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# *Private Ordering and the Chinese in Nineteenth Century Straits Settlements*

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**Abstract**
The Straits Settlements comprised a group of British territories located in the Malay Peninsula in Southeast Asia. It initially comprised Penang, Singapore, and Malacca, and was formed in 1826. Unlike Malacca which was a thriving city with a substantial Chinese community, Penang and Singapore were relatively uninhabited when the British arrived, but Chinese immigration to both territories swiftly took place and on a large scale. For much of the nineteenth century, British policy towards the Chinese community in the Straits was one of minimal governance. They were largely left to order their affairs privately and this suited the Chinese, who tended to be aloof from the machinery of government and were also unfamiliar with English law. While there were many positive aspects of such private ordering, some negative features included the manner in which secret societies evolved and the treatment of coolies. It was only when the colonial government introduced strong measures that these negative aspects were ameliorated.

The Straits Settlements comprised a group of British territories located in the Malay Peninsula in Southeast Asia. It initially comprised Penang,[1] Singapore,[2] and Malacca,[3] and was formed in 1826 when the three territories were combined to become the fourth Presidency of India under the administration of the East India Company. In 1867 the Straits Settlements came under direct British rule as a crown colony. After the Second World War the Straits Settlements was abolished in 1946 as part of the reorganization of Britain's colonial possessions in the Malay Peninsula. Penang and Malacca eventually became part of Malaysia together with the Federated Malay States while Singapore, after briefly being part of Malaysia from 1963 to 1965, became an independent state from 9 August 1965.

Penang and Singapore were relatively uninhabited when the British arrived. Nevertheless, Chinese immigration to both territories swiftly took place and on a

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1. Also known as Prince of Wales Island and founded by Captain Francis Light in 1786.
2. Founded by Sir Stamford Raffles in 1819.
3. Ceded by the Dutch under the *Anglo-Dutch Treaty of 1824*.

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large scale, especially in Singapore. For example, in the 1860s the Chinese constituted about sixty-five percent of Singapore's total population, which in 1860 stood at 81,000.[4] In 1881 the official census put the total Chinse population at 86,766 of which around eighty-four percent was male. Among the Chinese the largest groups were the Hokkiens (24,981), the Teochews (22,644), the Cantonese (14,853), and the Straits-born (9,527). By the end of the nineteenth century the Chinese were more than seventy percent of a population in Singapore of over a quarter of a million.[5]

The situation in Malacca was different. Malacca was a thriving international port from the early part of the fifteenth century and had been under Dutch control for centuries. As a result of Chinese who traded with Malacca, a Chinese community took root[6] and in 1826 the Chinese population there numbered between 4,000 and 5,000. Most of them were Hokkiens whose ancestors had come from the southern Chinese province of Fukien and initially cohabited with native women including their Javanese and Malay slaves.[7] They were referred to as the Baba community and theirs was a unique syncretic culture that retained many Chinese customs but adopted some features of Malay dress and spoke a Malay patois.[8] The Baba Chinese were familiar with Western culture and many had an understanding of a European language. Accordingly, they played a very important role in the economic development of the Straits Settlements throughout the nineteenth century.[9] However, by the time the British took possession of Malacca her best years were in the past. Malacca's harbour was shallow, and as ships increased in size this became a major handicap as larger vessels would have to be anchored further out. The founding of Singapore with her superior location in relation to ocean shipping and harbour finally sealed Malacca's fate.[10]

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4. CM TURNBULL, *The Straits Settlements, 1826–67: Indian Presidency to Crown Colony* (London: Athlone Press, 1972) at 21 [Turnbull, *The Straits Settlements*].

5. Maurice FREEDMAN, "Immigrants and Associations: Chinese in Nineteenth Century Singapore" (1960) 3 Comparative Studies in Society and History 25 at 25–26 [Freedman, "Immigrants and Associations"]; see also LEE Poh Ping, *Chinese Society in Nineteenth Century Singapore* (Kuala Lumpur: Oxford University Press, 1978) at 87.

6. Kernial Singh SANDHU, "Chinese Colonization in Melaka" in Kernial Singh SANDHU and Paul WHEATLEY, eds, *Melaka: The Transformation of a Malay Capital c.1400–1980*, vol 2 (Kuala Lumpur: Oxford University Press, 1983), 93 at 96 states that by the beginning of the seventeenth century there was little doubt about the existence of a permanent Chinese settlement in Malacca for by this time the Chinese were present in sufficient numbers to have a "*Kampung Cina*" – literally Chinese village – of their own in the city.

7. Victor PURCELL, "Chinese Settlement in Malacca" (1947) 20 Journal of the Malayan Branch of the Royal Asiatic Society 115 at 125.

8. PNG Poh-Seng, "The Straits Chinese in Singapore: A Case of Local Identity and Socio-Cultural Accommodation" (1969) 10 Journal of Southeast Asian History 95. With modernization and the widespread use of English and standard Malay in Singapore and Malaysia respectively after independence, Baba culture is in precipitous decline. The only aspect of Baba culture that is likely to survive beyond museums and heritage centres is its cuisine which, at least in Singapore, is regarded as part of the country's distinct cuisine.

9. For example, see Charles Burton BUCKLEY, *Anecdotal History of Old Times in Singapore: From the Foundation of the Settlement under the Honourable the East India Company on February 6th, 1819 to the Transfer to the Colonial Office as Part of the Colonial Possessions of the Crown on April 1st, 1867*, New edn (Singapore: Oxford University Press, 1984) at 216.

10. Kernial Singh SANDHU, "Chinese Colonization of Malacca: A Study in Population Change, 1500 to 1957 A.D." (1961) 15 Journal of Tropical Geography 1 at 7. As Singapore surpassed both Penang and Malacca, many of the Chinese in Malacca moved to Singapore, though some eventually returned to Malacca when they retired. There was not the scale of Chinese immigration into Malacca that was seen in

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The development of Penang and Singapore can be attributed largely to the Baba Chinese and the Chinese immigrants, who rapidly became very populous in the Straits Settlements.[11] Yet for much of the nineteenth century the Chinese ordered substantial aspects of their affairs beyond the British authorities and the legal system,[12] and for short periods the colonial government even officially sanctioned arrangements that placed the Chinese under the control of persons from their community. This article will show that the root cause for the British authorities allowing the Chinese a large measure of autonomy was the desire to keep the cost of administration low.[13] This left a governance vacuum that was filled by those Chinese who were in a position to exercise leadership and control. Private ordering, which involves voluntary arrangements and norms that groups adhere to, was the substitute for state control and provided the principal means by which a degree of structure and order was established for the shifting and unstable Chinese society in nineteenth century Straits.[14] In the absence of strong government and the effective rule of law, alternative institutions were necessary. The role that such institutions played included the provision of protection for the individual, protection of property, networks of information transmission, social norms and punishments for the enforcement of agreements,[15] welfare, and training. While private ordering also takes place in societies with mature legal systems because people may prefer to arrive at voluntary arrangements that are different from their strict legal rights,[16] it is particularly important in societies that do not have strong rule of law. The Straits Settlements in the nineteenth century was such a society.

The structure of this article is as follows. The next part will outline the government and legal system in the Straits Settlements and the difficulties faced by the executive and judicial branches. It will be followed by a description of the Kapitan system which was an indirect mode of governance that the British authorities initially used to manage the Chinese community. Thus from the outset, the colonial government evinced a preference not to govern the Chinese community directly but for the Chinese to

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Penang and Singapore. For this reason, Malacca does not feature as much in this article as the other two territories.

11. LA MILLS, *British Malaya, 1824–67* (Kuala Lumpur: Oxford University Press, 1966) at 204.

12. Steven L SCHWARCZ, "Private Ordering" (2002) 97 Northwestern University Law Review 319 at 327–329 describes this type of private ordering as rules adopted by private actors without government sanction or enforcement.

13. The territories in the Straits Settlements were occupied to provide the East India Company with a base to protect and enhance the Company's trading interests in the Far East. When the Company decided to unite the three territories in 1826, it had hoped that this would improve the financial position of the territories. These hopes, however, were unfulfilled, leading to the downgrading of the Straits Settlements Presidency to a Residency in 1830. See Turnbull, *The Straits Settlements*, *supra* note 4 at 55.

14. It will also be seen that in some areas coercion or sharp practice was used leading to non-voluntary arrangements.

15. Avinash K Dixit, *Lawlessness and Economics: Alternative Modes of Governance* (Princeton, NJ: Princeton University Press, 2004) at 4.

16. Examples are provided by Stewart MACAULEY, "Non-Contractual Relations in Business: A Preliminary Study" (1963) 28 Americal Sociological Review 55 (views of Wisconsin businesspeople on the relative unimportance of contracts) and Robert ELLICKSON, *Order Without Law: How Neighbors Settle Disputes* (Cambridge, Mass: Harvard University Press, 1991) (how residents of rural Shasta County in California resolve a variety of disputes that arise from wayward cattle).

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manage their affairs. The article will then discuss the two principal avenues of migration to the Straits Settlements after which will follow a discussion of Chinese voluntary organizations. In the absence of adequate government, these organizations fulfilled many of the needs of the early Chinese community while also giving rise to certain problems. The article then concludes.

## I. GOVERNMENT AND LEGAL SYSTEM IN THE STRAITS SETTLEMENTS

For many years after the establishment of Penang there was no regular form of government, no proper legal system, and no known body of law was administered.[17] Captain Light and his immediate successors appeared to have administered justice according to the dictates of their consciences.[18] In 1792, he also allowed the native inhabitants to be tried and governed under their own laws by a headman and eventually this was extended to all classes of inhabitants in Penang.[19] This continued despite the appointment of an English barrister, Mr John Dickens, as Judge and Magistrate of Penang in August 1801.

