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Black's Theory on The Behavior of Law Revisited III: Law as More or Less Governmental Social Control

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Law as More or Less Governmental Social Control in China

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Abstract

In 1976 Donald Black introduced a scientific social theory on *The Behavior of Law*. Black defines law as “governmental social control.” In 1997, Wong restated Black’s concept of law as “more or less governmental social control.” Law as more or less governmental social control exists when the government endorses private social control activities or otherwise delegates social control powers to private parties.

This research used Wong’s restatement of Black’s concept of law to investigate the law enforcement role and functions of the Strike Committee during the Canton-Hong Kong strike (1925-1926). It found that during the Canton-Hong Kong strike the KMT National government in Guangzhou delegated broad police powers to the CCP led Strike Committee *jiuchadui* as well as providing it with an abundance of material and moral support to perform vital police functions, including enforcing strike laws, maintaining strike order, and securing strike discipline. The KMT, the CCP, the British government, the Hong Kong press, and the Chinese public at that time referred to the Strike Committee variously as the “mini-government”, “second government” or “revolutionary law enforcement.” Notwithstanding this fact, Black’s concept of law (as “governmental social control”) could not be made to apply to the Canton-Hong Kong Strike Committee, then functioning as an undisputed “governmental social control” agency. This conceptual lapse can be cured by applying Wong’s restatement to Black’s concept of law, i.e. defining law as “more or less governmental social control.”

Introduction²

In 1976 Donald Black introduced his theory on the behavior of law. (Black 1976). Black defines law as “governmental social control” (Black 1976: 2). Sherman observes in his general review of Black’s theory of law in 1978 that Black’s concept of law needs to be defined in a meaningful manner (Sherman 1978:10-11). Griffiths who wrote the only full length article on Black’s concept of law in 1984 laments that Black’s concept of law is defined without reference to the theoretical structure (Griffiths 1984:37). More recently Wong compiled a comprehensive review of Black’s theory of law and found that Black’s concept of law is not clearly articulated; a critical conceptual link, the term government, is not defined (Wong 1995:214). In 1998 Wong provided a restatement to Black’s concept of law by introducing the idea of “more or less governmental social control” as realized in the twin concepts of governmental sponsorship of private social control and governmental delegation of social control powers to private parties (Wong 1998).

This article provides an empirical assessment of Wong’s restatement to Black’s concept of law. It shows how the restated concept of law as “more or less governmental social control” and its associated analytical frameworks are helpful in studying the law enforcement role and functions of the Strike Committee during the Canton-Hong Kong strike of 1925-1926 in China; then operating as a de facto and quasi government agency.

This article consists of five sections. Part I: “A Restatement of Black’s Concept of Law” summarizes Wong’s objections to and his restatement of Black’s concept of law. Part II: “The Historical Context of the Canton-Hong Kong Strike *Jiuchadui*” provides a brief historical background of the Canton-Hong Kong strike as a foundation to the discussion of the roles and functions of the Strike Committee *jiuchadui*’s during the strike. Part III: “The Redistribution of Governmental Social

² This paper benefited from my continued discussion with Professor Black over his theory and concept of law. His contribution is hereby acknowledged with great thanks and appreciation.

Control” investigates the relationship between the KMT government and Strike Committee in order to elucidate the role, functions, powers and responsibilities of the Strike Committee *jiuchadui* in enforcing the Canton-Hong Kong strike. This sets the stage for analyzing whether the Strike Committee and its *jiuchadui* were engaging in “governmental social control.” Part IV: “*Jiuchadui* as Governmental Social Control” illustrates the utility of the “more or less governmental social control” conceptual frameworks in analyzing the extent to which the Strike Committee was functioning as a quasi and de facto “governmental social control” agent. Part V: “Conclusion” summarizes some of the major empirical findings and discusses a number of the more important research and theoretical implications of this research.

I

A Restatement of Black’s Concept of Law

Black’s concept of law as governmental social control

Black’s concept of law is a simple and strait-forward one. Black defines law as "governmental social control" (Black 1976: 2). Black provides a descriptive, and not an analytical, definition of government. He describes governmental social control as the “normative life of a state and its citizens.” Black intends his definition to encompass “any act by a political body that concerns the definition of social order or its defense” (Black 1972: 1906). However, none of the critical terms – government, state, or political body – are defined. Wong has construed Black’s concept of government as formally institutionalized political authority (Wong 1998). Finally, social control is defined as "response to deviant behavior" of every kind including "law, etiquette, custom, ethics, bureaucracy, and the treatment of mental illness" (Black 1995: 106).

The myth of unitary government

The major problem with Black’ concept of law is that he defines government in dichotomous terms.³ Government either exists or does not exist. In this regard Black

³ In a personal communication with the author, Black objected to such a characterization of his work. However, he made three points clear: (1) He insisted that the term government is self-evident, thus requiring no elaboration. (2) He insisted that there is only one institutionalized political authority at any one time and should be apparent to all. (3) Researchers who are keen in

echoes historical understanding and follows conventional wisdom. People have long associated state and government with omnipotent, omnipresent, undivided, perpetual, and absolute political control over an area (country) or people (association) (Elazar 1987:11). However, the political scientists have long taken a contrary stance. For example, political scientists have advanced three classical models to explain power sharing in government. They are respectively the pyramid (Fieldhouse 1965; Sale 1990), center-peripheral (Briffault 1990, 1990a), and matrix power structure of government (Elazar 1987).

Debunking the myth of government

The deconstructing the myth of government as a holistic and integrated unit can be achieved in two ways: internally deconstruction and externally deconstruction.

(1) *Internal deconstruction.* There is a substantial division of labor within the government, particularly when government services are bureaucratized, horizontally and vertically. Thus while the political sovereign makes policies at the top, it is up to the professional administrators to carry them out at the bottom. This is a vertical division of political vs. administrative labor, and policy making vs. policy execution role. The political sovereign then as now also expanded his span control or fine-tuned his administration by creating coordinated horizontal specialized departments, e.g., establishing judicial vs. legislative vs. executive branches of government. This is a horizontal division of labor.

(2) *External deconstruction.* There may be competing sovereign powers (legal pluralism) in a state, each commanding the loyalty, allegiance, and obedience of a group of the citizen of the state in a point of time and over a geographic area, e.g., a citizen of the United States is subjected to multiple jurisdictions at any point in time: county, state, and federal law applies, depending of the time, place, matters, issues involved and a citizen of imperial China is subjected to overlapping social control as a son to his parents, as a member to his family clan, and as an associate to his professional guild

testing his theory are invited to adopt a conventional and common sense approach to defining government.

The idea of relative government

The debunking of the myth of government makes way for the proper construction of a *sociological* definition of law that recognizes the *relativity* of governmental social control, i.e. more or less governmental social control in multiplex law. It serves at this juncture to remind ourselves of Professor Max Rheinstein penetrating observation - social phenomenon is not absolute but relative:

After all modern science could not achieve its spectacular results until the phenomena to be observed had been described, classified, and systematically arranged for ready reference.....In social science it also seems at first glance that we know those phenomena whose interrelations we are trying to unravel. We think that we know the species of, let us say, political organization ... but let us try to define the exact borderline between monarchy or republic...None of these questions can be answered for the simply reason that clearly defined species do not exist in the realm of social phenomena ... What we find are mixtures ... *The question is always one of more or less*, or one of defining the position of a concrete phenomenon upon a scale of infinite transitions between the two extremes of clear-cut polarity. (*Italics mine*) (Weber 1954: pp. xxvii – xxvii).

More or less, more so than unitary, governmental social control is thus better describes governmental social control in action. When private parties take part in governmental social control, e.g., private security, they are engaging in governmental social control of a sort. When private parties are given the legal authority to maintain social control, e.g., family discipline in China or chartered associations in England, they are law deputies. When the government gets involved or participated in private social control, e.g., organizing community policing, the private social control takes on the color, authority, and characteristics of the government.

