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15 B. U. Int'l L. J. 1 (1997).

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The Empire Strikes Back: Britain's Use of the Law to Suppress Political Dissent in Hong Kong

Richard Klein*

TABLE OF CONTENTS

INTRODUCTION	1
I. PART ONE: THE BRITISH RESPONSE TO LABOR UNREST IN THE COLONY	3
II. PART TWO: PROSECUTION OF SEDITIOUS NEWSPAPERS	13
III. PART THREE: 1956 — MASS ARRESTS, CURFEWS AND A MILITARY RESPONSE	19
IV. PART FOUR: 1966 — RECESSION, FERRY FARE INCREASES, RIOTING AND SUPPRESSION	25
V. PART FIVE: 1967 — TARGET: THE BRITISH COLONIAL GOVERNMENT	34
VI. PART SIX: THE GOVERNMENT RESPONDS TO PROTESTS AGAINST ENGLISH AS THE OFFICIAL LANGUAGE	56
VII. PART SEVEN: MISCELLANEOUS ACTS OF REPRESSION	66
CONCLUSION.....	69

Hong Kong was, in many ways, the world's "last colony." When it became part of China in July of 1997, it represented the end of an era on a global scale. In recent years, Britain has boasted about its accomplishments in Hong Kong and contrasted the freedoms of the Hong Kong Chinese with that which might be expected to be the situation after 1997. However, the use of law as a tool to suppress dissent and to prohibit any movement for democracy or independence for Hong Kong makes suspect the claim about Britain's accomplishments. This Article highlights historical events in Hong Kong under the British administration, and calls for a reconsideration of the widely-held view approving of British rule. Among those instances highlighted by this Article include the British use of martial law, deportation, imprisonment, flogging and censorship to deal with those who dared criticize the governance of the colony.

INTRODUCTION

The manner in which a country deals with those who are critical of and who protest the policies of those who govern reveals much about the

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nature of the rule. In some ways, how a government responds when it is challenged reveals its true character. Over the span of the 150 years of British control of Hong Kong, the British have utilized the legal and legislative systems to stifle and oppress those who opposed or desired to reform the governance of the Colony. The lack of a vote for the Chinese, the absence of representation in the Legislative Council, and the resulting inability of the Chinese in Hong Kong to express their views had created a huge gulf between the British government and the Chinese population it governed. The subsequent alienation, anomie and resentment has led over the years to rioting, strikes, marches, attacks on the police, bombing and terrorism by those who have had no voice in how they were to be ruled.

The British Crown Colony of Hong Kong consisted of land which had been part of China but which was acquired by Britain in three separate stages. Hong Kong Island was occupied and taken "in perpetuity" in 1842 after Britain's victory in the First Opium War.¹ The Island grew in population, and the colonizers desired the Kowloon Peninsula, an area of the Chinese mainland directly across from Hong Kong Island, for security² as well as for commercial reasons.³ After attempts to persuade the Emperor to cede Kowloon had failed, Britain began a war with a weakened Manchu Dynasty in China, resulting in 1860 with the signing of the Convention of Peking.⁴ The final piece of territory that comprises modern day Hong Kong was contiguous to Kowloon and also a part of the Chinese mainland. Called the New Territories and acquired in a treaty with China in 1898, this land was not "ceded in perpetuity" but was only leased for 99 years.⁵ The New Territories constituted 365 of Hong Kong's

¹ Treaty between China and Great Britain, Aug. 29, 1842, 93 Consol. T.S. 465, 467.

² Major-General van Straubenzee, the British Commander of the land force in China, had concluded in 1858 that "the occupation of the [Kowloon] peninsula was absolutely essential to the security of the Island." GERALD S. GRAHAM, *THE CHINA STATION WAR AND DIPLOMACY: 1830-1860*, at 386 (1978).

³ The British East India Company had long desired to get a foothold in China and a chief officer of the Company expressed the view of many British merchants that "[i]n all points, both of facility of egress and ingress, and in its perfectly land-locked situation, this harbour can hardly have a superior in the world." H. H. LINDSAY, *REPORT OF PROCEEDINGS ON A VOYAGE TO THE NORTHERN PORTS OF CHINA, IN THE SHIP LORD AMHERST*, at B (1833).

⁴ The Convention provided that "the Emperor of China agrees to cede to Her Majesty the Queen . . . to have and to hold as a dependency of Her Britannic Majesty's colony of Hong Kong, that portion of the township of Cowloon." Convention of Friendship between China and Great Britain, Oct. 24, 1860, 123 Consol. T.S. 72, 73.

⁵ The Convention between China and Great Britain respecting an Extension of Hong Kong Territory, June 9, 1898, provided the "justification" for the acquisition: "[A]n extension of Hong Kong Territory is necessary for the proper defence and protection of the Colony." 186 Consol. T.S. 310, 310.

400 square miles and became such an integral part of the Colony that Britain concluded that the termination of the lease would mean that all of the territory of Hong Kong would be returned to China in 1997. In 1984, the *Draft Agreement Between the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong* provided for Hong Kong to become a Special Administrative Region of China as of July 1, 1997. It also stated that Hong Kong would have a high degree of autonomy except in the areas of foreign affairs and defense.⁶

I. PART ONE: THE BRITISH RESPONSE TO LABOR UNREST IN THE COLONY

The determination of the British to "control" the Chinese population in Hong Kong was evidenced in the early years of the colony's existence by an 1888 Ordinance entitled "Regulation of Chinese." The Ordinance stated: "No Chinese shall hold or be present at any Chinese public meeting whatever, not being a meeting solely for religious worship, without a permit under the hand of the Governor"⁷ The maximum punishment for being present at any unapproved meeting was imprisonment with hard labor for three months.⁸ For the majority of the years of British rule, a Chinese person would be subject to expulsion from the Colony for merely being "*suspected of being likely . . . to cause a disturbance of the public tranquility.*"⁹ Any association of persons was deemed unlawful if the British determined that the purposes were "incompatible with the peace and good order of the Colony."¹⁰

The first significant use of British power against the Chinese in Hong Kong occurred during the 1920's after a series of strikes by the Seamen's

⁶ Article 31 of the Constitution of the People's Republic of China provides that "[t]he state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of the specific conditions." XIANFA [Constitution] art. 31 (1982).

⁷ Ordinance No. 3 of 1888, pt. VII, § 51 (H.K.).

⁸ § 50.

⁹ Expulsion of Undesirables Ordinance, LAWS OF HONG KONG ch. 242, § 4(f) (1950) (emphasis added).

¹⁰ Ordinance No. 8 (Societies Ordinance) of 1920, § 3(c) (H.K.). The Ordinance banned any "society" having such purposes and defined society to include clubs, unions, companies, guilds, lodges, partnerships or any "other association of persons, whatsoever, and every branch of any such association." § 2. Anyone who invited another to become a member of a society designated unlawful was subject to imprisonment for a period of twelve months. § 5(2). An individual merely *present* at any meeting of an unlawful society faced imprisonment of six months. § 5(4). The breadth of the Ordinance is shown by not even requiring that the authorities prosecuting the "criminals" know the name of the alleged unlawful society. § 7(3).

Union.¹¹ The Chinese seamen, paid only about twenty-five percent that of Europeans doing the same work¹² and provided with miserable living quarters, began a six week strike in January, 1922.¹³ When the Government responded by declaring martial law, outlawing the Seamen's Union and closing down its headquarters,¹⁴ a strike involving 100,000 employees resulted.¹⁵ The Government retreated¹⁶ when confronted with this first large scale strike in Hong Kong, and the Seamen received wage increases of up to thirty percent.¹⁷

Several years later, Britain was determined to prevent a concerted action by the Chinese from succeeding once again.¹⁸ The genesis of this

¹¹ The Seamen's Union, founded in China in 1909, and headquartered in Hong Kong, was one of the most radical of unions with its leaders active members of the Communist Party in China. See Earl John Motz, *Great Britain, Hong Kong, and Canton: The Canton-Hong Kong Strike and Boycott of 1925-26*, at 11-12 (1972) (unpublished Ph.D. dissertation, Michigan State University).

¹² CHAN WAI KWAN, *THE MAKING OF HONG KONG SOCIETY* 167 (1991).

¹³ *Id.* at 166.

¹⁴ The Societies Ordinance of 1920 declared unlawful any union or association which had "purposes incompatible with the peace and good order of the Colony." Ordinance No. 8 § 3(c). The Ordinance also provided for imprisonment of up to six months for any member of such an unlawful union or for anyone merely present at a union meeting. § 5(4).

¹⁵ CHAN, *supra* note 12, at 166.

¹⁶ On March 6, the Government canceled the order to close down the Seamen's Union and released all workers who had been arrested. Two days later, the strike ended. GREGOR BENTON, *THE HONGKONG CRISIS* 96 (1983).

¹⁷ *Id.* The Seamen's Union remained the major union in Hong Kong for the next fifty years until the decline in maritime employment coupled with the growth of the Motor Transport Workers' Union pushed it to second place. See H. A. TURNER ET AL., *THE LAST COLONY: BUT WHOSE?* 118 (1980). The seamen were more politicized and activist than most Chinese in Hong Kong because the very nature of their work exposed them to Western cultures and ideas, as well as to the revolutionary movement developing in China itself. The life on a ship, with all workers together 24 hours a day, was a factor leading to the growth of solidarity and mutuality of concerns. Close living quarters were also a factor in the solidarity and actions of the cargo-carrying coolie workers. It was not uncommon for more than 100 coolies to live in one house. Jung-fang Tsai, *The 1884 Hong Kong Insurrection: Anti-Imperialist Popular Protest During the Sino-French War*, 16 BULL. CONCERNED ASIAN SCHOLARS, No. 4 1984, at 2, 3. When the Colonial Government attempted in 1872 to impose a tax on the buildings that housed the coolies, nearly 19,000 coolie workers went out on strike, thereby nearly paralyzing trade with China. JUNG-FANG TSAI, *HONG KONG IN CHINESE HISTORY: COMMUNITY AND SOCIAL UNREST IN THE BRITISH COLONY, 1842-1913*, at 78 (1993).

¹⁸ In fact, as soon as the strike had ended, the Colonial Government acted to prevent a repetition. The military forces were increased in number by one battalion, intelligence gathering operations were expanded, lists were compiled of Europeans who were willing to work on an emergency basis in case of another strike, and depots to store coal and other supplies were constructed. NORMAN MINERS, *HONG KONG*

conflict began in China when on May 30, 1925, troops under British command in Shanghai fired and killed eleven Chinese who were demonstrating against the presence of foreigners in China.¹⁹ Less than one month after this incident at the Shanghai International Settlement, British-led troops fired on anti-British demonstrators in Canton, killing fifty-two.²⁰ The Hong Kong Chinese, many of whom had come from Canton and still had family there,²¹ became bitterly anti-British, and within one month over 250,000 workers left Hong Kong for Canton.²² The authorities in Canton called for a boycott; no British ships were permitted to be loaded

UNDER IMPERIAL RULE, 1912-1941, at 14 (1987). The Government also prompted employers to unite in a federation in order to provide a united front if labor unrest were to occur. *Id.* at 14.

¹⁹ FRANK WELSH, *A BORROWED PLACE: THE HISTORY OF HONG KONG* 371 (1993). Anti-imperialist sentiment had been growing in China, and the success of the 1922 strike in Hong Kong against western businesses had great psychological significance. See Motz, *supra* note 11, at 18.

²⁰ WELSH, *supra* note 19, at 371.

²¹ The economic interdependence of Hong Kong and Canton was of crucial import to both places. See Bert F. Hoselitz, *Generative and Parasitic Cities*, *ECON. DEV. & CULTURAL CHANGE*, Oct. 1954, at 278. Goods from all over China that were to be exported to the West would first go to Canton and then be brought to Hong Kong for export. A similar chain worked in reverse for those western products being imported into China. Above all, it was the lack of a deep water port in Canton which led to the development of and reliance by Canton on Hong Kong.

²² THE KOTEWALL REPORT, *A REPORT TO THE GOVERNOR OF HONG KONG* 5 (1925) [hereinafter KOTEWALL REPORT]. A railroad connecting Hong Kong and Canton was finished in 1911 and provided easy and relatively cheap transit between the two areas. The striking seamen in the 1922 strike similarly had gone to Canton for support. See Motz, *supra* note 11, at 15. As striking workers arrived in Canton they were met by the Canton Strike Committee which was attempting to manage all strike associated actions and which provided the strikers with food, lodging and money. *Id.* at 41-42. The following description of the work of the Strike Committee reveals the complexity and sophistication of its work:

[The strikers arriving from Hong Kong] were registered at one of the eight sections of Canton into which the city was then divided. After being properly registered the strikers were provided with food and lodging. From every 50 strikers one representative was elected to serve on the committee of workers' representatives whose membership was about 800. This was the highest legislative body of the strikers. From this committee another committee of 13 was elected to constitute the Strike Committee which was the highest executive body. Under the Strike Committee were eight sub-committees, two of which having especially important duties, *i.e.*, one on finance and the other on picketing.

Ta Chen, *Analysis of Strikes in China, from 1918 to 1926*, 1 *CHINESE ECON. J.* 945, 951 (1927). From the very commencement of the strike, skilled workers in Hong Kong supported the action and went to Canton. One exception was the Chinese Engineers and Mechanics Union which, ultimately, did also join the strike. Motz, *supra* note 11, at 58.

in Canton and ships of other countries would also be boycotted if they were carrying British goods.²³

The Kotewall Report provides a fascinating insight into the British mind and policies *vis-à-vis* the Crown Colony of Hong Kong. Prepared in October 1925 for the British Governor to assess the causes of the general strike that occurred in Hong Kong after the shootings in Canton, it was stamped "Secret" and "Confidential" and was not declassified until late 1979. The Report made no attempt to minimize the perceived threat of the actions in Canton: "This trouble has shaken our economic structure to its foundations The boycott has paralyzed our trade."²⁴ In a Colony whose very reason for existence was for trade and enrichment of British wealth,²⁵ these were words of catastrophe, crisis, and a call to action.

Act the government did. Even before the general strike was called, the offices of the newspaper *San Man Po* were ordered closed because the government had determined that:

[I]n daily articles and stories from time to time attacks mostly veiled, were made on the merchants and the ruling classes. At last it overstepped the utmost limits of toleration by ridiculing His Majesty, the King, *on the eve of his birthday*, after having a few weeks previously published a scurrilous article in which His Majesty was referred to as the "Big Devil" and his Excellency the Governor as the "Little Devil."²⁶

The Governor declared an emergency, and censorship and restriction became widespread. Not only were Chinese newspapers affected, but

²³ KOTEWALL REPORT, *supra* note 22, at 6. It was during this period that President Calvin Coolidge was reportedly in favor of granting the demand of the Chinese government for the abolition of the extra-territorial rights that the western countries had exercised within China. *Washington to Call Powers to Discuss Accord with China*, N.Y. TIMES, July 2, 1925, at 1. Britain strongly opposed the Washington initiative claiming that it would constitute a surrender to the violent disorders that had been endorsed by China. *Some British Uneasiness Over the Plan*, N.Y. TIMES, July 2, 1925, at 5.

²⁴ KOTEWALL REPORT, *supra* note 22, at 6, 33. The Canton Strike Committee developed effective methods of enforcing the boycott, examining all merchandise coming into or exiting Canton. *See* Motz, *supra* note 11, at 54-55. All products, regardless of the country of origin, that were found to have entered China from Hong Kong were seized and sold at public auction. *Id.* at 55. The number of boats entering and leaving Hong Kong in 1925 was less than half in the previous years. *Id.* at 108. The Strike Committee had become so powerful by late 1925 that the Governor of Hong Kong called the Committee the "de facto government in Canton." *Id.* at 110. *See also* HAROLD R. ISAACS, *THE TRAGEDY OF THE CHINESE REVOLUTION* 71 (2d rev. ed. 1961) (the Strike Committee was in fact the "first embryo of workers' power in China").

²⁵ *See* Richard Klein, *Law and Racism in an Asian Setting: An Analysis of the British Rule of Hong Kong*, 18 HASTINGS INT'L & COMP. L. REV. 223, 224-230 (1995).

²⁶ KOTEWALL REPORT, *supra* note 22, at 4-5 (emphasis added).

English ones as well, as they had "frequently published information likely to disturb the minds of the public."²⁷ Fifty government employees were assigned to censor mail and delays in processing mail were deliberate. Telephone communication was similarly censored by six employees designated to this work.²⁸ Rewards of 500 Hong Kong dollars were offered for information on "agitators"²⁹ with the expectation that "harmful and seditious talk as well as serious agitation is necessarily checked by the knowledge that the audience has substantial financial inducement to report such words and deeds."³⁰

Police were ordered to deport all "strikers and idlers."³¹ Random warrantless searches were conducted, especially of women, because "it has been reported that considerable quantities of arms and some bombs were being smuggled into the Colony by respectably dressed women arriving by train."³² The British Army and Navy conducted marches to display their power.³³ A special order, which had a "most salutary effect," enabled magistrates to summarily sentence individuals to ten years in prison with hard labor and flogging.³⁴

A war mentality existed on the part of the British. The Report warned that "*our enemy* has been and will be, increasing in his attacks upon us."³⁵ Military parades were held in an attempt to allay concerns as to whether the British would be able to maintain control.³⁶ The Governor of Hong

²⁷ *Id.* at 11-12. The British perceived censorship as particularly required when dealing with Chinese people because "the crucial fact in these disturbances was the absurd ease with which all classes of Chinese allowed themselves to be frightened by direct threats or general rumors." *Id.* at 18.

²⁸ *Id.* at 12-13. Some Chinese volunteered to aid the officially-designated Censor in these tasks. See Letter from R.E. Stubbs to Mr. Amery (June 26, 1925), in BRITISH DOCUMENTS ON FOREIGN AFFAIRS: REPORTS AND PAPERS FROM THE FOREIGN OFFICE CONFIDENTIAL PRINT, Pt. II, Ser. E, Vol. 29, at 230, 231 (Kenneth Bourne & D. Cameron Watt gen. eds., Ann Trotter ed., 1994).

²⁹ Informers were promised confidentiality for their information about "evil-disposed persons endeavoring by speeches and pamphlets to disturb the peace and good order of the colony." Notice issued by the Police Department, reported in S. CHINA MORNING POST, June 23, 1925. Editor's Note: The *South China Morning Post* is only available in the newspaper's archives in Hong Kong. Copies are not available at the *International Law Journal*.

³⁰ KOTEWALL REPORT, *supra* note 22, at 15. Control of the agitators was particularly mandated because "the Chinese at the beginning of the troubles swallowed everything the agitators told them." *Id.* at 24.

³¹ A special proclamation had been issued by the Colonial Government authorizing the deportation of any individual who was refusing to work. *HongKong Exiles Idlers*, N.Y. TIMES, July 7, 1925, at 6.

³² KOTEWALL REPORT, *supra* note 22, at 16-17.

³³ *Id.* at 16.

³⁴ *Id.* at 16-17.

³⁵ *Id.* at 25 (emphasis added).

³⁶ *Hong Kong*, N.Y. TIMES, July 8, 1925, at 1.

Kong, Sir Reginald Stubbs, in an address to the Legislative Council, warned that:

The present movement cannot be called a strike . . . the movement is nothing less than an attack on existing standards of civilization as represented by Hong Kong . . . we have to realize that we are faced with a deliberate attempt to destroy, in the interests of anarchy, the prosperity and *the very existence* of the community.³⁷

Since no Chinese language newspaper in Hong Kong would print Government "propaganda,"³⁸ the British created their own daily newspaper.³⁹ In order to show the Hong Kong Chinese that there *was* support for the British among the Chinese, the Government created imaginary associations — such as the "Peace and Order Preservation Society" — to author and sponsor posters and literature.⁴⁰

The striking workers made the following demands as proposed terms for any settlement with the companies in Hong Kong: 1) that the Chinese employees be afforded freedom of publication, speech and organization; 2) that the Chinese shall enjoy the same legal treatment as received by the British; 3) that the election law shall be revised to include the Chinese as electors; 4) that labor legislation shall be enacted providing for an eight-hour day, a minimum wage, a collective agreement with the employers, an abolition of contract labor, an improvement of living conditions for women and child workers, and compulsory insurance; 5) that all strikers be allowed to return to work without discrimination; 6) that all strikers receive pay for the time lost during the strike; and 7) that a committee shall be formed by representatives of the employers and the workers to investigate losses and to recommend that the Hong Kong Government compensate the companies for the losses.⁴¹ The strikers

³⁷ Reports of the Meetings of the Legislative Council of Hong Kong, H.K. HANSARD Sess. 1925, at 45-46 (emphasis added). Governor Stubbs' successor continued to make remarks of a similar nature. In an address to the Legislative Council in early 1926, Governor Clementi stated that the Colonial Government was determined to "put down with a firm hand any conspiracy to intimidate or otherwise to cause trouble among labourers and merchants in this Colony." T.C. Cheng, *Chinese Unofficial Members of the Legislative and Executive Councils in Hong Kong up to 1941*, 9 J. H.K. BRANCH ROYAL ASIATIC SOC'Y 7, 22-23 (1969).

³⁸ The Kotewall Report freely refers to the British Government's account of the conflict as "propaganda." KOTEWALL REPORT, *supra* note 22, at 22, 23, 25, 26.

³⁹ *Id.* The Kotewall Report concluded that this newspaper was a success. *Id.*

⁴⁰ *Id.* at 25. There was support for the British among some of the Chinese elite. For example, Sir Shouson Chou, the first Chinese member of the Executive Council (the Governor's cabinet), called for the suppression of all labor unions and called upon the British to not "retreat one inch." See WELSH, *supra* note 19, at 370.

⁴¹ Chen, *supra* note 22, at 949.

also called for an end to deportation⁴² and floggings⁴³ of the Chinese in Hong Kong.

London knew it had to act to support the Colony and three million pounds were provided at the Governor's request. The Governor was direct in making his appeal to London about the British companies' monetary losses due to the boycott, and forwarded to London the following analysis of the impact:

The resulting loss from the blockade to Chinese and foreign business and shipping is enormous. The consequences must prove disastrous to Lancashire and Yorkshire export trade while in addition there is complete paralysis of very valuable raw silk trade and other exports from Canton in which British firms are largely interested . . . [the boycott] seriously threatens the continued existence of many old established firms and businesses in the Colony, both British and Chinese.⁴⁴

In the very month that the funds came from Britain, land values had been dropping by as much as forty to sixty percent.⁴⁵ The money may have alleviated some of the financial losses of the British residing in Hong Kong, but the hardships resulting from the loss of servants who had gone out on strike had caused special dismay to Britons not used to doing

⁴² See Deportation of Aliens Ordinance, LAWS OF HONG KONG ch. 240 (1950).

⁴³ Flogging has, historically, been a punishment reserved for the Chinese. For example, Ordinance No. 9, Section 8 of 1857 provided for a flogging to be the punishment for violating the Ordinance only "if the offender shall be a Chinaman." Flogging had become so common an event that the Registrar of the Supreme Court wrote that "[d]isgusting exhibitions of public flogging were reported to be of almost daily occurrence [T]here was more flogging in Hongkong than probably in any country in the world according to the population. For the most trifling offences the Chinese were being daily sentenced to be publicly whipped." 1 JAMES WILLIAM NORTON-KYSHE, THE HISTORY OF THE LAWS AND COURTS OF HONGKONG 92 (1898). The injuries inflicted by the flogging were so severe that deformities and permanent scarring resulted. G.B. ENDACOTT, A HISTORY OF HONG KONG 115 (1958). It was only shortly after the United Nations Human Rights Commission in 1989 concluded that the flogging in Hong Kong violated the International Covenant on Civil and Political Rights that the Colonial Government in Hong Kong announced that there would be no more flogging in the colony. Tommy Chan, *Government Puts Down the Cane*, H.K. STANDARD, Aug. 24, 1989, at 1.

⁴⁴ Letter from Stubbs to Amery (June 26, 1925), in GREAT BRITAIN COLONIAL OFFICE, GENERAL CORRESPONDENCE 129/489 (enclosing telegram from the Chinese Chamber of Commerce in Hong Kong). A Director of the largest British Trading Company, Jardine, Matheson and Company, was even more blunt: "British shipping companies . . . will have to go out of business altogether unless the British Government does something about it." See Motz, *supra* note 11, at 109.

