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**Crime and its Control
in the People's Republic of China**

**Crime and its Control
in the People's Republic of China**

**Proceedings of the University of Hong Kong
Annual Symposia 2000-2002**

*Edited by R.G. Broadhurst
Centre for Criminology, The University of Hong Kong*

**Crime and its Control in the People's Republic of China:
proceedings of the Annual Symposia 2000-2002**

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Foreword

The Centre for Criminology at the University of Hong Kong was established in 1999 to provide a home for indigenous studies of crime and criminal justice in Hong Kong and the region. As part of this objective it sought to provide a platform for both academics and practitioners to share their knowledge and to assist in the development of effective strategies to deal with the increasingly sophisticated problem of crime.

The annual symposium on 'Crime and its Control in Greater China' functions as a forum to discuss interdisciplinary research on crime relevant to Greater China. The various components of Greater China have common cultural, linguistic and economic bonds that give rise to some similar crime problems and opportunities to resolve them. Therefore it seemed appropriate that both scholars and practitioners from Mainland China, Hong Kong, Macau and Taiwan should meet to discuss their research on these issues.

In the furtherance of these objectives it has been gratifying that the Chinese Peoples' Public Security University has participated in these events and co-hosted the 3rd Symposium. They also organised a Symposium in Beijing in 2002 to discuss 'Criminal Trends and Countermeasures' and invited the Centre for Criminology to co-host, that event. This is the type of synergy that our annual event aspires to generate.

A conscious intention of the annual symposium is to be broad in terms of both the range of topics covered and the depth of experience of the speakers. For this reason the symposium has provided a platform for postgraduate students to introduce their research as well as for well-established scholars with an international reputation for excellence in their chosen area of research. To further the concept of providing a bridge between academia and practice, several speakers are usually invited from the private sector to present their views on the problems and issues that concern them.

These proceedings provide a record of selected papers presented at the various symposia and demonstrate the wide variety of topics covered and interests of speakers. I hope this bilingual event will help to fill the need that exists for a joint effort to review and discuss developments in criminology relevant to Greater China.

David Hodson

Hon. Director, Centre for Criminology

University of Hong Kong

February 2004

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Abbreviations

| | |
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| ABCI | Australian Bureau of Criminal Intelligence |
| AI | Analytical Interviewing |
| BCBS | Basel Committee on Banking Supervision |
| BIS | Bank for International Settlements |
| CCP | Chinese Communist Party |
| CMR | computer-mediated relating |
| CNNIC | China Internet Information Center |
| CSIS | Centre for Strategic and International Studies |
| CSRC | Chinese Securities and Regulatory Commission |
| CTP | Core Treatment Programme |
| EU | European Union |
| EBFs | extra-budgetary funds |
| ETU | (Sex Offender) Evaluation and Treatment Unit |
| FATF | Financial Action Task Force |
| FBI | Federal Bureau of Investigation (US) |
| FDI | foreign direct investment |
| FIE | foreign-invested enterprise |
| FINCEN | Financial Crimes Enforcement Network |
| FIU | financial intelligence unit |
| FSU | Former Soviet Union |
| FTZ | free trade zone |
| GDP | gross domestic product |
| GVIO | gross value of industrial output |
| HK | Hong Kong |
| HKP | Hong Kong Police |
| HKCVS | Hong Kong Crime Victimization Surveys |
| HS | homicide-suicide |
| ICAC | Independent Commission Against Corruption (HK) |
| I/E | import/export |
| IID | independently and identically distributed |
| IMF | International Monetary Fund |
| IP | inter (-networks) protocol |
| IPR | intellectual property rights |

| | |
|--------|--|
| ISP | Internet service provider |
| IT | information technology |
| MANOVA | multivariate analysis of variance |
| MnSOST | Minnesota Sex Offender Screening Tool |
| MNE | multi-national enterprise |
| NCCT | non-complaint countries and territories |
| NPC | National People's Congress |
| OCTB | Organised Crime and Triad Bureau |
| OECD | Organisation for Economic Co-operation and Development |
| OSCO | Organized and Serious Crimes Ordinance |
| PBOC | People's Bank of China |
| PC | People's Congress |
| PCA | principal components analysis |
| PKU | Peking University |
| PLA | People's Liberation Army |
| PRC | People's Republic of China |
| QSSQ | Queensland Sibling Study Questionnaire |
| SAFE | State's Administration of Foreign Exchange |
| SAR | Special Administrative Region |
| SCMP | South China Morning Post |
| SCNPC | Standing Committee of the National People's Congress |
| SEC | Securities and Exchange Commission |
| SEZ | Special Economic Zone |
| SHP | Self-Help Programme |
| SOE | state-owned enterprise |
| SOOP | Sex Offender Orientation Programme |
| SORAG | Sex Offender Risk Appraisal Guide |
| SPSS | Statistical Package for the Social Sciences |
| SQEQ | Shanghai Quality Education Questionnaire |
| STDM | Sociedade de Turismo e Diversoes de Macau |
| TRIPs | Trade-Related Aspects of Intellectual Property Rights |
| UK | United Kingdom |
| UNCJS | United Nations Criminal Justice System |
| VAT | value-added tax |
| WTO | World Trade Organization |

Acknowledgements

These proceedings would not have been possible without the considerable effort required to host three symposia held between 2000 and 2002 that involved scholars from Greater China and abroad. Although a fourth symposium was scheduled for June 2003, this was cancelled because of the SARS crisis and the consequent WHO restrictions on travel. Three papers offered but unable to be presented also appear in these proceedings.

A considerable debt is owed to the financial sponsors and the many postgraduate criminology students of the Department of Sociology, the University of Hong Kong, who assisted the Centre for Criminology in the organisation of the symposia. The involvement of the Chinese Peoples' Public Security University as co-host of the third meeting and the good offices of the Hong Kong Society of Criminology greatly added to the social and scholarly richness of the symposia.

As convenor of the symposia I am most thankful to the many speakers who agreed to present their research and the 40 authors who provided the written papers that comprise the 31 chapters in these proceedings. I also thank all the authors who so willingly responded to the many editorial issues that arise including some of the vexed problems of translation of Chinese text into English. Although considerable effort was made to consult all authors on editorial matters this was not always possible and any errors that arise rest with the editor.

I am also most grateful to Professor Zhou Guo-ling, Professor Zhao Ke and Dr Mei Jian-ming for their assistance in organising the symposium and Ms Angela Leong, Ms Maggie So and Dr Venetia Somerset for their assistance in the preparation of the final manuscript.

Roderic Broadhurst

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April, 2004*

Introduction

Crime and its Control in the Peoples' Republic of China

Roderic Broadhurst, Associate Professor, University of Hong Kong

Crime and Crime Control in Transforming China

The accelerated economic development of the the People's Republic of China (PRC) during the past decade has transformed it into one of the world's leading trading nations,¹ the workshop and engine of growth for the entire Pacific Rim. The 'opening up' of 'Red' China a quarter of a century ago has led to enormous and fundamental changes in the social and economic life of all Chinese people, especially those in urban and coastal areas. The transformation of China from a socialist command to a socialist market economy with all the attendant opportunities and problems has required major innovation in the roles of state, provincial and local agencies, including those tasked with policing and social control functions. The sheer magnitude of the changes in economic, governmental and social practices and values has engendered new opportunities and motives to engage in criminal and anti-social activities, while at the same time rendering many traditional methods of public security and crime suppression ineffective. The drive to modernise the policing and regulatory agencies is crucial and fraught with the contradictions and dynamism of a transitional economy.

China is currently in an exceptional historical period, a critical time in which its economy is changing track and society is being transformed, a time of increased reform and opening up. Some Chinese people have been influenced by a wave of the worship of money and extreme individualism. They have antisocial motives, and they rush hastily into danger. Some follow the path of crime. Certain areas of China have been permeated by the influence of criminal society from beyond the borders. In certain areas of China, underworld and evil forces run rampant, people become local tyrants, and criminal activity is common. This has severely disrupted economic construction, social development, and the peaceful lives of the people in certain areas."²

The challenge to develop a comprehensive 'rule of law' framework needed by an expanding market economy (and further stimulated by World Trade Organisation [WTO] membership) is now rapidly being addressed and a host of measures to regulate commercial activity are in place or pending. The importance of dealing with crime under the rule of law is recognised by the Communist Party of China (CPC). In 2001, as a litmus test for the reforming process, the Party Central Committee convened an historic National Working Conference on the Work of Maintaining Public Order. This stressed that public order was not just a major social issue, but also a major political issue, and that providing real safety for lives and property was a crucial responsibility of the CPC and the government.

¹ By 2002 China was ranked the world's 5th largest export nation.

² Furthermore, "The gradual conversion of the economic system and the acceleration of the pace of economic restructuring, and in particular the various economic and financial risks and social pressures that will follow China's formal accession to the WTO, will all inevitably have a major impact on China's efforts regarding social and public order. The many kinds of deep-rooted contradictions and problems in society will also be exposed further, with the possibility that various kinds of negative factors which incite crime may proliferate". See Fan Zaiqin and Wang Hui (Ministry of Public Security) 2002, 'Public Order in 2001'; in Ru Xin, Lu Xueyi, Li Peilin, et al., eds., *Year 2002: Analysis and Forecast of China's Social Situation*, [Blue Book on Chinese Society: Beijing, in Chinese].

In respect to public and criminal law, developments have been rapid (for example the passage in 1997 of the Chinese People's Republic Criminal Law and the adoption by the National People's Congress of the International Covenant on Economic, Social and Cultural Rights, in October 1997, ratified in March 2001, and the International Covenant on Civil and Political Rights, in October 1998, acceded to in August 2003). Yet it is widely acknowledged that the gap between the 'law in books' and the law in practice is considerable.

The central government has also promulgated administrative procedural laws ('Law of the People's Republic of China on State Compensation', the 'Administrative Punishment Law of the People's Republic of China', and the 'Procedures for Handling Administrative Review Cases') in an effort to standardise and supervise the way laws are applied. Administrative actions or conduct can now be challenged in the courts and declared invalid. An important aspect of this socio-economic and legal transitional process is the urgent need for both practitioners and scholars to engage in both fundamental and critical research on issues of public policy relating to crime and its administration. Many of the papers in the *Proceedings* that follow reflect this engagement. Thus the papers by Professors Li Wenyan, Wang Hongsha and Guo Jianan focus on the impact of economic crime and the need to reinforce the legitimacy of the public security and legal agencies in a context traditionally hostile to regulatory interference in the control of crime and anti-social elements.

Due to the impact of traditional ideas about legal systems that have been the practice in our country over a long period of time, the idea that a tendency toward 'paying greater attention to the execution of the law than to the procedures to execute the law' has long existed for public security laws. [Problems such as] a weak sense of the rule of law in accordance with given procedures and a lag in the construction of legal systems that govern how the law is executed – have long existed in the public security law system. This has prevented public security institutions from executing the law at a higher level, and hampered improvement of the level of the public security law system. The national government has put forward increasingly higher requirements on the ways in which administrative departments execute laws, and [has] expressly required administrative institutions at all levels to align their execution of the law with laws and regulations.³

Criminal Science and Criminology

Criminology has long been regarded in China as an important *science*, a discipline whose role is to serve the security of the masses and the state. The role of critical criminological research, and especially evidence-based research methods, remains unfamiliar to many Chinese scholars of crime. There is a dearth of detailed statistical analysis of crime victimisation, crime trends and the evaluation of anti-crime policies as well as qualitative studies of criminal behaviour and the role of policing agencies. Despite Deng Xia Peng's often-quoted 'black cat, white cat' pragmatism⁴, the application of modern methods of social science research as applied to a whole range of criminal justice issues is in its infancy. However, there are signs that things are changing, for an evidence-based approach is apparent in the papers contributed, among others, by Professor Zhou Lu, Dr Cong Mei and Professor Liu Jianhong.

³ See *Beijing Renmin Ribao* "Standardize Law-Enforcement Procedures and Raise the Level of Law-Enforcement" (Internet Version-WWW) in Chinese 9 Sep 2003: p4.

⁴ Former President Deng Xiaoping's metaphor comes from his speech 'how to rebuild agriculture' on July 7th, 1962 at the 7th plenary of the 3rd National Congress of Communist Youth's League in which he advocated the 'contracted responsibility system' for the reform of agriculture. Shortly after he was denounced by Mao and vilified during the Cultural Revolution. In the reform era, however, the 'contracted responsibility system' became the backbone of agricultural reform in China. The 'white cat' should be literally translated as the 'yellow cat'.

Official rectitude about access to data on the prevalence and severity of crime and the problems of crime remains an important barrier to a more informed debate, among criminal justice personnel, intellectuals and the masses, about the control of crime (and corruption) in China. Nevertheless, tentative debates have emerged between officials and the academy on a number of important issues. The topics include *inter alia*: the long-term effectiveness of the periodic ‘Strike Hard’ (*yanda*) crime campaigns which have been a mainstay since 1983; the rise of local and foreign crime syndicates; the value of comprehensive crime prevention strategies in urban environments; the crime reduction role of certain penal regimes for young offenders; and the deterrent effectiveness of the widespread use of capital punishment. These debates are, however, often fuelled more by ideological nuances than criminological evidence about practice and outcomes.

For example, the reluctance to report the number of judicial executions in China – which arises from official concerns about the legitimacy and fairness of criticism about China’s human rights record – has unfortunately also set the tone for limits on all research based on official access to sources of data on crime. The inherent difficulty of undertaking useful criminological research without the cooperation and assistance of the agencies involved is well known to Western criminologists. Changes in official attitudes or culture will be crucial if evidence-based research is to provide the information necessary for effective policy development in China. It is also crucial that it reaches the public domain and helps to form the basis of local and self-help responses to crime and corruption.

Nevertheless, many public security officials believe that the publication or release of local crime statistics and the incessant reporting of crime by the media would be detrimental to society both by unnecessarily raising the fear of crime among the citizenry and by exposing the (in)capacity of law enforcement. The distaste for media exposure of crime (exploitative or otherwise) and concerns about bringing law enforcement into disrepute are also convenient means of avoiding accountability to the masses, contrary to the spirit of the ‘Three Represents’.⁵ The basic problem with such approaches is that official announcements about trends in crime or successes against crime have become less credible and the masses have grown cynical about the effectiveness of public security and their periodic pronouncements about the crime problem. However, widespread use of the media to tout particular success is not eschewed and the reader need only cursorily scan party, provincial and city newspapers or their Internet versions (for example, the CPC Central Committee’s *People’s Daily*, *Shenyang Liaoning Ribao*, *Chengdu Sichuan Ribao*, *Beijing Fazhi Ribao* and *Harbin Heilongjiang Ribao*) for frequent references to convictions and arrests relating to the latest public security campaign.⁶

⁵ Former President Jiang elaborated on the theory of three representatives: “The Communist Party should represent the requirements of developing the most advanced production force in China..., should represent the direction of developing the most advanced culture in China..., should represent the fundamental interests of the most people in China...” speech at the 80th Ceremony of the establishment of the Chinese Communist Party on July 1, 2001: The three represents were presented at in November 2002 at the 16th Communist Party Congress and was later added to the Communist Party Constitution. In March 2004 at the 2nd Plenary of the 10th National People’s Congress it was added to the Constitution of the PRC.

⁶ A typical example arising from efforts to ‘strike hard’ against syndicate crime and the protection or “umbrella” they often buy from local officials is reported in *Beijing Fazhi Ribao* (translated from Chinese, 26 August 2003, p2): “Heilongjiang Qitaihe Court Tries Criminal Syndicate-Like Organization Gangsters. On 25 August 2003, in its initial trial, Qitaihe Court sentenced ZHANG Fengxiang (1728 7685 4382) to 20 years imprisonment for leading a criminal syndicate like organization, bribery and organizing prostitution. The court sentenced LI Xiuhe (2621 4423 3109) and 12 others to prison terms of from one year six months to 10 years. The court also punished SHEN Zhicheng (3088 1807 2052), the deputy secretary of the Municipal Committee and concurrent secretary of the Political Science and Law Committee of Qitaihe City for protecting triad gangsters. From December 1999 to May 2002, ZHANG, age 39 (6855 0337), the chairman of Jin Yuan Club and a member of the Municipal People’s Congress of Qitaihe, opened casinos, night-clubs, pornography saunas, and other illegal entertainment places. He offered bribes, organizing Russian women to engage in prostitution and pornographic dancing, and illegally possessed revolvers, hunting rifles and submachine guns. He employed several dozen “guards”. He falsely reported registered capital and illegally attracted public deposits.”

Law enforcement activity measured by ‘figures’ or quantities is often referred to but is seldom contextualised, as in the following example of the success of anti-smuggling activities under the rubric ‘joining forces in the smuggling crackdown, taking concerted action and tackling the problem in a comprehensive way’.

According to statistics, between 1998 and 2002, customs offices nationwide managed to crack 55,755 smuggling cases valued at 43.037 billion yuan; public security organs managed to crack over 14,000 smuggling cases valued at approximately 2 billion yuan; industry and commerce departments managed to crack 26,914 smuggling cases valued at 6.02 billion yuan; and the tobacco system managed to crack over 220,000 tobacco smuggling cases. Procuratorates at all levels prosecuted 7,030 people suspected of committing smuggling crimes. Courts at all levels handled 3,324 smuggling cases of various kinds and passed judgments on 4,690 smuggling criminals according to law. Since 1999, the yearly total value of the smuggling cases solved by law enforcement agencies like customs offices, public security organs, frontier guards, as well as industry and commerce departments, among others, has noticeably declined.⁷

While this quotation may give some sense of the probable scale of the crimes in question, the interpretation that declines in the value of illegal cases constitutes a measure of law enforcement success is less probative. The misuse or beautification of ‘statistics’ by law enforcement agencies is neither new nor confined to China, but the absence of independent means of verification poses problems for the development of criminology. China, like most nations, regards indices of crime and punishment as both social facts and measures of general civility. Low crime rates (validated until recently by large-scale crime victim surveys), for example in Hong Kong, are widely touted as evidence that the city is very safe for tourists, visitors and businesses, and is a source of civic pride. Under such circumstances it is unsurprising (and hardly unique to China) that crime statistics and their interpretation are regarded as objects for intense state control and not as contested and incomplete measures of the crime phenomena that are often the focus of criminological concern. The elevation of the importance of accurate and meaningful measures of crime should also be seen in the context of the state’s general need to ‘correct untruthful statistics’ and implement the

‘Three Represents’, of reform and opening up and the overall development of modernization, of maintaining national tax revenues and economic security, of realizing the continued acceleration of national economic development, and of building a healthy socialist market economic system and perfecting the socialist legal system.⁸

Consequently, many officials see the successful management of the crime problem as an example of the superiority of socialism and indeed Chinese civilisation. Increases in crime and criminal conduct have frequently been regarded as the outcome of one or more of various factors: feudalist and counter-revolutionary remnants; excesses of the Cultural Revolution; westernisation or foreign influences; migration to the cities and rapid economic restructuring of labour; rampant individualism; growing income inequality; and all other inevitable side-effects of a transitional socialist market economy.

⁷ See *Beijing Renmin Ribao* in Chinese – Internet version of daily newspaper of the CPC Central Committee (People’s Daily: www.peopledaily.com.cn).

⁸ *Beijing Jingji Ribao* in Chinese – Internet version of the PRC State Council newspaper covering general economic affairs: <http://www.economicdaily.com.cn>.

China's history of relatively low officially reported rates of crime victimisation as reported in its annual Law 'blue books' and to Interpol is now, however, showing signs of change. Since the 1990s it has been recognised that all crime has been increasing, especially property and economic-related crime. Official concern has progressively shifted from a focus on youth crime (often attributed to the 'lost generations' of the Cultural Revolution), to crime associated with income inequality and indigence, the product of market transformations that draw peasants to the city. Mass internal migration and the loosening of the household registration system and other conventional means of maintaining public order have given rise to concern about the impact of crime on the development of the socialist market economy. As the following Ministry of Public Security assessment for 2001 notes:

It is undeniably true that the public order situation remained extremely serious... There was a considerable increase in four categories of crimes against property: theft, robbery, grab-and-run, and swindling... Serious crimes such as bombing, murder, robbery, kidnapping, poisoning, and the abduction and sale of women and children were still quite rampant, and criminal gangs of an underground nature ran wild, particularly in certain areas. Certain hooligan forces such as rural tyrants, urban tyrants, and street tyrants did harm to others. The incidence of breaking and entering for theft, strong-arm robbery, and carjacking, and other multiple-crime cases remained high. Criminal activity in the economic sphere was also very prominent.⁹

Cross-border and syndicate crime

While in the 'West' the emergence of China as a significant economic power was at first welcomed because of its huge potential markets, the growing competition provided by highly competitive Chinese industry is now also a source of friction. Good international relations and law enforcement cooperation with respect to China and its trading partners will help ease the risk of criminals exploiting the gaps in international law enforcement. As a consequence of the opening up of China, Western law enforcement agencies have been concerned with the potential expansion of the role of Chinese criminal networks, for example in drug and human smuggling, while the Chinese authorities have been equally concerned about the inroads foreign criminal syndicates have made and the increasing sophistication of organised crime in many parts of China (see for example the chapters by Dr Dai Peng and Professor Zhao Ke). As a consequence, Chinese law enforcement agencies have belatedly embarked on rapidly developing effective partnerships with overseas policing agencies and made efforts to enhance mutual legal assistance (MLA). The need for greater international cooperation in policing is nowhere better illustrated than in the problems of cyber-crime and serious transnational crime. China's law enforcement agencies are thus as vulnerable as other countries in their attempts to combat these crimes (which include the smuggling of weapons, people, drugs, protected species and antiquities). Thus engagement with foreign law enforcement via joint operations and shared intelligence is now an essential element in the modernisation of policing (see the contributions of Professor Li Wenyan and Li Chunhua).

China's 'opening up' policy and its rapid development as a market economy has allowed foreign criminal groups to establish relationships with local groups and to invest directly or indirectly in licit or illicit business.

⁹ *ibid* per footnote 2.

This infiltration of foreign syndicates has helped to develop, through leadership and effective communications, the size and reach that serious criminal groups have in many cities and towns across China. The most insidious aspects have been the criminal investment in factories (both licit and illicit) including state-owned enterprises through the corruption of public servants and CPC officials at high levels. When all this is combined with the traditional activities of loose-knit rural gangs who bully village heads, openly resist local police, and make money from ‘entertainment’, extortion and protection at village, district and county market fairs, the scale of organised criminal activity is considerable,¹⁰ However, these criminal groups and syndicates have not yet gained overwhelming financial strength or territorial cohesiveness. In response, crime prevention efforts as well as legal reforms¹¹ such as amendments to the criminal law have been put in place to enable law enforcement officers to respond with greater vigour. They target criminal leaders, foreign syndicates and state officials who harbour or connive at criminal syndicates and related offences.¹²

Overview of the Proceedings

These *Proceedings* reflect the discussions and presentations at the three annual symposia on crime in greater China held from 2000 to 2002 at the University of Hong Kong and convened by the Centre for Criminology. These meetings brought together both practitioners and scholars interested in the problem of crime and its control in China. The papers provide a rough and partial cross-section of some of the criminological work now being undertaken in China and also by overseas scholars. As with many conference proceedings, the depth and scope of the contributions varies considerably, but it is hoped that this variety of style and approach will be taken by the reader as a measure of the strength and versatility of the kind of work now going on. The forty contributors have varying backgrounds as scholars or practitioners, and included are the contributions of several young scholars who have recently completed postgraduate research in criminology.

The papers are organised in six sections covering many of the problems and issues raised above. Part I comprises papers that address aspects of China’s entry to the WTO and the problems of managing criminal risks to financial institutions. The financial and other risks WTO membership may engender have been emphasised by Dr Dai Peng and Mr Robin McCusker, the latter in global perspective. Dr Dai Peng notes traditional apathy towards credit risk and the limited time before the 2006 WTO deadline, while Mr McCusker questions the prudence of the banking system and the likelihood that e-commerce will have the desired impact (see also the research by Ivan Chiu). This is also clearly reflected by some of the concerns resulting

¹⁰ See Zheng Xin-feng (Ministry of Public Security) in R.G. Broadhurst (ed), *Transnational Organized Crime. Bridging the GAP: A Global Alliance Perspective: Proceedings*. Hong Kong Police, see www.hku.hk/crime. For a more general account see also: Liu, J., Zhang, L. & S.F. Messner 2001, *Crime and Social Control in Changing China*, Greenwood Press: Westport Connecticut.

¹¹ Zhang, Qi, 2002, ‘The Dynamics from the Ideal to the Reality: The Rule of Law in China’, *Social Sciences in China*, Vol. 23. No. 2.

¹² The criminal organisation laws of the People’s Republic differ from that of other jurisdictions. Article 294 of the Criminal Law of the People’s Republic of China states in part: ‘Whoever organizes, leads, or actively participates in an organization with characteristics of a criminal syndicate, which carries out lawless and criminal activities in an organized manner through violence, threat, or other means, with the aim of playing the tyrant in a locality, committing all sorts of crimes, bullying and harming the masses, and doing what has seriously undermined economic and social order is to be sentenced to not less than three years but not more than ten years of fixed-term imprisonment. Other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights’. A significant amendment to Article 294 states: ‘mere participation in criminal syndicates constitutes the crime of criminal syndicate and deserves imprisonment below three years, labour in detention, surveillance or deprivation of political rights’. Article 26 already provides that a ‘ring-leader’ ‘who organizes or leads a criminal group shall be punished on the basis of all the crimes that the criminal group has committed’.

from the payment card industry's expansion into the China market expressed by Mr Esmond Chan and Mr Phillipe Bertrand, both experts in credit card security. Topics raised in Part I are carried through in Part II by several papers that address the nature of economic crime in China. Professor Li Wenyan's paper stresses the interdependence of China's economic success with processes of globalisation and lists the problems and means to overcome the growth of both new and old forms of economic crime. Professor Guo Jianan reviews the role of money laundering and China's readiness and capacities to counter it. His paper provides the background to the important new regulations and investigative capacity introduced in 2003. Professor Wang Hongsha argues that the real possibility that the market may seriously malfunction has not been fully understood and therefore policy needs to be strengthened to ensure a fairer distribution of the benefits of the market. Of particular concern is the role of the courts in addressing the abuse of trade mark laws and the production and marketing of substandard and often dangerous counterfeit products (see chapters by Professor Zhou Guoling and Huang Xu, and Yang Hui-zhong).

A number of papers in Part III attempt to provide for the analysis of changing crime patterns arising from the powerful social transitions now under way in China. Some of the differences in the availability of official crime statistics can be seen in the work of the Tianjin scholars (Professor Zhou and Dr Cong Mei) and this writer's analysis of Hong Kong crime statistics. A more theoretical approach is taken by Professor Liu in his paper analysing, from a functional perspective, national statistics and the relationship between increases in crime and the transition to a market economy. Professor Alan Jiao considers the shifting emphasis of traditional informal social control to more formal mechanisms and argues that integration is still possible despite the challenges ahead.

Part IV focuses on the issue of illicit drugs and begins with a paper by Professor Li reflecting on the resurgence of the narcotics problem and its connection with AIDS and organised crime. The international linkages are also clearly outlined in the papers by Dianne McIntosh and by Dr Beyer and Li Shan Shan's research on a notorious smuggling syndicate based in Xiamen.

Matters raised in Part IV are carried through in Part V on the subject of organised crime or criminal syndicates and networks and its control. An opening review by Professor Wang Yong and Dr Mei Jianmeng of the relationship between capitalism and organised crime draws critically on the functionalist tradition of Robert Merton and Daniel Bell. This section includes contributions on triad violence in Hong Kong (Kent Lee and colleagues); a case study of the problems of rendition and the differences in the treatment of a notorious Hong Kong criminal in the Chinese legal system (Professor K.C. Wong); and the triads' role in Macau's gaming industry (Angela Leong). Two papers by Professors Zhe and Zhou tackle the growing problem of syndicated crime in China. Professor Zhe warns of the risk of partial 'state' capture and the potential that syndicated crime may have in stealing the benefit of market reforms. Professor Zhou addresses the legislative and other measures now in place to render syndicate crime more vulnerable to law enforcement. Professor Emile Plywaczewski discusses the reach of Chinese criminal networks in central Europe and so provides the basis for a genuine role for mutual legal assistance given China's concerns about foreign criminals exploiting opportunities in China.

The final section, Part VI, collects some of the diverse papers dealing with particular crimes and criminals and includes an unusual attempt to compare the juvenile crime experience in Shanghai and Brisbane (Dr Wei Zhigang and Professor Ross Homel). Ms Aris Chan and colleagues provide some recent data on the prevalence and causes of the rare but revealing episodes of homicide followed by suicide, and Ms Judy Hui

and her colleagues outline a recently developed correctional programme for sex offenders. Mr Zhang Hangwei discusses some steps that may be taken to reduce the impact of pornography on the Internet and stresses the need to govern the Internet. Finally, Ms Cheng Hui Wa's pilot experimental study of the issues that arise in the context of bilingual investigative interviews shows that detecting deception is sensitive to the language context.

Comment

In my view the papers, despite critique, warnings and concerns, all share a common optimism that rational crime control policies can be developed within the rule of law. A need to share experiences in order to fight crime locally and globally animated the internationalist spirit at the symposia. Those in the field and the academy saw the struggle for justice as a crucial and ongoing task that required constant effort. If the challenge was unmet, then the risk was that China's many sacrifices to achieve economic prosperity and civic life free from crime and corruption might be lost. A telling example of these risks has been the rampant abuse of trade mark laws that has led to the sale of substandard and potentially fatal products: an issue of grave concern regardless of the rights (and losses incurred) of intellectual property right holders. As many speakers noted, China was 'stepping up' its efforts through the reform of its laws, crime control policies and professional development to meet the challenges of modern criminality. These challenges include, among others, the problems of addressing the various kinds of financial risk emerging in the new economies (such as e-commerce); China's entry to the WTO and likely exposure to a host of fraudulent opportunities; ensuring environmental protection in the face of industrial expansion; and the emergence of sophisticated risk-averse criminal enterprises with the capacity to 'capture' local government.

In summary, the papers presented in these *Proceedings* reflect to some degree the kinds of criminological work under way in China. A large number of the papers have been translated from the original Chinese text and consequently there is some unavoidable loss of nuance and tone. While every effort has been made to check the accuracy of translation with the original authors, this has not always been possible. In editing the papers, I have generally attempted to reduce repetition and to minimise the use of jargon or slogans that to a Western reader might interfere with the basic point the author wishes to make.

The problems of measuring crime and testing theories of crime were a feature of some papers, but rigorous evidence-based research has yet to become standard. Consequently much of the primary data relied on for secondary analysis by China scholars is problematic and a source of dispute rather than clarity. Uncritical attention is often paid to the fragmentary, poorly qualified or insufficiently detailed official or 'research' statistics that are often cited as evidence. Unsubstantiated claims of success or failure in crime control, normally the former, may actually do more harm than good. If indeed correctional programmes are hugely successful or certain penalties are effective deterrents then there should be no difficulty subjecting them to the scrutiny normally required. In short, much remains to be done to place criminological research on a firm and credible footing, and these *Proceedings* are offered as one of the many small steps that will be necessary to achieve a worthy and credible 'scientific' criminology in greater China.

PART I
FINANCIAL RISK CONTROL

1

Financial Crime Control Strategies after China's Entry into the WTO

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I would like to take this opportunity to share with you my research on the countermeasures against financial crime in post-WTO China.

China became a full member of the World Trade Organization in December 2001. The transformation after China joined the WTO is being observed closely by the world, and many forecasts have been made by scholars about the effects of membership. Financial stability is crucial to the healthy development of China's economy, and therefore the movement of the Chinese financial industry is becoming a focus of attention. Gradual opening up of the financial market is one of China's commitments. By December 2006, foreign banks will be granted national access. China is speeding up reform in the financial sector and gradually opening it in a bid to achieve sustainable and sound development. China's entry into the WTO will bring about a series of challenges to the financial sector, including financial crime. We are thereby confronted with a brand-new question: how serious financial crime will be and how do we deal with it?

Financial Risk that the WTO Brings to China

Financial crime inevitably breeds financial risk. Such risk includes the possibility of losing financial assets, and affects credit, the market, operations and strategy. The financial sector is more at risk than other industries because of its inherent uncertainties. Financial institutes could sustain heavy losses. In general, the risk of loss in China's financial sector is much greater following the country's WTO entry.

First, loopholes in the financial legal system may result in disorder in some fields. It is not likely that regulation of this system can be perfected in the short time available, though financial legislation is improving. Foreign financial institutes will expand their presence in China after WTO entry, and an imperfect legal framework could bring turmoil to the financial market. Second, such financial disorder could hardly be remedied in good time. At present, in some regions, the financial sector is already in disorder. All kinds of funds have been set up illegally without warrant of the People's Bank of China, in some areas involving a lot of clients and enormous capital, and as well as this, the illegal raising of funds is a serious concern in some cities. The problem of local government interference with the normal operation of financial institutes has not been completely solved.

Credit risk is the risk of loss arising from default by a creditor or counterpart. At present, financial assets, especially those of the wholly state-owned commercial banks, are of low quality. Non-performing loans remain comparatively high, amounting to 1.8 trillion yuan at the end of last September, or 26.62 per cent of

their loans. About 7 per cent of the total loans are bad. Despite the increasing capacity of the government to deal with non-performing loans, the work of realising these loans is still challenging. The stress of competition will be intensified in many industries as a result of China's entry to the WTO. Because of lack of competitive advantages, quite a number of enterprises will bog down, even go bankrupt. Some enterprises welsh on their financial debts by suspending payment fraudulently.

Operational risk is the risk of direct or indirect loss resulting from inadequate or failed internal processes, people and systems or from external events. There are many weak links in the daily operation of financial institutions, especially careless internal control, which results in loopholes that can be exploited by an offender. Most of the misconduct occurring in financial institutions is the result of such poor control. In China, strengthening internal control is still a new concept and there will be tremendous issues to be resolved. In the meantime, the weakness of internal control could lead financial institutions to heavy losses.

Current risk is the risk of failure to pay current liabilities resulting from misconduct or loss of assets. Such risk constitutes a serious threat to the safety of the financial sector by damaging a bank's credit standing. Clients will recall their deposits from banks in a panic and the banks will go bankrupt when their credit is doubted. The Asian financial crisis broke out under such circumstances in 1997. Owing to the heritage of a planned economy, quite a few of China's financial institutions are apathetic about current risk. After WTO entry, the current risk will be much higher; it might even lead to bank bankruptcy if the management and quality of loans cannot be improved. Damage would not be confined to individual banks but would spread to the whole industry by the domino effect.

At present, many deficiencies exist in the stock market, especially lack of regulations and disciplines. First, the public company's quality is not good enough. Some local governments expect to raise money from the stock market to support those enterprises that have a deficit. Second, some local supervisory authorities have not done their best. Due to interference from local government, they are blind to misconduct in the stock market. Third, the atmosphere of speculation is immoderate. According to WTO commitment, the stock market will be open to foreign securities firms. It is inevitable that the stock market will be expanded and the difficulties of supervision will be augmented. The stock market might be shocked into imposing better regulation.

The trend of financial crime after WTO entry

As financial risks become more serious, financial crimes will tend to get more serious. They will show several new features.

By integrating into the world economy after WTO entry, financial crimes will show the characteristics of internationalisation or 'globalisation'. First of all, international offenders will target China. Along with the opening of financial markets, some foreign offenders will infiltrate China's financial market by undertaking all kinds of illegal activities for sudden huge profits. In addition, financial institutions are vulnerable because of inherent defects in the financial market. Second, new methods of crime will be introduced to China from foreign countries after WTO entry, and domestic offenders will learn or imitate methods of crime from abroad. Thus methods of financial crime will be spread and updated rapidly.

After WTO entry, both the methods and organisation of crime will differ from traditional crime. Financial crime will become a highly specialised and sophisticated activity. First, modern technology will be applied

to commit financial crime more frequently; it has already had a significant impact on the financial sector and on conventional business. Rapid progress in information technology (IT) has pushed forward the evolution of commercial behaviour, corporate structure and even government decision-making through cost-cutting and productivity improvement. Entry into the WTO will accelerate the application of technology in financial services. In the meantime, this application will also bring new financial risks. Hi-tech crimes such as hacking, virus distribution, forgery, theft and blocking computer access are threatening the safety of the financial sector. Banking and securities institutions will become the targets of greedy Internet crooks. Second, organised gangs will wade into financial crimes. Financial crimes with an international organised background will arise as international gangs come into China after WTO entry. Meanwhile, domestic gangs will pursue financial and other crimes in order to raise funds for survival.

The financial risks will be more complicated and will spread rapidly. Financial crimes will threaten the safety of the financial sector by aggravating financial risk. First, financial crimes could induce or aggravate individual risk. The great damage caused by financial crimes could debase the quality of assets and worsen credit risk. Banks will be on the edge of bankruptcy when the huge losses resulting from financial crimes cannot be made up in time. Second, financial crimes could induce or aggravate industry risk. Financial risk usually spreads between various financial institutions. The breakdown of a large bank shocks other financial institutions, even other regions sometimes, and finally results in full-scale financial crisis. Third, financial crimes could induce or aggravate regional risk. If financial crimes break out frequently and financial order falls into chaos in a certain region, financial risk will be accelerated to a dangerous level. When bad assets exceed the comfortable range, banks will slump into a crisis of debt; a series of economic and political crises will sweep the whole region or country in a chain reaction.

There are wide gaps in the management and supervision of China's financial sector, which need to be closed if WTO agreements are to be met. Loopholes exist in the system, and the management of the financial industry might be used to commit crime, hence the amount of financial crime will rise rapidly and the loss will go beyond that experienced to date.

Measures against financial crime after WTO entry

Given their international characteristics, financial crimes must be combated through international collaboration. First of all, in order to heighten the communication of information and experience, related countries and regions should advance mutual understanding, forge mutual trust, increase consensus, and create a favourable environment based on mutual respect, equality and seeking common ground while reserving difference and reaching unanimity through consultation. Second, a mechanism for exchange and communication should be developed and perfected promoting reciprocal high-level contact so as to build up a cooperation mechanism. Third, a bilateral and multilateral cooperation mechanism for fighting transnational crimes should be established so that integrative measures can be taken in the prevention of financial crime. Fourth, in cooperating in the fight against transnational financial crime, the countries concerned should abide by the relevant international laws, insisting on mutual respect for each other's sovereignty, participating actively and assuming responsibility together. Each country's legislation and concrete situations should also be considered.

To prevent and combat financial crime, governments and law enforcement organs have made tremendous efforts and accumulated valuable experience. Drawing on the successful experience of other countries and regions will help to strengthen financial supervision and crime prevention. Supervisory authorities, law enforcement organs and financial institutions could cooperate with their foreign counterparts by sending people abroad to study the experience of financial supervision and suppressing financial crime or by inviting foreign experts to counsel supervisory authorities and financial institutions.

It would be better to tighten crime prevention than to impose a severe punishment on offenders. Law enforcement organs should shoulder responsibilities for crime prevention while cracking down on financial crimes. To stop similar financial crimes occurring repetitively, problems and loopholes in the handling of criminal cases should be found and dealt with, and preventive suggestions should be put forward to supervisory authorities and financial institutions.

Financial crimes have a direct bearing on the economic situation and on reforms in the financial system. Especially in recent years, new types of financial crime arise once new policies are formulated. China's WTO entry means that financial risks are higher than before with the opening of the financial market, and that financial crimes will be more dangerous. Countermeasures against financial crime should be taken in advance. Financial supervisory authorities and law enforcement organs should establish an early warning system for monitoring financial crime so as to forecast the trends and work out practical measures to suppress such crimes before they become rampant. In the meantime, financial institutions and the public should be warned against the likelihood of financial crime occurring frequently.

After WTO entry, the burden of preventing and combating financial crime will increase and there will be tremendous issues for research. China's pace of reform and opening up will be quicker and the trend to a market economy is irreversible. By integrating into the world economy, China will fully use its comparative advantages in international specialisation.

2

China's WTO Entry Implications for Card Payment Systems

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This paper will attempt to examine the foreseeable changes in payment card risks faced by the banks in China in the wake of its entry into the World Trade Organization, their readiness and adequacies of current systems infrastructure and legal framework, and necessary changes in dealing with the challenges ahead.

Current Market Overview

Issuance and acceptance of payment cards first emerged in China in 1987 with international card schemes such as MasterCard International, Visa International and American Express vying for a significant share of an untapped market with huge business potential. Today, there are about 250 million payment cards (including debit, credit and deposit access cards, out of which about 120 million are internationally branded cards, such as MasterCard and Visa) issued by most of the major state-owned and commercial banks in China.

In the beginning, the payment card business started with limited acceptance of major international credit cards, mostly at travel and entertainment outlets such as hotels, airlines and restaurants. Issuance of credit cards to Chinese citizens then followed. In the early days, banks would only issue cards selectively, and typically to their known customers, and this trend continues. Other unique features of the payment card market in China include:

- Ninety-nine per cent of the cards issued are restricted to domestic use (i.e. they can only be accepted at credit card merchants in China), which is in contrast to the universal acceptance of credit cards issued in all other markets. This is mostly due to credit risk concerns and also to the fact that only a limited number of Chinese citizens travel overseas, though this is increasingly common today.
- The customer must have a banking relationship with the card issuer and must maintain an adequate level of funds in the account. In addition, there is no revolving line of credit attached to the card account. In a strict sense, the card is a secure card rather than a credit card. Again, more than 99 per cent of credit cards issued in China are merely secure cards.
- The vast majority of the local transactions are what the industry refers to as 'on-us', that is, there is no settlement of transactions between banks. A card issued by Bank A can only be accepted at a merchant signed up by Bank A. Again, this is in contrast to the principle of universal card acceptance whereby, say, a MasterCard card issued by Bank A can be accepted at any merchants acquired by Bank A or any other banks worldwide.
- One unique feature of the China market is the extensive use of credit cards as a means of payment for trade transactions. For example, a purchaser of certain industrial equipment may use a MasterCard card

to pay its supplier. Basically, the supplier will need to obtain an authorisation through the bank, which will ensure that the customer (i.e. the cardholder) has sufficient funds in the account to settle the payment. Once an authorisation has been given, the amount will be frozen in the cardholder's bank account. In a nutshell, the card is used as a medium of guarantee, similar to letters of credit or other commercial bills. The card volume generated by such trade transactions is huge and accounts for almost 50 per cent of the total payment card volume in China, which is estimated at about US\$1 trillion annually (this includes all international and domestic payment card brands).

Current market infrastructure and its readiness

Banks in China now mainly operate in a closed environment. Because of the 'on-us' nature of the vast majority of the transactions, there is no clearing and settlement between banks in China. Clearing and settlement will only occur when an overseas card is used by the customer who chooses a merchant/retailer who is supported (or 'acquired') by a bank in China. Then it will be processed via the global networks of MasterCard, Visa or other international payment card companies. The largely 'on-us' environment also means that banks in China typically will only examine their own risk – in other words, their own cards and their own bottom line. Again, this is in contrast to the risk management challenges of most other markets where the issuer's bottom line can be directly affected by the risk management practices of another acquirer. For example, how involved is the due diligence process before a merchant is signed up? How rigorous is the fraud-monitoring system employed? How good is merchant education? And so on.

The efficiency of the payment card business depends on how sophisticated the telecommunications infrastructure is in the marketplace. For China, much improvement in its telecommunications infrastructure has been made over the years, resulting in payment card transactions increasingly being made online. This has not only made the operations more efficient, but banks are more capable of managing risks as they are seeing most transactions immediately, rather than a few days or weeks after the transaction.

While in general the telecommunications infrastructure has improved significantly over the years, the challenges of interoperability between banks remain. In some instances there are even problems for different branches of the same bank. Individual banks run their own proprietary systems and there are no national networks capable of switching the transactions to the right parties at a national level. There had been many attempts in the past to build provincial networks where international brands such as MasterCard participated and invested in such projects. They were all eventually aborted because of the lack of coordination at a national level.

Recently, the People's Bank of China (PBOC) has established Union Pay, an organisation tasked with developing national standards for payment cards and transaction protocols in China. This is seen as a positive step towards ensuring interoperability between banks in China. While this is important, it is more important that universal interoperability needs to be ensured. Establishing a workable local proprietary set of standards will limit the further development of the payment system. The success of international payment card brands is due in large part to the universal acceptance of their card products, which requires systems in different geographical locations to interoperate seamlessly.

Current Fraud and Credit Risks

Both fraud and credit risks for the payment card industry in China are comparatively low today. Fraud is limited to the acceptance of fraudulent cards of overseas banks (typically counterfeit cards). When fraud is measured against the international volume in China, the ratio does exceed the global average, but in terms of dollar amount of fraud losses it is insignificant.

The more significant fraud risk in China, as seen by MasterCard and other international card companies, is its use by transnational criminal syndicates as a base for manufacturing counterfeit cards and other paraphernalia such as counterfeit holograms, skimming devices (gadgets used to illegally capture and store magnetic stripe data encoded on credit cards), and so on. Counterfeit cards and implements made in China are mostly destined for use in other countries. They are typically exported illegally through Hong Kong. However, some quantity of counterfeit cards are also regularly used in China, mostly in major cities in the southern part of China (e.g. Shen Zhen, Guangzhou, Zuhai).

Credit risk is relatively low for the following reasons:

- Credit runaway is a criminal offence. Cardholders who intentionally do not repay the banks can be arrested, criminally charged and fined substantially. This no doubt has a strong deterrent effect.
- Most customers are known to the banks and the cards are secured against deposits on accounts.

In summary, risks faced by banks in China today are relatively low and hence not much importance has been placed by banks in the area of risk management. With China's accession to the WTO, however, this behaviour will have to be changed quickly. The dimensions and dynamics of risks for banks in China will change dramatically.

Implications of WTO accession

Undoubtedly, China's WTO accession has far-reaching economic and social implications for China and naturally its neighbouring areas, such as Hong Kong SAR and Macau SAR. In relation to the payment card industry the implications can be categorised at a high level as follows:

- As part of the obligations or conditions under WTO accession, the government of China will have to provide increased market access to foreign banks. The right to issue cards in China was in the past restricted to local banks only. Overseas banks only acted as agents for local banks in processing card transactions. Today, there are a limited number of foreign banks that have been granted the authority to issue and acquire payment card transactions in China. More and more banks will be given market access and restrictions placed on them will gradually be eased off.
- As a result of the expected increase in market access by foreign banks, banks in China will face very keen competition.
- Foreign banks are better equipped to manage risk and their risk tolerance is generally much higher than for banks in China. Chinese banks will have to take a more liberal approach to risk, whereas today they tend to adopt more of a risk-free philosophy, an approach that has impeded some of their business development opportunities. With increased competition, banks in China must begin to change their approach. The key is to manage risk appropriately and at the same time generate healthy portfolio growth.

Challenges

While it is easy enough to say that banks in China have to take a more liberal or, more appropriately, open approach to risk, it requires long-term preparation to change a bank's culture and establish sufficient checks and balances to make sure that they are ready to take on more risks. There are many and varied challenges in relation to effective management of payment card risk in China. The following are the key areas of concern:

- Lack of national credit bureaux or negative files to deal with potential credit and fraud risk. At present, only some very basic negative files are maintained at local city or provincial level. There is no formal sharing of negative information among banks.
- Limited fraud and credit risk detection capability. Most banks have no credit-scoring or sophisticated fraud-monitoring systems.
- Lack of experienced risk management staff with international operations experience.
- Law enforcement awareness is limited to major cities.

Response Required

As mentioned, it requires long-term planning and preparation to get banks in China ready to take on the new challenges brought about by China's WTO accession. In my opinion, the following strategic responses need to be initiated early on:

- Enhance staff training, particularly by exposure to international operations and best practices.
- Improve front-end and back-end detection capability. Banks should begin to explore the implementation of sophisticated online fraud detection systems (either rule-based or real-time neural network-based prediction systems).
- Develop risk databases at national level (both positive and negative files).
- Increase public awareness on payment card risk through education programs.
- Increase law enforcement awareness and work with them to develop a cohesive enforcement strategy.
- At present, the legal framework is generally adequate to address existing risks. Nevertheless, the various laws need to be reviewed and enhanced if required to make sure they are compatible with the current and future industry developments and technological advancements. For example, possession of counterfeit payment cards is currently not an offence in China. This is the fundamental deficiency in laws in many other jurisdictions such as Japan and Korea, where as a result these countries have been targeted by transnational criminal groups.
- Partnerships between the industry and the public sector should be encouraged and practised.

In conclusion, this chapter intends only to point out, at a broader level, the foreseeable risks to the payment industry in China with its WTO accession and the type of strategic response required. More detailed research is required to fully assess the various risk potentials and determine the appropriate strategies and solutions. The views expressed in this paper are personal ones based on my knowledge and understanding of the market environment in China. They do not represent the views of MasterCard or the industry.

3

Cyber-crime and E-business in China

A Risk Perception Perspective

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Globalisation implies that different countries or places will have more contact and interaction between each other. As suggested by Castells (2000), as the interaction among countries increases, information will become an asset for a better economy which he labelled an 'informational economy'. A society launches the IT revolution in order to have a faster and more continuous access to updated information. It begins to operate in a timeless manner and becomes an 'information society'. All these contribute to the existence of what has been called a network society. One of the indications of the existence of such a society is that there is a wide informational network between a country and the rest of the world. For instance, the IDD, fax, the Internet and the like all mean that China and the world are in the relationship of a network society.¹

Computers are obviously the centrally important tool of the network society. The Internet, in turn, has a vital role in the computer world. The influence of the Internet is so wide that it is an almost indispensable component of our daily life. The influence of computers in our life ranges from simple tasks such as backing up files and printing reports to complicated functions such as transferring money and equipment control machinery. China is no exception to the world trend of increasing computerisation. The Chinese government faces the challenges of the Internet with both smiles and trepidation. The reason is that, on the one hand, the Internet can help to link China to the outside world and it can also facilitate China's commercial activities so that China can maintain a close relationship and with the world and not find itself lagging behind others. On the other hand, the Internet has also brought cyber-crime into China, causing serious problems for the government. Many companies use electronic business (e-business) to seek their customers. E-business can be defined as those electronic forms of commercial activities conducted over the Internet (Sterrett & Shah 1998: 43). With China's entry into the World Trade Organization, it is expected that the role of e-business in China will expand. But the threat from cyber-crime may slow the development of e-business in China: people may reject it as too risky. In view of this, in this chapter I will try to give an overview on the relationship between cyber-crime, risk perception and the development of e-business in China.²

Current Development of E-business in China

At the end of April 2002, with over 56 million people able to access the Internet at home, China was proclaimed to be the largest Internet population in the Asia-Pacific region and the second largest in

¹ In this paper, Beijing refers to the physical territorial boundary of the city of Beijing in the People's PRC. China refers to the physical territorial boundary of the PRC, excluding the physical territorial boundaries of the Special Administrative Regions of Hong Kong and Macau.

² In this paper, the word 'perception' refers to a person's capability to organise or create meanings based on what the sense receive (Gray 1991: 283; Smith et al. 1986: 146).

the world, just after the United States. The figures, however, recorded a mere 5 per cent of Chinese households.³ Furthermore, in accordance with survey findings regarding the characteristics of the websites in China from the China Internet Information Center (CNNIC) up to 30 April 2001, only 5.4 per cent of commercial websites and 77.8 per cent of enterprise websites in China were involved in e-business.⁴ Of the commercial websites, only 45.4 per cent were involved, of which 18 per cent were in business to customers (B2C), 15.8 per cent in business to business (B2B), 4.5 per cent in online hotel reservation, 3.4 per cent in online stock trading, 2.6 per cent in online booking, and 1.1 per cent in online auction. Among the enterprise websites, only 11.2 per cent of the websites were involved in e-business, of which 5.9 per cent were B2C, 4.9 per cent were B2B while 1.4 per cent were online tender.

Although it was difficult and unfair to conclude whether or not the e-business websites were well developed in China based only on the above statistics, the potential market for e-business in China seems to be bright.⁵ Nonetheless, there are many issues, like cyber-crime, that could hinder the development of e-business in China. The following is a brief account of them.

Cyber-crime

There are three types of cyber-crime. First, cyber-crime refers to the situation when the computer itself becomes the focus of the unlawful offence. For instance, the behaviour of hackers/crackers are an act of cyber-crime because such people illegally enter computers and steal the computer data and/or damage it.⁶ Second, cyber-crime also refers to a situation where the computer itself is used to commit the offence, like using computers to disseminate pornography. Third, cyber-crime refers to a situation where computers are used to store evidence of the offence.⁷ For the sake of discussion, in this chapter 'cyber-crime' refers to the first situation.

Cyber-crime is said to be responsible for seriously undermining the economy of a society by causing huge loss to its companies. The exact figure is hard to determine, partly because not all the companies that suffered from cyber-crime were willing to report for fear that their images would be tarnished.⁸ Nevertheless, a finding from a survey conducted with the US Federal Bureau of Investigation (FBI) pointed out that only 35 per cent of companies were willing to admit that they suffered from cyber-crime. This percentage, however, already contributed to the loss of at least US\$37.78 billion in 2001, a dramatic rise from the 2000 figure of US\$26.56 billion.⁹

³ http://www.nielsen-netratings.com/pr/pr_020422_eratings.pdf

⁴ Commercial websites refers to the websites of the companies whose businesses were conducted online only. Enterprise websites refers to the businesses of the websites were conducted more than online. For further details of the classification between commercial and enterprise websites, please refer to <http://www.cnnic.net.cn/tj/2.shtml> for details.

⁵ Yang (2000) argued that most of the business websites in China cannot be regarded as e-business as they are still confined to the stage of informative or just displaying the information of the company and its products.

⁶ There is some difference between hackers and crackers. Hackers refer to people who illegally invade other computers but do nothing to steal information from or destroy or damage the system in any ways. They just illegally invade other computers and see what is inside the system. On the other hand, crackers illegally invade other computer systems and steal information from them or destroy or damage them to get control over the system in any ways (Pfaffenberger 1997: 121, 224; Nader 1998: 143, 284). However, we should be aware of attack from both hackers and crackers.

⁷ For details, please refer to <http://www.pricewaterhousecoopers.co.uk/extweb/newcolth.nsf/docid/IA47C7356C3D57AC85256AD1005834DI?OpenDocument> for details.

⁸ http://www.mpinews.com/fprint.cfm?htm=htm_per%20cent5C20020408_per%20cent5Cta11441a_per%20cent2Ehtm.

⁹ http://app.singpao.com/20020409/international/99089_main.html.

The rise of cyber-crime poses a new challenge to society. The reason is that, as pointed out by Turnbull, unlike traditional crimes, cyber-crime can be committed at any time, anywhere, and law enforcement authorities need to spend more time and effort if they are to locate and detect offenders.¹⁰

The threat of cyber-crime not only falls on the government and e-business companies but on Internet users as well. Facing the risk of having personal or important information stolen by hackers/crackers, Internet users may not be willing to take part in e-business. As a result, the development of e-business can be impeded. Having a huge potential market, what do Chinese Internet users think about e-business? Do they regard it as a risky behaviour that poses a threat to them? In other words, what is the security risk perception among Chinese Internet users towards e-business? Before looking into the issue, it is better for us to have a brief review of the security risk perception.

Security Risk Perception

Computers are very useful to humans. Because of their general reliability – operating for long periods without problems, and giving correct answers to calculations – people tend to put their trust in these machines. But computers do break down, and whole systems can crash, and of course there can be serious problems with software.

Because so many functions run on computer systems, society may malfunction when computer systems crash: citizens may not be able to receive their salary, social benefits, bank interest, and the like. What is more, the effect of computer failure is not limited to individuals. Companies may not be able to conduct their normal business because they cannot perform their accounting, payroll, inventory and other data-processing functions, and this effect extends to their business partners who supply them with goods, and so on.¹¹ In fact, as we are now living in a society that is so reliant on computers, we all – experts and layman, individuals or the community – have, voluntarily or involuntarily, to face the risk of computer failure (Starr 1969: 1234-5).

In a society so heavily reliant on complex information technology, the risk of IT failure, especially the risk of computer failure, is ever present. Therefore I shall limit my discussion to the security aspects of computer failure.

The issue of security is important for the use of computers. With the rise of the Internet, the opportunity for conducting e-business, doing financial transactions, sending important data such as credit card numbers, security numbers, personal information and the like, has become widespread. In addition, sometimes people simply disclose their own personal data to others easily, such as through some communicating software like ICQ, AOL or Microsoft NetMeeting. However, in the Internet, some crackers/hackers may be able to access your personal and security number and you will have no idea about it. They can use your personal data and security number to commit crime or even use your credit card to purchase goods on your account. Therefore, what I mean about the security use of computers is whether computer users have the perception that their

¹⁰ <http://www.acpf.org/WC8th/AgendaItem2/I2PpTurnbullHK.html>.

¹¹ http://www.year2000.gov.hk/english/index_2.html.

personal and important data is unsafe and whether they have taken measures to minimise the probability that this data might be revealed by unauthorised third parties. For instance, the selection of the computer software can be regarded as a matter of security concern to a person or an organisation. The reason is that some of the software is open to being invaded by hackers/crackers. A recent instance of showing security concern was when the Beijing government selected Linux rather than Microsoft's products (Ming Pao, 7/1/2002).¹²

Methodology

I shall use my research findings on computer risk perception among students at Peking University (PKU) in Beijing and biannual survey reports on the development of China's Internet conducted by the CNNIC to show the relationship between cyber-crime, risk perception and the development of e-business in China.

With a view to probing the computer risk perception among educated youth in China, a set of questionnaires was prepared at the end of September 2001. A total of 250 questionnaires were sent to the targeted respondents from the period 4 October 2001 to 19 November 2001 by direct distribution at PKU. I divided the students into computer-majored and non-computer-majored. With the help of my assistant at PKU, the questionnaires were distributed to a broad range of respondents in the dormitory and computer laboratory inside PKU. The completed questionnaires were collected immediately. No person other than my assistant could have access to the questionnaires, which for safety reasons were photocopied. The originals were then directly mailed to me in mid-November 2001 for data analysis. My assistant kept the photocopies. All the original and photocopied questionnaires were destroyed at the end of my data analysis.¹³

Two hundred and two completed questionnaires were returned, of which 90 were from postgraduate students and 112 from undergraduates; 55.4 per cent of respondents were computer-majored students while 44.6 per cent were non-computer-majored students.¹⁴ The response rate was 80.8 per cent.

The CNNIC is one of five organisations that provide inter-networks protocol (IP) and domain to either end users or Internet service providers in China. China connected with the Internet in 1994. In June 1996, China began to offer Internet services for commercial and private uses. In June 1997, the Chinese government institutionalised regulation of Internet use by setting up the CNNIC with a view of controlling use, especially regarding IP and domain. Up to July 2002, the CNNIC conducted ten surveys regarding the use of the Internet in China, in October 1997, July 1998, January 1999, July 1999, January 2000, July 2000, January 2001, July 2001, January 2002 and July 2002.¹⁵

¹² The government of the United States, for instance, has used a lot of software from Microsoft. Nonetheless, this government is now paying more attention to software security, especially when Microsoft products are reported to have many security problems. Interested readers can refer to http://full.mingpaonews.com/20020118/t_tacl.htm for details.

¹³ The author would like to acknowledge the financial support from the research travel grant offered by the School of Humanities and Social Science at the Hong Kong University of Science and Technology.

¹⁴ The author further divided postgraduate and undergraduate students into computer majored and non-computer majored students. As a result, four groups were created, namely, postgraduate computer majored, postgraduate non-computer majored, undergraduate computer majored, and undergraduate non-computer majored.

¹⁵ <http://www.cnnic.net.cn/about.shtml>.

As mentioned, the CNNIC conducted the surveys on Internet use in China biannually. It targeted mainly two groups of potential respondents: national households that had installed fixed telephone lines and whose ages were 6 or above, and high school students who were living in school. In the first group, the CNNIC further divided the respondents by province. In each province, the CNNIC, based on selected criteria, randomly approached the respondents, both in urban and rural areas, by means of telephone survey. The confidence level was set at 95 per cent. For the second group of potential respondents, the CNNIC randomly chose 120 high schools in China. Then it randomly chose 50 students in each school. The confidence level was also set at 95 per cent.¹⁶

Findings

I shall present the findings in two ways, showing the view of the respondents on hackers/crackers, and the level of security risk perception among the respondents. Before drawing a conclusion, I shall relate the respondents' view on hackers/crackers, their security risk perception and their e-business behaviour together. In presenting the data, I shall mention my findings first and then compare it with the CNNIC survey, whether appropriate and possible, and see if there are any differences between them.

View on hackers/crackers

From my research, though not many respondents experienced invasion by hackers/crackers, they tended to think that hackers/crackers pose a great threat to their society. In addition, they described the effect of such invasion as serious or moderate to them.

Table 3.1 Personal experience on getting hackers/crackers

| | Very often | | Sometimes | | Rarely | | Never | | No idea | |
|---|------------|-----|-----------|-----|--------|------|-------|------|---------|-----|
| | N | % | N | % | N | % | N | % | N | % |
| Personal experience on getting hackers/crackers | 7 | 4.2 | 15 | 8.9 | 75 | 44.6 | 62 | 36.9 | 9 | 5.4 |

Note: Due to the rounding of figures, the sum of the percentage in some of the items is not equal to 100 per cent. The same criteria applied to the following tables.

Table 3.1 shows that most of the respondents said they rarely experienced any invasion from hackers/crackers. This finding was, however, different from the CNNIC's result. The CNNIC pointed out that, up to January 2002, 63.3 per cent of Internet users in China experienced invasion by hackers/crackers in the last year (CNNIC survey, 1/2002).

¹⁶ <http://www.cnnic.net.cn/develst/fa.shtml>.

Table 3.2 Threat of hackers/crackers to society

Do you agree that hackers/crackers pose a great threat to society?

| | Strongly agree | | Agree | | Disagree | | Strongly disagree | | No opinion | |
|---------------------------------------|----------------|-----|-------|------|----------|------|-------------------|-----|------------|-----|
| | N | % | N | % | N | % | N | % | N | % |
| Threat of hackers/crackers to society | 15 | 7.5 | 91 | 45.3 | 70 | 34.8 | 6 | 3.0 | 19 | 9.5 |

Table 3.2 shows that even respondents who rarely experienced any invasion agreed that hackers/crackers already posed a threat to society.

Table 3.3 Self-description of the effect of invasion from hackers/crackers

| | Very serious | | Serious | | Moderate | | Minor | | None | |
|---|--------------|-----|---------|------|----------|------|-------|------|------|-----|
| | N | % | N | % | N | % | N | % | N | % |
| Self-description of the influence on invasion from hackers/crackers | 9 | 9.3 | 37 | 38.1 | 35 | 36.1 | 11 | 11.3 | 5 | 5.2 |

Table 3.3 shows that the respondents tended to regard the effect of invasion of hackers/crackers as either serious or moderate to them.

Although my research does not match with the CNNIC's finding in the experience of the invasion of hackers/crackers among Internet users, the figures above suggest two things: that Chinese Internet users believed that the hackers/crackers were posing a threat to their society; and that they thought the effect of invasion by hackers/crackers would be serious. This, in turn, would affect the security risk perception among the Chinese Internet users towards hackers/crackers and their attitude towards e-business.

Security risk perception

Table 3.4 Installation of firewall software

| | Installed | |
|-----------------------------------|-----------|------|
| | N | % |
| Installation of firewall software | 132 | 78.6 |

As illustrated in Table 3.4, most of the respondents tended to install firewall software in order to protect the security risk of surfing the Internet. This shows that the security risk perception among respondents was high. In fact this finding matched the result from the CNNIC survey, according to which, up to January 2002, 64.6 per cent of Internet users in China chose the installation of firewall software as the main method of protecting their security risk in surfing the Internet (CNNIC survey, 1/2002).

Table 3.5 Sending personal or important information

| Sending personal or important information | Very often | | Sometimes | | Rarely | | Never | |
|---|------------|------|-----------|------|--------|------|-------|------|
| | N | % | N | % | N | % | N | % |
| A) In e-mail, without encryption (secure format) | 50 | 25.8 | 39 | 20.1 | 49 | 25.3 | 56 | 28.9 |
| B) In e-mail, with encryption (secure format) | 29 | 15.3 | 69 | 36.5 | 54 | 28.6 | 37 | 19.6 |
| C) Via the Internet, without encryption (secure format) | 27 | 14.2 | 51 | 6.8 | 62 | 32.6 | 50 | 6.3 |
| D) Via the Internet, with encryption (secure format) | 17 | 9.2 | 73 | 39.5 | 49 | 26.5 | 46 | 24.9 |
| E) In a computer that is not yours, via e-mail | 24 | 12.5 | 38 | 19.8 | 70 | 36.5 | 60 | 31.3 |
| F) In a computer that is not yours, via the Internet | 23 | 12.0 | 37 | 19.4 | 70 | 36.6 | 61 | 31.9 |

As seen in Table 3.5, most of the respondents said they would send their personal or important information by using encrypted e-mail or via the Internet with encryption. Encryption is a kind of secure format in sending information to and from computers. Its use can lessen the chance of personal or important information being revealed by unauthorised persons during data transference. The result matched the CNNIC's finding. Up to January 2002, there were only 45.0 per cent of Internet users in China who were satisfied with the protection of the personal privacy over the Internet (CNNIC survey, 1/2002). It suggested that a number of Internet users in China felt uncomfortable with Internet security.

These figures suggest that Chinese Internet users had a high security risk perception on their computers or their data. With a view to protecting their computers, most of them had installed firewall software. In order to protect their personal data, Chinese Internet users tended to use encrypted format during transmission. This suggested that they were concerned about the security of their computers and their data. So how was the high security risk perception affecting e-business behaviour among Chinese Internet users?

*E-business behaviour***Table 3.6 Purchasing from e-commerce websites is a widespread practice in your society**

| | N | % |
|----------------------|----|--------|
| A) Strongly agree | 24 | (12.0) |
| B) Agree | 85 | (42.5) |
| C) Disagree | 69 | (34.5) |
| D) Strongly disagree | 10 | (5.0) |
| E) No opinion | 12 | (6.0) |

From Table 3.6, most of the respondents agreed that purchasing from an e-business website was a widespread practice.

Table 3.7 Frequency of visiting e-business websites

| | N | % |
|-------------------|----|--------|
| A) Very often | 22 | (11.0) |
| B) Sometimes | 26 | (13.0) |
| C) Not very often | 64 | (32.0) |
| D) Occasionally | 83 | (41.5) |
| E) Never | 5 | (2.5) |

Table 3.7 shows that although the respondents agreed that e-business was a widespread practice, most of them visited e-business websites only occasionally. The result was a little different from the CNNIC survey. Up to January 2002, 49.8 per cent of Chinese Internet users sometimes accessed e-business sites (CNNIC survey, 1/2002).

Table 3.8 Frequency of purchasing from e-business websites

| | N | % |
|-------------------|----|--------|
| A) Very often | 9 | (4.7) |
| B) Sometimes | 16 | (8.3) |
| C) Not very often | 32 | (16.6) |
| D) Occasionally | 64 | (33.2) |
| E) Never | 72 | (37.3) |

Table 2.8 further revealed that the respondents occasionally or never purchase from e-business. This result matched the finding from the CNNIC survey. In accordance with the CNNIC's report, up to January 2002, 68.4 per cent of Internet users in China had not purchased goods or services from e-business during the last

year. In addition, 93.1 per cent of Internet users in China did not purchase goods via auction e-business in China. Furthermore, 91.3 per cent of Internet users in China did not purchase second-hand goods via e-business in China over the last year. All these suggested that Chinese Internet users did not purchase goods or services from e-business websites very often.

Table 3.9 Method of payment method for online purchasing

| | N | % |
|---|----|--------|
| A) Online payment | 7 | (5.8) |
| B) Mail the cheque to the company | 7 | (5.8) |
| C) Deposit to the specific bank account | 11 | (9.1) |
| D) Cash on delivery | 93 | (76.9) |
| E) Others | 3 | (2.6) |

Security was the main criterion for the respondents in using e-business. Table 2.9 shows that most respondents preferred cash on delivery in settling the payment for any electronic purchase. This result matched the CNNIC's finding. Up to January 2002, 42.8 per cent of Internet users in China preferred paying by cash on delivery to paying electronically. Moreover, if the bills were over RMB 1000, 73.3 per cent of Internet users in China would pay by cash on delivery (CNNIC survey, 1/2002). The above showed that Chinese Internet users were concerned about the security of their data and information when settling the payment for online purchasing.¹⁷ Security risk was a concern when choosing the method of payment for online purchasing among Chinese Internet users.

Table 3.10 Reasons for choosing the online payment method

| Reason for choosing the online payment method | N | % |
|---|----|--------|
| A) Convenience | 36 | (30.5) |
| B) Security | 56 | (47.5) |
| C) Most of my friends do it in this way | 4 | (3.4) |
| D) Convenience and security | 13 | (11.0) |
| E) Others | 9 | (7.6) |

As illustrated in Table 3.10, most of the respondents expressed that they considered security as the main reason for choosing this payment method for e-business.

¹⁷ There was another explanation for the data on the method of payment for online purchasing in China. From the knowledge of the author, credit card was still not popular among Chinese. In view of this, among the payment methods, most of the e-business in China would provide an option of cash on delivery for their customers. Nonetheless, when considering the figures in Table 2.10, the author believed that security was still one of the main concerns in choosing the method of payment for the online purchasing.

Generally speaking, the figures from my research and that of the CNNIC suggest that Chinese Internet users are still not adopted to e-business. Most of them still went to the traditional shops to purchase their own necessities. Worse still, for those who were willing to get in touch with e-business, most of them tended to regard it as a high-risk activity. I suggest that this was because of the activities of hackers/crackers. Although not all subjects experienced invasion from hackers/crackers, they feared that hackers/crackers could steal their personal information from e-business or even during a transaction. With such a perception, Chinese Internet users who made purchases through e-business tended to choose cash on delivery to settle the payment. This suggests that the current e-business failed to offer a strong sense of security to their customers. If this situation does not improve, the development of e-business in China will be hindered.

Conclusion

The introduction and development of e-business in China are believed to be beneficial to Chinese society. Nonetheless, the high security risk perception of the threat from cyber-crime has hindered the development of e-business in China. I suggest that the perception of security risk among Chinese respondents depends on whether or not they have an accurate understanding and appreciation of the issue of cyber-crime and e-business. Their understanding and appreciation of the issues in turn depend on whether young people have received accurate knowledge or information on the issue. The ability and willingness to receive such knowledge or information, as suggested by Morgan (1981), are affected by the interaction between humans and their environment. Even though not all the people will agree on the causal relationship between risk perception and risk behaviour, the more knowledge the respondents have of cyber-crime and e-business, the more options will be available to them to facilitate the development of e-business. Most of the information comes from education. Thus, with an aim of increasing the knowledge among the Chinese respondents on cyber-crime and e-business, proper education is very important.

References

- Castells, Manuel, *The Rise of the Network Society*, Oxford: Blackwell, 2000.
- Gray, Peter, *Psychology*, New York: Worth, 1991.
- [Http://app.singpao.com/20020409/international/99089_main.html](http://app.singpao.com/20020409/international/99089_main.html).
- [Http://full.mingpaonews.com/20020118/t_tacl.htm](http://full.mingpaonews.com/20020118/t_tacl.htm) on 18 January 2002.
- [Http://www.acpf.org/WC8th/AgendaItem2/I2PpTurnbullHK.html](http://www.acpf.org/WC8th/AgendaItem2/I2PpTurnbullHK.html).
- [Http://www.cnnic.net.cn/about.shtml](http://www.cnnic.net.cn/about.shtml).
- [Http://www.cnnic.net.cn/develst/200201/doc2002-1.zip](http://www.cnnic.net.cn/develst/200201/doc2002-1.zip).
- [Http://www.cnnic.net.cn/develst/fa.shtml](http://www.cnnic.net.cn/develst/fa.shtml).
- [Http://www.mingpaonews.com/20020107/t_gaa1h.htm](http://www.mingpaonews.com/20020107/t_gaa1h.htm) on 7 January 2002.
- [Http://www.mpinews.com/fprint.cfm?htm=htm per cent5C20020408 per cent5Cta11441a per cent2Ehtm](http://www.mpinews.com/fprint.cfm?htm=htm%20per%20cent5C20020408%20per%20cent5Cta11441a%20per%20cent2Ehtm).
- [Http://www.nielsen-netratings.com/pr/pr_020422_eratings.pdf](http://www.nielsen-netratings.com/pr/pr_020422_eratings.pdf).
- [Http://www.pricewaterhousecoopers.co.uk/extweb/newcolth.nsf/docid/1A47C7356C3D57AC85256AD1005834D1?OpenDocument](http://www.pricewaterhousecoopers.co.uk/extweb/newcolth.nsf/docid/1A47C7356C3D57AC85256AD1005834D1?OpenDocument).
- [Http://www.year2000.gov.hk/english/index_2.html](http://www.year2000.gov.hk/english/index_2.html).
- [Http://www.ust.hk/itsc/y2k/](http://www.ust.hk/itsc/y2k/).

- Morgan, M. Granger, 'Probing the Question of Technology-Induced Risk', *IEEE Spectrum* 18(11) 1981: 58-64.
- Nader, J.C., *Prentice Hall's Illustrated Dictionary of Computing*, 3rd edn. Sydney: Prentice Hall, 1998.
- Pfaffenberger, Bryan, *Webster's New World Dictionary of Computer Terms*, 6th edn, New York: Que, 1997.
- Smith Ronald E., Irwin G.. Sarason and Barbara R. Sarason, *Psychology: The Frontiers of Behavior*, Cambridge: Harper & Row, 1986.
- Starr, Chauncey, 'Social Benefit Versus Technological Risk', *Science* 165(19) 1969: 1232-8.
- Sterrett, C., and A. Shah, 'Going Global on the Information Super Highway', *SAM Advanced Management Journal*, 63(1) 1998: 43-8.
- Yuang Xia, 'Searching for Substance: The Reality of China's Internet Development', *Harvard Asia Pacific Review* 4(2) 2000: 17-18.

4

Understanding Risk in the Financial Industry

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Risk in the financial industry is a vast subject and this chapter will therefore be limited to reviewing some of the non-technical challenges faced by the retail sector of the financial industry. In particular, I shall address fraud risk and risk management in regard to consumer products like payment cards.

Today there are, worldwide, billions of credit and debit cards in circulation. ‘Tomorrow’s money’, as they have been termed, is now a global reality with considerable advantages and convenience for consumers worldwide. Credit and debit cards, like all consumer products, are the targets of crime and the resulting fraud is a considerable hindrance to safe growth.

Crime is not a static phenomenon; like most forms of criminality, financial crime in general and card crime in particular constantly evolves. While true innovation is rare, specialised criminals constantly adapt and re-adapt known ways of operating to new products and see new markets as target areas for an ever-rewarding blend of the old and the new.

This evolution has accelerated considerably over the last 12 years and has been perhaps most noticeable in the field of counterfeiting. Asia, in particular, has over the last decade proved to be a fertile proving ground for organised criminals focused on payment card counterfeiting, and this Asian expertise has quickly and successfully spread worldwide. From Thailand to Malaysia to Hong Kong in the early 1990s and from there to Europe and Canada then across the border to the United States, ethnic Chinese criminals have made card counterfeiting a truly global enterprise and created a global challenge for all concerned. Since 1990, five or six subsequent generations of counterfeited cards and holograms of increasing quality, at least three generations of skimming devices and at least two generations of terminal implants are true evidence of the capacity of Asian card counterfeiters to innovate and adapt.

It would, however, be wrong to assign all the blame to the entrepreneurial, loosely organised Hong Kong criminals, as was so often done in the past. The opening of the former Eastern Bloc, for example, has had its own consequences for some specific aspects of card crime. Nonetheless, as a direct result of such phenomena, accounted losses due to counterfeiting have grown from less than 10 per cent of global losses in the late 1980s to nearly 40 per cent today – a much faster rate of increase than any other form of card crime and one that shows no sign of abating.

Financial institutions recognise this overall risk and its potential negative effect on both growth and consumer confidence. Today they invest more resources than ever before in making their products and the networks that make those products as impervious as economically possible to the threat of organised financial crime.

The investments and efforts made over the last ten years by law enforcement authorities, though considerable, have understandably focused on fraud prevention. Increasingly better, safer and more reliable products, safer networks, consumer education and overall better training and communication for all parties involved have had undeniably positive effects but remain challenged by a very adaptable criminal class. Even larger investments are on the way and will be made in the years to come. The real issues associated with the necessary solutions to the constant challenge of card crime are not so much technological ones but the cost-effectiveness of these solutions and the actual time required for their global deployment.

While redesigning a card is easy enough, imagine the challenge of producing and distributing this new safer product to individual consumers, two or three billion times every two or five years. Imagine converting terminals and ATMs and adapting both systems and the required procedures globally, and this without impeding day-to-day operation, and you will have an idea of the true challenges at hand. More flexible, more intelligent and more resilient products like the smart card, supported by ever smarter networks will, I trust, effectively address most of the threats identified to date, but considerable challenges remain which are not essentially technological in nature.

It is somehow paradoxical that in an industry that accounts, to the very second, for the last cent in every single transaction, there is a near total absence of truly detailed, historically researched and readily usable documentation about fraud and where, how and by whom it is committed. This is one of the issues that continues to hinder both broad investigations and prosecutions and the further refinement of fraud detection, investigation and analysis methodology and therefore overall better fraud prevention.

The ever more advanced risk management policies and the deployment of new fraud prevention, detection and control mechanisms needed to face ever more sophisticated and global criminals requires day-to-day monitoring, analysis and exploitation on a much larger scale than ever before. The reality is that most of the financial institutions concerned simply do not have, individually, the ability to be truly effective in this area because of limitations in individual scope, focus, staff and budget.

As a result, individual institutions involved with the issue and acquisition of payment cards must and increasingly will rely on their brands or payment systems affiliation for most of their strategic thinking and planning as well as for data extraction and analysis.

While data collection from individual banks has improved, most of the data is still financial in nature and therefore allows for limited analysis only. Data collected from investigations remains, for the most part, fragmented and uncollated. This non-numerical, historical and empirical data is nonetheless essential to refine the logic and better exploit, for example, the output of artificial intelligence-based fraud prediction and detection systems. The industry is gradually acquiring and deploying these systems worldwide but they are still lacking in both volume and consistency.

Of all the disciplines in banking, risk management for new payment instruments is one of the more demanding but one of the least documented. While within a card operation the risk function may once have been a sideshow, it is today a true profession with well over 100 000 practitioners in the card industry alone. Despite this reality, most of today's risk managers still learn on the job from colleagues. As the ranks of those who know are depleted and as more demands are made on their time, focused analysis is sparse and consequently true risk management innovation remains the exception rather than the rule.

We can only regret the unavailability of a truly comprehensive historical documentation. There is no true curriculum for the specialist who needs an understanding of subjects as diverse as banking, crime, forensic science and the possibilities offered by artificial intelligence. Skilled and experienced instructors are hard to find.

The interface that must exist between private and public sectors remains affected by issues ranging from lack of trust to urban legends like ‘banks are insured and therefore do not care’. Focused, effective and accurate communication between financial institutions, or between banks and payment systems or with law enforcement as a whole, while infinitely better today than it may have been in the 1980s, remains a constant challenge, particularly in a market-driven industry.

Limitation in jurisdiction remains a considerable hindrance to the full investigation of large-scale fraud schemes, which, with the odd exception, tend to be multinational in nature. Law enforcement and the judiciary are at the uncomfortable end of this stick. Official statistics about commercial crime are universally inaccurate as barely 5 per cent of commercial crime is officially reported. Partly as a result of that lack of comprehensive reporting about the actual volume of commercial crime within each jurisdiction, specialised units and officers are still the exception rather than the rule. In the particular area of card crime, in great part due to the efforts of the main card brands or payment systems, the amount of information and reporting that reaches law enforcement is better and more accurate than for other forms of commercial crime. It nonetheless fails to be as complete, detailed and readily exploitable as it could be.

The challenges listed above are by no means the reserved domain of the new payment instrument industry. The very same issues, in one or another way, are facing our risk management specialists involved, for example, with the protection of copyright, whether for software or luxury goods, as well as professionals concerned with the challenge of safety on the Internet.

Beyond technical issues, what I would term the human element of modern risk management would benefit enormously from true academic research. The influence such studies could have when applied to the essential area of professional development would be a real asset to all professionals involved.

It is therefore my conclusion that one of the solutions to most of the issues listed above is the need for better, more comprehensive, easily available multi-level training and professional development for both private and public sector professionals.

As such, an initiative like the Hong Kong University Centre for Criminology and this conference, which today provides us, for the third year running, with this remarkable platform to meet and exchange views on this and other subjects, deserves our strongest support.

5

China, Globalisation and Crime: A Potential Victim of Its Own Prospective Success?

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We are living in a world of global economies. More accurately, and more worryingly perhaps, we are living in a world of aspiring global economies. There are many countries which have until now been unable to enrich their economies through ordinary industrial growth. In part, this was because they lacked the requisite financial sources to do so; in part it was due to increasing, if unfair, Western moratoriums on ecologically damaging latent development. The beauty and potential danger of the Internet-driven economy lies in the ability of the emerging economies to create and sustain at least the illusion of industrial and capitalist parity with the developed economies of the West until such time as that parity is actually achieved. The problem with illusions, however, is that they require creative misdirection. The dangers of such sleight of hand being used by emerging economies are potentially grave.

The Organisation for Economic Co-operation and Development (OECD) has maintained that e-commerce lies at the very heart of the future of globalisation.¹ For emerging economies the nature and increased volume and complexity of e-trading increases the centrality for them of e-commerce.

Equally, the OECD also argues that ‘developing new kinds of commercial activities in the electronic environment largely hinges on assuring consumers and businesses that their use of network services is secure, reliable and verifiable’.² In pursuing the economic importance of e-commerce, however, the OECD had actually neglected to fully consider the concept and importance of security in e-commerce. Qu Yuan, writing over 2000 years ago, argued that ‘all the world is drunk and I alone am sober’.³ Applied to the security void evidenced by the OECD, his words border on the prophetic.

Globalisation requires, and will continue to require, an increased connectivity of the world’s computer, banking and financial systems. Globalisation has increased the free movement of capital between the world’s developed and underdeveloped economies. Globalisation operates in cyberspace, which by definition is extra-territorial.⁴ This means that the regulatory practices which purport to exist and operate in the land-locked world, and which should be the sine qua non of the globalised economy, are missing. The Economist notes that ‘much of the dynamism in global finance... has been due to fewer regulations on the movement of capital, particularly across borders, and on what can be done with it’.⁵ It goes on to posit an accurate but potentially dangerous truism that ‘for the most part, money is now free to flow wherever an opportunity

¹ Progress Report on the OECD’s Work on Electronic Commerce, 16–17 January, 2001, p. 3.

² *Ibid.*, p. 6.

³ Cited by J. Ridding, Damned by Progress, *Financial Times*, *FT Weekend*, 27–28 April 2002, p. 1.

⁴ G. Zekos, Internet or Electronic Technology: A Threat to State Sovereignty, *Journal of Information, Law and Technology*, 3, 1999, www.elj.warwick.ac.uk/jilt/99-3/zekos.

⁵ *Economist*, 18 May 2002, p. 12.

presents itself, and has generally done so, leaving everybody better off than with heavy regulation'.⁶ The OECD maintains, somewhat ironically, that there is little enthusiasm for a global system of regulation fore-commerce. In global electronic commerce the realities of the borderless world of cyberspace run head-long into geographically delimited national jurisdictions of sovereign states. International law and global international legal institutions certainly exist, but in the burgeoning global digital economy there are enormous difficulties in obtaining agreement on a global basis.⁷

Principally, the OECD is against the notion of global regulation of e-commerce for fear of creating a perception of discrimination against those countries whose systems may not equate with more developed economies. The price to be paid for basing a rationale of non-cooperation on the digital divide that exists between emerged and emerging economies will be a real and definite criminal infiltration of both. Indeed, the Commission on Crime Prevention and Criminal Justice has noted that 'as the degree of reliance placed on networks increases, the potential harm from criminal offences also increases'.⁸

There are, however, few such reservations on the part of transnational organised crime groups. Strategic alliances already exist between Mexican and Colombian drugs cartels, between Mexican and Chinese human traffickers and between Sicilian and Colombian drug traffickers.⁹ As Williams notes, 'cooperation among these organisations is only a natural activity particularly as they share the common problem of circumventing law enforcement and national regulations'.¹⁰ Ironically, Western and emerging economies do not seem to be of the same mind when attempting to deal with their shared common problem – the infiltration by those organised crime groups.

The groups' success lies, according to Williams, in 'the diversity of these organisations, their symbiotic relationships with legitimate businesses, their capacity to exploit (rather than disrupt) legitimate trading activity and financial institutions, and the ability to corrupt governments and law enforcement agencies'.¹¹ Crime, like nature, abhors a vacuum. It seems inevitable that within China, organised crime groups will rush to fill that void.¹²

A prime example of the systemic nature of transnational organised crime groups' lateral thinking and exploitative powers was witnessed in October 2000 when a Sicilian Mafia group, together with 20 other strategically placed individuals, created a digital clone of the Bank of Sicily's online component. Its plan, thwarted at the last moment by an informant, involved the diversion of \$400 million allocated to the bank by the European Union (EU) for regional projects with Sicily.¹³ The fact that the group tried and failed is not the issue. That they actually conceived the idea is. It does not take too much imagination to envisage the

⁶ Ibid.

⁷ J. Dryden, The Work of the OECD on Electronic Commerce, www1.oecd.org/subject/e_commerce/ottawa_speech.pdf.

⁸ Conclusions of the Study on Effective Measures to Prevent and Control High-Technology and Computer-Related Crime, Commission on Crime Prevention and Criminal Justice, Tenth Session, 8–17 May 2001.

⁹ Noted by P. Williams, Transnational Criminal Organizations: Strategic Alliances, *Washington Quarterly*, Winter, 1995, www.alternatives.com/crime/crimlink.html.

¹⁰ Ibid.

¹¹ Ibid.

¹² See W. Myers, The Emerging Threat of Transnational Organized Crime from the East, *Crime, Law and Social Change*, 24(3) 1995/96, pp. 181–222.

¹³ Cited by P. Williams, Organized Crime and Cybercrime: Synergies, Trends and Responses, www.usinfo.state.gov/journals/itgic/0801/ijge/gj07.htm.

havoc that might be unleashed were the evident flaws within China's computer infrastructure to be exploited by transnational crime groups in a similar fashion.

As a prelude to an examination of China's role in globalisation, it might be prudent to examine the fate of the Former Soviet Union (FSU), especially that of Russia, given that Russia too was once part of an omnipotent communist system. Georgy Satarov, president of INDEM (a Russian think-tank) noted in May 2002 that Russian companies paid £25 billion in bribes and unofficial charges, an amount equating to 12 per cent of Russia's GDP.¹⁴ The recipients of the largest bribes are members of the judiciary, the same judiciary responsible for ensuring that the financial and banking regulations are enforced through the courts. The black economy, grown large by dint of the collapse of the FSU, now accounts for 35 per cent of the economic activity in Russia.¹⁵

The Centre for Strategic and International Studies (CSIS) argues¹⁶ that Russia is already a 'criminal-syndicalist' state, comprising corrupt officials at all levels of government, successful full-time professional criminals (the Russian Mafia), and businessmen who seem to regard Russian law and Western norms of commerce, respectively, not as barriers to be respected but as mere obstacles to circumvent.¹⁷ The CSIS maintains that 'corruption at all levels of government had long been the lubricant that made the Soviet system work. In the Soviet Union, the system was the State itself; in a transforming Russia, it is corruption which allows organised crime to function.'¹⁸ Indeed, as Shelley points out, 'the pervasive corruption and penetration of organized crime into the political process are inhibiting the development of new laws needed as a foundation for a democratic free market economy'.¹⁹

The Russian Mafia purportedly runs 40 per cent of private business, 50 per cent of banks and 60 per cent of state-owned companies.²⁰ They have already infiltrated the United States through activities such as daisy-chaining²¹ fuel scams and have entered the transnational trade in sex trafficking to such an extent that the trade is now known generically as the Natasha trade.²² Russia remains on the Financial Action Task Force's (FATF) list of Non-Co-operative Countries and Territories, despite Putin's valiant attempts to introduce and enforce money laundering legislation. Ironically, the United States maintained in June 2002²³ that Russia was now a fully fledged market economy, one with which, presumably, it wishes to trade. This position ignores the fact, as noted by the *Economist* in the same month, that Russia 'is governed by forces that might politely be described as unusual – including highly politicised subsidies for energy, transport and credit, a welter of organised crime, and arbitrary bureaucratic interference'.²⁴ The reason for the United States' apparently blinkered approach is summed up neatly by the *Economist* when it supposes that 'the laws of

¹⁴ The Independent, 23 May 2002, p. 15.

¹⁵ Ibid.

¹⁶ *Russian Organized Crime*, Center for Strategic and International Studies, 1997, p. 26.

¹⁷ See also J. Finckenauer and Y. Voronin, *The Threat of Russian Organized Crime*, US Department of Justice, June 2001, www.ncjrs.org/pdffiles1/nij/187085.pdf; and T. Foglesong and P. Solomon, 'Crime, Criminal Justice, and Criminology in Post-Soviet Ukraine', US Department of Justice, July 2001, www.ncjrs.org/pdffiles1/nij/186166.pdf.

¹⁸ Ibid., p. 35.

¹⁹ L. Shelley, *Crime Victimized Both Society and Democracy*, www.usinfo.state.gov/journals/itgic/0801/ijge/gj06.htm.

²⁰ *Russian Organized Crime*, p. 25.

²¹ J. Finckenauer and E. Waring, *Russian Mafia in America*, [details not provided, ed.] p. 150.

²² D. Hughes, *The 'Natasha Trade': Transnational Sex Trafficking*, *National Institute of Justice Journal*, 246, January 2001, www.ojp.usdoj.gov/nij/journals/jr000246.htm.

²³ *Time to Trade*, *Economist*, 15 June 2002, p. 93.

²⁴ Ibid.

supply and demand certainly matter a lot more than they once did'.²⁵ Not for the first time in the world of commerce in general, and e-commerce in particular, justifiable concern has given way to economic pressure. If the United States, and by definition the rest of the Western global economies, are willing to trade with Russia while simultaneously condoning the rank criminality within that country, it seems likely that they will also turn a collective blind eye to the corruption that exists within China. Therein lies a true recipe for disaster in the process of globalisation. Indeed, China's increased and increasing amount of trade with Russia²⁶ may lead to China's fragile financial system becoming a conduit for Russian criminal proceeds.

Although China has witnessed momentous changes it has not yet undergone Russia's perestroika or glasnost. However, it is, particularly after its entry into the World Trade Organization, moving rapidly from a centrally planned to a socialist market economy. The corruption that pervades Russia and has precipitated many of its current problems is present in China also.

Time noted, in February 2002, in connection with China's WTO entry that 'China has long played the inert Panda to Asia's tiger economies, but this year the panda grows fangs'.²⁷ Morgan Stanley's chief economist, echoing this sentiment, said that when globalisation 'is all over China will be the largest exporter in the world'.²⁸

Roston and Fonda note, however, that 'in written Chinese, the same ideogram is used to express both danger and opportunity'.²⁹ China can certainly boast one of the most dynamic emerging economies. The average annual growth rate of China's GDP between 1990 and 1999 was 10.7 per cent.³⁰ For governments and MNEs (multi-national enterprises) outside of China, China's population of over 1249.6 billion people³¹ and its strong manufacturing base, which accounts for 49.3 per cent³² of its GDP represents a potentially lucrative market.

However, this trading must be carried out in an honest and secure environment. The Centre for Security Policy argues (conservatively perhaps³³) that corruption in China accounts for between 4 and 8 per cent of GDP.³⁴ Such corruption pervades everyday life in China such that it constitutes normality. Even the symbol of China's modernisation process – the Three Gorges dam – is affected. As Ridding has reported recently, 'corruption is a constant threat – to the dam's physical structure as well as its financial underpinnings'.³⁵ The Chinese Academy of Social Sciences noted that 'unless the problem of corruption is genuinely tackled as a systemic issue, it could become the main cause of social turmoil'.³⁶ The culture of all-pervading

²⁵ Ibid.

²⁶ Over the first nine months of 2001, Russian–Chinese trade increased by 31.5 per cent over the same period in 2000: www.english.pravda.ru/world/2001/10/15/18076.html.

²⁷ *Time*, Forecast 2002, 4 February 2002, p. 59.

²⁸ Ibid.

²⁹ E. Roston and D. Fonda, China's New Party, www.cnn.com/ALLPOLITICS/time/2002/01/25/china.html.

³⁰ *The Economist Pocket World in Figures*, Profile Books Limited, 2002, p. 124.

³¹ Ibid.

³² Ibid.

³³ Professor Hu Angang of Tsinghua University, Beijing puts the figure at between 13 and 16 per cent and estimates that 15–20 per cent of public project funds reach private hands: *Asian Wall Street Journal* (Singapore) 19 March 2001, cited by R. Callick, East Asia and the Pacific, *Global Corruption Report 2001*, p. 11.

³⁴ P. Hadekel, 'China Meets the WTO', *Washington Times*, 22 June 2001, cited at www.centerforsecuritypolicy.org/index.jsp?section=papers&code=01-F_49

³⁵ Ridding, *Damned by Progress*.

³⁶ Cited in *Something Rotten in the State of China*, *Economist*, 14 February 2002.

corruption³⁷ per se is unlikely to change as rapidly as the needs of the globalising economic system in China demands that it should. As Myers puts it, ‘the introduction of capitalism into the *guanxi*-dominated society³⁸ of the People’s Republic of China has proven an explosive mixture, spawning economic success on the one hand and an ungovernable society riddled with corruption on the other’.³⁹ It is the apparent pre-eminence of *guanxi* that supports and perpetuates the corruption that leaves the future security of the economy in jeopardy. As Yao notes, ‘the presence of privilege in China’s political system is the fundamental cause of implicit corruption in the short run and of explicit corruption in the long run’.⁴⁰ Johnston argues that ‘reforms and growth have created new opportunities and much higher incentives for illicit connections between wealth and power’.⁴¹ The Economist noted in February 2002 that the annual capital flight from China between 1991 and 2000 rose from \$10 billion to more than \$45 billion.⁴²

In May 2002, Wang Xuebing, the Bank of Construction’s president, was dismissed from office⁴³ and is now under investigation for fraud. Wang had been at the Bank of China’s New York branch but had been discredited by an American Treasury investigation.⁴⁴ The Chinese government, it is said,⁴⁵ must have known of his malfeasance. That fraud occurred was worrying; that it was systematically hidden was more worrying still.

In November 2001, Ernst & Young found⁴⁶ that almost half of the loans made by Chinese banks might never be repaid. Given that the four main state banks account for 66 per cent of lending and 60 per cent of deposits⁴⁷ and that the official government figure for non-payment is 25 per cent⁴⁸ (as opposed to the 50 per cent estimated by Lardy of the Brookings Institution⁴⁹) there is understandable and rising concern over the fact and consequences of such financial mismanagement.

In February 2002, China’s only private bank (with whom Western businesses might prefer to conduct business) was embroiled in a fraud scandal involving a loan for \$43 million made to one of its own tellers.⁵⁰

China’s national audit office found that \$320 million of the Bank of China’s funds had been diverted from a number of branches via a number of stratagems including unlawful loans.⁵¹ In March 2002, the Bank of

³⁷ For a broader discussion on the nature and consequences of corruption see N. Passas, A Structural Analysis of Corruption: The Role of Criminogenic Asymmetries, *Transnational Organized Crime*, 4(1) 1998: 42–55.

³⁸ As Myers has it, *guanxi* is ‘a social strategy by which individuals in a hierarchical society seek to insure access to resources, which are controlled by powerful elites, who can arbitrarily allocate them’: *The Emerging Threat*, p. 185.

³⁹ *Ibid.*, p. 213.

⁴⁰ Y. Shuntian, Privilege and Corruption: The Problems of China’s Socialist Market Economy, *American Journal of Economics and Sociology*, January 2002, www.findarticles.com.

⁴¹ M. Johnston, ‘Corruption in China: Old Ways, New Realities and a Troubled Future’, www.people.colgate.edu/mjohnston/MJ%20papers/%2001/currhist.doc, p. 1.

⁴² Something Rotten in the State of China, February 14, 2002, www.economist.com/displayStory.cfm?Story_ID=988457.

⁴³ China Banking Chief Under Investigation, January 15, 2002, www.bbc.co.uk/hi/english/business/newsid/1761242.st.

⁴⁴ The Bank of China’s Black Hole, *Business Week*, 4 February 2002, www.businessweek.com/magazine/content/02_05/b3768065.htm.

⁴⁵ Something Rotten in the State of China.

⁴⁶ Chinese Banks in Debt Crisis, November 1, 2001, www.news.bbc.co.uk/hi/english/business/newsid/1632056.st.

⁴⁷ G. Chang, China’s Banks: The Only Two Things You Need to Know, *China Brief*, 2(6) 2002, www.china.jamestown.org/pubs/view/cwe_002_006_001.htm.

⁴⁸ *Ibid.*

⁴⁹ Cited in Money Worries, www.economist.com/displayStory.cfm?Story_ID=1164600.

⁵⁰ Fraud Strikes China’s Only Private Bank, 24 February 2002, www.bbc.co.uk/hi/english/business/newsid/1839576.st.

⁵¹ Bank of China’s Mounting Problems, February 1, 2002, www.college3.nytimes.com/guests/articles/2002/0/898075.xm.

China revealed the theft by five of its officials of \$500 million.⁵² As Li Peng⁵³ warned in a broader but nevertheless relevant context, ‘historical experience has proved that the exercise of power without restraint and supervision inevitably leads to corruption’.⁵⁴ Applied to the banking situation in China, it resonates. It is somewhat ironic, therefore, that the People’s Bank of China participated (as a member of the Bank for International Settlements or BIS) in the drafting and revision of the 25 core principles for effective banking supervision laid down in the Basel Committee on Banking Supervision (BCBS) in 1997. Indeed, in 1999, Tang Xu of the Bank of China argued that ‘an effective banking system in keeping with the Basel core principles has taken shape in China’.⁵⁵

Mr Lui, of the Bank of China, recently admitted, though perhaps it was by then self-evident, that it suffered from a ‘lack of integrity, compliance, discipline and transparency’.⁵⁶ The Bank of China has also accepted that ‘for a commercial bank in the market economy, the criteria of healthy operation include sound corporate governance on the one hand, adequate capital and ability to control and deal with bad debts timely on the other’.⁵⁷ The various thefts and diversion of huge amounts of capital and the massive number of unjustified loans show clearly that such laudable criteria do not pertain to the Chinese banking system and this raises, as *Business Week* put it in February 2002, ‘troublesome questions about China’s ability to regulate its financial system, even as that system is being thrown open to the forces of the free markets’.⁵⁸

The OECD notes that the financial system in China ‘performs inadequately in carrying out several of its basic functions in the economy’.⁵⁹ It has ‘limited scope for transferring funds among financial institutions or regions’⁶⁰ and ‘the external discipline provided by the financial system has been a major weakness. Years of government mandated lending and weak contract enforcement has created a distorted credit culture in which banks have had limited incentives – and even less ability – to maintain strict lending standards and enforce loan agreements.’⁶¹ In January 2002 the director of the Fund Management Division at the Chinese Securities and Regulatory Commission reprimanded fund managers on the Chinese stock market for speculative share-dealing on such a scale that the stock market itself could, in his view, have been destabilised.⁶²

Ironically, in 2001 the CSRC had noted that ‘the complexity of Internet technology greatly increases the difficulty of effectively monitoring on-line information. It is reported that the success rate for investigating and handling the fraud cases are relatively low... It will take some time for the current legislation to be adapted to the new technology.’⁶³

⁵² Bank of China Reveals \$500m Theft by Officials, 15 March 2002, www.ft.com.

⁵³ Chairman of the Standing Committee of the National People’s Congress, cited in Callick, East Asia and the Pacific.

⁵⁴ Ibid.

⁵⁵ *Asia Times*, 7 July 1999, www.atimes.com/china/AG06Ad01.html.

⁵⁶ Cited in Bank of China – Reforms Open Pandora’s Box, Rating and Investment Information Inc., *Asian Focus*, 1 April 2002, p. 1.

⁵⁷ Deepening Reform: The Way Out for China’s Banking Sector: Facing the WTO Challenges, March 2002, www.tdctrade.com/econforum/boc/020301.htm.

⁵⁸ The Bank of China’s Black Hole, *Business Week*, 4 February 2002, www.businessweek.com/magazine/content/02_05/b3768065.htm.

⁵⁹ *China in the World Economy: The Domestic Policy Challenges Synthesis Report*, OECD, 2002, p. 18.

⁶⁰ Ibid., p. 19.

⁶¹ Ibid.

⁶² ‘China Steps Up Stock Market Crackdown’, 10 January 2002, www.news.bbc.co.uk/hi/english/business/newsid/1752758.st.

⁶³ ‘Securities Market Regulation in the Internet Age’, Speech by Dr Zhou Xiaochuan, chairman, Chinese Securities Regulatory Commission, www.csrc.gov.cn/CSRCSite.eng/enews/efi20011121.htm.

To add to the difficulties posed by China's relatively slow development, the CSRC is also somewhat constricted by the Chinese government. Chang argues that 'the nation's stock watchdog seems to be a captive of the industry it is supposed to regulate – this dog just watches all the problems and barks only when prompted'.⁶⁴ More specifically, the OECD has noted generally that 'China's financial regulatory and supervisory authorities face especially great challenges given the adverse incentives inherent in extensive state ownership of financial institutions'.⁶⁵ The OECD maintains further that 'supervisory authorities still lack full control over some basic prudential standards, such as the power to impose realistic norms for bank provisioning and loan write-offs'.⁶⁶ The fact that the CSRC has been given the responsibility but not the requisite power for regulating the stock exchanges, bond markets and securities and investment companies⁶⁷ does not augur well for the soundness or security of a financial system which will eventually go online in response to the increased connectivity required by globalisation. Indeed, as things currently stand, Chang notes that 'the exchanges of Shanghai and Shenzhen are infested, plagued by market manipulation, insider trading, accounting fraud, outright theft, and a dozen other corrupt practices'.⁶⁸ The Chinese government may believe that they are establishing, through entities like the CSRC, a market-based regulatory system. The point they are missing, however, is that 'regulation is not simply a collection of laws and regulations in individual areas but a process in its own right'.⁶⁹ Witherell has noted recently that 'recent high profile cases of governance failure and corporate misconduct... have shown that corporate governance mechanisms sometimes have not kept up with market developments'.⁷⁰ In the United States, Enron overstated its profits by almost \$600 million. Andersen, the supposedly objective auditors, shredded Enron-related documentation when they discovered that the Securities and Exchange Commission (SEC) had launched an investigation into Enron's accounting. WorldCom recorded losses over five quarters (from the beginning of 2001) as profits and Xerox overstated its profits by \$1.4 billion over a five-year period.⁷¹ There were several other less high-profile admissions of corporate malfeasance⁷² and undoubtedly hundreds of others currently hide behind the camouflage of corporate responsibility. Companies like these were already successful by-products of the globalisation process. They had already achieved dominance within their respective niches in the market. They were, theoretically, controlled by and accountable to a strict regulatory system. However, corporate greed led to corporate malfeasance; whether such behaviour was caused by the apparent common denominator of business the world over – profit – or whether they were simply suffering from globalisation-engendered competitive stress does not matter. What does matter is that it raises the question as to the lengths China, a relatively new, underdeveloped, under-regulated and quasi-capitalist economy might go in order to achieve the illusion of industrial parity referred to above, especially when increased trade in general, and the commitments made as a prerequisite of WTO membership⁷³ in particular, focus financial attention more and more upon the reality of China's economic stature. As a member of WorldCom recently noted, 'there were no rewards for saving the company from a

⁶⁴ G. Chang, 'China's Equity Markets: Floating with Helium, Part 1, 25 April 2002, www.china.jamestown.org/pubs/view/cwe_002_009_003.htm.

⁶⁵ China in the World Economy, p. 49.

⁶⁶ Ibid., p. 50.

⁶⁷ Ibid., pp. 49–50.

⁶⁸ Chang, China's Equity Markets.

⁶⁹ China in the World Economy, p. 61

⁷⁰ B. Witherell, Corporate Governance and the Integrity of Financial Markets: Some Current Challenge', www.oecd.org/pdf/M00029000/M00029848.pdf.

⁷¹ *Economist*, A Guide to Corporate Scandals, 10 July 2002, www.economist.com/adenda/displayStory.cfm?story_id=1223312.

⁷² Including Tyco, Global Crossing, Vivendi, Merck and Elan: *ibid*.

⁷³ 'WTO Successfully Concludes Negotiations on China's Entry', Press Release, 17 September 2001, www.wto.org/wto/english/news_e/pres01_e/pr243_e.htm.

potential loss. There were only rewards for doing a deal that could outwardly be reported as revenue or earnings.⁷⁴ There are inevitable moves afoot within the United States to mitigate the perceptual and actual harm done to its financial sector,⁷⁵ for as Goldstein (of the Institute for International Economics) has argued, ‘there have been enough serious breakdowns in corporate governance, accounting, auditing and investment banking to make everyone worry’.⁷⁶ In this regard, the Economist notes, for example, that ‘since Enron, Congress and the administration have been talking about reforms to the regulation of auditing and the setting of accounting standards’.⁷⁷ They might usefully and crucially, however, examine the role, or lack of thereof, of the SEC. As Coffee⁷⁸ has argued, with admirable understatement, ‘the SEC... has been something of a reluctant regulator’.⁷⁹

In relation to China’s regulatory oversight, however, there remains a more pressing problem. As Crockett puts it, ‘weaknesses in the financial infrastructure can render useless the most careful supervisory oversight’.⁸⁰ China suffers from poor oversight of a poor financial system and that combination of factors is destined to cause severe problems.

The future of e-trading and globalisation lies in the utilisation and utility of cyber payment systems such as e-cash (whether in smart card or computer-based form). As Fisse and Leonard have argued, ‘the more automated the banking and financial system becomes, the less face to face contact between clients and employees and the greater the holes in the detection net’,⁸¹ a process known as disintermediation.⁸² Schaechter argues that, in relation to e-banking, ‘the dependence on technology for providing the services with the necessary security, and the cross-border nature of transactions, involve additional risks for banks and new challenges for banking regulators and supervisors’.⁸³

If the supervision of China’s banking system has been so lax as to permit the aforementioned criminal diversion of funds to occur, one cannot really place too much faith in its ability to adapt to the security challenges posed by cyber payment systems at all, let alone to be in time to prevent mass infiltration and abuse of the global market. The BCBS drew up specific e-banking principles in May 2001.⁸⁴ They concern themselves with risk management for electronic banking, clearly the future of e-commerce and, on the OECD’s logic,⁸⁵ globalisation. In broad terms, the fourteen principles alluded to necessitate, *inter alia*, ‘effective management oversight’,⁸⁶ the establishment of an ‘ongoing due diligence and oversight

⁷⁴ *Financial Times*, 9 April 2002, p. 30.

⁷⁵ See, for example, the passage of s. 2673, The Public Company Accounting Reform and Investor Protection Act, www.sec.gov/news/press/2002-104.htm.

⁷⁶ *Time*, 8 July 2002, p. 32.

⁷⁷ Accounting for Change, *Economist*, 29 June 2002, p. 14.

⁷⁸ Professor of Securities Law, Columbia University, USA.

⁷⁹ Cited in D. Kadlec, ‘Buy! (I Need the Bonus)’, *Time*, 20 May 2002, pp. 88–90, at p. 90.

⁸⁰ A. Crockett, Issues in Global Financial Supervision, www.bis.org/speeches/sp010601.htm.

⁸¹ B. Fisse and P. Leonard, International Electronic Money Systems and Money Laundering, www.gtlaw.com.au/templates/publications/default.jsp?pubid=158.

⁸² ‘...the absence of a regulated third party (e.g. a bank) in transfers of financial value between two or more entities.’ Cited in R. Molander, D. Mussington and P. Wilson, *Cyberpayments and Money Laundering: Problems and Promise*, www.rand.org/publications/MR/MR965/MR965.pdf/.

⁸³ A. Schaechter, Issues in Electronic Banking: An Overview, IMF Policy Discussion Paper, PDP/02/6, 2002, www.imf.org/external/pubs/ft/pdp/2002/pdp06.pdf, p.1.

⁸⁴ *Ibid.*, pp.11–13.

⁸⁵ See note 1 above.

⁸⁶ Schaechter, Issues in Electronic Banking, p. 12.

process’,⁸⁷ and the promotion of ‘adequate segregation of duties within e-banking systems’,⁸⁸ all of which require the relevant banks to ensure that ‘clear audit trails exist for all e-banking transactions’.⁸⁹ It has to be acknowledged that even with the most optimistic of outlooks the likelihood of such criteria being met, given China’s track record of adherence to the land-based Basel principles, is slim.

The Financial Crimes Enforcement Network (FINCEN) of the US Department of Treasury argues that ‘inadequately regulated or unregulated electronic banking systems may be used to conduct anonymous transactions and to obscure audit trails, acts that may facilitate money laundering and hinder traditional investigative techniques, especially those requiring the analysis of financial records’.⁹⁰ The number and variety of crimes that might be committed through the use or abuse of computer systems is already legion.⁹¹ As far as money laundering in particular is concerned, Molander and colleagues have maintained that the ease with which cyber payment systems operate is a double-edged sword. As they put it, ‘the international dimension of these systems, and the fact that value transfers may take place with rapidity and with a degree of anonymity that impedes oversight by governmental authorities, is clearly a serious concern’.⁹² Further, the FATF have noted the dangers inherent in new payment technologies and online banking.⁹³ Schroeder has argued that ‘emerging market countries are particularly vulnerable to laundering as they begin to open their financial sectors, sell government-owned assets and establish fledgling markets’.⁹⁴ As has been observed already, the risk to China’s financial system, and by definition to the systems of any countries that trade with China, is high. This may be particularly so given the FATF’s recent observation⁹⁵ concerning coordinated money laundering among organised crime groups, the potential impact of such groups having already been noted.

Given that the International Monetary Fund (IMF) estimates global laundering to account for between 2 and 5 per cent of global GDP (\$600 billion to \$1.5 trillion)⁹⁶ it is a threat China needs to note carefully. China is not, unlike Russia, on the FATF’s NCCT⁹⁷ list,⁹⁸ but it does appear (as do, *inter alia*, the United Kingdom, Hong Kong and the United States) in the International Narcotics Control Strategy Report⁹⁹ as a country of primary concern because of its potential to become a centre for laundering activity. Those institutions which host (wittingly or otherwise) the money laundering activity are increasingly asked to create, enforce and adhere to a wealth of laws, conventions and regulations which operate nationally, regionally and internationally. The fact that such laws appear to treat the professional service providers who perpetrate the laundering as

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ A Survey of Electronic Cash, Electronic Banking, and Internet Gaming, Financial Crimes Enforcement Network (FinCEN), US Department of the Treasury, 2000.

⁹¹ Commission on Crime Prevention and Criminal Justice.

⁹² Molander et al., *Cyberpayments and Money Laundering*.

⁹³ See the Reports on Money Laundering Typologies for 1995–96, 1997–98, 1998–99 and 1999–2000, www1.oecd.org/fatf/pdf/TY1996_en.pdf; [TY1998_en.pdf](http://www1.oecd.org/fatf/pdf/TY1998_en.pdf); [TY1999_en.pdf](http://www1.oecd.org/fatf/pdf/TY1999_en.pdf) and [TY2000_en.pdf](http://www1.oecd.org/fatf/pdf/TY2000_en.pdf).

⁹⁴ W.R. Schroeder, Money Laundering: A Global Threat and the International Community’s Response, *FBI Law Enforcement Bulletin*, May 2001, p. 3.

⁹⁵ Report on Money Laundering Typologies, 2001–2002, www1.oecd.org/fatf/pdf/TY2002_en.pdf, Chapter 5.

⁹⁶ Ibid., p. 5.

⁹⁷ Non-Cooperative Countries and Territories.

⁹⁸ Fifteen countries are present on the list as of 21 June 2002. www1.oecd.org/fatf/NCCT_en.htm.

⁹⁹ Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, 2001, www.state.gov/g/inl/rls/nrcrpt/2001/c6085.htm.

naïve and accidental malfeasants¹⁰⁰ renders the overall global success of such intervention unlikely. More locally, if the way in which the banking sector in China is regulated is the litmus test for its prospective success in dealing with money laundering, then money laundering control within China is likely to be poorly attended to.

More generally, in a test of e-readiness¹⁰¹ (the extent to which an economy is conducive to e-business) of the world's 60 largest economies, China was ranked 45th. To contextualise this, India (a less developed rather than emerging economy) was placed 49th. The computer infrastructure in China is underdeveloped and, relative to the economies it seeks to business with, unsecure. Indeed, the OECD has noted that 'inadequate technology and limited capacity to innovate are particular weaknesses of much of Chinese industry'.¹⁰² The Chinese government has, arguably, added to that security concern by insisting on attempting to control the availability and content of web traffic. Attempting to control the Internet per se and certainly within the context of a globalised economy in which Western companies will be loath to ignore the potential of the Chinese market will undoubtedly lead to covert infiltration by those companies. Organised crime groups will exploit this level of uncertainty, for as Savona notes, 'criminal organisations go where opportunities are and the process of globalisation helps the expansion'.¹⁰³

Security within companies in Western economies is, relative to potential threat, a low priority.¹⁰⁴ As Butler has argued, 'although business was quick to recognise the advantages to be gained from improving connections to the outside world, a corresponding awareness of the unique vulnerabilities of such enhanced connectivity has been far slower to develop'.¹⁰⁵ That corporations lack the requisite awareness is evidenced by the number of viral infections and the effectiveness of denial of service attacks the systems have been subject to. Where security is raised, it is invariably raised in the context of treating security as a problem to be solved rather than a holistic process to be observed. The security of China's computer systems is, given the state of its banking and finance sectors and level of corruption, unlikely to be a priority. Indeed, as with most Western businesses, if security breaches do occur they are unlikely to be reported. As a newly welcomed member of the WTO, China cannot afford the negative impact. In consequence, China could become one of the weak links in the already weak chain of globalisation security.

Although not often mooted, the current global political climate may well render China an amenable target for terrorists and anti-globalisation protesters. Bin Laden saw the widespread economic impact of September 11 on the capitalist economies of the world. The *Economist* noted that despite the overall resolve shown by the financial system after the attacks, the attacks nevertheless indicated that 'even where capitalism is well established, it is increasingly vulnerable to those who hate it'.¹⁰⁶ Given that the eradication of capitalism is Bin Laden's *raison d'être* it seems inevitable that the globalisation process will become his

¹⁰⁰ See R. McCusker, Money Laundering Control: Elusive Dream or Achievable Reality?, *Journal of Money Laundering Control*, 3(3): 214–22.

¹⁰¹ Reported in B. Perez, Hong Kong Seen as 'E-Ready', Willing and Able, *South China Morning Post*, 9 May 2001, www.technology.scmp.com.

¹⁰² China in the World Economy, p. 15.

¹⁰³ E. Savona, Globalisation of Crime: The Organisational Variable, www.just.unitn.it/trasncrime/papers/Wp15.html.

¹⁰⁴ See R. McCusker, E-Commerce, Business and Crime: Inextricably Linked, Diametrically Opposed, *The Company Lawyer*, 23(1) 2002: 3–8; R. McCusker, E-Commerce Security: The Birth of Technology, the Death of Common Sense?, *Journal of Financial Crime*, 9(1) 2001: 79–89.

¹⁰⁵ M. Butler, Managing Risk, *E-Business Review*, 1(7): 59.

¹⁰⁶ Capitalism and Its Troubles: A Survey of International Finance, *Economist*, 18 May 2002, p. 4.

new focus. It seems equally likely therefore that fledgling globalising economies will constitute easier and, given increased Western investment in them, more devastating targets in the ongoing war against globalisation. Michael Vatis, a former head of the FBI's National Infrastructure Protection Center, notes that 'we have seen a clear decision by terrorist groups like Al Qaeda to focus on critical infrastructures, financial networks and power grids'.¹⁰⁷ Russia, a globalising emerging economy, is already fearful of movement in this direction. Department R of the Moscow police is Russia's Communication Security Branch. Their key focus is now digital crime. The head of Department R said 'this, unfortunately, is the future face of terrorism'.¹⁰⁸

Trott reported in March 2001 that anti-globalisation protesters maintain¹⁰⁹ that the Internet age is exacerbating the inequality that globalisation per se represents because it both pressures development and increases the digital divide between developed and emerging economies. The OECD has noted¹¹⁰ that China's economic growth has actually led to a growing inequality among its regions, with the coastal provinces seeing incomes and living standards rise and the western provinces seeing them fall. Needs which are not met successfully by government are inevitably met by organised crime. Infiltration into the population of China will make criminal infiltration into other sectors all the easier. Chelsea Mozen, an anti-globalisation protester, said after September 11, 'I believe the terrorism was awful and horrible, but so is what the IMF does'.¹¹¹

The US Department of Defence defines terrorism as 'the calculated use of violence or the threat of violence to inculcate fear, intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological'.¹¹² Anti-globalisation protesters share, with Bin Laden, an unobtainable goal – the removal of capitalism or at least a minimisation of its perceived exploitative nature. Equating, as Mozen does, September 11 with the policies pursued by the IMF indicates that the transition from violent demonstrations on the streets of Seattle to non-violent disruption of the computer networks which support global economies is not so far away as one might have imagined. China would present the perfect target for terrorists and anti-globalisation protesters, especially once the other WTO members have invested their billions of trade dollars and China supplies the world with a substantial volume of its products.

For the globalisation process to take precedence over the safety of the economic, political and financial systems that underpin it is, particularly in China's case, a travesty. As Confucius had it, 'to see what is right and not to do it is want of courage'.¹¹³ Unfortunately for China, the fear of not being part of the globalisation process is as much a driving force as, if not greater than, the prospect of suffering at its hands.

¹⁰⁷ Cited by P. Quinn-Judge, *Cracks in the System*, *Time*, 17 June 2002, p. 37.

¹⁰⁸ *Ibid.*

¹⁰⁹ 'Anti-globalisation Clashes in Italy', 17 March 2001, www.news.bbc.co.uk/hi/english/business/newsid_1226000/1226593.stm

¹¹⁰ OECD, *China in the World Economy: The Domestic Policy Challenges*, p. 27.

¹¹¹ Cited in P. Regnier, *Changing Their Tune*, www.time.com/time/europe/specia/antiglobalization.htm.

¹¹² Cited at the Terrorism Research Center, www.terrorism.com/terrorism/basics.html.

¹¹³ Confucius, *Analecets*, cited in *Quotations*, Harper Collins, 1985, p. 98.

PART II
ECONOMIC CRIME

6

Characteristics and Control of Economic Crime in Mainland China

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The open-door policy and market economy promote the development of economic forces in mainland China. But due to unavoidable negative effects and the infiltration of international crime, economic crime in mainland China is on the rise. In view of the rampancy of crimes, we would like to introduce the characteristics, trends and tendency, the relevant law, countermeasures and inter-agency cooperation against economic crime among law enforcement agencies in China.

Characteristics and Trend of Economic Crimes in Mainland China

At present, the economy of mainland China is developing rapidly. As the reform is going on, the old system has not broken down. Yet the present policies, the system and administration cannot catch up with the pace of economic development. So there are some characteristic problems.

Economic crime increases more quickly than other kinds of crime. Statistics show that law enforcement agencies registered over 10 000 cases involving a value of 10 billion to 100 billion yuan, which has increased from 20 to 30 per cent. So economic crimes have done great damage to the financial order.

There are hundreds of charges involving financial crime, counterfeit currency, violation of intellectual property, tax avoidance and money laundering. Criminal activities have penetrated into many fields including merchandise production, exchange, distribution and consumption. Among export businesses, some offenders make use of false documents to register a company overseas or in local cities for illegal activities committed in both the offender's native land and overseas.

The traditional and primary economic crime has mutated into high-tech crime. Offenders are conducting criminal activities in areas they can handle skilfully with their expertise and the available technology. These criminal activities are secret and increasing rapidly and are therefore often difficult to investigate. For example, suspects often counterfeit financial bills using laser and electronic scanners.

The opening of the market economy and the convenience of transportation provide many favourable conditions for criminal activities. We have to face problems such as the rapid increase in international crime, the linking of local criminal organisations with those abroad and the fleeing of criminals across China's borders.

Organised crime accounts for a large proportion of all crime. It involves more people with specialised skills from many cross-border regions. Criminal activity also shows the typical traits of trade across the region. So organised crime has influenced the whole situation of China's economic crime.

As China has entered into the WTO, there will be a new trend in economic crime due to drastic competition, capital transfer and a more active foreign trade market. So new types of crime appear more often, such as violation of intellectual property, deceptive business practices, illegal bankruptcy, credit card fraud, counterfeit notes, futures, and money laundering. Malefactors at home and abroad operate together through the loopholes in the supervisory system; highly intelligent crime is committed by the use of computers, modern communication technology, modern information technology and simulation technology.

Countermeasures against Economic Crime and Cooperation

The 'Criminal Law of the People's Republic of China' was promulgated and enacted in the fifth session of the Eighth People's Representative Committee. One remarkable amendment concerning economic crime was that the crime of destroying the market economy was specially stipulated and that criminal items increased from over ten to nearly a hundred; they included smuggling, impairing business management, destroying financial management order, financial defrauding, obstructing tax revenue, violating intellectual property rights, disturbing market order and so on. These crimes were regarded more seriously and punished more severely than before.

Economic crime is professional and has its own peculiarities. The form of these crimes is changing and complicated. The law against economic crime should be clear and definite. Criminal law is not fit for these peculiarities. So the law-making process should be strengthened and the legal system should be perfected. Some special laws against economic crime should be made and criminal law-making should be in line with the legislation of other countries.

Almost 70 of the economic crimes stipulated by the Criminal Law come within the jurisdiction of public security agencies. The main function of the special organisation set up to combat economic crime was to grasp the situation of economic crime, analyse its features and form, formulate policy and so on. The Investigation Bureau of Economic Crime is set up in the Ministry of Public Security and a branch office is also set up in each province and municipality. All public security agencies should accept the guidance of the higher authorities.

According to the relevant legislation, the investigatory organ into economic crime has the duties of investigation, and the right to detain, arrest and search suspects. If it is necessary to get to the root of the crime, this should be put on record, and the relevant criminal facts should be investigated thoroughly to obtain ample evidence. The document should then be given to the procurator. At this stage the investigation process is completed. It is the procurator, who after examining the documents, decides whether there is sufficient evidence to take the prosecution to court.

Facing the new tendency of economic crime under the new circumstances, public security organs will strengthen their management and establish a specialised team of talented officers who are knowledgeable in

finance, commerce, economic management and computer technology to be responsible for investigation and the administration of justice.

