Exploring the boundaries: Striking the balance between hard and soft policing, and over-policing and under-policing, in modern law enforcement.

Drivers: Hong-Kong Police Force, Professor Willy Bruggeman

Hong Kong Police Force

Introduction

Hong Kong Police Force (HKPF) was first established in 1844 and has evolved from a small colonial force of some 30 police officers to a modern force of more than 37,000 staff (28,606 regular police officers plus civilian and auxiliary officers). The police-population ratio stands at about 390 regular police officers per 100,000 citizens\(^1\). The HKPF being the single police force in Hong Kong, is charged with diversified duties, some of which are dealt with by national police in other places. Other than maintaining law and order on land and sea, it is also responsible for land and sea border security, VIP protection, counter-terrorism responses, etc.

2. After over 155 years of British colonial rule, China resumed the exercise of sovereignty over Hong Kong when the territory became a Special Administrative Region on 1 July 1997. Under the principle of ‘one country, two systems’, Hong Kong retains its political systems with a high degree of autonomy and capitalist economy, while Mainland China adopts a socialist system. The mutual policing assistance between Hong Kong and mainland China has been highly effective under the three principles of ‘Non-subordination, Mutual Liaison, and Mutual Assistance and Support’\(^2\). Hong Kong is one of the three most important financial centres alongside New York.

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\(^1\) In a land area of 1104 km\(^2\), Hong Kong has a population of 7.3 million of various nationalities, and is one of the world’s most densely populated metropolises.

\(^2\) These principles were agreed during the 1st Bilateral Meeting since Hong Kong’s return to China between the Mainland Public Security Authorities and HKPF held in 1998.
and London, and the world's number one tourist destination city.


**Challenges Faced**

4. The HKPF has faced different challenges during different eras in the past 172 years. Some of the most prominent challenges include the policing of riots in the modern era of colonial history in the 1960s; the handling of a major influx of Vietnamese boat people seeking refuge from Hong Kong as a springboard to western countries from 1975 to late 1990s; combating the upsurge of armed robberies targeting goldsmith and watch shops in the 1990s; and the policing of major events after the millennium. In recent years, ever increasing public expectations and the changing political landscape have added pressure to the force that is determined to strive for excellence in all dealings.

**Public Order Events (POE) Policing**

5. POE policing has posed significant challenges to the HKPF during the past decade. It is worthwhile to examine some of the most recent POE in the further discussion of the subject of this paper.

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6 Such as the Fortune 500 Global Forum in 2001, the 6th Ministerial Conference of the World Trade Organisation in 2005, the 10th Anniversary of the establishment of the Hong Kong Special Administrative Region in 2007, the Equestrian Events for the Olympic and Paralympic Games in 2008, the East Asia Games in 2009 and the 15th Anniversary of the establishment of HKSAR in 2012.

7 The heated debates concerning the political reform in Hong Kong and the adversarial relationship between the government and Legislative Counsel had complicated the political environment of Hong Kong.
6. The number of POE in Hong Kong surged from a yearly figure of 2,228 in 2006 to 6,029 in 2015, peaking in 2012 at 7,529. HKPF’s policy is to facilitate, as far as reasonably possible, all peaceful public order events and maintaining a balance between the rights of participants and those of the public. The approach has been indoctrinated in two Court of Final Appeal judgments, where frontline commanders must apply legal tests of “reasonableness” and “proportionality” in managing POE where persons are exercising their constitutional rights.

7. While the majority of the POE in Hong Kong are conducted peacefully, confrontational scenes are becoming more frequent in events organized by some of the more radical groups. ‘Showmanship’ styles of confrontation had in recent demonstrations turned violent and hostile, with some deliberately orchestrated to confront police. The two major events occurring in 2014 and 2016 are vivid examples of this increasingly radicalized POE.

**The Illegal “Occupy Central Movement” (OCM)**

8. The illegal OCM in 2014 is considered one of the most controversial POE in recent years. It was a large scale public order event triggered off by political agenda – to appeal for universal suffrage for the election of the Chief Executive of Hong Kong in 2017. On 28 September 2014, the event was set in motion when a major confrontation took place outside the Central Government Offices (CGO), where police deployed tear smoke to disperse protestors charging against police cordon. That particular confrontation was heavily reported and sensationalized by public media as the suppression of freedom by police. Many photos and video footage taken during that particular confrontation went viral through social media. Larger crowds reassembled at the same location outside the CGO and the prolonged illegal occupation of major thoroughfares began. Attempts to disperse illegal occupiers during the earlier stage of the event were proven futile as crowds reassembled afterwards. An example of such was the clearance action in Mongkok on the morning of 17 October 2014. Following the clearance,

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8 The overriding concerns are the preservation of national security, public safety and public order, and the protection of the rights and freedoms of others. The utmost priority in dealing with any public order events is the safety of the participants, the general public and the police duties.

