Book Reviews

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BOOK REVIEWS


Reviewed by David M. Corwin*

In the years immediately preceding the signing of the Joint Declaration, Hong Kong was rife with uncertainty. Faced with the imminent transfer of its sovereignty to China, Hong Kong struggled for political and economic stability. Though those with significant interests in Hong Kong initially hoped that the Declaration would serve as a panacea, the past several years have illustrated that numerous questions still remain. The Future of Hong Kong endeavors to address these remaining concerns and to shed light on Hong Kong's nebulous future.

The Future of Hong Kong does not purport to answer the questions posed by the Declaration. Like the Joint Declaration itself, The Future of Hong Kong raises more issues than it answers. Its seven articles do not attempt to assert concrete predictions; instead, their strength lies in creating a framework through which Hong Kong's future can be successfully analyzed. The articles as a collective unit provide insight into the areas of substantial agreement and disagreement in assessing Hong Kong's prospects. Together, the articles create a comprehensive multidisciplinary web covering Hong Kong's economic, political and social future while also addressing more peripheral issues such as the potential for using the Joint Declaration's approach to reunify Taiwan with China. The book's utility stems not only from its innovative analysis but also from its strength as a research tool; it provides a wealth of background information and additional sources for further research. While each article does not achieve complete success standing alone, the compilation as a single entity provides an interesting, illuminating and exceedingly useful glance into the future of Hong Kong.

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279
Hungdah Chiu's introduction is an invaluable tool for those delving into the issue of Hong Kong's future for the first time. Chiu sets forth much of the background material essential to an understanding of the current situation in Hong Kong. The article traces the history of Hong Kong's sovereignty from the 1842 Treaty of Nanking, in which China agreed to cede the island of Hong Kong to Great Britain, to the recent negotiations between China and Great Britain culminating in the Joint Declaration. Chiu also provides a very readable description of the structure of Hong Kong's government and its administration, which facilitates understanding the issue of democratic reforms discussed in subsequent articles. Chiu also discusses the Chinese policy toward Hong Kong and gives an overview of Hong Kong's cultural and economic relations with other nations. Finally, Chiu's article summarizes the contents of the rest of the book, briefly reviewing each author's analysis and conclusions.

Chiu's introduction is noteworthy in its evenhanded approach to the Hong Kong situation. On an issue that has polarized political and legal commentators, Chiu does not reveal his own predispositions or opinions on the future of the Joint Declaration or on Hong Kong as a whole. With one exception, where Chiu observes that "there is no adequate participatory democracy and self-government in Hong Kong," he refrains from drawing subjective conclusions from historical data. Chiu eschews the task of predicting Hong Kong's future; instead he provides a fund of impartially presented information to guide the reader through later articles.

George Hicks's *Hong Kong on the Eve of Communist Rule* also presents an excellent overview of the future of the Joint Declaration. Hicks enumerates some of the more frequently used arguments for and against the proposition that China will permit Hong Kong to retain its capitalist economy until, and after, 1997. Though Hicks's list is admittedly incomplete and many of his pessimistic arguments overlap, the article successfully highlights the pivotal issues surrounding the Joint Declaration's future and identifies the primary areas of contention.

While Hicks's approach of balancing the arguments of the optimists and the pessimists ostensibly places him in a neutral position, his own resolution of the conflicting issues quickly becomes apparent. Hicks, an Australian economist and businessman working in Hong Kong, concludes that proponents of the view that Hong Kong will be able to retain its free-market system and a high degree of autonomy have taken an ingenuous and overly simplistic view of the current situation. Hicks suggests that the "one country, two systems" proposal is a quixotic fantasy,

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developed to engender confidence from the people of Hong Kong and to prevent wealthy and powerful Hong Kong citizens from emigrating. He predicts, however, that the majority opinion concerning Hong Kong's future will become more pessimistic as 1997 nears.

Hicks provides an enlightening description of what he terms "the democratic mirage." In this section, he argues that due to the lack of incentives for both China and Great Britain to change the status quo quickly, it is likely that any measures taken to increase the democratization of the Hong Kong government will be illusory or insignificant. He notes that it is in China's best interests to limit Hong Kong's independence to maximize its own control, and yet to convince the rest of the world that Hong Kong will remain autonomous. China's paradoxical position leaves Hong Kong in a tenuous balance awaiting decisions from Beijing on its political future.

Hicks briefly examines Hong Kong's economic history, the role of the government in its success, its importance in East Asia as a financial center, and finally, its prospect for future economic success. Hicks concludes that "[t]he future of the Hong Kong economy over the next few years is likely to be influenced primarily by the interaction of two factors: the worldwide growth of protectionism and the relationship of London and Beijing over Hong Kong. The outlook is ominous on both counts." Hicks, therefore, presenting a voice from the international business community, gives a bleak picture of Hong Kong's political and economic future.

Y.C. Jao's Hong Kong's Economic Prospects after the Sino-British Agreement: A Preliminary Assessment provides a thorough exposition of Hong Kong's present and future economic situation. Jao's introduction promises an article that will "assess objectively Hong Kong's economic prospects in light of the Sino-British Agreement," a promise that is fulfilled in the following pages of his article.

