THE POLITICS OF RACIAL DISCRIMINATION IN HONG KONG

Barry Sautman and Ellen Kneehans

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Subscription is US $35.00 per year for 4 issues (regardless of the price of individual issues) in the United States and $40.00 for Canada or overseas. Checks should be addressed to MSCAS.

Tel.: (410) 706-3870
Fax: (410) 706-1516

Price for single copy of this issue: US $10.00

ISSN 0730-0107
ISBN 0-925153-85-0

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I. INTRODUCTION

Hong Kong’s Bill of Rights Ordinance [BORO] of 1991, enacted under the British colonial government that ruled the territory until 1997, made racial discrimination by public authorities illegal. Private sector actions were excluded from its reach at the insistence of the business community.¹ Ten years later, TUNG Chee-hwa, Hong Kong Special Administrative Region (SAR) Chief Executive (CE), appeared before the Legislative Council (Legco) to answer questions regarding racial discrimination in Hong Kong. When asked whether Hong Kong has a private sector race discrimination problem and needs a law against it, Tung responded,

"[A]ll places, all cosmopolitan cities have racial discrimination. Hong Kong has this problem. But is legislating[sic] the best option? . . . I lived in England for six years, the United States for nine and a half. I feel that their racial discrimination problems are much more severe than ours, even with all their laws against it . . . [T]he most important thing is to educate . . . people to know that discrimination is wrong."²

A politics of racial discrimination against minorities had emerged between the Bill of Rights’ enactment and Tung’s riposte to proponents of proscribing private sector discrimination. As Hong Kong’s return to China in 1997 under the “one country, two systems” arrangement, the Chinese/British dichotomy that marked a century and a half of colonial rule ended. An exodus of Britons began, while the population continued to diversify through increased migration to Hong Kong of South East Asians and South Asians. These migrants, together with long-resident minorities, experienced racial discrimination in its manifold forms. They, together with some Hong Kong Chinese, came to recognize and resist its modalities and consequences.

This essay examines the central political issue of racial discrimination in Hong Kong and the proposal to outlaw its practice in the private sector. It seeks to explain why top political leaders have been unyielding on legislation, a stance that creates a striking

anomaly: the Government asserts that Hong Kong is an "Asia's World City" or the "Manhattan of Asia,"\(^3\) that "people from all over the world are welcome here"\(^4\) and that Hong Kong is at the forefront of developed societies. It denies however the existence of significant discrimination despite strong evidence of its substantiality.\(^5\) The Government does so knowing that its opposition to legislation precludes even consideration by Legco of an anti-race discrimination bill. From July 1, 1997, SAR Basic Law Article 74 has barred legislators from introducing, without Government permission, any bill that relates to "public expenditure," "political structure," or "the operation of the Government." The provision strips Legco members of the power to initiate private-member bills of consequence over Government opposition. For example, in the 1996-1997 legislative session, 40 private-member bills were introduced and 22 became law, while in 1997-1998 only two private-member bills were tabled.\(^6\)

A Hong Kong newspaper has speculated that "[p]erhaps the reluctance to enact anti-racism laws is due less to a genuine belief that the problem is small and rather more to the fear that such a law would lead to a plethora of complaints and expensive and cumbersome litigation[s] they would create."\(^7\) It is unlikely, however, that the fear of vexatious litigations drove Government opposition to anti-race discrimination laws. Since 1996 three forms of discrimination have been barred by law in Hong Kong: sex; disability; and family status. However, there have been scant litigations under existing laws against sex, disability and family status discrimination,\(^8\) with reports of only a few cases.\(^9\) In 2000, there were ten lawsuits and in 2001 eleven by late in the year, resulting from some 1,000 complaints made to Hong Kong's Equal Opportunities Commission (EOC) each year. The small number reflects EOC policy of filing

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suits only to seek new interpretations of law; most complaints if accepted were settled by money, reinstatement, an apology or a change in procedures. Another possible reason which may discourage litigations is that there are no contingency fees in Hong Kong and losing parties must pay the fees and costs of winning parties.\textsuperscript{10} Furthermore, foreign domestic workers (FDWs), who often complain of race discrimination, are effectively barred from bringing suit because by law they may only do so when not employed and may only remain in Hong Kong for two weeks after becoming unemployed.\textsuperscript{11}

This essay will argue that the ideology of the regime's social base explains why the Government persists in an opposition to anti-race discrimination legislation that inherently creates intra-elite and elite-popular political tensions and leads to repeated international embarrassment. The main social base of the regime — the "traditional constituency" as one pro-business Hong Kong journal has it\textsuperscript{12} — is big business. The regime governs a society to which first Britain and now the PRC have assigned the role of producing a steady flow of profits for their enterprises and those of linked local tycoons — a word derived from the Cantonese dialect spoken in Hong Kong.

The Government presides over the world's most unambiguously liberal economy, a milieu in which success as measured by wealth generates great influence. While Hong Kong's regime is semi-democratic\textsuperscript{13} it also exemplifies what the prominent Hong Kong journalist Philip Bowring called "Government by Businessmen."\textsuperscript{14} Moreover, it also has been derided by Beijing's leaders as a "dictatorship of the bourgeoisie," in which predominant political influence is accorded leaders of large corporations, while the influence of other social groups is tightly circumscribed by an executive-led system whose chief happens to be a tycoon. That Hong Kong's top political leaders consider first and foremost the interests and


\textsuperscript{12} "Hong Kong: Free for All," \textit{AsiaWeek}, January 15, 1999, p. 23.


\textsuperscript{14} Philip Bowring, "Government by Businessmen: Hong Kong's Dilemma," speech before the Hong Kong Democratic Foundation, Hong Kong Club, July 16, 2002.
views of business is indicated by their statements on the necessity of prior business acceptance of any proposed anti-discrimination law.

SAR elites not only regard the business of Hong Kong as business, they also suppose that business leaders reflexively oppose any law that blocks them from even the arbitrary exercise of authority that inheres in discriminatory practices. However, foreign business leaders in Hong Kong are not so uniformly hostile to anti-race discrimination legislation. In contrast, local tycoons oppose such laws and are likely to continue on the same basis that they have resisted democratization, which is deemed as a potential encroachment on their influence over the processes of corporate and societal governance.

The tycoon regime is nevertheless unlikely to assuage growing international and local pressure to prohibit racial discrimination in Hong Kong. The difficulty that confronts Hong Kong as a world center of trade, whose economy is thoroughly imbricated with global commercial trends, is the requirement that it minimizes all factors that inhibit its competitiveness with similarly situated regional trading cities, such as Singapore and Shanghai. The international human rights regimes of which Hong Kong is a part have also been strengthened in recent years, adding non-structural pressures against the SAR Government’s resistance to a mechanism of retributive justice for victims of race discrimination. The fissioning of the top rungs of the political class on this issue will be discussed below, followed by an analysis of racial discrimination and the movement against it in late-colonial and early post-colonial Hong Kong. Finally, we will return to the relationship between the anti-democratic worldview of the Hong Kong tycoons and the politics of racial discrimination.

II. INTRA-ELITE CONFLICT OVER RACIAL DISCRIMINATION

TUNG Chee-hwa’s comments in 2001 about Hong Kong’s lack of a severe problem of racial discrimination and the need to emphasize education, rather than legislation, were consistent with his past record. Responding to a 1998 survey by the NGO Hong Kong Human Rights Monitor\(^\text{15}\) which showed that two-thirds of ethnic minority respondents had witnessed or been victims of discrimination, the CE stated that “compared to cities of comparable size,

\(^{15}\) HKHRM, Survey Results on Racial Discrimination in Hong Kong [1998], <http://www.hkhrm.org.hk/english/reports/survey.html>.
Hong Kong is not too bad. We can hold our head high.”\(^\text{16}\) “Our human rights record is one of the best in the world and we should be justly proud of it.”\(^\text{17}\) His response, however, gave no weight to criticisms of the Government by United Nations monitoring bodies. In his comparison of Hong Kong with the United States and Britain in 2001, he reaffirmed past Government statements that “the more serious forms of racism . . . have never been a problem in Hong Kong.”\(^\text{18}\)

Tung’s comments in 2001 also accorde with views expressed in a major “pro-Beijing” Hong Kong newspaper which argued that allegations of racial discrimination against FDWs in the SAR are misplaced. Practices termed discriminatory, it was said, are only inadvertent misunderstandings caused by cultural differences. There is thus no need for an anti-discrimination law, which may even result in offended feelings and heightened inter-ethnic tension.\(^\text{19}\) Some months before this claim was made however, a study conducted by the Lai Seng Youth Center of the Hong Kong Youth Services Department, based on interviews with 239 foreign workers, found that 80% of those interviewed felt they were discriminated against by local residents.\(^\text{20}\) This response is not surprising, given that those interviewed are likely to have been overwhelmingly FDWs and in almost all cases S.E. Asians, who place at the bottom of Hong Kong’s ethnic hierarchy. The African-American historian and political leader W.E.B. DuBois once remarked on how the close association of the inferior occupational and social status of Black domestic workers with their low racial status reinforced racial prejudice and imparted to the whole society, including to domestic workers themselves, that they were “a despised race to a despised calling.”\(^\text{21}\)


\(^{19}\) Luk Yau, “Gang ren bing bu qishi waiji nüyong” (Hong Kong people do not all discriminate against foreign maids), *Da Gong Bao*, January 30, 2001, p. A13.

\(^{20}\) “Wai yong zai Gang nan shiying xin shenghuo; tuanti jianyi jiaqiang jiaoyu zhu rongru shehui” (Foreign workers encounter difficulties adapting to new lives; groups urge stronger education to aid assimilation into society), *CB*, January 22, 2001, p. A3.

Beijing has consistently backed the CE and given media play to his claim that "Hong Kong is second to none in facilitating racial equality."22 There is speculation that Beijing is using Hong Kong as a stalking horse to determine which human rights the central government can ignore after its ratification of the International Covenant of Economic, Social & Cultural Rights (ICESCR) in 2001 and its announcement that it will eventually ratify the International Covenant on Civil and Political Rights (ICCPR).23 The "stalking horse" theory is not implausible; UN committees that oversee human rights treaties assert the right to make legally-binding "concluding remarks" about the failure of states to meet their treaty obligations.24 Because PRC law does not ban quotidian acts of racial discrimination, but only ethnic disparagement or incitement,25 the UN oversight body for the principal treaty that requires state parties to enact anti-race discrimination laws (the Committee for the Elimination of Racial Discrimination or CERD) has criticized the central government.26 The PRC will likely receive the same criticisms after it makes its first report to the United Nations Committee on Economic, Social and Cultural Rights Committee (CESCR) in 2003.27 Furthermore, it can expect more of the same if it ratifies the ICCPR and thereby comes under the scrutiny of the UN's Human Rights Committee (HRC).

At the same time that the pro-Beijing newspaper essentially endorsed the CE's stance, a newspaper with close ties to property development tycoons published articles by a follower of the laissez-faire economist Friedrich Hayek. The author claimed that advocates of anti-race discrimination laws are utopians who promote human rights concepts in order to reduce the Government's power. He discussed an incident to maintain that it would be onerous to use law to restrict private acts of discrimination. Ethnic Chinese residents of a public housing estate petitioned to have a Cantonese-speaking Hong Kong Indian family evicted because the Chinese neighbours did not like the smell of Indian cooking or the sound of Indian music. The author argued that proponents of legislation

would have the protesting neighbours fined or imprisoned and maintained that a better approach would be to mobilize Hong Kong music or sports stars to visit the Indian family and show their solidarity.28

Another columnist for the same newspaper implied that if a law were enacted, Filipina domestic workers in Hong Kong could sue their employers for discrimination because they had a low “maximum salary,” while local Chinese have no income limit.29 The argument contained a bizarre inversion: there is a government-mandated minimum wage of HK$3,670 a month,30 but no maximum salary, for FDWs; and there is no minimum wage for any other category of workers in Hong Kong. FDWs thus would hardly be in a position to claim race-based wage discrimination, since the fact that they have a minimum wage is a “privilege” not accorded to the rest of the population. Yet, in reality, the “privilege” may not be a true privilege. After all, almost all other full-time workers make more than $3,670 a month. Furthermore, a minimum wage for FDWs may serve to discourage people from employing them, thereby preserving the employment options of local workers.31

The “special columnist” also argued that anti-race discrimination laws had to await the achievement by Hong Kong people of the level of education that exists in the West. This contention is also untenable, given that the former Portuguese colony of Macau, China’s second SAR and the society most similar to Hong Kong, has banned public and private ethnic discrimination through its Basic Law.32 Macau’s educational level moreover is lower than that of Hong Kong. There are a number of reasons for the different result in Macau; the departing Portuguese may have had greater enthusiasm for measures against racial discrimination than did Margaret Thatcher’s Conservative Party. The profile of ethnic minorities in Macau is also different from in Hong Kong. The Filipino community, amounting to 2% of Macau’s population, is more diverse than in Hong Kong, with as many as one-third of its members working as

professionals. It is more difficult for these professionals to be stereotyped as lazy, immoral, unhygienic, etc., as are Filipina domestic workers in Hong Kong.

Tung's comments in June 2001, although in accord with the views of pro-Beijing and pro-tycoon forces, were at odds with statements of his own officials. Although he seemed to concede that Hong Kong had a substantial problem of racial discrimination, even if not one at US or UK levels, his Chief Secretary for Administration — the second highest SAR official — Donald Tsang Yam-kuen, was soon to say otherwise. At a Hong Kong General Chamber of Commerce meeting a few weeks later, Tsang termed race discrimination an "evil" with a potential to tarnish Hong Kong's reputation, but "stressed the problem was not serious enough to warrant legislation."

Two days before Tung's 2001 speech, a legislator queried the Government about a CESC contention that the SAR's failure to ban private sector race discrimination breached its obligations under the ICESCR. Hong Kong had submitted a report to CESC at its annual meeting in Switzerland. Legco member Emily LAU Wai-hing and NGO leaders went to Geneva to argue that the report refused to acknowledge racial discrimination, despite many complaints by minorities. The team further asserted that the report was based on surveys in which only ethnic Chinese were queried about race discrimination.

Responding to the legislator's query, Secretary for Home Affairs (SHA) LAM Woon-kwong stated that the Government was "open" on whether to enact an anti-race discrimination law. He thus echoed what then-SHA Michael SUEN Ming-yeung had said in 1997: "We haven't taken any particular stance," only to oppose legislation when a bill was presented a few months later. SHA Lam added, "we are currently reviewing whether there is a need to legis-

37. LAU Wai-hing Emily, "Xiaochu qishi renxu nului" (The elimination of discrimination still requires efforts), Ming Pao, April 26, 2001, p. A24.
late . . . with a view to reaching a conclusion on the way forward in 2002.” Deputy Solicitor-General Stephen WONG Kai-yi later told the CERD that the Government would decide in 2002 whether to introduce a bill, although John Dean, the Principal Assistant SHA emphasized that the Government’s position remains that “in general, persuasion is preferable to coercion.”

The year before, however, Lam stated that the Home Affairs Bureau (HAB) had determined through public consultations in 1996-1999 that “racial discrimination was not a significant problem in Hong Kong.” HKHRM has detailed its view that the consultations were closed and biased. The year before, the SHA had averred that a law would only be enacted if it had the support of the majority population, i.e. Hong Kong Chinese, a position still held by the Government and decried by the CERD.

The majoritarian approach adopted by the Government belies its claim of keeping an open mind on legislation and is challenged by the argument that the main point of reference has to be those who are victimized by discrimination, not those who may be victimizers. Deput SHA Leo KWAN Wing-wah nevertheless asserted in 2000 that “public consultations have indicated no general support for legislation in this area . . . [Hong Kong] is a tolerant and cosmopolitan society where persons of every race, colour and nationality live together in a remarkable degree of harmony. Racial discrimination is not a significant problem here.”

While DSHA Kwan was to backtrack a couple months later by stating, “We do not say there is no racial discrimination in Hong Kong.

41. HKHRM, Submission to the Legislative Council Panel for Home Affairs Regarding the Report of the Hong Kong Special Administrative Region of the People’s Republic of China, Paper No. CB(2)948/00-01 (01), Hong Kong: HKHRM, 2000.
other high officials, such as Secretary for Justice Elsie LEUNG Oi-sie and Secretary for Education and Manpower Fanny LAW FAN Chiu-fun, did not stress Government open-mindedness. But instead they argued that the CESCR is not a judicial body that issues binding orders and that each ICESCR state party may realize its requirements according to its own circumstances. While the CESCR is not a judicial body, treaties do bind state parties and oversight bodies are empowered to enforce them. An ICESCR state party agrees under Article 2 to take steps to the maximum of its available resources to progressively realize the treaty’s requirements. State parties thus cannot fail to protect rights that they are capable of protecting, e.g. through legislation. One indication of the existence of this principle is the CESCR Draft Optional Protocol, which will allow citizens of state parties to bring complaints against their states for failing to provide rights that the state is capable of realizing. A legal prohibition of racial discrimination and a mechanism for individuals to seek remedies for discrimination is obviously within the means of most state parties. Legislators including Emily Lau, James TO Kun-sun of the Democratic Party, and Confederation of Trade Unions head LAU Tsin-shek have excoriated the Government for failing to fulfil its obligations under the ICESCR.

