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Preface

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VANDERBILT JOURNAL OF TRANSNATIONAL LAW

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PREFACE

Every other year, the VANDERBILT JOURNAL OF TRANSNATIONAL LAW presents a symposium on a current topic in international law and practice. These symposia are intended to provide practitioners, scholars, and students with an opportunity for detailed exploration of a current topic in international law. This year, the symposium focused on Hong Kong's reintegration on June 30, 1997 into the People's Republic of China.

The symposium, HONG KONG'S REINTEGRATION INTO THE PEOPLE'S REPUBLIC OF CHINA: CONSTITUTIONAL ISSUES, POLICY APPROACHES & HUMAN RIGHTS CONCERNS, AND ECONOMIC & LEGAL IMPLICATIONS, was held at the Vanderbilt University School of Law on March 28-29, 1997.¹ Featuring presentations by diverse speakers from a variety of places and perspectives, the symposium addressed a broad range of issues. Topics ranged from comparative constitutional law to human rights and practical business concerns. While differences emerged, it was clear that fully understanding any one area requires knowledge of the others: the viability of markets may well depend upon the validity of documents proclaiming laws and the vitality of a people and their freedoms.

It is the hope of the editorial board that this and the following issue of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW will add to that knowledge. Partially as a result of the timing of the transition itself, this issue and the October issue of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW feature articles either presented at the symposium or related to it and the handover of Hong Kong.

1. Programs, including contact information for presenters and resources for additional materials on Hong Kong, are available through the VANDERBILT JOURNAL free of charge; please contact Linda Faye Johnson at (615) 322-2284 or via e-mail at "fjohnson@law.vanderbilt.edu".

The articles in this issue by Professors John Rogers, University of Kentucky College of Law, and Peter Wesley-Smith, Hong Kong University Department of Law, discuss historical matters surrounding the lease of Hong Kong. These articles provide insight into the future implications of the upcoming return of Hong Kong to China, not only for Hong Kong itself but for the United States in its interactions with what will soon be a "special administrative region" of the People's Republic of China.

This issue also features a bibliography, compiled by several editors of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW, which is intended to serve as a basic introductory research guide; for those needing more detailed listings of available resources and treatises, the JOURNAL gladly recommends consulting an itemization forthcoming in Part 2, Vol.27 of the HONG KONG LAW JOURNAL.

Additionally, there are three student notes on China-related topics; as a precursor to the symposium itself, these notes were presented on February 26, 1997 by their student authors as part of a Student Scholarship Series jointly-sponsored by the VANDERBILT JOURNAL OF TRANSNATIONAL LAW and the VANDERBILT LAW REVIEW.

The October issue of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW will include articles by Yu Ping, Consultant and Executive Committee Member of Human Rights in China; Professor Joseph W. Dellapenna, Villanova University School of Law and chair of the American Society of International Law's Law of the Pacific Region Interest Group and the American Bar Association's Committee on Chinese Law, (*The Lesson of the Triple Twisted Pine: Plum Blossoms on Mountain Peaks and the Future of the Rule of Law in Hong Kong*); Professor Theodore Hagelin, Syracuse University College of Law (*From Hong Kong to Guangdong: Doing Business in One Country with Two Systems*), and Professor Edwin Lun-Cheung Lai, Vanderbilt University Department of Economics, among others.² Remarks by the current U.S. Ambassador to China, James Sasser, an alumnus of Vanderbilt University's School of Law, as well as a transcription of a roundtable discussion held during the symposium, are also anticipated for the October issue.

2. Additional participants in the symposium included Professor Harold G. Maier, Vanderbilt University School of Law; Professor Jerome H. Reichman, Vanderbilt University School of Law; Ying Juan Rogers, trade consultant, Shadeland East International; Professor Jeffrey A. Schoenblum, Vanderbilt University School of Law; and Professor Derek J. Waller, Director of the East Asian Studies Program at Vanderbilt University.

Although the range and comprehensiveness of papers published here and in other law reviews and journals may seem to suggest that the topic of Hong Kong's transition has been addressed reasonably fully, many areas for further development in legal scholarship remain.³ Indeed, these areas are likely to become even more relevant after June 30, 1997. In particular, a detailed, clause-by-clause analysis of the Basic Law, its historical development, and potential application is needed; specifically, Articles 26 to 41, which were written primarily by China and purport to guarantee basic civil liberties now facing potential erosion, merit close attention.

