



Rational development under uncertain *de facto* jurisdictional boundaries



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ABSTRACT

This interdisciplinary study, drawing on knowledge in institutional economics, history, and cartography, uses evidence based on government files up to 1975 and disclosed since 2003, aerial photographs from 1945 to 1975, and NGO publications evidence to show that developers used metes and bounds, namely the original walls of the main fort as modified by public roads, and the surveyed alignment of a stream, to delimit their building lines under uncertain jurisdictional limits of the boundaries of the Kowloon (Walled) City in spite of certitude of the alignments of its walls. In this light, the paper discusses the proposition that to both the Chinese and colonial governments, “Kowloon City”, consistently referred to as the “Kowloon Walled City” (KWC) in post-war official Hong Kong government files and recent English language academic literature, had a great sign value in terms of Peirce’s theory, as it pointed towards something more than a disused solitary fort. This value cannot be dismissed when articulating present heritage management for the KWC as a public Chinese garden.

Boundary crossings must be expected to occur, even when property is clearly defined, because some persons will seek to obtain differential advantage by crossing borders... (Buchanan, 1993: p.11).

1. Introduction

Modern real estate development presupposes clearly delineated property rights. These rights spatially require not only clear delineation of the proprietary boundaries of individual lots (Lai, 2015), but also clear demarcation of spatial limits, within which these lots are bundled as if clearly subject to a specific legal and administrative jurisdiction. When either type of boundaries is uncertain, the economic prediction is that interested parties would rationally seek to reduce ambiguities to constrain rent dissipation due to the transaction costs of conflict. When boundaries are disputed, *natural boundaries* based on metes and bounds (i.e., physical objects such as paths, graves, trees, or rivers) and a reasonable degree of deviation from the *de jure* boundaries asserted by one authority are an economically acceptable solution. But where the metes and bounds in question are in the form of an outer defensive wall in an urban setting, then the matter is more complicated than a path for demarcating farm lots. The redevelopment of low-rise, village-type housing into high-rise modern development at Kowloon City, which has become officially and recently also academically¹ called in English the

“Kowloon Walled City” (KWC), with *ambiguous jurisdictional borders* in colonial Hong Kong is a case in point. This paper shows that developers confronted by uncertainty in jurisdictional boundaries and property rights acted rationally. They did not unreasonably step beyond the *natural boundaries* of the Kowloon City, chosen by the post-war colonial government as the definitive limit of *de facto* Chinese jurisdiction, although their building works involved some incursion into territory defined by the colonial government in terms of some walls of the Kowloon City serving as *de jure* boundaries.

2. Research and institutional background

Academic and popular imaging of the Kowloon City as the “Kowloon Walled City” (KWC) (Popham, 1993; Yau, 1994; Girard et al., 1999; Carney, 2013) has been fixated by its ultimate built form destroyed by the colonial government based on an announcement made in 1987, when this form was actually only 15 years old. Its popularly-known physique was just a *fraction* of the true Kowloon City, as defined by its walls, and the life history of this “City of Darkness” (Popham, 1993; Girard et al., 1999; Carney, 2013), was only a *brief moment* in its history, which dated back 140 years before that, when it was built as a fortified Manchu administrative centre against the then-newborn British Crown Colony of Hong Kong. British annexation of Kowloon in

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¹ Endacott (1964), for instance, used the original name, “Kowloon City”. But the official post-war name, “Kowloon City,” refers to the wider administrative district and KWC refers to the part of the old fort that became famous for its post 1963 built form and density.

1860 moved the colony's border very close to the Kowloon City's gates, which lied close to Boundary Street the then international border. Then the locality of the Kowloon City, with a commercial Chinese town outside the wall with it axial Kowloon Street that pointed towards Kowloon Bay connecting to a pier ("Lung Chun Pier", "Lung Chin Jetty" or Kowloon Pier) completed in 1875 and extended to 960 feet long in 1892 nearby to serve it (Sinn, 1987), became part of the New Territories, which were leased to Britain for 99 years in 1898 as an extension, even though successive Chinese governments continued to regard the Kowloon City as "always" under Chinese jurisdiction due to a provision in the Convention of Peking, which was understood to provide for the use of Kowloon Pier by the Chinese government.

The Kowloon City, as it was in 1847, consisted of a fortified town (2.7 ha) close to the natural shoreline of the Kowloon Bay with a magistracy court (yamen), barracks, and some civilian houses on low ground that was, more or less, rectangular in shape and enclosed by a thick stone wall; along with an outer and thinner triangular area enclosed by a thin stone wall that went up to the summit – a knoll called Pak Hok Shan (White Crane Hill), which has never been recorded on any official map but formed an integral part of the fortified town. To give an idea of the size of the fort: it could well accommodate a building as big as Buckingham Palace (about 1.3 ha²) or the White House (0.14 ha³).

During World War II, the Kowloon City's walls were quarried by the Japanese occupiers using POWs to yield construction materials for expanding Kai Tak Airport by reclamation of the sea, which buried the Kowloon Pier (Sinn, 1987: p.40; Kowloon City District City Council, 2005: p.38). Due to political pressure exerted by the Chinese government, which insisted that the Kowloon City was under *de jure* Chinese jurisdiction, the post-war colonial government had a policy of refraining from taking action against what it declared as squatter structures erected *within* the "Kowloon Walled City". However, it was never clear as to where the *true boundaries* of the Kowloon City or KWC actually ran because there was no cadastral or mapping information on the Kowloon City from the time of the Convention of Peking. This uncertainty was not a matter of politics, but the nature of a walled city as a physical entity and a powerful sign of Chinese authority in the British colony.

