

THE ROLE OF THE POLICE, PROSECUTION AND THE JUDICIARY IN THE CHANGING SOCIETY

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I. INTRODUCTION

In the 1960's, Hong Kong was still an entrepôt, with a population of 2.2 million. Nowadays, it has grown into a modern city of over 6.5 million population. During the years, the society has undergone rapid changes in terms of social, economic, technological and also political changes. As part of these changes, crimes of concern arised from time to time, at different periods. The government, including legislators, policy makers, the judiciary and law enforcement agencies, have responded to such changes for the effective control and prevention of crime.

This paper will briefly outline the recent changes in society and crimes of concern brought about by it in Hong Kong. Detailed discussion of the current situation of particular crime, responses of the government; in particular the police, judiciary and legislative changes, to combat and prevent such crimes. Some problems encountered, and the success brought about in the process of controlling and preventing such crimes, are also discussed.

II. THE DIFFERENT ROLES OF THE POLICE, PROSECUTION AND JUDICIARY IN HONG KONG

The roles of the police, prosecution and judiciary in Hong Kong are separate. To ensure fairness and justice, they work independent of each other. The judiciary is independent from the executive and legislative branches of government. The

courts make their own judgements, whether disputes before them involve private citizens, corporate bodies or the government itself. Judges make decisions and findings on their own judgement, according to the laws which are mostly written down in ordinances.

The Department of Justice is the legal adviser of the Hong Kong government. All government departments seek legal advice from it, for all legal actions. It is responsible for the drafting of all legislation, representing the government in court to institute and conduct prosecutions. The Hong Kong police are the only police force in Hong Kong. It has operational responsibility for crime prevention and detection, the maintenance of public order and traffic matters.

III. CHANGE OF SOCIETY IN HONG KONG AND RESULTANT CRIME

As the population rapidly grew, the government tried to build cities in the sub-urban areas to diverge the population from the centre of the city to less populated areas. The family structure also changed from large extended families to small nuclear families, mostly with a husband, wife and two children. Most of the young families in Hong Kong have both parents working, leaving children unattended after school. The education system is also a problem. There is free education provided by the government until Form 3, i.e. children around 15 years. The curriculum emphasizes mainly academic subjects. Technical schools are not welcomed by

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parents. Students who are under-achievers in school do not go to work, but just wander the streets with peer groups. The possibility of association with bad characters and committing crime becomes higher. Juvenile crimes relating to shop theft and drug abuse are matters of concern in the 1990s.

Economically, since post World War II, Hong Kong grew from a small light plastic and textile industrial city to a service trading centre in South East Asia, and became one of the world's financial centres. Servicing trade between China and the rest of the world has traditionally been the fundamental reasons for Hong Kong's growth and prosperity. Since the adoption of open door policies by China in the late 1970's, economic relations with mainland China have undergone rapid growth and development. In line with its well established trade, Hong Kong has a well-developed banking system. The government also adopted a laissez-faire approach to the economy. International money flows in and out of Hong Kong freely. The convenience and low tax policy attracts investment in Hong Kong or through Hong Kong. All these are elements of Hong Kong's success in maintaining good economic growth. However, the free economy (with minimum government intervention) created problems for law enforcement, prosecution and the judiciary. Commercial crime is always on the upsurge and causes the most loss in terms of money.

Hong Kong went through the most prominent political change in July 1997; the change of sovereignty from Britain to China. Before the handover, people would expect an increase in cross-border crime and corruption because people believed mainland Chinese are more inclined to corrupt cultures. However, the statistics do not support this hypothesis and there is no record of crime increases. In fact, the

common cross-border crimes, such as stolen vehicles and violent crime with the use of firearms, are decreasing.

New technology emerges everyday and changes rapidly, giving convenience to society as well as criminals. This also brings about problems for law enforcement, prosecution and the judiciary, as the law and knowledge of technology of the government officials concerned is always behind the latest development of technology. Computer crime is one of the prominent crimes which is expected to create huge losses and trouble in the near future.

