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1. Introduction

This article explores certain aspects of the manner in which the problem of the "vagrant" was addressed in Hong Kong following the Second World War. The Anglo vagrancy law tradition is often traced to certain legal measures implemented in the mid-14th century in the wake of the Black Death.[1] Those measures were reiterated and developed time and time again over the following centuries.[2] *Inter alia*, those vagrancy laws were used to penalise idleness, driving individuals to work while reducing the terms on which they might bargain for wages and better work conditions; to penalise various forms of activity that were deemed immoral; to stigmatise a loosely defined form of criminality, justifying the adoption of a variety of anti-crime measures; to control urban boundaries, including by authorizing deportations; and to enhance the discretionary authority of the police and magistracy over the poorer members of the population generally. Substantively and procedurally, vagrancy laws accomplished these diverse ends through inclusion of four component parts: anti-poor measures; anti-immorality measures; anti-criminal measures, which often targeted the figure of the "vagabond" in particular; and anti-migrant measures. While vagrancy laws had a long history prior to the 19th century, they took on their most enduring form via the 1824 Vagrancy Act, passed in the wake of a period of extensive social unrest. In addition to being extensively enforced in England and Wales, the law set a

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1 For more, see Poos (1983).

2 For more, see Beier (1985); Rogers (1994); Beier (2008); Hitchcock (2018).

model that was exported around the empire.[3] As Lowe observes, "vagrancy became a criminalized category across the globe in the 19th century," allowing for "the surveillance of a wide variety of practices such as trespassing, loitering, migration, prostitution, begging, or dissent."[4] While there were small regional and national variations – including for instance the penalization of "obeah" in the Caribbean and West Africa, the penalization of sharing the company of members of the indigenous population in Australia, and the penalization of "catemites" in Sudan and Northern Nigeria – the general template was remarkably similar everywhere.[5] Vagrancy law was not only a functional legal order, moreover. Rather, it can be seen as having provided an important genesis point for several of the better known hierarchical, discriminatory, racist ideologies, such as eugenics, that developed as the 19th century progressed.[6]

All of the above sorts of aims and measures were pursued and utilised in Hong Kong over the course of the first century in which the British ruled the city.[7] Various legal powers under which poorer members of the Chinese population might be detained or removed from the colony were among the first measures taken in Hong Kong, and remained a major subject of official concern throughout the 19th and early 20th centuries. Relevant measures included Ordinance 11 of 1845, Ordinance 7 of 1846, Ordinance 6 of 1847, Ordinance 1 of 1849, Ordinance 8 of 1858, Ordinance 7 of 1859, Ordinance 12 of 1888, Ordinance 25 of 1897, Ordinance 9 of 1912, Ordinance 25 of 1917 and Ordinance 39 of 1935, among others. The tendency to see Triads as a form of vagrant or vagabond began in this period as well. Controlling the colony's poorer Chinese population, including through broad power of deportation in particular, was, in short, a key governance mechanism of 19th and early 20th century Hong Kong, relied on by the authorities on an everyday basis, as well as in the context of political tension.[8]

3 For more, see Roberts (2023).
4 Lowe (2015) 122.
5 See Human Rights Watch [Alok Gupta] (2008); Kimber (2013); Paton (2015); Boaz (2018).
6 For more, see Roberts (2024).
7 See Munn (2001); Lowe (2015) 121–127.
8 For more, see Roberts / Leung (2023).

While they did not cease to be used immediately, vagrancy laws were far less relied upon in post-World War II Hong Kong – a particular puzzle given how essential they were to governance in the colony in the 19th century. Broadly speaking, this article will argue, reduced reliance on vagrancy laws was not indicative on an abandonment of the purposes those laws had served. Rather, vagrancy laws gradually became surplus to requirements, as several more specific, targeted laws, policies and techniques developed the authorities' legal tools for addressing situations that were previously dealt with through vagrancy law. This article explores post-war developments in two of the functional areas previously addressed through vagrancy law – migration control and "criminal" control – leaving vagrancy law's anti-poor and anti-immorality functions to be explored on another occasion.

The first turn away from vagrancy law came in the immediate wake of the war. One of the key functions played by vagrancy laws in 19th century Hong Kong was providing authorization for the removal of populations deemed threatening, undesirable or surplus. Large "refugee" populations entered Hong Kong in the mid to late 1940s.[9] Dealing with the new refugee populations was complicated, however, not least due to the colony's sensitive and rapidly shifting political relations with mainland authorities in the period. The response the authorities adopted was multifaceted and heavily internally debated. While vagrancy law as a means of authorizing deportation remained part of the picture, vagrancy laws played only a minor part in the overall policy, unable as they were to deal with either the scale or political complexity of the challenges posed. These developments are explored in the following section.

The next turn away from vagrancy law evolved more gradually. Another key function of vagrancy laws in the 19th century was to legitimize public power and discretionary police authority, by suggesting the existence of unruly, threatening, occasionally political and always dangerous criminal elements within the population. In the 19th century, a primary figure of concern in this regard was the "vagabond," one category of offender penalized by the 1824 Vagrancy Act. References to both "vagrants" and "vagabonds" diminished in the post-Second World War period. At the same time, new figures of the "criminal other" quickly rose to attention. In the late

9 On the complexities in terms of the use of that label at the time, see Madokoro (2015).

1940s and 1950s, the communist agitator was repeatedly invoked. As the 1950s gave way to the 1960s, the communist agitator was gradually replaced in public imagination by the figure of the "Triad member," matching a growing concern with "gang" activity elsewhere around the world in the period. In both cases, reference to these threatening criminal others was closely linked to public support for the adoption of various forms of policing and public order control. These developments are explored in the third section.

In short, vagrancy law gradually came to be less relied upon in Hong Kong in the decades following the Second World War. The functions vagrancy law had served did not go unfulfilled, however. Rather, vagrancy law gave way to various new, more targeted law and policy regimes, of which the new immigration and "anti-Triad" criminal law regimes constituted two key components. The penalization of vagrancy as such in Hong Kong was brought to a final conclusion in 1977, during a period in which vagrancy laws were under challenge across the British settler colonial world. Once again, however, this annulment of vagrancy law as such did not represent an annulment of its purposes, as a new, stricter penalization of loitering, which ensuring the ongoing ability of the police to detain on the basis of suspicion or animus alone, was brought into effect a few years thereafter. The supplantation of the penalization of vagrancy by the penalization of loitering is explored in the fourth section below.

In sum, in Hong Kong as elsewhere around the British Empire and the British colonial world, the 19th and early 20th centuries were marked by the extensive dissemination, heavy enforcement and extensive ideological impact of vagrancy law measures.[10] Following the Second World War, however, these regimes were gradually replaced, as the various sub-component features of vagrancy law were disaggregated and replaced by more functionally specific and targeted law and policy regimes. While individuals in Hong Kong may no longer face punishment on charges of "vagrancy" or "vagabondage" specifically, therefore, the vagrancy law legacy remains alive and well.

10 See Roberts (2023); Roberts (2024).

2. The Post-War refugee problem

During the Second World War, prior to the Japanese occupation, Hong Kong's government established some social services aimed at addressing the needs of refugees. While they recognised the need to take some palliative steps, the authorities were in at least equal measure antagonistic to Hong Kong's wartime refugee population. In 1940, Henry Butters, the Financial Secretary in Hong Kong, wrote to the Colonial Secretary to indicate, relative to services being provided to refugees, that while he was "entirely in favour of social services for the working classes," he "dread[ed] the consequences of swelling the population by a parasite class which lowers the standard of living of the workers and prevents genuine social amelioration."[11]

Concern with the presence of a large refugee population was renewed after the war: while Hong Kong had depopulated to 600,000 during the war, by the end of 1946 the population was up to 1,600,000, approximately the same as the population prior to Japanese occupation.[12] In 1946 the Chairman of the Urban Council wrote to the Colonial Secretary to indicate that, in his view,

> [t]he existence of large numbers of unemployed – and probably unemployable – or partly employed persons, who occupy ruined buildings in the Colony, constitutes an increasingly serious menace to public health and the maintenance of peace and good order in the Colony. It is difficult to get owners to repair their premises sufficiently to keep these people out and the sanitary condition inside soon becomes positively dangerous […].[13]

An appropriate policy response, the Chairman felt, was apparent:

> The situation […] is different now from that of the period immediately preceding the Pacific War, when the Japanese were oppressing South China, and we could not send refugees back to their native country, but had to afford them succour here to some extent. Now it would seem that a pauper should seek relief in his own parish.
>
> The suggestion accordingly is that the Chinese Government and international relief authorities should be approached with a view to the establishment of a dispersal relief on the Chinese side of the New Territories frontier some miles inside China, to which destitute or semi destitute natives of China who have drifted into the urban districts here might be consigned and ultimately sent back to their native villages.

