

# Mapping the Authoritarian and Democratic Divide

## The Transformation of Policing in Asia

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### 1.1 Introduction

Following a previous edited volume, *Authoritarian Legality in Asia: Formation, Development, and Transition*, this book delves into a sub-field of authoritarian legality by exploring the institutions of law enforcement and the concept of policing and legality in East and Southeast Asia in the context of democratic transition and authoritarian resilience. In studying constitutional transitions, scholars have invariably focused on the shifting role of the courts in limiting state power, safeguarding rights and freedoms, and sustaining the democratic agenda. Scant attention has been paid to the significant role of the police in supporting democratic transformation and maintaining authoritarian resilience in Asia. As Chen puts it in the Taiwan context, if an authoritarian state can get its police right it can get the legal system right.<sup>1</sup> In recent years, diminishing democratic and legal control over the police has become a global concern, epitomized by enduring police discrimination and brutality against the African American population in the US, the crackdown on dissenting voices in Hong Kong, and escalating confrontations between increasingly militarized police forces and restive communities. This edited volume is a small step toward filling a gap in the literature; it explores the nature of authoritarian policing, its transformation and resilience, and its rule of law implications. This book addresses both what Brodeur refers to as “high” policing, in other words, the policing of politics and the use of coercive state power to preempt, control, and punish political dissent and public protest, and the positioning and repositioning of regular, and “low,” policing within national political structures under authoritarianism and during

<sup>1</sup> Chen, Chapter 8 in this volume.

transitions to democracy.<sup>2</sup> The discussion of the evolution of policing takes place in this book in the context of the overall development of the police, their professionalization, institutional autonomy and neutrality, legality, and credibility within the communities they control and serve.

What makes policing “democratic” is a contested concept, and the definition varies depending on the level of abstraction and the particular focus of the inquiry. While regime type, which is a contested concept itself, is a significant factor in determining the nature of the police because of the close nexus between the coercive power of the police and the state, it is never dispositive. Thus, the dichotomous categorization of authoritarian policing (AP) and democratic policing (DP), while useful as a starting point for comparative analysis, misses a large amount of nuances and often overlooks the plurality of either system, neglecting the fact that a police system could be authoritarian or democratic in multiple ways and can be both authoritarian and democratic in different aspects of policing. This volume rejects this simple binary view. It aims to untie and unpack the nexus between the police and the political system and to explore the plurality of both AP and DP. While regime type is a key variable in explaining differences in ideologies, institutional design, and operation, it is only a factor, albeit perhaps a significant one along a long spectrum of AP and DP. Other variables have exerted a powerful influence in shaping the political role of the police and their accountability.<sup>3</sup>

It is our intention to recognize and articulate internal variations and contradictions of both AP and DP and factors beyond regime type that shape police behavior. The political system of East and Southeast Asian states is, to a significant degree, shaped by historical development and affected by international politics and international norms, which have left deep imprints on the respective police systems. There are different levels of economic development, and state capacities also vary significantly in supporting or restraining institutional development and the level of professionalization. While Confucianism has had an impact in shaping state–society relations, reinforcing certain attitudes toward authority, elite politics, and the political culture in general, there are great variations within the region owing to differences between prevailing ideologies,

<sup>2</sup> Jean-Paul Brodeur, “High Policing and Low Policing: Remarks about the Policing of Political Activities,” *Social Problems* 30(5) (1983): 507–520; and *The Policing Web* (Oxford: Oxford University Press, 2010).

<sup>3</sup> For critical analysis of regime type in the China and India comparison, see Prasenjit Dura and Elizabeth J. Perry (eds.), *Beyond Regimes: China and India Compared* (Cambridge, MA: Harvard University Asia Center, 2018).

colonial traditions, and political choices, as carefully elaborated by deLisle.<sup>4</sup> Accordingly, all such variations affect people's political culture, thereby constituting the sources of legitimacy of the police.

## 1.2 Defining Democratic Policing

There has been, in general, little academic attention paid to many aspects of AP such as its normative values, institutional blueprint, and cultural make-up. Often, AP is negatively defined, in opposition to DP. DP has received ample attention, drawing from diverse and often contradictory democratic theories developed in a specific historical context.<sup>5</sup> With some exceptions, theories on DP are often derivative, incoherent, or internally contradictory. They are often developed to serve a particular policy goal to respond to a unique exigency. The following section defines the core components of DP, based on the mainstream literature on DP in the US and other divided societies while taking into consideration the unique trajectory of policing in Asia.

In this part of the world, with a long history of resilient authoritarian rule under which the police served and continue to serve dictators or ruling political parties, DP hinges first and foremost on political neutrality, a high degree of institutional autonomy, and an arm's length distance from the dominant political power.<sup>6</sup> Political neutrality is a liberal democratic constitutional design, whereas the non-partisan police "swear allegiance to and be loyal to the Constitution and law."<sup>7</sup> A police force that is politically neutral would step back from political controversies and refrain from protecting any partisan interests of a government.<sup>8</sup> Police neutrality also serves as a shield to fend off political interference that may reduce the police to a mere instrument of political control and repression. As such, it is a strong anti-authoritarian device, together with other institutional design such as professionalism, which can be seen as necessary but not sufficient conditions for DP.<sup>9</sup>

<sup>4</sup> Jacques deLisle, Chapter 14, in this volume.

<sup>5</sup> David A. Sklansky, "Police and Democracy," *Michigan Law Review* 103(7) (2005): 1699–1830.

<sup>6</sup> Liqun Cao, Lanying Huang, and Ivan Y. Sun, "From Authoritarian Policing to Democratic Policing: A Case Study of Taiwan," *Policing and Society* 26(6) (2016): 642–658, 647, <https://doi.org/10.1080/10439463.2015.1009370>.

<sup>7</sup> *Ibid.*, 649.

<sup>8</sup> David H. Bayley, *Changing the Guard: Developing Democratic Police Abroad* (New York: Oxford University Press, 2006).

<sup>9</sup> Robert Reiner, *The Politics of the Police*, 3rd ed. (New York: Oxford University Press, 2000), 54.

