

Identity, Land, Feng Shui and the Law in Traditional Hong Kong*

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Introduction

It is said the sharp edges of the new Bank of China building in Hong Kong bring bad luck to those at whom they point unless the malevolent influences they project are deflected by the judicious placement of a mirror or eight-sided diagram (*paat kwa*). The gracious old banyan trees in Nathan Road, Kowloon were once saved from the axe on geomantic grounds.¹ In 1991 the construction of a columbarium at Pat Heung in the New Territories of Hong Kong was halted by determined villagers desperately fearful the good fortune of their village would be ruined forever.²

These are random examples of the belief held by many Hong Kong citizens in *feng shui* (Chinese geomancy).³ The purpose of this paper is to explore

* This paper is not based on fieldwork but purely on a review of the literature, and is contributed by a legal scholar whose knowledge and understanding of anthropology are rudimentary. As the author is also no Sinologist, the romanisation of Chinese terms is frankly a mess: no attempt has been made to impose consistency, the particular romanised terms used by the various authors consulted having been adopted willy-nilly. Particular thanks for advice on sources are due to Michael Palmer and Stephen Selby.

¹ S H Peplow and M Barker, *Hongkong, Around and About*, 2nd ed, Ye Olde Printerie, Hong Kong, 1931, p 127.

² See *Far Eastern Economic Review*, 26 March 1992.

³ Various romanisations as *fung shui*, *feng-shui*, *funshui*, *feng shui* etc depending on the system adopted. Geomancy has been defined as the science of putting human habitats and activities into harmony with the visible and invisible world around us: see N Pennick, *The Ancient Science of Geomancy, Man in Harmony with the Earth*, Thames and Hudson, London, 1979, p 7. Some scholars doubt the adequacy of this term to refer to *feng shui*. Anderson, for

the relationship between *feng shui*, land, and identity in traditional Hong Kong and to consider the role or status of *feng shui* in the Hong Kong legal system.

The New Territories

The district of Hong Kong in which traditional ideas and practices have survived their strongest is the New Territories.⁴ Contiguous to ceded Hong Kong Island and Kowloon, the New Territories were leased by Great Britain from China in 1898 and occupied by the Hong Kong authorities in 1899. The expiry date of the lease agreement was the principal reason for Sino-British negotiations leading to the Joint Declaration of 1984 by which the whole of British Hong Kong is to revert to Chinese sovereignty in 1997. According to one author on geomancy in 1962, Hong Kong as a whole has good *feng shui* and is enjoying three 60-year cycles of prosperity from 1842: "Even if, at the end of the period of the ninety-nine year lease, the British hand back the New Territories to China and Hong Kong reverts to Chinese rule, the predetermined prosperity will last for the remainder of the cycle".⁵ Hong Kong will thus remain prosperous until at least the year 2022! The whole Hong Kong area was once part of the county (*hsien*) of Hsin-an (Xinan in pinyin; San On or Po On at various times and in Cantonese), whose seat of imperial government was in Nam Tau, outside the British colony. In 1899 the New Territories were home to about 84,000 people⁶ in approximately 700 villages, the population rising to 102,000 in 1901, 456,000 in 1961, and now many, many more due to rapid urbanisation in recent years. The aboriginal inhabitants were displaced during the Sung dynasty and after by four Chinese-speaking ethnic groups: Punti and Hakka on the land and Tanka and

p 7. Some scholars doubt the adequacy of this term to refer to *feng shui*. Anderson, for example, states "Geomancy correctly applies to fortune-telling or forecasting by means of marks on the ground and related earth devices. As such it is widespread in the Near East and North Africa, and bears no resemblance or relationship to feng-shui" E N Anderson and M L Anderson, *Mountains and Water: Essays on the Cultural Ecology of South Coastal China*, Chinese Association for Folklore, Taipei, 1973, p 144.

⁴ J Hayes, "The Pattern of Life in the New Territories in 1898" (1962) 2 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 75.

⁵ M Freedman, "Geomancy" in *The Study of Chinese Society: Essays by Maurice Freedman*, G W Skinner, Stanford University Press, Stanford, 1979, p 328.

⁶ H D R Baker, *Sheung Shui: A Chinese Lineage Village*, Frank Cass, London, 1968, pp 3-5; James Hayes estimates a population of 90,000 Hakka and Punti in 1898: "Rural Society and Economy in Late Ch'ing: A Case Study of the New Territories of Hong Kong (Kwangtung)" (1976) 3 *Ch'ing-shih went-s'i* 33, 37.

Hoklo on the water.⁷ The social organisation of the land-dwelling population was expressed in two dominant systems: the first was that of the "five great clans", large, long-established, wealthy and politically powerful lineages with a high proportion of communally-held land, a charge-collecting prerogative over wide areas, and a near monopoly in the production of scholars successful in the imperial examinations; the second was that of smaller settlements, often involving multi-lineage settlements, with little lineage land and very rare examination success.⁸ The principal economic activities of the Hong Kong region were agriculture and fishing, with some rural industries such as lime-burning, firewood, and salt production.

Identity

Identity has been defined as:

The psychological self-conception of the person. In the social sciences, the term has also been extended to encompass social identity, cultural identity and ethnic identity, terms which refer to the identification of self within a specific social position, cultural tradition, or ethnic group.⁹

Using the term in the broad sense to embrace all these meanings, one can isolate many factors affecting the sense of "self" of indigenous New Territories residents, their relevance dependent upon the particular identity being considered. Some principal factors are discussed below. Other aspects of identity might include gender (the experience of being female in a patrilineal society practising surname exogamy was quite different from the enjoyment of maleness), marital status (marriage brought a wholly new role and meaning to a woman's life, and concubines were usually inferior to principal wives in many respects), status within the household (whether *mui jai* (bonded female servant) or not), the degree of servility suffered (whether a hereditary tenant in a servile relationship to a dominant lineage, a purchased slave, subject to debt bondage, or free), and class. In none of these categories did *feng shui* have much significance, and only the last two

⁷ J Hayes, *The Hong Kong Region 1850-1911: Institutions and Leadership in Town and Countryside*, Archon Books, Hamden, 1977, pp 25-32.

⁸ H D R Baker, "The Five Great Clans of the New Territories" (1966) 6 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 25; Hayes, above, n 7 at 194-201.

⁹ C Seymour-Smith, *Macmillan Dictionary of Anthropology*, Macmillan, London and Basingstoke, 1986, p 145.

involved land.¹⁰ It is noteworthy that a particular identity only arises when there is a competing group providing a measure of comparison and recognition of some social, political, economic, religious, or other objective to be pursued or protected.

