territories rice-land was owned, controlled, alienated, and inherited, and so clarify the lives and attitudes of the villagers who lived by this law.

Because the book is essentially a study of surviving customary land deeds, it concentrates on those aspects of the Customary Land Law which are illuminated by the deeds, especially the customary rules and practices on land transfers and alienation.

The Customary Land Law was never an absolutely hard and fast system, or an inviolable or rigid code. It was the sum of the rules by which villagers managed and controlled land, although those rules were well understood and implemented throughout the area. Moreover, as with every other aspect of village life in the area, there were differences from village to village. In some, there had been no sales of land to outsiders at all during the 150 or 200 years before the takeover of the New Territories by the Hong Kong Government: in such villages, the customary rules on alienation of land might not have been a matter of universal and detailed knowledge and understanding. In other villages, sales were sufficiently frequent for the rules to be well understood. There were also variations between how the rich and powerful saw the Customary Land Law and how the poor saw it. The customary rules were rarely considered by any formal Court of Law (but see Part 3, Deeds 1–4), because of the great unwillingness of the villagers to go to law; as a result, few if any legal rulings existed to stabilise or formalise the system, which was, therefore, in theory, open to variation.

However, despite all this, variations in how the customary rules were put into practice were minor. In general, differences and variations cannot be discerned in the documents as we have them.² The Customary Land Law was thus to a very large extent a universally accepted and understood code of rules in place over the whole of the area, despite marginal differences between villages. The customary land deeds show a great uniformity of approach and concept throughout the area from the mid-eighteenth century to the 1940s, thus presupposing a similarly generally uniform concept of Customary Land Law.

Village scholars were educated in similar ways in all the local villages. They met regularly and exchanged ideas and copies of books and documents, including notebooks of exemplars of land deeds. They would have shared a similar attitude towards what was “the right way of doing things”. It was the village scholars who



Map 1
Location Map

● Places from whence Deeds transcribed originated

drafted deeds. Their input into land alienation was, therefore, strong. The influence of village scholars would thus have been a powerful factor towards standardisation of the local Customary Land Law.

The customary rules and practices disclosed and reflected by the local New Territories customary land deeds were very ancient. The Land Law underlying the Tang and Sung land deeds as discussed by Valerie Hansen show rules and practices which mirror closely the rules and practices in place in the New Territories a thousand years later. This long tradition would also have been a powerful stimulus to uniformity.³

Taking all this into account, therefore, the New Territories Customary Land Law was very conservative and slow to change. It was inclined towards uniformity. Despite marginal differences, it was not a mere random set of practices. Even though it was not a rigid or inviolable code, it is reasonable, nonetheless, to call the legal system in place in the traditional New Territories the Customary Land Law.

The Traditional New Territories: Government and History

Hong Kong Island had been made a British possession after the First Anglo-Chinese War (1840–42); the Kowloon Peninsula was added after the Second Anglo-Chinese War (1858–60). Concern about the defensibility of the Colony of Hong Kong led the British to seek a lease from the Chinese Government of a large area on the landward side of the old Colony; this was agreed in 1898. The leased area was taken over in 1899. This leased territory became known as the New Territories.

The area which became Hong Kong between 1841 and 1899 comprised about half of one single Chinese county (縣), the County of San On (新安縣, Xinan: from the early twentieth century renamed Po On, 寶安, Baoan). San On was one of more than a dozen counties under the supervision of the Prefect of Canton (Guangzhou, 廣州), who in turn was one of more than a dozen prefects under the supervision of the Governor of Kwangtung (廣東, Guangdong) and the Viceroy of the Double Kwang. The area which was to become the New Territories was far from Canton, relatively poor, and mountainous. Government interest in this remote area had been low before 1899: even in the later nineteenth century, control by the San On Magistrate was light.

In 1898, the New Territories were thus cut out from this ancient County of San On. At that date, the County Magistrate (知縣) had his yamen (衙門, official headquarters) at Nam Tau (Nantou, 南頭), outside the New Territories, to the northwest, on the shore of the Pearl River.⁴ The San On Magistrate had four assistants. The senior of these, with the title of Deputy Magistrate (縣丞), had his yamen at

Tai Pang (Dapeng, 大鵬) to the east, also well outside the New Territories, close to the shore of Bias Bay (大鵬灣). The second assistant, with the title of Assistant Magistrate (巡檢) had his yamen at Fuk Wing (Fuyong, 福永), a good way outside the New Territories, to the north, also on the Pearl River shore. The third assistant (also with the title Assistant Magistrate 巡檢) had his yamen at Kowloon City (九龍城) in 1898, in the centre of the south of the New Territories area.⁵ The fourth Assistant Magistrate, with the title of Chief of Police (典史), had his yamen in Nam Tau, close to the Magistrate's yamen. There were also a Director of Education and his Deputy (教諭 and 訓導), with yamen in Nam Tau. The Land Tax Registry, the Land Tax Archives, and the Land Tax Accounting Office of the County were all centralised in the Magistrate's yamen at Nam Tau. The Magistrate had a staff of clerks to administer this vital part of his duties.

Despite this structure of offices, however, the Magistrate had only a small staff to help him administer his duties. As well as the Land Tax Registry clerks, he had a few other clerks to keep his files, take his orders to the villages, or to do anything else which required action by the Magistracy outside the yamen. The clerks (吏), however, numbered only ten, including the seven "Document Clerks" (典史) handling the land tax, although it is possible that the Magistrate employed others extra to the establishment. There were also small groups of "runners" (差役, or simply 差), men who could run urgent messages for the Magistrate. These runners also acted as police (see Deeds 3 and 4). Finally, there was a small group of "Treasury Guards" (卒), soldiers who kept order within the yamen, managed its small jail, and who guarded the Treasury, where silver paid in tax was stored, and then protected it on its long journey to the Provincial Treasury in Canton. The Magistrate had an establishment of eighty-three runners and Treasury Guards. He also had an establishment of twenty-seven "Courier Soldiers" (舖兵) responsible for the Government Postal Service, which ran routes east from Nam Tau to Tai Pang through Sham Chun (Shenzhen, 深圳), with a branch running south from Sham Chun to Kowloon City (九龍城), and another north from Nam Tau to Tung Kwun (Dongguan, 東莞), where the route connected with another route, from Tung Kwun to Canton. Each of the Assistant Magistrates had only two Treasury Guards, one Clerk, and a couple of runners under his control: the clerks attached to these Assistant Magistrates, and to the Director of Studies and his Deputy, were extra to the Magistrate's establishment. However, even if all the staff of the Magistracy were counted together, down to the lowest grade, in all seven offices and sub-offices, it is doubtful if the San On Magistrate had as many as 150 people he could call on for assistance, and probably substantially fewer than that.

The area which became the New Territories was all taken in 1898 from the area previously under the administration of the Kowloon City Assistant Magistrate, and comprised about ninety per cent of that administrative sub-district.

Apart from the Treasury Guards and Courier Soldiers, who were at the Magistrate's command, most of the military forces in the county were under the control of a Colonel (參將) who answered to the Provincial Military Headquarters in Canton. The Colonel was an officer of the same rank as the Magistrate, and could not be ordered to do anything by the Magistrate. In 1898, there were two battalions (營, these battalions were often called "Wings" 翼) of soldiers in the county, headquartered at Nam Tau (the "Left Wing") and Kowloon City (the "Right Wing"), with the County Military Headquarters being in Kowloon City: the Nam Tau Battalion was under the command of a Major (遊擊).⁶ Many of the soldiers at the Colonel's command were spread out through a network of small coastal defence forts which guarded the various anchorages along the coast. Originally, a network of "war-junks" (哨船) had patrolled the seas between the coastal defence forts to put down pirates, but these had, it would seem, been mostly destroyed in 1858 in a battle with the British Royal Navy at Tung Chung (東涌) on Lantau Island, and seem never to have been replaced. The local Colonel had a theoretical establishment of 1,800 soldiers (1,000 under the Nam Tau Wing and 800 under the Kowloon City Wing), but, in the nineteenth century, many of the county military posts were unfilled: it seems likely that the local Colonel had only a few hundred soldiers actually under his command by 1898.⁷ The Colonel was also responsible for supervising and training the local militia, or "trained bands" (憲團練). These were village volunteer groups which were designed to keep order within the village areas behind the coast, and which received basic training from the military.

Given these very small civilian and military establishments, the Magistrate and the Colonel were never able to provide "government in depth" within San On County. The system assumed that the people would rarely come to the Magistracy to seek help or to have cases judged in his Court, thus leaving the Magistrate to concentrate on his essential duties of collecting the land tax and ensuring peace and quiet by liaising with the gentry and local leaders of the area.