9 A summary of the court’s decision has been incorporated into HKPF’s Headquarters Order on Public Order Events. Annex A is the order’s excerpt.
protestors regroup themselves into ‘guerrilla packs’ and re-occupied those re-opened sections of the roads the same evening.

9. The difficulties and complexity in policing this highly politicized event were unprecedented. Continued deployment of hard tactics, though operationally viable, would inevitably trigger off larger scale confrontations, posing significant threat to human lives and public safety in general. To avoid the bloodshed and all other undesirable consequences, police had exercised a high degree of tolerance and restraint. Minimum level of force was resorted to only when there were no other alternatives. The event lasted for 79 days from September to December 2014 with unlawful assemblies and illegal blockage of major thoroughfares in three busy districts.

10. The restraint and discipline displayed by the police throughout had won the hearts of the majority of Hong Kong citizens. In policing the event, HKPF had on one hand, maintained the order and security inside the illegally occupied areas by providing emergency services as and when required; on the other hand, the Force worked diligently in minimizing disruptions caused to the livelihood of the general public. Countless supportive letters, cards and flower bouquets were sent to police stations along with supportive messages on the social media and newspapers. The 79 days events came to an end when police assisted bailiffs in the execution of injunction orders. During various confrontations in these 79 days, a total of 130 Police officers were injured and 221 protesters received medical treatment.

**Mongkok Riot**

11. A year after the illegal OCM, Hong Kong police faced another major incident, but with much higher levels of violence.

12. On the late evening of 8 February 2016 and the following morning,
after an encounter between officers of the Food and Environmental Hygiene Department (FEHD) and a number of illegal hawkers selling cooked food in Mongkok in the Chinese New Year’s evening, a number of raucous crowds assembled illegally in multiple locations in Mongkok. They started random fires and damaged both public and private property and launched violent attacks against police officers as well as journalists at the scene.

13. During the riot, the rioters persistently and viciously attacked police officers with makeshift weapons and hurled hard objects like glass bottles, wood pallets, road signs, bricks and bamboo sticks at police officers. They also deliberately damaged shop windows, demolished hawkers stalls, started fires at various locations, damaged police vehicles as well as set fire to a taxi. Police arrested 54 rioters at the scene. Over 130 people were injured, including 90 police officers and several journalists.

**Polarized Public**

14. Apart from tangible and quantifiable loss, the severity of the illegal OCM and of the Mongkok riot were multi-dimensional, including the effectiveness of rule of law, economic activities, society in the state of being torn apart and public distress, and furthermore, means of future restoration.

15. Public opinion was polarized and was especially evident during the illegal OCM in 2014. Some self-justified the illegal acts as means in the pursuance of their political goal while others disagreed with the political agenda or the illegal occupation itself as a mean to pursue political goals.

16. Criticism was leveled at the Force for being overly tolerant and too soft in policing the event for not clearing illegally occupied major thoroughfares and places where severe hindrance was caused to the public at the early stage of the event. Critics also queried the police decision of not employing large scale crowd dispersal tactics, and the use of tear smoke, since the initial confrontation on 28 September 2014. Tear smoke was not deployed to quell the Mongkok Riot in late February 2016. There was opinion that the “silent majority’s” rights and views were being overridden by sensational media reporting.
Staff Morale

17. The way police reacted to these violent acts had repercussion too internally with calls from frontline officers for the adoption of a firmer approach. Given that frontline officers were trained and equipped to cope with such internal security situations, there was an aggrieved feeling when a firmer approach and harder tactics were not deployed. This sentiment peaked after the Mongkok Riot, during which officers on the ground were targeted and violently attacked. However, such sentiment conflicted with that of some parts of the community and for that reason, more antagonism against police resulted.

18. HKPF is currently reviewing both operations, with focus upon three specific areas namely, ‘operations’, ‘arms, equipment and training’ and ‘support’. This paper will not discuss the two incidents in detail. However, they raise a fundamental question: What sort of policing model are we looking for in future similar incidents?

Three Successful Policing Elements

19. We will discuss future policing direction with reference to Professor Bruggeman’s mentioning of the three key successful components namely, ‘Crime Reduction’, ‘Strong Links with Communities’ and ‘Just Policing’. We will examine in brief what HKPF has done in these three areas.