John Dean is another SAR official who has stressed that the Government is “open-minded” and “not deaf” to calls for an anti-race discrimination law. He noted in a May 2001 Canadian Chamber of Commerce discussion on race discrimination and business that the Government has an “inescapable obligation to eliminate racial discrimination” as a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Britain acceded on behalf of Hong Kong in 1961. ICERD Article 2(1) requires that state parties prohibit dis-

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discrimination by any persons, group or organization, using all appropriate means, including legislation and that they file reports with the oversight body CERD. In their last reports of this kind, the British colonial authorities stated, “The Government, satisfied that racial discrimination is not a problem in Hong Kong, has not considered it necessary to introduce any law aimed at eradicating racially discriminatory behavior and practices.”

The SAR’s first periodic report to the CERD was made in October 2000. While the Government claimed that the report took account of views expressed by “interested parties and members of the public” during consultations supposedly held in late 1999, the report was labelled by human rights activists as “a fairy tale” because it denied the existence of substantial discrimination, which activists said had increased since 1997 and affects both dark-skinned and white ethnic minorities. Several NGOs, including the Hong Kong Human Rights Commission (HRC) and the Social Organizations Committee (SOC) voiced such criticisms. Members of three NGOs and the Frontier travelled to Geneva in July 2001 to brief the CERD during a hearing on the PRC report’s section on Hong Kong. SAR delegation head Stephen WONG Kai-yi stated that it remained the Government view that legislation would not be effective in curbing race discrimination, a stance characterized by one member of CERD, the British scholar of ethnicity Patrick Thornberry, as the Hong Kong Government’s signal to the public that it had “a licence to discriminate.” Thornberry also rejected as “totally unacceptable” the SAR Government’s statement that the cost to business had to be taken into account when considering anti-race discrimination laws. CERD itself concluded that the situation of discrimination in Hong Kong is “unsatisfactory.”

At the Canadian Chamber meeting in May, querying whether the Government neglects its ICERD obligation, John Dean answered that under the treaty, "we have to prohibit racial discrimination, and you cannot prohibit something without legislation." He averred the Government's neutrality on outlawing private sector discrimination and stated that it plans to consult local and foreign chambers of commerce and would decide on legislation in early 2002.\textsuperscript{56} Dean, however, had said in March 2001 that "to legislate might be 'counter-productive' and there is a 'fear that it would create resentment by the ethnic majority' and might create ethnic tensions."\textsuperscript{57} Dean was Assistant SHA in 1996 when he stated, in connection with earlier consultations on the same question,\textsuperscript{58} that "the government plans to introduce measures to eliminate racial discrimination to promote equal opportunities for all and in response to calls for further measures against discrimination."\textsuperscript{59} The Government claimed that "individuals and concern groups consulted in the studies were almost unanimous that education was the best option."\textsuperscript{60} The measures taken were thus "educational."

The HAB spent HK$7 million (about US$900,000) in 1997-1999 and HK$3.5m in 2000 on "extensive publicity programs and community participation projects." Some $2.6m was budgeted in 2001 for race and sexual orientation discrimination education. Education efforts have included a non-binding Code of Practice Against Discrimination in Employment on the Ground of Race in 1997,\textsuperscript{61} a TV variety show and public interest announcements, posters, leaflets, a drawing contest and exhibit, a comic book on the ICERD, and "Racial Harmony Carnivals."\textsuperscript{62}

\textsuperscript{57} "I Care," March 21, 2001, News, \url{http://www.icare.to/21/maart.html}.
\textsuperscript{60} "Racism 'Not Serious' Despite Complaints," HKS, February 20, 1997, p. 9.
\textsuperscript{61} HKG, Code of Practice against Discrimination in Employment on the Ground of Race, \url{http://www.info.gov.hk/hab/top_issue/race_e.html}, 2001.
The “campaign” is in fact exhortative rather than educational: it is not based on recognition of the extensiveness of discrimination or on illustrations of its serious inequities and irrationality, indeed use of such examples would imply that racial discrimination in the SAR is substantial. Rather, the campaign mainly seeks to persuade people that race discrimination obstructs social harmony, more or less in the manner of mainland exhortations to maintain “minzu tuanjie” (ethnic unity), rather than to combat Han chauvinism. The SAR Government campaign moreover has been “near invisible,”63 even though, in his October 2001 policy address, the CE stated that he “has asked the Home Affairs Bureau to examine how we can reinforce the ideals of harmony and equality through publicity and education.”64

The Code is the centrepiece of the Government’s educational effort, which is described as “facilitat[ing] self-regulation on the part of employers and employees in eliminating discriminatory practices in employment.” The Government however recognizes that “it may not always be feasible” for all practices that the Code recommends to be followed, thus encouraging employers to select the recommendations they choose to honour or to regard none as feasible. The Government has even refused to require the Code to be applied by publicly-funded schools, social service agencies and other employers receiving government subsidies or even by such government-owned corporations as the Mass Transit Railway (MTR) and Kowloon & Canton Railway.65 To make matters worse, the Government’s official response to complaints of racial discrimination has been to send literature to educate perpetrators.66

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media nevertheless highlight the Code as an effective effort to promote equal opportunity in Hong Kong.\textsuperscript{67}

There is no evidence that educational measures have mitigated race discrimination; indeed, some actions by public authorities are regarded as having fostered it. It is alleged that school texts negatively represent the peoples of non-Chinese developing countries.\textsuperscript{68} The Hong Kong Amateur Athletic Association, which has a Government mandate to select athletes to represent the SAR in the Olympics, Asian Games, All-China National Games and other sports events, allows only SAR passport holders to be part of Hong Kong teams.\textsuperscript{69} Ethnic minorities are generally ineligible to receive SAR passports because they can become Chinese citizens only by renouncing their present citizenships and obtaining permission of the central government. Government issuance of identity cards that distinguish ethnic Chinese from minorities is also said to be a source of discrimination. A Hong Kong Indian has written that some shops have refused to grant him instalment plans because his ID card lacks the three stars that indicate the holder is an ethnic Chinese. For that same reason a higher upfront deposit for a mobile phone purchase was asked of him by the major telecommunications company Pacific Century Cyber Works (PCCW), and that a leading tour specialist offers its Star Cruise excursions only to three-star ID holders.\textsuperscript{70}

The barrister Vandana Rajwani, head of the NGO Hong Kong Against Racial Discrimination (HARD),\textsuperscript{71} points out that if the Government fears that anti-race discrimination legislation would create ethnic tensions, "then clearly the policy of education is failing."\textsuperscript{72} Former legislator Christine LOH Kung-wai argues that unless the Government uses law to show society a serious desire to eliminate discrimination, any amount of education will prove useless.\textsuperscript{73} The head of the NGO Human Rights Commission has stated that the Government claim that because Hong Kong is a Chinese

\textsuperscript{67} "Hong Kong Publishes Guidelines Addressing Discrimination at Work," \textit{Xinhua}, April 24, 1998.
\textsuperscript{68} "Race Night," \textit{SCMP}, June 24, 1999, p. 21.
\textsuperscript{70} "ID Cards Highlight SAR's Race Bias," \textit{SCMP}, September 6, 2001, p. 15.
\textsuperscript{71} HARD, "Press Statement" [leaflet], January 19, 1999.
\textsuperscript{72} "I Care," \textit{supra} note 57.
\textsuperscript{73} LOH Kung-wai, "Lifa jinzhi fan qishi" (Legislative ban against discrimination), \textit{TYB}, June 2, 2001.
society it cannot have race discrimination negates educational
efforts. The only high SAR official to unequivocally endorse an anti-
race discrimination law has been Equal Opportunities Commission
(EOC) chair Anna WU Hung-yuk. She challenged the claim of
Deputy SHA KWAN Wing-wah that race discrimination is not a
significant problem in Hong Kong, and instead deemed it as being
"very serious." The EOC advocates a law in order to deal with com-
plaints of racial bias brought to it. Anna Wu has asserted that over-
seas chambers of commerce in Hong Kong support legislation
because they believe that a law would assist economic development
and has urged other business groups to back a law. A few days
after the CE made his June 2001 remarks opposing legislation, the
EOC head stated that victims of discrimination cannot be expected
to wait for the benefit of education. She added, "If you accept
there is discrimination, you have the responsibility to get rid of it.
The only way to do so and protect the victims is to legislate." Her
statements were recognized as directly contradicting those of the
CE. A year later, when Ms. Wu’s contract was about to expire,
SHA Patrick HO Chi-ping offered her one year more, rather than
the standard three years. A Legco member stated that several se-
ior officials had opposed reappointment. After her reappoint-
ment, Ms. Wu stated that one of her goals would be to work
towards legislation to outlaw racial discrimination.

Part of the SAR officialdom has unreservedly or grudgingly ac-
nowledged that racial discrimination is a significant problem in
Hong Kong, a partial change from past unanimous official insis-
tence that racial bias is inconsequential and can be addressed

74. HO Hei Wah, “Lifa fangzhi zhongzu qish” (Legislation preventing racial dis-


77. SCMP, June 17, 2001, supra note 76.

78. “Yu te shou chang fan diao Hu Hongyu: ying lifa xiao chu zhongzu qishi (WU
Hung-yuk sings against the Chief Executive’s melody: urges legislation to eliminate ra-


80. “Effective Laws against Race Discrimination Long Overdue,” SCMP, August 6,
2002.
through a modicum of education. It had become difficult by 2001 for the Government to sustain that position in light of surveys conducted among minorities in the SAR. For example, a study by the Society of Community Organisations (SOCO), carried out in the first half of 2001 among 83 Africans, South Asians and Southeast Asians in Hong Kong, reported that 32% of respondents said they had been refused a job based on their ethnicity. Employers typically rejected these applicants on the ground that they could not speak Chinese, but the applicants later learned that the position in question did not require a command of Chinese. One third of those surveyed said they had been refused rental of a flat and claimed that landlords tend to discriminate against certain ethnic groups who landlords imagine as "being poor and unable to pay the rent." More than 30% of respondents said that police discriminate against them on the streets. Nearly 60% said that they had had their identity checked on the street by police and 60% felt that Immigration and Customs officers at borders were biased. Some 46% stated that they were discriminated against by hospitals, often as a result of language barriers, and 12% said that they experienced bias from shopkeepers or ethnic Chinese diners at restaurants, who would move away from minorities.81

Hong Kong officials in 2001 stood divided over racial discrimination, with some agreeing that a law would bolster Hong Kong's image and others opposing the idea.82 They had expressed several distinct views about whether legislation is required, with some internal inconsistency. John Dean admitted that the SAR is obligated to enact legislation and stated that the Government would not oppose it. He had however raised doubts about whether legislation was needed after all, despite its being required by international law, and implied that Government support for legislation depends on whether business people would concur. His boss, the SHA, hinted that the Government does not necessarily oppose legislation, but co-equal officials had at the same time implied that the SAR is not obligated to enact it. The SHA's boss, the CE, implied that not only was the Government not obligated to enact legislation, but that it would oppose it because education is sufficient as a remedy for discrimination. One political commentator noted that the CE had contradicted his own SHA and worried that the CE's comments would prevent the HAB from supporting anti-discrimination

Finally, the head of the EOC had directly contradicted the CE, by arguing that education is itself insufficient to mitigate racial discrimination.

This clash of approaches was evidence of confusion in 2001 about whether there would be a policy review on race discrimination. It was reported that the HAB would consult on whether an anti-race discrimination law is warranted and that it "wanted to know whether the business community would accept such a law." The SHA denied that a consultation was planned, but a month later, soon after the CESC R expressed concern over the lack of legislation, he reversed himself, announcing consultations with the business sector. The HAB wrote to 31 chambers of commerce of different countries and to local employers' associations in June 2001, asking whether they would agree to anti-race discrimination legislation, what concerns they would have with such a law, and issues that they would raise in its drafting. The Bureau was to seek minority and human rights groups' views only after obtaining those of businesses.

Business did speak out on the question. The British Chamber of Commerce stated that Hong Kong UK businesses support anti-race discrimination legislation, adding that "[r]acial discrimination exists in Hong Kong. Legislation is a key element to win the battle of discrimination of all kinds, including racial discrimination." The Canadian Chamber of Commerce said that legislation and education were "important tools to fight discrimination," while the US Chamber supported legislation and stated that it would not lead to industrial disputes or to foreigners barred from employment in the SAR. The Australian and Indian chambers also endorsed legislation. A survey of 31 business groups in November 2001 found that all foreign chambers of commerce backed legislation, as did several local organizations, including the Chamber of Professional Property Consultants, the Association of Restricted Licence Banks and De-

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POSIT-TAKING COMPANIES, the Hong Kong Hotels Association and the Society of Hong Kong Real Estate Agents. The Institute of Human Resource Management and the Management Association did not object to legislation, but opposition was voiced by the Chinese Chamber of Commerce, the Hong Kong Employers of Overseas Domestic Helpers group, and the Hong Kong Hotel Owners. Of the 25 business organizations that responded, six (all apparently “local”) opposed legislation and three expressed no views. In November 2001, the HAB sent letters soliciting the views of 55 ethnic organizations and NGOs. All 44 groups that responded endorsed legislation. Anomalously, an organ of overseas business in Hong Kong, the *Far Eastern Economic Review*, denounced legislation. Its editors argued that a “ban would cause bigots to mask their bias when committing employment or housing discrimination.” In addition, the editors viewed that the existing laws are sufficient to deal with criminally racist acts, and that proponents of an anti-race discrimination law aim to use it to change attitudes, a view that they found reminiscent of Nazi Germany.

The largest “local” SAR business organization is the Hong Kong General Chamber of Commerce (*Xiănggăng cong shanghui*). With 6,000 members, almost all of whom are ethnic Chinese, it has been a consistent opponent of anti-race discrimination legislation. In 1996, it stated that racial discrimination in Hong Kong is not serious and discussion of the problem in Legco is a waste of effort. In 1998, General Chamber head Eden Woon averred that racism in society and employment was “not a serious concern” and that “[w]e are perceived as one of the more ‘equal’ cities in the world, even though we did not have any legislative framework on discrimination until recently.” He thereby contradicted his own chief economist, Ian Perkin, who stated ten months earlier: “if laws


92. “Lìju taolun ben gang zhongzu qishi wentsi, tuanti cu baozhang 97 hou fei hua yi daiyu” (Legislative Council discusses the problem of racial discrimination in Hong Kong; groups urged to safeguard the treatment of non-Chinese after 1997). *XB*, January 14, 1996.

were being passed again, companies now would have preferred the Government to enact an all-embracing anti-discrimination law,” i.e. one that also includes anti-race discrimination, because “the costs of the current legislation are quite marginal” and “all-embracing legislation offered greater certainty.”

Eden Poon told a US lawyers’ delegation in 1999 that most businesspeople did not see racial discrimination as a significant problem. The delegation found that legislators who represent functional constituencies (elected by a small circle of enterprise leaders in industries such as property, garment and textiles, hotels, and communications) claim that race discrimination is insignificant. “In contrast, many academics, popularly elected legislators, legal practitioners, activists, service providers and individuals shared research, case examples and personal experiences suggesting that race-based discrimination is a problem.” In 2001, the General Chamber stated that “[a]ll races are living in harmony in Hong Kong at present, and racial discrimination is not serious.” It holds that discrimination is difficult to define and that a ban would result in industrial disputes, while legislation would reduce the number of job openings, as employers would be deterred from employing foreigners in order to avoid discrimination lawsuits. The Chinese Manufacturers Association of Hong Kong (Xianggang Zhonghua changshang lianhehui) also stated in 1997 there is no racial discrimination in Hong Kong and thus legislation is not warranted.

The present diversity of elite views on whether to enact an anti-race discrimination law reflects longstanding ambiguities over “race” in Hong Kong. Equivocation distinct from the unambiguous racism found in most parts of the Empire was apparent from the outset of British rule in Hong Kong and remained in the waning days of colonialism. It was to resurface after the post-handover transition to a tycoon regime.

