

## Introduction

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Today, as a declared heritage site in Hong Kong, the former Victoria Prison at No. 16 Old Bailey Street, including the Central Police Station Compound and the Central Magistracy, attracts a steady flow of visitors. We may assume that at least some of them have prior knowledge of the former presence here of its most famous inmate, namely Ho Chi Minh. We may also assume that others with no prior knowledge learned of this fact through information provided by a guide or through a careful reading of signboards. As revealed by photographs and exhibits, renovation and expansion of the prison compound, which continued through the twentieth century, transformed the site radically from its earlier appearance, even if prison practices were little altered across the decades. Becoming a remand prison after World War II, the prison began to admit illegal immigrants and Vietnamese “boat people” in the early 1980s. It was decommissioned in 2006.

Ho Chi Minh is believed to have been incarcerated in Victoria Prison’s B-Hall, constructed in 1914, and visitors today can certainly imagine the circumstances both inside the cells and in adjoining courtyards. A major attempt has been made through dioramas to capture the atmosphere. Nevertheless, Ho Chi Minh’s prison number along with cell number do not appear to have been researched against prison documents, even allowing for modifications over time to the prison halls. Although Ho Chi Minh’s former presence is boldly announced on the exterior of the red brick walls of B-Hall, he is in no sense memorialized. Inside B-Hall his name is referenced alongside Filipino nationalist, José Rizal, who made an inspection visit to the prison in 1892, *inter alia* describing harsh conditions. However, the names of a number of other illustrious inmates of Victoria Prison are simply not acknowledged, such as a Vietnamese prince and an Indonesian revolutionary, on whom we have much more to say. No other exhibit or piece of evidence links Ho Chi Minh with B-Hall, much less any particular cell. As explained to the author by a museum guide, the presence of a trilingual English–Chinese–Vietnamese notice in B-Hall was actually for the benefit of Vietnamese refugees arriving in the 1980s.

As announced in the Hong Kong media almost ninety years ago, the arrest in the British colony of the Vietnamese revolutionary then going by the

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Cantonese pseudonym Sung Man Cho led to one of the most important trials in local legal history. Apprehended on June 6, 1931 in a tenement in Kowloon City along with a young Vietnamese woman described in court documents as his niece, Ho Chi Minh's subsequent incarceration along with court appearances was widely reported at the time. As the *South China Morning Post* of August 9, 1932 wrote, "much of the inner history of the earlier proceedings will never be known, except by the Government officials concerned."<sup>1</sup> Possibly so, but it is a challenge worth pursuing. While the life and times of Ho Chi Minh, including the Hong Kong episode, are standard fare for an audience in Vietnam today, much less has appeared on this subject in Western writing. Less well known, because it was not reported in the local media – and because he was long demonized in Indonesia under the generals – was the simultaneous incarceration in Victoria Prison of leading Indonesian nationalist-communist theorist and then roving Moscow agent Tan Malaka.

In fact, as Hong Kong governor of the day, Sir William Peel, reported to London at the time of Ho Chi Minh's final exit from the colony on January 25, 1933:

I must draw your attention to the very unsatisfactory position which this case and similar one of Tan Malaka reveals. The police of this Colony have had in their hands two of the most dangerous of Moscow's agents in the Far East but have been powerless to do anything beyond deporting them from Hong Kong to prevent them from continuing to work for subversion of European rule in the Far East.<sup>2</sup>

While Governor Peel was not wrong in his estimations of the dangers posed by Ho Chi Minh and Tan Malaka to colonial order, within the decade it was actually militarist Japan that would achieve what the governor feared, namely the invasion and occupation of the European colonies in Southeast Asia. As modern history informs us, the defeat by Japan in 1942 of the Dutch in the sprawling Netherlands East Indies and the total eclipse of the collaborationist Vichy French regime in Indochina in March 1945 provided the power vacuum necessary for the nationalists to lever themselves into power. In epochal events at the moment when the Republic of Indonesia was proclaimed in Jakarta on August 17, 1945, Tan Malaka was in the thick of things, as indeed was Ho Chi Minh in Hanoi prior to declaring the Democratic Republic of Vietnam (DRV) on September 2, 1945. On the other hand, the Ho Chi Minh and Tan Malaka cases – their respective arrests and release from captivity in Hong Kong – can

<sup>1</sup> *South China Morning Post*, August 9, 1932.

