

COMMENTHK

Secessionists pose ongoing threats to national unity and HK's safety

Grenville Cross says an even tougher response from the judiciary may be required in the interests of deterrence as proxies remain

On April 11, an extraordinary trial concluded in the District Court (DCCC 210/2023). Joseph John, also known as Wong Kin-chung, who holds a Hong Kong permanent identity card as well as a Portuguese passport, pleaded guilty to an offense of conspiring to incite others to commit secession through online posts. He styled himself the "president" of the "Hong Kong Independence Party", and operated its Facebook and other social media accounts, including a United Kingdom-registered website.

The trial judge, Ernest Lin Kam-hung, adopted a starting point for sentence of 78 months imprisonment, but sentenced John to five years' imprisonment, to acknowledge his guilty plea.

The prosecution disclosed that 42 posts circulated online from Sept 16, 2019, to Nov 1, 2022. Although secessionist activity was criminalized by the National Security Law for Hong Kong (NSL) on June 30, 2020, 35 of the posts occurred after its enactment.

The posts were bizarre, seeking not only Hong Kong's independence but also the stationing of American and British troops in the city. Judge Lin said John had "distorted history, demonized the Chinese government, and appealed to foreign countries to destroy Hong Kong and China". His posts advocated Hong Kong's "decolonization" from China, its designation as an independent Commonwealth nation, and crowdfunding for an independent Hong Kong army.

Not even Chris Patten, Iain Duncan Smith, or Liz Truss, as the UK's most rabid Sinophobes, have ever gone as far as John (although this could come), and his state of mind seemed questionable. However, Judge Lin found his activity was premeditated, and there was no suggestion he suffered from any mental disorder. He appears to have been in deadly earnest, and his crime, which could have led the young and the gullible astray, shows the secessionists remain a danger to Hong Kong, notwithstanding the NSL.

This was undoubtedly why Judge Lin took John's crime so seriously. It was of a type that has emerged all too often lately, and it recalled the secessionists' dastardly role in the recent troubles.

The secessionist movement was heavily involved in the events leading up to the insurrection of 2019. One of its first acts after invading the Legislative Council on July 1 of that year was to scrawl "Hong Kong is not China" on the walls, and to desecrate national and regional symbols.

The secessionists played a significant role in opposing the national security proposals of Tung Chee-hwa's government in 2003, which included



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the criminalization of secession. After those proposals were abandoned, the secessionists were emboldened, and galvanized on various fronts.

In the University of Hong Kong, for example, they infiltrated the Students' Union. Starting in February 2014, the union's official publication, The Undergrad, published articles calling for "the Hong Kong nation to decide its own fate", and for "democracy and independence in Hong Kong".

The secessionists also exhibited open hostility to visitors from elsewhere in China. On Feb 16, 2014, for example, over 100 so-called "nativists" harassed innocent mainland Chinese shoppers in Tsim Sha Tsui, screaming "locusts" at them. Once the insurrection broke out, they torched mainland-owned businesses, and their acolytes within the hospitality industry refused to serve customers who spoke Putonghua in their restaurants (unless they hailed from Taiwan).

Another secessionist entity was "Civic Passion", founded by Wong Yeung-tat in 2012. It organized summer camps to provide "lectures on localism" and "military style training". Its sister body, "Hong Kong Indigenous", was created by Edward Leung Tin-kei and Ray Wong Toi-yeung in 2015, and made its mark by organizing street violence and hostile receptions for mainland visitors in the New Territories.

Whenever the secessionists fell afoul of the law, which was often, the now-disbanded Civic Party lawyers were always there to hold their hands.

On Aug 14, 2018, the secessionists must have been ecstatic when the Foreign Correspondents' Club provided a platform for one of their leading lights, Andy Chan Ho-tin, founder of the "Hong Kong National Party". He duly condemned the "Chinese colonial masters", and said he hoped the "international community can, like the United States, objectively review the imperialistic threat that is coming from China". He described the "cry for Hong Kong's independence" as an "ethical cry for liberation". He wrapped things up by calling on the US to "deal an economic blow to China" by reviewing the US-Hong Kong Policy Act and to "start sanctioning" Hong Kong's

government officials (which was exactly what the US did two years later).

