OF HAWKS AND DOVES AND LAW-COURTS

An English newspaper editorial in Hong Kong in January, 1973, deplored the polarisation of views in the varying concepts of punishment of the Legislature on the one side and the Judiciary on the other, in the fight against youth crime.

This controversy had arisen as a result of legislation imposing a mandatory six months' sentence for carrying dangerous weapons. The general public would probably agree with this piece of legislation in the hope that it might reduce the incidence of youth crime. But implicit in every law should be the assurance that it will be carried out fairly, that criminals with knives and not innocent workers with their tools will be arrested, and that allegations of framing on such charges will be investigated. In Hong Kong, however, there are no such investigations.

This piece of legislation was enacted by non-elected and therefore non-representative law-makers. Much of the youth crime in Hong Kong can be laid at the door of this Council which has consistently denied human rights to the people of Hong Kong. It has opposed efforts to introduce a minimum wage, to limit hours of work, to enforce safety precautions, to provide adequate compensation for injury or loss of life, to provide sufficient education, housing and social welfare benefits. Showing a minimum of concern for social benefits and improvement in the standard of life of the people, this Council has nevertheless attempted to discourage young people from seeking political rights. Yet on imposing heavy punishments and on re-introducing capital punishment in practice as well as in theory, the Council is most outspoken. When the people have cried out against police oppression and official corruption, the Council has remained silent, heaping honours on those named as oppressors.

The Judiciary opposed the controversial legislation on mandatory sentences, but it is difficult to understand why, unless they objected to this usurpation of their authority. The judges and magistrates for the most part at any rate are by no means doves. It might be correct to say that the Legislative Council is one kind of hawk and the Judiciary is another kind of hawk. When dealing with savage crimes, the Judiciary sometimes appears like a dove, yet when dealing with what are really social crimes due to circumstances, they can be hawks.

One magistrate, no doubt quite rightly, refused
to impose the mandatory six month sentence on a young robber found with a knife in his possession. Yet the same magistrate on another occasion sent to prison a widow who was illegally hawking to support her fatherless children. The woman had no criminal record, nor did she know of any other way in which to support her family: at that time all she could have obtained from the Social Welfare Department was £33 for herself and £16.50 for each child, not enough to feed small animals. If this widow’s children turn robber when they grow older, or have a grudge against society, one would not be surprised. It is difficult to see the reasoning behind this magistrate’s attitude, unless it was just that he wanted to let the robber go free to prove his independence of the legislature.

I have done my best to understand how the law works here. Being a person who calls a spade a spade, I find it difficult to say I can see justice in certain actions merely because they follow the law, when I can see clearly from a practical and humanitarian aspect there is no justice at all in those actions. It may be a cliché to say that the law is an ass, but in Hong Kong it is certainly a fact.

The application of the law reminds me of some of the Christians I met in the church when I was a missionary. As human beings, some of them were good people, yet when they judged things from what they called God’s standpoint, they could be unbelievably cruel. The attitude appears repeatedly in our Christian history: judges sent men to torture and even to the stake, entreat their victims with tears of compassion to recant and believe what they should believe, or die in unbelief. The blame was invariably placed upon God for making such demands, God who was supposed to be love. And so in our courts, the blame is placed upon the law. Criminals are set free and innocent victims jailed, all in the name of the law. Suggest changing this extraordinary state of affairs and you are immediately spurned as a heretic.

I have attended the courts on numerous occasions and seen how the innocent suffer and the criminal go free. On one morning I heard four cases of appeal, all of them for minor offences.

The first case was that of a hawker appealing against a fine of £6000 (more than half a year’s earnings to the hawker but less than half a month’s salary to the judge). The young man had a free lawyer who put up a good case in his defence: he explained that the hawker
had been permitted by the factory owner to operate his cooked food business outside the factory, on condition that the young man kept the place clean and also took responsibility for removing industrial waste from the factory. The hawker had indeed kept the place clean, as I saw on several occasions. The solicitor pointed out that other illegal hawkers were allowed to operate with impunity and that this young man had been singled out for action. This fact I had also checked, and photographed. The hawker, he explained, was supporting his parents and his brothers and sisters, a task he had undertaken from the age of thirteen. What he had not done was to pay two thousand dollars for protection from legal action. Factory workers supported the young man, as he supplied their lunch in the absence of canteens in the district.

On that morning in court, the hawker was quietly sobbing, and his solicitor did his best to convince the judge. As I listened to the case I thought, "He must win. No fair judge would condemn him in those circumstances."

When the solicitor had finished speaking, the judge appeared to have heard not a word of what was said, but merely repeated the words of the prosecution as spoken by a Crown Counsel who appeared to know little about the case; for example, he said that the hawker was obstructing traffic, but this is a cul-de-sac and no traffic passed the hawker's stall. The judge chastised the hawker for defying the law and dismissed the appeal.

