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2008

Policing Hong Kong Police

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Policing the Hong Kong Police

by

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May 12, 2008

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Policing the Hong Kong Police

“Power tends to corrupt, and absolute power corrupts absolutely.”

Lord Acton (1887)

“Government in its various aspects … is now immeasurably stronger than it ever was before…capable of inflicting so very much more harm on the individual as a rule can inflict upon society.”

J. Steven (1883)²

Introduction

The HKP (Hong Kong Police) is an influential social qua political institution because they possess expansive, pervasive and awesome powers over people’s life in enforcing the law and executing their duties, e.g. from inspecting premises to directing traffic to stopping and searching people in the street. They made their presence felt by acting assertively, e.g. conducting aggressive Police Tactical Unit stop and search exercise, or failing to act passively, e.g. refusal to intervene in domestic disputes. Their powers are more or less felt when invoked by the police in the process of proactive policing, e.g. traffic enforcement, or when being mobilized by the public as a result of reactive policing, e.g. responding to 999 calls. ³

³ The ideas of active vs. negative and proactive vs. reactive exercise of police power are different dimensions of police power in action. Each dimension of police power, by itself or in combination, allows us to see clearly how police power can be differentially exercised, as shaped by various sociological, organizational or political forces, e.g. police management style and public demand. James Q. Wilson, Varieties of Police Behavior (Cambridge, Harvard University Press, 1968).

Table 1: Varies ways of invoking police powers

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<th>Proactive</th>
<th>Reactive</th>
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<tr>
<td>Active</td>
<td>Selective enforcement (e.g. vice)</td>
<td>Selective enforcement (e.g. serious crime report)</td>
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When HKP intervene into the citizens’ life, they often do so unexpectedly and uninvited; sometimes conspicuously, e.g. police raid, much of the time innocuously, e.g. police secret surveillance, and all the time imposingly and coercively, e.g. police stop and search. This creates anxieties for the citizens who are confronted by the police. For example, when a HKP police officer lectured a young man for making sexual advances to a young girl in a fully packed police report room. Of course, the police can be just as annoying and frustrating when they fail to exercise their power. For example, the HKP consistently refused to act on complaints about “loan sharks” intimidation claiming that it is a private dispute and civil case. More regularly, most people in Hong Kong have experienced being held up in traffic when they are late to work only to find that the traffic police is standing by and do nothing about the snaring traffic.

The HKP have broad and coercive criminal law power as well as vast and restrictive administrative law powers, e.g. licensing of bar, authorizing of public assembly, issuing of close area permits. For example, in order to visit the border area between the mainland and Hong Kong, a person has to apply for a restricted or closed area permit from the HKP. In as much as many people in Hong Kong have to visit the border area to show respect to their parents on the Ching Ming Festival, the permit system affects many people in critical times or dire circumstances. People will likely be very frustrated if their application for a permit to pay tribute to their ancestors in the border area is denied by the HKP. Otherwise, the HKP can make the application process more or less elaborate or troublesome for the applicants as they deem fit and proper for administrative reasons; all at great expense to the citizens and with grave consequences to police-public relations. This is to observe that HKP powers are omnipotent and omnipresent.

As a matter of balance and for the sake of completeness, it must be pointed out that in practice, the possession of expansive and pervasive powers – in of itself – does not make

<table>
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<th>Negative</th>
<th>Selective enforcement (e.g. traffic)</th>
<th>Selective enforcement (e.g. domestic disputes)</th>
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4 GPA/CUHK student statement, September 1999. On file with author.
6 A one mile buffer zone separating the mainland and New Territories (a part of Hong Kong). The buffer zone was first established to management border relation problems between PRC and Hong Kong British government, e.g. containment of illegal immigration.
7 A time of the year where Chinese people by tradition go to pay tribute to their ancestors at their graves.
the police intrusive or dangerous to the public. After all, vested police powers, as a matter of policy or as a result of practice, need not be used. This generation principle is no better illustrated than in the by Benton who made this observation about the governance of Hong Kong as a colony:

For all its lack of democracy, Hong Kong is a colony only in a technical sense, and though constitutionally its government could take the form of a dictatorship, in reality is does not. Constitutionally it is under the Crown, but it acts more like a semi-autonomous city-state, free since 1974 even from the financial controls that London once exercised over it. The colonial government – dominated at the top by British expatriates – decides it own internal affairs largely independently of Whitehall and in consultation with local conservative elites, pressure groups and business lobbies who are in frequent contact with the decision makers.

This has certainly been the case with the Royal Hong Kong Police Force (RHKP). All agreed that while the RHKP as a colonial police force was possessive of immense powers and beyond the control of the public (e.g. before 1974 there was no institutionalized complaint process), such powers were not blatantly abused or indiscriminatory used as instrumentality of political suppression and control. This is not to deny that the RHKP was used openly to serve the British interests at an institutional level (e.g. used at a Secret Branch to monitor political dissidents) and occasionally being exploited by the rank and files to serve organizational interests or for personal gains.

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11 My argument is not that the RHKP did not abuse its power. It did. The formation of the ICAC attests to gross abuse of powers within the RHKP before 1970s; systemic corruption was part of RHKP at the organizational as well as personal level. My own experience and other published sources indicated that there were widespread police non-feasant, malfeasant and mis-fesant before the 1970s, e.g. summary punishment of suspects, coerced confession and falsification of records and fabrication and evidence was rampant. Rance Lee, *Corruption and Its Control in Hong Kong* (Hong Kong: The Chinese University Press, 1981). However, notwithstanding such noted abuses and observed transgressions, the RHKP, given its vast legal power, socially enforced insolurarity, organizational induced solidarity, and politically lack of accountable, did no worse, perhaps even better in some respects, than other most other major urban police department, NYPD, LAPD, London MET, then and now. For example, we do not see RHKP being used by the British as a tool of overt oppression. Gross personal misconduct found unacceptable to peer and senior officers will be promptly punished administratively and
The real danger comes when the police are expected to use their power to execute the will of the state, to carry out duties imposed by law, and to meet the demands of the people. That is, when the police use the power they have to do a lot of things – such as securing a political regime, keeping social order, protecting individual rights or solving people’s problem.

internally. To the contrary, the RHKP showed tremendous restrain in the 1967 riots allowing it to earn its Royal title and attracted attention from police forces world-wide for its anti-riot training.

12 The conventional wisdom and public justification for government and police accountability is that of the “power corrupts” thesis. “Power corrupt” thesis holds that the more power and less control one is subjected to, the more likely one will abuse it. The thesis is taken as self-evident truth; requiring no empirical support, critical analysis or reflective deliberation. (I have observed elsewhere that “The truth of a proposition is inversely proportionate to ones conviction therein.” In committing to an idea/position, we transform ourselves into an advocate and forgo our role as inquisitor of idea. We also led our emotion, not rationality dictate our argumentation. In so doing, we allow certain ideas to become stale truisms, a fossilized idea fixed in time and place.) In the case of “power corrupt” thesis, depending on level and unit of analysis, the thesis calls for an individual (“bad apple”) (NYPD Commission) or organization (“deviant organization) (Shearing) approach to the understanding and control of police misconduct. The “power corrupt” thesis, in making the individual or organization as a primary site for the understanding (“police personality” Skolnick, Justice without Trial (1966) and control (selection, education and control, see Lawrence Sherman & National Advisory Commission on Higher Education for Police Officers, The Quality of Police Education (San Francisco: Jossey-Bass Publishers, 1978) of police misconduct fails to grasp the incompleteness of the “power corrupts” thesis in explaining police misconduct. At its core, “power corrupts” thesis, is a supply-side police power theory. The adoption of a “supply side” theoretical framework is to made clear that there is the “demand side” to contend with. It is argued here the lessons learned from economic can be applied to policing when power is view as a resource used to satisfy the service needs of the people (crime control, order maintenance, service provision). Power as resource is subject to supply and demand in an era of consumerism, managerialism, and “performance culture.” It is also compatible with a theory of policing based on community policing and civil governance. I raise the issue of “expectation” of police service to highlight the need to look beyond the simple notion that “power corrupts” which is too individualistic, static and above all ideological. If we have gone down this (demand) route, we will find that time and again, police excessive use of force, particularly to certain minorities and with most criminals, are supported and driven by public sentiments - from victims’ vengeance, community’s moral panic, mass hysteria and most certainly public punitiveness. Ultimately, it is the community (cultural) expectation of when and how to use police power and not the possession of power itself that is of material concern to a police power scholar or controller. The culture of violence literature goes to this very issue.

13 It was Reiss who first observed that the police is a democratic force par excellence. The distribution of police presence and force is very much driven by people’s demand. I will add here also the notion of “popular” demand. This is the least investigated area. Most police accountability focuses on how to police the police. In the nature of things, it is more effective to do something about the demand structure. In economic terms there is the supply side and demand side to the availability and distribution of police power. In police accountability, I argue that focusing on controlling the supply without paying attention to the demand will likely to be not fruitful. What do I mean by demand side police accountability study? As a professional reactionary force or community driven service, the police is in the business of meeting public demands. Public demands for police power-services have a definitive influence on police conduct.
Policing the police is not easy. Policing the police is hampered by uncooperative citizens, defensive police, disagreements over police role and functions, and lack of a philosophy of police vs. public relationships. The difficulties of policing the police in Hong Kong start with the reluctance of the public to get involved. The public is usually ignorant of their rights and more practically what to do when being abused; specifically how to lodge a complaint against the police. Researches have shown that Chinese culture and Hong Kong people are very deferential to and respect of authorities of all kinds, from family, to employers, to government. Repeated studies by local and overseas scholars have found that Chinese in general, Hong Kong people in particular, are more tolerance of police misconduct, up to and including the use of force to promote law and order. Conversely, they are less solicitous of rights of the criminals, including the use of physical coercion to induce cooperation. Laboring under this mind set, Hong Kong people are less inclined to complain against the police. Hong Kong people are also economic animals and a pragmatic crowd. They are very much driven by utilitarian concerns of the most immediate, material and tangible kind. Their decision making process to file or not file a complaint against the police reflects this Hong Kong character and mentality. The question has always been: is it worth ones while to report to CAPO or complain to the IPCC, and not whether it is right and proper to do so. In practical terms: what is a complainant going to get in return for reporting the abusive police other than perhaps a letter of apology? For example:

The complainant was arrested for ‘Theft’ at the junction of ABC and XYZ Street. He lodged a complaint with the duty officer that he was assaulted by three unidentified plainclothes police officers inside the police station. He was immediately examined. Later, he rang up CAPO and requested to withdraw the complaint. He stated that he did not want to waste time pursuing the matter. (IPCC 1997 – Appendix IV, p. 4)

More sociologically, the poor people are too timid to complaint. The well to do are too busy to do so. In practical terms, what are the negative consequences of filing a complaint, People who have a professional and recurring relationship with the police, e.g.
chronic poor (street people), habitual criminals or professional taxi driver, are worried about consequences of a strained relationship with the police.\textsuperscript{14}

Lastly, and not insignificantly, the citizens will think twice before complaining because the police will likely have levied cover charges against them, from obstruction of justice to resisting arrest. Thus, it should not surprise that the majority of cases are either withdrawn or not pursuable, being 61.2\% in 1995, 57.6\% in 1996 and 47.7\% in 1997.\textsuperscript{15}

One of the recurring issues with policing the police is how to investigate police abuse of power properly. In Hong Kong, investigating the police has always been done by the police themselves – by Sub-Division Inspectors (SDIs) before 1973 and by CAPO since then. This has led to charges of lack of openness, objectiveness and fairness of the complaint against police system and process. Hong Kong citizens might have a point.

CAPO and IPCC statistics show – year in and year out – that only a small proportion of cases is substantiated. Substantiated\textsuperscript{16}/Substantiated Other Than Report\textsuperscript{17} rate was 2.9\% in 1995, 2.2\% in 1996 and 3.8\% in 1997.\textsuperscript{18} Even when cases are substantiated, police officers are rarely punished with the full force of the law. For substantiated cases, only 23 resulted in criminal prosecution in 1995, 7 in 1996 and 8 in 1997.\textsuperscript{19} This creates a credibility and legitimacy problem for the police. This does not inspire confidence in the public however rigorous the investigation process.

The HKP openly object to civilian investigation of police misconduct because they feel that people either do not understand the police or are not capable of investigating the police or are not able to pass judgment on police conduct. The police argue that public monitoring of their work lessens their effectiveness in dealing with crimes and criminals.

\textsuperscript{14} How to settle disputes between people who have prior or future relationship is an interesting subject to explore. In surmise that both the issues, process and resolution of complaints will be distinctively different between strangers complaints vs. relations complaint. Braithwaite and community justice scholars have began the process of understanding disputes and recognizing crimes in continued relationship terms instead of separate and disjoined incident Clear, Todd R. and David R. Karp. 1998. “The Community Justice Movement.” In David R. Karp (ed.), Community Justice. Rowman & Littlefield Publishers.

\textsuperscript{15} IPCC 1997 – Appendix XI, p. 4.

\textsuperscript{16} “Where there is sufficient reliable evidence to support the allegation made by the complainant.”

\textsuperscript{17} “Where matters other than the original allegation have been identified (such as breach of internal discipline or failure to observe police orders and regulations) and are found to be substantiated. Such matter, however, must be closely associated with the complaint itself.”

\textsuperscript{18} IPCC 1997 Appendix XI, p. 4.
The citizens objected to a police investigation process that was not transparent or independent.

Even if people agree that the police need to be supervised and to be held accountable, there is still an unending debate on how that should be done effectively without compromising the rights of the police officer, expectations of the public, morale of the police force, effective enforcement of the law, and the mission of the police.

There is certainly debate over what standard or whose normative expectations the police are being held accountable to – law, public morality, personal ethics, community demands, and political pressure?

Lastly, turning to the main focus of this paper. What can an average Hong Kong citizen do in the face of police misconduct, abuse of power or mistreatment? For example, where can a citizen seek redress when the HKP decided not to answer her 999 call because of a ‘weak’ signal and ‘inaudible’ voice which resulted in her husband being drowned? What can a citizen do when the traffic police stop his lane of the traffic longer than the other lane for no apparent reason?

This paper is about HKP power, its proper exercise and effective control, i.e. police accountability, thus the title “Policing the HKP.” This is a first attempt to provide for a comprehensive, descriptive, and analytical account of the police accountability system in Hong Kong.

The article has three express purposes in mind. First, it provides Hong Kong students with basic instructional materials on the principle and practices of the HKP accountability system. Second, it provides uninitiated police scholars to HKP with a short, but detail, comprehensive and reliable, account of the HKP police accountability system. Third, it provides international police scholars with sufficient contextual materials, research literature and official data to embark on a meaningful cross-cultural comparative study of the HKP accountability system. In essence, one of the major contributions of this article

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19 IPCC 1997 Appendix XIV.
20 Unless otherwise specified, police misconduct, abuse of power and mistreatment will be used interchangeably.
21 This is a real case. A foreigner was drowned. His wife called the police by way of 999, only to have the phone hanged up on her many times.
is in providing authoritative and comprehensive materials for teaching and researching into HKP.

In this regard, this author have long lamented the lack of teaching materials with “local content and local context” and research reports with indigenous theory and local empirical support. This observation is made within a larger concern with a lack of sophisticated – theory based and empirical supported – cross-cultural studies. The first step in that direction, i.e. building up police scholarship in Hong Kong, is to provide for basic descriptive-analytical materials that are done in a way to raise scholarly issues and address practical concerns. To this end this article is conceived, directed, dedicated, structured, presented, used, and hopefully remembered. The end product is an informative, albeit more factual than theoretical and more analytical than critical, account of how the HKP is being policed; addressing such issues as how prevalent is police misconduct in Hong Kong; what are some of the reasons accounting for police misconduct in Hong Kong, and most importantly how are HKP police misconduct being controlled or policed, the central theme of this paper. The ultimate objective is to enhance our understanding of the HKP accountability system.

The article variously touches on the subjects of police legal authority, public accountability and various legal, political and administrative control measures. The paper is organized into nine sections, each of the nine sections focuses on one aspect of the police power and accountability problem set essential to the comprehensive understanding of the police accountability in HKP as an integrated whole: Section 1 – Studying police accountability in Hong Kong; Section 2 - Police power, misconduct and accountability; Section 3 – Hong Kong Police Powers; Section 4 – Public concerns with police misconduct; Section 5 – The nature, incidence and prevalence of police abuse of power in Hong Kong; Section 6 – Understanding police misconduct in Hong Kong; Section 7 – Who polices the Hong Kong Police? ; Section 8 – Complaint against the Police system: CAPO and IPCC; Section 9 – Conclusion.

22 Kam C. Wong, “Philosophy of Community Policing in the PRC.” Police Quarterly (2000)
Section 1: Study of police accountability in Hong Kong

Introduction

The concern with and desire for police accountability23 is as old as the police itself as a

23 For a recent debate of a very old accountability issue – central vs. local control of police in U.K., see Anonymous, “Police accountability: it’s a fair cop?” *The Economist*, Feb. 26, 19994 (Raising the issue once again whether police should be accountable locally or nationally. Since 1843, Britain’s regional forces have been held accountable to the Home Secretary as well as local police authorities. Increasingly, there is a movement nationalize the police. The movement starts with the consolidation of 52 local forces, centralization essential services (The National Criminal Intelligence Services in 1992), and uniform inspection by the Home Office. For a recent discussion of an emerging police accountability problem, i.e. private police accountability, see Stark Andrew, “Arresting developments: when police power goes private,” *American Prospect* Feb. 1999, pp. 41-48. (How should we come to terms with public (moonlighting) police officers using private police’s power to enforce the law, e.g. citizen’s power to arrest and/or ejection from people reppassing on private property?)

For a sample of recent articles on police accountability in professional journals, see Peter Finn, “Getting along with citizen oversight,” *FBI Bulletin* Vol. 69(8):22-27 (2000). (Since 1990s, more and more police agencies in the U.S. is finding citizen oversight helpful to their cause, e.g. improving public image, quality of internal investigation and police policy and procedure.); Jon Arnold, “Internal affairs investigation: The supervisor’s role,” *FBI Bulletin* Vol. 67(1):11-16 (2000). (Supervisors conducting internal investigations play a crucial role in maintaining professionalism and integrity of the police agency.)


governing institution. For example, recent studies in the U.S. show that about 50% of the complaints in Florida, Illinois, Pennsylvania, and Washington were about police rude and inappropriate statements. One quarter of the complaints involves excessive force. One half of the complaints deals with police on site intervention. A majority of the complaints are not substantiated, i.e. less than one third. The citizens are as unsatisfied with a civilian investigation as it is with a police one, but they still prefer a citizen review. Most of the complaints are filed by young, unmarried, low-income and male. Male officers under age 30 with less than 5 years police experience and a high school education suffers from a higher rate of complaints. Two officers working together generate more complaints. Experienced officers appear to handle stressful situation better. Formal education helps officers to understand people and situation better.

Sir Robert Peel, the father to the “new police”, spent much time and effort in convincing the British people that the creation of a centralized and specialized police force would pose no threat to constitutional rights and civil liberties of the English people.
English parliamentary committee which had reported on Peel’s earlier proposal stated: “that a forfeiture or curtailment of individual liberty with the creation of an effective police system would bring with it would be too great a sacrifice on behalf of improvements in police or facilities in detection of crime.” In the United States, August Vollmer and O.W. Wilson, pioneers to professional police, introduced professionalism to guard against the political corruption and abuse of police power. In the People’s Republic of China, Mao, the founder of modern China, zealously indoctrinated the “people’s police” to be ideological pure to make them responsive and responsible to the mass, and Deng, the father of reformed China, later ambitiously introduced the “rule by law” to hold police accountable to communist political ideal of serving the people. Mao supplied the rationale to “people’s policing” in his "Report on an Investigation of the Peasant Movement in Hunan": “The peasants are clear sighted. Who is bad and who is not quite vicious, who deserves severe punishment and who deserves to be let off lightly -

institutionalization, centralization and concentration of police power. For example, much of the early criticism of the proposed “new police” was focused on its military characteristics that reminded the Britons of the French gendarmerie who were not known for their respect for civil liberties nor public accountability. P. 26). See also William Watts, “Party Politics, Class Interest and Reform of the Police, 1829-56” Police Studies, Vol. 10:42-49, 42 (1987). (There were well found concerns that the new police would be expensive, inefficient, coercive and not amenable to local control). Kenneth J. Peak and Ronald W. Glensor, Community Policing and Problem Solving (N.J.: Prentice-Hall, 1996). (“Peel was denounced as a potential dictator; the London Times urged revolt; and Blackwood’s Magazine referred to the bobbies as “general spies” and “finished tools of corruption”. A national secret body was organized to combat the police, who were nicknamed the “Blue Devils” and the “Raw Lobsters.”), p. 3.


30 Luo Ruiqing, Lun Renmin Gongan Gongzu (A Treatise on People’s Police Work) (Beijing:
- the peasants keep clear accounts and very seldom has the punishment exceeded the crime." \(^{31}\) Since then, police abuse of power has been extensively studied in the U.S. \(^{32}\), U.K. \(^{33}\), Canada \(^{34}\), Amsterdam \(^{35}\), Australia \(^{36}\), China \(^{37}\) and other parts of the world. \(^{38}\)

The situation is no different in Hong Kong. However, the understanding and control of police misconduct in Hong Kong is hampered by a lack of development in police studies in Hong Kong. To this foundational issue we now turn.

**Studying of police (accountability) in Hong Kong**

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Under communism citizens have reciprocal rights and responsibilities.


\(^{34}\) For a review of literature, see Clifford D. Shearing, F. Jennifer Lynch, and Catherine J. Matthews, *Policing in Canada: A Bibliography* (Centre of Criminology, University of Toronto, 1970). For a representative study, see R. Erickson *Reproducing Order: A Study of Police Patrol* (Toronto: University of Toronto Press, 1982).


The scholarly study of police and policing has been an uphill battle worldwide and much more so in Hong Kong.\(^{39}\) This is due, in part, to the fact that policing has always been associated with being a street-action vocation – preoccupied by action more so than theory and understood more by accumulated street wisdom than methodical classroom research.

Recently, Reiner has stated that after years of being neglected police and policing has emerged as one of the foremost areas of research and public debate in the 1980s and 1990s (Reiner 1992). Regrettably, despite obvious needs and apparent void, Reiner’s observation about the ascendence of police research and study have not happened in Hong Kong.

The studying of criminal justice system and process in general and the investigation of the Hong Kong policing organization and practice in particular, while improving somewhat in the last ten years, has been very much neglected in Hong Kong, both as an academic study subject and as a policy research area.

For example, for a long time and at the undergraduate level, there is no tertiary institution in Hong Kong offering criminal justice or criminology, much less police studies, as a duly recognized degree subject. In the mid-1990s a British university did offer distant learning a police studies undergraduate program for Hong Kong police officers. It was very popular until its demised for lack of competent instruction. In 1996, the Open University of Hong Kong began to develop an undergraduate program in police studies. It remains to be one of the most well funded police studies developmental program in Hong Kong to-date. At about the same time, the School of Continuing Education of the Chinese University of Hong Kong starts to develop diploma courses in policing and security studies, with a view of offering undergraduate degrees in the not too distance future. The Hong Kong University has taken the leadership to offering a criminal justice degree program in September of 2000. Such courses attracted mostly in service police personnel.

\(^{40}\) To derive sociological insight (at a person level), one personal encounter is worth a thousand statistical report. I have many such personal encounters to enrich my experience and enlighten my thoughts over the issue why police studies are not well developed in Hong Kong.

\(^{40}\) Currently, the Master in Criminology at the University of Hong Kong is geared towards police
At the graduate level and before the onslaught of overseas distance learning programs in criminal justice and risk management, such as master level degree course offerings in public order, criminal justice and risk and security management, only Hong Kong University offered a master level degree course in criminology. Though these courses touch on police and policing tangentially, none of them deal with policing as a field of study in its own right. More significantly, none of these courses use course materials reflecting local social conditions and policing context. In essence, the course materials do not deal with police practice, problems and issues particular to Hong Kong, e.g. the relevance and impact of “one country two system” doctrine on Hong Kong Police operations when dealing with cross-border crimes between PRC and the HKSAR.

Before such time, people who were interested in studying the police, including police officers from the Hong Kong Police, have to go abroad to pursue their study, e.g. Bramshill Police College and Institute of Criminology at Cambridge in England and FBI Academy and School of Criminal Justice at the State University of New York - Albany (commonly referred to as SUNY or just Albany).

Instructional materials are imported from abroad, e.g. Portsmouth University and Leicester University from England in the 1980s and 1990s respectively. The Chinese University of Hong Kong and Open University of Hong Kong is taking up the initiative to develop local policing courses. Substantively, there are few research based instructional materials with local content and local context. Apart from a few doctor’s and a master’s thesis, mostly by serving police officers, and a handful of published articles, occasional paper and book chapter (many of questionable quality) e.g. D. W. Pope and J. Hui, “The

41 Professor Kam C. Wong, Consultant to Open University (October 2000); Reviewer to Chinese University of Hong Kong, Police Studies Project Proposal (June 1997).
42 Numerous discussions with Andrew Willis, Deputy Director of Scarman Cener, major provider of criminal justice distance learning instruction in Hong Kong, from 1998-1999.