The concept of law as more or less governmental social control

Black's concept of law can be improved by making it more sociological, i.e., incorporating the idea of "more or less governmental social control." The concept of law as "more or less governmental social control" can be adequately captured by two inter-related, though mutually exclusive, concepts, i.e., the *delegation* of governmental

social control rights to private parties and governmental sponsorship of private social control measures.

More or less governmental delegation of social control rights

More or less governmental social control can result from the affirmative delegation of social control rights and responsibilities. Delegation of social control rights (and responsibilities) is a re-redistribution of constitutional rights. They are rights conferred upon or acknowledged to exist in a private party by the state to take part in governmental social control, e.g. family discipline or clan rule in traditional China, sheriff deputies in the Wild West, and private policing in modern America. Depending on the scope of delegated control, extent of delegated authority, and degree of supervision over delegation, i.e. social control responsibilities, powers, and accountability, the delegated party acts more or less like an autonomous government. The broader the delegation - more responsibilities, bigger power and lesser accountability - the more a private party behaves like an autonomous government. The narrower the delegation - the more restrictive the responsibilities, the lesser the powers, and the closer the supervision, the less a private party behaves like an autonomous government.

Social control authority is of three kinds. In decrease order of authority, they are: authority to define social norms, authority to establish social norms, and authority to enforce social norms; corresponding to our western notions of legal policy setting, law making, and law execution (which encompasses in broad terms law enforcement, prosecution, adjudication, and punishment).

More rights of social control means more power *sharing* with the dominant social control qua *political* authority and in turn power *domination* over subordinate *social* subjects. In Black's term, power sharing with established political authority means more law for a political inferior. Power domination over another social equal means less law for the dominating social equal. Power sharing is manifested in negotiation for control as give and take. Lesser power allows for the negotiation over outcome. More power allows for the negotiation over substantive law. Power parity allows for the negotiation over procedure law. Power domination (from more to less) is

manifested in the imposition of decision making process, decision making norms, as well as results.

Table 1: Governmental delegation of public social control (policing) authority⁴ - an analytical framework

Theoretical concepts	Operational definitions	Example
Governmental delegation of police powers	<i>Delegation of social control authority</i> ⁵ - the redistribution of government's constitutional power to use force to enforce the law and maintain (political or social) order	(1) Constitution provisions (2) Enabling legislation
	<i>Delegation of norm defining authority</i> – the extent to which the government delegates the authority to define general normative expectation	(1) Government social control philosophy (2) Jurisprudential thought (3) Law enforcement policy
	<i>Delegation of norm setting authority</i> - the extent to which the government delegates the authority to set specific normative expectations.	(1) Police legislation (2) Police rules and regulations
	<i>Delegation of norm enforcing authority</i> – the extent to which the government delegates the authority to seek compliance with the normative expectations.	(1) Licensing (2) Inspecting (3) Policing

More or less government through sponsorship of private social control?

More or less government in social control due to state sponsorship of private social control activities is state participation in private social control. State sponsorship means state countenance, approval, endorsement, promotion, sanction, and/or enforcement.

⁴ The delegation of state authority thus can be analyzed along three critical dimensions: the scope of authority delegated (i.e. jurisdiction), the nature of authority delegated (i.e. norm defining vs. norm setting vs. norm enforcing), and the accountability of authority delegated (i.e. prior approval vs. after the fact veto).

⁵ The delegation of state authority necessarily implies the delegation of power to use force to secure the delegated authority. Thus *Black's Law Dictionary* defines authority as: "Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge... Often synonymous with power." (Abridged Sixth Edition (St. Paul, Minn: West Publishing Co., 1991), p. 89.

State sponsorship can be in the form of passive endorsement or active involvement corresponding to the two extremes of sponsorship, i.e. from minimal endorsement to maximum involvement.

Passive endorsement includes countenance, approval, or endorsement. Countenance is implied acceptance. It is demonstrated by knowledge of private social control and a failure to act. Approval is expressed acceptance. It is demonstrated by a formal acknowledgment of private social control. Endorsement is positive acceptance. It is an acceptance plus quality assurance. It is demonstrated by certification or recommendation.

Active involvement includes promotion, sanction, or enforcement. Promotion is active development. It is steps taken to facilitate the establishment, maintenance, growth, expansion, and improvement of social control, including enabling legislation but short of making available legal sanctions for private control enforcement. It is measured by efforts contributing to the development and maintenance of private control, e.g. making available material resources or lending needed advises. Sanction is making available legal punishment for private social control. Enforcement is directly participating in social control activities through the exercise of state social control powers and institutional authorities.

Table 2: Governmental sponsorship of private social control - an analytical framework

Theoretical concepts	Operational definitions	Examples
Governmental endorsement (passive – sponsorship)	<i>Endorsement</i> – the extent to which the government accepts and approves of the existence of private social control or self help	Neighborhood Watch (Garofalo & McLeod 1989:326-344)
	<i>Countenance</i> – the extent to which the government tolerates the existence of private social control	Vigilante, self-help (Perry, Jr. & Pugh 1989:129-131).
	<i>Approval</i> - the extent to which the government tacitly acknowledges the existence of private social control	Guardian Angel (Pennell, Curtis, & Henderson, 1985)
	<i>Endorsement</i> – the extent to which the government affirmatively approves of the existence of private social control	Community watch
Governmental	<i>Involvement</i> – the extent to which the government	Family discipline over

involvement (active – sponsorship)	actively participates in bringing about the private social control scheme -	juvenile
	Promotion - the extent to which to which the governments takes steps to establish, maintain, expand, or improve the private social control scheme	“Crime Stoppers” (Rosenbaum, Lurigio, & Lavrakas 1989: 401-420).
	Sanction - the degree to which the government made available legal sanctions and resources for private social control	Non-intervention in doemstic abuse (Hirschel, Hutchison, Dean, & Mills1992:247-283; Berk & Loseke, 1981:317-348.)
	Enforcement – the degree to which the government actively corroborate with private social control agency in enforcing private social control regiment	Family discipline over juvenile (Lundman, Sykes, & Clark, 1980:130-151; <i>Ga. Code Ann.</i> , S 15-11-2(12) (1990); Schutt & Dannefer 1988: 509-520)

Having familiarized ourselves with the conceptual structure and analytical frameworks for the concept of law as “more or less governmental social control” let’s turn to see how these analytical tools may help us in discerning the “governmental social control” role and functions of the Canton-Hong Kong Strike Committee’s during the Canton-Hong Kong strike (1925-1928) in China.

The research question

As observed, Black’s concept of law does not entertain the possibility of a more or less governmental institution, as a legal qua political entity, and in turn could not accommodate more or less governmental social control as a social practice. There are two issues involved here; both of them are concerned with the relative distribution of government social control powers and the proper attribution of governmental social control capacity.

First, when is a government acting in the capacity of a government in exercising social control? Alternatively under what circumstances can it be said that the government is not acting in a government capacity in exercising social control? For example, is a government acting in the capacity of a government when it performs private social control functions with government authorities?

Second: when are citizens acting in the capacity of a government? More specifically, under what circumstances can private citizens' social control action be considered an exercise of government authority, vesting it with quasi-governmental social control capacity.

This research in attempting to apply Black's concept of law (as restated by Wong) to the study of law enforcement activities of the Strike Committee during the Canton-Hong Kong strike raises mainly the second kind of issue, and tangentially touching on the first. Thus the pertinent research question is: Was the Strike Committee acting in a "governmental social control" capacity when delegated with police powers by the KMT government during the Canton-Hong Kong strike? More simply put, was the Strike Committee *jiurchadui* a "law" enforcement agent by Black or Wong's definition of law?

