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# Police Corruption Control in Hong Kong and New York City: A Dilemma of Checks and Balances in Combating Corruption

*Jinhua Cheng\**

## I. INTRODUCTION

Police corruption, the abuse of public power by police officers for their own profits, is a universal problem and one of the most notorious obstacles in the way of good governance.<sup>1</sup> Furthermore, given the fact that police officers are located in urban areas in most countries, police corruption is a big problem for municipal governance.<sup>2</sup> Correspondingly, the control of police corruption has been a tough issue in city politics, even within democracies.<sup>3</sup>

With respect to police corruption control in cities, this paper will discuss the following questions: Why have some city governments effectively changed the equilibrium of corruption and built up a new equilibrium of integrity within the police force, while others have failed to do so? In particular, why have some undemocratic municipal

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1. See, e.g., CARL B. KLOCKARS ET AL., *THE MEASUREMENT OF POLICE INTEGRITY* (1997); Dilip K. Das, *Policing of Corruption: Exploring Practice through Research*, in *POLICING CORRUPTION: INTERNATIONAL PERSPECTIVES 1* (Rick Sarre et al. eds., 2005).

2. See, e.g., ROBERT KLITGAARD ET AL., *CORRUPT CITIES: A PRACTICAL GUIDE TO CURE AND PREVENTION* (2000), available at <http://books.google.com/books?id=Bju8SS6mMjgC&printsec=frontcover&dq=corrupt+cities>.

3. See generally Maurice Punch, *Police Corruption and Its Prevention*, 8 EUR. J. ON CRIM. POL'Y & RES. 303 (2000); Tim Newburn, *Understanding and Preventing Police Corruption: Lessons from the Literature*, 110 POLICE RESEARCH SERIES 17 (1999), available at [http://www.popcenter.org/problems/street\\_prostitution/PDFs/Newburn\\_1999.pdf](http://www.popcenter.org/problems/street_prostitution/PDFs/Newburn_1999.pdf).

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governments been more successful than democratic ones in combating police corruption? Moreover, how have checks and balances in certain regimes impacted their policies and ability to control police corruption?

To answer these questions, I make two major arguments in this paper. First, in principle, an institutionalized organization independent of the police force that assumes the responsibility of investigating, monitoring, and preventing police corruption is necessary for the effective control of police corruption in the long run. The police force itself cannot reliably combat police corruption because of the popularity of “the blue code of silence” within the force. Second, there is a dilemma with checks and balances in the process of controlling police corruption. On the one hand, the establishment of an institutionalized independent organization assuming the task of anticorruption helps place checks and balances on the police force. On the other hand, this pursuit of checks and balances could ironically be better achieved in a regime without institutionalized checks and balances than in one with them. These arguments result from a comparative case study of police corruption control in two cities, Hong Kong and New York City (“NYC”).

The paper is organized as follows: Section II states a general proposition about the equilibrium of police corruption and some relevant factors conducive to the transformation of the equilibrium. After that, Section III presents the two cases of Hong Kong and NYC, describing their relevant socioeconomic and political backgrounds, their different approaches to combating police corruption, and the different outcomes. Section IV sorts out certain commonalities and differences of these two cases and presents several explanations for their different results of police corruption control. Finally, this article concludes by drawing policy implications for reform in the future.

## II. THE EQUILIBRIUM OF POLICE CORRUPTION AND ITS TRANSFORMATION

Corruption is the abuse of public power by officers for their own private benefits. On a theoretical level, it is useful to conceptualize three scenarios that indicate the possible extent of corruption in a certain regime. The first scenario is that most officers are corrupt and, because of the popularity of corruption in the regime, it is certainly more beneficial for rational officers to take bribery than to be loyal to the law. In contrast, the second scenario represents a situation in which most officers are clean and, because of the popularity of loyalty to the law, it is more costly for officers to be corrupt than to be loyal. Without significant external changes, the above two situations are usually stable

since one or a few individual officers will not change the costliness of going against the status quo. In the third scenario, however, about half of the officers are corrupt and about half are clean. In this case, the change of one or a few officers from corrupt to clean, or the opposite movement, might affect the whole equilibrium. Therefore, the third scenario is not stable. In the literature of economics of corruption, as ideal models, the previous three scenarios are defined as the equilibrium of corruption (“EC”), the equilibrium of integrity (“EI”), and the equilibrium of a mix of corruption and integrity (“EM”) respectively.<sup>4</sup>

The above framework of corruption equilibria is helpful in understanding the nature of anticorruption reforms: usually, reform is a process of changing the EC to the EI via the EM. Generally speaking, this process of transformation is structurally constrained by institutions and is time-consuming, which are results more of collective actions than individual choices. As Melanie Manion argues, “[w]hile no single player can unilaterally choose the other equilibrium with her actions, an equilibrium shift is certainly conceivable if some way can be found to coordinate the choices of many players to act differently.”<sup>5</sup> In this sense, the transformation from the EC to the EI requires certain structural rearrangements through different strategies.

Previous researchers have found that no single strategy is a panacea of anticorruption, either regarding corruption as a general governmental problem<sup>6</sup> or specifically dealing with police corruption.<sup>7</sup> In general, anticorruption strategies include the following measures: (1) policies to reduce the opportunity for—and benefits of—corruption, (2) policies to increase the likelihood of corruption being detected, and (3) policies to make punishment of transgressors more likely.<sup>8</sup>

But the unique nature of police corruption, a hierarchically organized form of crime within the police force widely tolerated by police officers, also makes the task of curbing police corruption distinct from other types

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4. See generally Pranab Bardhan, *Corruption and Development: A Review of Issues*, 35 J. ECON. LIT. 1320 (1997).

5. See MELANIE MANION, *CORRUPTION BY DESIGN: BUILDING CLEAN GOVERNMENT IN MAINLAND CHINA AND HONG KONG* 12 (2004).

6. See, e.g., SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* (1999); RICK STAPENHURST & SAHR J. KPUNDEH, *CURBING CORRUPTION: TOWARD A MODEL FOR BUILDING NATIONAL INTEGRITY* (1999), available at <http://books.google.com/books?id=eLh72ZUQcssC&printsec=frontcover&dq=CURBING+CORRUPTION>.

7. See, e.g., Das, *supra* note 1, at 9–15; SANJA KUTNJAK-IVKOVIC, *FALLEN BLUE KNIGHTS: CONTROLLING POLICE CORRUPTION* (2005).

8. See STAPENHURST & KPUNDEH, *supra* note 6; MANION, *supra* note 5.

of corruption control.<sup>9</sup> For police corruption control, a fourth policy of changing the attitude of police officers toward corruption through organizational rebuilding and education has to be adopted.<sup>10</sup>

While the choice of strategy is a major determinant of police corruption control, the choice itself is constrained at least by two other factors: the political structure of the regime where reforms are enforced, and resistance from the police at whom reforms are targeting.<sup>11</sup> Obviously, any decision-maker is not independent of her political context. There is no exception for decision-makers of anticorruption policies. Reformers, who are undertaking the tough job of changing the equilibrium of corruption, are constrained by both domestic and international politics.<sup>12</sup> Furthermore, as for police corruption control, the targeted police force usually demonstrates tremendous resistance. As a result, police corruption control is inevitably a political arena full of multilateral interactions among different players. In other words, the choice of strategy by reformers is also constrained by reactions from other players, in particular the police. Usually these interactions are dynamically developed when players are responding to a series of events, including (1) a police corruption scandal, (2) investigation into the scandal, (3) prosecution of the corrupted, (4) internal or external organizational rebuilding, and (5) resistance from the police force.<sup>13</sup>

In sum, successful reforms against regime-wide corruption usually follow the transformation of the EC to the EI via the EM. This process is significantly affected by the reformers' choice of strategy, which is constrained by the political structure and interactions among players. The

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9. See, e.g., ALASTAIR BLAIR-KERR, SECOND REPORT OF THE COMMISSION OF INQUIRY UNDER SIR ALASTAIR BLAIR-KERR (HONG KONG, 1973); THE KNAPP COMMISSION, THE KNAPP COMMISSION REPORT ON POLICE CORRUPTION (NEW YORK, 1972); THE MOLLEN COMMISSION, COMMISSION REPORT/NEW YORK CITY COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT (New York, 1994).

10. The four categories of anticorruption strategy are mostly performed by reformers throughout the world. But they are not the only choices. In her recent research on police corruption control, Sanja Kutnjak-Ivkovic enumerates twelve tasks to be implemented: (1) to detect and investigate corruption, (2) to discipline/punish corruption police, (3) to monitor propensity for corruption, (4) to cultivate culture intolerant of corruption, (5) to establish supervision and accountability, (6) to set official policies and enforce them, (7) to provide resources for control, (8) to control the police agency's efforts to control corruption, (9) to detect and investigate corruption not investigated by the police agency, (10) to improve the existing system, (11) to limit opportunities for corruption, and (12) to disseminate true information about corruption. See KUTNJAK-IVKOVIC, *supra* note 7, at 100.

11. See Lawrence W. Sherman, *Police Corruption Control: Environmental Context versus Organizational Policy*, in POLICE AND SOCIETY 107 (David H. Bayley ed., 1977).

12. See ROSE-ACKERMAN, *supra* note 6.

13. See LAWRENCE W. SHERMAN, SCANDAL AND REFORM: CONTROLLING POLICE CORRUPTION (1978); HENRY J. LETHBRIDGE, HARD GRAFT IN HONG KONG: SCANDAL, CORRUPTION, THE ICAC (1985).

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uniqueness of police corruption, meanwhile, imposes more challenges on reformers and requires additional anticorruption strategies, such as organizational rebuilding of the police force and overall education on police officers.

The following stories of Hong Kong and NYC will illustrate the above theoretical understandings of anticorruption reforms in general and the control of police corruption in particular.

