

Paying for Convenience: Corruption and Revenue Spending in Hongkong

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A bribe may be paid to buy convenience in the area of revenue spending. It may be given to gain access to revenue and/or lift the control over revenue spending. As a form of corruption, its causes were examined in Hong Kong and it was found out to have resulted from the lack of enforcement and not from the shortage of rules. The actual spending of revenue follows rules and regulations given out by the Hong Kong government. These rules suffer from incompetence and carelessness, thus breeding opportunities for corruption to arise. These opportunities come to be exploited and results proved that corruption pays. To prevent this, the Hong Kong government uses three approaches: investigation and prosecution which yield little result; prevention whose major action is the establishment of the Independent Commission Against Corruption (ICAC) in 1974; and publicity programs which act as supplement. However, these approaches suffered a major blow when the Governor declared an amnesty on acts of corruption committed before 1978. This implied that the government could not pursue the crime offenders because it could not afford to lose its own staff. Thus, importance should be placed now on strengthening public confidence — to prove that the government can and is willing to enforce its law.

In this paper, revenue spending is taken in a broad sense, to include not only budgeting and the actual process of spending, but also the distribution of government-provided amenities for which the spending is made. In fact, there is no information that links broad policy making directly to crude corruption in Hong Kong, and whatever available information exist deals with the process of spending and the distribution of amenities. It should be easy to understand that even concerning these aspects of corruption, there

are substantial gaps in the knowledge of the basic facts, enough is known however, for a general outline to be pieced together, and most of the incidents involved may be broadly characterized as payments for convenience.

Paying for Convenience: the Concept

A bribe may be genuinely paid out of gratitude or under duress. Otherwise, it has to be paid to buy convenience. Generally, the convenience purchased falls into two types: (1) for an interested party to gain access to revenue, and (2) for control over spending to be lifted once access is gained. Such convenience may be given, for instance, by an official expediting the processing of documents, by relaxing law enforcement, by offering "inside" information, and so on.

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It is characteristic of a bribe that advantages change hands.¹ In this paper I shall follow somewhat rigidly this understanding. As a result, the closely related phenomenon of embezzlement will be largely left out in the present discussion. Embezzlement exists through fraud or theft, and in the cases that have come to light, evidence has not been brought forward to establish the collusion of third parties.

Two passages in an official report on corruption illustrate very clearly the kinds of incidents that fall properly within the category of payments for convenience.

Hong Kong's problem of people has produced long queues in many places: waiting for low cost housing, well established schools, etc. There is strong temptation to get in by black market methods. Looking at our Government services objectively we can be thankful that many of our application procedures are reasonably well-controlled and insulated against corruption possibilities. But we must be on guard because even normally law abiding people are sometimes prepared to offer bribes for something they need badly.

¹For a statement of the offense of bribery of public officers in common law, see the passage quoted from Russell on Crime in para. 6 of the *Second Report of the Commission of Inquiry under Sir Alastair Blair-Kerr* (Hong Kong: Government Printer, 1973) hereafter referred to as Blair-Kerr Report II. Hsin-chi Kuan gives the evolution of the offense of corruption or bribery in the statutory laws of Hong Kong. See Kuan, "The Legal History of Anti-Corruption in Hong Kong," paper prepared for the second working meeting of the Bureaucratic Behaviour and Development in Asia Project, Thailand, January 18-23, 1977.

*The public often does not recognize the need or justification for stringent controls or high standards insisted upon. Operators often feel that the requirements are not always necessary and sometimes unrealistic. Failure to comply is unlikely to result in any major disaster which might attract public attention. All that remains to be done is to pay some enforcer to turn a blind eye. The bribe usually costs much less than the expenses for compliance. Again both parties are mutually happy and will jointly keep quiet.*²

The report does not give us information on the source of these two passages. However, what they describe is common knowledge and can be supported by cases that have been brought before the court of law. To my mind, they represent the two major types of corruption that arise from revenue spending, viz., the black market and the payment of an enforcer of the law to "turn a blind eye." In either situation, some convenience is given to the party that pays the bribe.

When convenience is successfully given, the payer of the bribe is satisfied. He is then as prepared as the party receiving the bribe to keep the transaction secret for fear of losing the advantages as a result of exposure. The corrupt are skilled in spotting areas where convenience may be offered and arrangement for paying or receiving the bribe with some degree of safety may be made. Where these skills are mastered, corruption of this kind is not easily exposed. This is the kind of corruption that, among anti-corruption bodies in Hong Kong, is known as the "satisfied-customer" type. It is difficult to detect or to prove corruption

²Blair-Kerr Report II, para. 87 (5) and (9).

beyond reasonable doubt in the court of law.³

A government employee who accepts payment to provide convenience is the epitome of corruption, both in popular conception and in law. In a black market situation, this happens when some people are given advantages of access to commodities for which they have not competed according to proper rules. In the suspension of control, the basic situation is often a renegotiation of the terms of the contract, whereby the party governed by the contract seeks to circumvent some of the clauses. Such practices may also degenerate into habitual payments, which are made not because convenience can be positively given, but because it is feared that it might be required and could be withheld. Of course, such practices are not exclusive to the spending of revenue. They may be found in many spheres of public activities of which the spending of revenue is only one part.

Aspects of Administrative Background

The rest of this paper is devoted to a broader examination of the causes of corruption in the spending of revenue and the possible measures to lessen, if not prevent the commission of corrupt practices. Any discussion of such matters must take into account the framework in the everyday administration of revenue spending, the actual practice that takes place, and matters

related though not directly arising out of such administration. It will then be necessary to analyze the concept of control, and to examine the effectiveness of control.