11 R. Butters (F.S.) to Hon. C.S. (Apr. 4, 1940), Hong Kong Record Series (hereinafter HKRS) 51-1-188.

12 See Mark (2007) 1146.

13 CUC to Hon. C.S. (May 7, 1946), HKRS-41-1-1725.

This suggestion was supported by the Secretary of Relief, who suggested that the proposed camp on the Chinese side of the New Territories border should be "strongly barbed," to prevent those detained from returning to Hong Kong.[14] However, due to the sense it would be difficult to persuade the Chinese authorities to agree to such a proposal – as well as the fear that the process of deportation involved would open British officials to criticism, and that a camp across the border would likely be loosely run, allowing those detained therein to return in short order[15] – other officials suggested the construction of a camp in the New Territories, with the condition that the camp be "situated in a remote place and run on austere […] lines," in order to ensure that no further influx be incentivised.[16] A "progressive repatriation" programme was also proposed, modelled on initiatives that had been undertaken prior to 1941. In order to prevent refugees settling in existing buildings in Hong Kong, the Chairman of the Urban Council also urged the use of emergency powers to force property owners to make their properties "squatter proof."[17]

Hong Kong's Colonial Secretary reluctantly supported the proposals, suggesting that the existing refugee camp at Aberdeen be used in the meantime, since a new camp in the New Territories would take some time to build.[18] However, Governor Mark Young expressed some hesitation as to the wisdom of the proposed approach. In October he wrote to the Colonial Secretary to express his concerns as to the adoption of such a policy. In particular, Young was concerned with the bad optics surrounding the invocation of the Emergency Regulations.[19] The Hong Kong Social Welfare Council opposed the use of camps as well, observing that

> [l]ife in camps is demoralizing. It reduce[s] the readiness of the people who are put into them to work for themselves, and it engenders a pauper mentality. It is therefore very difficult to get people out of camps when once they have been placed in them. The deterioration in this respect of inmates of camps before the war was one of the most regrettable features of them.[20]

14 S. of Relief (May 14, 1946), HKRS-41-1-1725.
15 See ACS to PACS (June 5, 1946), HKRS-41-1-1725.
16 ACS to PACS (May 21, 1946), HKRS-41-1-1725.
17 CUC to Hon. C. S. (May 28, 1946), HKRS-41-1-1725.
18 See Hon. C. S. to Governor, HKRS-41-1-1725.
19 See Governor Mark Young to Hon. C. S. (Oct. 3, 1946), HKRS-41-1-1725.
20 See Letter from Chairman of Hong Kong Social Welfare Council to Hon. C. S. (Oct. 25, 1946), HKRS-41-1-1725.

At the same time, the Governor requested that the Attorney General look into the law then in force in order to determine whether or not amendments would be required to deal with the "refugee problem." In response, the Attorney General observed that while "under the Emergency Regulations the Police could arrange the compulsory removal from the Colony of unemployed destitutes […] such persons would commit no offence if they returned".[21] The Attorney General therefore suggested that expulsion might best be pursued under the "Vagrancy Ordinance, on breach of which a returning destitute would have committed an offence and [would] be liable to further legal sanctions." The Executive Council meanwhile recommended that "an attempt […] be made through the guilds, Chambers of Commerce and other local Chinese organisations to persuade as many as possible of these destitutes to return to their villages voluntarily."[22]

A proposed scheme of voluntary repatriations began in early 1947. Only 4,000 individuals had been repatriated by March, several of whom made their way back to Hong Kong, leading the government to determine the scheme a failure.[23] While the Solicitor General had prepared a new draft amendment to the Vagrancy Ordinance, section 24A, to facilitate large-scale deportation,[24] the Executive Council advised against adoption of that amendment, concerned with the criticism it would likely generate.[25]

Meanwhile, a subcommittee of the Social Welfare Council came to adopt a more favourable position relative to the establishment of a refugee camp, should it be appropriately established, including through the deployment of an "honest, intelligent, and humane" procedure of rounding up destitutes and the appointment of "camp staff of good education, integrity and judgment."[26] The Sub-Committee justified this policy on the grounds that "destitution is but the culmination or the logical consequence of the 'five giant evils' of Want, Ignorance, Disease, Squalor and Idleness." Among other things, the subcommittee recommended that those within the camp might

21 Executive Council Meeting Minutes (Oct. 30, 1946), HKRS-41-1-1725.
22 Ibid.
23 See Memo from Executive Council Meeting (Mar. 19, 1947), HKRS-163-1-1249.
24 See Memo from Solicitor General to Attorney General (Jan. 8, 1947), HKRS-163-1-1249.
25 See Memo from Executive Council Meeting (Mar. 19, 1947), HKRS-163-1-1249.
26 Hong Kong Social Welfare Council – Destitutes Sub-Committee (May 1947), HKRS-41-1-3230.

be used as a labour pool, that might subcontract out for government or private projects requiring unskilled labour when needed. They warned however both that "while conditions in this camp should be as to represent an obvious improvement in the immediate material circumstances of the destitutes admitted thereto, the main purpose of the camp should be to induce the destitute to find employment or apply for repatriation but not to encourage him to settle down in the camp or to seek re-admission," and that care should be taken with the relevant terminologies, in particular by avoiding referring to the camp as a "detention camp" and by ensuring "that the camp […] not have the appearance of a 'concentration camp'."[27] The subcommittee suggested that a different approach should be employed relative to British subjects, meaning those born in Hong Kong, whom they suggested the government should move to separate rehabilitation camps – though the subcommittee also suggested the onus of proof should be on the destitute in regards to demonstrating that they were a British subject, rendering it challenging to successfully claim such a status.

Once the subcommittee had become open to the idea of camps, however, its vision of the nature and purpose of those camps rapidly grew harsher. By June 1947, the subcommittee was suggesting that the aim of the camps "should be to induce the destitute alien to leave the Colony," including by giving them no work other than the minimum necessary in their circumstances; by forbidding "smoking, gambling, etc.;" and by segregating men, women and young persons.[28] The subcommittee suggested new legislation, enhancing the ability of police and health authorities to remove individuals to the camps directly, without the need for magisterial involvement. The subcommittee also recommended the appointment of eight justices of the peace, who could interview destitutes newly arrived in the camps, and either order their detention, accompanied by fingerprinting and photographing, or release. While the subcommittee's underlying recommendations had grown much more draconian, they remained alert to public perceptions by recommending that legislation drafted to address such issues "be framed in such a manner that it cannot be justifiably attacked, in order to minimise the danger of political repercussions," specifically by being framed "as catering

27 Report of the Sub-Committee on Destitutes (June 23, 1947), HKRS-41-1-3230.
28 Ibid.

for the welfare of the destitute." The subcommittee also indicated that "[c]are should be taken in the method of collecting destitutes from the streets and publicity of the scheme should be avoided as much as possible." When the matter came before the Executive Council it was sharply divided, however, with a majority of one suggesting further reflection before any new measure be taken.[29]

In October 1948, the Hong Kong government amended the Deportation of Aliens Ordinance in several manners designed to procedurally facilitate deportation.[30] Shortly thereafter, five prominent communists were expelled, on the grounds that they had "abus[ed] the asylum of [Hong Kong] by activities directed against the established Government of China."[31] In early 1949, the Hong Kong government began introducing various measures designed to more tightly control border crossings. These included the Immigrants Control Ordinance,[32] which required entry permits for all Chinese immigrants, except for those from Guangdong; instituting a curfew and registration system for villages close to the border; and the Registration of Persons Ordinance,[33] which made identification cards, including photographs and thumbprints, mandatory for adults, and expanded police powers of search.[34] Barbed wire was put up along portions of the border in the period as well.