There are four steps to be taken in building up an efficient working mechanism and suitable strategy:

1. Strengthen the quality of economic crime investigation by establishing a system and network, for example gathering and managing information about related criminal activities in order to carry out comprehensive investigation with meaningful results.
2. Strengthen cooperation between the various bodies investigating economic crime by setting up a complete multifaceted cooperative mechanism to perform large-scale investigations, so as to direct cooperative force between departments against economic crime and to keep abreast of the technology. The relevant financial regulatory institution will strengthen the surveillance of financial transactions, exchange information with public security organs, and conduct research on the relevant legal aspects and defensive strategies of economic crime.
3. Keep up the work of prevention and punishment under a comprehensive approach to economic crime. At the same time, emphasise the investigation of serious cases, group crime and hunting for fugitive criminals. Change the prevailing passive attitude to fighting economic crime to an active one. Carry out special strategies directed against economic crime because such a strategy has successfully cracked many serial criminal cases in financial and commercial fields, for instance the US\$100 billion credit card bank fraud in Hebei Hengshui branch of the China Agriculture Bank.
4. To crack down on the crime of counterfeiting banknotes, the authorities developed joint movements all over China, cleared up millions of cases, and seized finished and half-finished counterfeit notes worth nearly US\$4.7 billion.
5. Use advanced information, computer systems and communication technology. Special focus working groups should be set up to collect and analyse information. These strengthen the capability of the various authorities to monitor the economic field, including international crime, build up a system of information collection and management, and improve the detection of different kinds of counterfeit banknotes.

The Future: International Cooperation in Economic Crime

In the area of economic crime, Chinese law enforcement agencies have paid much attention to international cooperation. Furthermore, they have already set up closely cooperative relationships with other police organisations and relevant departments in different countries and areas.

In the area of money laundering, China has established a cooperative relationship with the UN Anti-drug Division, Interpol, and the Asian Secretariat of the Task Force of Financial Crime. It participates in anti-money laundering training programmes presided over by international organisations and provides useful clues to countries concerned with the investigation of money laundering. In combating currency

counterfeiting, China has set up close ties with many countries and regions; in the tax-related crimes, PR China has helped police in Kazakhstan and Lithuania to investigate cases of producing false tariff labels and avoiding import tax by contacting the police of Russia and Italy. In order to capture economic crime fugitives, China has signed extradition treaties with Russia, Mongolia and Thailand, as well as criminal cooperation treaties with over 20 countries. China's Ministry of Public Security has also reached an agreement on cooperation with some nations' departments of immigration; the relevant system has been established by bilateral agreement.

Economic crime has become an international problem. By depending on just one nation's department of justice, it is hard to solve the problem. It is necessary to emphasise cooperation and communication among different countries' law enforcement agencies including:

1. stressing communication of information on economic crime;
2. holding regular conferences to keep track of criminal trends;
3. dispatching experts to each other's country; and
4. training law enforcement officials to help each other understand, control and track down suspects.

7

Money Laundering Crime and Countermeasures in China*

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Money laundering is an old crime with a new importance in criminological circles. The 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) has sharpened the awareness of this crime among law enforcement agencies around the world. The vast increase in the sophistication of underworld organised crime and drug-related crime, not to speak of the increased ease of money transfer by electronic means, has greatly increased the harm caused by money laundering, and this is now recognised at the highest levels of law enforcement. Pino Arlacchi, Executive Director of the UN Office for Drug Control and Crime Prevention at Vienna, said in 2001 that the global proceeds of crime could reach \$1–3 trillion every year.¹ According to UN estimates, up to \$1–2 billion is laundered each year in some developing countries, while in some developed countries, the figure could be \$100 billion. Up to \$300–500 billion is laundered every year in world financial centres.² According to IMF estimates, the total amount of the money in the laundering industry accounts for 2–5 per cent of GDP worldwide.³

THE CONCEPT OF MONEY LAUNDERING

Money laundering is the process by which criminals disguise the origins of the proceeds of crime by putting the money through various legal channels; this creates the illusion that the money is their legitimate income. The term ‘money laundering’ is said to have originated in the United States in the 1920s.⁴ The US government forbade activities such as gambling, prostitution and bootleg liquor, which were mainly run by the underground Mafia. The legendary gangster Al Capone, after succeeding to the chieftainship of the Capone family in 1925, engaged in these businesses with impunity, and by 1927 his assets amounted to \$100 million. The loot he had gained through illegal channels was dirty money that needed to be transformed into legitimate earnings by investing it in legal industries and businesses. Laundromats were chosen by the Capone-headed Chicago Mafia because they were cash businesses. The illicit earnings were mixed with the daily legitimate earnings of the laundromats, and the taxable sum reported to the Tax Office. In this way the money deducted by taxes and duties became clean and legal.

‘Money laundering’ became a professional term in legal dictionaries after Al Capone’s conviction for tax evasion in 1931. It was this that sent him to prison rather than predicate crimes such as gambling,

* Most of this paper concerns the mainland only.

¹ At the International Conference on ‘Illegal Economy and Money Laundering’, St Petersburg on 5 June 2001.

² <http://www.sina.com.cn> 6 June 2001.

³ Bing Yang, ‘Investigation in Dirty Money by Worldly Joint Hands’, *Beijing Youth Newspaper*, 29 April 1998.

⁴ Peter Lilley, *Dirty Dealings*, transl. Dong Zhenhua, Xinhua Publishing House, 2001, p. 3.

prostitution and bootleg liquor. He was sentenced to eleven years, with penalties and litigation fees running up to \$80 000.⁵ The term was frequently used during the Watergate investigation in the 1970s.⁶ The United States was also the first country to adopt anti-money laundering legislation. Laws related to money laundering were passed in as early as 1970, with the *Money Laundering Control Act* in 1986.⁷

The Vienna Convention put money laundering firmly on the world stage of criminal law enforcement in 1988. Under the Convention, each party agrees to establish, as necessary, the domestic criminal offence of money laundering when the funds arise from drug trafficking.⁸ To observe the obligations, signatory countries and regional organisations began to modify penal legislations and formulate local laws defining money laundering in connection with drug trafficking as criminal offences. In the 2000 UN Convention Against Transnational Organized Crime (the TOC Convention), the coverage of predicate offences for money laundering as provided for in the Vienna Convention was expanded from drug trafficking to various serious offences.⁹ Each signatory country and regional organisation updated its legislation accordingly.

The terrorist attack of 11 September 2001 shocked the whole world. The funds controlled and used by terrorists and transnational criminal organisations put the United States and the international community on high alert. Confronted with this situation, many countries have sought to amend legislation related to money laundering. The Council of Europe is preparing a third anti-money laundering directive in order to meet new challenges such as the increase in the volume of virtual transactions via the Internet, the protection for crime-reporting employees of financial and non-financial institutions, the role of lawyers in anti-money laundering battles, and funding for counter-terrorism.

Money laundering is a three-stage process that requires:¹⁰

1. *Placement*: moving the funds from direct association with the crime. Launderers collect the dirty money or place it into the financial system. In this initial stage, many ways and means could be used by launderers to make the money appear to be obtained from legal business transactions.
2. *Layering*: disguising the trail to foil pursuit, by putting the money through such legal conduits as shares, bonds and loans. There is usually a series of transactions designed to conceal the origin of the funds. This is the most complex stage of the process, and the most international in nature. The money launderers might transfer funds electronically from one country to another, then break them up into investments in advanced financial options or in overseas markets.
3. The final stage of money laundering is *integration*, making the money available to the criminal once again with its occupational and geographic origins hidden from view. It is at this point that the funds return fully assimilated into the legal economy. Having been placed initially as cash and layered through a number of financial operations, the criminal proceeds are entirely integrated into the financial system and can be used for any purpose.¹¹

⁵ Billy Steel, *Money Laundering- A Brief History*, on Billy's Money Laundering Information Website; A brief history of money laundering, on countermoneylaundering.com.

⁶ *Ibid.*

⁷ Anti-money laundering working committee of China, *Handbook of Anti-Money Laundering of Bank of China*, pp. 8–9.

⁸ Article 3, 'Crimes and Punishment. of UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

⁹ Article 6, 'Criminal Conviction of Money Laundering Activities' of UN Convention Against Transnational Organized Crime.

¹⁰ Peter Lilley (UK), *Dirty Dealings*, transl. Dong Zhenhua, Xinhua Publishing House, 2001, p. 216; What Exactly Is Money Laundering, on moneylaundering.ca; What Is Money Laundering, on countermoneylaundering.com.

¹¹ *Ibid.*

THE SITUATION IN CHINA

China has lagged behind other countries in the new awareness of money laundering as a crime, in drawing up legislation to deal with it, and in training its law enforcement officers. The result is that its crime prevention system is far from adequate to deal with this crime – until now, money laundering has not even been on China's statute books as a criminal offence. This omission is all the more startling because money laundering has for some time posed a serious threat to China. During the three consecutive years 1997–99, \$14.1 billion, \$31.7 billion and \$13 billion, a total of \$58.8 billion capital, exited China; a considerable part of that was for the purpose of money laundering.¹²

In late 2001, an illegal private bank with 100 billion yuan in operation was exposed in Shantou City, Guangdong Province, by the disciplinary inspection committee and judicial authorities. As estimated by the lawyer in charge of the case, the dirty money laundered by this bank before integration into the overseas financial system amounted up to RMB 200 billion annually, among which smuggling proceeds totalled RMB 70 billion and the income of corrupt government officials valued at RMB 30 billion. Lai Changxing, the most wanted criminal for smuggling offences, once delivered a truckload of cash to a private bank in Jinjiang City, Fujian Province, from which he received the equivalent US dollars or HK dollars on the black market exchange rate for his Hong Kong company. The money, transferred to an offshore bank, would be used in part to pay for goods, in part to purchase luxury assets or conduct other investment businesses.¹³

In addition, the foreign direct investment (FDI) of Hong Kong had advanced impressively from \$14.7 billion in 1998 to \$64.3 billion in 2000. It is believed that a great part of this money came from money laundering run by illegal banks.¹⁴

In September 2001, Hong Kong's Independent Commission Against Corruption succeeded in investigating and uncovering a huge transnational money laundering syndicate which was suspected of bribing and colluding with bank clerks, and was thought to have laundered HK\$50 billion. Orchestrated with inland procuratorate departments, ICAC arrested 39 suspects in mid-September 2001. Lai Changxing was one of the most important clients of the bank. He remitted dirty money through the laundering bank to a bank account opened by his son in Canada.¹⁵

Because of the lack of specific money laundering legislation, many who perpetrate this crime have to be convicted of other crimes, such as illegal business operations. According to the prevailing criminal code, money laundering predicate crimes are limited to drug trafficking, crimes by Mafia-type organisations and smuggling crimes. It was not until recently that the standing committee of the National People's Congress (NPC) included terrorist crimes in its legislative interpretations. Many criminal offences therefore deal with predicate crimes where the offender in these cases acted with the real purpose of money laundering.

China is for historical reasons especially vulnerable to money laundering. These reasons include a booming money laundering market because of the rampant criminal activities of drug trafficking, smuggling and organised crime generally; a financial system that is short on law and order; the existence of a second

¹² Exposure of China's Capital Flight, from Dazhong website, 10 July 2001.

¹³ Money Laundering Market through Private Banks of Underworld in Shantou, from Beifang website, column of News Front.

¹⁴ Ibid.

¹⁵ Liang Zhi, Uncover of 50 trillion dollars Money Laundering by HKICAC, from Sina website, 29 September 2001.

channel for money laundering in illegal private loans; little awareness among financial staff of the role they may play in money laundering (i.e. through loans); financial legislation that is out of date, with many loopholes that allow money to be laundered; weak regulation by the financial authorities; and lack of experience among the judicial authorities. The international community expects that China will join in the fight against money laundering, and at the present time Chinese law enforcement agencies, together with the government, are determined to meet this expectation.

Rampant Organised Crime

Profit-seeking crimes, as mentioned above, have generated a lot of dirty money. Drug-related crimes, for example, have been escalating since the 1980s, to an extent never reached since the 1950s. In 2001, registered drug users across the country numbered 0.86 million, while the number of actual drug users is well beyond that figure. At present, 72.7 per cent of counties and cities throughout China face notable problems in drug trafficking and abuse. The drug threat looms large in most Chinese cities.¹⁶ From 1983 to 1990, courts at various levels accepted and heard a total number of 18 457 drug-related cases; the number of cases accepted and heard in 1989 went up by 20.73 per cent compared with that in 1988, increasing further by 57.77 per cent in 1990. There is a rising trend in recent years. In 2000, drug-combating departments of the public security organs nationwide uncovered 96 000 drug-related criminal cases, an increase of 61.4 per cent over 1999.¹⁷ In 2000, 110 000 drug-related cases were uncovered; 73 000 drug trafficking suspects arrested; and 13.2 tons of heroin, 2.8 tons of opium, 4.8 tons of meta-amphetamine (ice), 2.07 million ecstasy pills and 208.2 tons of various chemical substances were confiscated. The public security organs, foreign trade and economy commissions, trade and economic relations committees, customs, industrial and commercial administrative offices and drug control departments at various levels increased supervision and regulation of the eight major narcotic drugs, and with a concerted effort stopped 1352 tons of narcotic chemicals from entering the overseas market.¹⁸

Influenced by a worldwide network of drug trafficking, China has to face the tough reality of drugs. First of all, the pattern of entry and penetration of drugs remains unchanged and poses immense crime control challenges. Second, the spread and number of drug users continue to increase; at present there are 2051 counties and cities facing a drug problem, 205 of which have more than a thousand drug users. Third, traffickers both at home and abroad, operating with increasingly flagrant violation of the law, collaborate to produce and sell synthetic chemicals such as meta-amphetamine and ecstasy in China. Fourth, narcotic chemicals have easy access to markets through illegal channels. With stricter control of ephedrine and traditional chemicals and narcotic substances, criminals have begun seeking substitute precursor chemicals for the production of drugs. Propelled by huge profits, a few chemical factories illegally produce precursor chemicals for narcotics manufacture to be smuggled into overseas markets, thus earning China a reputation as a major source country.¹⁹

¹⁶ The Start of Nationwide Anti-drugs Battles, from Sina website, 2 November 2002.

¹⁷ A visit to the chief and director of the ministry of public security Jia Chunwang on International Anti-drugs Day, from news report of Netease website, 26 June 2001.

¹⁸ The Start of Nationwide Anti-drugs Battles, from Sina website, 2 November 2002.

¹⁹ Ibid.

The people's courts of China at all levels dealt with 300 cases involving organised crimes, and in 2001 sentenced 12 000 offenders.²⁰ In the same year, 847 cases of smuggling were heard, an increase of 122 per cent.²¹ With regard to cases of corruption, the prosecuting organs investigated 367 447 cases of bribery offences and made more than 40 000 convictions, among which were 1319 cases involving bribes of millions of yuan, and six officials at provincial and ministerial level were investigated and tried by law.²²

In all these cases, it is only by making the dirty money appear clean and legal that criminals can enjoy their profits and provide funds for further crimes. Therefore, with the increasing demand, illegal performers engage in transferring dirty money across national borders so as to cover up its source. Because of the weakness of punishment and prevention endeavours against money laundering in China, it has become very hard, even impossible in judicial practice, to investigate and confiscate the dirty money transferred by criminals. And in some cases, ironically, criminals can still lead a life as luxurious as before in spite of being tried before the court.

Disorder in the Financial System

Before 1994, financial reform in China lagged behind other economic reforms. Defects in the old financial system such as high monopoly, integration of political guidance and enterprise management, and the merger of banking and enterprises have inhibited economic reform. In the past three years or more, the goal set for the first stage of financial reform was achieved: an initial establishment of a central bank adjusting system under the direction of the State Council which independently carries out monetary policies; and an initial establishment of a financial organisations system within the main body of state-owned commercial banks, with the cooperation of many other financial institutions.

The diversity of financial organisations inevitably causes a diversity of economic interests, leading to fierce competition as well as disorder in the market. In order to win over more clients and deposits, banks are in a position to attract clients and expand the scale of their business by such leverage as broadening access to opening a bank account, directly or indirectly raising bank interest, or easing cash management. For instance, a 'bank deposit war' broke out in Qianxi county, Hebei Province, in 1993. All seven branch offices of the county's Agricultural Bank of China urgently needed an amount of capital as large as several million RMB to be drawn directly by their clients. The trigger for this 'war' was that the two new types of financial organisations in this county, namely rural cooperative foundations and economic development foundations, raised their deposit interest for six months and five years respectively to 0.6 per cent and 2.1 per cent higher than that of other banks. In order to retain their clients, all the other banks hastened to raise their interest as well. In this situation, what bank would care about the source or the nature of the money deposited by clients? Worse, some banks pretended not to know the origin of what was obviously dirty money, and assisted clients with money transfer or other methods of disposal. In a situation as tangled and confused as this, it is very difficult to prevent and investigate money laundering.

²⁰ 12,000 Criminals Tried Last Year in China, from Sina website, 3 November 2002.

²¹ Work Report of the Supreme People's Court by Xiao Yang, on the 5th session of the Ninth National People's Congress.

²² Work Report of the Supreme People's Procuratorate by Han Zhubin, on the 5th session of the Ninth National People's Congress.

Illegal Loans

Owing to the strict macro-economic adjustment measures for financial loans, and the state's slanted policy in favour of large and middle-sized state-owned enterprises, many township enterprises, private enterprises and business individuals feel short of bank loan support; a lot of 'hot money' floats among people who shun low-interest bank deposits and seek other ways to increase the value of the money at hand. This explains the emergence of illegal underground loans. It has been learned that private banks exist not only in developed areas such as Zhejiang, Fujian, Guangdong and Shandong Provinces, but also in far southwestern areas such as Sichuan and Guizhou Provinces. Although private banks do not open businesses as before, because of the state's financial reorganisation, the so-called 'rural joint share cooperative foundation' is actually run by a few big shareholders employing joint capital, in the name of a cooperative set up by village or town enterprises. These cooperative foundations, with the permission of the local government authority, enjoy more favourable and relaxed policies than other banks. They provide easier and more flexible conditions for opening an account, drawing a deposit, and transfer services. As a result, on the one hand they are a serious competitor to standard financial organisations such as banks; on the other, private banks and people's cooperative foundations do not examine what is deposited into or withdrawn from an account. So there are more operational risks than with banks, but less chance of being caught and punished by the law. In this way, private banks become a second channel for money laundering. There were cases in which offenders laundered dirty money through private banks. As mentioned earlier, the money laundered by the private underground bank uncovered in the port city of Shangtou reached several billion RMB. In short, the bad management of civil lending and financing organisations leaves a loophole that China's anti-money laundering task force needs to plug.

Little Money Laundering Awareness Among Finance Workers

There have been great advances in the financial field in recent years since China's economic reforms and opening to the international market economy. This has, however, been somewhat problematic. While financial organisations and networks have shot up rapidly, the lack of qualified graduates in finance has meant that many organisations are forced to lower their standards and recruit a large number of young people who have neither a professional education nor a suitable personality. Many of these are children of workers and staff of the previous financial system, and start work in financial organisations without any examination or selective competition. Some of them have bad habits or an earlier record of crime, which makes them vulnerable to the temptation to make use of the available financial facilities to violate the law. Some are law-abiding but have poor education and no interest in business studies and ethical behaviour. It would be hard for them to uncover or technically examine any questionable financial dealings or even obvious transactions relating to money laundering. Statistics show that offenders under 35 accounted for 86 per cent of the total convictions in financial criminal offences from 1992 to 1994. There were 101 suspects on an investigation list into the financial system of Hebei Province in 1993, among whom 83 or 79.2 per cent were from basic credit cooperatives and saving banks. One can imagine the effect if these people were to undertake the task of fighting money laundering and cooperating with judicial authorities in related investigations.

In some areas, leaders of financial organisations put stress on business growth, which is deemed as a 'tough goal', neglecting moral education and career training, which are considered to be 'soft requirements' in the

construction and operation of financial organisations. Some employees cannot resist the temptation of bribes and sexual favours, while many others work negligently and carelessly, with the result that opportunities arise for illegal activities and criminal offences. For example, company regulations provide that open vouchers, official seals and employees' name lists should be kept strictly confidential, but there have been many cases where criminals stole and misused them. It would be very easy to carry out financial crimes in such financial organisations as these.

Financial Legislation with Loopholes that Allow Money Laundering

Compared with other economic industries in China, financial legislation and formulation of the working rules and regulations of financial organisations have achieved more progress. Since the 1980s, the State Council, the People's Bank of China (a government body whose departments are the equivalent of government departments in a bureaucracy), the State's Administration of Foreign Exchange (SAFE) and Chinese Securities and Regulatory Commission (CSRC) have enacted hundreds of administrative regulations and statutes, such as 'Regulations for Savings Management', 'Regulations for Cash Management', 'Regulations for Gold and Silver Management', 'Provisionary Regulations for Foreign Exchange', and 'Regulations for Enterprise Bonds Management'. Many of these regulations and statutes can be applied to prevent money laundering. However, not being targeted to money laundering crime, they have a limited function and effect in preventing it. This is especially the case with the rapid growth of the world financial market, where many financial innovations and derivatives emerged in the presence of the financial officials in China. Time is needed, first for the officials to learn, and then to bring them within a legal framework. In addition, new and high technology, especially telecommunications technology for paperless transactions, has been widely used in financial transactions, with the result of bringing confusion and challenge to financial legislation. For example, defects in the Shanghai Stock Exchange's dealing rules once allowed it to become a haven for stealing other people's shares and selling them. More than ten cases have occurred so far and forced the Shanghai Stock Exchange to revise its dealing rules.

The reasons for China's backwardness in financial legislation are the inadequate knowledge its financial legislators have about world anti-money laundering practices and rules and their hesitance to accept them. The 'Four Principles' on anti-money laundering presented in 1988 by the Basel committee, and 'Forty Recommendations' put forward by FATF have become the standard rules acknowledged and accepted by world financial organisations. But they are unlikely to prevent money laundering at present in China, or to effectively apply Article 191 (see below) relating to money laundering crimes in the recent Criminal Law of the PRC, before specialised laws and regulations are made in agreement with internationally accepted rules and practices.

Weak Supervision and Regulation of the Financial Authorities

Financial supervision can be divided into outward and inward monitoring. Outward monitoring refers to the external supervisory management by the PBOC and its local branches of the whole financial market and of various financial organisations. Financial supervision is a two-way monitoring of both the financial profession and legal practices, thus requiring supervisory personnel to be expert in both finance and law. For the time being, however, there is very little such talent in most Chinese financial organisations. In recent

years, these supervisory organs have done little with cases such as running an illegal financial organisation, illegally raising funds and illegally lending, which are so frequent that normal financial order is hard to maintain.

Inward monitoring refers to the internal supervisory management of a financial organisation by its audit department. However, audit departments have a dual supervisory function, on behalf of both the high-level state auditory organs and the heads of the organisation they belong to, which will most certainly hinder each other. For example, Mr Gao, president of Shenzhen branch of Citibank, violated the rules many times to issue a large amount of loan money and accept bribes for making loans. Over several years, neither the bank's own audit department nor the audit organ of the superior bank had uncovered any dubious practices. Under such futile supervisory practices, it is hard to stop money laundering through auditory organs within the financial institutions.

Additionally, it is worth mentioning that the October 1997 financial crisis in the Southeast Asian region alerted the Chinese supervisory authorities to keep a close eye on financial risks. Many policies, rules and regulations in this regard, such as the 'Guidelines for Enhancing Inner Control of Financial Organisations', have been released with the aim of preventing financial crisis. Yet no policy or rules for prevention of money laundering have so far been put in place. It should be pointed out that serious money laundering crimes could also destroy the public's faith in financial organisations to an extent that could ignite financial crises.

Lack of Experience of the Judicial Authorities

The crime of money laundering, as we have seen, is but newly added to the Criminal Law of the PRC. With no precedent or experience behind it, it poses a new challenge to public security organs, procuratorates and courts at all levels. It is therefore possible that the judicial authorities do not know when a case happened, or cannot investigate when it is reported, or find it hard to judge when it is investigated. So an urgent task is to strengthen studies in anti-money laundering law enforcement and improve the technical training for the relevant officials in criminal justice systems.

THE STATUS QUO IN PUNISHMENT AND PREVENTION

International communities generally set themselves to the work of preventing and punishing money laundering by formulating and perfecting the relevant legislation and by establishing and perfecting preventive mechanisms.

Legislation

At present, China's anti-money laundering legislation consists of punitive legislation, preventive legislation, and international covenants in which China has participated.

Punitive legislation

In the era of planned economy before the present market economy, the government implemented strict

planning management over economy and finance. Since there were few large-scale economic crimes, there was little demand for transforming a large amount of illegal profits into some legal form. Furthermore, China kept a closed door to foreign economies so very few transnational criminal organisations could cross its territory. Consequently, there was no provision in the old criminal code to punish or prevent a crime of money laundering.

With the door opening to the outside world and the market economy, China has increasingly taken part in international communications. Different financial sectors are becoming open one after another, and the inevitable result has been to invite money laundering into China. Many foreign launderers invest a large amount of dirty money in China in order to engage in all kinds of businesses. In some coastal cities, drug trafficking, smuggling and other organised crimes are now more involved than ever in the laundering of dirty money. During the formulation and signing of the 1988 Vienna Convention, China reached agreement with other members to become ‘Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing’, thus paving the way for China’s legislative theory against money laundering. Academics proposed criminal legislation for a single offence for money laundering, but this was separate from traditional handling stolen property offences.

On 4 September 1989, the standing committee of the National People’s Congress granted access to the Vienna Convention, to accord with international practices. As a follow-up, in December 1990 the 17th session of the Standing Committee of the Seventh National People’s Congress passed a ‘Decision on the Prevention of Narcotic Drugs’. It is stipulated in Article 4 under the Decision that ‘whoever covers up or withholds the illegal nature and source of property gained from selling of narcotic drugs shall be sentenced to fixed-term imprisonment of not more than seven years, criminal detention or public surveillance and may concurrently be sentenced to a fine’. This is the earliest mainland Chinese legislation in regard to money laundering.

Later, in March 1997, in order to clearly extend the crime of money laundering to drug crimes, the State Council amended the Criminal Law of the People’s Republic of China. Article 191 of this new law stipulates that:

Whoever commits any of the acts below to cover up or withhold the source or nature of what one knows is obtained from narcotics crimes, organized crimes of the underworld, or crimes of smuggling, or gains obtained through such crimes, are to be sentenced to not more than five years of fixed-term imprisonment or criminal detention, and are to be in addition or exclusively sentenced to a fine not less than 5 percent and not more than 20 percent of the amount of money laundered, and the gains obtained through committing the crimes mentioned above are to be confiscated; when the circumstances are serious, the sentence is to be not less than five years and not more than 10 years of fixed-term imprisonment and a fine not less than 5 percent and not more than 20 percent of the amount of money laundered:

- (1) providing funds accounts;
- (2) assisting to turn money and goods into cash or financial instruments;
- (3) assisting to transfer funds through transferring accounts, or other ways of settling accounts;
- (4) assisting to remit funds abroad; and

- (5) other ways to cover up and withhold what is illegally obtained through committing crimes, and the nature and sources of such gains.

This article is a product of the international legal obligation imposed by the Vienna Convention. It is also a sign that China is following the tide of international criminal legislation development. Although Article 4 of the Decision is its source, Article 191 amplifies the simple statement of Article 4 by presenting a more detailed description of money laundering activities. After the September 11 terrorist attack, in the context of a world where the fear of international terrorism looms large, the Standing Committee of the National People's Congress has passed an amendment to expand the types of predicate crimes of money laundering to include terrorist funds.

However, much remains to be improved in Article 191 of the new PRC criminal law, which limits the predicate crimes of money laundering to the three categories of narcotics crime, gangland organised crime, and smuggling. Theoretically speaking, any criminal beyond those involved in these three categories may also need to cover up or withhold the nature and source of ill-gotten gains. Article 191 actually hints that laundering of illegal gains obtained from other criminal offences will not form a money laundering conviction, nor will it be punished. Such a provision obviously goes against the rationality and evenhandedness of criminal law.

In practice, other kinds of crime, such as corruption, bribery, embezzlement, tax evasion, and financial fraud are becoming more and more rampant. Whatever the crime, criminals need to launder the proceeds. In any case, with the implementation and perfection of banking supervisory regulations, cash control and supervisory regulations and the reporting system of individual property, it will become harder for criminals to cover up the nature and source of property gained from illegal activities. At the same time, attempts to launder money will inevitably become more common and more aggressive. Without timely laws and regulations, this will pose a gigantic threat to financial and therefore social stability. Hence money laundering legislation has to be continually extended and updated to fit in with a rapidly changing situation.

Preventive legislation

With greater experience in anti-money laundering activity and punitive legislation, it is time for the government to bring in more preventive regulations and statutes against money laundering. The State Council, together with financial and customs supervisory authorities, has already set down certain regulations and statutes that will lead to the control of money laundering.

Two regulations have been enacted by the State Council: 'Cash Management Rules' and 'Real Name Rules for Individual Savings'. In addition, the 'Regulation of the People's Republic of China on Foreign Exchange Control' promulgated by Decree No. 193 of the State Council of the PRC on 29 January 1996, and the 'Notice of the State Council on Further Strengthening and Improving Foreign Exchange Income and Expenditure', promulgated in 2001, are helpful in preventing and controlling money laundering.

The People's Bank of China is the main watchdog for financial businesses other than securities and insurance industry. Statutes enacted by the PBOC include:

- bank account management rules;
- domestic foreign exchange account management rules;

- external foreign exchange account management rules; and
- large-amount cash payment registration regulations.

Statutes enacted by SAFE include:

- ‘Regulations for the Entry and Exit of China’s Territory with Foreign Exchange’, jointly promulgated by SAFE and Customs General Administration of the PRC on 31 December 1996;
- ‘Rules for Remittance of Foreign Exchange Abroad by Domestic Citizens’, ‘Notice on Certain Issues Relating to Deposit and Withdrawal of Large Amount Cash Savings by Citizens and Non-citizens’, ‘Administration Regulations for Domestic Foreign Exchange Account’, and ‘Provisionary Regulations for Foreign Exchange Registration of Foreign Investment Enterprises’; and
- ‘Provisionary Regulations for Administrative or Disciplinary Punishment for Behaviours against Foreign Exchange Control such as False Purchase of Foreign Exchange, Illegal Arbitrage, Foreign Exchange Dodging and Illegal Sale and Purchase of Foreign Exchange’ jointly promulgated by the PBOC, Customs, SAFE, Ministry of Personnel and Ministry of Supervision and Inspection on 25 January 1999.

Some of the administrative regulations and statutes in effect in China concerning the prevention of money laundering are not yet perfected or complete. China urgently needs comprehensive and effective anti-money laundering legislation, of the kind that some foreign countries have known for 20 years.

Related international covenants and treaties

Some international covenants and bilateral and multilateral treaties that China has participated in have contents relating to money laundering control, which have the same effect of domestic law. To date, China has signed and executed the Vienna Convention of 1988 and the TOC Convention of 2000. There is a great deal in these documents concerning the punishment and prevention of money laundering, such as the chapters ‘Criminal Conviction of Money Laundering’, ‘Measures for Anti-Money Laundering Activities’, ‘Confiscation and Detention’ and ‘International Cooperation’. Meanwhile, there are some international legal documents with no compulsory legal obligations for the signatory, such as the ‘Core Principles for Effective Banking Supervision’ promulgated in September 1997 by the Basel Committee on Banking Supervision. Article 3, in the part entitled ‘Preconditions of Effective Banking Supervision’, provides that:

The department in charge of license issue shall have the right to set down related standards and refuse to accept any applications failing to meet the requirement of standards. The procedures for license issue shall at least include examination of the ownership structure of banking organisations, business plan and inner management of directors and senior management bureau, as well as examination of estimated financial conditions including the capital fund. Where foreign banks apply, they shall first of all obtain the approval of the supervisory authority where the bank is located.

Article 15 provides that ‘banking regulators shall make sure that the bank has a complete set of policies, procedures and practices, including the strict policy of “know your client”, so as to promote the professional ethics and standards of the financial department, and to prevent the bank from being intentionally or unintentionally used by criminals’. Domestic laws have absorbed the spirit of related UN covenants and treaties and other legal documents, and further put it into practice against money laundering crime.

Anti-money Laundering Mechanisms

So far, no special anti-money laundering mechanism has been set up in China. The task is shared by different functional departments, among which the financial department is playing a major role. There are four supervisory sections in the People's Bank of China: Supervision Department I, Banking Supervision Department II, Department of Non-Bank Financial Institutions, and Department of Cooperative Finance. Apart from these four departments, the Security Office is in charge of comprehensive analysis of financial fraud, theft and robbery cases, and is responsible for formulating preventive measures. With the money laundering issue in perspective, the Office has formed an anti-money laundering section engaging in work beyond the securities and insurance area.

Within commercial banking system, the Bank of China, which faces the greatest potential threat from money laundering, has promulgated 'Basic Principles on Anti-money Laundering Practices for Overseas Institutions of Bank of China' in 1998, and has set up an anti-money laundering working committee and secretariat. This committee has published a *Handbook for Anti-money Laundering of Bank of China*.

The public security organisation is mainly responsible for the investigation of money laundering crimes. Very recently, the Ministry of Public Security has set up a special department in charge of money laundering investigation.

The major problem confronted by China in the fight against money laundering is the lack of an inter-departmental working group. The money laundering industry is not limited to the financial system but extends to such areas as retail and wholesale businesses, real estate, and construction, especially in the case of transactions in cash. It is therefore extremely important to match the complexity of the crime by setting up a working group that will have available the expertise of several departments. A special financial information institution would also be of immense value to law enforcement agencies as financial intelligence units (FIUs) in many other countries. Some of the relevant authorities in China have been considering this since the September 11 incident, but unfortunately the idea has not been realised for various reasons.

PROGRESS ACHIEVED IN EUROPE IN PUNISHMENT AND PREVENTION

Because of the maturity of its economic and juridical systems, Europe responded to the prevalence of money laundering much earlier than China. The legislation and measures for punishment and prevention have become more and more adequate to the task and Europe has taken the lead over other regions in deepening the scope of its counter-money laundering activities. Thus it acts as a benchmark for China's completion of its own legislation and mechanisms. For this reason, in 2001 I researched the legislation and mechanism of the anti-money laundering movement in the EU and specifically in Belgium and the UK, which represent continental law and common law countries respectively.

Legislation

The European Union

The Vienna Convention, adopted by the United Nations late in 1988, is the first international document to proscribe money laundering. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention), adopted by the European Union on 8 November 1990, was a regional convention used to implement the Vienna Convention. It constituted the foundation of anti-money laundering legislation for the EU.

To carry out these two Conventions, in June 1991 the EU Council published a Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering, in which the predicate crimes of money laundering (the crimes that can trigger the offence of laundering the proceeds) were mainly defined according to the crime categories specified in the Vienna Convention and other relevant crimes considered by each member country. The Council Directive prescribed that:

Each member country should guarantee that the money laundering prescribed in the Council Directive will be prohibited; Each member country should guarantee that the credit and finance institution must require the clients to present their identification in commercial activities and to verify the clients identification in the case of the transaction over 1500 Euro or suspicion on money laundering and report the suspicious transaction to the authority; Each financial institution should preserve the transaction record for no less than 5 years; Each member country should supervise its credit and financial institutions to set up valid inside commanding system and train the staff members on anti-money laundering; Each member country should formulate its laws and regulations in accordance with this Council Directive no later than June, 1993. After the Council Directive comes into effect, each EU country formulated its separate anti-money laundering laws.

As transnational organised crime became increasingly rampant, the EU Council adopted an Action Plan to Combat Organised Crime in 1997. In it the EU and each of its member countries expressed their desire to strictly implement the specific international conventions and their own state laws (including Council directives) against money laundering; to maintain the highest level of cooperation and the exchange of bilateral intelligence between financial institutions, legal enforcement institutions and judicial institutions; and to realise the need to develop training in the subject of anti-money laundering. The Action Plan offered a definition of money laundering and discussed a number of matters: the exchange of data between European police services; compatible predicate crimes of money laundering and investigation powers; confiscation of the criminal's property; share of criminal proceeds confiscated and reporting obligations between countries; currency and new technologies; and the prevention of excessive cash transactions. As one part of the Plan, the EU Council planned united actions to discern, track, freeze, seal up and confiscate the criminal proceeds. In Belgium and the UK, the funds connected with money laundering are divided into 'eblack money', from drug trafficking and smuggling, and 'edirty money', from bribery, corruption, tax evasion and blackmail.

In 1998, the EU Council adopted a second Action Plan to further implement the Amsterdam Convention (under the Dutch presidency of the EU) concerning freedom, security and judicature. This Plan required the EU and its member countries to strengthen and develop judicial cooperation on anti-money laundering within two years after the Convention came into effect and to set up a five-year exchange and analysis system on money laundering among the European police organisation.

On 20 June 1999, the EU proposed a revision of the Council Directive, in which it claimed to expand predicate crimes from drug selling to other serious crimes and to broaden the requirement to reveal a client's identity and the obligation to report suspicious transactions in regard to non-financial institutions.

The Tampere Summit in 1999 discussed in particular the history of judicial and police cooperation within the EU. At least nine items among the decisions directly concerned money laundering (Articles 51–58).

51. Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.
52. Member States are urged to implement fully the provisions of the Money Laundering Directive, the 1990 Strasbourg Convention and the Financial Action Task Force recommendations also in all their dependent territories.
53. The European Council calls for the Council and the European Parliament to adopt as soon as possible the draft revised directive on money laundering recently proposed by the Commission.
54. With due regard to data protection, the transparency of financial transaction and ownership of corporate entities should be improved and the exchange of information between the existing financial intelligence units (FIU) regarding suspicious transactions expedited. Regardless of secrecy provisions applicable to banking and other commercial activity, judicial authorities as well as FIUs must be entitled to judicial control, to receive information when such information is necessary to investigate money laundering. The European Council calls on the Council to adopt the necessary provisions to this end.
55. The European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds). The scope of criminal activities which constitute predicate offences for money laundering should be uniform and sufficiently broad in all Member States.
56. The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.
57. Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangement with third country offshore-centres to ensure efficient and transparent co-operation in mutual legal assistance following the recommendations made in this area by the Financial Action Task Force.
58. The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusion on the basis of this report.

On 27 March 2000, the EU Council adopted the Strategy of the EU's Prevention and Command of Organised Crimes in the New Century, which dealt with money laundering by using the Internet and electronic currency; tracking, freezing and confiscation of the funds; and money laundering convictions.

At a joint ECOFIN/JHA meeting on 17 October 2000 (the Jumbo meeting), the Council drew up an initial review of accomplishment in action against financial crime one year after the Tampere Summit and gave the necessary guidelines for continuing the programme as defined by the European Council.

The Council reached political agreement on

- the draft Directive on money laundering, to be adopted in codecision with the European Parliament;
- the framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime;
- protocol to the Europol Convention to extend Europol's mandate to laundering transactions in general;
- adoption of the Decision facilitating cooperation and information exchange between FIUs in the member states.

In November 2001, the Europol Convention was revised in accordance with a second Council Directive which broadened the EU police organisation's power to investigate money laundering cases. The scope of predicate money laundering crimes was extended from drug trafficking to other serious criminal offences.

On 26 June 2001, the Council adopted the Frame Decision on Tracking, Discerning, Freezing, Sealing up and Confiscating Criminal Proceeds and Methods. The Decision required that the criminal law and procedure, including especially the confiscation of funds and the scope of money laundering predicate crimes, should be harmonised in all member countries. Each country should take the necessary steps to ensure that money launderers are sentenced to a maximum of four years' imprisonment. Member countries are required to carry out this decision before 31 December 2002.

On 4 December 2001, the European Congress and EU Council adopted a second anti-money laundering directive, the Council Directive on modification of the Directive of 10 June 1991 on Preventing of the Use of the Financial System for the Purpose of Money Laundering. The modification had two main effects: it expanded the scope of money laundering predicate crimes from drug crimes to all serious crimes; and it broadened the scope of institutions which assumed the anti-money laundering report obligation – from banks, currency exchange office and finance institution to lawyers, accountants, auditors, real estate merchants, jewellers, auctioneers, and gaming operators and owners. Furthermore, each member country was required to accelerate the cooperation of each countries' finance and intelligence institutions pursuant to the EU Council's Decision on Coordinating Financial and Intelligence Institutions of Each Member Country to Cooperate on Interchanging Intelligence on 17 October 2000.

With the development of the economy, new problems and challenges have appeared in anti-money laundering practice, for example the increase of indirect financial transactions through Internet technology; the protection of employees performing the obligation of reporting in financial and non-financial institutions; and the role of lawyers and other professions in reporting suspicious transactions involving money laundering and terrorism finance. The EU experts group are consulting about the possibility of a third anti-money laundering Council Directive.

Belgium

In Belgium also, anti-money laundering legislation may be divided into criminal and preventive legislation. The criminal legislation is mainly in the stipulations of Article 505 of the present criminal code. In accordance with the article, the following activities are all money laundering crimes:

- to transform or shift funds or property for the purpose of covering up and withholding illegal proceeds or its source or the conduct which assists the criminal person connected with illegal proceeds to escape legal punishment;
- to cover up and withhold the nature, sources, position, distribution, transformation and the like of certain funds or property that one knows is obtained through committing crimes;
- to acquire, own or utilise certain funds or property that one knows is obtained by committing crimes;
- to participate or form a partnership in executing the above-mentioned deeds or aborted deeds; or
- to assist, teach or urge to carry out the above-mentioned deeds or to provide consultation for carrying them out.

In accordance with the prescription of this article, any conduct that launders substantial criminal proceeds will constitute a crime. The constitution of money laundering predicate crimes mainly includes:

- terrorism crime
- organised crime
- illegal traffic in narcotics
- illegal traffic in weapons or forbidden articles
- illegal traffic in labour force
- illegal traffic in persons
- exploitation of prostitutes
- illegal use or transaction of hormone substances
- illegal sales of human organs and tissues
- EU budget swindles
- serious organised tax swindles
- bribing government officials
- stock market crimes
- finance swindles
- the kidnapping of hostages
- fraudulent bankruptcy.

The offender who accepts and launders criminal proceeds will be sentenced to imprisonment from 15 days to five years or a fine from 26 Euro to 10 000 Euro and confiscation of the whole illegal proceeds, goods, and securities resulting from illegal proceeds and investment by illegal means. In the event of the illegal proceeds being dealt with, the substitute or the property equal to the illegal proceeds may be confiscated.

The preventive legislation against money laundering in Belgium includes the Law of 11 January 1993 On Preventing the Use of the Financial System for the Purposes of Laundering Money and the Royal Decree of 11 June 1993 On the Composition, Organisation and Independence of the Financial Intelligence Processing Unit. The Law of 11 January 1993 was formulated to carry out the first Council Directive published by the EU in 1991. According to the law, financial institutions have the following obligations:

- to discern the identity of clients (not long-term business clients in the case of transactions over 10 000 Euro) and all their representatives;

- to uncover suspicious transactions;
- to preserve the records and documents of the transaction for at least five years from the date the transaction is concluded;
- to train clerks and set up appropriate inside control procedures;
- to appoint employees in charge of correct enforcement of anti-money laundering prescriptions inside the institution;
- to report the suspicious transactions to Belgium's Financial Intelligence Processing Unit.

Institutions refusing to perform these obligations will be sentenced to an administrative fine from 10 000 to 50 million Belgian francs.

The financial institutions and persons applicable to the law mainly included:

- the Belgium National Bank
- all registered credit institutions
- stock companies
- life insurance companies
- post offices
- the stock exchange
- public good trust companies
- companies engaging in capital or finance business
- investment consultation companies
- an individual or legal person engaged in transaction of foreign currency by cash, credit etc.
- lease companies
- credit card companies
- customer credit companies
- mortgage companies
- public notaries
- personnel who enforce the court's verdict
- auditors
- outside accountants
- tax counsel
- real estate agents
- capital transportation companies
- gambling houses.

In accordance with the Imperial Decree on the Structure, Organisation, Operation and Independence of Financial Intelligence Processing Unit, Belgium's Ministry of Justice and Ministry of Finance set up a Financial Intelligence Processing Unit, which played a very important role in the Belgian anti-money laundering mechanism.

The United Kingdom

The UK anti-money laundering legislation is also divided into criminal legislation and preventive legislation. The main stipulation of criminal legislation was mainly defined in the *Criminal Trial Act 1988*, the *Anti Narcotic Transaction Act 1994*, and the *Anti Terrorism Activity Act 2000*. According to the relevant prescriptions of the three Acts, money laundering crime may be divided into three categories:

1. *Assisting money laundering.* According to the definition of the UK criminal bill, clerks in financial institutions who assist others to acquire, cover up and preserve criminal proceeds may commit the crime of assisting money laundering. The required culpable mental state of the crime is that the offender helps others to acquire, cover up or preserve funds which he knows of or suspects. If he reports the suspicious funds to the institution concerned, the reporter may be exempted from criminal liability. If he fails report in a suspicious case, he may be judged to be a party to assisting a money laundering crime. A maximum of fourteen years' imprisonment, a fine or both may be imposed for this kind of crime.
2. *Divulging information.* According to the relevant prescriptions of UK law, clerks in financial institutions or other insiders may commit the crime of divulging information if they try to influence an investigation by divulging any information that may affect the investigation. A maximum of five years' imprisonment, a fine or both may be imposed for this kind of crime.
3. *Failure to report relevant information.* This crime only applies to the funds of drug traffickers or terrorists. In accordance with UK preventive law, a person must report to the relevant departments if he knows or suspects that the funds in certain transactions belong to drugs traffickers or terrorists, otherwise he may commit the crime of money laundering . The criterion for required culpable mental state of this crime is that the connected person actually knows or there are appropriate reasons why he should know or suspect that the funds belong to drug traffickers or terrorists. A maximum of five years' imprisonment, a fine or both will be imposed for this kind of crime.

According to UK law, if the money laundering offender is also the offender or one of the offenders of predicate crimes, he will only be punished according to predicate crimes as against money laundering crime.

Before September 11, the UK anti-money laundering legislation was concentrated in the Anti-Money Laundering Activities Law, which was formulated to carry out the first anti-money laundering Council Directive of the EU. In accordance with this law, financial institutions assume the following obligations concerning money laundering:

- discerning clients' identification
- appointing a money laundering report official
- reporting suspicious transactions
- preserving transaction records
- training clerks on anti-money laundering.

If the financial institutions do not perform these obligations and commit crime, the personnel involved may be sentenced to a two-year imprisonment, fine or both, whether the actual money laundering activity happens or not.

After September 11, the UK re-examined its preventive legislation. It revised the *Anti-Money Laundering Act 1993*, promulgated the *Anti-Money Laundering Act 2001*, revised the *Anti Terrorism Act 2000* and promulgated the *Anti-Terrorism, Anti-Committing Crimes and Security Act 2002*. The Anti-Money Laundering Act 2001 broadened the scope of the 1993 Act to foreign exchange offices, remittance institutions and *bureaux de change*. The Act also prescribed that currency service merchants must be registered with UK Customs, which is responsible for ensuring that they abide by the law and file prosecution against their illegal conduct involving money laundering crimes. The Ministry of Finance also

revised relevant laws on finance supervision. Out of these reforms, the UK combined 11 former institutions in charge of financial supervision and established a Finance Supervision Bureau, which is in charge of supervising all UK financial institutions and financial businesses.

The UK is planning to make more amendments to its anti-money laundering law. In October 2001, the Home Office submitted a bill on criminal property to the House of Commons and was at June 2002 in its second reading. The Bill combined the law against money laundering in the *Drug Traffic Act 1994* and the *Criminal Justice Act 1988* and separated money laundering connected with terrorism from the *Anti-Terrorism Act 2000*, prescribing for it separately and formulating criteria for adjudicating money laundering. The Bill also proposed to set up a criminal assets recovery agency to prevent money laundering and to recover all assets resulting from or used for crime wherever they are. If they were transferred abroad, the proposed agency would have recovered them from overseas. If the illegal owner of the assets died, the proposed agency would have recovered them from his inheritance or his heritor.

Anti-money Laundering Mechanisms

The European Union

The institution engaging in anti-money laundering in the EU is Europol. Established in accordance with the European Criminal Police Organisation Convention, this organisation is a cooperative body of the EU member countries' police departments. Its main responsibility is to accelerate and develop the cooperation of member countries against serious organised crime. The Financial Crime Division of Europol is in charge of money laundering cases, but it is not its responsibility to undertake actual investigation of cases; that belongs to the various EU member police forces operating within their sovereign borders. Upon the request of any member country or through advice of Europol's Financial Crime Division, the relevant evidence pertaining to a possible offence is channelled through the Financial Crimes Intelligence Centre and cases are then referred to the particular member countries for investigation.

Belgium

The institution responsible for analysis of information on anti-money laundering in Belgium is the Financial Intelligence Processing Unit. The EU published the first anti-money laundering Council Directive, which required member countries to make their own laws and set up appropriate institutions. When the Belgian government formulated on 11 January 1993 the Law on Preventing the Use of the Financial System for the Purposes of Laundering Money and assented by Royal Decree of 11 June 1993 on the Composition, Organisation and Independence of the Financial Intelligence Processing Unit, it also set up the Belgian Financial Intelligence Processing Unit. The Unit commenced operation on 1 December in the same year. It is a completely autonomous administrative institution although it receives supervision from the Belgian Ministry of Justice and Ministry of Finance. Its task is to accept reports on suspicious transactions from financial institutions and, after analysing the reports and supplementing them with necessary information, conveys those that indicate serious crime to the Justice Department. Any reports it considers do not need to be transferred to the Justice Department are recorded and filed.

The financial institutions play important roles in countering money laundering. They also set up a specific anti-money laundering mechanism. Each financial institution governed by the legislation must appoint a 'Mr Clean' who is in charge of reporting the suspicious transactions submitted by the institution's staff to the

Financial Intelligence Processing Unit. In the case of suspicious or discovered illegal transactions, this person must, accordingly, report it to the Unit before the transaction's conclusion and must indicate if possible the likely time-frame for the completion of the suspect transaction. If the transaction turns out to be illegal or if the prosecution is likely to be delayed and it is not possible to report before the transaction is concluded, 'Mr Clean' must report to the Unit as soon as the transaction is concluded and state the reason for the delay.

According to statistics from the Financial Intelligence Processing Unit, it received 53 200 suspicious transaction reports from the start of its operation at the end of 1993 up to June 2001, and it registered 10 160 reports after examination. Registered cases numbering 3513 were considered serious indications of money laundering and were transferred for prosecution. The Unit estimated that 6.7 billion Euro was involved. Five hundred and five people in 337 cases were convicted and punished and a total of 1059 years of imprisonment imposed; fines totalled 1.17 million Euro and the total value of the property confiscated 2872 million Euro.

The United Kingdom

The UK anti-money laundering mechanism is comparatively complicated and involves several departments in which there are institutions in charge of financial supervision, prosecution, handling money laundering information, and so on.

The UK institution in charge of financial supervision is the Finance Supervision Bureau. Established on 1 December 2001, it is a unique financial supervision institution in the UK. Being a private company, it holds a shareholder conference and has 2185 personnel. Its funding is mainly collected from financial institutions without any budget from the UK Ministry of Finance. In 2002, the annual budget of the Bureau was £0.18 billion.

In accordance with the relevant laws, the Finance Supervision Bureau has four functions:

1. to formulate market information so as to enhance the public finance consciousness;
2. to provide protection to clients through financial supervision business;
3. to reduce financial crimes, especially money laundering; and
4. to issue permit and business licences to financial service institutions.

All financial institutions in the country must accept supervision by the Bureau and the limits it imposes. The Bureau is entitled to undertake certain punitive measures if financial institutions behave illegally.

The Finance Supervision Bureau also has responsibility for preventing and fighting the three forms of financial crime, namely money laundering, fraud, and insider trading on the stock market. Money laundering is the most serious of these and the Bureau is entitled to formulate the professional standards for the counter-measures and to impose the necessary penalties.

The UK institution in charge of money laundering is the UK National Criminal Intelligence Bureau, which is a completely independent department. Within the Bureau, the Economic Office is the specific anti-money laundering division, whose main responsibility is to collect suspicious reports from various financial institutions. Its 70 staff are recruited from the police, customs, and the Taxation Department, as well as from financial managerial agencies and welfare agencies. The Economy Office feeds suspicious reports into its database and transfers selected reports to the police or customs; it is the latter that carries out any investigation.

The cases will be transferred to the Crown Prosecution Service if the evidence collected proves that money has been laundered.

Since the UK's comprehensive implementation of anti-money laundering in 1997, the number of suspicious reports from the financial system to the Economic Office have gradually increased. There were 14 000 suspicious transaction reports in 1998 and nearly 30 000 suspicious transaction reports from banks and other financial institutions in 2001. It is estimated that there were over 50 000 reports in 2002.

The UK has also set up a suspicious transaction report system in financial agencies. Each bank has a suspicious transaction report official whose main task is to collect information on money laundering. He will write reports and submit them to the National Criminal Intelligence Bureau if he finds suspicious transactions. Each clerk in a financial agency must report to this official when he suspects a transaction, and the official will decide whether or not to report it to the Bureau. If the institution the official works in violates the relevant laws, he is entitled to report directly to the Bureau. These officials usually receive 20 000 suspicious reports each year. Meanwhile, the bank must collect all client material connected with the transaction and preserve it for at least five years.

In the UK, it is the custom to prosecute drug crimes and money laundering crimes. According to the law, the Crown Prosecution Service has exclusive jurisdiction of cases of drug trafficking, tax evasion and money laundering. This is because money laundering cases are unfamiliar and too complex for ordinary police prosecution.

In addition, many non-financial institutions have also designated a specific anti-money laundering officer, for example law firms. These firms are also obliged to check the identity of suspect clients. Law firms will not accept new clients if they do not agree to the legal requirement of client identity checking. Law firms also train lawyers and clerks in measures to counter money laundering. In a suspicious case, the lawyer may not refuse the clients' entrustment on the excuse of suspect money laundering, otherwise he may commit a crime of divulging information. Lawyers have no obligation to report suspicious transactions, but if they choose to report this relieves them of legal responsibility in the event that a money laundering crime exists.

SUGGESTIONS FOR PREVENTION AND PUNISHMENT

The following suggestions concern China's measures to counter money laundering in accordance with China's present legislation and measures, with the European practice as reference.

1. Increase public awareness of the seriousness of money laundering

In society today, the damage resulting from money laundering is endless because it is inextricably linked to the serious crime that plagues the world, within every country and transnationally: smuggling, drug trafficking, corruption at all levels of administration, and the increasing incidence of traditional gangland organised crime, not to mention the current explosion of terrorist acts and the fear they engender. It is so far-reaching and so devastating that it may undermine the foundation of government and, indeed, the national and international financial order. International society has therefore taken money laundering very seriously since 1980. The September 11 attacks made international society much more aware of money laundering because

it seemed that such a highly organised event might not have taken place if terrorists were unable to be financed through money laundering. The US government has already demanded of the international community that it control and prevent money laundering in order to block the financing of terrorism.

In China, the problem of money laundering deserves special attention. China is vulnerable to the harmful effects of money laundering for the reasons given earlier: incomplete financial laws, a less than ideal financial order, no high-level financial expert staff, illegal private loans and the large amount of competition that is manipulative and unfair. The nation and all its people will be inestimably damaged if the religious extremists and separatist groups arm themselves rapidly by access to laundered money. China must therefore learn to appreciate the damage money laundering can do. It must hasten the passage of new legislation and set up sound anti-money laundering measures.

In addition, public awareness of the seriousness of the issue should be increased through education – the ‘laundering’ of illegal money is a new concept to most Chinese and the necessary counter-measures will not succeed without the support of the people.

2. Perfect anti-money laundering legislation

In recent years, China has passed some anti-money laundering laws and regulations. The Criminal Code adopted by the People’s Congress defined the crime of money laundering and the relevant departments also promulgated regulations such as Real Name Rules for Individual Savings, Rules for Remittance of Foreign Exchange Abroad by Domestic Citizens, and Large Amount Cash Payment Registration. Yet in comparison with the legislation of the EU, Belgium and the UK, there are many gaps in China’s legislation. The three areas of criminal legislation, preventive legislation, and professional regulations all need improvement.

As we have seen, many aspects in Article 191 of the Criminal Code which defines the crime of money laundering are inadequate. First, the Article limits predicate crimes to drugs, gangland organised crime, smuggling and terrorism, while the EU, Belgium and the UK have broadened the scope of predicate crimes to embrace all serious crimes. We in China should use their experience for reference and broaden the scope of predicate crimes to ensure that the laundering of any serious criminal proceeds is regarded as a crime. Second, as the article defines it, the subjective aspect of money laundering is the knowledge of the illegal proceeds from drugs crime, gangland organised crime and smuggling crime, and collaboration to launder money. In the EU, Belgium and the UK, the culpable mental state of this crime is ‘know or suspect criminal proceeds’. The scope of ‘to know’ in Article 191 is also too narrow and should be changed to ‘ought to know’ or ‘know or suspect’. Third, the Article prescribes that the act aspect of the crime is restricted to a narrow list of predicate crimes in money laundering, while the EU, Belgium and the UK also embrace the mischief of divulging information and misprision (concealing information). The law will be more able to prevent serious crimes such as money laundering if the current prescription is broader.

So far, China does not have laws as specific as those in the EU, UK and Belgium, though the People’s National Congress representatives have proposed drafts of anti-money laundering legislation. Specific departments have promulgated some regulations, for example prescriptions on the cash payment of large sums, and foreign exchange administration guidelines published by the PBOC and Foreign Exchange Bureau. The present difficulties are first, that since these regulations are not particularly aimed at money laundering, they have no actual force against money laundering, and second, that because of finance workers’ ignorance

about the need to fight money laundering coupled with large-scale disordered competition, the existing regulations have not been enforced. Hence it is necessary for the financial system to formulate specific regulations to prevent money laundering and enforce them effectively.

3. Establish a valid anti-money laundering mechanism

It is necessary for China to establish specific working mechanisms to fight against money laundering home and abroad. Specific departments such as the Central Political and Law Committee are examining this problem. We consider that an information agency should be established while a valid mechanism is being put in place. This may meet the requirements of both domestic anti-money laundering measures and international cooperation. Many countries have established systems like the Financial Intelligence Processing Unit in Belgium and the Criminal Intelligence Centre Economy Crime Office in the UK. Fifty-eight member states of the Egmont Group have established such institutions. We have two proposals: one is that these institutions must be dedicated to countering money laundering and that no part-time agency or person may accomplish the task; the other is that these institutions must be independent, for example the UK Economy Crime Office was set up in the police department and later transferred to an independent institution after the enactment of the appropriate legislation.

Towards the goal of establishing a specific department collecting information on money laundering, we should speedily set up and perfect the reporting of suspicious transactions of financial and other departments and appoint examining and reporting officials in the relevant departments with explicit powers and obligations. Only in this way can our anti-money laundering institutions play important roles.

4. Strengthen international cooperation against money laundering

Because of the transnational characteristics of money laundering, international cooperation among the law enforcement agencies fighting it must be enhanced. This is certainly the international consensus. There are already two international avenues we can use: FATF and the Egmont Group. Twenty-nine countries participate in FATF. The European Committee and the Gulf Cooperation Organisation also joined the working team. Since the Recommendations were promulgated by the G-7 Summit, most of the developed countries become members of FATF and have in principle adopted its Forty Recommendations.

The working team has significant influence in the international anti-money laundering field. When we visited the EU, many officials, including EU External Relationship Department Asian Department head Mr Yades, expressed their hope that China would join the working team and adopt the Forty Recommendations. They also stated they were expecting all countries attending the Asian Europe Conference to join the team and implement the Forty Recommendations. We suggest that our country should weigh the advantages and disadvantages of participating on the working team and make a decision to join because we need international assistance more urgently than many others. If China can trace the enormous sums illegally remitted abroad through this channel, it may significantly benefit the domestic fight against crime and corruption.

Established in 1995, the Egmont Group is an informal cooperative organisation between some countries' financial intelligence centres. Its purposes are broadening the scope of financial intelligence exchange and systematising it, meanwhile improving its technological capability, enhancing staff expertise in financial intelligence, and using modern high technology to strengthen the communication among different countries'

financial intelligence centres. The Group held three meetings in its year of establishment and since 1996 has held one meeting a year. According to UK Criminal Intelligence Centre Economic Crime Division and the Belgian Financial Intelligence Processing Unit, the Egmont Group is an effective channel for different countries' money laundering intelligence institutions and personnel in exchanging intelligence and developing cooperation. The communication among the team members may avoid many unnecessary procedures and is highly efficient and convenient. As well as Hong Kong SAR China and Taiwan, there are at present 58 countries and regions in the Egmont Group. We suggest that China does further research on the Group and joins it at the proper time. Since the Group was established in Belgium, the president of Belgium's Financial Intelligence Processing Unit has invited China to join it many times.

Besides these two avenues of cooperation, China should use bodies such as the International Criminal Police Organisation to extradite criminals and trace criminal proceeds. Anti-money laundering should also be noted in bilateral criminal judicial assistance.

8

An Analysis of Economic Crimes in Chinese Mainland

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Economic crime has been the major target of law enforcement agencies in all countries in the world because of its severe violation of the social order and its vast impact on the economic foundations of modern societies. China's situation is particularly serious: criminal activity in the economic area tends to increase during a transition such as China has experienced in the last three decades from a planned economy system to a market economy system. Various new forms of economic crime have arisen in response to this transition. In order to crack down effectively on economic crime, Chinese authorities have to further their research on the characteristics and causes of economic crime, and work out plans to cope with it.

The Characteristics of Economic Crime

In recent years, great changes have taken place in the scope, subject, measurement, consequences and investigation of crime. In a sense, economic crime has penetrated into every corner of Chinese society. Some crimes have even extended to the outside world.

The level of economic crime remains high and the total number of such crimes continues to increase. In order to achieve success during this period, drastic adjustments have been made in line with China's economic policy over the past decade. Economic crime that was once suppressed in the highly restricted planned system has nowadays burst out in various forms: in particular, misappropriation of public funds, tax evasion, refusal to pay taxes, smuggling, illegal vending, inferior production of goods all violate the social order. Accompanying the growth of economic crime, the sum of money involved goes up too. There are important cases involving hundreds of thousands, millions or even tens of millions of yuan. Leaders of government departments or in other high positions commit crime or run away with the rewards of corruption.

Economic crimes are also becoming more secret and more intellectually sophisticated, and therefore more difficult to investigate and punish. Nowadays, in addition to traditional crimes such as smuggling, embezzlement and bribery, there are new kinds of economic crimes, especially stock market deception, manipulation of the market, theft of commercial secrets, false advertising, piracy of goods such as CDs, credit card swindle; forging, buying in and reselling value-added tax invoices at a profit; defrauding rebate of export tax embezzlement of the company's assets and money laundering. Criminals commit crimes under the banner of 'opening up to the outside world'. They use highly advanced means of communication to help establish a network to manage illegal activities and avoid legal responsibility. The vast majority are highly intellectual and familiar with the operation and management of the modern economy,

and are skilled in the use of scientific technological devices such as computers and up-to-date telecommunications. Their activities are very quick and skilful and often leave no trace for the investigator. There is a growing tendency for professional criminals to work with non-professional officials and business administrators, corrupting them in the process. Such new and old criminals take advantage of high positions in government or in business, so the method of crime is well hidden and its consequences are more serious. The number of crimes committed by state functionaries who take advantage of their position is very large, and the fact that leaders in high positions commit crimes causes a breakdown of public trust in the nation's leadership. The number of criminals, ranging from young to old, is on the increase. The complexity of economic crime provokes and aggravates economic crime and attracts organised criminality.

Work unit crime has been very apparent in the present wave of economic crimes. The involvement of work units is shown mainly in smuggling, producing and selling counterfeit goods, infringement of intellectual property rights, offences against national tax regulation, and the violation of corporation law. Most crimes are committed by individuals or non-juristic persons or corporate entities and the amount of money involved is often large. The consequences of economic crime are grave. Important cases come up every year, and the sums of money involved are getting larger and larger. Expansion in the scope of crime, the complexity about the identity of the perpetrators of the crime, intellectual sophistication and concealment of the methods used to carry out economic crime: all these make for more difficult investigations. The reckless act of annexing property disturbs the normal order of our economy.

The Causes of Economic Crime

From the long historical viewpoint, economic crime is the oldest form of crime, but its causes differ according to historical circumstances. In Mainland China, which has just stepped out of its primary stage of socialism and undertaken the construction of a market economy, the following may be considered as the causes of economic crime.

The economic plan has defects and structural problems are inevitable in the short term.

Since opening up to the outside world, China has carried on a transition from a planned economic system to a socialist market economic system. Problems arise because on the one hand the previous system has not been thoroughly broken down, and on the other the new market system is still immature and developing. The juxtaposition of two very different systems and the complexity of particular sectors during the period of transition give rise to a complex relationship between each system because each has its own vested interests and may leave plenty of room for criminal activity.

Economic reform in China has had many ups and downs in the last 23 years. Reform of the established system or incremental reform in the early 1980s stimulated all economic sectors except the state-owned economy and motivated the rapid development of the whole national economy. In the 1990s, China stated once again that both planned and market systems are equally valid methods of operating an economy and declared that China's economic reform was aimed at the establishment of a socialist market economy. In the report delivered at the 15th National Congress of the Communist Party of China, China's basic economic system for the primary stage of socialism is to retain a dominant position for public ownership and to develop diverse forms of ownership alongside. In addition, China will retain a system in which

distribution according to work is primary but in which various modes of distribution coexist. Remuneration according to work will be combined with remuneration according to factors of production, and priority will be given to efficiency after due consideration for equity; at the same time the use of capital, technology and other factors of production to participate in the distribution of profit will be encouraged. However, a lack of research both in theory and in practical experience means that China suffers from a narrow view. The following instances are examples.

In the course of reforming state-owned enterprises, the expansion of power and the right to transfer national profits to enterprise leaders has increased the autonomy of corporations and brought the initiatives of corporation managers into play, but the unclear ownership of property rights and the failure to separate the functions of government and the leaders of state-owned enterprises provide an easy way of privatising public properties, which is one type of economic crime.

In the course of reforming distribution regulations, China's aim is to encourage a proportion of people to get rich by lawful operations and honest work, to allocate resources optimally, to accelerate economic development, and to maintain social stability. In real economic life, however, the tardiness of reform leads to a lack of coherence in adjusting the distribution system. In addition, it also reveals the imperfection of the social security system. Unfair distribution of resources and disparity of income cause moral imbalance among the people which drives them to deviate from normal economic activities and engage in various traditional economic crimes.

During the reform of employment, as we all know, the rate of unemployment in cities remains comparatively high; there is a large number of surplus labourers in the country because structural unemployment cannot be eliminated in a short time. The great disparity between the poor and the wealthy, their unequal social status and the unfairness of the social security system also drive some people to commit economic crimes. Most members of the gang led by Zhang Jun, which stole a large amount of money and killed fourteen innocent people, were poor young peasants.

During the course of financial reform, the lack of specific laws and regulations places obstacles to entering the new market system. And there are obvious defects in such things as supervision of the disclosure of relevant information and the ensuing examination; standards for measuring deviance or unlawful acts; the efficiency principle of market annexation; and the self-regulatory supervision system in the stock market. All these have made financial crimes an open secret in the professions in recent years. The reckless interior deal, false statements, overheated share deals of private corporation and the so-called 'Black Curtain' of funds, which jeopardises the interests of medium and small shareholders, are the typical economic crimes causing grave concern to the whole society.

The unfitness of the legal structure and the government's administrative standards for socio-economic development

In recent years, the government of China has formulated series of laws and regulations to standardise the activities of the market and to crack down on irregular acts and crimes. But it is the case that the old economic operation system is still in effect while the new one has not yet been established, and the necessary laws and regulations are far from complete. These circumstances present many opportunities to criminals.

In addition, defects in the highly concentrated management pattern of the planned economy and the government's administration system are clearly exposed. Some public servants, used to placing themselves above the law, interfere in economic affairs directly or decide policy according to their own taste. In addition, the power of government institutions is overly concentrated on a few hands, without effective supervision or restraint. In particular, the general existence of problems such as ignoring the law, breaking the law, loose application of law and offenders going unpunished contribute to the rampancy of economic crime. In this period when the old system and the new system exist at the same time, all these factors present opportunities for some low-quality civil servants to abuse their power as a way of rent-seeking. Corruption and the abuse of legitimate power emerge in an endless stream. The open vogue of various ways of illegal rent-seeking have seriously damaged the image of the government and public morality. The recent cases of the illegal vice-ministerial officials is evidence of this.

The malfunction effects of the market economy have not been fully realised

In the change to market principles, China's economy has been regarded idealistically as the fairest economy, an economy regulated by law, the standardised economy and the profit and loss economy. So the emphasis has been redirected from careful planning towards respecting the market mechanism. But it is not fully realised that the market is handicapped and has its own limitations.

The market cannot itself guarantee fair distribution of wealth because it cannot easily regulate the net profit yielded from its intrinsic uncertainty and instability. For example, the dramatic rise in prices on the stock market or through inflation makes some people wealthy overnight. In addition, the pure rent comes from the monopoly caused by the leading position of technology. The market also has limitations for social well-being. What enterprises and individuals are concerned about is not long-term benefit but immediate economic growth, which can damage the long-term prospects of social amenities and society. Cases of domestic pollution, which seriously violate environmental principles are examples of this kind.

The market is also limited in that it has no inbuilt adherence to traditional Chinese morality. Social morality demands the prohibition of traffic in certain goods such as illegal sale of semen and ovaries in the open marketplace. And moreover, the market has inherent destructive elements. For example, its nature gives rise to inequitable tendencies such as the inclination to monopoly, competition for its own sake, speculation, fraudulent practices, and so on. The demand for profit maximisation, leading to the worship of money and enjoyments of all kinds, directly effects changes in people's values and moral principles. The market economy's fascination with material goods and money drives some people, unable to restrain themselves, recklessly to commit economic crimes. Some people without real ability to compete with others take illegal measures to seek maximum profit and eventually become criminals.

During the present period the government and institutions of justice fail to acknowledge the malfunctioning of the market and are not sensitive to economic crime caused by unemployment. This has greatly reduced the deterrence effect on economic crime in general. There are serious obstacles to dealing with the common crimes. In addition, the effectiveness of prevention is far from enough. To sum up, the rampancy of economic crime is closely related to the imperfect functioning of the market economy system along with China's laws and regulations. To prevent this kind of crime effectively, we have to fully realise the root of them, the long-term impact on the society and the seriousness of the damage. Then we can find more effective means of preventing economic crime.

9

Patent-related Crimes on the Chinese Mainland and Amendments to Criminal Statutes as Countermeasures

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With the advent of a new era based on knowledge economy, the role played by intellectual property rights (IPR), which include patent rights, in contributing to social and economic development is becoming more important. Because of huge economic benefits inherent in IP itself, criminal offences involving infringement of intellectual property, particularly on patents, are on the rise, causing great damage to society. How to curb and prevent such crimes so as to effectively protect patent rights, especially after China's accession to the World Trade Organisation, has become an issue of great concern as well as a subject for research for both scholars and practitioners in the legal field.

There are several reasons for China's current ineffective control of IPR crimes: a lack of the necessary provisions in the criminal statutes to deal with such crimes; inefficient enforcement of law by the judiciary; weak awareness of the need to protect intellectual property; indifferent attitudes to the principle of the rule of law, and serious regional protectionism. As well as emerging with the changes in contemporary society, these weaknesses may be a residue of China's history; they may have cultural origins as well as economic ones. This chapter aims to identify and analyse the deficiencies in China's existing criminal law system in dealing with patent-related crimes and puts forward proposals for improvement.

This study is part of a research project on IPR crime. It should be stated at the outset that in order to identify, analyse and study the patterns, characteristics and future trends of crimes involving patent rights so as to work out criminal statutes to counter them, the patent rights crimes described in the first part of this chapter are not necessarily confined to crimes of this type listed in the Chinese Criminal Law. Instead, the authors have adopted the criminal concepts and definitions common in general criminology.

Present Situation and Features of Criminal Offences Involving Patent Rights

When patents are violated in this way, the companies that hold the patents are seriously hurt. As a rule, it takes a lot of money and labour for an enterprise to develop a new technology or product, after which there is a difficult period of putting the innovation into mass production and launching the product in the market. Yet just as the enterprise is beginning to gain some benefit from its newly invested patented technology or product, the sales prospects are turning for the better and it is expecting its due investment returns and thinking of expanding production with the receivable fund, the market is found to be teeming with counterfeits of its patented innovation. This erodes or destroys the enterprise's ordinary financial forecast and inhibits its potential to develop further into the global market.¹

This chapter is an edited translation by Lei Tianfang.

¹ Melvin Simensky, Lanning G. Bryer & Neil J. Wilkof, *Intellectual Property the Global Marketplace*, vol. 1, 2nd edn, John Wiley & Sons: 1999, p. 52.

To have a better knowledge of the situation and features of criminal offences involving patent rights in present-day China, the authors have collected all of the 82 cases involving infringement of patent rights handled and closed by the Beijing No. 1 Intermediate People's Court between 1998 and 2000. Having conducted evidence analysis, we concluded that criminal offences involving patent rights now in China have the following features.

First of all, the number of patent-related offences is in general on the rise. In recent years, the number of cases involving disputes over infringement of patent rights handled by Chinese courts at different levels has kept increasing, and this represents the increased attraction of patent-related criminal offences. In the seven years from 1986 to 1993, courts throughout China handled 3505 civil lawsuits involving disputes over IPR, of which 1783 related to patent rights; in the five years between 1991 and 1995, Chinese courts accepted and tried 15 543 civil cases concerning IPR disputes, among them 3083 related to patent rights.² In 1999 alone, the courts handled 1485 patent-related cases, of which 71 involved patent licensing contracts, 1146 were disputes over infringement of patent rights, and 268 were disputes over ownership of patent rights.³ In 2000, the courts heard 1595 patent-related cases, of which 57 involved patent licensing contracts, 1162 were disputes over infringement of patent rights, and 376 were over patent ownership.⁴ At regional level, there is a growing tendency to patent-related offences. For example, the number of cases concerning infringement of patent rights heard by Beijing No. 1 Intermediate People's Courts between 1998 and 2000 almost doubled each year.

Table 9.1 Stages at which IPR offences were committed

| | Frequency | % Agree |
|------------------------------|-----------|---------|
| Before patent rights granted | 20 | 24.4 |
| After patent righted granted | 62 | 75.6 |
| Total | 82 | 100.0 |

Second, in terms of stages at which crimes were committed, the majority of offences were committed after the granting of patent rights, though the number of offences of infringing the potential patentee's right to application and other rights committed before the awarding of patent right was not small. Again, we cite the cases handled by the Beijing No. 1 Intermediate People's Court from 1998 to 2000 to illustrate the point in Table 9.1 .

The table shows that 24.4 per cent of offences took place before patent rights were granted. They involved infringement of inventors' patent application rights, temporary economic rights, and so on, while as many as 75.6 per cent of patent offences took place after the patents were officially awarded to the inventors. The

² Information Office of the State Council of the People's Republic of China, *Protection of Intellectual Property Rights in China*, White Paper, June 1994. <http://www.people.com.cn/GB/channel1/10/20000908/224663.html>

³ Wang Yanfang, 'Statistics and Analysis of Cases Concerning IPR Accepted by Chinese Courts'. In *Guidance and Reference to Trials of IPR-related Cases* by the Intellectual Property Rights Tribunal of the Supreme People's Court of the People's Republic of China, vol. 1, Law Press China, 2000, pp. 56–8.

⁴ 'Statistics and Analysis of Cases Concerning IPR Accepted and Closed by Chinese Courts'. In *Guidance and Reference to Trials of IPR-related Cases* by the Third Civil Case Tribunal of the Supreme People's Court of the People's Republic of China, vol. 2, Law Press China, 2001, pp. 59–61.

specific offences include unauthorised manufacture and sales of patented goods, palming off of another person's patent and infringing a patentee's relevant rights in the process of patent assignment, and using the granted licence. What should be stated here is that the rights referred to in this chapter are patent rights in broad terms. They refer not only to a series of rights enjoyed by the patentees after the patents are granted, but also to the peripheral rights arising from the process of obtaining these rights; these are an inventor or designer's right to apply for a patent, an applicant's right to request no disclosure for his invention or creation during the period of patent filing, a patent applicant's temporary economic rights between the time of publication of his invention or creation and the time when the patent is actually awarded, and so on. The inclusion is justified because the applicant's entitlement to this series of rights during the period of patent tendency is the precondition for his later entitlements after the patent is officially awarded to him, which is extremely important for the comprehensive protection of patent rights. Although the figures in Table 9.1 reveal that the proportion of offences concerning infringement of inventors and designers' deserved rights during the period of patent filing is not very large, we should regulate acts of this kind by taking timely legislative moves.

Third, if we examine the geographical locations where patent crimes have actually been committed, we find that there are more and more criminal cases of this type involving more than one region. They have covered a large part of the country. From the economically developed coastal regions to inland provinces as remote as Qinghai and Yunnan, crimes concerning infringement of patent rights are common. However, the places with the highest crime rate of patent infringement are Guangdong and other economically developed coastal provinces,⁵ which has something to do with the development pattern of starting from the coastal region and gradually expanding to the inland in China's reform and opening up efforts. Guangdong and other coastal provinces have been in the forefront for China's economic modernisation and have been pilot areas for the transformation of the economic system to a market economy. But while the economic system has changed within these pilot areas, people there have not changed their mindsets about the rights and interests of intellectual property and its protection. When the economy was initially taking off, many manufacturers, particularly those of light industry products such as household appliances, in order to corner the market, stay ahead of other competitors and seek quick profits, would start their business by copying or imitating available products of other manufacturers. Many of these imitated products were patented,⁶ but because of the economic chaos of that period, the acts of copying and imitating were not strongly opposed by the state,⁷ and people in general did not fully realise the illegality of these acts and the harm they could do to society. Since China's reform and opening up, the coastal regions have been leading the country's economy, yet they are also the places where patent crimes are likely to be committed.

Fourth, when we trace the motives and purposes of patent crimes, we find that greed for profit has always been the main motive. Our research has found that a patent that is being used and generating good economic benefits for the patentee is liable to become the target for patent infringement.

With the gradual improvement of China's legal system, the market economy mechanism has begun to run properly. Nowadays, without knowledge of the law, one can achieve nothing in either economic interactions

⁵ Dai Zigeng, 'Why there are so many patent-related lawsuits in Guangdong Province', *Guangming Daily*, 14 September 1996, p. 4.
⁶ *ibid.*

⁷ It was not until 16 February 1985 that the Supreme People's Court stated unequivocally, in its *Circulation on Several Issues Concerning Trials of Patent-related Cases*, that criminal liability of persons involving palming off of another person's patent, disclosure of state secrets and neglect of one's official duties, abuse of power, and self-seeking misconducts was to be investigated in accordance with the provisions in *The Criminal Law of the People's Republic of China*.

or social life, be it a company, an institution, a social group or an individual. The state organs have stressed the importance of knowing the law and of abiding by the law. Under these circumstances, we may say there are very few 'ignorant offenders' who have blindly infringed patent rights because of lack of knowledge about the state's relevant laws and regulations. This is particularly true of offences taking place after patents have been granted to inventors. As far as illegal copying of other manufacturers' patented products or palming off of others' patents is concerned, most offenders have done it intentionally. Statistics show that among the patent rights infringers, 87.8 per cent were intentional offenders. And of these intentional offenders, 64 per cent had been motivated by greed for illicit benefits, which demonstrates that greed has been the main cause of crimes involving patent rights.

Since this is the case, it is only natural for offenders to choose the means of infringement through which they are able to gain the maximum profits at the lowest cost. Obviously, counterfeiting of patented items that are generating good economic benefits for patentees has been regarded as the favoured short-cut to wild fortunes. According to the data from a questionnaire carried out by the Shanghai Patent Bureau, of the 103 patented items that bring economic benefits to the patentees, the patent rights of 51 items, or about 44.7 per cent of the total, had been infringed. Among over 400 other patented items that had been sampled, the patent rights of only 53 items (11%) were infringed.⁸

Fifth, when we examine the offenders, we find that many are units,⁹ particularly corporate entities, who offend under cover of some seemingly lawful excuse. In fact most (86.6%) of the patent offences were committed by units; of these 77.8 per cent were corporate entities, 16.7 per cent were institutions and research units, and 5.6 per cent were state organs. The consequences of patent infringements committed by such units are far more damaging than those committed by individual offenders (13.4%) because they have much greater access to financial, material and human resources, and far-reaching information and social networks that enable them to collect information quickly about items that they can pirate. In addition, institutions, social groups and enterprises enjoy higher social and economic credibility than private individuals. People tend to believe that what they do is lawful and in conformity with market norms. It is precisely because of this that unit offenders try to find out various covers and pretexts under which they infringe patent rights.

Sixth, when we look at victims, the chances for an individual or unit patentee to fall prey to infringements are almost equal. Most of the unit victims were enterprises, while most individual victims were employees of enterprises. But what is common to these two categories of victim is that both were very aware of the need to protect their patents.

Of all the cases we have collected, 56.1 per cent of the victims were people who held patents individually and 36.6 per cent were units. Unlike offenders of patent infringements who were mainly units, the chances for individual patentees and unit patentees to fall prey to infringements were almost the same. However, because individual patentees' ability to prevent and fight infringements was comparatively low, the proportion of individuals in the two categories was slightly larger. Besides, there were patent infringement

⁸ Xia Rong, 'The Shocking Infringements on Patent Rights', *Jiancha Ribao* (Procurator's Daily), 12 September 1996.

⁹ Article 30 of *The Criminal Law of the People's Republic of China* defines 'unit': 'Any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility.'

victims with a patent held jointly by more than two units, two individuals or jointly by a unit and an individual. They made up 7.3 per cent of the cases.

Unit victims can be roughly divided into two groups: Group 1 (61.6%) are enterprises whose purpose is to make profits and who participate in competition in the market economy; Group 2 (38.97%) is composed of teaching- and research-oriented schools and research institutions.

As for the individual victims, the authors had expected, before reading the collected statistics, that intellectuals like university professors and research specialists would constitute the main body of the patent infringement victims because the nature and contents of their work would make them better inventors, creators and designers, hence more likely to be awarded patent rights. However, the statistics indicated they made up only 42 per cent of individual victims and were the second largest group. Employees of enterprises, making up 46 per cent of the total, turned out to be the largest group. These employees were granted the patent rights for inventions and creations they had achieved in their spare time. Yet their patents would become easy targets for infringement from both inside and outside the enterprise. (The third group of victims is 'Businessmen', which account for 10 per cent while the category of 'Others' reports 2 per cent.) What merits special explanation is that some of the victim's professions had not been clearly identified, and so figures reported above are conservative.

What seems gratifying is that we found that most of the individual patent infringement victims had a good knowledge of the patent law and a strong awareness of the need for protection. Statistics show that 87.8 per cent of the individual victims had taken steps to protect their rights and interests when they discovered that their patents were being violated, and they did nothing wrong either intentionally or unintentionally; 93.9 per cent responded promptly, resorting to administrative or legal actions to protect their own rights when they found that their patent rights had been infringed. Only 4.9 per cent of victims did not know anything at all after their patents had long been violated, and 1.2 per cent sought out of court settlements but suffered even heavier losses (Table 9.2).

Table 9.2 Are victims at fault?

| | Frequency | % Agree |
|-------|-----------|---------|
| Yes | 10 | 12.2 |
| No | 72 | 87.8 |
| Total | 82 | 100.0 |

Seventh, looking into the relationship between the offenders and victims, we found in most cases that the two parties involved had been rivals in the same business area who had not known each other until the infringement took place. After legal proceedings got under way, a large proportion of cases were closed, with withdrawal of action as a result of intermediation and reconciliation.

Of the cases the authors have collected, 58.5 per cent of offenders and victims had not known each other before the infringement took place. In the main, the two parties were rivals in the same trade, and most of the infringements were committed after the patents had been granted to the inventors or designers. The usual

practice of infringements of patent rights is to sell counterfeited products or the associated technology as the legitimate patented products held by the victims in the same trade. Of defendants and plaintiffs, 41.5 per cent had maintained some sort of relation before the infringement took place. Among them, 1.2 per cent used to be colleagues and acquaintances and their infringement cases were triggered by disputes over whether an invention or design was the result of joint or individual efforts and, if the latter, which of the two parties had the right to apply for a patent, hence to be the final holder of the applied patent (Table 9.3).

Table 9.3 Are the offenders and victims known to each other?

| | Frequency | % Agree |
|-------|-----------|---------|
| Yes | 34 | 41.5 |
| No | 48 | 58.5 |
| Total | 82 | 100.0 |

We found that 58.5 per cent of lawsuits involving patent rights infringements were closed either through court-presided intermediation or through reconciliation between the parties resulting in the withdrawal of actions. This is a special phenomenon compared with cases brought to court over other claims or charges. It shows that victims of patent infringements cared much more about whether and how much of their economic interest could be compensated than about how the case would come to an end. To further our research on this issue, we cross-analysed the ways the cases were closed against several groups of variables. We discovered that of all the parties who had their cases settled through intermediation and reconciliation, 75 per cent, by far the largest group, had been rivals in the same trade and had not known each other before the infringements, whereas in cases involving former colleagues and acquaintances, the unit and employees, and parties with contractual bondages, were more likely to be closed by court rulings. Between the unit and employees, cases closed by court rulings were 7.6 per cent higher than those through intermediation and reconciliation. And for cases involving the two parties bound by former contracts, cases closed by court rulings were 35 per cent higher than through intermediation and reconciliation. Finally, as criminal patent offences become more numerous and more serious, their impact on society becomes greater. There have been cases in which the two parties sued each other,¹⁰ a growing number of joint offence cases, and more cases involving an overseas party or parties.

Now there have appeared more and more serial cases in which the same plaintiff filed lawsuits against several different defendants with the same charges. Typical of the more serious cases is the patent dispute over the invention of an electric flyswatter accepted by the Fujian High People's Court and those concerning the dispute on calcium concentrates heard in several courts in Beijing, Tianjin, Inner Mongolia and other places. As serious cases imply a network of connections and some involve several different courts, coordinated work is needed to ensure consistency in law enforcement. In addition to serial cases, there have been more cases where two parties file lawsuits against each other. Actions of this mutual kind were sometimes lodged with the same court and sometimes with two courts in different venues; some were lodged with the same cause of action and others with a different cause of action, which was likely to involve confirmation of jurisdiction and of cause of action, giving rise to disputes over the qualification of

¹⁰ Dong Tianping, 'A Summary of China's Trial Work on Cases Related to IP in 1998'. In *Guidance and Reference to Trials of IPR-related Cases* by the Intellectual Property Rights Tribunal of the Supreme People's Court of the People's Republic of China, vol. 1, Law Press China, 2000, pp. 59–62.

jurisdiction between courts, thus having greater social impact.

In most cases (79.3%), the offence was committed by a single unit or an individual. But in the course of their study of the collected cases, the authors have discovered that there have appeared in recent years some cases in which two or more individuals worked in collaboration with a unit to engage in infringement of the same patentee's rights. Although cases of this kind do not constitute a large proportion of cases collected (20.7%), because they are usually cases of gross violation and the damage suffered by patentees is heavy, greater importance should be attached to dealing with them.

The last few years have also seen cases of patent infringement involving parties from overseas. Of the cases accepted and tried by the Beijing No. 1 Intermediate Court between 1998 and 2000, 3.7 per cent involved parties who are enterprises or individuals from abroad or from Hong Kong, Macau and Taiwan. These infringement offences not only had a negative impact at home but also damaged China's international reputation regarding protection of patent rights.

Weaknesses and Deficiencies in China's Criminal Statutes Dealing with Patent Offences

There are several reasons for the present situation on the Chinese mainland with regard to patent offences, of which the historical, cultural and economic reasons are the chief ones. This chapter aims to identify weaknesses and deficiencies in the provisions of China's criminal statutes with a view to improving and perfecting the legislation on patent-related crimes on the mainland.

The availability of a patent system on the mainland came rather late. It was not until 1984, 35 years after the founding of new China in 1949, that the first Patent Law was officially passed and promulgated. Earlier there had been only two sets of provisions concerning patent rights: 'Interim Provisions on Safeguarding Invention Rights and Patent Rights', adopted in 1950 and repealed in 1963; and 'Provisions of Rewards for Inventions', adopted in 1963.

But as the latter relied on a system of rewards for inventions instead of a patent rights protection system,¹¹ it was unable to offer overall protection of various inventions, to safeguard inventors' legitimate rights and interests, or to promote international technical exchanges. The patent rights protection system, reaffirmed by the adoption of the 1984 Patent Law, played an important role in encouraging inventions and creations and in advancing the development of science and technology. But as the protection of intellectual property has become a matter of international awareness and requirement, the 1984 Patent Law was felt to be inadequate to cope with the changing situation. In 1992 and later in 2000, the mainland twice revised the 1984 Patent Law. The revised Patent Law and the Rules for its Implementation improved the procedures for patent application and for protection of patent rights and intensified supervision over patent-related enforcement of administrative rules and judicial practices, thus meeting the needs for international protection of patent rights and bringing it more in conformity with the WTO Agreement on TRIPS (Trade-Related Aspects of Intellectual Property Rights).

¹¹ Provisions of Rewards for Inventions stipulates that all inventions belong to the state and any unit in the country is entitled to use them, without paying any fees, whenever it deems necessary.

The incorporation of provisions on patent offences into the mainland's Criminal Law also appeared rather late. There was only one provision dealing with IPR offences in the Criminal Law adopted in 1979, that is, the provision making it a criminal act to counterfeit a registered trademark. In 1985, China became a signatory to the Paris Convention for the Protection of Industrial Property. In 16 February of the same year, the 'Circulation on Several Issues Concerning Trials of Patent-related Cases', issued by the Supreme People's Court, stated that the criminal liability of persons involved in unauthorised use of another person's patent, disclosing state secrets and neglecting official duties, abusing power, and engaging in self-seeking misconduct were to be investigated in accordance with the provisions in the Criminal Law of the People's Republic of China. Article 63 of the Patent Law of the People's Republic of China, which came into effect on 1 April 1985, also stipulated that in cases involving the misuse of another person's patent serious enough to constitute criminal liability, the persons directly responsible were to be investigated with reference to the provisions dealing with the crime of unauthorised use of trademarks in the 1979 Criminal Law. It was not until 1997 that the act of unauthorised use of another person's patent was criminalised in the mainland's criminal code. The revised Criminal Law of the People's Republic of China, adopted on 14 March 1997, defined the crimes of IPR infringement in a separate section of Chapter 3, Part Two (Specific Provisions), putting together in this criminal code all the specific criminal offences from former statutes and auxiliary laws with the newly added ones. What is more, it listed the criminal act of misuse of another person's patent in a separate article and clearly defined its acts of offences and stipulated specific scales of penalties. This was a major new move to counter and reverse the worsening situation of patent-related crime. However, there are still many weaknesses in the existing laws and regulations, which have been inhibiting the crack-down on patent-related crimes. The main weaknesses and deficiencies are in the following areas:

Lack of clearly defined criteria for criminal prosecution and disconnection between protection of patent rights offered by the civil, administrative and criminal laws

The legal system has provided protection of varying degrees for patent rights. There are provisions in civil law, administrative law and criminal law to deal with patent offences based on the seriousness of the harm done. In order to build up an effective correctional system against such offences, it is important to make sure that the protections offered by these different tiers are closely connected, and coherent as a whole. Unfortunately, since the Chinese statutes lack specific stipulations to determine if a patent infringer's act is damaging enough to convict him, the ambiguity in filing a criminal case makes it difficult to follow the sequential procedures for the protection of patent between civil law, administrative law and criminal law.

According to the relevant provisions in the Patent Law, in the cases listed above, it is only when the circumstances are serious that the criminal liability of the persons directly responsible will be investigated. But the law has not defined clearly how and when circumstances become serious, nor have academics agreed on it.¹² This has led to confusion of jurisdiction between civil courts, administrative departments and criminal courts, hampering the transfer of cases between them. In China, the People's Court hears a case involving patent infringement based on either complaint or petition filed by a party or on documents of prosecution prepared and sent by the People's Procuratorate. Apart from this, the patent administration department also has the power to impose administrative penalties on patent infringement acts. When investigating a patent infringement case, some patent administration departments, driven by self-interest, finding that the circumstances were serious and would possibly constitute a crime that should be handled by a judicial department, would rather punish the offender by imposing a heavy fine than turn him in to the judicial department. Important as it is for a victim of infringement acts to get compensation for his loss, he is more concerned about whether his patent can be protected from being further infringed. The deterrent

effects that legal and administrative punishments are supposed to achieve have not been carried to the full because of lack of an efficient case hand-over and take-over system between the civil court, administrative department and criminal court. This has to a certain extent weakened the judicial protection of patent rights and connived somewhat at the patent-related crimes.

Definitions for charges of crime are too general and not specific enough

Of all the seven criminal charges against criminal acts involving IPR infringements prescribed in Section 7, Part Three of China's Criminal Law, there is only one criminal charge for crimes involving patent rights, that is, the crime of counterfeiting the patent of another person as set forth in Article 216. Besides, according to Article 64 of the Patent Law, when a person, in violation of relevant provisions, applies for a patent in a foreign country and in the process discloses important state secrets, if the circumstances are serious, his criminal liabilities will be investigated. And Article 67 of the same law stipulates the same of patent administrative personnel and relevant state personnel who engage in neglect of official duties, abuse of powers and self-seeking conduct. It might be safe to point out that the available criminal charges against patent-related crimes could no longer meet the present requirements in China for crackdown and prevention, as the legal liabilities of many illegal acts in the patent field have not been accounted for and penalised. On the crime of counterfeiting a patent, Article 216 of the Criminal Law stipulates: 'whoever counterfeits the patent of another shall, if the circumstances are serious', be committing the crime of counterfeiting patent. However, according to relevant interpretations, 'counterfeiting the patent of another person' has been defined very narrowly. It only refers to the passing off of unpatented products and unpatented methods such as those patented by patentees,¹³ but does not include other serious offences or the tort resulting from illegal practice of another's patent. This restrictive definition has made judicial practices very difficult. There have been some widespread direct offences such as illegally practising the patents of other persons without their authorisation, and large numbers of other indirect offences such as making other people's patent marks without authorisation. Although the damaging effects of these on the patentees as well as on society have been no less than those resulting from counterfeiting patents, the offenders could not, according to the present incrimination principle, be charged with the crime of counterfeiting patents and could not be penalised accordingly. We may conclude that the current upsurge in patent offences on the mainland has much to do with the unspecific and oversimplified definition for patent-related criminal charges.

Types of punishment are too stereotyped

The Criminal Law of the People's Republic of China has only specified fixed-term imprisonment and criminal detention as two principal punishments, with a fine as an accessory penalty. With the diversification of subjects of patent-related crimes, the aforesaid types of criminal punishment could not meet the need for penalising offenders. For the rampant crimes perpetrated by units, the law has stipulated a dual-penalty system which imposes a fine on the unit and at the same time sentences the person in charge of the unit or personnel directly responsible for the crimes to fixed-term imprisonment or criminal detention. However, in practice, with the cases involving unit offenders, especially those production-oriented units, since the person in charge or the personnel directly responsible for the crime more often than not play the key role in the unit's production and operation, any court judgment that deprives them of their personal

¹² See Tian Hongjie, *Studies on Some Difficult Issues Concerning Law Application in Criminal Trials with Units as Criminals*, Jilin People's Publishing House, 2001, pp. 345-7, and Liu Fang & Shan Min, *Crimination and Sentencing of Crimes Involving IP Infringement*, The People's Court Press, 2001, p. 176.

¹³ Liu Jiashen, *Criminations and Punishments of Criminal Charges Commonly Cited in the New Criminal Law*, The People's Court Press, 1998, p. 520.

freedom would have very adverse effects. As judges often meet strong resistance during the court trials, cases of this kind would end up in imposing a fine on the unit but with the persons mainly responsible for the offence eluding due punishment. As a consequence, it is not uncommon to see the same unit commit the same crime of patent infringement.

Lack of specified and easy-to-operate sentencing criteria

A lack of operational and substantiated sentencing criteria has an adverse impact on crackdowns on patent offences and also on the prevention of repeat crimes. For instance, because of the huge economic benefits, the likelihood of a criminal repeating the same patent-related crime is very high. To deal with the situation, some countries and regions have prescribed specific response provisions in their criminal laws in this regard. For example, the Criminal Law of Macau stipulates that anyone who commits the crime of patent infringement concerning an invention, utility model or industrial design will be sentenced to a fixed-term imprisonment of three years. If it is a repeat crime, the sentence of fixed-term imprisonment will be doubled, and an extra one-third of the imprisonment term will be added to crimes of extremely serious circumstances. Under the same law, a fine of between \$50 000 and \$500 000 (patacas) will be imposed on crimes of trademark infringement. If it is a repeat crime, the fine will rise to between \$50 000 and \$1 million (patacas). Specified sentencing criteria like these facilitate the operation of the judiciary and make clear the state's differentiation between a first offence and a repeat offence; this has a considerable impact on the prosecution and prevention of repeat crimes. But in China's Criminal Law, the provisions concerning patent-related crimes do not have these specific sentencing criteria. It is a matter of course that judges may hear and rule the cases of repeat crime at their own discretion in conformity with the principles set forth in General Provisions of the Criminal Law concerning the trial and sentencing of repeat crimes, yet it does leave some loopholes that criminals may exploit.

Amendments to Criminal Statutes as Countermeasures to Fight Patent-related Crimes

With its entry into the WTO, China's domestic market is opening wider and its international trade volume is growing. As a result, some new phenomena and trends will appear with regard to patent-related crime. The criminal law is the fundamental law for penalising criminals and cracking down on crime.¹⁴ To be able to effectively control and prevent patent crime, we should further, in accordance with the WTO Agreement on TRIPS, amend and improve the current criminal statutes and perfect the strategising system for legislations on criminal offences concerning patent-related crimes.

Set up clearly defined criteria for criminal prosecution of a case

To deal with the worsening situation in patent crime, the most urgent thing now is to establish protection of patent rights by criminal statutes. However, criminal law is the last defence of the whole legal protection system and is the strongest force wielded by a state against certain misbehaviours. Compared with other legal sanctions, criminal punishment is the most severe and should not and could not be a commonly used legal means to law and order on the mainland. As Minoru Otani, a Japanese scholar in criminal justice, has pointed out:

¹⁴ Zhang Xiaoqin & Zhao Guoling (eds), *Crime and Crime Control in Contemporary China*, Peking University Press, 2001, p.9 6.

To keep anti-social behaviors from happening, it is necessary to adopt crimination measures. However, as criminal punishment goes hand in hand with cruelty of bodily coercion, only when a full recognition of legal interest it intends to protect is achieved, can crimination be practiced. Only when there is no other optional method to protect this legal interest except for creating criminal laws and resorting to criminal punishment, may crimination be allowed.¹⁵

There is no doubt that criminal penalty should be used, but it should be used prudently. To this end, a clearly defined boundary within which criminal law can be applied has become highly necessary. So to amend and improve the criminal legislations against patent-related crimes, we should first of all clearly define the criteria for criminal prosecution of a patent-related offence.

It has been mentioned previously that according to the relevant provisions in the Patent Law, cases involving the counterfeiting of another person's patent, disclosure of state secrets and neglect of one's official duties, abuse of power, and self-seeking misconduct will attract criminal investigation only when the circumstances are serious. But neither the legislative branch nor the judicial branch has an adequate yardstick for judging seriousness of circumstances. In patent offences, seriousness of circumstances is judged by the amount of illegal income gained by the counterfeiter, the degree of the subject's vicious intent, the actual loss suffered by the patentee, how evil the means are through which the offender engaged in the offence, and so on. The circumstances of cases involving patent infringements are judged serious:

- if the amount of illegal income from counterfeiting activities is comparatively large;
- if the counterfeiting is a deliberate subjective initiative and the offender has intentionally, continuously and repeatedly counterfeited the patent of another person, and when caught and proved, has refused to make a confession of his crime;
- if the offender has, from vicious motives, engaged in counterfeiting by very sordid means, thus causing extremely negative social or even political effects;
- if a case has not only caused the patentee or interested parties direct heavy economic losses, but also has hurt them in reputation and psychologically;
- if the patent administrative and law enforcement personnel have knowingly and intentionally engaged in patent counterfeiting; and
- if a case has very serious consequences internationally.

Although jurisprudential interpretations have made up for the deficiencies in legislative and judicial interpretations, the problem of the lack of clearly defined criteria for criminal prosecution of a case has hardly been resolved. First, scholars differ in their interpretations of 'comparatively large amount of illegal income'. Some hold that if the amount of illegal income gained by an individual offender exceeds RMB 20 000 or that gained by a unit offender exceeds RMB 50 000, the amount should be considered 'comparatively large';¹⁶ others hold that only illicit gain exceeding RMB 20 000 by an individual or exceeding RMB 100 000 by a unit should be considered 'comparatively large'.¹⁷ Second, on the issue of the target to whom the 'comparatively large' amount is directed, most scholars maintain that it refers to the illicit income gained by the criminal who has infringed patent rights. However, there are still some scholars who have argued that the

¹⁵ Minoru Otani, *Criminal Policy Studies*, transl. Li Hong, Law Press China, 2000, p. 86.

¹⁶ Liu Fang & Shan Min, *Crimination and Sentencing of Crimes Involving IP Infringement*, The People's Court Press, 2001, p. 176.

¹⁷ Tian Hongjie, *Studies on Some Difficult Issues Concerning Law Application in Criminal Trials with Units as Criminals*, Jilin People's Publishing House, 2001, p. 345.

judgment of whether the amount is comparatively large should be based first on the actual amount of loss the victim has suffered, because in some infringement cases, although the offenders may not have gained any profits or even have suffered some loss, they have caused loss for the patentees.¹⁸ Referring to relevant provisions of foreign legal systems, we find that the Patent Law of the United States stipulates that the decision of amount of damage is mainly based on the loss incurred by the patentee resulting from the infringement, and the illicit income gained by the offender is used as reference in certain circumstance in calculating the loss incurred by the patentee.¹⁹

Considering all these, the authors hold that the Chinese authorities should as soon as possible give uniform legislative and judicial interpretations on the issue. When drawing the specific lines for a ‘comparatively large amount’, differences between China’s economically developed regions and the less developed regions should be considered, and different minimum thresholds for different regions should be worked out. As for the target to whom the ‘comparatively large amount’ is directed, the authors agree that the actual loss incurred by the victim should be the basis for calculation. What is more, in calculating the actual loss, the patentee’s reasonable costs such as for stopping the infringement, for investigation, for collection of evidence and for the lawyer’s fee should all be included, together with the presumed patentee’s loss of profits because of changes in the market.

Under the ‘Provisions on Some Issues Concerning Law Application Arising from Trials of Cases Involving Patent Rights Disputes’ and ‘Interpretation for Some Issues Arising from Trials of Cases Involving Patent Rights Disputes’ issued by the Supreme People’s Court on 22 June 2001 and in 1992 respectively, there are four ways of calculating the amount of loss resulting from patent infringement:

- based on the actual amount of loss incurred by the patentee as a result of the tort against him;
- based on all the interests and benefits gained by the offender from his infringement acts;
- based the category of the patent, the nature and circumstances of the infringement acts, the patent licence fee, the nature, scope and duration of the patent licence, when a fee of between one and three times that of the damages is reasonable;
- where there is no licence fee to refer to or the amount of the licence fee that is referred to is obviously unreasonable, the court may decide the damage in accordance with the circumstances, that is, between RMB 50 000 and RMB 300 000, with a ceiling not exceeding RMB 500 000.

When establishing the specific criteria for criminal prosecution of a patent infringement case, these provisions can be used as reference.

Moderately increase the range of criminal charges or give wider interpretations to existing charges

Having clarified the criteria for criminal prosecution of an offender, the next question is, with what charges or counts, within the boundary of criminal protection, should patent infringements be capped? Whether the types or categories of charges are rationally established has a direct bearing on how the functions of criminal punishment are realised. As definitions of the charges for patent crimes are not specific enough in China’s Criminal Law, we may, based on the need for more precise legal practices and drawing on the relevant provisions in the criminal codes of certain countries, increase the types of charges against patent-related

¹⁸ Li Yang, *Invisible Rivalry: Hot Issues & Thorny Issues with IPR*, Lujiang Publishing House, 2000, p.202.

¹⁹ Russell L. Parr, *Intellectual Property Infringement Damages*, 2nd edn, John Wiley & Sons, Inc., 1999, p. 50.

crimes or give expansive interpretations to the existing charges. However, before doing either of these, a problem about the presumptions involved should be resolved.

Different legislations for inventions, utility models and industrial designs respectively

In China, 'patent' covers three things: inventions, utility models, and industrial designs. But according to the relevant provisions of most foreign countries and those of the Agreement on TRIPS, 'patent' does not include utility models and industrial designs.²⁰ This fact has brought about some unnecessary blocks to China's foreign trade and its technical and legal exchanges with others²¹ and put the country's patent legislation into an embarrassing situation. The main object of a crackdown on patent-related crimes through legislation is to protect through the most stringent legal means the inventions and creations that are technically most innovative and economically most rewarding. But because the Patent Law grants patents to all applications involving inventions, utility models and industrial designs that meet the requirements of the Patent Law, the Criminal Law treats cases involving the counterfeiting of these three types of patents indiscriminately, using the same charge of patent counterfeiting and the same terms of sentencing. In fact the social damage resulting from infringements of patents on inventions is different from that for patents on utility models or industrial designs. The indiscriminate treatment is not only inequitable but is also not conducive to the effective protection of patent rights through legislation. So if we are to reverse the worsening situation of patent crime, we should increase the types of charges and the types of punishment or increase the maximum terms of sentencing. Yet the present presumption is to have separate legislation for the protection of inventions, utility models and industrial designs, with utility models and industrial designs each having their own statute.

The object and scope of China's Criminal Law is relatively narrow as it concerns the counterfeiting of patents. So also are the provisions in the Patent Law, which dictate that in dealing with the serious disclosure of state secrets, an offender's criminal liabilities will be investigated. On the other hand, the provisions dealing with offences of neglect of official duties, abuse of power and self-seeking misconduct appear to be too general and oversimplified. In fact, in the process of applying for patents, and in obtaining, assigning and licensing of patent certificates, the harm done to society is grave enough to deserve criminal penalties. There should be different criminal charges available in accordance with their different nature. However, while avoiding setting up too many fine differences in charges, such as is characteristic of Taiwan's Criminal Law, we should identify some further forms of criminal charges. For example, since in China a lot of offences involving the infringement of inventors' patent application rights have taken place before the patent is granted (of all the cases the authors have collected, 24.4 per cent were offences concerning the infringement of inventors' patent application rights before the patent had been granted; see Table 9.1), we may consider setting up a new charge of infringing patent application rights. The criminal statutes of foreign

²⁰ According to Articles 25 and 26 of TRIPS, members are to be free to protect the independently created industrial designs through industrial design law or through copyright law as long as the duration of protection available amounts to at least ten years. The reason is that utility models and industrial designs are not fully in conformity with the definition for invention given by the patent law and they bear characteristics of their own. Furthermore, only when patent includes exclusive inventions does the word 'patent' truly represent techniques and innovations. Now the availability of protection of utility models and industrial design through different separate laws has been confirmed by most foreign countries and regions as well as by the TRIPS.

²¹ For instance, the revised second version of China's Patent Law, in conformity with the provision that 'an opportunity for judicial review of any decision to revoke or forfeit a patent shall be available' prescribed in Article 32 of the TRIPS, stipulates explicitly that cases of appeal involving re-examination and invalidation of utility models and industrial designs shall be heard at the people's courts and the courts' decisions are final. In fact the 'patent' referred to in the TRIPS does not cover utility models and industrial designs.

countries have long had provisions available to control the offence of infringing patent application rights. For instance, in Japan, the charge of fraud penalises acts of obtaining patents through fraud, and in France, the charge of counterfeiting another's patent or counterfeiting other patent applicants penalises acts of falsely claiming a patent or falsely claiming the ownership of a patent being applied for.

Since maintaining consistency in law is important, we do not expect that a comprehensive improvement and incorporation of new criminal charges against patent crimes can be achieved in a short time. To meet the needs of legal practice, we might consider interpreting the existing charges more broadly to include some infringement acts that have serious consequences. For example, a series of indirect infringing acts such as the illegal practice of misuse of the patents of another person without authorisation and illegal manufacture and sale of the components of patented products (contributory infringement) could be incorporated into the charge of patent counterfeiting. As another example, the acts of intentionally disclosing a person's patent secret (not state secrets) during the application process by patent administrative personnel and relevant state personnel, which causes great loss to the applicant, should be regarded as a criminal offence of abuse of power or of self-seeking misconduct. The scenarios proposed by the authors might not be very rational as the establishment of criminal charges involves decisions on policy orientation and technical practicality. But we hold that no matter what criminal charges are to be established, or how specific, the goal should be clearly defined criteria based on the principle of slow but sure justice to ensure the correct charge, penalty and sentencing.

Increase the categories of criminal punishment to achieve coherence with relevant provisions in the civil and business law

The rationalisation of legislation is represented not only by the availability of adequate pigeonholes for criminal charges but also by the availability of enough categories of penalty. As mentioned earlier, the classification of penalties for patent crime in China's Criminal Law is somewhat oversimplified. It has listed three kinds of penalty: fixed-term imprisonment, criminal detention, and fine. This has, to a certain extent, led to the disjunction between the patent-related criminal provisions and those prescribed in civil and business laws. Under (2) of Article 57 of China's Company Law, a person who has been sentenced to criminal punishment for the crime of embezzlement, bribery, seizure of property or misappropriation of property or for undermining the socio-economic order, where not more than five years have elapsed since the expiration of the enforcement period; or a person who was deprived of his political rights for committing a crime, where not more than five years have elapsed since the expiration of the enforcement period, may not hold the position of director, supervisor or manager of a company. Since the crime of patent infringement falls exactly into the category of crime that undermines the socio-economic order, if the head of a unit was sentenced to criminal punishment for the serious circumstances of crime of patent infringement, he should, according to the provisions of the Company Law, be deprived of the qualifications for a senior managerial position. Yet in the provisions for criminal punishment relevant to the crime of patent infringement in China's Criminal Law, this type of punishment is missing. The disjunction between the criminal law and civil and business laws has not only spoil the inherent consistency in China's legal system but has also frustrated the effective crackdown on and control of patent-related crime.

Of all the criminal cases involving patent infringements, cases with legal persons as offenders make up a large proportion. Among the cases to which the authors had access, 86.6 per cent of cases were cases with units as offenders. And of this 86.6 per cent, corporate offenders made up 77.8 per cent, by far the largest proportion (see Tables 9.2 and 9.3). So the main consideration in any discussion about criminal punishment

for patent-related crime is what types of criminal punishment we need to achieve our goal of cracking down on unit offenders of patent-related crimes in a more effective and efficient way.

There are many types of criminal punishments. The main ones include the punishment of deprivation of personal life, deprivation of personal liberty, deprivation of property and deprivation of qualification. Generally, deprivation of property and deprivation of qualification are applied to punish the criminals who are legal persons. The punishment of deprivation of property includes confiscation of property and fines. Under China's Criminal Law, the punishment of deprivation of property against patent offences mainly takes the form of a fine rather than confiscation of property, to which the authors have no objection, though in some countries confiscation of property is also used to punish criminals who are legal people.²² In China, since most patent offences have been perpetrated by corporate offenders, the punishment of deprivation of property should be limited to a fine, for according to the provisions of China's Criminal Law, deprivation of property refers to the compulsory confiscation of part or all of the property personally owned by a criminal.²³ For a company or an enterprise, a certain amount of property owned by the legal person is a prerequisite for its existence and for its engaging in business operations in the market economy. If part or all of its property has been compulsorily confiscated by the state, the legal person of the company or enterprise will possibly lose his qualifications as a subject for civil as well as economic activities. The market is made up of numerous entities, which are closely connected, crisscrossing and interacting with each other, thus maintaining the stability of the economic order. Under these circumstances, if part or all of the property of a company or enterprise is confiscated, thus deprived of its qualifications as a subject in the market, other subjects keeping various civil and economic links with it will be affected to varying degrees. If many companies or enterprises were affected – this is possible as the patent crime rate is soaring – the whole of business would be plunged into chaos and the market would stop functioning. Based on the above arguments, the authors hold that the punishment of deprivation of property against patent-related crimes should take the form of imposing a fine, as has been the case, rather than confiscation of property. What is more, the amount of money to be fined should be determined with reference to the amount set for administrative punishment. As for the disposal of the fines collected, we may borrow the US practice which gives part of the fine collected to the accuser or informant as reward to encourage the general public to bring patent offences to justice and to intensify the social supervision of criminal acts.

There are no specific provisions in China's Criminal Law relevant to the punishment of deprivation of qualification against patent-related crime. As its name suggests, this punishment means depriving the criminal of the qualification for engaging in certain activities. It is designed not only to function as punishment and warning, but also to prevent the criminal from committing crime repeatedly in the capacity in which his qualification has been taken, thus materialising the function of social defence expected from criminal punishment.²⁴ Under China's Criminal Law, a unit offender of patent crime faces dual punishments: the imposition of a fine on the unit and the sentencing of fixed-term imprisonment for the person in charge and other personnel who are directly responsible. As has been mentioned earlier, fixed-term imprisonment has rarely been used. To remedy this, the authors have proposed the incorporation of deprivation of qualification into the criminal provisions, suggesting that the head or main responsible personnel of a unit be deprived of their qualification for holding certain positions or for engaging in certain professions for a

²² Kang Shuhua, *Contrastive Criminology*, Peking University Press, 1994, p. 229.

²³ Chen Xingliang, *General Introduction to Criminal Punishment*, The People's Court Press, 1993, p. 389

²⁴ *ibid.*, pp. 470–6.

certain period or for life.²⁵ This would bring the criminal law in conformity with the relevant provisions prescribed in civil and business laws. Meanwhile, it will provide a practical solution to the weak enforcement in cracking down on patent offences committed by units. If flexibly applied in combination with other criminal punishments, it will play a positive role in preventing and punishing patent-related crime.

Make sentencing criteria more specific and easier to operate

Sentencing is the main means by which the purpose of criminal punishment is achieved and by which it seeks parity between the crime and the punishment. Sentencing finds a corresponding parity between crime and punishment in a specific criminal, thus intensifying and heightening the functions of criminal punishments, which include the judgment function, the deterrence function, the function of having justice done, and the consolation function.²⁶ As an ancient Chinese saying goes, ‘without specific sentencing, law alone simply does not work’. The best criminal punishment system will not function without accurate sentencing. If the sentence is made inappropriately, no matter if it is over-sentencing or under-sentencing, the goals of rehabilitating the criminal and of preventing crime will not be reached.

Different factors account for the appropriateness or rather the inappropriateness of sentencing. The first is the incompleteness of provisions for the criminal law and the roughness of the existing provisions.²⁷ In the fight against patent crimes, accurate sentencing is difficult because of the complex nature of this crime. Since the existing sentencing criteria for patent crimes are not specific enough and are difficult to follow, we should, from the perspective of criminal legislation, modify the relevant provisions to make them more specific with a view to minimising inequality in sentencing. Some people may argue that legal provisions should not define the criteria for sentencing in too specific a way, just as British and American legal academics believe that ‘For the sake of justice, law does not require sentencing to be constantly consistent, instead, flexible applications of a certain type of discretion should be allowed’.²⁸ But in the Chinese context, it is necessary to make the existing criminal provisions more specific because of the complexity of patent crimes and the lack of a good understanding of this complexity on the part of the judiciary, which may lead to unsatisfactory trials.

The factors that determine whether a heavier or a lighter sentence should be imposed include the degree of harm done to society by the offence and how grave the criminal’s anti-social behaviour is. When applied to patent-related crimes, factors such as the seriousness of the consequences (the amount of illicit income reaped by the infringer and the actual loss of interest incurred by the patentee), the degree of the criminal’s malice (subjective mindset, criminal intent and motive), the degree of evil of criminal tricks, profession of the criminal (whether he is a patent office administrative personnel), the criminal’s personal record before committing the crime (whether he is a habitual criminal or a recidivist), the criminal’s repentant attitude (Has he surrendered himself? Has he performed meritorious services? Has he actively returned the illicit

²⁵ See Zhao Guoling’s speech ‘Protection of IPS by Criminal Law’ delivered at Peking University Forum on IPS.

²⁶ Hu Xuexiang, *Studies on the Basic Theories of Sentencing*, Wuhan University Press, 1998, p. 9.

²⁷ *ibid.*, p. 219.

²⁸ Nicola Padfield, ‘Sentencing and Fairness? An English Perspective on Theories of Punishment and Sentencing Law’. In *A Comparative Study of Sentencing Between China and Britain*, Research Center on Criminal Law, China University of Political Science and Law and Cultural and Education Section, British Embassy in Beijing, ed. China University of Political Science and Law Press, 2001, p. 255.

gains or tried to make up for the losses?), should also be considered in sentencing. So in the legislative process, different sentencing criteria should be adopted in accordance with the aforementioned circumstances. On this issue, the criminal laws of France and Macau have set aside well-defined, specific provisions to impose heavier punishments against recidivists who have infringed patent rights. It is the authors' view that China should draw on these provisions and make the sentencing criteria more specific within the range of sentencing allowed.

10

The Prevention and Control of Crime of Infringing IPR in Mainland China

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The Chinese economy has become more prosperous and the living conditions of Chinese people have improved greatly since China carried out what has come to be known as ‘reform and opening’, that is, embracing the modern (and largely Western) market economy, in a socialist version, at the beginning of the 1980s. But there has been a downside to this modernisation: crime that uses sophisticated modern technology has risen alarmingly in the same period. One area of crime is that of infringing intellectual property rights; examples are the counterfeiting of registered trademarks or patents and producing or selling the counterfeited products. These have proliferated year after year, especially since 1990, and are endangering the development of the socialist market economy system.

Actuality and Trends of Such Crimes in China

According to the actual circumstances, the crimes of infringing IPR present the following trends.

The geographical area in which IPR crime is committed is expanding

At the beginning of reform and opening in China, crimes happened only in several developed provinces which lie in the southeast of China. For example, Chao-shan District of Guangdong Province, Jinjiang District of Fujian Province and Wenzhou District of Zhejiang Province were the main bases from which to produce and sell counterfeit and common products. In a sense, the prosperity of these districts profited greatly from IPR infringement. But since 1990, with the expansion of reform and open policy into the inland provinces, the area of such crimes is extending and is taking in districts such as Shanxi, Henan, Hunan and Hebei Provinces. A great deal of counterfeit and common everyday products in the Chinese market comes from these districts.

The objects of crime have become more varied

At the beginning of reform and opening, only low-end or ‘downmarket’ products were counterfeited, but now many more kinds of products are counterfeited. Capital goods such as steel and fertilisers, and consumer goods such as home appliances and foodstuffs are all objects of the crime of counterfeiting. What is more, not only famous products but also ordinary products are counterfeited. It is said that it is very difficult to find a consumer who has never been cheated unless he has never bought anything. According to the state data, from July 1991 to April 1994, 20 items including about 200 counterfeited products were investigated and prosecuted. The following kinds of counterfeit products are typical:

- Products that are harmful to health, such as counterfeit medicine, medicines of inferior quality, or poisonous food; and products that are dangerous, such as substandard pressure containers, substandard electrical appliances and flammable or explosive products.
- Products that may bring huge economic loss such as fake pesticides, fake animal pharmaceuticals, fake chemical fertilisers.
- Fake home products such as cigarettes, wine, clothing, shoes, cosmetics.

IPR crimes are committed more publicly, more systematically, and on a larger scale

At the beginning of the 1980s, IPR crime occurred only in scattered regions. But now, with the extension of the range of counterfeit products and a huge increase in profit, the scope for criminals to produce or sell counterfeit goods is expanding. Because of the inefficiency of Chinese industrial and commercial and market management, some criminals blatantly flout the law and publicly produce or sell counterfeit goods. They are also more systematic about it. According to judicial experience some criminals are in charge of producing, some are in charge of supplying and others are in charge of selling. And the old manual methods of production have been replaced by highly specific and collective mechanisation. A lot of professional villages and distributing centres come into being in some provinces. For example, in Wanrong County, Shanxi Province, the criminals only produce counterfeit pesticide; in Gongyi County, Henan Province, they produce only counterfeit electrical wire; in Renqiu County, Hebei Province, only counterfeit structural materials are produced; and Yulin County, Guangxi Zhuang Autonomous Region, produces only counterfeit medicines. All of these districts become large distributing centres for counterfeit goods in Mainland China. During the process of counterfeiting and distribution, individuals and units collude and cooperate with each other, forming a network for the processes of producing the goods to printing unauthorised trademarks, to packing and distribution. For example, the General Administration for Industry and Commerce of China investigated and prosecuted a case of counterfeiting of a famous wine. The counterfeit was mixed with water and alcohol in Sichuan Province, the trademarks were printed in Cangnan County, Zhejiang Province, the bottle caps were produced in Yantai, Shandong Province, and the bottles were mainly produced in Henan Province. The criminals worked together to run a large manufacturing enterprise in carefully organised steps. One of the greatest difficulties in the investigation of this sort of crime is that criminal organisations not only produce some useless products by traditional methods, but also a great deal of useful products by high-tech skills. The counterfeit goods can seldom be distinguished from the genuine ones.

The subjects of these crimes become more and more complicated

In the West, most offenders of the crime of infringing IPR operate in white-collar occupations because such crimes belong to the category of so-called intellectual crimes. But in China, the subjects of such crimes are more complicated. They include farmers, industrial workers, intellectuals, individual households, the unemployed and even state functionaries, of which individual households and the unemployed form the main component; according to the statistics of the investigation of Zhejiang People's Procuratorate, 82 per cent of the criminals were from these two categories. But with the gradually expanding scale of counterfeiting and the incessant improvement of crime technology, many units have taken part in the crimes. Among them, some are collective enterprises and even state-owned enterprises. For example, when the authorities investigated about 1567 cases of producing and selling counterfeit goods in Heilongjiang, Shandong and Hebei Provinces, 45 per cent of offences were committed by SOEs and collective enterprises. According to incomplete statistical data from cases in 22 provinces from January 1991 to June 1992, about 263 enterprises produced or sold counterfeit medicine, and about 8137 enterprises were in some way

involved in this; among them, 6699 medical units used counterfeit medicine. It is especially serious for village enterprises and small to middle-sized enterprises to produce and sell counterfeit goods. So we say that the crime committed by units make a high percentage of crimes.

These crimes have a very bad effect on the Chinese economy and society

Not only do these crimes damage the reputation of enterprises whose trademarks, patents or products were counterfeited, but they also damage and disrupt China's economic system. According to the statistics, the crime of infringing IPR makes China lose RMB 25 billion of tax revenue and RMB 10 billion of income from the cigarette and wine industries every year. Even worse, some counterfeit and common products seriously harm people's health and lives. In 1992, the public health bureau investigated 170 000 cases of producing or selling fake medicines to a total value of RMB 0.3 billion. In 1993, procurator's offices accepted and heard 5278 cases of counterfeiting trademarks and producing or selling counterfeit goods, and placed a total of 3436 cases on file for investigation and prosecution. Among them, there were 546 cases in which the amounts were beyond RMB 100 000 and 50 cases beyond RMB 1 million. The number of the cases was doubled in one year. According to data published by related departments, from 1993 to 1995, 370 000 cases were investigated and prosecuted in China and the total value of counterfeited products reached RMB 10.4 billion. In the two years, about 4145 criminals were transferred to judicial departments, among which 1127 criminals were imprisoned, 12 were sentenced to death and 16 were sentenced of life imprisonment. From August 1995 to the end of 1996, about 225 300 cases were placed on file for investigation and prosecution and their value was RMB 5.83 billion. Judicial departments melted down counterfeit goods worth RMB 2.04 billion, destroyed 22 770 bases, and uncovered 2095 criminal gangs; 2000 kinds of counterfeit goods were involved and many criminals were punished.