### III. POLICE CORRUPTION CONTROL IN HONG KONG AND NYC

With regard to police corruption control, Hong Kong and NYC are two ideal cases to be compared. Hong Kong represents a successful case of changing the equilibrium of police corruption. On the other hand, the New York Police Department (“NYPD”) has periodically suffered from widespread corruption in the past century. In this section, this paper will first introduce the backgrounds of the two cases and illustrate the comparability between them. This paper will then describe the development of the two stories diachronically, focusing on the decades around the 1970s when major reforms happened both in Hong Kong and NYC.

#### *A. A Review of Backgrounds*

Police corruption results from constant and variable factors<sup>14</sup> and, therefore, takes many forms in different nations.<sup>15</sup> Accordingly, successful control of police corruption requires systematic reforms.<sup>16</sup> Because of the various forms of police corruption, it is impossible to present all of the possible relevant background information in one research article; not every potential explanatory variable can be controlled and analyzed. Nevertheless, the more variables accounted for, the more valid the research is going to be. In this sense, it is helpful to introduce some similarities between Hong Kong and NYC in terms of their social, economic, and politic backgrounds relevant to police corruption control.

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14. See Newburn, *supra* note 3.

15. Maurice Punch sorts out nine types of police corruption, including (1) corruption of authority, (2) ‘kickbacks’, (3) opportunistic theft, (4) ‘shakedowns’, (5) protection of illegal activities, (6) ‘the fix’, (7) direct criminal activities, (8) internal payoffs, and (9) ‘flaking’ or ‘padding’. See Punch, *supra* note 3, at 303.

16. See Newburn, *supra* note 3, at 28-44.

### 1. *Similarities in socioeconomic backgrounds*

The two cities are quite close to each other in many aspects. First, both Hong Kong and NYC are currently among the wealthiest cities in the world.<sup>17</sup> Historically, while NYC has been the financial heart of the industrialized United States for more than one century, Hong Kong quickly became one of the most industrialized areas of the world after the Second World War and has been enjoying its worldwide reputation as one of Asia's "four little dragons."<sup>18</sup> Second, although there is a legacy of Chinese culture mixed in the Hong Kong's legal system, it shares a British legal tradition with its counterpart in NYC. In addition, even more interestingly, the municipal police forces in both cities were established during the same period, that is, the mid-1840s.<sup>19</sup> Finally, the sizes of the two cities are quite close in terms of population.<sup>20</sup> Given the total number of police officers allocated within Hong Kong and NYC, both cities are among the most police-dense cities in the world.<sup>21</sup>

### 2. *Comparison of political structures*

In addition to their socioeconomic backgrounds, the two cities share certain elements relating to political structure. First, although neither Hong Kong nor NYC is a sovereign state, both are constitutionally empowered with a full police power within their jurisdiction. In this sense, police corruption control is basically a municipal affair in both cities. A clear division of labor among different governmental branches

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17. According to The Global Financial Centres Index 5, which is published by the City of London in March 2009, New York City and Hong Kong currently rank at the second and the fourth among all global financial centers, respectively. The index is available at [http://217.154.230.218/NR/rdonlyres/8D37DAE2-5937-4FC5-A004C2FC4BED7742/0/BC\\_RS\\_GFCI5.pdf](http://217.154.230.218/NR/rdonlyres/8D37DAE2-5937-4FC5-A004C2FC4BED7742/0/BC_RS_GFCI5.pdf).

18. See EZRA F. VOGEL, *THE FOUR LITTLE DRAGONS: THE SPREAD OF INDUSTRIALIZATION IN EAST ASIA* (1991).

19. For the historical origin of the Hong Kong police force, see Mark S. Gaylord & Harold Traver, *Colonial Policing and the Demise of British Rule in Hong Kong*, 1995 INT'L J. SOC. L. 23; for the official creation of the NYPD, see Craig D. Uchida, *The Development of the American Police: An Historical Overview*, in *CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS* 18 (Roger G. Dunham, & Geoffrey P. Alpert eds., 2001).

20. According to the Hong Kong census, Hong Kong had a population of 3,950,000 in 1971 and of 6,840,000 in 1999. Demographia.com, *Hong Kong Population History*, <http://www.demographia.com/db-hkhist.htm>. According to the U.S. census, meanwhile, New York City had a population of 7,896,000 in 1970 and 8,008,000 in 2000. Demographia.com, *City on a Hill: New York City Reaches Population Peak*, <http://www.demographia.com/db-nyc2000.htm>.

21. Currently, the Hong Kong Police Force employs about 33,000 officers. See Hong Kong Police Force – Organization Structure, <http://www.police.gov.hk/hkp-home/english/org/index.htm> (last visited on March 25, 2009). The New York Police Department, meanwhile, employs about 38,000 officers. See NYPD – Frequently Asked Questions, [http://www.nyc.gov/html/nypd/html/faq/faq\\_police.shtml#1](http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#1) (last visited on March 25, 2009).

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has been formalized for decades in both cities. Accordingly, the three branches of the city hall, the city council, and the city court have been established for a long period of time. In both cities, city hall has been empowered to appoint most public officials directly or indirectly, including the police commissioner. Furthermore, the judicial systems in both cities have been considerably independent of the other institutions, and the citizens have enjoyed freedom of speech.<sup>22</sup>

However, one difference between the two cases makes them significantly distinct from each other. Generally speaking, when reforms were conducted, an institutionalized mechanism of checks and balances, in particular on the executive branch, existed in NYC but not in Hong Kong. In NYC, this mechanism was established by the city charter and guaranteed by a complicated system of elections. In NYC, elected municipal officials include the mayor, the comptroller (the city's chief financial officer), city council members, some judges of the municipal judicial system, district attorneys, several members of the board of education, etc.<sup>23</sup> Although municipal elections have been dominated by the Democratic Party over decades, many unpopular politicians were kicked out of their positions by voters either through inter-party or intra-party competitions, which makes the mechanism of checks and balances work in municipal politics.

In contrast, neither the governor nor any other officials were elected by the Hong Kong people during the 1970s.<sup>24</sup> The colonial government followed an executive-dominant system. In this regime, there was a formalized separation of power between the governor, the Legislative Council, and the judiciary. But, in fact, the governor had actual autocratic power through dominating the decision-making process of appointment. Before the handover of Hong Kong in 1997, the colonial governor had the following powers: (1) he appointed all members of the Executive Council and the Legislative Council before 1985; (2) he was chairman of both the Executive Council and the Legislative Council until 1991 and could dissolve the Legislative Council at any time; (3) all appointments, promotions, and transfers of public officials in the colony

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22. While the people of Hong Kong in the 1970s enjoyed less freedom than their counterparts in NYC because of the nature of colonial government in Hong Kong, the society was free in principle. In particular, the British-dominating court was protected by a tradition of rule of law transplanted from England. English publishers in Hong Kong society, such as *The Hong Kong Law Journal* and *The Far East Economic Review*, enjoyed substantial freedom.

23. See generally CHARLES BRECHER ET AL., *POWER FAILURE: NEW YORK CITY POLITICS AND POLICY SINCE 1960* (1993).

24. Democratization in Hong Kong started in the 1980s after the Sino-British negotiations during 1982-84, one decade after the establishment of the ICAC. See IAN SCOTT, *POLITICAL CHANGE AND THE CRISIS OF LEGITIMACY IN HONG KONG 1-8* (1989).

were made in his name; and (4) he could disregard the opinion of the majority of Executive Council and only had to explain the reason to the British Foreign Office.<sup>25</sup> This power structure brought many conveniences that allowed the governor to implement his own policy.

### 3. *Different results in combating police corruption*

Another crucial difference between the two cities is the different results that occurred in trying to control police corruption. Hong Kong has been widely appreciated as a successful case since the building of the Independent Commission Against Corruption (“ICAC”) in 1974.<sup>26</sup> Nevertheless, for the past hundred years, NYC has been suffering from twenty-year cycles of corruption, scandal, reform backslide, and fresh scandal in its police department.<sup>27</sup> From 1894 to 1994, there were six major investigations performed by different special commissions.<sup>28</sup> The first five faced the same fate—however successful their reforms might have been in the short run, none of them succeeded in achieving police integrity on a lasting basis.<sup>29</sup>

#### *B. Hong Kong: Changing the Equilibrium of Police Corruption*

The Hong Kong story begins with a short prelude before the 1970s and ends with the establishment of a new equilibrium of integrity in the Hong Kong police department decades after.<sup>30</sup> The establishment of the new equilibrium started with widespread acceptance within the police force of corruption and the Hong Kong people’s resentment against that. Hong Kong then went through reforms to clean the police force step by step, and ended with the consolidation of institutional rebuilding to guarantee a government of integrity. Like the old saying that “Rome was not built in one day,” the success of Hong Kong’s anticorruption reforms

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25. See Ma Ngok, *Lecture 2: The Chief Executive and the Executive Branch*, in HONG KONG GOVERNMENT AND POLITICS (Spring 2006) (unpublished manuscript on file with the author).

26. See LETHBRIDGE, *supra* note 13; KLITGAARD ET AL., *supra* note 2.

27. See Harold Baer, Jr., & Joseph P. Armao, *The Mollen Commission Report: An Overview*, 40 N. Y. L. SCH. L. REV. 73 (1995).

28. The six investigations were implemented by the Lexow Committee (1894), the Curran Committee (1913), the Seabury Committee (1930), the Harry Gross Committee (1950), the Knapp Commission (1971), and the Mollen Commission (1994) respectively. For more details, see Gabriel J. Chin, *Series Introduction*, in NEW YORK CITY POLICE CORRUPTION INVESTIGATION COMMISSION, 1894–1994 (Gabriel J. Chin ed., 1997).

29. See SHERMAN, *supra* note 133; THE MOLLEN COMMISSION, *supra* note 9; Chin, *supra* note 28.

30. For a general review of Hong Kong’s anticorruption efforts, see BERTRAND DE SPEVILLE, HONG KONG: POLICY INITIATIVES AGAINST CORRUPTION (1997).

did not come until the reformers had overcome enormous challenges, in particular those from within the police force.

