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Taiwanese Planning Law:
A Historical Review and Comparison with Hong Kong

A thesis submitted for the degree of Doctor of
Philosophy

in

Birkbeck, University of London

by

Wei-chuan Shih

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where states otherwise by reference or acknowledgment, the work presented is entirely my own.

Abstract

This thesis compares the evolution of urban planning systems and related laws that operate within Taiwan and Hong Kong. By conducting a historic review, this thesis studies how planning laws and urban plans have been made, shaped and written, as well as their effects on spatial development. Borrowing from Patrick McAuslan's "Ideologies of planning law" concept, this thesis observes that planning laws are compromised products of domestic and foreign socio-political forces beyond planners' control, with three competing ideologies (private property, public interest and public participation) dominating at various stages of the respective planning systems. On the surface, the private property and public interest ideologies appear to contradict each other. However, historically examining the implementation of urban planning by the developmentalist states of Taiwan and Hong Kong reveals that both ideologies have and still do serve the interests of certain power blocs and property developers. While the public interest ideology was upheld, the racial factor and sanitation syndrome present in the urban regularisation resulted in spatial apartheid and the ideology serving the interests of the colonial forces occupying each territory; while the private property ideology was upheld, the betterment of certain people's property right was built on less privileged people's losses. Researching the interaction between building violations and informal housing concludes that laws can be arbitrary and fluid in practice, with the line of legality having to be drawn and redrawn. With disadvantaged people living in informal housing, building violations eased government responsibility in relation to the burden on housing and intervening in the property market. While the first two ideologies sustain the existing capitalist system with an emphasis on a functional property market, the third ideology has the potential to become an oppositional ideology to the status quo if planners acknowledge that planning law is not apolitical but an arena for challenging the existing administration.

Index

Preface.....	7
Structure.....	12
Chapter 1: Setting the scene – The Outline and Failure of Urban Planning in Taiwan and Hong Kong in the 19 th and 20 th Centuries.....	19
1.1 The relationship between urban planning and industrialisation.....	21
1.2 A brief introduction to Taiwanese urban planning and its legal authorities.....	25
1.3 The failure of urban planning in Taiwan.....	29
1.4 A brief introduction to urban planning law in Hong Kong.....	32
1.5 The failure of urban planning in Hong Kong.....	36
1.6 The main conceptual approach: McAuslan’s ideologies of planning law.....	38
Chapter 2: The Importation of Urban Regularisation in Taiwan.....	48
Introduction.....	48
2.1 Colonialism and urban regularisation in Taiwan.....	49
2.2 The sanitation syndrome and urban regularisation.....	55
2.3 Conclusion.....	72
Chapter 3: The Emergence of Urban Regularisation in Hong Kong.....	73
Introduction.....	73
3.1 The rise of colonial urbanisation in Hong Kong.....	73
3.2 Contractual planning.....	79
3.3 The fear of endemics and the public administration approach towards sanitary rules and land-use control.....	84
3.4 Chadwick’s Report: the importation of a public health movement.....	97
3.5 Conclusion.....	114
Chapter 4: The Racial Factor in Development Control: A Comparison of Taiwan and Hong Kong.....	118
Introduction.....	118
4.1 Race and building regulations: the case of Hong Kong.....	119
4.2 The Chinese factor and legal segregation: the case of Taiwan and Comparison with Hong Kong.....	135
4.3 Conclusion.....	147
Chapter 5: The Modern Planning of the Developmentalist State in Taiwan.....	150
Introduction.....	150
5.1 The origin of Taiwanese planning laws: Chinese planning laws.....	152

5.2 The practice of zoning in the Chinese planning system	157
5.3 The evolution of Taiwanese systematic planning	165
5.3.1 The developmentalist approach of systematic planning	165
5.3.2 The failure of systematic planning in Taiwan	189
5.4 Case study: the development plan in Taiwan	194
5.5 Case study: the trial of planning permission in Taipei — Control Yuan v Chang Jing-sen	207
5.6 Conclusion	211
Chapter 6: The Chinese Nationalist State and Land Reform in Taiwan.....	214
Introduction.....	214
6.1 The success of agrarian land reform and the failure of urban land reform in Taiwan	215
6.1.1 Historical context of the struggle of Chinese Right/Left wings	217
6.1.2 Land reform in Taiwan.....	224
6.1.3 The failure of urban land reform in Taiwan	226
6.2 The analysis of the nationalist state in Taiwan	230
6.3 Conclusion	235
Chapter 7: Comprehensive Urban Planning and the Developmentalist State of Hong Kong	237
Introduction.....	237
7.1 The importation of modern comprehensive urban planning.....	238
7.1.1 The Establishment of Planning Ordinance and the Planning Board.....	240
7.1.2 The 1947 Abercrombie Plan	244
7.2 The introduction of statutory planning and zoning	246
7.3 The long-term planning of Hong Kong	254
7.3.1 The ignition of long-term planning in Hong Kong: planning in the 1960s	255
7.3.2 The 1970s and early 1980s	258
7.3.3 Practices in the 1980s, the 1990s, and beyond	273
7.4 Strategy for the new century and the developmentalist state of Hong Kong	286
7.4.1 The Chinese take over	286
7.4.2 Planning Vision and Strategy for the New Century	289
7.4.3 The legislation of Town Planning (Amendment) Ordinance 2004.....	291
7.5 Zoning in perspective: A comparison of Taiwan and Hong Kong	300
7.6 Conclusion: The developers' state	304
Introduction.....	308
8.1 Building violations and clearance in Taiwan	309

8.2 Slum clearance and planning in Hong Kong	314
8.3 Informal housing and law	321
8.4 Conclusion	329
Chapter 9: Conclusion	333
Bibliography (English)	346
Bibliography (Chinese and Japanese)	356

Preface

Situated in the south-eastern coast of mainland China, Taiwan and Hong Kong are both societies of immigration. Chinese migrants from mainland China who moved during various historical periods comprise the majority of the respective populations of Hong Kong and Taiwan.¹ However, for most of the time, both areas developed in isolation from the mainland Chinese political regimes or as virtually separate from the mainland's economic influence. Taiwan for example, originally the subject of the Chinese Ching dynasty, was ceded in full sovereignty to the Empire of Japan in 1895. When Japan surrendered in 1945 at the end of the Second World War, the Chinese Nationalist government of the Republic of China assumed control of Taiwan. After the Chinese Communist Party founded the People's Republic of China and the Chinese Nationalist government had retreated to Taiwan in 1949, the two governments continued in a state of war. The movement of people and goods, including by post and telecommunications, ceased between the PRC-controlled Mainland China and the Chinese Nationalist government-controlled Taiwan, until 1987, when the Chinese Nationalist government began to allow some Taiwanese habitants, originally from Mainland China, to visit their relatives in the Mainland.² Economic exchanges between Mainland China and Hong Kong hardly stopped, though it had been isolated from Mainland Chinese regime's political rule much longer than Taiwan under British colonial rule which lasted between 1842 and 1997, except for four years of Japanese occupation during the Second World War. The only exception to this continuation of exchange is seen with the US's implementation of an embargo that forbade economic transactions with communist China between 1951 and 1954. For the most part of Hong Kong's economic history, it has consistently been a commercial centre for

¹ G. B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964); Chen Shu-juo and Duan Hong-kuan 'Plains Indigenous Ancestors and Taiwan Blood Nationalism' (2008) 72 *Taiwan: A Radical Quarterly in Social Studies* 145.

² Imperial Japanese Army General Staff Office (ed) *Sino-Japanese War, 1894-1895* (Tokyo Press 1904); Lin Hen-tao, *History of Taiwan* (Jong Wen Books 1988); Hsueh Hua-yuan (ed) *Timeline of Taiwanese History: After the War (1)* (Institute for National Policy Research, Chang Yung-fa Foundation 1993); Hsu Chieh-lin, *History of Taiwan after the Second World War* (Wen Ying Tang Publisher 1996); Denny Roy, *Taiwan: A Political History* (Cornell University Press 2003); Mainland Affairs Council (ed) *Twenty Years of Cross Strait Relations* (2011) 5.

China's global and regional trade, and this is still the role it has today.³ Capitalism developed separately under the Japanese imperial government, the authoritarian Chinese nationalist government in Taiwan and the British colonial government in Hong Kong.⁴ In terms of their political systems, differences and similarities persist in the comparison of Taiwan and Hong Kong: Taiwan was governed under the *Martial Law Order* between 1949 and 1987.⁵ While the people of Taiwan were deprived of the right to freedom of speech and the right of forming political parties was also prohibited, people in Hong Kong enjoyed the lifestyle of “freedom without democracy”.⁶ The influx of socio-political movements in the 1980s transformed Taiwan’s political system into a democracy and the regime changed for the first time in 2000.⁷ In Hong Kong, the transfer of sovereignty to the People’s Republic of China in 1997, placed the nomination of the Chief Executive of Hong Kong government under China’s control. Another important difference, for our purposes here, is that while the legal system in Taiwan is continental, Hong Kong has a British common law system. The continental legal system in Taiwan was originally imported by the nationalist government from Mainland China:⁸ the English common law that remained in Hong Kong is now merged

³ Ho Y-P, *Trade, Industrial Restructuring and Development in Hong Kong*, (Macmillan London 1992); D. R. Meyer, *Hong Kong as a Global Metropolis* (Cambridge University Press 2000); C. R. Schenk, *Hong Kong as an International Financial Centre: Emergence and Development, 1945-65* (Routledge London 2001).

⁴ See Yanaihara Tadao, *Taiwan under the Japanese Imperialism* (Iwatami Shoten Tokyo 1929); Chen Shi-meng, Lin Chung-Cheng, Chu C. Y. Cyrus, Chang Chin-his, Shih Jin-ji and Liu Jin-tein, *Deconstructing the KMT State Capitalism* (Taipei Society 1991); D. R. Meyer, *Hong Kong as a Global Metropolis* (Cambridge University Press 2000); C. R. Schenk, *Hong Kong as an International Financial Centre: Emergence and Development, 1945-65* (Routledge London 2001).

⁵ *Martial Law Order of Taiwan* was proclaimed on 19th May 1949 and lifted on 15th July 1987.

⁶ I. S. Thomas Leung, ‘Crises and Transformation’ in Charles Burton (ed) *Politics and Society in Hong Kong Towards 1997* (University of Toronto-York University Joint Centre for Asia Pacific Studies 1992).

⁷ Yang Du, *The Collapse of Authoritarian Control* (Yuan-Liou Publishing 1988); Wang Jenn-hwan, ‘Opposition Movements and Political Transition in Taiwan’ (1989) 2 (1) *Taiwan: A Radical Quarterly in Social Studies*; Wang Jenn-hwan and Chien Sechin Yeong-Shyang, ‘Toward a New Country? The Formation of Populist Authoritarianism’ (1995) 20 *Taiwan: A Radical Quarterly in Social Studies*; Chen Shui-bian, *Taiwan Stands Up: Toward the Dawn of a Rising Era* (2000) President Chen Shui-bian’s Inaugural Speech 20th May 2000 <<http://www.fas.org/news/taiwan/2000/e-05-20-00-8.htm>> accessed 1st November 2014.

⁸ Wang Tay-sheng, *Introduction to History of Law in Taiwan* (3rd edn, Angle Publication 2012).

with the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong Basic Law)* imposed by Beijing.⁹

Despite the differences outlined above, the economies of Hong Kong and Taiwan took off in the 1960s and consistently had two-digit GDP growth throughout the 1960s, 1970s and 1980s.¹⁰ The rapidly growing economies attracted the attention of development scholars and researchers.¹¹ Accompanied by the studies of the Newly Industrialised Countries (NICs) and the Four Asian Tigers, research on Taiwan and Hong Kong became a popular subject in the 1980s and 1990s and various perspectives

⁹According to Article 8 of the *Basic Law*: “The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law and subject to any amendment by the legislature of the HKSAR.” Also see Peter Wesley-Smith, *The Sources of Hong Kong Law* (Hong Kong University Press 1994).

¹⁰ Taiwan consistently saw double digit GDP growth for almost 38 years between 1955 and 1993 with the exception of 1975, 1982, 1985 and 1988. Between 1962 and 1987, there were 12 years of double digit GDP growth in Hong Kong. See Directorate General of Budget, Accounting and Statistics (Taiwan), *Historical Principal Figures* <<http://www.dgbas.gov.tw/ct.asp?xItem=14616&CtNode=3566&mp=1>> accessed 1st November 2014; Census and Statistics Department, *Hong Kong Social and Economic Trends 1982-1992* (Hong Kong Government Printer 1993); Census and Statistics Department, *Estimates of Gross Domestic Product 1961 to 1994* (Hong Kong Government Printer 1995).

¹¹ Stephen Wing-kai Chiu, Kong-chong Ho and Tai-lok Lui, *City-States in the Global Economy: Industrial Restructuring in Hong Kong and Singapore* (Westview Press 1997) 1; Richard P. Appelbaum and Jeffrey William Henderson, *State and Development in the Asian Pacific Rim* (Sage Publications, London 1992); Frederic C. Devo, *The Political Economy of the New Asian Industrialism* (Oxford University Press, New York 1987); M. Douglass, ‘The ‘Developmental State’ and the Newly Industrialised Economies of Asia’ (1994) 26 (4) *Environment and Planning A* 543-566; Theodore Geiger and Frances M. Geiger, *Tales of Two City-States: The Development Progress of Hong Kong and Singapore* (National Planning Association, Washington D.C. 1973); Helen Hughes, *Achieving Industrialization in East Asia* (Cambridge University Press, Cambridge 1988); Keun Lee, *New East Asian Economic Development: The Interacting Capitalism and Socialism* (M. E. Sharpe, Armonk 1993); Andrew MacIntyre, *Business and Government in Industrializing Asia* (Cornell University Press, New York 1994); Dwight H. Perkins, ‘There Are At Least Three Models of East Asian Development’ (1994) 22 (4) *World Development* 655-661; Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton University Press, Princeton 1990); William C. Johnson, ‘Citizen Participation in Local Planning in the U.K. and U.S.A.: A Comparative Study’ (1984) 21 (3) *Progress in Planning* 149, 221; Ann Louise Strong, *Planned Urban Environments: Sweden, Finland, Israel, the Netherlands, France* (Johns Hopkins Press, Baltimore 1971); Thomas, D. and Tvrdý, M., *Flexibility and Commitment in Planning: A Comparative Study of Local Planning and Development in the Netherlands and England* (Martinus Nijhoff Publishers, The Hague 1983); Paul M. White, ‘Urban Planning in Britain and the Soviet Union: A Comparative Analysis’ (1979) 70 *Research memorandum* (Centre for Regional, Urban and Local Government Studies University of Birmingham, Birmingham) 44, 56.

were introduced to analyse this phenomenon of rapid growth.¹² Mainland Chinese academic publications also reflected world-wide interest.¹³ Although the popularity of the subject declined in the 2000s in Western academic circles,¹⁴ in mainland China, accompanied by the surge of exchange activities between Taiwan and mainland China in 2008 and Hong Kong and mainland China in 2003,¹⁵ there has been no such decline, and Chinese Mainland scholars in public research institutions are encouraged to keep working on the issues of the “Phenomenon” of Taiwan” and “Phenomenon of Hong Kong”.¹⁶ Motivated by the mainland Chinese government's need to see “what insights Taiwan and Hong Kong can offer to mainland China”, many researchers focused on

¹² Chiu, Ho and Lui categorised this complex literature into four conceptual strands: the Neo-Modernist version which focuses on people, culture and value; the free-market advocates who suggest that liberalisation was the driving force behind economic development; the statist version which focuses on the role of the state in guiding the development and those who saw the economic growth enjoyed by the NICs as a process of capitalist development worked itself out. See Stephen Wing-kai Chiu, Kong-chong Ho and Tai-lok Lui, *City-States in the Global Economy: Industrial Restructuring in Hong Kong and Singapore* (Westview Press 1997) 5, 7.

¹³ See Gu Yuanxiang, Zhou Shenkui and Tan Shihzhong (eds), *The Whole Story of Four Asian Little Dragons' Taking Off* (Economic Science Press 1992); Li Xiaoman (ed), *The Inspiration of Four Asian Dragon's Economic Development* (Shanghai People's Publishing House 1993); Ye Weiping, *Tracing the Mysterious Four Asian Little Dragons* (Beijing University of Technology Press 1994); Fan Aijun, *Research on Taiwan Economy* (Jinan Press 1995); Zhao Chuenming, *From Myth to Reality: the Rising of East Asia and it's Modernisation* (Wuhan Press 1997); Luo Rongqu, *The Modernisation of East Asia: the New Model and New Experience* (Beijing University Press 1998)

¹⁴ Amount of academic articles published about Asian Tiger economies declined sharply in 2001. See Joe C. Davis and Jorge G. Gonzalez, *Scholarly Journal Articles about the Asian Tiger Economies: Authors, Journals, and Research Fields, 1986-2001* (Trinity University 2002) 9.

¹⁵ For example, since the opening policy to allow tightly controlled mainland Chinese tour groups to visit Taiwan in 2008 and the opening in 2011 to individual tourists who met certain criteria, the numbers of mainland Chinese tourists visiting Taiwan each year has increased from 0 in 2007 to 3,987,152 in 2014. See 'The Growth of Foreign Tourists in the Last Ten years', Bureau of Tourism, Ministry of Transportation and Communication <<http://admin.taiwan.net.tw/public/public.aspx?no=315>> accessed 26th January 2015. In Hong Kong, the tourism market was open to mainland Chinese individuals who reside in certain cities in 2003 which allowed them to travel to Hong Kong without being part of an organized tour group. Hong Kong has been the top travel destination for people from mainland China. Between 2012 and 2013 Hong Kong attracted nearly 35 million mainland Chinese visitors each year. See Press release from Hong Kong's Information Services Department (2nd September 2013) <<http://www.info.gov.hk/gia/general/201309/02/P201309020621.htm>> accessed 26th January 2015.

¹⁶ Press release from All China Taiwanese Association (8th January 2009); also see The National Development and Reform Commission (China), Preface in 'Outlines of Pearl River Delta Area Reform and Development Plans' (2009) <<http://59.36.241.88:1980/b5/yea.jiangmen.gov.cn/show.aspx?id=238&cid=7>> accessed 26th January 2015.

the economic development of the two areas.¹⁷ Nevertheless, in the research field of urban planning and planning law, comparative studies Hong Kong and Taiwan are scarce. Most of comparative studies on urban planning concern Western countries.¹⁸ To compare urban planning mechanisms that operate within Taiwan and Hong Kong, one would need to examine the fundamental differences of the Continental legal system of Taiwan and the combination of the contractual planning and common law system of Hong Kong. Besides that, Taiwan's multi-layered government structure and its local governments' relationships and respective special interests and the fact that the Hong Kong government itself is the largest landlord in Hong Kong would be a challenge to researchers as well.

With a view to filling this gap, this thesis wishes to make a contribution to comparative studies on Taiwan and Hong Kong with regard to urban planning and planning laws. By making a historic and comparative review in the thesis's perspective, this study will try to understand the development of urban planning and planning laws in Taiwan and Hong Kong. Since this thesis is primarily interested in the spatial aspect of these developments, it differs from previous research, which has been concentrated on the development of the economy¹⁹. It will mainly consider the roles of states and the power blocs consisting of states affected spatial development of both areas. Therefore, this study will focus on planning law and planning, rather than urbanism or urban problems. This is a study of how planning laws and urban plans were made, shaped and written, and in turn, how they made, shaped, and wrote spatial development.

¹⁷ See Overview of Relations with Taiwan and Hong Kong (Global Times Beijing 2014) 3.

¹⁸ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong*. UCL Press (London 1996) 8; J Barry Cullingworth, *The Political Culture of Planning: American Land Use Planning in Comparative Perspective* (Routledge 1993); Andreas Faludi, *The Study of Comparative Planning*, 'Centre for Environmental Studies' (London 1975).

¹⁹ See page 7, footnote 15

Structure

Chapter 1 of this thesis introduces the relationship of modern urban planning to industrialisation, followed by a brief outline of the importation of urban plans as colonies and their relationship to colonisation, which was the historical background to implementation of the earliest urban plans in both Taiwan and Hong Kong. In this chapter, Taiwan's and Hong Kong's urban planning and their respective legal authorities are introduced and criticised. The critique points out that in both Taiwan and Hong Kong cases, urban planning has failed to deliver what it planned to achieve. The chapter then introduces Patrick McAuslan's three ideologies of planning law concept, which will be the main approach this thesis adopts to examine planning laws in action. As McAuslan reveals there are three competing philosophies (the ideology of private property, the ideology of public interest and the ideology of public participation) dominating planning law and in conflict with each other at various points in the planning system. This chapter will argue that law itself is a major contributory factor to the chaos in urban planning.²⁰ The chapter then notes that since McAuslan's research on planning ideologies is based on English town and country planning, his observations are not fully compatible to be applied to urban planning in Taiwan and Hong Kong. Other theories and concepts concerning sanitation syndrome, racial factors, power blocs and informal sectors will be used in later chapters of this thesis when arguing about the causes of disarray in the planning systems in Taiwan and Hong Kong.

Chapter 2 is concerned with the importation of urban regularisation in Taiwan, the importance of building and development control in colonial cities, and its relation to the emergence of imperial powers. This chapter borrows from Maynard Swanson's concept of "sanitation syndrome" to argue that building and planning regulations were established to supply infrastructure and attract colonial settlers, rather than for

²⁰ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980).

the welfare of locals.²¹ City walls and houses in town centres were demolished to give way to the development of new Japanese districts and separate Japanese settlers from the Taiwanese. Urban regularisation resulted in the replacement of Chinese old towns by new city landscapes, accompanied by a centralised system of development control in the name of public interest that met very little local resistance. During the urban regularisation implementation process, public interest ideology overpowered private property interest; however, this definition of the 'public' only included the colonists and not Taiwanese locals.

Chapter 3 deals with the emergence of urban regularisation in Hong Kong. Sanitation syndrome is considered here as the primary reason for the initiation of the early phase of land-use control. Sanitation rules were the principle motivation for interventions concerning private property rights, with contractual planning forming the crucial mechanism for regulating land use at that time. Since all of Hong Kong's land belonged to the British crown, the leasehold system as a land management measure attained development control via land sales and contracts. Besides contractual planning, British administrative machinery was also introduced to deal with land-use and set up sanitation rules. Sanitation concerns continued throughout the nineteenth century in Hong Kong, with this chapter highlighting that the early history of town planning in Hong Kong is a history closely associated with public health concerns. This chapter will show that the evolution of land use control and sanitation rules did not develop independently from the outside world. The importation of the public health movement from England helped shape development control in Hong Kong.

Chapter 4 discusses the impact of the racial factor on urban regularisation and related laws. By reviewing urban regularisation operating in Taiwan and Hong Kong during colonial periods, one can see that concerns about public health made a major contribution to the implementation of development control, even though public

²¹ M. W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony 1900-1909' (1977) 18(3) *Journal of African History* 387-410

health concerns only focused on colonists. Those concerns and the implementation of regularisation reflected colonists' views on the colonised: the laws and regulations stipulated to guide and control urban development represented the colonists' perceptions of local people whose physical appearances were different. The assumption that locals' ways of living had a bad influence on public health were shaped by racial categorisation, necessitating some spatial design measures in order to deal with the racial factor. The racial factor was used by the colonists like spatial apartheid. For example, in Hong Kong, Chinese people's crowded habitation and unhygienic living condition were distorted as "Chinese customs" and were selectively adopted to justify some implementations of development control that were only applied to Western settlements but not to Chinese quarters. Racial segregation in planning started as early as 1841, with similar stories can be seen in Taiwan as well. Chinese customs, such as collective punishment, were selectively adopted by the Japanese regime and integrated into the Japanese legal system for the convenience of governing the colony, whilst some western principles of law already adopted by the Japanese system were simply ignored. Building regulations were only applied to Japanese residential areas and used as a form of prohibition to prevent Taiwanese land owners from undertaking transactions and developments. Clusters of Japanese style houses could be seen in the city centres of newly regulated towns. However, the colonists were not the only ones who adopted the racial factor. In Hong Kong, "Chinese customs" were also used by local Chinese notables to plead against development control and the implementation of public health regulations, though the real reason behind the protest against the public campaign was economic. While Chinese customs were mentioned by both the Westerners and the Chinese in Hong Kong, the customs they described were neither traditional Chinese nor genuine Chinese. While the Chinese racial factor was mentioned in Taiwan, it was interpreted to justify the hierarchy of the racial system with Chinese people at the bottom, Japanese people at the top and Taiwanese habitants in the middle, leading to the modern urban regularisation brought by the Japanese being legitimised.

Chapter 5 reviews the legal framework of modern urban planning in Taiwan that was implemented by the Japanese before the Second World War. The Chinese Nationalist Party (Guomintang; K.M.T.) brought in the entire governing system, including state apparatus and legal instruments, from Mainland China to Taiwan in 1945. Hence, the Taiwan's contemporary legal system is based on the Chinese Nationalist legal system, which gave legitimacy to Chinese Nationalist rule and current Taiwanese government. It is necessary to trace back urban planning related legislation to the pre-Communist period in China to fully understand Taiwan's contemporary urban planning system. Zoning control in Taiwan will also be introduced and reviewed. Accompanied by revisions and the enactment of planning related laws, the zoning system in Taiwan evolved under detailed regulations and became the major land use control instrument. A comprehensive planning system was born and dominated the practice of urban planning, with zoning being the most powerful coercive legal instrument. However, the system, although looking mature on paper, has, in reality, always proven insufficient. Later in this chapter the system and its implementation under both the Japanese and Chinese regimes will be analysed and the reasons for failure highlighted. The urban plans of Wuchi, first introduced by the Japanese regime and then continually developed by the Chinese nationalist regime, will also be introduced in the chapter to support my argument.

Chapter 6 introduces land reforms in Taiwan to reveal how political struggle decisively affected the outcomes of land policy, with the character of the state apparatus analysed alongside. The first case of Taiwanese land reform can actually be viewed as an extension of the Chinese civil war between the Chinese Nationalists and Communists, which more precisely was a struggle between Chinese landlords and peasants. The second case in this chapter that will be introduced is the failure of urban land reform between 1954 and 1977 in Taiwan, which was also an outcome of political struggle. Though this was seen by some of the Taiwanese press as a struggle between Chinese Mainlanders and local provincials, in actuality, the "Chinese" factor was merely a smoke screen masking a political conflict between power blocs within the

government that represented, respectively, the interests of land speculators and bureaucrats.

Chapter 7 introduces the evolution of comprehensive urban planning in Hong Kong and discusses the role of the Hong Kong government as developer of its land use. This thesis argues that the establishment of systematic development control in Hong Kong was precisely an implementation of McAuslan's second ideology, the ideology of public interest. Developers' common law rights could be diminished or indeed taken away by administrative decisions. The trend calling for state intervention against laissez-faire economics continued after the Second World War. With the publication of the Abercrombie Plan in 1948, open space, green belt and reasonable density concepts were imported to Hong Kong to emphasise the importance of development control. Later, statutory and zoning plans were applied to Hong Kong generally as a set of universal development control legal measures. The application of zoning was not a paradigm shift in terms of planning ideology but it did improve the efficiency of administrative power. The main task of planning in the 1960s in Hong Kong was to meet the needs of large scale immigration and economic expansion that came with population expansion. Land demand pressure made the city state play the role of efficient developer. A long-term land use plan was crucial at this stage. The 1970s in Hong Kong was an era that saw the upgrading of public housing, development of new towns and the urbanisation of the New Territories. The Hong Kong government was meant to be both a welfare state and developmentalist state at the same time;²²

²² Regarding the characteristics of developmentalist state, I borrow the arguments from Castells and Bagchi. As Castells defines developmentalist state,

"a state is developmental when it establishes as its principle of legitimacy, its ability to promote and sustain development, understanding by development the combination of steady high rates of economic growth and structural change in the productive system, both domestically and in its relationship to the international economy."

While Castells emphasises the role of development ideology in mobilising the various forces in society for development and argues that it is a basis for state legitimacy, Bagchi stresses how the developmentalist state works. He points out that the developmentalist state

"puts economic development as the top priority and is able to design effective instruments to promote such a goal. The instruments would include the forging of new formal institutions, the weaving of formal and informal networks of collaboration among citizens and officials, and utilising new opportunities for

nevertheless, this chapter argues Hong Kong has been developed primarily by the government for the benefits of property development or fiscal objectives rather than for social welfare. The role of developer continued after the handover of sovereignty to China. While the socialist state of China has maintained capitalism in Hong Kong, the British colonial style of elite governance, and undemocratically elected representatives consisting of bureaucrats, developers and businessmen, still dominates urban planning decision making in Hong Kong.

Chapter 8 studies development control violations by focusing on illegal buildings that have arisen under the urbanisation of Hong Kong and Taiwan. The author points out that though this may look like a rebellion against the law, it actually eases the administrative state's crisis of legitimacy, eases the financial burden of city administrations and, most importantly, supports the growth and development of cities. While illegal buildings challenge planning authorities' development control, they are essential to urban development. They are not side effects of urbanisation, nor are city margins. This chapter also points out that in response to the challenge, laws and regulations can be arbitrary and fluid in practice. The definition of legality is not always straightforward. Building violations, for example, can be tolerated when the government does not have enforcement capabilities. Government also avoids the removal of large scale illegal constructions when the removal could result in social unrest that endangers the political legitimacy of the government. Though the selective implementation of building regulations exposes the failure of the government's development control, a building violation cannot be seen as the failure of public

trade and profitable production, Whether the state governs the market or exploits new opportunities thrown up by the market depends on particular historical conjunctures."

Nevertheless, the role of a developmentalist state in development, like development itself, needs to be situated in the context of class, power and struggle. See: Manuel Castells, *'Four Asian Tigers with a Dragon Head: A Comparative Analysis of the State, Economy, and Society in the Asian Pacific Rim'* in Richard P. Appelbaum and J. W. Henderson (eds), *States and Development in the Asian Pacific Rim* (Sage Publications 1992) 33-70; Amiya Kumar Bagchi, *'The Developmental State Under Imperialism'* in ed. K. S. Jomo (ed), *Globalization Under Hegemony: The Changing World Economy* (Oxford University Press 2006) 227-277; Abdul Rahman Haji Embong, *'Developmentalist State in Malaysia: Its Origins, Nature, and Contemporary Transformation'* in Joan M. Nelson, Jacob Meerman and Abdul Rahman Haji Embong (eds.), *Globalization and National Autonomy: The Experience of Malaysia* (Institute of Southeast Asian Studies 2008) 27-58.

interest ideologies. Government compromises on the legality of building violations are the results of the state's policies being incapable of meeting the realities and the state's incompetence to exercise its policies. The hegemony of public interest remains unchallenged.

Chapter 1: Setting the scene – The Outline and Failure of Urban Planning in Taiwan and Hong Kong in the 19th and 20th Centuries

This chapter introduces the relations between modern planning and industrialisation, followed by a brief introduction to the relationship between the importation of urban plans into colonies and colonisation, which was the historical background of the earliest establishment of urban plans in Taiwan and Hong Kong. The historic development of Taiwanese urban planning, Hong Kong urban planning and their respective legal authorities will be reviewed here. The chapter points out that in the cases of both Taiwan and Hong Kong, urban planning failed to deliver what it had planned to achieve. Taiwan and Hong Kong authorities did foresee the urban problems that industrialisation would bring, but the solutions provided by urban planning have not solved the problems arising since.

The chapter then moves on to present the three ideologies of planning law concept proposed by Patrick McAuslan, the author of *Ideologies of Planning Law*. McAuslan outlines three dominant planning ideologies: 1. the ideology of private property which exists for the maintenance and buttressing of private rights; 2. the ideology of public interest which tends to confer administrative powers and 3. the ideology of public participation, which demands direct public involvement.²³ Since law itself is a major contributing factor to the disarray in urban planning, the argument outlined above is one of the approaches this thesis will apply in order to examine planning laws in action.²⁴ According to McAuslan, planning law, far from being objective and neutral, is dominated by three distinct and competing philosophies which conflict with each other at various points of the planning system.²⁵

²³ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980).

²⁴ *Ibid.* p2.

²⁵ *Ibid.*

However, McAuslan's study of planning ideologies was based on English planning system, and while he emphasized the importance of discussing the roles of lawyers and planning officials, his own study of those agents could not be fully applied to the legal and planning authorities of Taiwan and Hong Kong, since the emergence of the planning establishment had a completely different background to that of England. Indeed, as this thesis will point out in Chapter 2 and 3, the planning establishment serves for the interests of colonists and not of the local people. Given the difference of the respective relationships of Hong Kong, Taiwan and England to colonialism, in order to examine the planning authorities and specific agents', including local people and colonists, involvement with the development of planning systems and to understand their intervention in the law and in planning, other theoretical concepts will also be introduced for this historical review of planning in Hong Kong and Taiwan. For example, the concept of sanitation syndrome will be discussed in relation to the initiation of urban regularisation. Colonial urbanisation will be explored in order to understand how the colonial periphery was incorporated into the metropolitan core and helped build colonial cities where the colonists controlled the extraction of resources and surplus. While characteristics of the developmentalist states of Taiwan and Hong Kong are examined with a view to revealing the roles of planning authorities in central and local level, the power blocs, consisting of states and the socio-political forces which drive spatial development can be reviewed alongside.

This thesis will discuss racial factors and urban informal sectors as well. With the discussion of race, this thesis argues that building regulations and planning implementation in both cases of Hong Kong and Taiwan were introduced according to the standards deemed appropriate for the segregated population, since with spatial segregation a social order could be created without disturbing the overall power structure of colonisation. In the discussion of urban informal sectors this thesis argues that informal sectors, for example illegal buildings and illegal settlement, actually constitute a collective reaction to the real estate market as part of which land capital deprives people of housing. In short, while this thesis adopts McAuslan's three ideologies as general theoretical guideline, the thesis is also aware of the need for

taking on other theoretical concepts and arguments to provide further observations and analysis on the development of urban planning laws in both Taiwan and Hong Kong.

1.1 The relationship between urban planning and industrialisation

This section discusses what urban planning is and the purpose of its implementation. The section emphasises the relevance of the relationship of urban planning and industrialisation by pointing out that the origins of modern planning resulted from the need to solve problems concerning the living conditions of newly emergent urban working class in the nineteenth century.

What is urban planning and what is the purpose of implementing urban plans? The Taiwanese *Urban Planning Act*, originally stipulated in 1939 and the latest amendment passed in 2015, clearly defines the meaning of urban planning and sets up its aims. As Article 3 of the *Urban Planning Act* reads,

*“An urban plan as referred to herein shall refer to a planned development for significant facilities concerning urban living such as economic activities, communications, sanitation, public security, national defence, culture, education, recreation and so on within a definite area and to a rational planning for land use therein.”*²⁶

Meanwhile Article 1 of the *Urban Planning Act* stipulates that *“This Act is enacted for the purpose of improving the living environment of residents, and promoting a planned and balancing development in city, town and urban rural settlement.”*²⁷ The purpose of improving living environment and rationally planning land use of Taiwanese urban

²⁶ Article 3, *Urban Planning Act*, 2015 Taiwan.

²⁷ Article 1, *Urban Planning Act*, 2015 Taiwan.

planning law is very similar to what *Town Planning Ordinance* of Hong Kong from 1991 emphasizes in its endeavour,

“[T]o promote the health, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the lay-out of areas of Hong Kong as well as for the types of building suitable for erection therein and for the preparation and approval of plans for areas within which permission is required for development.”²⁸

Both Taiwanese *Urban Planning Act* and Hong Kong *Town Planning Ordinance* proclaim publicly that there are definitely things to be done for the betterment of people’s living condition and that there are ways of doing this. Both laws coincide with scholars’ opinions. According to Peter Hall and John Forester, urban planning is the guidance of future action²⁹ and it is considered a rational process that is *“an orderly sequence of action that will lead to achievement of a stated goal or goals.”³⁰* The goal or goals are set in order to resolve urban practical problems and meet land users’ requirements. As Greed suggests:

“planning is for people... It is important to acknowledge the importance of the needs and wants of the population in generating demand for development in the first place, and to seek to meet the requirements of ‘users of land’ rather than focusing on the ‘land uses’ in isolation.”³¹

At an operational level, Keeble recognises urban planning as “the art and the science of ordering the land-uses and siting the buildings and communication routes so as to secure the maximum level of economy, convenience and beauty.”³² Therefore

²⁸ *Town Planning Ordinance*, amended in 1991, Hong Kong.

²⁹ John Forester, *Planning in the Face of Power* (University of California Press 1989) 3.

³⁰ Peter Hall, *Urban and Regional Planning* (Routledge London 1975).

³¹ Clara Greed, *Introducing Planning* (Longman 2000) 4.

³² Lewis Keeble, *Principles and Practice of Town and Country Planning* (Estates Gazette 1969) 1.

planning is not merely the production of blueprints for the future desired state of an area but “*a continuous series of controls over the development of the area.*”³³

As Sutcliffe points out “*the novelty of the town planning lay in its relevance to industrial urbanisation.*”³⁴ The historical origins of modern planning resulted from the need to solve problems concerning the horrendous living conditions of the new urban working class during the nineteenth century.³⁵ Since the mass shift in the balance between the rural and urban populations was unprecedented, it was not only a question of the overall size and rate of growth, but also of the adaptation of towns to a rapidly changing technology and social patterns and meet the new demands of industries.³⁶ Using technical means to meet the needs of land users and solving urban problems and planning land uses, the task of modern urban planning is somehow different from the long historical tradition of town planning before the Industrial Revolution: nineteenth-century town planning was more concerned with public health, sanitation and “*meeting the functional requirement of industry*”,³⁷ instead of providing a classical style of architecture and urban designs serving the upper class. The surge of industrialisation in both Europe and the United States, accompanied by failures in the management of the unwanted physical consequences of development, brought with it the birth of modern urban plans and related laws. For example, in England, as McAuslan details, post Industrial Revolution legislation on this subject started in the 1840s.³⁸ The earliest legislation included the *Removal of Nuisances Act*

³³ Peter Hall, *Urban and Regional Planning* (Routledge London 1975) 7.

³⁴ Anthony Sutcliffe, *Towards the Planned City: Germany, Britain, the United States and France 1780-1914* (St. Martin's Press 1981).

³⁵ William Ashworth, *The Genesis of Modern British Town Planning* (Routledge 1954); Patrick McAuslan, *Land, Law and Planning* (Weidenfield and Nicolson 1975); Anthony Sutcliffe, *Towards the Planned City: Germany, Britain, the United States and France 1780-1914* (St. Martin's Press 1981).

³⁶ Anthony Sutcliffe, *Towards the Planned City: Germany, Britain, the United States and France 1780-1914* (St. Martin's Press 1981)

³⁷ Clara Greed, *Introducing Planning* (Longman 2000) 68.

³⁸ Patrick McAuslan, *Land, Law and Planning* (Weidenfield and Nicolson 1975) 37.

1846 and the *Public Health Act* of 1848.³⁹ Certain types of power concerning public hygiene, land-use control and development control were introduced because of the defects of urban growth and the appearance of major urban centres that were not well regulated by pre-Industrial Revolution criminal legislation but required a more comprehensive approach with a wider range of administrative powers.⁴⁰ Before the turn of century, the expansion of public powers had grown steadily from an initial concern with nuisance in an individual house to embrace all aspects of development within a region.⁴¹

The inseparable relationship of modern urban planning to industrialisation can also be seen in the cases of Taiwan and Hong Kong, both former colonies of imperial powers that later industrialised and imported urban planning. Nevertheless, the relationship between industrialisation and urban planning in colonies had unique complexities different from those seen in western countries. Colonialism took the form of a conquest by the establishment, exploitation, and acquisition of land and this was enforced by political power, military force and capital exportation. Industrialisation brought with it the means to set up colonies and urban plans had played a crucial role in this process.⁴²

³⁹ Patrick McAuslan, *Land, Law and Planning* (Weidenfield and Nicolson 1975) 37.

⁴⁰ The *Removal of Nuisances Act* was concerned with nuisances in individual houses and empowered public officials to remove them. The *Public Health Act* extended the range of powers available to officials, but basically kept to the individual house as its frame of reference. Under the Public Health Act, the Local Boards of Health was established to empower public officials to install drains into a house, to pull down a house when the owner had failed to obtain permission from the Board and to inspect common lodging house. See: Patrick McAuslan, *Land, Law and Planning* (Weidenfield and Nicolson 1975) 38.

⁴¹ For example, the *Artisans' and Labourers' Dwellings Improvement Act 1875* gave local authorities to demolish areas of housing in a town on grounds and according to procedures. See: John Nelson Tarn, *Five Percent Philanthropy. An Account of Housing in Urban Areas Between 1840 and 1914* (Cambridge University Press 1973)

⁴² Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 9; Diane Kirkby and Catherine Coleborne, 'Introduction' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 3.

To sum up this section, there are inseparable relations between colonisation, industrialisation and urban planning. Colonialism brought industrialisation to the colonies, with industrialisation necessitating urban planning. The following chapters of this thesis will discuss the relations between colonisation, industrialisation and urban planning by reviewing the British importation of urban planning to Hong Kong and the Japanese importation of urban planning to Taiwan, as well as their development in relation to. The discussion starts in the brief introduction in the next section with a focus on the importation of urban planning to Taiwan.

1.2 A brief introduction to Taiwanese urban planning and its legal authorities

This section provides a brief review of the current urban planning system and planning related laws in Taiwan to concisely introduce the hierarchy of Taiwanese urban planning and its legal sources.

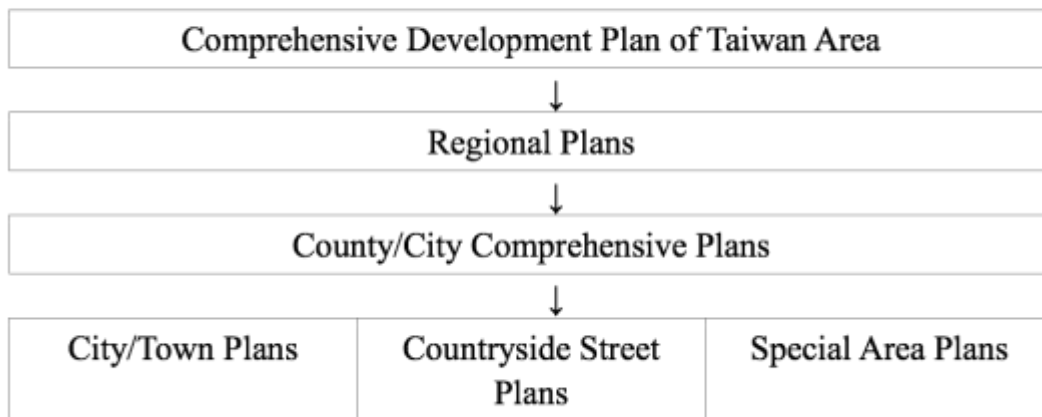
Modern urban planning was introduced in Taiwan during the early years of Japanese colonisation, which started in 1895.⁴³ While city plans and building controls were first set up in Taipei City (the name literally means north of Taiwan) and Taichung City (middle of Taiwan), Tokyo was the only city on the Japanese Mainland where a city plan had been implemented. In the 1930's, regional plans were established and implemented in three metropolitan areas (Taipei, Taichung and Kaohsiung in southern Taiwan), with city plans also applied to the construction of eight middle size cities and towns with designated populations ranging from 50,000 to 300,000. By the time Japanese colonists withdrew from Taiwan in 1945, 72 city plans had been published and implemented.⁴⁴ After the Second World War, the concept of English New Town

⁴³ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 5; Huang Wu-dar, *Studies on Taiwan Urban Planning under Japanese Rule 1895-1945 Volume 3* (SMC Publishing Inc 2003) 3.

⁴⁴ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 6.

was introduced, with the Chinese Nationalist Government initiating plans for two such towns.⁴⁵ The 1960s and 1970s saw more urban plans announced and applied to most cities and towns, while regional plans were promulgated and an integrated planning system, supported by the revised *Urban Planning Act* and *Regional Planning Act*, was accomplished.⁴⁶

Fig. 1.1 The hierarchy of Taiwanese urban planning



The Current Taiwanese planning system consists of four levels of planning, as shown in Figure 1.1. At the top of the system is the Comprehensive Development Plan of the

⁴⁵ The first wave of English New Towns was planned under the power of the *New Town Act* of 1946 and influenced by Ebenezer Howard’s Garden City movement that proposed self-contained communities surrounded by greenbelts, containing proportionate areas of residences, industry, and agriculture. The Chinese Nationalist Government published similar plans in 1955 and 1956 for Yunghe in northern Taiwan and Chung Hsin New Village in central Taiwan. Yunghe was designed with proportioned green fields that would occupy one ninth of the city area and have a planned population was 30,000. However, Yunghe eventually grew rapidly and became Taipei’s dormitory town with a population of 225,000 and green fields occupying only one percent of the city area. Regarding Chung Hsin New Village, it became the seat of the Taiwan Province Government with a population of approximately 25,500 as of 2016. All the buildings in the village are owned by the government, with development strictly controlled and carefully planned. See: Ebenezer Howard, *Garden Cities of To-morrow* (Swan Sonenschein & Co., Ltd. 1902); Robert Fishman, *Urban Utopias in the Twentieth Century: Ebenezer Howard, Frank Lloyd Wright and Le Corbusier* (MIT Press 1982); Liao Ying-chi, *Yesterday’s Garden City of Tomorrow: A Planning History of the Yunghe City* (Master’s Degree Thesis, Graduate Institute of Building and Planning, National Taiwan University 1999).

⁴⁶ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research, Chang Yung-fa Foundation 1993).

Taiwan Area, which concerns all of the Taiwan Area of The Republic of China.⁴⁷ The Comprehensive Development Plan was a national strategic plan that set out the spatial structure of Taiwan in accordance with the needs of Taiwan's long term socio-economic development plans. The latest version of the Plan was published in 1996 and targeted the year 2000. According to the Plan, western Taiwan would be developed into three megalopolitan regions - northern, central and southern megalopolises - along with the principal government initiative at that time: the Asia-Pacific Regional Operations Centre Plan. According to this plan, the cross-strait opening dialogue and economic exchange between Taiwan and Mainland China, would provide historical opportunities for the economic revitalisation of Taiwan.⁴⁸ The Comprehensive Development Plan delineated the spatial development guidelines for the Asia-Pacific Regional Operations Centre Plan. The Comprehensive Development Plan also bore the crucial task of tackling the problem of the deterioration of the environment and creating a better living environment.

At the second level of the Taiwanese planning system are the Regional Plans. A Regional Plan usually concerns more than a county or municipal city. Unlike the Comprehensive Development Plan, Regional Plans are statutory plans made under the authority of the *Regional Plan Act*. According to this, a Regional Plan can include the development and conservation of natural resources, land use plans and zoning controls, regional transportation plans, regional industrial development plans, public facility plans, tourism plans, environmental conservation plans and implementation plans. However, the main purpose of a Regional Plan is to stipulate the conditions of land use in non-urban areas. Since development plans in a Regional Plan are mostly laid out as aims or goals without proper legal measures to ensure their implementation in a given area, the legal enforcement of land use plans and zoning

⁴⁷ Taiwan Area legally refers to the effective governing area of the government of The Republic of China including two off-shore islands, Kinmen (Quemoy) and Matsu, and the nearby islets of the Pescadores chain, which excludes the Mainland Area governed by the People's Republic of China.

⁴⁸ Council for Economic Planning and Development, Executive Yuan, 'The Plan for Developing Taiwan into an Asia-Pacific Regional Operations Centre' (Council for Economic Planning and Development, 24th July 1997).

has become the main content of Regional Plans and stipulates the basic spatial structure of a region.

On the third level of the Taiwanese planning system are County/City Comprehensive Plans, which concern local comprehensive planning conducted by county and city governments. The plans are actually consultation plans that act as strategic guidance for local government planning operations and have no legal authority. A County/City Comprehensive Development is an integrated development plan that covers various sectors including industry, transportation, infrastructure, tourism, education, public health, finance and local administration.

At the bottom of the Taiwanese planning system are urban plans, including City/Town Plans, Countryside Street Plans and Special Area Plans. An urban plan is a statutory plan made under the authority of the *Urban Planning Act*, with zoning being the main content of an urban plan that stipulates the measures of land use planning. Therefore, an urban plan is the both the most impelling and confining regulation governing development control regarding urban areas, which gives a clear picture of the future appearance of a specific area and the layout of public facilities.

To sum up this section, there are four levels in the hierarchy of Taiwanese urban planning system, with Comprehensive Development Plan of Taiwan Area at the top being the national strategic plan and County/City Comprehensive Plans at the third level being the guide lines of County/City development. Both national and county/city comprehensive plans are non-statutory plans. At the second level and at the bottom of the hierarchy are statutory plans: Regional Plans and urban plans, with urban plans being the most restraining regulation governing zoning and development control.

1.3 The failure of urban planning in Taiwan

This section introduces some examples of the unsatisfactory results of urban planning practices in Taiwan to demonstrate its failure to realise its stated aims.

In terms of urban planning and the theories involved in planning, Taiwan did not fall far behind modern trends. As mentioned earlier, 72 city plans had been implemented in Taiwan by the end of the Second World War and new towns were initiated right after the war. However, the implementation of urban planning failed to provide sufficient affordable housing and public transportation, effective development controls and building controls. For example: in terms of development control, while most inhabitants in English towns have their own gardens, Taiwanese town dwellers mostly live in an apartment or a house without a front or back yard and without convenient access to green fields or open spaces.⁴⁹ According to Taipei City Government statistics,⁵⁰ there are 784 parks in Taipei, with most being so called “neighbourhood parks” that are no bigger than a small children's playground in a park in London. If only green fields or parks no bigger than 100 square metres were taken into account, Taipei's green areas would make for just 0.6 per cent of the city. Green fields in Taipei are severely rare compared to London's 20.8 per cent and Warsaw's 37 per cent.⁵¹ Whilst, in 2005, Taipei had a ratio of 4.95 square metres of green space per each single person, Paris measured 12.2 square metres, Seoul 13.0 square metres and Vancouver 23.9 square metres per person. In the 1910s, when the Japanese first

⁴⁹ According to Housing Statistics 2008 published by Department for Communities and Local Government (UK), 82 per cent of dwellings in England were houses or bungalows and 16 per cent were flats or maisonettes. In Taiwan, 34.78 per cent of dwellings were flats of apartment buildings. See: Directorate-General of Budget, Accounting and Statistics, Executive Yuan, 'Population and Household Census 2005' (2005).

⁵⁰ Public Works Department, Taipei City Government, 'The Annual Statistics of Public Works' (2006).

⁵¹ Department of Urban Development, Taipei City Government, 'The 1996 White Paper on City Development' (1996).

added city parks into the Taipei City Plan, their intention was 8 square metres per person.⁵²

Other examples also show the unsatisfactory results of urban planning practices in Taiwan. The lack of public transportation (especially rail transport) has contributed to too much increase in the number of motorbikes. Taiwan has very high rates of motorcycle ownership: 388.3 motorbikes per 1000 people in Taipei, 720 per 1000 in Kaohsiung and 576.4 per 1000 in the rest of Taiwan.⁵³ In comparison, grid-locked Japan has only 105 bikes per 1000 people, while in Europe, Great Britain has the lowest rate of ownership with about 20 bikes per 1000 people and Italy has the highest with about 159.⁵⁴ Slow progress in building infrastructure also resulted in the biggest crisis in the history of Taiwanese urban planning: the crisis of land reservation for public facilities. As the *Urban Planning Act* of 1964 states, the reservation of land for public facilities in a City Plan becomes void 15 years after a City Plan is published, if the land acquisition has not been completed. By the end of 1987, most City Plans were approaching the 15-year deadline since they had been published in or before 1973. There was a large amount of land reservation for public use that would expire on 5th September 1988.⁵⁵ If this had happened, more than half of the infrastructure in urban areas would not have been implemented. *“It would [have been] the total collapse of the urban planning system, the biggest disaster since post-WWII”*, according to Chang Jing-sen.⁵⁶

⁵² Ibid.

⁵³ Huang Huei-long, *The Comprehensive Planning of Kaohsiung Transportation Management* (Department of Transportation, Kaohsiung City Government 2005).

⁵⁴ Department for Transport (UK), *‘Compendium of Motorcycling Statistics: 2007 Edition’* (13rd December 2007).

⁵⁵ The total amount of land reservation for the public use which had not been purchased by the local governments was 20,000 hectares. It was 54.02 per cent of the total amount of the planned land reservation for the public use in urban areas.

⁵⁶ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993).

Nor did Urban planning meet the needs of the working class in Taiwan. Summer in 1989 saw the “Shell-less Snails campaign”, with the name of the campaign symbolising people lacking proper housing being like snails and lacking a shell to accommodate their bodies. More than 100,000 people joined the sleep-in campaign demanding affordable housing. People lay down in the streets of east Taipei, the busiest commercial section of the city, at a time when land prices in Taiwan were historically the most expensive. Activists argued that no housing policy to accommodate people had ever existed, but rather property policies were made to favour the interests of landlords and developers.⁵⁷ In 1990, various international surveys on living conditions and life quality in Asian cities concluded that Taipei was one of the most uninhabitable cities: it was deemed polluted, over-crowded, seriously congested and ugly.⁵⁸ The following year, even the Premier Hau Pei-tsun of Taiwanese government criticised Taipei for being the ugliest city in the world when he looked down from a helicopter, emphasising the illegal rooftop annexes/hubs everywhere in the modern city.⁵⁹

To conclude this section, although in terms of urban planning, Taiwan did not fall behind modern trends, the implementation of Taiwanese urban planning did not achieve the goal stipulated in *Urban Planning Act*: a planning and balancing development in city, town and rural settlements. The unsatisfactory examples include housing, transportation, development control, and building control, etc. To list the unsatisfied results is to lay down the background for this thesis’s further discussion: why urban planning does not achieve what it is supposed to achieve.

⁵⁷ Houseless Solidarity Union, ‘All Houseless in Taiwan United’ (16th August 1989).

⁵⁸ According to Sara Hammes and Laurie Kretchmar, ‘An Insider’s Guide to Seven Cities: From Seoul to Singapore’ (Fortune Magazine, 1st October 1990), Taipei was the Asian city that Western business travellers disliked most. The infrastructure of Taiwan’s capital was a wreck. The local architecture, which depended mainly on concrete, was as drab and gray as the skies above, which seemed perpetually overcast. And Taipei’s air pollution was severe. Getting around was almost as difficult here as in Bangkok. The Annual Report 1990 published by Population Action International had similar comments criticising the overcrowding and cramped living condition of Taipei since number of people per room in Taipei was 1.1 and traffic speed at peak hours were merely 18.4 km/hour. Also see: ‘The New Asian-Pacific Financial Centre?’ (Newsweek Magazine, 24th September 1990). It concluded that Taipei was still so ugly.

⁵⁹ National Architect Association, ‘Printed Selection of National Building Control Conference’ (1991)

1.4 A brief introduction to urban planning law in Hong Kong

This section makes a brief review of the current system of Hong Kong planning and its legal authorities by way of introduction to the hierarchy of Hong Kong urban planning and its implementation.

In Hong Kong, the Western trend of urban planning was imported directly from the West by the British.⁶⁰ The embryonic form of urban planning first arrived in the 1850s and matured during the second half of that century. Although Bristow argues that “*the earliest development was piecemeal and without a plan*”,⁶¹ the location arrangements and surveys of roads and building sites in the 1850s showed co-ordination with the requirements of commercial growth. The influx of Chinese people into Hong Kong in the 1850’s reflected the character of the colony: immigration to the frontier provided cheap labour. Demands for accommodation were acute and land auctions were held by the Land Committee to initiate development. Building controls were introduced and sustained by two interrelated mechanisms: Crown Leases of land auctions for development that established requirements asking lease holders to meet “*the satisfaction of the Surveyor of Her said Majesty*”;⁶² administrative orders were

⁶⁰ See Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, 1998) p.3. The British Colonial government set up not only the planning related ordinances and administrative bodies but also imported urban plans to Hong Kong which were conducted by British architects and planners. For example, the first long term comprehensive urban plan of Hong Kong, Hong Kong Preliminary Planning Report, was developed by Sir Leslie Patrick Abercrombie in 1948, who was the author of many town and country plans such as Dublin, East Kent, Thames Valley, Bath, Bournemouth, Oxfordshire, County of London Plan and Great London Plan and also the author of new town plans of Harlow, Crawley Harold Hill and Warwick, etc. The Hong Kong Preliminary Planning Report 1948 was commissioned under the Colonial Development and Welfare Scheme of British Empire to advise on town planning and it was found to have exerted considerable influence on the urban forms and planning issues of colonial Hong Kong. Also see Patrick Abercrombie, ‘Hong Kong Preliminary Planning Report’ (Hong Kong Government Printer 1948); Michael Havinden and David Meredith, *Colonialism and Development: Britain and Its Tropical Colonies, 1850-1960* (Routledge 1995) 206.

⁶¹ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984).

⁶² Edward G. Pryor, *Housing in Hong Kong* (Oxford University Press 1983) 4.

announced in the form of *Buildings Ordinances*, with penalties for contravention of the regulations.

Although it was not an industrialised city at the time, rapid urbanisation in the early development of Hong Kong was a product of industrialisation in the West.⁶³ Capitalism was imported to Hong Kong, and the little fishing village was transformed into a world trade hub. Hong Kong was on the periphery of global industrialisation and urban planning was needed so that the city could meet the requirements of rapid industrialisation.⁶⁴

History shows that modern urban planning in Hong Kong started in the early years of the 20th century: its first systematic and comprehensive urban plan was announced in 1922.⁶⁵ The main purposes of this plan included laying out land reservation for public facilities, regulating private buildings and proposing large reclamations on the sea front.⁶⁶ 'New Towns' were mentioned in 1947 in the Abercrombie Report.⁶⁷ The report was intended to cover long term policies and to plan a city with a population as large as two million.⁶⁸ Concepts similar to New Towns were actually proposed before Abercrombie. New settlements in New Territories were discussed in the Report

⁶³ The population of Hong Kong increased from 7,400 in 1841 to 23,900 in 1847. See: G. B. Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong University Press 1964).

⁶⁴ J. G. Browett, 'Industrialisation in the Global Periphery: The Significance of the Newly Industrialising Countries of East and Southeast Asia' (1986) 4(4) *Environment and Planning D: Society and Space* 401-418.

⁶⁵ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 41; Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing 1998) 3.

⁶⁶ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 41; Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing 1998) 3.

⁶⁷ Patrick Abercrombie, *Hong Kong: Preliminary Planning Report* (Crown Agents for the Colonies 1948).

⁶⁸ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 69; Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing 1998) 4.

of Housing Commission 1935 submitted by Secretary of Housing Commission, W. H. Owen. Owen also showed his commitment to public housing.⁶⁹ Before Owen, in 1922, a garden city scheme for development in Kowloon Tong contemplated a small community living in detached or semi-detached houses with small gardens, mirroring those of an English residential community.⁷⁰

The western trends of planning on the island has resulted in the current Hong Kong planning system. In Hong Kong, the key legal elements regarding development control include *Town Planning Ordinance*, *Building Ordinance* and lease conditions. *Town Planning Ordinance* is the legal source of the statutory Outline Zoning Plan and the Development Permission Area Plan that impose restrictions on plot ratio, site coverage and building heights. *Building Ordinance* gives legal authority to *Building (Planning) Regulations*, controlling plot ratio, site coverage, gross floor area, open space and bonus plot ratio for planning gain. The Regulations also control building standards, including natural lighting and ventilation, lane/street width and prescribed window provision.

Lease conditions are the foundation of Hong Kong's contractual planning. The Hong Kong government owns all the land in Hong Kong and releases land by way of long leases, known as Government Leases. The contract between the lessee and the Government is known as the Conditions of Sale. According to these conditions, lessees are required to comply with the Master Layout Plan, restrictions, maximum/minimum gross floor area, development period, design disposition, height restrictions and all other ordinances. Only when all the positive obligations of the Conditions are complied with will a Certificate of Compliance be issued to the lessee.

⁶⁹ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 54; Edward G. Pryor, *Housing in Hong Kong* (2ed edition, Oxford University Press 1983); Woo Man-lung, 'Hong Kong's City and Houses: An Introduction to Urban Sociology' in Chan Kam-wah, Woo Man-lung, Yu Wai-kam and Lee Chi-fai (eds), *The Development of New Towns* (Joint Publishing 1997) 111-130.

⁷⁰ Edward G. Pryor, *Housing in Hong Kong* (2ed edition, Oxford University Press 1983).

With regards to the hierarchy of current urban planning in Hong Kong, at the territorial level, there are the Hong Kong Planning Standards and Guidelines and Territorial Development Strategy, both of which are non-statutory plans. On the sub-regional, below the territorial, level, is the Structure Plan, which is also non-statutory. Statutory plans exist at the district level and include: the Outline Zoning Plan and Development Permission Area Plan. *Regulations of Use Classes* are stipulated along with the statutory Outline Zoning Plans. *Town Planning Ordinance* makes a provision for a Schedule of Notes to be attached to each statutory plan. The main mechanism of development control in Hong Kong is zoning, introduced under *Town Planning Ordinance*, with Use Classes working alongside planning permission.

Similar to Outline Zoning Plans, Development Permission Area Plans are enacted for developing areas in New Territories. Development Permission Area Plans also introduced zoning control and planning permission to areas not covered by an Outline Zoning Plan. At the lowest level of the planning system are the Outline Development Plan and Layout Plan, both of which are non-statutory plans. The function of an Outline Development Plan is to supplement a statutory Outline Zoning Plan and to show its land-use in greater detail. Being a departmental plan, an Outline Development Plan is prepared as a guide for land sales and for the reservation and allocation of land for public facilities. As with these plans, Layout Plans are departmental plans. They indicate detailed land use and the development proposal for an area covered by an Outline Zoning Plan and/or an Outline Development Plan. However, for particular reasons, separate plans need to be independently prepared. The particular reasons usually relate to the significance of localities, such as areas concerning urban regeneration and newly formed land.⁷¹

⁷¹ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing 1998) 27; Town Planning Board, 'Planning Guidelines' (Hong Kong Government Printer 2003).

By way of concluding this section, the table below shows the hierarchy of urban planning system in Hong Kong, as well as explaining the legal status of various plans and their relations.

Table 1.1: The Urban Planning System in Hong Kong

Plan	Level	Legal status
Hong Kong Planning Standards and Guidelines	Territorial Level	Non-statutory plan
Territorial Development Strategy		Non-statutory plan
Structure Plan (Sub-regional Planning Statement)	Sub-Regional Level	Non-statutory plan
Outline Zoning Plan	District (Local) Level	Statutory Plan
Development Permission Area Plan		Statutory plan
Outline Development Plan	District (Local) Level	Non-statutory plan
Layout Plan		Non-statutory plan

1.5 The failure of urban planning in Hong Kong

This section introduces some examples of urban planning's failure in Hong Kong.

As in Taiwan, modern urban planning started early in Hong Kong, falling not far short of modern Western practices. This said, whilst to some extent regulations concerning development control have been practically workable and legally effective, they have not been able to prevent over-urbanisation. De-centralisation of urban development can be noted in the 1922 Town Planning Scheme, even though the concept was never implemented successfully, and Hong Kong has become one of the highest density cities in the world. Most Hong Kong habitants live in the more than 7,500 high-rise buildings in Hong Kong. According to the Fact Sheet published by the Hong Kong S.A.R. Government in 2003, no city has more buildings over 150 metres high than Hong Kong (201 buildings over 150 metres).⁷² Though statistics show that the overall population density of Hong Kong is about 6,300 persons per square kilometre—⁷³ which is not much higher than London's 5,100— on Hong Kong Island the figure is more than 40,000. Its densest district, Kwun Tong, has 55,000 per square kilometre, more than Kensington and Chelsea, London's densest borough, which has almost three times fewer, at 15,177. New Towns (Sha Tin and Tseung Kwan O) in New Territories have a population density of around 35,000. Figures concerning land use analyses show that only about 21 per cent of land in Hong Kong has been developed. Among the rest, excluding uninhabitable areas or ecological reservations, more than 30 per cent of the land in Hong Kong is undeveloped land.⁷⁴

Hong Kong is a typical case of over-urbanisation, with a large percentage of the population living in over-crowded conditions. The over-urbanisation is certainly far away from the idea of garden cities in the early twentieth century. In this case, out-of-control urbanisation is not due to a lack of land, it is a symptom of the failure of urban planning.

⁷² Information Services Department, 'Hong Kong: The Facts' (Hong Kong SAR Government 2003).

⁷³ 'Population Distribution Projections for 2007-2016', Press release from Hong Kong's Information Services Department (Hong Kong SAR Government 7th December 2007).

⁷⁴ Council for Sustainable Development, 'First Sustainable Development Strategy' (Hong Kong SAR Government 2004).

The existence of “Cage People” is another such symptom. Government statistics from 2006 show that some 150,000 Hong Kong people lived in “inadequate housing”, including caged bedsits, cubicles, rooftop huts and hallways, despite the fact that Hong Kong has one of the largest public housing programmes in the capitalist world.⁷⁵ Charity organisation investigations say that there are approximately 4,000 “Cage People” who sleep in cages measuring 1.8 metres by 0.9 metres, usually stacked three high.⁷⁶ According to a Hong Kong government spokesperson, despite of their financial difficulties, one of the reasons people choose to live in bed-space apartments and cubicles is because they are mostly conveniently located, in urban areas.⁷⁷ A local press reported of a *“21st century tragedy to real estate and progress in which thousands of elderly citizens with incomes are forced to live in “cage” or “cubicle” homes.”*⁷⁸ “Cage People” represent another failure of Hong Kong housing.

To conclude this section, being a major global trade hub and financial centre, Hong Kong is home to some of the most densely-populated urban districts. This feature is also results from the long history of Western colonial planning: over-urbanisation, failure of development control and the existence of “Cage People” point us toward some of this system’s failures.

1.6 The main conceptual approach: McAuslan’s ideologies of planning law

⁷⁵ ‘Hong Kong’s Shame’ (The Standard 19th June 2006).

⁷⁶ The Cage People Report, ‘Society for Community Organisations’ (Hong Kong 2002); Siu-Keung Cheung, *Speaking Out: Days in the Lives of Three Hong Kong Cage Dwellers* (Duke University Press 2000); Dang Man Jyu and Wong Wo Peng, ‘Study on the Housing and Living Condition of the Low Income Singleton and Couple Elderly’ (The Hong Kong Council of Social Service 2013); Society for Community Organisations, ‘The Study of Cage Home, Compartment Rooms and Partitioned Flats’ (Hong Kong 2009).

⁷⁷ ‘Hong Kong “Cage Home” Rents Soar Above Luxury Flat’ (Reuters 28th April 2010)
<<http://www.reuters.com/article/2010/04/28/us-hongkong-poverty-idUSTRE63R2KY20100428>>
accessed 28th February 2015.

⁷⁸ ‘Hong Kong’s Shame’ (The Standard 19th June 2006).

In the introduction to this chapter, some theoretical concepts are introduced to explain how this thesis will review the development of planning and planning laws in Taiwan. We discuss “sanitation syndrome” in relation to the initiation of urban regularisation; colonial urbanisation will be explored to expose the way the colonial periphery was incorporated into the metropolitan core and helped build colonial cities that controlled surplus extraction. While characteristics of developmentalist states of Taiwan and Hong Kong are examined to reveal the roles of planning authorities at central and local levels, power blocs consisting of states and the socio-political forces which drive spatial development will also be reviewed. This thesis will discuss racial factors and urban informal sectors as well. With the discussion of racial factors, this thesis argues that in the cases of both Hong Kong and Taiwan, building regulations and planning implementation were adjusted according to the standards deemed appropriate to the segregated population. Spatial segregation ensured that social order be created without disturbing the overall power structure of colonisation. This thesis also discusses urban informal sectors and argues that informal sectors are actually a collective reaction to the real estate market in which the ownership of land deprives people of housing. While the concepts detailed above are discussed in various chapters of this thesis, this section introduces McAuslan’s three ideologies planning law which will continue to be relevant as the main conceptual approach of this thesis.

In the case of both Taiwan and Hong Kong, urban planning has failed to deliver its promises. In both cases the urban problems that industrialisation would bring were already evident when city plans were first drafted, but the solutions these plans proposed have not solved the problems arising since then. In reviewing the histories of urban planning in Taiwan and Hong Kong, this thesis aims to study the roles and characters of the two states and their respective apparatuses, as they functioned as decision making bodies in both areas, with particular attention to planning laws and city plans. As a set of institutions through which state power is exercised, state apparatuses are important because they offer the potential for strategic intervention by various economic interests, both domestic and international. By examining state

reactions to social changes and economic forces, this thesis investigates how states make decisions on planning matters (planning laws and city plans) and what factors have shaped the urban planning we see today. Reviewing laws on urban planning matters is a central part of understanding a state's intentions and operations. Of course, laws are not merely the legislative outcome of government intentions but also the compromised results of many differing interests and inclinations; conflict between these different interests do not cease when legislation is passed. Regarding planning laws, key actors - including government level, private sector interests and foreign political and economic forces - shape the form of planning legislation and also influence planning practices. By examining the socio-political context of planning law legislation in Taiwan and Hong Kong, we will be able to understand why a particular society embraces a specific system or ideology. Serious consideration of urban planning law in action and close observation of the process of implementation of urban plans will reveal how social groups react or resist state plans.

Law itself is also a major contributing factor to the disarray in planning. McAuslan outlines this in his three major planning ideologies, where he traces the emergence of planning law out of nuisance law. His analysis shows that the first prevailing ideology (against nuisances) of the maintenance and buttressing of private property has been the major supporting column in the superstructure of planning law.⁷⁹ McAuslan's second powerful ideology is that of public interest, an idea which emerged as part of the institutionalisation of public planning and tends to confer powers on administrators who are judged to be capable of determining the public interest. The third ideology is that of public participation which, despite having long-standing philosophical roots, is a relative newcomer to planning ideologies. It denies that the public servant has full knowledge, demanding direct public involvement and openness to social change.⁸⁰ McAuslan understood planning law to be:

⁷⁹ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 5.

⁸⁰ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980); Rachele Alterman, 'British Planning: A Troubled Look in the Mirror' (1982) 48 (2) *Journal of American Planning Association* 501.

“...far from being the golden metalwork of planning with all other aspects in a state of disarray... The law lacks objectivity and neutrality because it is based upon and is available to implement three distinct and competing philosophies or ideologies which dominate or conflict at different points of the system.... Firstly, that the law exists and should be used to protect private property and its constitution; this may be called the traditional common law approach to the role of law. Secondly, the law exists and should be used to advance the public interest, if necessary against the interests of private property; this may be called the orthodox public administration and planning approach to the role of law. Thirdly, the law exists to and should be used to advance the cause of public participation against both the orthodox public administration approach to the public interest and the common law approach to the overriding importance of private property; this maybe called the radical or populist approach to the role of law.”⁸¹

McAuslan warned that British planning laws, for example, were not a set of statutes and judgments with technical modifications that could be transferred for use in other countries with common laws. Arguing that the law is a partisan in the struggle for power and control over resources, and not a neutral referee policing the struggle, McAuslan took on the entire planning law establishment.⁸² The three ideologies of planning law he identified concern the conflicts that historically arose during the process of modern urban planning and its implementation. They are also relevant to urban planning's interaction with different socio-economic interests and influences. These three ideologies are often in conflict, which has formed the basis of dissonances within the planning system and public disenchantment with it. In the context of the United Kingdom, the ideologies do not exist independently of each other, but rather they: *“do not always come through so clearly nor must it be assumed that the courts always expose the ideology of private property or the planners and administrators the*

⁸¹ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 7.

⁸² Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980); Rachele Alterman, 'British Planning: A Troubled Look in the Mirror' (1982) 48 (2) *Journal of American Planning Association* 501.

ideology of public interest."⁸³ He regarded private property as providing the outer limits of any public involvement, ensuring that that co-existence between public interest and private property will always be on private property's terms.⁸⁴ While discussing the conflicts involving the third ideology, McAuslan believed that the difference between private property and public interest ideologies is likely to be more apparent than it is real, particularly when either is faced with public participation, a threat to them both.⁸⁵ McAuslan argued that usually public participation ideology has the losing hand, while the other two vie for first place.⁸⁶ He concludes that planning law has often been used to de-radicalise and ensure that its implementation occupies the same middle ground as the rest of the law and practice, in land use planning.⁸⁷ Nevertheless, as his third ideology indicates, planning law can also be a platform for the advancement of public participation in the land use planning process, not by virtue of the ownership of property but thanks to the "*more abstract principles of democracy and justice*"⁸⁸. From McAuslan's review on the ideologies of planning law, one can see that at any given point in time laws are being shaped and reshaped by the needs of society. Planning law is the product of social processes which develop within the context of overall societal development. Planning law is shaped by dynamic

⁸³ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 6; K. Wekwete, *Planning Laws for Urban and Regional Planning in Zimbabwe- A Review* (University of Zimbabwe 1989) 1.

⁸⁴ McAuslan did not spare judicial pronouncements from his poignant criticism. He argued that the courts have a clear and usually consistent bias: if confronted with a conflict between the ideology of private property and that of the public interest, they usually support the property owner. However, if confronted with a non-landowning citizen, they will usually support the authorities in the name of the public interest. Among McAuslan's many examples are judicial decisions involving the successful challenges of public health regulations by private property owners, as contrasted with the largely unsuccessful demands to enforce such regulations by community or tenant groups. See: Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 145; Karla Sperling, 'Going Down the Takings Path: Private Property Rights and Public Interest in Land Use Decision Making' (1997) 14 *Environmental and Planning Law Journal* 429.

⁸⁵ Karla Sperling, 'Going Down the Takings Path: Private Property Rights and Public Interest in Land Use Decision Making' (1997) 14 *Environmental and Planning Law Journal* 429.

⁸⁶ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980); Rachele Alterman, 'British Planning: A Troubled Look in the Mirror' (1982) 48 (2) *Journal of American Planning Association* 501.

⁸⁷ Rachele Alterman, 'British Planning: A Troubled Look in the Mirror' (1982) 48 (2) *Journal of American Planning Association* 501.

⁸⁸ R. Alastair, 'Legal Foundations for Public Participation in Environmental Decision Making' (1976) 73 *Natural Resources Journal*; Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 9.

phenomena such as political conflict and class struggle. Planning law, (the same in Taiwan and Hong Kong) being a platform of political and social advancement, acts as a legal and political mechanism that carries or mediates the conflicts between social groups.