II

The Historical Context of the Canton-Hong Kong Strike *Jiuchadui*⁶

⁶ For a legal-documentary analysis of the Canton-Hong Strike of June 1925 to October 1926. See Zhang Xipo & Han Yanlong, *Zhongguo Geming Fazhishi* (Chinese revolutionary legal history) (1921-1949), upper volume, (Zhongguo shehui kexue chubanshe, 1987), p. 284 -289. (Hereinafter GMFZS) For a collection of original documents, see *Wu-San-Shi Yundong he Sheng-Gang Bagong* (The May 30th movement and Canton-Hong Kong Strike) (Jiangsu guji chubanshe, 1985). (Hereinafter WSSYD). *Minguo shiqi Guangdong sheng zhengfu, dang'an shiliao xuanbian* (Collection of archive historical materials of Guangdong provincial government during the Nationalist period) (Guandong sheng dangangan, 1928). DS-2 46, Cmgs 12288 Vol. 1. (hereinafter SLXB) on legislative history and debates during 1925-1926 from official Canton provincial government council meeting minutes. For a brief summary, see "Sheng-Gang dabagong" (The Great Canton-Hong Kong Strike) in Tian Min & Xu Jianchuan (ed.) *Gonghui Da Cidian* (Jingji guanli chubanshe, 1989), p. 146. (Hereinafter GHDCD) For a more detailed account, Zhang Guofu, *Zhonghua Mingfuo Fazhi Jianshi* (Brief history of Republic of China Legal System) (Beijing University Press, 1986), pp. 201-264. (Hereinafter FZJS) Wang Haixing, *Zhongguo Gongren Yundong Shihuo* (History of Chinese Labor Movement) (Gongren chubanshe, 1994), Vol. 1 to 5. (Hereinafter GRYDSH). The most comprehensive set of original social data on workers' government in the Canton-Hong Kong strike is the *Sheng-Gang Dabagong Ziliao* (Materials on Canton-Hong Kong Strike) (Guangdong renmin chubanshe, 1980). (Hereinafter DBGZL) For a highly readable, albeit opinionated, summary of the role and incidents of the *jiuchadui*, see Cai Luo & Hu Quan, *Sheng Gang Dabagong* (Guangdong renmin chubanshe, 1980). (Hereinafter SGDBG). The most comprehensive discussion of Sheng-Gang *jiuchadui* is an essay by Xian Yiyu, "Yu-Gang bagong jiuchadui fengdoushi" (A history on the struggle of Canton-Hong Kong *jiuchadui*) in (DBGZL 1980:165-174).

The Canton-Hong Kong strike was one of the longest, large-scale strike in international labor movement history. It lasted 18 months from June 23, 1925 to October 10, 1926. The strike was precipitated by the indiscriminate shooting of peaceful demonstrators by foreign soldiers stationed in Shamian, Canton. It was one of the most organized and well-financed strikes to take place since the workers gained consciousness in China.

The strike was directed by the Chinese Communist Party (“CCP”), Guangdong district committee (*Guangdong qu wei*). It was organized by the All China workers’ general union (*Zhonghua quanguo zong gonghui*). Deng Zhongxia who led the strike was experienced in labor movement and strike affairs (GRYDSH Vol. 2 1994: 168). The strike was coordinated by the Canton-Hong Kong Strike Committee (*bagong weiyuanhui*) (GRYDSH Vol. 2 1994: 180-2). In the course of event, the Strike Committee acted and functioned more like a mini-government than a traditional union. It was publicly referred to as Canton shadow government (“Gungdong dier zhengfu”) by friends in China and authority in Hong Kong. Internally, it has departments such as administration, propaganda, recreation, communications, finance, *jiuchadui* etc. Externally, it provided education, recreation, welfare and news services to its members and the public.

In the course of preparing for the strike, the Strike Committee set up a five regiments (540 men each) *jiuchadui* on July 5, 1925 to direct the strike, supervise the strike members, and enforce the strike laws. Though the *jiuchadui* was not the only voluntary strike “police” force, it was the biggest, strongest, and most organized (WSSYD 1985: 275, 281-2, 333-341). When the *jiuchadui* was first organized it has a strength of 2,000. This was later increased to 3,000. It has ten armed patrol boats and 400 guns (GHDCD 1989: 187). Its major role was to enforce the Strike Committee’s orders and rules, and maintain strike discipline.

The Strike Committee had a training ground for the *jiucha dui* and a prison for the violators (with 300 prisoners on December 1925). The *jiuchadui* members were dressed in blue and have a red arm band. They inspected all goods and persons coming and going to and from Hong Kong and Guangdong. Whoever violated a strike order of the Canton-

Hong Kong Strike Committee would be “arrested” and send to the court. Strike leaders accused of corruption and collusion with the local troops were likewise arrested. (Chesneau 1968: 292-293; FZJS 1987: 284).

In time, the Chinese scholars come to refer to the Canton-Hong Kong picket as the earliest form of “revolutionary law enforcement.” (FZJS 1987: 285).

III

The Redistribution of Governmental Social Control

Introduction

This part of the paper concerns itself with two questions: (1) What role did the respective parties (KMT government vs. CCP Strike Committee) played in the Canton-Hong Kong as strike? (2) Did the Strike Committee function as a state sponsored policing agent with the grant of authority and the provision support from the KMT government?

Co-production of law and order

On July 1, 1925, the Canton provincial government was formally inaugurated (SLXB 1928: 1) (hereinafter Canton government). No sooner had the Canton government been established when it was confronted with a national crisis - the “Shamian massacred” - of an international proportion (GRYDSH 1994: 174, 178). The newly formed Canton government was ill prepared for the incidence. At this point in time, the new Canton government has no established infrastructure (SLBX 1928: 3), process (SLBX 1928: 4), resources (SLBX 1928: 9), or plan (SLBX 1928: 6) to response to a crisis of such a magnitude. The police suffered from inadequate manpower (SLBX 1928: 11) due to reorganization (SLBX 1928: 9) and consolidation (SLBX 1928: 9). They have not yet formulated a law and order blue print (SLBX 1928: 9), much less a crisis management plan. The Canton government relied heavily on the army to carry out its orders (SLBX 1928: 5). The military was used to supplement the regular police force (SLBX 1928: 11, 29) and even supplant the regular police in the performance of law enforcement duties (SLBX 1928: 11, 15, 24, 47). The Canton

government also relied heavily on voluntarism to implement critical government programs (SLBX 1928: 5, 13). The Chinese ubiquitous past, i.e. the preference for local rule as manifested in the existence of multiplex, indigenous, “natural” social control organization also played an important part in determining the government’s social control policy (Chu 1862, Van der Sprenkel 1962, Wong 1998b). Criminal justice and social order were popularized (XZXB 1980: 300) and communized (SLBX 1928: 58). Local groups were used to maintain law and order (SLBX 1928: 26, 67). The professional corporate bodies (e.g. *shang hui*) and functional collective organizations (e.g. *gong hui*) were made natural allies. They were considered ideal candidate for self-governance (SLBX 1928: 47). The Canton-Hong Kong Strike Committee was a prime example of such public and private joint-governance and central and local cooperative rule. The only differences were that the Strike Committee has a well-defined mandate, high degree of autonomy, broad police powers, and the discretionary authority to use force with few oversights.

The Strike Committee was also different from such other workers’ organization coming before it, i.e. workers’ strike organizations of the Chang Shen dian railroad strike, Anyaun lu miners’ strike, Shanghai Japanese cotton mill strike, Jinghan railroad strike, in major respects, chief amongst which were:

(1) The Strike Committee was a democratic institution. It has broad representation amongst the strikers.

(2) The Strike Committee was a self-governing political body. It has real political authority.

(3) The Strike Committee was a significant policy maker. It could decide upon when, how, and in which direction the strike was to be conducted.

(4) The Strike Committee has legal authority and coercive power. It could make and enforce law.

