

*A National Custom: Debating Female Servitude in Late Nineteenth-Century Hong Kong*¹

JOHN M. CARROLL

*Department of History, University of Hong Kong, Pokfulam, Hong Kong,
Email: jcarroll@hkucc.hku.hk*

Abstract

This article frames the debate about *mui-tsai* (*meizai*, female bondservants) in late nineteenth-century Hong Kong within changing conceptions of the colony's political, geographical and cultural position. Whereas some colonial officials saw the *mui-tsai* system as a national shame that challenged Britain's commitment to ending slavery, others argued that it was an archaic custom that would eventually dissolve as China modernized. The debate also showed the rise of a class of Chinese elites who had accumulated enough power to defend the *mui-tsai* system as a time-honoured Chinese custom, even while acknowledging that in Hong Kong they lived beyond the boundaries of Chinese sovereignty. Challenging notions of the reach of the colonial state and showing how colonial policies often had unintended consequences, this debate also reveals the analytical and explanatory weakness of concepts such as 'colonial discourse' or 'the colonial mind'.

Introduction

On 6 October 1879, Hong Kong Chief Justice John Smale declared from the bench that 'two specific classes of slavery exist in this Colony to a very great extent; viz., so-called domestic slavery, and slavery for the purpose of prostitution'.² Passing sentence on five

¹ Earlier versions of this article were presented in January 2006 at the Annual Meeting of the American Historical Association in Philadelphia and in October 2006 at the University of Hong Kong History Department Research Seminar. I am grateful to the participants in both sessions for their comments.

² Smale's declaration, 6 October 1879, enclosed in Hennessy to Hicks Beach, 23 January 1880, in *Correspondence Regarding the Alleged Existence of Chinese Slavery in Hong Kong, Presented to Both Houses of Parliament by Command of Her Majesty, March 1882* (London, 1882), 5, reprinted in Irish University Press Area Studies Series, *British Parliamentary*

Chinese defendants convicted of kidnapping children for selling and of purchasing a girl for prostitution, Smale especially condemned the age-old *mui-tsai* practice for violating British and Hong Kong laws prohibiting slavery. His declaration caused a stir among the local Chinese community, and less than two weeks later a group of Chinese merchants petitioned Governor John Hennessy for permission to form an association to suppress kidnapping and protect kidnapped women and children. After reminding Hennessy of Captain Charles Elliot's proclamation of 2 February 1841 guaranteeing Chinese in Hong Kong the right to practice their traditional customs, the petitioners explained in great detail the difference between kidnapping and the *mui-tsai* system, a respectable Chinese custom that should be allowed to continue. They also warned that banning the system would force poor families in Guangdong province to practice another traditional Chinese custom: drowning unwanted female babies at birth.

Hennessy was initially sympathetic to Smale's cause, but this delegation of Chinese 'gentlemen' eventually convinced him that kidnapping must be distinguished from the legitimate selling and buying of boys for adoption and girls as domestic servants. Thus, in 1880 Hennessy approved the establishment of the Po Leung Kuk (Society for the Protection of Women and Children). After a series of local studies on whether the *mui-tsai* system constituted slavery, the matter went to the British House of Lords, where it was agreed that the Hong Kong government should not interfere with customs which were so deeply ingrained in Chinese society. The Colonial Office eventually decided that ensuring the *mui-tsai* were not being sold into prostitution would be sufficient, passing an ordinance to this effect in 1887, the Ordinance for the Better Protection of Women and Children.

The *mui-tsai* controversy, which would be revived in the 1920s and 1930s, is reminiscent of similar issues in other European colonies: imperial ordinances towards local customs and legal traditions; the relationship between law, nationhood and gender; and patriarchal attitudes towards social welfare. As it would be in the early twentieth century, the controversy was also embroiled in long-standing debates about prostitution and venereal diseases, two problems that had drawn embarrassing and unwanted attention to Hong Kong since its early days as a British Crown colony. Whereas the *mui-tsai* controversy has been studied mainly for how it led to the founding of the Po Leung

Papers, China, 26; Correspondence, Annual Reports, Conventions, and Other Papers Relating to the Affairs of Hong Kong, 1882–1899 (hereafter *BPP*) (Shannon, 1971), 169.

Kuk,³ this article frames the debate within differing conceptions of what kind of place Hong Kong had become by the late 1870s, and what kind of place it could and should become. By adopting a mainly chronological narrative and frequently retaining the original wording, I hope to capture both the character of the debate and the passions that it invoked.

The *mui-tsai* debate arose from different attitudes towards Hong Kong's geographic, political and cultural position at the edge of the British and the Chinese empires. The debate also showed that colonialists disagreed so often and so vehemently that it sometimes makes little sense to talk about 'colonial discourse' or 'the colonial mind' – terms that have been thrown about so carelessly that they frequently lack any serious analytical or explanatory value. For John Smale, who several years earlier had condemned the Chinese 'coolie' or emigrant trade as a form of slave trade and in 1867 had even suggested that Chinese emigration through Hong Kong should be abolished entirely in order to end abuses, and who while on home leave in the spring of 1878 had been thanked by the Society for the Protection of Aborigines for helping to curb the oppression of the emigrant trade, the issue was a national shame that challenged Britain's commitment to ending slavery throughout its empire. For the liberal, reform-minded John Hennessy, the *mui-tsai* problem exemplified both what was wrong with Hong Kong and what, with the help of the rising Chinese merchant elite, the colony could become.⁴ Hennessy saw the *mui-tsai*, and any trafficking in humans, as an abomination that could nevertheless be resolved by the Chinese elites. Although Smale had declared all such arrangements illegal and ordered the courts to prosecute, on 10 October Hennessy ordered that no action be taken until the colonial secretary in London weighed in on the matter. For E. J. Eitel, missionary, sinologist, inspector of schools and Hennessy's private 'Chinese' secretary, the *mui-tsai* system was grounded in ancient, ingrained forms of Chinese 'patriarchalism'

³ For example, Henry J. Lethbridge, "Evolution of a Chinese Voluntary Association in Hong Kong: The Po Leung Kuk," in *Hong Kong: Stability and Change: A Collection of Essays* (Hong Kong, 1978), 71–103; Elizabeth Sinn, "Chinese Patriarchy and the Protection of Women in 19th-century Hong Kong," in Maria Jaschok and Suzanne Miers (eds.), *Women and Chinese Patriarchy: Submission, Servitude, and Escape* (Hong Kong, 1994), 141–170.

⁴ Kate Lowe and Eugene McLaughlin, "Sir John Pope Hennessy and the 'Native Race Craze': Colonial Government in Hong Kong, 1877–1882," *Journal of Imperial and Commonwealth History*, 20 (1992), 223–241.

that would eventually dissolve as China modernized.⁵ Complicating any facile notions about the power of the colonial state, the debate also showed the rise of a class of Chinese elites, such as the comprador Fung Ming-shan (Feng Mingshan), who had accumulated enough power and influence to defend the *mui-tsai* system as a time-honoured, national Chinese custom, even while in colonial Hong Kong they lived beyond the reach of Chinese sovereignty.

The *Mui-Tsai* System and the Growth in Kidnapping and Trafficking in Humans

Many of the girls and women in late-nineteenth-century Hong Kong were *mui-tsai*, 'younger sisters' who had been sold as bondservants to wealthier families, often through an intermediary known as a 'pocket mother'. Found throughout China under a variety of names, this arrangement helped poor families find better homes for their daughters while providing domestic help for wealthier families. Given the emphasis in China on having sons to carry on the family name, there was never a shortage of unwanted girls. As Western 'China experts' such as James Dyer Ball and Arthur Smith often noted, the *mui-tsai* system was especially prevalent in South China, ravaged by the economic and social disruption caused by the Opium Wars and the Taiping Rebellion, and by clan feuds, Hakka-Punti conflicts, and triad uprisings.⁶

The first ordinance of Hong Kong's Legislative Council, the Slavery Ordinance (No. 1 of 1844), banned slavery (although the ordinance was later disallowed because British law already banned slavery), but neither the colonial government nor the majority of the Chinese population considered this to include the *mui-tsai* system. Despite sporadic criticism, mainly from European missionaries in Hong Kong and officials in Britain, the legal status of the system did not come into question until the late 1870s. Even then, most colonial officials believed that the *mui-tsai* system did not violate British laws against slavery. Ruling on a case where a man had sold his daughter to another man who was planning to take the girl out of Hong Kong, in May

⁵ For Eitel's summary of the *mui-tsai* controversy, see *Europe in China: The History of Hong Kong from the Beginning to the Year 1882* (1895; reprint, Hong Kong, 1983), 546–548.

⁶ Lethbridge, 'Chinese Voluntary Association,' 74–75.