An example of Jao's evenhanded approach to the subject is his willingness to accept the inherent limitations of his prognosis. Jao organizes his investigations by looking at three distinct time periods: 1985-87, 1988-97, and post-1997. Preceding his analysis of each successive time period, Jao warns of the decreasing certainty of his predictions. To reflect this uncertainty, as the time periods examined by Jao become more remote, he adjusts his analysis from a more precise extrapolation from current data, to a less precise delineation of relevant factors and issues. Jao's approach to the problem of predicting future events not only makes his conclusions more credible, but also provides a more flexible model that is less likely to be contradicted or rendered useless by the future.

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2 Id. at 53.
3 Id. at 57.
Jao's economic conclusions, though laced with uncertainty due to the vicissitudes of future events, are far more sanguine than those prof- fered by Hicks. For the years from 1985 to 1987, Jao examines the unsettled state of mind in Hong Kong before the Joint Declaration was signed together with evidence that China has become more politically stable and has taken measures to support Hong Kong's economy. He concludes that until 1987, it appears that the Joint Declaration will result in Hong Kong's continued economic prosperity. For the period from 1988 to 1997, Jao expresses greater uncertainty. He sets forth a number of unanswered questions, the resolution of which will shape Hong Kong's economic future until 1997. He concludes, however, that barring a dramatic shift in political power in China, Hong Kong should "weather the political vicissitudes in China" and that "a total collapse of the economy . . . seems most unlikely." As for the years after 1997, Jao admits that it is virtually impossible to assess Hong Kong's economic outlook. He avers, however, that the critical factor in Hong Kong's economic well-being is China's willingness to adhere to the provisions of the Joint Declaration. Owing to China's historical willingness to permit Hong Kong to exist independently from China's control, Jao opines that in this regard, China "must be given the benefit of the doubt."

Jao's predictions, however, should not be classified as more than cautiously optimistic. The article raises many unanswered questions and expresses great incertitude as to Hong Kong's future. In light of these uncertainties, Jao concludes that the Joint Declaration is not the "final solution of the 'Hong Kong Question'."

Hsin-chi Kuan and Siu-kai Lau endeavor to predict Hong Kong's political future in *Hong Kong's Search for a Consensus*. Kuan, Dean of Faculty of Social Sciences at the Chinese University of Hong Kong, and Lau, Senior Lecturer in Sociology and Director of the Center for Hong Kong Studies at the Chinese University of Hong Kong, create a theoretical model, based on an amalgam of sociological and political science principles, to project into Hong Kong's future. They suggest that the path towards political change can be fruitfully viewed as a process of consensus building by the parties involved. After enumerating several barriers to the building of a consensus between the parties, the authors examine the positions and propensities of the Hong Kong government, the Chinese government and the Hong Kong people. They observe the consensus will most likely emerge in between the status quo and the democratized, independent government envisioned by the Joint Declara-

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4 *Id.* at 70.
5 *Id.*
6 *Id.* at 85.
7 *Id.* at 89.
tion. They add, however, that the many barriers to consensus building will probably result in the participants choosing the course of greatest familiarity and that, therefore, new political reforms will not depart radically from the present system.

Kuan and Lau's article differs from the other articles in the compilation due to its higher level of theorization. Their model is based, not on empirical evidence, but on political and sociological theory, rendering their work more susceptible to criticism from those who dispute their hypotheses. In particular, analysts may question the significance of some of the barriers to a consensus postulated by the authors as well as the usefulness of the model itself.

Despite the more esoteric and theoretical approach taken by the authors, their analysis contains several assertions of great practical significance. Of particular interest are the authors' assessments of the political positions of the Hong Kong government and its people. They note that the Hong Kong government has not been able to commit itself without reservation to its own democratization since its primary concern is its present efficiency. The authors' studies also indicate that the large majority of Hong Kong residents actively support the status quo. These observations indicate that these parties may display some reticence to adopting new political measures. Since these positions will have a significant impact on the degree to which the political reforms are implemented, these assertions are extremely useful.

Ta-ling Lee raises the specter of a possible violation to the human rights of the Hong Kong people in *Hong Kong: The Human Rights Dimension*. Lee passionately describes the situation of the Hong Kong people, noting that the Joint Declaration has decided the fate of Hong Kong without giving its citizens an opportunity to have an influential voice. He points to the various guarantees provided by the Universal Declaration of Human Rights and questions whether the Joint Declaration amounts to a violation of these rights.

Lee's article discusses the human rights positions of Great Britain and China and examines their moral responsibilities in the Hong Kong situation. Lee strongly argues that Britain has abdicated its moral responsibilities to Hong Kong by failing to focus on the human rights issue in its negotiations with China. He points to Great Britain's "pathetic"\(^8\) concessions during the negotiations and rejects the British defense that "things could have been worse if there had been no agreement,"\(^9\) as immoral. Though Lee refrains from pronouncing sentence on Great Britain, he concludes that "London should have raised the issue [of human rights] and stuck to it, thus bringing to world attention the fact that the

\(^8\) *Id.* at 117.

\(^9\) *Id.* at 118.
Hong Kong issue was a moral/human rights issue rather than a simple territorial issue."\textsuperscript{10}

Lee observes that Chinese ideology has traditionally rejected human rights as a bourgeois concept. Though China's record on human rights has improved since Deng's emergence as the leader of China, Deng has been notably unsympathetic to Hong Kong's current situation, and therefore, according to Lee, is partially at fault for the present uneasiness in Hong Kong. Though Lee never explicitly sets forth China's responsibilities, it can be inferred from his discussion that China's failure to recognize the concept of human rights would make such analysis superfluous.