⁴⁵ See Motz, *supra* note 11, at 80. It has been estimated that the total decrease in property values accountable to the boycott was 500 million British pounds. See WELSH, *supra* note 19, at 377.

their own housework while in Hong Kong. The Kotewall Report, therefore, concluded that in the future the Chinese should not be depended upon as domestics, but rather that Filipinos would be preferable.⁴⁶

China at this time was beset by internal strife. The Kuomintang (Nationalist) party that had control in Canton⁴⁷ and with whom the leaders of the Strike Committee were closely allied was struggling to expand its power. By June of 1925, the Kuomintang declared the formation of a new National Government of China.⁴⁸ In March of 1926, Chiang Kai-Shak led a right-wing coup successfully seizing control of the Kuomintang party. The focus then shifted from the concerns of workers to that of attaining control of all of China.⁴⁹ In October of 1926, the Strike Committee called off the strike as well as the boycott of the British, and issued the following statement:

As our revolutionary army is rapidly spreading its influence in the Yangtse Valley, we have to extend the line of anti-imperialism forces by organizing farmers, laborers, merchants and literati of the entire country. Let them join us in the common struggle against imperialism and let us cancel the Canton-Hongkong strike.⁵⁰

A condition for terminating the boycott was that Britain accept China's imposition of a tax of two and a half percent on all imports and five percent on luxury items.⁵¹ The government in Canton used the money raised to compensate those Hong Kong Chinese who had been out on strike.⁵²

One finding of the Kotewall Report that would have a major impact on British rule for the next fifty years was the perception of the politicized Hong Kong Chinese *student* as enemy. The Report concluded:

⁴⁶ KOTEWALL REPORT, *supra* note 22, at 40.

⁴⁷ The "independence" of the government in Canton from the control of the central government in Peking created great difficulties for Britain's attempt to negotiate with the Chinese. The government in Canton was legally and officially subordinate to Peking and therefore could not be appropriately recognized by Britain, but any agreement between Britain and the central government would simply not be adhered to by Canton. *See Serious Straits of Hong-Kong*, TIMES (London), Aug. 10, 1925, at 10. On one occasion the British did utilize military power and threatened the greater use of force in the future. In September of 1926, British Naval fleets sailed up the Pearl River to Canton, marines landed and removed the picketing strikers from the docking areas. MINERS, *supra* note 18, at 18.

⁴⁸ BENTON, *supra* note 16, at 99.

⁴⁹ ISAACS, *supra* note 24, at 93-94. Negotiations with the British which had been called off by London in January, 1926, resumed shortly after the coup. *Id.* at 106.

⁵⁰ Chen, *supra* note 22, at 951. Even though the strike ended with few specific gains for the workers, one important result was the consolidation of the labor unions in Hong Kong. The previously weak, loosely organized labor unions saw the advantages of a united front and the Federation of Labor Unions of Hong Kong was formed. *Id.* at 955.

⁵¹ *See* MINERS, *supra* note 18, at 19.

⁵² *Canton to End Boycott*, N.Y. TIMES, Sept. 26, 1926, at 1.

It is very necessary to learn from these events how to prevent the corruption of school-boys in the future, and particularly their attempts to interfere in politics. *It was the students who started the strike in Hong Kong* [S]o successful were their efforts that practically all the boys' schools were more or less contaminated.⁵³

The Government had in fact closed many of the schools during the fifteen month-long strike,⁵⁴ and the Report signaled a clear intent of future control and censorship in the schools in order to avoid a recurrence of the introduction of "undesirable literature" into the schools.⁵⁵ The following was offered as educational policy: "Money spent on the development of the conservative ideas of the Chinese race in the minds of the young will be money well spent, and also constitutes social insurance of the best kind."⁵⁶

Hong Kong remained free of disturbances and conflict until late 1949 when the British clamped down and stifled protesters in a strike of tram workers. The economy of Hong Kong had seen a rapid increase in the cost of living yet little growth in salaries.⁵⁷ Concern became widespread with the stock market plummeting over forty percent in a matter of months.⁵⁸ Employees at Hong Kong Tramways Ltd. went out on strike due to dissatisfaction with the wages offered as part of a new contract. The struggle became symbolic of workers' dissatisfaction with their salaries.⁵⁹

In January 1950, 400 sympathizers from thirty-eight different "comfort groups" came to a meeting to show support for the striking tramway men.⁶⁰ When the strike leaders refused to comply with the police request to stop using microphones to address the crowd, battles between the demonstrators and the police broke out. The conflict lasted for over

⁵³ KOTEWALL REPORT, *supra* note 22, at 40-41. The Report seems almost to overlook the fact that a general strike of *workers* had occurred, and the only recommendations relating to labor relations focused on the need for better public relations and night schools for laborers "to be run only by men of proven loyalty." *Id.* at 44-46. Whereas the overall role played by students in the boycott was minimal, one of the first acts of protest against the British was the exodus of about 700 students from their Queens' College dorms to the city of Canton. Motz, *supra* note 11, at 39.

⁵⁴ KOTEWALL REPORT, *supra* note 22, at 41. The boycott had gradually diminished and by October 1926, it had ended.

⁵⁵ *Id.* at 41-42.

⁵⁶ *Id.* at 42.

⁵⁷ *Sympathies*, S. CHINA MORNING POST, Feb. 4, 1950, at 6.

⁵⁸ *Id.*

⁵⁹ *Tram Workers Riot: Tear Gas Bombs Used*, S. CHINA MORNING POST, Feb. 1, 1950, at 1. The tramway workers' union had requested with no success that the company resume negotiations, and had suggested that the Government or "prominent residents" mediate the dispute. *Hongkong Tram Strike: Company's Refusal to Negotiate*, TIMES (London), Jan. 4, 1950, at 3.

⁶⁰ *Tram Workers Riot: Tear Gas Bombs Used*, *supra* note 59.

three hours. The crowd supporting the strikers grew to 10,000 and the police, whose number had grown to 800, threw tear gas to disperse the protesters.⁶¹ The police, with the military standing by, proceeded to seize the Tramways Union headquarters with steel-helmeted police forming barricades, and the Commissioner of Police informed the Union that no further meetings would be allowed.⁶² Forty-two demonstrators were arrested and many more were hospitalized.⁶³ The Hong Kong Federation of Trade Unions criticized the "tyrannical" police action and demanded higher wages for workers.⁶⁴

The British immediately deported the Tramways Union leaders. The Expulsion of Undesirables Ordinance⁶⁵ provided for the expulsion from Hong Kong of any person merely "*suspected* of being likely to cause a disturbance of the public tranquillity [sic]."⁶⁶ Union demands that the deportation orders be revoked were ignored,⁶⁷ and additional union activists were ordered deported a week later.⁶⁸

The British response was effective. Hong Kong Tramways Ltd. did not increase its offer and further clashes between the police and strikers occurred.⁶⁹ Appeals were made to Mao Tse-Tung asking for actions to be taken against the Hong Kong authorities, but there was no response.⁷⁰ After a forty-three day strike, the workers returned to work and the police permitted union members to reenter their offices.⁷¹ Hong Kong Tramways Ltd. proceeded to withdraw its recognition of the union.⁷² The

⁶¹ *Id.* A news account described the police use of their batons: "The battle raged furiously. Men were knocked down like ninepins and blood flowed freely from gaping wounds." *Id.*

⁶² *Leaders Deported: Swift Action by the Government*, S. CHINA MORNING POST, Feb. 2, 1950, at 1.

⁶³ *Tram Workers Riot: Tear Gas Bombs Used*, *supra* note 59.

⁶⁴ *Labor Unions Defiant*, S. CHINA MORNING POST, Jan. 2, 1950, at 1.

⁶⁵ Expulsion of Undesirables Ordinance, LAWS OF HONG KONG ch. 242, § 4(f) (1950). Any dependent of such an "undesirable" was also subject to deportation. § 4(n).

⁶⁶ The Government also utilized the Deportation of Aliens Ordinance which provided: "The Governor in Council may at any time summarily issue a deportation order against any person whom he finds to be an alien . . . if the Governor deems it to be conducive to the public good to make summarily a deportation order against the alien." Deportation of Aliens Ordinance, LAWS OF HONG KONG § 3(1)(c) (1950).

⁶⁷ *Tram Workers: Tear Gas Bombs Used*, *supra* note 59. The English language press was supportive of the deportation laws. An editorial in the *South China Morning Post* illustrated the position: "Anyone who will not serve the essential interests of this Colony must be invited to leave. This is not 'oppression'; it is simple safeguard." *Kowloon Riots*, S. CHINA MORNING POST, Mar. 3, 1952, at 6.

⁶⁸ *Tram Workers' Offer*, S. CHINA MORNING POST, Feb. 7, 1950, at 1.

⁶⁹ *Appeal to Mao Planned*, N.Y. TIMES, Feb. 1, 1950, at 10.

⁷⁰ *Hong Kong Strike Ends*, N.Y. TIMES, Feb. 9, 1950, at 10.

⁷¹ *Trams Run Today*, S. CHINA MORNING POST, Feb. 10, 1950, at 1.

⁷² TURNER ET AL., *supra* note 17, at 90.

Governor of Hong Kong, Sir Alexander Grantham, proclaimed that the deportation of the Union leaders and their inability to return to their jobs and families in Hong Kong "was an eye-opener for *potential trouble makers*. It showed that the government was master in its own house."⁷³

II. PART TWO: PROSECUTION OF SEDITIOUS NEWSPAPERS

Whereas the British used the Deportation Ordinance to deal with the labor protestors in 1950, the Sedition Ordinance was called upon just a few years later. The living conditions for many Hong Kong Chinese were severe. There were approximately 300,000 squatters who were living in small mud huts, one virtually on top of another.⁷⁴ In November 1951, the first of a number of fires in squatter villages occurred — over 3,000 huts were destroyed, 15,000 were made homeless and several died.⁷⁵ The fire spread so rapidly due in part to a series of explosions caused by flammable material illegally stored in adjacent unlicensed factories.⁷⁶

There was no government program for building resettlement housing and the displaced squatters received no assistance or relief of any kind. Criticism of the lack of response by the colonial government was widespread, reaching beyond Hong Kong itself and into the House of Commons in London.⁷⁷ Those Hong Kong Chinese who were particularly critical of the government's inaction were banished from the colony.⁷⁸

⁷³ ALEXANDER GRANTHAM, *VIA PORTS FROM HONG KONG TO HONG KONG* 148 (1965) (emphasis added). The possible hypocrisy of the British rulers of Hong Kong may be revealed in the *very next* paragraph of the Governor's memoirs: "[O]ne of the most important things for which the free world stands is freedom of expression of opinion." *Id.* at 148-49.

⁷⁴ *Hong Kong to Oust Chinese Squatters*, N.Y. TIMES, Jan. 18, 1952, at 3. In general, there were three types of squatters in Hong Kong: those whose living area was at ground level, those who lived on roofs, and those who set up their "homes" on extremely small boats. The scene was described by a Special Magistrate in Hong Kong as follows:

All over the rocky hillsides near the urban areas, tens of thousands of ramshackle little huts were sprouting day and night, built of packing cases, sacks, kerosene tins, linoleum, worn-out rubber tyres, anything anyone could lay their hands on, tied together with bits of wire, and even with rice straw.

AUSTIN COATES, *MYSELF A MANDARIN* 5-6 (1968).

⁷⁵ *Fire in Kowloon — Over 3,000 Huts are Destroyed*, S. CHINA MORNING POST, Nov. 22, 1951, at 1.

⁷⁶ *Id.*

⁷⁷ *Kowloon Riot Statement in Commons*, S. CHINA MORNING POST, Mar. 5, 1952, at 10. A Member of Parliament asked pointed questions to the Colonial Secretary concerning what precisely was being done by the Government to respond to the hardships caused by the fire.

⁷⁸ Henry R. Lieberman, *Canton Radio Warns Hong Kong; Says Colony Belongs to Red China*, N.Y. TIMES, Jan. 19, 1952, at 1. Those exiled often received a supportive audience in Canton. For example, five of those deported participated in a Canton

Some Chinese in Canton raised money, 102,000 Hong Kong dollars,⁷⁹ and collected food to bring into Hong Kong to give to the victims of the fire, terming their visit a "comfort mission."⁸⁰ Twenty to thirty thousand Hong Kong Chinese⁸¹ and 150 delegates from various Hong Kong trade union and student organizations, as well as 100 representatives from the Hong Kong Chinese Chamber of Commerce, had gone to the border to welcome the "comfort mission" only to be given no explanation for the British refusal to permit the mission to enter.⁸² The official police statement in full was: "Those concerned were told plainly that permission would not be given for a comfort mission as such to enter the Colony."⁸³ After the delegates returned from Hong Kong to the rally which was waiting to greet the comfort mission, some at the rally — which had been described by the press as "gay and cheerful" and "like a glorified Sunday school picnic"⁸⁴ — stoned a police station and set small fires to police and army vehicles.⁸⁵ The police responded by opening fire and using tear gas guns to disperse the crowds. The conflict and fighting increased, leading to what police deemed a riot.⁸⁶ One hundred arrests were made leading to immediate trial, conviction, and prison terms of three months for some demonstrators.⁸⁷

Although the official police statement gave no explanation for refusing entry to the "comfort mission," the memoirs of the British Governor of Hong Kong at the time⁸⁸ provide insight into the decision. The Governor wrote:

Radio broadcast claiming that there was no freedom for the Chinese in Hong Kong and calling for Hong Kong to be returned to China. *Id.*

⁷⁹ *All Quiet in Kowloon*, S. CHINA MORNING POST, Mar. 3, 1952, at 1.

⁸⁰ *Mob Violence in Kowloon — Rioters Burn Police and Army Trucks, Attack Europeans — Efficient Police Action Restores Order*, SUNDAY POST-HERALD, Mar. 2, 1952, at 1 [hereinafter *Mob Violence in Kowloon*].

⁸¹ *Id.*

⁸² An editorial in the English language newspaper *South China Morning Post* expressed what was perhaps the Government's view. The squatters in Tung Tau, the village that had burned, the paper wrote:

[S]hould be grateful to the Colony for tolerating their hut settlement upon land to which they had no title . . . They need no extraneous comfort, nor does sympathetic contribution to them from outside the Colony call for a mission. It is perfectly plain that Tung Tau is being exploited . . . to embarrass the Government.

Kowloon Riots, *supra* note 67.

⁸³ *All Quiet in Kowloon*, *supra* note 79.

⁸⁴ *Mob Violence in Kowloon*, *supra* note 80.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Prison Sentences*, S. CHINA MORNING POST, Mar. 5, 1952, at 3.

⁸⁸ GRANTHAM, *supra* note 73.

The outcome [of the comfort mission] was not difficult to foresee. The mission would have come to Hong Kong; fiery speeches would have been made against the 'imperialists', aid would have been promised from 'Mother China'; all this, be it noted, on Hong Kong soil. Rioting would have broken out with further fuel for the flames if any member of the mission had been injured or arrested. [Therefore] permission for the mission to enter Hong Kong was firmly refused.⁸⁹

Whereas to the British, the prohibition of the political dissent and criticism of colonial rule was critical, to China the suppression was typical of imperialist rule which the Chinese government was increasingly criticizing during 1951 and 1952 — the peak years of the Korean War.⁹⁰ The Peking *People's Daily*, an official newspaper of the People's Republic of China, responded to the actions of the Hong Kong government and police by accusing the British of "arresting, killing and persecuting our patriotic fellow countrymen."⁹¹ The paper warned that

the anger and indignation of the Chinese people is irrepressible. The Chinese people cannot but warn the British Government in Hong Kong . . . as follows: You must bear the whole responsibility for any grave consequences in connection with the provocative outrage you have committed against the great people of the Chinese People's Republic in Hong Kong.⁹²

Publishers and printers of three Chinese language newspapers in Hong Kong — *Wen Wei Po*, *Hsi Wen Pao* and *Ta Kung Pao* — reprinted this story from the *People's Daily*. The owners, editors, publishers and printers of the three newspapers were arrested and charged with publishing "seditious" journals in violation of the Sedition Ordinance of 1951.⁹³ The Ordinance provided that "any person who prints, publishes, sells, offers

⁸⁹ *Id.* at 158-59.

⁹⁰ Trade between Hong Kong and China, which was perhaps the major factor preventing greater antagonism between the two areas, had fallen sharply in the last six months of 1951 to a level less than one half that of the first six months of the year. *Hong Kong — China Trade Down*, N.Y. TIMES, Mar. 9, 1952, at 3. Hong Kong's primary trading partner since the founding of the Colony had been China. Henry R. Lieberman, *Hong Kong's Troubles With Chinese Increasing*, N.Y. TIMES, Mar. 9, 1952, at 4.

⁹¹ *Sedition Charge*, S. CHINA MORNING POST, Apr. 18, 1952, at 6.

⁹² *Id.*

⁹³ *Newspapers Accused of Sedition*, S. CHINA MORNING POST, Mar. 21, 1952, at 1. Seditious was defined as an intention to "bring into hatred or contempt or to excite disaffection against the person of Her Majesty, or Her Heirs or Successors, or against the Government of Hong Kong." Crimes Ordinance, LAWS OF HONG KONG, ch. 200, § 9(1)(a) (1950).

for sale, distributes or reproduces any seditious publication shall be guilty of an offense."⁹⁴

The first trial, against the newspaper *Ta Kung Pao*, began six weeks after the "comfort mission" incident. The Acting Solicitor General, A. Hooten, explained the Government's perception of free speech in the Colony: "A man is entitled to express his political views provided he does so in a fair, reasonable, and *moderate* way."⁹⁵ Hooten explained that even criticism of the Government was acceptable "as long as the criticism is candid and fair and the person criticizing the actions of the Government does so frankly without attributing a malicious motive to the Government or its officials."⁹⁶ Specifically, the Ordinance forbade "writings likely to promote discontent or disaffection against the Government."⁹⁷ By these definitions of what is "acceptable criticism," nothing truly critical was to be permitted. The criticism of any governmental policy was a cause of "discontent or disaffection." Such concerns, however, did not prevent the prosecution from informing the jury that "freedom of speech and writing are very dear to us wherever the British flag flies."⁹⁸

The defense challenged the seven-man jury on the grounds that none of the jurors knew Chinese even though the newspaper story that they had to assess had been written in Chinese. The British judge held the challenge was without merit.⁹⁹ The objectivity of the judge is certainly open to question considering that he informed the publisher and editor of *Ta Kung Pao* that the "paper was an influence for evil in the Colony."¹⁰⁰ The defense argued that the printed news story was an official release from the New China News Agency of the People's Republic of China, and was merely an unchanged reprint of the article in the *People's Daily*.¹⁰¹ The information contained in the news story was the official reaction of China to the "comfort mission" incident, and it was the publication of this reaction that the Colonial Government had deemed "seditious." The court rejected the claim of the *Ta Kung Pao* newspaper that it was a legitimate goal of the paper to inform the residents of Hong Kong

⁹⁴ Sedition Ordinance, LAWS OF HONG KONG, ch. 217, § 4(1)(c) (1951).

⁹⁵ *Prosecution Not Aimed at Communism — Crown Explains Case*, S. CHINA MORNING POST, Apr. 19, 1952, at 3 (emphasis added).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Paper Suspended — Publisher and Editor Found Guilty*, S. CHINA MORNING POST, May 6, 1952, at 5.

¹⁰¹ *Id.* The Government viewed the fact that the article was a reprint as irrelevant; the Sedition Ordinance did encompass the *repetition* of seditious words. *Prosecution Not Aimed at Communism — Crown Explains Case*, *supra* note 95. The judge, in his charge to the jury, supported the prosecution's view. *Paper Suspended — Publisher and Editor Found Guilty*, *supra* note 100.

what other countries were saying about Hong Kong.¹⁰² In fact, the newspaper *had* attempted to appear to be objective. In the column adjacent to the reprint from the *People's Daily* was the British Government's official account of the comfort mission incident which had been released by the Public Relations Office.¹⁰³

The defense was not allowed the opportunity to show that the actions of the police which were described in, and which formed a major part of, the article were in fact accurate. The judge ruled that such evidence was irrelevant, accepted the prosecution's contention that truth would not be a defense to the charge of sedition under the laws of Hong Kong, and that "the Government was not being tried nor was the police for their actions."¹⁰⁴ The defense was, however, able to read into the record accounts of the police conduct in London newspapers which were more inflammatory than those printed in *Ta Kung Pao* and were not, of course, subjected to any charge of sedition in Great Britain.¹⁰⁵

The trial lasted fifteen days. The jury deliberated for only forty-five minutes before returning the guilty verdict.¹⁰⁶ The judge told the jury that he agreed with the verdict, adding that the article was a "tissue of lies from start to finish."¹⁰⁷ The paper was forbidden to publish for a period of six months, the publisher was sentenced to nine months imprisonment or a \$667 (U.S.) fine, and the editor was required to serve six months or pay a \$500 (U.S.) fine.¹⁰⁸ Additionally, due to the judge's anger at the trial taking fifteen days when the judge had concluded that seven days would have been sufficient, both the publisher and editor were required to pay money for the additional costs the prosecution had incurred.¹⁰⁹

¹⁰² *Sedition Trial*, S. CHINA MORNING POST, Apr. 29, 1952, at 6. Counsel for the defense had argued that the Colonial Government wanted the people in Hong Kong to "close our ears like the three monkeys, and see no evil, hear no evil and speak no evil." *Id.*

¹⁰³ *Id.* The Secretary of State for the Colonies, Mr. Lyttelton, presented the Government's position initially to the House of Commons. *Disturbances in Hong Kong — Mr. Lyttelton's Statement*, TIMES (London), Mar. 4, 1952, at 6.

¹⁰⁴ *Defence Questions to Police Witness Ruled Irrelevant*, S. CHINA MORNING POST, Apr. 22, 1952, at 3.

¹⁰⁵ *Trial Continues*, S. CHINA MORNING POST, Apr. 26, 1952, at 6.

¹⁰⁶ *Paper Suspended — Publisher and Editor Found Guilty*, *supra* note 100, at 5.

¹⁰⁷ *Id.*

¹⁰⁸ *2 News Men Guilty of Sedition*, N.Y. TIMES, May 6, 1952, at 11. The Government's position was that if the jury were to find that the article was seditious, then the publisher and editor were *prima facie* responsible because of their positions. *Prosecution Not Aimed at Communism — Crown Explains Case*, *supra* note 95. The Crimes Ordinance authorized imprisonment for two years for a first offense. Crimes Ordinance, LAWS OF HONG KONG, ch. 200, § 10(1) (1950).

¹⁰⁹ *Paper Suspended — Publisher and Editor Found Guilty*, *supra* note 100, at 5. The court acknowledged that it was not the practice to require the defense to pay any costs whatsoever to the prosecution. *Id.*

One would expect that the goal of the British was not just to cease publication of the charged newspapers, but to send the message to all publications that articles sharply critical of colonial rule could lead to prosecution and closure. Indeed, after the *Ta Kung Pao* decision, the British concluded it was not even necessary to proceed against the two other publications.¹¹⁰ Interest in the sedition trial had been extraordinary — the courtroom was filled each day, and newspapers contained full transcripts of the proceedings in especially small print so as to enable complete reporting.¹¹¹ In case there was any doubt as to the purpose of the Sedition Ordinance, the government informed that “the point of making sedition an offense was to *preserve good feeling* in the Colony.”¹¹² The prosecution repeatedly made it clear at trial that criticism of almost *any* nature of government policy was intolerable. Comments that criticized how the British were treating the Chinese population and how government policies were affecting the residents were *de facto* considered to be remarks that “must raise discontent and disaffection in the minds of the inhabitants.”¹¹³ Yet those who were critical of the failure of the Hong Kong government to concern itself with the housing conditions of the populace¹¹⁴ believed it necessary to articulate the criticism if there were to be any hope of change.¹¹⁵

A free press has traditionally been a primary source for raising issues of concern and provoking controversy. The desire of the British in Hong Kong, however, was to have a press totally supportive of colonial rule, and a press which would editorialize, as did the major English language newspaper, that the “[G]overnment is correct in discouraging all public demonstrations. This attitude is not prompted by partisanship but by simple desire to prevent trouble. To this policy all who wish to remain in the Colony and enjoy its protection must conform.”¹¹⁶ If this was representative of the press that would be tolerated, then it was no wonder the

¹¹⁰ *Hong Kong Ends Red Case*, N.Y. TIMES, July 1, 1952, at 3. Counsel for the colonial government stated that the Crown was satisfied with having clearly established the applicability of the Sedition Ordinance in such instances. *Id.*

¹¹¹ *Defence Questions to Police Witness Ruled Irrelevant*, *supra* note 104, at 3.