Ethnicity and language

Land-dwellers mainly comprise Punti and Hakka. These groups are distinguished by mutually unintelligible languages and differences in dress, various customs, and sexual equality. The dominant lineages are Punti, who hold most of the best land; Hakka tend to belong to less-favoured occupational groups such as blacksmiths, barbers, stonemasons, and building labourers. Hakka-Punti wars in the nineteenth century are well documented, yet the two groups have often co-operated together, shared villages, intermarried, and even transmuted one into the other. The boat-dwellers, Tanka and Hoklo, are primarily fishermen. The former speak Cantonese (Punti), the latter a Fujian dialect, and in dress and customs they differ from each other and from Hakka and Punti (Tanka, for example, do not form lineages, though they are quite capable of making *feng shui* claims.) Objections to the evil rays caused by buildings or flashing lights are generally confined to Punti, it is said, while Hakka, inspired by animist beliefs, are more concerned with the *feng shui* of trees and rocks.¹¹

¹⁰ R S Watson, "Wives, Concubines, and Maids: Servitude and Kinship in the Hong Kong Region, 1900-1940" in *Marriage and Inequality in Chinese Society*, R S Watson and P B Ebrey (eds), University of California Press, Berkeley, LA, Oxford, 1991, chapter 7. J L Watson, "Hereditary Tenancy and Corporate Landlordism in Traditional China: A Case Study" (1977) 11 *Modern Asian Studies* 161, 175; "Chattel Slavery in Chinese Peasant Society: A Comparative Analysis" (1976) 15 *Ethnology* 361; "Transactions in People: The Chinese Market in Slaves, Servants, and Heirs" in *Asian and African Systems of Slavery*, J L Watson (ed), Basil Blackwell, Oxford, 1980, chapter 9. R S Watson, "Class Differences and Affinal Relations in South China" (1981) 16 *Man* 593; *Inequality Among Brothers: Class and Kinship in South China*, Cambridge University Press, Cambridge, 1985.

¹¹ S F Balfour, "Hong Kong Before the British" (1970) 10 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 134, esp 135-40 (first published in 1940-1); B E Ward, *Through Other Eyes: An Anthropologist's View of Hong Kong*, Chinese University Press, Hong Kong, 1989. R Krone, "A Notice of the San On District" (1967) 7 *Journal of the Hong Kong Branch of the Royal Asiatic Society*, 104, 125-6 (first published in 1859). P Y L Ng, *New Peace County: A Chinese Gazetteer of the Hong Kong Region*, Hong Kong University Press, Hong Kong, 1983, pp 3-6. On funeral customs as they differ between Punti and Hakka communities see P Hase, "Traditional Funerals" (1981) 21 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 192. E Anderson, "Lineage Atrophy in Chinese Society" (1970) 72 *American Anthropologist* 363, referred to by Watson, "Chinese Kinship" p 607. B E Ward, "Kau Sai, An Unfinished Manuscript" (1985) 25 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 27, 39. B D Wilson, "Notes on Some Chinese Customs in the New Territories" (1983) 23 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 41, 56.

A useful analysis of ethnicity is provided by C Fred Blake in his study of Sai Kung in the eastern New Territories.¹² Ethnicity, he maintains, may be expressed in both cultural and organisational terms. Cultural traits vary at different levels of the social system. At the broadest level there is an "underlying Chinese pattern" common to all ethnic groups, but such groups are differentiated by particular cultural identities whose expression narrows down as interests and categories become less diverse. Amongst the Hakka there are global traits, such as language and the role of women; regional traits, such as women's use of the calico-curtained hat; village traits, illustrated by subtle differences in the construction and style of the hat between villagers in Sai Kung and Tai Po; and within the same local system cultural traits depend on gender and social stratification. Organisationally, the use of ethnic identities in Sai Kung is a matter of degree, subject to political and economic circumstances. Ethnic identity may range from the purely personal to "matters of jural authority". Traditional criteria for organisation of the group - for categorising people and structuring their interaction - include surname, language, native place, and occupation: agnatic relationships dominate in the village, the other criteria tend to dominate in the market-town. Portions of ethnic communities may incorporate to provide greater economic and political power, though commonly the "criteria of ethnic competence" are then "less expressive in the personal, psychological, or cultural sense". Once incorporated, a group's leaders tend to become more acculturated in terms of the wider community, and the group, "the organisation of ethnicity", becomes more subject to control by the government.

Thus ethnicity is not monolithic: its expression - the symbols it employs - varies with different geographical arenas, social strata, and organisational effectiveness. Ethnic identity is itself dependent upon other variables.

Kinship

A dominant form of social organisation amongst land-dwellers in southeastern China is the lineage, a corporate group celebrating ritual unity and based on demonstrated descent from a common ancestor.¹³ A "local"

¹² C F Blake, *Ethnic Groups and Social Change in a Chinese Market Town*, University Press of Hawaii, Honolulu, 1981, chapter 8.

¹³ J L Watson, "Chinese Kinship Reconsidered: Anthropological Perspectives on Historical Research" (1982) 92 *China Quarterly* 589, 594. Despite the importance of lineages to social organisation, a majority of peasants in the Canton delta lived in communities not dominated by a single lineage: p 606.

lineage is a group of males descended from one ancestor and bearing one surname, together with their wives (including concubines) and unmarried daughters, living together in one settlement, owning some property in common, and led by the oldest and most senior male.¹⁴ In Freedman's terms, local lineages are "corporate groups of agnates (minus their married sisters and plus their wives) living in one settlement or a tight cluster of settlements".¹⁵ They may amalgamate with other local lineages descended agnatically from the same ancestor and sharing some property to form "higher-order" lineages. Unity was reinforced by ritual (ancestor worship), economic interest (sharing in the surplus proceeds of ancestral trusts), self-protection, political power, and prestige. The role of lineage membership in a villager's life depends on the nature of the lineage: "The more powerful and wealthy the lineage, the more it becomes an integral part of the individual member's personal identity. In an important sense, therefore, a lineage consists of a set of ideas, or ideological constructs, which exist in people's heads. It is tied to notions of property, relations of production and perceptions of the social universe."¹⁶

Status as a villager

However important lineages are in New Territories social organisation, membership of a lineage does not represent the sole important aspect of a resident's life. Indeed, the most significant rights possessed by an individual are the rights of settlement in a village, and these do not come only from membership of a lineage: the local community does not necessarily coincide with the agnatic community and its existence, extent, and functioning are defined by religious ritual and may be supported by local alliances which are not necessarily determined by lineage interests and organisation. Settlement and land rights could in pre-British times be acquired by contract (through purchase of surface or topsoil rights leading to perpetual tenancy), bringing land into cultivation followed by registration with the imperial bureaucracy, marriage, or other means.¹⁷ Villages, the fundamental units of society, are usually collected together in clusters called *heung*, which represent "the physical arena in which people had their being, usually over many

¹⁴ H D R Baker, *Chinese Family and Kinship*, Columbia University Press, New York, 1979, chapter 3.

¹⁵ M Freedman, *Chinese Lineage and Society: Fukien and Kwangtung*, Athlone, London, 1966, p 20.

¹⁶ Watson, above, n 13 at 597-8.

¹⁷ See generally D Faure, *The Structure of Chinese Rural Society: Land and Village in the Eastern New Territories, Hong Kong*, Oxford University Press, Hong Kong, 1986, chapter 3.

generations". The *heung* "was, in another sense, literally an arena in which villages and lineages struggled for existence and sometimes supremacy ..."¹⁸

Religion

The religious life of a villager is dominated by benevolent spirits (*zan* and *poosat*), which are the embodiment of *yang* and reside in Heaven, and malevolent spirits (*kwae*) representing *yin* and populating Hell; these supernatural beings interact with humans in the middle region of earthly existence.