\textbf{Hong Kong: The Human Rights Dimension} stands apart from the other articles in the compilation in several respects. First, Lee is decidedly partisan in his approach to this issue. His predispositions are reflected in his evocative phraseology. For example, Lee describes British behavior during the negotiations as indifferent and arrogant, while referring to the Hong Kong people as "hapless."\textsuperscript{11} Second, Lee's article does not attempt to make predictions on Hong Kong's future. Since the nature of the subject is not one that lends itself to predicting future actions, Lee is limited to discussing the ramifications of the relevant documents and the implications of the actions taken by the involved parties. Third, instead of drawing inferences in conformity with available data, Lee argues against the data's ostensible message. For example, in assessing the collective state of mind of the Hong Kong people regarding the Joint Declaration, Lee dismisses public opinion polls and the vote by the Unofficial Members of the Legislative and Executive Councils (UMELCO) in favor of the Joint Declaration. Instead, Lee compares recent confidence in Hong Kong to the Austrian acceptance of Anschluss under Hitler and relies on the statements of individuals to demonstrate that the public sentiment in Hong Kong is against the Joint Declaration. Regardless of the truth of Lee's assertions, his use of emotional argumentation and his attempt to draw general conclusions from the statements of individuals make his conclusions less credible.

Although the tenor of Lee's argument that the Joint Declaration infringes upon Hong Kong's rights under international law seems correct (though Lee fails to analyze this question), his appraisal of Great Britain during the negotiations is unduly harsh. Lee's conclusion that Great Britain should have been more insistent with regard to Hong Kong's human rights disregards Great Britain's lack of bargaining strength during the negotiations. The British government, pressured by Beijing's threat to decide Hong Kong's fate unilaterally and by the knowledge that

\textsuperscript{10} Id. at 120.
\textsuperscript{11} Id. at 123.
Hong Kong would revert to China in 1997, was not in a position to take a forceful bargaining stance. Lee's conclusion that Britain should have more vocally asserted the issue of Hong Kong's rights may well be correct, yet it is doubtful that Britain was as morally culpable as Lee's article suggests.

Yuan-li Wu, in his article, *In the Shadow of 1997: Interaction between Hong Kong and its Economic Partners and Neighbors*, undertakes a formidable task. Wu's article tackles not one but three separate issues. First, Wu surveys the factors that have led to Hong Kong's economic success since World War I. He contemplates the likelihood of Chinese intervention and elaborates on the possible effects of such intervention on Hong Kong's economy. Second, Wu argues that the reversion of Hong Kong's sovereignty removes the primary constraint to Chinese intervention. He then discusses whether foreign governments would be willing to make Hong Kong's independence a precondition for conferring certain benefits upon Hong Kong in order to create an additional constraint to Chinese intervention. Wu concludes that there is not a sufficient incentive for Hong Kong's major trading partners, with the possible exception of Taiwan, to create a constraint in this manner. Finally, Wu examines the possible measures that can be taken by foreign investors in Hong Kong to protect their investments. He counsels that some minimal protection, such as transferring registry of ownership of real investments outside Hong Kong, is advisable for those with sizable investments. Wu warns, however, that any withdrawal of funds should be undertaken gradually and well in advance of 1997 to avoid a capital flight stampede in the event of a crisis.

Wu's discussion on each of the three parts is moderately successful. Though Wu himself admits that his review of the factors bringing success to Hong Kong's economy is not particularly novel, his review of the consequences of Chinese intervention merits close reading by those with economic interests in Hong Kong. Similarly, Wu's advice to investors regarding precautionary measures for their investments in Hong Kong treads on familiar terrain, but is nonetheless worth reading. Wu's discussion of possible measures to protect against Chinese intervention, however, is distinctly innovative. He persuasively but objectively presents the need for an intentionally created constraint and cogently explains why such actions are unlikely to occur.

The article is less successful when viewed as a single unit. Its main drawback is the lack of an overarching framework giving it one single direction. The traditional instruments through which authors achieve a single focus are ineffectual here. The article's title is extremely broad and does not pinpoint the aspect of the interaction between Hong Kong and its economic partners and neighbors on which the author will focus. The introduction neither provides the reader with an adequate road map nor
alerts the reader to dominant themes or conclusions to be reached within the article. Finally, the conclusion consists of one short paragraph which does not address the substantive issues discussed in the article. The author's failure to set a unified course for his article renders it disjointed and difficult to follow. Consequently, the value of his analysis and conclusions to the reader is diminished.

*Can the Hong Kong Settlement Serve as a Model for Taiwan?* by An-chia Wu discusses China's ideological motivations behind its pursuit of the "one country, two systems" concept. Wu argues that China's willingness to permit Hong Kong to retain its capitalist economic system until 2047 is not a concession to capitalism, but is instead a means towards achieving its goals of socialism. According to Wu, China has propagated the "one country, two systems" idea to deceive the capitalist countries that "Chinese Communists are willing to settle for 'peaceful coexistence' with them,"12 to reunify Hong Kong with the mainland and to induce Taiwan to enter into negotiations for reuniting with China. He adds that recent propaganda circulated overseas by China has understated China's ideological stance, thus reducing anti-Communist sentiments in capitalist countries and permitting them to obtain capital, technology and management expertise.