Crime Reduction

20. Statistics suggest that Hong Kong is safer than ever. The overall law and order situation in Hong Kong remained stable in 2015. The overall crime figure dropped to 66 439, a decrease of 1 301 cases or 1.9% when compared with 67 740 in 2014. The figure was a new low since 1979. The overall crime rate measuring by number of crimes per 100 000 population stood at 910 cases, representing a new low in the past 43 years since 1972.

Strong Links with Communities

21. 'Engaging the Community' was first introduced as a
Strategic Direction\textsuperscript{13} since 2008. Some initiatives like Junior Police Call\textsuperscript{14} have been in place for 42 years. It is one of the largest youth organizations in the world with strong police ties. In addition, HKPF is currently organizing 77 youth engagement activities at District level. These activities include organizing visits, seminars, ballgames and a variety of workshops that aim to expanding youth’s horizon and to enhance the police-youth partnership. Newer initiatives like Senior Police Call, the elderly version of the Junior Police Call, have been rolled out for nearly three years, adapting to the ageing society. A close tie with local dignitaries, local residents and community associations are made possible with the setting up of Police Community Relation Office since the 70s in all Police Districts overseeing the actual implementation of all the engagement initiatives.

22. To expand the existing communication platforms, gauge community feedback and garner community support, HKPF has also embarked on engaging ‘netizens’ in a phased approach since 2012, with the introduction of smart phone application (Police App), the creation an official Facebook account and an official YouTube Channel.

\textbf{Just Policing}

23. This area is sometimes controversial. There are differing perceptions and expectations of what is just policing in a highly diverse society, as reflected in the illegal OCM and MK riot. Against the political and economic backdrops of Hong Kong, just policing is not a decision made between soft and hard but based upon the principle of ‘doing the right thing’. With the policing of POE in particular, HKPF observes the laws of Hong Kong which protects the constitutional rights to freedom of speech and expression. The false or perceived dichotomy between freedom and rule of law however distorts the genuine mandate of policing. HKPF maintains that freedom should be exercised within the rule of law. It is also determined to maintain political neutrality in upholding the rule of law and in serving Hong Kong people.

24. Statistical evidence indicates that HKPF has done an excellent

\textsuperscript{13} The Strategic Directions represent the key management areas that require our focus of attention in the years to come – those areas that senior management agreed will be crucial to the continued success of the Force in fulfilling our vision of Hong Kong as one of the safest and most stable societies in the world.

\textsuperscript{14} Its primary objects are to improve communication and mutual understanding between the police and the youth, and to foster police-youth partnership in the fight against crime.
job in crime reduction. It also accords a high priority in fostering strong community relationship. One of the biggest challenges, however, remains to be gaining public confidence in the Force, not of those citizens who always support the police but the ones who do not or who are angered - rightly or wrongly - about the recent events. The current controversy arising from the policing strategy and tactics deployed following both operations, to a significant extent, represents the complexity of nowadays policing.

**Strategic Triangle**

25. Professor Bruggeman mentioned that we can derive five imperatives\(^{15}\) for the future policing. It is motioned that to achieve just policing is not merely a decision made between soft and hard or under-policing and over-policing but based upon the principle of ‘doing the right thing’. The famous Mark H Moore’s ‘strategic triangle’\(^{16}\) – the basis for value-led public sector management may throw some light as to what is ‘right’ in policing.

26. The ‘strategic triangle’ encompasses ‘Operational Capabilities’, i.e. “What operational capabilities does the agency and service provider require to deliver this result?”, ‘Legitimacy & Support’ i.e. “What sources of legitimacy and support authorize the agency, or wider system, to take action and provide resources to create that value?”, and ‘Public Value’ i.e. “What is the important public value you are seeking to produce?” It was said that a fine balance of the three elements would help to develop a system that supports virtuous cycle.

**Solution within the Force – An Internal Perspective**

27. Applying the three broad tests in Moore’s ‘strategic triangle’, HKPF need to create sensible and reasonable ‘Public Value’ for the community, i.e. ‘Security and Safety’ which in turn leads to ‘Stability’. We should also leverage more ‘Legitimacy & support’ and ‘Operational Capabilities’ with effective internal measures. Apparently, policing in this complex and dynamic context would require wisdom and careful calculation to not fall into the trap of dealing only with signs on the surface without acknowledging the extent of root causes.

