The ICAC is suffering because of a lack of independent oversight from the prosecuting authorities, writes **Neville Sarony**

Eyes on the watchmen

Quis custodiet ipsos custodes? The Roman poet Juvenal posed the question: "Who watches the watchmen?" When Sir Murray MacLehose established the Independent Commission Against Corruption, its priority was to root out corruption in the Royal Hong Kong Police Force, a task it achieved with considerable success.

A key element in this success was the backbone of former Criminal Investigation Department officers recruited from various British police forces. They carried no local baggage, no legacy of past obligations – just skill, experience and integrity. Answering directly to the governor, they were proud of their independence from government. These qualities brought about the transformation of Hong Kong's police into the relatively corruption-free force that it is today.

The ICAC became a byword for integrity. But how valid is that reputation today and who watches the watchmen?

The creation of an elite law enforcement body carries the risk that this very elitism breeds an arrogance best characterised as a sense of untouchability.

The ICAC became a byword for integrity. But how valid is that reputation now and who watches the watchmen?

The temptation to manufacture or suppress evidence in order to secure a conviction is a constant threat not only to the integrity of the officers but to the prosecution itself.

If there is truth in the latest allegations of ICAC officers trying to compel a witness to tailor his evidence to its requirements, it speaks of a frightening abuse of power. In the case brought against barrister Kevin Egan and solicitor Andrew Lam Ping-cheung, it was alleged that the ICAC destroyed a critical record of a tapped telephone conversation in its custody.

A single incident might be disregarded, but all three reports of the panel of judges appointed to oversee covert surveillance operations demonstrate that ICAC officers flagrantly ignore both the spirit and the letter of the legislation designed to protect the public from illegitimate telephone intercepts, especially privileged lawyer-client communications.

This cannot be dismissed as the errant behaviour of junior officers because it is the product of a climate of impunity infecting all levels and either encouraged or ignored by the Department of Justice's counsel, who are responsible for advising the commission.

Even a layman reading the Court of Final Appeal's judgment clearing Egan and Lam of all charges can see for himself that the prosecution was founded, substantially, on the testimony of manifestly unreliable, if not downright lying, witnesses. Yet the case had to go through the entire appellate process at considerable public expense before its dire deficiencies were exposed. Given that both Egan and Lam had been lawyerly thorns in the ICAC's side, some drew their own unhappy conclusions about the motive for the prosecution.

It is difficult to reconcile the present incarnation of the ICAC with its glory days. What remains is a largely overzealous, hyper-suspicious animal, jealous of its powers and demonstrating a remarkable contempt for the administration of justice.

So what has gone wrong? In essence, a lack of independent oversight. What, then, is the role of the Director of Public Prosecutions in this process? The proper function of the DPP is to hold the balance between public and private interests.

This is in marked contrast to the role of the Secretary for Justice, whose political role is to advise the government. As such, it is manifestly inappropriate for the DPP to be embedded in the prosecutions division of the Department of Justice.

The DPP is responsible for all prosecutions brought by any of the authorities charged with the pursuit of the ungodly, including the ICAC. He carries a heavy responsibility to ensure that those who ought to be prosecuted are and those who shouldn't aren't. By definition, this demands genuine independence and objectivity, certainly not – with all due respect – qualities readily associated with the career path of a government servant drawn from the pool of prosecuting counsel.

There will often be instances when the behaviour of high-profile members of the community and civil servants needs to be considered for prosecution. A system of justice is ill-served where there is the potential perception of a vested interest or an uncomfortably close association with government.

All too often, investigative agencies and prosecuting authorities have an incestuous relationship. It is for this reason that in England and Wales the DPP is appointed from the private sector and on a contract for a limited period. Eminent counsel drawn from the private sector bring with them a scrupulously stubborn independence of mind.