¹¹² *Prosecution Not Aimed at Communism — Crown Explains Case*, *supra* note 95, at 3 (emphasis added).

¹¹³ *Id.*

¹¹⁴ As the sedition trial was taking place, another fire occurred in a squatter area, this time resulting in 12,000 becoming homeless. *Kowloon Tsai Fire*, S. CHINA MORNING POST, May 1, 1952, at 3; see also *Kowloon Fire Victims*, S. CHINA MORNING POST, May 10, 1952, at 5. At least two children died in this fire. *8,000 Made Homeless by Kowloon Fire*, TIMES (London), May 1, 1952, at 5.

¹¹⁵ See *Kowloon Riot Statement Read in Commons*, *supra* note 77.

¹¹⁶ *Kowloon Riots*, *supra* note 67, at 6.

prosecutor could tell the jury regarding *Ta Kung Pao* that "there could scarcely be a more seditious publication."¹¹⁷

Of course, it was not just the critical press that the colonial government was concerned with; the British also wanted to send a message to those who had demonstrated in support of the "comfort mission." Within a week after the disturbances, the British waged a five-day military exercise involving the Royal Army, Navy and Air Force, as well as the Hong Kong Police Force and civil defense agencies.¹¹⁸ The military exercise, named "Operation Vortex," included bringing in extra military forces from the British Colony of Malaysia to deal with what was considered to be an "explosive internal" situation in Hong Kong.¹¹⁹

The British attempts to chill dissent worked for a while. The incident, however, points out the legitimacy of concerns with British colonial rule at the time. There was inadequate housing and no significant government plan to provide alternatives for the 300,000 desperate squatters living in squalid, unsanitary and unsafe conditions.

III. PART THREE: 1956 — MASS ARRESTS, CURFEWS AND A MILITARY RESPONSE

In 1956, the Hong Kong government responded to citizens rioting in the streets by conducting "sweeps" of suspected leaders, making mass arrests, setting curfews, and calling out the military. As in many countries in which there may be an underlying discontent among the population, an isolated, seemingly innocuous event led to large-scale disturbances.

The precipitating event in Hong Kong was the tearing down by a Government employee of a Nationalist (Kuomintang) flag in a large, low-income resettlement housing project.¹²⁰ The flag had been placed on the side of a building by residents to commemorate Double Ten day, the celebration of the October 10, 1911 commencement of the revolution that led to the overthrow of the Manchu Dynasty in China and the founding by Sun Yat-Sen's followers of the Republic of China.¹²¹ There had been a history in Hong Kong of expressing enthusiastic support for the over-

¹¹⁷ *Prosecution Not Aimed at Communism — Crown Explains Case*, *supra* note 95, at 3.

¹¹⁸ Lieberman, *supra* note 90, at 4.

¹¹⁹ *Id.*

¹²⁰ *Rioting in Kowloon*, S. CHINA MORNING POST, Oct. 11, 1956, at 1. High-density resettlement projects were built to accommodate those made homeless due to the clearing of land for development by private industry or the government.

¹²¹ Double Ten day was a celebration of the Nationalist Government in Taiwan where the Kuomintang Party which had led the revolution was still in control. By contrast, October 1 is the national day for the People's Republic of China which was formally established on October 1, 1949.

throw of the rule of the Emperors in China.¹²² The Government worker was merely carrying out a decision made one week earlier by the Hong Kong Urban Council to prohibit any political decorations or flags from being placed on the outside of buildings in housing projects.¹²³

Upon discovering that the flag was torn down, a crowd soon to number 5,000 attacked the government housing office, set fire to stores, damaged police cars and burned down the police post at the resettlement area.¹²⁴ Six hundred riot police arrived, equipped with tear gas guns, shields and batons.¹²⁵ Fighting broke out as the rioters threw bottles and stones at the police.

Disturbances spread the next day and the military was called into the streets of Kowloon.¹²⁶ British military aircraft circled low while the troops marched along the main streets.¹²⁷ In a special radio broadcast, the government warned that those involved in the rioting risked being shot.¹²⁸ Thirty were killed on the second day of the conflict.¹²⁹ All public assemblies were banned.¹³⁰ For the first time in Hong Kong history, a curfew was imposed in all of Kowloon from 7:30 p.m. until 10:00 a.m.¹³¹ All forms of public transportation stopped operating, no fresh food was distributed, utility services were sharply curtailed, and the public hospi-

¹²² The Governor of Hong Kong, in a confidential dispatch to London, described the scene in Hong Kong when news was received in 1911 that the Manchu Emperors had fled: "The entire Chinese population appeared to become temporarily demented with joy. The din of crackers was deafening and accompanied by perpetual cheering and flag waving — a method of madness most unusual to the Chinese." GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE CO 129/381, at 196 (Nov. 23, 1911). The Governor added that the celebration was the "most amazing outburst which has ever been seen and heard in the history of this Colony." *Id.* The success of the Chinese Revolution increased anti-imperialist sentiment in Hong Kong. Crowds developed with people yelling to hit or kill foreigners. TSAI, *supra* note 17, at 257. The Governor reported of the lower class Chinese in Hong Kong that "their heads have become swollen by the contemplation at a safe distance of the exploits of others in the 'emancipation of China from the foreign (Manchu) yoke.'" *Id.* at 258.

¹²³ FELIX PATRIKIEFF, *MOULDERING PEARL: HONG KONG AT THE CROSSROADS* 39 (1989).

¹²⁴ *Rioting in Kowloon*, *supra* note 120, at 1.

¹²⁵ *Id.*

¹²⁶ *More Than Thirty Killed*, S. CHINA MORNING POST, Oct. 12, 1956, at 1.

¹²⁷ *Third Day of Rioting in Hong Kong*, TIMES (London), Oct. 12, 1956, at 10.

¹²⁸ *More Than Thirty Killed*, *supra* note 126, at 1.

¹²⁹ *Third Day of Rioting in Hong Kong*, *supra* note 127, at 10.

¹³⁰ *Id.*

¹³¹ *Id.* The next day, the curfew was extended both in area — to include the New Territories — and in time — until 11:00 a.m. *Nationalists Blame Reds for Riots*, S. CHINA MORNING POST, Oct. 13, 1956, at 1.

tals were unable to deal with the casualties.¹³² Beside the thirty dead, 165 were arrested, and 143 were hospitalized.¹³³

The next day, after the Government informed the populace that it will "put down these disorders without delay and take whatever means necessary to ensure that this is done,"¹³⁴ raids began on the resettlement projects. The following is a description of one such police action:

After firing a few warning shots, [the police] spoke to the occupants through the microphone, ordering all inmates to return to their homes and shut the doors. This lasted for 15 minutes. Police then went up to the premises and knocked at the door of each room. A little later they brought out all the male occupants, numbering about 500 and lined them up. The C.I.D. [Criminal Investigation Division] then went up to the men and sorted out 30 whom they put in a Police van. Six others who were believed to be ringleaders were handcuffed. During this particular operation, an elderly woman was accidentally shot in the left leg.¹³⁵

By the third day, such sweeps resulted in 3,000 arrests with charges such as conducting public meetings, illegal assembly, rioting, being members of secret outlawed societies, and breaching the curfew law.¹³⁶ Almost all those arrested were sentenced immediately upon a determination of guilt to six weeks in jail.¹³⁷

The military presence on the streets of the Kowloon area increased and barbed wire was put up in certain zones to restrict access by demonstrators.¹³⁸ Support for the tough British response came from London, illustrated by an editorial in the London *Daily Telegraph*: "The time may come when this week's disorders may well be recalled as an example of the failure of British rule. No effort, therefore, should be spared to prevent trouble makers staging a repeat performance."¹³⁹

In a pre-dawn raid the next morning, the British Royal Air Force and the police rounded up 1,000 individuals for arrest and imprisonment,¹⁴⁰

¹³² PATRIKIEFF, *supra* note 123, at 42.

¹³³ *More Than Thirty Killed*, *supra* note 126, at 1.

¹³⁴ *Id.*

¹³⁵ *Nationalists Blame Reds for Riots*, *supra* note 131, at 18.

¹³⁶ *Riots*, SUNDAY POST-HERALD, Oct. 14, 1956, at 1. Only 25% of those arrested were suspected rioters. *China's Turbulent Doorstep*, ECONOMIST, Oct. 20, 1956, at 219.

¹³⁷ *Riots*, *supra* note 136, at 1. Over 97% of those arrested were immediately ascertained to be guilty. *China's Turbulent Doorstep*, *supra* note 136, at 219.

¹³⁸ *Riots*, *supra* note 136, at 1.

¹³⁹ This editorial was reprinted in *Warning by London Paper on The Riots*, SUNDAY POST-HERALD, Oct. 14, 1956, at 3.

¹⁴⁰ *Returning to Normal*, S. CHINA MORNING POST, Oct. 15, 1956, at 1.

bringing the total number of arrests to over 6,000.¹⁴¹ Hong Kong became quiet, with only intermittent disturbances over the next few days. The death toll was sixty,¹⁴² at least forty-two of whom died from gunshot wounds.¹⁴³ There was no evidence at all that anyone other than the police had used guns.¹⁴⁴ Property damage during the riots was estimated at five million (Hong Kong) dollars.¹⁴⁵

The Hong Kong Government conducted an inquiry into the riots and concluded that the disturbances were spontaneous and unplanned.¹⁴⁶ The Governor at the time, Sir Alexander Grantham, determined that the riots would have occurred even if the removal of the flag had not happened because of the underlying tensions prevalent in the Colony.¹⁴⁷ In a dispatch to the Secretary of State for the Colonies in London, the Governor warned that the inadequate housing accommodations had created "conditions of unparalleled overcrowding and the attendant threat to law and order."¹⁴⁸ His comments clearly focused on the role of social discontent in causing the riots, and implied criticism of the failure of Great Britain to be more responsive to the needs of the residents of Hong Kong:

The people themselves for the most part live at a bare subsistence level; they own little or no personal property; the great majority have no real stake in the Colony. Employment is difficult and in some cases indifferently paid. They are people who have fled from their

¹⁴¹ KEVIN P. LANE, SOVEREIGNTY AND THE STATUS QUO: THE HISTORICAL ROOTS OF CHINA'S HONG KONG POLICY 73 (1990).

¹⁴² *Hong Kong Riot Toll Now 60*, N.Y. TIMES, Oct. 24, 1956, at 2.

¹⁴³ The Commissioner of Police had told the police officers to use their guns "without hesitation and where necessary." PATRIKIEFF, *supra* note 123, at 40.

¹⁴⁴ *Rioting Over*, S. CHINA MORNING POST, Oct. 18, 1956, at 10. There were two additional deaths that resulted from injuries sustained by tear gas shells. No police or military officer was among those killed. *3000 Arrested in Hongkong After Riots*, TIMES (London), Oct. 15, 1956, at 8.

¹⁴⁵ *Hong Kong Riot Toll Now 60*, *supra* note 142, at 2.

¹⁴⁶ See K.A. BIDMEAD, *The Police — Part One*, in HONG KONG GOVERNMENT, THE GOVERNMENT AND THE PEOPLE 81 (1962). The Acting Commissioner of Police, several years later concluded that the spontaneity of the rioters made the job of the police all the more dangerous. *Id.*

¹⁴⁷ GRANTHAM, *supra* note 73, at 191. The Governor wrote that at the time of the rioting, "tensions were already so high and tempers so violent, that there would probably have been an explosion in any case." *Id.* The Acting Police Commissioner, writing of the riots, supported the Governor's belief that fundamental discontent in the Colony could lead to a small incident escalating to riot proportions. BIDMEAD, *supra* note 146, at 81.

¹⁴⁸ Covering Dispatch from the Governor of Hong Kong to the Secretary of State for the Colonies (Dec. 23, 1956), in HONG KONG GOVERNMENT, REPORT ON THE RIOTS IN KOWLOON AND TSUEN WAN, OCTOBER 10TH TO 12TH, at II (1956).

homeland and it is not surprising if their fate has engendered a sense of frustration and bitterness.¹⁴⁹

One target, certainly, of the rioters were the British; the police reported that cars containing British passengers were "special targets for the stone-throwing mob."¹⁵⁰ In some instances attempts were made to pull the Britons out of their cars.¹⁵¹ British flags were ripped down from buildings and torn to pieces.¹⁵² To protect the exclusive British residential area of the Peak,¹⁵³ the police shut down the tram which provided primary access to that area.¹⁵⁴ To some observers, the riots, although prompted by the flag incident, had quickly developed into demonstrations directed against the presence of foreigners in Hong Kong.¹⁵⁵

¹⁴⁹ *Id.* at V.

¹⁵⁰ *Rioting in Kowloon*, *supra* note 120, at 1. Indeed, the correspondent for the *Economist* who was covering the disruptions wrote that anti-foreigner sentiment among the rioters was strong and even those Chinese who were mere spectators seemed to sympathize with the rioters as they harassed white men and women. *Hongkong's Black 46 Hours*, *ECONOMIST*, Oct. 20, 1956, at 250.

¹⁵¹ *Hong Kong Swept by Chinese Riots*, *N.Y. TIMES*, Oct. 11, 1956, at 1. It is characteristic of Asia to become xenophobic and target Westerners. *See* RICHARD HUGHES, *HONG KONG BORROWED PLACE—BORROWED TIME* 38 (1968).

¹⁵² *More Than Thirty Killed*, *supra* note 126, at 20.

¹⁵³ The "Peak" of Hong Kong Island refers to that residential area which is of the highest altitude and has, therefore, the most desirable climate in this extraordinarily humid land. In 1904, the Hill District Reservation Ordinance No. 4 of 1904 was enacted and designed to prohibit members of the Chinese race from residing on the Peak. Government of Hong Kong Ordinance, No. 4 (1904). For an analysis of this and other legislation intended to keep the Europeans separated from the Chinese, see Klein, *supra* note 25, at 259-67.

¹⁵⁴ *Id.* at 263.

¹⁵⁵ *See, e.g., Hong Kong Riots: Aftermath*, *AMERICA*, Nov. 3, 1956, at 115. There were, to be sure, other factors at work as well. The police were subsequently to blame the triads — secret societies engaged in criminal activities. *See* BIDMEAD, *supra* note 146, at 80 (the triads were quick to exploit the initial unrest and were responsible for escalating the riots to the level that was reached). The attempts to blame the triads was not given credence by most in Hong Kong. *Hong Kong Trouble on the Double Tenth*, *TIME*, Oct. 22, 1956, at 35, 35. What certainly was a factor was the antagonisms between the Chinese in Hong Kong who were supporters of the Nationalist government in Taiwan and those who supported the People's Republic of China. Fighting between the two groups was reported to have occurred inside factories. *More Than Thirty Killed*, *supra* note 126, at 1. Schools that were viewed as being supportive of the People's Republic were set on fire. *Hong Kong Swept by Chinese Riots*, *supra* note 151, at 1. Nationalist supporters rallied to demand their employers fire left-wing employees. PATRIKEEFF, *supra* note 123, at 40. Stores that sold food from the People's Republic were attacked, and in some areas of Kowloon individuals on the streets carried Nationalist flags to prevent their being assaulted. *More Than Thirty Killed*, *supra* note 126, at 1. The People's Republic blamed the Nationalist Government in Taiwan for the rioting. China News Agency Press Release of Oct. 14,

It was clear from the Government's response to the rioting that the military had been trained and prepared for internal disruptions. As the Acting Commissioner of Police stated regarding the British military forces:

In times of internal disorder, we work very closely with them, and they are always there to give their support when necessary. It is their duty to assist the civil power in preserving order in times of unrest, and I can assure you that their presence and efficiency are of immense value to us in our task.¹⁵⁶

The police themselves were not laggards. The Commissioner stated regarding the 1956 riots:

When trouble threatens, the Police assume a *para military* role, and we go into what we call Emergency Structure. To do this, we call upon the Auxiliary Police Force who, once they are mobilized, become part of the main forces and make another 1500 men available. We organize into battalions, mobile patrols and foot patrols in order to have maximum flexibility. All formations are armed with batons, gas, riot guns and automatic weapons, and if it becomes necessary to strike hard, these units can do so very effectively.¹⁵⁷

It was not just when acting in a specifically military role that the police dealt with internal threats. The Special Branch of the Police monitored the actions of groups which the Colonial Government believed were to represent a political threat.¹⁵⁸ During the 1956 riots, the Special Branch operatives observed and monitored those individuals most involved.¹⁵⁹ Direct appeals were made to civilians in Hong Kong to provide information about the leaders of the demonstrations.¹⁶⁰

As one result of the riot the People's Republic of China adopted the role of protector of the well-being of the Chinese in Hong Kong. The criticisms by Peking of conditions in the colony increased. Hong Kong was portrayed as being overridden with corruption, crime and poverty.¹⁶¹

1956, reprinted in S. CHINA MORNING POST, Oct. 17, 1956, at 24. Taiwan in turn placed the blame on the Communists for instigating the riots. *Nationalists Blame Reds for Riots*, *supra* note 131, at 1.

¹⁵⁶ BIDMEAD, *supra* note 146, at 81.

¹⁵⁷ *Id.* at 80-81.

¹⁵⁸ STEPHEN DAVIES & ELFED ROBERTS, POLITICAL DICTIONARY FOR HONG KONG 463 (1990).

¹⁵⁹ PATRIKKEFF, *supra* note 123, at 42.

¹⁶⁰ *Hong Kong Police Assert Gangsters Caused Riots*, N.Y. TIMES, Oct. 13, 1956, at 3.

¹⁶¹ Gary Catron, *Hong Kong and Chinese Foreign Policy, 1955-60*, 51 CHINA Q. 404, 415 (1972).

Capitalism as well as the cultural influences of the West were blamed for the colony's decline.¹⁶²

IV. PART FOUR: 1966 — RECESSION, FERRY FARE INCREASES, RIOTING AND SUPPRESSION

It was ten years until the next major disturbance in Hong Kong. As a result of the riots in 1956, the Colonial Government instituted measures to ensure better control over future demonstrations and protests.¹⁶³ An Emergency Control Centre was structured to receive information from a variety of sources and to report directly to the Governor.¹⁶⁴ New police stations were constructed and were described as resembling forts with tall barriers, barbed wire and gun turrets.¹⁶⁵ Greater resources were provided to intelligence operations. Yet despite this extensive preparation, the 1966 riots caught the police and the military off guard.¹⁶⁶

The economy of Hong Kong in 1966 had suffered from a minor recession. Real estate values had decreased,¹⁶⁷ there was a banking crisis,¹⁶⁸ overall growth had slowed, public confidence in the economic well-being of the Colony had been weakened, and there were growing fears of a depression.¹⁶⁹ Fears of hard economic times ahead were exacerbated by a series of price increases¹⁷⁰ and the widespread view that Hong Kong had entered into an inflationary cycle.¹⁷¹ Many in Hong Kong had not shared in the economic gains achieved by the Colony and had little hope

¹⁶² U.S. CONSULATE GENERAL HONG KONG, REVIEW OF THE HONG KONG CHINESE PRESS, No. 210/57, at 2 (English translation of article from *Ta Kung Pao*, Nov. 9, 1957).

¹⁶³ REPORT OF COMM'N OF INQUIRY, KOWLOON DISTURBANCES 1966 ¶ 253, at 68 (1967) [hereinafter REPORT OF COMM'N OF INQUIRY].

¹⁶⁴ *Id.* ¶ 257, at 69.

¹⁶⁵ PATRIKBEFF, *supra* note 123, at 45.

¹⁶⁶ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶¶ 260, 261, at 70.

¹⁶⁷ Investment in real estate had been one of the most reliable methods for making money in Hong Kong, and the abundance of empty apartments in 1966 was viewed as a symbol of economic decline. *Id.* ¶ 488, at 133.

¹⁶⁸ Two major banks in Hong Kong had failed and closed down with thousands of depositors unable to claim the full value of the money they had deposited in the banks. *Id.* ¶ 486, at 132.

¹⁶⁹ *Id.* ¶¶ 31-38, 483-491, at 6-7, 132-33.

¹⁷⁰ There had been increases in postal charges, higher rates for water, resettlement rent increases, greater car license fees, higher costs for oil, cigarettes, and other products. Y.T. Ku, *Hongkong's Blind Spot*, FAR E. ECON. REV., May 5, 1966, at 269, 269, 271.

¹⁷¹ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 500, at 135. Increases in the cost of commodities was a major factor leading to discontent. *Hong Kong Imposes Dusk-Dawn Curfew*, N.Y. TIMES, Apr. 9, 1966, at 3.

of doing so.¹⁷² Discontent was especially pervasive among the blue collar workers and the unemployed.¹⁷³

It was against this background that the Star Ferry Company announced an application to increase the fares on the boats that carried an average of 150,000 passengers daily across Victoria harbor from the urban areas of Kowloon to the commercial areas on Hong Kong Island.¹⁷⁴ Even prior to the formal announcement of the proposed fare increase, opposition to any increase had mounted. The Chinese press led the attack on any raise in fare and was joined by the Chinese Chamber of Commerce, trade unions and a number of civic associations.¹⁷⁵ Petitions opposing any fare increase were presented to the Government and focused on the following concerns: 1) the past profits of the Star Ferry Company had been excessive; 2) fear that any increase would lead to an inflationary spiral of other costs; 3) any increase in fare was not justified; 4) the burden of higher ferry fares would hit hardest those who were least able to pay.¹⁷⁶ Accusations were made that the Star Ferry shareholders were "milking" the public, and there were calls for cutbacks in dividends paid by the company to eliminate any justification for requiring a fare increase.¹⁷⁷

On April 4, 1966, at 9:00 a.m., a single individual — So Sau Chung — appeared at the Star Ferry Terminal with a black jacket on which the following was written in both Chinese and English: "Join hunger strike to block fare increase."¹⁷⁸ He received support from the press and many passengers, and the next day when a crowd had gathered around So, he was arrested. Witnesses to the arrest believed that So was not causing

¹⁷² See IAN SCOTT, *POLITICAL CHANGE AND THE CRISIS OF LEGITIMACY IN HONG KONG* 89, 92-93 (1989).

¹⁷³ See *Government and the Credibility Gap*, S. CHINA MORNING POST, Feb. 18, 1980, at 2 (Director of Home Affairs John Walden's presentation to the Hong Kong Observers).

¹⁷⁴ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 41, at 8. The 'Star' Ferry Company (Services) Ordinance No. 41 of 1951, (H.K.) specified the manner in which the Company was to go about seeking fare increases and provided for the Governor to make the final determination as to the appropriate fare. See *id.* at 152, app. 3.

¹⁷⁵ *Id.* ¶¶ 51-52, at 11. That the proposed increase was of mostly symbolic import can be perhaps best appreciated by realizing the minor impact of the increase. There had been no increase in fares in twenty years, with the exception of a small rise in monthly commutation tickets in 1951. SCOTT, *supra* note 172, at 84. In addition, the 1966 proposals which were finally approved by the Government did not affect second-class fares at all; the only impact was to increase first-class tickets from 20 to 25 cents. REPORT OF COMM'N OF INQUIRY, *supra* note 163, at 153, app. 4.

¹⁷⁶ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 55-57, at 12-13. The petition was begun by Ms. Elsie Elliot, a member of the Urban Council of Hong Kong and one of a very small number of political leaders in Hong Kong who were critical of the Government.

¹⁷⁷ *Realism Needed*, FAR E. ECON. REV., Mar. 31, 1966, at 641, 641.

¹⁷⁸ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 81, at 18.

any obstruction, that he had not been informed that he must leave, and that the police used excessive force in carrying out the arrest.¹⁷⁹ That night hundreds of people gathered to show support for So and to oppose the fare increase. Even though the demonstration was orderly, steel-helmeted police riot squads were called to the scene.¹⁸⁰

To prepare for any demonstrations the next night, the police formed their District Emergency Force companies, a para-military formation for riot suppression.¹⁸¹ One group was armed with riot batons and shields, another had tear-gas smoke pistols, a third held .300 calibre carbines, and a fourth section's responsibility was to secure prisoners.¹⁸² This show of strength was not deemed sufficient, so the Auxiliary Police were called out,¹⁸³ as was the military.¹⁸⁴ The rioting that was prepared for occurred and a question may exist as to what extent the overwhelming presence of the police precipitated incidents. The steel-helmeted, tear-gas shooting police antagonized and provoked those desiring merely to peaceably protest the ferry fare increase.¹⁸⁵ The main English language newspaper, the *South China Morning Post*, reported that eyewitnesses described Nathan Road, the major thoroughfare, as a battleground.¹⁸⁶ The *Morning Post's* headline read the next day: "Army Called Out: Mobs Go On a Rampage — Wild Riots in Kowloon."¹⁸⁷ The official Government Report of

¹⁷⁹ *Id.* ¶ 222, at 61.

