



Understanding Care Proceedings in Hong Kong:  
A content analysis of media coverage of care proceedings  
cases under social movements in Hong Kong

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University of Stavanger, June 2021



## Declaration

I hereby declare that the Dissertation titled “Understanding Care Proceedings in Hong Kong- A content analysis of media coverage of care proceedings cases under social movements in Hong Kong”, submitted to the Erasmus Mundus Master’s Program in Social Work with Families and Children:

- Has not been submitted to any other Institute/University/College
- Contains proper references and citations for other scholarly work
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- Has listed all citations in a list of references.

I am aware that violation of this code of conduct is regarded as an attempt to plagiarize, and will result in a failing grade (F) in the program.

Date: 3 June, 2021

Signature: 

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## Acknowledgements

I would like to sincerely thank my supervisor, Ida Bruheim Jensen, for her guidance through each stage of the process. Her kindness, patience, and support helped me to believe in my competence and kept me motivated in finishing the research.

I would like to acknowledge all Mfamily professors from University of Stavanger, University of Gothenburg, University Institute of Lisbon, and University of Makerere for bringing such an amazing learning experience. I appreciate Elisabeth Enoksen as our program coordinator in our first academic year. Her thoughtfulness, excellent coordination, and management skills allowed me to continue the study amid the pandemic. I show my gratitude to Evelyn Khoo, one of the key professors, for her care and support throughout the second academic year. I am thankful for Karina Danielsen Tallman, our program administrative coordinator. Without her assistance in following up on my moving situation in the last semester, I would not be able to settle in Edinburgh and finish my dissertation.

I would like to thank my Mfamily colleagues for joining me and supporting me through the whole journey. I want to express my deep gratitude to my family. I want to thank my parents, Waiyin Li and Timon Choi, and my grandma Muilan Tsoi, for supporting me to continue my education and personal development. I would like to thank my boyfriend, Heiko Ruth, for always being there for me and makes me relax when I get stressed.

Last but not least, I would like to thank the journalists in Hong Kong. Without them documenting the stories, I would not be able to carry out the research. I would also like to thank the children in Hong Kong, as they were my inspiration.

## Abstract

Title: Understanding Care Proceedings in Hong Kong- A content analysis of media coverage of care proceedings cases under social movements in Hong Kong

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Key words: care proceedings, care order, child welfare, Hong Kong

This study examines the practice of care proceedings in Hong Kong through two critical care proceedings cases under social movements. I used qualitative content analysis with newspaper articles as data materials. With focusing on the care proceedings practice of the two cases, the study found that decision-making in care proceedings was heavily relied on the views of the professionals. The involvement of children and family was limited. There were multiple shortcomings in the accountability mechanisms of care proceedings. The public questioned the police's use of discretionary power and concerned violation of multiple child rights. To shed light on the findings and expand the knowledge on care proceedings practice and policy in Hong Kong, I used characteristics of street-level bureaucrats and concepts of discretion. Street-level bureaucracies explained that decision-making in care proceedings may be due to the rubber-stamping practice of the street-level professionals and the influences which organizational contexts have on them. With insights gained from the findings of the public's comments to the care proceedings practice, I found that the wide discretionary space with no measure controlling the quality of discretionary reasoning may lead to misuse of discretion. To improve the care proceedings practice in Hong Kong, this study suggested that on one hand, professionals need to be aware of how street-level bureaucracies may have an impact on making any decision regarding care proceedings. On the other hand, the care proceedings structure should be reviewed and improved to ensure that discretion can be properly applied.

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## List of Abbreviations

CCR	The Committee on Children’s Rights
DSW	Director of Social Welfare
FCPSUs	Family and Child Protective Services Units
FPM	Force Procedures Manual
HKCS	Hong Kong Christian Service
HKPF	Hong Kong Police Force
HKSWGU	Hong Kong Social Workers’ General Union
JOO	Juvenile Offenders Ordinance
MDCC	Multi-disciplinary Case Conference
NGO	Non-government organization
NSL	National Security Law
PCJO	Protection of Children and Juveniles Ordinance
PGOs	Police General Orders
PWGO	Protection of Women and Girls Ordinance
PWJO	Protection of Women and Juvenile Ordinance
QCA	Qualitative Content Analysis
SCMP	South China Morning Post
SWD	Social Welfare Department
UN	United Nations
UNCRC	United Nations Convention on the Right of the Child

# 1 Introduction

Children who are exposed to or are living in situations at risk of harm depend on an effective and efficient child welfare system with intervention to safeguard them from any form of violence, abuse and neglect. Most Western countries have set up provisions for state institutions responding to children in need of protection or immediate danger and require urgent protection without parental consent. For example, emergency protection orders in England (Masson, 2006), interim care order in Norway (Gording-Stang, 2018), emergency care order in Ireland (Lamponen et al., 2019), and emergency placement in Finland (ibid). Beside the Western countries, some Asian countries also established laws authorizing state actors to initiate necessary interventions in safeguarding children, such as Children and Young Person's Act (2001) in Singapore, Child Welfare Act in Japan (Library of Congress, 2020), and Protection of Children and Juveniles Ordinance (PCJO) in Hong Kong (PCJO, 2020). The legislations of these countries empower several state services and actors, most commonly child protection services and the police, to intervene in the life of a family and remove a child to a place of safety (Gording-Stang, 2018; Lamponen et al., 2019). Since emergency decisions are made within a short time aiming at the urgency in safeguarding children, the normal standard of the rule of law is often not met (Gording-Stang, 2018). Actors in child protection systems are given the discretion to conduct care proceedings, which could raise the public's inquiries. The public concerning cases of over-intervention resulting in inappropriate removal of children from their parents, for instance, was found in the United Kingdom (Parton, 2006, as cited in Gilbert et al., 2011).

Care and Protection Order (hereafter referred to as care order) under the provision of the PCJO is set in Hong Kong for the purpose of child protection (PCJO, 2020). The PCJO authorizes a juvenile court on its own motion, or upon the application of the director of Social Welfare (DSW) or police officer, power to initiate care proceedings by applying for care order. A magistrate can issue an order for child removal to and detention in a place of refuge, which is termed as care order.