### 1. *Prelude*

In the Hong Kong colonial regime, during the period before the systematic reforms in the middle 1970s, corruption was widespread and a serious governmental problem. Responding to the social disease, the government adopted a set of institutional reforms.<sup>31</sup> In the legislative branch, as early as 1898, the colonial government promulgated its first legislation dealing specially with bribery and corruption, the Misdemeanors Punishment Ordinance. Fifty years later, the Prevention of Corruption Ordinance (1948) was passed as a response to the prevailing concern to the public service needed to be cleaned up. However, these regulations were “little more than a literal adoption of corresponding legislations in England.”<sup>32</sup> They had little effect on corruption control. Only decades later, with real changes of policy and attempts adapted to local conditions, the Prevention of Bribery Ordinance was promulgated in 1971, which was the principal statute relied on during the reforming era.<sup>33</sup>

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31. For the historical development of anticorruption efforts in Hong Kong, see Bernard Downey, *Combating Corruption: The Hong Kong Solution*, 6 HONG KONG L. J. 27 (1976); Kuan Hsin-Chi, *Anti-corruption Legislation in Hong Kong: A History*, in *CORRUPTION AND ITS CONTROL IN HONG KONG: SITUATION UP TO THE LATE SEVENTIES* (Rance P. L. Lee ed., 1981); LETHBRIDGE, *supra* note 13.

32. See Downey, *supra* note 31, at 29.

33. In particular, Section 10 of the 1971 ordinance not only made it possible to prosecute a public servant who lived with an unexpectedly high standard of living, but was also the center of the debates in the 1974 reform. The section provided:

- (1) Any person who, being or having been a Crown servant—
  - (a) maintains a standard of living about that which is commensurate with his present or past official emoluments, or
  - (b) is in control of pecuniary resources property disproportionate to his present or past official emoluments,shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how much pecuniary resources or property came under his control, be guilty of an offense.
- (2) No prosecution for an offense under subsection (1) should be instituted without the consent in the writing of the Attorney General, who shall, before consenting to the institution of a prosecution against a person for such an offense, inform that person a prosecution against him for such an offense is under consideration and give him an opportunity of making representations in writing to the Attorney General.
- (3) Neither section 7 of the Legal Officers Ordinance nor section 43 of the Interpretation and General Clauses Ordinance shall apply for or in respect of this section.
- (4) Any representation in writing by a person to the Attorney General under subsection (2) shall not, with the consent of that person, be admissible in evidence in any proceedings against him for any offense.

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In the executive branch, these laws involved institutional adjustments. For instance, as a response to the 1948 ordinance, the Anti-Corruption Branch (“ACB”) was established within the police department. The ACB was a specialized police unit with the responsibility to investigate and prosecute corruption cases. A standing committee on corruption was set up in 1956, which reported directly to the governor and was composed of the attorney general, senior police officers, and several unofficial members of the Executive Council.

It was the standing committee that gave an early proposal in the late 1950s to establish an external institution to investigate police corruption when it found that the ACB did not work well. But the proposal failed because of resistance from the police department. As a compromising and alternative approach in place of the proposal, the ACB was promoted to the Anti-Corruption Office (“ACO”) with the Assistant Commissioner of Police as its director. The standing committee had also significantly contributed to the 1971 ordinance.

Regardless of these efforts, the corruption problem was not well handled. Sir Alastair Blair-Kerr reported that there was a saying popular in the police force before the middle-1970s reforms: (1) “Get on the bus” (if you wish to accept corruption, join us); or (2) “run alongside the bus” (if you do not wish to accept corruption, it does not matter, but do not interfere); but (3) “never stand in front of the bus” (if you try to report corruption, the “bus” will knock you down—you will be injured or even killed or your business will be ruined).<sup>34</sup>

The effect of widespread corruption within the government was terrible. It contributed to a serious governmental crisis in the late 1960s, which eventually led to the appointment of a new governor, Sir Murray MacLehose, in November 1971.<sup>35</sup> Sir MacLehose was a man of great integrity and a true statesman. In his administration, the Legislative Council followed the suggestion from the standing committee on corruption and passed the 1971 ordinance. After that, there was a slight increase of prosecution against corrupted officers. However, a systematic campaign against police corruption did not happen until a big scandal in 1973.

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(5) In this section “official emoluments” includes a pension or gratuity payable under the Pensions Ordinance.

34. See BLAIR-KERR, *supra* note 9, at 26.

35. See SCOTT, *supra* note 244.

## 2. *The Godber incident*

In late April 1973, a routine query from a Canadian bank about the lack of activity in one senior police officer's account came to the attention of the police commissioner, Charles Sutcliffe, mainly because the officer had misrepresented his official position to the bank.<sup>36</sup> This officer was Peter Godber and was then a reputed policeman and Deputy District Police Commissioner of Kowloon District. He was born in London in 1922 and joined the Hong Kong police force in 1952 as a probationary sub-inspector (a designation that is no longer in use). He had been promoted several times and to his current position in 1971.

The query from the Canadian bank quickly led to the disclosure of Godber's unexpected wealth, which caused the Commissioner to initiate an investigation by the ACO. By the end of May, the team from the ACO had discovered that Godber's financial resources totaled over HK\$4.3 million (about US\$780,000), which was nearly six times his total net salary during his twenty-year service in Hong Kong.<sup>37</sup>

The disclosure prompted the ACO's decision to prosecute Peter Godber. But according to section 10 of the 1971 ordinance, a reasonable period should be provided for the suspect to present an explanation in writing after the attorney general notified him of the coming prosecution. Godber was offered one week to prepare his explanation. During this period, although immigration officers at the airport were instructed to stop and detain him if he attempted to leave Hong Kong, Godber was not put under surveillance. Godber left Hong Kong by air on June 8, 1973.

The escape of Godber put the Hong Kong colonial government in a very embarrassing position. According to British law, a fugitive offender who went to England could be sent back to Hong Kong only if he could be condemned in both jurisdictions. Unfortunately, the case of Peter Godber did not satisfy this requirement of double criminality.<sup>38</sup> In other words, Godber could stay in England, legally enjoying his illegal money from Hong Kong.

The story of corruption and escape of punishment was quickly and widely diffused in Hong Kong by the mass media. Godber became notorious as a symbol of police corruption and government impotence in Hong Kong. Students raised an outcry against corruption with slogans like "fight Corruption, arrest Godber." Protesters strongly petitioned the British prime minister to extradite Godber back to Hong Kong. Bernard Downey, a faculty of Hong Kong University Law School and then judge

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36. See MANION, *supra* note 5, at 32.

37. See LETHBRIDGE, *supra* note 13, at 95; MANION, *supra* note 5, at 32-33.

38. See Bernard Downey, *Editorial: Godber*, 3 HONG KONG L. J. 249 (1973).

of the District Court of Hong Kong, remarked in his editorial for the *Hong Kong Law Journal*:

The ordinary man in the Hong Kong street quite fairly thinks it monstrous that a senior British official should be able to commit a serious criminal offence in the Colony and then be permitted to enjoy his ill-gotten wealth in Britain, safe under the protection of British law. It is commonly felt that Britain exploits Hong Kong economically and that Hong Kong's position as the largest holder of sterling reserves is positive proof of this . . . However, despite the apparent conviction of a large proportion of Hong Kong's community that, if he wants to, the Governor has only to pick up the phone to Whitehall in order to secure Peter Godber's return . . . .<sup>39</sup>

### 3. *The Blair-Kerr investigation*

The public pressure forced the colonial government to make a quick response to prevent a riot. Under the new governor, one of the government's quick responses was an independent investigation into police corruption soon after the departure of Godber. The investigation was run by Sir Alastair Blair-Kerr, a Senior Puisne Judge. Under the Commissions of Inquiry Ordinance, Sir Alastair was responsible for the following duties: (1) within three weeks, to report the circumstances in which Peter Godber was able to leave Hong Kong; and (2) within three months, to report on the effectiveness of the Prevention of Bribery Ordinance and suggest amendments and other changes in current amendments considered necessary.<sup>40</sup>

Very efficiently, Sir Alastair submitted his two reports on July 13, 1973 and September 1, 1973, respectively. In his first report, Sir Alastair conceded that more should have been done to prevent Godber from escaping and recommended that the 1971 ordinance be amended to make prosecution against corruption likely. As a result of this report, the Legislative Council amended the 1971 ordinance in August of 1973. In his second report in September, Sir Alastair concluded that corruption was rife in Hong Kong. In particular, "police corruption typically took the form of 'syndicated corruption,' in which a number of officers join together to extort money for abstaining from mandatory duties. Syndicated police corruption was localized, situated within Hong Kong's 16 territorial divisions or sub-divisions."<sup>41</sup> For Sir Alastair, the problem

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39. *Id.* at 249.

40. See Downey, *supra* note 31, at 36.

41. MANION, *supra* note 5, at 30. The evaluation of police corruption by Sir Alastair was

of the widespread and organized police corruption resulted not only from problematic ordinances but also the lack of enforcement of these ordinances.<sup>42</sup>

Certainly, both the law and its enforcement needed to be improved. As Bernard Downey remarks,

Sir Alastair Blair-Kerr's second report, the obvious difficulties surrounding the interpretation of [section 10 of the 1971 ordinance], and mounting public criticism of the manner in which the law was, or was not, being enforced, clearly pointed to the need for a thorough and careful review of the law and the machinery of enforcement."<sup>43</sup>

Since the police department had been responsible for investigating corruption cases and implementing the law, some adjustments to the department seemed to be necessary. These adjustments could follow one of two approaches: either establish an independent anticorruption organization as a substitute for the Anti-Corruption Office, or conduct reforms by keeping the major responsibility of anticorruption within the police force. For certain reasons, Sir Alastair did not make his answer to the question very clear.<sup>44</sup>

#### *4. The establishment of the ICAC and its achievements*

As for the existing institutional anticorruption framework, Sir Alastair vehemently criticized the dysfunction of the ACO on the one hand, but on the other hand, he seemed to have some concerns about the establishment of a new institution. Sir Alistair's second report cited arguments made by the police commissioner that demonstrated the concerns over creating a new anticorruption institution. Commissioner Sutcliffe, a policeman of great integrity and a true reformer, strongly defended a policy in favor of status quo, that is, keeping the power of

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widely accepted. Years later, Gerald Harknett, Director of Operations of the ICAC, defined a corruption syndicate as:

a body of officers with a common interest in agreeing not to take action or take certain action which will produce a corruption income. This generally involves covering up some form of illegal activity, whether it be trafficking in dangerous drugs, illegal gambling, prostitution and other vice, or breaches of procedures connected with immigration, housing construction projects, fire prevention, licensing, etc.