This ambiguous state of affairs changed in 1807 when the Crown granted the first *Charter of Justice* and by it established a Court of Judicature in Penang. The *Charter* provided that the court consisted of the Governor, three Councillors, and the Recorder of Prince of Wales Island. There was no separation of powers between the executive and the judiciary, and only one professional judge in the court. Nevertheless, the Executive members were often content to allow him to sit alone.[20] The court was to have the jurisdiction and powers of the Superior Courts in England so far as circumstances would admit. On ecclesiastical matters the court's jurisdiction was to be exercised so long as the religions, manners, and customs of the inhabitants would admit. There was no Court of Appeal and any appeal had to be to the King in Council.[21]

17. In the case of *Regina v Willans* (1858) 3 Kyshe 15, Maxwell R said that it was clear beyond all doubt that for the first twenty years and upwards of Penang's history, no body of known law was in fact recognized as the law of the place. It was not even recognized as the personal law of its English inhabitants.

18. JWN KYSHE, *Cases Heard and Determined in Her Majesty's Supreme Court of the Straits Settlements, 1808–1884*, vol 1 (Singapore: Singapore and Straits Printing Office, 1885) at viii provides an example of the type of justice administered where in a case of adultery between two Chinese, the sentence on 27 April 1797 was that they should "have their heads shaved, and stand twice in the Pillory from the hour of 4 to 6 in the evening, and the man to be imprisoned, until an opportunity offers of sending him off the Island."

19. Roland St John BRADDELL, *The Law of the Straits Settlements: A Commentary* (Oxford: Oxford Unviersity Press, 1982) at 6–9; Kyshe, *supra* note 18 at vii. The judicial powers of the headmen (or Kapitans) were limited, e.g. their civil jurisdictions did not exceed ten dollars, and more serious or important cases had to be dealt with by the regular magistracy.

20. Still, the formal composition of the court was deprecated by many Recorders. For example, Sir William Norris, in remarks to the Grand Jury on 30 November 1837, said "that the constitution of this Court was essentially defective, and that it never could work so well as it should do, until freed from all connections with the Executive authorities" (Kyshe, *supra* note 18 at lxxxiii). In the first decades of the Straits Settlements there was friction between the executive and the judiciary and several Governors argued that the judiciary should be abolished (Turnbull, *The Straits Settlements*, *supra* note 4 at 63–66).

21. In *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381 the Privy Council, contrary to the understanding up to that time, took the view that English law applied from Penang's founding by Captain Light and not only when the first *Charter of Justice* was granted.

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The perceived position in Singapore in her early years after 1819 was similar to that in the early years of Penang. In Malacca, however, Dutch law and Malay custom (which the Dutch had left in force)[22] appeared to have constituted the *lex loci*.[23] When Malacca and Singapore were eventually annexed to Penang in 1826 to form the Straits Settlements, the second *Charter of Justice* was granted. It created the united "Court of Judicature of Prince of Wales' Island, Singapore and Malacca" and essentially contained similar provisions to those in the first *Charter*. From that point, it was clear that English law applied throughout the Straits Settlements.[24]

This did not preclude the English judges from occasionally giving effect to the customs of the other inhabitants where this did not undermine English law. In an 1883 case the following is recorded by Justice Ford in the Judge's book in Penang:[25]

April 13, 1883.

*Lim Guan Teet v Yew Boh Neo & anor.*

Action on a Promissory Note.
Execution denied.
Thomas, for Plaintiff.
Defendant in person.
By consent of both parties, if plaintiff goes to swear according to Chinese custom by cutting off head of a cock, and burning joss sticks before the temple in Pitt Street, he shall have verdict, if plaintiff refuses to do so, there will be verdict for defendants.[26]
The Interpreter of the Court directed to accompany the parties.
Arrangement tumbles through, priest of temple declining to allow.

April 18th.

Verdict by consent for $150.

Although the law applicable to all the territories in the Straits Settlements was clearly set out from 1826, the judicial structure continued for several decades to be inadequate. There was only one Recorder and this adversely affected the judicial work in Malacca and Singapore leading to disaffection. There was only one professional judge, the Recorder, who had to oversee three territories. The Recorder went on circuit periodically to Singapore and Malacca but when he was not present the judicial work in these two territories was undertaken by the Resident Councillors there. There was disaffection over some of their decisions and their judicial work in turn affected their other duties.[27] Eventually the press and the European merchants agitated for a separate

22. *Sahrip v Mitchell* (1870) Leic 466.
23. Braddell, *supra* note 19 at 25, but see also *Ee Hoon Soon v Chin Chay Sam* (1889) 1 SLJ 147.
24. *Rodyk v Williamson* (1834) 2 Kyshe 9; *Regina v Willans* (1858) 3 Kyshe 16. Prior to this Chinese and Malay laws were recognized in Singapore, see Braddell, *supra* note 19 at 77.
25. Kyshe, *supra* note 18 at xxxv.
26. Jonas Daniel VAUGHN, *The Manners and Customs of the Chinese of the Straits Settlements* (Kuala Lumpur and Singapore: Oxford University Press, 1971) at 92 observed that the Chinese "consider no oath binding on their consciences unless they cut a cock's head off, or burn sacrificial paper, or let a saucer fall on the floor and shiver to pieces; each form is emblematical of the dire end the operator is sure to meet if he tells a lie."
27. Kyshe, *supra* note 18 at xciii.

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judge for Singapore to be appointed. This led to the third *Charter of Justice* which was granted on 12 August 1855 and provided for a professional judge in Singapore who also had jurisdiction over Malacca. However, the Executive were still judges and it was only after the transfer of the Straits Settlements from India to the colonial office in 1867 that the Governor ceased to be a judge of the court.[28] In 1868 the Resident Councillors also ceased to be judges,[29] finally bringing about the separation of power that the early Recorders had advocated.

As regards the colonial administration in the Straits Settlements, the status of the three territories was downgraded from a Presidency to a Residency in 1830 and this affected the civil service. Positions were drastically reduced and the few officials who remained in their posts suffered big salary cuts.[30] Morale within the civil service understandably suffered. This skeleton civil service remained largely unchanged until the end of Indian rule even though between 1830 and 1867 Singapore's population quadrupled and her trade increased more than threefold. The downsizing of the Straits civil service coupled with population and economic growth meant that the Straits government was inadequately resourced to govern the territories effectively and could only exercise relatively simple functions. In this the government was hampered by its limited capacity to increase revenue. The British mercantile class' opposition to anything that might diminish Singapore's status as a free port was extreme. Not only were there no duties imposed on the import or export of goods, the British merchants were against any fees normally charged at ports, e.g. pilotage, wharfage, and anchorage duties.[31] The merchants also paid no personal or corporate income taxes, or until 1863 any stamp duty. Indeed the establishment of the Straits Settlements may have exacerbated the financial problems because Singapore's free port status was extended to the other two territories and the loss of revenue made it even more difficult for the colonial government to balance its budget.[32] The pressures of inadequate revenue, a fast growing population, and increased economic activity were important factors that led the British authorities to abdicate any real attempt to govern the Chinese community. For example, it was remarkable that until the Chinese Protectorate was established in 1877, there was practically no British official who had any knowledge of the Chinese language,[33] and it would appear that from an early period the court found great difficulty in obtaining suitable Chinese interpreters.[34] The police force was also small and ineffective.[35] This was the context that allowed the early Chinese community in the Straits Settlements the autonomy to order its affairs.

Similarly the Chinese stayed aloof from the formal legal system. The first reported civil case involving a Chinese plaintiff found in the most comprehensive collection of

28. Through the *Straits Settlements Act III of 1867*.
29. Braddell, *supra* note 19 at 40.
30. CM TURNBULL, *A History of Modern Singapore, 1819–2005* (Singapore: NUS Press, 2009) at 54 [Turnbull, *Singapore*].
31. Edwin LEE, *Singapore: The Unexpected Nation* (Singapore: ISEAS, 2008) at 9.
32. WONG Lin Ken, "The Trade of Singapore, 1819–1869" (1960) 33 Journal of the Malayan Branch of the Royal Asiatic Society 158 at 179–180.
33. Turnbull, *Singapore*, *supra* note 30 at 55.
34. Kyshe, *supra* note 18 at lxxiii.
35. Buckley, *supra* note 9 at 385–386.

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the early cases of the Straits Settlements[36] took place in 1836 in Penang.[37] Between this and the end of Indian administration of the Straits Settlements in 1867 there were only another six reported civil cases involving Chinese plaintiffs. While these reported cases do not signify that there were no other civil cases filed by Chinese plaintiffs, it is an indication that the Chinese did not generally seek to resolve their disputes through the formal court system.[38] It would appear that in Qing China, while there was a preference for civil disputes to be resolved through the informal justice system,[39] Chinese villagers were not averse to using the formal legal system.[40] If this is correct, it suggests that the relative aloofness towards the Straits legal system was not due so much to cultural factors but to issues of familiarity and language.[41]

## II. THE KAPITAN SYSTEM AND POLITICAL CONTROL

The word "Kapitan" is likely to have been inspired by the Dutch word "*Kapitein*" and is used interchangeably with Captain in English to denote a chief or headman in a community, particularly a Kapitan officially vested with certain executive, administrative, and, in some cases, judicial powers over his own people, and invariably acting as the channel between the government and the community.[42]

Prior to the establishment of the Court of Judicature in Penang in 1807 the Chinese, Malays, and Tamils had their own Kapitans. These were prominent natives appointed by the colonial authorities to assist it in maintaining law and order amongst their own countrymen.[43] At the beginning of the British occupation of Penang there was a thriving Chinese community in the Malay state of Kedah which supplied the early leaders of the Chinese in Penang. The first Kapitan of Penang, Koh Lay Huan, had rebelled against the Manchu government in China and fled first to Thailand and then Kedah with three junks of followers and many chests of books. He came to Penang soon after Captain Light's arrival and settled there with his followers probably forming the first Chinese community there.[44]

In Malacca, the British occupied the territory intermittently following the seizure of the Netherlands by French forces in 1795. Dutch laws and customs were followed, and the Dutch appointed Kapitans continued to settle lawsuits and disputes as before. Even after Malacca formally came under the British in 1825 following the *Anglo-Dutch*

36. Kyshe, *supra* note 18.

37. *Kho Chin Jan v Lim Tow* (1836) 1 Kyshe 22.

38. See also Maurice FREEDMAN, "Colonial Law and Chinese Society" (1950) 80 Journal of the Royal Anthropological Institute of Great Britain and Ireland 97 at 98 [Freedman, "Colonial Law"].

39. A large part of which involved community and kin-group mediation. See Philip HUANG, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996) at 58–68.