IV. JUVENILE CRIME

A. Present Situation

Similar to most of the urban cities in the world, juvenile crime is always a problem, but is not serious in Hong Kong. However, it is a priority of concern to the Hong Kong government and community. In Hong Kong, there are two ordinances to deal with and to protect juveniles :

- (i) *Juvenile Offenders Ordinance CAP 226*
This ordinance is particularly important as it allows juveniles under 16 years to be tried in juvenile court, which restricts the presence of people in court and the extent of matters to be reported in the news media.
- (ii) *Protection of Women & Juveniles Ordinance CAP 213*

The importance of this ordinance is that it makes provisions for a juvenile court to issue 'Care and Protection Orders'. On the application of the police or Social Welfare Department, the court may consider a juvenile under the age of 18 years in need of care and guardianship. This includes protection if his/her parent/guardian is unfit or unable to exercise care and

guardianship, and he/she is beyond control, falling into bad associations or exposed to moral or physical danger. The court may appoint the Director of Social Welfare Department as legal guardian, commit the child to the care of any person or institution, order the parents/guardian to enter into a recognisance to exercise proper care or make an order for supervision by a probation officer (a professional social worker).

During 1997, there were 5964 juvenile offenders aged between 7 and 15 arrested for crime. In comparison to the total arrests of 41714 persons, juveniles only contributed 14.3% of the arrested persons for the year. A comparatively large proportion of them were arrested for offences such as shop theft, miscellaneous thefts, wounding and serious assault. 82.5% of juvenile offenders were students involved in minor offences.

The overall crime reported in the last ten years in Hong Kong is quite constant and there has been a decrease since 1996. The decrease in crime was mainly attributable to drops in burglary, minor thefts (including shop theft), serious narcotics offences and robberies. The statistics do not imply that more juveniles were arrested for crime in the last ten years, but rather there was an upsurge in committing minor offences such as 'shop theft' by them.

Narcotic activities involving juveniles is of concern in recent years. Between 1983 and 1991, juveniles arrested for drug offences was quite constant. However, since 1992 there has been a significant increase. In 1992, 14.1% of the total number of drug arrests were juvenile offenders. It increased to 17.5% in 1995. On the type of drugs abused, there is an upsurge of abuse of soft drugs such as 'ice' and cough medicine.

B. Control and Preventive Initiatives

The Hong Kong government is determined to fight against narcotic offences, especially regarding young people. In 1995, the government took the initiative of opening the first Governor's Summit meeting, followed with further meetings in 1996, to co-ordinate the relevant government departments in solving the problem by a multi-agency approach. Subsequently, the Action Committee Against Narcotics was set up to tackle the problem. Action plans were formulated to combat drug abuse by juveniles, as well as juvenile crime, at three levels.

1. Law Enforcement Levels

(i) *Amendments to Legislation*

- Amendment to the Drug Trafficking (Recovery of Proceeds) Ordinance in September 1995 makes it even more difficult for drug traffickers to launder and retain their illicit profits from drug trafficking. Heavier sentences can be imposed on adults who are found to involve juveniles in the illegal drug trade.
- Amendment to the Pharmacy and Poisons Ordinance to increase the maximum penalties for offences of illegal or improper sale of drugs.

(ii) *Control of Drugs by Law Enforcement Agencies*

- Extend statutory licensing controls to 21 more chemicals used in the illicit manufacture of drugs. The new control system commenced operation from early 1996 by the Customs and Excise Department.
- The Department of Health increased inspection of pharmacies from 560 to 700 per month since September 1995, to clamp down on the illegal sale of prescription drugs. A special task force was set up to help the prosecution of offending drug