In terms of sign value, a walled city or town,⁴ not to mention a fort, has great research and policy attractions in architectural, heritage, and historical studies, as evidenced in the writings of, for instance, Ando (1978), Wall (2011), Kelley and Johnson (2004). In Chinese culture, it stands for the authority of the government (Trewarth, 1952; Shen, 1994). Almost all administrative cities and townships in Dynastic China were walled (Shi, 1992). In the Kowloon City, the presence of the residence and offices of a magistracy testified to the actual function of the fort. This explained the motif of Chinese diplomatic concern over a small, solitary, and virtually un-governed Chinese city on "British soil" throughout the entire history of the fort. That the colonial government did not eradicate the Kowloon City by fully abolishing its name or removing its walls from cadastral or other map records, but rather encircled it with roads and other land use zones that served to delimit the City's boundaries, and retitled it the "Kowloon Walled City" could be seen as a *symbolic interaction* that consolidated it as a sign of Chinese sovereignty over Hong Kong in the future. In practical terms, as the post-war Chinese government was not politically powerful or ready enough to re-occupy and govern the Kowloon City (or the rest of Hong Kong), its approach was to *deny the colonial government any means to administer the City as far as it was a living quarters for the Chinese* and took

² <http://www.buckinghampalace.co.uk/buckingham-palace-tours.php> (accessed 11 July 2016).

³ <http://www.whitehousemuseum.org/overview.htm> (accessed 11 July 2016).

⁴ Note that the overseas Chinese actually call their Chinatowns "Tang People's streets". A major town in China was often walled. Tang was a famous Chinese dynasty, during which its urban population was less restricted by its walls due to increased trade.

the number of Chinese residents and buildings in the Kowloon City as a token of its sovereign presence in Hong Kong. This was well-perceived by developers as a licence to build within the Kowloon City free from colonial government regulation. To both the colonial regime and Chinese government, the question, then, was where did the boundaries of the Kowloon City lie?

3. Certitude of wall alignment and the penumbra⁵ of KWC boundaries

The *alignment of the walls* of the Kowloon City was definitely unambiguous, as they were physical structures and professionally surveyed and recorded on a demarcation district (DD) plan. However, the exactitude of the location of these walls, which were civic and defensive structure and conveniently used as "metes and bounds" for boundary determination, is not incompatible with the uncertainty of their boundaries.

To assert that the boundaries of the Kowloon City were unambiguously defined by its walls would entail that the Kowloon City could not be treated as a *detached* structure. For a walled city to be regarded as a *free-standing* civic, if not also an effective defensive structure of a country, is only reasonable to prevent "foreign" buildings from being constructed right up to its walls and allow for a buffer zone, along which no building should be erected. How broad should this buffer zone be? Should this be the effective beaten range of its artillery? The answer would have been easy if the Kowloon City or KWC had been constructed with a moat or road that would ring its walls as a buffer and *tangibly* demarcate the "true boundaries" of the Kowloon City. In the absence of this, the width of the non-building zone outside its walls was ambiguous *ab initio*, unless there were some significant natural features that could be justifiably used as "natural boundaries". Fig. 1 is a schematic vertical section of a walled town that illustrates the ambiguity of the Kowloon City's boundaries in the absence of any natural boundaries. Horizontally, the penumbra encircled the Kowloon City like an apron had a definitive Kowloon City end limit along its wall but a fuzzy outer fringe. This penumbra enclosed the eastern, southern, western thick wall as well as the western and eastern thin wall but excludes the town along Kowloon Street or Kowloon Pier.

The penumbra of the boundaries of a fort or castle as a free-standing defence structure can only be resolved by arbitrary delineation, as vividly demonstrated by the boundaries of Mount Davis Fort in Hong Kong with five 9.2-inch gun emplacements and a history dating back to 1912, as shown in Fig. 2. The "boundary and barbed wire fence" of the fort in the land allocation by the colonial government to the War Department did not "naturally" follow any contour of Mount Davis or the alignment of Victoria Road, but a series of straight lines of unequal length. These *de jure* boundaries enveloped the footprints of the gun emplacements and various associated facilities like battery-plotting rooms (BPR) or position-finding cells (PF Cells). By the same logic, there had to be comparable *de jure* boundaries that enveloped the Kowloon City, had the same concept been applied to it, and made it a free-standing defence structure like the gun emplacements of Mount Davis Fort.

When the colonial government sought to clear "squatters" from the "Kowloon Walled City" to convert it into a public walled garden during the 1930s, it allowed for a belt of an "open space reserve" outside its thick walls to the north of Carpenter Road. This reserve may be regarded as a reasonable and practical measure of assessing the Kowloon City's "true" boundaries. As revealed by recent research based on released confidential official documents on the Kowloon City (Lai, 2016) and corroborated by further examination of official maps in this paper,

⁵ See Lai and Davies (2017) for an elaboration on the concept of boundary of penumbra in land boundaries setting and measurement. In this paper, the penumbra is a *prior* problem which is about the reasonable width of a building free belt along a defensive wall.

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