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Comments on the Report of the Mui Tsai Commission

(By Lt. Comdr. and Mrs. H. L. Haslewood).

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Note.—These comments refer to Hong Kong only, as we feel in no way qualified to discuss points concerning Malaya.

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From several sources we have been asked to comment on the Report of the Mui Tsai Commission.

We have carefully studied the Report word by word in conjunction with evidence, correspondence and details which we have obtained since 1919.

In compiling these comments we intend to avoid as far as possible such controversial words as buying, selling, slavery, servitude, etc., at any rate when referring to any particular transaction.

Referring first to the Majority Report we are in general agreement with the concluding paragraph of the Minority Report by Miss Picton-Turbervill, which reads:—

“I consider the recommendations enumerated in the Majority Report as very useful administrative reforms; it will be seen by the foregoing Report that in relation to the problem as a whole, I can only regard them as wholly inadequate.”

On the other hand we are much impressed by parts of the criticism made by the Majority Report on the proposed Ordinance put forward by Sir George Maxwell which is embodied with some few qualifications in the Minority Report.

Both in the Majority and Minority Reports the aim appears to be the same, i.e., to abolish the Mui Tsai system entirely and to afford adequate protection to all girls living away from their parents who in any way may be in need of such protection.

This ideal is also contained in the Loseby Report, which was the report of a local commission appointed by the Governor of Hong Kong prior to this present commission.

The following facts appear to be established without doubt and appear in both the majority and minority report and in the evidence:—

1.—There are a known number of registered mui tsai still known as mui tsai whose welfare is regulated by a special Ordinance (Hong Kong Female Domestic Service Ordinance).

2.—There are an unknown number of actual mui tsai who remained unregistered when registration took place.

3.—There are an unknown number of girls living with families or individuals who have obtained them generally in return for a valuable consideration, who if discovered would be classified as mui tsai or quasi adopted daughters although their possessors might describe

them as bona fide adopted daughters or bona fide prospective daughters-in-law, or relations.

4.—There are an unknown number of girls in all the above categories coming into and leaving the colony, principally from the mainland of China, but also in a limited degree from other places.

The Majority Report, broadly speaking, recommends the strengthening of some details of existing laws and procedure under them and hopes that girls living under the conditions of a mui tsai and at present unregistered will be detected by the appointment of two additional inspectors or inspectresses especially detailed for this purpose. It also expresses the opinion that the whole system is falling into disrepute and will in any case disappear in the course of time. They do not recommend any extended form of registration or listing.

The Majority Report appears to us to give far greater consideration to the susceptibilities of the more backward Chinese in observing "Chinese Customs" even when progressive Chinese law has abolished such customs, than to protecting the full birthright of every minor.

Before commenting on the Minority Report we wish to draw attention to clause 45a, Sections (1) and (2) of the Hong Kong Offences against the Person Ordinance given on pages 275 and 276 of the Report.

For those who may not have the report we give them below, as they appear to us to be of outstanding importance both with regard to the present position and to any future legislation or proposals.

45a.—(1) Every person who takes any part, or attempts to take any part, in the transaction the object or one of the objects of which is to transfer or confer, wholly or partly, the possession, custody or control of any minor under the age of 18 years for any valuable consideration shall be deemed to be guilty of an offence against this section, unless such person proves beyond reasonable doubt that the transaction was bona fide and solely for the purpose of a proposed marriage, or adoption, in accordance with Chinese custom.

(2) Every person shall be deemed to be guilty of an offence against this section who without lawful authority or excuse harbours or has in his possession, custody or control any minor under the age of 18 years, if any person has, within or without the Colony, purported to transfer or confer the possession, custody or control, wholly or partly, of such minor for valuable consideration after the 6th day of September, 1929."

In the past on the evidence available we were extremely sceptical as to whether there were in fact any "bona fide" adopters of girls. The evidence now available makes it clear that there are genuine adopters, but "bona fide adoption in accordance with Chinese custom" is still a vague and indefinable term. As Chinese law (see page 19 of report) lays down definite conditions of genuine adoption (which incidentally closely approximate to the conditions of the English Adoption of Children Act, 1926), we suggest that if the clauses of the Ordinance quoted above are still to stand the words "in accordance with Chinese custom" should be altered to read "in accordance with Chinese law."

Keeping the above law continually in mind, we turn to the proposals in the Minority Report.

Broadly speaking, the proposals here are that every girl living

in a family apart from her natural parents who is under the age of 12 or was under the age of 12 when she left her natural parents, and is not a near relation, becomes notifiable to Government Authority and is afforded protection in some form or other according to the category in which she may be placed. It makes no difference as to whether there has been a valuable consideration or not when the transfer took place from the natural parents to the family or individual concerned. Various other proposals are designed to ensure her freedom and general protection.