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- retailers.
- Additional manpower and resources were given to the police to increase surveillance activities.
- (iii) *Police Initiatives to Combat Juvenile Crime and Drug Abuse*
- Police regions make their own action plans to step up proactive enforcement actions at drug blackspots (such as housing estates), and youth gang blackspots (e.g. amusement game centres, billiard halls, parks etc). Special attention is paid to cases in which youth are employed by adults as drug couriers; every effort is made to gather sufficient evidence to prosecute the adults involved.
 - School teams of police continue to visit schools, arranged talks in the schools to deliver messages that are anti-triad and anti-drug abuse.
 - Police Missing Persons Units contribute more effort to make follow-up enquiries on the associates of young persons, with a view to locate them earlier. Care and Protection Orders under the Juvenile Protection Ordinance will be applied for in every suitable case, for proper follow-up by professional social workers on the problem youth.
 - The police extended the Superintendent's Discretion Scheme to allow police officers of or above the rank of Superintendent to issue a caution to a juvenile rather than taking criminal prosecution. The caution is given to those who have not yet reached the age of eighteen and have only committed minor offences. Close supervision and an aftercare program will be followed by social workers and police after the caution.
2. Prevention and Education Level
- Publicity through news media and exhibitions to increase the awareness of the drug problem and to warn the juvenile to keep away from drugs or any criminal offences, such as shop theft.
 - Through schools and teachers, to educate students as well as their parents to steer the juveniles away from crime.
 - All police regions and different government departments formulate their own programs, which are in line with the action plans of the government, to fit the local situation of different areas.
 - Apart from enforcing the law, the police have to involve themselves in community activities. The police will present and arrange community activities involving youth or schools in order to send out messages of combating and preventing crimes.
3. Treatment and Rehabilitation Level
- The government has allocated greater resources to establish more residential treatment centres and drug abuse clinics for young drug abusers.
 - Involvement in criminal proceedings can be a very distressing experience for a juvenile, and criminal conviction and the consequent sentence may constitute the destruction of his or her future. The police Superintendent's Discretion Scheme is an alternative to criminal proceedings and an effective rehabilitation program for young offenders. In 1997, 35% of juvenile offenders under the age of 18 were cautioned under this scheme, rather than criminal proceedings being instituted.
 - The Juvenile Offender's Ordinance also allows the young person's criminal record be removed by the police after a certain period of time

after the sentence.

C. Multi-agency Approach

The multi-agency approach to control and prevent juvenile crime and drug abuse has proved to be a success. In less than three years, the overall crime rate dropped by 14.8% between 1996 and 1997. Juvenile offenders arrested for crime dropped by 9.1% and there was a drop of almost 11% of drug addicts in Hong Kong.

The efforts of police officers in community education, publicity, enforcement, and rehabilitation, together with the effort of the legislators to amend the relevant legislation, as well as the efforts of other government agencies, such as social welfare and the Department of Health, combine together in forming effective interdiction to stop the upsurge trend of juvenile crime, especially in connection with drug abuse.

V. COMMERCIAL CRIME

A. Present Situation

Hong Kong was an entrepot in the 1980's and transformed into an international financial centre in 1990's. Money can both come into and out of Hong Kong freely. Investment comes from all over the world. Together with a highly efficient banking and financial system, Hong Kong is a haven for the money laundering of crime proceeds. Commercial crimes committed have involved international criminals and different kinds of investment tools.

In the past years, the total number of reports of deception, fraud and forgery cases is on the upsurge, but the number of fraud reports to the Commercial Crime Bureau has remained relatively steady. This may be explained by the change in charter by the Commercial Crime Bureau in 1995, to take up more complex cases involving loss over HK\$5 million. Although

the number of fraud reports remains quite steady, investigations have become increasingly more complex and international.