The few academic books that is available are very much historical in nature and descriptive in substance (for example, Iain Ward, *The Hong Kong Marine Police: 1841-1950* (Hong Kong: Hong Kong University Press, 1991). A few of them are written for lay readers, e.g. R. Wacks *Police Powers in Hong Kong: Problems and Prospect* (Hong Kong: University of Hong Kong Faculty of Law, 1989). The few exceptions being a few Law Reform Commission reports on police abuse of powers (for example, The Law Reform Commission of Hong Kong, *Report on Confession and Their Admissibility in Criminal Proceedings*, Topic 8 (14 December 1984): *Report on Bail in Criminal

The other data sources on Hong Kong policing include a number of internally commissioned and issues oriented policy studies put out by the Security Bureau or Hong Kong Police (Royal Hong Kong Police, Management Services Wing, A Survey – Public Usage of Neighborhood Police Units (NPUs) and Police Report Centres (1984) and discussion papers and debates records in the Legislative Council on police related matters and issues. (Officials Records of Proceedings of the Legislative Council on Security Panel discussions.) Other Hong Kong official reports, government commissions and private submissions also offer invaluable insights into Hong Kong police at work. (Hong Kong Government, UMELO. Report of the UMELO Police Group (Hong Kong: UMELO, 1977-1985); Local Inspector’s Association, Royal Hong Kong Police, Submission to Review Committee on Disciplined Service Pay and Conditions of Service (1988).

Until now, the more curious public members or inquisitive journalists who are interested in investigating Hong Kong policing have to be satisfied with reading anecdotal account of what police do everyday from memoirs of retired officials (for example Kenneth Andrew, Hong Kong Detective (London: John Long Ltd., 1962), official accounts of police activities and accomplishments (for example Police Beat, Police Annual Report) and in-depth analysis of news breaking police stories (for example, Kam C. Wong, “An Assault on thuggery” South China Morning Post, 3 January 2000, p. 15.) If one is interested in researching into Hong Kong Police one should begin by consulting the comprehensive list of Hong Kong police literature compiled in Lau Siu –Kai, Wan Po-san and Shum Kwok-cheung, Hong Kong Politics: A Bibliography (Hong Kong: Hong Kong Institute of Asia Pacific Studies, Chinese University of Hong Kong, 1999).
A comprehensive review of literature uncovers no systematic study of the Hong Kong police accountability or how to police the Hong Kong police. This is a first attempt to fill the literature gap.

**Difficulties in studying the Hong Kong Police**

There are a number of reasons accounting for this lack of scholarly interests in the investigation of policing in Hong Kong:

(1) There is a pecking order within the Hong Kong academic world. Police studies has been marginalized, both as a subject matter of study and focus area of research. There is a common perception amongst the scholars in Hong Kong that police institution and the practice is not worth studying. This means two things. First, the studying of police work is not intellectually stimulating, i.e. it is theoretically not interesting. Second, there is not much to study about the police, i.e. rhetorically, what is there to study but how to detect crime and arrest people? I support of the above observation and as example, this scholar was asked by one senior academic at a leading Hong Kong university in a most paternalistic and patronizing way (all well intended) why he, as a lawyer by profession and with a social science background, do not put his “talent” and “energy” to work to pursue more mainstream research, e.g. law or politics. The subject the senior scholar had in mind is the study law in China historically and sociologically, a matter of great interest to him. The senior scholar concluded by saying: “You should be teaching lawyers, not police officers.” On another occasion when this author talked to another senior scholar-administrator about his plan to help in developing course materials for a Hong Kong police studies program, the person informed the author that such activities are not counted as “academic” research for the purpose of assessment and evaluation and it might not be time well spent. The message is as clear as it is frustrating and depressing: scholars should be directing their research effort in conducting “real” research, not police studies. The author mentions both stories not because he thinks ill of his colleagues or they are necessarily wrong. The fact that these scholars are speaking from the bottom of their heart and not the top of the head, made their comments all the more disconcerting, as they reflected and reinforced the intellectual climate in Hong Kong. It does not bode well for Hong Kong police studies development. The lesson one can
draw from both of these respected scholars and powerful administrator is that scholars in Hong Kong hold a dim view of police studies and low regard for police scholars. Together these two scholars have 60 years of experience in Hong Kong academe. Their views and opinions, though may not be representative of or shared by ALL others in Hong Kong, particularly the new comers, are certainly deserving of attention in their own right. Their thinking and opinion are authoritative in shaping the academic environment in Hong Kong. This is a problem people have to deal with in Hong Kong in mounting police research in Hong Kong.

(2) From the Hong Kong Police’s perspective, policing is a vocation. It is a craft, not a science. Thus to learn about the police, it is best to join the police. Police work can best be learnt through practice, not scientifically based research.

(3) Hong Kong Police resist any attempt to study them, in fear that this might penetrate their mystique. If the public know more about how policing really work, this might comprome their operational effectiveness, professional autonomy and political legitimacy.

Gathering data for Hong Kong police research is also difficult for the following reasons:

(1) The Hong Kong Police is fearful of sharing information with outsiders for a number of reasons. As an organization, Hong Kong Police is subjected to political accountability and, increasingly, exposed to public scrutiny. The Hong Kong Police is genuinely fearful of how information will be interpreted (when taken out of context) and used (when being exploited). Thus, it follows that the less the public knows the better. In this regard, a very senior HKP officers have confined in this author that, in his opinion, one of the problem with police-citizen relationship today is that the people know too much and the police are sharing too much information.

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44 George L. Kirkham, “From Professor to Patrolman: A Fresh Perspective on the Police,” Journal of Police Science and Administration, 2 (June 1974), pp 127-137.
46 The officer might not be completely incorrect in his way and style of reasoning, objectionable thought it might first appear. The lack of total information and full understanding of what, how and why HKP police works make for erroneous judgement and distorted views about HKP’s
The Hong Kong Police as a result of its mission (as defender of law and order) and because of its ideology (as promoter of ethics and morality) is a conservative organization. Consequently, police do not accept alien ideas instantaneously. Researchers asking novel questions and introducing new perspectives are immediately suspected.

As required by the job, the police officers need to be in control of a situation and allow it to get out of hand. The police have learnt that once information is released to the public they lost all control over how information is being used. Releasing information is a risky business.

The Hong Kong Police is concerned with compromising operational secrecy. There is a need to keep organizational and operational secrets from the public, e.g. information source, law enforcement priorities and police tactics.

The Hong Kong Police is much concerned with protecting individual privacy. In as much as information the police acquired are dedicated for law enforcement purposes, thus any other use can potentially be a breach of use confidence.

In practice, serving police officers must apply for permission from the Commissioner of Police on a case by case basis when conducting research into the Hong Kong Police. The application must cover the purpose, scope, method and use of research. Finally, a copy of research report and findings must be cleared by the Hong Kong Police Headquarter of all objectionable materials before final distribution or publication. Sometimes restricted circulation is mandated. It goes without saying that both as a researcher and a research subject a police officer is required to abide by the official secrets pledge at all times.

relative effectiveness and degree of accountability. Since the people can never be totally informed (police have legitimate reasons not to share all information, e.g. cost, privacy, secrecy) and do not have the motivation, time or expertise to fully understand how police work (this is one of the evils of popular government, Sir Henry Sumner Maine, *Popular Government* (Indianapolis: Liberty Class, 1976) (First published 1885), they are likely to form a distorted view about the police or on issues relating to the police. If this should be the case (just as with imperfect market condition calling for state intervention to prevent the market from being abused, e.g. monopoly) the HKP might be tempted to control and manipulate what information should be made available to the public in order to “protect” or “correct” the people from structural ignorance of an unintended kind. This mindset towards information control, though appearing reasonable, is fraught with danger. Chief amongst which is the inclination on the part of the police to withhold information not favorable to the police, and further manipulate, if not even manufacture information putting the police in a more favorable light. Soon we will have a “1984” Ministry of
Section 2: Police power, police misconduct, and police accountability

In this section three fundamental concepts - police power, police misconduct and police accountability - pertaining to police power and control in Hong Kong will be discussed.

Police power

Some empirical evidence

The magnitude of police power, potentiality for abuses, and need for regulation can be gauged from the following HKP law enforcement activities data. In Hong Kong, the police conduct millions of stops and searches each year, all of them promise to cause inconvenience to many and attract complaints against the police from some. During the year of 1998, a total of 1,716,049 confirmation of identity check were made during Police operations involving identity card checks, stops and searches, and road blocks. Those resulting from direct identity card checks accounted for 153,014, stop and search for 1,480,158 and roadblocks for 82,877. This means one out of six Hong Kong people in will be searched during any one year. Of those, a total of 12,822 wanted or missing persons were arrested or located as a result of these checks. This amongst to one arrest for every 133.8 stops or searches. This also means that there are a lot more unproductive stops and searches than productive ones. This raises two troubling questions. For the general public in Hong Kong, they have a right to ask whether such stops and searches are in fact necessary. For the affected citizens, they have a right to ask whether the stops and searches are conducted in the most judicious, scrupulous and professional manner, i.e. not arbitrarily or discriminatorily.

The above figures do not include traffic enforcement. From Table 1 below one can see that the HKP together with the Traffic Warden gave 7926 summons and 598,386 (moving) and 1,561,816 (parking) fixed penalty tickets in 1997.

Table 1: Traffic enforcement 1997

<table>
<thead>
<tr>
<th></th>
<th>Arrest</th>
<th>Summons</th>
<th>Fixed Penalty (Moving)</th>
<th>Fixed Penalty (Parking)</th>
</tr>
</thead>
</table>

*Truth.

47 ‘Do you know?’ Police in Figure 1998, HKP Web.
<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary offense</strong></td>
<td>2630</td>
<td>25,936</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Moving offense</strong></td>
<td>834</td>
<td>41,094</td>
<td>598,386</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Miscellaneous offense</strong></td>
<td>290</td>
<td>12,248</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Parking offense</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>1,561,816</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3754</td>
<td>79,267</td>
<td>598,386</td>
<td>1,561,816</td>
</tr>
</tbody>
</table>


Traffic law enforcement, a prime example of police proactive and selective enforcement, with real financial consequences on citizens, are often conducted under confrontational, if not conflict laden, situations. They are a constant reminder to an increasingly large segment of the community (car owners and their passengers) of how powerful the police is and further demonstrate how irritating and abusive the police can be.

**A conceptual discussion**

The centrality of the concept of power to the study of police cannot be overstated and certainly requires no further demonstration (see above). In fact, it can be fairly asserted that it is impossible to understand the police as a political institution and policing as a social function without investigating police power; its nature, exercise and control. Whatever differences in opinion people – politicians, public, police, academicians – might have about the police role and functions, all agreed that police embody, personify and project state power. The politicians use police power to exert control. The people call on the police authority to deal with all kinds of problems. The police rely on police power to gain respect and instill discipline. The academicians are troubled about the abusive exercise and corrupting influence of police power. All agreed that police is powerful and must be firmly controlled, properly regulated and fully accountable.
The importance of police power in police studies is readily reflected in the literature. Police power is the first and last ports of call if one were to navigate the intellectual waters of policing. At the first port of call, police is given a political mandate and social identity with reference to the monopolistic use of coercive power.\textsuperscript{48} As a last port of call, the ways, means and problems of controlling police power is detailed and debated.\textsuperscript{49} In between, police power figures prominently in police intellectual discourse in various contexts, from police personality,\textsuperscript{50} culture,\textsuperscript{51} ethics,\textsuperscript{52} decisions making\textsuperscript{53} and accountability.\textsuperscript{54} Thus when George Berkley wrote a popular article on comparative policing, he began his comparative analysis with police power:

> When it comes to police work, the democracies of the Western Europe still strike any American observer as foreign countries. The gap between the Old World and the New is illustrated by their different approaches to the use of deadly force. In the United States, a policeman carries as standard equipment, a .38 special revolver, and an 18-inch wooden truncheon…In Great Britain and Norway, policemen are not issued guns and carry them only on rare occasions. Elsewhere in Scandinavia, policemen are issued guns but often leave them in their lockers when on daytime duty. In virtually no European democracy do they carry guns when off-duty.\textsuperscript{55}

Police power is an extension and realization of state authority.\textsuperscript{56} A functional state is predominately interested in stability, order and control. The police are its primary control

\textsuperscript{49} Ian Oliver, \textit{Police, Government and Accountability} (MacMillan Press, 1997).
\textsuperscript{52} John Kleing, \textit{The Ethics of Policing} (Cambridge University Press, 1996).
agent.\textsuperscript{57} As Green observed: “All modern states claim authority over their citizens…It bind many persons, to regulate their most vital interests, and do so with supremacy over all other mechanism of social control.”\textsuperscript{58} As to the meaning of authority, according to Easton, who has conducted extensive study and analysis of the concept of authority, it means: “If A sends a message to B and B adopts this message as the basis of his own behavior without evaluating it in terms of his own standards of what is desirable under the circumstances, we can say that A has exercised authority over B.”\textsuperscript{59} Operationally this means habitual\textsuperscript{60} or regular compliance\textsuperscript{61} with the command of the state.

At a macro level, police power has been defined as powers of the a sovereign state to “establish a special department of the police; adopt such laws and regulations as tend to prevent the commission of fraud and crime, and secure generally the comfort, safety, morals, health, and prosperity of its citizens by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, and insuring to each an uninterrupted enjoyment of the privileges conferred upon him or her by the general laws.”\textsuperscript{62}

At a micro level, police power has been defined as non-negotiable force to deal with situational contingencies. In this regard Bittner observed:

“Whatever substance of the task on hand, whether it involves protection against an undesired imposition, caring for those who cannot care for themselves, attempting to solver a crime, helping to save a life, abating a nuisance, or settling an explosive dispute, police intervention means above all making use of the capacity and authority to overpower resistance to an attempted solution in the native habitat of the problem.”\textsuperscript{63}

\textsuperscript{57} R. Reiner, “Police.” In Adam Kuper & Jessica Kuper (ed.) \textit{The Social Science Encyclopedia} (London: Routledge, 1996) p. 621 (“Policing is a specific subset of social control process.”)
\textsuperscript{58} \textit{Id}. P. 1.
\textsuperscript{60} J. Austin, \textit{Lectures of Jurisprudence} (1873). (Law as command of sovereign habitually obeyed and coercively enforced.).
\textsuperscript{61} D. Easton, “The Perception of Authority and Political Change,” in C.J. Fredrich (ed) \textit{Authority} (Cambridge, Mass.: Harvard University Press, 1958), 179. (A has authority over B if and only if B regularly complies with A’s requirements.”) P. 180
\textsuperscript{63} Egnor Bittner, \textit{The Functions of Police in Modern Society} (Chevy Chase, Maryland: National
This classical conception of police power is characterized by: (1) considering police power as a legal fact instead socially constructed reality; (2) considering police power as an objective phenomenon instead of being a subjective experience; (3) considering police power to be inherent in and imposed from an epic center (state) than emulating and derived from many indigenous sources (community, clan, family, individuals); (4) considering police power with a shared understanding instead of conflicting receptions; (5) considering police power as a state authority instead of people’s power; (6) considering police power as coercive instead of remedial; (7) considering police power as uni-dimensional instead of multi-faceted; (8) considering police power as uni-directional, static idea instead of interactive and dynamic experience.

Classical conception of police power corresponds with and reinforces conventional conception of power by political and social scientists. “Power” or “social power” has variously been used synonymously with “influence,” “control,” “persuasion,” “force,” “threat,” “authority,” and “dependency.” More specifically, police power in police literature conforms to everyone’s common understanding of police power, i.e. power as “the possibility of imposing one’s will upon the behavior of other persons.” In this way Robert Prus has defined power as:

> Power implies an intent and a capacity on the part of a person or a group to influence, control, dominate, persuade, manipulate, or otherwise affect the behaviors, experiences, or situations of some target.

Classical conception of police power affects and obstruct the police theoretical development in many ways. First, a behavior conception of police power has a low abstraction level and functional utility. Second, a coercive conception of police power does not reflect actual police practice. Third, a single dimensional conception of police power does not capture the multiplex nature of police power. Fourth, the unidirectional

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conception of police power does not capture the interactive and dynamic nature of police power in the making. All these contribute to a distorted view of police power. A comparison between classical conception of police power and a new conception of police power by Wong (2000) suffice to illustrate the differences and point out its inadequacy.

Table 2: A comparative understanding of police power

<table>
<thead>
<tr>
<th></th>
<th>Classical Conception of Police Power</th>
<th>Wong’s Conception of Police Power$^{67}$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conceptualization</td>
<td>Concrete particularized descriptive</td>
<td>Analytical abstract concept</td>
</tr>
<tr>
<td>Source</td>
<td>State</td>
<td>People</td>
</tr>
<tr>
<td>Nature</td>
<td>Coercive</td>
<td>Resource</td>
</tr>
<tr>
<td>Purpose</td>
<td>Resolve conflicts</td>
<td>Solve problems</td>
</tr>
<tr>
<td>Target</td>
<td>Physical resistance</td>
<td>Interest frustration</td>
</tr>
<tr>
<td>Mobilization</td>
<td>Imposed by police</td>
<td>Invoked by people</td>
</tr>
</tbody>
</table>

A historical exposition of police power

State authority and police power can also be fruitfully analyzed from a historical perspective. This exercise informs how police power originates and evolves; allowing us to better understand its content and application.$^{68}$ If we should travel along his rarely

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$^{67}$ “Police Power as a Social Resource Theory.” Presented at the First Asian Association of Police Studies Conference, Seoul, Korea. August 23, 2000 and as a public lecture entitled: “Police Accountability: State Police Power as a Social Resource Theory” organized by the Centre of Criminology, University of Hong Kong on September 28, 2000. The abstract of the paper reads: “This is a first attempt to provide for a scientific theory of police role and functions capable of explaining and predicting the availability, utilization and abuse of power by the police at the organization as well as individual level in a democracy. I shall call this state police power as a social resource theory. This theory argues that in a democratic state police power is a critical and limited social resource held in trust for the promotion of public welfare and serving of individual needs. The theory argues that the availability and imposition of police power is determined by the supply of police power as a political resource at the macro-legal-structural level and the distribution and disposition of police power is determined by the demand for police power as a social resource at the micro-personal-situational level. At a macro level, the availability and imposition of police power to the public is determined by the political process as reflecting conflicting ideological principles and competing materials interests. At a micro level, the distribution and disposition of police power is determined by the police-public encounters as reflecting the negotiation between local custom and personal morality at the street level on a case to case basis.”

traveled path, we find that the conception of police and its role and function in society,
much less its power and limitations, have seldom been exhaustively investigated.69 Until
very recently, the practice of police and realities of policing, much less the exercise of
police power, was rarely explored and relatively unexposed.70

What little we know is that in the distant historical past state authority is an integral part
of law of nature. State power is a non-idea reality of life. It is unproblematic,
uninteresting and uninterested topic. The existent of state authority and police power is
taken for granted as uncontroversial. It is self-evidence and apparent facts of life; a state
of affairs one is born into. Some people have authority, e.g. kings, others have not, e.g.
slaves. People are born into and accepted that power relationships - father vs. son,
husband vs. wife, emperor vs. officials – which informs ones consciousness, structure
ones reality and guide ones action. No one questions the status and power he enjoys, just
as no one asks about his station in life. Status and powers go hand in hand; never
questioned and unquestionable. Punishment follows evil deeds, as disease a manifestation
of personal shortcoming and moral inadequacy. Lepers and thieves are physically,
socially and morally dangerous.71 The imposition of power from the emperor is expected,
if not even a celebrated event.72 “Suspected offenders, like everyone else, were subjects
of the Crown and enjoyed rights and liberties merely on license from the monarch. Under
this theory of governance, it was deemed perfectly proper for the sovereign, omniscient as
he was, to take whatever measures he considered necessary to protect both the lives and
property of his subject and the stability of his regime. Accordingly, he could order that a
suspect be forced to undergo trial by ordeal, or that he be tortured until he put the question

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71 See David Garland, “Of Crimes and Criminals: The Development of Criminology in Britain.” In Mike Maguire, Rod Morgan and Robert Reiner, *The Oxford Handbook of Criminology*, Second Edition (Oxford University Press, 1999), pp. 1-56, 22. (Traditionally criminals are considered not as deviant requiring sociological explanation but depraved and sinful people who have fallen from God’s grave.)
of his guilt beyond doubt by confessing, or, indeed, that he be punished on the basis of accusation of alone.”

The discovery of and discourse over state power comes with industrialization and begin with Renaissance. As the constitution of society evolved from “organic” to “mechanic” and the organization principle transformed from “status” to “contract,” individual rights and personal power come into prominence.

The Glorious revolution transformed the relationship between the govern and the governed. For the first time the people of England are being converted into right bearing citizens. Even then few people were conscious of and dared to challenge the power of the state to define and punish criminality. The “new police” made sure that the marginal people knew and kept to their place.

For all intent and purpose, the conception for, discussion of, and debate over police power was not possible before the invention of “new police” by Sir Robert Peel in 1832; then only after the police historians have brought our attention to this very old, new idea. It was Richardson who concludes in the study of history of the police that “academic or professional historians largely ignored the police until 1960s.”

In England, the central principles, i.e. legality, informing the exercise of police power was articulated by *Entick v. Carrington* (1765):

> [E]very official interference with individual liberty and security is unlawful unless justified by some existing and specific statutory or common law rule; any search of private property will similarly be a trespass and illegal unless some recognized lawful authority for it can be produced; in general, coercion should only be brought to bear on individuals and their property at the instance of regular judicial officers acting in accordance with established and known rule of law, and not be executive officers acting in their discretion; and

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77 James F. Robinson, “Historical Perspectives on the Police.” Paper presented at the ACJS
finally it is law, whether common law or statute, and not a plea of public
interest or an allegation of state necessity that will justify acts normally
illegal.\textsuperscript{78}

From the early beginning, police powers in England were directed at preserving the peace
and the prevention of crime. The 1824 Vagrancy Act gave police the power for desertion
of one’s family, prostitution, gambling, fortune-telling, indecent exposure, displaying
obscene pictures and possessing instruments with intent to commit a felony. In 1829, the
Metropolitan Police Instructions provides that “The security of the person and property
and the preservation of a police establishment will thus be better effected than by the
detection and establishment of the offender after has succeeded in committing crime.”\textsuperscript{79}
In 1839, the Metropolitan Police Act provides a constable the power to arrest without a
warrant:

“all loose, idle, and disorderly Persons whom he shall find disturbing the
public Peace, or whom he shall have good cause to suspect of having
committed or being about to commit any Felony, Misdemeanor, or Breach of
the Peace, and all Persons whom he shall find between Sunset and the Hour of
Eight in the Morning lying or loitering in any Highway, Yard or other Place,
and not giving a satisfactory Account of themselves.”\textsuperscript{80}

In time, police power becomes the instrumentality of the state to secure ideological
dominance, political control and economic protection of the ruling elite. In the days of the
“new police” this means the securing industrial order and enforcing social discipline such
that industrialization and commercialization of Great Britain can progress in an orderly
fashion. For example, one of the pre-occupation of 1929 Metropolitan Police Act is to
instill industrial work ethics and Victorian morality in the workers coming from the
countryside. Section 7 gave the power to the constable to:

\textsuperscript{78} (1827) 6 B & C 635.
\textsuperscript{79} 1829 Metropolitan Police Instructions as cited in T.A. Critchley, \textit{A History of Police in
\textsuperscript{80} Section 64, the Metropolitan Police Act (1839), the Metropolitan Police Act
To apprehend all loose, idle, and disorderly person whom he shall find disturbing the Public Peace, or whom he shall have just Cause to suspect of any evil Designs, and all Persons whom he shall find between Sunset and the Hour of Eight in the Forenoon lying in any Highway, Yard, or other Place, or loitering therein, and not giving a satisfactory Account of themselves.

A thorough review and careful analysis of these and legal, political and social conceptions of police power find that they have not taken into account the contingent application, discretionary exercise, and multi-facet nature of police power. If past scholars have taken these other salient properties and important dimensions of police power into account, they will discover that police is not a raw physical power to be used indiscriminately and bluntly but a resource to be deployed strategically and tactically to achieve maximum effectiveness and efficiency with different (kind, level, mix) resources matching different police objectives. Such a realization will certainly change our image of police power, accountability principles and control strategy.

A practical (sociological) conception of police power

Police power in Hong Kong is characterized by the following salient features:

First, the scope and reach of police power is broad and extensive. In theory, police power is co-extensive with that of the sovereign authority to govern. As originally conceived, the term ‘police power’ includes all powers available to a sovereign state – legislative, administrative and physical – necessary to promote the order, health, safety, moral and welfare of the people.\(^{81}\) With the establishment of the police as a social institution, police power is being restricted to police work, i.e. law and order concerns.\(^{82}\)

Powers of the HKP can be found in Chapter: 232, Police Force Ordinance, Sections 50 to 59. The most often exercised of these powers are: Section 50: “Arrest, detention and bail of suspected persons and seizure of suspected property”; \(^{83}\) Section 51: “Person arrested

\(^{81}\) Brian Chapman, Police State (MacMillan, 1970).
\(^{82}\) Les Johnson, The Rebirth of Private Policing (Routledge, 1992), Chapter One.
\(^{83}\) Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE Section 50, Arrest, detention and bail of suspected persons and seizure of suspected property, provides in pertinent parts:
(1) It shall be lawful for any police officer to apprehend any person who he reasonably believes will be charged with or whom he reasonably suspects of being guilty of-
to be delivered to custody of police officer in charge of police station”; \(^8\) Section 52:

“Person arrested to be discharged on recognizance or brought before a magistrate”; \(^8\)

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(a) any offence for which the sentence is fixed by law or for which a person may (on a first conviction for that offence) be sentenced to imprisonment; or
(b) any offence, if it appears to the police officer that service of a summons is impracticable because-
   (i) the name of the person is unknown to, and cannot readily be ascertained by, the police officer;
   (ii) the police officer has reasonable grounds for doubting whether a name given by the person as his name is his real name;
   (iii) the person has failed to give a satisfactory address for service; or
   (iv) the police officer has reasonable grounds for doubting whether an address given by the person is a satisfactory address for service.