On the electoral front, the secessionists also abused the city's burgeoning democracy. In 2015, after "Youngspiration" was founded by Baggio Leung Chung-hang, it advocated the "Hong Kong nation's right to self-determination". When Leung and Regine Yau Wai-ching were elected to the Legislative Council in 2016, they paraded their separatist aspirations. When called upon to take their oath of office, they pledged allegiance to the "Hong Kong nation", produced a banner reading "Hong Kong is not China", and insulted the Chinese race.

Even after the NSL was enacted, some secessionists were not deterred. On July 1, 2020, for example, Tong Ying-kit, who was subsequently convicted of inciting secession and sentenced to six years and six months' imprisonment, drove around the streets with a banner proclaiming "Liberate Hong Kong, revolution of our times".

Then, in 2021, Adam Ma Chun-man was convicted of promoting separatism on numerous occasions through his speeches and chants, including "Hong Kong Independence, the only way", and received five years' imprisonment.

When Tony Chung Hon-lam, the former convenor of "Studentlocalism", was convicted of actively participating in secessionist activity online, he received three years and four months' imprisonment, having been given a 25 percent discount for pleading guilty. (Although he was granted early release under supervision in 2023, he lied to the authorities, as Ted Hui Chi-fung had done before him, and, instead of taking the permitted holiday in Japan, he fled to the UK to seek asylum.)

Although the secessionists once posed a real threat to national unity, they have been largely neutralized. However, as Joseph John's conviction showed, the threats have not gone away. There are still people in our midst who want to harm China by dividing it up, and the city cannot afford to let down its guard.

In the 19th century, foreign powers carved China up like a turkey to suit their imperial agendas, but those days are well and truly over. Although they have provided safe haven to many secessionists who have fled abroad, some of their proxies remain active in Hong Kong, albeit generally low-profile. When tracked down, they must expect to face the condign punishment meted out to the likes of Tong, Ma, Chung and John. If this does not eradicate the menace, the interests of deterrence may require an even tougher response from the judiciary.

The views do not necessarily reflect those of China Daily.



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City plays unique role in nation's opening-up

The Chinese mainland is promoting high-level opening-up and the development of new quality productive forces, allowing the Hong Kong Special Administrative Region several ways to play a unique and significant role.

As an international financial hub, Hong Kong boasts a high degree of openness and unrestricted capital flows, maintaining a strong connection with global financial markets. In contrast, the mainland financial market is much less open, with strict foreign exchange controls.

The disparities between the two sides' financial markets have facilitated Hong Kong's role as a bridge connecting the mainland and international markets. Hong Kong is currently the world's largest offshore renminbi business hub and the biggest source of external investment for the mainland. As the mainland proceeds with high-level opening-up, Hong Kong is well positioned to be a major conduit for capital flows between the mainland and external markets, thanks to the three distinctive advantages of the city's financial sector: a diverse array of financial products; low cost of financing; and a well-recognized legal system based on common law.

The United States is rallying European countries and other allies in a campaign to curb China's export of electric vehicles, lithium batteries and solar cells. This trade containment campaign in all likelihood will continue in the foreseeable future, recruiting more allies and having an enduring impact on China's trade.

Against this background, Hong Kong should enhance its role as a "trade intermediary", which can offer mainland enterprises significant benefits:

First, it can help the country circumvent trade barriers. Hong Kong is recognized globally as a separate customs territory and is a member of some international economic and trade bodies that the mainland has yet to join. Mainland enterprises are often greeted with "anti-dumping" and "countervailing duties", as well as technical barriers, when exporting products to developed countries. As offshore companies, Hong Kong firms can engage in triangular trade with mainland enterprises to bypass trade barriers and restrictive policies.