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97. “Zhi gang bu cunzai zhongzu qishi— Changshang Hui: jiaoyu yousheng lifa” (There is no racial discrimination in Hong Kong — League of Chinese Manufacturers: education is better than legislation), KB, April 3, 1997.
III. COLONIAL-ERA DISCRIMINATION

Racial discrimination in Hong Kong dates from the post-Opium War founding of the colony. Lethbridge writes that British colonial "higher class" treatment of Chinese mirrored that received by subaltern strata in Britain: "Attitudes to Chinese were . . . close to middle-class attitudes to servants in Britain, for servants in that country were perceived as members of another race – dark, incomprehensible, illiterate troglodytes."98 Well after Hong Kong British anti-Chinese bias ceased to be notable, long-resident "higher class" Britons disparaged recent working-class British migrants to the territory as FILTH, ("Failed in London, Try Hong Kong").99

Racial dichotomization in colonial Hong Kong was not only aggravated by class factors, but also mitigated by them. "Lower class" Britons in high colonial Hong Kong often had links to Chinese in employment, residence and social ties, while wealthy Chinese compradors had ties to the British upper class. The latter few — the British population of Hong Kong in 1901 numbered 2,700 — carved out the Peak area as a purely upper-class European enclave and in 1902 set aside for Europeans a much larger, but less desirable area, 20,000 acres of Kowloon.100 The memory of exclusion from the upper-class Peak after 1904 is the aspect of colonial-era discrimination most alluded to by elite ethnic Chinese in the discourse of racism in Hong Kong.101

Some large employers, such as Hong Kong Bank, refused to hire Chinese for any but menial positions and non-Chinese were sometimes dismissed from employment if they married a Chinese.102 Chinese public employees were also generally paid less for the same work than Britons. Distinctions continued to be made in public service between "local terms" and the more lucrative "expatriate terms" as late as the mid-1990s, despite the operation since 1991 of the BORO.103 In the private sector, the "local" versus "ex-

patriate” distinction still obtains. An industrial action in 2001 by
the union representing 1,500 pilots of Cathay Pacific, the British-
owned, locally-based airline that accounts for 40% of Hong Kong
air traffic, in part concerned this distinction. The 10% of pilots clas-
sified as “local” are denied housing allowances and other benefit
paid to their “expatriate” colleagues. The union demanded, inter
alia, that the benefit level of “local” pilots be raised to that of their
“expatriate” co-workers. CE TUNG Chee-hwa condemned the pi-
lots for contemplating industrial action and referred to their rela-
tively high salaries, even though the pilots main salary demand
concerned discrimination against Hong Kong Chinese pilots.104

Chinese were excluded from high-level public employment as
late as the 1970s and in some departments until the mid-1990s.105
English was the sole official language until 1974 and complaints
were still being raised against colonial language policy in the mid-
1990s.106 There was a miscellany of petty apartheid laws, such as
the requirement, until 1897, that Chinese have night passes and ex-
clusion of Chinese from juries until 1858.107 Flogging as a criminal
penalty was only abolished in 1989.108 Claims by mainland scholars
notwithstanding109 however, oppression in Hong Kong was not as
harsh as in most colonies and paled beside the viciousness of colo-


105. S.N.G. Davies, “One Brand of Politics Rekindled,” Hong Kong Law Journal,
Vol. 7 (1977), p. 44. “Has Racism Entered the Hong Kong Civil Service,” SCMP, Au-

106. Ping CHEN, “Language Policy in Hong Kong during the Colonial Period before
1 July 1997,” in Nanette Gottlieb and Ping CHEN, Language Planning and Language
qishu wu li” (The complaints of foreign public servants against the Hong Kong Gov-
ernment’s discrimination are unreasonable), XB, September 22, 1995.

Rule in Hong Kong,” Hastings International & Comparative Law Review, Vol. 18

108. Christopher Munn, “The Criminal Trial under Early Colonial Rule,” in Tak-
Wing NGO, ed., Hong Kong’s History: State and Society under Colonial Rule, New
York: Routledge, 1999, pp. 46-73. “Government Puts down the Cane,” HKS, August 24,

109. “Chinese Scholars Call for Remembrance of Historical Humiliation.” Xinhua,
June 9, 1997.
nial policy in India\textsuperscript{110} and Africa.\textsuperscript{111} Hong Kong Chinese also returned British elite disdain.\textsuperscript{112} Studies indicated that "Hong Kong Chinese evaluate themselves as higher than Westerners in general [and] British . . . or Americans . . . in particular on the basic dimension of morality-goodnaturedness."\textsuperscript{113} Among Hong Kong Chinese,

The primarily British colonials were ambivalently viewed both as models of 'progress' and 'Modernity' as well as 'barbarians' who lack the subtleties of Chinese civilization and culture. The small but visible overseas Indian/ Pakistani (the 'Ah Cha') community was looked down on with near-universal contempt for their alien ways, although a grudging respect for their hard work and language competencies was also often accorded them.\textsuperscript{114}

Hong Kong migrants to Britain also believed that "Chinese culture . . . is infinitely superior to the European cultures they encounter abroad."\textsuperscript{115} Among Hong Kong Chinese there was never the widespread, racism-engendered self-loathing observed in Africa and elsewhere.\textsuperscript{116} This positive sense of identity reflects Hong Kong people's conception of themselves as in broad terms a part of a dominant people of immense regional and international significance, the Han Chinese. That China is a rising state that is reclaiming its historic position as the regional hegemon reinforces this identity with the principal ethnic group of China and the successful Chinese diaspora.

There was scant organized protest against race discrimination in Hong Kong before the 1960s. Intra-elite pressure had by then

\textsuperscript{112} James Hayes, \textit{Friends and Teachers: Hong Kong and Its people, 1953-1987}, Hong Kong: Hong Kong University Press, 1996.
\textsuperscript{116} Frantz Fanon, \textit{The Wretched of the Earth}, Harmondsworth: Penguin, 1967.
largely ended forced residential segregation and some other features of colonial discrimination. Efforts against remaining *de jure* discrimination occurred as part of Hong Kong student and worker movements that coincided with China's Cultural Revolution of the late 1960s and early 1970s. Social movements succeeded in making Chinese an official language and reinforcing Hong Kong people's preference for ending colonial rule.\textsuperscript{117} Racial discrimination became a prominent issue again only after the 1984 Joint Declaration (JD) of China and the UK on the future of Hong Kong provided for Hong Kong's return to China in 1997.\textsuperscript{118} The perceived discriminators in question were the leaders of the British government of the time, rather than Hong Kong Chinese. The victims and complainants against that discrimination, however, were, for the first time, ethnic minorities in Hong Kong.

IV. STATELESS MINORITIES AND FULL UK CITIZENSHIP

From 1984 to 1997, ethnic minorities — mainly S. Asians whose ancestors came to Hong Kong years or generations before — were concerned that they would become stateless and face discrimination after Hong Kong's return to China. Some 60,000 minorities had right of abode in Hong Kong, but 11,500 held only British Dependent Territories Citizens (BDTC) passports, issued to people born or naturalized in Hong Kong. About 8,000 of the colony's estimated 22,000 ethnic "Indians" (who include migrants or descendents of those from what are now India, Pakistan and Bangladesh) were set to become effectively stateless, including some prominent, wealthy people, as Hong Kong's Indian traders account for 10-12% of the territory's exports and re-exports. By taking British passports, however second-class, they lost citizenship in their ancestral countries. The JD provided that SAR passports would issue after 1997 only to PRC citizens, who were in effect defined as ethnic Chinese. BDTC passports did not allow for the right of abode in Britain or even guarantee it in Hong Kong.\textsuperscript{119}


\textsuperscript{119} "11,500 Facing Statelessness in Hong Kong," *NYT*, August 17, 1986, pp. 1, 5. Graham Jenkins. "Hong Kong Indians: What a State They Are in," *Hong Kong Busi*
A British National (Overseas) (BNO) passport was to be issued in 1997. BDTC passport holders and their children born in Hong Kong after 1997 could claim it, but it did not include right of abode in the UK. Wealthy minorities could gain full UK citizenship through investment there, but China’s view that the BNO is a travel document, not evidence of citizenship. This meant that many minority BNO holders still would be deemed stateless. Hong Kong Indian leaders headed a drive for full UK citizenship for stateless minorities and won backing from the House of Lords, LegCo, Hong Kong Governor Chris Patten, and even Beijing. Campaigners for full UK citizenship threatened actions in the European Commission on Human Rights and International Court of Justice, but for a dozen years failed to move the Thatcher government. After the Tiananmen Incident of 1989, a British Nationality Selection Scheme (BNSS) provided passports with a right of abode in Britain to 50,000 Hong Kong households with a member who held a “sensitive” position, but stateless minorities did not receive any special dispensation.

By the mid-1990s, Hong Kong Indian traders were deeply immersed in the China trade. Some wealthy ethnic Indians had moved away from their previous pro-British outlook and come to side with China in its criticisms of Britain for staging more democratic Legco elections. Hari Harileela, a hotel-industry tycoon and leader of the main ethnic Indian organization with links to British powerholders, was even appointed as a Hong Kong affairs adviser by Beijing. An ethnic Indian journalist in Hong Kong noted that

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poorer members of minority communities most feared the handover to “socialist China”, because if subjected to discrimination, they lacked the political connections and migration options of their wealthier co-ethnics. The poorest South Asians, the 3,000 Indian domestic workers in Hong Kong, in fact have had unacknowledged grievances against the prosperous ethnic Indians who employed them. A survey of Indian domestic workers in 2000 found that about half are paid less than the legal minimum wage and almost three-quarters have to work during rest days and holidays. A mid-1990s study that compared amounts of underpayment of various national origin groups of FDWs found that “[i]n the case of underpayment of wages . . . if HK$3,500 is the minimum wage . . . the worst case is that of Indian women, who were paid HK$2,000-2,500 less.”

In 1996, the CERD condemned the UK for according full citizenship to residents of the (white) dependent territories Gibraltar and Falkland Islands, but not to Hong Kong minorities. By then the Hong Kong government had indicated that it could do no more to help ethnic minorities secure full UK citizenship. Suddenly, in February 1997, minorities seeking full UK citizenship secured victory through passage of the British Nationalities (Hong Kong) Act. UK elections were to take place in May, two months before the Hong Kong Handover. The British Conservative Party switched its position on the issue of full UK citizenship for the potentially stateless in Hong Kong because they did not want the issue of the Hong

Kong minorities to lose them votes among UK Asians.\textsuperscript{130} In the end, the UK extended full citizenship even to many dual South Asian passport holders, but continued to employ racial criteria in excluding from UK citizenship those who had an ethnic Chinese parent or even one ethnic Chinese grandparent, on the ground that such person are “Chinese.”\textsuperscript{131}

The ethnic minorities’ struggle to obtain full UK citizenship was the last issue of colonial-era discrimination in Hong Kong. There was a footnote to it just after the Handover when an erupting volcano destroyed the British Caribbean colony of Montserrat. Its 5,800 inhabitants, who are mainly of African descent, demanded of the new Labour Party government what was given by the Conservatives to the white micro-colonies and then to Hong Kong’s “stateless” ethnic minorities: full British citizenship. That was refused. Montserrat’s refugees were granted only two years of temporary shelter in Britain.\textsuperscript{132} It was not until 2002 that they and some 200,000 other island “colonials” finally had restored to them the full UK citizenship that had been removed in 1981 to stop Hong Kong people moving to the UK.\textsuperscript{133}

The ethnic Indian business organizations in Hong Kong played a role in the effort to secure full UK citizenship. In the post-1997 period, as an ethnic Indian activist noted, these same business groups have generally shied away from being involved in anti-racist efforts,\textsuperscript{134} despite South Asian business people being themselves the victims of discriminatory practices. There is housing discrimination against ethnic Indian business people and well-off ethnic Indians have charged that the Immigration Department sometimes unduly denies their applications to hire South Asian domestic workers,\textsuperscript{135} although the tycoon Harilela family employed as many as 34 Filipina domestic workers in one of its mansions in the mid-1990s.\textsuperscript{136}

\begin{flushleft}
\textsuperscript{132} “Home from Home,” \textit{SCMP}, August 27, 1997, p. 16.
\textsuperscript{133} “UK Passports for 200,000 ‘Colonials,’” \textit{Observer}, May 12, 2002.
\textsuperscript{135} “Immigration Rulings Branded Racist,” \textit{SCMP}, March 19, 2001, p. 3.
\textsuperscript{136} “Servant Pl Maids,” \textit{SCMP}, August 30, 1994, p. 4.
\end{flushleft}
Raj Sital, chair of the Indian Chamber of Commerce, endorsed it as needed to bring Hong Kong in line with other international cities, but also stated that "I don't think racial discrimination is serious in Hong Kong." \(^{137}\)

V. NEW MINORITIES, NEW ISSUES

While the Hong Kong South Asians' struggle for full UK citizenship was ongoing, a broader set of issues of racial discrimination in Hong Kong emerged. Beginning in 1969, expatriates were allowed to bring along their domestic servants from overseas. In the early 1970s, local Hong Kong people began to hire overseas domestic workers and by 1974, there were 881 FDWs in the territory. While the numbers of FDW grew steadily thereafter, a quantum leap occurred in the 1990s, with FDWs increasing by an average of over 15% per annum from 1990 to 1996. Some 99.7% of the FDWs were female, with an average age of 30 years. Well over 95% were S.E. Asians. \(^{138}\)

The 1980s and 1990s changed the ethnic composition of Hong Kong. Chinese continued to be the vast majority, but the largest minority was no longer European or S. Asian, but S.E. Asian. A growing economy swelled the middle class, including a "new middle class" of professionals, administrators and managers better educated and higher earning than the traditional "petty bourgeoisie" of shopkeepers. The new middle class moreover largely lives in private housing, rather than government estates. As early as 1981 it was estimated that the new middle class constituted 9.7% and the "petty bourgeoisie" of all self-employed 12.7% of the population. These segments of Hong Kong society expanded significantly well into the 1990s. \(^{139}\)

The expanded middle class was able to employ "domestic helpers," who by 2002 numbered 237,000, up from 101,000 a decade earlier, \(^{140}\) and must do so to maintain double-income households. In


<table>
<thead>
<tr>
<th>Year</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2002</td>
<td>153,670</td>
</tr>
<tr>
<td>Early 2002</td>
<td>156,000</td>
</tr>
<tr>
<td>2001</td>
<td>150,000-155,000</td>
</tr>
<tr>
<td>2000</td>
<td>150,000</td>
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<tr>
<td>1999</td>
<td>141,500</td>
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<tr>
<td>1998</td>
<td>140,000</td>
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<td>1997</td>
<td>135,000</td>
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<td>130,000</td>
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<tr>
<td>mid-1970s</td>
<td>2,000</td>
</tr>
</tbody>
</table>

2001, 186,800 Hong Kong families employed FDWs. Some households employed more than one FDW and not always to do the domestic work specified in their contracts, but instead to work in businesses owned by their employers. Some 25,700 families employed local domestic workers in 2001, but 70% of such workers are employed part-time and earn much higher wages than FDWs. Most FDWs are Filipinas and almost all are fluent in English, a skill that they can impart to their employers' children. Their numbers have grown rapidly over two decades.

From the mid-1990s, many employers began to hire Indonesian FDWs, most of whom do not speak English, but are said to be more adept than Filipinas at learning Cantonese. Some 60% of Indonesian FDWs are hired for less than the minimum wage, HK$3,670 [US$470] a month, with $2,000 the going rate in 2002. They are also often worked more onerously than Filipinas, in part because they are more often from rural backgrounds and have a lower level of formal education. Indonesians are also from a country where until recently an authoritarian regime repressed social movements, while the Philippines has had a long history of strong social movements for more than a century. The number of Indonesian FDWs has increased very rapidly. By 2001 they accounted for 27% of all Hong Kong FDWs and by 2002, 31%. There are also 7,000 Thai FDWs and 3,930 FDWs of other nationalities. Filipina, Indonesian, Thai and Nepalese account for 98% of all FDWs in Hong Kong.

S.E. Asians in Hong Kong are not all domestic workers. In addition to about 20,000 S. Asians studying in Hong Kong schools, there are more than 100,000 children of S.E. Asian heritage, almost none of whom can be offspring of domestic workers, as FDWs are not allowed to bring family members to the SAR. Many of these children are ethnic Chinese, but one specialist estimates that there are close to 70,000 people in the SAR who are not FDWs, but are of Filipino, Indonesian, Indian or Nepalese roots and are aged 24 or below. Only seven public or government-subsidized schools (five


<table>
<thead>
<tr>
<th>Date</th>
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<td>74,760</td>
</tr>
<tr>
<td>February 2002</td>
<td>70,890</td>
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<tr>
<td>December 2001</td>
<td>68,880</td>
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<tr>
<td>Nov. 2000</td>
<td>54,600</td>
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<tr>
<td>July 2000</td>
<td>51,000</td>
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<tr>
<td>April 2000</td>
<td>45,300</td>
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<tr>
<td>Dec. 1998</td>
<td>31,800</td>
</tr>
<tr>
<td>April 1998</td>
<td>26,650</td>
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<tr>
<td>Dec. 1997</td>
<td>24,700</td>
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<td>Oct. 1997</td>
<td>22,500</td>
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<tr>
<td>Dec. 1995</td>
<td>16,400</td>
</tr>
<tr>
<td>Dec. 1994</td>
<td>9,873</td>
</tr>
<tr>
<td>Jan. 1994</td>
<td>5,000</td>
</tr>
<tr>
<td>April 1993</td>
<td>3,806</td>
</tr>
<tr>
<td>Dec. 1992</td>
<td>3,541</td>
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<tr>
<td>1990</td>
<td>1,023</td>
</tr>
<tr>
<td>1986</td>
<td>246</td>
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</table>


primary and two secondary) service pupils who speak neither Chinese nor English or English, but not Chinese. The schools offer only 2,080 places and their students generally do not do well because there is little incentive for them to succeed in a society where they are made to feel unwelcome. Most minority children who do not speak, read and write Chinese typically must find a place in an expensive private school or not attend school and if they do attend, they are usually segregated from Hong Kong Chinese students. The
Labour Department’s Youth Pre-Employment Training Programme is open to only Cantonese-speaking secondary-school leavers. It is accepted that Indonesians are the most isolated and exploited minority in Hong Kong. The vast majority are domestic workers and are often paid much less than the statutory minimum wage and denied days off work that they are entitled to by law. There are 50,000 people of Nepalese descent in Hong Kong. In 1990 there were only 340 Nepalese nationals in the territory, but by 1999 there were 17,681. Some 20,000 Indian and Pakistani nationals live in Hong Kong and, in 1998, 25,000 Hong Kong permanent residents were of Indian, Pakistani or Bangladeshi descent. The Nepalese tend to be first generation migrants and half of all Nepalese men work on construction sites, where they often are underpaid compared to other workers. The Indian and Pakistanis are much more diverse in background, with some poor recent migrants, but many from well-off families settled in Hong Kong for generations.