Causes of the Crime of Infringing IPR

IPR crime is a frequent occurrence in mainland China. The author thinks that the following reasons can be given for such crimes.

Chinese citizens have little knowledge of IPR and have little idea of protecting it

Most Chinese citizens do not regard non-visible property, such as trademarks, patents and business secrets, as an exclusive property. They think that knowledge and skills are in the public domain, and that any one can use them unconditionally or freely. Some one even think the free use of them can help to popularise science and technology. As for those who can accept the rules of intellectual property law, their behaviour of infringing IPR can be explained by their lack of any legal sense of conforming to rules.

The attraction of huge profits

Since the reform of China's economy, the value systems of Chinese have changed greatly. For many people, 'money worship' became the most important value, so much so that in order to make money, some people disregard the national law. Profit is the sole purpose of all IPR crimes, so concealment and simplicity of operation are typical of them. Concealment means that criminals always try to keep their activities secret. When most consumers buy the goods, they see the trademarks on them and are easily deceived, so it is very difficult for consumers to distinguish counterfeit products from genuine ones. Simplicity means that the methods criminals use are the simplest and fastest, maybe the most efficient for making money.

Poor legislation for protecting IPR

As the planned economy has been enforced in our country for a very long time, administrative intervention and sanction have been the chief means of regulating the social economy. People treat the market economy as the opposite to the planned economy; they tend to throw regulation to the winds and ignore trademarks and patents, which have a very important regulatory function in the market economy. Although the market economy has been installed and people have realised such shortcomings, the legislation protecting IPR is very slow. For example, in the Criminal Law of the PRC, legislators pay more attention to violent crimes and other economic crimes than to IPR crime. In the old Criminal Law in 1979, crimes of infringing IPR were not paid enough attention. Some of the provisions were so far from perfect that the judicial apparatus could not enforce them correctly and effectively. Although the situation was changed after the new Criminal Law was published in 1997, some questions still exist. For example, in the new legislation, there are eight crimes of infringing IPR and the requisite qualifications of them are ‘the circumstances are serious’ or ‘the circumstances are too serious’. The maximum punishment for these crimes is no more than seven years’ imprisonment. The usual punishment is a fine, but the amount of the fine is not set out in the Law, which means that the penalty for these crimes is usually rather lenient.

The powerless enforcement of law

In China, the judicial apparatus has not fully realised the dangerous consequences of infringing IPR. As well as the punishments being soft and powerless, in judicial practice only a small portion of the criminals have been investigated and prosecuted and even fewer were found guilty. In most cases, criminals were punished by administrative measures instead of a penalty: criminals were only obliged to make partial compensation, without any criminal obligation. So the criminals always pull away easily and go on committing the crimes.

The Legal Control of Crimes of Infringing IPR

At the beginning of the economic reforms, IPR crimes were not popular and there were few laws controlling them. Legislators prescribed only one crime of infringing a registered trademark in the 1979 Criminal Law. But since 1980, with further implementation of the reforms, more and more serious IPR crimes have occurred and the Chinese government has begun to realise the importance of controlling such crimes. So a number of laws about protecting IPR were promulgated including:

- the Trademark Law of the PRC
- the Patent Law of the PRC
- the Copyright Law of the PRC
- the Decision regarding the Modification of the Trademark Law of the PRC
- Supplementary Provisions Regarding the Punishing Crimes of Counterfeiting Registered Trademarks
- Regulation for the Protection of Computer Software
- Provisions on the Implementation of the International Copyright Treaties
- Regulation on the Administration of Audio and Video Products
- Decision Regarding the Punishment of the Crimes of Infringement of Copyright.

All of these laws play important roles in the protection of IPR. For the purpose of punishing the crimes of producing or selling counterfeit goods, China passed the following laws, among others:

- Product Quality Law of the PRC

- Law on the Protection of the Rights and Interests of Consumers of the PRC
- Decisions on Punishment of the Crimes of Production and Sale of Fake or Substandard Commodities.

To protect IPR and reinforce cooperation with other countries, China joined the Berne Convention for the Protection of Literary and Artistic works and the Universal Copyright Convention in October 1992. China also signed the Trade-Related Aspects of Intellectual Property Rights (TRIPs) in 1994. The Chinese government fulfils its obligations earnestly according to the provisions of the international conventions and punishes IPR crimes in the context of international awareness of the problem.

In the above laws and regulations, administrative and economic punishments are prescribed. They include 'stop infringing', 'dispel influence', 'apologise to the obligee', 'compensate the loss', 'confiscate the illegal earnings', 'fine' and so on. The judicial system may use not just one kind of the punishment but several together. Because the offences can result in huge losses and weaken the country's economic system, the judicial system has an obligation to impose penalties to punish the criminals.

Measures for protecting IPR have been prescribed in trademark law, patent law, copyright law and even the 1979 Criminal Law, but the scope is too narrow and the prescribed penalty is too low. At that time, infringing IPR and producing counterfeit products were just treated as a crime of playing the market. So we say that the definition of the crime of infringing IPR and producing counterfeit products is incorrect and the penalties are too soft.

The complete protection of IPR in criminal law has been developed since the 1990s. On 22 February 1993, 'Supplementary Provisions Regarding the Punishing Crimes of Counterfeiting Registered Trademarks' was issued by the Standing Committee of the National People's Congress, and on 5 July 1994 it also issued the 'Decision Regarding the Punishment of the Crimes of Infringement of Copyright and the Decisions on Punishment of the Crimes of Production and Sale of Fake or Substandard Commodities'.

In all the laws, as already mentioned, the legislation treats some serious illegal conduct as crime and punishes it by imposing penalties. Such provisions increase the protection of IPR, strengthen the penalties for its infringement, effectively punish the criminals and defend the law of the country. But those provisions are only prescribed separately in various acts related to IPR rather than systematically in the Criminal Law. On 15 March 1997, the legislators accepted these matters into the criminal law and made them officially a part of the 1997 Criminal Law.

There are altogether seven crimes of infringing IPR in the 1997 Criminal Law:

- Article 213: Counterfeiting
- Article 214: Selling commodities bearing counterfeit registered trademarks
- Article 215: Making representations of another's registered trademarks or selling such representations without authorisation
- Article 216: Counterfeiting another's patent
- Article 217: Infringing another's copyrights
- Article 218: Selling works produced by infringing another's copyrights
- Article 219: Infringing on business secrets.

What is more, general offence of infringing IPR is also prescribed in the 1997 Criminal Law as the ‘crime of producing or selling counterfeit and common products’, which is proscribed in Article 140.

Prevention of the Crimes of Infringing IPR

The author thinks that the following five points should be emphasised to protect IPR.

Strengthen propaganda and education to enhance the citizen’s legal sense of IPR

Intellectual property rights are a new concept of rights and are protected by laws and regulations in China. Only if people learn and understand the rules can they protect their legal rights and fight against the crime of infringing IPR. Not only do such crimes infringe the legal rights of consumers and producers, destroying the production and management procedures of business enterprises, but if we do not establish a sense of IPR throughout the country, producing counterfeit goods may become a flood and the market will be filled with fake products. To prevent and control this crime, the most important thing is to strengthen propaganda and education.

Strengthen and consummate the legislation of IPR gradually

If we want to punish the IPR crime more effectively, we must improve the judicial system’s knowledge of such crime, hasten the construction of the legal system and eradicate the shortcomings of the old laws. To do so, the judicial apparatus needs to depend on the modern law and change the present passive situation. As we know, criminal legislation on the IPR has changed greatly. The Standing Committee of the NPC issued several supplementary provisions in the past ten years. These provisions are now the basis for punishing IPR crime and have filled up the gaps in the 1979 Criminal Law. The author hopes that the NPC will continue to fulfil its obligation, improve the legal system of IPR and provide a more powerful legal basis to protect IPR.

Clearly define the rights and obligations of the administrative institutions that have the power to control the crimes, and eliminate passive or complacent enforcement

At present, in Mainland China, the institutions for prevention and punishment of illegal activities are not clearly defined. Many of these institutions have the jurisdiction to control illegal infringement of IPR but overlap and uncertainty occurs. This leads to jurisdiction competition and actually makes control and governance ineffective, with the result that no single agency can deal with infringement efficiently. Under this situation, the criminals are always beyond the rules and the illegal acts and crimes are not punished and controlled effectively. Thus the author thinks that we must specify which institution is the right one to punish the illegal activities or crimes. We also must define the rights and obligations of the specialised personnel/apparatus in order to protect IPR and punish the illegal acts and crimes.

Strengthen the legal enforcement and eliminate local protectionism

We should also improve the judicial system’s understanding of the punishment as we strengthen the legislation. If they cannot realise the seriousness and harm of such crimes and do not know how to choose the proper methods to control them, the infringement will probably be indulged and the law will be just a piece of paper. Another thing which we should pay more attention to is local protectionism. In most places of infringement, the local government is protecting IPR crime for tax revenue, employment or some other

reason, and merchants and officials always collude with each other. So the judicial system must punish this local protectionism and try to eliminate the criminal officials behind the crimes. The author also thinks that the judicial system must punish such crimes as abusing power, engaging in malpractice for personal gain, offering bribes, accepting bribes and so on, which are all related to IPR crimes.

Strengthen cooperation with other countries to control the crimes

All of the crimes break down the reputation of the whole nation and the Chinese famous enterprises. In the past 30 years, the Chinese government signed and took part in the Berne Convention for the Protection of Literary and Artistic works and Universal Copyright Convention and TRIPs. China must fulfil its international obligations and must cooperate with the other countries according to those international conventions.

PART III
CRIME PATTERNS AND
SOCIAL TRANSITION
IN PR CHINA

11

**Four Patterns of Crimes during the
Period of Social Transition
An Empirical Study**

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Since the 1980s, unprecedented social changes have taken place in Mainland China which have been manifested by the dramatic development and reform in the fields of economy, politics and culture. China has managed to realise the transition from a planned economy to a market-oriented one. During this period, some patterns concerning criminal offences can be found which are particular to the phase of social transition in the mainland. It is of great importance to conduct research on these patterns so that we can forecast the trends of development in the area of crimes after China's entry into the World Trade Organization as well as formulate countermeasures.

Based on our comprehensive investigations of crimes in the 1990s, this paper will focus on patterns of changes in crime in the city of Tianjin. With the support of the relevant departments, investigations were carried out every three years (in 1990, 1993, 1996 and 1999 respectively), with a total number of 16 000 criminals concerned. As an outcome of the investigations, Tianjin Research Database on Crimes was established. By making use of its data, this paper analyses four patterns in the areas of composition of criminals, types of crimes, time of crimes and means of crimes.

PATTERNS OF COMPOSITION OF CRIMINALS

Change in Gender Composition

In gender composition, both in China and in other countries, male criminals always dominate while females account for only a very small proportion in the total number of criminals. What merits attention, however, is the trend of gradual increase of crimes committed by females in the past decade (Table 11.1).

Table 11.1 Gender composition of criminals (persons)

| Year | Male | | Female | | Total | |
|------|------|------|--------|-----|-------|-----|
| | N | % | N | % | N | % |
| 1990 | 4178 | 97.9 | 88 | 2.1 | 4266 | 100 |
| 1993 | 3764 | 97.5 | 95 | 2.5 | 3859 | 100 |
| 1996 | 4390 | 97.3 | 122 | 2.7 | 4512 | 100 |
| 1999 | 3246 | 96.3 | 123 | 3.7 | 3369 | 100 |

Our investigations show that the number of female criminals has been increasing both in absolute and relative terms. Many criminologists think that the modernisation process in developing countries inevitably brings about an increase of crimes committed by females. Though the amount of female crime cannot be considered serious at present, it will become a social issue that warrants careful consideration as more women participate in social life and their social role approaches that of men.

Change in Age of Criminals

Investigations in the past decade show that the proportion of crimes committed by teenagers (between 14 and 25) declined from 63.1 per cent in 1990 to 41.3 per cent in 1999, while that of middle-aged (between 25 and 50) criminals increased substantially from one-third in 1990 to more than half in 1999, and that of elderly (50 and above) criminals remained small and stagnant (Table 11.2).

Table 11.2 Changes of ages of criminals (persons)

| Year | Teenager | | Middle-age | | Elderly | | Unclassified cases | Total | |
|------|----------|------|------------|------|---------|-----|--------------------|-------|-----|
| | N | % | N | % | N | % | | N | % |
| 1990 | 2620 | 63.1 | 1441 | 34.7 | 89 | 2.1 | 116 | 4266 | 100 |
| 1993 | 2174 | 56.6 | 1594 | 41.5 | 76 | 2.0 | 15 | 3859 | 100 |
| 1996 | 2175 | 50.0 | 2096 | 48.2 | 76 | 1.7 | 165 | 4512 | 100 |
| 1999 | 1387 | 41.3 | 1896 | 56.4 | 79 | 2.3 | 7 | 3369 | 100 |

Table 11. 2 shows clearly the decline in the proportion of teenaged criminals. This has much to do with the trend of population ageing and hence the decline in the share of teenagers in the total population. The negative impacts of the birth peak in the 1960s and 1970s have subsided. Nevertheless, serious attention should still be paid to the issue of teenagers' crimes. Though the number of crimes committed by teenagers has dropped somewhat, it is worth noting their tendency to violence and the vile ways in which crimes are committed. The issue of teenager crime is faced by all developing countries during their modernisation process. However, in addition to paying attention to the issue of teenagers, research and analysis should also be done on the crimes committed by the middle-aged and elderly. At present, the number of crimes committed by middle-aged criminals has increased and accounts for more than 50 per cent of the total.

Change in Proportion of Immigrant Criminals

Among the total criminals of Tianjin, the percentage of immigrants has been increasing steadily, from 13.1 per cent in 1990 to 35.6 per cent in 1999 (Figure 11.1).

Figure 11.1 Shares of immigrants and local residents in total criminals

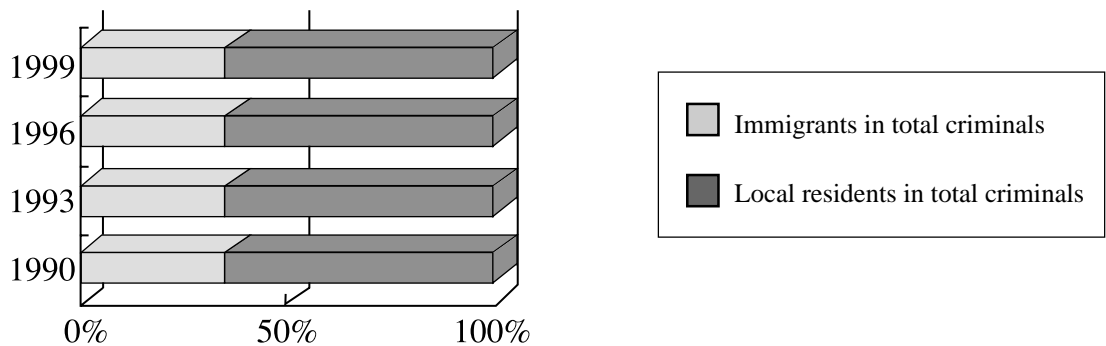


Figure 11.1 shows clearly the rapid rise of immigrants in proportion to the total number of criminals, which has become a major problem in crime control. After China's entry into the WTO, the rural surplus labour force will further expand. According to China Industry and Commerce Times of 18 January 1999, the labour force in the agricultural sector will further shrink by 9.662 million. With the influx of rural surplus labour force to urban areas, increased crimes committed by immigrants will become a general trend. There is an urgent need to find a solution to this issue.

Change of Urban and Rural Criminals and Their Occupations

Exclusive of immigrants, we divide the criminals in Tianjin into 'urban' and 'rural' criminals according to their registered permanent residence. The results of the four investigations are shown in Table 11.3.

Table 11.3 Shares of urban and rural residents in total criminals (persons)

| Year | Urban residents | | Rural residents | | Unclassified cases | Total | |
|------|-----------------|------|-----------------|------|--------------------|-------|-----|
| | N | % | N | % | | N | N |
| 1990 | 2781 | 76.1 | 875 | 23.9 | 610 | 4266 | 100 |
| 1993 | 2094 | 76.3 | 651 | 23.7 | 1114 | 3859 | 100 |
| 1996 | 2232 | 70.8 | 922 | 29.2 | 1358 | 4512 | 100 |
| 1999 | 1579 | 72.9 | 586 | 27.1 | 1204 | 3369 | 100 |

Table 10.3 shows that the shares of rural criminals from suburban counties in 1996 and 1999 were much higher than those in 1990 and 1993. This demonstrates the serious trend of crimes committed by rural criminals.

According to the statistics for 1996 and 1999, the occupations of criminals, including immigrants, are mainly as follows (in order of proportion in the total): farmers in the agricultural sector, urban workers, farmers working in non-agricultural sectors, urban self-employed, casual labourers, small retailers without licences, people in the urban service sector, people in the urban commercial sector, rural and urban government cadres, and other urban occupations. Among them, farmers in the agricultural sector accounted for a large proportion: 43.0 per cent in 1996 and 52.3 per cent in 1999. This should be attributed to the increase of crimes committed by rural immigrants and farmers in Tianjin. Appropriate attention should also be paid to the fact that the proportion of urban workers exceeded 10 per cent in both years. Comparing the two years, we found a substantial increase in the proportion of crimes committed by criminals in the urban commercial and service sectors. With China's WTO accession, as rural workers immigrate to cities in large numbers, many more people will be employed in the urban tertiary sector and crimes committed by people from this sector will rise accordingly.

TYPES OF CRIMES AND PATTERNS OF CHANGE IN OBJECTIVES

Main Charges

Analysis of the main crimes of 16 000 criminals in the four years of investigation shows that the first three crimes remain about the same with only slight changes (Table 11.4).

Table 11.4 Criminals of three major crimes (persons) (%)

| Year | First place | | Second place | | Third place | | Top three total |
|------|-------------|------|--------------|------|-------------|-----|-----------------|
| 1990 | Larceny | 53.9 | Robbery | 11.6 | Rape | 8.2 | 73.7 |
| 1993 | Larceny | 52.2 | Robbery | 11.5 | Rape | 9.3 | 73.0 |
| 1996 | Larceny | 50.0 | Robbery | 12.0 | Rape | 6.7 | 68.7 |
| 1999 | Larceny | 31.8 | Robbery | 18.3 | Injury | 8.5 | 58.6 |

As shown in the table, larceny and robbery were always the top two crimes, while the third place was rape in 1990, 1993 and 1996, and changed to injury in 1999. Even in the top two, larceny and robbery, there were also some changes during the four years. First, the share of larceny declined steadily while that of robbery rose substantially. Second, the total share of the top three charges dropped by about 15 percentage points, from 73.7 per cent in 1990 to 58.6 per cent in 1999. This decline demonstrates the diversification of crimes in recent years.

Categories of Crime

In order to understand the general trend of changes of different types of crimes, we divided the 46 more frequent charges into six categories: property crimes, murder and injury, sexual crimes, economic crimes, harming public security crimes, and other crimes, before making statistical analysis (Table 11.5).

Table 11.5 Major types of crimes (persons)

| Year | Property crimes | | Murder and injury | | Sexual crimes | | Economic crimes | | Harming public security | | Other crimes | | Unclassified | Total | |
|------|-----------------|------|-------------------|------|---------------|------|-----------------|-----|-------------------------|-----|--------------|-----|--------------|-------|-----|
| | N | % | N | % | N | % | N | % | N | % | N | % | | N | % |
| 1990 | 2950 | 69.7 | 391 | 9.2 | 457 | 10.8 | 206 | 4.9 | (No investigation) | | 226 | 5.3 | 36 | 4266 | 100 |
| 1993 | 2683 | 69.5 | 427 | 11.1 | 510 | 13.2 | 132 | 3.4 | 28 | 0.7 | 79 | 2.0 | 0 | 3859 | 100 |
| 1996 | 3182 | 70.6 | 520 | 11.5 | 482 | 10.7 | 101 | 2.2 | 79 | 1.8 | 133 | 3.0 | 15 | 4512 | 100 |
| 1999 | 2167 | 64.4 | 539 | 16.0 | 329 | 9.8 | 178 | 5.3 | 97 | 2.9 | 56 | 1.7 | 3 | 3369 | 100 |

The statistics show that the share of property crimes occupied the first place in all the four years that are experiencing fluctuating decline. The share of murder and injury rose by 6.8 percentage points, which shows that the harmfulness of this category of crime is increasing. Furthermore, the share of sexual crime shows a fluctuating decline while that of economic crime shows a fluctuating increase. It can be expected that China's WTO accession will bring about a further increase of economic crimes in terms of types and number, and, as a result, make these a major category of crime.

Change in Objective of Crimes

Table 11.6 Objectives of crimes (persons)

| Year | Revenge | | Seeking wealth | | Sexual satisfaction | | For friend(s) | | Creating political influence | | Prank | | Others | | Unclassified | Total | |
|------|---------|------|----------------|------|---------------------|------|---------------|------|------------------------------|-----|-------|-----|--------|-----|--------------|-------|-----|
| | N | % | N | % | N | % | N | % | N | % | N | % | N | % | | N | % |
| 1990 | 356 | 8.8 | 2263 | 56.1 | 262 | 6.5 | 677 | 16.8 | 14 | 0.3 | 202 | 5.0 | 257 | 6.4 | 235 | 4266 | 100 |
| 1993 | 326 | 8.6 | 2572 | 67.6 | 385 | 10.1 | 300 | 7.9 | 3 | 0.1 | 138 | 3.6 | 79 | 2.1 | 56 | 3859 | 100 |
| 1996 | 434 | 9.8 | 3069 | 79.0 | 422 | 9.5 | 277 | 5.1 | 1 | 0.0 | 95 | 2.1 | 197 | 4.4 | 67 | 4512 | 100 |
| 1999 | 354 | 10.6 | 2393 | 71.6 | 274 | 8.2 | 185 | 5.5 | 3 | 0.1 | 42 | 1.3 | 93 | 2.8 | 25 | 3369 | 100 |

The statistics of the four investigations show, among criminals' seven main objectives, that the share of criminals with 'seeking wealth' as their main objective occupies the highest proportion, increasing steadily from 56.1 per cent in 1990 to 71.6 per cent in 1999, which shows clearly the negative impacts of market economy on crimes. Furthermore, crimes with 'revenge' as the main objective is on the rise, from 8.8 per cent in 1990 to 10.6 per cent in 1999, indicating the complexity and changeable nature of person-to-person relationship in the market economy. The percentage share of crimes with 'sexual satisfaction' as the main objective is close to that of 'revenge', with some fluctuation. In the fourth place is committing crimes 'for friend(s)'. Its share was as high as 16.8 per cent in 1990 and then declined steadily to 5.5 per cent in 1999, a drop of 11.3 percentage points.

Changes in Motives for Crime

Motives are the internal forces making the criminals commit crimes. In accordance with the interviews with criminals imprisoned in 1996 and 1999, the proportion of criminals of 'premeditated crimes' rose substantially (Table 11.7).

Table 11.7 Premeditated and other crimes (persons)

| Year | Premeditated | | Accidental | | Loss of emotional | | Others | | Unclassified | Total | |
|------|--------------|------|------------|------|-------------------|------|--------|-----|--------------|-------|-----|
| | N | % | N | % | N | % | N | % | N | N | % |
| 1996 | 1605 | 35.9 | 1762 | 39.4 | 871 | 19.5 | 232 | 5.2 | 42 | 4512 | 100 |
| 1999 | 2096 | 62.6 | 851 | 25.4 | 376 | 11.2 | 24 | 0.7 | 22 | 3369 | 100 |

Table 11.7 shows clearly that the proportion of premeditated crimes rose from 35.9 per cent in 1996 to 62.6 per cent in 1999, an increase of 26.7 percentage points. The proportion of 'accidental occurrence' and 'loss of emotional control and acting impetuously' experienced a steady decline. If some criminals were regarded as committing crimes on impulse in 1996, many criminals were persons of 'intellect' and acted 'with malice aforethought' in 1999, which brought about even more pernicious results to society.

Patterns of Time of Crimes

Crimes in the twelve months of the year

The investigations in 1996 and 1999 covered the numbers of crimes in the 12 months of the years. As shown in Figure 11.2, the results of statistical analysis in the two years coincide with each other. This shows the close relationship between crimes and the months of the year. In the two curves, the peaks are all in January (before the Spring Festival), April (after the Spring Festival), and August, while the two troughs are in February and September. We think the peaks of crimes before and after the Spring Festival are closely related to the larger scale of immigrant inflow and outflow.

With the exception of a few months, the two curves are relatively even, with crime ratios (i.e., the percentage of crimes in a month in relation to the yearly total) fluctuating between 8 and 10 per cent. Only rape is more closely related with seasons and change of weather. Our statistical analysis on the time of rapes demonstrates this pattern (Figure 11.3).

In Figure 11.3, the two curves of 1996 and 1999, though slightly different, show a general trend that the cases of rape began to rise in April and May, stayed at a peak between June and August in summer, began to drop in September, and fluctuated at the bottom after November for the whole winter. The high incidence of rape in summer is attributed to the facts that people are thinly clad and suitable arenas are more accessible.

Figure 11.2 Crimes ratios in the 12 months of the year

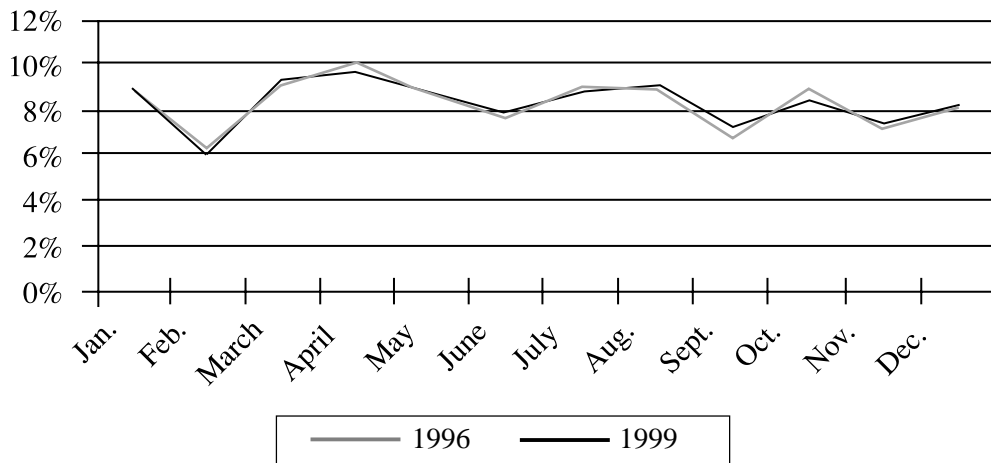
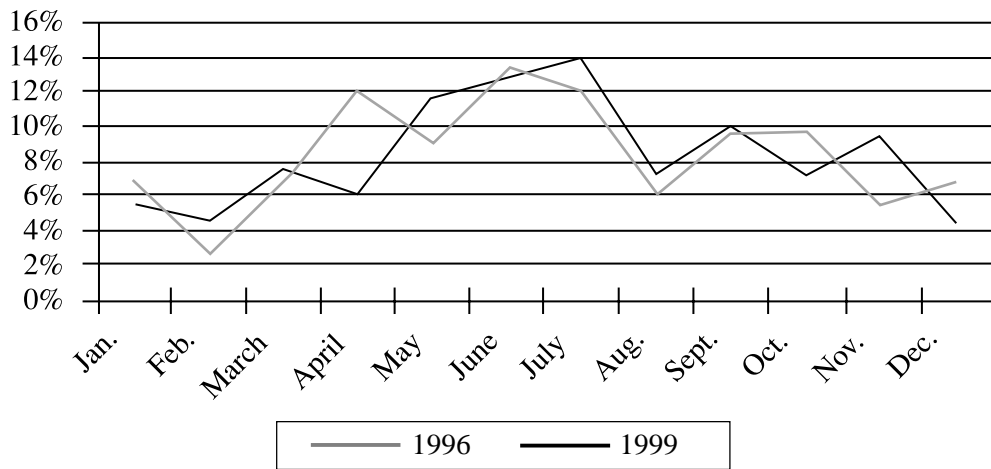


Figure 11.3 Rapes in the 12 months of the year



Crimes in the 24 hours of the day

The pattern concerning the time of crimes is shown not only in the 12 months of the year but also in the 24 hours of the day. Except for the year of 1990, related data of the other three years are available. We have divided the 24 hours evenly into four periods and the trend in terms of number of crimes is shown in Figure 11.4.

Figure 11.4 Percentage of crimes in different periods of the day

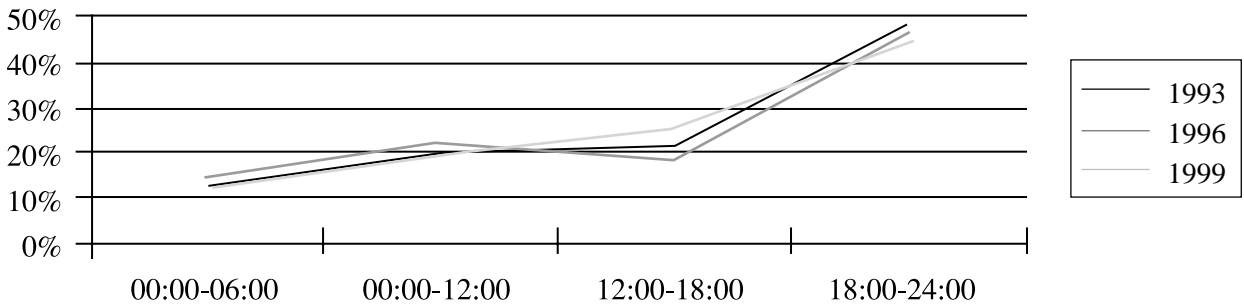
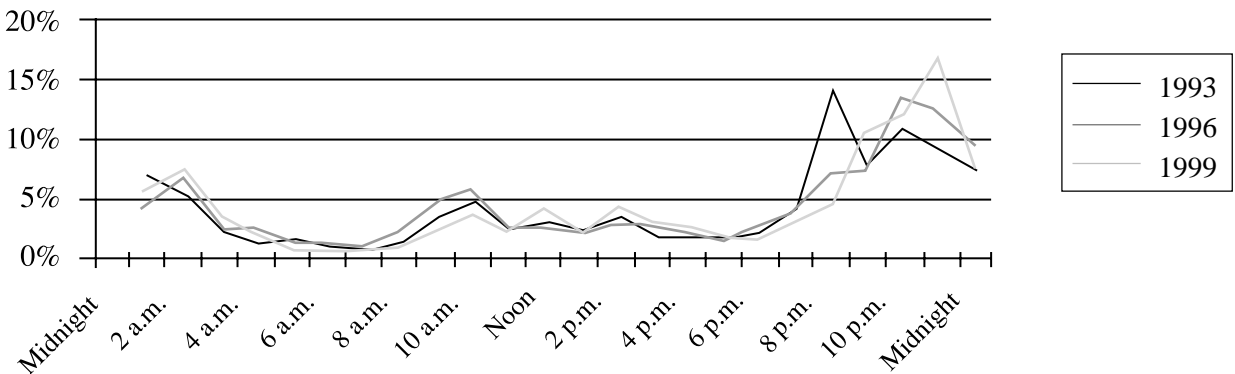


Figure 11.4 shows that the general trends in 1993, 1996 and 1999 are basically the same. For some periods the curves even overlap. This demonstrates clearly the pattern in distribution of number of crimes in the 24 hours of the day, that is, the highest proportion (almost half) is in the evening (from 7 p.m. to midnight.), relatively less (around 15 per cent) in the early morning (from midnight to 6 a.m.), around 16 per cent in the morning (from 6 a.m. to noon) and around 19 per cent in the afternoon (noon to 6 p.m.) It is important to recognise this pattern for the rational arrangement of police forces and for crime control.

We have also taken larceny and robbery as examples in exploring their respective patterns concerning the time of crimes, which is shown in Figure 11.5.

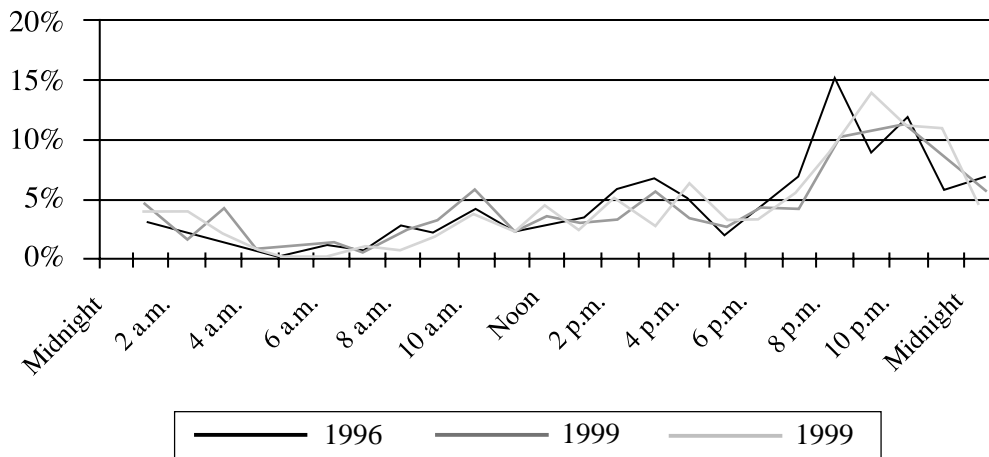
Figure 11.5 Distribution of the cases of larceny in the 24-hour day



The time curves of larceny in 1993, 1996 and 1999 show regular changes of time and the pattern concerning the time. The peaks of larceny in the three years concentrated in the period between 8 and 11 p.m.; the

only difference was the peaks moving gradually later in the three years. This might be attributed to the increasingly rich and varied nightlife of the people as well as the trend of their daily schedule moving later.

Figure 11.6 Distribution of the cases of robbery in the 24-hour day



Data on the cases of robbery in 1993, 1996 and 1999 demonstrate a similar pattern on time of day. Though both larceny and robbery tend to be committed in the evening, robbery tends to occur one hour earlier. The incidence of daytime robbery is rather low, with only about 4 per cent in the daytime. The high incidence of larceny and robbery in the evening can be attributed to the protection of darkness, which reduces the risk of committing crime. This is also the reason why most of the crimes are committed in the evenings.

Analysis on the Concentration of Sites of Crimes

Table 11.8 Degree of concentration of sites (persons)

| Year | Highly concentrated | | Rather concentrated | | No regular arena | | Unclassified | Total | |
|------|---------------------|------|---------------------|------|------------------|------|--------------|-------|-----|
| | N | % | N | % | N | % | | N | % |
| 1993 | 1553 | 58.7 | 449 | 17.0 | 644 | 24.3 | 1213 | 3859 | 100 |
| 1996 | 2534 | 57.8 | 967 | 22.1 | 883 | 20.1 | 128 | 4512 | 100 |
| 1999 | 2359 | 70.5 | 795 | 23.8 | 192 | 5.7 | 23 | 3369 | 100 |

The investigations over three years show the highest share of the category of ‘highly concentrated’ in sites of crimes, with a substantial increase in 1999. The share of ‘rather concentrated’ rose steadily year by year, while that of ‘no regular arena’ dropped in the three years. This shows that criminals are becoming more selective and generally have specific objectives and targets in mind. The trend of ‘two rises and one

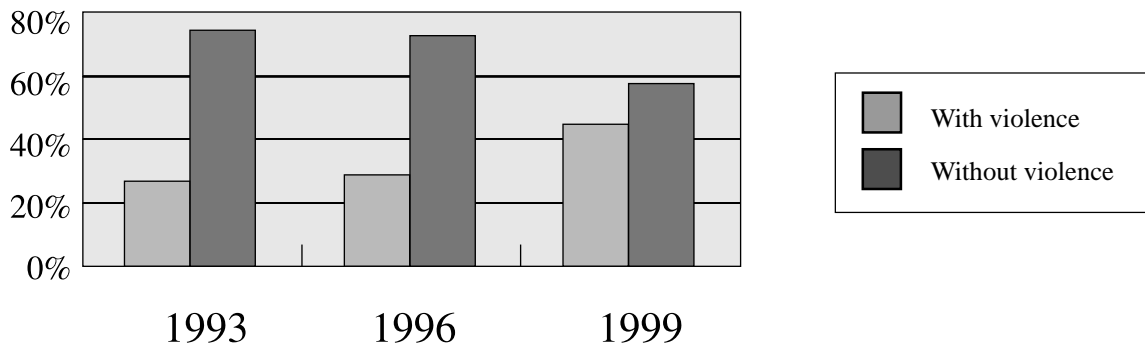
decline' in sites of crimes relates closely to criminal psychology. Psychoanalysis shows that criminals tend to commit crimes in the places with which they are familiar and where they visit frequently. With specific objectives and targets in mind, they often succeed in getting what they want. Among the nearly 400 streets, villages and towns in Tianjin, we have chosen for our analysis the ten with the highest incidence of crime. Our findings are that only one remained in the top ten places in all three years while five remained there for two years. These places are either the most flourishing and busiest districts or the bordering areas between city and countryside. Therefore these must be the key areas for our crime control.

Patterns Concerning Violent Crimes

Grave tendency towards violence

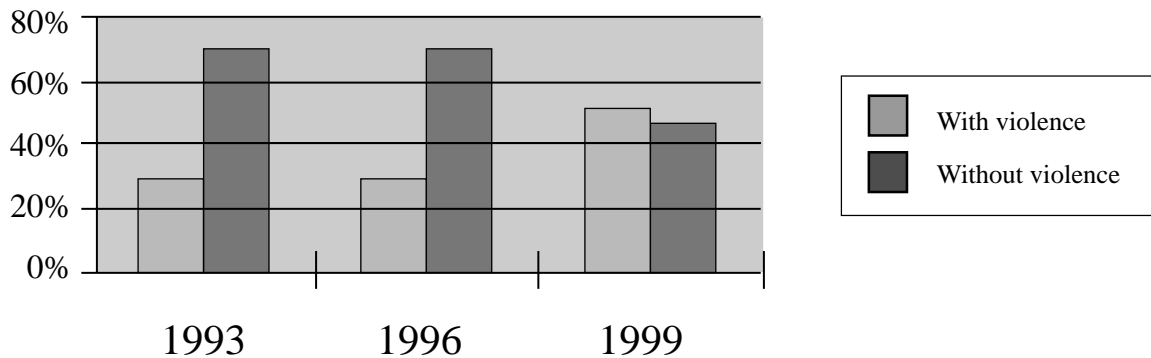
'Violent crimes' refer to 'the crimes with violent means or with threat of using violence'. In the investigations of crimes in 1993 and 1996, the share of violent crime remained rather low: 26.0 per cent and 28.4 per cent respectively, but it rose substantially to 43.9 per cent in 1999. This shows the recent trend that criminals tend to use violent means or threaten to use violence while committing crimes. Figure 11.7 shows the tendency of criminals to use violence.

Figure 11.7 % of violent crimes



Separate statistics on teenage criminals (Figure 11.8) show that the tendency to violent crimes is even more serious with teenagers. This is reflected in the fact that the share of violent criminals in total teenage criminals in 1999 increased by 22 percentage points as compared with 1993, exceeding the growth rate of 17.9 per cent for all criminals during this period. Furthermore, the share of teenage criminals using violent means in total teenage criminals reached 51.6 per cent in 1999, much higher than 43.9 per cent for all criminals. Comparatively speaking, teenage criminals tend more often to resort to violent means or threaten to use violence while committing crimes. The whole society should pay special attention to the fact that half of the teenage criminals resort to violence.

Figure 11.8 Violent crimes committed by teenagers



Analysis of the preparations for committing crimes Many criminals make careful preparations beforehand: hiding and keeping watch, stealing and duplicating keys, exploring the way, looking for confederates, careful planning, preparing tools, surveying the objectives/targets, preparing traps, learning the skills needed, purposely establishing a relationship with or creating conflict with victims, and so on. The investigations show that three-quarters of the criminals make at least one kind of preparation before committing their crime (Table 11.9).

Table 11.9 Prior preparation for committing crimes

| Year | 1 kind | | 2 kinds | | 3 kinds | | 4 kinds | | 5 and more kinds | | No preparation | | Unclassified N | Total | |
|------|--------|------|---------|------|---------|-----|---------|-----|------------------|-----|----------------|------|-------------------|-------|-----|
| | N | % | N | % | N | % | N | % | N | % | N | % | | | |
| 1996 | 884 | 40.6 | 296 | 13.6 | 169 | 7.8 | 112 | 5.1 | 94 | 4.3 | 620 | 28.5 | 0 | 2175 | 100 |
| 1999 | 571 | 41.2 | 305 | 22.0 | 118 | 8.5 | 28 | 2.0 | 12 | 0.8 | 353 | 25.5 | 0 | 1387 | 100 |

About 60–70 per cent of the criminals make one to three kinds of preparations for committing crimes, and this proportion is on the rise in recent years. This shows that the criminals are getting psychologically more mature and usually make elaborate plans before committing crimes. This also reflects, to a certain extent, a tendency to become more professional. Among the most common types of prior preparations, the following three are at the top: ‘surveying the objectives/targets’; ‘preparing tools’ and ‘careful planning’; and ‘looking for confederates’.

Analysis of tools used

It has become a distinct feature to use tools to realise criminal objectives in modern society (Figure 11.9).

Figure 11.9 Use of tools in committing crimes

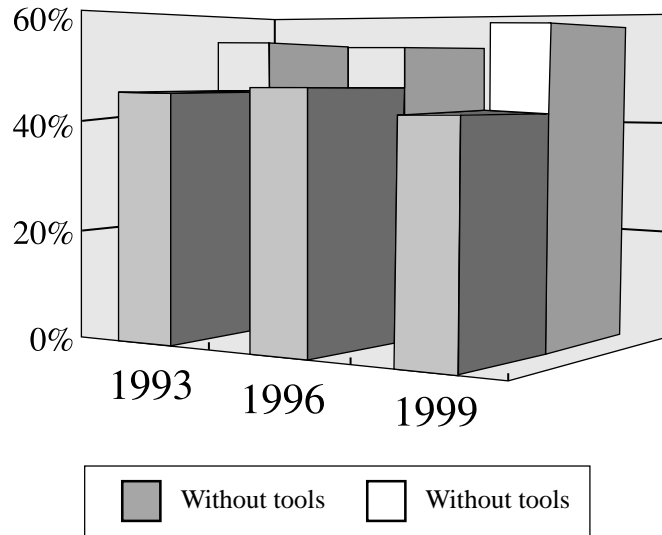


Figure 11.9 shows that the proportion of criminals that did not use tools dropped from 45.3 per cent in 1993 to 42.2 per cent in 1999. In other words, the number of criminals using tools when committing crimes is on the rise.

Many criminals use various kinds of tools when committing crimes: military firearms, gunpowder firearms, electric guns, false firearms, explosives, various kinds of knives, police appliances, poisonous substances, narcotics, transportation instruments, telecommunication instruments, production tools, clubs, rope, computers, contracts, trademarks, financial or commercial bills, forged bills, printing machines, etc. The most frequently used tools in committing crimes are gunpowder firearms, electric guns, fake firearms, various kinds of knives, transportation instruments, telecommunication instruments, and production tools. Table 11.10 shows that the number of criminals using the first three kinds of tools was on the rise if we compare data in 1999 with 1993.

Table 11.10 Use of tools in committing crimes

| Year | 1 type | | 2 types | | 3 or more types | | No tools | | Total | |
|------|--------|------|---------|-----|-----------------|-----|----------|------|-------|-----|
| | N | % | N | % | N | % | N | % | N | % |
| 1993 | 1927 | 49.9 | 165 | 4.3 | 17 | 0.4 | 1750 | 45.3 | 3859 | 100 |
| 1996 | 1939 | 43.0 | 394 | 8.7 | 94 | 2.1 | 2085 | 46.2 | 4512 | 100 |
| 1999 | 1615 | 47.9 | 283 | 8.4 | 48 | 1.4 | 1423 | 42.2 | 3369 | 100 |

CONCLUSION

The patterns in change of crimes in Tianjin in the past decade show that criminal cases are becoming more and more serious in many respects during this period of rapid economic development. Our public security is facing a rather grim situation. The characteristics of transitional society are objective reality independent of human will. For any country in the world, it is hard to avoid these costs during the modernisation process.

Lewis Shirley, an American criminologist, argues that countries in all the main continents are recently experiencing a transition from rural society to industrialised and urbanised society.¹ Though the developing countries vary somewhat because of their different social, cultural, political and economic features, hardly any country can avoid an increase of crimes – one of the striking results of this development process. With the launching of the modernisation drive, various countries where criminal incidence was originally rather low began to suffer from a substantial increase in crime. Crime has become a serious threat to urban order and the social development process.

Confronted with the trend to more serious crime, on the one hand, we should understand its inevitability during the period of social transition, and realise and prepare for the new issues concerning crime that will follow China's WTO accession. On the other hand, we should consciously and proactively seek to minimise the costs of modernisation. We must strengthen scientific research on contemporary patterns of crimes and the changes of the above-mentioned four patterns of crimes during the social transition, which is of great significance in exploring measures of crime control. The pattern concerning the change of criminals should make us devote more attention to rural crimes, crimes committed by immigrants, middle-aged and elderly criminals, and female criminals. The pattern concerning the objectives and types of crimes should make us conduct serious research the rapid increase in cases of robbery, murder and injury, and economic crimes. The pattern concerning the time of crimes provides a scientific basis for deciding the focuses of crime control and the disposition of the police force. The pattern concerning the means of crimes shows the importance of attaching enough attention to violent crimes, especially those committed by teenagers. Only by field research can we find out the patterns of crimes and hence gain the initiative in crime control.

¹ Crimes and Modernization: Impacts of Industrialization and Urbanization on Crimes, Qunzhong Press, 1986, p. 52.

12

Patterns of Economically Motivated Crimes in China

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Crime as a major accompanying consequence of social change or modernisation has long been an important topic for social scientists. Classic Durkheimian anomie theory and its modern variations are mainstays of the theoretical frameworks typically applied to guide empirical studies of crime patterns and social change. With a few exceptions, most studies have employed cross-national data (Bennett 1991) to study variations in crime levels during different stages of modernisation. This research has resulted in a fairly extensive literature since the 1970s. The findings of empirical examination have been largely mixed (for reviews of the literature see LaFree & Kick 1986; Neuman & Berger 1988; Neapolitan 1997; LaFree 1999).

Important limitations exist in the studies of crime patterns during social change in several major aspects. First, studies have focused narrowly on simple patterns of violent and property crime levels, entirely ignoring other patterns of change, particularly the rate of change in crimes. If all crimes are predicted to increase, do property crimes increase faster than violent crimes or vice versa? Will any particular kind of crime increase faster than conventional violent street crimes in a certain context? Our knowledge of crime patterns is too elementary and has no answers to these questions.

Second, studies typically use data that is geographically heavily weighted towards developed nations (Neapolitan 1997). In particular, countries such as China and other formerly socialist countries are entirely neglected. Ignoring these countries renders our knowledge unbalanced and incomplete; special features of social change in these countries offer vital insights. Third, studies generally use a conventional framework of property crimes versus violent crime, in particular theft versus homicide. Other crimes are typically ignored. Fourth, processes of social change are intrinsically longitudinal: patterns of crime occur in social processes in a temporal sequence. The cross-national design is far less than ideal for the purpose of examining patterns of crimes during social change.

Since late 1978, China has carried out dramatic economic reforms and modernisation programs and has experienced profound social change. From 1990 to 1998, China's real GDP's average yearly increase was 11.9 per cent, while from 1978 to 1998 the total crime rate increased almost threefold, from 55.91 to 163.19 per 100 000 people (Law Yearbook of China 1987–98). Special features of the social change from a state socialist society to a market economy in China represent a major variation in patterns of social change. Given the importance of China as the fastest growing product market with the largest population in the world, understanding China's crime patterns during social change is vital.

This chapter examines crime patterns during the rapid social change in China. Moving beyond conventional examination of simple variations in levels of property and violent crime, it examines whether, during the

period of social transition and modernisation, property crimes increased faster than violent crimes and whether economically motivated crimes increased faster than violent street crimes. These questions are answered through analyses of Chinese official statistics with time series techniques.

The literature of crime and social change

The link between social change or modernisation and deviance and crime has been a long-standing topic in social science (Engels 1845; Durkheim 1893, 1897; Tarde 1902; Bonger 1916; Clinard & Abbott 1973). A number of theoretical perspectives have been proposed, most of them having their roots in Durkheimian classical anomie/modernisation theory. Durkheim's theory is the most influential perspective applied in empirical studies. He argues that the breakdown of traditional values, or anomie, is the social source of crime during periods of rapid social change. The implication of Durkheim's theory for crime patterns is that crimes and deviance of all kinds will increase during periods of rapid industrialisation and modernisation.

Merton's version of Durkheim's anomie theory (1938) explains crime as an innovative reaction of those whose access to legitimate means for monetary success is blocked due to structural inequality. Since inequality is a typical feature of social change, Merton's theory is often invoked to explain rising crime.

Among various modern modifications of the Durkheimian anomie/modernisation thesis, the most elaborate version is Shelley's (1981). She posits that the pattern of change in crime during the process of modernisation depends on the stage of the development process, as causes of crime change over different stages. Property crimes become the most prominent crimes in the early stages due to anomie, social disorganisation and weak control. Violent crime also increases in these early stages since newly arriving migrants from rural areas bring traditions of violence associated with rural life into the city. As rural migrants become adjusted to urban life in later stages of development, violent crime decreases. In later stages of modernisation, violent crimes are committed during the commission of property crimes. Another perspective that discusses crime patterns during social change is Elias' (1978) thesis of the civilising process. This argues that levels of crime and violence should decrease as a society becomes more modernised and citizens more civilised.

A recent macro theory of relevance is Messner & Rosenfeld's (1994, 1997) 'institutional anomie theory'. This theory argues that the high crime rates of American society are due to the anomic feature of American culture and an unbalanced institutional structure. American culture, represented by the American dream, contributes to high rates of crime by encouraging people to use illegal means to achieve culturally approved goals; the dominance of the economic institution diminishes the capacity of other institutions such as family, education, and the political system to curb anomic criminogenic cultural pressures and to impose controls on the behaviour of members of society.

In sum, a number of theoretical perspectives have addressed the question of crime patterns during social change. Theories have focused on crime levels, especially of property crime and violent crime. All theories predict that in the early stages of social change or modernisation, both violent crime and property crime levels will rise, although they describe different social processes to explain the rising crime rates. A major inadequacy is that the theories do not provide answers to a further question of crime patterns: the rate of

change. As all crimes are predicted to increase in the early stages of social change or modernisation, do property crimes increase faster than violent crimes or vice versa? Will any particular kind of crime increase at a greater rate than conventional violent street crimes under a certain context? Our inability to answer the question of rate of change suggests that our theories have insufficient explanatory power.

The empirical literature of crime pattern and social change/modernisation mainly consists of cross-national studies (Bennett 1991). Large numbers of studies have been published (e.g. Wellford 1974; Krohn 1976, 1978; MacDonald 1976; Krohn & Wellford 1977; Braithwaite & Braithwaite 1980; Messner 1980, 1982, 1985; Hansmann & Quigley 1982; Hartnagel 1982; Conklin & Simpson 1985; Groves et al. 1985; Avison & Loring 1986; LaFree & Kick 1986; Neuman & Berger 1988; Neapolitan 1997; for review, see LaFree 1999). Earlier cross-national studies have commonly reported the pattern that modernisation and development are associated with increases in property crime (mostly measured by theft) and decreases in violent crime (mostly measured by homicide). To account for this pattern, Kick & LaFree (1985) proposed an 'opportunity' thesis. This explains that development enhances urbanisation, which decreases interpersonal ties and contacts among intimates and acquaintances, thereby reducing interpersonal violence. However, development increases property crime, in particular theft, because it increases the supply of readily available commodities in environments generally characterised by ineffective surveillance, and therefore increases opportunities for theft (Kick & LaFree 1985; LaFree & Kick 1986). Some researchers, however, do not accept the empirical claim that indicators of development exhibit opposite relationships with property versus violent crimes. The more recent studies have reported mixed results (for reviews see Bennett 1991; Ortega et al. 1992; Neapolitan 1997). In brief, empirical studies are largely based on cross-national data; the notion of social change and development is implied by the variation in levels of modernisation and development among different nations. Research has primarily been on property crimes and violent crimes, and has reported mixed findings in the change of crimes levels associated with modernisation and development.

Besides the narrow focus on crime levels, there are other major limitations in the theoretical perspectives and empirical studies. A major theoretical limitation is that perspectives are developed largely from the experiences of advanced Western capitalist societies or social transitions of industrialisation, decolonisation, modernisation and development that occurred in Third World societies after World War II and in the 1960s and 1970s. Similar limitations are also severely reflected in empirical studies. Neapolitan (1997) points out that most cross-national research has included small samples of nations that have been geographically imbalanced and heavily weighted towards the developed nations. He questioned the suitability of models developed for modern industrialised nations when applied to developing nations. His criticism suggests that different models may be required for different contexts of social change. Crime patterns and their underlying causal mechanism may vary depending on the context of social change.

In the 1980s and 1990s, a dramatic social change from state socialism towards a market economy swept over all previously socialist countries in Eastern Europe and Asia (Róna-Tas 1994; Walder 1994; Gerber & Hout 1998). Work on the transition from state socialism to a market economy has developed a sizeable literature. Important works include theoretical development of the social transition (Nee 1989, 1991, 1996; Nee & Cao 1996), stratification dynamics (Zhou, Tuma & Moen 1996; Xie & Hannum 1996), workplace (Lin & Bian 1991; Davis 1992; Walder 1992; Bian 1994), and political authority (Walder 1995a, 1995b). However, few papers have addressed crime patterns, except for some general descriptive reports.

A distinctive feature of the social change from a state socialist society to a market economy is the sharp contrast in institutional arrangements and their orientation to economic motivation. Socialist society is characterised by institutional suppression of individuals' economic motivation; in contrast, a market economy is based on an active entrepreneurial spirit and on individuals' strong economic motivation, which is often expanded to extremes to survive the fierce competition of the free market. A socialist command economy is based on state and collective ownership of enterprises, centralised state plans, and a relatively egalitarian income distribution. The functioning of the system demands that individuals place the goals of state and collectives above personal interests. The political institutions of socialist societies embody the party-state ideology, which emphasises the individual's obedience to the state and the collectives. Pursuing personal economic interests is a standard 'bourgeois' or 'capitalist' orientation. The party-state policy virtually prohibits individual economic ambition. Political campaigns and frequent and regular political education are employed to further socialist values. Socialist societies are largely 'closed' to exchange with advanced capitalist societies to prevent the invasion of capitalist political ideology, commercialism, individualism and consumerism. These features of the institutional arrangement have deeply suppressed the economic motivation of individuals. Over the decades, socialist societies are characterised by a lack of entrepreneurial spirit, enterprise inefficiency, economic stagnation, and consumer deprivation.

The social transition from a socialist society to a market economy involves profound institutional change. A central feature of the transition is that not only is institutional suppression of economic motivation removed as it has never been before, but economic motivation is also strongly encouraged. In contrast to the socialist orientation, market institutions embody the value orientation that promotes personal economic ambition, monetary achievement expectation, entrepreneurial spirit, and individualism. The seeking of selfish economic interests through free competition in a free enterprise system is believed to best facilitate the growth of the economy (McClelland 1961; Hagen 1962; Levy 1966; Parsons 1966, 1977; Inkeles & Smith 1974; Inkeles 1983). The institutional change of party-state ideology is another major stimulant for individuals' economic motivation. These changes involve complete disenchantment with communist party ideology (e.g. Eastern Europe) and the considerable change (e.g. China) from suppressing individuals' economic motivates to justifying and promoting them. Furthermore, along with the change to more open societies, exposure to commercialism, individualism, and consumerism from advanced capitalist societies stimulates the desire for wealth and material well-being. The transition to a new growing market economy has produced unimaginably vast opportunities to make money; get-rich-quick examples attract admiration and emulation. Together these factors produce a dynamic process of ever expanding economic motivation.

Existing perspectives were developed with no consideration of these special features of the context of transition from state socialist societies to market economies, and thus cannot effectively account for these features. Rational economic motivation has never been in the centre of various explanations for rising crime. In fact most of existing perspectives elaborate on Durkheimian anomie. These various anomie-based perspectives have been the mainstays of the theoretical framework employed in empirical studies. Although they are successful in explaining important aspects of social processes, they do not provide an effective explanation for the context of social change from state socialism to a market economy. To a considerable degree, therefore, they have missed an important aspect of the crime production process during the transition of state socialist countries to market economies. Although it is true that the breakdown of traditional values is a source for rising crime, it is also clear that in the meantime a new value consensus on wealth has developed; lack of such a consensus as an explanation would ignore the effect of new social values.

Although unregulated desire and frustration due to inequality many feel strain and massive numbers of individuals reacted by 'plunging into the sea of business'. While the anomic cultural tolerance to illegal means has certainly increased as institutional anomie theory argues, many believe that actions such as offering kickbacks are sound and legal business activities – to them, it is not the anomic cultural tolerance that has led them to commit crime, since the line between illegal and legal is blurred. Anomie-based perspectives share a common reliance on some intrinsic cultural expressive components of human action for explanation of criminal behaviour. These do not catch the important feature of the context of social change from state socialism to a market economy: the massively expanding rational economic motivation.

Recently, Liu (1999) has analysed the impact of institutional change and increased economic motivation in China and argues that massive expansion of rational economic motivation during the transition to a market economy is a primary cause for economically motivated crimes. He argues that the introduction of market institutions, the change in political ideology, and the change from a relatively closed society to an open society all contribute to the massively increased economic motivation. Further, the gradual introduction of market institutions into a traditional socialist command economy creates distinctive institutional incompatibility and institutional disorganisation, which are sources of unprecedented opportunities for economically motivated crimes. This thesis emphasises the rational characteristics of economic motivation.

Arguing for expanding economic motivation as the explanation of rising crime rates has substantial implications on crime patterns, which differ significantly from the pattern predicted by existing perspectives. Anomie-based perspectives only predict rising crime, since no reasons for non-uniformity between crimes are given in the theories; crimes are similar in nature as reactions to anomie. There should be no intrinsically different patterns among types of crime except that crimes that have more opportunities to be committed, such as property crimes, should have a higher level. Simply, all crimes should rise during social change. However, if economic motivation is a primary cause of the rising crime rates, the crimes that are economically motivated and rewarded should increase faster and be more severe as economic motivation expands during the period of social change, while less serious crimes that do not receive significant economic rewards perhaps should show patterns no different from other crimes. In contrast to the predictions of uniformly rising crime of existing perspectives, the economic motivation thesis predicts that economically motivated crimes and severe property crimes will increase faster than conventional violent crimes.

The Longitudinal Contextual Approach

The primary research design of empirical studies of crime patterns and modernisation is a cross-national design. Two critical problems stand out for studies using this design. First, cross-national data is generally suspected because they are plagued with incompatibility problems due to differences throughout the data production process from cross-national differences in crime definitions, reporting policy and practice, differences in criminal justice systems and its operations, and bias in sample selection. These problems have been amply documented in the literature (Archer & Gartner 1984; Huang & Wellford 1989; Lynch 1995). They have long been a major source of suspicion for cross-national studies and produce little confidence in its conclusions. In fact we do not know to what extent the mixed findings of cross-national studies of crime and modernisation are due to these data problems.

The second problem with the cross-national design is that it does not reflect an essential nature of the social change process. Social change and its consequential crime patterns are an intrinsically sequenced process. Theoretical perspectives describe stages and processes with their conceptual frameworks. Instead of directly reflecting the sequential nature of the theories and social change history, the cross-national design uses different levels and stages of social change and development in different countries to measure changes in crime and the development of social change. The data from the cross-national design does not accurately reflect the real processes of social change and their theoretical conceptualisation. More specifically, the data produced by sequentially occurring historical events typically is serially correlated, while cross-national data is assumed to be independently and identically distributed (IID), which ignores the autocorrelation among data.=

Cross-national design has been popular perhaps because of its advantages in availability of data and ease in analytical technology – the IID data makes it readily analysable by simple regression analyses. But the advantages come at a cost. As a consequence of data incompatibility between different countries, cross-national studies have been forced to narrow the scope of analyses to only the most compatible crimes, notably homicide and theft, and ignore available data on other crimes. The idiosyncrasies of different contexts of social change, which can be the greatest opportunity to increase our understanding of crime patterns in social change, become a source of undesirable difficulties with the cross-national approach.

I recommend a change in approach, one that uses longitudinal design and emphasises the importance of the features of the context of social change. We may call this approach a ‘longitudinal contextual approach’. Longitudinal designs and time series data should be advocated in studies of crime and social change, since they are much more accurate measurements of the historical social change process and reflections of conceptualisation of the theories. Methodologically, by using data from one carefully selected country with theoretically meaningful features, the longitudinal design avoids the problems of inadequate data. Substantively, this approach takes full advantage of the distinctive features of social change contexts, which offer significant insights into theoretical development and in-depth empirical explorations. To overcome the shortcomings in generalisability of findings, the research should proceed to other selected contexts.

Crime and Social Change in China

China is an important case of social changes arising from transition from a state socialist society to a market economy. After decades of poor economic performance, China started its economic reforms in the late 1970s and has had remarkable success. China is now the sixth largest economy in the world and second only to Japan as Asia’s largest economy; it is the world’s third largest exporter, surpassing Japan and following only the United States and Germany; it is the fastest growing market for products, with a GDP growth rate of over 10 per cent on average in the 1990s (China Statistical Yearbooks 1990–99; Kelley & Luo 1999). Along with the outstanding economic growth, crime has also greatly increased. Official statistics, news reports and scholarly studies have all reported an increase in the rates of both property and violent crimes (Xiao 1988; Dai 1995, 1997; Rojek 1996). A number of studies have explored factors that may have caused the increases: increased inequality (Dai 1997; Cao & Dai 2001); the massive migration of rural workers to urban areas (Feng 1995; Curran 1998; Ma 2001); anomie and changes in social values (Deng & Cordilia 1999); declining communitarianism (Anderson & Gil 1998); reduced effectiveness of traditional informal controls (Rojek 1996); and growing economic motivation (Liu 2001).

In 1978, the Chinese government began a comprehensive modernisation and economic reform program. Profound institutional change removed decades of suppression of individual economic motivation. The introduction of market institutions created vast opportunities for individuals to pursue economic success. Waves of rapid increase of individual and family-based private businesses (*getihu*) spread from the countryside to the cities. Many state workers and cadres left their state jobs to pursue dreams of personal wealth. A popular fashion was 'to plunge into the sea of business' (*xiahai*). Many others soon followed the get-rich-quick examples of others. To profit and to make money became a national movement (*quanming jingshang*).

In the rapid expansion of economic motivation, the change in party-state ideology played a significant role. The communist party in China holds paramount political status and influence. Since the late 1970s, the party's ideology has shifted from Mao Zedong's radical doctrine to Deng Xiaoping's much more pragmatic approach. Economic motivation was no longer considered negative and harmful to the collective interest, but seen as a necessary force for economic development. The party-controlled official media encouraged the entrepreneurial spirit and glorified successful individuals. 'To be rich is glorious!' was a popular slogan. The party newspaper propagandised examples of 'thousand dollar households', 'ten thousand dollar households', even 'millionaires'. Those lacking economic motivation were criticised as unfit for the development of a modern economy. Through the open-door policy, China has brought in more foreign investment since 1993 than any other country except the United States. In 1998, China received the sixth highest number of foreign tourists in the world. By 1998, about 300 000 Chinese students have studied in foreign universities, mostly in the United States (PRC State Statistical Bureau 1990–99). However, the open door has also brought exposure to Western commercialism, individualism and consumerism, strongly stimulating economic motivation. Consumerism and monetary success have quickly become prevailing social values (Schell 1988; Anderson & Gil 1998; Deng & Cordilia 1999). An indulgent and selfish new culture has quickly replaced previous traditions of frugality, diligence and self-sacrifice. The institutional change is also characterised by coexistence and the incompatibility of the traditional planned state sector and newly developed market institutions. The incompatibility of the traditional social control with the newly developed social reality has weakened social control, creating many criminal opportunities for profit.

China's situation offers great insights into the patterns of crime. The remarkable economic growth and the extraordinary escalation of economic motivation, together with the vast criminal opportunities created by institutional incompatibility and institutional disorganisation, suggest an imperative in-depth examination of patterns of economically motivated crimes. The importance of economically motivated crime is also reflected by the Chinese classification of crimes. In comparison with the typical violent versus property classification in the United States, the Chinese police data classify crimes into homicide, robbery, rape, assault, theft, grand theft, fraud, and currency counterfeiting. Fraud is defined as illegally obtaining money or property through cheating and is an independent category from larceny. Grand larcenies are thefts where more than 3000 yuan or equivalent property is stolen. Larceny includes grand larceny and bicycle theft. The Chinese context suggests that conventional examination of variation in levels of crime is insufficient; we must examine economically motivated crimes in more depth to further our knowledge of crime patterns during periods of social change from state socialism to a market economy.

Data

Data for this paper was taken from the *Law Yearbook of China* (1987–1998). For historical and political reasons, little crime data was published until 1987, when the first *Law Yearbook of China* appeared. The

Yearbooks are published in Chinese and they contain a section on Chinese crimes and criminal justice statistics. The Ministry of Public Security (the police) compiles the crime data, which is reported to the ministry by local police, who collect the data according to uniform national standards. In China, not all reported cases are filed and counted as a crime. Cases are filed only after the police check the preliminary evidence and certain minimum requirements are met. The data are yearly national total counts of crimes of homicide, assault, robbery, rape, larceny, grand larceny, fraud, and currency counterfeiting. The Yearbooks contain data from 1978 to 1998 for all crimes excepting assault, for which statistics are available only from 1980 to 1998. Crime rates have been calculated for each year and each crime. The inclusion of fraud and counterfeiting on the one hand perhaps reflects the salience of these crimes during the transition from a state socialist to a market economy, and on the other offers a valuable opportunity to examine patterns of economically motivated crime.

Problems with official statistics are well known. A large literature has been developed in criminology to deal with these problems. The limitations of official statistics in international research have been amply documented (Shelley 1981; O'Brien 1985; Biderman & Lynch 1991), for example changes in crime definitions and bias in reporting practices. These concerns apply to Chinese statistics too. Several studies have reported that Chinese official data have problems of under-reporting, especially for less serious property crimes and non-violent crimes (Dutton & Lee 1993; Dai 1995; Zhu et al. 1995; He & Marshall 1997; Yu & Zhang 1999). This pattern is similar to that in the United States (Maxfield et al. 1980; Yu & Zhang 1999). Studies also reported that the extent of under-reporting of less serious crimes has systematically reduced after 1989 (Yu 1993; Dai 1994; Yu & Zhang 1999). Despite these limitations, the data contains valuable information reflecting on patterns of crime during the social change in China.

One of the major problems with official statistics is the change of crime definitions. Considering the influence of inflation and growth in income, the Chinese government changed the definition of larceny in 1992. A larceny was previously defined as stealing 25 Chinese yuan or more in rural areas, or stealing 80 yuan or more in a city. This was changed to stealing 300 yuan or more in rural areas and 600 yuan or more in a city. This change led to a lower larceny rate after 1992. We make an adjustment to the larceny rates after 1992 following the method used by Cantor & Land (1985) to make the pre- and post-1992 data more compatible. We calculate a multiplier for larceny rates after 1992 in the following way in equation 3:

$$m = \frac{((1990 \text{ rate} + 1991 \text{ rate}) / 2)}{((1992 \text{ rate} + 1993 \text{ rate}) / 2)}$$

We then use this multiplier, which is 1.7026, times the larceny rate after 1992 to adjust for the lower recorded rates due to the change in definition. Although this adjustment seems reasonable, caution must be exercised in interpreting the results for larceny.

Among the problems of the data is that of under-reporting. For my analyses, it is crucial to understand the effect of under-reporting on the rate of change for each crime. The effect is to dampen the rate of change for a crime with an increasing trend. If crimes were persistently under-reported, as the volume of crime increases, larger numbers of crimes would become a 'dark figure of crime'. This leads to a downwardly biased trend in the data. A rapidly increasing crime rate would be seen as increasing at a slower speed than it actually is.

More importantly, the extent of the dampening effects of under-reporting varies depending on the type of crime. Non-violent and less serious property crimes will have a larger proportion of under-reporting than violent and serious crimes and will therefore suffer a more serious dampening effect. For my analyses, fraud and currency counterfeiting should suffer larger dampening effects than other crimes, since these crimes are less easy to detect and prove than violent street crimes that very likely cause immediate public concern. Business fraud is especially under-reported, partly because the courts are overwhelmed with increased business disputes as the market economy develops. Another reason is that many cases of business fraud involve official corruption, where officials often suppress information. Also, it is well known that property crimes have a lower report rate than violent crimes (Maxfield et al. 1980). Under-reporting therefore leads to a greater fraction of larceny, fraud, and currency counterfeiting cases being unreported than regular violent crimes in our data. We must consider the differential dampening effects in understanding the results of analyses. Since the analyses address the rate of change for larceny, fraud and currency counterfeiting relative to street violent crimes, the larger dampening effect on larceny, fraud and currency counterfeiting would lead to smaller observed differences between these crimes and violent crimes, reducing the likelihood of observing a higher rate of change when the rate of increase of larceny, fraud and currency counterfeiting is actually faster than regular violent crimes.

Methods

The task of the analyses is to examine patterns of crime during the period of social change from 1978 to 1998. The changes in crime levels have been examined previously (e.g. see Liu & Messner 2001). This chapter will focus on examination of the rate of change of crimes. It examines the rate of change of conventional property crimes relative to violent crimes, but more importantly it examines the rate of change of purely economically motivated crimes. Specifically, it examines whether larceny and grand larceny increased faster than homicide, assault, rape and robbery. The analyses then further examine whether fraud and currency counterfeiting increased faster than homicide, assault, rape and robbery.

To test if one time series increased faster than another series over time, the analyses model the trends of the two series to see if one has a trend of increase relative to the trend of the other. Suppose we set violent crimes as a convenient criterion for comparison. In that case there are three possible situations: the first is that a crime series increases faster relative to violent crimes, so the crime series shows a divergent pattern to violent crimes. The second is that a crime series increases slowly relative to violent crimes, so the two series show a convergent pattern to each other. The third situation is when a crime series is neither divergent from nor convergent to violent crimes, but they are moving together at the same rate, remaining in a relation of equilibrium; that is, they are cointegrated. Since the equilibrium is the standard to decide whether or not a series increases quickly or slowly relative to the violent crime series, we review the concept of equilibrium in more detail.

When we say that two series are in equilibrium, we refer to the situation where they somehow adjust to each other to remain at a relatively constant distance to each other. When two series are in equilibrium, or cointegrated in time series terminology, the two series will maintain a linear relationship with each other over time and will not 'wander away' from the linear relationship.

Suppose we have two series, y_t and x_t , generated from the following processes, respectively:

$$y_t = y_{t-1} + v_t$$

$$x_t = x_{t-1} + w_t$$

Their value at time t is their value at the previous time $t-1$ plus a stochastic component, or random error v_t or w_t . This kind of series is called a 'random walk'. Because the coefficient of the right-hand term x_{t-1} is 1, we say that each of the series has a 'unit root'. The time series processes x_t or y_t are unit root processes. Unlike a usual stationary process, a unit root process does not have a constant mean and its variance increases over time without a limit; it is a non-stationary process. A series that trends upward or downward without a limit will be non-stationary. When the dependent variable in a regression analysis is non-stationary, the usual assumptions for regression analysis are violated. When a unit root process has an intercept α , it systematically 'drifts' upward or downward depending on the sign of the intercept. That is, a systematic trend is generated by the intercept or drift component α . We call this process 'random walk with a drift'. These processes are written as

$$y_t = \alpha + y_{t-1} + v_t$$

$$x_t = \alpha + x_{t-1} + w_t$$

The most popular test for unit root is the Dickey-Fuller test in a form similar to the following:

$$y_t = \alpha + \rho y_{t-1} + \delta_1(y_{t-1} - y_{t-2}) + \delta_2(y_{t-2} - y_{t-3}) + u_t,$$

The test checks whether $\alpha = 1$. The lagged difference terms in the equation are used to eliminate autocorrelation. The test with these lagged difference terms is called the Augmented Dickey-Fuller Test. Since α is hypothesised to be 1, the usual critical values for the t-test are no longer valid. We use critical values based on MacKinnon (1991) in the statistical test.

Taking a first difference of a random walk, or random walk with a drift, the unit root will be eliminated and the series becomes stationary. This kind of series is called 'integrated order 1', denoted as $I(1)$. That is:

$$y_t - y_{t-1} = \alpha + u_t,$$

We say that the order of integration is 1, which is the number of differences needed to result in a stationary series. Since the differenced variable on the left in this equation is stationary, we can estimate the intercept α . First, we add differenced terms on the right to eliminate autocorrelation:

$$y_t - y_{t-1} = \alpha + \delta_1(y_{t-1} - y_{t-2}) + \delta_2(y_{t-2} - y_{t-3}) + u_t,$$

The concept of cointegration is derived from the fact that although each of the y_t and x_t series is non-stationary, their ratio may be stationary. When that is the case, the two series may be in equilibrium, that is, they are cointegrated. For example, suppose series y_t and series x_t have a linear relationship:

$$y_t = \alpha \cdot (x_t) + u_t$$

We can see this is an equilibrium process by taking the ratio of y_t to x_t , the expected value of the ratio will be α at any time t . That is, the ratio of y_t to x_t is a series that does not trend. We say that the two series are cointegrated. To make mathematical manipulation easier, we can take the log of the ratio. The expected value of $z_t = \log(y_t) - \log(x_t)$ is $\log(\alpha)$, a constant for each t (O'Brien, 1999); showing that the series resulting from the difference of the logs is a stationary series; that is, $\log(y_t)$ and $\log(x_t)$ are cointegrated.

Following this logic, we can use the unit root test to test if any two series y_t and x_t are cointegrated. That is, if the series $z_t = \log(y_t) - \log(x_t)$ has a unit root, then y_t and x_t are not cointegrated. If the series z_t has a unit root and is thus non-stationary, we need to further difference it to eliminate the non-stationarity. After the first difference, we can estimate α to see if the series z_t has a systematic trend (Hamilton 1994: 562; O'Brien 1999). That is, we can estimate α in the equation of the form:

$$z_t - z_{t-1} = \alpha + \delta_1(z_{t-1} - z_{t-2}) + \delta_2(z_{t-2} + z_{t-3}) + u_t,$$

If α is positive, z_t systematically trends upward, which indicates that the differences between y_t and x_t systematically increase, so they diverge from each other. That is, the series y_t increases faster than x_t . If α is negative, the series y_t and x_t converge and the differences between them get smaller over time. If α is not significantly different from zero, the situation becomes inconclusive. The additional difference terms in the equation are used to eliminate autocorrelations in the error term.

Results of the Analysis

Table 12.1 Dickey-Fuller test for cointegration of property and violent crimes^a

| | Estimated Value of ρ | Number of Lagged Differences |
|----------------------------------|---------------------------|------------------------------|
| log(larceny)-log(homicide) | 0.78 ^b | 0 |
| log(larceny)-log(rape) | 0.91 ^b | 0 |
| log(larceny)-log(assault) | 0.51 ^c | 0 |
| log(larceny)-log(robbery) | 0.86 ^b | 1 |
| log(grand larceny)-log(homicide) | 0.94 ^b | 1 |
| log(grand larceny)-log(rape) | 0.98 ^b | 1 |
| log(grand larceny)-log(assault) | 0.91 ^b | 0 |
| log(grand larceny)-log(robbery) | 0.84 ^b | 0 |

^a The Augmented Dickey-Fuller test is based on the test equation $z_t = \alpha + \rho z_{t-1} + \delta_1(z_{t-1} - z_{t-2}) + \delta_2(z_{t-2} + z_{t-3}) + u_t$, where equations contain zero, one, or two lagged difference terms, depending upon the number needed to eliminate autocorrelation. ^b Fail to reject the null hypothesis that $\rho = 1$ at the 0.10 level. ^c Reject the null hypothesis that $\rho = 1$ at the 0.05 level.

Table 12.1 reports the unit root test of the difference of the two log series. Column 1 lists the difference series, showing the two series being compared. Column 2 reports estimates of α in the test equation of the

Augmented Dickey-Fuller test. Column 3 reports the necessary number of lagged difference terms added to the test equation to eliminate autocorrelation in error terms. Without eliminating the autocorrelation, the test of ρ would be inaccurate. Since we have only 21 observations, except for assault, for which we have only 19 observations, the power of the test is low, and the estimates of α will only help to give a sense of the size of the coefficient. For example, Table 12.1 row 5 reports that the series constructed by deducting the log of homicide from the log of the grand larceny series appears to have a unit root, since the Augmented Dickey-Fuller test failed even at the 0.10 level to reject the null hypothesis that $\alpha = 1$. The estimated coefficient is 0.94 with one lagged difference term added to the equation to eliminate autocorrelation to an acceptable level indicated by the Durbin-Watson statistic. Generally, the results indicate that the tests failed to reject the hypothesis that $\alpha = 1$; there is a unit root in these series; the two series in each of the tests are not cointegrated. They may converge to or diverge from each other. These results call for further examination of these series to determine whether or not larceny, grand larceny, fraud, or currency counterfeiting series diverge from the violent crime series.

Table 12.2 Estimating the intercept of differences of log property versus violent crime series^a

| | Estimated Value of α | Number of Lagged Differences |
|----------------------------------|--------------------------------|---------------------------------|
| log(larceny)-log(homicide) | 0.01 | 1 |
| log(larceny)-log(rape) | 0.05 | 0 |
| log(larceny)-log(assault) | -0.02 | 0 |
| log(larceny)-log(robbery) | -0.09 | 0 |
| log(grand larceny)-log(homicide) | 0.17** | 0 |
| log(grand larceny)-log(rape) | 0.21** | 0 |
| log(grand larceny)-log(assault) | 0.13** | 0 |
| log(grand larceny)-log(robbery) | 0.06 | 0 |

^a The equations are based on the following specifications: $z_t - z_{t-1} = \alpha + \delta_1(z_{t-1} - z_{t-2}) + u_t$, where equations contain zero, one, or two lagged difference terms, depending upon the number needed to eliminate autocorrelation. * $p < 0.10$. ** $p < 0.05$.

Since failure to reject the unit root hypotheses indicates that none of the paired series are cointegrated, we difference the series and estimate α . Table 12.2 reports the estimate of α for each difference of the log equation. Column 2 reports the results of the estimates. Column 3 reports the number of lags used to eliminate the autocorrelations in the error term. For example, row 5 reports that the estimated α is 0.17, with no need to add additional terms to the equation for eliminating autocorrelation. The result also shows the α is statistically significant at the 0.05 level, indicating the α is statistically significantly different from zero. Thus grand larceny diverges from homicide series over time; that is, grand larceny increases faster than homicide over the 21 years from 1978 to 1998 in China. Grand larceny is defined as theft where more than 3000 yuan or equivalent is stolen. Grand larceny is subjected to fewer fluctuations in recording, and it therefore provides a good indicator of changes for property crimes in general. However, intercept α for larceny is not statistically significant, analyses do not find faster or slower increase than violent crimes.

Table 12.3 Dickey-Fuller test for cointegration of economically motivated crimes and violent crimes^a

| | Estimated Value of r | Number of Lagged Differences |
|-----------------------------------|------------------------|------------------------------|
| log(fraud)-log(homicide) | 0.79 ^b | 1 |
| log(fraud)-log(rape) | 0.94 ^b | 1 |
| log(fraud)-log(assault) | 0.48 ^c | 0 |
| log(fraud)-log(robbery) | 0.84 ^b | 1 |
| log(counterfeiting)-log(homicide) | 0.82 ^b | 1 |
| log(counterfeiting)-log(rape) | 0.91 ^b | 1 |
| log(counterfeiting)-log(assault) | 0.77 ^b | 0 |
| log(counterfeiting)-log(robbery) | 0.74 ^b | 1 |

^a The Augmented Dickey-Fuller test is based on the test equation $z_t = \alpha + \rho z_{t-1} + \delta_1(z_{t-1} - z_{t-2}) + \delta_2(z_{t-2} + z_{t-3}) + u_t$, where equations contain zero, one, or two lagged difference terms, depending upon the number needed to eliminate autocorrelation. ^b Fail to reject the null hypothesis that $\rho = 1$ at the 0.10 level. ^c Reject the null hypothesis that $\rho = 1$ at the 0.05 level.

Table 12.3 reports the results of the unit root test for cointegration for the series of log(fraud) – log(violent) crimes and for the series of log(counterfeiting) – log(violent) crimes. The results show that the test failed to reject the unit root hypothesis mostly at the 0.10 level for all the series, except for log(fraud) – log(assault), for which the significance level is 0.05, indicating none of the paired series are cointegrated.

Table 12.4 Estimating the intercept of differences of log economically motivated crimes versus violent crime series^a

| | Estimated Value of α | Number of Lagged Differences |
|-----------------------------------|-----------------------------|------------------------------|
| log(fraud)-log(homicide) | 0.05* | 1 |
| log(fraud)-log(rape) | 0.03* | 1 |
| log(fraud)-log(assault) | 0.01 | 1 |
| log(fraud)-log(robbery) | -0.04 | 1 |
| log(counterfeiting)-log(homicide) | 0.05* | 1 |
| log(counterfeiting)-log(rape) | 0.05* | 1 |
| log(counterfeiting)-log(assault) | 0.003* | 1 |
| log(counterfeiting)-log(robbery) | 0.04 | 1 |

^a The equations are based on the following specifications: $z_t - z_{t-1} = \alpha + \delta_1(z_{t-1} - z_{t-2}) + u_t$, where equations contain zero, one, or two lagged difference terms, depending upon the number needed to eliminate autocorrelation. * $p < 0.10$.

Given the results from the unit root test in Table 12.3, intercept terms are estimated for the first differenced series reported in Table 12.3. Table 12.4 reports the results of the estimation. Column 3 shows that most of the α are positive, indicating a general pattern that fraud and currency counterfeiting increase faster than violent crimes. Results for robbery are inconclusive, perhaps because most robberies are committed for economic motives, similar in nature to crimes of fraud and currency counterfeiting.

Conclusions and Discussion

Understanding patterns of crime as a major consequence of social change and modernisation has been an important topic of social science. The patterns of crime reveal important aspects of the social change process. While a large number of studies have addressed these patterns, the literature has conventionally focused on crime levels. Empirical studies consistently reported a higher level of property crimes than violent crimes, but reported mixed findings about the trend of property and violent crimes. Existing theories have made various predictions on the long-term variation of violent and property crimes, but they consensually predicted that all crimes will increase in the early stage of social change and modernisation.

This chapter adopts a longitudinal contextual approach to overcome several major limitations of the literature. In contrast with the conventional cross-national design, the approach addresses crime patterns in one country. This approach avoids the persistent data incompatibility problems plaguing cross-national design, enabling the researcher to fully exploit available data in the particular context, especially when this data would not be available in other countries due to substantial political, economical, historical, and cultural differences. The differences between different contexts often reflect variations of social processes. Our task is to study these variations. The longitudinal approach allows in-depth examination of these variations, which cause data incompatibilities in cross-national design and would be considered to be undesirable problems.

The longitudinal contextual approach helps to overcome the geographical imbalance of the sample in cross-sectional studies pointed out by Neapolitan (1997). Cross-national studies have entirely ignored crime in the context of change from previously state socialist countries to market economies. The present study uses China's case to fill the important omission. The in-depth examination of one context allows us to fully address special features of the particular context, resulting in observations and insights that would otherwise be missed. Crimes that do not seem especially important under one context can be theoretically informative in another. Patterns easily neglected may become important to explore when viewed in a different context. The examinations of the features of social transition from a state socialist society to a market economy suggest the importance of investigating economically motivated crimes, rather than conventionally only focusing on property versus violent crimes.

A pattern of increasing crime in China has been reported by official sources, news reports and scholarly studies, all of which have been typically descriptive. The general consensus is that crimes of all kinds have been on the rise since the start of economic reform. The most recent work is by Liu & Messner (2001). Using official statistics, they address patterns of Chinese crimes from 1978 to 1998. They explain how crime rates fluctuate in response to historical events such as 'severe strikes', changes in crime definitions, and

improvements in reporting over the period of economic reform. Employing time series analyses, their study reports that fraud, currency counterfeiting, grand larceny, homicide, assault, and robbery show statistically significant trends of increase, while the trends of increase in rape and larceny are not statistically significant.

Following the longitudinal contextual approach, the present study moves beyond conventional examination of levels of crimes to examine further the rates of increase for economically motivated crimes in China. It analyses how the features of institutional changes in China impact on the expanding economic motivation and patterns of crime. This study finds evidence that fraud and currency counterfeiting rates increased more rapidly than violent crime rates, and that the rate of grand larceny increased more rapidly than that of violent crimes. This latter finding that grand larceny increases faster than violent crimes suggests that property crimes develop in the direction of becoming more serious. No faster rates of increases in larceny were found compared with violent crimes. This may indicate that less serious crimes do not behave very differently in the context of the transition of socialist society to a market economy from other contexts, since most of the larceny is less serious theft. However, caution must be taken in this interpretation, since the larceny results may also be due to data series being influenced by change of definition, although adjustment was made to correct the problem. The results for larceny may also be due to larger fluctuations typically found in data for less serious crimes. Given the limitations in generalisability for the longitudinal contextual approach, it would be worthwhile to examine these findings in other contexts where economic growth is a major feature of social change.

References

- Anderson, Allen F., & Vincent E. Gil 1998, 'China's Modernisation and the Decline of Communitarianism: The Control of Sex Crimes and Implications for the Fate of Informal Social Control', *Journal of Contemporary Criminal Justice* 14(3): 248–61
- Archer, Dane, & Rosemary Gartner 1984, *Violence and Crime in Cross-National Perspective*, Yale University Press
- Avison, William R., & Pamela L. Loring 1986, 'Population Diversity and Cross-National Homicide: The Effects of Inequality and Heterogeneity', *Criminology* 24: 733–749
- Bennett, Richard R. 1991, 'Development and Crime', *Sociological Quarterly* 32(3): 343–63
- Bian, Yanjie 1994, *Work and Inequality in Urban China*, State University of New York Press
- Biderman, Albert D., & James P. Lynch 1991, *Understanding Crime Incidence Statistics: Why the UCR Diverges From the NCS*, Springer-Verlag
- Bonger, William A. 1916, *Criminality and Economic Conditions*, Little, Brown
- Braithwaite, John, & Valerie Braithwaite 1980, 'The Effects of Income Inequality and Social Democracy on Homicide: A Cross-National Comparison', *British Journal of Criminology* 20: 45–53
- Cantor, David, & Kenneth C. Land 1985, 'Unemployment and Crime Rates in the post-World War II United States: A Theoretical and Empirical Analysis', *American Sociological Review* 50: 317–22
- Cao, Liqun, & Yisheng Dai 2001, 'Inequality and Crime in a Changing China.' In Jianhong Liu, Lening Zhang, and Steven F. Messner (eds) *Crime and Social Control in a Changing China*, Greenwood Press
- Clinard, Marshall B., & Daniel J. Abbott 1973, *Crime in Developing Countries*, Wiley
- Conklin, George H., & Miles E. Simpson 1985, 'A Demographic Approach to the Cross-National Study of Homicide', *Comparative Social Research* 8: 171–86
- Curran, Daniel J. 1998 'Economic Reform, the Floating Population, and Crime', *Journal of Contemporary*

Criminal Justice 14: 262–80

- Dai, Yisheng. 1994, *On the Policies of Public Security* [Lun Gong'an Zhence], Chongqing Press
- Dai, Yisheng. 1995, 'Expanding Economy and Growing Crime.' *CJ International* 11: 9–16
- Dai, Yisheng. 1997, 'Crime Waves and Relative Deprivation in China: Are the "Wolves" Really Coming?' Presented at the 1997 Annual Meeting of the ASC
- Davis, Deborah. 1992, 'Job Mobility in Post-Mao Cities', *China Quarterly* 84: 1062–85
- Deng, Xiaogang, & Ann Cordilia 1999, 'To Get Rich is Glorious: Rising Expectations, Declining Control, and Escalating Crime in Contemporary China', *International Journal of Offender Therapy and Comparative Criminology* 423: 211–29
- Durkheim, Émile [1893] 1933, *The Division of Labor in Society*, Free Press
- Durkheim, Émile [1897] 1950, *Suicide: A Study in Sociology*, Free Press
- Dutton, Michael, & Tianfu Lee 1993, 'Missing the Target? Policing Strategies in the Period of Economic Reform', *Crime and Delinquency* 39: 316–36
- Elias, Norbert 1978, *The Civilising Process: The History of Manners*, Free Press
- Engels, Frederick [1845] 1958, *The Condition of the Working Class in England*, Basil Blackwell.
- Feng, Shuliang 1995, 'Mobile Population, Rural Social Order and Comprehensive Control of Public Security at the Grassroots Level', *Studies of Crime and Reformation*, Beijing 11
- Gerber, Theodore P., & Michael Hout 1998, 'More Shock than Therapy: Market Transition in Russia', *American Journal of Sociology* 104: 1–50
- Groves, W. Byron, Richard McCleary, & Graeme R. Newman 1985, 'Religion, Modernisation and World Crime', *Comparative Social Research* 8: 59–78
- Hagen, Everett E. 1962, *On The Theory of Social Change: How Economic Growth Begins*, Dorsey
- Hamilton, James D. 1994, *Time Series Analysis*, Princeton University Press
- Hansmann, Henry B., & John M. Quigley 1982, 'Population Heterogeneity and the Sociogenesis of Homicide', *Social Forces* 61: 206–24
- Hartnagel, Timothy F. 1982, 'Modernisation, Female Social Roles and Female Crime: A Crossnational Investigation', *Sociological Quarterly* 23: 477–90
- He, Ni, & Ineke H. Marshall 1997, 'Social Production of Crime Data: A Critical Examination of Chinese Crime Statistics', *International Criminal Justice Review* 7: 46–63
- Huang, W.S. Wilson, & Charles F. Wellford 1989, 'Assessing Indicators of Crime Among International Crime Data Series', *Criminal Justice Policy Review* 3: 28–47
- Inkeles, Alex 1983, *Exploring Individual Modernity*, Columbia University Press
- Inkeles, Alex, & David H. Smith 1974, *Becoming Modern: Individual Change in Six Developing Societies*, Harvard University Press
- Kelley, Lane, & Yadong Luo 1999, 'An Introduction to Emerging Business Issues for China 2000.' pp. ix–xx in Lane Kelley & Yadong Luo (eds) *China 2000: Emerging Business Issues*, Sage
- Kick, Edward L., & Gary D. LaFree 1985, 'Development and the Social Context of Murder and Theft.' *Comparative Social Research* 8: 37–58
- Kornai, Janos 1990, 'The Affinity Between Ownership Forms and Coordination Mechanisms: The Common Experience of Reform in Socialist Countries', *Journal of Economic Perspectives* 4: 131–47
- Kornai, Janos 1990, *The Road to a Free Economy*, Norton
- Kornai, Janos 1992, *The Socialist System*, Princeton University Press
- Krohn, Marvin 1976, 'Inequality, Unemployment and Crime: A Cross-national Analysis', *Sociological Quarterly* 17: 303–13

- Krohn, Marvin 1978, 'A Durkheimian Analysis of International Crime Rates', *Social Forces* 57: 654–70
- Krohn, Marvin, & Charles F. Wellford 1977, 'A Static and Dynamic Analysis of Crime and the Primary Dimensions of Nations', *International Journal of Criminology and Penology* 5: 1–16
- LaFree, Gary D. 1999, 'A Summary and Review of Cross-National Comparative Studies of Homicide.' Pp. 125–145 in M. Dwayne Smith & Margaret A. Zahn (eds) *Homicide: A Sourcebook of Social Research*, Sage
- LaFree, Gary D., & Edward L. Kick 1986, 'Cross-National Effects of Development, Distributional and Demographic Variables on Crime: A review and Analysis', *International Annals of Criminology* 24: 213–36
- Lerman, Paul 1968, 'Individual Values, Peer Values, and Subcultural Delinquency', *American Sociological Review* 33: 760–73
- Lerner, Daniel 1958, *The Passing of Traditional Society: Modernising the Middle East*, Free Press
- Levy, Marion J. 1966, *Modernisation and the Structure of 2 Societies* (2 vols), Princeton University Press
- Lin, Nan, & Yanjie Bian 1991, 'Getting Ahead in Urban China', *American Journal of Sociology* 97: 657–88
- Liu, Jianhong 1999, 'Crime Patterns and Impacts of Economic Reform in China.' Presentation at American Society of Criminology Annual Meeting, Toronto, November 17-20.
- Liu, Jianhong., 2001, "Social change and economically motivated crimes in China." Annual Meetings of American Society of Criminology, Atlanta, November 15-19.
- Liu, Jianhong, and Steven F. Messner 2001, 'Modernisation and Crime Trends in China's Reform Era.' In Jianhong Liu, Lening Zhang & Steven F. Messner (eds) *Crime and Social Control in a Changing China*, Greenwood Press
- Lynch, James. 1995. 'Crime in International Perspective.' in *Crime*, ed. James Q. Wilson & Joan Petersilia. ICS Press
- Ma, Goan. 2001. 'Population Migration and Crime in Beijing, China.' in *Crime and Social Control in a Changing China*, ed. Jianhong Liu, Lening Zhang, and Steven F. Messner. Greenwood
- MacDonald, Lynn. 1976. *The Sociology of Law and Order*. Westview
- MacKinnon, James G. 1991. 'Critical Values for Cointegration Tests.' pp. 267–76 in *Long-Run Economic Relationships: Readings in Cointegration*, ed. Robert F. Engle and Clive W.J. Granger. Oxford University Press
- Maxfield, Michael G., Dan A. Lewis, & Ron Zoc. 1980. 'Producing Official Crimes: Verified Crime Reports as Measures of Police Output.' *Social Science Quarterly* 62: 221–36
- McClelland, David C. 1961, *The Achieving Society*, Van Nostrand
- Merton, Robert K. 1938, 'Social Structure and Anomie', *American Sociological Review* 3: 672–82
- Messner, Steven F. 1980, 'Income Inequality and Murder Rates: Some Cross-National Findings', *Comparative Social Research* 3: 185–98
- Messner, Steven F. 1982, 'Societal Development, Social Equality and Homicide: A Cross-national Test of the Durkheimian Model', *Social Forces* 61: 225–40
- Messner, Steven F. 1985, 'Sex Differences in Arrest Rates for Homicide: An Application of the General Theory of Structural Strain', *Comparative Social Research* 8: 187–201
- Messner, Steven F., & Richard Rosenfeld 1994, *Crime and the American Dream*, Wadsworth
- Messner, Steven F., & Richard Rosenfeld 1997, 'Political Restraint of the Market and Levels of Criminal Homicide: A Cross-National Application of Institutional-Anomie Theory', *Social Forces* 75(4): 1393–416
- Neapolitan, Jerome 1997, *Cross-National Crime: A Research Review and Sourcebook*, Greenwood Press

- Nee, Victor 1989, 'A Theory of Market Transition', *American Sociological Review* 54: 663–81
- Nee, Victor 1991, 'Social Inequalities in Reforming State Socialism.' *American Sociological Review* 56: 267–52
- Nee, Victor. 1996. 'The Emergence of a Market Society: Changing Mechanisms of Stratification in China.' *American Journal of Sociology* 101(4): 908–49
- Nee, Victor, & Yang Cao 1996, 'Stratification in Path Dependent Societal Transformation.' Presented at the 1996 Summer Meetings of the International Sociological Association Research Committee on Social Stratification, Ann Arbor, Mich., August.
- Neuman, W. Lawrence, & Robert J. Berger 1988, 'Competing Perspectives on Cross-National Crime: An Evaluation of Theory and Evidence', *Sociological Quarterly* 29(2): 281–313
- O'Brien, Robert M. 1985, *Crime and Victimisation*, Sage
- O'Brien, Robert M. 1999, 'Measuring the Convergence/Divergence of "Serious Crime" Arrest Rates for Males and Females', *Journal of Quantitative Criminology* 15: 97–114
- Ortega, Suzanne T., Jay Corzine, Cathleen Burnett, & Tracey Poyer 1992, 'Modernisation, Age Structure and Regional Context: A Cross-National Study of Crime', *Sociological Spectrum* 12: 257–77
- Parsons, Talcott 1966, *Societies: Evolutionary and Comparative Perspectives*, Prentice Hall
- Parsons, Talcott 1977, *The Evolution of Societies*, Prentice Hall
- PRC State Statistical Bureau 1990–99, *Statistical Yearbook of China*, China Statistical Publishing House
- Press of Law Yearbook of China 1987–98, *Law Yearbook of China*, Press of Law Yearbook of China
- Rojek, Dean G. 1996, 'Changing Directions of Chinese Social Control.' In Charles B. Fields & Richter H. Moore Jr (eds) *Comparative Criminal Justice: Traditional and Nontraditional Systems of Law and Control*, Waveland
- Róna-Tas, Ákos 1994, 'The First Shall Be Last? Entrepreneurship and Communist Cadres in the Transition from Socialism', *American Journal of Sociology* 100(1): 40–69
- Schell, Orville 1988, *Discos and Democracy: China in the Throes of Reform*, Pantheon
- Shelley, Louise 1981, *Modernisation, Age Structure and Regional Context: A Cross-National Study of Crime*, Southern Illinois University Press
- Tarde, Gabriel 1902, *La Criminalité Comparée*, Flex Alcan
- Walder, Andrew G. 1992, 'Property Rights and Stratification in Socialist Redistributive Economies', *American Sociological Review* 57: 534–39
- Walder, Andrew G. 1994, 'The Decline of Communist Power: Elements of a Theory of Institutional Change', *Theory and Society* 23: 297–323
- Walder, Andrew G. 1995a, 'Career Mobility and the Communist Political Order', *American Sociological Review* 60: 309–328
- Walder, Andrew G. 1995b, 'Local Governments as Industrial Firms: An Organisational Analysis of China's Transitional Economy', *American Journal of Sociology* 101(2): 263–301
- Wellford, Charles F. 1974, 'Crime and the Dimensions of Nations', *International Journal of Criminology and Penology* 2: 1–10
- Xiao, Jianming 1988, 'Economic Development and Crime Problem' (in Chinese), *Juvenile Delinquency Studies* 5: 15
- Xie, Yu, & Emily Hannum 1996, 'Regional Variation in Earnings Inequality in Reform-Era Urban China', *American Journal of Sociology* 101(4): 950–92
- Yu, Lei 1993, *The National Study of the Crime Problem in Modern China* (Comprehensive Volume) [Zhongguo Xianjieduan Fanzui Wenti Yanjiou] (Zong Juan). The University Press of the Chinese

University of People's Public Security

- Yu, Olivia, & Lening Zhang 1999, 'The Under-Recording of Crime by Police in China: A Case Study', *Policing: An International Journal of Police Strategies and Management* 22(3): 252–63
- Zhou, Xuegang, Nancy B. Tuma, & Phyllis Moen 1996, 'Stratification Dynamics Under State Socialism', *Social Forces* 74: 759–96
- Zhu, Hongde, Lixian Wang, Jialun Lu, Jianan Guo, & Lu Zhou 1995, 'Result of the Crime (Victim) Survey in Beijing, China.' Pp. 185–217 in Ugljesa Zvekic, Lixian Wang, & Richard Scherpenzeel (eds) *Developmental and Policy Use of Criminal Justice Information: Proceedings of the Beijing Seminar, 12–16 September 1994*, United Nations Interregional Crime and Justice Institute

13

The Integration of Formal and Informal Social Control in China

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China's social control system can be characterised as a hybrid of the formal criminal justice organisation and the informal community crime prevention network. This system is a result of China's long historical tradition of moral governance and its current effort to modernise the country's economy and legal system. Although the legalist school of thought emerged in China almost simultaneously with the moralist, the rule of law as found in Western nations characterised by due process rules and procedures and respect for individual rights has almost never taken the more prominent role the Confucian philosophy and practices have played in Chinese society. This paper intends to look at the historical and cultural influence of 'Confucianism', in the broad sense of the word, on China's social control system, understand the characteristics of the formal criminal justice system and informal crime prevention system, examine how the two parts have integrated in contemporary Chinese society, and discuss some current challenges to and possible future policy directions of China's social control system.

The Informal Social Control System

The informal social control system has a long tradition in China. Its roots can be traced to the principle of moral governance advocated in Confucian and Taoist philosophy. As Confucius once said, 'Lead the people with governmental measures and regulate them by law (*fa*) and punishment, and they will avoid wrongdoing but will have no sense of honor and shame. Lead them with virtue and regulate them by the rules of propriety (*li*), and they will have a sense of shame and, moreover, set themselves right' (*Analects*). The moral or ethical dimension of informal social control is based on the belief that human nature is essentially good. Appealing to people's morality and conscience, the informal system aims at promoting communitarianism and collectivism or the common good. People are encouraged to moderate their personal emotions, and put their self-interest second and develop a sense of obligation to the group. Both the Confucian and the contemporary socialist doctrines ask people to protect and contribute to the community and society.

Because of this emphasis on informal social control, the Western sense of the law has never taken root in Chinese society. Law is viewed as flexible, changeable, and secondary to collectively held moral principles. This view is influenced not only by a long history of Confucianism and Taoism, but also by historically different interpretations of the law. Law was viewed either as a last resort when a person could no longer be 'cured' by moral reasoning, or as a last line of defence for the society when a person has committed a heinous crime against the community. A legal system built on the basis of individual rights and judicial

independence has yet to emerge in China. The political nature of the legal system in China has been made evident by the changes of governments over the last century, namely the Qing Dynasty, the Nationalist Government, and the Communist Government.

The informal system can be viewed as a traditional social control system in China and is extra-judicial in nature. Directed by a broad Confucian code of ethics in Chinese history and socialist moral principles during the communist era, the informal system has been able to mitigate most of the disputes and conflicts in the Chinese society. In contemporary China, the system follows three basic administrative principles: the 'party line', the 'mass line', and the 'prevention line' (Jiao 2001). These principles dictate that the Chinese Communist Party (CCP) and the 'great masses' play a central role in China's social control system and focus on crime prevention. A broad range of programmes have been established that operationalise the traditional social control philosophy in contemporary China. In these programmes, members of the community committees channel disputes and conflicts towards peaceful resolution through negotiation and compromise. They try every means to maintain parties' dignity, honour and respect for each another as the purpose of informal social control is to maintain social harmony, not to declare a winner or a loser.

The informal social control system as represented by local grassroots organisations in the neighbourhoods, at work and in schools, covers every social element in Chinese society. Various community committees play a dominant role in social control and public order. The role of the police becomes less significant and is often limited to organising civilian crime prevention activities and providing guidance to local committee work. The informal social control system in China, therefore, is not only represented by grassroots civilian organisations but is also characterised by a different work orientation or approach by the Chinese police. Chinese police officers often have a political orientation that leans toward the Left; they follow CCP directives, play the role of moral authorities, and stress the importance of serving the people (Jiao 2001). They have been given a good deal of authority independent from the formal legal system for less serious offences. They enforce laws as administrative affairs that are equivalent to misdemeanours and ordinance violations in Western countries.

The Formal Social Control System

The enactment of a criminal law and criminal procedural law in 1979 marked the beginning of a new criminal justice system in China. The Chinese Criminal Law and criminal justice system are, however, limited to the more serious criminal offences and offenders. Due to the long cultural tradition of moral governance and the relatively short period of developing the nation's legal system in the last 22 years, China has established a criminal justice system that essentially coexists with the informal social control system, with the former focusing on legal order and the latter moral order.

In early Chinese history, at the time when Confucius' philosophy of moral governance became influential, a school of thought that was the opposite of Confucianism also appeared. This school of thought, called the legalist school of thought (*fa-jia*), emphasised the codification of statutes and rule by law. The present formal social control system has been influenced by both China's own legalist school of thought in history (*fa-jia*) and Western rule-of-law principles. The Chinese legalists and Western law have both similarities and fundamental differences in ideology. They share the idea that humans are essentially selfish and

therefore should be subjected to certain and swift punishment and the deterrent effect of the legal system. China and the West differ in the functions and purposes of the formal system, however, because the Chinese legalist school of thought was developed in a feudal and highly stratified and hierarchical society, and the Western principles of equality before law and judicial independence emerged at a time of industrial and bourgeois revolution. The contemporary Chinese legal and justice system, therefore, operates under a different set of assumptions regarding rights (Terrill 1999) and remains highly centralised and hierarchical.

The formal criminal justice system of today's China is nevertheless a far cry from its own traditional social control system. At least in theory and in word, China's legal system recognises the importance of the rule of law, due process, protection of individual rights, and judicial independence. Legal units have been established in many criminal justice agencies that provide their agents with legal advice and analyses regarding the legality of their work. Departing from the tradition of ethical appointment and governance, a modern civil service system has been established based on rules and regulations, entrance and promotional examinations, and a competitive wage scale.

The police have introduced and implemented more programmes that emphasise law enforcement and police professionalism (Jiao 2001). All police officers are required to develop a good understanding of laws and procedures pertinent to police work through legal education and training. They are also required to work more closely with the criminal justice system. The Chinese police have become more accountable to procurators when detaining people for serious crimes. They have also made great progress in professionalising themselves through higher education, upgraded equipment, and better communication. They have become more modernised as a result, albeit symbolically, with advanced Western management and response technology. The establishment of a mobile patrol force is another example of the Chinese effort to professionalise police operations.

The Integrated Social Control System

Since both the informal and formal social control systems have been clearly established in China and work very closely with each other, it is probably best to characterise the Chinese criminal justice and crime prevention as an integrated social control system. This integrated system has several essential characteristics. First, it combines China's own historical Confucian and legalist schools of thoughts. Instead of pitting one against another, this system makes sure that both morality and legality are brought into full play against today's crime problems in Chinese society. It integrates government policies with social norms and values or vice versa. It requires that the bureaucratic elites (which represent the formal system) involve the masses (which represent the informal system) in their decision-making processes and sometimes even allow the masses to make decisions directly. Informal moral and ethical principles lead to the establishment of socially approved norms and values that require government enforcement. So the formal and informal rules become integrated eventually.

Second, in this integrated system, formal criminal justice programmes are matched with informal community crime prevention programmes. For the Neighbourhood Police Stations, for instance, there are Community Service Commissions that engage in crime prevention activities. For the Residential Administration Police, there are neighbourhood committees that conduct residential surveys. A cooperative

participatory partnership relationship emerges between the public security agencies and various community groups. In this framework, the police are able to work with tangible community crime prevention organisations such as neighbourhood public security committees, specialised public order organisations, people's mediation committees, and police-community joint defence programmes. These community organisations are often in a position to act in ways that police are legally prohibited from pursuing. Through these programmes, the police are able to immerse themselves in the community and avoid impediments to effective neighbourhood watching (Johnson 1986). The integration of the formal and informal systems also means that the two sides will strengthen each other's roles in enhancing public security. The police will play the role of organising and coordinating the work of their local crime prevention committees and citizens will play the role of supervising and advising their local police.

Third, the integrated system inducts certain civil social control practices into the legal system and establishes them as part of formal law enforcement responsibility. There is, for example, a broad definition of crime in the criminal law. The principle of analogy is allowed in the criminal case process. Article 64 of the Criminal Code states that 'those who voluntarily surrender after committing a crime may be given a lesser punishment'. The Security Administration and Punishment Act formalises certain administrative punishments for the less serious offences against public order. Crime victims can make statements during a criminal trial both at the beginning and at the end. In corrections, punishment is combined with rehabilitation, work, and education programmes with a strong emphasis on repentance (Terrill 1999). The local police are responsible for working with those sentenced to probation and released on parole. They lead various community groups in reintegrating offenders into the community, which often include people from an offender's life such as his or her family, school, neighbourhood, and workplace (Zhang et al. 1996).

Fourth, it combines professional policing with community policing. Neither professional nor community policing alone can deal with the complexity and extent of crime. The police are therefore not only a prime element in law enforcement but also play a major role in the elaborate system of informal social control. Chinese police combine external surveillance and punishment authority with their tradition of community mutuality. 'Community mutuality' is a term that can be defined as the state of harmony, balance, and mutual dependence between police and community in their effort to attain social well-being (Jiao 1995). The Chinese police do not need to use arrest for lack of an alternative. Instead, police officers are able to solve problems by handing the matter over to the offender's family, school, workmate or sport club, and by facilitating reconciliation and restitution between offenders and victims. This comprehensive approach channels various social forces into dealing with the problems of security, crime, crime prevention, and public order. Structurally, this approach combines a formal police organisation with an informal neighbourhood police operation. Although the local Chinese police are part of a highly centralised national police system, they are an identifiable decentralised unit in the community, operating at the neighbourhood level (Jiao 2001). They are functionally and structurally integrated into the community.

Challenges to and Future Directions of the Integrated System

In the old days, a well-organised society, in the form of Danwei, had no need for a formal criminal justice system (Rojek 2001). Today, the Chinese criminal justice system faces many serious challenges and various complex and unstable situations. Emphasis on economic growth has increased mobility and produced a

floating population, which in turn is changing the traditional Chinese household registration system. The increased use of personal ID cards and residential permits has made it impossible to have a fully registered population (Potter 1994). The residential environment has also changed as more smaller-household Chinese families live in the new multistorey apartment complexes. Higher mobility and apartment living have produced greater anonymity and privacy but less natural surveillance (Lu & Miethe 2001).

Embrace of a market economy encourages individual wealth. Chinese people now put more focus on financial profits and economic gains (Lu & Miethe 2001). The gap between rich and poor has widened and economic inequality is felt by many Chinese people; today, one-third of the Chinese population live in poverty (Tan 1999). There have been enormous increases in crime, more than 20 per cent annually (Curran 1998). Profit-motivated crimes such as robbery, theft, and counterfeiting have skyrocketed (Press of Law Yearbook of China 1998). Some old problems are also creeping back to Chinese society in the form of criminal gangs, organised crime, drug trafficking, prostitution, illegal gambling, and the black economy. Due to China's rapid economic development, government corruption has also become common (Rojek 2001), creating great distrust among the public and threatening the political base of the communist government.

A substantial portion of juvenile delinquency has been committed by children born under China's mandatory one-child policy implemented since 1976. Lacking sisters and brothers, these children often receive excessive attention from at least four adults – parents and grandparents – so tend to grow up self-centred and selfish, with a value system opposite to that advocated by traditional Chinese ethicists. In their teenage years they therefore present a serious challenge to China's law enforcement agencies.

Economic and demographic changes have also brought about more cultural and political changes. Chinese people have become more individualistic, the government more transparent, and the media more open. These changes should be positive for the country in the long run, but in the short term they have created instability and uncertainty for China's social control system. Many urban neighbourhood communities are experiencing community disintegration, with less frequent interactions between neighbours and reduced participation in community affairs by residents (Lu 2001). Fewer people make use of neighbourhood mediation committees as they rely more on formal litigation in the courts to resolve their financial disputes (Rojek 2001). Community crime prevention programmes in some sectors have become less effective due to the lack of powerful organisations and insufficient financial support (Xu 1996). To a certain extent these developments reflect the erosion of the collective spirit and lack of voluntary participation in community policing in contemporary Chinese society.

Facing these changes and challenges, the Chinese criminal justice system has adopted a campaign-style anti-crime strategy with programmes such as 'Severe Strike', 'Hard Attack', and 'Crack Down'. The purpose of this strategy is to control the rising crime trend and fend off public outcry. It is based on the belief that swifter and more certain and severe punishment will deter crime and lower the crime rate. More police officers are put on patrol, more police raids are conducted, more criminal cases are expeditiously processed, and more punitive judicial measures are being used. This approach has obviously deviated from the integrated social control model and the highly publicised comprehensive strategy of social order (Feng 2001), as the crackdown aspect of the comprehensive strategy becomes more prominent and crime prevention less so.

The urgent demand to stem the rising tide of crime has forced the formal social control system to develop quick-fix programmes and produce fast results. But a long-term solution to crime and related social problems certainly cannot be expected with such campaign-style policing. China's criminal justice system and community crime prevention should continue to follow the integrated social control model. While remaining committed to developing their culture of professionalism, legalism and service to the public, the police should continue to emphasise their traditional philosophy of policing a communitarian society. The formal criminal justice system should continue to rely on Chinese people's psychological and emotional ties to the family, the work group and the society to achieve long and lasting safety and security in Chinese society.

Some research evidence suggests that even though China has entered a new economic and political era, the integrated model of social control is still attainable. Chinese residents tend to perceive informal control mechanisms as more effective. Despite the legalisation, professionalisation and formalisation movement in policing and the criminal justice system in China (Lu & Miethe 2001), informal social control continues to assume its traditional roles in local arenas such as mediation, order maintenance and welfare services (Dutton 1992). What is probably the case is that there has been more window dressing and rhetoric to placate the public than substantive changes in the formal system. Interviews with Chinese police officials also indicate that they continue to embrace traditional crime prevention activities as an effective means of crime control. They view severe punishment and stern crackdowns as unusual measures under unusual circumstances and see traditional crime prevention as a more viable long-term strategy.

In conclusion, China will continue to experience social instability because of the rapid changes in its economic, political, and legal systems. The social control system will continue to face various and complex challenges during this historical period of social transition. But China should not lose sight of the importance of maintaining a strong integrated social control system consistent with both its traditional moral values and the need to modernise its criminal justice system. In the transition to a more stable economic and political system, the Chinese criminal justice system should be committed to the rule of law, to moral governance, and to a clean government free of corruption. The rising crime problems will challenge the social control system and force it to deviate occasionally from the integrated model. But the long-term stability of Chinese society demands that the integrated model be used and followed as the guiding principle for social control practices in China.

References

- Feng, Shuliang 2001, 'Crime and Crime Control in A Changing China'. In Jianhong Liu, Lening Zhang, and Steven F. Messner (eds), *Crime and Social Control in a Changing China*, West Port CT: Greenwood Press, pp. 123–30
- Jiao, Allan Y. 1995, 'Community Policing and Community Mutuality: A Comparative Analysis of American and Chinese Police Reforms', *Police Studies* 18(3–4): 69–91
- Jiao, Allan Y. 2001, 'Police and Culture: A Comparison between China and the United States', *Police Quarterly* 4(2): 156–85
- Johnson, E.H. 1986, 'Neighborhood Police in the People's Republic of China', *Police Studies* 9: 8–12.
- Potter, G. 1994, 'Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China', *China Quarterly* 138: 325–58

- Rojek, Dean G. 2001, 'Chinese Social Control: From Shaming and Reintegration to "Getting Rich Is Glorious"'. In *Crime and Social Control in a Changing China*, West Port, CT: Greenwood Press, pp. 89–104
- Tan, Kwong-leung 1999, 'Social Development in China: Progress and Problems', *Journal of Contemporary Asia*, 29: 95–108
- Terrill, Richard J. 1999, *World Criminal Justice System: A Survey*, Cincinnati, OH: Anderson Publishing Company
- Xu, Weihua 1996, *An Initial Study on the Comprehensive Control of Social Order*, Beijing: People's Court Publishing House
- Zhang, L., D. Zhou, S.F. Messner, A.E. Liska, M.D. Krohn, J. Liu, & S. Lu 1996, 'Crime Prevention in a Communitarian Society: Bang-Jiao and Tiao-Jie in the People's Republic of China', *Justice Quarterly*, 13: 199–222

14

Crime Trends in Hong Kong: Another Look at the Safe City

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Introduction

This chapter describes reported crime trends in Hong Kong over the past 30 years and provides a broad picture of the crime problem in this unusual jurisdiction. The main focus is on describing and explaining the nature and prevalence of crime as recorded by law enforcement and reported by crime victims. Explanations of changes in crime are critically reviewed in conclusion. Consequently discussion of offender populations, the impact of illegal immigration, the use of imprisonment² and other sanctions on the nature and extent of crime are not addressed. These topics warrant fuller treatment than can be attempted in this account.

Even though crime can function as a barometer of a society's health, its prevention, detection and prosecution involves substantial public costs and provokes considerable public interest. The public's fear of crime and its perceived risks are influential in the response to crime. These responses may not reflect objective or actual risks because of distortions and manipulations of the crime experience by the media and sometimes the relevant agencies. Because the effectiveness of crime suppression and prevention are one fundamental measure of the capability of the state, the 'crime barometer' is a constructed and contested artefact of these crime control activities. Pertinent, if flawed, 'crime statistics' represent the 'facts' and serve as *the* measure of crime. The statistics in turn become phenomena in their own right and the source for data and speculation on changing patterns of crime. Nevertheless, apart from bureaucratic need, the state's interest in producing crime statistics is to promote the perception of public order, safety, and predictability of law, and to highlight its protective and essential role. It is generally acknowledged that societies that are stable with low crime, secure and safe environments and rational means of dealing with conflicts and 'rule'-breaking are advanced and 'civilised' societies. In rational economic terms, such 'rule of law' states generate sustainable wealth and attract rather than deter investment (World Bank 1997). Crime then is a threat to social order and development as well as a problem of individual pathology or risk. The level of investment by the state in 'law and order' reflects the political salience of public order and crime issues. Hong Kong

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² Hong Kong has one of the highest rates of imprisonment in the region at 163 per 100,000 only Singapore at 290, Thailand at 270 and, Mongolia at 253 exceed this level. Japan (40), Australia (100) Canada (114) and New Zealand (143 per 100,000) and most other Asian countries had much lower rates (APCCA 1998). Imprisonment rates have declined from levels above 200 per 100,000 during 1991–96 due to fluctuations in the numbers of illegal immigrants.

supports a relatively large public³ and private policing establishment. In the last two decades about 12 per cent of annual government expenditure was devoted to the maintenance of security, an outlay exceeded only by spending on health and education.

The fifth United Nations Criminal Justice System (UNCJS) survey ranked Hong Kong the sixth highest police to population rate at 640 police per 100 000 in 1994.⁴ The UNCJS survey reported an average rate for developing countries of 283 and 346 per 100 000 for industrialised countries (Newman 1999: 124). However, there is also a large private security and guarding industry in Hong Kong.⁵ This suggests very considerable investment in crime prevention and loss reduction by private enterprises and individuals. This large investment in public and private policing ranked Hong Kong as one of the top spenders on criminal justice, exceeding troubled jurisdictions such as Northern Ireland (Newman 1999: 139). The Hong Kong Police (HKP) and the Independent Commission of Corruption (ICAC) have regularly polled public opinion and the Hong Kong Crime Victimization Surveys (HKCVS) measure satisfaction with the services of police. These polls tend to show a high degree of public confidence in the police and the anti-corruption body, but the victim surveys show considerably less satisfaction with the police service, especially victims of violent crime.⁶ Law and order is usually moderately ranked among the concerns of Hong Kong people: housing, the economy (recently youth unemployment), immigration, environment, health, transport and education issues as well as relations with China dominate. Crime does, however, feature at the district level where public concerns about youth gangs, incivilities, vice, theft and vandalism are common. The Hong Kong Chinese language press also provides extensive and often vivid accounts of crime and criminal trials, but the effect on public opinion and attitudes towards crime has not been the subject of research in Hong Kong.⁷

The nature and prevalence of crime is open to several interpretations and may be 'read' differently depending on the sources relied upon and fundamental differences in assumptions about the causes of offending. The definition of 'crime' is plastic, and while police statistics are usually valid measures of police activity they represent a problematic picture of the nature and prevalence of crime. Direct surveys of the crime experience (victim surveys) help compensate for hidden and under-reported offences but they are also limited in scope and accuracy. It is these official measures of crime that we rely on to gauge changes in the risks of victimisation, threats to public order, public safety and public revenues. Distinctions in the type

³ About 53,000 officers were employed in 1999 as follows: HKP and Auxiliary 33,244; ICAC 1,287; Correctional Services 7,000; Customs and Excise 5,233; and Immigration 5,713. Thus there is 1 police officer for every 245 persons or 202 in Hong Kong if auxiliary police strength is included.

⁴ Hong Kong public policing levels are, however, well below Singapore at 1075 police per 100,000 and the Russian Federation (1225) but well above Denmark (238), Canada (249), Australia (275), and USA (300). The rate exceeds other Asian neighbours such as Malaysia (430), Philippines (155) and Japan with 207 police per 100,000 population.

⁵ In 1999 there were 722 registered security and guarding companies in Hong Kong employing approximately 160,000 registered personnel (personal communication Security and Guarding Services Industry Authority HKSAR). In comparison, according to Nalla and Hoffman (1996: cited in Newman 1999) there are about 200 security companies in Singapore who employ between 15, 000-20,000 private police a ratio of about 2 private police to every public police officer. Hong Kong's ratio is closer to 5 private police for every public police officer.

⁶ The 1998 HKCVS showed most victims thought the manner of police was pleasant or satisfactory although 9.4 per cent did not, especially victims of violence (17.7 per cent thought police were unpleasant). Indeed 25.3 per cent of victims of violence considered the police service 'poor' or 'very poor' while overall 13.6 per cent of the respondents considered the police in this light (see Hong Kong 1999:114).

⁷ The 1989 HKCVS asked about support for the abolition of the death penalty: about half (49.7 per cent) were against abolition, nearly a third (29.9 per cent) were in favour of abolition and one fifth (20.4 per cent) had no opinion. Younger people (less than 29 years old) were more in favour of abolition than older respondents (Hong Kong Census and Statistics 1990; Gaylord and Galligher 1994). The death penalty was abolished in 1991 although no execution had taken place since 1966.

of crimes or offences, their relative gravity and frequency also help to qualify the impact of crime. The characteristics of 'known offenders' and their propensity to re-offend are also highly relevant to these questions. To the extent to which these measures reflect (or 'index') the true level of crime and offending, it is possible to test and 'read' crime statistics as measures of the relative safety and orderliness of a jurisdiction. Interpretation of long-term trends in reported crime has been hampered by changes in recording practices, counting rules and the classification of offences and few assessments of crime trends in Hong Kong (but see Lo 1993; Dobinson 1994; Traver 1991, Gaylord & Traver 1994; Leung 1995) are available.⁸ By reading both recorded and random survey measures of crime this paper aims to describe the extent and nature of crime in Hong Kong and its recent trends.