1878 Attorney General George Phillippo wrote that such a transaction 'would not be recognised in our laws as giving any rights except perhaps as to guardianship, but I am unable to say that there is anything illegal in the matter beyond that. I do not think it is a criminal offence if it goes no further than the adoption of a child and the payment to its parents for the privilege'.⁷

The reason why the *mui-tsai* issue became so controversial in the late 1870s had as much to do with timing as with the practice itself. An extensive network of kidnapping had developed to feed the need for prostitutes and servants in Hong Kong. Given the extent of poverty in Guangdong, it was hardly surprising that girls and young women were often kidnapped from their native villages and then sold as prostitutes or servants in Hong Kong. With the opening of the Suez Canal in 1870, the colony was becoming a popular destination for European and American tourists (former American president Ulysses Grant came in 1879 as part of his widely publicized world cruise), many of whom were shocked that such a practice could be tolerated in a British colony. The peripatetic Isabella Bird, who visited Hong Kong in 1879, described the *mui-tsai* system as a 'peculiar hateful form of slavery which is recognised by Chinese custom, and which has attained gigantic proportions in Victoria'.⁸ The issue had also attracted the concern of reformist groups in Britain, such as the Anti-Slavery Society, the Social Science Association and the Society for the Protection of Aborigines. Most important for the way the debate was resolved, local Chinese elites had become strong enough to protect a traditional Chinese custom in which they participated actively and from which they benefitted greatly.

Smale's Attack

Although there was never one single opinion representing either the Chinese or the European community, or even among the colonial government, many people in Hong Kong felt that Smale had unnecessarily condemned a perfectly acceptable Chinese custom. Further complicating matters was the ambiguous status of the *mui-tsai* within her adoptive household – half-servant, half-family member – with some *mui-tsai* even eventually becoming concubines

⁷ Hennessy to Hicks Beach, 23 January 1880, *BPP*, 167.

⁸ Isabella L. Bird, *The Golden Chersonese and the Way Thither* (London, 1883), 41.

and inheriting their husbands' wealth. And one of the cardinal rules of British colonial administration was that tampering too much with native customs could be dangerous. Whereas critics considered the *mui-tsai* system a form of slavery that often encouraged sexual abuse, defenders insisted that the girls were treated as family members and that the system saved girls from prostitution. Smale's support for Hennessy's 'pro-Chinese' policy, which alienated the local European community, won him little support from that quarter, while his eccentric and often acerbic personality did little to help his case. According to colonial official James Norton-Kyshe, Smale, who had arrived in Hong Kong in 1861 as attorney general, 'had frequent differences with the officers of the Court' and 'was somewhat lacking in the qualities necessary to maintain the dignity of his high office'.⁹ As a result of Smale's 'singularly impulsive and energetic' temperament, Norton-Kyshe reported, 'from time to time objectionable and occasionally disgraceful scenes were presented in Court'.¹⁰ E. J. Eitel later wrote that Smale's 'unseemly disputes' in the late 1860s with the popular senior Queen's counsel, E. H. Pollard, 'frequently disfigured' the administration of justice'.¹¹ Although in March 1874 Smale became the first chief justice of Hong Kong to be knighted, the local European community took advantage of his absence during home leave in the spring of 1878 'to urge his retirement from the service'.¹²

Far from retiring, Smale returned to Hong Kong recharged with reformist zeal. In his declaration from the bench on 6 October 1879, he vehemently disagreed that selling and buying children was not a criminal offence. Nor did he believe that the *mui-tsai* had any grounding in Chinese law: a system that was illegal in China was not only tolerated but even protected in a British colony. The reported frequent appearance of placards offering rewards for lost girls provided 'more palpable, more public evidence of generally recognised slavery' in Hong Kong than in Cuba and Peru, those two 'hotbeds of slavery'.¹³ Especially embarrassing for a nation that prided itself on having abolished slavery throughout its empire and had attempted to persuade other European nations to do the same, the *mui-tsai* system

⁹ James William Norton-Kyshe, *The History of Laws and Courts of Hong Kong*, vol. 2 (Hong Kong, 1898), 358.

¹⁰ Norton-Kyshe, *Laws and Courts of Hong Kong*, 358–359.

¹¹ Eitel, *Europe in China*, 445.

¹² Norton-Kyshe, *Laws and Courts of Hong Kong*, 275.

¹³ Smale's declaration, 6 October 1879, *BPP*, 169.

was becoming even more prevalent as Hong Kong attracted more of what colonial officials often called 'the better class of Chinese' from the mainland. In a letter to Hennessy on 20 October 1879, Smale estimated that between 10,000 and 20,000 girls and women were enslaved in Hong Kong, either as *mui-tsai* or as prostitutes: 'The more I penetrate below the polished surface of our civilization, the more convinced am I that the broad under-current of life here is more like that in the Southern States of America when slavery was dominant, than it resembles the all-pervading civilization of England'.¹⁴

Smale's criticism of the *mui-tsai* system reflected an old concern that colonial Hong Kong must become the 'right' kind of place. The British vision of early colonial Hong Kong was frequently called 'Anglo-China', which according to Christopher Munn meant 'a model of British good government, a living exhibition of European civilization, a meeting point between east and west, where the manners, institutions and technologies of both cultures would engage each other in a productive and beneficial way'.¹⁵ This vision had taken several fitful decades to materialize. One reason was because the colonial government could not provide a secure business environment. The new wealth in Hong Kong (especially compared with the poverty in the surrounding areas on the mainland), the easy access from China and the large number of European adventurers all led to crime on land and piracy in the surrounding waters. The colonial government was also initially unable to obtain reliable help from the local Chinese leadership, not the least because the indigenous Chinese population had been quickly overrun and bewildered by the new immigrants from the mainland.

By the late 1870s, however, the establishment of voluntary organizations such as the District Watch Force (1866), the Nam Pak Hong Kung So (1868) and the Tung Wah Hospital (1869) seemed to represent an expansion of Chinese participation in the local public sphere, demonstrating the community spirit, urban consciousness and commitment to collective civic betterment that colonial officials hoped to draw from their Chinese subjects. Yet the vision of Anglo-China remained cloudy. Because the overwhelming majority of Chinese and Europeans who came after the British occupation were male, the gender balance of Hong Kong's population had always been heavily

¹⁴ Smale to Hennessy, 20 October 1879, enclosed in Hennessy to Hicks Beach, 23 January 1880, *BPP*, 177.

¹⁵ Christopher Munn, *Anglo-China: Chinese People and British Rule in Hong Kong, 1841-1880* (Richmond, Surrey, 2001), 9.

skewed (the large British and Indian military presence only made the imbalance worse). With housing costs being so much higher than in Guangdong and with Hong Kong's reputation for crime, opium and gambling, most wealthy Chinese merchants kept their families in Guangdong. Hong Kong quickly gained notoriety as a centre for prostitution and venereal disease. Although the influx of Chinese in the 1850s and 1860s during the Taiping Rebellion had brought more 'respectable' Chinese women, according to the first proper census, in 1872, the ratio of Chinese men to women was still 7 to 1 (the European ratio was 5 to 1). According to the 1876 census, five-sixths of the almost 25,000 Chinese women in Hong Kong were prostitutes. In 1877, the police magistrate estimated that only one out of every six Chinese women in Hong Kong were either married or concubines, the rest being prostitutes. This assumption that Chinese women who were either not married or concubines must necessarily have been prostitutes says more about European attitudes towards the Chinese community than about the actual number of prostitutes. It does not, however, counter the fact that Hong Kong had become known as a centre for prostitution and venereal disease, especially syphilis.