Wu provides an excellent section describing the inherent difficulties in formulating a Basic Law in Hong Kong under the "one country, two systems" concept. First, he notes that Beijing has insisted that it has the power to interpret the Basic Law and that, under the Basic Law, Hong Kong should not be allowed to be an independent political entity. Second, China has traditionally permitted governmental ends to transcend the rule of law, thus casting into uncertainty economic transactions in Hong Kong. Third, Wu observes that permitting Hong Kong to retain its social and economic systems will contravene the Chinese Constitution, which becomes even more ominous in light of the absence of any provision in the Joint Declaration guaranteeing that China will not intervene in Hong Kong's internal affairs.

Wu's final section is a well-organized list of reasons why the Republic of China ("R.O.C.") will not agree to the "one country, two systems" approach. Though Wu sets forth many credible and persuasive arguments for maintaining Taiwan's independence, the most convincing and obvious hurdle to reunification remains the fact that since the R.O.C. is effectively and lawfully in control of Taiwan it is "naturally unwilling to accept an arrangement that will turn it into a local government under the People's Republic of China."13

Each section of Wu's article enlightens the reader to the R.O.C.'s

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12 *Id.* at 157.
13 *Id.* at 169.
aversion to the "one country, two systems" approach. At first blush, the author doesn't begin to answer the question posed in the title until his final section discussing the R.O.C.'s response to the People's Republic of China's ("P.R.C.") overtures to reunite Taiwan with the mainland using the concept of "one country, two systems." Although Wu's discussion of Chinese ideology may at first seem extraneous, it is in fact central to the R.O.C.'s position on the Joint Declaration. Wu's discussion of the P.R.C.'s motivation behind the "one country, two systems" concept embodies the R.O.C.'s position on the same issue. Wu's opinion that the Joint Declaration is the means through which China can advance its socialist ends is shared by the R.O.C.; this belief is a major factor dissuading the R.O.C. from revising the "one country, two systems" option.

Wu's article is not a neutral presentation of the advantages and disadvantages of the Joint Declaration or of the possible courses of action available to the R.O.C. His tone is propagandistic and his phraseology frequently reflects his personal opinions on the subject matter. Here, however, Wu's views do not detract from the value of his article. The article successfully conveys the present likelihood of the Joint Declaration serving as a model for Taiwan by articulating the R.O.C.'s present disposition towards the concept of "one country, two systems." Wu's bias serves to enhance his presentation of the R.O.C.'s views.

II. The Articles Collectively

The value of The Future of Hong Kong cannot be gauged simply by assessing the accuracy of its predictions. The articles contemplating Hong Kong's future do not focus on concrete predictions; in fact, they generally raise more questions than they answer. The primary value of the compilation lies in its presentation of issues and relevant factors which will ultimately determine the outcome of the current situation. The individual articles are most successful where they organize these elements into a useful framework for analyzing the Hong Kong situation. As the foregoing analysis suggests, the articles' value will be determined by the continued validity of the model after future developments have transpired.

The value of several of the articles can be seen by examining the interplay between recent events in China and the models propounded by the authors. In the winter of 1986-87, the conservative faction of the Chinese government experienced a resurgence in strength. This recent political swing culminated in the demotion of former Deng protege Hu Yaobang. Though China's recent mood shift has no direct effect on the situation in Hong Kong, these events are a foreboding augury to Hong Kong's citizens and to those with a financial interest in Hong Kong.

The theories expounded in the articles by Hicks, Kuan and Lau, and
Jao have contemplated the possibility of emerging political trends and are sufficiently flexible so as to retain viability in the face of these recent developments. In discussing the level of optimism in Hong Kong regarding Hong Kong's future, Hicks postulates that current expectations will vary dramatically with each swing of the pendulum in China. Hicks suggests that as the expectations for Hong Kong fluctuate, so too will the developments in the transition period. According to Hicks's model, recent events should decrease the level of optimism among the Hong Kong people. Thus, by constructing a flexible model which allows for variation in certain factors, Hicks's conclusions remain fruitful despite recent political events in China.

Kuan and Lau's model for determining the degree of political change in Hong Kong also successfully accommodates the political shift in China. The authors suggest that one of the barriers to building a consensus regarding political reform is a lack of trust among participants. They conclude that due to the formidable barriers to building a consensus in this situation, it becomes more likely that the participants will opt for the most familiar path—here, a lack of substantial political reformation. The most recent political trend in China will obviously reduce Hong Kong's confidence that China will adhere to the provisions of the Joint Declaration. According to this model, therefore, the recent shift in China will make it more difficult to reach a consensus and will make it less likely that significant reforms will take place.

Jao's conclusions regarding Hong Kong's economic future during the transition also remain fruitful despite recent events. Jao, while cautioning that his projections are necessarily murky and uncertain, concludes that "a total collapse of the economy before 1997 seems most unlikely." Jao notes, however, that this prognosis may differ if China experiences "another Cultural Revolution" or if the modern pragmatists lose power. Since neither of these events has yet transpired, Jao's original conclusions still hold. If, however, the recent political swing in China leads, for example, to the replacement of Deng's regime by a conservative faction, Jao implies that the likelihood of economic collapse in Hong Kong is much greater. In either event Jao's analysis remains viable.

