such as the mutual recognition of the legal professions under different systems of legal education will arise.

Towards a new approach

In responding to these developments, it is suggested that legal education in Hong Kong should first be extended down to the grass-roots level. This will familiarise the general public with the values associated with the rule of law. The study of law should be an essential component of the regular academic curriculum in all primary and secondary schools, and it should be undertaken as a liberal arts subject. Legal terminology should be simplified.

Second, law should be taught in Chinese, initially at primary and secondary levels and gradually extended to the tertiary sector.[20] More local law teachers must be trained and legal material in Chinese prepared.

Third, law as an academic pursuit should predominate, without, however, discounting the importance of legal practice. A redefined balance of academic study and professional training at the tertiary level should be adopted, encouraging law students to be more open-minded, promoting research for the improvement of law both in theory and in practice, and stimulating exchange with law schools in China.

The current mode of legal education is too parochial to meet present and future social needs. Law is becoming secular and popular and hence part of social life; a new legal culture, emphasising human rights, is emerging. Legal education must recognise this process and play a part in consolidating, informing, and furthering what amounts to a development of enormous social and political significance for the territory.

*Carlos Wing-Hung Lo**

The Wilkinson Case

Is the Attorney General accountable to the community when he exercises his power to abort a pending criminal prosecution? This question arose following his decision to intervene and offer no evidence in a criminal proceeding instituted by the police following a serious complaint of domestic violence. The victim of the alleged assault, public interest groups, the media, and members of the Legislative Council sought an explanation, but the Attorney General's

[20] See Ujejski, ibid. See also 'Discussion Paper on the Laws in Chinese,' *Report of the Attorney General's Chambers* (Hong Kong, April 1986) and Henry Litton, 'The Common Law' in Peter Wesley-Smith (ed), *Hong Kong in Transition: Problems & Prospects* (Hong Kong: Faculty of Law, University of Hong Kong, 1992), pp 7–9.

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perfunctory responses skirted the issue. One is therefore left free to speculate on the Attorney General's motives — a situation that could seriously undermine confidence in the administration of criminal justice in the territory.

The facts

On New Year's Eve 1992, a Cathay Pacific pilot, Ian Wilkinson, was involved in a violent altercation with his wife, Ann Wilkinson, at their home in Tai Po. A medical practitioner who examined Mrs Wilkinson on 4 January 1993 noted the following injuries: heavy bruising to both eyes; bruising to the jaw on both sides of the face; bruising on the back, chest, arms, and legs; cut to the left hand; cut to the throat; both upper and lower lips split; swelling around the neck as a result of pressure being applied; and lacerations to the lower part of the face. He also noted that she was 'still clearly suffering from shock,' and that 'she explained to me that her husband had beaten her, threatened her with a knife and attempted to strangle her in an attempt to prevent her disclosing details about his private life which Mr Wilkinson feared might result in his losing his employment at Cathay Pacific Airways as well as his personal reputation.' In his view, the injuries were consistent with her account of what had transpired during the night of 31 December 1992/1 January 1993.[1]

Following a complaint made to the police some six months later, and an investigation into that complaint, Ian Wilkinson was charged under the Offences Against the Person Ordinance with wounding his wife, an offence that carried a maximum sentence of three years imprisonment. Before doing so, the police probably interviewed other potential witnesses, including a consultant psychologist and his wife who had been summoned to the Wilkinson home shortly after the alleged attack, and a neighbour who responded to a call from Ann Wilkinson about 1.00 am on New Year's Day 1993 and took several photographs of injuries sustained by her. Presumably the police were satisfied that there was sufficient evidence to maintain the charge.

On 18 March 1994, in the Fanling magistrate's court, Ian Wilkinson pleaded not guilty to the charge. Immediately thereafter, a senior crown counsel who was present in court informed the magistrate that the Director of Public Prosecutions had decided that the case should not be proceeded with. Accordingly, he did not intend to offer any evidence. The magistrate remarked that he was 'taken aback' but had no alternative but to terminate the proceedings; the police reportedly were also surprised at this development.[2] Mrs Wilkinson leapt to her feet and shouted: 'This is absolutely disgusting. If this is Hong Kong justice, then it is an absolute disgrace.'

At this stage, the following 'agreed statement of facts' was read in court:

1 Signed statement of Dr Anthony W L Lam, dated 18 January 1993.
2 The magistrate's court proceedings of 18 March 1994 were reported quite extensively in Eastern Express, 19 March 1994.