¹⁸⁰ *Riot Squads Called Out*, S. CHINA MORNING POST, Apr. 6, 1966, at 1.

¹⁸¹ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 104, at 24.

¹⁸² *Id.* ¶ 105, at 24-25.

¹⁸³ The Hong Kong Auxiliary Police force consisted at the time of 2,437 volunteers under the command of the Police Commissioner. GOV'T OF H.K., HONG KONG ANNUAL REPORT 1966, at 154 (1967) [hereinafter 1966 H.K. ANN. REP.]. The transformation of the regular police force into the Emergency Force is dependent upon the Auxiliary Policemen taking over the station house and performing the routine work done by the Police. REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 287, at 76-77. There is also an Auxiliary Air Force which crew helicopters to provide information to the police about the formation of crowds. *Id.* ¶ 289, at 77.

¹⁸⁴ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 107, at 25. The military in Hong Kong is assigned a role in ensuring internal security. The Commissioner of Police, upon determining that military aid is advisable to help put down a disturbance, can request the Governor to deploy the Armed Forces. *Id.* ¶ 274, at 73. As to the 1966 riots, troops were deployed on April 7 as soon as the police received information that crowds were gathering. *Id.* ¶ 280, at 75. See Proclamation No. 2 of 1966, Legal Notice 28 of 1966, H.K. GOV'T GAZETTE (April 7, 1966).

¹⁸⁵ The detailed description of the rioting provided in the government-appointed Commission Report illustrates a number of occasions when as soon as the riot police appeared, the crowd threw stones at them. See, e.g., REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 152, at 41.

¹⁸⁶ *Army Called Out: Mobs Go on a Rampage — Wild Riots in Kowloon*, S. CHINA MORNING POST, Apr. 7, 1966, at 1.

¹⁸⁷ *Id.* The newspaper characterized the rioters as having gone "berserk" and as having "wrecked the Kowloon Peninsula." *Id.*

the rioting, prepared by a Commission appointed by the Governor and headed by Chief Justice Sir Michael Hogan¹⁸⁸ described Nathan Road at 1:30 a.m. as

very thickly covered with broken glass and all sorts of debris; any moveable object had been thrown into the road, traffic signs, road signs, bus-stop signs, traffic pagodas had been overturned and one or two were on fire. There were small fires in the roadway, on the pavements and at entrances to shops and buildings; a number of motor vehicles were on fire and several had been burned out. Many buses and vehicles had been abandoned in Nathan Road, some obviously hastily as their engines were still running.¹⁸⁹

The next night, the rioting was limited to a smaller area of the Colony and for a shorter period of time. The Commission of Inquiry Report concluded that a primary reason for the decrease in activity was the greater presence of military troops on the street which deterred "all but the more determined troublemaker."¹⁹⁰ The random shooting by the police into a hostile crowd led to the death of a demonstrator and an inquest finding of excusable homicide.¹⁹¹ On subsequent nights, military cordons and the military and police presence led to an end to the rioting.

The government took an additional measure by imposing a curfew. The Commission of Inquiry Report called the curfew a "vital weapon in the hands of the security forces."¹⁹² Curfews were imposed for three nights, for as long as 7:00 p.m. to 6:00 a.m. the next day.¹⁹³ The imposition of the curfew led to sweeps of persons on the streets during the curfew hours; ninety percent of those arrested during the riots were charged with violating the curfew.¹⁹⁴

¹⁸⁸ REPORT OF COMM'N OF INQUIRY, *supra* note 163. The Report was 167 pages; the manuscripts of the testimony presented amounted to over 2,000 pages.

¹⁸⁹ *Id.* ¶ 167, at 49.

¹⁹⁰ *Id.* ¶ 209, at 58. The Commission concluded that one reason the rioting in 1966 did not become as extensive as the 1956 disturbances was the early use of the military. *Id.* ¶ 276, at 74.

¹⁹¹ *Id.* ¶ 196, at 56. The only official accounting of injuries and deaths resulting from the riots comes from the government, but journalists disputed those numbers and concluded that the actual numbers were much higher than reported. *See, e.g., Troops Fight Rioters in Hong Kong*, N.Y. TIMES, Apr. 7, 1966, at 4.

¹⁹² REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 254, at 68. The Report did acknowledge the "disruption of ordinary life, discomfort, difficulties and loss of business" which is the inevitable result of a curfew. *Id.* ¶ 266, at 71.

¹⁹³ The Governor could clearly impose any curfew he liked. *See* Public Order Ordinance 1966, LAWS OF HONG KONG ch. 245, § 31(1)-(4) (1966). The longest curfew period was for the night of April 8.

¹⁹⁴ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 255, at 69. The court did accept, as mitigation of the curfew violation for sentencing purposes, excuses such as that of a tailor who claimed he had not known of the curfew and who had a 16 month-old child as well as three month old-twins who were crying for milk. The tailor was

The determination of the British to stop the demonstrations was clear. The Central Police Operations Room ordered all district commanders to "use all force necessary, including firearms" to suppress the protests, even though there was no claim that the demonstrators themselves had any weapons other than stones and projectiles.¹⁹⁵ There were many observers of the events who concluded that the police actions were in fact *responsible* for causing what were peaceful demonstrations against the ferry fare increase to degenerate into riots.¹⁹⁶ There were widespread accusations of police violence and brutality.¹⁹⁷

In addition to sending out the military, deploying more than a thousand steel-helmeted riot police, utilizing the Emergency Control Centre, and instituting curfews, the Government proclaimed that it was "necessary for the preservation of the public peace" that the Colony be subjected to the special provisions of the Peace Preservation Ordinance.¹⁹⁸ The Ordinance provided that any Justice of the Peace may authorize the police to enter, using whatever force necessary, any house: a) where there is a suspicion that weapons are located or; b) in which persons who have been rioting or engaged in unlawful purpose are suspected of being or; c) "persons *suspected of being about to break the peace* are suspected of being assembled."¹⁹⁹ The last provision gave great power to the police to seek out whomever they chose.

Those who were arrested, including individuals who merely called on passersby to join the march protesting the ferry fare increase, received prison terms of up to two years.²⁰⁰ Testimony was presented by the police that defendants were shouting anti-fare-increase slogans and the court accepted such evidence as proof of the charge of "incitement to

found guilty of violating the curfew but was sentenced to an absolute discharge. *Men Charged After Kowloon Riots*, S. CHINA MORNING POST, Apr. 13, 1966, at 8.

¹⁹⁵ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 233, at 63. The police suffered only ten injuries throughout the days of rioting, seven of which resulted from stone throwing. *Id.* at 155, app. 6. No police officer needed to be detained in the hospital. *Id.*

¹⁹⁶ *Id.* ¶ 238, at 64. Witnesses who testified before the Commission of Inquiry described the indiscriminate use of tear gas, and the Commission concluded that "we have little doubt that bystanders did suffer from tear smoke and that, as a result, some might have been tempted to join an unruly crowd." *Id.* ¶ 246, at 67.

¹⁹⁷ *Id.* ¶¶ 238-240, at 64-65. The Government Report dismissed the significance of these claims by commenting that "[i]t is commonplace during and after the occurrence of rioting anywhere in the world for accusations to be made of police brutality." *Id.* ¶ 240, at 65.

¹⁹⁸ Proclamation No. 3 of 1966, Legal Notice 29 of 1966, H.K. GOV'T GAZETTE (Apr. 8, 1966).

¹⁹⁹ Peace Preservation Ordinance, LAWS OF HONG KONG ch. 244 (1966).

²⁰⁰ *Hundreds Appear in Court on Riot Charges*, SUNDAY POST-HERALD, Apr. 10, 1966, at 1.

riot.”²⁰¹ The shouting of slogans against the British Commonwealth proved the charge of “incitement to interfere with the maintenance of law and order.”²⁰² A total of almost 1,500 individuals were arrested; there was no legal representation for the defendants.²⁰³ The estimated amount of damage done was over twenty million Hong Kong dollars.²⁰⁴

Explanations for the rioting were many.²⁰⁵ Those not part of the colonial government saw the rise in ferry fares as the spark that ignited the expression of the widespread dissatisfaction and frustration felt by the Hong Kong Chinese. Focus was placed on the lack of any representative government. The refusal of the British to permit the Chinese in Hong Kong to vote prevented people from influencing governmental policy by normal channels.²⁰⁶ A Member of Parliament of the out-of-power Labour Party in Britain called Hong Kong a “dictatorship” and the riots an expression of the frustration of ordinary people “who have no one to speak for them.”²⁰⁷ Elsie Elliot, who had led the petition drive opposing the ferry fare increase,²⁰⁸ went to London soon after the riots ended to emphasize the need to establish some mechanism to provide representa-

²⁰¹ *Pupil Led Mob of 500*, SUNDAY POST-HERALD, Apr. 10, 1966, at 8.

²⁰² *Rioters in Court*, S. CHINA MORNING POST, Apr. 15, 1966, at 8.

²⁰³ REPORT OF COMM’N OF INQUIRY, *supra* note 163, ¶ 375, at 103.

²⁰⁴ *Calm Returns to Kowloon*, S. CHINA MORNING POST, Apr. 11, 1966, at 1.

²⁰⁵ The Commission of Inquiry interviewed 24 young prisoners. Seventeen stated that the main cause of rioting was the ferry fare increase proposal; others said the rioting occurred because of “bad government,” because of antipathy towards police in general, or as a reaction to brutality by the police during the riots. See REPORT OF COMM’N OF INQUIRY, *supra* note 163, ¶ 387, at 104-06. Some Taiwanese put the blame squarely on the People’s Republic of China. The China News Service in Taiwan opined:

Reds seek not only to intimidate the British, but also the wealthy merchant class and the intellectuals of Hong Kong. Lonely frustrated in South East Asia and with failure piled atop failure at home, the Peking regime requires a diversion that will not be too costly. Making trouble in Hong Kong could be one such.

Behind the Kowloon Riot, S. CHINA MORNING POST, April 12, 1966, at 1.

²⁰⁶ Anti-British sentiment was exacerbated by the belief of many of the Chinese that part of the profits made by the higher fares would be sent back to London to be used by the U.K. Government. Ku, *supra* note 170, at 270. The senior Chinese members of the Civil Service, as well as the poorest members of the colony shared the belief that the purpose of the administration of Hong Kong was to make money for London. *Id.*

²⁰⁷ *Hong Kong Called a Dictatorship*, S. CHINA MORNING POST, Apr. 23, 1966, at 18. The Member of Parliament, John Rankin, called for an ombudsman at least so that the people would have “someone to whom they could tell their simple, sad story.” *Id.*

²⁰⁸ See *supra* note 176.

tion for the Hong Kong Chinese since the problems of the people were not being addressed.²⁰⁹

Taking to the streets might have seemed to be the only option available to those who felt they had absolutely no input into the process of making the decisions that most affected them. Although there was a "legislature" in Hong Kong at the time, all members were appointed by the Governor.²¹⁰ When the Government helicopters dropped leaflets in Chinese on those marching to protest the fare increase stating that "the Government . . . does not intend to be influenced by *mere demonstrations*,"²¹¹ there was no suggestion of how indeed the people *could* influence a government that has chosen to forego representative institutions.²¹² The Government did show that the "mere" actions of the people would not yield results when two weeks after the riots ended, it ratified the ferry fare increases that had been recommended.²¹³

Even the pro-Government newspaper, the *South China Morning Post*, editorialized that "[i]t would be foolish to deny that discontent exists."²¹⁴ The discontent was most widely felt by the poorest citizens. The Commission of Inquiry concluded that the great majority of the demonstrators

²⁰⁹ *Elliot to London*, S. CHINA MORNING POST, Apr. 22, 1966, at 1. The *Times of London* echoed Elliot's concern and concluded that "frustrations of the masses" were the perhaps inevitable result "in a colony which foregoes representative institutions." *More Arrested as Kowloon Dies for Another Night*, SUNDAY POST-HERALD, Apr. 10, 1966, at 2. A contrary and somewhat other-worldly view was expressed by the Hong Kong University Students' Union Council which called for any protests to go through "proper representative channels." *Uneasy Peace at Bayonet Point*, SUNDAY POST-HERALD, Apr. 10, 1966, at 2.

²¹⁰ The lack of involvement of the legislature in Hong Kong affairs is illustrated by the failure of the Legislative Council to even discuss the riots. The legislature met the day before the riots began, and at its next regularly scheduled meeting two weeks later, there was no mention made of the demonstrations. See SCOTT, *supra* note 172, at 94 & n.52.

²¹¹ *Helicopter Drops Leaflets*, S. CHINA MORNING POST, Apr. 7, 1966, at 1 (emphasis added).

²¹² Even peaceful discussions between citizens were not to be tolerated. For example, the Reform Club, a civic-minded association which had opposed the demonstrations and had urged people not to breach the peace, called a meeting after the restoration of peace to discuss the entire matter. However, the Commissioner of Police refused to permit the meeting to occur. *Star Ferry — What Now?*, S. CHINA MORNING POST, Apr. 15, 1966, at 10.

²¹³ *Star Ferry to Raise Fares*, S. CHINA MORNING POST, Apr. 27, 1966, at 1. The recommendation of the Transport Advisory Committee, affirmed by the Governor, had called for an increase of twenty-five percent in first class passage. *Id.*

²¹⁴ *Editorial*, S. CHINA MORNING POST, Apr. 11, 1966, at 10. The *Times of London* echoed the belief: "There may be detected a groundswell of popular discontent behind the Hong Kong riots." *More Arrested as Kowloon Dies for Another Night*, *supra* note 209, at 2.

were from the poorest segments of the Hong Kong population.²¹⁵ The Commission's report concluded that "[w]e believe that economic problems occupy a predominant position in the minds of the majority of the population."²¹⁶ The demonstrations protesting the fare increase were intended by many as a protest of the manner in which the Government was handling the Colony in general and the economy in particular.²¹⁷ The Report acknowledged that the widespread public support for the demonstrations occurred because of underlying social and economic dissatisfaction.²¹⁸ The Governor of Hong Kong, Sir David Trench, concluded that no one "could possibly suppose that these disturbances were more than remotely connected with concern over Star Ferry fares."²¹⁹

Given the Commission's finding of discontent among the people in Hong Kong, the lack of reforms either recommended or forthcoming was somewhat startling.²²⁰ The Commission, rather than recommending substantive changes that might, for example, ameliorate the notoriously unsafe, unhealthy working conditions in the factories, instead focused on the need for more effective public relations.²²¹ The widespread dissatis-

²¹⁵ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 392, at 107. The Commission found that most of the participants were poorly housed, poorly employed and poorly educated. *Id.* ¶ 503, at 136. One sad postscript to the protests was that So Sau Chung, the initial hunger striker, was eventually committed to a mental institution. PATRIKEEFF, *supra* note 123, at 46.

²¹⁶ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 499, at 135.

²¹⁷ *Id.* ¶ 397, at 108. The virtual total control of affairs in Hong Kong by the Executive was illustrated by the complete failure of the Legislative Council to even discuss the findings or recommendations of the Commission's Report. John Rear, *One Brand of Politics*, in HONG KONG: THE INDUSTRIAL COLONY 55, 87 (Keith Hopkins ed., 1971).

²¹⁸ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 418, at 114. For a discussion and conclusion that the causes of the riots were a product of the colony's political and class structure, see SCOTT, *supra* note 172, at 92.

²¹⁹ *Another Night of Horror — Guns Blaze as Police Battle with Mobs*, S. CHINA MORNING POST, Apr. 8, 1966, at 9.

²²⁰ To a great extent, the Commission seemed to believe that great disparities in wealth were inevitable in Hong Kong; the negative reactions to the differentiations was understandable and did not call out for changes in economic policy. For example, the Report concluded that

it is reasonable to assume that some demonstrators were motivated by feelings of frustration at their own economic situation and the obvious gap between wealth and poverty in Hong Kong. We would accept the assertion that feelings of frustration and jealousy must be a natural reaction amongst members of a generally underprivileged section of the community faced with limited chances in life owing to inadequate opportunity, education or skills. . . . Some feeling of frustration must inevitably result from the realization of being left behind in the race to affluence.

REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 492, at 134.

²²¹ The lack of specific substantive recommendations is all the more peculiar given the alarmist language found in the Report. For example, while discussing the defiant

faction did not mean there was an emerging demand for political representation, but rather it showed the people misunderstood the Colonial Government.²²² Any proposal to increase the actual *involvement* of the Hong Kong Chinese in running the Government was dismissed; what was needed was to ensure that the Government's "policies and problems are clearly explained and the public's co-operation in their implementation actively pursued."²²³ The Commission warned that since continued dissatisfaction and criticism of colonial rule might lead to a "slowing down of investment and a flight of capital," there must be "a greater consciousness of the need for public relations at all levels."²²⁴ And in a warning to those who might try to breed dissension by criticizing the Government, the Report stated that there was a "compelling *duty* on public leaders, the press and all who are anxious for the preservation of law and order to avoid encouraging any erosion in the public's respect for the law as such and for those who are enforcing it."²²⁵ The Colonial Government responded to the Commission's recommendations by appointing a full-time press officer for the police force in order to "assist the public to a fuller understanding of police aims and methods."²²⁶ But the problems which permeated the Hong Kong Police Force would not be remedied by

attitude of youth to authority figures, it was not assumed the defiance was just a passing phenomenon of adolescence: "[T]he evidence before us point to the probability that young people are less likely to put up with conditions which their parents accepted without complaint." *Id.* ¶ 542, at 143. It was expected that the frustration of young people at the limited opportunities available would persist. *Id.* ¶ 541, at 143. There were indeed many young people to become frustrated — 50% of the total population of the Colony was under the age of 21. *Id.* ¶ 539, at 142.

²²² *Id.* ¶ 458, at 125. The Commission concluded that "those who complain are seeking not so much a change in Government, as readier access to the Government." *Id.* ¶ 469, at 127. The Commission failed to realize that a demand that the Government actually respond to citizens' concerns would indeed represent a call for a "change in Government" of the Colony. Recommendations included improving communication between the government and the governed, as well as between the government and the press. Regulations also attempted to change the *image* of the rulers as individuals who were detached from the man on the street. *Id.* ¶¶ 470-473, at 127-28.

²²³ *Id.* ¶ 474, at 129. Political instruction or activities in schools was prohibited by law. Education Ordinance, LAWS OF HONG KONG ch. 279, § 52(j) (1964). Lack of awareness of governmental objectives activities or programs should not have come as a surprise.

²²⁴ REPORT OF COMM'N OF INQUIRY, *supra* note 163, ¶ 474, at 129.

²²⁵ *Id.* ¶ 482, at 131 (emphasis added). The *Far Eastern Economic Review* editorialized that by the condemnation of criticism, the Commission had, ironically, actually widened the gap between the Government and the community. *Post Mortem*, FAR E. ECON. REV., Mar. 2, 1967, at 416, 416.

²²⁶ 1966 H.K. ANN. REP., *supra* note 183, at 153-54.

better public relations, since corruption was rampant throughout the force, including those at the very highest levels.²²⁷

V. PART FIVE: 1967 — TARGET: THE BRITISH COLONIAL GOVERNMENT

The riots which were to begin in May, 1967 had for many the direct goal of forcing the British to leave Hong Kong. The Cultural Revolution, fervently anti-capitalist and anti-Western, was at its peak across the border in China.²²⁸ This brand of Chinese nationalism led to bloody confrontation in the Portuguese colony of Macau, less than one hour by boat from Hong Kong, with the Portuguese virtually surrendering to the Chinese rebels.²²⁹ This successful exportation of the Cultural Revolution to one European colony led many in Hong Kong to wonder just when Hong Kong's time would come.²³⁰

²²⁷ See H.J. LETHBRIDGE, *HARD GRAFT IN HONG KONG* 60-65 (1985).

²²⁸ One of the primary goals of the Cultural Revolution was to purge the Chinese Communist Party of those who were sympathetic with capitalism. See JACK GRAY & PATRICK CAVENDISH, *CHINESE COMMUNISM IN CRISIS* 122-23 (1968).

²²⁹ See HUGHES, *supra* note 151, at 40. It has been widely reported that Portugal offered to totally depart and hand Macau over to the People's Republic of China, but that China decided that a formal continuation of Portuguese rule, subservient to China, was more desirable. See PATRIKEEFF, *supra* note 123, at 46; see also NIGEL CAMERON, *HONG KONG THE CULTURED PEARL* 197-99 (1978) (the Chinese rejected Portugal's offer to give up Macau because a) the foreign capital coming into the colony was desirable; b) China had quite enough on its hands at the time; and c) the goal always had been only to humiliate the European colonizer); William Heaton, *Maoist Revolutionary Strategy and Modern Colonialism: The Cultural Revolution in Hong Kong*, 10 *ASIAN SURV.* 840, 850 (1970) (the Portuguese became mere figureheads who could no longer conduct significant governmental business without clearance from the communists).

²³⁰ The Governor of Hong Kong stated in June 1967 that the aim of the Communists in Hong Kong "is to Macau us." SCOTT, *supra* note 172, at 97. Britain's permission for the United States to use Hong Kong as a rest and recreation stop for troops stationed in Vietnam was a provocation to the Communists in both Hong Kong and China. See Daniel Scott, *Putting the Squeeze on Hong Kong*, *NEW LEADER*, June 5, 1967 at 7, 9. A pro-communist organization in Hong Kong expressed the anger:

The American aggressor's warships and military aeroplanes have been allowed to enter and leave the port in full freedom. Factories and enterprises manufacturing parts for military supply have been set up one after another by the Americans here in Hongkong. Here the Americans have also built up a sprawling intelligence system and a subversive organisation.

Yang Kuang, *The Situation and our Tasks in the Struggle Against British Violence*, Address at the Enlarged Session of the Standing Committee of the Committee of Our Compatriots in Hongkong of All Circles for the Struggle Against British Persecution (Sept. 18, 1967), in *THE MAY UPHEAVAL IN HONG KONG* 167, 169 (Committee of Hongkong-Kowloon Chinese Compatriots of All Circles for the Struggle Against Persecution by the British Authorities in Hongkong ed., 1967).

Hong Kong, just one year after the 1966 demonstrations protesting the Star Ferry fare increase, was still unsettled and vulnerable to disruptions.²³¹ As the Governor of Hong Kong said in May, 1967, "trouble can flare up over any minor matter — a football match or anything else — and it would be foolish to pretend otherwise."²³² Trouble most certainly did occur for the British colonial government was subjected to what was by far the most serious threat to its continued rule of Hong Kong.

The first hint of what was to come was the conflict at the Green Island Cement Company, the primary domestic supplier of cement for buildings in Hong Kong.²³³ Disruptions occurred inside the plant by workers shouting quotations from Mao Tse-tung²³⁴ and singing songs in praise of the Cultural Revolution.²³⁵ The Board of Directors of the Company voted to temporarily close the factory, thereby locking out the workers from continued employment.²³⁶

Within days of the Green Island Cement Co.'s actions, the owners of the Hong Kong Artificial Flower Works Company closed its doors on 1,000 workers after several weeks of a labor dispute regarding what employees considered as new and inappropriately harsh working conditions.²³⁷ As workers gathered on the streets surrounding the factory, riot police were called and arrests were made for unlawful assembly.²³⁸ Several days later, as the lockout continued, workers from left-wing unions joined the Flower Works employees in an expression of solidarity.²³⁹ The

²³¹ See *id.*

²³² *Can Hong Kong be Defended?*, U.S. NEWS & WORLD REP., May 29, 1967, at 36, 36. The Police Force was ready for whatever was to come. A Hong Kong correspondent for the *Times of London* described the Force in 1967: "The entire force is motorized in fortified jeeps and lorries with direct radio control. Armament includes carbines, .38 calibre revolvers . . . Sterling sub-machine guns. Greener shotguns specially designed for riot control. American-made gas guns, gas pistols, wicker shields, and long and short batons." David Bonavia, *Hongkong Defeat of Rioters*, TIMES (London), June 22, 1967, at 5.

²³³ See *Leftists Disrupt Hong Kong Labor*, N.Y. TIMES, May 6, 1967, at 7.