NOTE.—We have used the expression "natural parents" as it occurs throughout the report. A "natural child" is especially an illegitimate child, and the question may arise as to whether "natural parents" are parents of an illegitimate child only. It is not understood why the single word "parent" or "parents" is not used, as we presume that is the relationship meant. In any case it may be well to point out here that the problem is not one of the illegitimate child.

We suggest that the proposal to see that every such girl is actually notified and protected is thoroughly desirable, but considerable doubts arise in our minds as to whether the Ordinance proposed will effect what it purports to carry out, and in particular whether it will not open up the way for continued buying and selling on a large if not a larger scale than ever.

Sir George Maxwell's new proposed Ordinance cancels the existing Hong Kong Female Domestic Service Ordinance, which is essentially a "mui tsai" ordinance. This seems to be all to the good.

Although other Ordinances at present in force in Hong Kong are mentioned as being operative in conjunction with the proposed new Ordinance, there is no reference to the Hong Kong Offences against the Person Ordinance to which particular attention has been drawn by us above with special reference to clause 45a, Sections (1) and (2), and these sections appear to us to be of paramount importance.

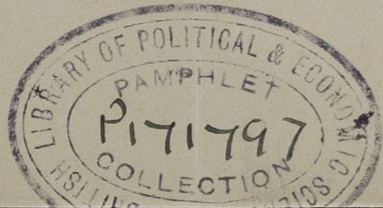
Presumably, as Sir George Maxwell does not mention them, they remain in force, as obviously he could not have proposed to cancel the whole of the very comprehensive Ordinance in which they are contained.

If, therefore, this law stands (and we feel it most desirable that it *should* stand, though perhaps in a slightly amended form), the transferring of a girl for a valuable consideration will still be illegal except for the bona fide purposes already mentioned and contained in these sections.

Presumably, Sir George Maxwell's Ordinance is designed to meet the position as it exists on the particular day in the Colony when the Ordinance comes into force and to meet any future cases that are found by detection, including those who may illegally enter the Colony subsequently.

But on page 97 the Majority Report, commenting on Sir George Maxwell's proposed Ordinance, says, "unlike the existing mui tsai, however, they would not be a diminishing company of registered juvenile domestic servants to which there would be no recruits; *the Ordinance would not forbid further transactions for domestic service either with or without a valuable consideration.* It would merely

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require official permission for such transfer." (We have placed in italics the vital words).

It is, of course, not necessary that Sir George Maxwell's Ordinance should forbid transfer for a valuable consideration, as such transfer is already illegal under the Hong Kong Offences against the Person Ordinance, Clause 45a, Section (1) and (2) quoted above, provided of course that it remains in force.

Now, the members of the Majority Report deal very fully in another section with these very clauses, and it is unlikely that they have overlooked them when making the statement to which we have just drawn attention; also the general report shows that oral discussion took place on two occasions with Sir George Maxwell concerning the points in his proposed Ordinance.

On the strength of this it would appear that perhaps it is proposed to cancel these sections, in which case it would seem that buying and selling of girls *would* have full scope for re-starting and increasing on almost any imaginable scale, and further, as the proposed new Ordinance is of universal application people of all nationalities would be able to take part.

Again, it would be in conflict with the Chinese Law prohibiting sales and create an impossible position with immigrants and emigrants.

There remains the question of the mui tsai or other girl who is given without valuable consideration. She is not covered by Article 45a, Sections (1) and (2) of the Hong Kong Offences against the Person Ordinance, but would appear to be covered by Sections (20) and (21) in the new proposed Ordinance, provided she is in the Colony at the time of transfer.

It would appear to be necessary to have some clause which covers the position of such a girl who had been transferred before arriving in the Colony. To some extent this may be met by another existing Ordinance referred to later.

It is necessary to realise the great problem resulting from the daily influx of Chinese to the Colony and the report draws full attention to it. Article 45a, Sections (1) and (2) of the Hong Kong Offences against the Person Ordinance appear to cover this problem from the legal point of view, but if not, could be amended.

It is reasonably certain that generally speaking a decision could not be reached on the moment of arrival in the Colony as to the *status* of any girl who was not a member of the family.

To what extent it could be detected when a girl was not a member of the family (quite apart from any status) is not known, as the Report shows that no attempt has been made to detect suspected mui tsai under the existing Ordinance and practically no effort has been made to inform incomers of the Hong Kong Law either by posters or leaflets or in any other way. This is astounding, but apparently true.

Whatever action may be taken in the future, it appears to be essential that the most thorough steps should be taken to see that all arrivals have had every reasonable opportunity of knowing the laws of the Colony.