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15 They are firstly to become truly global; secondly, for local policing to be continuously aware of global trends; and thirdly, that we learn from the best national and international practices. The fourth imperative being the delimitation of under-policing and over-policing; and the fifth one is the balance of soft and hard.

16 Moore’s strategic triangle was published in his 1997 book titled ‘Creating Public Value – Strategic Management in Government’.
Thus, we need to be flexible in operational tactics and approaches but maintain strong on values and principles.

**Integrity Management**

28. Professor Bruggeman emphasized the importance of police integrity, which is also the cornerstone of HKPF’s policing philosophy. One of its Strategic Directions is to enhance the personal and professional qualities of Force members. This includes the reinforcement of the key values of integrity and honesty, and an integrated integrity management framework has been introduced to assist this effort.

29. HKPF formulated an ‘Integrity Management Framework’ in 2009 to enhance the integrity of all Force members. The Force Strategy for Integrity Management (FSIM) adopts a four-pronged approach, namely ‘Education and Culture Building’; ‘Governance and Control’; ‘Enforcement and Deterrence’; and ‘Reintegration and Support’ with a Force Committee chaired by the Deputy Commissioner (Management) to steer its normal functionality. To further promote HKPF’s core values of integrity and to maintain public confidence, a set of behavioural guidelines have been drawn up, which seek to define the parameters of behaviour expected of Force members on and off duty. HKPF has also formulated a set of Baseline Activities in support of the FSIM, which comprises a number of mandatory measures and initiatives involving all members with a view to adding value directly to the notion of integrity management.

30. Integrity of the Force is well managed also with the collaboration of the Independent Commission Against Corruption. Further to that, HKPF looks into every complaint filed by a citizen and there exists an Independent Police Complaint Commission to monitor every case investigated by the police. We believe integrity is a very core value irrespective of the style of policing adopted. Without integrity, we could gain little legitimacy and support from the people we police.

**Internal Trust Building and Understanding**

31. Facing with the unprecedented challenge, HKPF believes, on top of external communication, it is crucial to cultivate internal trust and mutual
understanding between its management and the frontline units. The staff sentiment needed to be properly channeled and appropriately considered in the policing of any events, especially those of political nature. The Force’s Staff Relations Group in the Personnel Wing is responsible to maintaining regular liaison with the four Police Staff Associations\(^\text{17}\) to monitor staff’s concerns. During and after the two major operations, constant contacts with these associations and open forums attended by members of the senior force management helped to ensure the unimpeded communication between the force management and the frontline officers. Representatives from the four staff associations were invited to join the Review Committee after the Mongkok Riot. These timely engagement and constructive interactions, with the aim to enhancing the safety and professional capabilities of police officers, will in turn foster mutual understanding and enhance internal trust.

**Conclusion**

32. As pointed out by Professor Bruggeman, in a society undergoing significant political and economic challenges, the policing philosophies, institutions and practices are fast changing and may not be able to effectively and efficiently meet current and future policing needs. Just policing as such must be put into the context of different societies, jurisdictions and in consideration of their unique characteristics. The decision on using hard or soft approach depends on the context of different societies and in consideration of any unique situation. ‘Operational Capabilities’, ‘Public Value’, and ‘Legitimacy & Support’ from the public will determine how successful policing can be.

33. Facing the unprecedented external challenge, everything boils down to effective communications. We need good communication with the public so that they may understand the reasons behind police actions and the consequences otherwise. We also need very effective communication with frontline officers who may have suffered from low morale or esteem in a prolonged operation facing public spite. Unimpeded internal communications to negate the possible impact on staff morale is of paramount importance.

34. We do not think the challenges facing HKPF are unique nor do we think

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\(^{17}\) Superintendents Association, Police Inspectors Association, Overseas Inspectors Association and the Junior Police Officers Association
that there is an exact replica of what is happening in Hong Kong. Professor Bruggeman believes, amongst others, that the future of policing is to adopt a ‘global perspective in policing’. HKPF pledges to continue in the future to collaborate with the rest of the world to combat traditional crimes and those evolving hard core crimes. At the same time, we look forward to developing best practices in policing a brighter and safer future.

Hong Kong Police Force
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Questions for Discussion

1. We respect the citizens’ rights to freedom of speech and expression. We have been adopting an accommodating approach in policing POEs and apply restraint in resorting to using force against disruptive behaviours or illegal acts in POEs. This approach was effective in policing some public order events but, as seen in recent events, with the escalation of violence targeting police officers on the ground, the facilitative approach could have been abused by radical groups. It raised a question about whether, and if so how, we should change our policing approach?