Recorded Crime in Hong Kong

However, while there are difficulties reading police statistics, it is possible to gauge the approximate level of crime in Hong Kong. The general consensus is that Hong Kong has a comparatively low level of crime⁹ and indeed this fact is frequently stressed in tourism and other promotions of the city.¹⁰ The overall per capita rate (per 100 000) of reported crime was 1122 in 1999 and 1047 in 1998, a decline from the 1448 recorded in 1994 and well down on its peak of 1667 per 100 000 in 1982. Comparative burglary rates show that the burglary rate in Hong Kong was 223 per 100 000, and among advanced countries Japan's burglary rate of 200 is at similar level, but both have a rate well above Singapore at 30–44 burglaries per 100 000.¹¹ Burglary rates alone in Australia (2130), New Zealand (2451), England and Wales (2452) and Germany (2936) exceed the overall crime rate for Hong Kong.

Homicide is regarded a robust temporal measure of violent crime because it is much less subject to the vagaries of reporting, recording and definitional changes. The Hong Kong homicide rate of 1.23 per 100 000 population is significantly lower than nearby cities Macau (7.3), and Shenzhen (4.5) and supports the picture of the relatively low impact of crime.¹² Compared to other cities, Hong Kong's crime rate is low, especially for offences such as burglary, car theft and robbery, offences notable for their sensitivity to environmental

⁸ Minimal data is published on the criminal courts and there is limited information on the risks of recidivism. Although police records of reported crime are usually seen as the universe of 'known' crime, other agencies, notably Customs and Excise, Immigration and the ICAC also contribute to the level of known crime but are inconsistently included in measures of the 'overall' crime rate. In addition offences routinely categorized as 'minor' offences or misdemeanours are not listed as crime and often excluded in discussions of the overall crime rate.

⁹ Hong Kong crime victim survey results when compared with the UN international crime victim surveys also lend support to this proposition; personnel communication John van Kesteren, Department of Penal Law & Criminology, Leiden University.

¹⁰ As the Security Bureau's recent assessment of the 1999 official crime reports proclaims '(D)espite the economic downturn, Hong Kong remains one of the safest cities in the world with an overall crime rate lower than many other metropolitan cities' (HKSAR Security Bureau 1999: www.info.gov.hk/sb).

¹¹ The comparative data refers to 1994 (Mukherjee, Carcach and Higgins 1997: 77) except Singapore refers to 1995–1998 (Singapore 2000 Annual Report of the Singapore Police Force 1997–98; 1998–9: www.spinnet.gov.sg/). In the USA a rate of 1,041 burglaries per 100,000 accounts alone for nearly three-quarters of the rate of all crime in Hong Kong.

¹² All homicide rates cited are for 1996, except for Macau and Shenzhen that refer to 1997 and 1995 respectively. Large cities in the USA such as New York at 16.1 and Chicago 29.9 per 100,000 have high rates but differences with Hong Kong are less dramatic when compared with Singapore 0.83, Sydney 1.9, London 2.2, and Berlin 3.5 per 100,000.¹³ Note 39,000 'minor offences' comprising: 1,400 attempted assault; 15,600 attempted pick-pocketing, 4,300 common assault with no injury and; 17,700 involving objects dropped from a height without injury were excluded from the 1998 data and thus the overall rate compared to previous years is artificially reduced.

and situational determinants. As we shall see, this low rate of crime is largely supported by the results of the periodic crime victim surveys undertaken in Hong Kong, even though the surveys show much higher levels of crime than police records.

Table 14.1 Crimes recorded by HKP, 1989 and 1998

| | 1989 | | 1998 | |
|---|--------------|-------------|--------------|-------------|
| | N | % | N | % |
| Homicide | 107 | 0.13 | 66 | 0.09 |
| Rape and indecent assault | 1139 | 1.4 | 1304 | 1.8 |
| Assault police | 807 | 1.0 | 519 | 0.7 |
| Assault & wounding | 6986 | 8.5 | 7191 | 10.0 |
| Robbery | 6452 | 7.9 | 3224 | 4.5 |
| Criminal intimidation | 512 | 0.6 | 978 | 1.4 |
| Other violent crime | 1347 | 1.7 | 1400 | 1.9 |
| All violent | 17350 | 21.2 | 14682 | 20.4 |
| Detected | 8551 | (49.3) | 7643 | (52.1) |
| Burglary | 10907 | 13.3 | 9765 | 13.6 |
| Theft (snatching, pickpocket & from vehicles) | 4985 | 6.9 | 7601 | 9.3 |
| Shop theft | 5140 | 6.3 | 6032 | 8.4 |
| Motor vehicle theft | 4476 | 5.5 | 2449 | 3.4 |
| Other thefts | 12795 | 15.6 | 13727 | 19.1 |
| Fraud & forgery | 1783 | 2.2 | 384 | 0.5 |
| All property | 40086 | 49.0 | 39958 | 55.5 |
| Vice/brothel keeping | 298 | 0.4 | 655 | 0.9 |
| Abduction/procuration | 601 | 0.7 | 183 | 0.2 |
| Other against morality | 996 | 1.2 | 351 | 0.5 |
| Serious narcotics | 5040 | 6.2 | 2778 | 3.9 |
| Against lawful authority (escape, resist arrest, false report) | 3599 | 4.4 | 959 | 1.3 |
| Serious Immigration offences | 1741 | 2.1 | 2072 | 2.9 |
| Criminal damage | 4876 | 6.0 | 5883 | 8.2 |
| Disorder/fighting | 1195 | 1.4 | 1235 | 1.7 |
| Unlawful society | 1041 | 1.3 | 906 | 1.3 |
| Misc. crimes (lending, gambling, public order) | 1185 | 1.4 | 1276 | 1.8 |
| Preventive crime (loitering, weapons, pawning) | 3763 | 4.6 | 1019 | 1.4 |
| Other crime | 24308 | 29.2 | 17317 | 24.1 |
| All crime | 81808 | 100 | 71962 | 100 |
| Detected | 39170 | (47.9) | 33139 | (46.2) |
| All crime rate per 100 000 | 1438.7 | – | 1076.1 | – |

Table 14.1a Recorded ‘minor’ offences

| | 1989 | | 1998 | |
|------------------------------|--------------|------------|--------------|------------|
| | N | % | N | % |
| Minor narcotics (possession) | 3775 | 6.8 | 6719 | 14.9 |
| Prostitution related | 233 | 0.4 | 987 | 2.2 |
| Pornographic literature | – | – | 1314 | 2.9 |
| Hawking | 5294 | 9.5 | 6427 | 14.3 |
| Obstruction | 26040 | 46.9 | 10949 | 24.4 |
| Common Assault | – | – | 1469 | 3.3 |
| Minor immigration | – | – | 4050 | 9.0 |
| Drunk and disorderly | – | – | 329 | 0.7 |
| Other minor offences | 18751 | 33.8 | 11634 | 25.9 |
| All ‘minor’ offences | 55446 | 100 | 44952 | 100 |

In Table 14.1 the 1989 and 1998 recorded crime is described and the proportional contribution of different types of crime is shown. The most common crimes recorded by the HKP are burglary, wounding and assault, theft from persons, criminal damage, shop theft and ‘other’ thefts. This ‘snapshot’ shows robbery, serious narcotic offences, motor vehicle theft and fraud and forgery in proportional decline whereas thefts (other than burglary), indecent assault and criminal damage increased their contribution to overall crime. Approximately 20 per cent of reported crime involved violence but this relatively high proportion is reduced to about 12 per cent if minor offences are included in total crime. Table 14.1a shows offences that are classified ‘minor’ and if these are included the crime ‘rate’ is about 60 per cent greater than the selected offences used to calculate official levels of crime. Some of these offences (e.g. possession of narcotics, prostitution-related offences, common assault, drunkenness and disorderly conduct) are often included in the official measures of crime in other advanced jurisdictions. If ICAC reports of corruption are included, a further 3561 reported offences should be added to 1989 and 2162 to 1998.

Reported crimes led to the arrest of 43 684 persons in 1989, a rate of 852 per 100 000, and in 1998, 40 422 at 654 per 100 000 persons. In 1989 juveniles accounted for 17.0 per cent of all arrests but 14.8 per cent in 1998, while young persons (aged 16–20) accounted for 19.0 per cent in 1989 falling to 16.4 per cent in 1998. Rates of arrest for juveniles and young persons also fell from 962 to 800 per 100 000 for juveniles and from 1915 to 1511 per 100 000 young persons.

Victims of Crime and Reporting Behaviour

Estimations of the risk of criminal victimisation are provided by the six sweeps of the HKCVS conducted in 1978, 1981, 1986, 1989, 1994 and 1998. The last survey, conducted in January 1999, contacted 17 602 households and interviewed 49 942 persons 12 years and over from an eligible population of 5 674 600 persons and 2 million households (or 0.88% of persons). The survey scope is confined to crimes against the person or household crimes and excludes some serious crimes (such as corruption and commercial crime). The HKCVS, like other victim surveys, is subject to non-sampling error because it depends on the respondent’s memory, honesty and willingness to cooperate, but face-to-face interviews can help to reduce ambiguous and inconsistent responses about victimisation over the past year. Large samples tend to produce more

reliable estimates and the HKCVS sample is very large, but even so, for some rare crimes the sample may be too small for reliable estimation. Repeated surveys provide valuable guidance on trends and the impact of crime policies.

Overall, 352 200 crimes were estimated for 1998 and 175 400 persons experienced 192 700 criminal events at a rate of 3.4 per cent of persons for personal crime or 4.1 per cent if minor offences excluded in the 1998 count are included.¹³ A further 137 900 households experienced 159 500 crimes at a rate of 8.0 per cent for households in Hong Kong (see Table 14.2). This is one of the lowest rates of victimisation among the industrialised nations participating in the International Crime Victimisation Survey (ICVS; van Dijk & Kesteren 1996; Newman 1999). About 5 per cent (9100 persons) of the victims of personal crime experienced more than five victimisation events in 1998, showing that some segments of the population are at very high risk. Overall, 14.8 per cent (52 300) of the crimes reported to the survey involved crimes of violence, 39.9 per cent (140 400) theft from persons, and 45.3 per cent (159 500) crimes affecting households such as burglary and theft of cars. The general trends of personal crime victimisation show decreases in risks compared to previous sweeps in most age groups, except for a significant rise in 1998 reported by the youngest respondents. Overall, women are more at risk of personal theft and violence, but males have higher risks of violent offences in the 12–19 years age group and women in the 40–49 age group. Violent and personal crime victimisation peaks for either sex in the younger 12–19 age groups (see Hong Kong 1999: Chart 1 Appendix).

Table 14.2 Trends in HKCVS estimates of crime, 1978-1998

| | 1978 | 1981 | 1986 | 1989 | 1994 | 1998 |
|---------------------------------|------|------|------|------|------|------|
| All personal | | | | | | |
| % population | 2.19 | 3.92 | 4.02 | 2.43 | 3.32 | 3.40 |
| % report to police | 18.0 | 37.7 | 39.1 | 42.2 | 38.9 | 36.3 |
| Crimes of violence | | | | | | |
| % population | 0.98 | 0.98 | 0.95 | 0.67 | 1.05 | 0.92 |
| % report to police | 28.4 | 41.2 | 38.4 | 44.6 | 34.5 | 31.3 |
| Personal crimes of theft | | | | | | |
| % population | 1.20 | 2.94 | 3.01 | 1.75 | 2.27 | 2.47 |
| % report to police | 9.5 | 36.6 | 39.4 | 41.3 | 40.9 | 38.2 |
| All household crimes | | | | | | |
| % population | 4.65 | 8.64 | 7.37 | 6.12 | 9.34 | 7.98 |
| % report to police | 18.7 | 15.0 | 19.6 | 24.2 | 22.2 | 20.7 |

Source: Hong Kong 1999, Table 73 and Table 84: % of population over age 12 and therefore higher than rates per 100 000 total population used as the denominator in Tables 14.3–14.5: Rates for 1998 are depressed because of the exclusion of attempted and common assaults and other ‘minor’ offences (Note 10).

¹³ Note 39,000 ‘minor offences’ comprising: 1,400 attempted assault; 15,600 attempted pick-pocketing, 4,300 common assault with no injury and; 17,700 involving objects dropped from a height without injury were excluded from the 1998 data and thus the overall rate compared to previous years is artificially reduced.

The proportion of respondents who claim to have reported offences to the HKP appears to have peaked in the 1989 sweep, thereafter declining, especially for crimes of violence. The reporting rates for personal crimes of theft remain fairly stable at around two in five cases since the mandatory requirement to carry a universal identification card for all those over 15 was introduced in 1980. Household crime is not often reported, despite the incentive of insurance, but this crime includes a large number of criminal damage offences, attempted burglary, and other minor thefts where the victim suffered little or no loss. Generally in 1998, about 20 per cent of victims suffered no loss and 33.5 per cent losses of \$150 or less, but for household crimes the proportion resulting in losses of \$150 or less was higher at 42.2 per cent. For crimes of violence 80 per cent of victims sustained no injuries, but the majority of those victims (63%) who reported to the police sustained injury, which indicates the importance of evidence of an offence (e.g. injury) in reporting behaviour.

People fail to report victimisation for many reasons: about half (49.4%) reflect a 'no need to report' attitude and most (34.7%) don't report because they suffered little or no loss; over a quarter (28.1%) believed that 'nothing could be done' due to lack of evidence (15.3%) and that police could not or would not help; a further 14.6 per cent attributed not reporting to difficult procedures or they were 'too busy';¹⁴ and a further 7.4 per cent gave other reasons including reporting to someone else or fear of reprisal. Analysis of victim surveys show that the better-educated and higher income groups are more likely to report to police. There is also considerable variation in the levels of reporting depending on the gravity of the offence and the relationship of the victim to the offender. Respondents also may tend to over-report that they or a friend had contacted police or assume the victimisation was a only private matter (van Dijk & van Kesteren 1996; Alvazzi del Frate 1998). The importance of reporting behaviour in understanding the nature and prevalence of crime is borne out in Tables 14.3–14.5, which compare police-recorded crime rates with estimates from the HKCVS that reflect the experience (and perception) of criminal victimisation for selected offences.

Some of the select offences compared in Table 14.3 show contradictory trends and different periods of high and low rates depending on the source. Except for robbery, the data shows relatively low rates in 1978 that increase substantially in the 1980s and then decline or remain below peak levels, but higher than those found in 1978. Generally both measures indicate increases in wounding and assault, criminal damage and burglary, and declines in robbery. Trends in victim data show steep increases in sexual assaults, criminal intimidation, theft from vehicles, snatching and pickpocketing, whereas rates based on police figures show slight increases for sexual assault, stable rates for intimidation and theft from vehicles but declines in pickpocketing. Blackmail and fraud victim rates indicate increases since 1978, but police rates indicate significant declines.

¹⁴ A small number of respondents (2.5 per cent) said they did not report because they were 'too busy' with as many as 10 per cent of snatching victims giving this as the reason for not reporting.

Table 14.3 HKCVS and HKP trends for select offences

| | 1978 | 1981 | 1986 | 1989 | 1994 | 1998 |
|------------------------------------|------|------|------|------|------|------|
| Rape & indecent assault | | | | | | |
| HKCVS rate | 58 | 32 | 127 | 126 | 165 | 376 |
| Police rate | 34 | 33 | 33 | 41 | 39 | 39 |
| Wounding & assault | | | | | | |
| HKCVS rate | 48 | 83 | 225 | 121 | 162 | 181 |
| Police rate | 13 | 99 | 103 | 123 | 107 | 129 |
| Robbery | | | | | | |
| HKCVS rate | 661 | 633 | 284 | 229 | 295 | 200 |
| Police Rate | 123 | 160 | 122 | 114 | 103 | 48 |
| Blackmail | | | | | | |
| HKCVS rate | 17 | 17 | 71 | 33 | 99 | 25 |
| Police rate | 58 | 22 | 12 | 10 | 14 | 7 |
| Criminal intimidation | | | | | | |
| HKCVS rate | 48 | 35 | 145 | 102 | 233 | 251 |
| Police rate | 14 | 10 | 9 | 10 | 14 | 15 |
| Snatching | | | | | | |
| HKCVS rate | 78 | 146 | 172 | 111 | 198 | 129 |
| Police rate | 16 | 39 | 33 | 26 | 27 | 14 |
| Pickpocketing | | | | | | |
| HKCVS rate | 683 | 1795 | 1635 | 784 | 947 | 1142 |
| Police rate | 23 | 44 | 56 | 17 | 14 | 10 |
| Deception/Fppraud | | | | | | |
| HKCVS rate | 26 | 18 | 96 | 128 | 116 | 112 |
| Police rate | 60 | 85 | 33 | 31 | 53 | 41 |
| Burglary | | | | | | |
| HKCVS rate | 361 | 698 | 659 | 545 | 630 | 576 |
| Police rate | 118 | 206 | 216 | 192 | 223 | 146 |
| Theft from Vepphicle | | | | | | |
| HKCVS rate | 196 | 322 | 291 | 220 | 431 | 312 |
| Police rate | 45 | 93 | 94 | 91 | 63 | 42 |
| Criminal Dppamage | | | | | | |
| HKCVS rate | 35 | 74 | 94 | 141 | 408 | 320 |
| Police rate | 40 | 59 | 82 | 96 | 96 | 100 |

Note: Rates per 100 000 total population are rounded to the nearest whole number.

Trends in Violent and Property Crime

The definition and categorisation of violent crime has been subject to some changes in official recording practices over the period. 'Violent crime' is defined by police to include wounding, serious assault, assault police, criminal intimidation, armed and other robberies, blackmail, arson, homicide, kidnapping and aggravated burglary (the last three rare). These categories are largely mirrored in the HKCVS, which includes rape and indecent assault, wounding and assault, robbery, blackmail and criminal intimidation. Table 14.4 compares HKCVS estimates of violent crime and the numbers 'known to police' with police records. Both measures show that the number of crimes of violence increased, but rates based on police records indicate a reduced risk of violent crime. The recent decline in police records is contradicted by the HKCVS, which show that rates remain high. While police figures record a peak in 1989, the victim survey shows the estimate for that year to be the lowest recorded, although it was also the year when the HKCVS reported the highest proportion of victims willing to report to the police. While in 1989 police reports account for 55 per cent of the violence estimated by the HKCVS, they accounted for only 25 per cent of these offences in 1998.

Table 14.4 HKCVS and HKP trends in crimes of violence

| | 1978 | 1981 | 1986 | 1989 | 1994 | 1998 |
|------------------------------|-------|-------|-------|-------|-------|-------|
| HKCVS | 36900 | 40300 | 43400 | 31200 | 52600 | 58000 |
| % reported to police | 28.4 | 41.2 | 38.4 | 44.6 | 34.5 | 31.3 |
| Estimated number | 10480 | 16603 | 16665 | 13915 | 18147 | 18154 |
| Actual no. of reports to HKP | 12422 | 16094 | 14085 | 17350 | 17232 | 14682 |
| HKCVS rate | 802.7 | 781.9 | 785.6 | 548.7 | 867.8 | 867.3 |
| Police rate | 228.0 | 312.2 | 254.9 | 305.1 | 284.3 | 219.5 |

Note: The 1998 HKCVS published estimate 52 300 personal violence victimisations and the 95% confidence interval was between 46 700 and 57 800 and the rate total population is 782. This estimate excludes the 5700 attempted and 'common assaults' dropped from the estimate and these are included in order to ensure comparability with previous sweeps. Rates are lower than in Table 14.2 because the denominator is total population not the population over 12 years of age.

It is not possible to precisely compare overall property crimes recorded by police with all property or theft crimes estimated in the HKCVS, and consequently burglary is used as a substitute for trends in property crime in Table 14.5. Burglary is highly correlated with changes in police recorded property and overall crime (see Figure 14.1 below) and typically accounts for 25 per cent of all property crime – a proportion that

has remained fairly stable throughout the period. However, in 1992, 34 per cent of property offences were burglaries producing the peak rate (286 per 100 000) and the highest rate for all property crimes (829 per 100 000) since levels reached in 1983—1985 (888 per 100 000). HKCVS estimates show that burglary rates were highest in 1981 while police records show the rate was highest in 1994 both measures show significant declines in 1998 but overall increases since 1978. As with crimes of violence, victim reporting rates reached about 40 per cent in 1989 but unlike violent crime the rate has remained at this level (see Table 14.5).

Table 14.5 HKCVS and HKP trends in burglary

| | 1978 | 1981 | 1986 | 1989 | 1994 | 1998 |
|------------------------------|-------|-------|-------|-------|-------|-------|
| HKCVS | 16600 | 36000 | 36400 | 31000 | 38200 | 38500 |
| % report | 33.6 | 27.9 | 32.8 | 41.1 | 40.3 | 40.4 |
| Estimated reports | 5578 | 10044 | 11939 | 12741 | 15395 | 15600 |
| Actual no. of reports to HKP | 5412 | 10592 | 11942 | 10913 | 13509 | 9765 |
| HKCVS rate | 361.1 | 698.5 | 658.9 | 545.2 | 630.2 | 575.7 |
| Police rate | 117.7 | 205.5 | 216.2 | 191.9 | 222.9 | 146.1 |

Note: The 1998 HKCVS estimate calculates a 95% confidence interval of between 34 300 and 42 800 burglary victimisations and in 1994 the 95% confidence interval was estimated at 34 000 and 42 500 burglaries; rates per 100 000 total population.

Explaining Changes in Crime in Hong Kong

Hong Kong's low rate of crime is a useful source of civic pride, but why crime is low is also topic of considerable interest. Criminologists are equally concerned to understand the conditions that produce low risks of crime, as they are to understand those that engender high risks of crime (see Clinard 1978). Yet even if low levels of crime prevail we know that crime is not distributed equally or randomly: some citizens have much higher risks than others. Distinctions between acquisitive, violent and public order offences are also important and vary the risks. Temporal changes in the risk of crime are also relevant and reflect wider changes in the society, economy and regulatory environment. Leung (1995), Dobinson (1994) and Traver (1991) have noted the shifting trends in reported crime rates since the 1950s, especially the rise in the 1970s and 1980s and relative stability thereafter. However, these studies pre-date the subsequent falls in recorded

crime since 1995 (see Figure 14.1).¹⁵

Figure 14.1 shows that the overall violent crime reported to the HKP had increased from about 160 per 100 000 in 1970 to about 340 in 1990, declining in 1999 to 230, but this trend is contradicted by the HKCVS. The rate peaked at 410 in the mid-1970s but the highest rates according to the HKCVS occurred in the 1990s. Property crime (burglary, 'theft from person' and 'other theft') has also increased from about 360 per 100 000 in 1970 to 780 in 1990, but the rate peaked in the mid-1980s and also in 1992 at around 880, then declining to 560 per 100 000 in 1999. Estimates derived from the HKCVS, on the other hand, show significant increases in violent crime rates in the 1990s but burglary an uneven decline since 1981 (see Tables 14.4 and 14.5).

Several reasons have been suggested for the lower than expected levels of crime in a densely populated urban environment such as Hong Kong. The protective value of cultural and ethnic homogeneity combined with the preservation of traditional Confucianist values and extended kinship structures may be significant but may also be weakening. A compliant pro-social society and a government hostile to crime and corruption¹⁶ also favour control over crime even in popular cultures that romanticise Triads. The presence of a large police force with extensive powers of 'stop and search' and strict gun laws combined with compulsory identity cards¹⁷ also contribute to lower levels of crime. High levels of natural or informal surveillance, substantial investment in private policing and a relatively small enclosed jurisdiction are also highly advantageous. In situational crime prevention terms the urban structure of Hong Kong facilitates the presence of capable guardians and reduces the opportunity for crime (with notable exceptions in some of the older and poorer housing estates), despite the availability of attractive targets in such a wealthy city (see Felson 1998). These advantages may produce the displacement of crime to more vulnerable neighbours such as Shenzhen and Macau – jurisdictions with significantly more lethal violence and property crime.¹⁸

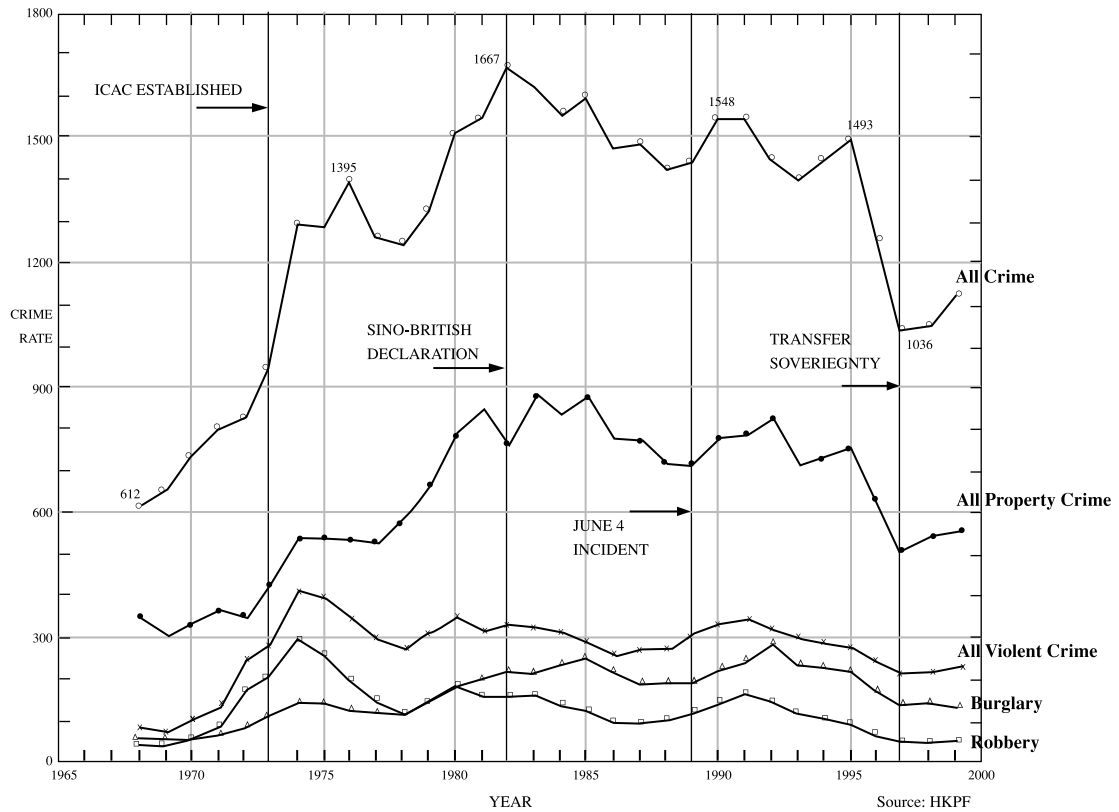
¹⁵ Leung, Dobinson and Traver, however, did not employ multivariate or correlation techniques to explore potential relationships and were dependent on a single descriptive measure (reported crime) to discuss these changes and their significance. Correlations, between the offence categories in Figure 1 and total crime are not unexpectedly highly significant with violent crime accounting for less of the variance than property crime: burglary alone accounted for 94 per cent of the variance and robbery only 36 per cent. A correlation between robbery and property and burglary offences, however, was not found and this is supported by the results of tests (including Spearman's Rank Order) on the HKCVS and HKP comparisons. HKCVS burglary and robbery rates are negatively correlated and HKP burglary and robbery rates are positively correlated, however, neither are significant HKCVS and HKP burglary rates are significantly correlated ($r = 0.85$) but robbery is not ($r = 0.69$). Robbery is, however, very significantly but negatively correlated with assault and wounding ($r = .99$), showing the decline in robbery has been associated with a concordant rise in assaults.

¹⁶ Selective enforcement policies are necessary but have variable impact on measurement. For example the suppression of counterfeit products and other copyright offences is a relatively recent phenomena and many other offences are conditional on law enforcement activity. Thus it is necessary to keep in mind that crime reports are not equivalent to a measure of general compliance with laws.

¹⁷ From 1980 it became compulsory to carry a universal identification card for all residents over the age of 15 and in 1987 the document was upgraded to make it more difficult to forge. Its introduction had any immediate impact on reporting behaviour, since loss or theft of the card and its replacement is mandatory. Citizens are required by law to carry the card and present it on police demand.

¹⁸ In 1998 Macau recorded a property crime rate of 1,340, a violent crime rate of 305 and an overall crime rate of 1,971 per 100,000 compared to Hong Kong's property crime rate of 543, violent crime 220 and overall rate of 1,047 per 100,000. Over the period 1981-1998 Macau's property crime rate was significantly higher than Hong Kong but since 1995 rates are more than twice that of Hong Kong while violent crime rates have been more or less equivalent until 1994; thereafter rates in Macau increased and rates fell in Hong Kong. The 1998 the homicide rate in Macau was 5.9 compared to 0.96 per 100,000 in Hong Kong and in 1999 it was 9.5 compared to 0.92 per 100,000 in Hong Kong. Detailed crime data is not available for Zhenshen but Tan and Xue (1997) report a very rapid rise in homicide from 1.38 in 1990 to 4.49 per 100,000 in 1995.

Figure 14.1 Police-recorded crime rates, 1968–1999



Low crime rates in the late 1950s and 1960s have also been attributed to the focus on public order by police during the colonial ‘garrison’ phase rather than crime suppression. In addition extensive corruption within the police and other government agencies during this period also reduced public confidence and willingness to report. Improvements in relations with China in the 1970s enabled policing priorities to shift to more conventional policing roles and together with the creation of the Fight Crime Committee (1973) and the ICAC (1974) combined to provide the basis for an improvement in the public response to crime. Anti-corruption measures and consensus policing styles were promoted. The symbiosis between police and triads was broken as the campaign against corruption succeeded but also led to increases in street and property crime and declines in levels of detection. Conscious efforts were made to decolonise and relegitimate policing, and the 1978 HKCVS reflects, among other measures, the effects of these changes in governance. Greater efforts at community involvement in crime prevention led to positive increases in the public’s willingness to report crime (Lethbridge 1985; Traver & Vagg 1991; Lo 1993; Gaylord & Traver 1995; Leung 1995). This greater willingness to report crime to police has been assumed to translate into higher rates of crime, but recent HKCVS data suggests some regression in the willingness of citizens to report.

Traver (1991) and Leung (1995) venture some explanation for the observed changes in recorded crime for 1957–90 and the causes of the rise in property and violent crime. The rises in police-recorded violent crime from the mid-1970s, however, were not sustained although the HKCVS suggests this may be partially the

result of a decreased willingness on the part of among victims of violence to report. Traver, drawing on strain theories, applies the notion of relative deprivation to account for the continued rise in property crime in the 1970s and 1980s, despite substantial improvement in the general standard of living. He explains the continued increases in property crime as a shift from 'need' to 'greed' and the stability of crime rates (either violent or property) in the 1980s and 1990s as arising from better distribution of the benefits of economic growth in the 1980s and early 1990s. Since the 1990s, however, both HKP recorded property and violent crime have decreased, although the HKCVS show neither as having declined (see Table 14.2). Traver suggests that the effects of industrialisation and urbanisation weaken social control, especially informal mechanisms, and are partly responsible for the increases in known crime. The very low rates of recorded crime observed in the period 1957–64 do not generally reflect pre-war or early postwar trends when rates for both property and violent crime were higher.¹⁹ The process of industrialisation begun before the war was given impetus by the Korean conflict, and so increases in crime are not fully consistent with the timing of socio-economic development.

Leung (1995) draws on theories of modernisation and development to explain the rise from the 1970s onwards and the apparent steady nature of reported criminal activity during the late 1980s and early 1990s.²⁰ He is troubled to explain why crime was low during the worst phases of industrialisation but became higher after the 'most challenging and disruptive period of its economic development' (Leung 1995: 110). This assumes that industrialisation produces more crime and that the worst effects of economic restructuring occurred in the 1950s and 1960s, but significant restructuring also occurred in the 1980s as capital and industry shifted to less costly operations in China, and it can be argued that this was at least as disruptive. This apparent paradox is resolved by saying that the official record was greatly depressed in the 1950s and 1960s by the nature of the colonial (corrupt) policing institutions relationship to the community. The rapid localisation and reorientation of police from 'force to service' improved public confidence and thus the increases in crime from the 1970s onwards are attributed to relegitimation of government via policing strategies.

Leung (1995: 110) argues that before the 1970s government was preoccupied with controlling political opposition and the police's connection with the triads had the effect of masking, and hence artificially deflating, the extent of criminal activity in society. 'Since that time... the police have had to adopt more stringent measures against criminal activities in order to boost their image and enhance their legitimacy in a context of mounting public discontent with civil service corruption. The public's confidence in the police subsequently increased, and crime reporting increased with it. The higher crime rates since the mid-1970s are to a significant extent a reflection of the public's greater willingness to report crime.'

However, data from the HKCVS sheds doubt on arguments that depend on shifts in the willingness of Hong Kong citizens to report crime. Substantial increases in the willingness to report crime appear to have occurred between 1979 and 1981 but are mostly limited to violent or personal theft crimes. Police-recorded

¹⁹ Rates for robbery were between 2.5-4.8 and burglary 40-55 per 100,000 in the period 1957-1964 (Dobinson 1994:20).

²⁰ Leung relies on Clifford's (1973) African examples to argue that modernisation generates wealth and thus greater opportunities for theft causing crime rates to increase in developing countries. Historical studies of European crime suggest that urbanisation and development reduces violent crime but enhance acquisitive crimes (Johnson and Monkkonen 1996), however, despite numerous studies no clear conclusion has been reached on the effects of socio-economic development on crime (Alvazzi del Frate 1998, Newman 1999).

violent crime rates actually peaked in 1974 before increases in the willingness to report violent crime are observed. Indeed *declines* in the willingness to report household crime, especially burglary, are observed during this period and increases in the reporting of burglary are not noted until 1989. In addition, the HKCVS figures indicate that real increases in crime occurred irrespective of changes in reporting rates.

These studies rely on the theory that recorded rises in property crime are a product of strain to explain the presumed effects of modernisation, but other explanations are possible. Changes in the proportions of the relevant high-risk delinquency age group 15–24 may be crucial. The proportion of the total population in this key group has fallen substantially from 22.7 per cent of the total population in 1981 to 13.3 per cent in 1998. During the 1960s and 1970s this age cohort grew from 11.8 per cent of the population in 1961 to 19.4 per cent in 1971 but began to decrease in the late 1980s as the postwar baby boom eased. In other words, much of the ‘rise’ and ‘fall’ in crime rates was sympathetic with changing demographics, in particular the increasing proportion of high-risk young males in the population in the 1970s and 1980s and the subsequent decline in the proportion of young males from the late 1980s onwards. This is reflected in the per capita decline in juvenile convictions that have fallen from about 98 in 1981 to about 30 per 100 000 in the late 1990s. Some of the decline in juvenile conviction rates can be attributed to the expansion of young offender diversion schemes, particularly from the mid-1980s onwards.

Conclusion

By comparing the two leading sources of information on crime trends, differences have emerged that challenge assumptions about the effect of economic growth on crime in Hong Kong. Hong Kong crime shows low dependence on the level of economic development and effects of modernisation, but fundamental shifts and shocks in Hong Kong’s economy, demography and social development have occurred in complex ways. The data does not support a linear relationship between crime and economic growth and at its peak crime remained well below most comparable societies.

Previous research has given ample attention to the influence of the role of government and the policing institution on crime rates, to the extent that these are seen as decisive in constructing them. The public order focus attributed to police in the pre-reform period was more episodic than dominant and much less of a distraction to crime control than other researchers have supposed. Despite its imperial origins, policing in Hong Kong followed the example of the British constabulary in stressing deference to the rule of law, the vigorous suppression of serious crime, and the preference for prevention and peace-keeping over proactive crime control. This ideology was influential and widely endorsed within the policing institution, particularly as the professionalism and localisation of police in Hong Kong begun in the 1930s continued more vigorously after the war.²¹ Although this professionalism appears at odds with the systemic corruption and associations with organised crime evident in the 1960s, it is not clear that this amounted to a symbiotic relationship and that it suppressed reported crime to the extent that is relied upon. It is also noteworthy that efforts to eliminate corruption in the Royal Hong Kong Police in the early 1970s coincided with dramatic

²¹ Local Cantonese comprised 76.5 per cent of the HKP in 1946/47 up from the 41 per cent prior to the Japanese occupation but under-represented in the Officer (inspector and above) ranks. By 1961/62 Cantonese comprised 84.7 per cent of the HKP but remained under-represented in the Officer grades, however, by 1992 the HKP was 96.7 per cent Cantonese and the majority of Officers were Cantonese (Gaylord and Traver 1995).

efforts to reform New Scotland Yard, similarly racked by systemic corruption and scandal (Cox et al. 1977) The Hong Kong Police have since the war developed into a quasi-independent agency in the tradition of the Anglo-Saxon model of policing, albeit configured as a gendarmerie. This serves to limit police manipulation of crime trends for partisan purposes and has contributed significantly to both stability in a rapidly changing society and the orderly transfer of sovereignty. This ethos may change but it is likely that crime (statistics) will remain the focus of contested interpretations of Hong Kong's prospects for stability and a key test of the success of 'one country two systems'.

We may conclude from this brief examination of crime trends that Hong Kong, in common with rapidly developing economies, periodically experienced relatively sharp 'shock' increases in crime but has sustained a low risk of crime over much of the postwar period. The fluctuations in police-recorded crime are less significant when read with the HKCVS. Thus theorising based on partial data is a problem that can only be overcome by a thorough examination of as many sources as possible. While still too little is known about the nature of crime or offenders and the relative impact of cultural, situational and institutional factors on crime trends, it is possible to list the factors that appear to have contributed to low levels of crime in postwar Hong Kong. Among these, an environment highly favourable to natural and informal surveillance, cultural homogeneity and high levels of public and private investment in policing appear significant. A challenge remains in unravelling which of these factors and others are crucial in protecting modern cities and societies from the costs of crime.

References

- Alvazzi del Frate, A. 1998, 'Preventing Crime: citizens' experience across the world', *Issues and Reports* No. 9, Rome: UNICRI.
- Asia Pacific Conference of Correctional Administrators 1999, 'Regional Rates of Imprisonment', website www.apcca.org/.
- Carvalho, M.A. 1999, *Forças de Seguranca de Macau*, Macau: Hung Heng Ltd.
- Clifford, W. 1973, *Development and Crime*, Chichester: Barry Rose.
- Clinard, M. 1978, *Cities with Little Crime*, Cambridge University Press.
- Commissioner of Police 1947–98, *Annual Report*, Hong Kong: Government Printer.
- Cox, B., J. Shirley and M. Short 1977, *The Fall of Scotland Yard*, Harmondsworth: Penguin.
- Dobinson, I. 1994, 'The Measurement of Crime'. In M.S. Gaylard and H. Traver (eds), *Introduction to The Hong Kong Criminal Justice System*, Hong Kong University Press.
- Gaylard, M.S., and H. Traver 1994, *Introduction to The Hong Kong Criminal Justice System*, Hong Kong University Press.
- Felson, M. 1998 *Crime and Everyday Life: Insights and Implications for Society*, Thousand Oaks CA: Pine Forge Press.
- Gaylord, M.S., and J.F. Galligher 1994, 'Death Penalty Politics and Symbolic Law in Hong Kong', *International Journal of the Sociology of Law*, 22: 19–37.
- Gaylord, M.S., and H. Traver 1995, 'Colonial policing and the Demise of British Rule in Hong Kong', *International Journal of the Sociology of Law*, 23: 23–43.
- Hong Kong 1999, *Crime and Its Victims in Hong Kong 1998*, Fight Crime Committee and Census and Statistics Department: Hong Kong SAR, PRC.
- Hong Kong 1999a, *Hong Kong Annual Digest of Statistics 1999*, Census and Statistics Department, Hong Kong SAR, PRC.

- Hong Kong 1995, *Crime and Its Victims in Hong Kong 1994*, Hong Kong: Fight Crime Committee and Census and Statistics Department.
- Hong Kong 1990, *Crime and Its Victims in Hong Kong 1989*, Hong Kong: Fight Crime Committee and Census and Statistics Department.
- Hong Kong 1987, *Crime and Its Victims in Hong Kong 1986*, Hong Kong: Fight Crime Committee and Census and Statistics Department.
- Hong Kong 1982, *Crime and Its Victims in Hong Kong 1981*, Hong Kong: Fight Crime Committee and Census and Statistics Department.
- Hong Kong 1979, *Crime and Its Victims in Hong Kong 1978*, Hong Kong: Fight Crime Committee and Census and Statistics Department.
- Johnson, E.A., and E.H. Monkkonen 1996, *The Civilisation of Crime*, Chicago: University of Illinois Press.
- Lethbridge, H.J. 1985, *Hard Graft in Hong Kong: Scandal, Corruption and the ICAC*, Hong Kong: Oxford University Press.
- Leung B.K.P. 1995, *Perspectives on Hong Kong Society*, Hong Kong: Oxford University Press.
- Lo Tit Wing 1993, *Corruption and Politics in Hong Kong and China*, Milton Keynes: Open University Press.
- Mukerjee, S., C. Carcach and K. Higgins 1997, *A Statistical Profile of Crime in Australia*, Canberra: Australian Institute of Criminology, Research and Public Policy Series.
- Newman, G. (ed.) 1999, *Global Report on Crime and Justice*, United Nations Office of Drug Control and Crime Prevention, New York: Oxford University Press.
- Tan, Xiuzheng, and Xue Kexuan 1997, 'The thinking concerning the strengthening of police force under the new situation', *Shenzhen Political and Legal Yearbook 1997*, Shenzhen SAZ.
- Traver, H. 1991, 'Crime Trends'. In H. Traver & J. Vagg (eds), *Crime and Justice in Hong Kong*, Hong Kong: Oxford University Press.
- van Dijk, J. M., and J. N. van Kesteren 1996, 'The prevalence and perceived risk seriousness of victimisation by crime; some results of the international crime victim survey', *European Journal of Crime, Criminal Law and Criminal Justice*, January: 48–71.
- World Bank 1997, *World Development Report*, New York: Oxford University Press.

PART IV
DRUGS AND CRIME

15

The Method of Banning Drugs at the Beginning of the New Century

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Since the beginning of the 18th century, drug abuse, especially opium addiction, has been a great disaster for the Chinese people. Historically, the Opium War saturated old China with drugs. China was invaded by the West and became a semi-feudal and semi-colonial society where Chinese people were plunged into misery and China lost its dignity as a nation. At the same time, Chinese people fought against the drug problem. The famous story of Sir Lin Zexu burning opium in Humen shook the whole world.

At the beginning of the founding of the People's Republic of China in 1949, the drug problem left by the old China was still serious. There were 1 million hectares of drug plantations and 20 million drug abusers. More than 300 000 people were engaged in the criminal trading of narcotics. Under the leadership of the central government, it took only three years to ban opium and oblige over 2 million abusers to kick the habit. On the whole the PRC cleaned up the drug problem, creating a wonder in the world in the 1950s.

By the start of the 1980s narcotics crime had returned because during China's open-door policy and economic reforms, many foreign drug smugglers began trading narcotics in China. Drug abuse became more and more serious. Could China create another wonder in terms of drug control? This was of concern not only to Chinese but also to international society.

In this chapter I would like to explore some of the chief government measures to resolve the current drug problem.

Drug Addiction Is Becoming More Serious

Of all the social and economic factors that threaten the survival of mankind – poverty, environmental deterioration, the growing threat of AIDS – nothing is more lethal or socially more damaging than drugs or drug-related crime. According to the statistics, worldwide there are 1.4 billion people who take marijuana, 13 million who take cocaine, 8.6 million who take heroin and 30 million who abuse stimulants. At this time, about 100 000 people die every year as a result of taking narcotics and 10 million people lose their labour ability. The total turnover of the narcotics trade worldwide amounts to more than US\$ 500 billion, which equates to 8 per cent of the world's trade.

Affected by international trends in narcotics, the narcotics trade has become vastly more serious in China. At the beginning of the 1980s, during the PRC's open-door policy and economic reforms, foreign drug smugglers began to smuggle narcotics through our country. Chinese criminals colluded with foreign drug

criminals and obtained huge profits from the trade. Several new methods of drug trafficking have been adopted:

- using mobile phones to control the drug trade outside China
- hiring offenders inside China
- decreasing currency exchange
- using post offices to mail drugs
- hiding drugs in other goods or on people's bodies.

The drug traffickers have built up a complete sales structure and a streamlined modern system closely linked to organised and international crime.

The number of drug abusers rises drastically

Today, China is not only a country of drug traffickers but also of drug users. Many different substances are traded throughout China and a drug consumption market has been formed. The social problems caused by narcotics are becoming more and more serious. By the end of 1999, 681 000 drug addicts had been registered in the whole country, which was 0.54 per 10 000 population. The number of counties (cities or districts) that were affected to drug crime amounted to 2081, 72.5 per cent of the total number in China. Drug users mainly take heroin, at clubs in cities of medium size, but the use MDMA and ice is also serious.

Expansion of drug addiction and trafficking has caused serious harm

In 1999, adolescents accounted for a large proportion of drug addicts in China. Among 681 000 registered drug addicts, those under 35 years old accounted for 79.2 per cent. The biggest harm of drug addiction does not lie in exhausting people's money but in damaging the physical and mental health of youth. That is to say, it damages the future and hope of human beings.

Drugs do harm to people's health and spread all kinds of disease by the sharing of injecting needles. According to the statistics of the medical health ministry, 17 302 AIDS victims (HIV-positive) were found in China, 72.4 per cent caused by drug injecting. Drug addiction can also cause all kinds of skin diseases and many sexually transmissible diseases.

Drug addiction is a key factor in causing crime and public disorder. In order to get drugs, the drug smugglers often run the risk of breaking laws and regulations. According to the statistics of ten provinces (cities), in 1999 there were 26 000 criminal cases of drug-related crime recorded by the police in China, including homicide, burglary, robbery, fraud and assault. There were 38 000 public security cases (against the Public Security Standards that occurred at the same time. Drug addiction has become a key factor affecting social stability in both cities and rural areas.

Rehabilitation, assistance and education are the only ways to control drugs

Drug addiction is a worldwide disaster. Different countries have different attitudes towards the problem. Drug abuse is an illegal behaviour according to Chinese law, but drug users are different from other criminals. Although their subsequent behaviour is shameful, many addicts start using only because their curiosity has been aroused. Even though drug addiction is illegal, a more sensible policy would be to see them as victims rather than merely as offenders who should be punished.

We should help them get rid of their addiction in order to save them and help them reintegrate into society. They are patients who need help as much as those who are sick. Almost every drug user wants to get out of his or her addiction. Only the community can save them and help them to start a new life. There are comprehensive ways involving family, unit, school and community that can help them get out of the nightmare. Society should not discriminate against them or treat them as outcasts. If they could give up drug addiction and reintegrate into society, it would be good for their families and the whole society. For its part, the central government has taken strong measures and made great efforts to solve the drug problem.

Bringing rehabilitation into the legal orbit

According to the 'Decision on Drug Prohibition' issued by the Standing Committee of the National People's Congress on 28 October 1990, 'in order to protect people's mental and physical health, keep normal social order and ensure smooth progress in socialist construction, drug taking and drug injecting are strictly banned'. That is to say, in our country, drug taking is an illegal activity. According to the regulation of the Decision, the offenders in drug taking or drug injecting are subject to detention of not more than 15 days and/or subject to a fine up to RMB 2000. At the same time, drug-taking equipment is confiscated.

Drug abusers should be punished according to the regulation above, and they should also be sent to drug rehabilitation centres, forced to get rid of their addiction and at the same time participate in a re-education programme. Reoffenders should be rehabilitated in a centre of re-education through labour. On 14 March 1997, the Eighth Standing Committee of the NPC adopted the 'Amended Criminal Law of the People's Republic of China', a new Criminal Law issued in China.

The new Criminal Law adopted a reasonable stance on the decision on drug enforcement. The regulations on drug-related crimes have been amended and augmented. The Supreme Court and the Supreme Procurator issued new regulations on punishment of drug-related crimes and made their own interpretation in implementing new Criminal Law and punishing the drug criminals. Carrying out the new Criminal Law is a sign that the legislation for punishing drug criminals in China is becoming more and more mature. Meanwhile the new Criminal Law provides strong legal sanction for the work of striking at drug-related crimes.

In January 1995, the state council issued the 'Regulation of Compulsory Rehabilitation Management', in the second part of which the term 'compulsory rehabilitation' is defined. Compulsory rehabilitation means that 'the government carries out medical treatment, psychological treatment, legal education and ethical education to drug addicts by administrative measures'. The 19 items stipulate that after drug addicts are released from the rehabilitation centre, they should not be discriminated against in entry to education or employment.

Drug enforcement activities

Crime surveys can establish a sure foundation for rehabilitation. Most local governments in China regard the survey of drug crime as an important basic tool and set up surveys and register groups which comprise leaders from the police force, judicial civil administration, public health, and the propaganda or education department. Special work teams have been established in every village, and in towns and cities in every street. These operate from what are called 'comprehensive control offices'. This work team surveys the number of drug addicts in different districts by looking up the files, interviewing every addict and surveying

the whole local population of addicts. Every addict is registered at the same time; his or her personal file is made available to every member of the team. Most drug abusers have been put into the computer system in the local district. In this way, local government can gain an overall view of the extent of the problem in their area.

Rehabilitation Programmes

In China, compulsory rehabilitation and voluntary rehabilitation have been combined into one system. Every drug abuser should be compelled to be re-educated.

Compulsory rehabilitation

Compulsory rehabilitation is the main method of breaking drug addiction. The liberty of addicts is limited for a specified time to force them to get rid of their addictive behaviour. Mental treatment can assist them in giving up bad habits so that they can get over the past and start a new, normal life again. Compulsory rehabilitation is an effective method based on the success of previous experience in China. It works by removing the addicts from the availability of drugs, in order to save them and their families. The emphasis is on assisting the addicts to achieve a happy life rather than punishing them.

In order to strengthen compulsory rehabilitation, the central government has put a lot of manpower and funding into the rehabilitation programme and has made some notable achievements. The Kunming model is a good example. Kunming Rehabilitation Station developed a successful system of scientific civilised management. Therefore it became the 'window of China's rehabilitation'. The station was praised by more than 5000 visitors, 80 government leaders and 500 journalists. It was also regarded as 'the best station in the world'. It has adopted five good methods of management:

- closed management
- militarised life
- education as in school
- recovery as in hospital
- rehabilitation by labour

Today 746 rehabilitation stations have adopted the Kunming model in the whole country. In this way, China's government has helped 91 000 drug addicts restore their health from 1991 to 1999.

Voluntary rehabilitation

Voluntary rehabilitation is also an effective measure and can lighten the pressure of drug enforcement to some extent. When they come into a rehabilitation station, drug addicts should sign two documents: a Voluntary Rehabilitation Responsible Contract and a Guarantee Paper of the family and working unit. In the rehabilitation station, drug abusers follow a special working timetable. They do physical exercise and receive legal and moral education. Voluntary rehabilitation can take place at a rehabilitation station or in the public health medical institutions. There are 129 medical rehabilitation institutions all over China at this moment.

Rehabilitation through labour

Rehabilitation through labour is another good way of combating the problem of drug addiction. Our principle is that reoffenders must be forced to work. There are 58 Labor Rehabilitation Stations in different regions in China catering for 120 000 addicts. Here drug addicts come to realise that getting rid of their addiction is a long and painful process of rescuing themselves from their emptiness, getting rid of their wrong thoughts, rectifying their bad habits and creating the conditions for their successful reintegration into society.

Developing scientific rehabilitation

The only way for drug abusers to reintegrate into society is through the scientific management of rehabilitation. Every compulsory rehabilitation station uses comprehensive methods of re-education, medical treatment, and psychological treatment.

The Police and Justice departments devised a series of regulations on the management of compulsory rehabilitation stations. They established state drug addiction study centres, drug abuse supervisor centres and state narcotics laboratories. The government coordinated different science study departments that work together to explore scientific rehabilitation methods and medicine. The medical units and hospitals cooperate with the rehabilitation departments closely to launch venereal disease and AIDS-prevention programmes. In some rehabilitation stations AIDS supervising points and examining systems have been established.

‘No Drug Community’ Activities and Consolidating the Achievement of Drug Prohibition

Drug prohibition is becoming a worldwide issue. In China in recent years better solutions are being sought to reduce the demand for drugs and encourage people to abstain from drug abuse. A new approach is the ‘no drug community’ programmes which are being carried out in, for example, Inner Mongolia, Yunnan, Guangxi and Zhuizhou. The aim is to strengthen and educate the whole society to adopt a comprehensive approach which can arise only from grassroots community action. Establishing these ‘no drug community’ activities initiates cooperation between the special government departments that are in charge of drug prohibition. The movement promises to address the difficulty of breaking the addiction of drug users. These activities can also assist in the job of AIDS instruction for at risk users and the monitoring of drug abuse in society. Community involvement can accelerate these ‘two contributions’ of the programme because community organisations should pay special attention to a holistic approach to education while law enforcement organisations apply effort to combat drug use. At the same time, it is good for building collaboration in the work of drug management. So many ‘no drug community’ programmes have been created in one place or another that it is possible to believe that, step by step – by city, by district, by province – we can in the end achieve real drug management over the whole country. ‘No drug community’ activities have created a new and unique way of prohibiting drugs in China in the prevailing atmosphere of economic reform and openness to a market economy. It is not enough merely to ban drugs, as was done at the beginning of new China in 1949. The more subtle ‘no drug community’ activities approach is the trend for the future.

It is important to reinforce what drug prohibition has been achieved and prevent a further outbreak of drug use. The city of Bao Tou in Inner Mongolia is a model of 'no drug community' activity. This city was once a serious drug abuse area, with more than 3770 drug users out of a population of 2.2 million. Since the 'no drug community' movement was introduced, 1436 programmes have been set up in this city, which covers 90.2 per cent of the total community. More than 700 people have given up drug abuse for more than three years. Bao Tou is achieving its aim of being a 'no drug city'. In 1999, the National Drug Prohibiting Committee introduced the experiences of BaoTou to eight other cities all over China and launched the 'no drug community' movement throughout the whole country.

The Chinese government has taken a firm and consistent stand against drug abuse. Illegal opium cultivation, drug manufacturing, trafficking, distribution, possession and abuse are all designated as criminal activities. The Chinese government and people have an unshakable resolve to get drugs under control. Sacrifices have been made in recent years in carrying out this resolve: more than 40 policemen, some of them armed, have lost their lives in drug policing operations.

The Chinese government attaches great importance to tightening up international cooperation in drug enforcement. They will continue to pay close attention to and participate actively in the specialised activities of international drug enforcement.

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Responding to Illegal Drug Offending

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Of all types of offending, drug offending is the most difficult and complex: a criminal, health and social welfare issue with international, national and community implications; an offence that crosses jurisdictional boundaries and one of concern to sectors within government that traditionally have not worked collaboratively. Illegal drug offending is an economic problem of huge but largely unquantified dimensions, and an offence linked to other categories of criminal offending. It is an offence that is multilayered, involving a range of activities from growing and manufacture to packaging, transportation, importation, distribution and use. And finally, it is an offence that may be explained as a human behaviour issue. Throughout history and across many cultures humans have been using mind-altering drugs.

In other classes of criminal offending there is a clear criminal intent inherent in the offence that can be dealt with in a straightforward manner by the legal system. This is of course also true of the manufacture, import and distribution of drugs and for those whose drug using is just another facet of an already criminal lifestyle. For other individuals, however, use of illegal drugs may be a means of escape from health and social problems. For these latter offenders it is their drug use that may cause them to enter the criminal justice system in the first place.

In this chapter I will argue that for lower-level drug users (selling and using) it is not productive to respond solely, or primarily, in a law enforcement way. I will discuss some of the harms that result from traditional law enforcement responses and will argue that, while difficult to achieve, a coordinated, complementary, cross-sector approach to illegal drug users and low-level sellers is required.

Research

I draw mostly on data collected in a large survey in the State of Victoria in Australia that was conducted by the Macfarlane Burnet Centre for Medical Research and funded by the Health Department. It is one of the few studies to examine illegal drugs from a combined criminological and health perspective. I was the criminological researcher and my colleague Gary Reid was the health epidemiologist. The research was overseen by Dr Nick Crofts who has done extensive international work in the area of HIV/AIDS. The study's purpose was to identify issues and understandings of the illegal drug problem in Melbourne, in the context of different ethnic communities. We also sought the opinions of health and justice professionals and examined available health and justice statistics.

In this very large 18-month-long study, we examined 332 international and national justice and health reports, and 49 Australian justice and health databases. We interviewed over 60 justice and health key informants and we conducted a number of public consultations and community-based focus group discussions. (A full report can be found at <http://www.dhs.vic.gov.au/phd/0008087>.) The main drugs of concern in Victoria are cannabis, heroin and amphetamines.

Victoria is one of the six states and two territories that make up Australia. Australia is an island continent about the size of Europe with a population of 19.4 million (Australian Bureau of Statistics 2002). Victoria is about the size of the United Kingdom and has a population of 4.8 million people, most of who live in the capital city of Melbourne. Victoria is second in population size to the state of New South Wales with a population of 6.5 million people, most of whom live in Sydney. Victoria is a diverse mix of people from 208 countries, speaking 151 languages (Multicultural Affairs Unit 1997).

Why Do People Use Illegal Drugs?

Why do people start and sometimes continue using illegal drugs? Is it because they are inherently bad? We asked this question of a sample of professionals in the criminal justice sector in Sydney, Canberra and Melbourne. The key informants were senior officials and officers from the judiciary, prisons, juvenile justice sector, state and federal police officers, federal criminal intelligence personnel, officers in charge of inter-agency task forces, and senior academics. Their views were remarkably consistent, although they themselves thought their views were not widely held by others in their field.

The reasons for drug use were considered to be complicated and interrelated:

- As an escape from realities and pressures of life and the tensions of adolescence. Illegal drugs were thought to be used by some former refugees as a relief from the memories of war, torture and loss of loved ones – in other words a coping mechanism.
- Peer pressure was also considered a strong factor: ‘children don’t take drugs to spite their parents, they do it to please their friends... to feel part of the group’; ‘there is the status and notoriety factor involved also’.
- Lack of parenting skills and supervision and a cultural and generational gap.
- New migrants are being initially placed in housing commission areas where illegal drugs are more common and it is more difficult to supervise the young people.
- It was thought that illegal drugs were being used to manage (usually undiagnosed) mental disorders and other illnesses. It was thought that illegal drugs were an easier and sometimes cheaper way to treat pain and mental problems than treatment from the health system or legal drugs.
- Informants also believed that some young people were being forced to sell drugs by moneylenders and extortionists to help keep the family safe and to pay their parents’ debts.

Academics in the United States have pointed out that drug use could just as easily have been identified as one of the outcomes of economic and social deprivation instead of the actions of the morally depraved, as commonly portrayed. Illegal drugs are an all-purpose scapegoat with which to blame an array of social problems on the deviance of the individuals who suffer them (Brownstein 1991).

A Harm Minimisation Approach to Illegal Drug Using

In recognition of the health and social costs of illegal drug use to individuals, families, the community and the economy, Australia has adopted a national policy of harm minimisation. This has been a key principle underpinning Australia's drug strategy since 1985 (Ministerial Council on Drug Strategy 1998: 15). Harm minimisation does not, however, translate into support for illegal drug use, or for radical policy reform. Rather, it is the middle ground where people with different views on drug policy can at least agree on practical and immediate ways to reduce the harms associated with illegal drugs (Single 1995). Harms of illegal drug use include the spread of blood-borne viruses, individuals being involved in a drug and therefore criminal lifestyle, a dependency level that prevents people getting back into mainstream routines and lifestyles of work, child-raising, social and family networks, and poor health and nutrition and early death.

Harm minimisation strategies in Australia have included prescription opioid replacement therapies including methadone and bupranorphine, needle exchanges and education of addicts in safer using practices that reduce the likelihood of spreading blood-borne viruses, and education of children within the school system about the harms of drugs (including alcohol and tobacco). Drug courts have also been recently established in Victoria and New South Wales where magistrates have the option of referring users to services that will assist them to detox and help address the problems that lead to addiction. There are efforts to re-engage them with family and link them into support groups in order to reduce their social isolation.

Media Influence

Part of our research was to examine the role played by the media in informing the public about illegal drugs. The media are very influential in forming public opinion and through this, political action. In Australia the media have often covered stories about illegal drugs in a sensational and moralistic way that has complicated plans for a rational, cross-sector response to illegal drug use. It has long been suspected that detailed reports of where and how to buy drugs act as free advertising for drug markets and directly affect the dynamics of street-level drug markets. A number of researchers have demonstrated that, far from reducing the drug problem, the media have inadvertently promoted the behaviour (Brownstein 1991; Rodd & Leber 1996; Lenton et al. 1998). In Melbourne research found that:

Like most people, drug users read newspapers and consequently can, and do, learn about new dealing/using areas from mass media as well as through their usual peer networks... In Fitzroy [Melbourne] ... a heightened media focus has resulted in increases in the drug trade on Smith Street as a response to the media reporting. (Fitzgerald 1998: 92)

A consequence of the media campaigns in the 1990s in Victoria was to put enormous pressure on the Victorian government and police to ‘do something about the problem’. What was done was for the state government to announce the introduction of harsher penalties for illegal drug offenders, including those using and selling small quantities to support their addiction. The second was an enormous increase in the number of heroin-related arrests by police.

A substantial increase in arrest rates for heroin-related offences can be seen in the statistics from 1997 following the *Sentencing Amendments (Sentencing and Others (Amendment) Act 1997)*. Australian Bureau of Criminal Intelligence (ABCI) figures show that Victoria’s arrest rates rose to almost double that of demographically similar but more populated New South Wales. Most of the arrests according to our key informants were made at the lower, street-level end of the market. Many individuals had multiple arrests, eventually leading to incarceration as they were deemed to be a repeat, and therefore ‘serious drug offender’ – a new category of offender attracting a higher penalty.

Table 16.1 Heroin-related arrests (consumer and provider)

| 1998/99 | | 1999/00 | |
|----------|--------------|----------|--------------|
| NSW | 4659 arrests | NSW | 3782 arrests |
| Victoria | 8153 arrests | Victoria | 5952 arrests |

Source: Australian Bureau of Criminal Intelligence 2001

These twin outcomes of the media pressure may sound like a good idea, but for a number of reasons they are not, when a holistic view of the problem is taken. Recent research in Sydney has demonstrated that traditional street policing methods and more sophisticated ways of dealing were developed; the relationship between drug sellers and buyers was strengthened; and the risk of spread of blood-borne viruses was increased through more risky user practices such as oral and intra-nasal storage, which lead to harm to both the users and the wider society (ABCI 1997). In this and other research it has been found that in intensively policed drug markets, the price of heroin increased, which increased the rate of crime as users sought to pay the higher prices; there was increased paranoia and violence in the marketplace; and dispersal of the drug market made it more difficult for police to supervise and engendered a reluctance to carry and therefore have available clean injecting equipment, and hasty injecting (Brown & Sutton 1996; Maher et al. 1998; Edmunds et al. 1996; van de Wijngaart 1997).

Another harm has been less obvious. In our study we found that the illegal drug users, who first entered the criminal justice system because of their drug use, were more likely to sell illegal drugs to support their habit than they were to commit other types of criminal offences. For this they received harsher penalties. On the other hand, we found that drug users whose drug use is just another facet of their already criminal lifestyle tended to commit robbery and theft offences to support their habit and as a result commonly received lesser sentences. Those that sold drugs to willing buyers to support their habit received harsher penalties because of the Sentencing Amendments.

Such outcomes are not equitable and seem to imply that it is better to hurt other people to support your drug habit than to sell to willing buyers. The inequity of this was pointed out by several of the key informants.

Federal criminal intelligence informant: 'I sometimes think that the criminal justice system is so driven by moral panic over illicit drugs that it loses sight of the level of actual harm which is happening... The sentences given for crimes where someone has been horrifically hurt and their lives ruined, are very often less than for someone who has sold drugs to willing buyers.'

Looking at the police and prison statistics, we found that as a result of the harsher penalties for drug offenders in Victoria, very young men, who may have no concurrent offending and little previous criminal offending history, are entering prison at a much earlier point than is the case for property and violence offenders. Victoria has the lowest rate of imprisonment of all the states in Australia, half that of demographically similar New South Wales. It also has the highest rate of secure custody prisoners – the more dangerous offenders (Beyer et al. 2001). Apart from the brutalising effects of non-violent young men being incarcerated with older, violent prisoners, being in prison carries very high risks for contracting blood-borne viruses, in Australia particularly of hepatitis C.

Over 40 per cent of the Victorian prison population is infected with hepatitis C (voluntary screening), and there are multiple opportunities for exposure to others' blood through syringe sharing (there is no needle exchange, and opioid replacement therapy is not always available), amateur tattooing and piercing, fights, and sharing toothbrushes and razors (Crofts et al. 1995). HIV prevalence in the Australian prisoner population is around 0.2 per cent – ten times that of the general population where needle exchange and opioid replacement has been available since the mid-1980s.

In Australia prisoners are eventually let out, and as such they increase the risks of infection to their children, their families, their associates and the wider community. Research is increasingly showing that the traditional law enforcement approach to street-level users and sellers is extremely expensive, has little if any visible positive outcomes and indeed may be directly increasing harms. Thus there has been considerable debate about whether alternatives should be tried. This comment is representative of the view of our criminal justice key informants:

Senior magistrate: 'We will never get rid of the problem of illicit drugs, but at least we should try and take some control of it through providing addicts with an alternative source...you might prevent overdoses and deaths and... give users some space to sort out their lives without having to worry about where their next fix is going to come from.'

We were surprised by the radical but consistent views of these key informants, many of whom thought their views were unique. We found the justice sector views more consistent with the views of the health sector key informants than they were with the policies of the agencies for which they worked. (A more comprehensive discussion of these views is soon to be published in the *International Journal of Drug Policy*.) Police in Australia appear to be increasingly seeing their efforts at the lower end of the drug market as a waste of their time.

Senior police detective: ‘We would be very happy for health to take up the drug users... We should be able to push [drug users] in the direction of the health services rather than arrest and charge them... With kids dying ... you have to do something about it. The kids themselves are probably good kids but they are stuffed up by the drugs.’

Conclusion

Despite a harm minimisation policy in Australia, there is still a strong public expectation that police will uphold the law and proceed against drug users. The criminal justice sector is therefore faced with the paradox of being expected to adopt a harm minimisation approach while also being expected to pursue the traditional punitive approach, which increases the harms. They must work within this policy paradox and they will do it most effectively if they work in partnership with health and social welfare sectors.

The complex nature of illegal drug offending and its potential for substantial harm at an international, national and community level means that it is extremely important that health, social welfare and criminal justice sectors work together on the issue. I have only touched on the bottom level of the drug chain and that is in itself very complex.

A large, generally defined problem, particularly one clouded by traditional associations with moral depravity, is obviously difficult if not impossible to address. However, a problem that has been rationally examined through intelligence and research and from a range of perspectives, that has been teased apart and its component parts and complexities defined from a range of perspectives, has a much greater chance of success. It is essential to have a clear, shared national goal founded on rational, evidence-based research. Then complementary sector goals and strategies that do not undermine the overall goal and the efforts of other sectors can be developed for tackling illegal drug user issues.

In Australia relationship-building between sectors is not particularly well developed – no sector has had a history of working together. Having worked in both sectors I can confidently say that professionals in different sectors still tend to hold stereotypical views of one another that get in the way of good communication and collaborative strategies. There are also few formal systems in place that allow or enable government sectors to work together on joint issues. This is probably true for most other countries as well. To respond adequately to illegal drug problems it would be necessary to address the existing institutional barriers that are getting in the way of cross-sector collaboration and problem-solving.

A complex problem requires a complex solution. I believe cross-sector, collaborative efforts are the only productive way to respond to lower-level drug offending. A greater role by health and social welfare sectors will enable police to divert their resources to those more serious offenders higher up the drug chain. It will also avoid the harms associated with vigorous traditional policing methods at the lower levels – harms which, though perhaps not immediately obvious – may result in long-term damage to the health and prosperity of the nation.

References

- ABCI 2001 (2002) *Australian Illicit Drug Report 1999–2000*. Canberra: ABCI. Australian Bureau of Statistics website www.abs.gov.au.
- Beyer, L., G. Reid & N. Crofts 2001, 'Ethnic based differences in drug offending', *Australian and New Zealand Journal of Criminology* 34(2).
- Beyer, L., & G. Reid 2000, *Drugs in a Multi-cultural Community – An Assessment of Involvement*, McFarlane Burnet Centre for Medical Research for the Department of Human Services, Victoria, Australia (Full report: <http://www.dhs.vic.gov.au/phd/0008087/>)
- Brown, M., & A. Sutton 1997, 'Problem oriented policing and organisational reform', *Current Issues in Criminal Justice* 9: 21–33.
- Brownstein, H. 1991, 'The Media and the Construction of Random Drug Violence', *Social Justice*, 18: 85–103.
- Crofts, N., J.L. Hopper, D.S. Bowden, A.M. Breschkin, R. Milner & S.A. Locarnini 1993, 'Hepatitis C Virus Infection among a Cohort of Victorian Injecting Drug Users', *Medical Journal of Australia*, 159: 237–41
- Crofts, N., T. Stewart, P. Hearne, X.Y. Ping, A.M. Breschkin & S.A. Locarnini 1995, 'Spread of Blood-Borne Viruses among Australian Prison Entrants', *British Medical Journal*, 310: 285–8.
- Crofts, N., J. Webb-Pullman & K. Dolan 1996, 'An analysis of trends over time in social and behavioural factors related to the transmission of HIV among injecting drug users and prison inmates'. *Technical Appendix 4. Evaluation of the National HIV/AIDS Strategy 1993–94 to 1995–6*, AIDS Communicable Diseases Branch, Commonwealth of Australia.
- Edmunds, M., M. Hough & N. Uriquia 1996, *Tackling Local Drug Markets: Crime Detection and Prevention Series*. Paper 80, Home Office Police Research Group, London.
- Fitzgerald, J.L., S. Broad & A. Dare 1998, *Regulating the Street Heroin Market in Fitzroy/Collingwood*, VicHealth and the University of Melbourne.
- Justice Department 1999, *Court Outcomes*, Statistical Unit, Department of Justice Victoria
- Lenton, S., T. Stockwell & R. Ali (eds) 1998, *Proceedings of a National Workshop on the Prevention of Heroin Overdose*, National Centre for Research into the Prevention of Drug Abuse Monograph. Curtin University of Technology, Perth.
- Maher, L., D. Dixon, M. Lynskey & W. Hall 1998, *Running the Risks: Heroin, Health and Harm in South West Sydney*. Monograph No. 38. National Drug and Alcohol Research Centre, University of New South Wales.
- Ministerial Council on Drug Strategy 1998, *National Drug Strategic Framework 1998/99 to 2002/03. Building Partnerships. A strategy to reduce the harm caused by drugs in our community*, Australian Federal Government, Canberra.
- Multicultural Affairs Unit 1997, *A Nation of Immigrants: A State of Diversity*. Fact File 4. Multicultural Affairs Unit, Department of Premier and Cabinet, Melbourne.
- Rodd, H., & S. Leber 1996, 'Beyond gangs, drugs and gambling'. In D. Bretherton (ed.) *No Longer Black and White*, vol. 1. *Media Responsibility in Ethnic and Racial Conflict*. Proceedings of a conference on the media and ethnic and racial conflict. International Conflict Resolution Centre, School of Behavioural Science, University of Melbourne.

- Sentencing and Others (Amendment) Act 1997* No. 48 (Amendments to the Sentencing Act 1991 (Vic) No. 49/91) Victoria, Australia.
- Single, E., & T. Rohl 1995, *The National Drug Strategy: Mapping the Future*. Supplementary Report commissioned by the Ministerial Council on Drug Strategy, Canberra: AGPS.
- Van de Wijngaart, G.F. 1997, Drug Problems among Immigrants and Refugees in the Netherlands and the Dutch Health Care and Treatment System in *Substance Use and Misuse*, 32(7) and (8).

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The Centre's Scrutiny Elasticity and the Local's Response The Anti-smuggling Campaign in Xiamen, 1999–2001

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When Deng Xiaoping returned to power in 1979, he began deideologisation and decentralisation over economic management.¹ The progressive withdrawal of central allocation of resources at the territorial and sectoral levels and the diffusion of legislative powers of laws have contributed to the flexibility of lower levels. Deng advocated economic reform as a base for not only economic power but also political power since decentralisation was given to the provinces to build political support for his economic reform and rule² However, ongoing decentralisation brought the central leadership a changing and complex web of conflicting national and local interests. While facilitating a turbo-charged economic growth for two decades, decentralisation has also brought about a wide array of local perversities which in the 1990s the new leadership has often striven hard to rein in. The central leadership in particular has had a hard time with the coastal provinces.

Foreign direct investment is a key dimension to national modernisation. The assumption of 'open policy' (*Kaifang zhengce*) is that FDI is essential for the transfer of technological (and other forms of) know-how regarding best practice to the Chinese economy.³ In terms of the accumulated foreign investments actually committed by the end of 1997, the central and western regions took up a mere 9 and 4.2 per cent respectively of the nation's total, while the figure for the eastern region was 86.8 per cent.⁴ However, massive smuggling activities were reported in the eastern region. Customs estimated their annual losses due to smuggling at US\$15 billion, more than 10 per cent of imports.⁵ According to a more recent report of the Central Discipline Commission to the Political Bureau, from 1991 to 1998 there have been 4200 cases of smuggling for a total of US\$130 billion, which is about the same amount as the above-mentioned customs annual estimate. The reported cases mainly concerned the localities of Beihai in Guangxi, Shantou and Zhanjiang in Guangdong, Qingdao in Shandong, and Xiamen in Fujian.⁶

In order to activate local economy and regulate local perversities, the centre has deployed repeated cycles of centralisation-decentralisation as an ad hoc solution to the anomalous system where 'the centre seeks to

¹ For detailed discussion of Beijing's decisions to de-ideologise and decentralise policy processes, see Dai Yuanchen, 'Sixiang jiefang tuidongle gaige kaifang he jingji fazhan' [Deideologization Activated Reform, Opening and Economic Development], *Shehuikexue yanjiu cankao ziliao* [Reference Materials for Social Science Research], 588, 20 February 1999: 1–6.

² See Susan Shirk, 'Playing to the provinces: Deng Xiaoping's political strategy of economic reform,' *Studies in Comparative Communism* 23, 1990: 227–58.

³ See V. Sit, 'The Special Economic Zones of China: a new type of export processing zone?' *Developing Economy* 23, 1985: 68–87.

⁴ *Zhongguo tongji nianjian 1998* [Statistical Yearbook of China 1998, hereafter *ZGTJNJ*], Beijing: Zhongguo tongji chubanshe, 1998.

⁵ 'Guanyu chengzhen jumin geren shouru chaju de fenxi he jianyi,' [Analysis and advice on the individual income differentiation among urban residents], *Jingji yanjiu* [Economic Research], 8, 1997: 7.

⁶ *Zhengming*, January 2000: 15–16.

recentralise while, at the same time, localities try to decentralize'.⁷ This complex situation poses crucial questions: How has the centre exercised scrutiny over the powerful localities? What were the responses of the localities? How effective could it be given the ongoing institutional changes in Mainland China?

This paper is a study on the Yuanhua case and the central government's anti-smuggling campaign in Xiamen from 1999 to 2001. The case is representative for it is not just an example of the smuggling that is rampant on Mainland China's coastline. More significantly, the 19-month investigation produced a sprawling scandal that ravaged the local government and police force in Fujian. In September 2000 the communist regime launched the most extensive corruption trial of its 50-year rule. It looks like the largest contraband scandal since the Chinese Communist Party came to power in 1949, involving as it did key members of its political elite.⁸

Decentralisation and Local Discretion

As a vehicle to obtain capital and advanced technology in achieving modernisation, FDI became part of Chinese national economic strategy. In 1979 the central government introduced its 'open policy'.⁹ Fujian was historically paired with Taiwan; Xiamen became a Special Economic Zone (SEZ) that aimed to accumulate large foreign investments, especially Taiwanese capital.

Apart from facilitating modernisation, Xiamen's access to Taiwanese investment is supposed to catalyse reunification of Taiwan and the mainland. In 1978 Deng Xiaoping originated the basic principle of a peaceful reunification: the 'one country, two systems' formula that replaced Mao's earlier emphasis on liberating Taiwan by force. The CCP urged the Taiwanese to contribute to the 'overall interests of the Chinese nation'.¹⁰ It was to incorporate Taiwan by means of economic integration and Xiamen SEZ was one of the areas chosen to promote this. In practice, Xiamen was given authority to enact laws and regulations and implement preferential policies to promote investment and trading by Taiwan businessmen, and finally political negotiation.

What follows highlights the policy privileges granted by the central government to Xiamen which reveal the relaxed attitude of the former through special policy privileges allowed to the latter.

⁷ This phrase (originally *zhongyang jiquan difang fenquan*) is adapted from Angang Hu, 'Ruo zhongyang qiang difang bufuhe zhongguo guoqing' [The Weak Centre and Strong Localities Do Not fit the Chinese Situation], in Fureng Dong (ed.), *Jiquan yu fenquan* [Centralization and Decentralization], Beijing: Jingji kexue chubanshe, 1996, p. 74.

⁸ Data for this research comes from both documentary sources and fieldwork. Documentary data includes (a) municipal publications, including yearbooks, statistical yearbooks, document compilations, government reports (*zengbao*), newspapers and journals; (b) documents and publications on Chinese economy and in particular Xiamen economy, and legal development and reform; (c) Chinese and foreign press, magazines and books covering the smuggling and anti-smuggling activities; and (d) scholar books and journals on the studies of China's central-local relations for facilitating discussion and analysis. I have had visits to Xiamen in September 2000, January–February and May 2001. I have had discussions with officials from Xiamen municipal government, businessmen from local private and state-owned enterprises and companies, foreign and Taiwanese enterprises.

⁹ *Kaifang zhengce* should not be mistaken for *laissez-faire*; rather, it was conceived in geopolitical terms as a regulated strategy that seeks to stimulate as well as control FDI and its positive and negative effects. Roger Hayter and Shenghan Sun, 'Reflections on China's Open Policy Towards Foreign Direct Investment,' *Regional Studies* 32(1) 1998: 7.

¹⁰ Chou, Yu-sun, 'Nationalism and Patriotism in China', *Issues & Studies* 32(11) 1996: 67–86.

Devolution of legislative power

Beginning in 1982, the Standing Committee of the National People's Congress (SCNPC) granted provincial/local People's Congress (PC) legislative power. It has delegated legislative power to Guangdong and Fujian and five SEZs to legislate in the areas belonging to the NPC or SCNPC.¹¹ The object was to encourage local initiatives in law-making activities that should help stimulate the development of local economy. Because each province has its own unique situation, it is simply impossible to govern without decentralisation. As Peng Zhen once said, 'the Constitution grants so many powers to the PCs and their standing committees because the central government cannot manage on its own'.¹² The centre has come to rely on local initiative and flexibility to strengthen the regime as a whole. Diversity indicates adaptability, dynamism and strength.¹³

For instance, it is imperative for Fujian to enact Taiwan-related regulations in order to regulate cross-strait economic activities. Fujian has so far passed four Taiwan-related regulations since 1989, despite the fact that power belongs to the centre, which has not legislated on it.¹⁴ Second, in order to promote an open and modern image among foreign investors, Fujian passed a regulation allowing lawyers to represent criminal suspects immediately after they are detained, whereas previously national criminal procedure allowed legal representation only during trial. The regulation also gave courts the discretion to mention major arguments of defending counsels, which was not required under the previous legislation.¹⁵ Third, in 1994, the SCNPC further enlarged the legislative power of Xiamen. It authorised the PC and its Standing Committee of the Xiamen government 'to legislate according to the specific situations and practical needs, and in conformity the Constitution and the principles of the law and administrative regulations'. This authorisation was said to be broader than the legislative power of provinces since the provinces' legislation has to conform to the law and administrative regulations, not just their principles.¹⁶

Regional discrimination strategy

The central government pursued a regionally discriminatory strategy of supporting the coastal region to attract FDI at the expense of the rest of the country. First, in 1984, the State Council approved the right of Xiamen to borrow from abroad, issue bonds overseas and make spot transactions in order to enhance its capacity to raise revenues apart from the central and provincial governments.¹⁷ Second, SEZs were granted a 100 per cent foreign exchange retention rate, while some coastal provinces such as Guangdong and Fujian were allowed to retain only 50 per cent and inland provinces even less – 25 per cent of their foreign

¹¹ PRC Constitution, Articles 58, 89, 100 and 116 in *Zhonghua renmin gongheguo falu quanshu*, Changchunshi: Jilin renmin chubanshe, 1989–.

¹² See Guancheng Shen, 'Dui difang lifajuan de zairenshi' [Rethinking of Local Legislative Powers]. In Buyun Li (ed.), *Lifafa yan jiu* [Legislation Law Studies], Changsha: Hunan renmin chubanshe, 1998, p. 94.

¹³ Lieberthal, Kenneth, *Governing China: From Revolution through Reform*, New York, London: W.W. Norton & Co., Inc., 1995, p. 316.

¹⁴ Legally, Taiwan, Hong Kong and Macau have been treated as foreign countries. Shen, 'Rethinking of Local Legislative Powers', p. 103.

¹⁵ Original PRC Criminal Procedure Law was passed in 1979. It was amended in 1996 with 140 revisions. Shen, 'Rethinking of Local Legislative Powers', p. 103.

¹⁶ Shen, 'Rethinking of Local Legislative Powers', p. 97.

¹⁷ V. Falkenheim, 'Fujian's Open Door Experiment', *China Business Review*, January–June, 1986: 38–42.

exchange earnings until 1991.¹⁸

Third, the decentralisation of investment authority gave Xiamen greater scope for approving FDI projects. Before 1994, it had to get provincial approval for domestic projects over RMB 50 million in heavy industry and RMB 30 million in light industry, and State Council approval for projects over RMB 100 million. From 1994 on, it was authorised to approve domestic projects worth over RMB 100 million without prior approval from the State Council.¹⁹ Fourth, Table 17.1 shows that Xiamen, as a SEZ, enjoyed highly preferential business income tax rates,²⁰ thereby attracting large amounts of FDI.

Table 17.1 The centre-designated ‘open zones’, 1995

| Designations | Number | Tax rates (%) |
|--|--------|---------------|
| Bonded zones (FTZs) | 13 | 0 |
| Economic and technological development zones | 30 | 10–15 |
| New and hi-tech industrial development zone | 52 | 15 |
| Special economic zones | 5 | 15 |
| Coastal open cities | 14 | 24 |
| Coastal open areas | 260 | 24 |
| Tourism and leisure zones | 11 | 24 |
| Riverine open cities | 6 | 24 |
| Border-region open cities | 13 | 24 |

Sources: ‘Cujin diqu jingji xietiao fazhan yanjiu’ [Study on the Promotion of Regionally Coordinated Development], *Jingji yanjiu cankao* [Reference for Economic Research], no.914/915 (25 July 1996), pp. 33–4; and Li Haijian, *Zouxiang pinghengshi kaifang* [Toward a Balanced Opening] (Beijing: Shehuikexue wenxuan chubanshe, 1999), pp.166, 186–90.

In October 1992, the State Council approved the establishment of Xiangyu Free Trade Zone as a pilot zone of free port policies. The aim was to encourage the development of the bonded processing industry, warehousing and modern logistic industry, trading industry, dock operation industry and related industries such as finance, commodity exhibition, transportation, and information.²¹ Tax concessions are a way of encouraging export and entrepôt industries. First, imports of production equipment within the agreed

¹⁸ See Sang Baichuan, *Quyü kaifang zhanlue lun: Qingxie zhengce yu quanfangwei kaifang* [On the Strategy of Regional Opening – Discriminating Policies and All-Directional Opening, Beijing: Zhongguo qingnian chubanshe, 1996, pp. 40–50; Wei Houkai, ‘Woguo diqu fazhan chaju de xingcheng yingxiang ji qi xietiao tujing’ [The Origins and Impact of Regional Disparities and the Path toward Co-ordination in China], *Jingji yanjiu cankao* [Reference for Economic Research], 1014, 10 February 1997: 5. For the previous system, see Nicholas R. Lardy, *Foreign Trade and Economic Reform in China 1978–1990*, Cambridge University Press, 1992, pp. 53–7, 102–3. For the 1991 change, see ‘Learning the Rules of Foreign Trade’, *China News Analysis*, 1464, 15 July 1992, pp. 1–9.

¹⁹ Jude Howell, ‘The Political Economy of Xiamen Special Economic Zone’. In Y.M. Yeung and K.Y. Chu, (eds), *Fujian: A Coastal Province in Transition and Transformation*, Hong Kong: Chinese University Press, 2000, p. 128.

²⁰ There are Xiangyu Free Trade Zone and Xiamen Torch Hi-Tech Industrial Development Zone, which enjoy zero and 15 per cent business tax rate, respectively.

²¹ The Administrative Committee of Xiamen Xiangyu Free Trade Zone, *Xiamen Xiangyu Free Trade Zone, 2000*.

investment amount by foreign-funded projects that are for technology transfer and fall within the Xiamen government's encouraged catalogue are exempted from customs duties and import value-added tax (VAT). Second, exports by foreign-funded enterprises or their agencies are covered by the scheme of Tax Exemption, Tax Offset and Tax Rebate.²²

Xiamen's Economic Performance since 1980

Xiamen's economic development stands out in the reform era. It underwent a rapid industrialisation and export-led growth based largely on FDI. Several key data and examples illustrate its success.

Table 17.2 GDP, GVIO and exports of Xiamen, 1980–99

| Year | GDP (RMB billion) | GDP Annual growth rate | GVIO (RMB billion) | Exports (US\$ million) |
|------|----------------------|---------------------------|-----------------------|---------------------------|
| 1980 | 0.64 | N/A | 0.94 | 140.02 |
| 1983 | 0.86 | 34.37 | 1.05 | 124.02 |
| 1984 | 1.06 | 23.25 | 1.50 | 128.07 |
| 1985 | 1.37 | 29.24 | 2.14 | 145.85 |
| 1986 | 1.49 | 8.75 | 2.46 | 165.28 |
| 1987 | 1.82 | 22.14 | 3.28 | 163.74 |
| 1988 | 2.34 | 28.57 | 4.81 | 261.07 |
| 1989 | 2.76 | 17.94 | 5.65 | 646.78 |
| 1990 | 5.71 | 106.88 | 8.59 | 781048 |
| 1991 | 7.34 | 28.54 | 10.94 | 1150.62 |
| 1992 | 9.25 | 26.02 | 13.97 | 1765.68 |
| 1993 | 11.58 | 25.18 | 18.56 | 2355.27 |
| 1994 | 14.74 | 27.28 | 24.92 | 3390.88 |
| 1995 | 25.05 | 69.94 | 33.01 | 3479.15 |
| 1996 | 30.63 | 22.27 | 40.33 | 3701.53 |
| 1997 | 37.03 | 20.89 | 50.09 | 4250.29 |
| 1998 | 41.81 | 12.91 | 58.76 | 4295.73 |
| 1999 | 45.83 | 9.60 | 72.92 | 4437.09 |

Note: The 1980 prices are used as base for 1980s and 1990 prices for 1990s.

Sources: On 1980–97, adapted from Howell, J., 'The Political Economy of Xiamen Special Economic Zone,' in Y.M. Yeung and K.Y. Chu (eds), *Fujian: A Coastal Province in Transition and Transformation*. Hong Kong: The Chinese University Press, 2000), p. 121. On 1998 and 1999, Xiamenshi tongjiju (ed.), *Xiamen jingji tequ nianjian 2000* [Yearbook of Xiamen Special Economic Zone 2000] Beijing: Zhongguo tongji chubanshe, 2000, pp. 250–1, 256–7.

²² Xiamen Foreign Investment Executive Committee, *Investment Guide to Xiamen Special Economic Zone*, 2000.

As can be seen in Table 17.2, Xiamen's GDP in 1999 was 71 times higher than in 1980. The average annual growth rate between 1980 and 1985 was 28.95 per cent. This fell to 18.23 per cent between 1986 and 1990 but increased impressively to 31.8 per cent between 1991 and 1995. It has still hovered at 16.4 per cent between 1996 and 1999. Second, the gross value of industrial output (GVIO) increased 77 times 1980–99, with growth at an average of 32.41 per cent in 1980–85, 26.58 per cent in 1986–90, 29.47 per cent in 1991–95, and 55.52 per cent in 1996–99. Third, the value of exports in 1999 was 31 times greater than in 1980. It remained at a stable level between 1980 and 1985 but increased five times between 1986 and 1990. It rose sharply in the 1990s, increasing three times 1991–95 and 1.3 times more 1996–99.

The influx of FDI into Xiamen contributed considerably to its rapid growth (Table 17.3).

Table 17.3 Annual agreed and realised FDI in Xiamen, 1980–99

| Year | Number of agreements | Cumulative agreements | Agreed FDI (US\$ million) | Realised FDI (US\$ million) |
|---------|----------------------|-----------------------|---------------------------|-----------------------------|
| 1980–83 | 24 | 24 | 37.06 | 7.75 |
| 1984 | 86 | 110 | 149.67 | 40.44 |
| 1985 | 105 | 215 | 242.02 | 73.28 |
| 1986 | 34 | 249 | 27.58 | 34.46 |
| 1987 | 50 | 299 | 56.68 | 17.53 |
| 1988 | 180 | 479 | 155.64 | 479.60 |
| 1989 | 225 | 704 | 769.06 | 209.80 |
| 1990 | 262 | 966 | 485.55 | 72.23 |
| 1991 | 213 | 1179 | 519.75 | 132.56 |
| 1992 | 443 | 1622 | 1697.91 | 563.55 |
| 1993 | 655 | 2277 | 2404.11 | 1037.40 |
| 1994 | 692 | 2969 | 1864.87 | 1241.48 |
| 1995 | 505 | 3474 | 2062.41 | 1321.60 |
| 1996 | 375 | 3849 | 1650.45 | 1350.17 |
| 1997 | 460 | 4309 | 1656.32 | 1378.67 |
| 1998 | 245 | 4554 | 1688.11 | 1381.21 |
| 1999 | 209 | 4763 | 1286.55 | 1341.96 |

Sources: On 1980–97, adopted from J. Howell, 'The Political Economy of Xiamen Special Economic Zone,' p. 122. On 1998–99, Xiamenshi tongjiju (ed.), *Xiamen jingji tequ nianjian 2000*, pp. 256–57 (see sources for Table 17.2).

Table 17.4 Contribution of FIEs to Xiamen's exports, 1988–99

| Year | Xiamen exports (US\$ million) | FIEs exports (US\$ million) | FIEs exports as % of Xiamen's exports |
|------|----------------------------------|--------------------------------|--|
| 1988 | 458.68 | 83.16 | 18.13 |
| 1990 | 781.48 | 236.00 | 30.20 |
| 1992 | 1765.48 | 516.10 | 29.20 |
| 1994 | 3390.88 | 1316.70 | 38.80 |
| 1996 | 3701.53 | 1730.10 | 46.70 |
| 1997 | 4250.29 | 2105.31 | 49.50 |
| 1998 | 4295.73 | 2229.53 | 51.90 |
| 1999 | 4437.09 | 2626.43 | 59.19 |

Sources: On 1988–97, adopted from Howell, 'The Political Economy of Xiamen Special Economic Zone', p.123. On 1998–99, Xiamenshi tongjiju (ed.), *Xiamen jingji tequ nianjian 2000* [Yearbook of Xiamen Special Economic Zone 2000], p. 457 (see sources for Table 17.2)

Table 17.5 Contribution of FIEs to Xiamen's industrial output value 1983–99 (RMB million)

| Year | Gross industrial output value | FIEs industrial output value | FIEs industrial output value as % of Xiamen industrial output value |
|------|----------------------------------|---------------------------------|--|
| 1983 | 1202.10 | 14.20 | 1.2 |
| 1984 | 1508.50 | 75.30 | 5.0 |
| 1985 | 2185.20 | 404.60 | 18.5 |
| 1986 | 2465.80 | 439.70 | 18.0 |
| 1987 | 3285.60 | 967.70 | 29.4 |
| 1988 | 4500.00 | 1946.00 | 43.0 |
| 1989 | 5452.00 | 2674.40 | 19.0 |
| 1990 | 8592.90 | 4078.50 | 59.8 |
| 1992 | 13 876.91 | 7923.80 | 57.0 |
| 1994 | 24 924.68 | 16 156.00 | 64.8 |
| 1995 | 32 317.94 | 22 940.78 | 70.9 |
| 1996 | 40 335.27 | 29 760.80 | 73.7 |
| 1997 | 50 090.96 | 37 446.57 | 74.8 |
| 1998 | 58 767.06 | 42 974.16 | 73.1 |
| 1999 | 72 927.19 | 54 953.68 | 75.4 |

Note: The 1990 figure in 1980 prices is RMB 6816.27.

Sources: On 1983–97, adopted from Howell, 'The Political Economy of Xiamen Special Economic Zone', p. 123. On 1998–99, Xiamenshi tongjiju (ed.), *Xiamen jingji tequ nianjian 2000* [Yearbook of Xiamen Special Economic Zone 2000], p. 251 (see sources for Table 17.2)

The high levels of FDI have made an increasing contribution to both export and industrial output value growth in Xiamen, as illustrated in Tables 17.4 and 17.5. The percentage of contribution by foreign-invested enterprise (FIE) exports to the total value of exports increased by nearly two-thirds between 1988 and 1990. By 1994 this had more than doubled to 39 per cent and accounted for half of all exports from 1996 to 1999 (Table 17.4). Industrial output value of FIEs that made up only 1.2 per cent of the total in 1983, rose to 18.5 per cent by 1985, 43 per cent by 1988, 73.7 per cent by 1996 and then 75.4 per cent in 1999 (Table 17.5). The FIE sector's salient share in industrial output value means the decline of the SOE sector, which fell sharply from 78.65 per cent in 1981 to 17.5 per cent in 1994 and then 6.7 per cent in 1999.²³

Table 17.6 Breakdown of source of FDI agreements approved in Xiamen, 1996 (US\$ million)

| Country/Region | Number of agreements | % | Amount of planned foreign investment | % |
|----------------|----------------------|-------|--------------------------------------|--------|
| Hong Kong | 201 | 53.6 | 975.10 | 59.73 |
| Taiwan | 105 | 28.0 | 373.31 | 22.87 |
| Singapore | 14 | 3.7 | 69.85 | 4.28 |
| USA | 9 | 2.4 | 45.59 | 2.79 |
| Philippines | 8 | 2.1 | 15.71 | 0.96 |
| Malaysia | 8 | 2.1 | 72.52 | 4.44 |
| Japan | 6 | 1.6 | 42.89 | 2.63 |
| UK | 5 | 1.3 | 16.11 | 0.99 |
| Canada | 3 | 0.8 | 2.79 | 0.17 |
| Others | 16 | 4.2 | 18.58 | 1.14 |
| Total | 375 | 100.0 | 1632.49 | 100.00 |

Source: Adopted from Howell, 'The Political Economy of Xiamen Special Economic Zone,' p. 129 (see source for Table 17.2).

Among FIEs, Taiwan-invested and Hong Kong-invested enterprises together accounted for 81 per cent of both the foreign investment agreements and planned FDI in 1996 (Table 17.6). The real share of Taiwan-invested enterprises in the value of planned FDI will be much higher than the reported 22.87 per cent because a large amount of Taiwanese capital has entered under the umbrella of 'Hong Kong investment' in order to avoid legal restrictions from the Taiwan government.²⁴ Over the reform period Xiamen has attracted large amounts of FDI, particularly from overseas Chinese communities, especially Taiwan and Hong Kong. They faced significantly lower spatial entry barriers because of cultural and geographical proximity. It is believed that they also retained deep psychological ties to ideas of Chinese civilisation and an inherited understanding of 'unique Chinese characteristics' (*quo qing*).²⁵

²⁴ Fieldwork in September 2000 and January 2001.

²⁵ See S.G. Redding, *The Spirit of Chinese Capitalism*, Berlin: Walter de Gruyter, 1990; R. Yan, 'To reach China's consumers, adapt to *quo qing*', *Harvard Business Review*, September–October, 1994: 66–74.

Significance of SEZ Policy and Local Discretion

Xiamen SEZ policy privileges are characterised by progressive withdrawal of central decision-making powers over legislation, foreign investment, loans and foreign trade. They had a far-reaching impact on the attitudes of Xiamen leaders and the local community. The municipal government enjoyed greater discretion in policy formulation and implementation over time. The task entrusted to it as the pioneer and experimenter in economic reform required a modern outlook and attitude among SEZ officials. They were encouraged by central leaders to be bolder, less conventional and more aggressive in pushing forward new initiatives.

In the mid-1980s, when the ‘open policy’ had been carried out for a few years, complaints were made by the foreign investors about bureaucratic and legislative constraints on investment in China. In response, the central government issued more flexible regulations in 1986 in order to generate more foreign investment. Inspired by the central government’s initiative, Xiamen’s leaders reacted proactively by first investigating the complaints of local foreign investors and then issuing complementary regulations on RMB funds, raw materials supply, foreign exchange balance and employment terms.²⁶

In fact the need to attract more foreign investment and to sustain high economic growth rates, together with the exercise of local discretion, became interdependent factors in Xiamen’s success and kept reinforcing each other over the SEZ’s life. The gradual withdrawal of central control over time showed that the centre acquiesced in Xiamen being the pioneer and deviating from national rules so long as it kept on meeting high GDP and FDI growth rates. The urge to retain a high economic growth rate in return accustomed the Xiamen leaders to ‘flexible manipulation’.

Xiamen leaders interpreted Deng Xiaoping’s southern journey in 1992 as signalling a change in the ‘political wind’ at the centre after the Tiananmen Incident in 1989 and accordingly readjusted their plans and strategies. In keeping with the spirit of pioneers of reform, they resolutely announced plans to catch up with the Asian Tigers – Hong Kong, Singapore, South Korea and Taiwan. The Xiamen government set about speeding up the implementation of its free trade zone (FTZ) policy.²⁷ They took great care to sustain Xiamen’s momentum of economic growth and therefore its image as the successful pioneer of reform.

In addition to offering foreign investors access to a large supply of cheap labour, infrastructure provision, land-use rights, tax concessions, and access to Chinese and international markets, Xiamen’s municipal government also helped them offset the uncertainties facing foreign and Taiwanese enterprises by providing them with tailor-made advice and problem-solving services. With special regard to Taiwanese and foreign enterprises, all five governance systems had to assign one particular official to ‘take responsibility for’ (*huagou*) serving one particular investment project. Whenever the target enterprise faced a problem concerning a particular department, the official assigned would facilitate mediation between the target enterprise and the department involved. The most striking feature of this practice is that ad hoc extra privileges, policy adjustment and extremely efficient department coordination would be given to the target enterprise to solve the problem fully, even though it might violate normal work procedure among different departments or existing policies and rules.²⁸

²⁶ *Fujian ribao*, 15 October 1986: 1.

²⁷ Fieldwork in September 2000, January and May in 2001.

²⁸ Fieldwork in September 2000 and January 2001.

Sometimes the local officials used to deviate from the normal rules and practices at the expense of local interest. The government departments inevitably favoured Taiwanese and foreign investors when conflicts between them and the local people occurred over factory pollution, land resumption, building auction and land auction. Government officials also tended to give privileged treatment beyond what was announced to foreign companies. For example, extra preferential policies, such as tolerance to adjustment of financial reports for tax evasion and tax holidays beyond the normal period, would be granted to large Taiwan and foreign enterprises.²⁹

The Smuggling Business

Xiamen has been the centre of local and overseas media attention since the investigation of the Yuanhua smuggling case in early 2000. The Yuanhua Group, based in Xiamen, was accused of smuggling consumer and producer goods worth RMB 53 billion (US\$6.4 billion) into Xiamen ports,³⁰ costing the central coffers RMB 30 billion (US\$3.6 billion) lost in import duties between 1994 and 1999. After a 19-month investigation into the Yuanhua Group, the central investigation taskforce '420'³¹ discovered as many as 200 local and some national officials involved in the Yuanhua smuggling business.

The progressive devolution of economic powers at local, sectoral, and institutional levels was partly responsible for the existence of the scam. In particular, the established foreign trade structure in Xiamen enabled the administrative power holders to ally themselves with the businessmen to deal flexibly enough with demand and supply across the border.

The foreign trade structure

The free port policy resulted from an 'anything goes' approach originating from the central government and was aimed at promoting foreign trade activities. This allowed simplified and relaxed procedures for import, export, entrepôt, packaging, storage, distribution and sales of goods by the enterprises inside the FTZ. FTZ enterprises were also entitled to gain exemptions from tariffs, VAT and consumption tax, and to reserve foreign currency for their own circulation. The key preferential policies (Table 17.7) enforced in the Xiangyu FTZ clearly show the relaxed nature of the free port policy. These policies, together with a sound infrastructure, a national no. 6 harbour and national highway network, provided the Yuanhua Group with the essential conditions for engaging in systematic corruption of the port to allow rivers of goods to pass through freely though illegally and then be distributed to other provinces. The Group smuggled vast volumes of high-tariff goods ranging from crude oil, petrochemical products, steel, rubber, textiles, chemical products, fibres, plastics, electrical products, mechanical and electronic equipment, cars, computers, vegetable oil, cigarettes and many other consumer goods.

²⁹ Ibid.

³⁰ This figure is even higher than Xiamen's annual GDP in 1999, which is about RMB 46 billion.

³¹ The investigation taskforce '420' was organised to investigate the Yuanhua case under the decision of the Standing Committee of the CCP Politburo. It was named '420' because the Standing Committee meeting was held on 20 April 1999. The investigation started from August 1999 and ended in March 2001. The '420' did not leave Xiamen until May 2001.

Table 17.7 Key preferential policies of Xiangyu Free Trade Zone

Any economic organisation, enterprise or individual, domestic or abroad may invest in the FTZ and enjoy the following preferential policies:

1. Investors can choose freely to invest in manufacturing, processing, entrepot trade, bonded warehouses, import goods distribution, dock operation or commodities exhibition, etc.
2. No license or quota is required for the cargo exchange between the FTZ and foreign companies.
3. Import goods may be stored inside the FTZ without time limit.
4. For processing enterprises inside the FTZ, no proportion is set in terms of sales of their products in either domestic or foreign markets.
5. Manufacturing equipment, infrastructure materials, office articles or spare parts for maintenance imported for FTZ enterprises' own uses are exempt from tariffs, value-added tax (VAT) and consumption tax.
6. Imported raw materials, components, spare parts or packing materials necessary for processing inside the FTZ are bonded with no requirement to submit a deposit or open a desk account.
7. FTZ enterprises may open foreign currency account and reserve foreign currency for their own circulation.
8. Import goods inside the FTZ may be distributed in the way of Imported in Batches, Sold in Batches and Verified after Sales.
9. When FTZ enterprises purchase goods from non-FTZ suppliers or manufactures, an extension of storage time could be applied on checking out of the goods.
10. Approval procedures are convenient and prompt for management staff members of FTZ enterprises applying to go abroad.

Source: Modified from the Administrative Committee of Xiamen Xiangyu Free Trade Zone, Xiamen Xiangyu Free Trade Zone 2000.

The operation of Yuanhua's smuggling business

The other condition was the collaboration of government officials and state agents. Lai Changxing,³² director of the Yuanhua Group, methodically bought off representatives of almost every arm of the state. First, he paid local port officials such as the local customs, inspection and port administration millions of dollars in bribes to ease the entry of smuggled goods. The relationship between Yuanhua executives and the local customs officers was 'like brothers'. Second, he bribed officials in the local Communist Party committee, the municipal government, Public Security bureaux at all levels, and the People's Liberation Army (PLA), in order to avoid customs and police inspections.

The third group to be drawn in were bank and company bosses, including the heads of several state bank branches who organised money laundering and the heads of Xiamen's largest state-run companies who rented out their import or export licences, official stamps and 'Import Books' (*Baoshui shouce*).³³ Lai showered those associates and government officials with gifts, money, apartments, cars, sex, travel permits

³² See Zhongguo xinwenshe Xiamen jishe (ed.), *Xiamenshi rongyu shimin fengcai*, Hong Kong: Hong Kong Minnanese Publication Co. Ltd, 1998, pp. 157–8; popular report on Internet.

³³ For instance, the Xiamen Dongfang Group illegally rented out its export license and official stamps to the Yuanhua Group for an annual fee of RMB 20 million, which top executives shared. Susan V. Lawrence, 'A city ruled by crime', *Far Eastern Economic Review*, 30 November 2000: 14–18.

to visit Hong Kong and abroad (procured from Lai's police contacts) and study abroad for their children.³⁴

The Yuanhua Group established a form of 'systematic smuggling engineering' that fitted in with the 'one stop' service promoted by the free port policy. 'One stop' service provides FTZ enterprises with network-wide information and a service system that integrates all procedures of customs clearance, inspection, port supervision and port services, taxation, banking, insurance and post services. Working with the collusion of officials in each section, the Yuanhua Group completed each procedure falsely with legal documents endorsed by the state-run companies, working as its agents.

First, those agents offered Yuanhua their company certificates and seals for processing, signing purchase contracts and shipping documents with overseas suppliers. Second, after shipment, the smuggled goods would be moved through Xiamen port without real customs clearance and inspection. Third, the smuggled goods would proceed freely inside the FTZ or would be transported to buyers in other provinces through domestic authorised sales units and, on many occasions, with the escort of public security or PLA vehicles. Fourth, state banks assisted Yuanhua and its smuggling partners to launder their ill-gotten gains through China's savings system.³⁵ Fifth, domestic buyers transferred payment to those authorised sales units, which then transferred payment, through underground banks in Shishi or Jinjiang and bank accounts in Hong Kong for exchange of currency, to overseas suppliers.

Another common strategy is the abuse of import duty exemption and 'false export'. In order to promote exports, import/export (I/E) corporations and processed goods producers can apply for 'Import Books' listing the types and quantities of imported components entitled to tariff exemptions if the processed goods are exported. Through the Yuanhua Group's association with the customs officers, empty containers would be shipped out after a reasonable period of production time with customs clearance to export processed goods. Those goods were then sold to domestic markets at a lower price as the producers claimed import duty exemption on the components.³⁶ The third strategy is 'false entrepôt' trade. I/E corporations made customs declarations as an entrepôt trade, but goods were shipped in without being shipped out, with the collaboration of Yuanhua's associates and customs officials. As usual, empty containers would be shipped out to other countries and those 'entrepôt goods' would be sold in domestic markets. Smuggling of cigarettes mostly relied on that strategy. The Yuanhua Group was also said to have moved huge volumes of goods through Xiamen ports illegally without any customs declaration at all.³⁷

The anti-smuggling campaign

Despite the high levels of smuggling business in Xiamen, it took the central leadership in Beijing years to realise that there was a problem. The Central Committee of the CCP and the State Council uncovered the irregularity in Fujian Province as far back as April 1999 when the General Administration of Customs in Beijing received a blackmail threat reporting Yuanhua's vast smuggling activities in Xiamen ports.³⁸ The Central Committee and the State Council then launched an investigation into the Yuanhua smuggling

³⁴ See *ibid.*

³⁵ China's saving system is notoriously known as a money laundering paradise whereby depositors could use real names, pseudo names, numerical codes or names of relatives. *Xinhua*, 30 August 1999 in *SWB BBC Asia Pacific*, 7 September 1999.

³⁶ Fieldwork in January and May 2001; Hai Yun, *Xiamen Yuanhua Da'an*.

³⁷ Information from interviews; Hai Yun, *Xiamen Yuanhua Da'an*.

³⁸ See Hai Yun, 'Interview with New Customs Chief,' *Xiamen Yuanhua Da'an*, Beijing: Zhongguo HaiGuan Chubanshe, 2001, pp. 1–2.

ring. The CCP Central Commission for Discipline Inspection led investigation taskforce '420' under the coordination of seven ministries.³⁹

Court hearings of people implicated in this racket began behind closed doors in early September in five cities in Fujian province and verdicts were delivered on 8 November 2000. Six hundred people were found guilty. Among them 200 were local officials, three held positions at provincial level, 23 at bureau level and 84 at departmental level.⁴⁰ The case 'involved enormous sums of money, was extremely complicated and caused most serious harm', commented He Yong, head of the investigation taskforce and Secretary of the CCP Central Commission for Discipline Inspection. Indeed the central crackdown of the case also had considerable impact on Xiamen.⁴¹

Almost all senior cadres were interrogated. The locals believed that the central government decided to reshuffle the provincial leadership because of the scandal. For example, Song Defu, Minister of Personnel from 1993 to 1999 when he was ordered to Fujian, replaced Chen Mingyi. It was widely believed Chen was sacked because the smuggling syndicate flourished in the mid-1990s during his tenure.⁴² This showed that top officials should be held accountable for crimes committed in their jurisdictions, even if they were not found to be personally involved. Among the defendants, four of the highest ranking local cadres, former Head of Xiamen Customs Yang Qianxian, former Vice-Director of Fujian Public Security Bureau Zhang Rushun, former Xiamen Vice-Mayor Lan Fu and former Director of the Xiamen branch of the Industrial and Commercial Bank of China Ye Jichen, were sentenced to death.⁴³ The tight controls over court procedures were attributed to fears among existing senior officials that an open trial could implicate them or their family members.

Senior party and government officials in the province were in the firing line even though they were not directly involved in criminal activities. 'Some cadre groups and government departments are still being reformed and most have not recovered from the impact. That means they have been unable to carry out economic work, which is having a big impact on the local economy',⁴⁴ although Xiamen Party Secretary Hong Yongshi commented that the number of officials convicted represented just a fraction of Xiamen's 10 610 administrative staff. The low morale led to a loss in confidence among administrative staff that were afraid to take the initiative on many tasks.

Impact on local businessmen

Although the damage the Yuanhua case caused was extremely serious, Xiamen official statistics continued to see a positive picture. Accustomed to recording blistering growth of 17 per cent a year in the second half of the 1990s, Xiamen still reached an annual GDP growth of 15 per cent in 2000 and a monthly disposable income growth of 12 per cent to RMB 1300 per capita.⁴⁵ The municipal revenue increased by 38.1 per cent and the per capita income of urban and rural residents rose by 12.3 per cent and 9.2 per cent to RMB 10 813

³⁹ *New York Times*, 22 January 2000: 1; Kevin Whitelaw, 'Corruption crackdown trials and an execution', *U.S. News & World Report*, 25 September 2000:, p. 1.

⁴⁰ Hai Yun, *Xiamen Yuanhua Da'an*, Beijing: Zhongguo HaiGuan Chubanshe, 2001, Preface, p. 1.

⁴¹ See Gilley Bruce, 'Hooked on Dirty Money', *Far Eastern Economic Review*, 31 May 2001: 28.

⁴² According to official China News Service. *Hong Kong iMail*, 13 December 2000: A13; 15 December 2000: A17.

⁴³ *SCMP*, 9 November 2000.

⁴⁴ According to Guo Zhemin, a delegate to the Xiamen PC. Bruce, 'Hooked on Dirty Money': 29.

⁴⁵ *Ibid*.

and RMB 4030 respectively.⁴⁶ These figures are probably correct because the bloom brought by the huge smuggling business was created outside the establishment. The gloom caused by the crackdown would certainly not be reflected in the official figures. In fact virtually every corner of the Xiamen economy was touched by the demise of the biggest-ever smuggling racket.

The largest state-run I/E corporations, which controlled 70 per cent of Xiamen's foreign trade, were 'purged' and underwent reform. Many smugglers from those corporations were arrested or fled. Many companies needed to be reformed because they had to relearn the rigours of legitimate business. Apart from being decimated, the I/E corporations also encountered more restrictive rules and regulations enforced by the new customs officials, who were sent from other provinces to replace those arrested. The officials followed the rules on inspection strictly and required the I/E corporations to follow the rules of customs declaration in the same manner. Some local businessmen complained that customs officers had brought them trouble. For instance, they had to revise declaration sheets many times because the officers refused to point out mistakes on the sheets at once. The officers no longer took on overtime work, which caused delays with inspection and shipment delays.⁴⁷ The I/E corporations' business opportunities were reduced, without price-competitive smuggled producer and consumer products. In the past, buyers in Jiangsu, Zhejiang, Hebei and even inland provinces would order foreign products through Xiamen's I/E corporations because of the comparatively lower prices.⁴⁸

Many locals believed the smuggling crackdown shut off some major sources of income. First, fewer buyers came to Xiamen, which led to fewer business opportunities for the service industries, especially hotels, tourist services, entertainment, restaurants and eventually the retail sector. All these industries are important for projecting a prosperous and energetic picture. Second, the consumption of the smugglers and all other beneficiaries diminished. Third, there was a psychological impact on ordinary people's desire for consumption. Xiamen people complained that it would take years to lift the deep malaise hanging over the once prosperous and free-spirited city. The locals thought Xiamen would be more prosperous if the central government had delayed its crackdown on the Yuanhua Group. The damage was also obvious in the Xiamen property sector. Xiamen was now a gloomy wreck, not just with shuttered nightclubs, KTV restaurants and bars, but with halted construction sites along the roads.⁴⁹

The impact was being felt in the FDI sector too. Fujian provincial and Xiamen municipal leaders had been 'rushing from one business to another to resolve sensitive issues of economic growth and social stability resulting from the crackdown'. Foreign investment plunged 23 per cent to US\$1 billion in 2000 after a similar decline in 1999 as foreign investors lost confidence and had to decide whether to cancel or hold on to their investments in Xiamen.⁵⁰ They lost confidence in Xiamen officials, whose biggest concern was how to carry out investment promotion after the damage done to the image of Xiamen. The 21st Century Economic Report points out that Taiwan investment flooded into Xiamen until 1998, with the number of projects reaching 1595 by February that year, with investment of US\$35.5 billion. But in 1998, when Taiwanese businessmen began to realise the scale of the Yuanhua operations and of the official corruption involved, investment began to fall. Taiwanese investment added just four projects in 1999, with investment

⁴⁶ *Hong Kong iMail*, 9 March 200: A08

⁴⁷ Fieldwork in February 2001.

⁴⁸ *Ibid.*

⁴⁹ According to the *Xiamen Daily's* report in February 2001. Bruce, 'Hooked on Dirty Money'.

⁵⁰ Bruce, 'Hooked on Dirty Money'.

of US\$4 million. Their investment fell 27 per cent in 1999, while that in the mainland as a whole rose 108.1 per cent over 1999.

Impact on the local community

Many Xiamen people perceived the crackdown on the Yuanhua smuggling business in a different light from the central government. Although the country had lost tax revenue, the locals saw Yuanhua in a positive light because the trickle-down benefits of the smuggling operation were immense. First, the smuggled goods gave Xiamen an affordable cost of living and allowed the city to sustain rapid growth with low inflation. Second, the goods boosted trading and business opportunities and brought a multiplier effect to other sectors. Third, Yuanhua's construction projects benefited the local tourist industry. The Yuanhua International Cinema City, an RMB 60 million theme park with a full-scale copy of Beijing's Forbidden City, was a top tourist attraction in Xiamen. The construction of hotels, residences, ports and the 88-storey Yuanhua International Centre also benefited the property market.

Fourth, to residents of Xiamen, Lai Changxing is a business hero. His Yuanhua Group was said to be the best company there, capable of competing with companies anywhere in Mainland China. The Group consisted of nine subsidiaries covering property, tourist services, hotels, entertainment, tobacco production, *entrepôt*, the hi-tech industry, finance, warehouses and port construction. The locals thought the smuggling racket hurt only a predatory treasury that imposed high tariffs and protected inefficient state-owned enterprises. Lai Changxing further boosted the city's pride by buying the soccer team of Foshan city in Guangdong province and moving it to Xiamen as the Xiamen Yuanhua Soccer Club. It was poised to enter China's A League when the scandal broke.⁵¹ Fifth, Lai's generosity added to his popularity. With his birth ties to Jinjiang (a suburban area near Xiamen), Lai also benefited his hometown, donating about RMB 50 million for 19 projects on education and medical services for the cities and counties in the Jinjiang region.⁵²

Local discontent with the crackdown

Lai's generosity, charity and even his smuggling business created legitimacy. With dreams of making Xiamen a modern metropolis to rival Beijing and Shanghai, both local officials and people thought Yuanhua's smuggling business had helped boost the local economy and community spirit and made Xiamen one of the country's most prosperous, modern and well-known cities. In some sense Lai had successfully corrupted the general public in order to escape criticism and punishment. While official reports and press statements tend to impose a positive picture of the situation, claiming, for example, that the crackdown would promote equal competition in the market and increase foreign investors' confidence in Xiamen, there is considerable frustration about the extent of the national attack. People feel the crackdown was an unfair attack on Xiamen. From a local perspective, the measures have taken away one major development perspective for Xiamen.

Some locals did feel disgusted with the smuggling racket and official corruption. The crackdown made them realise the seriousness of the graft and corruption problem in their government. They understood that most government officials have two careers: one in an efficient and clean bureaucracy that the officials attempt to convey in public settings, the other a corrupt one that exists only behind closed doors. It discredited the whole system. However, they also accepted that graft and corruption were widespread in China, practised in

⁵¹ Lawrence, 'A city ruled by crime,' pp.14–18.

⁵² Zhongguo XinWenshe Xiamen Branch (ed.), *Xiamenshi rongyu shimin fengcai*, Hong Kong: Hong Kong Minnanese Publication Co. Ltd, 1998, pp. 157–8.

every segment of society to facilitate efficient and effective interactions and interpersonal relations. Thus they felt frustrated that Xiamen was made a showcase for the rest of the country.

In the reform era, the general ethos being promoted is individual enrichment and entrepreneurship as opposed to purely political power and the ideal of individual sacrifice to the collective, as promoted in the Maoist period. People nowadays behave according to the perspective of utility that justifies the practice of smuggling and the collusion between businessmen and government officials.

The Elasticity of Central Scrutiny

Over the past 20 years, the open policy and economic reform have weakened the centre's scrutiny over the coastal localities. The new leadership carried out a new round of institutional reforms in various realms, particularly in the second half of the 1990s, in order to reconstruct central–local relations. With special regard to the problem of official corruption, the centre has relied on both rigorous anti-corruption campaigns as immediate surgery and cadre and legal reforms as long-term institutional therapy.

The centre's handling of the anti-smuggling campaign in Xiamen and Xiamen's response to the crackdown showed the predicament of the centre when promoting economic growth and reasserting its authority over the localities. Prolonged toleration of smuggling and corruption followed by a sudden and severe crackdown by the central government resulted in local discontent. The Yuanhua case also showed that the central government lacked a credible commitment to its current vision of 'governing the country according to law' (*Yifa zhiguo*). Both consequences undermined Xiamen locals' as well as the general public's recognition and cooperation with the centre's long-term visions and policies because the ordinary people indeed decide whether their government deserves legitimacy and authority according to the consistency of its words and deeds.

The Importance of Central Scrutiny

Since the decentralisation policy in the economic, fiscal and administrative realms, which have boosted economic growth for two decades, the central government has gradually lost its scrutiny over the localities, leading to a 'state capacity crisis' in three ways.

First, low tax revenue has made the central government unable to command enough fiscal resources to devise and place appropriate institutional mechanisms to strengthen the centre's resource capacity and to redirect the resource flows to mitigate regional disparities, particularly the eastern versus the western regions.⁵³ Because of the dramatic expansion of the non-state sectors and poor operations of state-run sectors, state revenues as a share of GNP declined from 30 per cent in 1978 to 22.3 per cent in 1985, 15.8 per cent in 1990 and 10.9 per cent in 1995. Also because of various measures of fiscal decentralisation, the centre's

⁵³ For studies on this argument, see Wang, Shaoguang and Hu, Angang, *Zhongguo guojia nengli baogao* [Report on China's State Capacity], Shenyang: Liaoning renmin chubanshe, 1994; Shaun, Breslin, *China in the 1980s: Centre-Province Relations in a Reforming Socialist State*, London: Macmillan, 1996, chs 6 and 7; Shaoguang Wang, *Fenquan de dixian* [The Bottom-line of Decentralization], Beijing: Zhongguo jihua chubanshe, 1997.

share in total government expenditures was reduced from 54.3 per cent in 1980 to 29.2 per cent in 1995.⁵⁴

The size of extra-budgetary funds (EBFs) expanded so rapidly that the ratio of EBFs to budgetary revenues rose from 31 per cent in 1978 to 111 per cent in 1992. While the implementation of the ‘tax-sharing reform’ (*Fenshuizhi*) since 1994 proved somewhat effective in suppressing the growth of EBFs, only 13 per cent of the EBFs belonged to the centre in 1995.⁵⁵ Furthermore, the central government faced successive budget deficits, while localities continued to reap surpluses.⁵⁶

Second, there have been problems on the fringes of the military establishment, such as with the PLA-affiliated commercial empire, military units in outlying and coastal regions, and corruption in parts of the rank and file and high echelons. The centre has hardly preserved its coercive capacity. Apart from safeguarding national sovereignty and territorial integrity, the PLA also has the divine duties of safeguarding the CCP’s rule and authority, as a demonstration of discipline and righteousness of the party, and defining China’s national ideology and identity: patriotism, cohesion and national strength. The PLA’s engagement in business and smuggling activities, however, have obviously undermined the relevance and legitimacy of the CCP, which have already been eroded by the pursuit of capitalist reform and collective corruption that has spread throughout the party apparatus.

Third, regarding the administrative realm, the ability of the central government to impose its preferences on localities as well as acquire information about local conditions around the country was also weakened. The centre’s administrative capacity has declined over the years because of decentralisation, marketisation, privatisation and internationalisation. The central government has no longer been able to impose its will strictly on the localities. On many occasions it consciously chose to avoid direct confrontation for fear that its intervention might dampen the national mood for reform.⁵⁷ The low percentage of central taxation but a high percentage of EBFs belonging to localities, the PLA business empire and the progressive local autonomy were attributable to the existence of a massive informal economy that raised a lot of questions about the efficacy of public intervention, growing inequalities and corruption. To reassert central authority, the central government has relied on a number of alternatives to tackle these problems. For example, by using fiscal reform in 1994 and banking reform in 1995, the central government has sought to strengthen its own fiscal and administrative capacity so as to maximise its macro-economic controls over the local authorities.

Nationwide Anti-Corruption Campaign since 1998

Widespread corruption among officials and their families has seriously damaged the party-state’s reputation and caused great loss in the treasury. The central auditing administration revealed that corrupt officials had

⁵⁴ *Zhongguo Tongji Nianjian (hereinafter ZGTJNJ) 1996*, pp. 22–23, 223.

⁵⁵ Tianxin Yu, ‘Guipin he shudao yusanwai zijin de gaige shi zai bixing’ [The Reform of Merging and Channeling the Extra Budgetary Funds is Inevitable], *Jingji yanjiu cankao* [Reference for Economic Research], 417, 7 May 1994: 31; and *ZGTJNJ 1997*, Beijing: Zhongguo tongji chubanshe, 1997, pp. 233, 248.

⁵⁶ Huaicheng Xiang, *Jiushiniandai caizheng fazhan zhanlue* [Strategies of Fiscal Development for the 1990s], Beijing: Zhongguo caizheng jingji chubanshe, 1991, p. 16; and Zhenyu Yuan, *Caizheng chizi yanjiu* [A Study of Fiscal Deficit], Beijing: Zhongguo caizheng jingji chubanshe, 1991, pp. 3012.