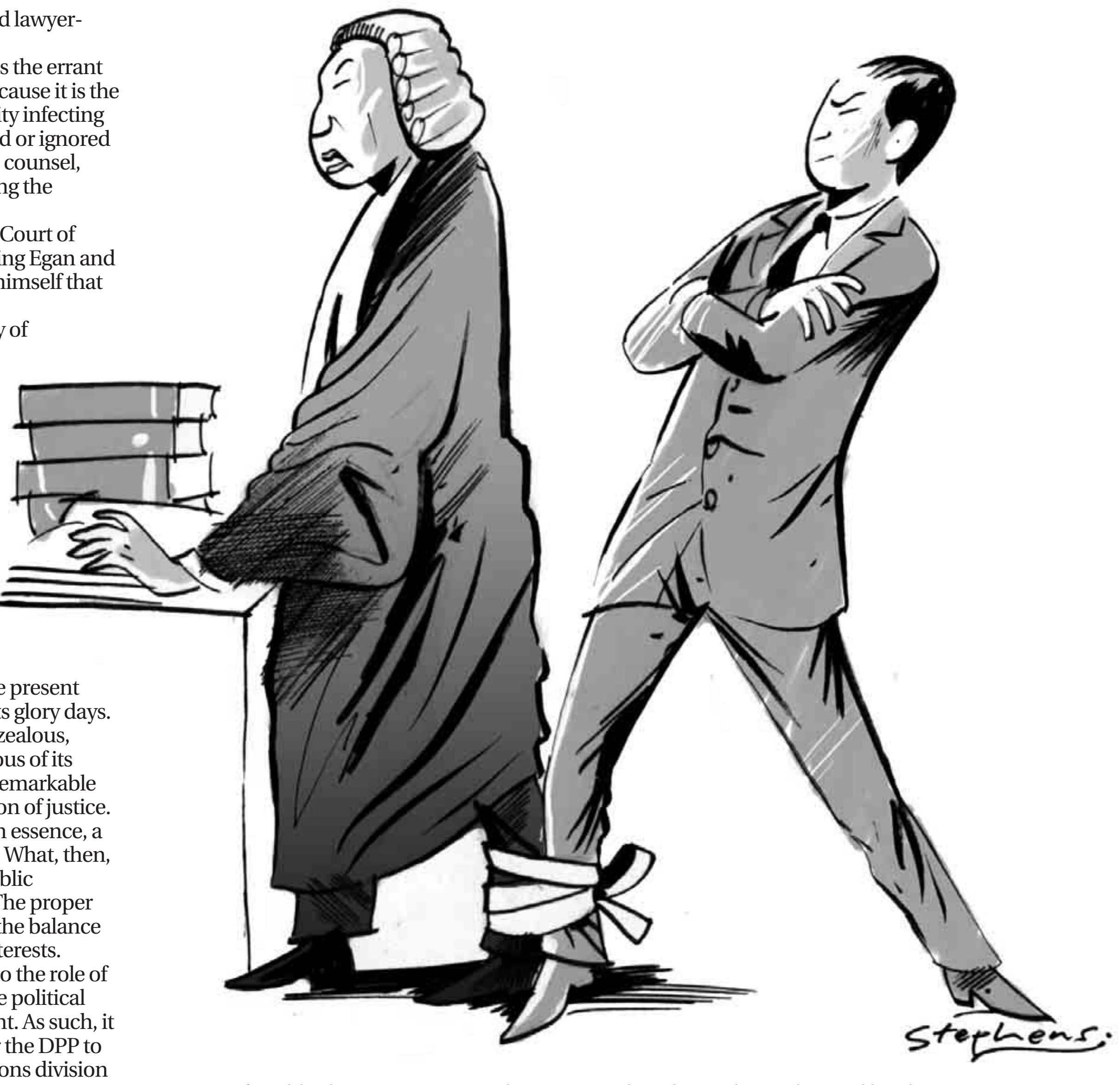
In Hong Kong, the policy is to make the appointment from within the Department of Justice, provided there is "a suitably qualified candidate".