Care proceedings cases rarely caught the public's attention in Hong Kong until a case happened under the social movement in 2014. The police claimed that they concerned about the interest of a 14-year-old girl who used chalk to draw flowers on a wall, so they initiated care proceedings by applying for the care order. The police's action did not only become the



focus of the press, but also triggered a widespread public outrage after the case was known. Another similar case involved three teenagers in 2019 called for another substantial coverage by the media. The unique background of these two cases and the active responses of the public caught my curiosity to know, from a child welfare perspective, the speciality of these two care proceedings cases and if it gives insights into the current care proceedings practice in Hong Kong.

## 1.1 Statement of the Problem

Child protection cases which are most serious high profile or highly controversial are usually subject to public scrutiny (Choate, 2017). The above-mentioned cases in 2014 and 2019 were strongly criticized by the public as reported by most news media in Hong Kong. Care proceedings cases are rarely related to social movements. Besides, care proceedings did not become a topic among the public for discussion before these two cases appeared in Hong Kong.

With most of the countries in the world signed the United Nations Convention on the Right of the Child (UNCRC) (United Nations [UN], 1989), they are obligated to safeguard children in harmful situations with appropriate protective measures and effective procedures according to Article 19. The regulations and organization of institutional settings for child protection and decision-making processes are different in each country. Various factors have influences on the delegation of discretion to decision-makers by the state, which include the type of child protection system, legal system, and power in society (Skivenes & Sørdsdal, 2018). Therefore, when encountering similar situations, decisions made by decision-makers from different countries may vary. Berrick et al. (2015) used four dimensions to understand the discretionary space governments in four Western countries given to child protection workers in preparing care orders. The four dimensions were: 1) inclusion of relevant information, evidence, and expert knowledge, 2) timelines for decision-making, 3) involvement of children and parents, and 4) accountability mechanisms (ibid). The study found that Norway and Finland had wide discretionary space, while the USA and England had narrow discretionary space (ibid). These dimensions provide directions to assess the discretionary space a government given to decision-makers in theory. They could be also useful in understanding how decision-makers exercising discretion in practice.

To avoid violation of power use, governments use legislation to set standards and criteria

to limit the discretionary power of decision-makers. Yet, the provisions can be subjected to interpretation (Gording-Stang, 2018). To understand how these decision-making professionals, the street-level bureaucrats as conceptualized by Lipsky (2010), decide on using their discretionary power to safeguard children, researches were carried out in the Western contexts (Juhasz & Skivenes, 2018; Lamponen et al., 2019; Masson, 2006; Skivenes & Tonheim, 2019). However, no study can be found carried out in an Asian context. Particularly, not to my knowledge that any study about care proceedings has been conducted in the context of Hong Kong. I believe it is imperative conducting the study to enrich the knowledge about care proceedings in an under-researched context.

## 1.2 Purpose of the Study

The purpose of this study is to examine care proceedings within child protection in Hong Kong. Details of care proceedings process in courts are not open to the public in Hong Kong. Also, taken into account the ethical concern which will be detailly introduced in chapter four, I considered newspaper articles as the most suitable materials to understand the whole progress of care proceedings. Through in-depth analysis of newspaper articles regarding two care proceedings cases under social movements in Hong Kong, the study aimed to gain knowledge on the current care proceedings practice within child protection.

## 1.3 Research Question

The two care proceedings cases under social movements in Hong Kong gained wide media coverage. The whole care proceedings process, views from decision-makers in the cases, voices of professionals, and the general public were reported by news media. The information available from the news media permitted an analysis of the care proceedings practice in Hong Kong. Voices from the public could give insight into the failure of the current care proceedings policy. The following overarching question guided my study:

What can we learn about care proceedings in Hong Kong through media coverage of two critical care proceedings cases under social movements?

## 1.4 Significance of the Study

The finding of this study will redound to the benefit of child welfare knowledge

development, considering that care proceedings is a significant policy to safeguard children. There is an enormous knowledge gap about care proceedings in child removals (Burns et al., 2016). Most available child welfare and protection knowledge are based on Western and Anglo-Saxon countries (ibid; Gilbert et al., 2011). Very limited knowledge can be found about child protection systems in Asian contexts or Hong Kong in particular. This study would be vital to enrich those who are keen on this topic or working in the child welfare field to gain knowledge about care proceedings policy development outside Western countries. It would bring valuable knowledge to policymakers, legislators, child-welfare non-government organizations (NGOs), social work professionals, and those who are interested in child rights in Hong Kong particularly, to improve and advance the current care proceedings framework and practice. Another significance of the research would be to raise individuals' and policymakers' awareness to concern care proceedings.

## 1.5 Clarification of Concepts and Terms

This study involves an in-depth discussion on care proceedings in Hong Kong. Some terms are specifically used in Hong Kong. Some terms can be used in other countries but might carry different meanings (Pösö, 2014). For a better understanding of the study and to avoid confusion, some key concepts and terms are clarified here.

### *Care Proceedings*

If social workers or police officers believed that a child is in need of care or protection, they can initiate care proceedings according to the PCJO which will be detailly introduced in chapter two. Social workers or police officers initiate care proceedings by applying to a juvenile court for a care order to protect the child.

### *Care Order*

A care order is an order issued by a juvenile court regarding the decision of care proceedings in the PCJO (PCJO, 2020). The order can be in various forms which will be detailly illustrated in chapter two. In Hong Kong, there are different terms used for the care order concept, including “care or protection order”, “care and protection order” and “child protection order” in Chinese. To avoid confusion, I will use the term care order in this study.

### *Interim Order*

An interim order is an order issued by a juvenile court before the final decision of care

proceedings in the PCJO (PCJO, 2020). The term will be detailly illustrated in chapter two.

### *The High Court*

The high court in Hong Kong is made up of two courts: the court of appeal and the court of first instance (Judiciary Hong Kong, 2018b). It can hear appeals sent and cases first taken to it. The right to appeal is a crucial part of the legal system in Hong Kong. A higher court can review the judgement of a lower court, i.e. the high court can review cases heard in the magistrates' court which includes juvenile courts.

### *The Juvenile Courts*

The juvenile courts in the magistrates' courts in Hong Kong have jurisdiction to deal with care orders in respect of children or juveniles aged up to 18 (Judiciary Hong Kong, 2018a). It will be introduced in detail in chapter two. There are five juvenile courts in Hong Kong. Judges in the juvenile courts are magistrates.

## 1.6 Organization of the Study

This research study contains six chapters. Chapter one is the introduction chapter. Chapter two presents the knowledge basis of care proceedings in Hong Kong. Chapter three introduces the theoretical framework. Chapter four provides the methodology of the research. Chapter five reports the findings. Finally, the last chapter discusses the findings of the study.