Each year there is a complex ceremonial calendar in which worship at local shrines and household altars plays an important part. Deities and ancestral spirits are worshipped in the hope that these supernatural [beings] may help the villagers to get rich and have a healthy and secure life. The propitiation of the *kwae* has an equally important place, with several major festivals designed to bribe them with offerings and force them to leave the village. The central conception [of] all religious worship is to obtain power and help from benevolent supernatural beings and to ward-off the attacks of the *kwae*.¹⁹

These beliefs and rituals combined with *feng shui*, the cult of the ancestors, and the conception of souls (lucky or unlucky, repelling or attracting *kwae*) as "interdependent elements in a meaningful view of the universe and man's place in this universe".²⁰

Earth gods (local spirits) and temple gods (deities invited to a temple) are worshipped by villagers to secure protection and well-being, worship being either personal or communal and taking the form of small-scale sacrifices and offerings or large, elaborate, and expensive festivals. The *ta tsiu* rites, propitiary services for the dead intended to protect inhabitants from harmful spirits, involve fasting, the worship of local deities, and performances of puppet opera. Portable images from neighbourhood temples are paraded

¹⁸ J Hayes, *The Rural Communities of Hong Kong*, Oxford University Press, Hong Kong, 1983, pp 5-6.

¹⁹ J M Potter, "Wind, Water, Bones and Souls: The Religious World of the Cantonese Peasant" (1970) 8 *Journal of Oriental Studies* 139, 149.

²⁰ Potter, above, n 19 at 150.

about, lion and unicorn dancers may entertain, protective rites are chanted by Taoist priests, a procession of many people will visit local villages and temples, incense will be burnt, and so on.²¹ In the pre-war period 'there was a great belief in, and reliance upon, such rituals to maintain an even tenor of life in accordance with traditional beliefs,²² and *ta tsiu* ceremonies have been performed in much more recent times as well.²³ The *ta tsiu* and the "dragon boat on land" ritual, which was intended to banish harmful things from the community, took place according to regular schedules; *tun fu* rituals, involving the placing of charms, were performed as need arose, when *feng shui* was detrimentally altered by human action.²⁴

In relation to *ta tsiu*, Barbara E Ward spoke in 1981 of the ceremony she had witnessed the year before in Fanling, when to a village of less than 3,000 inhabitants more than 500 people had returned from overseas.

Asked why they had spent so much money, the parents all gave the same reply: "We wanted our children to know our customs and traditions" ... These people understand about personal identity; they know the immense value of the intangible; and they can still *experience* their cultural heritage.²⁵

The practice of religion was of significance for communal organisation, in fortifying existing groups, promoting the formation of groups with common interests, and contributing generally to the integration or cohesion of kin, villagers, and other rural communities.²⁶

²¹ Hayes, above, n 18, pp 11, 156-60.

²² Hayes, above, n 18, p 159; "The *ta-tsiu* is an example of the mingling of a wider culture with village traditions": D Faure, "Hong Kong and China in the Village World" (1981) 21 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 75, 87.

²³ See, eg, Chan Wing-hoi, "Observations at the *Jiu* Festival of Shek O and Tai Long Wan, 1986" (1986) 26 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 78; "The Dangs of Kam Tin and their *Jiu* Festival" (1989) 29 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 302.

²⁴ Hayes, above, n 18, p 11.

²⁵ B E Ward, "Rediscovering our Social and Cultural Heritage in the New Territories" (1980) 20 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 116, 124 (published in 1983).

²⁶ M Topley, "Chinese Religion and Rural Cohesion in the Nineteenth Century" (1968) 8 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 9.

Land and identity

The possession of land is fundamental to the identity of an indigenous New Territories resident. It is the primary determinant of wealth and power in village life and a fertile source of conflict.²⁷ In particular, land plays a significant role in kinship, settlement rights, and religion. Class, too, is important and can be largely defined according to land-ownership:

Understanding class relations in a village like Ha Tsuen [in the New Territories] is not simply a matter of determining who owns the land and who does not. It is important to know Teng landlords dominated local marketing and monopolized political power in Ha Tsuen and in the surrounding area. Landlord-merchants followed a different system of affinity from their tenants; they lived in larger houses, ate better food, and had higher levels of education than their poor agnates.²⁸

Some groups were (and in some cases still are to a limited extent) condemned to a form of servile relationship with their patrons, obliged to pay land rent and protection fees and to serve in local militias, regarded as social inferiors, and excluded from intermarriage and local political power. These groups are hereditary tenants to resident corporate lineage landlords, their status determined by their possession of mere surface as opposed to subsoil rights.²⁹ Land was also crucial to maintenance of rural credit and the cash economy.³⁰

With regard to kinship, it has been shown: one, ancestral estates have been indispensable to the creation and maintenance of strong lineage organisation; in the New Territories there is a clear correlation between strong lineages and possession of large common landholdings; two, the internal structure of a

²⁷ J Hayes, "Land and Leadership in the Hong Kong Region of Kwangtung in the Nineteenth Century" (1967) 7 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 91, 99-100.

²⁸ Watson, "Class differences ..." above, n 10, p 7.

²⁹ J L Watson, above, n 10. J T Kamm claims that perpetual tenancy, as the dominant mode of land tenure in the agricultural sector, was the major determinant of the relative prosperity of late Ch'ing Hsin-an: "Perpetual Tenancy in Hsin-an" (1977) 17 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 56, 58. For a detailed account of perpetual tenancy see Michael J E Palmer, "The Surface-Subsoil Form of Divided Ownership in Late Imperial China: Some Examples from the New Territories of Hong Kong" (1987) 21 *Modern Asian Studies* 1.

³⁰ Hayes, above, n 18, p 55.

lineage, and thus the distribution of political power within it, is determined by the distribution of ancestral property; and three, ritual structure (collective worship) is also related to the distribution of ancestral property.³¹ Segmentation of a lineage does not occur unless land is dedicated to a particular ancestor, providing funds for ancestral worship and surplus funds for the benefit of descendants. The wealth and power of an individual villager, at least one not involved in commerce, marketing, or other potentially high-income activity (such a government service in pre-British times), depends to a large extent on the number of ancestral trusts in which he (or, through her husband or father, she) can participate.³²

Membership of a village, and thus of a *heung*, is largely determined by settlement rights, that is, by possession of rights to land. Similarly, important elements in religious belief and ceremonial refer to the spatial distribution of local society and thus are intimately related to land rights; the *ta tsiu*, for example, exemplifies

the embodiment of territorial community in the village. It also demonstrates that territorial community is tied as closely to a religious world view as to the sheer necessities of daily life.³³

And *ta tsiu* "represents a living community".³⁴ Even the agricultural use to which land is put has significance for communal life: rice cultivation is (or, from the present-day perspective, was) conducive to and integrated into lineage ideology, whereas vegetable farming, which has replaced rice as the principal agricultural activity, involves a different "province of meaning" and as Aijmer writes:

a basic idea of traditional Chinese rural society is that land is an agnatic source. Rice cultivation in flooded fields is everywhere endowed with a particular meaning. All activities related to the cultivation [of] rice are vested with

³¹ J M Potter, "Land and Lineage in Traditional China" in *Family and Kinship in Chinese Society*, M Freedman (ed), Stanford University Press, Stanford, 1970, pp 121-38.