<sup>2</sup> Public Records Office (PRO), London, Colonial Office record series 129 (CO 129)/539/2 Governor William Peel, Government House, Hong Kong to Sir P. Cunliffe-Lister, Foreign Office (FO), London, January 31, 1933. As he further lamented, by deporting Ho Chi Minh in the direction of Vladivostok, he was actually obliged to help him to return to the fold of his Russian "principals."

and have been upheld as exemplars of British rule of law and jurisprudence. This is all the more apparent with its attention to procedural detail and rights of appeal, especially with respect to extradition involving political cases. Indeed, these are principles not without resonance in many parts of the world today, Hong Kong included. This came to world attention in 2019 with respect to wide-scale acts of civil disobedience against a proposed bill that could allow Hong Kongers to be extradited to mainland China to face charges, *inter alia* leading many to question the enduring nature and status of the legal jurisdiction in Hong Kong to which Ho Chi Minh evidently owed his life.

At the core of this book stands the *Sung Man Cho v. Superintendent of Prisons* case, as the trial proceedings involving Ho Chi Minh were known in the Hong Kong Supreme Court as well as at his appeal to the Privy Council in London, then the final appellate court for Hong Kong. With Tan Malaka winning his freedom through a different process, we seek in this book to assay just how the *Sung Man Cho v. Superintendent of Prisons* case came to test Hong Kong's legal system with respect to the adjudication of deportation and extradition cases. To this end, new light is brought to bear upon the contradictions and moral dilemmas faced by the British colonial authorities in handling this case through the lens of newly available or long-ignored archival material. Thus the distinguishing feature of this work, as opposed to the numerous general biographies on Ho Chi Minh, is the attention paid to a reconstruction of the legal environment surrounding his case in Hong Kong, the ensuing British intramural bureaucratic exchanges, the diplomatic interventions by the French, and the local and international media environment. A separate concern of the book – also entangled with a discussion on colonialism and anticolonial nationalism – is to reveal the agency demonstrated by Ho Chi Minh in superintending the launching of a unified Vietnamese communist party from his base in Hong Kong while also reaching out to Vietnam and other parts of Southeast Asia. Although the stark facts surrounding Ho Chi Minh's incarceration in Hong Kong's Victoria Prison have long been known, another distinction of this book is to introduce his hitherto ignored prison correspondence, mirrored by the experience of Tan Malaka as drawn from his autobiography.

This book is not a biography as such but it does examine the subject's life history: his family roots, his early education and political awakening, especially during formative years in France, and even intimations of domestic life such as his marriage when he moved to China, thus somewhat belying his official image of lifelong bachelorhood. Between the lines we see the humility of the man, his trademark frugal lifestyle, his intelligence, his charisma, his deceptions and vanity, his sometimes misplaced loyalty to comrades, his dedication to nation and, at the same time, his deference to Moscow even when his native instincts knew better. It is also true, as the book affirms, that he

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was a man obsessed with his vocation, and his vocation was making revolution. As others have said, it was not a dinner party.

Revered in Vietnam today as a father-figure of his nation, just fifteen years prior to his declaration of independence, Ho Chi Minh's life was under threat should the British accede to French requests for his extradition or deportation to a French port (even if granted a deferred sentence). As he well knew, the death sentence handed down in his native land hung over him like the sword of Damocles. With Ho Chi Minh spending twenty months in detention in Hong Kong (from June 6, 1931 to January 22, 1933), the Hong Kong public could not get enough of the story of his arrest and trial. With newspapers displaying banner headlines of the complex legal proceedings transpiring in Hong Kong and London until the moment of his vindication or at least his escape from deportation to French territory, the storyline from the British colony as to rule of law and justice still masked many of the basic facts. With Ho Chi Minh well known to the French authorities as Nguyen Ai Quoc, dating back to his youthful intervention at the 1919 peace talks in Versailles, and as a master revolutionary seeking to bring down French rule in its colonial sphere, at the time of his incarceration in the British colony, communist rebellion had just broken out in central Vietnam and it was assumed that he had a determining influence on the events.