LETHBRIDGE, *supra* note 13, at 117.

42. See BLAIR-KERR, *supra* note 9, at 21–22.

43. See Downey, *supra* note 31, at 51.

44. See LETHBRIDGE, *supra* note 13.

investigating corruption within the police department. Commissioner Sutcliffe argued that it was the police officers, not others, who were responsible for investigating crime, and that corruption was a crime. He also strongly believed that police officers were the most professional and efficient at investigating crime. He further assumed that if there was some independent organization established, the morale of the police force would be at stake.<sup>45</sup> From the perspective of the police force as an interest group, the Commissioner's position is understandable and expected. While Commissioner Sutcliffe tried to keep the power within the police force, he by no means rejected proposals to improve the organization. He did introduce a number of organizational reforms, reshuffling the hierarchy of the force and redistributing powers in order to dilute the monopoly of powers by sergeants.

Sir Murray MacLehose, however, stood on the opposite position of Commissioner Sutcliffe. On October 17, 1973, Governor MacLehose

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45. Sir Alastair copied Commissioner Sutcliffe's trenchant views against establishing ICAC in his second report. These views of Commissioner Sutcliffe were:

1. Corruption is a crime and the investigation of crime is the task of officers trained in investigation work with court proceedings in mind. The investigation of crime is not within the province of lawyers and others.
2. There is no source of trained investigations in Hong Kong outside the Royal Hong Kong Police Force.
3. It is unlikely that police officers of ability would wish to transfer to an Anti-Corruption Bureau independent of the police because such a bureau would offer very limited career prospects. It is likely that any officers who would be willing to transfer from the police force would be officers of limited ability with little prospects of promotion in the force.
4. Apart from impairing their career prospects, officers of ability would find it distasteful to spend their working lives in an Anti-Corruption Bureau, independent or otherwise.
5. The Recruitment of police officers from overseas would prove difficult and, in any case, would take time.
6. An independent Anti-Corruption Bureau would lose the vast knowledge and resources which the Hong Kong police can bring to bear against crime, including corruption, and the advice and counsel of the Commissioner, his Deputies, and the Director of Criminal Investigation.
7. There is no guarantee that corrupt elements would not soon infiltrate into an independent bureau. If that were to happen, it would be impossible for a small bureau to turn inwards upon itself in order to investigate itself, whereas it is a relatively simple matter for a vast organization like the Royal Hong Kong Police Force to investigate any part of itself. Corruption in an independent bureau would have to be investigated by the Royal Hong Kong Police Force.
8. A bureau staffed by police investigations but responsible to persons other than the Commissioner of Police and his officers would be nothing more than an emphatic vote of no confidence in the senior officers of the police force and would be strongly resented by the officers of the police force. The morale of the force is at stake. The result of any lowering of the morale of the Royal Hong Kong Police Force would be putting in jeopardy the peace, order and security of Hong Kong.

See BLAIR-KERR, *supra* note 9, at 84.

made his argument for an independent anticorruption organization before the Legislative Council. He emphasized two points in support of this innovation:

I think the situation calls for an organization, led by men of high rank and status, which can devote its whole time to the eradication of this evil. . . . A further and conclusive argument is that public confidence is very much involved. Clearly the public would have more confidence in a unit that was entirely independent, and separate from any department of the Government, including the Police.<sup>46</sup>

Not only the governor but also the people of Hong Kong demanded a new and effective institution to curb the widespread corruption. The prevailing perception was that the long-rotten police force was simply not reliable. An ordinance that enabled the Independent Commission Against Corruption (“ICAC”) was passed in February 1974. “[T]he ICAC reflect[ed] and crystallize[d] the ‘felt needs’ of its time.”<sup>47</sup>

According to the ordinance, the ICAC aims to (1) pursue the corrupt through effective detection, investigation, and prosecution; (2) eliminate opportunities for corruption by introducing corruption-resistant practices; and (3) educate the public on the evils of corruption and foster their support in fighting corruption.<sup>48</sup> Correspondingly, there are three major departments in the ICAC: operations, corruption prevention, and community relations. The new institution was politically, financially, and organizationally independent of any other agency, including the Royal Police Force, except that the commissioner was made responsible to the governor directly. Jack Cater was appointed to be the first ICAC Commissioner. Cater was widely known as a man of integrity and a civil servant of great ability during his 30-year civil service in Hong Kong. Now he was leading a brand new anticorruption institution with a staff of 682, including 225 police officers and civilian employees of the former Anti-Corruption Office, with the full support of the governor.<sup>49</sup> Both the innovative framework design and the choice of a charismatic leader were helpful for the good image of the ICAC at the very outset.<sup>50</sup>

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46. Hong Kong ICAC, History, [http://www.icac.org.hk/new\\_icac/eng/about/history/main\\_6.html](http://www.icac.org.hk/new_icac/eng/about/history/main_6.html).

47. Ambrose Yeo-Chi King, *An Institutional Response to Corruption: The ICAC of Hong Kong*, in HONG KONG DILEMMAS OF GROWTH 115 (Leung Chi-Keung et al. eds., 1980).

48. Independent Commission Against Corruption Ordinance § 12, No. 204, (2009), available at <http://www.hkllii.org/hk/legis/en/ord/204/s12.html>.

49. See LETHBRIDGE, *supra* note 13.

50. See King, *supra* note 47.

At the beginning stage, it was not surprising for the ICAC to focus on the first function to pursue the corrupt through effective detection, investigation, and prosecution. Not surprisingly, “[t]he ICAC’s first important task was to bring Godber to justice.”<sup>51</sup> In early 1975, Godber was extradited from England to stand trial. Mr. Godber was eventually found guilty and sentenced to four-year imprisonment in February 1975. Godber’s extradition and prosecution demonstrated the ICAC’s determination and resolution to eradicate corruption. It was this landmark case that kicked off a quiet revolution—a new start against corruption. This “new start” resulted in a total of 108 prosecutions and 66 convictions in the ICAC’s first year.<sup>52</sup>

Although the ICAC had succeeded in prosecuting several notorious corrupt individuals and cleaning the business circle in its first two years, the campaign against syndicated corruption in the police force was not launched until 1976, in part because the new investigatory institution had to rely on human resources from the police department at first. As early as 1975, though, the working schedule on this issue was foreshadowed by the commissioner. In his annual review, Commissioner Cater announced,

1975 was a year of consolidation—of consolidation and of preparation for the titanic struggle which lies ahead. For our aim is to break the back of organized, syndicated corruption within the next year or two. 1976 and 1977 are going to be crucial and testing years both for the Commission and for the community of Hong Kong.<sup>53</sup>

The working agenda performed very well. In 1976, the ICAC was convinced that almost every police division had built its own corruption syndicate for decades, some of which could even be traced back to the nineteenth century. The large-scale and longstanding police corruption was not eradicated until the late 1970s. During the campaign, large numbers of police officers were investigated, prosecuted, and convicted. According to the ICAC Annual Report, by the end of 1977, a total of 7312 corruption reports were received, 3519 cases were investigated, and 749 persons were prosecuted. Most of the convicted were police officers, including a large number of sergeants. In some cases, dozens of officers were convicted and imprisoned in a single corruption case. In July 1977, Commissioner Cater reported to the governor that no major corruption

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51. Hong Kong ICAC, History, [http://www.icac.org.hk/new\\_icac/eng/abou/history/main\\_7.html](http://www.icac.org.hk/new_icac/eng/abou/history/main_7.html).

52. See King, *supra* note 477, at 119.

53. LETHBRIDGE, *supra* note 13, at 116.

syndicates were known to exist and those remaining were either dormant or had been shattered into small, and therefore financially less rewarding, groups.<sup>54</sup>

The success of the ICAC in fighting for a better and cleaner Hong Kong was also demonstrated by its ability and resolution in slaying “big tigers.”<sup>55</sup> In addition to the Godber case, the cases of Au Yeung, Tsang Kai-wing, Norman Temple, Paul Lee and Roy Sturgeon, Cunningham and Thompson, the Kowloon Traffic Conspiracy, the Wanchai Conspiracy and the High Island Water Scheme were all exposed, one by one.<sup>56</sup> All these achievements caused “a sudden, large shift in mass public beliefs about anticorruption enforcement . . . .”<sup>57</sup>

##### 5. *Police officers’ opposition and the partial amnesty*

The tremendous success of the ICAC in curbing police corruption revived the confidence of the Hong Kong people in the government. However, the morale of the police force was dampened immeasurably, in particular by frequent and unwelcome queries and investigations.<sup>58</sup> Many officers resigned or were dismissed.<sup>59</sup> The campaign also caused a wave

54. 1977 ICAC ANN. REP.

55. MANION, *supra* note 5, at 40.

56. *See* King, *supra* note 477.

57. *See* MANION, *supra* note 5, at 35.

58. According to one report by *The South China Morning* on July 11, 1976, “This is possibly one of the most depressing periods of its existence because of the uncertainty that many officers feel about their future and their concern about the inroads that corruption inquiries are making into the fabric of the force.” *See* Dianne Wood, *Low Morale-Officers Speak Out*, S. CH. M. POST, July 11, 1976.