Ironically, then, just as Hong Kong appeared to be fulfilling one part of that cherished vision of Anglo-China and was no longer simply a minor colonial outpost and an opium centre, it was becoming a bastion of prostitution, kidnapping and what John Smale and other opponents of the *mui-tsai* system called 'domestic slavery'. Furthermore, the very fact that more 'respectable' Chinese women were coming to Hong Kong was partly responsible for the growth of the *mui-tsai* system. As Geoffrey Sayer, early historian of Hong Kong, noted, more Chinese women were gradually coming to the colony, 'bringing with them that domestic atmosphere the lack of which accounted more than all else for the rowdyism and laxity of morals of the place'. But this was a mixed blessing, for 'as the housewives came to Hong Kong, the "little sisters" or *mui-tsai* came too'.¹⁶ Smale, too, realized that the prevalence of the *mui-tsai* system was due to the expanding Chinese population of Hong Kong, but whereas other colonial officials saw value in this larger Chinese population, Smale saw also decadence and dissolution. 'The number of Chinamen in this Colony has increased and is increasing rapidly', he argued, 'whilst the great increase in wealth has fostered licentious habits, notably

¹⁶ G. R. Sayer, *Hong Kong, 1862–1919: Years of Discretion* (Hong Kong, 1975), 43–44.

in buying women for purposes sanctioned neither by the laws nor customs on the mainland'.¹⁷ Smale insisted that the *mui-tsai* system could not be distinguished from kidnapping and sale and purchase of girls and young women for brothel slavery: 'all slavery, domestic, agrarian, or for immoral purposes, comes within one and the same category'.¹⁸ Smale also rejected any possible parallels between the *mui-tsai* and the common apprenticeship system in England. Furthermore, he disagreed on both historical and legal grounds that the *mui-tsai* custom was protected by the 1841 proclamations, mainly because Hong Kong at that time would not have had enough wealthy Chinese who could have owned *mui-tsai*.¹⁹

The 1878 Chinese Petition

That they would find themselves arguing against John Smale must have come as a surprise to the Chinese merchants, for the chief justice had established a reputation as a champion of Hong Kong's non-European residents. In April 1865, he received an address and a silver plate from the Parsee and Indian Muslim communities. When Smale created a controversy in 1871 by finding Kwok Asing, a Chinese emigrant, innocent of murder and piracy, on the grounds that Kwok had the right to free himself – even if it meant killing the officers on the kidnapping ship – he enjoyed the support of the Tung Wah Hospital, the most powerful Chinese organization in Hong Kong.²⁰ Chinese leaders were similarly gratified when in 1873 and 1875 the colonial government obliged their requests to pass a law against kidnapping and trafficking in coolies and women for prostitution. During the tenure of Richard MacDonnell, who tried harder than any governor to control Hong Kong's Chinese population, by expanding the powers of the police and by increasing the use of flogging, hanging, branding and deportation, Smale criticized the police for conducting slow enquiries in which innocent people were wrongfully detained for long periods.²¹ But these Chinese leaders were shocked to discover that the 1875 law

¹⁷ Smale's declaration, 6 October 1879, *BPP*, 169.

¹⁸ Smale's declaration, 6 October 1879, *BPP*, 170.

¹⁹ Smale's declaration, 6 October 1879, *BPP*, 172.

²⁰ Sinn, "Chinese Patriarchy," 143; see also Sinn, *Power and Charity: The Early History of the Tung Wah Hospital, Hong Kong* (Hong Kong, 1989), 103, 114.

²¹ G. B. Endacott, "A Hong Kong History: *Europe in China*, by E. J. Eitel: The Man and the Book," *Journal of Oriental Studies* 4 (1957/1958), 154.

did not simply prohibit kidnapping and buying and selling coolies and women for prostitution: it prohibited any kind of sale and purchase of human beings. After Phillippo's ruling in May 1878 that selling and buying children for adoption did not constitute slavery, in early November of that year, four prominent Chinese merchants asked Hennessy for permission to form an association to suppress kidnapping and trafficking in humans. In a memorial signed by 62 Chinese shops, Lo Lai-p'ing (Lu Liping), Shi Shang-kai (Shi Shengjie), Tse Tat-shing (Xie Dacheng) and Fung Ming-shan (co-founder of the Nam Pak Hong Kung So) explained why kidnapping had become so widespread:

[Q]uite lately the minds of some people have become perverted in deceit, pretending to obey the law and secretly disobeying it, pursuing a dangerous secret game, and moving about between east and west, the worst being go-betweens and old women who have houses for the detention of kidnapped people, and, as it may be, inveigle virtuous women or girls to come to Hong Kong, at first deceiving them by the promise of finding them employment (as domestic servants), and then proceeding to compel them by force to become prostitutes, or exporting them to a foreign port, or distribute them by sale over the different ports of China, boys being sold to become adopted children, girls being sold to be trained for prostitution, it being altogether impossible to explain in detail all their varied plans of wickedness.²²

Such 'wicked people' were to be found in all of the neighbouring Chinese districts and counties, but the kidnapping of children had become especially common in Dongguan, the four merchants' native district in Guangdong.²³ Thus, the memorialists requested permission to form a society to 'facilitate general publication of offers of reward, and the employment of special detectives with a view to eventually stamp out this crime of kidnapping, and to make it impossible for the kidnappers to carry on their tricks'.²⁴

The Chinese merchants faced a dilemma: they needed to show that the *mui-tsai* system should be allowed to continue as a legitimate Chinese custom, but they also needed to show that there was nothing particularly Chinese about kidnapping. In their enclosure in the memorial, they explained that although kidnapping was 'a crime to

²² Memorial of Chinese merchants, 9 November 1878, enclosed in Hennessy to Hicks Beach, 23 January 1880, *BPP*, 190.

²³ Lethbridge, "Chinese Voluntary Association," 80–81, states that a combination of several factors made kidnapping especially severe in Dongguan: disruption from triad activities, the Opium Wars and civil strife, as well as the district's role as a base for Chinese emigration and its easy access to the Pearl and East rivers.

²⁴ Memorial of Chinese merchants, 9 November 1878, *BPP*, 190.

be found anywhere', there was 'no place' where it was 'more rife' than in Hong Kong. Nor had there ever been a time 'when it developed so rapidly as of late'. With conditions so ripe, 'evil-disposed persons had an opportunity to set their wicked plans for inveigling and kidnapping people in operation. Ignorant women fell an easy prey to their schemes. If once they entered the trap there were but few who could extricate themselves again'. Downplaying the 'Chineseness' of kidnapping and trafficking in human beings, the memorialists described how Hong Kong's geographic and political situation facilitated these 'wicked plans'. As the 'emporium and thoroughfare for all the neighbouring ports', Hong Kong had become 'a place where it is easy to buy and to sell, and where effective means are at hand to make good a speedy escape'. Furthermore, the kidnappers were taking advantage of Hong Kong's easy English justice: 'the laws of Hong Kong being based on the principle of liberty of the person, the kidnappers take advantage of this to further their own plans . . . Even if they are confronted with witnesses it is difficult to show up their wicked game'. Noticing that kidnapping had increased and that both kidnappers and victims were generally from Dongguan, the memorialists found it 'unbearable to think that these villains take this hospitable Colony for a convenient refuge'.²⁵

By asking for permission to form a society to stop kidnapping, the memorialists were trying to distinguish between kidnapping and the *mui-tsai* system, thus attempting to preserve a custom in which they were so heavily invested.²⁶ As Elizabeth Sinn has argued, enforcing the law against human trafficking would have done more than end the *mui-tsai* and brothel systems: it would have also affected the practice of concubinage. Thus it would have 'eroded the very basis of Chinese patriarchy'.²⁷ But the memorial was also a declaration that the Chinese elites had the wherewithal to handle the situation on their own. They proposed to 'publish everywhere offers of reward to track such kidnappers and have them arrested'.²⁸ Because the memorialists all hailed from Dongguan, they could 'get comparatively more reliable information' about the kidnappers, 'leaving no room for miscarriage of

²⁵ Enclosure in memorial of Chinese merchants, 9 November 1878, translated by E. J. Eitel and enclosed in Hennessy to Hicks Beach, 23 January 1880, *BPP*, 191.

²⁶ Lethbridge, "Chinese Voluntary Association," 8; Sinn, "Chinese Patriarchy," 144.

²⁷ Sinn, "Chinese Patriarchy," 163.

²⁸ Enclosure in memorial of Chinese merchants, 9 November 1878, *BPP*, 191.

justice'.²⁹ They would hire Dongguan 'natives' to track the kidnapers, and 'although their wicked schemes are very deep, yet they will find it difficult to escape a careful search'.³⁰ The memorialists also realized that in a British colony their proposal might 'be an interference with official regulations'. Revealing how well they had learned to operate within Hong Kong's colonial situation, they insisted that they 'dare not proceed in the matter without a warrant' from the governor.³¹ The benefits of their plan would be manifold: 'honest people will be saved from ruin, and kidnapers will be unable to carry out their schemes at random; thus our native city will be benefitted, and Hong Kong will be [*sic*] derive equal advantage'. Not only would the plan help to end kidnapping, it would also bring credit to Hennessy: 'the grace and favour of His Excellency the Governor will not only put under obligation the people of Hong Kong, but all the poor people of the inland districts will, with one voice, praise his goodness'.³²

The 1879 Chinese Petition

What alarmed the Chinese elites so much about Smale's declaration was not only that he was ruling the *mui-tsai* system a criminal offence; he was also demanding that the colonial government prosecute the practice. In his conclusion Smale affirmed that 'to sell or to buy or to hold or detain a man, a woman, or a child as a slave or as property is absolutely prohibited by the law of England, which law is imported into and forms the substance of the law of Hong Kong'. Because the

²⁹ Memorial of Chinese merchants, 9 November 1878, *BPP*, 190.

³⁰ Enclosure in memorial of Chinese merchants, 9 November 1878, *BPP*, 191.