Time passed. Reports on the court case in Hong Kong and appeal to the Privy Council in London jostled for newspaper space with the global economic depression, the first Japanese military assaults on China, Chiang Kai-shek's ongoing purge of the Left, and many other local events. Even with an appeal to the Privy Council pending, in October 1931 the ruling British Labour government with its strong democratic socialist Fabian Society component suffered an electoral defeat and a national coalition took over. Moreover, once Ho Chi Minh departed the scene following his secret release by the Hong Kong government on January 22, 1933, he was no longer news. Even his death was falsified in a bid to throw off his pursuers.

As Dennis J. Duncanson wrote in his landmark article of 1974, "error has persisted over the Hong Kong episode," especially with respect to appeal on his behalf to the Privy Council on a suit for writ of *habeas corpus*, among other details. "No full account of these years in Ho-chi-Minh's life is likely ever to be possible," he asserted, noting that the police, administration and lawyers' files in Hong Kong, as with those of Singapore and the international settlement in Shanghai, perished during the Japanese occupation.<sup>3</sup> This is not entirely the case. It is precisely the survival of a volume of these records in French archival repositories that allows us to elaborate upon what Duncanson found missing,

<sup>3</sup> Dennis J. Duncanson, "Ho-chi-Minh in Hong Kong, 1931–32," *China Quarterly*, 57 (1974), 85.

as well as to offer some corrections. Duncanson, however, had the privilege of talking to Mrs. F. H. Loseby, widow of Ho Chi Minh's Hong Kong solicitor, as well as to Lung Ting-Chang (one of Loseby's clerks), and even to A. H. Dickinson, the Singapore-based police officer active in the discovery of Ho Chi Minh's identity and whereabouts. While the opportunity for this kind of primary witness testimony has long passed, it should not have escaped Duncanson's attention that the French authorities – especially the police or *Sûreté* – were privy to most of this documentation and, indeed, generated even more through their network of local agents and spies.

That Ho Chi Minh could win his case in Hong Kong, going on to fight another day, also brings into relief an old sore in Vietnamese history at the heart of many debates during the long “Vietnam War”: namely, was the man a patriot first and communist second or was it the other way around, or even some kind of mix of both? It is hoped this book will help readers to make up their minds; but there is a bias here as well. Simply, when he was arrested in Hong Kong, the Vietnamese “patriot” was also a Moscow-trained agent and the Soviet Union was paying his rent. As mentioned, rebellion had also just broken out in central Vietnam and it was communist-tinged. The British too were struggling to neutralize what they knew were concerted efforts to implant a communist party in Singapore and Malaya following on from an abortive communist rebellion in the Dutch East Indies (present-day Indonesia). The hand of Moscow, as Duncanson highlights, was clear.

While the biographical literature on both Ho Chi Minh and Tan Malaka is rich and varied, seldom have their careers been evaluated as part of a global revolutionary process propelled by the Bolshevik revolution and anchored to Leninist planning. They knew each other's reputations and they personally met in Moscow and Guangzhou at a time when an Indonesian communist party was well established and the younger Tan Malaka's revolutionary career was more advanced. As Oliver Crawford writes in his study of Tan Malaka's political thought, both he and Ho Chi Minh were part of a Comintern or Communist International project in support of uprisings of the oppressed across the colonial world. “In this manner,” he explains, “Marxism allowed Asian revolutionaries to see themselves as part of a process with an unstoppable historical momentum, extending across borders, with a heroic past behind it.” For both of them, “national and international struggles were bound together, and politics could not be understood purely at a national level.”<sup>4</sup> Tan Malaka was no less committed to internationalism, although he was an early defector from the Comintern project in the interest of his own national-communist approach.

<sup>4</sup> Oliver Crawford, “The Political Thought of Tan Malaka” (unpublished PhD diss., University of Cambridge, 2019), 112.

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It was in fact during the independence struggle of 1941–45 that Ho Chi Minh played the nationalist card to the full, exposing the failure of the Vichy French to protect Vietnam from the extreme hardships of Japanese occupation including mass famine.<sup>5</sup> His ability to harness nationalism and self-sacrifice during America's war is no less legendary. Even setting aside the hand of Moscow, many other factors were at play in the general evolution of Vietnamese anticolonialism, including family and regional ties, the pioneer actions of Vietnamese literati and patriotic royal figures – some of whom looked to Japan for leadership – the impact of the Chinese revolution upon Vietnamese reformers, the role of competing nationalist and communist parties at home, and the influence of Chinese and French left-wing politics. While it may be argued that in later decades both Tan Malaka and Ho Chi Minh would adopt more autonomous nationalist positions – and this was already apparent in the throes of independence struggles following the defeat of Japan – our focus is precisely upon an age when conspiratorial Leninist organizations sought to graft anticolonial nationalism onto their internationalist communist agendas.