While comparisons between Hong Kong's fundamental documents and the constitutions of many other countries need to be made, it is worth noting here—for possible future development—some parallels between U.S. jurisprudence and issues evolving in Hong Kong. Comparative analysis among the clauses ensuring personal freedoms in the U.S. (First Amendment speech provisions, Sixth and Fourteenth Amendment equal protection and due process concerns, etc.), the Basic Law, and international covenants (especially the International Covenant on Civil and Political Rights, which is incorporated in Article 37 of the Basic Law) are all areas ripe for additional research.

Likewise, issues surrounding judicial review, questions of jurisdiction and authority, and the power of the courts to control aspects of the economy need further consideration. For example, in many respects, Hong Kong in 1997 is much like the United States in 1803, before U.S. Chief Justice Marshall delivered the *Marbury v. Madison* decision, or for that matter, prior to the U.S. "Commerce Clause" cases and judicial scrutiny of economic regulations which dominated the first decades of this century.⁴ How courts in Hong Kong, which has the world's eighth-largest trading economy, choose to resolve such questions—and whether the political forces in Hong Kong and China will respect the court's decisions with regard to them—will have significant repercussions.

Basic separation-of-power-styled issues are at a critical juncture, especially with regard to the Provisional Legislature. Because China may seek to "vet" judges through the Provisional Legislature, judicial independence is at stake; scholarly examinations of such issues are relevant not only for the survival

3. Simon Doctor & Peter Wesley-Smith, *Handing Over the Law*, NEW GAZETTE, February 1996 at 32. See also William H. Overholt, *Twelve Tips for the Markets*, NEWSWEEK May 19, 1997 at 48, and Andrew Neil, *Hong Kong Surprise*, VANITY FAIR, March 1997 at 158.

4. 5 U.S. 137 (1803). See U.S. CONST. Art. 1, § 8; see also Art. VI. See also *Lochner v. New York*, 198 U.S. 45 (1905) and subsequent cases.

of the rule of law in Hong Kong, but also for what they reveal about what other regions and countries value within their own borders.⁵

The Editorial Staff of the VANDERBILT JOURNAL OF TRANSNATIONAL LAW hopes that the articles and ideas presented here may inspire additional works on issues relating to the transfer of Hong Kong; such scholarship may be increasingly necessary if the Basic Law is to exist as a worthwhile document and not mere window-dressing.

We remain grateful to each of the symposium participants: they have our thanks not only for deepening our appreciation of issues surrounding the transfer, but also for their teamwork and collegiality and for exemplifying the diversity and vitality of legal scholarship. We also appreciate the comments made by Professor Jonathan I. Charney, Vanderbilt University School of Law, with regard to speakers during the initial planning phases of the symposium last spring. We extend special tribute to Professor Harold G. Maier, Vanderbilt University School of Law, for his expert interest, support, and continuous good will with regard to scholarship and to student initiatives. Additionally, we thank Dean David F. Partlett, Associate Dean Donald J. Welch, Jr., and Assistant Deans Anne Brandt and Sue Ann Scott for their invaluable assistance.

Finally, I would like to acknowledge the work of my predecessor, Jonathan Wike, who served as Symposium Editor for 1995-96, as well as the contributions made by the 1996-97 Associate Symposium Editor Keith S. Koegler and the 1997-98 Executive Symposium Editor Kendall L. Kelly. Special thanks are also due Linda Faye Johnson, whose patience, humor, and professionalism are a help beyond measure.

Laurelyn E. Douglas
Executive Symposium Editor 1996-97
May 1997

5. See, e.g., Edward A. Gargan, *Hong Kong Fears Unraveling of Rule of Law*, N.Y. TIMES, May 7, 1997 at A1 and A8; see also Kristen Choo, *Zero Hour for Hong Kong and Uncertain Outlook: ABA Team Members Differ on Hong Kong's Fortunes Under Chinese Rule*, ABA JOURNAL, May 1997. See also Anthony Lewis, *Politicians Intimidate Judiciary*, N.Y. TIMES, March 29, 1997. ("When we urge countries such as China to adopt a rule of law, a large part of what we mean is an independent judiciary. Se we should be worried when American politicians get into the business of intimidating judges.")