59. The following table enumerates the numbers of police resignations and dismissals during 1970 and 1982 in Hong Kong.

Year	Commissioned Officers <sup>a</sup>		Non-commissioned Officers <sup>b</sup>	
	Resignations	Dismissals	Resignations	Dismissals
1970-1	34	0	475	34
1971-2	34	1	698	75
1972-3	18	0	461	81
1973-4	28	3	455	93
1974-5	34	6	170	61
1976	54	9	285	65
1977	53	8	350	61
1978	38	5	350	60
1979	26	2	450	58
1980	25	2	406	88
1981	27	4	475	91
1982	21	3	398	63

of migration out of Hong Kong, especially among retired staff sergeants, serving station and barracks sergeants, and other ranks.<sup>60</sup>

While the campaign went on, the confrontation between the ICAC and the police force escalated. Several factors contributed to this escalating confrontation. The first one was a belief, widely held by police officers, that the ICAC seemed to be deliberately concentrating its attention almost entirely on the police force and that the Commission appeared to be carrying out a vendetta against the police force.<sup>61</sup> A second reason was related to the officers' natural hostility to the rivalrous force of the ICAC, which had significantly deprived the police force of its powers. Thirdly, financial recourses were lessened and life became much less secure, particularly for those officers, mostly Chinese, who had significantly relied on dirty money to support their families. This situation was exacerbated because the anticorruption campaign coexisted with a sharp economic recession in Hong Kong during those years.<sup>62</sup>

A police mutiny eventually emerged in October 1977. More than one hundred police officers from three Kowloon divisions were arrested for alleged involvement in syndicated corruption. On October 28, a large number of officers marched to police headquarters with a petition against the ICAC. Soon after, some forty officers went to the Operations Department of the ICAC and took part in a violent demonstration against the department. During the following week, the situation seemed to be out of control, which led to a crisis of law and order in Hong Kong.

Quickly responding to the crisis, the Governor made a very critical statement on November 5, 1977 on television, which was widely known as "the partial amnesty." According to this announcement,

[T]he ICAC in the future would 'not normally act' on complaints or evidence relating to offences committed before January 1977 except in relation to persons who had already been interviewed, persons against whom warrants had been issued, and persons outside of Hong Kong on November 5, and cases so heinous it would be unthinkable not to act.<sup>63</sup>

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LETHBRIDGE, *supra* note 13, at 225 (citing ANN. REP. OF THE COMM'R OF POLICE).

Note a & b: The Hong Kong police in the colonial era, as a body, contained two main segments or layers. On the one hand, there were the inspectorate and senior officers (superintendents and above), mostly British in the mid-1970s. On the other hand, the majority of the rank and file police officers were Chinese. The commissioned officers were referred to as the first layer; the non-commissioned officers, as the later layer. LETHBRIDGE, *supra* note 13, at 118.

60. *See id.*

61. *See King, supra* note 47.

62. *See LETHBRIDGE, supra* note 1313.

63. King, *supra* note 47, at 130.

The partial amnesty succeeded in appeasing the majority of the uneasy police officers and brought them back to the daily job of implementing the law.

*6. Institutionalization of the ICAC and consolidation of the equilibrium of integrity*

The partial amnesty imposed a dual impact on the ICAC. It was first of all negative. The public's confidence in the ICAC's determination to combat corruption was shaken. But, from a practical perspective, the amnesty did contribute to operational efficiency of the ICAC by relieving its investigators from many lengthy, costly, and difficult investigations into past offenses. It also "produced a second desirable practical result: Without the fear of investigation and prosecution for past activities, an increasing number of officials showed a new willingness to assist ICAC investigators."<sup>64</sup>

Another less-discussed significance of the amnesty is that the uneasiness of the police force demonstrated the possibility of a new Leviathanal power within the politics of Hong Kong. The methods of investigation adopted by the ICAC were widely criticized by police officers involved, which made an external check on the ICAC necessary. Therefore, soon after the statement of amnesty, the Governor set up an ICAC Complaints Committee to monitor the operation of the ICAC, which was composed of a group of eminent civil leaders.

After the major corruption syndicates had been abolished and the police force was appeased by the amnesty, the campaign against police corruption itself was normalized. Finished with the first part of this operation, the ICAC could now spend more energy on its second and third functions, to eliminate the many opportunities for corruption, and to educate the public. As a matter of fact, the success of the Hong Kong case in curbing police corruption was tightly related to the three-pronged strategy of the ICAC.<sup>65</sup>

In summary, the achievements of the ICAC in curbing corruption have significantly contributed to a clean Hong Kong<sup>66</sup> with a new

64. MANION, *supra* note 5, at 41 (quoting 1979 ICAC ANN. REP.).

65. *See id.*

66. The transparency rankings from the Transparency International Report well illustrate the cleanness of Hong Kong Government.

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Rank	16	15	15	14	14	14	16	15	15	14	12
Score	7.8	7.7	7.7	7.9	8.2	8.0	8.0	8.3	8.3	8.3	8.1

equilibrium of police integrity. Table 1 shows relevant data that illustrate these achievements. Decades after the reforms in the mid-1970s, fewer and fewer people now believe that corruption in the Hong Kong government is very common. The majority of Hong Kong people do not doubt that the performance of the ICAC has been effective. In particular, the percentage of police corruption cases among all cases reported to the ICAC has decreased from forty-five in 1974 to thirteen in 2002.

Table 1 Survey Data on Corruption in Hong Kong (1974-2002)<sup>67</sup>

<b>Year</b>	<b>Mass Belief of Widespread Corruption</b>	<b>Mass Belief of Effective Performance of ICAC</b>	<b>Reports to ICAC Alleging Police Corruption</b>
<b>1974</b>			45%
<b>1976</b>			46%
<b>1978</b>	35%	72%	39%
<b>1980</b>	16%	76%	30%
<b>1982</b>	8%		29%
<b>1984</b>	6%	84%	30%
<b>1986</b>	7%	87%	25%
<b>1988</b>	2%	88%	20%
<b>1990</b>	5%	76%	20%
<b>1992</b>	3%	75%	20%
<b>1994</b>	8%	71%	20%
<b>1996</b>	7%	69%	19%
<b>1998</b>	4%	67%	16%
<b>2000</b>	3%	70%	14%
<b>2002</b>	1%	70%	13%

### *C. NYC: Cycling Equilibria of Police Corruption*

The NYC case shows a different story compared with Hong Kong. It has suffered from twenty-year cycles of police scandal and reform. For the convenience of comparison, this article focuses on the cycle that started with the saga of Frank Serpico in the late 1960s and ended with the Mollen Commission investigation in 1994 (the “Knapp-Mollen

*See* TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTION INDEX (CPI) 1998-1999, 2001-2005, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi) (follow hyperlinks for individual years).

67. Adapted from MANION, *supra* note 5, at 58 tbl.2.2, 67 tbl.2.6, 68 tbl.2.7.

cycle”). Specifically, this article describes the reforms around the Knapp Commission investigation primarily provoked by the revelation of Frank Serpico.<sup>68</sup> The organization of the NYC story mirrors that of the Hong Kong story, starting from pre-reform backgrounds and ending decades later.

### 1. *The Pre-Knapp era*

In NYC, historically, there were two major organizations that were supposed to monitor, investigate, and prevent police corruption before the Knapp Commission.<sup>69</sup> The first one was the Department of Investigation of NYC. According to the City Charter, the Commissioner of Investigation “is authorized and empowered to make any study or investigation which in his opinion may be in the best interests of the City, including but not limited to investigation of the affairs, functions, actions, methods, personnel or efficiency of any agency.” Unfortunately, however, the Department of Investigation “never seriously concerned itself with police corruption,” and the fear of interfering with the Police Department has been a definite restraint upon the Department of Investigation.<sup>70</sup>

A second, more important anticorruption organization was the police force itself. Before the Knapp-Mollen cycle, there were several units within the NYPD responsible for anticorruption affairs. But, the institution suffered heavily from organizational fragmentation. As reported by the International Association of Police Chiefs, “[T]he various units charged with searching out misconduct within the Department and with maintaining internal discipline, efficiency and integrity were widely dispersed, poorly coordinated, undermanned, and, in many instances, so

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68. There are two major reasons for me to narrow my analysis of the NYC case to this period. One reason is that, compared to previous ones, the 20-year cycle during the 1970s and 1990s is the most recent police scandal in the history of the NYPD, and this coincidentally happened during the same era as the Hong Kong case. Secondly, as opposed to the reforms suggested by the Mollen Commission in 1994, the reforms suggested by the Knapp Commission were implemented and completed, which makes it easier to do causal analysis.

69. For a general historical review of NYC’s efforts in fighting against police corruption, see Chin, *supra* note 28.

70. The Knapp Commission found that there were three main factors contributing to the dysfunction of the Department of Investigation. First, like the anticorruption unit within the police force, the Department was short of manpower. The other two reasons are related to two organizational characteristics of the Department. The first is that its investigative staff was composed “of policemen and a few civilians who [were] work[ing] with the police unit under the supervision of a . . . police officer.” The second is that the Department lacked the power to grant immunity. THE KNAPP COMMISSION, *supra* note 9, at 246–48. These last two factors made the Department of Investigations not truly independent of the Police Department.

misdirected that they were almost totally ineffective in rooting out corrupt policemen.”<sup>71</sup>

## 2. “*Psycho Serpico*”

Under this fragmented and dysfunctional anticorruption system, it would predictably be a time-consuming job for any policeman of integrity and courage to successfully reveal a corruption case to the head of the department. This is exactly the unfortunate story of Frank Serpico, who began his quixotic fight against police corruption in July 1966 as a plainclothesman in the NYPD and left the force in June 1972. All that Serpico ever wanted was to be a good cop.<sup>72</sup>

When Serpico got an unexpected share of a “pad” in July 1966, he was concerned about being involved with dirty money, and reported the corruption to someone who would launch an investigation. Ironically, when Serpico handed in his corruption report to the captain at the Department of Investigation, he was warned that people revealed by Serpico would find him “face-down in the East River.”<sup>73</sup> In the following years, through different channels, Serpico tried very hard to appeal to the First Deputy Commissioner, who was widely believed to be truly managing the NYPD at the time, in order to initiate a systematic investigation into the widespread corruption in the department. But the result was disappointing. Not only was his request rejected again and again, but Frank Serpico himself was regarded as a “psycho” by several high-level officers.<sup>74</sup>

## 3. *The Knapp Commission investigation*

Eventually, with the support of three other colleagues, Serpico went to *The New York Times* in 1970. On April 25, 1970, *The New York Times* publicized an accusation of widespread corruption in the police department. Under a front-page headline, *The Times* reported: “*Graft paid to police here, said to run into millions.*” The story “created a sensation, and for weeks at a stretch police corruption and police shake-ups were page-one topics in *The Times*, *The New York Daily News*, and *The New York Post*, and nightly leads on television and radio broadcasts.”<sup>75</sup>

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71. *Id.* at 205.