⁵⁷ For this view, see Jae Ho Chung, ‘Studies of Central–Provincial Relations in the People’s Republic of China: A Mid-term Appraisal’, *China Quarterly*, 142, June 1995: 497–506; *Central Control and Local Discretion in China*, chs 3, 5, 6; and Yasheng Huang, *Inflation and Investment Controls in China: The Political Economy of Central-Local Relation*, Cambridge University Press, 1996.

plundered RMB 15 billion from state coffers in 1999 alone.⁵⁸

The central government began a major campaign in late 1998 to clean up government. Frequent statistics release by the Supreme People's Procuratorate in recent years indicated the momentum of the centre. By the end of November 2000, more than 43 000 corruption cases had been dealt with, recouping RMB 3.67 billion (US\$442 million). Among these cases, 1270 involved funds of more than RMB 1 million. More than 2700 officials at county and divisional level were investigated during the period.⁵⁹ Besides, from January to August 2000, the national prosecution office had investigated four officials at the rank of minister or provincial governor and 100 at the rank of head of a bureau.⁶⁰ And from January to April 2001, prosecutors nationwide probed more than 15 000 cases of corruption and dereliction involving more than 16 600 people.⁶¹

More significantly, Premier Zhu Rongji promised in March 2000 to stamp out the rampant corruption that extends to the highest ranks of the CCP.⁶² A number of high-ranking officials were executed for taking bribes or were accused of criminal activities. For example, Hu Changqing, former deputy governor of Jiangxi province and a former deputy director of the State Bureau of Religious Affairs, was sentenced to death in February for taking bribes worth more than RMB 600 000 and executed in March 2000.⁶³ Cheng Kejie, former vice-chairman of the SCNPC, was sentenced to death in July and executed in September 2000 for taking RMB 5 million in bribes and kickback. Cheng is so far the highest-ranking official in China to have received capital punishment for corruption.⁶⁴ Gao Changli, the Minister of Justice, was removed from office in December 2000; he was said to be under investigation for corruption and economic misdeeds. If his departure involves financial improprieties, Gao Changli's case would be another blow to the party-state because, though traditionally weak, the ministry oversees prisons and legal education and regulates the legal profession.⁶⁵ A former Deputy-Director of the General Administration of Customs, Wang Leyi, has been accused of taking bribes amounting to RMB 820 000 (US\$99 000) and seizing RMB 630 000 (US\$76 000) worth of state-owned property and other people's property.⁶⁶

A show of trials and the fall of the mighty should exercise a deterrent effect on the cadres. Unusual high-profile reporting in the official press, on the main evening news and even the television program *Daily Focus*, China's popular investigative news show, about Hu Changqing's and Chen Kejie's misdeeds, downfalls, courtroom confessions and executions indicated again that the party-state was willing to recognise publicly its problem with party discipline. Indeed, the commentary and reports in the *People's Daily* and in particular the public speeches of the party-state leaders were signs that the central leaders recognised they must 'reel in the big fish' if they hoped to stem the epidemic. A commentary in the *People's Daily* said on 9 March 2000, the date Hu Changqing was executed: 'For such a flagrant criminal, only the death penalty is sufficient to safeguard national law, satisfy popular indignation, rectify the party work style and fight against

⁵⁸ Lorien Holland, 'Scandal at the top', *Far Eastern Economic Review*, 3 February 2000: 27.

⁵⁹ *China Daily*, 22 December 2000: 1.

⁶⁰ *New York Times*, 15 September 2000: A.22.

⁶¹ *China Daily*, 5 June 2001: 1.

⁶² *New York Times*, 9 March 2000: A.10.

⁶³ *China Daily*, 1 January 2001: 2; *New York Times*, 15 September 2000: A.22, 9 March 2000: A.10.

⁶⁴ *China Daily*, 1 January 2001: 2.

⁶⁵ While Gao had no direct power over prosecutors and courts, which are notoriously susceptible to political control and corruption, he had taken a leading role in promoting 'the rule by law', a professed goal of the top leaders as China opens to the global economy. *New York Times*, 2 December 2000: A.4.

⁶⁶ *China Daily*, 5 June 2001: 1.

corruption.’ The commentary also urged officials to learn their lessons from the case and not to be ‘attracted by all sorts of temptation during reform and opening to the outside world’.⁶⁷

Institutional reforms

Apart from the anti-corruption campaign, the central government has looked at ways to stop future officials from being drawn to a life of crime. The central leaders have renewed efforts to reconstitute the levers of central control.

The central government has attempted to reform the cadre system. Most importantly, the central leadership not only appoints but also periodically shuffles provincial leaders and PLA regional commanders to ensure that these officials do not become too tied to local interest, in order to avoid nepotism and corruption.⁶⁸ By the late 1990s, cadre rotations have become a key ingredient of the Chinese personnel management system and were broadened to include sub-provincial cadres such as mayors and vice-mayors of coastal cities. In 1999 the central leadership formalised the cadre exchange system by promulgating a set of Provisional Regulations on Exchanging Leading Party and Government Cadres. The regulations specify that the exchanges are to follow strict procedures and are to be aimed at cadres with promotion prospects so that they may broaden their experiences and improve their leadership capability.⁶⁹

Other cadre reform includes cancelling jobs for life, allowing more public involvement in appointments, and making checks on disclosure of assets. Increased transparency and closer monitoring by the graft-fighting agencies are supposed to enhance education of officials in self-discipline and correction of malpractice in various departments and sectors. A more prominent step is the crackdown on the business activities of military armed forces, the armed police and the judicial system launched in the summer of 1998.

One of the reasons for the pervasiveness of corruption is the impunity of bureaucrats’ misdeeds. The increasing expansion of local autonomy in law-making activities since the reform era has caused deterioration in legislative quality, contradictions among laws, and difficulty in law enforcement. This is because of the local PCs’ authority to pass local regulations that are called ‘advanced legislation’ (*Xianxing lifa*) before a national law was promulgated on the same subject matter.⁷⁰ The centre has tolerated this because it met practical needs of promoting local economic development. On the other hand, it has been unable to deal with violation arising from lack of proper procedures and expertise. Local officials took advantage of the ambiguous and rudimentary legal system by not only passing regulations in conflict with the national laws but also by manipulating judicial procedures or not taking effective action to implement the party and government documents and regulations. The arbitrary legal system has enabled them to escape legal scrutiny. In his annual work report to the National People’s Congress, Xiao Yang, President of the Supreme People’s Court, conceded that judicial officials were also implicated in favouritism, bribery, mishandling of cases in violation of law, local protectionism, making improper financial demands on litigants,

⁶⁷ Ibid.

⁶⁸ Between 1991 and 1999, there were 691 exchanges of cadres at the level of the provincial department deputy chief and above. *Wenhui bao* (*Gazette*, Hong Kong), 14 June 1999.

⁶⁹ While previously local leaders were transferred laterally for poor performance, those who have worked in the same locality or department for ten years must be exchanged with their counterparts in other localities. In contrast, cadres who perform poorly, exceed certain age brackets, in poor health, or have committed crimes are to be excluded from the exchange circuit.

⁷⁰ Theoretically they violated the Constitution for, under the Constitution, local regulations can only be passed to implement an existing national law. *PRC Constitution* 1982, Articles 99, 100.

and abuse of power.⁷¹ Such malfeasance has contributed to the widespread public dissatisfaction with judicial corruption.

The central government has attempted to regulate the disorder of the legislative system. The 15th NPC held in September 1997 not only formally endorsed the idea of ‘governing the country according to law’ (*Yifa zhiguo*) but also stipulated that China should develop a socialist legal system by the year 2010. In spring 1999, the NPC formally enshrined the principle of ‘governing the country according to law’ in the Constitution. The central leaders demanded that the party and government officials abide by the law and promote judicial fairness, particularly in handling inter-regional and interdepartmental economic cases, and have launched a variety of institutional reforms.

The centre took legal instead of administrative measures in order to handle its relationship with localities. The Third Plenary Meeting of the Ninth NPC promulgated the Legislative Law on 15 March 2000. It is the first time that the legislative powers were divided among various law-making organs, especially those between the centre and localities, by listing nine areas that belong exclusively to the legislative jurisdiction of the centre. It also consolidates all the above procedural rules for law-making and provides some guidance for dispute resolution. This law is expected ‘to regulate legislative activities, guarantee and promote socialist democracy, and rule [the] country by law’.

Contradictions of the Xiamen Yuanhua Case

The central government aimed at setting up a transparent, strict and fair establishment to eliminate corruption, but its handling of the Xiamen Yuanhua case and its consequences is unfavourably interpreted by the locals and the general public.

Xiamen as two showcases

Corruption is preserved as an element of stabilisation through rent-seeking by the state-party apparatus and must be fought as an element destabilising political legitimacy, which threatens the survival of the regime. For almost two decades, Xiamen’s powerful and imaginative officials as well as people in general were allowed to practise administrative and financial manipulation. From a local perspective, smuggling and corruption were known and tolerated by the central government for a very long time as the cost for facilitating economic development and attracting Taiwanese and foreign investment. However, the toleration expired when the smuggling and corruption were thought to undermine national economic interest and the central authority. Xiamen had to be sacrificed to show the determination of the central authorities to fight smuggling and corruption in 2000, for Xiamen was not the only notorious locality.

Lack of transparency

The Yuanhua case showed there was lack of transparency in the judicial procedures in several areas. First, the exact extent of the crackdown is unclear, since most high-level investigations are kept under wraps. Second, defence lawyers had been barred from mentioning the names of top central government and provincial leaders implicated in the case. The lawyers had also been ordered not to raise any political issue

⁷¹ ‘Supreme Court President Xiao on Eliminating Corruption,’ *Zhongxinshe*, 10 March 1999, FBIS-CHI-1999-03-15.

or challenge the relevant judicial procedures adopted for the trial. This was to ensure the smooth conduct of what was described as the most ‘politically sensitive’ court hearings.⁷²

Third, the Propaganda Department had banned most of the local media from covering the hearings, and they were ordered to use only reports released by Xinhua News Agency to ‘avoid any threats to stability’. The state-controlled print and broadcast media reported almost nothing of the trials, forcing the public to rely largely on reports on Chinese Internet news sites and in racy unofficial magazines and books.⁷³ The media ban inevitably signalled that the central leaders were nervous about what the corruption hearings would reveal. It also made the public think that the party-state banned media reporting because the judiciary would not conduct the court hearings or impose sentences in accordance with the laws. They once again doubted the willingness of the central leaders to really fight against corruption and to really establish a just legal system.

A workable legal framework?

As a unitary system, the source of government power is deemed to come from the centre. The centre delegates the powers to the province level and below, and to a large extent retains control over every aspect of local affairs. This relationship has been guided by the following constitutional principle: ‘the state organs of the PRC apply the principle of democratic centralism... The division of functions and powers between the central-local organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.’⁷⁴

In order to activate local economic development in the early 1980s, the centre decentralised power to the localities. The localities saw that local legislatures were to take bold initiatives, be creative and adventurous in passing local regulations and exercise local legislative powers to the fullest extent so long as this conformed to the national legislation, for this was exactly what the centre encouraged.⁷⁵ In addition, the actual decentralisation process resulted in the devolution of economic powers to the central state apparatus represented by the PLA and the public security, customs and judicial systems, aiming at achieving political stability at the same time as undergoing socialist transformation. Those particular powers for the lower levels caused widespread corruption. In this sense, the centre has instrumentalised corruption by ‘corrupting’ the state agents and the ordinary people in the economic sphere of utility. However, when it found corruption was so serious that it threatened its regime legitimacy, as perceived by the people, it has also instrumentalised the fight against corruption by channelling national discontent against it. It blamed individual officials for conniving at corruption rather than the decentralised system that tempted the officials to be corrupted.

From the local point of view, decentralisation to boost Xiamen’s local economic development since 1980 followed by a full-scale attack on its smuggling and corruption in late 1990s constitutes a political instrumentalisation of corruption by sacrificing Xiamen’s interest and blaming the local officials and businessmen. From a local perspective, the centre broke the agreement with the locality, that is, corruption was tolerated, even authorised by the centre as a means of boosting the local economy. In order to

⁷² SCMP, 14 September 2000; *New York Times*, 15 September 2000: A22; *Hong Kong iMail*, 27 September 2000: A9.

⁷³ *New York Times*, 15 September 2000: A22.

⁷⁴ PRC Constitution 1982, Article 3.

⁷⁵ Shen, ‘Rethinking of Local Legislative Powers’, p. 98.

check officials' power, the central government requires not only well-written laws and a well-functioning legislative system, but also fairness in judicial practice. But the handling of the Yuanhua case showed the elasticity of the central scrutiny. The case in a sense is a test of the central leadership's nerve. If only local officials are punished, when so many big names are thought to have been embroiled in the scam, the show trial could be seen as fudge. The public believe that the huge amount of money involved in the scam is too great to have been amassed without involvement at senior levels.

Facing the problems in judicial fairness and legal enforcement that have undermined the legitimacy of the system, the central leaders have eagerly promoted legal reforms to serve not only as a dispute resolution mechanism but also as a safety valve for alleviating socio-political tensions in the rapidly changing transitional period. However, the lack of transparency and unfairness revealed in the Xiamen Yuanhua case suggest that any campaign against smuggling, or corruption generally, is likely to be limited. Instead, judicial leaders should emphasise the importance of judicial institutions exercising power and enforcing the law independently and in the interests of judicial fairness.⁷⁶

⁷⁶ The rule of law system is defined as 'a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. They enshrine and uphold the political and civil liberties that have gained status as universal human rights. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proved guilty. The central institutions of the legal system, including courts, prosecutors, and police, are reasonably fair, competent, and efficient. Judges are impartial and independent, not subject to political influence or manipulation. Most important, the government is embedded in a comprehensive legal framework, its officials accept that the law will be applied to their own conduct, and the government seeks to be law-abiding.' Thomas Carothers, 'The rule of law revival,' *Foreign Affairs* 77(2) 1998: 95–106.

18

Soft Boys to Bad Men
Expressions of masculinity among boys from communities
marginalised by drugs, crime and violence

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Recently the links between masculinities, crime and other social issues has increasingly become the subject of academic debate (Bourgois 1996; Jefferson 1996; Messerschmidt 1997). Challenging the general discourse on crime and anti-social behaviour is crucial since most crimes are committed by men – any analysis on crime and anti-social behaviour should consider gender. Further, Goodey (1997) claims that this analysis should be ‘contextualised’ and that in order to understand male crimes the processes by which boys make their transition into criminal men need to be examined in the ‘context of one’s class, race, age and sexuality’ (1997: 401). Based on a multi-site ethnographic fieldwork across Kingston in Jamaica, Brooklyn in New York and Brixton in the United Kingdom, this chapter analyses the notion of masculinity in adolescent boys in an inner-city community in Jamaica and traces their transition into men who become linked to organised criminal networks.

In Jamaica, statistical data suggest most of the crimes committed in the island state¹ are by male youth under the age of 19. My research began with a quest to understand this and the rising levels of violent crime in Jamaica. This chapter starts by describing the emergence of the international organised crime group originating in Jamaica known as the ‘Yardies’ or ‘posses’,² their criminal activities between Jamaica, the United Kingdom and North America, and their growing influence on crime in Jamaica.

My current knowledge of the Yardies comes from accounts of their infamous rise and criminal activities, particularly Davison (1997), Small (1995) and Gunst (1995), who offer popular caricatures of them as political henchmen, gang leaders and mafia-style ‘dons’. The Jamaican criminologist Harriot (2000), in his critique of the making of the Yardie, refers to them as ‘dons’ and modern-day ‘Robin Hoods’ nesting in a power base largely funded by the drug trade. According to Harriot, they exist in a system in which criminal values are internalised, and the role of the ‘don’ is legitimised. They move overseas into Jamaican enclaves and mould themselves into organised crime networks. Harriot has shown how poor communities – he refers to them as crime communities – in Jamaica nurture criminality, and it is in this environment that the Yardie begins to learn the skills that eventually lead to the escalation of crime and the development of organised crime networks outside Jamaican borders.

¹ Jamaica is an island state of approximately 2.6 million persons located in the Caribbean whose principle exports being alumina, bauxite, sugar, rum, clothing, coffee all valued at 1.3 billion in 2000. The economy has a strong mining manufacturing and tourism sector. In 2001 Jamaica’s GDP (gross domestic product) was 7.78 billion.

² Yardie and posses are used interchangeably to indicate the names of Jamaican crime networks operating outside the borders of Jamaica.

The development of Yardie criminal activities worldwide over the last decade is largely anecdotal and mainly confined to their criminal behaviour. In discussions about the basic causes of crime in Jamaica to which Yardie and posse networks contribute greatly, very little is known about the formation of Yardies' identity. Equally there is an absence of discussion about the role that gender socialisation plays in their understanding and accomplishing of masculinity. Yet many have returned to the island from the United States as convicted criminals and as deportees, sometimes after having served a few years in the US criminal justice system. They return to the Caribbean highly skilled, 'apprenticed in the ways of badness' (Gunst 1995: 140) and their return is linked to the rise in crime, especially in Jamaica. According to media reports, 'United States aggressive deportation policy may be directly responsible for a large chunk of Jamaica's surging crime in the last five years'.²

Remarkably, one out of every 106 Jamaican males over the age of 15 is now a criminal deportee from the United States, and most of those sent back to Jamaica come from a population of American street gangs said to number about 800 000.³ How did this happen to so many Jamaican men? This question requires an understanding of the process by which adolescent boys from the so-called 'crime' communities⁴ make their transition into men who through violence participate in the global drug trade.

To enquire into this, I undertook an ethnographic journey which involved an eight-week immersion in the lives of 20 adolescent boys from an inner-city Jamaican community. The fundamental questions of this effort included: What is the notion of, and the process by which these young men construct masculinity? Moreover, how does their concept of masculinity change over time?

My argument takes off from the view that historical structures of colonialism and imperialism shape the local construction of masculinity (Connell 1998). The historical point of reference for understanding the construction of masculinity in Jamaica starts at 1860. This is the point at which Caribbean society was challenged after blending with other ethnic groups to weave itself into a culture with a distinct identity. This is the context in which the exclusion of Afro-Jamaican men is said to begin and to result in their eventual marginalisation.

The social practices of the past place the Afro-Jamaican male in a marginalised state, the result of which has been, for some, an inferior expression of self. Some have attributed this to the tensions and clashes produced by African matriarchal and Victorian patriarchal models of socialisation. An examination of the trends and practices carried out over the years in education, in the family unit and at the workplace reveal life-restricting features of this patriarchal system that later hinder the Afro-Jamaican male in his accomplishment of masculinity (Kerr cited by Chevannes 2001; Miller 1991).

Of the Past: Setting the Stage

The social and political history of Jamaica shows the extent to which slavery, cultural diversity, friction, domination, poverty and the integration of white European, African, Chinese and Indian cultures have formed

² The *Jamaica Gleaner*, October 21, 2003.

³ Associated Press report cited by the *Jamaica Gleaner*, October 21, 2003.

⁴ Crime communities are explained as communities where yardies have evolved, and are based.

Afro-Caribbean culture in Jamaica and in the process formed Afro-Jamaican masculinity. Here masculinity is rooted in a superiority–inferiority dialectic which has excluded the Afro-Jamaican male, adversely affected his identity and set in motion subordinate expressions of masculinity that today result in deviant lifestyle practices particular to some men from the lower social strata. Such practices range from alcohol and drug abuse, participation in urban gangs, drug trafficking, and acts of violence (Miller 1991).

These practices are the result of and have been maintained by uneven interaction of gender, class and ethnicity within the patriarchal system. Such unevenness goes as far back as slavery, where the male as protector and head of family has disappeared, resulting in absent fathers and broken families. This family pattern continues to be observed in some contemporary Jamaican households, and some observers believe that the absence of a father figure or appropriate role model has a direct relationship to boys' poor school performance (Miller 1991).

More recently, migration has resulted in additional stress for single mothers; poverty has forced them to seek out alternative strategies for the family's survival. Added to this are new patterns of social deviance, with single mothers complaining of their inability to control their sons. Other debates refer to masculinity as a function of male under-achievement rather than male marginalisation,⁵ and Bourdieu's symbolic violence perpetuated in schools and other institutions lends itself to experiences of failure by adolescent boys (Evans 1999).

There is a long-established relationship between deviance and failure to accomplish hegemonic masculinity. According to some observers, the African-American male, subjected to a dominant white supremacist culture, has been denied the cultural and material ability to master his role as economic provider. The product of this subordination has been an African-American male identity that is vulnerable to crime and violence (Hooks 1994; Messerschmidt cited by Bowler 1998). While this may be so and may be similar to the history of the Afro-Jamaican, the fact remains that for these ethnic groups, whether African-American or Afro-Jamaican, little has been done culturally to safeguard the passing down of transition rituals and values that will ensure safe passage of boys to manhood. This failure perpetuates the practices of other rituals, resulting in a subordinate expression of masculinity.

Constructing the Object of Enquiry

Drawing on the work of Bourdieu (1992), Connell (1995) and Messerschmidt (1997), I apply the notion of habitus and the theory of structured action in the making of crime as a resource for 'doing masculinity'. As I explore the habitus of the adolescent boy and place myself in his social space, I expect to learn about the structures and practices around which his identity is formed, an identity which may later be expressed as bad, tough and violent masculinity as he makes the transition from boy to man. In observing the structure and practices crucial to identity formation, I hope to examine further how the construction of masculinity changes over time. Discussion of this construction and the observation that the social practices of gender, race and class interact with this construction implies an examination of its impact on the varying expressions of 'doing masculinity'. For within this interaction, identity is understood as dynamic and non-static, the

⁵ Figueroa cited by Bartely in the *Jamaica Gleaner*, September 14, 2003

subject of change and negotiation and one dependent on social interactions that are essentially affected by the above-mentioned structures. Boys and girls understand who they are from the expectations placed on them as they interact in the family, at school, in church and at the workplace as they become adults. This is the manner in which they play out their roles and 'do gender'.

Seen ethnographically, this space has its codes, its rules, its 'bureaucratic maze' (Bourgeois 1995: 29), its 'webs of significance, layers of meaning, tensions and conflicts' (Geertz 1973: 5). All these minimise the resources available for acquiring status and accomplishing masculinity, so opportunities for these may be replaced by a feeling of powerlessness and low self-esteem. This positions the adolescent boy as he becomes man to use crime 'as a resource for the situational accomplishment of gender' (West & Zimmerman 1987; Fenstermaker et al. 1991; Goffman 1979 cited by Jefferson 1996). In this case hegemonic masculinity is an essential expression for 'doing gender' within the patriarchal structures. A hegemonic man is described as one who is 'economically successful, racially superior and visibly heterosexual' (Connell cited by McDowell 2002).

Hegemonic expressions of manhood reproduce these patriarchal structures and 'doing gender' allows for such expressions as locating man as 'one in power, with power and of power' (Cohen 2001: 31). This is the driving force behind accomplishing hegemonic masculinity and gaining respect. Drawing on Bourgeois' ethnographic work with Puerto Ricans in an East Harlem community (1995), I show how in inner-city Jamaican communities the inability to accomplish the desired hegemonic masculinity produces deviant social behaviour when the adolescent boy searches for respect as he becomes a man.

To construct an object for sociological analysis, Bourdieu (1997: 224) challenges us to 'constitute socially insignificant objects into scientific objects' by approaching a major socially significant object from an unexpected angle. Therefore I use the game of cricket to negotiate my way into the lives of 20 adolescent boys whose social space is part of Harriot's 'crime communities'. Cricket is a popular sport in Jamaica and is regarded as the sport of gentlemen – it is non-contact and non-violent. Cricket can therefore be a useful instrument with which to communicate and gain access to the cultural structures, webs of significance and dispositions that influence behaviour in the habitus of these boys. More profoundly, sports can be used as a ritual of transition and as an institution for observing and reproducing masculinity practices.

Framework for the Research

Starting from Pattman and colleagues' (1998: 125, 140) boy-centred research, I agree that boys should be seen as 'active subjects' producing multiple fluid and soft identities as part of a 'repertoire' of masculinity. The analysis on adolescent boys and their transition into violent men is therefore considered along this continuum.

My analysis on the historical overview of local masculinities in Jamaica, along with Messerschmidt's structural action theory, points to three areas that interact as a process of identity formation and result in the construction of masculinity: gender, class and ethnicity. To locate the notion of masculinity in an adolescent boy means a process analysis of the interaction of gender, class and ethnicity in his social space. Further, analysing this process in the social space of a 'crime community' raises the questions of whether crime becomes a resource for 'doing masculinity', and of what kind of identity the boy displays as he engages in

the many social interactions of his habitus. In the following analysis, I attempt to show that gender, class and ethnicity interacting within the rituals of organised action as laid out in sports may give access to an adolescent boy's identity which is characterised as multiple, fluid and soft (Pattman et al. 1998).

I spent eight weeks with 20 boys in an action-oriented research project in which I deliberately brought these three elements together in the design of the project. Therefore I can suggest through the location of an adolescent boy's masculinity that reconstructing his notion of manliness may be possible through the organised action and rituals associated with sports. Although this remains outside the scope of the initial inquiry, the dialogue for such can begin and may be carried forward in future discussions on transforming masculinities in 'crime communities'.

The Project

Young boys growing up in the inner-city communities of Kingston are exposed daily to harsh economic and social conditions arising out of poverty, and in most cases they are also exposed to crime and violence (Miller 1991; UNDP 2002). The prevalence of such social conditions leaves room for few to accomplish masculinity in the normal hegemonic expression. Unfortunately some of the boys from an early age make their way into a deviant lifestyle, acquiring from it a new sense of identity, power and economic security. More often they become completely absorbed into gangs which have extension overseas, operating for the most part from Kingston to North America and/or Britain. They become known as Yardies or posses, and form part of organised crime networks (Harriot 2000). Today this is the reality that confronts the adolescent boy in inner-city communities as he makes his way from boy to man in the process of defining his identity. In order to try to understand this transition and more importantly locate his notion of masculinity, an action research project was designed within an inner-city community of Kingston.

To construct such a project, I used the sport of cricket first as a vehicle with which the ethnographer would enter the social space of the boys, establish rapport and conduct interviews, and second as a way to engage in discussion on the 'real life games' played out in that community as class, gender and ethnicity intersect to give adolescent boys a sense of who is man.

Why Action Research?

Action research was selected as the most appropriate mode for an enquiry because it is scientifically regarded as a tool for engaging the community in a process of participatory analysis, self-reflection and development. According to Fals-Borda & Rahman (1991: 6), 'it offers an opportunity for making theory concomitant with action'. In the midst of social and economic deprivation, participatory action research (PAR) will bring to light the tensions and social inequalities that give rise to oppression and poverty in the structures. When this picture emerges, it allows for a freedom and liberation in inquiry, raises consciousness in the community, and creates action towards transformation (ibid. 1991).

Using participatory action research to engage with the world of adolescent boys meant that I had to be prepared to put myself into the subjects' shoes. PAR methodology gave me the flexibility and creativity to confront and experience the truth as they experienced it. In addition, I had to be aware as an ethnographer

that in addressing my thesis question I might have to test the limits of the science. To understand how the adolescent boy changes would take me into an expanded experience that might be outside the initial locale. Multi-sited ethnography is able to do this.

The criterion for selecting of a community to research was largely the presence of a non-government organisation in Kingston and their current work in using sports to reduce violence in the community. It meant that both the facilitating organisation and the community had some experience in using sports to address key social issues around violence.

Twenty young men ranging from 11 to 19 years signed up for the project in an ad hoc manner. I say this because mobilisation of project participants was difficult. As a result of increased tensions between gangs, an air of general distrust characterised levels of interaction in the project environment, so the coaches, the main project mobilisers, were unable to gather boys who were afraid to venture into their unsafe environment. Even more disturbing was news from the coaches, who rode bicycles around the community to announce the project, that some 14-year-old boys were reported to have said, 'nuh gun, nuh money, nuh cricket', meaning that if neither guns nor money were forthcoming they would not be participating in the project.

Seventeen sessions of cricket were conducted in addition to eight focus group discussions. Eventually the regular attendance of 20 boys was recorded and a club formed. The boys played cricket twice a week for three hours in the evenings. The two coaches facilitated practice sessions during the week. However, on Saturday afternoons before cricket was played the boys would sit for 45 minutes in the community clinic and explore through discussion with a male facilitator the different themes around which their identities were formed. These were structured focus group discussions in which the male facilitator under the guidance of the ethnographer raised the following issues: who is a man, qualities of a man and woman, men in the community, family, mother–father–son relationship, rules for survival in the 'yard', power, police, guns, violence, crime and drugs, institutions in the community, and the right to life.

The group facilitator, the boys and the coaches only attended the focus groups. The ethnographer remained in the background as an observer at all focus group and cricket sessions. As cricket rules and simple strategies of the game were discussed alongside their real life experiences, the boys began to recognise how their participation in the project helped them to gain confidence in articulating their feelings on the transition from boyhood to manhood.

Results of the project

During the eight-week period it became apparent that the research method was not only facilitating my understanding of the transitions of masculine identity but was also serving as a male initiation rite that gave an opportunity for the reconstruction of masculinity. New knowledge was revealed when the club members realised that the ritualised action of the past eight weeks of training, including the regularity of discussions on manliness and the presentation of men displaying other masculinities, opened up free expressions of feelings among the boys. The process of removing what Pollack refers to as the mask of masculinity inside the world of boys (2001) for me began here, with the knowledge that a show of affective, 'soft' or tender

masculinity is part of a continuum along which multiple masculinities exist (Connell cited by McDowell, 2002). The following expressions could be described as soft and tender:

Cricket teach me more manners and discipline.

I liked the involvement with the younger kids. I felt a connection, and this helps me to act better.

I like how everybody came together as one.

Cricket helps me to deal with people better, if somebody says something to me.

I hear wey dem say (I listen to what they say).

When I go to the field to bat I feel welcome. I feel good among the others, I feel confident, and it builds my self-respect.

I respect the authority of the coach.

I like when we come to talk about what takes place in the community.

Of course there were times during the entire experience when I was scared and agitated by the constant threat of violence posed in that space, but there were equally times when I was overwhelmed by the display of 'soft' masculinity, characterised by tenderness and an ability to communicate such feelings. These two dimensions came from the older men and boys in the community. In so doing, PAR allowed me to experience the multiple, fluid and disparate elements of an adolescent boy's identity referred to by Pattman and colleagues (1998). So it may be possible to assert that soft masculinity in an adolescent boy can be located and developed from the ritualised action of a sport. This is one area where focus can be given to the reconstruction of one's masculinity. To an adolescent boy in inner-city Kingston it may be a crucial part to his negotiating a life-giving transition into manhood. One pattern is quite clear: while 'soft masculinity' is present in an adolescent boy's identity, it is not encouraged, and over time, as a result of the social practices of gender, class and ethnicity interacting on the habitus in his social space, it gives way to other masculinities.

Eight weeks was not enough time to come to such a conclusion but the observation is noted as important to the total process of locating masculinity in adolescent boys. However, one of the major achievements of this strategy is the chance to observe the above-mentioned social practices within the community as experiences in which a boy's notion of masculinity is constructed and transformed over time.

Discussion

One of the first places where boys construct low self-images is in the area of socialisation and in child-rearing. In Caribbean communities males and female roles are associated with domestic chores, nurturing and providing for one's family. While girls are encouraged to have nurturing skills, are protected by their families and given house chores that organise them for school tasks, boys are pressured to work and

are left for the most part on their own to do what they wish on the streets. Many boys depend on an after-school or weekend job to afford school but after a time, unable to sustain the two activities of school and work, they give way to the world of work, becoming school dropouts by the end of their primary education at 11 years of age. Boys are socialised very early to toughen up and assume the role of man as provider. Later, it is the fear of not being tough and an inability to provide coupled with a fear of being branded worthless that pushes them into illegal activities (Chevannes 1998; Evans 1999).

We asked the boys a simple question one Saturday afternoon when we were all assembled before the game: 'Who is a man?' Their response very clearly indicated one who was the provider and head of house. Man, they explained,

know wney fe do (man is someone who knows what to do) has children, has a job with responsibility, is married, has a car, has land, response fi de house (is responsible for the house).

The adolescent knows the significance of these tasks, clear markers of the gender differences significant to manhood. When asked what makes one a man and different from a woman, they responded:

Woman fi clean, (house), press (do ironing), look after the baby, mek sure yuh bathe, go a shop (do the groceries), go work.

Man fi send children to school, is the breadwinner, clean dem house (he must clean his house) cook, use roll on (deodorant), and look sensible.

Although the boys felt that men are handsome, violent, sporty, thieves or robbers, gunmen, Christian, rapists, loving and respectful, they recognised that it takes respect, education, sensibility, and know-how as head of house to be seen as a man. It is evident that the socialisation process gives them a clear understanding of their role expectation. Despite the messages sent in terms of what role is significant for their gender, in their description of men the boys displayed a disparate view of man and one in which multiple masculinities were shown.

No doubt these are all elements of varying expressions of masculinities which are experienced as part of their habitus; they aid in understanding the scope and expectations they hold of a man according to where and with whom he interacts. Further, when asked which quality you would look for in a man, the response 'respect, kindness, rich, truthfulness' suggests that man as provider – a criterion for accomplishing hegemony – can also be experienced as an affective expression of masculinity, often seen as soft or tender. To an adolescent boy, this is also their notion of accomplishing masculinity.

Alongside this analysis, some observers have confirmed that the social construction of identity among Jamaica's boys has largely been the result of gender biases in the delivery of education; high rates of attrition and under-participation as they progress through the school system; and attitudes and perceptions surrounding sexual behaviour and crime (Chevannes 1998; Evans 2000). When classlessness, class stereotyping and 'inner-city apartheid' practices are added to the biases and behaviours, then the boy, who is marginalised by these practices, will turn to the streets where misplaced values easily position him into the family of gangs. Alexander argues that 'the image of the gang has come increasingly to symbolize this nexus

of crisis, the intersection of raced, gendered and socio economic exclusion of volatile youth set against the landscape of the street' (2000: 237).

The attempt to negotiate and accomplish hegemonic masculinity within the patriarchal structures is experienced as failure and can result in expressions of anger. Harry, a 40-year-old male resident, told me of an encounter with the police, whom he felt tried to accuse him falsely of robbery; his feelings of anger and powerlessness at being indefinitely detained for this crime led him to bear arms illegally. According to him:

In vexation yuh back a gun. After that yuh start lickhead with some gun man, yuh handle gun.

After some time Harry was again apprehended by the police. By this time he was walking with a group of other young men, all around 19 years. He remembers this experience as:

Police carry them a station and beat him with a base-ball bat.

As early as the age of 14, adolescent boys are on the streets on, beyond the reach and control of their mothers. As a socialising site, the street is a male domain, and the adolescent boy uses the freedom of the streets to roam with his peers to acquire manhood training. To this end, socialisation is transferred to the peer group, inner-city don and area leader who carry a Mafioso image (Chevannes 1999). One of the community corner crews, Wilton, now 24 years old, reflected on what the streets meant to him as a boy:

Man call me and say go buy a bag a weed [i.e.marijuana]. If I say no him box me [i.e. hit me] and kick me down in a gutter.

Another community resident explains the powerful role of peers:

You and man grow up together, dem [they are] on the road so you waan [want to] go with them, you waan feel how the road feel, you want to give it a try.

He explained to me that he had got his idea of manhood from the streets by the age of 19:

You go to dance, you drink you first beer, you get you first woman.

Unfortunately some of these acts are often linked to criminal networks that are running drugs and have connections to gangs in the United Kingdom or North America. In roaming the streets traditional values become lost and new values begin to emerge (Skeggs 2001: 3) The Organised Crime Unit (OCU) in Jamaica says guns are associated with elevated status. Mothers of sons with guns are recognised in the community for their son's badness, and have a higher status than others. If 'bloodmoney' or money earned from drug trafficking and guns provide the means for the social positioning of oneself, then moral value is being reworked. No longer is it being defined around what is 'good or bad, worthy or worthless'; rather it is based on new forms of values produced from the criminal proceeds that become an integral part of the social life of the community. The concept of badness has taken a new form and carries with it social positioning. In the quest for self-esteem, respect and male superiority, which are all elements of the masculine identity,

associations of success are made with the gun, violence and illegal activities. The streets as a site of transition for the adolescent boy give him access to these links. Through the links it becomes easy for associations to be made with the gun and the inner-city don, and together they become a guarantor of respect and power become 'he living source of power' (Chevannes 1999: 30, 31). As masculinity gets expressed through the social organisation of gender in the community and in the family, respect and power emerge as important indicators of manhood.

The boys are also aware of the levels and various forms of violence present in their lives and they express fear and hopelessness at any means of resolution; they feel they may never reach the age of 30. Andrew, another adolescent respondent, speaks of his cousin who was killed in gang wars: 'an order was given by a gang leader and some young guys came up and killed her.' The gang leader came from overseas.

Each boy is affected by the violence in one way or another and many carry a notion of revenge born out of the pain of losing a loved one to the gang wars and reprisal killings that take place in the community. Police interviews reveal that in their crime-fighting experiences, children get hurt through reprisal killings. As they mature, the act of revenge taken against families and loved ones results in the internalisation of pain. In expressing their hurt they may wait as long as five years and as they grow into their new-found manhood as part the ritual of transition they are expected to retaliate. Retaliation earns them respect.

Respect is a valued part of manhood and for the initiate or adolescent boy this is understood as masculinity accomplished. Socialised without the critical values for performance within the structures of the habitus, the young man has very little with which to negotiate his social position. At this juncture the opportunity to affirm masculinity and gain respect is sought through the Jamaican enclaves of North America and the United Kingdom. If man as provider is accomplished by whatever means possible, and youths from inner-city communities are more likely to move to the UK and North America before going to other parts of Kingston⁶ (Chevannes 2001), the ethnic enclaves of Afro-Jamaicans across borders facilitate the importation of new structures within the habitus. These new structures will affirm money and power, again by whatever means, and most important will give respect, status and recognition to the young adolescent as he approaches manhood. He holds this as a vision within himself.

Understandably, as the opportunity arises, young men make their way, legally or illegally, to the ethnic enclaves of North America and the UK. This migration may have created the space for what Griffiths (2000) calls the 'international import of ethnicity'. He suggests that this function of ethnicity, which in my interpretation is an expression of a new ethnicity, acts as a vehicle for the strengthening of criminal activities across borders and can easily grow into international drug trafficking. The international import of ethnicity within the context of a new ethnicity locates the social and political struggle of young Afro-Jamaican youths and awards them the space to 'do masculinity'. The import of ethnicity serves an emerging function within the notion of new ethnicities, in that it also facilitates the expression of black hyper-masculinity (Alexander 2000 cites academics like Hooks, Wallace and Mac & Ghail). To put it simply, Chevannes (1999: 19) states: 'A new and different kind of human being has been bred and let loose upon the society, whom we do not know, whose actions are conscious and consciously different.'

⁶ Kingston is the capital city of Jamaica

Where did the Afro-Jamaican boy make this turn on the route from boy to man? How does his notion of masculinity change over time? Today's youth are conscious that power and respect can be earned through crime. Power, respect, recognition and status are all signals of the accomplishment of hegemonic masculinity. It stands to reason that where conventional means do not allow for this accomplishment, crime will offer a replacement (Jefferson 1996; Messerschmidt 1997), and so through the notion of an emerging new ethnicity within the Afro-Jamaican ethnic community, crime becomes a viable option for the accomplishment of hegemonic masculinity whose expression takes place through the formation of gangs, 'crews', and 'posses'. Posses are your friends, your crew, your gang – all groups that have a criminal orientation (Gunst 1995; Levy 2001).⁷ Not all gangs or crews of youth end up in crime – some do negotiate healthy transitions to manhood – but many are forced to survive in structures where they have minimal accomplishment of self and are driven to create a new and different image of youth.

According to my findings from interviews and secondary data, youth involvement in organised crime can start somewhere between 11 and 14 years of age when the boy becomes a 'shotta', 'press button' or 'finger'. These are terms for 'pre-pubescent assassins' who move across communities, defy political boundaries and permeate porous borders to carry out a contract killing (Chevannes 1999: 31; Griffiths 2000: 104). From interviews with the OCU, I learned that a 'shotta'

moves easily across boundaries set by political alliance or by drug markets. He is not necessarily an idle person who sits on the street corner; he can be an educated fellow, could be a student. His job calls for him to take care of an execution, to perform that particular task. He is heartless, wicked, not violent and could be very educated. He can go off the island in the morning to do a job overseas and be back at the end of the day or he could leave class to do a job and come back in time to catch another class. To be a shotta is a status symbol and if you shoot a man you get money. You can achieve the vision.

A community resident shared the following view of a shotta:

As a shotta you are feared, man have respect for you. Yuh start with gun as early as 14 years, yuh come out of school, de mongst gun man and yuh feel me a big man.

As noted earlier in the discussion, new value systems are replacing the traditional benchmarks set for accomplishing masculinity. These are value systems imported through the notion of a new ethnicity.

To enrich my understanding of Griffiths' term 'the import of ethnicity' and its impact on apprenticing badness I (the ethnographer) journey to Franklin Avenue in Crown Heights, Brooklyn New York. As I drive along the streets trying to locate the Crown Heights Youth Collective whose director I contacted for an interview, I am faced with some apprehension and fear. Crown Heights, I have read, was a site for several battles between Jamaican posses and other drug-related gangs as well as the site for race wars during the 1980s. It's quieter now, I gather, but the strong images of culture conflict and points of tension are still evident. Franklin Avenue is very busy; there is a variety of business amid rundown residential estates. As I drive through it is obvious to me that the Jews are a distinct ethnic group and are economically dominant in this locale. Their presence is felt and seen through the inscriptions of Hebrew on buildings and by the large

⁷ Horace Levy taken from the *Jamaica Gleaner*, Wednesday, December 4, 2002

number of synagogues. There are as well the everyday goings and comings of men in their Hasidic gear. Through language and colour, Caucasians, Afro-American and Afro-Caribbean folk are also visibly distinctive on Franklin Avenue. Crown Heights Youth Collective is situated across from a residential estate or housing project where I observe a large gathering of what may be a mix of Afro-American or Afro-Caribbean men on the outside.

According to one peace broker in this community for the past 20 years,

gangs in the neighbourhood are mostly Puerto Ricans, Blacks, Jamaican crews or posses. When you come from the islands you are ostracised. There is a language difference. In order to be part of the crew you do what has to be done, try as hard as possible to be accepted. Most youth want to be able to quickly fit into the crew, whatever it takes to make sure that keeps going. You go one step higher than the other, don't settle for being mediocre, trying to outdo the other. You hang out with posses to get privileges. You want a job right away.

You have to deal with the gang members as individuals. You have to get them to feel self-worth, let them feel they are special and important. In the face of poverty that may be all they need. In neighbourhoods such as Crown Heights different dynamics are operating every day that leave young men broken economically, racially and socially. They set up different ways of relating to peers, to cops and other power points in the community. They are searching for acceptance and respect; machismo is an important part of this notion of respect in the posses and gangs. It's a kind of hybrid male[ness] and the best way to get a person is through this way, get to his machismo, which he wears around his neck via enormous gold chains. Sometimes the gun becomes an extension of [his] manhood, part of the show of his machismo.

This show of manhood in the form of hybridity or exaggerated masculinity is explained as a response to the ethnic minority oppression and racism experienced particularly by Afro-Caribbean persons in these overseas enclaves.

They adopt an exaggerated form of emotional inexpressiveness which can be very expressive as well they adopt a defensive or coping strategy and present to the world an 'emotionless, fearless and aloof front' which is really their way of coping with a damaged pride, low sense of inner control, absence of stability, fragile social competence that comes from living on the edge of society. (Majors & Billson cited by Goodey 1997: 415)

Some of these problems can be attributed to the conflicts and stress behaviours associated with the acculturation process as the youth from the islands settles into his new environment. Feelings of marginality and alienation are heightened (Duval-Harvey 1990) and as my New York informant emphasises, getting accepted as quickly as possible is important even if it means getting in with the crew, who he explains as

ongoing groups from Jamaica. They get in [from Jamaica] and link up, be down with a crew making money. They want to get a job. They come [to the US], don't have their papers [legal documents of entry]. The crew gives a job. They hustle, sell drugs, send money back home. When they come up not engaged in anything meaningful, [they] find anti-social activities, go to prison and get deported. Some cool out when the heat is on, take off to Florida.

According to media and police reports, the posses, crews and Yardies in overseas enclaves are very violent as they compete for 'a piece of the pie' in the illegal activities. Blake's account of the activities of the Jamaican Shower posse in New York is filled with incidents of violence centred primarily around the profits of the drug and arms trade in the battle over drug turf. BBC News and World Edition give anecdotal reviews of terror in these communities.⁸ In the wanton disregard for life displayed by both groups, violence is unleashed on British and North American communities by Jamaican Yardies, posses and crews (Blake 2003).

Each Yardie, posse and crew member vies for his 'piece of the pie' and as an ethnic minority is driven by his machismo, his need to go one step higher than the other person, to be recognised, to be respected and to prove himself capable of accomplishing his masculinity in the primary role of man as provider. He is conscious that he can earn from the multimillion-dollar drug economy. It should be noted that in 2000 Caribbean reports estimated that the illegal drug market generates approximately US\$3.3 billion in the region (Caribbean Task Force on Crime 2002). The movement of Yardies, posses, crew members and shottas across borders as they link and connect within the global environment of the drug economy undoubtedly influences the import of new values within the communities to which they are attached.

In this mayhem of crime, violence, and the drugs and arms economy, global masculinities affirm local masculinities (Connell 1998). What emerges is that in both the ethnic enclaves overseas and the local communities of urban Jamaica, the notion of respect, exercised through fear or love, becomes a symbol of accomplished masculinity.

Conclusion

The construction of one's masculinity is heavily influenced by levels of symbolic violence and by economic deprivation. The social and economic inequalities produced from the interaction of class, gender and ethnicity contribute to the development of a hybrid masculine identity that reworks hegemony around the notion of respect. Being respected and having respect is a basic component of masculinity (Raminez 1999). However, the components of respect vary across cultures. In the cultural context in which this inquiry is discussed, respect is defined violently or tenderly, from soft to bad in the transition from boy to man.

Respect gained is masculinity accomplished, and this is achieved along a continuum of multiple masculinities, facilitated through social interaction within the structures of the community. As a boy becomes a man he learns that respect is paramount to manhood, and in his struggle to achieve it amid the inequalities experienced from the interaction of class, gender and ethnicity, he displays multiple masculinities that locate his identity as soft and tender or tough and violent depending on whom he interacts with.

Being bad sets up a position of superiority guaranteeing one's status and respect, which in turn affirm masculinity. The severity with which acts of disrespect are punished is an indicator of the importance of respect in the maintenance of hegemony and accomplishing manhood within the habitus. Respect is critical to manhood, explain OCU experts:

⁸ Articles reviewed from BBC News World Edition, Wednesday August 28, 2002.

If you disrespect them, you deny them or strip them of manhood. Anything that deviates from this manhood they will kill for: calling of a name, stepping on a toe, trivial things. If one operates a shop in the community and denies one of these so-called bad men credit in the shop then he may kill you because you disrespected him. If one man calls to another man's woman he may kill you.

An adolescent boy's notion of his masculinity is built along the continuum of a 'soft' to 'bad', 'tender' to 'tough' identity and as he makes his transition into manhood he is aware that he does not have enough social capital to accomplish masculinity in the normative hegemonic structures. He establishes a new benchmark for manhood that is sustained by his ability to gain respect. This is not primarily a moral positioning on his part but one in which he seeks to overcome economic deprivation, symbolic violence, inner-city apartheid, and classlessness by any means possible. Therefore he uses crime to reposition himself, and in so doing he gains status and he uses respect to maintain that status. It is this act of respect that allows him to 'do gender'.

Soft boys to bad men is about expressions of multiple masculinities. It's about survival in a competitive environment that is determined by one's interactions with others as they bid for respect. This is not to say that acts of crime are justified but that they are a replacement for the respect, recognition and dignity that has been lost. Boys from the lower strata of our society do not feel fulfilled and have few opportunities. For some, crime becomes the replacement for a sense of dignity and self-worth which the present structures within the habitus have failed to validate.

References

- Alexander, Claire E. (2000), *The Asian Gang: Ethnicity, Identity, Masculinity*, New York: Berg Publications.
- Blake, Duane (2003), *Shower posse : The Most Notorious Jamaican Criminal Organisation*, New York: Diamond Publishing.
- Bourdieu, Pierre, and J.D. Wacquant (1992), 'The Practice of Reflexive Sociology. (The Paris Workshop)'. In Pierre Bourdieu, ed., *An Invitation to Reflexive Sociology*, University of Chicago Press, pp. 218–60.
- (1988), *Homo Academicus*, Cambridge: Polity Press.
- (1994), *Sociology in Question*, Sage Publications.
- (2001), *Masculine Domination*, Cambridge: Polity Press.
- Bourgeois, Phillipe. (1996), 'In Search of Masculinity', *British Journal of Criminology* 36(3): 412–27.
- (1995), *In Search of Respect, Selling Crack in El Barrio*, Cambridge University Press.
- Bowker, Lee H. (1998), *Masculinities and Violence: Research on Men and Masculinities*, Thousand Oaks, CA: Sage Publications.
- Brathwaite, Edward (1985), *Contradictory Omens: Cultural Diversity and Integration in the Caribbean*, Mona: Savacou Publications.
- CARICOM Task Force on Crime and Security (2002), *Excerpts from a report presented to the Caribbean Heads of Government Meeting*, Trinidad and Tobago.
- Chevannes, Barry (1999), *What We Sow and What We Reap; Problems in the cultivation of male Identity in Jamaica*. Jamaica: Stephenson's litho Press Limited.
- (2001), *Learning To Be A Man; Culture, Socialization and Gender Identity in Five Caribbean Communities*, Jamaica: University of the West Indies Press.
- , & Janet Brown (1998), *Why Man Stay So, Tie The Heifer, Loose The Bull: An Examination of Gender Socialization in the Caribbean*, Jamaica: Pear Tree Press.

- Connell, R.W. (1998), 'Masculinities and Globalization', *Men and Masculinities*, 1(1): 3–23.
- Davison, John (1997), *Gangsta: The Spread of Yardie Gun Culture*, London: Vision Paperbacks.
- Duval-Harvey, Jacqueline E. (1990), 'Mental Health and the Caribbean Immigrant'. Paper presented at the Conference on the Caribbean-American Family: Issues and Implications for Public Policy, Medgar Evers College, 10–12 May.
- Evans, Hyacinth (1999), *Gender and Achievement in Secondary Education in Jamaica*. Kingston: Policy Development Unit, Planning Institute of Jamaica.
- Fals-Borda, Orlando, and Mohammad Anisur Rahman (1991), *Action and Knowledge: Breaking the Monopoly with Participatory Action-Research*, New York: Apex Press.
- Geertz, Clifford (1973), 'Thick Description: Toward an Interpretive Theory of Culture' in Clifford Geertz, ed., *The Interpretation of Culture*, 3-30. New York: basic Books.
- Griffith, Ivelaw L. (2000), *The Political Economy of Drugs in the Caribbean*. St. Martins Press.
- Goodey, Jo (1997), 'Boys Don't Cry: Masculinities, Fear of Crime and Fearlessness', *British Journal of Criminology*, 37(3): 401–17.
- Gunst, Laurie (1995), *Born Fi' Dead: A Journey through the Jamaican posse Underworld*, Edinburgh: Payback Press.
- Harriot, Anthony (2000), *Police and Crime Control in Jamaica: Problems of Reforming Ex-Colonial Constabularies*, Kingston: University of the West Indies Press.
- Hooks, Bell (1994), *Outlaw Culture: Resisting Representation*, New York: Routledge.
- Jefferson, T. (1996), 'Introduction to Special Issue on Masculinities and Crime', *British Journal of Criminology*, 36(3): 337–47.
- Joe Laidler, Karen, and Geoffrey Hunt (2001), 'Accomplishing Femininity Among The Girls In The Gang', *British Journal of Criminology* 41: 656–78.
- Marcus, George E. (1995), 'Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography', *Annual Review of Anthropology*, 24: 95–117.
- McDowell, Linda (2002), 'Masculine discourses and dissonances: strutting "lads", protest masculinity, and domestic respectability', *Environment and Planning D: Society and Space*, 20: 97–119.
- Miller, Errol (1991), *Men At Risk*, Kingston: Jamaica Publishing House Ltd.
- Messerschmidt, James (1993), *Masculinities and Crime: Critique and Reconceptualization of Theory*, Lanham, MD: Rowman & Littlefield.
- Messerschmidt, James (1997), *Crime As Structured Action: Gender, Race, Class and Crime in the Making*, Thousand Oaks, CA: Sage Publications.
- Pattman, Rob, Stephen Frosh and Ann Phoenix (1998), 'Lads, Machos and Others: Developing "Boy-Centred" Research', *Journal of Youth Studies* 1(2): 125–42.
- Peoples, James G. (2001), 'The Cultural Construction of Gender and Manhood'. In Theodore F. Cohen, ed., *Men and Masculinity: A Text Reader*. Belmont, CA: Wadsworth Thomson Learning.
- Polack, William (2001), 'Inside the World of Boys: Behind the Mask of Masculinity'. In Theodore F. Cohen, ed., *Men and Masculinity: A Text Reader*, Wadsworth Thomson Learning.
- Reason, Peter (1994), 'Inquiry and Alienation'. In Peter Reason, ed., *Participation in Human Inquiry*, London: Sage, pp. 9–15.
- Ramirez, Rafael L. (1999), *What it Means To Be a Man: Reflections on Puerto Rican Masculinity*. New Brunswick, NJ: Rutgers University Press.
- Sabo, Donald F., and Joe Panepinto (2001), 'Football Rituals and the Social Reproduction of Masculinity'. In Theodore F. Cohen, ed., *Men and Masculinity: A Text Reader*, Wadsworth Thomson Learning.

- Sennett, R., and J. Cobb (1973), *The Hidden Injuries of Class*. New York: Vintage.
- Skeggs, Beverley (2002), 'The Re-branding of Class: Propertising Culture'. Paper presented at a symposium held at the University of Hong Kong as a condensed version of an argument from the forthcoming book 'Valuing Class: the resourceful self' (June).
- Small, Geoff (1995), *Ruthless, The Global Rise of the Yardies*, London: Warner Books.
- UNDCP (2002), Drug Abuse prevention Programme for Youth at Risk in Jamaica, Bridgetown, Barbados: United Nations Drug Control Programme.
- Whitmore, Elizabeth (1994), 'To Tell the Truth: Working with Oppressed Groups in Participatory Approaches to Inquiry'. In Peter Reason, ed., *Participation in Human Inquiry*, London: Sage, pp. 82–98.

PART V
ORGANISED CRIME AND
ITS CONTROL

19

China's Social Transition and Organised Crime A Sociological Interpretation

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Recently much attention in both national and international societies has been given to criminal activities conducted by organised gangs such as the American and Italian Mafia, the Japanese yakuza, Hong Kong triads, the Taiwanese United Bamboo Gang (*Chu Lien Pang*¹) and the Latin American Medellin. Special legislation and legal articles have been formulated by nations throughout the world aiming at the prevention, control and eradication of organised crime.

Article 294 of the Criminal Law of the People's Republic of China (1997) clearly specifies three kinds of criminal acts linked to organised crime:

- to organise, lead or join an underground society (*Hei She Hui*);
- to enter China to recruit members of an overseas underground society;
- to harbour and or to connive at criminal activities of an underground society.

However, based on Article 294 of the Criminal Law, combating the so-called crime of underground society in China is wrongly targeted, in the name of combating organised crime, from the organised crime such as money laundering, smuggling cars or weapons by powerful groups, while local despots are punished for violating Article 294, upper-class criminals, who organise and sponsor money laundering and other illegal activities of organised crime, may be immune of punishment.

From the perspective of sociology, this chapter tries to understand, in the context of China's social transition, the causes of organised crime and to reflect on certain misunderstandings of organised crime in our perception and practice.

What is organised crime?

The history of organised crime can be traced back to a political organisation begun in Palermo, Italy, in 1282 devoted to the liberation of the island of Sicily from French occupation. This body was not criminal to start with. It was only in the early 15th century that it began to evolve into the organisation known as the Mafia that used blackmail and murder to gain its objectives.² The academic study of organised crime is much more recent still, getting under way only in the last few decades of the 20th century.

¹ In original Taiwan spelling – translator.

² Denny F. Pace and Jimmie C. Styles, *Organised Crime: Concepts and Controls*, 2nd edn, Prentice-Hall, 1983, p. 19.

In the 1990s various scholars around the world conducted extensive studies and made some progress in research. Nonetheless, as the Secretary General of the United Nations pointed out in the second conference held in 1993 by the Crime Prevention Committee, the attempt to make a universal and acceptable definition of organised crime has failed. Indeed, even though different definitions were suggested from different documents and materials, few of them seem to have gained general public acceptance.³ This resulted in the puzzling phenomenon that despite the fact that the growing presence of organised crime demands more research and preventive legislation and litigation, there is a lack of consensus as to what conditions or circumstances constitute organised crime. The principal legislation in the United States against organised crime is the *Organised Crime Act 1970*. Unfortunately, despite its importance, it only discusses various phenomena associated with organised crime, and there is no reference to the forms and the definition of organised criminal activities.⁴

Despite these deficiencies, generally speaking, the main characteristics of organised crime are:

- It possesses a hierarchical organisational structure resembling a modern bureaucracy.
- Profit maximisation is the principal aim.
- The use of blackmail and bribery are common ways to achieve its aims.
- It does business in illegal commodities (drugs) and services (gambling and prostitution) to make a profit.
- It is also involved in IT crime and money laundering.⁵

The theory of structural rigidities and Bell's analysis

With these characteristics in mind, we can turn to the causes of organised crime. Various ideas are offered by sociologists and criminologists, in particular the work by the sociologist Daniel Bell, *Crime as an American Way of Life* (1953), which was re-edited into his famous work *The End of Ideology*. In these works, Bell used the theory of another sociologist, Robert Merton, on structural rigidities to analyse the origin of organised crime in the United States.

Merton put forward the theory of structural rigidities in his work *Social Structure and Abnormality* (1938). He argued that the hope engendered by the 'American dream' contrasts harshly with the reality of social and economic inequality. On the one hand, the economic success advocated by American culture seemed to provide an opportunity for everyone to become a millionaire through personal effort in the open and free environment of the social melting pot. On the other hand, not everyone was able to share this opportunity equally. Therefore the tension between cultural values and the stratified social structures of capitalism created various adaptive forms such as alcoholism, drug addiction and revolution (rebellion). From the perspective of the dominant values, these adaptive forms are considered as 'deviant behaviours'. That is, they flout either the culturally defined goals or the means to achieve these goals provided by the actual structural arrangements in the mainstream society. According to Merton, these deviant behaviours are of four kinds: innovation, ritualism, retreatism and rebellion. He considered crime as a creative response to dire social predicament: because some people cannot obtain their culture's goal of economic success by legitimate means, they try to obtain it illegitimately.

³ Bingzhi Zhao and Xingwang Hao, 'Lun Yuan Zhuzhi Fanzhui' [On organised crime], *Faxu Qianyuan* [The Frontier of Jurisprudence], Issue 1, Falu Chanshen [The Law Publishing], 1997, p. 11.

⁴ Li, Zhongxin, *Guowai Youzuzi Fanzhui* [Overseas Organised Crime], Xunzhong Chubanshe [People's Publishing], 1997, p. 20.

⁵ Jay S. Albanese, *Organised Crime in America*, 3rd edn, Ohio: Anderson Publishing Co., 1996, p. 3.

Merton's theory of structural tension introduced the idea to American consciousness that poverty is created by external conditions outside the control of individual morality and efforts. Institutional rather than personal deficiencies are determinants of poverty. Equally, institutional reasons should be given for the creation of poverty-related crime and deviant behaviours.⁶

Merton's theory has helped significantly in understanding the causes of organised crime. Although organised criminal activity in the United States might date back to the period of Prohibition (1920–33) or even earlier,⁷ the public attention of Americans was caught by a one-year investigation conducted by the Kefauver Committee⁸ in the early 1950s which claimed the existence of a nationwide conspiracy group, the Mafia, organised and operated by the American descendants of Sicilian immigrants. The report of this Committee shocked the American public, while subsequent official and media reports, as well as the movie *The Godfather*, left a lasting stereotype in the minds of Americans. The story that mainstream American culture has tried to sell to the public is that the Mafia is controlled by American Sicilians and is therefore the alien product of foreign countries. As an 'underground super-government', it threatens the American way of economic and political life.⁹ As an alien movement, it exonerates American society from blame and can be seen as yet another of America's public enemies.

Does organised crime really exist in the manner claimed? Using Merton's theory of structural rigidities, Bell analysed American organised crime and found that in a country of immigrants, each group of immigrant dominated one type of deviation, and each group of newcomers learned from the experience of earlier immigrants that deviant behaviours were the principal means of gaining status in respectable society, because status was acquired by amassing wealth and such wealth could normally only be gained by illegal means because legal means or opportunities to do so were not available to the new immigrants.

For example, before Sicilians began emigrating to the United States, Irish immigrants had learned to secretly obtain public purchase contracts by corrupting government officials in the area of construction, transportation and stevedoring. By this they amassed great wealth and were able to control the operation of city or municipal governments. On the other hand, financial support from Irish immigrants provided an important resource for politicians to climb up the political ladder. As a result, there existed a kind of symbiotic relationship between Irish wealth and political corruption. When Italian and Sicilian immigrants came to America, their lack of skills left them with less competitive advantage than the Irish in terms of winning the favour of politicians. Therefore, learning from the experience of their hard-working predecessors, Italian immigrants and their descendants finally found the way to the riches necessary for social status in America. They first controlled the running of gambling, which was popular among the lower strata of society, but when the law of temperance was enacted in the United States, they found a new source of fortune, bootleg liquor.

Thus Bell asserted that social changes would induce new forms of criminal activity. As American society became more 'organised', American merchants were likely to become more 'civilised', with fewer 'bandit habits' than in the past, and so new forms of blackmail and extortion emerged in America. While

⁶ J. Robert Lilly, Francis T. Cullen and Richard A. Ball, *Criminological Theory: Context and Consequences*, 2nd edn, Sage, 1995, p. 58.

⁷ Peter A. Lupasha, 'Organised Crime in the United States'. In Robert J. Kelly (ed.), *Organised Crime: A Global Perspective*, Rowman & Littlefield, 1986, p. 40.

⁸ The exact name of committee in English cannot be identified. *Kefule* is Chinese Pingyin (– transl.).

⁹ Mike Maguire, Rod Morgan and Robert Reiner (ed.), *The Oxford Handbook of Criminology*, 2nd edn, 1997, p. 325.

commercial enterprise underwent massive changes, 'systematic' illegal business also changed. Therefore, Bell pointed out, crime has been an awkward ladder to achieve social mobility in American life.¹⁰

Bell's historical analysis refutes the argument that organised crime in America is the result of a conspiracy by foreign immigrants and suggests that it needs to be understood in the context of specific American political, economic and cultural conditions.

China's social transition, underworld crime and organised crime

Bell's assertion that social change brings new forms of criminal activity is a particularly useful pointer in the case of the People's Republic of China. It is well known that underground societies were notorious in old Chinese society but were more or less eradicated after the establishment of the PRC. However, after the 'open-door' policies of reform were adopted in 1978, crimes of the 'underworld' have become rampant in some places in China. So, why does such underworld crime re-emerge in the new era of reform? What observable conditions caused underworld crimes to flourish in China after having been suppressed for so long? The theory of structural tension may well provide a useful basis of analysis.

As a social phenomenon, organised crime undoubtedly has causes that are complicated and elusive. With regard to the present specific economic and social backgrounds in China, the causes of underworld crime are closely linked to China's present threefold process of transition: from a planned economy to a market economy with socialist characteristics; from a highly controlled and authoritarian political system to a more democratic one; and from a closed society of ritual and custom to an open society of law and rationality. These transitional macro processes offer great opportunities for initiation into underworld crime.

First, during the transition from a planned to a market economy, pragmatic behaviours that emphasise individual rights and interests have gained legitimacy. Before the 1970s, Chinese tended to put more emphasis on the state and the collective than on the individual, and many still see this as a better way than Western individualism, which is seen as anti-social and falsely materialistic. The notion of 'preserving the way of Heaven and eradicating human desires'¹¹ constrained individuals and shamed them if they focused on profits. So existence of individuals was dependent only on their relation with the collective or the state. In Mao's China, collectivism and the process of collectivisation extinguished the subjective primacy of individuals as independent human beings. They were tamed as models of Chairman Mao's children. They couldn't think as they wished, in fact they lost the capacity to think. They just did what they were ordered to do, as if they were all terminals of one powerful workstation. When losing their independence, individuals were resubjected to the absolute authority of the family, tradition, and country or regime. However, when the contract responsibility system was initiated in villages in the late 1980s, a revolutionary process began.

The contract responsibility system, which leads to the development of a socialist market economy in rural areas in China, weakened the base of collectivism and further freed individuals from the shackles of

¹⁰ Daniel Bell, 'Crime as an American Way of Life'. In Nikos Passas (ed.), *Organised Crime*, Dartmouth Publishing Co., 1995, pp. 95–6.

¹¹ Chun Tian Li, Mie Ren Yu. This phrase comes from Song Dynasty Confucian Scholars, the so-called Cheng Zhu School. (– transl.)

collectivism by requiring new ways of interaction between individuals. Transaction in the market requires the precondition of a division of labour, which is characterised by difference rather than accordance or uniformity. As agents of transaction, individuals make decisions of their own other than act on orders of political leaders as in Mao's time. Therefore, individuals should repeatedly ask themselves reflective questions such as: 'Who am I?', 'What's my relationship to him?', 'How do I differ from him?' This questioning can promote the subjectivity of individuals, who are not soldiers in the class struggle any more but independent actors in the market economy. Anthony Giddens once concluded that the more we think of 'making the self human', the more conscious the concept of the 'human' becomes. Therefore, as individuals explore these questions, they begin to think independently and thus bring back the subjectivity and independence that they lost. Individuals begin to describe the self from a more humanistic perspective and become a more reflexive subject rather than a dependant of the collective or state. On the other hand, in contrast to the situation where individuals were used instrumentally as tools to achieve the goal of emancipation by politics or of salvation by religion, the current situation is that individuals with human rights demand that various external forces (first of all the state) treat them as human, intrinsically valuable, and not just as a means of achieving a grand or collective goal. In this way, individuals begin to shed the enslavement imposed by religious or political ideology. For this reason, the development of a market economy establishes a process whereby the individual continually searches for the meaning of self, rights, equality and freedom. As the economy breaks free from the stifling traditional model that had suppressed individuality, individuality revives and individual rights and pragmatic behaviours regain legitimacy to a larger degree.

Second, if the awakening of individual rights means the realisation of an individual value and cultural position, there is no doubt that the spread of the market economy also injects individual value into an economic situation where money is the standard measurement because money is seen as the means to abundance and happiness. But for each person, what is the chance for economic success? Generally speaking, under a planned economy, the state monopolises all materials, reputation and power resources and redistributes them through its hierarchy into *danwei* (the work unit) and thence to the individual. Through this mechanism, the state retains its control over *danwei* and over individuals, who have basically lost the freedom to choose. Since 1979, China has undergone tremendous changes, one of them, as many researchers have pointed out, being a relative structural dissociation between the state and the society. Despite this, we should note that civil society created from the background of transformations of modernisation is still constrained and confined within a given space. Therefore, while civil society in Mao's time was squeezed to near non-existence, the relaxation of resources allocation by the state makes possible the growth of civil society in the reform era. Strictly speaking, however, this kind of civil society, although more autonomous and independent than the state, can still influence, manipulate or co-opt individuals of civil society. For example, there was a saying several years ago that even monks have official status hieratically arranged similar to those of government employees in PR China.

There are dual tracks in China in the early stage of reform. One is the formal and official track, the other is informal. For example, there are two systems of pricing, one given by the government and another regulated by the market. Therefore, for the same rare commodity, there may be different prices; one is set by the government while others are determined by market demand. Usually, the formal government price of a rare commodity is lower than those offered by the market for the same kind of commodity. Dual-track pricing gives ample opportunity for speculation. For those who have close connections with government officials, they can buy goods at the lower 'official' price, and then sell them at higher prices in the market. In the early years of reform, government agencies established their own corporations. Under this circumstance,

individuals or institutions having good relations with government officials or agencies can make money very easily. The saying ‘One family, two systems’ is a metaphor derived from the formula ‘One country, two systems’. It refers to the ideal arrangement that one person of a two-person family works for the government, while another runs their own corporation. This arrangement is very desirable to many persons. However, for ordinary people, the traditional ways of achieving economic success, social status and mobility (joining the army, being a model worker or becoming a government official retired from the army) are no longer practical or meaningful. Under a market economy, the traditional self-sacrificing ‘worker hero’ is transformed into an economic hero. But this is often impossible. The difficulties ordinary people have in competing with government or semi-government special-interest groups are for this reason likely to lead them into the areas of business that the law forbids, such as drug trafficking, or areas where the development of the law lags behind the criminal, as in software piracy.

Third, the conditions described above obtain generally throughout China, and it is worth mentioning the increasing mobility of the rural population in a dual social structure. The economist Arthur Lewis sees the coexistence of the traditional and modern sectors or systems as dualism in developing countries. In China, a notable example of such dualism would be the separation of the rural and urban population as two long-separated worlds; in this world, peasants would have had less social mobility than city-dwellers.¹² The adoption of the contract responsibility system, the reform of the *Hukou* household registration system (based on locality) and the reform of clothing and food coupons began to break down the barriers between urban and rural areas. Peasant farmers now seem to have more opportunities to choose either the traditional way of life working on contracted land or going to work in the city.

This change, however, does not mean the disintegration of the rural/urban divide in China. Although the visible dualism between these sectors may not be as clear-cut as it used to be in terms of spatial distribution and policy prescription, an invisible dualism in the minds of people still remains because of the differences in social status, welfare, custom and self-recognition between town and countryside. Therefore peasants often face a dilemma whether to choose to stay in ‘backward’ rural areas or leave for the promise of the city and modernity. On the one hand, the lack of adaptability to functional changes in rural governance and its inefficient grassroots power brings pressure to bear on peasants whose rights have often been infringed in the contract responsibility system, the expense levy, and birth control. On the other hand, in adjusting to the rural/urban divide, peasant farmers also have difficulty finding their position in the city, in which human relations differ vastly from the human warmth of village society. Even for those who finally find their position, they still experience a rootless state in the city, as the popular song ‘Home Letter’ describes.

Thus extra pressure creates the phenomenon of self-organisation. Contrary to the image of a blind searching for jobs and roaming fruitlessly around the city, rural migrant workers use various kinds of *Guanxi* networks such as close or distant relatives, classmates and friends to find jobs, information and help. This phenomenon is not confined to rural migrant workers but can also be found in semi-underground self-help cooperatives in rural areas, which form either for economic reasons (e.g. a non-government credit agency or intermediaries) or for mind-controlling purposes (e.g. a non-government rural religion controlled by a conspirator). Self-organisation or mutual aid is indeed an adaptive form during the process of modernisation.

¹² Hangshen Zheng et al., *Dandai Zhongguo Shehui Jiegou he Shehui Guanxi Yanjiu* [Study of modern China’s social structure and relationship], Shoudu Shifan Daxue Chubanshe [Beijing Normal University Press], 1997, pp. 91–4.

It creates opportunities for individuals that replace the need to solicit help from the state, which was in the past the chief distributor of opportunities to different level of societies. Yet who can guarantee that this kind of self-organisation will not create deviant behaviours? In fact, among various forms of underworld crime, the most typical kind is the offence frequently committed by a 'gang' of friends.

Fourth, the dysfunction of public authority creates objective conditions for the cause and spread of underworld crime. There are two kinds of dysfunction in public authority: the absence of government services, which means the absence of public authority to institutionalise basic functions or services within its territory; and inefficient governance, which means that public authority has failed to play its role within its territory. To some degree, there are causal relationships between these dysfunctions and the causes and spread of underworld crime.

Let us consider the Mafia again. In what conditions did it arise? Historically, in the 18th and 19th centuries, the relations of production in capitalist societies broke away from feudal relations then abolished feudal institutions. There was a growing demand for patronage to guarantee the stability of contracts between landlord and tenants, a function that the various governments of Italy at that time failed to provide because of their weakness and disunity. A new class came into being to deliver this demand and later evolved into the Sicilian Mafia, which spread throughout Italy before unification of the principalities. This situation fits with the power vacuum described earlier resulting from the absence of a principal effective public authority. As an underground quasi-government, the evolution of the Mafia organisation was therefore a functional response to the power vacuum created during the process of rapid social change in the 19th and early 20th century.

Why then does inefficient governance result in the initiation of underworld crime? Researchers into the Mafia have observed that peasants, upon finding their ox stolen, did not go to the police but rather sought help from the Mafia. This outcome was because of the inefficiency of the police bureau. Generally speaking, if the peasant reported to the police, there was a 15 per cent probability of catching the thief but only a 10 per cent probability to getting the ox back. But if they went to the Mafia, there was a high 95 per cent probability that they could find the stolen ox, but of course, they paid a quarter or a third of the value of the stolen property to the Mafia for its recovery. Despite this cost, the victim still sought help from the Mafia because by doing so he was also exempted from both the fear of reprisal and the trouble and cost of litigation. This phenomenon reveals the result of inefficient governance and the failure of the responsible public authorities to enforce the law. Because of the latter's inefficiency, the criminal group replaced the role of legitimate authority.

From this it is evident that the dysfunction of public authority may actually help to cause the presence of organised crime. As our economy is experiencing the transition from a planned economy to a socialist market economy, the public institutional authority has also gone through continuous and incremental reform. During this process, in certain localities, there is an absence of public authority and inefficient governance in different degrees (especially where grassroots rural authority is weak). This objective condition creates opportunities for the spread of organised crime. In China, various forms of 'refunding-deadlock-debt' companies,¹³ underground public security forces, courts, and even local government are typical examples of

¹³ A company that specialises in recovering debt on behalf of creditors (– translator.).

the encroachment on legitimate public authority by illegal power. It is natural for people in their daily life to solve disputes and seek arbitration within an acceptable limit from the judicial organs of government. If, for some institutional reason, the public authority and the court of law refuse the case or fail to provide a just ruling, it is likely that a plaintiff will seek some powerful underground society as an alternative.

The dysfunction of public authority reveals a complex symbiotic relationship between corrupt public authority and organised crime. This relationship is the source of monopoly profits, which a gang will use to corrupt state officials or their special-interest groups in the form of visible or invisible profits.

In China, this kind of symbiotic relationship provides the means for some special-interest groups to get rich, especially in illegal smuggling, large-scale prostitution and large-scale racketeering. It is also evident in bidding for public works and engineering projects. Crime, a adventuresome and low-cost means of getting rich, is applicable to the lower classes in society who are desperate for a change of status; for those whose status is more firmly established, it is a means to maintain the status quo and their self-interests.

Misleading perceptions and practices

From this analysis of organised crime, I would like to point out that there are different levels of misunderstanding in our current ideas and practices.

First, it is suggested that organised crime is a tumour or a deformed foetus of modern society that needs to be eradicated. But as Daniel Bell has pointed out, organised crime is a way of life for many people. Yan Jing Yao, a famous criminologist who graduated from Columbia University in 1930s, also raised the point in his doctoral dissertation: 'Crime is but a side face of culture. It changes with cultural changes. Its emergence is related to a general culture and is not to be viewed independently as a fester or a tumour.'¹⁴

There is some truth in this assertion. Culture moulds our objectives in life. The market economy culture moulds our life's objective as the pursuit of economic success. When someone experiences a setback in attaining this goal through acceptable means, this person will very likely resort to crime. Since organised crime may provide lower transaction costs, less risk and higher return, it becomes an inevitable form of organisation in response to the market demand relative to the lack of a legitimate 'supplier'.

The assumption behind the view that organised crime is a blemish on modern society is that all other functions of social organs are healthy and the problem exists only in certain areas, so curing these parts would solve the problem. Because of this assumption, we tend to rely on crackdown campaigns aimed at eradicating evils and sweeping away underground societies. Such measures, though capable of controlling certain types of organised crime, fail to have a long-term effect and in some cases even see an escalation of crime after the campaign. These campaigns resemble a partial surgical measure that fails to cure the root problem.¹⁵ In order to solve the problem of organised crime, we need to reflect more comprehensively on institutions and structures.

¹⁴ Yan, Jingyao *Zhongguo De Fanzhui Wenti Yu Shehui Bianqian* [China's crime problems and its relationship with social transition], Beijing Daxue Chuban She [Beijing University Press], 1986, p. 3.

¹⁵ The original idiom in Chinese tells a story of a doctor that tries to relieve his patients' pain by only curing specific areas rather than searching for the root symptom of pain. 'Toutong Yitou, Jiaotong Yijiao' (– transl.).

Second, there is a view that regards organised crime as a special phenomenon of the United States or other advanced economies, or as a special product of the economy and politics of capitalism. In fact, as Robert Kelly points out, organised crime exists in countries with all manner of political, economic and cultural backgrounds and only differs in its causes and the forms it takes.¹⁶

Many scholars and lawmakers, for example, Mr Wang Han Bing, deputy chair of the National Congress, argues that conspicuous and typical organised crimes do not exist in China. Is it true that organised crime in China comprises only some criminal groups with certain characteristics of underground societies? Or that organised crime is merely some groups of villains that terrorise local residents? Undeniably, just as the American perception of organised crime is based on the Mafia model, the Chinese perception of organised crime is largely based on Qing and Hong underground societies. A rational understanding, however, must transcend the narrow boundary of such perception. American academics have come to realise that organised crime is not just confined to the Mafia type of crime – or at least, that the Mafia model is no longer the dominant form of organised crime. Indeed, many scholars define organised crime as an ‘illegal enterprise’ or the work of a ‘crime syndicate’. They consider that in a general sense organised crime can be defined as a ‘business enterprise that obtains its profits and interests through illegal means’.¹⁷ In the context of China’s reality, can we say that because we are still in the early stage of socialism, ‘illegal enterprises’ or ‘crime syndicates’ do not exist, but only local despots or gangs in rural areas? If this is true, then this does not explain the frequent exposures and revelations of outbreaks of fund racketeering, smuggling and product adulteration. These are all organised crime, not merely the idiosyncratic activities of local despots and bullies or ‘traditional’ underworld societies.

Therefore, the crucial point is not whether there is or is not any ‘illegal enterprise’ or ‘crime syndicate’ in reality but how we view these phenomena. Have we subjectively adopted a double standard because we lack experience in dealing with different forms and behaviours of organised crime, despite its similar nature? If we confine our perspective to the view that organised crime is just some groups of villains that terrorise local residents, this would make our campaign merely an inquiry into the crime of obstructing social and public order as proscribed in Article 294 of the Criminal Laws of the PRC. As a result, we would sideline other forms of organised crime such as fund racketeering, smuggling, product adulteration and organised prostitution, which have a significant impact on the economy, politics and the social order. As the Chinese saying goes, the legislators have constructed a net so wide and large that the fish swim through.

There are other reasons why the fish get away: it is also likely that they are allowed. As we think about the construction of legal clauses from a rational viewpoint, we need to reflect on the motives and objective reasons underpinning this construction. As analysed above, the law strikes first and foremost the disadvantaged groups of the lower classes located in towns, village and cities where social inequality makes them weak. These groups are most vulnerable during the process of rapid transition and are most likely involved in self-organisation (legal or non-legal) to resist or respond to change. Those who can escape from becoming the targets are the established interest groups in urban society because they are most capable of using their legal and illegal resources to engage in organised crime. As the law faces equally different strata of society but treats them differently, it gradually departs from the principles of justice and equality.

¹⁶ Kelly, *Organised Crime*, pp. 14–17.

¹⁷ Aizhien, Dimou ‘Fanzhui Xue’ [‘Criminology’ Chinese Version], Qunzhong Chubanshen, 1988, pp. 263. The original source in English cannot be verified. The translation is based on Chinese text (– transl.).

Third, there is a tendency, because of the lack of cultural experience, to equate organised crime with underground societies.¹⁸ This is a partial viewpoint because crime committed by underground societies is not inclusive of all the forms of organised crime. It is also a naïve assumption that views the world as black and white struggling against each other. If we look at the history of China and the world, it is not difficult to find that the ‘black’ and ‘white’ parts of the world are not necessarily always at odds. During World War II, American troops sought help from the Mafia in the liberation of Sicily. In Chinese history, particularly at times of political upheaval, underground societies were transformed and utilised. Such is the case of Dr Sun Yat-Sen, who joined the Hong (Triad) Society and used it to launch his campaign against the rule of the Qing imperial court. It has also been reported that among 72 martyrs in Huanghuagang cemetery, Guangzhou, 54 of them were members of the Hong Society.¹⁹ In the reign of the Kuomintang, Chiang Kai-shek used the influence of the Qing Society (or also known as the ‘Green Gang’) in his anti-Communist campaign.²⁰ These facts have compelled us to think about the phenomenon noted by many criminologists: that crime committed by the lower level of society provides an important service and role for the needs of the upper level of society. Although disguised as the victim of organised crime, the political elite or new power group have often purposely used or invoked organised criminal groups and even created them.²¹

All these phenomena reflect a main theme of this chapter: if there is no corruption of public authority or no symbiotic corrupt relationship between organised crime and public authority, there will be no space left for organised crime. Because of this kind of relationship, the attempt to solve the problem of organised crime is an arduous and long-term task.

¹⁸ See for example Fangmin Ruan, ‘Xiantan Heshehui Zhuzhi Zhui De Rending’ [Discussing the legal recognition of organised crime], ‘Xuexi Yu Shikao’ [Study and Reflection], 1998, Issue 1, p. 30; and Shangyi Liu, ‘Heishehui Fanzhui Yu Duiche’ [Crime by Underground Societies and strategies of counteraction], Xunzhong Publishing [People’s Publishing], 1997, pp. 1–2.

¹⁹ Hongxian Mo, ‘Youzhuzhi Fanzhui Yanjiu’ [Study on Organised Crime], Hubei Renmin Chubanshe [Hubei People’s Publishing], 1998, p. 45.

²⁰ Shuhua Kang, ‘Dangdai Youzhuzhi Fanzhui Fangzhi Dui Che’ [Counter-strategies against Contemporary Organised Crime], Zhongguo Fangzheng Chubanshe [China Fangzheng Publishing], 1998, p. 86.

²¹ Kelly, *Organised Crime*, p. 127.

20

Understanding PR China Criminal Justice Process: Anatomy of the 'Big Spender' Case

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On 20 October 1998 Cheung Tse-keung,¹ also known as the 'Big Spender',² and 35 other accomplices went on trial in China for a host of criminal offences³ ranging from murder to kidnapping to smuggling of explosives, committed in Hong Kong and China⁴ from 1991 to 1997. Cheung, wired with explosives, demanded and obtained HK\$1.38 billion for kidnapping Cheung Kong Company's deputy chairman Victor Li Tzar kuoi on 23 May 1996. Later Cheung kidnapped and obtained another HK\$0.6 billion from Sun Hung Kai Company's chairman Walter Kwok Ping-sheung on 29 September 1997.⁵

The case made legal history in Hong Kong and China. It is the first time a Hong Kong legal resident was prosecuted, tried and executed in China under the PRC Criminal Law⁶ for criminal acts largely perpetrated in Hong Kong. The case tests for the first time the criminal jurisdiction boundary between the PRC and Hong Kong under the 'one country two systems' formula.⁷

The 'trial of the century' ended on 12 November 1998 with the court of the first instance, Guangzhou Intermediary People's Court, finding Cheung (and all other defendants) guilty as charged.⁸ The court of the second instance, Guangzhou Higher People's Court, rejected Cheung's appeal and confirmed his verdict on 5 December 1998.⁹ Cheung was immediately executed.¹⁰

In an in-depth anatomy of the Big Spender case, this chapter provides a general overview of the PRC criminal justice process: from case initiation (*li an*) by the public security organs to public prosecution (*qisu*) by the procuracy to final judgment (*panju*) by the court of the first instance and appeal by the court of second instance to sentence execution (*jixing*). Such an overview and examination is conducted to give information

¹ Cheung Tse-keung can also be translated into Cheung Chi-keung in Cantonese or Zhang Zi-qiang in mandarin (*Pinyin*). I have used Big Spender to reference the case and Cheung Tse-keung or sometimes Cheung to reference the person.

² 'Big Spender' or *da fu hao* (Cantonese), literally meaning 'big boss', is an alias of Cheung.

³ Ng Kang-chung, 'Troops on alert for start of 'Big Spender' trial' *SCMP*, 20 October 1998. For a summary of the prosecutor's case, see 'The prosecutor's case' *SCMP*, 6 November 1998.

⁴ I have used PRC or China to refer to the PRC government. I have used Hong Kong Special Administrative Region (HKSAR or SAR) to refer to Hong Kong.

⁵ See *Next Magazine*, 6 November 1998, cover story on the 'Big Spender,' p. 51.

⁶ Criminal Law of the People's Republic of China (Adopted at the Second Session of the Fifth National People's Congress on 1 July 1979, revised at the Fifth Session of the Eighth National People's Congress on 14 March 1997 was promulgated by Order of the President of the People's Republic of China, No. 83 and entered into forces as of date of promulgation.) (PRC Criminal Law).

⁷ Editorial: 'Slippery slope.' ('even more than the Big Spender case, the decision to try Li in Shantou represents the start of a slippery slope that could erode Hong Kong's legal autonomy.') *SCMP*, 20 October 1998.

⁸ Guangdong Province, Guangzhou Municipality, Intermediary People's Court, Criminal Verdict (1998) Guangzhou, Intermediary, Legal, Criminal, Initial, No. 468. Published in full in *Ta Kung Po* on 13 November 1998.

⁹ See Billy Wong Wai-yuk and Clifford Lo, 'Abundant evidence to reject appeal' *SCMP*, 6 December 1998, p. 2.

¹⁰ See Wong Wai-yuk, 'Big Spender shot after plea barred' *SCMP*, 6 November 1998.

on how the PRC criminal system and process operates in principle as well as in practice, allowing for informed discussion and enlightened debate over many of the legal and policy issues raised in the process, for example whether the PRC court has overreached itself in prosecuting the Big Spender case in China.¹¹

The legal process of the case is reconstructed from the Bill of Prosecution (*Qixushu*),¹² the Criminal Judgment (*Xingshi panshu*)¹³ and the Appellate Decision.¹⁴

ANATOMY OF THE BIG SPENDER CASE

The Finding of Facts in the Case

The facts of the case were extracted from the final verdict.¹⁵

On organising and directing the trading and transportation of explosives

The case is clearly established after hearing and investigation. In October of 1997, the defendant Cheung Tse-keung proposed to Qian Han-shou to purchase explosives. He further directed Lau Ding-fun to coordinate with Qian Han-shou. Lau paid Qian HK\$150,000 for the purchase of explosives. In November the same year, Qian Han-shou returned to his place of origin at Guangzhou province, Shan Wei municipality, and found defendant Jiang Chaigu to purchase illegal explosives. Jiang Chaigu introduced Qian Han-shou to his brother Jiang Ronchang. Jiang Ronchang collected HK\$10,000 from Qian Han-hou and illegally purchased 818.43 Kg of explosives, 2000 detonators and 750 meters of fuse line. He helped Jiang Chaigu to transport the purchased illegal explosives to Qian's home. Qian Han-shou placed the explosives in 40 foam boxes, disguising them as seafood. On January 1, 1998, Qian instructed defendant Wang Wenxiong to transport them to Ding Ling Yang near Zhu Hai municipality, to be further transported to Hong Kong on an pre-arranged fish boat belonging to Qian Hanye: 'Zhu Dan 5144'. The next morning Qian Hanshou allowed the aforementioned explosives to be transported by Qian Hanye's vehicle and his staff. Lau Ding-fun further directed Lau Kwok-wah to transport the explosives to Liu Shui Xiang, Da Wo village No. 95. Cheung Tse-keung and... [others offenders handled separately in another case]... together removed the explosives inside the house. At noon the same day, Cheung Tse-keung together with Lau Ding-fun and others removed the explosives to Ma Cao village. On 17th of the same month, the explosives were uncovered.

¹¹ Kam C. Wong, 'Testing the Limits of 'One Country Two Systems': Untangling Legal and Policy Issues in Cross-Border Crime Disputes,' *China Perspective*, June 1999.

¹² Guangdong Province, Guangzhou Municipality People's Procuracy: Indictment – Guangzhou Procuracy First Prosecution – No. 888. ('The Bill of Prosecution').

¹³ Guangdong Province, Guangzhou Municipality, Intermediary People's Court, Criminal Verdict (1998) Guangzhou, Intermediary, Legal, Criminal, Initial, No. 468. (Criminal Judgment).

¹⁴ The Higher People's Court of Guangdong Province, Criminal Judgement (1998) Guangzhou High Law (Court) Final No. 1139. Original Public Prosecution Organ Guangdong Municipality People's Procuracy of the Guangzhou Province. (Hereinafter Appellate Decision). Reprinted in full in *Wen Hui Bao* A4, A6.

¹⁵ See Criminal Judgment (*yishen xingshi panjue shu*).

On organising, directing and financing the kidnapping of Li XX in China

From the end of 1995 to the beginning of 1996, defendants Cheung Tse-keung... (and others)... made multiple visits to Shenzhen, staying in Ming Du Hotel, Ri Sun Hostel... secretly plotted to kidnap Li XX¹⁶ and divided the work... later persuaded... (other defendants)... to join in the criminal activities. Cheung Tse-keung put up HK\$1.4 millions for the purchase of equipment and renting of premises for the locking up of the hostage... (other defendants)... were responsible for purchasing a vehicle, fake license plate and walkie-talkies...

On smuggling of arms (weapons), ammunition and explosives

Yip Kai-fun used the money supplied by Cheung Tse-keung to purchase two AK47 automatic rifles, one miniature machine gun, six pistols, nine packages of explosives (weighting 1.887 Kg) and bullets from mainland. Cheung Tse-keung made arrangements and provided for facilitation.... (with a number of defendants)

On May 12, 1996... (with other defendants, Cheung)... smuggled the weapons to Hong Kong when Yip was arrested immediately upon landing in Hong Kong by the Hong Kong police with the weapons confiscated...

On kidnapping of Li XX in Hong Kong

At 6 p.m. on May 23, 1996... (after being informed of Li XX's where-about)... Cheung... (and other defendants)... kidnapped Li XX and his driver near No. 80 Hong Kong Deep Bay Road. After Cheung... went to Li's home and collected a ransom of HK\$1.3 billion, the victim was released. Cheung Tse-keung received HK\$.362 billion... (with other defendants dividing the rest)...

On organising, directing and financing the kidnapping of Kwok XX in China

In April of 1997, defendant Cheung Tse-keung decided to kidnap Kwok XX, a Hong Kong resident. He grouped together... (a number of defendants)... in Guangzhou, Shenzhen, Dongguan to secretly plan and divide the work. Cheung and Wu... put up HK\$ 2.2 millions as expenses.

On the kidnapping of Kwok XX in Hong Kong

At 6 p.m. on December 29, 1977... (after being informed of Kwok's where about)... Cheung... (and other defendants)... kidnapped Kwok XX neared Hong Kong Beach Road and transported him to No. 200 Hong Kong Ma On Kong... After Cheung Tse-keung asked and obtained HK\$ 0.6 billion from the Kwok's family, the victim was released. After the crime, Cheung Tse-keung got HK\$ 0.3 billion.

¹⁶ The procuratorate officials is allowed to avoid putting the victims name in the record if it is going to harm the victim's reputation. See Editorial Committee, *Prosecutor Manual* (Jianchaguan Shouce) (Shanxi Renmin Chubanshe, 1995), p. 82.

THE MAKING OF A CRIMINAL CASE

The Initiation of the Criminal Justice Process

Reporting of a crime

In the PRC, a criminal case starts with the discovery of a crime. In most cases this means the filing of a crime report with the public security organ by the citizen.¹⁷ In this regard, Article 84 of the PRC Criminal Procedure Law *requires* the citizens to report all crimes: ‘Any unit or individual, upon discovering facts of a crime or criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, a People’s Procuratorate or a People’s Court.’¹⁸

Recording of a crime

After a crime is reported, the public security organ has to open a case file, a process known as *lian*,¹⁹ if the report is substantiated. Article 86 of the Criminal Procedure Law requires the public security organ to open a criminal case file ‘if it believes that there are facts of a crime and criminal responsibility should be investigated’.

Investigation of a crime

After a case file is open, the public security organ ‘shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave’.²⁰

Preliminary inquiry of a crime

After the investigation is completed, a preliminary inquiry (*yusheng*²¹) will be conducted to determine whether a crime has been committed, whether the suspect has committed the crime, and whether a criminal charge is warranted. Thus Article 90 of the PRC Criminal Procedure Law provides that ‘the public security organ shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained’.

Referral for prosecution of a criminal case

After an Article 90 preliminary inquiry a Preliminary Inquiry Report (*yusheng zhongjie baogao shu*) is prepared. The Preliminary Inquiry Report should include:

1. personal background and conditions of the defendant;
2. whether coercive measures have been used and the reasons supporting such measures;

¹⁷ The public security organs do not have the exclusive responsibility to investigate crime. The People’s Procuracy and the People’s Court are also charged with the responsibility to investigate crimes, for example economic crime and official wrongdoings.

¹⁸ Traditionally, and especially during Mao’s era, the Communists preached that a crime is only a crime if the ‘masses’ think so: *Selected Works of Mao Tse-Tung* vol. 1 (Beijing: Foreign Languages Press, 1977), p. 28 (‘The peasants are clear sighted. Who is bad and who is not quite vicious, who deserves severe punishment and who deserves to be let off lightly – the peasants keep clear accounts and very seldom has the punishment exceeded the crime.’) For a discussion, of ‘policing by the mass’ see Kam C. Wong, ‘The Philosophy of Community Policing in China,’ *Police Quarterly* 4(2) 2001: 186–214.

¹⁹ Literally, *li* is to establish, and *an* is a case. *Lian* is to have a case established.

²⁰ Article 89 of the PRC Criminal Procedure Law.

²¹ Literally, *yu* is to make preparation for and *sheng* is to adjudicate.

3. verified facts and circumstances of the case;
4. verified facts and circumstances of the defendant's confession;
5. verified facts and circumstances pointing to the absence of crime or lack of criminality;
6. verified facts and circumstances suggesting lack of or insufficient evidence;
7. the defendant's confession attitude;
8. recommendation on how to dispose of the case based on articulated facts and particularised PRC Criminal Law and PRC Criminal Procedure Law;
9. in cases of joint criminality, the role and responsibilities of each joint defendant should be separately listed;
10. in cases of alternate disposition of related parties in the case, their alternate dispositions should be made clear;
11. the disposition of seized property should be accounted for.²²

If the public security organ concludes that a crime has been committed and certain offenders are responsible, it has to make a recommendation for prosecution. Article 129 of the PRC Criminal Procedure Law provides: 'After a public security organ has concluded its investigation of a case, the facts should be clear and the evidence reliable and sufficient and, in addition, it shall make a written recommendation for prosecution, which shall be transferred, together with the case file and evidence, to the People's Procuratorate at the same level for examination and decision.'

The transfer of the case file is accompanied by a 'written recommendation', that is, the *qixu*²³ *yijianshu* (Recommendation for Bill of Prosecution). The recommendation should contain: title and case number; the defendant's background information; facts and circumstances of the case; reasons and basis for prosecution, including nature of criminal conduct, motive, purpose, danger and legal basis; concluding part, that is, transfer to identified people's procuracy, date and time, detention place, seal.²⁴ The transfer of case file with written recommendation for prosecution marks the conclusion of the police investigative phase of a criminal case.

Prosecution of a crime

The people's procuracy has to review the case for prosecution. Article 136 of the PRC Criminal Procedural Law provides that: 'All cases requiring initiation of public prosecution shall be examined for decision by the People's Procuratorates.'

DISCUSSION: CASE INITIATION IN CHEUNG'S CASE

How was the crime discovered in Hong Kong and the PRC?

On 23 May 1997 Cheung kidnapped Victor Li. On 29 September 1997 Cheung kidnapped Walter Kwong. In January 1997, Cheung transported a substantial amount of explosives into Hong Kong. Cheung's major criminality – kidnappings and transportation of explosives – was not *officially* reported to the Hong Kong or

²² Zhen Yuegan and Guan Shuguang *Gongan Neiqin Gongzuo Shouce* (Public Security Internal Working Manual) (Jingguan Jiaoyu Chubanshe, 1994), pp. 216–22. See 'Qixu yijianshu' on p. 218.

²³ Literally, *qi* is to begin and *xu* is to prosecute.

²⁴ See Zhen Yuegan and Guan Shuguang, note 22 *anpve*.

PRC police. The police discovered Li's kidnapping after his car was discovered with windows broken in the middle of the road. The Li family refused to cooperate with the police. The Hong Kong police were made aware of Cheung's kidnappings unofficially and after the fact.²⁵

The HKP allowed Cheung to escape to China on 15 January 1998, allegedly for insufficient evidence. Two days later they searched and discovered explosives in Cheung's hideout.²⁶ Cheung was then put on the Interpol wanted list and the PRC police were informed.²⁷

Cheung's criminality in Hong Kong was also not reported to the PRC police. Cheung came to the attention of the PRC police as a result of Li Kar Shing's personal relationship with the PRC's President Jiang Zhe-min. The PRC Ministry of State Security assisted by Guangdong Public Security launched 'Operation Catching Tiger' for the arrest of Cheung.²⁸

How the kidnapping came to the attention of the HKP was and still is a hotly debated factual question bearing on the 'proper' disposition of the case. Some of the unresolved factual questions in the Big Spender case include: When and how did the HKP become aware of the kidnappings? Did they possess sufficient evidence to arrest Cheung for kidnapping or explosive charges before he left for China on 15 January 1998? Why did they not take the initiative to investigate and prosecute Cheung?

If the Li family had been more forthcoming with the kidnapping or the police had been more aggressive with the investigation, Cheung would have been arrested, prosecuted and sentenced in Hong Kong.

Handling of Criminal Defendants in the Big Spender Case²⁹

Criminal defendants being investigated and prosecuted

All told there were 36 defendants in this case. Other people were involved, for example suppliers of explosives, but were never investigated, much less prosecuted. Repeated questions were asked in Hong Kong as to why the suppliers of arms, weapons, ammunitions and explosives were not investigated and prosecuted. The missing defendants had committed as serious a crime as Cheung and others who were indicted.

DISCUSSION: THE ISSUE WITH MISSING CRIMINAL DEFENDANTS

The failure to investigate and prosecute yet to be identified fugitives at large raises troubling questions about the efficacy and fairness of the PRC criminal justice system. It is precisely such lack of trust by the Hong Kong people in this system that underscored and fuelled the jurisdiction dispute in the Big Spender case³⁰

²⁵ "'Big Spender' road to thiefdom', *Next Magazine*, 6 November 1998: 38–70.

²⁶ 'TNT trio ran risk of accidental detonation' *SCMP*, 12 February 1999: 3.

²⁷ "'Big Spender' road to thiefdom'. See a copy of the Confidential' memo in *Shida Chao* 1988, Issue 15, p. 37.

²⁸ *Ibid.*, p. 54.

²⁹ For a summary specification of charges, see Ta Kung Po, 13 November 1998: A9. See also 'Big Spender Case: The rest of the gang', *SCMP*, 13 November 1998.

³⁰ 'In the mainland, how many Hong Kong people were convicted?' *Jiuxinianda*, July 1987.

and accounted for the lack of a PRC-HKSAR rendition agreement in spite of demonstrated needs and apparent urgency.³¹

The Process of Investigative Detention

Custodial detention

In the PRC, custodial investigation is the exception rather than the norm. Criminal suspects are usually subject to community surveillance, that is, allowed to reside at home to be closely watched by their neighbours in the community and co-workers at the workplace.³²

Investigative detention

Investigative detention, if allowed, is to be used under limited and well-defined situations. Article 61 of the PRC Criminal Procedure Law provides the following grounds for detention before investigation of an active criminal or a major suspect:

- if he is preparing, during or discovered after a crime
- if he is identified by a victim or an eyewitness
- if criminal evidence is found on his body or at his residence
- if he attempts to escape or become a fugitive
- if he destroys or falsifies evidence
- if he does not reveal his true identity
- if he is strongly suspected of being a mobile, repeat and all-round criminal.

Furthermore, investigative detention is subject to approval of the People's Procuratorate with stringent time limitations. Article 57 of the PRC Criminal Procedure Law provides that:

If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days... A major suspect involved in crimes committed from one place to another, repeatedly, or in a gang... a request for examination and approval may be extended to 30 days. The People's Procuratorate shall decide either to approve or disapprove the arrest within seven days.

³¹ Grenville Cross S.C. (Director of Public Prosecution) 'Letter: Criticism over the Big Spender case unfair', *SCMP*, 4 November 1998. (It is a matter of regret that there has been no formal rendition agreement between Hong Kong and the mainland over the transfer of fugitives or criminal cases.)

³² Article 51 of the PRC Criminal Procedural Law. For a theoretical treatment, see 'V. Community Prosecution and Sanction.' In David R. Karp (ed.), *Community Justice*, Rowman & Littlefield, 1998, pp. 253–372.

DISCUSSION: HOW CHEUNG AND ACCOMPLICES WERE HANDLED BEFORE TRIAL

Extended detention of Cheung

Cheung was first detained on 26 January 1998. The prosecutorial approval for his arrest was on 21 July 1998, five months and 25 days later.³³ Cheung's detention was over and above the legal limit of 30 days when arrest approval must be sought.

A plausible explanation might be that Cheung had tried to disguise himself as 'Chen Xing-wei' when he was arrested.³⁴ In this regard, Article 128 of the PRC Criminal Procedure Law allows for the 'indefinite' investigative detention of a criminal if his or her true identity cannot be ascertained: 'If the criminal suspect refuses to disclose his true name, address, and identity, the period under which he can be held in custody starts from the date the identity is clarified.'³⁵

If this has been the proffered explanation, two more questions present themselves, first, whether Article 128 is applicable to the facts and circumstances in this case. By all accounts the PRC police knew, very early on in the investigation, that the person they arrested (Chen Xing-wai) was in fact Cheung, notwithstanding his facial denial. In fact the PRC police were just waiting for Cheung to confess to the details of his crime.³⁶ Even if they did not know Cheung's true identity when arrested, the police were able to positively identify him, by DNA/fingerprint matching³⁷ and/or eyewitness identification, with certainty and ease within a very short time.³⁸ Second, even if Article 128 has applied, Cheung should have been formally approved for arrest when he had confessed to his true identity in the middle of June 1998.

Extended detention of other defendants

Cheung was not the only to be detained beyond the legal time limit. In fact almost all the defendants in the Big Spender case were detained beyond the statutory period. If we take one month as the optimal period of investigative detention before an approval must be sought, 26 out of the 36 defendants were detained over 30 days without an approval for arrest. The average detention for all 35 criminals was two months nine days. This ranged from the maximum of five months 25 days to two days.

³³ On 21 July 1998, the official PRC news agency, the Xinhua News Agency, broke the news that the Big Spender gang had been arrested and Cheung had confessed: *Tian Di* (Heaven-Earth), No. 48, January 1999: 90.

³⁴ For an account of the police interrogation of Cheung, see *Tian Di* (Heaven-Earth), No. 48, January 1999, Ch. 11 85–90. (Cheung was arrested on 25 January 1998 and interrogated on 26 January 1998. He did not disclose his true name or address until the middle of June 1998.)

³⁵ See Kam C. Wong, 'Sheltering for Examination (Shoushen) in the People's Republic of China: Law, Policy, and Practices' *Occasional Papers/Reprints Series in Contemporary Asian Studies* (School of Law, University of Maryland), 3, 1997 (140), esp. pp. 26–30.

³⁶ Cheung was the target of an extensive and intensive investigation (secret case file coded '9810') in Chian. Cheung's identity and characteristics were well known in advance to the inter-agency work group consisting of Ministry of Public Security, Ministry of State Security and Guangdong Province Public Security Bureau: *Tian Di* (Heaven-Earth), No. 48, January 1999: 65. PRC interrogators were certain of Cheung's identity, notwithstanding his denial, as early as 26 January 1998. *Ibid.*, p. 86.

³⁷ At the time of the arrest, the PRC police was in possession of a substantial amount of information on Cheung and his gang. In fact there was a war room dedicated to the Big Spender case investigation with 80 volumes of files, 2 metres high: *ibid.*, p. 70.

³⁸ On 10 April 1998 one of the gang members, Cheung Chi-fung, started to talk and identified Cheung as to leader of the criminal gang: *ibid.* p. 87.

Table 20.1 PRC Public security investigative detention of the ‘Big Spender’

| Defendant | Detained | Arrest approval | Approved arrested | Time detained |
|------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Cheung | 26 January 1998 | 21 July 1998 | 22 July 1998 | 5 months 25 days |
| Chan Chi Ho | 27 April 1998 | 21 July 1998 | 22 July 1998 | 2 months 24 days |
| Ma Shan-chung | Imprisoned for other offense | Imprisoned for other offense | Imprisoned for other offense | Imprisoned for other offense |
| Lian Fei | 19 June 1998 | 21 July 1998 | 22 July 1998 | 1 month 10 days |
| Qian Han-shou | 6 July 1998 | 21 July 1998 | 22 July 1998 | 15 days |
| Chu Yuk-sing | 2 May 1998 | 21 July 1998 | 22 July 1998 | 2 months 19 days |
| Li Wan | 7 May 1998 | 21 July 1998 | 21 July 1998 | 2 months 14 days |
| Lau Ding-fun | 11 April 1998 | 21 July 1998 | 21 July 1998 | 3 months 10 days |
| Ye Xin-yu | 26 June 1998 | 28 July 1998 | 30 July 1998 | 1 month 2 days |
| Wong Wah-sang | 1 May 1998 | 28 July 1998 | 29 July 1998 | 2 months 27 days |
| Qian Han-ye | 3 May 1998 | 21 July 1998 | 22 July 1998 | 2 months 20 days |
| Or Ying-ting | 29 May 1998 | 21 July 1998 | 22 July 1998 | 1 months 23 days |
| Luo Ji-ping | 2 June 1998 | 21 July 1998 | 22 July 1998 | 1 month 19 days |
| Zhang Huan-qun | 17 June 1998 | 21 July 1998 | 22 July 1998 | 1 month 4 days |
| Wu Chai-shu | 26 January 1998 | 21 July 1998 | 22 July 1998 | 5 months 25 days |
| Wang Ying-de | 21 July 1998 | 29 July 1998 | 29 July 1998 | 8 days |
| Chin Hon-yip | 27 January 1998 | 21 July 1998 | 22 July 1998 | 5 months 25 days |
| Kam Wing-keung | 9 May 1998 | 21 July 1998 | 22 July 1998 | 2 months 20 days |
| Tang Li-hin | 10 May 1998 | 21 July 1998 | 22 July 1998 | 2 months 19 days |
| Ho Chi-cheung | 6 June 1998 | 21 July 1998 | 22 July 1998 | 1 month 15 days |
| Yu Chuan | 14 July 1998 | 28 July 1998 | 29 July 1998 | 1 month 14 days |
| Jiang Yongchang | 10 July 1998 | 28 July 1998 | 29 July 1998 | 18 days |
| Jiang Chai-gu | 10 July 1998 | 28 July 1998 | 29 July 1998 | 18 days |
| Wang Wenxiong | 20 August 1998 | 22 August 1998 | 26 August 1998 | 2 days |
| Lau Kwok-wah | 10 April 1998 | 21 July 1998 | 21 July 1998 | 3 months 11 days |
| Yu Hong-jian | 14 July 1998 | 28 July 1998 | 29 July 1998 | 14 days |
| Wang Yi | 9 July 1998 | 28 July 1998 | 29 July 1998 | 19 days |
| Chan Shue-hon | 12 April 1998 | 21 July 1998 | 22 July 1998 | 3 months 9 days |
| Chen Hui-guang | 4 May 1998 | 28 July 1998 | 30 July 1998 | 2 months 24 days |
| Luo Yue-ying | 2 June 1998 | 28 July 1998 | 29 July 1998 | 1 month 26 days |
| Chen Lixin | 25 June 1998 | 28 July 1998 | 30 July 1998 | 1 month 3 days |
| Liu Ganyong | 30 May 1998 | 28 July 1998 | 30 July 1998 | 2 months 29 days |
| Yip Kai-chung | 24 June 1998 | 28 July 1998 | 30 July 1998 | 1 month 4 days |
| Yi Kai-yuk | 1 May 1998 | 28 July 1998 | 29 July 1998 | 2 months 27 days |
| Total | | | | 80 months 6 days |
| Average | | | | 2 months 6 days |

Source: Extracted from Bill of Prosecution, pp. 1–9.

DISCUSSION: ABUSE OF PROCESS

The prolonged and over-extended detention of criminal suspects in the Cheung case reflects and comports with the national trend. According to PRC official data, and scholarly research, over-extended investigative detention is the norm, not the exception.³⁹

The Criminal Prosecution of the Defendants

The decision to prosecute

Article 137 of the PRC Procedure Law instructs the people's procuracy to examine a criminal case transferred to it by the public security with a view towards public prosecution.⁴⁰ Article 141 further provides that the People's Procuratorate should initiate a criminal prosecution if the facts and evidence warrant it. 'After a People's Procuratorate considers that... the evidence is reliable and sufficient and that criminal responsibility should be investigated according to law, it shall... initiate a public prosecution in a People's Court.'

The filing of criminal charges

The *Qixushu* (Bill of Prosecution) starts the public prosecution of a crime in the PRC courts. Substantively, the Bill of Prosecution is made up of three essential parts:

1. The introduction part provides information on the nature of the case and particulars of the parties to the case;
2. The main part details the facts and circumstances, law and legal provisions, and criminal charges, and any associated civil proceedings in the case;
3. The concluding part provides information about the legal status and process of the case.⁴¹

The Bill of Prosecution against Cheung: Initial part of the Bill of Particulars⁴²

Defendant Cheung Tse-keung, alias Chen Xing-wei, alias 'Big Spender' (da fu hao), 'abnormal guy' (biantai lao), male, 43 years old, Guangxi, Zhuang Autonomous Region person, senior middle school cultural (education) status, resided in 10 Nanwan Rd, Flat 1(H), Ya Jing House, Hong Kong. Hong Kong I.D. Card No.: D123744 (7). Detained on January 26, 1998, arrest approved sought on July 21, 1998 to the Guangdong Province People's Procuracy office, arrest approved on July 22, the same year.'

³⁹ 'Police Powers and Control in the People's Republic of China: A case study of shouron shencha', Columbia Journal of Asian Law 10 (3) 1996: 367-90.

⁴⁰ See also Article 97 of PRC Criminal Procedure Law (1979). If a crime has been committed and the evidence is found to be sufficient, a public prosecution will be started under Article 143 of the PRC Criminal Procedure Law (1979) with a Bill of prosecution.

⁴¹ See Editorial Committee, Prosecutor Manual (Jianchaguan Shouce) Shanxi Renmin Chubanshe, 1995), pp. 79-80.

⁴² Only those portions in the Bill of Prosecution related to Cheung's criminality is reported.

This is a case of defendant Cheung Tse-keung... (and other co-defendants)... engaging in illegal trading of explosives, smuggling of arms and ammunition, kidnappings, murder, robbery, illegal trading of arms and ammunition, illegal concealment of arms, and concealment of loots. The case was uncovered by the Guangdong Province Public Security Bureau and transferred to Guangdong Province People's Procuracy office,⁴³ the said office petitioned this Court for prosecution and adjudication.

The Bill of Prosecution against Cheung: Main part of Bill of Particulars

This office is of the opinion: Defendant Cheung Tse-keung disregarded state law and illegally traded, transported, and stored explosives. His conduct violated Article 125, paragraph one of the PRC Criminal Law and [is] thus guilty of the crime of illegally trading, transporting, storing of explosives under serious circumstances and should be punished severely; [Cheung] avoided custom control in the smuggling of arms, ammunition and explosives, his conduct already violated Article One to the Standing Committee of National People's Congress 'Supplemental Regulations Regarding Severe Punishment of Smuggling Offenses'⁴⁴ made applicable by Article 12 of PRC Criminal Law⁴⁵ and is guilty of smuggling of weapons and ammunition under specially serious circumstances, and thus should be severely punished in accordance with the above applicable regulations; [Cheung] in kidnapping people for the purpose of extorting money, his conduct has violated the Article 2(3) to the Standing Committee of National People's Congress 'Decision Regarding Severe Punishment of Criminals Abduct to Traffic and Kidnapping of Female and Young Children'⁴⁶ and Article 239 of the PRC Criminal Law.⁴⁷ In accordance with Article 12 of the PRC Criminal Law, Article 239 of the PRC Criminal Law is the applicable law, [Cheung] is guilty of kidnapping under serious circumstances and should be punished severely. According to Article 64 of the PRC Criminal Law before revision and Article 69 of the (current) PRC Criminal Law, defendant Cheung Tse-keung should be punished separately for different offences.⁴⁸ Cheung Tse-keung conspired with others and assumed a principal role in organising and directing many joint offences,⁴⁹ and was a principal offender according to Article 23 of the PRC Criminal Law before revision and Article 26 of the (current) PRC Criminal Law,⁵⁰ and should be punished more severely for all the crimes he organised and directed.⁵¹

⁴³ The Bill of Prosecution, p. 9.

⁴⁴ Adopted by NPC on 21 January 1998. Article 1 provides: 'Whoever smuggles in... weapons and ammunition... shall be punished to fixed-term imprisonment of not less than seven years and shall also be fined or sentenced to confiscation of property; if circumstances are particular serious shall be sentenced to imprisonment for life or death.'

⁴⁵ Article 12 of PRC Criminal Law provides: 'If an act committed after the founding of the People's Republic of China and before the entry into force of this law was not deemed a crime under the laws at the time, those laws shall apply.'

⁴⁶ Adopted by NPC on 4 September 1991. Article 2(3) provides: 'Whoever kidnaps others for the purpose of extorting money, shall be punished in accordance with item 1.'

⁴⁷ Article 239 of the PRC Criminal Law provides: 'Whoever kidnaps another person for the purpose of extorting money or property... shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and also to a fine or confiscation of property.'

⁴⁸ Article 69 of the PRC Criminal Law provides: 'or a criminal who commits several crimes... unless he is sentenced to death or life imprisonment, his term of punishment shall be not more than the total of the terms of all the crimes but not less than the longest of the terms for the crimes.'

⁴⁹ Article 25 of the PRC Criminal Law provides: 'A joint crime refers to an intentional crime committed by two or more persons joint.'

⁵⁰ Article 26 (para. 1) of the PRC Criminal Law provides: 'A principle criminal refers to any person who organizes and leads a criminal group in carrying out criminal activities or plays a principal role in a joint crime.'

⁵¹ Article 26 (para. 4) of the PRC Criminal Law provides: 'Any principal criminal not included in Paragraph 3 (ring leader of permanent criminal group) shall be punished on the basis of all the crimes that he participates in or that he organizes or directs.'

DISCUSSION: TAKING ISSUE WITH THE BILL OF PARTICULARS

The pleading and criminal charges raised a number of interesting questions and perplexing issues in the Big Spender case.

The Issue of Conflicting PRC versus HKSAR Jurisdiction

The most controversial aspect of the case is that of whether PRC or HKSAR should exercise jurisdiction over the investigation, prosecution and adjudication in this case.⁵²

The legal position of the HKSAR government

The HKSAR government's legal position is clearly stated in a public statement issued by the Government Information Centre on 11 November 1998: 'Government clarifies court's jurisdictional authority over Cheung Tse-keung and Li Yuk-fai.'⁵³ The public statement stressed the following points with respect to the Cheung case:

1. According to Article 18 of the Basic Law, the only national laws applicable to Hong Kong were those specified in Annex III. 'RC Criminal Law' is not one of the national law mentioned.
2. Although Cheung is a Hong Kong resident, he was suspected of violating criminal acts provided for under Article 6 of the 'PRC Criminal Law' while he was in the mainland. Thus 'PRC Criminal Law' is applicable to Cheung's case. Article 6 provides that if any of the 'conduct or consequence' of a criminal act happened within Chinese territories, PRC will have jurisdiction over the case.
3. According to Article 19 of the Basic Law, 'The courts of Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region.' But Article not does not give HKSAR court exclusive jurisdiction over cross-border crime cases implicated PRC as well as HKSAR jurisdictions.

The government's position was more elaborately discussed in three articles by three prominent SAR government justice officials.⁵⁴

The legal position of the PRC

In a press conference held in Guanzhou, the presiding judge in the case, Shi Anqi, made clear that Guanzhou (PRC) had jurisdiction in trying the case since all of the defendants, including Cheung, had either committed a crime in China, for example purchase of explosives, or had engaged in cross-border crime, for example smuggling of firearms.

⁵² In 1988 *The Journal of Chinese Law* devoted the whole issue to discussing Hong Kong basic law issues, but none of the articles specifically addressed the issue of conflict of criminal law; see 'Symposium on the Hong Kong Basic Law', *Journal of Chinese Law* 2(1) 1988.

⁵³ <http://www.info.gov.hk/chinfo/cheung-c.htm>.

⁵⁴ Grenville Cross S.C. (Director of Public Prosecution), 'Letter: Criticism over the Big Spender case unfair', *SCMP*, 4 November 1998. Li Shaoqiang (former Chairman, Local Prosecutors' Association), 'Balancing Law and circumstances in cross-border crime cases', *Hong Kong Economic Law Journal*, 4 November 1998: 12. Stephen Wong (Acting Solicitor General) 'SAR should not interfere with mainland judicial process': *ibid*.

Legally speaking, PRC courts assume jurisdiction when either the conduct (*zingwei*) or the consequence (*houguo*) of a crime happen in China.⁵⁵ More specifically, in answer to Cheng Chi-keung and other defendants' jurisdiction argument, the Guangzhou Intermediary People's Court stated:

Besides, defendants Cheung... has raised objections over jurisdiction in regard to illegal trading, transportation of explosives, kidnapping and robbing of Hong Kong gold shops. After investigation, for people who were involved in the above crimes, some of the defendants are Hong Kong residents, some of the defendants are mainland residents; the kidnapping and robbing of gold shops were conducted in Hong Kong, but the conspiracy, planning, and preparatory conduct, all happened in the mainland; the explosives and instrumentality of crimes were all illegally procured in the mainland and transported to Hong Kong; defendants were all arrested in the mainland; a lot of proceeds of crime, loots, and evidence were all recovered in the mainland. Thus according to PRC Criminal Procedure Law, Article 24, the judicial organization in mainland possessed jurisdiction over the case.

DISCUSSION: LEGAL ANALYSIS

Article 6 of the PRC Criminal Law provides in pertinent part:

This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the PRC, except as otherwise specifically provided by law... If a criminal act or its consequence take places within the territory or territorial waters or space of the PRC, the crime shall be deemed to have been committed within the territory and territorial waters and space of the PRC.

According to the Guangzhou Intermediary People's Court and as independently verified by Hong Kong investigative report, Cheung had committed the following criminal acts in China:

1. In October 1997, the defendant Cheung supplied HK\$150 000 and directed others to purchase 818.43 kg of explosives, 2000 detonators, 750 metres of fuse line from mainland China.
2. From the end of 1995 to the beginning of 1996, defendants Cheung and others made multiple visits to Shenzhen, staying in Ming Du Hotel and Ri Sun Hostel to secretly plot the kidnapping of Li. Cheung put up HK\$1.4 million for the purchasing of equipment and renting of premises for locking up the hostage, including two AK47 automatic rifles, one miniature machine gun, six pistols, nine packages of explosives (weighing 1.887 kg). Cheung also helped to smuggle the arms and ammunitions to Hong Kong.
3. At 6 p.m. on 23 May 1996, Cheung kidnapped Li and his driver and demanded and obtained a ransom of HK\$1030 million.
4. In April 1977, defendant Cheung and others planned for the kidnapping of Mr Kwok in China – Guangzhou, Shenzhen and Dongguan. Cheung and Wu put up HK\$2.2 million as expenses. At 6 p.m. on 29 September 1977, Cheung and other defendants kidnapped Kwok. After Cheung demanded and obtained HK\$6 billion from Kwok's family, the victim was released.

⁵⁵ Guangzhou Intermediary Court conducted a lengthy press conference, 'Guangzhiu municipality intermediary court situation briefing session', to explain the verdict, attended by the Court President, Li Go, Deputy President, Huang Min, Presiding judge Shi Anqi and judicial officer Wu Chan. 'Presiding judge asserted once again that mainland has judicial authority', Ming Bao Daily News, 13 November 1998: A4.

Given these facts in the case, there is very little question that Cheung had committed serious criminal offences in China and that the PRC court had properly assumed jurisdiction in the case. Specifically, Article 24 of the PRC Criminal Procedure law provides: ‘A criminal case shall be under the jurisdiction of the people’s Court in the place where the crime was committed. If it is more appropriate for the case to be tried by the People’s Court in the place where the defendant resides, then that court may have jurisdiction over the case.’

However, the question remains whether the PRC court overreached its jurisdiction in taking over the adjudication of a case where both the conduct and consequence of the *primary* criminal act, the kidnapping of Li and Kowok, happened in Hong Kong. More particularly, whether the PRC court has breached the spirit of the Basic Law of Hong Kong – allowing Hong Kong to be an autonomous and independent legal entity⁵⁶ – in assuming jurisdiction over the Cheung case, the corpus of which happened mainly in Hong Kong.

In pursuit of this line of analysis, we should begin by observing that all crimes are not to be treated equally for purposes of jurisdiction. Conspiracy to kidnap, smuggling of arms and ammunitions, and illegal trading of explosives are all preparatory offences⁵⁷ to the primary and completed offence of kidnapping.

As a matter of jurisprudential principle, the NPC never intended the ‘preparatory offense’ to be treated more seriously than the primary and completed crime. Thus preparatory crimes are to be ‘given a lighter or mitigated punishment or be exempted from punishment’. Viewed in this light, it stands to reason that cases of cross-border crime should be tried in the jurisdiction where the ‘conduct’ of the primary criminal act actually occurred and where the ‘consequence’ of crime is most strongly felt, and not where the preparatory acts are being done.⁵⁸

This interpretation is buttressed by the PRC’s position in allowing cross-district (*kuan qu*) crimes to be tried in a jurisdiction where the primary crime occurred.⁵⁹ In this case, the NPC did not intend for the PRC Court to pre-empt the Hong Kong courts’ criminal jurisdiction with the promulgation of the Basic Laws of Hong Kong.⁶⁰

⁵⁶ See the draft basic law of the Hong Kong Special Administrative Region of the People’s Republic of China, Consultation Report (vol. 2) – Special reports. The reports on ‘The Relationship between the Basic Law and the Chinese Constitution and the Relationship between the Basic Law and the Sino-British Joint Declaration’, ‘One Country Two Systems’ and ‘A High Degree of Autonomy’. (The Consultative Committee for the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China [October 1998]. HKSAR is also delegated with extensive powers to govern herself under the principle of a ‘zero sum game’, i.e. power given to HKSAR will not be available to the PRC.)

⁵⁷ Article 22 of PRC Criminal Procedure Law provides: ‘Preparation for a crime refers to the preparation of the instruments or the conditions for a crime.’