³² J L Watson, above, n 10, p 176. Watson, above, n 13, pp 595-6 points out that the corporate base of a lineage might be commercial premises, markets, salt pans, oyster beds, transportation facilities, or intangible resources such as the management of emigration, rather than land as such.

³³ Faure, above, n 17, p 80.

³⁴ Faure, above, n 17, p 86.

social values. The individual management of the fields by a gardener is not meaningful in the same way for the corporation of agnatic relatives, and it is not endowed with prestige, nor can it derive any meaning from the lineage ideology. On the contrary, the farms of market gardening families stand out as anarchistic counterparts to the ideals of the corporate lineage ideology.³⁵

Thus land, religion, village and lineage organisation, class, political and social status, and, as we shall see in some detail, *feng shui* are all inter-related, all significant components in the traditional strand of the New Territories villager's identity.

What then is feng shui

Feng shui, according to Feuchtwang,

stands for the power of the natural environment, the wind and the airs of the mountains and hills; the streams and the rain; and much more than that: the composite influence of the natural processes. Behind it is a whole cosmology of metaphysical concepts and symbols.³⁶

Maurice Freedman called it "mystical ecology"³⁷ and expressed the core of its ideas as follows:

Fung shui: winds and waters ... The Breaths (*hei*) which constitute the virtue of a site are blown about by the wind and held by the water. If the wind is high the Breaths will disperse; if the water moves fast the Breaths will be drawn away. Hills must protect a site against the wind; places from which streams and rivers flow must be avoided. An ideal site

³⁵ G Aijmer, "A Note on Agricultural Change in Hong Kong" (1972) 12 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 201. See eg, p 203. See also Blake, p 150: in Sai Kung in the New Territories, Punti and Hakka villagers celebrate different annual fertility festivals. Closer study "may demonstrate that these fertility festivals are geared to differences in local Cantonese and Hakka agricultural cycles - the Cantonese occupy double-crop land, and Hakka occupy single-crop land".

³⁶ S Feuchtwang, *An Anthropological Analysis of Chinese Geomancy*, Vithagna, Vientiane, 1974, p 2.

³⁷ Freedman, above, n 5, p 313.

is one which nestles in the embrace of the hills standing to the rear and on the flanks; it is then like an armchair. Deficiencies in the line of hills can be made up by trees or, in extreme cases, by walls. The hills behind the site support it; they give it strength. Those to the left, as the site faces its unshielded fourth side, are the Azure (or, as it is more usually translated in Hong Kong, the green) Dragon (*ts'ing lung*); those to the right are the White Tiger (*paak fu*). The Dragon is not a dragon; the Tiger is not a tiger. The former is a beneficent force (one comes fairly close to Chinese conceptions, as Chinese themselves sometimes do, in speaking of it as an electrical or magnetic force)³⁸ which animates the hills and spreads itself in the approaches to the site. (Moreover, a *loi lung*, an Advancing Dragon, may come from the rear to pour its virtue into the site.) The White Tiger is a force of danger (white because it bears a patch of that color on its forehead, a sign of fierceness) which protects only as long as it is in complementary relationship with the Azure Dragon. Dragon and Tiger must be present in the right proportions. The Dragon must stand higher than the Tiger to ensure a proper balance of forces between them. The one is *yang*, the other *yin*; the one is spring, the other autumn; the one is civil, the other military. They are opposite and complementary, neither by itself providing benefit and together in the correct ratio ensuring the concentration of the Breaths.³⁹

Baker employs a surfing metaphor:

the waves of luck are always there, but man must provide the surf-board and the knowledge of when and where to launch himself on the wave. If one selects a good *fung-shui* position and enters it at the right time one is bound to be carried along on a wave of good fortune. Thus, when a man is alive, if he chooses a good *fung-shui* site for his house he

³⁸ "Handling *fung shui* is like dealing with a high voltage electric current; the benefit one receives from its power is directly proportional to the technical skill employed": Potter, above, n 19, p 141. See also Feuchtwang, above, n 36, p 202. An alternative analogy is used by Eugene Anderson: "Just as a radio gathers invisible radio waves out of the air and selects the channel, so a properly sited structure gathers invisible waves of good influence". Above, n 3, p 129.

³⁹ "Chinese Geomancy: Some Observations in Hong Kong" in Skinner above, n 5, pp 192-3.

will have prosperity and a plentiful crop of children; and if, when he is dead, he is buried in a good *fung-shui* site, he will be so well served in the after-life that, out of natural love and gratitude, he can devote his every influence to the welfare of his descendants.⁴⁰

Feng shui derived, not from popular superstition, but from Chinese syncretist philosophy.⁴¹ Villagers' "supernaturalistic beliefs and practices are intimately related to their cultural values and to their cosmological and philosophical beliefs".⁴² De Groot was scornful of it: he called it

a mere chaos of childish absurdities and refined mysticism, cemented together, by sophistic reasonings, into a system, which is in reality a ridiculous caricature of science.⁴³

Others have disagreed.⁴⁴ It is not, however, internally consistent: it is

⁴⁰ H Baker, "Burial, Geomancy and Ancestor Worship" in *Aspects of Social Organization in the New Territories* M Topley (ed), Hong Kong Branch of the Royal Asiatic Society, Hong Kong, 1964, p 37. Compare Freedman, "Chinese Geomancy", p 209: "as benevolent guardians of their descendants, the ancestors can be expected to exert such supernatural influence as they have to promote the interests and soften the hardships of their living issue. The ancestors in their graves, in contrast, are the passive vehicles of impersonal geomantic forces. In ancestor worship our forebears are active and we are passive; in *fung shui* we are active and they are passive". Anderson writes: Freedman stresses the point that good influences flow through the grave in any case, and minimizes the active role of the spirit. My informants tended to stress the spirit's role in actively helping his [descendants], who repaid him with worship offerings. Both factors are clearly relevant" (p 132). R Watson refers to the neglected ancestor's "retribution" in harming the prosperity of his living descendants: above, n 10, p 49.

⁴¹ Feuchtwang, above, n 36, p 96.

⁴² Potter, above, n 19, p 150.

⁴³ J J M de Groot, *The Religious System of China*, Leyden 1892-1910, republished in Taipei by Ch'eng Wen, 1972, p 938. "It fully shows the dense cloud of ignorance which hovers over the whole Chinese people; it exhibits in all its nakedness the low condition of their mental culture, the fact that natural philosophy in that part of the globe is a huge amount of learning without a single trace of true learning in it ... [T]he cobwebs of absurd, puerile speculation, built up by the system, are hardly worthy of serious study".