The villagers were fiercely independent, managing their own and their village's affairs themselves. They were, indeed, even willing to take up arms to defend themselves from outside pressure: inter-village wars and armed conflict were common, especially in the 1860s and 1870s, when the Imperial Government was at a low level of effectiveness.⁸ Their robust self-confidence, indeed, strongly impressed Hong Kong Government officials when they took the area over from 1899.⁹

The area had begun to be settled by Chinese farmers from the late Southern Sung (twelfth and thirteenth centuries). There were a number of ancient and wealthy villages in the west and north of the New Territories area. These villages, mostly founded in the Southern Sung, and so the oldest settlements in the area, not surprisingly occupied the best and most fertile land: they were proud of their antiquity and the wealth and power it brought them. These ancient villages were still able at the end of the nineteenth century to exert a good deal of pressure over their immediate neighbours (they called them their “tenants and allies”, 朋佃).

However, in the centre and east of the area, the dominant political structure was by that time the inter-village anti-bandit league (*yeuk*, 約), by which the elders of a group of villages would swear an oath to unite their strength to fend off unwelcome outside interference in their affairs, especially from the ancient, wealthy villages around them. In the areas where the dominant political structure was the *yeuk*, landlords or other wealthy outsiders had very little practical power by the later nineteenth century.¹⁰

In the mid-seventeenth century, the history of the area had been brutally shattered by the Coastal Evacuation (1661–69). This was an attempt by the fledgling Ch’ing Government to deal with the problem of Ming remnants on Taiwan under Koxinga, who had refused to submit to the Ch’ing when the rest of China did in 1641.¹¹ In 1661, the Ch’ing Government attempted to deny Koxinga and his troops access to potentially sympathetic areas along the Mainland coast, by driving everyone living near the coast inland, so that the forces of Koxinga could not get any succour from them. Nothing was done, however, to feed or house those driven inland: vast numbers died of starvation in consequence.

The first San On Magistrate after the Evacuation (Lei Ho-shing, 李可成, Li Kecheng) stated that, of the population of the county, “at least half died” in the Evacuation.¹² He encouraged newcomers to settle in the area, to take up land where no one had come back from the Evacuation to reclaim their property, or else to take up tenancies where the numbers of returnees were too small to till the land effectively. While many of the newcomers were Punti (本地, “Cantonese-speakers”), it was during the repopulation of the area after the Evacuation that the first Hakka (客家) seem to have come into the New Territories. By the eighteenth century, over half the population, especially in the centre and east of the area, were Hakka. It was at this period, indeed, that the centre and east of the area was first fully settled.

The consequences of all these changes were very great. The newcomers, both Hakka and Punti, were tough and self-reliant. It was their descendants, together with those older-established, smaller Punti villages which had been able to remain

free of “tenant and ally” subservience to the ancient and wealthy clans, who established the *yeuk* system, mostly in the early and middle nineteenth century, which provided the basic structure of the society present in 1899.

Before 1899, arable land was traditionally considered to have two landholders, one (the *tei pei*, 地皮, “skin of the land” or “topsoil landholder”) with the right to till the soil and to take the produce, the other (the *tei kwat*, 地骨, “bones of the land”, or “subsoil landholder”) with the right to take a rent-charge from the land.¹³ The *tei kwat* landholder was responsible for paying the land tax due from the land, if any. Both rights were hereditary and perpetual. Both could be sold or mortgaged.

The Hong Kong Government insisted that all the cultivators should be given identical rights to their land, that they should all equally pay the new land tax (“Crown Rent”) at the same standard rates, and that they should not pay anything to anyone claiming to be the *tei kwat* landholder.¹⁴ Only tenancies which were genuinely tenancies-at-will or formal tenancies for a term of years were to be countenanced for the future, but no perpetual tenancies.¹⁵ The Hong Kong Government instituted this land reform not because it wanted to introduce any new or revolutionary system of landholding, but because it felt that, by making these changes, it was merely enforcing the norms of the Imperial Chinese Land Law, which they felt ought to have been in place before their administration came into being.¹⁶ Nonetheless, the changes were far-reaching, with important social and cultural implications within the area.

This land reform sharply weakened the ancient clans of the richer Punti villages (which had held the *tei kwat* rights to most of the New Territories) and strengthened the self-confidence and self-reliance of the villagers who had previously been *tei pei* landholders, and, as such, the perpetual customary tenants of the wealthier clans.

Throughout the nineteenth century, the tenant villages had been slowly strengthening their social, economic, and political position in the area as against the ancient Punti clans. The Hakka villages (essentially all *tei pei* clans) had thus campaigned for a long time to be allowed to sit the Imperial Examinations in San On County alongside their Punti neighbours (their *tei kwat* landlords). Their victory in this regard in 1802 (see further below) marked the start of a long string of successes for the minor families of the county.

The Punti elders (essentially all from the ancient Punti villages) had long had an organisation within the eastern half of the county (the Tung Lo, 東路, “Eastern Roads”) called the Tung Ping Kuk (東平局, “Council for Peace in the East”).¹⁷ This Council, together with the Council of the Graduates (all of them, before 1802, being Punti), was one of the pivotal organisations in the county. These two

Councils were the normal bodies the Magistrate would have gone to for advice. Probably from about 1800, the Hakka elders founded a rival organisation, the Tung Wo Kuk (東和局, also meaning “Council for Peace in the East”), and demanded that the Magistrate seek their advice, in addition to that of the Punti elders.¹⁸

New markets were founded in the nineteenth century, in most cases by groups of minor families seeking to break the hold exercised over them by the ancient Punti families who owned and dominated the older markets as well as holding the local *tei kwat* rights – examples include the new markets at Sha Tau Kok (沙頭角), founded about 1800, and Tai Po (大埔), founded in 1892, after over a hundred years of pressure.¹⁹ These two new markets were founded in despite of the ancient Punti clans of the Cheungs (張) of Sham Chun (Shenzhen, 深圳), and the Tangs (鄧) of Tai Po Tau (大埔頭) respectively.²⁰

More importantly than any of these signs of changing times, however, was the establishment by the small and weaker villages of oath-sworn, inter-village, mutual-aid alliances, or *yeuk* (約). The successful establishment of a *yeuk* usually meant that the older *tei kwat* landholder lost most, or all, of its influence. The establishment of a *yeuk* thus sometimes implied the ancient *tei kwat* clan being reduced to the bare collection of rent-charges, without the retention of any real social influence. In some places, they even lost the capacity to collect any rent-charge at all. The willingness of the members of a *yeuk* to go to war to ensure that they could establish or keep their independence from the ancient Punti clans helped in this development. Many of the inter-village wars in the area in the later nineteenth century were between ancient *tei kwat* landholders and associations of their tenants: most ended in victory for the tenants.

By the end of the nineteenth century, when the Hong Kong Government took over the New Territories, *yeuk* associations were the dominant social organisation in the centre and east, in what are today the districts of Sai Kung (西貢), Sha Tin (沙田), and Tsuen Wan (荃灣), and in the Sha Tau Kok and Ta Kwu Ling (打鼓嶺) areas of Northern District.²¹ Much the same had been true of Tai Po District since the successful establishment of the new market there in 1892. The ancient Punti *tei kwat* clans were able to continue to dominate the smaller families around them, whether politically or socially, mostly only in the Islands,²² in the present-day Yuen Long District, and in the western part of Northern District.

In 1899, a number of the ancient Punti clans rose up in armed opposition to the takeover of the New Territories. The resulting war (“The Six-Day War”, as the villagers called it) showed the limitations of their power.²³ They were able to bring out most of the manpower of the present-day Yuen Long District, but were able to get

only very little support from the areas which were by then dominated by the *yeuk*. After the war was brought to its inevitable conclusion (at the cost of five hundred villagers dead), the ancient Punti clans lost a good deal of influence: their tenants immediately petitioned the new authorities to grant them independence from their erstwhile masters.

By 1899, therefore, the trend towards the loss of position by the ancient *tei kwat* landholder clans and the increase in the social and political position, and the resultant self-confidence, of the smaller *tei pei* villages had already gone a long way. Nonetheless, the refusal to allow the payment of any rent-charge to the ancient clans still had a major effect: the ancient Punti clans thereafter lost what remaining influence and prestige they still had other than the (far from insignificant) position their wealth gave them. The land reform was a revolutionary change, even if the Hong Kong authorities never intended it to be so.

After the takeover of the New Territories in 1899, the villagers found themselves much closer to a more effective government than before. The new District Offices had more staff, and were each responsible for a much smaller area than the old official yamen. There were far more police, and the army, too, was present in greater numbers than before. Furthermore, the new roads made it easier for officials to visit the villages. This much more efficient and ever-present administration was one of the major changes introduced by the new government.