Even so, we feel the fact must be faced that many girls will illegally be brought into the Colony. It would seem, therefore, that without being harsh or vindictive, any new laws must provide a penalty

which will simply not make it worth while to break the laws by withholding notification, whether the offender is in the Colony or subsequently becomes a resident.

It is a leading principle of British law that anyone setting foot on British soil is automatically free from any form of bondage or servitude and entitled to general protection, and any such girls who do enter Hong Kong must come under the benefit of that principle.

In passing, it might be well to say at this stage that we feel that every girl who under any scheme becomes notifiable should be given a written certificate which should include a statement of the above principles of British law, and make it clear to her that she is a free subject and entitled to British protection when on British soil.

Such a document might be of the greatest value to the girl if at any time she found that steps were being taken to transfer her, or commit any abuse, or attempt made to remove her from the Colony for improper purposes. It should be for her a sort of Charter of Freedom, a duplicate being held by Government Authority.

We also put forward the suggestion as to whether any document in the hands of the possessor of a girl which is not legal by either Chinese or British Law should be indelibly stamped or preferably perforated with wording such as:—"This document is not recognised in British territory."

To return to the main subject, we suggest that little weight should be attached to the objections raised in the Majority Report either with regard to the impracticability or the political undesirability of increasing the requirements of notification or inspection, or again, the keeping of permanent registers. Almost precisely the same objections were put forward before the registration of mui tsai, and the keeping of permanent registers is not an innovation in the life of communities. One example is the registration of foster-mothers and boarded-out children in England.

If it should be found that there are loop-holes in the proposed minority scheme we suggest the following as a preliminary skeleton outline for consideration, the clauses mentioned to be embodied as necessary in existing Ordinances and in Sir George Maxwell's proposed Ordinance in the same way as the general Ordinances and the special mui tsai Ordinance exist now side by side.

(a) A clause similar to Article 45a, Sections (1) and (2), of the Hong Kong Offences Against The Person Ordinance substituting in any case the words "in accordance with Chinese Law" for "in accordance with Chinese custom."

NOTE.—The ideals laid down in Chinese law are far higher than those commonly ascribed to Chinese custom, and they have a definition instead of being vague.

(b) On the date when the amended law becomes operative all persons having possession of a girl claimed to be within the bona fide clause shall notify Government Authority.

NOTE 1.—Such girls would be under the guardianship of Government Authority under the existing Ordinance, "Hong Kong Protection of Women and Girls Ordinance," Part (2), Article (32), shown on page 270 of the Report.

Inspection and control would be carried out as necessary.

NOTE 2.—It seems very desirable that those who have obeyed the law should be listed quite apart from those who have broken or evaded the law, and under these circumstances they may be expected to wish to notify in order to regularise their position.

(c) All other girls who are in the possession of any persons who have acquired them for a valuable consideration shall notify them to Government Authority.

NOTE 3.—They will come under systematic inspection and control. They will include all those mentioned in the main clause (a) above who have not been acquired for “ bona fide purposes.”

(d) A clause on the lines of the Protection of Women and Girls Ordinance, Part II., Article 32, calling upon all girls who have been received into a family without valuable consideration to notify Government Authority and to come under full inspection and control.

(e) A clause making the above conditions applicable to all persons who may become residents in the Colony and have any girl in their possession under any of the above categories.

NOTE.—The general existing ordinances have never been fully operative because the Secretary of Chinese Affairs, who under these Ordinances is the legal guardian of all transferred girls with full power to enforce their freedom and welfare, has never been able to carry out his functions, as he has never known the number, names or whereabouts of those he has to protect. Obviously he will never be able to do so till they are listed. Unfortunately the Majority Report does not recommend this course.

GENERAL NOTE.—It is not entirely understood why the Minority Report and Sir George Maxwell’s Ordinance divide the girls (excluding the bona fide ones) into different categories, whereby seeming to imply that at a maturer age they are bound to fulfil the calling in which they are placed.

We would suggest that one name, say “ ward,” would cover all those under the guardianship of Government Authority, the bona fide cases alone carrying a name descriptive of their calling.

We have no doubt that the Minority Report and Sir George Maxwell have excellent reasons for this and other proposals to which we have drawn special attention, and no doubt, in due course we shall hear of further details.

Finally, we wish particularly to point out and emphasise that these comments are not intended either as a full review or a final opinion of the Report, and at this stage they do not constitute definite proposals so much as questions for consideration.

It is in this latter spirit that they are put forward, and we should welcome any correspondence on our memorandum and particularly any criticism or correction on points we have raised, now that the whole problem is being discussed and considered in various quarters.

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