⁴⁴ "It is consciously, deliberately and explicitly scientific - according to the principles of a folk science", (Anderson, p 49); "once the initial unscientific premise that man can benefit from his physical position is accepted, the rest does follow in a fairly logical manner, and scientific methods of site-location can be employed ..." (Baker, above, n 40, p 37): "*Fung shui* is an exact science, like Newtonian physics, and the traditional prescriptions for different purposes are set down to the smallest detail" (Potter, above, n 19, p 143); "*Fung shui* is not like most of the rest of Chinese religion; no reliance on the will of a deity is involved; there are no gods to serve and placate; it is not superstitious, for it is based on self-evident propositions; the principles which regulate the cosmos are fixed, known, and subject to exact treatment by experts who, in the performance of their duties, are like scientists or technicians" (Freedman,

self-defining, hypothetical, metaphysical,⁴⁵ self-fulfilling, nonfalsifiable;⁴⁶ "If it works, well and good. If it fails to work, a neglected principle, an ignorant geomancer, an undetected alteration to the landscape can be held responsible".⁴⁷ Its doctrines, "when handled with dexterity and eloquence, can explain all the phenomena of human life and fate.... [N]o smart professor can ever be brought to bay".⁴⁸ No doubt it can be, and is, manipulated by charlatans;⁴⁹ many geomancers are obscurantist, the better to impress ignorant peasants.⁵⁰ Yet it is not in the main cynically maintained,⁵¹ and it is widely believed in and practised in the New Territories.⁵² A Hong Kong government official reported in 1912: "it is characteristic of the Chinese folk that their superstitious ideas have always yielded ultimately to the needs of a progressive age,"⁵³ and another wrote in 1931 that old *feng shui* ideas were gradually being modified as incompatible with Western laws and customs⁵⁴ - yet in 1992 there is no sign that *feng shui* is anywhere near eradication as a significant component of the belief systems of both rural and urban Hong Kong Chinese.

Feng shui is not a system of magic but a means of diagnosis and prognosis relying on the natural world rather than the realm of spirits, and it is discovered by education rather than divine gift.⁵⁵ For respectable Chinese:

there is something called religion, a debased and sometimes dirty thing, and there is *feng-shui* which rests on a kind of science of observation, backed up by a canonic literature and

above, n 5 p 194).

⁴⁵ Feuchtwang, above, n 36, p 107.

⁴⁶ Potter, above, n 19, pp 146-7.

⁴⁷ Freedman, above, n 5, p 194. See also p 200.

⁴⁸ de Groot, above, n 43, p 1015.

⁴⁹ See de Groot, above, n 43, pp 938, 1048; Peplow and Barker, above, n 1, p 128.

⁵⁰ Anderson, above, n 3, p 49.

⁵¹ Freedman, above, n 5, pp 190-1.

⁵² See J W Hayes, "Government and Village: Reactions to Modern Development by Long-Settled Communities in the New Territories of Hong Kong" in *An Old State in New Settings: Studies in the Social Anthropology of China in Memory of Maurice Freedman*, H D R Baker and S Feuchtwang, JASO, Oxford, 1991, p 129. Hayes notes at p 125 that "Whatever their pastors may say, Christianity does not apparently extinguish local villagers' beliefs in *feng-shui* or inhibit them from hiring geomancers"; see also Freedman, above, n 5, p 325.

⁵³ Quoted by Freedman, above, n 5, p 206.

⁵⁴ Peplow and Baker, above, n 1, p 126.

⁵⁵ Feuchtwang, above, n 36, p 201.

that impressive instrument, the compass. If they are misled by the geomancer, they are being dazzled by science, not bamboozled by religion.⁵⁶

Nor is *feng shui* a moral system indicating correct moral action with appropriate rewards for moral worth.⁵⁷ Freedman refers to "the automatism of geomantic determinism"; "*Fung shui* is an amoral explanation of fortune lying alongside a moral explanation: Earth against Heaven, good luck against merit".⁵⁸ Yet *feng shui* presupposes intervention by men in the shaping of their destinies:

And I think it follows from this that geomancy plays a larger part than ancestor worship in explaining fortune and that, for all the profound significance of ancestor worship in domestic and lineage organization, on the plane of ideas it pales before *fung shui*. Geomancy explains more and better than ancestor worship.⁵⁹

Effect on the physical environment

In one sense, *feng shui* is primarily a prescription, or set of prescriptions, for siting and constructing graves and buildings. Burial of a New Territories villager is a three-stage process: interment in an earth grave (*huet chong*) for a number of years to allow for full decomposition, exhumation and arrangement of the bones in a funerary pot (*kam tap*) which is deposited on a hillside. Where according to Nelson, "the ancestor's bones 'must survive exposure to the elements, passing cows, and even dogs' and reburial in a masonry grave (*shan fan*)".⁶⁰ *Feng shui* considerations, though not irrelevant

⁵⁶ Freedman, above, n 5, p 325. Nevertheless *feng shui* is part of Chinese religion in the broad sense, being ambiguous and nonrational (p 326), its basic ideas belong to a standard system of metaphysics, and "its elements are transposable into Chinese 'religion'" (p 331).

⁵⁷ Feuchtwang, above, n 36, pp 103-5; Freedman, above, n 5, p 198.

⁵⁸ Freedman, above, n 5, p 211.

⁵⁹ Freedman, above, n 5, p 209. See J T Kamm, "Field Notes on the Social History and Fund-Shui of Kam Tin" (1977) 17 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 202, 215-16. Hayes refers to preoccupation with *feng shui* in order to rationalise significant depopulation in the nineteenth century New Territories, though the better explanation was overpopulation and ensuing malnutrition and disease ("Rural Society and Economy" pp 56-8).

⁶⁰ H G H Nelson, "Ancestor Worship and Burial Practices" in *Religion and Ritual in Chinese Society*, A P Wolf (ed), Stanford University Press, Stanford, 1974, p 273. See Wilson, above, n 10, pp 52-4; R Watson, above, n 10, p 50. For an account of funerary ritual, see J L Watson, "Of Flesh and Bones: The Management of Death Pollution in Cantonese Society" in

to the first two stages, are paramount in regard to the third: much time and expense are devoted (where family resources allow) to finding an ideal site with the Green Dragon on the left, the White Tiger on the right, water in front flowing in but not out, and still air.⁶¹ Once such a site is discovered, and eventual geomantic good fortune is assured for descendants, vigilance must be maintained lest alteration to the landscape or construction of a new grave nearby destroy the *feng shui*. Watson gives an example of stealing a village's good geomancy by building houses in front of the entrance gate.⁶²

Houses and whole villages are located on propitious sites wherever possible. Potter's summary is useful:

Villages had to be constructed at the foot of a hill if possible so that the *fung shui* could flow down gradually from the higher mountains along the crests of smaller hills to concentrate on the village.... The height of village houses, the plan and layout of the village, the shape of house roofs⁶³ - even the maximum size that the village could safely attain - were all theoretically governed by *fung shui* requirements. Since villages required special groves of *fung shui* trees as a curtain at the rear of the village, some villages had to postpone construction for several years to allow the *fung shui* trees to reach a proper height.⁶⁴ The exterior and interior construction of village houses, including the exact size and location of doors and the direction in which they

Death and the Regeneration of Life, M Bloch and J Parry (eds), Cambridge University Press, Cambridge, pp 155-86; Watson refers at p 181 to the annual ritual of a pig sacrifice for the transmission of *feng shui*: male descendants eat roasted pig flesh, the good influences of the environment having flowed through the ancestor's bones into the pigs as they are displayed in front of the tomb.