29 See Executive Council Meeting (July 2, 1947), HKRS-41-1-3230. The Social Welfare Officer continued to support the creation of camps for juveniles at the very least, however, which he suggested "could absorb certain petty delinquents who would benefit considerably from the training and would offer no danger of 'contamination' to the trainees," and could serve the "constructive" function of helping to "creat[e] a useful body of citizens out of parasitical swarms" (HKRS-156-1-1112, Social Welfare Officer to Hon. C. S., September 20, 1947). The Secretary for Chinese Affairs urged similarly, suggesting that the establishment of "a rehabilitation camp for destitute orphan juveniles" might help the government "gain some experience" with camp management (HKRS-156-1-1112, Secretary for Chinese Affairs to Colonial Secretary, September 22, 1947).

30 See Sutton (2017) 88.

31 Ibid. at 89, citing Grantham to Creech Jones (Dec. 21, 1948), Colonial Office 129/617/5 (hereinafter CO).

32 Ordinance No. 4 of 1949.

33 Ordinance No. 37 of 1949.

34 See Mark (2007) 1147; Sutton (2017) 160. See also Ku (2004); Kam-yee / Kim-ming (2006).

Discussions in the spring and summer[35] also led to the introduction of the evocatively named Expulsion of Undesirables Ordinance, which was approved by the Legislative Council in September.[36] The Ordinance provided for the expulsion, by summary procedure, of non-British "undesirables." According to the law, undesirables included persons "[without] the means of subsistence and […] diseased, maimed, blind, idiot, lunatic or decrepit"; those unable to show they could support themselves and/or their dependents; those likely to become vagrants, beggars, or otherwise "a charge upon any public or private charitable institution;" those "suffering from a contagious disease which is loathsome or dangerous;" those who had "been removed from any country or state by the government authorities of any such country or state for any reason whatever;" someone "suspected of being likely to promote sedition or to cause a disturbance of the public tranquillity *[sic]*;" someone "convicted by a competent authority outside the Colony of" a number of offences stipulated in an attached annex; "prostitute[s], person[s] living on the earnings of prostitution or person[s] of known immoral character;" persons lacking the required quarantine certificates; persons "found squatting or dwelling in any unlawful structure or in any tunnel or cavity or in any place which has been declared by a health inspector to be or to be likely to become dangerous to health;" individuals required to register under the Registration of Persons Ordinance who had, without reasonable explanation, failed to do so; dependents of those deemed "undesirable[s];" and anyone else the authorities should decide to so designate. Those targeted under the Ordinance could only avoid deportation if they could convince the authorities that they were not an "undesirable," that they were a British subject or that they had been "ordinarily resident in the Colony for ten years or more."[37]

35 See Hon. C. S. to Attorney General (Mar. 11, 1949), HKRS-163-1-1249; Solicitor General to Hon. C. S. (June 24, 1949), HKRS-163-1-1249; Attorney General to Hon. C. S. (July 7, 1949).

36 Expulsion of Undesirables Ordinance, Act 29 of 1949 (Sept. 2, 1949), available at: https://oelawhk.lib.hku.hk/items/show/2091. This was not the first "Expulsion of Undesirables Ordinance" passed in the British Empire: similar measures were passed in Trinidad and Tobago in 1922, and in British Guiana and Tanzania in 1930, and in the Territory of New Guinea in 1935.

37 Supplement No. 3, J B Griffin, Objects and Reasons [Expulsion of Undesirables Ordinance 1949] (Aug. 1949), CO 129/604/7.

The provisions in Hong Kong's Expulsion of Undesirables Ordinance were unique, in the context of similarly titled laws, in providing detailed content to the category of undesirability. Trinidad and Tobago's 1922 Ordinance did not specify any particular category of persons as being "undesirable," rather granting "the Governor in Executive Council" the power, if he deemed it "expedient for the preservation of the peace and good order of the Colony," to "make an order […] requiring [any person] to leave the Colony."[38] British Guiana and Tanzania's 1930 Ordinances left undesirability similarly unspecified.[39] While it has not been possible to locate a copy of New Guinea's 1935 Ordinance, it seems likely it was similar. The 1950 Ordinance that repealed and relaced New Guinea's 1935 Ordinance certainly opted for a broader approach, allowing for the deportation as undesirables of anyone "not born in the Territory" who had "at any time been convicted under any law […] of a criminal offence punishable by imprisonment for one year or longer" or "whose presence in the Territory is prejudicial or likely to be prejudicial to the peace, order, or good government of the Territory or to the well-being of the natives of the Territory."[40]

The Expulsion of Undesirables Ordinance was a remarkable sort of measure, including due to the extensiveness of the categories of person it delimited, as well as due to the broad, vague, and demonstrably prejudicial label of "undesirable" through which it classified such persons. While utilizing a new form of labelling, however, the measure fit squarely into the vagrancy law legacy, not only due to the fact that vagrants were among those covered, but also insofar as many of the other categories of "undesirability" – including being without means of subsistence, a beggar, a "prostitute," or simply generally suspicious – had all also been traditionally covered by vagrancy laws. In granting wide power of deportation over such categories of individual, the measure also recalled a wave of eugenically-framed migration laws passed in the United States both prior to and following the First World War.[41]

38 Ordinance No. 24 of 1922 (Trinidad and Tobago), section 2.

39 Ordinance No. 30 of 1930 (British Guiana); Ordinance No. 15 of 1930 (Tanzania).

40 Ordinance No. 9 of 1950 (Papua New Guinea), section 4(1).

41 Examples include 1903 "Anarchist Exclusion Act" (Pub. L. No. 57-162, 32 Stat. 1213 [Mar. 3, 1903]) and the 1924 Immigration Act (Pub. L. No. 68-139, 43 Stat. 153 [May 26, 1924]) in the United States. For discussion of some of these laws, see Roberts (2022).

For its part, the Colonial Office indicated in internal correspondence that there was a "need for some simple and therefore inevitably somewhat summary procedure for relieving the pressure of population in the Colony," in order to address the presence of a "large number of Chinese who have entered the Colony since the war [and who] present urgent and serious problems in the maintenance of public order and health."[42] At the same time, it urged the authorities to only use the procedure [the Expulsion of Undesirables Ordinance] in question in cases of "emergency," and to suspend its usage when "the conditions of over-population cease." In response to such criticisms, the Attorney General of Hong Kong admitted that the Ordinance did indeed authorise an "arbitrary" power, but promised it would only be used "in circumstances of real need."[43] However, the Colonial Office did not find this position particularly convincing and weighed in again later in the year to note that if in fact such measures were intended only for emergencies, it would have been more appropriate to rely on an emergency regulation.[44] In addition, the Colonial Office expressed concern that "[t]here has recently been some publicity about 'Human Rights'," in which context it was felt "the existence of the Ordinance would be a good weapon for anti-colonial propaganda."

In March 1950, Secretary of State for the Colonies James Griffiths indicated that the Expulsion of Undesirables Ordinance would not be disallowed, given the "public order, health, and essential supplies" issues in Hong Kong. However, Griffiths also expressed concern that the government, having adopted the powers in question through a permanent law, rather than as an emergency measure, might afford "hostile propagandists the opportunity of criticizing the Hong Kong Government by talk of arbitrary arrests, concentration camps, etc."[45] Griffiths observed approvingly that section 14 of the Ordinance specifically envisioned the Ordinance's potential suspension and noted that he "should not wish the Ordinance to be used merely as a convenient method for effecting deportation […] or to be kept in force

42 Draft Despatch from the Colonial Office for Foreign Office Consideration, addressed to the Governor of Hong Kong, CO 129/604/7.