But that was not the end of the story, at least in consideration of Japan's invasion and occupation of China and most of mainland Southeast Asia. As war closed in, Americans joined forces with Ho Chi Minh's embryonic fighting force – the Viet Minh – to undermine Japanese control in Indochina. This time, Moscow was nowhere to be seen. Ho Chi Minh had now connected with the American Organization of Strategic Services (the forerunner of the CIA), which supplied him with guns, food and, crucial for his life, antimalarial medicine. Moreover, in mid-1946, at a juncture when Chinese Nationalist forces, after entering Indochina to take the Japanese surrender, were under the obligation to withdraw from northern Vietnam, Ho Chi Minh would travel to France in a vain attempt to obtain French recognition of Vietnam's independence and unity.

When no decisive progress was made at the Fontainebleau Conference of July–September 1946, hotheads and hardliners on both sides plunged the nation into a thirty-year war.<sup>6</sup> Famously, France failed in 1954 at Dien Bien Phu in its set-piece battle against the People's Army of Vietnam. With the Geneva Accords formally partitioning Vietnam along the seventeenth parallel, the Western-backed State of Vietnam under the former emperor of Annam,

<sup>5</sup> See Geoffrey C. Gunn, *Rice Wars in Colonial Vietnam: The Great Famine and the Viet Minh Road to Power* (Lanham, MD: Rowman & Littlefield, 2014), chapters 6, 7 and 8.

<sup>6</sup> See Philippe Devilliers, *Histoire du Viêt-nam de 1940 à 1952* (Paris: Editions de Seuil, 1952); Stein Tønnesson, *Vietnam 1946: How the War Began* (Berkeley: University of California Press, 2011). Both books discuss the timing of the Chinese withdrawal and how it paved the way for the Franco-Vietnamese outbreak of war. Also see Geoffrey C. Gunn, "Prelude to the First Indochina War: New Light on the Fontainebleau Conference of July–September 1946 and Aftermath," *Tonan Ajia Kenkyu Nenpo*, 54 (2013), 19–51.

Bao Dai, was replaced in 1955 by the Republic of Vietnam under President Ngo Dinh Diem. At his invitation, America stepped in on the ground with its crusade to contain communist expansion. Although he was temporarily eclipsed as hardliners took up the running, Ho Chi Minh would return to the center of power around the slogan of Vietnamese unification.

Today Ho Chi Minh lends his name to the southern city of Saigon which his northern successors took over in April 1975 following the surrender of adversaries in the Republic of Vietnam (and with Soviet-supplied tanks moving in). In this great struggle, the sacrifices incurred by the unification-of-Vietnam-at-all-costs struggle were unbelievable. Today networks of expansive and well-maintained war cemeteries provide silent witness to the fallen northern fighters and the southern comrades, even if those for their southern adversaries are in a state of decay. National museums tell an even grimmer story of defoliation, the use of herbicides and the lingering effects upon humans of such chemicals as Agent Orange, the baneful legacy of unexploded ordnance, and the heroic sacrifice. In any case, this was a war which tore both Vietnam and America apart.

### Colonial Lore on Deportation

With their separate jurisdictions, in the opening decades of the twentieth century both Hong Kong and the Portuguese-administered territory of Macau played the role of sanctuary for political exiles such as of Sun Yat-sen and Vietnamese nationalists who modeled their political organizations along the lines of the Chinese Kuomintang. Although it is less well known, in the 1910s the Portuguese Republican governor of Macau, José Carlos da Maia, turned a deaf ear to French requests to detain and extradite anticolonial rebels charged with bombing outrages in Hanoi, namely the scholar-patriot Phan Boi Chau and his follower the rebel Prince Cuong De born Nguyen Phuoc Dan (1882–1951). Phan Boi Chau was leader of what came to be known as the Dong Du or Look East to Japan movement founded at the outset of the twentieth century, and Cuong De was a scion of the royal family of Annam with its court in Hue, so that Governor da Maia may well have had reason to doubt that the pair were merely “common criminals,” as the French alleged.<sup>7</sup> In addition, when Governor da Maia took up office on June 10, 1914, he rejected the Yuan Shi-kai regime’s demands to extradite Sun Yat-sen partisans then