In sum, the Strike Committee came close to being a mini-government, with elected law making bodies that could set public policy, enforce law, maintain order by the use of force.

In all, we observe in this section that in the early days of the KMT government, the government allowed much of the state law and order functions to be performed

locally and privately as a result of the government's political vulnerability and the nation's cultural legacy. This opened up a unique opportunity for the CCP, an increasingly powerful workers' association, to wrestle control from the KMT government during the Canton-Hong Kong strike.

IV

Jiuchadui as Governmental Social Control

Introduction

In this section we will discuss in some detail what specific kinds of strike enforcement powers were delegated to the Strike Committee in enforcing the Canton-Hong Kong strike. Specifically, we will be looking at how such powers were exercised as a way of understanding the Strike Committee's policing role, functions, and capacity during the Canton-Hong Kong strike. We will also be looking at how the KMT government assisted and supported the Strike Committee in enforcing the strike. Finally, we will apply the conceptual framework developed earlier in Part I (esp. Table 1 & 2) to assist us in assessing the "governmental social control" capacity of the Strike Committee during the strike, and in so doing affirming the appropriateness and utility of the Wong's restatement to Black's concept of law as "more or less governmental social control."

Delegation of Police Powers

The power to strike

On July 8, 1925 the Guangzhou National Government endorsed the idea of an economic boycott directed against the British in Hong Kong. The National Government's standing committee issued the "Directive Authorizing the Guangdong Provincial Government to Carry out Its Decision to Support the Guangdong-Hong Kong Strikers' Union Headquarters" (hereinafter Directive) (WSSYD 1985:260-261) in support of the Canton-Hong Strike. Item three of the Directive instructed the Guangdong provincial government to declare the 24 ports and other coastal areas

closed to the export of food to Hong Kong. The Directive clearly specified the role of the Strike Committee and the National government. It affirmed the National government's role in setting strategic policy while conceded to the Strike Committee the role of implementing the strike. It further vested the Strike Committee with legal authority, and political legitimacy, to act on behalf of the government in organizing the strike. The Directive also implicitly held the Strike Committee accountable for the successful prosecution of the strike, discipline of the strikers, and propriety of the Strike Committee's action. The message was clear: the Strike Committee has the widest liberty to act, but should conduct itself within well-defined limits and with the utmost care and discretion.

The Strike Committee accepted the KMT government's invitation and proceeded to fashion a strike plan. On July 9, 1925, one day after the Directive was issued, the Strike Committee settled on a strike date. The Strike Committee send a "Circular telegram on implementing the blockade of Hong Kong" (DBGZL 1980: 281-282) which declared that "From the tenth of this month, all boats and ferries will be forbidden to travel to Hong Kong and New Territories, so that it will die of starvation." It further asked the National government to instruct its army and police to assist in the blockade.

The power to implement the strike

Taking hints from the KMT government, the Strike Committee took charge to orchestrate the strike. The Strike Committee has the power to decide upon the date, scope and manner in carrying out the boycott. On July 9, 1925 the Strike Committee issued "The wire of Sheng-Gang Strike Committee on implementing the boycott of Hong Kong" (DBGZL 1980:281-282) to effectuate the strike. On November 25, 1925, the Strike Committee decided to expand the scope of the boycott to other coastal ports newly coming under the Nationalist government's control (DBGZL 1980:285-287) On March 15, 1926, the Strike Committee organized a naval patrol to provide for zone patrolling of the boycotted seaports (DBGZL 1980:285-287).

The power to finance the strike

The Strike Committee has the power to “tax and spend” to finance the strike. For example, on February 9, 1925 the Strike Committee promulgated the “Kaifang Sheng-O Hangxing tiaoli” (Canton-Hong Kong Sailing Regulations) (DBGZL 1980:310) which permitted the resumption of the Canton-Macau steam line service in order to facilitate the return of strike workers from Hong Kong and Macau to Guangzhou. As a condition, the shipping company must agree to free up space for Hong Kong and Macau strikers going back to Canton free of charge. In another instance, on September 21, 1925, the Strike Committee issued the “Sheng-Gang bagong weiyuanhui duiyu Ri, Mei, Fa deng guo lunchuan dianhu tiaoli” (Regulations of the Strike Committee on Japanese, American and French’s steamboats and shops) (DBGZL 1980:310) which permitted Japanese, American, and French boats to resume operation subjected to certain conditions. One of the conditions laid down in Article five of said regulations was “One tenth of the workers salary should be voluntary contributed to this Strike Committee, to obtain food provisions for all.”

The power to set strike law enforcement policy

The Strike Committee has a key policy role to play in deciding upon how to enforce the strike law. For example, the Strike Committee made clear from the start that they were boycotting for a public cause and not over private grievances. Thus on the issue of whether to continue to strike or not to strike, the Strike Committee declared that: “Because our strike concerns the whole issue of race and not our own personal problem, what to do next is a complex problem, and requires the help of overseas and local Chinese to resolve” (DBGZL 1980:48). The Strike Committee also expected and insisted upon maximum participation from the widest quarters in its decision making. For example, on July 23, 1926 when the negotiation between the Chinese and British government came to a halt, the Strike Committee took the initiative to solicit the opinions of the countrymen, the overseas Chinese, the nation’s labor unions, and world labor unions, the KMT, and the National government before it came to a final decision.

The power to make strike law

The Strike Committee was given a wide latitude and a free hand to promulgate organic laws for the establishment of strike agencies, administrative law for implementing the strike, substantive and procedure criminal law for the punishment of offenders. The Strike Committee has promulgated various organic laws for the establishment, administration and control of strike organs, including: the “Jiucha dui zuzhi fa” (Organic law of jiuchadui) (DBGZL 1980:234-235); the “Jiuchadui weiyuanhui zuzhi fa” (Organic law of jiuchadui committee) (DBGZL 1980:235-236); the “Jiuchadui junfachu zuzhi fa” (Organic law for the jiuchadui military law office) (DBGZL 1980:238-239); the “Jiucha weiyuanhui gedi banshi chu zuzhi fa” (Organic law of jiuchadui committee offices in various places) (DBGZL 1980:239-241); the “Jiucha xuan zhuan dui jianzhang” (Charter of Jiucha propaganda troop) (DBGZL 1980:241-242); the “He shen chu zu zhi fa” (Organic law of joint-hearing office) (DBGZL 1980:244-247); and the “Shui lu zhen cha dui zanxing guize” (Provisional organic regulations of the land-sea reconnaissance troop) (DBGZL 1980:288).

The Strike Committee also promulgated extensive and detailed administrative rules for the implementation of the strike. For example, on August 14, 1925, the Strike Committee set forth the standards and procedure for the issuance of the special permit (texu zheng) with the “Sheng-Gang gongren weiyuanhui guanyu sheli texuzheng de tongzhi” (Notice of Sheng-Gang Strike Committee regarding special permit) (DBGZL 1980:310) to facilitate and simplify the release of goods now in storage and awaiting inspection and disposition.

The power to interpret strike laws

The Sheng-Gang Strike Committee enjoyed a wide-latitude in drafting administrative regulations and has a lot of discretion in allowing for dispensations from such rules and regulations. For example: The Strike Committee made special rules allowing for special dispensation to local residents. The Strike Committee often made exceptions to the general boycott rules in order to alleviate the adverse impact of the boycott on the local residents. For example, the “Sheng-Gang bagongweiyuanhi tezhun baoan nonghui nongmin jingguo yingjie tiaojian” (The Sheng-Gang Committee:

Conditions of special permission for Baoan peasants' association and peasants to pass through the British border.) (DBGZL 1980:256-266) allowed the border area peasants to obtain rice, fertilizers and salt across the Hong Kong border. The Strike committee also adopted special provisions for speedy inspection to avoid foressible hardships. The Strike Committee adopted special rules to facilitate the speedy inspection of easily rotten food, e.g. salt fish. On April 17, 1926, the Strike Committee promulgated the "Sheng-Gang bagong weiyuanhui guanyu xianyu yunshu banfa xunling" (Instruction of Sheng-Gang Strike Committee regarding the transportation of salt fish) which allowed the free transport and selling of salt fish without prior inspection clearance, subjected to speedy on the spot inspection on demand (DBGZL 1980:256-266)

The power to enforce strike laws

The "Jiucha dui zuzhi fa" (Organic law of jiuchadui) (DBGZL 1980:234-5) specified the *jiuchadui*'s law enforcement duties as follows: (a) to maintain order; (b) to intercept provisions; (c) to chase after running dogs; (d) to arrest workers' enemy; (e) to search and detain enemy goods; (f) to conduct blockade of Hong Kong, Macao, and Shamian traffic.