One feature of The Future of Hong Kong is its broad scope. Nearly everyone engaging in some form of transaction involving Hong Kong will benefit from some aspect of the compilation. In particular, those who have or plan to have some form of financial stake in Hong Kong's future or those with a scholarly interest in Hong Kong's current economic picture will find a wealth of relevant information. Hicks's article

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14 Id. at 70.
15 Id.
examines Hong Kong's economic past and its short-term economic outlook. He provides an abundance of statistical evidence, particularly regarding Hong Kong and China's economic relationship. Jao's article gives an even more detailed look at Hong Kong's more recent economic past and its economic prospects. Finally, Yuan-li Wu's article enumerates the potential injuries that Chinese intervention could cause to Hong Kong and those with economic connections to Hong Kong.

Those interested in Hong Kong's political future will also benefit from reading The Future of Hong Kong. The most expansive discussion of Hong Kong's current and future political situation is contained in Kuan and Lau's Search for a Consensus which addresses the various forces whose struggles will determine the shape of Hong Kong's political structure in the coming years. Kuan and Lau's article provides the most detailed analysis on the issue of Hong Kong's political systems, but it is not the only one; Hicks, Jao, Lee and An-chia Wu all include some aspect of this issue in their articles.

It should be noted, however, that The Future of Hong Kong is not a collection of law review articles. No author here deals exclusively, or even extensively with the legal questions raised by the current situation. In fact, the absence of a detailed legal discussion may be considered a drawback to the work as a collective whole since the international legal ramifications of the Joint Declaration will certainly be an influential factor in shaping China's policy.

Several elements of the book will be valuable and interesting to international lawyers. An-chia Wu discusses the conflicts between the "one country, two systems" approach and the Chinese Constitution. Hicks and Yao briefly comment on the P. R. C.'s past record of compliance with international agreements. More important, however, the book is a useful supplement to those engaged in researching the legal aspects of the Joint Declaration in that it provides a thorough factual, economic and political background to the current situation.

An advantage of presenting The Future of Hong Kong as a collection of articles is that a comparison of the areas of overlap permits a reader to determine the level of agreement among the authors on a particular issue. Several examples illustrate this point. One major issue discussed by Hicks and Kuan and Lau is the degree of democratization that will be achieved in Hong Kong's political structure. Hicks argues that the democratic reforms promised to Hong Kong are illusory since the present elections are of representatives who will not wield significant power. Hicks also examines the motivations of China and Great Britain and concludes, first, that China does not want to grant additional political independence to Hong Kong and, second, that Great Britain has neither the power nor the inclination to effectuate political reforms.

Kuan and Lau reach similar conclusions with regard to the Chinese
government. They opine that China is resisting the democratization of Hong Kong but are mindful of arousing the ire of the Hong Kong people. The Hong Kong government is primarily concerned with present effective rule, a concern which has prevented it from concentrating on the issue of reform. The authors add that the people of Hong Kong are positively attached to the status quo and its present success; they are less concerned with the form of the government than with its efficacy. Thus, the synthesis of the two articles portends great difficulty in establishing substantive democratic reforms.

The authors have disparate opinions on the recent elections to the Legislative Council in 1985. Jao describes the elections as “fairly successful.” Kuan and Lau, conversely, saw the turnout as “not enthusiastic.” Lee comments that these elections “saw more active participation than before,” and adds that the Hong Kong people, given the opportunity to participate, have begun to organize. Lee concedes, however, that the public remains apathetic but explains their lack of interest by pointing to the difficulty in reactivating political interest after Hong Kong’s lack of interest in politics for the past several decades. The commentators, therefore, have divided explanations on the implications of the recent elections. From the above observations, therefore, it is impossible to draw conclusions as to the success of the recent elections or to predict the success of future elections.

The authors take a bleak view of the recent upsurge in Hong Kong’s collective morale and its economic growth. Hicks describes Hong Kong as “outwardly and officially confident but inwardly uncertain and fearful of the future.” He portrays the people as a politically helpless and impotent group and describes the post-accord confidence as “officially orchestrated.” Jao sees the recent “euphoria” and the concomitant economic success as attributable to confidence in the British regime, barring a radical turn of events, will remain in control until 1997. He acknowledges, however, that part of the great impact of the Joint Declaration is in part due to the hopefulness of a “frightened and unsecure population.” A somewhat contradictory position is taken by Kuan and Lau. They describe the Hong Kong people as “mesmerized” by the hope of maintaining the status quo. Later, however, the authors note that the Hong Kong people have become much more sophisticated regarding their political fate. Finally, Lee, in his article on human rights,

16 Id. at 69.
17 Id. at 102.
18 Id. at 129.
19 Id. at 23.
20 Id.
21 Id. at 65.
22 Id. at 101.
compares the Hong Kong people with the Austrians after Hitler instituted Anschluss. Like the Austrians, Lee states, the sudden change in Hong Kong's mood is due to overwhelming fear and hysteria and not from genuine optimism. The authors of *The Future of Hong Kong* thus conclude that recent signs of optimism gleaned from public opinion polls and economic data are deceiving. These indicia of approval for the Joint Declaration are not necessarily reflective of the public and economic sector's well-reasoned conclusions, but rather the result of hopefulness over a possible solution to their uncertain future.

One overarching area of comparison is the degree of optimism displayed by each author regarding his own subject. Though making such a comparison is inherently misleading since the authors are reviewing different issues within a general area, the issues are frequently interdependent. For example, it is likely that political upheaval in Hong Kong would lead to dire economic consequences. The degree of optimism of each author on their own area of specialty gives a broad perspective of the prognosis for Hong Kong's future.