The Administrative Framework

The control of revenue in Hong Kong is highly centralized.⁴ The central institution is the budget, drawn up by the Financial Secretary, and approved every year by the Legislative Council. It cannot be overstated that in Hong Kong the budget is prepared by a civil servant, and the Legislative Council is free from partisan politics, although it would be naive to think that pressure group influence is entirely absent.

The actual spending of funds allocated in the budget follows procedures listed in the regulations of the Hong Kong government.⁵ Corruption here does not arise from a shortage of rules. In gist, payments are made not by administrative departments but by the Treasury, sometimes through the departments. All payments have to be properly accounted for on prescribed forms in duplicate. Strict regulations govern the handling of vouchers, and proper records of all sums taken from the Treasury are to be kept. The same careful record-keeping applies to the issuing of stock: stock is to be regularly checked and issued only when properly vouched for. The head of the department is held responsible for

³ See a series of three articles in the *South China Morning Post* (hereafter SCMP) on corruption on May 13, 14 and 15, 1969, and the discussion in Blair-Kerr Report II, paras. 110-119.

⁴ For an introduction, see Alvin Rabushka, *Value for Money, the Hong Kong Budgetary Process* (Stanford: Hoover Institution Press, 1976).

⁵ These are contained in *Regulations of the Hong Kong Government, Vol. 3: Financial and Accounting Regulations*.

stores issued to the department, and he appoints a controlling officer who has to carry out routine inspections. The Surveys and Stock Verification Unit of the Government Supplies Department advises on the verification of stock held by individual departments.

Special sections of these regulations apply to the procurement of stores. Single purchases of less than HK \$250 may be made by departments on their own but any purchase above this amount must be referred to the Government Supplies Department. Except in urgent cases, the Government Supplies Department is obliged to approach at least five suppliers for quotations before purchasing any item exceeding HK \$250 but below HK\$25,000. Purchases exceeding HK \$25,000 must be submitted to the Central Tendering Board, chaired by the Deputy Financial Secretary, and only the latter has the authority to permit purchase under special circumstances. There are also six subsidiary tender boards that handle sums ranging from HK \$100,000 to HK \$250,000.

Tendering is not necessarily public. Although public tenders are advertised and announced in the *Government Gazette*, tendering in any case is carried out under strict confidentiality. Tenders are submitted in duplicate in sealed covers and are placed in a tender box which is opened at the advertised closing time. The department requesting the tender is given one copy of the tender, which is analyzed by the head of the department concerned after which necessary recommendations are made. The recommendations made by the department head are considered by the appropriate tender board but final authority rests ultimately with the Financial Secretary.

Tendering is only one of the many built-in financial control measures employed by the Hong Kong government. In addition, there are regulations governing employment, the checking of receipts issued by stores, and so on. All government expenditures and accounts are duly accounted for and audited. Account books are kept on the advice of the Accountant General, but every officer having monetary or financial responsibilities is personally responsible for maintaining proper accounts. To facilitate proper auditing, the Director of Audit is provided access to all records of accounting. To give him more freedom in the performance of his work, the Director of Audit is directly appointed by the Governor with the approval of the Secretary of State of the British government. He may be retired or dismissed only upon order from the same authorities.

These regulations of the Hong Kong government are not applicable in all situations. As the need arises, departments may institute rules, supported by legislation. The Education Department, for instance, employs various subsidy codes supporting privately-managed schools. However, the general principles of financial accounting are made very clear, and where procedures are found to be faulty, the Director of Audit makes the necessary correction.⁶ Such being the case, it is very doubtful that shortage of rules can be a cause of corruption.

⁶The annual reports of the Director of Audit are publicly issued, and the comments contained therein are commonly acknowledged as the most interesting among government publications in the year.

Examples of Actual Practice

The basic question is how the rules are applied. There are many irregularities in government spending, and the most usual source of these irregularities is the Director of Audit's annual report. The Directors of Audit state in their reports that on the whole they are satisfied with the accounting procedures used by the government, and that irregularities are the exceptions rather than the rule. Yet, a number of cases quoted in these reports show that there is blatant violation of procedures, as well as gross carelessness. It is clear that despite the regulations, irregularities sometimes involving very large sums of money are not only present, but are also permanent features.

Had it been the object of this paper to examine revenue spending procedures in general, it would have discussed in depth the problems of finance control as revealed in these reports. However, since this article is restricted to a discussion of corruption, it shall focus on the kinds of irregularities from which bribery *might be* induced. It is underscored that the Director of Audit does not in any way hint the presence of corruption in any of the cases that he reported. On the contrary, one is made to believe that many discrepancies arise purely from incompetence and carelessness, or perhaps from a misunderstanding of rules and regulations, let alone the isolated examples of inventories that are not properly kept, of allowances that need not be paid, or of records that are fabricated. It does not take any stretch of the imagination to see that such practices, however rare, breed the opportunities from which corruption may arise.

Some of the practices described by the Director of Audit, show that

"white collar crimes" are prevalent in government service as evidenced by the incredible expenditure of HK\$40,000,000 representing travel expenses of government officials in 1976-1977. When the Director found inconsistencies in the claims for payment of travel allowances, he had reservations as to the validity of such claims. One case recorded several travels as "private" but which were subsequently certified by the officer-in-charge as official in nature. Such cases cloud the integrity of people in the government service.⁷

There are other cases with irregularities of a different sort. In one instance, it was found that tender procedures were not followed. For tenders up to HK \$100,000, the departure from the proper procedures included "failure to maintain properly the list of approved contractors and, on occasion, failure to invite all eligible contractors to tender, and a lack of effective security in the handling of tenders submitted."⁸ This happened in the Marine Department, which in another year's audit, was found to be guilty of irregularities in the control of stores issued.⁹ In an audit of the Resettlement Department concerning the repairs of handcarts amounting to HK\$350,000 annually, the Director of Audit noted:

⁷There are too many examples of this abuse in the Director of Audit's reports to list in full here. The example referred to in the text may be found in his report for 1971-1972, para. 34.