The second case was also an obstruction case. It was unknown to me, but I heard the judge telling the hawker that this was "the worst case of obstruction" he had seen. It is almost certain that the judge had not seen this obstruction; nor had he apparently seen the obstructions far worse caused by construction companies who pay bribes and do as they like. This appeal too was dismissed.

The third case was one in which a young man was appealing against an $80 traffic fine for crossing on a red light. It was obvious that the young man had not appealed because of the small fine, but because he was certain he had not been at fault. He explained that he had crossed on the green light, but because of an obstruction by another vehicle, a minibus, half-way across, the lights had changed. The judge was surprised why in that case no summons had been served on the mini-bus for stopping. The judge obviously did not know that if the mini-bus had paid its protection money, there would be no summons whatever it did.
When the young man had enthusiastically finished presenting his case, the judge said: "I have no doubt that you honestly do not think you have committed an offence. However, the appeal is dismissed." So the man in uniform is always right, the public always wrong.

The fourth case was the one I had been waiting for, the case of a poor widow supporting herself and two children of school age by selling newspapers with a valid newspaper licence. She had failed to get legal aid, and she was objecting to paying $120 fine for having done nothing wrong, so she decided to conduct her own defence.

Lee Pui Ling made out her case clearly: she had been granted a licence to sell newspapers outside a restaurant in Tai Kok Tsui. A few days afterwards she was approached by two persons whom she named, known to the neighbourhood as Triad gang members of the 14-K. They ordered her to hand over her licence to them for a small monthly sum of money; she refused. Later they approached her again and ordered her to pay them $2000, for protection money if she wanted to keep her stall. She refused. This is the normal procedure when a licence is granted, but few have Mrs. Lee's courage to refuse.

Having failed to carry out their normal practice, the gangsters then beat her up. She reported to the police, who refused to take action. They then set up an illegal stall next to hers, and she began to receive police summonses for obstruction. The new illegal stall did not receive summonses, though it was bigger, unlicensed, and causing fire risk to the restaurant by obstructing the doorway. The illegal stall was being run by a policeman's wife, and newspapers were often delivered to it in a police van. The policeman and his wife had connections with the men who beat Mrs. Lee.

Mrs. Lee's business went down heavily as a result of unfair competition and regular attendance in court. She had broken no regulations, and her stall was always found to be of the correct size.

All this the brave little woman told to the judge, who listened apparently sympathecally. When she had finished, the judge said, "I will refer what you have told me to the police for investigation. However, I cannot have you continually breaking the law like this. Appeal dismissed." He did not clarify what law she had broken. One must forgive her for concluding that she had broken the law by not paying the Triad gangsters. The widow
wept a little. Her daughter also wept. I am sure the little girl will not become a delinquent, but no one could blame her if she did. I also ran from the court - and vomited. I would have felt honoured that day to go to prison for contempt of court. He was a judge I had always respected too. I doubt if he would have cared that he lost my respect that day.

When I lived in Britain half a lifetime ago, I had little chance to see how the law and the courts worked. I had never broken a law, and knew only one person who had.

But the British form of Justice was one of the major bones of contention in the Colony's beginnings. The Chinese could not understand how a man could commit murder, but the system was so eager to be "just" to the murderer that it failed to notice the suffering of the victim and his family.

The Chinese attitude is more reasonable. The Chinese believe in facing facts as they are, and not as lawyers and prosecutors twist and turn them; they believe in reaching a decision based on fairplay to all. The way in which "justice" is administered even today remains a source of amazement and disgust to the Chinese.

There are so many rules in court about what can be said, what can be asked, and who can be approached, that in my own dealings with the courts here I am forced to conclude that the last thing magistrates and judges are likely to hear is the truth, the whole truth, and all aspects of the truth that might lead them to a just conclusion.

How some cases are decided is something beyond my knowledge and imagination. I came across one case in which the father of a large family had been killed. He was apparently followed to a restaurant by an enemy, and stabbed to death. When his wife came to me she complained that the family of the victim knew nothing of what was going on, except that the accused had been set free without punishment at all. I wrote to the Attorney General to ask for an explanation why a murder case had been decided without court hearing, judge or jury. This is the reply I received:

"Mr. C's case came up for plea, with nine other cases, before the Chief Justice. His plea of guilty to man-slaughter was accepted by the Crown with the approval of the Chief Justice. In view of this, the Chief Justice was able to deal with Mr. C forthwith, without having to set down the case for trial and summon witnesses."

"This would explain why the deceased's family and friends were not aware of the hearing. If they are dissatisfied because they were not present, one can only point out that there was no obligation whatever to inform them about the
hearing, and our criminal system is not intended as an instrument of vengeance for private individuals."