From a reading of the original archives documents, the actual role, functions, and powers of the Canton-Hong Kong *jiuchadui* can be ascertained. First, the *jiuchadui* was involved in setting up blockades against the importation and exportation of prohibited goods. For example, on September 29, 1925 the standing Committee of the National government decided to send the army to assist the *jiuchadui* in blockading Qian Shan and Wan Zi against illegal food export (WSSYD 1985:314). Second, the *jiuchadui* was involved with the inspection of incoming cargoes for imported foreign goods, i.e. British and Japanese goods. For example, it was discovered that the Nanning General Chamber of Commerce has sealed imported goods without inspection. In such cases, the *jianchadui* has to re-inspect the goods if suspicion was aroused (WSSYD 1985:333-341). Third, the *jiuchadui* was involved with interdicting and seizing smuggled provisions to the British, transportation of strike workers to and from Hong Kong, and the importation of enemy goods from Hong Kong. For example in August of 1925, the *jiuchadui* was informed that the local

evil gentry, tyrants, and unscrupulous merchants at Baoan have been sabotaging the strike. In the tenth month, 23rd day, the *jiuchadui* intercepted a boat numbered 2389 belonging to an evil gentry carrying food and visitors to Hong Kong (WSSYD 1985:330). Fourth, the *jiuchadui* was involved with investigating and reporting upon foreign spies and suspicious characters. For example, on October 6, 1925, the Strike Committee reported the sighting of two suspicious British nationals. It instructed the *jiuchadui* to closely investigate their activities and report on them accordingly (WSSYD 1985:316). Fifth, the *jiuchadui* was responsible for maintaining order and discipline within the striker's rank and common area. It was particularly involved with the investigation and arrest of striker-impostors, troublemakers, and hooligans. On Nov. 24, 1925 The Strike' Committee asked for permission to punish those unruly people who violated strike discipline and order

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Those strikers or actual strikers ...who violated the laws and regulations, causing disturbances to the area, should be immediately arrested according to law and punished additionally, so as to set an example to preserve order and peace (WSSYD 1985:332).

Seventh, the *jiuchadui* was involved with preventing the local defense army and police from colluding with unscrupulous merchants in the transportation of food to Hong Kong and importation of enemy goods between Taipo (Hong Kong) and Sha Yu Yong, and between Huang Yu Yong, Ao Tou and Dan Shui (WSSYD 1985:341-342).

The power to adjudicate and punish strike law violators

The Strike Committee has a near plenary over how the strike law should be interpreted and violators punished. First, the *jiuchadui's* law enforcement activities were subjected mainly to internal administrative review by a joint hearing office (JHO) made up of five hearing officials (*cheng-shen yuan*) elected from strike workers from Canton (two members) and Hong Kong (three members),⁷ with occasional KMT government oversight (DBGZL 1980:265-267). Second, more significantly, there were

⁷ Article 2 of Organic law of joint-hearing office provided that: "The joint-hearing office has five hearing officials, to be selected and filled by the Sheng-Gang strike workers, with two from Sheng and three from Gang."

no constitutional or institutional of control over the Strike Committee's exercise of strike powers. For example, the relevant constitutional documents of the time, e.g. "Jianguo dagang" (Basic principles of national construction) of April 12, 1924, did not contemplate the existence of a private strike agency with plenary powers to effectuate a strike. There was thus no external legal or administrative supervision over the discipline of the *jiuchadui* misconduct. The *jiuchadui* committee, and the Strike Committee was only subjected to internal administrative review. The "Jiucha dui zuzhi fa" (Organic law of the *jiuchadui*) (DBGZL 1980:234-235) drafted by the Strike Committee⁸ made the *jiuchadui* answerable to the Sheng-Gang Strike Committee,⁹ a strikers' elected body.¹⁰ The *jiuchadui* was discouraged from reporting to anyone outside the chain of command, including to the KMT government.¹¹

The power to use coercive force

When the *jiuchadui* was first formed, it has 2,000 members. There were about 200 guns, about one gun to two *jiuchadui*. They also have 12 armed patrol boats as a "navy". The *jiuchadui* was trained in military tactics and subjected to military discipline. The *jiuchadui* was not hesitant to use force to enforce the strike laws and suffered many casualties at the hands of the local bandits, smugglers, shangtuan, and the British soldiers (GRYDZH 1994: vol. 3, p. 194-203).

Lack of accountability

⁸ Article 18 of the Organic Law provided: "If necessary, this law must be passed by the people's representatives congress, and referred to the legal system office for revisions."

⁹ Article 1 of the Organic Law provided that "Jiuchadui reports directly to the Sheng-Gang Strike Committee." Article 7 of the Organic law further provided: "All matters concerning the troop are to be decided by the committee after meeting, and refers to the a standing committee of three for execution." Article 15 of the Organic Law provided: "The company commander (*da duichang*), deputy commander (*dadui fu*), platoon commander (*zhidui chang*), deputy platoon commander (*zhidui chang*), training and education director (*zuren*) are all appointed by the weiyuanhui and confirmed by the Sheng-Gang Strike Committee."

¹⁰ Article 6 of the Organic Law provided that "The headquarters troop establishes a committee, acting as the highest command organization of the *jiuchadui*. It is formed by 6 elected representatives from the Sheng-Gang strike workers representative congress and 1 elected representative from the military committee."

¹¹ Article 7 of the Jiuchadui disciplinary code provided that: "Troops at all level should not cross-over level to report (*yueji chengbao*) ... and should not report directly to ... any other organs within the government, so as to unify authority over matters and avoid disputes."

As to be expected, given the extensive delegation of police powers, the open nature of the charge to conduct the boycott, and a lack of structural oversight by the KMT government, there were many cases of *jiuchadui* abuse of power. There were many citizens' complaints of the Strike Committee's conduct. For example, the owners of private premises have complained to the Guangzhou Public Security Office that the Strike Committee has been occupying private residents without payment. The owners have asked the Strike Committee to vacate but to no avail. The Canton government has to intervene before the case was finally resolved, and only after the matter was brought up repeatedly at the Canton government provincial meetings (DBGZL 1980: 44, 101).

There were as many complaints from the government officials. The chief of public security, Wu Tiacheng, announced to the public that "The strikers were more violent than the soldiers of Liu and Yang." On February 22, 1922 the Chinese custom and duties department (Haiguan shuiwusi), Canton custom office (Yue haiguan), announced that it would have to close the office because the Strike Committee has been encroaching on its legal mandate and authority.

Discussion on delegation of governmental social control

The above detail description of the Strike Committee's law making and enforcement powers during the Canton-Hong Kong allow us to use the analytical framework developed in Part I to ascertain whether the Strike Committee was functioning in a "more or less governmental social control" capacity, i.e. acting as a de facto state law enforcement agency.