⁸Director of Audit, *Report and Certificate on the Accounts of the Hong Kong Government, for the Year ended 31st March 1974* (hereafter Audit Report 1973-1974), para. 35.

⁹*Audit Report, 1971-1972*, para. 45.

Steps were not apparently taken to ensure that no uneconomic repairs were carried out and it was not clear how certifying officers satisfied themselves as to the reasonableness of rates quoted or whether satisfactory service had been rendered. In the absence of cross-referencing invoices with departmental orders and as the handcars themselves bore no distinguishing marks, work done could not be identified and the possibility of incorrect bill, including bills for services not rendered at all, and duplicate bills being passed for payment was not guarded against.¹⁰

In both instances, not only were control measures entirely ignored, but it also indicated that there were areas wherein private individuals conceivably benefited from the violation of normal procedures. Of course, this is not to say that corruption was involved, but these are clear examples of opportunities for corruption.

Undoubtedly, because of the huge sums of money and the complexity of the network involved, public works spending drew considerable comments from the Directors of Audit. There are apparently blatant loopholes in the finance procedure, and even more blatant ones in the manner in which the procedures were executed. For example, a very interesting case was discovered concerning land resumption. The Director of Audit wrote:

In paragraph 51 of my 1965-66 report, it was reported that the attention of Government had been drawn to a series of transactions in which an area of private land in the New Territories, which Government had been negotiating to acquire, was purchased by a private buyer for \$4,090,345.00 and almost immediately surrendered to Government for land valued at

\$6,427,685.00 to be granted in exchange, and that the vendor subsequently obtained from Government \$3,200,000.00 cash compensation in lieu of approximately half of the area of the land in question.¹¹

In other words, somebody bought a piece of land which government was negotiating for, and immediately made a profit of over HK \$2,000,000 out of the transaction. How this was possible was a matter of some concern to the Director of Audit who pursued the issue for four years. Finally, in the 1968-1969 report, he wrote:

There is little room for doubt that when the question of payment of parts of the requisition consideration in cash arose, there existed a series of misconceptions amongst the Government officers involved as to the nature of the particular type of commitment entered into by Government, and regarding the propriety of meeting the costs from the existing vote without further special authority and review. The circumstances of the unsatisfactory cash payments, land valuation, and stamp duty valuation, have been the subject of inquiry by Government. Action has been taken to present a recurrence, and much beneficial appraisal of the processes involved has now been made. No further comment is proposed on this very unsatisfactory matter.¹²

In the foregoing instance, a third party purchased a piece of private land which the government was negotiating to acquire and surrendered this for another piece of land to the government at a profit.

There are always arbitrary elements concerning payments for land requisition, and hence it is no surprise that quite a few cases were discussed in the

¹⁰*Ibid.*, para. 63.

¹¹*Audit Report*, 1967-1968, para. 69.

¹²*Audit Report*, 1968-1969, para. 49.

reports. However, because large sums are frequently involved, it seems that the Director of Audit is justified in being concerned over the apparent lack of procedures in the instances cited. The High Island Water Scheme, already noted in connection with a case of corruption, provides examples where loose procedures could well have given rise to abuse.

In his report in 1975, referring to the award of HK \$52,000,000 as compensation to a total of 490 persons, the Director wrote:

Although the whole question has been under correspondence with the Colonial Secretariat for over a year I have yet to see a categorical statement of how the criteria adopted in awarding shops and flats to each family or family member were arrived at. I have been informed that the determination of the rate of ex-gratia compensation and the method of re-housing, resumption and compensation followed the principles agreed for an earlier water scheme, but my own interpretation is that the terms for the scheme now under review were substantially more generous and I would therefore have anticipated that the principles governing them would have been separately enunciated. I would also have anticipated that the bases of ex-gratia compensation on such a scale would have been submitted for the approval of the Finance Committee of Legislative Council, but in this connection I have been informed by the Deputy Financial Secretary that, as the necessary funds were appropriated without the Committee's seeking details of the compensation terms, it could properly be assumed that its members were prepared to leave those details to be determined as an administrative matter.¹³

There might be good reasons why the Finance Committee left the procedures

as administrative details. But it seems that the Director of Audit was objecting not only to the manner by which these procedures were made, but also to the elements in the procedures which he found questionable, thus:

I doubt the validity of this assumption but be that as it may, it is still not clear to me what exactly the compensation was designed to cover. . . Even whilst recognizing that the negotiation of compensation for removals to make way for Government project is invariably a complex and delicate operation, it seems open to question whether the value of the awards was in reasonable proportion to the standards previously enjoyed by the villagers and to the probable levels of income derived from the properties affected and it would seem desirable for it to be clarified why compensation awards in respect of water schemes should vary such to a great extent from the terms usually offered for village removals outside the context of such schemes.¹⁴

The Director further cited projects which were equally questionable but which the government was prepared to compensate more generously. (While one would not want to argue for less generosity for villagers being removed from ancestral homes, nor would one question that all the agreements were made in good faith, one cannot help but see that there was a number of corruption opportunities in this arrangement.)