40. *Ibid.*

41. A list of law agents and Advocates and Attorneys from 1808 to 1884 reveals no one of Chinese origin. See Kyshe, *supra* note 18 at cxiii–cxx. The first Chinese person to be called to the Singapore bar was Song Ong Siang in 1893.

42. WONG Choon San, *A Gallery of Chinese Kapitans* (Singapore: Ministry of Culture, 1963) at i.

43. Mills, *supra* note 11 at 42.

44. CHAN Gaik Ngoh, "The Kapitan Cina System in the Straits Settlements" (1982) 25 Malaya in History 74 at 74–75.

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*Treaty of 1824* the status quo of the Kapitans was maintained, at least nominally.[45] The Kapitan system was also adopted in Singapore.[46]

The establishment of the Recorder's Court in Penang in 1807 did away with indirect rule through Kapitans and the second *Charter of Justice* similarly did away with the system in Singapore and Malacca in 1826.[47] While it existed there were distinct advantages to the British. Without sufficient revenue, and coupled with the traditional aloofness of the Chinese from the machinery of government,[48] which contributed to the difficulty of bringing the immigrant Chinese population within the political system,[49] the Kapitan system provided a workable substitute.[50]

While the Kapitan system could not formally exist in the face of the first two *Charters of Justice* as judicial authority had been vested specifically with the courts that were established, the need for a substitute for direct control continued.[51] The British were in no better position to administer the Chinese post-1807 in Penang or post-1826 throughout the Settlements as they were prior to such dates. As such the Chinese continued to be left largely to govern themselves.[52] Whatever the official position, some prominent Chinese were recognized as unofficial Kapitans.[53]

However, beyond the unofficial Kapitans the British also co-opted the Straits Chinese and other Chinese community leaders, including secret society headmen.[54] The main reason for this was that the reliance on a highly select group of Chinese

45. Wong CS, *supra* note 42 at 6.

46. *Ibid* at 27–28.

47. Braddell, *supra* note 19 at 77; Victor PURCELL, *The Chinese in Southeast Asia*, 2nd edn (London: Oxford University Press, 1965) at 270 [Purcell, *The Chinese*].

48. While the Chinese generally respected officialdom, the vastness of China and the often weak ability of the imperial court to extend its writ significantly beyond the centre meant that ordinary Chinese organized much of their affairs within clan/lineage organizations and village communities with minimal contact with civil service officials. See Frederick W MOTE, *Imperial China: 900–1800* (Cambridge, Mass: Harvard University Press, 1999) at 349–350, 751–757.

49. Turnbull, *The Straits Settlements supra* note 4 at 3–5. Chan, *supra* note 44 at 75–76 writes that the majority of the Chinese immigrants to the Straits Settlements came from the lowest and worst classes, and being oppressed victims at home who had been forced to migrate, their hatred and suspicion of governments was strong.

50. See also Chan, *supra* note 44 at 75–76.

51. Andrew BL PHANG, *The Development of Singapore Law: Historical and Socio-Legal Perspectives* (Singapore: Butterworths, 1990) at 36–37 offers for consideration four possible reasons why the Kapitan system was abolished, being: the undesirability of a system of indirect rule given the attendant law and order problems; to weaken the Kapitans' power; that the Kapitan system continued informally in any event; and finally, there may have been a desire for a uniform system of law and governance to be instituted. It is suggested here that the formal cessation of the Kapitan system was the logical constitutional consequence of the *Charters of Justice* vesting judicial power on a formal basis. It would have been difficult for the Europeans agitating India for a proper legal system to be instituted to call simultaneously for a parallel native system to be preserved as this would have raised issues of legitimacy and complicated the process.

52. Freedman, "Immigrants and Associations", *supra* note 5 at 34.

53. For example, in Singapore these were Tan Tock Seng, Tan Kim Seng, and Tan Kim Ching (see Wong CS, *supra* note 42 at 30–31), all of whom were from the Hokkien community. Traditionally, Chinese surnames appear at the beginning and "Tan" is a common surname for those whose forefathers came from Fukien province. In Malacca, the title of Kapitan was applied to one Sit Mun Chew as a courtesy (see *ibid* at 7–8).

54. Carl A TROCKI, "Political Structures in the Nineteenth and Twentieth Centuries" in Nicholas TARLING, ed, *The Cambridge History of Southeast Asia: The Nineteenth and Twentieth Centuries*, vol 2 (Cambridge, New York, and Melbourne: Cambridge University Press, 1992), 79 at 89.

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leaders was not politically or socially optimal because of the heterogeneous nature of the Chinese community in the Straits Settlements, particularly in Singapore and Penang. When the Kapitan system was in place, the colonial authorities tended to appoint the leader of the major dialect group to the position of Kapitan.[55] The Kapitan was only the accepted leader of his own dialect community but was nevertheless appointed to maintain law and order throughout the Chinese community. This understandably left the other Chinese groups feeling insecure as they could not be sure of the Kapitan's support in times of need.[56] Such a shortcoming would have continued if the British government continued to rely only on unofficial Kapitans as go-betweens with the Chinese community.

Accordingly, the British needed other avenues to engage the diverse Chinese population. The most natural way to do so was through the institutions that the Chinese organized themselves around. These were based along speech or kinship ties, or through membership of secret societies, and they therefore became the organizations through which the British for much of the nineteenth century attempted to engage and manage the Chinese community. We will therefore explore these communitarian organizations in a later part of this article. It will be useful though to first discuss the mechanics of immigration into the Straits as this formed the basis on which the communitarian based systems flourished.

## III. STRAITS SETTLEMENTS IMMIGRATION

Migration from China to the Straits Settlements largely comprised of two patterns, namely the kinship based system and the credit ticket system.[57]

For much of China's history, the main pursuit of its people has been agricultural. When there was relative peace the population would increase, but this would inevitably cause a decrease in per capita land cultivation, made worse sometimes by increased tax burdens as a result of powerful landowners using their influence or wealth to withdraw large tracts of land from the tax system. This would make it difficult to earn a livelihood[58] and could lead to banditry and in the worst cases, uprisings. Periods of disorder would ensue whereby the population would be significantly reduced until a new balance was achieved, sometimes accompanied by the rise of a new ruler.[59] Such a period of disorder was to be found in nineteenth century China during the waning of the Qing Dynasty. The peasant class faced increasing hardship and many jobless peasants became a source of unrest in society. There were also many natural calamities in the 1840s and 1850s, and major rebellions broke out in the second half of the

55. Though Chan, *supra* note 44 at 76 states that in Penang more than one *Kapitan Cina* was appointed.

56. YEN Ching-hwang, *A Social History of the Chinese in Singapore and Malaya 1800–1911* (Singapore: Oxford University Press, 1986) at 42–43, 124–125 [Yen, *A Social History*]. See also MAK Lau Fong, *The Sociology of Secret Societies: A Study of Chinese Secret Societies in Singapore and Peninsular Malaysia* (Kuala Lumpur and New York: Oxford University Press, 1981) at 26–29.

57. Yen, *A Social History*, *supra* note 56 at 4.

58. Which could be exacerbated by natural disasters.

59. Immanuel Y HSU, *The Rise of Modern China*, 6th edn (New York: Oxford University Press, 2000) at 222.

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nineteenth century the most serious of which was the Taiping Revolution that lasted from 1850 to 1864, raging over sixteen provinces and destroying more than 600 cities.[60] There was therefore pressure throughout much of this century to emigrate overseas, including to the Straits Settlements.

For those immigrants who managed after a period of time in the Straits to accumulate sufficient capital to start a business, they would eventually require assistants if the business grew. In a difficult environment where most Chinese were seeking to earn enough to return to China as quickly as possible,[61] honesty and loyalty were not readily given and the immigrant therefore found it difficult to find trustworthy staff.[62] He would therefore turn to his home village in China to recruit staff from among his kinsmen (or sometimes from the same dialect group). His relatives worked as assistants or apprentices and after a few years some of them would start their own businesses after having learnt the necessary skills as well as saving some capital of their own. They in turn would go back to China to recruit their relatives if they needed labour.[63] The family orientation of Chinese business is the result of the Chinese system of social relations. According to Confucianism, in a person's network of relations family members are the closest and therefore the most trustworthy.[64]

The apprentices would work long hours with low pay, and much of their work involved petty and mundane matters. The relationship with the business owner could sometimes be oppressive. There was no fixed period of apprenticeship, and promotion to a proper position within the business depended very much on the apprentice's performance and his relationship with the owner, with kinship ties being more important than mere dialect ties.[65] It is likely that hardly any of these arrangements were placed on a formal contractual basis,[66] and even if they were such arrangements would not be specifically enforceable and would at best give rise to an award of damages.[67] Nevertheless it would appear that they were in the main adhered to by the apprentices because such arrangements were highly beneficial to them. In the absence of modern tertiary education, learning business or a craft was only practical through the apprentice system and such opportunities were highly sought after.[68] In addition, given that the legal institutions at the time were weak, trust was an important

60. *Ibid* at 221–232.

61. Purcell, *The Chinese*, *supra* note 47 at 254.

62. See Yen, *A Social History*, *supra* note 56 at 4, who cites an example in Malaya of a Tan Tek Heng and a Sim Mah Leng, both employees of Chop Seng Hong in Klang, who embezzled a sum of $557 from the shop when the owner visited Penang in 1900. Both Tan and Sim absconded to Johore. This author understands from family members that his great-grandfather, while away on vacation, was the victim of theft by his Hainanese cook, which ended up impoverishing him.

63. *Ibid*.

64. TAN Chee Beng, *Chinese Overseas: Comparative Cultural Issues* (Hong Kong: Hong Kong University Press, 2004) at 187.

65. YEN Ching-hwang, *The Ethnic Chinese in East and Southeast Asia: Business, Culture and Politics* (Singapore: Times Academic Press, 2002) at 67–69 [Yen, *Business, Culture and Politics*].

66. Yen, *A Social History*, *supra* note 56 at 150.

67. As a general rule, a breach of contract gives rise to a compensatory monetary award except in exceptional circumstances, see Guenter TREITEL, *The Law of Contract*, 14th edn by Edwin PEEL (London: Sweet & Maxwell, 2015) at 1106.