²³⁴ Mao Tse-tung was the Chairman of the Chinese Communist Party and the inspiration for the Cultural Revolution.

²³⁵ *Cement Works Close*, S. CHINA MORNING POST, May 5, 1967, at 24.

²³⁶ *Id.* No advance notice was given to the workers, when the workers appeared for work the gates were closed. The Europeans managing the factory told the employees that a "cooling down period" was required. JOHN COOPER, COLONY IN CONFLICT: THE HONG KONG DISTURBANCES MAY 1967-JANUARY 1968, at 3 (1970).

²³⁷ *Police Clash With Strikers*, SUNDAY POST-HERALD, May 7, 1967, at 1. The conditions included very long working hours, loss of pay whenever machines broke, and the prohibition against leaving during work hours for any reason. COOPER, *supra* note 236, at 4. Many thought the company had merely used the labor dispute as an excuse to discharge the workers. *Id.* at 5.

²³⁸ *Police Clash With Strikers*, *supra* note 237, at 1.

²³⁹ *Comfort Missions*, S. CHINA MORNING POST, May 10, 1967, at 1. The flower company's refusal to pay the workers the back wages that they were owed led to

target of the protests now included the government and the police who were accused of brutally attacking unarmed workers.²⁴⁰

In the following days, demonstrations continued at the factory sites and spread to the housing resettlement estates. Steel-helmeted riot police utilizing tear gas were called in and more arrests were made.²⁴¹ The Hong Kong Federation of Trade Unions, a coalition of leftist unions,²⁴² demanded that the Government release those arrested and stop suppressing the Flower Factory employees; even the Chinese Chamber of Commerce of Hong Kong called the government actions "fascist tyranny."²⁴³ Those arrested were brought to court where they were sentenced to jail terms of up to eighteen months.²⁴⁴ There were widespread reports of police brutally beating those who had been arrested.²⁴⁵

A sharp polarization of Hong Kong had begun. Whereas some of the Chinese in Hong Kong had identified with and supported the "right wing" Chang Kai-shek government in Taiwan, others were clearly supporters of the People's Republic of China (PRC). The pro-PRC newspapers were strong supporters of the protesters. *Wen Wei Pao*, perhaps the most influential of these journals, attacked the Governor as the "chief culprit of the Hong Kong and British imperialist authorities."²⁴⁶ The right-wing labor unions²⁴⁷ which had formed the Trades Union Council took the position that the demonstrations were "engineered by a few who had ulterior motives while the ignorant, the unemployed and the discontented followed blindly, thereby changing the labor dispute to a political issue."²⁴⁸ The leftist Hong Kong Federation of Trade Unions organized a

increased support for the locked-out employees. One week later, the Company agreed to make the payments. *Youths Defy Curfew*, S. CHINA MORNING POST, May 13, 1967, at 8.

²⁴⁰ GOV'T OF H.K., HONG KONG ANNUAL REPORT 1967, at 3 (1968) [hereinafter 1967 ANN. REP.].

²⁴¹ *Disturbances at San Po Kung*, S. CHINA MORNING POST, May 12, 1967, at 1. Violent clashes between demonstrators and police occurred primarily at the resettlement estate where 500 riot police had gone. The Auxiliary Police were mobilized as well. *Id.* The Government imposed a curfew but it was ignored. *See* 1967 ANN. REP., *supra* note 240, at 4.

²⁴² As of March 1967, membership in the trade unions of Hong Kong was estimated to comprise only about 10% of the total work force. COOPER, *supra* note 236, at 307.

²⁴³ *Youths Defy Curfew*, *supra* note 239, at 8.

²⁴⁴ *Id.*

²⁴⁵ *See* THE MAY UPHEAVAL IN HONG KONG, *supra* note 230, at 21.

²⁴⁶ *Youths Defy Curfew*, *supra* note 239, at 10.

²⁴⁷ The trade union movement in Hong Kong was highly fragmented and disorganized; there frequently were two unions within one factory. *See* COOPER, *supra* note 236, at 305.

²⁴⁸ *Rioters Go on Rampage for Third Day*, SUNDAY POST-HERALD, May 14, 1967, at 3.

Workers' Anti-Persecution Struggle Committee,²⁴⁹ and the left-wing press opined that "we are facing not only a class struggle, but a racial struggle."²⁵⁰

The concerns of the protest leadership were varied. Of major import was an antagonism to the perceived racism of the British colonialists.²⁵¹ The society had become viewed as one obsessed with making money, with corruption and dishonesty permeating all levels.²⁵² The business and professional leaders were thought to have ignored their obligations to serve the community, and the aspirations of the masses had been suppressed by the British colonialists. A widely shared belief was that the British, instead of spending money generated in Hong Kong to improve housing, schools and medical care, sent the money back to London.²⁵³ Furthermore, the worker-demonstrators were angry at the extraordinary pay discrepancy existing between the company bosses and the employees. The low pay was made all the more problematic by the high level of inflation in Hong Kong.²⁵⁴ The health and safety conditions in the factories were also widely regarded as scandalous, even more so since there were only twenty-two government inspectors responsible for overseeing the 11,000 factories registered in Hong Kong in 1967.²⁵⁵

The Peoples' Republic of China had initially kept out of the conflict occurring right across its border, and China continued its earlier policy of not engaging in criticism of British colonial rule.²⁵⁶ But on May 16, the

²⁴⁹ *All Quiet in Kowloon*, S. CHINA MORNING POST, May 14, 1967, at 6. It was estimated at the time that 135,000 out of 1,500,00 workers in Hong Kong were unionized, forming 200 unions, 1/3 of which were leftist, 1/3 rightist and 1/3 centrist. *Food Strike Hits Hong Kong*, S. CHINA MORNING POST, July 3, 1967, at 12.

²⁵⁰ *Food Strike Hits Hong Kong*, *supra* note 249, at 12. Many of the demonstrators perceived the conflict in racial terms. For example, police officers who were Chinese were taunted by protesters shouting "Aren't you Chinese too?" DAVID BONAVIDA, *HONG KONG* 1997, at 50 (1983).

²⁵¹ For an analysis of British policies that were considered to be racist by the Chinese, see Klein, *supra* note 25.

²⁵² For a report of interviews with protest leaders, see L.F. Goodstadt, *The Road to Violence*, FAR E. ECON. REV., Aug. 17, 1967, at 349, 349-50.

²⁵³ *Id.* at 351.

²⁵⁴ *Id.* at 354. Even pro-Government sources, such as the *Far Eastern Economic Review*, shared in the workers' grievances:

The leftist agitators have had just causes for complaint. The disputes have had one salutary effect; they have revealed the extent to which many local managements conduct their relations with the workers in a high-handed, not to say autocratic, manner. Many of those responsible for supervising labour would evidently be more at home in a long-past colonial era.

Managing Men, FAR E. ECON. REV., May 11, 1967, at 333, 333.

²⁵⁵ COOPER, *supra* note 236, at 301. It was conceivable that there were as many unregistered factories as registered ones. See *id.* at 307.

²⁵⁶ Certainly one reason for this was the economic import of Hong Kong to the Chinese. In 1966 alone, China had earned more than 400 million dollars (U.S.) in

Chinese Vice-Minister of Foreign Affairs in Beijing called in the British Chargé d'Affaires to protest the "persecution of Chinese residents and workers by the British authorities in Hong Kong."²⁵⁷ The British were warned: "The Chinese Government and people are determined to carry the struggle through to the end."²⁵⁸ Within days of the Chinese reaction, a crowd of almost one million marched outside the British mission in Beijing protesting the policies in Hong Kong. A similar demonstration occurred in Shanghai outside of the British consulate.²⁵⁹

The protests by the workers and students had initially been limited to the Kowloon area of Hong Kong; there never had been rioting on Hong Kong Island itself since Britain seized the island in 1842.²⁶⁰ All the major

much-needed foreign exchange from the sale of food and cheap textiles to Hong Kong. See Scott, *supra* note 230, at 7. This amount constituted almost one-half of the total of China's foreign exchange receipts that year. *Id.*

²⁵⁷ *Hong Kong Federation of Students Deplores Riots*, S. CHINA MORNING POST, May 16, 1967, at 22. A statement of the Ministry of Foreign Affairs was given to the British official charging that the British had "vainly attempted by violent suppression to restrict the influence of Mao Tse-tung's thought and to maintain their control, and thus committed the barbarous fascist atrocities." Statement of the Foreign Ministry (May 15, 1967), reprinted in *THE MAY UPHEAVAL IN HONG KONG*, *supra* note 230, at 141, 143.

²⁵⁸ *Id.* at 144. The Foreign Minister issued five demands upon the British: 1) that demands of the Chinese workers in Hong Kong be accepted; 2) that all those arrested be set free; 3) that the British apologize to the victims of its violence and pay appropriate compensation; 4) that a guarantee be forthcoming that similar conduct would not occur; and 5) that all fascist measures immediately cease. See *Chinese Demands Over Hongkong*, TIMES (London), May 16, 1967, at 7. For the next month, a series of protest notes were exchanged between the Hong Kong Government and China. See COOPER, *supra* note 236, at 87. Editorials in the official newspapers of the P.R.C. certainly indicated that China would become increasingly involved:

British imperialism is the extremely vicious colonial ruler of Hongkong, the enemy of the 4 million Chinese compatriots there and the enemy of the 700 million Chinese people. For more than a hundred years, this moribund, savage imperialism has subjected our compatriots in Hongkong and Kowloon to brutal oppression. All of Hongkong's troops, police, secret service agents, courts, prisons and what not are tools for oppressing our compatriots in Hongkong and Kowloon.

Editorial, *Resolutely Repel British Imperialist Provocations*, PEOPLE'S DAILY (Peking), June 3, 1967, reprinted in *THE MAY UPHEAVAL IN HONG KONG*, *supra* note 230, at 145, 146.

²⁵⁹ *Demonstrations Continue*, S. CHINA MORNING POST, May 18, 1967, at 1. Within one week, China closed the British consulate office in Hong Kong "in view of events." *Ban on Illegal Processions*, S. CHINA MORNING POST, May 23, 1967, at 1. A little more than a week before the Beijing demonstration, the British consulate in Macau had been "invaded" by Chinese residents of Macau who were protesting the "bloody suppression" of workers in Hong Kong. *British Consulate in Macao Invaded*, TIMES (London), May 13, 1967, at 1.

²⁶⁰ *Rioting in Hong Kong*, S. CHINA MORNING POST, May 22, 1967, at 1.

Government offices, banks, businesses and courts were on the Island — the symbol of the British colonial rule of Hong Kong. Most of the Europeans living in Hong Kong lived on the Island, and the police were headquartered there as well.²⁶¹ By May 18, large scale protests hit Hong Kong Island, initially focusing on Government House, the residence of the Governor and the center of the administration of the colony.²⁶² Within days, the central business district had become completely paralyzed with Europeans becoming the primary targets of the demonstrators.²⁶³ A curfew — from 6:30 p.m. to 5:00 a.m. — was announced,²⁶⁴ and the police banned all public processions and meetings.²⁶⁵

The lockout at the Artificial Flower Works ended and workers returned to work, but by then the protests had a life of their own and the peace at the Flower Works was hardly noticed.²⁶⁶ Numerous groups of workers had organized to support the protests and engaged in their own work stoppages and strikes.²⁶⁷ The British perceived a real threat to continued colonial rule. The main English language newspaper editorialized

²⁶¹ Kowloon, extraordinarily densely populated, was in some sense ideal for demonstrations in Hong Kong since any small disturbance was sure to bring out the crowds.

²⁶² See COOPER, *supra* note 236, at 20. The protesters presented petitions and demanded to see the Governor; their request was denied. *Id.* A correspondent for the *Times of London* characterized the confrontation at Government House as a meeting of the worlds of Somerset Maugham and Mao Tse-tung. See BONAVIA, *supra* note 250, at 50-51.

²⁶³ See *Protests Continue*, SUNDAY POST-HERALD, May 21, 1967, at 1. Some aspects of the conflict had their amusing elements, see *Battle of the Loudspeakers*, S. CHINA MORNING POST, May 24, 1967, at 6 (describing how protesters at the Bank of China building in the central business district used loudspeakers to attempt to persuade people to join them. The British responded by placing loudspeakers on top of office buildings which played opera music to drown out the protesters, who then reacted by using stronger amplifiers only to be drowned out by even more powerful ones then used by the Government).

²⁶⁴ Public Order Ordinance, H.K. GOV'T GAZETTE EXTRAORDINARY, ch. 245 (May 22, 1967). A curfew had several days earlier been put into effect in Kowloon. Public Order Ordinance, H.K. GOV'T GAZETTE EXTRAORDINARY, ch. 245 (May 12, 1967). The curfew hours were from 6:00 p.m. to 4:30 a.m.

²⁶⁵ *Ban on Illegal Processions — New Police Order Follows Imposition of Curfew*, S. CHINA MORNING POST, May 23, 1967, at 1.

²⁶⁶ *Artificial Flower Workers End Dispute*, S. CHINA MORNING POST, May 24, 1967, at 1.

²⁶⁷ For example, 3,000 dock workers stopped work for two hours and formed the Hong Kong Seamen's Anti-Hong Kong British Suppression Struggle Committee. *Hong Kong Protests*, S. CHINA MORNING POST, May 25, 1967, at 6. The Hong Kong Postal Workers' Union engaged in a twenty-two hour strike to protest "atrocities of the Hong Kong Government." *Postal Workers Strike*, S. CHINA MORNING POST, May 27, 1967, at 1. The Star Ferry employees waged a one hour stoppage to protest "Hong Kong-British brutality." *Star Ferry*, S. CHINA MORNING POST, May 26, 1967, at 1.

that the actual purpose of the demonstrators was to "bring down Hong Kong, reduce a thriving metropolis to impotence and ruin."²⁶⁸ As labor unrest spread to the textile industry, concerns over the threat to the colony mounted since textiles were by far the most significant export of Hong Kong industry.²⁶⁹

The Government crackdown began on a new front; no longer would the British rely strictly on the police in the streets.²⁷⁰ Laws were enacted to give special powers to the Government wherever needed. The first change affected the courthouse. The British custom of a public trial had been followed in Hong Kong, and as the arrests of protesters mounted, their supporters attended the trials.²⁷¹ Alarmed that the court sessions might lead to further organized protests, the Government issued a regulation empowering any judge to exclude the public from the court.²⁷² Anyone who contravened such a direction from the court would be subject to imprisonment for two years.²⁷³

The British Colonial Government, in one broad stroke, next attempted to prohibit speech that was critical of the Government. The Governor issued regulations without any involvement whatsoever of the Hong Kong Legislative Council.²⁷⁴ These regulations, known as the Emergency Prevention of Inflammatory Speeches Ordinance,²⁷⁵ provided for a prison sentence of up to *ten* years for anyone who uttered inflammatory

²⁶⁸ Editorial, S. CHINA MORNING POST, May 23, 1967, at 10.

²⁶⁹ See COOPER, *supra* note 236, at 33-34. In 1967, 41% of the total labor force was involved in some aspect of textile production. *Id.* at 34.

²⁷⁰ The heavy reliance by the Government on riot police could well have proved counter-productive; the highly visible presence of the police could have symbolized foreign rule and therefore increased the appeal of the protests. Within the first two weeks of the protests, there had been more than 780 arrests. See David Bonavia, *China Blames Hongkong Tactics*, TIMES (London), May 25, 1967, at 3.

²⁷¹ See *Unruly Crowd Stops Hearing of Case*, S. CHINA MORNING POST, May 18, 1967, at 8 (at the trial of a photographer for unlawful assembly, the magistrate asked the defendant if he had any witnesses and the 60 supporters present in court shouted, "we are all his witnesses"). The standard sentence given by the court to the demonstrators charged with unlawful assembly was 18 months. *Artificial Flower Workers End Dispute*, *supra* note 266, at 7.

²⁷² Emergency (Courts) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, §§ 3, 4 (May 23, 1967). In some instances, the defendants themselves were excluded from their own trials. See *Defendants Excluded From Court*, S. CHINA MORNING POST, Nov. 17, 1967, at 8. All 25 defendants who were charged with forming part of an intimidating assembly were taken out of the courtroom and later were able to hear in their jail cells a recording of the questions asked of the witnesses by the prosecutors.

²⁷³ Emergency (Courts) Regulations 1967 § 5.

²⁷⁴ See Reports of the Meetings of the Legislative Council of Hong Kong, H.K. HANSARD Sess. 1967 (May 17 & 31, 1967).

²⁷⁵ Emergency (Prevention of Inflammatory Speeches) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241 (May 24, 1967).

speech.²⁷⁶ Speech would be inflammatory if it was considered likely to lead to a breach of the peace, if it was calculated to lead to disaffection against the administration of justice in Hong Kong, or if it was calculated to promote feelings of ill-will between different sections or races of the population of Hong Kong.²⁷⁷ Police were empowered to break open and search any building if there was any reason to believe the location had been used to utter any inflammatory speech.²⁷⁸ An Explanatory Note to the Ordinance made it clear that "inflammatory speech" included "all . . . forms of incitement and trouble-making."²⁷⁹ Any owner of a building in which there had been inflammatory speech uttered was subject to three years imprisonment however "passive" and unaware such owner may have been of the suspect action.²⁸⁰

The attack by the British Colonial Government on those who criticized it continued one week later with the Prevention of Inflammatory Posters Ordinance,²⁸¹ making it a crime subject to two years imprisonment to place any inflammatory poster onto a building or even to merely possess such a poster.²⁸² The purpose of the law was made clear in the Explanatory Note: to prevent any attempt to "spread disaffection . . . or to stir up ill-will in the community."²⁸³

The ability of the Colonial Government to write whatever ordinance or regulation it desired dated back to the Emergency Regulations Ordinance of 1922.²⁸⁴ This Ordinance empowered the Colonial Government

²⁷⁶ § 5(a).

²⁷⁷ § 2(a), (b), (d).

²⁷⁸ § 3(2)(a).

²⁷⁹ App., explanatory note.

²⁸⁰ § 6(1), app., explanatory note § 3. The Bank of China building, from which loudspeakers had been broadcasting daily messages, did become silent the day after these regulations took force. *See China Blames Hong Kong Tactics*, *supra* note 270, at 3. There was, therefore, no longer the need for the Government to play Chinese music to draw out the broadcasts. *Id.*

²⁸¹ Emergency (Prevention of Inflammatory Posters) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241 (June 1, 1967).

²⁸² §§ 4(1)(a), 5.

²⁸³ App., explanatory note.

²⁸⁴ Emergency Regulations Ordinance, LAWS OF HONG KONG ch. 241 (rev. ed., 1950). The British had enacted varying forms of legislation to deal with emergency situations throughout its colonies. The "emergencies" that were of concern were threats to continued British rule. Even in the land of Israel, which Britain governed not as a colony but as a Mandate in conjunction with oversight by international organizations, there were the British Mandatory Emergency Regulations which continue to exist in modern Israel. Although very rarely used, the Regulations have been attacked as anti-democratic and in violation of the Israeli Constitution. *See Evelyn Gordon, Kach Activist Appeals Against IDF Order Restricting his Movements*, JERUSALEM POST, Dec. 12, 1995, at 3. An additional attack on the Regulations was that there was no "emergency" existing in Israel; the peace agreements with Egypt, Jordan and the Palestinian Liberation Organization had, it was argued, negated any

on any occasion it “may consider to be an occasion of emergency or public danger” to “make *any* regulations whatsoever which [it] may consider desirable in the public interest.”²⁸⁵ These extraordinary regulations had the effect of negating the rule of law to the extent it did exist. The Government was specifically empowered to suspend or amend any existing law.²⁸⁶ The only occasion where there needed to be any role for the legislature was if the Ordinance declared by the Governor provided for a punishment of death.²⁸⁷

The Government’s aggressiveness in removing any poster it found objectionable led to protesters clashing with the police, the use of tear gas, and in at least one instance the death of a worker.²⁸⁸ New strikes

emergency. *Id.* After the assassination by Yigal Amir of Israeli Prime Minister Itzhak Rabin in October, 1995, the Israeli Army issued an order, based on the Emergency Regulations, against a right-wing Israeli activist. It prohibited him from leaving his home town, confined him to his home at night, and required him to report to the local police station three times a day. *Id.*

²⁸⁵ Emergency Regulations Ordinance, § 2(1) (emphasis added). There was a specific provision providing for censorship and the Government used this to ban broadcasts it found offensive. *Government Ban on Broadcasts*, S. CHINA MORNING POST, May 25, 1967, at 1. Any poster that the Government didn’t like was removed. *Clean-up Operation*, S. CHINA MORNING POST, June 5, 1967, at 1. Songs were banned as well. At a concert at City Hall, police prohibited the singing of two songs — one against the Vietnam War, the other deemed to be anti-police. *Censorship*, S. CHINA MORNING POST, June 10, 1967, at 1.

²⁸⁶ Emergency Regulations Ordinance § 2(2)(g).

²⁸⁷ § 3(3). Such legislation would then be subject to the approval of the Legislative Council.

²⁸⁸ Four hundred employees of the Public Works Department clashed with the police force’s riot squad and were all arrested; one of those arrested died at the police station. *Government to Deport Trouble-makers*, S. CHINA MORNING POST, June 10, 1967, at 1.

began²⁸⁹ and arrests were commonplace.²⁹⁰ Judges began to deport many of those who had clashed with the police.²⁹¹

As demonstrations and work stoppages increased, the Government responded by enacting the Emergency (Prevention of Intimidation) Regulations of 1967.²⁹² The primary goal of these Regulations was to declare unlawful any group of three or more persons where "any person in such assembly does or says anything . . . likely to or might alarm or intimidate some other person . . . or give some other person ground for apprehending that a breach of the peace may take place."²⁹³ Violating the Ordinance subjected one to a prison term of five years.²⁹⁴ A Govern-

²⁸⁹ When the employees at the Star Ferry Company found that posters had been removed from the terminal area, a strike resulted which led to a total cessation in ferry service from Kowloon to Hong Kong Island. *Star Ferry Services Disrupted*, S. CHINA MORNING POST, June 7, 1967, at 1. One hundred and forty-five thousand passengers were stranded. *Id.* Workers at the Hong Kong Electric Company, the Taikoo Dockyard, the Kowloon Wharf and Godown Company Limited among others, also engaged in token strike actions to protest poster removal as well as to indicate general support for the protests. See COOPER, *supra* note 236, at 36-37. To entice employees to stay at work, the Government began providing "loyalty bonuses" for those who had remained at their posts. David Bonavia, *Hongkong Battle with Rioters*, TIMES (London), June 24, 1967, at 4.

²⁹⁰ See, e.g., *More Arrests*, S. CHINA MORNING POST, June 10, 1967, at 6 (108 employees at the Hong Kong China and Gas Company were arrested for obstructing police who were attempting to remove inflammatory posters).

²⁹¹ The Deportation of Aliens Ordinance enabled the court to recommend deportation of virtually anyone who had not been born in Hong Kong. See, e.g., *Deportation*, S. CHINA MORNING POST, June 13, 1967, at 7 (recommending the deportation of a movie theater usher engaged in non-violent attempt to obstruct police who were removing inflammatory posters); *Protests*, S. CHINA MORNING POST, June 11, 1967, at 2 (finding that those guilty of unlawful assembly have illustrated their hostility to Hong Kong's way of life). In some instances, judges recommended that deportation occur only after the protester finished serving his prison term. *Deportation*, S. CHINA MORNING POST, June 20, 1967, at 8.

²⁹² Emergency (Prevention of Intimidation) Regulations 1967, H.K. Gov't GAZETTE (Legal Supp. No. 2) ch. 241 (June 24, 1967).

²⁹³ § 4(1). A colloquy between one teacher arrested for intimidation and the judge presents an interesting perspective on "intimidation." The teacher asked "Whom did we intimidate? By what means? . . . I was only shouting: 'Long Live Chairman Mao!' . . . when we turned about we heard the 'riot police' shouting to us: 'Don't move! Or we'll open fire!' Isn't it only too clear who was intimidating whom?" THE MAY UPHEAVAL IN HONG KONG, *supra* note 230, at 106.