Political neutrality is rooted in police professionalism and institutional autonomy,<sup>10</sup> and relies on common professional standards, ethics, rules, and of course interests to be sustainable and legitimate. In that sense, the political neutrality of the police is a professional calling, and it is this professionalism as a shared value and identity that in turn reinforces the demand for political neutrality and institutional autonomy. While professionalism may be reduced to merely a pretext for a politicized police force that, in substance, serves partisan interests, a highly professionalized police force often shares some common core features, including education and training, centralization within a clear hierarchical bureaucratic structure, and structured bureaucratic, legal, and political accountability mechanisms. Cultivating a professional identity as a law enforcement agency offers the best antidote to politicization.

By these standards, AP is necessarily politically biased and therefore neither professional nor autonomous. Authoritarian states insist on retaining a monopoly on political power, are partisan on the grounds of class, race, religion, or politics, and are particularly repressive in silencing dissenting voices. Without exception, they use the police as the sharp edge of political control. Police in authoritarian systems are inherently politicized and loyal to their political masters, whoever they are, rather than faithful to the law.<sup>11</sup> They are anti-democratic in that they “take sides” in a larger political sense, as Martin pithily puts it. DP requires the police “to satisfy the divergent audience, producing representations of police power that supply plausible legitimacy on multiple and potentially contradictory grounds.”<sup>12</sup> As he continues, “The moment police shift from the impossible aspiration of maintaining an inclusive-if-contradictory peace to a realist posture at war with some political fraction of the population under their power is the moment they cease to be democratic.”<sup>13</sup>

While politically neutral and unbiased, DP is simultaneously subject to multifaceted democratic control and accountability mechanisms, variously defined to include “legislative authorization” and “democratically founded rules,”<sup>14</sup> democratic,<sup>15</sup> “a state–society consensus,”<sup>16</sup> and

<sup>10</sup> Herman Goldstein, *Policing a Free Society* (Cambridge, MA: Ballinger Pub. Co, 1977); *ibid.*

<sup>11</sup> Erica Marat, *The Politics of Police Reform: Society against the State in Post-Soviet Countries* (Oxford: Oxford University Press, 2018).

<sup>12</sup> Martin, Chapter 7 in this volume.

<sup>13</sup> *Ibid.*

<sup>14</sup> Barry Friedman and Maria Ponomarenko, “Democratic Policing,” *New York University Law Review* 90 (2015): 1827–1907.

<sup>15</sup> Cao, Huang, and Sun, “From Authoritarian Policing to Democratic Policing,” 648.

<sup>16</sup> Marat, “The Politics of Police Reform,” 11.

civilian oversight and monitoring,<sup>17</sup> with the active participation of the communities as partners participating in policing.<sup>18</sup> To elaborate, while a democratic police force is apolitical and insulated from partisan interferences, they are also held accountable to external institutions and operate transparently and responsively.<sup>19</sup> Those accountability mechanisms are designed to prevent an autonomous police force from becoming an independent fiefdom and a law unto itself.<sup>20</sup> To be politically autonomous and at the same time accountable to external mechanisms is a delicate balance to strike, but both are indispensable for DP. Autonomy is often regarded as an antidote to authoritarianism to avoid state capture of a powerful force, but abundant research has shown, as highlighted by Kroncke's chapter,<sup>21</sup> police in democracies through well-organized unions can become a powerful interest group in their own right, highly autonomous, insulated by unionization, and effectively immune from effective external control.

While politically accountable, DP aims to treat people equally and be fair to all members of society. There is a danger, which often manifests itself forcefully, that democratic accountability of the police to majoritarian interests may turn out to be in favor of discriminative and repressive policing against minorities. Democratic police treat people with human dignity.<sup>22</sup> Here one sees a tension between a pretext or justification of democratic accountability and populist bias. Popular control of the police creates a well-known majoritarian difficulty, especially in highly decentralized systems such as that in the US, where the police, controlled by and accountable to the white majority, follow the majority will to the detriment of minorities, turning an otherwise democratically designed police force into a discriminatory and repressive instrument of power. Thus, DP is not a tool of particular political parties or their leaders, and

<sup>17</sup> Errol P. Mendes et al., *Democratic Policing and Accountability: Global Perspectives* (Aldershot: Ashgate, 1999); Andrew Goldsmith and Colleen Lewis (eds.), *Civilian Oversight of Policing: Governance, Democracy, and Human Rights* (Oxford: Hart Publishing, 2000); Andrew Goldsmith (ed.), *Complaints against the Police: The Trend to External Review* (New York: Oxford University Press, 1991).

<sup>18</sup> Sklansky, "Police and Democracy," 1828.

<sup>19</sup> Democracy is an open process and democratic police necessarily demands police transparency, especially in the age of big data and mass surveillance when the traditional accountability mechanisms are ill-fitted to control new policing technologies. Policing has to be made visible to be accountable.

<sup>20</sup> Matthew Light, Mariana Mota Prado, and Yuhua Wang, "Policing Following Political and Social Transitions: Russia, Brazil, and China Compared," *Theoretical Criminology* 19(2) (2015): 216–238; Marat, "The Politics of Police Reform."

<sup>21</sup> Kroncke, Chapter 2 in this volume.

<sup>22</sup> Gary T. Marx, "Police and Democracy," in Menachem Amir and Stanley Einstein (eds.), *Policing, Security and Democracy: Theory and Practice* (vol. 2) (New York: Office of Justice Program, 2001), 35–45.

it does not merely enforce the popular will. It has become axiomatic, as the painful experiences in the US and other Western democracies have demonstrated, that DP has to be impartial and fair to all members without discriminating between individuals based on grounds of status, race, or other personal attributes.<sup>23</sup> Democracy is thus an expansive concept that includes an element of, and aspiration for, egalitarianism, which is an enduring challenge facing the police in liberal democracies, the decentralized police system in the US being a particular case in point.<sup>24</sup> Otherwise, a decentralized process with democratic trappings can be captured by a populist bias that may push the police to widespread discriminatory practices. It reduces the effectiveness of accountability and authorizes or even demands hate, bigotry, discrimination, and populism of the sort that is antithetical to the rule of law.<sup>25</sup>

Finally, democratic police operate within the framework of the rule of law, broadly defined to include effective control of police powers by an independent judiciary. To overcome discriminative policing, the judiciary has to step in forcefully to enforce the rule of law and protect constitutional rights. In a populist society, the legislature could be biased so as to amount to part of the problem rather than part of the solution, and in this case, legislative control is remote and weak. Enhanced executive control often leads to the politicization of the police force. Ultimately, it is the rule of law, safeguarded by a powerful and independent judiciary, which offers legal remedies to correct the majoritarian bias and act fairly and proportionately for the benefit of society as a whole that sets DP apart from AP,<sup>26</sup> even though judicial control of the police has its inherent limitations. At a minimum, it should be borne in mind that judicial oversight, while producing significant advantages in placing police power under check, is limited in its scope, remote in its remedies, and feeble in its ability to offer a timely corrective to systemic social discrimination and political domination.<sup>27</sup>

There is thus no clear blueprint for DP. DP is necessarily a broad, inclusive, and frequently difficult concept that includes multiple components that can be potentially contradictory. Many nuances and a significant

<sup>23</sup> Sklansky, "Police and Democracy," 1815.