The prime quality of independence of mind is the very antithesis of someone in government employ. Inevitably, such candidates will have operated closely with prosecuting authorities and built up a sound working relationship and loyalties. These are factors that, with the best will in the world, hardly work in favour of objective oversight.

None of this is to say that either the incumbent DPP or any of his predecessors are less than honourable men.

However, the principle that justice must not only be done but must be seen to be done applies with special force to the work of the DPP.

It does not enhance Hong Kong's international standing for the position of DPP to be seen simply as a stepping stone in the career of someone in the government's prosecuting authority.



Neville Sarony is a practising silk in Hong Kong and has been instructed on behalf of the ICAC in the past

Jim Rogers

The Nobel world

This year, the Nobel Prize for economics went to two American professors and one British-Cypriot academic. The award brings plaudits and 10 million Swedish kronor (HK$11.4 million) to each of its laureates, but an examination of the real world indicates that the prize has a shaky basis in reality. If nothing else, the committee awarding the prize should take a few basic courses in economics and history.

The economics prize is not actually a Nobel Prize at all. The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel was first awarded in 1969. At that time, the successful global economies were mainly in the West, with the United States and Europe being the dominant players. The rest of the world, including Asia and South America, were "undeveloped economies" at best.

But 40 years later, the world is experiencing a historic shift from West to East. The great economic successes since 1969 are certainly not the United States or Europe. In this span, the US went from the largest creditor nation in the world to not just the largest debtor nation in the world, but the largest debtor nation in the history of the world. That U-turn may deserve a prize, but one that brings embarrassment rather than prominence.

Today, most major international creditor nations are found in Asia – economies like China, Japan, South Korea, Singapore, Hong Kong and Taiwan. Yet, of the 67 recipients who have received the economics prize, 52 are affiliated with US institutions and 14 have European affiliations. One was from the Hebrew University of Jerusalem. So despite the huge economic growth of Asia during a period of relative and absolute decline in Europe and America, no economist from an Asian institution has been lauded. Not a single one.

Singapore has been the greatest economic success of the past four decades, but former prime minister Lee Kuan Yew and Dr Goh Keng Swee, a former deputy prime minister who died in May, have never been acknowledged by Stockholm. And Dr Goh even held a degree from the London School of Economics.

It may well be that Asia should worry it is peaking if and when prizes start moving East

China has also experienced huge economic success during this time, yet neither Deng Xiaoping (鄧小平) nor any of his economists were ever awarded the prize.

In fact, one esteemed Nobel laureate published a paper in 1994 titled "The Myth of Asia's Miracle" in the journal *Foreign Affairs*. The same winner proclaimed loudly in 2009 that it was untrue that huge amounts of Western assets had moved to Asia. Perhaps he had to try to cover for his 1994 paper. He has not returned his award. (This same laureate insisted this year that Fannie Mae and Freddie Mac had nothing to do with the mortgage and housing collapse.)

I am sure that all of the winners are intelligent and probing people, but real results are the bottom line in economics.

Another recipient was implementing his and his co-winner's theories in Long Term Capital Management when they won in 1997.

A year later, Long Term Capital Management collapsed in a crash that many claimed would have ruined us all but for the massive bailout by the US government and the Federal Reserve. The two 1997 laureates have not returned their awards either.

I don't want to dwell on possible geniuses or charlatans who have won the prize. My main point is the lack of reality reflected in the winners. It is clearly a process of Western academics politicking among themselves and the Swedes.

Perhaps someone should examine the selection process in another article, but the facts are that Asian economies have boomed since 1969 yet no one from an Asian institution has ever won the prize. So why pay any attention at all? Who needs it? It may well be that Asia should worry it is peaking if and when prizes start moving East. Or perhaps someone in Asia should establish an Economics Prize for the Real World.

And don't even get me started on the Peace Prize.

Jim Rogers is an international investor and author of A Gift to My Children

Caixin View

Edited by Hu Shuli

Plotting a course in the euro storm

There's still no end in sight to the euro-zone crisis. Last week, ratings agency Fitch downgraded Irish sovereign debt to BBB+ from A+, suggesting the market is still bearish about the country's economic outlook.