## 2 Knowledge Basis

To understand care proceedings in Hong Kong, it is crucial to understand the context in which they happen. This chapter provides an illustration of care proceedings organization and development in Hong Kong. It acts as a foundational point of reference in constructing a case study of care proceedings. This chapter contains the following sections: 2.1 the legal framework for care proceedings in Hong Kong; 2.2 the procedural framework for care proceedings in Hong Kong; 2.3 care proceedings in practice in Hong Kong; and 2.4 social movements in Hong Kong; and 2.5 challenges of the current care proceedings policy in Hong Kong.

### 2.1 The Legal Framework for Care Proceedings in Hong Kong

Hong Kong does not have a specific child welfare legislation or child welfare act, but multiple legislative provisions were established related to child protection. Relevant ordinances include the PCJO (Cap 213), Adoption Ordinance (Cap 290), and Child Abduction and Custody Ordinance (Cap 512), etc. (Social Welfare Department [SWD], 2020). The PCJO is presented here. It provides the structural frame for care proceedings in the juvenile courts and discretion delegated to professionals, namely judges, police officers, and social workers, for decision-making in care proceedings.

#### 2.1.1 History of Protection of Children and Juveniles Ordinance

The history of the PCJO can be traced back to 1938. The ordinance was named Protection of Women and Girls Ordinance (PWGO) at that time. It aimed at providing care and protection to deprived women and girls who were sold at their young age to work as domestic servants or were exposed to any moral danger (SWD, 1956, as cited in P. Leung, 2002, p. 14). A child found in need of care would be placed under the care order with the recommendation of DSW to the juvenile court. Upon the court decision-making, the child might return home or place in residential care with mandatory supervision from a social welfare officer for a specific period of no more than three years (S. W. Lam, 1990). In 1951, legal attention was paid to further protect both boys and girls. The PWGO was replaced by Protection of Women and Juvenile Ordinance (PWJO) (*ibid*). The PWJO expanded the provision of care and

protection to children who have been neglected, ill-treated, abandoned, or orphaned. Yet, the major target groups remained to be females and girls who drifted into prostitution or were victims of traffickers (ibid). In the 1960s, there was a rapid increase in the youth population due to urbanisation and industrialization (P. Leung, 2002). Juvenile delinquency became a concern in Hong Kong. A new category “children and juveniles beyond control” was created as targets who need statutory care and protection (ibid). Therefore, children placed under care orders were no longer only children who were exposed to harm or ill-treatment, but also children with serious conduct or behavioural issues and beyond the parents’ control (ibid). In 1993, the PWJO was amended to put the focus of the ordinance only on children and juveniles. It was renamed as Protection of Children and Juveniles Ordinance. It has continued to be used till now with some minor amendments in 1997, 2002, 2007, and 2020 (Hong Kong Social Workers’ General Union [HKSWGU], 2019; P. Leung, 2002; PCJO, 2020)

### 2.1.2 Protection of Children and Juveniles Ordinance

Within the current legislation in Hong Kong, the main statute for child protection is the PCJO. In this ordinance, child means person under 14, while juvenile refers to person aged 14 or above and under 18. In other words, the ordinance is in the exercise of protecting all children under 18. It is coherent with UNCRC’s definition of children (UN, 1989). For the sake of brevity, I will use child hereafter referring to both child and juvenile defined in this ordinance. Section 34(2) of the PCJO provides the definition of a child who is in need of care or protection. A child in need of care or protection means a child:

- (a) who has been or is being assaulted, ill-treated, neglected or sexually abused; or
- (b) whose health, development or welfare has been or is being neglected or avoidably impaired; or
- (c) whose health, development or welfare appears likely to be neglected or avoidably impaired; or
- (d) who is beyond control, to the extent that harm may be caused to him or to others, and who requires care or protection. (PCJO, 2020, p. 12)

According to the above definition in the legislation, two categories of child can be seen as in need of care or protection: 1) child who has been exposed to, is exposing or will likely to be exposed to any form of abuse or neglect, and 2) child who is “beyond control”. P. Leung (2002) argued that children in the latter category can be regarded as troubling, pre-delinquent,

or youth-at-risk; S. W. Lam (1990) defined them as having conduct and behavioural issues.

Section 34(1) of the PCJO states that the DSW, any person authorized by the DSW, or any police officer can apply for a care order to protect a child who appears to be in need of care (PCJO, 2020). This action can also refer as care proceedings initiation. With the care order application made, the juvenile courts may but not necessarily require the child to be brought before court. The courts would also give out directions to notify a parent or guardian of the child regarding the application. If further inquiries are needed, the courts can have different decision-making regarding the application. Section 45A (7) states that the juvenile courts can order a child to be assessed by professionals regarding his health and development (ibid). Section 34E(1A)(4) states that the juvenile courts have the power to issue an *interim order* to detain a child in a place of refuge for a period not exceeding 28 days from the date of the order in the first instance for the purpose of making further inquiries about the child (ibid). The interim order can be further extended but the total period of continuous detention cannot exceed 56 days. One of the places of refuge is Tuen Mun Children and Juvenile Home (hereafter referred to as just juvenile home). The juvenile home serves multiple functions as “a place of refuge, a probation home, and a reformatory school” (SWD, 2021b). Children who are in the juvenile home could be under an interim order, a care order, or a probation order. There were no statistics found showing the number of children living in the juvenile home under each order. However, it is important to note that the juvenile home is put under service for offenders in the SWD. That made me doubt the major purpose of the juvenile home and the suitability of it for children in need of care.

### 2.1.3 Care Order

A juvenile court, on its own motion or upon the care order application, may issue the final care order with the following decision-making to protect a child:

- (a) appoint the DSW to be the legal guardian of such child; or
- (b) commit him to the care of any person whether a relative or not, who is willing to undertake the care of him, or of any institution which is so willing; or
- (c) order his parent or guardian to enter into recognizance to exercise proper care and guardianship; or
- (d) without making such order or in addition to making an order under (b) or (c), make an order placing him for a specified period, not exceeding three years under the supervision of

a person appointed for the purpose by the court. (PCJO, 2020, pp. 8-9)

According to the above, a care order can be in different forms, such as ordering parents of the child to promise exercising proper care, requiring the child to be taken care of by an appointed person or institutions, and with an additional supervision order placing the child under the supervision of an appointed person.