³¹ Enclosure in memorial of Chinese merchants, 9 November 1878, *BPP*, 190–191. In February 1860 a prominent Chinese merchant named Tam Achoy and five other local Chinese had learned the perils of carrying out such vigilante activities. After chartering a steamer, fitting it with guns, and hiring English sailors to attack "a tribe of Hakkas who had forcibly taken possession" of Tam's village in Guangdong and "were committing great ravages throughout the neighbouring country," the six were charged in Hong Kong with piracy and organizing "a hostile expedition against subjects of the Emperor of China." Insisting that they had acted in response to a Chinese official's request and were unaware of breaking any law, all six pleaded guilty, put themselves at the mercy of the court, and received a reprimand. Great Britain, Colonial Office, Original Correspondence: Hong Kong, 1841–1951, Series 129 (CO129), Public Record Office, London, "Notes by W. H. Adams, Chief Justice on the Tam Achoy filibuster case," enclosed in CO 129/78, 21 February 1860, 191–197, and CO 129/78, 24 August 1860, 187–190.

³² Enclosure in memorial of Chinese merchants, 9 November 1878, *BPP*, 191.

system was 'contrary to the public morals which form a part of that law', it 'ought to be put down'. Given Hennessy's commitment to fighting the abuses of the Chinese emigrant trade, Smale felt assured that because of 'his previous acts' Hennessy would 'actively promote all such proceedings as will tend to enforce the laws against slavery here, so that this Colony may become as free from that taint as any other Colony under the British Crown, by enforcing laws already in existence, and, if necessary, by passing laws, however stringent, that shall free this Colony effectually from all slavery'.³³

This explains the speed and alacrity with which the Chinese merchants responded to Smale's declaration. On 22 October 1879 a group of Chinese merchants, 'on behalf of the Chinese community of Hong Kong', sent a second petition to Hennessy, asking him to 'stretch such a point of law, and to apply it with discrimination, so as to yield to the feelings of the people, and to extend compassionate consideration to their views'.³⁴ Whereas in 1878 the Chinese merchants had merely tried to obtain approval for their anti-kidnapping society, now they tried to prevent the government from banning the practice of selling daughters and adopting out sons. In their introduction, the petitioners explained that because the Chinese government had never prohibited Chinese from selling daughters and adopting out sons 'to save their own lives (from starvation)', the practice had continued 'for a long time without interference'. But recently this practice had become confused with buying girls as domestic servants and then selling them into prostitution, 'such confusion of stones with pearls being a matter for extreme regret'. However, the petitioners insisted that buying boys for adoption and girls for 'domestic servitude' tended to 'widely differ' from the 'wicked' kidnapping that had become so widespread, 'because the purchasing of boys has its reason in the absence of male descendants creating a desire to adopt a son, as the sphex adopts the mulberry insect, whilst the buying of girls has its origin in the necessity for a division of labour caused by the multifarious character of domestic duties'. The girls were not abused; rather, they required 'both to be taught and to be tended' and were given in marriage (to

³³ Smale's declaration, 6 October 1879, *BPP*, 172–173.

³⁴ Petitioners listed as Chiu U-t'in (Zhao Yutian), Wong K'wan-t'ong (Wang Juntang), Leung On (Liang An), Kwok Ts'ung, Fung Ming-shan, Wong Shü-t'ong (Huang Shutang), Fung Tang (Feng Deng), Leung Lün-po (Liang Luanbo), Ch'an Cheuk-chi (Chen Zhuozhi), Fung Yin-t'ing (Feng Yanting), Ts'ui Sui-chang (Cui Ruisheng), P'ang Yat-p'o (Pang Yipu), U Ho-ts'un, Kwok Nam-p'ing (Guo Nanping), *et al.*

free men), 'whilst all along they are allowed to take their ease and have no hard work to do'.³⁵

After noting how Elliot's proclamation of 1841, which promised that Chinese in Hong Kong would be treated according to Chinese custom, had attracted the Chinese who helped make Hong Kong so prosperous, the Chinese merchants explained that all previous governors 'were fully aware of these social customs of the Chinese people, and never insisted upon the law being set in motion against them, but treated the matter with indulgence, and forbore prosecution'. But now Smale wanted to make buying and selling girls even for domestic servitude an offence. This had 'put all native residents of Hong Kong in a state of extreme fear': merchants feared they could be found guilty of a statutory offence, while 'the poor and low class people' feared 'being deprived of a means to preserve their lives'. If the practice were to be 'entirely forbidden', female infanticide would increase and people 'thus deprived of a means to keep off starvation' would 'drift into thieftom and brigandage'. The petitioners hoped that Hennessy, with his habit 'of solicitude for the sufferings of the people, and of sympathy with their feelings', would 'surely not allow poor people who have no helper to be left awaiting death with tied hands', and would not make the practice a criminal offence.³⁶

In the text of their petition, the Chinese merchants established that buying and selling children in China had existed since 'time immemorial' and, because of the 'excessive increase of the population, and the wide extent of poverty and distress', was found among both 'common people' and 'families of scholars and high officials'. The Chinese government had always tolerated this practice; otherwise, 'poor and distressed people would have no means left to save their lives, but would be compelled to sit down and wait for death'. This must be distinguished from kidnapping, which in China was punished 'with severity, the worst cases being visited with capital punishment'. Reminding Hennessy again that Elliot's proclamation had attracted enough Chinese to make Hong Kong prosperous, the petitioners explained that Chinese had come to Hong Kong 'supposing that they would be able to live here in peace, and to rejoice in their property'. Some 'native residents' had even recently 'expressed a wish for naturalisation', while other 'native merchants felt a desire to settle

³⁵ Memorial of Chinese merchants, 22 October 1879, translated by E. J. Eitel and enclosed in Hennessy to Hicks Beach, 23 January 1880, *BPP*, 208–209.

³⁶ Memorial of Chinese merchants, 22 October 1879, *BPP*, 208–209.

down in this trading place'. But now, 'all of a sudden', the law was to be changed. Not only was this 'a violation of the rule of Sir John [*sic*] Elliot', it would 'not fail to trouble the people'.³⁷

It was in this petition that the Chinese merchants used the threat of one Chinese custom to justify the continuation of another. Banning the selling of girls and adoption of boys in Hong Kong would encourage the 'evil' practice of infanticide, which was 'especially followed' in neighbouring Guangdong (though it had 'lately abated to a certain extent'). 'Poor and indigent people, scarcely able to provide food and clothes for themselves, finding themselves additionally burdened with the anxieties and troubles which children involve, will frequently, if unable to find anybody willing to take over and rear them, proceed to drown them the moment they are born'. Although this 'cruel and unnatural proceeding' was 'unanimously abhorred by everyone', it was 'caused by the pressure of poverty and distress' and thus 'must be classified with evils which are almost unavoidable'. The petitioners posed infanticide as a stark but preventable alternative to selling or adopting children. 'The heinousness of the violation of the great Creator's benevolence' was 'beyond comparison with the indulgence granted to the system of buying and selling children to prolong their existence'. Because the adopting families had 'an abundance of clothes and food, which certainly offers an advantage beyond anything those children had in their own families', people tended to 'rather rejoice over the fact that these children change hands'. And since parents who sold their children did so only as a last resort, the arrangement was 'entirely voluntary' and without the 'least compulsion'. Buyers saw themselves as 'affording relief to distressed people', considering the matter 'as an act akin to charity'. Not only did the children have to be clothed, fed, taught and provided with medical care when necessary, they had to be chosen suitable husbands or wives once they were old enough. 'The love and care devoted to them is often greater than that bestowed on one's own offspring'. Thus, the petitioners insisted, it was impossible to 'class this system as identical with life-long slavery and deprivation of liberty'.³⁸

Whereas Smale had gendered the sale and purchase of children by focusing on the *mui-tsai*, Chinese merchants de-gendered the issue by placing it into the larger context of selling and buying girls and adopting boys, both of which they claimed were time-honoured

³⁷ Memorial of Chinese merchants, 22 October 1879, *BPP*, 209–210.

³⁸ Memorial of Chinese merchants, 22 October 1879, *BPP*, 210–211.