⁶¹ Baker, above, n 40, pp 37-8.

⁶² See Hayes, above, n 18, p 122; R S Watson, "Remembering the Dead: Graves and Politics in Southeastern China" in *Death Ritual in Late Imperial and Modern China*, J L Watson and E S Rawski (ed), University of California Press, Berkeley, LA, London, 1988, p 218. Watson, above, n 10, p 99.

⁶³ See L F Sullivan, "Traditional Chinese Regional Architecture: Chinese Houses" (1972) 12 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 129, 133-4.

⁶⁴ The importance of *feng shui* groves was illustrated when "taxlords", offered compensation by the British when their claims to ownership of land proved incompatible with the land system adopted for the New Territories, laid claim to the groves "and proceeded to extort and blackmail neighbouring villages by threatening to chop down the trees for firewood": J T Kamm, "Taxlordism" (1977) 17 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 68, 77.

were to open, were determined by *fung shui*.... If a locality has bodies of water flowing away from it sometimes remedial steps can be taken. In Ping Shan an entire village and a large pagoda were constructed as a retaining wall to prevent the *fung shui* of the main villages and the central ancestral halls of the lineage from being swept out to sea by a river that once flowed by the front of the village.... Even apparently minor matters like the digging of a village well might be so disturbing to the flow of the village *fung shui* as to kill everyone in the village.... Most roads in the New Territories have a serpentine quality that is due more to *fung shui* requirements than to bad engineering. Everything in the lives of the villagers, then, from the construction of a village latrine to the determination of the direction in which bridal sedan chairs were placed was determined according to *fung shui* criteria.⁶⁵

One well-known New Territories village, frequently visited by tourist buses, was placed in direct physical relationship with other walled villages in a lineage complex for *feng shui* reasons, and its design has been termed "the epitome of the cosmic archetype"; a pagoda was built to check the escape of good influences and its demolition was blamed for a decline in family fortunes.⁶⁶ Several cases have been documented of whole villages being removed to better locations because of a decline in geomantic fecundity evidenced by declining male birth rates and other calamities.⁶⁷ The site of one village was lowered, the labour taking four years, on the advice of a geomancer.⁶⁸ In Sheung Shui the main ancestral hall was built on the head of a dragon and part of the village took the shape of a pearl to discourage the dragon from turning his head away.⁶⁹ Houses traditionally had no windows lest the flow of good luck forces be disrupted and evil influences allowed to enter.⁷⁰ Some Hakka villages built "fence-cage houses" (*wai lung*),

⁶⁵ Potter, above, n 19, pp 142-3.

⁶⁶ D Lung, "Fung Shui, An Intrinsic Way to Environmental Design with Illustration of Kat Hing Wai in the New Territories of Hong Kong" (1980) 20 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 81.

⁶⁷ See Hayes, above, n 18, chapter 11.

⁶⁸ Hayes, above, n 52, p 119.

⁶⁹ Baker, above, n 14, p 101.

⁷⁰ J L Watson, *Emigration and the Chinese Lineage: The Mans in Hong Kong and London*, University of California Press, Berkeley, LA and London, 1975, p 161. In this respect ideas have changed.

three-storey circular apartment houses, to obtain the proper *feng shui* in relation to the hills.⁷¹ Some *feng shui* groves may have preserved the natural forest of the region (long since, of course, vanished in the rest of Hong Kong).⁷²

Feng shui has, indeed, ensured a particular, and particularly pleasing, aesthetic to the Chinese landscape. It is a form of urban and rural planning through which conservation and "architectural good manners" are enforced.

The "spiritual organization" of the beneficial influence of the spirit of wind and water was ... a prerequisite before any development, and although a weird blending of philosophic and poetic ideas, animistic belief, imaginative aestheticism, professional requirements, and sensitive landscaping, a workable system evolved which produced the unique yet typical Chinese environment.⁷³

Feng shui results in

A balance of mountains and water, of wild land and cultivated land, of trees and open space - and beyond this a balance of the forces of nature, a mental harmony and union, and even a sexual symbolism made explicit in the womb-like tomb and the conception of *yang* and *yin*. Aesthetics becomes a validator of site planning for other reasons. The relationship of man and the world is preserved partly through the identification of physical comfort and aesthetic or spiritual comfort.⁷⁴

Erosion is controlled, the use of land is sensibly allocated, protection of villages from floods is provided; "the traditional rural communities of China had an explicit and extremely efficient system of managing the land, based on sound principles and on a science of site planning that (for all its magic)

⁷¹ C Osgood, *The Chinese: A Study of a Hong Kong Community*, University of Arizona Press, Arizona, Tucson, 1975, Vol 1, p 196.

⁷² D C Shen, "'Fung Shui' Woodlands" (1974) 14 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 188.

⁷³ M Hugo-Brunt, "Walled Villages of Hong Kong" (1964) 135 *Architectural Review* 442-6. See also L Weaver, "Hong Kong" *The Builder*, No 196, April 24, 1959, p 773.

⁷⁴ Anderson, above, n 3, pp 138-9.

can well be the envy of modern planners".⁷⁵ Yet "the heart of the matter", writes Freedman, is not the physical landscape but contentment, a "feeling for the virtues flowing from the harmony between the site and its owners," a mental response to "a mysterious field of forces set up in a given place" hinted at by features of the landscape. "You", living or dead, "are content".⁷⁶

Effect on social and political organisation

Feng shui has significant implications for social organisation and the expression of political differences. First, it provides a focus for unity - though of a differentialised kind, for the distribution of its virtues depends on the object: a well-sited grave or ancestral hall benefits the descent group, a house its owner or occupants, a city, town or village its residents, a temple or pagoda the corporate group which established it, Government House the citizens of the colony.⁷⁷ Second, unlike ancestor worship it tends towards the atomisation of groups and expresses individual autonomy, giving expression to points of conflict.⁷⁸ The *feng shui* of a grave-site, for example, can benefit one son as opposed to another ("in geomancy there lies the inherent principle that tombs are a means of individualizing the fate of the living."⁷⁹ The *feng-shui* of graves is a repudiation of the solidarity of agnates"),⁸⁰ or one branch of a lineage at the expense of other branches, or one lineage in competition with other lineages. De Groot blamed *feng shui* as the cause of hostilities between clans or villages; quarrels and litigation over *feng shui* were of daily occurrence in the towns.⁸¹ As Freedman says:

In the arrangement of the buildings for the living there is orderliness and an apparent muting of competition. But the competition is there. Let one man in a village build a fraction too high; let him make a window or a door that can be interpreted as a threat; and he has a struggle on his hands. If one village appears to prosper at the expense of another,

⁷⁵ Anderson, above, n 3, p 53; see also pp 140-1.

⁷⁶ Freedman, above, n 5, p 192.

⁷⁷ Feuchtwang, above, n 36, p 196, 211; Freedman, above, n 5, pp 200-1.

⁷⁸ Feuchtwang, above, n 36, p 213-16, 220.

⁷⁹ Feuchtwang, above, n 36, pp 213-16; Potter, above, m 19, p 146; de Groot, above, n 43, pp 1029-31; Hayes, above, n 18, p 143; Freedman, above, n 5, p 287.