Another legislation that can be related to care orders is Juvenile Offenders Ordinance (JOO) (JOO, 2020). Under Section 15 of the JOO, child between 10 and 16 charged with any offence and the court is satisfied with his guilt, one way to deal with the case is to process care proceedings if the child is in need of care (ibid). In other words, a care order can also be made in criminal proceedings. Apart from the previously mentioned two categories of child: child who has been exposed to, is exposing or will likely to be exposed to any form of abuse and neglect, and child who is “beyond control”, child who is charged with offence can also be under a care order.

#### 2.1.4 The Juvenile Courts

The juvenile courts within the magistrates’ courts in Hong Kong have the jurisdiction to hear charges against children or young persons under the age of 16 except homicide, and deal with care orders in respect of children or juveniles aged up to 18 (Judiciary Hong Kong, 2018a). There are five juvenile courts in Hong Kong. The atmosphere in the juvenile courts is relatively relaxed comparing to the adult courts. Magistrates would use simple language to communicate with children (The University of Hong Kong, 2020). The UN commented that children in need of protection should be transferred to the family courts instead of having hearings in the juvenile courts (UN, 2012). However, the Hong Kong government argued that the current system was running smoothly without changes needed (ibid). Ireland also used non-specialist courts to deal with child care proceedings, where there were few specialized staff or facilities (O’Mahony et al, 2016). The research conducted in Ireland found several disadvantages of using non-specialist courts to deal with care proceedings: the court failed to take comprehensive cognisance of the special needs of these cases, insufficient time was given to hearings of care applications in some locations, and to a large extent of inconsistencies in practice exist across courts (ibid).



## 2.2 The Procedural Framework for Care Proceedings in Hong Kong

Hong Kong does not have a comprehensive child welfare policy. Measures related to child welfare can be found in different policies including education and family policies (Choy, 2018). Two agencies in Hong Kong can initiate care proceedings: the SWD and the police.

### 2.2.1 Social Welfare Department

The SWD is a department in Hong Kong, responsible for welfare service delivery including child protection. Family and Child Protective Services Units (FCPSUs) under the SWD provide services to children who are in need of protection from maltreatment (SWD, 2021a). The SWD, in collaboration with other relevant professionals, drew up “Protecting Children from Maltreatment- Procedural Guide for Multi-disciplinary Co-operation” (hereafter referred to as the Guide). The Guide first appeared in 1993 and had been reviewed and revised few times to the current version of 2020 (Chung et al, 2002; SWD, 2021a). It serves as a procedural frame for child protection, but only as a reference and without legal effect for professionals in taking action to handle suspected child maltreatment cases (Hong Kong Christian Service [HKCS], 2018; SWD, 2021a). In other words, it is not mandatory that professionals other than social workers from the FCPSUs follow the Guide or even know how to handle the circumstance when encountering a suspected child maltreatment case (HKCS, 2018). It is important to note that since the Guide is specified for working with children from maltreated, which means that the Guide might not apply to children in the category of “beyond control” in the PCJO. I would highlight the contents of the Guide which is related to care proceedings below.

The Guide states three key principles when handling child protection cases: “child-focused, safety first”, “family participation” and “multi-disciplinary co-operation”(SWD, 2021a). The best interest of the child shall override parents’ rights for child protection intervention as indicated in the Guide (ibid). Yet, when taking any actions, the overall situation of the family should be considered to form a comprehensive intervention of safeguarding the child and supporting the family (ibid). Parents should be engaged and listened throughout the whole process from assessing risks to formulating follow-up plans of the child (ibid). If parents are incapable of protecting their child, or their wishes are not coherent with the goal of protecting the child’s safety, social work professionals can initiate care proceedings according to the PCJO (ibid).

Multi-disciplinary Case Conference (MDCC) is a forum gathering professionals, for example, social workers, psychologists, doctors, and police officers, who have a key role in handling and investigating a suspected child maltreatment case, to share knowledge, information, and concerns on a child's situation (ibid). The MDCC focuses on protecting the safety and the best interest of the child. When suspected child maltreatment incident is revealed and investigated by social workers and other professionals, the MDCC is required (ibid). If a child is assessed to be in need of statutory protection in the MDCC, social workers of the SWD should initiate care proceedings by applying for a care order according to the PCJO (ibid).

### 2.2.2 The Police

Another state agency that can also initiate care proceedings is the police. The police have drawn up Police General Orders (PGOs) and Force Procedures Manual (FPM) (Hong Kong Police Force [HKPF], 2021b). The PGOs are orders drawn to monitor police discipline and behaviour when police officers carrying out their duties, while the content of the FPM consists of guidelines and procedures (ibid). The public can file for complaint if they suspect police officers violate the PGOs (Press Release HKSAR, 2019; RadicalHK, 2019; The Association for the Advancement of Feminism, 2019). However, the PGOs is only partly available to the public, while the FPM is not available to the public. In the available chapters of the PGOs, I found chapter 34, family conflict, sexual violence, and vulnerable person, was most relevant to police officers working with children in need (HKPF, 2021a). The chapter contains details in defining different types of child abuse. It also states that police officers should refer to appropriate units for investigation when encountered child abuse cases, but it does not mention the necessity and situation of initiating care proceedings. Besides, the chapter does not mention or clarify how to define a child as “beyond control”.

## 2.3 Care Proceedings in Practice in Hong Kong

There was very limited knowledge could be found about care proceedings practice in Hong Kong. No case information, official statistics or reports was found about care proceedings. I only found two master dissertations examining care order (S. W. Lam, 1990; P. Leung, 2002). S. W. Lam (1990) interviewed children who were under care order regarding their perceptions to the order. Among ten interviewed children, she found only one child was a victim of child

abuse and gave positive feedback to the order. Another nine children involved in the study had runaway behaviour, poor relationships with their families, and undesirable peers (ibid). S. W. Lam found these children disliked and criticized the order. This study revealed that care orders seemed to be mainly used in children who might be considered as “beyond control” rather than children who suffer from abuse or neglect. Yet, the study may not tell the current situation as it was done 30 years ago.

P. Leung (2002) analysed the effectiveness of care orders in dealing with children beyond control. Her research only focused on children who entered care proceedings as “beyond control”. It is also important to note that she placed care order as a part of the juvenile justice system but with welfare orientation rather than as a part of the child welfare system. Nevertheless, the study developed crucial knowledge about care order. Since the study was done almost 20 years ago, which means the current phenomena could be different due to societal change and welfare development. Even so, the study was valuable to be reviewed due to the limited informed and well-recorded knowledge.