Chinese customs. Because having a son to carry on the family name was the most important of the Confucian tenets, many people were willing to buy boys. And the selling and buying of girls and life-long slavery were 'as different heaven and earth'. The petitioners had already asked the government for permission to form a society to protect women and children from kidnapping. This proved that they 'hate that form of wickedness as one hates one's enemy, and cannot bear seeing this class of rogues and vagabonds at liberty to play their pranks in this humanely governed English Colony'. Everyone knew that the majority of women in brothels had been purchased, yet the government had never tried to prohibit this, mainly because the colonial registrar generals, 'who were thoroughly acquainted with Chinese social customs, abstained from such grievous measures'. Because the *mui-tsai* enjoyed food and clothing that were 'far superior' to what they had received in their own families, girls from 'poor and distressed' families considered the *mui-tsai* system to be 'the very heaven and highroad to fortune'. Any effort to end the system would only 'be to their injury'. Instead, the petitioners suggest that the colonial government subject the buying and selling of boys and girls to official regulation.³⁹

Unconvinced, on 27 October 1879 Smale sent Hennessy his own comments on the Chinese petition. Smale found the petitioners' statements 'one-sided and coloured, but, on the whole, more fair than is usual with persons who believe they are representing grievances'.⁴⁰ The petitioners had cited Elliot's proclamation that Chinese in Hong Kong would be allowed to keep their customs, but they had ignored the proclamations of 1841 and 1845 prohibiting slavery. Smale also disagreed that the *mui-tsai* could be considered a Chinese custom that, if ended, would force poor Chinese to revert to another Chinese custom, drowning their children. By calling female infanticide a Chinese custom, the petitioners were in effect claiming that it was 'free from criminality in Hong Kong'. Yet, Smale argued, if anyone in Hong Kong was convicted of infanticide, 'Chinese custom would be no protection' and the perpetrator would be sentenced to death.⁴¹

³⁹ Memorial of Chinese merchants, 22 October 1879, *BPP*, 211–212.

⁴⁰ Smale's declaration, 27 October 1879, enclosed in Hennessy to Hicks Beach, 23 January 1880, *BPP*, 176.

⁴¹ Smale's declaration, 27 October 1879, *BPP*, 176.

Eitel's Report

By now the debate had boiled down to two main questions: Was the *mui-tsai* a form of slavery, and was it truly a Chinese 'national' custom? On 25 October 1879, between the Chinese merchants' second petition and Smale's response, E. J. Eitel, inspector of schools and Hennessy's personal 'Chinese' secretary, submitted a detailed, often tedious report to Colonial Secretary W. H. Marsh.⁴² One of the rare government officials in Hong Kong with a deep interest in Chinese culture, Eitel had worked in China with the Basel Missionary Society and subsequently with the London Missionary Society (LMS). He moved to Hong Kong in 1870 and in the same year completed his *Hand-Book for the Student of Chinese Buddhism*, which earned him a doctoral degree from Tübingen University and is still regarded as an important reference work.⁴³ He also gave lectures at the City Hall on Chinese Buddhism and on *feng-shui* (on which he published a book in 1873).⁴⁴ At the invitation of Governor Arthur Kennedy, Eitel started working for the colonial government in 1875 as director of Chinese studies and chairman of the Schoolbook Committee. In 1879 he resigned from the LMS to become inspector of schools and Hennessy's personal secretary.⁴⁵

In his report, Eitel presented himself as one of those few Europeans who truly understood China and its people, and what distinguished Chinese society in Hong Kong from that on the mainland. He began by reflecting how slavery had 'happily become an impossibility among the enlightened nations of the West', where it had been 'more or less superseded by the contractual relation of master and servant'.

⁴² Eitel's findings were later published as *Correspondence Regarding the Alleged Existence of Chinese Slavery in Hong Kong* (London, 1882).

⁴³ *Hand-Book for the Student of Chinese Buddhism* (Hong Kong, 1870). Later revisions and expansions of this book include: *Hand-Book for the Student of Chinese Buddhism: Its Historical, Theoretical and Popular Aspects* (Hong Kong, 1884) and *Hand-Book of Chinese Buddhism: Being a Sanskrit-Chinese Dictionary, with Vocabularies of Buddhist Terms in Pali, Singhalese, Siamese, Burmese, Tibetan, Mongolian and Japanese* (Hong Kong, 1888). Eitel also compiled a Cantonese dictionary that was republished after his death as *A Chinese Dictionary in the Cantonese Dialect* (London and Hong Kong, 1877) and as *A Chinese-English Dictionary in the Cantonese Dialect* (Hong Kong, 1910-1911).

⁴⁴ *Feng-Shui, or, The Rudiments of Natural Science in China* (London, 1873).

⁴⁵ This brief biography is based on Endacott, "Europe in China, by E. J. Eitel: The Man and the Book," 41-65; Henry J. Lethbridge's introduction to the reprint of Eitel's *Europe in China*; and Wong Man-kong, "The Use of Sinology in the Nineteenth Century: Two Perspectives Revealed in the History of Hong Kong," in Lee Pui-tak (ed.), *Colonial Hong Kong and Modern China* (Hong Kong, 2005), 135-154.

Having thoroughly studied the role of slavery in Chinese society, he concluded that the *mui-tsai* did not constitute any form of slavery as it was known in the West. Because the term 'slavery' was 'bound up with the peculiar development of the social life and the legal theories of the progressive societies of the West', it could not be 'rashly' applied to China, with its 'entirely different history' and social systems. For China there was no room for the 'absolute slavery' that had for so long 'disfigured Western civilization'. In China, the person did not exist as a legal entity; rather, every family member, including servants and slaves, 'merges his or her individual existence in the "family", which is legally the only "person" existing in China'. Indeed, the Chinese mind was unable to 'comprehend any basis for individual relations apart from the relations of the family'. Although no one in such a family could be 'free', this 'bondage' was 'not a mark of tyranny, but of religious unity, a bond of equality and mutual regard'. Nor was the 'family' in China the same as in the West, for the 'purchased slave, the hired domestic, the wife' were all 'as truly related' to the head of such a family as his own son.⁴⁶

In China, Eitel argued, slavery was not 'an incident of race as in the West, but an accident of misfortune'. And even though China had a variety of persons who in the West would be considered slaves – such as convicts, eunuchs and people who sold themselves or were born in to hereditary slavery – Eitel was sure that there was '*not one such hereditary slave in Hong Kong*'. In any case, he insisted that domestic servitude was 'entirely different' from hereditary slavery. Foreigners would 'of course' find it 'very unnatural that children should be sold into domestic servitude'. But Chinese saw 'nothing unnatural' in the arrangement 'because almost every social arrangement in China – 'betrothal, marriage, concubinage, adoption, servitude' – was 'professedly based on a money bargain'. The 'roots of this whole system of slavery and servitude' were 'inseparably interlaced not only with the general social organism but with the natural character of the Chinese'.⁴⁷ For Eitel, 'the slavery and domestic servitude of China' were institutions that could be eradicated by 'nothing short of the general dissolution of the whole social system of patriarchalism', for they were 'ingrained in the very blood and brain of China'. Given that English common law had 'proved utterly inapplicable to the

⁴⁶ Eitel's report, 25 October 1879, enclosed in Hennessy to Hicks Beach, 23 January 1880, in *Chinese Slavery*, 51, *BPP*, 215.

⁴⁷ Eitel's report, 25 October 1879, *BPP*, 217–218; original emphasis.

peculiar social systems of the Chinese living here', and that the colonial government had never interfered with the most 'prominent feature of patriarchal society, that fountain source of female servitude, polygamy', Eitel felt it 'inconsistent to single out the peculiar form of legitimate female domestic servitude practised by the Chinese here in accordance with the time-honoured custom of their native country, the frontiers of which are conterminous with those of Hong Kong'.⁴⁸

In *Europe in China* (1895), his history of Hong Kong, Eitel described Hong Kong as 'the inchoative union of Europe and China'. The 'mighty spirit of free trade' had 'fused the interests of European and Chinese merchants into indissoluble unity'.⁴⁹ In 1879, this 'inchoative union' and 'indissoluble unity' had apparently yet to occur. For even though Hong Kong was 'indeed but a dot in the ocean', its Chinese social life was 'also a dot in the ocean of that vast social life which covers a country peopled by 400,000 of people'. Not having any 'social intercourse with the foreigners of Hong Kong, the pulse of Chinese social life in Hong Kong beats in unison with that of patriarchal China, and its arteries are constantly supplied with new life blood from the same source'.⁵⁰

Like the Chinese merchants, Eitel warned that abolishing the *mui-tsai* system would cause more harm than good. As a colonial official, he also realized the impracticality of trying to prosecute such an ingrained custom. After all, 'modern sociology' taught 'that police prosecutions or legislative enactments must of necessity prove inefficient when intended to cope with any deep-seated social custom, because social reforms cannot be effected by any means except by the accumulated effects of habit on character'. As the situation currently stood, *mui-tsai* in Hong Kong knew that they were free, and if 'badly treated' had 'no hesitation in applying to the police, and bringing a charge of assault against master or mistress'. If, however, the Hong Kong police were to arrest every Chinese 'house-father' who possessed a *mui-tsai*, these men would simply send their families back to the mainland. Alternatively, if wealthy families were forced to give up their *mui-tsai*, 'all worthless girls servant girls would be thrown upon the hands of the Government'. Eitel could not imagine 'what permanent good could reasonably be expected to result from such direct interference'.⁵¹

⁴⁸ Eitel's report, 25 October 1879, *BPP*, 218–220.