The Traditional New Territories: Society and Demography

The society of the New Territories during the period when the traditional Land Law was in force – that is, before the takeover of the area by the Hong Kong Government in 1899, and, with some modifications, between 1899 and the 1950s – was not a highly sophisticated one.

The area was extremely mountainous, especially in the centre and east, and in the Islands. The New Territories comprised 240,640 acres, but, in 1905, only 43,673 acres were occupied by houses, other buildings, and cultivated land. The remaining 196,967 acres, or seventy-two per cent of the whole, was waste, mountain, and marsh.²⁴ Since at least half the arable land lay in the more fertile western and north-western plains, which occupied at most a quarter of the whole area, the remaining part of the New Territories cannot have had more than about fourteen per cent of its land surface actually occupied by houses or tilled land. Most of the area which became the New Territories in 1898 was, therefore, wild. Much of it was rocky, grass-covered hillside, with patches of dense woodland in the steep

ravines through which the mountain streams passed. In some areas, more extensive stretches of forest still survived in 1898, despite centuries of fuel-cutting. In the far north-west of the area, there were extensive marshes along the coast, full of egrets and duck. Tiger, deer, and wild boar were common. Many of the larger villages kept packs of hunting dogs and hunted game – the local markets were well known for the sale of game, in particular wild boar and deer in Kowloon City (九龍城) and Tai Po (大埔), and wild duck, for which Yuen Long (元朗) was especially famous. Things had changed only a little by 1950, except in the immediate vicinity of the City.²⁵

The larger Hong Kong area had few substantial towns in 1900. The largest of the landward towns were Nam Tau, the county capital, and Sham Chun (Shenzhen, 深圳). Both lay outside the New Territories area, Nam Tau some miles to the north-west, and Sham Chun immediately north of the new border, in the centre of the most fertile stretch of land in the county, the Sham Chun River plain. Of the fishing ports, the largest was Cheung Chau (長洲) within the New Territories. None of these towns were very large: Cheung Chau had a total population of about 7,600 in 1911; Sham Chun and Nam Tau occupied much the same area as Cheung Chau, and must have had about the same population. Tai O (大澳), the second largest fishing port in the New Territories, also had a total population of about 7,600 in 1911, and was thus much the same size as Cheung Chau.²⁶ Kowloon City, the largest of the landward market towns in the New Territories, was only about half the size of Cheung Chau. There were half a dozen other market towns within the New Territories, each with about fifty to 100 shops,²⁷ and resident populations of less than a thousand: the largest were Tai Po and Yuen Long.²⁸ These small urban centres provided all the basic marketing services needed by the villages, but they were in no way sophisticated urban centres. By 1950, the major New Territories market towns (Cheung Chau, Tai O, Yuen Long, and Tai Po) had grown substantially, although they were still no more than rural market towns, providing basic services to the surrounding villages. Most were still quite small, with between three and six streets of shops. Kowloon City and Sham Shui Po (深水埗), which were essentially still rural market towns in 1898, had been swallowed up in the urban area by 1950.

For any higher-level metropolitan services, villagers would, before 1841, have had to make the seven-day journey to Canton (廣州, Guangzhou), the prefectural and provincial capital, but very few ever made this arduous trip. After 1841, with the foundation of the great port-city of Hong Kong, a major and self-consciously sophisticated and modern city grew up much closer, within a day's journey.

Villagers made the trip into the new city more frequently than their forefathers had made their way to Canton, but still only relatively rarely. After the 1870s, when Yaumatei (油麻地), in Kowloon, developed as part of this modern metropolis, villagers made their way there, too. Contact with the City, especially from the central part of the Mainland New Territories, became steadily more frequent after the Kowloon-Canton Railway was opened (1909), and the Tai Po and Castle Peak Roads were built (motor-buses began to run along them from 1919).²⁹ However, some parts of the New Territories (especially Sai Kung, 西貢, and the Islands, 離島), came into close and easy contact with the City only after the end of the Japanese Occupation in 1945.

Within the New Territories there were some 670 villages, mostly small, with populations typically of between about thirty-five and a few hundred individuals.³⁰ The villages were mostly clan villages.³¹ Many were single-clan villages, in which all the male residents believed themselves to be descended from one single founding ancestor (太公 or 大太公).³² Other villages had populations descended from a small group of closely related founders – two brothers in many cases, or three cousins. Yet others had residents of three, four, or up to a dozen surnames or so, but were still clan villages. Many of these multi-surname villages had been founded by small groups of friends who had settled there together; others had at some date allowed newcomer families to settle among the older villagers. These multi-surname villages were, nonetheless, in 1898, seen as clan villages since all the residents were descended from one or other of the founding fathers, either one of the original clan founders or a subsequent settler clan founder. With the exception of Tsuen Wan (荃灣), the suburban area close to the City, the market towns, and a scatter of small new suburban settlements along the railway and roads, the overwhelming majority of the population, even in the 1950s, were still from the same clans as in 1898.

The villages, in both 1899 and 1950, mostly consisted of short terraces of single-storeyed, lime-washed brick houses, usually built on stone foundations, and set with their backs to the mountains, with dense woods of *fung shui* (風水, fengshui, “geomancy”) significance between them and the hill-slopes, and facing their fields in front. Such villages sat very beautifully in the landscape: rows of simple houses, with the bamboos and banyans of the *fung shui* wood behind, with the mountains in the background, and facing the brilliant green of the rice-fields in front.

These village houses were small. Fir-poles for rafters were imported into the local market towns from villages in China which specialised in growing them. These were imported at a standard length of about fourteen feet, which made for a

standard width for the village house of about thirteen feet. Houses were built about twice as long as they were wide, to a total area of about 340 square feet. They usually consisted of a single main room, open to the rafters and tiles above. The back third of this main room was partitioned off to form a small bedroom for the head of the household and his wife, with a cockloft above, accessed by a ladder: the family grain would be stored in the cockloft after the harvest, and the sons of the family would sleep here. It was felt to be improper for teenage girls to sleep in the same house as their brothers and father: all the unmarried teenage girls of a village would usually sleep together in a house supervised by some respected widow of the village (the 媽屋, Ma Uk, or “Granny’s House”). In front of each house there was usually a tiny courtyard (天井), of about 130 square feet, where the family stove, water container (water would be brought by the unmarried boys every morning from the village well or stream), fuel store, and urinal (just a tiny walled-off area with a bucket in it) were to be found. In most villages, the richer families did not have larger houses, but rather would live in two or three standard houses next to each other: only in the very wealthy villages of the Yuen Long plain and the Sham Chun River valley were there any larger or more pretentious houses.

The houses were uncomfortable: cold in winter, hot in summer, and damp in all seasons. They had few if any windows, since putting windows into a wall was expensive. If there was a window, it would be a small opening, high in the wall, about nine inches square, opening into the partitioned-off area at the back of the house, with an iron stanchion to stop anyone getting through it, and a wooden shutter. The floors were often of mud, mixed with lime, and polished, but this flooring wore very quickly. Because the houses were uncomfortable, they were used mostly only for cooking, eating, and sleeping: as much as possible of the life of the family took place outside, in the alleys and open spaces of the village.

The main room was used for a number of farming activities: the table for eating was always foldable, and put away against the wall during the day to free the space for work. There was sometimes a bamboo settle against one wall, and usually a small shrine on the wall opposite the entrance, where a sheet of paper would contain the names of the three generations of the family above the current head of the household: a stick of incense would be lit here every morning, and another to the household spirits.

Most families would bring the family pig (if they had one) and chickens into the courtyard at night, to protect them from thieves. During the day, these animals would roam freely through the village, eating any edible rubbish they could find.

These houses were thus rather bare, with little by the way of fine furniture or decoration. According to the villagers, however, if the house was typhoon-proof and safe from fire or flood, then it was all that was really needed: anything more would be wasteful, and waste was seen as criminal folly by the villagers – thrift being perhaps the most important of the virtues in their eyes.

In most villages, the only buildings with decoration or finer detail would be the local temple or the ancestral hall. These were display buildings: the village or clan community would often build them as fine as they could manage, in the hope of impressing passers-by.

Each village would have one or several earth-gods. Richer villages would build substantial brick shrines for these deities, the lords of the village's fertility, but poorer villages would make do with a simple stone at the base of a tree. Incense would be lit before the earth-god every day, but especially at the New Year, when the village would go *en masse* to show their respect.