(1A) A police officer may exercise the power to apprehend a person under subsection (1) without any warrant for that purpose and whether or not he has seen any offence committed. (Added 57 of 1992 s. 2)

(1B) It shall be lawful for any police officer to apprehend any person whom he reasonably suspects of being liable to deportation from Hong Kong. (Added 57 of 1992 s. 2)

(2) If any person who may lawfully be apprehended under subsection (1) or (1B) forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer or other person may use all means necessary to effect the arrest. (Replaced 57 of 1992 s. 2)

(3) If any police officer has reason to believe that any person to be arrested has entered into or is in any place the person residing in or in charge of such place shall on demand of that police officer allow him free ingress thereto and afford all reasonable facilities for search therein.

(3) …

(4) …

(5) …

(6) Where any person is apprehended by a police officer it shall be lawful for such officer to search for and take possession of any newspaper, book or other document or any portion or extract therefrom and any other article or chattel which may be found on his person or in or about the place at which he has been apprehended and which the said officer may reasonably suspect to be of value (whether by itself or together with anything else) to the investigation of any offence that the person has committed or is reasonably suspected of having committed: Provided that nothing in this subsection shall be construed in diminution of the powers of search conferred by any particular warrant. (Replaced 57 of 1992 s. 2)

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\(^8\) Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE , Section 51, Person arrested to be delivered to custody of police officer in charge of police station, provides:

Every person taken into custody by a police officer with or without a warrant, except a person detained for the mere purpose of taking his name and residence or detained under section 54, shall be forthwith delivered into the custody of the officer in charge of a police station or a police officer authorized in that behalf by the Commissioner. (Replaced 57 of 1992 s. 3)

\(^8\) Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE , Section 52, Power of Arrest, provides in pertinent part:

(1) Whenever any person apprehended with or without a warrant is brought to the officer in charge of any police station or a police officer authorized in that behalf by the Commissioner, it shall be lawful for such officer to inquire into the case and unless the offence appears to such officer to be of a serious nature or unless such officer reasonably considers that the person ought to be detained, to discharge the person upon his entering into a recognizance, with or without sureties, for a reasonable amount, to appear before a magistrate or to surrender for service of a warrant of arrest and detention or for discharge at the time and place named in the recognizance;
Section 53: “Power of arrest”; 86 Section 54: “Power to stop, detain and search”; 87 and
Section 55: “Power to stop, search and detain vessels, etc., or person suspected of
conveying stolen property”; 88

but where such person is detained in custody he shall be brought before a magistrate as soon as
practicable, unless within 48 hours of his apprehension a warrant for his arrest and detention
under any law relating to deportation is applied for, in which case he may be detained for a
period not exceeding 72 hours from the time of such apprehension. Every recognizance so taken
shall be of equal obligation on the parties entering into the same and shall be liable to the same
proceedings for the estreating thereof as if the same had been taken before a magistrate.
(Amended 57 of 1992 s. 4)
86 Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE, Section 53, Person
arrested to be discharged on recognizance or brought before a magistrate, provides in pertinent
part: Any warrant lawfully issued for any purpose may be executed by any police officer at any
time notwithstanding that the warrant is not in his possession at the time, but the warrant shall,
on the demand of the person affected, be shown to him as soon as practicable after its execution.
87 Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE, Section 54, Power to stop,
detain and search, provides in pertinent part:
(1) If a police officer finds any person in any street or other public place, or on board any vessel,
or in any conveyance, at any hour of the day or night, who acts in a suspicious manner, it shall be
lawful for the police officer-
(a) to stop the person for the purpose of demanding that he produce proof of his identity for
inspection by the police officer;
(b) to detain the person for a reasonable period while the police officer enquires whether or not
the person is suspected of having committed any offence at any time; and
(c) if the police officer considers it necessary to do so-
(i) to search the person for anything that may present a danger to the police officer; and
(ii) to detain the person during such period as is reasonably required for the purpose of such a
search.
(2) If a police officer finds any person in any street or other public place, or on board any vessel,
or in any conveyance, at any hour of the day or night, whom he reasonably suspects of having
committed or of being about to commit or of intending to commit any offence, it shall be lawful
for the police officer-
(a) to stop the person for the purpose of demanding that he produce proof of his identity for
inspection by the police officer;
(b) to detain the person for a reasonable period while the police officer enquires whether or not
the person is suspected of having committed any offence at any time;
(c) to search the person for anything that is likely to be of value (whether by itself or together
with anything else) to the investigation of any offence that the person has committed, or is
reasonably suspected of having committed or of being about to commit or of intending to
commit; and
(d) to detain the person during such period as is reasonably required for the purpose of such a
search.
(3) In this section, “proof of identity” (身分證明文件) has the same meaning as in section 17B of
the Immigration Ordinance (Cap 115). (Replaced 57 of 1992 s 5)
88 Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE, Section 55, Power to stop,
search and detain vessels, etc., or person suspected of conveying stolen property, provides in
pertinent part:
It shall be lawful for any police officer to stop, search and detain any vessel, boat, vehicle, horse
or other animal or thing in or upon which there is reason to suspect that anything stolen or
unlawfully obtained may be found and also any person who may be reasonably suspected of
The HK Auxiliary Police have powers similar to the regular HKP. In some instances, village representatives also can exercise limited police power, in the absence of police authority. This is a comprehensive list. HKP also have specific powers to enforce certain laws and residual powers to enforce all laws of Hong Kong, e.g. immigration and custom laws.

Second, police power is forceful, deadly, and most of the time irreversible, e.g. shooting at a fleeing felon. For example, on August 7, 1998, Li Ka-ming was arrested for theft and pleaded guilty on October 19, 1998. He jumped bail and was re-arrested on March 19, 1999. He was found dead in police custody at Sheung Shui Police Station the next morning. All police forces in the world are legally empowered to use coercive powers, including deadly force, to secure compliance with the law, maintain order, and more simply getting things done. As Bittner observed before ‘the policeman, and the policeman alone, is equipped, entitled, and required to deal with every exigency in which force may have to be used to meet it.’ Hong Kong is no different – its police can use all necessary and reasonable force in the performance of their lawful duties.

Third, powers are given to the police to perform many duties. For example, the HKP are vested with the power to discharge 19 duties from maintaining law and order to the licensing of premises. The duties of the HKP to take ‘lawful measures’ include: (a) Preserving the public peace; (b) Preventing and detecting crimes and offences; (c) Preventing injury to life and property; (d) Apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exist; (e) Regulating

having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property is offered to be sold or delivered, if he has reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorized and if it is in his power, is required to apprehend and detain such offender and as soon as may be to deliver him into the custody of a police officer together with such property to be dealt with according to law.

Laws of Hong Kong, Chapter 233, HONG KONG AUXILIARY POLICE FORCE ORDINANCE ,Section 17, Powers and functions of members when on duty. (Auxiliary police have duties, functions, and powers conferred under Section 50 to 59 Police Force Ordinance.)

Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE ,Section 20, Village representative to have police powers and duties in certain cases. (The Chief Executive may impose police duties and powers on village representatives.)


Laws of Hong Kong, Chapter 232, POLICE FORCE ORDINANCE ,Section 10.
processions and assemblies in public places or places of public resort; (f) Controlling traffic upon public thoroughfares and removing obstructions therefrom; (g) Preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and meetings and assemblies while open to any of the public; (h) Assisting coroners to discharge their duties and exercise their powers under the Coroners Ordinance (Cap 504); (i) Assisting in carrying out any revenue, excise, sanitary, conservancy, quarantine, immigration and alien registration laws; (j) Assisting in preserving order in the waters of Hong Kong and in enforcing port and maritime regulation therein; (k) Executing summonses, subpoenas, warrants, commitments and other process issued by the courts; (l) Exhibiting information and conducting prosecutions; (m) Protecting unclaimed and lost property and finding the owners thereof; (n) Taking charge of and impounding stray animals; (o) Assisting in the protection of life and property at fires; (o) protecting public property from loss or injury; (p) Attending the criminal courts and, if specially ordered, the civil courts and keeping order therein; (q) Escorting and guarding prisoners; (r) Executing such other duties as may by law be imposed on a police officer.

In an earlier era the HKP even had the responsibility of immigration control and health inspection. In performing such statutory duties, the HKP had broad powers to arrest, detain and seize persons and things.\(^\text{94}\)

One last observation before we leave this important concept. In Hong Kong police powers are not evenly distributed in time and space. As observed by the Hong Kong Human Rights Commission in its report to the UN: ‘however, the potential victims of police torture and power abuse are not evenly distributed among the population. Judging from the experiences of social workers, most of the torture cases occur among the lower classes and marginal groups.’\(^\text{95}\)

Physically, the police can only exercise their power in public places and not in the private domain. They cannot do so because they are not allowed to intrude into people’s

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\(^\text{95}\) Hong Kong Human Rights Commission, November 1995, Chapter 2.
privacy.\textsuperscript{96} Thus, in real terms, spousal abuse is beyond the watchful eyes and power of the police.

Politically, certainly people or areas are off-limits to the police. For example, diplomatic officers enjoy diplomatic immunity. Article 31 of Chapter 259 (Consular Relations Ordinance which provides that Provisions Of Vienna Convention Having The Force of Law in Hong Kong) provides for the ‘inviolability of the consular premises.’ Consular premises are beyond the reach of HKP power.

Socially, certain people are more vulnerable to police power. Because historically, and still very true today, police power is directed at policing the underclass.\textsuperscript{97} For example young males, working class people and IIIs are stopped and searched more.

Economically, certain people are less vulnerable to police power, e.g. rich people who can afford hiring chauffeur can violate the traffic law in impunity.

Technologically, the police have very little capacity – resources and competence – to police the electronic space. For example, on 2 January 2000, the Commissioner of Police, Hui Ki-on reported that Computer related offences have surged from 34 in 1998 to 2666 in 1999, an almost eight-fold increase. The Hong Kong Police have promptly established a task force of 80 officers to crack down on computer crimes. There is a question of whether Hong Kong Police will ever be effective in fighting or dealing with computer crimes.

All the above factors restricts and confines the exercise of police power, which is to say that police misconduct are not randomly distributed, e.g. rich people are being abused less and street people being abused by police more.\textsuperscript{98}

**Police Misconduct**

‘Beauty is in the eyes of the beholder.’ What is police misconduct to one person, e.g. a human rights activist, may not be so to another, e.g. a victim of a crime. To a certain extent, the concept of police misconduct is a relative one – relative to time, place, matter and people involved. However, if we can agree on some common core moral values, basic

\textsuperscript{96}Fundamental Rights and Duties of Residents, Basic Law of Hong Kong, Chapter III: Article 29: \textit{The homes and other premises of Hong Kong residents shall be inviolable.}

\textsuperscript{97}Hong Kong Human Rights Commission, November 1995, Chapter 2.
political philosophy and universal legal principles, we might be able to come to some consensus of what the police should or should not do. For example, in a government of law and not man, police should obey the rule of law. In a democratic country, the police should protect, not abuse, the rights of citizens. In a human rights regime, police should be solicitous of the rights of all people, criminal included, e.g. not be able to use coercion to obtain confessions. Lastly, in the Anglo-American legal tradition, people should respect the due process of law, e.g. recognize that suspects have a right to remain silent.

Consensus over what constitutes police misconduct can also be found through living together as a community as fellow human beings with common tradition and shared needs and wants. In this regard, as the following discussion shows, people in the U.S. and Hong Kong share very similar expectations of the police, e.g. police officers should be polite to the public and not neglectful of their legal duties. The following are three lists of police misconduct in the U.S. and Hong Kong

The Philadelphia National Coalition On Police Accountability Conference in 1998 found that the public in United States are much concerned about police abuse of power and dereliction of duty, including: abusive use of force; physical brutality; ill comportment (rude behavior); harassment (including selective enforcement based on class, ethnicity, subculture, and political affiliation for violations of park rules or bicycle, pedestrian, or motor vehicle traffic statutes), and non-performance of duties (as evidenced by higher call response wait time and lower response rates).

The American Civil Liberties Union (ACLU) reported that the range of police misconduct includes: excessive use of deadly force; excessive use of physical force; discriminatory patterns of arrest; patterns of harassment of the homeless, youth, racial minorities and gays, including aggressive and discriminatory use of ‘stop-and-frisk’ and overly harsh enforcement of petty offenses; chronic verbal abuse of citizens including racist, sexist and homophobic slurs; discriminatory non-enforcement of the law such as the failure to respond quickly to calls in low-income areas and half-hearted investigations of domestic violence, rape or hate crimes; spying on political activists; employment discrimination — in hiring, promotion and assignments, and internal harassment of minority, women and gay or lesbian police personnel; the ‘code of silence’ and retaliation against officers who

98 For a theoretical treatment, see Black Behavior of Law (1976).
report abuse and/or support reforms; overreaction to gang problems, which is driven by the assumption that those who associate with known gang members must be involved in criminal activity, even in the absence of concrete evidence that this is the case. This includes illegal mass stops and arrests, and demanding photo IDs from young men based on their race and dress instead of on their criminal conduct; the ‘war on drugs,’ with its overly broad searches and other tactics that endanger innocent bystanders. This ‘war’ wastes scarce resources on unproductive ‘buy and bust’ operations to the neglect of more promising community-based approaches; lack of accountability, such as the failure to discipline or prosecute abusive officers, and the failure to deter abuse by denying promotions and/or particular assignments because of prior abusive behavior; crowd control tactics that infringe on free expression rights and lead to unnecessary use of physical force.99

The CAPO and ICAC classify HKP misconduct under the categories of:

(A) Assault

The complainant, a two-way permit holder from Mainland China, alleged that he was assaulted by two police officers inside a public toilet during a stop and search operation. He claimed that his belly and chest were punched. He attended medical examination on the same day. Although he has no external injury, a large amount of red blood cells was found in his urine. (IPCC 1997 Case No. 3 p. 28)

(B) Overbearing/Impolite Conduct/Abusive Language

The complainant was driving a light goods vehicle (LGV) with his brother and two employees on board. Suddenly and accidentally, the LGV near side mirror hit PC X. The complainant immediately stopped his LGV and asked PC X whether the latter had sustained any injury. PC responded by swearing at him three to four times. The complainant considered that it was only a traffic accident and PC X should not have scolded him with offensive language. (IPCC 1997 Case No. 6 p. 34)

(C) Neglect of Duty/Improper Action

At about 0330 hours on a Friday night, the complainant returned to his shop because the anti-burglary alarm of the shop sounded. At about 0345 hours, the complainees, SGT X, PC Y and PC Z, attended the scene. Upon checking, there was no sign of ransacking. Nothing was found missing except that a window glass at the cockloft was broken. The complainant pointed out to the complainees that the damage to the window glass was new. An iron bar that guarded the window had also been pried. The complainees took no action but merely told him to fix the damage and left. Two days later, the complainant went to the police station to enquire about his case. On learning that the police classified the incident as a ‘False Alarm’, he considered the classification to be improper. That same afternoon, several plainclothes officers approached him for a statement because the police had arrested several culprits who admitted having attempted to burgle his shop on the material day. He therefore considered that the complainees had been negligent in handling his report and made a report to ICAC.

(D) Unnecessary Use of Authority

The complainant had a dispute with the complainee over the issue of a fixed penalty ticket to a goods van unloading goods at the scene. The dispute attracted a crowd of on-lookers. The complainant was subsequently arrested for ‘Disorderly Conduct in Public Place’ and ‘Obstructing a Police Officer in the Execution of His Duty’. After enquiries, he was released unconditionally. After his release, the complainant lodged two allegations of ‘Unnecessary Use of Authority’ against PC A. Firstly, he alleged that PC A unnecessarily conducted an identity card check, searched, handcuffed and arrested him. Secondly, he alleged that PC A abused his authority by stopping him writing his disagreement on his statement taken by PC A. (IPCC 1997 Case No. 10, p. 41)

(E) Fabrication of evidence

Tribunal on Police Misconduct’ (15 Jan 1996, bwitanek@igc.apc.org). For special case examples, see Web page of ‘The Austin Police Department Hall of Shame’.
The complainant was a student. According to the arresting officers PC Q and PC R, he was intercepted at the staircase on the third floor of a building. A paper cutter was found inside the left front pocket of his jeans and he was arrested for ‘Possession of an Offensive Weapon’. Eight hours after his arrest, he complained to the Duty Officer of a police station that his arrest was based on fabricated evidence. The officers intercepted him in the street rather than at the staircase when he was on his way to a doctor. After PC Q checked his identity card and rucksack, PC Q pushed him against the wall and told PC R that he was going to a stationery shop. About five minutes later, PC Q returned and took him to the staircase where PC Q handcuffed him and planted a paper cutter on him.’ (IPCC 1996 Case No. 4 p. 41)

(F) Threat

The complainant, who was driving a Public Light Bus (PLB), was stopped by PC A who accused him of picking up passengers in a restricted zone. He denied having picked up any passenger and that the passengers in the PLB could be his witnesses. PC A did not listen to his explanation and asked PCA X to ticket him…The complainant remembered that he had been ticketed by PCA X a few months ago for the same offence at the same location. During that incident, PCA X threatened to summon him whenever he saw him again. He considered the two officers fabricated evidence against him. He therefore lodged a complaint of ‘threat’ and ‘Fabrication of Evidence’ to CAPO. (IPCC 1996 Case No. 12 p. 54)

(G) Other Offences

The complainant dropped her wallet, which was subsequently picked up by Mr. A. Mr. A then handed it over to PCs X, Y and Z whom he met further down the road. Instead of taking the wallet to the Police Station, the police officers dumped it into a nearby mailbox. When the complainant learned that the police officers failed to bring her wallet to a Police Station, she lodged a complaint of ‘Theft’ against the three police officers. Although the complainant’s wallet was subsequently located, she found that the money in the sum of HK$920 and some other property inside the wallet were missing. (IPCC 1998 Case No. 11)

(H) Police Procedure
The complainant was ticketed by PC X who told him, after conducting a radio check on his driving license, that he was disqualified from driving for life. The complainant was arrested accordingly. On reporting bail, he learnt from SSGT Z that he was wrongly arrested due to a computer record error. He was immediately released unconditionally. He experienced another wrongful arrest by PC Y a year later. The complainant considered the police were at fault in the two incidents. A check with the complainant’s traffic conviction record revealed that although his driving license had been revoked for one year, he was qualified to drive on the dates when he was arrested. The Transport Department had made the mistake of not updating the computer record to which Police Console officers normally refer, and the mistake was not discovered until the complainant lodged his complaint. (IPCC 1997 Case No. 5 p. 33)

If we were to make a detailed comparison between two sets of police classification data: ACLU vs. CAPO, one would immediately notice that many complaints concerning police misconduct are very similar in both places. The complaints include excessive use of physical force vs. assault; chronic verbal abuse of citizens, including racist, sexist and homophobic slurs vs. overbearing/impolite conduct/ abusive language. However, similarities aside, the two places do have quite different expectations of the police. For example, spying on political activities is a big issue in the United States and not so in Hong Kong. Also, the United States, as a result of its revolutionary history, human rights values and egalitarian tradition, is much more concerned with discriminatory police practices, e.g. discriminatory patterns of arrest.

**Police Accountability**

Police accountability is a multi-faceted, complex and subtle concept. Most basically, police accountability requires that the police be held responsible to external agency, process and/or standards – i.e. accountable to some one (e.g. emperor), some institution (e.g. democratic government), some process (e.g. law), and/or to some standard (e.g. professional) beyond itself.

In a democratic and progressive society, and as used here in Hong Kong, police accountability means four things: accountable to the law; accountable to democratic
government, accountable to professional standards; and accountable to the community. Issues abound and debates await.

First, to what extent the police should be held accountable? The now disbanded Special Branch in the HKP, for example, had much more latitude in operational matters in their effort to fight against Communists spies and KMT agents, leading to occasional charges of abuse of human rights. According to an ex-Specific Branch officer Lo Ah, the procedure of detention and interrogation of spies vs. common criminals is different in three major ways: Spies are not subject to the 48-hour rule before appearing in court, interrogations are not subject to Judges Rule, and there is no legal representation. The whole objective is to break the prisoner physically and spiritually in order to secure his confession and/or obtain information. This example of HKP policing method raises the most difficult and controversial question whether, in what way and political criminals are be treated different than common offenders.

The answer in broad philosophical terms, concrete organization policy or refined operational rules, should help in creating a framework whereby all police conduct can be judged. For example, if one thinks that the end always justify the means, one will probably support the Special Branch. For example, Bentham has defended the use of torture after he read Beccaria On Crimes and punishment who have argued against judicial torture. Bentham proposed that torture should be used sparingly “where a person is made to suffer any violent pain of body in order to compel him to do something or to desist from doing something which done or desisted from the penal application is immediately to cease … community has an interest in his doing…having it in his power to do it … is obstinate and in despite of Justice persist in refusing to do it … where is the harm done.” Police scholars call this the “Dirty Harry” problem. If one believes that the end sometimes justifies the means, one will probably approves of the riot police using

101 Police all over the world have different procedures for dealing with spies and terrorists. The most explicit case is that of Israel. Mao of openly championed for different treatment of enemy of the state, e.g. counter-revolutionaries, and misguided citizens. (On Contradiction).
104 Carl B. Klockars, “The Dirty Harry Problem” Frederick A. Elliston and Michael Feldberg.
more force with less discrimination during riots, thereby risking some innocent lives to secure order an inevitable, albeit regrettable, scenario. For example, Mr. Justice Moshe Landau, former Supreme Court President) investigated into unethical, coercive and inhumane methods employed by Israel General Security Services (GSS) to obtain needed intelligence in the suppression of terrorism, concluded that the use of “moderate physical pressure” subject to the approval of Ministerial Committee in order to fight Arab terrorism and protect “existence of society and the State” is justified.\textsuperscript{105} If one believes that the end \textit{never} justifies the means, as the human rights activities or rule of law advocates do, one probably believes that there are fundamental principles that the police should follow – at all times, with all people, in all cases and under all circumstances.\textsuperscript{106} This is the chronic debate between relativistic particularistic-situational vs. universal-absolute justice approach.\textsuperscript{107}

Second, to whom should the police be accountable? Should the police be accountable to the state or the people? In a totalitarian regime (Russia) and dictatorial state (Nazi Germany), police answer to the dominant political authority. In a present day democracy, police are made to answer to the people. The question of ‘people’s rule’ or more appropriately ‘community accountability’ only begins but does not resolve the ultimate issue of what people and which community – e.g. poor vs. rich, mainlanders vs. Vietnamese vs. Hong Kong residents – should have the ultimate say over what the police should do.\textsuperscript{108} This has always been a problem in a capitalistic society (rich vs. poor), multi-ethnic (Chinese vs. Indian) nation and multi-cultural state (straight vs. gay). For example, in the remote island of Cheung Chau in Hong Kong, the police has to mediate cultural differences and ethnic disputes between transplanted foreigners (Hong Kong Chinese and expatriate) and indigenous local residents proper over behavior codes, e.g. bar conduct, stray dogs and marjon noises.

Third, for what conduct should the police be accountable? For example, should the police be held accountable for their public political speech or private or off-duty conduct? Of late, the HKP have asked officers to lead a healthier lifestyle as a part of the HKP

\textsuperscript{105} Israel Landau Commission (1987), Section 2.27.
organizational reform process. Some of the HKP officers think that the well-meaning police reform initiative resembles the Communist drive for ideological and spiritual purity in China in the early 1950s. As a practical matter, HKP officers have openly challenged the HKP leadership in its organizational campaign against excessive gambling. The officers argued, not without reason, that they should not be expected to play by different conduct rule and moral code when the whole of Hong Kong engages gambling craze from *tom.com* (tom-dot-com) subscriptions to real estate blind speculations hoping for a quick return everyday.\(^{109}\)

Fourth, to what philosophy, values, standard or norm should the police be held accountable? Should the police follow legal rules or community norms or professional standards or personal ethics? These standards are not one and the same. Actually, the dilemma in China has always been whether the public security should follow Communist Party ideology enshrined in the Constitution or the will of the people (masses) that is expressed in local communities or being amenable to national or local control. For example, in Hong Kong many good officers used their professional judgement routinely and informally not to arrest and charge juveniles because that would have ruined the career prospects of the juvenile.\(^ {110}\) In Hong Kong, the “Superintendent Discretionary Scheme” has formalized this process. In order to divert juvenile offenders from court proceedings whenever possible, the Police Superintendents’ Discretion Scheme was introduced (Royal Hong Kong Police Force, 1995a). Under the Scheme, when a juvenile offender is arrested for an offence, a police officer of the rank of Superintendent or above, as authorized by the Secretary for Justice, can issue a caution to that offender instead of initiating a criminal prosecution at his or her own discretion. At present, the Scheme is applicable to juvenile offenders who are under the age of 18. If an offender commits the offence when he or she is under 18. Before a juvenile offender can be given a caution, the following conditions must be satisfied: (a) The evidence available is sufficient to support a prosecution, and that a prosecution would be the only and inevitable alternative course; (b) The offender voluntarily and unequivocally admits the offence; and (c) The offender

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\(^ {109}\) Personal information. SIP, CID from Hong Kong island, May 1999.

\(^ {110}\) I personally have released a form seven student caught stealing when I was satisfied that he was a good student with a clean record and that he was leaving in six months to study in the US. I often wonder out loud what would have happened to him if I had arrested him ‘according to the law’?
and his parents or guardians agree to the cautioning. Issues remain. Sociologically, what values and standards inform the Superintendent Discretion, e.g. police, social workers, or community. Politically, are such standards acceptable to all interest groups or affected people in Hong Kong.

Section 3: Hong Kong Police Powers: An Overview

The whole purpose of this section is to show the range of powers the HKP officer possesses when he goes around his round of policing. It makes three points. First, HKP have a wide range of powers to bring to bear on their wide-ranging duties and responsibilities. Second, HKP have more than criminal law powers to control people’s life. Third, criminal law is not the most important power the HKP possess or apply on a day-to-day basis. It is the vast administrative power and its routine use that affects many things people do everyday.

Police criminal law powers

As informed by the HKP web-page, the HKP has the following criminal law powers:

Stopping & Questioning:

Every police officer has the power to question any person about a crime or offence.