Table 3: Strike Committee's governmental social control capacity (SC) in relationship to Canton-Hong Kong strike law enforcement - an analytical framework

	Responsibility	Power	Accountability
Defining norm	A (3)	B(3)	C(3)
Establishing norm	D(3)	E(3)	F(3)
Enforcing norm	G(3)	H(3)	I(3)

SC3 = most governmental social control capacity

SC2 = some governmental social control capacity

SC1 = little governmental social control capacity

SC = government capacity¹²

(Total possible SC) = SC 27 = most governmental capacity or approaching full governmental social control capacity, i.e. sovereign state

- (1) Responsibility is defined as the scope of state controlled matters (over people, places, things, objects, matters) a party is charged with. This is commonly associated with a state's political jurisdiction, manifested as constitutional limits and as translated into legal jurisdiction and administrative charge of all kinds. This is usually measured in terms of the scope (how many matters under control) and the nature (how important things under control) of the party's jurisdiction.
- (2) Power is defined as the extent to which a party can effectively impose his will on others. This is usually defined along the dimension of legitimate force allowed to be used.
- (3) Accountability is defined as the extent to which a party is amenable to supervision by the state. This is usually measured by the degree of prior approval or subsequent review upon the party's action or decision.
- (4) Defining norm is defined as setting general social control expectations. The common indicators are adopting philosophy, setting policy, and deciding upon strategy.

¹² The SC index used here is for illustrative and heuristic purpose, more so than definitive to be used in actual measurement. In constructing the SC index score I have arbitrarily determine a range for the SC variable (from most social control to some social control to no social control) and assign equally arbitrary possible values to each (SC3, SC2, SC1). There are other measurement problems: (1) Conceptually more or less governmental control is a continuous variable and should not be measured with a ratio or interval measure. (2) To the extent that more or less governmental social control index are measured along different dimensions with a ratio or interval measure, a legitimate question is raised as to whether such a measurement is truly additive and thus can be added to from a global composite SC index, e.g. is SC2 on the responsibility indicator comparable to SC2 on the power indicator. (3) The SC index as designed does not measure the relative significance of the nature of governmental control authority - define, establish, and enforce and focus primarily on the implementation of such authority - responsibility, power, accountability. A true SC index should take both into account in creating a weighted SC measure. This should be done in due course, but is considered beyond the scope of this paper.

- (5) Establishing norm is defined as setting specific social expectations. The common indicators are rule making and interpretation.
- (6) Enforcing norm is defined as seeking compliance with general or special social expectations. The most common indicators are policing, arrests, and punishment.

A sample case analysis of more or less governmental capacity for the Strike Committee during the Canton-Hong Kong strike:

1. The Strike Committee has the broadest responsibility in defining (A) strike control for the union members, public, and the foreigners. This was manifested by the ability of the Strike Committee to advocate political-social (strike related) philosophy, influence KMT national (domestic as well as foreign) policy, and to set strike strategy on the full spectrum of strike issues. (A = SC3)
2. The Strike Committee has the broadest responsibility in establishing (D) strike control laws for the union members (e.g. disciplinary code), public (e.g. import license), and the foreigners (e.g. boycott rule). This was manifested by the authority of the Strike Committee to promulgate strike laws and provided for exceptions to them on all matters affecting the successful prosecution of the strike. (D = SC3)
3. The Strike Committee has the broadest responsibility (G) in enforcing the strike laws for the union members, public, and the foreigners. This was manifested by the unlimited authority of the *jiuchadui* to interdict any boats, inspect any goods, seized any goods in all the designated boycott areas to effectuate the boycott. (G = SC3)
4. The Strike Committee possessed a lot of power (B) in defining strike philosophy, policy, strategy concerning the strike. This was manifested by the Strike Committee's ability to face up to the KMT government in the Shamian incident. (B = SC3)
5. The Strike Committee has near total power (E) in promulgating strike laws. This was manifested by lack of any prior consultation with the KMT government. However, the Strike Committee's rule making authority was subjected to over-sight of the KMT government, if necessary. (E = SC2)

6. The Strike Committee exercise total power (H) in enforcing the strike law. This was manifested in the ability to use force (with KMT assistance), imprisonment, and capital punishment to enforce the strike law. (H = SC3)
7. The Strike Committee showed very little accountability (C) in defining strike philosophy and policy. This was manifested in the Strike Committee's ability to disagree with the KMT over issues of philosophy, policy, and strategy over the conduct of the strike. (C=SC3)
8. The Strike Committee showed very little accountability (C) in establishing strike. This was manifested in the Strike Committee's public disagreement with the KMT over issues of philosophy, policy, and strategy over the conduct of the strike.(F) (F = SC3)
9. The Strike Committee showed very little accountability (I) in the enforcement of strike law. (I = SC3)

From this sample case analysis it is possible to conclude that the Strike Committee enjoyed a SC score of 26/27 making it ipso facto a state agent with full state capacity. The conclusion drawn from this analysis only serves to confirm and re-inforce what has been publicly acknowledged during the time, i.e. the Strike Committee was functioning as a mini strike government during the time.

Governmental sponsorship of Strike Committee

From the very beginning the KMT and Canton was interested in doing what it can to assist the strikers and the Strike Committee. For example, the national government provided in kind service of all types for the strikers, e.g. the dispensation of telegram fees (DBGZL 1980:262) and the administration of strike funds. (SLXB 1928: Vol. 1, p. 19) It led a concerted effort to harness funding from the private sector to support the Strike Committee and displaced workers. It even started a public works project to support the unemployed strike workers (WSSYD 1980:260-261).

Strike support

The government financed the Strike Committee's administration costs and the strike's operational expenses (SLXB 1928: Vol. 1, p. 9). On July 8, 1925, just when the Standing Committee of the KMT government declared a blockage of 24 seaports and coastal areas, it made specific provisions for the setting up of an office for the Strike Committee. For example, The Guangzhou provincial government instructed the Guangdong municipality to instruct the public security to allow the Canton-Hong Kong Strikers' Committee to use the Dong Yuan complex as a temporary office. (DBGZL: 260-261). The government started a public work program for the strikers. For example, the Canton government instructed the Guangdong Construction Bureau to work with the Strike Committee in the building of the Huang Bu and Shi highways, thereby providing works for the idled striking workers. Most importantly, the government raised funds for the strikers. First, the KMT government started a system of collection and distribution of strike funds for the Strike Committee. The strike funds collected was to be reported in three days and transmitted in 30 days to the Strike Committee (SLXB 1928: Vol. 1, p. 19). Second, the Guangzhou provincial government (Canton government) instructed the Guangzhou municipal administration to instruct the Public Security Office to surrender 50% of all rental collections and deposited them at the Central Bank for the use of the Striker Committee (SLXB 1928: Vol. 1, p. 19). Third, the Canton government instructed the Guangdong Commercial Affairs Bureau (*Shang Wuting*) to persuade the merchants and citizens to support the Hong Kong Strike Committee (SLXB 1928: Vol. 1, p. 19). Fourth, the Canton government instructed the Guangdong Commercial Affairs Bureau to admonish (*zecheng*) the various Chinese cigarettes companies to donate part of their earnings as financial aid for the Strike Committee (SLXB 1928: Vol. 1, p. 19). Fourth, Between June 1925 to July 1926 the Strike Committee collected and administered 5 million yuan of the strike fund. The Canton government was one of biggest contributor to the strike fund to the Strike Committee. From June of 1926 to July of 1926, it provided a total of 2.8 million yuan or 58.6% of the total 4.78 million yuan strike fund available. It was also one of the most consistent source of financial support for the Strike Committee. The government donated about 10,000 yuan each month as strike fund.

The July 1926 balance sheet of the Strike showed the following sources of contribution.

Table 4: Sources of strike fund collected by Strike Committee July 1926

Collected in China	250,000 yuan
Collected from overseas	1.13 million yuan
Advanced by Canton government	2.8 million yuan
Sale of seized merchandised	400,000 yuan
Fines	200,000 yuan
Total	4.78 million yuan

Source: Jean Chesneaux, in *The Chinese Labor Movement* p. 293.