⁸⁰ Freedman, above, n 5, p 332; see also "Ritual Aspects" p 287.

⁸¹ de Groot, above, n 43, p 1042. See also Hayes, above, n 18, p 32.

some alteration must be made (perhaps the erection of a pagoda) to redress the balance.⁸²

Feuchtwang cautiously denies there is sufficient evidence to blame *feng shui* for causing or aggravating conflict.

All we can say is that it is an ideology that does not promote group above individual interests as does ancestor worship because it expresses the interests of individuals first and secondarily of individuals as part of a group.⁸³

Another anthropologist has suggested *feng shui* provides a focus for dispute-resolution and, in the *feng shui* expert, an authoritative mediator:

A conflict whose real import is economic or related to power politics and touchy ethnic relations is brought into the formal stage - where it can be mediated - by means of feng-shui.⁸⁴

On this view *feng shui* is a language of mediation and can promote harmony rather than conflict. It may also be a language of political protest, permitting the expression of political views - either in village or lineage politics or vis-à-vis the government - which would otherwise be unwise or impermissible.⁸⁵ Finally, it is a political language in another sense: a set of symbols and ritual statements expressing and justifying social and economic differentiation.⁸⁶

Another political dimension of *feng shui* may be found in relation to the acceptance of economic transformation. According to Boxer, accommodation to massive urban developments in the New Territories:

is governed by ideas of "change", where modes of action and response are sanctioned by tradition, and facilitated by *feng shui* belief ... [T]he successful application of traditional Chinese conceptions of "change" to the immediate demands

⁸² Freedman, above, n 5, p 332.

⁸³ Feuchtwang, above, n 36, p 220.

⁸⁴ Anderson, above, n 3, p 135.

⁸⁵ R Watson, above, n 62, pp 216-18.

⁸⁶ G Aijmer, "Being Caught by the Fishnet: On Fengshui in Southeastern China" (1968) 8 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 74.

of urbanization has facilitated a smooth transition to a modern urban-industrial society.⁸⁷

Feng shui provides a "natural" explanation, independently of moral worth, industriousness, or intelligence, for the unequal distribution of wealth - one which "draws the teeth of jealousy" and attributes differences in riches to impersonal fate, thus assisting in the maintenance of village and lineage solidarity.⁸⁸ At the same time it offers a technique for achieving worldly good fortune.

Tun fu (or *tan foo*) ceremonies illustrate the political dimension of *feng shui*. When geomantic virtue has been disturbed it is necessary to appease the gods and spirits to whom offence has been caused, and this is achieved by propitiatory services conducted by a Taoist priest or, occasionally, a *fung shui* professor. The form and details differ, but most of the *tun fu* ceremonies which have been described follow a similar pattern. A vegetarian diet may be enforced on villagers and no one permitted to enter or leave the village for several days. Bamboo sticks, dipped in the blood of a chicken and decorated with inscriptions or charms, are put in pots which are placed at various locations around the village. Rites are conducted at each pot, and when the works which are upsetting the spirits are completed the priest returns and burns the charms.⁸⁹

Two points may be emphasised. First, *tun fu* connects *feng shui* to religion and integrates it into the wider belief system of villagers:⁹⁰ *poosat* are called upon to counter the malign influences of *kwa*. Second, Judith Strauch has observed the pots are "located at sites which could only be derived with a full knowledge of the local *social* rather than *geomantic* terrain".⁹¹ She concluded the *tun fu* ceremonies she witnessed were a means by which the indigenous villagers symbolically fought back against threats to their peace and security represented by immigrant farmers and government development plans. *Tun fu* provides "a glimpse of the structure of social as well as

⁸⁷ B Boxer, "Space, Change and *Feng Shui* in Tsuen Wan's Urbanization" (1968) 3 *Journal of Asian and African Studies* 226, 239-40. See also Feuchtwang, above, n 36, pp 221-2.

⁸⁸ Anderson, above, n 3, p 138. Potter, above, n 19, p 147.

⁸⁹ Hayes, above, n 18, chapter 13.

⁹⁰ Freedman, above, n 5, p 207.

⁹¹ J Strauch, "A *Tun Fu* Ceremony in Tai Po District, 1981: Ritual as a Demarcator of Community" (1980) 20 *Journal of the Hong Kong Branch of the Royal Asiatic Society* 147, 149.

religious meaning in a sector of Chinese society that carries on old traditions in a changing world".⁹²

The legal status of *feng shui*

We have seen *feng shui* is a belief system, a method of diagnosis and of divination, a set of ecological principles, a political and ritual language, and more. The issue now to be considered is its legal status.

Under the Ch'ing penal code, *feng shui* was apparently disfavoured. Section CLXXXI provided that if, "vainly seeking an auspicious time and place", a person detains a relative's coffin for more than a year "he shall be punished with 89 blows". Staunton's note to this section reads:

This seems to have been required to check the absurd consequences of a superstitious notion universally prevalent among the Chinese, of an intimate connexion always subsisting between the advantageous or disadvantageous mode and place of interment of persons deceased, and the future good or bad fortune of their surviving relations.⁹³

De Groot quotes a passage not appearing in Staunton's translation:

The fung shui doctrines date from latter ages. At the bottom they are absurd and false, and not worthy of belief.⁹⁴

He also refers to an edict issued by the Taotai of Amoy in 1882 which wholeheartedly condemned delay in burial caused by geomancy:

[W]ealth and consideration in human life are from the outset fixed by Heaven, so that it is impossible to secure greatness and glory to posterity by a selection of lucky spots for burying.⁹⁵

⁹² Strauch, above, n 91, p 153.

⁹³ Sir G T Staunton (trans) *Ta Tsing Leu Lee*, T Cadwell and W Davies, London, 1810: reprinted in 1966 by Ch'eng-wen Publishing Co Taiwan, p 190.

⁹⁴ de Groot, above, n 43, p 133.

⁹⁵ de Groot, above, n 43, p 134.

Nevertheless, although written law and the government had denounced *feng shui* "in contemptuous terms as a farrago of nonsense, and its professors as a set of deluders", magistrates could be persuaded by bribery to enforce *feng shui* ideas and most magistrates respected "the noble geomantic art".⁹⁶ Hayes says:

The penal codes and court cases of the last two imperial dynasties and of the Chinese Republic (1911-49) testify to this fruitful source [disputes over graves] of conflict and litigation.⁹⁷

Many aspects of *feng shui* were not directly proscribed by the Code, yet official attitudes in imperial China, despite the lapses by some magistrates, were distinctly out of sympathy with it. Hayes notes that it was the practice of:

the imperial government to take up the ancestral graves of any persons convicted of rebellion against them ... "to upset their geomantic order and thereby disrupt the good fortunes of the clan".⁹⁸

But Chinese law during the Ch'ing period was not solely determined by official attitudes: custom provided an essential gloss on the imperial statutes and occasionally contradicted them, and it seems inevitable under the customary regime *feng shui* principles were recognised and enforced. Evidence is hard to come by. Feuchtwang quotes a Chinese scholar: "years are spent in litigation" regarding burial lots, and this may refer to litigation at the village level in accordance with custom.⁹⁹ Hayes mentions *feng shui* as one reason why:

a body of customary law sprang up in each *heung* governing the usages of the population, and this was enforced when necessary by the elders of the villages and those whose influence extended to the *heung* as a whole.¹⁰⁰

⁹⁶ de Groot, above, n 43, pp 1036-7.