43 Hong Kong Legislative Council Minutes (Aug. 31, 1949), CO 129/604/7.

44 Notes from HP Hall (Colonial Office) (Dec. 14, 1949), CO 129/604/7.

45 Dispatch from Colonial Office in London (James Griffiths, Secretary of State for the Colonies) (Mar. 15, 1950), HKRS-163-1-1249.

when there is no longer any likelihood that its provisions will be needed." While some in the Colonial Office supported this position, observing that the Ordinance "would not merely improve morale in Hong Kong, but would also strengthen the Governor's hand by enabling him to reduce the 'undesirable' population among which the Communists are bound to foment trouble," others were more cautious, arguing that its potential over-utilization might have "serious" consequences "both for the Colony [and] for our general relations with China."[46] Although Governor Grantham continued to support the Ordinance, arguing that the "continued alarming increase in population" made it an "essential corollary to the new immigration control measures," the Foreign Office pushed back, suggesting they were "not convinced that the situation is such as to warrant large scale expulsion."[47]

Debates over the Ordinance were eclipsed by the outbreak of the Korean War in mid-1950, following which the Colonial Office decided to give local authorities a freer hand. In particular, the Colonial Office argued that "the Korean developments, and [...] the constant pressure that is being put on the Officer Administering the Government to subordinate the interests of Hong Kong to American requirements in waging the Korean war" were serious enough to allow the Hong Kong government to implement the Ordinance without prior consultation with officials in London.[48] At the end of July 1950, Griffiths wrote to Grantham that "[you may] implement the Ordinance at your discretion without further reference to me."[49] Contemplating the subject in December 1950, the Executive Council determined that the "[g]overnment should adopt a firm policy of inducing the maximum possi-

46 Memo from N C C Trench (Foreign Office) to Hall (Colonial Office) (June 17, 1950), CO 129/624/8. Colonial Office officials had also earlier warned that the "existence of th[e] Ordinance would be a good weapon for anti-colonial propaganda," while those in the Foreign Office noted "it would certainly [make it] easy enough to talk of arbitrary arrest, concentration camps etc". Memo from HP Hall (Dec. 14, 1949), CO 128/604/7; Memo from Coates to HPH Hall (Jan. 25, 1950), CO 127/624/8.

47 Savingram No. 507, Governor of Hong Kong to Secretary of State for the Colonies (May 8, 1950), CO 129/624/8; Memo from NCC Trench (Foreign Office) to Hall (Colonial Office) (June 17, 1950), CO 129/624/8.

48 FC 10112/50, Memo from HP Hall (Colonial Office) to NCC Trench (Foreign Office) (July 21, 1950), CO 129/624/8.

49 Telegram 1182, Secretary of the State for the Colonies to the Governor of Hong Kong (July 27, 1950), CO 129/624/8.

ble proportion of Hong Kong's present population to return to China by forcible eviction of undesirables coupled with a consistent and wholehearted policy of discrimination by all Departments in favour of Hong Kong residents and against newcomers."[50] Hong Kong residents were understood as those "who had resided in the Colony for about 10 years and who w[ere] performing a useful function."[51] Meanwhile, "the forcible eviction of undesirables" was to "be accomplished by increased deportations (including expulsion as at present ordered by the Magistrates) and by use of the Expulsion of Undesirables Ordinance, 1950." In 1951, the Vagrancy (Amendment) Ordinance[52] and the Deportation of Aliens (Amendment) Ordinance[53] expanded the instances in which individuals could be deported without the need for a hearing before a magistrate.[54]

In sum, while Hong Kong's governing authorities initially equivocated between more humane and more securitized approaches to the city's new migrant population, harsher approaches soon won out.[55] While vagrancy law continued to constitute one part of the legal architecture relied upon for deportations in the post-war period, the massive influxes of population that followed the war, together with the new security situation, led to a more expansive and more targeted regime of population and border control, within which vagrancy law had a greatly diminished role.[56] While vagrancy law was much less explicitly relied upon, however, the ideological and rhetorical

50 Executive Council Meeting (Dec. 6, 1950), HKRS-163-1-1249.

51 Ibid. What exactly constituted a "useful function" was left unspecified.

52 Ordinance No. 28 of 1951.

53 Ordinance No. 29 of 1951.

54 Deportation policy remained subject to debate within the government in subsequent years, however, including due to the observation by several government officials that those expelled often seemed to return. See, e. g., Commissioner of Prisons to Hon. C. S. (Dec. 31, 1951), HKRS-125-3-367; Social Welfare Officer to Hon. C. S. (Mar. 7, 1952), HKRS-163-1-1518. Moreover, while several thousand persons were deported in 1950 and 1951, China and Taiwan both stopped accepting deportees in 1952, rendering the other measures adopted more significant. See Sutton (2017) 163.

55 As Goodstadt (2004) had observed, while the British Colonial Office began to support more progressive policies in the 1930s, pressure in this direction dramatically weakened, at least in Hong Kong, in the post-war decade.

56 In some cases, the developments here – such as increased use of concentration camps and barbed wire – fell along the lines of repressive developments in the colonial context generally, augmented by the wartime experience. On the history of concentration camps, see Pitzer (2018). On the history of barbed wire, see Forth (2017).

impacts of vagrancy law could still be strongly felt, with the same descriptions that were so often applied to "vagrants" in the 19th century now applied to "refugees," "undesirables" or the like – in short, that they were lazy and reluctant to work, "parasitic," and potentially both criminally and politically dangerous.

3. New criminal others

As explored above, the Hong Kong government implemented a range of new legal measures aimed at better controlling the border and facilitating deportations in the postwar years, supplanting vagrancy law's traditional role in that area to a significant extent. As noted in the introduction, while vagrancy law played a role in migration control, especially in a city like Hong Kong, that was never its sole function. Another important function of vagrancy law was to provide ideological support to the adoption of strong public order measures, which it was argued were necessary in order to confront the challenges posed by threatening figures such as that of the vagabond. By the post-Second World War period the "vagabond" was no longer frequently referenced as a source of public danger, however. Rather, in Hong Kong the post-war decades saw the rise to prominence of new figures of criminal concern, including prominently the communist agitator and the Triad member.

In order to understand the legal context in the immediate post-war period it is necessary to go back first briefly to 1911, when the Societies Ordinance was passed.[57] Aimed at "provid[ing] for more effectual control over Societies and Clubs," the Ordinance granted the authorities extensive discretionary authority to register associations, declared unregistered associations unlawful, and imposed a range of penalties on those associated with such "unlawful" associations. Sections 4 and 16 of the Ordinance gave the Governor-in-Council the power to exempt societies from registration, as well as the power to order a society's dissolution where it was suspected of "being used for unlawful purposes, or for purposes incompatible with the peace or good order of the Colony." In its commentary on the Ordinance the South China Morning Post ("SCMP") noted that passage of the Ordinance was "brought

57 Ordinance No. 47 of 1911.

about, or hastened to completion by the recent trouble among the boat-builders of the Colony."[58] In passing the Ordinance, the Legislative Council made clear a central aim was indeed to control labour and limit political organizing, stating:

> The objects and reasons mention working men's clubs as one of the classes of society we wish to control. It is these clubs which organise faction fights and lend out fighting men in cases where the Trades [sic] Unions wish to exercise coercion or intimidation […]. Then there is a third class of club, which is dangerous to peace and good order. Sometimes it is frequented by young men having revolutionary tendencies, or closely connected with the revolutionaries. It is necessary for us to keep a close eye on these clubs, and if necessary to suppress them.[59]

Following in the footsteps of the 1887 Triad and Unlawful Societies Ordinance, the Societies Ordinance also specifically penalised Triad membership. In drawing such a connection, the Societies Ordinance implicitly connected labour organizing to criminality in the form of Triad activity and membership. The Ordinance was heavily supported in the English-language press: the SCMP, for instance, suggested that the bill was "urgently required," argued that the new measures would ensure that societies' "power for causing excitement and causing annoyance will […] be considerably curtailed," and "commended" the government "on the steps they are taking to cope with what has become a perpetual menace to employers and to loyal employees alike."[60]