⁴⁹ Eitel, *Europe in China*, 165, 569–570.

⁵⁰ Eitel's report, 25 October 1879, *BPP*, 219–220.

⁵¹ Eitel's report, 25 October 1879, *BPP*, 220.

Eitel's conclusions about the *mui-tsai* thus could not have been more different from Smale's. Whereas Smale had likened Hong Kong to the American slave states, Eitel argued that 'Chinese domestic servitude' was 'so peculiar' and so different 'in its essential characteristics from negro slavery', that it could not 'be logically brought under the provisions of any English enactment regarding that form of slavery'. Chinese domestic servitude was 'a low form of social development when judged by the advanced standard of European civilization, but when judged by the relative standard of Chinese civilization, founded on entirely different principles', it was 'the best possible form of social development under the circumstances. Absolute condemnation of Chinese domestic servitude would therefore be an act of moral injustice'. Chinese domestic servitude was 'not an excrescence on but a necessary part of the patriarchal order of things' that characterized the 'social life' of Chinese in Hong Kong. Thus to 'prohibit Chinese domestic servitude *in toto* would therefore constitute an act of violence, as striking at the very roots of the social organism, the results of which would in all probability be harmful to the Chinese and embarrassing to the government'. Although Chinese domestic servitude had been 'hitherto upheld in Hong Kong by the conservative tendencies of the patriarchal organism in China', it was 'bound by the laws of nature to yield eventually to the progressive tendencies of modern society. Undue interference with this process would therefore be an act of injudicious intolerance'.⁵²

The American Challenge

For John Smale, the existence and toleration of any practice that resembled slavery was an embarrassment, both to British justice and to Hong Kong's international image. His concerns were not unwarranted. On 30 April 1880, the British Foreign Office reported to the Colonial Office that David Bailey, the American consul general at Shanghai, had alleged on 22 October 1879 that slavery still existed in Hong Kong. A Californian member of the House of Representatives had used Bailey's report to support restricting Chinese immigration to the United States: If the British had been unable to prevent slavery in Hong Kong, unlimited Chinese immigration to America would

⁵² Eitel's report, 25 October 1879, *BPP*, 220–221.

lead to the same kind of slavery practiced in Hong Kong. In his report on slavery in China, Bailey cited Smale's claim that there were between 10,000 and 20,000 slaves in Hong Kong. Given that Hong Kong's Chinese population was 120,000, Bailey estimated 'at least one slave to every eleven freemen in that British colony in spite of laws prohibiting slavery'. He concluded that 'judging from the result of thirty-seven years' experience by the British authorities in Hong Kong', there was 'vitality and strength enough in the Chinese family law and in the system of Chinese slavery to enable them to defy foreign laws and courts even in foreign countries'.⁵³

Bailey was concerned about the implications of slavery in Hong Kong for Chinese immigration to America, not about conditions in Hong Kong *per se*, but his report showed how Smale's declaration had drawn unwanted attention to the *mui-tsai* issue. On 2 December 1879, Bailey forwarded to Charles Payson, third assistant secretary of state, a collection of documents on slavery in Hong Kong: Smale's declaration that slavery had been allowed to exist in Hong Kong despite the colonial government's 1844 ordinance forbidding it; editorials on Smale's declaration from the *Hong Kong Daily Press* and the *North China Daily News* based in Shanghai; a memorial from 'more than ten thousand of the Chinese gentry, merchants, and other people of Hong Kong' asking that British laws against slavery not be enforced in Hong Kong (Bailey did not explain how he had obtained the number 'ten thousand'); and an editorial from the *Hong Kong Daily Press* on the Chinese petition. Whereas the Chinese petitioners had tried to show that the *mui-tsai* system was not slavery, Bailey argued that the petition and other documents were proof that 'real slavery . . . prevails in every part of the [Chinese] empire and among Chinese wherever they go'. It was 'significant', noted Bailey, that colonial Hong Kong, 'where it is now settled by a judicial decision of its Supreme Court, and by admissions in solemn memorial of all the leading native residents, that Chinese slavery exists and ever has existed as an essential feature of the Chinese political and social system, is the entrepot for all the Chinese emigration to the United States'.⁵⁴

⁵³ Bailey to Payson, 22 October 1879, enclosed in Foreign Office to Colonial Office, 30 April 1880, in *Chinese Slavery*, 57, *BPP*, 221.

⁵⁴ Bailey to Payson, *BPP*, 234.

The Colonial Office Steps In

News of Bailey's report prompted the Colonial Office to pursue the matter. On 20 May 1880 the Earl of Kimberly, secretary of state for the colonies, wrote Hennessy about the issue of buying and selling children. Regretting that 'anything further' had yet been done and 'so much valuable time' had been lost regarding the Chinese petition of 1878 for a society to prevent kidnapping, Kimberly asked Hennessy to 'at once thank these Chinese gentlemen for their offers of assistance in repressing this form of crime', and to allow them to 'form themselves into an association of whatever kind they desire' – as long as the association's rules and organization were 'made known and approved by the Colonial Government'. Kimberly wanted to know if Hennessy agreed with Eitel and the Chinese petitioners that there was indeed no connection between slavery and the adoption and domestic servitude that Smale had decried, but which Eitel and the petitioners had described as a Chinese tradition whereby the children were treated better than had they 'been left to their ordinary fate'. Did Hennessy and Smale see these statements as 'an accurate representation of the facts connected with the adoption of children and domestic servitude in Chinese families'?⁵⁵

For Hennessy, who had commented on the *mui-tsai* system earlier in 1877 and 1878, the problem was part of the larger issue of giving local Chinese elites a share in administering Hong Kong. On 23 January 1880, he explained to Colonial Secretary Michael Hicks Beach that the 'term slavery can hardly be applied in fairness to Chinese adoption or to domestic service, where the individuals concerned go about our streets with a knowledge that they are free; yet the fact that they have actually been bought seems to me to condemn this system'. Hennessy was 'clearly of opinion that any practice involving a traffic in human beings should be put down by law'. Unlike Smale, however, he felt that the Chinese elites of Hong Kong could resolve the matter themselves: 'Her Majesty's Chinese subjects in this Colony are so loyal and law-abiding a race that I anticipate no real difficulty in getting them to assist the Government in putting a stop to this buying and selling of children for adoption or domestic service'.⁵⁶

⁵⁵ Kimberly to Hennessy, 20 May 1880, in *Chinese Slavery*, 72, *BPP*, 236–237.

⁵⁶ Hennessy to Hicks Beach, 23 January 1880, *BPP*, 168.

As evidence that Chinese in Hong Kong were indeed capable of playing such a role, Hennessy noted that in 1879 a 'Chinese gentleman' had finally been appointed a justice of the peace. In 1880 the Chinese were at last represented in the Legislative Council, by Ng Choy (better known in Chinese history as Wu Tingfang), the first Chinese to be called to the English Bar. 'As long as they were treated as an alien race it is not surprising that they were allowed to keep up practices alien to our constitution'. For Hennessy, giving the Chinese a greater role in local affairs was an integral part of making Hong Kong a 'flourishing Anglo-Chinese community'.⁵⁷ Thus on 23 June 1880 he replied to Kimberly that he had already let the 'Chinese gentlemen' form the Po Leung Kuk while awaiting the Colonial Office's approval, and that Ng Choy, acting police magistrate, was examining the rules and organization of the society. (Hennessy did not, however, say what he and Smale thought about the second Chinese petition or Eitel's report.)⁵⁸

Smale, however, had little confidence in the colonial government, let alone the Chinese elites, to resolve the situation. On 17 June 1880, after a Chinese was charged with kidnapping a 14-year-old girl to sell her into prostitution, Smale complained that little was being done to prevent girls from being sold into 'domestic slavery' (which he differentiated from brothel slavery).⁵⁹ But the matter was never so simple. On 28 June, C. V. Creagh, acting police magistrate and acting captain-superintendent of police, described the government's dilemma: Although Smale had declared all such arrangements illegal and ordered the courts to prosecute, Hennessy had ordered that no action be taken until the Colonial Office gave its opinion. Creagh reported that although 'contracts for the purchase or sale of human beings' were 'of course invalid' in Hong Kong, 'it was not customary for the police to prosecute or the magistrates to punish either parents or legal guardians who, according to Chinese custom, sold their children as servants or for adoption, or those who bought children for either purpose from their guardians'. Not only was the practice not prohibited by law, it was 'generally regarded as beneficial to those concerned, especially the children, who were rescued from destitution

⁵⁷ Hennessy to Hicks Beach, 23 January 1880, *BPP*, 168.

⁵⁸ Hennessy to Kimberly, 23 June 1880, in *Chinese Slavery*, 74–75, *BPP*, 238–239.