72. PETER MAAS, *SERPICO* 11–12, 313 (Bantam Books 1973).

73. *Id.* at 133.

74. *Id.* at 186, 256, 258, 268, 308, 309.

75. *Id.* at 259.

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As a quick response to public pressure provoked by this story, a committee was appointed by Mayor Lindsay, with the City Corporation Counsel at its head. However, the pressure from the public and the press was so much that, out of a concern of possibility of conflicts of interest, this City Hall-dominated committee was replaced by a new independent commission chaired by a Wall Street lawyer named Whiteman Knapp. The Knapp Commission was established in May 1970, almost four years after Frank Serpico first tried to get City Hall to investigate police corruption.

Rather than seeking evidence for criminal charges against individual police officers, the main function of the Knapp Commission “concentrated on the broader problem of identifying the nature and extent of corruption in the Department.”<sup>76</sup> Having struggled to survive from lack of financial resources, the Commission submitted its final report in December 1972 after a series of investigations and public hearings. Not surprisingly, in the first sentence of its report, the commission said, “We found corruption to be widespread.”<sup>77</sup> According to the report, corrupt police officers in the NYPD had been described as falling into two basic categories: “meat-eaters” and “grass-eaters.” As the names suggest, the meat-eaters were those police officers who aggressively abused their powers for personal benefits; the grass-eaters simply accepted the payoffs that the circumstances of police work would throw their way. Corrupt cops not only took “scores”—individual payments—but also were widely involved in “pads”, by which they collected regular bi-weekly or monthly payments from each of the gambling establishments in the area under their jurisdiction, and divided the dirty money in equal shares. The department had not eliminated this misconduct because of the wide acceptance of the “rotten-apple” theory. The premise of the theory, believed by many high-ranking officers, was that corruption within the force was the exception rather than the rule. Even worse, the rotten-apple doctrine reinforced and gave respectability to the “blue code of silence” that was popular among ordinary police officers.<sup>78</sup>

It was the task of the Knapp Commission to expose the myth of the rotten apple doctrine. The Commission urged the state and city governments to set up a detailed plan that would dismantle the infrastructure of corruption that existed within the force. The first part of the Commission’s plan took the position that a basic weakness in the existing approaches to police corruption was that all agencies relied

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76. THE KNAPP COMMISSION, *supra* note 9, at 36.

77. *Id.* at 1.

78. *Id.* at 1–10.

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primarily on police officers to do their investigative work, which caused distrust among those citizens who wished to complain about police officers. Accordingly, the Commission recommended that the Governor of the State of New York appoint a Special Deputy Attorney General in charge of investigating and prosecuting all crimes involving corruption in the criminal process. A second part of the Commission's plan was to improve anticorruption action in the police department by strengthening administrative accountability. In the meanwhile, all those fragmented anticorruption units within the force were to be centralized and brought together under the Inspection Services Bureau ("ISB"). Other recommendations included strategies of reducing the opportunities for corruption activity, reducing the temptations and increasing the risks, and changing procedures that encourage corruption.

#### 4. *The Murphy reformation*

Some of the recommendations from the Knapp Commission—for example, the suggestion of setting up a Special Deputy Attorney General in charge of anticorruption affairs—were never put into effect because of the opposition from the city's five district attorneys.<sup>79</sup> Other recommendations were implemented by the new Police Commissioner. In contrast to the external institutional establishment of the ICAC in Hong Kong, most reforms in NYC were related to internal organizational rebuilding of the police force. Five months after the corruption story by *The New York Times*, in October 1970, Mayor Lindsay replaced Police Commissioner Leary with Patrick V. Murphy, who was a former head of the New York Police Academy and then the Detroit Chief of Police. Murphy had a reputation rare among police officers: that of a "law-and-order liberal."<sup>80</sup>

Later developments of the police scandal had proved that Commissioner Murphy was a sincere and successful reformer of the police force.<sup>81</sup> During his three-year commissionership at the NYPD (October 1970 – May 1973), Murphy launched tremendous reforms in the force, including decentralizing authority and responsibility, reducing the autonomy of the detective branch, setting new standards of accountability for senior officers, instigating proactive investigatory procedures for police deviance, altering certain aspects of enforcement,

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79. VINCENT J. CANNATO, *THE UNGOVERNABLE CITY: JOHN LINDSAY AND HIS STRUGGLE TO SAVE NEW YORK* 475–76 (2001).

80. See MAAS, *supra* note 72, at 273.

81. See generally PATRICK V. MURPHY & THOMAS PLATE, *COMMISSIONER: A VIEW FROM THE TOP OF AMERICAN LAW ENFORCEMENT* (1977).

rotating personnel, and emphasizing integrity in training.<sup>82</sup> As for the new system, Murphy himself interpreted it as the following:

This was the essence of accountability: not passing the buck. And the essence of good police management: knowing what was going on under your command. It was either corruption or incompetence, one or the other.

Under the old system, the commanding officer could have feigned insulation. Under the reform, we were insisting on greater accountability, knowledgeability, professionalism.<sup>83</sup>

With regard to the reforms by Murphy, Jerome H. Skolnick, a former president of the American Society of Criminology, has commented:

Thus Murphy's success in New York probably had more to do with his own extraordinary personal ability, energy, and broad experience than with the fact that he came from a line of New York cops. He was the ideal reformer: a savvy insider who had been away learning about police life in other places before returning to reform the agency in which he had grown up.<sup>84</sup>

##### 5. *Reversion*

The Murphy reformation of the NYPD should not be evaluated unilaterally. On the one hand, it is quite fair to conclude that the immediate effect of those reforms was promising. Some serious academic research on the reforms soon after the event indicated huge achievements. Leading scholars in the field of police corruption have paid much attention to it. Lawrence Sherman, for example, remarked, "From all indications, the most recent episode of scandal and reform in the New York City Police Department . . . reduced police corruption to a very minimal level."<sup>85</sup> Maurice Punch, in a number of informal interviews with members of the NYPD conducted in the early 1980s, was told that the reform was revolutionary.<sup>86</sup> Not only academic research but also the public media reached the same conclusion. On November 29,

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82. See MAURICE PUNCH, CONDUCT UNBECOMING: THE SOCIAL CONSTRUCTION OF POLICE DEVIANCE AND CONTROL 22-28 (1985); see generally John Dombink, *The Touchables: Vice and Police Corruption in the 1980's*, 51 LAW & CONTEMP. PROBS. Winter 1988, at 201-32.

83. MURPHY & PLATE, *supra* note 81, at 167.

84. JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 185 (2002).

85. SHERMAN, *supra* note 13, at xxix.

86. PUNCH, *supra* note 82, at 28.

1982, *The New York Times*, in an article named “*Decade after Knapp Inquiry, A Sense of ‘Revolution’ Pervades Police Force*”, said, “[T]he last 10 years have brought a profound change in the department’s attitude toward corruption – a change reflected in the behavior not only of senior officials but also many officers on the street.”<sup>87</sup>

However, negative evidence persisted. Even during Murphy’s commissionership, police corruption was never fully stopped.<sup>88</sup> In 1986, when 12 police officers from the 77th Precinct of the NYPD were involved in another police scandal, the issue of anticorruption was once again put back on the table.<sup>89</sup> But after that scandal, the NYPD enjoyed a period of quiet regarding corruption until the early 1990s. On July 24, 1992, responding to a new police scandal, Mayor Dinkins issued Executive Order No. 42 to establish another independent investigation commission, the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department. This commission was chaired by Judge Milton Mollen. According to the Executive Order, the Mollen Commission “was asked to examine three areas of deep public concern: (1) the extent and nature of corruption within the NYPD; (2) the NYPD’s policies and procedures for corruption control; and (3) improvements and reform for the detection and prevention of corruption within the NYPD.”<sup>90</sup>

The final report of the Commission in 1994 stated that the NYPD was still grappling with the corruption problem precisely twenty years after the Knapp Commission Investigation.<sup>91</sup>

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87. M.A. Farber, *Decade after Knapp Inquiry, A Sense of ‘Revolution’ Pervades Police Force*, N.Y. TIMES, Nov. 29, 1982, at B1.

88. In a historical review of police corruption in 1986, *The New York Times* enumerated several major police corruption cases after the Murphy reformation in the 1970s. In 1981,

[f]ive officers from the 10th Precinct in the Chelsea section of Manhattan were sent to jail for taking bribes and 11 supervisors were disciplined by the department for being unaware of the corrupt activity. [In] 1983[, a]fter an undercover Federal inquiry into possible organized crime connections, 10 officers from the 10th Precinct were charged with accepting bribes from after hours [sic] clubs in Greenwich Village and on the Lower East Side. [In] 1985[, f]ive officers in the 106th Precinct in South Ozone Park, Queens, [were] accused of torturing drug suspects with a stun gun . . . Two of the officers were eventually convicted and trials for the other three are pending. Police Commissioner Benjamin Ward transferred every supervisor in the 106th Precinct.

*Police Corruption: A Look at History*, N.Y. TIMES, Sept. 24, 1986, at B4.