However, the effects of the new measure were disappointing in practice. As it was put in the Legislative Council, the law "failed to give the increased control expected," "probably dr[ove] several undesirable societies underground," "in some cases g[ave] a fictitious responsibility to doubtful societies on the border line," and overall "cast the net too widely," requiring the registration of "a great many societies that require no governmental regulation whatsoever."[61] The Ordinance was amended in 1920.[62] The 1920 framework was relatively progressive, removing the previously existing requirement that all societies exist under the framework of the law. At the same time, the authorities maintained and deployed discretionary power to

58 "In Leash," South China Morning Post (hereinafter SCMP) (Oct. 10, 1911).
59 Legislative Council Proceedings (Oct. 19, 1911).
60 "In Leash," SCMP (Oct. 10, 1911).
61 "Legislative Council," SCMP (June 18, 1920).
62 Ordinance No. 8 of 1920.

declare societies illegal. This power was put into use in response to the major seamen's strike in February 1922, with the government declaring the Chinese Seamen's Union an illegal society on the grounds that it was "being used and is likely to be used for purposes incompatible with the peace and good order of the Colony."[63]

The framework put in place in the 1920s remained in force in the 1940s. In 1948, however, following both Young's replacement by Grantham as Governor in 1947 and the ascendency of the Chinese Communist Party ("CCP") in China's civil war, Hong Kong's government – which, under Grantham, allied itself much more closely with the Kuomintang on security matters than it ever had done before[64] – adopted a more repressive approach to labour governance, and the governance of purportedly hostile "societies" in general. A key step in the direction of a harsher approach to governance came with the adoption of the Trade Unions and Trade Disputes Ordinance on April 1, 1948.[65] The Ordinance required trade unions to register or face dissolution, indicated that only registered unions would enjoy related labour rights, and gave the government extensive discretionary authority over whether to accept registration or not. Just over a year or so later, and less than a week after the CCP captured Nanjing, the Trade Unions and Trade Disputes Ordinance was complemented by the Illegal Strikes and Lockouts Ordinance.[66] That ordinance banned unions from having foreign affiliations, public sector worker industrial action and strikes with political objectives, which caused social hardship or which sought to "coerce" the government.

Shortly thereafter amendments were made to Hong Kong's Societies Ordinance.[67] In support of the new measure, the Attorney-General argued that

> [a]t this time when the state of the world is gravely unsettled and the maintenance of law and order in the Colony is likely to be endangered by outside influences, it is considered necessary that there should be in existence a record of all societies in the

63 "Strike Situation: An Electric Day – Suppression of Intimidators, Government Adopts Drastic Measures, Sign of a Split in the Strike Camp," SCMP (Feb. 3, 1922).

64 See Louis (1997) 1070–1071.

65 Ordinance No. 8 of 1948.

66 Ordinance No. 10 of 1949. The 1948 Trade Unions and Trade Disputes Ordinance had in fact repealed a similar measure that had been instituted in 1927. See Levin/Chiu (1998).

67 Ordinance No. 28 of 1949.

> Colony and a knowledge of their objects combined with enhanced powers to control societies.[68]

Making fairly apparent the amendment's anti-CCP intent, the Attorney-General observed that a key function of the new measure would be to ensure that "local societies now in the Colony which are affiliated or connected with any political organisation or group outside the Colony shall be refused registration and thus become unlawful with the consequence that management or membership of any such society will constitute offences punishable under the law." The new measure restored the requirement of compulsory registration of associations. The Special Branch – a subdivision of the police created in late 19th-century Britain to tackle political crimes – was given authority to oversee registrations.[69] As Sutton puts it, "[c]ombined with the Trade Unions and Trade Disputes Ordinance, the Societies Ordinance effectively outlawed all foreign politics and gave the governor sole discretion without an appeals process to determine if a society should be prohibited."[70] While acknowledging the measure's restrictive nature, Grantham defended it on the grounds that "there is no discrimination, [as] foreign political parties of all views are equally prohibited."[71] For its part, the CCP observed that "[t]he Societies Ordinance is of an anti-Communist, anti-people, anti-democracy and anti-freedom nature. It persecutes the people of Hong Kong and turns Hong Kong into a 'police state.'"[72]

68 "Control of Societies: Registration To Be Refused To Those With Political Affiliations, Legislation Introduced," SCMP (May 19, 1949).

69 "Police Special Branch: Additional Tasks During Past Year," SCMP (Nov. 30, 1950).

70 Sutton (2017) 96.

71 Grantham to Creech Jones (Apr. 8, 1949), CO 537/4835, cited in ibid.

72 CCP Report, "An understanding of the nature of the Society Ordinance" (June 24, 1949), CO 537/4815, cited in ibid. at 97. Similar developments continued in subsequent years. In 1952, further amendments to the Societies Ordinance ensured that even small associations were covered, and extended the authorities' ability to penalise those "incit[ing], induc[ing] or invit[ing]" others to join or support, or who otherwise secured financial support for, unlawful associations. See Ordinance 3, 1952; "Societies Ordinance: Amendments Proposed in New Bill," SCMP (Jan. 9, 1952). The same year, the authorities commenced "clandestine deportations by junk" of suspected Triad members as well as other "alien Chinese," in order to attempt to avoid the challenges posed in the context of attempted deportations across the land border – highlighting from another angle the Triad-vagrant connection. This policy only ran for a few years, however, being determined "no longer feasible" by 1954. See Report on Triad Societies in Hong Kong, Triad Society Bureau – Hong Kong Police (Aug. 1964) (hereinafter Triad Societies Report). In 1955, Hong Kong's

From the moment the CCP gained the ascendency in the Chinese civil war, in short, the threat of communists came to play a major role in shaping policy in Hong Kong, including by justifying the imposition of sharply repressive labour laws and a draconian approach to freedom of association, despite a Labour government being in power in Britain. Ability to forcefully and publicly rely on the figure of the communist agitator as the grounds to justify harsh public order measures quickly declined, however, not least due to need to establish at least non-overtly hostile diplomatic relations with China's new authorities. As such a gradual transition began to occur, in which the figure of the "Triad" took over as the principal image of the threatening criminal other. At times, the Triads were Kuomintang linked,[73] at times communist linked; before long, however, the idea of the Triad as a public order threat had enough legs to stand on its own.

Key in this transition were 1956 protests and clashes between pro-Kuomintang and pro-CCP members of Hong Kong's population. In its internal documents as well as its subsequent press on the issue, the government suggested the clashes had at the very least been sharply exacerbated by Triad gangs.[74] In an address to the Legislative Council in early 1957, Governor Grantham emphasised that it was "crucial to 'turn potential little hooligans into responsible citizens,'" or in other words to prevent them "from becoming 'rioters or members of a Triad society,'" and suggested that boys' and girls' clubs could help in this aim.[75] The government also commenced a campaign against those it saw as Triad members, deporting many. These deportations were apparently ineffective, however, with "the majority [being] sent back to Hong Kong within hours of crossing the border." In response, the government issued new Emergency (Detention Order) regulations, allowing for the emergency detention of those whose "deportation proved impracticable or who unlawfully returned to the Colony following

Attorney General, Arthur Ridehalgh, sent a memo to the Colonial Secretary proposing emulation of a provision of Nigeria's Criminal Code which allowed the Governor-in-Council to declare a society unlawful where he deemed it "dangerous to the good government of Nigeria." Memo from Arthur Ridehalgh (Attorney General) to Colonial Secretary (Feb. 10, 1955), HKRS-920-1-2.

73 See Louis (1997) 1069.

74 See Triad Societies Report; Jones/Vagg (2007) 299–305.

75 Mark (2007) at 1164–1165, citing Hong Kong Hansard, Session 1957, Meeting of February 27, 1957.

their deportation."[76] By the end of 1957, the authorities in China "had completely clamped down of the entry of criminal deportees," however, forcing the authorities to further develop domestic measures.