68. Yen, *Business, Culture and Politics*, *supra* note 65 at 69.

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commodity in business[69] and one did not engender this for the future if one reneged on an apprenticeship arrangement. Many apprentices who worked for a relative also had the opportunity to rise within the family owned firm.

While the kinship system was socially and economically beneficial and an essentially private arrangement between the parties that was within the Confucian norms of mutual responsibility,[70] this could not be said for many aspects of the credit ticket system. Singapore's trade with China was one of her most important branches of trade in the nineteenth century. This comprised trade in commodities, but there were also transactions in human beings and these were perhaps the most valuable cargoes the Chinese junks brought to Singapore.[71] This trade was given further impetus with the development of tin mining in the Malay States.[72] The credit ticket system developed out of the need for immigration on a larger scale and Singapore was a key conduit for the trade in human cargoes for Southeast Asia.[73] It has been said that initially the system did not result in widespread abuse but changed after the progressive abolition of the slave trade in Europe from the 1830s and the opening of China after the signing of the Treaty of Nanking in 1842. These factors combined to make the trade larger and more international, and led to the treatment of immigrants becoming more inhumane.[74] Blythe gives the following description of how this system operated in the transportation of Chinese immigrants to Penang and Singapore:[75]

> Under this system, coolie-brokers in the ports of south China working in conjunction with similar brokers in Singapore paid the expenses of the voyage from China for batches of coolies .... On arrival at Singapore or in Penang; the brokers found employment for the coolies .... Once in the hands of the employer, the coolie was required to work for that employer at whatever wages the latter cared to fix, until he had paid off the amount which the employer had paid for him .... [T]he demand for coolies was so large and the business of supplying them so lucrative that the recruiters at the China ports were quite unscrupulous in their methods of recruiting. Men were sent to the country districts of South China to get in touch with the peasants there. They told wonderful stories of the wealth to be won by emigrating overseas and offered to pay the passages of intending emigrants. Or they would lure them to the city and introduce them to gambling houses where they lost all their money, and the recruiter or the lodging house keeper would cajole or force them to emigrate in order to pay their gambling debts. It was quite true that the wages offered overseas were higher than those obtainable in China where many of the peasants existed at the starvation line, but as we shall see, the wages offered were rarely obtained in full by the coolie .... [After writing of the disgraceful and hazardous conditions on the ships] .... But the evils which beset the emigrant were by no means

69. Kwame Sundaram JOMO, "Chinese Capitalism in Southeast Asia" in Kwame Sundaram JOMO and Brian C FOLK, eds, *Ethnic Business: Chinese Capitalism in Southeast Asia* (Abingdon and New York: Routledge, 2003), 10 at 17.

70. Yen, *Business, Culture and Politics*, *supra* note 65 at 69.

71. Wong LK, *supra* note 32 at 111.

72. Turnbull, *Singapore*, *supra* note 30 at 97.

73. Carl A TROCKI, "Singapore as a Nineteenth Century Migration Node" in Donna R GABACCIA and Dirk HOERDER, eds, *Connecting Seas and Connected Ocean Rims: Indian, Atlantic, and Pacific Oceans and China Seas Migrations from the 1830s to the 1930s* (Leiden and Boston: Brill, 2011), 198 at 218.

74. Yen, *A Social History*, *supra* note 56 at 5–7.

75. Wilfred L BLYTHE, "Historical Sketch of Chinese Labour in Malaya" (1947) 20 Journal of the Malayan Branch of the Royal Asiatic Society 64 at 69–71 [Blythe, "Historical Sketch"].

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> over when he had found, or rather been sold into, employment …. Coolies were beaten, badly fed, and locked in at night to prevent their escape.[76] In general no medical treatment was provided and disease was rife. The contractors supplied the coolies with chandu [i.e. opium] at high prices and encouraged its use to increase their own profits. They … ran 'crooked' gambling and thus relieved the coolie of what little balance of wages he might have. In actual fact, the coolie did not receive any cash wages …. He was invariably in debt.[77]

The colonial government benefited indirectly from the coolie trade. In the absence of more conventional means of raising revenue, it relied greatly on "sin" taxes. Opium was the most important source of revenue as the government sold licenses to operate opium dens. These licenses accounted for between 30 and 60 percent of the locally collected revenue of Singapore and the other territories of the Straits Settlements in every single year for the entire century after 1819, and generally averaged between forty and fifty percent of total annual revenues.[78] The impact of these taxes fell disproportionately on the Chinese who used opium most heavily. The revenue obtained by the government was too valuable to abolish these opium farms despite some calls to do so,[79] and it is suggested here that this also meant there was initially little incentive to curb the abuses in Chinese immigration given that the Chinese were major consumers of the drug. Furthermore, consumption over time had deleterious effects on the physical and mental condition of the users. Liberal immigration would have been necessary to ensure the replenishment of the labour pool.[80]

It has been asserted that only when the British feared that the lack of control would deter Chinese immigration thereby hurting its interests that it decided to do something.[81] In the 1870s some leading Chinese also began to call for the government to superintend coolie immigration and prevent the kidnapping of new arrivals (also known as "*sinkhehs*" – literally "new person"), which was then being done on a highly organized basis by the secret societies.[82] Thus regardless of whether the colonial government was motivated by self-interest or not, it became more difficult for it to ignore the issue.[83] The outcome was the *Chinese Immigrants Ordinance 1877*

76. Wong LK, *supra* note 32 at 113 states that the system "had a colouring of the slave trade, and was bound to have abuses."

77. See also Carl A TROCKI, "Opium and the Beginnings of Chinese Capitalism in Southeast Asia" (2002) 33 Journal of Southeast Asian Studies 297 at 300.

78. *Ibid* at 298.

79. Cheng U WEN, "Opium in the Straits Settlements, 1867–1910" (1961) 2 Journal of Southeast Asian History 52.

80. In most societies such a state of affairs would not long be tolerated because the social costs of widespread opium or other narcotic addiction would have to be borne by society as a whole and it is likely that such costs would outweigh any revenue that could be collected from the sale of the narcotic. In the Straits Settlements, this was not the case and in fact powerful elements benefited from the opium trade and therefore saw no benefit in curtailing its excesses. The colonial government assumed almost no responsibility for social services because of a lack of revenue, the rich Chinese merchants benefited from it, and the European merchants were only too happy to allow it to take place since it meant a more favourable tax regime for them.

81. Lee PP, *supra* note 5 at 30.

82. Turnbull, *Singapore*, *supra* note 30 at 97.

83. NG Siew Yoong, "The Chinese Protectorate in Singapore, 1877–1900" (1961) 2 Journal of Southeast Asian History 76 at 79.

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(CIO 1877), which *inter alia* established the Chinese Protectorate[84] to keep a watchful eye on the coolie trade and its adjunct, the import of young girls for prostitution.[85] It had branch offices in Penang and Malacca.

Another possible self-interested colonial reason for eventually regulating the coolie trade was the change in British policy towards the Malay States. After 1870 the British decided to annex the Malay States. It has been argued that intervention brought about political protection and unlocked the developmental potential of the Malay Peninsula. Intervention also increased the political linkage between Singapore and the Peninsula given that Singapore was the political centre of British power. For Singapore to fulfil this role for the Peninsula there needed to be some measure of stability in the Chinese population which constituted almost three-quarters of the total inhabitants. The Chinese Protectorate was accordingly created to limit the criminal activities of the secret societies by regulating prostitution and ending the kidnapping of coolies.[86]

Pursuant to the CIO 1877 and the *Crimping Ordinance 1877*, which provided for the licensing of recruiting agents, every immigrant ship was boarded by an officer from the Protectorate and hand bills were distributed amongst the passengers to assure them that the government would protect them against any oppression. Those whose passage had been paid were released at once, while others were taken to licensed depots.[87] Further protection was provided them by requiring that all labour contracts must be signed in the presence of the Protector of Chinese. Each labourer and employer received a copy of the contract numbered according to the Registration books kept in the Protectorate. The terms of the contract were explained to the immigrant in his own dialect and he was told to whom he should lodge his complaints. This drastic change to a more paternalistic approach was undoubtedly justified because the typical *sinkheh* was unable to protect himself in a foreign land against sophisticated commercial enterprises that were out to exploit him. Many facets of the previously unregulated system could not be considered voluntary.

An 1883 case from Penang indicates that the new system was an improvement. In *Koh Boo An v Tioh Jee*,[88] the defendant had upon disembarkation entered into a written contract with his employer (Koh) to work for the latter for a period of 360 days in consideration of the employer paying the defendant's passage money from China. The defendant duly worked for 360 days but also took further advances from his employer such that he was indebted to his employer at the end of the period of service. As the period of service had come to an end, he refused to work any longer under the terms of the original contract but was ready to do so on the usual wages paid in Penang. One of the terms of the contract provided as follows:

> Their employer shall give them their daily food in sufficient quantity, and should they during their period of engagement absent themselves from their work through mere

84. See "Chinese Immigrants Ordinance 1877 is Passed" (23 March 1877), online: HistorySG <http://eresources.nlb.gov.sg/history/events/dbfed061-8451-42c9-8a5b-5a6c72df1a2c>.

85. E Lee, *supra* note 31 at 30.

86. Lee PP, *supra* note 5 at 85–87.

87. Turnbull, *Singapore*, *supra* note 30 at 101.

88. *Koh Boo An v Tioh Jee* (1883) 3 Kyshe 164.

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> laziness or borrow from their employer sums of money in excess of the amount agreed to, they shall not abscond or run away or otherwise leave the estate, before having paid the amount of work agreed to or the monies borrowed in excess of their due.

Given the impasse, the employer brought a charge against the defendant that:

> having received an advance in money and agreed to work as labourer on the Perak Estate for 360 days, he did, without reasonable excuse, absent himself from his employer's service, and thereby committed an offence under section 14, clause V. of Ordinance 1 of 1882.

While the employer clearly had a good civil claim against the defendant on the outstanding debt, this would have been meaningless given the defendant's indigence. The criminal proceedings on the other hand, if successfully prosecuted, would have some prospect of coercing the defendant back to work on the original terms.