Ideally, every village family had about an acre of good-quality rice-land to subsist on, plus a small plot for growing vegetables. With this amount of land, a family of six or seven should have been able to feed itself and meet all its cash requirements, without needing any other source of food or income.³³ However, by the late nineteenth century, many village families had a good deal less than an acre of rice-land, and needed either to have a trade which they could use to get some supplementary income, or else would have to mix the rice they grew with sweet potatoes, or poor-quality rice bought in the market town.³⁴ Poor families with less than half an acre of rice-land were thus always at great risk from famine. When famine came, such people might well starve, as no one would want to spend on their trade, nor would anyone be willing to sell them even the poorest rice. In famines, some people always died, usually from families at the poorer end of the village community.

Almost all the villages were of rice-subsistence farmers. There were villages of artisans – potters, boat-builders, and so forth – but they were relatively few. The great majority of the inhabitants of the area (other than the fishing-people, living on their sampans and fishing junks in the coastal anchorages) spent almost all their time farming and were dependent on their fields for the great majority of what they ate: if their village was on the sea coast they would supplement the diet by fishing from inshore sampans, or by collecting oysters or clams. This subsistence lifestyle survived in essence until the late 1950s.³⁵

Ethnically, the villages predominantly comprised settlements of the two mutually incomprehensible language groups, Hakka (客家) and Cantonese-speaking

(Punti, 本地). The villagers were very conscious as to which group they were part of. However, their lifestyles were similar, and the Land Law under which they lived seems to have been the same. The Punti lived mostly in the west and north, while the Hakka occupied the more mountainous areas of the south and east, but with pockets of Punti settlement here and there between the Hakka villages. Within the New Territories area, there is no record or folk memory of significant inter-ethnic conflict. Inter-village conflicts were mostly between the wealthier villages and the poorer: Hakka and Punti from the poorer villages would freely unite against their wealthy neighbours.³⁶

Travel from valley to valley was often difficult: the paths over the hills were steep and narrow, rarely paved, and often formed of interminable flights of steps. Streams were crossed by precarious stepping-stones or the occasional narrow stone footbridge. There were no roads in the area in 1898 capable of taking any sort of wheeled vehicle, not even a wheelbarrow: it was in this area of communication that the new administration made perhaps its most significant early impression on the area, with its new roads and railway.

At the turn of the nineteenth and twentieth centuries, the area often seemed poor to outsiders, but the villagers saw themselves as generally comfortably off. Although the diet was monotonous, there was plenty to eat in most years, although famine came every generation or so, when the harvests failed for several years in succession. There was usually enough spare cash for the villagers to hold feasts to celebrate the New Year, other major festivals, the birthday of the head of household, or some other major family event, when the food would be much richer and fuller than normal. Most families seem to have been able to hold between six and a dozen feasts a year, including several over the New Year period. The villagers had a lively culture of folk song and poetry.³⁷ The annual operas put on in the market towns or at the major temple festivals were eagerly awaited: most families would find the cash to buy tickets for them.

Before the introduction of modern medical services by the Hong Kong Government, villagers of the New Territories had access only to pre-modern medicine. As a result, the average age of death was about twenty.³⁸ About half of all children born died before they reached the age of marriage (about twenty-two for men, about sixteen to eighteen for women). Most of these deaths occurred before the child was five years old. Infant deaths came in the first place from infections during childbirth, mostly due to the total lack of disinfectants and the tendency to use unclean knives to cut the birth-cord. Then there was dysentery. Every village well was polluted to a greater or lesser degree with sewage. When the child was

weaned and had to drink water, the inevitable result was an attack of dysentery. Those children who survived this attack would be immune to the water from their own village well thereafter, but many did not survive. Infectious diseases, especially smallpox, were another major killer. The villagers were well aware that those who survived smallpox would be free of the disease for the rest of their lives. So every child had to catch smallpox to ensure that he or she would not catch it when they were adults. Perhaps one in five died of the disease. Measles was another, if less deadly, killer. Malaria was yet another. Living in the middle of flooded rice-fields meant that there were always malaria mosquitoes everywhere. Every child was infected. By the age of sixteen, youngsters had become immune, but many died before they reached that age.

Those who survived to the age of marriage had an average age of death of about forty to fifty. Deaths of adults came especially in childbirth for women and from infected wounds for men. Men used hatchets, adzes, sickles, and all sorts of other edged tools – cuts were common. Given the total lack of antiseptics or disinfectants, many cuts became infected and triggered blood-poisoning of one type or another. More men died than women, year on year.

Nonetheless, despite the many risks daily life posed, some villagers lived into their seventies or even into their eighties: most villages had a few elderly people. Most children knew at least one of their grandparents.

The rate of childbirth was rather low. Villagers were well aware of the dangers of the well-water and tended to defer weaning as late as possible, so that the children would be stronger when faced with the need to drink the water. Often, boys were not weaned until they were five years old. This is doubtless the major reason why the rate of childbirth seems to have been no more than about one birth every four or five years.³⁹ Given the death rate of children, this meant that communities grew only slowly. Families with more than two children who lived to marry were doing well.

Shortly after the establishment of the new administration in the New Territories, some elements of modern medicine were introduced into the area. Free vaccination against smallpox was introduced immediately after the takeover, although it took until the 1920s before the majority of youngsters were vaccinated.

Probably the most significant change was the introduction of village midwives from 1913 onwards, in phases, reaching most village areas from about 1930. These women were given a few months training in basic first-aid and midwifery.⁴⁰ They knew the importance of cleanliness in cutting the birth-cord and in everything else connected with childbirth. They were trained in bandaging, basic first-aid and the use of antiseptics and disinfectants. They vaccinated against smallpox. They

disinfected on a regular basis the wells of every village under their care. Each had a small maternity ward of three or four beds attached to their houses: village women were encouraged to go there to give birth (every child born, however, had to be vaccinated before leaving the ward). Oral information from village elders states that, with the coming of a midwife to an area, the number of children dying dropped immediately to a fraction of what it had been. Deaths in childbirth and from infected cuts also dropped sharply.

By the 1930s, the New Territories were thus starting to move towards a modern demographic status.

The Traditional New Territories: Village Scholarship and Learning

The villages had enough cash in hand to maintain schools – every large village or group of smaller villages had a school. Most of these schools were rather basic, providing schooling usually only for about four years. There were better quality schools in the richer villages, however, especially in the fertile plains in the west of the area, and in some of the market towns, where scholarly boys could achieve higher levels of learning. Most boys studied for only about three or four years: this was enough to achieve basic literacy. About fifty-five to sixty-seven per cent of adult village men considered themselves literate in 1911.⁴¹ Boys completing a full seven or ten years of study were recognised by their fellow villagers as fully literate and scholarly. Such men were regarded as “village scholars”: few went on to seek any higher formal academic status. Village girls were educated only very exceptionally until the 1950s.

On occasion, a few boys, mostly from these higher-quality schools, took the Imperial Examinations in the years before 1898: there were small groups of graduates in all the rich villages in the western and north-western plains, and a handful scattered throughout the poorer centre and east of the area.

A few years after the establishment of the new administration, a system of scholarships was set up to allow boys graduating from their village schools to continue their education at the higher-level English-language lower-secondary schools which the Hong Kong Government had founded or supported (at Tai Po, Yuen Long, Cheung Chau, Sai Kung and Yaumatei).⁴² A very small number of government scholarships were also available to boys from these lower-secondary schools to go on to Queen’s College or King’s College in the City for higher-secondary studies. In the 1920s and 1930s, the New Territories lower-secondary schools were supplemented by higher-level Vernacular Secondary Schools at Tai Po and Yuen Long,

and by the Tai Po Normal School, where young men of promise were given training as teachers for village schools. By the 1930s, a very few village boys, graduates of Queen's College or King's College, were taking scholarships to the University in Hong Kong. However, as before 1898, only a very few youngsters pursued education after graduation from their primary-level village schools: most were content to remain as "village scholars". The Hong Kong Government had made major efforts to modernise the curriculum of the village schools from 1913 onwards,⁴³ with only partial success, but the whole village education system was entirely reformed from the 1950s onwards.

There were surprisingly high numbers of medical doctors in the market towns: many doubled as *fung shui* masters. These were mostly "village scholars": men who had studied as apprentices with an established doctor after completing their education at the local village school.