Even in a non-common law country like Taiwan, the competing ideologies can be seen in the law; in planning law but also in other fields concerning land policy and development. The *Constitutional Law* states that *“the right of property shall be guaranteed to the people”* (Article 15), while freedom of contract is the core concept of Taiwanese *Civil Code*, guaranteeing that people have the right to dispose of property as they wish. On the other hand, the Constitution limits rights and freedom with a view to *“attain[ing] a well-balanced sufficiency in national wealth and people's livelihood”* (Article, 142). Article 142 of the *Constitutional Law* declares, *“The national economy shall be based on the principle of people's livelihood and shall seek to effect equalisation of land ownership.”* Article 143 also mentions the issue of the limits of ownership, stating that,

“Mineral deposits which are embedded in the land, and natural power which may, for economic purposes, be utilised for public benefit shall belong to the State, regardless of the fact that private individuals may have acquired ownership over such land.”

The Constitution's intention to restrain private property ownership is therefore obvious.

The Constitution's intention to put restrictions on land ownership does not stop there. Article 143 of the Constitution states,

“All land within the territory of the Republic of China shall belong to the whole body of citizens. Private ownership of land, acquired by the people in accordance with law, shall be protected and restricted by law. Privately-owned land shall be liable to taxation according to its value, and the Government may

buy such land according to its value. [...] If the value of a piece of land has increased, not through the exertion of labour or the employment of capital, the State shall levy thereon an increment tax, the proceeds of which shall be enjoyed by the people in common. [...] In the distribution and readjustment of land, the State shall in principle assist self-farming land-owners and persons who make use of the land by themselves, and shall also regulate their appropriate areas of operation.”

Article 143 of Taiwanese *Constitutional Law*, then, looks like the land policy of a socialist state, contradicting the fact that the state of the Republic of China has been a capitalist state most of the time since its birth, whether as Mainland China before 1949 or as Taiwan in the present day. Were we to think in terms of the competing ideologies of planning law in Taiwan, we would see that public interest is supported by administrators and planners but also by the Constitution.⁸⁹

In Hong Kong conflicts of McAuslan's three ideologies have a different outlook. The leasehold system in Hong Kong as a means of planning by contract is an instrument of the governmental allocation of private rights. Where such allocation is by means of auction, tender or negotiation, the means of allocation is contractual.⁹⁰ Contractual planning is based in private property rights: the government acts as land owner and leaser, allocating land as a private commodity through the market mechanism. Contracts of Crown lease are civil contracts which have never been subject to judicial review, since such a review would be impossible due to the private nature of such leases.⁹¹

⁸⁹ However the reality provides a different story from what the Constitution stipulates. Despite the Taiwanese *Constitution Law's* intention of agrarianism, Land Value Increment Tax on land transaction in Taiwan still fails to tax property owners' capital gains properly and land transactions become a legal trick for dodging tax. It will be discussed in Chapter 6 of this thesis.

⁹⁰ Samuel R. Staley, *Planning Rules and Urban Economic Performance: The Case of Hong Kong* (The Chinese University Press 1994) 97; Lawrence Wai-Chung Lai, 'The Leasehold System as a Means of Planning by Contract: The Case of Hong Kong' (1998) 69 (3) *The Town Planning Review* 254.

⁹¹ Lawrence Wai-Chung Lai, 'The Leasehold System as a Means of Planning by Contract: The Case of Hong Kong' (1998) 69 (3) *The Town Planning Review* 254, 255; Lawrence Wai-Chung Lai, 'Planning by

McAuslan's ideology of private property is reflected in this leasehold system of land auction, as is his second ideology, that of public interest. As Lawrence Lai argues, "*Crown leases are bona fide, de facto and de jure town plans drafted by the government which control land use and built form in a town.*"⁹² The leasehold system authorises the government executive powers to restrict land use to enhance the general welfare, as well as granting economic interests to the property developers. Hong Kong's period of statutory planning (since the first statutory town development plan came to existence very late in 1955) is relatively brief, compared with its one and a half century long modern urban history. This longer history of contractual planning has been played a crucial role in the development control of Hong Kong.⁹³ In government leases, the conditions attached are both enabling and restrictive, and public interest is considered to have written the lease.⁹⁴ The government, being simultaneously the leaser and the regulator of urban development, acts as both civil body and as public apparatus. These are definitely conflicting roles. While land auctions have been a stable financial source of governmental income, the consideration of maximising profit often overrides the possibility of attaching a condition of low density development to the contract.⁹⁵ Prices of auction are sustained by the expectation that the land can be developed to its fullest potential

Contract: Two Dialogues' in Emanuel Anderson and Stefano Moroni (eds) *Cities and Private Planning: Property Rights and Entrepreneurship and Transactions* (Edward Elgar Publishing 2014) 139.

⁹² Lawrence Wai-Chung Lai, 'Planning by Contract: Two Dialogues' in Emanuel Anderson and Stefano Moroni (eds) *Cities and Private Planning: Property Rights and Entrepreneurship and Transactions* (Edward Elgar Publishing 2014) 136.

⁹³ Though the first statutory plan of zoning control in Hong Kong, Outline Zoning Plan of Kowloon City, was introduced in 1922, the first statutory development plan which was the Yau Ma Tei Outline Development Plan came very late. It was exhibited in November 1955. Also see: Lawrence Wai-Chung Lai, 'Planning by Contract: Two Dialogues' in Emanuel Anderson and Stefano Moroni (eds) *Cities and Private Planning: Property Rights and Entrepreneurship and Transactions* (Edward Elgar Publishing 2014) 137.

⁹⁴ Samuel R. Staley, *Planning Rules and Urban Economic Performance: The Case of Hong Kong* (The Chinese University Press 1994) 99.

⁹⁵ Income of land auction has contributed most of Hong Kong government's surplus. See Lee Cheuk Ming, 'Private Property Market: The Myth of Non-Intervention Policy' in Kam Bing Kwong, Chui Wing Taki, Lui Tai Lok, Ip Chiu Ping and Hong Kong People's Council on Public Housing Policy (eds), *Criticism and Comments on Hong Kong Housing Policies* (Joint Publishing 1996) 89.

given the state of the market.⁹⁶ Meanwhile the lack of public participation meant that grass-roots organising against the auction and development is easily ignored.⁹⁷ The conflicts of McAuslan's ideologies in the leasehold system, and the complexities resulting from government being a developer and regulator can be seen here.

By reviewing McAuslan's argument of the ideologies and their conflicts in planning and planning law this thesis wishes to understand how planning law and plans were made, shaped and written, as well as their implementation in the respective societies of Taiwan and Hong Kong. This study assumes then, that plans and planning laws are products of social dynamics. Different agents intervene in the law and plans in their own way in accordance with their own interests. This dynamic process will be revealed and analysed in this thesis, by the examination of the specific agents and forces involved. Therefore, there are some key questions that this thesis will engage with while reviewing legislation of planning laws and the practice of urban planning:

- While the ideology of public interest is raised high to compete against the private property interest, who are the public and who represents the public?
- While there are conflicts between the ideologies, who are the referees mediating the conflicts and making critical decisions?

To conclude this section, planning law, acting as the vehicle of social conflict and resolution in the planning process, represents the state's and social agents' expectations and interpretations of socio-spatial development. By critically reviewing the legislation and practice of planning laws and by examining the conflicts of planning ideologies underpinning the relevant legislation and policies, this thesis will assess the

⁹⁶ Samuel R. Staley, *Planning Rules and Urban Economic Performance: The Case of Hong Kong* (The Chinese University Press 1994) 97.

⁹⁷ Lai Yuen Mei, 'Behind the Metroplan: Victims of Urban Regeneration' in Kam Bing Kwong, Chui Wing Taki, Lui Tai Lok, Ip Chiu Ping and Hong Kong People's Council on Public Housing Policy (eds), *Criticism and Comments on Hong Kong Housing Policies* (Joint Publishing 1996) 109.

role of state apparatuses in planning and the socio-economic forces that exercise influence on states, with particular regard to Taiwan and Hong Kong.

Chapter 2: The Importation of Urban Regularisation in Taiwan

Introduction

This chapter introduces the earliest stage of town planning in Taiwan. The urban regularisation of Taiwan, the embryo of modern planning, was imported by colonial Japan. Therefore the importance of building and development control in colonial cities and its relations with the emergence of imperial powers will be discussed in the chapter. Borrowing Swanson's concept of "sanitation syndrome", I argue that building and planning regulations were established to supply infrastructure in order to attract colonial settlers rather than for the welfare of locals.⁹⁸ City walls and houses in town centres were demolished to give way to the development of new Japanese districts and separate the Japanese settlers from Taiwanese. Urban regularisation resulted in the replacement of Chinese old towns by new city landscapes, accompanied by a centralised system of development control in the name of public interest, which met very little local resistance. During the process of implementation of urban regularisation, the public interest ideology overpowered the private property interest; however, urban regulations were stipulated on the needs of the colonists and therefore the definition of "public" included the Japanese, to the exclusion of Taiwanese locals. In the conclusion of this chapter, I would like to point out that the colonists used law to establish a racial hierarchy in the administrative system, presided over by the Japanese at the top and as part of which the Taiwanese were deprived of their legal rights. Urban regulations associated with racial bias were set up to eliminate the obstruction and resistance to urban regularisation. With the application of urban regularisation, colonial urbanisation took shape as did a spatial structure of racism. Law legitimated colonial governance and urban regularisation helped create the colonial urban system as the foundation for colonisation. In terms of ideologies of

⁹⁸ M. W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony 1900-1909' (1977) 18(3) *Journal of African History* 387, 419.

planning law, the public interest ideology, paradoxically, was adopted to protect the private interest of colonists.

2.1 Colonialism and urban regularisation in Taiwan

This section reviews how the Japanese colonists exercised their power in the early stages of colonialism. Colonial law was established by the regime and was instrumental in legalising the occupation and in denying local Taiwanese from participating in rule-making. A racialised hierarchy was established within the Imperial legal system for the purposes of defining a distinct population so that the colonists could maintain authoritative. Along with the introduction of colonial law, town planning was also imported to Taiwan to regulate the environment. Urban regularisation was born and implemented through law which brought the Colonist's order to the unruly land.

Initially, it was opium traders who proposed the acquisition of Hong Kong.⁹⁹ Hong Kong Island was first occupied by the British during the First Opium War in 1841 and then formally ceded by the Chinese Ching Dynasty in 1842 under the Treaty of Nanking. Regarding Taiwan, it was the Japanese Navy that lobbied for the occupation of Taiwan.¹⁰⁰ Following defeat in the Sino-Japanese Jia Wu war, in 1895 (the year of Jia Wu) by signing the Treaty of Shimonoseki (Ma Guan), Ching China ceded Taiwan and the Pescadores to Japan in perpetuity. The colonisation of Hong Kong and Taiwan was a typical product of imperial powers competing in the Chinese arena. By conquering China, world trade incorporated certain ports and areas as elements of a division of labour in a world-wide economy. Colonial cities were the major links between core

⁹⁹ Robert Blake, Jardine Matheson: Traders of the Far East (Weidenfield and Nicolson 1999).

¹⁰⁰ Yanaihara Tadao, Taiwan Under the Japanese Imperialism (Iwatami Shoten 1929).

and peripheral economies. They were sites for encounters between the representatives of capitalists and pre-modern social formations. Colonialism exercised its authority through the execution of the law; the rule of law was at the heart of colonial power. Law was instrumental in defining races and in deciding who would be the qualified subjects of the colonial empire.¹⁰¹ Locals in the colony, seen as savages, were denied a participative legal personality. Only the colonist was to provide civil and civilized order.¹⁰² *"There were no rights for the savages in this scheme, apart from 'rights' to have things done to them so as to bring them within the ambit of civilisation."*¹⁰³ Since a racialised hierarchy was established, it was assumed that the colonists could know and speak for the natives better than they could themselves and thence decided to act with an appropriate force. This racism was reflected in the socio-political accommodation which colonist governments imposed upon the original inhabitants and became part of the nature of governance in colonies.¹⁰⁴ In Taiwan, the aboriginals were categorised as either wild savages, cooked savages: wild and cooked savages were *"people outside the civilisation, animals wandering on the territory"*, according to Yasui Katsuji, then a Japanese judge.¹⁰⁵ Obviously most aboriginal people

¹⁰¹ For example, social and cultural separation of blacks and whites in North America was started when Virginia planters began establishing laws on the assumption that Africans were an inferior race. Slave codes were enacted in the 1600s to legalise slavery in New England, also the Barbados slave code was stipulated by the English in order to legalise slavery in the Caribbean island. Urban those provisions slaves were denied the basic rights guaranteed by English common law. The servitude of slaves was permanent and slave owners were allowed to mutilate or burn slaves alive. See S.E Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Harvard University Press 2001); S. E Hadden, *The Black Codes of the South* (T. B. Wilson University of Alabama Press 1965).

¹⁰² A. P. Thornton, *Doctrines of Imperialism* (John Wiley & Sons 1965) 158; Peter Fitzpatrick, 'Terminal Legality: 'Imperialism and the (De) Composition of Law' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 21.

¹⁰³ Peter Fitzpatrick, 'Terminal Legality: 'Imperialism and the (De) Composition of Law' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 20.

¹⁰⁴ Peter Fitzpatrick, 'Terminal Legality: 'Imperialism and the (De) Composition of Law' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 20, 21; Patricia Grimshaw, Robert Reynolds and Shurlee Swain, 'The Paradox of Ultra-Democratic Government: Indigenous Civil Rights in Nineteenth-Century New Zealand, Canada and Australia' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 88.

¹⁰⁵ Yasui, Katsuji presided courts in Taiwan between 1898 and 1917. See Yasui Katsuji, 'Wild Savage's Legal Status' (1907) 7 (1) *Notes on Taiwan Customs*.

did not even qualify as subjects of Empire. Nevertheless, according to the Japanese Imperial Parliament's interpretation of the Imperial Constitution, other natives in Taiwan, mostly Chinese Han people (the largest ethnic group), were merely objects of the Imperial rule and not citizens of Japanese Empire with political rights.¹⁰⁶ The law created distinctive populations in colonies so that the colonist, inevitably outnumbered, could maintain authority and induce acute fear.¹⁰⁷ In that setting, law was integral to the colonial regime's mission of hegemony. The law sought to affect a direct and primary relation between the government and the individual native by dominating intermediate factors. Take native custom and traditional rules as examples: they were recognised solely in subordination to the law of the colonist. The pervasion of colonist rule accords with the prime place set for law in the imperial project. Given the separation and containment of the natives and the denial of their participating in rule making, the colonist imported law from the outside which he claimed was a civilised law of universal value.¹⁰⁸ Imperial law was an instrument of creating civilisation by the colonist's standard and since the violence of imperialism was legitimated in its being exercised through law, law brought the colonist's "order" to the native's "chaos". Law was brought in to legalise the occupation and to develop the unruly land into a tamed built environment where the colonists could settle down and industrialisation, acquisition and exploitation could be enforced by the colonists and their law.¹⁰⁹

¹⁰⁶ Nakamura Tetsu, 'Colonial Law' in Ukai Nobushige (ed) *Essays on the Development of Modern Japanese Law* (Keisoshobo 1958) 191; Wang Tay-Sheng, 'Gaoshan People's First Experiences of Modern Rules of Law' (2011) 40 (1) *National Taiwan University Law Journal* 76.

¹⁰⁷ J. Evans and D. Philips, 'When There's no Safety in Numbers: Fear and the Franchise in South Africa - the Case of Natal' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 100, 102.

¹⁰⁸ Peter Fitzpatrick, 'Terminal Legality: 'Imperialism and the (De) Composition of Law' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 20, 21.

¹⁰⁹ A. Nandy, *The Intimate Enemy: Loss and Recovery of Self under Colonialism* (Oxford University Press, Delhi 1983) 69; Diane Kirkby and Catherine Coleborne, 'Introduction' in Diane Kirkby and Catherine Coleborne (eds), *Law, History, Colonialism: The Reach of Empire* (Manchester University Press 2001) 2, 3.

The concept behind the possession of Taiwan was different from that of the possession of Hong Kong. The occupation of Hong Kong Island was of great value to Britain for securing and expanding valuable Chinese trade, which was also an integral part of Indian trade.¹¹⁰ While the colonial focus in Hong Kong was commercial, the focus in Taiwan was rural. Initially, the main function of occupying Taiwan was the production of agricultural and mineral products and raw materials.¹¹¹ Despite the differences between their colonial functions, the manifestations of colonialism were equally urban. As King's studies on European imperial powers indicate, the political, administrative and economic role of its cities and towns shaped colonial urbanisation. Colonial cities controlled surplus extraction and subsequently their increasingly significant roles as markets, centres for consumption and "theatres of accumulation".¹¹² Colonial urbanisation became the instrument by which the colonial periphery was incorporated into the metropolitan core. For each of the main colonial powers, a colonial urban system was established, from the metropolitan capital and port cities, through to a network of colonial port cities, colonial capitals, regional and district centres, and down to the outlying stations of the colonial bureaucracy and system of military control. All were linked by transport, communications, and subsequently, electronic and other media.¹¹³ The colonial urban system was the operations-headquarters that dominated the politics and economies of the colonies. It located state organisations, police and military, bank, commerce, trade brokers and transportation etc. It was the vein through which the imperial powers flowed out to control to every corner. The colonial urban system represented the colonial power; and colonial cities and their institutions were emphatically instruments of colonisation.

¹¹⁰ Frank Welsh, *A Borrowed Place: The History of Hong Kong* (Kodansha America Inc. 1993) 19-23.

¹¹¹ Thomas Gold, 'Colonial Origins of Taiwanese Capitalism' in E. A. Winckler and S. Greenhalgh (eds), *Contending Approaches to the Political Economy of Taiwan* (Studies of the East Asian Institute, Columbia University 1990).

¹¹² Anthony D. King, *Global Cities: Post-imperialism and the Internationalisation of London* (Routledge 1990); A. D. King, *Urbanism, Colonialism, and the World-Economy: Cultural and Spatial Foundations of the World Urban System* (Routledge 1990).

¹¹³ Anthony D. King, *Urbanism, Colonialism and the World Economy* (Routledge 1991); Warwick Armstrong and T. G. McGee, *Theatres of Accumulation: Studies in Asian and Latin American Urbanisation* (Methuen 1985).

The importation, legislation and implementation of urban planning law and urban plans in colonies shaped the colonial urban system and inscribed the disparities between colonists and colonised in the form of the built environment.¹¹⁴

Goto Shinpei, Chief Officer of Civil Affairs of Taiwan during the early years of Japanese colonisation (1898-1906), understood the importance of colonial cities. In that era, his department was in charge of all interior affairs related to the colony, including military actions. As Chief Officer, Goto acted as the chief executive officer of government who possessed legislative, executive and judiciary powers. In fact, since the Governor, General Kodama, who also retained ministry positions in the Japanese cabinet, had been absent from his Taiwanese administration most of his tenure, Goto was the person who actually ruled Taiwan.¹¹⁵ Goto emphasised the importance of building *“Taiwan as a place suitable for the Japanese to have the intention to stay forever”*.¹¹⁶ In order to do so, it was essential for the colonial government to police the native people and environmental conditions. He relieved the military police from their social security duty but gave the police more administrative powers for the reason that police were more capable of penetrating local society. In five years, 32,000 people were executed by the police under *Bandits Criminal Ordinance*. That was more than 1 per cent of the then whole Taiwanese population.¹¹⁷ The police state was introduced, as was the policy of “policing the environment”.¹¹⁸

¹¹⁴ Anthony D. King, *Urbanism, Colonialism and the World Economy* (Routledge 1991); Robert K. Home, *Of Planting and Planning: The Making of British Colonial Cities* (Taylor & Francis 1996); Jo Beall and Sean Fox, *Cities and Development* (Routledge 2009).

¹¹⁵ Chang Lung-chih, *Scientific Colonialism and Colonial Modernity: Goto Shinpei and Japan's Civilising of Taiwan 1898-1906* (North America Taiwan Studies Conference, Madison, Wisconsin, U.S.A. 4th-6th June 1999).

¹¹⁶ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 9.

¹¹⁷ Shiomi Shunji, *Secret Diaries of Taiwan During and After the War* (Kochi Newspapers 1985).

¹¹⁸ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993).

Under Goto's governance, modern town planning was introduced to Taiwan. Japanese engineers and their western experts' previous involvements in the transformation of ancient Edo into the most modern city of Tokyo were selectively adopted as a reference to their emergence as a colonial power. One of the first things Goto Shinpei did was to make plans to raze the Taipei city wall as the initial step in the modernisation of "Taihoku" (i.e. a modern Japanese Taipei).¹¹⁹ Taipei was expected to be the blueprint for the wide ranging economic and social transformation plans for Taiwan Island. Emphasis on the importance of urban infrastructure and regulating environmental surroundings were repeated in his policy statements and personal letters.¹²⁰ Even in the latter years of life, Goto still often mentioned his ideas about colonialism, "*The priority (in the colonies) is to set up schools, then build (Japanese Shinto) temples, then facilitate hospitals. That would attract immigration and make (Japanese) people have the intention to stay forever.*"¹²¹ Goto's priority was obvious: a regulated environment was needed for the colonists to settle down permanently. Goto's modernisation of Taiwan was a profitable investment. Author and editor of his biography, and also his son-in-law, Tsurumi calculated the cost/profit ratio of the colonisation of Taiwan: in the first seven years of the occupation, the (Japanese) central government subsidised Taiwan with ¥27.3 million and the total volume of trade of the Taiwanese contribution to the Japanese economy was ¥15.2 million, making the cost/profit ratio 55 per cent. "*Assuming it is an investment to a commercial company, 55 per cent of net profit in seven years was quite an achievement*", Tsurumi said.¹²² According to Hsu Chieh-lin, since Tsurumi's calculation did not include the profit of about ¥3 million a year created by the Japanese monopoly on the opium trade, the actual ratio which would have been more than 100 per cent.¹²³ Hsu's version is

¹¹⁹ J. R. Allen, 'Reading Taipei: Cultural Traces in a Cityscape' (2000) 3 Harvard Studies on Taiwan: the Taiwan Workshop. More about the transformation of Taiwanese towns of Chinese characteristics to "modern" Japanese cities will be discussed later in this chapter.

¹²⁰ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993); Tsurumi Yusuke, *Goto Shinpei* (Taiheiyō Kyōkai Shuppanbu 1943).

¹²¹ Nagao H. B., 'The Vestige of Earl Goto' (1929) 8(6) *Urban Question*; Takagi T., 'Earl Goto and Taiwanese Urban Sanitary System' (1929) 8(6) *Urban Question*.

¹²² Tsurumi Yusuke, *Goto Shinpei* (Taiheiyō Kyōkai Shuppanbu 1943).

¹²³ Hsu Chieh-lin, *Criticisms of Praising Japanese Colonialism* (Wen Yin Tang Publisher 2006).

consistent with the fact that since 1905 Taiwan had been financially independent on Japanese subsidies.¹²⁴

To sum up this section, colonial urbanisation was implemented in Taiwan by the Japanese in order to amass agricultural and mineral products and raw materials, therefore a colonial economic system was able to be set up for the expansion of the Empire's accumulation of capital. The Japanese-imported modern town planning emphasised the importance of regulating environmental surroundings. Urban regularisation was adopted with a view to policing the environmental conditions, the police state was also introduced to control the native people, the purpose of both these measures being to make Taiwan a place suitable for the Japanese. During this process of policing Taiwan, law served to bring the colonist's "order" to the native "chaos" and the violence of occupation was legitimated. Urban regularisation, enforced by the colonists and their law, developed the unruly land into a tamed environment.

2.2 The sanitation syndrome and urban regularisation

After reviewing the relation between colonisation and urban regularisation in Taiwan, this section reviews the implementation of urban regularisation and its correlation with public health concerns in detail. The Japanese government made sanitation a priority, and urban regularisation started with improvements to the sewerage system. Before City Plans were introduced in the 1930s, building codes and other legal enactment of urban regularisation were all sanitation related. Nevertheless, accompanying this campaign of urban regularisation, an island wide construction

¹²⁴ Provincial Bureau of Accounting and Statistics 'Statistical Summaries of the Province of Taiwan for the Past Fifty-One Years (1946); Chih-ming Ka, Japanese Colonialism in Taiwan: Land Tenure, Development and Dependency, 1895-1945 (SMC Publishing Inc. 1995) 53.

scheme was implemented to demolish Chinese style old houses, religious and community centres in town centres and city walls, and cities were expanded to allocate Japanese residential and organisational buildings. To accommodate the colonist's needs, urbanisation was in progress on a nationwide scale.

In the initial stages of urban planning history in Hong Kong and Taiwan, public health related urban regulations were the foremost task of the British and Japanese colonist states. Fears of endemic diseases forced the colonists to regulate surrounding conditions. The promulgation of sanitary regulations ensured that modern administrative centres, military quarters and commercial and residential areas for colonists were well established to accommodate the functions of the military and bureaucratic apparatus. As Goto's "intention to stay forever" suggests, the establishment of towns and regulations for the surrounding conditions were to supply the infrastructure to attract colonial settlers and not for the welfare of locals. As Swanson pointed out in his study on colonial Africa, sanitation syndrome was considered of first importance for the health of colonists themselves. Japanese sanitation syndrome was initially required because of the huge number of Japanese soldiers who died of malaria.¹²⁵ Epidemics happened whenever the Japanese troops invaded Taiwan. During the Botan Tribe Incident of 1874, the Japanese military doctor, Ochiai Taizo's record showed that whereas only eight Japanese soldiers (of a total of 3,600) died in the battle, 547 died of diseases.¹²⁶ General Saigo Tsugumichi and his troops had to retreat back to Japan. It was the first Japanese military invasion of a foreign country since the Meiji Restoration; the administration was shocked by the fact that modernised troops were defeated not by local tribes, but an endemic disease.¹²⁷ After the Sino-Japanese Jia Wu War, during the Japanese invasion of Taiwan in 1895, only 146 Japanese soldiers died in the battles whilst 4,642 died of

¹²⁵ M. W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony 1900-1909' (1977) 18(3) *Journal of African History* 387-419.

¹²⁶ Ochiai Taizo, *Medical Records of Botan Incident in Meiji Year 7* (1874).

¹²⁷ Mizuno Jun, *Personal Diaries on Conquering Savages* (1930).

malaria the same year. 26,094 soldiers were infected, with 21,748 of them needing to be sent back to Japan for treatment.¹²⁸ These historical events were considered by some Taiwanese scholars with expertise in Taiwanese history as proof that the Taiwanese were naturally unhygienic when compared to the modernised Japanese troops and colonists. Taiwanese people's Chinese cultural inheritance was blamed for the insanitary living conditions and for exporting the diseases.¹²⁹ On the contrary, plagues also actually occurred in Japan at that time, such as cholera outbreaks lasting more than twenty years. Learning from the struggle of the Japanese 1877-1895 Cholera outbreaks, in 1896 the Japanese Prime Minister, the Secretary of State of Navy and the Taiwanese Governor arrived in Taiwan to investigate sanitary conditions.¹³⁰ Instead of sending religious missionaries like western countries, the Japanese government made sanitation its priority. This was called the "taking care of sanitation first".¹³¹ Horiuchi, had served as a military doctor when the 1895 invasion occurred and then later took the position of Chancellor of Taipei Medical School, witnessed that *"no doubt the authorities' priority on governance is sanitary. Without improving [this], the government cannot proceed the governance."*¹³² Writing in his memoirs, of his arrival in Taipei in 1895, he stated that:

*"heat disease, cholera and beriberi could be seen everywhere but we did not know how to start the investigation. What was heat disease? No one understood it. How many kinds of epidemic diseases were there in Taiwan? There was no such survey. There were no western modern hospitals and schools. We felt like just entering into darkness."*¹³³

¹²⁸ Ide Hidekazuta, 'Governance in Taiwan' (Taiwan New Daily News 1937).

¹²⁹ Li Siao-fong, 'The Chinese Plague' (Liberty Times 12th May 2003).

¹³⁰ Ide Hidekazuta, 'Governance in Taiwan' (Taiwan New Daily News 1937).

¹³¹ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993).

¹³² Horiuchi Tsugio, 'With the Japanese Expedition to Taiwan: A Memoir of the Invasion' (1942) 10 Southern Folklore.

¹³³ Ibid.

“Heat disease” was later identified as Malaria.¹³⁴ However, the panic over this mysterious “heat disease” reflected colonists’ anxiety about facing an unknown world. If the colonists wished to stay, native people and the environmental surrounding needed to be regularised. City regularisation was introduced, which later formed the template for Taiwanese urban planning.

Urban regularisation started with improvements to the sewerage system in cities. In 1896, the administration initiated plans to build new sewer systems in Taipei and Taichung. A Scottish engineer, William Kinninmond Burton, was invited in 1877 by the Meiji Government of Japan to become the first Professor of Sanitary Engineering and lecturer in Rivers, Docks and Harbours at the Imperial University of Tokyo and working in the Japanese Home Office (Department of Civil Affairs). He arrived in Taiwan in 1896 to start his survey and was appointed Sanitary Consultant to the Governor in 1897. Burton was expected to act like Sir Joseph Bazalgette, the Chief Engineer of the Metropolitan Board of Works and workaholic builder of 83 miles of interceptor sewers, had in London. Burton worked in Taiwan for only 3 years before dying, in 1899 aged 43, of constant overwork and liver infection.¹³⁵ With his students, such as Hamano Yoshiro, who was then an Engineer in the Taiwanese Civil Affair Department, he set up a foundation for modern sanitary engineering and city planning. Burton is remembered as “the father of Taiwanese tap water.” In 1897, Burton and Hamano submitted the ‘Proposal of Sanitary Engineering Designs in Taipei and Other Areas’. From this proposal, and with the approval of the Governor, water supply engineering in northern Taiwan was implemented. According to Burton and Hamano’s suggestion, construction was carried out along with road engineering, such as work broadening streets and building new roads. In 1898, the Taiwan Central Sanitation Committee was set up, with Hamano appointed as a member. 1899, *Taiwan Sewage Regulations* were recommended by the committee and approved by the Governor. According to the

¹³⁴ ‘The History of Public Health in Taiwan’ (Health Bureau, Executive Yuan 1995) 156, 188.

¹³⁵ Ide Hidekazuta, ‘Governance in Taiwan’ (Taiwan New Daily News 1937); Ann Jones, ‘The Life and Legacy of William Kinninmond Burton’ (September 2006) Leopard Magazine.

Regulations, sewage systems were categorised as both private and public systems. The central and local health/sanitation authorities would be in charge of building and maintaining public systems and establishing the standards for all systems. Any development or improving of private sewers would need the local authority approval. This was the earliest building permission order applied to all inhabitants of Taiwan.

In the same year, a building control regulation applied to town dwellers was introduced. The Governor's Order Number 30, *Notice on Building and Land in the Planned Areas of Public Facilities* announced that "for the purpose of (constructing) parks, roads and sewage systems and the planned public facilities and official buildings, any activities of building and improving dwellings must seek the local authorities' approval and permission." This was actually an order of a building ban implemented in advance of the enforcement of an urban plan, imposed 2 months before the publication of the first Taiwanese urban plan in history, the Taichung Inner City Regulation Plan.¹³⁶ The original legislation of the building ban on land reserved for public infrastructure became the legal foundation for eliminating the obstructions associated with compulsory acquisitions.¹³⁷

However, Order Number 30 did not cover building codes. In 1900, the Governor's Office passed the *Taiwan Dwelling Building Regulations* and its sub-regulations. A more comprehensive system of building control was enacted to regulate all buildings, including new constructions and existing houses, to ensure safety (fireproof and structure) and sanitation (ventilation, lighting and hygiene). The regulations gave local officials extra powers to demolish dangerous buildings and evict occupiers. For example, when a plague attacked Taipei in 1907, and 963 cases of infection were recorded, 125 houses were categorised as unhygienic buildings and demolished

¹³⁶ The order would endure for more than 36 years until the *Taiwan Urban Planning Order* was promulgated in 1936 and adopted as Section 9 of the new order.

¹³⁷ Huang Wu-dar, *Studies on Taiwan Urban Planning under Japanese Rule 1895-1945 Volume 3* (SMC Publishing Inc. 2003) 3, 22.

according to the legislation.¹³⁸ The regulations also standardised arcaded “Qilou” (pedestrian side roads) and made them a legal requirement.¹³⁹ Qilou was a traditional element of Chinese architecture and a popular building form in tropical and semitropical Chinese towns. The Japanese were therefore not experts of Qilou since there was no need to have sidewalks such as this in Japan, but the northern colonists in semitropical Taiwan did have need of them for walking and shopping in the shade. The shaded corridors kept pedestrians from the sun and rain. Qilou had to be made a standard element of urban regularisation so that the semitropical climate could be conquered.

Taichung Inner City Regulation Plan was the first integrated urban regulation plan to target a specific area. This began with the Governor Office’s plan to build a new sewerage system, with Burton and Hamano the men in charge of the design. In April 1899, the Report of Taichung City Street Area Design was submitted and the following year, the Taichung Inner City Regulation Plan became very first Taiwanese development control plan. In the plan, street blocks were laid out to straighten the irregular lanes and aisles. Roads were widened. Winding water streams in the inner city area would be straightened as well. Later in the same year, the Taipei Inner City Regulation Plan was announced. The main content of these plans included plans for infrastructure, such as roads, water supply, bridges, railroads, parks, markets, slaughter houses, crematoriums and cemeteries. Sanitation syndrome dominated the city regularisation plans. As part of Burton’s design for Taichung, sewage ditches were laid on both sides of the street, and these effluents flowed by force of gravity to underground pipes. So as to use sunlight to kill bacteria, streets did not run in east-west/north-south directions but were diverged fifty five degrees off the meridian. However, the design exposed residents and pedestrians to direct sunlight and heat

¹³⁸ ‘Taiwan Affairs’ (Taiwan Governor-General Office 1922); Huang Wu-dar, *Studies on Taiwan Urban Planning under Japanese Rule 1895-1945* Volume 3 (SMC Publishing Inc. 2003) 3, 10.

¹³⁹ Article 4 of the 1900 Regulations states: “*Houses built on the rode sides shall have arcaded pedestrian paths (Qilou)*”. It was the very first time in Taiwan history that Qilou was stipulated in a legal document.

stroke.¹⁴⁰ Both the Taichung and Taipei Plans were an emergency measure in reaction to colonists' fear of endemics. The intramural plans only covered inner city areas.

Urban regularisation schemes and urban regularisation in general are not legislations stipulated and announced by the colonial authority; they are terms that describe the implementation of building controls from the earliest years of the Japanese colonisation until City Plans were introduced, and Inner City Plans and Urban District Plans were replaced (in the 1930s). Urban regularisation started with the planning and building of sewerage systems, with the policing old towns to give way to the development of new Japanese districts as its main motive. Old houses in town centres and city walls were demolished; temples, religious and community centres of natives were demolished, or moved and rebuilt. City centres were expanded. Re-generated zones were preserved to accommodate government organisations and the Japanese and separate them from the Taiwanese.

In the case of Taipei, as mentioned previously in this chapter, the Taipei town of Chinese characteristics was converted the Japanese Taihoku. The initial step in the modernisation of Taihoku was to make plans to raze the Taipei city wall, which reflected earlier patterns of modernisation in Tokyo.¹⁴¹ In traditional Chinese urban design the city wall functioned as a practical and symbolic measure of imperial power. The wall provided the military protection of administration; it delineated the city centre, with multiple walls marking the concentration of power in that centre; and it formalised the relationship between the urban commercial/administrative activity and the rural agricultural support.¹⁴² By razing walls, expanding the city centre and creating roadways and boulevards that encircle and pass through the city, Japanese

¹⁴⁰ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993).

¹⁴¹ J. R. Allen, 'Reading Taipei: Cultural Traces in a Cityscape' (2000) 3 *Harvard Studies on Taiwan: the Taiwan Workshop*.

¹⁴² Arthur Wright, 'The Cosmology of the Chinese City' in G. W. Skinner (ed), *The City in Late Imperial China* (Stanford University Press 1977) 33, 73.

urban regularisation made Taipei into a blueprint for the wide ranging transformations within Japanese colonised Taiwan.¹⁴³ Filling in intramural space was also part of the Japanese urban regularisation. In terms of residential housing, Japanese-style new houses were built throughout the city area, but particularly in the area east and northeast of the old walls. The entire area was transformed, over time, into a Japanese style neighbourhood, which stood in contrast to the older suburban areas of Mengjia and Dadaocheng, with their southern Chinese style architecture and (in Dadaocheng) European commercial buildings dating from further back.¹⁴⁴ During the urban regularisation of Changhua, in central Taiwan, in order to accommodate the Japanese and their organisations, 11 out of the 36 temples registered with “Temple Accounts” in 1905, were completely demolished and gone, and 12 were partially demolished. In total 23 temples were damaged by the regularisation.¹⁴⁵ As in Taipei, the Chinese town’s spatial texture was transformed.

A series of instances of implementation of urban regularisations are included in the table below. (The list is in order from North to South.)

Keelung: In Keelung, Urban District Plan was announced in 1907.

¹⁴³ J. R. Allen, ‘Reading Taipei: Cultural Traces in a Cityscape’ (2000) 3 *Harvard Studies on Taiwan: the Taiwan Workshop*

¹⁴⁴ *Ibid.*

¹⁴⁵ According to Aoi Akihito's study, some temples were cut off a slim part by the planned road; some were cut out off a corner. It could have been easily avoided by adjusting slightly the location of roads. The Japanese authorities just did not care to do so though there is no evidence that the Japanese deliberately destroyed the religious/community centres. See Aoi Akihito, *Changhua 1906: Urban Regularisation Initiation* (Common Master Press 2013) 102, 105.

- Taipei: In Taipei, sewerage engineering started in 1896.
In 1899, Taipei Inner City Regulation Plan was published.
In 1911, a typhoon damaged and destroyed thousands of dwellings in Taipei, with the colonial authority taking the opportunity to build new three-storey commercial buildings on some business streets in urban areas.
In 1912, the construction of the Governor's Office started. The site was located close to the original Taipei administrative hall of the Ching Dynasty secretariat. Aspects of Japanese colonial architecture was the main character, including a façade facing east and a creative blend of European elements (Renaissance, Baroque and neo-Classical features). Between 1912 and 1915, four streets nearby were widened. Buildings were partly demolished and their facades reconstructed. Baroque or Renaissance styles replaced the original Min style fronts.
In 1920, following the expansion of the Inner City Regulation Plan, urban regularisation was expanded to nearby areas.
- Shinchu: The Urban District Plan was published in 1905, followed by the implementation of urban regularisation.
- Taichung: In Taichung, the Inner City Regulation Plan was published in 1900.
In 1911, the Plan was extended to a larger scale; straight streets were laid out and the newly rising city was expected to be transformed into the largest city in central Taiwan. Commercial buildings in a Japanese colonial style were built in newly developed urban areas.
- Changhua: In Changhua, the Urban District Plan was published in 1906 and large scale urban regularisation started in 1933.

- Chiayi: Regularisation started in 1902, with demolition of the original Chinese style city walls to give way to the expansion of the city. In 1906, a powerful earthquake destroyed houses and killed more than 1,000 people. The Urban District Plan was published after this earthquake. The city was to be transformed to a city full of Japanese-style architecture.
- Tainan: In Tainan, the largest city in southern Taiwan before Kaohsiung took that position saw the construction of sewerage and other infrastructure start in 1902. The Urban District Plan was published in 1911.
- Kaohsiung: In Kaohsiung, the first Urban District Plan was published in 1908. In 1911, the colonial authority decided to develop Kaohsiung Port and a modified Plan was drafted.
- Pintung In Pintung, construction of the sewerage system started in 1907, with a Street Plan proposed in the same year. The Urban District Plan was published later in 1913.

Besides the listed plans and actions, eight smaller towns began to implement urban regularisation during the 1910s, although most only started this after the 1935 earthquake hit central Taiwan.¹⁴⁶ The campaign of urban regularisation was accompanied by an island-wide construction scheme. Sea ports were built in northern Taiwan, in Keelung, and in southern Taiwan, in Kaohsiung, for the purpose of agricultural transportation to Yokohama, in Japan, and to Japanese occupied Southern Manchuria.¹⁴⁷ The western line railway stretching from north to south was completed in 1908 to connect the two ports and most of the urban regularisation

¹⁴⁶ Huang Lan-Siang, 'Urban Regularisation in Taipei City in the Earliest Years of Japanese Occupation' (1995) 18 *Taiwan: A Radical Quarterly in Social Studies*; Huang Wu-dar, *Studies on Taiwan Urban Planning under Japanese Rule 1895-1945 Volume 3* (SMC Publishing Inc. 2003).

¹⁴⁷ Kaohsiung Harbour Bureau, 'History of Kaohsiung Port'

<http://ebooks.lib.ntu.edu.tw/1_file/khb/063002/index_m_061.html> accessed 1st April 2015.

areas.¹⁴⁸ It was the biggest engineering project in Taiwan's history, and was met with the criticism that it revealed the collusion between the colonial government and conglomerates in Japan. The systematic engineering of this infrastructure provided the foundation for colonial accumulation, exploitation and governance.¹⁴⁹ According to Huang Lan-Shiang, early urban regularisation was mostly applied only to city centres where the Japanese would reside or already resided. The construction of sewerage systems was not extended to non-Japanese districts. Taiwanese dwellings gained very little from regularisation. Regularisation and demolition were met with some resistance but most petitions were ignored. Regularisation was carried out by an army of engineers and police. Under the rule of the colonial military regime, Taiwanese cities were intrusively policed and re-structured.¹⁵⁰

Accompanied by the campaign of urban regularisation, a centralised planning system was established to make sure that the central government would be in charge of leading plans, of monitoring works and of the engineering of local urban regularisation. In May 1897, the Taipei Urban Planning Committee was set up by the governor's office in order to "perfect the design of sanitation facilities".¹⁵¹ In accordance with the *Rules of Taipei Urban Planning Committee*, Goto, the Chief Officer of Civil Affairs, was appointed chairman. Of the 15 official members appointed, 13 were central government officials, including 9 from the Civil Affairs Department and 4 from Military Affairs. Only 2 members were Taipei County officials.¹⁵² Later that year, in August, the Tainan Urban Planning Committee was set up to make and review urban plans for southern Taiwan. It also belonged to the Governor's Office with the same composition

¹⁴⁸Watanabe Keinoshin, *Taiwan Railways* (Shunju Shuppansha 1939)

¹⁴⁹ Aoi Akihito, *Changhua 1906: Urban Regularisation Initiation* (Common Master Press 2013) 44.

¹⁵⁰ Huang Lan-Siang, 'Urban Regularisation in Taipei City in the Earliest Years of Japanese Occupation' (1995) 18 *Taiwan: A Radical Quarterly in Social Studies*.

¹⁵¹ 'History of Taipei City Development' (Taipei City Archives 1983) 12.

¹⁵² Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 13.

as the Taipei committee.¹⁵³ In November of the same year, the Governor's Order Number 31 proclaimed that *"all urban plans [must] be submitted for the governor's approval to become effective"*.¹⁵⁴ In 1902, the Tainan Committee was dissolved and handed over its duties and work to the then expanded Taipei Committee, which was reorganised in 1910 and renamed the Taiwan Governor's Office Urban Planning Committee. The Governor's Order 56 of 1904 and Order 65 of 1905 clearly represent the principal of centralising planning power. They stipulated that before local authorities approved any civil engineering, including roads, rivers, ditches, irrigation and improvements to existing unplanned roads and sewage, the plan, budget, maintenance plan and start/finish date needed to be submitted for the governor's approval so that urban planning matters could be integrated and coordinated.¹⁵⁵ A similar order was given to county mayors in 1911, stating that:

"general affairs on urban regularisation and changes and alterations of routes and sewage in the following areas: 1. towns/cities where the county hall sits; 2. towns/cities with a population of 1000 households or more; 3. new towns, the local authority shall prepare the detailed plan with reasons and submit it to the governor's office".¹⁵⁶

The order stretched out central government power to all towns, including those situated in non-urban planning areas. It also emphasised the principle of centralisation and forced local authorities to pay extra attention to planning matters.

The centralisation of urban planning declared it to be a national concern of colonisation. Instead of being understood as directions and measures facilitating local government autonomy, urban planning matters were all taken over by the Governor's Office. In 1936, the publishing of the *Order of Urban Planning* emphasised once more the authority of the central government in urban planning. Article two of the Order

¹⁵³ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 13, 15.

¹⁵⁴ Order Number 31 (issued on 22nd November 1899).

¹⁵⁵ Order Number 56 (issued on 6th June 1904); Order Number 65 (issued on 31st March 1905).

¹⁵⁶ Issued by Civil Affairs Department in July 1911.

stipulated that “*areas of urban planning and urban plans will be decided by the Governor of Taiwan based on the opinions of the Taiwan Urban Planning Committee*”.¹⁵⁷ The principle was opposite to practices in western countries and resulted from the Japanese Central-government-lead colonisation because the Governor’s Office dominated almost all matters of infrastructure and state-owned companies, including road, sewage, water supply, electricity and telephone services. Few were delegated to the local governments.¹⁵⁸ Another reason for centralising urban planning was the necessity for authoritarianism in policing development and building. Nation-wide comprehensive, spatial developments were needed to serve colonial purposes: with Taiwan being the Japanese advance guard for the expansion of its Empire towards southern Asia, building and planning were focused on serving this single objective. The needs of local inhabitants were not the priority. Nevertheless, local governments at that time were not autonomous bodies so it would not have made much difference even if planning power had been given to them.

¹⁵⁷ Article 2, *Order of Urban Planning* 1936.

¹⁵⁸ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 16.



Map 2-1: Cities of urban regularisation and the western railway

Urban regularisation was a Japanese import. It started in 1888 with the announcement of the *Tokyo Urban District Regularisation Ordinance*, the *Ordinance*

of Dwelling Building and the *Tokyo Urban District Regularisation Ordinance's* by-law, *Regulations of Land and Building Control in Tokyo Urban District*. It was the very first development control and urban plan in the history of Japan, and it was met with serious opposition. The Japanese Senate vetoed the proposed *Tokyo Urban District Regularisation Ordinance* and its by-law for the reason that it was a luxurious expenditure that would lead to financial difficulty. People of Tokyo voiced their opinions against the Ordinance with the reason that the proposal would affect their livelihood and ownership. Nevertheless, the central government insisted on the passage and implementation of the law. Eventually a compromise was reached: *Tokyo Urban District Regularisation Ordinance* and its Regulations would be enacted; the central government and Tokyo City authorities could go ahead with the scheme but it would only be applied to the Tokyo area. Meanwhile the legislation of *Ordinance of Dwelling Building* was abandoned.¹⁵⁹ Therefore, for the next thirty years, while Taiwan was having more than sixteen urban district plans of various scales implemented, Tokyo was the only area with an urban plan in Imperial Inland Japan. Not until after the Great War did rapid urbanisation lead to the necessity of reconsidering the luxurious investment. In 1918, the government announced that the rules and regulations of the *Tokyo Urban District Regularisation Ordinance* would be applied to Kyoto, Osaka, Nagoya, Kobe and Yokohama. Kyoto was the oldest capital still surviving in Japan, with the other four cities being international ports with a rapidly growing population. Thirty years had passed since the original Ordinance was introduced.¹⁶⁰

The *Tokyo Urban District Regularisation Ordinance* was controversial and met with opposition whereas the Taiwanese version of urban regularisation, met little resistance, the reason being that it was a colony: Order Number 63 of 1896 authorised the Japanese Governor absolute power to govern Taiwan, including enacting laws without having to obtain approval from the imperial Japanese state. Order Number 63, often called the “Six Three Law”, was legislation pushed by the military authorities

¹⁵⁹ Kawana Kichiemon, *Urban Planning* (Dai Mei Dou, 1972).

¹⁶⁰ Committee of Land Policy Research, ‘Land Problem of Japan’ (Economy Planning Council 1970).

in Tokyo. There were 6 articles in the law which stipulated that the Taiwanese Governor-General's Office had the power to enact executive ordinances applied to his governing area. The ordinances would have the same legal efficacy as laws. Additionally, while ordinances would be stipulated and decided by the Commission of Taiwanese Governor's Office and submitted to the Governor-General's for their approval, in the case of emergency, the Governor-General would be able to announce ordinances directly, without the Commission's decision. The Six Three law, in a practical sense had placed the Taiwanese outside of the protection of Japanese constitution and deprived them of their rights of citizenship.¹⁶¹ Although constitutionally Taiwan was a legal territory of Japan, the Japanese imperial government's attitude made it clear that the issue of how law should be applied to Taiwan was a matter of governance rather than of interpretation of the Constitution.¹⁶² While the Governor-General received broad law-making powers to issue executive orders, the colony constituted a legally separate territory that the colonial government ruled with little interference from the cabinet or legislature in Japan. Since Order Number 63 was an intrusion on Parliament's legislative powers, a three-year limit was set for it. This was prolonged twice until the replacement of the law was announced in 1907. However, the principle of the Governor having absolute legislative power over Taiwan stood firm in the re-enactment and the re-enactment's substitute until the Japanese colonial regime surrendered Taiwan to the Allies in 1945.¹⁶³ When the Six Three Law was announced, the Governor of Taiwan was Count Kabayama Sukenori, who had been a field commander (Fleet Admiral) during the First Sino-Japanese War and the commander (Major General) of the Japanese invasion force of Taiwan. He had total control over military, executive and legislative powers. A military general acting as Governor was the typical political arrangement between

¹⁶¹ Marie Seong-Hak Kim, *Law and Custom in Korea: Comparative Legal History* (Cambridge University Press 2012) 106, 107.

¹⁶² Wang Tay-Sheng, *Legal Reform in Taiwan under Japanese Colonial Rule* (Linking Publishing 1999) 74, 76.

¹⁶³ Wang Tay-Sheng, *Legal Reform in Taiwan under Japanese Colonial Rule* (Linking Publishing 1999) 76, 77; Marie Seong-Hak Kim, *Law and Custom in Korea: Comparative Legal History* (Cambridge University Press 2012) 106, 107.

1895 and 1919 and from 1937 to 1945.¹⁶⁴ The head of the state apparatus having authoritarian control over military, executive and legislative powers reflects the fact that the colonial regime did not need to consult native habitants or meet the approval of their representatives to implement urban and building regulations.

In conclusion it was sanitation syndrome that initiated Japanese urban regularisation in Taiwan. Learning from the experience of Japanese Cholera outbreaks between 1877-1895, as well as the defeat of Japanese troops by endemic disease in Taiwan, doctoring of sanitation first was imported to regulate environmental surrounding. However the campaign of public health related urban regularisation was organised to supply the infrastructure for the benefits of colonial settlers and not for the welfare of Taiwanese locals. Accompanied by a centralised system, early urban regularisation was mostly applied to city centres where the Japanese resided and construction of infrastructure was hardly extended to non-Japanese districts. The implementation of regularisation was supported by legal enactments, for example building permission of private sewers and building ban was introduced and legal foundation was set up to eliminate the obstruction associated with compulsory acquisitions. Nevertheless local officials were legally empowered to demolish buildings and evict occupiers. While old houses in town centres and city walls were demolished in the name of sanitation, city centres were expanded with newly developed infrastructure to exclusively accommodate colonial government organisations and the colonists. The racial separation which was resulted from urban regularisation was carried out by a mixed army of engineers and police therefore Taiwanese cities were being intrusively policed and re-structured. Compared to the campaign of urban regularisation in Tokyo which met severe resistance, the Taiwanese version went smoothly because of the Japanese Governor having absolute control over military, executive and legislative powers over Taiwan.

¹⁶⁴ Yang Bi-chuan, History of Taiwanese Rebellion under Japanese Occupation (Daw Shiang Publishing 1998).

2.3 Conclusion

Unlike urban regularisation in Tokyo, which met with serious opposition, in Taiwan it was implemented in all major cities. During the process, in terms of McAuslan's ideologies, public interest ideology seemed to overpower private property interests. Despite this dominance, decisions of urban regularisation and building controls were taken by engineers in the colonial government based entirely on the needs of the colonists, whilst colonised natives were not considered as part of "the public". Law established a racial hierarchy system with the Japanese settlers at the top, "wild savages" at the bottom and Chinese Han people in the middle. Native Taiwanese were deprived of constitutional rights. Accompanied by the racial system, Order Number 63 and the urban planning-related law in Taiwan were set up to eliminate the obstruction associated with urban regularisation. Providing, as it did, infrastructure in city centres for the colonial settlers, urban regularisation generated a spatial structure of racism. The colonists' fears of endemic disease exercised a powerful influence on their regulating surrounding conditions and created the spatial apartheid. Sanitation syndrome was considered of greatest importance for the colonists themselves rather than for the welfare of locals, which was reflected in the ordinances of urban regularisation. With the application of urban regularisation, colonial urbanisation was shaped and the occupied cities were transformed. The colonial urban system became a major instrument of colonisation. Being a state created and sustained by military force, the colonial state exercised its authority through the law and administrated accumulation, exploitation and acquisition through its spatial plan. Law legitimated colonial governance and urban regularisation provided the foundation for colonisation. Regarding the competing ideologies of planning law, though on appearance the public interest ideology had the winning hand actually it was adopted to support and protect the private interest of colonists, who represented a part, and not the whole, of the public.

Chapter 3: The Emergence of Urban Regularisation in Hong Kong

Introduction

This chapter focuses on the rise of colonial urbanisation in Hong Kong. As in the case of Taiwan, discussed in the previous chapter, sanitation syndrome will be highlighted as the primary reason initiating the early phase of land-use control. Sanitation rules were the principle motivation for interventions concerning private property rights, with contractual planning at that time being the crucial mechanism regularising land use. Since all Hong Kong land belonged to the British crown, the leasehold system as a land management measure attained development control via land sales and contracts. Besides contractual planning, British administrative machinery was also introduced to deal with land-use and establish sanitary rules. Sanitation concerns ran throughout the whole of the nineteenth century in Hong Kong, and this chapter will argue that the early history of town planning in Hong Kong is rather more a history of public health. This chapter will also show that the evolution of land use control and sanitation rules did not develop independently from the outside world. The importation of the public health movement from England helped shape development control in Hong Kong.

3.1 The rise of colonial urbanisation in Hong Kong

This section reviews the earliest stage of colonial urbanisation in Hong Kong. On the surface it would seem that military power initiated the British occupation of Hong Kong, but really colonisation was driven by mercantile interests: British batteries were mobilised to protect British merchants' trading rights with China and Hong Kong was gradually developed as a new establishment of mercantilism.

The Japanese Economist and Chancellor of Tokyo University (1951-1957) Yanaihara Tadao compared Japanese colonialism to its German and British counterparts, arguing that while Japanese occupations were led directly by the Japanese imperial government, "*western colonists' occupations resulted from activities of monopoly capital. Chartered trade companies led and pushed the states to initiate the acquisitions*".¹⁶⁵ The opium trade, which predated the decision by the Japanese navy to occupy Taiwan by 54 years, was the real motivating factor. Opium had been a crucially important part of Britain-India-China trade triangle which financed the British importation of tea and provided a large proportion of the revenues for both the Indian and British governments.¹⁶⁶ Britain seized Hong Kong after the opium trade wars. Initially, British colonialism in Hong Kong during the earliest stage of the occupation was different from Goto's modernisation policy in Taiwan. The small island was only seen as a temporary lodging port for the shipping business during the earliest years of colonisation. The colonial government had no intention of investing in or of developing the infrastructure for locals. For Europeans, it long remained an insalubrious station in which people who had made enough money were only too glad to quit. The imperialist's intention was aimed at inland cities and ports like Shanghai and Canton. When the first Administrator of Hong Kong, Charles Elliot, seized Hong Kong island in 1841 by signing the Convention of Chuenpee, the conditions of the agreement were unacceptable to the British government because Hong Kong was deemed a small, desolate and bleak island that was rocky, wind-swept, mountainous and with a population of merely 4000 (or less), of which some 2000 were boat dwellers. Hong Kong was too far away from the Yangtse River estuary, which was likely to become the most important trading area in China. Even after the armed forces and British traders treated the island and harbour as an undisputed British possession (ratified by the Nanking Treaty), Foreign Secretary of State Henry John Temple, Viscount Palmerston, still did not favour the acquisition of Hong Kong. He and his merchant advisors' preference was for the island of Chusan, a prosperous and well-

¹⁶⁵ Yanaihara Tadao, *Taiwan Under the Japanese Imperialism* (Iwatami Shoten, Tokyo 1929).

¹⁶⁶ Robert Blake, *Jardine Matheson: Traders of the Far East* (Weidenfeld and Nicolson 1999) 121.

cultivated island with a population of one million.¹⁶⁷ After being censured for inadequately representing British mercantile interests, Elliot was relieved of his duties and reassigned to Texas in 1842. This was a demotion.

In 1843, under the Treaty of Nanjing 1842, Hong Kong Island was publicly proclaimed a British Colony. The Charter of 5th April 1843 erected Hong Kong and its dependencies into a colony and established therein a law-making body: the Governor, acting by and with the advice of the Legislative Council. Sir Henry Pottinger, the Plenipotentiary and Superintendent of Trade, who used to be in the service of the East India Company, was the first governor of Hong Kong. According to a letter written by Lord Stanley, the Secretary of State for War and the Colonies, Sir Henry Pottinger was told that he had three functions: to negotiate with the Chinese Emperor, to superintend the trade of British subjects in China and to regulate the internal economy of the settlement.¹⁶⁸ These statements and Sir Henry Pottinger's appointment as the governor made the role of Hong Kong clear. It should not exist only as war booty but also as a site of mercantilism. Once the new colony was recognised by the treaty, the need for a proper administration was immediately apparent. In response to recommendations forwarded from Hong Kong in July 1843, the Secretary of State for the Colonies set out a schedule in September 1843 for the new establishment, including a Surveyor-General who was to be in charge of public works and land rent, and the Public Works Department that was to oversee the administration of land, roads and other public works. Thus, by 1843, not only had there already been an attempt to plan the further development of urban areas but a basic administrative mechanism had also been established.¹⁶⁹

¹⁶⁷ George B. Endacott, *Government and People in Hong Kong 1841-1962. A Constitutional History* (Hong Kong University Press 1964) 16; Robert Blake, *Jardine Matheson: Traders of the Far East* (Weidenfield and Nicolson 1999) 109.

¹⁶⁸ George B. Endacott, *Government and People in Hong Kong 1841-1962. A Constitutional History* (Hong Kong University Press 1964) 20.

¹⁶⁹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 25.

Transshipment brought urbanisation to the coastal areas of Hong Kong Island and Kowloon. Besides commercial activities, military factors were also an element contributing to the development of built-up areas. Since the occupation took place in war-time conditions, and under the noses of the Chinese military who had two forts near the tip of Kowloon Peninsula, British batteries quickly set up camp at strategic locations in the settlement. Forts were set up to accommodate and hospitalise troops, and to provide close protection of British interests. A Victorian town, named Victoria, was set up jointly by merchants and administrators. The core of urbanisation was on the north-facing base of Victoria Peak, which started primarily because of the location of the major administrative buildings, including the court-house, the gaol, the post office, the hospital, churches, government offices and officials' residences. The commercial-administrative characters of the central business district were developed and a market established. A shanty village, consisting of a higgledy-piggledy assemblage of bamboo huts and mat sheds in the harbour area was replaced by docks and warehouses. The emergence of Victorian neoclassical buildings suggested the atmosphere of the Anglo-Indian model.¹⁷⁰ Flagstaff House, an impressive colonial style house constructed in the 1840s, embodied the merchants' and the government's joint participation in the urbanisation process: situated in the centre of the northern coast, it had originally been the headquarters of Jardine, Matheson and Company, before being the headquarters for the British Military, and was later converted into a residence for the commander of the British forces.¹⁷¹ Very near the Flagstaff House site, Matheson erected his mat shed "godown" (warehouse) only a month after the Union Flag had been hoisted, and the warehouse was soon rebuilt in stone, the first solid building on the island. The lots at the centre of the northern coast were surrounded by the military, with the Government later deciding to requisition them in 1843. Jardine, Matheson and Company left the Centre and purchased further plots from the government's land sale to develop East Point, having decided to make it its headquarters instead of Macao or Canton. The merchant firms that, like Jardine,

¹⁷⁰ Ian Kelly, *Hong Kong: A political-geographic Analysis* (The Macmillan Press Ltd 1987) 44; Robert Blake and Jardine Matheson: *Traders of the Far East* (Weidenfield and Nicolson 1999) 111.

¹⁷¹ Ackbar Abbas, *Hong Kong: Culture and the Politics of Disappearance* (University of Minnesota Press 1997) 67.

Matheson and Company, operated from Macao and Canton, played a major part in the development of Hong Kong which led to the acquisition. In continuation of Palmerston's hesitancy, in 1841, his successor, Earl Aberdeen, ordered all building operations to be stopped because he considered that the occupation would cause a *"certain expense, the nature of our relations with that strange empire, and the probable embarrassment it would create with other Powers."*¹⁷² Stanley, at the Colonial Office, was equally reluctant. However, Stanley feared that the government might have to give away over Hong Kong: *"all classes, Military, Civil and Mercantile, are conspiring to force us into its adoption"*.¹⁷³ His description stated precisely that mercantile interests were the real driving force of Hong Kong's development.

According to Blake, Major-General Lord Saltoun in 1842 wrote a vivid account of early British life on the island. He had been told that there were only four houses in September the previous year, and *"now they have a street nearly a mile and a half long, most of the houses finished and inhabited, good shops of every kind, a bazaar and a covered market place"*.¹⁷⁴ In 1844, Jardine, Matheson and Company's headquarters were moved to East Point from Macao. The firm's principal office was to remain in Hong Kong from that day to the present. A Victorian settlement arose. In 1851, the administration made the first modest attempt at co-ordinated reclamation of the water front. The new settlement there, of quay facilities for handling growing commerce, was proposed for economic reasons. Expansion from the original central area between Ice House Street and Western Market was rapid. By 1851, Boham Road and Caine Road were being developed. Almost at the same time, the settlement spread both west and east; westwards to Sai Ying Pun and eastwards to Bowrington (Causeway Bay), which was the new reclamation completed in 1858. By 1860, the expansion of the settlement reached Robinson Road and up the hill slopes of the Peak. In the east, by the end of the nineteenth century, the settlement was expanded to

¹⁷² Robert Blake, Jardine Matheson: Traders of the Far East (Weidenfield and Nicolson 1999) 111.

¹⁷³ Ibid. p112.

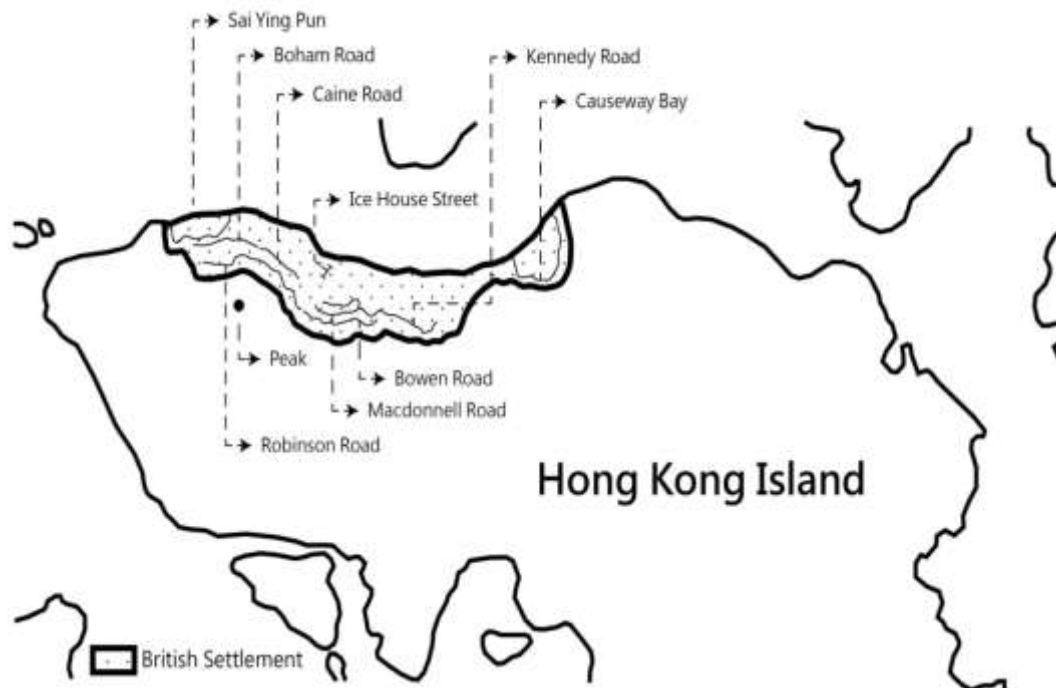
¹⁷⁴ Ibid.

Kenny Road, Bowen Road and Macdonnell Road. In the west, Kennedy was laid out in the 1880s. Hong Kong was developed as a British town on Chinese soil and became an entrepôt for European merchants' trading with China, in which opium was for many years by far the most important item. Governor Bowring, who submitted the Blue Book for 1858, proudly emphasised that Hong Kong was a magnificent harbour "*inviting flags of all nations which there is nothing in its legislation to repel,*" as well as the colonists bringing free trade and justice that "*produce a most salutary effect on the minds of the Chinese people*".¹⁷⁵ It had become a free port and commerce was the reason for its existence.

To conclude this section, mercantilism was the driving force behind the establishment of Hong Kong. Once publicly proclaimed a British colony, the machinery was set up to oversee the administration of land and implement public works. The colonial government's participation in the urbanisation was helped by merchants. The expansion of Hong Kong continued specifically so that the city could be maintained as an entrepôt, one interlocking part of the international trade-triangle of China, India and Europe.

¹⁷⁵ Colonial Office Record, 'Dispatch from the Government of Hong Kong' (CO 129/67, 1858); John M Carroll, 'Colonialism and Collaboration: Chinese Subjects and the Making of British Hong Kong' (1997) 12 (1/2) China Information 12, 35.

Map 3.1 The early British settlement in Hong Kong



3.2 Contractual planning

This section introduces the origins of contractual planning which is one of the mechanisms that conducts Hong Kong's land-use, a system based on a leasehold-land system introduced by the colonial administration. That system was a government means of allocating private rights by contract. By selling long leases on a contractual basis, the Hong Kong colonial administration had an incentive to provide contractual terms, obligations and rights to the leaseholders that would maximise the value of land. By introducing contractual planning, the colonial authorities also specified and enforced the administration's land-use planning consideration and influenced the urbanisation of Hong Kong.

In the time before a comprehensive planning system was introduced, plans allocating buildings and land use were mostly piecemeal, meeting the immediate needs of trade expansion and the influx of Chinese workers, but lacked an overall long term vision. Contractual planning, at that time, was the crucial mechanism which allowed colonist government to be the land owner as well as to setting land-use development, and controlling individual site planning cases. Land auctions guaranteed property rights and development with conditions that specified limitations on development and use, and developers' obligations towards public interest issues. Contractual planning in Hong Kong has been an arena where McAuslan's first and second competing ideologies, the traditional common law approach and the orthodox public administration approach, contested against each other. The legal source of contractual planning is common law. The legislation in the Charter of 5th April 1843 initially provided for the wholesale reception of English law,¹⁷⁶ with English law thus becoming the main legal source in Hong Kong. Common law concepts, including the precedent doctrine, judicial review, respecting individual property rights and the principle that law emerges from judicial decisions rather than from the legislature, were all imported in this period. The legal machinery enforced the rule of law, regulating the relationship between the administrative body and the inhabitants. It also provided the fundamental rules for economic development. The importation of the British administration and English legal system profoundly influenced Hong Kong's economic activities and also formed an essential part of urban planning in Hong Kong for almost 140 years. One of the most important elements introduced by Britain was Crown Leases, which was set up as the means of development control over urban planning.

Since the ratification of the Nanjing Treaty, the Hong Kong Government has been the landlord of virtually all land, with all land held on leases granted by the Crown. The role of the Hong Kong Government has been comparable to that of the aristocratic

¹⁷⁶ Peter Wesley-Smith, *The Sources of Hong Kong Law* (Hong Kong University Press 1994) 89.

landlords of eighteenth century London.¹⁷⁷ Under the leasehold system, the government allocated land parcels to individuals by auction or private treaty grant. According to Bristow, although the formal position of Hong Kong as a permanent British settlement had to await the Treaty of Nanjing in 1843, the former form of modern town planning in Hong Kong concerning the control of land use was founded in the form of contractual planning in 1841.¹⁷⁸ The first issue undertaken by the Hong Kong Government Gazette was a preliminary notice regarding land sales. The rapid development of Hong Kong was noted, and the arrangement of land that could be developed properly for suitable purposes was discussed, in this article. The authority (Superintendent of Trade and his advisers) went to work, carefully devising a system to encourage and control building.¹⁷⁹ The provision of land for housing, offices and business premises had become an important issue. *“Many merchants saw that if Hong Kong became a British colony, land would become valuable, and there was competition to get good sites partly as a speculation”*.¹⁸⁰ In the Gazette, the ‘Public Notice and Declaration of 1st May 1841’ detailed the *“principles and conditions upon which allotments of land will be made, pending Her Majesty’s further pleasure.”*¹⁸¹ The notice went on to set up the principles of tenure, rent and building development for proposed allotments. Prospective land owners were permitted to choose their own sites with government approval.

The leasehold system as a land management measure attained development control via contracts, with the government’s land-use control playing a crucial part in fitting

¹⁷⁷ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong*. UCL Press (London 1996) 82; D. J. Dwyer, *Asian Urbanization: A Hong Kong Casebook* (Hong Kong University Press 1971) 25.

¹⁷⁸ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 21.

¹⁷⁹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 22.

¹⁸⁰ George B. Endacott, *A History of Hong Kong (Revised Edition)* (Oxford University Press, Hong Kong 1973) 28.

¹⁸¹ Hong Kong Government Gazette. (1941) 1(1) 11, 12.

dwellings by enforcing leasing conditions, planning and implementing new developments. Lease conditions also provided the government with an opportunity to intervene in property rights. Crown land auction leases for building development normally required that the leaseholder,

*“shall well and sufficiently repair, maintain, pave, purge, scour, cleanse, empty, amend and keep the messuage or tenement... and all walls, rails, lights, pavements, privies, sinks, drains and whatsoever, the whole to be done to the satisfaction of the Surveyor of Her said Majesty.”*¹⁸²

The Crown, as universal head lesser, also gained one significant advantage from the system: closer contact with and control over the land by means of the lease and its content. Above all, the Crown was put in the same position as a private property owner who sought to develop it by leasing it on short leases to others who undertook its development as a speculative activity, which would, it was hoped, prove profitable to them. The Crown could and did specify what general conditions should be complied with in relation to the development of land under the condition of land sales at public auction. This was as important in the case of the urban development of formerly non-urban land (also as it was in the case of later urban renewal). Since the Crown controlled development in this way, the terms and conditions on which a lease was granted, including withholding execution of the lease until the conditions of sale had been complied with, it was within its power to specify and enforce planning considerations that it felt were desirable in a particular area. As Evans presents, it played a more direct role than could, say, the government in the United Kingdom or any other Western European country.¹⁸³

Therefore, the property and development rights of the landowner (the lessee) were defined explicitly by the “conditions of sale” and then by the subsequent conditions contained in the contract between the government and the purchaser, called the

¹⁸² Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 4.

¹⁸³ D. M. E. Evans, ‘Some Legal Aspects of Urbanisation in Hong Kong’ in D. J. Dwyer (ed), *Asian Urbanisation: A Hong Kong Case Book* (Hong Kong University Press 1971) 25.

“lease document”. These conditions were interpreted as part of common law. The rights of the lessee included the exclusive right to use land for specific purposes (as defined by the “user clause”), the exclusive right to transfer the whole part of the use or income rights to another individual (such as assignment or re-assignment) and the exclusive right to derive income from land use (such as rent). The exclusivity of the three types meant, under the doctrine of the privity of contract, that a third party had no rights to interfere with such enjoyment of rights. The land contract was a civil contract that allowed for maximum development. When land for private development was allocated by the government through competitive public auction or tender, the consideration paid by the successful bidder was at market price. The price represents the full potential of a development.¹⁸⁴ The terms of the leasehold contract could be modified on mutual agreement of the lessee and the government. The lessee was required to pay the government a premium if the value after the modification was greater than it had been before. Meanwhile, the conditions of sale specified that the obligations of the lessee must be fulfilled before legal title would be formally transferred from the government. An example of these obligations was that the lessee must carry out development on a specific use within a given period of time. A complete waste of land would prompt re-entry by the government.¹⁸⁵

In short, the leasehold land-use system was a contractual planning system. The contractual nature of land development was a characteristic, and not a mere “by-product of the leasehold system.”¹⁸⁶ Development rights were in effect already vested in the Crown in Hong Kong and needed no legislative action of the kind that led to their nationalisation.¹⁸⁷ Same was McAuslan’s first ideology, the ideology of private right, vested in the common law practiced in the British colonial Hong Kong. In theory,

¹⁸⁴ Lai Wai-Chung, *Town planning in Hong Kong: A Critical Review* (Hong Kong Centre for Economic Research, City University of Hong Kong Press 1997) 20, 21.

¹⁸⁵ *Ibid.* p20.

¹⁸⁶ *Ibid.* p22.

¹⁸⁷ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong*. UCL Press (London 1996) 83.

this combination of ground landlord and government authority should have given the Hong Kong government unparalleled power over the form of development and the effective means of ensuring compliance with long-term planning policy. However, it was not an equivalent to modern understanding about the planning process.¹⁸⁸ Later problems arose because locating development and land auction plans were largely drawn up to meet immediate requirements. Where the land form permitted, the leasehold system produced the familiar rectangular gridiron street pattern. It was determined by the minimum street layout regulations and the building requirements of the Chinese tenement houses. The high value of land in the town soon led to the maximum use of available land for building and the minimum for public space. Nevertheless, contractual planning could not retroactively adjust the leases of developed/developing projects after land auctions to deal with the plagues or cholera outbreak that happened later. Facing British sanitation syndrome, administrative regulations and intervention was a necessity in planning matters. Administrative enactments on building and land-use control, including public infrastructure work and legislation which attempted to monitor development had to be introduced.

3.3 The fear of endemics and the public administration approach towards sanitary rules and land-use control

This section reviews the origin of administration approach land-use control and its relations with sanitary rules. It points out that sanitation syndrome was the motivating factor in the land-use control in the history of Hong Kong. Since disease related issues were the first priority of British colonists, earliest British rules then were mainly concerned with public health and improving living conditions. McAuslan's second

¹⁸⁸ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong*. UCL Press (London 1996) 82.

ideology, the ideology of public interest, can be seen in the rise of land-use control in Hong Kong.