Amid the uncertainty, it is critical that affected countries determine the causes of the crisis, and weigh their risks and opportunities. And, since China is not immune to the upheaval, it too must be ready to act.

Ireland finally bowed to market pressure last month, becoming the second euro country after Greece to seek foreign help. The European Union, the International Monetary Fund and Ireland agreed on a €85 billion (HK$886 billion) rescue package. But the market's response was tepid.

Few people would be surprised if Portugal was the next domino to fall. If that really happened, how much longer before Spain, too, was affected? Since Spain is the fourth-largest economy in the euro zone, the cost of a rescue could be very high, and the €440 billion euro-zone fund could run out.

We have not yet come to that, mainly because the European Central Bank has bought more bonds issued in the euro area. But this emergency measure is only palliative – once the ECB considers withdrawing the liquidity support, or the market perceives it has such a plan, market panic will follow.

Sooner or later, volatility in the euro area will affect China. The ECB's expanded acquisition of euro-zone bonds is in fact no different from the over-issuance of money. And although the central bank's mission is to maintain the euro's stability, its policy against inflation is far tougher than that of the US Federal Reserve. The euro, as the world's second-largest reserve currency after the greenback, draws a major share of China's foreign exchange reserves in the country's drive to diversify its currency holdings. China, therefore, has reason to be concerned about the likely loss of its investment and other indirect effects.

Beijing has increased its investment in euro debt since the onset of the global financial crisis in 2008. From a purely economic perspective, investing in euro government bonds could generate fabulous returns if a default or debt restructuring do not occur. But most analysts believe a default or debt restructuring is unavoidable.

Should the euro fall, the US would become more unrestrained in its monetary policies

At present, countries such as Ireland and Greece offer very high coupon rates for their debt, so they will shoulder heavier debt burdens, slowing the rate at which they get out of the woods. Worse, the countries have to carry out fiscal austerity measures at the request of the EU and IMF in return for their loans. This will upset their efforts to boost short-term economic growth, plunging the countries into the vicious cycle of a deeper recession with a higher debt burden. Therefore, debt restructuring could be the least harmful option for these countries and the entire euro zone.

If this happens, China's investments will inevitably suffer a loss. But if it is the price to pay for breaking the vicious cycle and bringing stability to the world economy, China could hardly complain about the loss. This is the dilemma it faces.

The key to ending the crisis is to win public confidence in European Monetary Union and government policies aimed at tackling economic imbalances in the euro zone. However, the measures designed to do that have so far failed.

Of particular concern is the deteriorating image of the euro in Europe. A unified currency represents the dream of a unified Europe but this point is not much comfort to its citizens who have suffered greatly in the crisis. Political leaders must restore a consensus on this issue in their countries, knowing that any withdrawal of peripheral European countries from the euro currency system would only cause even greater instability. At the same time, we should not underestimate the determination of European countries to integrate their political and economic systems. At least for now, disintegration of the euro currency seems very unlikely.

For China, supporting the euro could be of great strategic significance. This not only relates to asset allocation of China's foreign investment portfolios, but also the future make-up of the international monetary system. Should the euro – the most powerful competitor to the dollar – fall, the US would become more unrestrained in making its monetary policies. If this happened, China, as the biggest investor in US treasury bonds, could sustain even greater losses.

Since the financial crisis hit, China and other major economies have pursued loose monetary policies. So far, the US and European economies have shown no sign of recovery, but China already faces mounting inflationary pressure. It is therefore necessary to bring China's monetary policy back to normal. If European economies continue to be sluggish, capital will flow more rapidly into China and it will be even more difficult for the country to cope with inflation. It makes sense for China to support the euro to ease its inflationary pressures.

European countries are painstakingly reforming their financial systems, and that will help improve their competitiveness in the medium to long term. The United States, in contrast, is still seeking to use cyclical policies to resolve structural problems. It has failed to map out any feasible, long-term solutions to cut deficits. China should, therefore, prepare for the risks and opportunities to come.