⁵⁸ See Ms Audrie Yu, Chairman, Hong Kong Bar Association’s argument at the PRC–HK Law Seminar on ‘Legal Issues in Cross-border Crimes: Looking into the Future’ 27 November 1998, co-sponsored by Chinese Law Program, Chinese University of Hong Kong and French Centre for Research on Contemporary China in Hong Kong.

⁵⁹ PRC Criminal Procedure Law (1979), Article 20.

⁶⁰ Margaret Ng, ‘Right to autonomous law’. *SCMP*, 6 November 1998.

The Issue of Proper Venue: Guangzhou Intermediary versus Primary People's Court

Article 19 of the PRC Criminal Procedure Law provides that: 'The Primary People's Courts shall have jurisdiction as courts of first instance over ordinary criminal cases...' However, according to the Bill of Prosecution, the Big Spender case was initiated in the Intermediary People's Courts.⁶¹ The Guangzhou Intermediary People's Court and not the Primary People's Court assumed initial jurisdiction as the court of the first instance over this case because this was not an 'ordinary criminal case'.

DISCUSSION: MANDATORY VERSUS DISCRETIONARY REMOVAL

The Big Spender is a major, complex and serious case, that is, a capital crime involving multiple defendants and different jurisdictions (PRC-HKSAR). According to Article 20 of the PRC Criminal Procedure Law, the Guangzhou Intermediary People's Court is the proper court to initiate the prosecution. Article 20 provides for *mandatory* removal of a serious case from a lower to a higher people's court: 'The Intermediary People's Courts shall have jurisdiction as courts of first instance over the following cases:... (2) ordinary criminal cases punishable by life imprisonment or the death penalty.' In this case, since Cheung was charged with life and capital offences – smuggling of arms and ammunition, being a principal criminal in kidnapping and transportation of explosives – his case should have been tried in the Intermediary People's Courts.

Alternatively, if the case had been initiated in the Primary People's Court, it would have been proper to remove it to the Intermediary People's Courts by *discretion* under Article 23 of the PRC Criminal Procedure Law: 'If a People's Court at a lower level considers the circumstances of a criminal case in the first instance to be major or complex and to necessitate a trial by a People's Court at a higher level, it may request that the case be transferred to the People's Court at a higher level for trial.' The PRC Criminal Procedural Law does not make clear what a 'major and complex' case is in allowing for 'discretionary removal' on petition of the lower people's court.

An interesting legal policy issue can be raised as to whether Cheung could or should have been tried in the Intermediary People's Courts as a 'foreigner' because he was a Hong Kong citizen, enjoying special legal protection under the Basic Law. In this regard, Article 20 of the PRC Criminal Law provides for the *mandatory* removal of a foreigner's case: 'The Intermediary People's Courts shall have jurisdiction as courts of first instance over the following cases:... (2) criminal cases in which the offenders are foreigners.' The PRC judicial authorities, however, have taken the view that Hong Kong residents are PRC nationals, not 'foreigners'.

Finally, a case can be made for the *discretionary* removal of a Hong Kong resident's case from a Primary People's Court to an Intermediary People's Court on other grounds:

1. Criminal cases involving Hong Kong residents raise conflict of law and jurisdiction issues which the lower people's court is ill equipped to deal with.

⁶¹ Bill of Prosecution, p. 34.

2. Criminal cases involving Hong Kong residents, as with a foreigner's case, raise sensitive political ('one country, two system') and international (treaty obligations under the Joint Declaration⁶²) issues that implicate domestic politics and foreign relations, and would be best dealt with by a higher court.
3. Finally, in terms of judicial administration, the lower (local) court, being more intimately involved with local interests and solicitous of indigenous concerns, cannot be trusted to fully protect the rights of Hong Kong residents, as foreigners and outsiders. For example, a Shenzhen People's Court can be expected to be more protective of Shenzhen residents' interests and welfare, at the expense and to the detriment of a Hong Kong litigant.

The Issue with the Specificity of the Pleadings

The Bill of Prosecution on Cheung's case is structured in such a way that the facts and circumstances in the case were recited in detail before the particular criminal charges were specified. However, it is not clear on the face of the Bill of Prosecution how each of the charges and corresponding elements of offences were supported by particular facts and material evidence.⁶³

In the Big Spender case, for example, the first charge in the Bill of Prosecution was for illegal trading, storing and transportation of explosives (p. 19). The charge could have referred to the October 1997 incident when Cheung asked Qian Han-shou to orchestrate the purchase of explosives in China. It could also refer to the spring of 1997 incident when Cheung and Chen Zhihao directed and assisted others to smuggle arms, ammunition and explosives to Hong Kong (p. 11). Likewise, the third charge summarily concluded that Cheung was guilty of kidnapping(s) (p. 20) without further specifying whether he was guilty of one or more kidnappings and what facts alleged in the case supported which kidnappings – that is, Mr Li's kidnap (p. 12) or Mr Kwok's kidnap (p. 13). Finally, the last charge alleged that Cheung was a principal criminal to a number of joint offences (p. 20). It was not clear what alleged facts were used to support which joint offences.

DISCUSSION: SPECIFICATION OF CHARGES AND DUE PROCESS

The lack of specification of charges in relationship to facts raises substantial concerns about due process. For example, it creates notice problems for the defendant to prepare adequately for the defence. It also forecloses successfully any appeal against the judgment, for example challenging the adequacy of proof of facts as to each and every element of the crimes charged.⁶⁴

⁶² See Simon Macklin, 'Britain Defend Right to Comment', *SCMP*, 13 February 1999. (Britain had a right to comment on developments in Hong Kong because of its role in the Joint Declaration.)

⁶³ See Editorial Committee, *Prosecutor Manual* (Jianchaguan Shouce) Shanxi Renmin Chubanshe, 1995), p. 79.

⁶⁴ Cui Min and Zhang Wen-qing, *The Theory and Practice of Criminal Evidence* (Xingshi Zhengju de Lilun yu Shijina) (Beijing: Zhongguo renmin gongan daxue chubanshe, 1992), p. 42. (Evidence establishing the defendant's guilt must bear a necessary relationship with alleged criminal facts in the case.) See Editorial Committee, *Judges Manual* (Faguan Shouce), Shanxi Renmin Chubanshe, 1995. Judicial officials must determine whether evidence bear logical relationship to alleged facts in the case, p. 244.

To illuminate the issue, it is best to compare the PRC criminal charge practice with that of the United States. In that country, as a fundamental due process requirement, the US Constitution requires the defendant to be put on timely and adequate notice as to what a person is being charged with such that he can defend himself. Federal Rules of Criminal Procedure, Rule 3, provides that: ‘The complaint is a written statement of the essential facts constituting the offense charged.’ Rule 7(1) provides that ‘The court for cause may direct the filing of a bill of particulars’.

The Issue with Appropriateness of Charges

Charge of kidnapping

Cheung was charged with abduction under ‘Decision Regarding Severe Punishment of Criminals [Who] Abduct to Traffic and Kidnapping of Female and Young Children’ and Article 239 of the PRC Criminal Law, not kidnapping alone. The reason is a historical one. There was no kidnapping offence per se in the old PRC Criminal Law (1979). The only kidnapping-related provision is that of Article 141: ‘Whoever *abducted people for sale* should be sentenced to fixed term imprisonment of not more than five years; if the circumstances were serious, they should be sentenced to fixed term imprisonment of more than five years’ (emphasis added). This provision is to be read in conjunction with and supplemental to the Decision Regarding Severe Punishment of Criminals, which was the first kidnapping charge to appear. The Decision was an incidental provision appended to a broader punitive scheme that aimed to deter the abduction of females and children for sale. Until then, China was preoccupied with the abduction of females and children for sale, not kidnapping in general.⁶⁵ Later, in the 1980s and 1990s, the preoccupation was with kidnapping hostages to resolve commercial disputes, again not kidnapping for ransom.⁶⁶ Kidnapping for ransom is a very recent phenomenon, beginning after 1979.

Charge of smuggling

With regard to the smuggling of weapons and ammunitions, Cheung could have been charged under the new Article 151 of the PRC Criminal Law (1997), which provides in part:

Whoever smuggles weapons, ammunition, nuclear materials or counterfeit currency shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined or sentenced to confiscation of property; if circumstances are minor, he shall be sentenced to fixed term imprisonment of not less than three years but not more than seven years and shall also be fined...Whoever commits the crime as mentioned in the first and second paragraph, if the circumstances are specially serious, shall be sentenced to life imprisonment or death and also the confiscation of property. (Emphasis added)

However, since Cheung committed the offence of smuggling weapons, ammunitions *and explosive* on 12 May 1996 and before the new PRC Criminal Law (1997) (Article 151) came into effect, he was properly charged under Article 1 of ‘Supplemental Regulations Regarding Severe Punishment of Smuggling Offenses’.

⁶⁵ Cui Nam-san (Editor-in-Chief), *Xingshi Fanzui Anli Congshu: Guaimai Renkou Zui* (Series on Criminal Cases: Regarding Abduction for Sales Crime). Beijing: Zhongguo jiangcha chubanshe, 1991, p. 12. (Between 1980 and the first half of 1983 abduction of people for sale was a major concern; abduction grew 500 per cent between 1992 and 1984.)

⁶⁶ See Legal Policy Research of the Supreme People’s Procuracy, *Practical Interpretation to Amended Criminal Law Provisions* (Xiuding Xingfa Tiaowen Shiyong Jiesuo), Beijing: Zhongguo Jiancha Chubanshe, 1997) p. 317 (interpretive note to Article 239).

This was the relevant and appropriate legal provision governing the smuggling of weapons and ammunitions then in effect. The Supplemental Regulations were made applicable in accordance with Article 12 of the PRC Criminal Law (1997), which gives the PRC Criminal Law only prospective, not retroactive, effect. However, since the Supplemental Regulations did not provide for the punishment of *smuggling of explosives*, Cheung was not so charged.

The Issue of Appropriateness of Punishment

Before the revision, the NPC Standing Committee ‘Decision Regarding the Severe Punishing of Criminals Seriously Endangering Public Security’⁶⁷ imposed the death penalty for the manufacturing, trading, transportation, and stealing of arms, ammunition and explosives:

With respect to the following kinds of criminals seriously endangering public security, it is possible to add more sentences to the highest sentence to those provided in the criminal law, including capital punishment ... Four, illegal manufacturing, trading, transportation or stealing of arms, ammunition, and explosives, where circumstances are particularly serious, or where consequences are serious.

Since the Decision’s Article 1(4) provides for the enhancement of punishment, up to and including death, for stealing of explosives and Article 112 does not provide for the crime of stealing explosives, how should criminals who have stolen explosives under non-serious circumstances and without serious consequences be dealt with?⁶⁸ The Supreme People’s Court was of the opinion that in effect Article 112 should be construed as if it had incorporated the provision under Article 1(4).⁶⁹

The Issue of Legal Interpretation: The Meaning of Special Serious Circumstances

Cheung was charged with smuggling of weapons and ammunition under especially serious circumstances. What constituted serious circumstances are not clearly defined in the general PRC Criminal Procedure Law or the more specific Supplemental Regulations on which Cheung’s charge is based.

Official Chinese legal authorities have interpreted ‘minor circumstances’ with respect to Article 151 as small quantity, relatively less dangerous and not causing serious consequences. By natural implication and logical extension, degree of ‘serious circumstances’ can be ascertained by looking at the number of weapons, the lethality of the weapons and any intended use made of the weapons.⁷⁰

⁶⁷ Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guangyu Yancheng Yanzhong Weihai Shehui Zhian de Ganzui Fenzi de Jueding) (approved on 2 September 1983.

⁶⁸ For a judicial interpretation, see the Supreme People’s Court ‘Responding to Certain Questions (3) Regarding Applicable Law in People’s Courts Adjudication of Serious Criminal Cases’ (Zuigao Renmin Fayuan ‘Guanyu Renmin Fayuan Shenpan Yanzhong Xingshi Fanzuian Zhong Juti Yingyong Falu de Rugan Wnti de Tafu) (issued on 21 August 1985) (Question no. 29 raised by Sichuan, Liaoning.

⁶⁹ Ju Yong-chun (Editor-in-Chief), *Xingshi Fanzui Anli Congshu: Youguan Qiangzhi, Tanyaoyao, Baozhawu de Fanzui* (Series on Criminal Cases: Regarding crimes of arms, ammunition, explosives), Beijing: Zhongguo jiangcha chubanshe, 1992, pp. 1–2.

⁷⁰ See Legal Policy Research of the Supreme People’s Procuracy, *Practical Interpretation to Amended Criminal Law Provisions* (Xiuding Xingfa Tiaowen Shiyong Jiesuo), Beijing: Zhongguo Jiancha Chubanshe, 1997, p. 193 (interpretive note to Article 151).

More generally, *qingjie yanzhong* ('serious circumstances') allows for aggravated punishment to the primary offence. Article 125 of the PRC Criminal Law allows for 'imprisonment of not less than 10 years, life imprisonment or death' for 'serious circumstances' in illegal trading of explosives. Article 112 also provided for such aggravating circumstances. Judging from practical experience, 'serious circumstances' when applied to Article 112 included: being a principal or soliciting criminals to criminal gangs, reformed labor escapees, and reoffending criminals; illegally manufacturing, trading, and stealing of arms, ammunition, and explosives in large volume; robbing arms, ammunition from armories, explosives storage, vital departments, and armed guards; illegally trading, stealing and robbing arms, ammunition and explosives for the purpose of committing robbery, murder or serious crimes; and the manner of the crime was particularly heinous.⁷¹

'Especially serious circumstances' when applied to Article 112 included: (1) illegally manufacturing, trading and stealing of arms, ammunition and explosives for the purpose of hijacking planes, boats and cars; causing harm to transportation facilities; robbing banks and gold depositories; armed smuggling of drugs thereby causing serious consequences; (2) the use of violence and coercion to obtain arms, ammunition and explosives or kidnapping, harming or killing of arms guards or arms possessors, thereby causing serious injuries or death; (3) stealing and robbing of arms to be used as criminals move from place to place or resist arrest, thereby causing grave consequences.

The Defence of the Case⁷²

Right to defence under PRC Criminal Procedure Law

Defendants in China are entitled to rights of defence by law. In order to defend himself effectively, the accused has a right to be represented by a lawyer (Article 32(1) of the PRC Criminal Procedure Law), to consult and extract information from the case file (Article 36), to testify (Article 155), to present statements in court (Article 155), to gather evidence (Article 37), to summon witnesses (Article 37), to confront witnesses (Article 46), to request new witnesses, evidence or expert evaluation (Article 159) and finally to have his guilt adjudicated by a court (Article 12). Specifically, Article 35 provides:

The responsibility of a defender shall be to present, according to the facts and law, materials and opinions proving the innocence of the criminal suspect or defendant, the pettiness of his crime and the need for a mitigated punishment or exemption from criminal responsibility, thus safeguarding the lawful rights and interests of the criminal suspect or the defendant.

Cheung's defence on the record

Defendant Cheung Tse-keung confessed to the crime of kidnapping with no reservation. He claimed to be ignorant of the origin of the explosives. He specifically denied that he paid for the purchase of

⁷¹ Ju Yong-chun (Editor-in-Chief), *Xingshi Fanzui Anli Congshu: Youguan Qiangzhi, Tanyao, Baozhawu de Fanzui* (Series on Criminal Cases: Regarding crimes of arms, ammunition, explosives), Beijing: Zhongguo jiangcha chubanshe, 1992, p. 25.

⁷² See 'Defense in Criminal litigation' (Xingshi xusong zhong de bianhu) in Editorial Committee, *Judges Manual* (Faguan Shouce), Shanxi Renmin Chubanshe, 1995. (The accused and his defender are allowed to present material and viewpoints to show that the accused is not guilty or deserves to be punished less. In particular, he has a right to: participate in court investigation and hearing, including confronting witness; participate in court argument; appeal the case) p. 243.

the explosives. Lastly, he challenged the PRC court's jurisdiction to hear the case.⁷³

DISCUSSION: CHEUNG'S DEFENCE STRATEGY

Confession

First, Cheung hoped to be afforded leniency for showing remorse and repentance with his confession. As a matter of jurisprudential first principle, PRC promotes 'leniency to those who confess their crimes and severity to those who refuse to' (*tan bai cong huan, kang ju cong yan*).⁷⁴

In order for this principle to apply, Cheung had to be considered by the public security to have shown sufficient contrition. This raised two issues in Cheung's case: First, what was Cheung's true motive in confessing to the police? Did he confess out of (external) fear or out of (internal) remorse? Second, did he demonstrate sufficient remorsefulness by confessing to some (kidnapping) and not all offences (trading in explosives within China)?

The *tan bai cong huan, kang ju cong yan* principle poses a dilemma for any criminal caught in the PRC criminal justice system. If *tan bai* (literally 'forthcoming') is used by the police as a measuring rod to gauge repentance, any lack of *tan bai* reflects a lack of sincerity in owning up to one's criminal qua moral responsibilities. This precludes the criminal from asserting any defence he might legally be entitled to. Any aggressive assertion defence, even legitimate, might be conceived of as a deliberate attempt to obstruct the search for truth and justice. Worse still, in desperation or out of ignorance, the criminal might be compelled to tell the police what they want to hear, even if untrue, in trying to earn credit for being *tan bai*.

The other more interesting interpretation issue is whether the *tan bai* principle is based on confession to a criminal act per se or whether confession and surrender is used as a manifestation and evidence of a criminal's change of heart deserving of special consideration. The former makes punishment contingent on confession, pro rata, that is, the more confession the less punishment. The latter makes punishment contingent on evidence of change of heart, thus voluntary and total cooperation with the police is required.⁷⁵

The Supreme People's Court in conjunction with the Supreme People's Procuracy and the Ministry of

⁷³ The defence challenged the Guangzhou Intermediary People's Court's jurisdiction under Article 6 of the PRC Criminal Law: 'This Law shall be applicable to anyone who commits a crime within the territory... of the People's Republic of China, except as otherwise specially provided by law... If a criminal act or its consequence takes place within the territory... of the People's Republic of China, the crime shall be deemed to have been committed within the territory... of the People's Republic of China.' The defence argued that the Article 18 of the Basic Law precluded PRC Criminal Law from being applied to HKSAR, i.e. reaching Cheung's criminal acts in Hong Kong.

⁷⁴ Jerome Alan Cohen, *The Criminal Process in the PRC 1949–1968*, Cambridge MA: Harvard University Press, 1968, p. 30. For a practical application of such a principle, see Bao Ruo-Wang & Rudolph Chelminski, *Prisoner of Mao*, New York: Coward, McCann & Geoghegan, 1973, p. 33. In every police yushen interrogation room, the sign 'tan bai cong huan, kang ju cong yan' is prominently displayed. See Margaret Ng, 'Endangered by lack of action on suspect law', *SCMP*, 20 November 1998 (Xinhua photo interrogation room).

⁷⁵ *Prisoner of Mao*, p. 73. In the PRC context, the attitude of the offender is closely observed and meticulously recorded. Zhen Yuegan and Guan Shuguang *Gongan Neiqin Gongzuo Shouce* (Public Security Internal Working Manual) (Jingguan Jiaoyu Chubanshe, 1994), p. 218. During the preliminary examination, the officer should pay attention and record the offender's confession attitude (*yingzui biaoqian*). The attitude of an offender has always made a difference to how the aggrieved victim or harmed society reacts to a transgression. See Erwin Goffman, *Relations in Public*, New York: Harpers, 1971. There are two parts to remedial exchanges for a public wrong: accounting and apology by the offender: pp. 108–18.

Public Security has issued an opinion on how to apply the principle:

‘Tan bai cong huan’ refers to the situation whereby after the relevant judicial organs are suspicious and decide to question, summon, or otherwise adopt coercive measures with respect to the criminal element, the criminal element voluntarily confesses to his crime.

If the criminal is actually able to voluntarily confess, depending on the degree of honest confession and in accordance with Article 57 (of PRC Criminal Law),⁷⁶ he should be treated lightly.⁷⁷

The principle is now codified in Article 67 of the PRC Criminal Law, which provides in pertinent part:

Voluntary surrender refers to the act of voluntarily delivering oneself up to justice and truthfully confessing one’s crime after one has... committed the crime. Any criminal who voluntarily surrenders may be given a lighter or mitigated punishment. The ones whose crimes are relatively minor may be exempted. If a criminal suspect or a defendant under compulsory measures or a criminal serving a sentence truthfully confesses his other crimes that the judicial organ does not know, his act shall be regarded as voluntary surrender.

In light of Article 67, there was a factual legal issue whether Cheung qualified for such an affirmative defence. While Cheung confessed to the police, he did not surrender voluntarily. While Cheung did confess to kidnapping, the PRC police had been informed of the details of the crime all along.⁷⁸

Another interesting question in this case is whether Cheung was entitled to leniency under Article 67, that is, having confessed to crimes not known to or within the jurisdiction of the PRC police. For example, could Cheung have claimed credit for confessing to crimes committed in Hong Kong? The answer should turn on whether as a matter of policy, leniency for *tan bai* provided under Article 67 is based on cooperative acts or reformative attitude. If it is the latter, it should not matter whether the crime(s) confessed to happened within PRC criminal jurisdiction. It is enough to show that the confession demonstrates a truly remorseful and reformed person.

If it is the former, an intriguing legal question is now raised, whether the confession of a criminal act, otherwise sufficing for the reduction of punishment under Article 67, is nevertheless denied because it is not the kind of criminal act contemplated under Article 67, that is, not actionable crime within PRC criminal jurisdiction.⁷⁹ Simply put, Article 67 asks for the confession of a ‘prosecutable’ criminal act, not one that is without the criminal jurisdiction of the police.

⁷⁶ Article 57 of the Criminal Law (1979) provides: ‘In determining punishment for the criminal, (the court) should consider the nature and circumstances of the crime and the degree of harm to the society in accordance with this law.’

⁷⁷ Zui Gao Renmin Fayuan, Zui Gao Renmin Jianchayuan, Gongan Bao, ‘Guanyu danqian chuli zishou he youguan wenti juti yingyong falu jieshi’ (16 April 1984) (Interpretation of related issues regarding current treatment of surrendering’ (Question 5: How to apply ‘leniency to those who confess’?). See Editorial Committee, *Compendium of PRC Public Security Law*, Jinlin: Jilin Renmin Chubanshe, 1995, p. 71.

⁷⁸ Zui Gao Renmin Fayuan, Zui Gao Renmin Jianchayuan, Gongan Bao, ‘Guanyu danqian chuli zishou he youguan wenti juti yingyong falu jieshi’, 16 April 1984. (Interpretation of related issues regarding current treatment of surrendering’. Question 1: What is surrendering? It must be voluntary. He must confess to all his crime. He must inform upon the co-defendants.) See Editorial Committee, *Compendium of PRC Public Security Law*, p. 71.

⁷⁹ This is separate from the evidentiary question of whether the act of confessing, especially to a non-actionable crime, affords proof of voluntariness and thus evidences a reformed mind.

Thus far, the prescription under the ‘one country two systems’ formula is that the PRC Criminal Law cannot reach criminal conduct in Hong Kong. There is, however, a broader question of under what circumstances, if at all, criminal conduct as material facts and circumstances to a criminal case can ever be used in a PRC court. For example, can facts and circumstances in Hong Kong be used to support a prosecution in PRC courts, either ‘directly’ as material elements of crime, for example double marriages, or ‘indirectly’ as circumstantial evidence to support a prosecution in China? In the present context, this means whether the Basic Law precludes the positive or benevolent use of legal act in HKSAR Cheung to offset criminal punishment in the PRC, or the negative or punitive use of criminal act, for example a criminal record in Hong Kong as the basis of determining habitual criminality in China.⁸⁰

Deny paying for the explosives

By denying paying for the explosives, Cheung tried to distance himself from the ‘trading of explosives’ charge. If it was proved that Cheung paid for the explosives, this made him ipso facto an accomplice if not even a principal offender. This gave PRC courts jurisdiction over the case and allowed them to impose capital punishment for one of the most serious offences. In effect Cheung was denying that he played a leadership role or was otherwise an accomplice to the crime of ‘trading of explosives’.

Lack of personal knowledge or intent

Cheung insisted that he ‘did not know about the origin of the explosives’ because his co-defendants carried out the purchase, transportation and smuggling of the explosives from China. In so doing, Cheung refused to accept criminal responsibility for the crime of ‘trading in explosives’, which happened in China. His defence was based on law, that is, he lacked mens rea for the crime in China. Article 14 of the PRC Criminal Law provides that: ‘An intentional crime refers to an act committed by a person who clearly knows that his act will entail harmful consequences to society but who wishes or allows such consequences to occur, thus constituting a crime. Criminal responsibility shall be borne for intentional crimes.’

The strategy of the defence was to deny ‘knowingly’ purchasing explosives in China, which was the most serious charge Cheung faced. In so doing, he was hoping to distance himself from other mainland criminals and defeat the jurisdiction of the PRC Criminal Law.

Insufficiency of evidence

Cheung’s lawyer challenged the sufficiency of evidence to support the kidnapping charge because the victims did not testify in the case.⁸¹ The problem encountered by Cheung’s defence was that the legal standard of proof or ‘proof requirement’ was not clearly articulated in PRC Criminal Law and PRC Criminal Procedure Law.⁸² The standard of proof⁸³ describes the quality (credibility) and quantity (sufficiency) of

⁸⁰ The issue turns on how to construe ‘autonomy’ and ‘interference’. Does ‘autonomy’ preclude a benevolent assistant? Is a benevolent assistant an interference? This recalls debate about punishment in the US: is paternalistic rehabilitation of prisoners a kind of punishment? Ultimately from whose perspective are we to understand the term ‘interference’? See discussion in Introduction to Part III, ‘The Socialized Juvenile Court’. In Frederic L. Faust and Paul J. Brantingham, *Juvenile Justice Philosophy*, 2nd edn, St Paul MN: West Publishing Co., 1979, pp. 139–46 (socialization of juvenile court deprived the juveniles their constitutional rights).

⁸¹ Personal conversation with Ivan Tang, 27 October 1998, Radio Television Hong Kong.

⁸² For recent efforts fo PRC authorities to explore and expound on the issues, see He Jiacheng (ed.), *Xhengjuxue luntan* (Forum on Evidence), 3 vols, Beijing: Zhongguo Jiancha Chubanshe, 2001.

⁸³ ‘The burden of proof required in a particular type of case, as in a criminal case where the prosecution has the standard (i.e. burden) of proof beyond a reasonable double’: Henry Campbell Black, *Black’s Law Dictionary*, St Paul, MN.: West Publishing Co., 1983, p. 30R.

evidence required to persuade the trier of fact to convict in a criminal case. In the PRC this issue is called *zhengming yaoqiu* ('proof requirement') and is not settled.

Article 162 of the PRC Criminal Procedure Law provides that in order to find a defendant guilty, a PRC court must find that 'the facts of a case are clear, the evidence is reliable and adequate' (*anjian shishi qingchu, keshi, chongfen*). Whereas *keshi* ('reliable') deals with the quality of evidence, *chongfen* deals with the quantity of evidence needed to convict (Article 162). Article 162, however, does not articulate how much evidence is deemed adequate, that is, the degree of standard of proof is not clearly stated. In layman's terms, how convinced or persuaded must the judicial official sitting in judgment be before a conviction is warranted: absolute certainty or various degrees of probability?

According to one leading PRC author, *keshi* and *chongfen* evidence means: evidence verified to be objectively true; there is logical relationship between evidence and facts of the case; there is no contradiction between evidence versus evidence and evidence versus case circumstances; the facts and circumstances of the case that are supported by evidence lead to a conclusion in the case; the evidence viewed as an integrated and comprehensive whole is not assailable; the facts and evidence in the case point to an inevitable conclusion or there is no other plausible explanation given the facts and evidence on hand.⁸⁴

More generally, the 'proof requirement' is interspersed within various clauses of the PRC Criminal Procedure Law (emphasis added). For example:

1. Article 61 of the PRC Criminal Procedure Law provides for investigative detention: 'Public security organs may initially detain an active criminal or a major suspect under any of the following conditions: (1) if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime; (2) if he is identified as having committed a crime by a victim or an eyewitness; (3) if criminal evidence is found on his body or at his residence... (7) if he is *strongly suspected* of committing crimes from place to place.' (See also Article 63 for grounds allowing for immediate seizure of criminals by citizens.)
2. Article 68 provides for arrest pending trial: 'After a People's Procuratorate has examined a case with respect to which a public security organ has submitted a request for approval of arrest, it shall decide *according to the circumstances* of the case either to approve the arrest or disapprove of the arrest.'
3. Article 86 provides for the opening of a criminal case file by the public security 'if it *believes* that there are facts of a crime and criminal responsibility should be investigated'.
4. Article 90 provides for the starting of a preliminary inquiry into a case: 'After investigation, the public security organ shall start preliminary inquiry into a case for which *there is evidence that supports* the facts of the crime, in order to verify the evidence which has been collected and obtained.'

⁸⁴ Cui Min and Zhang Wen-qing, *The Theory and Practice of Criminal Evidence* (Xingshi Zhengju de Lilun yu Shijina), Beijing: Zhongguo renmin gongan daxue chubanshe, 1992, p. 90.

5. Article 129 provides for a recommendation for public prosecution: ‘After a public security organ has concluded its investigation of a case, *the facts should be clear and the evidence reliable and sufficient* and, in addition, it shall make a written recommendation for prosecution.’
6. Article 137 provides for a Procuratorate to examine a case for a prosecution: ‘In examining a case, a People’s Procuratorate shall ascertain: (1) whether the *facts and circumstances of the crime are clear; whether the evidence is reliable and sufficient.*’
7. Article 141 provides for a public prosecution: ‘After a People’s Procuratorate considers that the facts of a criminal suspect’s crime has been ascertained, that the *evidence is reliable and sufficient* and that criminal responsibility should be investigated according to law, it shall make a decision to initiate a prosecution and shall, in accordance with the provisions for trial jurisdiction, initial a public prosecution in a People’s Court.’
8. Article 162 provides for the determination of guilt: ‘If the facts of a case are clear, *the evidence is reliable and sufficient...* he shall be pronounced guilty accordingly’ (*anjian shishi qingchu, keshi, chongfen*).
9. Article 46 of the PRC Criminal Law provides for evidentiary proof: ‘In the decision of all cases, stress shall be laid on evidence... The defendant may be found guilty and sentenced to a criminal punishment *if evidence is sufficient and reliable*, even without his statement.’
10. Article 61 of the PRC Criminal Law provides for sentencing: ‘When sentencing a criminal, a punishment shall be meted out on the *basis of facts*, nature and circumstances of the crime, the degree of harm done to society and the relevant provision of the Law.’
11. Article 204 of the Criminal Procedure Law provides for the retry of a case on petition: ‘If a petition presented by a party or his legal representative or his near relative conforms to any of the following on conditions... (2) The evidence upon which the condemnation was made and the punishment meted out is *unreliable and insufficient.*’

A comprehensive review and in-depth analysis of evidentiary requirements in the PRC criminal process above reveals that:

1. Facts and circumstances are critical at every stage of the criminal justice process, with law and legal requirements playing a less important role; for example, there is a lack of identification and particularisation of the quantity or quality of proof that is required for the sound exercise of legal discretion. For example, Article 69 provides that the People’s Procuratorate ‘shall decide according to circumstances of the case’ in approving public security arrests. ‘However, what are those circumstances justifying an arrest is not detailed in the said provision.’
2. The ‘proof requirement’ has a large range – from ‘strongly suspected’ (Article 61) to some ‘belief’ (Article 86) to some ‘evidence’ (Article 90) to ‘reliable and sufficient’ evidence (Articles 137, 147, 162, 204) – depending on the kind of process involved; for example, for investigative

detention it is ‘strongly suspected’ and in cases of conviction it is ‘reliable and sufficient’ evidence.⁸⁵

3. The PRC legal framework governing the exercise of police, prosecution and court discretion allows for subjective, case-by-case, ad hoc decision-making with little effective legislative regulation or administrative oversight. For example, Article 61(5) of the PRC Criminal Procedure Law allows the police to detain an ‘active criminal’ or ‘major suspect’ ‘if there is likelihood of his destroying or falsifying evidence or tallying confessions’. How convinced the public security officials have to be (evidentiary requirement) or how likely the risk of destroying evidence needs to be (legal requirement) before the police can act is an open question for the police to decide.⁸⁶

The ‘proof requirement’ in the PRC Civil Procedure Law and process is equally unclear. The dominant approach is that objective facts speak for truth. Evidence must be objectively true (*keguan*); related to facts of the case (*lianxi*); no contradiction between evidence versus evidence and evidence versus facts of the case (*paxue moudun*); and no other plausible explanation or explanation (*paxue qita jieshi*).⁸⁷

DISCUSSION: THE BURDEN OF PROOF

PRC criminal codes (PRC Criminal Law and PRC Criminal Procedure Law) do not provide for a legally responsible and evidentiary threshold as to who should ultimately bear the burden of proof. It appears that *both* the state and the accused have to work together to discover the truth in a case.

Article 43 of the PRC Criminal Procedure Law provides: ‘Judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the criminal suspect’s or defendant’s guilt or innocence and the gravity of his crime.’ This is identical to Article 32 of the PRC Criminal Procedure Law (1979). The proving process in PRC courts thus follows closely Article 20 of the Soviet Criminal Procedure Code. Specifically, the prosecution has the burden of proof (*zhengming zheren*) to establish the facts pointing to guilt – more appropriately to establish the truth of the matter; the public security, procuratorate and judicial officials have an affirmative duty to collect evidence both for and against the defendant’s innocence, that is, uncovering the whole truth; the defence has no burden of proof as to his innocence; and the defence has a right to assert and proof his innocence or entitlement to lesser punishment.⁸⁸

⁸⁵ *Ibid.*, p. 86 (Evidentiary requirement is made depending on stages of criminal justice process as reflecting the incremental accumulation of evidence and correspondently increase certainty of guilty.);

⁸⁶ *Ibid.*, p. 85 (The degree of ‘proof requirement’ is elastic and depends on kinds of case and circumstances.)

⁸⁷ See PRC Criminal Procedure Law, Ch. 6, esp. Article 55. See also Wang Fa-rong et al., *Chinese Civil Litigation Study* (Zhongguo Minshi Shenpan Xue), Beijing: Falu Chubanshe, 1991, Ch. 15 ‘Burden of proof in People’s Courts’ (Renmin Fayuan de zhengming zheren), pp. 182ff.

⁸⁸ Cui Min and Zhang Wen-qing, *The Theory and Practice of Criminal Evidence*, pp. 15, 95–6. See Harold J. Berman, *Justice in the U.S.S.R.*, New York: Random House, 1993, p. 366. (Soviet court process was paternalistic in nature and designed to protect the citizens. Pre-trial and trial procedure was designed to uncovering the whole history of the situation.)

Unlike in the West (e.g. the UK and US), the defence has a duty to cooperate with a criminal investigation, including the volunteering of information, production of evidence, answering of pertinent questions, and submitting to examination. In this regard, Article 48 of the PRC Criminal Procedure Law provides in pertinent part: 'All those who have information about a case shall have the duty to testify.' The command to cooperate with investigation of a crime does not draw a distinction between criminal defendants or regular citizens.

PRC judicial authorities consider it more important to seek the truth than to protect the rights of defendants. Article 6 of the PRC Criminal Procedure Law provides that: 'In concluding criminal proceedings, the People's Courts, the People's Procuratorates and the public security... base themselves on facts and take law as the criterion.' The PRC judicial authorities further believe that facts are paramount in reflecting the truth. Simply put, it is a basic principle in criminal investigation to *shishi quishi* ('seek truth from facts').

Given this mentality, it is odd to allow anyone with information about crime, including the defendant, to withhold such information and thereby obstruct the search for truth and justice. Article 45 of the Criminal Procedure Law thus provides in pertinent part: 'The People's Courts, the People's Procuratorates and the public security organs shall have the authority to collect or obtain evidence from the units or individuals concerned. The units or individuals concerned shall provide truthful evidence.' Conversely, there is no right to remain silent for a criminal defendant, as in the US Constitution, Amendment V: 'No person... shall be compelled in any criminal case to be a witness against himself.'⁸⁹ Article 93 of the PRC Criminal Procedure Law provides that in pertinent part: 'The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.' Nor is there a right to refuse answering questions based on fear of self-incrimination.

Conclusion

The Cheung case is one of a kind of show trials.⁹⁰ As such, it offers a rare glimpse into the PRC criminal justice process: a first-hand account of how system and process work in practice as distinct from on paper. However, just as the O.J. Simpson trial in the United States is not typical (i.e. not routine), the Big Spender case suffers from a similar distorting effect. As a show trial manufactured for public consumption, particularly a foreign (from Hong Kong to the world) audience, the case is too real to be true.

The PRC authority hopes to use the Big Spender case to convince the world of its commitment to the rule of law, in other words, the prosecution and conviction of Cheung and others is 'based on (objective) facts and controlled by (established) law'. By all accounts, the processing and disposition of the case is a far cry from Mao's evolutionary justice when people were arbitrarily detained without legal process.

⁸⁹ See 'Self-Incrimination'. In John Kaplan, Jerome H. Skolnick, Malcolm M. Feeley, *Criminal Justice*, New York: Foundation Press, 1991, pp. 217–55. (The privilege against self-incrimination in American law dates from the Massachusetts Body of Liberties of 1641 and the Connecticut Code of 1650).

⁹⁰ The other one happened in 1979 when Jiang Qing was put on trial.

However, as evident in the discussion above, the Big Spender case, notwithstanding its meticulous recitation of law and detailed presentation of facts, fails to inspire the degree of confidence in the PRC criminal justice system that the authorities had hoped for or that Hong Kong people had come to expect. In particular, the court lacked a degree of objectivity and criticalness that we have come to associate with a mature and dependable law regime: a process that is marked by continuous debate over the proper application of law to facts and the correct interpretation of facts with reference to law. In this regard, the Cheung court was more concerned with justifying their decision than with debating the issues of the law.

There is a long way to go before the PRC can be said to be a country of law, not man. The Big Spender case is a promising sign of things to come, but much more needs to be done.

21

The 'Bate-ficha' Business and Triads in Macau Casinos

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Under Portuguese rule, gaming has been legalised in Macau since 1847 and this small former Asian overseas province of Portugal² has become known worldwide as the Monte Carlo of the Orient. The first casino monopoly franchise was granted to the Tai Xing Company in 1937, but it was too conservative to exploit the full potential of the industry and only Chinese games were played in the casinos at that time. In 1962, the government granted the Sociedade de Turismo e Diversoes de Macau (STDM)³ the monopoly rights to all forms of gambling. The exclusive gambling franchise of the STDM was extended in 1986 for another fifteen years but expired in 2001. Today, there are ten casinos operated by the STDM and they have become the backbone of Macau's tourism and entertainment industry. The number of visitors rose from half a million in 1961 to 2 million in 1973, then 4 million in 1983 and more than 8 million in 1996, but declined to 7.4 million in 1999. Besides playing a key role in the development, prosperity and growth of Macau, the STDM is the largest taxpayer and has contributed to most infrastructure projects.⁴ The STDM is also the largest commercial employer in Macau, employing more than 10 000 people (5 per cent of Macau's workforce). With the huge revenue from gambling, Macau is able to maintain a free port status, invest in infrastructure and adopt a low taxation policy. Thus Macau, like Nevada, has 'built government around the gaming industry'⁵ and could be called a 'Casino State'.⁶ The centralisation of ownership of casinos seems to be a

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² Macau (Macao), the first and last Western settlement in China, was a former so-called 'overseas province' of Portugal but became a 'Chinese territory under Portuguese administration' in 1976 with a high degree of autonomy under the *Organic Statute of Macau (Estatuto Orgânico de Macau)*. Macau is located on the western side of the Pearl River Estuary on the southern coast of China and comprises a total area of 23.6 square kilometers consisting of Macau Peninsula, Taipa Island and Coloane Island. The estimated total population was 435,000 in 2000. Just 60 kilometers opposite to Macau, on the eastern side of the Pearl River Estuary, is the Special Administrative Region (SAR) of Hong Kong (See Huang Han Qiang and Wu Zhi Liang, *Macau Overview* 1996). Like Hong Kong, Macau recently returned to China and became a Special Administration Region on 20 December 1999.

³ The gambling franchise was granted to the STDM in Mr. Stanley Ho Hung Sun's name at a price of MOP\$3 million in 1962. In 1999, the STDM had a registered equity capital of MOP\$80 million and paid 31.8% of its annual income as taxes to the government. According to Article No.1 in the *Contract of Exclusive Concession of Gaming (Boletim Oficial de Macau [1962] 21)* and all revised versions (Contract of Exclusive Concession of Gaming 1998), the STDM must observe the regime of exclusive concession in operating the gambling industry in Macau (MOP stands for Macao Patacas which is the legal tender in Macau: US\$1 = MOP\$8.034 approximately).

⁴ Major infrastructure projects funded by the STDM include the New Maritime Ferry Terminal, International Airport, Deep-water Port, New Macau-Taipa Bridge, and reclamation and development in Praia Grande Bay.

⁵ Zendzian, Craig A (1993) *Who Pays? Casino Gambling, Hidden Interests, and Organized Crime*. New York: Harrow and Heston: p 13.

⁶ By 'Casino State' I mean to imply a state or jurisdiction where casino gambling has been legalized and that government revenues depend excessively on the gambling industry. Since 1988 more than 30% of government's revenue has been derived from gambling taxes. In 1998 and 1999, gambling taxes contributed almost half of total government revenue (*Macau Monetary and Foreign Exchange Authority Annual Report 1990-1998*).

good way of running gambling business in a small place like Macau. It is often easier to manage and the order inside the casinos can be maintained. Over time, however, too much centralisation and monopolisation have meant fewer incentives for the STDM to improve its services and reduce costs. The administrative process becomes time-consuming and resources are wasted. As a result of increasing competition from newly opened casinos in nearby areas like Thailand, Myanmar and Korea, and floating casinos in adjacent seas, consumers were attracted to these new casinos with better facilities and services.

At the beginning, the STDM observed the rules of the game and operated as the only operator under the exclusive franchise. However, in order to reduce the administrative and marketing costs while attracting more customers, it decided to change its way of doing business in the 1980s and began to operate gambling rooms within its casinos in 1984. With this informal arrangement of gambling rooms, the 'dead' chips system and the *bate-ficha* business became established in 'individual or subcontracted' gambling rooms.

The 'dead' chips system and gambling rooms

The 'dead' chips system

The STDM imported the idea of 'dead' chips from Europe in the 1970s but the first organised dead chips system appeared in Macau casinos only in 1980 when the informal gambling rooms began. 'Dead' chips (*sei-ma*), also called non-negotiable chips or 'mud' chips (*lai-ma*), are chips that cannot be exchanged for cash. 'Dead' chips can be used only in specific gambling rooms for gambling purpose alone. The overt function of dead chips is to attract customers and keep them staying in the games, while cash chips can be used for betting in all gambling rooms and are transferable into cash. There are cash chips ranging in value from \$10 to \$200 000 for Macau patacas (MOP) and Hong Kong dollars (HK). However, there are no dead chips for MOP and the smallest value of dead chips is HK\$1000 increasing to HK\$5000, HK\$10 000, HK\$50 000, HK\$100 000 and HK\$500 000. The face value of both dead chips and cash chips is the same. All cash chips of value below HK\$10 000 are circular in shape with 'STDM' and the value imprinted, and the size increases with the value, while the dead chips are usually rectangular in shape. In addition to the logo of the STDM, the word 'Junket' and sometimes the name of the gambling room are printed on the dead chips to distinguish them from the cash chips. The dead chips for different gambling rooms are different in colour and size, sometimes even in shape, and can be used only in designated gambling rooms.

The arrangement of gambling rooms

The first room, the 'Diamond VIP Room' was established in Casino Lisboa in 1984. Although the gambling rooms are not run directly by the STDM, they remain their property. The STDM provides the croupiers or dealers and other assistance to the gambling rooms, including security. But the operator of the gambling room has to take care of the administrative costs, profits and losses in the form of a quasi-privatisation of the room. The STDM, however, has denied contracting out of any of its gambling rooms because this is illegal under Article 1 of the Contract of Exclusive Concession of Gaming,⁷ and it claims that rooms are reserved for high rollers and VIPs. Today, there are more than fifty gambling rooms and clubs in Macau casinos and

⁷ Contract of Exclusive Concession of Gaming (Boletim Oficial de Macau [1962] 21) and all revised versions (Contract of Exclusive Concession of Gaming 1998).

baccarat⁸ is the chief game played. The only distinction between gambling rooms and clubs is that the former is open to the public, while the latter requires membership.

As the arrangement of these VIP gambling rooms is informal, the 'contract' between the STDM and the gambling room operator is not standardised or legally endorsed. Instead, the terms of such contract depend on the relationship between the operator and the STDM and also the ability to raise entry capital. In other words, successful or favoured operators may negotiate better terms of profit and loss sharing. This is an example of casino management failure as it is based on a form of cronyism rather than on efficiency.

When the gambling room operator starts his business, he has to give the STDM an amount of approximately HK\$2 million as a guarantee. In addition, he has to buy a certain amount of dead chips from the STDM, usually about HK\$4 million per month. The operator obtains a commission for these HK\$4 million of dead chips and additional commission for extra dead chips bought. If the operator is not able to buy HK\$4 million of dead chips in one month, he will be fined. The profits gained from the gambling rooms are shared between him and the STDM, usually 55 per cent for the STDM and 45 per cent for the operator. In addition, the gambling room operator has to pay rent for each gambling table, which is approximately HK\$300 000 per table per month. He is also responsible for the administrative and management costs as well as the commission of the *bate-ficha* business inside his gambling room.

As mentioned above, the gambling room operators have to buy a huge amount of dead chips from the STDM each month, so they have to attract enough business to absorb all the dead chips required by their 'contract'. Thus instead of keeping all the commission from the STDM, the gambling room operators use part of this commission to establish a unique ancillary business in their gambling rooms, known as the *bate-ficha* business trading in dead chips.

The *bate-ficha* Business

The term *bate-ficha* is a colloquialism used in Macau as this kind of business only exists in Macau casinos. This term does not appear in the law but it exists in the police records of investigation. In other words, this business is not governed by any legislation, nor is it taxed. The original expression is in Cantonese (*dap-ma*) and the Portuguese term *bate-ficha* was made up by some local Portuguese police officials. 'Bater' is a verb that has many meanings such as shake, beat, strike, hit, while 'Ficha' means chips. The term *bate-ficha* means to 'handle' chips, and lots of chips indicate power and profit. So the *bate-ficha* business simply means the rolling or exchanging of chips between the customers (gamblers) and the *bate-ficha* guys (*dap-ma-chai*) or chip rollers. The chip rollers often carry piles of dead chips and walk around the gambling rooms in order to seek customers. And that is how this activity earns its name. They exchange the dead chips for cash chips or cash with their customers. In return, the chip rollers get a commission for this kind of exchange.

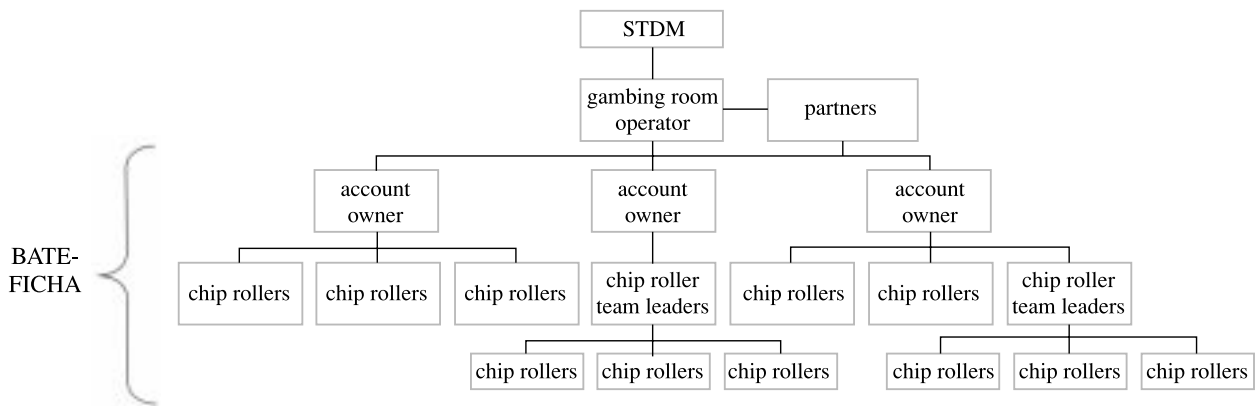
⁸ Since a gambler can choose to be the banker or player in baccarat, this game seems to be the fairest game. The casino merely acts as a 'referee' who takes only a small commission from each game. The 'hold', the percentage of total bets that the operator takes, is merely 2.5% in baccarat. It is much lower as compared to 18% of total bets for horse racing in Hong Kong. In other words, the casino takes a commission of 5% on bets on the banker if banker wins and takes no commission on bets on player if player wins. As the commission is drawn from the banker only, the rules of the game seem to give a little advantage to the banker for compensation. Because of its fairness and small percentage of hold, baccarat has become the most popular game in Macau casinos. 'From 1977 to 1985, measured by the gross revenue derived from each game, baccarat has increased its share from 37% to 65%' (Pinho, A (1991) 'Gambling in Macau. Macau: City of Commerce and Culture', Hong Kong: UEA. p. 245-257, 251).

The pyramid structure of the *bate-ficha* business is shown in Figure 26.1. The STDM arranges or ‘contracts out’ a gambling room to an operator. The gambling room operator is the only person who actually has an account with the STDM but he can choose his own partners to share his investment in the gambling room. According to the usual contract, he has to buy a few million in dead chips from the STDM each month. Say for instance, if he has to buy HK\$4 million of dead chips from the STDM, he will need at least a hundred customers each gamble HK\$40 000 per month in order to absorb all the dead chips. Since the amount of dead chips is substantial, the gambling room operator has to attract more customers through the establishment of the *bate-ficha* business, which include the account owners, chip roller team leaders and chip rollers. The operator will invite interested people, usually his friends or relatives, with large amounts of capital to open an account in his gambling room; this person is often called the account owner or middleman. He will get commissions for the amount of dead chips rolled for cash chips. Again, one man’s power is limited, this account owner will then invite or employ his friends or ‘triad’ brethren to run the *bate-ficha* business. In other words, his friends or triad brethren work as sales agents and will earn a commission from the account owner. They approach customers and exchange the dead chips for the customers’ cash chips or cash, and they are called the *bate-ficha* guys’ (*dap-ma-chai*) or chip rollers. There are several thousand chip rollers in Macau casinos, both male and female; a few hundred might be full-time and the rest are part-time. They have no professional qualifications and are usually old school dropouts. Since the STDM has no liability role in the *bate-ficha* business, the gambling room operator, the account owners (middlemen) and the chip rollers are not employees of the STDM. The chip rollers may or may not be employed by the account owner but they earn their living mainly from commission¹⁰ by exchanging dead chips for cash chips. When their operations are profitable, many will acquire their own branch and continue to ascend the ranks so they can eventually become chip roller team leaders. In addition, the gambling room operator or his partners can be account owners and establish their own *bate-ficha* business. Even when someone gets into trouble, the *bate-ficha* system will not collapse because it is divided into separated branches under different account owners and team leaders. Each account owner has his own *bate-ficha* business, independent of the others. This organisational structure reflects the idea of pyramid selling and risk distribution. Furthermore, two teams under different account owners working in the same gambling room may help each other by lending money with a mutual agreement on how to share the commission. In other words, the account owners will try to form themselves into loose cartels.¹¹

⁹ Triads, also known as *Hung Mun*, Heaven and Earth Association, *Sam Hop Wui* or Black Society, are often portrayed as violent, dangerous, unlawful and well-organized underground organizations. James Main (1991) ‘The Truth About Triads’ *Policing*, 7[2] 144-163, 144, claimed that ‘The word Triad conjures up visions of a worldwide organized crime network, centered in Hong Kong, masterminded by a single all-powerful entity, with tentacles embracing Chinese communities around the globe and with probing fingers in virtually every criminal pie.’ There are many myths about triads as they are often seen as Chinese organized crime. Also see Che WK (1990), ‘The Triad Societies in Hong Kong in the 1990’s’ *Police Studies* 14(4) 151-153; Chin, Ko-Lin (1990) *Chinese subculture and Criminality: Non-traditional Crime Groups in America*. New York: Greenwood Press; Chin Ko-Lin, ‘Triad Societies in Hong Kong’ (1995) 1(1) *Transnational Organized Crime* 47-64; Booth, Martin (1990) *The Triads: The Chinese Criminal Fraternity*. London: Grafton Books; Mak, Lau Fong (1981) *The Sociology of Secret Societies: A Study of Chinese Secret Societies in Singapore and Peninsular Malaysia*. Kuala Lumpur: Oxford University Press; Morgan, W. P. (1989) *Triad Societies in Hong Kong*. Hong Kong: Government Press.

¹⁰ The gambling room operator will get approximately 1.6% of the total amount of ‘dead’ chips bought as commission from the STDM. He will distribute this commission to the account owners, then to the *bate-ficha* teams. The chip rollers will usually get HK\$600 to HK\$800 as commission for every HK\$10,000 of ‘dead’ chips rolled. Thus the income of the account owners and chip rollers depends on the number of customers and the amount of ‘dead’ chips that their customers gamble. This means that if they are able to get more customers, their income will increase, ranging from a few ten thousands to over a hundred thousand dollars per month.

¹¹ A cartel is an association of producers in an industry that agree to set common prices and output quotas to prevent competition (Miller, Roger LeRoy (1997) *Economics Today*. USA: Addison-Wesley p. 538).

Figure 26.1: The pyramid structure of the *bate-ficha* business in Macau

The following is an example to demonstrate the operation of this business more clearly. Say for instance, the operator of the gambling room X knows that one of his friends (Mr Y) is interested in running the *bate-ficha* business and he also has enough capital. The operator will ask Mr Y to open an account in the chip exchange counter in gambling room X and, let's say, the commission for every HK\$10 000 dead chips is HK\$600. Each account carries a number and the account number for Mr Y is 32. Mr Y becomes the account owner of this business. He then employs some friends or triad brethren as chip rollers. The minimum amount of dead chips that can be bought from the counter is HK\$100 000, which is often known as a tray of dead chips. For example, Mr Y uses cash or credits to reserve HK\$2 million dead chips (twenty trays of dead chips) recorded in his account (no. 32). Each of the chip rollers will get HK\$100 000 dead chips and they begin to walk around the gambling room seeking new gamblers or their own customers to exchange cash or cash chips for their dead chips. Once the chip rollers have exchanged all HK\$100 000 worth dead chips, they will go to the counter and use HK\$100 000 cash chips to buy another tray of dead chips through account 32. At the end of each month, the transaction of dead chips in account 32 is calculated. For example, if there are a hundred trays of dead chips sold from account 32 in this month, then the commission for Mr Y will be HK\$600 000. Mr Y, the account owner, will either pay the chip rollers fixed salaries each month, or they may also receive some commission depending on his decision.

The customers of the *bate-ficha* business are mainly from Hong Kong, mainland China and Taiwan. While having the dead chips, the chip rollers will provide their customers with free jetfoil tickets, accommodation and meals. They will also give them advice on the games. Sometimes the chip rollers will exchange dead chips at a discount.¹² The customers can always exchange the dead chips back to cash chips or cash with the chip rollers whenever they want to quit gambling. In addition, the chip rollers will protect their customers from the hangers-on (*pa-chai*) inside the casinos. These are people who will bother and beg the gamblers for tips when the gamblers win a game. Occasionally their customers might want to acquire drugs and prostitution, whereby the chip rollers can arrange for better deals with or without an additional commission.

¹² At times, especially during the Asian Financial Crisis in 1997, when their business was not good, chip rollers will exchange 'dead' chips at a discount, for example, HK\$9,000 or HK\$9,500 cash for HK\$10,000 worth 'dead' chips, so as to get more customers to absorb the 'dead' chips as much as possible.

Although it is possible for high rollers to open an account with the gambling room directly, it is often difficult because the operator usually wants to build his own *bate-ficha* business with the account owners, who are his friends or triad brethren, because they can be controlled more easily. The operator has many excuses to prevent customers from opening an account individually in his gambling room. Excuses usually include insufficient stakes, or they need to maintain an account for a long period of time. In fact, most high rollers will choose the services of the chip rollers for the purpose of convenience, companionship and protection.

The contracting out of gambling rooms and the establishment of the *bate-ficha* business generates more cash flows for the casinos because gamblers are often stimulated to gamble when they are accompanied by the chip rollers and can get additional credits (in the form of cash chips or dead chips) from the chip rollers. In this way the STDM can reduce its administrative and marketing costs while increasing customers and/or the amount gambled. However, there is no legislation governing this lucrative *bate-ficha* business and this loophole is exploited by the triads, especially in the areas of loan sharking, money laundering and skimming operations within Macau casinos.

Triad involvement in Macau casinos

King, Skolnick¹³ and Zendzian¹⁴ have shown that there is a long history of organised crime involvement in casinos, and Macau is no exception. Before the arrangement of gambling rooms, there was no *bate-ficha* business in Macau casinos. At that time, the power of the triad societies was limited because they did not have direct administrative access in the casinos and only limited profit was earned from loan sharking and other illegal ancillary activities like prostitution, drug trafficking and smuggling. Hence under the centralised casino structure, different triad societies were loosely organised marginal to the central activities and did not have their own territories inside the casinos during the 1960s and 1970s. With the arrangement of gambling rooms and the establishment of the *bate-ficha* business in the 1980s, a 'lawless' space was created for triads in the casinos. With the increase in access and wealth, different triad societies began to establish their territories in the casinos and the strongest ones monopolised the *bate-ficha* business by the late 1990s. The three largest triad societies in Macau in the 1980s and 1990s were the 14K and Wo On Lok, also known as Shui Fong and Wo Shing Yee, and the Big Circle Boys (*Dai Huen Chai*) was another active gang of criminals in Macau.

Most of the gambling room operators are wealthy businessmen, of whom some are alleged to have earned their capital from past illegal businesses. They are not necessarily triad members although some may be retired or inactive triad members. The major criterion is to have a huge amount of capital and a good relationship with the STDM, the triads and also the police.

Because the *bate-ficha* business is not governed by any legislation, the *bate-ficha* business works like a black market¹⁵ which is risky, unprotected and unpredictable. Those who are involved in this business have

¹³ See King, Rufus (1969) *Gambling and Organized Crime*. Washington, D.C.: Public Affairs Press; Jerome H Skolnick, 'A Zoning Merit Model for Casino Gambling' (1984) 474 *American Academy of Political and Social Science* 48–60;

¹⁴ See Zendzian, above n 5, for details.

¹⁵ 'Black market' is a market in which goods are traded at prices above their legal maximum prices or in which illegal goods are sold (Miller, above n 10, 81). This market occurs when there is a shortage or excess supply and the implicit price is either higher or lower than the equilibrium price. Thus, a 'black market' is not properly governed and is highly competitive, risky and unpredictable.

difficulties in recovering debts and seeking legal protection as a result of unclear laws and ineffective law enforcement agencies. Thus the gambling room operators often invite faction leaders of the triad societies to be account owners and to run the *bate-ficha* business in their gambling rooms. These leaders often recruit their own members or triad brethren to work as chip rollers. The functions of triads in the *bate-ficha* business are as follows.

As bouncers or protectors in the gambling rooms

Since the number of customers determines the income of the *bate-ficha* business, there is severe competition among different chip roller teams. Without triad muscle, they cannot compete for customers and risk losing their own customers to their competitors. As a result, they can hardly survive in this business without the chip roller teams securing positions in the gambling room by turning to the triads for private protection. Thus, triads are often employed for protection by the gambling room operators. They intervene and stabilise the market by using violence to ensure the benefits of their members, secure positions and for the purpose of mutual aid.

The chip rollers also provide protection to their own customers from the so-called hangers-on who will bother and beg the gamblers for tips when the gamblers win a game. If these hangers-on are unsuccessful in begging for tips from the gamblers, they may use violence or threats against these gamblers. The chip rollers will also provide ancillary services such as drugs, prostitution and loan sharking.

In addition to providing private protection, triads often run the *bate-ficha* business in their gambling rooms. Usually the gambling room operator will grant the business to just one triad society, for example, the 14K. But sometimes he may allow two triad societies, say the 14K and Shui Fong, to run the business in the same gambling room. If say, the 14K (main protector) is weaker in strength or influence than the dominant triad faction, the Shui Fong, in order to prevent conflict the operator will allow both groups to operate in his gambling room but will pay the main triad protector (the 14K) a higher commission, usually double.

Dispute settlement

Due to the small geographic area and large population, Macau functions like a small community and triads have become part of the culture of the Macau society. There is a traditional practice in seeking triad assistance in the settlement of disputes and for private protection rather than the assistance of police as Macau citizens have little confidence in the law enforcement agencies under Portuguese administration. Most people have difficulties in understanding the law because most legislation is written in Portuguese, and legal channels for dispute settlement are often time-consuming, expensive, ineffective and involve a complex chain of procedures. Furthermore, legal channels are unavailable to illegitimate businesses such as loan sharking and bookmaking. Thus triads provide real services and settle disputes among different gambling rooms and different chip roller teams in a more effective and efficient manner than the state.

Massive consumption of dead chips

Triad societies are believed to be highly structured and organised, with many members available to form a large pyramid of *bate-ficha* business providing many sales agents for the gambling rooms. Such triads have no hesitation in resorting to illegal means when exchanging the dead chips. Since millions of dead chips have to be absorbed each month by the gambling rooms, the operators will allow triads to exchange the dead chips through two illegal channels, namely 'forced exchange' and loan sharking.

Forced exchange

'Forced exchange' means that when the customer gambles with cash chips in the gambling rooms, the chip rollers will replace the cash chips or cash on the bet with dead chips without the consent of the gambler. Technically, the customer loses nothing because the value of the cash chips and the dead chips is the same. But a dispute may result and triads often help to settle this kind of conflict.

Loan sharking

Loan sharking or usury is defined as illegal in the Penal Code of Macau (Article 219)¹⁶ and penalties range from one to five years' imprisonment. Since there is no legislation governing the *bate-ficha* business, the chip rollers will exploit this grey area to run loan shark businesses, which generate attractive profits. They usually lend money to their customers in the form of dead chips, but seldom in cash so that they are less prone to detection. Triads are involved in the loan sharking business as it is very lucrative and they can easily acquire potential borrowers in their guise of chip rollers. Thus there is no clear distinction between chip rollers, loan sharks and hangers-on, as they all claim to be in the *bate-ficha* business in order to avoid violating the law. In fact there is not much the police can do to deter loan sharking through the *bate-ficha* business, as there is no law in place to detain or arrest chip rollers. The chip rollers will choose to break the law as the perception of apprehension and punishment is low. Since loan sharking is an illegal business in which there is no legal contract protecting the rights of both creditors and debtors, it is highly vulnerable to triads, extortionists, robbers, informants, dishonest customers, dishonest partners and employees. Because of the lack of formal regulation and contract, violence is often employed in debt collection.

Casino and triads: operational symbiosis

The dead chips system established in the early 1980s can be a good casino marketing tool if it is managed properly, as seems the case in Nevada and elsewhere. The problem was that the STDM had imported the idea of such a system but not the techniques for managing it. Moreover, because the government depends excessively on gambling taxes, it seems to adopt a passive role in monitoring the management of the casinos. Given the symbiotic relationship between the government and the STDM and unclear legal regulation, loopholes are created for triad infiltration to casinos and the unregulated *bate-ficha* business serves as a vector for skimming operations, money laundering and corruption. Gambetta's economic theory of private protection¹⁷ is used to explain why the *bate-ficha* business is highly vulnerable to triad involvement. Gambetta applied economic theories and concepts to study how organised crime is organised in the market place and gave unique insights into their origin, organisation and activities. According to Gambetta, the Sicilian Mafia emerged as the supplier of private protection in order to meet the demand in the market.

¹⁶ According to the *Penal Code of Macau 1995* (Article No. 219), a lender with intent to obtain interest in property for himself or a third party, by using means of the borrower's financial hardship, mental disorder, disability, non-skill, inexperience, personality weakness, or dependence on the lender, to cause the borrower in any circumstances to promise or to undertake obligation, to give pecuniary interest to the lender or a third party which is not proportional to that received by the borrower according to the facts, may be liable to imprisonment for a maximum of three years. For the following situations, the offender shall be sentenced to imprisonment for one to five years: (a) living by means of usury; (b) by way of bank draft or false contract to cover up illegitimate pecuniary interest; and (c) causing the sufferer to be in financial hardship (translated by the author).

¹⁷ See Gambetta, D. (1993) *The Sicilian Mafia: The Business of Private Protection*. Cambridge, Massachusetts: Harvard University Press.

As mentioned above, the STDM has no liability in the *bate-ficha* business. Those who run the business are not employees of the STDM, which means that they are not protected by any legal employment contract. As a result it is often difficult for those involved to seek adequate official protection from the Public Security Police, Judiciary Police or gambling inspectors. According to Gambetta's economic theory of private protection, this ambiguity provides the demand for private protection in an inscrutable market where both the sellers and the buyers know little about the quality of their products.¹⁸ Gambetta claimed that 'choices in inscrutable markets are potentially full of momentous consequences, such as choosing between partners, prophets, or sometimes even presidential candidates. The options are indistinguishable, yet the faint possibility that one is better than the other, or one genuine and the other a fake, makes the choice difficult.'¹⁹ In addition, trust, which is necessary in order to do business, is scarce and fragile in these unstable transactions. Since the so-called contract between the STDM and the gambling room operator is not legally sanctioned, there is a fundamental lack of trust between them. Consequently the unregulated *bate-ficha* business works like a black market in which the sellers (chip rollers) and the buyers (gamblers) do not have much information about the quality of their products (such as protection and loan sharking) and the actual 'price' provides little surety. The instability creates the circumstances for more ruthless measures to protect earnings.

Only few individuals are eligible to open an account or obtain dead chips directly from the gambling rooms. Those who would like to gamble with dead chips and acquire additional benefits (such as free meals and accommodation and protection against hangers-on) have to buy these services from the chip rollers. Thus the services provided by the *bate-ficha* business can be considered as inelastic in demand.²⁰ Except for the slight differences in appearance of the dead chips and sometimes the interest charged for loans, most *bate-ficha* businesses provide similar services and benefits. Despite the fact that some chip roller teams sometimes undertake sales promotion and advertising by exchanging chips at a discount rate or giving extra benefits, there is still little product differentiation. The *bate-ficha* business requires no professional qualification and involves low technology. The few skills required are gambling skills, and perhaps communication skills so that they can persuade the gamblers to exchange more dead chips or stay in the game longer. In fact individual chip roller teams only have moderate influence over the price of their services because each chip roller team receives more or less the same amount of commission from the gambling room operator and there is usually a market price for loans. The only barrier to entry is whether you have enough capital and any connections with the gambling room operators. As there are more than fifty gambling rooms, there are many chip roller teams, resulting in fierce competition. However, no unionisation can be found among the chip roller teams in different gambling rooms because they are usually operated by different factions of a triad society or by various triad societies. The lack of official or legal recognition also

¹⁸ In an inscrutable market, not just the customers but the suppliers themselves cannot discern which products are of good quality or bad quality, thus it is often difficult to make rational decisions. 'Inscrutable commodities are generally regarded as *sui generis*, special realms of human activity unsuitable for rational choice analysis. This is a reasonable attitude. It is arduous for agents to rank the alternatives on the basis of quality, thus they have no rational way to decide whether to enter an exchange. Moreover, the fact that suppliers themselves are unsure about the quality of their services adds an insurmountable impediment because there is no way they can send honest signals to customers helping them to make up their minds. There is no clear ground on which the notion of 'honesty' itself can be constructed' (D. Gambetta, 'Inscrutable Markets' [1994] 6[3] *Rationality and Society* 353-68, 354).

¹⁹ *Ibid.*, p. 354.

²⁰ In a situation of inelastic demand, a 1 percent change in price causes a response of less than a 1 percent change in the quantity demanded. The most extreme inelastic demand is perfectly inelastic; no matter what the price, the quantity demanded remains the same, so the price elasticity of demand is zero (Miller, above n 10, 443).

inhibits collective bargaining.²¹

The characteristics of the *bate-ficha* business mentioned above are similar to the market structure of monopolistic competition²² and possess features that Gambetta and Reuter²³ have described as low product differentiation, low barriers to entry, low technology, unskilled labor, inelastic demand for the product and comprising a large number of small firms. The exception is no obvious presence of unionisation, unless the traditional mutual aid aspect of the triads can be considered a functional equivalent. By generating a huge amount of cash profit, the *bate-ficha* business has become a very attractive target for organised crime. Contrary to a popular belief that the business community is a passive victim which is unable to resist triad demands, triad societies in Macau are actually invited by the gambling room operators to provide private protection, to enforce contracts and to ensure debt collection in the *bate-ficha* business. These organised crime groups have already established their reputation in Macau as reliable protectors because they are ready to use violence as a deterrence to intrusion. In fact the chip rollers not only provide basic security but also other ancillary services which help to attract more customers. These illegal enterprises or ill-defined practices are most vulnerable to triad protection as they cannot seek any official protection. Therefore the actual operation of the *bate-ficha* business makes it highly vulnerable to triad involvement and indeed my informants took this to be endemic in that aspect of the gambling industry.

In their involvement in the *bate-ficha* business, triads are not extortionists and are able to provide real services to the gambling room operators. They help to maintain public order in gambling rooms, guarantee exchange and enable business to run smoothly. The triads function as a labour union²⁴ in this market, and anyone who wants to enter the *bate-ficha* business must be in one way or another connected to the triads. Gambetta and Reuter stated that the comparative advantage of the Mafia 'is likely to be in organizing cartel agreements for large number of industries, as well as making cartels more stable and successful'.²⁵ The triads exploit and maintain their reputation in using violence to protect their members from competitors, hangers-on and other extortionists. Thus the use of violence and threats by triads is rationalised for the purpose of providing more effective services and establishing reputation.²⁶ 'Toughness is a quality lacking in subtlety, for one either has it or does not. There is no coming in second best, only winning or losing.'²⁷ According to Gambetta, protectors tend to protect all the transactions in a small territory rather than providing services over different territories.²⁸ This is true for triads in the *bate-ficha* business: one triad society tends to monopolise the business in a small territory, such as inside a particular gambling room, so

²¹ Collective bargaining means bargaining between the management of a company or of a group of companies and the management of a union or a group of unions for the purpose of setting a mutually agreeable contract on wages, fringe benefits, and working conditions for all employees in all the unions involved (Ibid. at 629).

²² The characteristics of 'monopolistic competition' market structure include: (1) large number of firms; (2) differentiated products; (3) easy entry into the industry; (4) an individual firm's influence over price is moderate; and (5) each firm undertakes sales promotion and advertising (Ibid. see Chapter 25).

²³ See Gambetta D. and P. Reuter, 'Conspiracy Among the Many: The Mafia in Legitimate Industries' (1995) In G. Fiorentini and S. Peltzman, *The Economics of Organized Crime* Cambridge: Cambridge University Press: 116-139.

²⁴ Labor unions refers to worker organizations that seek to secure economic improvements for their members; they also seek to improve the safety, healthy, and other benefits (such as job security) of their members (Miller, above n 10, 629).

²⁵ Gambetta and Reuter, above n 24, 117.

²⁶ See Chu Yiu Kong, *The Triads as Business*, Routledge (2000).

²⁷ Gambetta, above n 1, 40

²⁸ See D. Gambetta, 'Fragments of an Economic Theory of Mafia' (1988) 29 *Archives Europeennes de Sociologie* 127-45; Gambetta, above n 17 and Gambetta, above n 18.

that they can have better control over their business and enjoy the ‘economies of scale’.²⁹ It is also easier for them to collect protection fees and commissions for their business. In addition, they also need relevant intelligence and sources of reliable information to provide effective services especially ancillary services to their customers. As Gambetta states, ‘building and managing an intelligence network may be difficult, time-consuming and treacherous’.³⁰ Furthermore, unfamiliar faces trying to work as chip rollers in their gambling rooms can be identified or punished immediately to prevent newcomers into the market and to protect their trademark from being pirated or usurped by others.

In the late 1980s, the strongest criminal organisations in Macau (14K, Wo On Lok, Wo Shing Wo and Big Circle Gang) monopolised the *bate-ficha* business, shared the markets and formed themselves into cartels. In this case, triad membership serves as a licence to operate this business.³¹ Thus poor casino management combined with the presence of cronyism and police corruption has enhanced the monopolisation of the *bate-ficha* business by triads. Due to this monopolisation, there is an increasing opportunity for greater levels of organisation, loan sharking, money laundering, skimming operations and the power to corrupt law enforcement agencies at higher levels.³²

Unfortunately, this picture of business rationality also poses risks to the gambling room operators. The triads may ultimately offer a poor and costly service because the *bate-ficha* business is not subjected to any legal or market control, and it is not uncommon for triads to blackmail the gambling room operators or their customers. In some cases triads may force the gambling room operators to employ only their triad brethren as chip rollers. Once they are in the business, it is very difficult to get rid of them. Sometimes customers may also be victims of the chip rollers through loan sharking, prostitution and blackmail.

Gambetta argued that whether the Mafia are protectors or extortionists depends on the variable of time.³³ Although the four largest criminal organisations managed to form themselves into cartels in the 1980s, they began to foresee short-term prospects in this *bate-ficha* protection business in the early 1990s. In fact the triad cartels broke up when one triad society or a faction leader of one society, ‘Broken Tooth Wan’,³⁴

²⁹ The reasons for ‘economies of scale’ include specialization, dimensional factor, and improved productive equipment. When a firm operates at a larger scale, there are more opportunities for specialization and better productive equipment, so less input is required for each unit of output. Thus, it is sometimes not profitable for more than one firm to exist in an industry (Miller, above n 10, 499-500 and Chapter 24). With one triad society monopolizing a particular gambling room, there can be better distribution of labour. The chip rollers can become more specialized in their own tasks and have better control over their customers. Besides, by dominating all rooms, they can avoid triad warfare.

³⁰ Gambetta, above n 17, 36.

³¹ See Chu, above n 26.

³² Some Judiciary Police officers were reportedly recruited by the triads as bouncers in their gambling rooms, some of them even became bodyguards of the triads. A typical example was the case of Artur Chiang Calderon. Calderon was a former Judiciary Police officer but he was forced out of the Force in 1997 because he was believed to be the brains of the 14K triad society. In 1999, he was convicted and sentenced to ten years imprisonment for being part of the leadership of a triad society, illegal possession of weapons and involvement in a string of bomb attacks (‘Brains of 14K Triad Jailed for 10 Years’, *South China Morning Post* [Hong Kong Internet Edition], 26 November 1999).

³³ ‘...as time shortens, the temptation to prey grows. As with all dealers, if the future looks uncertain, protectors will maximize present over future income. They will be more likely either to sell bogus protection or to charge extortionate prices for it, or both’ (Gambetta, above n 17, 33).

³⁴ ‘Broken Tooth Wan’ is the nickname of Wan Kuok-koi, an infamous triad leader in Macau. He was suspected of involvement in the car bombing of the Director of Macau Judiciary Police on 1 May 1998. Thus, he was arrested in the same evening, detained and finally convicted of being a triad gang leader, money laundering, loan sharking and telephone tapping and received the maximum jail term of 15 years (‘Broken Tooth Jailed for 15 Years’, *South China Morning Post* [Hong Kong Internet Edition], 24 November 1999).

became so wealthy, powerful and ambitious that he invaded others' territories and took their *bate-ficha* businesses. As a result, cartels fell apart and territorial wars or battles for control began. Severe competition combined with the uncertainty produced by the return of administration to China in 1999 and the expiration of the exclusive franchise in 2001 meant that protection drifted towards extortion. Though the problem was partly due to casino mismanagement, the STDM had no incentive to set new rules of the game. Instead the STDM was more concerned about maximising profit before the end of 2001. The Directorate of Inspection and Coordination of Gaming and the law enforcement agencies had little incentive or legislative support in regulating the *bate-ficha* business because the Casino State had failed to acknowledge this aspect of casino gambling.

Conclusion

A cooperative and harmonious relationship between the government and the gambling industry is necessary for the stability and economic growth of Macau. However, this symbiotic relationship had become so entwined, and at the level of operations indistinguishable in effect, that the role and functions of the colonial administration were grossly distorted. In fact the Portuguese government had little incentive to develop adequate control mechanisms. The laws governing the gambling industry stressed the regulation of the collection of gambling taxes, yet were permissive in monitoring the management of the casinos, hence the *bate-ficha* business remained unregulated and undertaxed and required no registration of its players.

The *bate-ficha* business appeared apparently functional to the government, casino owners and customers, and so was tolerated. During the 1980s the STDM was able to earn more profits through this casino marketing tool, and in turn the colonial government received more gambling taxes. While everybody was content about this manifest function of the *bate-ficha* business, there was no concern to impose any legal control over its operation. As a result, law makers and law enforcers ignored the existence of the *bate-ficha* business and no legislation about this business was found in the Contract of Exclusive Concession of Gaming. Even though the Organized Crime Law (Law no. 6/97/M) was carefully planned, the definitions of high rollers, VIP gambling rooms or *bate-ficha* business still did not exist legally when this new law was promulgated in 1997.

At equilibrium, when there was a balance of power and the symbiosis still held, triad involvement in the *bate-ficha* business seemed to generate more positive than negative externalities. The triads were allowed in casinos because they were highly productive and did not interfere with the system. They were more likely to be entrepreneurs and protectors as they were able to provide some real services, attract more customers and generate more cash flow in the casinos. Since the triads and the less educated Chinese immigrants who came to Macau in the early 1980s were able to earn a living through this *bate-ficha* business, they became less involved in other illegal activities outside the casinos. Thus the level of crimes has decreased rapidly since 1984. The total number of crime has dropped from 6831 (crime rate per capita is 23.66) in 1984 to 4414 in 1986 (crime rate per capita is 14.64). The latent function of this business helped to keep public order in Macau. In other words, casinos helped to accommodate triads and certain crimes in the 1980s.

However, the break-up of the cartels, resulting in severe and unregulated competition in the *bate-ficha* business, most likely contributed to the increase in crimes in the 1990s. The *bate-ficha* business had become dysfunctional and served as a vector for corruption, loan sharking, money laundering and skimming operations.

There was also a high tendency for the triads to practice extortion rather than simply remain as entrepreneurs or protectors. According to Gambetta, whether triads are protectors or extortionists is a function of the time involved in the business. In the case of Macau, however, other external factors, such as the irrational behavior of 'Broken Tooth' Wan, economic recession caused by the Asian Financial Crisis in 1997, and pressure from the handover of the colonial administration in 1999, completely overwhelmed the equilibrium that was supposedly providing symbiosis. The triad turf wars and the public order problem in the late 1990s reflected the weaknesses and instability of such symbiotic relationship and were also symptomatic of the structural complexity and divided strength of Macau law enforcement agencies.

The relationship between the government and the gambling industry has also changed from a symbiotic to a more hostile one. The Macau SAR government finally broke up the monopoly in February 2002 into three casino licencees namely *Sociedade do Jogos de Macau* (a subsidiary of STDM), *Wynn Resorts and Galaxy Casino*. Fear of a renewed struggle in the advent of the competition can only be suppressed if proper recognition of the *bate-ficha* business is formalised by the government. In June 2002, the Macau SAR government attempted to enact a by-law which introduces a licence system for junket operators or chip rollers. They have to undergo police checks to ensure that they have no triad connections and are barred if they fail to follow a code of conduct.³⁵ But whether this licensing system of the *bate-ficha* business will be successful depends very much on how it is enforced.

The Macau SAR government begins to adopt an active role in monitoring the management of the casinos by setting up various specialised courses on casino management with the Macau Tourism Institute and the University of Macau. The government aims to turn Macau into the Las Vegas of Asia by casting off the criminal past and making it into a major centre for business conferences and symposiums, as well as a family vacation resort offering a wide variety of entertainment and good-quality services for all ages.

³⁵ *South China Morning Post*, 29 June 2002.

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Organised Economic Crime

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While scholars at home and abroad hold different ideas on what exactly constitutes organised economic crime, they have similar views on some of its basic features. To the best of our knowledge, what is known as organised economic crime is the totality of criminal activities committed by a gang or group whose main intention is to obtain illegal economic benefits via violence, threat, menace, corruption or other means. The gang usually consists of three or more persons, organised into a comparatively compact structure in which they follow certain norms of behaviour and self-protection measures.

Organised economic crime falls within the wider category of organised crime. Besides having the general features of organised crime, it has its own inherent characteristics.

First of all, organised economic crime is a manifestation of economic crime. It is not economic crime in the general sense; instead, it is an organised criminal act committed in the economic or financial sphere by well-organised criminal organisations, illegal enterprises or criminal organisations under cover of legal enterprises.

Second, it is different from unit crimes, that is, specific crimes committed in the name of organisations and units.¹ One scholar believes that ‘the so-called unit crime refers to the acts which are committed, due to the decision or the negligence of the policy-making body, and directly through the persons in charge as members, by companies, enterprises, public institutions, organisations or groups; the acts hereof have endangered our society and according to law, the criminal responsibility has to be ascertained’.² These units as the subject of a crime are all legally registered organisations, or their establishment has been approved by the country or its institutions at all levels. The subject of a crime that falls into the category of organised economic crime is a criminal organisation and criminal enterprise or a legally registered enterprise or company that is used by criminal organisations as a vehicle for their crimes.

Third, while closely related, organised economic crime and unit crimes are distinct from each other. Sometimes they are interwoven and difficult to distinguish.

Fourth, though the nature of organised economic crimes varies — there are some distinctions between the manner of the criminal act and the degree of secrecy — their way of manifesting and their nature as crime have a general similarity.

¹ Zhao Yanguang (ed.), *Fundamental Tenets of China Penal Code*, Wuhan University Press, 1992, p. 235.

² Wang Zuofu (ed.), *Criminal Substantive Law*, Public Press, 2002, p. 159.

A characteristic of organised economic crime is that it pursues the greatest economic benefits. 'The criminals gather together to form a criminal organisation, its real motive originates in the purpose of economic profit. Therefore, the feature of economy is the nature of organised crime.'³

Organised economic crime usually exists in illegal economic fields. In these fields there are no rivals from legal enterprises and monopoly is easy to obtain, and there is a large criminal market because of society's demand for illegal merchandise and services, so it is easy to make huge profits. But criminals offending under these conditions are normally at great risk: once exposed, they will suffer heavy losses. In order to reduce the risk and the cost of crimes, organised economic criminals penetrate the legal economic field, either investing in legal enterprises or using legal enterprises as cover. By such measures as bribery they woo and corrupt government officials and functionaries in economic departments to give them protection. Both sides are in collusion with each other, the illegal businessmen bribing the officials while the officials protect the businessmen with their power. They are jointly responsible for committing economic crimes.

The Current State of China's Organised Economic Crime

Economic crime is at present a most serious issue and has attracted wide public attention. For this reason, the Chinese government attaches great importance to it and adopts various social and legal measures. Various kinds of specialised struggles have been carried out against organised economic crimes and as a result these crimes have suffered heavy blows. Nevertheless, up to this date, organised economic crime still exists and in a serious way. It is still a matter requiring vigilant surveillance and action.

Organised economic crimes are of the following kinds:

- smuggling
- forging, transporting and selling counterfeit RMB and foreign currencies
- producing and purchasing fake and shoddy goods
- illegal money-raising by fraud
- tax evasion
- money laundering
- setting up underground banking houses and practising usury
- forging and falsifying treasury bonds and other securities issued by the country
- various illegal organised pyramid sales for swindling people out of money and property
- forging and selling forged value-added tax (VAT) special receipts and other invoices
- forging and selling ID cards, passports, various diplomas and other certificates
- illegal buying and selling of foreign exchanges and forging train, bus and boat tickets.

Of all these, the most serious and harmful are smuggling, making and selling fake and inferior goods, forging, transporting and selling counterfeit currencies, and evading taxes.

³ Wang Jiaming, 'Economic Features of Organised Crimes', *Journal of Jiangsu Public Security Junior College*, 2001/2, p. 24.

With China's reform and opening to the outside world, as the market economy develops, the crime of smuggling has become worse and worse. Though repeatedly prohibited, crimes are still going on in the form of smuggling national cultural and historical relics, rare animals and plants and their products, components and parts of weapons, vehicles and computers, cigarettes, pornography, mobile communication devices, counterfeit currencies, finished oil, chemical and industrial raw materials, and other banned goods and articles.

The various types of organised economic crimes show a number of characteristics. The first characteristic of organised smuggling is that it is transnational and transregional. Gangs of criminals inside and outside the national borders are in collusion with each other. The second characteristic is that the value of smuggled goods is large. Under the cover of legal companies and enterprises, the total value of smuggling cases can be as small as hundreds of thousands or several million RMB and as large as several hundred millions. The third characteristic is the large variety of smuggled goods, as indicated above.

Criminals smuggle whatever is profitable. For example, a Hong Kong businessman with the surname of Gu was in collusion with offenders from Mainland China to form a smuggling gang which smuggled famous-brand watches that were valued at RMB 300 hundred million. The tax evaded was RMB 130 million. In 1999, the Customs of Guangdong Province ferreted out over 5.5 million smuggled pirated video disks. In an especially big smuggling and bribery case in Zhanjiang, Guangdong Province, three gangs were involved in organised smuggling, to the value of RMB 10 000 million. The tax evaded was over RMB 6000 million. From January to October 1999, Chinese Customs scout institutions had taken up 2158 smuggling cases, at an average speed of eight per day and 1933 criminal suspects have been arrested and the value of smuggled goods ferreted out and seized was RMB 7400 million. In June 2000, Hangzhou Customs ferreted out 4634 boxes of smuggled cigarettes, with a total value of RMB 20 million. In 2000, Shanghai Customs Scout Branch Bureau Against Smuggling uncovered a gang of forging and smuggling criminals. The case value of the forged goods for export was RMB 105 million. From 1991 to 1999, the public security agencies of Fujian Province cracked down on 77 cases of making and smuggling narcotic drugs, captured 3491.06 kg of ice and 263.59 kg of heroin. A hundred and fifty-one drug traffickers from such regions and countries as Taiwan, Hong Kong, the Philippines and Singapore have been arrested.

According to an incomplete estimate, the cross-border smuggling of ice to the Philippines, Taiwan, Hong Kong, Japan, America and other countries has numbered 7000 kg.⁴ In April 2002, under the unified command and coordination of the Ministry of Public Security and under the cooperation of Thailand, Myanmar Police and the American Bureau Against Drug Trafficking, the Chinese inland police, together with the police and the Customs of Hong Kong SAR, succeeded in ferreting out extraordinarily serious cases of international drug smuggling: 356.95 kg of heroin were intercepted and 13 ringleaders and members of the transnational drug-smuggling gangs arrested.⁵ Since 1996, the smuggling clique of criminals in Xiamen, Fujian Province, headed by Lai Changxing, carried out an organised smuggling of imported goods such as finished oil, plant oil, vehicles, cigarettes to the value of RMB 53 000 million; there was also tax evasion amounting to RMB 30 000 million.⁶

One of the chief manifestations of organised economic crime is that of forging, transporting and sale of counterfeit money in an organised way.

⁴ *Legal System Daily*, 1999/2000.

⁵ *People's Public Security Daily*, 10 May 2002: 1.

⁶ See note 4 above.

The crime of forging money directly breaks the country's financial management order. In recent years, forgery has been on the rise. This crime is usually carried out in an organised way. In 1999, RMB 430 million was confiscated throughout China. By July 2000, 300 million counterfeit RMB had been confiscated. In April 2000 alone, a counterfeit money case in Jieyang, Guangdong Province, was exposed and 170 million semi-finished counterfeit RMB was confiscated. As confessed by the criminal suspects, 230 million of counterfeit money had been sold out.⁷ In Shanwei City, Guangdong Province, a smashed organised criminal gang had forged 600 million counterfeit RMB from May 1995 to June 1999. In Kaifeng, Henan Province, two money-forging gangs that have been unearthed comprised over 50 people. The area of their transporting and selling counterfeit money covered nine provinces, 17 districts and cities and 224 counties. Over 3.8 million RMB had been confiscated.⁸

The characteristics of forgery are the following:

1. The number of criminal cases is large and the crime of forging money has been on the rise. As estimated by China's public security agencies, the number of cases solved and the counterfeit money confiscated in 1999 in the whole country has increased by 4.8 and 17 times as compared with that of 1991. There has been a crackdown on 2790 cases of smuggling counterfeit money in 1999 in the whole country.⁹ In 2000, in a provincial allied operation, the public security agencies have investigated 179 cases, of which 18 involve over RMB 100 000. Criminal suspects arrested total 191 and RMB 6.75 million have been confiscated.¹⁰
2. The hideouts of forgers are increasing year by year and there is a great variety of counterfeit money in RMB, treasury bonds and foreign currencies. They include notes of large denomination and small denomination as well as coins.
3. The act of forgery becomes more and more organised. In some areas, a coordinated process of production, transport and marketing has developed. Places like Guangdong, Zhejiang, Henan, Anhui have become collecting and distributing centres. The criminal cliques collude with each other and their criminal offences of forgery, transport and sale of counterfeit money have become very prevalent. In 2000, 19 criminal gangs of forgers were destroyed.
4. The smuggling of counterfeit money into Mainland China happens frequently. As we can see from those that have been investigated, Taiwan is a major base for counterfeiting RMB. Of 17.40 million counterfeit RMB that were ferreted out in Mainland China in 1990, 11 million came from Taiwan criminal cliques that accounted for 63 per cent of the total. In 1994, an especially large counterfeit RMB smuggling operation by Taiwanese fishing vessels was intercepted in Shanwei, Guangdong Province; 18.017 million counterfeit RMB were seized and six Taiwanese criminals were arrested.¹¹
5. As soon as a new edition of RMB appears in the market, the criminals begin to counterfeit them and sell the counterfeits. For example, in less than a month after the fifth edition of RMB was issued, the counterfeit version of the new RMB began to appear in provinces like Guangdong and Anhui.

⁷ *Legal System Daily*, 18 July 2000: 8.

⁸ *Journal of Shandong Public Security Junior College*, 2001/3: 58.

⁹ See note 4 above.

¹⁰ *Legal System Daily*, 5 April 2001: 1.

¹¹ See note 4 above.

6. The technique of forgery has improved steadily and it is getting more difficult to tell the false from the genuine and guard against them. Because of the extensive use of such skills as electronic colour scanning, computer scanning plate-making and lithographic offset printing, criminals can produce counterfeit money in a shorter time and at lower cost. As the simulation gets more successful, the crime of forgery is more and more harmful to the nation, and as a result more difficult to guard against.

Tobacco is an important source of national tax revenue. Every year, the tax revenue that the tobacco departments turn over to the country is over RMB 100 billion, which makes up more than 10 per cent of the total tax revenue of the country. But each year, the loss caused by the production and smuggling of imitation cigarettes is over RMB 10 billion. Every year the tobacco departments of Guangdong Province turn over RMB 3 billion of tax revenue to the country, but the value of the production and smuggling of imitation cigarettes is over RMB 4 billion. The fact that the production of imitation cigarettes can earn colossal profits stimulates the criminal cliques to try all means to purchase production lines, run underground factories and produce imitation cigarettes. According to the estimate of the departments concerned, an underground cigarette factory with only one production line can earn at least RMB 30 million a year.¹²

The production and sale of counterfeit goods results in large-scale tax evasion. VCD players forged after reputable brands at home and abroad are produced by underground factories in Guangdong and sold through wholesale markets in China. These counterfeit VCD players have flooded some markets and are of course sold at a price lower than quality products. By wildly evading taxes, they have disrupted the economic order.

Because of the assault on the crime of making and smuggling counterfeit and shoddy goods in the past few years, the criminal cliques have changed their tactics. By breaking up the whole into parts, they disperse and evacuate large-scale factories, produce underground and sell the goods in loose packaging. Organised economic crime of necessity develops secretly. The criminal cliques of forgers have a clear division of labour; they form a network in which each group deals with activities such as the processing of raw materials, the production of finished products, packaging, transport and sales, just like a legal operation. They have single-line contact with each other. Their skill in forgery confuses the spurious with the genuine. Warning and monitoring devices are fitted in these underground factories and there are close security measures. The heads of criminal cliques are in hiding and control the activities from a distance. The distribution of hideouts for forgery is more and more extensive. In Fujian and Guangdong provinces, the geographical spread of hideouts for forgery covered 16 counties and cities in 2001, while in 2002 it extends to 34 counties and cities. Heavy machinery for forgery has increased greatly. According to the estimate of related departments, the number of these machines doubled from 47 between January and March in 2001 to 94 in March 2002.¹³

In recent years, the forging, selling and making out of bills and invoices has given rise an organised criminal network. According to the estimates, 14 449 tax-involved criminal cases have been put on file; the sum of money involved in these cases is RMB 25.6 billion. Thirteen thousand cases have been solved and RMB 6.6 billion of loss has been retrieved. A recently uncovered criminal web, with criminals from Wenzhou and Taizhou of Zhejiang Province as the main body, which consisted of several loosely linked criminal

¹² *People's Public Security Daily*, 29 April 2002L 4.

¹³ See note 12 above.

gangs making and smuggling counterfeit invoices, committed the crimes of counterfeiting and inflating value-added tax special invoices and ordinary invoices. With northern China and central China as their main sale collecting and distributing centres, they carried on a long-term criminal operation. Twenty-nine forgery hideouts and ten criminal webs have been uncovered. Seventeen thousand various counterfeit invoices have been confiscated and 81 criminal suspects have been arrested. The total of the tax value involved was RMB 3.3 billion.¹⁴ In Jiangqiao, Henan Province, the country's biggest collecting and distributing centre that forges certificates, some underground printing factories print dozens of counterfeit certificates which include diplomas for universities, colleges, self-study examination; certificates for professional titles or army officers; residence booklets; marriage certificates; certificates for temporary stay in a city. Recently, the Beijing police cracked down on five criminal gangs that made and sold counterfeit official seals, certificates and diplomas; 24 criminal suspects were arrested and 2400 counterfeit official seals and 6800 counterfeit certificates were confiscated.

Organised crimes such as the forgery of credit cards, credit certificates, financial notes and negotiable securities, as well as financial fraud, are common. For example, the transregional credit card criminal gang that was uncovered by Guangdong police was well organised with a clear division of labour, and formed a coordinated process of production, sale, processing and transport. It stole international credit card materials in some countries and areas, forged credit cards and decoding devices in Zhuhai and then sold them to countries like Britain, Australia, Malaysia and areas like Hong Kong and Macao for colossal profits. This is one of the biggest international criminal cliques that are involved in the forgery of credit cards.¹⁵ As well as this, crimes like organised illegal pyramid selling and illegal money-collecting frequently take place.

The Trend of Development of Organised Economic Crime

The penetration of organised crime into the economic field is an inexorable trend. In the context of the development of organised crime in modern China, it appears that some criminal gangs have gradually turned into well-organised cliques that can be called criminal syndicates. These cliques have developed from the primitive accumulation of criminal capital to an organised and advanced stage in which they have accumulated certain capital and can invest in illegal and legal enterprises and earn profits. Although these criminal cliques are not many, they are at the top of the pyramid structure of organised crime and they are active in China's society and economy. The penetration of organised crime into the economic field shows four developing trends:

1. The underground economy continues to become one of the main forms of organised economic crime. In China, the underground economy is forbidden by law, but it never disappears. In recent years, although the Chinese government has adopted a series of measures to rectify the market economic order and cracks down ruthlessly on economic crimes and punishes the criminals, the underground economy still develops. For instance, the criminal activity of the production, transport and sale of narcotic drugs is still developing though repeatedly banned. Underground processing factories for making ice and other narcotic drugs grow out of nothing, then develop from a few to many, from one area to many areas. Making and selling counterfeit and shoddy goods are usually protected by the local officials or

¹⁴ *People's Public Security Daily*, 3 April 2002: 1.

¹⁵ *Legal System Daily*, 5 April 2002: 3.

undertaken in underground factories. For example, there are underground factories in Guangdong that produce massive amounts of imitation national and foreign well-known brand CVD/DVD players and distribute them to buyers in some legitimate national wholesale markets. These imitations spread quickly into some shopping malls. The goods are sold at a price lower than that of the genuine products. Offenders also commit tax evasion and interrupt the economic order through these illegal activities without shame. The nation's largest collecting and distributing centre of forged credentials is Henan Jiang Chiao. The forged credentials include high school certificates, graduate certificates of independent study courses, work certificates, officer certificates, bank books, marriage certificates, temporary local residential certificates, and many others. The Beijing Police have recently cracked down five organised crime groups who produced and sold forged official seals, credentials and certificates. In all 24 suspects were arrested, 2400 forged seals and more than 6800 forged credentials were seized.¹⁶ During the process when the government regulates the market economic order, this kind of underground economy will vary its means, continue to exist and develop, since it will be permitted and supported by local protectionism.

2. With the increase of the illegal income of organised crime, seeking a channel to add value to criminal capital will become the main motive of organised economic crime. There are many ways to increase capital, such as investing in enterprises, purchasing real estate and other immovable properties, practising usury, running various service industries and running underground factories. A small number of organised criminal organisations in China have accumulated large amount of capital. For more economic benefits, the organised criminal organisations will take all ways to increase the capital, including laundering money, legalising their capital, or carrying on their illegal dealings. This will become the basic reason why organised crime will develop. This kind of developing trend requires our concentrated attention.
3. Crimes like organised smuggling and financial fraud will still present a wave-like developing trend. Organised smuggling has a history of over 20 years since China's reform and opening to the outside world. From the beginning of the 1980s, we have been attaching importance to combating various smuggling crimes. Unfortunately this history tells us that in spite of our efforts to combat it, smuggling does not diminish but on the contrary is becoming more serious. It is getting more and more serious as far as the degree and quantity of the crimes are concerned. For some time now, the smuggling committed by local government and private citizens in collusion with each other has been checked. This is the result of our taking a series of more powerful measures. But the growth of organised smuggling has never been checked; the smugglers merely change their tactics and continue their smuggling through different channels. As the strike force of the government is sometimes strong and sometimes weak, this smuggling activity presents a wave-like tendency. Since China's entry into the World Trade Organization, financial crime will become more complicated and harder to track down. Organised financial fraud and other financial crimes will undergo new transformations. It will be especially serious that organised criminal groups at home and abroad collude with each in their transregional crimes.
4. The types of organised economic crimes will be more varied and complicated. Besides some traditional criminal types, with the progress of science and technology and the development of a market economy, and facing the more complicated international economic situation after entry to the WTO, organised

¹⁶ *People's Public Security Daily*, 4 April 2000:1.

economic crime has turned in some new criminal types. More varied and complicated situations will appear. These will not only appear in the social and economic fields but also in fields such as science and technology. The varied and complicated nature of the crimes will become a major focus of criminological study.

Countermeasures Against Organised Economic Crime

1. *Regulate the market economy and ruthlessly crack down on organised economic crime in the economic field*

One of the conditions that enables organised economic crime to expand is the existence of various problems and loopholes in the management and operation of the market. Irregularities, careless omissions and imperfections will inevitably influence the regular operation of the market, thus creating economic chaos. For instance, for a long time, because of this chaos, various fake and shoddy foods, sidelined agricultural products, articles of everyday use, important industrial and agricultural equipment, vehicle parts, household appliances, and architectural and decorative materials have flooded commodity exchange markets. This has not only directly infringed upon the interests of the consumer and severely broken the market economic order, but has also bred some organised criminal organisations that commit such illegal activities as bullying others for control of the market, producing and selling counterfeit goods, swindling and squeezing, monopolising the market, and imposing protection fees. The history of economic development over the past 20 years and more has proved this and has prompted government strategies to regulate the market economy and crack down on economic crime.

In recent years, concerted efforts in this direction have been made everywhere in the country. Good progress has been made against such activities as smuggling, money counterfeiting, tax-related crimes, and making and selling counterfeit and shoddy goods. From April 2002, the related government departments took joint action to reform fair trade markets and petrol stations. These were originally considered 'a special zone of tax evasions, a collecting and distributing centre for counterfeit and shoddy goods, a sanctuary to shelter evil people and uphold evil practices, and an "independent kingdom" that law enforcement agencies cannot penetrate'.¹⁷ The fair trade markets include markets for the means of subsistence and the means of production. According to statistics in 2001, there were about 93 085 fair trade markets and 75 000 petrol stations. Concerted action to stamp out corrupt practices in these will facilitate regulation of the economy, create an environment of fair competition, maintain the legitimate rights and interests of the consumer and promote the healthy development of the economy. In this centralised operation of putting the fair trade markets in order, 20 markets in 11 provinces and cities are listed as the key markets to be reformed. The emphasis will be on solving such problems as counterfeit and shoddy goods, tax evasion, giving short measures or weight, sheltering criminals and criminal practices, law enforcement barriers and the production, processing and storing of counterfeit and shoddy goods.

2. *Perfect economic legislation and criminal legislation and to punish organised economic crime*

Because of the tendency of economic crimes to increase, the Chinese government aims at taking centralised action to put the market economy in order, to perfect economic management, to intensify management of the market and to change the conditions that breed economic crime. On the other hand, it strives to refine

¹⁷ Note: citation source unknown, ed.

economic laws and regulations step by step, to regulate the economy by law, and through the national organs of power, to amend and gradually perfect the criminal laws. As far as the present situation is concerned, China's economic legislation and the regulation of economic management cover every aspect of the economic field. It can be said that China's market economy has gradually been on the road to legalisation. There are now laws to govern every economic act and the penal code, amended in 1997, stipulates heavier punishments for criminal acts. Stipulations in the new penal code on money laundering and other crimes play a very important role in curbing organised economic crime. But with the process of world economic integration and the new economic development trends after WTO entry, the relevant economic laws and regulations require further amendment and refinement, as does the penal code.

3. *Intensify comprehensive treatment of organised economic crime*

The occurrence and development of economic crime have their source in economy and social history. To curb economic crime requires not only appropriate economic policy, social policy and legal measures, but also intensive and comprehensive social measures such as social education, social supervision and a comprehensive improvement in people's quality of life. The improvement of public order is the most effective and most essential social measure in preventing and curbing crimes, and this is given strong emphasis by both the central government and local governments. The constant realisation of their measures will produce a healthy and ordered development of the market economy. A comprehensive crackdown on criminal offences and economic crimes is the most important way to improve public order. The kernel of the comprehensive measures is 'curbing and preventing simultaneously, preventing first, [and] laying stress on a permanent cure'. To treat organised economic crimes is the same as treating other kinds of crimes, one must adopt comprehensive measures. These measures should include economic, political, legal, cultural and other social measures. Only through mutual influence and interaction will they play a key role.

4. *Strengthen cooperation between countries and areas and join forces to oppose organised economic crimes*

Organised economic criminals usually operate transregionally and transnationally. To crack down on them depends on cooperation between law enforcement bodies across the nation and in other countries. This kind of cooperation is especially needed in a modern society in which science and technology is highly developed, because organised crime knows very well how to make use of them. China has developed relationships with many countries and areas in cracking down on organised economic crimes and has had a great deal of success. This kind of cooperative relationship needs to be strengthened in the days to come.

23

Triad-Related Homicides in Hong Kong 1989–1998 A Preliminary Description¹

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Triads are ‘secret’ criminal societies prohibited in Hong Kong² by special laws and triad-related homicides are those defined by police that arise from their activities. Triad³ homicides are any homicide (murder or manslaughter⁴) that is motivated by triad identity, criminality and the pursuit of illegal enterprises. These include rivalry, revenge and conflicts when undertaken by an organised group. Attacks on ‘ordinary’ victims arising from triad-related activities are also included.⁵ This research reports preliminary findings of a study of all recorded triad-related homicide in Hong Kong between 1989 and 1998 derived from the homicide case files of the Hong Kong Police (HKP) and Coroner’s Court. A review of the literature found no systematic research on triad violence and this paper attempts to address this limitation in respect to lethal violence. Our aim is to describe the circumstances in which triad-related homicides take place and explore the role of violence in Chinese criminal networks.⁶

This chapter examines the extent to which triad-related homicides may be characterised as rational or ‘instrumental’ in the service of illegal enterprises. The systematic use or threat of violence, especially lethal violence, is a resource or commodity that perpetuates the mystique of organised criminal networks and distinguishes them from other perpetrators of acts of lethal violence (Gambetta 1993). However, unlike lethal violence by ‘gangs’ and other ‘organised crime’ reported elsewhere (Martens 1974; Dickie 2004), triad-related homicides in Hong Kong are rare, and seldom involved firearms or were connected directly to illegal drug trades.

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² Hong Kong is on the southeast coast of China, adjoining the provinces of Guangdong. It lies between latitudes 22°9’ and 22°37’ N and longitudes 113°52’ and 114°30’ E. The twin cities of Victoria on Hong Kong Island and Kowloon on the mainland, stand on either side of the harbour, and are about 130 kilometres southeast of Guangzhou and 65 kilometres east of Macau. [Hong Kong 1990 ‘Annual Digest of Statistics’]. The population of Hong Kong was estimated to be 6,800,000 in 2003.

³ The terms ‘triad’, ‘gang’ and ‘triad gang’ have been used interchangeably in Hong Kong among both practitioners and academics. The HKP regard triad societies as a collection of loose-knit groups or gangs rather than a monolithic ‘mafia’ or command style criminal organization: see Fight Crime Committee (1986), Yip (1999), Chu (2000) and Hodson (2003) for further explanation of their presumed organizational forms. The authors draw on the work of Gambetta (1993) and Dickie (2004) and their interpretation of violence as a resource or ‘brand’ in the Sicilian context to explore the issue of lethal violence associated with triads in Hong Kong.

⁴ We exclude involuntary manslaughter and manslaughter involving motor vehicle fatalities.

⁵ See the definitions of triad related offences in various editions of the Hong Kong Police ‘Crime Enforcement Report’ 1991–2000).

⁶ A noted police triad expert (Ip 1999) has explained that the word ‘triad’ is an English designation for the sacred symbol of the societies, a triangle enclosing a secret sign derived from the Chinese character ‘hung’. The resulting symbol represents the triangular union of heaven, earth and man. The character ‘hung’ can also be translated into English as the colour ‘red’.

The 1949 *Society Ordinance* (Chapter 151, 1997: [SO]) and the enhanced definitions, powers of law enforcement and substantial penalties in the 1994 *Organized and Serious Crimes Ordinance* (Chapter 455, 1994: [OSCO]) were both enacted to tackle the threat posed by organised crime and triad societies. The SO in s. 18 defined an ‘unlawful society’ as one which ‘uses any triad ritual or which adopts or makes use of any triad title or nomenclature shall be deemed to be a triad society’. Section 20 of the Ordinance defines triad membership as:

Any person who is or acts as a member of a triad society or professes or claims to be a member of a triad society or attends a meeting of a triad society or who pays money or gives any aid to or for the purposes of the triad society or is found in possession of or has the custody or control of any books, accounts, writing, lists of members, seals, banners or insignia of or relating to any triad society or to any branch of a triad society whether or not such society or branch is established in Hong Kong, shall be guilty of an offence and shall be liable on conviction or indictment.⁷

New offences and powers of investigation created by OSCO⁸ also facilitated the seizure and forfeiture of the proceeds of crime and defined a ‘triad society’ in terms similar but more broadly than the SO and defined ‘organised crime’ as involving triads or criminal networks in a serious (Schedule 1⁹) offence or attempt or conspiracy, incitement, aid/abet or counsel to procure such offences. Given these legislative definitions and the interchangeability of the notion of organised crime and triads (although not mutually inclusive since triad membership is not per se a prerequisite for participation in organised crime), triad-related homicides are identified as those perpetrated by organised criminal networks.

Within the HKP the Criminal Intelligence Bureau and Organised Crime and Triad Bureau (OCTB) are charged with the suppression of triads and their investigations into triad-related homicides form the basis of the data collected for this study. There are over 50 known triad societies in Hong Kong (Fight Crime

⁷ Penalties for SO offences vary depending on the degree of involvement from a fine of \$20 000 to \$100 000 and imprisonment for 1 to 2 years for a first conviction but for a second or subsequent conviction a fine of \$50 000 to \$250,000 and imprisonment for 2 to 7 years. Section 19 penalises for office-bearers or those assisting with the management of an unlawful society or claim to do so with 3 or 15 years imprisonment and fines of up to \$100 000 or \$1 million depending on the scale of activity and whether previously convicted. Section 21 also penalises anyone who allows an unlawful society to operate on their premises or anyone who incites a person to become a member of an unlawful society (s22) or who procures subscriptions or aid for an unlawful society (s23). Other sections of the Societies Ordinance specifies further liabilities upon convictions under section 19 or 20 (s24), restrictions on office-bearers of a prohibited society becoming office-bearers of other societies (s25), and outlines the role, procedure and constitution of the Triad Renunciation Tribunal that enables amnesty to be extended to triad members who choose to leave a triad society (s26A).

⁸ The *Witness Protection Ordinance* (Chapter 56, 2000) also serves to reinforce the aims of OSCO. OSCO defines a triad society as: (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or (b) adopts or makes use of any triad title or nomenclature. OSCO defines organized crime as ‘(a) is connected with the activities of a particular triad society; (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or (c) is committed by 2 or more persons, involves substantial planning and organization and involves: (i) loss of the life of any person, or a substantial risk of such a loss; (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or (iii) serious loss of liberty of any person’.

⁹ Schedule 1 includes common law offences like murder, kidnapping, false imprisonment, conspiracy to pervert the course of justice and statutory offences such as offences proscribed by the Import and Export Ordinance (Cap 60), Immigration Ordinance (Cap 115), Dangerous Drugs Ordinance (Cap 134), Gambling Ordinance (Cap 148), Societies Ordinance (Cap 151), Money Lenders Ordinance (Cap 163), Crimes Ordinance (Cap 200), Theft Ordinance (Cap 210), Offences against the Person Ordinance (Cap 212), Firearms and Ammunition Ordinance (Cap 238), Trade Descriptions Ordinance (Cap 362), Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), Organized and Serious Crimes Ordinance (Cap 455), Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap 526), Copyright Ordinance (Cap 528).

Committee, 1986), of which 15 to 20 commonly come to the attention of the police due to their frequent criminal activities (Ip 1999). Twenty-one triad ‘societies’ including their associated factions were identified in the related homicide cases examined.¹⁰ The term ‘society’, however, is an imperfect description of the diverse criminal networks that operate because some triads and their factions operate only within a particular district and others disperse after a fairly short time. The total number of triad members was estimated by the HKP to be around 100 000 by the beginning of 1990s (Ip 1999), but estimates of the numbers of triad members are unreliable and the number that is active is unknown. The OCTB, regional and district anti-triad units conduct routine patrols and raids against suspect enterprises and covert (‘undercover’) surveillance operations against them. The OCTB also undertakes community awareness projects, especially in schools and with youth groups to counteract the mythology and recruitment activities of triads (Lo 2003).

Triad Society in Hong Kong

Triads, also known as Hung Mun, are home-based in Hong Kong and are often considered by law-enforcement authorities as actively participating in a worldwide organised crime network that uses connections among overseas ethnic Chinese enclaves to undertake transnational crime such as drug and human trafficking. There are various legends or historical accounts of the emergence of triads that have created a self-serving mythology about them (Lisle 2003). The most popular and widely accepted version was that the triad was originally a 17th-century secret group loyal to the ousted Ming Emperor at the beginning of the Ching Dynasty. The objective of the secret society was to overthrow the Ching (Manchu) and restore the (Han) Ming Dynasty (Morgan 1960), and thus triads have often exploited an association with patriotic activity in their pursuit of illicit profits.¹¹

As early as 1819 the triads established their first presence in Hong Kong under the name of *Chung Wo Tong*, and since the 1840s British Hong Kong became a base for the *Hung Mun*, also sometimes known as the Heaven and Earth Association or *Sam Hop Wu*. Gradually the triads devolved from nascent political associations into criminal groups following the rapid development and economic growth of Hong Kong as an imperial port for the China trade. The role of the *Hung Mun* was initially that of a mutual self-help organisation among the many immigrant Chinese and operated to assist them in respect to everyday disputes, loans and welfare needs that were unmet by their alien British colonial rulers.¹² By the beginning of the 20th century the *Hung Mun* were seen as a threat to colonial order, and suppression by colonial authorities forced elements of these mutual aid societies underground. This criminalisation of the activities of the *Hung Mun* societies led to their transformation to *Hak She Wui* or the Black Society (Lim 1999), whose various ‘triads’ often compete for a monopoly over illicit activities or a particular district (see for example case 1).

Triad societies are thought to be a particular Chinese subculture (Chan 1979; Lo 1984; Chin 1990; Chu 2000) that provides an alternative set of norms, values and lifestyle to those who are unable or unwilling to become assimilated into the dominant culture. Chin (1990) has asserted that triad members neutralise their criminal acts through identifying with the concept of *jiang hu*, which permits a life outside normal social

¹⁰ The following triad societies were identified in the homicides discussed in this paper: Wo Hop To; Wo On Lok; Wo Shing Wo; Wo Shing Yee; Wu Nam (a faction associated with Wo Shing Wo and Wo Shing Yee); Wo Lee Wu; Tung Luen She; Tung Sun Wu; Fuk Yee Hing; Luen Lok To; Luen Ying She; Sun Yee On; Woo Kwan Lak; 14K and, 14K factions: ‘Baai Lo’; ‘Hau’, Tak, Yee, Mui, ‘Hi Lo’; and Tai Heun’ or ‘Big Circle’.

¹¹ Note there is as yet no definitive historical account of the Hong Kong triads and although Morgan’s account of the triad is frequently cited the sources he relied on were limited.

¹² See also Mak (1981) and Lim (1999) for discussion of the evolution of triads in Malaysia and Singapore respectively.

customs and obligations.¹³ Thus triad norms and lifestyle govern the behaviour of triad members and this affects their risks of committing homicide or becoming victims of lethal violence.

Case 1 *Sun Yee On* and *Wo Ho Top* rivalry

On Wednesday at around 0050 hours in February two young members of the *Sun Yee On* were murdered and several others seriously wounded by six *Wo Ho Top* who entered a bar well known as a gathering place of *Sun Yee On*. Two weeks before the fatal incident the new Mercedes Benz of a *Sun Yee On* senior was damaged during a verbal confrontation with a group of *Wo Hop To*. Later a car belonging to a *Wo Hop Top* member was stolen and damaged and a group of *Sun Yee On* led by one of the deceased subsequently harassed *Wo Hop Top* establishments and seriously injured a *Wo Hop Top* member. This led to a meeting of the *Wo Hop Top* that sanctioned an attack on the *Sun Yee On*.

The deceased had been drinking and chatting with other victims, playing finger-guessing games and karaoke when two young men appeared at the entrance of the bar and looked at the people inside the bar, but soon left and disappeared round a street corner. Soon after, six Chinese males entered the bar ignoring the greeting of the waitress, produced knives and promptly attacked the deceased's party. In the ensuing chaos and panic some of the victim's group managed to fend off some blows with chairs and stools while others managed to flee, but two sustained fatal multiple chop wounds. The attack lasted no more than 30 seconds, and ended when the target victims were rendered unconscious and one of the assailants shouted: 'go and don't you people move.' As the offenders walked out of the bar, the last turned back and said, 'don't you people move'. A few seconds later, two taxis, fully occupied with all lights switched off, were seen leaving the scene.

Both victims were well-built Chinese males, 25 and 23 years old respectively (one had full body tattoos) and members of the *Sun Yee On*, but neither had a criminal record. Both were employed, one as bar tender, the other as a parking attendant. Only one *Wo Hop Top* triad was later identified and arrested. Aged 30, he was employed as a newspaper vendor and had a prior non-violent criminal record.

Common triad offences and arrests

Typical triad-related offences in Hong Kong involve blackmail, extortion and protection rackets involving local shops, small businesses, restaurants, hawkers, construction sites, car valet services, and places of public entertainment such as bars, billiard halls, game parlours, karaoke and nightclubs. Triads also have at various times monopolised the control of home decoration companies and non-franchised public transport routes. Society members often engage in street-level narcotic trafficking, or operate illegal gambling casinos and protection rackets, and these activities extend to Macau (Leong 2001), Zhenshen (Zhong 2003)

¹³ The '*jiang hu*' concept was vital for it implies a different way of life and a different set of values. A triad member can neutralize his criminal acts by attributing it to his fate as a *jiang hu* man. Triad sub-cultural norms and values are such that a 'good' triad will break the laws of conventional society even though he has no intention of committing a crime for personal gain. Even if the criminal act involves personal gain the triads perceive themselves as striving for an alternative way of living, a way that is justified because it redistributes wealth in an imperfect society (Chin, 1990). Parallels can be drawn with this 'world-view' and the notion of being 'men of honour' as in the case of the Sicilian Cosa Nostra (Gambetta 1993, Dickie 2004).

and Guandong. Prostitution, counterfeit products, pornography and loan-sharking are also important sources of street-level illicit profit for triad societies. Non-profitable violent crimes like gang fights, serious assaults or murder are less common but make up a significant portion of all known triad-related crime (see Table 23.1b). Two elements of the triad problem – territorial-based street or youth gangs, and entrepreneurs or ‘racketeers’ – have been identified, the former often hired by the latter to staff or protect illicit enterprises and projects. These elements are loosely connected and both reinforce their authority by means of threats in argot or signs associated with triads; the implication is therefore that they are backed by triad societies. Many triad-related offences, in particular violent offences, are committed by young street gang members who provide the necessary manpower and occupy the lower stratum of the social hierarchy (HK Fight Crime Committee 1986).

Triad involvement in recorded crime

Despite frequent lurid media depictions and periodic alarm over their influence, triad ‘involvement in overall crimes has remained stable at about 3.7 per cent during the past ten years (1993–2003)’.¹⁴ However, 11.9 per cent of homicide events were triad-motivated, involving 13.2 per cent of all homicide victims recorded in the ten-year period of this study. The risk of a triad member becoming a homicide victim, although low, was estimated to be approximately 13 times greater than that of a non-triad member.¹⁵

Trends in triad-related arrests are described in Table 23.1 (a & b) but are limited, except for SO offences, because detailed data has only become available from 1996 with the implementation of OSCO. Triad involvement in serious wounding and assault accounted for between 8 and 11 per cent of all such arrests, but 33 to 53 per cent of all arrests for the less common cases of blackmail and intimidation. The reported number of known triad-related wounding and blackmail offences is available and shows that the triad-related proportion had increased from 4.4 per cent in 1989 to 10.8 per cent in 2002. Reported cases of triad-related blackmail offences, however, show a decline from 52.6 per cent of all blackmail offences in 1991 to 42.2 per cent in 2002.

Table 23.1a provides HKP arrests by age group for SO offences and shows that the majority of persons arrested were under the age of 21 (varying between 56 per cent and 72 per cent over the period). This is because juveniles and youths are the triad’s main recruitment source and form a pool of low-skilled but readily available ‘soldiers’ or ‘blue lanterns’. Once they are initiated into the triad society they have committed the offences of being a ‘member of a triad society’ or ‘claiming to be member of triad society’ and are liable for arrest on these grounds alone. Arrest trends for unlawful society offences are uneven but show some decline since 1995, possibly due to the enactment of the OSCO. However, arrest trends for triad-related assault and wounding and blackmail show no clear trends and this is also the case for the other triad-related offences for which separate arrest data is available (see Table 23.1b).

¹⁴ See HK Security Bureau homepage <http://www.gov.hk/sb>; visited January 2004.

¹⁵ A crude risk ratio can be calculated based on the number of triad members estimated in 1994 at 100,000 compared to the average population of Hong Kong over the period at 6 243 150 persons. Of all 948 homicide victims, triad members comprised 163 and 785 were non-triad victims. Thus the risk of a triad member becoming a homicide victim was $163/100000 = 0.00163$ and the risk of a non-triad homicide victim was $785/6143150 = 0.000128$; this yields a risk ratio of $0.00163/0.000128 = 12.756$ or approximately 12.8:1 triad member victims to every non-triad homicide victim.

Table 23.1a Arrests for SO offences & homicide reports 1989–2002

| Year | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|------------------------------------|--------|-----------------|--------|--------|--------|--------|--------|--------|-----------------|--------|--------|--------|--------|--------|
| SO arrests | 530 | 594 | 699 | 755 | 705 | 857 | 989 | 728 | 649 | 656 | 756 | 673 | 702 | 821 |
| % < 21 yrs | 72.5 | 70.7 | 70.8 | 66.2 | 68.2 | 63.9 | 55.7 | 65.7 | 63.3 | 62.2 | 67.1 | 72.4 | 60.1 | 56.4 |
| All arrests | 43684 | 44013 | 44059 | 41780 | 45044 | 49784 | 53098 | 47157 | 41714 | 40422 | 40745 | 40930 | 38829 | 39665 |
| (% SO) | (1.21) | (1.35) | (1.58) | (1.81) | (1.56) | (1.72) | (1.86) | (1.54) | (1.55) | (1.62) | (1.86) | (1.64) | (1.81) | (2.07) |
| Homicide ¹ | 102 | 137 | 92 | 108 | 86 | 96 | 73 | 77 | 102 | 64 | 63 | 43 | 66 | 69 |
| Triad-related | 12 | 23 ² | 12 | 10 | 9 | 12 | 6 | 8 | 25 ² | 7 | – | – | – | – |
| Homicide ¹ (% Triad) | 11.8 | 16.8 | 13.0 | 9.3 | 10.5 | 12.5 | 8.2 | 10.4 | 24.5 | 10.9 | n/a | n/a | n/a | n/a |

Source: HKP Crime enforcement Report 1991–2001 and HKP Crime in Hong Kong 2002.

Note: 1 = figures refer to the reported number of deaths; 2 = includes multiple victims arising from a single triad-related arson attack.

Table 23.1b Arrests of triad members for specific offences, 1996–2002

| Year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|--|--------|--------|--------|--------|--------|--------|--------|
| All arrests | 47157 | 41714 | 40422 | 40745 | 40930 | 38829 | 39665 |
| All Triad-related arrests | 2510 | 2232 | 2438 | 2428 | 1987 | 2472 | 3144 |
| (% of all arrest inclusive SO) | (5.3) | (5.4) | (6.0) | (6.0) | (4.8) | (6.4) | (7.9) |
| Triad-related blackmail | 353 | 195 | 308 | 298 | 195 | 169 | 257 |
| (% of all arrest ¹) | (50.4) | (36.2) | (52.9) | (42.9) | (33.1) | (34.9) | (46.8) |
| Triad-related wounding & assault | 475 | 547 | 470 | 513 | 411 | 435 | 544 |
| (% of all arrest ¹) | (8.6) | (9.7) | (9.0) | (9.2) | (8.1) | (9.2) | (11.2) |
| Triad-related criminal intimidation | 61 | 57 | 40 | 91 | 58 | 52 | 74 |
| (% of all arrest ¹) | (11.9) | (12.6) | (6.7) | (11.5) | (8.9) | (10.1) | (13.1) |
| Triad-related robbery | 120 | 65 | 101 | 79 | 132 | 115 | 123 |
| (% of all arrest ¹) | (8.0) | (6.1) | (8.2) | (6.6) | (8.7) | (8.4) | (8.8) |
| Triad-related serious narcotics offences ² | 191 | 92 | 93 | 65 | 50 | 132 | 70 |
| (% of all arrest ¹) | (14.7) | (8.0) | (9.1) | (6.1) | (4.4) | (10.2) | (5.7) |
| Triad-related possession of offensive weapon or firearm (% of all arrest ¹) | 50 | 28 | 26 | 60 | 27 | 32 | 123 |
| Other Triad-related offences ³ | 533 | 599 | 745 | 567 | 441 | 835 | 1133 |

Source: HKP Crime enforcement Report 1991–2001 and HKP Crime in Hong Kong 2002.