As we have previously explored, Swanson's study of colonialism highlights that sanitation syndrome was considered of utmost importance for the colonists' health, a concern that reportedly arose in most colonies in Africa and Asia.¹⁸⁹ In Hong Kong, sanitary control was also the first stage in the early phases of land-use control, since climate, health, disease and death were the colonists' main concerns during the early stage of colonialism. Sanitation rules were the principle motivation for various interventions concerning private property rights throughout the nineteenth century in Hong Kong.

After the British military landed in Hong Kong in January 1841, malaria haunted the base at Sai Ying Pun (West Camp). One quarter of soldiers from the cannon troops died from the disease; many of the bodies were buried at the cemetery at Wong Nai Chung, later renamed by the British as "Happy Valley", rather in contrast to the reality of their previously harsh living environment. Civilians suffered too. There was a high mortality rate among missionaries and their wives. Smallpox, cholera and tuberculosis had their day in the convents. Letters sent to friends and relatives often described the illness as "Hong Kong fever".¹⁹⁰ According to Colonial Treasurer Robert M Martin's witness statement in 1844 in a letter to the Colonial Office in London:

".... on an average, every man went through the hospital more than five times in the year! (. . .) The destruction of life since our occupation of Hong Kong has been enormous. Last year the deaths among the troops in the island amounted to 1 in 3 1/2; at Chusan, to 1 in 29 1/2; and at Koolungsoo, to 1 in 12 1/2. (. . .) But in this and other regiments, it is not merely the deaths which indicate

¹⁸⁹ Maynard W. Swanson, 'The Sanitation Syndrome: Bubonic Plague and Urban Native Policy in the Cape Colony 1900-1909' (1977) 18(3) *Journal of African History*.

¹⁹⁰ Susanna Hoe, *The Private Life of Old Hong Kong. Western Women in the British Colony 1841-1941*. (Oxford University Press, Hong Kong 1991).

disease and a pernicious climate, it is the number of men invalided, and constantly unfit for duty. One-half the men of a company are frequently unable to attend the parade; out of 100 men, there are sometimes not more than five or six men fit for duty. (. . .) I cannot name a single colony that was originally unhealthy, and that subsequently became salubrious. Soldiers, sailors, and civilians, Europeans and natives, women as well as men, residing in every part of Hong Kong, have fallen victims to the climate, and at all seasons of the year. (. . .) An extensive study of the subject, and no inconsiderable experience in different climates, induces me to concur in the opinion of Dr. Thompson, the respected head of the medical department of Hong Kong, that the island never will be healthy. (. . .) No drainage can obviate this destructive miasma; independent of new roads or buildings, the rain will every year uncover large portions of the hills, washing the putrefying substance down the deep ravines towards the sea, thus generating a fruitful crop of disease.”¹⁹¹

Despite criticising Martin’s complaint as oversensitive to the unfamiliar environment, Colonial Governor J. F. Davis’ report to the Colonial Office admitted that the soldiers catching disease was a difficult problem to solve.¹⁹² Correspondences to the British government from the earliest colonists described Hong Kong and its environs as a frightening place. Lord Palmerston had disparagingly called Hong Kong a barren island. While calling Hong Kong an unhealthy and scandalous remote island, British colonists also described the situation as exciting, a place for adventures, rascals, the strong and brave.¹⁹³ If Hong Kong was to be conquered, issues related to diseases were the first priority.

¹⁹¹ Robert L. Jarman, ‘Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886’ (Cambridge University Press 1996); Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) Cities and Design.

¹⁹² Robert L. Jarman, ‘Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886’ (Cambridge University Press 1996) 20; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) Cities and Design.

¹⁹³ Susanna Hoe, *The Private Life of Old Hong Kong. Western Women in the British Colony 1841-1941.* (Oxford University Press, Hong Kong 1991) 37.

Studies on early colonialism in Hong Kong authored by Wu Yiching and Ip lam Chong confirm that British rulers then were mainly worried with health and sanitation. From Davis and Martin's correspondences, one can learn how significantly that health related issues and climate were their main concerns. Anything threatening soldiers' health threatened the ruling of the colony because their bodies were the material pillars of the colonial government.¹⁹⁴ According to Wu's study on early colonial culture, themes of death and disease were the negative side of the image associated with the freedom of Hong Kong. It was the cause that drove colonial rulers to enforce regulations, followed by harsh punishment.¹⁹⁵ Every year, Davis submitted his Blue Book (the annual report) to the Colonial Office, and climate and sanitation were always a core issue. Improvements in living conditions, as well as soldiers and colonists' health were discussed. According to Davis' 1846 Report,

*"...about the time I quitted England, and led many persons to imagine that a residence in the place was a desperate undertaking. The best answer to the whole is the remarkable immunity from disease which followed immediately upon the completion of fitting dwellings, efficient drainage, and other improvements."*¹⁹⁶

From looking at colonist perspectives on sanitary matters we can see clearly that issues associated with buildings and nuisances were related. Fitting dwellings and efficient drainage were the main and crucial projects of colonialism. In other words, sanitary rules and related administrative regulations were meant to serve the ruling colonists. They provided the foundation for steadily population growth, tax revenue increases and the security of military forces. Therefore, ruling power was stabilised.

¹⁹⁴ Wu Yiching, 'Prelude to Culture: Interrogating Colonial Rule in Early British Hong Kong' (1999) 24(2) *Dialectical Anthropology*; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

¹⁹⁵ Wu Yiching, 'Prelude to Culture: Interrogating Colonial Rule in Early British Hong Kong' (1999) 24(2) *Dialectical Anthropology*.

¹⁹⁶ Robert L. Jarman, 'Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886' (Cambridge University Press 1996) 74; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

Sanitary concerns were emphasised due to rapid population growth in urban areas. These initial sanitary concerns inspired the land-use control in city planning. To deal with land-use, British administrative machinery was introduced. The Lands Office and Department of Public Works were set up right after the first land sale that took place in June 1841. An island-wide scale land allocation scheme was set up later by A.R. Johnson, the deputy of the Chief Superintendent of Trade, which divided Hong Kong Island into marine lots, town lots, Wong Nei Chong (Happy Valley), Chek Chu (Stanley), Chek Pai Wan (Aberdeen) and suburban lots. In addition, some areas were marked out as bazaars serving the Chinese population.¹⁹⁷ The Land Committee, the machinery responsible for contractual planning, also had administrative powers governing land-use matters. The first committee was announced in March 1842, with wider powers being attached beyond just selling land. Those powers were actually town planning powers that included paying compensation to native Chinese dwellers on account of the British occupation of land:

“selecting sites for public landing places, defining limits of Cantonments, fixing the extent of ground to be reserved for a naval depot and a dockyard and selecting a watering place for shipping.”¹⁹⁸

However, having seen military, naval and civil buildings spring up and the rapid erection of houses in Chinese areas, more careful plans were needed; hence, the Committee soon found itself prohibiting all further land sales out of necessity.¹⁹⁹

The second Land Committee was set up in 1844. One of its tasks concerned planning the layout of expanding towns, in response to clear instructions from London to

¹⁹⁷ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 23.

¹⁹⁸ Geoffrey Robley Sayer, *Hong Kong, 1841-1862: Birth, Adolescence and Coming of Age* (Hong Kong University Press, Hong Kong 1980) 25.

¹⁹⁹ Geoffrey Robley Sayer, *Hong Kong, 1841-1862: Birth, Adolescence and Coming of Age* (Hong Kong University Press, Hong Kong 1980) 25.; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987).

examine which land should be reserved for public sites, towns and villages, and to decide on their expansion, communications and recreation. According to the instruction, these reservations needed to be set out on public charts or as plans. The executive of the committee, Surveyor-General Gordon, recommended proposals setting out areas for housing, administration and commerce. He also proposed certain construction work, including: 1. moving the centre of new town to Happy Valley, 2. the construction of three quays connected to the sea by canal, 3. the extension of Queen's Road (the main road on Hong Kong Island) round the island and 4. the construction of a waterfront road along the sea frontage. This project never took place, the Government having no intention of embarking on public investment on this scale. Also, no merchant was interested in this long-term investment.²⁰⁰ In 1849, another Land Committee was established. The extension of leases from 75 years to 99 years was allowed. The Government (under the leadership of Governor Bonham) also brought in a change to sale conditions so that the auction was no longer for annual rent but for the payment of a single premium to secure a lot at a fixed rent. This change was a great leap forward in the commercialisation of land.

Land Committees were aided by other administrative bodies to govern land-use and building control issues. Fear of epidemics had been the main motivation for building up administrative apparatuses. In August during the first year of British official colonialism (1844), the Committee of Public Health and Cleanliness was set up by Governor Pottinger. According to Bristow, the aim was to enforce sanitary rules amongst "all classes of community".²⁰¹ The Committee's deliberation led to the enactment of No. 5 Ordinance of 1844, *Good Order and Cleanliness Ordinance*, and No. 14 of 1845, amendment of the Ordinance, for the preservation of good order and cleanliness within the Colony of Hong Kong. In total, 22 ordinances were put in place during the first year of British colonialism in Hong Kong. Yiu argues that the

²⁰⁰ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 26.

²⁰¹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987).

ordinances governing land and building matters (No. 3 and No. 5) were created even earlier than that to establish a police force (No. 12).²⁰² The importance of regulating land and building matters can be inferred from their priorities. In 1845, the *Summary of Offences Ordinance* was also established, making it an offence for the owner or occupier of any house or building to neglect its repair or permit it to remain in a ruinous or dangerous state.²⁰³ Other matters relating to building and planning were enforced through the *Market Ordinance* of 1846 and 1847 respectively. These included specific requirements regarding encroachments on crown land, and unsafe and inflammable buildings.²⁰⁴

Sir John Bowring arrived in Hong Kong in 1854 as the new Superintendent and Governor, showing immediate concern about sanitation. He appointed a new Colonial Surgeon, Dr. J. Carroll Dempster, who had been an army doctor and turned out to be an outspoken critic of the existing sanitary system. In Dempster's 1854 report, he wrote, "...so much filth...cowsheds, pigsties, stagnant pools" in Tai Ping Shan (Peace Mountain). He asked for drainage, sewerage, the laying of pavements and efficient scavenging. Crowded and miserable housing conditions were also noted. In 1855 and the following year, he complained insistently that nothing had been improved except for the construction of a few dustbins that were being used by Chinese people as latrines. Clearly, Dempster felt the government's response was unsatisfactory. The statement addressed that things were "under consideration", with Dempster underlining the phrase.²⁰⁵ Responding to the growing sanitary hazard menace, Bowring responded with the *Buildings and Nuisances Ordinance* of 1856. It was the first sanitation related legislation to include "Buildings" in the title. By putting

²⁰² Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁰³ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 4.

²⁰⁴ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 26.

²⁰⁵ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 28; Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 86.

“Buildings” together with “Nuisances”, the colonists emphasised the significance of building controls and sanitary concerns.²⁰⁶

It was the first Hong Kong buildings ordinance and was assented by governor Sir John Bowring on 16th April 1856. It had 20 sections that established a minimum standard for the construction of houses, and required that dwellings should be provided with an adequate and safe place for the lighting of fires and the cooking of food. Kitchen and water-closet provisions in new buildings were regulated in paragraphs VIII and XIII of the ordinance, which also disallowed inflammable construction materials. The provision of a privy and sufficient ashpit furnished with proper coverings were required.²⁰⁷ Paragraph III showed that the requirement for the approved commencement of work and the responsibility of building control was already vested in surveyors.²⁰⁸ However, the ordinance made no provision for the reservation of rear yards, the width of streets, the height of buildings or adequate means of ventilation and lighting. The requirements were clearly for European houses only, since Paragraph II of the Ordinance stipulated that:

“The Walls of all Houses shall be solidly built of Bricks or Stones throughout, and shall be of the thickness of not less than nine inches at the upper Story,

²⁰⁶ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987); Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983); Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991); Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

²⁰⁷ Paragraph VIII of the *Building and Nuisances Ordinance* of 1856 stipulated that *“It shall not be lawful to construct, reconstruct, or to complete any house without a sufficient and safe Place for lighting of fires and cooking food; and also a sufficient water closet or privy.”*

Paragraph XIII of the Ordinance stipulated that *“Every Building erected or to be hereafter erected of any inflammable material ... endanger any neighbouring Building, shall be deemed a Nuisance.”* Paragraph VIII and paragraph XIII, *Buildings and Nuisances Ordinance* of 1856. Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁰⁸ *Ibid.* Paragraph III of *Building and Nuisances Ordinance* of 1856 stipulated that

“It shall not be lawful for any person to commence or ... to resume any works, until four days written notice of the intention to commence or resume the same shall have been given unto the Surveyor General at his Office by the person by or for whom such works are intended to be commenced, or resumed. Every such notice shall specify the material particulars of the said intended Works.”

*thirteen and a half inches at the Story immediately below the upper Story, and eighteen inches at the Story (if any) at immediately below the said two Stories.”*²⁰⁹

As most Chinese tenements at that time were built in timber with neither kitchen nor water closet, the Ordinance was not applicable to overseeing the construction of Chinese tenements.

Rapid population growth during Bowring’s years had been the main factor responsible for sanitary risks. Due to the rise of the Tai Ping Tian Guo rebellion and increasing trade contributing to steady economic growth in Hong Kong, the population increased from 29,507 in 1849 to over 39,000 in 1853. In 1859, the population totalled 86,941. Between 1853 and 1859, the population more than doubled.²¹⁰ In 1857, a global cholera pandemic occurred in Hong Kong. Multiple sporadic eruptions of the disease killed more than four thousand in the next five years. This event highlighted the sanitation crisis and justified Dempster’s criticism. However, the 1856 Ordinance and its later amendment in 1858, because it consisted of Bowring’s response to hygiene risks, was hard for Magistrates and Justice to interpret; often they handed down decisions which were contrary to the spirit of the ordinances. The matter was referred to the Colonial Office, where Bowring’s approach was rejected. Though the legislation was retained, its enforcement was difficult.²¹¹ In 1858, Dr. John Ivor Murray was appointed the Colonial Surgeon, a position he served until 1872.²¹² He repeatedly drew attention to the exceedingly unhealthy state of Hong Kong and spoke out against Bowring during his tenure. According to Dr Murray’s 1860 Annual Report, Bowering

²⁰⁹ Paragraph II of the *Building and Nuisances Ordinance* of 1856.

²¹⁰ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964); Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983); Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 87.

²¹¹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 28; Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 86.

²¹² ‘Obituary: John Ivor Murray, M.D., F.R.C.S., Edin.’ (8th August 1903) *The Britain Medical Journal*. 339-340.

was responsible for horrific and deteriorating environmental conditions.²¹³ In 1859, Bowring boldly created a post for Inspector of Nuisances, the beginning of the following Sanitation Department.

Bowring has been described by contemporary historians as a humane liberal reformist, *“kind to Chinese people but tough to Chinese government”*.²¹⁴ Bowring learnt to speak the local language (Cantonese) to get close to locals. According to Frank Welsh, he was the most remarkable man ever to be Governor of the colony, a radical member of parliament and the closest friend of Jeremy Bentham.²¹⁵ Considering himself the promoter and enforcer of equal justice for both races, Bowring allowed the Chinese in Hong Kong access to the legal profession and initiated a recruitment and training scheme for the Chinese to fill official posts. Commenting on a suspected miscarriage of justice in 1856, Bowring said that *“every man’s life and liberty on British soil is intended to be most reverently protected by every security against wrong which legislation can provide.”*²¹⁶ In 1858, he advertised the equal justice of the authority of British law by publicly announcing the execution of two Europeans convicted of murdering a Chinese resident. Bowring attempted to suspend public flogging and introduce an element of properly representative Legislative Council that would include the Chinese population.²¹⁷

In February 1858, Bowring wrote in his correspondence to London that *“the comfort is that in no part of China is there so much justice so little venality as here and we do*

²¹³ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 29.

²¹⁴ Jan Morris, *Hong Kong: Xiang Gang* (Penguin Group, London 1988).

²¹⁵ Frank Welsh, *A Borrowed Place: The History of Hong Kong* (Kodansha International, London 1993).

²¹⁶ *Ibid.*

²¹⁷ Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo Tak-Wing (ed), *Hong Kong’s History, State and Society under Colonial Rule*. (Routledge, London 1999) 46, 73; Frank Welsh, *A Borrowed Place: The History of Hong Kong* (Kodansha International, London 1993).

*far better than would be expected with the instruments at our Command.”*²¹⁸

However, the assumptions that Bowring so frequently made about the impartiality of English law and the survival of justice in the colony during the trying years of his governorship are not borne out by investigations. No governor made greater use of deportation and rendition than the “liberal” Bowring. He ordered the deportation, of 46 Chinese people seized on the streets, to Hainan because they could not give satisfactory accounts of their identities. More deportations were ordered to get rid of petty thieves. While Bowring proposed reforming the Legislative Council and empowering Chinese representatives, he publicly voiced his hatred toward the accused suspect of a baker poisoning case, declaring that he should be hanged without trial. The suspect was later released due to a lack of substantial evidence, but deported. Bowring decided to bypass the Supreme Court entirely by handing 73 men captured by the Royal Navy to the Chinese authorities for the reason that the administration of justice dealing with piracy was defective. Bowring was condemned as not being a Friend of China but “*the greatest monster on the face of the earth.*”²¹⁹

Bowring was a controversial figure. While questioning Bowring’s personal integrity in matters of conscience, instead of suggesting Bowring’s controversies and contradictions between his policies and actions were the result of his character defects, Munn argues that, given the weak instruments at their command and the troubled state of the region at that time, it is hardly surprising that officials failed to create a model of good governance and equal justice that many had envisaged for the colony. The imperative of protecting European lives and property distorted the colony’s criminal justice system into one that gave little consideration to the liberties of the ordinary Chinese people who came before the courts.²²⁰

²¹⁸ Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo Tak-Wing (ed), *Hong Kong’s History, State and Society under Colonial Rule*. (Routledge, London 1999); Colonial Office Record, ‘Dispatch from the Government of Hong Kong’ (CO 129/67, 1858).

²¹⁹ Jan Morris, *Hong Kong: Xiang Gang* (Penguin Group, London 1988); Frank Welsh, *A Borrowed Place: The History of Hong Kong* (Kodansha International, London 1993); Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo Tak-Wing (ed), *Hong Kong’s History, State and Society under Colonial Rule*. (Routledge, London 1999) 62.

²²⁰ Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo Tak-Wing (ed), *Hong Kong’s History, State and Society under Colonial Rule*. (Routledge, London 1999) 66.

Bowring, being a politician was the last of the political appointees, with succeeding governors normally being colonial officials, with the last governor holding the combined offices of Governor and Superintendent of Trade.²²¹ Being a practical administrator, Bowring made the priorities of the colonial government clear: the administrative state served the interests of European colonial expansion. The rise of Hong Kong as a trading centre was seen as having a close relationship to the incorporation of the East Asian region into the world market. Bowring proudly stated in 1858 in one of his dispatches to the Colonial Office that "*Hong Kong presents another example of elasticity and potency of unrestricted commerce.*"²²² Bowring's expectation and plan for Hong Kong was consistent with his free trade ideology. In his reports on Commercial Relations between France and Britain, Bowring spoke for the manufacturers seeking to expand markets. The idea of freedom for industries to buy in the cheapest and sell in the dearest market was voiced.²²³ Despite being a famous pacifist (former President of the Peace Society in London), Bowring precipitated the Second Opium War by ordering the bombardment of Guangzhou in a dispute over the rights of the Chinese military to remove a Chinese pirate from a Chinese ship. The ship, The Arrow, was flying the British flag without authorisation. This minor incident was used as an excuse for hostilities by Bowring.²²⁴ His overreaction was one example of his deliberate aggressive acts towards China. As he insisted in his letter to the Colonial Office, "*the appropriate way to deal with China is more warships and cannons*".²²⁵ He shared the view of Western merchants in China that the Chinese Empire was a worthless and degenerate tyranny and that trade would not flourish while the

²²¹ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 81.

²²² Hui Po-Keung, *Comprador Politics and Middleman Capitalism*. in Ngo Tak-Wing (ed), *Hong Kong's History, State and Society under Colonial Rule* (Routledge, London 1999) 30.

²²³ John Bowring, *First Report on Commercial Relations between France and Britain*, Parliamentary Papers 1834; John Bowring, *Second Report on Commercial Relations between France and Britain*, Parliamentary Papers 1835.

²²⁴ G. F. Bartle, 'Sir John Bowring and the Arrow War in China' (1961) 43 *Bulletin of the John Rylands Library*.

²²⁵ John Bowring, *Autobiographical Recollections of Sir John Bowring* (Henry S. King, London 1877)

Emperor and his mandarins in Peking refused to receive envoys. Bowring advocated that warships and cannons were the means to treaty ports, colonial settlements and free trade. In 1855, he wrote to the King of Siam: *"I have a large fleet at my disposal but I would rather visit you as a friend than as bearer of a menacing message."*²²⁶ Therefore, the treaty he imposed opened up the country to outside free trade. His military diplomacy was backed by merchants in China, who were an important influence on the political world in London. His warships and cannons were later adopted by other European countries in the East.

Governor Bowring aggressively asserted British interests and trampled on Asian sensibilities: he not only demanded reparations for the "Arrow incident" but the reopening of the whole question of the Treaty of Nanking. Supplementary agreements were worked out. For Hong Kong, the most significant change was the legalisation of the opium trade. The hopes of decades of Western merchants at last became a reality. Bowring created an opium monopoly that gave the rights to prepare opium in the colony, which supplied no less than 29% of the colony's annual income in 1858.²²⁷ Bowring also left his characteristic marks on issues related to town planning. He had been an enthusiastic developer. In 1855, a scheme attempting the coordinated reclamation on the waterfront of the Victoria City settlement was proposed for economic reasons, with proper quay facilities for growing commerce in need of being built. By means of draining the swampy ground and filling it in with soil and rubble, in 1858, the completion of the reclamation between Happy Valley and the sea was achieved, as was the government expanding the scope of the colonists' urban settlement. The settlement spread both west and east, rationalising the contour of the shore: westward to Sai Yin Pun and eastward to Causeway Bay. The new reclamations on the waterfront had potential commercial value in the provision of new land for development and it would allow public access to the harbour at various

²²⁶ Ibid.

²²⁷ Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 80, 81, 88; Frank Welsh, *A Borrowed Place: The History of Hong Kong* (Kodansha International, London 1993) 349; Robert Blake, *Jardine Matheson: Traders of the Far East* (Weidenfeld and Nicolson, London 1999) 130.

points. The eastward reclamation (Causeway Bay) was later named after Bowring as Bowrington.²²⁸ Development-wise, it was his main contribution to Hong Kong.

In conclusion, with the support of British military diplomacy, Hong Kong had arisen a trading centre. Urbanisation in Hong Kong was in progress to accommodate the interests of European expansion, alongside its developing into a vital port to the incorporation of China into the world market. With the rapid urban growth came the increasing sanitary risks, therefore land-use administrative apparatuses were established to conquer colonists' fear of epidemics. Sanitary rules were stipulated to regulate building and control development. Though on surface the aim of sanitary rules and building control was to protect all classes of community as the authority publicly claimed, in reality the priority of guarding European lives and property gave little consideration to the rights of ordinary Chinese people. In terms of land-use control, the emergence of sanitary rules and sanitary related building codes represented the necessity of public administration approach which was McAuslan's second ideology, ideology of public interest, in action.

3.4 Chadwick's Report: the importation of a public health movement

This section continues reviewing the evolution of land-use control in Hong Kong and its relation with sanitation syndrome.

²²⁸ Thomas R. Tregear and Leonard Berry, *The Development of Hong Kong and Kowloon as Told in Maps* (Hong Kong University Press 1959); Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987); Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991).

The sanitary state of Hong Kong never stopped being a question of great interest to the colonists in the second half of nineteenth century, despite the fact that controlling land-use and sanitation related ordinances had been implemented in the forms of contractual planning and public administration in the early 1840s. The continuing growth of population and general neglect over the enforcement of health regulations had made colonists still live in the shadow of fearing endemic disease. Later the life threatening condition was worsened by cholera pandemic, therefore more detailed sanitary rules and sanitation related building control measures were stipulated accompanied by establishment of administrative machineries to deal with the situation. Although compared to earlier regulations the later stipulations did not present many new concepts, a more comprehensive system of land-use control notwithstanding emerged and the ideology of public interest continued to dominate the works of development control.

After a series of military confrontations in the 1840s, Hong Kong established itself as a permanent trading station under British control that British merchants needed to escape the control of the Chinese rulers. Trade increased the population, which rose tenfold in fifteen years. As mentioned earlier in this chapter, an Inspector of Nuisances was appointed in 1859. It was the beginning of the later Sanitation Department. The new authorities announced *Building and Nuisances Ordinance* 1856 and *Nuisances Ordinance* 1858. The former was the first to include “Buildings” in its title.²²⁹ In 1860, under Article 6 of the *Convention of Peking* between China and the United Kingdom, part of Kowloon Peninsula (up to present day Boundary Street) was ceded in perpetuity to the UK. More Chinese came from the mainland seeking employment in Hong Kong. Despite the continual outflow of people, newcomers arrived in such numbers that by 1865 the population had increased to some 125,500 persons, of whom 63% were adult males. This reflected the frontier character of Hong Kong.²³⁰

²²⁹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 28.; Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 5.

²³⁰ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 5.

Accompanied by the overcrowding situation and shortage of accommodation, houses were commonly occupied by three to eight families per room, which were in a filthy state and constructed without any regard to basic sanitary requirements. Such properties were owned both by Europeans and wealthy Chinese who exacted high rents. Due to the accommodation shortage, the tenants were in no position to seek more equitable terms or improvements.²³¹

A cholera incident led to the appointment of a Sanitary Committee in December 1862. The Committee recommended a complete reorganisation of the sanitary system and proper enforcement of the 1856 and 1858 Ordinances. To deal with the continually worsening situation, the *Order and Cleanliness Ordinance* of 1866 was promulgated. Having learned from the cholera pandemic that devastated Europe between 1829 and 1851, generic concepts on adequate drainage, sewage and water, present in the *Public Health Act* of 1848 in England, were introduced. By that time, Dr. John Snow had proved his theory that cholera was linked to a contaminated water supply by studying his case of a single water pump in Soho in 1854. The “germ theory of disease” had been proven, even though it was controversial at that time. The Hong Kong ordinances then, like their parent legislation, the British *Public Health Act*, were products of the influence of the miasma theory of disease that maintained that diseases were caused by “bad air” or poisonous vapour. The miasma theory made sense to the English sanitary reformers of the mid-nineteenth century because it was obvious that cholera was concentrated in the poorest districts where sanitation was most neglected and the slum housing most befouled by excremental filth. The concerns about the miasma (bad air) caused public health reforms and encouraged urban cleanliness.²³² The assumed ideology of the Act was that the reformers believed that diseases could be fought by the use of mixed population management actions: population growth

²³¹ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 5, 7.

²³² Christopher Hamlin and Sally Sheard, ‘Revolutions in Public Health: 1848 and 1998’ (1998) 317 *The British Medical Journal*; Kenneth Calman, ‘The 1848 Public Health Act and its Relevance to Improve Public Health in England now’ (1998) 317 *British Medical Journal*.

control, locations of cemeteries and air circulation, etc. The miasma theory has been proven wrong since because it did not explain the mechanism of diseases. However, the correlation between poor urban conditions and diseases did exist as the theory suggested. The concerns about miasma led to the bringing in of urban sanitary management as a social practice or as social medicine²³³ that had been developing in capitalist societies in the middle of the nineteenth century.

However, in Hong Kong, the enforcement of those ordinances and the new sanitary rules were unsuccessful,²³⁴ since the sanitation infrastructure had not been sufficiently invested in. Steady population growth had worsened the situation and also led to increasing resistance in the enforcement of regulating sanitation and buildings. By 1876, Hong Kong's population had increased to 139,000, of whom 93.5% were Chinese. This growth continued and by 1881, 160,400 persons were resident in Hong Kong, an increase of 15.3%. The development was heavily concentrated along the western part of the northern coast of Hong Kong Island. The expense and difficulty associated with creating building sites consequently placed a high premium on land. This provided developers with a good reason to justify the fullest exploitation of their properties.²³⁵ According to an Annual Report by the Colonial Surgeon in 1874, houses were occupied by five to ten families and were constructed against every sanitary rule, lacking a yard and ventilation. In addition, pigs were often kept in houses, which made the living conditions even worse.²³⁶

²³³ As Foucault called it in his speech in October 1974 at the Institute of Social Medicine, Biomedical Centre of the State University of Rio de Janeiro, Brazil. See: Michel Foucault, 'The Crisis of Medicine or the Crisis of Anti-medicine' (1974) 1 Foucault Studies 5, 19. (Translated by Edgar C. Knowlton, William J. King and Clare O'Farrell).

⁶¹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 29, 32.

²³⁵ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 7, 8.

²³⁶ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 5, 6; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 32.

The 1874 Report recommended some means of improvement, as did the Surveyor-General in 1878. The Colonial Surgeon and the Surveyor-General made recommendations for open spaces and better ventilation by widening the alley at the rear of premises. These actions met with protests. The Governor was favourably inclined to the petitions. He took the view that traditional Chinese methods of sanitation and the overcrowded conditions in the city were adequate. They were considered habits deeply rooted as social customs. Another opinion was noted in the Hong Kong Government Gazette on 27th July 1878:

*“Chinese tenants are, as a rule...unable to pay high rents...and it is only by so dividing the houses that many families can reside in each division that Chinese property is made profitable and at the same time the necessary lowness of rent is attained.”*²³⁷

The economic reason was noted as an obstacle to the enforcement of building regulations.

After forty years of growth and general neglect over both the enforcement of building and health regulations, and the provision of sanitary services, the condition of the city was extremely unhealthy. Sanitation issues continued to plague the colonisers. It was the issue of British soldiers and colonists' health that continued to plague the governments of Hong Kong and London. In 1881, the Colonial Office conducted an investigation into Hong Kong's sanitary problem because a military official's complaint raised concern that Hong Kong's sanitary state was threatening his soldiers' health. The Colonial Office sought the services of a sanitary engineer, Osbert Chadwick, who was put in charge of the investigation. Though Governor Sir J. Pope Hennessy claimed in his letter to the Colonial Office that, *“The sanitary state of this colony is always a question of great interest to us”* and frankly stated that the health and death rate of

²³⁷ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 7; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 32.

soldiers were indicators of local sanitary conditions, the Governor had a different idea about sanitation from that conceived by the Colonial Office. He stated:

*"I think that the town of Victoria might be made a model of sanitation, with its position on the slope of a hill, the possibility of obtaining an almost unlimited supply of water for drinking and washing purposes, and above all, having here a native population who will readily carry out the Chinese custom by which the sewage and refuse is carried out of the town, and used for agricultural purposes. (. . .) Eminent sanitary authorities seem now to be in favour of what is called the Chinese process."*²³⁸

Instead of investing in proper drainage systems, Hennessy preferred the *Chinese* model of house buckets, for the reason of not imposing a European custom on native people. In his Blue Book submitted to the Colonial Office, he quoted Dr Dudgeon, a European medical doctor, to support the Chinese house-bucket system ahead of the underground drainage system connected with water closets or house privies. Hennessy adopted Dr Dudgeon's opinion, arguing that the association between "bad smells" and disease was not applicable to the Chinese because "[g]ases (. . .) are not so injurious to health when given off in the open air, as when escaping from sewers". He concluded that "*China is par excellence, the country of bad smells, and yet, as we have seen, the people do not seem to suffer from them.*"²³⁹ Hennessy twisted the concept of the germ theory of disease to make excuses for the lack of infrastructure investment for Chinese communities. While followers of the theory like Dudgeon stated that "*bad air*" was not the cause of an epidemic, they did not mention that hygienic practices were important.

²³⁸ Robert L. Jarman, 'Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886' (Cambridge University Press 1996); Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) Cities and Design.

²³⁹ Robert L. Jarman, 'Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886' (Cambridge University Press 1996) 632; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) Cities and Design.

Chadwick, like his father Edwin Chadwick who was the author of the English Sanitary Report in 1842, was also convinced that the health of the labouring population was largely determined by the state of the physical environment. He campaigned for sanitary measures because they were needed on both economic and humanitarian grounds. Chadwick's belief and the view of the Colonial Office and its perception of Hong Kong's sanitation at that time were coherent. He defended official sanitary ideas, arguing that crowded environments required special measures to deal with health problems. Chadwick's investigation contradicted the Governor's description of the Chinese population: the death rate then was incredibly high, therefore "energetic remedial measures" were urgently needed and he expected that even when assuming the absence of epidemic diseases that there "*there is no ground for the assertion that the violation of the laws of health is not punished*".²⁴⁰ Chadwick presented his own report in 1882. His main concerns were building and drainage. His research was mostly conducted in the Taiping Shan area, a Chinese community.²⁴¹

According to Chadwick's observation:

- (1) Houses were commonly built back-to-back without backyards, no lane or space being left between them.
- (2) Most buildings had very narrow frontage. By comparison, the depth of buildings was considerable, ranging from 30 to 60 feet. In terraced houses, only the front rooms had windows so the inner compartments were dark and airless.
- (3) At the rear of each floor was a cookhouse, normally about 7 feet deep, which also frequently served as a latrine, storage room and even sleeping quarters. Chimneys were the exception, with the consequence being that fumes

²⁴⁰ Osbert Chadwick, Reports on the Sanitary Condition of Hong Kong: with appendices and plans (The Colonial Office, London 1882) 21; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) Cities and Design.

²⁴¹ Osbert Chadwick, Reports on the Sanitary Condition of Hong Kong: with appendices and plans (The Colonial Office, London 1882) 21; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) Cities and Design.

permeated the living space.

- (4) Each floor was usually leased to a separate tenant and then sublet to other families. Severe overcrowding became a way of life.
- (5) Whilst the regulations required the provision of latrines, they were rarely found.
- (6) The drain system condition was very poor. Drains overflowed and saturated the walls and floors with filthy effluent. None of the public drains had vents so uprising sewer gas had no means of escape.
- (7) The storm-water drain system was chaotic. Drains were also inappropriately used as sewers that emptied directly into the sea. There was an offensive smell at low tide along the waterfront.
- (8) Little thought was given to ensuring the reservation of adequate street widths. The public right-of-way was so narrow that the bamboo poles used to hang out washing reached from side to side.
- (9) The water supply was barely sufficient for cooking and drinking. Families in houses with no water supply had to hire a water carrier to obtain their day's supply from public standpipes that were turned on between 2am and 5am. Those who were left out had to obtain water from wells, distant water-holes and streams on hillsides.
- (10) The life expectancy of Hong Kong's Chinese citizens was relatively short. Statistics showed that the mean age of adults at death was 43 years in Hong Kong in 1881, compared to 55 years for the whole of England in 1840.²⁴²

Overall, Chadwick's report presented the lay-out of Chinese accommodation tenements using illustrations. It was the first detailed examination of Chinese housing in Hong Kong.²⁴³

²⁴² Osbert Chadwick, Reports on the Sanitary Condition of Hong Kong: with appendices and plans (The Colonial Office, London 1882) 11, 12, 15, 16, 17 and 22.

²⁴³ Osbert Chadwick, Reports on the Sanitary Condition of Hong Kong: with appendices and plans (The Colonial Office, London 1882) 21; Edward G. Pryor, Housing in Hong Kong (2nd Edition) (Oxford University Press, Hong Kong 1983) 8, 12.

According to the Report, Chadwick made a considerable number of bold recommendations.²⁴⁴ He pointed out necessary improvements to the water supply, drainage, scavenging night-soil collection and public latrines, as well as suggesting the provision of additional facilities such as public bath houses, laundries and new markets. Regarding housing, he commented that both the design and construction of existing dwellings was defective. He urged that *Building Ordinance* required a complete revision and that the amended law must be “*enforced with more vigour and intelligence than the present, particular as to alleys, lanes and open spaces*”.²⁴⁵ He further recommended the prohibition of cocklofts and earthen floors, the provision of open spaces at the rear of buildings, the provision of a window in every habitable room and all buildings being required to install a ventilation system because, according to Chadwick's theory, crowded and enclosed spaces were the hotbed of disease. He planned the provision of surfaced roads with drains before building lots were offered for sale and put limits on overcrowding. Other notable recommendations were that the government should carry out improvements to existing properties financed by an improvement fund set up by contributions from licence fees placed on gambling houses. He also recommended that buildings incapable of improvement should be acquired by the government, demolished, rebuilt and sold.²⁴⁶

²⁴⁴ Most recommendations he made follow the general spirits of the precepts of “Model Byelaws” which promulgated by the British Local Government Board. Osbert Chadwick, *Reports on the Sanitary Condition of Hong Kong: with appendices and plans* (The Colonial Office, London 1882) 45, 57.

²⁴⁵ Osbert Chadwick, *Reports on the Sanitary Condition of Hong Kong: with appendices and plans* (The Colonial Office, London 1882) 27

²⁴⁶ Osbert Chadwick, *Reports on the Sanitary Condition of Hong Kong: with appendices and plans* (The Colonial Office, London 1882) 27; George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 183; Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 12, 13; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 32; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

The Chadwick report resulted in an almost 46% plummet in land prices by the end of 1882. Chadwick proposed the establishment of the Sanitary Board to improve Hong Kong's sanitary conditions. After being pressurised by the Colonial Office, the board was set up by the then Governor Bowan in 1883, with the government putting forward the *Order and Cleanliness Amendment Ordinance 1883* by incorporating the Chadwick Report's recommendations regulating the sanitary conditions in streets and apartments. It was an amendment to the existing public health related ordinances, such as the *Nuisances Ordinance*. The *Order and Cleanliness Ordinance* empowered the Sanitary Board to deal with overcrowded, dangerous and unhealthy buildings. It stipulated that overcrowded, filthy houses would be seen as dangerous or injurious to the public health and that the Magistrate should issue a summons against the householder.²⁴⁷ Efforts to regulate excrementitious disposal also could be seen in the Ordinance. For many dwellings in Hong Kong at that time that did not have a drainage system, the collection of soil at night by cleaners was common practice. By nationalising the property rights of night-soil and urine, and outsourcing the collection to designated contractors, the government intended to control sanitary practices. For a few houses with toilet facilities and new developments, the Ordinance regulated connecting drains to water-closets.²⁴⁸ The Ordinance also licensed domestic animals. Households raising pigs were required to attain a licence.²⁴⁹ It also became the first building control legislation regulating the density and ventilation of buildings in Hong Kong. For example, sub-section 3(a) of the Ordinance stipulated the minimum space (50 square feet) and volume of air (550 cubic feet) per occupant, sub-section 4(c) set up regulations for windows (the minimum room space that required a

²⁴⁷ Section 3 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that

"If any member of the Sanitary Board, ... shall certify ... that any house is so overcrowded or is in such a filthy and unwholesome state as to be dangerous or injurious to the public health, the Magistrate shall issue a summons against the householder as defined by the Victoria Registration Ordinance, 1866..."

²⁴⁸ Section 9 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that *"All night-soil and urine shall vest in and become the absolute property of the Government night-soil Contractors for the time being and the disposal of it shall be subject to regulations to be made under this Ordinance."* ; Section 8 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that *"No person shall ... erect a water-closet within his tenement, or connect such water-closet by means of a connection-drain with any public or private sewer, without the written permission of the Sanitary Board."*

²⁴⁹ Section 11 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that *"The keeping of pigs, goats, or cattle without a licence from the Sanitary Board is hereby prohibited."*

window) and section 12 also required routine maintenance via painting and repairs.²⁵⁰

Chadwick's report was a landmark in the history of development control. Although compared to previous regulations Chadwick did not present many new concepts, the Report clearly proved that urban regulation work in the previous forty years had failed. The Sanitary Board consisted of the Surveyor-General, the Registrar-General and the Colonial-Surgeon, based on the English municipal model of the time. The Ordinance gave the Board wide powers to deal with insanitary houses, the inspection of premises and compulsory disinfection. However, these policies displeased some Chinese residents.²⁵¹ Strong opposition from property owners and landlords caused these provisions to be withdrawn because the Ordinance forced them to reduce their rental area and disturbed their everyday life. The draft bill did not even obtain a first reading in the Legislative Council. In order to comfort the Chinese privileged class, the government revised the Ordinance and recruited two elected members (only taxpayers and residents documented on the juries list were qualified as voters because they could read English) onto the Sanitary Board. In 1886, an amended *Public Health Bill* was drawn up by the new Sanitary Board and passed in 1887 by an official majority over the unanimous opposition of the unofficial members.²⁵² The unofficial Chinese members led the opposition on the ground based on insufficient consultation, of attempting to apply western standards to Chinese people and for removing valuable space from needy Chinese tenants. They claimed that what was perhaps

²⁵⁰ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 32; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*; Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁵¹ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 13.

²⁵² George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 150.

necessary legislation in England was not required in Hong Kong. Principally, they demanded compensation for the property owners affected by the bill.²⁵³

As Yiu highlights, *Public Health Ordinance 1887* was a much more detailed law governing buildings than previous regulations.²⁵⁴ Part III of the Ordinance established drainage system requirements that made a drainage system compulsory for new buildings.²⁵⁵ Section 66 of the Ordinance was also the first time in the history of Hong Kong's building control stipulating that back yards with a certain space were a necessity for new buildings.²⁵⁶ Chadwick's principles on density were adopted in law, as well as establishing the legal definition of overcrowding as being a building in excess of the minimum standard of 300 cubic feet per person being deemed a Nuisance.²⁵⁷ An occupation permit system was introduced by the Ordinance for the first time.²⁵⁸ The Sanitary Board at that time was officially fully in charge of building control.

²⁵³ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 150; Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 13; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 33.

²⁵⁴ Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁵⁵ Section 39 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that

"Every owner of a new building erected within the City of Victoria shall construct the ground floor of such building at such sufficiently high level as will allow of the construction of a drain and of the provision of the requisite communication with any public sewer into such drain may lawfully empty, at a point in the upper half-diameter of such sewer."

²⁵⁶ Section 66 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that *"if one storied, a clear space forming a back-yard of at least 10 feet in width and if such building be of 2 or more stories, be shall cause the width of such back-yard to be at least 15 feet."*

²⁵⁷ Section 67 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that *"Every domestic building or portion thereof to be inhabited in excess of a proportion of 1 adult to every 300 cubic feet of clear internal space, shall be considered to be in an overcrowded condition, and shall be deemed a Nuisance."*

²⁵⁸ Section 74 of *Order and Cleanliness Amendment Ordinance 1883* stipulated that

"No person who shall erect a domestic building shall allow the same or any portion thereof to be occupied until such building shall have been previously examined by an Officer of the [Sanitary] Board, duly authorized by the Board and certified by such officer as having been built in compliance with the entire provisions of this Ordinance."

However, implementation was not successfully carried out until the early years of the twentieth century, after the bubonic plague shocked Hong Kong in 1894.²⁵⁹

In 1889, the Government attempted to introduce new provisions in the form of a *Building Ordinance*. The matter of rear yards was included in the Bill but was once more forced out by the unofficial members on the Legislative Council and had to be included in the *Crown Lands Resumption Ordinance* of the same year. A clause was proposed whereby mezzanine floors could only be constructed if provisions were made for a vertical clearance of 2.7 metres above and below. This was modified at the insistence of the unofficial members again so that it would only apply in cases where the mezzanine extended over more than two-thirds of a room, otherwise a clearance of 1.8 metres was permitted. Another clause relating to the provision of sufficient windows was eliminated, whilst the installation of privies was made optional.²⁶⁰ Stiff resistance continued from property owners against further proposals.²⁶¹ The building control work drafted in the reformed legislations since Chadwick did not achieve their aims. As Colonial Surgeon Dr. Ayres stated in his Annual report in 1891, "*the Building Ordinance refers only to new buildings, and existing buildings previous to the Ordinance remain the same.*" Despite the Sanitary Board inquiring into the issue of overcrowding in 1890 and later intending to introduce a series of amended ordinances to enforce the overcrowding clauses, little effectively happened. Nuisance Notices served by the Sanitary Board were commonly unenforced.²⁶²

An outbreak of the great bubonic plague hit Hong Kong in 1894, even though French researcher Paul-Louis Simond in the 1890s postulated a connection between human

²⁵⁹ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983)14.

²⁶⁰ *Ibid.*

²⁶¹ Edward G. Pryor, *Housing in Hong Kong* (2nd Edition) (Oxford University Press, Hong Kong 1983) 15.

²⁶² Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 34.

and rodent plague, identifying the flea as a possible vector. Also, in 1894 in Hong Kong, bacteriologist Alexandre Yersin isolated the responsible bacterium and determined the common mode of transmission, even though most scientists still believed that unhygienic living conditions was the cause of the plague.²⁶³ In Hong Kong, the leadership in the government were still followers of miasma theory. The mainstream opinion was that by omitting the implementation of the recommendations in the Chadwick Report, the government had paved the way for the coming plague.²⁶⁴ However, it is fair to say that the bubonic plague of 1894 exposed the failure of building controls. In five months, over 2,500 people died and 80,000 left Hong Kong. Between 1894 and 1923, more than 20,000 people were killed by the disease. Of the 2,679 persons treated in government hospitals, 2,485 died. The exact number of victims was far beyond the recorded statistics. Of the victims, the vast majority were Chinese.²⁶⁵ With the outbreak of the plague, strict emergency measures were adopted. Empowered by the *Closed Houses and Insanitary Dwellings Ordinance 1894*, the government had absolute power to enter private premises to search, clean, disinfect and quarantine people. Chinese communities were considered the hot bed of disease by miasma theory followers, so strict measures were only applied in Chinese areas.²⁶⁶

Tai Ping Shan District was the most infected area. On 27th August 1894, the Government submitted the bill of *Land Resumption for the Tai Ping Shan District* to the legislative council in order to stop the spread of the plague. In 1895, the *Tai Ping Shan Resumption Ordinance* was set up to improve the epidemic area.

²⁶³ John Kelly, *The Great Mortality: An Intimate History of the Black Death, the Most Devastating Plague of All Time* (New York: Harper Collins 2005); Edward Marriott, *The Plague Race: A Tale of Fear, Science and Heroism* (Picador Books 2002).

²⁶⁴ John Kelly, *The Great Mortality: An Intimate History of the Black Death, the Most Devastating Plague of All Time* (New York: Harper Collins 2005); Edward Marriott, *The Plague Race: A Tale of Fear, Science and Heroism* (Picador Books 2002).

²⁶⁵ Hong Kong Sessional Papers, 'Report Shewing Progress of Special Work Carried Out for the Prevention of the Further Spread of Bubonic Plague' (1895).

²⁶⁶ Philippa Levine, 'Modernity, Medicine, and Colonialism: The Contagious Diseases Ordinances in Hong Kong and the Straits Settlements' (1998) 6(3) *Positions* 675, 705.

HK\$944,000 was spent under the Ordinance by 1899. Access to Tai Pin Shan was blocked and the whole area secluded. An army of three hundred British and Indian hygienists, policemen and soldiers were sent in to comb the whole area, with houses searched one by one. The resumption involved 384 buildings in the district, including 76 houses that had reported more than 3 cases of Bubonic Plague and 146 houses that had reported one or two cases. More than 7,000 people were affected, with hospitals nearby used to accommodate the homeless. The government decided to burn the whole district into ashes so as to eradicate the then unknown cause of the epidemic. The Notice was issued and habitants were asked to leave in seven days or be punished by public whipping.²⁶⁷

Regulations with rigid measures were introduced almost immediately to combat the plague. Ventilation was the main concern of the *Closed Houses and Insanitary Dwellings Ordinance* 1894. It was the first time a ratio of window-to-room area was designated.²⁶⁸ The Ordinance also set up limitations on the height of buildings and the standards for overcrowding. A more rigid standard than the *Public Health Ordinance* 1887 was stipulated.²⁶⁹ The modern concept of building bulk control/floor space ratio was introduced, so building height was limited in accordance to the street width. The Sanitary Board was authorised to control building height. Buildings taller than 76 feet would need the Board's permission to be erected.²⁷⁰ At this stage, legislation and

²⁶⁷ Philippa Levine, 'Modernity, Medicine, and Colonialism: The Contagious Diseases Ordinances in Hong Kong and the Straits Settlements' (1998) 6(3) Positions 675, 705; Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁶⁸ Section 8 of *Closed Houses and Insanitary Dwelling Ordinance* 1894 stipulated that "Every person erecting a new building shall provide every habitable room therein with one window, at least, opening directly into the external air, and he shall cause the total area of such window or windows, clear of the window frame, to be at least one-tenth of the floor area of every such room."

²⁶⁹ Section 9 of *Closed Houses and Insanitary Dwelling Ordinance* 1894 redefined overcrowding density as "Every domestic building and any part thereof found to be inhabited in excess of a proportion of one adult for every 30 square feet of habitable floor space or superficial area and 400 cubic feet of clear and unobstructed internal air space shall be deemed to be in an overcrowded condition."

²⁷⁰ Section 12 of *Closed Houses and Insanitary Dwelling Ordinance* 1894 stipulated that

"In the case of any existing street where the length of such street does not exceed 420 feet ...the height of any building hereafter erected shall not exceed 35 feet where the width of such street on which the

implementation of building controls were continually driven by the public health concerns. Inhabitants in Hong Kong and their living environment were expected to be disciplined as the amended ordinances stipulated.

Public Health and Buildings Ordinance 1903 was the first comprehensive and integrated version of building regulations. It combined the *Public Health Ordinance* 1901 and the *Buildings Ordinance* 1889 as the drastic action to fight the plague. Similar to one of its predecessor, the *Ordinance for Buildings and Nuisances* 1856, which was basically an imported copy of the sanitary and building laws of England at that time. Building control and public health were integrated into a legal format that symbolised their inseparable relationship. Besides ventilation, density control, floor space ratio, drainage and water closet, building materials were also regulated to prevent mice hiding on ceilings or inside hollow walls. It was the response to the great plague.²⁷¹ The short life and frequent enactment and amendments to the *Public Health Ordinances* at the turn of century reflected the serious sanitary problems encountered in Hong Kong. The legislation of the Ordinances, its predecessors and related legislation clearly represented the government's intentions, with Chadwick's prescriptions to treat the issues. Public health authorities dominated the drafting of

principal front of such building abuts is under 14 feet. Where the width of such street is 14 feet but does not exceed 20 feet the height of such building shall not exceed 46 feet."

It also stipulated that

"In all other cases the height of a building shall not exceed 25 feet, where the width of the street in which the principal front of such building abuts, does not exceed 15 feet. Where the width of such street exceeds 15 feet but does not exceed 20 feet the height of such building shall not exceed 40 feet. Where the width of such street exceeds 20 feet but does not exceed 25 feet, the height of such building shall not exceed 45 feet. Where the width of such street exceeds 25 feet but does not exceed 30 feet, the height of such building shall not exceed 52 feet. Where the width of such street exceeds 30 feet but does not exceed 35 feet the height of such building shall not exceed 65 feet. Where the width of such street exceeds 35 feet but does not exceed 40 feet the height of such building shall not exceed 76 feet. No building shall exceed 76 feet in height above the level of the street, without the permission of the Sanitary Board."

²⁷¹ In response to the bubonic plague, Osbert Chadwick was asked to come to Hong Kong again in 1902 to investigate water supply and drainage system. Together with Chadwick, Professor W.J. Simpson was also invited to study the hygienic conditions of the city when the plague shocked the colony. Simpson's report (submitted in 1902 and published in 1903) was so important that it led to the *Public Health and Building Ordinance* 1903 being enacted. See: Osbert Chadwick, Reports on the Sanitary Condition of Hong Kong (The Colonial Office, London 1902); William John Ritchie Simpson, Report on the Causes and Continuance of Plague in Hong Kong and Suggestions as to Remedial Measure (1903).

building control legislation and its implementation. Though building height, back yard regulations, floor space ratio, height of mezzanine floors and occupation permit were shown on paper, the achievements were unsatisfactory, with Dr. Ayres again criticising the Sanitary Board in 1895, during the outbreak of the plague, for its *“long, wordy, windy, desultory rambling discussions, ending in nothing being done”*.²⁷² Nevertheless, the administration did achieve a number of major improvements recommended by Chadwick. Between 1883 and 1890, with over HK\$2 million spent on improvements to water supplies and over HK\$1 million on the sewerage system and drains. Furthermore, HK\$660,000 was used for the construction of new markets, animal depots, slaughter houses, latrines, laundries and other infrastructure works.²⁷³ At that time, the annual government expenditure was about HK\$2 million (HK\$2.3 million in 1894) therefore the government spending on sanitation related public works accounted for about a quarter of annual expenditure every year in average. Although resistance was met, such as two petitions developed by the Hong Kong Chamber of Commerce at the end of the nineteenth century and the early years of the twentieth century, urban regulation work continued.²⁷⁴

To conclude this section, the close relations between public health and development control reflect that sanitary concerns were the driving force behind regulating the living environment for 60 some years. Building control and sanitary improvement provisions had been the main theme of development control in Hong Kong in the nineteenth century, which represented the government’s concerns over colonists’ interest. While the campaign of public health was advocated to protect Europeans the living condition of Chinese communities was blamed as the cause of disease. British concepts and legal enactments of building control were imported as measurements

²⁷² George B. Endacott, *A History of Hong Kong (Revised Edition)* (Oxford University Press, Hong Kong 1973) 28; Gerald H. Choa, *A History of Medicine in Hong Kong* (in *Medical Directory of Hong Kong, The Federation of Medical Societies of Hong Kong* 1985).

²⁷³ Edward G. Pryor, *Housing in Hong Kong (2nd Edition)* (Oxford University Press, Hong Kong 1983) 15.

²⁷⁴ Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

to regulate the living condition. Though the effort had not prevented the outbreak of bubonic plague, more rigid building codes were stipulated to combat the plague. The frequent enactments of sanitation related ordinances in the second half of nineteenth century, and at the turn of the century as well, reflected the inseparable relationship between building control and public health. In terms of planning ideology, the evolution of the ordinances also reflected the domination of public interest ideology.

3.5 Conclusion

In order to present a clear view of the urbanisation and evolution of related laws during the earliest years of British colonialism in Hong Kong, the table below summarises the most important events related to land use and development control.

Table 3.1: Significant events related to land use and development control in Hong Kong (1840s-1900s)

Years	Events
1841	Controlling land use started in the form of contractual planning. The first land auction initiated the leasehold system as a land management measure with development control attached.
1842	The first Land Committee meeting held.
1843	Surveyor-General, Public Works Department and Land Office established.

1844	The layout of expanding towns was planned. The Committee of Public Health and Cleanliness established. The <i>Good Order and Cleanliness Ordinance</i> enacted.
1845	<i>Summary of Offences Ordinance</i> enacted.
1846	<i>Market Ordinance</i> enacted.
1856	<i>Buildings and Nuisances Ordinance</i> enacted as the first sanitation related law to include buildings in the title.
1857	The global cholera pandemic attacked Hong Kong, with more than 4,000 deaths in the following five years.
1858	<i>Nuisances Ordinance</i> enacted.
1859	Inspector of Nuisances established (later became the Sanitation Department).
1862	Appointment of the Sanitary Committee.
1866	<i>Good Order and Cleanliness Ordinance promulgated.</i>
1881	Colonial Office conducted an investigation into sanitary problems.
1882	Chadwick's Report published.
1883	Establishment of Sanitary Board. The <i>Order and Cleanliness Amendment Ordinance 1883</i> published.
1887	<i>Public Health Ordinance</i> passed.
1888	<i>Veranda Ordinance</i> passed.
1889	<i>Crown Lands Resumption Ordinance</i> passed; <i>Building Ordinance</i> passed.
1890	Amendment of <i>Public Health Ordinance</i> (No. 4 of 1890) and Amendment of <i>Public Health Ordinance</i> (No. 26 of 1890) passed.

1891	The <i>Latrine Ordinance</i> passed; Amendment of <i>Public Health Ordinance</i> passed.
1894	Great bubonic plague hit Hong Kong. <i>Closed Houses and Insanitary Dwellings Ordinance</i> passed.
1895	Amendment of <i>Public Health Ordinance</i> and <i>Tai Ping Shan Resumption Ordinance</i> passed. <i>Medical Officer of Health Ordinance</i> passed. The <i>Sanitary Committees Ordinance</i> passed.
1897	The <i>Government Latrine Ordinance</i> passed.
1898	<i>Buildings Amendment Ordinance</i> passed.
1899	<i>Insanitary Properties Ordinance</i> passed.
1901	<i>Public Health Amendment Ordinance</i> passed.
1903	<i>Public Health and Building Ordinance</i> passed.

While Hong Kong grew into a trading centre, urbanisation appeared in the coastal areas and land auctions initiated land use management and development control. Though town expansion layouts were being prepared, development at this stage was piecemeal and without a systematic plan. Concerns about public health had brought up the construction of basic infrastructure and sanitation rules, with the significance of building control on sanitation concerns also reflected in the enactment of ordinances. An administrative state set up the land use and development control machinery to advance the public interest. The table of various development control related regulations represents the rise of a sanitary city in Hong Kong. The close link between building control and sanitation syndrome can be seen by reviewing the administration busily catching up with the need to improve sanitation. To conclude, sanitation syndrome gave birth to Hong Kong's urban planning regulations.

The emergence of urban regularisation in Hong Kong shows that, in terms of McAuslan's ideologies, public interest ideology overpowered private interests. Though resistance was met, private property rights were restrained by public health

legislation. The public health and development control legislation had made it clear that the property rights of private owners were not absolute natural rights that could not be intervened by the State or shared with the public. The nationalisation of private night soil was a case that specially symbolised the triumph of the public interest ideology: almost everything can be nationalised via legislation, even human faeces. Nevertheless the legislation and implementation of urban regularisation and building control were advanced based on the needs of the colonists, which was very similar to the situation in Taiwan as introduced in the previous chapter. Some laws were deemed to be applied only to areas with western inhabitants, with race used as an excuse to stop improvements to Chinese settlements. Unhygienic living conditions were labelled a Chinese custom, therefore in the name of respecting local custom it has become the reason for not implementing building controls. Chinese communities' resistance was overruled or adopted accordingly as well.

In his book, McAuslan's observation on British judicial judgements notes that there was a consistent bias: if confronted with a conflict between the ideology of property rights and that of the public interest, public interest quite often would lose. Public interest would get support only when the opponent against the planning authorities was a non-landowning citizen.²⁷⁵ In Hong Kong, the administrative authorities' discretion showed similarity. Though the parties involved with administrative decisions were different from those involved with British judicial pronouncements, the selective adoption of public interest was the same. In the case of Hong Kong, race was indeed a factor. The racially hierarchical system created a spatial apartheid that supported the colonists' need to conquer sanitation syndrome. In next Chapter this thesis would focus on exploring the racial factor to have better understanding of the relations between development control, public interest ideology and race.

²⁷⁵ Patrick McAuslan, *Land, Law and Planning* (Weidenfield and Nicolson 1975) 145.

Chapter 4: The Racial Factor in Development Control: A Comparison of Taiwan and Hong Kong

Introduction

By reviewing urban regularisation operating in Taiwan and Hong Kong during colonial periods, one can see that concerns about public health made a major contribution to the implementation of development control. However, the public health concerns did not consider the whole population and instead focused on the colonists. These concerns and the implementation of regularisation reflected colonists' views of the colonised; the laws and regulations stipulated to guide and control urban development represented the colonists' way of seeing those local people, whose bodies and physical appearance were different to their own. The colonists assumed that locals' ways of living had a bad influence on public health, a view influenced by modes of racial categorization which were used as an excuse for spatial apartheid. In Hong Kong, "Chinese customs" were selectively adopted as the reason to justify applying some development controls to Western settlements but not Chinese quarters. Racial segregation in planning started as early as 1841. It was the colonial authorities' intention to keep Chinese and European towns apart.

Similar stories can be seen in Taiwan. "Chinese customs" were selectively adopted by the Japanese regime and integrated into the Japanese legal system for the convenience of governing, with some western principles of law already adopted by the Japanese system being simply ignored. For example, Chinese style collective punishment that targeted a suspected perpetrator's neighbours and relatives was kept in the colonial legal system, with the western concept of judicial independence

never genuinely exercised in Japanese controlled colonial Taiwan.²⁷⁶ Building regulations were also used to apply only to Japanese residential areas and used as a form of prohibition to prevent Taiwanese land owners from transactions and development. The consequence of the application of building regulations was that the city centres of newly regulated towns were reserved for the Japanese only, with old Chinese style houses replaced by clusters of Japanese style houses. However, the colonists were not the only ones adopting racial factors. In Hong Kong, “Chinese custom” was also used by Chinese local notables to plead against development control and the implementation of public health regulations, though the real reason behind the protest against the health campaign was economic. While Chinese customs were mentioned by both the Westerners and the Chinese in Hong Kong, the customs they described were neither traditional Chinese nor genuine Chinese. In Taiwan, when the Chinese factor was mentioned by mainstream scholars, it was interpreted to justify the hierarchy of the racial system, with mainland Chinese at the bottom, Japanese people at the top and Taiwanese habitants in the middle, therefore legitimising the modern urban regularisation brought by the Japanese. This chapter reveals the impact of the racial factor on urban regularisation and related laws. It also reviews how the factor interacted with administration’s selective adoption of public interest ideology when implementing development control. When the ideology of private interest, in relation to property rights, was upheld against the ideology of public interest, in relation to health, the racial factor was also proclaimed to obstruct development control.

4.1 Race and building regulations: the case of Hong Kong

²⁷⁶ Wang Tay-Sheng, *Legal Reform in Taiwan under Japanese Colonial Rule* (Linking Publishing 1999) 159, 296.

This section reviews the evolution of building control and public health ordinances in Hong Kong. In both instances, a pattern was repeated in which criticism was followed by new legislation, which was followed by more criticism of the same nature, which would then lead to further legislation or amendment. During this process, racial categories were repeatedly used to argue both for and against the implementation of building and development control. While this section also reviews the relations between racial factors and McAuslan's first and second ideologies, it argues that the real cause behind the racial factor was economic.

As discussed in the previous chapter of this thesis, the bubonic plague showed the failure of building controls in nineteenth century colonial Hong Kong, with Chadwick's report clearly proving that urban regulation works were unsatisfactory.²⁷⁷ Nevertheless, the causes of the outbreak were more complicated than simply "insanitary living conditions". Climate, transportation, population density and military action have been statistically proven to be related to the spread of the disease.²⁷⁸ While strict building control measures were enforced in Hong Kong by the city state, in Canton, Chinese officials remained largely uninvolved in plague relief efforts; the disease disappeared almost at the same time in both areas.²⁷⁹ However, the plague did expose the sanitary issue and shift the colonists' attention, previously focused solely on British troops and merchants, to all of Hong Kong's inhabitants. Consequently, building control measures were developed to cover the whole of Hong Kong.

²⁷⁷ Osbert Chadwick, *Reports on the Sanitary Condition of Hong Kong: with appendices and plans* (The Colonial Office, London 1882) 21, 23.

²⁷⁸ Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

²⁷⁹ Carol Benedict, *Bubonic Plague in Nineteenth Century China* (Stanford University Press, California 1996); Ann G. Carmichael, 'Public Health and Sanitation in the West before 1700' in Kenneth F. Kiple (ed), *The Cambridge World History of Human Disease* (Cambridge University Press, Cambridge 1993).

As previously mentioned, Colonial Surgeon Dr. J. Carroll Dempster's criticism of the sanitary system in 1854 led to the new 1856 and 1858 ordinances. In 1858, Dr. John Ivor Murray took over as Colonial Surgeon and repeatedly drew attention to the exceedingly unhealthy state of Hong Kong. In 1860, Dr. Murray's damning Annual Report again raised the same issue, resulting in the setting up of the Sanitary Committee. However, little was done. In 1870, the colonial surgeon noted, "*It is not creditable to this colony that after their unhealthy condition has been pointed out; they [the drains] should remain as they are, a source of disease and death.*"²⁸⁰ Dr. Philip Ayres, who had succeeded Dr. Murray as Hong Kong's Colonial Surgeon, reported on 15th April 1874, that the living conditions of the Chinese were very poor, "*such as bad drainage, deficient ventilation, foul privies, filthy condition of houses.*"²⁸¹ Nevertheless, in response to criticism of the health of British troops in 1880, Chadwick's Report was published and gave birth to amended laws. Yet Chadwick's bold recommendations were not fully implemented. Dr. Ayres, who held the post of Colonial Surgeon for twenty four years, stated in his 1891 annual report that "*the Building Ordinance refers only to new buildings, and existing buildings previous to the Ordinance remain the same.*"²⁸² Even after the appearance of the plague and the introduction of new ordinances, including The *Sanitary Committees Ordinance* of 1895 and Amendment of *Public Health Ordinance* of 1895, similar criticism was recurred in the then Colonial Surgeon Ayres's Annual Report.

Resistance from property owners and Chinese people was blamed by the colonial authorities for the failure of implementing building controls. The intervention of building control met with the combined opposition of the Chinese, who asked for no more than to be left alone, and of property owners who resented interference with

²⁸⁰ Colonial Surgeon's Report 1870 in Hong Kong Blue Books (1870) 268.

²⁸¹ Colonial Surgeon's Report 1874 in Hong Kong Blue Books (1874).

²⁸² Colonial Surgeon's Report 1891 in Hong Kong Blue Books (1891).

property rights.²⁸³ Enforcement was difficult when the legal concept of private property rights was upheld against building controls. According to Bristow and Endacott, the *Public Health Ordinance* forced landlords to reduce their rental areas.²⁸⁴ Local Chinese notables led the petition against the proposal and pleaded that the implementation of the new regulation would inevitably intrude into people's everyday life. Segregation was also an excuse for asking the authorities to leave Chinese people "*free to live or die, avoid, catch and spread disease as it pleases them.*"²⁸⁵ To placate the resistance, two Chinese representatives were recruited to the Sanitary Board. They led the opposition against the attempt to apply the standards of the new British Public Health legislation to Hong Kong and demanded compensation for the property affected by the bill.²⁸⁶

Sir Kai Ho Kai, at that time serving on the Legislative Council, was one of the first Chinese physicians to be medically trained in Britain, collecting some 47,000 signatures protesting against the *Public Health Ordinance*.²⁸⁷ As a result of this petition, the colonial authority revised the original bill. All sections concerning windows, privies and backyards were deleted, with only certain public health standards for new buildings remaining in the Ordinance.²⁸⁸ Nevertheless, the new policies were seen as a violation of the promise made in 1841 by Charles Elliot,

²⁸³ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1973) 149, 150.

²⁸⁴ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1973) 85-86; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 28.

²⁸⁵ Geoffrey Robley Sayer, *Hong Kong 1862-1919: Years of Discretion*. (Hong Kong University Press, Hong Kong 1975).

²⁸⁶ Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

²⁸⁷ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1973) 152.

²⁸⁸ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 33; Gerald H. Choa, *The Life and Times of Sir Kai Ho Kai* (Chinese University Press, Hong Kong 2000); Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

Superintendent of Trade in China, that the Chinese would be guaranteed against future British interference and allowed to follow their own customs. According to Ip, the establishment of the Sanitary Board was viewed as a sort of official intervention into Chinese life.²⁸⁹

This was not the first time that the “Chinese customs” plea was used to justify opposition to health regulations. The colonists took it as a reasonable excuse as well. As mentioned earlier, Hennessy stated that *“the system of water-closets and house privies is a system quite out of place in a tropical colony, and not in accordance with the custom of the Chinese people.”*²⁹⁰ He also argued that *“some of the provisions (of the Ordinance for Building and Nuisances, 1856) are entirely unsuited to this Colony and would do more harm than good if enforced.”*²⁹¹ Hennessy’s objection was the main reason why the *Ordinance for Building and Nuisances* of 1856 was not implemented in Chinese quarters.²⁹²

Accounts of health reforms in Hong Kong have argued that members of the Chinese elites like Dr. Ho Kai, who were beholden to special economic interests, were the main obstacle to Western modernisation, and that Dr Kai’s petition against public health regulations was a consequence of lingering xenophobia and cultural conservatism. Yet was this really the case? Loss of rent was indeed a great concern for landlords. In his 1874 report, Colonial Surgeon Dr. Ayres described the living conditions found in Chinese tenements:

²⁸⁹ Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

²⁹⁰ John Pope Hennessy, Letter to the Right Honourable the Earl of Kimberley (8th February 1882) in Robert L. Jarman, *Hong Kong Annual Administration Reports 1841-1941* (Archive Editions, London 1996) 649, 650; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

²⁹¹ *Ibid.*

²⁹² Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

“the average size of the main rooms is 26 feet by 14 feet by 10 feet high, containing eight partitions, averaging 7 feet by 6 feet by 7 feet high, over which a sort of loft is often built to increase the accommodation, and in a room of this description, from 16 to 25 people live.”²⁹³

Accordingly, the average living space for a person was about 180 cubic feet, far below the requirement of three hundred cubic feet per person stipulated by the 1887 Ordinance. The enforcement of the proposed Ordinance would either push up rent or cause a huge loss for landlords, or both.

The draft Bill also included provisions that required alterations to existing buildings to be carried out at the owner’s expense. The main concern of all economic interests affected was the requirement of a backyard (10 feet wide for one-storey structures and 15 feet wide for two), which would be equal to half the size of a main room. The removal of valuable space from landlords and tenants was the reason why land prices went down sharply after Chadwick published his Report. There were European and British landlords who suffered the same loss, but it was unofficial Chinese members of the Legislative Council who led the opposition.

Race played a significant role in the campaign. Dr. Ho Kai spoke to the Sanitary Board, criticising the regulation of Chinese buildings as unreasonable. He correctly pointed out that all these regulations originated from the context of British cities. Indeed, Chadwick, in his report, did quote *The Metropolitan Buildings Act* issued by the Local Government Board in Britain to argue that Hong Kong's houses were below standard. The opposition claimed that these regulations violated the colonial policy that maintained the colonial divide between the British and the Chinese.²⁹⁴ More racial tension between the colonists and natives resulted from the outbreak of the plague.

²⁹³ Colonial Surgeon’s Report 1874 in Hong Kong Blue Books (1874).

²⁹⁴ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 150; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

In the name of public health, the authorities intervened in Chinese communities. The deployment of soldiers for house-by-house searches, the implementation of quarantine and the sealing off of a Chinese community were viewed, not only as a violation of freedom, but also as an intrusion into Chinese tradition, since Chinese people took care of patients at home rather than submitting them to a hospital or isolated cells, where they would be forcibly subjected to Western medicine. Disputes about Chinese and Western medicine increased during the plague. While Chinese patients refused to be admitted to the quarantine ship (*Hygeia*) and chose Tung Wah Chinese hospital, where all patients were treated using Chinese herbal medicine, the Sanitary Board opposed this. When statistics showed that treatments in Western hospitals had not achieved a lower fatality rate than at Tung Wah, the authority had to compromise. As Carol Benedict notes, *“the resistance to quarantine was a reasonable response to an alien and intrusive medical system that had not satisfactorily demonstrated its therapeutic superiority to the indigenous one.”*²⁹⁵ Benedict proposes an explanation to Dr. Ho Kai’s opposition to the passage of the 1887 *Public Health Ordinance*:

*“He was a Chinese nationalist who selectively assimilated those aspects of Western learning that he believed would strengthen China, but rejected the notion that all western knowledge and institutions were intrinsically superior.”*²⁹⁶

Thus, while he opposed colonial health measures, Dr. Ho Kai identified himself with colonial views about crime and punishment, recommending English justice as a model for reform in China.²⁹⁷ Later in 1894, an empty glass factory was converted into a branch of Tung Wah to quarantine patients and Western medicine was introduced to Tung Wah in 1896 through the recommendation of the colonial authority as a

²⁹⁵ Carol Benedict, ‘The Life and Times of Sir Kai Ho Kai: A Prominent Figure in Nineteenth-Century Hong Kong (review)’ (Fall 2001) 75(3) *Bulletin of the History of Medicine*.

²⁹⁶ *Ibid.*

²⁹⁷ Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (Curzon Press, Richmond 2001).

compromise, rather than to dissolve the Chinese hospital.²⁹⁸ The Chinese tradition was broken at Tung Wah and a Western trained medical doctor was appointed Superintendent. In 1896, the population in Hong Kong was 240,000, with 220,000 Chinese. Tung Wah's clinics received 110,000 patients that year. The figures showed that the hospital being a charity organisation did indeed play a vital role in Hong Kong's public health system, even though Tung Wah had been independent from the colonial government's administration until the first Superintendent was appointed. However, the hospital still did not get any subsidies from the government until 1973, even after it was integrated into the official public health system.²⁹⁹

The encounter and conflict between Western and Chinese doctrines on public health and medicine serves as a significant example of the Chinese appropriation of Western modernisation, including the public health movement and development control. Instead of assuming the superiority of Western practices and the backwardness of Chinese customs, Benedict criticises "*the triumphalist narrative that characterised earlier interpretations [which] had seen the Chinese resistance as cultural conservatism.*"³⁰⁰ Benedict suggests that the resistance and adoption of Western knowledge and discipline was a complex and ever-shifting process of negotiation and selective assimilation, undertaken by multiple actors for diverse purposes.

Furthermore, while "the Chinese" were viewed by the colonial authorities and subsequent scholars as the principal factor obstructing the implementation of the building control and the public health campaign, the real cause was economic

²⁹⁸ Gerald H. Choa, *The Life and Times of Sir Kai Ho Kai* (Chinese University Press, Hong Kong 2000); Society of Hong Kong History, *History of Hong Kong in Cultural Relics and Historic Sites (1)* (China Academy of Culture Publisher 2014) 159.

²⁹⁹ Ho Pui-Yin, *Abolition and Establishment: Evolution of the Administrative System of Tung Wah Group of Hospitals* (Joint Publishing, Hong Kong 2010) 521.