The government complemented these measures with amendments expanding the Registrar's ability to rescind registration.[77] These amendments too were justified on the basis that they were a necessary response to "[t]he grave and costly riots which [had] burst upon Kowloon," which, in the eyes of the SCMP, had "revealed the alarming extent to which secret and other unlawful societies had insinuated themselves into the Colony."[78] As the SCMP continued,

> [i]t has long been recognised that in a Chinese population such as ours secret societies have more opportunity than usual to flourish, though few imagined last year that they had become so firmly implanted in the Colony. Awakening to the realities was rude and distressing. It also left Government with no alternative but to take whatever legislative steps it deemed essential to bring about the eradication of these bodies, so capable of inciting disorder.

In justifying the new measure, the Attorney General "commented that two things are accepted by reasonable opinion in Hong Kong as axiomatic – the need for maintaining control over societies, thereby combatting subversive or criminal activities, and the vulnerability of the Colony to undesirable organisations, capable and ready to engage in lawlessness such as the riots of last October." The SCMP supported that position, observing:

> The community generally […] believes that Government must adopt all reasonable measures to prevent the continued existence of these unlawful elements […] In the ordinary course of events, this latest legislation would be subject to the criticism that it is too sweeping in the powers it invests in the authorities – executive and judicial. But as the Attorney General argues, proof of the existence of unlawful societies has been one of the big difficulties in the way of prosecuting, and it is essential those difficulties, if not entirely removed, be at least reduced.[79]

76 While these measures were challenged – on the basis that they in effect represented a form of quasi-criminal punishment in regards to which no representation needed to be provided, no formal charges needed to be made, and under which detention could be broadly authorized – the authorities insisted on maintaining them, citing the ongoing danger posed by Triads in particular. See Jones/Vagg (2007) 318.

77 Ordinance No. 31 of 1957.

78 "The New Societies Ordinance," SCMP (July 6, 1957).

79 The SCMP also observed that "victimi[zation of] the innocent," due to "[e]xcessive zeal and arbitrary action," should be "avoided at all costs," however.

In subsequent comments, Arthur Ridehalgh, Hong Kong's Attorney General between 1952 and 1961, argued the amendments had been important in "giv[ing] the Commissioner of Police a measure of help in curbing the activities of Triad and other unlawful societies" by providing "added weapons against these evil associations."[80]

The authorities put their new powers into operation on several occasions in subsequent years. In 1959, for example, the Society of Plantations, a farmers' collective in the New Territories, was dissolved on the grounds that it was a communist front organization, and three of its senior members were deported across the border.[81] In addition, a supportive law, the Companies (Prevention of Evasion of the Societies Ordinance) Ordinance,[82] was passed to "close a loophole" that allowed people to "carry on 'nefarious activities'" by registering under the Companies Ordinance."[83] In 1960, the penalties imposable under Hong Kong's vagrancy law were increased (Ordinance 3, 1960). In 1961, further significant amendments to the Societies Ordinance were made, tightening the rules, extending the Registrar's discretionary powers, and enhancing the penalties applicable relative to "Triad societies" in particular.[84]

1958 and 1959 also saw the formation of a new Triad Societies Bureau within the police. In August 1964, the Bureau released a report on Triad activity and anti-Triad efforts to date. The report observed that more than 10,000 "Triad members" had been convicted between 1956 and 1960 (with the majority bound over for good behavior), and that 600 officers had been brought before the courts, of whom 400 or so were deported under the Deportation of Aliens Ordinance.[85] The gradual transformation in the manner in which the Triad threat was presented could be seen in the bifurcated definition of the Triad contained in the report. On the one hand, the report observed that "[t]he orthodox Triad Society may be defined as a disciplined

80 Societies Ordinance: Resolution for year's extension adopted by Legislative Council Curbing Triad Activities (Dec. 19, 1957), HKRS-163-1-937.

81 See "Around Hong Kong," SCMP (May 31, 1959).

82 Ordinance No. 23 of 1959.

83 "Societies Ordinance: First reading of bill designed to close a loophole, menace of unlawful groups," SCMP (June 25, 1959).

84 See Ordinance No. 28 of 1961.

85 See Triad Societies Report. The Deportation of Aliens Ordinance was Ordinance No. 39 of 1935.

blood brotherhood dedicated to a political cause, members of which are bound by ritual and sacred oath not to betray or offend one another and are engaged in collecting funds for a common purpose." On the other hand, the report observed that

> [t]he Triad Society as it exists in Hong Kong today may be defined as a large number of independant *[sic]* street gangs totally lacking in central control, each one a loose aggregation of a dozen or so criminals who are engaged in the Triad practices of extortion and the organisation and protection of vice in all its forms, but nevertheless able, under the menace of the still awe-inspiring name of Triad, to terrorise the majority of the Chinese population.

In short, in other words, "Triad" at the time was a term with dual meaning – referring both to a well-defined, overtly threatening, tightly-bound, and politically oriented "blood brotherhood," as well as, much more loosely, to any low-level association of individuals engaged in criminal activities. Whatever the empirical reality of this observation, what is clear is that this expansive, dualistic definition of "Triads" was of utility to the authorities, providing two different angles from which the maintenance of a strong police force, backed by forceful criminal laws, could be justified.

The equation of "Triads" with both political unrest and crime broadly continued as the 1960s went on, before gathering further steam following the 1967 "riots." A report on "Triads" issued in 1969 observed an apparent rise in assaults and robbery in the period, carried out by "gangs of young people" "on the fringe of the Triad movement."[86] Among other things, the police blamed the rise in crime on "[t]he decline of parental authority, the acceptance of a more 'permissive society', the continued portrayal of teenage violence in the cinema, on television and other mass communication media coupled with the natural frustration of youth brought about by their social environment."[87] In conclusion, the police observed "whilst the resurgence of a pure form of the triad cult is not seen as likely, a lack of vigilance by the police and other authorities could provide the climate in which quasi-triad activities could give way to a more pure form reminiscent of the situation pre-1956 before the Triad Society Bureau was formed." At a government meeting held shortly after completion of the report, the authorities agreed to "broaden the basis of the […] Triad and Society Bureau and Juvenile

86 Triads, Police Headquarters (June 6, 1969), HKRS-874-7-1, para. 26.
87 Ibid., para. 43.

Liaison Office to deal with all gang and quasi-triad activities."[88] The possibility of utilizing the Emergency (Deportation and Detention) Regulations, understood as likely to constitute a more severe deterrent, was also considered. That possibility was floated again by the Chief of Police in 1970.[89] Meanwhile, "widespread stop and search operations at night" commenced in "areas frequented by youths," a step that, according to official reports at least, "certainly had some effect," though "the Commissioner [was] not confident that it w[ould] be more than temporary."[90]

Alongside these steps, the government decided to devote further resources to the police.[91] In addition, the provision requiring annual renewal was stripped from the Societies Ordinance in 1970, rendering the measure permanent.[92] In 1971 the Legislative Council debated measures that might be taken to further strengthen the fight against crime, in response to a reported rise in crime.[93] In 1972, the Attorney General indicated that the government had determined to reverse the "increasingly liberal and humane attitude" that had, apparently, been adopted in recent years, and to replace it with "a harsher view."[94] The tougher measures the government was taking and proposing were not universally supported. A Special Committee of Hong Kong's Bar Association, for instance, expressed their concern with the new District Court, Magistrates, Criminal Procedure and Public Order Amendment bills, and the enhanced sanctions regime included therein, in particular.[95] Justice, the British section of the International Commission of Jurists,

88 Extract from Notes of Government House Meeting (June 13, 1969), HKRS-874-7-1.

89 See Extract from Minutes of a meeting held at Government House (July 10, 1970), HKRS-874-7-1.

90 See Colonial Secretary to Leslie Monson, Foreign and Commonwealth Office (Aug. 6, 1970), HKRS-874-7-1. The policies also apparently led to "criticism […] by academically-minded expatriate lawyers," which the Colonial Secretary worried could "promote unwelcome interest among people outside Hong Kong who lack the benefit of accurate and up-to-date information on the situation."