A police officer has a general power to stop and question any person behaving suspiciously. Whilst doing so he may demand proof of identity, conduct computerized enquiries and search for weapons or drugs.

Caution:

If a police officer suspects a person of an offence, the police officer may caution that person that what he says will be written down and might be used in evidence.

Searching:

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111 Paragraph 4, Chapter 34-08, Police General Order, Juveniles - The Exercise of a Superintendent’s Discretion not to Prosecute.
113 HKP website (http://www.info.gov.hk/police/english/index.htm)
If a police officer has grounds to believe that a person has committed an offence, or is about to commit an offence, he may conduct a thorough search for items relevant to that offence.

Arrest:

The term ‘arrest’ means to deprive a person of his liberty. That person will not be free to leave unless released from arrest. An arrested person will be taken to the Duty Officer of the nearest police station as soon as practicable. The purpose of the arrest is to ensure that a person suspected or known to have committed a crime or offence may be answerable to a court of law.

A person may be arrested –

(a) to further enquiries if he is suspected of a crime or offence; or

(b) if the offence is serious; or

(c) if the person is likely to abscond; or

(d) where the person is likely to impede the investigation or interfere with witnesses; or

(e) if the person refuses to give his name and address or the particulars he gives are reasonably believed to be false; or

(f) where it is in the person’s own interest that he is taken into custody; or

(g) where arrest action may preserve evidence or reveal additional evidence concerning the charge; or,

(h) if the person is required by law to be fingerprinted.

A person should be informed at the time, or as soon as practicable, that he or she is under arrest and the reason for the arrest.

A person under arrest should be charged as soon as practicable, and within 48 hours except for certain immigration offences.
If a person has been charged with an offence and is detained by Police in custody, he/she will be brought before a court of law at the next available court session.’

The HKP list of powers, while comprehensive, is far from complete and accurate. It certainly raises more questions than providing answers. For example, it fails to include the police power to stop and ask for identity of a person under the immigration ordinance. For example, it is claimed that ‘every police officer has the power to question any person about a crime or offence.’ The question remains whether a person is required to answer the police? That is to say, must a person cooperate with police during general inquiries about a crime or even as a suspect? For example, it is claimed that ‘A person may be arrested – (a) to further enquiries if he is suspected of a crime or offence.’ What happens if the person refuses to assist the police with their enquiries? More pertinently, if a suspect is questioned in relationship to a crime, does he have a right to remain silent? Further, it is claimed that ‘A police officer has a general power to stop and question any person behaving suspiciously.’ What kind of suspicion, in terms of quantity and quality of evidence, must exist before a police officer can stop and question a person?

**Police administrative law powers**

When people think about police powers, they tend to think solely in terms of the police’s power to stop and question, or to detain and arrest or of search and seizure, i.e. legal powers associated with the investigation of a crime or processing of a criminal, or criminal law power. However, the original concept of ‘police power’ as a generic sovereign power embraces a much wider range of power and spectrum of authority necessary to promote public welfare and serve common needs. In the context of policing, the police department adopts a variety of measures to secure good order and discipline in the state. The police variously used education-indoctrination, reasoning-persuasion, and administration-regulation measures to make people conform to social ordering before appealing to coercive force. This is more typical of the PRC approach to social control than is typical in Hong Kong. Viewed in this light, the real power of the HKP comes from its ability to regulate every facet of people’s life, i.e. administrative regulatory powers and not just criminal sanctioning power.

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In this regard, the HKP administrative power is by no means small in the day-to-day life of Hong Kong citizens, and it has certainly not contracted or been restricted with the change over of sovereignty. If anything, administrative power of the HKP is growing and becoming more cumbersome after 1997. Ironically, as Hong Kong gets to be more progressive and liberal, the more inclined it is to use police powers to regulate in the name of public good. Take the following cases as an example.

**Case number one:** For historical reasons, the border area between Hong Kong and China has always been a restricted area, i.e. closed to general public. Access to the restricted border areas requires the permission of the HKP.

For example, if a person wants to visit his/her father in the border area, he/she needs to apply for a Closed Area Permit. When he/she applies for a Closed Area Permit (CAP) he/she needs *Proof of Identity* (e.g. Hong Kong Identity Card) and *Proof of Relationship* (e.g. Birth Certificate; Adoption Certificate; Marriage Certificate) with a Close Relative (grandparents / grandchildren; parents / children; brothers or sisters; their spouse) residing in the restricted area. Otherwise, he/she needs to satisfy the HKP that he/she is a ‘person who needs to maintain a traditional link with the local community within the Closed Area because of family or historical ties’ or that you have a ‘need to access the Closed Area.’ Most people have to put up with these kinds of procedure and documentation just to be able to visit their relatives inside the restricted area, even if they find them to be troublesome. This also raises an issue of privacy: Generally, people do not like to have their personal ties and social activities being scrutinized by strangers?

**Case number two:** In order to shoot a film or TV program in Hong Kong, the director probably has to do the following: First, inform the HKP Public Relations Branch – Attn: TV & Films Liaison Section (as a courtesy and as a matter of practice) of his intention to carry out location filming, giving the place, time and date, which will then be passed on to the relevant police district. Second, conduct his activities in accordance with law and order. Third, observe the laws of Hong Kong. Fourth, no obstruction of public places (not obstruct, inconvenience or endanger members of the public and/or their vehicles). Fifth, abide by road traffic and parking regulations (TV/film company vehicles used on public roads must conform to the Road Traffic Regulations). Sixth, control noise

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115 Government regulations (Government Information Bureau – 17 November 1997.)
level (not to make excessive noise which causes annoyance in a public place or in domestic premises between 11 p.m. and 7 a.m., or at any time on a general holiday). Seventh, do not litter (location film crews must not create litter by discarding ‘props’ (properties), rubbish or similar material in a public place). Eighth, do not use simulated uniforms, Police premises or insignia without consent of the Commissioner of Police (‘uniform’ includes those of the HKP Force, the Hong Kong Auxiliary Police Force, the Government Flying Service and other Government departments connected with military or public security forces). Ninth, do not modify arms and ammunition (no genuine arms and ammunition are to be used on location filming and imitation firearms (such as model guns) cannot be licensed and, under certain circumstances, it is an offence to possess one under Section 20 of the Firearms and Ammunition Ordinance is relevant). Tenth, all modified firearms and blank ammunition used for filming must be exempted from license by the Commissioner of Police.

All these regulations have a material and significant burden on civilian life, and livelihood. For example, there was a debate recently (January 2000) on a local talk show over the unreasonableness of having all actors licensed before they can handle an imitation firearm. The debate centered on the issue of whether temporary day-to-day actors need to be so licensed. The critical observation was that the regulations were unreasonable in affecting the livelihood of the temporary actors looking for a job.

Ironically, holding the HKP administratively more accountable means more bureaucracy (expressed in terms of time, effort and frustration) for the people of Hong Kong. The expansive and liberal use of administration (regulatory) powers vs. restrictive and controlled application of the HKP criminal (penal) power is an area of police accountability research that has not receive very much attention in Hong Kong.

Empirically speaking, restricting the criminal powers of the HKP will only benefit a few underclass citizens (people on the fringe) but the expansion of the administrative powers of the HKP will affect the life of everyone in Hong Kong. This routine exercise of police administrative-regulatory power is in fact a ‘low intensity-vast impact’ power.116 As an

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116 A robber told me years ago that he made it so long without being arrested because he only politely asked people in the ‘lovers’ lane’ for small amount of money. People who were robbed did not care to complaint because of the small among. The robber make a lot more money overall from many small ‘donations’!
social policy, it is the latter and not the former that should receive our attention. Currently, we are spending far more time on the former than the later in the mistaken belief that police criminal law powers are much more invasive and consequential for the citizens involved while police administrative regulatory powers are much less intrusive and certainly less consequential. This view must be counter-balanced with the realization that in everyday life and real terms, a traffic cop affects regular citizens much more than a CID ever would!  

On a more theoretical plane Jeremy Bentham, who is a utilitarian, has called for legislation that benefits most people most of the time, i.e. greatest happiness for the greatest number. ‘Therefore one state of affairs is better than another if it involved a greater balance of pleasure over pain, or a smaller balance of pain over pleasure.’

As a police executive, should he/she be more concerned with police brutality that rarely happens (here you can even quantify it, e.g. three cases) but has grave consequences (two deaths and one serious injury) or with police mal-administration that happens every day and affects the lives of many?

In the context of Hong Kong, HKP’s obsession with and possessive of vast power is not hard to explain.

Historically, partly as a result of traditional authoritarian Chinese culture and partly because of age-old British colonial mentality, the HKP have always exercised wide-ranging and unrestricted powers.

Politically, the precariousness of Hong Kong, first as a colony and now as a Special Autonomous Region, requires that the law enforcement agencies in Hong Kong, especially the police, be equipped with immense power of social control with few

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117 The mirror image of this problem has only recently surfaced in the form of fear of crime and ZTP (zero tolerance policing) debate. In that context, it is discovered that people are more concerned with petty “quality of life” crimes, e.g. aggressive begging as a public nuisance, than more serious crimes.
guidelines and still fewer restrictions to secure political control and maintain social stability sufficient for Hong Kong, a barren rock with few resources and sandwiched between contending economic forces and contentious political powers in the Asia-Pacific realm, to thrive as an international seaport (1870s), industrial city (1950s-60s), trading depot (1970s-80s), commercial town (1990s), and now finance center of the world (2000s). Hong Kong can not afford having disruptive elements and tumultuous circumstances to interfere with its appointment with destiny.

Culturally, in traditional China, the concept of rule by law as promoted by the legalists in the Qin dynasty (247-221 B.C) was never a dominant feature of Chinese imperial governments. Until very recently, Confucian ethics – social status, hierarchical relationships and ethical code of behavior – guided the operations of society as a whole. This has inevitably led to police abuse of powers. For example, we are told by retired HKP officers that, in earlier years, police officers in Hong Kong could shoot at will and destroy people’s property without ever being accountable to anyone. In fact, before the 1960s, police annual reports did not give any idea that police abuse of power was a problem in Hong Kong.

It is from this background that people in Hong Kong started to worry about unrestricted and unsupervised police powers, especially after the political transfer of sovereignty after 1997. Specifically, people were concerned police power for pragmatic and ideological reasons..

121 Hong Kong Human Rights Commission 1993.
122 Richard Hughes, Borrowed Place, Borrowed Time (Andre Deutsch, 1968).
125 K. Andrew, Hong Kong Detective. (London: John Long, 1962)
126 I still recall one time (in 1969) when I was a young police inspector with the Royal Hong Kong Police I instructed my sergeant to clear all the illegally parked vehicles along Lai Chi Kok Road to make way for a VIP visit next morning. The time allotted (6 hours) was not enough to have tow trucks tow every vehicle away properly by the book. The sergeant enlisted the help of some ‘experts’ who tampered with the locks and drove the vehicles to the pound one by one. Many a car was slightly damaged in that operation, e.g. scratched. Only one owner complained, however. I gave the owner some money out of my pocket to replace the lock. I am still amazed at how few people complained about this most efficient but improper road clearance operation!
127 S. Lee ‘Public think police abuse power: poll’ South China Morning Post, Feb. 24, 2000, p. 5
128 The fear of corruption of power in Hong Kong is real, though some say exaggerated and not supported by evidence. However, in politics, perception holds sway over reality. The symbolic interactionists inform that what is perceived as real is real in consequences. The fear of
Pragmatically, people observed that power corrupts and absolute power corrupts absolutely. Increasingly, as a result of the change over of political sovereignty from the British to the PRC, the Hong Kong people are sensitive to the abuse of power by public officials in Hong Kong, especially the police. For example, in October of 2000, the HKP has singled out for arrest university student representatives for failing to compile with the Public Order Ordinance in giving prior and proper notice before engaging in public assembly when 6000 thousand plus other public assemblies were allow to go on without arrest and 406 people were warned without arrest since 1997. 

Ideologically, after 1997, the people of Hong Kong believed that in a rule of law regime, the police – as law enforcement agents – should abide by the law. For example, on October 9, 1999, a 16-year-old, Chinese national turned United States resident, Lin Qiaying, was arrested and subsequently jailed for 3 ½ months for using a forged passport while returning to the United States from Fouzhou through Hong Kong. It was reported that she was jailed on account of her own induced or coerced confession, i.e. involuntarily. It turned out that the passport at issue was not forged. The community was in an uproar. A local newspaper
has called the incident ‘bizarre’ or otherwise described it as a ‘travesty of justice’. The police in a democracy the police should be held accountable to the people. It was Charles Reith, the great police historian in England, who stated in the second principle of policing: ‘to recognize always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect’ Police are the public and public are the police.

It should thus come at no surprise that in Hong Kong, as in elsewhere, police abuse of power has given rise to occasional outcries in the press and perennial debate in the public arena; in the media or Legislative Council. The question being asked is who is policing the police? Legislative Council Member Ho Sai-chu asked the Secretary for Justice the following question:

Will the government inform this Council of: (a) the number of complaints received by the Complaint Against Police Office about people being treated with violence by police officers during detention at police stations in each of the past three years, and the number of substantiated cases; and (b) the measures in place to prevent the occurrence of such incidents?

Section 4: Hong Kong public’s concerns with police misconduct

Public’s concern with police misconduct: An overview

This section is about gauging Hong Kong public’s concerns with police misconduct. This section introduces the readers to the political culture in Hong Kong as a way of explaining why, until recently, Hong Kong people rarely if ever complained about police

cries out for more internal discipline.


misconduct. The section will then show how the ‘silent in the face of police abuse’ culture has changed. The readers are then asked a series of questions on the implications of such political culture changes in public vs. citizen relationship using police accountability as a focal point of the discussion. The section sends with a critical observation of how negative press coverage of the police has influence public opinion.

Until recently in Hong Kong, public concerns about HKP abuse of powers, though exist, have been effectively suppressed throughout Hong Kong’s history. This has happened because, by historical Chinese cultural tradition and established Hong Kong social custom, Chinese people in Hong Kong are more respectful (some say fearful) of government authority. As Endacott observed ‘there is also among the Chinese a tendency to political acquiescence, which stems from a Confucian respect for the official and which should not be mistaken for apathy’. 135

By nature and with social training, Hong Kong people are more law and order oriented, besides being politically conservative. Professor Kuan Hsin-chi has conducted survey research on legal culture in Hong Kong and found that Hong Kong people are more inclined to support the police in maintaining order at the expense of [maintaining] the rule of law. 136

Hong Kong people are economic animals. Conditioned and confined by the political-economical structure in Hong Kong, the people in Hong Kong were not encouraged to engage in political activities in the past. The economic reality is that people have little interest in pursuing political activities. Endacott observed that Hong Kong people are not politically apathetic as much they cannot be bothered with politics. 137 Political apathy in Hong Kong was strikingly illustrated in 1967 when, soon after the 1967 riots, only 26,000 (out of 300,000 eligible) people bothered to vote for elected Urban Council members. 138 Even now, the turn out rate is not more than 40% in the latest election.

134 Hong Kong SAR Government. ‘LCQ 8: Complaints received by CAPO’ Press Release, Wednesday, April 21, 1999.
138 Richard Hughes, Borrowed Place, Borrowed Time (Andre Deutsch, 1968).
More recently, especially after the negotiated return of the Colony but also during the transitional period (starting with 1980s), the public’s outcry against police brutality and abuse of power has grown more rampant and vocal. For example, on February 1, 2000 the HKP released the initial findings of a ‘Public Opinion Survey’ conducted in November 1999 by the Hong Kong University on behalf of the HKP. The Survey noted that citizens think that the HKP have shown very low regard for people’s privacy and respect for the rights of suspect.  

Table 3: Values and Behavior of Officers

<table>
<thead>
<tr>
<th>Performance Area</th>
<th>Positive</th>
<th>Neutral</th>
<th>Negative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking stand against corruption</td>
<td>35%</td>
<td>21%</td>
<td>18%</td>
</tr>
<tr>
<td>Protecting others’ privacy</td>
<td>29%</td>
<td>17%</td>
<td>21%</td>
</tr>
<tr>
<td>Respecting the rights of persons in custody</td>
<td>21%</td>
<td>19%</td>
<td>15%</td>
</tr>
</tbody>
</table>

Source: Extracted from Public Opinion Survey, Hong Kong Police (November 1999) (Hong Kong University)

The outburst of negative sentiments against police abuse of power resulted as much from the democratization of the political process, e.g. introduction of popular election, as it did from the Hong Kong government’s attempt to introduce more service oriented – responsive and responsible – administration, e.g. adoption of performance pledge. This is facilitated by a free and aggressive and, according to some, irresponsible press.

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139 Hong Kong Police. ‘Society 'highly confident' in the Force’ Offbeat ISSUE 674, March 1 to March 21, 2000.
142 MEDIA ETHICS – THE WAY FORWARD, Survey Result, November 13, 1999. (Self-survey results (178 respondent) show that most journalists are concerned with media ethics issue. 47% (84) Sensational or disgusting photographs 43% (77) is concerned with too much sex. 41% (73) is
However, as yet there are no empirical research to show whether and to what extent such increased concerns with police abuse of power – as manifested in the number and intensity of citizen’s complaints, press reports, legislative questionings and government inquiries – are real and here to stay? For example, are the public concerns due to:

- A net increase in police misconduct? That is, is there more police misconduct now than before? This does not appear to be the case. If you look at CAPO or IPCC complaint data, complaints against police are dropping steadily.

- An increase in the news-reporting capacity of police? That is, are the journalists and press/media getting better in what they do best? For example, Hong Kong is producing more able journalists; e.g. Chinese University of Hong Kong Journalist Department enrolls some of the best students in the University. Hong Kong as a whole is producing more and more bright graduates – MA to PhDs – in journalism now than before. Some newspapers are hiring knowledgeable and experienced journalists to write on police issues or staff police beat, e.g. Sing Tao has a special column on policing. This observation appears to be sound.

- A change in the style of reporting? That is, Hong Kong journalists are getting to be more aggressive starting with the introduction of investigative journalism, e.g. *Next Magazine*. This is a fact of life in Hong Kong.

- A change in public attitude towards police misconduct. That is, the public is more aware of their rights and has a higher expectation of police conduct and lower tolerance of police misconduct. For example, as Raymond Ng Wai-ming (a CAPO investigator) observed, the public is becoming more aware of their rights. The public sometimes provokes the police, but the police must remain calm.\(^{143}\) This is obviously the case.

- A change of HKP organizational culture? The HKP are getting more responsive and responsible.\(^{144}\) This in turn invites more complaints.

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\(^{143}\) Carl Williams. ‘Courtesy to be compulsory for frontline police’ *South China Morning Post*, June 20, 1999., p. 3.

\(^{144}\) Hong Kong Police, Police Public Relations Branch. ‘Police school of politeness’ *Police Report No.2*, June 2,1999.
The public’s concern with police abuse of powers can be illustrated through the following cases. For example:

In December 1999, a female Chinese university student was accosted by two fellow students and joined a fraudulent scheme. The student, on the advice of a professor, contacted a Commercial Crime Bureau inspector, who asked her to call a CID in TST. The CID asked her to call Tsuen Wan station where she lived. She was puzzled about why she had to file a report in Tsuen Wan when her case happened in TST. She talked to the professor. The professor talked to the CID sergeant in charge on the phone. He refused to be of help and challenged (tauntingly invited) the professor to complain before he abruptly hung up the phone on the said professor. A formal complaint was filed with the Division Commander by phone. The Commander promptly called back and promised a full and speedy investigation. The case was resolved informally with the officer in charge (a CIP.) of the CID explaining and apologizing on behalf of the CID sergeant. The female student was interviewed by a CIP and the case was processed. The professor withdrew the complaint. 145

In November 1999 a Chinese University tutor was about to go back to work at the university when a reported burglary happened in his building. The police arrived and stood guard outside the premises. A police constable demanded to know the tutor’s identity and where he lived. The watchman assured the officers that the tutor was a resident of the building. Nevertheless the police constable insisted on checking the tutor’s identity card. The tutor refused to comply and instead asked for the warrant cards of all those officers who were present. A police sergeant came along and resolved the issue by explaining to the tutor the facts and circumstances of the case, i.e. the police had a duty and responsibility to conduct the charge. The tutor was allowed to go his way to the university. 146

It is now commonly acknowledged that the newspapers play a significant and instrumental role in registering, shaping, creating and/or reinforcing public opinion on police misconduct, 147 For example, the Hong Kong press and media are much more

145 Student interview, December 1, 1999 at GPA/CUHK.
146 Interview with tutor on Feb. 20, 2000 at GPA/CUHK.
aggressive these days conducting investigative report if needed – for example ‘230 Police Keep Tight Rein on 15 Li Peng Protesters’\textsuperscript{148} Such reports can be based on individual cases or result from policy, e.g. downsizing of the Hong Kong Auxiliary Police, or operational issues, e.g. increased crime rate and lower detection rates coming to light. They can be in the form of an editorial, analysis or news report.

A systematic analysis of local newspaper news analysis shows why and to what extent the public is concerned about police misconduct. A casual examination of the Hong Kong press find that in the last eight months – April 1999 to February 2000 – the\textit{ South China Morning Post} (English) reported on the following police abuse of power and accountability stories:

1. The Secretary for Security has refused to introduce legislation to supervise the HKP properly even when the Law Reform Commission has recommended for more restrictive law controlling police exercise of power, e.g. requiring police officers to have reasonable grounds before stopping, searching or arresting people. The Secretary declined to act due to ‘no time and resources’ even though the Hong Kong Government promised in June of 1997 that relevant and appropriate legislation would be introduced within three years.\textsuperscript{149}

2. The Legco Public Works sub-committee challenged the HKP for excessive spending in their plan to spend $3.2b to redevelop the police HQ in Wanchai as an imprudent use of resources.\textsuperscript{150}

3. The HKP were contemplating installing CCTV in detention jails after the death on March 20 of a teenage suspect (18-year-old Li Ka-ming) in police custody at Sheung Shui Station. The inquest jury recommended that CCTV be installed in all police holding cells.\textsuperscript{151}

\textsuperscript{148}\textit{South China Morning Post}, September 24, 1997.
\textsuperscript{150} Susan Shiu. ‘$3.2b plan for ‘luxurious’ HQ attacked’\textit{ South China Morning Post}, Jan. 1, 2000. p. 8
HKP senior management has been acting personally and vindictively in silencing dissenting voices and sanctioning people unfriendly to the HKP. A group of auxiliary police claimed that HKP chiefs have tried to stop Legco member Chan Yuen-han for her effort to fight for rights of the Hong Kong Auxiliary Police from being cut in seize and patrolling duties.\textsuperscript{152}

Police used excessive and illegal force in the arrest of two persons. The CAPO started investigating a case of excessive force and physical assault complaint in the arrest of Kan Kwok-hung 27 and Kan Kwok-shing 26 in Ping Chau. The incident started as officers of the Marine Crime Unit tried to arrest three youths in connection with criminal charges. This led to 100 people blocking the police station.\textsuperscript{153}

The Commissioner of Police has not been fair and stern in disciplining senior police officers found guilty of abuse of power. Chief Superintendent David Thomas was found guilty by the CAPO to have abused his authority in sending police officers under his command to harass a fellow social club associate at her school in January of 1999. The Commissioner of Police declined to discipline the officer but referred the case to the Civil Service Bureau for final disposition instead. The IPCC has criticized the decision as too lenient.\textsuperscript{154}

The HKP have not been able to control police officers from violating rights of suspects and criminals. ‘There have been too many accusations of beatings in custody, and too many sudden deaths in police cells, for the public to accept that proper procedure are always followed when suspects are questioned’.\textsuperscript{155}

The IPCC could work better and more effectively with the appointment of many more independent observers to CAPO complaint investigations to augment the busy IPCC members.\textsuperscript{156}

\textsuperscript{152} Stella Lee. ‘Police ‘tried to censor lawmaker’’ \textit{South China Morning Post}, December 11, 1999, p. 6.
\textsuperscript{154} Stella Lee (n.d.). ‘Chief’s rebuke for top officers ‘too lenient’ \textit{South China Morning Post}, p. 3; Stella Lee. ‘Police chief hands over discipline case,’ \textit{South China Morning Post}, November 23, 1999, p. 5
\textsuperscript{155} Editorial. ‘Path to truth’ \textit{South China Morning Post}, September 9, 1999.
\textsuperscript{156} Stella Lee. ‘Checks to be increased on police complaints system,’ \textit{South China Morning Post}, September 1, 1999, p. 4.
9 The HKP should improve upon its record in treating citizens with more politeness. It was noted that more than half of the complaints against police in the last 17 months concerned rudeness or offensive language. For example, one officer said to a driver when giving him a fixed penalty ticket: ‘paying this won’t be a big deal to you. You must have a lot of money, driving about in a BMW.’ An old lady complained that the police said to her: ‘it is no good paying to go. Put the joss stick out.’

10 HKP officer even complained against fellow HKP officers. A woman police inspector on anti-burglary duty asked an off duty sergeant for his ID because he looked like an immigrant. The IPCC found the case unsubstantiated.

It is clear that from a cursory reading of the newspapers that the HKP is in deep trouble. One certainly does not get the idea that the HKP has mounted a relative successful effort to reform itself from within. Nor do the readers get any ideas of the various achievements the HKP attained in the course of the eight months being reported.

Since most of the average citizens have not had any personal experience with the police, the negative image painted by the press will have a negative impact, if not even distortive effects and inflaming influences on the general public, making them more skeptical, less trusting, and overly critical of the HKP. In fact, a fair number of the respondents in a HKP commissioned survey said that their knowledge of the HKP is gathered from other than personal sources, e.g. friends and newspapers (Hong Kong Police 1999). For example, in response to the question ‘where do you get your perception of the [Force]?’ Respondents replied: through their own experience (55%); from television (40%); from newspaper (37%); from friends (7%); from magazines, radio, family members, promotional booklets/leaflets, others (each less than 7%).