To say that the compensation criteria leave much to be desired is borne out by an account in the 1976 report:

Another aspect of compensation payments in connection with the High Island Water Scheme which engaged my attention was the ex-gratia award of \$3.5 million to the occupants of one village for the loss of a claimed

¹³*Audit Report, 1974-1975, para. 52.*

¹⁴*Ibid., para. 53.*

880,000 pine trees covering an area of approximately 160 acres. It is a long-standing practice when land is cleared for Government development schemes, for ex-gratia compensation to be paid to persons holding licenses permitting them to grow pine trees on a non-commercial basis, the rates of compensation in accordance with the sizes of the trees being determined from time to time by the Director of Agriculture and Fisheries and the actual counting and assessment of the trees being the responsibility of the New Territories Administration. I have been informed that in this particular case the size and nature of the area did not lend itself to a detailed survey of all the plots involved and in respect of most of the plots the compensation was assessed following a count of the trees on small subsections, the result being applied arithmetically to the whole of the relevant plot with an addition of 10% to compensate for any miscounting. Whilst this would have constituted a reasonable basis if carried out on proper statistical lines by qualified officers, in the circumstances concerned I doubt the accuracy of the method, especially as the results obtained produced a total number of trees more than four times the maximum which a Forestry Officer considered could have been accommodated in the area, thus indicating an overpayment in the region of \$2.7 million. No detailed records of the computations were retained, the only figures available to me being those finally agreed for each plot, which in at least a few instances would seem to owe less to mathematics than to the negotiating skills of the villagers. At no time did the District Officer concerned seek the advice or assistance of officers of the Conservation and Forests Division of the Agriculture and Fisheries Department, one of his reasons for not doing so, he tells me, being that his staff had no reason to suppose that those officers would have any particular expertise in the matter, a view which has surprised the Director of Agriculture and Fisheries. I have suggested to the Secretary for the New Territories that the methods of counting and assessing pine trees for the purpose of paying compensation should

now be reviewed in conjunction with the Director of Agriculture and Fisheries, who should be asked to advise on the contribution which his professional forestry officers could make.¹⁵

Quite apart from compensation payments, the Director of Audit also questioned payments for construction work in the building of the reservoir:

During a visit to the site of the High Island reservoir contract in the early days of the scheme, my staff proffered advice on the form in which basic interim payment records should be maintained in order to provide a permanent and readily verifiable record of the quantum and source of all measurements and assessments for interim payment purpose. This advice was not accepted, the site staff concerned preferring to adopt their own individualistic system. On a more recent visit it was found that following a change of site staff and their preoccupation with special work of an urgent nature, even this system had fallen into disuse and I have expressed the view that the lack of a clearly defined method of recording the interim measurements of work, such as I had recommended, had resulted in claims for that work being inadequately verified. The situation was such that I was unable to obtain a sufficient assurance in audit that interim payments totalling over \$300 million made for measured work had been fully substantiated. The Director of Water Supplies, whose attention was invited to the situation, has informed me that keeping measurement records so that checking of the justification of the quantities in the interim certificates will be feasible.¹⁶

It seems that payments were made while the building of the reservoir and related works was in progress without proper measurements by the supervising staff. This is a much more general

¹⁵ *Audit Report, 1975-1976*, para. 53.

¹⁶ *Ibid.*, para. 54.

problem in public construction than this single passage would imply because the Director of Audit found the same problem consistent throughout other areas of public works:

In paragraph 39 of my previous report I expressed my concern, which is shared by the Director of Public Works, that expenditure of many millions of dollars on works carried out under Architectural Office maintenance contracts were passed for payment on the basis of measurements taken by contractors' representatives which, contrary to departmental instructions, were not subjected to remeasurement by officials of the Public Works Department -- a situation which gave rise to the possibility that substantial excess claims for works executed could occur and remain undetected, resulting in overpayments to contractors. This unsatisfactory situation, which I understand is due solely to the inadequate staffing situation, still obtains, and the Director of Public Works is unable to say whether a solution is any nearer now than when his original request for extra staff to carry out measurements was first made to the Colonial Secretariat in 1969.¹⁷

That was reported in 1971. In 1974, however, the Public Works Department was nowhere nearer to a solution:

A recent survey conducted by a firm of management consultants supported my own findings, reporting that only 2 percent of total works were remeasured, and recommending that ideally, to ensure accurate charges from the contractor in terms of work performed, all maintenance work should be remeasured by P.W.D. staff.¹⁸

¹⁷*Audit Report, 1970-1971, para. 48.*

¹⁸*Audit Report, 1973-1974, para. 51.* As late as 1976, the Director of Audit was reporting on trials of a new computerized system to deal with the problem. Apparently, the difficulties of control were still not overcome. See *Audit Report, 1975-1976, para. 36.*

The importance of the lack of remeasurement should not be overlooked. Since rechecking of work was not made for payment purposes, the irregularity is not caused by the absence of the person responsible for the inaccuracy but by the breach of the process, making control absolutely impossible.

The examples quoted here are not unique. There are other examples in the Director of Audit's reports that show the existence of irregularities in the government's accounting records. On the basis of these reports, it is obvious that on the whole, while financial regularities are probably working, there seem to be very big gaps in places. The gaps do not arise from a shortage of rules but from the non-enforcement of such rules, the responsibility for which must squarely be placed on the respective departmental directors regardless of their justifications. Moreover, because of technical limitations, one would expect, in fact, to find more gaps in practice than the ones that auditing can detect.¹⁹ In addition,