<sup>7</sup> On Phan Boi Chau’s early contacts with Cuong De, first visit to Japan and the Dong Du Movement see David G. Marr, *Vietnamese Anticolonialism, 1885–1925* (Berkeley: University of California Press, 1971), chapters 5 and 6.



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granted refuge in the Portuguese colony.<sup>8</sup> In the late 1920s, various military opponents of the Nationalist government in Guangzhou were also tolerated in Hong Kong notwithstanding immense pressure being brought upon the British to surrender them.

As the legal scholar Christopher Munn has pointed out, even though deportation and extradition were sometimes confused by local officials in Hong Kong, they had different purposes and followed separate procedures. By definition, deportation was the expulsion of a person from a jurisdiction at the initiative of the government of that jurisdiction whereas extradition was the surrender of a fugitive charged with an offense in another jurisdiction at the request of the authorities of that other jurisdiction. While extradition could be granted for serious criminal cases, it was disallowed for offenses of a political nature. Whereas deportation proceedings were invariably shrouded in secrecy, extradition required a hearing in an open court. Extradition was regulated by imperial acts and by treaties between Britain and other countries that extended to Hong Kong. Fugitives committed by a magistrate for a decision by the governor were allowed fifteen days to apply to the Supreme Court for a writ of *habeas corpus*. Technically, safeguards were required in the case of requisitions by the Chinese authorities, as with a guarantee against torture. As he points out, *habeas corpus* actions were successful in several extradition cases in the Hong Kong courts reaching back to the opening decades of the twentieth century.<sup>9</sup>

In fact, extradition clauses were inserted into the very first international treaties that Britain and other European powers imposed upon China in the wake of the Opium War of 1839–42. As Glen Peterson has pointed out, while the initial treaties made no mention of political crime, the extradition of political offenders quickly became a subject of debate in China, in British colonial spheres and in Europe around this time. However, by the 1920s and 1930s, issues surrounding political asylum and sanctuary for persons fleeing political charges in China grew increasingly acute, particularly at a time when China's central government lost authority and warlordism took over, alongside the challenge posed by the rise of communism.<sup>10</sup>

<sup>8</sup> In making the case for extradition of the rebels, on October 3, 1915, the French consul in Hong Kong cited Article II of the Treaty of July 13, 1854, between Portugal and France relating to the extradition of “common criminals.” See Geoffrey C. Gunn, “Clandestinity and Control: The Macau Congress of the Indochina Communist Party (March 27–31, 1935),” *Review of Culture* (Macau), 45 (2014), 47.

<sup>9</sup> See Christopher Munn, “‘Our Best Trump Card’: A Brief History of Deportation in Hong Kong, 1857–1955,” in Michael H. K. Ng and John D. Wong (eds.), *Civil Unrest and Governance in Hong Kong: Law and Order from Historical and Cultural Perspectives* (New York: Routledge, 2017), 35–6.

<sup>10</sup> Glen Peterson, “Forced Migration, Refugees and China's Entry into the ‘Family of Nations’, 1861–1949,” *Journal of Refugee Studies*, 31: 3 (2018), 275–6.



The binding legislation during this period was the Chinese Extradition Ordinance of 1889, essentially allowing a requisition for the extradition of a fugitive criminal who was the subject of China. Formally the request was made by “some officer of the Chinese government.” But with the collapse of central government and with increasing pressure exerted by provincial authorities in China, the British were moved in October 1927 to modify the Ordinance of 1889 by substituting “Chinese authority” for the term “Chinese government.” At the same time they sought to underline the need of the authority to offer “certain engagements” (precluding torture and other cruel punishments) if extradition were to be acted upon.<sup>11</sup> The Chinese Extradition Ordinances of 1889 and 1927 explicitly ruled out extradition for political offenses. Besides China, protocols relating to extradition requests to French (Indochina) or American jurisdictions, as with the Philippines, also tested specific treaty arrangements with the concerned powers.