Viewed in this light, the compilation presents a bleak picture of Hong Kong's future. Hicks, in *Hong Kong on the Eve of Communist Rule*, argues that it is unlikely that China will permit Hong Kong to realize the high degree of political and economic independence promised by the Joint Declaration. Jao, while offering a more sanguine view of Hong Kong's economic future than Hicks, acknowledges that Hong Kong's economic future between 1988 and 1997 is difficult to predict, while any prognostication following 1997 is virtually impossible. With regard to political reform in Hong Kong, Yuan and Lau comment that the enormous barriers to progress in Hong Kong renders it unlikely that the Hong Kong political structure will undergo a substantial change. Yuan-li Wu's *In the Shadow of 1997*, without advancing a concrete prediction, notes that Hong Kong's reversion removes a major constraint to Chinese intervention. An-chia Wu, while not specifically addressing China's willingness to adhere to the Joint Declaration, stresses the importance to China of the tenets of the Communist system and observes that these tenets may conflict with many aspects of the "one country, two systems" experiment.

While comparing and contrasting the views of the authors is a useful exercise for assessing Hong Kong's future, its significance in *The Future of Hong Kong* is somewhat diminished by the absence of a commentator with a pro-P.R.C. viewpoint. The articles by Lee and particularly An-chia Wu, discuss the Chinese in a vituperative and suspicious manner. The addition of an article with a pro-P.R.C perspective would counterbalance the sentiments expressed in these two articles and would also present a more complete and unbiased view of Hong Kong's future.

While *The Future of Hong Kong* includes several innovative insights
into the Hong Kong situation, it is also an excellent source of background information and additional research materials. Each article presents a factual and historical background relevant to that article's objective. The compilation is particularly commendable in that the background sections of each article avoid significant redundancies. Moreover, the book's appendices furnish the reader with a valuable research tool including the text of the Joint Declaration, a summary of the negotiations between China and Great Britain and sketches of the promised political reforms for Hong Kong and Hong Kong's Basic Law.

*The Future of Hong Kong* is also extremely useful, with regard to finding additional sources. It provides an extensive guide to other relevant works, including several sources that examine the legal issues that have arisen from the signing of the Joint Declaration. In addition, each article, with the exception of Yuan-li Wu's, is amply supplemented with footnotes.

**III. CONCLUSION**

Though *The Future of Hong Kong* contains certain shortcomings, it succeeds in presenting an illuminating and panoramic view of Hong Kong after the signing of the Joint Declaration. In recognition of China's volatile political history, the authors do not issue definitive answers to the many questions raised by the Joint Declaration, instead they highlight the factors that will serve as indicia of Hong Kong's progress in implementing the Declaration's objectives. Several authors focus on constructing models that will retain their vitality despite the inevitable fluctuations within China's political infrastructure. It is in this capacity as creator of durable and flexible models for Hong Kong's future that the compilation is most successful.

*The Future of Hong Kong*'s "multi-author" approach is a particularly useful vehicle in that it conveys a great sense of breadth to the collection as a whole. The collection not only addresses a broad spectrum of issues, but, through each author, it presents a number of approaches and perspectives to issues of particular significance. An examination of the areas of agreement and disagreement among the authors facilitates drawing objective conclusions as to Hong Kong's future. In addition, the authors traverse the practical and theoretical, making the book equally useful for practitioners and academicians. It is by dint of this breadth that *The Future of Hong Kong* achieves its success and makes the work an important and significant addition to the body of literature addressing Hong Kong's future.

Reviewed by David D. Knoll*

I. INTRODUCTION

Four decades ago, the world's trading nations branded dumping as unfair trade in the General Agreement on Tariffs and Trade ("GATT").¹ The trading nations examined pre-World War II economic history and decided that no business should be permitted to dump, that is, sell its products for export at a price less than it sells those products in its domestic market.

This looks like a simple anti-price discrimination law. It is but deceptively simple as Professor John Jackson reminds us in his forward to Mr. Edwin Vermulst's detailed and scholarly volume.² Indeed, the intertwined legal, economic, accounting and intercultural issues continue to perplex trade practitioners and scholars.

In his first book, Mr. Edwin Vermulst masterfully reviews the complex web of antidumping laws on both sides of the Atlantic. His analysis is scholarly and comprehensive. The book clearly is addressed to lawyers and scholars already familiar with the GATT and antidumping law, for it is by no means a beginner's volume. Subject to the reservations which I express below, I urge fellow international lawyers not to balk at the hefty price tag, and to take the time to give this outstanding work a close reading.

The book is organized into essentially three parts. Within each part, U.S. and European Community laws are reviewed separately and then compared. Part I addresses procedural antidumping law, part II the substantive question of determining whether dumping exists, and part III

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the substantive question of whether dumping, once determined to exist, causes a remediable injury in the importing country.

Indeed, it is tempting to quarrel that the order might be reversed, because as Mr. Vermulst recognizes in his conclusory remarks, “International regulation has always focused on control of protective measures that may be taken against dumping: It pursues the problem from the side of the country that imports the dumped product.” The practicing lawyer asks first what damage his client has suffered. He or she then looks for the legal basis upon which damage can be recompensed by identifiable responsible parties and finally examines the procedures for obtaining relief for the client.