Second, Hong Kong companies can facilitate mainland enterprises in achieving unrestricted trade, by acquiring assets or equities of mainland producers, or by establishing joint ventures with them. This model can also enlarge profit margins.

Third, whereas the mainland enforces foreign exchange controls, Hong Kong allows unrestricted capital flow and free currency conversion. Mainland enterprises registered in Hong Kong can conduct foreign exchange-related operations much more easily.

Since the conclusion of this year's two sessions, the development of new quality productive forces has become a priority on many local governments' agendas. Technological innovation is a key aspect of new quality productive forces; and Hong Kong, with its threefold advantage, is well placed to catalyze technological innovation on the mainland:

First, Hong Kong's remarkable research capability can be tapped by the mainland.

The city is home to five of the world's top 100 universities. Its academic subjects ranked top 20 globally by the QS World University Rankings by Subject increased from 12 last year to 15 this year.

In aiding the mainland's technological innovation, Hong Kong and the mainland can jointly promote technological advancement by leveraging the city's own capabilities as well as the collaboration platforms it has established with global top-tier universities.

Second, Hong Kong has an exceptional innovation platform. With robust intellectual property safeguards, a well-established market economy and a world-class business environment, the city has been recognized as one of the world's freest economies for 28 consecutive years. The two sides can work together to promote technological advancement by leveraging this platform.

Third, Hong Kong is a powerful magnet for global technology talent because of its trilingual environment, cultural diversity, convenient transportation and global connectivity, providing a talent pool for the mainland.

As a renowned international metropolis, Hong Kong is well positioned to promote the nation's high-level opening-up in several ways.

First, Hong Kong can serve as a "breeding ground" for international brands. Boasting a robust and globally recognized intellectual property (IP) protection regime, the city is well equipped to safeguard IP rights and assist mainland enterprises in augmenting their brand influence and global reach.

Second, Hong Kong could become a major marketplace for IP rights. The Global Innovation Index 2023 ranked the Shenzhen-Hong Kong-Guangzhou science and technology cluster second among its counterparts for the fourth consecutive year. Hong Kong is striving to create a regional IP trading center. Although the majority of the world's applications for patents, trademarks and designs come from the mainland, the transaction volume of the country's IP rights remains modest. Hong Kong is in a good position to assist mainland businesses in commercializing their IP and attract foreign capital to the mainland, facilitating the monetization of the mainland's IP rights.

Third, Hong Kong is a bridge for cultural exchanges that contribute to people-to-people bonds, which are essential to promoting high-level opening-up. As the place where East meets West, Hong Kong is the ideal showcase for Chinese culture as well as other cultures.

Fourth, Hong Kong can play the role of arbitrator for international trade disputes. The city's arbitration judgments, based on common law, are recognized by over 140 countries. As more mainland enterprises go global, international trade disputes are bound to increase. Hong Kong can offer professional arbitration services for mainland enterprises.

During his visit to Hong Kong in February, Xia Baolong, director of the Hong Kong and Macao Work Office of the Communist Party of China Central Committee, asserted that the mainland's high-quality development is a powerful driving force for Hong Kong to move toward a bright future. What Xia implied is that the strong complementarity between the two sides under "one country, two systems" allows Hong Kong to play a unique role in promoting the nation's high-level opening-up. Hong Kong will attain further success by working together with the mainland.

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SAR in better position to leverage its advantages

In recent years, with the rapid evolution of the international situation and the high-speed development of technology, countries around the world, including common law countries like the United States, the United Kingdom and Singapore, have enacted or updated their laws concerning national security. In 2003, many Hong Kong residents were unfamiliar with the concept of national security, but today, Hong Kong society has reached a consensus that the city can no longer afford a further delay in the enactment of the Article 23 legislation. Apart from fulfilling a constitutional responsibility of the Hong Kong Special Administrative Region, the passing of the Safeguarding National Security Ordinance (SNSO), or the Article 23 legislation, was also an invaluable opportunity for Hong Kong to enact national security laws by way of the local legislative process based on common law principles. Furthermore, it definitely aligns with global trends. As an international metropolis, Hong Kong should not lag behind other common law jurisdictions in updating its statute books to cope with national security threats arising from a high-tech world as well as to safeguard the lives and properties of its residents.