³⁰⁰ Carol Benedict, 'The Life and Times of Sir Kai Ho Kai: A Prominent Figure in Nineteenth-Century Hong Kong (review)' (Fall 2001) 75(3) *Bulletin of the History of Medicine*.

interests. The British building regulation standard was not completely opposed, but selectively absorbed. The opposition, led by Dr. Ho Kai, condemned the lack of consultation, even though he did not reject the detailed construction regulations for new buildings when he served as a Chinese Representative. The petition mainly pleaded for affordable accommodation. This was an era before the concept of the welfare state and the solution that Chinese dwellers could opt for was to sacrifice comfort in exchange for low cost. Similar motivations led to earlier oppositions to building controls. When population growth led to overcrowding, it saw renewed opposition to the enforcement of the 1856 *Building and Nuisances Ordinance*.³⁰¹

Low cost accommodation was a reasonable request and in accordance with the interests of privileged Chinese elites. Class was a factor here. Race and traditional customs were conveniently used by members of these elites to mobilise Chinese people to challenge Western regulations and also to cover up potential class conflict between Chinese landlords and their tenants. Race and customs were also conveniently borrowed by the colonial authorities as an excuse when the government was reluctant to invest in infrastructure. The difficulties of implementing building controls were exacerbated by Hong Kong Governor John Pope Hennessy's non-intervention approach.³⁰² In 1878, Hennessy took the view that traditional Chinese methods of sanitation and overcrowded conditions in the city were adequate. They were considered habits deeply rooted as social customs.³⁰³ Likewise, in a letter of 1881, Hennessy mentioned "*a native population who will readily carry out the Chinese custom by which the sewage and refuse is carried out of the town, and used for agricultural purposes.*"³⁰⁴ Instead of investing in proper drainage

³⁰¹ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987).

³⁰² George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 112, 113, 114.

³⁰³ Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*. 346.

³⁰⁴ John Pope Hennessy, Letter to the Right Honourable the Earl of Kimberley (8th February 1882) in Robert L. Jarman, *Hong Kong Annual Administration Reports 1841-1941* (Archive Editions, London

systems, Hennessy preferred the Chinese house buckets model so as not to impose a European custom on the native people. In order to support his opinion of “leaving the Chinese custom alone”, he did not even consider the living conditions in Chinese tenement buildings as being overcrowded, stating:

*“These houses can hardly be called overcrowded. In no case is there less than 250 cubic feet for every individual inhabitant, men, women and children included; and never reckoning the space in verandas and kitchens, the average space would be about 400 cubic feet for each individual.”*³⁰⁵

These figures were very different from Dr Ayres's estimate of on average of approximately 180 cubic feet per person.

Nevertheless, even campaigners for public health like Dr Ayres had seen the Chinese resistance as cultural prejudice. In 1898, in the Report of the Commission to Inquire into the Existence of Insanitary Properties in the Colony, Dr. Ayres commented:

*“Many laws have been made in the twenty years previous to 1894 to remedy the insanitary state of the Colony, but most have remained dead letters owing to the difficulties of enforcing them and the prejudices of the Chinese...”*³⁰⁶

The topic of racial and cultural difference was treated at some length, with both sides (the Chinese and colonists) happy with the excuse for their reluctance or disagreement with the building control reforms. For the campaigners and reformers, the Chinese were the main obstacle to sanitary regulation and building controls. They genuinely assumed that the issue was mostly racial and cultural.³⁰⁷ While most

1996) 649, 650; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) Cities and Design.

³⁰⁵ Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) Cities and Design; Yiu Chung Yim, The Plague and Building Control in Hong Kong (Hong Kong Museum of History 2007) 14.

³⁰⁶ P. Ayres, Report of the Commission to Inquire into the Existence of Insanitary Properties in the Colony (Government Printer, Hong Kong 1898).

³⁰⁷ Ibid

criticism focused on the Chinese residents, the State's responsibilities were also mentioned. However, though the reformers condemned the colonial government for its failure to enforce the regulations, this criticism assumed that a more powerful administrative apparatus was needed to deal with the Chinese factor.³⁰⁸ So, the root of the issue was held to be the Chinese. There was a hidden discourse behind this kind of criticism, which held that the correct approach to the reforms was to support the entire Ordinance, the amendments, and the regulatory measures introduced by the sanitary authorities. Regulating Chinese habitation was the cure to poor sanitary conditions.

Sanitation campaigners, like Ayres, emphasised that regulating Chinese habitation could have helped solve the sanitary syndrome if the regulatory rules relating to both Chinese and non-Chinese habitations had been implemented alongside proactive investment in infrastructure.³⁰⁹ Yet such investment was frequently lacking. The Sanitary Board of Hong Kong, in charge of public health, was actually an importation of the British General Board of Health. During the birth of the public health movement, the State was expected to play a crucial role in the campaign and asked to invest in public health. The British *Public Health Act* of 1848, which was the outcome of Edwin Chadwick's Sanitary Report and the Health of Towns Association's campaign, was one of the first to challenge the notion of *laissez-faire*. It stipulated government investment in infrastructure and set up the authorities to take charge of public health, with the following presenting some features of the act:

- (1) The establishment of a General Board of Health.³¹⁰
- (2) Responsibility for water supplies and drainage, amongst other things, was given to corporations.³¹¹
- (3) Permission was granted to towns that did not have corporation status to

³⁰⁸ Ibid

³⁰⁹ Ibid.

³¹⁰ Article VI and Article VII, *Public Health Act* 1848 (UK).

³¹¹ Article X, Article LXXV, Article LXXVI and Article LXXVII, *Public Health Act* 1848 (UK).

have a Local Board of Health.³¹²

- (4) Taxes and fees would be levied locally to pay for improvements.³¹³
- (5) Where the death rate exceeded 23 in every 1,000, a Local Board of Health could be imposed by the General Board of Health.³¹⁴

Responsibilities similar to these stipulations on public investment, including water supply, drainage and street cleaning, were also incorporated on the regulations of the Hong Kong Sanitary Board in 1883.³¹⁵ However, little was done in terms of public investment in Hong Kong, until Chadwick filed his report. As Bristow states on the subject of the failures of the Sanitary Committee, “*despite recommendation that a complete reorganisation of the drainage system and proper enforcement of existing ordinances were required, little was done, mainly on the grounds of cost.*”³¹⁶ During the three decades, investment in infrastructure had consistently proved insufficient in Hong Kong. It was unsurprising that Dr. Ayres repeatedly criticised the Sanitary Committee and Sanitary Board for nothing ever being done or achieved.

This thesis argues that the causes for failing to implement building control were economic. The lack of government investment in infrastructure meant that the implementation of building controls was destined to meet public resistance. The frequently amended ordinances repeatedly requiring people to be “disciplined” merely shifted the burden from the government to the people. Over-emphasising the “Chinese factor” as the excuse, both when the State was reluctant to enforce regulations, and when State enforcement met resistance, the authorities regarded

³¹² Article XIII, *Public Health Act 1848* (UK).

³¹³ Article XLII, Article LVII, Article LXXXVI - LXXXIX, Article XC and Article XCIII, *Public Health Act 1848* (UK).

³¹⁴ Article VIII and Article XII, *Public Health Act 1848* (UK).

³¹⁵ Robin Gauld & Derek Gould, *The Hong Kong Health Sector: Development and Change* (Chinese University Press 2002) 36.

³¹⁶ Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987).

repeated legislation, rather than a greater focus on economic infrastructure, as the most appropriate approach for public health and a better living environment. Blaming the people was not an action intended to deceive, since the colonial authority genuinely believed the Chinese people to be responsible. Yet this mistaken view meant that the government evaded sufficiently investing in the infrastructure.

The frequently-invoked notion of “Chinese customs” was a speculative inference and vague concept whose true contents had not been debated between the colonists, Chinese elites and reformers. They mostly referred to crowded living conditions. By illustrating the floor plans and interior of houses in his Report, Chadwick’s sketch showed a three dimensional image of the spatial tradition of “Chinese customs”: the ground floor was used as a shop, the upper floor was the living space and there was narrow front with a long depth so there were few windows and many partitions lacking natural light and ventilation. This was, in fact, a drawing of a typical commercial house in many urban areas in China or Chinese settlements, including Canton, Taiwan, Singapore and Shanghai. It is called a “shophouse” or “street house” in Chinese because it commonly appeared on busy commercial streets.³¹⁷ However, the common pattern of a shophouse is actually an exception in Chinese dwellings.³¹⁸ Narrow and long shophouses existed in the busy

³¹⁷ Typical “shophouses” can be seen in Lukang today. Lukang, a small town with a population of about 80,000 people in central Taiwan is a tourism hot spot famous for its historical heritage. There are clusters of old streets with typical commercial houses in the southern Min style with European baroque facades. Their history can be traced back to before the Japanese took over Taiwan. Lukang’s comprehensive heritage provides an illustration of the Chinese way of living and the blue print for the early spatial structure of a Chinese town. Similar to the Hong Kong houses drawn by Chadwick, Lukang shophouses have a very narrow front and long depth, with the front width usually being less than 5 metres and the depth ten times the width. Lighting and ventilation are usually problematic. These commercial buildings are mostly one or two storeys (with attic space) and extend from the store front in a series of single rooms away from the street, combining commercial and residential space. Thus, space is created by the extension of these rooms back away from the streets. This gives the storefronts the characteristic narrow, uniform shape, with adjacent or shared walls. N. Ni, ‘China’s Expanding Economic Interests in Hong Kong’ (December 1994) 11(6) *Asian Perspectives* (Nomura Research Institute Hong Kong Limited); Joseph Allen, ‘Reading Taipei: Cultural Traces in a Cityscape’ (2003) 3 *Harvard Studies on Taiwan: Papers of the Taiwan Studies Workshop*.

³¹⁸ What is the architectural pattern of traditional Chinese dwellings? There is no universal style applied to all corners of China but Siheyuan (Four Embrace Court) was the most common classical

commercial centres of towns. Many studies on traditional Chinese/Taiwanese architecture point out that the unique “pattern language”³¹⁹ of architecture enabled the busiest street to accommodate the maximum numbers of shops because the closer to the town centre is, the more expensive rent is.³²⁰ Chadwick’s illustration of the traditional narrow front houses in Hong Kong, on the contrary, did not represent the traditional way of living. The reason for the building style he had sketched, with its crowded conditions, was a consequence of commercial activities and urbanisation.³²¹ Hence, the “Chinese customs” quoted by the Chinese and Europeans in the public health debate in Hong Kong was a myth. Similar to Hong Kong, the implementation of regulating narrow-front commercial buildings was carried out in Japanese colonial Taiwan as well. The *Taiwan Dwelling Building Regulations* of 1900 and its sub-regulations were set up to improve the ventilation, lighting and sanitary conditions of urban dwellings. Building permission was stipulated in the regulations because the hot-bed of diseases needed to be conquered.

Ip lam Chong’s observation on the British public health movement of the nineteenth century further supports the above point that the causes for failing to implement

architectural style of residential housing. A unit of Siheyuan comprised of a garden surrounded by three or four one or two-storey houses. Siheyuan used to be quite common in China, Taiwan and the New Territories of Hong Kong and had a long history of about 700 years. The style is derived from a peasant’s single bungalow with a big front yard for drying rice in the sun. When a family grew, additional bungalows were added to the sides of the yard to accommodate new family members. See: Liang Sicheng, *Qing Structural Regulations*, (China Society of Architecture, Beijing 1934); Gao Wei, *Siheyuan* (Xue Yuan Publisher, Beijing 2007) 3.

³¹⁹ Pattern language is a term coined by architect Christopher Alexander in his books, *The Timeless Way of Building* (C. Alexander, 1979) and *A Pattern Language* (C. Alexander, S. Ishikawa, and M. Silverstein, 1977). A pattern is a spatial design to solve architectural problems and a pattern language is a structured method of good design practices.

³²⁰ Lin Hui-Chen, *The Structure of Lukang’s Streets in the Late Years of the Ching Dynasty* (Realm and Image Publishing, Taipei 1979); Lin Hui-Chen, *The Development of Town Streets in the Chronical of Lu-Kang: Geography Chapter* (Lukang Town Office, Lukang 2000); Hung Min-Lin, *Evaluation of the First Stage Restoration Engineering of Lukang Historical Reservation*, (Civil Affairs Bureau, Taiwan Province Government, Nantou 1994).

³²¹ For example, Hong Kong (literally meaning Fragrance Port, the pronunciation of “Kong” is Cantonese) and Lukang (literally meaning Deer Port, the pronunciation of “kang” is Mandarin) were both regional shipping centres, with the living conditions a consequence of commercial activities and urbanisation.

building control were not racial but economic. Ip argues that sanitary syndrome was not necessarily a colonial product.³²² As mentioned above, the original sanitary ordinance of 1856 was imported from the British public health movement, as mentioned earlier in this section. Campaigners like Edwin Chadwick, under the influence of miasma theory that maintained that diseases were caused by “bad air” or poisonous vapour, believed that the solution to public health was mainly through a focus on civil engineering, rather than through medical science.³²³ Ip borrows Foucault’s argument that modern (Western) medical science not only envisions a space of configuration for disease, but also marks out the space for the localisation of disease.³²⁴ He observes that the ideology of the public health movement in Britain and Hong Kong presumed that diseases each had particular domains of genesis, occurrence, development and treatment: the public health movement in Britain located diseases in crowded working class dwellings, while the movement in Hong Kong located disease in Chinese inhabitation.³²⁵ In both cases, disease was not viewed as an independent entity but associated with perceptions based on racial and class categories. Such perceptions on the part of State authorities were frequently not borne out in reality. For example, at the turn of the century, the plague disappeared in Canton and Hong Kong at almost at the same: this was a mystery to the public health campaigners who believed that improving hygiene helped extinguish the disease. While conditions in hygiene seemed to have improved far less in Canton than they had in Hong Kong, the same result had been achieved. However, the communities and dwellings of the Chinese in Hong Kong and the working class in

³²² Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

³²³ Charles Wilcocks, *Medical Advance, Public Health and Social Evolution* (Pergamon Press, Oxford 1965); Deborah Lupton, *The Imperative of Health: Public Health and the Regulated Body* (Sage, London 1995); Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

³²⁴ Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (Vintage, New York 1975).

³²⁵ Michel Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (Vintage, New York 1975); Christopher Hamlin, *Public Health and Social Justice in the Age of Chadwick: Britain, 1800-1854* (Cambridge University Press 1998) 368; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

British cities were viewed as the hot bed of plagues, which needed to be conquered by civil engineering. Ip's analysis of the public health movement in Hong Kong concludes that a disease cannot be separated from the social perception of different peoples and groups. The Chinese in Hong Kong and the poor people in Britain's cities were deemed inferior and were the targets of frequently aggressive campaigns.³²⁶ Viewed as being responsible for the causes of disease, they were regulated and asked to be self-disciplined. Such legislation placed the emphasis on individual conduct, rather than focusing on State-supported infrastructure. Thus, in Hong Kong, when tenants were asked not to squeeze into a crowded room, neither subsidies nor alternative housing were provided. The main theme of the legislation promoting building control and public health burdened individuals with heavy and often unrealistic responsibilities.

To conclude this section, by reviewing the history of building control and public health ordinances in Hong Kong, the interaction of racial discourse with the administration's selective adoption of public interest and private property interest can be made clear. While the British colonial regime brought the concept of public health movement to implementation, the ideas of the movement adapted themselves to the needs of colonists. The well-being and health of Europeans were the priorities. Building controls were introduced in the name of public interest, but this notion of the public did not include the Chinese. When the ideology of private property was upheld against public interest ideology, the notion of "Chinese customs" was again used to resist building control. Viewed as inferior to the colonists and responsible for the causes of diseases, local Chinese were targets for regulation, and were required to be self-disciplined. Instead of investing in infrastructure, as stipulated in the establishment of Sanitary Board, the colonial authorities implemented legislation which placed the responsibility on Chinese individuals. As the repeated legislation on regulating building and development and the repeated failure of its implementation suggests, the

³²⁶ Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

amended ordinances which repeatedly required people to be “disciplined” merely shifted the burden from the government to the people, and the “Chinese factor” was over-emphasised as an excuse when the enforcement met resistance. The real cause of the failure of building control was economic, a result of the colonial government’s evasion of investment in infrastructure.

4.2 The Chinese factor and legal segregation: the case of Taiwan and Comparison with Hong Kong

Following the preceding analysis of race and building regulations in Hong Kong, this section shifts its focus to town planning and development control in Taiwan. There are many similarities between the two cases. In Hong Kong, the earliest building regulations were not applied to Chinese settlements, with Governor Hennesy urging that the Chinese were better left alone. In Taiwan, early urban regularisation was applied to city centres where only the Japanese lived, as was the construction of sewerage systems; “insanitary” Taiwanese dwellings were mostly excluded from such measures, and so derived no benefit from the infrastructure and regularisation.³²⁷ Even now, contemporary scholars and politicians in Taiwan claim that crowded and unhygienic conditions are the default way of Chinese living. Race, or “the naturally unhygienic character of the Chinese”, has been conveniently used to describe the under-developed state of Taiwan and the cultural conservatism of the Chinese people of Taiwan.³²⁸ This section would like to challenge the above stereotype.

³²⁷ Huang Lan-Shiang, ‘Urban Regularisation in Taipei City in the Earliest Years of Japanese Occupation’ (1995) 18 *Taiwan: A Radical Quarterly in Social Studies* 189, 213.

³²⁸ In 2003 pro-Taiwan independence politicians and medical doctors campaigned renaming Severe Acute Respiratory Syndrome (SARS) Chinese Pneumonia. In his article, Professor Li Siao-fong of Shih Hsin University called SARS “Chinese Plague” and argued that the naturally unhygienic character of the Chinese had been the reason of diseases spreading in Taiwan. Li Siao-fong, ‘The Chinese Plague’

Reviewing the history of the public health movement in Japanese colonial Taiwan, Taiwanese scholar Li Siao-fong reinforces this stereotype, arguing that, in terms of sanitary conditions, the Taiwanese are indeed Chinese (the nature of Chinese being unhygienic), since it was epidemics that almost defeated the Japanese invasion.³²⁹ As mentioned in the second chapter of this thesis, the Japanese administration was shocked that a modern army could be defeated by an endemic disease and not by local tribes. However, Li Siao-fong's conclusion that some races are superiorly more hygienic than other races by nature is highly dubious. In the second half of the nineteenth century, there were four outbreaks of cholera in Japan, with approximately 50,000 people dying between 1877 and 1882.³³⁰ While Japanese soldiers died of cholera in Taiwan, the disease spread in sea ports like Nagasaki. The poor and working class in the dock areas suffered most. While the Japanese of that time are viewed as a more "advanced" people by some Taiwanese scholars, public urination was a common practice throughout the country.³³¹ In 1872, legislation was presented making it illegal to appear nude in public and banning public urination.³³² The more "modernised" Japanese people were not necessarily more hygienic than Taiwanese people, though it is a fact that the public health movement started earlier in Japan than Taiwan. Facing the fear of epidemics, the Japanese

(Taipei: Liberty Times, 12th May 2003); Lo Bi-shia, 'Chen Chien-jen: Calling SARS "Chinese Pneumonia" is not Proper' (Taipei: Liberty Times, 3rd June 2003).

³²⁹ Li Siao-fong, 'The Chinese Plague' (Taipei: Liberty Times, 12th May 2003).

³³⁰ Kuo Chun-Lin and Fukui Hiromich, 'Geographical Structures and the Cholera Epidemic in Modern Japan: Fukushima Prefecture in 1882 and 1895' (2007) 6(25) *International Journal of Health Geographics*; Aleksandra Kobiljski, 'On Science and Faith in the Meiji Engineer' in David G. Wittner and Phillip C. Brown(ed) *Science, Technology and Medicine in the Modern Japanese Empire* (Routledge 2016) 17, 18.

³³¹ Shih Wei-chuan, 'Epidemic and Race' (Taipei: China Times Evening, 21st May 2003).

³³² James L. Huffman, *A Yankee in Meiji Japan: The Crusading Journalist Edward H. House* (Rowman & Littlefield Publishers 2003) 78; Richard M. Reitan, *Making a Moral Social Ethics and the State in Meiji Japan* (University of Hawaii Press, Honolulu 2010) 12.

started to implement town plans in Taiwan, but did not apply them in plague infected cities like Nagasaki.³³³ Writing in 1905, Louis Seaman argued:

*“Japan is the first country in the world to recognize that the greatest enemy in war is not the opposing army, but a more treacherous and dangerous – preventable diseases, as found lurking in every camp – whose fatalities in every great war of history have numbered from four to twenty times as many victims as those of mine, bullets and shells.”*³³⁴

The reason and motivation for Taiwan being a priority for implementing urban regulation was military based. This was the same in Hong Kong. Chadwick’s investigation into sanitation were prompted by the threat to the health of British soldiers. Governor Davis frankly said that the health and death rate of soldiers were indicators of local sanitary conditions. When Governor Davis proclaimed in 1844. *“I will pledge myself for the improvement of the general health”*, he was only referring to the British people.³³⁵ Sanitary syndrome began from soldiers’ bodies rather than native people, as parallel studies on colonialism and public health in India confirm.³³⁶ The cases of Taiwan and Hong Kong are not exceptional in this regard.

In a Ph.D. thesis on British imperial medicine in China, Li Shang-jen adopts the figure of the “alien” from the American film of the same name as a metaphor to explain the colonists’ fear of disease in colonies. Li argues that folk diseases and epidemics in colonies were “aliens” to the colonists/explorers because they were fatally

³³³ Shih Wei-chuan, ‘Epidemic and Race’ (Taipei: China Times Evening, 21st May 2003).

³³⁴ Louis Livingston Seaman, *From Takio through Manchuria with the Japanese*. (D. Appleton and Company, New York 1905).

³³⁵ Robert L. Jarman, ‘Hong Kong: Annual Administration Reports 1841-1941, Volume 1: 1841-1886’ (Cambridge University Press 1996); Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

³³⁶ Radhika Ramasubbam, ‘Imperial Health in British India, 1857-1900’ in Roy Macleod, and Milton Lewis (ed) *Disease, Medicine and Empire: Perspectives on Western Medicine and the Experience of European Expansion* (Routledge, London and New York 1988); D. Arnold, *The Touching the Body: Perspectives on the Indian Plague 1896-1900*. in Guha, Renajit and Spivak(ed) *Gauatri Chakravorty. Selected Subaltern Studies* (Oxford University Press, New York 1988).

threatened by and unfamiliar to the outsiders.³³⁷ Since fear and understanding of disease cannot be separated from the colonists' perceptions and fear of local natives, the Chinese in both Hong Kong and Taiwan were identified as the carrier of "aliens"; or even more directly, they *were* aliens. Their habitation and bodies needed to be regulated, conquered or separated. Usually, segregation was the prepositional measure when colonising local habitation and habitants; it was also the most economical approach. Segregation was a common practice during the earliest stage of colonisation. It was a state of social exclusion performed spatially. Laws and city plans were enacted accordingly to segregation. As Anthony King notes, the central social fact of colonial planning was segregation on racial lines. The native population were kept out of core urban districts and confined to "native locations".³³⁸

In Taiwan, before building permission was introduced to the whole county in 1900 through the *Taiwan Dwelling Building Regulations*, it was only applied to Japanese residential areas. The Mayor of Taipei County in 1896 published the No. Thirty Three Order, *Dwelling Building Regulations*. It was the very first appearance of building permission in Taiwanese history. However, the Regulations only applied to Japanese residences in five towns in northern Taiwan. Most residents were colonial officials, with their dependants and residences located close to town centres with easy access to State buildings and police stations. The Regulations were actually a prohibition order preventing Taiwanese land owners from transactions and development. Protected zones were reserved solely for colonists.

Newly built houses in Japanese zones differed from traditional Chinese and Taiwanese dwellings; influenced by traditional Chinese architecture, they consisted essentially of post-and-beam structures that did not greatly diverge from their Japanese rural

³³⁷ Li Shang-Jen. *The Imagined Tropic: British Imperial Medicine in China, 1840-1910*. (PhD thesis, Imperial History of Science, University of London 1999).

³³⁸ Anthony D. King. *Urbanism, Colonialism, and the World-Economy: Cultural and Spatial Foundations of the World Urban System* (London: Routledge 1990) 57.

precursors. Houses had a grid of wooden or bamboo supports that supported wall positions. Walls were not structural but movable partitions defining space or rooms with “tatamis” (straw mats) or wooden floors. Clusters of Japanese style dwellings could still be seen after the colonial years until these areas were regenerated during the 1980s by the Ministry of Defence and some departments or State companies of the central/provincial government in the Chinese nationalist government (such as the Bank of Taiwan, the Taiwan Water Company and Cooperation Bank).

After the Second World War, the Chinese government took over the Japanese properties and they became high-level officials’ residences. For example, Japanese one-storey houses in Jin Hua Street, located in inner city Taipei, are still well-preserved, some of them being high level public servants’ or ministers’ official residences. Jin Hua is now a quiet and low density residential precinct in a busy city centre. However, most of the Japanese dwellings here were previously used by Chinese soldiers and their families from the Mainland as dormitories.³³⁹ Usually, a house was divided into several units and shared by different households. Annexes were added and living quarters extended to the garden or street. Such a unique urban landscape was informally named Military Dependant Quarters and positioned in the original Japanese zones where the finer locations of the city were located.³⁴⁰ For example, close to the Ministry of National Defence, Tao Yuan Street was a typical urban ghetto accommodating veterans and famous for its Northern Chinese beef noodle stalls before being demolished.³⁴¹ It was deliberate segregation stipulated by urban regulations and plans during the Japanese occupation to protect the minority ruling class. After the Chinese takeover, it was segregated as well but for a different reason: such areas became un-regulated and un-planned slums accommodating lower

³³⁹ Luo Yu-Ling, *Military Dependents Quarters: Re-defining a Spatial Meaning* (MSc Dissertation. Building and Planning Graduate School, National Taiwan University 1991).

³⁴⁰ *Ibid.*

³⁴¹ I was there helping veterans fight the bulldozers but we ultimately failed. Since the veterans did not own the properties they were forced to leave their accommodations and give way to the government’s new development project.

class soldiers and dependants. Residents of these urban villages were alienated from local Taiwanese people, whatever ethnicity they were.

Taiwanese scholars who preach Taiwanese nationalism still adopt Goto's view on modernisation, which emphasises the importance of infrastructure and suggests that colonies can be brought to development in the same manner western countries had been, without examining the racial and spatial differential factors of uneven development.³⁴² For example, while some Taiwanese nationalist politicians and scholars praise the modernisation of Japanese colonisation by mentioning that the tap water supply at that time covered 60% of Taiwanese households³⁴³, the actual figure for the whole of Taiwan was 20% in 1942.³⁴⁴ Most of the running water supply was concentrated in urban areas.³⁴⁵ The 60% figure actually only referred to Taipei's urban area. While the racial aspect was ignored, it is easy to draw the picture of "the civilised Japanese versus the backward Chinese." Yet, if the progress of industrialisation is to be used as criteria measuring civilisation, some figures actually suggest the opposite. The Chinese Ching Dynasty started building water pipes in Canton in 1905, and within 3 years, 89km had been completed. The Japanese started water supply engineering in Taiwan in 1907, with 169km of pipes constructed in twenty five years. "Modernisation" was in progress in China as well with no less efficiency.³⁴⁶

³⁴² Chang Yan-sian, 'Japanese governance in Taiwan (1895-1905)' (1985) The 4th Social Science Symposium, Academia Sinica 5-19; Ng Chiautong, 'Research on the Identity of Taiwanese before the Second World War' in Ng Chiautong (ed) *The Fall of Taiwan* (Modern Academic Research Foundation 1996).

³⁴³ Wu Wen-Shing, *The Study on Local Leaders during Japanese Occupation* (Cheng Chung Publisher 1992).

³⁴⁴ Shih Wei-chuan, 'Epidemic and Race' (Taipei: China Times Evening, 21st May 2003); 110 years of Taiwan Water Works (Chinese Taiwan Water Works Association).

³⁴⁵ Chu Chi-Mou, *Restructuring the Relationship between Individual and State: A Study on Running Waterworks of Japanese Colony of Taiwan* (Ma Dissertation, National Taiwan Normal University 1998).

³⁴⁶ It is also worth pointing out that, as a principle, one must be extremely careful not to equate the relative levels of 'western' development, for example sanitation and infrastructure, etc., with essential human worth or "racial superiority" or hierarchy based on racial / nationalist categorization. Also see: Jiou Rei-Kun, *Public Health and the Modernisation of Canton (1901-1930'S)* (MSc thesis, Chengchi University 2002).

In Hong Kong, racial segregation in planning started as early as 1841. Segregation was the colonial authority's original intention and had been decided on to keep Chinese and European towns apart. In 1841, when Deputy of Chief Superintendent of Trade A. R. Johnson set up a comprehensive land location scheme, some areas were marked out as bazaars serving the Chinese population.³⁴⁷ Victoria Town (Central District) was planned as an area for British settlement and commercial activities. Chinese people were secluded in Tai Pin Shan. In a letter to London of July 1844, Governor Davis expressed his concern about mixed habitation, arguing that it was a potential problem that needed to be prevented in the future.³⁴⁸ By the 1870s, there had been a significant increase in the Chinese population. Chinese businesses were increasing and prospering, while businesses in the European sector were decreasing. Having learnt trade knowledge and built their commercial networks by having served their Western bosses, many Chinese compradors started their own business. With their businesses expanding, Chinese entrepreneurs were accepted by the Hong Kong General Chamber of Commerce as members, with their stores and offices gradually encroaching on the British settlement. Responding to this change, Davis' successor, Governor Hennessy reported in 1878 that *"One sees warehouses that a few years ago were in the midst of a European district... now in occupation of the Chinese."*³⁴⁹ Though segregation was breaking down a little, most Chinese people resided in the east and to the west of Victoria Town. A Clause in the leases of European Settlement properties restricted construction to Western-style buildings.³⁵⁰ Yu Sheng Wu and Liu Cun Kuan describe the changing pattern, highlighting that in the 1860s, European residences, their businesses and banks had clustered mostly in

³⁴⁷ D. J. Dwyer, *A Hong Kong Case Book* (Hong Kong University Press, Hong Kong 1975) 27; Roger Bristow, *Land-use Planning in Hong Kong, History, Politics and Procedures* (Oxford University Press 1987) 23.

³⁴⁸ Yu Sheng Wu and Liu Cun Kuan, *19th Century Hong Kong* (Hong Kong: Unicorn Publisher 1994) 313.

³⁴⁹ Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 143.

³⁵⁰ D. J. Dwyer, *A Hong Kong Case Book* (Hong Kong University Press, Hong Kong 1975) 27; Nigel Cameron, *An Illustrated History of Hong Kong*. Oxford University (Hong Kong 1991) 143.

Wellington Street, Ice House Street and Wyndham Street.³⁵¹ In the 1870s, property transactions between Chinese and Europeans increased, with Chinese shops appearing on Wellington Street and Wyndham Street. In the 1880s, Wellington Street had become a mixed-race business street.³⁵² According to Evans, many Europeans could not afford the high prices asked for property in the European town so moved or settled in nearby hillside areas, living with the Chinese.³⁵³ Because of this, segregation ultimately failed.

In terms of transfer of property from Europeans to Chinese, between January 1880 and May 1881 the property transactions amounted to a shocking \$1.71 million, with Chinese purchases accounting for 88% of the transactions.³⁵⁴ Governor Hennessy elaborated the growth of Chinese merchants and professionals in Hong Kong in the past decades, and he concluded that *“it was a just and natural process, and that this transfer of property from Europeans to Chinese was not of a merely speculative kind.”*³⁵⁵ Hennessy had been a supporter and promoter of commerce, proclaiming in 1881 that,

“There being no legal impediment in the way, and it being a principal importance that no obstruction should be put in the way of the natural

³⁵¹ Yu Sheng Wu and Liu Cun Kuan, *19th Century Hong Kong* (Hong Kong: Unicorn Publisher 1994) 313.

³⁵² Yu Sheng Wu and Liu Cun Kuan, *19th Century Hong Kong* (Hong Kong: Unicorn Publisher 1994) 313.

³⁵³ D. J. Dwyer, *A Hong Kong Case Book* (Hong Kong University Press, Hong Kong 1975) 27.

³⁵⁴ Yiu Chung Yim notes that

“The Daily Press of the 11th May 1881 found it shocking that there were transactions of landed property in Hong Kong (mainly transferred to Chinese) amounting to \$1.71 million from January 1880 to May 11, 1881. The Governor responded the report with the following breakdowns: total value of properties bought by Chinese from foreigners: \$1,710,036; total value of properties bought by Chinese from the Government: \$17,705; total value of properties bought by foreigners from foreigners: \$216,750; total value of properties bought by foreigners from Chinese: \$16,450.”

Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

³⁵⁵ Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

course of trade... permits be freely granted for native structures along any part of the Queen's Road, and business streets immediately adjoined."³⁵⁶

The expansion of the central commercial district collided with the westward spread of the Chinese quarter, with the east-side European/Chinese boundary gradually disappearing. Nevertheless, there was still a line drawn along Upper Wyndham Street, Hollywood Road and Aberdeen Street setting the boundary at the south of the European Central District. The Chinese were allowed to infiltrate few certain areas. The authorities could not seclude expansion from their former quarters, so they had to seclude themselves. The Peak area was made into a European enclave by introducing a clause that land could only be transferred to non-Chinese.³⁵⁷ The colonisers of Hong Kong were by no means immune from disease and death, and believed that their health was at stake when contact with the Chinese increased. Their fear and anxiety about disease, death and losing their military power and ruling authority soared. The expansion of colonial power into the Chinese community was also paralleled by this heightening fear and anxiety.

Nevertheless, the policy to "spatially and legally open up to the Chinese" met resistance. The Registrar-General, C. C. Smith, and the Commander-in Chief, Lieutenant General E. W. Donovan, opposed it on the ground that the insanitary condition of most Chinese housing might introduce a health hazard.³⁵⁸ Driven by economic interests, Governor Hennessy was more adventurous. Reliance on land related items (including stamp duties, rates and land sale premiums) for government revenues was explicitly spelt out in his report of 1881:

"Hong Kong is a free port; we have no income tax; we have no public debt, and we have a moderate surplus." "The house taxes, which were at the

³⁵⁶ George B. Endacott, *A History of Hong Kong (Revised Edition)* (Oxford University Press, Hong Kong 1973) 181.

³⁵⁷ D. M. E. Evans, 'Some Legal Aspects of Urbanisation in Hong Kong' in D. J. Dwyer (ed), *Asian Urbanization: A Hong Kong Case Book* (Hong Kong University Press, Hong Kong 1975) 27.

³⁵⁸ George B. Endacott, *Government and People in Hong Kong 1841-1962: A Constitutional History* (Hong Kong University Press 1964) 91.

same rate (12 per cent) in 1876 and in 1880, produced in these years respectively, 38,439 pounds and 48,032 pounds...The other chief items of our revenue are stamps,”³⁵⁹

Hence, no obstacle should be put in the way of development and land transactions between the Chinese and the Europeans.

On the surface, the attitude of Hennessy’s predecessor, Governor Bowring toward Chinese people was similar to that of Hennessy, adventurous and broad minded. In his Blue Book of 1858, Bowring proudly emphasised that Hong Kong was a magnificent harbour, *“inviting flags of all nations which there is nothing in its legislation to repel”*,³⁶⁰ and that the colonists had brought free trade and justice which *“produce a most salutary effect on the minds of the Chinese people.”*³⁶¹ However, as Christopher Munn has argued, Bowring’s assumptions about the impartiality of English law and the success of justice in Hong Kong during the 1850s are not borne out by the actual practice of criminal law during this period. ³⁶² The imperative of protecting European lives and property distorted the colony’s criminal justice system into one that gave little consideration to the liberties of ordinary Chinese people. As Munn notes,

“The belief that Chinese people had been brutalized by their own society gave rise to dual standards of sensibility that demanded heavy punishment and intrusive control for the Chinese but urged consideration and leniency toward Europeans.”³⁶³

³⁵⁹ Governor’s Report 1881 in Hong Kong Blue Books (1881); Yiu Chung Yim, *The Plague and Building Control in Hong Kong* (Hong Kong Museum of History 2007).

³⁶⁰ John M Carroll, ‘Colonialism and Collaboration: Chinese Subjects and the Making of British Hong Kong’ (1997) 12(1-2) *China Information* 12, 35.

³⁶¹ Colonial Office Record, Dispatch from the Government of Hong Kong 1859; John M Carroll, ‘Colonialism and Collaboration: Chinese Subjects and the Making of British Hong Kong’ (1997) 12(1-2) *China Information* 12, 35.

³⁶² Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo, Tak-Wing (ed), *Hong Kong’s History, State and Society under Colonial Rule* (Routledge, London 2001).

³⁶³ *Ibid.*

The legal system was heavily prejudiced against Chinese people: it abounded with bribery, intimidation of witnesses, inadequate provisions of defence counsels and interpreters, racially exclusive and prejudicial juries. In addition, there was the problem of wide-spread police corruption, the frequent use of emergency powers, curfews, deportation, and the running of protection rackets.³⁶⁴ Contrary to Governors Hennessy and Bowring's words, grossly anti-Chinese legislative measures, racial division rather than equality, repression not liberation, were the norm during the nineteenth century and into the twentieth.

In Taiwan, local people faced a similar situation in terms of their legal status. As Fitzpatrick argues, colonialism was legitimated by being exercised through law.³⁶⁵ The military regime of Japanese empire imported modern Japanese criminal law, based on western law, to Taiwan in 1896. According to Wang Tay-sheng, the reason was not, as many have argued, because it was a modern Western system, but because it was the Japanese colonists' law.³⁶⁶ Nonetheless, Governor Goto emphasised the necessity of understanding local Chinese people's customs and respecting Chinese traditions, in a similar manner to Hennessy and Bowring's governance of Hong Kong. Goto proposed a comprehensive and detailed survey of Chinese customs in Taiwan. For instance, Koo Hsien-jung, a Taiwanese bourgeois originally from Lukang Town, was rewarded with industrial and commercial privileges by the Japanese for his cooperation with the colonial government, with Goto inviting Koo to the Secretary's Residence every Saturday and Sunday to consult Koo about Chinese traditional customs.³⁶⁷ Goto also created and headed the Provisional Council for the Investigation

³⁶⁴ Christopher Munn, *The Criminal Trial Under Early Colonial Rule*. in Ngo, Tak-Wing (ed), *Hong Kong's History, State and Society under Colonial Rule* (Routledge, London 2001) 251; Peter Wesley-Smith, *Book Review, Christopher Munn, Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (China Perspective, 45 January-February 2003).

³⁶⁵ Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge University Press, Cambridge 2001) 19.

³⁶⁶ Wang Tay-Sheng, *Legal Reform in Taiwan under Japanese Colonial Rule (1895-1945): The Reception of Western Law* (University of Washington Press 2014).

³⁶⁷ Ozaki and Miyazaki, *Biography of Koo Hsien-jung* (Biographical Society of Koo Hsien-jung 1939) 298.

of Old Habits in Taiwan.³⁶⁸ He wanted to adopt those that would smooth Taiwanese resistance and favour the colonial regime. Goto argued that those traditional Chinese customs should be integrated into the Japanese legal system and would be crucial to his efforts of making Taiwan a modernised state. At the same time, some Western principles of criminal law, though already adopted by the Japanese system and introduced by the Japanese, were simply ignored for the convenience of the colonial government. Various special Ordinances were promulgated to override legitimate criminal procedure and penalties.³⁶⁹ Savage punishments, malicious accusations and prosecutions were only applied to Taiwanese people. The legal system was institutionally discriminative on the grounds of race. The selective adoption approach represented the ideology of Goto on colonialism and race. Goto, who is still praised by some Taiwanese historians as “*father of Taiwanese modernisation*”, held that, from a biological perspective, the natives could not be completely assimilated.³⁷⁰ Thus, Taiwan would never be governed in exactly the same way as the Home Islands of the Japanese Empire, but under a whole new set of laws.

To conclude this section, in both Taiwan and Hong Kong, because of the fear of alien bodies and unfamiliar territories, the colonial authorities put natives under their gaze; both people and habitation needed to be regulated and policed. Intrusive policing, racial and class discrimination, and a periodic campaign of repression existed in various areas of the law in both Hong Kong and Taiwan. Urban and building regulation was a typical example. As King points out, physical-planning notions and legislation were introduced as part of the overall expression of colonial power.³⁷¹

³⁶⁸ Wu Wen-Sing, *The Triad of Taiwanese Leaders under Japanese Rules* (Cheng Chung Books, Taipei 1992).

³⁶⁹ Wang Tai-Sheng, ‘The Impact of Modern Western Law on the Chinese in Taiwan’ (1999) 1(2) *The Australian Journal of Asian Law* 194, 220.

³⁷⁰ Yang Bi-chuan, *Biography of Goto Shinpei: Laying the Foundation for Taiwan's Modernisation* (Hitotsubashi Publisher 1996).

³⁷¹ Anthony D. King, *Urbanism, Colonialism, and the World-Economy: Cultural and Spatial Foundations of the World Urban System* (Routledge, London 1990) 48, 53.

4.3 Conclusion

In the cases of both Taiwan and Hong Kong, while the colonial powers brought the concept of modernisation and public health to the colonised, such campaigns adapted themselves to the needs of colonists. In both cases, the colonial authorities segregated and put native urban areas under their control and had the habitation regulated, so that the fear of alien bodies and disease-ridden environments could be conquered to meet the priorities of the colonists. Hierarchical systems were built according to racial categorisation, and these racial systems were legitimated by legislation. Law in the colonies had responsively extended towards unfamiliar territories and by doing so sought the subjugation of the alien race and habitation in a determined order. Colonial power and imperial violence was regulated through law, which played the leading part in the creation of westernized civilisation. By promulgating laws related to development control, the colonial states projected a particular gaze towards both space and race that had the consequence of delineating certain spaces and the native inhabitants. In the spatial control process, racism appeared as a product of diverse political actions driven by economic forces. As Swanson highlights, "*problems of public health and sanitation, over-crowding, slums, public order and security [were] perceived in terms of racial differences.*"³⁷² The culture and class-specific perception of health hazards, more than actual health hazards themselves, were instrumental in determining many colonial urban planning policies. Racism had become the nature of colonial planning law. The law was used as an instrument to reinforce the perception of the colonial force over native people and their plan to form new social constructions.

³⁷² Maynard W. Swanson, Reflections on the Urban History of South Africa, in H. L. Watts (ed) Focus on Cities (Durban 1970).

As a result, building regulations were introduced according to the standards deemed appropriate to the segregated population. Segregation and planning arranged a certain population at a certain location, so that an order could be created without disturbing the overall power structure. This arrangement was an integral part of the “modernisation” progress. While Goto, Hennessy and Bowering were praised as either “the Father of Taiwanese Modernisation”, “liberal” or “progressive”, an image of conservatism and retrogression was labelled on the Chinese to serve as contrast and justification for such measures. A hierarchy of racism was created in which ethnic groups were regarded as more “civilized” the less “Chinese” they appeared. People in Taiwan, Hong Kong and Singapore are still competing for the status of being “less Chinese” to this day. To the Taiwanese, the only way to win the competition is to identify themselves as non-Chinese and discriminate against the Chinese; otherwise there is no way to challenge the superiority of British subjects (of Hong Kong or Singapore). The Chinese myth still dominates the discourse analysing Japanese colonisation and the ruling state. While such essentialist racial discourses are problematic in and of themselves, the comparison of the Chinese and Japanese, and the statement of the Japanese being superior also ignores the fact, mentioned earlier in this chapter, that the Chinese Ching Dynasty started modernisation in the Western style in some coastal cities earlier than the Japanese colonial authority, and with more efficiency in some areas. More importantly, the notion of modernisation implies a process of social adoption throughout a universal society, leading to racial segregation and spatial uneven-development being ignored.

Regarding the competition between McAuslan’s ideologies of public interest and private property rights, it can be seen the campaigns of public health and urban regulation selectively adopted the ideologies of public interest and private property rights in order to suit the well-being of the colonists. Urban regulation was introduced in the name of public interest to suppress property rights - yet while the private property in question mostly belonged to the local Chinese, the “public” did not include them. Likewise, when the ideology of private property rights was upheld against public

interest ideology, because the State lacked the resources to implement infrastructure, racial was used to as an excuse to resist urban regulation. As mentioned in the first section of this chapter, local natives were legally categorised as inferior to the colonists and viewed as responsible for disease and epidemic, and were consequently targeted to be regulated and ordered to be disciplined. Instead of the colonial authorities' investing in infrastructure, the requirement of urban regulation burdened native individuals with responsibilities. This finding accords with McAuslan's observation of British planning law in practice. He argues that British courts had a clear and consistent bias: if confronted with a conflict between private property ideology and that of public interest, the property owner would usually win. If confronted with a non-landowning citizen, the courts usually supported the authorities in the name of public interest.³⁷³ In the cases of Taiwan and Hong Kong, colonists were entitled to better protection than the rest of the public, with this privilege coming at the cost of other people. The colonial administration's inclination toward planning ideologies was arbitrary and fluid. As I have argued in this chapter, the public is not comprised of equal individuals with no differences: the public hierarchies in Taiwan and Hong Kong appeared in the format of racial apartheid. The racial factor was conveniently used by the administration to protect the colonists and serve the interest of colonial regime. Yet the real force behind such discourse, and that which drove urban regulation was economic: the empirical power.

³⁷³ See Part II of Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 77, 144.

Chapter 5: The Modern Planning of the Developmentalist State in Taiwan

In previous chapters, this thesis introduced the earliest stages of town planning in Taiwan and Hong Kong during the nineteenth century. In Taiwan, urban regularisation, the embryo of modern planning, was imported by colonial Japan to serve the interest of the colonists. Similarly, in Hong Kong, the contractual planning of the British leasehold system was the crucial mechanism regularising land use. In both cases, sanitation syndrome was the primary reason initiating the earliest phase of land-use control and urban regularisation. Concerns about colonists' public health had necessitated the construction of basic infrastructure and sanitation rules. The emergence of urban regularisation in both Taiwan and Hong Kong shows that, in terms of McAuslan's ideologies, public interest ideology overpowered that of private interests. Nevertheless while the campaigns of public health and urban regularisation adopted themselves to the needs of colonists, colonial powers selectively adopted public interest ideology and private property ideology. Decisions regarding urban regularisation and building controls were taken by colonial regimes based entirely on the needs of the colonists, and the colonised natives were not considered as "the public". This thesis further points out that the "public" is not comprised of equal individuals with no differences, and that public hierarchies in Taiwan and Hong Kong manifested in the form of racial apartheid. Race was conveniently used by the colonial administration to protect the colonists and urban regularisations were introduced according to the standards deemed appropriate to the segregated population. Moreover, laws were stipulated to legitimate the spatial segregation and hierarchical system of racism. In the following chapters, this thesis will continue to introduce the development of planning laws in both Taiwan and Hong Kong: later stages of town planning in both cases will be reviewed to find out how the competing ideologies of private and public interest shape modern urban planning in Taiwan and Hong Kong, and the role of both states in the evolution of planning laws will be discussed.

Introduction

After Japan handed over Taiwan to China at the conclusion of the Second World War, the Chinese Nationalist Party (Guomintang; K. M. T.) ruled Taiwan for fifty-three years, until losing the 2000 presidential election. Guomintang brought in the entire governing system, including state apparatus and legal instruments, from Mainland China. Hence, the Taiwanese contemporary legal system is based on the Nationalist Chinese legal system, which gave legitimacy to the Nationalist Chinese rule and current Taiwanese government. To fully understand the contemporary Taiwanese urban planning system, it is necessary to trace the history of urban planning-related legislation back to the pre-Communist period in China. This is the first task of the present chapter and is presented in section 1. Zoning control, the primary instrument of land use control, will be introduced and reviewed in section 2. Zoning was introduced to the Chinese planning system earlier than was urban planning legislation. The earliest zoning regulations were attached to city plans introduced by Western colonists and implemented in colonial cities on the Chinese east coast to preserve the character of non-Chinese communities. In Taiwan, accompanied by the revisions and enactment of planning related laws, the zoning system evolved with more detailed regulations. A comprehensive planning system was born and dominated the practice of urban planning, with zoning being the most powerful coercive legal instrument. However, zoning has consistently failed to match the expectations behind its implementation. In section 3 of this chapter, I will analyse the system and its implementation during both Japanese and Chinese regimes, as well as highlighting the reasons for its failure. To support the argument of this thesis, two cases of study are introduced in section 4 and 5. First, the urban planning of Wuchi, initially introduced by the Japanese regime and then continually developed by the Chinese nationalist regime. The second is the experiment of planning permission in Taipei which represents the challenges faced when planning permission is introduced into a zoning system.

5.1 The origin of Taiwanese planning laws: Chinese planning laws

This section introduces the framework of Taiwanese planning laws. Though an element of the Taiwanese legal system, these laws were in fact derived from those of the Republic of China (R.O.C). Following the handover of Taiwan from the Japanese colonial government to the Guomintang regime of the ROC in 1945, the ROC legal system took effect, with most Japanese laws repealed the following year.³⁷⁴ The following section therefore traces the root of current Taiwanese planning laws to their origin in the planning laws stipulated in Mainland China during the 1930s.

In 1928, with the help of the Chinese Communist Party, Guomintang's Northern Expeditionary Army, mainly under Chiang Kai-shek's leadership, unified the whole of China. In April of the same year, the Nationalist Government was established in Nanjing and the Interior Ministry and its departments officially launched. One of these was the Department of Land, the first land administration authority in China after the Republican Revolution. In June 1930, the first land administrative law, the *Land Act*, was announced. In Section 3 of the *Land Act*, the State was given powers to classify land and establish land-use regulations: "*Urban land is classified into two categories, free-use area and limited-use area.*"³⁷⁵ The Act stipulated that Urban Design Plans should include the following provisions:

- (1) Limitation of land-use.
- (2) Limitation of building-use.
- (3) Building site boundary lines.
- (4) Building height, numbers of storey and shape.
- (5) Building density.

³⁷⁴ Wang Tay-Sheng, *Jurisprudential Reception: Taiwan Experience and its Inspiration* (Taiwan Jurisprudential Reception and Japanese Legal Influence Conference, Nagoya University: Centre for Asian Legal Exchange 26th June 2004).

³⁷⁵ Article 148, *Land Act* 1930.

(6) Building coverage ratio and floor space ratio.³⁷⁶

Other land-use administration measures were introduced as the Act stated that:

(1) “The government is authorised to restrain the use of fragmentary land.”³⁷⁷

(2) “The government is authorised to re-plot land.”³⁷⁸

(3) “The government is authorised to restrict building and construction.”³⁷⁹

The government was given powers by the Act to regulate development.

In 1939, during the early years of the Sino-Japanese War, the *Urban Planning Act* was stipulated as the very first urban planning legislation in China. The 1939 Act can be seen as an extension of Section 3 of the 1930 *Land Act*, which was later removed from the legislation of the 1946 *Land Act*.³⁸⁰ After Guomintang’s withdrawal from Mainland China, the *Urban Planning Act* was amended six times: in 1964, 1973, 1988, 2000, May 2002 and December 2002. Generally, the alterations did not result in any radical change to the urban planning system. The Chinese 1939 legislation thus gave rise to the contemporary urban planning system in Taiwan.

Three elements constituted the structure of the Chinese/Taiwanese urban planning system.

1. The separation of urban planning areas and non-urban planning areas.

Firstly, it set up urban planning areas. All land was classified into two main categories:

³⁷⁶ Article 150, *Land Act* 1930.

³⁷⁷ Article 151, *Land Act* 1930.

³⁷⁸ Article 152, *Land Act* 1930.

³⁷⁹ Article 155, *Land Act* 1930.

³⁸⁰ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 40.

urban planning and non-urban planning areas. According to the *Urban Planning Acts* of 1939 and 1964, places with a dense population or of political or commercial importance should be assigned as urban planning areas, with urban plans drawn up as soon as possible.³⁸¹ They included:

- (1) Cities.
- (2) Developed commercial ports.
- (3) Provincial capitals.
- (4) Areas where population is greater than one hundred thousand people.
- (5) Areas specially assigned by the Government.³⁸²

The 1964 law stipulated four kinds of urban plans:

- (1) City/ Town Plans.
- (2) Countryside Street Plans.
- (3) Special Area Plans.
- (4) Regional Plans.³⁸³

According to the Act, City/Town Plans should be drawn up and implemented in the following cities and towns:

“national capitals and municipal cities, provincial capitals and provincial municipal cities, towns where County Halls are located and other places assigned by the Ministry of Interior or Provincial Governments.”³⁸⁴

The Countryside Street Plan is a less complicated version of the City Plan on a smaller scale. According to the stipulation, Country Street Plans should be drawn up and applied to the following places:

“Places where town halls (Town/Village Public Offices, Public Offices of County Administrated Cities) are located. Places where the population has

³⁸¹ After its defeat by the Chinese Communist Party, Guomintang withdrew from Mainland China to Taiwan in 1949. The origin Chinese legal system ceased to exist in Mainland China but was still effective in Taiwan. Therefore, Taiwanese (ROC) laws stipulated after 1949 were legislated and effective only in Taiwan.

³⁸² Article 3, *Urban Planning Act* 1939 and 1964.

³⁸³ Article 6, *Urban Planning Act* 1964.

³⁸⁴ Article 7, *Urban Planning Act* 1964.

*been more than three thousand for five years, and has increased no less than one-third in the last five years. Places where the population are more than three thousand people and more than 50 per cent of the inhabitants are in commercial/industrial employment. Other places assigned by Provincial Governments or County Governments.”*³⁸⁵

The boundaries of urban planning areas did not have to be consistent with local administrative territories. *Urban Planning Act* was only applied in urban planning areas.

2. Zoning as the main measure of development control in Taiwan.

Article 10 of the 1939 *Urban Planning Act* stated that an urban plan shall contain:

- (1) A contemporary demography of the city.
- (2) The plan area.
- (3) Zoning control.
- (4) Land use for public facilities.
- (5) Road system and drainage system.³⁸⁶

This was the very first time that zoning control was introduced nationally. As the above article shows, zoning would be the main system of land-use regulation and the main content of an urban plan. The Chinese system is a use-based measure regulating the uses to which land may be put and combining regulations concerning building height, lot coverage and similar building control characteristics. In this system, the use-based measure and administrative regulations regarding development controls were the main content of urban plans. To specify the activities and character of each zone, the Act divided each urban area into four kinds of zone: Residential, Commercial, Industrial and Special-Use Areas. The purpose was to segregate uses that were

³⁸⁵ Article 8, *Urban Planning Act* 1964.

³⁸⁶ Article 10, *Urban Planning Act* 1939.

thought to be incompatible. In Article 13 - 18 of the Act, principles were set up to maintain the standards for living conditions and the commercial/industrial activities for each area. In Article 12, it was decided that green belts in urban areas should be kept to the city's edges, and designated for agricultural purposes only. Articles governing zoning were kept in the later Amendments of 1964, 1973, 1988, 2000 and 2002, and constitute Section 3, the Zoning Section, of the current *Urban Planning Act*. Mapped zones were represented by different colours drawn in the urban plans and have become development control guidelines.

3. The hierarchy of reviewing urban plans

According to the *Urban Planning Act*, "an urban plan shall be prepared by the City/Town Office or the County/City Government, and approved by the Provincial Government and the Ministry of Interior".³⁸⁷ Town Offices were appointed as the planning authorities at the lowest level. In order to study planning affairs, and prepare, implement and review urban plans, all local and central governments were requested to set up an Urban Planning Committee (Article 74 of the 1964 and 1988 Law). As Figure 1 in Chapter 1 shows, a Plan prepared by a Town Office needed to be approved by at least three superior authorities.³⁸⁸ In 1973, the Ministry of Interior promulgated the *Regulations on Urban Plan General Reviews*. Article 2 of the Regulations stipulated that the review of an urban plan should be conducted at least once every five years. A general review was the only opportunity to modify zoning, such as a residential zone being changed to a commercial zone. At local government level, members of urban planning committees were appointed by Mayors who were usually also the chairs of committees. Mayors can hold great power over re-mapping zones.

³⁸⁷ Article 11 and 16, *Urban Planning Act* 1939 and 1964; Article 13 and 20, *Urban Planning Act* 1988.

³⁸⁸ After Taiwan's Provincial Government was virtually abolished in 1999, reviews/approvals at the provincial level have been skipped.

To conclude this section, as I have shown above, Taiwanese urban planning laws originated from the R.O.C. *Land Act* of 1930, which was followed by the *Urban Planning Act* of 1939. Both laws were stipulated in Mainland China and set up the framework of the modern Taiwanese urban planning system. The Chinese *Land Act* and *Urban Planning Act* constituted of three core elements: separation of urban planning areas and non-urban planning areas; zoning; and the hierarchy of reviewing urban plans. Of the three elements, zoning was the key mechanism that control urban growth and development, by permitting and prohibiting land uses. In the next section, I will introduce the practice of zoning in the Chinese planning system.

5.2 The practice of zoning in the Chinese planning system

Being a mechanism that controls land uses, zoning was introduced to China before the 1939 *Urban Planning Act* legislation. In 1900, German colonists announced the first comprehensive urban plan of Qingdao City. In order to protect “*the right of comfortable living hood of Europeans*”, the practice of zoning was designated to “permit” Chinese people’s uses of land in a Non-European zone.³⁸⁹ Two sets of regulations on building height, building design, parks, road systems and sanitary issues were laid down to be applied separately in both the European Zone and the Chinese Zone. Chinese style buildings were not allowed in the European Zone; the height limit was set at 18 metres or three storeys and the maximum building coverage ratio was 60%. In the Chinese zone, the building coverage ratio was set at 75% and rooms in living quarters in buildings were required to be at least 2.7 metres in height and 5

³⁸⁹ Li Dongquan and Zhou Yixing, ‘Historic Base of Contemporary Chinese Urban Planning Ideology in View of the Development of Qingdao Modern Urban Planning’ 158 *Urban Planning Forum* 44, 52.

square metres in size.³⁹⁰ Chinese habitants originally residing inside the European Zone were moved to the Chinese Zone.

Strict regulations were implemented to confine the Chinese evictees to certain areas, leading to new buildings being crowded along narrow streets in the city centre of the Zone. New building forms arose in a mixed architectural style called shophouse to maintain the traditional life style of “Siheyuan” (courtyard houses) and meet the necessities of urban commercial activities.³⁹¹ Similar stories occurred in colonial Shanghai, Dalian and Changchun. Zoning control was introduced to international settlements in Shanghai without a comprehensive master plan. Urban planning in Dalian and Changchun was closer to Qingdao. City plans were prepared by the Russians (Dalian) and Japanese (Dalian and Changchun), with the zoning and building control regulations used as a permit system.³⁹² The purpose of zoning in these colonial cities was to create new settlements for the colonialists, to prevent new developments by Chinese people from “harming” the European or Japanese residents and businesses in the protected zone, and to preserve the character of non-Chinese communities.

In the 1920s, before the *Urban Planning Act* legislation, the Chinese Nationalist Government published city plans for Shanghai and Nanking that were accompanied by zoning regulations. In 1929, the Shanghai New City Area Plan was announced, and

³⁹⁰ Cao Sheng, ‘The Inspiration of Qingdao Urban Construction during German Occupation’ (2004) 1 Journal of Qingdao University of Science and Technology.

³⁹¹ Shophouse and Siheyuan are vernacular architectural building types commonly seen in China. Shophouses are mostly two or three stories high, with a shop on the ground floor for mercantile activity and a residence above the shop. This mixed-use building form characterises the historical centres of towns and cities in the Southeast China. Siheyuan (courtyard houses) is also known as Chinese quadrangle in English. The name literally means a courtyard surrounded by houses on all four sides. A spacious Siheyuan would be occupied by a single large and extended family, signifying wealth and prosperity. Li Aihua, ‘The Architecture Culture and Preservation of Qingdao City’ (2000) 1 City Planning Review.

³⁹² Dong Wei, ‘A Study of Urban Plan History of Dalian’ (Dalian University of Technology 2001); Liou Wei, ‘A Study of Changchun City’s Modern Architecture’ (PhD thesis of Jilin University 2012).

commercial zones, special zones for import/export trade, inner city areas and residential zones were set up. Residential Zones were sub-categorised according to the wealth of residents: the upper class, the poor and the rest in the middle. In the same year, the Capital Plan was prepared for Nanking. The city was divided into a Central Administration Area, a City Administration Area, Commercial Zones, Culture and Education Areas and Residential Zones. An annex to the plan, the *Zoning Regulations Bill* stipulated the details, including the building controls. Through these measures, land uses were regulated and the activities of residents from different ethnic groups segregated.

In theory, zoning was controlled by local municipal governments, but it was the central Nationalist Government that initiated the Plans. The person in charge of the Capital Construction Committee was the Minister of Finance in the central government, Sun Ke, the son of Sun Yat-sen. Chiang Kai-Shek, the Chinese Nationalist Party Chairman, endorsed the Plan by inscribing his name on the cover of the Capital Plan. By grasping the power to plan the two most important central-east coastal cities' futures and policing development and industrial/commercial activities, political factions in the Chinese Nationalist Government were competing to control the resources of these cities. By implementing the Plans, the Nationalist Government strengthened its rule over coastal areas and consolidated its legitimacy, using planning and zoning as a means of social control.³⁹³

The Nationalist regime started preparing the Capital Plan in January 1928, eight months after Guomintang's Northern Expeditionary Army unified the whole of Mainland China and appointed Nanking as China's capital. The Director of National Capital Design, Lin Yi-ming, emphasised the importance of the Plan by pointing out that it would be the ideal model that other cities in China should follow.³⁹⁴ The Plan

³⁹³ Wang Chun-Hsiung, Sun Chuan-Wen and Hsieh Horng-Chang, 'On the Capital Plan of Nanking in the Early Years of Nationalist Era 1928-1929' (2004) 15(1) *New History* 93, 165.

³⁹⁴ *Ibid.*

was expected to be a pilot scheme, crucial for the Nationalist regime's plans of building a modern China. As part of these plans, the Chiang Kai-shek leadership, representing the interests of industries and commerce in coastal cities, initiated violent oppression of workers' movements once Guomintang took over Shanghai. Unionists were asked to surrender their weaponry and students and activities were arrested or executed. Left wing revolutionaries were forced to go underground. Besides the potential social upheaval, the Chiang Kai-shek leadership was also facing political challenges from other Guomintang factions. Modern plans for building China's new future were urgently needed to appeal to the people to support Chiang Kai-shek's leadership. The implementation of the Capital Plan was seen as the initiation of modern social engineering in China, with the selective assimilation of Western technology and the preservation of Chinese cultural characteristics. The Plan bore the mixed ideology of Chinese nationalism and Western modernity, which had been the ideological pillars of the Nationalist regime's legitimacy.

The Shanghai New City Area Plan of 1929 was promulgated in the same political context. By classifying residential areas in accordance to inhabitants' wealth, zoning was used as a means of social control. Western-style urban plans were imported to coastal cities and modified to meet the regime's political needs. Urban planning was integrated as part of the rulers' authoritarian apparatus. The Nationalist government first experimented with the Nanking and Shanghai Plans, including the attached zoning regulations, in coastal areas, before introducing the concepts of modern urban planning to the rest of China and passing *Urban Planning Act* legislation. The practice of starting pilot projects in premier cities was echoed the actions of the Japanese government in Tokyo in 1888 before national urban planning legislation was introduced.

The 1939 *Urban Planning Act* was kept in its original form while the Nationalist Government effectively ruled China. Not until 1964, fifteen years after Guomintang was defeated and withdrew to Taiwan, was the Act amended. Zoning regulations were

for the first time expanded and enriched in 1976, three years after the second amendment to the legislation, to deal with the increasingly complicated situation of urbanisation that resulted from the rapid growth of the Taiwanese economy in the 1960s and 1970s. In 1976, Taipei City Government promulgated Taipei City's *Enforcement Rules of the Urban Planning Act*. The Rules set up nine main zoning categories:

- (1) Residential zone.
- (2) Commercial Zone.
- (3) Industrial Zone.
- (4) Administrative Zone.
- (5) Educational and cultural Zone.
- (6) Storage Zone.
- (7) Scenic Zone.
- (8) Reservation Zone.
- (9) Agricultural Zone.³⁹⁵

The Taiwan Province's *Enforcement Rules of the Urban Planning Act* were also introduced in the same year with very similar zoning regulations. Section 3 of the Rules consisted of 22 Articles (from Article 14 to Article 35) and named Zoning Control. This Section regulated land use, use classes, plot ratio and gross floor space, etc. According to Article 14 of the Enforcement rules, 10 zones were set up:

- (1) Residential Zone.
- (2) Commercial Zone.
- (3) Industrial Zone, including Special Industrial Zone, Industrial Zones (Type A), Industrial Zones (Type B) and Fragmental Industrial Zone.
- (4) Administrative Zone.
- (5) Educational and Cultural Zone.
- (6) Scenic Zone.
- (7) Conservations areas.
- (8) Preservation Zone.

³⁹⁵ Article 10, *Enforcement Rules of Urban Planning Act (Taipei City) 1976*.

- (9) Agricultural Zone.
- (10) Zone of Other Uses.³⁹⁶

Under both Rules in Taipei City and Taiwan Province, use classes were regulated and a segregation system set up to prevent mixing different kinds of economic activities. The *Enforcement Rules of Urban Planning Act* of Taipei City and Taiwan Province provided a new channel for amendments of use classes. Before the advent of the two Enforcement Rules, use classes were rigidly attached to an urban plan and technically seen as part of an urban plan. Without reviewing the urban plan, zoning use classes could not be modified. According to *Urban Planning Act*, though an urban plan would need to be reviewed at least every five years, some plans had been left unreviewed for ten years or more. After the promulgation of the Rules, use classes could be more flexibly adjusted by only amending the *Enforcement Rules of Urban Planning Act*. Regulations governing zoning use classes comprised Section 3 of the Enforcement Rules, in both Taipei City and Taiwan Province. In 1984, the regulations in Taipei City were significantly expanded again and the whole of Section 3 became the *Taipei City Land Use and Zoning Control Regulations*, an independent statutory instrument from the Enforcement Rules of Taipei. The complexity of the zoning system in Taipei was enriched by the delegated legislation. The *Taipei City Land Use and Zoning Control Regulations* was the most complicated zoning code in Taiwan, containing stipulations for 56 categories of use classes and twenty-two zones.

There are some similarities in non-urban planning areas, but the regulations came later. In 1974, *Regional Planning Act* was passed by Legislative Yuan to replace Article 19 (provisions for Regional Plans) of *Urban Planning Act*, as the new legal authority for Regional Plans. Compared to City Plans, Regional Plans were supposed to be more development oriented. They were expected to encourage the utilisation of land and natural resources and advance economic development, as stipulated in 'Section 1: General'. According to the Act, the government is obliged to draft and prepare four Regional Plans: the Northern Regional Plan, the Southern Regional Plan, the Central

³⁹⁶ Article 14, *Enforcement Rules of Urban Planning Act (Taiwan Province)* 1976.

Regional Plan and the Eastern Regional Plan. However, there was neither a commercial/industrial/tourism development plan nor a financial plan provided for “advancing economic development.” Without the supplement for the means of development, the Regional Plans were only development control stipulations. The zoning regulations in the *Regional Planning Act* controlled all development activities in non-urban areas, similar to their counterparts in *Urban Planning Act*. In 1978, the *Enforcement Rules of Regional Planning Act* was disseminated by the Ministry of Interior and later amended in 1988 and 1997, providing more details about zoning regulations on non-urban land. Of Taiwan’s total area of 13,814 square miles, more than 70% were regarded as Non-Urban Planning areas; therefore, the zoning regulations in the *Regional Planning Act* were applied to most areas of Taiwan. The course of development in the enactment of zoning rules exhibits the trend towards increasing complicated statutory instruments. The delegated legislation permits municipal level government to pass and adjust the regulations without central government approval. Meanwhile, the content of the zoning codes was significantly expanded.

To conclude this section, I present the chronological table below, which illustrates the evolution of the zoning from Chinese urban planning law evolved.

Table 5-1: Evolution of zoning in Chinese planning

Year	City	Zoning Measurement
1900	Qingdao	German colonists set up European and Chinese Zone.
1910s	Shanghai	Zoning was introduced to international settlements.
	Dalian	Japanese and Russians prepared city plans and introduced zoning and building regulations as a permit system.

	Changchun	Japanese prepared city planning and introduced zoning and building regulations as a permit system.
1929	Shanghai	Shanghai New City Area Plan was announced. Set up commercial zones, special zones (trade zones), inner city areas, upper class residential zones, middle class residential zones and lower class residential zones.
	Nanking	Capital Plan was announced. Central Administration Area, City Administration Area, Commercial Zone, Culture and Education Areas and Residential Zones were set up.
1939	Nationwide (Mainland China)	<i>Urban Planning Act</i> stated that an urban plan shall contain zoning control.
1976	Nationwide (Taiwan)	Zoning of <i>Urban Planning Act</i> was first time amended and expanded.
	Taiwan Province	<i>Enforcement Rules of the Urban Planning Act (Taiwan Province)</i> was promulgated. Section 3 of the Rules, named Zoning Control, was stipulated.
	Taipei City	<i>Enforcement Rules of the Urban Planning Act (Taipei City)</i> was promulgated. The Rules set up nine main zoning categories.
1978	Nationwide (Taiwan)	<i>Enforcement Rules of Regional Planning Act</i> was promulgated, providing details regarding zoning on non-urban land.

In theory, zoning is supposed to accord with a comprehensive plan, a City Town Plan or a Street Plan, designated to meet the characteristics of each individual planned area. Nevertheless, the zoning section in the *Enforcement Rules of Urban Planning Act (Taiwan Province) 1976* provided universal directives covering all urban plans in Taiwan island, except for Taipei City and Kaohsiung City. As we have seen, during the 1920s and 1930s, urban planning directives were used as a means of social control, directed towards the interests of industrial and commercial concerns, and to cement the power of the Central Government of the R.O.C. Likewise, Taiwanese governmental plans have reduced the authority of local governments over spatial development and development control. More than three hundred urban plans followed the commandments originally stipulated by the Taiwan Provincial Government, leaving sparse room for local autonomy.³⁹⁷

5.3 The evolution of Taiwanese systematic planning

Though the legal source of Taiwanese urban planning is, as we have seen, urban planning laws stipulated in Mainland China during the 1930s, the earliest urban planning implemented in Taiwan was imported by the Japanese. The following section argues that current urban planning practice in Taiwan is based on the combination of two foundations: Japanese urban plans and Chinese planning laws. However, both Japanese urban planning and Chinese planning related laws were deeply influenced by Western planning trends, and therefore they share similar roots.

5.3.1 The developmentalist approach of systematic planning

³⁹⁷ Further discussion of the Taiwanese zoning system will be presented later in this thesis and will be compared with zoning in Hong Kong.

In the 1930s, under the growing tensions of war, Taiwan was becoming geopolitically more important to Japan. Due to the increasing importance of ports and industrial cities, simple urban regulation was insufficient. The legal system for modern Japanese urban planning was introduced to Taiwan to rectify land use, development benefits and land re-plotting. In 1933, Japanese civil engineers on urban committees were employed by the Taiwan Governor's Office. In 1934, the Preparation of Implementing Urban Planning Act Committee was established in the Governor's Office. The aim was to set up an integrated urban planning legal system. Under leadership by Japanese planners, the Taipei Expansion Plan and Hualian Expansion Plan were prepared, incorporating the latest Japanese planning concepts. In 1936, seventeen years after the Japanese *Urban Planning Act* was enacted in Tokyo, the *Order of Taiwan Urban Planning* was officially passed into legislation, as was the *Performance Rules of Taiwan Urban Planning*.³⁹⁸ According to the Order, the purpose of urban planning was to "regulate city areas and plan transportation, sanitary and social security facilities and economic development as well". The *Order of Taiwan Urban Planning* continued to have legal effects long after the Japanese regime withdrew from Taiwan; it was not until 1964, that the Chinese *Urban Planning Act* was amended and officially operated in Taiwan. The Japanese Performance Rules lasted until 1972. According to Shia Chu-joe, seventy two towns and cities were planned during the Japanese colonial period in accordance with the Order. The Japanese urban planning system thus overwhelmingly shaped Taiwanese spatial development.³⁹⁹

The development control of Japanese urban planning was quite similar to that of China. Under the provisions of the *Order of Taiwan Urban Planning*, Taiwan's Governor was responsible for setting up zoning in urban planning areas. The zone

³⁹⁸ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 14; Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993).

³⁹⁹ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 271.

categories included Residential Districts, Commercial and Industrial Districts, Scenery Areas, Artistic Areas, Crime Security and Fire-Proof Areas. The Order enumerated restricted development activities for *districts*; it also set up *areas* for special uses. Accompanying those restrictions, use classes, building height and building plot-ratio were also announced. The Japanese zoning system was in fact, a land use control plan, because it was concerned with setting up areas/districts for some basic urban functions to control land use. It was more a control plan than a development plan. The later Chinese zoning system in Taiwan had the same effects. The similarities between the Japanese and Chinese systems were one of the reasons that the two systems articulated almost seamlessly in Taiwan.⁴⁰⁰

In 1940, under the influence of the National Development Plan Bureau of the German Nazi Party, the Japanese Outline of the National Development Plan was published by the Cabinet.⁴⁰¹ It was the concretisation of Japan's "Great East Asia Co-Prosperity Sphere", a doctrine promulgated during the Shōwa era by the government and the military of the Empire of Japan which argued for a self-sufficient bloc of Asian nations led by the Japanese and free of Western powers. Economic reasons played a large role in Japan's announcement of the Co-Prosperity Sphere in 1940. Japan required East Asian raw materials, such as oil from the Dutch East Indies and rubber from Indochina, in order to keep its manufacturing industry and military in China supplied. The U.S. embargo on oil and steel shipments to Japan and other restrictions on raw materials shipments by Western nations pushed the Japanese leaders to seek resources in Asian countries to ensure Japanese self-sufficiency. The other Asian countries in the Co-Prosperity Sphere would also provide Japan with export markets for its manufactured goods and with land for its surplus population. Under the guidance of the Outline, the Task of Regional Planning in War Time was proposed in 1944, and the Proposal of National Development Plan in War Time announced later the next year. The national

⁴⁰⁰ Article 18 of *Order of Taiwan Urban Planning*. Please refer to Table 5-2 in the end of this sub chapter.

⁴⁰¹ Mark R Peattie, 'Japanese Attitudes Toward Colonialism, 1895-1945' in R. H. Myers & M. R. Peattie (eds), *The Japanese Colonial Empire, 1895-1945* (Princeton University Press 1987) 85, 180.

plan included Manchu, Korea, Taiwan and Southeast China.⁴⁰² In 1942, the National Development Plan Bureau was set up by the Taiwan Governor's Office and Shingao Port commenced construction in Wuchi Town in central Taiwan.⁴⁰³

Situated in the centre of the Great East Asia Co-Prosperity Sphere, Taiwan was regarded by the Japanese Government as an important military base and gangway to the South Pacific region. Taiwan's Governor's Office was asked to enhance the construction of ports and traffic systems. According to the National Development Plan Bureau's programme, the task of Taiwan's development was to advance industrialisation and establish Taiwan as an industrial production base to exploit the rich natural resources in South Asia.⁴⁰⁴ Regional and urban plans followed the development principles. In order to properly lay out the distribution of population and industry, three regional plans were drafted for northern, central and southern Taiwan. These were the Taipei, Taichung and Kaohsiung Regional Plans, as laid out in Table 5.2 below.