Notes: 1 = percentage of all triad members arrested for the relevant offence; 2 = arrests for both 'Dangerous Drug Trafficking' and 'Manufacturing of Dangerous Drugs'; 3 = percentage of triad arrest per all 'other' arrest not applicable – other offences include local immigration, vice and piracy offences.

It is generally held that triad societies have been in decline and that their organisational forms have changed as a consequence of risk-averse responses to new laws and vigorous countermeasures adopted by the OCTB (see Lo 2003). The recorded triad-related offence and arrest data tell us more about anti-triad suppression than triad activity. However, the official data suggests that triad society activities remain a significant if limited feature of overall crime in Hong Kong.

Methods and Population

Following the definition and approach of the HKP and the relevant statutes, a triad-related crime is basically one that has known or suspected triad-related motives. Thus triad-related homicides were selected based on the apparent motivation as recorded by the HKP rather than membership of a triad alone. In the Hong Kong context some triad-related lethal events are committed by youth or 'street' gangs whose triad status is ambiguous because they are loosely connected through association with a triad 'big brother' (Ip 1999).

Long-term databases are essential to uncover patterns of victimisation and the risks of lethal violence because such events are rare; in the case of Hong Kong one or two years' data would be insufficient to describe adequately the range of homicidal events and their characteristics. The HK Homicide Monitoring Database established in 1998 collects details of all cases of reported murder and manslaughter in Hong Kong from 1989 onwards. Since the 1950s the homicide rate in Hong Kong has fluctuated between 0.65 and 2 per 100 000, with trends since 1997 showing a decline and with rates below 1 per 100 000 (see Table 23.1a). Thus, compared to many large cities, Hong Kong has a relatively low rate of homicide. The average homicide rate over this period was approximately 1.5 per 100 000 or about 90–100 victims per annum.

Of the 805 homicide events found in the HK Homicide Monitoring Database¹⁶ from 1 January 1989 through to 31 December 1998, we identified 96 triad-related homicide cases. The triad-related homicides and their attributes are initially compared with all non-triad homicide cases identified from the same database, but we exclude 42 homicide events that occurred in Vietnamese refugee camps.¹⁷ Among the remaining 667 non-triad homicides events included, 14 were classified as infanticides, 56 were homicides followed by suicides, and 140 were 'domestic' homicides. Accordingly the basic comparisons reported here require further refinement. The details of the circumstances, sequence of events, the roles of the various 'players' and the background of the 'victims' and offenders involved are also illustrated in several brief case studies of triad lethal violence. While the narrative of events is simplified (see for example cases 1 and 2) they illustrate some of the complexities faced by researchers in quantifying and analysing such events.

¹⁶ The HK Homicide Monitoring Database [1989-2004] is a project funded by the HK Research Grant Council (No 0203188) and directed by co-authors R.G. Broadhurst and S.L. Beh.

¹⁷ Previous research found the circumstances in closed refugee camps differed substantially from those found elsewhere in Hong Kong, and violence inside the camps often took a different form arising from the situational stresses of capture and confinement (Davis 1991; Lee 1992; Ip 1994). All refugee camps were closed by 1998 and the numbers of Vietnamese detained progressively declined during the period of this study and because this population was not, for the most part, integrated into Hong Kong society we regarded their inclusion in this study problematic.

The data in the Homicide Monitoring Database contains all reported homicides over the period obtained from the Coroner's Court¹⁸ and the HKP Criminal Records Bureau where case files (including investigation 'cover' reports, crime scene descriptions and photographs, witness statements, autopsy and pathology reports etc.) were viewed and relevant data was coded according to a protocol originally developed by the Australian Institute of Criminology (Mouzos 2000). There are over 100 variables in the homicide-monitoring database.¹⁹ Based on the protocol, data was collected on a wide range of information on the victim and the offender/suspect, if known and includes data on time, place, mode of death, circumstances, relationships between offenders and victims and subsequent outcomes in the case of arrest. In this preliminary paper a description of the characteristics of triad-related homicides compared with non-triad homicides establishes their distinctive character and serves as a starting point for further analysis of triad-related lethal violence.

When membership of a triad (of either the victim or the offender/suspect) is used to classify and select cases, discrepancies are observed in the resulting number of homicides categorised as 'triad-related'. We found that the membership-counting approach included (misclassifying) many homicide cases that had no connection to triad activities or functions, for example a triad member murdered in a domestic dispute. Given the HKP definition, we opted for the more restricted motive approach by counting only those homicides that involved an apparent triad-related motive. Using the membership approach would have placed seven 'love affairs' and seven 'domestic'-motivated homicides into the triad-related homicide category.²⁰ This shows that the selection of cases based on the membership status of the parties involved can distort the role of triads in lethal violence by including many non-triad-motivated homicide cases.

In certain homicide cases some of the variables are absent due to missing records, and in more than a quarter of events (27.2%) details about the offender/suspect are unknown. We code these missing variables as 'unknown' to indicate the following situation: the relevant death or police reports could not be located, or data was absent or not stated in either the death or police 'cover' report.

¹⁸ HK Coroner's Court inquires into the cause of and the circumstances connected with the death of any person by accident or violence or under suspicious circumstances. A Coroner's Court may sit with a jury of three people if an inquest is deemed necessary but will usually briefly document known homicides under police investigation (Coroner's Ordinance Cap 504, 1998).

¹⁹ The protocol variables for victims and offenders: sex, age, residency, race, criminal record, housing type, mental status, occupation, triad membership; for case background: location, time, cause of death, weapons, number of offenders, victims and non-lethal victims, motive, relationship, court result (if any).

²⁰ Furthermore, 19 cases selected on the basis of membership involved only female victims, compared to six cases when motive was selected despite the traditional triad ban (with rare exceptions) on the killing of women. Overall, selection based on membership of a triad would have classified 67 more cases than the triad motive approach.

Case 2 Sun Yee On youth 'gang' revenge

At about 2200 hours on a Saturday in July, the deceased, his two injured associates and about ten friends gathered at the Tsim Sha Tsui promenade (group A). They noticed a group of four males of similar age 'staring' at them (group B). The deceased playing the key role led his group (A) to confront the smaller group (B) about 'staring'. He took aside and punched their 'leader' (B) for being 'cheeky'. The leader of group B claimed the leader of group A asked them which triad society they belonged to but as they did not reply the larger group (A) then beat them all. The confrontation resolved itself when the smaller group B declared their triad allegiance to be the *Sun Yee On* of Wan Chai.

The two gangs went their separate ways, but within a few minutes group A was alerted that there was a group looking for revenge. The leader of group A then directed some of his friends to make ready iron bars from a nearby construction site to be hidden near the promenade. When nothing happened they decided to leave and went to McDonald's on Peking Road. At about 2330 hours they (A) returned to the promenade and saw some of group B suspiciously sneaking into the male toilet on the ground floor of the New World Centre. The leader of group B had meanwhile met with his 'big brother' and planned to lure the leader of group A (the deceased) into an ambush. He did so by swearing at group A and then ran into the toilet where his three co-offenders were waiting.

The leader of group A and two companions then followed and saw one of group B leaning on the wall at the far end with his arms crossed in front. He issued a challenge to fight and group A started to kick open the doors to the WCs, but suddenly one of the opposing gang (B) came out of an adjacent cubicle armed with a kukri. At this juncture, the other offender also produced a knife. The two knife-wielding assailants then delivered a few serious 'chops' to one of group A as they headed towards the deceased, who was the main target. He sustained fatal blows to his arms, head, chest and pelvic area while the other group A member was chopped once when the assailants made their escape after the rest of group A had fled. By chance an off-duty constable saw a knife-wielding assailant running from the scene, followed by several teenagers in pursuit. The constable saw the deceased sitting against the wall gravely wounded and was told that there were four assailants.

The deceased, a male aged 16, was unemployed with a prior record of indecent assault. His two surviving companions, also aged 16, were employed in semi-skilled trades and one had a prior record for theft. All the offenders were older than the victims (i.e. aged 18–21) and except for the 'leader' were employed as a cook and clerk and had prior records. The leader who confessed to the murder was the youngest, at 18 years. All of the victims and offenders were members of the Sun Yee On but were unknown to each other.

Preliminary Findings*Ethnicity, gender, co-offending and co-victimisation*

The incidents and the victims and offenders involved in triad-related homicides are described and compared with non-triad-related events. Arising from the 96 cases of triad-related homicide there were 125 deceased

victims and 526 known offenders identified,²¹ and these are compared with the 705 victims, 958 known offenders involved in the 667 non-triad-related homicide events. Homicides in Hong Kong were predominantly intra-racial events, especially those that are triad-related. Nearly all triad-related homicide victims (96%) and known offenders (95.8%) were Chinese, compared to 90.7 per cent of victims and 88.8 per cent of offenders of other homicides. Most or 83.9 per cent of triad-related homicide victims were male, compared to 58.9 per cent of other homicides. The remaining 16.1 per cent of triad-related homicide victims were females who were 'collateral' victims of two arson cases arising from rivalry over the protection of karaoke nightclubs and bars, another arson case associated with debt collection, and one case associated with a prostitution business. However, 41.4 per cent of non-triad-related homicide victims were females who were often victims of domestic disputes. Thus in 93.7 per cent of triad-related homicides at least one male was killed in the incident compared to 62.3 per cent of other homicides:²² in six triad-related cases (6.3%) and 250 non-triad-related cases (37.7%) only female victims were involved. All triad-related homicides involved male offenders, but in 69.3 per cent of non-triad-related cases male offenders were involved while only 10.8 per cent involved a female acting alone.

Of the 526 triad-related homicide offenders identified, 91.3 per cent were male, compared to 72.7 per cent of the 958 known non-triad-related homicide offenders. Only 1.3 per cent of female offenders participated in a triad-related homicide, while 10.0 per cent of other homicide offenders were females. However, 7.4 per cent of the triad-related and 17.2 per cent of the non-triad-related homicide offenders, information about their sex was not found.

Table 23.2 Multiple-victim and co-offender homicide by triad involvement

| | | Triad homicide | | Non-triad homicide | |
|-------------------------|---------------------|----------------|----|--------------------|-----|
| | | % | N | % | N |
| <i>Single victim</i> | Single offender | 7.3 | 7 | 55.5 | 370 |
| | Multiple offenders | 72.9 | 70 | 20.2 | 135 |
| | Unknown offender(s) | 7.3 | 7 | 14.5 | 97 |
| <i>Multiple victims</i> | Single offender | 1.0 | 1 | 6.1 | 41 |
| | Multiple offenders | 9.4 | 9 | 1.9 | 13 |
| | Unknown offender(s) | 2.2 | 2 | 1.6 | 11 |
| Total | | 100 | 96 | 100 | 667 |

$\chi^2 = 149.454$, $df = 5$, $p < .000$.

²¹ Over a third (35.5%) of all known offender/suspects were involved in triad-related homicides. The offender's sex in 18.8% (n=18) of triad homicides could not be identified and for non-triad homicides the sex of the offender was not known in 19.9% (n=133) of cases.

²² This was a significant difference as the chi-square test shows: $\chi^2=36.609$, $df=1$, $p < .000$.

The mean number of victims per triad-related homicide was 1.32, compared to 1.18 victims in other homicides. On average there were 6.1 offenders per triad-related homicide compared to 1.54 offenders involved in non-triad homicides. The mean number of non-lethal victims in triad-related homicides was 1.37, compared to 0.35 for other homicide cases. Although there were slightly more multiple victims in triad homicides (12.5%) than other incidents (9.7%), there were more multiple offenders (90.8%) than in non-triad homicide (26.5%). The majority of triad-related homicides involved single victims with multiple offenders (72.9%), followed by multiple victims with multiple offenders (9.4%), but a majority of non-triad homicides involved single victims with single offenders (55.5%), followed by single victims with multiple offenders (20.2%). Thus triad-related homicides involved significantly more multiple non-lethal victims – 39.4 per cent compared to 12.4 per cent of other cases²³ – and along with the higher level of events involving a single victim and multiple offenders, this is a distinguishing feature of triad-related homicide incidents. An unsurprising finding is that triad-related homicides usually involve a group of offenders acting in concert, leading to the death of a single victim and occasionally multiple victims (Table 23.2). Only eight triad-related homicides, however, involved a single offender.

Age of victims and offenders

The mean age of triad-related homicide victims was 30.4 years, which was significantly younger than the mean age of 36.7 for non-triad-related homicide victims.²⁴ Table 23.3 shows the age distribution of triad and other homicide victims, but only one triad-related homicide case involved a victim under the age of 12 years, compared to 11.9 per cent of other cases. However, the victimisation rate for the teenage group (aged 13–18) was much higher when compared to non-triad-related homicide victims. The majority of triad-related homicide victims were in the age group 19–29 years (40.3%) followed by those in the 30–39 age group (25.0%). The age distribution for other homicide also rose in the 19–29 age group (20.8%), declined slightly at age 30–39 (18.4%) but rose again to peak in the 40–59 age group (23.4%), followed by the group 60 years or above (16.3%). In contrast, the age distribution for triad homicide victims dropped steadily after the peak 19–29 age group.

Table 23.3 Age groups of homicide offenders and victims by triad involvement

| Victim age (%) | 0–12 | 13–18 | 19–29 | 30–39 | 40–59 | •60 | Unknown | Total % (N) |
|------------------|-------|-------|-------|-------|-------|------|---------|-------------|
| Triad | 0.8 | 16.9 | 40.3 | 25.0 | 12.9 | 4.0 | 0.0 | 100 (125) |
| Non-triad | 11.9 | 7.1 | 20.8 | 18.4 | 23.4 | 16.3 | 2.1 | 100 (705) |
| All Victims | 10.2 | 8.6 | 23.7 | 19.4 | 21.8 | 14.5 | 1.8 | 100 (830) |
| Offender age (%) | 10–14 | 15–19 | 20–29 | 30–39 | 40–49 | •50 | Unknown | Total % (N) |
| Triad | 3.0 | 14.4 | 20.3 | 8.6 | 2.3 | 0.6 | 50.8 | 100 (526) |
| Non-triad | 0.5 | 7.8 | 22.1 | 16.8 | 9.0 | 7.6 | 36.0 | 100 (958) |
| Total Offender | 1.4 | 10.2 | 21.4 | 13.9 | 6.6 | 5.8 | 41.2 | 100 (1484) |

²³ However, this excludes 23 cases with missing non-lethal victim data.

²⁴ The result of the relevant t-test are: $f=40.756$, $p<.000$; $t=-3.166$, $df=814$, $p<.000$.

For offenders, missing age data was significant; in about half of triad-related homicides (50.8%) and over a third (36.0%) of other homicides, the offender's age could not be ascertained. The mean age of offenders was calculated from the available data, and triad-related homicide offenders were found to be significantly younger than those involved in other homicide at mean ages 23.2 and 32.6 respectively.²⁵ The age distribution of offenders shows that triad-related homicides involved significantly more teenagers, while more non-triad homicide offenders were found in the older age groups.

Relationship and principal motive

The description of victim-offender relationships in Table 23.4 showed that 61.5 per cent of triad-related cases involved offenders who were either a stranger(s), person(s) acquainted within 24 hours immediately before the homicide, or where the relationship was classified as unknown by the police. Only 42.0 per cent of non-triad homicide involved the aforementioned kinds of victim-offender relationship. The remaining proportions of both types of homicide were composed of acquaintances of all kinds and intimates. Description of the apparent motives or 'causes' of a homicide are complicated by the presence of multiple motives in many cases; as a result, we report the principal or first motive, although this entails a degree of arbitrariness. A third (31.3%) of triad-related cases involved as the principal motive²⁶ disputes over money matters compared to 16.8 per cent of other homicide. About one in six (15.6%) of triad homicides involved a matter of face and/or honour compared to 5.7 per cent of other homicide. Furthermore around 34.4 per cent of triad homicide was instigated by revenge, compared to only 7.3 per cent of other homicide. General arguments constituted 20.8 per cent of triad homicides compared to 12.6 per cent of non-triad cases. The only triad-related homicide²⁷ that involved a 'domestic motive' stemmed from an argument between father and son regarding his triad identity, and none involved love or jealousy motives.

Mode of death and involvement of drugs and alcohol

Since the involvement of firearms and drugs has been a special concern among gang researchers, we observe in respect to events that there was a low use of firearms in both triad-related (11.5%) and non-triad-related homicide (6.6%). Firearms were not the weapon of choice in triad-related homicides, but sharp instruments, usually meat knives and 'choppers', accounted for 43.8 per cent, compared to 25.3 per cent of other homicide events. A breakdown of the victims' mode of death shows (Table 23.5) the leading mode of death for triad-related homicide victims was injuries inflicted by sharp instruments (37.9%) followed by fire/burn/inhalation (25%), blunt instrument injury (21%) and gunshot wounds (9.7%). Injuries inflicted by sharp instrument also constituted the major cause of death for non-triad homicide victims (32.5%), followed by blunt instrument injury (19.7%), neck pressure/strangulation/suffocation (17.1%) and fire/burn/inhalation (7.5%).

²⁵ The t-test results were as follows: $f=29.283$, $p<.000$; $t=-9.808$, $df=892$, $p<.000$.

²⁶ The Homicide Monitoring Database allows multiple entries of motives.

²⁷ Like many other homicides this case also involved multiple motives but this was the only triad-related case found that was classifiable either way.

Table 23.4 Motives and relationships in triad and other homicides

| | | Triad homicide | | Non-triad homicide | | Chi-square tests (x^2) |
|---------------------|-------------------|----------------|------|--------------------|------|----------------------------------|
| | | % | N | % | N | |
| Motive | | | | | | |
| | Money/Profit/Debt | Yes | 31.3 | 30 | 16.8 | 112 |
| | No | 68.8 | 66 | 83.2 | 555 | |
| Face or honour | Yes | 15.6 | 15 | 5.7 | 38 | $x^2 = 12.797, df = 1, p < .000$ |
| | No | 84.4 | 81 | 94.3 | 629 | |
| Revenge | Yes | 34.4 | 33 | 7.3 | 49 | $x^2 = 63.916, df = 1, p < .000$ |
| | No | 65.6 | 63 | 92.7 | 618 | |
| General argument | Yes | 20.8 | 20 | 12.6 | 84 | $x^2 = 4.840, df = 1, p < .05$ |
| | No | 79.2 | 76 | 87.4 | 583 | |
| Love/Jealousy | Yes | 0 | 0 | 14.7 | 98 | $x^2 = 16.184, df = 1, p < .000$ |
| | No | 100 | 96 | 85.3 | 569 | |
| Domestic | Yes | 1.0 | 1 | 27.7 | 185 | $x^2 = 32.440, df = 1, p < .000$ |
| | No | 99.0 | 95 | 72.3 | 482 | |
| Relationship | | % | N | % | N | |
| Stranger | Yes | 61.5 | 59 | 42.0 | 280 | |
| Non-stranger* | Yes | 38.5 | 37 | 58.0 | 387 | $x^2 = 12.897, df = 1, p < .000$ |
| Total | 100 | 96 | 100 | 667 | | |

Note: *non-stranger includes intimates, acquaintances and unknown.

In respect to lethal events motivated by illicit drugs, 14.6 per cent of triad-related homicides were implicated, compared to only 2.7 per cent of other homicides.²⁸ Since most homicide offenders were not apprehended at the scene, this chapter reports only the drug or alcohol tests (derived from the pathology reports) conducted on homicide victims. Significantly,²⁹ more triad-related homicide victims had consumed alcohol before the homicide event (24.5%) than had other victims (12.5%). In contrast, little difference was observed for prior illicit drug consumption between triad (12.3%) and non-triad-related homicide victims (10.3%). However, it is notable that levels of alcohol and drug (as detected at autopsy and sometimes noted in cover reports) found in the population appear generally lower than that found in other homicide victim populations (see Mouzos 2000).

Table 23.5 Cause of death by triad involvement

| Cause of death | Triad homicide | | Non-triad homicide | | Total | |
|--|----------------|------|--------------------|------|-------|------|
| | N | % | N | % | N | % |
| Adverse effect | 0 | 0 | 24 | 3.5 | 24 | 3.0 |
| Blunt instrument | 26 | 21.0 | 134 | 19.7 | 160 | 19.9 |
| Fire/burn/inhalation | 31 | 25.0 | 51 | 7.5 | 82 | 10.2 |
| Gunshot | 12 | 9.7 | 46 | 6.8 | 58 | 7.2 |
| Height | 1 | 0.8 | 23 | 3.4 | 24 | 3.0 |
| Neck pressure/strangulation/ suffocation | 0 | 0 | 116 | 17.1 | 116 | 14.4 |
| Sharp instrument | 47 | 37.9 | 221 | 32.5 | 268 | 33.3 |
| Unascertainable | 6 | 4.8 | 38 | 5.6 | 44 | 5.5 |
| Miscellaneous | 1 | 0.8 | 27 | 4.0 | 28 | 3.5 |
| Total* | 124 | 100 | 680 | 100 | 804 | 100 |

$\chi^2 = 64.711$, $df = 8$, $p < .001$; * In 1 triad-related and 25 non-triad homicides the cause of death is missing or unknown.

Employment, marital and mental health status

Most (70.1%) triad-related homicide victims were employed, whereas only 55.0 per cent of non-triad homicide victims were employed,³⁰ but this is partly accounted for by the absence of very young victims. Although a third (34.3%) of non-triad-related homicide offenders were employed compared to a quarter of triad offenders (26.4%), most offender's employment status was unknown (61.6% of triad and 39.8% of non-triad offenders). Similarly, the absence of data on offender's marital status also renders comparisons unreliable, with no data available for 75.3 per cent of triad-related homicide offenders and 49.2 per cent of other offenders. However, 2.5 per cent of triad-related homicide offenders were married compared to 21.2 per cent of other homicide offenders. Nearly two-fifths (39.6%) of triad-related homicide victims were married compared to 48.1 per cent of other homicide victims – a partial reflection of the older age distribution of the non-triad group.

²⁸ The difference was statistically significant: $\chi^2=29.501$, $df=1$, $p < .000$.

²⁹ For alcohol presence the chi-square statistic was $\chi^2=10.862$, $df=1$, $p < .005$.

³⁰ The relevant chi-square statistic was: $\chi^2=8.609$, $df=1$, $p < .005$.

Although it is generally difficult to establish the mental state of either victims or offenders at the time of a homicide, subsequent investigations may reveal a prior history of mental illness, and these are recorded in the protocol.³¹ None of the triad-related homicide victims was known to have a history of mental illness and only 5 per cent of other homicide victims were known to be mentally ill. Among offenders, however, 11.7 per cent of other homicide offenders had a record of mental illness (mainly psychosis and depression) but none of the triad offenders was known to have such a history. However, other conditions such as a personality disorder were not included in our definition of mental illness.

Temporal and location factors

Analysis of the distribution of homicide events by location and time of day, week and month help assess the relevance of general situational factors and the applicability of lifestyle differences in the risks of triad-related homicides. Most (90.6%) triad-related homicides took place in 'open space' or a non-dwelling such as public entertainment premises, while 51.3 per cent of non-triad homicides occurred in these places. The remainder occurred in residential premises (9.4% of triad and 48.7% of non-triad-related homicides).³² Triad-related homicides took place most frequently from midnight to early morning (48.4%), followed by the late evening to midnight (34.4%). Only 17.2 per cent of triad-related homicides occurred during the daytime and this pattern distinguishes them from non-triad homicides, which are evenly distributed across the different times of day.³³ Monthly trends show a general increase in triad-related homicides during the summer months May to September (54.1%) that peaked in July (20.8% of all triad-related homicides). In contrast, other homicides were more evenly distributed throughout the year, though generally the summer months also had a higher proportion of non-triad homicides (45.5%) than other months. However, in the festive season (Christmas to Chinese New Year) in December and January, other homicides increase before dropping to the lowest level in February.

Triad-related homicides peaked on a Saturday (26.0%) but fluctuated among the other days of the week. For other homicide there appears to be two peak occurrences: Monday and Saturday (16.5% and 16.1% respectively). Both groups, however, have a higher frequency on weekends, and by combining the time of day and day of week a simplified two-category classification can be compared: 'weekday' included cases that occurred between Monday 0600 to Friday 1759 hours; and 'weekend' included Friday 1800 till Monday 0559 hours.³⁴ The results indicate that triad-related homicides were evenly distributed between weekdays (51.0%) and weekends (49.0%), but compared to other homicides (64.6% for weekdays and 35.4% for weekends), more triad-related homicides occurred over the weekend.

Summary

The majority of triad-related homicide victims and offenders were Chinese males, with most females involved as collateral victims in two serious arson cases that resulted in multiple fatalities. On average, triad-related homicide victims were younger than non-triad victims and, as far as the data can establish, also

³¹ In 60.1% (n=316) of triad and 39.1% (n=375) of non-triad-related homicide offenders their mental health record was not recorded, thus the estimates are offered with this caution in mind.

³² These differences were statistically significant: $\chi^2=52.798$, $df=1$, $p<.000$.

³³ The difference was significant ($\chi^2=37.633$, $df=3$, $p<.000$). The hours of the day were categorized into four time zones: 0000-0559 (mid-night to early morning), 0600-1159 (early morning to noon), 1200-1759 (noon to early evening) and 1800-2359 (late evening to mid-night): 91 homicide cases are excluded because time of day was missing.

³⁴ Friday evening (1800-2359) and Monday morning (0000-0559) are included in the 'Weekend' category because these times are an extension of weekend activities. The chi-square analysis showed a significant effect ($\chi^2=6.544$, $df=1$, $p<.05$); in 29 cases the incident hour was unknown.

younger than other offenders. Age differences between victims and offenders were much less for non-triad than for triad-related homicides. Triad-related homicides involved more victims who had consumed alcohol than other homicide events, but no differences in drug consumption were noted, although reported in about a tenth of all cases. The leading cause of death of both triad and non-triad homicides was sharp weapon injuries, but triad-related and other homicides differed chiefly in two aspects: more arson-related deaths occurred in triad cases, while strangulation/suffocation/neck pressure causes were found only in non-triad-related cases and more often (often homicides followed by suicide) involved pushing the victims from a height. Neither the victim nor the offenders in triad-related homicide had histories of mental illness, but psychosis or depression was found among some victims and offenders in other homicides (see Chan et al. 2003). Triad-related homicides mostly involved multiple offenders and more lethal and non-lethal victims than other homicides. Most triad-related homicides involved multiple offenders killing a single victim who was usually a recent acquaintance or a 'stranger', whereas other homicides usually show a lone offender killing a single victim who was often an intimate. Money disputes, face or honour contests, and revenge were the motives most commonly established for triad-related homicide. Significantly more triad-related homicides had a drug-related motive than other homicides, although this was a small portion of triad-related homicide. Most triad-related homicides occurred outdoors or in a non-dwelling over the weekend, while other homicide was more likely in residential premises and on weekdays.

Discussion

Since Wolfgang's (1958) pioneering study of Philadelphian homicide, numerous studies have established the effect of different lifestyles on the temporal and location factors that influence the patterns and risks of homicide offending and victimisation (Messner & Tardiff 1985; Silverman & Kennedy 1987, 1990; Caywood 1998; Kposowa & Breault 1998; Mouzos 2000). As these studies note, the frequency of homicide peaks on weekends, at night, in both midsummer and midwinter, and they take place away from the residences of typically young male victims and offenders who engage in recreational activities associated with alcohol consumption.³⁵ The situational aspects of triad-related homicide also differed from other homicide and link the subculture of triad societies with the routine activities and lifestyles of triad members (Hindelang et al. 1978; Cohen & Felson, 1979; Felson & Cohen 1980; Kennedy & Baron 1993³⁶). Triad subculture norms and values shape members' activities and lifestyles and 'authorise' the violence displayed in lethal encounters. In our study triad-related homicides were more likely to occur at night, in or near entertainment premises or in open areas, over the weekend, and involved offenders and victims of similar age and status. Simply put, the situations in which triad-related homicides often occur are opportunities that render intervention unlikely and allow for multiple offenders to attack and escape from the scene.

We hypothesised that the lifestyle of triad members, which often involves activities such as loan-sharking, protection, street crime, and illicit drug sales and vice, would result in *instrumental* (goal-oriented) rather than *expressive* (or emotional) motives for the use of violence. In the conventional definition, 'aggression is

³⁵ See also Cheatwood (1988); Kposowa & Breault (1993), Kposowa, Breault & Harrison (1995); Land, McCall & Cohen (1990); and Landau & Fridman (1993).

³⁶ Routine activity theory argues that for any criminal offence to occur there must be a convergence of three essential factors: the potential/suitable victim, a willing/motivated offender and the lack/absence of capable guardian. A fourth essential element: the availability of resources to the offender is also often included to gauge the (conditional) rationality of the criminal conduct (a 'willing offender who is also well equipped'). The convergence takes place when the four essential factors meet in space (location factors) and time (temporal factors).

assumed to be functional and involves minimal levels of violence necessary to achieve compliance and overcome resistance, while 'expressive' aggression yields excessive levels of violence beyond that necessary to subdue a victim and ends when the offender's anger is dissipated (Salfati 2000).³⁷ This basic difference in motive or apparent 'cause' may be less helpful in explaining homicides associated with criminal networks such as triads. The distinction between instrumental and expressive motives is often blurred in triad-related homicide. This is because the 'rationality' or instrumentality of the violence associated with the monopoly of enterprise crime coincides with issues of reputation (i.e. 'honour' contests, revenge, and 'punishment') related to territorial competition between triad street/juvenile gangs as illustrated by some of our case examples.

The standard categorisation of homicide motives (see Table 23.4) as face-saving or honour contests, domestic or other arguments, revenge, jealousy or profit shows that these motives (or their absence) to a considerable degree distinguish triad-related homicides from other homicides. The case examples also illustrate lethal violence as an aspect of triad culture where violence is a form of reputational social capital that requires aggression to be manifested in expressive and instrumental ways. Although triad members engage in violence to uphold their reputations, most triad-related homicides were committed by a group who target a single victim, even though the victim was often part of a rival group. The individuals involved were also often 'strangers' to each other and governed by their role as part of a group. This indicates a premeditated instrumental form of violence rather than the violence of an individual spontaneously aroused or provoked to aggressive conduct.

In addition, some triad-related homicides are triggered by the provocation of the victim, which when returned in kind overcame the rational or controlled exercise of violence (as an example, see case 5). The elements of victim provocation, involvement of alcohol, 'neutralising' values and, the (actors') anonymity in the group are contributory factors and give rise to complex motives and explanations for such lethal violence. The violence in the form of 'contests' related to triad business cannot be readily classified as either instrumental or expressive. For expressive violence unintentionally or intentionally serves instrumental purposes by creating fear about the dangerousness of the triad society. Thus violence becomes a factor or 'resource' that distinguishes between the capabilities of putative rivals and may heighten the risk of violence for its own sake. It is a resource that like a famous brand product must be advertised or demonstrated to ensure its continued relevance. The view that organised criminals deploy only profit-oriented controlled violence (regardless of the 'triggers' whatever they may be or how trivial they appear) was not always evident in the excessive violence found in triad-related lethal events.

Lethal violence is often evoked in circumstances that appear calculated and 'instrumental' because the events usually involve multiple offenders (overwhelming numbers), discipline (preparation and acting in concert) and planning (ambush). Expressive violence itself acts as a trade mark and thus serves a crucial purpose in maintaining brand recognition. The only cases that appear purely instrumental are triad drug syndicate violence when challenges or dishonoured deals are highly costly and damaging to the effective control of

³⁷ This distinction derived from Feshbach (1964) suggests that violence arises from aggression, which takes two distinct forms distinguished by the rewards or goals they offer offenders. Expressive aggression occurs in response to anger-inducing circumstances such as insults, physical attacks or perceived failures where the goal is to punish or make the victim suffer. Instrumental aggression is prompted by the desire to obtain objects (e.g. money, jewelry or territory) or status possessed by another and aggression (or violence) is used only to achieve the desired outcome and usually occurs if someone intervenes to prevent theft or possession.

illicit sales. Much of the extreme violence observed in our cases arises from the need to discipline³⁸ or punish associates, customers or rivals who breach customary conduct and for which there is no other remedy. Furthermore, even uncalculated violence that led to the perpetrator's arrest or pursuit is itself beneficial, because the mass media attention serves to advertise the incident and remind the general public of the fearful nature and image of triads. Thus the concept of 'reputational' violence combines expressive violence (e.g. face-saving) so essential for triad members' identity, and the instrumental elements often used to classify homicide motives.

Thus motives in triad-related homicides are tentatively characterised as follows:

1. reputational violence with overt instrumental purposes to ensure economic gains from protection rackets, smuggling, drugs, pirated intellectual property goods, or for disciplinary purposes, either punishing someone or sending a warning signal to rivals; or
2. reputational violence with overt expressive purposes to assert status and territory such as honour contests and revenge; or
3. cases that mixed overt instrumental and expressive elements.

Our examples serve to illustrate the dual function of triad violence and the cycle of revenge, status and reputation that often engulf the 'actors', even those who may owe allegiance as 'brothers' in crime. Our first case illustrates reputational violence with overt instrumental purposes (see also cases 1, 8 and 10). This event illustrates again the potential complexity of the events to be described and analysed. While data about victims is often complete, less is usually known about the offenders.

Case 3 Victims of triad rivalry

An arson resulting in six deaths took place inside a mahjong 'school' early one Tuesday morning (0255), in September. The 'school', although located in *Luen Ying She* territory, was 'bounced' by a notorious *Sun Yee On*; however, by agreement the protection money was equally shared by both triads.

Just a few minutes before the arson took place two light goods vehicles were seen moving slowly along the street. Two male offenders (from a group of four) armed with knives rushed into the 'school's' 2nd floor premises, subdued the staff, and then poured petrol over the floor and set it on fire. Before leaving the offenders also set fire to the entrance on the ground floor and, then left in a waiting car. Although most people escaped, five male staff and one male customer (all aged between 28 and 44) could not and died from inhalation of the fumes. None of the deceased were triad members or known to the offenders.

The offenders were suspected to be escaped illegal Vietnamese immigrants who were hired by a *Wo Shing Wo* triad society office-bearer (A '426'³⁹) engaged in an inter-faction conflict with another notorious *Wo Shing Wo* (B '426') office-bearer over protection of 'entertainment' in the Mongkok area. A series of unreported retaliatory skirmishes and an ambush murder (two days earlier) of a follower of A by B or his followers had preceded this arson incident. The 'school' was believed to be a 'safe house' used by B, but he was not present at the time.

³⁸ For a brief discussion of the nature of triad disciplinary punishments see Yue (2003).

³⁹ In triad argot an ordinary member carries the number '49' and an office bearer '426' while an initiate is referred to as a 'hanging lantern'.

The next case illustrates reputational violence with overt expressive purposes, and like case 2 involved entirely young triad members of notionally the same triad society. The case serves as an illustration of the problem of youth gang conflicts that occasionally result in lethal violence. Case 9, which included older offenders and a different modus operandi, also involved an essentially expressive motive.

Case 4 Reputations at Lion Rock

The deceased was an unemployed 19-year-old Chinese male *14K* triad member (faction unknown). The incident took place at a barbeque site at Lion Rock Park early on a Sunday (0300) morning in June. The offenders (four of whom were charged with murder) were all young Chinese males (aged between 15 and 18 years) who were also *14K* triad but were associated with a different faction. The deceased, the injured co-victims and the offenders were strangers to each other and were acting as ‘reinforcements’ for a settlement talk between two disputing parties having a barbecue party at Lion Rock Park from midnight onward. The dispute originated when two girls at the barbecue quarrelled about who should light the stove.

The deceased was originally drinking and singing karaoke with his friends when a female companion was paged by one of the girls asking for assistance because she was having a quarrel with another girl and was afraid she would be beaten up. The deceased’s group went to Lion Rock Park where a stand-off between the groups ensued, but a short while later a ‘Big Brother’ and four male associates arrived and he immediately accused the deceased’s group of disturbing his beer drinking. One of the victims argued that it was his followers that had caused the trouble and this prompted the ‘Big Brother’s’ party to immediately attack.

The deceased’s party was surrounded by a group of males, two of whom chopped his friends while others punched him. He attempted to disengage but was chased and fell to the ground and was attacked with knives for about a minute until somebody said it was enough, but one of the assailants returned and again chopped him before the assailants all fled. Still conscious and lying in a pool of blood with his small intestine protruding, he said it was very painful. The deceased suffered severe multiple cut wounds and died from massive blood loss.

Mixed or complex motives are also common and two further triad-related homicides that comprise both overt instrumental and expressive elements are illustrated below (see also case 7).

Case 5 Triad ‘duty’

The case occurred on Friday at 0330 in the early morning of October in a karaoke bar protected by *Sun Yee On* bouncers. This was a fatal assault involving four offenders (three of whom were later charged with murder), which arose in a dispute provoked by the victim. The victim and offenders were strangers to each other and there had been no prior contact before the incident.

The deceased was a 33-year-old married Chinese male owner of a nearby hair salon who had a prior record for assault but was a low-profile and inactive member of the *14K Hau* triad. He was drinking and playing dice with friends but entered a VIP room occupied by two males who were drinking and

.....see over

singing and tried to pull the waitress out for a drink. The two male occupants disputed his trespass into their room and the bouncers began to beat him about the head. One of the bouncers shouted, 'I didn't f**king interfere when you played outside but now you even come in here to play – you regard me, the *Sun Yee On* bouncer, as nothing.' The deceased tried to summon assistance from his friends sitting outside the VIP room but the bouncers and 'spectators' prevented them. The assault lasted 10–15 seconds, after which the victim was found unconscious (with fatal brain injury). The bouncers told the waitress to present the bills to the victim's party for payment and then remained at the scene while friends of the victim took him to hospital.

The known offenders were three Chinese males aged 22, 26 and 35 who were members of *Sun Yee On*. The eldest offender was married and was a part owner of a garage, and the two youngest, who had left school at 14 years, were both employed in construction. All of them had prior records for a variety of offences including theft of vehicle, wounding, fighting, robbery, triad membership, possession of dangerous drugs, disorderly conduct, giving false information, and criminal damage.

Case 6 Power and illegal gambling profits

This was a fatal shooting that took place in March on an early Tuesday morning (0430) at a New Territories village playground dominated by the *14K 'Ngau'* group. The incident involved a dispute between a triad '426' (office-bearer) and one of his followers, a 29-year-old male, who had a prior record that included assault. He was employed as an illegal casino operator by the '426'.

The deceased was gambling in an adjacent illegal casino but quarrelled with his '426' triad brother over his share of earnings from another illegal gaming establishment. The deceased accused his '426' of not contributing to the costs of setting up the gambling establishment and during the argument the triad brother shouted back and punched the deceased several times. While leaving the deceased suddenly drove his car at his '426', attempting to crush him, but failed and then repeated the attempt. The '426' allegedly shouted to his associates, 'Shut the gate, don't let him go, fix him up.' One of his followers then drew a 7.62mm handgun and twice shot at the car and then chased the moving car, firing one more shot as he came alongside it near the gate of the playground. The car continued to move but hit a concrete barrier and the gunman then opened the driver's door; the deceased fell to the ground with his feet still in the compartment. The gunman then dragged the victim out and fired two more shots at close range. The triad '426' and the gunman then escaped via another vehicle. Associates of the deceased took him to a nearby hospital but the gunshot wounds to the chest and abdomen were fatal.

The triad '426' was apprehended two days later by the Royal Navy on a speedboat heading towards China. The gunman or bodyguard was never located and charges against the '426' did not proceed because of unsure witnesses. The '426' was a 42-year-old Chinese male from Macau who was involved in illegal gambling and a decoration business monopoly. He had multiple prior convictions including assisting in the management of an unlawful society, conspiracy to cause criminal damage, and incitement and conspiracy to commit assault.

Typical methods of triad-related homicide

From the above general findings, a preliminary typology of triad-related homicide is offered describing the typical methods used. This typology serves to extend the description of the nature of the mode of death found in Table 23.5 by characterising the different methods used in triad-related homicides. Methods may be basically characterised in four ways, illustrated below by case examples.

Attacks with knives, choppers and sharp instruments

1. The offenders, armed with knives in groups varying in size (sometimes groups of a dozen or more persons), ambush or skirmish with the victim(s) and the assault may be general or targeted to a particular victim. Case 7 illustrates this method, which may be prompted by all forms of reputational violence, and another example is case 1.

Case 7 14K factional violence

The case occurred on a late Friday night in May on a street near a rollerskating rink known to be a meeting place of the 14K. A 20-year-old male deceased and a friend both of the *Tak 14K* faction had been rollerskating and left after the rink closed at 2300 hours. He was noticed by a group of six *Hau, Mui* and *Yee 14K*, who then ambushed him in revenge for two assaults involving them a few months earlier in Wan Chai. A security guard witnessed the event and telephoned the police. His account forms the basis for this description.

The deceased was attacked on the road and tried to escape but was intercepted by a vehicle that chased and knocked him down. The deceased was then chopped by at least four different knives and these multiple cut wounds were the cause of death. The deceased's hand was partly chopped off. The offenders then fled on foot or in the vehicle and later that night they gathered in a restaurant before leaving Hong Kong for China.

No alcohol had been consumed by either the offenders or victim and nor were triad slogans observed. The victim had no known criminal record. All six male offenders (aged 18 to 27 years) were arrested; four of them had a variety of previous convictions including property and violence offences.

Killing with firearms

2. The offender(s) armed with firearms kill the victim often in an execution-style ambush. Case 8 exemplifies this kind of method and this occurs infrequently with just under 10 per cent of triad-related homicide victims dying by gunfire: see also case 6.

Case 8 Execution outside a sauna

The deceased was a 40-year-old Chinese male who was known to the HKP Narcotic Bureau as a probable drug trafficker moving large quantities from Thailand to Europe, Australia and Hong Kong since the late 1980s. The 'hit' occurred at around midnight on a Wednesday in November outside a Tsim Sha Shui sauna in which he had a financial interest and which was frequently used by him and his associates. Although his triad status was unclear he had close *Wu Nam Gang*, *Wo Shing Wo*, *Wo Shing Yee* and Thai criminal connections. He was known to be involved in remminbi exchange deceptions, loan-sharking and debt collection but he was also a habitual gambler who had recently pawned his Rolex watch for \$70 000.

He entered the sauna at 2345 and made a number of overseas calls and then walked out of the sauna and waited outside for someone at 2357. A few minutes later two shots were heard by a number of witnesses. No one saw the actual shooting or offender(s) but a vehicle was seen to leave the scene. The deceased was then found lying on the pavement with a point blank shot to the temple and another shot fired two feet from the neck.

Setting fires

3. A group of offenders set fire to premises (the arson often takes place in public entertainment premises), attempting to kill or injure their rivals, and consequently non-triad members are placed at risk. Case 9 is also an example of reputational violence with fatal consequences for 'bystander' or collateral victims (see also case 3).

Case 9 Arson at the Top One Karaoke

The setting fire to the Top One Karaoke, Tsim Sha Shui, by at least four *Wo Shing Wo* took place in January on an early Saturday morning (0400) and resulted in the deaths of 17 customers and staff, none of who were triad members. Five days before the incident the karaoke's *Sun Yee On* bouncers had beaten up some *Wo Shing Wo* after a hostess complained that one of them had molested her. The same *Wo Shing Wo* then sought revenge but two attempts (they had taken knives and clubs to assault the *Sun Yee On* bouncers) had been called off due to a heavy police presence in the area. Driving by, the offenders quickly threw three ignited petrol bombs at the entrance of the karaoke and then escaped in the same vehicle. Although most customers managed to escape, all of the victims died at the scene due to inhalation of carbon monoxide and toxic fire fumes.⁴⁰

⁴⁰ Arson investigators considered the karaoke as especially vulnerable because it lacked basic fire prevention measures.

Blunt and brute force

4. A group of offenders attack the victim(s) using blunt objects or their hands and feet resulting in the victim being beaten to death. Case 10 shows this method deployed in the course of a triad administered punishment (see also case 5).

Case 10 A drug user's fatal beating

A fatal assault took place on a Wednesday afternoon (1530) in July at the rear lane behind a drug treatment clinic in Tsuen Wan. The 29-year-old deceased male was a *Sun Yee On* drug addict who visited the location to steal heroin, which was usually hidden there. Four members of *Wo Shing Wo* who were drug 'pushers' and had prior disputes with the deceased found him and demanded payment of \$3200 for the stolen drugs. They reportedly said, 'Again and again you get away with it. Even a *Shing Wo jai* won't be given face.' An acquaintance of the deceased, a female drug addict, had witnessed the assault but was too afraid to help.

The assault was in the form of an extended beating with fists and feet, and a plastic water bottle was also used. After the assault the deceased struggled home but died two days later of traumatic rupture of the spleen. A post-mortem revealed that he had multiple bruising and suffered serious injuries to his internal organs including the spleen, lungs and liver, resulting in massive internal bleeding.

Conclusion

This chapter provides an initial description of triad-related homicide in Hong Kong over a limited period and shows that situational factors distinguish them from other homicides. We note the relative infrequency of triad-related homicides, although they are significant in the context of the low prevalence of homicide in Hong Kong. The pursuit of illicit profit in the context of anti-triad measures obliges triads to minimise counterproductive violence, especially lethal violence. The dominance of profit-driven violence usually associated with the triad's business orientation was not fully supported by these preliminary findings. We infer from the cases examined that violence is a resource that serves the hyper-masculine nature and monopolistic strategies of triad societies – a resource that in contemporary Hong Kong is seldom displayed.

Instrumental and expressive classifications of motive and the conventional combination of relationship and motive as a proxy for causation offer little explanatory assistance in the case of triad-related homicide. The analysis, although preliminary, provides a basis for future detailed investigation of violence by organised crime in 'oriental' settings using evidence-based strategies derived from the longitudinal surveillance of homicide in Hong Kong. However, the topic of organised crime and violence can only be fully addressed when a comprehensive scholarly history of the triad's influence on crime and law enforcement is available and a detailed examination of the many lethal cases attributed to them can be undertaken over a longer time-frame. This research has provided an assessment of violence as a functional resource deployed by triad societies and the role of 'reputational' violence in Chinese criminal networks.

References

- Broadhurst, R.G. 1999, 'Homicide Monitoring Database [Hong Kong], 1989–97', *1st Annual Conference of the Hong Kong Sociology Conference*, Hong Kong University, November 1999.
- Broadhurst, R.G. (ed.) 2003, *Transnational Organized Crime – Bridging the GAP: A Global Alliance Perspective: Proceedings*, Hong Kong Police.
- Caywood, T. 1998, 'Routine Activities and Urban Homicides: A Tale of Two Cities'. *Homicide Studies*, 2: 64–82.
- Chan, W.S. 1979, Study on Becoming a Triad: A Naturalistic Study on Secret Society Recruitment in Hong Kong. Unpublished M.Soc.Sc. Thesis, University of Hong Kong.
- Chan, C.Y., S.L. Beh & R.G. Broadhurst 2003, 'Homicide-Suicide in Hong Kong, 1989–1998', *Forensic Science International*, 137: 165–71.
- Cheatwood, D. 1988, 'Is There a Season for Homicide?' *Criminology*, 26: 287–306.
- Chin, K.L. 1990, *Chinese Subculture and Criminality: Non-traditional Crime Groups in America*, New York: Greenwood Press.
- Chu, Y.K. 2000, *Triad as Business*, London: Routledge.
- Cohen, L., & M. Felson 1979, 'Social Change and Crime Rate Trends: A Routine Activity Approach', *American Sociological Review*, 44: 588–608.
- Davis, L. 1991, *Hong Kong and the Asylum-seekers from Vietnam*, London: Macmillan.
- Dickie, J. 2004, *Cosa Nostra: A History of the Sicilian Mafia*, Bury St Edmunds, UK: Hodder & Stoughton.
- Felson, M., & L. Cohen 1980, 'Human Ecology and Crime: A Routine Activity Approach', *Human Ecology*, 4: 389–406.
- Fight Crime Committee 1986, 'A Discussion Document on Options for Changes in the Law and in the Administration of the Law to Counter the Triad Problem', Hong Kong: Fight Crime Committee.
- Gambetta, D. 1993, *The Sicilian Mafia*, Cambridge MA: Harvard.
- Hindelang, M.J., M.R. Gottfredson & J. Garofalo 1978, *Victims of Personal Crime: An Empirical Foundation for a Theory of Personal Victimization*, Cambridge MA: Ballinger.
- Hodson, D. M. 2003, 'Triads in Business: "To Get Rich is Glorious".' In Broadhurst, *Transnational Organized Crime*.
- Hong Kong Police 1991–2000, 'Crime Enforcement Report', Hong Kong Police: Government Printer.
- Howell, J.C. 1999, 'Youth Gang Homicide: A Literature Review', *Crime and Delinquency*, 45(2): 208–42.
- Ip, P.F. 1999, 'Organized Crime in Hong Kong'. *Occasional paper presented in Organized Crime and the 21st Century Seminar*, 6 June 1999. Centre of Criminology, University of Hong Kong.
- Ip, P.F. 1999, The Sociolinguistics of Triad language in Hong Kong. Unpublished M.Phil. thesis, University of Hong Kong.
- Ip, Y.C. 1994, Riots and Disturbances Related to the Vietnamese Asylum-seekers in Hong Kong. MA thesis, University of Leicester, and School of Professional and Continuing Education, University of Hong Kong.
- Kennedy, L.W., & S.W. Baron 1993, 'Routine Activities and A Subculture of Violence: A Study of Violence on the Street', *Journal of Research in Crime and Delinquency*, 30(1) 1993: 88–112.
- Kennedy, L.W., & R.A. Silverman 1990, 'The Elderly Victim of Homicide: An Application of the Routine Activities Approach', *Sociological Quarterly*, 31(2): 308–20.
- Kposowa, A.J., & K.D. Breault 1993, 'Reassessing the Structural Covariates of Homicide in the United States', *Sociological Focus*, 26: 27–46.
- Kposowa, A.J., K.D. Breault & B.M. Harrison 1995, 'Reassessing the Structural Covariates of Violent and Property Crime in the USA', *British Journal of Sociology*, 46:79–105.

- Kposowa, A.J., & K.D. Breault 1998, 'Temporal Factors and Homicide in the United States', *Journal of Interpersonal Violence*, 13: 590–604.
- Land, K.C., P. McCall & L.E. Cohen 1990, 'Structural Covariates of Homicide Rates: Are There Any Invariances Across Time and Social Space?' *American Journal of Sociology*, 95: 922–63.
- Landau, S.F., & D. Fridman 1993, 'The Seasonality of Violent Crime: The Case of Robbery and Homicide in Israel', *Journal of Research in Crime and Delinquency*, 30: 163–91.
- Lee, C.S. 1992, The Causes of Collective Violence among Vietnamese Asylum-seekers in Hong Kong. Unpublished M.Soc.Sc. thesis, University of Hong Kong.
- Leong, V.M. 2001, Macau, Crime and the Casino State. Unpublished M.Phil. thesis. University of Hong Kong.
- Lisle, J. 2003, 'Triads: Myth, History and Reality of the Hung League'. In Broadhurst, *Transnational Organized Crime*.
- Liu, Benjamin T.M. 2001, *Hong Kong Triad Societies Before and After the 1997 Change-over*, Hong Kong: Net e-Publishing Ltd.
- Lim, I. 1999, *Secret Societies in Singapore* (Featuring the William Stirling Collection), Singapore: Singapore History Museum.
- Lo, M.H. 2003, 'Treating the Cancer: Effective Enforcement Strategy'. In Broadhurst, *Transnational Organized Crime*.
- Lo, T.W. 1984, *Gang Dynamics: Report of a Study of the Juvenile Gang Structure and Subculture in Tung Tau*. Hong Kong: Caritas Outreach Service.
- Mak, L.F. 1981, *The Sociology of Secret Societies: A Study of Chinese Secret Societies in Singapore and Peninsular Malaysia*, Kuala Lumpur: Oxford University Press.
- Martens, F.T. 1974, A Study of Organized Crime Homicides among Syndicated Organized Crime Groups in the State of New Jersey, 1960–1973. Unpublished dissertation, New York: John Jay College of Criminal Justice.
- Maxson, C.L. 1999, 'Gang Homicide'. In M.D. Smith & M.A. Zahn (eds), *Studying and Preventing Homicide: Issues and Challenges*, Thousand Oaks CA: Sage: 197–222.
- Maxson, C.L., & M.W. Klein 1990, 'Defining Gang Homicide: An Updated Look at Member and Motive Approaches'. in C.R. Huff (ed.), *Gangs in America*, 2nd edn 1996, Newbury Park CA: Sage, pp. 3–20.
- Maxson, C.L., & M.W. Klein 1990, 'Street Gang Violence: Twice As Great, or Half As Great?' in C.R. Huff, *Gangs in America*, pp. 71–100.
- Messner, S.F., & K. Tardiff 1985, 'The Social Ecology of Urban Homicide: An Application of the "Routine Activities" Approach', *Criminology*, 23(2): 241–67.
- Mouzos, J. 2000, *Homicidal Encounters: A study of Homicide in Australia 1989–1999*, Canberra: Australian Institute of Criminology.
- Morgan, W.P. 1960, *Triad Societies in Hong Kong*, Hong Kong: Government Printer.
- Polk, K. 1994, *When Men Kill: Scenarios of Masculine Violence*, Cambridge University Press.
- Salfati, C.G. 2000, 'The nature of Expressiveness and Instrumentality in Homicide (Implications for Offender Profiling)', *Homicide Studies*, 4(3): 265–93.
- Silverman, R.A., & L.W. Kennedy 1987, 'Relational Distance and Homicide: The Role of the Stranger', *Journal of Criminal Law and Criminology* 78(2): 272–308.
- Wolfgang, M.E. 1958, *Patterns in Criminal Homicide*, New York: John Wiley.
- Yue, T.W. 2002, 'Reading the Signs: Recognizing Triad Punishment.' In Broadhurst, *Transnational Organized Crime*.
- Zhong, Y. 2003, Communities, Crime and Social Capital: Crime Prevention in Two Shenzhen Communities. Unpublished PhD thesis, University of Hong Kong.

24

Crime in Western and Central Europe

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Regarding transnational criminal organisations, the national authorities of Germany, the United Kingdom, Netherlands and the United States find that groups which deserve international attention are Chinese triads, Colombian cartels, Jamaican posses, Japanese yakusa, Sicilian Mafia, Russian criminal organisations and West African groups such as Nigerian organised crime groups.¹

Chinese triads are involved in a whole range of criminal activities, including extortion, drug trafficking, prostitution, gambling and sideline businesses in Chinese videos, books, newspapers and entertainment services. They also have extensive overseas networks that allow them to engage in transnational criminal activity with great ease. Triads are well established in every major Chinese community in the world. International activities include heavy participation in heroin trafficking to the United States and Europe combined with arms smuggling and other opportunistic activities such as theft and smuggling of luxury automobiles and yachts to wealthy markets and consumer goods to the PRC, and international credit and card frauds. The smuggling of illegal aliens not only to the United States but also to Europe is particularly extensive (Table 24.1).²

Table 24.1 A comparison of the number of people smuggled to Germany in 2000 and 1999

| People smuggled | 2000 | % result | 1999 | % change from 2000 to 1999 |
|----------------------------|-------|----------|-------|----------------------------|
| Overall number | 10320 | | 11101 | -7.0 |
| Excluding | | | | |
| Republic of Yugoslavia | 9706 | | 7372 | +31.7 |
| 1. Afghanistan | 1960 | 19 | 1744 | +12.4 |
| 2. Iraq | 917 | 8.9 | 672 | +36.5 |
| 3. India | 838 | 8.1 | 401 | +109.0 |
| 4. Romania | 780 | 7.6 | 916 | -14.9 |
| 5. Sri Lanka | 684 | 6.6 | 589 | +16.1 |
| 6. The Yugoslav Republic | 614 | 5.9 | 3729 | -83.5 |
| 7. Moldova | 610 | 5.9 | 129 | +372.9 |
| 8. China | 442 | 4.3 | 399 | +10.8 |
| 9. Turkey | 412 | 4.0 | 345 | -19.4 |
| 10. The Russian Federation | 374 | 3.6 | 103 | +263.1 |
| 11. Vietnam | 358 | 3.5 | 129 | +177.5 |
| 12. Ukraine | 323 | 3.1 | 180 | +79.4 |
| 13. Iran | 315 | 3.1 | 115 | +173.9 |
| 14. Macedonia | 156 | 1.5 | 188 | -17.0 |
| 15. Bosnia-Hercegovina | 123 | 1.2 | 72 | +70.8 |

¹ See Sabrina Adamoli, Andrea Di Nicola, Ernesto U. Savona & Paola Zofi, *Organised Crime around the World*, HEUNI, Helsinki 1998, pp. 49–57.

² See Reinhard Tomm, *Aktuelle Lagebild der Bundesrepublik Deutschland im Bereich der Schleusungskriminalitaet*, in: Mitteleuropaeische Polizeiakademie, *Schleusungskriminalitaet*, Zentraleskoordinationsbuero der MEPA, Vienna 2001, pp. 7 ff.

Transfer of Chinese Nationals to Europe³

According to information obtained from the Austrian Police (see Appendix 1: Operation Zenit), the criminal organisation consisted of multiple criminal groups that constituted its cells. Its leadership is located in Beijing. The organisation is hierarchic in structure and has a number of levels. Isolating the separate cells of the organisation, from both outside and inside, guarantees that a given cell knows only the functions of the cell located directly above it, that is, the one from which it receives the tasks it is to accomplish. Such a cell does not know anything at all, or anything specific, about the members and tasks of the cell located above it.⁴ The main tasks of the organisation's leadership in Beijing are the following:

1. Conduct a recruiting campaign in appropriate media (the press), with the purpose of finding persons who want to leave the country.
2. Determine the fee for the illegal smuggling, depending on the country of destination or target country.
3. Identify an appropriate route to the target country.
4. Provide appropriate guidance to the smuggled persons on how to behave at specific stages of the transfer.
5. Obtain Korean passports in South Korea and send them, via DHL, to Austria.
6. Completely falsify or remake the passports and other key documents (for instance, certificates for technical professions, health certificates).
7. Coordinate actions and manage cooperating cells.

Prestige Criteria of a Criminal Organisation

The prestige of a given criminal organisation depends on its effectiveness in transferring people across borders. The more effectively the organisation operates, the more people willing to leave the country will trust it. Particularly effective are those organisations that give such people a 'guarantee of effectiveness'. That is to say, the criminal organisation guarantees its 'customers' that they will be transferred to the target country even if they are stopped, perhaps many times, by the police or the customs service. Such a guarantee requires a respectively higher fee.

Cooperation between separate cells of the criminal organisation

An organisation that smuggles people across international borders can function effectively only when every one of its cells accomplishes its tasks. A specific cell is therefore dependent on the neighbouring cell. If the police or the customs service apprehends the persons being smuggled by one cell, then the neighbouring cell, which would otherwise take those people over in the next stage of the transfer, will be deprived of its work and consequently of the expected profits. So failure in one cell's operations brings not only an increase in additional costs but also a drop in the organisation's prestige, and because of word-of-mouth propaganda, a resulting decrease in the number of customers for the organisation's leadership in Beijing.

³ The information presented here has been obtained from the Austrian Police, which conducted surveillance of the activities as a part of a special operation bearing the cryptonym Operation Zenit.

⁴ For example, the Chinese nationals who were smuggled across borders on foot or by vehicle know only those who perform tasks in a given cell. They do not know who is the boss of the cell or with whom in other cells the cell cooperates. Consequently, those Chinese nationals who are apprehended in situations of this type are really in no capacity to provide any information about the leadership of the criminal organisation.

Costs, additional costs and profits of criminal groups

Every cell of the criminal organisation bears the current costs of housing and feeding the smuggled persons until they are handed on to the next cell. At the same time, every cell acts in accordance with the principle of maximising profits.⁵ Any mistakes made by a given cell may result in financial losses, which the cell has to cover from its own resources.

In the example presented above, the Austria/Vienna cell received 40 Chinese nationals from a cell operating in Hungary, with the aim of sending them on to the target country, in this case France, and more specifically Paris. The cell was obliged to cover the cost of housing and feeding these people until their further transfer. Further costs incurred by the group were related to the purchase, from a travel agency and using Korean passports, of plane tickets which were necessary to transfer them from Austria to Paris. Before the flight to Paris, the customers receive new clothing and backpacks in order to resemble regular tourists. At the moment of their leaving the flat where they are in a temporary hiding, they are clothed differently. If the smuggled persons are apprehended before they reach the target country by the police or other services, the Austria/Vienna criminal group not only will not receive the agreed payment, but will also have to cover all previously incurred costs. Moreover, if the group has given a guarantee of effectiveness, it will be obliged to take further action to ensure the customers' arrival in the target country. Consequently, they will be obliged to cover any associated expenses, which includes the purchase of plane tickets.

The process of transferring persons

For the smuggled persons, the criminal group leases specially selected flats using Korean passports. The flats are in houses located next to streets with a lot of traffic and have at least two entrances and exits. This makes an escape possible and hinders observation of the house by the police.

During the stay, the customers are guarded by the criminal group members and given food and clothing. Before the next transfer, they receive detailed instructions on their behaviour during the transfer, especially during a possible apprehension by police or customs. From the very beginning of the transfer and until arrival in the target country, they are accompanied by a designated guardian. The persons participating in the transfer receive the plane tickets and the Korean passports just before the beginning of their trip.

In the target country, the transferred persons are received by members of the local criminal organisation. The guardian who has accompanied them receives the customers' Korean passports, as well as a fee for the successful transfer, from the local organisation. The guardian then returns, by plane or train, to Austria, where he hands his boss the fee and the passports he has collected. The passports are used during future transfers, until they are taken away during a transfer from the customers by the appropriate services, or from the group guardian during his return to Austria.

Transfer fees and methods of payment

The fees depend on the category of the target country, the estimated risk to the organisation, and the type of tariff (regular or one with a guarantee of effectiveness).⁶ Definitely more expensive, because of higher risk, are transfers from Beijing to England.

⁵ For example, the Austrian police have found 40 persons awaiting the next stage of the transfer being kept in inhumane conditions in a small 50 square metre flat.

⁶ For example, the fees for some routes are indicated below: Beijing–France: between \$10 000 and \$12 000, Beijing–Madrid: \$ 12 000, Beijing–Italy: \$ 10 000.

Many methods of payment have been observed. In the case of transfers with the guarantee of effectiveness, the whole fee is paid in Beijing. In other cases, only an advance instalment is paid in Beijing, and its amount depends on the target country. Only after the customers' arrival in the target country is the remaining amount paid by their families, most often through the Western Union Bank or directly to the initiator of the transfer in Beijing. It is necessary to point out that the customers are set free in the target country or allowed to join their relatives in that country only after the remaining amount is paid.

There is another option available. The customers pay only an advance instalment depending on the target country and agree to pay off the remaining amount by working in that country. The place of their employment can be a Chinese restaurant, a factory or a brothel. The work may also consist in a temporary or permanent participation in the activities of a criminal group that deals in smuggling people.

The use of Korean passports and transfer routes

Korean passports are used to transfer customers from Austria to the target country. The reason for this is that Koreans travelling in the European Union are not required to obtain visas. The initiators of a transfer in Beijing buy such passports in South Korea, paying special attention to their quality. Good quality means a distant expiry date, which allows for their use over extended periods, as well as the possibility of using special travel fares for young people. In case of transfers by plane, such fares maximise the group's profits.

After the purchase in South Korea, the passports are sent from Beijing to a criminal group in Austria via DHL. The initiators from Beijing mark every package with an appropriate code word and the recipient's phone number. The phones used by the criminal group are prepaid mobile phones, which makes it impossible to identify their owners. When the package arrives in a DHL post in Austria, an employee calls the specified number and passes information to the recipient about the arrival of the package, which the recipient can collect after providing a certain code word. Appendix 1 of Operation Zenit, showing transfer routes, indicates that Moscow plays an essential role in transfers of persons.

Criminal groups (cells) responsible for transfers to Austria

There are three groups: Hungarian (responsible almost exclusively for customers from the Fujian Province), Czech and Slovak. Most transfers from Slovakia to Austria go through the Czech Republic. The leaders of all the groups are Chinese nationals.

European target countries and participants in the illegal process

Austrian law enforcement agencies have observed that for the criminal organisations Austria is only a transit country. The target countries are Germany, Italy, France, Spain, Holland, the United Kingdom, Portugal, Belgium, and Luxemburg. The most common method of transportation is airlines. If the destination is northern Italy, the transfer is done by train. Another observation is that the Chinese nationals participating in illegal transfers had been involved in different criminal groups constituting their organisation before they were apprehended by the Austrian police. Many suspects had been involved in the activities of similar groups in Moscow, Chechnya, the Czech Republic, Slovakia, France and Spain.

Chinese Organised Crime in the Former Eastern Bloc

In discussing the main problems of Chinese organised crime in Europe, I should, among other things, point out that we are observing the development of a different criminal subculture among the Chinese communities not only in Western Europe but also in the Central European countries of the former Eastern Bloc. These countries have undergone major political changes which have also involved the reorganisation of economic systems into free markets.⁷ Criminal organisations (both local and foreign) have benefited from the situation, using the opportunities offered by the economic systems to expand their traffic and to invest their illicit proceeds in the financial system by corrupting political figures and public officials.

Chinese criminal structures in the Czech Republic

Here one can see a constant growth of business activities, mainly in establishing new companies and opening new restaurants. A lot of capital has been invested in the Czech Republic, the origin of which is in many cases unclear. There is a presumption that because of benevolent laws a huge amount of illegal money is laundered in the Czech Republic. Because of certain difficulties caused especially by the language barrier and a very different national mentality, the information examined in various cases was not finalised into respect to a specific person. It is clear that in the Czech Republic Chinese businessmen use copious experience from abroad – establishment of companies, accountancy, dealing with relevant legislation at a very high level – so to take legal action against illegal activities covered by such cleverly organised companies is very difficult.

Roughly, it can be said that there are three groups of Chinese coming to the Czech Republic: tradesmen from poor areas of China; people who get university degrees in the Czech Republic, a vast majority of whom return to China; and people who go to the Czech Republic as a refuge from criminal prosecution for their criminal activities outside the Czech Republic.

As for relations between Vietnamese and Chinese, one can say that no significant contacts have been registered. If there are any, the Vietnamese have the role of a lower-ranked auxiliary force for rough jobs, but they are not in an equal partnership.⁸

Chinese criminal structures in Hungary

Contrary to forecasts, the number of criminal acts committed by Chinese nationals has so far been relatively low. Since the mid-1990s, a large Chinese community of almost 30 000 people has existed in Hungary. Its immigration efforts have grown stronger year by year. Initially, the Chinese people regarded Hungary as a station on the way to Western Europe. Table 24.2 shows the educational level of Chinese nationals staying in Hungary for less than a year.⁹

⁷ For more see Dilip K. Das & Otwin Marenin (eds), *Challenges of Policing Democracies: A World Perspective*, Amsterdam: Gordon & Breach Publishers, 2000.

⁸ See Police of the Czech Republic, National Anti-Drug Central and Criminal Police and Investigation Services, *Annual Report 2001*, Prague, 25 January 2002, pp. 15–16.

⁹ Data received from Central European Police Academy.

Table 24.2 Education of Chinese nationals staying in Hungary for less than a year (N=718)

| Education | % | No. of persons (approx.) |
|------------|----|--------------------------|
| Elementary | 20 | 144 |
| Secondary | 52 | 373 |
| University | 28 | 201 |

Meanwhile, Hungary has become a target country for their migration, so the number of crimes committed by these immigrants has increased. The number of crimes against public order committed with their participation has doubled since 1995; nevertheless, the most numerous crime is falsification of documents, such as various manipulations with passports and residence permits, which are usually connected with further violations of the statute on foreigners.

Those Chinese nationals who conduct trade in Hungary have, for the most part, legally issued permits allowing them to stay and conduct trade; this corresponds with their way of life, which stresses the need to abide by existing norms. Table 24.3 shows the preoccupation of the Chinese nationals staying in Hungary for more than a year.¹⁰

Table 24.3 Occupation of Chinese nationals that stay in Hungary for more than a year (N=4663)

| Occupation | % | No. of persons (approx.) |
|----------------|----|--------------------------|
| Trader | 75 | 3497 |
| Student | 4 | 187 |
| Stay-by-family | 6 | 280 |
| Householder | 5 | 233 |
| Other | 10 | 466 |

Only the yearly occurrence of mutilations and murders indicates that every so often violent conflict takes place between competing groups. The trade activity of the Chinese in Hungary focuses on open marketplaces – called Chinese markets – where the main category of goods are mass-produced industrial goods such as clothing and household supplies. This type of economic activity can easily be controlled by both the police and security agencies which are present at the marketplaces.

The largest section (90–95 per cent) of the foreigners who perpetrate criminal acts in Hungary has always been, and still is, of European origin. Asians constitute 6–7 per cent, Africans about 2 per cent, and Americans between 1 and 1.2 per cent. Statistical data show that the most common perpetrators are Romanians, Yugoslavs, Ukrainians, Poles, Slovaks, Croats and Germans (see Appendix 2 and 3 concerning ranking

¹⁰ Ibid.

of criminal activity).¹¹ For the most part, they have committed single crimes, but some, especially those belonging to the category of professional criminals, have committed multiple criminal acts. As far as the sex of the perpetrators is concerned, among the Romanian, Ukrainian, Polish and Russian criminals a large fraction are women. At the same time, participation of women in criminal activity is not at all typical among Yugoslavs, Germans, Austrians and Chinese.¹²

With respect to the statistical data shown in Table 24.4, it is necessary to highlight the fact that criminal activity by Chinese nationals is low because both the victims and the perpetrators are of Chinese origin.

Table 24.4 Main fields of activity of the Chinese criminals in Hungary

| Crime | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|------|------|------|------|------|
| Murder | 2 | 2 | 2 | 5 | – |
| Injuries | 4 | 9 | 2 | 7 | 6 |
| Crimes to do with safety of the transport | 17 | 16 | 22 | 16 | 14 |
| Crimes against the public administration | 8 | 5 | 12 | 63 | 20 |
| Crimes against the public order | 46 | 73 | 69 | 68 | 102 |
| Crimes connected with drugs | – | – | – | – | – |
| Economic crimes | 20 | 48 | 32 | 46 | 41 |
| Crimes against property | 6 | 9 | 16 | 18 | 15 |
| Theft | 3 | – | 1 | 9 | 1 |
| Robbery | – | 1 | 7 | 1 | 2 |
| Car theft | – | – | – | – | 1 |

Crimes committed within an ethnic group are hardly ever reported to the police. The reason for such behaviour among victims is, first of all, a fear of repressive action on the part of their community, and second, the fact that the Chinese community handles the punishment of perpetrators or tries to resolve conflicts through informal reconciliation.

¹¹ For more on this issue see Szilveszter Poczik, *Auslaendische Straftaeter in Ungarn im Spiegel der Kriminalstatistik – Ueberblick von den 10 letzten Jahren*, in: Mitteleuropaeische Polizeiakademie, Internationale kriminelle Gruppen, Zentraleskoordinationsbuero der MEPA, Vienna, 2001, pp. 60 ff.

¹² *Ibid.*, p. 63.

Table 24.5 Number of crimes and victims involving Chinese citizens in Hungary, 1999–2001

| | Crimes committed by the Chinese | | | Crimes in which the Chinese were victims | | |
|---|------------------------------------|------|------|---|------|------|
| | 1999 | 2000 | 2001 | 1999 | 2000 | 2001 |
| Crimes against the person | 5 | 6 | 1 | 11 | 10 | 5 |
| Murder | 0 | 0 | 0 | 0 | 2 | 1 |
| Injuries | 5 | 2 | 1 | 10 | 6 | 2 |
| Crimes against safety in transport | 14 | 9 | 7 | 2 | 0 | 0 |
| Crimes against marriage, family and youth | 0 | 0 | 0 | 0 | 0 | 0 |
| Crimes against the public administration, justice and the transparency in public life (e.g. illegal stay, violating the ban on border-crossing) | 18 | 73 | 30 | 0 | 0 | 0 |
| Crimes against the public order (e.g. counterfeit, the abuse of document) | 104 | 166 | 107 | 6 | 1 | 4 |
| Economic crimes | 37 | 32 | 29 | 0 | 0 | 0 |
| Crimes against property | 13 | 8 | 22 | 233 | 158 | 152 |
| – theft | 1 | 1 | 5 | 164 | 93 | 80 |
| – robbery | 2 | 1 | 0 | 20 | 11 | 15 |
| Crimes in total | 191 | 294 | 196 | 252 | 169 | 161 |

As we see, the social organisation of the Chinese community, traditionally focused on family and society, hinders explanation of existing social and sociological and criminal relations in their groups. According to Hungarian experts, one cannot completely exclude the possibility that the presence of a systematically expanding Chinese community may in the future pose a threat even to the national security of the country.

Chinese nationals in Poland: The case of Mr Man Dugeqi and Ms Jinge

On 24 July 1994 the Chinese Security Services issued warrants of arrest against Mr Man Dugeqi and Ms Jinge on charges of fraud under Article 152 of the Chinese Act on Penalties. They were charged with misappropriation of property of approximately 10 million yuan, that is, US\$2.1 million. On 10 August 1996 the applicants were apprehended by the police at the border and arrested at Warsaw Oklcie International Airport by virtue of an international warrant of arrest issued by Interpol in November 1994 upon request of the Chinese branch of Interpol.

On 11 August 1996 the Warsaw Regional Court remanded them in custody with a view to extradition on suspicion of fraud. On 2 September 1996 the Chinese Ministry of Foreign Affairs submitted a request for extradition to the Polish Government. On 14 October 1996 Mr Man Dugeqi and Ms Jinge were heard by the Warsaw Regional Court within the framework of the extradition proceedings. On 7 February 1997 the

Warsaw Regional Court pronounced an opinion on the admissibility of extraditing Mr Man Dugeqi and Ms Jinge.

- The Regional Court considered that it transpired from the documents submitted with the request for extradition that the charges against the applicants were punishable under the Polish Criminal Code. Thus the necessary requirement for extradition, that the acts concerned were punishable in both countries, was complied with.
- The Regional Court went on to state that the condition of reciprocity between Poland and China was not met as there was no treaty on extradition between Poland and China and that there had been no case of extradition between these countries in recent years. Thus it could not be established that China would ensure reciprocity.
- The Court further considered that the applicants' extradition would be in breach of Article 3 of the Convention. It transpired from the explanations given by the applicants before the Court and from the materials submitted by Amnesty International, in particular from its Report for 1995, that there were serious grounds for believing that, if extradited, the persons extradited, regardless of the character of their offence, would be subjected to treatment contrary to Article 3 of the Convention both during the investigation and during the execution of a prison sentence.

The Court concluded that in its opinion the applicants' extradition would not be compatible with the Polish legal order in so far as it incorporated the international conventions ratified by Poland and in particular the European Convention on Human Rights.

On 11 February 1997 the Warsaw Regional Prosecutor lodged an appeal against the opinion. On 7 March the Warsaw Court of Appeal quashed the opinion of 7 February and pronounced an opinion to the effect that the applicants' extradition would be admissible. The Court further had regard to the information submitted in the extradition request, that is, that criminal proceedings had been instituted against the applicants in which the public prosecutor had conducted a 'thorough investigation as to the frauds committed' by them, and to the summary of facts, supported by evidence, as to the offences with which the applicants had been charged which had been annexed to the extradition request. The Court of Appeal further observed that it had not disregarded the arguments submitted by the applicants, based on the reports of Amnesty International.

The Court of Appeal finally concluded that in the light of these considerations, neither the applicants' actual social position nor the character of the charges against them, which were far from being of a political character, would justify the conclusion that they ran a risk of being subjected to such an extreme form of discrimination as to fall within the scope of Article 3 of the Convention. The Court concluded that there were no legal obstacles to the applicants' extradition.

On 18 March 1997 the Warsaw Court of Appeal prolonged the applicants' detention pending extradition until 20 July 1997. On 13 April the applicants lodged an appeal in cassation with the Supreme Court. On 29 July the Supreme Court rendered a decision in the cassation proceedings. The Court considered that under Article 1 of the Convention the States Parties were obliged to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. This article has applied to Chinese citizens who are staying in Poland.

Article 3 of the Convention prohibits torture, and inhuman and degrading treatment. Thus a decision by a Contracting State to extradite a fugitive might give rise to an issue under Article 3. It was not necessary to have established with certainty that the extradited person would not be subject to treatment contrary to this provision. The Supreme Court further considered that the applicants' extradition would be in breach of Article 3 of the Convention. It transpired from the explanations given by the applicants before the Court and from the materials submitted by Amnesty International. The Amnesty report states Mr Mandugeqi and Ms Jinge could be treated in China in a way that conflicted with the Convention.¹⁴

Poland as a country of interest to Chinese criminal groups

No signs of activity by Chinese criminal groups have been identified in Poland so far. A system of monitoring ethnic criminal groups is currently being introduced. Nevertheless, there are reasons to believe that Poland is a country of interest to Chinese groups which have been operating in Hungary for several years. In the 1990s a number of firms, controlled by Chinese nationals and serving as a cover for criminal activities, were established in Hungary. Their legal forms of business are most often bars and restaurants, as well as restricted massage clubs and paramedical centres. The most common criminal activity is drug trafficking (heroin). Some signs have been observed which indicate that in 2001 the first representatives of the groups, after multiple visits lasting up to 20 days, were planning to settle in Poland, in the Mazowsze region, in towns located in the direct vicinity of Warsaw.

Conclusions

Foreigner-related crime is a phenomenon which on a worldwide scale shows not only a dynamic upward tendency but also that it is undergoing vital quality changes. In Europe this is proved by many years' experience of Western European countries, confronted with more and more dangerous aspects of foreigner-related crime, especially of an organised kind. Members of Chinese criminal subculture include import-export businessmen, community leaders, restaurant owners, workers, gamblers, housewives, and the unemployed. It is difficult to penetrate this subculture because members have no prior criminal records, no identifiable organisation, and no rigid structure, nor clearly defined deviant norms and values. They can conceal their criminal activities through their involvement in lawful business activities.¹⁵

The biggest problem we face today is the increase in transnational crime. According to representatives of law enforcement agencies, those involved in combating the illegal transfer of persons across international borders believe that only countering the 'roots' of this criminal activity can bring positive results. This means that it is necessary to take appropriate preventive and repressive measures in the source country and

¹⁴ Under Article 534 #1 of the Polish Code of Criminal Procedure the request for extradition shall be refused if the person concerned is a Polish citizen or has been granted asylum in Poland. Under Article 534 #2 extradition may be refused: 1. if the criminal offence was committed within the territorial jurisdiction of Poland; 2. if criminal proceedings concerning the same act committed by the same person are pending, were pending or ended by a final decision in Poland; 3. if under the law of the requesting State the offence concerned is subject to a penalty not exceeding one year or to a lesser penalty, or the penalty imposed does not exceed this period; 4. if pursuant to Polish law the offence is subject to private prosecution; and 5. if the requesting State does not guarantee reciprocity.

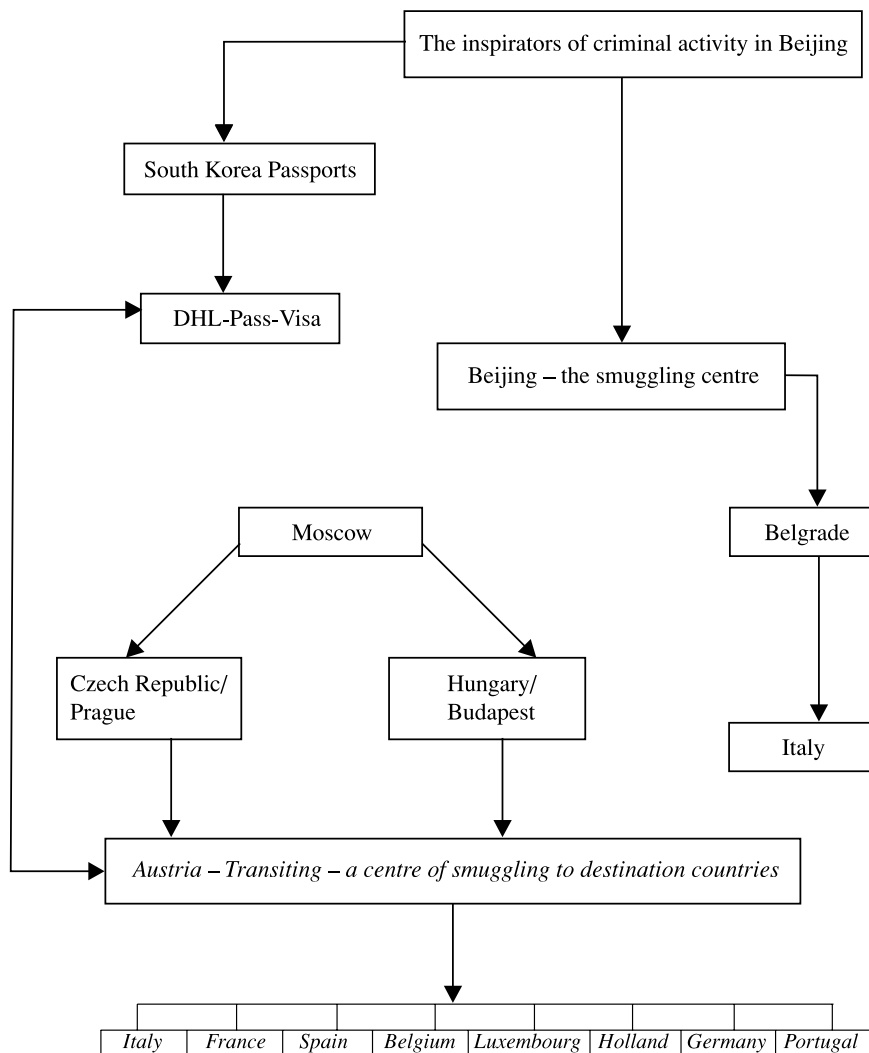
¹⁵ See Sheldon Zhang and Ko-lin Chin, 'Snakeheads: Chinese Human Trafficking Organizations', paper delivered at the International Conference on 'Strategies of the EU and the US in Combating Transnational Organized Crime', Ghent/Belgium, 23–26 January 2001.

to obtain the cooperation of this country with law enforcement and judicial institutions in transit and target countries.¹⁶

Globalisation, an increasingly border-free world, and technological advances offer many opportunities for all human beings, but also for criminals. By using the opportunities of new technology such as modern banking, criminals make use of the advantages of globalisation. This development requires worldwide cooperation and new solutions.

Appendix 1

Figure 24.1 Operation Zenit



¹⁶ See He Bingsong, 'Organized Crime: A Perspective from China'. In Jay S. Albanese, Dilip K. Das & Arwind Verma (eds), *Organized Crime: World Perspectives*, Upper Saddle River NJ: Prentice Hall, 2003, pp. 288 ff.

Appendix 2

24.6 Criminals according to nationality and the number of crimes committed 1989–1999 in Hungary

| Year/ Nationality | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|----------------------|---------------|---------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| 1 | Poles | Poles | Romanians | Romanians | Romanians | Romanians | Romanians | Romanians | Romanians | Romanians | Romanians |
| 2 | Germans | Romanians | Poles | Ukrainians | Yugoslavs | Yugoslavs | Yugoslavs | Yugoslavs | Yugoslavs | Yugoslavs | Yugoslavs |
| 3 | Austrians | USSR | CIS | Yugoslavs | Ukrainians | Ukrainians | Ukrainians | Germans | Germans | Germans | Ukrainians |
| 4 | Citizens the | USSR | Yugoslavs | CIS | Germans | Germans | Germans | Ukrainians | Ukrainians | Ukrainians | Slovaks |
| 5 | Yugoslavs | Germans | Germans | Poles | Austrians | Bulgarians | Austrians | Austrians | Austrians | Slovaks | Germans |
| 6 | Romanians | Austrians | Bulgarians | Germans | Poles | Poles | Turks | Poles | Poles | Croatians | Croatians |
| 7 | Czechoslovaks | Czechoslovaks | Austrians | Bulgarians | Bulgarians | Austrians | Chinese | Chinese | Chinese | Austrians | Austrians |
| 8 | Bulgarians | Bulgarians | – | Russians | Russians | Russians | Poles | Croatians | Croatians | Chinese | Chinese |
| 9 | Vietnamese | Vietnamese | – | Austrians | Slovaks | Slovaks | Croatians | Bulgarians | Bulgarians | Bosnians | Bosnians |
| 10 | – | – | – | – | Croatians | Croatians | Russians | Slovaks | Slovaks | Bulgarians | Bulgarians |

Source: Hungarian statistical data; USSR = Union of Soviet Socialist Republics; CIS = Commonwealth of Independent States (i.e. the former USSR).

24.7 Foreign criminals and their share in major crimes in Hungary

| Years/ Nationality | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|---------------------------|-------------------------|-------------------------|-------------------------|------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Poles | 1728/1948 38.3/38.9% | 1721/1850 29.1/29.0% | 837/1085 15.0/11.3% | 342/380 6.0/5.0% | 217/353 3.9/1.5% | 185/652 3.3/5.3% | 147/209 2.5/1.7% | 124/177 2.6/2.2% | 179/315 3.6/3.0% | - | - |
| Romanians | 245/269 5.3/5.3% | 1269/1410 21.5/22.0% | 1892/3209 34.0/33.6% | 2080/2890 36.2/40% | 1949/4094 34.8/17.5% | 2131/6534 37.8/53.1% | 2017/5812 33.7/49.1% | 1593/3123 33.7/39.0% | 1818/4170 37.0/40.2% | 2135/3534 30.5/29.1% | 2142/3036 33.5/30.4% |
| USSR/CIS | 253/277 5.4/5.5% | 586/613 9.9/9.6% | 799/1058 14.3/11.0% | 394/368 6.9/5.1% | - | - | - | - | - | - | - |
| Russians | - | - | - | 198/262 3.4/3.6% | 185/190 3.3/0.8% | 120/151 2.1/1.2% | 119/150 2.0/1.3% | 101/109 2.1/1.3% | 68/- 1.4/-% | - | - |
| Ukrainians | - | - | - | 515/523 9.7/7.2% | 511/557 9.1/2.4% | 390/400 6.9/3.3% | 468/588 7.8/5.0% | 322/505 6.8/6.3% | 267/465 5.4/3.8% | 308/435 4.4/4.4% | 315/445 4.9/4.5% |
| Yugoslavians/ Serbians | 248/254 5.3/5.0% | 557/635 9.4/10.0% | 449/820 8.1/8.6% | 504/594 8.8/8.6% | 736/8741 3.1/3.7% | 1088/1572 19.3/12.8% | - | 17.3/13.8% | 16.3/94% | 31.1/21.7% | 22.8/21.3% |
| Slovenians | - | - | - | - | - | - | - | - | 76/- 1.5/-% | - | - |
| Croatians | - | - | - | - | 92/166 1.6/0.7% | 114/206 2.0/1.7% | 130/163 2.2/1.4% | 119/137 2.5/1.7% | 116/152 2.4/1.2% | 118/320 1.7/3.2% | 131/288 2.0/2.9% |
| Germans | 940/955 20.2/19.0% | 316/338 5.3/5.2% | 324/506 5.8/5.3% | 340/449 5.9/6.2% | 311/991 5.6/4.2% | 307/362 5.4/2.9% | 305/411 5.1/3.5% | 263/761 5.6/9.5% | 297/369 6.0/3.6% | 338/863 4.8/7.1% | 377/424 5.9/4.2% |
| Austrians | 472/498 10.1/10.0% | 312/336 5.3/5.2% | 241/306 4.3/3.2% | 198/206 3.4/2.9% | 204/209 3.6/0.9% | 157/192 2.8/1.6% | 218/274 3.6/2.3% | 149/175 3.1/2.2% | 197/2366 4.0/22.8% | 185/234 2.6/1.9% | 237/263 3.7/2.6% |
| Czechoslovaks | 152/155 3.3/3.0% | 210/201 3.6/3.1% | - | - | - | - | - | - | - | - | - |
| Slovaks | - | - | - | - | 68/83 1.2/0.4% | 115/232 2.0/1.8% | - | 98/280 2.1/3.5% | 93/196 3.9/1.8% | 122/387 1.7/3.9% | 137/426 2.1/4.3% |
| Bulgarians | 70/76 1.5/1.5% | 167/179 2.8/2.8% | 253/427 4.5/4.4% | 229/281 4.0/3.9% | 203/252 3.6/1.0% | 207/239 3.7/1.9% | - | 94/113 2.0/5.7% | 109/- 2.2/-% | 150/172 2.1/1.7% | 92/110 1.4/1.1% |
| Chinese | - | - | - | - | - | - | 92/105 1.5/0.8% | 131/163 2.8/2.0% | 163/163 3.3/1.6% | 164/223 2.3/1.8% | 190/199 3.0/1.9% |
| Turks | - | - | - | - | - | - | 190/315 3.2/2.7% | 148/174 3.1/2.2% | 72/123 1.5/1.0% | 111/160 1.6/1.6% | - |
| Others | 544/572 10.6/11.8% | 772/838 13.1/13.1% | 774/2129 14.0/22.6% | 940/1239 15.7/17.5% | 1125/7815 30.2/66.9% | 1729/1742 14.7/14.4% | 2300/3810 38.4/32.2% | 774/1178 16.4/10.6% | 667/1091 11.5/11.6% | 1193/3170 17.2/23.6% | 1319/2665 20.7/26.8% |
| Total | 4652/5004 100/100% | 5910/6400 100/100% | 5569/9540 100/100% | 5740/7192 100/100% | 5601/23451 10/100% | 6543/12282 100/100% | 5986/11837 100/100% | 4733/7999 100/100% | 4923/10381 100/100% | 7001/12136 100/100% | 6401/9984 100/100% |

Note: In each cell is the number of criminals/the number of crimes they committed, and their respective percentages.

25

Organised Crime and Its Control in PR China

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Organised crime is a serious type of crime to which states all over the world pay much attention. However, it has no unified or recognised definition. In my opinion, organised crime is of three kinds: criminal groups, criminal syndicates, and Mafia-type activities. Of these, the criminal group is a fairly steady organisation, consisting of at least three members who plan to commit crimes jointly. The criminal syndicate is a proper legal concept in PR China, indicating those criminal groups with the nature and characteristics of underworld society but smaller in scale and degree. The syndicate stands between the criminal group and the underworld society. In the Criminal Law of the People's Republic of China, a criminal syndicate refers to criminal groups that commit organised crimes by using force, threat or other violent methods, by adversely affecting the life of local people, and by causing serious damage to the economy and to public order.¹ The 'underworld society' is an English term referring to those criminal organisations that have the capacity to exercise an illegal control over people or society on a large scale. These three types are seen as the elementary, intermediate and advanced stage of organised crime according to their form, level of development, and the harm they do to society. Focusing on the present situation of crime and law enforcement in PR China, this essay will discuss criminal syndicates.

The Present Situation and Characteristics of Criminal Syndicates

According to the explanation about the first paragraph of Article 294 of the 'Criminal Law by the Standing Committee of the National People's Congress', the criminal syndicate has the following general characteristics:

1. It is a tightly structured organisation with a large membership and an inner core of leaders.
2. Its economic interests supply it with a large amount of money with which to commit large-scale crime.
3. It tends to operate by blackmail, mass affray, intentional injury by using force, menace or other means, and by repeating such crimes.
4. By exercising an illegal control, and particularly by using officials' protection and connivance, it causes serious damage to the economy and social order within specific regions or industries.²

There are timely stipulations by the Standing Committee of the National People's Congress to strengthen the restraint of crimes committed by gangland criminal syndicates when the situation is serious.

Crime by criminal syndicates, while not yet a huge problem in PR China, nevertheless does exist. It emerged in the 1980s in Guangdong, Hainan, Hu'nan and other provinces, and has expanded from south to north

¹ Criminal Law of PRC, modified in 1997, Article 294

² It was passed on the 27th meeting of the Standing Committee of the ninth NPC on April 28, 2002.

and from coastal areas to the hinterland. According to relevant data, the judicial body of Guangdong Province had found and dealt with over 800 such organisations and similar criminal groups; the members of all of these groups reached 3917.³ In order to achieve greater success in the struggle against syndicate crime, Article 294 of the 1997 Criminal Law adds three new crimes:

- the crime of organising, leading or joining criminal syndicates;
- the crime of entering China and developing criminal syndicates; and
- the crime of shielding or conniving in the activities of criminal syndicates.

Based on these provisions, judicial bodies reinforce the restraint of these types of crime. Unfortunately, crime by criminal syndicates is still rampant and has become one of the most serious crimes at present in China.

The characteristics of the criminal syndicate at present operating in PR China are as follows:

Tightly structured organisation and large membership

Criminal syndicates in PR China normally have a specific leading group with a fixed core, rigorous internal duty division and strict discipline. For example, there is a criminal syndicate in Nancun county, Fanyu city, Guangdong Province, the leader of which is a person named Zeng Jinjun (hereafter groups will be referred to by their leader's name). This group has held a formal alignment function, specified power grading and relevant ascriptions, established gang rules, and made duty divisions among the members. There are nine ringleaders, each of whom controls four to eight 'boys', and each 'boy' is given RMB 10 000 to commit illegal practices. This group also has very strict 'family rules', according to which the lower level must obey the higher without question, must report and ask for instruction when dealing with criminal activities, must be totally loyal to the group and must never drop out from it. Anyone who violates the 'family rules' would suffer finger chopping, leg breaking, or even would be killed.⁴ Whoever wants to join such a criminal group would normally undergo a thorough examination. In the 'Zhang jun' syndicate, the condition of joining is having killed at least one person. These syndicates generally have ten persons or more but in the larger ones the number can go beyond 100.

Committing barbaric crimes by using force or other illegal means

Criminal syndicates often resort to physical violence. The 'Hai zaiwen' syndicate, which was arrested by judicial bodies in Qiongzhou city, Hainan Province, had been picking quarrels, provoking troubles and slaughtering innocent people in local places. Most groups have advanced weapons, and they often use firearms, most of which are military firearms. Some groups even produce and sell firearms and ammunition. In Chengdu city, Sichuan Province, police cracked an underworld group in a firearms-related case titled '3.1'; the ringleader of that group had submachine guns in his private car. In Shandong Province, police cracked the 'Xu zongtao' syndicate, whose membership had reached 92. This group had a large cache of firearms and ammunition with which they had committed 86 crimes, causing many deaths and injuries. Criminals commit crimes with firearms and sometimes slaughter the innocent people. For example, in Yingkou city, Liaoning

³ Special Topic: About the Gangland Criminal Syndicate Crime, published in the Criminal Hearing Reference, the 5th volume, 2001, edited by the first and second criminal court under the Supreme People's Court, Publishing House of Law, p.78.

⁴ Huang kui: Analysis on the Structure of the Gangland Criminal Syndicate, published on the Postgraduates' Jurisprudence, the 1st volume, 2001.

Province, the 'Duan shi' group injured over 120 people with firearms. In Guangdong province, Guo hua, the ringleader of the 'Ax Gang', one of the gangland syndicates, had his countryman Wang junming 'chopped' for refusing to hand in protection money and for going to the police. He suffered 27 gashes to the left arm, six to the right arm, and had ten fingers gashed and five removed.⁵ All this amazing cruelty is for one purpose only: retaliation.

Making huge profits through economic interests

Depending on their economic strength, the aim of Chinese criminal syndicates is to make huge profits. While a syndicate is forming, it makes money mostly by brigandage, looting and hijacking, sometimes by dunning, retaliating, collecting protecting fees, racketeering, loaning dear money, abducting and so on. For example, the 'Li quanfa' criminal group had over 100 members in Yichang city, Hubei Province. It was divided into a fish gang, vegetable gang, fruit gang, clothes gang, and passenger-transporting gang, and established a pistol team, sword team and so on. It had hijacked vehicles and ships and racketeered, and the protection money it collected each year had reached RMB 400 000. Some of the criminal groups make money by monopolising one or more industries. For example, the 'Pan jiachang' criminal group in Qiqihaer city, Heilongjiang Province, had controlled the vegetable market, fruit market and steel market of the whole city, with hired roughnecks racketeering in firearms in these markets.

When they are big enough and have enough money, criminal syndicates establish enterprises that look legitimate, such as companies or factories, dance halls, restaurants or holiday villages. Their commercial and criminal activities depend on each other. For example, in Jiangsu Province, police found 19 contractual and equity joint ventures established by 18 overseas gangland criminal syndicate members in Nanjing, Wuxi and other places. Some of these enterprises engaged in illegal businesses such as money-laundering, smuggling, transporting drugs, gambling and so on, and some of them engaged in legal businesses. Whatever means they use, they get hold of more and more money to commit further crimes. For example, the 'liu yong' gangland criminal syndicate in Shengyang city, Liaoning Province, established the Jiayang Group in 1995. It engaged in trade, fashion, restaurants, entertainment, real estate, and so on, and had 26 subordinate companies, 2500 staff members and over RMB 700 million in assets.

Penetrating government for protection

For their survival and growth, criminal syndicates even penetrate government by all available means. The inducements are often bribery and sex, and they and also blackmail civil servants, some of whom have been forced to take part in a syndicate's illegal activities or act as a shield for its members. Almost all criminal syndicates cracked by police nowadays have government protection. For example, protection for the 'Yushi Three Brothers' criminal group in Jiling Province is provided by the police of the county public security bureau; that of the 'Yu ling' syndicate by the deputy director of the city public security bureau; that of the 'Zhuang xiangji' syndicate by the former head of the county. The 'Zhang wei' organisation syndicate corrupted 184 civil servants, 42 of whom work in Party and government organisations, 15 in judicial bodies, and ten in financial organisations; among them there are several VIPs of Wuling city such as the former mayor, the former director of city public security bureau and so on. The 'Liu yong' syndicate has three shields: the former chief procurator of the procuratorate of Shengyang (his nominal father), the former deputy director of the labour bureau of Heping District (his nominal mother), and the former deputy dean of the city's intermediate people's court (his fancy woman).

⁵ Details are in the South Weekends, June 25, 2001.

Another way the syndicates use is grasping at political power by various means. For example, Zhang wei, the ringleader of a syndicate in Wenlin, Zhejiang Province, made a large amount of money illegally, after which he sought to change his public image. He took, successively, the positions of deputy chairman of the political consultative conference of Yidu city, Hubei Province, honorary proprietor of a newspaper, *Zhejiang Law Affairs*, deputy president of the Young Enterprise Association of Taizhou city, and so on. Liu yong, ringleader of the criminal syndicate in Shengyang city, was one of representatives of the city's people's congress. To have both protection and political power is to control the society, and to control the society is to facilitate criminal commitments. In this way criminal syndicates do serious harm to the society.

Objectively speaking, underworld societies such as the Mafia in Italy and the 14K in Hong Kong have not emerged at the present time in PR China. However, we cannot deny that a few criminal syndicates have emerged. To admit this can only do good to our theory and practice in this field; gaps in our knowledge of these things would lead to mistakes in policy, resulting in increasing opportunities for the underworld societies.

Causes of the Formation of Criminal Syndicates

There are several causes for the development of criminal syndicates in PR China, such as the influence from feudal underworld gangs, an anti-social mentality, cultural and moral factors, the weakening of social control mechanisms, and political protection. Here the focus is on the factors which facilitate the development of these syndicates in present-day Chinese society.

Unemployment

The transition from a planned economy to a market economy in China saw a greatly improved labour force, but it also saw unfairness and inequality in the distribution of wealth and in the structural transformation and even bankruptcy of the state-owned enterprises (SOEs). The demise of the SOEs caused an army of millions of laid-off workers. This huge number of unemployed, together with the labour force newly entering the labour market, caused tremendous market pressure. According to a preliminary estimate, over 20 million people reach employment age in Chinese cities every year, from the 1990s to the year 2000, while the annual number of people who retire from the labour market is under 9 million. That means a net increase of over 11 million labourers every year. But the labour market can only accommodate 7.3 million workers annually. When their material and mental needs cannot be met by legitimate work, these unemployed people easily develop an anti-social mentality, and some of them form criminal gangs.

Moreover, a huge number of surplus workers in the countryside drift to the cities, which forms waves of migration in Chinese society. On one hand these migrant workers contribute to the development of the cities, on the other they suffer from discrimination and exclusion by the urban residents. With the unfair treatment, some of the migrants develop dissatisfaction and hostility towards the urban residents. When this hostile mentality develops to a certain level, the migrants will release it by irrational means such as committing crime. Other rural migrants resort to theft and robbery when they cannot find a job in the cities. According to statistics released by the Shenzhen Public Security Bureau, among the serious criminal cases of robbery, homicide, rape, prostitution, and drug trafficking, over 90 per cent of the offenders are the so-called 'three-no' migrants from the countryside: no ID card, no residence permit and no work permit. In large cities with a large number of migrants, these people, based on their geographic origins, gather in certain areas,

such as Xinjiang village and Zhejiang village. They help each other in everyday life, including committing crime. Thus it is possible for them to develop into criminal organisations that take on the nature of criminal syndicates.

Multiple economic elements coexist with each other, which serves as the economic base for the development of criminal syndicates

Currently in China the economic structure is one of public ownership with several coexistent economic elements. Although the private sector contributes substantially to economic prosperity and the rise of living standards, it possibly also provides opportunities for criminals to commit organised crime due to the problems of social control mechanisms.

The rampant growth of pornography, gambling and drugs provides conditions for the birth of criminal syndicates

Since PR China's implementation of economic reform and open door policy, pornography, gambling and drugs have spread rapidly in the mainland. From official statistics, currently there are over 3 million drug abusers in mainland China, and over 10 million prostitutes and pimps. Activities such as drug trafficking and prostitution are closely related to secret societies and provide capital for the criminal organisations. In the coastal areas, the involvement of criminal organisations in the sex industry is an open secret. For example, in Haifeng and Lufeng of Guangdong Province, members of two secret societies extorted protection money from the local restaurants and waitresses. Every restaurant was forced to pay \$200 per month, and every waitress pays \$20 per night, and even every customer was forced to pay \$10.

The weakening of social control mechanisms provides conditions for secret societies to strengthen their forces

At present Chinese society is undergoing profound social transformation. The earlier uniting power of the state is decreasing, social control structures in the villages are dying, and the organising and mobilising power of society in general is diminishing. All of this provides conditions for the growth of organisations such as criminal syndicates. In some areas, clan forces override local government bodies such as the village committee, and clan power replaces the authority of local government. The revival of clan power not only disrupts the healthy operation of local government, but it is also easily used by criminals, and thus secret societies have come to dominate local affairs. For example, in Wenzhou city of Zhejiang Province, the criminal organisation established by Xu Haiou is centred on clan forces. They used clan influences to recruit criminals and develop criminal forces. Their organisation was based on extended family membership, thus attracting a lot of people to join. From 1992 to 1995, this organisation committed a wide range of crime such as homicide, robbery, kidnapping, smuggling, fraud, extortion, racketeering, and illegal imprisonment. Altogether they committed 136 offences, killed one person, injured 30, and destroyed over 40 factories, houses, and shops; the money they made from smuggling, extortion and racketeering came to over \$2 million.

The worsening of political corruption leads to the development of criminal syndicates

In contemporary societies, the development of secret society crime is closely related to political corruption. Currently in PR China, corruption and embezzlement have spread into the Party and the state fabric and into the economic and political spheres, and in some areas some government officials even commit corruption collectively. The so-called 'brotherhood incident' in Jinxian county of Hebei Province is such an example.

Eighteen powerful people of this county, including bosses of enterprises, editors of local television stations, the members of the county regulatory committee, the chief of the county department of finance, the chief of the county transportation, the vice-president of the county legal and political committee, and the leaders of the police, procuratorate, and the courts, and the husband of the deputy country governor, treated each other as brothers and made a commitment of mutual help. Corruption provides opportunities to criminals, who are desperate for political backing and protection. After taking bribes, some of the corrupted officials abused their power to protect the criminal organisations regardless of the interests of the state and the people.

Countermeasures Against Criminal Syndicates

From the above analysis of the causal factors of criminal syndicate crime, I think the following countermeasures should be adopted to control organised crime in PR China.

First, it is necessary to work at improving legislation, and to strengthen law enforcement. In the current criminal law there are inadequacies in the stipulations on criminal syndicate crime:

- The definition on this type of crime is not clear and is too broad, and is easy to confuse with ordinary criminal gangs.
- The maximum penalty of ten years' imprisonment is too lenient, and is not sufficient for a crime with such huge social consequences.
- Singularity of penalty. For those criminal syndicates with economic interests as the basic goal, property punishment should be imposed.

So based on the experience of legislation against organised crime in foreign countries on the one hand, and practical experience gained in the suppression of organised crime domestically on the other, it should be clearly stated in the criminal law that penalties should be more severe, and such punishment as over ten years' imprisonment, life imprisonment and even death should be introduced for serious offenders. Meanwhile, fines and confiscation of property should be introduced in order to provide legal weapons for the suppression of secret society crime, and to legitimate the fight against it.

Second, the fight should be linked to the suppression of corruption, so as to destroy the political protection of criminal syndicates. Measures should be adopted to educate the cadres of the government and the Party, and especially officials in the criminal justice system, so as to build an honest and clean government. Corruption should be severely punished. Meanwhile, a system of surveillance and supervision should be constructed, together with the leaders' responsibility system and accountability system. The purpose is to clear the social forces protecting criminal syndicates.

Third, social integration should be strengthened and social inequality reduced, in order to destroy the reasons why criminal syndicates form. As stated above, irrationality in social structure, inequality in social distribution, the widening gap between poor and rich, the increase in laid-off workers, and the inadequacies in controlling rural migrants, form an important social foundation for the development of criminal syndicates.

To curb the spread of these organisations, it is inefficient to just focus on destroying individual organisations. Instead, the focus should be on readjusting the social structure, strengthening social integration, and solving practical social problems.

Moreover, a special agency of working against syndicate crime should be established, the public should be mobilised to participate in the crackdown, the campaign of 'The Comprehensive Management of Public Order' should be further developed, and international cooperation should be strengthened. These should go some way towards dealing with criminal syndicates.



PART VI
CRIMES AND CRIMINALS

26

Descriptive and Comparative Views of Offending Shanghai and Brisbane Juveniles Compared

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The use of comparative criminology is on the increase, and this tool is applied especially to Western and Asian cultures. The potential value of comparative studies lies in the possibility of identifying common and unique features of crime in different countries. Comparative studies are also of great value to public policy since they can provide a perspective on a country's crime problem (rates, patterns and so forth) and the ways in which similar problems are experienced and dealt with in other countries.

Australia and China are quite different countries with different social structures, cultures and populations. Australia is a liberal democratic society, and law plays a very important role. By contrast, traditional mechanisms of social control in China are personal ethics and an emphasis on the importance of mediation and the family in maintaining social order and harmony. At present, China is undergoing a major process of social transition, moving from a centralised economic planning system to a relatively decentralised socialist market system, from a policy of national isolation to an 'open door' policy (Gaylord 2000). The rapid economic growth that has taken place since China's adoption of this policy has brought about many positive changes. Politically, China occupies a pivotal strategic position and its weight in the international system is increasing. Socially, the orientation of the people and the tone of society have changed dramatically. Economically, the growth rate in the past two decades can rightly be regarded as a miracle, and accordingly, people's living standard has improved greatly. Yet rising living standards have been accompanied by rapid urbanisation, the emergence of an increasingly large transient population, corruption, inefficient law enforcement, a materialistic value system, and so on. These problems, among others, have helped prepare for an increase in all categories of crime at all levels of society, including that of juvenile crime. Since the early 1980s, juvenile crime has increased dramatically, from 7 per cent in 1980 to 20.4 per cent of all crimes in 1984. From 1980 to 1995, juvenile crime reached an average of 18 per cent of total crime (Wang & Bao 1997: 132).

In Australia, juvenile crime shows an increasing trend over the past 20 years. The worsening situation seems to result from such related trends as the youth unemployment rate and the breakdown of the family structure (Homel et al. 1999: 196). The spectre of family break-up and growing parental indifference continues to arouse anxiety among politicians and social commentators who see this as leading to diminished care and supervision of children, and therefore to greater social instability in the long term (Hil 1998). In Queensland, for example, the reported rate for juveniles processed for break and enter alone reached 1271 per 100 000 in 1999/2000 (O'Connor & Cameron 2002).

A comparative study of juvenile crime is difficult not only because of the variations in culture and political systems but also because the statistics on youth offending in different countries are collected in quite different ways. Indeed the legal definitions and measurement of crime vary from country to country. Pfeiffer

(1998) warns of the dangers of making comparisons among nations using official statistics. In addition, compilers of official records have discretion in deciding which subjects to arrest, which arrests to record, and which charges to file. This differing discretionary power is one of the factors that makes the use of police records alone incomparable with those of other countries (Maxfield et al. 2000). Self-reported data seems more reliable than the use of official records.

In China, however, because of methodological and other problems, there are very few juvenile delinquency studies involving self-reporting. Chinese research on crime patterns usually uses basic official statistics (Fu 1992; Guo 1999; Wong 1999). Studies that use self-reporting take the analysis of juvenile delinquency to a deeper level and permit a better understanding than do the official statistics of the full range of juvenile behaviours that may lead to conflict with the law. This research, based on self-reported data, may make a contribution to the methodology of crime research in China.

This chapter undertakes an analysis of participation rate and types of delinquent behaviour in Shanghai and Brisbane, and aims to answer the following questions: what are the differences and similarities of the participation rates between a representative of the school sample and offender sample in each city; what is the relationship between age and delinquent behaviour; and what are the characteristics of the offending types? I shall focus on description rather than analysis of the differences (see Wei 2002 for a detailed analysis).

Methods

The study uses an instrument, known as the Queensland Sibling Study Questionnaire (QSSQ, see Queensland Sibling Study Consortium), to do a comparative analysis of Shanghai and Brisbane. The questionnaire, which was developed in Brisbane in 1994, incorporates a comprehensive range of variables, such as the family life of young people, their neighbourhood, school, the juvenile justice system, and their attitudes and behaviours. It contains more than 200 questions, and the items range in seriousness from playing pranks on someone on the telephone, to break and enter, career acts of personal violence, property crime, and drug and alcohol use. The Chinese version, the Shanghai Quality Education Questionnaire (SQEQ), was developed and implemented in Shanghai in 1999/2000.

The Brisbane sample was originally made up of 1125 adolescents aged from 12 to 18 years old from data collected in 1998. Of these, 678 were attending one of 16 high schools, 225 were young offenders, 160 were homeless or at risk adolescents, and 62 were urban Aborigines. In the following analysis, the data on urban Aborigines and the homeless will not be used as there are no counterparts in the Shanghai sample. Therefore the total number constituting the Brisbane sample becomes 903.¹ The Shanghai data originated from six schools (four ordinary schools and two key schools), one work-and-study (Gongdu) school and the only juvenile reformatory in Shanghai, resulting in a total of 613 respondents. The work-and-study school sample is not included in the following analysis because of its small sample size. So the total Shanghai sample is 565. Table 26.1 shows the composition of the samples.

¹ In the following analyses, the total number for the analyses may be different as the variables depend on the research questions. For example, when analyzing co-offending, those who did not commit crime were excluded. But in some other analyses, they were included.

The extent and nature of delinquent behaviour were determined by responses to several general questions and a number of specific items in the Mak's (1993) Self-Report Delinquency Scale for Australian adolescents, ranging in seriousness from playing pranks on someone on the telephone to personal violence, property crime, and drug use.² This scale originally had 37 items. In the Chinese version, items such as 'driven unregistered car', 'raced with other car' were deleted as not applicable to the situation in China. Therefore, there are altogether 25 items in the Chinese version of the questionnaire to be analysed. All items eliciting a 'yes' were given a score of 1 while all other answers (including a 'no') to this item were given a score of 0. By handling the data in this way, the number of cases deleted was minimised (see Wei 2002 for the details).

Table 26.1 Composition of the Shanghai and Brisbane samples

| Sample | Number | | Mean age | | SD | |
|--------------------|----------|----------|----------|----------|----------|----------|
| | Shanghai | Brisbane | Shanghai | Brisbane | Shanghai | Brisbane |
| Students | 417 | 678 | 15.4 | 14.4 | 1.49 | 1.39 |
| Juvenile Offenders | 148 | 225 | 18.1 | 15.6 | 1.22 | 1.61 |
| Total | 565 | 903 | 16.1 | 14.7 | 1.85 | 1.54 |

Sources: QSSQ and SQEQ computer files.

Findings

Participation rates

Participation means the number of criminally active individuals in a population at a given time. Here, the term 'participation' rather than 'prevalence' is used to describe the proportion of a population that is criminally active over a given period, as recommended by Blumstein et al. (1986). Their recommendation was based on Gordon's argument that the adaptation within criminology of the epidemiological concept of prevalence has been a source of confusion rather than clarity (Le Blanc & Frechette 1989: 59).

² This scale was included in the QSSQ.

Table 26.2 Participation rate (%) in self-reported delinquent behaviour by city in the school sample

| Items | Shanghai (n = 417) | Brisbane (n = 678) | χ^2 | ρ value |
|------------------------------------|-----------------------|-----------------------|---------------|--------------|
| Stolen parts from car | 0.7 | 4.1 | 10.92 | .001 |
| Stolen a bicycle or parts | 0.5 | 3.7 | 11.05 | .001 |
| Seen an R-rated film | 6.2 | 16.7 | 25.35 | .000 |
| Drunk alcohol in a public place | 5.5 | 12.8 | 15.29 | .000 |
| Not paid an entrance fee | 1.9 | 16.2 | 54.96 | .000 |
| Skipped class/school | 3.6 | 21.1 | 64.00 | .000 |
| Run away from home | 1.0 | 7.4 | 22.02 | .000 |
| Shoplifted | 1.0 | 15.6 | 61.53 | .000 |
| Stolen < \$10 | 0.7 | 19.5 | 84.00 | .000 |
| Stolen \$10 or more | 1.9 | 6.9 | 13.61 | .000 |
| Broken into a house | 0.7 | 3.1 | 6.81 | .009 |
| Stolen from machine | 0.5 | 9.9 | 38.66 | .000 |
| Damaged private property | 1.4 | 10.8 | 33.56 | .000 |
| Damaged with fire | 0.2 | 3.7 | 13.23 | .000 |
| Damaged public property | 0.7 | 5.6 | 17.10 | .000 |
| Damaged school property | 2.4 | 11.4 | 28.33 | .000 |
| Put graffiti on public places | 5.8 | 13.7 | 17.15 | .000 |
| Taken part in a group fight | 7.0 | 19.6 | 32.83 | .000 |
| Beaten someone up | 1.0 | 13.7 | 52.05 | .000 |
| Used weapon in a fight | 0.7 | 5.0 | 14.60 | .000 |
| Used force to get things | 0.7 | 8.4 | 29.46 | .000 |
| Used marijuana or hashish* | 0.0 | 16.8 | 78.26 | .000 |
| Forced someone to do sexual things | 1.0 | 2.1 | 1.95 | .162 |
| Played telephone tricks | 10.6 | 33.5 | 72.89 | .000 |
| Made nasty phone calls | 11.5 | 12.5 | .26 | .614 |
| Total Participation Rate | 28.8 | 64.7 | 133.70 | .000 |

Sources: QSSQ and SEQEQ computer files.

Note: *In the Chinese questionnaire, this item was translated into 'drugs'.

Table 26.3 Participation rate (%) in self-reported delinquent behaviour by city in the offender sample

| Items | Shanghai (n = 417) | Brisbane (n = 678) | χ^2 | ρ value |
|------------------------------------|-----------------------|-----------------------|-------------|--------------|
| Stolen parts from car | 1.4 | 28.9 | 45.94 | .000 |
| Stolen a bicycle or parts | 6.8 | 26.7 | 23.21 | .000 |
| Seen an R-rated film | 55.4 | 41.3 | 7.10 | .000 |
| Drunk alcohol in public place | 46.6 | 57.8 | 4.47 | .035 |
| Not paid entrance fee | 25.0 | 44.4 | 14.53 | .000 |
| Skipped class/school | 50.7 | 55.1 | .71 | .401 |
| Run away from home | 62.8 | 36.0 | 25.84 | .000 |
| Shoplifted | 10.1 | 52.9 | 70.89 | .000 |
| Stolen < \$10 | 10.8 | 28.4 | 16.48 | .000 |
| Stolen \$10 or more | 21.6 | 50.2 | 30.73 | .000 |
| Broken into a house | 18.2 | 48.9 | 36.01 | .000 |
| Stolen from machine | 4.1 | 28.9 | 35.73 | .000 |
| Damaged private property | 23.6 | 38.2 | 8.65 | .003 |
| Damaged with fire | 5.4 | 15.1 | 8.42 | .004 |
| Damaged public property | 14.9 | 30.7 | 12.09 | .001 |
| Damaged school property | 18.2 | 32.4 | 9.18 | .002 |
| Put graffiti on public places | 20.3 | 39.1 | 14.65 | .000 |
| Taken part in a group fight | 62.2 | 56.4 | 1.20 | .273 |
| Beaten someone up | 37.2 | 50.7 | 6.57 | .10 |
| Used weapon in fight | 44.6 | 36.4 | 2.48 | .115 |
| Used force to get things | 42.6 | 34.7 | 2.37 | .124 |
| Used marijuana or hashish* | 14.9 | 63.6 | 85.80 | .000 |
| Forced someone to do sexual things | 9.5 | 4.0 | 4.60 | .032 |
| Played telephone tricks | 36.5 | 41.8 | 1.04 | .307 |
| Made nasty phone calls | 52.0 | 24.0 | 30.78 | .000 |
| Total Participation Rate | 85.8 | 94.7 | 8.68 | .003 |

Sources: QSSQ and SQEQ computer files.

Note: *In the Chinese questionnaire, this item was translated into 'drugs'.

Table 26.2 gives the percentage of the adolescents in the school sample admitting each type of delinquent behaviour, by city. At least some involvement (at least one of the 25 items) in delinquent behaviour was reported by 28.8 per cent of the Shanghai school respondents, while in the Brisbane school sample the corresponding rate was 64.7 per cent. Table 26.3 shows that 85.8 per cent of respondents in the Shanghai offender group, and 94.7 per cent respondents from the Brisbane Family Services group reported involvement in delinquent behaviour.

As far as the school respondents are concerned, the participation rate of the Brisbane sample is higher than that found from a total of 5178 secondary school students in New South Wales in 1996, which was 47.7 per cent (Baker 1998: 19). In the Brisbane sample, the most common activities related to: telephone pranks, buying and drinking alcohol in a public place, using cannabis, getting into a group fight and shoplifting, while the least common offences concerned forced sex, drink driving, and racing with other cars.

Comparatively speaking, the participation rate in delinquent acts of the Shanghai school sample was lower than that of the Brisbane sample. Apart from certain items, which were 'made nasty phone calls' and 'forced someone to do sexual things with you when they did not want to', there were statistically significant differences between the two school samples (see Table 26.2). These findings are similar to some other cross-cultural comparative studies on juvenile delinquency. For example, Hartjen & Kethineni (1992) compared juvenile crime in India to that in the United States, and one of their findings was that Indian youth were less delinquent, or less serious delinquents, than their Western counterparts.

With regard to the offender samples, six out of 25 items showed no significant difference between the two groups. These items were 'skipped class', 'taken part in a group fight', 'beaten someone up', 'used weapon in a fight', 'used force to get things', and 'played telephone tricks'. It seems that the two groups are similar in violent offences.

The next question is whether the patterns of offending are different in Shanghai and Brisbane; specifically, whether the respondents in the Shanghai sample specialise in particular types of delinquent acts while the Brisbane respondents specialise in others, or whether they have committed similar types of offence. To investigate this issue, a factor analysis was performed separately for each city. Before this, a multivariate analysis of variance (MANOVA) was performed on the data to obtain a within-cells pooled correlation matrix, which isolated the within-group variance from the between-group variance for each city. The independent variable used in each MANOVA was the two levels of the cohort variable (school and juvenile reformatory) in the Shanghai sample, and school and Family Services in the Brisbane sample.

The dimensionality of the 25 items was analysed using principal components analysis (PCA). Extracting factors from the correlation metrics was determined by the eigenvalue-greater-than one criterion (Green et al. 2000: 294). In the Shanghai sample, eight factors with eigenvalues greater than one were extracted, while in the Brisbane sample five factors were extracted based on the same criterion. Taking the scree plot and the results of the Brisbane sample into account, four factors in both the samples were rotated.³

³ The extracted 4 factors accounted for 43.6 per cent of the variance of the 25 variables, while 8 factors accounted for 61.6 per cent of the variance. The scree plot was not in sharp form.

Principal factor extraction with varimax rotation was then performed on the corrected matrix through SPSS, using minimum eigenvalue of one as the criterion to determine the most appropriate solution. If the factor analysis yielded a meaningful and significant solution, then items loading on each of the factors was summed to produce an overall score for the factor. The rotated solution (see Table 26.4) yielded four interpretable factors. In the Brisbane sample, the first factor, 'theft', accounted for 12.2 per cent of the total variance of the rotated factors, and was determined by 'shoplifted', 'stolen money for less than \$10 (in one go)', 'stolen money of \$10 or more in one go', and so on. The second factor was named 'property-related offence', which accounted for 11.1 per cent of the total variance. This factor was associated with 'cheated or stolen food, drinks or other goods from dispenser machines', 'deliberately damaged property by starting a fire', 'broken into a house or building to steal things'. The third factor was named fighting, which was related to 'taken part in a fight between two or more groups', 'used anything as a weapon in a fight', and so on, which explained 11.0 per cent of the variance. The fourth factor was labelled 'disturbing' and included acts such as 'deliberately damaged school desks, windows or other school property', 'put graffiti on walls, toilet doors, bus panels or other public places', and so on, which accounted for 10.4 per cent of the total variance of the rotated factors. The four factors altogether explained 44.7 per cent of the variance.

In the Shanghai sample, the rotated four factors explained 43.6 per cent of the variance (see Table 26.5). The first factor was also named 'fighting', and accounted for 16.3 per cent of the variance. The second factor was named 'disturbing', which accounted for 10.2 per cent of the variance, the third factor was property-related offence, which explained 8.8 per cent of the variance, and the fourth factor was theft, which explained 8.4 per cent of the variance.

It can be seen from the factor analyses that the general structure of the factors from the two samples was similar, although the order of the factors was a bit different, with theft at the top, followed by property-related offence, fighting and disturbing in the Brisbane sample, and fighting, disturbing, property-related offence, and theft in the Shanghai sample. These findings lead one to ask whether there is one major and general dimension underlying delinquency, or alternatively whether there are several separate dimensions. Some researchers have used unrotated PCA to answer this question as it involves the fewest arbitrary constraints (Emler & Reicher 1995: 86). The results from unrotated PCA of this study consistently indicate that one general factor accounts for between 20 and 30 per cent of the total variance, and the second principal component accounts for about 7 per cent of the variance in the two samples.