<sup>24</sup> Sklansky, "Police and Democracy," 1815–1816.

<sup>25</sup> Kroncke, Chapter 2

<sup>26</sup> Sarah A. Leo, "Democratic Policing Before the Due Process Revolution," *The Yale Law Journal* 128 (2019): 1246–1302.

<sup>27</sup> Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 2nd ed. (Chicago: University of Chicago Press, 2008).

degree of delicate balancing have to be put into place to realize its effect. Political neutrality is a key ingredient for DP, but neutrality alone is not sufficient and the police must be accountable legally and politically to be democratic. A police force that is politically neutral but entirely unaccountable can be highly authoritarian, with repression and brutality masquerading under the cloak of professionalism and autonomy. But democratic accountability of the police can become an enemy of its own success, whereby DP becomes self-defeating if the police are captured by a populist bias against the minority. DP thus demands a delicate balance to be struck between majority will on the one hand and equality and non-discrimination on the other hand, failing which the police become insidiously discriminative and repressive. This brings us to the role of courts against a wider rule of law backdrop in enforcing and entrenching political neutrality, autonomy, accountability, and fairness – a task that judges are not best positioned to accomplish.

### 1.3 Policing under Authoritarian Regimes

This book takes seriously regime type, specifically the political design of a state measured by the level of political participation and the degree of democratic accountability, and reiterates the point many have made that policing is an integral part of the overall political structure, responding to the prevailing political demand and safeguarding existing order. The nature of the political system of which the police are an integral part is a key factor in shaping the design and exercise of police power.

However, scant literature on policing has been developed in the Asian context. East and Southeastern Asian states are known for their authoritarian resilience and also a number of successful democratic transitions, where one finds the coexistence of powerful Party states and vibrant young democracies. There is a plurality of regime types that invariably exert their impact on the police. Some, such as Japan, Korea, and Taiwan, have transitioned to democracies of varying degrees of stability and maturity, demanding some democratic accountability and ensuring the police are rule-based and rule-complying. In comparison, authoritarian states rely on repressive police power to crush real or perceived challenges to maintain political order, as illustrated by such cases as China and Vietnam and in the not-so-distant past Japan, South Korea, and Taiwan.

An oft-observed starting point is political policing in highly repressive states, in which secret political police were created to serve as the core of the repressive apparatus. Police brutality and control by dictatorship

offer some classic examples of what secret political police are and what can do.<sup>28</sup> Other cases include repressive police in highly polarized societies and occupied territories, including South Africa during apartheid,<sup>29</sup> and Northern Ireland during the Troubles,<sup>30</sup> all of which shed light on the origins of and variations among configurations of AP. A particular earlier subtype of AP is the examination of colonial policing,<sup>31</sup> which imposed from the outside, was often quasi-military in style and illegitimate in the eyes of the policed, and shaped policing in the colonized world in significant ways. The police system was tailor-made to suit the needs of colonialism and was often different from that in the metropolises, which were typically more “democratic.”

Police in former communist states and states in transition tend to be authoritarian in the classical sense and the antithesis of DP, without democratic checks and balances and safeguards. Communist Parties in the USSR, East Germany, and China exerted absolute political control over the police force, reducing them at both the ideological and institutional levels to powerful instruments of political control and repression. In these countries, the police in particular were officially designated as part of the control apparatus created to serve the interests of the ruling party with political control and repression being primary hallmarks of Leninist policing.

However, traditional autocracy and dictatorship, with a few exceptions, have largely evolved into a new type of authoritarian regime with multiple objectives. An electoral process may have been added with some popular participation, and democratic institutions are put in place to dilute the dictatorial nature of the regime. Increasingly, legality and rule by law have also been inserted into governance structures to constrain and legitimize police power. Yet, beyond the ideological rhetoric and formal institution designs,

<sup>28</sup> Sheena Chestnut Greitens, *Dictators and Their Secret Police: Coercive Institutions and State Violence* (Cambridge: Cambridge University Press, 2016).

<sup>29</sup> Mike Brogden and Clifford D. Shearing, *Policing for a New South Africa* (Abingdon: Routledge, 1993).

<sup>30</sup> Aogan Mulcahy, *Policing Northern Ireland: Conflict, Legitimacy and Reform* (Abingdon: Routledge, 2013).

<sup>31</sup> Mike Brogden, “The Emergence of the Police – The Colonial Dimension,” *The British Journal of Criminology* 27(1) (1987): 4–14; David Anderson and David Killingray, “Consent, Coercion and Colonial Control: Policing the Empire 1830–1940,” in David M. Anderson and David Killingray (eds.), *Policing the Empire: Government, Authority and Control, 1830–1940* (Manchester: Manchester University Press, 1991); and Emma Bell, “Normalising the Exceptional: British Colonial Policing Cultures Come Home,” *Mémoire(s), identité(s), marginalité(s) dans le monde occidental contemporain. Cahiers du MIMMOC* 10 (2013): 1–12. For a historical survey, see Caroline Elkins, *Legacy of Violence: A History of the British Empire* (New York: Alfred A. Knopf, 2022).



we know little about how the politicization of the police at ideological level is translated into institutionalized police practices in contemporary authoritarian states. We don't know whether high-profile exposures of police abuse are representative of the routine political policing on the ground. If legal reforms promoted by authoritarian states create some legal certainties to promote economic growth and improve governance, how have the police forces in those party states or other authoritarian states reconciled the conflicting imperatives between safeguarding the political order and respecting personal freedom and rights? It remains unclear how the well-disciplined, quasi-military police in Leninist states comply with legal rules.