⁹⁷ Hayes, above, n 18, p 143. See also Faure, above, n 17, p 151. Apparently in such cases the official system, as opposed to the customary regime, was resorted to in *feng shui* disputes.

⁹⁸ Hayes, above, n 52, p 125.

⁹⁹ Feuchtwang, above, n 36, p 219-20.

¹⁰⁰ Hayes, above, n 18, p 6.

If *feng shui* provided a mechanism for the resolution of disputes whose real cause was economic or political it must have been supported by law. Hayes refers to a small hill with good *feng shui* in Shek Pik;

No villagers were permitted to bury their dead there or to cut trees or grass on pain of being taken before the elders and fined.¹⁰¹

In theory, Chinese customary law could survive into the British period in Hong Kong where English law was inapplicable, and in the New Territories the courts are empowered by legislation to "recognize and enforce any Chinese custom or customary right" affecting land.¹⁰² There is no example in the official post-1899 case law of judicial recognition of any aspect of *feng shui*. A computer search reveals no mention of *feng shui* in the current Hong Kong statute book. It seems, at the official level of state law, *feng shui* does not exist. Yet in government practice it is everywhere tolerated and enforced. In 1909, for example, the government introduced a system for the registration of graves in order to prevent disputes arising from *feng shui* "poaching".¹⁰³ When, a year earlier, adoption of a proposal to build houses would have affected the *feng shui* of a Tang lineage grave at Tsuen Wan, sale of the land by the government was withdrawn and it was

put on record that the site [of the] grave was to be preserved for ever; the line of a proposed road was moved to avoid harming the grave's *feng shui*.¹⁰⁴

The government's village removal policy, approved by the Executive Council, provides compensation for damage to graves,¹⁰⁵ and *ex gratia* payments are frequently made to cover the expenses of remedial works, *tun fu* ceremonies, and so on.¹⁰⁶ Further, individuals might be required (not by state law, but

¹⁰¹ Hayes, above, n 18, p 149.

¹⁰² See P Wesley-Smith, *The Sources of Hong Kong Law*, Hong Kong University Press, Hong Kong, 1994, chapter 12.

¹⁰³ Freedman, above, n 5, p 197; Hayes, above, n 18, p 210.

¹⁰⁴ Peplow and Barker, above, n 1, pp 15-16. Freedman refers to one proposed road which was welcomed because it would help to remedy "a defect in the geomantic conformation of the front aspect of the village", Freedman, above, n 21, p 205.

¹⁰⁵ Hayes, above, n 52, p 117.

¹⁰⁶ See, for example, Freedman, above, n 5, pp 203-6, p 321. Hayes, above, n 18, Appendix 5 contains a number of letters to the government seeking protection for their *feng shui*. The first letter is termed by Hayes, "a classic statement of *feng-shui* fixation. The geomantic quality of

perhaps by non-recognised customary law) to pay compensation for geomantic disturbance.¹⁰⁷

It has been claimed villagers' rights in these matters are protected by the treaty by which the New Territories were leased to Britain.¹⁰⁸ There is nothing in the treaty to this effect, and in any event the treaty cannot give rise to obligations enforceable in domestic law against the government. Promises were made when the British took over both Hong Kong Island and the New Territories that there would be no interference with the customs of the people, but these were proclamations of government policy, not binding statements of law. When the authorities protect *feng shui* or compensate for its destruction they do so in the exercise of the canons of good government, not because they are under a legal duty. This situation can be illustrated by the following statement by James Hayes:

The only "rights" which accrue to graves in the New Territories are those of a customary kind which relate to *feng-shui*, rather than land ownership. If these are interfered with or disturbed there is recourse by the offended party to the local elders, or the District Office.¹⁰⁹

Recourse to the local elders would have produced a solution according to customary law in pre-British times, and during the colonial period an extra-legal solution; recourse to the District Office would have produced a political solution, not a legal remedy.

Thus *feng shui* has no status in the modern Hong Kong legal system. As a set of beliefs, a science of planning, a methodology of divination, or a language of politics it would not, of course, be recognised by the law of a modern state. It could be reduced to a system of rules, mostly consisting of prohibitions forbidding disturbance to a grave, injury to the dragon's vein, obstruction of good influences, and so on, and requirements for compensation where damage has been caused, and such rules could be sufficiently clearly stated to be accorded legal force. They would be difficult to reconcile both

the ground in question the adverse effects of the interference with it, the remedy applied, the lawlessness of the offender, all couched in emotive language, are essential ingredients to a *feng shui* scenario" (p 277n). See also chapter 13 of Hayes' book for accounts of government-funded propitiation ceremonies and monetary compensation for the removal of *feng shui* trees.

¹⁰⁷ See the example cited by Freedman, above, n 5, p 201.

¹⁰⁸ See Hayes, above, n 52, p 116 and R Watson, above, n 85, p 216.

¹⁰⁹ Hayes, above, n 18, p 210.

with the formal rationality of state law - judges could not themselves determine whether *feng shui* had been affected, or choose between the opposing arguments of *feng shui* "experts" - and with the bias towards freedom of land use inherent in the common law. Many *feng shui* interests are in fact protected through political processes which exploit the susceptibilities of paternalistic British administrators¹¹⁰ or were pursued so fervently that they simply could not be resisted. On a broad view, this situation may be as successful in maintaining *feng shui* in the modern industrial colony (and in the future Special Administrative Region) as would legal recognition. Nevertheless we should be aware that customary law was itself an essential component of rural life in the New Territories and provided support for villagers' sense of "self".¹¹¹

Conclusion

How important to cultural identity is control over resources? By what rules or customs do individuals mark themselves off from groups, and groups from other groups? How is this shown in official and unofficial rule systems? How important is land to identity and what is the inter-relationship?

In traditional New Territories society:

- * rights to land are a crucial element in the structure of village, lineage, and class and in the practice of religion;
- * one major determinant of land use, and thus of ecology, economy, and the sense of well-being of villagers, is geomancy;
- * *feng shui*, as an important component of a complex traditional culture, is also a weapon employed in rivalry between individuals, villages, families, and lineages and a language for the expression of conflict, dispute-resolution, and political struggle; and
- * this was reflected in Chinese customary law of the pre-British period and has received recognition by the post-1898 government in practice, though not in law.

¹¹⁰ See Freedman, above, n 5, pp 203-6 and "Shifts of Power in the Hong Kong New Territories" in Skinner, pp 220-1.

¹¹¹ See J Hayes, "Chinese Customary Law in the New Territories of Hong Kong" in *Proceedings of the Tenth International Symposium on Asian Studies 1988*, 455.

Now rather diminished in scope, *feng shui* nevertheless displays considerable vitality and has not yet been overwhelmed by massive economic development, immigration, industrialisation, and education; indeed it seems likely to continue for many years to be asserted by villagers anxious to preserve their identity in the face of modernisation.