In dismissing the charge, Wood J agreed with the Solicitor-General that the defendant was only obliged to fulfil the period of 360 days under the original contract as otherwise the term of labour may be extended indefinitely by means of loans by the employer. There was nothing in the contract to oblige the defendant to work for the employer beyond the stated period and the defendant had made no attempt to abscond from the estate.

It would naturally take some time before the full effects of the new regime took hold. Many *sinkhehs* continued to be ignorant of their rights and abuses continued.[89] However, a decisive step in the right direction had been taken and further reforms in the late nineteenth century meant that the more glaring ones were eliminated by the end of the century.[90] This aspect of Straits history illustrates strongly how important it is for societies to have clear rules and strong institutions to prevent non-voluntary relationships from arising.

## IV. CHINESE VOLUNTARY ORGANIZATIONS AND SECRET SOCIETIES

Given that the Chinese in the Straits Settlements were initially a minority, and most of them new arrivals in a strange land under foreign dominion that operated in a language they were unfamiliar with, it was natural for them to congregate among those of their kind with whom there was some connection. Simply being Chinese may not be sufficient because there are many different Chinese dialects and each was often unintelligible to those from a different dialect group (though see the discussion below on secret societies). Thus it is not surprising that a very important social organization of the Chinese was the dialect association. The members of the dialect group usually came from a certain geographical part of China. In addition to the dialect group, the clan organization was another important communal organization. The basic difference between the two is that clan organizations were generally composed of people with the same surname. While this could

89. Blythe, "Historical Sketch", *supra* note 75 at 81–82; Ng, *supra* note 83 at 85–86.

90. Ng, *supra* note 83.

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cross dialect lines,[91] clan organizations generally comprised people that spoke the same dialect,[92] giving rise to an overlap between speech and kinship associations.[93]

The earliest known dialect organization in the Straits Settlements appears to be the Chia Ying Association of Penang that claimed 1801 as its founding year. The Chia Ying people were Hakka speakers who claimed to have come from the five districts of the eastern part of Guangdong province. In 1821, the Chia Ying also founded what seems to have been the first dialect organization in Malacca, the Ying Ho Association. The first such association in Singapore was the Ning Yang Association founded in 1822.[94] The functions of dialect associations were to perpetuate religious practices[95] and social customs, and provide social welfare and mutual assistance.[96] In addition, the dialect association helped maintain law and order amongst its members[97] and settled minor disputes. Major civil cases such as disputes over inheritance were settled by the courts.[98] Kin based clan organizations performed similar functions to those found in dialect associations.[99] One difference was the existence of ancestral worship in the clan organization and another involved the arrangement of marriages.[100]

An example of the dispute resolution role played by these voluntary organizations is provided by Yen from his study of the Eng Chuan Tong Tan Hokkien clan that was founded in 1854 in Penang.[101] This was said to be its most important role in its early decades. Internal disputes were usually over money or personal matters and parties were required to resort to the investigation sub-committee of the clan. The head of the clan and his deputy would have the matter thoroughly investigated, and try to mediate a settlement. Punishment and satisfaction could also be ordered. The clan would also attempt to resolve inter-clan disputes that involved its members. That this was an important preoccupation can be seen from the fact that

91. For example, the surnames "Tan" and "Chan" share the same Chinese character and are therefore similar surnames but the spelling in English is very different because they are pronounced differently in their respective dialects.

92. Freedman, "Immigrants and Associations", *supra* note 5 at 43.

93. In addition to speech and kinship associations, other organizations such as business guilds and businessmen's clubs also existed. It is outside the scope of this article to discuss all such organizations. What should be noted is that many business guilds and businessmen's clubs had strong dialect affiliations (see Yen, *Business, Culture and Politics*, *supra* note 65 at 60–77), and for the purposes of this article can be regarded as a manifestation of speech and on occasion kinship associations.

94. Yen, *A Social History*, *supra* note 56 at 37–39.

95. Thus a dialect organization often revolved around a Chinese temple, e.g. an unofficial Kapitan in Malacca was the President of the Cheng Hoon Temple. See also Freedman, "Immigrants and Associations", *supra* note 5 at 39.

96. Yen, *A Social History*, *supra* note 56 at 45–48.

97. When there were disturbances involving members of the Chinese community, the colonial government would often appeal to the various leaders of the community to assist in restoring order.

98. Yen, *A Social History*, *supra* note 56 at 48, though this greater reliance on the legal system only appeared to begin to occur from around the last quarter of the nineteenth century when more cases involving Chinese plaintiffs were reported in Kyshe.

99. Freedman, "Immigrants and Associations", *supra* note 5 at 40–41.

100. Yen, *A Social History*, *supra* note 56 at 85–87, 91–93.

101. *Ibid* at 81–82.

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in nineteenth century Penang, five powerful clans agreed to cooperate in settling inter-clan disputes.[102]

Such private ordering by the Chinese along dialect and kinship (broadly construed) lines was clearly welfare maximizing given the context they found themselves in. As many were cut off from their families and villages in China, the mutual support, assistance, and fellowship offered by such voluntary organizations were essential. These organizations provided practical succour during times of need and the member could also be assured of a proper burial if he died indigent.[103] In return for the benefits provided by speech and kinship organizations, the member had to submit to group authority. Disputes would be resolved within the group and between groups based on Chinese norms. English law was not a practical alternative for the average Chinese person. Not only would he be ignorant of English law, he would in all likelihood not have the means to engage an English lawyer nor would he necessarily have felt comfortable doing so. The dialect and clan organizations provided the only real means by which disputes could be resolved through a process that would be accepted by the other party. The typical immigrant wanted only to be able to earn enough to return to China and unresolved disputes that could lead to violence and injury were best avoided. Such private ordering reduced this risk.

As mentioned above, disputes over inheritances were a category of cases that tended to be resolved through the formal court system. Such cases likely involved wealthier and better informed parties. In addition, English law provided a significantly better solution for some parties and therefore there was an incentive to use an alternative system. These disputes also tend to be one-off affairs that may not necessarily have long term adverse reputational effects within the community. In the first reported decision of its kind, the Straits Settlements Supreme Court decided in 1867 that a second or inferior Chinese wife was to all intents and purposes a lawful spouse and was therefore entitled to share with the first or superior wife in the property for her deceased husband who had died intestate.[104] In this case recourse to English law meant the difference between receiving nothing and a proportionate share of the percentage a wife was entitled to upon the intestacy of a husband, which at that time was a third of the estate. This approach was subsequently confirmed by the majority in the Straits Settlements Court of Appeal decision of *In the Matter of the Estate of Choo Eng Choon, Deceased*

102. The author contacted some dialect and kinship organizations to explore the possibility of obtaining access to the early records of these organizations relating to civil disputes among its members. The exercise was fruitless. Some organizations did not respond and those that did said there were no records either because the leaders at the time were illiterate or the documents (if they existed) "may have been destroyed or burnt during the Japanese occupation as was done to most other written materials to avoid falling into the hands of the Japanese Military" (Letter to the author from a kinship association in Penang (6 August 2015)).

103. Traditionally, the Chinese are afraid of dying alone without any funeral rites being performed as this may hinder their passage into the next life. Vaughn, *supra* note 26 at 30–33 describes in some detail the elaborate nature of a Chinese burial. He also observed that while the poor are buried with very little pomp, one part of the ceremony is never neglected, namely the strewing of the road with paper money which the deceased is supposed to require on his passage from this world to the next. A bundle of paper money is also nailed on the coffin.

104. *In the Goods of Lao Leong An* [1893] 1 SSLR 1.

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(also known as the *Six Widows Case*).[105] This gave subsequent "wives" and their children much greater rights than Chinese custom would have accorded them in which they would only have been regarded as concubines.[106]

Relatedly, the English rule against perpetuities was also invoked to invalidate bequests of uncertain or lengthy duration. In *Choa Choon Neoh v Spottiswoode*[107] the testator devised certain property to his trustees to be applied towards the performance of religious ceremonies according to the custom of his ancestors. These ceremonies were referred to as a charity in the will. His children sought to set aside the bequest. Maxwell CJ held that the ceremonies did not constitute a charity, the rule against perpetuities applied equally to a Chinese as it did to an Englishman, and accordingly the bequest to a non-charitable purpose in eternity was void. The property was therefore distributable among the testator's next of kin living at his death. Although this was in direct contravention of the Chinese tradition of holding family property infinitely for ancestral worship,[108] and the testator's next of kin may well have risked the opprobrium of the community on themselves, the following passage from the judgment shows why they would have been highly motivated to act in such manner:[109]

> Certainly it would require very strong evidence to establish that it was regarded as a duty, in any religion, to disregard the claims of natural affection, and, as in this case, to dispose of the bulk of one's property in providing for the supposed benefit and comfort of his own soul, while he left his sons and daughters almost wholly unprovided for.

An additional reason for the Chinese immigrants to organize themselves through such voluntary associations was because many trades were virtually monopolized by the different dialect or clan groups.[110] For example, a contemporary observer said that the carpenters, miners, blacksmiths, shoemakers, and artisans were from Guangdong province[111] while the Hokkiens were chiefly tailors, shopkeepers, and merchants, making them among the wealthier of the Chinese.[112] Mak[113] has suggested that this specialization and monopolization came about because of the physical living environment of the particular dialect group, the sequence of migration,[114] continuity in occupational specialization, and the use of secret societies to perpetuate dominance in particular trades.[115] Yen argues this is

105. *In the Matter of the Estate of Choo Eng Choon, Deceased* (1911) 12 SSLR 120.
106. LEONG Wai Kum, *Family Law in Singapore: Cases and Commentary on the Women's Charter and Family Law* (Singapore: Malayan Law Journal, 1990) at 123; Freedman, "Colonial Law", *supra* note 38 at 100–103.
107. *Choa Choon Neoh v Spottiswoode* (1869) 1 Kyshe 216 [*Choa Choon Neoh*].
108. Wong CS, *supra* note 42 at 5.
109. *Choa Choon Neoh*, *supra* note 107 at 221–222.
110. As mentioned above, while trade associations existed they tended to be dominated by a particular group and therefore are not treated separately in this article.
111. The dialect groups referred to here would be the Cantonese and the Hakkas.
112. Vaughn, *supra* note 26 at 14–15. For a more comprehensive breakdown of occupations according to speech groups, see Mak, *supra* note 56 at 41–43.
113. *Ibid* at 43–46.
114. With earlier settlers having a greater choice of lucrative occupations to select from.
115. Yen, *A Social History*, *supra* note 56 at 121 on the other hand states that there is no evidence to suggest the use of secret society power for such purpose.