Yet, while China and Vietnam remain hardcore communist regimes, their policing style and control strategies have evolved. Following the Tiger economies of the 1960s and 1970s, the police in both China and Vietnam have witnessed a similar pattern of changes – professionalism, institutionalization, and legalization leading to greater effectiveness and credibility for both the police and the party states. Societies in turbulent social and economic transitions call for effective leadership and guidance from the state, with the police playing an instrumental role in the maintenance of order to facilitate economic growth, social stability, and political order. Orderly development is a key feature of the East Asian model, as the Tiger Economies and the later developers have clearly demonstrated.<sup>32</sup> They all generated an important impact on the police and the legal system at large, softening the repressive edge of the police to place political control on a stronger legalistic footing.

Fu's chapter on the political policing of human rights lawyers in China illustrates a new style of authoritarian high policing in China with a humane touch.<sup>33</sup> Instead of the intimidation, torture, and unlawful detention that often capture the popular imagination of China's political police, the Chinese security police have adopted a process that the author refers to as coercive political persuasion. The police routinely engage key members of the community of human rights lawyers by inviting them for tea and meals and exerting pressure through persuasion and influence. When persuasion fails to work, the police resort to relational violence, by mobilizing relatives, family members, employers, and other "significant others" to amplify the pressure to comply. To effectively "disappear" dissident lawyers on sensitive dates, the police invite them to tour China's

<sup>32</sup> Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (Oxford: Oxford University Press, 2007).

<sup>33</sup> Fu, Chapter 3 in this volume.

scenic places at the cost of the state. The security police have preferred to absorb and soften resistance from lawyers through soft violence, all done with a thin veil of legality.

Biddulph's chapter offers an incisive study of the continuing evolution of police administrative power to punish minor crimes, posing a question whether legal reforms have improved the protection of rights and enhanced police accountability. Or in her words, "What do these reforms say, if anything, about the particular character of authoritarianism and authoritarian legality in policing in this field?" There is a clear trend in the direction of the legalization of police administrative power consistent with the wider trend toward enhanced legality that many have observed, but the critical point that Biddulph makes is that with some exceptions legalization has not resulted in greater accountability of the police in China in their exercise of administrative power. Judging from the outcome of a series of reforms coupled with the massive use of surveillance technology and a refocus on social control, the author points out that the reform presents not a story of straightforward progress toward limiting police power, but one "that reorganised police powers rather than significantly disempowering the police."<sup>34</sup> Shedding light on the nature of authoritarian legality, Biddulph concludes:

While we can trace the development of a legal field, the mere increasing importance of legality does not determine what mix of values will be produced by the contests that build the legal field. Also, the state-centred model of legality remains vulnerable to political intervention, being circumvented and being weakened when political imperatives do violence to the fundamental principles of legality enacted in the law.<sup>35</sup>

Nguyen's chapter similarly presents a particular strategy of political persuasion by the Vietnamese police in preempting and controlling political dissent.<sup>36</sup> By controlling discourse power, or managing the narrative, the police shape and reinforce public opinions so that citizens would think and act as the party state demands with the aim of forestalling "a peaceful evolution and self-evolution," a deep-felt concern that has strong resonances in China.<sup>37</sup> Echoing other research on China and similar political systems,

<sup>34</sup> Biddulph, Chapter 4 in this volume.

<sup>35</sup> Ibid.

<sup>36</sup> Nguyen, Chapter 5 in this volume.

<sup>37</sup> Hualing Fu, "China's Imperatives for National Security Legislation," in Cora Chan and Fiona De Londras (eds.), *China's National Security: Endangering Hong Kong's Rule of Law?* (Oxford: Hart Publishing, 2020), 41–60.

Nguyen's chapter demonstrates the close link between thoughts and action and their mutual reinforcement; authoritarian regimes demand rigid conformity in thought and belief, and have a propensity to extensively use spies to uncover heretic thoughts and aggressively deploy propaganda to achieve uniformity.<sup>38</sup> Thought policing becomes a necessity contributing significantly to the making of a police state. As Nguyen's chapter powerfully illustrates, the battle against the enemy starts in the mind and persists.<sup>39</sup>

#### 1.4 Democratic Transition and Authoritarian Resilience

Political change – democratization – often leaves deep footprints on political policing by triggering changes in the status, power, and accountability of the police, as observed in contemporary Taiwan, South Korea, and Japan. As new democracies wrestle themselves out of their authoritarian shackles, past abuses perpetrated by the police are often made public, leading to nearly universal demand for structural reforms to hold the police accountable. Political changes often lead to meaningful changes in political policing in terms of the narrative, institutional design, and practices. As has been observed, at the moment when an authoritarian state transitions to democracy, the locus of power in the legal system shifts from the police to the courts. The kind of repressive and intrusive high policing that was epitomized by the Garrison police in Taiwan, the national security establishment in South Korea, and the Interior Ministry in Japan all experienced transformative changes during periods of democratic transition. Formal accountability mechanisms, American in style and compatible with democracy, are in place in all three jurisdictions, setting them apart from their neighbors.

It is less well known whether those institutional changes have been effective in achieving police accountability on the ground, just as it is unclear whether the democratic transition has made a real difference in making the police more accountable or less repressive. Given the peaceful democratic transition in South Korea and Taiwan in particular, how have the police, often a key supporter of the old order,

<sup>38</sup> David H. Bayley, *Patterns of Policing: A Comparative International Analysis*. Crime, Law, and Deviance Series (New Brunswick, NJ: Rutgers University Press, 1985), 207–208.

<sup>39</sup> For the Chinese case, see Suzanne E. Scoggins “Propaganda and the Police: The Softer Side of State Control in China,” *Europe-Asia Studies* 73(1) (2021): 200–220, <https://doi.org/10.1080/09668136.2020.1850644>.

responded to new accountability mechanisms? Does this response undergird or undermine the emerging democratic system that chips away at their powers slowly but decisively? Given the resilience of institutions, does the authoritarian legacy retain a strong hold on police and policing in a democratic setting? Constitutional convergence in the region notwithstanding,<sup>40</sup> historical inertia is surprisingly difficult to overcome in shaping the exercise of police power and promoting a culture of accountability.<sup>41</sup> Several contributors aim to illuminate these dynamic changes through case studies of transition in their respective jurisdictions.