¹⁹This was pointed out by the Director of Audit on more than one occasion. In his 1970-1971 report, he noted: "Whilst from audit reviews of vehicle records I am able to establish lack of use of vehicles, I am often unable, whatever my private conclusions may be, to establish misuse, as I must rely on the description of the nature of the journeys shown in the vehicle logbooks, on the supervision of departmental officers to ensure that those descriptions are correct, and on their integrity in investigating and replying to any observations which I may raise. As I commented at some length in my 1965-1966 report when referring to the amount of time spent abortively in examining these records, even where there are reasonable grounds for supposing some element of private use, Departments almost invariably answer audit observations by claiming that they are satisfied that the journeys queried were on offi-

with outspoken Directors of Audit and published reports, we are fortunate in being able to gain some insights, however crude, into the actual shortcomings in the government's financial control. While subvented bodies are also audited, the reports, made by commercial auditors, do not necessarily go to the same length in pointing out glaring discrepancies.²⁰

cial business." (para. 37) Exactly this problem was revealed in 1974 through a court case: "As a result of court proceedings against an officer of the Social Welfare Department a case was brought to my notice in which claims to duty mileage amounting to \$419.80, although false, had been certified as correct by a more senior officer. All appropriate action has been taken and the amount involved has been recovered but the case again serves to emphasize the point, which I have repeatedly stressed in my reports, that the best internal control procedures can be nullified and loss and fraud facilitated, if supervisory officers, either knowingly or by lack of proper care, do not ensure the correctness of the certificates which they render on accounts and vouchers." (para. 57), *Audit Report*, 1974-1975.

²⁰One of the most abused areas of subvention that is coming under increasing public attention is that given to schools. Under the title, "Phantom Classes Pad Out Payrolls," the *SCMP* (July 17, 1977) reported, among other items: "Some schools collect fees from students for a variety of extra-curricular activities while at the same time applying for funds from the Education Department for the same purpose. Cases have been known in which principals have claimed for remission from the Education Department for 40 percent of the children in a class when only about 10 percent actually have had their fees reduced." More recently, claims of the abuse of public funds led to a sit-in in one school by its students, and the Education Department discovered irregularities to the order of \$300,000. The principal pleaded guilty to various charges of false accounting. See *SCMP*, (April 5, 1978).

Relation to Abuses Not Primarily Arising from Revenue Spending

Although this paper concentrates on corruption that arises from revenue spending, it must be admitted that corruption is as much prevalent in certain trades. Whether the source of finance arises from revenue does not greatly alter the manner in which bribes are levied. In the construction industry, concentration on revenue spending must not divert attention from its general pervasiveness throughout the trade, of which the construction of public projects only forms a part. For instance, the possibilities of bureaucratic delay in private construction projects have the same kind of financial implications as in public projects. If supervision is a source of corruption in public construction, it is also true in private construction, where the incentive to use a lower grade material is just as likely, and where inspectors can give an equal amount of trouble.

The Public Works Department, in fact, came under considerable discussion in numerous government reports concerning corruption, and the discussions focused more on the supervision of private buildings than on the possibility of corruption in public projects. In 1961, out of six reports from the Standing Committee and Advisory Committee on Corruption, one entire report was devoted to the Buildings Ordinance Office, one of the major offices of the Department.²¹ It is not necessary to list the details here, for the Building Ordinance Office was (and still is) responsible chief-

²¹*Reports of the Standing Committee and the Advisory Committee* (Hong Kong: Government Printer, 1961); see the fifth report, pp. 33-40.

ly for certifying constructions in the private sector. Suffice it to note that in the 1950s, it was generally known that corruption was widespread, arising from the delay in the issue of occupation permits, and this was the reason for the Committee's concern. In addition to this report, a very concrete case was cited as a result of the investigation into a building built in the 1950s that was found to be structurally unsound in 1971.²²

It is interesting to note that the amendments to the Building Ordinance since 1961 did not cut down corruption, but rather increased corruption. This was brought out in another government report ten years later

by Sir Alastair Blair-Kerr. According to Sir Alastair, in the mid-1960s, when amendments were made to the Building Ordinance, it did pay well for the land developers to obtain approval from the Office before a particular date. Within this period, a number of "very large payments" were made to some people to speed up the approval of building plans.²³ But buildings erected in the late 1960s and early 1970s continued to be substandard. Two cases came to light through government investigation showing that substandard materials had been used.²⁴

²²*Report of the Committee Appointed to Consider Certain Matters Concerning the Closure of Chong Hing Mansion, 1971* (Hong Kong: Government Printer, 1972). On page 9, the report notes: "Furthermore, at about this time the Anti-Corruption Branch had been in receipt of a complaint and a request for investigation. This request had been made by Mr. Walters, the then Authorized Architect for Liu Chong Hing Bank Ltd., and it concerned the failure of the Public Works Department Inspectors to report on the deviations from the approved plans. This complaint and request was made in May 1957 and we are satisfied that all parties concerned in the Public Works Department were aware that the Anti-Corruption Branch was investigating during the months of June, August and September, 1957. It is of interest to note that the Anti-Corruption Branch decided that, while there was insufficient evidence to support criminal charges against the public officers concerned, disciplinary proceedings against two of them should had been taken. However, these officers had, by then, in one case, left the Colony at the end of his tour of duty and resigned while on leave and, in the other, had left the Colony without permission and died shortly thereafter." For some general implications, see the letter by the Director of Public Works to the press in *SCMP* (February 11, 1971), and the paper's reply in *SCMP* (February 11, 1971).

²³*Blair-Kerr Report II*, para. 104. Sir Alastair preceded these few lines with the observation: "Of course, in some cases what may have been extremely lucrative fields for corruption a few years ago, may not be so today." He mentions the development of the Buildings Office in the mid-1960s as an example of this observation. However, one only wishes that he could offer evidence for his optimism. With his observation and the Chong Hing Mansion report quoted in footnote 22, we have here well documented material on the existence of corruption in the Buildings Office through the 1950s and 1960s. There is no shortage of reports that the situation has not improved in the early 1970s, when the Commission of Inquiry was held.