Section 5: The nature, incidence, and prevalence of police abuse of power in Hong Kong

Problems with measuring abuse of power in Hong Kong

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157 Stella Lee. ‘Checks to be increased on police complaints system,’ *South China Morning Post*, September 1, 1999, p. 4.
158 Stella Lee. ‘Sergeant looked like migrant, says ID check inspector’ *South China Morning Post*, April 28,1999, p. 3
159 Hong Kong Police. ‘Public Opinion Survey’ conducted on behalf of the Hong Kong Police by the Hong Kong University in November 1999.
As might be expected, accurate and reliable data on the prevalence and nature of police abuse of power is hard to come by.\textsuperscript{160} Independent surveys of police abuse of power have rarely been attempted in Hong Kong. The Law Reform Commission did compile some data on challenges to police confessions in the various courts in Hong Kong and found it to be a major drain on judicial resources.\textsuperscript{161}

An ongoing study by Janice Brabyn of the University of Hong Kong has revealed that 162 or 21\% of 762 defendants in criminal cases handled by the Magistracy over a two-month period challenged confession evidence. In 74, or 46\% of those cases, the defendants alleged improper police behavior in obtaining confessions. 43 claimed that they had been assaulted by the police, 36 claimed that threats were made against them or family members in order to induce confession. Tellingly, the magistrate upheld the defendant's challenge in 29, or 18\% of the 162 cases in which confession evidence was at issue. Hong Kong's rate of challenge to the admissibility of confessions and the rate at which such challenges are upheld is quite high compared to other jurisdictions. Many of the Monitor’s members are legal practitioners and have long believed that illegal or improper use of force in arrest and interrogation is routine. This is confirmed'.\textsuperscript{162}

Police abuse of power cases surface when they are reported to the police as a complaint or make it into the press/media as a newsworthy item. Neither of these two sources is considered a very reliable indicator and/or accurate representation of the distribution and magnitude of police abuse of power problem.

The lack of reliable and accurate data on police abuse of power is not unique to the HKP. Police, like other organizations, are protective of their own public image (variously a good will, credibility and legitimacy problem) and solicitous of their staff and


organizational interests (variously a staff morale, professional integrity and organizational autonomy issue). For example,

On 21 April 1993, a motion was passed in the Legislative Council demanding the establishment of an independent complaints authority. However the Government was deaf to these voices. Officers in the Security Branch and the police force have repeatedly insisted that they would refuse to accept the removal of the complaints office from the force. The spokesperson of the Association of Senior Police Officers even claimed that the motion in Legco was a blow to the force’s morale and had political motivation, while nothing was said about the possible partiality of the present system.¹⁶³

In practice, the HKP have been known to discourage citizens from complaining. Individual officers are not likely to blow the whistle on their fellow officers due to the code of silence. Citizens have no incentive to report in minor cases and may be too afraid or too troubled to report in major ones. Complainants are also inclined to drop the complaint when their cases are cleared legally or settled informally. Most people are happy with an informal or formal apology. The press and reporters only report on cases of interest to the public – sensational harm to the victim or glaring mistakes by the police. Lastly, even when police abuse cases surface, there is a hard time concluding who is right.

On one hand, in most cases, the complainant is hardly an objective and fair person due to his personal involvement in a contentious and emotional encounter with the police. If he is a criminal suspect, he is more likely than not automatically deemed to have a vested interest in challenging the police to provide for a legal defense, e.g. coerced confession.

On the other hand, most police abuses of power are directed at the economically deprived and socially powerless. Almost all police abuse of power happens away from public scrutiny, e.g. in dark street corners or behind heavily guarded police stations. This makes the reporting and substantiation of complaints most unlikely.

Let us look to the US for some examples of why complaints against police data are hard to come by. For example, in 1990, it was widely reported that San Francisco, with less

than 2,000 police officers had more citizen complaints than Los Angeles, which has more than 8,000 officers. What that may mean, however, is that Los Angeles residents are afraid to file reports or don’t believe it would do any good. San Francisco has a relatively independent civilian review process that may encourage the filing of more complaints. A better complaints against the police system actually generates more complaints!

Also in 1990, New York City reported a decline from previous years in the number of citizen complaints filed, but many analysts believe that simply reflected New Yorkers’ widespread disillusionment with their civilian review board. Citizen complaints filed in Omaha, Nebraska doubled after the mayor allowed people to file their complaints at City Hall as well as at the police department.

Another problem is that in some police departments with internal affairs systems, officers often try to dissuade people from filing formal complaints that will later become part of an officer’s file. And the number of complaints counted is also affected by whether or not the internal affairs system accepts anonymous complaints and complaints by phone or mail or requires sworn statements made in person.

Thus, the official ‘complaint rate’ (complaints per 1,000 citizens) more than likely reflects the administrative practices of a particular police department rather than being a reliable measure of police performance.

Whatever the reasons explaining the lack of information on complaints, the consequence is likely to be the same. People do not have a clear, complete and accurate picture of what went wrong, and in turn what can be done to alleviate the problem. As a result, public policy over control of police misconduct is driven less by informed debate than by emotional exchanges – and decidedly less on facts than on politics.

Police abuse of power in a global perspective

The prevalence and nature of police abuse of power must be viewed in a global perspective. This enables us to ask the meaningful question – how is police abuse of power in Hong Kong different from or similar to other countries and cities? More importantly, what can we learn from others’ experiences? In this regard, the Secretary for Security often pacified Legco members by saying that Hong Kong has one of the best
civilian review systems in the region, and the IPCC is fond of looking to other countries for lessons to be learned (IPCC 1997).

The literature worldwide on police abuse, misconduct and control is rich and varied.

In South Africa, the South African Police force (SAP), as a brute force of military domination and political repression, exhibited a history of political bias and a legacy of oppression under the Apartheid government. The transfer of political power to the ANC, a democratically elected government, did not seem to abate the problem of police abuse. The negotiation process – while effective in dismantling the old political regime – was less successful in establishing a new police system capable of exercising disciplined and responsible social control. The result has been a vacuum of legitimate authority within society accompanied by growing lawlessness within and without the police department. This has led to calls for a re-orientation of the policing strategy from militarism to professionalism and from political policing to community policing.164

In Haiti, the transition in 1995 to a civilian-controlled police (The Haitian National Police – Police Nationale d’Haïti, HNP) was likewise not able to arrest chronic and serious human rights violations at the hands of the police, including torture, executions and the use of excessive force. For example, the police have killed at least 46 Haitians since July 1995. The HNP summarily killed at least six men on March 6, 1996. Not one policeman has so far been convicted of any killing. The political leadership and judicial institutions have not been effective in holding the police accountable. This has attracted international attention in asking for more stringent human rights protection.165

The situation is not much better in countries steeped in police tradition, e.g. the UK, and in countries secured with constitutional protection, e.g. the US.

In the UK, official data show that there were 22,500 complaints against the police from April 1996 to March 1997, of which only 834 were substantiated. Approximately 200 of those resulted from ‘oppressive’ police conduct. There were 57 deaths in police custody – a 14% increase over the previous year. The data clearly show that the police had singled

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out the ethnic minority for maltreatment, e.g. 9.5% of the deaths were black people who made up approximately 2% of the UK population. In all, only 6 complaints of racially discriminatory behavior were substantiated.\footnote{66}{Cotton, Judith and David Povey. ‘Police Complaints and Discipline: Deaths in Police Custody, England and Wales, April 1996 to March 1997.’ \textit{Home Office Statistical Bulletin}. (London: Government Statistical Service, 1997)}


In 1997, the National Coalition on Police Accountability in the US highlighted the following areas of public concerns with police misconduct nationwide: use of force; physical brutality; ill comportment (rude behaviors); harassment (including selective enforcement based on class, ethnicity, subculture, and political affiliation for violations of park rules or bicycle, pedestrian, or motor vehicle traffic statutes); and non-performance of duties (as evidenced by higher call response wait time and lower response rate).\footnote{68}{Amnesty International. ‘Police Brutality and Excessive Force in the New York City Police’ (Report – AMR 51/36/96, June); American Civil Liberties Union. \textit{Fighting Police Abuse} (New York, NY: American Civil Liberties Union, 1997)}

In 1982, the U.S. federal government funded a ‘Police Services Study’ in which 12,022 randomly selected citizens were interviewed in three metropolitan areas. The study found that 13.6 percent of those surveyed had cause to complain about police service in the previous year (this included verbal abuse and discourtesy as well as physical force). Yet, only 30 percent of the people filed formal complaints. In other words, most instances of police abuse go unreported.\footnote{69}{American Civil Liberties Union. \textit{Fighting Police Abuse: A Community Action Manual}. (2nd ed) August, 1997.} For example Reiss found that the overall rates of unwarranted force were low — only about one percent of all encounters with citizens.\footnote{70}{Albert, Reiss. \textit{The Police and the Public} (Yale: Yale University Press, 1971).}
This has led to repeated cycles of public outcry and calls for public supervision and police reform. For example, the Citizens for Police Accountability (CPAC) at Brown University (ACLU) maintain a 24-hour beeper hotline for victims of police misconduct and brutality. The Sunshine Project for Police Accountability in Austin, Texas seeks to reform the Austin Police Department’s closed-records policy on police brutality and other complaints against officers. The Concerned Citizens for Police Accountability (CCPA) in Boise, Idaho has dedicated itself to holding police accountable to their communities through public education, community organizing, legislation, litigation and the promotion of empowered civilian oversight. The National Coalition on Police Accountability (as with its local chapters, the COPA) and National Association for Civilian Oversight of Law Enforcement (NACOLE) provides practitioners of civilian oversight with a structured forum and opportunity to dialogue and exchange information on questionable and unacceptable actions of law enforcement personnel. Finally, George Kelling, Wasserman and Williams have called for improved police accountability. They observed that the centralized command and control management structure of the police, while enhancing the ability to control in society, creates grave problems of accountability. Police organizational culture characterized by isolation from citizens and internal solidarity precludes effective monitoring. ‘Overcoming police culture can be achieved in three ways, leadership through values, accountability to the community, and administrative mechanisms of control.’

Police misconduct and accountability issues afflict Hong Kong as much if not more than other countries and cities in world. The nature and characteristics of police complaints are not that much different than in other big cities. In the 1990s Hong Kong boasted 4,000 and more complaints against the police each year. Consistently, 50% or more of the complaints are about police assault, and consistently in the same period the complaint against police substantiation rate has never risen about 3%. This has led the politicians and public to clamor for more police accountability starting with a more independent and transparent complaint against the police process. The HKP and the Security Bureau, however, have been quick to defend the integrity and effectiveness of the current process.

---

Incidence and prevalence of police misconduct in Hong Kong

Both CAPO and IPCC kept records of citizens’ complaints against the police. These data give us a partial view of the nature, distribution and resolution of complaints of abuses. The complaints against police are mainly divided by their nature into the following categories. The recent figures are as below:

Table 4: Citizens’ complaints against Hong Kong Police (1996-2004)

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<tr>
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<tbody>
<tr>
<td>Assault</td>
<td>1265</td>
<td>976</td>
<td>910</td>
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<td>658</td>
<td>602</td>
<td>594</td>
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<tr>
<td></td>
<td>(38.2%)</td>
<td>(33.2%)</td>
<td>(31.3%)</td>
<td>(28.5%)</td>
<td>(22.3%)</td>
<td>(20.3%)</td>
<td>(15.8%)</td>
<td>(17.6%)</td>
<td>(21.2%)</td>
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<tr>
<td>Assault</td>
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<td>786</td>
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<td>1033</td>
<td>1080</td>
<td>922</td>
<td>971</td>
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<td></td>
<td>(25.3%)</td>
<td>(27.7%)</td>
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<td>(25.5%)</td>
<td>(28.7%)</td>
<td>(31.8%)</td>
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<td>(30.1%)</td>
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<tr>
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<td>575</td>
<td>745</td>
<td>892</td>
<td>1209</td>
<td>1097</td>
<td>1586</td>
<td>1443</td>
<td>1130</td>
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<tr>
<td></td>
<td>(18.2%)</td>
<td>(19.6%)</td>
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<td>(29.0%)</td>
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<td>(33.8%)</td>
<td>(41.5%)</td>
<td>(42.7%)</td>
<td>(35.1%)</td>
</tr>
<tr>
<td>Misconduct/</td>
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<td>213</td>
<td>223</td>
<td>199</td>
<td>257</td>
<td>183</td>
<td>230</td>
<td>172</td>
<td>164</td>
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<tr>
<td>Manner/</td>
<td>(6.5%)</td>
<td>(7.3%)</td>
<td>(7.7%)</td>
<td>(6.5%)</td>
<td>(7.0%)</td>
<td>(5.6%)</td>
<td>(6.0%)</td>
<td>(5.1%)</td>
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<tr>
<td>Offense</td>
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<td>Offensive Language</td>
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<td>155</td>
<td>167</td>
<td>168</td>
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<td>(4.9%)</td>
<td>(6.6%)</td>
<td>(5.3%)</td>
<td>(4.8%)</td>
<td>(4.4%)</td>
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<tr>
<td>Neglect of Duty</td>
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<td>115</td>
<td>96</td>
<td>100</td>
<td>103</td>
<td>88</td>
<td>127</td>
<td>65</td>
<td>123</td>
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<td>(3.0%)</td>
<td>(3.9%)</td>
<td>(3.3%)</td>
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<td>(2.7%)</td>
<td>(3.3%)</td>
<td>(1.9%)</td>
<td>(3.8%)</td>
</tr>
<tr>
<td>Unnecessary Use of Authority</td>
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<td>14</td>
<td>17</td>
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<td>(0.1%)</td>
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<tr>
<td>Fabrication of Evidence</td>
<td>52</td>
<td>37</td>
<td>28</td>
<td>17</td>
<td>16</td>
<td>18</td>
<td>13</td>
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<td>(1.6%)</td>
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<tr>
<td>Police Procedures</td>
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<td>2908</td>
<td>3081</td>
<td>3656</td>
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<td>3822</td>
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</table>

Source: The IPCC Annual Reports, 1996-2004
Table 1 informs us that between 1996 and 2004 the number of complaints stayed at about 3000, i.e., from 3309 to 3222. However, the relative distribution, i.e., the mix of complaints, has seen some noticeable changes. Generally, more serious (criminal) complaints were decreasing in absolute and relative terms. For example, assault (violation of criminal law) decreased from 1265 cases (38.2%) in 1996 to 628 cases (21.2%) in 2004, and fabrication of evidence (miscarriage of justice) decreased from 238 cases (7.2%) in 1996 to 134 cases (4.2%) in 2004. Conversely, less serious (disciplinary) complaints were increasing. For example, neglect of duty increased from 601 cases (18.9%) in 1996 to 1130 cases (31.5%) in 2004. Finally, and most significant observation one can make is that there is no discernible difference, in terms of police abuses, before and after 1997; the day Hong Kong changed status from a British Colony to a Chinese Special Administrative Region.

In terms of reporting of police abuses, Table 2 below shows that most people preferred to report to the police rather than to some other independent agency, e.g., IPCC. They either do it in person, by letter or by phone. The statistics show that in 1996, 897 cases (29.1%) were reported to CAPO, 1,607 cases (52.1%) to police stations, and 197 (6.2%) to the Commissioner of Police. In 2004, 1,384 cases (43%) were reported to CAPO, 984 cases (30.5%) to police stations, and 204 (6.4%) to the Commission. It is clear from this set of data that the Commission, in spite of its apparent authority and ultimate responsibility, has never been a major outlet for complainants. This might be due to the fact that the office of the Commission is less visible and relatively inaccessible to the public. What is also clear is that people are turning more and more to the CAPO to file their complaints instead of the going to the more accessible police station. This might be due the fact that the CAPO has increasingly earned the respect of the public as an independent, efficient and effective complaint against the police agency.

What is harder to explain is why the complainants chose to resort to internal accountability organs, i.e., CAPO, instead of external accountability organs, i.e. IPCC, ICAC or Legislative Council. In 1996, the ICPP received only about 6 cases (0.2%) and in 2004 only 16 cases (0.5%). The Legco/solicitors office did not fare any better. In 1997, it received 9 cases (0.3) and by 2004 it received 22 cases (0.7).

This last observation to be made of Table 2 is that judiciary is increasingly getting more important as a right protecting institution for the public to turn to, as a last resort. In
1996, the judiciary was handling only 6 cases (0.2), by 2004 it was handling 544 cases (16.9%). The turning point for the upswing was in 1999, two years after the change of sovereignty. The complaints jumped from 53 (1.8%) in 1997 to that of 301 (9.8%) in 1999, a jump of nearly 6 fold. This attested to the increasingly importance of the court as a check and balance institution in post 1997 Hong Kong.

This set of data raised two questions, one empirical, the other policy: First, did the civilians really prefer independent investigation of police complaint vs. a police process. Second, if the data truly reflect citizens’ preference for police investigation, a policy issue is raised as to whether we still need independent civilian reviews.

Table 5: Origin of Complaints Received for the Years 1994 – 2004

<table>
<thead>
<tr>
<th></th>
<th>1994 (% to total)</th>
<th>1995 (% to total)</th>
<th>1996 (% to total)</th>
<th>1997 (% to total)</th>
<th>1998 (% to total)</th>
<th>1999 (% to total)</th>
<th>2000 (% to total)</th>
<th>2001 (% to total)</th>
<th>2002 (% to total)</th>
<th>2003 (% to total)</th>
<th>2004 (% to total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported to CAPO in person or by telephone</td>
<td>897 (29.1)</td>
<td>960 (27.8)</td>
<td>1,168 (35.3)</td>
<td>1,239 (42.2)</td>
<td>1,184 (40.7)</td>
<td>1,253 (40.7)</td>
<td>1,659 (45.4)</td>
<td>1,634 (50.3)</td>
<td>2,006 (52.5)</td>
<td>1,744 (51.6)</td>
<td>1,384 (43.0)</td>
</tr>
<tr>
<td>Reported to a Police Station in person or by telephone</td>
<td>1,607 (52.1)</td>
<td>1,764 (51.2)</td>
<td>1,505 (45.5)</td>
<td>1,190 (40.5)</td>
<td>1,105 (38.0)</td>
<td>1,026 (33.3)</td>
<td>1,104 (30.2)</td>
<td>1,018 (31.4)</td>
<td>1,023 (26.8)</td>
<td>969 (28.6)</td>
<td>984 (30.5)</td>
</tr>
<tr>
<td>Reported by letter (to Commissioner of Police, Box 999, CAPO or Police Formation)</td>
<td>197 (6.4)</td>
<td>245 (7.1)</td>
<td>244 (7.4)</td>
<td>181 (6.2)</td>
<td>302 (10.4)</td>
<td>280 (9.1)</td>
<td>308 (8.4)</td>
<td>197 (6.1)</td>
<td>247 (6.5)</td>
<td>232 (6.9)</td>
<td>207 (6.4)</td>
</tr>
<tr>
<td>Complaints made at Prisoner Reception Centres / in Prisons</td>
<td>272 (8.8)</td>
<td>312 (9.0)</td>
<td>217 (6.6)</td>
<td>207 (7.0)</td>
<td>197 (6.8)</td>
<td>145 (4.7)</td>
<td>80 (2.2)</td>
<td>55 (1.7)</td>
<td>79 (2.1)</td>
<td>57 (1.7)</td>
<td>43 (1.3)</td>
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<tr>
<td>Received via ICAC</td>
<td>82 (2.7)</td>
<td>89 (2.6)</td>
<td>74 (2.2)</td>
<td>35 (1.2)</td>
<td>23 (0.8)</td>
<td>30 (1.0)</td>
<td>28 (0.8)</td>
<td>19 (0.6)</td>
<td>19 (0.5)</td>
<td>4 (0.1)</td>
<td>8 (0.2)</td>
</tr>
<tr>
<td>Received via</td>
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<td>0</td>
<td>0</td>
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<td>0</td>
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<tr>
<td>Source:</td>
<td>The IPCC Annual Reports, 1994-2004</td>
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</tbody>
</table>

How were complaints disposed of? Table 3 shows that few of the complaints were being substantiated, either by the IPCC or CAPO. As might be expected the substantiation rate is higher for minor offenses (impolite conduct – 1.70%; neglect of duty – 10.2%) than major offense (assault – 0.28%) and more for process violations (police procedure - e.g., 10.8%) than substantive claims (fabrication of evidence – 0.5%). Overall, the low substantial rates might mean any number of things, from inability of IPCC to question CAPO findings of facts independently or that that most of the complaints were spurious. As to specific kinds of claims, it is hard to prove that assault occur but easy to allege that there were impoliteness. It is easy to show improper use of authority but very difficult to show fabrication of evidence.

<table>
<thead>
<tr>
<th></th>
<th>Legco, Solicitors</th>
<th>Received via Judiciary</th>
<th>Received via Police Public Relations Branch / Press / Radio</th>
<th>Received via other government departments</th>
<th>Received via the IPCC</th>
<th>Others</th>
<th>Total reports received</th>
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<td>(0.2)</td>
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<td>(1.8)</td>
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<td>(0.5)</td>
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<td>3,448</td>
<td>(100.0)</td>
<td>3,309</td>
<td>(100.0)</td>
<td>2,937</td>
<td>(100.0)</td>
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</table>

Table 6: Percentage of Substantiated Rate of Allegations to Total Allegations of the Same Nature as per CAPO Reports Examined by the IPCC in Year 1994 – 2004
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<td>(1.9)</td>
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<tr>
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<td>(7.0)</td>
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<tr>
<td>Fabrication of Evidence</td>
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<td>0</td>
<td>0</td>
<td>0.5</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(6.9)</td>
<td>(1.6)</td>
<td>(1.3)</td>
<td>(1.1)</td>
<td>(1.2)</td>
<td>(0.8)</td>
<td>(1.1)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0)</td>
<td>(1.3)</td>
</tr>
<tr>
<td>Threat</td>
<td>0.7</td>
<td>1.7</td>
<td>0.5</td>
<td>0.5</td>
<td>0.4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.3</td>
</tr>
<tr>
<td></td>
<td>(1.3)</td>
<td>(4.3)</td>
<td>(1.5)</td>
<td>(1.1)</td>
<td>(1.3)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0)</td>
<td>(0.9)</td>
</tr>
<tr>
<td>Other Offences</td>
<td>0</td>
<td>12.5</td>
<td>3.6</td>
<td>8.2</td>
<td>2.3</td>
<td>9.1</td>
<td>0</td>
<td>7.5</td>
<td>5.3</td>
<td>0</td>
<td>5.3</td>
<td>4.4</td>
</tr>
<tr>
<td></td>
<td>(0)</td>
<td>(29.4)</td>
<td>(10.7)</td>
<td>(14.6)</td>
<td>(4.3)</td>
<td>(12.5)</td>
<td>(0)</td>
<td>(11.5)</td>
<td>(9.1)</td>
<td>(0)</td>
<td>(9.1)</td>
<td>(8.4)</td>
</tr>
<tr>
<td>Police Procedures</td>
<td>3</td>
<td>0</td>
<td>50</td>
<td>11.1</td>
<td>6.3</td>
<td>5.3</td>
<td>8.0</td>
<td>0</td>
<td>0</td>
<td>18.9</td>
<td>16.7</td>
<td>10.8</td>
</tr>
<tr>
<td></td>
<td>(50)</td>
<td>(0)</td>
<td>(50)</td>
<td>(20)</td>
<td>(20)</td>
<td>(14.3)</td>
<td>(16.7)</td>
<td>(0)</td>
<td>(0)</td>
<td>(38.9)</td>
<td>(33.3)</td>
<td>(22.1)</td>
</tr>
</tbody>
</table>

Source: The IPCC Annual Reports, 1994-2004

Many of the complaints were resolved informally (Table 4). In 1994 only 569 cases or 13.7% were resolved by informal resolution. Since then the informally settled cases kept growing: 736 cases (15.8%) in 1995, 972 cases (19.2%) in 1996, 1016 cases (20.9%) in 1997, 1090 cases (26.0%) in 1998. The number and percentage of cases settled were less trendy but still maintain at a 20% plus level between 1999 (1272 cases, 23.6%) and 2004 (1219, 20.9%). This suggested that most complainants were not interested in a
full scale investigation, only an honest acknowledgement of the humiliation done or rendering of a sincere apology for inconvenience caused.\textsuperscript{172}

Table 7: Number of Cases Resolved by Informal Resolution Endorsed by the IPCC for the Year 1994 – 2004

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Cases</th>
<th>(% to total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>569</td>
<td>(13.7)</td>
</tr>
<tr>
<td>1995</td>
<td>732</td>
<td>(15.8)</td>
</tr>
<tr>
<td>1996</td>
<td>972</td>
<td>(19.2)</td>
</tr>
<tr>
<td>1997</td>
<td>1,090</td>
<td>(26.0)</td>
</tr>
<tr>
<td>1998</td>
<td>1,272</td>
<td>(26.0)</td>
</tr>
<tr>
<td>1999</td>
<td>1,425</td>
<td>(24.0)</td>
</tr>
<tr>
<td>2000</td>
<td>1,491</td>
<td>(24.0)</td>
</tr>
<tr>
<td>2001</td>
<td>1,669</td>
<td>(26.9)</td>
</tr>
<tr>
<td>2002</td>
<td>1,539</td>
<td>(26.9)</td>
</tr>
<tr>
<td>2003</td>
<td>1,219</td>
<td>(20.9)</td>
</tr>
</tbody>
</table>

Source: The IPCC Annual Reports, 1994-2004

One of the issues that is of concern to this study is how Hong Kong’s complaint against police system works compared with other countries. As noted in Table 9 below, the complaints substantiation rates are much higher in the United States. On first sight, it might appear that U.S. has a more effective monitoring system than that of Hong Kong. This conclusion is not warranted, at least without more evidence.