“Racial or ethnic minority residents of Hong Kong,” most permanent residents or otherwise entitled to long-term residency, were estimated at 400,000 in 1997.\textsuperscript{148} The 2001 census revealed that “Chinese” (hua ren) were 94.9\% of the “usually resident” population and that “others” (qi ta) were 5.1\%, including Filipino 2.1\%, Indonesian 0.8\%, White 0.7\% (British 0.3\%; others 0.4\%), Indian 0.3\%, Thai, Japanese, Nepalese and Pakistani each 0.2\%, and others 0.5\%.\textsuperscript{149} A survey of 9,500 persons in 1999\textsuperscript{150} showed that most minorities are women aged 27-38, working as domestics, with a median income of HK$3,800 a month. Nearly 80\% of the minorities receive an income of HK$6,000 or less per month. There are wide disparities among minorities, however, with 60\% of Indians and most Westerners holding positions as managers, administrators or professionals. The median monthly income of Indians in 1999 was HK$13,000, while for Westerners it was HK$36,000.\textsuperscript{151} Some 60.4\% of minorities claimed fluency in English and 11.2\% said they are fluent in Chinese.\textsuperscript{152}

Many Filipinas are better educated than their employers.\textsuperscript{153} A Government survey found that nearly 80\% of Filipina FDWs in Hong Kong had graduated from secondary school and 15\% had a college education.\textsuperscript{154} Employment agencies have indicated that Hong Kong Chinese employers do not value intelligence or education among FDWs, with many seeing these as negative attributes that are antithetical to docility.\textsuperscript{155} One in four Hong Kong FDWs suffers the physical and sexual abuses that affect domestic workers.

\begin{itemize}
\item \textsuperscript{151} "Poll Puts Non-Chinese at 4pc." \textit{SCMP}, January 3, 2001, p. 2.
\item \textsuperscript{154} “Maid in Hong Kong.” \textit{SCMP}, July 2, 1995, \textit{Sunday Magazine}, p. 8.
\item \textsuperscript{155} Constable, \textit{Maid in Hong Kong, supra} note 34. Lowe, “Negotiating Meaning across Cultures,” \textit{supra} note 34.
\end{itemize}
the world over. Indeed, of 153 employers of FDWs interviewed in a study released by the Lai Seng Youth Center in 2001, nearly half expressed willingness to physically punish employees who were not performing to their satisfaction.

VI. NEW MAINLAND MIGRANTS AND “RACIAL” DISCRIMINATION

Alongside the increase of minorities in Hong Kong, there has been a sizable growth in the Mainland migrant community. Since 1995, 54,700 per year have lawfully entered Hong Kong. Anti-mainland migrant discrimination has been found in education, housing, social security, and the immigration process. One foreign journalist has labelled Hong Kong as a place of “one country, two castes.” Another has remarked on how Hong Kong practices discrimination even as to the admission of the most highly-educated Mainlanders. James Tien, a longstanding opponent of legislation against racial discrimination, has taken up the anti-discrimination cudgels for Mainlanders, albeit only for those who come to Hong Kong as visitors.

A survey of over 1,000 Hong Kong people showed that 48.9% of male and 63.9% of female respondents believe mainland migrants were “using social resources,” i.e., unduly receiving Government welfare assistance. Some 14% admitted that they had discriminated significantly against these migrants and 42.8% agreed

157. “Wai yong zai Gang nan shiying xin shenghuo; tuanti jianyi jiaqiang jiaoyu zhu rongru shehui” (Foreign workers encounter difficulties adapting to new lives; groups urge stronger education to aid assimilation into society), CB, January 22, 2001, p. A3.
the group was generally discriminated against. A poll by the Hong Kong Psychological Society of 423 Hong Kong-born people showed that most respondents thought Mainland migrants were "ignorant, rude, dirty . . . and failed to integrate into the community." Eighty percent agreed that migrants could not make proper use of improved Government assistance. The study's author, CHIU Chi-yue of Hong Kong University, commented that "[i]t is very clear that many Hong Kong-born people do not like people from the mainland . . . They believe people from China are inferior."

Survey research found that Mainlanders are demed "impolite, filthy and under-educated," with a 1999 poll of 836 Hong Kong people showing that nearly 80% thought that new arrivals have a low level of education. A 1998 study found however that 64% of over-15 mainland immigrants arriving in Hong Kong in 1996 had completed secondary school and over 9% had a tertiary education, while a Government study of more than 10,000 Mainland migrants who arrived in 2000 indicated that 7.6% had university degrees. Indeed, the notion of Mainlanders as "country bumpkins" is so strong that Cantonese-speakers at a Chinese-language TV company in the UK were found by a tribunal to have committed nationality discrimination against a Mainland colleague by disparaging her in that way.

Mainland migrants are portrayed as "impoverished spongers coming primarily for welfare handouts," although in 1997 only 6% of social security cases involved these migrants and a Government study in 1999 found that 15% of migrants are "quite rich" and over 25% are middle class. New Mainland migrants complained of being denied services by shopkeepers and of police harassment. They are ineligible for social security for a year after arrival and for public housing or a civil service position for seven years. Their school credentials are often not recognized in Hong Kong.

Mainland migrants are often taunted for “stealing” jobs; one survey had 54% of respondents complaining that Mainland migrants compete with locals for jobs and social benefits to which they have not made any contributions. Not surprisingly, Mainland migrants are subject to employment discrimination that includes being paid less than Hong Kong people for the same work. Some Hong Kong parents refused to send their children to schools that enrol many “newly-arrived children” (NAC). Only one-third of NAC go on to secondary school. Indeed, the Education Department does not provide assistance in securing school places to NAC above 15.

A poll of 103 new migrants taken by the Ngau Tau Kok Kaifong Association, a community organization, found that 73% feel they are discriminated against by Hong Kong people. Only 5.3% of those polled rated Hong Kong people as “friendly,” while 7.8% found them “hypocritical.” A survey of 100 mainland wives who had arrived in the past three years to join Hong Kong husbands found that 75% believed that they are discriminated against by society. An earlier survey had found that 70% of Mainland migrant women were unemployed and, of those who worked, 75% said they laboured for 63 hours a week or more and 80% earned HK$6000 a month or less. Another survey determined stress among Mainland migrant women is far greater than among Hong Kong-raised women. A survey of 100 Mainland migrant households found that 82% of respondents believed they face racial discrimination in Hong Kong, with almost all convinced that discrimination is average to very serious. Some 40% reported being paid less than Hong Kong people for the same work and 30% stated that employers had rejected them because of their migrant status.

172. “Mainland Women Seen as ‘Breeders and Sex Objects,’” SCMP, July 11, 2000, p. 3.
The SAR Government acknowledges that discrimination against Mainland migrants is analogous to race discrimination.\(^{175}\) It is not unusual to have such discrimination within an ethnic group — witness the situation of the Burakumin and Okinawans in Japan\(^{176}\) or north Jiangsu people (Subeiren) in Shanghai.\(^{177}\) The effect in Hong Kong is to substantially enlarge the population subject to actions that are very like racial discrimination. The total number of people in Hong Kong who are either ethnic minorities or new Mainland migrants probably exceeds one-eighth of the population. It should be noted, however, that survey research has shown that the level of bias against Mainlanders remains lower than against such ethnic minorities as S. Asians, as does the level of perception by members of these two groups of being discriminated against.\(^{178}\) Being a new Mainland migrant in Hong Kong moreover is a mutable characteristic that should disappear among the offspring of such migrants who are raised in the SAR, while ethnic minorities are permanent "visible minorities."

**VII. EMERGENCE OF THE RACIAL DISCRIMINATION ISSUE IN THE MID-1990S**

The first biased practice against ethnic minorities widely discussed in Hong Kong made headlines in the mid-1990s because of its evident irony. It involved a sign posted in the main lifts of an upper-class apartment complex, Tregunter Tower. The sign, in Chinese and Tagalog, asked maids to "please use the service lift" and appeared directly below a sign that indicated that dogs are not allowed in the lift. Filipina maids and even an employer in the complex stated that the sign "smacked of discrimination" and it was later pointed out that some parks had signs stating "No maids or pets allowed in pool." The complaints against banning of maids from the main lifts were answered by another notice from residents that stated "You should take the service lift where you belong! If you don't like please go back to your own country. Don't forget

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you are servants.”

Maids were also banned from some beaches, from using toilets in some buildings, and from entering clubs in the territory, a practice still the norm in private and even Government-linked clubs and that impacts only Southeast and South Asians. That such actions reflect prevailing racial and not just class-based bias can be seen from reports that Southeast and South Asians who are not domestic workers are often subject to discrimination in areas involving admission to private space; for example they often find it difficult to rent a flat.

Filipina domestic workers perceive that they do not face bias from Hong Kong Chinese merely for being domestic workers, but for being Filipinos.

Besides experiencing acts of discrimination involving the private sphere, FDWs have been the objects of racial animus in the public sphere. Some Hong Kong Chinese have complained in the media about the presence of FDWs in parks and other public spaces. The leading landlord in the Central area, Hong Kong Land, recommended in 1992 that Chater Road be cleared of Filipino maids to make for “quality family traffic.” Others have agreed with the Beijing-appointed body that oversaw Hong Kong’s transition, the Preliminary Working Committee, that FDWs who had lived in Hong Kong for seven years or more should not be allowed to vote in elections, despite a law at the time of the 1995 Legco elections giving the franchise to adults who had fulfilled this period of residence.

Hong Kong Chinese connected to human rights organizations, some political groups, the Confederation of Trade Unions,


181. Lowe, “Negotiating Meaning across Cultures,” supra note 34.

and a few newspapers have however decried these attitudes as reflecting racial prejudice. 183

The Tregunter Tower incident called to mind a notorious epitome of racial disdain displayed for some six decades before 1928 at Huangpu Park in the International Settlement of Shanghai. Signs barring entry to the park by Chinese or non-members of the "foreign community" were placed next to signs excluding dogs, giving rise to the legend that a sign had announced a "No Chinese or dogs" prohibition. That legend is often repeated in the mainland press and is familiar to many Hong Kong Chinese. 184 Indeed, Movement against Discrimination vice-chairman John TSE Wing-ling, whose group protested against the lift signs at Tregunter Tower, explicitly compared these signs to the putative Huangpu Park sign. 185 While the single sign of the legend never existed, a racially-malign intent in conjoining signs that coupled a ban on entry by people not of the favored "racial" group and by animals could be inferred in both the Shanghai and Hong Kong cases. The Tregunter Tower sign, like the sign in Huangpu Park, continued to be recalled years after it was taken down. 186

At the time that the sign controversy arose, it was noted that "the Hong Kong government did not recognize that racism occurred in the territory and therefore no anti-discrimination laws existed." 187 In response to the non-recognition by the Government of racial, sexual and other discriminations, several Legco members, led by Anna WU Hung-yuk and Christine LOH Kung-wai, proposed to establish a human rights tribunal and introduced Equal Opportunities bills. 188 This idea was opposed by an important segment of the business sector. James Tien, representing the Federa-

tion of Hong Kong Industries in Legco and now chairperson of the “pro-business” Liberal Party, strongly criticized the proposal. He argued that Hong Kong was “spared racial problems because 98 per cent of the people here are ethnic Chinese” and that if a law mandated equality of opportunity, an equal opportunity council with recourse against discriminatory employers was an “ominous next logical step.” He concluded that if there were an equal rights bill for employees, then there should be one for employers.  

In May 1994, the Government non-publicly sought legal advice on legislating against race discrimination and was told that the ICERD obliged it to legislate. The matter was taken up in the Executive Council (Exco), an advisory body to governors (and now to the CE) that has long been dominated by business people. Exco was split on whether to enact a law. A source close to Exco stated that “[t]he council did not want Beijing to see legislation against racial discrimination as a tool to protect non-Chinese, especially British, interests . . . The council at that time believed education would be the right way to tackle racial discrimination.” The reference to British interests involved “localisation” of the Government. According to the source, some ExCo members feared that “expatriates” who were being replaced might use anti-discrimination legislation to bring lawsuits against the Government. This explanation is not convincing, however. Localisation was a Government policy and public sector race discrimination was already banned under the BORO. On that basis, expatriate civil servants filed lawsuits charging that aspects of localisation amounted to racial discrimination or violated the Basic Law. Localisation moreover is no longer an issue in Hong Kong: the proportion of “expat” civil servants was 2% in 1987, 1.2% in 1993, .9% in 1996, .5% in 1998 and .3% in 2001. By 2001, 563 of the 182,675 civil servants were “expats,” with 350 of them in the police. Despite the recision of the localization issue, the Government continues to oppose an anti-discrimination law.

A private member's Equal Opportunities (Race) Bill was introduced in 1995, but was defeated by Government opposition, which included a memo to Legco members that argued that the proposed law "would create employment problems for the civil service and uncertainties for the private sector."\(^{193}\) A ban on sex discrimination did emerge\(^{194}\) and laws banning disability and family-status discrimination followed. Attempts to marshal support for race discrimination bills continued to fail,\(^{195}\) but the discourse of racial discrimination grew apace, focused on incidents and practices.\(^{196}\)

 Discrimination in Hong Kong also began to be criticized internationally. The UN Human Rights Committee oversees implementation of the ICCPR, a treaty whose Article 2(3) requires state parties to provide remedies for discrimination. It criticized Hong Kong in 1995 for its treatment of the Vietnamese refugees then detained in the territory.\(^{197}\) It was to specifically condemn the SAR Government's failure to legislate against racial discrimination in a report issued in late 1999, when it was noted that Chief Secretary Anson CHAN FANG On-sang had "vetoed" the proposed law. At the same time, the Human Right Committee requested that the Government conduct a survey analysing racial problems.\(^{198}\) This request essentially repeated one made by the CERD in 1996 at the time of the presentation of the Hong Kong section of Britain's 13th Periodic Report.\(^{199}\) When the survey was undertaken in 1999, however, it asked questions about difficulties experienced by minorities,

\(^{193}\) "'Sabotage' Claimed on Bill to Stop Bias," SCMP, July 18, 1995, p. 2.


\(^{195}\) "Bill on Discrimination," SCMP, December 28, 1995, p. 4.


\(^{199}\) "Census Bid to Protect Minorities," SCMP, March 7, 1996, p. 4.
but not about discrimination and was criticized by minority organizations as a “total failure.”

In the mid-1990s, human rights activists deemed racism against ethnic minorities in the territory to be severed and on the increase and criticized the Government for failing to recognize the problem. The Confederation of Trade Unions generally took this position as well, although its general secretary LEE Cheuk-yan also argued that Hong Kong should “stop importing so many foreigners, especially those who are not so skilled.” In a poll of 890 “citizens,” presumably Hong Kong Chinese, undertaken in early 1996 by a social scientist who was also a Democratic Party Legco member, 52% of respondents said that racial discrimination existed in Hong Kong and 47.9% agreed that the Government had not done enough to eradicate it. More than 40% supported a law to eliminate racial discrimination. In a survey of 60 persons by HK Magazine in 2001, 54% agreed and 42% disagreed that Hong Kong is “a racist city,” while 62% thought Hong Kong needs an anti-race discrimination law and 36% believe that it does not. Some 52% indicated that they think that racist tendencies are “natural,” while 46% think that they are not, and 24% stated that they would take race into account if they need to employ someone, while 76% said they would not. One tenth of the sample indicated that they believe that racism is not wrong.

The Government responded to polls that indicated that most people in Hong Kong believe that racial discrimination is significant by claiming that 83% of those who responded to its own “survey” did not consider race discrimination as a serious problem and favored public education measures over legislation to address the issue. Officials cited this “survey” in discussions with a delegation of US human rights lawyers in 1999. SHA Lam stated “there is no obvious problem of any significance that warrants specific legislation.” The asserted “83%” was not based on a survey however.

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The figure derives from a public consultation from late 1996 to mid-1997 in which, according to the Government, 197 of 238 submissions from groups and individuals indicated that it is not necessary to legislate against racial discrimination. When Hong Kong was included however in the 1999 Gallup International Millennium Survey of 57,000 adults in 60 countries and regions and respondents were asked whether racial discrimination is a problem in their country, the percentage responding affirmatively in Hong Kong was five points above the world average.

After the CESC criticized the Government’s use of racial majority opinion to determine whether discrimination exists, the HKHRM surveyed 123 Hong Kong Chinese, 67% of whom reported experienced or witnessed racial discrimination in employment (45%), admission to facilities (33%), sales or delivery of goods or services (20%), government services (16%), home purchase or rental (15%), medical care (12%), access to education (6%), business investment (5%) and other settings, such as social occasions (12%). Eighty percent agreed that legislation would be helpful. Seventy-six percent stated that they would support such legislation.