The village scholars, of whom even the poorest villages or village clusters had one or two, seem to have maintained libraries of anything up to 500 books, with up to half being handwritten.⁴⁴ Literacy and scholarship were greatly prized, especially before 1898; the village scholars were well respected within their local communities. Village scholars from groups of villages would meet together two or three times a year. Such groups of village scholars often formed clubs, some of which owned a little land, the income of which supported the dinners celebrated on these occasions (see Deed 29). Such regular meetings of village scholars were to be found in most of the market towns and richer villages.⁴⁵

While "village scholars" formed, at best, only one or two per cent of the adult male population, nonetheless, as noted above, at least a half to two-thirds of all adult men were basically literate in the first two decades after 1899. It is likely that literacy and respect for scholarship declined to some degree after this period. This was, in part, because the old scholarship, based on the study of the classical texts, became generally scorned in China in the aftermath of the May 4th Movement of 1918. In part, however, it was because there were few village scholars able to teach the "New Books", that is, the books written in vernacular Chinese and designed for the teaching of new subjects such as mathematics or geography, which were required to be taught by the Hong Kong Government alongside the Classics after the curriculum reform of 1913. Furthermore, since the men who left the village to find their fortune overseas often did so despite being illiterate, literacy and scholarship were no longer seen as the essential passport to greater wealth. As a result, rather fewer boys than before felt it worthwhile to study beyond the minimum needed for basic literacy. After the reforms of village education in the 1950s and

later, however, when teaching in the New Books became widespread and general, levels of literacy and scholarship once again started to rise.

There were no specialist writers, and no lawyers, in the New Territories area, either in 1898 or in 1950. Whenever villagers needed to have a complex formal document written, something more complex, that is, than the books of accounts which many families kept – a village notice, for instance, a formal letter, or a land deed – then one of the village scholars would be asked to do the work. Exemplaries (貼式), handwritten collections of document exemplars which could be used as templates, abounded.⁴⁶ It seems probable that every village scholar had one or several of these hand-written exemplaries. This remained true well into the 1960s.

Emigration and Modernisation

The foundation of the great new port-city of Hong Kong in 1841 led to major changes within its hinterland, especially after about 1870. By then, all the land easily reduced to arable within the New Territories area had already been opened for cultivation. Most of the shallow sea-bed areas at the heads of the bays had been reclaimed to provide more arable space, or else were actively under reclamation. By 1870, land hunger was beginning to be a problem. Most landholdings were small and effectively managed by one man, with part-time help from his wife (harvest and planting times excepted), or even by one woman on her own, and many villagers had strapping young sons for whom there was little work in the village. The new City had an unquenchable hunger for coolies and semi-skilled labourers of all sorts: young villagers started to go there for a few years in the later nineteenth century to earn a little money before getting married. Furthermore, from the 1870s, demand for Chinese labour on board ships and in various overseas locations led many young men from the richer village families to go to the City, not to work there but to find work outside the area from urban recruitment agencies.⁴⁷ These youngsters would emigrate, often for just a few years in their youth, sometimes returning with surprisingly large savings. Such periods of work outside the village led to contact with more sophisticated ways of living and to a greater knowledge of the world outside the narrow valley where the home village was built.

However, this process of modernisation was slow and only just beginning to become noticeable by 1900. In 1899, in fact, the continuing deep-rooted suspicion and fear of outsiders on the part of villagers, many of whom were still very isolated in their mountain valleys and very conservative in their outlook, led to the

short war of that date. Many villagers, indeed, remained extremely conservative and old-fashioned in their thoughts and ways of life down to the 1950s and even later. Nonetheless, there were some significant changes in the period between 1910 and 1930, when remittances from overseas and villagers returning from spells of residence in the City or overseas led to many new and better houses being built (some villages being entirely rebuilt), and to many families beginning to develop tastes for some Western-made goods (cigarettes, bottled drinks, woollen winter clothes, beer, and so forth).⁴⁸ The new railway and the new road around the New Territories, with its easy gradients and, from 1919, public buses, were important factors accelerating the pace of change. The most old-fashioned and conservative villages tended to be those off the new railway and road, and so less exposed to modernity.

After becoming part of Hong Kong, the New Territories thus slowly became more open to the wider world outside, at least in those villages with easy access to the City, and much less dominated than before by the ancient Punti clans, their erstwhile *tei kwat* landlords.

However, within the sphere of the Land Law, relatively little changed until after the disaster of the Japanese Occupation (1941–45). Few land deeds produced in the New Territories for transactions between villagers were seen by a lawyer before the late 1950s or 1960s. They were still mostly drawn up in the old way, handwritten by village scholars from the old handwritten exemplaries, subject only to a few minor changes required as a result of the changes to the landholding system. The land deeds of the period 1899–1960 abundantly demonstrate the essential continuity of the traditional Land Law throughout this period.

The Japanese Occupation period was a true disaster, as the flow of remittances from villagers abroad dried up and the population was forced to try to subsist on food produced from land which was simply no longer capable of feeding the numbers of people resident in the area. The result was a full-scale famine. Many died, in some villages over half the population.⁴⁹ Since the government offices closed down, land deeds could only be produced during this period in traditional form. After the surrender of the Japanese, however, the introduction of more modern documents changed the old ways for ever. About a decade or so after the return of the Hong Kong Government, land deeds drafted by lawyers start to appear in the New Territories, eventually becoming the norm: the modern New Territories had begun to appear. The Customary Land Law, among other facets of traditional village life, withered. Nonetheless, traces of it still survive today, especially in the area of traditional village trusts (*tso*, 祖, and *tong*, 堂).

10

An Afterview

Before 1899 there was very little about the area which was to become the New Territories which was at all special. The area had a recorded history of almost 2,000 years, but, for most of that time, its history had been quiet and uneventful. The area was part of the Prefecture of Canton and fell firmly into the Cantonese cultural region. It shared the facilities and practices of the rest of that region – temples, schools, opera, annual and decennial rituals, social customs, traditions, dress, manners and etiquette, and general lifestyle. It was, however, a somewhat remote, rustic, and poor corner of the Prefecture. It was without towns other than the tiny inland market towns and a string of port-towns along the coast. It had few artisans. The villages of the area were mostly small, and hidden away in narrow valleys between the hills, separated by steep mountain paths. The inhabitants were, as a result, somewhat unsophisticated, conservative, and suspicious of outsiders. At the same time, the villagers were self-reliant, running their villages by themselves, and accepting little influence from any outsiders. If necessary, they were willing to take up arms to defend themselves and their independence. It was only with the foundation of the great City of Hong Kong in 1841, and even more after the area became part of the territory of Hong Kong in 1899, that the villagers suddenly found themselves close to an urban centre. From 1899, the New Territories started to become a suburban area, at first very slowly, but more and more quickly from the 1950s and even more so from the 1960s. Today, the area is, to most intents and purposes, part of the great metropolis of Hong Kong, dominated by New Towns and suburban housing estates, with agriculture a thing of the past.

In and before 1899 and to a great degree down to about 1960, however, the people of this area were overwhelmingly subsistence rice farmers, growing rice and vegetables on the tiny fields which surrounded their villages, and living off what they grew. As such, control of the fields on which they depended was a matter of great importance to them. A system of Customary Land Law was in place by

which this control was articulated. It was a coherent and workable system, with a surprisingly sophisticated and flexible structure of legal concepts. This system, given the absence of lawyers and the villagers' great reluctance to take disputes to any law court, was designed to be enforced by village public opinion, as expressed in meetings of villagers, but without much formality. Every villager was expected to know the basic parameters of the system and to take whatever action was needed to support and defend it, as part of his village community.

The incorporation of the New Territories into the territory of Hong Kong led to a great deal of information on the Customary Land Law of the New Territories being recorded, especially through essays on the system written by officials of the Hong Kong Government. Information on the local Customary Land Law is also to be found in the significant numbers of surviving land deeds from the area. The Customary Land Law of the New Territories disclosed by this information allows us to see into the pre-modern villager's world, in a way nothing else can do to quite the same degree. By studying this Customary Land Law, it is thus possible to get a better idea of how the villagers lived, thought, and worked, how they settled disputes between themselves, and how they managed to control land and its alienation without access to any sort of formal legal infrastructure.

The customary land deeds are simple, but do what they set out to do clearly and effectively. They were enforced, if necessary, by the public opinion of the village community. It is thought-provoking to see how effective this was: even though village public opinion was all that kept the system working, it did so with great efficiency. Equally, it is salutary to see, despite what seems a very simple and unsophisticated society underlying the Customary Land Law, yet how flexible and effective an instrument the villagers made of it. This is particularly so where the customary trust was concerned, which was made an efficient vehicle for every possible village need, from the largest and most complex to the smallest and simplest.

The Customary Land Law thus disclosed was, in many ways, very ancient. The basic legal concepts, even some of the very turns of phrase in the local customary land deeds, are very close to Sung and even Tang legal ideas and practices. This means that many of the concepts of the Customary Land Law of the New Territories as they were being put into practice at the end of the nineteenth century must have been in existence in the area ever since it was first settled, in the Southern Sung, nearly a thousand years earlier.