The first and most important point to raise is whether the unit of comparison – the definition and base line of police complaints substantiation rates – is indeed comparable. That is to say, how the 10 cities in the US define “misconduct” and “substantiation” compared with that of Hong Kong. Without a comparable base, any comparison is meaningless.

Table 8: Citizen Complaints about Police Misconduct in 1988

<table>
<thead>
<tr>
<th>City</th>
<th>No. of complaints</th>
<th>Per 100 Officers</th>
<th>% sustained</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Francisco</td>
<td>1,146</td>
<td>81.4</td>
<td>1.2</td>
</tr>
<tr>
<td>Seattle</td>
<td>412</td>
<td>35.9</td>
<td>7.7</td>
</tr>
<tr>
<td>Boston</td>
<td>427</td>
<td>21.8</td>
<td>25.0</td>
</tr>
<tr>
<td>Cleveland</td>
<td>376</td>
<td>21.7</td>
<td>8.8</td>
</tr>
</tbody>
</table>

\textsuperscript{172} Police informants. Author’s students. 2002 – 2004.
Section 6: Understanding police misconduct

As observed in last section, police misconduct is prevalent in Hong Kong and effective steps must be taken to deal with the problem. However, in order to reduce citizens’ complaints and control police misconduct effectively we must understand the causes of police misconduct.

Hong Kong has conducted no systematic empirical investigations and reliable scientific research into police misconduct and control, e.g. how much police misconduct is out there? How is police misconduct distributed in the social space? What are the salient characteristics of police misconduct in Hong Kong? In point of fact, when it comes to police misconduct, almost everyone has an opinion – informed or otherwise. In fact, and as mentioned before, the HKP Public Opinion Survey (1999) showed that a lot of people formed their opinion of the police by watching movies, reading newspaper articles and talking to friends and relatives.

Conventional wisdom has it that police misconduct is caused by the maladjustment of ‘individual’ police officers. Witness the explanation given by the HKP to the Provisional Legco on November 17 1997 for the shooting death of a suspect in Aberdeen police station in 1997 –made possible by a ‘dysfunctional’ police accountability system.173

These twin explanations, the bad apple theory and slack supervision theory, explain away the need to look at police misconduct critically (without predisposition), scientifically (with empirical evidence) and analytically (based on logical reasoning).174

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174 Robert Worden. ‘The Causes of Police Brutality: Theory and Evidence on Police Use of
These two kinds of explanations make sense to most people and are called ‘conventional wisdom’ because they are: (1) simple, i.e. most people can easily comprehend them; (2) reasonable, i.e. they appeal to common sense; (3) punitive, i.e. someone can be held accountable; (4) remediable, i.e. things can be fixed. Since it is simple, most people can follow the argument. Since it is reasonable, most people readily understand the logic. Since it is punitive, it satisfies our retributive instinct. Since it is remediable, it gives us hope for a better future.

A moment’s reflection reveals that while there is some truth to such and other ‘conventional wisdom,’ the true causes and remedies of police misconduct lie elsewhere. Effective control of HKP misconduct requires an understanding of HKP policy, practices and behavior in the broader legal, social, organizational and situational context in which the police find themselves. For example, the following legal, political, social, organizational and situational factors in Hong Kong affect the HKP in performing their duties in a lawful manner. More particularly, these factors affect a street level police officer carrying out your duties.

1. The Bill of Rights restricts the power of the HKP to perform its legal duties (e.g. detecting crime) and in meeting the rightful demands of the public (securing peace and order).

2. Political liberation in Hong Kong makes people more aware of their rights. The public is demanding more protection from the police, e.g. more vigorous enforcement actions against vice establishments. They are expecting better service from the police, e.g. being treated more politely.

3. The social culture in Hong Kong is telling the public in general and the younger generation in particular that they can question, if not even challenge and defy the HKP in the proper exercise of their legal authority.

4. The social development of Hong Kong – such as the influx of illegal immigrants – calls for the HKP to step up its enforcement effort, e.g. vice raids and illegal immigration interdiction.

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The social environment fosters a ‘blame the HKP’ culture as an extension of critical attitudes towards HKSAR government mentality, e.g. HKP can do nothing right.

The HKP organizational vision and mission is changing radically. The HKP is putting a lot of pressure on the front line officers to increase productivity, i.e. doing more with less. In practical terms this means reducing crime rates and increasing detection rates –and no overtime.

The HKP organizational culture is becoming more protective of its members – as a survival strategy – than ever before.

The HKP top leadership is getting less and less supportive of the officers in the street. Senior officers are chosen from effective managers – not dynamic leaders.

The HKP officers are exposed to more and more unfriendly, humiliating and violence-prone situations every day.

Policing in Hong Kong is becoming a job and not a vocation. People are attracted to the police as a well paying job, not as a vocation or service ideal.

Increasingly, he HKP officers are putting up with a lot more pressure without a great sense of direction and far less pride. Anomie sets in. Such pressures have generated personal stress and affected organizational morale that led to personal maladjustment, from suicide to police misconduct. A police officer that is not driven by service ideal is easily corrupted by power. A police organization without a sense of direction creates disorientation in its police officers. The ‘living the culture’ campaign is a way to induce a sense of mission and vision. The problem is that it is coming on too fast, and officers in the street do not completely understand and nor commonly share the new “mission and vision” of the reformed HKP. A police manager that can ask to manage and cannot lead causes their officers to be disillusioned. A police office organization that is not supportive of its staff breeds insecurity and contempt. Police officers that are being placed between restrictive law and growing demand for services and increasing pressure for productivity is tempted to take the law into their own hands. This is the broader social context has to take into account as one try to analysis what causes police misconduct in Hong Kong.

Before we start we should take heed of what Superintendent Coalter, of CAPO Kowloon has to say about the structural nature of complaints against the police:
Police officers by the very nature of their duties can be targets for complaints. It’s built into the job. However, if members of the public genuinely experience unprofessional or bad service from an officer it is in everyone’s interest that they can have their complaints properly investigated. The most important thing for police officers is to do their job as professionally as possible and remain calm when faced with difficult situations. (Complaint against Police Office 1999)

Police officers are required and empowered to enforce the law and maintain order by force. The use of force to enforce law and maintain order attracts complaints.

First, law enforcement is confrontational in nature and conflicts-laden in practice. No one likes to be told that they have acted illegally, especially when such an enforcement act carries with it material consequences (e.g. court fines), moral implications (e.g. public humiliation) and personal impact (e.g. private embarrassment). Police law enforcement activities naturally invite challenges to police authority. For example, the ‘what right do you have stopping and searching me?’ argument concerning applicable law. The ‘this was a 70 KMH zone a week ago!’ dispute of existing fact. The ‘I was not speeding’ type of dispute. And questioning the police’s response – ‘I do not what to talk to you (the citizen). You have to talk to the judge about the ticket’.

Police-citizen encounters are thus fertile grounds for mutual misunderstanding where tempers flare and reason disappears – complaints against the police are not only probable but also inevitable. The HKP have called this ‘avoidable complaints’. The CAPO is devising ways to address and reduce them. As the Chief Inspector of CAPO (New Territories Office), Mr Raymond Ng Wai-ming explained: ‘Of course, when dealing with violent criminals, we have to retain a forceful image but we need to be more empathetic and tactful with the general public in our routine police work, such as identity card checks, road blocks and issuing fixed penalty tickets.’ The public may be just expecting a ‘thank you’ or a ‘sorry for the inconvenience’ from the police officers that accosted them – unexpectedly and perhaps unnecessarily.  

Second, no one likes to be told what to do in public, still less under the threat or use of force. The threat or use of coercive force to compel compliance arouses fear and anxiety.

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in citizens, generating frustration and anger that leads to animosity and resentment. The situation is aggravated by two factors: (1) The use of force is routine to the police. Police encounters are rare to most law-abiding citizens, and incidents involving the use of force are still rarer. Thus, being ‘physically’ handled by the police is a traumatic ‘life threatening’ experience. (2) Increasingly, and particularly after 1997, the public are more informed of their rights and they expect the police to treat them with respect, not force. The use of force by the police, even legitimate force, is often resented.

Police officers are law enforcement officers. This usually means two things. Police have a duty to enforce the law and do so legally. There are three problems associated with this formulation of police mandate, each one leading to public concern if not to complaints.

First, police perform more than law enforcement duties. According to Police Force Ordinance (Section 10), besides enforcing the law, police are supposed to maintain order, preserve peace, provide services, protect property, investigate crime and apprehend criminals, etc. However, beyond the most general and platitudinous statements of assorted police duties, the law (and by extension the legislature and community) does not tell the police what to do and how to do it. Which law to enforce? How much order to maintain? What level of force should be used? This is an open invitation to the police to interpret and apply the law the way they see fit that predictably leads to charges of police abuse of discretion or dereliction of duties.

Second, in as much as the full enforcement of all laws is not possible, i.e. limited supply of police resources vs. unlimited demand for police services, the police are called upon to decide how conflicting demands of police time and resources are to be resolved. For example, should the police adopt a ‘zero-tolerance’ or ‘selective enforcement’ or ‘impact strategy’ policy towards illegal gambling? Such police decisions are often

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176 “Zero tolerance” law enforcement was made famous by Chief William Bradford of New York City Police Department in early 1990s. He championed the use total enforcement (thus “zero tolerance”) of minor offenses, e.g. subway fare evasion, as a way of putting fear into potential criminals and improve quality of life in the city.

177 “Selectice enforcement” is the idea that since police cannot enforce all the law, they must strategically enforce certain law and not others.

178 “Impact strategy” in relationship to law enforcement means that police use “zero tolerance” and/or “saturation patrol” (i.e. flooding an area with police) enforcement strategy to target certain crime, e.g. pick pocket, so as to make police presence in an area or with respect to a crime felt.
made with very little meaningful guidance and still fewer objective standards for evaluation.

This uncertainty of the ‘ends’ and indefiniteness over the ‘means’ creates intractable problems for the police administrators in establishing and defending police priorities at the management level and in guiding and supervising police discretion at the operations level. This gives the public – public commentators, press editorials and aggrieved citizens – perpetual and legitimate reasons to complain of the sufficiency, efficiency and effectiveness of police service from appropriateness and efficacy of police deployment to correctness and fairness of police discretion. For example, as a police policy – ‘why do the police tolerate vice establishments?’ and as a police discretion – ‘why do the police ticket this car and not that truck?’

Third, police are requested and expected by the public to solve all kinds of personal (e.g. suicide attempt), inter-personal (e.g. roommate disputes), family (e.g. runaway kids) and community (e.g. disorderly neighborhood) problems. Police are constrained by resource and ill equipped by law, however, to satisfy the citizens’ varied wants and needs. For example, the police have no right to order the husband to leave the house so that the police can pacify an allegedly abused wife or order a juvenile gang to go home in answer to a call of public nuisance. In those instances, in order to take care of the citizens’ pressing needs, the police may have to resort to less than legal or extra-legal means, e.g. preferring of a ‘cover charge’\footnote{A “cover charge” is a drum up charge to cover police less than legal action. For example, a} to instill fear in the juveniles to take care of the problem on hand. This might give rise to citizens’ complaints such as ‘why are the police acting beyond the law?’

Police are mainly a reactionary force (e.g. to citizens’ reports of crime or calls of service). As such, the police are called upon to deal with a variety of problems and situations implicating multiple parties, competing claims, contending issues and differentiated concerns. In most cases, the police are not able to provide for an optimal solution by making everyone happy by satisfying all their wants, needs and expectations. The best the police can do is to impose a minimal solution – defusing the situation and securing peace. The citizens’ expectation of the police is otherwise. They want the police, as legal officers and government officials, to bring a closure to the problem, for example ‘Officer, please
ask the crook to give me back the money under the ‘London Gold’ scheme’. Simply stated, police roles and capabilities do not match public expectations. The police most certainly cannot please everybody when they go about their round of solving people’s problem. Some unhappy people and frustrated citizens will find good cause to complain of police partiality and lack of due diligence.

Citizens call upon the police in time of crisis or emergency for help and assistance. They expect the police to restore order and solve the problem on hand while upholding law, justice and morality in the process. In order to achieve his objective as a ‘problem solver,’ the police must first learn to take effective control of a situation. This usually mean being assertive, forceful and dominating. In operational contexts, this might mean using ‘abusive’ language and ‘intimidating’ force appropriate for the situation, circumstances and people, e.g. in hostile environment (e.g. raid of vice establishment), danger prone situations (e.g. stop and search operations) and challenging people (e.g. juvenile gangs). The perceived ‘gratuitous’ use of unreasonable force and abusive authority in unwelcomed public and private space will likely attract complaints.

Police, like all of us, live in their own social milieu and cultural world. According to classical police research, police (mis)conduct cannot be understood away from the police social organization and sub-culture of which the officer is an integral part. The police sub-culture provides the officer with an emotional anchor to define himself and provides a cognitive reference to guide his action. The police social organization structure constrains and influences the police’s action.

Within dominant police sub-culture, the police see themselves as a ‘righteous’ force – in the promotion of law and order and for the defense of justice and morality. This self-image – solemnly mandated by law, actively promoted by the police and consistently reinforced by the public – leads to predictable, if problematic, police behavior.

First, police see things in black and white and right or wrong terms with nothing in between. This exposes the police to charges of intolerance of ideological differences (e.g. political protest), contempt of lifestyle preference (e.g. gay), insensitivity to citizens’ concerns (e.g. more democratic policing) and resistant to changes (e.g. reform of CAPO).

“cover charge” for abusing a police prisoner will likely be “resisting arrest”.

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Second, police do not like to have their institutional and personal authority challenged. As gatekeepers of the law, the police have come to be identified by self and others as the personification of the law. In such a capacity, the police are not used to being challenged, particularly from undeserving citizen, e.g. criminal elements (such as triad members) and marginal groups (such as illegal immigrants). Challenges to the law are considered to be disrespectful – institutionally and personally. The challengers will not go unpunished. The police will not stop at using extra-legal processes and force in facing up to the challenge of legal authority lest the foundation of law and the effectiveness of the police is called into question.

As observed by the Hong Kong Human Rights Commission:

Some police officers expect absolute conformity from the subject citizen and cannot tolerate even verbal challenges… Some citizens suffered from police assault just because they refused to provide their ID to the police officers because of their rudeness… One example is a student of the Chinese University of Hong Kong. This student refused to show the police officers that stopped him to check his ID card. These officers responded by forcing the student to a quiet area. They bought a 5-inch knife from a nearby store and put it in the pocket of the student. The student was then beaten up and was told that he would be accused of possessing an offensive weapon. The student, fortunately, was later released but not until after he was assaulted.\(^{180}\)

Third, most people think of criminals and victims as an abstraction – as people they read about in the newspaper and see in movies. Police see the criminals in a naked light uncontaminated by the press and unfiltered by the courts. Police observe the depravity and deviousness of the crooks in their daily work, live the plight and anguish of the victims and see the damage to and destruction of the community. Police are also exposed to street level information about the background, criminality, culpability and harm of the suspects and criminals that is not readily available to lawyers, judges and the public. Given such policing experience and community exposure, the police are likely to identify criminals as public enemies deserving of no legal rights and due process protection. The criminals can

manipulate the law in fooling the courts but not the police. The police will stop at nothing to get rid of such social ‘scum’ in seeking justice for the crime victims and to protect the community from fear of crime including by fabricating evidence and by coercion to extract confession.

Finally and most significantly, the police are never too insulated from the community they serve. The police are empowered, funded and supported by the community. Police members are drawn from the community and return to the community to live and play after work. Community values and concerns become those of the police. Police misconduct, e.g. mistreatment of criminal suspects and rudeness to citizens, is a reflection of the community attitude, habits and expectations. Hong Kong people are not known for their politeness to people, why should they expect their police to be any different? Hong Kong people do not respect criminals’ rights (research shows that Hong Kong people favor substantive justice over procedural justice) and the police act accordingly. The Hong Kong people get the police they deserve.

Section 7: Who policies the Hong Kong Police

Overview

As pointed out earlier, there have been sustained, repeated and vocal complaints about the HKP lacking in accountability. For example, between 1974 to 1986 (except 1985) complaints against police rose annually with the highest level registered in 1986 at 4532. Between 1988 and 1994 the number of complaints fluctuated between 3084 and 3424. IPCC data reveal that from 1996 to 1998, 50% of the all complaint cases involved threats, assaults, over-bearing or impolite and abusive conduct that made up 64.6% in 1996, 62% in 1997 and 61.7% in 1998.

As a case example, public concerns about prisoners dying in police custody has led Legislative Council Member, Ho Sai-chu, to ask the Secretary for Security, Mrs. Regina Ip, in the Legislative Council on April 21, 1999:

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Will the Government inform this Council of: (a) the number of complaints received by the Complaints Against Police Office about people being treated with violence by police officers during their detention at police stations in each of the past three years, and the number of substantiated cases; and (b) the measures in place to prevent the occurrence of such incidents?  

The critical question that is the main focus of this session: Who is policing our police? 

There are basically five ways or strategies to control police misconduct. They are: administrative control, i.e. CAPO and IPCC; institutionalized political control, i.e. Legco (e.g. questioning); Informal political control, i.e. political parties (e.g. public comments), interest groups (e.g. annual reports) and the press (e.g. investigative reporting); legal control, i.e. international convention, fundamental laws (e.g. Hong Kong Bill of Rights Ordinance), domestic legislation (e.g. Police Force Ordinance), administrative regulations (e.g. Police General Order), criminal prosecution (e.g. Crimes (Torture) Ordinance), and civil proceedings (e.g. action in tort), and professional/peer control, e.g. professional culture and peer pressure. 

There are three major lessons we can draw from this discussion on policing the police. First, unbeknown to most people, there are many ways to police the police in Hong Kong. Second, in spite of what people say (especially the liberals and democrats) the HKP against the police system is very mature, vibrant and relatively effective. Third, the HKP are very responsive to external pressure over complaints of police misconduct, though there is much room for improvement, e.g. adding independent features to the complaints against police system here and there. 

**Administrative control** 

Traditionally, all complaints against the police are investigated by the Complaints Against Police Office (CAPO). CAPO reports to the Commissioner of Police through the Service Quality Wing. CAPO is supplemented by the Internal Investigations Office which, besides its primary supervisory accountability duties, has a secondary role of investigating 

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disciplinary breaches and other misconduct brought to light by other government agencies, e.g. ICAC.

The CAPO Performance Pledge sets out the standard of service the public can expect from the office after making a complaint against police, e.g. establishing a time frame for investigation and informing the complainant of the progress of the case.

Notwithstanding self-asserted good faith efforts and demonstrated due diligence from the HKP, the public shows little confidence in the police (CAPO) investigating itself. Between 1977 and 1986, CAPO had to be monitored by the UMELCO Police Group. In 1994 the Government set up an independent civilian advisory agency, the Independent Police Complaints Council (IPCC) to monitor and review the investigations by the CAPO. (Before, it was monitored by the PCC). Attempts to give the IPCC independent investigative powers to investigate complaints against the police failed in 1997.

The terms of reference of the IPCC include:

1. To monitor and where it considers appropriate, to review the handling by the Police of complaints by the public;

2. To keep under review statistics of the types of conduct by police officers that lead to complaints by members of the public;

3. To identify any faults in police procedures that lead or might lead to complaints; and

4. Where and when it considers appropriate, to make recommendations to the Commissioner of Police or, if necessary, to the Chief Executive.

The ‘Vision, Mission & Values’ statement of IPCC further stresses the need for an open, just, speedy and thorough complaints against the police system.

The monitoring and review process of a citizen’s complaint by the IPCC starts with an investigation report filed with the IPCC by the CAPO. If the report is endorsed it is referred back to the HKP for appropriate actions – inform the complainant, discipline officers and initiate procedural review/reform. If the IPCC has any questions, it can query and request clarification from CAPO. In very serious and complicated cases, the monitoring process may involve the setting up of special review panels, the interviewing
of witnesses by IPCC members and seeking expert medical and/or legal advice where necessary. Difficult and problematic cases will be discussed at IPCC/CAPO meetings.

More recently, in order to convince the public that every citizen’s complaint against the police is thoroughly and fairly investigated, various measures have been introduced to enhance the transparency and fairness of the police complaints’ system. They include the video or tape-recording of CAPO interviews and IPCC members interviewing witnesses – and observing CAPO investigations first hand. In 1996, the IPCC Observers Scheme was expanded to include Lay Observers. Fifty were appointed in July 1998.

Is the IPCC effective in curbing police abuses and stopping citizens’ complaints? The IPCC is slowly making its mark.

First, complaints against the police are dropping – from 3,229 in 1992 to 3,309 in 1996, to 2,939 in 1997, to 2,908 in 1998. The drop in complaints must be viewed in a larger context. Police proactive law enforcement activities have increased during the same period, e.g. the police have increased identity checks, stop and search, and roadblocks. There is an increase in public awareness of their legal rights. The IPCC website shows a dramatic increase in ‘hits’ from less than 10 in January of 1998 when it was first started to a high of 100,000 in July 1999. In all, the decline in complaints coupled with the rise in police activities and the public’s rights awareness show that the police are acting more and more accountably towards the public.

Second, complaint cases not fully investigated due to being withdrawn/not pursuable dropped precipitously from 2,909 in 1996 to 1,768 in 1997. This showed that the police are more aggressive in their investigation, e.g. in following leads and pursuing suspect officers who have resigned instead of taking an easy way out, e.g. by informal disposition.

Finally, and most significantly, the IPCC has shown itself to be an aggressive supervising agency fully deserving of its ‘independent’ name. The number of queries raised by the IPCC with the police regarding their investigations and procedures has risen drastically, adjusting for case intake, from 414 queries (5,052 cases) in 1996 to 324 (4,854) in 1997 to 564 (4,200) in 1998. More revealingly, requests for clarifications on ambiguous points in the CAPO reports and case files rose from 135 in 1996 to 573 in 1998. This led to CAPO changing the results of their investigation 48 times in 1996, 37 times in 1997 and 64 times
in 1998. Two conclusions can be drawn from this set of data: we have an active and effective IPCC.

Though three years of official data does not make for a trend (i.e. more data and research are required), it tentatively appears that the IPCC is doing its job in policing the police. Increasingly, IPCC is an ‘accountability’ force to be reckoned with.

**Political control**

Legco members and political parties have on many occasions registered their strongest dissatisfaction with the HKP abusing its powers and lacking independent accountability. On November 17, 1997 the Frontier Party\(^\text{183}\) wrote a commentary strongly criticizing the HKP and Secretary for Security for suppressing freedom of speech. They specifically criticized the Hong Kong SAR government and the police for not allowing certain segments of the population to display the Taiwanese flag and denying people’s right to gather peacefully to petition the government.\(^\text{184}\) Margaret Ng Ngoi-yee, as a representative of the legal profession, has also been vocal about police abuse of people’s rights.\(^\text{185}\)

The following discussion highlights various ways politicians have tried to police the police. The list is offered to show that the control of HKP misconduct is diverse, vibrant, alive and functioning relatively well – a fact that is not apparent from the virile attacks leveled by the press and critical comments made by politicians. It is certainly not appreciated by the public.

Currently, political pressure is one of the most effective way of reining in runaway governmental powers in Hong Kong, police in particular. There are two kinds of political control, i.e. institutionalized (e.g. legco questioning) and informal (e.g. media).

*Institutionalized political control: Legislative Council members questioning, criticizing or condemning the Hong Kong Police for misconduct*

What could a Hong Kong citizen do if he/she is abused by a police constable in the street? One option is for him/her to seek help from a Legislative Council member. As indicated

\(^{183}\) [http://www.frontier.org.hk/index2.htm](http://www.frontier.org.hk/index2.htm)
\(^{184}\) Frontier. ‘Demonstrators’ bad dreams, Hong Kong people’s sadness,’ *Apple Daily*, November 17, 1997.
in Section 3, ‘Table 6: Origin of Complaints Received for the Years 1994 – 1998’ this option is rarely taken by the public. No research has been done to explicate this phenomenon. This has led some to conclude the citizens of Hong Kong has full faith and confidence in the police as a policing the police agency.

Alternatively a Legislative Council member or the Security Panel may choose to look into HKP policy, practices or actions that have been found to be objectionable. This is much more frequent. Normally, a Legislative Council member is entitled to raise a question or make some comments concerning any aspect of HKSAR activities – including the HKPs policy, practices, procedure and individual officers’ action – in the Legislative Council. Otherwise, the HKP are required to answer the Legislative Council member’s question by and through the Security Bureau. Alternatively the Security Panel can discuss a police matter with the HKP via the Security Branch. For example, the following is a typical dialogue in a Security Panel meeting:

Mr. Albert Ho said that he had received quite a number of complaints on the advice given by the report room staff on cases related to fraud, transactions with foreign exchange companies, alleged harassment and intimidation by private developers toward residents in the New Territories, etc. Very often the report room staff would advise the complainant that the Police could not deal with these cases because they were non-criminal matters. Mr Ho was concerned that the improper handling of such cases would undermine the public's confidence in the Police. ACP/SQ(Ag) said that should any reported cases be non-criminal, the report room staff would advise the complainant where to seek appropriate assistance. The relevant information pamphlets would also be made available to the complainant.

Informal political control: Political parties publishing public reports critical of the Hong Kong Police

Political parties have an important role to play in holding the HKP accountable for their overall performance including dereliction of duty and misconduct. For example, the Democratic Party has long championed for the right of freedom of speech and association
in accordance with international conventions. In 1999 the Democratic Party released a report criticizing the HKP for inhibiting the rights of people to assemble peacefully. The report reads in part:

D. Right of Peaceful Assembly (Article 21)

8. People's right to peaceful demonstration is strictly and unnecessarily restricted – A violation of Article 21.

Case 1.