The issue of racial discrimination had to be directly confronted by the government in 1996 because in 1995 Britain submitted its 13th periodic CERD report, which was presented in March 1996. A 14th periodic report was submitted in August 1996, allegedly over PRC central government opposition and Hong Kong Government officials were part of the UK delegation for the March 1997 presentation. NGOs and legislators criticized the 13th report for

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205. “Gang fu zixun yu ba cheng tongyi bu yi yinru zhongzu qish li” (More than eighty percent in the Hong Kong government consultation agree that it is not appropriate to enact a statute on racial discrimination). XH, June 19, 1997, p. 54.
“being economical with the truth”\textsuperscript{212} and CERD raised criticisms and recommendations, including that the BORO be amended to prohibit discrimination by private citizens, groups or organizations.\textsuperscript{213}

HKHRM produced a critique of the 13\textsuperscript{th} periodic report, a major part of which dealt with FDWs, who labored under a Government policy first elaborated in 1987 as “New Conditions of Stay” (NCS). FDWs, who do not include persons from the Chinese mainland, Taiwan or Macau, are only allowed into Hong Kong on two-year contracts.\textsuperscript{214} They cannot obtain an indefinite right to remain however long they want to stay in Hong Kong, in contrast to “expatriates,” who can be granted unconditional stay in Hong Kong (the right to live and work in the SAR without seeking permission) and permanent residence (the right to stand for election to all but 23 top posts, to vote in elections and to not be deported from the SAR) after a continuous period of seven years as ordinarily resident in Hong Kong.\textsuperscript{215} That is because since July 1, 1997, a person cannot be treated as ordinarily resident in Hong Kong during the time she is employed as a domestic helper.\textsuperscript{216} There are, however, many FDWs who have lived in Hong Kong for 10 years or more, often working for the same family.\textsuperscript{217}

FDWs are prohibited from changing to other types of employment and can be prosecuted for non-domestic work done at an employer’s demand. If an FDW’s contract is terminated prematurely, she is generally required to leave Hong Kong within two weeks, unless she can both prove that she was not responsible for the termination of her contract and find another employer.\textsuperscript{218} This “two-week rule” replaced a six-month rule in place before 1987.\textsuperscript{219}

\textsuperscript{216} “Clarifying Immigration Rules.” SCMP, June 1, 1998, p. 16.
\textsuperscript{217} HKHRM, Shadow Report, supra note 62, p. 38.
\textsuperscript{219} GB, supra note 211. p. 12.
CESCR\textsuperscript{220} and CERD\textsuperscript{221} have criticized it, but it has not been without support in the Hong Kong Chinese press.\textsuperscript{222} During the two-week period, the FDW is barred from working. If a domestic worker whose contract has been terminated prematurely has a dispute with the employer, she is not permitted to change jobs, but is deemed a visitor ineligible for employment. Resolution of disputes often takes months and requires the FDW’s presence. FDWs’ identity cards are marked with a “W” prefix to distinguish them from the general population. Although entitled to one day off per week and to statutory holidays, FDWs may be made to work an unlimited number of hours and may be fired without their employer having to provide evidence of neglect or a contract violation. Many FDWs face verbal abuse, sexual harassment or underpayment by employers, as well as discrimination by civil servants and the general public. They encounter rudeness and contempt in dealings with the police, immigration and labour officials.\textsuperscript{223}

In July 1996, Legco member Elizabeth WONG CHIEN Chilien, who in late 1995 had first raised in the Council the matter of race discrimination,\textsuperscript{224} introduced a private-member’s bill against racial discrimination for Legco’s decision in June 1997. In its 14\textsuperscript{th} periodic CERD report, the Government stated “there is a need for the community to thoroughly to examine and to understand the issues — and the nature of any difficulties — before reaching conclusions on what measures, or combination of measures will best

\begin{itemize}
\item \textsuperscript{221} CERD, \textit{Concluding Observations} . . . , \textit{supra} note 212, para. 18. “Bei zhi qishi hai wai laogong, gang fu zhuyi bochi lian guo” (Indicted as discriminating against foreign labor, the Hong Kong government refutes the UN ad seriatum), \textit{XB}, March 23, 1997.
\item \textsuperscript{222} “Zhongzu qishi weiyuanhui de yi pai hu yan” (CERD’s pack of nonsense), \textit{XB}, March 16, 1996.
\item \textsuperscript{224} “Lian he guo jiang shen zhongzu qishi baogao, li ju yiyuan ze neirong yin’e yang shan” (United Nations will examine the report on racial discrimination; Legislative Council members denounce its content as hiding wrongdoing and praising good deeds), \textit{JJRB}, December 21, 1995, p. 49.
\end{itemize}
address whatever problems have been identified." 225 It launched a public consultation in late 1996 and issued a paper in February. 226 More than 70 bodies made submissions, with those of ethnic organizations, academics and consul-generals providing examples of discrimination. The HAB responded by reporting an "explanation" for each discriminatory act. For example, in response to reports that ethnic Chinese employers had fired their dark-skinned FDWs upon seeing them for the first time, because the employers believed these FDWs to be unlucky, the report juxtaposed the comment of an organization of employers of FDWs: "Domestic employment entailed close and frequent contact between employer and employee. It was important that all concerned felt comfortable with one another. Measures to address such matters would need careful consideration as they could be counter-productive intrusions on domestic privacy." 227

The excuses of "habit" and "communications difficulties" offered for the use of racial pejoratives by media representatives and taxi drivers respectively, were reproduced. That the government tried to deflect every claim of discrimination presented during the public consultation was not lost on media analysts. 228 After the report issued, some organizations that had not participated in the consultation process, such as the Hong Kong Federation of Women, endorsed the Government's evident position that "civil education to eliminate discrimination may be a better way." 229

The Government reported the results of its public consultation in June 1997: 83% of submissions (197) did not support legislation and thought the issue should be addressed through educational and administrative measures, while only 19 of the 238 submissions backed legislation. District Boards, the Labour Advisory Board, trade associations and women's groups opposed legislation on the grounds that racial discrimination is not a significant problem. The groups further agreed that the enactment of legislation might mislead the world into thinking that it was and "might result in vexa-

tious litigation and disputes, accentuate the racial differences in the community and, as a result engender resentment by the majority against the ethnic minority.”

The Government concluded that “it would not be opportune at present to introduce legislation” because “discriminatory acts are not prevalent” and “legislation at this juncture against the view of the majority respondents might be counter-productive.” Human rights activists criticized the consultation process. LAW Yuk-kai, director of HKHRM observed that “[t]he submissions which say there is no need [for legislation] are from people who are not victims or could even be from perpetrators.” Albert Ho of the Democratic Party stated that “[t]he Government had asked the majority if there was discrimination against the minority, and because the majority said no, it decided not to protect the minority.” The Government opposed Elizabeth Wong’s bill, which failed in Legco on June 27, 1997. The Handover took place four days later.

VIII. THE RACIAL DISCRIMINATION ISSUE IN POST-HANDOVER HONG KONG

Ethnic minority organizations did not abandon the issue after the failure to secure an anti-race discrimination law in 1997. In the absence of a mechanism to vindicate the victims; rights continued to be recalled when bias were reported, such as when an African-American businessman alleged that he was called racially-deprecatory names and refused service in an electronics shop and when Japanese tourists were shown to be systematically overcharged by travel agents for hotel stays in Hong Kong. Bias was also charged as to a Government anti-discrimination education campaign. The HAB had linked up with a newspaper group to promote a “Let’s eliminate racial discrimination” drawing contest for schools, but the group was also promoting journalism scholarships to the University of Toronto that are available only to ethnic Chi-

nese. Several years later a Democratic Party legislator, Albert HO Chun-yen, raised the question of whether a HK$10 million contribution raised by the Hong Kong Jockey Club, approved by the SAR Treasury, and allocated to the Dragon Foundation, a non-government fund set up to promote exchanges among young Chinese, implicated discrimination. HAB Director Shelley LEE Lai-kuen, a Dragon Foundation trustee, argued that charity funds may target their services at the elderly or women, so "it was normal to have one dedicated to Chinese," although she was unsure if the Government had ever approved any contributions to funds for non-Chinese.

It was also argued that the Government discriminates through Basic Law provisions that bar non-Chinese citizens from holding high office and convey PRC citizenship only to ethnic Chinese. Immigration Ordinance Schedule 1, which provides that a PRC citizen never loses his or her right of abode in Hong Kong merely by living abroad, while a non-Chinese permanent resident will lose it by living abroad for more than three years, has been termed racially-discriminatory. The same has been said of the rule that requires that a non-Chinese be "settled" in the SAR and continuously reside there for seven years immediately before applications for permanent residence, but does not require this of a Chinese citizen seeking to permanent residence. Complaints have been raised that non-ethnic Chinese permanent residents of the SAR, even if born in Hong Kong, are ineligible for SAR passports because they cannot hold PRC citizenship unless they are close relatives of Chinese citizens or are settled in Hong Kong and willing to renounce their other citizenships. A proposed plan for the Government to run a casino that barred local residents was also thought to amount to discrimination on the basis of ethnic origin. The CE was criticized for implied bias for telling a visiting US President that in Hong Kong, "[w]e are all Chinese."
There were allegations that Hong Kong private schools practice employment discrimination after an ethnic Indian woman’s application to teach English was turned down on the grounds of her ethnicity. The woman was born and raised in Hong Kong and her first language was English, but she was forced to abandon her job search in Hong Kong and move to India. Kindergartens surveyed by a newspaper stated that they preferred to hire whites, rather than Asians, to teach English. The reasons proffered included that “whites can teach English better than Asians” and that “[w]e are here to serve the students so we have to consider their opinions when we recruit English teachers.” The supposed racial preferences of four- or five-year-olds thus barred non-white English teachers from being hired at the school. Indeed, an ethnic Indian born in Hong Kong complained that when children in Hong Kong used terms of racial abuse, their parents found it amusing and that he had experienced such abuse from bus drivers, fellow film patrons, and university classmates.

The allegation of exclusion of non-whites from English teaching positions was not being made for the first time, however. There had been complaints from an ethnic Chinese who lived in Britain for 17 years and returned to Hong Kong to seek work as a kindergarten English teacher, only to be turned down repeatedly by ethnic Chinese employers who “blatantly ask[ed] that only whites should apply.” Reports of refusals to hire ethnic Chinese or ethnic Indians as English teachers continue and the matter has been much-discussed. While in the 1990s, the practice was confined to private schools, in 2002 it was revealed that public school principals had refused to hire teachers of Chinese descent who were part of the Native English-speaking Teachers [NET] program. Ironically, the white head of the agency that recruits NETs demanded that there be no discrimination against teachers of Chinese descent,

247. “Wan Chai you jiu ba she qishi zhongguo ji yindu ren, renquan tuanti yu teshou zhi dingfan zhongzu qishi fa” (Some Wan Chai bars involved in discrimination against Chinese and Indians; human rights groups appeal to the SAR Chief Executive to promulgate a law against racial discrimination). XB, June 6, 1998.
while ethnic Chinese principals insisted that they had the right to refuse to hire teachers of Chinese descent to block any urge by their students to speak to NETs in Cantonese.  

Instances of racial discrimination were related to the CE in a December 1997 meeting he held with HKHRM activists, who reported that the CE was “genuinely shocked and concerned.” Neither these nor subsequent examples discussed in the Hong Kong media changed the CE’s opposition to anti-race discrimination legislation however. Then-SHA, David LAN Hong-tsung was surprised by a report that a popular disco that charged no entry fee to whites but demanded an entrance fee of HK$300 to ethnic Indian customers. One of four ethnic Indians who reported this practice to the press, a manager of a well-known auditing company, commented that “[u]nfortunately, there are no laws on racial discrimination in Hong Kong and victims have no way to air their grievances.” The practice is clearly designed as a “pragmatic” (i.e. money-making) substitute for the outright exclusion based on skin colour that is still practiced at discoteques in other parts of the world, for example in Peru.

A newspaper sent investigators to nightclubs and found that “[w]hile Caucasian male customers walk in free, four out of six bars surveyed in the Wan Chai area charge about HK$150 for Chinese men and up to HK$300 for Indians.” It was later reported that a European Hong Kong resident returned from vacation with a tan was charged a double entry fee because a doorman mistook him for an Indian. The stated reason for this policy, practiced mainly by ethnic Chinese nightclubs owners, is their perception that whites drink more and react less to alcohol then ethnic Chinese or ethnic Indians. The HAB responded to the revelations about differential bar admission charges by sending letters to 500 bars and clubs urging them not to discriminate. It refused however to release the names of the bars or clubs on the ground of “time constraints.” DSHA Peter LO Yat-fai defended the bar owners by repeating

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their claim that they had acted in accordance with ‘commercial operations,’ rather than engaging in race discrimination. Hong Kong Human Rights Watch condemned the Government for tolerating the discrimination and a Legco member accused the SHA of not understanding racial discrimination. The Government’s resistance to anti-race discrimination laws was characterized in the international press as one of condoning racism. Democratic Party activists, led by social worker MAK Hoi-wah, picketed two nightclubs and endorsed anti-race discrimination legislation. The practice of race discrimination in admission fees by bars continued however; in 2001 white men still could enter certain bars and discos for free, but Pakistanis, Filipinos and Nepalese were charged HK$300. The charges were made because, in club managers’ view, Asians are “more likely to ‘cause trouble’ than Whites.”

The South China Morning Post, an ethnic Chinese-owned, English-language newspaper that carried out the investigation of discrimination by bars, became the first media outlet in Hong Kong to endorse anti-race discrimination legislation and has since run editorials urging passage of a law. In July 1998, Citizens Party head and Legco member Christine Loh indicated that she would introduce such legislation, based on existing laws against gender, disability and family status discrimination and a draft was produced. The leaders of HKHRM lobbied the CE on the question.

The SHA however rejected calls for a law, arguing that it is natural for those of the same culture or language to associate with each other and that this association should not be considered racist. Because there are grey areas between discrimination and “personal choices,” litigation that arises out of the grey areas might end up


restricting personal choices that had no direct bearing on race, making legislation counter-productive.\textsuperscript{262} It was observed that perhaps the SHA, in distinguishing discrimination and bias, had in mind a statement of James TIEN Pei-chun, the Liberal Party head and Legco representative of the General Chamber of Commerce. Tien stated in a debate about government intervention in financial markets that “‘[w]e should never let the gweilo know our last card.’”\textsuperscript{263} He employed a disparaging Cantonese term for whites which — although said by DSHA KWAN Wing-wah to be a phrase “for many purposes”\textsuperscript{264} — abbreviates fan gwei lo or barbarian ghost, a term that can hardly have a benign tinge.\textsuperscript{265} There are also derogatory Cantonese terms for Indians, Filipinos, Black people and mainland Chinese, as well as disparaging epithets for foreigners in Chinese generally. The Cantonese term “ban mui,” literally “Philippine girl,” is used interchangeably with servant and Filipinas regard it as insulting, as they do references by ethnic Chinese children to their family’s domestic worker as “my Filipino.”\textsuperscript{266}

By 1998, reports of discriminatory practices became common in the SAR media, including one involving racially differential treatment for flat hunters, based on “testers” sent by HKHRM to housing estates. Real estate agents provided information about defects in the flats to a white client not provided to Asians. Agents stated that they preferred whites because “[t]hey don’t think they’re troublesome at all.” The white client was steered to the most expensive properties and not shown less expensive ones. He was also offered a flat at a rate lower than that given to ethnic Chinese, while the Chinese client was made aware of an inexpensive flat not shown to the white. A white customer was offered a wide


\textsuperscript{264} \textit{AWSJ}, February 9, 2001.

\textsuperscript{265} May Holdsworth, \textit{Foreign Devils}, supra note 100, p. 193.

range of flats; a Pakistani customer with the same requirements was told of only the worst properties.267

Minority group members told the Legco Panel of Home Affairs about experiences involving discrimination when renting accommodations, finding employment or legal services, and entering bars and clubs.268 Many subsequent press reports attested to widespread discrimination. A group of non-Chinese tenants complained that notices about building management committee meetings were sent out only in Chinese. Human rights activists reported that police and immigration officers are less friendly toward “dark-skinned” people than toward ethnic Chinese or whites. A Sudanese businessman who had lived in Hong Kong for 14 years reported that he often hides from police on the street because he is subjected to frequent police identification checks and searches, while police have never stopped his white wife.269

A senior executive posted to Hong Kong by a large corporation was refused a flat on the Peak because he is Indian, while an ethnic S. Asian couple had to swap roles with their British property agent so they could rent a luxury flat. A social worker seeking employment as a cleaner or dishwasher was offered positions by snackshops and restaurants until they learned that she is Nepalese. Ethnic Indian employers told of having a hard time getting Chinese to work for them. Sofas in an Airport Express train station were removed because “there had been too many Filipinos sitting” on them. A Pakistani SAR resident claimed that a public hospital discriminated against him by failing to tell him that he has a tumour. A Cantonese-speaking Hong Kong Indian with straight A grades at an international high school alleged she was denied a place at the University of Hong Kong medical school because of her ethnicity, an irony in that the university’s founding in 1910 was underwritten by a Hong Kong Indian businessman. A Hong Kong Indian complained of being denied admission to any local university’s accountancy program, despite good exam results, because he failed to attain a C grade on part of the entrance exam that tests minority

students in French. He noted that minority students study French in lieu of Chinese, but that ethnic Chinese students need not attain a C in Chinese. A prize given by the fast food chain McDonald's in an Olympics-related promotion and a discount offered by a cruise liner were restricted to ethnic Chinese. "Dark-skinned" and white residents have reported that ethnic Chinese on the MTR or buses move away from them at the first opportunity. S. Asians working in beauty parlours complained that some Chinese refuse to have their hair washed by dark-skinned people. Filipinos in the SAR report that travel agents charged them twice the fee that other nationalities paid for visas to enter mainland China. Ethnic Chinese and S. Asian law school faculty at City University contended that discrimination was involved in their replacement by faculty recruited overseas. Foreign students at Hong Kong University complained that student election materials were in Chinese only, while foreign prison inmates alleged exclusion from all incentive schemes. Sacked ethnic Chinese Northwest Airlines cabin crew alleged that their work conditions and layoffs were marked by racial bias favouring American employees, but had to appeal to the US Consulate for assistance because laws in Hong Kong did not allow them to sue there.\textsuperscript{270}

\section*{IX. ORGANIZED PROTEST BEGINS}
Rising perceptions of discrimination impelled the formation of a "Racial Equality Federation" (\textit{Zhongzu pingdeng lianmeng}), as it was called in Chinese or Hong Kong Against Racial Discrimination

(HARD) in English. The coalition came together under the auspices of Legco member Christine LOH Kung-wai and included 12 organizations of Filipino, Indian, Thai, Indonesian, Nepalese, Mainland Chinese and other migrants. Its priorities have been to raise awareness of race discrimination and press for an Equal Opportunity (Race) bill.\textsuperscript{271} Christine Loh planned to table an Equal Opportunity (Race) bill after consultations with the "commercial sector."\textsuperscript{272} The Government however precluded her from raising the bill in Legco, stating that "[t]he decision not to introduce legislation on race discrimination is a conscious and deliberate policy of the Government," invoking Article 74. Loh termed the decision "disingenuous and intellectually dishonest" because the Government had no reason not to legislate.\textsuperscript{273}

The new coalition’s leaders did not have a uniform view of what constituted racial discrimination. For example, when a 5% wage cut was imposed on SAR domestic workers, some leaders denied that the cut amounted to racial discrimination because many other workers were also experiencing wage cuts as a result of the Asian Financial Crisis. A second wage cut was proposed in late 2001 and, again, some but not all the leaders of the coalition termed it racially discriminatory.\textsuperscript{274} Other leaders argued however that the cut’s disparate impact on poor women workers “of a different colour” amounted to racial discrimination.\textsuperscript{275} Some months later, several Legco members proposed imposing a 20% tax on the wages of FDWs, who were then earning HK$3660 (US$470) a month, but this proposal was never put into law.\textsuperscript{276}

HARD’s first issue involved the reduction of visa-free entry for citizens of three S. Asian countries, India, Pakistan and Bangladesh, from three months to two weeks. Nepalese visitors and Nepalese citizens with dependent Hong Kong identity cards were


\textsuperscript{273} “Dishonest,” \textit{SCMP}, February 13, 2000, pp. 9, 11.