Nakano offers a striking example of the revolving door phenomena in that senior police officers in the *ancien régime* were first removed and then moved to other key state or non-state sectors.<sup>42</sup> Tracing closely the career path and retirement patterns of elite police officers in postwar Japan, Nakano provides powerful evidence of political continuity amid unprecedented democratic change, showing not only a clear cultural and institutional resilience but also laying bare the close, unbroken ties between the former police and national political and business elites. The US Occupied Forces abolished the Ministry of Interior, which was dominated by the police, in the aftermath of the war, only to find senior officers resurfacing in other ministries, continuing to exert an influence and shape postwar Japanese policies in the areas of defense and public order.<sup>43</sup> Japanese politics seems to be defined not by the contours of its constitutional straight-jacket on full public display but by the subtle maneuvering in the shadows that kept Japanese conservatism intact.

While Nakano focuses on the continuity of individual senior police officers, Chen examines the survival of norms and culture of policing in Taiwan.<sup>44</sup> As Chen puts it, while the democratic transition has successfully put an end to the repressive political police, the “bad cops” and the institutions of high policing, the regular police, the “good cops” trained during the authoritarian era, have remained largely intact after

<sup>40</sup> Po Jen Yap and Chien-Chih Lin, *Constitutional Convergence in East Asia*. Comparative Constitutional Law and Policy (Cambridge: Cambridge University Press, 2021).

<sup>41</sup> For the authoritarian resilience of the police in the post-Soviet Countries, see Marat, *The Politics of Police Reform*.

<sup>42</sup> Nagano, Chapter 9 in this volume.

<sup>43</sup> For a study of the institutional crossover in the context of political policing in Northern Ireland, see Kevin Hearty, *Critical Engagement: Irish Republicanism, Memory Politics and Policing* (Liverpool: Liverpool University Press, 2017).

<sup>44</sup> Chen, Chapter 8.

the democratic transition, allowing authoritarian features to creep in or to continue. The process of politicization, depoliticization, and repoliticization is an interesting one. Before the democratic transition, the Taiwanese police were placed under the tight, centralized political control of the ruling party, the Nationalist Party, Kuomintang (KMT), as pointed out clearly by Chen and others. In the wake of the democratic transition, policing was decentralized to dilute political control as a gesture by the KMT, which remained in power in the initial years following democratization; moreover, the police were made directly accountable to the democratically created local governments. It transpires that decentralization may have made the police more democratically accountable, but this did not depoliticize the police. Instead, the democratic process is such that decentralization creates opportunities and incentives for capture by local political forces, leading to a repoliticization of the police. In the context of Taiwan's fragmented political system with protracted partisan political fights after democratization, sometimes police made decisions in the course of several political incidents according to their unique partisan views. As Chen points out, democratization opens up new corruptive opportunities and can breed its own anti-democratic practices at microlevel.

The police system may be immune from political change notwithstanding the democratization of the larger political system. This continuity thesis is most forcefully argued in Mérieau's chapter in relation to the lack of any meaningful democratic impact on Thai political policing. While in both Taiwan and South Korea regime change did induce a corresponding institutional change in the high policing, Mérieau makes the argument that AP persists in Thailand following the country's political democratization. Open repression of political dissent and blunt disregard for legal rules on the part of the police and security forces have continued. What then explains the Thai exception that proves the rule? Relying on Fraenkel's dual state conceptualization, Mérieau explains that a prerogative state, or the deep state, has persisted in Thailand, which is centered on the police and the military. The deep state is highly autonomous of the political process, and largely a power unto itself unaccountable to democratic processes. Thus, despite democratization, with newly designed legal and political accountability mechanisms, the prerogative state "continues to function according to fully fledged authoritarianism and to its own set of norms and hierarchies."<sup>45</sup>

<sup>45</sup> Mérieau, Chapter 10 in this volume.

### 1.5 DP in the Shadow of Authoritarianism

There is thus a need to pluralize regime types, both authoritarian and democratic, and to unpack the respective policing so as to identify their multifaceted and multidimensional nature. Police could be politically repressive in silencing political dissents but at the same time radically communitarian in partnering with communities to address local issues. While police could be racially discriminatory or religiously repressive but at the same time democratically accountable, they might leave political dissidents entirely alone to their oppositional politics but at the same time be abusive and violent toward suspects and the public at large and corrupt to the root.

The line between AP and DP is even more fluid and fuzzy. Any single standard, as discussed earlier, either neutrality, professionalism, autonomy, external accountability, decentralization, or the rule of law, will not be able to set DP apart from the autocratic counterpart and proves to be ill-founded. The attributes of DP are inherently contentious. All designs may have their strong democratic potentials, but placed in different political circumstances, they either reinforce the authoritarian style of the police or are too weak or remote to offer an effective corrective to the authoritarian propensity.

While regime type matters in one dimension in locating a country's place along with the democracy to authoritarianism spectrum, it may matter less or differently in other dimensions. Beyond regime type, chapters in this book consider police-community relations, public order maintenance, social services, and police discipline, all of which are also universal functions of police across all regime types, to rediscover democratic practices and potential in otherwise authoritarian political systems.<sup>46</sup> Beyond the repressive and preventive high policing that was often the mirror image of authoritarian politics, there is a service-oriented, people-friendly, and well-disciplined police force that reinforces a paternalistic government.

Against this backdrop, this book unveils the very diverse roles of the police in authoritarian and semi-authoritarian states. It attempts to unpack and disentangle what is dictated by politics and the characteristics that may transcend regime type. In South Korea under colonial and authoritarian rule, for example, the police were particularly brutal and repressive in serving the regimes and crushing any sign of dissent and resistance, yet they continued to manage the mundane tasks of people registration, maintaining sanitation, assisting and controlling vagrants, the homeless, and prostitutes, and creating peace and order so as to facilitate the social

<sup>46</sup> Reiner, *The Politics of the Police*.

and economic transformation of South Korean society, as Mobrand in this volume and others have observed.<sup>47</sup> While high policing was largely an assertion of violence from the state, the welfare-oriented low policing was embedded in the local communities, tied to social structures, and accountable to the people it served through informal (rarely rule-based) and occasional illegal mechanisms (e.g. through working with secret societies). It was through this contradictory process, working with and against criminal organizations at the same time, simultaneously helping and exploiting the poor, thereby undergirding and undermining the state that the police muddled through the period of transformation and managed to build their credibility as an effective and legitimate force. The embedded nature of the police reduced regularity and increased discretion, although ironically this very arbitrariness blunted the harshness of the authoritarian state.