By this juncture, colonial elites in the British, French and Dutch colonies in Southeast Asia were galvanized by threats to internal security such as were emerging from native nationalists, immigrant populations pulled by the politics of the homeland and upstart communist parties. Various legal instruments were devised to stem this danger using deportation and banishment orders. Banishment to countries overseas was usually effected in Hong Kong and Singapore on an order made by the governor-in-council specifying the ship by which the deportee was to leave and the destination port (in China). In those days many of those who were banished sailed from Singapore to China and simply disappeared. Ho Chi Minh was a French-protected person and a native of Indochina, and the normal procedure would be to deport such a person on a ship leaving for an Indochinese port. In reality, because at this time Asians rarely held passports, the procedure usually involved a “banishment inquiry” conducted by an administrative officer with magisterial powers, principally to establish identity and place of birth.<sup>12</sup> Nevertheless, revisions to standard deportation orders were found necessary, as in the Straits Settlements (principally Singapore and Penang), where a number of agitators against Dutch rule in the East Indies sought refuge in the British colony. Hong Kong would follow suit in seeking to tighten its legislation, although necessarily involving detailed discussion with London and particularly the Home Office on the particular parameters surrounding British conventions on political refuge.

Political events also interceded in Hong Kong, thoroughly testing British principles on political asylum. Notably, the crackdown on the Left by forces

<sup>11</sup> *China Mail*, October 8, 1927, 1.

<sup>12</sup> For this author’s admission that he had taken part in such procedures himself, presumably during the period when he served in the Malayan Civil Service, see Duncanson, “Ho-chi-Minh in Hong Kong,” 90, n. 90.

loyal to Chiang Kai-shek in Guangzhou in December 1927 prompted thousands of would-be political refugees to descend on the border area with Hong Kong. This led to pro and contra views on the way the Ordinance could or should be modified, which came to light with respect to moves to amend the Deportation Ordinance coming into force on November 15, 1929. As noted in an official report, “The Governor-in-Council may therefore, at any time summarily issue a deportation order against any person who in his opinion is an alien, if he deems it to be conducive to the public good that such an order be issued.” This sentence amended Section 3 (2) of the 1917 Ordinance to counter criticism that deportation could be imposed without justification in a court of law, without inquiry to allow the person to be heard *and* without reference to any particular statutory provision. Henceforth the deportation order would include reference to the particular statutory provision.<sup>13</sup>

The hardline view was expressed by G. S. Moss, the British consul in Guangzhou, in a communication of December 9, 1928, to Sir Miles Lampson, serving as British minister to China between 1926 and 1933. Commenting upon the presence in Hong Kong of the former Kuomintang Left figure, Wang Jingwei, as well as a party of rebel generals from Guangxi, he deplored the legal environment where “outlaw leaders conducting plots against the Central Government authorities in Kwantung has severely endangered relations between Canton and Hong Kong.” Noting that the Hong Kong government was strictly bound by colonial law on extradition and deportation to the extent requiring cause in a court of law upon challenge of a writ of *habeas corpus*, he complained that this had acted as a block to summary deportation orders. In no uncertain language, he rejected the “stock” Hong Kong government argument that “the opponent of today may be in power tomorrow.” He also decried the “external casuistic legal view” that he found to obtain in government circles, “where extreme jealousy obtains of anything which might possibly be construed as interference by the Chinese authorities in Hong Kong affairs.”<sup>14</sup>

Supported by the British legation in Beijing, this view was nevertheless repudiated as “unthinkable” by the Foreign Office (May 22, 1930): “The Hong Kong Government would never, except under the compulsion of the Secretary for State, agree to this [political rendition to China], since it would in effect make the Governor-in-Council in this matter a mere puppet of the Nanking government.” Moreover, “it would of course be contrary to the traditional policy of His Majesty’s Government who have always allowed the country to

<sup>13</sup> PRO CO 129/526/4 China: Deportation of Political Refugees from Hong Kong, 1930. Marginal note J. H. Kemp, Attorney General.

<sup>14</sup> PRO CO 129/526/4 China: Deportation of Political Refugees from Hong Kong, 1930 Consul Moss H. M. Consulate, Canton, to Sir Miles Lamson, December 9, 1929.