²⁹⁴ § 4(2)(a). The Ordinance applied to an individual's act of "intimidation" as well. § 3(a). The first prosecution under the law occurred within days of its promulgation. Lau Shun was a construction worker who boarded a bus run by the China Motor Bus Company, many of whose employees had been on strike. The bus conductor, Chan Yat-Yin, heard some passenger behind him use foul language and when he turned around he saw Lau pointing at him, eyes wide open, and appearing angry. Lau was convicted at trial, and sentenced to one year in jail for engaging in

ment spokesman made it clear that *all* participants in any demonstration would be in violation of this Ordinance if any *one* participant acted to cause alarm.²⁹⁵ Even the defense of a certified journalist that he was present merely on assignment did not prevail: he was sentenced to two years for unlawful assembly.²⁹⁶ At a subsequent incident involving the arrests of five reporters, the police explained their policy: anyone present at an assembly in which there are inflammatory speeches will be arrested "irrespective of who he may be."²⁹⁷

Great Britain responded to the increasing disturbances by sending battalions of Gurkha troops into Hong Kong.²⁹⁸ By the beginning of July, there were over 10,000 British soldiers in Hong Kong.²⁹⁹ In one small town near the New Territories' Chinese border, police buildings were under siege for a ten-hour period and five police officers were shot

actions which may have been designed, according to the Government, to persuade Chan to stay away from work. *Intimidation Conviction*, S. CHINA MORNING POST, June 29, 1967, at 8. The judge at trial conceded that Lau had not said anything considered to be violent or even threatened any violence but that nevertheless the law had been violated. *Id.*

²⁹⁵ *Emergency Law to Fight Intimidation*, SUNDAY POST-HERALD, June 25, 1967, at 2. An Explanatory Note to the Ordinance explained that the goal was indeed to deter anyone passively associating with undesirable assemblies. Emergency (Prevention of Intimidation) Regulations, app., explanatory note.

²⁹⁶ *NCNA Reporter Sentenced*, S. CHINA MORNING POST, July 20, 1967, at 8. This particular reporter worked for the official China news service, New China News Agency. China responded by restricting the freedom to travel of the Reuters news correspondent in Peking. *China Responds*, S. CHINA MORNING POST, July 22, 1967, at 1.

²⁹⁷ *Five Leftist Reporters Held*, S. CHINA MORNING POST, July 31, 1967, at 6. China reacted to the Emergency Regulations in an editorial in the *Renmin Ribao* (*People's Daily*):

They [the British] have promulgated a series of so-called 'emergency decrees' to provide 'legal grounds' to 'justify' their persecution and make the resistance to violence a 'crime' in an attempt to stamp out our patriotic compatriots' struggle against imperialism and violence with more arrests and persecution on a still larger scale.

Resolutely Repel British Imperialist Provocations, *supra* note 258, at 145.

²⁹⁸ *Gurkhas Flown Into Hong Kong, More Due Today*, S. CHINA MORNING POST, July 1, 1967, at 7. A London Commonwealth Affairs Office spokesman said that it was believed that the Gurkha forces were needed by Hong Kong at that time. *Id.*

²⁹⁹ *Troop Movements*, S. CHINA MORNING POST, July 6, 1967, at 1. An editorial in the People's Republic of China official publication *People's Daily* reacted to the overall military buildup by the British as follows: "British imperialism has truly gone raving mad!" *Resolutely Repel British Imperialist Provocations*, *supra* note 258, at 145.

dead.³⁰⁰ It was only after the British army arrived in armored cars that peace was restored.³⁰¹

In the succeeding days, rioting occurred in both Kowloon and Hong Kong Island. Seven rioters and one policeman lost their lives.³⁰² A curfew was put into effect on Hong Kong Island³⁰³ and in Kowloon.³⁰⁴ The Government had announced that it was going to grasp and maintain the initiative.³⁰⁵ At 11:00 p.m. on July 12, the police, supported by the military, broke into and raided the headquarters of several unions.³⁰⁶ There was no warrant, since the law no longer required any.³⁰⁷ The police arrested anyone "suspected of subversive activities."³⁰⁸ Several days later, the police attacked the headquarters of the Kowloon Dock Workers Amalgamated Union. The union members successfully kept the police out for three hours but at a cost. Several of the unionists, including the union secretary, were shot and killed by police sub-machine gun fire.³⁰⁹ The military barbed wired the area surrounding the union building once the raid commenced to prevent supporters from coming to the aid of those inside the building.³¹⁰ In one twenty-five day period, it was esti-

³⁰⁰ *Five Hong Kong Police Shot Dead*, S. CHINA MORNING POST, July 9, 1967, at 1.

³⁰¹ COOPER, *supra* note 236, at 106-07. The Government proceeded to set a curfew on the town forbidding anyone to be out on the streets from 3:45 p.m. to 9:00 a.m. Public Order Ordinance (Curfew Order No. 7 of 1967), H.K. GOV'T GAZETTE EXTRAORDINARY ch. 245, § 2 (July 8, 1967).

³⁰² 1967 ANN. REP., *supra* note 240, at 13. It was unclear who had killed the police officers; the bullet may well have had come from the gun of another officer — the rioters were not known to have had any guns. See COOPER, *supra* note 236, at 111-12.

³⁰³ Public Order Ordinance (Curfew Order No. 9 of 1967), H.K. GOV'T GAZETTE EXTRAORDINARY ch. 245 (July 12, 1967).

³⁰⁴ Public Order Ordinance (Curfew Order No. 10 of 1967), H.K. GOV'T GAZETTE EXTRAORDINARY ch. 245 (July 12, 1967).

³⁰⁵ See *id.*

³⁰⁶ *Leftist Unions Raided*, S. CHINA MORNING POST, July 13, 1967, at 1.

³⁰⁷ Emergency (Prevention of Inflammatory Speeches) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, § 3(1)(a) (May 24, 1967) (empowering the police to enter and search without a warrant any building they have reason to suspect had been used for the uttering of any inflammatory speech).

³⁰⁸ 1967 ANN. REP., *supra* note 240, at 13.

³⁰⁹ *Eighty One Arrested in Raid*, S. CHINA MORNING POST, July 15, 1967, at 6. Deaths caused by police were becoming increasingly common. See, e.g., *Man Shot Dead in Wanchai Incident*, S. CHINA MORNING POST, July 17, 1967, at 1 (police opened fire at protesters in an area of Hong Kong Island and at least one death resulted).

³¹⁰ *Eighty One Arrested in Raid*, *supra* note 309, at 6. Those inside were able to successfully hold the police off, in part, because they were equipped with home-made masks to protect against the tear-gas used by the police. COOPER, *supra* note 236, at 129.

mated that up to sixty unions, schools, and organizations were raided and ransacked by the police.³¹¹

A graphic illustration of how the British used the law as a tool, creating whatever laws they wanted, was a regulation created within days after the raid at the Dock Workers Amalgamated Union. The regulation, designed to prevent the need for further battles to gain entrance to suspicious buildings, announced that "[w]here the entry of an authorized officer to any premises or place which such officer is empowered to enter and search . . . is barred or impeded, *any person* found in or leaving such premises or place shall be guilty of an offence."³¹²

Not content to target unions exclusively, the Government next turned to those schools which it perceived were anti-British and supportive of the protesters. The first of a series of raids occurred at 2:00 a.m. with the police, backed by the military, entering the building of the Fukien Middle School.³¹³ The police arrested school headmasters, teachers, and in some cases students. One raid on an elementary school was considered to be of such symbolic importance that it was led by the Chief Superintendent of Police.³¹⁴ There were reports of police beatings of teachers as well as students.³¹⁵

The Government proceeded to warn certain "leftist" schools that they would be closed if the schools were found to be disseminating inflammatory material or engaging in subversive teaching.³¹⁶ The Director of Education declared that there would be unannounced inspections to ensure that the schools were being run in a "proper manner."³¹⁷ Instruction supporting British rule was to be encouraged and the Director called

³¹¹ THE MAY UPHEAVAL IN HONG KONG, *supra* note 230, at 26. It was also reported that the police robbed those found in the unions of their belongings. *Id.* at 26-27.

³¹² Emergency (Principal) (Amendment) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, § 9 (119B) (July 22, 1967).

³¹³ *Schools Raided*, S. CHINA MORNING POST, July 16, 1967, at 2. The police justified the raid by showing inflammatory posters that were found in the school and by recounting anti-British slogans on blackboards. COOPER, *supra* note 236, at 130-31.

³¹⁴ *Raids*, S. CHINA MORNING POST, July 19, 1967, at 1. "Inflammatory utterances" found at one school raided included the writing on a classroom blackboard asking the police to "lay down your weapons and return home." COOPER, *supra* note 236, at 140.

³¹⁵ THE MAY UPHEAVAL IN HONG KONG, *supra* note 230, at 32.

³¹⁶ *Government Warns Nine Schools — Subversive Teaching Not Allowed*, S. CHINA MORNING POST, Aug. 19, 1967, at 6. The schools consisted of seven middle schools, one primary school, and one night school.

³¹⁷ *Id.* The Director issued 13 regulations that schools were to comply with; over 1,000 students from leftist schools demonstrated in opposition to the regulations leading to arrests for unlawful assembly. *Students Protest*, S. CHINA MORNING POST, Aug. 27, 1967, at 2.

on all schools to teach how the Government was dedicated to the happiness and well-being of its citizens.³¹⁸ The Government did shut down several of these schools and the students were transferred to government-operated institutions.³¹⁹ On one occasion, four schools were raided simultaneously while classes were in session; one hundred and ten students and teachers were brought to the police station and questioned.³²⁰ The courts reinforced the Government's attack on the left-wing schools, in one case blaming the defendants' political dissent on the "stench which calls itself a school."³²¹

No special emergency regulations were required for the Government to close down the schools it chose. The existing Education Ordinance authorized the Governor to "make regulations providing for the prohibition of political, subversive or tendentious activities or propaganda in schools and amongst teachers and pupils."³²² This Ordinance was buttressed by educational regulations prohibiting

instruction, education, entertainment, recreation or propaganda or activity of any kind which, in the opinion of the Director, is in any way of a political or partly political nature and prejudicial to the public interest or the welfare of the pupils or education generally or contrary to the approved syllabus.³²³

These extraordinary restrictions on the exercise of free speech, inquiry, and debate in the forum in which such discussions are most warranted, belied any claim by the Government of being a free and open political entity.

Although raids occurred on theaters, department stores, squatter huts, and banks in attempts to retrieve inflammatory literature,³²⁴ the war against the dissenters primarily concentrated on unions. On one day alone, 600 union members were arrested in three separate raids.³²⁵ The leaders of the unions were special targets. As long as any inflammatory

³¹⁸ *Schools*, S. CHINA MORNING POST, Aug. 22, 1967, at 6.

³¹⁹ *Warning Heeded by Communist Schools*, S. CHINA MORNING POST, Sept. 6, 1967, at 6. There was no free education provided at the time and one reason that students attended communist schools was that the fees were lower. See COOPER, *supra* note 236, at 312-13.

³²⁰ *Raids on Four Red Schools*, S. CHINA MORNING POST, Nov. 29, 1967, at 1. One of the schools was ordered to remain closed for a seven and one-half month period. *Id.* An attendant at another school was sentenced to 18 months incarceration merely because he was found on the premises of a school in which there were inflammatory posters and films. *Id.*

³²¹ *Magistrate Tells Boy to Keep Off Politics*, S. CHINA MORNING POST, Oct. 11, 1967, at 7 (emphasis added).

³²² Education Ordinance, LAWS OF HONG KONG ch. 279 (1964).

³²³ Education Regulations, rule 89 (1967).

³²⁴ See COOPER, *supra* note 236, at 138-39.

³²⁵ *Lightning Raids on Leftists*, S. CHINA MORNING POST, July 17, 1967, at 1.

posters were found on the union premises, the union's officers could be arrested for allowing the presence of the posters.³²⁶ The military, using bayonets or sub-machine guns, routinely provided assistance to the police.³²⁷ A new law was promulgated which enabled the police to declare certain union buildings "Closed Areas." The Emergency (Closed Areas) Regulations of 1967 provided for imprisonment for up to three years for anyone who entered any building specified by the Governor as a "Closed Area."³²⁸

The all-out assaults by the Hong Kong Government against their opponents had its successes. The leaders of the opposition had been arrested and jailed, union offices were decimated and closed, the omnipresent posters attacking British rule had been removed, and meetings to plan protest activities were broken up and participants arrested. The protesters responded by using low-level bombs, which by mid-July began to appear at many locations throughout Hong Kong.³²⁹ The random use of the explosive devices, however, began to cost the protesters much-needed public support.³³⁰ A covert operation, reminiscent of the "dirty tricks" used by the Committee to Re-Elect the President (Nixon), further alienated the protest leaders from the populace as a whole. The Government formed a committee to write letters to the press, supposedly sent by the demonstration organizers, designed to anger, intimidate and provoke the people of Hong Kong.³³¹

Any claim to concepts of due process and fairness by the British colonial government in Hong Kong was tossed asunder by the Emergency Deportation and Detention Regulations decreed by the Government at

³²⁶ See Emergency (Prevention of Inflammatory Posters) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241 (June 1, 1967).

³²⁷ A well-armed military was prevalent even when objects of the raid were merely open-to-the-public department stores. *More Raids*, S. CHINA MORNING POST, July 28, 1967, at 6 (the military supported the police in the raids of two stores which led to the arrests of nine after inflammatory leaflets were found in the stores).

³²⁸ Emergency (Closed Areas) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, §§ 3, 4(3) (June 24, 1967). Police were empowered to remove and arrest anyone found unlawfully in any closed area. § 5(2).

³²⁹ See COOPER, *supra* note 236, at 150-53.

³³⁰ One particular incident hurt the rebels' cause. A seven year-old girl found a bomb on a street and upon beginning to play with it, it exploded, killing her and her two year-old brother. *Explosion*, S. CHINA MORNING POST, Aug. 21, 1967, at 1. The placing of the bomb in an area where it was conceivable that children would play with it was called by the major English-language newspaper the "most dastardly communist-inspired act to date." COOPER, *supra* note 236, at 172. A prominent leftist denied any responsibility for the bomb as well as other recent explosions, calling them "Fascist atrocities." *Bombings*, S. CHINA MORNING POST, Aug. 23, 1967, at 1.

³³¹ PATRIKEEFF, *supra* note 123, at 48.

the end of July.³³² This law empowered the Government, when a conviction for any specific crime could not be obtained due to insufficient evidence, to simply detain an individual for up to one year.³³³ There was no provision to even require that a person be told why he was detained. There was no requirement that reasonable cause for the detention be shown. Once again, these new laws were unchallenged by anyone in the Legislative Council.³³⁴ The Executive had complete control, unhindered by the powerless legislature.

For those whom the prosecution did possess sufficient evidence to obtain a conviction, their authorized prison time was increased by the District Court Ordinance. The ordinance provided for up to ten years incarceration instead of the prior two year maximum imprisonment that had been in existence.³³⁵ Hong Kong had in place two court levels — the District and Supreme Courts. Traditionally only the less serious cases were dealt with at the District Court level where the judge was empowered to enter summary judgments and defendants had few rights and no counsel. The Explanatory Note to the Ordinance justified the change because “[a]t the present time it is considered that the deterrent effect of swift trials . . . is such as to require that they be dealt with in the District Court instead of by way of committal proceedings and eventual trial in the Supreme Court.”³³⁶ There was no right to a jury trial at the District Court level regardless of the severity of the sentence.

Indeed, the “justice” handed out by the District Courts could hardly stand scrutiny anywhere.³³⁷ The absence of lawyers and juries enabled a

³³² Emergency (Principal) Regulations (Commencement) (No. 3) Order 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241 (July 28, 1967).

³³³ After a one year period, a second Detention Order could be issued. The individual could be held for 14 days without even any warrant being issued pending the declaration by the Colonial Secretary of the Detention Order. Provisions did exist for an objection against the Order to be lodged and considered by a Committee on Review. Emergency (Committee of Review) Rules 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241 (July 28, 1967).

³³⁴ Rear, *supra* note 217, at 87.

³³⁵ Emergency (Principal) (Amend.) (No. 2) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, (Aug. 1, 1967). The prior limitation of sentencing power by the District Court “shall not apply” to cases arising out of violation of the Emergency Regulations. § 4.

³³⁶ App., explanatory note. Legal Aid counsel for the indigent had only been available at the Supreme Court level; one month after this Ordinance, Legal Aid assistance began to be provided at the District Court for those defendants who were facing imprisonment for more than five years. Emergency (Legal Aid in Criminal Cases) (District Court) Regulations 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, § 2 (Sept. 1, 1967).

³³⁷ A visiting British member of Parliament, after spending ten days in Hong Kong, criticized the “excessively severe sentences” given by judges which revealed the

single judge to try and sentence more than 200 demonstrators a day.³³⁸ For example, a department store employee was given a six month jail term because the police found in a drawer, which they claimed was in the employee's control, a piece of paper on which was written inflammatory words.³³⁹ Two others were arrested when they were overheard speaking out against the police; their jail term was fifteen months.³⁴⁰ A sixteen year-old was sentenced to eighteen months in jail for possession of inflammatory posters.³⁴¹ The typical punishment given for juveniles fifteen years-old and younger was three to six months detention.³⁴² An appellate court's rationale for sustaining the admittedly heavy sentences was that the demonstrations had "not been against the social or economic policies of government but against the very identity of government itself."³⁴³

Over time, police activity intensified. In one pre-dawn raid, 1,000 police and seven platoons from the 1st military Battalion, some of whom landed by helicopter on the roofs of buildings, forced their way into every room in a complex of three high rise structures.³⁴⁴ Police use of com-

"savage" instincts and "emotional vindictiveness" of the courts. *Parliamentarian Critical of Jail Terms*, S. CHINA MORNING POST, Oct. 24, 1967, at 6.

³³⁸ *Magistrate Hears 212 Cases*, S. CHINA MORNING POST, Dec. 28, 1967, at 6.

³³⁹ *Arrests*, S. CHINA MORNING POST, Aug. 3, 1967, at 8.

³⁴⁰ *Id.* There were reports of beatings of inmates by prison guards, and since no medical care was available to cleanse the wounds, prisoners were forced to apply urine to the open wounds. *THE MAY UPHEAVAL IN HONG KONG*, *supra* note 230, at 116.

³⁴¹ *Jailed For Having Inflammatory Posters*, S. CHINA MORNING POST, Aug. 9, 1967, at 7.

³⁴² Alexandra Close, *Fit for the Offender?*, FAR E. ECON. REV., July 13, 1967, at 129, 129. In some instances, imprisonment for five years was the sentence even for those less than fifteen years old. *See Boy Jailed for Five Years*, S. CHINA MORNING POST, Dec. 1, 1967, at 8. These youths were sent directly to adult prisons; the three detention centers for youths in Hong Kong had become fully occupied even before the riots had begun. Close, *supra*, at 130. In some instances caning — beating the youth with twelve strokes of a cane — was the punishment. *See Caning for Left-wing School Boys*, S. CHINA MORNING POST, Dec. 6, 1967, at 8.

³⁴³ *Yim Tak Wai & The Queen*, [1967] H.K. Rep. 443, 460. In *Yim Tak Wai*, the defendant, a first offender, received a two year term of imprisonment which the appellate court considered warranted especially in light of the testimony that the defendant had dared to refer to Hong Kong as Chinese territory. *Id.* at 469.

³⁴⁴ *Police Raids*, S. CHINA MORNING POST, Aug. 5, 1967, at 1. Little was found to justify the extreme police action — there were only thirty-six arrested — although the police uncovered significant amounts of inflammatory material. One observer of the 1967 disturbances described the attack as follows:

Three huge, low-flying Wessex helicopters took off from the aircraft carrier at 6:30 a.m. and rose swiftly into the air with their first load of riot police and soldiers, all of whom had received practical training in rope landing and commando assault tactics. The 'choppers' approached their target at low level,

mando assault tactics, tear-gas, and riot guns increased.³⁴⁵ When the extreme use of aggressive tactics caused civilian deaths, the police conduct would be deemed justified.³⁴⁶

Government action against newspapers that criticized the policies of the government began with the arrest of the papers' publishers as well as the suspension of the journals' publication.³⁴⁷ The laws used by the Government were the Sedition Ordinance, the Control of Publications Ordinance, and the Police Force Incitement to Disaffection Ordinance.³⁴⁸ When a joint-edition of three newspapers which had been ordered to cease publication was in fact printed, 120 police officers raided the facilities, detaining thirty-four employees.³⁴⁹

and then used mountain flying tactics to zoom up the side of [the buildings] before hovering above the two buildings so that the assault parties could use ropes and ladders to descend on to the roofs.

COOPER, *supra* note 236, at 162. A clinic and a makeshift hospital, apparently designed to treat wounded protesters, was found to exist in an area of one building. *Id.* at 163. Booby traps and explosives had been designed to go off had the police broken into one of the buildings through the front entrance. *Id.*

³⁴⁵ *Police Fire on Rioters*, S. CHINA MORNING POST, Aug. 9, 1967, at 1. To deal with the increased deaths that resulted, an Emergency Regulation was invoked, empowering the Government to dispose of corpses which had not been claimed within a reasonable period of time. *Put Your Money Where Your Mouth Is*, FAR E. ECON. REV., July 27, 1967, at 216, 216.

³⁴⁶ For example, in one instance where there was a verdict of justifiable homicide, the prosecutor had concluded in summation that the police "could use all reasonable force, even to the extent to kill in suppressing a riot." *Justifiable Homicide Verdict*, S. CHINA MORNING POST, Nov. 25, 1967, at 8; *see also* *Jury's Verdict on Worker Shot Dead*, S. CHINA MORNING POST, Oct. 14, 1967, at 7 (the police had entered union offices and when union workers started chasing the police out, the constables drew their guns and fired, hitting one worker four times).

³⁴⁷ There were five publications in Hong Kong at the time that could be characterized as Marxist-Leninist. *Transgressions of the Left*, S. CHINA MORNING POST, Dec. 1, 1967, at 10. The newspapers, supporters of the Communist government in China, had been permitted to exist as part of Britain's overall accommodation with the People's Republic of China. The reaction in China to the arrest in Hong Kong of reporters for the New China News Agency, the official news service of China, included an attack by a mob of Chinese on the Peking office of the British Chargé d'Affairs. 1967 ANN. REP., *supra* note 240, at 14.

³⁴⁸ *Newspaper Executives Arrested*, S. CHINA MORNING POST, Aug. 10, 1967, at 7. Evidence that the papers were attempting to cause disaffection among the police included editorials calling on the police to "refrain from beating up or arresting people." *Id.* China lodged with Britain the "most urgent and strongest" protest of the suspensions; the British Chargé d'Affairs refused however to officially accept the protest memorandum because it was written in "non-diplomatic language." *China Protests*, S. CHINA MORNING POST, Aug. 22, 1967, at 1.

³⁴⁹ *Raid on Three Newspapers*, S. CHINA MORNING POST, Aug. 20, 1967, at 2. Prior to this raid, there had been reports of constant police harassment and searches of left-wing journalists. *THE MAY UPHEAVAL IN HONG KONG*, *supra* note 230, at 30-31.

The newspaper publishers were summarily brought to trial, convicted, and sentenced to three years in jail.³⁵⁰ The judge suppressed publication of the newspapers. In explaining his verdict, the judge stated "[t]he articles were openly written not with the view to elucidate the truth but clearly to bring Government into contempt, to raise discontent among the people in this Colony and create ill-will among the different classes."³⁵¹

The Government attempted to restrict coverage by *any* newspaper of the protests in Hong Kong. Reporters who were present and covering demonstrations were arrested and charged along with the protesters for unlawful assembly. In one trial, the judge, summarizing the evidence against some reporters, concluded that the reporters did commit the unlawful act of "appearing to take photographs" of the protests.³⁵² The sentence for each of the five reporters was three years imprisonment.³⁵³

Police continued to force entry into private residences in the middle of the night and make arrests if inflammatory literature was found.³⁵⁴ Rewards were paid to residents for giving information to the police about prohibited activities.³⁵⁵ Individuals were arrested and imprisoned for merely being at the wrong place at the wrong time.³⁵⁶ One's intention, one's *mens rea*, was not a factor; conduct even when engaged in with no purposeful wrong-doing, was deemed criminal.³⁵⁷

³⁵⁰ *Company Executives Jailed for Sedition*, S. CHINA MORNING POST, Aug. 30, 1967, at 6. At the trial, a reporter who had not been arrested and who was in the courtroom to cover the trial, was himself sentenced to a two year prison term for conveying an unauthorized article and obstructing the police after having passed a note to one of the defendants. *Jailing*, S. CHINA MORNING POST, Sept. 6, 1967, at 8.