In Taiwan, the police developed a long-lasting relationship of mutual support and respect with their local communities, instilling high levels of credibility and deference. Chen links the extensive administrative role of the police directly to the Japanese colonial legacy.<sup>48</sup> Following systematic reforms to centralize and streamline political policing by the KMT government in the early 1950s to create pervasive and intensive political control embedded in the society,<sup>49</sup> and with the control of the police by military officers who were parachuted into senior positions where they remained until the end of martial law,<sup>50</sup> low policing was allowed to remain separate from political policing in its organizational identity and its relationship to the community. In this way, the police management of household registration, coupled with other administrative duties and powers, allowed the police to become deeply rooted in their communities, extending state control into the very fabric of society across a wide range of political and social matters.

Similarly, the Japanese police are well known for their intimate and reciprocal relations with the communities they served, as Kroncke points out,<sup>51</sup> both during the authoritarian period and after the transition to democracy; police service to the communities is exemplary in Singapore, and, similarly, police in China and Vietnam under the one-party rule are duty-bound to

<sup>47</sup> Mobrand, Chapter 6 in this volume; Byongook Moon, "The Politicization of Police in South Korea: A Critical Review," *Policing: An International Journal of Police Strategies & Management* 27(1) (2004): 128–136; Vincent J. Hoffman, "The Development of Modern Police Agencies in the Republic of Korea and Japan: A Paradox," *Police Studies* 5(3) (1982): 3–16.

<sup>48</sup> Chen, Chapter 8.

<sup>49</sup> Greitens, "Organizing Coercion in Taiwan," in *Dictators and Their Secret Police*, 75–111.

<sup>50</sup> Liqun Cao, Lanying Huang, and Ivan Y. Sun, *Policing in Taiwan: From Authoritarianism to Democracy* (Abingdon: Routledge, 2014).

<sup>51</sup> Kroncke, Chapter 2.

serve the public. The strong bonds between the police and the community are an enduring feature of police in societies of this region, providing a façade of avuncular benevolence notwithstanding the repressive nature of the regime writ large. Police in authoritarian regimes, while harshly treating enemies of the state, thus create an image of being people-friendly, community-based, service/welfare-oriented, and in this way even democratic.

Democracy per se does not ensure accountability and it is well documented that democracies face their own disciplinary difficulties in dealing with police violence.<sup>52</sup> Kroncke's chapter forcefully rebuts the often reflexive assumption that democratic regimes are more accountable and less violent than authoritarian regimes in terms of policing practices. Narrowing the scope of inquiry to the use of force by the police, it becomes clear, though often ignored, that regime type has little if any impact on the persistence and the level of police violence. Police may be insulated from and are beyond the reach of mechanisms of democratic accountability in otherwise democratic states. In her chapter on Thailand, Mérieau makes the argument that police violence and brutality have persisted in spite of democratic reforms.<sup>53</sup> In Kroncke's chapter, it is noted that police violence was aggravated and amplified in the Philippines' populist democracy under Duterte; and, in the Japanese case, the fact that "near unrestrained authoritarianism" has persisted in the formal criminal justice system in Japan could be interpreted as a forceful illustration of Kanoki's continuation thesis on the persistence of the Japanese national security state.<sup>54</sup> Behind the smiling face of the Koban officers, there is a repressive system that exists independently of the larger democratic political system. Seen in that light, the Thai deep state wielding excessive political power is hardly surprising. Democracy, hollowed of its liberal core, may camouflage, energize, and indeed necessitate repressive policing. The persistent racist policing throughout US history and its contemporary practices is a direct consequence of the highly decentralized police structure, in which policing minorities reflects the majoritarian views of the white population.

What makes police in this region accountable is their embeddedness in the community, their interaction with local residents in friendly terms, and their service orientation. Something that is short of what Marat calls "a state-society consensus,"<sup>55</sup> but community-oriented and people-based,

<sup>52</sup> Marat, *The Politics of Police Reform*.

<sup>53</sup> Mérieau, Chapter 10.

<sup>54</sup> Kroncke, Chapter 2.

<sup>55</sup> Marat, *The Politics of Police Reform*, 11.



nonetheless, and with a strong dose of paternalism. The police also actively engage local communities to secure cooperation, incentivize compliance with the law, and facilitate the implementation of public policy in sharp contrast to the colonial police who were inserted from the outside as strangers. In addition to top-down policy implementation, the police also support residential organizations, respond to local initiatives where possible, and help solve local problems. The police in those circumstances often serve as an indispensable intermediary between the people and authoritarian states, creating a conduit or node in communications that became a functional substitute for democratic procedures designed to facilitate similar dialogue in lieu of improving local accountability.<sup>56</sup> Community police of this sort maintain local order relying on discretion, individual qualities of the police officers on the ground, and informal accountability.

Community policing in this region is an organic and deeply entrenched practice. The paternalistic role of the police and the embedding of policing into welfare provision has much to do with the prevailing cultural propensity resulting from institutional designs that embed the state in local neighborhoods. The chapters here on China, Japan, Singapore, South Korea, and Taiwan all touch upon special police-in-community features with the effect of inducing localized police accountability in the larger authoritarian context. The embeddedness of the police makes them partially accountable to the people they serve, and potentially democratic in this unique sense.

## 1.6 The Exceptional Hybridity of Hong Kong and Singapore

Singapore and Hong Kong are often regarded as the exception that proves the rule, characterized as hybrid regimes with freedom, high income, and a strong rule of law without “genuine” democracy. Hong Kong and Singapore were former British colonies, both exemplary in embracing and practicing the English rule of law in a largely benign but strict authoritarian political system. There was shared history between the two cities in the development of the colonial police, forming a particular DNA that was subsequently confirmed and reinforced by subsequent development. Police were ostensibly political in safeguarding the colonial order; they

<sup>56</sup> For studies of the interaction between the state and the society at the neighborhood level, see Benjamin L. Read, *Roots of the State: Neighborhood Organization and Social Networks in Beijing and Taipei* (Redwood City, CA: Stanford University Press, 2012); and Luigi Tomba, *The Government Next Door: Neighborhood Politics in Urban China* (Ithaca, NY: Cornell University Press, 2014).

were racist in their composition and in targeting the native population,<sup>57</sup> “policing by strangers” in design.<sup>58</sup> They focused on monitoring ethnic communities and were repressive in cracking down on any political mobilization. Given their colonial nature, the police were quasi-military in their command structure, organization, and ethos.