91 See Governor's Address to Legislative Council (Oct. 1, 1970).

92 See Attorney General to Legislative Council (Oct. 7, 1970).

93 See Crime Statistics, Legislative Council (Jan. 6, 1971); Legislative Council (Feb. 24, 1971).

94 Speech by Attorney General in Debate of the Governor's Address in Legislative Council (Nov. 15, 1972), HKRS-2144-1-4.

95 See Fighting Crime – Comments on the Fight Violent Crime (hereinafter FVC) Campaign, Compiled by the Special Committee on Crime and Punishment of the Hong Kong Bar Association (May 1973).

also criticised the proposed bills.[96] Other anti-crime community groups supported the measures, however.[97] Police presence on the streets was increased, including through the recruitment of additional police auxiliaries, and more raids and stop and search actions were conducted.[98] On June 21, the District Court, Criminal Procedure and Public Order Amendment Ordinances were passed. The Criminal Procedure (Amendment) Ordinance introduced a system of preventive detention for individuals with four convictions or more, with sentences ranging from five to fourteen years.[99] The Public Order (Amendment) Bill allowed corporal punishment to be used. In addition, the new measures extended the maximum sentence district court judges could hand out from five to seven years. These measures were supported by numerous editorials in the Chinese language press.[100]

The "Fight Violent Crime" campaign continued in 1974. Raids, sweeps and stop and search operations, targeted at "areas […] known to be frequented by triad and gang elements", as well as at "[p]remises such as billiards salons, massage parlours, illegal gambling houses and brothels known to be managed, staffed or frequented by triad and gang elements," remained a centrepiece of the programme.[101] In addition, the programme targeted "known leaders of triad and gang elements," who were to "be picked up and interrogated on a regular basis and, should evidence so warrant, prosecuted." In 1976, the policing of the New Territories was stepped up.[102] Some police authorities remained unhappy with their powers under the law as of late 1976, leading to proposals, *inter alia*, to introduce penal sanctions under which convicted Triad members might be penalised for consorting with other Triad members.[103] The Attorney General expressed some reservations

96 See UK Bid to stop anti-crime laws (June 15, 1973), HKRS-2144-1-4.
97 See, e.g., "Tougher laws give new teeth to new crime drive," SCMP (May 12, 1973); "Measures to beat crime supported--a step in the right direction," Hong Kong Standard (May 14, 1973).
98 See Legislative Council (June 20, 1973); Legislative Council (Aug. 1, 1973).
99 See, e.g., "Bill to increase sentencing power of magistrates," SCMP (May 24, 1973).
100 See Chinese Press Editorial Translations, Public Relations Division (June 20, 1973), HKRS-2144-1-4.
101 Paper for the Governor's Committee-FVC Programme (1974), HKRS-163-8-9.
102 See Notes of the New Territories Administration, Heung Yee Kuk and Royal Hong Kong Police Meeting in Connection with the FVC Committee (Jan. 6, 1976), HKRS-934-1-4.
103 See Review of the Triad Problem, Triad Society Bureau, Royal Hong Kong Police Force (Dec. 15, 1976), HKRS-934-12-54.

around such proposals, however, including due to the fact that they might "victimi[ze] innocent groups."[104] Police actions were complemented by the efforts of the "District Fight Violent Crime Committees," which were deemed by a government report to have been "generally effective in bringing about a greater public awareness of the need to report crime and to become more sensitive towards security matters," including by

> a) promoting public wariness by publicizing campaigns at district level […];
> b) promoting better understanding and free and informal discussions between representatives of local communities and Government departments on matters affecting security and kindred matters […]; [and] c) providing regular opportunities to gauge local public opinion on crime and reaction to police anti-crime efforts.[105]

In sum, by the latter part of the 20th century references to vagrants and vagabonds had largely disappeared from public discourse. At the same time, however, the role played by the figure of the vagabond in terms of justifying strong law enforcement powers in the hands of the state did not go unfilled; rather, the archival materials surveyed above suggest, the figure of the vagabond was gradually replaced – first, more tentatively and with more reservations (in the period) by that of the communist agitator, and later, with greater confidence, by that of the "Triad member". In many ways, moreover, the Triad member, Hong Kong's equivalent of the gang member, was an even more ideally-suited candidate for the role in question, as a mysterious, malleable figure that invoked vague sentiments of political threat, while in practice also constituting a label that could be pinned on forms of activity otherwise best characterized as petty youth street crime.

4. From vagrancy to loitering

Hong Kong's vagrancy law was repealed in 1977 by the Law Revision (Miscellaneous Amendments) Ordinance.[106] The repeal of Hong Kong's vagrancy law occurred in the context of unprecedented contestation of vagrancy laws around the British colonial and settler colonial worlds. Central here were several decades of dedicated challenge to vagrancy laws by civil rights lawyers

104 FVC Sub-Committee – Review of the Triad Problem (Mar. 8, 1977), HKRS-934-12-54.
105 FVC Committee Paper No. 5 – Review of District FVC Committee (Jan. 5, 1978), HKRS-934-1-4.
106 Law Revision (Miscellaneous Amendments), Ordinance No. 70 of 1977.

and legal academics in the United States, which culminated in the 1972 Supreme Court decision in *Papachristou v. City of Jacksonville*, which found that the criminalization of vagrancy was unconstitutional on the grounds of vagueness.[107] This wave of challenges was followed and accompanied by challenges elsewhere as well. In Canada, wandering without apparent means of support, begging and being a "common prostitute" were all decriminalized in 1972.[108] In the United Kingdom, section 4 of the 1824 Vagrancy Act, known as the "sus" provision due to the fact that it authorized detention on the basis of suspicion alone, came under challenge from the 1970s on (though it was only repealed after Hong Kong's vagrancy law, in 1981).[109] In New Zealand the explicit penalization of vagrancy was repealed in 1981.[110]

No sooner had Hong Kong's vagrancy law been repealed than the authorities began considering means through which to fill the lacuna, however. In 1978, the Fight Crime Committees considered the potential addition of a loitering offence to Hong Kong's penal code. The government supported the adoption of such a new provision, arguing that it should be "widely drawn" in order to "counte[r] the activities of gangs who lurk, for example, in the public areas of housing estates and obstruct or frighten residents."[111] In 1979, the penalization of loitering was put forward in the Legislative Council. The proposed amendment criminalised "loiter[ing] in a public place or the common parts of any building" without excuse, or in such a way as to lead to obstruction, or in such a way as to lead another to be "reasonably […] concerned for his safety or well-being."[112] Those convicted of loitering could be sentenced to two years' imprisonment. The new measure was to replace the penalization contained in section 26 of the Summary Offences Ordinance, which, notably, was more limited, targeting specifically overnight loitering. Overall, the bill was framed as a way to combat "gangs, commonly

107 See *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); Goluboff (2016).
108 See Ranasinhe (2010).
109 The measure that repealed the "sus" component of vagrancy law in England was the Criminal Attempts Act, 1981 c. 47 (Aug. 27, 1981). That act followed extensive criticism; see Hall et al. (1978).
110 See New Zealand Summary Offences Act 1981, Public Act No. 113 of 1981 (Oct. 23, 1981).
111 Minutes of 68th Meeting of Fight Crime Committees (Oct. 26, 1978), HKRS-934-12-44.
112 Proposed First Draft (Apr. 19, 1979), HKRS-618-1-231.

associated with Triad societies, which come together in public places and the common parts of housing estates and other buildings."