II. SUBSTANTIVE ANTIDUMPING LAW: THE DETERMINATION OF INJURY (PART III)

One of the highlights of Mr. Vermulst’s treatise is his treatment of the injury requirement in antidumping law. Mr. Vermulst first explains that the remedy for dumping is increased customs duties or a comparable form of protective action (e.g., an agreement to raise prices for the exported products). For dumping to be dutiable, it must cause or threaten material injury to a U.S. national or regional industry, or materially retard the establishment of such an industry. Materiality is neither defined nor elucidated in the GATT or the 1979 GATT Antidumping Code. U.S. law contains the following rather feeble definition: “The term ‘material injury’ means harm which is not inconsequential, immaterial or unimportant.”

However, the 1979 Trade Agreements Act does indicate the economic factors which need to be investigated by the International Trade Commission (“ITC”) in making a materiality determination. These effectively are market penetration and the other impacts upon domestic producers, namely, price effects and quantity effects. The statutory expressions do no more than indicate that materiality in a trade statute necessarily involves a factual examination of economic impact, actual or likely. While the law gives no guidance to the practitioner wishing to organize and develop his or her client’s case, this treatise ably fills the gap. Mr. Vermulst organizes the factual issues into a logical order and sets forth the challenges for data collection in a succinct and coherent

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3 Id. at 697.
fashion. Petitioners should certainly review the conclusions Mr. Vermulst draws from the ITC injury determinations.\(^9\)

One of the initial and vital functions of the ITC is to screen for injury to the U.S. industry. Within 45 days of filing of the petition, the ITC must reach a preliminary determination as to whether there is a "reasonable indication" that any dumping is injuring the U.S. industry. The standard of proof required by the ITC to satisfy the injury requirement was at one time a bone of contention at the international trade bar. This is no longer the case. The Federal Circuit Court of Appeals has determined that the ITC needs to find more than a mere possibility of injury in order to proceed beyond the preliminary determination stage.\(^{10}\)

Mr. Vermulst also addresses one of the more curious defects in the ITC injury analysis. It is possible, as a practical matter, for dumped imports to be undercut on price by non-dumped imports. The non-dumped imports may then be the more likely sore on the domestic industry's back. Any injury, then, may not be "by reason of" the dumped imports. Mr. Vermulst correctly points out that the two types of imports need to be separately examined with respect to volume and price effects.\(^{11}\) He finds no record of such separation in his survey of ITC decision making.

In the European Communities, the key concern is the lack of precision in the European Commission's published opinions. Mr. Vermulst tries his best to divine some guidance from the trends in Commission decision making, and develops some useful guidelines for practitioners. One must recognize that these guidelines cannot be as concrete as those provided for the American practitioner until the European Commission settles into the habit of publishing clear reasons for its decisions and of making explicit reference to its prior decisions, if not according them some limited precedential value. Mr. Vermulst observes the early stages of development of such a settled pattern of reasoning—a most laudable development.

### III. Substantive Antidumping Law: The Determination of Dumping (Part II)

Chapter 7 compares the substantive rules applied by the International Trade Administration of the Department of Commerce ("ITA") in determining any dumping margin with those rules applied by the European Commission. Quite clearly, the similarities outweigh the differences, and the accounting challenges exceed the legal ones. Nonetheless the law is not settled yet, and Mr. Vermulst has a most useful recommen-

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9 Where threat of injury or material retardation rather than actual injury is being complained of, additional issues need to be addressed. See Vermulst, supra note 2, at 550-58.

10 American Lamb v. United States, 785 F.2d 994 (Fed. Cir. 1986).

11 Vermulst, supra note 2, at 562.
dation to offer. He advocates a "clean hands" defense for foreign respondents. Often a petitioning domestic industry starts a price war with its foreign competitors, hoping that their shipping and insurance costs will prevent them from matching price decreases. If and when a domestic industry starts losing, it cries foul and files an antidumping petition.

At present, action and reaction are not distinguished in the course of the dumping determination. Mr. Vermulst makes out a good case as to why they should be. If the foreign respondents can show that the petitioning domestic industry engages in "below cost" selling, then the petitioners should have to prove that their "below cost" selling was a reaction to the dumping, rather than its precursor. Curiously, Mr. Vermulst does not discuss the patent similarity of his fine suggestion with the Robinson-Patman Act "meeting competition" defense. The policy behind both Mr. Vermulst's "clean hands" defense and the meeting competition defense under the Robinson-Patman Act is that neither excessive pricing aggression nor overreaction to such aggression is permissible.

Theoretically both sound and appealing, a "clean hands" defense would require a factual inquiry into who started the price war. Because the ITC will have the information as to domestic price effects, whereas the ITA will have the information on when and how the foreign producers under investigation shifted their prices and outputs, the two agencies would need to combine their talents in order to make an effective and accurate determination as to who acted and who reacted. Mr. Vermulst unfortunately does not venture an opinion as to whether such cooperation is likely to be achieved.

IV. PROCEDURAL ANTIDUMPING LAW (PART I)

One of the most confusing aspects of U.S. antidumping law for foreign business is the multiplicity of actors with roles to play. Mr. Vermulst acutely observes that despite congressional changes in antidumping law such as the 1984 Trade and Tariff Act, legislative amendments have little impact on administrative practices. Therefore Mr. Vermulst proceeds to dissect and analyze the nuances of administrative practices on both sides of the Atlantic. His observations are chestnuts to be hoarded by the international trade bar.