### 2.3.1 Care proceedings in the juvenile justice system

In P. Leung’s study (2002), she found the major categories of children under care orders included runaway children, girls being treated as victims of sexual and related offences, non-convicted offenders who committed minor offences, teenagers exposed to drug danger, and those who have self-harm or aggressive behaviour in family disputes. P. Leung found that these children were also likely to involve in gang-related activities or substance use. She also looked into newspapers and found other categories of children under care orders, including one case that a child was beyond his guardian’s control and challenged the police’s authority. The above-mentioned categories were defined as ‘beyond control’ in her study. P. Leung stated that it was more often for police officers to initiate care proceedings rather than social workers. Before the care proceedings initiation, both police officers and social workers would consider three main factors theoretically: if the child has repeated missing records, peer connection which might put him in danger, and adverse family conditions which fail to prevent the child from exposing in danger and violating laws (Lee, 1989, as cited in P. Leung, 2002). The study also highlighted the problem of care proceedings under the juvenile justice system. For crime control purpose, police officers diverted delinquents without sufficient evidence for charges to care proceedings (P. Leung, 2002). Without the legal operational

definition to interpret “beyond control”, the court seldom rejected the police’s care order application (ibid). While the juvenile justice system as part of the criminal justice system, P. Leung stated that the courts focused on determining the criminal liability of the child brought before court. The social worker’s key concern of “the best interest of the child” was seen contradicted with the court and the police’s approach (ibid). Insufficient communication channels among the police, the courts and social workers regarding care proceedings practice were criticized in the study (ibid).

### 2.3.2 Care proceedings from a child welfare perspective

Care proceedings from the perspective of child welfare in Hong Kong has been lacking organized documentation and review, which is also common across countries (Burns et al., 2016). There was little literature investigating the quality of decision-making in child protection systems, decision-making in courts, and the use of discretionary power in child removal cases (ibid). Fragmented information I found about care proceedings in Hong Kong will be presented below.

A well-known care proceedings case that led to the law amendment was in 1986. A five-year-old child was suspected to be kept in the flat by her mother who was mentally unstable (Pang, 2019). Social workers tried to intervene with home visits but were rejected (ibid). With the concern of the child’s safety, the SWD decided to break into the flat with the police’s assistance (Liu, 1995). The child was forced to separate from her mother (ibid). The SWD initiated care proceedings and sent the child to the children's home (ibid). At that time, the action of the SWD was heavily criticized by the public regarding the use of force (K. Lam, 2018). The legislation did not appear to confer the power of forced entry, but it was amended, conferred the power of entry with force, a year after the incident (Liu, 1995).

Two child abuse cases in the recent years led to wide discussions of the poor child protection system in Hong Kong. A 10-year-old girl who suffered from long-term child neglect was revealed in 2015. She was staved till brain damage and classified in a persistent vegetative state (Now News, 2018). A five-year-old girl who died from long-term abuse by her father and stepmother in 2018, was commented as “the most serious child abuse case” (HK01, 2021). In a magazine issued by HKCS (2018), one of the NGOs providing child welfare service in Hong Kong, commented on the practice difficulty in carrying out care proceedings by frontline social workers for child protection. Overriding parental rights was

hard from the court's perspective (HKCS, 2018). Care orders were hard to be obtained unless it was with the parents' consent or parents were lost contact (ibid). Yet, this difficulty did not find to appear with police officers when they were the ones who initiate care proceedings for cases "beyond control". As mentioned previously, the court seldom rejected police officers' care order applications (P. Leung, 2002). With such contradiction of police officers' and social workers' experience in care proceedings initiation, it is crucial to know how decisions in the juvenile courts were made.

Another two cases share high similarity but completely different from the above-mentioned cases happened in 2014 and 2019. These two cases happened during a special time when Hong Kong was experiencing social movements. In 2014, a 14-year-old teenage girl used chalk to draw flowers on a wall where the social movement happened. She was arrested and followed by a care order application to initiate care proceedings by the police. In 2019, three teenagers were arrested at where riots were happening, followed by a care order application to initiate care proceedings by the police. However, the teenagers claimed that they were on the way home and waiting for the bus respectively. Children in both cases were granted interim orders by the juvenile courts to stay in the juvenile home until final decision-making of care orders. Since the police did not charge the children in both cases, the care order applications were not in criminal proceedings. All children in both cases were not granted care orders at the final court hearing. The police were heavily criticized by the public for power abuse to apply for care orders. These two cases will be introduced in detail later, as I chose them to conduct the study. By comparing these two cases to the previously mentioned cases which aroused public discussions regarding the child protection system in Hong Kong, these two cases are different in nature. I could not classify the children in these two cases as either category of child in need of care stated in the PCJO: child suffered from abuse or neglect, and child beyond control. Therefore, I decided to name these two cases generally as care proceedings cases without specifying the case category. Without detailed examination and analysis of the two cases, it is hard to understand why children in these two cases would appear as in need of care to the level that led the police to initiate care proceedings by care order application directly and agreed by the court to issue interim order with the strictest measure of detaining them in the juvenile home.

## 2.4 Social Movements Contexts of the Two Care Proceedings Cases

The above-mentioned two care proceedings cases happened under the specific context of social movements. Though this study did not intend to look at how political instability in Hong Kong may relate to care proceedings practice, an introduction of the social movements may clarify the context of when the two cases happened and shed light on my choice of methodology introduced in the next chapter. A brief overview of the two social movements is presented here.

The social movement in 2014 is also called “the Umbrella Movement”. It started with China releasing its decision in August 2014 about the candidates of the Chief executive in 2017, the head of Hong Kong. The candidates can only be from the list pre-approved by the Chinese government (BBC, 2019; Kaiman, 2014). With China breaking its promise that Hong Kong citizens would enjoy universal suffrage electing their own leader by 2017, students began class boycott and protests in September 2014. Civil disobedience campaign initiated by two professors and a Baptist minister drew more citizens’ attention and support, led to a large-scale protest outside the Hong Kong government headquarters, and major roads occupations. The police used tear gas to attack protesters during the movement. The movement lasted for about three months from late September to December 2014.