Training

When the *jiuchadui* was first established, the Strike Committee requested the KMT government to help with its staff training. Specifically, the headmaster of Whampao Military Academy, Jiang Jieshi, was asked to send officer-trainees as organizers and instructors. On September 14, 1925 Jaing dispatched 15 graduating officers of the second graduating class to assist in the organization and training of *jiuchadui*. In fact the chief military drill instructor was Xu Chengzhang, an officer of the first graduating class (GRYDSH 1994:Vol. 2: 194).

Military assistance

The most important resources made available to the Strike Committee was perhaps the government authority. The National government provided military assistance and support for the strikers when needed and as requested. For example, Article 6 of the Provisional organic regulations of the land-sea reconnaissance troop (DBGZL 1980: 244-247) provided that “When members of this troop perform their duty, they should inform the nearest military, police, *jiuchadui* to help in execution.”¹³

¹³ The original language suggests that the Sea-land reconnaissance troops have no independent arrest powers. They must be accompanied by the established KMT authority.

Discussion of governmental support and sponsorship

The above detailing of KMT governmental support - political, moral, military, administrative, legal, and material resources - for the Strike Committee during the Canton-Hong Kong strike allow us to ascertain, with the analytical framework developed in Part I, whether the Strike Committee received the endorsement of the KMT government in their strike law enforcement activities; thereby implicating the government in private law enforcement activities.

Table 5: KMT governmental sponsorship of Strike Committee strike enforcement - an analytical framework

Theoretical concepts	Operational definitions	Example
Governmental endorsement (passive – sponsorship)	Endorsement - the extent to which the government accepts and approves of the existence of private social control.	Public endorsement - KMT government publicly supported the Strike Committee's strike enforcement role (WSSYD 1980:260-261).
	Countenance - the extent to which the government tolerates the existence of private social control	Reluctant acceptance - KMT knew of the existence of the Lin Heji case (capital sentence) but choice not to intervene while voicing strong objections through KMT Minister of Prosecution in the press (WSSYD 1980:265-267).
	Approval - the extent to which the government tacitly acknowledges the existence of private social control	Acquiesce to strike plan KMT did not object to strike date and plan announced by the Strike Committee (DBGZL 1980:281-282).
	Endorsement - the extent to which the government affirmatively approves of the existence of private social control	Affirmative approval - KMT made the Strike Committee as the proper party to settle the strike (DBGZL 1980:576-579).
Governmental involvement (active – sponsorship)	Involvement - the extent to which the government actively participates in bringing about the private social control scheme	KMT funding - The KMT government provided funding for the Strike Committee (SLZB Vol. 1.:19).
	Promotion – the extent to which to which the governments takes steps to establish, maintain, expand, or improve the private social control scheme	Dispute referral – When private citizens were aggrieved with the <i>jiuchadui's</i> action they were referred to mediation by the peasant-worker (nong-gong) and industrial (shiy) bureaus (SLZB Vol. 1.:116-118, 118).
	Sanction – the degree to which the government made available legal sanctions and resources for private social control	Military back-up - The Strike Committee provided armed escort for the Strike Committee (DBGZL 1980:244-247)

	Enforcement - the degree to which the government actively corroborate with private social control agency in enforcing private social control regiment	Join-operations - The KMT police worked along side with the <i>jiuchadui</i> to enforce the Shamian opening (DBGZL 1980:282-283).
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Table 5 clearly shows that the KMT provided extensive and consistent government assistance to the Strike Committee during the Canton-Hong Kong, sufficient to demonstrate a symbiotic relationship. In so doing, the KMT government gave the Strike Committee more than just material support; it gave the State Committee legitimacy and respect. In the process, it transformed what was essentially a self-help strike enforcement effort into a de facto quasi governmental social control exercise.

VI

Conclusion

“How, then, should my writings be evaluated? Scientifically.”

Donald Black (1995)

This study rises to Black’s challenge in five ways: It assesses Black’s concept of law empirically; scientifically; generally; cross-culturally and historically (Black 1995:831).

The whole purpose of this research is to empirically assess the validity (does a theoretical concept adequately captures the underlying reality it seeks to explain) and generalizability (can a theoretical concept explains a set of empirical phenomenon it is intended to cover) of Black’s concept of law with a case study of Canton-Hong Kong Strike Committee during the Canton-Hong Kong strike (1925-1926) in China. The research finds that during the strike, the Strike Committee, a citizens’ labor union, was given extensive state powers (investigation power, search and seizure power, arrest power, detention power, coercive power, punishment power) to perform strike law enforcement activities (preventive patrolling, inspecting import/export goods,

intercepting smugglers, confiscating illegal goods, suppressing armed resistance, investigating and arresting trouble makers, detaining suspects, conducting trials) with the fullest KMT support (housing, funding, training, conflict referral, armed support). In so doing the Strike Committee - *jiuchaduli* was acting in a “governmental social control” capacity. Indeed it was variously called a “mini government” or the “second government” by friends and foes alike at the time, including the KMT, Strike Committee, the Hong Kong-British, the press, and the Chinese people. In spite of this fact, if we were to apply Black’s concept of law (as governmental social control) to this case, the Strike Committee would be not be considered by Black as exercising governmental social control, but only engaging in private self-help.¹⁴ The Strike Committee and the *jiuchadui* was not a formally institutionalized political authority. This is certainly a result not intended by Black in formulating his concept of law which is supposed to be sociological in origin, general in nature, and scientific in design (Black 1995:837). The solution to this conceptual lapse is to restate Black’s concept of law by incorporating the idea of “more or less governmental social control.” The restatement expands Black’s concept of law, allowing it to reach out to private social control activities which have been endorsed by the government or based upon delegated governmental social control authority, i.e. private agencies functioning in a governmental social control capacity with governmental powers and support in one form or another, as with the case of Strike Committee here discussed.

This study is also a first attempt to apply the “more or less governmental social control” analytical frameworks (Table 1, 2) to the study of state empowered and state supported private law enforcement in China. It finds the analytical frameworks, albeit crude and in need of further refinement, was useful in articulating various keys dimensions to measure the degree of “more or less governmental social control”

¹⁴ Black can insist upon his original concept of law by interjecting the notion of agency to account for non-governmental persons or agencies performing governmental social control functions. The need to interpose a concept of agency, besides the many problems raised, only vindicates the position of this researcher, i.e. Black’s original concept of law, should be able to, but in fact cannot be applied to de facto and quasi governmental social control of all kinds. More significantly, an agency concept only achieves indirectly, surreptitiously, and non-theoretically, what this researcher tries to do directly, explicitly, and theoretically.

capacity. In this way, the frameworks provide much needed and more structured ways to empirically assess Black's theory of law in the future.

The next stage of investigation, if the concept of "more or less governmental social control" is to be properly incorporated into Black's concept of law, is to determine whether law behaves the same when "more or less governmental social control" is involved, i.e. can Black's theory of law predicts private social control implicating governmental authority. If we are to pursue this line of investigation, it is quite possible that the law does not behave uniformly along the full spectrum of more or less governmental social control, as originally predicted by Black.¹⁵ This will surely "require refinements of various kinds" (Black 1995: 846). vindicating once again Black's refreshing self-critical insight - theory never rests, people do (Black 1995: 845).