²⁴It must be realized that documented information concerning faulty buildings is not easy to come by, although it is general knowledge that many buildings now standing fail to meet required standards in different ways. Of the two cases where definite information is available, one concerns a building that collapsed in a rainstorm disaster in 1972. Concerning this building, the Commission of Inquiry reporting on the issue wrote: "We have considered all the evidence submitted in relation to the structural design and the strength of materials used in Kotewall Court. This evidence indicates that some of the materials used in the structure were of lower strengths than those specified in the design specification. Nevertheless, these deficiencies were relatively minor in character. The struc-

There is not enough evidence of corruption in the Building Ordinance Office. However, it is generally believed that 10 to 15 percent of construction costs are attributed to corruption payments. If the percentages that are levied in bribes are about the same, over the years, the amounts derived from the private sector in construction would far exceed the amounts derived from public projects. This is too large a sum in any construction contract to be made available from mere muddling through. In fact, this is the kind of sum that has to be budgeted far in advance, in full knowledge that corruption has to be allowed for, and cover-ups have to be designed in the accounting records. It is not difficult to see also how cost estimates can be inflated, and bogus claims made for expenditures. Thus, there is a certain amount of direct trade-off between a lower standard of workmanship and materials for corruption payments.²⁵ Nevertheless, although in

tural design was executed in an acceptable manner and was capable of resisting the normal forces which are to be expected on a building of this nature. We have no fault to find with the manner in which Kotewall Court was designed and constructed and we conclude that its collapse was the result of impact of forces which were beyond the bounds of any reasonable expectation. We are of the opinion that even if the building had been satisfactory in every respect it could not have withstood the force of the landslide." (para. 280, *Final Report of the Commission of Inquiry into the Rainstorm Disaster*, 1972). In the second case, cracks appeared in the building. It was certified to be of deficient material, and a closure order was issued by the court. The building was quickly demolished by its owners. See *SCMP* (March 25, 1977).

²⁵The Commissioner Against Corruption made an interesting comment in this respect

every case, the payment is known only to a small and closely-knit group, on the whole, many people are involved. This explains why corruption is a matter of wide public knowledge.

A Note on Causes

Reports from government commissions and committees on causes of corruption in Hong Kong give weight to both ends of the bribery process. It is generally recognized that the existence of small pockets of corrupt officials in government is an important source of corrupt practices. But, it is equally recognized that these pockets can exist only because the public, in general, connive somewhat easily. The difficulty of establishing guilt in the eyes of the law is generally taken as a reason for the strength of the corrupt, while a general *attitude* that tolerates corruption is regarded as a reason for general popular connivance. It is implied here that corruption exists because, for people who pay, it works and is seen to work. Hence, there is the suggestion in the reports that government procedures be reformed, whenever possible, so that corruption would not be a needed lubricant. This last aspect has come to be the basis of prevention, which is now one of the

in a speech on February 15, 1977: "The Paul Lee case showed how widespread corruption had been, and I fear still is, on PWD construction sites. Here, money was paid to avoid 'unnecessary delays' in construction. PWD personnel were given 'retainers' amounting to double their salaries. In this particular case there was no evidence of sub-standard construction, but there is ample evidence of poor standards of workmanship elsewhere, and there must be a strong inference, at least, that some corruption was involved in these projects."

main themes in combating corruption in Hong Kong.²⁶

One would not dispute the bearing of attitude and organization on the prevalence of corruption. But, especially with corruption from revenue spending, it is important to note that the basic opportunities for corruption are inherent in all governments, i.e., discrepancy in supply and demand, and bureaucratic discretion. The opportunities for corruption come to be exploited, and the results become confirming evidence that corruption pays. In this way, a dynamic process sets in, where attitudes and opportunities reinforce each other. Within this self-reinforcing process, corruption is maintained because it is a low-risk crime. It is hardly disputed in Hong Kong as evidenced by very low percentage of corrupt officials who are ever actually brought to court. In the field of revenue-spending, where apparently more care has been taken to cover the tracks, the record of detection is dismal. However, the questions of detection and opportunities for corruption belong to the sphere that in anti-corruption efforts in Hong Kong is known as "operation" and "prevention". A few pages should be devoted to problems in these activities.

Curbing Corruption from Revenue Spending.

In Hong Kong, attempts to curb corruption in general follow a combination of three approaches: investigation and prosecution, prevention, and

publicity programs.²⁷ Except in a supplementary way, it would seem that publicity programs do not greatly influence corrupt practices that arise from revenue spending. It is unlikely that those who wish to buy convenience can be persuaded against it on altruistic grounds, nor are they ignorant of the evils of corruption or its illegality. The main efforts must be investigation-cum-prosecution and prevention.

With regards to the investigation and prosecution of corruption, offenses that arise from revenue spending do not so far show astounding success in records. One might even conclude that, on the basis of the material presented so far, investigation on its own has yielded very little result. In a sample of 11 cases concerning payments of bribes for public housing, for instance, all but two of the defendants were acting without middlemen. The other nine cases came to be prosecuted because the defendants either solicited or offered bribes directly to the other party, without prior knowledge or consent. This is highly risky, and is not the manner in which the bulk of the black market in public housing operates.²⁸ The other two cases are much more interesting in this respect. As far as we can tell from the cases, one single resettlement official worked with some middlemen to draw clients, and the cases came to be noticed because the officer failed to deliver the goods. Apparently, the others who were arrested consisted primarily of

²⁷*Ibid.*

²⁸This is a general knowledge in Hong Kong. See the discussions concerning the "middlemen" in *Standing/Advisory Committee Report*, page 47, and the *Blair-Kerr Report II*, para. 113.