Table 5-2: Regional plans of Japanese colonial Taiwan

Plan Area/ Cities	Total Area (km ²)	Population in 1939	Population expected in 1985	Density (person/ km ²)
<i>Taipei Region</i>	<i>823.8</i>	<i>664,510</i>	<i>1,200,000</i>	<i>1,460</i>
Taipei City			600,000	

⁴⁰² Mark R Peattie, 'Japanese Attitudes Toward Colonialism, 1895-1945' in R. H. Myers & M. R. Peattie (eds), *The Japanese Colonial Empire, 1895-1945* (Princeton University Press 1987) 185; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 28.

⁴⁰³ Hayakawa Toru, 'Taiwan Cities of National Planning' (1941) 1 *Taiwan Local Administration*; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 29.

⁴⁰⁴ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 28.

Industry Cities			150,000	
Satellite Towns			250,000	
Villages			200,000	
<i>Taichung Region</i>	<i>687.4</i>	<i>357,082</i>	<i>1,000,000</i>	<i>1,450</i>
Taichung City			250,000	
Shingao New City			300,000	
Fong-ian			50,000	
Satellite Towns			200,000	
Villages			200,000	
<i>Kaohsiung Region</i>	<i>295.4</i>	<i>216.842</i>	<i>800,000</i>	<i>2.710</i>
Kaohsiung City			400,000	
Tzuoying			100,000	
Shiaugang Industrial City			100,000	
Fongshan			100,000	
Nantz			50,000	
Villages			50,000	
Total	1,806.6	1,238,434	3,000,000	1,600

Source: Hayakawa, 1941; Chang Jing-sen, 1993.⁴⁰⁵

Taichung, which literally means “centre of Taiwan”, has been the biggest city in central Taiwan since the early twentieth century. The cities in central Taiwan were covered by the Taichung Region Plan. Taipei, which literally means “Taiwan North”, is the biggest city in Northern Taiwan and the capital of Taiwan. The Taipei Region Plan covered most cities in Northern Taiwan. Kaohsiung City is the biggest city in Southern Taiwan and the biggest port. The Kaohsiung Region Plan covered cities in the South. In the Taipei Regional Plan, new industrial cities were expected to be built along the Danshui River. According to the Taichung Plan, the construction plan for the commercial port Shingao was expected to start in 1939 and was expected to expand into an industrial port with a population of 300,000. Such a port would be even greater than Taichung City, despite the fact that Shingao (Wuchi) was a small fishing and shipping village with population of less than 20,000 at that time.⁴⁰⁶ In the Kaohsiung Region Plan, a metropolitan area in Southern Taiwan was drawn up. Descriptions of the Plans exhibited an ideal picture of spatial development in Taiwan: reasonable urbanisation, new industrial cities growing along regional commercial centres and the zoning system in urban areas were the means of development control that would prevent over-urbanisation and overcrowding. The planners assumed that rationalised development could be achieved through comprehensive plans. Due to their military defeat, the Japanese Government did not see the results of their plans, but the urban planning blueprints did not leave with them. After the Second World War, the Guomintang government followed up these plans and continued most of the Japanese ideas. For example, the development of Shingao Port (which was then renamed Taichung Port) in the 1970s and the construction of number 7, 14 and 15 parks in the 1990s in Taipei City actually followed the Japanese footsteps on urban planning.

⁴⁰⁵ Hayakawa Toru, ‘Taiwan Cities of National Planning’ (1941) 1 Taiwan Local Administration; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 28.

⁴⁰⁶ Wang Chong-Fu, etc, ‘Chronicles of Wuchi Town’ Wuchi Town Office (2005).

After the Taiwan Province Administrative Government Office of Nationalist Chinese took over the Taiwan Governor's Office of Japan in 1945, there was a period of recession on urban planning until 1958.⁴⁰⁷ The most important land policy in the 1950s shaping the Taiwanese socio-spatial structure was Land Reform. It undertook land tenure improvement, land acquisition and distribution. Agrarian justice was expected to be delivered by the Reform, under the guidance of Vice-President General Chen Cheng. Agrarian reforms were appreciated by tenant peasants but opposed by landlords: the landlord class saw such reforms as military oppression over the local provincials of Taiwan, a view shared by contemporary mainstream scholars and politicians.⁴⁰⁸ However, my current research argues that agrarian reform was actually an extension of the civil war between Guomintang and the Chinese Communist Party, whose Red Army was mostly assembled of peasants.

The preliminary cause of agrarian reform in Taiwan was the Nationalist's defeat in China. In 1948, Guomintang was defeated in northern and north-eastern China. Despite the Nationalist Army being equipped with modern weapons, the Guomintang government was on the brink of losing the war. In January 1948, in order to acquire aid from the United States, Executive Yuan expressed the determination of the Guomintang government to advocate land reform. Agricultural Revival Associations were established in central and southern China. In 1949, land reform was implemented in Taiwan, Fukien, Szechwan, Canton, Kwangsi and Kweichow provinces.⁴⁰⁹ Chen Cheng was then the Governor of the Taiwan Provincial Government and Chiang Ching-Kuo (son of Chiang Kai-shek) the Chief of the

⁴⁰⁷ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 272.

⁴⁰⁸ Li Fu-chung and Chang Yan-sian, 'Revealing the Truth of the One Hundred Years of R.O.C. Taiwan' (Historical Association, Taipei 2011); Chang Yan-sian, 'Experiences in the Turbulent Years: Land Lords in Taipei County and the Land Reform' (Taipei County Cultural Centre, Taipei 1996).

⁴⁰⁹ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 272.

Guomintang Party in Taiwan. Both aggressively carried on land reform, mainly based on the *Three Seven Five Arable Rent Reduction Act* of 1951, which stipulated a rent ceiling set at 37.5% of a tenant's harvest.⁴¹⁰ According to Cheng Chen,

*"...the general situation on the Mainland was deteriorating fast.....and at the juncture it looked as though anything might happen. To safeguard the island (Taiwan) as a base of operations for national recovery, we require social stability.....Farmers constitute more than three-fifths of the population and the number of peasant tenants constitutes more than two-thirds of all farming households. Social stability, improved people's livelihood and economic development could take place only through land reform."*⁴¹¹

After the implementation of the *Three Seven Five Act* in 1951 and *The Land to the Tiller Act* in 1952, it was claimed that "*land reform achievements on Taiwan have attracted world-wide attention.*"⁴¹² Actually, agrarian reform in Taiwan was a compromised agreement between local landlords and the Chinese Nationalist Government. Taiwanese landlords could only choose between supporting the Nationalist Government or facing the foreseeable Communist Party take-over. The Guomintang party was bidding to win over the political support of Taiwanese peasants and directly control the production surplus in the countryside.⁴¹³ In order to implement the idea of agrarianism, Taiwanese landlords were persuaded to release their land to tenants, but promised compensation by the Nationalist Government. Since post-war economic difficulty could not provide enough sufficient financial compensation, Guomintang privatised major State-owned companies, which were originally taken over from the Japanese, releasing shareholdings to landlords in exchange for land.⁴¹⁴ According to

⁴¹⁰ The enactment of the Act was indeed two years later than the implementation of the land reform. During these two years, landlords' property rights were eroded by the administration, without proper legal authorisation.

⁴¹¹ Chen Cheng, *Land Reform in Taiwan* (Taipei: Taiwan Chunghua Books 1961).

⁴¹² Chen Cheng. *Land Reform in Taiwan* (Taipei: Taiwan Chunghua Books 1961) 1.

⁴¹³ Thomas Gold, *State and Society in the Taiwan Miracle* (M. E. Sharpe, New York 1986).

⁴¹⁴ Chen Cheng, *Land Reform in Taiwan* (Taipei: Taiwan Chunghua Books 1961) 67.

the arrangement of the “converting landholdings into industrial holdings” policy, major land owners had become entrepreneurs and industrialists, with their industries supplying Taiwanese people’s livelihoods. The privatised companies were Taiwan Cement Corporation, Taiwan Paper Corporation, Taiwan Tea, Pineapples, Aqua Products and Livestock Corporation, and Taiwan Industrial Development Corporation.⁴¹⁵

Privatisation was part of the conditions demanded by the US government for American Aid. It led the Taiwanese economy to a new development of inputting new management and private capital into the bureaucracy of state companies and down-scaling the monopoly of state capital.⁴¹⁶ The legislation of the *Issuance of Land Bonds in Kind Regulations, Taiwan Province* (1952) and the *Transfer of Government Enterprises to Private Ownership Regulations* (1953) were passed to implement the privatisation and agrarian reform policies. According to the Regulations, compensation to landlords should be paid with 70% of land bonds in kind and 30% of state enterprise stock shares.⁴¹⁷ However, the lack of investment opportunities in rural areas of recessionary Taiwan meant that most land capital did not find a way out, leading to urban land speculation. Land speculation triggered incredible price increases. The average price of land in cities shot up 14.9 times. In Taipei, the 1959 price was 28 times that of 1954.⁴¹⁸ Agrarianism in the 50s resulted in an increase of productivity in farming, contributing to the industrialisation of the 60s. Nevertheless, the recessionary 50s was a period of decline in town planning. Urban regulation and development control work were more emphasised than developing comprehensive urban development plans, as the discussion below will explain.

⁴¹⁵ For a further review and discussion of the land reform and its relations to the political struggle between Guomintang and the Chinese Communist Party, see the next chapter.

⁴¹⁶ Duan Cheng-Pu, *Taiwanese Economy after World War Two* (Renjian Publisher, Taipei 1992).

⁴¹⁷ Chen Cheng, *Land Reform in Taiwan* (Taiwan Chunghua Books, Taipei 1961) 75.

⁴¹⁸ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research Chang Yung-fa Foundation, Taipei 1993) 109; Pan Lian-fang, *Land Reform in Taiwan: Retrospect and Prospect* (Cheng Chung Books, Taipei 1965) 122.

Two major issues changed urban planning during this period. The first was refugees. An estimated 1,500,000 soldiers and Mainlanders withdrew along with Guomintang after the civil war defeat. Being homeless and lacking social connections in Taiwan, most Mainlanders (Foreign Provincials) flocked into cities. In 1955, 66.8% of Mainland Chinese in Taiwan lived in metropolitan and industrial areas, while the figure for the islanders (Local Provincials) was 23.3%.⁴¹⁹ Before the Taiwanese economy recovered and returned to pre-war production levels, the poor and overloaded economy fell short of providing sufficient employment. Islanders' immigration from rural to urban areas contributed to severe overcrowding in cities. With both Mainlanders and migrant islanders moving into the same areas, there were severe housing shortage problems in urban Taiwan. Self-help informal housing was the foremost form of housing supply because of the huge influx of political/economic migrants from the Mainland and the countryside. Numerous squatter settlements were established in large cities. In 1958, 44% of Taiwan's 106,259 informal housing units were in Taipei City, with 35% in five other major cities. Squatter settlements accounted for nearly one-third of all dwelling units in Taipei City.⁴²⁰ This overnight urbanisation resulted in slum problems, illegal buildings and the increasing price of urban land.

The second issue affecting urban planning was the problem of scarce housing, one which compelled the government to enforce its policy of equalising land rights in urban areas, an ideological principle preaching the principle of "land capital gains belong to the public", one of the most important revolutionary programmes advocated by Dr. Sun Yat-sen. Disorderly urbanisation also forced the Nationalist Chinese leadership to implement urban planning. In order to accomplish both tasks,

⁴¹⁹ Wang Hong-ren, 'Class Structures and Social Mobility in Taiwan in the Initial Post-war Period' *Taiwan: A Radical Quarterly in Social Studies* (1999) 36. Taipei 1, 35.

⁴²⁰ Huang Li-ling, 'Urban Redevelopment and Urban Governance: A Comparative Study between Taipei and Hong Kong' (PhD thesis of Building and Planning, National Taiwan University, Taipei 2003); Tseng Shu-Cheng, 'The Formation of Urban Consciousness and the Urban Process of Taipei City After the Second World War' (PhD thesis of Civil Engineering, National Taiwan University, Taipei 1994).

the Taiwan Province Urban Affairs and Construction Inspection Group was organised in 1953. Group members included eight representatives from central government departments and the Taiwan Provincial Government and seven social welfare, land administration, sanitation and finance experts. The Group published their suggestions in 1954 as guidelines for the preparation of urban planning in Taiwan.

In the same year, the *Equalisation of Urban Land Rights Act* was enacted. The Act stipulated four main sections in accordance with Sun Yat-sen's four equalising land rights steps: assessing land value, levying land tax according to valuation, purchasing land at the declared value and land value increment going to the public. In Sun's 1912 speeches, he described the land problem in terms of the future "spectre" of monopoly and speculation. Sun advocated equalising land rights by implementing the following steps:

- (1) Self-assessment of all land values exclusive of improvements.
- (2) A standard tax rate of about 1% on the assessed value.
- (3) Governmental appropriation of all future increases in value.
- (4) The government have the right to purchase any piece of land at any time according to its original value.⁴²¹

Sun proposed a unique method of self-assessment in place of the government valuation systems prevalent in the West. In Sun's proposal, each land owner would submit his own valuation, with the State always reserving the right to purchase the land at the original self-assessed value, therefore deferring an owner from under-assessing his property. Also, the annual land tax would discourage a land owner from over-valuation.⁴²² The 1954 Act was a compromised version of Sun Yat-sen's land policy doctrine. According to Sun, the equalisation of land rights meant governmental appropriation of all future land value increases. The Act imposed a Land Value Incremental Tax (capital gains tax) on land transactions. Although the tax rate was set

⁴²¹ Sun Yat-sen, 'Writing of Premier' (1952) 1 Chinese Nationalist Party.

⁴²² Schiffrin Harold, 'Sun Yat-sen's Early Land Policy: The Origin and Meaning of Equalization of Land Right' (1957) *Journal of Asian Studies* 556.

at between 40% to 60%, the tax was not levied on actual land transaction prices, but on an “Official Announcement Price” which was far lower than market prices. The Act was merely an urban taxation device because the government would not levy all the land value increments.

Another significant difference concerned the way land value was assessed. According to Section 1, Article 15 of the Act, the responsibility of assessment fell upon the State:

“The procedure for the assessment or reassessment of land value by the competent authorities of municipality or county (city) shall be as follows:

- (1) Investigate the transaction prices and income values of lands occurring in the last 12 months by sections.*
- (2) Demarcate land value sections and evaluate section values according to the investigation, then transmit the result to the Land Value Evaluation Committee for finalization.*
- (3) Calculate the land value of each plot.*
- (4) Publicly announce the land values for 30 days for the landowners to declare the values of their lands.*
- (5) Compile land value rolls and general registers of landowners in accordance with the declared land values.* ⁴²³

The above stipulations make it clear that the responsibility did not fall upon individual owners. The following article stipulated how the land value should be assessed on various occasions:

“In case the landowner fails, during the period of assessment or reassessment of land value, to declare the value of his land within the time limit, then 80 per cent of the announced land values shall be deemed as his declared land value. In case the landowner declares land value during the announcement period, and the land value declared is higher than 120 per

⁴²³ Article 15.

cent of the announced land value, the 120 per cent of the announced land value shall be deemed as his declared land value. If the land value declared by the owner is lower than 80 per cent of the announced land values, the government reserves the right to purchase his land at the announced land value, or the 80 per cent of the announced land value shall be deemed as his declared land value.”⁴²⁴

As the above regulation shows, limitation was set when the land owner declared land value too low or too high.

Since the *Equalisation of Urban Land Rights Act* stipulated that the Act would only be applied to areas covered by urban plans, all levels of government were urged to prepare urban plans as soon as possible. In November 1954, the Ministry of the Interior established the Urban Plan Reviews Group, with members representing other government bodies and two being urban planning experts. Of all the plans which were reviewed, fifty-three plans were approved and thirty-four required modification. Most of the eight-seven plans took effect in 1954 and 1955.⁴²⁵ In 1954, a proposal to prepare development plans for Northern and Southern Taiwan was announced. The Taipei Regional Plan and Kaohsiung Regional Plan would cover more than half of Taiwan. However, the approval of the Plans was not a priority and the planning authorities eventually gave up.⁴²⁶ Accompanied by the intention to continue with urban plans, sets of urban land reform provisions were announced to improve the deteriorating situation in crowded cities and restrain land speculation, including the *Taiwan Province Urban Land Reform Procedure* (1951), the *Urban Planning Implementation Notes* (1956) and the *Regulations of Illegal Buildings* (1956). For urban landlords, as their land was covered by urban plans, the urban planning and land reform legislations

⁴²⁴ Article 16.

⁴²⁵ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 44.

⁴²⁶ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 273.

meant: 1. building control, less plot ratio and less floor space and; 2. more taxes on land transactions. For people living in illegal buildings in cities, urban planning was nothing more than an eviction device.⁴²⁷ Development control during that era appeared not as a guideline for development but merely a force of urban policing.

There was nonetheless a chance, at least according to Western experts' expectations, that urban planning in Taiwan would not only be a means of urban policing, but provide reasonable urbanisation that was achievable through comprehensive urban plans. In the late 1950s, foreign capital was introduced to Taiwan to take advantage of the low cost of Taiwanese labour.⁴²⁸ The low grain price also contributed to maintaining the cheap cost of labour and pushed the new generation of peasants from the countryside into industrialising cities. In 1964, Taiwan's industrial sectors were starting continuous double-digit growth. Taiwan entered the High-Speed Development of the export-orientated period, which was described by economists as the Taiwanese economic miracle.⁴²⁹ During the period between 1964 and 1973, economic growth of 12% or more was attained annually. In 1966, the export and import of goods accounted for over 50% of Gross National Product for the first time.⁴³⁰ Under the export-orientated industrial policy, Taiwan's urban planning was supposed to engage in the development process. In 1961, the Ministry of the Interior, the Taiwan Provincial Government and the Industrial Investment Research Unit of American Aid Association jointly established the Taiwan Urban Planning Survey Group. After a six month investigation and review of plan designated urban areas, the group reached the following inclusions:

- (1) Industrial Zones were not properly planned and located. The infrastructure in

⁴²⁷ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 273.

⁴²⁸ Taniura Takao, *Industrialisation of Taiwan: The Development of an International Export Processing Site* (Renjian Publisher, Taipei 1992).

⁴²⁹ Duan Cheng-Pu, *Taiwanese Economy after World War Two* (Renjian Publisher, Taipei 1992).

⁴³⁰ Duan Cheng-Pu, *Taiwanese Economy after World War Two* (Renjian Publisher, Taipei 1992).

industrial zones was inadequate.

- (2) The price of industrial land was unreasonable for industrialists.
- (3) Accompanying the modification of industrial zoning plans, plans for the traffic system, sanitation system, schools and residential areas should be reviewed and amended.
- (4) In order to start the review of industrial area plans and urban plans, *Urban Planning Act* should be amended first.⁴³¹

In 1962, the Workshop of Amending Urban Planning Act was set up, organised by the Ministry of Interior and Committee of American Aid. The workshop introduced the translation of British, American, French, Japanese, West German, Dutch, Swiss and Belgian urban planning systems and laws as references. In addition, local government opinions were consulted. In 1964, the new *Urban Planning Act* was passed by Legislative Yuan.⁴³² The new Act, which embraced Western trends and was made for the interests of foreign industrial capital, bore the following characteristics:

- (1) An urban plan would consist of a Main Plan and Detail Plan.
- (2) The concept of regional plan was introduced. The Section on regional plans was enacted within the Act. Later, the Section was separated from the Act and became the Regional Planning Act, an independent entity, in 1973.
- (3) Encouraging private investment in infrastructure. Article 27 states: “if necessary, county (city) governments or town (village) offices may encourage private persons or companies to invest in parks, play grounds, markets and public services in urban planning areas”. The State expected private investment to partly relieve financial burdens on the government. The concept of the minimal state was introduced.
- (4) Public exhibition. For the first time in Taiwan’s urban planning history, public

⁴³¹ Ma Baohua, ‘What Happened during Drafting the Bill of Urban Planning Act (Amendment)’ (1963) 24(10) Democratic Constitution 5, 7.

⁴³² Ma Baohua, ‘What Happened during Drafting the Bill of Urban Planning Act (Amendment)’ (1963) 24(10) Democratic Constitution 6; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research Chang Yung-fa Foundation, Taipei 1993) 74.

participation was considered part of the planning process. Under the provisions of Article 15, after an urban plan was approved, the county (city) government shall publicly put it on display for 30 days. During the public exhibition, any citizen or private organisation may submit opinions as references for review by the superior planning authorities. However, local government preparations of urban plans were still to be treated as a government secret.

- (5) Introducing the American urban regeneration approach. Articles 54 and 55, for the implementation of urban renewal, suggest that:

“a local authority may be authorised to compulsorily acquire land or buildings by enforcing land acquisition or the above-quota acquisition. After purchase, the local authority shall demolish obstructions or buildings, carry out land preparation, construct infrastructure and re-construct buildings, or sell the site to a developer in the private sector [...] The earnings shall contribute to further betterment or compensation for land acquisition.”

- (6) The law made it clear that the government was obliged to suppress objections when an urban renewal project was being carried out.

In 1964, the same year of the enactment of the new *Urban Planning Act*, the United Nations sent Donald Monson, an urban planning expert, to help with regional plans in Taiwan. After reviewing the Taipei-Keelung Metropolitan Plan, Monson suggested that the Taiwanese government should ask for help from the United Nation’s Special Fund for Assistance in Metropolitan and Urban Planning. Monson warned Taiwan that by the end of the twentieth century, the population in cities would increase two or three-fold; without proper development guidelines and urban planning, the expansion of urbanisation would lead to money being wasted on the reconstruction of infrastructure and housing investment, which could damage economic development. According to Monson, metropolises, such as New York, Detroit, Tokyo and Buenos Aires, were ugly, inefficient and unhealthy. In order to support industrial development, an integrated and efficient urban infrastructure system should be established. Monson proposed that planning should be undertaken to arrange the

population distribution before the migrating population came into urban areas.⁴³³ For the purpose of a reasonable spatial plan, Monson argued that, firstly, a national policy for population distribution was needed, and that the policy would need to be urgently put into practice. In metropolitan areas, control plans for crowded populations were immediately required. Secondly, the State should help with the establishment of industrial areas and public housing, followed by the construction of urban planning areas.⁴³⁴ In Monson's proposal, the first step was a national development plan. He suggested locating Industrial Zones in medium-sized cities to avoid over-centralisation of industrial sectors. He expected industrialisation to bring reasonable development to the cities. After population growth in medium sized cities, the second step was to set up and implement metropolitan plans in northern, central and southern Taiwan. According to Monson's proposal, the relationship between core cities and surrounding towns must be properly regulated, setting up the standards for Taipei, Taichung and Kaohsiung's densities and development limitations, then leading the population overflows to satellite towns, building new towns, and finally setting up agricultural areas to restrain the urban spread. The third step was scheduling implementation plans by arranging construction work in the planned areas.⁴³⁵

Monson emphasised that his urban/regional planning idea was different from those of socialist states, although it could restrict development opportunities for private investment. Addressing the common view of socialist states as dictatorships, he explained that administrative powers over development control were not an invasion on individual and local liberty. He argued that Taiwan had no choice but to obey the rules of order because it was a necessity to establish an industrial urban society.

⁴³³ Monson, 'Urbanisation of Taiwan's Population and the Metropolitan or Regional Planning' (1965) 7(3) *Civil Engineering* 71, 75; Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 274.

⁴³⁴ Monson, 'Urbanisation of Taiwan's Population and the Metropolitan or Regional Planning' (1965) 7(3) *Civil Engineering* 72.

⁴³⁵ Monson, 'Urbanisation of Taiwan's Population and the Metropolitan or Regional Planning' (1965) 7(3) *Civil Engineering* 72; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 67, 68.

According to Monson, by encouraging private investment and paying proper compensation to land owners, his plan would not over-restrain commercial activities by private enterprises.⁴³⁶

In 1966, with Monson's help, the Taiwanese Government's application was approved by the United Nations, receiving funding through the United Nations Development Project. Funds and experts were sent to Taiwan. An Urban and Housing Development Commission was set up under the Economic Cooperation Committee, Executive Yuan. In the next three years, working with experts from the United Nations, the Committee finished two-hundred-and-forty-eight reports on housing, urban and regional planning. The UN's consultants also proposed four-hundred-and-fifty-nine suggestion notes. Those reports and suggestion notes have shaped the prototype for Taiwanese urban/regional planning since the 1970s. Even after Taiwan's United Nations membership was handed over to China, concepts of urban planning similar to Monson's remained the main trend in the country for quite some time, under the influence of Western trained Taiwanese experts and overseas scholars. Monson and his followers' plans were built on the systematic programming approach that intended to develop an integrated comprehensive plan. The difficulty with their systematic theory was that close-end planning does not really exist. Therefore, an urban plan has to be expanded to the regional level and become a regional plan, then a national plan later. Every time the planners have to start all over on the national level to complete a systematic planning system. Under the influence of this concept, the National Comprehensive Development Plan was published and implemented in 1971. In the next 10 years, the priority of urban planning was to build and implement the integrated planning system, including the National Comprehensive Development Plan, regional plans, County/City Comprehensive Development Plans and urban plans.⁴³⁷

⁴³⁶ Monson, 'Urbanisation of Taiwan's Population and the Metropolitan or Regional Planning' (1965) 7(3) *Civil Engineering* 72; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 69.

⁴³⁷ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 274.

Monson and his colleagues worked like missionaries delivering the modern gospel on town planning. The gospel was welcomed and accepted but hardly put into practice. Monson and United Nations' suggestions can be summarised in three points: reasonable development control; development of medium size cities and new towns; and more infrastructure construction. None of the above was the then Government's priority. The Guomintang government did not start its first great national infrastructure plan until 1974. It was named "Ten Great Constructions" and included commercial/industrial ports, the first national super highway, Electrification of the Western Line railway, improvements to electricity and water supplies, nuclear power stations and the expansions of the Chinese Steel Corporation, the Chinese Petroleum Corporation and the Chinese Ship Building Company. These were national infrastructure projects to upgrade both industries and State investment in certain industrial sectors. At that time, Taiwan was experiencing significant economic effects from the 1973 oil crisis, with the Government expecting the "Ten Great Constructions" to increase employment and encourage industrialisation by significantly investing in massive building projects. However, the six transportation-building infrastructure projects did not result in reasonable development between large and medium-sized cities as Monson had expected. Over-urbanisation in Taipei and its satellite cities was never stopped.

Contrary to planner suggestions on developing industrial zones to attract industry, in the 1980s, small sized factories were encouraged by the government under the slogan "*living rooms being factories*". In both towns and countryside, farmers set up machines in their living rooms, with pollution and non-licensed factories being tolerated by people and the government. In cities, illegal extensions were built on rooftops, with fire lanes or arcaded passages seen as the solution to over-crowded living conditions and expensive housing. Some of the New Towns and satellite cities suggested by Monson and his colleagues had become crowded dormitory cities with higher densities than Taipei. For example, Yong-he city in Taipei metropolitan area

now has an approximate population of 250,000, but was designed as a garden city with a planned population of 50,000. Yong-he's density is twice that of Hong Kong Island.

Urban plans based on the modern systematic model fell behind the reality of economic development, and were never prepared one step ahead of urbanisation as the planners had expected. When the United Nations' team prepared hundreds of notes on Taiwanese town planning, they believed that the package of detailed plans and modern planning techniques was eminently achievable, but these ideal concepts were proven impractical. The Taiwanese modern planning system had been established to be a perfect blueprint, but failed to catch up with the reality of development. Urban planning had only been "planning". Nonetheless, the whole system based on the United Nations' suggestions still forms the basis of the contemporary planning system currently used in Taiwan.

The following table summarises the history of Taiwanese urban planning laid out above.

Table 5-3: A brief introduction to the legal evolution of Taiwanese urban planning.

The Mainland China Period

<i>Land Act, 1930</i>
Legal/Political background: Autonomy of some local coastal governments started in China.
<ol style="list-style-type: none"> 1. It gave birth to the Taiwanese land use control system in its current form. 2. It was also the first legislation on land use control in China.

<i>Urban Planning Act, 1939</i>
Legal/Political background: It was based on the <i>Land Act</i> and deeply influenced by Western systems.
<ol style="list-style-type: none"> 1. The modern Taiwanese planning system can be traced back to this first urban planning law in China. 2. There was only one urban plan level, not like the later legislations. There was no distinction between the master plan and detailed plan. 3. Urban Planning Committees were set up to produce urban plans. 4. Zoning control system was introduced.

<i>Buildings Regulations for Towns in Recovered Territory, 1943</i>
Legal/Political background: Instated by the Minister of Interior with respect to the <i>Urban Planning Act, 1939</i> .
It created an integrated development control system. The superior level was the Provincial Building Plan. There was a Regional Building Plan in the middle. The lowest was the Town Plan.

The Japanese Colonial Period

1897
Legal/Political background: The third year of the Japanese occupation of Taiwan.
The Taipei City Area Planning Committee was established to produce the Taipei Inner City Regulation Plan. It was one of the first urban plans in Taiwan.

1900
Legal/Political background: The imported urban planning model was generalised to some other cities.
In Taichung, the Inner City Regulation Plan was published.

<i>Taiwan Urban Planning Order, 1936</i> <i>Procedure Rule of Taiwan Urban Planning, 1936</i>
Legal/Political background: The Urban Planning Department was established under the Civil Engineering Class, Bureau of Interior Affairs in the Governor's Office. The Taiwan Urban Planning Committee was established in the Governor's Office, to review the urban plans. It was the first urban planning committee in central government in Taiwan.
<ol style="list-style-type: none">1. These were enacted as the legal sources for urban planning in Taiwan.2. Building control and zoning control were introduced.

The Guomintang Period

<i>1964 Urban Planning Act</i>
Legal/Political background: <ol style="list-style-type: none">1. Taiwan started high speed economic growth.2. To resolve the few technical conflicts between the Japanese and Chinese systems.3. To improve the infrastructure for economic development.
<ol style="list-style-type: none">1. There were four kinds of urban plans: City/Town Plan, Countryside Street Plan, Special Area Plan and Regional Plan.2. Urban Planning Committees were in charge of the reviewing of urban plans at every level.3. Planning authorities were required to exhibit urban plans to the public.

<i>1973 Urban Planning Act</i>
Legal/Political background: <ol style="list-style-type: none">1. Taiwan went into the second imported substitute period.2. The law sought to resolve the "Reservation Land for Public Facilities" issue.
<ol style="list-style-type: none">1. It simplified the Urban Planning review procedure.2. It improved the procedure for draft exhibition of urban plans.3. The provisions of the Regional Plan were deleted in this Law.

<i>1974 Regional Planning Act; 1977 Regional Planning Procedure</i>
Legal/Political background: <p>To move toward a less uneven development in Taiwan.</p> <p>To avoid undesirable externalities resulting from land use competition.</p>
<ol style="list-style-type: none">1. Regional Plan set as the superior plan to an urban plan.2. It was supposed to be a development plan and not only a control plan.

<i>1976 Regulations of Land Use Control in Non-urban Areas</i>
Legal/Political background: As a supplementation of the Regional Plan.
Zoning control in no-urban areas.

<i>1984 Regulations of Zoning Control in Taipei</i>
Legal/Political background: To avoid overcrowding and over-urbanisation in Taipei. The complexity of the zoning system in Taipei was enriched by the delegated legislation. <i>Taipei City Land Use and Zoning Control Regulations</i> are the most complicated zoning codes in Taiwan, containing stipulations of fifty six categories of usage classes and twenty two zones.
<ol style="list-style-type: none"> 1. Original regulations governing zoning usage classes composed Section Three of the <i>Enforcement Rules of Urban Planning Act</i>. In 1984, the regulations governing Taipei City were significantly expanded again, with the whole of Section Three becoming the <i>Taipei City Land Use and Zoning Control Regulations</i>, an independent statutory instrument from the Enforcement Rules of Taipei. 2. Building control regulation was separated from zoning control.

To conclude this section, as we have seen, current urban planning practice in Taiwan is based on the combination of two foundations: Japanese city plans and Chinese planning law. It is a mixed blood with two nationalities. The concept of modern urban planning was imported to Taiwan by the Japanese who set up the earliest city plans of Taiwan, and the legal source of urban planning implementation has been Chinese since the end of the Second World War. However, both Japanese and urban planning were significantly influenced by Western planning trends, and thus share similar influences. Given this, the Western gospel of systematic planning spread throughout Taiwan during the last century.

5.3.2 The failure of systematic planning in Taiwan

Urban planning is supposed to project the future and translate future needs into land use requirements. Urban plans are supposed to control development and achieve reasonable urbanisation. By contrast, this section argues that in the case of Taiwan, urban planning has consistently been chasing over-urbanisation, with problems seldom acknowledged or tackled until they are out of control, and reactive crisis management becoming the norm. Often, planning is merely the after-fact reparation of an out-of-control situation.

Several reasons have caused the failure of modern planning practice in Taiwan, as discussed below.

1. Planning without financial plans

During discussions of the *Urban Planning Act* in 1964, an important amendment was proposed, involving the setting up of a centralised authority with a special budget. However, the idea was not adopted by Executive Yuan and Legislative Yuan.

Before the Nationalist Government took power, the Japanese *Urban Planning Order* had been established to stabilise urban planning financial resources, although economic difficulties sometimes led to the concept being abandoned. The financial resources were to come from:

- (1) Planning gains: whoever benefitted from urban planning was required to take full responsibility for urban planning expenses.
- (2) An urban planning tax set up as the most reliable source for urban planning.
- (3) Fixed and regular subsidies from central government, which would be the main

financial resource for local planning authorities.⁴³⁸

After the Chinese Nationalist Party's take over, the *Provisional Measures on Tax Collections during the Period of National Mobilisation in Suppression of Communist Rebellion* was published in 1951 in order to simplify the complicated tax system, and the urban planning tax abolished. The lack of a regular financial source for urban planning meant that there was no proper budget for local planning authorities to prepare and implement urban plans. In 1964, the appeal for proper urban planning funding was submitted and presented in the *Urban Planning Act* draft by the Land Administrative Department, Executive Yuan. According to the draft of the Bill, an integrated planning authority independent from the Land Administrative Department should be established by central government. There was also a section stipulating proper urban planning funding. The provisions can be summarised below.

- (1) The Land Value Incremental Tax (capital gain tax) levied in urban planning areas should be used for urban planning first.
- (2) The financial benefits from the sales of public land/properties in urban planned areas should all be applied to urban planning expenses.
- (3) Local government should encourage private investment in parks, playgrounds, public service enterprises and markets.
- (4) For urban planning purposes, local governments should issue government bonds.
- (5) State owned financial organisations and banks should grant local governments loans to aid urban planning.⁴³⁹

These ideas for special financial budgeting for town planning, proposed by planning staff, were not approved by politicians. Executive Yuan did not support the provisions

⁴³⁸ Ministry of Interior, 'Taiwan Provincial Government Inspection Report on Municipal Affairs' (Taipei, 1954) 54; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 76.

⁴³⁹ *Urban Planning Bill* 1964.

and the whole section did not pass in Legislative Yuan. The apparent reason for the failure of the legislation was the authoritarian central government's disagreement on local governments possessing this degree of autonomy. More independent financial resources would have meant less centralised administrative power. Even if the draft had been passed, a steady supply of financial resources for local planning authorities would not be guaranteed. Since the Land Value Incremental Tax had been the main source of local government tax revenues and Town Office administrative expenses, and local infrastructure taking up most of the tax levied, the stipulation that the "capital gains tax should be used for urban planning first" would be just lip service without practical implementation.

2. Urban planning without the means of development but with development control

Besides stable financial resources, land readjustment has been an important means for urban planning in Taiwan. In the later period of the Japanese occupation, the German concept of compulsory re-plotting was introduced to Taiwan as an efficient urban expansion measure. The first compulsory re-plotting was introduced in 1938, the year following the *Urban Planning Order's* enactment. Between 1938 and 1943, the Japanese government conducted re-plotting in twenty towns and cities, on a total amount of 4,387.7239 hectares (10969.309 acres). This was equal to the total amount of re-plotting implemented by the Guomintang government in the thirty-five years between 1949 and 1983.⁴⁴⁰ Due to the lack of re-plotting, urban planning became only control planning in the early era of the Chinese Nationalist regime. In 1977, the *Equalisation of Urban Land Rights Act* was amended and became the *Equalisation of Land Rights Act*, with re-plotting work intensifying. By 1986, planning authorities had finished re-plotting 137 areas on a total amount of 6,536 hectares (16,340 acres). 4,458 hectares (11,145 acres) of land available for buildings and 2,004 hectares (5,010

⁴⁴⁰ Ministry of Interior, 'Implementation of Urban Land Consolidation' (Taipei 1984).

acres) land for public facilities and infrastructure were acquired.⁴⁴¹

This uneven and fragmented history of urban planning and land readjustment activity had serious long-term consequences.

- (1) The progress of infrastructure acquisition was too slow, resulting in the delay of infrastructure development and greater cost of compulsory purchases and compensation.
- (2) Without land re-plotting, the implementation of zoning caused injustices. Some landlords gained sudden and large profits from the implementation of urban plans because their agrarian land was designated for commercial or residential use. Others, however, suffered significant losses and resisted infrastructure construction because their land was marked for public facilities. Without re-plotting, urban plans led to fragmented development.
- (3) The delayed land re-plotting of urban planning and unstable financial resources resulted in an urban planning crisis. According to provisions of the 1964 law, the authorities' purchase of Reservation Land for Public Facilities in a planned area should have been completed within five years, once the urban plan was approved. If necessary, the purchase could be extended to ten years (Article 49). By 1973, most compulsory acquisition of reservation land in Taiwanese planned areas had not been completed due to budgetary deficiencies. The expiry dates were extended to ten or fifteen more years. In order to cut down compulsory purchase expenses, the 1975 Regulations of Urban Plans Reviews stipulated that local planning authorities should reduce the amount of reservation land. The new regulation proposed "multiple purpose use for reservation land" to encourage local governments to multiply the development of public facilities on an individual plot of land. This meant less open space and more floor space on reserved land. In 1984, only 16% (65,503.3 hectares) of land in urban planning areas was used for public

⁴⁴¹ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 80, 81.

facilities, much less than the 40% in the original plans. Among the 16% of land for public facilities, 62.7% had not been purchased or developed.⁴⁴² Until the end of 1987, 54.02% of reservation land had not been purchased.⁴⁴³ Over twenty years since the passing of the 1964 Act, urban planning had not been able to catch up with the reality. Urban planning in Taiwan suffered a serious collapse.

- (4) Social injustice remained widespread. Firstly, according to the original concept of Taiwanese planning law, landlords and developers who gained profits from the implementation of urban plans should have taken responsibility for the financial resources associated with infrastructure. In practice, landlords and developers received the benefit of the land value increment and enjoyed the betterment of the infrastructure but their unearned increment was not subject to appropriate recapture by public bodies (community, society or government). Urban planning had become a process in which the public subsidised landlords. Secondly, the rigid zoning system controlled by local governments without public participation had become the most important land speculation mechanism.
- (5) The collapse of urban planning also caused regional injustices. As mentioned above, when the modern planning system was introduced to Taiwan by Monson and other experts, it was supposed to build an efficient and healthy environment with an appropriate distribution of population to support industrial development. An integrated and efficient urban infrastructure system should have been established. Monson proposed using public sector investment in infrastructure to have industrial sectors allocated and distributed properly and reasonably. Nevertheless, with the staggering amount of infrastructure construction this plan required and, more importantly, without powerful and efficient means to allocate industries, over-urbanisation and regional uneven-development became increasingly worse. Between 1967 and

⁴⁴² Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 275.

⁴⁴³ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 86.

1981, 90% of public investment accumulated in metropolitan areas, with 60% of that being in Taipei.⁴⁴⁴

To conclude this section, we can see a number of reasons for the consistent failure of planning practice in Taiwan. Firstly, urban planning with insufficient financial projections has resulted in lack of regular financial source for local planning authorities to prepare and implement urban plans. Secondly, urban planning without the means of development but with development control has caused the slow progress of infrastructure development and the lack of land re-plotting. Without proper land re-plotting, the implementation of zoning frequently caused land injustices. Even worse, the combination of delayed land re-plotting of urban planning and unstable financial resources resulted in an urban planning crisis. Accompanied by the collapse of urban planning, over-urbanisation and regional injustices have increasingly deteriorated. Taiwan's double digit economic growth has not been distributed reasonably throughout its regions, and Monson's systematic programming consistently failed in practice. Urban planning was expected to be the social engineering mechanism that would lead to regional and social justice. However, in policy, legislation and implementation, many of the necessary elements were missing, distorted and abandoned. The imported Western model failed and finally became merely a Utopian theory.

5.4 Case study: the development plan in Taiwan

This section introduces a case study of the Taiwanese development plan to support the argument presented in section 5.3 that systematic planning failed in Taiwan due

⁴⁴⁴ Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei 1993) 277.

to its lack of financial strategies and means of development. The case is the development of Wuchi, a town with a fisheries port in central Taiwan, which started during the Japanese occupation and continued after the Nationalist government took over Taiwan. It has been more than seventy years since Wuchi's first urban plan was introduced, with Wuchi failing to reach the goal of being a port city with a 300,000 population as its urban plan proposed.

With a population of 55,000 people, Wuchi is situated in the centre of the western coast of Taiwan. It is 20 miles from Taichung, the largest city with a population of 700,000 in central Taiwan. Taichung Port and a 700 hectare industrial park are located in the west of Wuchi. Though it is part of Wuchi, the port is more like a foreign settlement to the town. The Town Office has no authority over the land use and development of Taichung Port. By the end of the 1990s, 23.1% of employment in Wuchi was in the agricultural and fisheries sectors, 37.74% in the industrial sector and 24.38% in the commercial sector.⁴⁴⁵ The total area of Wuchi Town (excluding the port area) is approximately 6500 acres, with 27% industrial areas, 20% categorised as commercial areas but mostly undeveloped, and most of the rest of the areas for agricultural use.⁴⁴⁶ Wuchi was a small agricultural village and fishing harbour before the development of Taichung Port. Like most ports in western Taiwan, trade between the Chinese Mainland and Taiwan during the Chin Dynasty initiated Wuchi port's development. After the Japanese took over, cross-strait commercial trade declined and the Wuchi economy suffered a depression. In 1932, there were no more commercial shipments. Instead of shipping, railway transportation increased and Wuchi was overtaken by nearby towns where the Western Railway ran through. The golden age of Wuchi had gone, as it had for most ports on the west coast.

⁴⁴⁵ Shih Fu-sheng, 'The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer's Investment on Taichung Port' (Ma dissertation, Department of Sociology, Soo Chow University 1999) 23.

⁴⁴⁶ Taiwan Province Government, 'Bureau of Housing and Urban Development Comprehensive Development of New town in Taichung Port' (1988).

The earliest modern urban planning in Wuchi started in 1939. For the purpose of Japanese national defence, industrial decentralisation and deployment of warships, Wuchi port was chosen to be built as the commercial/industrial hub of central Taiwan and renamed Niitaka (or Shingao, as pronounced in Chinese Mandarin). According to the Taichung Regional Plan, Shingao was expected to have population of 300,000 in 1985, about fifty years later, higher than the expected population of Taichung City. At that time, the population of Taichung was 200,000 and the Shingao Plan area, including the 25,000 from Wuchi and nearby villages, was 60,000. The Japanese government estimated that the cheap and sufficient electricity supply from other areas of central Taiwan would enable Shingao's industrial and commercial development. Its development would bring out the economic potential of metropolitan Taichung. According to the plan, the Taichung area was possessed a mild climate, rich soil and good quality water, suitable for habitation. Twin cities (Shingao and Taichung) would be the cores of the region. The new city's industrial sector would support Taichung City's further development and help it remain the political, economic and cultural centre of central Taiwan. In 1944, the development and construction of Shingao was stopped in 1944 because of a shortage in financial and material resources during the war-time period.⁴⁴⁷

After the War, there was a very short period in the revival of Wuchi's economy when shipping and commercial trade between Taiwan's western coast and Mainland China resumed. However, the Chinese Nationalist Government's retreat to Taiwan had frozen the cross-strait relationship again. No more shipping and trade took place between the Mainland and Taiwan. After the Chinese Nationalists' take-over, the Japanese plan was adopted by the Guomintang government. In 1969, with the help of Japanese consultants, a plan was established to develop Taichung Port. In 1973, the development started and the newly named Taichung Port in Wuchi was planned as

⁴⁴⁷ Taichung County, 'Taichung County Comprehensive Development Plan' (1994).

the international port of central Taiwan to support the high speed growth of international trade between Taiwan, Japan and America.⁴⁴⁸ Taichung Port was later listed as one of the “Ten Great Constructions”. In 1972, accompanied by the preparation for construction, the Taichung Port Special Area Plan was proposed by the Taiwan Provincial Government. The planned area included Wuchi and three other towns and villages nearby. The Special Area Plan aimed to construct a hinterland to provide residential, commercial and industrial areas for the development of Taichung Port. The population of this area was expected to reach 500,000 by 1991. A light and heavy industrial park were both planned.

Table 5-4: Schedule for development of the Taichung Port Special Area Plan⁴⁴⁹

Years	Construction Schedule	Development	Population estimate
1969~1973	Part of the port built		183,500
1974~1981	Most parts of the port built. Shipment expected: 8,000 tons of goods a year.	The development of industrial parks begins.	271,000
1982~1986	The construction of the port finished.	The development of industrial parks finished.	417,000
1987~1991		A new harbour city established.	500,000

⁴⁴⁸ Lin Siang-bo, ‘Taichung Port Special Area’s Impact on Demography of Central Taiwan: A Case Study with Lowry-Garin Model’ (MSc dissertation, Urban Planning Graduate Institute, National Chung Hsing University 1977).

⁴⁴⁹ Shih Fu-sheng, ‘The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer’s Investment on Taichung Port’ (Ma dissertation, Department of Sociology, Soo Chow University 1999) 23.

In the 1978 Taiwan Area Comprehensive Development Plan, the Council of Economic Development, Executive Yuan proposed the setting up of a new metropolitan administrative authority, Taichung Port City, to replace Wuchi and three other nearby Town Offices. According to the proposal, Wuchi and other nearby towns should be merged and become a municipality directly under the administrative leadership of the provincial government. This would mean an elevation in administrative status for Wuchi.⁴⁵⁰ In 1981, there was a similar proposal in the Taiwan Provincial Government's Central Taiwan Regional Plan. According to the Plan, the Special Area (Wuchi and nearby towns) would be developed as a new town in central Taiwan and the new centre of metropolitan Taichung. In 1989, the Comprehensive Development Plan for New Town in Taichung Port Area was proposed by the Taiwan Provincial Government. Under the Comprehensive Development Plan, the new municipality of Taichung Port City was mentioned again and a New Town Plan set up for the new city.⁴⁵¹ The plan aimed to adopt the concept of British, Japanese and Singaporean new towns in Taiwan and set up a new town development authority directly under the provincial government. The Comprehensive Development Plan was expected by the planning authority not only to be a land use plan, but also to be a plan including substantial economic and social development plans. The Plan held back (and actually gave up on) the idea of a heavy industrial park, but specified that the development of a light industrial area should continue; this had been the main economic development plan for this area since 1969. Food processing, textile, electronic, furniture, drinks and tobacco industries were suggested. However, the Plan did not provide a powerful means to attract such industries and encourage investment. In 1996, with the help of the Urban Planning Department at Fong Jia University, the Taichung County Comprehensive Development Plan was prepared and published by Taichung County

⁴⁵⁰ Department of Housing and Urban Development, 'Taiwan Area Comprehensive Development Plan' (Council of Economic Development, Executive Yuan, Taipei 1978).

⁴⁵¹ Bureau of Housing and Urban Development, 'Comprehensive Development of New Town in Taichung Port' (Taiwan Province Government 1989).

Government. The development of Taichung Port Special Area was mentioned again and the main ideas are presented below.

- (1) Enhancing development and construction work in the port area, and building it up as the sub-centre of Taichung metropolitan.
- (2) Developing a high-tech industry, establishing a research and innovation centre and increasing the employment of high-tech personnel.
- (3) Developing the under-developed commercial zone of Wuchi.
- (4) Preparing to set up a shipment operation centre, a technology industrial park, a community college and an intelligent economic/industrial park.⁴⁵²

Despite the above plans, Wuchi was still a small town with a population of approximately 50,000. The only achievement was a light industry park and the construction of Taichung Port.

In 1995, Executive Yuan published the *Developing Taiwan as Pacific-Asian Operation Centre Plan*, which the Premier declared as “the national development plan for the next millennium”.⁴⁵³ According to the Operation Centre Plan, Taichung Port was to form a shipping operations centre and would be the main port in western coastal waters. “Western coastal waters” was actually a metaphor hinting at future direct trade between Mainland China and Taiwan. The Operation Centre Plan was supposed to be a substantial development plan for cross-strait shipping. According to the plan, an offshore operations centre would be set up in Taichung Port because of its geographical convenience. Despite the political restriction, it would be a trial touchstone for direct shipment and cross-strait trade between Taiwan and Mainland China. The direct trade plan raised local inhabitants’ expectations one more time. Replacing the previous plans made for Taichung Port but never implemented, direct shipping was seen as the new and only hope for the flourishing of Taichung Port and Wuchi.

⁴⁵² Taichung County Government, ‘Taichung County Comprehensive Development Plan’ (1996).

⁴⁵³ China Times, 6th January 1996.

Following the Pacific Asian Operation Centre Plan, the 1996 Economic Development Council introduced German international corporation Bayer to invest NT\$8.9 billion (£445,100 million sterling) in the Taichung Port area and found a 58 hectare site for a chemistry factory project. The case was proclaimed by the central government as the greatest foreign industry investment since 1990 and the key plan for the Pacific Asia Operation Centre. Although Bayer is famous for its pesticides and pharmaceutical products, and has a long history of commercial business in China and Taiwan, the investment project still met fierce opposition. The then-opposition party (Democratic Progressive Party) and environmentalists led a campaign against the project which was later joined by Wuchi town hall. According to Fu-sheng Shih's case study, there were two reasons why Bayer sank into complicated political difficulties.⁴⁵⁴ Firstly, the people of Wuchi had learnt from other third world countries' experiences that the manufactories of multi-national corporations caused pollution and hazards in developing countries. They did not have any confidence in Bayer. Secondly, local notables considered that the Bayer project would benefit local development and themselves very little. Besides those reasons, the Wuchi people's campaign was also encouraged by the rise in local autonomy and communalism, and the successful anti-Du Pont campaign case in nearby Lukang town of 1985-1987. In November 1997 and January 1998, there were County Mayor and Town Mayor elections, with the Bayer issue in need of a referendum according to most candidates. Anti-Bayer was the main theme advocated by local activists in the Democratic Progressive Party. In March 1998, Bayer announced that they were giving up the investment project.

Wuchi is a typical example of Taiwanese urban planning. Modern planning concepts were introduced into Wuchi by the Japanese government, with Chinese Nationalists

⁴⁵⁴ Shih Fu-sheng, 'The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer's Investment on Taichung Port' (Ma dissertation, Department of Sociology, Soo Chow University 1999) 41.

inheriting the practices. As Table 5-5 below shows, many plans had been prepared since the 1930s.

Table 5-5: A list of plans in Taichung Port Area⁴⁵⁵

Plan Hierarchy	Plan Name	Year	Content
Regional Plan	Taichung Regional Plan	1939	Develop a new city. Start to build up an industrial port.
Urban Plan	Taichung Port Special Area Plan	1972	The special area planned as a hinterland of Taichung Port. Set up zoning control.
National Comprehensive Development Plan	Comprehensive Development Plan in Taiwan Area	1978	The name Taichung Port City appeared for the first time. Set up a new town.
Regional Plan	Central Taiwan Regional Plan	1981	Set up a Port Area as a sub-centre of Taichung metropolitan.
Urban Plan	Comprehensive Development Plan for New Town in Taichung Port Area	1989	Plan substantial social and economic development.
County Comprehensive Development Plan	Taichung County Comprehensive Development Plan	1996	Develop a commercial area in Wuchi. Prepare to set up a shipment operation centre, technology industrial park, community college, intelligent economy and trade park.

⁴⁵⁵ Shih Fu-sheng, 'The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer's Investment on Taichung Port' (Ma dissertation, Department of Sociology, Soo Chow University 1999) 25.

By comprehensively surveying these plans, one can find that many ideas have been introduced over a period of many years. Promises had been made to the people of Wuchi, but what really happened in Wuchi?

- (1) In the last 32 years between 1975 and 2007, the population of Wuchi had not changed much, remaining at approximately 50,000.⁴⁵⁶
- (2) The expansion and over-urbanisation of Taichung City continued. The expectation of reasonable growth and even the development of Taichung region was not achieved. By 1999, the population of 700,000 in Taichung City was much more than the Japanese plan's 250,000.
- (3) According to the provisions in the Taichung Port Special Area Plan, a restriction order for building still exists in most of Wuchi's designated commercial areas. The detailed plan was prepared and announced in 1996; however, land re-plotting was not continued. The regulations for floor space and building height were not set for twenty-seven years. Habitants could not have their cottages rebuilt or renovated. On 27th May 2002, Councillor Bi-ling You questioned Taichung County Mayor on this issue. She complained that seven of the nine designated commercial blockers were still un-developed and countryside like. Before being elected as a Country Councillor, she was the Mayoress of Wuchi and during the eight years of her two terms, she was powerless to amend the situation.
- (4) Taichung Port City never materialised. According to the conclusion of the Reviews of Comprehensive Development Plans for New Town in Taichung Port Area, made by the Economic Development Council in 1989, the idea of Taichung Port City was not mentioned.⁴⁵⁷ The central government seemed to have given up on Taichung Port City.
- (5) Construction of infrastructure has been seriously delayed. For example, without the regeneration of old villages, the integrated sewerage system was

⁴⁵⁶ Source: Ministry of Interior, August 2008.

⁴⁵⁷ Executive Yuan Document of Code Tei 78 Interior 27326. (1989).

never finished as planned. Under developed areas of old cottages have serious flooding problems.

- (6) There were no direct trade and shipments from the Chinese Mainland until 2008.⁴⁵⁸

It is particularly clear that the central state tried to develop a new town in Wuchi: an ideal, self-sufficient garden city with light industry, suburban style new houses and perfect urban functions. However, without efficient means of development and financial plan, the proposed plans were, in the words of the Chinese saying, “moon in the water: beautiful but cannot be touched”. Among those plans, only the Taichung Port Special Area Plan contained substantial content. The plan, based on the authority of *Urban Planning Act*, was actually a larger scale urban plan and specially prepared by the Taiwan Provincial Government, unlike common urban plans prepared by local governments. Like most urban plans, zoning control was its most powerful land use planning tool. Other plans, including the Central Taiwan Regional Plan, the Taichung County Comprehensive Development Plan and the Comprehensive Development Plan for New Town in Taichung Port Area, did not have any power governing land use control. The Taichung Port Special Area Plan was the plan at the lowest level and the only plan with real effects on urban planning in Wuchi.

In the Wuchi case, planning did not challenge the centralised urbanisation of central Taiwan. According to the central government’s plans, Taichung Port City was supposed to be a new city administration, with the city providing industrial, commercial and financial services to Taichung Port. However, the idea did not succeed. Nearby Taichung City has been the capital of central Taiwan for more than one hundred years,

⁴⁵⁸ In 2008 *Cross-Strait Sea Transport Agreement* was signed by Taiwan and Mainland China after tension between both sides eased and negotiations started. Direct links between Taiwan and Mainland China were resumed.

with 52% of people in employment in Taichung City working in the services industry.⁴⁵⁹ It continues to attract business for commercial and industrial services. The ideal of the de-centralisation of urbanisation in metropolitan Taichung was not achieved.

Likewise, planning could not challenge politics. It is clear that the development of Taichung Port area relied deeply on the development of Taichung Port. The government expected that the growth of the port would have a ripple effect spreading economic achievements over the port area and cities nearby, which would de-centralise the urbanisation of Taichung City. A more even and reasonable development of central Taiwan could be achieved. Nevertheless, it did not happen. The expectation of a sudden increase in shipments had not materialised. The economic and planning authorities in the government struggled to challenge political reality. Most plans for the development of Wuchi were merely paperwork.

The lack of public participation and public inquiries into the planning process are also a reason for the central government failing to implement its development schemes in Wuchi. According to the central government, the Bayer investment project would meet the Taiwanese public's common interests. However, Wuchi residents and nearby towns were never consulted about their concerns around industrial safety and environmental pollution. Local residents felt ignored, and more importantly, sacrificed, for a cause in which the locals felt that there was hardly any positive impact on local development. The people of Wuchi felt offended by the central government's insistence on forcing the Town Office and Council to accept the plan. As the Bayer case highlights, the central government played the role of a broker finding a plot of land for Bayer. The project was not designated in accordance with the interests of local people. Not only did the Bayer project lack public participation, but so did other Wuchi-related plans. As Shih Fu-sheng's study on the Bayer case points out: "*the planners in central*

⁴⁵⁹ Shih Fu-sheng, 'The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer's Investment on Taichung Port' (Ma dissertation, Department of Sociology, Soo Chow University 1999) 33.

government never expected that they would meet local resistance. To them, Wuchi was 'a site under construction' for the Bayer project, not a town where people lived and worked."⁴⁶⁰ To local people, the Pacific Asian Operation Centre Plan became merely political spin, not a plan that local development could relate to. It was an alien plan that ignored existing conditions and sacrificed local interests. The same ideology can be found in other plans introduced by the central state. Planners expected Wuchi to be a plain site with little-to-no man-made disturbance. Tough measures were executed to restrict the growth of old villages, to meet the needs of top-down plans.

To conclude this section, the proposals to de-centralised urbanisation in metropolitan Taichung and build a self-sufficient garden city in Wuchi were never implemented. Within all the plans prepared by the central government, the only tool governing development that had real effects on urban planning in Wuchi was zoning control. Without efficient means of development and supporting financial plans, all of the urban plans failed. Planning could not challenge the reality of urbanisation. The lack of public participation in the planning process was also a reason for the central government failing to implement its development scheme in Wuchi. While the ideology of public interest was held by the central government, the local public did not believe that they were included within the government's conception of the "public". The central government's scheme was an alien plan that sacrificed local interest.

Furthermore, the legitimacy of the central government's development plan was challenged because public servants, elected politicians and permanent officers were accused of planning not in the public interest, but for certain special interests. Wuchi was not an isolated case. The first case of a central government development plan meeting local resistance, the anti-Du Pont campaign, started in 1985 and gave birth to

⁴⁶⁰ Shih Fu-sheng, 'The Relations between Local People, Local Political Power Blocs and Multi-national Enterprise: A Case Study on Bayer's Investment on Taichung Port' (Ma dissertation, Department of Sociology, Soo Chow University 1999).

the first street demonstration against development in Taiwanese history. Since then, on average, there are more than one hundred rallies or street protests with a similar cause every year.⁴⁶¹ The authorities of the authoritarian government met unprecedented objections and eventually resulted in the change of regime in 2000.

The calls for public participation were calls for democratic governance, as has McAuslan noted:

*“All who are likely to be affected by or who have, for whatever reason, an interest or concern in a proposed development of land or change in the environment should have the right of participation in the decision on the proposal just because they might be affected or are interested.”*⁴⁶²

McAuslan also argues that, *“Public servants should act only after full public debate (and by public debate is meant a debate in which the general public can take a direct part) and subject always to continuous consultation with the public.”*⁴⁶³ The public need to be empowered, because the state apparatus is not value neutral with regard to making reasonable and unbiased decisions. In fact, various special interests are affiliated with the decision-making process, and the state apparatus itself is a complexity of power blocs, with each having its own political agendas. It was those power blocs that decided on the use of land and the distribution of benefit and profits from land development. The planning laws were shaped accordingly.

⁴⁶¹ Yang Du, *The Collapse of Authoritarian Control* (Yuan-Liou Publishing 1988).

⁴⁶² Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 5.

⁴⁶³ *Ibid.*

5.5 Case study: the trial of planning permission in Taipei – Control Yuan v Chang Jing-sen

This section introduces a second case study, considering the introduction of planning permission in Taipei. This process was begun in 1995 by the Taipei City government, which introduced flexibilities to the zoning system. The challenges faced by the introduction of such planning are clearly illustrated by the 1998 case, detailed below, of *Control Yuan v Chang Jing-sen*, which concerned the up-zoning of an abandoned manufactory site.

The 1994 Taipei Mayoral election was the first democratic election for the position after *Order of Martial Law* was lifted in Taiwan. After Chen Shui-bian of the Democratic Progressive Party won the mayoral election in Taipei City, a genuine planning permission system was introduced to Taipei by Chen's Director at the Urban Development Department, Chang Jing-sen. The idea was actually a recapture scheme imposed on developers while their land on an industrial zone was being up-zoned for commercial use. The idea matured after several cases of up-zoning in Taipei County brought the original land owners huge profits. By moving their factories to new locations in sub-urban areas, the land where the factories were originally located could be sold at a fairly good price if the zoning rules were reviewed and changed. Huge profits could be generated without any development of the land. Chang Jing-sen's practice was imposing conditions on up-zoning while zoning was being reviewed. Conditions could be negotiated between the land owner/developer and the local government.

The Control Yuan is the official body of the ombudsman that conducts supervisory work of civil servants and carries out independent investigations into complaints against departmental bodies. It is hereditary and from the old Chinese feudal

tradition.⁴⁶⁴ The case of *Control Yuan v Chang Jing-sen*, the then Director of the Urban Development Department of Taipei City Government, was an impeachment case. It happened in November 1998 during the city's mayoral election, in which Chen was campaigning for re-election. Chang Jing-sen was indicted on two accounts. One was bribery, with Chang accused of accepting an improper payment valued at NT\$50,000 (about £1000) by the developer, Nan-long Development Company. The other was the criminal offence of unjust enrichment. The verdict became a contentious issue and deeply influenced the Mayoral election.

The case of up-zoning was named after the developer, the Nan-long consortium. Nan-long bought a parcel of land, an abandoned factory site in the East End of Taipei, applying to the authority in an attempt to change the zoning of the land into a Commercial Zone. This was the second case to concern changing the zoning of industrial land to commercial land in Taipei City. After a zoning review, the Taipei City Plan was approved by the Urban Planning Committee of the Interior Affairs Ministry. According to the conclusion of the review, the developer was required to donate a certain portion of land as a recapture to the Taipei City Government. The developer wanted to do so, but the Taipei City Government asked for more than was required by the Plan. Trying to apply the concept of planning permission to the existing zoning control system, the City planning authority expanded its discretion on the case. The Urban Development Department used its Urban Design Committee as a stumbling stone to delay development and tried to negotiate with the developer. According to the Urban Design Committee's conclusions, firstly, part of the land would be donated to the City for public facilities and the total amount of floor space reduced: i.e. the density of development was reduced. Secondly, the Committee asked the developer to buy back the reduced amount of floor space, meaning that the developer could get the same amount of gross floor space if the developer was willing to pay the

⁴⁶⁴ Yuan is the superior level to the Ministry. There are five Yuans in Taiwanese central government: Executive Yuan, Legislative Yuan, Justice Yuan, Examination Yuan and Control Yuan. Executive Yuan is the executive branch of central government, also known as the Cabinet. The head of Executive Yuan is the Premier.

government. Finally, the developer and the authority reached an agreement in which the developer would spend approximately NT\$1 billion (approximately £20 million) buying the gross floor space. During the review period, the developer also donated NT\$20 million (£400,000) to Taipei City Government's Cultural Development Fund, trying to develop a good relationship with Taipei City Government.

The Control Yuan's verdict declared that: 1. There is no law or regulation allowing administrative authority the power to make the developer buy back the donated gross floor space and; 2. NT\$1 billion was not the right price and was much less than the market price. As such, it was concluded that there must be an unlawful profit exchange between Director Chang and the developer. Control Yuan impeached Chang for accepting a NT\$100,000 bribe and making an unjust profit for the developer. This was happening at a critical time in Taiwanese urban planning history. The final verdict affected the future practice of the reformation of the planning system. The reform was chiefly concerned with socio-economic injustice that resulted from zoning, especially up-zoning. The demarcation of zoning could make a land owner a millionaire overnight because their land was drawn as a commercial zone, whilst their neighbours gained almost nothing because their land was set for infrastructure use with little compensation. Zoning meant land speculation opportunities. Local notables from political factions took advantage of opportunities for personal gain because they had control over local governments and councils, a common practice in local politics in Taiwan. Speculative facts have clearly revealed that the land-use problem is a land issue. It has been called the "land use" or "zoning problem" only to technically cover its political nature. The reforms proposed by economists and planners aimed, firstly, to add some flexibility to the rigid zoning control system and secondly, to socialise the profits from zoning. The two principles were in the guidelines of the new planning system, which is what the Taipei City Government was experimenting with.

One year after the start of the prosecution, Chang was found not guilty by the Public Servants Discipline Committee. This acquittal had two major consequences. Firstly,

the new system would bring big changes to all the roles and functions of developers, citizens and planning authorities. A new flexible system would mean that the planning authorities would have more discretion when making a decision about particular projects and have the power to negotiate with developers. The officials would not just do what the urban plans said, as had happened in the past. On the other hand, developers would also meet new challenges, and would have to prepare for a longer negotiation period. At the same time, a public inquiry would become a crucial part of the new planning system. More room for public participation would allow community members to voice their opinions. It had been easy for local politicians to manipulate zoning reviews and profit from land speculation. While the introduction of planning permission brought discretion and negotiation power to planning authority professionals, it did reduce the involvement of traditional local political factions. One characteristic of the new system was a more transparent process. Under these circumstances, Control Yuan, the jurisdictional system and supervising departments had to recognise the new room for manoeuvre possessed by the administration when the merits of planning permission were being reviewed.

Secondly, however, such room for discretion would not necessarily guarantee good urban planning. A legal administrative action does not guarantee a reasonable urban planning case. In Chang's case, the buying back of gross floor space meant more financial gains for the government and more intense development for the project. It also meant larger financial gains for the developer. If the recapture by the government is not to be used in the infrastructure or construction of open space in a nearby area, if the limitation of density is not properly set, and if the authority does not ask the developer to off-set the density, the recapture would only be a larger burden on the environment. Reasonable urbanisation could never be achieved. Moreover, permission for development and up-zoning has always meant the granting of huge profits, and scandals like political donation for planning permission could therefore be expected in cases like Chang's case. The NT\$20 million donation was ultimately deemed legal, but the case did expose the fact that some special interests were certainly exchanged between Democratic Progressive Party politicians and

developers. Prevention would rely on a more transparent decision making process, including public participation in politics and public participation in urban planning.

To conclude this section, the case of *Control Yuan v Chang Jing-sen* reflected the problem caused by zoning: the rigid zoning system controlled by local governments without public participation had become the main instrument for land speculation. Though, in the case of Nan-long up-zoning, a new and flexible mechanism was added to the zoning system, which succeeded in reducing the involvement of traditional local politicians and brought discretion and negotiation power to planning authority professionals. However, the key to its success was a more transparent public inquiry and public participation.

5.6 Conclusion

By reviewing the city plans of Japanese Colonial Taiwan and the legal evolution of Taiwanese urban planning, one can see a comprehensive framework has been built up in Taiwan, with regulations governing land use and control administered by the planning authorities. The earliest elements of Chinese Urban Planning Act, were initially supposed to be implemented throughout the whole of China, in order to guide and control development in a continent of 9.6 million km². These elements are still being implemented in overcrowded Taiwan, an island with only 23,900 km² of land available for development, although they have been adjusted to meet Taiwan's situation. The use of zoning as the main instrument of development control in the current urban planning in Taiwan had its legal source in Chinese, but was imported by the Japanese before the Chinese urban planning legal framework was brought to Taiwan. It is a mixed product of Japanese and Chinese zoning, both of which were deeply influenced by modern Western planning trends. The ideology of systematic planning, which dominated Taiwanese urban planning and its implementation, was

expected to systematically conquer existing urban issues on every corner and lead to reasonable urbanisation. The fact that zoning has been the most powerful measurement of the Taiwanese planning system shows that the system lacks sufficient means of development. Instead of the original purpose of reasonable spatial development, development control had become the most important mechanism for land speculation. Urban plans did not bring an ideal environment but caused social and spatial injustices. The failure of modern systematic planning to catch up with the reality of development, the lack of financial plans, the rigidity of zoning and the lack of transparency and public participation in planning decision further contributed to this failure. Though they have consistently failed, the systematic planning and related laws have been a vehicle for McAuslan's second competing ideology, the public interest ideology. Planning and laws have been seen as providing the backing and legitimacy for the implementation of urban plans to advance the public interest. The ideology is translated into laws and plans that confer wide power to administrators and planners to do as they see fit. Planners' development visions were held up as all inhabitants' collective common goals. Nevertheless, in the Wuchi case, local people's public interest was clearly different from the public interest claimed by the central government. The public interest that was supposed be a legitimate concern for planning authorities was challenged by a different public group. The lack of public participation and public inquiries in the planning process was one reason for the failure to implement the government's development scheme. McAuslan's third ideology – that law is a carrier for the advancement of public participation – differs from public interest ideology by denying that the public interest can be identified and acted upon by neutral public servants on the basis of their own views and assumptions as to what is right and wrong.⁴⁶⁵ In the cases of Wuchi and *Control Yuan v Chang Jingsen*, the lack of public participation also meant the lack of a democratic and transparent decision making process. The legitimacy of the government's development scheme was therefore questioned. In the case of Taiwan, an authoritarian state that possesses more independent, autonomous political power over the private sector can be seen in the evolution of the Taiwanese planning system

⁴⁶⁵ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 5.

and related laws. The developmentalist state led planning with strong state intervention and extensive regulation, until it met challenges like the case of Wuchi. However, the state's ambition did not guarantee satisfactory results. The next chapter examines the characteristics of the Taiwanese state and the power blocs within the state by reviewing the politico-economic elements affecting the evolution of urban planning in Taiwan.

Chapter 6: The Chinese Nationalist State and Land Reform in Taiwan

Introduction

In the previous chapter, by reviewing planning cases such as Wuchi, I argued that the public need to be empowered because the state apparatus is not value neutral concerning making reasonable and unbiased decisions. In fact, various special interests are affiliated with the decision making process, and the state apparatus itself is a complexity of power blocs, with each having its own political agendas. This chapter introduces land reforms in Taiwan to reveal how political struggle decisively affected the outcome of land policy, as well as analysing the characteristics of the state apparatus and the power blocs within it. The chapter begins by introducing the historical context of the struggle between the Chinese right and left wings, to argue that the first case of Taiwanese land reform can actually be viewed as an extension of the Chinese civil war between the Chinese Nationalists and Communists, which more precisely was a struggle between Chinese landlords and peasants. Secondly, this chapter introduces the failure of urban land reform in Taiwan, which was also an outcome of political struggle. Though some Taiwanese scholars have seen this struggle as one waged between Chinese Mainlanders and local provincials, I argue that, in fact, the “Chinese” factor was merely a smoke screen, and that the real reason for the failure of the reform was the political conflict between power blocs within the government which represented the interests of land speculation and bureaucrats. Thirdly, by analysing the nature of Taiwanese state, I suggest some reasons as to why agrarian land reform could succeed in Taiwan but urban land reform failed. At the end of this chapter, I argue that, by reviewing the historical development of land reform in Taiwan, one can see that the development of land use and planning related laws were not constructed through the professionalism of planners, but was instead affected by political and economic forces beyond the planners’ control. Though the competition between McAuslan’s ideologies can be seen during the evolution of land

reform, the real agents who advocated the competition were power blocs that comprised the governing elite.

6.1 The success of agrarian land reform and the failure of urban land reform in Taiwan

This section introduces land reform in Taiwan, and discusses both the success of agrarian land reform and the failure of urban reform. I begin by challenging the identity politics of main-stream discourse in Taiwan, and arguing that the social conflicts between classes have to be looked back upon to review the success and failure of Taiwanese land reform. In 6.1.1, I introduce the historical context of the struggle between Chinese right wings and left wings to review the relations between the political struggle which mainly happened in Mainland China and the agrarian land reform implemented in Taiwan. In 6.1.2, I outline the initial stages of agrarian land reform in Taiwan, and continue by reviewing the relations between this reform and the political struggle in Mainland China. In 6.1.3, I review the implementation of land reform in Taiwanese urban areas. I argue that planning in Taiwanese urban areas had become a political arena, and discuss the reasons behind the failure of urban land reform.

As discussed earlier in this thesis, Taiwanese urban planning was initially introduced by the Japanese colonial regime. After the Second World War, Guomintang took over Taiwan and inherited the Japanese planning system. The Japanese and Guomintang governments each ruled Taiwan for some fifty years, with the state apparatus dominating urban planning during those periods. There was very little public participation or involvement of civil society during the planning process. Mainstream scholars in Taiwan and Taiwanese Nationalism activists argue that these regimes, being foreign and alienated from local society, should be blamed. Being a foreign regime and

having little connection with local society when taking over Taiwan, the state apparatus was authoritarian. To develop their anti-Chinese argument, which blames Guomintang for being a foreign regime, libertarian economists argue that the Guomintang state was beyond class and had become a new class; economic development in Taiwan was state-capitalism. Therefore, urban planning in Taiwan was merely a process for the developing special interests and properties of the Guomintang's party-state.⁴⁶⁶

Based on such discourse, the Democratic Progressive Party in its 1996 presidential election manifesto argued that the foreign regime's failure to identify itself with Taiwan had caused the twin catastrophes of the current Taiwanese environment and living conditions. Accompanying the rise of this democratic movement, Taiwanese nationalism was the main theme of identity politics in Taiwan, with "identity with Taiwan" being the most important criterion by which to judge politicians and their policies. The logic is simple: Guomintang was a foreign regime imported from China, and therefore never identified itself with Taiwan, despite being in Taiwan. The presumption behind the statement is that China has been a backward country and that the Chinese are the enemy of Taiwan. Since Guomintang is Chinese, it is the enemy to Taiwanese people. Taiwanese people were urged to unite behind a new regime and build a cooperative commonwealth that would overcome all the issues caused by Guomintang, including crowded living conditions and ugly city landscapes in Taiwan. However, it is my contention that, in such discourses, identity politics have been manipulated to cover up social conflict between classes.