The social movement in 2019 began with peaceful marches for the anti-extradition bill in June 2019, a bill proposed allowing suspects to be sent from Hong Kong to mainland China to face trial (Wu et al., 2019). As the government rejected to withdraw the bill, clashes between protesters and the police were escalated with the use of force and violence involved (ibid). An increased number of citizens showed dissatisfaction to the government and the police through different forms of protests, including mass rallies, launching petitions, labour strikes, and class boycotts. The protesters demanded not only to withdraw the bill, but also raised other four demands, including the last one as universal suffrage. This movement can be seen as a continuation of the one in 2014 with the key demand of democracy. From June 2019 to March 2020, 7165 people were being arrested with about 1200 aged under 18 (Amighini, 2020).

## 2.5 Challenges of the Current Care Proceedings System in Hong Kong

From the legal and procedural framework of care proceedings introduced, involved agencies including the police, the juvenile courts, and social workers all have been entrusted

with wide discretionary power in their roles as “street-level bureaucrats” (Lipsky, 2010). This discretionary power delegation is required for the professionals to implement policy. It is not possible to write out all circumstances. With discretionary space set out for the agencies, the agencies can adapt their decisions to the specific circumstances in each case (Molander et al., 2012; Rothstein, 2011). These professionals have the flexibility in deciding if a care order is necessary to apply and should be granted. Yet, from the mentioned care proceedings practice in Hong Kong, it is found that the discretionary space has led to a wide variety of practice and decision-making, which caught the public’s inquiries. This is due to the fact that agencies can make judgements according to their own interpretations within the legal and procedural framework, while the public did not agree with their judgements. The abuse of discretionary power in care proceedings was first-ever challenged by the public in the two cases related to social movements. With the societal change and development, the long-standing care proceedings framework in Hong Kong might not be developed well enough to secure child welfare.

### 3 Theoretical Framework

Street-level bureaucracy by Lipsky (2010) may offer a perspective to understand how frontline professionals interact with children and families involved in care proceedings. Another crucial concept that came across most literature talking about decision-making in care proceedings is discretion (Berrick et al., 2015; Juhasz, 2020; Magnussen & Skivenes, 2015; Molander et al., 2012; Skivenes & Tonheim, 2019). Such knowledge might shed some light on the two care proceedings cases happened under social movements in Hong Kong. I will introduce street-level bureaucracy and discretion in this chapter.

#### 3.1 Street-level Bureaucracy

Street-level bureaucracy is a sociological theory developed by Michael Lipsky (2010) to describe public agencies whose workers interact directly with citizens to deliver public service. These workers have substantial discretion on the allocation of benefits and public sanctions, who are called street-level bureaucrats (*ibid*). Examples of street-level bureaucrats are teachers, the police, judges, social workers, public lawyers, health workers, etc. The typical groups of street-level bureaucrats related to care proceedings in Hong Kong are the police, social workers and judges. Lipsky (2010) stated that the interaction between citizens and street-level bureaucrats is complex, which might have an impact on the benefits and sanctions they receive. A key characteristic of street-level bureaucrats is that the bureaucrats enjoy a high degree of discretion (*ibid*). Since no one rule or procedure can fit all cases, street-level bureaucrats as professionals, are expected to make discretionary judgements within their fields (*ibid*; Maynard-Moody & Musheno, 2005). Concepts within the street-level bureaucracy, which might explain the finding of this study, will be discussed in detail in chapter six.

#### 3.2 Discretion

A characteristic of many welfare states is delegating discretionary power to professionals to implement welfare policy. In Hong Kong, the police and social workers are the major professionals who have the discretionary power in making decisions on care proceedings initiation, while judges have the discretionary power in deciding to grant a care order or not.



Yet, the outcome of discretion can vary a lot across time, space, and persons (Molander et al., 2012). The same case can be interpreted and judged differently. However, since a customized plan is required according to the child and family's situation, the use of discretion is unavoidable, particularly in child protection. According to Molander et al. (2012), discretion can have two aspects: structural and epistemic. The structural aspect of discretion refers to discretionary space, while the epistemic aspect of discretion refers to discretionary reasoning.

#### *Structural aspect—Discretionary space*

With a structural and regulative framework, decision-makers have to act according to the instruction given in the framework. Molander et al. (2012) claimed that discretionary space is an opportunity concept. The framework restrains decision-makers' opportunities in being autonomous to make judgements and decisions. Through legislation, authorities are delegated to make decisions and exercise discretion according to the standards set. Discretionary space can be wide or narrow. Another way of saying it is strong or weak discretion, as distinguished by Dworkin (1967, as cited in Magnussen & Skivenes, 2015). Strong discretion or wide discretionary space refers to only a few requirements are set for decision-makers to consider when making decisions. An example would be that the best interest of the child should be considered by judges when making decisions in care proceedings, but no instruction on what aspects of it should be considered and how to do it. The opposite of strong discretion is weak discretion or narrow discretionary space, which a detailed range of considerations is listed for decision-makers to consider. As used by Berrick et al. (2015) in their research, there are four dimensions to examine the discretionary space set out for child protection worker to prepare care orders: inclusion criteria of information, evidence and expert knowledge; timeline for decision-making; involvement of children and parents; and accountability mechanisms. In chapter six, I will discuss how the findings of my study may be related to the care proceedings legal framework in Hong Kong, the discretionary space set out for professionals to exercise discretion in care proceedings.

#### *Epistemic aspect—Discretionary reasoning*

Within the set discretionary space, decision-makers can exercise their discretionary power. Giving reasons to justify the use of discretionary power is expected, so the discretionary power does not turn to arbitrary power. Molander et al. (2012) stated discretionary reasoning is an exercise concept. Discretionary reasoning is necessary for child protection work, since every child and family has their uniqueness and needs. A reason can be a strong valid claim in

one circumstance but not in another one. Take leaving a two-year-old child alone in a room for a long time without supervision compared to if the child is 14-year-old as an example. It can be a valid claim to say that the circumstance with the two-year-old child involves child neglect, but it could be a weak or even invalid claim with the 14-year-old child.

Besides, it is challenging to make decisions under uncertainty, but it is unavoidable in child protection work. A long investigation is needed to know the detailed history of a family, but professionals usually only have a short time to make judgements about a child's needs according to what they know in an at-risk situation. Predicting what might happen if certain actions are not taken also increases uncertainty (Munro, 2019). Decision-makers require valid reasonings for their judgements about what to do under uncertain situations, so the use of discretionary power can be counted as qualified and justified by the public. If a child or family appeals for the decision made regarding the care order, professionals must be prepared to defend their judgements with arguments which they believe can support their judgements the best. As stated by Molander et al. (2012), discretion reasoning is fundamental "since the delegation of discretionary power is based on the epistemic assumption that the entrusted actor is capable of passing reasoned judgement" (p. 219). In other words, professionals are granted discretionary power by the public because they are believed to have certified knowledge in making reasonable judgements even without the discretionary space set. In chapter six, I will discuss how discretionary reasoning may be an adaptable concept for understanding how the decision-making was justified in the chosen care proceedings cases and how the public viewed the arguments given by the professionals.