³⁵¹ *Newspaper Verdict*, S. CHINA MORNING POST, Sept. 8, 1967, at 1. The convictions were for sedition, attempting to cause disaffection, and printing false news.

³⁵² *Reporters Convicted*, S. CHINA MORNING POST, Sept. 14, 1967, at 8.

³⁵³ *Id.* As the judge passed sentence, three women in the gallery of the courtroom shouted and raised their fists in protest; they were immediately given a 14-day jail sentence.

³⁵⁴ *See Rewards Paid to Residents*, S. CHINA MORNING POST, Sept. 16, 1967, at 1.

³⁵⁵ *Id.* The Director of Criminal Investigation admitted that a "substantial sum" of reward money had been paid; he declined to be specific because he didn't want the "other side" to know too much. *Id.*

³⁵⁶ *See Magistrate's Warning to Boy*, S. CHINA MORNING POST, Sept. 26, 1967, at 7 (sentence of six months imposed on individual who claimed to be merely passing by a street when police arrested everyone in the area for listening to an inflammatory radio broadcast).

³⁵⁷ *Tse Chung & The Queen*, [1967] H.K. Rep. 452, 454 is illustrative. Testimony showed that the defendant left his house to go to the store; a crowd had gathered almost immediately outside his house. Some members of the crowd of approximately 100 began to stone and jeer at a police riot unit; there was no evidence that the defendant had engaged in any such activity or had any common purpose with the crowd. The conviction of the defendant, as well as the 12 month prison sentence, was upheld. *Id.* at 459.

The judiciary's harsh response and lack of receptivity to virtually any defense was based on an overall intolerance of dissent. As one judge said in passing a sentence of five years on a married couple: "You are the type of creatures that bite the hand that feeds them."³⁵⁸ The fact that some in Hong Kong had been fed far better by the hand than others, did not seem to be of concern to the courts. When one college student told the court that there was unfair persecution of political dissenters, the judge deemed the individual "politically brainwashed" and ordered a psychiatric evaluation.³⁵⁹ Another defendant was sent to prison for cursing a police officer.³⁶⁰

The amount and level of disturbances in Hong Kong had reached their peak, and began to sharply decrease in September and October 1967. The number of explosives being planted was sharply reduced, strikes fizzled out, and the presence of posters and other "inflammatory" material had become minimal.³⁶¹ Furthermore, the protest movement had become divided and weakened.³⁶²

However, this did not stop the enactment in November of the Public Order Ordinance.³⁶³ The Ordinance consolidated the various emergency laws and regulations³⁶⁴ while further strengthening the powers of the police to stop citizens at will, and increasing the authority of the Auxiliary

³⁵⁸ *Two Found with a Bomb Jailed for Five Years*, S. CHINA MORNING POST, Sept. 27, 1967, at 8. Another judge, upon finding some protesters guilty of unlawful assembly, explained that their criticisms of the government were impermissible because they may "upset the social stability where you and I live." *Magistrate's Comments on Criticism of Government*, S. CHINA MORNING POST, Dec. 7, 1967, at 8.

³⁵⁹ *Boy 'Politically Brainwashed'*, S. CHINA MORNING POST, Nov. 2, 1967, at 8.

³⁶⁰ *Coolie Curses in Court*, S. CHINA MORNING POST, Oct. 26, 1967, at 8.

³⁶¹ COOPER, *supra* note 236, at 222. In the six months from May to November 1967, over 5,000 "bombs" had been planted, but only 200 were real. IN MEMORY OF THE MARTYRDOM TO MAINTAIN THE PEACE IN HONG KONG, THE RIOT OF HONG KONG 1967, at 163 (1967).

³⁶² Even the communists in China had withdrawn their support. In late September, the Canton Military Area Command labeled the riots "leftist adventurism" and called for a cessation of support for any further demonstrations in Hong Kong. Jürgen Domes, *The Impact of the Hong Kong Problem and Agreement on PRC Domestic Policies*, in HONG KONG: A CHINESE AND INTERNATIONAL CONCERN 79, 85 (Jürgen Domes & Yu-ming Shaw eds., 1988).

³⁶³ Public Order Ordinance No. 64 of 1967, H.K. GOV'T GAZETTE ch. 245 (Nov. 16, 1967).

³⁶⁴ For example, the Emergency (Prevention of Intimidation) Regulations 1967 were revoked by the Emergency (Prevention of Intimidation) Regulations 1967 (Revocation) Order 1967, issued on December 1, 1967, "in consequence of the incorporation of the substance of the Regulations in the Public Order Ordinance 1967." Emergency (Prevention of Intimidation) Regulations 1967, (Revocation) Order 1967, H.K. GOV'T GAZETTE (Legal Supp. No. 2) ch. 241, § 2 (Dec. 1, 1967).

Police and the Armed Forces.³⁶⁵ Unlike the Emergency Legislation, which was expected to have a life span for the duration of the demonstration, the Public Order Ordinance became a permanent part of the *Laws of Hong Kong*.³⁶⁶ The continuation of the totalitarian powers of the colonizer was an unfortunate legacy of the riots of 1967, the Ordinance itself remaining a source of great controversy throughout the final years of British rule.³⁶⁷

In addition to the continuation of the Public Order Ordinance, the 1967 riots had other ramifications as well. Some wealthy Chinese and Europeans fled Hong Kong, taking their money and valuable possessions with them.³⁶⁸ The net loss of deposits in Hong Kong banks during the period between May and July of 1967 was estimated from twelve to twenty percent of the total deposits existing in May of 1967.³⁶⁹ The Queen determined that the police had done such an effective job in confronting the arresting the protesters that she honored the police and expressed her gratification by designating the term "Royal" to be used to describe the force, which was then to be known for the duration of British rule as the Royal Hong Kong Police Force.³⁷⁰ A Police Education Fund, to provide funding for the education of children of police, had received

³⁶⁵ *Tighter Laws on Public Order*, S. CHINA MORNING POST, Oct. 7, 1967, at 6. The Preamble to the Ordinance explained that its function was to "consolidate and amend the law relating to the maintenance of public order, the control of organizations, meetings, places, vessels and aircraft, unlawful assemblies and riots." Public Order Ordinance, pmbl.

³⁶⁶ The Hong Kong Students' Union criticized the Ordinance as creating the "rule of the Ruler" to replace the "rule of Law." COOPER, *supra* note 236, at 300. The students claimed that the Ordinance "not only increases the authority of Government and the police, but also increases the dissatisfaction and hatred of society and decreases our freedom and authority, and that is unnecessary." *Id.*

³⁶⁷ Some of those victimized by the attack on free speech during the 1967 riots were in the forefront, twenty five years later, of attacks on the continued existence of the Ordinance. A human rights activist attending the United Nations Human Rights Committee hearing on Hong Kong in 1991 recalled: "I took part in the 1967 riots and distributed pamphlets criticizing the colonial education system and lack of freedom of expression at the time. I was 16 years old. And the police came into my school with carbines to arrest me." *Fears Mount Over Human Rights in Hong Kong after 1997*, REUTERS LIBRARY REPORT, Mar. 31, 1991.

³⁶⁸ CAMERON, *supra* note 229, at 199. Some businessmen had accumulated great wealth in Hong Kong. One Chinese industrialist who had chosen to flee to Canada, when asked what financial resources he had so that he would not be a parasite living off the Canadian taxpayers, answered "US\$5,000,000 . . . in cash . . . immediately. Will that be enough?" PATRIKEEFF, *supra* note 123, at 51. The exodus of the wealthy was to continue into 1968 and 1969. *Id.* at 50.

³⁶⁹ THE MAY UPHEAVAL IN HONG KONG, *supra* note 230, at 171.

³⁷⁰ NIGEL CAMERON, AN ILLUSTRATED HISTORY OF HONG KONG 312 (1991).

\$3.7 million (Hong Kong) by the end of 1967.³⁷¹ The Governor enacted ordinances to establish permanent trust funds for the general education³⁷² and higher education³⁷³ of the children of police officers.

The fact that the initial disturbances arose due to an employer-employee conflict led the Governor, in his annual address to the Legislative Council, to admit that "there is room for improvement in labour conditions in the Colony."³⁷⁴ Suggestions such as reducing the maximum work week for women and children from 60 hours to 48 hours came from members of the British Parliament as well.³⁷⁵ Sharp attacks on the policies of the government in Hong Kong were made in the House of Commons in London, where one member claimed the main source of unrest was "the miserable conditions under which the great mass of the people in Hong Kong were living today."³⁷⁶

Significant changes, however, were not forthcoming.³⁷⁷ No minimum wage law was enacted, no social security plan introduced, and no unem-

³⁷¹ 1967 ANN. REP., *supra* note 240, at 150. Contributions were given by the Chamber of Commerce, large British-owned banks, and corporations. COOPER, *supra* note 236, at 93, 126-27.

³⁷² Police Education and Welfare Trust Ordinance 1967, LAWS OF HONG KONG ch. 1120 (1967).

³⁷³ Police Children's Trust Ordinance 1967, LAWS OF HONG KONG ch. 1119 (1967).

³⁷⁴ Reports of the Meetings of the Legislative Council of Hong Kong, *H.K. Hansard*, Sess. 1968, at 47 (Feb. 28, 1968). Others, however, believed that different cures were needed. The Reverend of St. John's Cathedral in Hong Kong concluded that if "Christian leadership is not forthcoming, our young people will turn elsewhere and lead Hong Kong into disaster." *Colony's Young People Must Be Given Leadership*, S. CHINA MORNING POST, Sept. 25, 1967, at 6.

³⁷⁵ See Robert Keatley, *Adam Smith Capitalism and Hong Kong*, WALL ST. J., Nov. 6, 1967, at 14 (comments of the Minister of State for Commonwealth Affairs). Whatever the labor regulations in fact, were, was not of such crucial import since the laws were widely ignored anyway. See COOPER, *supra* note 236, at 304. The Minister added that there must be increased "attention to the social betterment of the people." *U.K. Minister Voices Need for Change in Colony*, S. CHINA MORNING POST, Oct. 11, 1967, at 20.

³⁷⁶ COOPER, *supra* note 236, at 303 (comments by John Rankin, Labour Party member in the House of Commons). Similar comments came from those who had in the past been strong supporters of the Hong Kong Government. For example, an editorial in the *Far Eastern Economic Review* concluded that only a "depressingly small proportion of our four million people have begun to reap the benefits of Hongkong's economic growth." Derek Davies, *What's to be Done Now?*, FAR E. ECON. REV., June 1, 1967, at 509, 511. The editorial called on the Government to act to re-appraise its policies so that the unfair conditions existing in Hong Kong would not again be exploited and result in unrest. *Id.*

³⁷⁷ The Governor himself had warned in his Legislative Council address against any changes in labor relations which might be considered "over-dramatic or far-reaching." Reports of the Meetings of the Legislative Council of Hong Kong, *supra* note 374, at 47. An example of the type of reform that did occur was the formation of

ployment benefits, no guarantee of medical or hospital insurance for employees and no assistance plan for the poorest Hong Kong families was to be promulgated.³⁷⁸ The shockingly-low tax rate, a maximum of fifteen percent for both corporations and the wealthiest of individuals,³⁷⁹ did not provide funds for social welfare. The wealthy and corporate interests were not about to sit idly and watch their tax rate increase.

The British control of the colony after the riots was as tight and in place as in the pre-1966 days. A British member of the House of Lords' comment during a debate in Parliament that "all Hong Kong knows that a return to the normal pre-riot days is impossible"³⁸⁰ did not prove to be accurate. The governmental reforms urged by some British Labour Party members did not occur and the accusation in Parliament during the riots that the form of rule in Hong Kong did indeed "smack of imperialism"³⁸¹ would prove almost just as true thirty years thereafter.

VI. PART SIX: THE GOVERNMENT RESPONDS TO PROTESTS AGAINST ENGLISH AS THE OFFICIAL LANGUAGE

No person shall post up or exhibit or cause to be posted up or exhibited in or near any street any public notice or proclamation *in the Chinese language*.

So began Ordinance No. 13 of 1888, *Regulation of Chinese*, Chapter VII.³⁸² For a violation of this Ordinance, imprisonment for up to three months was authorized.³⁸³ And the next section of the same Ordinance informed that:

a new Department of Census and Statistics to provide "increasingly accurate and comprehensive measurements of Hong Kong's progress and problems." *New Department Formed to Assess Hong Kong's Progress*, S. CHINA MORNING POST, Dec. 4, 1967, at 1.

³⁷⁸ There were 39 pieces of labor legislation passed in the years 1967-1972. They were not of great impact, however. A typical new law was the requirement in the Employment Ordinance of 1968 that salaries must be paid to employees within one week of the wages being due. See ALVIN RABUSHKA, *THE CHANGING FACE OF HONG KONG* 73 (1973). Another provision required one week's notice before termination of employment. *Id.* As has always been the case with whatever protective labor legislation that did exist in Hong Kong, there were very few means of enforcement. For example, for all of Hong Kong in 1969, there were only nine government employees available to deal with complaints about industrial payments disputes. HONG KONG RESEARCH PROJECT, *HONG KONG: A CASE TO ANSWER* 24 (1974).

³⁷⁹ Scott, *supra* note 230, at 8.

³⁸⁰ *Peer Urges Reform in Hong Kong Government*, S. CHINA MORNING POST, Nov. 11, 1967, at 9.

³⁸¹ *Id.*

³⁸² Ordinance No. 13 of 1888 (*Regulation of Chinese*) § 47 (H.K.).

³⁸³ § 50.

No Chinese shall hold or be present at any Chinese public meeting whatever, not being a meeting solely for religious worship, without a permit under the hand of the Governor.³⁸⁴

To live in a country which is ruled by those who don't speak your language, whose laws are written in a language that you don't understand, but nevertheless subjects one to incarceration — by a court that won't speak your language³⁸⁵ — if you don't obey, and where your language is not recognized because only the language of the colonizer is considered to be the "Official Language," contributed to an alienating and demeaning existence.³⁸⁶ The prohibition of the use of Chinese, the primary language of over ninety-eight percent of the population, in any official capacity was indeed an illustration and daily reminder of who had the power in Hong Kong.³⁸⁷ It was as though the subjects of "Her Majesty, the Queen" were faceless, invisible, and voiceless.³⁸⁸

The inability of the residents of a country to communicate with those in power resulted in much misfortune. There was, for example, no perma-

³⁸⁴ § 48.

³⁸⁵ Since Chinese was not a recognized language in court, a "confession" to a crime given in Chinese may have been poorly translated into English. As a result, the official translation would bear little resemblance to that which a defendant may have originally said.

³⁸⁶ Gloria Anzaldúa, in her book *Borderlands, La Frontera* has described the impact on an individual whose native language is not accepted:

Repeated attacks on our native tongue diminish our sense of self.

....

If a person has a low estimation of my native tongue, she also has a low estimation of me.

....

So, if you want to really hurt me, talk badly about my language. Ethnic identity is twin skin to linguistic identity — I am my language. Until I can take pride in my language, I cannot take pride in myself.

GLORIA ANZALDÚA, *BORDERLANDS, LA FRONTERA* 58-59 (1987); see also Martha B. Crago, *Ethnography and Language Socialization: A Cross-Cultural Perspective*, TOPICS IN LANGUAGE DISORDERS, May 1992, at 28, 28-29 (noting that language acquisition and cultural identification are intertwined).

³⁸⁷ For example, no member of the Legislative Council, even if he were Chinese, was permitted to speak in Chinese during a legislative session. DAVIES & ROBERTS, *supra* note 158, at 327. One novelist has highlighted the impact of a policy such as that which existed in Hong Kong by asking, "Who is to say that robbing a people of its language is less violent than war?" ANZALDÚA, *supra* note 386, at 53 (quoting Ray Gwyn Smith's unpublished book *Moorland Is Cold Country*).

³⁸⁸ It was not just their language that the British imposed on the Hong Kong Chinese, but their religious views as well. For example, the crime of blasphemy, a misdemeanor, deemed criminal any writings which denied the truth of Christianity, the Holy Bible, the Book of Common Prayer, or the existence of God. Until 1896, the marriage law allowed for civil marriages before the Registrar-General only if one of the partners was a Christian. ENDACOTT, *supra* note 43, at 245.

nent interpreter employed at the civil courts, and often there was no interpreter available for the Chinese to use in a court where the paper work was done exclusively in English.³⁸⁹ Thus, the Chinese who desired to bring a suit in this monolingual legal system often were unable to do so.³⁹⁰

Even greater hardship fell on an individual arrested for a crime. In the early days of the Colony, the decision was made not to hire any Chinese for the Police Force since they were considered corrupt.³⁹¹ When a Chinese man was arrested, he could not be informed by the arresting officers or the police in the stationhouse what he was being charged with. He was, nevertheless, stripped of all his property and detained.³⁹² He was little better off when he arrived at criminal court where the interpreter was also the Joint Superintendent of the Police and frequently the primary witness against the defendant.³⁹³

Moreover, the British believed that interpreters for the Chinese in Hong Kong were not crucial to court proceedings since the testimony of the Chinese anyway was often not to be believed. The Registrar of the Supreme Court expressed this bias, elaborating on his conclusion that Chinese witnesses have a general "disregard for truth:"

Like other heathen the Chinese have very loose notions of the obligations of an oath, and in the ordinary affairs of life they tell an untruth without hesitation, nor are they ashamed if detected. The evil is a serious one, and one for which there is no certain cure. Their system of morality, which, in China, is religion, does not enforce upon them the importance of truth, and an oath sits very lightly upon the conscience of those who have no conception of the deity, and care very little for the future. Among all persons professing Christianity, truth is hedged in, guarded alike by the religious and irrelig-

³⁸⁹ 1 NORTON-KYSHE, *supra* note 43, at 223. Part of the difficulty in getting interpreters was the perceived need for a Briton who could speak Chinese, since the Hong Kong Chinese who claimed to know English were considered incompetent and untrustworthy. 2 JAMES WILLIAM NORTON-KYSHE, *THE HISTORY OF THE LAWS AND COURTS OF HONGKONG* 138-39 (1898).

³⁹⁰ In recent years, the People's Republic of China has been instituting an increasingly influential system of courts. By 1994, there were more than 90,000 judges in China sitting in 3,000 country, district, intermediate, and high courts. Geoffrey Crothall, *China Allowing Justice to be Seen to be Done*, S. CHINA MORNING POST, Mar. 12-13, 1994, at 6.

³⁹¹ 1 NORTON-KYSHE, *supra* note 43, at 255.

³⁹² *Id.*

³⁹³ *Id.* at 223. The conflicts involved were not unnoticed. The Registrar to the Supreme Court noted "the two offices were incompatible." *Id.*

ious, but among the heathen it is cared little for, — to them, it would be an inconvenient acquisition.³⁹⁴

The fact that the correctional officers employed in the prison were British and knew no Chinese created all sorts of obvious problems and was likely responsible for at least one death in 1860.³⁹⁵ A Chinese man was imprisoned for being a vagabond and when he was too ill to do his work-detail, he was flogged, placed on short rations and put in solitary confinement. He died shortly thereafter. The report of a coroner's jury linked the inmate's death to the victim's inability to communicate with the guards and sharply criticized the failure of the system to have an interpreter at the prison.³⁹⁶

It is not surprising that the impetus for change in the laws designating English as the "Official Language" came from students. Although historically students in Hong Kong have not played the important role in political development that students elsewhere in Asia have,³⁹⁷ one exception is the initiative to have Chinese adopted as an Official Language. Hong Kong Chinese students had textbooks which were not only written in English, but often had been transplanted from England with no modification.³⁹⁸ As far back as 1878, the Government had determined that the primary objective of schools in Hong Kong was to be the teaching of English.³⁹⁹ The Inspector of Schools explained the aim was to "elevate the Chinese people of this colony by means of English rather than Chinese

³⁹⁴ *Id.* at 275. Until 1860, the manner in which a Chinese witness "took" an oath was to burn a sheet of yellow paper on which was written, in Chinese, a statement indicating that the witness was to speak the whole truth. *Id.* at 310-11.

³⁹⁵ *Id.* at 645.

³⁹⁶ *Id.* The Coroner's jury verdict was as follows:

The jury desire to express their indignation at the cruel usage the deceased met with in being twice flogged, put on half rations, and placed in solitary confinement while sick and under medical treatment. They also think there is great carelessness in conveying to the Gaol [prison] Governor the reports on the prisoners made by the Surgeon; and that the punishment of flogging within the Gaol appears to be much too common.

Id.

³⁹⁷ Students across the border in China were playing a major role in the Cultural Revolution in the mid-to-late 1960's. The Maoist leaders of the Chinese Communist Party believed that students and children generally should lead the revolution and that the workers and peasants would follow. See GRAY & CAVENDISH, *supra* note 228, at 125. The Red Guard was led by middle-school students from families of workers and poor and lower-middle class peasants and indeed played a very prominent role in the Cultural Revolution. *Id.* at 124-25.

³⁹⁸ This policy is in direct conflict with the UNESCO position urging governments to promote and use the *local* languages in schools. See *Skirmishing Over Heritage*, ASIA WK., Dec. 29-Jan. 5, 1979, at 33, 33.

³⁹⁹ ENDACOTT, *supra* note 43, at 234.

teaching.”⁴⁰⁰ A policy was adopted wherein no new school would receive Government aid unless it provided a European education in English.⁴⁰¹ Some secondary schools disciplined students who would speak Chinese during the school day, even during informal discussions with each other at lunch or recess.⁴⁰² One unfortunate result of this language policy has been that the standard of English, as well as the level of ability to communicate in written Chinese, are both low.⁴⁰³ Another result, revealed by a 1994 survey of secondary school students conducted by the Education Department, was that the widespread inability of the students to conquer the English-language hurdle generally led to loss of interest in school because of the overall difficulty of the curriculum.⁴⁰⁴

The Chinese as an Official Language Movement could be seen as inherently anti-colonialist, an attack on the failure of the British to recognize and respect the Chinese people. The Hong Kong University Students' Union bi-weekly newspaper, the *Undergrad*, claimed that the Chinese language campaign was the first step to democratization and decolonization: “We must all understand that ultimately we are actually bargaining for the people of Hong Kong to decide their own affairs.”⁴⁰⁵

In 1970, the Hong Kong Government appointed a Chinese Language Committee “to examine the use of Chinese in official business and to advise on practicable ways and means in which the use of Chinese might

⁴⁰⁰ *Id.* at 241. The teaching of English was seen by some as part of a process to “civilize” the Chinese. See 1 NORTON-KYSHE, *supra* note 43, at 19-20 (teaching of English was of great value and part of the encouragement of the Chinese to adopt British customs and manners).

⁴⁰¹ ENDACOTT, *supra* note 43, at 280. There was, in general, little expenditure by the Government on education. By 1900, only 1.24% of the colony's revenues were spent on education. *Id.* It was not until 1971 that free primary level education was available for all who desired it. *Id.* at 313.

⁴⁰² This information was obtained through personal knowledge from the author's children who attended different secondary schools in Hong Kong from January to July of 1993. The form of punishment was most commonly a fine, which would double in amount for each succeeding offense. *Skirmishing Over Heritage*, *supra* note 398, at 33 (Catholic schools in Hong Kong imposed fines in order to discourage communication in Chinese).

⁴⁰³ Mary Lee, *The Language of Nationalism*, FAR E. ECON. REV., Dec. 1, 1978, at 26, 26; see also Crago, *supra* note 386, at 35-36 (discussing how education in a second language in a non-bilingual school has a significant impact on students' ability to use their first language).

⁴⁰⁴ Stella Lee, *Pupils Struggle with English*, S. CHINA MORNING POST INT'L WKLY, May 7-8, 1994, at 2. One-half of the 2,380 students surveyed said they had difficulties learning subjects taught in English. *Id.*

⁴⁰⁵ *Step Towards Democracy in Hong Kong*, S. CHINA MORNING POST, Oct. 22, 1970, at 1. The doctrinaire leftist supporters of the Chinese Communists did not join in this movement. First, they refused to acknowledge the legitimacy of the Colonial Government, and then, they considered it a given that Chinese was the only legitimate language.

be further extended in the interests of good administration and for the convenience of the public.”⁴⁰⁶ The Chairman of the Hong Kong Federation of Students criticized the composition of this Committee⁴⁰⁷ and the Government attempted to thwart the desire of students to influence the Committee’s recommendations. For example, as students began a petition drive in favor of Chinese as an official language, the police refused to permit them to set up tables and kiosks because the student groups were not “properly registered societies.”⁴⁰⁸ The next day, the police prohibited the students from placing any publicity posters on public buildings.⁴⁰⁹

The major clash between the student groups and the police occurred the night before the 1972 annual Queen’s Birthday celebration in Hong Kong.⁴¹⁰ The night before the celebratory parade, the police, utilizing their well-financed intelligence apparatus, “smashed an organized student underground movement” which allegedly was planning to carry *posters* at the parade.⁴¹¹ The Hong Kong Federation of Students and seven other student groups sharply criticized the raid and the subsequent arrests of many student activists.⁴¹²

⁴⁰⁶ Reports of the Meetings of the Legislative Council of Hong Kong, *H.K. Hansard*, Sess. 1970/71, at 119 (Oct. 9, 1970). This was not the first official recognition by the Government of the problems caused by the exclusion of Chinese in the administration of the colony. The Commission of Inquiry that studied the riots in 1966 concluded that the sole use of English distanced the government from the people. REPORT OF COMM’N OF INQUIRY, *supra* note 163, at 127-28.