²⁶See Jeremiah K.H. Wong, "The ICAC: Its Anti Corruption Measures," paper for the Bureaucratic Behaviour and Development in Asia Project.

isolated individuals working on their own, who were arrested precisely because they were working on their own, and did not know the organization of the black market. The regular organizers of the black market were largely undetected. It is incredible that in order for the black market to function, the middlemen have to send out feelers to look for prospective clients.

The cases presented here, of course, are isolated instances. The newspapers from 1965 to 1976 show that there were only 14 civil servants charged in connection with the distribution of flats in housing estates, in addition to about six private individuals who were offering bribes. Of those who might have been involved in corruption, only very few were brought to court. One can firmly conclude that corruption is a low-risk crime.

Black market in public housing was most prevalent from the late 1950s to the early 1970s, while corruption detection was under the Police. It is possible that the lack of detection since then reflects a shrinking for the market as shown by more public housing that became available, rather than the inadequate work of the new authority against corruption, known as the Independent Commission Against Corruption (ICAC).²⁹ However, one has to look also at other cases, teachers' employment, or public works con-

²⁹Since the ICAC was established, there has not been any charge against Housing/Resettlement officials concerning the distribution of flats in housing estates. Of the people charged in these departments, one case involved an electrical maintenance foreman concerning electric fuse box installation, another involved an assistant in the squatter control unit, for not demanding that an illegal structure be demolished, and a third case involved 13 people (12 Housing officers and

struction. While the Paul Lee Construction Company case apparently did have considerable immediate impact, there has not been any dramatic increase in prosecution of corruption arising from public construction. One must not also forget that of the two major public construction cases, one came to light through liquidation, and the other was a rare occurrence of the sub-contractor making the report.

No doubt, incidents where convenience was given in exchange for the bribe are difficult to detect, because both parties benefit in the transaction. Another reason why corruption in this area has been difficult to detect is that unlike organized corruption in other areas, the organization of these groups is not centralized. In the Paul Lee Construction Company case, for instance, there was no clearly proven central link among those arrested who were in government service. Rather, the corrupt were individually approached by individual foremen on the site, and were paid without proven knowledge of collusion among themselves. The only link that was proven was a foreman who was privately employed. From the point of view of investigation, to find out the extent of such a network, it would be necessary to find all the links in the private company who had been offering bribes, and this would, to say the least, be extremely difficult. Does corruption in fact extend beyond the site? Who is to say? There is no evidence.

an assistant clerk of works) for borrowing or lending money without permission. It could well be that there are fewer incidents of corruption in the distribution of flats in housing estates than before, but one never really knows. It is hard to believe, nonetheless, that with a sizable waiting list, corruption can be altogether absent.

One may also wish to consider, with respect to detection, the mechanics involved in the payment of bribes. In general, the larger the sum paid, the more worthwhile it is to take precautions, and the less likely it is for the crime to be detected. This is poignantly illustrated in a recent case of a Public Works Department official who pleaded guilty to a bribery offense, the gist of which was that he received over HK \$100,000 worth of property while on leave in the United Kingdom.³⁰ The detection of payments outside Hong Kong in this manner is virtually impossible.

Because corruption offenses in revenue spending are basically difficult to detect and prove, preventive programs play a major role in its control. Some general ideas of prevention are present even in early reports on corruption, but it is only since the ICAC was established in 1974 that it was fully endorsed as one of the main approaches to be used against corruption. Over the last three years, studies were undertaken that were relevant to revenue spending, including among others, the allocation of flats in some housing estates, various compensation payments for development, employment of teachers in aided schools, local purchase arrangements, squatter control procedures, and the Building Ordinance Office. The reports being confidential were not available for this paper. In any case, it takes time to see how preventive programs work, and there has not really been very much time since any of them was drawn up.³¹

³⁰SCMP (April 8, 15, 16; May 6, 13, 18, 1977).

³¹The ICAC publishes the titles of its prevention studies in its annual reports.

Various people were interviewed concerning some of the programs drafted by the ICAC's Corruption Prevention Department. In some cases, it seems that the programs were well received, notably in the Mass Transit Corporation. In other places, apparently there were problems, and sometimes even resentment. This aspect is very important, because the program that is designed is at best only a set of rules, and it should be clear that in Hong Kong it is not the absence of rules that facilitates corruption, but the lack of enforcement. The ICAC does not enforce the program but the departments which agree to arrange for a study in the first place. Whether preventive programs can succeed depends very much on the weight that is given them at high levels.

But one must not assume that administrative departments are necessarily willing to carry out preventive programs concerning corruption. Not that they would not agree to the importance of curbing corruption, but first of all, preventive programs have to be put into practice at some level within a department, and one cannot assume that no corrupt interest is at stake. Secondly, administrative departments have other targets to fulfill: houses have to be built, teachers have to be employed, and so on, and it may not be the case that implementing a program of corruption prevention will not affect the progress in other spheres. It may well mean a considerable amount of inconvenience, especially for those in sensitive positions that are likely to give rise to corruption. A great deal of resentment to any forceful prevention program is natural.

However, what can be implemented as measures to curb corruption from

revenue spending? It is on this that eventually the entire concept of corruption prevention will stand or fall. The Corruption Prevention Department published some general characteristics of opportunities for corruption that are highly relevant to revenue spending: (1) Outdated or inadequate policy; (2) Unenforced or unenforceable legislation; (3) Inadequate or excessive instruction, (4) Unnecessary procedures; (5) Lack of supervision and accountability; and (6) Insufficient publicity.³² These are areas that can be improved, but those involving corruption arising from revenue spending can hardly be improved, if ever.