On June 30, 1997, about 30 demonstrators marched to the Convention Centre to voice grievances against the Chinese leaders and to call for the Chinese leaders to step down. Voices of demonstrators were covered by music played by the police so that their protesting voices could not be heard.

In publishing such a report, it is hoped that the public can be informed and their political apathy abated. It also act as an annual public audit of government/police performance.

*Interest groups issuing public statements or reports critical of Hong Kong Police*

Interest groups such as Human Rights Monitor and Voices of Democracy often act as self-appointed guardians of public trust – from freedom to justice to human rights. In so doing, they become effective watchdogs of the HKSAR government. These groups provide well-researched position papers and persuasively argue public commentaries that are critical of HKP performance. They even have dedicated staff working on selected police issues including trend and incidents of police abuse. In order to promote their cause, the various interests groups appeal to various sectors of the domestic or international community for help to rein in police misconduct.

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186 Legco’s institutional political role in policing the police you should read Kathleen cheek-Milby, *A Legislature Comes of Age* (Hong Kong: Oxford University Press, 1995)
Appealing to international community

In 1993, the Human Rights Commission filed the *Hong Kong Human Rights Report* (1993).\(^\text{187}\) A specific section of the Report was devoted to the police and disciplined forces. The report raised concerns with the following incidents and issues:

The Hong Kong Police used excessive and illegal force in the execution of its duty. ‘In February 1993, during a police operation, two off-duty customs officers, for no reason, were handcuffed and beaten up by police in a restaurant and at the police station respectively. The two victims were beaten separately by about ten policemen using electric torches and batons. They were cuffed and kicked into semi-consciousness. They were charged with ‘resisting arrest, obstructing police carrying out their duties and assaulting police officers’.

The Hong Kong police engaged in search and seizure without warrant or authority. On 23 April, 1993, a massive door-to-door search was carried out in the Ching Yan temporary housing area in Ching Yi Island. The police did not apply for any search warrant, as required by Section 50(7) of the Police Force Ordinance, for this operation that affected more than two thousand residents in the housing area. *(Hong Kong Human Rights Report 1993)*

Appealing to the HKSAR government authority

On February, 27 1999 the Director of Human Rights Monitor in Hong Kong issued an open letter to the Secretary for Justice. The letter complained to the Secretary for Justice that she has failed in her judgement and duty in not prosecuting police officers for torture under the Crimes (Torture) Ordinance (‘the CTO’). The HKSAR had also failed to report accurately to the United Nations (in the HKSAR Administration’s Report to United Nations under the International Covenant on Civil and Political Rights (ICCPR) in concluding that there was ‘no reasonable prospect of securing a conviction’ under the CTO) against the abusive police officers, presumably because it considered the pain inflicted was not severe enough. The failure to prosecute the officers for torture ran counter to the facts in the case. In this regard, the court judgement to the criminal trial of the police officers shows that:

\(^{187}\) http://is7.pacific.net.hk/~hkhrc/
Police officers handcuffed the victim, took him to an empty refuse room in the building in which he lived, and ordered him to lie on his back on the floor. One of the officers then sat on the victim’s pelvis and another on his shins while he was punched in the chest.

The officers then stuffed a shoe in his mouth and inflicted a form of water torture that involved pouring water into his ears, nose and mouth until he found it difficult to breathe (while two of the officers sat on him).

Next the four officers carried him to the railings in the refuse room, which was on the 16th floor, and threatened to throw him to his death. It was at this point that the victim agreed to cooperate with the officers, but the torture continued.

The officers returned the victim to his former position of lying on the floor of the refuse room. One of the officers pressed his thumbs into the victim's neck, while another officer poured more water into his nose and mouth causing him to lose consciousness.

The Hong Kong Human Rights Monitor concluded by observing:

In light of the fact, the ‘Human Rights Monitor urges the Administration … to state publicly – and in particular to inform the disciplined services – that the test it has previously applied for prosecutions under the CTO has been reconsidered and that in future, cases of a similar nature will be prosecuted under the CTO.

In filing this report, the Human Rights Commission openly challenged the HKP and Hong Kong Government’s decision not to charge the officers with torturing of prisoners, as prohibited by Article 28 of the Basic Law.  

Appealing to the public

On March 27, 1999, Hong Kong Voice of Democracy issued a public statement concerning two suspects dying within one month in mysterious circumstances while in police custody.:  

188 “The freedom of the person of Hong Kong residents shall be inviolable…Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited.”
(The first case involved a mainlander, Yang Li-jun, 27, who) Was suspected to be involved in a petty theft case and arrested by police two weeks ago. When brought to the court, Yang complained loudly in Mandarin that the police beat him while in custody ... According to the police, Yang died at 2:00 a.m. March 24, 1999… Yang is the second suspect who died in mysterious circumstances in a week. Another young suspect, Li Ka-ming, aged 18, was found dead in police custody in Sheung Shui police station on March 20. It was reported that he was found with bruises all over his body and one of his testicles was severely injured. The death of both suspects has caused concern over the use of violence by police. Human rights activists noted that the present mechanism for complaints against police is severely faulted because of the lack of independent monitor. 189

In so doing, the Hong Kong Voice of Democracy was trying to raise the consciousness of the Hong Kong people to take affirmative steps against police brutality, to seek change to the civilian review police system and to admonish the HKP that they are being watched.

Professional bodies keeping a vigilant eye on the Hong Kong Police

Certain professional bodies – the Hong Kong Bar Association and the Hong Kong Journalists Association – have vested interests to protect against their professional values and practices being compromised by police misconduct. When the Hong Kong Bar Association is of the opinion that the rule of law has been eroded by police misconduct, they will voice their objection. For example, on August 10, 1999, the Hong Kong Bar Association published its ‘Bar’s Column in Hong Kong Economic Times’ entitled ‘Coerced confession or guilt deserved’:

I remembered years ago I was handling a criminal case. My client wrote a confession statement in the police station. He told me that the statement was not written voluntarily. I asked him where is the proof. He asked me to string up the first character of each of the sentences and then I will understand. I followed his instruction and obtained the following sentence: ‘All my confession is not

voluntary.’ … It is clear that law enforcement officers abuse their power and force suspect to confess to crimes. (http://www.hkba.org/bars-column/0810.htm)

Likewise, the HKJA will voice their objections when they think that the freedom of the press has been attacked or restricted by the HKP. For example in their 1999 Annual Report, Joint Report of the Hong Kong Journalists Association and Article 19 (June 1999), the HKJA had this to say about the HKP:

Are the police being politicized? … Another disturbing trend is the policing of sensitive events, for example visits to Hong Kong by Chinese leaders. One significant example took place during the September 1997 World Bank and International Monetary Fund annual meetings, which were attended by the then Chinese premier Li Peng and the then vice-premier, Zhu Rongji. Police restricted demonstrators to small areas far from the conference venue, and in one incident they hemmed in a small group of protesters, vastly outnumbering them. Several arrests were made during that incident. Journalists were also confined to press areas. One overseas journalist complained to the HKJA that she had been mistreated and that her ability to perform her journalistic duties had been seriously impaired.

Retired judicial officials commenting on police misconduct exposed the Hong Kong Police to ridicule

Retired judges are respectable members of the Hong Kong community. Sometimes these retired judges see fit to publish their experiences on the bench that are critical of the HKP in part. For example, one such retired Chief Magistrate wrote:

Police Force Ordinance Section 52 provides that the police can detain a person for inquiry up to 48 hours. In most circumstances the police would like to hold people beyond the law by making numerous attempts to adjourn the hearing. Meanwhile, the poor defendant lingers in jail.190

Government reaction to public opinion/political pressure

At this juncture, one might be curious to find out whether the above political measures have any impact on the HKP. More particularly, whether and to what extent the above measures are effective in policing the HKP. The simple answer is nobody knows. This is because their efforts cannot be effectively measured with specified outcome indicators, e.g. reduced complaints against the police with CAPO. If effectiveness cannot be measured by output, it can certainly be reflected by input indicators, i.e. how many questions and reports are directed at the HKP misconduct, and process indicators, i.e. how timely and thorough the HKP response to public reports.

The Security Branch always answers the Legislative Council Members’ question in a most responsive and detailed manner. For example on April 21 1999, in answer to Legco member Ho Sai-chu’s question on the measures in place to prevent the occurrence of such incidents of ‘people being treated with violence by police officers during their detention at police stations?’ Secretary for Security, Mrs. Regina Ip, replied in writing as follows:

(b) We believe that the provision of proper training and education to Police officers is the most effective preventive measure. All Police officers are trained to treat all persons as individuals with humanity and respect and to act within the law at all times. The training courses cover the ‘Rules and Directions for the Questioning of Suspects and the Taking of Statements’ that was published in 1992 and the relevant disciplinary codes stipulated in the Police Force Ordinance (Cap. 232), Police General Orders and Headquarters Orders…

In addition, to avoid possible abuse of powers, the Government is implementing a number of proposals made by an inter-departmental Working Group on a Law Reform Commission Report on Arrest. Since February 1999, the Police have formalized the current practice by appointing a ‘Custody Officer’ and a ‘Review Officer’ in each Police Station to ensure detainees are treated properly and detained no longer than required. A total of 60 video interview rooms have been provided in all major divisional Police Stations
since the end of 1998 with a view to increasing the transparency of the process of questioning suspects ...\textsuperscript{191}

The HKSAR government in general and the Security Bureau in particular are very sensitive to public concerns and are quite forthcoming with reform plans in the face of police scandal or public outcry.

For example, an 18-year-old man was found unconscious in a cell in Sheung Shui Police Station and later died in North District Hospital. He had sustained injuries to one of his testes and bruises to several parts of his bodies. The Police spokesman denied that the deceased suffered any external or internal injuries that could have led to his death. ‘There is no apparent injury on his body save for (an) abrasion on his face, the possible cause of which is unknown. However, the injury is superficial.’ The Commissioner of Police called for an immediate and thorough investigation.\textsuperscript{192}

For example, when a person was shot by a police officer in the Report Room, the Security Bureau immediately made this report to the Legislators:

1 ‘The Government is fully aware of the community concern over the recent shooting incident that occurred inside a Police station. The incident is being investigated thoroughly and impartially. The Police officer arrested in the case has been charged with murder. There is likely to be an independent death inquest on this case in due course. This paper briefs Members on Police procedures and safeguards on the handling of suspects, officers under stress or with psychological problems and the counseling services available to them. … Handling of suspects …

2 Both law and Police internal orders and guidelines govern the questioning and handling of suspects by police officers. In addition, the Secretary for Security had promulgated the Rules and Directions for the Questioning of Suspects and the Taking of Statements in October 1992 for all law enforcement officers including the Police to

\textsuperscript{191} ‘LCQ 8: Complaints received by CAPO’ HKSAR, Press Release, April 21, 1999.
follow in questioning suspects and taking statements. A copy is at Annex.

…Improvements to Police procedures in handling suspects …

3 As part of the Administration’s on-going effort to improve the law enforcement system, we announced in June 1997 the decision to implement over the next three years a package of 51 improvement measures proposed by an inter-departmental working group on the Law Reform Commission Report on Arrest. The improvement measures aimed to further enhance the protection of an individual’s rights while ensuring law enforcement effectiveness.’

Legal control

The HKP are subjected to four interlocking kinds of legal control: international conventions, fundamental laws, domestic laws and administrative regulations. Before we go further, it should be realized legal control over police activities has its shortcomings.

The best virtue of rule of law is that it provides uniform justice for all. The worse quality of rule of law is that one rule is made to fit all types of people and different circumstances. The tension between these two opposite positions – universal rule (justice) vs. particular circumstances (individual justice) - finds its way into the regulation and control of police misconduct by fixed and universal rule. Hereunder are some issues to think about as we try to decide how best to regulate police (mis) conduct by using penal law or administrative rules:

First, rules, to be effective, must be clear, concise and simple. The situations – consisting minimally of people, events and context – confronted by the police are often very confusing, complex and dynamic. There is often not one right or wrong answer to a problem on hand, as much as there are a number of better (optimal) or worse (inadequate) solutions. How then can we pass judgement on a police officer’s decision or conduct based on a fixed rule, especially on hindsight? It is difficult, if not impossible. That is also why seasoned police officers will tell you to forget the rule and use your common sense!

Second, rules, to be effective, must be consistently applied. If this principle is used, most of the officers will be punished for having abused their discretion or being inconsistent – or both – everyday. Law enforcement is a discretionary exercise of best judgement under the circumstances, starting with the fact that there are too many laws to enforce and very
few police resources. Selective enforcement of the law is a reality of police work. However, using discretion to enforce law is in direct violation of one of the most basic principle of rule of law, i.e. full enforcement of the ‘letter of the law.’

Third, rules postulate one set of values to be promoted or one kind of interests to be protected. In real life, there are many values and interests – from person to person, community to community, place to place, context to context, situation to situation. Balancing conflicts and interests of all concerned is an almost impossible task yet the police is asked to do so everyday, all supposedly within the confines of the law.

Lastly and most significantly, police rules and laws set down the basic minimum of what the police should not do. They do not tell the police what they should do and how they should go about doing it. The officer is then left to his own devices should – or when – he makes a mistake.

(1) International conventions

Hong Kong SAR and the HKP is governed by international conventions by virtue of the Basic Law. For example, the International Covenant on Civil and Political Rights (ICCPR). The Joint Declaration between the United Kingdom and the People's Republic of China in 1984 on the future of Hong Kong contains the following provision under Annex I, Part XI. ‘The application to the Hong Kong Special Administrative Region of international agreements to which the People’s Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government … The Central People’s Government shall, as necessary, authorize or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements.’ This means that Hong Kong Police powers, in legislation or practice, must conform with International conventions, such as Covenant on Civil and Political Rights (ICCPR) or subject to challenge in a court of law. Since the Joint Declaration, the Bill of Rights Ordinance has been adopted to secure much of the rights guaranteed by the international conventions. Also, when the Law Reform Commission consider the reform of law affecting police powers in Hong Kong, they will take into
account the international conventions, e.g. Law Reform Commission, Topic 25, *Arrest* (1992)

(2) **Fundamental laws**

The rights of citizens are guaranteed under the Basic Law of the Hong Kong Special Administrative Region (promulgated on 5th April 1990) and Bill of Rights (Hong Kong Bill of Rights Ordinance (Cap 383) and other Domestic Laws of Hong Kong, e.g. Police Force Ordinance and Crimes (Torture) Ordinance (Cap 427) and Police Administrative rules and regulations

(3) **Police General Orders, 1992 Rules and Directions for the Questioning of Suspects and the Taking of Statements**

From time to time the Legislative Council members or the Hong Kong government will take the initiative to introduce legislation to supervise the police better, e.g. Independent Police Complaints Council Bill of July 1996 tabled by James To.

The Law Reform Commission was first established by the then Governor Sir Maclehose ‘to report on such of the laws of Hong Kong as might be referred to it for consideration by the Attorney General or the Chief Justice.’ For example, on November of 1981, the Law Reform Commission was asked to consider ‘Confession Statements and their Admissibility in Criminal Proceedings.’ This led the Law Reform Commission to propose:

> There should be a clear statement of law to the effect that law enforcement officers are legally entitled to question any person whom they feel may be able to provide information in connection with the investigation of any offence or suspected offence provided always that this does not extend in anyway the powers of arrest and entry.\(^{193}\)

(4) Criminal prosecution

Criminal prosecution has a salutary deterrent effect on HKP officers, who are obligated to obey the law. Court judgements give details of police abuse of power that are proven in a court of law. They have an educational effect for the public and provide guiding principles for the HKP. For example: In the case of HKSAR vs. Chuen Lai-Sze and 3 Others, MA 470/98, 26 September 1998, four officers of Special Duty Squad were found guilty of assaulting a drug offender causing actual bodily harm. The judgement in the case provided extensive discussion of what happened and why the officers ran afoul of the law. (HKSAR vs. Chuen Lai-Sze and 3 Others, MA 470/98, 26 September 1998).

At this juncture, it is worth while to visit the issue whether criminal prosecution is a good way to control the police. There are the following considerations:

First, it is difficult, if not impossible, to collect credible evidence against the police, especially in minor cases. HKSAR vs. Chuen Lai-Sze and 3 others above was proven by forensic evidence – not testimony. The reasons are simple: First, complainants, usually criminals or illegal immigrants, are not credible in a court of law, i.e. they can be impeached as a result of their background. Their testimonies are suspect because they have a reason to lie. Most criminals try to build a defense against the police by fabricating police abuse allegations. Second, police-citizens encounters usually happen in private, i.e. away from the public and inside police establishments. In the first instance, it is always a case of police vs. criminal. In the latter, it is always a case of police as a secretive group vs. the complainant as an individual. Third, even if there is medical or forensic evidence, that evidence is not conclusive of police abuse since injury can result from resisting arrest.

If one is to examine the IPCC Annual Report carefully, one will find that in some instances the IPCC just ‘chose’ to believe the complainant more so than the police, if there is a weight of evidence issue, e.g. one against one!

Second, the burden of proof in a criminal prosecution – beyond a reasonable doubt – is very high. This is particularly the case in a criminal prosecution of the police. If there is the slightest conflict in evidence, the court and jury will more than likely believe the
police officer. The three Public Opinion Surveys by the HKP have conclusively shown that the majority of the public viewed the police favorably.

Third, it is difficult if not impossible to convince the jury or judges that the police ought to be punished when they are doing their job, i.e. fighting against the ‘bad guys’. Conversely, most people believe that even if the police have been abusive, the criminals were ‘asking for it’.

Fourth, the Justice Department would not be interested in prosecuting a police officer for doing his job unless it is an extreme case and there is clear and convincing evidence. The Justice Department wants to maintain a good working relationship with the HKP. There are also other more effective ways in dealing with police misconduct, i.e. by internal discipline.

(5) Professional and peer control

One of the distinctive marks of a true profession is the ability to formulate self-imposed professional standards to be enforced by peer discipline, e.g. Hong Kong Bar Association has a Professional Code of Conduct as does the Medical Association in Hong Kong. For example, ‘It is the duty of a every barrister … (c) to observe the ethics and etiquette of his [sic] profession…’ (http://www.hkba.org/code-of-conduct/home.htm)

However, the HKP do not boast such a code of conduct, other than those disciplinary rules of ‘conduct unbecoming’ or ‘conduct bringing the Force into ill repute.’ This is not strictly speaking a common code of standards agreed upon by the practitioners of a true profession as much as they are disciplinary rules imposed by the higher authority in a quasi-militaristic organization steeped in an honorable tradition. This is one of the many reasons why the HKP cannot claim to be a true professional organization.

There is very little discussion in public and virtually no literature about the nature and impact of professional standards or peer control in the HKP. Suffice to say that peer pressure is important in every organization, the code of silence speaks to its continued virility, vitality and potency in the HKP. For example, in spite of thousands of cases of complaints against police abuse every year, there are few complaints by officers against officers. There is a good reason for officers to support each other against outsiders. (1) Police everywhere are distrustful of the public. “The public do not understand police
work.” This is police cynicism. (2) Police everywhere needs their colleagues to support them when they are confronting dangerous situations. This is police solidarity. (3) Police rarely if ever speak ill of each other in public. This is police culture of silence.

If we can harness the positive aspects of peer control, we need not resort to administrative or legal control to police the police. For example, peer pressure in Hong Kong Police is supportive of heroic deeds in the protecting of public’s live and limb even if that means risking once life beyond the call of duty.

HKP do share certain dominant values. This is the root of peer pressure, e.g. worship of Guandi. Guandi worship is prevalent in civilian life of Hong Kong, particularly in some sector e.g. Triad. Traditional, though less true today, to the HKP Guandi represents police virtues at its best. He is the personification of the best of the Hong Kong Police have to offer: loyalty, integrity, compassion and bravery. Thus in the police, the worship of Guandi takes on a specific symbolic meaning and serve multiple functional purposes. It reinforces police solidarity as it projects proper police values – police fearlessly seeking after factual truth and substantive justice – within and without the department.

In light of our understanding of police peer pressure in general and Hong Kong Police identification with Guandi in particularly, it is interesting to ask whether the police culture as reinforced and manifested in worshiping Guandi will allow HKP officers to knowingly frame an upright citizen for a crime or privately tolerating the torturing of a law abiding and respectful citizen? Given their respect for Guandi, a personification of justice, it is unlikely that they will do so. However, Guandi justice might mean at time that C.I.D. officers will use extra-legal means to illicit confession of guilt from the suspects. Guandi justice protects the innocence as it punishes the guilty, with fairness and impartiality.

On a larger compass, there is a chronic debate whether people should disobey an unjust law, especially for the betterment of mankind. Under what circumstances should people engage conscientious objection and civil disobedience to wrongful government action and immoral state laws. In this regard, the question is whether as a police officer one is obliged to obey law (no matter how unjust the result) or follow ones own conscience and a higher morality (when they are clear and unambiguous). When this debate is conduct with Guandi in mind, the preponderance of evidence is in favor of protecting the society,
i.e. punishing the guilty and vindicating the victim, and not to obey “trivial” and “obstructive” procedural rules; which according to the common wisdom is there to allow most guilty to go free.

Section 8: Complaint against the police system: CAPO and IPCC

Varieties of complaint against the police system: CAPO and IPCC

Complaints against police systems take many forms. They are distinguished by their relative independence from the police in the processing and disposition of citizen complaints, in terms of reporting, investigation, adjudication, discipline, punishment and review. Alternatively, complaint systems can be classified based on how much the public or citizens are involved in overseeing the complaints against the police system or process.

What is meant by independence:

The issue of ‘independence’ is extremely complex and controversial. One of the basic purposes of citizen oversight is to provide an independent review of citizen complaints – in the sense of being independent of the internal police department procedures. Independence is designed to enhance the credibility or legitimacy of the complaint process in the eyes of the community. (Albuquerque City Council, 1996)

Ultimately, what is and is not an independent police complaint system rests on how much it is controlled by civilian staff, executive directors and a civilian review board. The determining question is whether, and to what extent, the public perceived it to be independent in fact from the police as demonstrated by the autonomous leadership of the review board or executive, independence of the staffers and fairness of the results.

Five types of complaint against police system can be readily identified:

1. The first system is one that is organized, staffed and operated completely by civilians.

2. The second system is one in which complaints are investigated by the police but subjected to civilian review.

3. The third system provides an appellate review of failed citizen complaints. Individual citizen complaints are first investigated and disposed of by the police department. If
the complainant is not satisfied with the final decision of the police chief executive, he or she is allowed to appeal the adverse decision to the citizen review board.

4 The fourth system is an auditing system. The civilian review board provides random audit of the police department’s complaint process.

5 The fifth type of system is a police internal investigation system with no civilian involvement or review.

Table 9: Types of complains against the police system: role and functions; advantages and disadvantages

<table>
<thead>
<tr>
<th>Types of Complaint Against the Police System</th>
<th>Extent of police Vs Civilian involvement</th>
<th>Advantage</th>
<th>Disadvantage</th>
</tr>
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<tbody>
<tr>
<td>Civilian investigation</td>
<td>Civilian external investigation, adjudication and punishment</td>
<td>Truly independent of police.</td>
<td>Quality of investigation affected by the competency of staff, availability of resources, and delegation of legal authority (subpoena).</td>
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<td></td>
<td></td>
<td>Allow citizen representatives to get involved with all phrases of police oversight.</td>
<td>Difficult and timely investigation.</td>
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<td></td>
<td></td>
<td>Credible with the public.</td>
<td>Affects police morale.</td>
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<td>Consistent with democratic value.</td>
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<td>Police investigation – civilian review</td>
<td>Police internal investigation and adjudication but Making available</td>
<td>Provides some public participation.</td>
<td>No civilian investigation, less independence.</td>
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<td>Police investigation – civilian appeal</td>
<td>Police investigation – civilian audit</td>
<td>Police internal investigation (may or may not involve investigation, adjudication and punishment)</td>
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<td>subjected to review and recommendation for punishment</td>
<td>Offers limited oversight to dissatisfied complainants.</td>
<td>Speedily, economical and comprehensive investigation and adjudication. Understanding of police problems and issues.</td>
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<td>police information for the public.</td>
<td>Oversight depends on appeal, much less effective as a supervisory device.</td>
<td>Not independent of police – conflict of interests, police culture.</td>
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<td>Depending on police leadership, less effective.</td>
<td>Depending on perception of the public, much less credible.</td>
<td>Confidential data of police and others might be compromised. Audit team might be co-opted by the police.</td>
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<td>Police internal investigation, adjudication and punishment, subjected to civilian appeal</td>
<td>Police internal investigation, adjudication and punishment, subjected to civilian audit.</td>
<td>Provides routine monitoring of police procedure and practices. Open up the police internal process to public view through audit report. Allow public debate of police policy issues.</td>
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Hong Kong complaint against the police in historical perspective

Prior to the 1960s public complaints against police were rare though police misconduct was common, universally known and generally accepted as part of HKP culture and practice. The political relationship between the HKP and the people was not the same then (ruler vs. ruled) as it is now (service agency vs. client). In 1963, a man called Chan Kin-kin lodged a complaint in England alleging that he had been subjected to police brutality while being detained by the HKP. The case led to the appointment of Mr Justice Blair-Kerr who led a commission of inquiry that made a number of recommendations for the improvement of police complaint procedures. From 1963 onward, the Commissioner of Police Annual Report started to include a section devoted exclusively to the subject of complaints against police. The Police Annual Report in 1967 was the first to classify complaints against police into six categories, namely ‘Assault; unnecessary exercise of authority; overbearing conduct; use of foul language; neglect of duty; improper action.’

Before 1974, complaints against the police were investigated by Chief Inspectors in charge of the respective formations. All complaints were investigated internally and disposed of administratively – criminal investigation and external review were unheard of. The District Commanders would review the investigation report and its findings and recommendations. In 1974, CAPO was established, and with it a ‘centralized’ (a HQ function), ‘independent’ (of the formations) and ‘institutionalized’ (dedication of functions) complaints against police system was born.