⁴⁰⁷ *Language Committee Leans on Government Side*, S. CHINA MORNING POST, Oct. 22, 1970, at 1.

⁴⁰⁸ *Language Sign-In Encounters a Legal Hitch*, S. CHINA MORNING POST, Oct. 24, 1970, at 1. The Societies Ordinance, dating back to 1887, requires any association of persons “whatever its nature or object” to register with the Registrar of Societies within 14 days of its establishment. If the Registrar refuses to grant the society permission to register, the society is deemed to be illegal. No society will be permitted to register if it is believed likely that it would be used for any purpose “prejudicial to or incompatible with peace, welfare or good order.” If approved, the society must then submit its constitution for acceptance. Societies Ordinance, LAWS OF HONG KONG ch. 151 (1970).

⁴⁰⁹ *Now the Posters are Banned*, S. CHINA MORNING POST, Oct. 25, 1970, at 3. The police claimed that section 8(b) of the Summary Offences Ordinance would be violated by the posters.

⁴¹⁰ The celebration in Hong Kong of British royalty dates back to 1869 when the Duke of Edinburgh, Queen Victoria’s youngest son, became the first member of a Royal family to visit Hong Kong. GEOFFREY ROBLEY SAYER, HONG KONG 1862-1919 YEARS OF DISCRETION 30 (1975). This visit was described at the time as a “unique one in the history of the world, for until Prince Alfred’s visit to Hongkong, never before had a Royal Prince visited lands so remote from the centres of civilization.” 2 NORTON-KYSHE, *supra* note 389, at 175.

⁴¹¹ *Police Smash Anti-British Student Move*, S. CHINA MORNING POST, Apr. 20, 1972, at 1.

⁴¹² *Id.*

The justification for the arrests and the seizure of the posters — the most inflammatory of which read *Down with Colonialism*⁴¹³ — was that the posters might incite a breach of the peace and disturb public order.⁴¹⁴ The police testimony at the trial of the students was that as the police entered the office of the *Secondary School Students Weekly* newspaper, they saw students sitting around a long table “discussing something and they kept quiet when they saw us enter.”⁴¹⁵ Further evidence against the students was that one of them was found cutting a piece of cardboard on which Chinese characters were written.⁴¹⁶

The individuals were prosecuted under an archaic English law, not in effect in England at the time, the English Justices of the Peace Act.⁴¹⁷ The Magistrate found that had these posters been distributed, a breach of the peace was likely “either through the gathering of crowds or by other public agitation.”⁴¹⁸ But of course the whole purpose of the parade was to attract crowds; and ten thousand people had come to one of the biggest Queen’s Birthday Parades ever held in Hong Kong.⁴¹⁹ That these students, with their Chinese language posters, could have presented any threat was certainly belied by the strong military presence:

The parade went on with superb military precision . . . the armed troops showed all the signs of drill, spit and polish as they marched past at 140 paces a minute with their eyes right. . . . The jungle green uniforms of the rifle-bearing Gurkhas. . . . The gleaming white uniforms of the Royal Navy contingent and the scarlet caps of the Royal Military Police.⁴²⁰

The arrests of students planning on carrying posters in the Chinese language to a parade celebrating the birthday of the Queen of England showed the determination of the British to assure that their rule contin-

⁴¹³ *Id.*

⁴¹⁴ *Police Expect Anti-Royalist Bid by Students*, S. CHINA MORNING POST, Apr. 21, 1972, at 1.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ The Act had been passed by Parliament in 1360. English Justices of the Peace Act, (1360), 34 Edw. III, I (Eng.). The law provided that

Justices shall have power to refrain Offenders, Rioters, and all other Barretors, and to pursue, arrest, take and chastise them according to their Trespass or Offense; and to cause them to be imprisoned and duly punished . . . to the Intent that the People be not by such Rioters troubled nor endamaged, nor the Peace blemished.

⁴¹⁸ *Poster Case*, S. CHINA MORNING POST, Apr. 26, 1972, at 7.

⁴¹⁹ *Parade*, S. CHINA MORNING POST, Apr. 22, 1972, at 1. There have been, over the years, various ways of celebrating the Queen’s birthday in Hong Kong. The first recorded manner of celebration was in 1845 when 19 men imprisoned for minor offenses were pardoned in honor of the Queen. See 1 NORTON-KYSHE, *supra* note 43, at 83.

⁴²⁰ *Parade*, *supra* note 419, at 1.

ued, unhampered by considerations such as free speech or liberty. It was a crime punishable by up to two years in prison to merely "utter[] any seditious words."⁴²¹ The show of force was largely effective as protest activity was chilled. It was clear who had the power in Hong Kong, and it was not the Chinese.

The British, learning from history, realized that were there to be a significant threat to their rule, it might emerge from the students. Therefore, laws were enacted in an attempt to depoliticize the schools and students. For example, Education Regulation No. 104 (1), in clear violation of the United Nations Convention on the Rights of the Child,⁴²² warns that:

No instruction, education, entertainment, recreation or propaganda or activity of any kind which is in any way of a *political or partly political* nature and prejudicial to the public interest or the welfare of the pupils or education generally or contrary to the approved syllabus, shall be allowed on any school premises or upon the occasion of any school activity.⁴²³

Such prohibitions of political activity continued when one reached the university level. For example, Regulation No. 13 of the Regulations of United College of Chinese University of Hong Kong stated: "Undesirable Activities: Students of the College shall refrain from undertaking any political propaganda or participating in undesirable political or other activities inimical to the interests of the college."⁴²⁴

The preeminent university in Hong Kong is the University of Hong Kong.⁴²⁵ From the beginning, the British perceived the University as a place where not only would political activity be restricted, but the institution would be one which would actually *protect* the Colony from being subjected to reform-minded Chinese who would have otherwise been

⁴²¹ Crimes Ordinance, LAWS OF HONG KONG, ch. 200, § 10(1)(b) (1972).

⁴²² Article 13(1) of the Convention on the Rights of the Child requires that the "child shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds." G.A. Res. 25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, 168, U.N. Doc. A/44/49 (1989).

⁴²³ See J. WALKER, UNDER THE WHITEWASH 10 (2d ed., 1972) (quoting Education Regulation No. 104(1)) (emphasis added).

⁴²⁴ *Id.* (quoting Regulation No. 13 of the Regulations of United College of the Chinese University of Hong Kong).

⁴²⁵ The University is still an elite institution and difficult to get into, although it has come a long way from the initial perspective that characterized the function of the law faculty as one to provide training for the "*sons of gentry* who aim at official posts." George Endacott, *The Beginnings*, in UNIVERSITY OF HONG KONG: THE FIRST 50 YEARS, 1911-1961, at 23, 29 (Brian Harrison ed., 1962) (quoting the Governor of Hong Kong) (emphasis added).

exposed to political theories at universities outside the Colony.⁴²⁶ The Governor of Hong Kong, Lord Frederick Lugard, who led the drive in the early 1900's to fund the University, was straightforward: "Chinese parents find by experience that their sons return from a course of study in a foreign country with revolutionary ideas and become a danger to the state. *It should be the special care of Hong Kong University to see that no pernicious doctrines are encouraged or tolerated here.*"⁴²⁷ Faculty have discouraged students from engaging in political activity, and students have in turn feared the sophisticated Hong Kong intelligence operation and paid police informers.⁴²⁸ Such concerns thwarted the drive to obtain signatures on petitions calling for Chinese to be an official language as many who supported the goal feared official response and retaliation were they to indicate support.⁴²⁹

The British Government in Hong Kong was to realize, however, that the language barrier did create an obstacle to effective rule and communication with the Chinese in Hong Kong.⁴³⁰ The Government's Committee on the Chinese Language made a series of recommendations for gradual changes.⁴³¹ The Committee issued four reports between 1970 and 1974. In 1974, the Official Languages Ordinance was enacted declaring both Chinese and English to be official languages for Government use as well

⁴²⁶ It most certainly would have been considered undesirable to have Chinese students, who studied in London, to return to Hong Kong equipped with the theories of liberty, democracy and equality embodied in English thought, and then attempt to apply the political philosophy to Hong Kong.

⁴²⁷ WELSH, *supra* note 19, at 356 (emphasis added).

⁴²⁸ WALKER, *supra* note 423, at 10.

⁴²⁹ *Id.* at 11.

⁴³⁰ This was an observation made as early as 1866 by the then Governor of Hong Kong, Sir Richard MacDonnell, in a communiqué to the Secretary of State for the Colonies: "My experience here convinces me that this government cannot in many departments be well-served except by officers who thoroughly understand the language of the natives." GREAT BRITAIN COLONIAL OFFICE, OFFICIAL CORRESPONDENCE CO 129/114 (Aug. 25, 1866). Interestingly, opposition to the adoption of Chinese as an official language came not only from the British, but also from the elite, highly educated Hong Kong Chinese whose privileged position in society was all the more secure because they were among the few who had completely mastered English. For the British, the requirement that English be known in order to have any position of power in Hong Kong, not only reinforced their position but also continued the treatment of the Chinese in Hong Kong as second-class citizens.

⁴³¹ For example, the only substantial recommendation emerging from the First Report was that the proceedings of the Legislative Council should be simultaneously translated into Chinese. *Mixed Views on Language Report*, S. CHINA MORNING POST, Mar. 2, 1971, at 2. The Chairman of the Council of the Hong Kong Federation of Students, James Chui, responded that the report was merely a public relations ploy. *Id.* at 6.

as in the "lower" courts.⁴³² Proceedings in the Supreme and District Courts were to continue to be exclusively in English.⁴³³ The changes were clearly more of form than substance as English continues to this day to be the preferred and dominant official language.⁴³⁴ All instruction and texts at the University of Hong Kong are still in English, and English continues to dominate at the secondary school level as well.⁴³⁵ Although some legislation has been translated into Chinese for reference and not for official use, English is still the norm.⁴³⁶ The vast amount of case law is available only in English, and English dominates the official law reports and law journals as well.⁴³⁷

⁴³² Official Languages Ordinance of 1974, §§ 3(1), (2) (H.K.). However, due to the shortage of Chinese-speaking magistrates and judges, the reality is that English continues to dominate. See Albert H.Y. Chen, *Law in a Foreign Language: The Case of Hong Kong*, in HONG KONG: THE CHALLENGE OF TRANSFORMATION 222 (Kathleen Cheek-Milby & Miron Mushkat eds., 1989). The slow pace of the localization of civil servants retards the expansion of the Chinese language.

⁴³³ Official Languages Ordinance § 5(2). The Joint Declaration between Great Britain and China recognizes the entrenched nature of the English language in Hong Kong. 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, Annex I, Sept. 26, 1984, 23 I.L.M. 1366, 1373 [hereinafter Joint Declaration].

⁴³⁴ The Joint Declaration provides that after Hong Kong becomes part of China, "[i]n addition to Chinese, English may also be used in organs of government and in the courts." *Id.* (emphasis added). The perception of the leaders of the People's Republic of China that English is a mere unpleasant reminder of colonialism and an insult to the pride of the Chinese may hasten the decline in the use of English.

⁴³⁵ As of 1988, only 8.3% of secondary school students were in schools wherein Chinese was the official language of instruction. DAVIES & ROBERTS, *supra* note 158, at 124. The focus on English continues despite the recommendation of the Llewellyn Commission, which after a two year study in 1981 and 1982 of Hong Kong's educational system, recommended a gradual adoption of Chinese as the language of instruction. The Commission followed the procedures recommended by the Center for Education Research of the International Organization for Economic Cooperation and Development. *Id.* at 277-78.

⁴³⁶ There are over twenty-six volumes of the *Laws of Hong Kong*, and translation from English to Chinese is a most difficult and time consuming task. See Francis Cheung, *Bilingual Statute Law for Hong Kong*, in CONFERENCE ON THE COMMON LAW IN ASIA (1986). A sample of specialized English legal terms having no Chinese equivalent are "equitable interests," "fee simple," "diminished responsibility," "consideration," and "without prejudice." *Id.* at 29. There have been isolated ordinances through the years that were published upon enactment in Chinese as well as English. The first such was Ordinance No. 2 of 1858, an ordinance for licensing and regulating the sale of prepared opium.

⁴³⁷ See Albert Chen, *Language, Law and the Case for Hong Kong*, (unpublished paper for the Conference on the Common Law in Asia, University of Hong Kong, Dec. 15-17, 1986) (on file with author).

VII. PART SEVEN: MISCELLANEOUS ACTS OF REPRESSION

In the years immediately following the 1967 riots, the Colonial Government moved to expel outsiders who were deemed potential provocateurs. A number of left-wing individuals from America, Germany and Switzerland were refused visa renewals.⁴³⁸ The offices of the *70's Biweekly*, a journal which was sharply critical of the Hong Kong Government, was raided for allegedly violating the Control of Publications Consolidation Ordinance.⁴³⁹ Protestors who were Hong Kong Chinese and engaging in nationalistic demonstrations were also arrested and prosecuted. The Defend Tiao Yu Tai Movement involved a worldwide attempt by those of Chinese ancestry to prevent a Japanese takeover of a group of islands 120 miles northeast of Taiwan in 1972.⁴⁴⁰ Initially the protest targeted the Japanese Information and Cultural Office and not the Hong Kong Government. But as the Colonial Government repeatedly refused to allow protests and marches to be carried out and arrested demonstrators for "unlawful assemblies," the Government itself became an object for criticism.⁴⁴¹

⁴³⁸ Protestors in Hong Kong against the United States' involvement in the Vietnam War were perceived as potential antagonists to Hong Kong's cooperation with America's involvement in Vietnam. See WALKER, *supra* note 423, at 16-18.

⁴³⁹ *Id.* at 22. Chapter 268 of the Ordinance prohibited the publication of any journal without a \$10,000 (Hong Kong) deposit paid to the Hong Kong Government. However, the government did not interfere with many other publications that had not made any such deposit. *Id.* The *70s Biweekly* was both anti-British as well as anti-Communist, and this may have been of particular concern to the Government which wished to portray all opponents as Communist so as to limit support from those who were steadfastly opposed to the Chinese Communist regime. *Id.* at 22-23.

⁴⁴⁰ The islands were thought to possibly contain oil and the United States had agreed to give the islands to Japan in 1972 as part of the Okinawa Treaty.

⁴⁴¹ The Colonial Police Commissioner repeatedly refused permission to those who sought to demonstrate. For example, when demonstrators requested permission to rally at a large park, they were denied permission because traffic might be obstructed; when they proceeded to request the area adjacent to the Star Ferry Terminal, that site was rejected because it was "used by members of the public as a highway and for recreational purposes." *Sit-in Will Go Ahead Despite Ban*, S. CHINA MORNING POST, May 4, 1971, at 5. Eventually the Government determined that there was no need to provide specific reasons for banning demonstrations and that the entire prime area of Hong Kong was to be off-limits. The Government responded to a request by the Hong Kong Federation of Students: "The whole Central area is unsuitable for a demonstration and permission is never granted for a demonstration there." *Students Go Ahead with Today's Rally*, S. CHINA MORNING POST, May 13, 1972, at 1. The frequent arrests of demonstrating students led the Current Affairs Committee of the Hong Kong Student Union to issue a press statement calling the unlawful assembly laws in Hong Kong "oppressive" and creating resentment against the Government in general and the police in particular. *Students Hold More Senkaku Demos*, S. CHINA MORNING POST, Apr. 12, 1971, at 1.

The inadequate housing facilities in Hong Kong had created a need for people to live in small boats docked in the waters around the Island. Often eight to ten persons would be cramped on a boat of less than 100 square feet. Storms at sea endangered the lives of the houseboats' inhabitants.⁴⁴² In 1979, a movement began an effort to pressure the Government to provide some form of housing for these boat people. The leaders of ten voluntary agencies along with representative boat people decided to bring petitions to the Governor's residence.⁴⁴³ The buses carrying priests, social workers, university students and children were intercepted by the police, and the individuals were arrested for unlawful assembly.⁴⁴⁴

The court, in a well-publicized hearing following the arrests, found that the attempt to petition the Government violated section 12(2)(c) of the Public Order Ordinance. The mere presence of the individuals in the buses was deemed to constitute an "unlawful assembly." The judge declared that any tourist bus would similarly violate the law: "Any police officer could, if he were so minded, exercise his power under section 12 to stop one of those coaches and order the tourists inside to disperse . . . the power is there, the words of the Ordinance are there. I see no other way in which to read them."⁴⁴⁵ An appeal sustained the convictions, thus ignoring the red armbands of the supporters of those arrested which contained the words "Petition is No Crime."⁴⁴⁶ Upon being informed of the decision on appeal, supporters were reported to have shouted "Democracy is Dead."⁴⁴⁷

The housing crisis also caused some homeless individuals to become squatters on vacant, agricultural land which led to periodic police attacks and arrests for, once again, unlawful assembly. In one typical confrontation, police used tear gas to clear the squatters. Subsequent jail sentences for those arrested ranged from three to eighteen months.⁴⁴⁸

The Special Branch of the Hong Kong Police is the unit that engaged in surveillance of those political groups that the Government considered subversive. In one instance, when the Special Branch forced their way

⁴⁴² See *Boat People are Freed by Judge*, S. CHINA MORNING POST, Feb. 14, 1979, at 7.

⁴⁴³ Joseph Y.S. Cheng, *From Being Responsive to Being Responsible*, in HONG KONG IN THE 1980s 1, 7 (Joseph Y.S. Cheng ed., 1982).

⁴⁴⁴ *Protest Priest on \$200 Bail*, S. CHINA MORNING POST, Jan. 9, 1979, at 9. One arrested priest commented that he did not know that a "group delivering a petition could be classified as an unlawful assembly." *Id.*

⁴⁴⁵ *Boat People Petitioner's Appeal Dismissed by Judge*, S. CHINA MORNING POST, Apr. 28, 1979, at 8.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* The public was in effect banned from attending the court proceedings. The police enforced this ban by closing entrances and assigning guards to control the main entrance.

⁴⁴⁸ *Village Clash Nets Jail Terms*, S. CHINA MORNING POST, Sept. 15, 1979, at 11.

into television newsrooms and seized videotapes that had been taken of a demonstration attended by 20,000 Chinese, an international furor ensued. A Hong Kong ordinance permitted a magistrate to issue a warrant to conduct a search whenever there was found to be reasonable cause to suspect that the search might assist an investigation.⁴⁴⁹ The application of the police to the magistrate was *ex parte*; the media had no opportunity to be heard.⁴⁵⁰

Twenty thousand Chinese rallied to protest the celebration of Chinese National Day on October 1, 1989. The Hong Kong Chinese reacted vigorously against the People's Republic of China's retaliation against the students at Tiananmen Square in the spring of 1989,⁴⁵¹ and the memories of Tiananmen persisted in October. The United States and the French Consul-Generals had decided not to attend the National Day Celebrations in Hong Kong but the Colonial Government actively participated in the celebrations.⁴⁵²

It was not only large scale demonstrations that led to responses by the police and prosecutions. In 1990, several highly respected leaders of the incipient pro-democracy movement in Hong Kong were arrested for using a megaphone without permission and for soliciting funds.⁴⁵³ The Summary Offences Ordinance prohibited the use of any instrument for magnifying sound without a special permit issued by the Commissioner of Police "in his absolute discretion."⁴⁵⁴ The Ordinance provided for a maximum jail sentence of three months.⁴⁵⁵ Those arrested included the head of the Hong Kong Christian Institute, the former President of the Hong Kong Affairs Society, the Director of the Christian Industrial Committee, and two Vice-Chairmen of the United Democrats of Hong Kong, the

⁴⁴⁹ Police Force Ordinance, LAWS OF HONG KONG ch. 232, § 850 (1964). The ordinance permitted the police to "break into or forcibly enter such building." § 850 (7)(a).

⁴⁵⁰ In Britain, the law was far different. The United Kingdom Police and Criminal Act of 1984 required any search to be pursuant only to a special judge's warrant with the media having the opportunity to appear and contest the issuance of any warrant.

⁴⁵¹ It was estimated that 600,000 Hong Kong residents marched in support of the Chinese students and called for the resignation of Chinese Premier Li Peng. *Huge Hong Kong Rally Backs Students*, S. CHINA MORNING POST, May 22, 1989, at 1. The following week, once again, 600,000 demonstrated in support of the pro-democracy movement in China. *Another Vast Crowd Joins Worldwide Show of Solidarity*, S. CHINA MORNING POST, May 30, 1989, at 1.

⁴⁵² *Party Protest Turns Violent*, S. CHINA MORNING POST, Sept. 30, 1989, at 1. The British Governor of Hong Kong toasted the Director of the New China News Agency at a special reception. *Id.*

⁴⁵³ *The Queen & Li Wing-tat and Others*, [1991] 1 H.K. Rep. 731, 731.

⁴⁵⁴ Summary Offences Ordinance, LAWS OF HONG KONG ch. 228, § 4(29) (1989).

⁴⁵⁵ § 4.

leading political party in the Colony.⁴⁵⁶ Amnesty International referred to those arrested as "Prisoners of Conscience."⁴⁵⁷

CONCLUSION

Hong Kong has often been referred to as the world's "last colony." European colonial rule of territories in Africa and Asia generally terminated in the years following the end of the Second World War. With the return of Hong Kong to China in July of 1997, it is crucial to understand the character and nature of the British domination of the Chinese people living in Hong Kong.

Over the course of colonial rule, the Government used martial law, flogging, deportation, and censorship of those deemed antagonistic to British control. Newspapers were closed and publishers jailed for the crime of sedition. Union headquarters were raided and shut down, labor leaders arrested and imprisoned. When protests occurred, steel-helmeted police responded with tear gas and batons.

At times, demonstrations were completely outlawed, as was any use of "inflammatory" speech. Curfews were instituted and warrantless searches conducted. Petitioning, posters that might lead to "ill-will," and public assemblies were forbidden. When the Government was unable to identify any specific offense that was committed by someone the British wanted to imprison, the law permitted detention for up to a year without the need to charge any crime at all.

The British were not even restricted to those laws which were on the books. The Government was empowered to make any regulations it deemed in the public interest whenever the Colony was believed to be confronted by a public danger. When it was felt that some schools were engaging in anti-British sentiment, the schools were raided and closed. Teachers, principals and students were summarily tried and imprisoned. All schools were instructed to teach that the British Colonial Government was devoted to the well-being and happiness of the Hong Kong Chinese.

As the Chinese called out for reform and change, the Colonial Government did not choose to respond by opening up the channels for representative government. Instead, the state moved to suppress the dissenters. The huge, extraordinarily successful British businesses insisted on stability, the status quo of low taxation, and the corresponding absence of any welfare provisions for the destitute. There were no social security plans,

⁴⁵⁶ *Loudhailer Prosecution Criticized*, S. CHINA MORNING POST, July 21, 1990, at 1.

⁴⁵⁷ *Activists Vow to Defy Loudhailer Fine*, S. CHINA MORNING POST, July 28, 1990, at 1. The defendants' convictions were ultimately reversed on appeal. *Li Wing-tat*, [1991] 1 H.K. Rep., at 740. The Chief Judge of the High Court wrote: "[I]t offends against the sense of fairness for the police, having established a regular practice of not prosecuting over a long period of time . . . to suddenly alter that practice without a prior warning and start prosecuting." *Id.* at 738.

no unemployment benefits, no minimum wage laws, and no health insurance for employees.

Oppression and domination are not the tools of just the lawless dictatorships. The civilized cover of "the rule of law" may be used to shield a regime that is every bit as anti-democratic as one which is more blatantly authoritarian.