Comparing the Japanese government in Taiwan to Guomintang, as I argue in previous chapters that Japanese urban plans in Taiwan focused on the interests of the colonialists. Taiwanese urban planning was part of the "Great East Asia Co-Prosperty Sphere" and resulted in dependent development in Taiwan. The Japanese government

⁴⁶⁶ Chen Shi-meng, Lin Chung-Cheng, Chu C. Y. Cyrus, Chang Chin-his, Shih Jin-ji, Liu Jin-tein, *Deconstructing the KMT-State Capitalism* (Taipei Society, Taipei 1991).

was a colonial state. The case of Guomintang is somewhat different. Guomintang originally came from Mainland China but broke up with China in 1949. Since that year, they did not have any connection with the “mother country”. Taiwan had not been a colony of Guomintang or China, and the development of Taiwan bore no interest to China or the Communist regime of Mainland China. Consequently, the analysis of colonialism or alien regime cannot be applied to Taiwan.

6.1.1 Historical context of the struggle of Chinese Right/Left wings

Given this, we must now answer the following questions. What was the Guomintang government that dominated Taiwanese development for 53 years? Whose interests did their development plans represent? By reviewing Guomintang’s land policy, I will now analyse the elements that have shaped Taiwanese spatial development. Guomintang worships its founders, Dr. Sun Yat-sen and his Principle of People’s Livelihood, through which they can identify Guomintang’s tradition, history and legitimacy. At the end of the nineteenth century, Sun Yat-sen was exiled and fled abroad. Influenced by Henry George’s 1879 book of social theory, *Progress and Poverty*, he believed in the nationalisation of land. Based on his Western experience, Sun concluded that, in the West, the trend of change pointed towards governmental intervention, a form of socialism, to ensure a more equitable sharing of wealth. Sun Yat-sen argued that the land issue was the root of Chinese peasants’ poverty, as well as the key for China to prevent capitalistic corruption in the future. Nationalisation of land could take away the feudal class’ land ownership and initiate the development of capitalism. When Tung Meng Hui (an antecedent of Guomintang) was founded in 1905 in Tokyo, the equalisation of land rights was one of the “Four Big Platforms”. Sun Yat-sen explained the meaning of “the equalisation of land rights” as “*the cultivation of culture shared by all citizens equally.*”⁴⁶⁷ He explained how to put the idea in practice: when the social economy improves, the land value is estimated, with the original land

⁴⁶⁷ Sun Yat-sen, ‘The Speech Delivered in Tokyo to Celebrate the First Anniversary of the Founding of the People’s Journal (2nd December 1906)’ in Sun Yat-sen (ed) Collections of Sun Yat-sen (1924).

value belonging to land owners; after revolution, the increased land value is due to social progress, attributed to the state and shared by all people.⁴⁶⁸ From then on, the equalisation of land rights has been one of the most important pieces of political propaganda for Guomintang. For over one hundred years, Guomintang had put the equalisation of land rights in the *Constitution* and *Land Act*. This policy was consistently in Guomintang's platform and was presented in Taiwanese students' textbooks. However, in practice, Guomintang never really stuck to Sun's principle, and the issue was hardly taken seriously. In 1912, the provisional government of the Republic of China was founded in Nanking. During his brief tenure as Provisional President, Sun Yat-sen advocated the equalisation of land rights and policies for the people's livelihood for the purpose of solving agrarian problems, but these went unapproved by most of his comrades. In August 1912, the government was reshuffled and Tung Meng Hui's platform in essence omitted The Principle of the People's Livelihood. This was the first time that Guomintang gave up on its socialistic policy.

At almost the same time, the inevitable struggle between landlords and peasants for the land was occurring in certain rural areas. The tillers refused to pay rent or taxes, burning landlords' houses. In one speech, Sun assured his followers that the equalisation of land rights did not imply actual land division or nationalisation.⁴⁶⁹ In 1927, under cooperation of the revolutionary force led by Guomintang and the workers' and peasants' movements of the Chinese Communist Party, most areas south of the Yangtze River were taken over by the Northern Expedition Army. Nevertheless, conflicts existed and grew between Guomintang and the Chinese Communist Party. Ever since the Chinese Communist Party was founded in 1921, the workers' and peasants' alliance has been its revolutionary base. In 1923, when the Party was ordered by Comintern to cooperate with Guomintang to build a united front under Guomintang's leadership, some Party leadership officials aggressively organised peasant movements. Mao Tse-tung was a typical case of campaigning for

⁴⁶⁸ Sun Yat-sen, Chinese Alliance Military Government Declaration (1905).

⁴⁶⁹ Harold Schiffrin, 'Sun Yat-sen's Early Land Policy: The Origin and Meaning of Equalisation of Land Right' (1957) *Journal of Asian Studies* 556.

agrarian reform. During the Northward Expedition, the Chinese Communist Party set up provincial peasant associations consisting of more than nine million members that gave the Party's revolutionary power reach to the Yangtze and Yellow Rivers areas.⁴⁷⁰ The Party launched campaigns protesting against landlords and other issues, such as cutting rent, reducing deposits, forbidding usuries, opposing extortionist levies and encouraging peasants to boycott rents, deposits and taxes.

On the Nationalist side, by issuing state bonds and selling them to the plutocrats of middle coastal cities, Chiang Kai-shek made alliances with the bourgeoisie and became their political representative.⁴⁷¹ Since the Guomintang leadership mostly consisted of landlords or provincial notables of a similar background, it finally counter-attacked the Chinese Communist Party, leading to Guomintang's purging of the party of communists and the end of cooperation with the Chinese Communist Party. In 1927, Guomintang officially broke off with the Chinese Communist Party and started hunting left wing activists. The Party decided to arm workers and peasants and build up Soviet regimes by initiating an agrarian revolution. A ten-year-long revolutionary war commenced. Campaigns rallying around "down landlords and share lands" were spreading in mid-western provinces. The Chinese Communists led poor peasants in confiscating land and workers in organising strikes. Local armed forces (Red Army) were established to develop the revolutionary strategy of "rural villages surrounding urban areas." A wide range of Soviet states were established during a short period of time (1928-34). The Chinese Communist Party promulgated the *Land Act* of the Chinese Soviet Republic and the *Land Act* of Jing Gang Mountain. The Party's agrarian revolution continued until the anti-Japanese war. In order to carry on the policy of an Anti-Japanese National United Front, the Chinese Communist Party declared the

⁷ Chen Wen-gui, 'The Evolution of Land Rights Policy during the Period of Agrarian Revolution' (1982) 4 History Research 97, 113; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988*. (Institute for National Policy Research, Chang Yung-fa Foundation 1993) 17.

⁴⁷¹ Li Yun-han, *From United Front to Purge of Communists* (Chinese Academic Writing Awards Committee, Taipei 1966); Wang Cheng-hua, 'Relations between Chiang Kai-shek and Shanghai Financial Circles in 1927' (2002) 4 Modern Chinese History Studies, Taipei 76, 112.

abolishment of the policy of confiscating landlords' land, and replaced it with the "two-five reduction rent" movement as the land policy in rural villages.⁴⁷²

Concerning Guomintang, after the party purge, there were debates within the party on the issue of organising peasant based associations, which it was considered would help consolidate the support of the lower classes. They acknowledged the importance of the implementation of the "two-five reduced rent" policy. The right wing of the party clearly opposed the rent reduction movement; Zhejiang province's leadership appointed a landlord as the Minister of Agriculture who strongly opposed the its enforcement. Between 1927 and 1929, the struggle between the left and right wings spread. Young radical members of the left wing were accused of being "members of the Chinese Communist Party" and arrested for supporting agrarian reform.⁴⁷³ When the Nationalist government was established in Nanking, the platform for "the period of political tutelage" was declared in October 1928. The Guomintang party soon drew up nine principles as guidelines for *Land Act* legislation. *Land Act* was promulgated in 1930, which stipulated the measures for the Guomintang government to implement the equalisation of land rights policy. Chapter Four of the Act, titled "Land Tax", included detailed regulations on assessing land value, levying land tax and value-increment tax (capital gains tax). The chapter also included the policy for reducing agrarian rent in order to support the peasant's campaign; however, the Act had a different viewpoint to Dr. Sun Yat-sen's notion of the government taking over the increment of land value. A right wing nationalist, Hu Han-min, who had been a prominent figure during the republican revolution, spoke out with his own interpretation of Sun's concept, intervening in the legislation. Instead of the government taking over all the increment of land value, Hu argued that the increment

⁴⁷² Chen Wen-gui, 'The Evolution of Land Rights Policy during the Period of Agrarian Revolution' (1982) 4 History Research 97, 113; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 97.

⁴⁷³ Wan Kuo-ding, *The Evolution of the Ideas on Equalisation of Land Right*, in Hsiao Cheng, *Equalisation of Land Rights and Land Reform* (Joint Press, Shanghai 1943) 18, 21.

only partly belonged to the state.⁴⁷⁴ Hu's concept was popularly supported by warlords, landlords and politicians. Therefore, the value-increment tax was introduced into the legislation. The original drafter of the *Land Act*, Wu Shan-ying, explained that the introduction of the capital gains tax was a step towards Sun Yat-sen's idea and a gradual reform.⁴⁷⁵ The Guomintang leadership was afraid of an attack by the right wing and pushed the policy.

Nevertheless, the Guomintang government's compromised policy still met strong resistance. The leadership of a Nationalist faction (Central Club faction, a clique founded in 1927, which was a close ally of Chiang Kai-Shek) commented on the failure of implementing *Land Act* because the regime was reluctant to carry on with Sun's policies. The newly established government was too weak to fight on so many fronts and agrarian reform was not a priority.⁴⁷⁶ The case of urban planning in Nanking reveals one of the reasons why land reform was unsupported by party members. The compulsory acquisition of land for public facilities met opposition because high level officials had invested in real estate and purchased land. The situation everywhere else besides Nanking was more severe. At that time, most provinces were dominated by warlords, and warlords were landlords.

In 1945, Japan was on the verge of losing the Second World War, so the Chinese Communist Party started preparing for civil war against the Nationalists. Mao Tse-tung advocated putting the "land to the tiller" policy in practice and liberating the peasants. Mao made it very clear in his political report to the seventh National Congress of the Chinese Communist Party in 1945, "On Coalition Government", that the real reason

⁴⁷⁴ Hu Han-min, *The Meaning of Equalisation of Land Rights and Origins of the Principles of Land Act*. (1928) 111, 116.

⁴⁷⁵ Chang Wu-yi, *A Comparative Study of Land Appreciation Tax Systems* (Master's Degree Thesis, Public Finance Graduate Institute, National Chengchi University 1976) 37; Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 99.

⁴⁷⁶ Pan Lian-fang, *Land Reform in Taiwan: Retrospect and Prospect* (Cheng Chung Books, Taipei 1965).

for the clash between the Communist and Nationalist Parties was the agrarian issue.⁴⁷⁷ In August 1945, civil war between the Chinese Communist Party and Guomintang resumed again, but in the liberated area, with the Communists aggressively carrying on with agrarian reform. The movement in the end turned out to be the action of confiscating a landlord's land. With tension between the Chinese Communist Party and Guomintang increasing, the Party's leadership in 1946 instructed local party leaders to abandon the 1937 policy of stopping confiscating landlords' land. The Party motivated peasants by letting them acquire land. The peasants were armed against Guomintang. Tensions developed, and in September 1947 the Chinese Communist Party held a national meeting on land issues and announced the "Guidelines of Chinese Land Act", declaring the abolishment of the feudal land system, implementation of land to the tiller and the redistribution of land. No sooner had the Guidelines of Chinese Land Act been promulgated than a widespread land reform movement began in liberated areas. Around 100 million peasants in liberated areas acquired land. Since peasants had land, they were more aggressive in supporting and joining the liberation war. The Red Army of the Chinese Communist Party was strengthened. In the second half of 1948, the Chinese Communist Party carried both military and political advantages in the war. By 1953, the agrarian reform campaign had been carried out through most of Mainland China.⁴⁷⁸

In 1945, the Central Club faction (also known as CC) of Guomintang, which gradually controlled the party machine, launched a political struggle inside Guomintang by insisting on progressive land reform guidelines. CC's leaders including Chen Guo-fu and his younger brother Chen Li-fu, who were loyal to Chang Kai-shek and authorised to run the party administration. There was a famous saying describing the relationship between Chiang and the Chens: "*Chiang Kai-shek's Empire; the Chen family's party.*" The Chens were anti-Communist right wing Nationalists, but insisted on agrarian

⁴⁷⁷ Mao Tse-tung, 'On Coalition Government' in Mao Tse-tung Selected Works vol. 3 (China People Publisher 1969) 116.

⁴⁷⁸ Meng Nan, Issues on Chinese Land Reform (Sin Min Chu Publishing, Hong Kong 1949).

reform. They emphasised the importance of having progressive land policies to enhance Guomintang's propaganda. The Chens wanted to revive the *Land Act* that had been frozen by Guomintang. They accused the Minister of Finance of failing to carry out land reform, with the Minister of Finance forced to resign. In April 1946, the Guomintang government passed a *Land Act* amendment. It stipulated that rent could not be more than 8% of the land price, or more than 37.5% of the harvest. Land would belong to the farmers who tilled the land, while the transaction and transfer of ownership had to be approved or monitored by the government. A progressive land tax and capital gains tax were announced. Other articles included measures for re-plotting land, encouraging development and setting up a housing fund. The *Constitution of The Republic of China* was promulgated on 1st January 1947. The *Constitution Law* adopted the Chens' land issue concepts.⁴⁷⁹

In April 1947, the CC faction's Chinese Land Reform Association was founded. It made a rousing statement, aimed at the Chinese Communist Party's land reform, stating that: *"the current truth told us, the land problem in China is more serious than any time before. It has made us go to a crucial point of whether to progress or go backward, revive or decline. If we do not solve it, it is going to solve us!"*⁴⁸⁰ In March 1948, the Chinese Land Reform Association proposed a more drastic *Land Reform Act*, focusing on how to solve land problems to meet the needs of tenant farmers in the fastest and simplest way. It suggested that the tenants could have the land immediately on the day the radical legislation passed and pay for the transaction later in instalments.⁴⁸¹ The political situation was so disadvantageous to Guomintang that landlords were told by some Guomintang members to either cooperate with the Nationalists or face the consequences of a Communist revolution. They were told that *"all land reform acts have no reasons to protect landlords"* and that *"if landlords want to protect their own interests rather than going with the peaceful reform, someday it will be impossible to*

⁴⁷⁹ Hsiao Cheng, *The Memoirs of Hsiao Cheng: The Fifty Years of Land Reform* (China Research Institute of Land Economics, Taipei 1980).

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

protect their own lives. The rebellion led by the Chinese Communist Party right now is a fact in front of your eyes."⁴⁸² In May, Guomintang proposed the *Agricultural Land Reform Act* as a response to the proposed *Land Reform Act* and demanded that land reform must be completed within one year after promulgation of the act. The purpose of the act was to prevent the Chinese Communist Party's expansion of power via its agrarian reform policies.

6.1.2 Land reform in Taiwan

Taiwan's land reform can be seen as an extension of the civil war between Guomintang and the Chinese Communist Party. According to an undercover member of the Chinese Communist Party, the Party's undercover Taiwanese activists had been campaigning for land reform in Taiwan in the 1940s.⁴⁸³ By late 1948, the Chinese Communists had captured some northern industrial cities. Guomintang's position was bleak. Guomintang had the advantage of numbers and weapons, and benefited from considerable international support, but low morale hindered their ability to fight. Though they administered a larger and more populous territory, civilian support was eroded by corruption in the Nationalist administration. The capture of large Nationalist formations provided the Chinese Communist Party with the tanks, heavy artillery and other combined-arms assets needed to carry out offensive operations south of the Great Wall. Meanwhile, a hyperinflation crisis afflicted the Nationalist Government. In January 1948, in order to acquire aid from the United States, the Nationalist government was determined to carry on with its agrarian reform policy. Agricultural Revival Associations were established for the reform. In 1949, agrarian reform had been implemented in Taiwan, Fukien, Szechwan, Canton, Kwangsi and Kweichow provinces. Chen Cheng was the then Governor of the Taiwan Provincial Government and Chiang Jing-guo Chief of the Guomintang Party in Taiwan. Both of

⁴⁸² Ibid.

⁴⁸³ Tseng Yung-Hsien. *Sixty Years of from the Left to the Right: Records of Interviews with Mr. Tseng Yung-Hsien* by Chang Yan-sian and Hsu Jui-hao (Academia Historica, Taipei 2009).

them aggressively carried out the land reform mainly based on the 375 (37.5%) Rental Reduction Policy.

In Taiwan, the Chinese Nationalist government consolidated its political legitimacy by successfully carrying out land reform. As previously mentioned in this thesis, agrarian reform in Taiwan was actually a compromised agreement between local landlords and the Chinese Nationalist Government. Taiwanese landlords could only choose between supporting the Nationalist Government or facing the foreseeable Communist Party take-over. Taiwanese landlords were forced to release their land to tenants but were promised compensation by the Nationalist Government. According to the arrangement of the “converting landholdings into industrial holdings” policy, major land owners had become entrepreneurs and industrialists, owning industries supplying Taiwanese people’s livelihoods. Agrarianism in the 1950s resulted in an increase in productivity in farming, which contributed to the industrialisation of the 1960s. With the Guomintang government’s defeat in the civil war, a flux of Chinese political migrants from the Mainland had been rushing into Taiwanese cities. The increasing population pushed up urban land prices. The implementation of agrarian reform also contributed to the increase in urban land prices. After the “land to the tiller” policy was carried out, of the compensation given to landlords, only 30% was transferred to the industrial sectors. The rest found its way to cities and speculating on urban land, leading to land speculators monopolising urban land ownership. Between 1949 and 1952, urban land prices had risen almost five times, with the rising prices not slowing down between 1954 and 1959.⁴⁸⁴ Land speculation resulted in expensive rents, inflation and a scarce housing problem. Entrepreneurs found it hard to find suitable and affordable sites for factories, damaging the government’s effort to attract foreign and overseas Chinese investment.

In 1951, the Nationalist government decided to carry out land reform in urban areas.

⁴⁸⁴ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 109.

Chiang Kai-shek announced his determination to enforce Sun Yat-sen's principles, the equalisation of land rights, in cities. The "*Regulations of Taiwan Province Urban Land Reform*" bill was introduced by the Taiwan Provincial Government and later approved by Executive Yuan. Nevertheless, most measures introduced by the Regulations were not carried out. Sun Yat-sen's equalising land rights were stipulated but rarely put into practice.⁴⁸⁵ In 1954, Executive Yuan again pushed forward the urban land reform policy. In the same year, the *Equalisation of Urban Land Rights Act* was enacted. The Act stipulated four main sections in accordance with Sun Yat-sen's four steps of equalising land rights: assessing land value, levying land tax according to valuation, purchasing land at the declared value and land value increments going to the public. In September, Executive Yuan ordered Taiwan province to be the area in which the Act would be applied, but the order met strong resistance from the Provincial Assembly. The by-laws and implementation details had not been passed until 1956. 59 cities, villages and towns were appointed as the applied areas. The land value-increment tax was put into practice on 1st August 1956 and the land tax on 1st September.

6.1.3 The failure of urban land reform in Taiwan

The Taiwan Provincial Assembly was officially established in 1959. Though the leadership consisted of Taiwanese politicians with either strong connections to the Chinese Nationalist Party or with experience working in Mainland China, most members were native Taiwanese (local provincial people) who represented the interests of local landlords and notables. It was a democratic body and members were elected via popular elections, easily infiltrated by the special interests of local political factions in the Guomintang Party that were allowed by the central government to operate local monopoly businesses. The Assembly was the main obstacle to the government being able to carry out the equalising land rights policy. In the 1960s, there were approximately 400 cities and towns in Taiwan. Due to the Provincial

⁴⁸⁵ Lien Chen-tung, *President Chiang and Rebuilding Taiwan* (China Cultural Service, Taipei 1967) 457.

Assembly's opposition to the implementation of the equalisation of land rights, urban cities, only 85 cities or towns had prepared urban plans. Of the 85 cities towns, only 61 practically carried out the equalisation of land rights. The areas putting the equalisation of land rights into practice accounted for only 32% of the total area of the 61 towns and cities.⁴⁸⁶ Fast growing areas with booming property markets were not included in the equalisation of land rights plan. The government dared to impose a high capital gains tax on the increment of land value in cities. There was no real intention to achieve Sun Yat-sen's policies. The first property boom in Taiwan was after the war started in 1967. With the interest rate cut, savings poured into the property market. In 1967, annual house price growth was 25%. In 1968, growth increased, reaching 65% in Taipei.⁴⁸⁷ The boom also increased inflation, the most serious increase in 60 years. In 1968, several measures were introduced to slow down the boom in the cities, including restrictions on land ownership, tightening credits on loans and mortgages, and taxing vacant land. The market slowed down for approximately a year before growth continued. In 1971, the boom spread to suburban areas not covered by urban plans. In order to suppress speculation, Guomintang announced its determination to carry out the equalisation of land rights on non-urban land.⁴⁸⁸

However, work assessing land prices (the first step in equalising land rights) was not completed until 1978. While there was a boom, the areas of fast growth were not covered by the practice of equalising land rights. When the government wanted the policy to be implemented, land consortiums had already acquired huge profits from speculation. The gains strengthened the war chests of local political factions, with their influence even infiltrating central government. After seven amendments, Guomintang's version of the equalisation of land rights was eventually implemented

⁴⁸⁶ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 111.

⁴⁸⁷ Jwo Alpha, *Property Market and Town and Country Development*. Conference on Property Market and Town and Country Studies (National Taipei University, Taipei 2005).

⁴⁸⁸ *Ibid.*

in Taiwan, but it was far different from Sun Yat-sen's previous versions. The failure of the publicisation of value increment meant that land speculation became a very profitable business, a niche involving those local politicians who could manipulate urban planning. Suburban greenbelts could be up-zoned to gold-belts overnight. Accompanying the democratisation of Taiwanese politics, local political factions infiltrated the state apparatus. Leaders of regional conglomerates from Taipei Country (consisting of property developers, construction, credit societies, bus companies and the media industry) worked with Lee Teng-hui, the first local Taiwanese to become President, to replace Guomintang's old Chinese Nationalist leadership.⁴⁸⁹ Together they dominated the plutocracy period in Taiwanese politics. Lee Kuan Yew (the life-long leader of Singapore) provides an accurate description of this period:

*"...to be elected to Taiwan's Legislative Yuan in the 1990s, some KMT candidates spent as much as US\$10-20 million. Once elected, they had to recoup and prepare for the next round by using their influence with government ministers and officials to get contracts awarded or to convert land use from agricultural to industrial or urban development."*⁴⁹⁰

As a political operator who has been involved in Taiwanese electoral campaigns at various levels, I concur with the figures Lee suggests.

While urban planning had been an important political arena for the new democracy, home ownership concentrated rapidly. In 1989, there were more than 3,000 individuals owning more than 10 houses in Taiwan.⁴⁹¹ In Taipei, 3% of households owned 27% of the land. The property boom in the late 1980s resulted in un-affordable housing prices. The Department of Comptroller estimated that in Taipei City it would take 37.57 years of saving for a family to own a house, even if the family was thrifty

⁴⁸⁹ Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996).

⁴⁹⁰ Lee Kuan-yew, *From Third World to First: The Singapore Story 1965-2000* (Times Media Private Ltd, Singapore 2000).

⁴⁹¹ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, Taipei 1993) 117.

during their daily spending. In Kaohsiung, it would take 19.33 years, and in the rest of Taiwan, the average figure was 13.53 years. Meanwhile, the statistics indicate that there were more than 800,000 empty houses in Taiwan, with 16.65% in the housing market. In 1989, the property boom reached its peak. Demanding affordable housing, more than 100,000 people joined a lie-in protest on the busiest street in Taipei. The campaign was organised by left-wing scholars, under the leadership of Professor Shia Chu-joe, and postgraduate students from the Graduate Institute of Building and Planning, National Taiwan University. By initiating the movement, the advocates declared their disappointment with the urban planning practices in Taiwan, urging reform. The government's legitimacy was challenged and they responded with the Second Land Reform policy. Nevertheless, the proposed amendment to capital gains tax was the only substantial content in the Reform. The localised Guomintang regime had no intention to carry out the Reform, not even the section on capital gains tax. Minister Wang Chien-shien from the Finance Ministry insisted on the proposed amendment and was later forced to quit. He was accused by the Guomintang leadership of "being a Mainlander who would like to take away local Taiwanese people's land." Whilst being interviewed by me in 1993, Wang clarified his position at the time. As a right-wing politician who believes in the free market, he did not agree with the idea of another land reform, and only wished for a more effective measure for levying capital gain tax.⁴⁹² The Second Land Reform, though it had not been a genuine one, was defeated by identity politics relating to stereotypical visions of "mainlanders" and never implemented.

To conclude this section, I have argued that because identity politics in Taiwan have been manipulated to cover up social conflicts between classes, the key reason to the success of agrarian land reform has been simplified by main-stream discourse to suggest that Guomintang was an alien regime with little connections to Taiwanese people, which implemented land reform by coercion. As part of main-stream

⁴⁹² Shih Wei-chuan, 'An Interview with Wang Chien-shien' (November 1993) 3 New Parliament Magazine.

discourse, theories of an alien regime are also being applied to explain the failure of urban planning and urban land reform: according to such discourse, being a foreign regime and being Chinese, Guomintang, has not identified with Taiwan, so it does not care about the living condition of Taiwanese people. Challenging the above discourse by reviewing the historical context of the struggle of Chinese right wings and left wings, this section points out that the agrarian land reform in Taiwan was actually an extension of the Civil War between the left and right in Mainland China. The Chinese Nationalist regime in Taiwan had to consolidate its political legitimacy by carrying out agrarian land reform. In order to prevent the power expansion of Chinese Communist Party to Taiwan, the landlord class was also willing to work with the Guomintang to implement the agrarian land reform. Regarding the failure of urban land reform, it was not the alien element of Guomintang that failed the reform; on the contrary, it was the local element of Guomintang that opposed its implementation, since it dared not challenge local Taiwanese special interests.

6.2 The analysis of the nationalist state in Taiwan

To further review why it was the local element of the Chinese Nationalist regime, rather than its foreign element, that opposed urban land reform, this section analyses the essence of the Guomintang regime and examines its composition. This section argues that it was Guomintang's local political factions, which had control over local planning authorities, who opposed urban land reform.

The fact that Guomintang was from the Chinese Mainland and had few ties to Taiwanese indigenous landowners had little to do with the success of agrarian reform

in the 1950s.⁴⁹³ The Reform did not result from Guomintang's forceful suppression. The possibility of the Chinese Communist Party's invasion of Taiwan left landlords with no choice but to support and cooperate with the Chinese Nationalists, though some landlords sought independence for Taiwan through the help of American and Japanese sympathisers. The fact that Guomintang was an outsider party did not mean that it could do whatever it wished; otherwise, Guomintang would have carried on urban land reform by force. Why was Guomintang so reluctant to implement land reform in urban areas? Guomintang was arguably little more than an assembly of warlords and party officials. In exchange for the support of local notables, Guomintang granted local political factions privileges for operating monopolistic industries in their constituencies.⁴⁹⁴ The alliance made Chinese Guomintang localised and become Taiwanese. Meanwhile, state capitalism in Taiwan had been strongly established. High speed economic development had created a new class of Taiwanese capitalists, including those who used to be landlords. The government's economic policies needed to meet the interests of the bourgeoisie who were usually important elements in local politics. During the period of Guomintang's rule, local political factions had had control over local planning authorities and they opposed land reform.

Local factions refer to a web of interpersonal networks that function in local political arenas. The activists in a faction are called pillars (vote captains), who organise and round up votes for candidates. Once they hold public office, politicians are expected to take care of their vote captains' needs in exchange for the vote captains' continuing support. The network is built on nepotism and cronyism. There used to be over one hundred local factions in Taiwan in the 1980s and 1990s, which were the most powerful force that decided election outcomes, usually with two or three factions in a county competing for public office.⁴⁹⁵ They are mainly built around geographic

⁴⁹³ Meanwhile, the Taiwanese economy of petty farming did not make landlords a strong political alignment either. See Tseng Chien-ming, 1949, the Civil War and Taiwan (Linking Books, Taipei 2009).

⁴⁹⁴ Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996).

⁴⁹⁵ With the rise of opposition parties, the number and influence of local factions has declined. See Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996).

connections, lineage, marriage and business cooperation. Politicians and activists seek collectively to pursue political and economic resources through elections, and once elected, to distribute the resources among the networks. Nearly all the local factions originated in 1951 when popular elections were instituted.⁴⁹⁶ While Guomintang encouraged the existence of local factions, it also prevented their expansion by restricting them from moving beyond local borders to the national stage, until President Lee introduced them into the central party machine and replaced the old Chinese Nationalist cadres in the late 1980s. Due to the authoritarian government's suppression of the opposition movement virtually guaranteeing Guomintang candidates' success, leaders or factions were encouraged to join the party to help win elections and receive the spoils and patronage that accompanied political positions. However, local popular elections did not necessarily mean local autonomy, and the central government still had the final say on the distribution of most financial and economic resources.

Nevertheless, as previously noted, local politicians' personal gains were granted by allotting regional monopolies and special interests to local political factions, including:

- (1) Prerogatives of regional banks, credit societies and bus companies, etc.
- (2) Local politicians had the privilege of receiving large personal loans from provincial government banks.
- (3) Local factions dominating state purchases and construction work at the local level and making exorbitant profits from it.
- (4) Local factions running protection rackets. They were involved in illegal economic activities, such as pubs with escort services and casinos and saunas with prostitutes.
- (5) Urban planning was also a niche for local politicians to speculate on land transactions. Due to their control of urban planning committees, factions

⁴⁹⁶Chu Yun-Han, *Oligopolistic Economy and Authoritarian Political System*. in Hsiao Hsin-huang, Wu Chung-chi and Chu Yun-Han (ed), *Monopoly and Exploitation: A Political Analysis of Authoritarianism* (Taiwan Research Fund, Taipei 1989) 139, 160; Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996).

manipulated zoning reviews. They bought cheap agricultural land and converted them to residential zones.⁴⁹⁷

Land speculation and protection rackets have been the most important niches for local factions. They do not cause an obvious loss for local governments because they can generate huge profits. Through shrewd manipulation and by granting material incentives, including a local monopolistic business environment, Guomintang was able to turn most factions away from the call for political reform. While local factions were practicing the politics of cronyism and nepotism, the migrant party, Guomintang, established its legitimacy by integrating local elites into government. Local factions ruled local people for the migrant party and had become an important power bloc of the regime.

Following Gramsci, Manuel Castells defines a power bloc as the aggregation of heterogeneous actors that together control the development of state institutions. In the same way as institutions are territorially differentiated, so are power blocs. The inclusion of power blocs can help achieve the balance of domination and legitimation on which the state is based.⁴⁹⁸ Traditionally, in Taiwanese academic circles, “clientelism” has been used to describe the relationship between the Taiwanese central government and local political factions. The Chinese Nationalist Party’s rule in Taiwan has been defined as clientelist authoritarian.⁴⁹⁹ The concept of clientelist authoritarianism aims to show how an outsider party from the Mainland can govern a country in which the majority of people are islanders. However, while clientelism

⁴⁹⁷ Chu Yun-Han, *Oligopolistic Economy and Authoritarian Political System*. in Hsiao Hsin-huang, Wu Chung-chi and Chu Yun-Han (ed), *Monopoly and Exploitation: A Political Analysis of Authoritarianism* (Taiwan Research Fund, Taipei 1989) 152; Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996).

⁴⁹⁸ Manuel Castells, *The Power of Identity* (Wiley-Blackwell 2004) 359; Felix Stalder, *Manuel Castells: The Theory of the Network Society* (Polity Press, Cambridge 2006) 108.

⁴⁹⁹ Chao Yung-Mau, ‘Relations between Local Factions and Elections: an Analysis of Conceptual Framework’ (1989) (4) 3 *Journal of Sunology: A Social Science Translation & Critical Commentary* 58, 70; Chao Yung-Mau, ‘The Relations between Development of Local Factions and Political Democratisation’ (1996) 7 *Taiwanese Journal of Political Science*; Lin Cha-long, ‘Oppositional Movement under an Authoritarian-Clientelist Regime: Social Base of the Democratic Progress Party’ (1989) 2(1) *Taiwan: A Radical Quarterly in Social Studies*.

suggests that local political factions are fringes of the authoritarian party-state, local factions actually sustained the whole political machinery. Instead of clientelism, some studies describe local factions as informal political sectors, which worked like hinges between the Chinese Nationalist state and Taiwanese society.⁵⁰⁰

Therefore, in political terms, Taiwanese people have been mobilised and organised by local factions, not by trade unions. This helps explain how identity politics arose in Taiwan and why there has been little room for class politics. While local factions have been suggested as being on the margins of the Taiwanese political system, in reality the power bloc consisted of the biggest land owners in Taiwan. According to my previous field research, 18 factions in Taipei County owned at least 161 development companies.⁵⁰¹ Between 1988 and 1994, 9 of the 18 factions had sold NTD\$2.62 billion (£5.8 billion) worth of properties in the real estate market.⁵⁰² 95% of local councillors in Taipei County owned or were supported by development companies.⁵⁰³

To conclude this section, it was the local (Taiwanese) element of the Chinese Nationalist regime that opposed urban land reform. This conclusion is quite contrary to the argument prevalent within Taiwanese main-stream discourse that it was Guomintang's being Chinese which resulted in the failure of land reform. This thesis argues that Guomintang, in exchange for the support of local notables, dared not to challenge local political factions' special interests, since local political factions mostly consisted of landlords, and land speculation has been the most important niche for local factions. This explains why Taiwanese urban land reform met severe resistance

⁵⁰⁰ Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996); Ting Jen-Fan, *Informal Politics and Decision Making in Local Politics*. in Chen Wen-jun (ed), *Local Governments and Politics in Cross Straits* (Graduate Institute of Political Science, National Sun Yat-sen University, 1999) 470, 471.

⁵⁰¹ Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996) 77, 78.

⁵⁰² Chen Marshall Dong-hao, 'Investigation Reports on Relations between Local Politicians and Local Plutocrats' (1st March, 8th March and 12th April 1992) *The Journalist*.

⁵⁰³ Shih Wei-chuan, *Local Factions* (Yang-Chih Book Co. Ltd, Taipei 1996) 109.

from Taiwan Provincial Congress, because it represented the special interests of local factions.

6.3 Conclusion

By reviewing the historical development of land reform in Taiwan, one can see that the development of land use and related laws occurred as a result of political and economic forces beyond the planners' control. The land reform carried out in the late 1940s was driven by the fear of agrarian rebellion led by the Chinese Communist Party and to win support from the United States for the Nationalist government. By successfully implementing land reform, the government consolidated its political legitimacy. The urban land reform initiated in the late 1950s and continued through the second half of the century was another proof that the political complexity of power blocs dominated land policy and development decisions. Though the doctrine of equalising land rights proposed by Sun Yat-Sen in the name of public interest was written in *Constitutional Law*, the power blocs in central government and local politics who represented the interest of land owners and speculators won the battle against publicisation of land capital gain. The government's policies operated in a society based on recognition of the institution of private property and a property market, with the conflicts between those policies occasionally stressing the public interest over private property.

In this chapter, we can once again see how the competition between the ideologies of private property and public interest analysed by McAuslan, can be seen during the conflicts between various political economic forces. Though the ideologies differed, the parties advocate the ideologies all are members of power blocs that comprise the governing elite. Members of the power blocs are persons who have arrived at their political positions because they represent certain special interests, with their visions

on land policy and development reflecting the ideologies of the governing elite and serving their interests, rather than reflecting the aspirations and ideals that originated from the commitment to professionalism. Concerning Taiwan, this chapter has emphasised that local political factions are an important economic force that decisively affected the spatial landscape. McAuslan's analysis of the conflict between persons and organisations accompanying planning ideology conflicts – which in the case of Britain are central government vs. local government, Conservative vs. Labour and judges vs. bureaucracy – does not provide the necessary insight into the development of the Taiwanese land-use system without focusing on the unique local political factions, the power bloc comprised of the biggest land owners in Taiwan. This was the reason why Taiwanese urban land reform met severe resistance.

Chapter 7: Comprehensive Urban Planning and the Developmentalist State of Hong Kong

Introduction

This chapter introduces the evolution of comprehensive urban planning in Hong Kong and discusses the role of the Hong Kong government as the developer of Hong Kong's land use. The first modern town planning attempt in Hong Kong, the Town Planning Scheme of 1922, concerned laying out sites for new development in Kowloon to meet Hong Kong's economic expansion. In this respect, it differed from its counterpart in England, *Town Planning Act 1925*, that was planned to solve existing urban issues. However, the successors to the 1922 scheme, introduced later in the 1930s, were similar to the British planning legislation of the same era, focusing on the issue of externalities. Accompanied by the setting up of permanent planning machinery in 1939, Hong Kong's *Town Planning Ordinance* legislation created an integrated authority that combined building control and sanitation control to carry out the concept of state intervention for public goods and external effects. The establishment of systematic development control was an exact implementation of McAuslan's second ideology, the ideology of public interest. Developers could be deprived of their common law rights by administrative decisions.

The trend calling for state intervention against laissez-faire continued after the Second World War. With the publication of the Abercrombie Plan in 1948, open space, green belts and reasonable density concepts were imported to Hong Kong to emphasise the importance of development control. Later statutory and zoning plans were introduced to generally apply to Hong Kong as a set of universal development control legal measures. The application of zoning was not a paradigm shift in terms of planning ideology but it did enhance the efficiency of administrative power. During the 1960s, the main task of planning in Hong Kong was to meet the needs of large scale

immigration and economic expansion that came with population expansion. Land demand pressure made the city state play the role of efficient developer. A long-term land use plan was crucial at this stage. The 1970s in Hong Kong was an era that saw the upgrading of public housing, the development of new towns and the urbanisation of the New Territories. The Hong Kong government was meant to be both a welfare state and developmentalist state at the same time; nevertheless, this chapter argues that Hong Kong has primarily acted for the benefits of property development or fiscal objectives rather than social welfare. The role of developer continued after the handover of sovereignty to China. While the socialist state of China has allowed Hong Kong to retain its capitalist economic system, the British colonial style of elite governance, with undemocratically elected representatives consisting of bureaucrats, developers and businessmen, still dominates urban planning decision making in Hong Kong.

7.1 The importation of modern comprehensive urban planning

This section introduces the evolution of modern comprehensive urban planning in Hong Kong. It begins with the importation of modern comprehensive urban planning through the Town Planning Scheme of 1922. I will then introduce the establishment of planning ordinance and the setting up of permanent machinery to take charge of town planning, followed by a discussion of the 1947 Abercrombie Plan, a master plan that covered long term urban planning policies and development plans.

According to the Town Planning Division, Lands Department of Hong Kong, the earliest history of institutionalised planning began with the enactment of the *Town Planning*

Ordinance in 1939.⁵⁰⁴ However, the first major attempt to apply modern town planning to Hong Kong was the Town Planning Scheme of 1922.⁵⁰⁵ The 1922 Scheme was introduced to counter the explosive growth of Kowloon. In the late 1880s and early 1890s, the corresponding concessions made by China to Russia, France and Germany created demand in Hong Kong to extend the northern boundary to defend against European competition. New Territories were leased to Britain in 1898. In the same year, Hong Kong entered the world financial market, using merchant finance to underwrite the cost of railway construction in southern China. Two major transport systems were built. The tram service was inaugurated in 1905 and the Canton-Kowloon railway opened in 1905, with the transportation systems allowing the integration of Kowloon and Hong Kong Island.⁵⁰⁶ From this period, Hong Kong experienced steady economic growth. Industry received its first major boost during the First World War when substitution was required for European products that were no longer available. As the annual Administrative Report of 1921 stated, great and rapid development had taken place on the Kowloon Peninsula. The 1922 Town Planning Scheme plan for Kowloon was essentially a scheme for laying out building lots for subsequent private development, including offensive trade areas, residential areas and markets. The government also took the opportunity to reserve sites for a wide variety of public facilities, including recreation grounds, sewage, transport networks such as planned railways and ferries, and reclamations and harbour work. Kowloon had been mapped out in detail for the future requirements of a very large population.⁵⁰⁷

⁵⁰⁴ Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984).

⁵⁰⁵ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984).

⁵⁰⁶ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54.

⁵⁰⁷ Colonial Office, 'Administrative Report for the Year 1922: Report of the Director of Public Works for the Year 1922, Section 214-Town Planning' (Colonial Office, London 1923) 108; Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 41, 173.

By the 1920s, the New Territories on Kowloon Peninsula had become the known as the countryside of Hong Kong and the gateway to recreation. With steadily increasing numbers of people migrating to Kowloon, it was fast becoming a twin city to Victoria on Hong Kong Island.⁵⁰⁸ Concern about provisions for the reservation of playing fields for members of the Police Force and subordinate staff in the Town Planning Scheme reflected the fact that Kowloon was expected to be essentially a colonists' "country house" in Hong Kong: a recreation quarter for Europeans.⁵⁰⁹ The Governor did indeed have a country house at Fanling in Kowloon, with many bachelors of British society settled in spacious colonial houses in the newly developing Territories. The Town Planning Scheme was both the result and cause of land and property speculation.⁵¹⁰ Although the government failed to set up a permanent authority to deal with property development pressure, it is apparent that most developments after the enactment of the 1922 Scheme were confirmed by the master plan. The scheme was suggested by Legislative Council members to be drawn up to provide the expansion of the Colony for the next fifty years.⁵¹¹ The scheme was largely related to the proposed reclamation of East Praya and North Point. The square pattern of building plots in contemporary Tsim Sha Sui and Mong Kok resulted from this scheme and shows the enduring influence of the 1922 Scheme on the layout of contemporary Hong Kong.⁵¹²

7.1.1 The Establishment of Planning Ordinance and the Planning Board

Another important town planning development before the Second World War was the setting up of permanent machinery to take charge of town planning. The

⁵⁰⁸ Jan Morris, *Hong Kong: Xiang Gang* (Penguin Group, London 1988) 192.

⁵⁰⁹ Minutes of 2nd May 1929, Hong Kong Legislative Council.

⁵¹⁰ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 42.

⁵¹¹ *Ibid.* p41.

⁵¹² Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 3.

permanent organisation was expected to be armed with planning powers to deal with not only the development of private property but also slum clearance, housing and compensation for interference with private property rights. The *Town Planning Ordinance* bill was presented before the Legislative Council and passed in 1939, giving birth to the Town Planning Board. The Ordinance had 14 sections stipulating the following powers, among others:

- (1) Drafting the content of lay-out plans.
- (2) Exhibition of draft plans.
- (3) Objections to draft plans.
- (4) Approval of draft plans.
- (5) Governor-in-Council's powers on making regulations.

The Ordinance only applied to urban areas, similar to the legislation for the *Housing and Town Planning Act* 1909 and 1919, and the *Town Planning Act* 1925 in Britain, which were enacted before universal rural planning was introduced.⁵¹³

The making of the Ordinance was influenced by British planning. In his report to the Commission and the Executive Council, the Housing Commission Secretary, Mr W. H. Qwen, suggested details on how town planning procedures and functions might be introduced, with lengthy quotes from the British *Town and Country Act* 1932 being presented.⁵¹⁴ It is clear that the Ordinance was a brief version of the British *Town and Country Planning Act* 1932. Nevertheless the difference from British planning was that development control in Hong Kong could be exercised by both contractual leases and planning laws. The *Town Planning Ordinance* of Hong Kong not only gave administrative bodies planning powers over development and building control, but the authority to make master plans. Though there were no statutory enforcement powers directly attached to the Ordinance, the Hong Kong government was

⁵¹³ M. Gaskell, "'The Suburb Salubrious': Town Planning in Practice' in A. R. Sutcliffe (ed), *British Town Planning: The Formative Years* (Leicester University Press 1981).

⁵¹⁴ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 54, 55.

empowered to have a permanent board to set up plans. Town Planning Board members were appointed by the Governor, with members including non-officials who were not approved by any democratic procedure but did represent the public. The town plans implementation procedure was well established, with the Board submitting plans pursuant to the Ordinance for approval by the Governor. These approved plans, according to Section 13 of the Ordinance, “*shall be used by all public officers and bodies as standards for guidance in the exercise of any powers vested in them.*” The function, formality and responsibility of preparation for Town Planning Board plans still exist in its current amended form.

The importation of modern urban planning came to Hong Kong approximately 100 years after contractual planning. Since the 1922 Town Planning Scheme and earlier schemes were purely administrative, the 1939 legislation was emphasised as a milestone that upgraded development control to town planning, provided legal force, provided plans for infrastructure, and dealt with the issue of externalities.⁵¹⁵ However, it would be unfair to say that development controls before 1939 did not have any effective function as urban plans. The main functions of modern urban planning are to regulate private property development and provide public amenities, in the vein of mainstream planning theories such as Pigouvian Market Failure and Keynes’ Welfare State model, which suggest state intervention for public goods and external effects. The contractual planning and early administrative regulations, such as *Building Ordinance and Order and Health Amendment Ordinance*, had already suggested the same approach to guarantee state interference in private development rights. At the urban planning conceptual level, it would be fair to say that the 1939 legislation was not a paradigm shift from the previous development controls, but an integration of planning authorities. It was an administrative integration provided by the law to organise development control powers with different departments and make the

⁵¹⁵ Lai Wai-Chung, *Town planning in Hong Kong: A Critical Review* (Hong Kong Centre for Economic Research, Hong Kong Economic Policy Studies Forum, City University of Hong Kong Press 1997); Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 52.

master plans the legal obligation of planning authorities. Since the Legislative Council was not a democratic parliament with grass-roots support and was only a ruling organisation constituted by members imported from and introduced by British authorities in London, the shift in legal status for the planning regulations from the administrative body to the legislative body was merely a change of formality. Since development control could now be exercised by both contractual leases and planning laws, more power and discretion towards development control had been given to planning authorities. Development control measures made by the delegated legislations could over-ride development rights granted by a lease. It can be argued that developers' common law rights had been deprived by administrative decisions, sometimes for vague public purposes. The conflict between entitlement of leases, master plans and property rights has been one of the most important issues associated with town planning laws and administrative laws in Hong Kong. The 1939 Ordinance of Hong Kong carried some characteristics of the British 1932 and 1947 *Town and Country Planning Acts*: prevention of urban sprawl, universal planning complying with a master plan, legalised town planning and nationalised development rights. The creation of the British *Town and Country Planning Act 1932* and its predecessors, including the *Housing and Town Planning Act 1909* and *1919* and *Town Planning Act 1925*, lay in concerns developed during the previous century in response to industrialisation and urbanisation. The laws were products of campaigns introduced by Patrick Abercrombie's *The Preservation of Rural England (1926)*, Ebenezer Howard's Garden Cities Association and the philanthropic actions of industrialists, such as the Lever Brothers and the Cadbury family.⁵¹⁶ A trend towards calling for state interventions on property development resulted in development control legislation, with the ideal of laissez-faire gradually going out of fashion. The *Town Planning Ordinance* of 1939 declared in its introduction its intention:

"To promote the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval

⁵¹⁶ M. Gaskell, "'The Suburb Salubrious': Town Planning in Practice' in A. R. Sutcliffe (ed), *British Town Planning: The Formative Years* (Leicester University Press 1981); J. B. Cullingworth, *Town and Country Planning in Britain* (Allen and Unwin, London 1964).

of plans for the future layout of existing and potential urban areas as well as for the types of buildings suited for erection therein.”

The welfare state concept began to tentatively form in Hong Kong, accompanied by the importation of systematic urban planning.

7.1.2 The 1947 Abercrombie Plan

In 1947, the famous Irish architect and planner, Sir Patrick Abercrombie, project leader of the County of London Plan and Greater London Plan, was appointed to advise the Governor of Hong Kong on the long term general guidelines and principles of planning for a future Hong Kong. According to the Minutes of the Hong Kong Legislative Council, Abercrombie spent a month investigating Hong Kong. His work involved the planning of the port and urban areas, advising on what such plans would involve and what planning organisations would be needed.⁵¹⁷ The Abercrombie Plan, published in 1948, suggested a bold system of legislation for land development and outlined various physical planning proposals, including the provision of a cross-harbour tunnel, reclamations, railway locations, the removal of military establishments, creation of industrial and residential zones, and the development of new towns in rural New Territories. Abercrombie set a maximum population of two million in the existing urban area.⁵¹⁸ The Plan was intended to provide not only a master plan, but also guidelines for development plans to cover long term urban planning policies and allow for revisions from time to time in light of changing requirements and technical accomplishments.⁵¹⁹ The Plan’s planned population of two million was one-third more

⁵¹⁷ Minutes of Hong Kong Legislative Council on 19th March 1948.

⁵¹⁸ Town Planning Division, Lands Department, ‘Town Planning in Hong Kong’ (Government Printer, Hong Kong 1984); Chan Lik-tin and Lo Wai-ming, An Introduction on Hong Kong City Planning (Joint Publishing, Hong Kong 1998) 4; Woo Man Lung, ‘The Development of New Towns’ in Chan Kam-Wah, Woo Man Lung, Yu Wai Kam and Lee Chi Fai (eds), Hong Kong’s City and Houses: An Introduction to Urban Sociology (Joint Publishing, Hong Kong 1997) 116.

⁵¹⁹ Roger Bristow, Land-use Planning in Hong Kong: History, Politics and Procedures (Oxford University Press 1984) 69.

than the currently existing population. The Plan also suggested decentralisation of urban development. Although Abercrombie proposed the expansion of the urban area to the sea, new towns in New Territories were also suggested.⁵²⁰ The conception of decentralising urbanisation had been Abercrombie's trade mark and he had left significant footprints in his City Development of Dublin, two London Plans and City and the County of Kingston-upon-Hull Plan. He advocated the necessity of a coordinated open space system, arguing that "*adequate open space for both recreation and rest is a vital factor in maintaining and improving the health of people*".⁵²¹ He also suggested figures for reasonable low density in urban areas. The plan prepared for Hong Kong was an accumulation of nearly fifty years of experience and knowledge in the planning field.

In 1948, the Governor announced that Town Planning Office established within the Public Works Department. It would prepare the land-use plans and necessary surveys to facilitate Abercrombie's work, and to draw up the future plans that would be needed as a result of Abercrombie's investigations. However, in 1950, Abercrombie's proposal was delayed and the town planning sub-department disbanded. It was not until 1953 that the Planning Branch was set up within the Crown Lands and Survey Office of the Public Works Department. Meanwhile, the Town Planning Board, under the 1939 Ordinance that had been reinstated in 1947, had not formally functioned until 1951 despite Abercrombie's suggestion of setting up an advisory committee.⁵²² The reason that the Hong Kong government did not implement the Abercrombie Plan was that the long-term planning proposals had not been considered a priority. Given

⁵²⁰ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998).

⁵²¹ John Henry Forshaw and Leslie Patrick Abercrombie, *County of London Plan* (Chapter 3) (London County Council 1943).

⁵²² Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984) 12; Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 70.

the economic depression which Hong Kong suffered at the time, the plan was abandoned as too costly in terms of both finance and resources.⁵²³

To conclude this section, it was the economic boom in the 1920s which initiated the earliest modern comprehensive planning in Hong Kong, Town Planning Scheme. Town planning was carried out for laying out building lots and public facilities, with the consideration of future requirements of a large population. Along with the implementation of comprehensive planning came the needs of setting up permanent machinery to take charge of town planning, which resulted in the establishment of Town Planning Board. To arm the Board to deal with development related matters, the *Town Planning Ordinance* was enacted to stipulate planning powers. The birth of the *Town Planning Ordinance* was the milestone that upgraded development control to town planning, and provided legal instruments and plans for infrastructure and further development. Comprehensive planning, administrative body and legal stipulation together constitute modern town planning and built the foundation for Hong Kong's future planning.

7.2 The introduction of statutory planning and zoning

This section predominantly introduces a new era of urban planning in Hong Kong: the era of urban district plans. During this period, comprehensive long-term planning such as the Abercrombie Plan was not considered a priority. Instead of preparing a visionary development strategy, the planning machinery was under pressure to prepare the way for immediately realisable District Plans. With the appearance of District Plans,

⁵²³ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 70.

statutory planning and zoning, which acted as the legal instruments to control development, were also introduced as the Plans' main legal components.

Abercrombie originally proposed a development plan similar to British urban plans that had been prepared in accordance with the planning system introduced in the 1947 *Town and Country Planning Act* in Britain. However, the Hong Kong Government moved to emphasise the introduction of a set of universal measures on development control to be generally applied to Hong Kong. In 1950, the *Town Planning Ordinance* was revived and zoning introduced as the main legal instrument for policing urban growth.⁵²⁴ Although the Abercrombie Plan had not been accepted in the late 1940s, the setting up of the Town Planning Board and Planning Branch initiated an era of urban district plans. One of the main duties of the Planning Branch was the preparation of statutory plans under the auspices of the Town Planning Board and the production of detailed plans. The task included land-use plans, regulation of private property development, public housing development, public amenities and recreational facilities. District Plans had been started in over 70 per cent of urban districts in the 1950s. Kwun Tong (in Kowloon) was one of the districts in which a District Plan was successfully implemented.⁵²⁵ District Plans were the main practice of Hong Kong's town planning in the 1950s and 60s.

In the 1950s, the pressure put on the Town Planning Board principally focused on preparing the way for immediately realisable development, instead of a further development strategy. District Plans were the main task, instead of preparing a comprehensive plan for the development of the whole of Hong Kong.⁵²⁶ The detailed

⁵²⁴ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong* (UCL Press, London 1996) 83.

⁵²⁵ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 5.

⁵²⁶ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong* (UCL Press, London 1996) 83.

plans of District plans, Outline Development Plans and Layout Plans were urgently needed to lay out every inch of planning maps for un-built areas. Actually, District Plans consist of statutory Outline Zoning Plans, Outline Development Plans and Layout Plans. statutory Outline Zoning Plans, as the name suggests, are statutory plans, which, being statutory instruments, must be approved by the Town Planning Board. Outline Development Plans and Layout Plans are non-statutory plans, prepared within the framework of statutory Outline Zoning Plans. The legal source of statutory plans is *Building Ordinance*. The 1935 *Building Ordinance* was amended and enacted in 1956. The 1956 Ordinance has been considered a mature piece of planning legalisation.⁵²⁷ One of its legal significances was the introduction of statutory plans, which have become the legitimate blue prints for statutory Outline Zoning Plans for District Plans. Furthermore, the Ordinance granted mandatory power to the Building Authority for refusing a building plan if a proposed development did not conform to the statutory Outline Zoning Plans. The Ordinance stipulated:

*“The Building Authority may refuse to give his approval of any plans of building works where the carrying of the building works shown thereon would contravene the provisions of this ordinance or any other enactment, or would contravene any approved of draft plan prepared under the Town Planning Ordinance.”*⁵²⁸

This stipulation made statutory Outline Zoning Plans a powerful development control instrument.

New administrative discretions were also given to the Building Authority. The Ordinance introduced the Occupation Permit and gave the Building Authority more grounds to refuse building plans. As the 1935 *Building Ordinance* stipulated, the increased principal grounds included:

⁵²⁷ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 77.

⁵²⁸ Section 9B (I) (C), *Buildings Ordinance* (1956).

“...the carrying out of [...] building works [...] which] would result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site; ...the access or other opening of the building [which would] be dangerous or likely to be dangerous or prejudicial to the safety or convenience of traffic using the street”.

Therefore, the public safety and public interest of a neighbourhood would be legal grounds for the government’s intervention in development. An appeals tribunal procedure was also set up to consider appeals against refused plans.⁵²⁹ Plans produced were from the initial detailed zoning plans that specified use to be permitted and certain limited exceptions. Draft plans had to be made available to the public on demand. At the same time, the new arrangement for public access to plans was made under the 1956 *Town Planning (Amendment) Ordinance*. The first two cases of public exhibition were put up in the same year for Yau Ma Tei (Kowloon) and North Point (Hong Kong Island). For the first time, draft and approved plans became not only the guidance standards for planning officers but also mandatory provisions. As Bristow points out, development control had finally come of age in Hong Kong.⁵³⁰

The legal classification of statutory plans and non-statutory plans does not signify the hierarchy of plans.⁵³¹ Following the era of immediate district plans of the 1950s and the first half of the 1960s came the age of comprehensive planning for the whole of Hong Kong. In 1965, the Colonial Secretariat called for the preparation of a comprehensive development plan for the whole of Hong Kong. The plan was finally agreed to by the Land Development Planning Committee in 1971 and noted by the Executive Council in 1972. In 1974, the Plan, known as the Outline Plan, was

⁵²⁹ Section 11, *Buildings Ordinance* (1956).

⁵³⁰ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 84.

⁵³¹ As Table 7-1 presents, at the top of the planning system at that time was Hong Kong Planning Standards and Guidelines, a non-statutory plan at the territorial level.

substantially revised and took into account changes in socio-economic conditions and government priorities. It consisted of: Part One, Planning Standards, which was later renamed the Hong Kong Planning Standards and Guidelines, and formed a separate document of its own; and Part Two, Territorial Development Strategy. The Guidelines and its revised successors were by no means rigid. They were a government manual concerned with district and local criteria for site reservations, location factors and site requirements. The application of the Guidelines involved in the formulation of Territorial Development was an important source of reference for government land use planning policies in the preparation of statutory and department plans.⁵³²

At the second highest level of the planning system in Hong Kong, Structure Plans (later renamed sub-regional Planning Statements in the 1990s) were sub-regional guidelines for development policies. Structure Plans were designed to meet the specific objectives of the development of individual sub-regional areas in accordance with regional characteristics. Structure Plans were prepared for the four sub-regions: the North-east New Territories, North-west New Territories, South-east New Territories and the Main Urban Areas. In the 1980s, most of the North-west New Territories were designated as Agricultural Priority and Livestock Upgrading Areas, with North-east New Territories being Recreation and Natural Reservation Areas. A Structure Plan is also a non-statutory plan. At the third level of the planning system are statutory Outline Zoning Plans that are applied to existing and potential urban areas. They were prepared under the provision of *Town Planning Ordinance* and approved by the Executive Council. Broad land use patterns for particular areas were proposed in the Plans. Areas were zoned for residential, commercial and industrial areas, and public facilities, open spaces and specified use areas. As statutory instruments, the Plans had legitimate power to regulate development. A Plan could affect a land owner's development right by zoning the land for public purposes, restricting the land to a use

⁵³² Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984) 17, 18.

not permitted under the Lease and severely restricting use other than those permitted under the Lease.

In order to specifically put land uses into various categories, regulations for use classes, which govern the indications of the types of use that may fall within each use class, were also stipulated along with statutory Outline Zoning Plans. The 1939 *Town Planning Ordinance* made a provision for a Schedule of Notes to be attached to each statutory plan. Zoning with use classes, working alongside planning permission, which was introduced under Sections 16 of the *Town Planning Ordinance*, has been the development control system in Hong Kong since the Ordinance was enacted. According to the Town Planning Division, the combination of zoning and planning permission allowed for greater flexibility in land use planning and better control of development to meet changing needs.⁵³³

Similar to Outline Zoning Plans, Development Permission Area Plans were enacted for developing areas in New Territories in 1991. Development Permission Area Plans introduced zoning control and planning permission to areas not covered by an Outline Zoning Plan. In most areas in New Territories, use class changes would be regulated by Development Permission Area Plans until an Outline Zoning Plan was drafted and replaced the existing Development Permission Area Plans for that area. At the lowest level of the planning system are the Outline Development Plan and Layout Plan, with both being non-statutory plans. The function of an Outline Development Plan is to supplement a statutory Outline Zoning Plan and to show the land-use plan in greater detail. Being a departmental plan, an Outline Development Plan is prepared as a guide for land sales, and for the reservation and allocation of land for public facilities. An Outline Development Plan indicates the specific use of land reserved for public use.

⁵³³ Ibid. p20.

In a similar manner to Outline Development Plans, Layout Plans are departmental plans as well. These Plans indicate detailed land use and development proposals for an area covered by an Outline Zoning Plan or/and Outline Development Plan. However, for particular reasons, separate plans need to be prepared independently. The particular reasons are usually the significance of related localities, such as urban regeneration areas and newly formed land. In the following table, I outline the major features of the urban planning system in Hong Kong since the 1970s.

Table 7-1: The urban planning system in Hong Kong since the 1970s.

Hong Kong Planning Standards and Guidelines Territorial Development Strategy	Territorial Level	Non-statutory plan Non-statutory plan
Structure Plan (Sub-regional Planning Statement)	Sub-Regional Level	Non-statutory plan
Outline Zoning Plan Development Permission Area Plan	District (Local) Level	Statutory Plan Statutory plan
Outline Development Plan Layout Plan	District (Local) Level	Non-statutory plan Non-statutory plan

Apart from preparing plans, the Planning Branch also undertook comprehensive studies with other government departments. Though no district plan for rural areas

was prepared by the Branch, staff from the Branch contributed to the coordination of physical development in New Territories.⁵³⁴

Legislative enactment on building control was also passed to help empower the discretion of planning officials when undertaking development. In 1953, a Building Regulation Committee was formed to review development and building control regulations. The draft *Building (Planning) Regulations* made reference to building and zoning laws in New York and Chicago. The legislation stipulated a set of orders concerning the process of issuing leases and minimising the adverse impact of development on neighbouring buildings.⁵³⁵ The *Building (Planning) Regulations* in the 1956 legislation authorised government departments to exercise wider discretion on development control. The Regulations specified a wide range of reasons for refusing building plans and also made possible a much higher plot ratio, resulting in the high density that shapes the characteristics of present-day Hong Kong.⁵³⁶

In 1974, the amendment legislation to the *Town Planning Ordinance* introduced a system of planning permissions for uses in Column 2, stipulating that uses that may be permitted with or without conditions would be subject to Town Planning Board approval. Therefore, a modern system of development control was complete, combining zoning control and planning permission for statutory plans and contractual planning by means of issuing leases in accordance with *Building (Planning) Regulations*.

⁵³⁴ Ibid. p12.

⁵³⁵ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong* (UCL Press, London 1996) 83; Edward Ng, 'Studies on Daylight Design and Regulation of High Density Residential Housing in Hong Kong' (2003) 35(2) *Lighting Res. Technol.* 127, 139.

⁵³⁶ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong* (UCL Press, London 1996) 83.

To summarise this section, during the era of urban district plans, the Hong Kong Government moved to emphasise the introduction of a set of universal measures on development control to be generally applied to Hong Kong. Development control had come of age in Hong Kong in the second half of 1950s. With later, more gradual improvements, a modern system of development control was eventually complete in 1974. Along with the evolution of development control in Hong Kong, the statutory Outline Zoning Plan was introduced as a powerful statutory instrument to guide and regulate development, and zoning introduced as the main legal measure for policing urban growth. Furthermore, mandatory power and new administrative were granted to the Building Authority for refusing building plans. Nevertheless, the *Building Ordinance* authorised the government's intervention in development when the government had legal grounds concerning public safety and the public interest of a neighbourhood. To conclude, supported by statutory plans, zoning and ordinances stipulated for administrative discretion, this was an era of government intervention, with the ideology of public interest deployed to regulate private property and to build public housing, public amenities and infrastructure.

7.3 The long-term planning of Hong Kong

As noted in the previous section, the main task of planning in the 1950s was setting up District Plans, and long-term planning was not considered priority. However, following the gradual maturation and completion of the system of development control, which worked within the frameworks of District Plans, the priorities of urban planning gradually shifted back to visionary planning during the 1960s. This section illustrates how, compared to the 1950s, planning in the 1960s dealt broadly with the long-term development of the whole of Hong Kong.

7.3.1 The ignition of long-term planning in Hong Kong: planning in the 1960s

Following the large scale post-war immigration wave in the 1950s, which brought 1 million refugees into Hong Kong and saw the population reach 3 million, the continuation of in-migration in the first half of the 1960s brought another 600,000 people into Hong Kong. In the ten years, the population had risen to almost double its initial size.⁵³⁷ Economic expansion had come with this population expansion. In 1959, following the end of the Korean-War-embargo on strategic exports to China, domestic commodity exports took a dominant position in the trade structure and led to rapid economic growth. In the 60s, GDP grew at an average rate of 10 per cent a year. The process of export-led development started and was accompanied by the very first property boom.⁵³⁸

Economic development and land demand pressure led to a preliminary investigation of five possible sites for new town development. The concept of building new towns in Hong Kong originally suggested by Sir Patrick Abercrombie was resurrected in 1959. The first two Outline Development Plans for new towns (Sha Tin and Tsuen Wan) were published in 1962 and 1964. The first new town, Tsuen Wan, was then a community with a population of 80,000. Most inhabitants were new immigrants from China, which comprised 20 per cent of Hong Kong's labour force. The idea for the Tsuen Wan plan was to develop a new town of self-

⁵³⁷ Choi Ching-Yan and Chan Ying-Keung, 'Housing Development and Housing Policy in Hong Kong' in Tzong-biau Lin, Rance Pui-Leung Lee and Udo Ernst Simonis (eds), *Hong Kong: Economic, Social and Political Studies in Development* (M. E. Sharpe Incorporated, New York 1979) 183.

⁵³⁸ Hsueh Tien-Tung, 'Hong Kong Model of Economic Development' in Tzong-biau Lin, Rance Pui-Leung Lee and Udo Ernst Simonis (eds), *Hong Kong: Economic, Social and Political Studies in Development* (M. E. Sharpe Incorporated, New York 1979) 19; Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990); Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: the End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 40.

contained and balanced development.⁵³⁹ One of the functions of new towns was designed to encourage small size family style factories to move from slums to new sites. The flexibility of small-size factories, built on traditional Chinese immigrant social networks and cheap labour, had been one of the major factors contributing to the economic competitiveness of Hong Kong. Sites in new towns were designated for flatted factories and expected to bring their former neighbouring workers with them. Redevelopment of the worst slum areas commenced in 1965, focusing on Western District and Yaumatei, where intense use of commercial activities and crowded residences resulted in high rents and the pressure of rising wages. Displacing residents to public housing in new towns effectively and continually provided cheap labour to industry sectors.⁵⁴⁰

Planning for the expansion of urban areas was also in progress. In 1960, a plan covering 1,350 acres in north-eastern Kowloon was prepared for a population of 650,000. As the Town Planning Division pointed out, the plan was characterised by its emphasis on public housing development and sites of flatted factories.⁵⁴¹ Re-development plans for old urban districts that paved the way for the private sector were also progressing. In 1961, a comprehensive re-development plan for the Central District was published. In 1967, the study of a Pilot Scheme Area in Western District was authored by the Planning Branch. The layout plan was prepared and adopted in 1970.⁵⁴² Some land policy modifications accompanied the planning to meet the development pressure demands in the property industry. Firstly, regular sales of twice-weekly lease auctions were introduced to Crown Lands, resulting in a six-fold increase in the number of leased sites. The availability of development

⁵³⁹ W. G. Gregory, S. Mackey, J. R. Firth, C.H. Wong and K. W. Leung, *Tsuen Wan Development: A Feasibility Report* (University of Hong Kong, Hong Kong 1959); Woo Man Lung, 'The Development of New Towns' in Chan Kam Wah, Woo Man Lung, Yu Wai Kam and Lee Chi Fai (eds), *Hong Kong's City and Houses: An Introduction to Urban Sociology* (Joint Publishing, Hong Kong 1997) 118.

⁵⁴⁰ I. Kelly, *Hong Kong: A Political-Geographic Analysis* (The MacMillan Press Ltd, London 1987) 64.

⁵⁴¹ Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984) 12.

⁵⁴² *Ibid.* p12.

sites in the New Territories increased. Secondly, in October 1960, the existing lessees of seventy five-year non-renewable leases in Kowloon were granted an extension to their leasehold. Thirdly, some alterations were adopted concerning more conversions of agricultural land to building land, helping to increase land supply. The original procedure was only permitted in areas where lay out plans had been prepared. The new procedure would be broadly adopted in more rural areas in the New Territories, particularly on the sites of proposed new towns.⁵⁴³

During this period, the density zoning policy emerged. Concepts of American style zoning were adopted. A set of regulations were stated in the *Building (Planning) (Amendment) (No. 2) Regulations* 1962. It set out the permitted maxima of plot ratios and the coverage of sites for three density zones: the greatest densities were allowed in principal built-up areas; an intermediate level was set up mainly for central Kowloon; the lowest level was for the rest of Hong Kong Island and the foothills in Kowloon. Later, in 1969, some alterations related to zoning control and planning procedures were made to the Regulations. The 1969 Regulations introduced the designation of zoning for undetermined use and revised the examination and exhibition procedures for draft plans. Administrative procedures between the Governor and the Town Planning Board were re-consolidated.⁵⁴⁴

In accordance with economic development and modifications to planning control, the Colony Outline Plan (renamed the Hong Kong Outline Plan in 1974) was proposed by the government at the end of 1962 as the framework for the long term spatial development plan for the future Hong Kong. It was prepared not only to meet the rapid population increase but also to be a comprehensive plan that was assisted by several government committees and outside experts working on various

⁵⁴³ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 94.

⁵⁴⁴ *Ibid.* p94.

subjects, such as industry and infrastructure.⁵⁴⁵ The Outline was not completed until 1972, and was amended in 1974 and 1979. It comprised of two major parts: a long-term land-use plan and development strategy was included in the first part, and standards for the planning guidance included in the second part. The Outline was more like a proposal without statutory power, but available as a guide for detailed planning. With the introduction of the Hong Kong Outline Plan, the hierarchy of planning in Hong Kong had reached three levels: the Outline, the District Plans and Draft Plans prepared under planning ordinances. The last two plans had statutory power to control development.

In short, the 1960s saw the ignition of Hong Kong's long-term planning. While some realisable plans and urban expansion were prepared to meet the immediate needs of population growth and economy boom, visionary plans were planned and accompanied by some modification of planning hierarchy for future development. This progress continued in the 1970s and early 1980s.

7.3.2 The 1970s and early 1980s

The 1970s was an era that saw the upgrading of public housing, development of new towns and urbanisation of the New Territories. An estimated 40 per cent of the Hong Kong population (1,600,000 people) had been accommodated in public housing by 1972, with the number of squatters substantially decreased. However, the 1971 census showed that the housing crisis was far from solved. Nearly 50 per cent of residents still lived in living quarters that were not self-contained; 32 per cent of the population was in urgent need of housing. In the middle of the 60s, the number of squatters had increased to 550,000. The increase in rents in the private

⁵⁴⁵ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984); Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 6.

sector forced workers to seek cheap accommodation in slums. A survey in 1968 showed that half of the squatters interviewed were living in private tenements before becoming squatters. Housing policy since the 1950s controlled squatting, but the population increase was still threatening the delicate social equilibrium in Hong Kong.⁵⁴⁶

The 1966 and 1967 riots (also known as the Anti-British Struggle by leftists) inspired by the Chinese Great Cultural Revolution, were seen at the time as social disturbances by social elites and the government.⁵⁴⁷ In fact, they had actually done nothing significantly damaging to the economy. Evidence showed that the riots were only large-scale demonstrations. However, they were triggered by the unjustifiable living conditions of common people, and had been the first challenge to the rule of the colonial government since the Second World War. Before the riots, the process of the administrative absorption of politics had co-opted the emerging socio-economic elites into politics through appointments on government councils and boards. During and after the riots, however, this process was facing challenges from the grass roots. While the majority of non-English speaking people criticised the alienation of their English-speaking Chinese fellows in government, the younger generation of Hong Kong habitants started seeking identification with China or Hong Kong, distinguishing themselves from the foreign regime. A manifesto of social justice and political reform was declared by campaigners and activists. The integration of the government that was built on the elite consensual society of Hong

⁵⁴⁶ K. Hopkins, 'Housing the Poor' in K. Hopkins (ed), *Hong Kong: The Industry Colony* (Oxford University Press, Hong Kong 1970) 271, 335; Choi Ching-Yan and Chan Ying-Keung, 'Housing Development and Housing Policy in Hong Kong' in Tzong-biau Lin, Rance Pui-Leung Lee and Udo Ernst Simonis (eds), *Hong Kong: Economic, Social and Political Studies in Development* (M. E. Sharpe Incorporated, New York 1979) 185; Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 51; Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990) 24.

⁵⁴⁷ Commission of Inquiry, 'Kowloon disturbances 1966: Report of Commission of Inquiry' (Government Printer, Hong Kong 1967).

Kong was facing a legitimate crisis.⁵⁴⁸ In response to this crisis, the government tried to ameliorate popular tension and get closer to the people: for instance, the City District Officer Scheme was introduced into urban areas to improve communication between the government and the people. This Scheme was also useful for the work of the Building Ordinances Office, and provided more material benefits and welfare to them in exchange for an implicit conferment of legitimacy.⁵⁴⁹ The riots resulted in the ten-year era of urban planning reconstruction, including upgrades to public housing, building new towns and urbanisation of the New Territories.

Sir Murray MacLehose was appointed Governor-in-Council in 1971, with social reform a high priority of his policies. His housing policy aimed at providing adequate and affordable housing to the entire population. The following year, the new Governor approved the adoption of the Ten-Year Housing Target Programme. In April 1973, the Housing Board evaluated housing needs. According to an estimate, 1,535,000 people would need to be re-accommodated to public housing. The Governor ordered all housing needs to be satisfied by the public housing programme within ten years.⁵⁵⁰ A significant part of the population – almost one-third of the targeted residents – were resettlement estate occupants involved in redevelopment schemes driven by property development by the private sector in urban areas. The programme would build not only residences but multi-storey

⁵⁴⁸ D. Faure, *Society: A Documentary History of Hong Kong* (Hong Kong University Press, Hong Kong 1997); Tai-Lok Lui and Stephen W.K. Chiu, 'Social Movements and Public Discourse on Politics' in Ngo Tak-Wing (ed), *Hong Kong's History: State and Society under Colonial Rule* (Routledge, London 1999) 101, 118.

⁵⁴⁹ Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 101. Cheung Anthony Bing-leung, 'Changes in Hong Kong's Local Politics and Future Development' in Centre for Asian Pacific Studies (ed), *Hong Kong in the Asian-Pacific Region: Challenges and Responses*. (Centre for Asian Pacific Studies, Lingnan University, Hong Kong 1989); Cheung Anthony Bing-leung, Louie Kin-sheun and Lei Jingxuan, *Social Conflicts in Hong Kong, 1975-1986: Trends and Implications* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, Hong Kong 1991) 3.