At the same time, the local New Territories Customary Land Law had evolved a system of dual owners of all land, one landholder being a perpetual tenant, holding the right to till the soil, and the other having the right to receive a rent-charge from

the perpetual tenant and paying the Imperial Land Tax, if any. This system was found over much of South China, but the New Territories variant of it had some unique features, especially the existence of dual ownership over land which paid no land tax, or very little. This system does not date back to the Sung, but seems to have grown up in the New Territories area over the period between two and five centuries before the incorporation of the area into Hong Kong.

When the New Territories became part of Hong Kong, the new administration accepted that the Customary Land Law should remain in being as the local land law. The new administration surveyed the area, in order to find out exactly what land was there and who was the landholder of each lot, with a view to issuing new land leases for it. This survey, the Block Crown Lease Survey, forms another essential component of the information we have on landholding in the area. The only major changes introduced by the new administration were the Block Crown Lease enumeration of every lot and the almost total eradication of the old dual ownership system.

In parts of China, by the later nineteenth century, land seems to have been “commodified”, that is, land had begun to be treated in a modern manner, as a commodity, to be bought and sold without restraint as the vendor and purchaser saw their financial advantage to lie. This seems to have been true, however, only of urban and suburban situations, or of other areas with better than average access and communications. In the New Territories, these changes had not taken place. Here, the older legal ideas, centred on the view that land inherited from the ancestors was held as an informal “trust” from them for the descendants, were still fully in place and universally considered to be the only right way to control and alienate land.

The Customary Land Law was a pre-modern system of law. Hence alienation of land was to be achieved by a series of formal public acts, articulated orally. Many alienations were concluded entirely orally, without any written document being produced, merely by the correct undertaking of these formal acts, conducted in the sight and under the witness of the village community. Written land deeds, if they were prepared, were issued as evidence that the vital formal acts had been properly completed: they recorded the alienation, but did not achieve it.

The Customary Land Law was effective and comprehensive, so long as the villages of the area remained as a pre-modern subsistence society. It was simple enough that it could be understood by the villagers and it needed no specialist legal training to comprehend. The rules and concepts of the law allowed everyone to know who owned what land, under what conditions, and the limits of the rights of the landholder. It had functioned satisfactorily for a thousand years, and was still functioning satisfactorily into the 1950s. However, it could not continue to function once the New Territories became engulfed in the urban area.

Today, there is almost no agriculture surviving in the New Territories. Many villages in the hills, without road access, have become abandoned, and the arable land around them lies derelict. Other village areas, close to major roads, find their arable land now worth thousands of dollars per square foot. If the land is accessible and well located, it is worth huge sums: if it is inaccessible and remote, it has little or no value. In other words, arable land in today's New Territories has development value, but not subsistence value: its value is now no longer based on how much rice it can carry, but how much concrete. The Customary Land Law could not cope with this change. Sung dynasty legal concepts were found to be incapable of managing modern urban or suburban land transactions.

Even as early as 1903, this problem can be seen arising, as land developers started to buy up arable land for development in the Kowloon City area. The restraints of the old legal system could not withstand the temptation of the huge sums offered by the land developers. Nonetheless, even though such cases continued to appear, and more and more frequently as time passed, even as late as the 1950s most arable land in the New Territories north of the Kowloon hills was still seen as being held under the Customary Land Law, and alienations were still mostly conducted in accordance with it. Most of the area was, at that date, basically still a subsistence society; the old law was still effective in controlling land there.

However, over the last fifty years, a great change has occurred. In many still-populated villages, most of the younger villagers are either working abroad or commuting into the City for work. Everywhere the village communities are losing a certain degree of coherence as a result. The Small House Policy has allowed huge numbers of new three-storey houses to be built in road-accessible villages, but the great majority of them have been sold off to outsiders who are not part of the village community. These outside purchasers are not willing to buy without the protection of land deeds drawn up by lawyers in accordance with the dictates of the modern Hong Kong law on conveyancing.

As a result of these developmental changes, the Customary Land Law has withered away as a living legal system. Fifty years ago, the system was still functioning; now, all that is left are a few disjointed fragments, mainly for land owned by customary trusts, surviving like fossils in the bedrock of modern Hong Kong law. New Territories land is now, to a large degree, valued as a commodity like any other, to be bought and sold freely at the owner's absolute discretion. The Customary Land Law is, to a large degree, now a matter of history and it has ceased to exist as a living entity, along with the subsistence rice-farming economy and society which it supported and which sustained it.

At the same time, while the system is no longer functioning, it survived into the recent past. It is now only a historical memory, but there are still men alive today who grew up in villages where it was fully in operation. Discussion with such elders makes the study of the system particularly satisfying: the Customary Land Law is a significant part of our past, but it survived to within living memory.

The Customary Land Law of the New Territories was a complex and flexible legal system. Elucidating its legal concepts and practices is a fascinating process, and essential if we are to achieve a true understanding of the traditional life and society of the New Territories. Study of this legal system is, therefore, important to an overall understanding of the local past. At the same time, pre-modern legal systems are of great interest in themselves. Taking the system as a whole, it is impossible not to admire the robust common-sense of the village communities which ran it and lived by it. The local New Territories Customary Land Law was ideally suited to manage the affairs of the subsistence rice-farming society of the area. It has withered away with the ending of that society, but it is no less admirable and interesting for that.

Notes

Introduction

1. For other collections of deeds from the New Territories, see the Bibliography.
2. Some regional differences, mostly in the wording of deeds, can be discerned. They are discussed in the text. None reflect any differences in content or practice: they are semantic only.
3. Valerie Hansen, *Negotiating Daily Life in Traditional China: How Ordinary People used Contracts, 600–1400*, Yale University Press, 1995. A number of places are discussed in the text where coincidence between Tang and Sung practices and the New Territories Customary Land Law are particularly striking.
4. For a general overview of the administrative establishment, geography, and history of San On County, see P. L. Ng, with Hugh D. R. Baker, *New Peace County: A Chinese Gazetteer of the Hong Kong Region*, Hong Kong University Press, 1983. This is a translation of selected passages from the 1819 San On County Gazetteer (新安縣志), with an introductory analysis. For the best edition of the Gazetteer, see 深圳舊志三種 [“Three Ancient Gazetteers of Shenzhen”], ed. Cheung Yat-ping (張一兵), 海天出版社, Shenzhen, 2006. Despite its title, this is an excellent edition of the three local gazetteers: that of Tung Kwun of 1453, and those of San On of 1688 and 1819. See also Hugh D.R. Baker, “Customary Law and the New Territories”, paper no. 7, *Hong Kong Culture and Society Programme*, Centre of Asian Studies, University of Hong Kong, 2009.
5. Before 1847, this yamen had been at Chek Mei (赤尾, Chiwei), near Sham Chun (深圳, Shenzhen).
6. Before 1847, the Left Wing of the County military forces had been centred on Tai Pang (大鵬), but, in 1847, the headquarters of this Wing were moved to Kowloon City, to keep the foreigners on Hong Kong under more immediate military view.
7. A number of late-nineteenth-century witnesses suggest that many of the coastal defence forts were, at that date, usually without soldiers in post. See P. L. Ng and Hugh D. R. Baker, *New Peace County*, op. cit.
8. See P. H. Hase, “Eastern Peace: Sha Tau Kok Market in 1925”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 33, 1993, pp. 147–202 (this contains an appendix listing all the “Disturbances on the Border” between 1899 and 1941);