89. See Todd S. Purdum, *12 from 77th Precinct Arraigned; Ward Outlines Integrity Measures*, N.Y. TIMES, Nov. 7, 1986, at A1; Dombrink, *supra* note 82, at 219; see generally MIKE MACLARY, BUDDY BOYS: WHEN GOOD COPS TURN BAD (1987).

90. Baer and Armao, *supra* note 277, at 74 (citing N.Y., N.Y., Exec. Order No. 42 (July 24, 1992)).

91. See generally THE MOLLEN COMMISSION, *supra* note 9.

#### IV. THE BLUE CODE OF SILENCE, CHECKS & BALANCES, AND POLICE CORRUPTION CONTROL

With the foregoing background of scandals, investigations, reforms, and results of police corruption control in the two cities, this article will now analyze the factors contributing to different results in the cases and then present a mechanism that enables successful control of police corruption.

##### *A. Empirical Findings and Their Theoretical Implications*

Before moving into detailed scrutiny of the mechanism, it's useful to summarize the empirical findings from the previous case study. In principle, the Hong Kong account is a successful case of controlling police corruption, while the 1970s NYC account represents a relatively failed attempt at controlling corruption in the long run. Throughout the process of reform leading to these different results, similarities and differences between the two cases are readily apparent.

On one hand, both cases involve (1) a police scandal, (2) an independent investigation into the scandal, (3) a finding of organized police corruption by the investigator, (4) a new policy-entrepreneur police commissioner appointed soon after the scandal, and (5) a systematic organizational rebuilding within the police force enforced by the new police commissioner. Nevertheless, the two cases vary in the following aspects: (1) the existence of institutionalized checks and balances within the NYC political structure but not within Hong Kong, (2) an external-reform approach in the Hong Kong case but not in the NYC case, and (3) a severe punishment of the corrupt police and later a partial amnesty in Hong Kong but not in NYC.

What are the implications of these empirical findings? To explore potential theoretical implications, it is helpful to introduce Mill's method of difference. Named after British philosopher John Stuart Mill, this analytical tool deals with situations for which the outcome is not the same for all compared cases.<sup>92</sup> To use this method,

the researcher examines all possible independent variables that might influence th[e] outcome, looking for a pattern where only one of the independent variables is perfectly correlated with the dependent variable, whereas the other independent variables are either constant

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92. See generally JOHN STUART MILL, A SYSTEM OF LOGIC, RATIOCINATIVE AND INDUCTIVE (Obscure Press 2004) (1843).

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(regardless of shifts in the dependent variable) or imperfectly correlated with the dependent variable.<sup>93</sup>

According to this method, the one “perfectly correlated” independent variable is assumed to be responsible for the different outcomes.

While Mill’s method of difference is not perfect in social research and its application is conditional on many prerequisites,<sup>94</sup> it is illuminating for comparative studies, including this comparison between Hong Kong and NYC. Accordingly, without claiming a single deterministic-causal relation, I contend that the above three major differences regarding the process of reform between the two cases might contribute to the different results of anticorruption in the two cities.

Specifically, there are three relationships found in the previous empirical study. First, the establishment of the ICAC, an independent institution with the power of investigation and prosecution, was a necessary condition for the wide and severe prosecution of the corrupt police officers in Hong Kong, which later caused the police mutiny and eventually culminated in partial amnesty. On the other hand, the NYPD, which continued to effectively control the power of investigating corruption cases, did not make an overall attack on itself. This comparison, along with the relationship between vigorous prosecution and reform, is obvious and therefore not treated extensively in this article. The second explanation is that the establishment of an independent institution checking on the police force is a precondition for changing the equilibrium of police corruption. Thirdly, the existence of institutionalized checks and balances within the political structure will stand in the way of establishing such an independent institution. This article explores the last two relationships in the parts B and C, below.

### *B. The Blue Code of Silence and Insufficiency of Internal Reforms*

As mentioned above, the comparative case study of reform efforts in Hong Kong and NYC shows that an internal rebuilding within the police force is not sufficient to build up a new equilibrium of police integrity. Instead, an external institution checking on the police force is necessary

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93. Stanley Lieberman, *Small N's and Big Conclusions: An Examination of Reasoning in Comparative Studies Based on A Small Number of Cases*, 70 *SOCIAL FORCES* 307, 307–20 (1991), at 312.

94. See Elizabeth Nicholas, *Skocpol and Revolution: Comparative Analysis vs. Historical Conjecture*, 9 *COMP. SOC. RES.* 163, 170–175 (1986).

for controlling police corruption in the long run. Why? One major reason is that police corruption is usually organized.<sup>95</sup>

Another factor is related to a universal subculture within the police force, the blue code of silence. As the name suggests, the blue code of silence refers to a police subculture of keeping silent regarding fellow officers' unethical behavior. The code has widely been found by investigations throughout the world, including recent investigations performed in west European cities, such as Amsterdam;<sup>96</sup> east European cities, such as Zagreb;<sup>97</sup> Australian cities, such as Queensland;<sup>98</sup> and North American cities, such as Los Angeles.<sup>99</sup> It was also discovered in the above cases of Hong Kong<sup>100</sup> and NYC.<sup>101</sup>

These two reasons (lack of external checks and the blue code of silence) are significantly interrelated and share the same etiology. According to Skolnick, the blue code of silence is developed in the following way:

To fulfill their mandate, police work is done in unpredictable and sometimes violent environments. Given the potential danger of their workplaces coupled with their authority to use force to overcome resistance, police develop a close-knit substructure, with its own demands and expectations. *Loyalty* to fellow officers is a key feature of the culture of policing, regardless of whether criminality is evolved . . . .

The notion of loyalty to fellow officers is first encountered by police officers in their Police Academies, and this sense of loyalty tends to be reinforced throughout officers' careers . . . .

The refusal to report misconduct to proper authorities, or falsely claim no knowledge of misconduct, is a common manifestation of these

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95. *Id.* at 3–56.

96. See PUNCH, *supra* note 82, at 155–156.

97. See Sanja Kutnjak-Ivkovic et al., *Controlling Police Corruption: The Croatian Perspective*, in POLICING CORRUPTION: INTERNATIONAL PERSPECTIVES 259 (Rick Sarre et al. eds., 2005).

98. See David Brereton, and Andrew Ede, *The Police Code of Silence in Queensland: The Impact of the Fitzgerald Inquiry Reforms*, 8 CURRENT ISSUES CRIM. JUST. 107 (1996-1997).

99. See WARREN CHRISTOPHER, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 168 (1991).

100. See generally BLAIR-KERR, *supra* note 9; Tak-sing Cheung & Chong-chor Lau, *A Profile of Syndicate Corruption in the Police Force*, in CORRUPTION AND ITS CONTROL IN HONG KONG 199 (Rance Lee ed., 1981).

101. See generally THE MOLLEN COMMISSION, *supra* note 9; THE KNAPP COMMISSION, *supra* note 9.

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sentiments. Another is providing false testimony—“falsification”—to cover up or support the misdeeds of fellow police officers.<sup>102</sup>

Actually, not only covering up for fellow officers but also joining them in committing misconduct is a good way to securing police officers’ loyalty; in fact, the latter is more efficient. Not surprisingly, reports on both Hong Kong<sup>103</sup> and NYC<sup>104</sup> have found very few policemen in each setting who refused to join in the corruption syndicate or “pad” in a certain division. In contrast, disclosing their fellow officers’ misconduct is a risky business.

The code is not only popular among ordinary police officers but also commanders. Commanders tolerate their subordinates’ misconduct simply because their patronage for their subordinates is a source for building authority. As a result, it is not uncommon for the police to regard the relation between them and the public as one of “us versus them.” As two members of the Mollen Commission have reported,

At the Police Academy, an officer testified, he had learned that cops were different from the society they police, that the police are “us” and the public is “them” – that a cop must be prepared to do anything for himself and his comrades to insure that “them” never get the better of “us.”<sup>105</sup>

Influenced by the perception of “us versus them,” bosses of the force always want to “clean their own laundry” when corruption is detected. But, it is almost impossible for them to launch a real campaign against corruption within the force because of the blue code of silence. In this sense, it is not surprising to find that both Commissioner Sutcliffe and Commissioner Murphy, men of great integrity, did not accept any external intervention into police corruption, because they were concerned how it would affect the morale of the force.

In other words, because of the uniqueness of police work and the particular subculture of the blue code of silence, internal organizational rebuilding is not sufficient to change the equilibrium of police corruption. This point is well demonstrated by the two cases. In particular, the Mollen Commission of NYC gave the same conclusion in its final report in 1994, which was a reflection of the eventual failure of

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102. Jerome H. Skolnick, *Corruption and the Blue Code of Silence*, in POLICING CORRUPTION: INTERNATIONAL PERSPECTIVES 302 (internal citation omitted).

103. Cheung & Lau, *supra* note 100, at 205.

104. *See generally* MAAS, *supra* note 72.

105. Baer and Armao, *supra* note 277, at 80.

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the Murphy reformation. “The Commission urged the NYPD to undertake a dual-track approach to improving police integrity. The first track focused on the NYPD’s internal operations; the second, on the creation of an outside monitor that would insure the vigilance and commitment of the NYPD’s own efforts to stop corruption” in the long run.<sup>106</sup> And as a matter of fact, the necessity of an independent organization for police corruption control is not unique to the two cases. At the Seventh United Nations Congress on Prevention of Crime and Treatment of Offenders, several participants, including Australia, Brazil, England, Nigeria, and the United States emphasized the need for external, independent corruption control.<sup>107</sup>

### *C. Two Faces of Checks and Balances*

The previous discussion establishes that an independent institution like the ICAC is necessary to ensure a new equilibrium of police integrity. The questions then are: Why have so many cities not adopted this approach? Why did City Hall in NYC not adopt the suggestion from the Mollen Commission? Clearly, a good suggestion of strategies is not sufficient to implement a good public policy. The enforcement of any public policy is significantly constrained by the political structure in which decision-makers are performing. Probing the success of the Hong Kong case signals a new phase of analysis, namely, examining what it takes to *establish* an independent institution like the ICAC.