> The defendant and the victim were married in 1980. They came to Hong Kong in 1985 and lived in Hong Lok Yuen. From 1989 onwards their relationship deteriorated, until 31 December 1992 when the defendant left the matrimonial home. On the evening of 31 December 1992, a heated argument took place, during which physical blows were traded and the defendant hit the victim around the head. In the course of the fight, the defendant lost control and picked up a small knife, which caused a cut to the victim's left hand. He also used his hands to apply pressure to her throat. At this juncture, the defendant regained control of himself and phoned a consultant psychologist whom the parties had been using for counselling. This man, a Mr Whyte, came to the house with his wife; he calmed the victim, and suggested to the defendant that he should leave, which he did. The victim reported the assault to the police some six months later.[3]

Thereupon, by agreement of the parties (the DPP and the accused), Ian Wilkinson was bound over to keep the peace in a sum of $20,000 for a period of twelve months.

Ann Wilkinson wrote to the Attorney General alleging that the fact sheet read in court 'was inaccurate, misleading and incomplete,' and inquiring why an arrangement had been entered into with the accused to abort the trial without her prior knowledge or consent. In his reply the Attorney General, Jeremy Mathews, stated that 'While I can appreciate your concerns, I am afraid that it would not be appropriate for me to add to that which was said in court on March 18 last.'[4]

The conduct of the Attorney General was canvassed very conspicuously in the media in their editorial columns, by readers, and by interest groups. In the Legislative Council members asked him to explain his action. Once more, the Attorney General evaded the issue:

> As has been explained to this Council in the past, it is not appropriate for me to give reasons for decisions made in relation to any particular prosecution. I can nonetheless confirm that in this case the Director of Public Prosecutions reached his decision only after an exhaustive examination of the case file, of the witness statements of Mrs Wilkinson, of Mr Wilkinson, and of others. Any such decision is not, of course, taken lightly. The Director of Public Prosecutions, in reaching his decision, was aware of all relevant factors. He considered the events leading to the incident, the incident itself, and the circumstances subsequent to the incident. In that exercise, regard was likewise had to the interests of the victim, to those of the accused, and to the wider public interest.

[3] This version of the 'facts' was immediately disputed by Ann Wilkinson in court.
[4] South China Morning Post, 17 April 1994.

Referring to the bind over order, he explained that five basic requirements needed to be satisfied before a magistrate made such an order: (1) there should be material before the court justifying the conclusion that there is a risk of a breach of the peace unless action is taken to prevent it; (2) he should make clear to the accused his intention to bind him over and the reasons for it; (3) he should obtain consent to the binding over from the accused; (4) before fixing the amount of the recognizance he should enquire as to the accused's means; (5) the binding over should be for a fixed period. Mr Mathews stressed that 'we do not take offences associated with domestic violence lightly. The case in question turned on its own facts and circumstances and should not be regarded as setting any precedent. There is no question of going soft on domestic violence.'

A few days later, in a letter to a newspaper, the Attorney General elaborated on the 'sound reasons of public policy' that prevented him from revealing the reasons for a prosecution decision. They were: (1) If the defendant has been prosecuted but acquitted it cannot be in the interests of justice and fairness for that acquittal or its reasons to be debated in public. (2) If the defendant has been prosecuted and convicted it would hardly be proper to discuss whether the conviction was correct or not. If the defendant felt he should not be convicted he would appeal. (3) If criminal proceedings were not taken it would not be fair or just to discuss why the accused was suspected and the reasons for not prosecuting. To embark on such a course would be tantamount to a trial but it would not be in accordance with court procedures and would not be confined to evidence admissible in court. This reasoning applies equally to a decision to accept a bind over.[5]

Summoned before the Legislative Council's Panel on Legal Affairs, the Attorney General again refused to disclose why it had been decided to offer no evidence against Ian Wilkinson. The Director of Public Prosecutions, John Wood, revealed, however, that he had taken the decision after counsel for the accused interviewed him. He had not consulted Ann Wilkinson because 'there isn't much point in consulting the victim when you know what the victim's attitude is.' The police officer in the case had told him, 'she would not like it and would not agree.'[6]

Comment

The Wilkinson case was not concerned with the Attorney General's power to decide whether or not to institute, or to consent to, a prosecution. The Attorney General is not bound to prosecute a suspect in any case in which he may be of opinion that the interests of public justice do not warrant a

5 Eastern Express, 30 April 1994.
6 Hongkong Standard, 6 May 1994; Eastern Express, 6 May 1994.

prosecution.[7] In 1987, the then Attorney General, Michael Thomas QC, explained the manner in which that discretionary power was exercised. In deciding whether to prosecute, there were two major considerations: is the evidence sufficient, and does the public interest require a prosecution to be initiated? In considering the 'public interest,' regard is had to the effect which the prosecution, successful or unsuccessful as the case may be, would have on public morale and order, and any other considerations affecting public policy. He stressed that the process of deciding such matters entailed the exercise of judgment and discretion in a judicial, and not a haphazard, manner.[8]