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only part of the answer and ignores the role of the dialect and clan organizations as instruments that perpetuated the monopolization of various trades.[116]

What is clear is that as certain groups became dominant in a trade or profession, this had a self-perpetuating effect. In the absence of any formal educational system by which a person could learn a trade, one could only do so by working or apprenticing for someone already in such trade. In addition, the lack of capital among many immigrants meant that they would not have a realistic chance of starting a business even if they had the right skills. They would first have to find employment to earn some capital. Given the division of the Chinese along dialect and clan lines, a person would only be hired or apprenticed by someone within his dialect or clan group. Over time, this would lead to more members of a particular dialect or clan group gravitating into these particular trades.[117] The network within the group would reinforce the dominance further and could also be used to prevent others from entering the trade.[118]

The inadequacy of the banking system was another important factor. Until the beginning of the twentieth century, all the banks established in Singapore and Malaya were foreign owned, with the first being established in Singapore in 1840. During the period 1840 to 1903, the primary purpose of these foreign banks was to finance external trade between Malaya (including the Straits Settlements) and the neighbouring countries.[119] Credit advances were usually short term.[120] The Chinese would therefore not be able to obtain a loan easily and informal credit arrangements were therefore crucial to Chinese businessmen. The provision of starting capital or the supply of goods on credit (often without security) was often facilitated by one's relationship with those already established in the trade and the level of trust between such parties.[121] Inevitably it would be someone from the same dialect or clan group. Being part of the same group meant that the parties were part of a social network that would impose some constraints on opportunistic behaviour thereby making it more likely that any credit granted would be repaid which in turn increased the likelihood of credit being advanced.

The importance of trust is further underlined by the fact that Chinese businessmen did not traditionally enter into formal written contracts but were happy to conclude agreements by word of mouth. This was particularly so when the business in question – such as the import and export of commodities – could see significant price fluctuations and therefore speed was of the essence.[122] Such an informal mode of

116. *Ibid* at 118–119.

117. As Freedman, "Immigrants and Associations", *supra* note 5 at 41 points out, while territorial and surname associations were not generally intended to serve commercial aims, they did have such an impact by virtue of the economic specialization of dialect groups.

118. For instance, CHENG Lim-Keak, *Social Change and the Chinese in Singapore: A Socio-Economic Geography with Special Reference to Bang Structure* (Singapore: Singapore University Press, 1985) at 89–90 refers to the Singapore Cycle and Motor Traders' Association which was dominated by the Henghua dialect group. One of its functions was the inducement of its members to take over any member's firm that was to be wound up.

119. LEE Sheng-Yi, *The Monetary and Banking Development of Singapore and Malaysia*, 3rd edn (Singapore: Singapore University Press, 1990) at 36–37.

120. Rajeswary Ampalavanar BROWN, *The Chinese Business Enterprise: Critical Perspectives on Business and Management*, vol II (New York: Routledge, 1996) at 136.

121. Cheng, *supra* note 118 at 105.

122. *Ibid* at 106.

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engaging in commercial transactions, with the attendant risk of a dispute over the exact terms of the agreement, meant that the organization provided a safety net in the event of disputes. If a member did not honour his promise, the party affected would take steps to secure performance.[123] This would include bringing the infraction to the attention of members of the organization which would lead to internal condemnation and affect the promise breaker's future commercial prospects, given the manner in which business was transacted.[124] Trust is a commodity that takes much time and effort to accumulate but can be easily diminished, and when one's ability to engage in business depends on maintaining a high level of trust, this incentivizes promise keeping. For a promise breaker to act in such manner, he must calculate that the one-off benefit to be obtained is worth significantly more than the adverse consequences which is the loss of future business opportunities. As the latter is difficult to ascertain with any certainty, there is a strong bias in favour of promise keeping where reputational considerations are important and information about promise breaking can be easily disseminated.[125] The voluntary associations' ability to process information that might lead to the exclusion of recalcitrant members from future business made them effective institutions for private ordering.[126]

As the Chinese speech and kinship groups were initially established for social and religious reasons such as security, recreation, mutual assistance, and ancestral worship, they provide an example of a private legal system (another term for "private ordering") that evolved in two stages.[127] Essentially, in the first stage a network creating a centralized bonding mechanism develops, usually as a side effect of regulating a low-enforcement-cost norm (i.e. one to which members adhere without coercion). At stage two, the network evolves to regulate a higher-enforcement-cost norm if there is demand for such regulation and the network can perform this role efficiently. Examples of such a network are social and religious networks. In social networks, for example, reputation is important (where the member derives utility from membership) and the enforcement costs of its norms are sufficiently low to form spontaneously and survive. This is because a member who behaves in a deviant manner will likely attract gossip that will cause a negative reaction among the members of the network. When members of the same social circle are also part of another network (such as a commercial network in the case of the Chinese immigrants), the social network can align most members' response to a member's unacceptable

123. For the pervasiveness of self-help enforcement, see Ellickson, *supra* note 16 at 143–144.

124. See also Cheng, *supra* note118 at 106 who states that information about a breach of contract would spread quickly through the close-knit Chinese community and bring immediate business sanctions and moral condemnation.

125. Such arrangements based on trust are not unique to the Chinese. See Avner GREIF, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge and New York: Cambridge University Press, 2006) at 59 (writing about the Maghribi Traders' Coalition).

126. See also Janet T LANDA, "A Theory of The Ethnically Homogenous Middleman Group: An Institutional Alternative to Contract Law" (1981) 10 Journal of Legal Studies 349, who discusses the marketing of smallholders' rubber in Singapore and West Malaysia which was dominated by a middleman group with a tightly knit kinship structure consisting of four clans from the Hokkien ethnic group. This close knit business relationship led to efficiencies such as economizing on information costs.

127. Amitai AVIRAM, "A Paradox of Spontaneous Formation: The Evolution of Private Legal Systems" (2004) 22 Yale Law and Policy Review 1 at 20–23.

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behaviour in the other network. As there is no need for two separate networks, however, an existing social network will evolve to provide the required regulation if it can do so efficiently. Enforcement of the new, higher-cost norm (such as proscribing opportunistic conduct through business sanctions) is possible through control of the existing members of the social network where this is beneficial to them.[128] The ability of the Chinese voluntary associations to regulate the behaviour of their members was also enhanced by the relative inability of individual members switching to another voluntary association given the homogeneous nature of these associations. The strong "bonding" social capital within speech and kinship groups made it difficult for outsiders to "bridge" different groups.[129]

It is interesting to observe that despite commerce not being given a place of prestige in typical Chinese society, Chinese businessmen succeeded in dominating the business environment in many parts of Southeast Asia. This is one of the principal reasons for tension between the indigenous people in many Southeast Asian countries and those of Chinese ancestry. A cause of Chinese success can be attributed to the network of relationships built on trust, often reinforced by kinship or dialect links that cut across geographical lines,[130] that reduced the transaction costs and information asymmetry of engaging in commercial dealings between parties in different parts of Southeast Asia.[131] A strong norm that promises are generally to be kept is clearly one that conduces to overall welfare. In a study of Wisconsin businesspeople, one of the norms that was widely accepted was that commitments were to be honoured in almost all situations.[132] Detailed negotiated contracts could get in the way of creating good exchange relationships. It indicated a lack of trust and might also reduce the flexibility to negotiate matters in light of the actual circumstances post-contract and thus some vagueness in the terms was to be welcomed.[133] Indeed, even in many contracts today in Singapore that are lengthily negotiated with the assistance of legal advisers, it is not

128. Another example was the merchant guilds in medieval Europe that served to enforce merchant boycotts. Such guilds were at their core administrative bodies that supervised the overseas operation of merchant residents of a specific territorial area and held certain regulatory powers within that area. The guilds facilitated coordinated action by the merchant community and in addition, many towns were controlled by the mercantile elite who organized a merchant guild to advance their interests. See Avner GREIF, Paul MILGROM, and Barry R WEINGAST, "Coordination, Commitment, and Enforcement: The Case of the Merchant Guild" (1994) 102 Journal of Political Economy 745 at 755. Aviram, *supra* note 127 at 56 argues that the guilds built on the existing social network in a given town and that their enforcement powers came both from the town's social network and its governance institutions.

129. Mark R WARREN, J Phillip THOMPSON, and Susan SAEGERT, "The Role of Social Capital in Combating Poverty" in Susan SAEGERT, J Phillip THOMPSON, and Mark R WARREN, eds, *Social Capital and Poor Communities* (New York: Russell Sage Foundation, 2001), 1; see also Alejandro PORTES, "Social Capital: Its Origins and Applications in Modern Sociology" (1998) 24 Annual Review of Sociology 1, writing about negative social capital.

130. Such Chinese networks in Southeast Asia were already in existence before the nineteenth century. See KWEE Hui Kian, "The Rise of Chinese Commercial Dominance in Early Modern Southeast Asia" in LIN Yu-ju and Madeleine ZELIN, eds, *Merchant Communities in Asia, 1600–1980* (London: Pickering & Chatto, 2015), 79 at 86–87.

131. For a contemporary example of private ordering among Chinese businesspeople where there is weak rule of law, see CHEN Weitseng, "Arbitrage for Property Rights: How Foreign Investors Create Substitutes for Property Institutions in China" (2015) 24 Washington International Law Journal 47.

132. Macauley, *supra* note 16 at 63.

133. *Ibid* at 64.

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uncommon for certain clauses to lack the precision that one might expect. Such clauses often reflect a compromise over the language used that gives each party some assurance that their perspective has been incorporated; there is therefore a degree of ambiguity by design to facilitate negotiation in the future should disputes arise.