To summarise, the participation rate in the Brisbane sample was much higher than that of the Shanghai sample, and the respondents of the two samples showed a general dimension underlying juvenile delinquency characterised by theft, property-related offence, fighting, and disturbing.

Variety of offending

In this section, the focus is on the number of different types of offences in which the respondents participated. Variety of offending refers to participation by a particular respondent in several categories of crime (Le Blanc & Frechette 1989), and was measured by Q166 in the QSSQ, which includes eight offences.

Table 26.4 Factor loading (the Brisbane sample)

| Items | Factors | | | |
|--|---------|------|------|------|
| | 1 | 2 | 3 | 4 |
| Theft | | | | |
| Shoplifted | .446 | | | |
| Stolen money of less than \$10 | .361 | | | |
| Stolen money of \$10 or more in one go | .462 | | | |
| Gone to see an R-rated film in a cinema | .631 | | | |
| Drunk alcohol in a public place like a pub or nightclub | .666 | | | |
| Not paid the entrance fee for something | .586 | | | |
| Skipped class or wagged school | .456 | | | |
| Run away from home | .431 | | | |
| Used marijuana or hashish | .624 | | | |
| Property-related offence | | | | |
| Broken into a house or a building to steal things | | .524 | | |
| Cheated or stole food, drinks or other goods from machines | | .381 | | |
| Deliberately damaged property by starting a fire | | .567 | | |
| Stolen things or parts from a car or a motor bike | | .422 | | |
| Stolen a bicycle or parts from a bicycle | | .575 | | |
| Fighting | | | | |
| Taken part in a fight between two or more groups | | | .478 | |
| Deliberately hurt or beaten up somebody | | | .640 | |
| Used anything as a weapon in a fight | | | .571 | |
| Forced someone to give you things | | | .409 | |
| Deliberately damaged other people's property | | | .588 | |
| Disturbing | | | | |
| Deliberately damaged things like telephone boxes, street signs | | | | .313 |
| Deliberately damaged school desks, or other school property | | | | .567 |
| Put graffiti on walls, toilet doors, bus panels, etc. | | | | .453 |
| Made nasty phone calls to people for fun | | | | .706 |
| Used the telephone to play tricks on people | | | | .570 |
| Forced someone to do sexual things* | -.100 | .608 | .050 | .147 |

Sources: QSSQ and SSEQ computer files.

Note: *Item does not fit in.

Table 26.5 Factor loading (the Shanghai Sample)

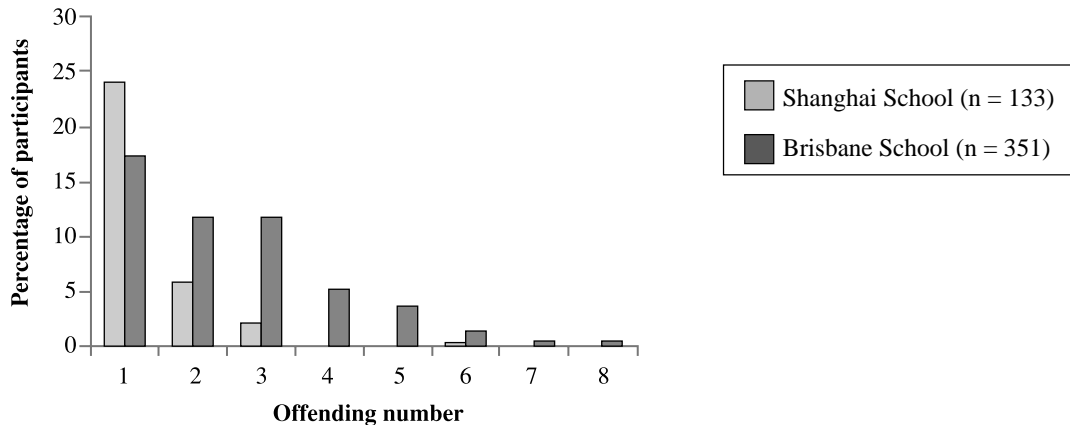
| Items | Factors | | | |
|--|---------|------|-------|------|
| | 1 | 2 | 3 | 4 |
| Taken part in a fight between two or more groups | .672 | | | |
| Deliberately hurt or beaten up somebody | .609 | | | |
| Used anything as a weapon in a fight | .718 | | | |
| Forced someone to give you things | .500 | | | |
| Gone to see an R-rated film in a cinema | .559 | | | |
| Drunk alcohol in a public place like a pub or nightclub | .643 | | | |
| Not paid the entrance fee for something | .340 | | | |
| Run away from home | .679 | | | |
| Disturbing | | | | |
| Deliberately damaged things like telephone boxes, street signs | | .608 | | |
| Deliberately damaged school desks, or other school property | | .742 | | |
| Put graffiti on walls, toilet doors, bus panels, etc. | | .625 | | |
| Used the telephone to play tricks on people | | .267 | | |
| Made nasty phone calls to people for fun | | .268 | | |
| Property-related offence | | | | |
| Broken into a house or a building to steal things | | | .528 | |
| Cheated or stole food, drinks or other goods from machines | | | .597 | |
| Deliberately damaged property by starting a fire | | | .681 | |
| Deliberately damaged other people's property | | | .426 | |
| Stolen a bicycle or parts from a bicycle | | | .388 | |
| Theft | | | | |
| Shoplifted | | | | .410 |
| Stolen money of less than \$10 | | | | .644 |
| Stolen money of \$10 or more in one go | | | | .696 |
| Used marijuana or hashish | | | | .549 |
| Skipped class or wagged school | | | | .317 |
| Stolen things or parts from a car or a motor bike | | | | .441 |
| Forced someone to do sexual things* | .078 | .515 | -.117 | .104 |

Sources: QSSQ and SQEQ computer files.

Note: *Item does not fit in

Figure 22.1 and Figure 22.2 show the number of different types of offences committed by the school respondents and the young offenders in the two samples.

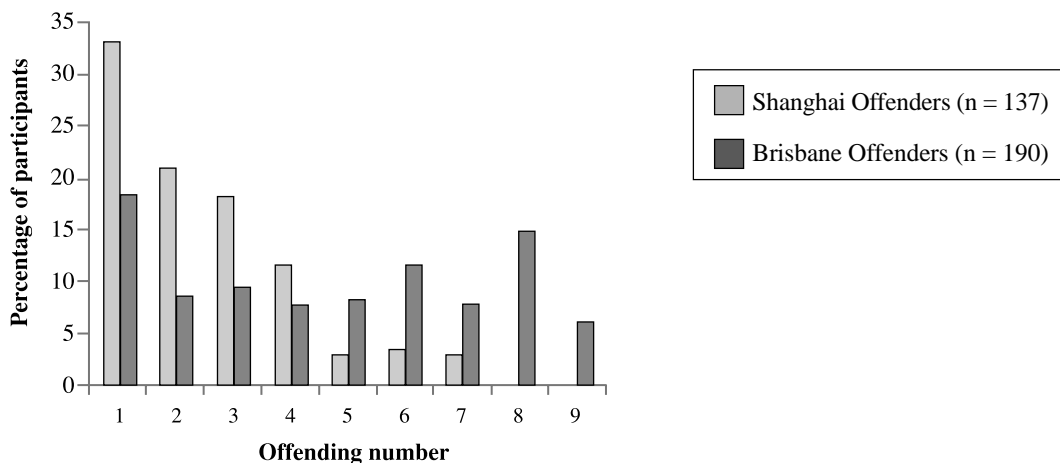
Figure 26.1 Number of different types of offences committed by the school respondents



Sources: QSSQ (red bar) and SQEQ (blue bar) computer files.

It can be seen from Figure 26.1 that most school respondents participated in only one or two different types of offences, but Brisbane school respondents were more likely than Shanghai school respondents to commit multiple types of delinquent behaviour. At the same time, from Figure 26.2, the proportion of young Brisbane offenders participating in five or more types of delinquent behaviour was higher than that of the school respondents, and also much higher than the Shanghai offenders.

Figure 26.2 Number of different types of offences committed by the young offenders



Sources: QSSQ and SQEQ computer files.

It has been argued that the average degree of variety increases from adolescence to youth and there is a difference of almost two types of infractions between the adolescents and the delinquents (Le Blanc & Frechette 1989). This tendency was also reflected in the preceding analysis. In addition, it should be noted that variety affords a better indication of the actual illicit activity of the delinquent than frequency, which is largely affected by the outliers. However, variety is relatively independent of other descriptive concepts.

In conclusion, Brisbane school respondents were more likely than Shanghai school respondents to commit multiple types of delinquent behaviour. At the same time, the proportion of young offenders participating in five or more types of delinquent behaviour was higher than that of the school respondents in both samples, and Brisbane offenders committed a much greater variety of offences than the Shanghai offenders.

Age of onset

The participants were asked to describe the delinquent behaviour they first committed (Q173 in QSSQ). Table 26.6 shows the ages of the first offence in the Brisbane sample. The first peak age of onset was at age 10, and the second one was at age 13. Table 26.7 shows that the peak age of onset in the Shanghai sample was 14 and the second one was 16, which means that both peak ages in the Brisbane sample were lower than the corresponding age in the Shanghai sample. Farrington (1992) found two peaks, with the first peak at 14 and the second at 17.

Table 26.6 Age at which first illegal act was done in the Brisbane sample (% by cohort)

| Age | School (n = 678) | Family Services (n = 225) | Total (n = 903) |
|-----|---------------------|------------------------------|--------------------|
| 6 | 0.4 | 4.0 | 1.3 |
| 7 | 1.2 | 4.9 | 2.1 |
| 8 | 0.9 | 2.7 | 1.4 |
| 9 | 2.1 | 6.2 | 3.1 |
| 10 | 4.3 | 8.9 | 5.4 |
| 11 | 2.9 | 7.6 | 4.1 |
| 12 | 5.2 | 13.8 | 7.3 |
| 13 | 9.9 | 12.9 | 10.6 |
| 14 | 7.7 | 13.8 | 9.2 |
| 15 | 4.7 | 5.8 | 5.0 |
| 16 | 1.5 | 3.1 | 1.9 |
| 17 | – | 1.3 | 0.3 |
| 18 | – | 0.4 | 0.1 |
| 20 | 0.1 | – | 0.1 |

Sources: QSSQ and SEQ computer files.

Both cross-sectional and longitudinal data suggest that the prevalence of offending increases to a peak in the teenage years and then decreases in the twenties (Farrington 1998: 358). One of the best known studies in juvenile delinquency by Wolfgang, Figlio & Sellin (1972) found that among a male cohort born in 1945, arrests were most common at age 16. In the Cambridge study, the peak age of onset (based on the first conviction) was at 14 (Farrington 1998: 360). In a Canadian study, male and female participants aged 12 to 17 were asked about acts committed in the past year. Their findings indicted a peak in admissions at around 14–15 years for boys, with a corresponding but slightly less distinct pattern for the girls (Farrington, Biron & Le Blanc 1982, cited in Emler & Reicher 1995: 73). These findings are generally consistent with the present research and with a finding of peak age at 14.8 in China in 1990 (Wei 2002).

Table 22.7 Age at which first illegal act was done in the Shanghai sample (% by Cohort)

| Age | School (n = 417) | Reformatory (n = 148) | Total (n = 565) |
|-----|---------------------|--------------------------|--------------------|
| 6 | 0.2 | – | 0.2 |
| 7 | 0.2 | 0.7 | 0.4 |
| 8 | – | 0.7 | 0.2 |
| 9 | – | 2.7 | 0.7 |
| 10 | 0.2 | 1.4 | 0.5 |
| 11 | – | 2.7 | 0.7 |
| 12 | 0.2 | 3.4 | 1.1 |
| 13 | 0.2 | 6.8 | 1.9 |
| 14 | 0.5 | 13.5 | 3.9 |
| 15 | 0.5 | 9.5 | 2.8 |
| 16 | 0.5 | 23.6 | 6.5 |
| 17 | – | 18.2 | 4.8 |
| 18 | – | 2.7 | 0.7 |
| 19 | 2.0 | 0.5 | – |
| 20 | 0.7 | 0.2 | – |
| 21 | 1.4 | 0.4 | – |

Sources: QSSQ and SQEQ computer files.

Regarding the different ages of onset in the Shanghai and Brisbane samples (first peak age 14 in the Shanghai sample versus age 10 in the Brisbane sample), two explanations may be considered. One is physical development, specifically the biological hallmarks of adolescent such as the appearance of secondary sex characteristics, which may occur earlier in Australian adolescents than in Chinese adolescents. The second one is social influence. Social influence is one of the most popular theories to explain why offending peaks in the teenage years. For example, children are under the influence of their parents, who generally discourage offending. But the young people gradually break away from the control of their parents

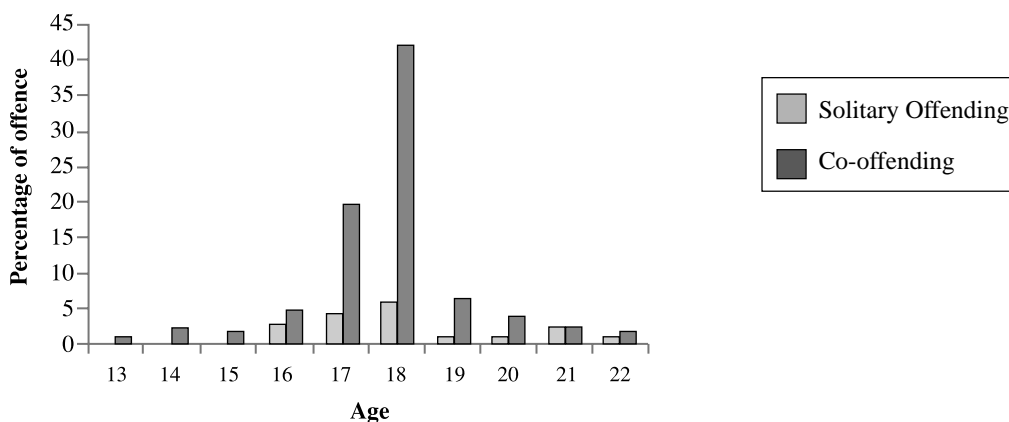
and become influenced by their peers, who may encourage offending. After age 20, offending declines again as peer influence gives way to a new set of family influences such as marriage and cohabitation (Farrington 1998). Due to a different cultural background and tradition, Chinese parenting is more authoritarian than Western parenting (Homel et al. 1999), which means that Chinese children, generally, are more dependent on their parents.

It is evident that many children may start to commit offences earlier than we thought. These findings would yield many implications for developmental intervention and prevention of delinquency and crime.

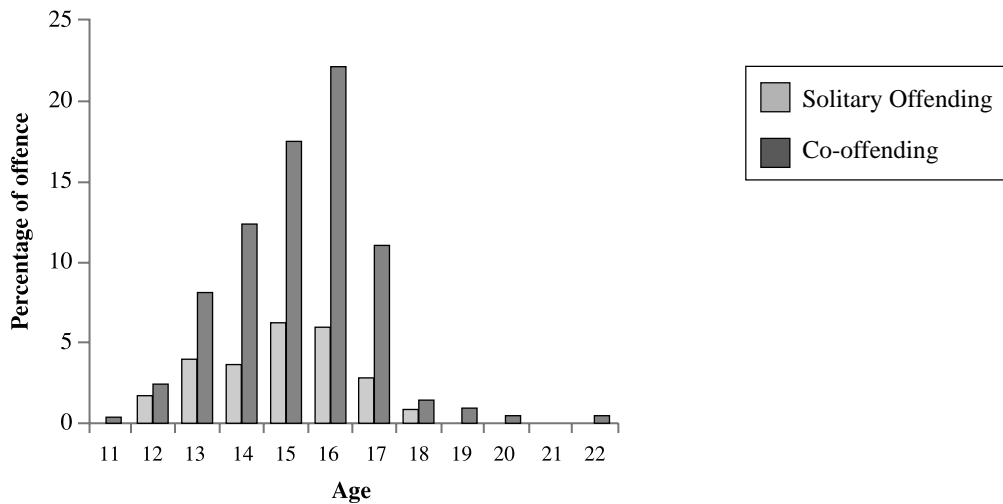
Co-offending

Juveniles tend to commit crimes with others. Co-offending was measured by Q182 and Q183 in the QSSQ. Answering 'On my own' was coded as a solitary offence, and answering 'with one other friend', 'with two friends' or 'with a group of friends' was coded as a co-offending offence. The percentage involvement in co-offending was calculated as the proportion of co-offending (with others) respondents divided by total respondents who committed crimes in the sample at a certain age.

Figure 26.3 Co-offending and age in the Shanghai sample (n=143)



Sources: QSSQ and SEQ computer files.

Figure 26.4 Co-offending and age in the Brisbane sample (n=490)

Sources: QSSQ and SQEQ computer files.

Figures 26.3 and 26.4 show that 83.2 per cent in the Shanghai sample versus 75.5 per cent in the Brisbane sample were involved in co-offending. It can be seen that the number of co-offenders in both samples is very much greater than that of solitary offences at almost every age. These figures are higher than those of the Cambridge study, which claimed that about half of all offences were committed with others (Farrington 1998: 360). They are also higher than Shapland's self-reported delinquency research in boys aged 11–14 in the United Kingdom, with the mean percentage involvement in group offences of 59.9 per cent, especially trespassing 85.2 per cent; littering 90.3 per cent; breaking windows 90.7 per cent; vandalism of public property 91.3 per cent; and going to an 'X' film 89.4 per cent (Shapland 1978: 262).

Co-offending was usually committed with people of the same sex. In the Shanghai sample, 87.5 per cent of the male respondents committed offences with male co-offenders, and only 2.9 per cent of the male respondents reported that they committed offences with female co-offenders. However, 26.7 per cent of the female respondents committed offences with female co-offenders, and 33.3 per cent of the female respondents went with male co-offenders when committing offences. In the Brisbane sample, 71.4 per cent of the male respondents committed offences with male co-offenders, and only 4.9 per cent of the male respondents committing offences with female co-offenders. However, 45.5 per cent of female respondents committed offences with female co-offenders, higher than the corresponding figure of 26.7 per cent in the Shanghai sample, and 13.9 per cent of the female respondents went with the male co-offenders as partners. It seems that co-offending with the same sex is more popular than co-offending with the opposite sex.

In summary, it is reasonable to conclude that co-offending peaked at age 16–17, and then decreased steadily. Co-offending is more common in the Shanghai sample than in the Brisbane sample, and in both cities co-offending with the same sex is more popular than co-offending with the opposite sex.

Conclusion

The aims of this study were to give descriptive and comparative views of offending. It showed that almost every act outlined in the Mak's Self-report Delinquency Scale was admitted by respondents in both the Shanghai and Brisbane samples. In the Shanghai sample, 28.8 per cent of the school respondents, and 85.8 per cent of the juvenile reformatory respondents, respectively, reported at least some involvement in delinquent behaviour measured by Mak's scale, while in the Brisbane sample, the corresponding rates for school and Family Services respondents were 64.7 and 94.7 per cent respectively. Comparatively, the participation rate in delinquent acts of the Shanghai sample was lower than that of the Brisbane sample. But a factor analysis indicated that both samples had a generally similar structure of offences, with fighting at the top, followed by disturbing, property-related offence and theft in the Shanghai sample, and theft, property-related offence, fighting and disturbing in the Brisbane sample.

Regarding the variety of the offending, it is clear that Brisbane school respondents and offenders were more likely than the Shanghai school respondents and offenders (respectively) to commit many types of delinquent acts. At the same time, the proportion of young offenders participating in five or more types of delinquent acts was higher than that from the school respondents.

Age operates in the manner of an independent factor affecting levels of delinquent activity. The peak ages of onset in the Brisbane sample were age 10 and 13, while in the Shanghai sample the first peak age was 14 and the second one was 16. Children may commit offences earlier than often thought, suggesting that prevention programmes should be implemented as early as possible.

Co-offending peaked at age 17–18 in the Shanghai sample, and then decreased steadily. Co-offending is more common in the Shanghai than in the Brisbane sample, and co-offending with the same sex is more popular than co-offending with the opposite sex.

The relatively low rates of juvenile delinquency in the Shanghai sample appear to be a function of social-cultural features related to economic development and other social structural factors that are peculiar to China. Youth in China appear to be more integrated into the family network, and community relations help insulate them from the influences of family, school and community. Generally speaking, compared to Australian children, Chinese children may be much more restricted, so the rates of delinquency are likely to be comparatively low. This study suggests that further research should focus on the analysis of the impact of family, school, and peers on juvenile crime.

References

- Baker, J. 1998, *Juveniles in Crime*, NSW Bureau of Crime Statistics and Research.
- Blumstein, A., J. Cohen, J.A. Roth & C.A. Visher 1986, *Criminal careers and 'Career Criminals'*, 2 vols, Washington DC: National Academy Press.
- Emler, N. & S. Reicher 1995. *Adolescence and Delinquency*, Blackwell Publishers Inc.
- Farrington, D. 1992, 'Criminal Career Research in the United Kingdom', *British Journal of Criminology*, 32(4): 521–36.

- Farrington, D. 1998, 'Youth Crime and Antisocial Behavior'. In A. Campbell & S. Muncer (eds), *The Social Child*, Psychology Press Ltd.
- Fu, H.L. 1992, 'Juvenile delinquency in post-Mao China', *International Journal of Comparative and Applied Criminal Justice*, 16: 263–72.
- Gaylord, M.S. 2000, 'China'. In G. Barak (ed.), *Crime and Crime Control*, Westport CN: Greenwood Press, pp. 13–28.
- Green, S.B., N. Salkind and T. Akey 2000, *Using SPSS for Windows*, Prentice-Hall, Inc.
- Guo, X. 1999, 'Delinquency and its prevention in China', *International Journal of Offender Therapy and Comparative Criminology*, 43: 61–70.
- Hartjen, C., & S. Kethineni 1992, 'Delinquency in Comparative Perspective: India', *International Journal of Comparative and Applied Criminal Justice*, 16(2): 317–28.
- Hil, R. 1998, 'The Call to Order: Families, Responsibility and Juvenile Crime Control', *Journal of Australian Studies*, December.
- Homel, R., et al. 1999, *Pathways to prevention: Developmental and early intervention approaches to crime in Australia*, Canberra: National Crime Prevention.
- Le Blanc, M., & M. Frechette 1989, *Male Criminal Activity from Childhood through Youth*, New York: Springer-Verlag Inc.
- Maxfield, M.G., B.L. Weiler & C.S. Widom 2000, 'Comparing self-reports and official records of arrests', *Journal of Quantitative Criminology*, 16: 87–110.
- O'Connor, I., & M. Cameron 2002, 'Juvenile justice in Australia'. In A. Graycar and P. Grabosky (eds), *The Cambridge Handbook of Australian Criminology*, Cambridge University Press, pp. 211–34.
- Pfeiffer, C. 1998, 'Juvenile crime and juvenile violence in European countries'. In M. Tonry (ed.) *Crime and Justice: A Review of Research* (vol. 23: 255–328), University of Chicago Press.
- Queensland Sibling Study Consortium 1998, *Sibling Study Code Book*.
- Shapland, J. M. 1978, 'Self-reported Delinquency in Boys Aged 11–14', *British Journal of Criminology*, 18(3) 255–66.
- Wang, Y.D., & S.X. Bao 1997, *Zhongguo xian jieduan weichengnianren weifa fanzui wentiyuanjiu* [Study on juvenile delinquency and crimes in present China], Beijing: Zhongguo Jiancha Chubanshe.
- Wei, Z.G. 2002, A comparative study of juvenile delinquency and juvenile justice in Shanghai, China and Brisbane, Australia. PhD thesis, Brisbane: Griffith University.
- Wolfgang, M.E., R.M. Figlio & T. Sellin 1972, *Delinquency in a Birth Cohort*, University of Chicago Press.
- Wong, D.S. 1999, 'Delinquency control and juvenile justice in China', *Australian and New Zealand Journal of Criminology*, 32: 27–41.

27

Homicide-suicide in Hong Kong, 1989–98: A Preliminary Analysis*

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Homicide-suicide (HS) is one of the most tragic forms of violence and although infrequent, it provokes family disruption, psychological trauma and public concern.¹ HS has been the subject of specific Imperial law from at least the Ming Dynasty (Miejer 1991). Nevertheless, studies of HS on Chinese societies are rare. Although Wong & Singer (1973) reported HS along with other ‘abnormal homicide’ and Cheung (1986) discussed HS in relation to ‘maternal filicide’, this chapter provides the first systematic study of HS in Hong Kong.

Marzuk et al. (1992) defined HS as a lethal event in which an individual kills another and subsequently commits suicide within one week. In our data in all but one case HS offenders killed themselves within hours after they committed murder.² The data are drawn from the HK Homicide Monitoring Data Base derived from investigation and death reports held by the HK Police Force and Coroner’s Court (Broadhurst 1999). Inchoate offences are excluded and only cases in which both murder and suicide successfully committed are reported. The aims of this study are: to determine the prevalence and nature of HS in Hong Kong; to identify the role of demographic and risk factors; to compare HS in Hong Kong with HS in other societies, and explore the role of cultural and social factors in such lethal events.

From 1989 to 1998, there were 56 HS events involving 74 victims resulting in 133 deaths, equivalent to one in seven of homicide deaths (including offenders) or one in 13 homicide events. The number of events varied from two to nine per year and averaged 0.22 (including offenders) per 100 000 persons per year, compared with a suicide rate of 11.8 per 100 000 and a homicide rate of 1.5 per 100 000 over the same period.³ This is higher than the annual rate of 0.07 (events) per 100 000 based on 29 HS cases identified by HK Police from 1961–71 reported (but not described) by Wong & Singer (1973).

The proportion of homicides followed by suicides varied considerably in studies undertaken in other jurisdictions and comparisons with Hong Kong are fraught because of differences in sources, definitions, time-frames and demographic and other variables employed. Estimates of the proportion of HS have ranged from as low as 1.5 per cent of all recorded homicide in the United States (Berman 1979) to as much as

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¹ Murder-suicide events provide ample scope for discussion in the public media: see ‘Murder-suicide woman a ‘good mother’, *SCMP*, 23 April 2002; and ‘Spirit lost in a material world’, *Hong Kong iMail*, 24 January 2002.

² In one event the offender who had set fire to the home of his stepbrother’s family committed suicide three days later.

³ Derived from Hong Kong Annual Reports and Coroner’s Reports, 1989–98.

42 per cent in Denmark (West 1965). The HS rate for Hong Kong falls in the range of the international samples reported by Coid (1983) and Milroy (1995) and was, as noted, 0.22 (including offenders); 0.13 (victims only) and 0.09 (events) per 100 000 persons per year. Despite variation in the proportion of HS to other homicides, the per capita rate appears fairly constant across countries and through time (Marzuk et al. 1992; Milroy 1995). HS occurred disproportionately among long-term and intimate relations (spouses and children) and was predominantly committed by males, with females the usual victims (Coid 1983; Palermo et al. 1997; Stack 1997; Carcach & Grabosky 1998; Gillespie et al. 1998). Few female homicide offenders commit suicide (Marzuk et al. 1992; Lecomte & Fornes 1998). Most offenders were married and on average older than non-HS offenders (Berman 1979; Marzuk et al. 1992; Palermo et al. 1997; Carcach & Grabosky 1998). Compared with non-HS homicides, HS offenders had fewer prior criminal histories and higher economic status (Wolfgang 1958; West 1965; Palermo et al. 1997). Depression was the most common mental disorder among HS offenders while morbid jealousy was the most frequently cited motive (West 1965; Marzuk et al. 1992; Lecomte & Fornes 1998).

Most HS involved only one victim, but 16 cases (28.6%) involved two or more victims and three cases involved a suicide pact and murder. All events were committed by a single offender except one event in which two children were killed by five adults (one of whom survived) who had formed a suicide pact. On average each HS event caused 2.39 deaths (inclusive of offenders). Most ($n = 45$ or 75%) offenders were male and the male to female ratio was 3:1. The mean age of offenders was 41.9 years (range 21–72 years, $SD = 12.8$), and male offenders (mean = 43.4 years, $SD = 13.2$) were on average older than female offenders (mean = 37.6 years, $SD = 10.7$). Most victims were female ($n = 47$ or 63.5%) but over a third ($n = 27$ or 36.5%) of victims were male. The mean age of victims was 32.3 (range 0.4–86 years $SD=24.5$) and males were on average older (mean = 34.4 years, $SD = 27.7$) than female victims (mean = 31.1 years; 22.6).

The majority of offenders ($n = 35$ or 58.3%) were married or in a defacto relationship. One in six offenders ($n = 11$ or 18.6%), all males, had prior criminal records. A third of offenders (38.3% or $n = 23$) faced imminent financial pressure before the HS. The majority of offenders ($n = 41$ or 70%) were apparently free of mental disorder, but 11 offenders (18.3%) were severely depressed (7 female and 4 male), four were schizophrenic (2 female, 2 males), and three suffered from other mental illnesses. In addition, one in five offenders ($n = 17$: 16 male and 1 female) were regarded by relatives and friends as unreasonably or extremely 'hot tempered'. Nearly all HS ($n = 54$ or 96.4%) occurred between intimates (including cohabitants) and family members. Spouse or lover killings only contributed the largest group ($N = 19$ or 33.9%) followed by child-killing ($N = 14$ or 25%), killing of parents ($N = 4$ or 7.1%), killing of other family members ($N = 4$ or 7.1%), and in seven events (12.5%) husbands killed their wives along with their children. In one event, five adults committed suicide and killed two children and in another event the offender chopped his wife and mother-in-law to death (Table 27.1). Only two HS cases (3.6%) occurred between non-intimates or non-cohabitants; one involved the death of a landlord and another the offenders' supervisor.

Table 27.1 Relationship of victims with offenders (%)

| | |
|------------------------------|------|
| Spouse or lover | 33.9 |
| Children (all ages included) | 25.0 |
| More than one relationships | 14.3 |
| Parents | 7.1 |
| Other family members | 7.1 |
| Co-tenants | 5.4 |
| Others | 7.1 |

More than a quarter of HS victims (n = 19; 25.7%) were strangled and suffocated to death, followed by almost a quarter who were stabbed or chopped (n=18; 24.3%). Gassing/poisoning (n = 11; 14.9%), falling from a height (n = 10; 13.5%), beating with or without weapons (n = 8; 10.8%) and others (n = 8; 10.8%) comprised other modes of death (Table 27.2). Females and males showed significant differences in the method of killing. Of the 14 female offenders, seven killed their victims by throwing or pushing them from a height, three poisoned or gassed their victims, two killed by stabbing/chopping, but only one used strangulation and one drowned her child. In contrast, most males killed their victims by stabbing/chopping, suffocating or beating and in one case a firearm was involved.

Table 27.2 Mode of killing (%)

| | |
|-----------------------------|------|
| Strangulation/suffocation | 25.7 |
| Stabbing/chopping | 24.3 |
| Gassing/poisoning | 14.9 |
| Falling from a height | 13.5 |
| Beating with/without weapon | 10.8 |
| Others | 10.8 |

For motive, 22 cases (39.3%) were triggered by separation or termination of marital or sexual relations, 14 (25%) were triggered by economic circumstances, 11 (19.6%) arose from other domestic disputes, and seven (12.5%) appear to relate to depression. In two cases (3.6%) the reason or likely motive for the killing was not known (Table 27.3).

Table 27.3 Apparent motive (%)

| | |
|---------------------------------|------|
| Love and termination | 39.3 |
| Economic reasons | 25.0 |
| Argument | 19.6 |
| No other motive than depression | 12.5 |
| Unknown | 3.6 |

Discussion

The HS cases in Hong Kong were closer to the European experience than the United States in terms of the predominance of male offenders, the composition of victims, and the percentage of morbid jealousy as motive. For example, in Hong Kong 74.6 per cent of offenders were male, in the United Kingdom about 60 per cent (West 1965), in Paris about 85 per cent (Lecomte & Fornes 1998), while in US studies, the percentage of male offenders was 92 per cent in Wolfgang's (1958) and 100 per cent in Berman's (1979) studies. In terms of mode of death, the fact that US offenders blast their victims with guns stands out. In Hong Kong females comprised 63.5 per cent of all victims similar to the proportion found in Paris (60%) and the United Kingdom (70%). However, in the United States the proportion of females victims was higher: 87.5 per cent in Berman (1979) and 85 per cent in Marzuk et al. (1992), while 73.6 per cent of victims in Australia were females (Carcach & Grabosky 1998: see Table 27.4).

Table 27.4 Select summary of homicide followed by suicide studies

| Author & year | No of HS Cases* | Place | Scope in years | Data sources | % HS / Homicide | % Male offenders | % Female victims | Offender mean age | Victim mean age | % Fire-arms | % Jealousy & Desertion as motive | % Spouse & lover as victims | % Child victims |
|------------------------------|-----------------|--|----------------|--|-------------------|------------------|------------------|-------------------------|-----------------|-------------|----------------------------------|-----------------------------|-----------------|
| This study 2000 | 56 | Hong Kong | 1989–98 | HK Police and Coroner's Court | 7 events | 75 | 63.5 | 41.9 | 32.3 | 1.7 | 39.3 | 48.2 (events) | 35.7 (events) |
| Barracough & Harris 2002 [2] | 144 | England and Wales | 1988–92 | Death certificates | 6 victims | 85 | 75 | 35-44 (mode) | NA | 28.9 | NA | 67.4 (events) | 28 (events) |
| Lecomte & Fornes 1998 [21] | 56 | Paris and suburbs | 1991–96 | Institute of Forensic Medicine | NA | 85 | 60 | 51.0 male & 40.5 female | NA | 80 | 18 | 45 | 45 |
| Carcach & Grabosky 1998 [7] | 144 | Australia | 1989–96 | National Homicide Monitoring Programme | 6.5 events | 91.4 | 73.6 | 39.6 | 33.2 | 60 | Approx. 45 | 43 | NA |
| Aderibigbe 1997 [1] | 300 | USA | 1990–95 | newspapers | NA | NA | NA | NA | NA | 90 | NA | 36–57 | 0–3 |
| Stack 1997 [29] | 265 | Chicago | 1965–90 | Chicago Police | 1.6 events** | 97** | 78.5** | 39.7** | 35** | NA | NA | 65** | 7.5** |
| Buteau, et al. 1993 [4] | 39 | Quebec | 1988–90 | Coroner's files | 13.7 victims | 90 | NA | NA | NA | 56 | NA | 32 (spouses) | 35 |
| Marzuk et al. 1992 [22] | NA | USA | NA | Published HS studies in USA | Approx. 5 (1980s) | 93–97 | 85 | 39.6 | NA | 80–94 | 50–75 | Approx. 65 | NA |
| Berman 1979 [3] | 20 | Philadelphia Baltimore Washington D.C. | 1974–75 | Police & medical reports of suicide cases | 1.5 events | 100 | 87.5 | 38.4 | 34.5 median | 95 | 85 | 67 | 0 |
| West 1965 [31] | 148 | UK (London area) | 1954–61 | Scotland Yard & Metropolitan Police District | 33 offenders | 59.5 | 70 | NA | NA | 19.8 | NA | 43.2 | 47 |
| Wolfgang 1958 [32] | 24 | Philadelphia | 1948–52 | Philadelphia Police | 4 offenders | 92 | NA | 38.3 median | 30.1 median | 62.5 | 27 (of victims) | 69 | NA |

Notes: *All cases available to the authors were included. **Stack included only intimates and excluded casual acquaintances for this analysis; ***Marzuk et al. (1992) surveyed all published US HS studies available since 1966; NA = no relevant data is available or criteria uncertain.

In Hong Kong about half (48.2%) of HS offenders killed their spouses or lovers (including husbands who killed wives and their children) and this is similar to the proportion found (45%) in Lecomte & Fornes' Paris study. The US studies showed higher levels of intimate HS with 69 per cent of cases reported by Wolfgang (1958) involved spouse or lover, 67 per cent by Berman (1979) and 65 per cent by Stack (1997). In Hong Kong 39.3 per cent of cases were motivated by jealousy, the percentage in Paris was 18 per cent, while the national samples in the United States indicated that 50–75 per cent were triggered by morbid jealousy (Marzuk et al. 1992). In Hong Kong 20 events (35.7%) resulted in the death of children (below age 18) and in Paris about 45 per cent of cases involved children (below age 16), but in West's English study the percentage was 47 per cent (below age 16). Fewer children were killed in the US HS samples, only 7.5 per cent in Stack's and 10.7 per cent in the Palermo et al. (1997) samples. Firearms were the most frequently used weapon in most studies, but in Hong Kong the most frequently used means of killing was strangulation or stabbing. In previous studies custody disputes or 'separation rage' contributed a large percentage of child killings (Selkin 1976), while only one child was killed for this motive in Hong Kong. Economic distress played a very small part in the overseas samples (Wolfgang 1958; Lecomte & Fornes 1998), while a quarter (n = 14) of the HS in Hong Kong arose from economic disputes. Mercy killings between older couples are cited in other samples (e.g. Marzuk et al. 1992; Eastal 1994) but no 'mercy killing' involving elderly couples in Hong Kong was found. On the contrary, all cases (n = 6) involving older people (over 60 years) arose from disputes. Half involved elderly parents who killed to defend their 'respect' and interests. For example, three parents killed their adult children to stop them from moving out and two involved disputes with co-tenants over domestic issues.

This chapter provides a preliminary description of the nature of HS in Hong Kong and briefly reviews previous studies in other countries to distinguish possible differences in the character of these tragic events between Chinese and other societies. Some differences are apparent and are suggestive of the role of cultural factors, but further analysis of the data, especially comparisons with non-HS homicide in Hong Kong, is necessary before firmer conclusions can be drawn.

References

- Aderibigbe, Y.A. 1997, 'Violence in America: A survey of suicide linked to homicide', *Journal of Forensic Sciences*, 42(2): 662–5'
- Berman, A. 1979, 'Dyadic death: Murder-suicide', *Suicide and Life-threatening Behaviour*, 9(1): 15–23.
- Broadhurst, R.G. 1999, 'Homicide Monitoring Database (Hong Kong), 1989–97'. 1st Annual Conference of the Hong Kong Sociology Conference, Hong Kong University, November 1999.
- Carcach, C., & P.N. Grabosky 1998, 'Murder-Suicide in Australia', *Trends and Issues in Crime and Criminal Justice*, No. 82, Australian Institute of Criminology: Canberra.
- Cheung, P.T.K. 1986, 'Maternal Filicide in Hong Kong 1971–85', *Medicine Science and Law*, 26: 185–92.
- Coid, J. 1983, 'The epidemiology of abnormal homicide and murder followed by suicide', *Psychological Medicine*, 13: 855–860.
- Coroner's Report, 1989–98, Hong Kong Government.
- Eastal, P. 1994, 'Homicide-Suicides between adult sexual intimates: An Australian study', *Suicide and Life-Threatening Behaviour*, 24(2): 140–51.
- Gillespie, M., V. Hearn & R. Silverman 1998, 'Suicide following homicide in Canada', *Homicide Studies*, 2(1): 46–63.

- Lecomte, D., & P. Fornes 1998, 'Homicide followed by Suicide: Paris and Its Suburbs, 1991–1996', *Journal of Forensic Sciences*, 43(4): 760–4.
- Marzuk, P.M., K. Tardiff & C.S. Hirsch 1992, 'The epidemiology of murder-suicide', *JAMA*, 267(23): 3179–83.
- Meijer, M. J. 1991, *Murder and Adultery In Late Imperial China: A Study of Law and Morality*, Leiden: E.J. Brill.
- Milroy, C.M. 1995, 'The epidemiology of homicide-suicide', *Forensic Science International*, 71: 117–22.
- Palermo, G., M. Smith, J.M. Jenzten, T.E. Henry, P.J. Konicek, G.F. Peterson, R.P. Singh & M.J. Witeck 1997, 'Murder-suicide of the jealous paranoia type: A multicenter statistical pilot study', *American Journal of Forensic Medicine and Pathology*, 18(4): 374–83.
- Selkin, J. 1976, 'Rescue fantasies in homicide-suicide', *Suicide and Life-Threatening Behavior*, 6(2): 79–85
- Stack, S. 1997, 'Homicide followed by suicide: An analysis of Chicago data', *Criminology*, 35: 435–54.
- West, D.J. 1965, *Murder Followed by Suicide*, London: Heinemann.
- Wolfgang, M. 1958, *Patterns in Criminal Homicide*, NJ: Patterson Smith.
- Wong, M. & K. Singer 1973, 'Abnormal Homicide in Hong Kong', *British Journal of Psychiatry*. 123: 295–8.

28

The Metamorphosis of Psychological Services for Incarcerated Sex Offenders in Hong Kong

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Abstract

In Hong Kong, there are about a hundred of rapes and a thousand of indecent assaults reported to the police per year. Psychological factors are found to be one of the major factors in leading to the development of sex offending behaviour. Psychologists certainly play an important role in the prevention of sex crime. In the last decade, psychologists devoted continuous effort in developing the psychological services for incarcerated sex offenders in Hong Kong. The setting up of the Working Group on Assessment and Treatment of Sex Offenders in 1991 and the formation of the Sex Offender Evaluation and Treatment Unit (ETU) in 1998 both marked the important milestones in the service development. As one of the first residential treatment center for sex offenders in South East Asia, the ETU provides thorough psychological assessment and renders a range of specialized treatment programmes for reducing participants' risk of sexual recidivism. Clinicians find the programme effective in reducing sex offenders' denial and enhancing their readiness for change. Numerous positive psychological changes are observed. The cost effectiveness of the services is improved. In facing the future, there is a strong need to further improve the service through systematic treatment evaluation, better programme development, improvement of risk assessment, enhancing community services for sex offenders, interdisciplinary cooperation and active participation in policy recommendation.

The Metamorphosis of Psychological Services for Incarcerated Sex Offenders in Hong Kong

Every year, there are about 100 of rapes and nearly 1000 of indecent assaults reported to police in Hong Kong. In 2000, Hong Kong police received 104 and 1124 reports of rape and indecent assault respectively (HK Police 2001). From these figures, it can be estimated that a sexual assault happens in every seven hours. Unfortunately, this is not the whole picture of sex crimes in Hong Kong. Owing to various psychological, social, and culture factors, most of the victims hesitate to report to police after the sexual assaults. Indeed, the result of the Hong Kong Crime Victimization Surveys conducted in January 1999 indicated that up to 90 per cent of sex crimes were not reported to police. This finding implied that the actual incidences of sex crime are ten times more than that reported to police. The number of sexual assault victims could be more than 10 000 a year. In addition, a sexual assault not only has tremendous impacts on victims, but also on their

families, friends, or relatives. Therefore, It is therefore believed that the number of people disturbed by sex crimes are far more than 10 000 in each year.

A sexual assault is not only traumatic to victims when it happens. Victims also have to suffer from a wide range of physical and psychological problems afterwards. The impacts could last from for a few days, several weeks or even a lifetime. The experience of sexual assault has undesirable effects on victims' psychosocial development, as well as their personal and interpersonal functioning. Because of the serious consequence of sex crime, it is essential for our society to strengthen our prevention work to reduce the occurrence of sexual assault. Since sex offenders in the correctional institutions are a group of people with identified risk of recidivism, reducing their reoffending risk is a way to reduce the incidence of sexual assault. This is an ultimate goal of the Psychological Service Section for the sex offenders in the Correctional Services Department in Hong Kong.

Psychology and Sex Crime: An Introduction

The motives behind many sex crimes are more than just 'sexual' a desire for sex. Many sex offenders actually have either a wife or a girlfriend. Besides, these individuals come from all sectors of the society, from unskilled labourers to highly educated professionals. To a clinical psychologist, sex offenders are therefore not necessarily deprived of proper channels for sex or subculturally oriented. Rather, their offending behaviours have multiple causationcauses. Many are related to various psychological factors that will be discussed below. Psychological factors refer to how an individual's thinking and feeling influence one's his or her offending behaviours. These factors have important implications for preventing an individual from reoffending. Unless these factors are addressed and tackled properly, considerable numbers of these offenders will recidivate.

Based on Western researches, the rate of sexual recidivism ranges from 0 to 50 per cent (Frisbie 1969; Massachusetts Post Audit Bureau 1979; Maletzky 1980; Hanson & Bussiere 1998). The actual recidivism should be higher as it was believed that a large number of crimes were not reported and many of the offenders were not arrested or convicted. Recent studies on treatment evaluation revealed that psychological treatment could reduce reoffending rate (Pithers & Cumming 1989; Marshall et al. 1991; Marshall et al. 1991; Marques 1993), sometimes up to 50 per cent (Bakker et al. 1998). Although some researchers (Quinsey et al. 1993) were more reserved about treatment effectiveness, developed countries like North America, England, Australia and New Zealand continue to invest a lot of resources to develop comprehensive and systematic sex offender programs.

Psychological Factors Behind Sex Crime

Sexual offending results from the interplay of biological, psychological and sociological factors. Every sex offender has his unique pathway to sexual aggression. The followings are the more important psychological factors that relate to an individual's propensity to commit a sexual offense.

Development of deviant sexual interest

Deviant sexual interest (also called paraphilia) are 'recurrent, intense sexually arousing fantasies, sexual urges, or behaviours generally involving 1) non-human objects, 2) the suffering or humiliation of oneself or one's partner, or 3) children or other non-consenting persons' (American Psychiatric Association, 2000). From the psychological paradigm called of behaviourism, such interests are acquired through associating unusual sexual stimuli as mentioned above with sexual arousal. These interests are further consolidated through repeated masturbation with deviant sexual fantasy. People with deviant sexual interests usually find conventional sex relatively unfulfilling and non-rewarding. They may thus resort to sexual offending to attain sexual excitement.

Inability to establish interpersonal intimacy

Individuals who fail to fulfil their needs for intimacy in reality are hypothesized to see sexual contact as a short-cut to emotional closeness (Marshall 1989, 1993). These individuals may not necessarily be alone and have no friend;. Rather, they found find it difficult to develop in-depth relationship with others. From clinical experience, some offenders fantasised about making friends with their victims while they were are committing the crime. Others even ran the risk of arrest and date their victims after the offense.

Distorted sexual attitudes

Individuals with the above attributes would be more vulnerable to sociocultural factors (like sexism and pornography) that tend to dehumanise and sexualised women or children. They would subsequently internalise these values and developed what clinical psychologists called 'distorted cognition'. Some examples would be 'every woman/child secretly desires to be raped', 'if the victim doesn't resist my sexual advances, it means he/she really likes it', or 'even if he/she resists, he/she is just pretending to be cool'. These attitudes help the perpetrators to overcome guilt and shame by justifying the offending behaviours. They also give an illusion to the offenders that their crimes are not serious and cause minimal impacts on the victims. They are thus very crucial to the development and maintenance of sexual aggression.

Other factors

Individuals' self-control ability will be further undermined if they have a drug or alcohol problem. Other disinhibitors also include negative emotionality. If these individuals are in situations where opportunities for offense are available, a sexual crime is very likely to occur.

The Role of Psychologists in the Prevention of Sex Crime

The prevention of sexual crime requires concerted efforts from various disciplines. As applied social scientists, psychologists could make the following contributions:

Assessment

Psychologists are often called on by the court and various judiciary bodies (like such as sentence review boards) to conduct assessment on individual sex offenders. Based on research knowledge and clinical experience, the scope of psychological assessment includes one's aetiology of offending behaviours and risk of recidivism. It is hoped that through early identification of the more dangerous offenders, appropriate treatment and supervision would be arranged accordingly.

Treatment

A considerable number of sex offenders are at risk of recidivism. However, punishment alone may not be adequate to prevent them from reoffending unless the underlying causes behind of their crime are tackled. Due to cognitive distortion, many offenders tend to blame others and refuse to accept responsibility for their crimes. The objectives of psychological treatment are thus to help them face the problems that lead to their offenses. The ultimate goal is to reduce levels of victimization in the society. The scope of treatment include:

- cognitive restructuring : rectifying distorted sex attitudes;
- relapse prevention: helping offenders to identify high-risk situations for offending and handling these situations appropriately;
- victim empathy: stop dehumanising the victims by enhancing their understanding about a victim's suffering;
- interpersonal skills: equipping offenders with skills that facilitate interpersonal intimacy;
- changing or handling their deviant sexual interest;
- mood management.

Research

Psychologists are also active researchers who keep on building up knowledge on sexual offending by scientific and objective means. Recent researches mainly focuses mainly on the aetiology of sexual offending, predictors for recidivism and effectiveness of treatment effectiveness.

Professional consultation

On a more macrobroader level, clinical psychologists are most ready to share their expertise in sex offending with law enforcement agents and policy makers. In both correctional and community settings, clinical psychologists play an active role in planning treatment services for sex offenders. In the police, colleagues also make contributions regarding policies and procedures in for handling sexual abusers and their victims. They also provide consultation on criminal profiling. In the legislature, psychological opinions are considered in the formulation of ordinances related to sexual aggression.

Development of Psychological Services for Sex Offenders

Tracing back to the history, Individual therapy is the only major intervention format used to treat sex offenders before 1991. Sex offenders were treated individually by stationed or visiting clinical psychologists in their respective correctional institutions. However, we encountered considerable amount of difficulties when we adopted this format of service delivery. During the treatment process, we found that sex offenders tended to deny their offending behaviours. They therefore see no need for psychological treatment. This was one of the major hindrances affecting the treatment progress. They used to have this problem partly because of the shame that was associated with the nature of their crime. They were afraid to be labelled as a 'sex offender' and had feareds to beof being looked down upon by other prisoners. Hence, they tended to hide up their psychosexual problems and refused to admit their needs for psychological intervention. Their chronic denial, reluctance to discuss their problems openly with psychologists and low motivation for treatment definitely hindered any progress in their treatment progress. Besides, they were often ignorant about the kinds of treatment they needed to go through and upheld a number of myths towards about

psychotherapy. All these had greatly affected the effectiveness of service delivery. Sometimes, the treatment was affected by the regular transfer of inmates from prison to prison, which was part of the common practice of prison management. The therapists responsible for particular sex offenders had to be changed frequently, which was not beneficial to a therapeutic process.

In view of the above problems, a working group on the assessment and treatment of sexual offenders was set up by the clinical psychologists in the Correctional Services Department in 1991. It is a group of clinical psychologists who are responsible for the development and implementation of psychological services for incarcerated sex offenders. The working group had made continuous effort to study effective strategies to resolve the above problems stated above. As a result, a number of changes towards the related rehabilitative service were made as a result between 1991 and 1998. During this period of time, the clinical psychologists had tested different modalities of psychological treatments for sex offenders. Starting from 1993, the clinical psychologists began to run a self-help programme, in the format of self-help manuals and audio-visual aids, as a supplement to individual therapy. Group therapy was also tried out, though irregularly. After a trial period, it was found that the self-help programme was a very useful supplement to individual treatment. Based on clinical observation and self-report from the participants, group therapy was also found to be more effective than individual treatment which was solely adopted in the past.

To resolve the problems of service delivery described above, clinical psychologists also collected overseas experience from the United Kingdom, North America, Australia and New Zealand through by attending international conferences, by working in clinics, and by reviewing the literature. clinical attachment and literature review to resolve the problems of service delivery described above. There were some common elements of overseas psychological services for incarcerated sex offenders as listed below:

- They had all developed a discrete therapeutic unit or institution to accommodate sex offenders for receiving psychological assessment and treatment.
- There was an incentive system for participation in treatment such as eligibility for parole.
- A specialist team was available for conducting the treatment programme.
- There was heavy emphasis on group therapy.
- Common components of the therapeutic programme included mood management, cognitive restructuring of offending thoughts, handling deviant sexual urges, relationship skills, victim empathy training, understanding offence cycle, and relapse prevention.
- In some areas in the United States, there were extensive use of self-help therapeutic manuals and audio-visual aids.
- The use of a standardized set of psychological tests in many countries and the regular use of phallometric assessment in both the United States and the United Kingdom.

Based on the local and overseas experience, the Working Group on the Assessment and Treatment of Sexual Offenders wrote a proposal in 1998 to suggest improving the referral procedure and treatment format for incarcerated sex offenders. In the same year, a new treatment unit called the Sex Offender Evaluation and Treatment Unit (ETU) was set up exclusively for offenders with risk of future sexual offence. Several strategies were adopted in ETU for motivating incarcerated sex offenders into treatment programmes. They include:

- ‘normalising’ or ‘routinizing’ sex offender referrals to ETU in order to lower their resistance to be transferred for treatment;
- ‘pre-exposing’ sex offenders to psychotherapy, by showing them how unthreatening and useful therapy is, in order to lower their defensiveness to participating in treatment;
- ‘early streamlining’ of sex offenders according to psychopathology type, dangerousness, and motivation for change, in order to facilitate groupings of offenders with similar concerns and treatment needs;
- ‘centralising’ the evaluation and treatment in order to facilitate sex offenders’ adjustment, sense of security and concentration in the treatment process.

Based on these strategies, three programmes were developed. An orientation programme was developed to enhance offenders’ motivation for treatment. A comprehensive and systematic group therapy, with components revealed in therapeutic programmes in overseas, was developed and implemented in ETU. The self-help programme was further refined for sex offenders with moderate risk of reoffending. Apart from these, the clinical psychologists in ETU also committed themselves in to evaluating the effectiveness of the treatments offered and are developing a local assessment tool for assessing sex offenders’ risk of reoffending. Through these research works, it is hoped that the quality of psychological services for sex offenders could be further enhanced.

Programmes in ETU

ETU is a residential treatment centre for sex offenders which is one of the pioneers in the South East Asia. It aims at to providing a thorough psychological assessment for the admitted participants and render a range of specialized treatment programmes for those with treatment needs. Moreover, it aims at to providing a special therapeutic environment within a discrete unit, which promotes mutual care and support among the participants. It is hoped that such an arrangement can help lower their defence and allow them to face with their problems. Besides, it aims at as well as this, ETU is intended to serve as a resource centre within the department for developing psychological services for incarcerated sex offenders.

There are three programmes offered in ETU, namely the Sex Offender Orientation Programme (SOOP), the Self-Help Programme (SHP) and the Core Treatment Programme (CTP). These programmes are regularly conducted by clinical psychologists. The correctional officers of the Psychological Services Section serve as psychologists’ assistant in delivering programmes and supervising participants.

Sex Offender Orientation Programme (SOOP)

Newly sentenced sex offenders will first go through the 14- days SOOP before streamlining into other programmes. During these two-weeks period, individual interviews will be arranged to them for motivational interviewing. It is hoped that their motivation for psychological treatment will be enhanced and their denial towards their offending behaviours will be reduced by early intervention. Group discussion among old and new ETU participants will be conducted. By providing a therapeutic environment for the new comers to interact with the treated sex offenders, we aim at facilitating positive influences from the latter and to increasing their confidence about the effectiveness of psychotherapies. Besides individual and group work, programmed learning will also be provided by using self- help manuals. Participants will be assigned to complete three self-help packages, including the Motivation Intervention Package, Understanding Sex

Offending Behaviour Package and the Community Resources Package. Apart from these, systematic risk assessment of sexual recidivism will also be carried out at this stage. By using a standardized battery of psychological tests and clinical interviews, clinical psychologists will classify the participants into different risk levels in order to streamline them for relevant treatment programmes. It is expected that upon the completion of SOOP, an individual sex offender profile and treatment plan can be drawn up. The participants will then be debriefed. The moderate-risk offenders will be recommended to participate in the Self-Help Programme, (SHP) while the high-risk offenders will be recommended to join the Core Treatment Programme (CTP). As for the low-risk offenders, they will be discharged back to the referring institution where they can receive individual treatment from the clinical psychologist there if the needs arises.

As nearly all the incarcerated sex offenders will be sent to attend SOOP systematically, this arrangement significantly shortens sex offenders' their waiting time for psychological service. This is especially important for offenders serving a short -term imprisonment sentence. Besides, offenders with moderate to high risk of sexual reoffending could be identified at the very early stage of imprisonment.

The SOOP has effectively reduced the participants' denial of their sexual offence. The ETU serves as a therapeutic community where sex offenders felt being accepted and supported. Psychologically, they feel safe and secure to explore and face with their psychosexual problems. After attending SOOP, the number of sex offenders volunteers for treatment increases significantly. Most of the remaining deniers are only appellants who have lodged an appeal for conviction when they join the programme. Apart from these, in the past, much time was spent in motivating individual sex offenders for treatment in individual institutions. Little time was left for the treatment of their psychosexual problems. As the ETU is set up and systematic programmes are available, the number of treatment hours renders given to each offender increases vastly as well.

Self-Help Programme

The SHP is designed with the rationale of reducing the reoffending risk of moderate-risk sex offenders. It is a highly individual programme which may start and end on any week day. Depending on participants' progress and treatment plan, the programme normally lasts for two to 16 weeks, with about four hours per week or more. It adopts a self- help format with regular use of self- help manuals, audio visual materials, and interactive exercise to help the participants. There are over 30 SHP manuals covering a variety of topics including such as Sex Knowledge, Identifying and Modifying Distorted Sex Attitudes, Mood Management, Social Skills/Relationship Building, Understanding the Offense Cycle, Relapse Prevention and Victim Empathy Training, etc. The self-studying format serves as a supplement of individual psychotherapy. Clinical psychologists will be assigned as a personal tutor to monitor participants' progress, to prescribe new self-learning exercise pertaining to particular objectives, and to provide psychological intervention. Upon completion of SHP, participants will be reassessed with a standard psychological assessment package to identify their progress change, their current reoffending risk and future treatment needs.

By attending the SHP, a large group of offenders (the maximum is 2020) can receive treatment at one time. The number of supervising staff required is reduced. This saves resources and manpower in terms of psychologists' work and officers' work.

Core Treatment Programme

The 18-week CTP is mainly designed for offenders with high risk of sexual reoffending. It consists of a series of comprehensive and intensive group therapy which requires 28 sessions lasting for six hours each, conducted weekly. There are six intensive modules, namely Mood Management, Tackling Deviant Sexual Interests, Modifying Distorted Sex Attitudes, Relationship Building, Relapse Prevention and Victim Empathy Training. Group discussion, assignment of therapeutic exercise and role play will be adopted used throughout the process. After the 18-weeks programme, participants may remain in ETU for a short period of time for individual psychological intervention according to individual treatment needs. Upon completion of CTP, as with SHP, participants will be reassessed with a standard psychological assessment package to identify their progress change, their current reoffending risk, and their future treatment needs.

Both the SHP and CTP show their effectiveness by achieving several major changes that are significant in reducing offenders' risk of recidivism. Firstly, both programmes are effective in rectifying sex offenders' problematic beliefs towards sex, females and rape. For instance, a typical pre-treatment attitude of a rapist is likely to be the following:

'I did not use any violence and the victim never struggled. How would it be rape?' After attending the programmes, a post-treatment attitude may be generated: 'Sex without consent is rape. The victim did not struggle because of fear rather than consent to have sex.' Secondly, based on clinical observation and offenders' self-reporting, participants have a better understanding of the development of their offending behaviour and become more aware of the high-risk situations for reoffending. Thirdly, the programmes have effectively increased participants' understanding of the impacts of the abuse on their victims. Untreated sex offenders tend to minimize the impact of their sexual aggression on their victims. After treatment, however, they are more able to feel the pain that their victims experienced. Enhanced victim empathy serves as a powerful deterrent to future offending. For instance, a typical pre-treatment attitude of a rapist is likely to be the following: 'Since the victim was not a virgin, raping her did not bring any harm to her.' Yet, after treatment, a new attitude may be generated: 'Being forced to have sex is a humiliation for all women. Its traumatic impact can be life-long.' Fourthly, before treatment, most participants blame their family, spouse, victims and even the police for his offending behaviours. The programmes, however, have effectively increased their sense of responsibility in the for their offence.

Future Directions

Development of psychological services for sex offenders is not a short-term project. It requires long-term commitment and effort. In the last decade, the Working Group on Assessment and Treatment of Sex Offenders has introduced a series of service developments for incarcerated sex offenders. Improvement in the rehabilitation work for this group of offenders is observed. In facing the future, there is a strong need to further develop our services further.

Treatment evaluation

We are now in the process of conducting systematic research in evaluating existing treatment programmes. Recidivism rate of programme participants and non-participants will be collected. Several psychological measures are also used for evaluating the impacts of the existing programmes on sex offenders. We focus on

understanding the changes of cognitive distortions, victim empathy and relapse prevention skills as any positive changes in these areas will help the offenders to stop their abusive behaviour. We will also explore how the level of risk and the nature of crime affect the effectiveness of treatment. Through these studies, we hope to identify ways of programme improvement.

Programme development

The intensity and extensiveness of our existing programmes are still very different from that provided in Western countries. Continuous development of the existing programme is thus necessary. Similar to Like the clinicians in many other countries, we find some sex offenders not responding positively to the services provided. Theyse usually include offenders with major personality disorders and those who are chronic deniers. We also find assessing and treating those with deviant sexual interests a difficult clinical task. Further experimentation on new therapeutic programmes and treatment modality is needed in order to find out a better solution to the problem. More work on adapting our programmes for local offenders should also be done as our existing programmes are largely borrowed from the Western culture. Further research in understanding the psychosexual problems of people underof the Chinese culture may generate useful insights for improving the effectiveness of our programmes.

Improvement of risk assessment

Accurate understanding of offenders' risk of future reoffending is certainly important for any programmes that aim at decreasing offenders' dangerousness for the public. In estimating their risk of reoffending, our working group has made use of the actuarial risk assessment tools developed in North America. Risk assessment tools like the Minnesota Sex Offender Screening Tool (MnSOST) (Epperson et al. 1995), the Static-99 (Hanson & Thornton, 1999) and the Sex Offender Risk Appraisal Guide (SORAG) (Quinsey, Harris, Rice, Cormier et al., 1998) are often used by local clinicians as a reference in making the risk prediction. These scales include factors that are found to be significant predictors of recidivism. Despite their proven validity in the West, their usefulness in risk prediction in Asian countries remains unclear. Both cultural factors and differences in criminal justice system will affect their validity. Hence, there is an urgent need to construct our own risk assessment tool by using local data. Our recent plan to conduct research on identifying predictors of reconviction of local sex offenders will be a first step of constructing our own risk assessmentsuch a tool.

Services for sex offenders in the community

Sex offenders' risk of relapse will not be totally eliminated after their completion of treatment programmes. After discharge, they will have to face situations that will trigger off their urge of to reoffending. Continuous professional support in maintaining their motivation for change and helping them to apply the relapse prevention skills they acquired is essential for themif they are to lead a law-abiding life. Thus, continuous development of rehabilitative services for sex offenders in the community and strengthening the cooperation between mental health professionals working in and outside prisons are considered to be very important. These measures will help to ensure good continuity of services and provision of full care for people with risk of reoffending. Innovative ideas, including setting up hotline services or support groups for individuals with sexually violent tendency in the community, are worth consideration by professionals working in our community.

Cooperation between professionals

The rehabilitation of offenders requires multidisciplinary cooperation. Apart from clinical psychologists, professionals including correctional staffs, social workers, criminologists and psychiatrists have made a very good contribution in to reducing sexual violence in the community. In Hong Kong, however, in Hong Kong, cooperation among professionals in this area is still in its developing development stage. A common forum that allows exchange of opinions among professionals will definitely be useful. Effort should also be made to build in building close cooperation with professionals in other parts of China and overseas experts should also be made. The signing of the Memorandum of Understanding (MOU) between Hong Kong Correctional Services Department and Correctional Services of Canada in the coming months will definitely help to enhance the cooperation between professionals in both departments.

Policy recommendation

Psychologists should not limit our their contribution in our to their clinical room. Apart from being effective clinicians, we they owe have the role of change agents in the system. Based on our their professional knowledge and experiences, we they should take the initiative to suggest changes in order to promoteing improvement in prisons and the criminal justice system as a whole. In North America, there is an active development of legislation related to management of sex offenders. As forensic professionals in Hong Kong, we psychologists prepare ourselves themselves to give expert opinions to the policy makers in that will facilitateing the formulation of effective policies and legislation that will ultimately help to reduce sexual violence in our community.

Conclusion

Sexual violence has always been an important public concern in our society. The negative impacts that it brings can be extremely traumatic, long-lasting and irreversible. The reasons behind the formation of sex offending behaviour is are certainly multifoldmany. Both sociological and psychological factors contribute to the formation of the problem. In the last two decades, clinical psychologists in Hong Kong hasve made a continuous effort to study effective strategies to resolve the problemit. The setting up of the Working Group on Assessment and Treatment of Sex Offenders in the Correctional Services Department in 1991 was the cornerstone for the development of the rehabilitation services for incarcerated sex offenders. The development of the Sex Offender Evaluation and Treatment Unit (ETU) in 1998 has made the service more comprehensive and systematic. With years of effort, initial success has been achieved. However, considering the complexity of the problems behind sexual violence, we believe that we are still at the early stage of finding a solution to the problem. In facing the future, we are prepared to develop our services further, in terms of our clinical work, service planning and cooperation with other professionals. As a member of Greater China, we look forward to have more sharing with scholars researchers and professionals in other parts of China. We hope to have more cooperation with people in different disciplines. Through these, we hope that we can jointly build up a much safer society in the years to come.

References

- American Psychiatric Association 2000, *Diagnostic and Statistical Manual of Mental Disorders*, -4th Edition-4th edn, Text Revision.
- Bakker, Hudson & Wales et al. 1998, 'And there was Light': An Evaluation of the Kia Marama Treatment Programme for New Zealand Sex Offenders Against Children. Unpublished manuscript, Psychological Service, Department of Corrections, New Zealand.
- Epperson, D.L., J.D. Kaul & S.J. Huot 1995, 'Predicting risk of recidivism for incarcerated sex offenders: Updated development on the Sex Offender Screening Tool (SOST)'. Presentation at the Association for the Treatment of Sexual Abusers 14th Annual Conference, New Orleans.
- Frisbie, L.V. 1969, *Another Look at Sex Offenders in California*, Mental Health Research Monograph (No. 12), Sacramento State of California, Department of Mental Hygiene.
- Hanson, R.K., & M.T. Bussiere 1998, 'Predicting relapse: A meta-analysis of sex offender recidivism studies', *Journal of Consulting and Clinical Psychology*, 66(2): 348–62.
- Hanson, R.K., & D. Thornton 1999, 'Static-99: Improving actuarial risk assessments for sex offenders' (User Report 99-02), Ottawa: Department of Solicitor General of Canada.
- Hong Kong Police 2001, Rape and Indecent Assault, 1st half 1999 – 1st half 2001. Retrieved 23 October 2001, from <http://www.info.gov.hk/police/aa-home/english/statistics/statsframe.htm>.
- Maletzky, B.M. 1980, 'Assisted covert sensitisation'. In D.J.Cox and R.J. Daitzman (eds), *Exhibitionism: Description, Assessment and Treatment*, New York: Garland Press.
- Marques, J.K. 1993, 'California's relapse prevention program: An update'. Paper presented at the 12th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Portland OR.
- Marshall, W.L., A. Eccles & H.E. Barbaree 1991, 'Treatment of exhibitionists: A focus on sexual deviance versus cognitive and relationship features'. *Behaviour Research and Therapy*, 29: 129–35.
- Marshall, W.L., R. Jones, T. Ward, P. Johnston & H.E. Barbaree 1991, 'Treatment outcome with sex offenders', *Clinical Psychology Review*, 11: 465–85.
- Marshall, W.L. 1989, 'Invited essay: Intimacy, loneliness and sexual offenders', *Behaviour Research and Therapy*, 27: 491–503.
- Marshall, W.L. 1993, 'The role of attachment, intimacy, and loneliness in the etiology and maintenance of sexual offending', *Sexual and Marital Therapy*, 8: 524–30.
- Massachusetts Posts Audit Bureau 1979, Report of the Committee on post audit and oversight, Bridgewater: Author.
- Pither, W.D., & G.F. Cumming 1989, 'Can relapses be prevented? Initial outcome data from the Vermont Treatment Program for Sexual Aggressors'. In D. R. Laws (ed.), *Relapse Prevention with Sex Offenders*, New York: Guildford, pp. 313–25.
- Quinsy, V.L., G.T. Harris, M.E. Rice, & M.L. Lalumiere 1993, 'Assessing treatment effectiveness in outcome studies of sex offenders', *Journal of Interpersonal Violence*, 8: 512–23.
- Quinsey, V.L., G.T. Harris, M.E. Rice & C.A. Cormier 1998, 'Violent Offenders: Appraising and managing risk', Washington DC: American Psychological Association.

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Emerging 'Internet Pornography' and Its Social Control in China

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There is no doubt that for Chinese people the Internet is a most exciting new technology that promises a key to a new world of information and entertainment. The Internet has already succeeded in achieving the world of cyberspace and has become an indispensable part of our everyday life. Because of its glamorous appearance and rapid development, the Internet has hastened our daily progress into modernity and has very quickly constructed an entire view of humanity. People are spending large amounts of time online for work, education and recreation.

When the Internet first became a popular and easy way for people to find information without visiting libraries or exploring traditional media, nobody had much idea of what its negative influence might be. This negative influence is all too apparent now. As the Chinese society's dependency on computers and Internet continues to increase, the potential for computer-based crime or cyber-crime increases. But at the same time, the Internet and cyberspace can render impotent traditional methods of social control on which the state has relied and thus represent a threat to society. When the Internet became available to ordinary Chinese, all kinds of Internet-related deviance emerged and began to run riot around 1997. In particular, Internet pornography began to exert a very negative influence on juveniles. Increasingly, Internet pornography was found to be addictive, like a drug making young people 'enjoy' themselves to the point of madness.

Since Internet pornography has such a serious effect, how do we define and describe it? Answering this question is not easy, for unlike their Western counterparts, few Chinese criminologists or sociologists study this problem, and those who do hold many different ideas and definitions. The definition offered in this chapter is that 'Internet pornography' refers to the use of the Internet to transfer sex-related contents, such as obscene words, pornography, movies, DVDs or other broadcast materials, and also to advertise prostitution and so forth in order to receive illegal benefits.

Current Internet Development and Internet Pornography in China

Internet usage in homes, enterprises, and governments has seen an unprecedented upsurge. According to a report released by the official China Internet Network Information Center (CNNIC), there were 33.7 million Internet users in Mainland China at the end of December 2001, up almost 49.8 per cent at the same time last year (Sun & Gu 2002). The proportion of people accessing the Internet increases by 100 per cent every year.

Internet technology is becoming more and more dangerous socially, and the prevention of juvenile deviance becomes ever more difficult. It is clear that more and more juveniles learn the motives, technology, and organisation to commit most kinds of deviance and crimes directly, step by step, from the Internet. Moreover,

of all Internet-related deviances, it is widely thought that Internet pornography should be regarded as the most serious, for does a direct disservice to our children without using any weapons and causes inestimable losses to the health of our next generation. The harm from Internet pornography is enormous: studies have shown that it is strongly linked to sexual violence. Some individual 'adult' websites are collectors of pornographic pictures, which are poison for young people, causing some to step onto the crime path. In fact the Internet gives criminal offenders a good place to hide and an ideal opportunity to make money, because it has no geographical limit and its material changes rapidly. In other words, it is intrinsically hazardous. Since the Internet seems to amplify the sexual desires of individuals, we should find out more about Internet content relating to sex – after all, sex is the most widely searched topic on the Internet now.

Along with the expanding number of Internet users, there is a special need to regulate cyberspace. One study showed that men exposed to pornography for any length of time came to think that rape was not so serious. The next step is a tendency to sexual deviance and then to sexual crime. This situation has led to questions of regulation and controversy, and the Chinese government is giving it some attention. Nevertheless, people continue to use Internet services to pursue their sexual interests and to make contact with others for a multitude of sexual schemes.

From investigation of the Internet bars around Chengdu universities area, it was found that 90 per cent of 17–24-year-old males and 60 per cent of 18–24-year-old females visited adult websites (Liu 2000). More serious, 34.6 per cent of Cantong youth confess to visiting sex websites ('34.6% Cantong Youth Confess to Visit Adult Websites' 2001). Although we have not enough data to show the relationship between increasing Internet use and visiting 'adult' websites, it is not so difficult to draw the conclusion that some Internet searching is for pornography. Most of these people are young and are unable to refuse an invitation view 'adult' websites. 'Nearly 50 percent of all teenage cyber-surfers in the capital of China browse the Internet for study purposes, while the other half indulge themselves in on-line games, chat and even adult websites, official sources show' (People's Daily 2001).

It took the author nearly two weeks in the summer of 2001 to make some participant observations in several legal Internet bars in Wuhan. Although the government requires bar owners to check the IDs of Internet explorers, not every bar carries out this regulation. It is easy to find a bar where you can just pay your money and explore cyberspace unhindered. Although there are notices stating that it is not permitted to explore any 'adult', political and other unhealthy websites, no one ever checked the author's screen when online. Such a problem exists in other Chinese cities. In the absence of enough support from technology, experts and regulation, it is easy for Chinese viewers to find pornographic pictures, movies and stories. It has become a serious social problem on which the whole of society needs to focus.

Technology and Internet Pornography

As Chinese devote increasing amounts of time to searching the Internet, we need to know how the technology affects and develops Internet pornography.

It seems that the technology for Internet pornography develops faster than we can imagine. The basic function of the Internet is to move information in digital 'packets' in cyberspace, which makes it difficult to respond to pornography 'packets' quickly and effectively. From the Internet's earliest days, websites for

sexually explicit material quickly took root and flourished. So long as one has a computer, a telephone line and a modem, anyone can access the world of pornography very quickly. Internet service providers and major providers of Internet 'adult' entertainment post warnings about the potential negative impact on one's life of going on the Internet in search of sex. But for young people such warnings appear to act more as an invitation than a prohibition. In addition, it provides many different links and invitations to visit other pornographic websites where sexual acting out and related issues might be addressed in more detail. Although some pornographic websites show a warning that they will only open to adults and that anyone under 18 should leave voluntarily and immediately, it is clear that they attract young people to enter this kind of site without any hesitation instead of forcing them to leave at once. As a matter of fact, the alternative sites might contain self-assessment instruments on sexual acting out, criteria for when to seek therapy or some other intervention, and information on how to link up with treatment programs, organisations, or networks of qualified providers.

Along with Internet speed enhancement, multimedia technical development and digital compression technology consummation, there are more and more pornographic materials available nowadays. The core of cyberspace is the Internet Protocol, a special computer language used to exchange information over networks. It targets Internet pornography and threats to children from sexual predators on the Internet and explains how 'packages' of different technological and non-technological tools and strategies can be used together to enable local approaches to protecting children from inappropriate material. It should be pointed out that Internet pornography has another novelty in addition to obscene pictures and novels, and that is the chat room. Many people coming to chat rooms are only out for an evening's recreation and don't expect to hear from each other again, so lies come very easily. Starting with name and appearance, then often moving on to height, weight, even marital status, they use Internet chat rooms to meet new friends and stay in touch with old ones. 'Some, their youthful fantasies fired by cyber versions of the romance novel, are looking for love. Others, often the offspring of one-child families, just want someone their own age to talk to' ('Youngsters Looking for Love Online, 2001'). Cooper & Sportolari (1999) examined the notion of romance in cyberspace. They coined the term 'computer-mediated relating' (CMR) to describe the interactions taking place through e-mail. Sometimes some bad young guys use this tool to cheat innocent girls to develop and keep their net-friend relationship, then half or fully force the girls to have sex with them. It is not news that some girls are raped very soon after meeting Internet friends they have 'known' for some months, for the Internet shows girls as sex objects.

Why People Choose Pornography on the Internet

It appears that Chinese Internet users access sexual sites for many different reasons and purposes. Using psychological, ethical and economic perspectives, this chapter focuses on the interaction between a changing Chinese society and personal factors, which in my view has led to Internet deviance. There is an important gap in knowledge about Internet users who access sexual sites, which could be partly filled by collecting, describing and examining data about these individuals.

First, Internet sexuality is regarded as pathological. Such a view is consistent with a medical model and focuses on addiction and obsession. Internet pornography is more adaptive, emphasising sexual exploration and anonymous connectivity. Some Internet explorers are paraphilics because they are dependent on Internet pornography to supply them with stimulation and satisfaction for their unconventional sexual predilections

and behaviours (Levo 2000). For the people or their partners who seek therapy for sexual problems, Internet sexual pursuits are 'often part of a constellation of issues linked to social isolation and having an unsatisfactory life' (Cooper 1999).

Some originally viewed Internet pornography from a need to learn about their own bodies. After all, 'material covered in sex education classes in Chinese high schools lags far behind the actual sexual awareness of young people' ('Sex Education Lags Behind in Chinese Schools' 2001). More serious, thanks to the increasing prevalence of Internet access, many teenagers are addicted to Internet pornography and some have been even afflicted by 'Internet Syndrome'. However, because of a lack of data theoretical arguments and clinical observations about this phenomena remain to be investigated and supported empirically.

Limited in interests or knowledge about the Internet, parents, schools and social administrations are far from ready to handle the complicated nature of Internet pornography, while browsing the Internet has become a youth fashion throughout greater China. It would seem traditional authorities cannot offer immediate or effective suggestions for youth and adolescents have a very strong natural curiosity about Internet pornography.

Let us move to economic considerations. Comparing with the cost and speed of mailing a letter, the Internet is much cheaper, safer and faster. The most obvious characteristic is that it is borderless. Dissemination is rapid and broad, especially overseas. And because the interaction is secret and not easy to find and investigate, the cost of avoiding investigation is much lower. In this hypothesised space mere access via secret ciphers data enables all things to be seen; therefore whoever grasps the secret cipher is able to obtain access to what is normally prohibited.

The problems discussed here are of course the underbelly of China's modernisation reforms. As others in this volume have pointed out, China's new participation in international society is a two-edged sword. Her great economic success over the past 20 years is undermined by a new escalation of crime, and Internet pornography is no exception. Traditional moral regulation has lost its hold on people and a new regulation system has yet to be put in place. A sick society breeds deviance and crime. Under pressure from economic competition, surviving for living, or pursuing personal satisfaction and 'happiness', some people think that by using the Internet to attract interest in pornography they can enjoy economic benefits as well as making fun from it.

Unemployed people, who are the by-product of economic modernisation, have increasingly become viewers of Internet pornography, as have school dropouts who have no prospects of entering higher schools and colleges. Because their young age (most are from 15 to 25), there is greater danger of their committing crime after they explore pornographic websites. Although nowadays many local governments pass regulations on the administration of Internet bars, there are no explicit terms on how far an Internet bar should be from a school or whether a teenager is forbidden to enter such places.

From the perspective of Chinese traditional thought, we will find some interesting ideas that will be developed in what follows. The Chinese regard self-control, the tolerance of frustration and commitment to rules as very powerful tools of social control, some of them related directly to sexual life. For example, in the old days it was unacceptable to have any sexual relationship with a brother-in-law; even the exchange of words was seen as deviance and its violation was punished. While a modern view would see this as invading people's privacy and 'human rights', such a rule had some positive results on people's everyday acts,

especially protecting the whole family from being influenced by some negative things. However, with the great social and economic reform in the past years, such inner containment is becoming weaker and weaker, that is, the social bond between the individual and traditional society is broken. In this situation, some people who do not have not strong self-confidence will incline towards sexual deviance.

A Plan for Regulating Internet Pornography

Cyberspace should be developed into a secure space for studying and exchanging information. We need to protect our children from Internet pornography and other inappropriate adult content. If children see too many pretty naked bodies on their monitors, they may have bad thoughts and grow up to be deviants and criminals. The problem is how do we block access to this dangerous obscenity.

Here's my proposal to keep our children innocent. It is impossible to stop adults viewing 'adult' websites and since they already know about sexuality there's no need to worry about corrupting them. However, it is vital for us to forbid juveniles access to such kind of carnality, for our children do not yet have the maturity to have correct thoughts and tell what is right. Combine this with the fact that many people seem quite fond of digitally altered photos anyway, and we may have the solution by allowing adults to use the knowledge they already have to fill in the 'dirty' parts themselves. Of course, there is a price to pay – acquiring a Java-capable browser. But now that that Microsoft has licensed Java it will be legal to own such a browser. When we use Internet Explorer at home, we can use a password to access 'adult' websites. Whenever children cannot catch the password, they have no way of seeing any sex content.

It is our aim to protect children from pornography and other inappropriate Internet contents. By focusing on Internet pornography and threats to children from sexual predators on the Internet, we can make an objective description of the risks and benefits of various tools and strategies that might be used for this purpose of protection. Some Chinese scholars have suggested using rating or screening to control Internet contents, but I see education as more important. Moreover, an explanation of how 'packages' of different technological and non-technological tools and strategies can be used together can enable local approaches for protecting children while using the Internet.

In addition, case studies show how different communities have approached the problem of protecting children from exposure to pornographic material on the Internet. A better understanding of different tools and strategies can promote a more reasoned consideration of various public policy options as well as more informed approaches that can be locally implemented.

The Internet's popularisation and the damage this chapter has discussed make the appearance of Internet police inevitable. Anhui became the nation's earliest provincial capital to have network or Internet police. At present, approximately 20 provinces, province-level cities and autonomous region are preparing to construct an Internet or network police unit. Developing such specialised police is very important to the health of the Internet and to public security. Internet police have a thorough knowledge of computers and the network. In view of increasing Internet access by children, their main goal is to develop filter software, which would check Internet content and block access to pornography by young people. The Chinese police have several ways of achieving this goal. According to regulation from the Ministry of Public Security, the duties of the first section of the special-purpose group '110' is to stop the spread of wrong doctrines,

pornography, violence and related material. The Internet purifier software ‘The Network Police 110’ was released on 26 February 2001. It was published in three different editions in order to satisfy different groups – the Family, Internet Bar and Campus Version. It is said that it can search for 24 hours, seven days a week for wrong doctrines and related information on pornographic violence, prevent all users of search engines from searching the wrong doctrines, pornography and so on, and cut off all these kinds of information at their source. Simultaneously this software may also monitor network possesses including the origin, destination IP and port, so that users can decide whether to reject or allow access.

We cannot cease our vigilance and allow the minds of our people and the life of our nation to be destroyed. The question of Internet pornography raises issues about Internet regulation and control in other areas such as racism and harassment. Moreover, the Chinese government has been very responsive to the pressure of public opinion and has begun to realise the seriousness of Internet pornography and to make some regulations about it. Providing a better understanding of different tools and strategies can promote a more reasoned consideration of various public policy options as well as more informed approaches that can be locally implemented. The National Standing Committee of the National People’s Congress recently considered the ‘Decision on Maintenance of Internet Security’ on 28 December 2000. Programs should be developed and implemented to educate individuals at risk for developing online sexually compulsive behaviours. Although going to the Internet for sexual pursuits does not necessarily cause distress or inevitably lead to sexual acting out, it might be useful to provide ‘markers’ for individuals to assess whether their behaviours might make them vulnerable. These indicators might help them break through the denial of the consequences of their behaviours on their lives. For example, warnings about the long-term effects of Internet acting out might be offered to people with impulsive tendencies whose Internet-mediated difficulties fall short of sexual compulsion. They might also be directed to online or offline support groups or to moderated chats that are (or could be offered in the future) as a service of organisations such as church groups, mental health associations, managed care organisations, and so forth.

Correction programs should be developed to educate individuals about the potential positive effects of the Internet:

1. to offer people healthy sexual self-esteem and behaviours;
2. to clarify questions and correct misinformation about sexuality;
3. to develop virtual communities for minority and disenfranchised populations.

In the end, it should be pointed out that every policy should be carried out without reservation. In addition, the best policy for crime control is social policy. There should be a call for the whole of society to pay attention to the adverse influence of Internet pornography on people’s thinking, especially teenagers. Although we cannot destroy Internet pornography completely, if we will make our social policy suitable and workable, we can reduce it to an acceptable limit whose negative effect will be diminished.

Conclusion

An almost unlimited amount of information is available on the Internet, and a sizeable chunk of it is related to sex. Overall, an objective description is necessary of the risks and benefits of various tools and strategies for addressing Internet pornography that might be used to protect children from inappropriate adult materials.

Because the Internet is the product of high-tech development and a distillation of human wisdom, we should use it to serve humanity's health.

This paper has incorporated a number of suggestions. We may formulate a policing method, strengthen Internet safety, control supervising and managing, and simultaneously strengthen technical work. In order to achieve this aim, legislation, law enforcement, technological prevention and personal involvement are essential in any treatment plan. Specifically we should put our emphasis on social education, the legal system and the improvement of Internet technology. I believe these three aspects will work.

References

- '34.6% Canton Youth Confess to Visit Adult Websites', 12 December 2000, <http://dailynews.sina.com.cn/s/157266.html> (accessed 18 June 2001).
- Cooper, Alvin, and Coralie R. Scherer 1999, *Sexuality on the Internet: From Sexual Exploration to Pathological Expression*, *Professional Psychology: Research and Practice*, 30(2): 154–64.
- Levo, Lynn M. 2000, 'The Internet and Cybersex', <http://www.sli.org/page82.html>, 4(3).
- Liu, Lu 2000, 'Chengdu College Students "Enjoy" Sex websites All Day Long', 22 March, <http://tech.sina.com.cn/news/internet-china/2000-03-22/20820.shtml> (accessed 20 June 2001).
- People's Daily* 2001, 'Half Beijing's Teenage Surfers Addicted to Recreational Websites', 11 February.
- 'Sex Education Lags Behind in Chinese Schools' 2001, http://210.77.134.148/pls/wcm/Show_Text?info_id=654&p_qry=internet. 20 June.
- Sun, Yuxia, and Gu Jing 2002, 'The Population of Chinese Internet Users Is 33.7 Million Now', *People's Daily*, 16 January, Beijing, Youngsters Looking for Love Online, 9 November 2000, www.eastday.com, 20 June 2001.

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**The Detection of Deception:
The Effects of Training and Language on
Lie Detection Ability in Hong Kong Chinese**

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Deception in humans is so common that it seems to be an inseparable part of life. Throughout the history of mankind, people have sought ways to discover the truthfulness of others. Truth verification or the detection of deception is also a fascinating and important topic in criminal, clinical and interpersonal contexts. Deception is ‘an act that is intended to foster in another person a belief or understanding which the deceiver considers false’ (Zuckerman et al. 1981). A review of the literature suggests that the average lie detection ability is no better than that achieved by random chance (Ekman & O’Sullivan 1991; Vrig & Winkel 1993; Desforges & Lee 1995). However, HHresearch has showed that some ‘lie catchers’ are consistently better judges of interpersonal deception than others, so one may assume that an individual who acquires characteristics or skills when evaluating deceit will subsequently improve their accuracy at deception evaluations. To examine possible training effects, pre-test and post-test experiments were conducted with different professional groups (Independent Commisison Against Corruption, police officers, Correctional Services officers and social workers) before and after they have attended a training course titled ‘Analytical Interviewing’ (AI), which was designed to improve lie detection ability.

DePaulo & Pfeiffer (1986) reported that confidence in one’s ability to detect lying and the amount of experience in law enforcement were unrelated to actual accuracy. For instance, in Vrig’s (1996) study, when comparing prisoners, police detectives, customs agents, prison guards and college students, the inmates were the most capable at detecting deception. The present study attempted to further explore the relationship between an observer’s confidence, job experience and lie detection accuracy by replicating the methods applied in previous studies (i.e. Frank & Ekman 1997).

Most lie detection research has been undertaken in the United States, especially the use of polygraph machines. At present there are few studies that aim to explore, for example, the relationship between ‘foreign language use’ and ‘emotional expressions’. In addition, special lie detection training courses (offered, for example, by the Hong Kong police in basic training and detective training) is uncommon. Detectives in Hong Kong in recent years have sought ways to learn about lie detection through overseas courses such as the Advanced Interview Courses of the Kent Constabulary and Royal Canadian Mounted Police. Locally, almost all the HKP detective school instructors were encouraged to attend the ‘AI Course’ offered by the Centre of Criminology, the University of Hong Kong.

Although it has long been argued that human basic emotions and expressions may be universal (Russell 1994), we argue that the ability to interpret and decode another’s non-verbal behaviour is subject to cultural variations. Early studies supported by Landis & Klineberg (1938, cited in Wallbott 1998: 880) show that ‘the

relation emotion–facial expression is neither innate nor universal, but to a very large degree culture-dependent’. If non-verbal cues are not recognised to have the same meanings and usage across cultures, it is plausible that non-verbal and verbal behaviour differ when the subject uses different languages to communicate, hence a different pattern of base-line behaviour. Therefore, understanding the effects of language on deception becomes crucial.

This is the first study to examine the relationship between the issue of language and facial expressions during attempts to deceive in Hong Kong. In Hong Kong and elsewhere in the world, immigration officers and police officers conduct interviews with foreign suspects and are frequently required to use a second language (normally English or Mandarin). For instance, crime statistics obtained from the Crime Statistics Wing of the Hong Kong Police show that about 7 per cent of offenders arrested for crime in the years 2000–2002 were foreigners (Filipino, Thai, Vietnamese, Japan, Indian/Pakistani, Malaysian/Singaporean, British, French, American, Canadian, Australian/New Zealander, Others). Although a small proportion of all arrests, this amounts to roughly 2600 to 3000 cases a year where a language difficulty may arise.

Given time limitations, training aspects of deception detection will not be discussed here. Emphasis will be placed instead on the effects of language on detecting deception. To do so, an experiment was set up to test the lie catchers’ ability to judge deception of people speaking in their mother tongue (Cantonese), or in their second language (English). Specifically, we examine the following two hypotheses:

- H1: Non-verbal and verbal clues differ significantly for participants speaking in their mother tongue (Cantonese) than for participants speaking in a second language (English).
- H2: Observers will achieve higher judgment accuracy when judging participants’ lying in their mother tongue (Cantonese) than participants speaking in a second language (English).

Facial Expressions and Emotions

Although Ekman (1972) admitted that not all emotional states are correlated with universally recognisable facial expressions, a limited set of six basic emotional facial expressions – joy, sadness, anger, disgust, fear and surprise – were considered universally recognisable. This conclusion was based on studies conducted in the United States, Japan, Borneo and New Guinea (Ekman & Friesen 1969, 1975). A more recent work by David Matsumoto (2001) pointed out that cross-cultural work on emotion in the past two decades has brought to light the myriad ways in which cultures around the world are both similar and different in how they conceptualise, experience, express, and perceive emotions. Apart from the basic emotions mentioned above, ‘embarrassment’ is also a familiar emotion that exerts influence on social behaviour and its study again has its historical roots in the writings of Charles Darwin (1872: 309), who claimed that ‘Blushing is the most peculiar and the most human of all expressions’. Yet it is rare to see lie detection researchers examining this kind of emotion. Thus apart from the six basic emotions, the present study also looked at the extent to which ‘embarrassment’ occurred during deception. According to Bond (1996), research on the psychology of emotions among Chinese has been important in raising our fundamental understanding of the role of emotions in this culture. Recruiting Cantonese-speaking participants may therefore further our understanding in this area.

Culture and language effects

According to Ekman (1992), as people grow up, they learn a set of ‘display rules’, which in turn govern one’s emotional expression without choice or conscious awareness. Once these display rules are well learned and deeply ingrained, they become a habit that will operate automatically and is difficult to undo. Past studies that focused on inter-cultural communication found that humans learn to decode facial expressions in others in order to interpret accurately emotion cues and display rules (Hall 1979; Hochschild 1979, 1983; Thoits 1984). Matsumoto & Ekman (1989) offered support for this by suggesting that differences in judgments are based on the existence of cultural decoding rules, and these rules create tendencies for people of any culture to amplify, de-amplify, neutralise or qualify their judgments.

In this study, we speculated that people’s ability to decode and interpret others’ non-verbal and verbal behaviour is subject to language/cultural variations. Three studies help to illustrate this point. First, Dickey & Knower (1941) found that Mexican observers were more accurate in interpreting the facial expressions of other Mexicans than of Caucasian subjects. Second, when showing static magazine photographs to Caucasians, Japanese and Chinese, Vinacke & Fong (1955) observed there was greater agreement in judging the expression of emotions of members from their own cultural group than with the others. Finally, by using student populations from the United States, Germany, South Africa and Japan, Joy & Casmir, (1998) found that the amount of foreign travel had a positive correlation in the accurate interpretation of facial expressions. Again, such insights lead to the possibility that lying in a different language (first as against second language) may in turn influence the observer’s ability to accurately interpret and decode the emotions expressed by the deceivers.

Experimental Design

Using the Opinion Paradigm, an experiment was set up to test the lie catchers’ ability to judge deception of people speaking in their mother tongue (Cantonese), or in their second language (English). Since little is known about language variations and its effect on detecting deception, the present study is partly exploratory. The experiment consisted of a two (communication medium, Cantonese/English) by two (deception/truthfulness) between-subjects factorial design. This means that we have different subjects participating in each of the conditions and have included all combinations of different levels of our two main variables, language and deception. To assess the participants’ level of fluency in English and Cantonese, we asked participants to rate on a Likert scale (1 = Very Poor, 7 = Very Good) to the following statement ‘Please indicate the degree of your English/Chinese Proficiency’. Those who rated at or below 3 on this scale were discarded (one participant was discarded for the English condition and two were discarded for the Chinese condition). There were two stages to this experiment; first, we recruited 31 undergraduate students to help create the stimulus material, and later 20 videos of the best quality were selected for the judgment exercise in stage two, which also allows us to assess training effects.

Creating stimulus material and stages of experiments

First, an opinion survey was conducted with 135 undergraduate students and four postgraduate students. They were asked what they thought about several debatable issues including the reinstatement of capital punishment in Hong Kong, soccer betting, and moral issues such as legalising soccer betting and

homosexuals being entitled to the same rights as heterosexual couples). The students were asked to rate their strength of opinion on a Likert scale. Second, only those with strong opinions on certain issues were selected (i.e. assigned 1 or 5 on the scale indicating strongly agree or strongly disagree). Further analysis indicated that a number of students held very strong opinions on the question of capital punishment. Consequently, 31 students were selected for an interview and instructed to lie or tell the truth about their opinion. Participants were randomly assigned to speak in English (their second language) or Cantonese (their mother tongue). Out of these 31 videos, 20 videos of the best content and sound quality were selected.

A fluent female Cantonese–English bilingual experimenter (a PhD candidate in criminology) carried out the procedure and the interview questions were given in English or Cantonese, depending on the assigned condition. The experimenter described the study as being concerned about how people can effectively communicate an opinion. The interviewer in this study was blind to the experimental conditions to avoid possible bias during the questioning phase. In the first phase of the experiment, instructions were given to each participant in a quiet discussion room. Each participant was asked to read and then verbally instructed as to what to do using a standardised script in Cantonese (Part I).

In the second phase of the experiment (Part II), each of the participants was interviewed by an interrogator. The whole interrogation process was videotaped. Each participant sat on a chair and was completely visible so that their body movements and facial expression could be carefully monitored. All the questions were standardised and rapport was established in the first phase of the interview across all experimental conditions. As soon as the participant enters the room, the experimenter would introduce herself by name and greet with a handshake. In the final phase (Part III), each of the participants was asked to fill in a questionnaire concerning their confidence about deceiving others as well as their opinion about the experiment. General questions related to the detection of deception were also included.

In Stage two of the experiment, 27 postgraduate students were recruited with voluntary consent. This includes four correctional officers, seven police officers, three social workers, three ICAC officers, one lawyer, one psychologist and eight others (four Customs and Excise officers, three researchers and one from media study). This group of observers was asked to watch the 20 videos and record their detection deception judgments and attitudes associated with lie detection by filling in a questionnaire.

Results

Judgment accuracy

The overall judgment accuracy for this group was above chance level = 68.35%, $t(26) = 10.02$, $p < .05$. Although results indicated no significant mean score differences across each of the conditions (Table 30.1), observers scored slightly better when participants were lying in English (i.e. out of 5 correct responses, the mean score for identifying Cantonese speaking liars = 3.26, for English-speaking liars = 3.7, $t(26) = -1.363$, $p > .05$). Likewise, observers' were able to identify truth-tellers among Cantonese-speaking participants better than among English-speaking participants (i.e. out of 5 correct responses, the mean score for identifying Cantonese truth-tellers = 3.52, for English truth-tellers = 2.93, $t(26) = 1.844$, $p = .077$).

Table 30.1 Average correct judgment accuracy among postgraduate observers

| Condition | N | Mean (%) | S.D. | S.E. | Minimum (%) | Maximum (%) |
|-------------------|----|----------|---------|--------|-------------|-------------|
| English (truth) | 5 | 63.84 | 13.4782 | 6.0277 | 50.0 | 76.9 |
| Cantonese (truth) | 5 | 70.78 | 16.2384 | 7.2621 | 50.0 | 88.5 |
| English (lying) | 5 | 73.08 | 14.1662 | 6.3353 | 61.5 | 88.5 |
| Cantonese (lying) | 5 | 66.94 | 21.8544 | 9.7736 | 30.8 | 88.5 |
| Total | 20 | 68.66 | 15.8042 | 3.5339 | 30.8 | 88.5 |

One of our concerns in this study was that speaking in a second language might influence the observers’ judgments due to an increase in ‘illustrators’ (expressions or body movements used to emphasise speech) displayed by those lying or telling the truth in a second language (English). Indeed, the average correct response (Table 30. 1) showed that while observers achieved the highest judgment accuracy for English-speaking deceivers, the lowest judgment accuracy was observed among English-speaking truth-tellers. A detailed behavioural analysis of these videos showed that while deceiving and telling the truth in English, participants displayed more non-verbal movements indicating nervousness and anxiety. In turn, these extra non-verbal behaviour and changes in their baseline behaviour might have caused confusion for the observers. (See Figs 30.1 and 30.2 below.)

Figure 30.1

Behavioral indicators of deception by English and Cantonese Truth-tellers

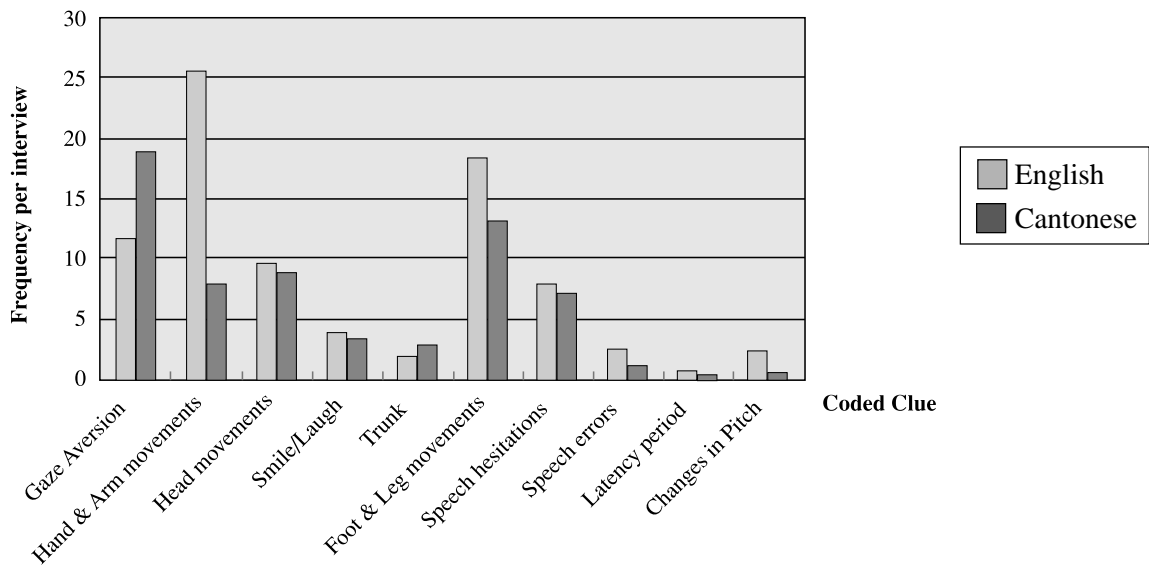
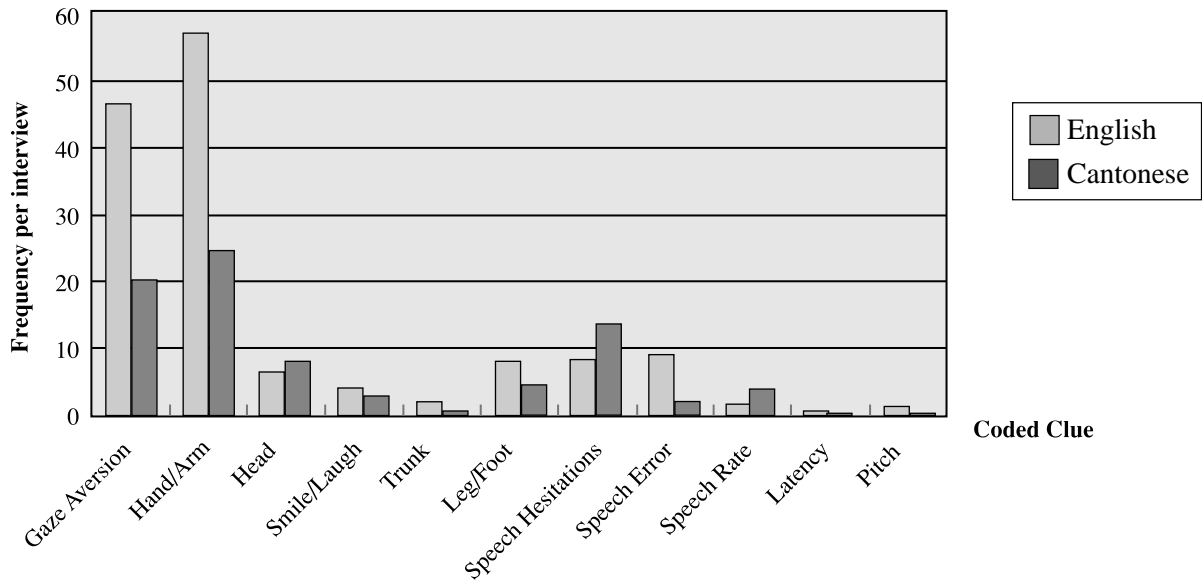


Figure 30.2

Behavioral indicators of deception by English and Cantonese Liars

*Controlled behavioural clues*

Apart from the possibility that extra non-verbal movements might cause confusion among the observers, participants might also be aware that their non-verbal and verbal behaviour differed while lying and telling the truth using their second language. To assess this possibility, we asked participants whether they had attempted to control the amount of behavioural clues displayed during the interview. The results indicated that (Table 30.2) when telling the truth in English, participants' had explicitly tried to control their direct eye contact and speech hesitations as well as changes in voice pitch, whereas those speaking in Cantonese had not. Regardless of language conditions, Table 30.2 also indicated that deceivers in general reported less control over non-verbal indicators of deception like 'smiling and laughing', 'leg and foot movements', 'head and body movements' and 'micro-expressions' (i.e. facial expressions) than did truth-tellers. Likewise, deceivers also reported less control over verbal indicators of deception such as speech hesitations and changes in voice pitch. Noticeably, lower control ratings were observed among those lying in English than among those lying in Cantonese, for a majority of the behavioural clues.

Indeed, participants were aware that their non-verbal and verbal behaviour differed when using their first and second language. The fact that verbal and non-verbal indicators of deception were less controllable when lying or telling the truth in English helps to explain the observers' relatively better lie detection judgment accuracy with English-speaking deceivers and the low truth detection judgment accuracy

(or false-positive errors) with English-speaking truth-tellers.

Table 30.2 Clues relied upon in detecting deception

| Clues | Cantonese (lying %) n = 5 | English (lying %) n = 5 | Cantonese (truth %) n = 5 | English (truth %) n = 5 |
|---------------------------|---------------------------------|-------------------------------|---------------------------------|-------------------------------|
| Direct eye contacts | 80 | 80 | 80 | 100 |
| Hand and arm movements | 60 | 60 | 40 | 60 |
| Smile and laugh | 40 | 0 | 40 | 40 |
| Leg and foot movements | 20 | 20 | 40 | 40 |
| Speech disturbances | 40 | 20 | 100 | 40 |
| Upper body movements | 80 | 20 | 40 | 20 |
| Changes in pitch of voice | 40 | 60 | 60 | 100 |
| Head movements | 20 | 20 | 40 | 60 |
| Micro-expressions | 40 | 40 | 80 | 80 |

Question: ‘As an interviewee, do you think you’ve controlled the followings during the opinion test?’ (i.e. control the amount of direct eye contact) Answer: Yes/No response.

Perceived reliable clues to lie detection

Although we hoped that observers would come up with different kinds of clues to detect deception, we found no significant differences between observers’ and deceivers’ reliability ratings for clues that are considered reliable at detecting deception (Table 30.3). We noticed that observers paid more attention to clues that are easily controlled, such as direct eye contacts (used 96.3% when making judgment decisions), smiling and laughing (77.8%) and hand/arm movements (74%). However, observers in this study also relied heavily on ‘micro-expressions’ (used 96%), which are not as easily manipulated (Ekman 1992). Although micro-expression was considered a useful indicator of deception, observers in this study were not trained specifically in facial recognition. Therefore we expect improvements on lie detection judgment accuracy when specific micro-expressions trainings were offered.

Emotions associated with deception

In this study, liars felt that they had expressed more emotions resembling ‘disgust’ and ‘surprise’ than truth-tellers (Table 30.4), so the ‘opinion paradigm’ generated more genuine emotional conflict in deceivers than in participants in the ‘crime scenario’. Second, since participants in this study had to actively generate and fabricate reasons contrary to their true opinion (i.e. rather than using passive strategies like ‘concealment’ or ‘omission’), deceivers saw lying as requiring more cognitive resources than deceivers in the crime scenario. Further details of perceived cognitive resources and deception are discussed below.

Table 30.3 Observers' perceived reliability and frequency ratings

| | Observers' reliability ratings (n = 27) | % of observers using such clue to making judgment | English and Cantonese deceivers' reliability ratings (n = 10) |
|---------------------------|---|---|---|
| Direct eye contacts | 5.52 | 96.3 | 5.33 |
| Hand and arm movements | 4.41 | 74 | 4.53 |
| Smile and laugh | 4.44 | 77.8 | 3.73 |
| Leg and foot movements | 4.41 | 56 | 4.40 |
| Speech disturbances | 5.26 | 93 | 3.93 |
| Upper body movements | 4.30 | 70 | 4.33 |
| Changes in pitch of voice | 5.37 | 81 | 5.40 |
| Head movements | 4.26 | 63 | 4.13 |
| Micro-expressions | 5.48 | 96 | 5.67 |

Questions: 'To what extent do you think the followings are reliable clues to detecting deceit?' (1 = Very Unreliable, 7 = Very Reliable). Deceivers' ratings: 'If you are the interviewer looking for the truth, do you think the following are reliable clues to detecting deceit?' (1 = Very Unreliable, 7 = Very Reliable).

Language and cognitive resources

Observers in this study believed that 'it is easier to tell lies and avoid being detected when speaking in Cantonese' (mean = 5.39, $t(30) = 6.543$, $p < .05$). Regarding the interaction between cognitive factors and language effects, results showed no significant mean difference across the four experimental conditions ($F(3, 27) = 1.509$, $p > .05$). When we combined the two language conditions (English/Cantonese), deceivers felt that 'lying requires significantly more cognitive resources' for them than for truth-tellers (mean = 6.07 for deceivers and mean = 5.5 for truth-tellers, $t(29) = 1.527$, $p < .05$). When we looked at each language condition separately, English and Cantonese-speaking deceivers assigned higher mean ratings to the above 'cognitive statement' than English and Cantonese-speaking truth-tellers (mean = 6 for English-speaking deceivers and 6.11 for Cantonese-speaking deceivers; mean = 5.13 for English-speaking truth-tellers and 5.86 for Cantonese-speaking truth-tellers). We have found further evidence of language effects by asking participants the following: 'It is difficult to come up with reasons to support the opinion. I agree/disagree while appearing truthful/deceitful'. Results showed that deceivers have more difficulties in coming up with reasons while appearing truthful than truth-tellers do, though results were not significant (mean ratings for deceivers = 4.53, mean ratings for truth-tellers = 3.94, $t(29) = 1.047$, $p > .05$).

Table 30.4 Types of emotions expressed by participants via self-report measure

| Emotion | Experimental condition | N | Mean | S.D. | S.E. Mean |
|-------------------|------------------------|----|------|-------|-----------|
| 1. Fear | Lying | 15 | 3.60 | 1.682 | .434 |
| | Truth | 16 | 3.81 | 1.682 | .421 |
| 2. Anger | Lying | 15 | 2.47 | 1.727 | .446 |
| | Truth | 16 | 2.44 | 1.861 | .465 |
| 3. Sadness | Lying | 15 | 2.80 | 1.612 | .416 |
| | Truth | 16 | 2.00 | 1.095 | .274 |
| 4. Disgust** | Lying | 15 | 2.80 | 1.740 | .449 |
| | Truth | 16 | 1.81 | .911 | .228 |
| 5. Surprise** | Lying | 15 | 4.13 | 1.598 | .413 |
| | Truth | 16 | 2.94 | 1.692 | .423 |
| 6. Happiness | Lying | 15 | 3.20 | 1.207 | .312 |
| | Truth | 16 | 2.63 | 1.408 | .352 |
| 7. Embarrassment* | Lying | 15 | 4.53 | 1.807 | .467 |
| | Truth | 16 | 4.56 | 1.365 | .341 |

Notes: *Significant differences at 95% Significant Level **Approaching significant differences at 95% Significant Level: Disgust, $t(29) = 1.96$, $p = .063$; Surprise, $t(29) = 2.02$, $p = .053$

The observers' perspective on the effects of language on judgment accuracy was inconsistent. That is, while the observers believed that 'it is easier to detect lies if others are speaking in Cantonese' (mean = 4.15, $t(26) = 2.092$, $p < .05$), they over-estimated their ability to detect lies accurately. For instance, while participants were lying in their first language, observers accurately identified them 66.9 per cent of the time, but when they were lying in their second language, observers were able to identify English deceivers 73.08 per cent of the time (Table 30.1). These findings confirm research in cognitive psychology that points to an 'overconfidence' effect on human judgment and decision-making. That is, people generally feel more confident than is warranted by measures of their actual competence (Fishchhoff et al. 1977; Koriati et al. 1980).

Observers' confidence and occupational experience

Differing from trained individuals (those who attended the AI course), the confidence levels of postgraduate students dropped significantly after viewing the videotapes (at pre-test = 4.7 and at post-test = 3.85, $t(26) = 3.595$, $p < .05$). The analysis showed that police officers tend to have more confidence in general than other professions. Likewise, except for participants from ICAC, all confidence ratings among other occupational groups declined after the test. Further analysis showed that over 85 per cent of the observers

received no prior training in detecting deception and the closest training they had was to conduct interviews with clients at work, which was reported by approximately 60 per cent of the participants. Before and after the test, confidence scores were not significantly correlated with the accuracy rate, $r = .061$ and $r = .27$, $p > .05$ respectively.

Discussion and Conclusion

Across all studies, our participants realised the importance of facial expressions in detecting deception. It is generally agreed that humans are capable of formulating impressions or decoding other people's emotions by looking at their faces as well as their words. The fact that lying in a different language may alter one's facial expression or emotion means that one cannot examine the question of lie detection without looking into cultural factors. A better understanding of the discrepancies of communication patterns in different cultures would lead not only to more effective communication but also to improvements in the accuracy of lie detection judgment. Second, given that the ability to decode non-verbal and verbal behaviour is amenable to learning and training rather than an innate skill, intercultural training in combination with training in lie detection or interviewing should maximise accuracy of detection judgment, within or across cultures.

Confirming hypothesis 1, non-verbal and verbal indicators of deception differed when participants were lying and telling the truth in English rather than in Cantonese. Contrary to our expectations, observers were better at identifying English-speaking liars than Cantonese-speaking liars, so hypothesis 2 was rejected. More importantly, the figures showed that while the observers achieved the highest judgment accuracy at spotting English-speaking liars, they did worst at spotting English-speaking truth-tellers. In general, when participants were lying or telling the truth in English, they displayed more non-verbal and verbal indicators of deception than Cantonese speakers. Therefore we could not rule out the possibility that these extra body movements and paralinguistic features caused confusion for the observers. The whole process of lie detection involves identifying truthful individuals as well as deceptive ones, thus these disbelieving-the-truth mistakes, or 'false positives' that we observed are certainly as troublesome as false negatives and are worth paying attention to.

Unfortunately, although we have managed to observe behavioural differences among Cantonese-speaking and English-speaking deceivers, the extent to which these results were caused by social learning or display rules could not be fully explored or substantiated by the current methodologies. To date, questions about the universality of emotions across cultures remain uncertain, especially about cross-cultural differences in display rules. Thus apart from conducting research within the local context with Hong Kong Chinese, it would be interesting to examine lie detection among Cantonese speaker versus a Mandarin-speaking population. Although they share the same ethnicity and geographical ties, display rules should differ because of the differences in social-cultural learning and behaviour.

Regarding the possible interactions between language and cognitive factors, English-speaking deceivers did not consider lying to require significantly more cognitive resources than Chinese-speaking deceivers. However, English-speaking deceivers tend to engage in more response latency and changes in voice pitch than Cantonese-speaking deceivers, though the results are statistically insignificant. Given the higher cognitive load among

deceivers, the likelihood increases for leakages among deceivers in general, including leakages among those using a second language.

This study has given statistical support to the idea that lying and telling the truth in one's second language increase the amount of non-verbal and verbal indicators of deception displayed. The evidence presented here also draws attention to the likelihood of 'false positive' errors in mis-identifying truth-tellers when using a second language. However, the extent to which observers attribute these extra non-verbal cues either to the communicator's intention to deceive, to nervousness, or to inability to express the language is uncertain. Yet we are certain that the meaning of non-verbal behaviour depends on the language that it accompanies (Lee & Beattie 1998). The relationships between verbal and non-verbal behaviour are in part determined by the language in use. In this case, interrogators should be more cautious when interviewing second language users, especially when they observed an increase in behavioural indicators.

We have recruited Cantonese and English bilinguals in this study. Since speaking in one's first and second language was already sufficient to elicit behavioural differences among our deceivers and truth-tellers, we would expect even more significant differences between native English speakers (whose second language is not Cantonese) and native Cantonese speakers (whose second language is not English) undertaking similar experiments. Another important bilingual effect we observed was the phenomenon of code-switching, which refers to the use of words from two different languages within a single discourse. This is illustrated in Clip 5 and 17 while lying in Chinese; Clip 12 while lying in English; and Clip 10 when telling the truth in Chinese.

| Clip number | Condition | Opinion |
|-------------|--------------------------|--|
| Clip 5 | Lying in Chinese | ‘遮係終生監禁 instead of eh...eh 死刑啦’ (Well life imprisonment instead of eh...eh death penalty) |
| Clip 17 | Lying in Chinese | ‘咁同埋我覺得 ed 果 d 人應該係 deserve 返佢地所做既野 囉... 佢地應該受到某一 d 懲罰去... 變為佢地既 consequence’ (And I felt eh...people should deserve what they did...they should receive some form of punishment for...to become their consequence) |
| Clip 12 | Lying in English | ‘阻嚇作用...遮係...em...there will be er...some’ (Deterrent effects...meaning...em...there will be er...some) |
| Clip 10 | Truth-telling in Chinese | ‘同埋第三我覺得 during 佢坐監果個 process 係真係令到佢 地真會係反省佢做過既野’ (And thirdly I felt during their imprisonment the process would make him really do some self-reflections to what they've done) |

According to Chan (1993), Chinese and English are commonly used and code-switching occurs daily among Hong Kong Chinese. However, regarding cognitive factors and code-switching, not until recently have psycholinguists studied the cognitive processes involved in code-switching (Grosjean 1980). According to Silva-Corvalan (1994), code-switching is one of the strategies bilinguals would adopt to lighten the cognitive load of having to remember and use two different linguistic systems. Since deceivers in this study considered lying to require more cognitive resources than truth-telling, code-switching was observed among three of the deceivers (Clip 5, 12, 17) and only one among all the truth-tellers. The extent to which code-switching helps to lessen cognitive load while lying or telling the truth is yet another research question that requires attention in a world where cross-language or dual language are becoming the norm.

The current study has contributed to exploring the relationships between language and deception detection. We learned that increases in certain behavioural indicators can help distinguish truthful from deceptive individuals. Based on the indications that lying requires more cognitive resources than telling the truth, lies could be transparent or observed verbally or non-verbally through behavioural leakages. The demand for information on deception detection is strong and the application of lie detection research to real-life settings is considerable. Although there are difficulties with cross-cultural examinations (culture difference is hard to define and measure), the influence of cultural characteristics associated with lie detection remains an important area to explore and investigate in a world in which cross-border or cross-culture investigation is increasingly common.

References

- Bond, M.H. (ed.) 1996, *Handbook of Chinese Psychology*, New York: Oxford University Press.
- Chan, H.K. 1993, 'Code-mixing in Hong Kong Cantonese-English bilinguals: Constraints and processes', *CUHK papers in Linguistics*, 4: 1–24
- Darwin, Charles 1882 [1872], 'Chapter 13: Self-Attention, Shame, Shyness, Modesty; Blushing', In *The Expression of the Emotions in Man and Animals*, New York: D. Appleton & Co., pp. 309–46.
- DePaulo, B.M., & R.L. Pfeiffer 1986, 'On the job experience and skill at detecting deception', *Journal of Applied Social Psychology*, 16: 249–67.
- Desforges, D., & T. Lee 1995, 'Detecting deception is not as easy as it seems', *Teaching of Psychology*, 22(2): 128–30.
- Dickey, E., & F. Knower 1941, 'A note on some ethnological differences in recognition of simulated expressions of the emotions', *American Journal of Sociology*, 47: 190–3.
- Ekman, P. 1972, 'Universals and cultural differences in facial expressions of emotions'. In J. Cole (ed.), *Nebraska Symposium on Motivation*, Lincoln: University of Nebraska Press, pp. 207–83.
- Ekman, P. 1992, 'An argument for basic emotions', *Cognition and Emotion*, 6: 169–200.
- Ekman, P. 1999, *Facial Expressions*. In T. Dalgleish & M. Power, *Handbook of Cognition and Emotion*, New York: John Wiley & Sons Ltd.
- Ekman, P., & W.V. Friesen 1969, 'Non verbal leakage and clues to deception', *Psychiatry*, 32: 88–106.
- Ekman, P., & W. Friesen 1975, *Unmasking the Face*, Englewood Cliffs NJ: Prentice-Hall.

- Ekman, P., & W.V. Friesen 1978, *The Facial Action Coding System*, Palo Alto CA: Consulting Psychologist Press.
- Ekman, P., & M. O'Sullivan 1991, 'Who can catch a liar?' *American Psychologist*, 46(9): 913–20.
- Ekman P., W.V. Friesen & M. O'Sullivan 1988, 'Smiles when lying', *Journal of Personality Social Psychology*, 54: 414–20.
- Ekman, P., M. O'Sullivan, W.V. Friesen & K. Scherer 1991, 'Face, voice, and body in detecting deceit', *Journal of Nonverbal Behavior*, 15: 125–35.
- Fishhoff, B., P. Slovic & S. Lichtenstein 1977, 'Knowing with certainty: The appropriateness of extreme confidence', *Journal of Experimental Psychology: Human Perception and Performance* 3: 552–64.
- Frank, M.G., & P. Ekman 1997, 'The ability to detect deceit generalizes across different types of high-stake lies', *Journal of Personality and Social Psychology*, 72(6): 1429–39.
- Friedman, H.S., & J.S. Tucker 1990, 'Language and deception'. In H. Giles & W.P. Robinson (eds), *Handbook of Language and Social Psychology*, New York: Wiley & Sons.
- Grosjean, F. 1980, *Life with Two Languages: An introduction to bilingualism*, Cambridge MA: Harvard University Press.
- Hall, E. 1979, 'Cultural models in transcultural communication'. In A. Wolfgang (ed.), *Nonverbal Behavior: Applications and cultural implications*, New York: Academic Press, pp. 11–17.
- Hochschild, A. 1979, 'Emotion work, feeling rules, and social structure', *American Journal of Sociology*, 85: 551–75.
- Hochschild, A. 1983, *The Managed Heart*, Berkeley and Los Angeles: University of California Press.
- Joy, S. & Casmir, F.L. 1998, 'The impact of culture-sameness, gender, foreign travel, and academic background on the ability to interpret facial expression of emotion in others', *Communication Quarterly*, University Park, Spring 1998: 214–27.
- Klineberg, Otto 1938, 'Culture and emotional expression', *Journal of Abnormal and Social Psychology*, 33: 517–19.
- Koriat, A., S. Lichtenstein & B. Fischhoff 1980, 'Reasons for confidence', *Journal of Experimental Psychology: Human Learning and Memory*, 6: 107–18.
- Landis, C. 1924, 'Studies of emotional reactions: II. General behavior and facial expression', *Journal of Comparative Psychology*, 4: 227–509.
- Lee, V., & G. Beattie 1998, 'The rhetorical organization of verbal and non-verbal behavior in emotion talk', *Semiotics*, 120: 39–92.
- Matsumoto, D. 2001, 'Emotion in Asia: Linking theories and data around the world, Introduction to the special issue on emotion', *Asian Journal of Social Psychology*, 4: 163–4.
- Matsumoto, D. 2001, 'Culture and Emotion'. In D. Matsumoto (ed.), *The Handbook of Culture and Psychology*, New York: Oxford University Press.
- Matsumoto, D., & P. Ekman 1989, 'American-Japanese cultural differences in intensity ratings of facial expressions of emotion', *Motivation and Emotion*, 13: 143–57.
- Russell, J.A. 1994, 'Is there universal recognition of emotion from facial expression? A review of the cross-cultural studies', *Psychological Bulletin*, 115: 102–41.
- Silva-Corvalan, C. 1994, *Language Contact and Change: Spanish in Los Angeles*, Oxford: Clarendon Press.
- Swenson, J., & F.L. Casmir 1998, 'The impact of culture-sameness, gender, foreign travel, and academic background on the ability to interpret facial expression of emotion in others', *Communication Quarterly*, University Park, Spring 1998: 214–27.

- Thoits, P. 1984, 'Stress, coping, social support and psychological outcomes: Emotional process'. In G. Lindzey & E. Aronson (eds), *Review of Personality and Social Psychology*, vol. 5, Beverly Hills: Sage, pp. 219–38.
- Vinacke, W., & R. Fong 1955, 'The judgment of facial expressions by three national-racial groups in Hawaii: Caucasian faces', *Journal of Personality*, 17: 407–29.
- Vrig, A. 1996, 'Lie expert's beliefs about nonverbal indicators of deception', *Journal of Nonverbal Behavior*, 20(1): 65–80. Vrij, A. 2000, *Detecting Lies and Deceit: The psychology of lying and the implications for professional practice*, Chicester: Wiley.
- Vrig A., & F. Winkel 1993, 'Objective and subjective indicators of deception', *Issues in Criminology and Legal Psychology*, 20: 51–7.
- Wallbott, H.G.(1998, 'Bodily expression of emotion', *European Journal of Social Psychology*, 28: 879–96
- Zuckerman, M., B. DePaulo & R. Rosenthal 1981, 'Verbal and Non-verbal communication of deception'. In L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, vol. 14, New York: Academic Press, pp. 1–59.