One key observation is that filing (or fighting) an antidumping peti-

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12 Id. at 487-88.
13 These actors are Congress, the courts (the Court of International Trade and the Court of Appeals for the Federal Circuit), the International Trade Administration of the Department of Commerce, the International Trade Commission, the Antitrust Division of the Department of Justice, the U.S. Trade Representative, the U.S. Customs Service and the Department of the Treasury.
15 VERMULST, supra note 2, at 36.
tion is expensive, often upwards of $100,000. Consequently, a U.S. industry will generally need to be confident of its case before it files. Nevertheless, the ITA screens petitions carefully to ensure that the petitioner does indeed represent its industry and is involved in the manufacture, production or wholesale of a product like the allegedly dumped import. Once an examination is underway, the ITA generally tries to examine at least 60% and usually 85% of the dollar volume of exports of the allegedly dumped merchandise to the United States in order to avoid sampling errors.\(^\text{16}\)

The ITA examination can be a significant burden on the business being investigated in terms of both time and money, and many a foreign business executive will be tempted not to cooperate. However, for a foreign respondent not to participate in an investigation also can be expensive. Non-participating firms risk an antidumping duty at the weighted average dumping margin calculated for participating firms in the United States and at the highest dumping margin in Europe.

Of course, heavy discounters can benefit from non-participation just by having their prices excluded from the calculation of the dumping margin.\(^\text{17}\) The decision on whether to participate will depend on a seller's depth of knowledge of his own and his competitors' price and cost structures. For all these important calculations, and the many other crucial procedural considerations in antidumping proceedings, Mr. Vermulst provides a useful road map, pointing out traps for the unwary along the way.

To a practitioner dealing with the ITA and hoping that judicial review (at great cost to his or her client) will not be necessary, reference to consistent administrative and judicial reasonings is more compelling than reference to judicial decisions alone. On the other side of the Atlantic, practitioners may search in vain for consistency and predictability in the European Commission's published opinions.

In reviewing the procedural context, Mr. Vermulst emphasizes the less regimented framework of dumping investigations in Europe. Indeed, resolution by settlement as opposed to adjudication is the norm in Europe, although it is very much the exception in the United States.\(^\text{18}\) As in many instances throughout this treatise, a gem is hidden in the footnotes. In an interview with Mr. Vermulst, Jacques Bourgeois, Head of the European Commission's Antidumping Section, revealed a Section policy to accept undertakings to revise prices only after a provisional dumping determination has been made. Thus, respondents can only partly avoid the

\(^\text{16}\) Id. at 52.
\(^\text{17}\) Id. at 53.
\(^\text{18}\) Id. at 219. More recently, however, as Mr. Vermulst rightly observes, the Commission has become more hesitant in accepting undertakings.
stigma of an adverse dumping determination by settling up.\textsuperscript{19} The Section, on occasion, compounds this problem through a policy of rejecting undertakings where it dislikes the exporting country government’s trade laws or policies. Mr. Vermulst rightly criticizes application of what is essentially a procedural penalty upon private business for actions of a government over which the private business has no control.\textsuperscript{20}

\textbf{V. CONCLUSIONS}

In addition to specific legal reforms, Mr. Vermulst’s key general recommendations are as follows. First, both the calculation and the importation of antidumping duties should be predictable both as to process and to result. This recommendation patently is directed more to the European authorities than their U.S. counterparts. It necessarily entails a very narrow role for surrogate country or surrogate producer nominal value calculations for exports from non-market economies. Secondly, domestic industry complainants should be subject to a “clean hands” threshold. If below cost selling is not normal industry practice (and no business rationally runs a loss as an ordinary and regular business practice), domestic complainants should be required to show, at least \textit{prima facie}, that they price rationally before they obtain relief. Third, the exporter who cuts prices in order to gain entry into a foreign market should be permitted to do so, if entry would be otherwise impossible (say, due to effective product differentiation and brand loyalty). A “meeting competition” defense, similar to section 2(c) of the Robinson-Patman Act also should be available. From this reviewer’s perspective, this defense should be enacted at least to assist developing country exporters seeking rationally to develop export industries.

One ought not forget that only a handful of countries actively enforce antidumping laws.\textsuperscript{21} Nevertheless, when coming to grips with domestic antidumping law, the international origins of that law must be understood.

Neither the underlying international economic law nor its domestic manifestations are static. With respect to antidumping law, legal change develops primarily in the United States and the European Communities, the two largest “economies” engaged in international trade. Thus, to understand not only the current state of antidumping law but also the direction in which it is developing, lawyers must follow the evolution of the law on both sides of the Atlantic. Mr. Vermulst’s comparative study is a remarkable contribution to that understanding.

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\textsuperscript{19} \textit{Id.} at 288 n.125.

\textsuperscript{20} \textit{Id.} at 321.

\textsuperscript{21} \textit{Id.} at 698. Mr. Vermulst identifies the United States, the European Communities, Australia and Canada as such jurisdictions which have enacted antidumping laws.
VI. Presentation

Sadly, Mr. Vermulst's fine work could have been better presented by his publisher. The text has not been typeset. As noted above, footnotes are inconveniently placed at the end of each chapter. The numbering of footnotes is not always easy to follow because often there are two footnotes for a particular item of text. Finally, pages in this reviewer's copy were inserted upside down and out of order. Nonetheless the substance of Mr. Vermulst's analysis is well worth the high price that North-Holland has placed on this treatise.