## 4 Methodology

The primary goal of this study is to learn about the current practice of care proceedings in Hong Kong through media coverage of two care proceedings cases under social movements. The methodology employed to answer the research question is presented in this chapter. The chapter contains the following sections: 4.1 philosophical underpinnings; 4.2 research design; 4.3 selection of materials; 4.4 sampling procedure; 4.5 data collection; 4.6 data analysis; 4.7 trustworthiness; 4.8 ethical concerns; and 4.9 limitations.

### 4.1 Philosophical Underpinnings

Researcher's scientific position guide how a research is formulated and carried out (Creswell & Poth, 2018). I chose a social constructivist perspective to conduct my research (Bryman, 2012; Lincoln & Guba, 2013; Schwandt, 2007). This perspective is congruent with my worldview that I believe the nature of reality is socially constructed. The context, historical and cultural, must be taken into account for how reality is constructed, as our interpretations happen under the context we live in (ibid). My research aims to understand care proceedings within the specific context of when Hong Kong was undergoing social movements. With a social constructivist starting point, the reality about care proceedings practice in Hong Kong is constructed by the journalists who wrote about the cases and those who voiced out and reported by the journalists. I, as the researcher, also contributed to construct the reality through interacting and interpreting the newspaper articles written by the journalists. In the process of meaning-making, I recognized that my interpretation was affected by the phenomena and the society that I could not separate myself from. My background as a Hong Kong citizen, social worker with local and international child welfare knowledge shaped my interpretations of issues happening under the context I am familiar with.

From a social constructivist perspective, there can be multiple realities constructed according to personal experiences and variances in historical and cultural contexts. Therefore, I value everyone's view including my own. Individuals construct knowledge instead of discovering it (ibid). With the epistemological orientation of subjectivism, I co-created the knowledge about care proceedings in Hong Kong through my interaction with those to be

studied throughout the research process (Schwandt, 2007). I analysed newspaper articles, so the local journalists and voices reported in the articles were those to be studied. My interpretation was combined with the subjective reality presented by the journalists to co-construct knowledge of care proceedings in Hong Kong.

## 4.2 Research Design

I designed the research to be a qualitative case study. The two care proceedings cases happened under social movements formed as a case of the study.

### 4.2.1 Case study with qualitative design

Case study looks into a contemporary phenomenon in the real-world context (Yin, 2014), which involves detailed and intensive analysis of a single case or multiple cases. A distinctive characteristic of case study is the deep investigation of a case with a holistic and real-world perspective to understand complex social phenomena (ibid). With my general research purpose of understanding care proceedings in Hong Kong, case study with a qualitative design was a preferred research approach. Since care proceedings was a relatively new social issue to be explored in Hong Kong, the knowledge developed and the sample of care proceedings cases were limited. Case study could be useful to provide a description and understanding to this new social issue (ibid). Informed by my interest in child welfare and the care proceedings case happened under the social movement in 2019, I decided to carry out a case study about care proceedings cases under social movements. It was an intrinsic case study, since the case selection was based on my interest and the case's uniqueness (Stake, 1995, as cited in Crowe et al., 2011). Among all kinds of care proceedings cases, I chose two care proceedings cases happened under social movements. There were two reasons to support my selection. The first was regarding their criticalness.

Since the 2014 social movement in Hong Kong, there was an increased number of children, particularly youth, involved in social movements. The police carrying out care proceedings after a child was arrested was a new and unusual phenomenon. Some of these cases were intensively reported by news media and aroused public attentions. To carry out an in-depth investigation of the phenomenon, I chose two of these cases for analysis with critical case sampling strategy (Patton, 1990). Critical case refers to case that is crucial, which highlights vital information and has key impacts on knowledge development (Bryman, 2012; Patton,

1990). Patton (1990) pointed out a clue to look for a critical case is the statement to the effect that “if it happens there, it will happen anywhere” or vice versa, “if it doesn’t happen there, it won’t happen anywhere” (p. 174). The two chosen cases were controversial and widely discussed by the public on social media, which provided good opportunities to learn about the complexity of the phenomenon.

Another reason for my selection of these two care proceedings cases was their similarities. Although the two cases happened in different years, 2014 and 2019, both happened under a similar context in which Hong Kong was undergoing a series of democratic social movements. In both cases, the involved children were teenagers. In addition, the progress of the two cases was almost identical. The involved children were arrested by police officers at where social movements happened. The police did not prosecute them but initiated care proceedings by care order applications instead. At last, children in both cases had gone through similar legal proceedings: first hearing in the juvenile court after the care order application, a high court hearing to object to the interim order, and final hearing in the juvenile court with the final decision of rejecting the care order application. Decision-making in care proceedings of both cases included the application of care order, granting interim order, granting interim relief, and rejecting care order.

#### 4.2.2 The two critical cases

In the following, I will provide an overview of the two chosen care proceedings cases.