B. Problems in Investigation and Prosecution

Unlike violent crime, most victims of commercial crime reported their case merely with a view to recover their money/loss. Many of them are not willing to appear in criminal court to punish the suspect(s) with imprisonment or fine. Most of the commercial crime cases are very complicated, involving voluminous documents. Usually, it takes a much longer time to complete these investigations than other crimes. Always, by the time the investigation has been completed and is ready for prosecution, the suspect(s) have already disappeared. For prosecution, it is also very difficult as the voluminous documentary exhibits are to be presented in court one by one by witnesses standing in the box, thus it is a time consuming process. Not all the judges and juries can fully understand and remember the contents of each document after a long trial. Moreover, many commercial crime cases were committed internationally. These involved a number of different jurisdictions and different judicial systems. This makes the investigation and prosecution very difficult. To gain a conviction is even more difficult and takes a very long time.

C. Solutions

1. Legislation

The Organised and Serious Crimes Ordinance, which was enacted in April 1995, widens the police and judiciary's power to investigate and combat organised crime, including organised commercial crime and money laundering. The following are the aims of the law:

- (i) assist police to investigate organised crimes and to trace the proceeds of

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- crime. Restraining orders can be drawn out from the court to safeguard the crime proceeds before any prosecution can be instigated in court;
- (ii) impose heavy penalties and enhance sentences for members of syndicates if they do not return the proceeds of crime;
 - (iii) disintegrate syndicates by the use of strong forfeiture provisions and impose punishment for those who assist in money laundering; and
 - (iv) financial institutes have the duty to report suspicious money laundering activities.

The Complex Commercial Crime Ordinance, which was enacted in 1988, can assist in reducing the length of trial in complex commercial cases. The important feature of the ordinance is that the judge has the power to order a preparatory hearing before the jury is empanelled, for the purpose of:

- (i) identifying issues which are likely to be material to the verdict of the jury;
- (ii) assisting the jury's comprehension of any such issues;
- (iii) expediting the proceedings before the jury, by making legal argument and admissibility of evidence before the trial; or
- (iv) assisting the judge's management of trial.

The Hong Kong police are heading towards computerisation. Advanced technology can assist the documentation and analysis of a large number of documentary exhibits during the investigation, and the presentation of exhibits in court.

2. International Liaison and Mutual Legal Assistance

Strengthening liaisons with overseas law enforcement agencies and the judiciary

can greatly improve the efficiency of investigation. Being a sub-bureau of the China National Central Bureau, the Hong Kong police are a member of the International Criminal Police Organisation (ICPO) - Interpol, performing the same duties as before the transfer of sovereignty. Through the Interpol Channel, the police can make requests for assistance from law enforcement agencies overseas, to assist enquiries on overseas witnesses, locating suspects and dealing with criminal information. The Hong Kong police also maintain close contact with the overseas liaison offices of foreign law enforcement agencies in Hong Kong, and liaison offices in mainland China. The speedy assistance provided by our overseas counterparts is invaluable in police investigation.

In order to present overseas evidence in court, mere liaison is not enough. The Evidence Ordinance (Cap. 8) of the law in Hong Kong allows evidence taken by the Supreme Court, and exhibits tendered to it, to be provided to foreign courts in certain circumstances. The Ordinance also enables Hong Kong to seek evidence from abroad, and admit it in legal proceedings in Hong Kong. This ordinance is only suitable for cases with a view to prosecution.

In addition to the mentioned international assistance on investigation and prosecution, the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), law of Hong Kong enacted in February 1998, enables Hong Kong to make and respond to requests to and from other jurisdictions in relation to criminal matters which are serious enough to warrant a sentence of 12 months or more in prison in the country in which they occur. The followings are such requests, which may cover :

- (i) Taking of evidence and production of documents before a magistrate;

- (ii) Application for the service of the summons;
- (iii) The search for and seizure of exhibits;
- (iv) The production of relevant documentary evidence;
- (v) The service of documents by a bailiff;
- (vi) Matters pertaining to the confiscation of the proceeds of crime;
- (vii) The transfer of persons (including prisoners) to other jurisdictions to provide assistance.