- “Ta Kwu Ling, Wong Pui Ling and the Kim Hau Bridges”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 30, 1990, pp. 257–264; “A Village War in Sham Chun”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 30, 1990, pp. 265–281 (this contains, at Table 1, a list of all known inter-village warfare in the area); and “Bandits in the Siu Lek Yuen Yeuk”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 32, pp. 214–215. See also J. W. Hayes, “A Village War”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 17, 1977, pp. 185–198. Myron L. Cohen, *Kinship, Contract, Community and State: Anthropological Perspectives on China*, Stanford University Press, 2005, p. 9, stresses the “cultural and economic sophistication of ordinary people in China” and the “high value placed on superior managerial capabilities” (pp. 14–15).
9. The Governor of Hong Kong, Sir Henry Blake, in a dispatch of 16 August 1899 to the Colonial Office said of the village elders of the Yuen Long area: “I found them shrewd and intelligent”, reporting that his visit to the area “impressed me favourably with the people” (no. 243 in *Eastern No. 66, Hong Kong, Correspondence (June 20, 1898 to August 2, 1900) respecting the Extension of the Boundaries of the Colony*, Colonial Office, London, November 1900). The views of other government officers posted to the New Territories in these early days were similar to those of the Governor. The District Officer in 1912 thus spoke approvingly of the “moral influence ... in the maintenance of the public peace” of the village elders (G.N. Orme, “Report on the New Territories, 1899–1912” in *Papers laid before the Legislative Council of Hongkong, 1912* [Sessional Papers], Government Printer, Hong Kong, 1912, No 11/1912, para 15).
 10. D. Faure, *The Structure of Chinese Rural Society: Lineage and Village in the Eastern New Territories, Hong Kong*, Oxford University Press, 1986. Usually, the villages of a *yeuk* would swear an oath to treat all the inhabitants of the other villages of the *yeuk* as “brothers” (兄弟), using the fictive relationship thus established as the basis of the alliance.
 11. In this book, “Ch’ing” is used for the last Imperial dynasty (清, otherwise “Qing”), since it is closer to the English pronunciation. Transcriptions of surnames follow standard Hong Kong practice (e.g. Cheng for Tseng 鄭, Law for Loh 羅, etc.). The reader’s indulgence is earnestly requested for any errors in transcription.
 12. 1688 San On Gazetteer, 卷 10, 11, Cheung Yat-ping, ed. op. cit., pp. 415, 446: 丁半死素被狼戾 and 死喪已過半.
 13. “Rent-charge” is used here to mean a small payment – very much less than the commercial rent – paid as a recognition payment by a *tei pei* landholder to the holder of the *tei kwat* rights. It is used to distinguish the payment from “rent”, by which is meant the full commercial rent, or something close to it, paid by a non-perpetual tenant (a tenant for a term of years or a tenant-at-will) to the holder of the land. Members of the New Territories Land Court found it difficult to find a form of words which described these payments accurately, sometimes calling the payment made by a *tei pei* landholder to the *tei kwat* landholder “rent” and sometimes “rent-charge”. This payment is here called “rent-charge”, since that was the term used most often by the Land Court.
 14. Strictly speaking, “Crown Rent” is payment for permission to occupy and use Crown Land, whereas “land tax” is a tax on private landowners. However, this subtlety does

not really apply in the New Territories, where there were no private landowners, but only perpetual Crown tenants or sub-tenants. The payment made to the Imperial authorities before 1899 was thus actually a Crown Rent, but it is almost universally called “land tax” (occasionally it is called “Crown Rent” by members of the New Territories Land Court and other Hong Kong officials in the period 1900–05). After 1899, the new payment to the new authorities was called “Crown Rent” in English, and is indeed strictly Crown Rent. However, in Chinese it bears the same name as the older land tax payment to the Imperial Chinese authorities (i.e., 糧銀). As far as the villagers are concerned, the payment both before and after 1899 is land tax: more strictly, it was Crown Rent under both jurisdictions. For convenience and clarity, and in accordance with standard New Territories usage, the payment to the Chinese Imperial authorities before 1899 is here called “land tax”, and the payment to the new Hong Kong authorities after 1899 “Crown Rent”.

15. The final statement of the Hong Kong Government on the question of the perpetual tenancy was included in a Proclamation of 28 June 1905, issued by the Colonial Secretary on behalf of the Governor: “In future no perpetual leases will be allowed; but leases must be granted for a definite term of years.” (“Notes for Use in District Land Offices, New Territories”, file C.S.O. 4865/1906, Hong Kong Public Records Office, HKRS No. 15).
16. The 1905 Proclamation (see previous note) stated: “The Government alone collects Crown Rent. Under the Chinese Administration it appears that people illegally bought and sold the right to collect [this] rent. This is an infringement of the law due in its origin to the existence of the Perpetual Lease. . . . Delaying in rents will not be allowed”.
17. It is likely that there was something analogous in the western half of the county as well, in the area known as the Sai Lo (西路, “Western Roads”). The whole of the New Territories fell within the “Eastern Roads” part of the county.
18. On the Tung Wo Kuk and the new market at Sha Tau Kok, see P. H. Hase, “The Alliance of Ten: Settlement and Politics in the Sha Tau Kok Area”, in *Down to Earth: The Territorial Bond in South China*, eds. D. Faure and H. Siu, Stanford University Press, 1995, pp. 123–160.
19. The formal names of these markets were 東和墟 (“Tung Wo Market”), and 太和市 (“Tai Wo Market”) respectively.
20. P. H. Hase, “The Alliance of Ten”, *op. cit.*, dates the foundation of the Sha Tau Kok market to about 1820, but 1800 seems more likely to be correct.
21. For the *yeuk* of Ta Kwu Ling, see P. H. Hase, “Cheung Shan Kwu Tsz, an Old Buddhist Nunnery in the New Territories, and Its Place in Local Society”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 29, 1989, pp. 121–157, and “Ta Kwu Ling, Wong Pui Ling and the Kim Hau Bridges”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 30, 1990, pp. 257–165, and for the *yeuk* of Sha Tau Kok, see P. H. Hase “The Alliance of Ten”, *op. cit.*
22. But see Deeds 2 and 4 for the limitations of the control enforceable by the ancient clans, even in these parts of the area.

23. For the Six-Day War, including the implications for the social and political history of the area, see P. H. Hase, *The Six-Day War of 1899: Hong Kong in the Age of Imperialism*, Hong Kong University Press, with the Royal Asiatic Society, Hong Kong Branch, Hong Kong Studies Series, 2008.
24. The area of the New Territories is given in J. H. Stewart Lockhart, “Extracts from a Report by Mr Stewart Lockhart on the Extension of the Colony of Hong Kong” in *Papers laid before the Legislative Council of Hongkong, 1899* (Sessional Papers), Government Printer, Hong Kong, 1900, attachment to No. 9/1899, section “Cultivated Land”; the total area of occupied land represents the cumulative total of land surveyed in the Block Crown Lease Survey of 1900–1905, see “New Territories: Land Court, Report on Work from 1900 to 1905” in *Papers laid before the Legislative Council of Hongkong, 1899* (Sessional Papers), Government Printer, Hong Kong, 1906, No. 10/1905, Report by J.R. Wood, para 7, p. 145.
25. In this book, in accordance with standard New Territories usage, “the City” means “the urban area of Hong Kong and Kowloon”.
26. The land population of Cheung Chau was 3,244, but the town also had a floating population of 4,442. The land population of Tai O was 2,248, with a floating population of 5,413, making the total population of both towns, land and sea people combined, about 7,600 (respectively, 7,668 and 7,661). See *Report on the Census of the Colony for 1911*, in *Papers laid before the Legislative Council of Hongkong, 1911* (Sessional Papers), Government Printer, Hongkong, 1911, No. 17/1911, Tables XIXa and XVIII.
27. Government reports suggest many fewer shops than this (74 in Tai Po in 1905, and only 38 in Yuen Long: see J. W. Hayes, *The Great Difference: Hong Kong's New Territories and its People 1898–2004*, Hong Kong University Press, Hong Kong, 2006, p. 51), but it seems likely that these reports count only premises used exclusively as shops, ignoring the many tiny shops and workshops operating from the front rooms of residences.
28. Tai Po (Tai Wo Shi) had a resident population of 472 in 1911, and Yuen Long Market 559 (see *Census Report, 1911*, op. cit., Table XIX). The *Census Report, 1911* does not give exact figures for the Kowloon City Market, since it gives a combined figure for the Market and the villages nearby.
29. *Administrative Reports for the Year 1919: Report on the New Territories for the Year 1919*, “J”, p. 4.
30. The 1911 Census enumerated 674 villages (not including New Kowloon) (*Census Report, 1911*, op. cit., Tables XIX and XIXa). The total land population of the area (also not including New Kowloon) was found to be 80,622. This implies an average size for the village of about 120 persons. The number of villages differs in every official report, because of the difficulty in distinguishing subordinate settlements and separate villages, since the villagers themselves sometimes count some settlements as the one, and sometimes as the other. Since the average family size was about 5, the total number of landward families in the area in 1911, not including New Kowloon, must have been about 16,000, or, including New Kowloon, about 20,000.
31. In this book, “clan” is taken to mean all that group of men (and their wives and unmarried daughters), resident together in one village or village cluster, who believed they