Policing in the earlier stage of nation-building was often political and repressive. In the earlier decades of the police development in Singapore, as Tan points out,<sup>59</sup> a weak state was confronted with an organized, secretive, and often subversive society; therefore, the colonial government and the government led by the People’s Action Party (PAP) following it had to invest heavily in political monitoring and control and enhance political repression so as to establish a normal political order. What is needed in any failed states is an effective central government to restore stability, and Singapore proves to be a successful example. To achieve the goal, policing was necessarily politicized and biased against political opposition, serving as an effective instrument against enemies of the emerging state, whoever they were. It was only after the establishment of a stable political order and after the enemy was kept at bay that the scale started to tip toward low policing. There seems a more symbiotic relationship of sorts between political policing and routine policing. Arguably, the authoritarian practices contributed to community-friendly policing in both symbolic and utilitarian ways. Tan’s chapter on DP in Singapore makes the argument explicitly. Under the PAP government, the police have been professionalized and become more rule-bound and legally accountable, not in spite of the Internal Security Act regime but because of it.

Those authoritarian features that were developed during the formative years full of crisis and uncertainty were subsequently institutionalized during normal times. Sporadic reforms and changes notwithstanding, police in Hong Kong and Singapore remained a sharp instrument of the colonial state, with a fragile institutional autonomy, endemic corruption, and politically repressive targeting of pro-communist activities. In pointed contrast to Singapore, Hong Kong never experienced a period of protracted nation-building thus setting the two apart, as Tan’s chapter demonstrates.

<sup>57</sup> Peter Wesley-Smith, “Anti-Chinese Legislation in Hong Kong,” in Ming K. Chan and John D. Young (eds.), *Precarious Balance: Hong Kong Between China and Britain, 1984–1992* (Hong Kong: Hong Kong University Press, 1994); Carol A. G. Jones with Jon Vagg, “The Hong Kong Police,” in *Criminal Justice in Hong Kong* (Abingdon: Routledge-Cavendish, 2007), 45–96.

<sup>58</sup> Jones with Vagg, “The Hong Kong Police,” 56.

<sup>59</sup> Tan, Chapter II.

Hong Kong presents an intriguing case study of the rise, fall, and rise again of political policing. Owing to the nature of colonial policing and Hong Kong's geopolitical delicacy, the city remained a politically contentious place as a former British colony in East Asia. Moreover, rivaling political forces, either pro- or anti-communists waged their overt or covert battles to gain influence in Hong Kong and beyond. The primary task of the police was political until the Sino-British political settlement reached in the early 1980s. Contrary to the popular myth of Hong Kongers' legendary political apathy, Hong Kong has always been a place of political contention and resistance; furthermore, political censorship, surveillance, and punishment were far more prevalent and repressive than what was doctrinally presented.<sup>60</sup> The political freedom and rule of law that the colony offered, all in relative terms, attracted political dissidents of different sorts to Hong Kong who used Hong Kong as a base to support different political organizations and ideas. The Communist Party was not the first to use Hong Kong to subvert the authorities on the mainland when the former was under siege on the mainland and is not the first to highlight Hong Kong's role as a subversive base when it controlled the mainland. In addition, all governments in the Mainland since the Qing and multiple foreign powers, including Japan and the US, have pressurized the government of Hong Kong at various stages of its colonial history and in one way or another prohibited and suppressed political speech and activities that were regarded as offensive. The colonial police played a highly politicized role in maintaining a delicate balance of political tranquility in the territory with the Special Branch, the political police unit, playing an instrumental role in keeping agitation and mobilization at bay. Ng's historical analysis of political censorship and repression in relation to the charge of seditious libel demonstrates the intensive attention the Special Branch paid to political expression and agitation.<sup>61</sup>

Political stability in the region since the mid-1950s and the consequent social and economic take-off that made Hong Kong one of the Asian Tigers also transformed the police. The end of the wars and revolutions in China and reestablishment of political order created a peaceful environment for social and economic development in Hong Kong, and without

<sup>60</sup> Michael Ng, *Political Censorship in British Hong Kong: Freedom of Expression and the Law (1842–1997)* (Cambridge: Cambridge University Press, 2022); Hualing Fu, "Past and Future Offences of Sedition in Hong Kong," in Hualing Fu, Carole Peterson and Simon Young (eds.), *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (Hong Kong: Hong Kong University Press, 2005).

<sup>61</sup> Ng, Chapter 12.

existential threats, the colonial government could divert resources to building institutions and improving governance. In the following three decades, Hong Kong developed a political system that King famously referred to as “administrative absorption of politics,”<sup>62</sup> whereas legality, promoted in the form of “legal fetishism” to use Martin’s term, served as an alternative to democratization. Facing a turbulent society in social and economic transition in the postwar era, the colonial government effectively used good governance to build legitimacy, which allowed the police to conflate legality with consent. Facing the imminent reunification with China and the uncertainties and anxieties it brought about, the rule of law slowly became the focal point of Hong Kong’s identity, which could be used to assert and defend itself in sharp contrast with the Mainland, commonly perceived in Hong Kong as lawless. The rule of law, which was later on referred to as a core value, sustained Hong Kong’s transition to Chinese rule. While a colony without any prospect of meaningful democratic participation, people were content with the rule of law system that was underwritten indirectly by the political system in Britain. There was a strong consensus within Hong Kong that peace, order, good government with abundant social and economic rights, and freedom guaranteed by the rule of law was the endgame.

To keep pace with the social and economic developments in the postwar era, the police sloughed off the vestiges of corruption, improved their relationship with communities, became well disciplined, legally accountable, and above all politically neutral as a law enforcement agency to serve and protect Hong Kong. Their professionalism, effectiveness, and accountability brought them credibility in the eyes of the people of Hong Kong. The residents of Hong Kong were well known for being rule-abiding, and the police were effective in enforcing rules, forming a symbiotic circle in constructing an exemplary free and orderly society.