Was there ever such a monstrosity? The family of the victim is not supposed to be interested in knowing what caused death, not supposed to wish for judgment on the killer. What human being, including the judge and the Attorney General himself, would be happy to lose the breadwinner and not even care to know how he died? Where is respect for human life? Can one wonder at the high rate of murder? Is one surprised that so many police kill the suspect with deliberate intent? Furthermore, in this case, if the Judge did not call the relatives, some of whom had witnessed the killing, on what did he base his judgment?

The irony is that it is exactly these Government officials who accuse me of listening to one side of a story! The fact is that I always get both sides, that of the complainant and that of the official on the other side. It is the courts that hear only one side, usually the police side—and next most cases of serious crime can be fixed with them, especially if the criminal is wealthy, or a triad member. The courts are therefore made the instruments of crime and oppression.

Another of the injustices of the courts was revealed on another visit, again to the Supreme Court, where two appeals were being heard.

The first case was one in which a man was appealing against a sentence of four and a half years for manslaughter. He was represented in his appeal by one of the best-known lawyers in Hong Kong, a man who seldom loses a case. I knew nothing about this case except what I learned in court that day.

It appeared that this man had been partner in a killing. He claimed that he did not actually commit the deed, and did not even want to be partner to the crime. However, he was with the person who committed the crime and had been sentenced with him to the same length of time. Four and a half years is little enough for killing a man anyhow. The result of this case was a reduction of sentence from four and a half to two and a half years' imprisonment.
Next came my case, that of a poor hawker supporting a family of ten by selling fruit in a resettlement estate. He was a genuine hawker with a licence to hawk, but as the pitch he had been allocated had poor business, he had come out of it to trade in a more lucrative spot. Many others had done the same thing, but this man had already been fined $300, and the next day the officials came for him again. This man, named K., knew no other means of livelihood, and to his reckoning he was entitled to trade where he could make a living, as so many others were doing with impunity. When the officers therefore came the day after his $300 fine to take photographs, he knew he was going to be in trouble again. The next time his fine would be heavier, he knew; he might even be imprisoned, since in Colonial eyes, this kind of offence is worse than crime, worse than selling heroin, worse than corruption.

So when the officers came on the second day, Mr. K. pleaded for them to give him a chance. According to the officers he then became violent. According to Mr. K. and three independent witnesses I interviewed, it was the officers who started the incident by calling Mr. K. dirty names and assaulting him. Officials can be haughty and they know they can get away with assault as they simply have to become witnesses for each other. One present on that day had a very bad name anyhow. The Department concerned supports its men whether they are guilty or not: the public is always wrong, and there is no channel of appeal to which they can go as the Government from top to bottom will support the official.

Finally, after Mr. K. had apparently been felled to the ground, he grabbed a knife, according to him and bystanders, to defend himself. He did inflict injuries with the knife on one of the officials, and the wounds could have been permanent. In the prosecution it was stated that the wounds were permanent; in actual fact, reports said that there was total recovery. But truth is never a very important factor in cases brought to court by Government officials.

The vast majority of Magistrates and judges in Hong Kong will always believe the man wearing a uniform, even though in fact some of them may be little better than gangsters. In this case, the word of the officials was accepted implicitly, and the hawker's witnesses were absolutely ignored. K. was sentenced to two years in prison – almost the same sentence as the man mentioned above found guilty of killing.
Soon after this K. appealed against the sentence. He was not allowed to have legal aid, so he had to defend himself, knowing nothing about law. When he appeared in the Supreme Court he was totally incapable of conducting his own defence, as he did not know the difference between appealing against a conviction and appealing against the length of the sentence. It seems that the court had been convened to hear him appeal against the length of the sentence, whereas K. wanted to try to prove that he was not guilty but had acted under provocation. The judge had spent his life in courts and to him it was as clear as a pikestaff that K. had originally appealed against the length of the sentence, and at a much later date had asked to appeal against conviction. The judge wanted to know why K. had originally accepted the conviction and later appealed against it. K. did not understand these terms and just went ahead trying to prove he was innocent of the charge. The judge was impatient: he wanted to know why K. had changed his mind, first appealing against the length of the sentence and later against conviction. Still K. could not understand, and repeated that it was the officers who struck the first blow and he had used the knife to defend himself. One can excuse K. for being obtuse on law. It took me some time to differentiate between the two kinds of appeal, but how K., an uneducated hawker, could be expected to understand without a lawyer to help him, the judge should have realised was difficult. In my estimation it was the judge who was obtuse not to realise that the man had not the slightest clue on court procedure.

Finally the judge decided not to hear the appeal against conviction, but only that on the length of the sentence. K. was accordingly asked to go ahead with his appeal. To him there was no difference, and again he pleaded that he had committed no crime. It was back to square one.