- were descended from a single founding ancestor; or, where a village was lived in by the descendants of two or three closely related founders, then those men (and their women-folk), resident together in the same village or village cluster, who believed they were descended from one or other of the founding ancestors. In practical terms, at the village or village cluster level, “clan” and “lineage” have little difference in meaning.
32. “太公” can, in standard Chinese usage, be used as a general expression of polite respect, but in the ordinary speech of the New Territories it means only “founding ancestor” or “first ancestor”.
 33. See P. H. Hase, “Notes on Rice Farming in Sha Tin”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 21, 1981, pp. 196–206. It seems likely that, in the mid-nineteenth century, a substantial percentage of village families had about this amount of rice-land. By the mid-twentieth century, however, with the great growth in village population arising from access to more modern medicine, the average area held per family was well below this. See *Southern District Reports: Islands and Villages in Rural Hong Kong*, ed. J. Strickland, Hong Kong University Press with the Royal Asiatic Society, Hong Kong Branch, Hong Kong Studies Series, 2010, for comments on subsistence problems in the immediate post-Japanese period (1945–60), especially in the Sai Kung area.
 34. Poor families would often exchange the good rice grown on their fields for old and musty rice from the stores of the market-town grain shops, thus getting perhaps 50% more rice to eat than they had grown, even if it tasted poorer.
 35. See J. W. Hayes, *The Great Difference*, op. cit., chap. 6 (“An End to Subsistence Farming: Opening the Way for Urban Development and Country Parks”).
 36. As for instance at Lam Tsuen (林村), where the twenty-three villages of the area (comprising four Punti villages and nineteen Hakka villages) united together to fight off a rich and ancient Punti clan, the united district forming itself into the Luk Hap Tong (六合堂, “Hall of the Six United”), from the six *kap* (甲), or tax units, the area comprised.
 37. See P. H. Hase, “New Territories Poetry and Song”, in *Collected Essays on Various Historical Materials for Hong Kong Studies*, Urban Council, Hong Kong, 1990, pp. 20–32. See also 港澳詩選注, “A Collection of Hong Kong and Macau Poems”, 李暢友 (Lei Cheung-yau), 廣東高等教育出版社, 1997, and 歷史的聲音：歷代詩人詠香港 (“Historical Sounds: Historical Poets writing in Hong Kong”), 胡從經 (Wu Chung-king), Commercial Press, 1997.
 38. See P. H. Hase, “Traditional Life in the New Territories: The Evidence of the 1911 and 1921 Censuses”, *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 36, 1998, pp. 1–92, for detailed discussions on mortality, childbirth, marriage and other demographic features of traditional New Territories life.
 39. There were no contraceptives known to the villagers, who would have viewed such a thing with horror, anyway.
 40. They were very similar to the “bare-foot doctors” introduced by Mao Tse-tung in the 1950s in China.
 41. For discussions of traditional education in the New Territories, see the Bibliography. Myron L. Cohen, *Kinship, Contract, Community and State*, op. cit., pp. 24–25, stresses

- the importance of literacy in traditional Chinese society, and summarises his views thus: “Literacy to one degree or another was rather widespread among men ... education ... had equipped a significant number of men throughout the countryside to undertake the literary tasks required in Chinese rural life”. See P. H. Hase, “Traditional Life in the New Territories: The Evidence of the 1911 and 1921 Censuses”, op. cit., for a discussion of village literacy and schooling.
42. The Sai Kung school (the Sung Tsan School) was founded by the Catholic Church in 1927, but its quality was recognised by the Hong Kong Government as equivalent to that of the new schools founded by the Hong Kong Government, and the scholarship system could be used to study there. Sha Tin boys were still taking up scholarships to the Yaumatei Government School in the 1950s for lower secondary education.
 43. See the *Annual Reports* of the Director of Education, passim. The curriculum was reformed again in 1922. The government tried to get the new curriculum put into use by subsidising with a cash grant any village teacher who followed it. The new curriculum attempted to get teachers to spend only half the time teaching the Classics.
 44. Details of several libraries of village scholars from the New Territories survive. The Central Library of the Leisure and Cultural Services Department of the Government of Hong Kong holds the entire library of Yung Sze-chiu (翁仕朝, 1874–1944), who was from the poor Hakka village of Hoi Ha (海下), and about a quarter or a third of the library of Yau Tung-hoi (邱東海), a Hakka from the wealthier settlement of Tsuen Wan (荃灣) who was an almost exact contemporary of Yung Sze-chiu. A catalogue of the books of Cheng Yung (鄭榕) and his father also survives: Cheng Yung’s father was, again, a contemporary of Yung Sze-chiu. Cheng Yung and his father were simple hill-farmers from the poor Hakka village of Uk Tau (屋頭). See P. H. Hase, “Uk Tau and the Books of Cheng Yung” *Journal of the Hong Kong Branch of the Royal Asiatic Society*, Vol. 47, 2007, pp. 33–40,
 45. Agreement by such a group of village scholars that some young man was fit to take part with them in these gatherings was the formal public acceptance of the young man as a village scholar.
 46. There are several such exemplaries, or formularies, in the collection of New Territories books at the Central Library, Causeway Bay, of the Leisure and Cultural Services Department of the Government of Hong Kong, gathered from various New Territories villages. See Plate 13. Hansen, *Negotiating Daily Life*, op. cit., notes that exemplaries (“booklets of model contracts”) were common in the Sung dynasty (pp. 57, 65).
 47. The recruitment agencies charged an introduction fee, often quite substantial, so this avenue was mostly taken up by boys from better-off families: work on board a ship was better paid and safer than coolie work, so, where a family could afford the fee, this was where they would send their sons.
 48. G. N. Orme, District Officer, New Territories, “Report on the New Territories, 1899–1912”, in *Papers laid before the Legislative Council of Hongkong, 1912* (Sessional Papers), Government Printer, Hong Kong, 1912, No 11/1912, paras 87, 89, 31. Myron L. Cohen, *Kinship, Contract, Community and State*, op. cit., states at some length his view that the villagers of Southern Taiwan were, in the late nineteenth century, very

modern in their general outlook, giving his view that claims to the contrary were essentially political statements by Republican “antitraditionalists” seeking to have the rural population dismissed as mere peasants. This view, however, seems to go too far where the people of the New Territories were concerned.

49. In one village known to the author, every single villager died except one man, his wife, and his aged mother, and this family survived only because of assistance from the father-in-law.

Chapter 1 The Imperial Land Law

1. Neither in the Imperial Land Law nor in the Customary Land Law was there any conception of landownership of the absolute sort implied by the word “freehold”. All land was held by way of tenancies, albeit usually perpetual and hereditary. The concept of “landowner” thus bears a very different meaning to the one it has in the modern Common Law: “landholder” reflects the position more accurately.
2. At the time, this survey was usually called, simply, “The Land Survey”, but it is today usually called the “Block Crown Lease Survey” to distinguish it from other surveys which have been conducted at various dates.
3. H. H. J. Gompertz, *Report on the Work of the Land Court up to 31st December 1901* Appendix No. I to *Report on the New Territory for the year 1901* (Stewart Lockhart), *Papers laid before the Legislative Council of Hong Kong* (Sessional Papers 22/1902), 1902, Government Printer, Hong Kong, pp. 5–9 (hereafter *Gompertz, 1902*), para 8.
4. Members of the New Territories Land Court, in pursuit of this aim, thus researched what books they could find on the subject and interviewed scholars considered to be expert in the Chinese Land Law. The members of the Land Court seem to have spent some seven months in 1900 thus studying the Imperial Land Law (see Peter Wesley-Smith, *Unequal Treaty, 1898–1997: China, Great Britain, and Hong Kong's New Territories*, Oxford University Press, rev. ed. 1998, pp. 131, 134). H. H. J. Gompertz, the President of the Land Court, in particular researched the provincial decrees during this period and found there the decree discussed below making concessions to the poor on the registration of newly reclaimed land for the land tax. In 1903, when Cecil Clementi, Assistant Registrar-General in the Hong Kong Government, was appointed to the Land Court, he “made frequent visits to San On ... to confer with the Chinese District Magistrate over various land deeds, some forged and others misconstrued” (Hong Kong Public Records Office, HKMS 178/D-S No 1–31, a typewritten “Record of the Public Services of Cecil Clementi, M.A. (Oxon.), Assistant Colonial Secretary, Hong Kong” – for the background to this “Record”, see J. W. Hayes, *The Great Difference*, op. cit., chap. 3, n. 52, and Bibliography, p. 260, “Clementi”), which enabled him to make informed and sound decisions on contentious cases.
5. *Memorandum on Land*, Mr Messer and Mr Ts'ui, Appendix No. III to *Report on the New Territory during the First Year of British Administration* (Stewart Lockhart), *Papers laid before the Legislative Council of Hong Kong* (Sessional Papers 15/1900), 1900, Government Printer, Hong Kong, pp. 266–269 (hereafter *Messer and Ts'ui*,

General Index

In this Index “Dd” = “Deed” (referenced by page and Deed number); “n” = “note attached to the Deed referred to”; “fn” = “footnote” (referenced by page and footnote number). References to the Deeds are limited to those matters discussed in the notes to the Deeds.

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