While politics was absorbed, it never disappeared. Democracy, which was a marginal pursuit in Hong Kong prior to the 1980s, became a dominant concern in the following three decades once the prospect of Hong Kong’s reunification with China arrived on the horizon. The formula of peace, order, and good government without democracy, which sustained

<sup>62</sup> Ambrose Y. C. King, “Administrative Absorption of Politics in Hong Kong: Emphasis on the Grass Roots Level,” in Ambrose Y. C. King and Rance P. L. Lee (eds.), *Social Life and Development in Hong Kong* (Hong Kong: Chinese University Press, 1981); and Carol A. G. Jones, *Lost in China? Law, Culture and Identity in Post-1997 Hong Kong* (Cambridge: Cambridge University Press, 2015).

British rule in Hong Kong, was no longer regarded as feasible under Chinese rule. It was said that the rule of law could no longer be sustained without democratic participation to give oxygen to it. Nevertheless, the constitutional structure that China designed for Hong Kong makes it impossible to seek “genuine” democratization as Hong Kong demands through institutional means, forcing the population in general and the younger generations in particular onto the streets to exercise popular constitutionalism through civil disobedience. While Beijing may have preferred not to disturb the colonial equilibrium in retaining good governance without thorough democratization, it could not convince Hong Kong people of the feasibility of this bargain. Hong Kong, determined to achieve full or genuine democracy as it defines was set on a collision path. The democratic contention in the post-transition era in Hong Kong was such that the rule of law in Hong Kong could no longer tame and control the democratic impulse. By 2014, Hong Kong’s democratic frustrations and energies accumulated and evolved onto a massive scale of civil disobedience following the eruption of the Occupy Central Movement, together with the rise of a violent independence movement. When political tensions resurfaced on the streets and morphed into violent confrontations, police neutrality was no longer possible, and at that moment police had to take a side, using Martin’s term. For the protesters, the rule of law was no longer an asset. The public order laws as enforced by the police and upheld by the courts have become a liability and a formidable barrier to the path to democracy. In 2019, the youth fighting for democratic governance and the police trying to maintain law and order clashed violently on Hong Kong’s streets.

Wang, Joosse, and Cho capture the moment when the rule of law was no longer able to contain the demand for democratization.<sup>63</sup> Triggered by an anti-extradition Bill that set to create a mechanism for formal repatriation of fugitive offenders between Mainland China and Hong Kong, the political energies coalesced and then erupted into an unprecedented level of violence between the police and the protesters. In late 2019, Hong Kong became uncharacteristically confrontational and violent, with the city literally being set on fire. The conflict between police and the community intensified quickly and their relationship deteriorated sharply. To the protesters and their supporters, the police were brutal, violent, and repressive, but the police felt they were merely pushed to the front to hold a thin blue line between chaos and order as they are duty-bound to do.

<sup>63</sup> Wang, Joosse, and Cho, Chapter 13 in this volume.

The sudden turn of the Hong Kong police from the “soft” to “hard” model of protest policing and from DP to AP cannot be explained effectively by looking only at the police operations at street level or at any “police-centric” models, according to Wang and his co-authors. The rise of AP in Hong Kong can only be explained by embedding the police in the larger geopolitical context. By 2019, and forcing the relentless forces demanding democratic changes in society at large, the police no longer had the capacity to facilitate protest demands and channel their aspiration through communications and negotiation as they used to do. The authors identified the changes in the larger society that were detrimental to DP in Hong Kong as a legitimacy crisis of governance at a macrolevel factor, the erosion of police authority within the local political culture at a mesolevel, and tactical changes in police–protester interactions, involving the increased use of masks and collective action frames of identification as victims of police as microlevel factors. Together, these have inaugurated reaction spirals that have led to Hong Kong’s unprecedented state of social fission, where “soft” policing is now all but impossible, and where the police force is beset by a widely subscribed demand for its outright disbandment.

In response to sustained protestor violence, China enacted a National Security Law and extended it to Hong Kong. A key feature of this law is a massive buildup of the national security police and a determination to securitize all of Hong Kong society. The Special Branch, the political police that reigned in Hong Kong before 1997, returned with a vengeance, and Hong Kong is set to repeat the similar censorship and prosecution that Ng vividly describes in his chapter, except that the tables have been turned and those deemed as anti-communist agitators are at the receiving end.<sup>64</sup>

## 1.7 Conclusion

This book explores diverse aspects of policing in a range of Asian jurisdictions, providing case studies that illustrate the impact of a political system on the roles and functions of the police. This book also aims to go beyond regime type and the simplistic dichotomy between democracy and authoritarianism in examining the police. Through studying policing in authoritarian states, hybrid states, and democratic states in Asia, the contributors offer nuanced, critical analyses of that transformation and the resilience of authoritarian states.

<sup>64</sup> Hualing Fu and Michael Hor (eds.), *Hong Kong’s National Security Law: Restoration and Transformation* (Hong Kong: Hong Kong University Press, 2022).

This region is a patchwork of different regime types that have left deep imprints on the policing of their respective jurisdictions: North Korea and Taiwan can be tentatively located at the opposite ends of a long spectrum between autocracy and democracy. Authoritarian states tend to maintain a separate and powerful branch of political police that they are invariably ready to use in order to safeguard the existing political order. As such, they are oppressive when punishing dissenting forces and voices and intrusive when monitoring society. Democracies hold a strong discipline of political neutrality, and the police effectively refrain from intruding into the realm of political rights and freedom. Regime type clearly matters in how security and freedom are defined and how different balances are struck between them.

That being said, once we evaluate police and policing from a functionalist perspective, with broader benchmarks to include the equal treatment of individuals and responsiveness and accountability to communities, the explanatory power of regime type diminishes quickly. The Singaporean police force would rank highly on both scales, and hence can be characterized as democratic in spite of, if not because of, a highly authoritarian internal security regime. Similar cases can be made in relation to community-centered, service-oriented policing in a wide variety of jurisdictions regardless of their political nature. By the same token, police in democracies can be highly discriminatory, repressive, and authoritarian when it comes to policing certain minority groups. This is because the police can adapt and respond to particular political dynamics. With populist or discriminatory sociopolitical conditions at the local level, decentralized democracies can become breeding grounds for police bigotry and abusive police practices. There is clearly an endogeneity factor as Kroncke reminds us in his chapter, which argues that police monopolize the use of violence, and, as such, authoritarianism is in the institutional DNA of all police, which necessarily must be controlled closely.