In late 1976, Mrs. Elsie Elliot launched a campaign against police brutality, complaining of a total lack of effective supervision over police conduct, if not even a conspiracy of silence in the face of chronic police misconduct. The resulting public pressure led to the formation of the UMELCO Police Group in 1977. The group was a non-statutory ‘civilian review’ body appointed by the then Governor with the Attorney General as a co-opted member. For the first time CAPO was placed under the ‘civilian’ monitoring of UMELCO (later renamed as OMELCO, referring to the Office of the Members of the Executive and Legislative Councils) Police Group.
Notwithstanding the establishment of the UMELCO Police Group (or perhaps because of it?) the HKP saw a sharp increase in complaints against the police between 1978 to 1984, i.e. from 2,264 in 1978 to 4,398 in 1984. The Government set up a working party to review the monitoring role of the UMELCO Police Group.

In 1986 a more permanent ‘civilian review’ body, the Police Complaints Council (PCC), replaced the UMELCO Police Group. The PCC had a chairman and two vice-chairmen drawn from UMELCO with at least eight of its members drawn from a pool of active non-official Justices of Peace.

The PCC was not a UMELCO body. From the very beginning the PCC had its own independent existence and separate identity, i.e. it had its own budget, staffing, charter and mission. PCC was staffed by a secretariat and operated as a separate government agency. Members of the PCC continued to be appointed by the Governor. The Attorney General or his representative (ceased to be a member since 1996) was appointed as an ex-officio member. In 1989 the Commissioner for Administration Complaints (now renamed as the Ombudsman) was nominated as an ex-officio member of the PCC.

In the late 1980s and early 1990s, the political-economy of Hong Kong changed drastically. After the Joint-Declaration was signed making way for the eventual return of Hong Kong to the PRC, a so-called ‘transition period’ began to transfer sovereignty and administration over Hong Kong to the PRC. The ‘transition period’ affected Hong Kong people in drastic ways. It created a confidence crisis in Hong Kong. Particularly, there was great concern with the loss of freedom and erosion of rule of law in Hong Kong after 1997. There was genuine anxiety and widespread fears that the HKP might be used as an instrument of the PRC government to impose political domination over Hong Kong (Hong Kong Voice of Democracy 1998).

It was under such political circumstances that the British government, with the help of her last governor Chris Patten, spearheaded fundamental political and legal reform in Hong Kong. Patten introduced more democratic participation in the political system and promoted the rule of law with the people. For example, various structural and relative permanent elements were established to protect the human rights of Hong Kong people after 1997, starting with the introduction of Hong Kong Bill of Rights Ordinance (Cap 383) in 1991. Article 1: Entitlement to rights without distinction ‘
'(1) The rights recognized in this Bill of Rights shall be enjoyed without
distinction of any kind, such as race, colour, sex, language, religion, political or
other opinion, national or social origin, property, birth or other status.'

It is in this context in 1993 that Legislative Councilor Mr. James and other ‘progressive’
human rights groups alleged that the PCC was not working. They pointed to the
‘persistently high’ complaints rate and ‘unacceptably low’ substantiation rate as evidence
of police misconduct running amok. They were also of the opinion that the police
complaint system was not functioning as it should.

In December 1994, PCC was renamed as IPCC to make it more independent, autonomous
and powerful. In July 1996, a further move was initiated to enhance of the effectiveness,
credibility and legitimacy of the IPCC with the introduction of an Independent Police
Complaints Council Bill (the Bill). The Bill sought to turn the IPCC into a statutory
monitoring body of police misconduct with enhanced oversight powers. The Bill
empowered the IPCC to:

- Refer complaints back to CAPO for re-investigation,
- Allow selected public members to sit-in CAPO investigation proceedings through
  scheduled or surprise observations,
- Establish special panels to monitor serious cases,
- Submit its reports to the Governor on an annual basis, and
- Lay its annual report before the Legislative Council for scrutiny.

The primary role of the IPCC, however, remained that of reviewing and monitoring (i.e.
performing a civilian review role) and not investigation and discipline (i.e. no complaint
investigation/adjudication functions). Thus, no independent investigative power was
conferred.

There were a lot of heated debates over the merits and adequacy of the Bill in taming the
police. Some of the biggest concerns expressed by the Legco members were that the
CAPO system was neither independent of the HKP nor transparent to the public, i.e. it
lacked credibility and legitimacy. There were a number of counter proposals, which
ranged from appointing a civilian head for CAPO to a giving the IPCC investigative
powers, to improve the effectiveness of the civilian oversight system and process. During the first and second readings of the Bill, a number of motions calling for significant amendments to the Bill were tabled. Some amendments were actually passed. However, the government considered the Bill with such amendments unacceptable. The government’s argument was that the amendments to the Bill called for fundamental changes to the existing police complaints system. The Bill was finally withdrawn by the Administration during its third reading on 23rd June 1997 (one of the last Legco Meetings before 1st July 1997).

Notwithstanding the withdrawal of the Bill, the Administration undertook steps to reform the IPCC as far as possible along the lines and in accordance with the provisions that had been accepted during the Committee Stage. These included:

(a) The widening of the definition of ‘witness’ to include any person whom the IPCC considers would be able to provide assistance;

(b) The IPCC may request CAPO to submit an interim report on the progress of the investigation of a complaint within six months from the date of the request; and

(c) IPCC members may, with the consent of the Commissioner of Police, interview any witness after an interim report has been submitted in connection with a complaint. The Commissioner shall give his consent for the interview unless he is of the opinion that such interview would likely prejudice the investigation of any crime or complaint.

**CAPO**

In terms of legal authority and institutional arrangement, the Commissioner of Police charges CAPO with the responsibility of investigating all complaints against police. Legally speaking, CAPO is not a statutory body with independent powers (like the IPCC) but an administrative organ reporting to the Commissioner of Police through the chain of command. Thus the Commissioner of Police has the ultimate authority and sole prerogative (literally unlimited powers at his pleasure) in determining whether, to what extent, and how CAPO should operate, e.g. what kind of cases are to be investigated by CAPO.
For example, Chief Superintendent David Thomas was found guilty by the CAPO of abusing his authority in sending police officers under his command to harass a fellow social club associate at her school in January of 1999. The Commissioner of Police declined to discipline the officer but referred the case to the Civil Service Bureau for final disposition instead. (Lee 1999b, and Lee n.d.) This case shows clearly that the Commissioner of Police has the power to accept or not accept the CAPOs investigative findings and recommendations.

However, remember that in practical terms the effectiveness of CAPO as a check against police misconduct is determined less by a single person – powerful though the Commissioner of Police obviously is – as it is shaped by the confluence of many personal, institutional, organizational, political and social forces. Viewed in this light, the determination of the Commissioner of Police is always subject to the influence of entrenched institutional forces (e.g. competition between various factions) as informed by dynamic interplay between organizational factors (e.g. maintaining loyalty vs. promoting accountability) within the HKP. It goes without saying that the Commissioner of Police has to take into account the political pressure and public opinion of the wider community at that time.

Organizationally speaking, CAPO is a division of the Complaints and Internal Investigation Branch. The Division is commanded by a Chief Superintendent who reports directly to the Assistant Commissioner of Police (Service Quality). A Senior Superintendent commands CAPO. The ranking structure of the HKP precludes CAPO from being effective against very senior officers, e.g. Chief Superintendent and above. Disciplining Chief Superintendent grade officers necessarily requires the personal attention of the Assistant Commissioner and the approval of the Commissioner. Investigation of a Commissioner grade officer must be approved by the Commissioner himself. It is appropriate to ask whether and to what extent Command influence and

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194 One of the salient characteristics of Hong Kong Police is the “horse stable” system of patronage. One has to belong to a certain “stable” formed around certain “big brother” (“da lo”) to have his/her career protected. This is what is going on with the fight over who is going to the next Commissioner of Police, after Hui. The “gweilo” (expats) have their own “stable” system. For example, an SIP who worked for the CAPO has a fall out with his superior officer, an SP. He has to seek the intervention of his “da lo” (an SSP) to get him an immediate transfer to another CID post.
personal connections might influence the course of a CAPO investigation? This goes to the credibility and legitimacy of CAPO to be discussed in due course.

In terms of staffing, CAPO has ten investigation teams and three Headquarters teams. Each team is responsible for handling complaints from two to three formations. Besides investigating complaints, the investigation teams also monitor complaint trends closely, e.g. noting any increase in neglect of duty cases, in order to devise timely, appropriate and proactive strategies to deal with emerging problems affecting each formation – a kind of community policing/problem-oriented policing at work.

Practically, the staffing arrangements at CAPO will influence its perceived independence and actual effectiveness. Since all officers within CAPO are subject to internal transfer, i.e. there is no permanent CAPO post, CAPO officers can expect to be transferred back to regular policing work eventually. As the Hong Kong Human Rights Commission observed:

> Officers working in CAPO come from the police force, and will return to their posts in the future. After serving a few years, they will leave CAPO and return to the normal hierarchy. The work in CAPO is acknowledged as temporary and they remain police officers. Structurally and psychologically, the investigators in CAPO are attached to the police establishment and impartiality is not easy to maintain. (Hong Kong Human Rights Commission 1993)

This raises the issue of whether CAPO officers can ever be expected to act independently of their mother organization upon which their career depends (e.g. command influences) and isolate themselves socially from their fellow officers whom they have learned to rely on emotionally (e.g. peer pressure).

Section 26-01 of the Police General Orders defines ‘Complaints Against Police’ as a complaint made by a member of the public against the conduct of a member of the HKP in the execution of his official duties, or when on duty, where the complainant is an aggrieved party to the alleged misconduct, but does not include:

(a) Traffic complaints;

(b) Complaints made against an officer in his personal capacity, or when off duty, unless such complaint refers to some misconduct connected with his official authority; and
(c) Complaints against police standards, procedures or methods unless the complainant is
by an aggrieved party.

CAPO categorizes complaints as follows in ascending order of seriousness:

(a) Police procedures;

(b) Overbearing/impolite conduct/abusive language;

(c) Unnecessary use of authority;

(d) Neglect of duty/improper action;

(e) Threat;

(f) Fabrication of evidence;

(g) Other offences;

(h) Assault.

In terms of procedure, minor complaints related to the first two categories are referred to
the parent formations of the complainees for investigation. The investigation result will be
examined by CAPO, and if required referred back to the relevant formations for further
investigation or re-investigation. Other more serious complaints are investigated by
CAPO. Specialist divisions within the HKP will investigate crimes.

A typical enquiry of complaints includes:

- Interviewing complainants and complainees and all relevant witnesses;

- Carrying out scene visits;

- Getting any medical report and seeking pathologist's advice if necessary;

- Reviewing criminal case files, police notebooks and court case; and

- Seeking legal advice to see if there is sufficient evidence to support any criminal or
disciplinary charge against the complainee.
In theory, CAPO is structurally speaking relatively independent and is fairly effective against lower rank line officers on operational matters, you are not far wrong. In practice, it is still far from being an independent, objective and credible complaint investigative agency. In July 1992 the PCC secretary submitted an internal document evaluating the work of CAPO to the PCC. The document highlighted that:

(a) The investigators of CAPO usually frame questions favorable to the officer complained of when taking statements,

(b) The investigators are not critical enough when handling evidence given by police,

(c) The investigators usually adopt a defensive rather than an investigative perspective in analyzing evidence.

The PCC observation is in line with my own discussion with serving police officers and conclusions drawn from structured person interviews.

The independence of CAPO and its effectiveness is further compromised once its investigation reaches into the higher ranks, i.e. Superintendent and above, and especially with policy and strategic matters. This was more than clearly demonstrated in the complaint against an Assistant Commissioner broadcasting music to drown out voices of demonstrators on July 1, 1997. The CAPO cleared the officer but the disposition was not endorsed by the IPCC. This led to the following question by Legco member James To, the Security Panel Chair, in the Legislative Council:

Regarding the complaint against the Police’s broadcasting of music to subdue the voice of demonstrators on the Handover night last year, the Complaints Against Police Office (CAPO) considered that the police had not made any mistake. However, the Independent Police Complaints Council (IPCC), upon investigation, considered the complaint substantiated and submitted a report to the Chief Executive. In this connection, will the Government inform this Council:

(a) Whether the Chief Executive will respond to the investigation report;

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195 Interview with eight officers in November of 1999.
(b) Given the different conclusions of CAPO and IPCC over the complaint, what measures the authority will take to improve the existing complaints against Police system, so that it can win the trust of members of the public;

(c) How the Police will, in formulating the procedures and guidelines regarding the handling of demonstrations, implement the recommendations of IPCC in this respect, so as to safeguard the demonstrators’ freedom of speech; and

(d) In regard to the posting of the police officer under investigation as head of CAPO when the case was still being investigated by CAPO, has the authority considered whether such an arrangement would affect the operation and credibility of CAPO in investigating the case; if the credibility of CAPO is affected as a result, what remedial measures will be adopted? (Hong Kong SAR Government 1998)

The Legco questioning by TO is reproduced here to show you that the CAPO is not an adequate safeguard against police abuse of office if such abuses reach into high places. Without passing judgement on the merit of the case, the public has a right to be skeptical when a complained officer can be posed to head the CAPO when he is still under investigation by the CAPO. This is clear case of conflict of interest. The issue is can an organization be trusted to investigate itself?

**IPCC**

After the CAPO investigates a case, it files an investigation report together with the case file to the IPCC. The investigation file is scrutinized in detail by Executive Officers of the IPCC Secretariat. If necessary, the in-house Senior Government Counsel will be consulted.

All CAPO reports, including the draft replies to complainants, are discussed in detail at the weekly Secretariat’s case conferences chaired by the Secretary of IPCC. After each case conference, the Secretariat will write to CAPO, when necessary, for clarification. Alternatively, the IPCC can draw the attention of the Commissioner of Police to any inadequacies in existing police policies, procedures and practices and propose remedial measures where appropriate. Once every fortnight, batches of cases that have been vetted by the Secretariat are circulated to IPCC members for consideration.
The majority of the cases are cleared through the circulation process. However, a few complicated cases involving grave policy implications – or that cannot be resolved by correspondence between the Secretariat and CAPO – are considered at the Joint IPCC/CAPO meeting chaired by the IPCC Chairman.

Since 1994, the IPCC has been empowered to interview witnesses when it considers necessary. The IPCC has the full discretion to decide who should be invited for interview but it has no legal power to compel witnesses to attend. After each interview is conducted by a panel of two IPCC members, a record is submitted to the full Council. Beginning with 1996, IPCC members are allowed to sit in and observe CAPOs investigations through scheduled or surprise observations.

But it should be noted that with this power, the IPCC has interviewed only 21 witnesses in 11 cases from October 1994 to December 1995. By contrast, in 1995 alone, 3,454 complaints against the police were reported to the IPCC. Further, the IPCC can only ‘invite’ witnesses to appear, it cannot compel their appearance. And IPCC can only speak to witnesses after the conclusion of CAPOs investigation. While IPCC members can now observe CAPO interviews with complainants, witnesses, or complainees, they cannot ask any questions of the interviewee. (Human Rights Monitor 1996)

Following the formal endorsement of investigative files by the IPCC, CAPO will inform the complainant(s) of the results of the investigation. CAPO will also notify the complainees of the results and take appropriate follow-up or remedial actions. As part of the review mechanism, the IPCC Secretariat assumes the responsibility of informing complainants and complainees of the outcome of CAPO review/re-investigation into their complaints. The Commissioner of Police has full discretion in imposing disciplinary action on police officers found guilty of disciplinary transgressions as a result of a complaint. The IPCC can comment on the proposed disciplinary action, e.g. whether it is commensurate with the gravity of the offence. As part of its charter, the IPCC is empowered to make suggestions to improve upon police internal policy and procedures to the Commissioner of Police, and if need be to the Chief Executive.

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**Evaluation of the current complaints against the police system**

One of the question to be asked is how effective is our complaints against the police system, i.e. the efficiency and effectiveness of CAPO and IPCC in policing the police? In order to evaluate anything from employee performance to personal achievement, you need some sort of yardsticks. In the case of CAPO and IPCC, you probably are interested in the question ‘whether and to what extent the CAPO and IPCC is effective in constraining or reducing police misconduct?’ In this regard, Mike Maguire suggested that an ideal police complaints system should meet the following objectives:

(a) The maintenance of ‘discipline in the ranks’;

(b) The satisfaction of complainants;

(c) The maintenance of public confidence in the complaints against police system; and

(d) The provision of ‘feedback from consumers’ to police managers. (Maguire 1991 pp.186 – 193).

\textsuperscript{196} \url{http://members.hknet.com/~hkhrm/english/reports/enw/nwsidxe.html#JUN96}

\textsuperscript{197} \url{http://members.hknet.com/~hkhrm/english/reports/enw/nwsidxe.html#JUN96}
In Hong Kong, the public, policy makers, police professionals and lawmakers have failed to agree upon, much less been able to articulate, a set of common criteria upon which the success or failure or effectiveness and ineffectiveness of CAPO and IPCC can be judged.

The public, press and politicians love to point to the low substantiation rate to show that the system is not working. They further attribute the lack of substantiation to the lack of independent investigation and oversight. As the Human Rights Monitor observed:

> Among the cases revealed in the past two years by the Independent Police Complaints Council (IPCC), 8 police officers have been clearly found to have assaulted suspects or innocent members of the public. All eight got an entry in their record of service about their respective assault. Four were given advice whilst another one was reprimanded. And that is all the ‘punishment’ they received. …The system of having police policing themselves already makes complaints against police officers difficult to substantiate. The lack of an independent external check of disciplinary decisions by the police force makes it impossible for unruly bad apples in the force to be sufficiently punished.’ (Human Rights Monitor 1999.)

However, this approach ignores the reality that most complaints against the police are very hard to substantiate and also that most of the complaints are never going to be proven one way or another. For a typical assessment of the complaints against police system you should read commentaries in *Hong Kong Human Rights Report* (1993) particularly, the section on ‘The system of complaints against the disciplined services’.

The public love to point to repeated incidences of outrageous police abuse of powers as indicating the failure of the complaints against the police system as a whole. There is a big problem with this approach. CAPO and IPCC will never be able to wipe out police misconduct. All we can ever hope for is to keep police abuse of power under control and reduce it to a minimum.

The police might point to the declining complaint rates as a clear sign that ‘discipline in the ranks’ has been maintained. The problem with this approach is that we do not know whether the drop in complaint rates is a result of CAPO and IPCC effect or in spite of it.
More troublesome, perhaps, is whether the drop in complaints is a real drop or failure of proper recording.

**Section 9: Conclusion**

Hong Kong people have a right to be concerned about unchecked HKP police powers. HKP have expansive and coercive – broad, extensive, irreversible, invisible - criminal as well as administrative powers in the performance of multi-faceted duties as imposed by law or at the request of the public. The free exercise of such powers will affect people’s daily life including causing economic loss and physical harm. As a matter of principle – democratic governance theory, and in practice - power corrupts thesis, police should be held accountable to the public. However, as we see in this study, policing the HKP is easier said than done. People are ignorant of their rights, police are defensive of their professional independence and there are different views on how much or little the police should be controlled.

The policing of HKP is made more difficult by two factors. First, there is a gross lack of valid and reliable data on of the nature and extent of police misconduct. Public opinion of the performance of the HKP is based on some unreliable and invalid sources of information, from personal encounters to friends’ experience to press report. Second, there is a lack of agreement on what police accountability means.

1. How much power should the police possess in maintaining law and order?

2. How much individual right should a citizen possess as he/she goes about conducting his/her business in a peaceful manner?

3. To whom should the police be held accountable, e.g. HKSAR vs. local village; victims of crime or justice institutions?

4. By what standard should police misconduct be judged, e.g. legal vs. moral vs. ethical vs. communal vs. professional or administrative vs. peers?

This study argues that police misconduct does not necessarily result from ‘bad apples’ or a ‘malfunctioning system’. For a true understanding of police misconduct, it is advisable to look at a number of factors, e.g. legal, organizational, cultural, social structural, personal
and psychological and situational factors. In Hong Kong police misconduct comes about because:

1. Law enforcement is confrontational in nature and conflicts-laden in practice.
2. No one likes to be told what to do in public, still less under the threat or use of force.
3. Increasingly, and particularly after 1997, the public are more informed of their rights.
4. Police perform more than law enforcement duties. However, there is no guideline telling the police what he should do or how he should do it.
5. Full enforcement of all laws is not possible. Selective law enforcement attracts complaints.
6. Police are requested and expected by the public to solve all kinds of problems. Police are however constrained and ill equipped by law to satisfy the citizens’ varied wants and needs.
7. Police see things in black and white or right and wrong terms with nothing in between. This makes the police open to charges of intolerance.
8. Police do not like to have their institutional and personal authority challenged.
9. Most people think of criminals and victims as an abstraction; police see them as real victims of criminals. They will not let to law to stand in the way of public morality and community justice.

This study reports that in Hong Kong there are four ways to police the police: legally, administratively, professionally and politically. Individuals can complain about the police to CAPO and IPCC. The press can report on police misconduct. The Legislative Council members can ask questions of the police on procedures, practices and actions. Interest groups can file reports to the U.N on police compliance with international conventions. The prosecutors can prosecute the police for criminal violations. The Law Reform Commission can propose legislation to guide and restrain police. The court can make judgement against the police misconduct. The police profession can set up standards and police peer group can pressure fellow officers to behave.
Overall, the complaints against the police system in Hong Kong is very well established and functioning adequately. There are certainly room of improvement, e.g. more civilian oversights. Prior to the 1960’s public complaints against police were rare, though police misconduct were accepted as part of police culture and practice. From 1963 onwards, the Commissioner of Police’s Annual Report started to include a section devoted exclusively to the subject of complaints against police and, in 1967, the Police Annual Report for the first time classified complaints against police into six categories. Can you remember what they were? Before 1974, complaints against the police were investigated internally by Chief Inspectors in charge of the respective formations. In late 1976, Mrs. Elsie Elliot launched a campaign against police brutality resulting in the formation of the UMELCO Police Group in 1977, a non-statutory ‘civilian review’ body appointed by the then Governor. The Police Complaints Council (PCC) took over the work from UMELCO Police Group in 1986. In December 1994, PCC was renamed as IPCC to make it more independent, autonomous and powerful. In July 1996, as a further move to enhance of the effectiveness, credibility and legitimacy of the IPCC, an Independent Police Complaints Council Bill (the Bill) was gazetted. Notwithstanding the withdrawal of the Bill, the Administration undertook steps to reform the IPCC

There are however no existing research on the effectiveness and efficacy of the complaints against the police system in Hong Kong. There is an inherent difficulty in evaluating HKP complaints against police system according to objective standards and quantifiable benchmark, as suggested by Maguire’s accountability test:

(a) The maintenance of ‘discipline in the ranks’;

(b) The satisfaction of complainants;

(c) The maintenance of public confidence in the complaints against police system;

and

The British rule of law tradition, colonial (Irish Constabulary) police para-military mentality and Chinese cultural understanding converge to demand the police to follow strict and uncompromising “rules of engagement” when dealing with the public. Police are suppose to observe the law, obey instructions and otherwise follow ethical principles. This classical orientation to policing dominates the mind set of the policy makers, police administrators and public at large. When police misconduct is uncovered, and there are
many, the response and swift, resolute and forceful – to enforce the law, to reinforce
discipline and uphold ethical principles; the return to a pristine order. The propensity of
looking at police misconduct in legal, disciplinary and ethical terms and not
psychologically, ecologically, organizationally, sociologically, culturally or politically
frame created predictable and insurmountable problems for police reformers. First, there
is very little concern with understanding of a problem from bottoms up (as a personal
behavioral problem, as a organizational cultural problem, as a social ideological problem)
and more attention with imposing a ready made solution from the top down. Law,
discipline and ethics are all concerned with restoring a normative order coming to terms
with a negotiated, constructed and evolving reality. The British colonial officers were
interested in bringing the “ignorant” mass to the law, in the process enlightening them.
The British police administrators were pre-occupied to imposed strict discipline on the
“unruly” officers in the name of operational efficiency and effectiveness. The Chinese
public were concerned with making the police a moralistic force to fight the evil to be –
prostitution, gambling, drugs, crimes…

The imposition of punitive solution without understand the underlying problem in a large
social, organizational and political context resulted in gross mismatch between solution to
problem. Punishing individual officers, while emotional satisfying and politically correct,
is not effective in deterring multi-faceted, deep seated and structural police misconduct
problem. A one size fits all approach is not likely to rectify the varieties of police
misconduct one has to deal with.

Future research in Hong Kong on police accountability should move more three fronts.
First, conduct survey research on the nature, incidence and prevalence of police
misconduct in Hong Kong. Second, conduct empirical research and behavior analysis on
the causes of police misconduct. Third, set standards and devise methods to measure the
effectiveness of the current complaints against police system.
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Further Readings


ACLU, (1992). *The Call for Change Goes Unanswered.* Southern California: March. (Little has improved since Rodney King beating one year ago. The LA Police Department is still not responsive to citizen complaints of police brutality.)

ACLU (1995). *Pepper Spray Update: More Fatalities, More Questions.* Southern California, June. (ACLU makes recommendations to avoid the use of pepper maze.)

ACLU (1993). *A Call for Accountability: Steps to Reform Investigations of Police Misconduct.* Washington, DC: August. (A critique of Seattle Police Department's handling of civilian complaints with recommendations that an independent civilian review board be established.)


Minneapolis Police Civilian Review Working Committee. (1989). *A Model for Civilian Review of Police Conduct in Minneapolis.* Minneapolis, MN. September. (Special Committee Report to Mayor and City Council on analysis and evaluation regarding authority and role of civilian review)


Reiss, Albert J. (1971). *The Police and the Public.* New Haven, CT: Yale University Press. (The most comprehensive sociological study of routine police work, including police abuse of powers, based on direct observations)