With the power given under this ordinance, it can reduce the physical case enquiries made overseas, and the investigations made by overseas agencies can be admissible as evidence in future court proceedings, to reduce the duplication of work by the police and judiciary. The assistance provided to overseas jurisdictions is a reciprocal assistance.

There are many different types of commercial fraud in Hong Kong. The common ones are Long Firm Fraud, letter of credit (documentary credit) fraud, employee fraud and Forex/Loco-London Gold Leveraged Trading Fraud. Forex Leveraged Trading is a good example that the change of legislation and vigorous enforcement actions can almost completely remove this crime. The enactment of new legislation in September 1994 to control leveraged foreign exchange trading (Forex), forced unethical companies out of the Forex business in Hong Kong. Unfortunately, many of the fraudsters who previously operated Forex companies have now targeted the new and currently unregulated areas of gold and silver trading. Therefore, consideration is being given to controlling the unregulated gold and silver trading to prevent fraud being perpetrated by this type of investment tool. Proper legislative change, responding to certain ways of committing crime, can be very effective.

VI. COMPUTER CRIME

A. Present Situation

The use of computers is very common nowadays. As technology advances, it is no longer used as a wordprocessor or a storage tool for information, but as a communication tool. Communication between computers using the Internet has created 'cyberspace', in which people can talk, exchange information, trade and provide services. Within cyberspace there are no geographic or jurisdictional boundaries. The information, electronic money or goods can be transferred from one jurisdiction to another within seconds, leaving no trace.

The efficiency and convenience of computers has been used to commit crimes. Hacking into others computers to obtain information or cause damage; and within the Internet, gambling and publishing obscene articles, are common computer-related crimes in Hong Kong. As the use of computers and the magnitude of cyberspace is expanding by multiples, computer-related crime, in terms of the number of reports and losses, has also expanded at the same pace. The number of reports on computer-related crime increased by eight times, whilst the amount of losses increased by more than 3 times since 1993. At present, the loss of HK\$2 million this year is minimum in comparison with the total amount of loss of HK\$2377 million in commercial crime cases. However, the growth is of concern to the law enforcement and judicial system in Hong Kong. The magnitude of cyberspace has expanded tremendously in the last few years and is expected to grow at a faster speed in the near future. Police records show that most computer-related crimes were committed by students who were mostly doing it for mischief. However, with the growing popularity of E-commerce in Hong Kong, such as shopping on the

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Internet and Internet Banking, it is expected that more crime will be committed by sophisticated criminals through computers and internet communication networks. The loss and damage can be very significant. Therefore, pro-active actions are required to prevent this.

B. Legislation

To cope with the new problems arising from new technology, the law also needs to keep abreast of the development of new technology. In Hong Kong, the Computer Crimes Ordinance was enacted on 23 April 1993 in order to clarify and amend the law relating to the misuse of computers. Apart from creating some offences to address new problems, this new legislation consists of a number of amendments to the existing legislation at that time; namely the Telecommunication Ordinance, the Crimes Ordinance and the Theft Ordinance. In fact, at that time, most of the computer-related offences could be addressed by the existing law, but it is unable to interpret the latest technology. The computer ordinance bestows on the judiciary a system to cope with changes in technology.

C. Control and Preventive Initiatives

In 1993, the Hong Kong Police took the initiative to respond to the change of technology. The Computer Crime Section of the Commercial Crime Bureau of the Hong Kong police was established in 1993 to enforce the Computer Crime Ordinance. The Section is responsible for the following:

- (i) making investigations into all reported computer crime;
- (ii) examining and retrieving data for evidential value from computers;
- (iii) studying new developments with a view to highlighting problem areas and;
- (iv) identifying potential solutions to prevent the occurrence crime.