⁵⁵⁰ Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984); Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990) 25.

factories, providing flatted industrial buildings to small factories for displaced businesses which were operating industrial undertakings in areas subjected to redevelopment.⁵⁵¹

In response to this ambitious task, all housing agencies were unified in a new single institute. The Housing Authority, headed by the Secretary of Housing, was set up to take charge of the study, and make and implement housing policy. The *Housing Ordinance* of 1973 was enacted. Under the pressure of implementing public housing policy, the government decided to accelerate the development of new towns and expand market towns in the New Territories.⁵⁵² Some institutional changes had also been brought along with the housing programmes and the re-organisation of housing authorities. As the Town Planning Division of Land Department reported in 1984:

*“the New Territories Development Department was formally set up in 1973 within the Public Works Department to be responsible for planning, coordinating and implementing the development programme of new towns [...] concurrent with the establishment of the New Territories Development Department, the Planning Branch was upgraded to become a full-fledged Office with the Lands, Survey and Town Planning Department which operated under the umbrella of the Public Works Department. It was responsible for statutory planning matters in both the new towns and the urban areas, district planning matters in the rural New Territories and the urban areas as well as the revision of the Hong Kong Outline Plan.”*⁵⁵³

⁵⁵¹ Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990) 25.

⁵⁵² Town Planning Division, Lands Department, *‘Town Planning in Hong Kong’* (Government Printer, Hong Kong 1984) 13; Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990) 25.

⁵⁵³ Town Planning Division, Lands Department, *‘Town Planning in Hong Kong’* (Government Printer, Hong Kong 1984).

In terms of the division of labour, the intention was clear: the implementation of the programme was split between the two main branches of the Public Works Department, so that the New Territories Development Department was in charge of the development of new towns, and the rest – mainly statutory planning, development control and some development programmes – was administered by the Lands, Survey and Town Planning Department.

Actually, the political context of the alterations to the planning machinery was more complicated than the report published by the Town Planning Division. Long existing political competition between the building divisions (led by the Director of Public Works) and sectoral divisions (led by the District Commissioner of New Territories) contributed to an escalation of planning authorities' administrative levels. A new Secretary for the Environment was appointed in 1973, followed by an upgrade in the status of the Commissioner for the New Territories to Secretary level. The Secretary of Environment took over the chairmanship of the government's Land Development Planning Committee, which was reformed as the Land Development Policy Committee in 1975, while the New Territories Development Progress Committee was established in the same year. However, it was not administratively related to the Environment Secretary, but subordinately connected to him and his Committee in policy-making terms. The New Territories Development Progress Committee was designated to be responsible for the implementation of physical development policies in the New Territories and to approve detailed layouts. From 1974 onwards, under the leadership of the New Territories Development Progress Committee, a Rural New Territories Works Progress Committee and similar Committees for each of the new towns were introduced. There had been a re-organisation within the spatial and building departments as well. The Town Planning Office was upgraded to an independent branch in 1973, under the administrative leadership of the Director of Lands and Survey, and headed by a Principal Government Town Planner. The Town Planning Office was subdivided into two divisions. One was the District Planning Branch that was in charge of urban areas and the New Territories; the other was the Colony Planning Division, later

renamed the Hong Kong Outline Planning Division, which was responsible for the preparation and revision of the Hong Kong Outline Plan. The co-ordination between the authorities of New Territories and Public Works was also considered in the re-organisation of spatial sectors. This was the reason why the new New Territories Development Department was formed within the Public Works Department in 1973. It was established as a multi-disciplinary organisation resulting from the government's objective to implement the public housing programme and associated development in the New Territories. The New Territories Development Department took responsibility for the planning and co-ordination of the development works of three new towns and other major areas in the New Territories, including all administrative, professional and financial functions. It prepared layouts, prepared and reviewed development programmes, and provided all kinds of infrastructure required by plans. Four Development Offices were set up for the new towns and major areas. By 1982, these Offices had expanded to six. Development Offices were designated to have an inter-disciplinary staff of professionals, including town planners approved by the Town Planning Office to develop and monitor the development programmes for public sector investment with broad departmental directives.⁵⁵⁴

The setup of the New Territories Department can be seen as an extension of the administrative reform to local authorities that had begun in the late 1960s, and was mainly implemented in the first half of the 1970s. In 1966, the Governor responded to the issue of local governments by pointing out that: "*An effective method of providing channels for the exercise of local initiative in the management of purely local affairs is valuable.*"⁵⁵⁵ There was a consensus between government departments that the most efficient way to co-ordinate the local operations of specialised departments was to have territorial-based agencies that could help adjust policies

⁵⁵⁴ Ibid.; Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984) 111, 113.

⁵⁵⁵ Norman Miners, *The Government and politics of Hong Kong* (Hong Kong: Oxford University Press 1975) 171.

laid down by the central authority to fit the localities. It was also one of the political projects that won popular support from distinct remote areas.⁵⁵⁶ The New Territories Development Department was not only a planning authority but a development- and construction-orientated organisation. It had more functions for development than just development control. As previously noted, the setup of the New Territories Development Department occurred as a result of competition between the spatial planning and district sectoral sections, but the establishment was actually an integration of administrative reform coordinated with the great spatial plan located in the New Territories. The diagram below represents the Government's ambitious attempt to develop and re-construct Hong Kong's remote areas.

⁵⁵⁶ Ibid. p171.

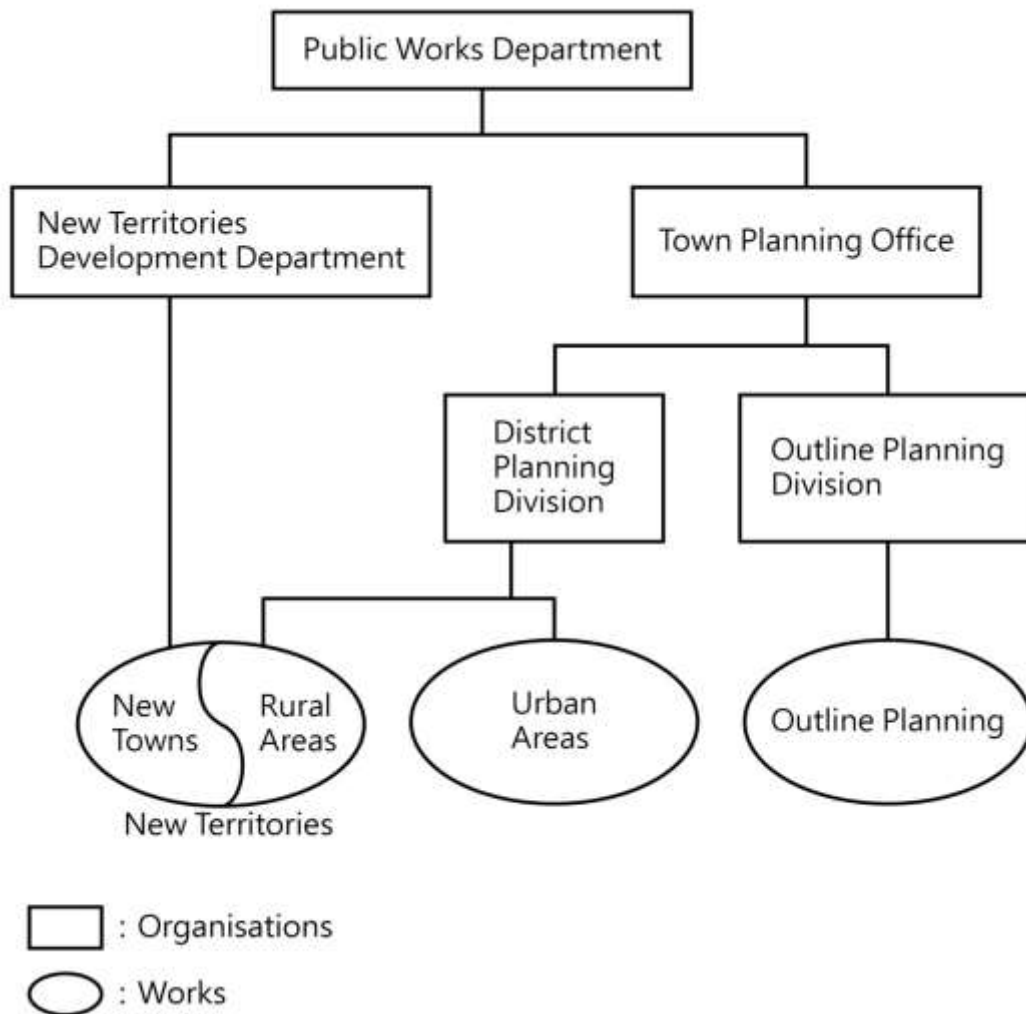


Diagram 7-1. The role of the New Territories Development Department and the administrative co-ordination between the spatial and sectoral departments in 1973.

Sources: Ambrose Y. C. King and Rance P. L. Lee, *Social Life and Development in Hong Kong* (The Chinese University Press, Hong Kong 1981) 172; Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984) 14.

The era was a golden age for town planning and planners. District planning was stretched out widely, covering both urban districts and some new towns. In 1973, twenty-two statutory plans were applied to twenty-one planning areas in urban areas and three new towns in the New Territories. By the end of 1983, there were a total of twenty-four statutory plans covering twenty-six planning areas in urban districts and seven draft Outline Zoning Plans covering most of the new towns. Meanwhile, in those urban areas where urban renewal was needed, plans for

Environmental Improvement Areas and Comprehensive Redevelopment Areas were prepared.⁵⁵⁷ More administrative alterations by the planning authorities were stepped up in the early 1980s. The most comprehensive re-organisation attempted so far shaped the current institutional form. The administrative changes included:

- (1) The establishment of the Urban Area Development Organisation (and Offices). Its Offices would be in charge of local detailed plan-making, for layout and departmental plans.
- (2) The establishment of the Strategic Planning Unit.
- (3) The abolition of the Secretariat of Environment, the appointment of a separate Secretary for Lands and Works, and the de-federalisation of the Public Works Department.⁵⁵⁸

The Urban Area Development Organisation was established in 1980 as a parallel unit to the New Territories Development Department, on behalf of the Public Works Department, to take charge of the coordination and implementation of urban development in urban areas. Like the New Territories Development Department, several local Offices were set up under its leadership. While the Offices were formed at the bottom of the administrative structure, at the top level, the Strategic Planning Unit within the Secretariat for Lands and Works was formed in the same year to prepare the overall Territorial Development Strategy to guide public and private investment. The Strategy would be, as the Governor-in-Council pointed out, to accomplish *“in the longer term the most careful strategic planning.”*⁵⁵⁹ At the mid-level of the planning machinery, a new Town Planning Division provided technical and planning support to the Secretariat and the Strategy Unit. With the de-

⁵⁵⁷ Town Planning Division, Lands Department, ‘Town Planning in Hong Kong’ (Government Printer, Hong Kong, 1984).

⁵⁵⁸ Source: Town Planning Division, Lands Department, ‘Town Planning in Hong Kong’ (Government Printer, Hong Kong, 1984).

⁵⁵⁹ Legislative Council, ‘The Legislative Council Debates Official Report: The Session of The Legislative Council of Hong Kong in the Thirtieth Year of the Reign of Her Majesty Queen Elizabeth the Second’ (Legislative Council Chamber, Hong Kong, 7th October 1981).

federalisation of the Public Works Department in 1982, which had long existed for 140 years, it was divided into five departments, including the planning related Land, Building and New Territories Departments. The old Town Planning Office was re-organised to the Town Planning Division, under the Lands Department. It was designated as the core of the urban planning hierarchy. The overall functions of the Division are listed below:

- (1) To formulate planning policies, planning standards and guidelines.
- (2) To prepare structured plans and plan sectoral studies.
- (3) The responsibility to take charge of statutory planning matters, including drafting and publishing statutory plans.
- (4) To provide professional advice to the public and other government bodies on town planning matters.
- (5) To service the Town Planning Board in the preparation of statutory Outline Zoning plans and process planning applications under the provisions of the *Town Planning ordinance*.
- (6) To service the Land Development Policy Committee and the Special Committee on Land Supply, and their sub-Committees.
- (7) To update the Hong Kong Outline Plan or later Strategic Plans.⁵⁶⁰

The head of the Town Planning Division was the Principal Government Town Planner and was also responsible for the professional quality of the work of town planners seconded to the New Territories Development Department, Urban Area Development Organisation and the Strategic Planning Unit within the Lands and Works branch of the Secretariat. The role of the Town Planning Division was similar to the New Territories Development Department in New Territories' planning. However, via the administrative channel of the Sub-Regional Planning sector, which was set up under the Town Planning Division to co-ordinate the work of the New Territories Development Department, the Town Planning Division was able to

⁵⁶⁰ Source: Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong, 1984).

access planning in the New Territories.⁵⁶¹ Consequentially, a modern hierarchy of Town Planning authorities eventually emerged. This firm administrative hierarchy formed the current structure of planning bodies in the Hong Kong Government.

Diagram 7-2 below presents the administrative hierarchy of those planning authorities responsible for policy making, preparing plans and implementing them. The mechanism for the submission/approval of plans (including planning permissions and contractual development control) consisted of a tidier hierarchy, as illustrated in Diagram 7-3.

⁵⁶¹ Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984) 13; Roger Bristow, Land-use Planning in Hong Kong: History, Politics and Procedures (Oxford University Press 1984) 114, 117.

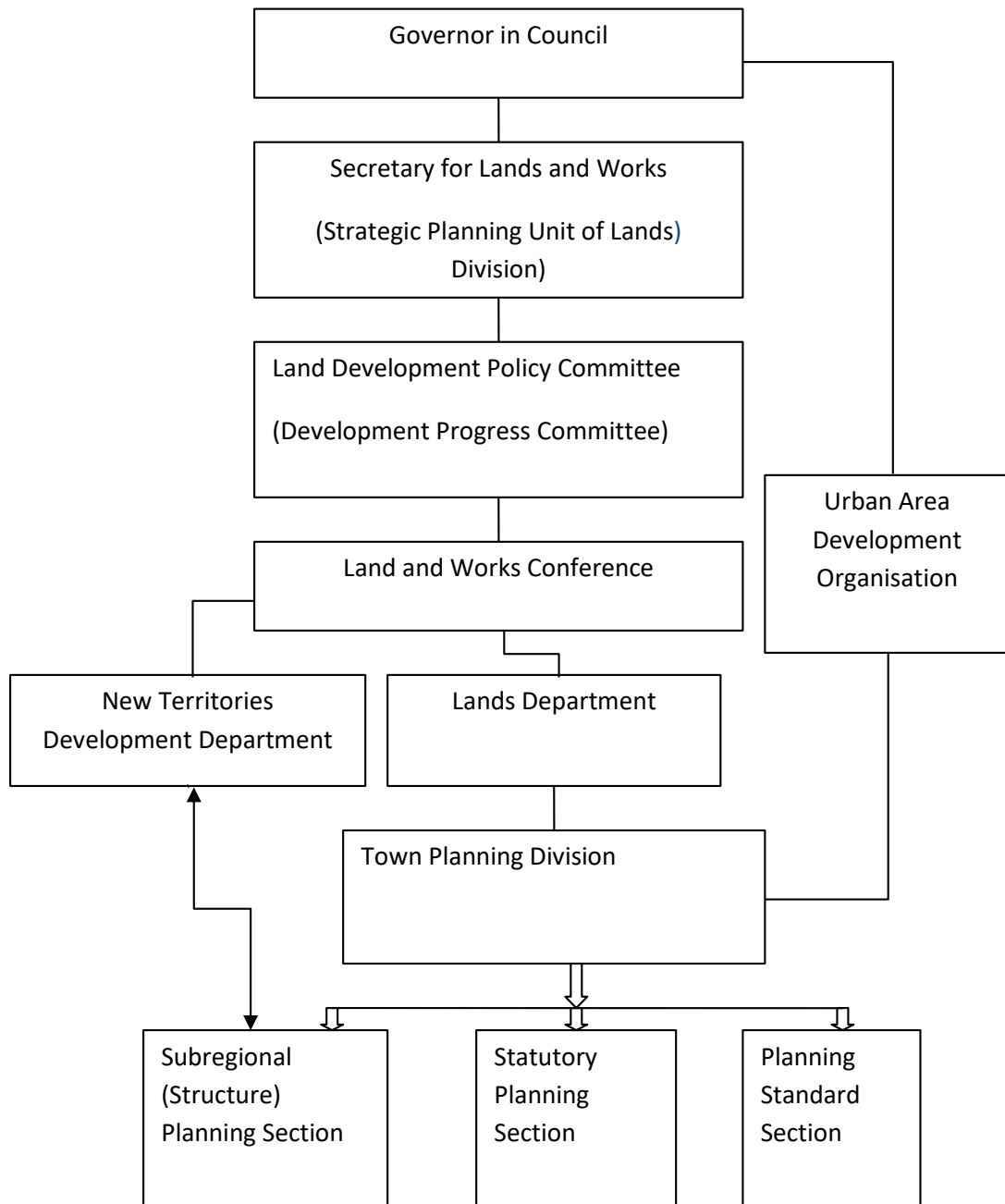


Diagram 7-2: The administrative structure of Town Planning in the 1980s.

Source: Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984); Town Planning Division, Lands Department, 'Town Planning in Hong Kong' (Government Printer, Hong Kong 1984).

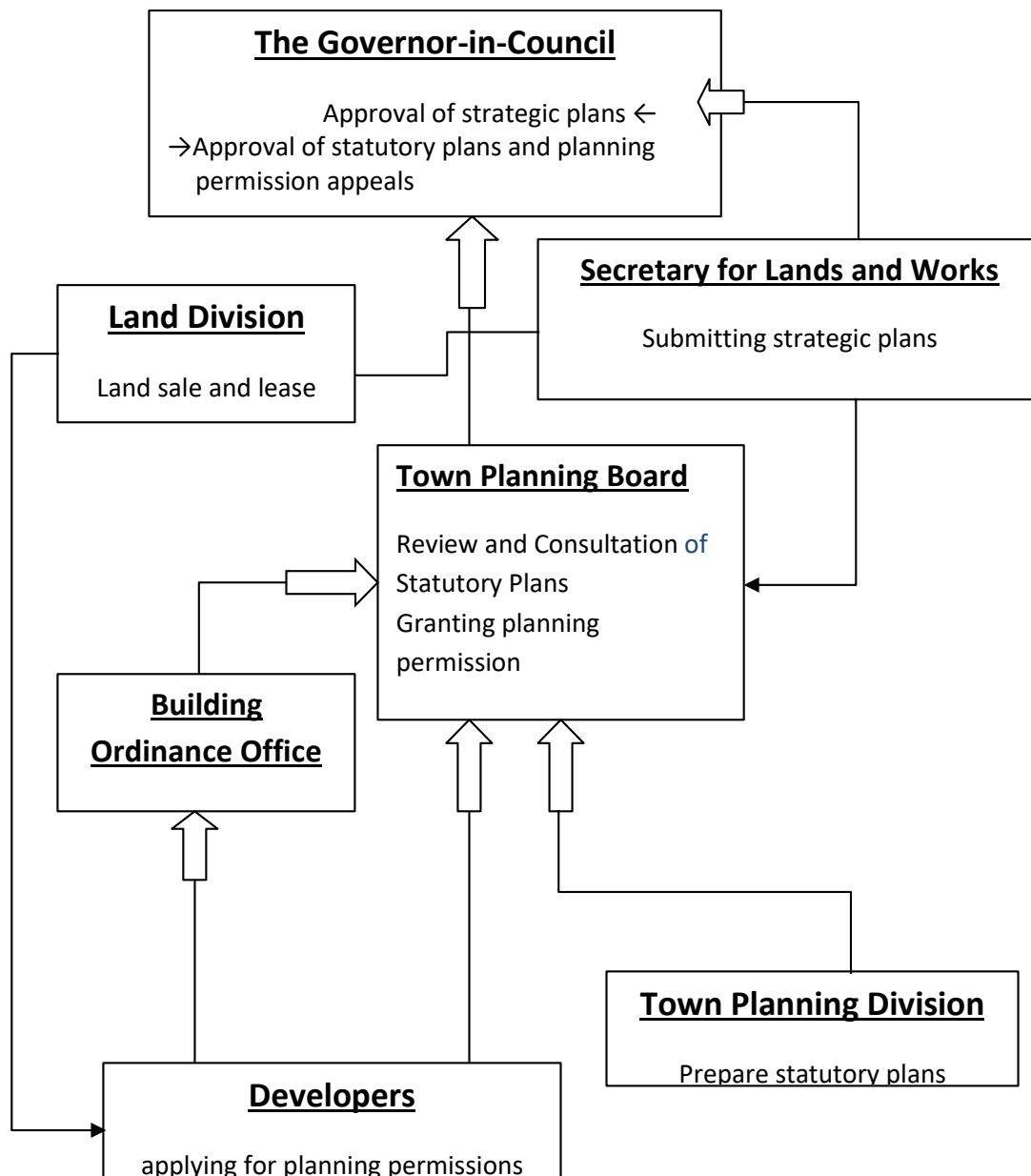


Diagram. 7-3: The processes for approval of plans and permissions.
 Source: Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984)

The introduction of this modern planning administrative structure was part of the Government's administrative reform that occurred in the second half of the 1970s and the early 1980s. Continuous and steady economic growth forced the administrative bodies to self-re-regulate in order to cope with the rapid changes and requirements of Hong Kong's economy and society. The request for administrative efficiency and effectiveness by the private sector in the planning

system suggested, not only a speeding-up of the planning process, but most importantly, the speedy release of land. It included the sale of land from the Government and the permission to re-generate developed land.⁵⁶² The administrative reform of planning functioned as a political programme serving the interests of landowners and real estate developers, who pushed forward the property boom in the 1970s and '80s.

The planning works in this era had similar effects on social and economic situations. It is also worth mentioning that, like the Hong Kong Outline Plan prepared in the 1970s, the Territorial Development Strategy had been the outline plan for Hong Kong in the 1980s. To help prepare this Strategy, a Structure Planning Section was created within the Town Planning Division. This Section undertook several sub-regional structure plans and took charge of sub-regional studies for the Territorial Development Strategy. The Strategy consisted of five sub-regions: the North-east New Territories, North-west New Territories, South-east New Territories, South-west New Territories and the main urban areas. Despite continuous work developing new towns, which had been mainly planned in the 1970s, the main task of planning in the 1980s, as the Territorial Development Strategy showed, was urban renewal in the main urban areas. The development of new towns and the re-generation of urban areas resulted in an inner-migration wave in the 1970s and early 1980s. While growing international trade and the accompanying service sector gradually occupied urban areas and pushed employees in the industrial sector to move mainly to high rise buildings in the New Territories, the high price of accommodation in renewal areas also contributed to the migration. It is not unfair to say that, just as the planning administrative reform had functioned as a political programme to serve the interests of landowners and real estate

⁵⁶² Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 11.

developers, the planning work that reflected economic requirements was also a contributing factor to the property boom.⁵⁶³

In short, the 1970s Hong Kong was an ambitious era for town planning in Hong Kong. The riots of the late 1960s, triggered by unjustified living conditions, forced the government to face a grass-roots challenge. In order to save the authorities from a genuine crisis, strategies of upgrading public housing, developing new town and urbanising New Territory were being implemented. Though the housing crisis was far from solved, cheap accommodation provided by the private sector and non-self-contained living units in slums also helped ease the issue. Property development by the private sector was also one major measure that the Hong Kong authorities introduced to conquer the housing problem: one-third of the Hong Kong residents who needed to be relocated were resettlement estate occupants involved in redevelopment schemes driven by the property development of the private sector. In terms of housing policy, the Hong Kong government intervened in the housing market by essentially appoint itself as the land lord, but also by paving the way for the private property market. Drastic intervention in both public housing and private housing in the 1970s provided Hong Kong's labourers with cheap accommodation and also helped to maintain the cheap cost of labour. It sustained the continuous economic boom of the 1970s and early 1980s. In terms of urban planning, the 1970s was a golden age for planning and planners. Accompanied by new measurements in planning, with administrative reform and organisation re-regulation, a mature, modern hierarchy of town planning authority emerged during the second half of the 1970s and the early 1980s. This hierarchy forms the basis for the present-day structure of planning bodies in the Hong Kong Government.

⁵⁶³ Fung Bong Yin, *One Hundred Years of Hong Kong's Property Industry* (Joint Press, Hong Kong 2001).

7.3.3 Practices in the 1980s, the 1990s, and beyond

This section introduces the Chinese factor, the main force driving town planning in Hong Kong during the last two decades of the twentieth century. The imminent 1997 re-unification with Mainland China resulted in adjustments to the formalities of Hong Kong politics. A series of de-colonisation processes, initiated by the colonists themselves, led to a political agenda that social movement activists had not expected. Prior to the political and administrative reforms of the 1980s, the question of democratisation was regarded by most activists as remote from the political reality.⁵⁶⁴ Firstly, political power was released to local authorities before alterations to the central administrative and legislative bodies. Eighteen district councils were set up, with two-thirds of council members elected. There were nine in urban areas and nine in the New Territories. The growing calls for participation in formal institutional politics from pressure groups, social movement organisations and grass-roots protesters were influencing the de-colonisation agenda. The Colonial Government had been pushed to make the political system more representative and accountable. A series of White Papers released by the government in the first five years of the 1980s pressed for an increase in direct representation through the electoral process.⁵⁶⁵

After 142 years of colonial rule, the first elected representatives appeared on the Legislative Council in 1985. They represented functional constituencies (representing different social sectors such as workers, trade business and professionals). In 1995, all appointed legislative members were replaced by members elected from either functionally- or geographically-based constituencies.

⁵⁶⁴ Tai-Lok Lui and Stephen W.K. Chiu, 'Social Movements and Public Discourse on Politics' in Ngo Tak-Wing (ed), *Hong Kong's History: State and Society under Colonial Rule* (Routledge, London 1999) 112.

⁵⁶⁵ Norman Miners, 'Moves Towards Representative Government 1984-1988' in Kathleen Cheek-Milby and Miron Mushkat (eds), *Hong Kong: The Challenge of transformation* (Centre of Asian Studies, University of Hong Kong, Hong Kong 1989) 19, 35.

Accompanying the political reforms, some changes were also made within planning authorities. The major changes included the re-organisation and re-naming of the Town Planning Division to the Town Planning Office under the new Buildings and Lands Department in 1986. In addition, the Planning Department was established in 1990, under the then Planning, Environment and Lands Branch of the Secretariat, amalgamating all the planning functions previously carried out by the Town Planning Office, the Strategic Planning Unit and various development offices of the New Territories Development Department.⁵⁶⁶ The 1990 establishment was actually an administrative upgrade to the old Planning Office. It was the very first time a planning authority was independently set up in the Departmental level from the Land or Public Works Department. The establishment reflected the Government's acknowledgement of the unique importance of planning.⁵⁶⁷ As the Planning Department was designated as a parallel unit to the Housing Department and the Land Department, planning was no longer treated as subordinate to housing and land policy. Although land policy and the contractual planning of land leases in Hong Kong had been one of the main mechanisms in development control and town planning, the setting up of the New Department was a significant sign that the Government took the economic changes in the 1980s seriously, and was prepared to use planning as a means of development to face these economic challenges.

The reform of the administrative apparatus in the early 1980s was a reaction to the Chinese factor. However, the Chinese factor related to the planning authorities, with planning more an economic than a political issue. The "Open-Up" policy of the Chinese Government had been initiated under the right-wing leadership of Den Xio Ping in 1979, and resulted in the reconstruction of Hong Kong industries and the development of the Zhujiang Delta Region (Pearl River Delta Region). In 1980, the south part of the Delta was granted special economic jurisdiction. The

⁵⁶⁶ Town Planning Office, 'Planning Hong Kong: 50th Anniversary' (Hong Kong: Town Planning Office, Planning Department 1997).

⁵⁶⁷ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 21.

establishment of the Shenzhen Special Economic Zone in the south-east of the Delta and adjacent to Hong Kong, and the Zhuhai Special Economic Zone adjacent to Macao, promoted an increase in national investment in fixed assets in the area, and also granted greater local discretionary powers regarding foreign investment inflow, including tax breaks, de-regulation of currency control and land provision. In the first decade of the Open-Up policy, the Delta had developed a strong connection to Hong Kong. A belt of export-process towns had sprung up within a 250km radius of Hong Kong. Chinese policies on national development indicated the strategic importance of Hong Kong in China's opening up to the world market. Commercial trade between China and Hong Kong had increased 39 per cent by 1988.⁵⁶⁸ Hong Kong was the chief investor in Southern China, with 90 per cent of the investment concentrated in the Delta. In 1989, ten years after the start of the Open-Up policy, three million people in the Delta were directly employed by Hong Kong industrialists (including Taiwanese companies based in Hong Kong), representing four times the size of all labour engaged in manufacturing in Hong Kong.⁵⁶⁹

The shortage and expensive cost of the Hong Kong labour force was also one of the main factors contributing to the restructuring. The immigration wave from Mainland China had stopped, and a new international labour division between Hong Kong and Southern China formed in its place. The reconstruction saw the restructuring of industries in Hong Kong. Macro-economic trends towards outward processing in China resulted in the downsizing of manufacturing units. In 1996, manufacturing sectors accounted for just 14 per cent of employment, in contrast to 42 per cent in 1984. The number of employees per manufacturing establishment

⁵⁶⁸ Hong Kong Government, 'Comprehensive review of the Town Planning Ordinance' (Hong Kong: Government Press 1991).

⁵⁶⁹ J. Kamm, 'Reforming Foreign Trade' in E. F. Vogel (ed), *One Step Ahead on China: Guangdong Under Reform* (Harvard University Press, Cambridge 1989) 373; E. G. Pryor, 'The Role of Hong Kong Infrastructure Development in the Modernisation of Southern China with Particular Reference to the Pearl River Delta' (1991) 7(1) *Planning and Development*; F. Soulard, *The Restructuring of Hong Kong Industries and the Urbanization of Zhujiang Delta, 1979-1989* (The Chinese University Press, Hong Kong 1997) 9.

had decreased from 33 in 1970, to 20 in 1980, and only 12 in 1996.⁵⁷⁰ Besides the decreasing population employed in the industrial sector, basic planning data prepared by the Planning Department in 1989 showed that employees in service sectors (including communication, storage, transportation, retailing and restaurants) had increased from 45 per cent in 1980 to 63 per cent in 1989. Accompanying the employment shift from manufacturing to the third sector, there were industry adjustments in the face of the economic growth of China and rising production costs in Hong Kong. The garment industry, which had been one of the two main industrial sectors in Hong Kong, experienced steady growth in gross output and contributed to one quarter of the output of all manufacturing industries throughout the 1980s. However, the number of establishments started to drop in 1987, following a fall in the number of employed persons in 1986. Another industrial sector, the electronics industry, also experienced a significant fall: both the gross output and employment started to drop in 1988.⁵⁷¹ The falls in industries mirrored the trend of relocating plants offshore to solve the problem of rising production costs by making use of cheap labour and the cheap and abundant supply of land in China. Hong Kong's industries continuously maintained the advantage of flexibility in their international commercial networks. As the Industry Department pointed out in 1989, it was difficult for industry to diversify into other areas that were capital- or knowledge-intensive or had potentially high value-added production.⁵⁷² Considering the fact that little progress had been made in technological upgrades to both the garment and electronics sectors, Hong Kong continued playing its role in the world market as an international subcontractor that

⁵⁷⁰ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 50, 51.

⁵⁷¹ Stephen Wing-kai Chiu, Kong-chong Ho and Tai-lok Lui, *City-States in the Global Economy: Industrial Restructuring in Hong Kong and Singapore* (Westview Press, Boulder 1997) 56.

⁵⁷² Hong Kong Government Industry Department, 'Report on the Survey of Overseas Investment in Hong Kong's Manufacturing Industries' (1989).

was still locked into labour-intensive manufacturing as it had been in the 1960s and 1970s.⁵⁷³

Economic restructuring had some extensive effects on land-use and related policies and legislation. Due to the wave of relocating manufacturing, plus the decisive failure of Sino-British talks in 1983, the property boom that occurred in the 1970s collapsed in the early 1980s. Despite attaining the world's highest industrial growth rate between 1976 and 1981, Hong Kong's regime of surplus was transformed into a string of deficits. In the 1982-1983 budgets, capital receipts from land sales declined from 25 per cent to 6 per cent of revenue.⁵⁷⁴ Some spatial- and planning-focused policies were presented to revive industrial investment and save consecutive unprecedented deficits. One was to build a friendly investment environment for the property industry, which would, it was hoped, also help solve the shortage in public facilities in developing areas and reduce the lack of public investment by the government. In the meantime, another policy concerned creating more available land in suitable locations for property development and industrial investors. By providing both clear information and substantial material conditions for developers, the Government expected that reasonable spatial development, led by the government, and participated in by the private sector, would lead to industrial revival. Therefore, several large-scale plans (including investment in big public facility projects) were prepared and implemented in the 1980s and the 1990s by the Government.

Planning in Hong Kong had continuously expanded during the previous two decades. Approximately 30 statutory Outline Zoning Plans were implemented in the 1980s, covering and providing guidance to all the new towns and urban areas. By

⁵⁷³ Stephen Wing-kai Chiu, Kong-chong Ho and Tai-lok Lui, *City-States in the Global Economy: Industrial Restructuring in Hong Kong and Singapore* (Westview Press, Boulder 1997) 56.

⁵⁷⁴ Alvin Rabushka, *The New China: Comparative Economic Development in Mainland China, Taiwan and Hong Kong* (Westview Press, Boulder 1987) 178.

1991, with the enactment of two amendments to the *Town Planning Ordinance*, the jurisdiction of statutory planning was extended to more remote rural areas outside Country Parks (reservation areas), enabling enforcement action to be taken against unauthorised development. The town Planning Appeal Board was established in the same year. By June 1997, ninety statutory Outline Zoning Plans had already been implemented, covering approximately 45 per cent of land in the Hong Kong territory, and 95 per cent of existing and planned development areas.⁵⁷⁵ The plans provided definite land use zones to sustain spatial development.

Statutory Plans had to accord with guidance by the Territorial Development Strategy. As previously highlighted, the Strategy was proposed in 1980 and published in 1984. The aim was to prepare a long-term strategy for development in the 1990s and the early years of the 21st century. The preparation was based on surveys and analyses conducted in forty-nine areas, comprising of five sub-regions. The methodological approach of regional orientating was one of the Strategy's characteristics. The planning authorities were also proud of the application of mathematical models in the planning. Despite the ignorance of un-quantifiable socio-economic considerations and the fact that only certain quantifiable data were included,⁵⁷⁶ the Land Use and Transportation Optimisation model, whose purpose was to identify areas of future growth, gave form to the preparation of the Territorial Development Strategy. It was declared a great systematic project by the Government. A systematic approach was also applied to other projects in the 1980s and early 1990s, including the Study of Harbour Reclamations and Urban Growth (1982-1983), the successive Port and Airport Development Strategy project

⁵⁷⁵ Town Planning Office, 'Planning Hong Kong: 50th Anniversary' (Town Planning Office, Planning Department, Hong Kong 1997).

⁵⁷⁶ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54; Edward G. Pryor, *Parallel Development of Strategic Land-Use and Transport Planning: The Case of the Territory Development Strategy*. in Harry T. Dimitriou and Alison H. S. Cook (ed), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 55, 80.

prepared in 1987-1989, the *Toward the Twenty First Century: the 1990 White Paper of Transportation Policy and the Metroplan in 1991*.⁵⁷⁷

The Metroplan was a new metropolitan development strategy covering only the main urban areas in the Hong Kong territory, which were Hong Kong Island, Kowloon and Tsuen Wan, Kwai Chung and Tsing Yi areas. It reinforced the shift of development focus from new towns to the central area and western harbour. The preparation of the Metroplan also responded to the relocation of the international airport and large scale expansion of the container port, incorporating a vast programme of associated land-based transport infrastructure and building construction. The Metroplan aimed to address variations neglected by the Land Use and Transportation Optimisation model, and to consolidate uncoordinated development into a well-organised and efficient metropolis with a projected population of 6.5 million by 2001. It was the first attempt to bring a number of qualitative parameters to the forefront that were badly ignored in earlier planning studies. In particular, these concerned quality of life, open space, landscape, urban design and economic growth.⁵⁷⁸ The Metroplan reflected the ambitious aims of planning professionals who were unsatisfied with the then-current situation and were seeking improvement. For example, the Development Strategy had been unsuccessful as far as industrial development was concerned. Cheaper land and better services on the periphery were inadequate in persuading and attracting industrialists to move from inner urban areas.⁵⁷⁹

⁵⁷⁷ Yeh Anthony G. O, 'The City Development of Hong Kong toward to the 21th Century: Prospects and Challenges' in Yeung Yue Man (ed), *Urban and Regional Development in China: Toward to the 21th Century* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University Press, Hong Kong 1993); Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: the End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54.

⁵⁷⁸ Harry T. Dimitriou and Alison H. S. Cook, 'Transport Planning and Metroplan: Progress or a Missed Opportunity?' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 230.

⁵⁷⁹ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54.

The Metroplan was seen as a pace-making remedy for the Territory Development Strategy, which failed to face the challenges of economic transformation in Hong Kong. It was dominated by economic interests and in particular the needs of trade and the transport industry. As Dimitriou and Cook highlight, social issues took secondary position.⁵⁸⁰ The Plan categorised land-use into six categories:

- (1) Areas needing significant changes, with large-scale redevelopment expected.
- (2) Areas needing selective changes, encouraging most of the existing land-use to be maintained but re-development in selective areas.
- (3) Areas needing limited changes, with only very limited development needed in these areas. Development would be carefully controlled.
- (4) Newly developed areas needing no new development.
- (5) Future development areas, with newly levelled land provided for new development.
- (6) Coastlines and rural areas.

The six categories were not statutory regulations, but guidelines for the construction of infrastructure.⁵⁸¹ They provided information needed by real estate investors. The Metroplan was considered by investors and politicians as a political project trying to save the property industry from bursting its bubble of the late 1980s, although its density guidelines met with opposition from the real estate industry.⁵⁸² One of the plan's main tasks was an overall reduction in urban densities. The population in the metropolitan area was expected to be controlled at under 4.2

⁵⁸⁰ Harry T. Dimitriou and Alison H. S. Cook, 'Transport Planning and Metroplan: Progress or a Missed Opportunity?' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 230.

⁵⁸¹ Yeh Anthony G. O, 'The City Development of Hong Kong toward to the 21st Century: Prospects and Challenges' in Yeung Yue Man (ed), *Urban and Regional Development in China: Toward to the 21st Century* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University Press, Hong Kong 1993) 492.

⁵⁸² Harry T. Dimitriou and Alison H. S. Cook, 'Transport Planning and Metroplan: Progress or a Missed Opportunity?' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 230, 231.

million.⁵⁸³ Other issues, such as housing, recreation, landscape design and tourism, were also addressed by the Plan's creators.⁵⁸⁴

Another overall plan was the Rural Planning and Improvement Strategy. The proposal of the Strategy was approved in 1989, with the whole plan published in 1990. The Rural Planning and Improvement Strategy was a reaction to rapid changes in rural areas. It represented economic restructuring resulting from China's "Open-Up policy in the New Territories. Since the 1960s, several development plans had been designated for the New Territories. The New Territories had played a vital role in the development of new towns and of public housing policy. Statutory plans had been prepared and applied to the areas of new towns, but did not cover most of the rural areas in the New Territories. Affected by the growth of China—Hong Kong trade in the 1980s, agrarian land, fishing pools and grazing farms in rural areas had been transformed into alfresco storages for cargo, building materials, junk yards and lorry parking. Village-style factories, mainly for wood-cutting, rattan works, food processing and garages, were sprawling. However, these rapid changes to the landscape in the New Territories had caused significant environmental issues, such as pollution, floods and safety problems, as well as traffic concerns. In 1987, a study unit organised within the Secretariat was appointed to survey the environmental problems. The task was to propose a plan to improve living conditions in rural areas. The Rural Planning and Improvement Strategy, published in 1990, declared a ten-year plan with HK\$4 billion of public investment. The Strategy set up the following guidelines:

- (1) To set up guidelines for land-use control, pollution control and encouraging efficient use of agrarian land.
- (2) To prevent the threat of flooding.

⁵⁸³ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 12.

⁵⁸⁴ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 47.

- (3) Investment in infrastructure, including inter-city highroads, sanitation and sewage disposal facilities.
- (4) Provision of community facilities.
- (5) Planning low density areas for development expansion.⁵⁸⁵

Reacting to the Rural Planning and Improvement Strategy, four sub-regional plans of The Territory Development Strategy regarding the New Territories were amended and the Rural Area Development Control Guidelines published. According to the Guidelines, designated areas were applied to land-use control, including a Rural Activity Area, Recreation Priority Area, Countryside Conversation Area, and an Area for Open Storage Uses. Villages Layout Plans were prepared covering areas that were originally left out of statutory Outline Zoning Plans.⁵⁸⁶ It was clear that the purpose for setting up areas for Rural Activity and Open Storage Uses was to legalise existing land uses. This was a compromise to the expansion of self-built dwellings and small-size industrial activities. The Rural Planning and Improvement Strategy was an after-the-fact reparation for the out-of-control situation in rural areas.

Reparation work was also undergoing in urban areas. Although urban redevelopment was not principally focused on improving living conditions for inhabitants, it was urgently requested by the trade and transport industries. Several causes put pressure on the government. Firstly, efficient planning in urban areas was needed. The relocation of the international airport attracted a general movement of industrial land use towards the west of Hong Kong, especially Kowloon, Tsuen Wan and Kwai Tsing. The restructuring necessitated by the new labour division between Hong Kong and China was also changing the industrial landscape. Existing developed areas were preferred by industrialists. At the same time, improved environmental legislation created new standards for the design of

⁵⁸⁵ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 15.

⁵⁸⁶ *Ibid.*

industrial uses, including lower density and less intensive land use. These factors increased the land supply demand. With land reclamation reaching its limit in proximity to urban areas, redevelopment was the solution. Redevelopment concerns complicated the degrees of leaseholds, property development rights and the resettlement of accommodation. Hence, state intervention was needed. Secondly, due to the recession, investment in the real estate industry had waned. Given this, public investment in development was expected by the private sector.

The Land Development Corporation was established under the *Land Development Corporation Ordinance* of 1987. The state-owned corporation's participation in the market represented recognition of the failure of the previous "positive non-interventionism" policy.⁵⁸⁷ Using public funds, the establishment of the Land Development Corporation aimed to marry the private sector with the Government's power to resume land use and make joint venture projects more viable as commercial concerns. By 1995, thirty-four projects had been initiated. Five major projects had been published, although one of these was dropped because of strong objections by local residents that had been upheld by the Town Planning Board. According to Cuthbert and Dimitriou, the large areas most in need of redevelopment did not coincide with private interests.⁵⁸⁸ Since only those areas where the locations met the interests of both real estate investors and trade/transport industrialists saw development, these other areas were likely to deteriorate even further. Despite the deteriorating areas in the private sector, the Government tried to carry out the redevelopment of public housing on its own. However, the privatisation process launched in 1991 failed miserably. Only the most desirable public housing in the best locations provided for wealthy tenants

⁵⁸⁷ Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 51.

⁵⁸⁸ Alexander R. Cuthbert and Harry T. Dimitriou, *Redeveloping the 5th Quarter: Practices and Prospects in Hong Kong* (1992) 9(3) *Cities Journal*; Alexander R. Cuthbert, 'Genesis of Land-Use Planning and Urban Development' in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54.

succeeded. Critics argued that the failure of privatisation was actually the net effect of the downgrading of housing.⁵⁸⁹

Redevelopment played a major role in the Metroplan. Although the Government declared that the purpose of redevelopment was to improve communities and provide better living conditions, the developers in actuality had no obligation to resettle original inhabitants. A resettlement arrangement was not the consideration of approvals by the Land Tribunals and the Town Planning Board. When tenants were forced from their original accommodation, most could not afford the high rents in the same area. When the redevelopment authorities adopted interventionism to help the property investors with the support of legal powers, the Housing Department refused to intervene between tenants and developers. According to an investigation in 1991 by the Christian Care for Homeless People, more than 20 per cent of homeless people and 33 per cent of “cage people” were victims of urban regeneration.⁵⁹⁰ As previously noted, the infamous housing problem of a large population of cage people attracted worldwide attention, and was officially condemned by the United Nations in 1991. It had been eighteen years since the launch of one of the largest public housing policies in history put forward by a capitalist state, yet an estimated 200,000 people were living in no better conditions than squatters during the Shek Kip Mei period. This disgraceful phenomenon was exacerbated by the Long-Term Housing Strategy, another large-scale plan launched in 1987 and published by the Housing Branch of the Secretariat.

⁵⁸⁹ Alexander R. Cuthbert, *Genesis of Land-Use Planning and Urban Development*. in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 35, 54.

⁵⁹⁰ Lai Yuen Mei, ‘Behind the Metroplan: Victims of Urban Regeneration’ in Kam Bing Kwong, Chui Wing Taki, Lui Tai Lok, Ip Chiu Ping and Hong Kong People's Council on Public Housing Policy (eds), *Criticism and Comments on Hong Kong Housing Policies* (Joint Publishing, Hong Kong 1996) 106.

The dominant theme of the new governmental housing policy was a new emphasis on the role of the private sector. The government was to resign from the role of being the biggest housing provider and leave this role to the market. The Government stressed its confidence in the property industry that had made a significant contribution to economic growth in the 1970s and early 1980s. The new housing policy was also acknowledged as part of the worldwide trend of neo-liberal ideology.⁵⁹¹ The provision of subsidised loans to help public housing tenants and newcomers in the market to buy flats from the private sector was slated to play an increasing role in housing policy. Another policy involved selling state houses to tenants and using home-ownership schemes in redevelopment programmes. Yet the non-interference policy was not actually adopted in either the new housing programme or in urban renewal projects. In both cases, financial subsidies and legal powers were provided in favour of the developers. In theory, the Government announced an official attitude of respecting a laissez-faire approach, but in reality, interventions were introduced to retain a so called “free market” for property developers. Such interference even included price assessments. Prices lower than potential market values were suggested by the Land Development Corporation and approved by the Tribunals for compensation to original tenants in redevelopment areas,⁵⁹² while overly steep prices were offered to tenants living in private houses, who were encouraged to buy ownership.⁵⁹³ As the largest land owner, the Hong Kong government controlled land use and supplied the floor space. During the recession, it would limit land supply to prevent the property market from collapsing; when the economy was booming, it increased land sales to maximise

⁵⁹¹ Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London 1990) 25.

⁵⁹² Lai Yuen Mei, ‘Behind the Metroplan: Victims of Urban Regeneration’ in Kam Bing Kwong, Chui Wing Taki, Lui Tai Lok, Ip Chiu Ping and Hong Kong People's Council on Public Housing Policy (eds), *Criticism and Comments on Hong Kong Housing Policies* (Joint Publishing, Hong Kong 1996) 107.

⁵⁹³ Alexander R. Cuthbert, *Genesis of Land-Use Planning and Urban Development*. in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 51.

profits.⁵⁹⁴ Given this, the Hong Kong government remained a major player in the property market.

To conclude this section, aided by the contribution of Chinese factor, both politically and economically, the 1980s and the early 1990s in Hong Kong was an era in favour of large-scale plans. These plans responded to the restructuring of Hong Kong's economy, and also reacted to the need for a more locally-representative and accountable political system. Nevertheless, they were dominated by economic interests, particularly the needs of trade, the transport industry and property developers, on the assumption that what was good for industrial interests was also good for common habitants. Big plans led to major spatial developments, including the building of the second channel tunnel, the new Hong Kong International Airport in Chek Lap Kok, the extension of the underground system, the expansion of ports and harbours, and the re-development of some of the main urban areas, including the expansion of the west centre of Hong Kong Island and the development of the west and the north of Kowloon. Hong Kong's urban landscape had been significantly changed.

7.4 Strategy for the new century and the developmentalist state of Hong Kong

7.4.1 The Chinese take over

⁵⁹⁴ Lee Cheuk Ming, 'Private Property Market: The Myth of Non-Intervention Policy' in Kam Bing Kwong, Chui Wing Taki, Lui Tai Lok, Ip Chiu Ping and Hong Kong People's Council on Public Housing Policy (eds), *Criticism and Comments on Hong Kong Housing Policies* (Joint Publishing, Hong Kong 1996) 89.

The Sino-British Joint Declaration, signed in 1984, has profoundly influenced land-use in the recent period. The land issue had been one of the main obstructions during the Sino-British negotiations. Land auctions had been the main financial income of the Hong Kong Government, and contributed 10 to 20 per cent of annual revenue on average. Between 1980 and 1982, the figure had risen to more than 30 per cent.⁵⁹⁵ The Chinese Government wanted to restrain the auctions in the final years of British rule and monitored expenditures. The Annex III: Land Leases was produced as one of the three annexes to the Joint Declaration, focusing on the land issue. Both sides agreed on three principal points. Firstly, from the entry into force of the Joint Declaration until 30th June 1997, new leases of land could be granted by the British Hong Kong Government for terms expiring no later than 30th June 2047, with conditions that after 30th June 1997 leases would require payment of an annual rent equivalent to 3 per cent of the rateable value of the property. Secondly, the total amount of new land to be granted in the transition stage would be limited to 50 hectares a year. Thirdly, the premium income obtained by the British Hong Kong Government from land transactions would be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government would be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The Hong Kong Special Administrative Region Government's share of the premium income would be deposited in banks incorporated in Hong Kong and not drawn on except for the financing of land development and public works, and approved by the joint Land Commission.

According to the Annex, the Land Commission was in charge of monitoring the funds and auctions. Chinese representatives from the Beijing Government joined the administrative land use apparatus. The Joint Declaration limited the provision of new land, but it clarified the statutory status of leases after 1997, especially in the

⁵⁹⁵ Wu Ching-lun, *The Economics of Land Sales in Hong Kong*. Department of Economics (University of Hong Kong, Hong Kong 1986) 61.

New Territories. The concern of property developers about an expected increase in rent after the take-over was also relieved by the Joint Declaration. The Joint Declaration made clear that all leases of land granted or decided upon before the Joint Declaration would see all rights in relation to such leases continue to be recognised and protected by the future Hong Kong Special Administrative Region. Also, all leases granted by the British Hong Kong Government not containing a right of renewal that expired before 30th June 1997, could be extended, if the lessee so wished, for a period expiring no later than 30th June 2047. No additional premium would be added.

The 1997 unification with China changed the formality of the Hong Kong government. On 25th January 1997, the Provisional Legislative Council convened its first meeting in Shenzhen to elect the President, the future Chief Executive. The elections for the first term of the Legislative Council were held on 24th May 1998. Under the *Basic Law*, there were 60 Members in the first term: 20 Members returned by geographical constituencies through direct elections, 10 Members by an Election Committee and 30 Members by functional constituencies. The President would be elected from among the Members. Elections were also held in local districts. Eighteen District Councils were established. The main alteration of the administrative apparatus occurred on 1st July 2002. The Chief Executive proposed a new Accountability System for Principal Officials in his Policy Address. Under the Accountability System, the upper echelon of the Government (the Chief Secretary for Administration, Financial Secretary, Secretary for Justice and all Directors of Bureaux) would no longer be civil servants, but would be appointed on contract terms as Principal Officials.⁵⁹⁶ In the new administrative system, the Secretary of Housing, Planning and Land would become the head of the Housing, Planning and Land Bureau, and would operate under the leadership of the Chief Secretary for Administration. The Bureau would consist of four departments: Building, Planning,

⁵⁹⁶ The Chief Executive announced the principal elements of the Accountability System in an address to the Legislative Council on 17th April 2002.

Lands and Land Registry. The Planning Department was the successor of the old Department established in 1991. It would share the same title, formality and functions as its predecessor under colonial rule.

7.4.2 Planning Vision and Strategy for the New Century

The continuous transformation of planning authorities not only resulted from the change of regime, but also reacted to Mainland China's seeking an expanded role in the world market. In 1990, a comprehensive review of the Territory Development Strategy commenced. Despite the updates in 1986 and 1988, it was the first overall review since publication in 1984.⁵⁹⁷ The technical work of the Territory Development Strategy Review was completed in late 1996, and after some extensive public consultation, the Final Report was endorsed by the Executive Council in 1998. However, some economic parameters resulted in an imminent further review. The 1997 financial turmoil in Asia had devastated economic growth, and China's accession to the World Trade Organisation had been leading international trade in the Zhujiang Delta into a new stage. A new version of the Review, "Hong Kong 2030 Planning Vision and Strategy", was proposed to respond to the main socio-economic issues listed below:

- (1) **Cross-Boundary Interactions:** The socio-economic linkages between Hong Kong and Mainland China had contributed to the dramatic growth of cross-boundary movements of goods and people. According to the Immigration Department's statistics, the number of cross-boundary passengers grew significantly. In 1999, some 4.5 million Hong Kong residents, almost three in every five residents, had travelled across the boundary to the Mainland. They together made a total of 97.1 million trips for various purposes. It was noted that the average annual growth rates of passenger departures and arrivals to

⁵⁹⁷ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 17.

and from the Mainland were respectively about 10 per cent between 1992 and 1999. To facilitate further interaction in economic and social activities, consideration was given to the provision of additional cross-boundary links (e.g. Lok Ma Chau/Sheung Shui Spur Line and Crosslink projects).

- (2) Responses to the Governments economic/industrial development projects: After the shift in sovereignty, the Government established the Commission on Innovation and Technology to promote high value-added and high technology industries, and tourism development. Service industrial upgrade projects were proposed and implemented, including the Cyberport and the International Theme Park (Disney). The Review was expected to assist these economic projects.
- (3) Responses to undergoing planning and spatial development: Those included a number of strategic planning studies such as the Second Railway Development Study, the Third Comprehensive Transport Study and the Urban Renewal Strategy Study. Due to competition from the growing port facilities across the boundary, particularly in Shenzhen, the expansion and new location of port facilities would need to be examined in the Review.⁵⁹⁸

“Hong Kong 2030 Planning Vision and Strategy” was being prepared by the Planning Department. It was meant to provide broad concepts and planning directions that allow Hong Kong planning authorities to get prepared for possible development needs that may arise henceforth.⁵⁹⁹ Some experiences of failure from the previous Review were examined and the new approach adopted. According to the Department, the last review was essentially trend-based and demand-led, with the recommended strategies very much based on the planners own unilateral wishful thinking. Such an approach has been considered inflexible in responding to rapidly changing circumstances. In view of planning uncertainties over the long-term and to provide necessary flexibility, a “development scenarios” approach was applied

⁵⁹⁸ Planning Department, ‘Hong Kong 2030 Planning Vision and Strategy’ (Planning Department, Development Bureau, Hong Kong 2003).

⁵⁹⁹ Ibid. p1.

to the new Strategy. Moreover, response plans would be suggested for changing circumstances. In distinction to the previous Review, the Planning Department suggested that Hong Kong and the Zhujiang Delta Region are, in fact, one single economic entity. Linkages with the Mainland were the main issue of the new Strategy. Hong Kong would be studied in the wider regional perspective in terms of the strategic roles that Hong Kong should and could perform in the Zhujiang Delta region's further development. In addition to the economic relationship, the issue of increasing social interactions between Hong Kong and the Pearl River Delta Region were included, such as housing provision, cross-boundary travel patterns, cross-border commutes, tourism and recreational developments in the Mainland. The review also emphasised the necessity of studying the interface between physical planning in Hong Kong and Shenzhen. The interaction of the Comprehensive Master Plan for Shenzhen, strategic transport links (road and rail) in the Zhujiang Delta Region and the development in the territory would also have to be assessed.⁶⁰⁰

7.4.3 The legislation of Town Planning (Amendment) Ordinance 2004

The existing *Town Planning Ordinance* was first enacted in 1939 and lay largely untouched until 1991. In 1990, the Government published the *Town Planning Amendment Bill*. According to the Bill, the Planning Department was authorised to prepare a statutory plan to be applied in the New Territories, and created to the Interim Development Permission Area Plan for this purpose. It was the statutory representation of the Rural Planning and Improvement Strategy. They both responded to rapid landscape changes in rural areas. The Interim Development Permission Area Plan provided statutory means for land use control to regulate the growing activities resulting from cross border trade, such as open storage, container storage and parking.⁶⁰¹ The preparation of the Interim Development

⁶⁰⁰ *Ibid.*

⁶⁰¹ Planning, Environment and Lands Branch, 'Comprehensive Review of the Town Planning Ordinance: Executive Summary' (Government Secretariat, Hong Kong 1991).

Permission Area Plan met strong opposition from developers and local industrialists.⁶⁰² As a result, the compromised statutory Plan did not seek to “repair” existing land use problems, but allowed the existing uses to be unconditionally legalised. However, new development and industrial activities in the rural areas would need permission from the Planning Department. Density was also stipulated in the Plan.

The Bill was amended and passed in 1991. The 1991 *Town Planning Amendment Ordinance*'s significant changes included the following:

- (1) The *Town Planning Ordinance* would be applied not only to urban areas but to the whole territory of Hong Kong.
- (2) The Town Planning Board was authorised to organise committees (for example, the Metro Planning Committee and the Rural and New Town Planning Committee) to facilitate the preparation of statutory plans and consider planning applications.
- (3) The Town Planning Board was authorised to prepare the Development Permission Area Plan as the statutory plan applied in rural areas.
- (4) The Development Permission Area Plan would be the permanent replacement for the Interim Development Permission Area Plan. The Ordinance also introduced direct enforcement provisions against unauthorised development of land use in Development Permission Areas. This was particularly aimed at the container storage problem because the increase in the numbers of containers deposited on container storage yards in Green Belt Zones without planning permission had caused environmental degradation and problems such as flooding, pollution, traffic congestion, nuisance to nearby residents and damages to the natural environment.⁶⁰³

The Development Permission Area Plan would have the same statutory and

⁶⁰² Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998) 46.

⁶⁰³ Planning Department, 'Enforcement of Unauthorised Developments in the Rural New Territories' (Planning Department, Development Bureau, Hong Kong 2011).

administrative status as the statutory Outline Zoning Plans in urban areas. Ongoing unauthorised developments in the Development Permission Area Plan's applied areas were forbidden from being carried out, according to the legislation.

Under the *Town Planning (Amendment) Ordinance* that came into operation in 1991, the Town Planning Appeal Board was also set up to hear all appeals against the Board's decisions to reject the planning applications upon review. Before 1991, control over development relied mainly on the *Building Ordinance* and leases. The *Town Planning (Amendment) Ordinance* 1991 introduced direct enforcement against unauthorised development in areas covered, or previously covered, by development permission area plans.

Significantly, this new legislation was the first time criminal enforcement had been introduced into town planning, a key factor in terms of jurisprudence in Hong Kong. Enforcement powers to prosecute illegal developments were expected to be applied to the areas of the Outline Zoning Plans and Development Permission Area Plans. High Court Judge Rhind, J. J. confirmed on 21st December 1993 in *Tsei Kwei-king and another; R v. The Attorney General, ex parte (Hct)* that the new Ordinance had overridden the Melhado precedent,

*“within the embrace of the Ordinance by adding a new sub-paragraph (h) to its s.4, but, also, for the first time, gave the Director (of Planning) an array of penal weapons to combat unauthorised development. Moreover the Director was at last given power to prevent the opening up of new container and similar sites by means of adding, as a new paragraph (i) to the same section, zones or districts set apart for use for open storage.”*⁶⁰⁴

⁶⁰⁴ Byrnes, Andrew, Chan Johannes, Edwards, George and Heffernan Ian, Hong Kong Public Law Reports: Volume 4, Part 4, 1994 (Hong Kong University Press, Hong Kong 1996) 686.

Before the introduction of the new Ordinance, the only means of development control applicable to the non-statutory plans covering rural areas in the New Territories was the *Buildings Ordinance (Application to the New Territories)* of 1987. The planning authority had tried to apply the *Planning Ordinance* to rural areas, but were flatly rejected by the Court's ruling of *Attorney-General v. Melhado Investment Ltd* [1983] HKLR 327. In rural areas, building control had been governed merely by implied conditions stipulated in the Crown lease issued by way of block Crown leases. Without statutory plan guidance, the *Building Ordinance* was merely a safety measure. The new legislation nullified the effect of *Attorney-General v. Melhado*, which represented the planning authorities' failed attempt to apply the *Planning Ordinance* into rural areas. Yet despite these legislative changes, the basic structure of land use remained largely un-altered, as did the administrative structure. In accordance with *Town Planning Regulations*, the Town Planning Board might require the Director of Planning to prepare plans or sketches to carry out its functions as laid down in the Ordinance. Headed by the Director of Planning, the Planning Department was still the executive arm of the Board, responsible for formulating, monitoring and reviewing town plans, planning policies and the associated programmes for the physical development of Hong Kong. It dealt with all types of planning at the territorial, sub-regional and district levels, as well as providing services to the Board. The reasons for the un-alteration largely remained. As Cuthbert has suggested, this was due to the fact that public housing remained outside the scope of the Ordinance; the redevelopment still remained a private sector function, financially backed by the Government but independent of planning, and strategic level planning had been somewhat insulated from the planning of the statutory Outline Zoning Plans.⁶⁰⁵ The absence of a system of democratic representation, compensation or appeal against development proposals was still absent in the 1991 Ordinance, although the issue of democratic representation in

⁶⁰⁵ Alexander R. Cuthbert, *Genesis of Land-Use Planning and Urban Development*. in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 52.

planning had been discussed in the context of a much wider debate over electoral reform concerning the 1997 sovereignty shift.

The 1991 alteration initiated a further comprehensive overhauling review of the Ordinance. In July of the same year, the Government published the Consultation Paper, starting a public enquiry for the preparation of a new Ordinance. It was proposed that four categories of disadvantages in the existing planning system should be amended by the Paper. These mainly concerned two points: the statutory powers of direct enforcement over development control and public participation.

- (1) Some amendments were proposed concerning the preparatory procedures for the statutory Outline Zoning Plans, including the following:
 - a) While the Town Planning Board was responsible for the preparation of statutory Plans, it would also judge any opposition to the Plans. The Board would make the final decisions on adopting public opinions. The establishment of a higher level administrative body or an independent committee would be expected to make the final judgement in debates between the Board and the public.
 - b) There would be no time limitation on the public enquiry. The Board would be able to close cases at its convenience.
 - c) Lack of public participation in the process of preparation for the statutory plans. A public enquiry would only be allowed after the preparation.
 - d) Planning application (Section 16 of the Ordinance): Lack of public participation in planning application cases. Public opinions concerning application cases might need to be considered by the approving authority.
- (2) Enforcement of development control:
 - a) The direct enforcement provisions against unauthorised development of land use in Development Permission Areas would not be applied to the rest of the areas in the territory. Legal power to prosecute illegal development would be expected to be applied in areas covered by the Outline Zoning Plans.

- b) The 1991 Ordinance, like the Rural Planning and Improvement Strategy and the Interim Development Permission Area Plan, would tolerate existing unauthorised development in rural areas. A “sunset regulation” would be needed to set up a time limit for those unauthorised industrial activities that existed before the declaration of the Interim Development Permission Area Plan.
 - c) The existing planning system did not have the statutory means of development control. Development control in Hong Kong relied on *Building Ordinance* and leases. In the new Ordinance, developers would be requested to submit a Concept Plan. An approved Planning Certificate by the planning authorities would be required before the application for building permission.
- (3) Other regulations concerning development control: An Environmental Impact Assessment, a conservation and setting up urban design areas would also be considered in the new legislation.⁶⁰⁶

In 1996, the Executive Council published the new planning legislation proposals in the form of a White Bill for public consultation. Most suggestions noted in the 1991 Paper were adopted, with the exception of some minor alterations, such as the main provisions for enforcement actions against unauthorised development. One of the major changes to the proposals in the White Bill was to drop the imprisonment sentence but to increase in the maximum level of fines to provide a stronger deterrent against unauthorised development. Some other specified regulations were proposed by the White Bill, such as a time limitation attached to the Plan Certificate. Any modification to statutory Plans would not affect Plan Concepts and Plan Certificates. Plan Certificates, designated as the prerequisite for applying building permission, had become a developer’s amulet. Other amendments concerned planning control in the New Territories. The proposed time

⁶⁰⁶ Chan Lik-tin and Lo Wai-ming, *An Introduction on Hong Kong City Planning* (Joint Publishing, Hong Kong 1998).

limitation on existing unauthorised development in the rural areas of the New Territories still met strong opposition. The proposal was abandoned by the White Bill. Another proposal abandoned in the Paper was that the direct enforcement provisions against authorised development of land use in Development Permission Areas would not be applied to the other areas of the territory.⁶⁰⁷

During the preparation of the White Bill, despite many suggestions submitted by grass roots organisations, such as Friends of the Earth, the planning authorities' spontaneous consultation only reached building and planning professional and developer organisations.⁶⁰⁸ The parties consulted expressed their main concerns, demanding improvements in the efficiency of the development approval process and more certainty and transparency in the process. They specifically asked for more time limits to be imposed on various steps involved in the procedures and for less Government intervention.⁶⁰⁹ The main concerns focusing on more efficiency and less intervention were adopted in the Bill. *The Town Planning Bill* proposing an overhaul of the statutory planning system was finally gazetted on 21st January 2000 and introduced into the Legislative Council in February 2000. A Bills Committee was formed in early March 2000 to consider the Bill and the public submissions in the Bill. Owing to the complexity of the issues involved, the Bills Committee was not able to complete consideration of the Bill within the last term of the Legislative Council. The Committee was dissolved in May 2000 after nine meetings. According to the Secretary for Planning and Lands, John C Tsang, the planning authorities would consult the main stakeholders on the first batch of amendments and introduce the Amendment Bill to the Legislative Council in early 2003.⁶¹⁰ In the Amendment Bill, the Secretariat wished to expedite the development approval

⁶⁰⁷ Ibid. p58-61.

⁶⁰⁸ Friends of the Earth, *Suggestions on Town Planning Bill* (Hong Kong 1996).

⁶⁰⁹ The Real Estate Developers Association, *Comments of the Real Estate Developers Association of Hong Kong on the Town Planning Bill* (Hong Kong 2000).

⁶¹⁰ John Chun-wah Tsang, *Speech on Town Planning (Amendment) Bill on 18th February 2002* (Hong Kong).

process by exempting the need for planning permission from certain minor amendments to approved development schemes, and by enabling further delegation of powers and functions of the Town Planning Board.

In theory, greater public involvement and a more open planning process allowing applications for amendments to statutory plans were still to be promoted. However, a reasonable balance between public participation and efficiency was expected to be achieved by simplifying the statutory procedures for resolving objections to a draft plan, and by substantially shortening the processing time. Enforcement control against unauthorised development in rural areas would also be expected.⁶¹¹ The *Town Planning (Amendment) Bill* was eventually introduced into the Legislative Council in May 2003. The proposal emphasised that the main objectives of the amendment bill were to streamline the plan-making process and planning approval procedures, enhance the openness and transparency of the planning system, and strengthen planning enforcement control in the rural New Territories. The amendment bill was subsequently passed by the Council on 7th July 2004. The *Town Planning (Amendment) Ordinance 2004* was then gazetted on 23rd July 2004. The Amendment Ordinance came into operation in June 2005. From the publication of the Amendment's embryo, the White Bill on Town Planning to the Amendment's coming into force, it had taken 10 years. The legislation had come through various stages of public consultation and was seen as a milestone in Hong Kong's planning history in terms of public participation.⁶¹² Though its effort to increase the transparency of urban planning was emphasised, the urge for opening up all the Town Planning Board meetings for public attendance was not adopted in the Amendment Ordinance.⁶¹³

⁶¹¹ Ibid.

⁶¹² Bosco C. K. Fung, *New Planning System under Town Planning Ordinance (Amendment) 2004*: Speech by Bosco C. K. Fung, JP, Director of Planning on 5th July 2005.

⁶¹³ In September 2003, the Hong Kong Institute of Planners publicly urged the Hong Kong Government to open up all meetings to the public. The institute argued that it would be the most effective way to strengthen the public trust in the planning system and promote transparency in decision-making by the government. See Hong Kong Institute of Planners, *HKIP's Position on Town Planning (Amendment) Bill 2003*. September 2003.

Before the passing of the Amendment, being the highest decision making mechanism, the Town Planning Board was often criticised for being dominated by the administrative bureaucracy and affiliated with property developers and conglomerates.⁶¹⁴ However, the legislation of *Town Planning (Amendment) Ordinance 2004* did not change the characteristics of the Board. In its current form, it still resembles the Legislative Council before democratisation: though most members are non-official members from various sectors of society, they are appointed by the Chief Executive. Without further provisions to ensure independence in fulfilling duties and exercising power, the appointees are naturally biased towards the proposals favouring the government and seldom challenge the administrative authorities. Non-official members occasionally speak for their own special interests but since they are a political affiliation to the government they do not have to face accountability for their actions.⁶¹⁵

In short, planning ordinance reform across the 1990s and early years of 2000s was merely a reform of technical planning matters and the applied procedure; it did not fundamentally change the structure of decision making power. The city state of Hong Kong, consisting mainly of English-speaking government officials, entrepreneurs and developers, had no intention of sharing their power with the grass-roots.

⁶¹⁴ Members of the Board are appointed by the Chief Executive. In 2000, of 45 members, 23 were representatives of the development and construction industries. See *Ming Pao Daily News*, 15th September 2012.

⁶¹⁵ In July 2014, having purchased around 80,000 square feet of land in the district she oversaw, Anita Lam, assistant director of the Lands Department, went on to apply for permission to put up a new building there. The land was next to a site planned for a new town and the information was confidential. Lam's application was granted by the Town Planning Board, more than doubling the land's total floor space. While the impropriety was questioned by a member of the Board, the then chairperson, Director of Planning Department Ling K. K., refuted the question. The case was one of the cases that aroused suspicions of cronyism and the backroom operations of the Board's practices. See *Ming Pao Daily News*, 8th August 2014.

7.5 Zoning in perspective: A comparison of Taiwan and Hong Kong

In Hong Kong and Taiwan, zoning is crucial to detailed urban plans in both areas' town planning systems. It permits and prohibits land uses, and specifies a variety of outright and conditional uses of land. Thus in this section, I wish to further explore the discussion on zoning, and to compare its practice in Hong Kong and Taiwan.

Zoning in Hong Kong was introduced in 1922 as part of the planning permission mechanism and zoning regulations codified in statutory plans, the Outline Zoning Plan.⁶¹⁶ An Outline Zoning Plan in law has two parts: a zoning map and a set of annotated Notes that stipulate land uses permitted in a designated zone and uses that may be permitted with or without conditions in the application to the Town Planning Board. Uses always permitted belong in Column 1 in a statutory plan, and uses that may be permitted belong to Column 2. While uses in Column 1 are stipulated as a development right, the uses of the latter require planning permission. The enactment of Column 2 for zoning in Hong Kong has led to a flexible approach in the way in which zoning plans have been applied to particular developments. The Hong Kong zoning shows characteristics of decision-making flexibility, on a case by case basis, involving departmental discretion, with executive power belonging to the Town Planning Board and conferred by law. Furthermore, the amendment legislation to the *Town Planning Ordinance* in 1991 empowered the planning authorities with further discretions. A Development Permission Area was introduced specifically for rural areas in New Territories, whilst zoning with regulations on use classes (Uses of Column 1 and Column 2) was used in the same way as a statutory Outline Zoning Plan. According to Philip Booth, the desire to establish discretionary powers emanated from the tradition

⁶¹⁶ Though leasehold system, regarded as a "zoning by contract" system, has established land use zoning in Hong Kong since 1842, the first statutory Outline Zoning Plan in Hong Kong, Outline Zoning Plan of Kowloon City, was published in 1922 but not implemented until its 1941 revision was approved. Lawrence Wai-Chung Lai, 'Planning by Contract: Two Dialogues' in Emanuel Anderson and Stefano Moroni (eds) *Cities and Private Planning: Property Rights and Entrepreneurship and Transactions* (Edward Elgar Publishing 2014) 137.

of administration in Hong Kong that remains a derivative of British practice.⁶¹⁷ The British planning system remains a point of reference for the planning profession in Hong Kong. In addition, zoning concerns development rights. Outline Zoning Plans identify uses as of right and thus land value is protected. The certainty of land use plans stipulated by statutory detailed plans is essential to the prosperity of the land market and maintains constant contributions to government revenue streams.

Zoning is central to detailed urban planning in both Hong Kong and Taiwan's systems. As the universal measure of subdividing geographical space for the purpose of development control, zoning in Taiwan thus separates utilisations of land and activities according to the statutory coloured map, rather than being subject to more detailed case-by-case development control procedures as in Britain and Hong Kong. Tight regulations are imposed by zoning in urban areas. Zoning in the Taiwanese planning system, including the early practice of Chinese urban planning and Japanese practice, was originally introduced as a systematic means for protecting the residential properties of the ruling classes and claiming land for government bodies. The intention of zoning concerned enhancing order, safety and health in cities. A modern zoning system is supposed to be developed in accordance with a comprehensive plan, but few of the earliest zoning practices were implemented in the absence of a master plan. Zoning was presented as part of a rational planning process to meet the purposes of public health, safety, convenience and order, but in fact had been carried out as a process of urban policing by banishing undesired or disorderly social phenomena from protected areas.

Often, zoning has been an exercise in policing power, manifesting the inherent power of a colonial state to regulate the health, welfare and safety of the community of colonists. In the post-war era of implementing urban plans, zoning powers were extended to standards for the plot ratio, floor space, height and density of buildings.

⁶¹⁷ Philip Booth, *Controlling Development: Certainty and Discretion in Europe, the USA and Hong Kong* (UCL Press, London 1996) 131.

Zoning, being the provision of separating urban activities, became the land use element of an urban plan. The aim was for zoning practices to secure orderly and stable development and to protect city wealth and residential property values. Development on urban fringes was also to be managed.

However, a lack of discretion is the main feature of the Taiwanese zoning system. An individual public officer of a planning or building authority is not authorised to make his own judgment on a particular development case. The officer cannot impose conditions on the case. Once zoning is set, development rights are protected by the zoning scheme in an urban plan, with administrative powers over planning constrained by regulations and the plan. Nevertheless, since the Zoning Section of the *Enforcement Rules of Urban Planning Act (Taiwan Province) 1976* contains the universal directives covering all urban plans in Taiwan (with the exception of municipalities such as Taipei City and Kaohsiung City), local government planning authorities are not allowed to develop their own regulations on zoning use classes. Local governments, including county governments and town offices, have been reduced to being merely central government agents. Outside the areas covered by urban plans, the Development Permission system was established for the development of non-urban areas, even though no discretion was given to the planning officers to make decisions on a particular case. As long as private sector developments meet the zoning control criteria and requirements, they automatically obtain development permission without any other specific condition being demanded. Hence, the “Development Permission” system is not exactly a system of planning permission, but merely rigid zoning control.