\textsuperscript{276} “Philippines up in Arms over Proposal to Tax Maids in Hong Kong,” \textit{DPA}, October 20, 1999.
required to apply for visas, with visitors limited to a 15-day visa. The Government claimed these changes were based on an increase in overstaying by visitors from these countries. Immigration Department statistics, however, showed that deportation orders for visitors from India, Pakistan and Bangladesh had fallen since 1996. Only 86 of 93,000 visitors from India in 1998 were arrested for overstaying. There were also almost 25,000 Pakistani and 17,000 Bangladeshi visitors. Immigration officials stated that among these 135,000 visitors they detected 389 over-stayers. Forged travel documents from these countries numbered 310 in 1998. The issue is related to stops, searches and rudeness by officials at Hong Kong's airport that S. Asian visitors (including famed Indian cultural figures) find to be a constant, exacerbated after the September 11, 2001 terrorist attacks in the US, despite 2001 figures showing that there were only 69 cases of overstaying detected among 179,741 arrivals from India (down from 78 in 2000 and 74 in 1999).

There was soon another travel issue: Customs officers were often accused of racial discrimination for carrying out a disproportionate share of airport baggage searches on dark-skinned travellers and body searches of South and S.E. Asians. Of 8,785 visitors searched from February 1998 to January 1999, 18% were Nepalese and 11% of nearly 14,000 Nepalese who entered Hong Kong in that period were subjected to a body search. Of 480 passengers required to provide urine tests, 82% were Nepalese. Indian, Pakistani and Thai nationals were also singled out, while Australians, New Zealanders, Britons and Americans constituted only 2.4% of those searched. S. Asians were found to be 367 times more likely to be searched than Western travellers and 45 times more likely than those from E. Asia. Only three searches, 0.03% of those conducted, uncovered illegal drugs. Seven Nepalese with drugs were arrested at the airport over a two-year period. The searches could delay passengers for up to two hours and sometimes required urine samples. Many of those searched were Hong Kong permanent residents. Thai women between the ages of 18 and 40


visiting the SAR for the first time were routinely asked whether they are prostitutes and had their bags searched regardless of whether they arrived as individuals or on a group tour. One Hong Kong resident later reported that his Thai girlfriend had been detained on 16 of 18 entries to the SAR, while his British sister, also a single young woman, had entered six times without problems. A similar program had targeted Filipinas several years before, but was ended after complaints from the Philippines consulate.  

The HAB denied that Customs practiced discrimination, but the airport-related practices served to undermine the Government-touted image of cosmopolitanism and increased competition between Hong Kong and other regional cities. If those who were not of Chinese or European descent cannot travel in and out of the SAR without risking an encounter with discrimination, the prospects for escaping it while living in Hong Kong seemed even more remote. Indeed, there was later a flurry about whether discrimination was implicated in a proposal by tax officials that "expatriates" have part of their pay withheld by employers to prevent income tax evasion. Some 0.2% of total salary tax had gone unpaid in 1999 because of expatriate evasion and 0.2% of expatriate salary earners had dodged taxes by leaving. There were no prosecutions. One leader of HARD stated that she did not consider the concept to amount to racism because many "expatriates" in Hong Kong are ethnic Chinese. Other non-Chinese deemed the proposal discriminatory on its face. Chambers of commerce with foreign members opposed the idea, as did the Taxation Institute of Hong Kong, and nothing more was heard of it. In late 2000 however, an incident that gave rise to a claim of racial bias heightened the perception that life in Hong Kong for minorities is made unpredictable by discrimination and dramatically magnified the discourse.


283. "Targeting one Section of Community is Discriminatory," SCMP, November 22, 2000, p. 19.
X. UPSURGE IN THE DISCOURSE OF RACIAL DISCRIMINATION

In August 1999, a new EOC head took office. Anna Wu’s position contrasted with that of other officials, such as SHA David LAN Hong-tsun, who continued “to insist that [on an anti-racial discrimination law], we must have the support of the majority of the people of Hong Kong,” otherwise such a law would amount to “coercion.”

Soon after the EOC was set up in 1996, it began to receive complaints of racial discrimination, even though it is powerless to act on them. From 1996 to the end of 1999, the Commission received 62 such complaints. It investigated 11 in 1998 and nine in 1999. In 2000, with a new EOC chair and increased anti-racist activism, 66 such complaints were lodged, despite some minority leaders discouraging filings because the EOC lacks power to handle them. From January to May 2001, the EOC received 68 more complaints of racial discrimination, for a total of 196 complaints from mid-1996 to mid-2001. By the end of 2001, the EOC had received 191 racial discrimination complaints in that year, more than double the number filed in 1996-2000, despite a continued lack of EOC authority to act on them. There were 1,166 complaints of all kinds to the EOC from September 1996 to May 1999 (48% about sexual harassment) and about 400 more in September 1999-March 2001. Of 1,571 complaints in the three-year period before January 2000, 750 related to sex, 790 to disability and 44 to family status. Race discrimination complaints thus accounted for some one-tenth of submissions, even though the EOC was not empowered to deal with them and these filings sharply outnumbered complaints about family status discrimination, although the latter is prohibited by law. The EOC moreover received 525 “inquiries” concerning racial discrimination between 1996 and mid-2002.


Some complaints lodged with EOC in the late 1990s included:
A modelling agency seeking only Caucasian, Chinese or Japanese models;
Employment advertisements saying only Japanese and Germans should apply;
A Briton refused employment on the grounds of his nationality;
A company that gave medical insurance to all employees, their spouses and children except for an employee whose wife was Filipino; and
A female engineer who said she was called *puk ku*, a colloquial Cantonese term for a mainland prostitute.\(^{286}\)

Complaints made in 2000 included claims by Mainland migrants and native English teachers that their salaries were lower than those of Hong Kong Chinese doing the same work, claims by ethnic Indians that they are overcharged for rent, that landlords are reluctant to lease apartments to them, that they have to pay more in bars than do others and that they cannot find schools for their children.\(^{287}\)

While instances of bias were familiar to Hong Kong minority organizations, an incident that surfaced in November 2000 brought an unexpected upsurge in interest in questions of racial discrimination. A UK newspaper reported that Harinder Veriah, a Cantonese-speaking Malaysian Indian lawyer working for a UK firm in Hong Kong and wife of British journalist Martin Jacques, had died in Hong Kong’s Ruttonjee Hospital of an epileptic seizure on the eve of the new millennium. The report alluded to questions to be raised at an inquest about whether ethnicity was a factor in her death.\(^{288}\) Ironically, the hospital was endowed by a Hong Kong Indian businessman.

Ms. Veriah had told her husband that she felt “at the bottom of the pile” in the hospital because she was the only Indian patient and everyone else at the hospital was Chinese. Her husband told the inquest that his wife “felt she was being discriminated against in the

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hospital on the grounds of her colour.” The accusation was noted by the international media, as was her husband's observation that his wife experienced acts of discrimination at work, in the streets and shops, and found race discrimination during her year in Hong Kong to be far worse than what she experienced in four years in London. Minority group leaders stated that it would be unsurprising if attitudes of discrimination toward dark-skinned minorities manifested in Hong Kong were present in medical circles. The coroner only noted that there was no evidence for accusations raised by Martin Jacques. The Government, through John Dean, commented that in Hong Kong, “[i]mmigrant communities don't have excrement shoved through their post boxes. We don't have racist political parties . . . People's houses are not firebombed like the Bangladeshis in east London. There are no mobs with white hoods over their heads,” comparing the situation of Hong Kong minorities with that of minorities in Britain and the US, as the CE was to do. The argument that state is required only when racism is violent had however been addressed years before.

The Harinder Veriah case revived a movement against race discrimination demoralized by the Government's refusal to consider legislation. The case came after the retirement of SHA David LAN Hong-tsong, who had adamantly opposed a law, and it coincided with the prospect that several UN human rights treaty oversight committees would criticize the SAR government for failing to enact one. Members of the UN Human Rights Commission, which investigates human rights conditions in member states, visited Hong Kong in February 2001, met with the SHA and “said they would

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291. “Xiang gang ren you zhongzu qishi” (Hong Kong still has racial discrimination), XDRB, March 3, 1997, p. 58.

like to see the Government legislate against racial discrimination.”

At the same time, HARD announced a campaign to lobby for a law. The public was asked to submit their experiences of racism to the organization via e-mail and some of these were recounted in the press. HARD raised another case involving medical treatment of an ethnic minority. A domestic helper, Cristina Solano, had died in Hong Kong in 1999 after having been bitten by a dog in the Philippines two months earlier. Several Hong Kong doctors failed to diagnose her condition and the coroner recorded a death by natural causes. HARD leaders raised the question of whether Ms. Solano would have been properly diagnosed were she Chinese.

At a meeting organized by HARD in March 2001 and attended by over 200 people, some 60% ethnic South and S.E. Asians, 20% ethnic Chinese and 20% Whites, Solano’s mother stated that nurses in the hospital where her daughter died had refused to help her walk to the bathroom. A leader of an Asian migrants’ NGO related that ethnic Chinese employers had rejected domestic helpers whose skin they thought too dark, a prejudice that has been noted ever since the large-scale migration to Hong Kong of S.E. Asian FDWs began. Some employers specifically request a Filipina hailing from Manila because they believe that people from the capital are lighter-skinned than those from other parts of the Philippines. An ethnic Indian managing director of a trading company, Sham Parmanand Balani, recounted how he was three times refused rental of a flat, being told by landlords or estate agents that it was on account of his Indian ethnicity. He eventually secured a luxury flat by masquerading as an Italian. Ironically, Mr. Balani is a past officer of the General Chamber of Commerce. In an incident the following year, a New York banker who had moved to Hong Kong was refused a flat in the upper-middle class Mid-Levels after the landlord told his property agent that he did want an Indian tenant. The agent said that 90-95% of Mid-Levels landlords specify

297. Constable, Maid in Hong Kong, supra note 34, p. 36.
that they do not want Indians. Soon after, an ethnic Indian chief technology officer at a garment company recounted that in the two times that he had moved home in seven years, landlords and property agents "declined his business because of his race." A Sikh accounts manager told how a fellow MTR passenger left his seat and walked away when he sat down, while an Indian banker stated that ethnic Chinese mothers would not let their children play with her daughter because they thought "'dark-skinned people and Indians smell and are dirty.'"

HARD recognizes however that legislation would only deal with discrimination and not bias, i.e. with acts in employment and the provision of goods and services. Although some have urged that legislation deal with group slander, but not employment discrimination, in order to protect the interests of local workers, a law would likely do the reverse: cover employment and services, but not expressions of race-based stereotypes, such as the common conception by Hong Kong Chinese that Westerners are promiscuous about sex and drinking, and lack industry or displays of prejudice that amount only to rudeness or unfriendly attitudes, such as the radio program that made insulting remarks about Filipinas and Asian women married to Westerners or the TV ad that deprecated "black tribesmen." Even the "parody" proposed to be staged at an awards ceremony by the Association of Accredited Advertising Agents of Hong Kong (the 4As) that called for purging the "gwei[lo]" from the SAR presumably would be outside the ambit of the law. In the radio case, the Broadcasting Authority warned the station. In the TV ad case, the HAB dismissed the concern with bias as "subjective." In the 4As case, the parody was

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302. "Gang ren bu ying you zhongzu qishi" (Hong Kong people should not practice racial discrimination), XDB, March 6, 1997.


dropped after the association's second largest member threatened to quit the organization.\textsuperscript{305}

HARD and the Coalition for Racial Equality, headed by MAK Hoi-wah, announced that its campaign for anti-race discrimination legislation would seek to gather one million signatures for submission to the Government and to Mary Robinson, the UN High Commissioner for Human Rights. The UN held a world conference against racism in South Africa in August 2001 to which Hong Kong sent a delegation and where HARD had planned to present the signatures. HARD also made a submission to the CESC to express concern about the lack of anti-race discrimination legislation and to back the idea, previously suggested by the CESC, to establish a government human rights commission in Hong Kong.\textsuperscript{306} Another coalition, the Asian Migrant Co-ordinating Body, comprised of associations representing South and S.E. Asian migrant workers in the SAR, also staged a march of FDWs on May Day 2001. About 200 marchers pressed for repeal of the two-week rule and the enactment of a law against racial discrimination.\textsuperscript{307} Thus by 2001, a movement to challenge Government recalcitrance on the issue of racial discrimination had achieved a certain presence.

\section{XI. The Tycoon Regime and the Politics of Racial Discrimination}

In the year 2000, for the seventh year in a row, the Heritage Foundation (HF), a conservative US think tank, declared Hong Kong "the world's freest economy."\textsuperscript{308} The HF is a favourite of the SAR Government, whose website in 2001 made 233 references to it. TUNG Chee-hwa has met several times with the president of the

\textsuperscript{305} "Natives' Return in Noodle ad Campaign," \textit{SCMP}, October 12, 1998, p. 3.


HF, which in turn has held banquets in his honour.\textsuperscript{309} The PRC government has positively noted the HF’s evaluations of Hong Kong\textsuperscript{310} and it is liked as well by Hong Kong tycoons, who have donated several million US dollars to the HF. Most donations have come from “a number of pro-China figures and property developers.”\textsuperscript{311}

A week before the HF’s declaration about Hong Kong’s “freedom,” a European Parliament (EP) report expressed concern that “a number of tycoons have an undue and dominant influence in certain sectors of Hong Kong’s economy” that could be used to exclude new entrants. It mentioned allegations that the LI Ka-shing family business operations account for a quarter to a third of stock market capitalization and called on the SAR to enact fair competition laws.\textsuperscript{312} The Government’s policy of colluding with developers to keep property prices from falling is well-documented.\textsuperscript{315} A prominent Hong Kong commentator who has analysed close links between property developers and SAR officials has stated that the CE Tung’s Government “worships at the feet of the wealth manipulators, rather than wealth creators” and “limit[s] competition to protect the interests of the already mega-rich.”\textsuperscript{314}

It has been noted that Hong Kong income disparities are the highest of developed areas and higher than most developing states. The SAR’s Gini Coefficient, a measure of income inequality in which 0 is complete equality and 1 complete inequality, was .518 in 1996, up from .453 in 1986, while for the PRC it was .407, for India .378, and for Indonesia .365. In 1996, 20\% of Hong Kong people held 50\% of all wealth.\textsuperscript{315} Inequality between the richest and poorest deciles of SAR income earners doubled in the 1990s; in 2000, the top 10\% took a third of Hong Kong’s total income, while

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\textsuperscript{312} “Euro MP’s Hong Kong Report Voices Concern over Tycoon’s Clout,” \textit{AFP}, October 25, 2000.