Finally, a word on the conceptual implications of this paper. While I agree with Black that scientifically the central relationship between social space and social control seems no longer in doubt generally, I still have much difficulty in operationalizing and testing Black's concept of law as "governmental" social control in the particular case (as with this case study of KMT vs. Strike Committee in their respective strike enforcement role in the Canton-Hong Kong strike), in as much as the term government is not defined by Black anywhere. This paper tries to cure this conceptual lapse by expanding Black's concept of government to include private social control implicating governmental authority. This expansive strategy, while

¹⁵ Take the case of delegation of governmental social control powers. Two things we can be certain of: (1) Delegated governmental social control will behave differently than traditional governmental social control. This is saying no more than different realms of law have different elasticity of law schedule (Wong 1995:219). (2) The differences between delegated governmental social control and governmental social control are at their greatest when there is very little delegation and smallest when there is a lot of delegation. However when delegation of social control approaches total, the differences between delegated social control and governmental social control again widen. The reasoning is a simple one. Small delegation attracts little supervision, accountability, and control. Broad delegation calls for continuous supervision, strict accountability, and maximum control. However, when delegation of social control power is total, delegated party shares in social control with the dominant political authority, as it acts independently of the dominant political authority. If a private party has absolute social control, it is able to establish, enforce, and adjudicate upon social control norms under its charge. This means wide discretion and very little accountability. The private party becomes ipso facto an independent governing party in its own right, i.e. being an autonomous sovereign.

successful in making Black's concept of law more attuned to the empirical reality of divided government, will not be wholly successful in savaging Black's concept of law if ultimately the term government is not theoretically defined by Black or indeed turn out to be not definable "sociologically" and "scientifically." More problematically, an elastic definition of "more or less governmental social control" which allows for an ever more expansive construction of "governmental social control" may in time obfuscate any meaningful differences between governmental vs. non-governmental social control, or obliterate the clear distinction between law vs. private self-help, e.g. all private self-help require some degree of government sponsorship if only it means that the government is tolerating such practices.

I begin by suggesting that this research was conducted as a response to Black's challenge. By that I do not only mean for researchers to try to discover a theoretical issue here or find some empirical support there for Black's theory of law. The real challenge Black poses is for researchers to continue to subject Black's theory to the most critical empirical assessment and robust theoretical debate, such that further improvement - refinement, restatement, extension, or in the unlikely event rejection - can be made. A theory is a statement of the past (pattern). A prediction is an assertion about the future (relationship). Predicting the future with the past is a never-ending process; nor should our quest to validate Black's theory of law stop anytime soon!

References

Berk, S.F. & Loseke, D.R. (1981) 'Handling' Family Violence: Situational Determinants of Police Arrest in Domestic Disturbances. *Law and Society Review* 22:317-348.

Black, D. (1972) The social organization of arrest. *Stanford Law Review* 23:1087-1111.

Black, D. (1976) *The Behavior of Law*. Academic Press: New York.

Black, D. (1984) Social Control as a Dependent Variable. *Towards a General Theory of Social Control*. Vol. 1. Academic Press: New York.

- Black, D. (1995) The Epistemology of Pure Sociology. *Law & Social Inquiry* 20: 829-870.
- Black, H.C. (1983) *Black's Dictionary*. West Publishing Co.: St. Paul, Minn.
- Blumberg, A.S. (1967) *Criminal Justice*. Quadrangle Books: Chicago.
- Briffault, R. (1990) Our Localism: Part I - The Structure of Local Government Law. 90 *Columbia Law Rev.* 1-115.
- Briffault, R. (1990a) Our Localism: Part II - The Structure of Local Government Law. 90 *Columbia Law Rev.* 346-456.
- Cai, Luo & Hu, Quan (1980) *Sheng Gang Dabagong*. Guangdong remin chubanshe: Guangdong. (SGDBG).
- Chesneau, Jean (1968) *The Chinese Labor Movement*. Stanford University Press: Stanford, CA.
- Elazar, D.L. (1987) *Exploring Federalism*. University of Alabama Press: Tuscalossa & London.
- Fieldhouse, D.K. (1965) *The Colonial Empire* Delacorte Press: New York.
- Garofalo, J. & McLeod, M. (1989) The Structure and Operations of Neighborhood Watch Programs in the United States. *Crime and Delinquency*. 35:326-344.
- Griffiths, J. (1984) The Division of Labor in Social Control. *Towards a General Theory of Social Control* (Black, D., Ed.). Vol I. Academic Press: New York.
- Guandong sheng dangangan (1928) *Minguo Shiqi Guandong Sheng Zhengfu, Dangan Shiliao Xuanbian* (Collection of archive historical materials of Guangdong provincial government during the Nationalist period). Vol 1. Guandong sheng dangangan: Guangdong. (SLXB)
- Hirschel, D.J., Hutchison, I.W., Dean, C.W., & Mills, A-M (1992) Review Essay on the Law Enforcement Responses of spouse Abuse: Past, Present, and Future. *Justice Quarterly* 9:247-283.
- Lundman, R.J., Sykes, R.E., & Clark, J.P. (1980) Police Control of Juveniles: A Replication. In *Police Behavior: A Sociological Perspective*. (Lundman, R.J. (Ed) Oxford University Press: New York

Pennell, S., Curtis, C. & Henderson, J. (1985) *Guardian Angels: An Assessment of Citizens Responses to Crime*. Vol. 2. San Diego Association of Governments: San Diego, CA.

Perry, Jr., J.B. & Pugh, M.D. (1989) Public Support of Guardian Angels: Vigilante Protection Against Crime, Toledo, Ohio, 1984. *Sociology and Social Research*. 73:129-131.

Qu, T. Z. (1981) *Zhongguo falu yu zhongguo shehui*. Zhonghua shuju: Beijing.

Rosenbaum, D.P., Lurigio, A., & Lavrakas, P.J. (1989) Enhancing Citizen Participation and Solving Serious Crime: A National Evaluation of Crime Stoppers Programs. *Crime and Delinquency*. 35: 401-420.

Rosenbaum, D.R. (Ed.) (1986) *Community Crime Prevention: Does it Work?* Sage Publications: Beverly Hills, CA.

Sale, K. (1990) *The Conquest of Paradise*. Alfred A. Knopf: New York.

Schutt, R.K. & Dannefer, D. (1988) Detention Decisions in Juvenile Cases JIN,JDs, and Gender. *Law and Society Review*. 22: 509-520.

Sheng-Gang Dabagong Ziliao (Materials on Canton-Hong Kong Strike) (1980) Guangdong renmin chubanshe: Canton, China.

Sherman, L. (1978) Review Symposium on *The Behavior of Law*. *Contemporary Sociology*. 7:11-15.

Tian, Min & Xu, Jianchuan (ed.) (1989) *Gonghui Da Cidian* Jingji guanli chubanshe: Beijing. (GHDCD)

Ven der Sprenkel, S. (1962) *Legal Institutions in Manchu China*. University of London: London.

Wang, Haixing. (1994) *Zhongguo Gongren Yundong Shihuo* (History of Chinese Labor Movement). Vol. 1 to 5. Gongren chubanshe: Beijing. (GRYDSH).

Weber, M. (1954) *On Law in Economy and Society* (Trans. by Edward Shils & Max Rheinstein) Clarion Book: New York & L.A.

Wong, K. C. (1995) Black's Theory on the Behavior of Law Revisited. *International Journal of the Sociology of Law* 23, 213-215.

Wong, K. C. (1998) Black's Theory on the Behavior of Law Revisited. II: A Restatement of Black's Concept of Law. *International Journal of Sociology of law* (forthcoming)

Wong, K.C. (1998a) Philosophy of Community Policing in China. Paper presented at the 5th International Police Executive Forum, Hague, Netherlands, June 2-5, 1998.

Wu-San-Shi Yundong he Sheng-Gang Bagong (The May 30th movement and Canton-Hong Kong Strike) (1985) Jiangsu guji chubanshe: Jiangsu. (WSSYD).

Zhang, Guofu (1986) *Zhonghua Mingfuo Fazhi Jianshi* (Brief history of Republic of China Legal System) Beijing University Press: Beijing. (FZJS)

Zhang, Xipo & Han, Yanlong (1987) *Zhongguo Geming Fazhishi* (Chinese revolutionary legal history) (1921-1949), upper volume, Zhongguo shehui kexue chubanshe: Beijing. (GMFZS)