While a group may wish to perpetuate its dominance, in a dynamic economic environment there was nothing to prevent persons from another group with the right skills from being engaged in a trade dominated by the incumbent group. Such persons might be able to obtain support from his dialect or clan group. After all, it could not be that there were no artisans among the Hokkiens or the Teochews. Thus while dialect and clan associations were undoubtedly an important factor in occupational dominance, this may not be a sufficient explanation. It has accordingly been suggested that some external element, namely secret society involvement, was likely. Among other things, the secret societies were organizations for self-protection[134] and control within the Chinese community,[135] and certain societies were organized around type of employment.[136] Without a certain degree of law and order enforced by state mechanisms, close-knit groups may seek to protect and advance their rights through improper practices including force rather than legitimate competition, or otherwise act in a manner that does not enhance the welfare of the wider community. The state must therefore set out certain fundamental ground rules that limit the ability of groups to pursue their interests at the expense of the community as a whole such that overall welfare is diminished rather than maximized. This is one of the reasons for anti-monopoly laws and we see a modern resonance in some cartel activities that in the past would have been legal in Singapore but are now illegal under the *Competition Act*.[137] It is tempting to speculate that Singapore's history of occupational dominance was a major factor why such a law was never seriously contemplated[138] until it became one of the conditions for the *US-Singapore Free Trade Agreement*[139]

134. Wilfred L BLYTHE, *The Impact of Chinese Secret Societies in Malaya: A Historical Study* (London *et al.*: Oxford University Press, 1969) at 1 [Blythe, *Secret Societies*].

135. As Freedman, "Immigrants and Associations", *supra* note 5 at 29 points out, the reliance by the Singapore authorities on rich Chinese produced a structure of control that was likely to be political as well as economic and a major structural feature of the Chinese in the nineteenth century was the secret society.

136. Blythe, *Secret Societies*, *supra* note 134 at 1–2; see also Mak, *supra* note 56 at 43–46; Freedman, "Immigrants and Associations", *supra* note 5 at 37 (writing that there "may have been occupational and commercial homogeneity in society membership, societies sometimes grouping men according to their economic interests"). But see Yen, *A Social History*, *supra* note 56 at 117, who says that while the power of secret societies was used to consolidate certain lucrative businesses such as mining, opium and spirit farms, gambling, and prostitution, it would be an exaggeration to claim that secret societies were mainly responsible for the monopolization of occupations.

137. *Competition Act 2004* (Cap 50B, 2006 Rev Ed Sing). The *Competition Act* came into force on 1 September 2005. The Competition Commission of Singapore has, since its inception, issued several Infringement Decisions relating to cartel activities.

138. This is of course highly speculative and another contributory factor may have been the large role played by state owned enterprises in the Singapore economy, as to which see TAN Cheng-Han, Dan W PUCHNIAK, and Umakanth VAROTTIL, "State Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform" (2015), online: SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2580422>.

139. The *US-Singapore Free Trade Agreement* came into force on 1 January 2004. See "Singapore Signs Free Trade Agreement with the United States" (6 May 2003), online: HistorySG <http://eresources.nlb.gov.sg/history/events/9f328cfb-06c7-464b-b008-ee6b46e0497d>.

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which disrupted the path dependency that allowed anti-competitive conduct to be tolerated.

The terms "triad" and "secret society" come with negative connotations in modern society. This was not always the case in China and the Chinese communities overseas where secret societies existed. These societies were formed originally by loyalists to the fallen Ming Dynasty to carry on the struggle against the Manchus of the Qing Dynasty. One of the leading societies was the Heaven and Earth Society which is also referred to as the Triad Society because of its emphasis on the harmony of heaven, earth, and man.[140] The various Chinese secret societies in Malaya may have originated from the Triad Society.[141] To a degree they may be regarded as voluntary associations even if they also used coercion against some to become members.[142] Candidates for admission vowed to keep the secrets of the fraternity. During the rite of initiation, the middle fingers of their left hand were pricked and some blood squeezed out into a bowl which contained a mixture of chicken blood, Chinese wine, sugar, and other ingredients. The candidates would drink some of the mixture and with this became blood brothers with all members of the society. Each new member was handed a certificate of membership bearing the name of the lodge and other secret inscriptions.[143] The rite of initiation, the mysticism, the secret symbols and words, the concept of brotherhood, were all meant to bind the individual to the society.

In the Straits Settlements, secret societies generally quickly lost their political purpose and evolved instead to become control and self-protection organizations.[144] It may be that secret societies arose when the Chinese were denied some measure of political independence. This could amount to little more than the relatively mild interference of an authority trying to maintain public order.[145] However, in the context of the Straits such an explanation does not sit well with the colonial policy of the time to largely allow the Chinese to govern their own affairs.

Rather it is more likely that secret societies in the Straits Settlements emerged and flourished for two reasons. First, many of the Chinese in the Straits Settlements had fled China because of unsuccessful resistance to Qing rule. They were already members of the Triad Society and it was natural for them to establish a structure they were familiar with in their new homes. They also established overseas branches in the hope of returning to drive out the Manchus.[146] Accordingly, the Triad was the earliest Chinese

140. Hsu, *supra* note 59 at 127–128.

141. Vaughn, *supra* note 26 at 95; Leon F COMBER, *Chinese Secret Societies in Malaya: A Survey of the Triad Society from 1800 to 1900* (Locust Valley, NY: JJ Augustin, 1959) at 1.

142. AH HILL, "The Hikayat Abdullah: An Annotated Translation" (1955) 28(3) Journal of the Malayan Branch of the Royal Asiatic Society 1 at c 21.

143. Comber, *supra* note 141 at 9–11.

144. An excellent overview of the problem of secret societies in Singapore can be found in Phang, *supra* note 51 at c 4, Part III.

145. Freedman, "Immigrants and Associations", *supra* note 5 at 45–46.

146. Chan, *supra* note 44 at 74. This may have initially accounted for the Qing government not taking steps to establish contact with the overseas Chinese, but this policy changed in 1876 when consulates were established in the Nanyang. The consulate in Singapore was established in 1877 and is credited with changing the attitude of the Singapore Chinese towards Peking. See Turnbull, *Singapore*, *supra* note 30 at 119–120.

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organization in the Straits Settlements.[147] The second reason has been discussed earlier, being the governance vacuum because of the inadequate colonial administration. This vacuum was readily filled by Chinese secret societies which "set up mechanisms of 'law' within the Chinese community."[148] Indeed right from the outset of indirect rule, initially through Kapitans, secret societies were likely used to exercise control.[149] There is certainly circumstantial evidence of this in Penang where the first Kapitan, Koh Lay Huan, was in all probability a member of the Heaven and Earth Society in Fukien province, given that this society was active in southern China.[150] The followers who fled with him after the rebellion against the Manchus failed must have been fellow members of the Society. Koh Lay Huan as Kapitan would naturally have relied on the members of his secret society to police and control the Chinese community.[151] After the abolition of the Kapitan system, the secret societies and the powerful community leaders continued to retain close links.[152]

Although it has been posited that for the most part the respectable Chinese, i.e. the prominent merchants, were not leaders or members of the secret societies,[153] this is probably incorrect. The social and hence power structures in the Straits Settlements were very different from that in China. In China, the typical social structure would have scholars and government officials at the apex followed by farmers, artisans, and finally merchants. The relatively high status of farmers was indicative of the importance of agricultural pursuits in China while the relatively low status of merchants was due to commerce being regarded as a parasitic profession that did not create anything.[154] In the Straits Settlements this social ordering was inverted. As the three territories were substantially urban centres, agriculture was not as important as it was in China and its importance diminished considerably over time. There were of

147. W MILNE, "Some Account of a Secret Association in China, Entitled the Triad Society" (1826) 1 Transactions of the Royal Asiatic Society of Great Britain and Ireland 240 at 241 refers to a secret society in Malacca that was already in existence in 1818 and most likely even before such time. Mak, *supra* note 56 at 21 takes this as an indication that secret societies could not have arisen because of political deprivation. However, since Malacca was under various rulers prior to British rule, and the Chinese had permanent settlements there since at least the beginning of the seventeenth century during which time secret societies could have emerged, the existence of secret societies in Malacca prior to 1826 does not disprove Freedman's thesis. Mak, *ibid* at 38 states that one of the leaders of the refugees who migrated to Malacca after the fall of the *Koxinga* regime in Taiwan in 1683, and who was appointed a Chinese Kapitan by the Dutch around 1710, had been a Triad member in China. This makes it more likely that the existence of the Triad in Malacca had little to do with any assertion of political control over the Chinese by the British (or the Dutch) but was an incident of the people that settled there.

148. Freedman, "Immigrants and Associations", *supra* note 5 at 35; see also Buckley, *supra* note 9 at 366.

149. Yen, *A Social History*, *supra* note 56 at 124–125; Mak, *supra* note 56 at 36.

150. See also Jean Elizabeth DEBERNARDI, *Rites of Belonging: Memory, Modernity, and Identity in a Malaysian Chinese Community* (Stanford: Stanford University Press, 2004) at 26; Comber, *supra* note 135 at 65.

151. See also CM TURNBULL, "Penang's Changing Role in the Straits Settlements, 1826–1946" in YEOH Seng Guan *et al.*, eds, *Penang and Its Region: The Story of an Asian Entrepot* (Singapore: NUS Press, 2009), 30 at 35; Chan, *supra* note 44 at 74–75.

152. Yen, *A Social History*, *supra* note 56 at 124.

153. Lee PP, *supra* note 5 at 51–54.

154. Mote, *supra* note 48 at 390–391 nevertheless also points out that as early as the Song Dynasty, while merchants had low status in ideal terms, the actual social status of rich merchants was high. He further states that by the Ming Dynasty rich merchants occupied the social space between the established elite and the next strata of economically better-off commoners. *Ibid* at 765.

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course virtually no scholars, and even if there were, the scholars would be without influence or power in a system of government to which they were strangers. The true mark of success was wealth and being a successful Chinese merchant therefore meant that one had social status which was reinforced by the colonial government's reliance on rich Chinese as leading members of Chinese society to manage their communities. This necessitated links with the secret societies[155] in the absence of a robust legal system and an effective police force.[156] It is difficult to see how the Chinese community leaders, whose status depended on their success in commerce, could maintain their business interests and also manage their communities without the assistance that the secret societies could offer.[157] It is therefore likely that some community leaders must have held leadership positions within the societies.[158] After all, until 1890 secret societies were not illegal and were even thought to be useful, and a large proportion of Chinese were members of such societies.