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the bottom 10% took 1%. 316 Much of the increased inequality is
due to shifts in population shares, notably the increase in the propor-
tion of foreign workers, whose earnings variance from the rest
of the population is the largest. 317

Neither side of the Hong Kong business-government partner-
ship tries to obscure the relationship. Philip Bowring has noted that
"Hong Kong remains beholden to the interests of a small group of
inordinately influential people who dominate large areas not just of
the domestic economy, but of those which provides its links to the
outside world." Since 1997 "the links between the political leader-
ship and the leading families have been strengthened and the separ-
ation between the bureaucracy and institutions such as the stock
exchange have eroded." He has also observed however that the top
bureaucrats’ partners are not business in general, but the tycoons. 318

At the top of the business tree nowadays are the figures
who dominate not just the property market but other as-
psects of the economy — utilities, retailing, telecoms — to
the same or even greater extent than the chaebol ever con-
trolled the South Korean one . . . They act like the govern-
ment-linked companies (GLCs) that play a similar role in
Singapore [but] Singapore’s GLCs are subservient to the
political and bureaucratic leadership, while in Hong Kong
the bureaucracy tends to follow their interests . . . The bu-
reaucrat fat cats seem to think it is their job to be pro-
business, which in effect means being for the established
elite and their profitable cartels, which are a burden on
the overall economy and on small and international busi-
ness in particular. 319

Hong Kong’s tycoons are in some ways like the family autocracies of the Arab emirates of the Persian Gulf region and it might be argued that the tycoon regime, like these autocracies “seek to elevate the political and cultural integrity of their dominions by counter-posing them to the ‘secondary’ serving societies made up of

317. Kit-Chun LAM and LIU Pak-Wai, “Immigration, Population Heterogeneity,
and Earnings Inequality in Hong Kong,” Contemporary Economic Policy, Vol. 6, No. 3
ethnically degraded foreign workers.” Primus inter pares among the tycoons is Li Ka-shing, head of the Cheung Kong property and telecommunications group. He has excellent relations with PRC leaders and with CE Tung, including past business partnerships. Li received Hong Kong’s highest award from the CE in 2001 and in turn endorsed him for re-election by the business-dominated “small circle” committee of 800 that re-elected the CE. In 2002, the CE appointed Frederick MA Si-hang, executive director of PCCW, a Li family company, as his Financial Services and Treasury minister. Li, incidentally, is another admirer of Friedrich Hayek.

During the small circle election for CE in 1996, tycoons with interests allied to Li voted for Tung, while competitors of Li voted for Tung’s opponent, the tycoon Peter WOO Kwong-ching. Woo and other tycoons, however, endorsed Tung’s re-election in the small circle selection of 2002. Li’s son Richard Li Tzar-kai, CEO of PCCW, heads IT and other companies awarded without open tender the right to develop Hong Kong’s Cyberport, an incident that elicited a rare letter of protest from other property developers. Business commentators have accused Li Ka-shing of using a front company to covertly secure at auction seafront property for an amount far below its value and have skewered the Li family for issuing to itself and its friends shares of companies at a few cents each and then selling them to the public at several dollars. Li Ka-shing responded to the EP report by arguing that at most his family holdings account for 18% of Hong Kong stock market capitalization. Beijing, the CE and the General Chamber of Commerce all condemned the report. In contrast, a newspaper advertisement,

signed by directors and investors of 23 listed small and medium-sized companies, referred to the EP report in charging that some people in the Government were "shoe-shining" companies associated with the Li family.328

Commentators such as Emily Lau have stated that many people in Hong Kong and elsewhere believe that LI Ka-shing is more powerful than the CE and recount the close connections between officials and the Li family.329 Li was termed "not Hong Kong's richest tycoon, but easily its most influential."330 British business journals reported that LI Ka-shing bullies companies to not do business with his competitors and benefits immensely from Government land policies that drive up rents.331 They describe the Government as "deferential to a fault to the demands of big business."332

Examples of the workings of a tycoon regime abound: Hong Kong has no minimum wage or collective bargaining law.333 Its labor regulations are toothless.334 Proposals to require employers to provide workers with meal breaks and one day off per week have been rejected.335 When Cathay Pacific pilots carried out a rare industrial action, the CE sided with the company. Hong Kong has a Home Ownership Scheme (HOS) under which the Government sells subsidized flats to what is, relative to per-capita GDP, the worst-housed community in the world. About one-seventh of the population lives in HOS flats. When LI Ka-shing announced a fall in profits for his companies and demanded that HOS end so that private-built flat prices can rise, the Government announced a moratorium on HOS construction.336 It halved the number of HOS...


331. "In a Few Hands," Economist, supra note 325, p. 78.


flats each year until 2005 and will then make further "radical cuts" that will likely result in a phase-out of the scheme. It will also freeze the allocation of new land to build HOS flats and allow Government-subsidized loans to be used to buy privately-built flats. This approach corresponds to proposals made by Li, other developers and major lenders, such as the Bank of China. Developers stand to sell some HK$20 billion worth of flats as a result. The international media, including business publications, said such measures "pander to the developers" and will "please only the tycoons." 

The tycoons are a voice against expanded democracy. They united in the mid-1990s to criticize Governor Patten for his limited expansion of the franchise. After the Handover they have often voiced opposition to criticism of the "establishment" by demonstrators, Legco members, and journalists. Protests sometimes target business, including property developers, and General Chamber head Eden Woon has put it that "[t]he more bickering there is, the more people [in business circles] shake their heads." He backs the Government's refusal to ease the Public Order Ordinance, which requires advance police permission for protests. In contrast, a governor of the American Chamber has stated "[i]t's good that people are engaged in policy debates rather than packing their bags and moving to Vancouver." 

Besides Li Ka-shing, other tycoons, such as LAM Kinming of the Lai Sun property group, have vocally condemned challenges to Hong Kong's political and social systems. Much of what the tycoons have written is redolent of the Eighteenth Century European concept of government as a protector of property against those who lack it. Wharf Holdings chairman Peter Woo has written that a centralized government "ensures the tax-exempt majority does not swamp the taxed minority." Gordon WU Ying-sheung of Hopewell Holdings told a Legco panel that was considering a 'one man, one vote'" electoral system that Hong Kong might suffer for at least 10 years if the system were implemented. Chesson International

339. “Radicals Rising,” Asiaweek, December 8, 2000, p. 27.
Holdings chairman KAI Yiu-ming has stated that the SAR Government’s opponents want to destabilize Hong Kong. A Hang Lung Development property baron Ronnie CHAN Chi-chung, chair of the tycoons’ Better Hong Kong Foundation, advocates an executive-dominated government and “recently told an audience of local students that democracy was undermining the SAR’s business environment.”

A US business journal has commented that “Li [Ka-shing] may be lamenting the business community’s lack of clout, but how much more influence does he want tycoons to have? After all, China backed shipping tycoon TUNG Chee-hwa to become Hong Kong’s first chief executive. The legislature is also designed to favor pro-business groups.” Government leaders concur with the tycoons that there should be even greater business influence: Chief Secretary Tsang has urged business leaders to take a direct part in politics and ensure that “the message of business get[s] through to the grass roots.” Another business journal has noted that “[g]reater democratisation should . . . give a voice to people in lower income brackets with less representation than the rich in Hong Kong’s skewed political system. The result could be the end of Li’s unquestioned writ.” Tycoons reportedly funnelled money to candidates in the 2000 Leagoe election who opposed an expansion of democracy and the Liberal Party is foremost in this regard. Gordon Wu has even baited critics of Beijing in Hong Kong as “communistic,” although the Democratic Party opposes a minimum wage and the chief aid to its leader, Martin LEE Chu-ming, was formerly a policy adviser to ultra-conservative US Senator Jesse Helms. Wu has also equated the concept of “one man, one vote” with use of the guillotine during the French Revolution.

The tycoons, particularly large property developers, are now generally considered to be opposed to democracy. While no tycoon has spoken directly and publicly about racial discrimination, the two main Hong Kong Chinese business groups, the General Chamber of Commerce and Chinese Manufacturers Association, have

opposed anti-race discrimination legislation, as have the two SAR leaders closest to big business, the CE and Chief Secretary. The Government does not benefit from its opposition to anti-racism legislation — there is no groundswell of disapproval of it among Hong Kong Chinese — and the lack of a law contradicts the campaign to burnish the SAR's international image. Its stance thus presents an anomaly in need of explanation, the most likely being that top leaders share the tycoons' view that there are already too many challenges to existing order in Hong Kong. An anti-racial discrimination law would provide another basis for a subaltern stratum to exercise countervailing influence, however small, against a political and social system in which power and wealth are highly concentrated in a small part of the population. In itself, the right to pursue anti-race discrimination claims would scarcely detract from tycoon hegemony, but a modicum of empowerment of minorities has to be seen in the larger context of the tycoons' perception of sharp social cleavages endangering stability in Hong Kong.

Setting out his view of Hong Kong society to a visiting mainland leader, Gordon Wu has stated "Workers confront their employers, students accuse their school heads, members of the public oppose the government. They are just like Mao's Red Guards during the Cultural Revolution."347 Along the same lines, Wu commented,

From 1949 to 1979, people on the mainland were busy waving [Mao Zedong's] little red book and organising demonstrations. Meanwhile, Hong Kong people were quietly working to improve the economy and their livelihoods. So we got rich. Now mainland people work hard to improve their economy and we mobilise demonstrations every day.348

This abhorrence of social discontent is a skewed reflection of the reality of rising protest. In the first 10 months of 2000, there were 518 protests and 479 assemblies in the SAR, while in 1997 there were 448 and 424 respectively.349 By 2001, many politically-attentive Hong Kong people held that the Government eschewed openness and achieved little.350 A survey showed that 32% of Hong Kong people were happy with the Government's perform-

349. “Radicals Rising,” Asiaweek, December 8, 2000, p. 27.
ance and 31% happy with the CE’s, compared to 35% and 37% in November 2000. The survey of 837 persons, 82% of whom deemed themselves Hong Kong people, along with 6% “expatriates” and 7% Mainlanders, also recorded that 8% of respondents had some experience of racial discrimination.351

A law against racial discrimination, while of potential benefit to ethnic minorities, Mainland migrants, and even some Hong Kong Chinese, would have a class inflection of the kind most distasteful to tycoons such as Gordon Wu. There are instances of discrimination against even wealthy ethnic minorities and Mainland migrants. Most people who have experienced discrimination are likely to be “lower class,” however, because even if many migrants to Hong Kong are from middle-class backgrounds in their home countries, they are not stereotypically well-off “expatriates,” but people from poor countries, the salient fact for Hong Kong people.352 More often than not, these migrants are also women from societies where women are more subordinated than in Hong Kong. Migrants who are FDWs are particularly demeaned, with one poll of university students in Hong Kong finding that of 45 listed occupations, the respondents deemed domestic workers to have the second from least prestigious work, lower than that of a prostitute.353 As the Asian Migrant Centre has written,

‘[L]ow-status’ migrant workers, unlike many other members of Hong Kong society, are discriminated [against] . . . by virtue of their combined and intersecting social identities of national origin, race, gender and class. The racial discrimination they face is a complex web of all such identities; it can neither be understood, nor eliminated, as one monolithic entity.354

Although social class is virtually a taboo concept in Hong Kong, the tycoons are nothing if not “class conscious.” Their opposition to democracy is explicitly based on an expressed fear that those who do not earn enough to pay taxes will overwhelm the more propertyed elements. Most ethnic minority people fall within this suspect class.


352. Constable, Maid in Hong Kong, supra note 34. Lowe, “Negotiating Meaning across Cultures,” supra note 34.


The tycoons have had to accommodate themselves to laws against gender, family status and disability discrimination, but the implications of these bans are different from one concerning race. It is recognized that discrimination against women, the disabled and single parents occurs in all parts of the world, but racial discrimination is represented in Chinese societies as a Western practice carried out against Chinese and others. Despite evidence to the contrary, Chinese elites claim that their societies are free of racism. Former Chinese Communist Party chair ZHAO Ziyang, for example, stated that race discrimination is common “everywhere in the world except China.” To acknowledge that racial discrimination is substantial in Hong Kong and that given the demographic balance, most is practiced by ethnic Chinese, would undercut the argument advanced by TUNG Chee-hwa that a regime of deference to authority based on “Chinese values” or the “Chinese way of doing things” is suitable to Hong Kong because it produces a more moral society than would a fuller democracy.

Commentators have underscored the move away from a putative cosmopolitanism in Hong Kong to an SAR in which Chinese-ness is uniquely valorized. Margaret Ng, the independent Legco member for the legal profession, citing many examples of the diminution of multiculturalism in the SAR, has argued that “[a]s rich ethnic Chinese float to the top, the non-Chinese non-rich are submerged.” She points out that this process is intimately connected with the denunciation by elites of human rights and democratisation as “Western,” while “harmony” and “cooperation” among social forces are claimed as “Chinese.” Similarly, the journalist Phillip Bowring describes how the new Hong Kong Museum of History is focused exclusively on the achievements of ethnic Chinese, with no reference to the prominent role in Hong Kong’s success of the South and S.E. Asian communities, nor even of commerce and investment involving Japan and the US. In short, an “ideological localization” of the Hong Kong Chinese elite in the

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years immediately before and after the Handover, lends strength to
the Government's opposition to anti-race discrimination measures.

Apart from the top rungs of Hong Kong society, wider parts of
the population may passively support the Government position on
racial discrimination because they employ FDWs, with whom they
sometimes harshly interact. Some 13% of Hong Kong families with
children 12 years of age or less employ an FDW. Many of these
employers are lower middle class\(^{360}\) and may perceive their class
and ethnic status as enhanced through the ethnic hierarchy. As
Pinches\(^{361}\) has put it:

Intrinsic to the employment of Filipino domestic servants
. . . is their place as status-markers for their middle-class
and elite employers. Having Filipinos and other foreign-
ers do work that is seen as servile and demeaning not only
enhances the social standing of the middle class, but also
the national identity of the broader populace, now re-
leased into less servile and supposedly more productive
occupations.

CHEUNG Tak-sing, in a study comparing labor regimes of Fil-
ippina domestic workers employed by ethnic Chinese and West-
erners in Hong Kong, found that almost half of his sample of 631
domestics work for their ethnic Chinese employers for 15-16 hours
a day, while 34% of the123 working for Westerners in Hong Kong
that he surveyed labor for the same long hours. Cheng also found
that 28% of domestics working for Chinese employers work for 11-
14 hours. Some 62% of ethnic Chinese employers assigned domes-
tic workers tasks on public holidays, while 6.8% of Westerners did
so. On days off, 73% of ethnic Chinese employers imposed a "cur-
few" time on their FDWs to return home, while 4.4% of Westerners
did so. When a Filipina domestic made a mistake, 66.7% of ethnic
Chinese employers scolded her or expressed unhappiness, while
only 22% of Western employers did so. Some 53.3% of Filipina
domestics working for ethnic Chinese felt nervous in their work,
generally from surveillance by employers, while only 30% felt
happy. Of those working for Westerners, 9.1% felt nervous and

\(^{360}\) Vicky Tam, "Foreign Domestic Helpers in Hong Kong and Their Role in Child-
care Provision," in Janet Momsen, ed., Gender, Migration and Domestic Service,

\(^{361}\) Michael Pinches, "Class and National Identity: The Case of Filipino Migrant
Workers," in Jane Hutchison and Andrew Brown, eds., Organising Labour in Globalis-
75% felt happy (the remainders felt "a little nervous"). More than 35% of the women sampled agreed that their ethnic Chinese employers treat them as working machines and not as humans (versus 2.3% of those employed by Westerners). Only 29% of those working for ethnic Chinese thought they were treated as family members, versus 75% of those working for Westerners.\textsuperscript{362}

These comparisons accord with the finding of Constable that many Filipina domestic workers in Hong Kong prefer Western employers because the work regimen is not as strict as it is with Chinese employers.\textsuperscript{363} Indeed, some Chinese employers take pride in regimenting even non-work activities of domestics working for them.\textsuperscript{364} Ozeki, who has studied relations between Filipina domestics and their Hong Kong Chinese employers, argues that the latter are less conscious of the human rights of FDWs than are Western employers, although younger Chinese employers tend to be more respectful of FDW rights than older ones.\textsuperscript{365} Part of the difference in the attitudes and practices of ethnic Chinese and Western employers may be attributable to differences in education and occupational status. Western employers are very likely to be university-educated. The majority are managers and professionals, with average family incomes about twice that of the average Hong Kong Chinese family.\textsuperscript{366}

Ethnic Chinese employers in Hong Kong are from a broader social group than are Western employers. They include "school-teachers, bank tellers, shop clerks, or office staff, occupations that some Filipinas held before coming to Hong Kong."\textsuperscript{367} Many ethnic Chinese employers are without higher education and own small and middle-sized businesses, where achieving a suitable profit-margin

\textsuperscript{362} CHEUNG Tak-sing, "Ru he dui Fei yong? - Xianggang Zhong Xi yong zhu de bijiao" (How is it with Filipina servants? A comparison of Hong Kong Chinese and Western servant-master [relations]), in Keji xueshu yantiaohui (Association for Inter-disciplinary Research), ed., Zhongguo ren de xinli yu xingwei (Chinese psychology and behaviour), Taipei: the Association, 1992.

\textsuperscript{363} Constable, Maid in Hong Kong, supra note 34. Lowe, "Negotiating Meaning across Cultures," supra note 34.

\textsuperscript{364} "Domestic Judgment Opens Old Wounds," SCMP, May 27, 2000, p. 17.


\textsuperscript{367} Constable, Maid in Hong Kong, supra note 34. Lowe, "Negotiating Meaning across Cultures," supra note 34.
may entail a certain tight-fistedness and precludes amicable relations with employees. In contrast to the Government, which at least claims that "[t]here is no room for racial discrimination here in Hong Kong," such individuals may believe that employers, estate agents and others have the "right" to practice race discrimination. Hostility toward Filipina domestic workers is by no means exclusive to less well-educated Hong Kong Chinese however. In a study of letters-to-the-editor in Hong Kong's main English-language newspaper in 1995-1996, Lowe found that most of the letter-writing Advocates for FDWs were Western "expatriates." They generally wrote in response to "Critics" of Filipina domestic workers, who, in their own missives, "often identify themselves as 'local Chinese' or 'Hong Kong Chinese' [and] usually express open hostility and resentment toward the workers." The Critics however are likely to be well-educated, since they read and correspond with an English-language newspaper.