In 1997, the Hong Kong government started to see the risk and opportunity given by the computer-related technology. The government also takes the initiative to open the market as well as preventing any fault. There is a vision for Hong Kong to become a digital city in the 21st century. HK\$173 million was allocated from the budget in 1997 to research and set up a program on Electronic Service Delivery. The purpose is to provide an environment, infrastructure, security and control on developing electronic commerce. The following are the initiatives of the government:

- By 1999, new legislation on E-Commerce will be drafted for 'Certification Authority' to be established. The authorised users will be required to register and obtain digital keys to ensure the confidentiality and trustworthiness of information;
- Set a requirement of encryption security.

Academics in the educational institutes of Hong Kong are at the forefront of technology. Seeing the rapid growth of cyberspace and its possible risks, they took the initiative to form informal working groups with members from government law enforcement agencies, government policy makers and legislators, hoping find effective ways to identify problems, control and prevent them.

D. Problems and Preventive Measures

Most of the law enforcement officers and the general public have very little knowledge of this new area of technology. On the side of law enforcement agencies, we ask how can we capture or retrieve data in cyberspace, which can be destroyed within a second? As a member of the public, we ask how can we secure information and

prevent damage? The following measures should be considered or continued:

- (i) We all need to be educated on new technology.
- (ii) The law which is always behind technology, needs to be amended or created to keep abreast of the problem.
- (iii) There are no geographic or jurisdictional boundaries within cyberspace. Local legislation, as well as international resolutions, are needed to address this problem.

VII. POLITICAL CHANGE

The change of sovereignty of Hong Kong from the United Kingdom to China in July 1997 was a prominent political change. Long before the handover, people in Hong Kong and overseas worried about the increase in crime prior to and after the handover. Fortunately, the statistics do not support this. In fact, the overall crime rate for 1997 reached the lowest level in 24 years. The decrease of overall crime is attributed to a decrease of violent crime, robbery, burglary and missing vehicles.

After the handover, without the hurdle of different jurisdictions (i.e. between China and Britain), as part of China, there is continuous improvement in co-ordination between Hong Kong and mainland law enforcement agencies on intelligence exchange, assistance on case investigations and joint efforts in combating cross border crimes. As a result, the tight control on smuggling firearms into Hong Kong from the mainland, and the smuggling of stolen vehicles into the mainland, attributed to the obvious drop in robberies connected with firearms, and 24% reduction in the theft of vehicles.

VIII. CONCLUSION

Our role as the police is to respond to the changes which are brought about by

the change of society, and to find a way to combat crime. Because the judicial system in Hong Kong is independent, the roles of prosecutors and the judiciary are very passive. They can only react to the changes of law and make decisions according to the law.

The changes in politics, economics, social structure and technology in society can give rise to particular crimes. The change in the economic environment can also give rise to commercial crime which is more globalized; committing greater loss in terms of money in Hong Kong. Better international liaisons, streamlining court procedures for complex commercial cases, and change of legislation, can improve investigation, and enhance the chance to apprehend and convict the offenders, so as to suppress crime.

The social change gives rise to juvenile crime on minor offences. It is the role of the police to identify the trend of crime, jointly with other government departments; the role of legislators to identify the causes of these crimes committed by juveniles, and to assist in the reform of offenders by involving all parties in rehabilitation programs, rather than merely in prosecution. The society is now much more vocal and has higher demands for quality service. The police have to involve themselves in the community and listen to the demands of the public in order to combat crimes, as well as providing a better service.

The police, prosecutors and judges have to keep themselves abreast of advances in technology, as computer crime in cyberspace will be a problem in the foreseeable future. To cope with change, the efforts of the police cannot be alone. The government should provide the infrastructure, environment and education to control the possible rise of computer

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crime; such as amendments to legislation to keep abreast of new technology and the launching of the Electronic Delivery Service program.

During political change, the most important role of the police is to maintain public order and control any rise of crime. The roles of the prosecutor and the judiciary are to maintain justice and exercise the power bestowed to them in ordinances. In Hong Kong, during the transition and after the transfer of sovereignty, the police, prosecutors and judiciary have done their utmost to successfully maintain law and order, with a declining trend in overall crime.