The proposed loitering offence was criticised by the Hong Kong branch of Justice (the British section of the International Commission of Jurists), who noted that their objections were similar to their objections to the "crime of public assembly," in particular in that "[i]n both cases, perfectly innocent conduct can, under the wording of the legislation, be an offence."[113] Henry Litton, of the Hong Kong Bar Association, also criticised the law. Litton's critique was detailed: he noted that the law was broader and "more obscure" than the provisions it was aimed at replacing; that the penalty had been "drastically increase[d];" that no effort had been made to provide clarity as to whether some mens rea had to be proved relative to loitering; that there was a particular problem in terms of the Chinese translation of the phrase "loitering," which "barely adumbrate[d] some recognizable social misbehavior;" and that while the explanatory memorandum had referred to the "menacing behaviour of gangs congregating in public places," this hadn't been reflected in the elements of the crime in question.[114] In a meeting with the legislative scrutiny group shortly thereafter, the Attorney General, John William Dixon Hobley, argued that the bill was necessary in order to "assist the police to maintain law and order by strengthening their preventive powers."[115] The bill was thereafter amended to reduce the penalty applied to six months' imprisonment.[116] However, the bill continued to be criticised by members of the Legislative Council. Wong Lam argued that despite amendments, the revised proposal continued to allow for "unjustifiable interference with personal freedom," and suggested that additional safeguards be added.[117] T. S. Lo took the occasion to criticise the lengthy remand detention in which those

113 British Section of the International Commission of Jurists, Hong Kong Branch–Committee of Justice, Ian Robert Anderson MacCallum to Attorney General (Apr. 30, 1979), HKRS-618-1-231. The Hong Kong branch of Justice noted they would not have a problem with the penalization of loitering if it were limited to cases involving reasonable concern for safety or well-being, however.

114 Hong Kong Bar Association (Henry Litton QC) to Attorney General (May 4, 1979), HKRS-618-1-231.2

115 Notes from Meeting Held by Legislation Scrutiny Group with the Attorney General (May 7, 1979), HKRS-618-1-231.

116 See Amendments to be moved by the Attorney General (May 14, 1979), HKRS-618-1-231.

117 See Draft Speech by Wong Lam JP Legislative Council (May 23, 1979), HKRS-618-1-231.

charged but not yet convicted of loitering or the like might be held.[118] Despite ongoing concerns, the Crimes Amendment No. 2 Ordinance passed on May 23, 1979.[119]

The new penalization of loitering was heavily relied upon: as of 1984, 3,000 or so loitering cases were being brought per year.[120] In 1985, the law was challenged by Judge Penlington's decision in *The Queen v Ma Kui*,[121] a decision influenced by the recent rejection of the "sus" laws in England.[122] In his decision, Penlington attempted to force the loitering law into compliance with some basic notions of due process by requiring "a strict interpretation," and suggested that "the defendant [was] entitled to an acquittal if the magistrate [was] not satisfied" that the explanation offered by the accused as to their presence in a certain place was untrue, with satisfaction in such cases meaning being "satisfied beyond reasonable doubt." Penlington's decision was, unsurprisingly, criticised by the Fight Crime Committee Secretariat, which observed "[s]ome recent interpretations of portions of the Societies Ordinance by the High Court may make it virtually impossible to obtain a conviction for the offence of being a member of a triad society."[123]

Shortly thereafter, loitering charges against Sham Chuen resulted in an appeal to the Privy Council. In *Attorney General v Sham Chuen*, the Privy Council took a far less progressive tack.[124] The magistrate and Court of Appeal below had found the loitering law problematic, due to the fact individuals might be convicted where they were unable to provide a satisfactory explanation of their presence in a place, a requirement that prima facie appeared to violate their right to remain silent. The Judicial Committee of the Privy Council deemed this not to pose a problem, however, albeit through a rather tortured and tenuous form of reasoning.

Unease with the open questions posed by the penalization of loitering lingered, however, leading the Chief Justice and the Attorney General to

118 See Speech Re Crimes Amendment No. 2 Bill T. S. Lo (May 23, 1979), HKRS-618-1-231.
119 Ordinance No. 37 of 1979.
120 See "Judge's decision puts law on loitering in spotlight," SCMP (Oct. 1, 1985).
121 *The Queen v Ma Kui* [1985] HKCU 35.
122 See ibid., para. 9.
123 "A Discussion Document on options for changes in the law and in the administration of the law to counter the triad problem," Fight Crime Committee Secretariat, Security Branch (Apr. 1986).
124 *Attorney General v Sham Chuen* [1986] UKPC 32 (17 June 1986).

refer the question of "[w]hether the law relating to the offences of loitering […] should be amended and, if so, what changes should be made" to the Law Reform Commission in 1987. In its 1990 report, the Commission urged the repeal of the loitering law.[125] Despite the Law Reform Commission's recommendation the authorities decided not to abolish the penalization of loitering, however, and it has remained on the books since. While "vagrancy" law has formally been repealed in Hong Kong, therefore, the broad discretionary power vagrancy laws once granted the police to detain the poor and control public spaces lives on in the form of loitering laws, which have been maintained despite several well-reasoned challenges.

5. Conclusion

Vagrancy law was omnipresent in 19th and early 20th century Britain, the British Empire and the British settler colonial world.[126] In addition to providing the authorities with an enormously flexible tool – and hence constituting a primary source for the expansion of executive and law enforcement authority as such – vagrancy law played a powerful ideological role, helping to cement in official and public imagination connections between poverty, immorality, criminality and migration – the four areas over which vagrancy law exercised its power.[127]

Following the Second World War, however, as this article has explored, vagrancy laws gradually became less relied upon. This reduction in reliance was not indicative of the end of the vagrancy law tradition, however, but rather of the transition of the various functions vagrancy laws once played into new, more targeted legal regimes. This article explored two of those transitions. First, it considered the manner in which confrontation by a large "refugee" population, and a changing security situation, led Hong Kong authorities to develop a stricter border control regime in the years immediately following the Second World War. While vagrancy laws came to be less

125 See Law Reform Commission of Hong Kong, Report: Loitering (June 1990), para. 8.7. The Commission justified its recommendation in significant part on the basis that the police would retain the power to question and detain on the basis of suspicion under section 54 of the Police Force Ordinance, posing the question of why that power should not also be deemed to enable the arbitrary and discretionary deprivation of liberty.

126 See Roberts (2023).

127 See Roberts (2024).

explicitly relied upon in this context, their ideological influence could clearly be seen to persist, as the various negative characterizations those laws had suggested were appropriate in the context of vagrants were transferred to the city's new impoverished migrant population.

Second, the article considered the manner in which, while references to the "vagrant" declined in Hong Kong following the Second World War, new categories of the "criminal other," including both the communist agitator and, later and with enduring appeal, the "Triad" member, became increasing subjects of public attention, justifying the development of a range of new repressive measures. These evolutions can be understood along similar lines to the manner in which the criminal was "reconstructed" in 19th century England.[128] Whatever the truth of the threat (to safety or "law and order") posed by Triads – a subject this article has not explored – the idea of the Triad was clearly useful, in terms of justifying the creation of a stronger police force and the adoption of harsher criminal measures. Third and finally, and in close connection, the article observed that while the penalization of vagrancy was repealed in Hong Kong in 1977, the penalization of loitering was shortly thereafter dramatically increased, ensuring that the space opened up by the removal of vagrancy law as a means under which discretionary detention of the poor might take place was quickly filled.

As in the context of its anti-migrant functions, therefore, while vagrancy law's explicit role in helping extend the power of law enforcement authorities, and in shaping public perceptions of criminal danger, was brought to a close in the latter portion of the 20th century, its legacy lived on, in alternative images of the criminal other and in alternative legal mechanisms that could be put to highly similar use. While this article has not explored the legacies of vagrancy law's other two functions – penalizing the poor and the "immoral" – the legacies in both of those areas are almost certainly similar. Whether the disaggregation and functional specialization of the various subcomponent areas of vagrancy law will serve to strengthen the legitimacy of each, protecting them from the rule of law and human rights-based challenges vagrancy laws have been subjected to – or whether, on the other hand, disaggregation of the regimes may open up increased space for challenge, at least in some areas – remains to be seen.

128 See Weiner (1990).

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