⁵⁹ Smale to Stewart, 17 June 1880, enclosed in Hennessy to Kimberly, 3 September 1880, in *Chinese Slavery*, 82–83, *BPP*, 246–247.

and provided with homes in well-to-do families, without being deprived in any degree of the protection of English law, which guarded them against ill-treatment'.⁶⁰

Similarly, on 2 July 1880 Ng Choy explained that under an ordinance of 1875 the Hong Kong police actively intervened in cases where a woman had been 'decoyed into or out of the Colony for the purpose of prostitution'. But cases where boys and girls were sold for 'honest purposes' were more difficult. A mother 'in distressed circumstances' might sell her daughter but then make a false report that the girl had been 'forcibly detained' in order to get her back. Even though the girls often preferred to stay with the families who had bought them, these families had no legal right over them. And if the police interfered in cases where neither the girls nor their parents had filed any complaint, the consequences could be 'very serious'. Since most of the girls' parents were not in Hong Kong, the police would have to find homes for them.⁶¹

Supporters of the sale and purchase of children had argued that the system constituted adoption rather than slavery. Smale disagreed. On 26 August 1880 he wrote the acting colonial secretary, Frederick Stewart, stating that 'in 99 cases out of every 100 cases' adoption in Hong Kong would be illegal – not only under English law but also under Chinese law, and that 'if the status of owner and owned exist between the parties, that is slavery'. By focusing only on the suppression of kidnapping, the government had created an environment where 'the pauper kidnappers and sellers are punished while the rich buyers go free'.⁶² On 24 November, Smale insisted to Stewart that 'buying and selling, even for adoption and domestic servitude under the best circumstances, constitutes slavery; – legal according to Chinese law, but illegal to British law'. As for the 'Chinese gentlemen' petitioners, Smale believed that 'not one of them' kept his family in Hong Kong. Rather, he kept his 'small-footed' wife at his family house in China, keeping his 'harem only' in Hong Kong. Furthermore, the Chinese merchants who had proposed a society to protect women and children

⁶⁰ Report by Creagh, 28 June 1880, enclosed in Hennessy to Kimberly, 3 September 1880, *BPP*, 248.

⁶¹ Minute by Ng Choy, 2 July 1880, enclosed in Hennessy to Kimberly, 3 September 1880, *BPP*, 248.

⁶² Smale to Stewart, 26 August 1880, enclosed in Hennessy to Kimberly, 4 August 1881, in *Chinese Slavery*, 94, *BPP*, 258–259.

had 'not shown their bona fides', for 'not a step' had been taken to form such an association.⁶³

Nor was Smale convinced by the argument that these children were 'far happier than if they had been left to their ordinary fate'. Had this not been the same logic used by 'the noble and the wealthy, the much respected slave trader and holder, a century ago in England'? Even if the girls were treated well, as the Chinese gentlemen had insisted, they were nevertheless eventually sold as wives or concubines, 'and form a profitable investment to a Chinese gentleman'. The adopted boys were 'generally never' able to redeem themselves from their contract. And even if the children were purchased from their parents, it would still be a misdemeanor under English law, 'though the circumstances may be such as to reduce the moral crime . . . to a minimum'. Smale thus found his own conclusions to be 'entirely inconsistent' with the views of Eitel and the 'Chinese gentlemen'. He ended his letter to Stewart by repeating that the 'bona fides' of the Chinese merchants to form an association to suppress kidnapping had been 'best tested' by their 'entire inaction ever since' their request in 1878.⁶⁴

On 15 June 1881, Hennessy reported to Kimberly that he was now 'clearly of opinion that there is nothing illegal in the ordinary mode of adoption of Chinese children in the colony', and that the views of Eitel and the Chinese petitioners on the practice were 'correct'. He declared that 'no further change is needed in the executive machinery now dealing with this matter; and that no alteration of the law on this subject is required'.⁶⁵ In a separate dispatch to Kimberly on the same day, Hennessy reported that although the rules of the Society for the Protection of Women and Children had not yet been finalized, 'the Society works smoothly and is doing good'. The acting chief justice who had replaced Smale had told Hennessy that the society had greatly helped the government to detect kidnappers. Hennessy was convinced that the society would 'do more than anything else to put an end to whatever was really bad in the native customs to which Sir John Smale objected'.⁶⁶

By this point, the debate was mainly between Smale and Eitel, between the chief justice and the sinologist. On 15 July 1881, Smale

⁶³ Smale to Stewart, 24 November 1880, enclosed in Hennessy to Kimberly, 4 August 1881, *BPP*, 261.

⁶⁴ Smale to Stewart, 24 November 1880, *BPP*, 261–264.

⁶⁵ Hennessy to Kimberly, 15 June 1881, in *Chinese Slavery*, 90, *BPP*, 254.

⁶⁶ Hennessy to Kimberly, 15 June 1881, *BPP*, 256.

offered a translated copy of bill of sale of a Chinese boy in June 1879 as proof of domestic slavery in Hong Kong.⁶⁷ In his second report on slavery, on 2 August 1881, however, Eitel argued that in Smale's reports 'slavery' had been 'indiscriminately used, – now in a strictly legal sense, and then again in its ethical or sentimental sense'. Eitel also disagreed with Smale's insistence that Chinese social life in Hong Kong was 'radically different' from that in China, that the system of adoption had no religious basis, that there was 'relatively little or no [Chinese] family life' in Hong Kong, and that 'not one of the leading Chinese' had his home in Hong Kong. These, Eitel insisted, were 'matters of which Sir John Smale could hardly be cognizant, as they lie as much beyond his sphere of knowledge and experience as English law lies beyond mine'. Eitel, after all, had spent the last 19 years observing such matters, and his claim that buying and selling for legitimate domestic servitude and adoption was indeed an established Chinese custom had been borne out in reports by the Chinese embassy in London and by American diplomatic sources. The person from whom Smale had received his information on Chinese customs, on the other hand, was 'a foreigner' who was 'ignorant of the written language of China, but possessed of a smattering of the lowest slang of Hong Kong', and whose 'knowledge of Chinese social life' was 'confined to an intimate acquaintance with the lowest class of Chinese prostitutes'. Eitel also disagreed that the Chinese petitioners had not 'shown their bona fides' and had not done anything to form their association. If Smale had taken 'the trouble to inquire', he would have found that in most of the cases of kidnapping he tried 'it was due to the efforts of these very gentlemen that, in the first instance, the offenders were brought to justice'.⁶⁸ Eitel then listed 123 cases of kidnapping and illegal sale of women or children that the society had dealt with from 15 January 1880 to the present. The 'piles of correspondence' between the colonial secretary and the chairman of the Po Leung Kuk, testified to the 'immense activity of these gentlemen and their detectives'.⁶⁹

⁶⁷ Smale to Colonial Office, 15 July 1881, in *Chinese Slavery*, 89–90, *BPP*, 253–254.

⁶⁸ Eitel's report, 2 August 1881, enclosed in Hennessy to Kimberly, 4 August 1881, in *Chinese Slavery*, 109, *BPP*, 273.

⁶⁹ Eitel's report, 2 August 1881, *BPP*, 274.

Conclusions and Legacies

Especially compared to the fervent efforts to end the *mui-tsai* system after World War I, the debate in the late 1870s and early 1880s was short-lived and confined mainly within Hong Kong. On 31 August 1881, Hennessy forwarded to Kimberly a copy of the rules and regulations of the Association for the Protection of Honest People, along with suggestions for revisions by Attorney General Edward O'Malley and the revised rules and regulations, including a new English name: the Society for Protection of Women and Children. On 18 March 1882, Kimberly gave Hennessy what would be the Colonial Office's final word on this debate. Hennessy had already indicated that there was nothing illegal about the practice of adopting Chinese children, and Kimberly was convinced that Hong Kong's criminal law was 'not only strong enough to reach all ordinary cases of ill-treatment, but that it affords special protection to women and girls'. Furthermore, the fact that the law provided these women and girls 'the same protection as to other members of the community' was proof that they were not slaves 'in any technical sense'.⁷⁰ Both Hennessy and Smale left Hong Kong later in 1882. Hennessy, notes Sayer, 'was thus fortunate in escaping unscathed from a problem which was to perplex and alarm subsequent administrations'.⁷¹ When Smale finally left Hong Kong on 11 April 1881, a contemporary report noted that his 'irascible temper and want of judicial dignity at times had done much to render his final retirement a general relief'.⁷² He died in England on 13 August 1882, but not before lecturing on the many evils of Hong Kong: brothels and contagious diseases, slavery and the opium trade.⁷³ As Eitel, who remained in Hong Kong until 1897, when he retired to Adelaide with his wife and four children, observed, 'the brief turmoil caused by the local slavery questions disappeared as quickly as it had arisen'.⁷⁴

Nor did the debate and the establishment of the Po Leung Kuk lead to any significant changes in the *mui-tsai* system. In contrast, whereas Hennessy had hoped that the Po Leung Kuk would eventually end the *mui-tsai* system, some critics considered the society little more than

⁷⁰ Kimberly to Hennessy, 18 March 1882, in *Chinese Slavery*, 122, BPP, 286.