2. Against this politicized backdrop and this dynamic policing environment, to what extent is the approach of integrity management and trust building effective in addressing the current issues?

3. How effective are the existing community engagement initiatives in addressing the contemporary policing challenges? How to engage those who are dissatisfied with the conduct of police?

4. Social issues are often dramatized or politicized. The result is to render the policing of the consequential activities problematic – Public sentiment, and especially those of radical groups, does not necessarily follow a certain perceived logic, like the general desire for peace and order. Police actions are unfairly scrutinized and reported with police being specifically targeted. What sort of policing mentality or tactics should be deployed to enhance political neutrality?

5. What else is there that we might have overlooked? Are our fingers on the pulse? And what actions would you consider if you were in a similar situation?

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Annex A

The Law and Principles Governing the Assessment and Policing of Public Order Events (Excerpt)

In line with the CFA judgments, frontline commanders must apply the tests of “reasonableness” and “proportionality” in managing public order events where persons are exercising their constitutional rights.

a. The CFA judgment of YEUNG May-wan & others v HKSAR (CFA FACC No. 19 of 2004) ruled that the test of reasonableness must be applied when handling an obstruction in public place. It was further held that not every physical obstruction of a public place is an offence. The law requires reasonable give and take between users of public places. It is only where the obstruction is an unreasonable use of public place given its extent and duration, the time and place where it occurs and the purpose for which it is done, that it is “without lawful excuse” and so amounts to an offence. When obstruction results from persons exercising the constitutional right to demonstrate, the importance of that fundamental right must be given substantial weight in deciding whether the obstruction is reasonable.

b. The CFA judgment of LEUNG Kwok-hung & others v HKSAR (CFA FACC Nos. 1 & 2 of 2005) ruled that the CP must apply the proportionality test (proper balance is struck between the interests of society and the individual’s right of peaceful assembly) in exercising his statutory discretion to restrict the right of peaceful assembly, and must consider (a) whether a potential restriction is rationally connected with one or more of the statutory legitimate purposes; and (b) whether the potential restriction is no more than is necessary to accomplish such purpose.
Annex B

Following is an excerpt from the reply by the Secretary for Security, Mr Lai Tung-kwok, in the Legislative Council to a question raised by a Legislative Councilor on 17th December 2014. It illustrates the extent of disruption caused to the normal livelihood and damage done to public property:

“During the OC, protesters made road obstructions by misappropriating and taking away a huge quantity of public property, including mills barriers, water barriers, pavement railings, litter bins, recycling bins, traffic cones, road signs and so on, in the illegally occupied areas and their vicinity. Drainage covers at both sides of carriageways and pavement tiles were removed without permission while central dividers on roads were dismantled. Apart from making graffiti on places such as road surface, road dividers and footbridges, some protesters erected wooden staircases or railings on road dividers. They also trod on grass and turned over the soil in roadside planters for planting. Some occupiers even damaged traffic lights and dismantled the covers of illuminated bollards and lamp posts, which was an act of suspected abstracting of electricity, and rendered escalators to malfunction by spreading cement on the steps of the escalators. During the entire OC, 32 police cars were vandalised so far. In addition to government property, the glass doors and walls of the Legislative Council Complex were severely smashed and there were misappropriations of or damages to the property of public and private companies, such as bus/minibus stops and railings of bus/minibus companies, luggage trolleys at the Airport Express, trolleys of supermarkets, and tools and materials at construction sites, including fire extinguishers, precast concrete units, hoardings, aggregates, bricks and bamboo poles.

Given that the occupied road surface and public areas as well as locations at which protest materials were placed or posted fall within the purview of a number of government departments, the Administration has removed the obstructions on the roads and their surrounding areas, washed the streets, and inspected public facilities within the illegally occupied areas, etc, through the concerted efforts of relevant departments. Since the roads in illegally occupied areas that covered a larger space, i.e. those in Admiralty, Central and Causeway Bay were not re-opened until very recently, the Administration is, at this point of time, in no position to assess the additional public expenditure
and manpower for clearing up the illegally occupied areas and their vicinity as well as restoring and repairing the public facilities in such areas. Nor has it comprehensively assessed the exact degree of damage in those illegally occupied areas and their vicinity. Nevertheless, I can tell you that about 100 truck trips were consumed just for the delivering of cleared rubbish and miscellaneous items upon the re-opening of roads in Central and Admiralty. As the misappropriated or damaged government property items were under different departments, it will take certain resources, time and concerted effort among departments before such districts can be fully reinstated.”