When Article 23 legislation was discussed in the past, there were always two major views: One was to directly apply the Chinese mainland's national security laws to Hong Kong through Annex III of the Basic Law; the other was to preserve the characteristics of Hong Kong's common law. It is preferable to make Article 23 legislation part of Hong Kong's local legislation by enacting it through the familiar legislative process of the Legislative Council, and all related cases will be adjudicated by Hong Kong courts based on common law principles. It's important to note that no country would leave any part of its territory without national security protection, nor would any country normally authorize local governments to enact national security laws on their own. Hong Kong and Macao are privileged under "one country, two systems" to have an opportunity to pass national security laws on their own. Article 23 reflects the central government's determination to uphold "one country, two systems" and Hong Kong's common law system,



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and demonstrates its high degree of trust in Hong Kong. It gives Hong Kong the opportunity to legislate independently in accordance with common law principles; and after the legislation, the local legislation is entirely adjudicated by Hong Kong courts based on common law principles. We apply the principles of presumption of innocence, ensuring that no guilt is imputed without evidence, and a high threshold for conviction such as beyond reasonable doubt. Section 2 of the SNSO explicitly states that the implementation of the SNSO has to adhere to "one country, two systems", the Basic Law, and the International Covenant on Civil and Political Rights (ICCPR).

The Basic Law and the Bill of Rights Ordinance clearly state that they protect Hong Kong residents' rights to freedom of speech, peaceful assembly, procession and demonstration, as well as the application of the ICCPR. Article 19(1) of the ICCPR provides for various rights for citizens, while Article 19(3) stipulates that those rights are not absolute, and the government can enact laws to impose necessary restrictions to protect national security, public order, public health, and morals.

After World War II, many countries that had suffered from the war placed great emphasis on respecting the sovereignty of each country to maintain world peace. In 1984, the United Nations Judicial Committee issued the Siracusa Principles, which stipulate that when facing threats to national security, including threats to the safety of people's lives and the integrity of national territories, further measures can be taken by a government to limit such rights.

To maintain world peace and respect all countries' sovereignty and territorial integrity, international law clearly states that rights and freedoms must be regulated within legal boundaries, and may be subject to necessary restrictions required for protecting public order and national security as stated above. There are countless cases in common law that demonstrate such principles. Hong Kong residents who experienced the riots in 2019 understand that without comprehensive legislation to protect national security, their daily lives could be obstructed. The government and the legislature's task is to balance individual rights and freedoms with the collective interest by introducing laws that best suit society. This is the role of every government and legislature on Earth. In drafting the Article 23 legislation bill, the HKSAR government extensively studied the practice of other major common law jurisdictions. After multiple amendments, the final draft addressed the questions raised by the Bills Committee, and fully complied with international standards and the rule of law.

The SNSO has made the legal boundaries clearer. Clearly defined laws can play a role in preventing behavior that endangers Hong Kong's safety. Macao is a good example: A chaotic situation like what happened in Hong Kong in 2019 has never occurred in Macao; nor has the city brought any charges under its Article 23 legislation since its enactment in 2009.

The SNSO is in fact much more lenient than those of other common law countries, like the UK, the US and Singapore, and is completely in line with the Basic Law, common law, international law, and international standards. The SNSO protects the lawful rights and interests of both residents and businesses, local and international, and ensures a stable business environment. It should receive the respect and support of the international community.

With the SNSO in place, Hong Kong is in a better position to leverage the advantages of "one country, two systems" in future.

I truly hope that the international community can adopt an objective and fair view on the law.

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