Ozeki concludes that Chinese employers seldom try to develop personal relationships with Filipinos beyond what is necessary as an employer. Almost no Filipina domestic in Hong Kong have any Chinese acquaintances beyond people in the work domain. The findings of Cheuang and Ozeki comport with those of Chin in Malaysia. Filipina domestic workers there rank Western employers as better than ethnic Chinese employers. They complained particularly that the latter are "stingy" compared to the former. Employers in Malaysia may in turn complain that Filipina domestic workers have been "spoiled" by white employers.

The bottom-rung status of Filipinas in Hong Kong contrasts with the situation of Filipina domestic workers in Los Angeles, USA, where they are held in higher regard than Hispanic domestic workers, and in Rome, Italy, where they have higher status than Polish domestic workers. There are moreover examples of friendship offered by employers to Filipina domestic workers in the US

and Italy. Although attitudes among middle class Hong Kong Chinese on matters of race and politics vary, there is a hierarchy in terms of how the middle class appraises ethnic groups. Among the demographically significant populations, S.E. Asians are rated at the bottom of the Hong Kong ethnic hierarchy. As a Filipina journalist in Hong Kong wrote a few years before the Handover, "Filipinos, being very much on the lower rungs of society in the colony, rank just a notch above the miserable Vietnamese refugees."

Other peoples, including those perceived as "cultured" and "democratic," but who live in societies that come to incorporate an ethnic division of labour, have naturalized the subordinate position of ethnic groups who stereotypically and modally are from impoverished countries and do low-skilled and demeaning manual work. It is likely then that the SAR Government is convinced that it has the support of most Hong Kong Chinese in resisting anti-racial discrimination legislation not only because the tycoons support such resistance, but also because the Government can expect the acquiescence of a much wider section of the population.

XII. CONCLUSION

The Latin poet Quintus Horatius Flaccus ("Horace," 65-8 BCE), viewing the Roman legislative process two millennia ago concluded "Parturient montes nascetur ridulus mus" – the mountain went into labour and gave birth to a laughable mouse. The SAR Government had stated that after a consultation with business and minority organizations it would reconsider its position on anti-race discrimination legislation and announce a decision in early 2002. While several "local" business groups remained hostile to legislation, the many "foreign" chambers of commerce and ethnic minor-

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375. Isabel Escoda, Hong Kong Postscript: More Letters from Hong Kong from an Expatriate Filipina, Hong Kong: MediaMark, 1994.
ity organizations registered support for it during the consultation. The Government however stated that it did “not consider it appropriate to set any pre-determined criteria to evaluate the responses. They are being analysed on the basis of the views expressed and the rationale behind these views...”\textsuperscript{378} In other words, it might well oppose legislation even if most business and ethnic minority organizations favoured it. In March 2002, the HAB stated that a decision on legislation would be made in the first half of the year and, later, said an announcement would be made in June. The announcement, by Secretary for Home Affairs LAM Woon-kwong, was a reaffirmation of the Government position that race discrimination in Hong Kong is not serious and that because “there exists strongly divided viewpoints in our society,” “it would be better to proceed slowly” rather than urgently implement new laws.\textsuperscript{379}

The Government announced instead a Committee on the Promotion of Racial Harmony, under the HAB. The committee has 12-members serving two-year terms, four of them are officials, five are Filipino, Indian or Nepalese and eight are Chinese. Its mandate is “to advise the Government on public education and publicity to foster racial harmony and improve mutual understanding between people of different ethnic origins.” At least one member has publicly expressed her concern that the Government may intend to use the committee as a substitute for legislation.\textsuperscript{380} All four staff members of a new HAB Race Relations Unit, which includes three officers and a clerk and is headed by a former director of Amnesty International and EOC member, are ethnic Chinese. The Unit maintains a hotline for enquiries and complaints on racial discrimination and has proposed a “taskforce,” i.e. another committee, to review how minorities are affected by government policies. Meanwhile, the HAB once again stated that it “will consider anti-racism legislation in due course.”\textsuperscript{381}


The tycoon regime may delay the adoption of an effective anti-race discrimination law, but such opposition will not prevail indefinitely. A breakthrough is not likely to come as a result of the tycoons adopting a more benign outlook on civil rights or democratic forms of governance. Rather, it is because an anti-race discrimination law, like direct elections and an effective Legco, is not demonstrably harmful to the interests of the corporations whose influence undergirds Hong Kong politics. As contention around these issues continues, one can expect that eventually the examples of countries in which corporate and government leaders have come to accept and indeed benefit from non-discrimination and liberal democracy will be persuasive.

While the vaunted "world-wide trend to democracy" is overblown in a world where most democracies are illiberal,\(^{382}\) where illiberal democracy would be seen as an advance in much of Pacific Asia,\(^{383}\) and where China remains an authoritarian state, there is something of a push to adopt anti-racial discrimination policies internationally. Most noteworthy in that regard is the development of an anti-race discrimination policy in the European Union that led to the incorporation of a comprehensive anti-discrimination article in the EU's Amsterdam Treaty in June 1997. The article's adoption was the result of a congealing of a transnational policy network in Europe in the early 1990s to promote EU-level measures against racial discrimination. EU member states, which had resisted an anti-racism policy for decades, finally agreed to launch one for self-interested domestic reasons. In the EU case, there was a relationship between the degree of individual countries' support for EU-level anti-racism measures and the perceived degree of radical right success in those same countries. Backing by governments for an EU anti-racism policy was a counter to anti-democratic forces: the populace could be enlisted to defend and advance democracy through anti-racist measures.\(^{384}\) Similarly, the forces in Hong Kong most enthusiastic about an anti-race discrimination law and other measures against racism tend to be associated with the "democratic" camp, broadly construed, or with non-affiliated per-


sons who nevertheless tend to agree that an expansion of democracy in Hong Kong in the near-term would be beneficial.

Hong Kong is not the only site in Asia of contestation of the issue of legislation against racial discrimination. A parallel political process is unfolding in Japan, where more than 2% of the population are foreigners, including ethnic Koreans born in Japan. Acts of discrimination, especially against non-Japanese Asians and Africans, are common in employment and housing. Discrimination in services is blatant, with many restaurants, bars, shops, and public baths displaying the sign “For Japanese only” or “No Chinese allowed.” Overt skin-color prejudice is practiced against the many Filipino entertainers employed in Japan, with fair-skinned Filipinos receiving better treatment and higher pay than darker Filipinos. The Japanese police habitually publicize arrests of foreigners and have even distributed leaflets urging residents to call an emergency number if they hear people speaking Chinese. The Japanese Constitution prohibits racial discrimination, but no law provides a mechanism for redress of such acts. NGOs, such as the International Movement Against All Forms of Discrimination and Racism, have sought a law. The government argues that existing civil and penal provisions are adequate, but a Tokyo court recently dismissed a case brought by a Korean denied membership in a golf club because of his ethnicity. Although Japan ratified the ICERD in 1999 and the CERD in 2001 called on it to pass an anti-race discrimination law, the ruling Liberal Democratic Party (LDP) and the Liberal Party contend that a law would be hard to implement.385

While Japan is not often viewed as an illiberal democracy, as Hong Kong has been seen,386 it has been almost continuously ruled by the LDP, a party almost as conservative and tightly imbricated with major corporations as Hong Kong’s tycoon regime.387 It is nevertheless thought that Japan will adopt an anti-racism policy, in large measure because the greying of the population and globalized economy require a larger migrant presence in the country and Ja-

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Japan wants to avoid the inter-ethnic problems encountered by some European states. Japan’s opposition parties, including the Democratic Party of Japan, the Social Democratic Party, the New Komeito party, and the Japanese Communist Party have all announced that they favor or would consider backing anti-racial discrimination legislation.

Hong Kong has an inexhaustible source of labour across the border and the flow from the Mainland is mainly of children and young adults. It is this flow that allows Hong Kong to escape the ageing problems experienced by Japan. The SAR however has had a continuous need for certain kinds of migrants; hence the large-scale importation of English-speaking FDWs, an “Admissions of Talents Scheme” to bring in Mainland PhDs, and substantial communities of “expats” that range far beyond those fitting the stereotype, e.g. the 50,000 Japanese in Hong Kong. There are reports of ethnic minorities leaving Hong Kong because of racial discrimination and of citizens of their ancestral homelands being discouraged from coming to the SAR for the same reason. In a meeting of 17 chambers of commerce, racial discrimination, along with the environment, were cited by business people as the important issues for corporations in the drive to attract talent to Hong Kong. Given the acute sensitivities to issues of regional competition in Hong Kong — Singapore has not even ratified the ICERD, but demands have been raised there for a body to combat racial discrimination — these must be matters of some concern to the Hong Kong political class. As in Europe and Japan then, the larger Hong Kong elite has self-interested reasons to act against racial discrimination, reasons that are sound enough to cause them to break with the tycoons on this point. It remains to be seen how soon the self-realization of their power to do so coincides with their self-interest.

393. “Rule of Law off Agenda,” SCMP, September 12, 2001, p. 3.
### APPENDIX 1. LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AFP</td>
<td>Agence France Presse</td>
</tr>
<tr>
<td>AHRC</td>
<td>Asian Human Rights Commission</td>
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<tr>
<td>AMC</td>
<td>Asian Migrant Centre</td>
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<tr>
<td>AMWC</td>
<td>Asian Migrant Workers Centre</td>
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<tr>
<td>ANS</td>
<td>Asahi News Service</td>
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<tr>
<td>AP</td>
<td>Associated Press</td>
</tr>
<tr>
<td>AWSJ</td>
<td>Asian Wall Street Journal</td>
</tr>
<tr>
<td>BBC/SWB</td>
<td>British Broadcasting Corporation/Summary of World Broadcasting</td>
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<tr>
<td>BBCWM</td>
<td>British Broadcasting Corporation World Monitor</td>
</tr>
<tr>
<td>BDU</td>
<td>Business Daily Update</td>
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<tr>
<td>BG</td>
<td>Boston Globe</td>
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<tr>
<td>BT</td>
<td>Business Times [Singapore]</td>
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<tr>
<td>BW</td>
<td>Business Week</td>
</tr>
<tr>
<td>CB</td>
<td>Cheng Bao [Hong Kong]</td>
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<tr>
<td>CERD</td>
<td>Committee on the Elimination of Discrimination</td>
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<tr>
<td>CESCRT</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CLN</td>
<td>Christine Loh’s Newsletter</td>
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<tr>
<td>CNA</td>
<td>Central News Agency [Taiwan]</td>
</tr>
<tr>
<td>CPG</td>
<td>Central People’s Government [of the People’s Republic of China]</td>
</tr>
<tr>
<td>DFRB</td>
<td>Dongfang Ribao [Hong Kong]</td>
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<tr>
<td>DPA</td>
<td>Deutsche Presse-Agentur</td>
</tr>
<tr>
<td>DT</td>
<td>Daily Telegraph [London]</td>
</tr>
<tr>
<td>DY</td>
<td>Daily Yomiuri [Tokyo]</td>
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<tr>
<td>FEER</td>
<td>Far Eastern Economic Review [Hong Kong]</td>
</tr>
<tr>
<td>FT</td>
<td>Financial Times [London]</td>
</tr>
<tr>
<td>GB</td>
<td>Great Britain [Her Majesty’s Government of]</td>
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<tr>
<td>HAB</td>
<td>Home Affairs Bureau</td>
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<tr>
<td>HARD</td>
<td>Hong Kong Against Racial Discrimination</td>
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<tr>
<td>HKCSD</td>
<td>Hong Kong Census &amp; Statistics Department</td>
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<tr>
<td>HKG</td>
<td>Hong Kong Government</td>
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<tr>
<td>HKHRC</td>
<td>Hong Kong Human Rights Commission</td>
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<tr>
<td>HKHRM</td>
<td>Hong Kong Human Rights Monitor</td>
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<tr>
<td>HKiM</td>
<td>Hong Kong iMail</td>
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<tr>
<td>HKS</td>
<td>Hong Kong Standard</td>
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<tr>
<td>HKSAR</td>
<td>Hong Kong Special Administrative Region</td>
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<tr>
<td>HKTP</td>
<td>Hong Kong Transition Project</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>IHT</td>
<td>International Herald Tribune (Paris)</td>
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<tr>
<td>IPS</td>
<td>Inter Press Service</td>
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<tr>
<td>JD</td>
<td>Joint Declaration [on Hong Kong of the UK and PRC governments]</td>
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<tr>
<td>JEN</td>
<td>Japan Economic Newswire</td>
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<tr>
<td>JIRB</td>
<td>Jingji Ribao [Hong Kong]</td>
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<tr>
<td>JRPC</td>
<td>Joseph R. Crowley Program</td>
</tr>
<tr>
<td>KB</td>
<td>Kuai Bao [Hong Kong]</td>
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<tr>
<td>LAT</td>
<td>Los Angeles Times</td>
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<tr>
<td>Legco</td>
<td>Legislative Council [of Hong Kong]</td>
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<tr>
<td>M2</td>
<td>M2 Presswire</td>
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<tr>
<td>Code</td>
<td>Company Name</td>
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<tr>
<td>MP</td>
<td>Ming Pao</td>
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<tr>
<td>NST</td>
<td>New Straits Times</td>
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<tr>
<td>NYT</td>
<td>New York Times</td>
</tr>
<tr>
<td>PGRB</td>
<td>Pingguo Ribao [Hong Kong]</td>
</tr>
<tr>
<td>RTHK</td>
<td>Radio Television Hong Kong</td>
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<tr>
<td>SCMP</td>
<td>South China Morning Post</td>
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<tr>
<td>ST</td>
<td>Straits Times [Singapore]</td>
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<tr>
<td>SuT</td>
<td>Sunday Times [London]</td>
</tr>
<tr>
<td>TS</td>
<td>Toronto Star</td>
</tr>
<tr>
<td>TTRB</td>
<td>Tian Tian Ribao [Hong Kong]</td>
</tr>
<tr>
<td>TYB</td>
<td>Taiyang Bao [Hong Kong]</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UPI</td>
<td>United Press International</td>
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<tr>
<td>XB</td>
<td>Xin Bao</td>
</tr>
<tr>
<td>XDRB</td>
<td>Xingdao Ribao [Hong Kong]</td>
</tr>
<tr>
<td>XGSB</td>
<td>Xianggang Shangbao [Hong Kong]</td>
</tr>
</tbody>
</table>
APPENDIX 2. TRANSLATION OF SELECTED CHINESE NAMES & ORGANIZATIONS

Names
Chan, Chi-chung Ronnie 陈志聪  Loh, Kun-wai Christine  陸志蕙
Chan, Fang On-sang Anson 陈方安生 Ma, Si-hang Frederick  馬時亨
Ho, Chi-ping Patrick  何志平  Mak, Hoi-wah  麥浩華
Ho, Chun-yan Albert  何俊仁  Ng, Ngoi-yee Margaret  吳靄儀
Kai, Yau-ming  許佑銘  Suen, Ming-yeung Michael  孫明揚
Kwan, Wing-wah Leo  關永華  Tien, Pei-chun James  田北俊
Lam, Kin-ming  林建名  To, Kun-sun James  涂建申
Lam, Woon-kwong  林煥光  Tsan, Yam-luen Donald  曾廉權
Lan, Hong-tsung David  藍鴻震  Tse, Wing-ling John  謝永齡
Lau, Chin-shek  劉千石  Tung, Chee-hwa  董建華
Lau, Wai-hing Emily  劉慧卿  Wong, Chien Chi-lien Elizabeth  黃婉其
Law, Fan Chiu-fun Fanny  羅范淑芬
Lee, Cheuk-yen  李卓人  Wong, Kai-yi Stephen  黃繼兒
Lee, Lai-kuen Shelley  李麗娟  Woo, Kwong-ching Peter  吳康民
Leung, Oi-sie Elsie  梁愛詩  Woon, Eden  翁以登
Li, Ka-shing  李嘉誠  Wu, Hung-yuk Anna  胡紅玉
Li, Tsau-kai Richard  李澤楷  Wu, Ying-sheung Gordon  胡應湘
Lo, Yat-fai Peter  盧錫輝  Zhao, Ziying  趙紫陽

Organizations
Association of Accredited Advertising Agents of Hong Kong  香港廣告商會
Association of Restricted License Banks and Deposit-taking Companies  香港有限牌照銀行及接受存款公司公會
Better Hong Kong Foundation  香港明天更好基金會
Chamber of Professional Property Consultants  香港專業地產顧問商會
Chinese General Chamber of Commerce  香港中華總商會
Chinese Manufacturers Association of Hong Kong  香港中華廠商聯合會
Confederation of Trade Unions  香港職工會聯盟
Federation of Hong Kong Industries  香港工業總會
Hong Kong Amateur Athletic Association  香港業餘田徑總會
Hong Kong Federation of Women  香港各界婦女聯合協進會
Hong Kong General Chamber of Commerce  香港總商會
Hong Kong Hotels Association  香港酒店業協會
Hong Kong Institute of Human Resource Management  香港人力資源管理學會
Hong Kong Management Association  香港管理專業協會
Ngau Tau Kok Kaifong Association  牛頭角街坊福利會
Society of Community Organizations  香港社區組織協會
Society of Hong Kong Real Estate Agents  香港地產代理專業協會