Unlike dialect and clan organizations, membership in secret societies could run across different dialect and kinship groups. For this reason Vaughn[159] thought that secret societies were a positive force that helped to dissipate the traditional ill feeling among the different groups of Chinese,[160] although over time the division of the original society into rival branches introduced more elements of discord. In much of the nineteenth century, the secret societies dominated the Chinese in the Straits Settlements. In 1876 Pickering said that over sixty percent of the Chinese population in Malaya were sworn members of the secret societies and the remaining forty percent were subject to their influences.[161] This must have meant that while the speech and kinship groups were functionally separate from the secret societies, many Chinese were members of both groups and it was a fluid situation.[162] Khoo Thean Teik who was

155. See also Freedman, "Immigrants and Associations", *supra* note 5 at 47. Mak, *supra* note 56 at 96–98 lists some indicators of close links between community leaders and the societies.

156. Not unlike the Italian mafia, one aspect of Chinese secret societies was that they represented an economic enterprise that produced, promoted, and sold private protection (see Diego GAMBETTA, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, Mass: Harvard University Press, 1993); and see also Blythe, *Secret Societies*, *supra* note 134 at 1), which was a valuable service given that the formal institutions of law and order were largely irrelevant to most Chinese.

157. For example, the capitalists who owned the tin mines on the Malay Peninsula were secret society headmen, or worked with such headman, who used secret society power to protect their commercial interests and exploit the Chinese workers. Many became wealthy and eventually moved back to the territories in the Straits Settlements where they transformed themselves into business tycoons. See Hans-Dieter EVERS and Ruediger KORFF, *Southeast Asian Urbanism: The Meaning and Power of Social Space* (Münster: Lit Verlage; New York: St. Martin's Press, 2000) at 48–50.

158. See also Freedman, "Immigrants and Associations", *supra* note 5 at 38; YONG Ching Fatt, *Chinese Leadership and Power in Colonial Singapore* (Singapore: Times Academic Press, 1992) at 11; Mak, *supra* note 56 at 106–107.

159. Vaughn, *supra* note 26 at 98–99.

160. They also disposed of "[t]housands of complaints both civil and criminal" which the formal courts would not have been able to cope with. *Ibid* at 111. See also Yen, *supra* note 56 at 115.

161. Cited in Lee PP, *supra* note 5 at 48.

162. Some groups ostensibly established as dialect or clan associations may have been secret societies in essence (Comber, *supra* note 141 at 269; Blythe, *Secret Societies*, *supra* note 134 at 3). In addition, certain societies came to be composed principally of members from a particular speech group or included non-Chinese (Vaughn, *supra* note 26 at 103), and place of residence or type of employment was at times the basis for eligibility for membership, or there might have been a combination of these factors (Blythe, *Secret Societies*, *supra* note 134 at 1). At the same time, dialect and clan rivalries rather than secret society

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both a director of the Khoo Kongsi[163] and the leader of the Tua Peh Kong secret society (also known as the Kien Tek society)[164] provides a good example. During the Penang Riots of 1867 many of the Hokkien members of the Tua Peh Kong society that fought against the Cantonese in the Ghee Hin society were also members of the Khoo Kongsi.[165]

Although the secret societies did bring about some positive outcomes, a situation where secret societies were the means of control over a substantial part of the population could never be legitimate as an *imperium in imperio* was the consequence. Whatever good secret societies may have done was also outweighed by the social costs of such organizations. Secret societies were involved in unlawful activities such as gang robberies and extortion.[166] Conflict between the societies and abuses were also inevitable given the types of commercial activities the secret societies were engaged in and this added to the lawlessness of the period. For example, the opium farm system was very lucrative and successful bidders used their secret societies to prevent illegal smuggling by other merchants who also had backing from their secret societies.[167] Such unlawful and unsavoury activities gradually brought about a change in public attitude towards the societies[168] that led initially to measures requiring secret societies to register themselves and eventually to legislation that outlawed them.[169]

After such time, the dialect and clan organizations became the principal groups through which the Chinese ordered their affairs and the colonial government dealt with. Even though speech and kinship groups had been involved in some violent activities, they had a veneer of respectability and it was in any event impossible to ban all Chinese organizations. To maintain good standing with the colonial authorities and the social prestige that came with it, the leaders of the Chinese community had to cut their links with the secret societies once they became illegal organizations. While it made sense to have links with secret societies when they were perceived as having some social value, little advantage could be obtained by respectable members of the Chinese community from such association once they became illegal organizations. Instead they

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affiliation were also the cause of some of the violence between Chinese groups causing members of secret societies to fight against their brethren from a different speech group (Vaughn, *supra* note 26 at 99). Thus, a contemporary observer has said that some of these groups were "quite as dangerous as the triad societies" and had "from time to time disturbed the peace…and [were] likely at any time on the slightest provocation to do the same" (Vaughn, *supra* note 26 at 114). Purcell, *The Chinese*, *supra* note 47 at 273 also states that "it is likely that the district and clan associations were as much involved in the early disturbances as the huis" (i.e. secret societies).

163. KHOO Su Nin, *Streets of George Town Penang: An Illustrated Guide to Penang's City Streets & Historic Attractions* (Penang: Areca Books, 2007) at 59.

164. Blythe, *Secret Societies*, *supra* note 134 at 131.

165. See Leong San Tong Khoo Kongsi, "The Origin of Cannon Street", online: Leong San Tong Khoo Kongsi <http://www.khookongsi.com.my/history/the-origin-of-cannon-street/>.

166. Buckley, *supra* note 9 at 386; Hill, *supra* note 142 at c 21.

167. Carl A TROCKI, *Opium and Empire: Chinese Society in Colonial Singapore, 1800–1910* (Ithaca, NY: Cornell University Press, 1990) argues that the opium trade was at the heart of the disputes within the Chinese community.

168. For example, at a public meeting in Singapore held on 10 February 1843, resolutions that were adopted included one calling for a law to be passed to suppress secret societies. See Buckley, *supra* note 9 at 386. Nothing was done till late in the nineteenth century.

169. Through the *Societies Ordinance 1889* which came into force on 1 January 1890.

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strengthened their links with the dialect and clan organizations.[170] While secret societies continued well into the twentieth century and posed significant law and order challenges they were not able to exercise as much power as they used to and over time became small scale criminal gangs.[171]

## V. CONCLUSION

The story of the Chinese immigrants to the Straits in the nineteenth century is one that shows institutions[172] matter.[173] Good institutions help to shape behaviour in socially beneficial ways. The example of the Chinese in nineteenth century Straits Settlements provides a good example of how people in the absence of well-functioning institutions may pursue goals that are not beneficial to the broader community, and indeed may actively conduct their affairs sub-optimally from a societal perspective. For example, if the Straits Settlements had well-functioning institutions the welfare of the *sinkheh* would have been better as the improvements brought about by the Chinese Protectorate attest to. This is not to detract from the merits of decentralized institutional creation through private ordering but to suggest, from the experience of the Straits, that it may be too much to expect private rules, beliefs, norms, and organizations to provide optimal solutions in all instances,[174] particularly when people are transplanted to a foreign land that lacks a strong institutional framework and where many of their own institutions are non-existent. Indeed it has been argued that an organized social order requires formal institutions, sustained by agents who enforce law and order,[175] and that governments play a crucial role in the evolution of institutions that protect individual rights.[176]

Intervening factors in the form of legislative change and stronger direct control over the Chinese population put an end to secret society dominance of Chinese society and by extension, much of the Straits Settlements. Changes in the sphere of economic activity also had a role to play. When large European enterprises ventured into areas such as tin mining that had been dominated by the Chinese, particularly the Cantonese and Hakkas, dialect association in such areas became less important. To the extent that secret societies had played a role in maintaining such sectoral economic dominance,

170. Yen, *A Social History*, *supra* note 56 at 127–128; Mak, *supra* note 56 at 106.

171. Blythe, *Secret Societies*, *supra* note 134 at 243; Comber, *supra* note 141 at 270.

172. The term is used here to denote "a system of rules, beliefs, norms, and organizations that together generate a regularity of (social) behavior". Greif, *supra* note 125 at 30.

173. CHANG Ha-Joon, "The Market, the State and Institutions in Economic Development" in CHANG Ha-Joon, ed, *Rethinking Developmental Economics* (London: Anthem Press, 2003), 41 at 52–54; Greif, *supra* note 125.

174. Solidarity and trust among members of a group can have both positive and negative effects. Mafia families, prostitution and gambling rings, and youth gangs offer many examples of how embeddedness in social structures can be turned to less than socially desirable ends. Portes, *supra* note 129 at 18. The existence of strong social groups can lead to corruption. See Paolo MAURO, "Corruption and Growth" (1995) 110 The Quarterly Journal of Economics 681.

175. Itai SENED, *The Political Institution of Private Property* (Cambridge: Cambridge University Press, 1997) at 72.

176. Itai SENED, "The Emergence of Individual Rights" in Jack KNIGHT and Itai SENED, eds, *Explaining Social Institutions* (Ann Arbor: University of Michigan Press, 1995), 161 at 162.

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this weakened them further.[177] On the other hand, dialect and clan organizations continued to remain acceptable and their utility as institutions that facilitated private ordering is demonstrated by the fact that many still exist today, even though their roles have changed and they now subsist largely as philanthropic, cultural, and networking organizations. This raises another insight from the Straits experience. Where a form of private ordering developed as a result of a weak legal system, the development of the legal system[178] may reduce the need for such private ordering. For example, where enforcement of legal obligations is weak, inaccessible, or distrusted, exchange networks based on personal relations and norms assume greater importance, but this may diminish when the regime for contract enforcement becomes more developed.[179] This leads to a beneficial outcome if it expands the universe of potential counterparties.

177. Mak, *supra* note 56 at 93.

178. Today, Malaysia and Singapore have mature legal systems.

179. See also Landa, *supra* note 126 at 362. Analogously, as the state system evolved, the need for merchant guilds to secure merchants' rights declined. See Greif, Milgrom, and Weingast, *supra* note 128 at 773.

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