Establishing an independent institution is essentially the building of a new power center that will inevitably usurp some powers of the police force and then perform as its external monitor. Some organizational and institutional blockages have to be overcome before this can be done. The first blockage is an inevitable opposition from the police force. Another blockage is the problem of locating the principal for the new power center: the proposed independent institution should certainly be independent of the police force on the one hand, but on the other hand, it should certainly not be independent of certain higher authority, such as the city hall, the city council, or the people. After all, the establishment of a powerful anticorruption institution is about redistributing powers within the whole political structure.

In modern municipal politics built upon civil service, the first blockage is less significant than the second one. In most cities, either with or without fair selections, police officers are directly or indirectly

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106. *Id.* at 83.

107. Das, *supra* note 1, at 5.

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responsible to the police commissioner, who is appointed by the chief executive of the city. As long as the city leadership shows a great resolve to fight against corruption, the opposition from the police force can eventually be overcome. However, if there are institutionalized checks and balances among different branches, the setting of a new power center has to and will be a constitutional problem. Once a constitutional debate is provoked, the debate on the legitimacy of this new power center will take place prior to the discussion of efficiency in terms of implementing public policies, as illustrated by the following chapter in the NYC case.

After the strong recommendation from the Mollen Commission in 1994, the City Council of New York *did* try to create an outside monitor, which was named the Independent Police Investigation and Audit Board, with Local Law 13 of 1995. According to the law, the board would be empowered to “undertake independent investigations of possible corruption within the police department” (§451-a) and be supported by the power of issuing subpoenas (§451-b). But, soon after the promulgation of the law, the mayor vetoed this legislation. He believed that it violated the principle of separation of powers granted by the city charter. The mayor argued that all executive powers should be put in the hands of the executive branch but not the legislature, and that the independent investigation into police corruption was a consummately executive power. When the case was presented to the Supreme Court of New York County, the court ruled in favor of the executive branch.<sup>108</sup> As a result, the Independent Police Investigation and Audit Board was never created.<sup>109</sup>

A third institutional blockage to the establishment of an independent institution is related to a dilemma of governmental accountability in democracies. In principle, a system of periodical elections is a good measure to improve accountability by removing irresponsible politicians. Concerned with reelection, elected officials try to maintain a good public image as much as possible. In the case of police scandals, an elected mayor faces a dilemma: on one hand, he had better show his prompt and sincere commitment to fighting against corruption by appointing an investigating commission; on the other, however, he also hopes that the police force will not pose trouble for him.

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108. *See* Mayor of New York v. Council of New York, 651 N.Y.S.2d 531 (App. Div. 2007) (affirming the order of the Supreme Court of New York County granting the mayor’s motion for summary judgment).

109. Nevertheless, City Hall itself did establish, on its own behalf, an independent committee to monitor police corruption. This is called the Commission to Combat Police Corruption (“CCPC”), and is a permanent board to monitor and evaluate the anti-corruption programs, activities, commitment, and efforts of the NYPD. But, compared to the proposed Independent Police Investigation and Audit Board, the CCPC’s power is significantly reduced.

In practice, however, a true campaign against widespread police corruption usually does pose trouble for the current mayor, as evidenced by the NYC history. This shows a negative correlation between the commitment to anticorruption and reelectability. In fact, no mayor of NYC who has launched an independent investigation into a police scandal has been re-elected in the past century.<sup>110</sup> Smart politicians can learn much from the reading of history and Mayor Lindsay took this lesson seriously. Vincent J. Cannato, the author of the only substantial biography of Mayor Lindsay, stated, "Having been beaten badly over the issue of the [Civilian Complaint Review Board] and fearing that any investigation into corruption would completely sever whatever goodwill remained with the police, Lindsay and his aides chose to ignore the charges of corruption."<sup>111</sup>

In short, an elected mayor has to face the dilemma of earning and losing points when he commits to investigating corruption within his own agencies. This makes him hesitate to move forward with a campaign of anticorruption. Thus, a certain version of the prisoner's dilemma arises in democracies battling corruption.<sup>112</sup> This dilemma reduces the mayor's incentive to disclose police corruption. Since the job of disclosing police corruption could be done well by an external independent institution, the mayor will also hesitate to push the establishment of such an institution forward.

The NYC case proves the thesis of the "improper influence" of checks and balances in curbing corruption.<sup>113</sup> In particular, the negative influences came from the separation of powers between the City Hall and the City Council, two-party politics, and the interaction between the two. Another example that illustrates this point is related to the dysfunction of the Department of Investigations. According to the law, the Department was authorized to investigate governmental problems in any agency on behalf of the city, including police corruption. But it did not work well, in part because it could not compel a reluctant witness to testify by giving him immunity. As a matter of fact, the Department did try hard to get this power by introducing bills into the legislature, but it failed to do so.<sup>114</sup>

In contrast, in the Hong Kong colonial government, most powers were centralized and controlled by the governor. It was much more

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110. Chin, *supra* note 28.

111. See CANNATO, *supra* note 79, at 466.

112. Cf. Barbara Geddes, *A Game-Theoretic Model of Reform in Latin American Democracies*, 85 AM. POL. SCI. REV., 371, 371-92 (1991).

113. ROSE-ACKERMAN, *supra* note 6, at 143.

114. THE KNAPP COMMISSION, *supra* note 9, at 247.

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convenient for him to mobilize all resources to eliminate police corruption without significant institutionalized blockages. As for the establishment of the ICAC, it did usurp substantial power from the police force, and that led to a much more vehement opposition from the Hong Kong police force than its counterpart in NYC. But, from the perspective of the governor, those redistributed powers were just shifted from his left pocket to his right pocket, with the Legislative Council neither getting nor losing anything. Essentially, nothing had been changed for the governor. It is therefore understandable that Sir MacLehose strongly repudiated the status quo approach proposed by the Police Commissioner because of the pressure from the public and the media.

Leaving the problem of legitimacy aside for a while, the efficiency of an autocratic power is also apparent from the example of partial amnesty. This amnesty was indeed controversial and widely criticized.<sup>115</sup> But, as Melanie Manion points out, it had certain positive practical results that significantly contributed to the consolidation of the ICAC.<sup>116</sup> Given the controversial understanding of the amnesty, it could have never happened if the governor had been an elected official.

In summary, through these cases, we find the double edges of the “sword”—the mechanism of checks and balances in governance. On the one hand, the lack of external checks on the police force is conducive to widespread corruption within the force. In order to deal with this problem in the long run, it is necessary for reformers to rely on an external institutionalized power. In this sense, the pursuit of the equilibrium of police integrity is a pursuit of better checks and balances in government. On the other hand, this aim can be better achieved in a regime without an institutionalized mechanism of checks and balances, especially in relation to the executive branch. This is the dilemma of checks and balances in combating police corruption and in governance.

## V. CONCLUSION

The above comparative study neither tries to develop certain universal and single-dimensional explanations for the success of police corruption control in cities, nor gives a deterministic-causal analysis on the relation between institutional factors and the outcome of police corruption control. Obviously, reasons conducive to successful constraint on police corruption in the long run are multi-dimensional. The few successful cases of police anticorruption policies throughout the world in

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115. Peter Wesley-Smith, *Graft Amnesty and the Law*, FAR E. ECON. REV., Dec. 30, 1977, at 24.

116. MANION, *supra* note 5, at 41.

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past decades, such as Hong Kong and Singapore, do not share the exact same model.<sup>117</sup>

Rather, this article has the less ambitious goal of showing some hints for answering the questions raised in the introduction. With support of our empirical survey, we conclude that some city governments, such as Hong Kong, have succeeded in combating police corruption partly because they have made a better choice of anticorruption policies than those cities that have failed, such as NYC. In particular, one important lesson for future policy-makers is that police corruption control cannot solely rely on the police force itself. This wisdom is demonstrated by many other cases, as well. The basic reason is that corruption within the police force is usually widespread and organized, and has been reinforced by certain police subcultures, such as the blue code of silence. Such subcultures make the equilibrium of police corruption easy to build up but hard to change.

Therefore, the establishment of an independent organization to monitor, investigate and prosecute, and prevent police corruption is necessary for long-term reform. Such an approach acknowledges the inefficiency of a routine-and-incremental anticorruption approach and the priority of a mobilizing-and-comprehensive anticorruption policy.<sup>118</sup> The latter approach refers to a policy of mobilizing more resources and centralizing more powers in order to win the fight against corruption. This is a reasonable solution in that a stable equilibrium of police corruption, by definition, cannot be easily achieved by fragmented forces in routine ways.

The establishment of the ICAC in Hong Kong demonstrates well the efficiency of such an approach by taking powers from the police force and checking the police force institutionally at the same time. In this sense, the success of police corruption control is an outgrowth of a successful pursuit of checks and balances in governance. Once the old equilibrium of police corruption is broken, the institutionalized external checks on the police force make the consolidation of the new equilibrium of police integrity easy.

However, this comparative study also shows that the pursuit of additional checks and balances in governance can be negatively affected by the existing checks and balances among political players. Ironically, it is more efficient for a centralized autocratic power to do this job. As Susan Rose-Ackerman remarks, “[T]he fragmentation of political power

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117. See Jon S. T. Quah, *Controlling Corruption in City-States: A Comparative Study of Hong Kong and Singapore*, 22 CRIME, LAW & SOC. CHANGE 391 (1995).

118. See *id.* at 408.

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[in democracies] is not necessarily effective.”<sup>119</sup> This is a true dilemma of checks and balances in combating police corruption.

Nevertheless, this dilemma by no means leads us to conclude that the mechanism of checks and balances is useless and even deleterious to good governance. Rather, the case study tries to provoke a reflection of a fundamental cost-benefit analysis of checks and balances in democracies. This paper contends that it is reasonable for political players to impose checks on checks and balances in certain circumstances, which could be a note in the literature of the relationship between corruption control on one side and democratization and decentralization on the other.

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119. ROSE-ACKERMAN, *supra* note 6, at 143.