⁷¹ Sayer, *Hong Kong*, 44.

⁷² Norton-Kyshe, *Laws and Courts of Hong Kong*, 346.

⁷³ Norton-Kyshe, *Laws and Courts of Hong Kong*, 347.

⁷⁴ Eitel, *Europe in China*, 548.

a scheme for ensuring that wealthy Chinese families always had a steady supply of young servants and that well-to-do Chinese men had a stocked pool of potential concubines. As Sinn argues, the Chinese merchants' 'triumph had long-term consequences'. Despite its many commendable activities, the Po Leung Kuk upheld a 'peculiarly Chinese form of patriarchy at a critical point of its development in Hong Kong'. Once the controversy had subsided, 'official inertia set in again' and the *mui-tsai* system was left 'unquestioned' until 1917.⁷⁵ Henry Lethbridge saw the establishment of the Po Leung Kuk 'not only as an example of commendable benevolence on the part of the affluent but as an attempt to maintain within a British colony a Chinese custom which had no basis in English law'. Ordinance No. 10 of 1893, which incorporated the Po Leung Kuk, established a Permanent Board of Directors and provided a government grant, was beneficial both to the society and to the colonial government, for it made the government look like 'it was acting vigorously in curbing the traffic in human beings'. Thus the Po Leung Kuk 'helped, indirectly, to maintain in servitude numbers of Chinese girls until long after the First World War'.⁷⁶ As Poon Pui Ting has argued, the *mui-tsai* controversy put the Hong Kong government in an embarrassing predicament that it tried to resolve by condemning the abuses within the system but without alienating the Chinese elites by attempting to end it.⁷⁷

Partly because of the increased interest in social welfare throughout the British Empire but also because British reformers began to take a stronger interest in Hong Kong, debates about the *mui-tsai* system were revived in the 1920s and the 1930s. One of the most intense and protracted British colonial policy disputes in the interwar period, the anti-*mui-tsai* campaign had three main differences from that in the 1870s and the 1880s. It focused more on the system itself rather than on the prostitution aspect. This time the campaign had help from all sorts of places: British women in Hong Kong, a small group of local Chinese, members of Parliament in Britain, religious leaders (including the archbishops of York and Canterbury) and international women's groups. And since the system had been banned (but never effectively enforced) in China after the 1911 revolution, no one in

⁷⁵ Sinn, "Chinese Patriarchy," 143.

⁷⁶ Lethbridge, "Chinese Voluntary Association," 65, 82, 89–90.

⁷⁷ Poon Pui Ting, "The *Mui Tsai* Question in Hong Kong (1901–1940), with Special Emphasis on the Role of the Po Leung Kuk" (MPhil Thesis, University of Hong Kong, 2000), 183.

Hong Kong could claim that it should be allowed simply because it was a Chinese tradition.

But even though the Female Domestic Service Ordinance was passed in 1923, the bill ended up doing little except to prohibit any new *mui-tsai* transactions and domestic service for girls below 10 years of age. Although reports in the mid-1930s suggested that the number of *mui-tsai* had probably increased after 1923, the bill temporarily ended all agitation in Britain. The *mui-tsai* issue re-emerged, however, after the Guangdong government abolished all forms of slavery in March 1927 and cancelled the deeds for the transfer of *mui-tsai*. In response to so much pressure, in 1929 the Legislative Council passed an amendment stipulating that all *mui-tsai* were to be registered and paid wages. Finally, in response to increased pressure in Britain and a colonial inquiry prompted by the League of Nations' Permanent Advisory Committee of Experts on Slavery, in April 1938 the Legislative Council passed legislation making it compulsory to register all adopted girls with the secretary for Chinese affairs. However, this affected only girls who were actually registered (of which there were still more than 1,000) and did little to end the large number of girls being sold into prostitution. The *mui-tsai* system lasted until after World War II, with cases being reported even into the 1970s.⁷⁸

Charles Elliot's proclamation of 1841 guaranteeing that Chinese in Hong Kong could keep their own religions and customs was aimed at minimizing resistance from the indigenous Chinese population and attracting Chinese merchants from the mainland to Hong Kong. In this, the proclamation was generally successful. Hong Kong's colonial founders could not, however, have predicted that the Chinese elites would be able to use this proclamation to their own advantage. In their warnings against government interference in the daily lives of the Chinese population, Chinese members of the various councils and boards frequently referred to Elliot's proclamation. In May 1887, for example, Ho Kai, the most Anglicized member of Hong Kong's new Chinese business and professional elite, and a permanent director of the Po Leung Kuk, opposed as 'wholly unnecessary' a proposed bill

⁷⁸ On the *mui-tsai* controversy in the 1920s and 1930s, see Norman J. Miners, "The Attempts to Abolish the *Mui-tsai* System in Hong Kong, 1917–1941," in Elizabeth Sinn (ed.), *Between East and West: Aspects of Social and Political Development in Hong Kong* (Hong Kong, 1990), 117–131, and his *Hong Kong under Imperial Rule, 1912–1941* (Hong Kong, 1987), chapters 8 and 9; Susan Pedersen, "The Maternalist Moment in British Colonial Policy: The Controversy over 'Child Slavery' in Hong Kong 1917–1941," *Past and Present*, 171 (2001), 161–202; and Poon, "Mui Tsai Question," chapters 4–7.

to improve sanitation standards in Chinese houses. Although Ho, a British-trained physician and lawyer, had helped draft the bill when he was a member of the Sanitary Board and knew that it would benefit Hong Kong's Chinese population, he suddenly argued that it violated Chinese customs and that the Chinese should be left to live as they pleased, regardless of overcrowding and unsanitary conditions. Ho complained how:

Some Sanitarians are constantly making the mistake of treating Chinese as if they were Europeans. They appear to forget that there are wide constitutional differences between a native of China and one who hails from Europe. They do not allow for the differences of habits, usage, mode of living and a host of other things between the two. They insist upon the theory of treating all nationalities alike however much they may differ from one another physically, mentally, and constitutionally . . . One might as well insist that all Chinese should eat bread and beefsteak instead of rice and pork, just because the two former articles agree better than the latter with an English stomach.⁷⁹

As the Chinese petitioners had in 1878 and 1879, Ho used Elliot's proclamation to justify his opposition to the proposed bill. 'As long as we govern the Chinese according to our promise given while this Colony was yet in its infancy, viz., to govern them as much as possible in accordance with their manners and customs, and to respect their religion and prejudices, we must of a necessity modify our laws in order to meet their peculiar requirements'.⁸⁰

When Chinese elites in Hong Kong resisted the colonial government's measures, they often saw themselves as protecting the Chinese of Hong Kong against an intrusive colonial state. And they could always point, for example, to the fact that the number of women who fled from China to Hong Kong proved that women there were freer than in China, or – as Ho Kai argued in 1890 – that the government's proposed prison reforms would only encourage poorer Chinese to commit crimes so that they might be sent to prison, 'where they can have a lot of amusement and pay nothing'.⁸¹ But the policy of allowing certain Chinese customs grafted itself onto another assumption that had defined Hong Kong's colonial rhetoric since the 1840s: because the majority of Chinese in Hong Kong had come there voluntarily, they

⁷⁹ "Dr Ho Kai's Protest against the Public Health Bill, Submitted to the Government by the Sanitary Board, and the Board's Rejoinder Thereto," *Hong Kong Legislative Council Sessional Papers, 1887*, 404.

⁸⁰ "Dr Ho Kai's Protest," 404.

⁸¹ Cited in Gerald H. Choa, *The Life and Times of Sir Kai Ho Kai* (Hong Kong, 1981), 111–112.

neither expected nor deserved much from the colonial government. For example, despite Hong Kong's rapid economic growth after World War II, the colony remained well behind the rest of the industrialized world in terms of social welfare. As G. B. Endacott, once the foremost historian of Hong Kong and certainly no critic of colonialism in Hong Kong, explained, 'the unspoken assumption was that Asians, and in particular the Chinese, were not forced to come to Hong Kong, and if they did so that was their own affair and they must accept conditions as they found them'.⁸² Many colonial officials feared that providing too much social welfare would only attract more refugees from the mainland. Twisted as this logic may seem, it echoed an old concern shared not just by colonial officials and Chinese elites but also by many ordinary Chinese, who frequently justified Hong Kong's poor working and housing conditions by contrasting them with those on the Chinese mainland. After all, it was a Hong Kong custom.

⁸² G. B. Endacott, *Hong Kong Eclipse*, Alan Birch (ed.) (Hong Kong, 1978), 320.