On the basis of some of the cases reproduced here, corruption opportunities arise from discrepancies in the market and discretion given to government staff. Some of these are affected by outdated policies and so on, but many of them are not. In the area of public housing, for instance, the discrepancy reflects the genuine state of the housing market. The costs of improving the market situation would be enormous, and when government decided to embark on a more abundant supply of public housing, corruption was foremost in their minds. Likewise, this must be the case with the employment of teachers. In both cases, it would be ideal to adjust the market so that the convenience which corruption can provide will disappear.

The same is true with supervision. In public construction, on-site super-

vision will continue to be needed, and discretion will exist in supervision. In the employment of teachers, removing the headmasters' power to employ would likewise undermine an important principle in subsidizing privately-managed schools. Moreover, it is erroneous to think that supervision moved to a higher level will necessarily reduce corruption, or that instruction can ever be adequate so that corruption will not arise, viz., who instructs or supervises those who instruct and supervise? One also must constantly remember the many cases of department heads who have not efficiently supervised their departments as reported by the Director of Audit. Indeed, clear instructions, clear policies, some publicity, and so on are means to promote an efficient service, and minimize "fudging." But, is it really plausible for administrative departments not to be aware of all these irregularities nor be capable of designing their own programs against corruption? There is no gainsaying the fact that any administrative department is in a better position to do this than an outside body.

One of the most hopeful recommendations of the ICAC is not any of the items on this list, but the enforcement of "accountability" of public office which it has in recent months drawn attention to.³³ In different degrees, officers in government service are always held accountable for the responsibilities of their posts. However, it is common knowledge that practice varies considerably from principle in these matters. The ICAC has a study to examine how accountability is enforced in government, in the hope

³²These items are listed in the *Annual Report of the Independent Commission Against Corruption* (hereafter *ICAC Annual Report*), 1975, pp. 27-29. In the 1976 report, p. 29, "delay" was added as an extra item.

³³*SCMP* (November 26, 1976); *ICAC Annual Report*, 1976, pp. 29-30.

that it might genuinely be enforced. There will be many obvious difficulties but the possibility of enforcing accountability should be taken very seriously.

However, in enforcing accountability, the question that has to be raised in the light of this paper is whether it will thereby increase the risk of detection of corruption. One would imagine that accountability left entirely to bureaucratic practice will certainly go the same way as all bureaucratic practices, namely, that after some initial enthusiasm, it will depend very much on the character and temperament of people at the top. One can set up a committee, so to speak, and yet committees quickly find means of execution that will yield minimal opposition. Without going deeply on the issue, one can imagine the accountability enforced by a bureaucratic committee and see how it would be everything that a court of law is not. If one wishes information on corruption, for instance, it is not enough to appeal to a sense of justice, but to model on the court, in being able to provide redress. If one wishes to hold an officer accountable for lack of effort, it is not enough to have the channels open, but also to provide the incentives for the information to flow in.

This goes to argue that accountability indeed will work but it will only work insofar as officers are held accountable to people who are likely to suffer as a result of misdeeds. In other words, in the spending of revenue, these are the people who have to wait unduly long on a waiting list for public housing, who live in tenement in which cracks appear, who feel that they have to bribe supervisors because the latter

tend to be able to object to minor issues, or who have applied for jobs to subsidized schools and find that people less qualified have been employed in their stead. The suggestion of enforcing accountability is important and would be promoted by the establishment of such an instrument as a Public Accounts Committee to inquire into matters raised by the Director of Audit in his reports, which apparently is being considered by government.³⁴ Equally important, if not more so, is the setting up of formal channels of redress for individual cases, which may have the authority of courts of law but to which individuals can bring their grievances without incurring the same expense. Already, there are some of these institutions working very well in Hong Kong. One hopes that there can be many more of them, extending also into such critical areas as housing and teachers' employment.

In Hong Kong, one is constantly reminded that it is not enough for justice to be done, but that it must be seen done. In few other spheres is this principle upheld as strictly as in the fight against corruption. Yet, when one carefully examines the record of the battle, it is not all that obvious that corruption in revenue spending is necessarily more risky now than it had been, or that justice is being done to the many people who benefited from corruption or suffered as a result. Many who made their fortune in the heydays of the 1950s must have either retired or reached senior positions. Life goes on in full awareness that no campaign has ever been so successful as to eradicate corruption altogether. If, however, in the midst of present enthu-

³⁴SMCP (January 7, 20, 21, 1977).

siasm, increased risk of detection can be brought into the practice of corruption, perhaps this may contribute to at least lowering its incidence. It is generally accepted that the fight against corruption is difficult and one awaits anxiously to see its results.

Postscript

Since this paper was written, the anti-corruption effort in Hong Kong has been greatly altered by the governor's declaration of an amnesty on acts of corruption committed before 1978. Although the ICAC may continue to prosecute those who were already under investigation, witnesses have declared sudden loss of memory and judges have found themselves bound to accept the amnesty as a mitigating circumstance.

If the line of argument of this paper is correct, nothing can be so damaging to the cause of fighting corruption as this blanket amnesty. It must be taken as a sign of success that the efforts of the ICAC until the end of 1976 worried many corrupt government officials to

no end. But the blanket amnesty has assured the corrupt that corruption pays in Hong Kong and that it will remain a low-risk crime. Furthermore, the message of the amnesty is that corruption is not only low-risk because it is hard to detect, but because it is so prevalent that when detected the government cannot afford to pursue the charges to their logical end because it cannot afford to alienate itself from its own staff.

The mood that has set in with respect to investigation and prosecution must necessarily overflow into prevention projects. No general accountability program can be implemented when it is realized that the government is prepared to waive the individual's responsibility for crime. The question at stake is no less than that of public confidence: not that the government might not have the power to enforce the law, but that it might not be willing to do so. The surest gains to the government's confidence in the past few years came with the open trials and conviction of corrupt individuals. There can be no substitute for justice being seen done.