When the Attorney General has exercised that discretion, he is not required ordinarily to explain his decision not to prosecute. Michael Thomas explained to the Legislative Council the reason why:

> There are good reasons why any Attorney General does not normally explain in public a decision not to prosecute in a particular case. It is rare for any public announcement to be made of that decision because it would reveal unfairly that someone has been under suspicion for having committed a criminal offence and even where that fact is known, to give reasons in public for not prosecuting the suspect would lead to public debate about the case and about his guilt or innocence. The nature of the evidence against the suspect would have to be revealed. Then some might say that was proof enough for guilt, and the suspect would find himself condemned by public censure. Sir, in our legal system the only proper place for questions of guilt or innocence of crime to be determined is in a Court, where the accused has the right to fair trial in accordance with the rules of criminal justice, and the opportunity to defend himself. So, members will readily appreciate that it would be quite wrong for any Attorney General, having decided that the issue should not proceed to trial in the Courts, to say anything in public that might be taken to indicate a belief in the suspect's guilt, or which might lead to a public discussion of that very question.[9]

The confidence which the legislature and the public has in an Attorney General is what sustains his decision and accords him the right to decline to make an explanation. If that confidence were to be eroded, the Attorney General would probably be compelled either to resign his office or to defend his action by submitting it to public scrutiny, regardless of the effect such a debate would have on a suspect's reputation.

7 Criminal Procedure Ordinance, s 15(1).
8 Michael Thomas, 'Balancing the Scales of Justice,' South China Morning Post, 4 November 1987.
9 Statement made on 25 March 1987 in the Legislative Council, and cited by Silke VP in *R v Harris* [1991] 1 HKLR 389, 395.

The Wilkinson case was not one in which the Attorney General entered a nolle prosequi which would have had the effect of bringing a criminal prosecution to an end before judgment, but without prejudice to the commencement of new proceedings against the same defendant in respect of the same charges. Where that step is taken, it is often apparent why the Attorney General has chosen to invoke that power.[10]

What was at issue in the Wilkinson case was entirely different. The police, as they lawfully might, had instituted a prosecution, and the case was ready for trial. At that stage, the Attorney General chose to intervene and offer no evidence, thereby securing the acquittal of the accused. The fact that an immediate bind over order was made, with the consent of the accused and despite the acquittal, suggests that inadequacy of evidence was not the reason for his decision. If the evidence was adequate, the only other legitimate consideration should have been the public interest. While public interest may influence a decision not to institute a prosecution for criminal defamation, or one likely to affect the economy, or impair international relations, it is incomprehensible how the public interest can possibly require a domestic violence prosecution to be suppressed. In fact, the Attorney General asserted that there was 'no question of going soft on domestic violence.'

In his statement to the Legislative Council, Jeremy Mathews indicated that he might have had regard to the interests of the victim and to those of the accused. The interests of the victim will ordinarily require a judicial scrutiny of her evidence, not the stifling of the prosecution. Ann Wilkinson's outburst in court and her persistent pursuit of this matter ever since suggest that her interests have not been adequately served. Did the overriding interests of the accused motivate the Attorney General to act as he did? That may constitute a valid basis if accompanied by a good and sufficient explanation why that particular individual was singled out for privileged treatment. When the Attorney General insists that this case 'should not be regarded as setting any precedent,' he is obliged to explain how this case may be distinguished from other complaints of domestic violence.[11]

The reasons suggested by Michael Thomas for not requiring an explanation relate to an Attorney General's decision not to prosecute a particular suspect. They do not appear to have any relevance to an Attorney General's decision to secure the acquittal of an accused person by not offering evidence that is available in a case already instituted and set down for trial. When such a decision is reached following an interview with the accused's counsel, but with no prior consultation with the virtual complainant, in circumstances which

[10] A nolle prosequi is usually entered on humanitarian grounds, as when a defendant is terminally ill, or where proceedings have been instituted in the wrong court.

[11] According to statistics furnished to the Legislative Council by the Attorney General, of 462 persons charged in cases of domestic violence during the three preceding years, bind over orders were made in respect of 71. He was unable to state how many (if any) of these 71 persons had been acquitted.

suggest that he was motivated to intervene having regard to the interests of the accused, the Attorney General is obliged to explain his conduct. When a victim of crime is barred from ventilating her grievance in a court which she has already accessed, an Attorney General who takes that extraordinary step must be willing to stand before the bar of public opinion and justify his action on sound and rational grounds.

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