

trick been able to provide a creditable original or alternative theory. Second, with the exception of his interesting reading of Foucault, his excursions into post-structuralist theories of language and culture only further obscure his central arguments. And this is not the fault of post-structuralism but, I fear, of Fitzpatrick's again sketchy, metaphorical and, in the case of Derrida, simply dilettantish appropriation of what is, admittedly, highly complex material. In short, his arguments do not meet even the minimum standards of philosophical rigour requisite to undertake the huge task he has apparently set himself: namely, the deconstruction of modern western law. And lastly, though I am sympathetic to Fitzpatrick's aspirations, I would question the validity and utility of a legal theory that seeks to bid adieu to all the normative aspirations of the Enlightenment and modernity. Judged theoretically, such an undertaking is intrinsically problematic, in that to the extent to which it attempts to engage in total critique it deprives itself of any explicit critical standards to fall back on. Whereas, when it does seek to elaborate normative criteria these, when pieced together, are inevitably tainted by just those Enlightenment ideals that were sought to be eschewed. Thus caught between the desire to be critical and the necessity to remain normatively ambiguous the book in the end reads, at best, as a series of unsystematic aperçus and, at worst, as theoretical fairy floss.

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HUMAN RIGHTS IN HONG KONG by R Wacks (ed),
Hong Kong, Oxford University Press, 1992, xxiii+542pp,
\$91(HC), ISBN 0 19 585291 5

For most of its history, Hong Kong has exhibited little interest in or concern with human rights (p1). Ironically, it was the pending return of the sovereignty of Hong Kong to her "motherland" — the People's Republic of China — that initiated a concern for human rights and this has been strengthened since the great tragedy of Tiananmen Square on 4 June 1989.

While the struggle in mainland China may have been suppressed for the time being, the fight for democracy and human rights in Hong Kong is being intensified as 1997 approaches. One of the most significant developments has been the enactment in June 1991, three years after the suppression of the democracy movement in China, of the Hong Kong Bill of Rights Ordinance. Although the Ordinance took effect from 8 June 1991, its real intention is to provide legal protection of human rights for people in Hong Kong after 1997. Recent human rights discussions in Hong Kong also express more concern for the future than for the present. Indeed, Tiananmen Square, the 1991 Bill of Rights and 1997 are three of the most common themes in recent human rights discourse and this book is no exception.

Human Rights in Hong Kong contains 14 chapters, of which five are updated papers which originally appeared in *Civil Liberties in Hong Kong* (Ray-

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mond Wacks (ed), 1988). Although primary attention has been given to Hong Kong, each author examines specific topics in a wide international context. All contributors possess a detailed knowledge of Hong Kong.

Part I deals with sources and methods of human rights protection in Hong Kong. In Chapter 1, Peter Wesley-Smith outlines historical sources of human rights law and traditional methods of protection. Although he casts some doubts on the practical value of the newly enacted Bill of Rights for post-1997 Hong Kong, Professor Wesley-Smith believes that formal structures are more likely to enhance than hinder the proper protection of citizens' rights (p31). Nihal Jayawickrama, in Chapter 2, traces the history of Bills of Rights in Commonwealth countries and the genesis of the Hong Kong Bill of Rights. Jayawickrama also identifies and analyses six "minimum requirements necessary to produce an effective functional Bill of Rights" (that is, comprehensiveness, applicability, limitations, derogation, entrenchment and justiciability, pp48ff). In another chapter (Chapter 4), Dr Jayawickrama examines international law providing human rights protection to people in Hong Kong. In Chapter 3, William MacNeil questions whether the Hong Kong Bill of Rights is merely a textual response to what is fundamentally a linguistic crisis. He argues that rights and rights discourse have been absent from the Hong Kong social text as a result of Hong Kong's identity crisis. Part I concludes with a chapter by Albert Chen on human rights in China. This chapter deals with historical, ideological and practical aspects of human rights in China and is therefore necessarily brief in all aspects.

Part II deals with specific rights. It begins with a discussion by Andrew Byrnes on the concept of equality, legal protection of equal rights under international law and in various jurisdictions, and anti-discrimination law in Hong Kong. He also identifies areas of law that are likely to be challenged under the newly enacted Bill of Rights as well as limitations of the Bill of Rights itself. In Chapter 7, Athena Liu puts capital punishment and abortion law in Hong Kong in a broad perspective of international human rights law. Although the death penalty still exists in Hong Kong and is mandatory in cases of murder, any imposition of the penalty has been automatically commuted by the Governor to life imprisonment ever since 1966 when Britain abolished the death penalty. Its application in the future, after 1997, is rather uncertain and has become a source of public concern (pp274- 275). Dr Liu expects a progressive phasing out of the death penalty as a part of international development, however Liu argues that the issue of abortion in Hong Kong may call for a different analysis from the one offered in Western societies because of moral and cultural differences.

Chapter 8 focuses on the ancient writ of habeas corpus. In this brief chapter, David Clark analyses both the weakness and the future uncertainty of habeas corpus in Hong Kong and argues for the localisation and the modernisation of the UK Habeas Corpus Acts of 1679 and 1815 in Hong Kong. Raymond Wacks concentrates on the issue of privacy in Chapter 9. What is essential for Hong Kong, in his view, is carefully drafted legislation to protect specific "personal information". Anne Carver, in Chapter 10, analyses the fragility of religious freedom in post-1997 Hong Kong. She compares the politics of religion and the legal guarantees of the Basic Law and the Bill of Rights with the guarantees in the Chinese Constitution. In Chapter 11, Yash Ghai first illustrates the incompatibility between the liberal idea of freedom of expression and a non-democratic, colonial system, and then examines the potential of the Bill of Rights Ordinance Art 16 for the protection of freedom of expression.

Chapter 12 deals with similar difficulties with the right of peaceful assembly in Hong Kong. Here Roda Mushkat reviews the history of controls over peaceful assembly in Hong Kong and then examines and evaluates the current legal provisions. In Chapter 13, Ng Sek-hong surveys legal sources, both international and local, regarding trade unions in Hong Kong. In this view, trade unions will play a more active role as political pressure groups in a gradual transition to representative government in Hong Kong, so many issues (for example, collective bargaining) need to be addressed by legislation. Part II concludes with an examination by Johannes Chan of several aspects of the dispute between the Chinese and British governments over the question of nationality of Hong Kong people from a human rights perspective. Chan argues that dual nationals (for example, Anglo-Chinese) should be permitted to choose a nationality prior to 1 July 1997. A full text of the Bill of Rights Ordinance is included at the end of the book.

Although a wide range of topics has been included in the book, there is an obvious and important omission of the issue of representative government. One of the vexed questions in the long running dispute between Hong Kong (more precisely the UK) and China is the issue of the pace and path of a gradual transition to representative government. Such an important issue certainly warrants some substantial treatment in a separate chapter. Nor is the issue of judicial independence in post-1997 Hong Kong addressed. Although many human rights issues in post-1997 Hong Kong may be uncertain, there is one certainty: without a representative government and an independent judiciary human rights would have no future in Hong Kong.

It would be unfair to conclude this review on a critical note. The authors have made a significant contribution to the study of, and debate about, human rights in Hong Kong. The book will also be a convenient, informative and useful reference work for comparative human rights studies.

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Correction

In Volume 15 Number 3 of the *Sydney Law Review* a review of Hilary Golder's book *High and Responsible Office* by John K McLaughlin appeared. On page 395, paragraph two, the text reading "there were more equally qualified women within the public service" should have, in fact, read "there were within the Public Service no equally qualified women". We apologise for the error which occurred during the editing process.

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