Tight regulations and rigid control do not necessarily mean effective management. The reality of over-urbanisation in Taiwan tells a completely different story. The common characteristic of Taiwanese cities is mixed use development in almost every inch and every corner of urban areas. Most residential zones are full of commercial activities, crowded and noisy. The zoning system has failed to control urban

expansion. Suburban areas have become high density dormitory cities and in some cases such as Taipei metropolitan region, “American dream”-style suburban residential areas which are supposed to grow at a reasonable rate have higher densities than Taipei city. Meanwhile, zoning has been seen by developers and medium-to-small size companies as a rigid system without flexibility, which restrains the development of commercial activities. Businessmen with small-sized barber shops, guest houses, cram schools, nurseries and cafés have petitioned for a zoning system with a more flexible approach. Between 1993 and 1995, associations of these trades in Taipei collectively complained that they would not be able to survive if the city authorities were serious about clamping- down on building or zoning violations, as there was no way of finding an affordable place that was 100 per cent legal in accordance with zoning regulations.⁶¹⁸

In other words, a good living environment is not guaranteed by enacting the original zoning design. Zoning in Taiwan has been defeated in many ways. It failed to reasonably manage urban growth, and it had to surrender to the high-density area activities’ invasion of lower density zones. In order to face the reality, zoning use classes have been regularly adjusted, with trades and activities in commercial zones allowed to remain in certain residential zones, and designated characters of an existing residential or business zone unable to be preserved (i.e. upzoning). Even though mixed-use activities are allowed in most residential and commercial zones, zoning code and building regulation violation are a common phenomenon in Taiwanese urban areas.⁶¹⁹ Furthermore, upzoning in Taiwan has led to land speculation opportunities.⁶²⁰ In contrast to the introduction of Simplified Planning Zones and Enterprise Zones in Britain, which aim to stimulate development and

⁶¹⁸ Shih Wei-chuan, ‘The Zoning System Devastated Taipei City. *New Parliament Magazine*’ (December 1994) Taipei.

⁶¹⁹ This will be further discussed in the next chapter.

⁶²⁰ As previously discussed in Chapter 5.

reduce the burden of obtaining planning permission for an enterprise,⁶²¹ Taiwanese zoning has become highly inconvenient. Likewise, in contrast to the enactment of zoning in Hong Kong, which led to a flexible development control approach, Taiwanese zoning has been criticised for tight regulations and rigid control, and only having a slight effect on urban management. Though planners and public servants in Hong Kong have more room for discretion when implementing zoning than their counterparts in Taiwan, the nature of zoning remains the same: administrative powers policing urban development. There is no difference in the fundamental principles for both sides as regards advocating the ideology of public interest.

7.6 Conclusion: The developers' state

By reviewing the evolution of town planning in Hong Kong and related legislation, one can see that the Hong Kong government has been the main developer in the property market whilst also being the largest land owner. The government has created one of the largest scale public housing situations in the capitalist world, but acts more like a commodity provider with a greater belief in the property market and private sector than in a social welfare state. It has served the interests of property developers whilst itself being a main player in the market. It is a developmentalist state. In terms of McAuslan's ideologies, while the Hong Kong government implements statutory town planning in the name of the public interest, its core value stands with the ideology of private property rights. Nevertheless, the collective consumption provision, including the development of new territories, new towns and new housing, has been a crucial component of the expanded reproduction of Hong Kong's capitalism. Being a developmentalist state, which frequently acts as a main developer itself, the Hong

⁶²¹ Regarding British zoning, please see Keith Thomas, *Development Control: Principles and Practice* (UCL Press, London 1997) 88, 94.

Kong government has from time to time had to respond to society's call for change, even though it has never been a democratically-elected governing body.

As previously noted in this thesis, the Hong Kong economy began to grow at an average GDP of 10 per cent from 1961 over the following twenty years. Between 1960–1970, manufacturing output rose by 275 per cent and labour productivity by 207 per cent. However, the manufacturing wage index only rose by 71.5 per cent.⁶²² Accompanying the rapid wealth growth, the number of squatters doubled from 300,000 in 1954 to 600,000 in 1964.⁶²³ Social disturbances and riots in the 1960s reflected this social injustice. While some argued that the origins of the riots lay in the Chinese Cultural Revolution, I contend that these social movements were actually spontaneous and issue-driven.⁶²⁴ The era of localised politics was born in Hong Kong.⁶²⁵ During the same years, Urban Council elections had become the most important channel for the political participation of the rising new generation of the middle class. In 1961, the Chinese Reform Club and the Hong Kong Civil Association joined forces for the purpose of contesting Urban Council elections with a common platform urging constitutional reform and demanding more seats for elected political representatives on both the Legislative Council and Urban Council. Though the political reform did not represent the interests of the majority of Chinese-speaking people, but only the English-educated and most influential sections of society, it had the advantage of enabling some residents to undertake public administrative work.⁶²⁶

⁶²² J. Halliday, 'Hong Kong: Britain's Chinese Colony' (1974) 87/88 *New Left Review*, London; Alexander R. Cuthbert, *Genesis of Land-Use Planning and Urban Development*. in Harry T. Dimitriou and Alison H. S. Cook (eds), *Land-Use/Transport Planning in Hong Kong: The End of an Era* (Hants: Ashgate Publishing, Surrey 1998) 42, 43.

⁶²³ Drakakis-Smith, David, *High Society: Housing Provision in Metropolitan Hong Kong 1954 to 1979* (Centre of Asian Studies, University of Hong Kong, Hong Kong 1979).

⁶²⁴ Ian. Scott, *Political Change and the Crisis of Legitimacy in Hong Kong* (C. Hurst & Co. Publishers, London 1989).

⁶²⁵ Tai-Lok Lui and Stephen W.K. Chiu, 'Social Movements and Public Discourse on Politics' in Ngo Tak-Wing (ed), *Hong Kong's History: State and Society under Colonial Rule* (Routledge, London 1999) 101, 118.

⁶²⁶ G.B. Endacott, *Government and People in Hong Kong, 1841-1962: A Constitutional History* (Hong Kong University Press, Hong Kong 1964) 207.

Responding to the needs of the new bourgeoisie who could now collectively voice their wishes in the political arena and demand improvements in the infrastructure to meet economic growth, it also responded to the spontaneous political campaigns participated in by under-represented people demanding public services, with long term urban development plans being initiated.

Concerning planning, the city state of Hong Kong placed significant emphasis on fiscal costs and financial returns when formulating and implementing urban policies. As a result, social and environment factors were often underestimated. The authorities were either insensitive or reluctant to acknowledge the potential problems of the development process until they were out of control. Reactive crisis management became the norm. Sometimes, planning was merely an after-the-fact reparation. As previously discussed, the resettlement schemes and extension of the statutory planning system to the New Territories are specific cases in point. The reluctance was not a result of respecting the free market, nor the consequence of unresponsiveness to meet the needs of private interests. Contrary to their supposed non-intervention ideology, the government was anxious to ensure continued prosperity, which was associated with land development by creating the conditions under which development could take place to the best advantage.

Responding to these economic development needs, planning helped reduce labour costs and provided flatted factories for manufacturers. Public housing begun in the first half of the last century paved the way and cleared the obstacles for property developers. The privatised housing programme started in the 1980s was another financial incentive scheme supporting the private sector. Public housing tenants were evicted because of developments, but compensated for less than market value. Some were asked to apply for a mortgage so they could stay after the privatisation of the settlement where they lived. The prices were assessed and determined by the government, on behalf of and in favour of the developers. The stories associated with the privatisation era of the 1980s are similar to those in the public housing era in the

1950s: tenants had to bear more financial burdens in order to stay or had to move away to a more remote location.

Planning in Hong Kong has been pursued primarily for the benefits of property development or fiscal objectives, rather than social welfare. This approach has left its footprints in the changing Hong Kong landscape. Satellite towns were constructed in the 1960s and 1970s to settle the urban poor so that development could be implemented in the old settlements. In the 1990s, developers were encouraged to come back to the city. The private sector took over public housing and invested in its regeneration. Gentrification came along with privatisation and a new generation of urban poor who had to leave the city. In the New Territories, the government did not take any action to arrest the degrading environment until 1991. Building and planning violations had been tolerated so that low cost and flexibility in Hong Kong's manufacturing and transportation bases could be maintained to compete in the economic integration of Hong Kong and Southern China. The changes to the landscape in urban areas, new towns and the rest of the New Territories were not the result of "natural evolution" driven by economic forces. The state, often serving the interests of property development, played an active role in the process. Decision-making on planning matters was made by a governing elite that represented property developers' interests, rather than planners whose ideals originated from their commitment to professionalism. The ideology of public interest was upheld alongside the ideology of private property, together vying for prominence against McAuslan's third ideology, the ideology of public participation. In the case of Hong Kong, the latest planning ordinance reform has not fundamentally changed the decision-making power structure and reflects the fact that public participation has continued to be side-lined.

Introduction

In the previous chapters of this thesis, through the reviewing of planning legislation and the implementation of urban planning in both Hong Kong and Taiwan, interventions by states can be seen within the realm of urbanisation. Nevertheless, state intention does not guarantee the continuation of urban policies. While a 'public interest' ideology is proclaimed, development control in Taiwan and Hong Kong has met various kinds of resistance, as discussed in previous chapters of this thesis. One kind is disobedience. By violating building codes and development control regulations, property owners and users challenge the administration's urban policing. Though 'property rights' ideology is defeated in the arena of administrative laws it appears in the form of guerrilla rebellion. This chapter therefore will focus on the violations of development controls.

This chapter focuses on illegal buildings constructed under the urbanisation of Hong Kong and Taiwan, with the 'informal sector' concept also introduced to review the appearance and demolition of illegal buildings and related laws. The impact on the planning system created by illegal buildings will also be examined. I aim to point out that, though it looks like a rebellion against the establishment, the existence of illegal buildings in reality eases the administrative state's crisis of legitimacy, the financial burden of city administrations but primarily supports the growth and development of cities. While illegal buildings challenge the development control of the planning authorities, they are also essential to urban development. They can be seen, neither as side effects of urbanisation nor as the periphery of cities. I will also point out that in response to the challenge, laws and regulations, in practice, can be arbitrary and fluid. The definition of legality is not always straightforward. Violations can be tolerated and even considered legal when governments do not have enforcement capabilities. Government enforcement, on a large scale, can also result in social unrest

that endangers the political legitimacy of the government as a whole. Cases in either Hong Kong or Taiwan will be reviewed to support the above argument in the following sections.

8.1 Building violations and clearance in Taiwan

This section introduces the phenomena of building violations which can be quite commonly seen in Taiwan to discuss how legal violation can be accepted when the government had to rely on illegal building to ease the burden of a housing crisis.

In Taiwan, despite the efforts to re-distribute land rights and implement urban planning, the enforcement of building violations became the main task of planning authorities in the 1950s and early 1960s.⁶²⁷ Urbanisation and the shortage of housing supply were the causes of the increasing flourishing of illegal buildings, in the form of annexes being illegally added or rooftop constructions lacking a building license. For the influx of migrants from Mainland China, small scale temporary housing was built by government departments to accommodate employees and their families who were mostly Mainlanders. According to the 1954 report submitted by the Inspection Group, Ministry of Interior,⁶²⁸ departmental temporary residential units were raised mostly on vacant plots surrounding government buildings in cities. There had not been large scale slums with populations of tens of thousands in Taiwan before, even though a few unofficial military quarters had populations in the thousands. These were built by military veterans and their families on occupied land designated for parks in Taipei City and upon land reserved for public facilities in towns and the countryside. In the 1950s, military tensions still existed between Taiwan and Mainland China, with high

⁶²⁷ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, 1993) 45, 49.

⁶²⁸ Ministry of Interior, 'Report: Reviews of Urban Construction and City Affairs in Taiwan Province' (Inspection Group, Ministry of Interior, Taipei, 1954).

density living conditions appearing close to government department buildings seen as a huge disadvantage in a war effort. Air raid and evacuation plans were the driving force that pushed forward the delegated legislation on building controls and building violation enforcement. The strict regulations on building violations were actually initiated right after the Second World War. In 1945, the *Temporary Regulations on Building Violations Ban* was announced by the Taiwan Governor's Office. It was the first building violations regulation introduced in Taiwan by the Chinese Nationalist government.⁶²⁹ In 1949, Taipei City Government announced an assurance that it would clamp down on building violations. In 1953, its Public Works Department and Police Department jointly set up a task force, the Building Violations Demolition Brigade, to implement the clamp down. In 1954, the Taipei City Government and the Taipei Defence Command jointly announced a project to widen eleven main roads and demolish illegal buildings on those roads. In June of the following year, eight hundred illegal buildings on Roosevelt Road were demolished.⁶³⁰ The policy enforcing demolition met severe resistance. The Nationalist Party's propaganda machine, the *Central Daily*, reported members of military personnel, veterans and their families fighting against the police and military police, reporting cases of people being serious injured and suicides carried out by the inhabitants.⁶³¹

In 1956, detailed stipulations were announced by the Ministry of Interior as *Principles for Managing Building Violations*. Other regulations were also published as parts of the *Directions for Implementing Urban Plans* in the same year by the Ministry of Interior. According to the above statutory instruments, the prohibition of new buildings and constructions was applied to certain inner city areas in nine cities. Meanwhile, local governments were ordered to clamp down on building violations. The operation of demolishing illegal buildings was executed by the 'Building Violations

⁶²⁹ Yang Yu-fu, *Taiwan's Housing Policies* (PhD Thesis, Graduate School of Civil Engineering, National Taiwan University, Taipei, 1991).

⁶³⁰ Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, 1993) 49.

⁶³¹ *Central Daily*, 8th December 1954.

Demolition Brigades' and headed by police authorities. Military police would assist when the demolition involved military employees or veterans' accommodation. Priority was targeted at areas crucial for military defence: main routes/roads for transportation and evacuation, bridges of military strategic importance, and areas where defence lines were located. Between 1957 and 1965, efforts regulating urban growth continued. Several regulations and amendments were introduced in order to enhance the work on regulating buildings.⁶³² In 1968, a national survey on building violations was conducted, and, in doing so, the government sought once again to deal with the problem.⁶³³

The government's assurances did not resolve building violations, however. Instead of carrying out the clamp-down and demolitions, the policy u-turned more than once. The first U-turn happened in 1957 after the introduction of the 1956 *Principles for Managing Building Violation* when Executive Yuan announced *Regulations on Building Violations*. Illegal buildings constructed before 10 February 1958 would be classified as old violations, with new violations after that day being demolished as soon as they were reported. Concerning so-called old violations, they were still illegal and would be dealt later, but they were not deemed a priority. This meant that the existence of old illegal buildings would be tolerated and that demolition would not be carried out, even when reported. Old violations were not legalised in law but were legal in reality. In Taipei, on 22nd June 1958, the *Central Daily* reported that the city authorities were "finished the task of setting priorities by classifying twenty thousand and some illegal buildings." After that, between 1959 and 1960, four large-scale operations

⁶³² Including:

1957 *Enforcement Regulations on Building Violations*.

1959 *Regulations on Repairing Old Building Violations (Taipei)*.

1962 *Enforcement Regulations on Building Violations Amendment*.

1964 *Enforcement Regulations on Building Violations Amendment*.

1965 The Clearance Plan of Building Violations in Taipei for the Next Three year.

⁶³³ According to Police Department, Taiwan Provincial Government, between 11th February 1958 and the end of August 1968, there were 54,650 newly built illegal buildings in Taiwan province (not including Taipei City), with 71.8 per cent of them being demolished (Central News Agency, 24th November 1968).

demolishing illegal buildings on main streets were carried out. Between 1961 and 1964, at least two thousand illegal buildings were demolished by five big operations. Statistics show that the demolition operations did not suppress the increase in building violations. The number of illegal buildings in 1961 remained similar to 1958. In 1964, there were 72,056 households, consisting of 292,894 persons living in illegal buildings, representing 28.13 per cent of the whole city population. The total floor space of illegal buildings accounted for only 6.25 per cent of floor space for all buildings in Taipei, meaning that the habitants in illegal buildings endured more crowded living conditions.⁶³⁴ In Taiwan Province, the 1968 survey caused serious concern to provincial congressmen over the government's demolition of illegal buildings, arguing that the authorities should not "*damage common people's livelihood.*"⁶³⁵ In response, an official from Taiwan Provincial Government announced that there were 33,507 illegal buildings that had not interfered with the implementation of city plans and not endangered either public security or traffic infrastructure that should be legalised.⁶³⁶

One of the main groups relying on illegal buildings was military veterans and their families. In the 1950s, almost a third of soldiers in Chiang Kai-shek's army were forced to retire. Before Taiwan lift its ban on travel to mainland China in 1987, Communication between the two sides of Taiwan Straits was strictly prohibited. Displaced Mainland veterans had to make a living in a society alien to them, a form of demobilisation quite different from the usual sense of discharged soldiers returning to their homes. Some ex-service personnel settled for the arrangement of Veterans' Farms or the Veterans Engineering Department, with the rest having to find their own way to survive in Taiwanese society with a lump sum pension of merely six months'

⁶³⁴ Taipei City Government, 'Report: Illegal Buildings in Taipei City' (Taipei City Government, Taipei, 1964); Chang Jing-sen, *Taiwanese Urban Planning: 1895-1988* (Institute for National Policy Research, Chang Yung-fa Foundation, 1993) 46, 53.

⁶³⁵ Provincial Congressman Wang Guo-sho, Chen Ken-tu, Chen Chin-chun and Wang An-shun all raised the issue during question time on 5th June 1969 (United Daily News, 6th June 1969).

⁶³⁶ United Daily News, 6th June 1969.

salary or less.⁶³⁷ According to field studies by Lu Bing-yi and Chen Yong-long, and Huang Sun-chuan, when veterans gave up hope of returning to their homes in Mainland China, they gradually settled down in local society and got married to local women, mostly from the Taiwanese countryside out of relative poverty. The marital combination of disadvantaged minorities from different ethnicities led to the expansion of illegal building quarters and an increasing number of building violations.⁶³⁸ Various waves of migrants from the countryside also contributed to the scarcity of housing. Some stayed with their relatives or employers in the city in makeshift annexes, lofts and rooftop structures. Some squeezed themselves in clustered areas in illegal buildings, with Taiwanese migrants from the countryside living alongside migrants from the Mainland China. Military veterans starting their own families was also a factor that resulted in over-crowded living conditions in illegal buildings' clustered quarters and the increase in building violations in the 1960s. Similar to what happened in the late 1950s and early 1960s, the enforcement of the clearances did not solve the issue of building violations, with building regulations defeated by the reality. After the policy on clearing illegal buildings u-turned in 1957 when old violations were "tolerated", the same compromise was repeated three more times. The definition of old violations was re-drawn in 1968, 1984 and 1996. After the surrender of building regulations and enforcement, most of the new violations that 'required' clearing had eventually also become "tolerated violations". Regulations governing building and development have consistently been arbitrary and fluid in practice.

To conclude this section, in the case of Taiwan, the phenomena of building violation shows that the definition of legality is not always straightforward. Laws and

⁶³⁷ Fan Yu-Wen, 'From Soldiers to Farmers: The Settlement of Mainland Chinese Veterans in Taiwan (1954-1989)' (2008) 60 *Bulletin of the Institute of Modern History Academia Sinica* (Institute of Modern History, Academia Sinica, Taipei) 127, 168.

⁶³⁸ Chen Yon-Ion and Lu Ping-I, *Treasure Hill: A Culture Study on Socio-Spatial Relations of a Squatter Settlement and its Historical Development* (Department of Civil Engineering, National University of Taiwan, Taipei, 1988). Huang Sun-chuan, *Green Bulldozer: The Squatter Parks, Nature, Estate and Institutionalised Landscape in the 90s in Taipei* (MSc. Dissertation, Graduate Institute of Building and Planning, National Taiwan University, 1997).

regulations can be arbitrary and fluid. The pressure of housing justice, providing reasonable price private housing or public housing, led to a situation in which the state had to tolerate building violation, even through the legalisation of such violations. In the case of Taiwan, the housing crisis caused more damage to the government's ruling legitimacy than the state's failing to maintain law and order in building control.

8.2 Slum clearance and planning in Hong Kong

This section addresses the cases of laws that govern development control in Hong Kong, arguing that they can be understood as arbitrary and fluid here too. This section also introduces a series of legislation passed in the 1950s that gave the planning authorities power to implement slum clearance and resettlement.

1953 was eventful in terms of urban development in Hong Kong. Research into Hong Kong's urban problems argues that modern public housing schemes in Hong Kong started in that year as if it were a Christmas tale. On Christmas Eve, a fire devastated the Shek Kip Mei squatter settlement in North Kowloon. 50,000 people were made homeless overnight. To cope with this emergency, a resettlement programme was required.⁶³⁹ Before 1954, housing provisions mainly relied on the market. The Government's non-intervention policy had expected that the property industry would provide for housing needs.⁶⁴⁰ Although the Hong Kong Government had not implemented a substantial concrete public housing policy until the Shek Kip Mei great

⁶³⁹ Lee Sze Ming and Yu Fu Lai, *Studies on Hong Kong Urban Questions* (The Commercial Press, Hong Kong, 1987); Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press 1984); Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London, 1990).

⁶⁴⁰ Yeh Anthony G. O., 'The City Development of Hong Kong toward to the 21st Century: Prospects and Challenges' in Yeung Yue Man (ed), *Urban and Regional Development in China: Toward to the 21st Century* (Hong Kong Institute of Asia-Pacific Studies, The Chinese University Press, Hong Kong, 1993) 479.

fire, there had been some settlements designated for deprived people from slum clearances before and after the Second World War. The earliest slum clearances started as a government reaction to social instability. In the 1920s, a series of mass strikes challenged British dominance. In November 1921, the Seamen's Union demanded a pay rise to catch up with the economic inflation rate and close the gap between Chinese and Non-Chinese seamen, given the latter received much higher wages. The breakdown of the negotiation resulted in a huge general strike in 1922, with a revolt against foreign domination sweeping through Hong Kong and Canton (Guangdong). The armed militia of the union enforced the strike and blockaded food supplies by sea and rail. Cooks, bakers, "coolies" and servants joined the strike too, with the support of their Chinese relations in Canton. The *Order of Martial Law* was announced and the strike lasted fifty six days. In 1925 and 1926, a larger scale general strike lasted sixteen months in Hong Kong, begun as a response to the Shanghai Incident on 30th May. A Chinese Union leader was shot dead by a British police officer in the Shanghai Settlement. The upheaval escalated when a demonstration of over 200,000 protestors were confronted by British troops from Hong Kong who fired indiscriminately on the Chinese. Hong Kong's economy quickly deteriorated because of the strike. Negotiations went on and resulted in a wage increase, improved working conditions, the formation of the Labour Advisory Board and the establishment of a Secretary for Chinese Affairs in 1928.⁶⁴¹ Faced with social instability, the colonial regime maintained its alliance with Chinese elites and failed to tackle the social conflicts between the lower classes and the ruling alliance.⁶⁴²

Social policies were needed to smooth the tension between residents and the colonial city state. In 1935, the idea of social housing was introduced as part of social welfare schemes to tackle the hardship of the lower classes. In 1935, the Housing Commission was set up to investigate housing difficulties and unhygienic conditions. The Report

⁶⁴¹ Linda Butenhoff, *Social Movements and Political Reform in Hong Kong* (Greenwood Publishing Group, Santa Barbara, 1999).

⁶⁴² Choi Wing-Fong, *The History of Hong Kong People: 1841-1945* (Oxford University Press, Hong Kong, 2001); Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

was published in 1938 and focused on over-crowding standards, building control violations and slum clearances. Nevertheless, the Housing Commission Report⁶⁴³ documented that it was impossible to rely on the private sector to provide housing for the lower classes. The state was forced to discard its laissez faire policy and intervene in the provision of housing.⁶⁴⁴ The public housing policy met some resistance. The Financial Secretary refused to provide funding and preferred high density designs using cheap building materials and low standards. Opposition also came from the Chinese elites. Lo Man-Kam, a member of the Legislative Council, urged a solution to the housing problem by simplifying and speeding up land lease renewal and land sales so that private developers would be encouraged to build more housing units.⁶⁴⁵ Later, the Civil War between the Chinese Nationalist Party and Chinese Communist Party on the Mainland resulted in two large scale immigration waves between 1945-1947 and 1949-1952 that brought over one million refugees who set up sheds and huts on hillsides and roof tops. Concern for potential fires, natural diseases and public disorder saw the Resettlement Division set up under the Urban Service Department to clear the slums.⁶⁴⁶ Nevertheless, as Castells and Smart suggest, development and housing in the private sector was one of the major causes that pushed the massive eviction of tenement dwellers. Private development needed the government to clear land to meet the increasing housing demand.⁶⁴⁷ Squatter areas were mostly located on the periphery of urban built-up areas and were forced to be re-located in more peripheral locations when the first squatters were cleared from central areas.

⁶⁴³ Housing Commission, 'Housing Commission Report' (Hong Kong, 1938).

⁶⁴⁴ Leo F. Goodstadt, *Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong* (Hong Kong University Press, Hong Kong, 2009).

⁶⁴⁵ Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

⁶⁴⁶ D. Podmore, 'The Population of Hong Kong' in H. Hopkins (ed), *Hong Kong: The Industrial Colony* (Oxford University Press, Hong Kong, 1971) 21, 54; Choi Ching-Yan and Chan Ying-Keung, 'Housing Development and Housing Policy in Hong Kong' in Tzong-biau Lin, Rance Pui-Leung Lee and Udo Ernst Simonis (eds), *Hong Kong: Economic, Social and Political Studies in Development* (M. E. Sharpe Incorporated, New York, 1979) 184.

⁶⁴⁷ Manuel Castells, Lee Goh and R. Yin-Wang Kwok, *The Shek Kip Mei Syndrome: Economic Development and Public Housing in Hong Kong and Singapore* (Pion Limited, London, 1990); Alan Smart, *Making Room: Squatter Clearance in Hong Kong* (Hong Kong University Press, Hong Kong, 1992) 32.

Meanwhile, the real estate industry was continually empowered by the government. In order to clear and pave land for private property development and public works, slum clearances were prioritised by the Planning Branch. In 1951, more than 500,000 people were considered by the government to be living in slums with crowded and poor hygienic conditions. As a result of the expansion and implementation of District Plans, more than 100,000 people were driven into Settlements. Different from public housing, the Hong Kong government did not build these Settlements. It was rather a slum relocation plan that assigned new locations to squatters. As the Colonial Secretary explained in a meeting not long after the Shek Kip Mei fire, the purpose of the enactment of *Emergency (Resettlement Areas) Regulation 1952* was for “[...] giving the Urban Council powers to control these areas, but, of course, it was not the intention to undertake or finance the construction of resettlement accommodation.”⁶⁴⁸ People licensed by the welfare department had permission to build a house or rent one from the Hong Kong Settlers' Housing Corporation in settlement areas. Tenant cards were issued to approve squatters. The scale and condition of the buildings were subject to special building regulations for settlements. Except for permitted/licensed areas, some ‘tolerated areas’ were also assigned by the government, but with worse conditions and looser regulations. Squatter clearances during this period were intensive. In 1950 alone, 17,060 huts accommodating 106,748 people were demolished. One third of the clearances were of previously cleared sites. The permitted/licensed and ‘tolerated areas’ had been planned to enhance slum clearances but only 45,000 persons moved into these approved areas, accounting for only 10 per cent of the whole squatter population. Most people could not afford the rent or their accommodation did not meet the building standards, so they collectively squatted in illegal settlement areas. Shek Kip Mei was one of these settlements.⁶⁴⁹

⁶⁴⁸ Hong Kong Legislative Council, ‘Official Report of Proceeding’ (Hong Kong, Meeting of 14th April 1954).

⁶⁴⁹ Alan Smart, *Making Room: Squatter Clearance in Hong Kong* (Hong Kong University Press, Hong Kong 1992) 32; Ip lam Chong, ‘The Birth of a Sanitary City: The Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

The Great Fire initiated the new resettlement policy. The new programme was undertaken for strictly economic reasons, rather than for welfare. According to the Housing Committee, two reasons drove the programme: 1. To cut the cost to the Hong Kong Government of the emergency relief measures that the squatter fire required, with resettlement the least costly way; 2. To obtain the proper use of the land adjacent to the urban areas that the squatters occupied.⁶⁵⁰ The Commissioner for Resettlement stated clearly why resettlement was adopted:

*“not simply because they need or deserve hygienic and fireproof houses: they are resettled because the community can no longer afford to carry the fire risk, health risk and threat to public order..... and because the community needs the land on which they illegally occupy.”*⁶⁵¹

The Hong Kong Government’s argument for acting as the courier to help the private property speculation is supported by the fact that the one million squatters resettled by 1971 were resettled on land whose size in total was equivalent to only 34 per cent of the previously occupied areas. The resettled areas were located on peripheral land of much lower value.⁶⁵² As Kehl suggests, *“government intervention in housing through squatter resettlement creates the best condition for the freest play of the market in private real estate.”*⁶⁵³ Government revenue that heavily relied on land sales was also considered a factor contributing to the clearances for private developers. Smart, however, emphasises the autonomy of the city state, arguing that, as the land

⁶⁵⁰ Commission for Resettlement, ‘Hong Kong Annual Department Report by the Commissioner for Resettlement for the Financial Year 1954-1955’ (Hong Kong: Government Printer, Hong Kong, 1955); Roger Bristow, *Land-use Planning in Hong Kong: History, Politics and Procedures* (Oxford University Press, 1984) 75; Leung Mei Yee, *From Shelter to Home: 45 Years of Public Housing Development in Hong Kong* (Hong Kong Housing Authority, Hong Kong 1999); Ip lam Chong, ‘The Birth of a Sanitary City: the Colonial Formation of Hong Kong’s Early Public Housing’ (2003) 14(13) *Cities and Design*.

⁶⁵¹ Commission for Resettlement, ‘Hong Kong Annual Department Report by the Commissioner for Resettlement for the Financial Year 1954-1955’ (Hong Kong: Government Printer, Hong Kong, 1955).

⁶⁵² Drakakis-Smith, David, *High Society: Housing Provision in Metropolitan Hong Kong 1954 to 1979* (Centre of Asian Studies, University of Hong Kong, Hong Kong, 1979) 34; Alan Smart, *Making Room: Squatter Clearance in Hong Kong* (Hong Kong University Press, Hong Kong, 1992) 33.

⁶⁵³ Frank Kehl, *John Stuart Mill’s Other Island: Squatters, Real Estate and Hong Kong Government Policy* (Presented at American Anthropological Association Conference, 1981) 20.

owner, the Government did not release much land for private development despite the large requirement for housing.⁶⁵⁴ The colonial state was not simply a capitalist instrument facilitating market operations. The government controlled land supply in order to restrict over-supply. By doing so, the government maximised their monopoly and boosted land prices.

The settlement policy had been acting to provide low rent accommodation to help industrial capitalists maintain low salary labour. The Government also used high-rise buildings in settlements to control the release of land and property speculation. Settlements of high density were seen as the most cost-effective way to accommodate people in terms of land use and finance. Public housing in the 1950s had been one of the most important mechanisms for capitalism reproduction. For the Government, the settlements not only settled people's accommodation issue but also settled the social security risks (fire, disease and public security) caused by squatters. Mostly, settlement reduced the social-political conflicts resulting from the slum clearances.⁶⁵⁵ Echoing A. Smart's argument, Ip also emphasises the autonomy of the colonial state but note that sanitary concerns in squatter areas are crucial in gathering an understanding of the political and economic interests of the colonial state.⁶⁵⁶ The concept of 'sanitary syndrome' was used to explain why the Urban Council was involved in clearance and resettlement. The Urban Council, being the government body that regulated sanitation, was established in 1936 to succeed its predecessor, the Sanitary Board. In the Hong Kong Annual Department Report by the Commissioner for Resettlement for the Financial Year 1954-55 of Hong Kong Government, the Commissioner addressed the Legislative Council, stating that "...squatter clearance

⁶⁵⁴ Alan Smart, *Making Room: Squatter Clearance in Hong Kong* (Hong Kong University Press, Hong Kong, 1992) 34.

⁶⁵⁵ Alan Smart, *Making Room: Squatter Clearance in Hong Kong* (Hong Kong University Press, Hong Kong 1992) 42, 47; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

⁶⁵⁶ Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

and resettlement was not a welfare operation in any sense."⁶⁵⁷ Sanitation was used as an excuse and tactic to avoid the controversial debate of the welfare state being against laissez faire ideology because public housing was seen as impossible and could not gain cross-department consensus.

A series of legislations were passed in the 1950s giving the planning and housing authorities of the Executive Council power to administer resettlement.⁶⁵⁸ In 1958, the *Resettlement Ordinance* was enacted. The purpose of the Ordinance was to permanently replace the above Emergency Regulations dealing with the clearance and resettlement of squatters. The Ordinance made no substantial changes to the previous legislation but merely consolidated all the legislation into one law. According to the Regulations and Ordinance, the state had overall power over squatters. It was authorised with significant powers to resettle people, including eviction, screening and resettling. A system of 'occupation permits' was developed for resettlers. A Tenant Card or residency permit would be needed to stay in an approved area, with the permit able to be taken away if a thirty-day notice was given. The government also had the power to assign locations that it deemed suitable for resettlement or redevelopment. When a place was chosen, the existing squatters would be asked to move. Little compensation was paid since the state had no legal obligation to compensate illegal dwellers.

To conclude this section, the slum clearance and resettlement in Hong Kong was not resulted from a single cause. Several factors initiated and implemented the course of slum clearance and resettlement. Social conflict and instability made social welfare a necessity to smooth the tension between Hong Kong residents and the colonial state

⁶⁵⁷ Hong Kong Legislative Council, 'Official Report of Proceeding' (Hong Kong, Meeting of 14th April 1954).

⁶⁵⁸ There were *Emergency (Resettlement Areas) Regulations*, 1952; *Emergency (Resettlement Areas) General Rules*, 1952; *Emergency (Squatter Clearance) Regulations*, 1953; *Emergency (Provisional Resettlement Areas) Regulations*, 1954; *Emergency (New Territories Resettlement Areas) Regulations*, 1954.

and to tackle the hardship of the lower classes. Meanwhile, the provision of housing had not completely relied on the public sector. With the Hong Kong government increasing the sales of land, private developers were encouraged to play a crucial role in housing supply as well. In fact, the development and housing in the private sector was one of the major causes that pushed the eviction of tenement dwellers. In order to clear and pave land for private developers, slum clearances were designated as the authority's main task. Squatters were resettled in peripheral areas with much lower value. This made way for the re-development of urban areas that were originally occupied by squatters. Hong Kong government's intervention in resettlement thus paved the way for the free-play of the market in private real estate.

8.3 Informal housing and law

In this section, examples of urban policy implementation that met with resistance in both Taiwan and Hong Kong are discussed. By introducing these examples, I wish to argue that, though building control and development control were introduced, the authorities often tolerated, even deliberately ignored, violations of building ordinance. Through accommodating more people into single accommodation units, and selectively executing or ignoring building ordinances, the governments relied on informal housing to relieve the pressure of housing provisions.

The execution of urban policing often met politicised resistance, one of the consequences being that a strong and collective community developed among squatters. The bonding of squatters was strengthened under the pressure of eviction. The Rennie's Mill settlement was a particular case of resistance. At the end of the Chinese Civil War, large numbers of political refugees, Nationalist soldiers and their families fled to Hong Kong and finally settled in Rennie's Mill, a barren piece of land in a remote location. Some 20,000 refugees turned the inhospitable waste land into a settlement. Schools were built, roads constructed and electricity connected. The

refugees governed themselves and pledged allegiance to the Nationalist government of the Republic of China in Taiwan. The Hong Kong government took no part in the development and administration of the village. Subsidies to schools and veterans were occasionally sent from Taiwan. The national flags of the Republic of China were raised at every corner in the village. It was a Taiwanese military quarters in a British colony not far from the border of the People's Republic of China. The population grew to some 30,000 by 1960.⁶⁵⁹ The 1958 '*Resettlement Ordinance*' legislation threatened the livelihood of the refugees. In 1961, the Hong Kong government announced that Rennie's Mill was to be administered as a 'resettlement area'. Despite the promise made by the Commissioner of Resettlement stating that no removal or resettlement would occur, the sense of an unknown future spread throughout the village. The villagers believed that the British would eventually take over the Chinese nationalist settlement and that any political ceremony representing the Chinese Nationalist Party's stance would be banned. In 1964, the village was classified as a Cottage Resettlement Area. In 1988, a New Town Plan was announced that would include Rennie's Mill. Petitions and responses had been sent back and forth between the villagers and the government since 1991. In 1992, developers estimated that the land on which the village stood was worth 30 billion Hong Kong dollars (around £2.4 billion in accordance with the exchange rate at the time).⁶⁶⁰ In 1996, the national flags of the Republic of China were lowered and some 6,500 inhabitants removed. Propaganda paintings of "Long Live President Chiang" and "Long Live the Republic of China" disappeared with the demolition of the village.

Huts clustered along hillsides, crowded living environments on narrow lanes, steep stairs and bad odours were characteristics attributed to Rennie's Mill in 1960, with primitive living conditions existing until its demolition. Buildings were un-regulated

⁶⁵⁹ Leong Ka Lun, *Bread and Gospel: Christianity in Rennie's Mill in the 50s* (Cosmic Light Publishing, Hong Kong, 2000).

⁶⁶⁰ Lau Yee Cheon, 'A Study of Rennie's Mill: Its Education' (1998) 3 *Historia* 357, 379 (Chinese University of Hong Kong, Hong Kong).

but the habitants well organised with their own rules and orders. The distinguishing characteristics of the village were observed:

- (1) The old military hierarchy was obeyed.
- (2) Sonority was respected in the community.
- (3) Identities of some Legislators and Representatives of the National Assembly (of Republic of China) were kept secret to the outside world but known in the community. They were the community leaders.
- (4) Community wardens were well organised as a security force and fire patrol. People were highly vigilant about fire since it would pave the way for the Hong Kong government's development plan.⁶⁶¹

Nevertheless, Squatter settlements, especially ones that had been approved like Rennie's Mill, were presumed by the resettlement authorities to be unorderedly,

*"having no self-respect, having no respect for the rights of their neighbours, having the defeatist attitude towards dints and disease. Squatters needed to be taught to make the best of the simple accommodation provided once they were offered resettlement."*⁶⁶²

The reality was very different from the Hong Kong Government's description of life in squatter settlements. Though It was un-regulated and lawless on appearance, the people living there were actually disciplined and self-governed.

In comparison to squatter settlements in Hong Kong, informal veterans' quarters in Taiwan had similar characteristics. In 1997, as a petition to the Taipei government asking to stop the clearance of squatters on the designated location of Number Fourteen and Fifteen Parks, professional urban planners and scholarly bodies argued that clearance was not the best path to urban regeneration for a number of reasons.

⁶⁶¹ Leong Ka Lun, *Bread and Gospel: Christianity in Rennie's Mill in the 50s* (Cosmic Light Publishing, Hong Kong, 2000); Lau Yee Cheon, 'A Study of Rennie's Mill: Its Education' (1998) 3 *Historia* 357,379 (Chinese University of Hong Kong, Hong Kong).

⁶⁶² Commission for Resettlement, 'Hong Kong Annual Department Report by the Commissioner for Resettlement for the Financial Year 1954-1955' (Hong Kong: Government Printer, Hong Kong, 1955) 40.

Firstly, in the fifty years of settling in the area, social networks had been established, social interconnections built and systems of self-help developed. Secondly, though living in poor conditions, squatters had sustained the development of the neighbouring modern fashion and tourism industries, including hotels, shops, restaurants and entertainment businesses. The veterans' quarter community also provided labour and services to its developed neighbours.⁶⁶³ The description of a cross-knit community could also be applied to other military veterans' quarters. Before the clearance of some 14,000 inhabitants on the designated area of Taipei Number Seven Park in 1992, veterans and their families were actively mobilised. Fire patrols were set up and volunteers walked the beat day and night.⁶⁶⁴

An orderly self-governed community residing in an unlawful enclave can be seen in the cases of squatters' quarters in both Hong Kong and Taiwan. It was not the absence of an urban regulations legal framework that resulted in the illegal settlements. In both cases, building controls had been introduced and systematic planning implemented. As previously noted in this thesis, the 1938 Report by the Hong Kong Housing Commission proves that the state deliberately ignored the infringements of over-crowding standards and building ordinance violations, but despite it, the state maintained relatively good control over unauthorised land use. By squeezing more and more bodies into an accommodation unit, it was the people who were made to resolve their own housing problems. The pre-war solution to easing the demand for housing was increasing congestion, which relieved the pressure of housing provisions for the government. In the 1938 Report, the government admitted that the private sector could not be relied upon to solve the housing issue and that, at the same time, the government itself was reluctant to commit to public housing. Thus, relaxing building controls and an increase in density were deemed to be a solution. The designated tolerated areas of squatter settlements proposed in the 1954–55 Report by the Commissioner for Resettlement was another step by which the Hong Kong

⁶⁶³ Statement issued by "Why Are We Against the City Government's Bulldozers" campaign on 1st February 1997.

⁶⁶⁴ Shih Wei-chuan, *The Pattern Language in Squatters' Quarters* (Taiwan Li Pao, 30th June 1994).

government relaxed the restrictions it had previously made. Rents were cheaper and more bodies could be crammed into those buildings.

The evolution of 'building violation policies' in Taiwan tells a similar story. The government relied on illegal buildings to accommodate people, despite the government repeatedly announcing that it was determined to clear all the illegal buildings in Taipei for almost half a century. As previously mentioned, in 1945, the *Temporary Regulations on Building Violations Ban* was announced. It was the first building violation regulations introduced in Taiwan by the Chinese Nationalist government. In 1949, Taipei City Government reassured that it would clamp down on building violations. Since then, delegated legislation on building violations was introduced or amended at least nine times between 1956 and 1983. In 1968, a national survey on building violations was conducted and, in doing so, the government reassured again that it would deal with the problem. The most recent time that the central government announced its determination to clear away building under violation in cities was 1991. Obviously, the strict enforcement of clearances could not solve the issue of building violations. Building regulations were undermined repeatedly by reality. As mentioned previously, the policy clearing of illegal buildings u-turned in 1957, with a new set of Regulations drawing a line between old and new violations. Old violations would be tolerated, though still illegal. In the next forty years, the same compromise was repeated. The line defining "tolerated old violations" and "violations to-be-cleared" had fallen back three more times, re-drawn in 1968, 1984 and 1996. The 'original new violations' stipulated in 1957 later become old new violations in 1968, 'old old new violations' in 1984 and 'old old old new violations' in 1996. After the surrendering of building regulations and enforcement, most of the 'to-be-cleared new violations' had eventually become 'tolerated old violations'. Also, with the increase in new violations each year and the government's lack of capacity to clear these violations, illegal building has become an issue that remains unresolved.⁶⁶⁵

⁶⁶⁵ For example, between 1989 and 2000 11,689 new building violations were reported every year on average in Taipei County, with the building authorities only able to clear 29 per cent of the cases each year. Even the county government had found a way to stop the occurrence of new violations; it would

The practice of establishing substandard regulations that contradicted government stipulations that tolerated the reality of poor housing provisions was also a part of the housing policy in modern Hong Kong. Responding to the infamous revealing of the intolerable living conditions of cage dwellers in the film “Cageman”,⁶⁶⁶ the *Bedspace Apartment Ordinance* was enacted in 1994. Despite the Hong Kong Community Organisations’ Association’s appeal to increase public housing provisions for elderly residents and the banning of cage apartments, the government legalised the practice of cage dwelling. The legislation covered flats in which 12 or more bedsits were occupied under rental agreements. A four-year period of ‘toleration’ was set for the owners of cage apartment to improve the sanitation and fireproofing of facilities. In 1993, the Secretary for Home Affairs addressed the Legislative Council on the implementation of the *Bedspace Apartments Ordinance*: 66 cage apartments were licensed that accommodated around 1,200 residents and 29 cage apartments were banned.⁶⁶⁷ According to government statistics, the total number of licensed cage apartments was reduced to 48 by 2002. In the same year, the Hong Kong Community Organisations’ Association found thirty-three unlicensed cage apartments. The total number of cage dwellers was estimated to be 4,000. According to a survey by the Community Organisations’ Association in 2002, 88.9 per cent of cage dwellers believed that the implementation of *Bedspace Apartments Ordinance* had not helped improve living conditions, with 40.8 percent of the interviewees suggesting that the situation had gotten worse since licensing took effect in 1998.⁶⁶⁸

take 62 years to clear out the existing violations accumulated between 1989 and 2000. See: Hong Tsun-shan, A Study on Management of Illegal Constructions in Taipei County (Master of Engineering Dissertation, Chung Hua University, 2002) 64, 65.

⁶⁶⁶ A 1992 Hong Kong film directed by Cheung Jacob. It follows various residents in a low-income housing building. The said habitation consists of individual cages for men who are struggling to scrape together a living while the city authorities ignore their squalid conditions.

⁶⁶⁷ Legislative Council, ‘News Release’ (10th March 1999).

⁶⁶⁸ Hong Kong Community Organisations’ Association, ‘Hong Kong Cage People Report’ (Hong Kong, 2002).

Compared to cage apartments, cubicle apartments had a similar arrangement, although with slightly better results. The government uses this distinction to cover accommodation units that are not regulated by the *Bedspace Apartments Ordinance* but that are similarly crowded, including flats divided into several rental units and cage apartments with less than twelve bedsits. A government survey in 2007 showed that 53,200 persons were living in cubicle apartments or cage apartments. The majority of the dwellers were new migrants from Mainland China in the 1980s and 1990s who provided cheap labour to the Hong Kong economy. Regardless of the serious building code violations, the government addressed the Legislative Council on the issue:

*“People choose to live in bedspace apartments and cubicles because these apartments, apart from commanding a low-rental level, are mostly located in convenient urban areas. People living in these apartments can then travel to their workplaces on foot or by relatively low-cost public transport. Hence, there is still a demand for this type of private accommodation in the market. The Government has no plan at present to displace those in such accommodation.”*⁶⁶⁹

Violations were tolerated by the government because it could not afford to properly accommodate those living in urban areas. On the other hand, eviction or demolition would endanger livelihoods and would become a serious social issue.

Not only was it the economically deprived population who relied on illegal buildings for accommodation, building violations (illegal extensions and annexes) in Taiwan had been a common practice among home owners who sought to increase floor space with balconies, forecourts and fire lanes. According to a newsletter dated 27th November 2007, the ‘Construction and Planning Agency of the Interior Ministry’ were aware that there were some 468,000 cases of disapproved building violations in Taiwan, 46.7 per cent of which were in metropolitan areas of Taipei City and Taipei County. Expensive house prices were seen as the main cause of building violations. By expanding indoor space with balconies, flat owners could add around 20 per cent of

⁶⁶⁹ Legislative Council, ‘News Release’ (27th February 2008).

floor space to a living room. By extending the building with a forecourt or fire lane, an extra room could be achieved. Many cases of building violation were executed by developers with the consent of buyers. In 2001, Taipei City Government found that there were some seven hundred flats in a new development with illegal balconies covered as a part of indoor space and, in 2002, 507 flats were found to have the same practice in Taipei County.⁶⁷⁰ A two bedroom flat of fifty-eight square metres in floor space in the development was for sale at that time for NTD\$8.9 million (£150,000), highlighting that building code violations can add £20,000-£30,000 in value to a flat.

To conclude this section, I wish to adopt the concept of the informal economy, as developed by Portes, Castells and Benton, to explain the use of informal housing to describe and explain building violations in Hong Kong and Taiwan.⁶⁷¹ The informal sector of housing plays an important part in the process of socio-economic reproduction and performs a productive and essential role in easing the demands of collective consumption. It usually operates beyond official recognition and is mostly illegal. On the contrary, to be seen as existing on the margins of formal sectors, the informal sector is actually at the core of the economy. In the cases of Taiwan and Hong Kong, illegal settlements and quarters are a common scene in urban areas. In Taiwan, as previously noted, more than half of the building violations have occurred in metropolitan Taipei. In terms of geography, informal sectors are located in urban areas. In terms of economy, urban informal sectors provide flexible and cheap labour in the cities. The rural migrants residing in informal sectors have been one of the main urban labour forces sustaining development. The economy relies on informal sectors in both cases.

⁶⁷⁰ Hong Tsun-shan, A Study on Management of Illegal Constructions in Taipei County (Master of Engineering Dissertation, Chung Hua University, 2002) 33.

⁶⁷¹ See: Manuel Castells and Alejandro Portes, 'World Underneath: The Origins, Dynamics, and Effects of the Informal Economy' In Alejandro Portes, Manuel Castells and Lauren Benton (eds), *The Informal Economy: Studies in Advanced and Less Developed Countries* (John Hopkins University Press 1989); Shia Chu-joe, *Space, History and Society: Selected Papers 1987-1992* (Taiwan: A Radical Quarterly in Social Studies, Taipei, 1993); Lauren Benton, 'Beyond Legal Pluralism: Towards a New Approach to Law in the Informal Sector' (1994) 3 *Social and Legal Studies*; Ip lam Chong, 'The Birth of a Sanitary City: The Colonial Formation of Hong Kong's Early Public Housing' (2003) 14(13) *Cities and Design*.

8.4 Conclusion

This chapter has discussed one form of resistance against state development control: building violations. By reviewing the state's reaction to building violations (including toleration), incompetence in cracking down and amending regulations to meet the reality, I argue that laws and regulations can be arbitrary and fluid in practice with the line of legality having to be drawn and redrawn. Instead of concentrating on the legality of building violations, the concept of the informal sector is introduced to describe the characteristics of those violations. Informal housing is not sector, to an extent, ignored by respective governments. State intervention and non-intervention have been an important causal mechanism that resulted in the development of informal sectors. On the surface, informal sectors appear unregulated and outside the law, even though laws are actually an essential element. Regulatory actions in reality facilitated the legal foundation of the informal sectors. Clearance and demolition operations were implemented alongside approval of illegal settlements and building legalisation. The implementation of compromised regulations created a systematic property market along with the existence of informal sectors. Instead of the normative assumption that informal sectors are the unorganised activities of self-interested individuals, informal sectors are people's collective reaction to the market in which land capital deprives the population of housing. Informal sector is not a disorderly world. On the contrary it is comprised of organised communities. This chapter also argues that legality alone cannot differentiate between informal and formal sectors since some informal housing is actually legalised, regulated, approved or tolerated by the government. For example, the licensed cage apartments in Hong Kong are technically legal but considered hazards and a nuisance when compared to the building violations of illegal annexes for expensive apartments in middle-class residential communities in Taipei, given cage apartments carry heavier risks to public safety. In a perverse sense, the riskier arrangement is legal and the other illegal,

though tolerated by the state. There is no clear line of legality defining the two sectors. The legal boundary of regulated and approved housing is fluid.

While discussing the competing ideologies of private property and public interest, McAuslan concludes that *“the ideologies and practice of planning laws mirror the ideologies and practices of government and society.”*⁶⁷² He emphasises that the government operates in a society based on recognition of the institution of private property and a market for property:

*[...] the occasional conflicts between those programmers of the government which appear to stress the public interest over private property of market forces in society which put private property before public interest is reflected in the administration of the law of land use planning and control.*⁶⁷³

In the cases of Taiwan and Hong Kong, building violations expose the failure of each government’s development control. It cannot, however, be seen as the failure of public interest ideologies. Government compromises on the legality of building violations were a result of the state’s incompetence to implement its own policies and a product of state’s policies being incapable of meeting the reality. The hegemony of public interest was not challenged because, for example, in most cases, the government compromised due to it not involving a change in regulation. Concerning Taipei, the government did not claim that illegal buildings were preferable, it just admitted its failure to clear them. While the ideology was justified through ‘public interest’, the implementation of planning and control was selective. In the case of Hong Kong, there was no consistent standard in terms of planning in either the government’s intervention or non-intervention. In order to pave the way for private development, slums were cleared in the name of public interest. Meanwhile the government made it clear that resettlement was not worthy of a social welfare programme but that it had to be done because it was or would endanger public safety. Slum dwellers were members of the public but obviously deemed less important than

⁶⁷² Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press, 1980) 265.

⁶⁷³ *Ibid.*

property developers. While public interest was evoked, 'the public' was a vague concept that lacked definition. In other words, the state's definition of public usually excluded disadvantaged groups and favoured certain private interests.

Public interest ideology was actually used to support the ideology of private property. The complexities that resulted from the competition between private property and ideologies of public interest does not stop here. By examining the interaction between building violations and development control implementation, this chapter concludes that while building violations have been used by disadvantaged populations to fight against the property market for their own survival, buildings violations did not genuinely challenge the ideology of property rights itself nor endanger recognition of the institution of private property. On the contrary, by forcing disadvantaged people to live in informal housing in a difficult environment, building violations eased government responsibility in relation to the burden on housing, development control and intervening in the property market. The government has been able to rely on illegal buildings to accommodate people. Building violations do not challenge but actually support urban development and the property market.

Faced with the issue of 'development control' versus 'building violations', governments appear to stress the public interest over private property. In reality, however, the ideology of private property wins over the ideology of public interest in the practice of development control. In most cases, the proclamation of public interest serves private property interests. As McAuslan argues, "*the ideologies and practices of planning law mirror the ideologies and practices of government and society*".⁶⁷⁴ In the case of 'building violations' versus 'development control', it is clear that Taiwan and Hong Kong are capitalist societies primarily based on the recognition of the institution of private property and the market for property. Both states, whether

⁶⁷⁴ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press, 1980) 265.

through planning law, both in ideology and practice, including the ideology of 'public interest', fundamentally serve the needs of capitalism.

Chapter 9: Conclusion

McAuslan's planning law interests explored the boundaries between law and other disciplines. His emphasis on the competing ideologies in the planning law provided a means for professionals, planners, lawyers and administrators to self-examine their roles in the existing planning system, with Costas Douzinas, for example, praising McAuslan's *Ideologies of Planning Law* for changing mainstream perceptions of planning, environmental and land law.⁶⁷⁵ Associated with his academic writing, McAuslan's advisory works contributed to land reforms and related legislation in Tanzania, Uganda, South Sudan and Kenya, as well as projects in Asia, the Middle East, the Pacific and Eastern Europe.⁶⁷⁶ Despite his world-wide influence, McAuslan's achievements, academy and profession-wise, were not well known in East Asian newly industrialised countries. Neither Taiwan nor Hong Kong had seen his legal frameworks being applied in planning discourses. This thesis is the first writing adopting his planning law ideologies to review the evolutions of planning law in Taiwan and Hong Kong. With the application of McAuslan's concept and other theories concerning sanitation syndrome, racial factors, power blocs and informal sectors, this thesis contributes to the existing planning law discourses in Taiwan and Hong Kong by revealing the existence of a racial hierarchy in the early stage of urban planning in Taiwan and Hong Kong, with the racial segregation strengthening colonial urbanisation. By challenging the image of conservatism and retrogression labelled on the Chinese serving as contrast and justification for colonial urban regularisation, this thesis points out the "Chinese" factor, in actuality, was merely a stereotype masking economic conflicts between the colonists and the colonised. Also, while planning law ideologies reflect the ideologies of government elites, they reinforce the institution of private property and the status quo of the society as well. Although the ideology of public participation has the potential to become the ideology of opposition against

⁶⁷⁵ Obituary: Professor Patrick McAuslan <<http://www.bbk.ac.uk/about-us/obituaries/obituary-professor-patrick-mcauslan>> accessed 16th January 2018.

⁶⁷⁶ Patrick McAuslan Obituary <<https://www.theguardian.com/law/2014/feb/13/patrick-mcauslan>> access 16th January 2018.

property relations in society, it is bound by the limitations of participatory democracy and has the tendency to become populism.

The first chapter of this thesis highlighted Patrick McAuslan's study of the ideologies of planning law, identifying the competing ideologies underpinning land use planning practice. Though the ideologies are not always readily apparent, their presence as a source of negotiation, debate and competition shows that, at any given point in time, planning law is shaped and reshaped by the different needs of society. Planning law is an outcome of social processes that are based within the context of societal development, involved with political conflicts and driven by socio-economic forces, both domestic and international. With the help of McAuslan's concept, Chapters 2 and 3 reviewed the rise of urban regularisation in Taiwan and Hong Kong, finding them to be driven by sanitation syndrome, something considered of primary importance for the health of colonists. The fear of folk diseases and epidemics formulated the colonists' perceptions of the local people, and Chinese people in both Hong Kong and Taiwan were identified as the carriers of diseases. The colonial administration thus sought to regulate and to separate local Chinese people's habitation practices and their bodies from those of foreigners. The emergence of urban regularisation was very similar to the emergence, noted by McAuslan, of English planning law from the earlier "nuisance law". That said, the ideologies behind the cases of England and Taiwan and Hong Kong were somewhat different. The emergence of urban regularisation in Taiwan and Hong Kong showed how the ideology of public interest emerged as part of the institution of public planning and tended to confer wide powers on the administrators who were judged to be capable of determining what the public interest was. On the other hand, the birth of British planning law showed that ideological calls for the maintenance and buttressing of private property were the major foundation of planning law. Despite these differences, this thesis has revealed that, despite the apparent dominance of public interest ideology in the cases of Taiwan and Hong Kong, this ideology was actually adopted to support and protect the private interest of colonists, who were only one group within the public body. This was the reason why racial segregation was the prepositional measure during the early stage of land use planning. In the case of Hong Kong, some laws were deemed applicable only to areas with

western inhabitants, with race used as an excuse. Chinese communities' resistance to urban regularisation was overruled or adopted according to the colonists' interests. In the case of Taiwan, urban regularisation generated a spatial structure of racism which provided infrastructure in city centres for Japanese settlers. The colonists' fear of endemic disease was reflected in the urban regularisation ordinances. In both cases, urban regularisation was introduced in the name of public interest, but actually only served private property interests. This finding accords with McAuslan's observation of British planning law in practice. He argued that British courts had a clear and consistent bias: if confronted with a conflict between private property ideology and that of the public interest, the property owner would usually win. If confronted with a non-landowning citizen, the courts usually supported the authorities in the name of public interest.⁶⁷⁷ In the name of public interest, privileged people's private property was entitled to better protection than the rest of the public, with this privilege coming at the cost of others. McAuslan was aware that the public is not a homogenous body, comprised of equal individuals with no differences; likewise, this thesis argues that the existence of hierarchy in the public appeared in the format of racial apartheid in the early stage of urban planning in both Taiwan and Hong Kong.

This thesis supports McAuslan's analysis of the composition between the public and the bias toward the different groups of the public brought about by planning law practices. However, it extends the argument further. In Chapter 4, by reviewing the racial factor present in the development control of Taiwan and Hong Kong, I argued that spatial apartheid was constructed not only for the welfare of individual colonists residing in colonies but served the interests of the greater purpose: Colonialism. When a hierarchical racial system was established and imposed upon the original inhabitants, it became the nature of the governance in colonies, legitimatising the violence caused by imperialism. Colonial urbanisation was shaped according to racial segregation. With colonial urbanisation acting as the instrument by which the colonial periphery was incorporated into the metropolitan core, the colonial urban system was the operational centre that dominated the politics and

⁶⁷⁷ See Part II of Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press 1980) 77, 144.

economics of colonies. It represented colonial power and delivered the economic profits to the imperial countries. The racially segregated colonial urban system saw colonists settled mostly in towns and local inhabitants settled mostly in rural integrated colonies under the global map of imperialism. Furthermore, sanitation syndrome-driven racism had become the nature of colonial planning law and development control. The implementation of planning and control reinforced the colonial forces' perceptions of native people, with issues related to public health and public order perceived in terms of racial differences, manifesting the subjective projection of fear and misunderstanding of local people. The dominant racial myth helped shaped the concept of development and modernisation, which were defined in Eurocentric terms, and assumed that the process and direction of change was predetermined. There was only one direction of modernisation, with European powers at the top, followed by Japan, Hong Kong falling behind, and Taiwan at the bottom. Imperialism gave birth to the racial hierarchy of nations that still remains today.

This process, by which the betterment and protection of certain people's property rights was built on less privileged people's losses, still remained in place in Taiwan after the colonists had left, and in Hong Kong after racism was no longer a factor in urban planning policy making, which was all undertaken in the name of public interest. In Chapter 5 of this thesis, I reviewed the failure of systematic planning in Taiwan. Such planning law has ostensibly been a vehicle for McAuslan's public interest ideology, which has translated into legal and planning measures that confer wide power on administrators and planners whose visions were held up as all inhabitants' common goals. Yet, in practice, certain groups of people have always been excluded from being part of the "public", with their public interest clearly different from the public interest claimed by the planning authorities. This notion can be also seen in the zoning plans for Shanghai and Nanking: there was a hierarchy within the public, leading to residential zones being sub-categorised according to the wealth of people. The authoritarian state, led by Chinese Nationalists, had more independent, autonomous political power over the private sector, manifesting in the evolution of planning laws and planning led by strong state intervention. Nevertheless, the public interest could not be identified and acted upon by the planners, public servants or the state, on the basis of their own views and assumptions

as to what was right and wrong. In various instances, such as the cases of Wuchi and *Control Yuan v Chang Jin-sen*, authorities called for McAuslan's third ideology, the ideology of public participation. Yet, in the main, the planning authority served the interest of certain groups and administered on this basis; they were inclined to maintain and preserve the status quo of the planning system against radical changes. The issues underlying planning law and planning administration ideologies were the ideology of society and the preservation of the private property system, especially the private property of certain special interests.

The fierce competition between ideologies exists not only in practice but also in law itself. Taiwan is not a common law country, but McAuslan's first ideology, the tradition which seeks to protect private property, can be seen in the Constitution. The Chinese Nationalist Constitution guarantees private property protection. The relationship between the Constitution and private property was upheld when building the Republic of China, a capitalist nation-state. Meanwhile, the Constitution also reflects the ideology of the public administration approach and sets the limitation of property rights in order to attain "*a well-balanced sufficiency in national wealth*".⁶⁷⁸ The appearance of McAuslan's second ideology in the Chinese Nationalist Constitution was not derived from the experience of the regime's social welfare administrative practices in China, but is the result of political compromise between the Nationalist Party and Communist Party. The Chinese Nationalists had to include Sun Yat-sen's principle on the equalisation of land ownership in the Constitution to sustain the regime's legitimacy and win over public support. Land reform in China and Taiwan reflected competition between the first and second ideologies. The implementation of redistribution was an extension of the struggle between the Communists and Nationalists. However, the ideology of private property often had the upper hand in the history of Taiwanese land policy and planning, as illustrated by the land reform cases in Taiwan and the analysis of Taiwanese political factions – the power bloc comprised of the biggest land owners – discussed in Chapter 6. The development of land use and related laws were constructed by political and economic forces beyond planners' control. The successful land reform carried

⁶⁷⁸ Article 142, *Constitution Law*, Republic of China.

out in the late 1940s was driven by the Taiwanese landlords' fear of agrarian rebellion by the Chinese Communist Party, consolidating the Nationalist government's political legitimacy. The failed urban land reform was further proof that the political complexity of power blocs dominated land policy and development decisions. Though the competition between private and public interest ideologies can be seen during the conflicts between various political economic forces and development control was implemented in the name of public interest, it was the members of the power blocs who decided what the public interest was. They were people who had arrived in their positions because they represented certain special interests, with their urban policy visions reflecting the ideology of the governing elite and refusing to challenge the existing private property system.

Competition between the first and second ideologies appears in a different form in Hong Kong. The zoning plans and as-of-right uses limited development rights but also created a certain degree of certainty for the developers. Contractual planning (leasehold control) was one of the mechanisms stipulating balance between minimising constraints on development to maximise profits and imposing constraints to minimise external costs and any adverse effects. Though the government created one of the largest-scale public housing projects in the capitalist world, it also acted as the main player in the property market and served the interests of property developers. In terms of the competition between public interest and private property ideologies, although the Hong Kong government implemented statutory town planning in the name of public interest, it placed significant emphasis on fiscal costs and financial returns when formulating urban planning plans, and the city state was either reluctant or insensitive to acknowledging social and environment factors until they were out of control. While reactive crisis management became the norm for Hong Kong's planning and development control, the government's core values always stood with the ideology of private property rights. The review of the failure of development control in both Taiwan and Hong Kong, as discussed in Chapter 8, points toward the same conclusion. In the case of building violations in Hong Kong, there was no consistent standard of planning professionalism in either the government's intervention or non-intervention. Slums were cleared in the name of public interest, but in reality to pave the way for private development. Slum dwellers were

members of the public but obviously not as important as property developers. While public interest was advocated, the “public” was a vague concept, and it was left to the state to decide who exactly the public were. The same situation occurred in Taiwan. While public interest ideology was stressed, the implementation of building and development control was selective. Indeed, public interest ideology was actually proclaimed to support the ideology of private property in both Taiwan and Hong Kong.

As discussed in the previous chapter, when faced with the issue of development control versus building violations, both Taiwan and Hong Kong’s governments appeared to stress public interest over private property. Yet in reality, the ideology of private property trumped the ideology of public interest when practicing development control. In most cases, the proclamation of public interest ideology served private property interests. As McAuslan has stated, “*the ideologies and practices of planning law mirror the ideologies and practices of government and society*”,⁶⁷⁹ with both Taiwan and Hong Kong functioning as capitalist societies based on recognition of the institution of private property and a market for property. Both states’ planning law ideologies and practices, including the selective adoption of public interest ideology, served the needs of capitalism.

With building violations being discussed in this thesis, the “informal sector” concept was also introduced to aid further reviews of the relations between building violations and planning law. By examining the characteristics of building violations in Taiwan and Hong Kong, it was concluded that while urban informal sectors challenged the development control of the planning authorities, they were also critical to urban development. They could be seen neither as side effects of urbanisation, nor as the periphery of cities. Both states’ reactions to building violations, including their incompetence in cracking down, amending regulations that pandered to the violations and the respective government not enforcing slum clearance on a large scale to avoid social unrest that endangered the political legitimacy of the government as a whole all highlight that laws and regulations were arbitrary in practice, with the line of

⁶⁷⁹ Patrick McAuslan, *The Ideologies of Planning Law* (Pergamon Press, Oxford 1980) 265.

legality having to be redrawn again and again. Thus, legality alone did not define the informal sectors. State intervention and non-intervention was an important causal mechanism that resulted in the appearance of informal sectors. Informal sectors appeared unregulated and outlawed; however, regulatory actions forced upon building violations actually facilitated the legal foundation of informal sectors. Instead of the assumption that informal sectors were unorganised activities of self-interested individuals, in reality, informal sectors were people's collective reaction to the property market. Building violations were used by disadvantaged populations to fight against the property market for their survival. While the collective reactions could be seen as a potential challenge to the status quo of the planning system and property relations, nevertheless, building violations did not endanger recognition of the institution of private property. Informal sectors actually supported and even enhanced the system because those sectors also eased housing responsibilities and the financial burden of city administrations. Informal sectors primarily supported the growth and development of cities.

The above discourse can be extended further to the issue of state legitimacy. State legitimacy is a structural variable determined by the socio-political process that imposes order to social relations, with this current examination of the characteristics of the developmentalist states of Taiwan and Hong Kong highlighting that "development" had been the central source of state legitimacy that the governments of Taiwan and Hong Kong could claim. With building violations (informal sectors) easing the administrative crisis of legitimacy by alleviating housing problems, supporting the status quo of property relations and not challenging the hegemony of development, building violations actually enhanced the legitimacy of both states. Do legal violations actually enhancing state legitimacy? It may seem ironic, but it is the reality in Taiwan and Hong Kong.

This thesis has also shown that decision making on planning matters was made by a governing elite that either believed in the developmentalist state or represented certain power blocs and property developers' interests, rather than planners whose ideals originated from their

commitment to professionalism. At the same time, the ideology of public interest was upheld alongside the ideology of private property, together vying for prominence against McAuslan's third ideology, the ideology of public participation. In the case of Hong Kong, the latest planning ordinance reform has not fundamentally changed the decision-making power structure and reflects the fact that public participation continues to be ignored. In the case of Taiwan, public participation is merely a formality with little effects. The ideology of public participation, as McAuslan argues, "*sees the law as the provider of rights of participation in the land use planning process not by virtue of the ownership of property but by virtue of the more abstract principles of democracy and justice*" and denies that "*the public interest can be identified and acted upon by public servants on the basis of their own views and assumptions*".⁶⁸⁰ The ideology can be hostile to the existing administrative planning framework, run by professionals, public servants and politicians who "*do run it and claim the legitimacy in so doing by virtue of official qualifications, official appointments or official elections*".⁶⁸¹ This thesis agrees that the ideology of public participation has the potential to become the oppositional ideology to the status quo, which is "*the existing state of property relations in society, the existing capitalist system with its emphasis on private property and a functioning market for that property*".⁶⁸² Public interest and private property ideologies are the ideologies of the status quo, and the planning system based on the two ideologies is irreconcilable with the ideology of public participation.

This thesis further contends that planning laws in Hong Kong and Taiwan, created by the developmentalist states, have the tendency to strengthen the status quo, and that the opposition should see these laws as an arena in which they can meet their opponents. In Taiwan, the backroom politics of up-zoning decisions manipulated by local political factions resulted in land speculation. Notables from local factions, allied with the Chinese Nationalist Party, together built a new Taiwanese republican nation-state. Differing from the old Chinese

⁶⁸⁰ Ibid. p5.

⁶⁸¹ Ibid. p6.

⁶⁸² Ibid. p7.

Nationalists who used to implement the redistribution of land ownership in rural Taiwan, the localised new party dominated the property market. While politicians were benefiting from the non-transparent planning system, campaigners against high-priced housing challenged the existing property relations and demanded housing as a basic human right. This conflict gave birth to the practice of public participation in the planning system. Though Taiwanese people still have no effective channel within the planning mechanism to voice their opposition to individual cases of development, except for those legally required by the Environment Impact Assessment, zoning plan reviews have at least become more transparent. As in Taiwan, the participatory mechanism also came very late to Hong Kong. The colonial government's democratisation effort in the decade before the Chinese take-over promoted a more transparent and open planning process. However, it was not until the *Town Planning (Amendment) Ordinance 2004* that public consultation provisions for planning applications were stipulated. Before the legislation, public views could only be obtained through informal enquires conducted by the relevant District Offices. Nevertheless, in both Taiwan and Hong Kong, the status quo of planning is currently being challenged by the developing ideology of public participation. This ideology is sceptical or hostile to the professionals, public servants and politicians running the planning system who claim legitimacy in doing so by virtue of official qualifications, official appointments, or official elections.

The ideology of public participation is a prospective challenge to the status quo, but is it really, as McAuslan concludes, a genuine threat to the system and structure of society, challenging the existing state of property relations in society and the operations of the capitalist system ?⁶⁸³ According to McAuslan, the mechanisms ensuring accountability of decision-making need to offer the possibility of debating the appropriateness of advocated decisions, and of prompting reform to the process when planning decisions are made within central and local governments. This would serve to increase the possibilities of the public accountability of officials, general public awareness of policy issues and the possibility of successful

⁶⁸³ Ibid. p268, 270.

challenges to government decisions by a whole range of individuals and groups.⁶⁸⁴ According to McAuslan's proposal, planning professionals' authority would be challenged, politicians' power questioned and people empowered – yet the fundamental property relations would still be upheld. The societal status quo would remain. Changes made within the urban planning process are quoted in McAuslan's book but there is no sign of revolutionary change to the existing state of property relations. The same applies to the cases of Taiwan and Hong Kong. With increasing demand for public participation and advocacy of participatory democracy, there is more room for people to become involved in the decision-making process, in order to voice their opinions about what is in the genuine public interest. However, these voices express only that their definition of public interest is different from that of professionals and bureaucrats, and does not challenge the ideology of public interest itself. Nor do they threaten the ideology of private property, because requests to participate in the planning decision-making process are also requests to preserve people's private property. With public participation being the vehicle to uphold the public interest and private property ideologies, and with the ideology of private property being the core value of the implementation of urban planning in the name of public interest (as discussed in Chapters 6, 7 and 8), the ideology of private property has the upper hand in the competition between these three ideologies. This conclusion reflects the reality of the contemporary democratic political system and represents the system's character. Contemporary democracy is built on the recognition of private property rights and the operation of capitalism. The task of democracy is not to change the existing class structure in a capitalist society but to maintain the order of private ownership. The proposal of participatory democracy is still a capitalist democracy and merely a reform within the current system with the potential *"to safe guard the long-term interest of society and its environment against exploitation for short term gain and to reduce inequalities, not merely of opportunity but of material conditions of life"*, as the Royal Town Planning Institute of Britain proclaimed in 1976.⁶⁸⁵ It also has the tendency to prompt the move towards a populist state, as is evident in contemporary Taiwan. While

⁶⁸⁴ *Ibid.* p215.

⁶⁸⁵ Royal Town Planning Institute, 'Planning and the Future' (Royal Town Planning Institute 1976).

democracy does not guarantee a progressive society, neither does the ideology of public participation and participatory democracy.

The above conclusion does not affect the fact that, if there is to be effective social progress and transformation, urban planning is a key instrument in seeking such a goal. However, planners must be cautious about relying too heavily on the flawed notion of apolitical professionalism as the key to planning success. This is why this thesis did not stop at the description of the competing ideologies, but also examined the way in which states operate in the planning process, by observing the evolution of planning laws in both Hong Kong and Taiwan, and the factors behind this evolution. In both cases, planning is not apolitical. On the contrary, both states dominated the planning process from the beginning. Nevertheless, state domination does not guarantee planning success, with planning all too often merely an-after-the-fact reparation of the existing situation. The original blue prints for urban planning did not work as expected, and crisis management became the norm, because socio-economic and political factors were ignored or under-estimated by planners. At certain stages of development in Hong Kong, the state served the interests of developers. In Taiwan, the state was the vehicle for land speculation. The law reflects the socio-political context and the state has quite often chosen not to enforce regulations. Informal sectors have been left free to act as a buffer so that social crises can be dissolved and industrial production costs minimised. It is a myth that lawyers and planners are apolitical professionals, neutral and above the struggle for spatial and social justice, or to expect that their contribution of professionalism alone can formulate a rational and egalitarian town and country planning system. The status quo of the planning system and the related laws need to be broken, with legal and planning professionals also becoming activists in a wider social forum.

Throughout the historical period addresses in this thesis, planners' conceptions of modernisation were defined in Eurocentric terms, assuming that the process and direction of change was predetermined, and that there was only one direction, one form of modernisation. By reviewing urban legislation processes and the socio-political forces behind

these, this thesis argues that modernisation is not an autonomous process of change which occurs through introducing ideas and measures from more “advanced” societies, but a restructuring of society into conformity through conflict between economic forces, both domestic and foreign.

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