In the midst of this K.'s mother pressed forward and asked to speak to the judge. If K. knew nothing about law, his mother knew even less, and what she had to say was enough to increase her son's sentence. With Chinese politeness she agreed that her son was wrong, and asked the judge to forgive him. Of course, she knew nothing about whether or not he was guilty; she believe that having an old mother was sufficient reason for any judge to set him free whether guilty or not. He and his relatives tried their best to stop her speaking, but she seemed determined to win the case by outright admission
of his guilt. Any sensible judge would have ignored her as an uneducated old woman trying to save her son.

I had been given permission to plead mitigating circumstances. This was no substitute for justice and human rights, of course, but at least it was an attempt to help him. I explained that he was a man of good character who had looked after his family well. His neighbours all spoke well of him. One of the witnesses, I said, who had seen the officers start the fight had been afraid to come as a witness because the officials would have sought revenge and cancelled his shop tenancy, but I had his written statement. I explained how the Resettlement Department was going to evict the whole family of ten and leave them homeless because of this case, and K. had already suffered a great deal mentally because of this incident. I also pointed out that this offence had taken place at a time when there was a public outcry against crime, and it was possible that for that reason his sentence had been stiffer. Mr. K. was no knife-wielding robber, but a man fighting for the survival of his family. Wrong, yes, perhaps, but not deliberately seeking to hurt anyone.

The judge seemed to listen sympathetically. But when he and two other judges reviewed the case, they repeated all the jargon of the Government officials, completely ignoring what the witnesses had said. They found no reason to reduce the sentence, they concluded, and dismissed the appeal.

The Hong Kong courts have long caused me to have a sick stomach. I feel utterly ashamed to be British in the midst of such injustice. As I travelled home, unable to face the stricken family, I wondered if those judges ever considered the results of their decisions.

That morning, a man involved in a killing had been defended by a good lawyer, and his sentence had been reduced by half. The one who claimed he was provoked, a man of good character, a man refused a lawyer, a man not allowed to appeal against conviction and not understanding what the appeal was all about, had had his case dismissed.

Will these two years in jail reform Mr. K.? There is nothing to reform as he is normally a quiet man, unusually quiet, his neighbours said. Will this not more likely make him more resentful, more likely to do a "better job" next time? After all, if he had killed the officer instead of only injuring him, he would at least have been given a lawyer. Will this man not feel resentful towards officials who twist every story to
suit their own ends?

And what about those children. Will they not grow up resentful that their father who was only trying to support them is now languishing in prison?

No matter which way one looks at it, two years in prison will do no good either to the man or his family, not to mention their friends and neighbours who support their side of the story.

And all this is called British Justice!

Is there any wonder that I am sometimes ashamed to say I am British?

The Colonial Government in Hong Kong seems to be obsessed with the idea that the small offences of poor people are to be punished heavily, yet the major crimes of drug-trafficking, vice, white slave trade, thuggery and other violent crimes abound, and it is difficult to get police action against them.

On 18th December, 1972, I was walking along Hong Ning Road, Kwan Tong, at 7.15 in the morning. On reaching the street corner, I noticed an array of police, and remarked to my companion that there must have been a serious robbery. Going closer, I noticed that the roads were all lined with police cars and policemen. I then concluded that the matter must be more serious — perhaps a murder. My guess was quite wrong.

I then noticed yellow helmeted workers going into action, and discovered that this enormous force of men and police were aiming their efforts at resisting one or two hundred hawkers. I had been dealing with this group of hawkers, and they had been trying in the most civilised way to reach agreement with the authority concerned. Some concessions had been made to the hawkers, and although a few of them were still dissatisfied, there was very little possibility of confrontation. The problem of this hawker bazaar had been caused by the authorities themselves, through failure to control what had been, less than two years earlier, a newly set-out bazaar for licensed hawkers. For this failure to keep control, the hawkers had to suffer a new clearance.

But what a waste of police and other personnel!

I then remembered that a week earlier a young man had rung me up to say he had just been stopped in the
same area by three thugs wielding long knives. He had had nothing worth stealing, but he felt it could be dangerous for others, and asked me to report to the police. Like a good citizen I rang up the police, and the following conversation took place:

"There are three thugs armed with knives in the area" - I gave exact details of the location.
"Was your friend hurt?"
"No, but as the thugs had knives, someone else may get hurt".
"But we cannot keep men on that beat all the time."
"I know, but I am telling you a specific location where there are thugs."
"Did anyone get hurt?"
"No, but I thought we had a law that it is illegal to carry knives."
"Did your friend get robbed?"
"No, he had no money, but I am afraid in case someone else may get robbed or even killed."
"Well, if you see anything like that, please ring again."

How does one get through? What are the police priorities, innocent hawkers, or criminals? What are the priorities of the courts? Serious crime, or the protection of Government servants and their corrupt friends?
I would give up, were it not that unjustly treated people keep coming to ask me to help to find justice for them. Maybe some day we shall get through to officialdom, but I am afraid that by then it may be too late.