In the long run, China should accelerate the transformation of its economic model, gradually turning its excessive trade surpluses and foreign reserves into a new force to drive domestic consumption. Meanwhile, the central government should allow monetary authorities to work more independently and deepen the reform of the renminbi exchange rate mechanism. All these will help achieve the free float and full convertibility of the currency, making yuan-denominated assets more important to international investors.

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Voices: Hong Kong

Dereliction of duty

Oren Tatcher

On Friday, the Hong Kong government quietly issued an order to acquire properties for the first phase in the Urban Renewal Authority's scheme to redevelop the historic Graham Street market area.

This unfortunate move, approved by the chief executive at the recommendation of the Development Bureau, is a severe blow to the cause of heritage preservation in Hong Kong, and would seem to benefit mostly property speculators and big developers. It is seriously out of step with the community's sentiments.

In last year's policy address, Donald Tsang Yam-kuen singled out three heritage sites to anchor the plan to preserve Central's "rich cultural and historical heritage": the former Central Market, the former Central School site on Hollywood Road, and the former Central Police Station compound. Whatever their merits, it is strange that three large, inaccessible complexes that have not been in use for years are to be preserved, while the Graham Street market, a vibrant site of living heritage, and one of Hong Kong's most popular tourist attractions, is set to be torn down.

In 2007, the URA issued a plan to redevelop the market area, following a 1997 decision by the now defunct Land Development Corporation. The plan was met with strong objections from the community and won the unanimous condemnation of professional and heritage conservation groups.

The URA then modified its design, but its new plan, while containing some improvements, failed to address the main concerns regarding the outsized bulk of the development in this already congested neighbourhood, and the wholesale demolition of a historic neighbourhood. It was again met with fierce objections from community and professional groups.

Meanwhile, last year, the URA launched its own Urban Renewal Strategy Review in response to this and other controversial URA projects. The conclusions of the review are still pending, but there seems to be a welcome strategic shift from redevelopment to regeneration.

Unfortunately, the URA is still insisting that the current Graham Street scheme "must go forward", despite its obvious roots in the old strategy and the strong objections.

In its defence, the URA likes to mention the 500 people living in squalor in the area as the main reason for redevelopment, and shows gut-wrenching pictures of dilapidated flats as evidence. But this kind of emotional appeal is disingenuous; there are many ways in which 500 people can be helped by a government running enormous budget surpluses, none of which involves bulldozing a heritage site.

Indeed, had the Graham Street area not been under the shadow of URA redevelopment for the past 13 years, with many properties held by speculators in anticipation of government resumption, market forces would have brought about the kind of gradual upgrading of buildings seen in virtually all the neighbourhoods surrounding the redevelopment area.

So why is the government, fully aware of the objections to the redevelopment and the existence of viable alternative schemes, still going ahead with this ill-conceived project? The only plausible explanation seems to be a business-as-usual mentality seeking maximum financial gain. The URA scheme, which is based on a Planning Department brief, is all about maximising gross floor area on the site, and hence profit for both government and the big developers who will partner the URA in turning this neighbourhood into another bland, overbuilt cluster of towers, with flats no one in the community can afford.

This is not the kind of redevelopment Hong Kong people want from the URA.

It is not too late to save the Graham Street market area. Resumption may be a foregone conclusion, but the government can still demand that the URA replace the current redevelopment scheme with a truly sustainable, sensitive regeneration plan, as has been proposed by the various concern groups over the past few years.

Destroying a historic, richly textured neighbourhood and replacing it with four high-rises on podiums is the kind of "urban renewal" true world cities have abandoned decades ago.

Character and authenticity take generations to build up; destroying them takes just a day. The day the wrecking ball hits the old tenements on Graham Street will be just such a day, and a very sad one for Hong Kong.

Oren Tatcher is an architect and a member of the Hong Kong Institute of Urban Design

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