##### *Case I: 14-year-old girl drawing on Lennon wall in 2014*

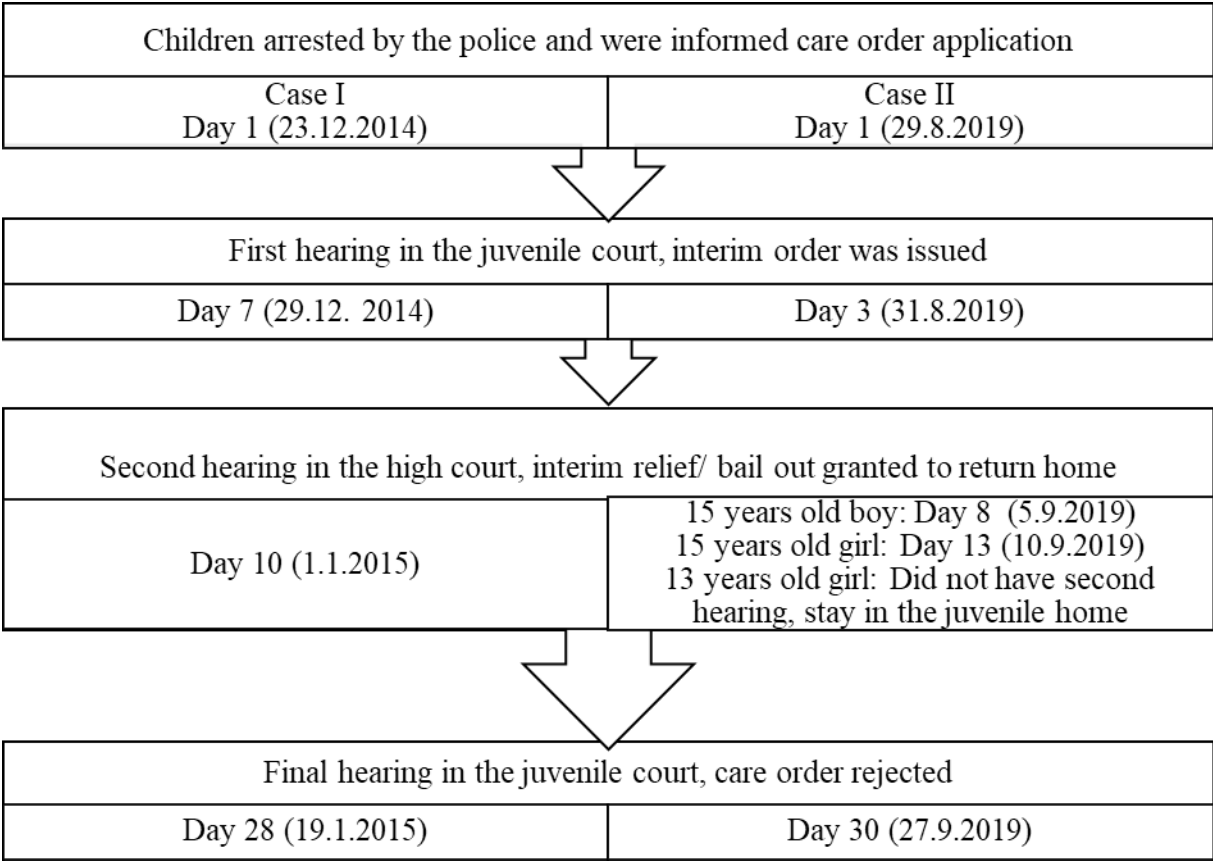
A 14-year-old girl was arrested on 23 December 2014 by police officers for using chalk to draw flowers on a wall near the Hong Kong government headquarter in Admiralty, which was known as the “Lennon Wall”. Lennon wall was where people expressed their opinions through plastering notes on the wall during the Umbrella Movement happened in Hong Kong from September to December 2014. The police stated that they would apply for a care order at a juvenile court after detaining the girl for 17 hours. On 29 December, the juvenile court granted an interim order regarding the care order application. The interim order required her to stay in the juvenile home while pending completion of the social welfare report. A solicitor applied for bail for the girl. Bail out was granted until 19 January 2015 in the high court on 1 January 2015. In the final hearing on 19 January, the magistrate from the juvenile court rejected to grant care order as she found it not necessary.

*Case II: A 15-year-old boy and girl, and a 13-year-old girl being arrested in 2019*

On 29 August 2019, three teenagers, a boy and a girl aged 15 and a girl aged 13, were arrested in Shum Shui Po for unlawful assembly outside Shum Shui Po police station. The boy and the 13-year-old girl claimed that they were on the way home after watching a film, while the 15-year-old girl said that she was waiting for the bus to return home. The police initiated care proceedings by applying for care orders after detaining the children but did not prosecute them. A magistrate in the juvenile court granted interim orders to the three children on 31 August and ordered them to stay in the juvenile home for up to 28 days during the inquiries of their backgrounds and welfare. The families of both 15-year-old teenagers applied for judicial review leave on behalf of the children. The applications were accepted by the high court. The two 15-year-old teenagers left the juvenile home on 5 and 10 September respectively. On 27 September, A magistrate in the juvenile court rejected all three care order applications as he found the orders unnecessary. The 13-year-old girl was released to return home.

**Figure 1**

*The progress of the two cases with timeline*



### 4.3 Selection of Materials

I selected newspaper articles as the materials for data collection. Three main reasons led me to choose newspaper articles as materials. First was the accessibility of information. Since the juvenile courts, which are responsible for care proceedings, are not open to the public for the purpose of protection to children, media became the only source for the public to receive information about the care proceedings process in courts. I chose newspaper articles but not other media, such as TV news or radio, because there were available and public assessable newspaper databases for me to look for materials needed. With the limitation of obtaining primary data through interviews or direct observations, analysing newspaper articles was an alternative method to understand a social issue. By focusing on the facts and perspectives that newspapers presented to the public, the research contributes to understanding how care proceedings practice was constructed in the social reality.

The second reason for choosing newspaper articles was related to the unstable political situation in Hong Kong. With the implementation of the National Security Law (NSL) in 2020, the freedom of speech in Hong Kong was shrinking fast. Citizens were no longer legally protected to say whatever they want (Wu & Yu, 2020). Due to the fact that the selected cases in this study are politically related, I faced an ethical dilemma in gathering local citizen's opinions through interviews. People might also not feel free to speak what they think, which affects the reliability of the data. While the newspaper articles were written before the NSL was released, opinions and views documented were expressed at the time when the freedom of speech was still existing.

The last reason for my choice of newspaper articles as materials was the characteristic of newspaper articles itself. News media, including newspaper articles as one of the main categories, is key to our daily life. It provides us information and creates opportunities for us to connect with others. Journalists contribute to constructing the subjective reality of their audience and the society (Edelman, 1988, as cited in Chang et al., 1992). Newspaper articles are secondary documents constructed by journalists, as representations of events (Hodgetts & Chamberlain, 2014). Yet, journalists are affected by the culture when producing news, since they tend to provide feedback and resonate with their audiences who share the same culture (Schudson, 1989). In a democracy, the media acts as “watchdogs” of the governing body's actions to provide necessary information and report issues that might concern the public (Saeed, 2009). Although the freedom of journalists in Hong Kong was dropping continuously

since 2014, some news media in Hong Kong were resisting oppression from the Hong Kong and Chinese government and continued their roles of monitoring the government with the support of the public (Reporters Without Borders, 2021). With the advanced technology nowadays, people can receive information from other online platforms, such as Facebook, Twitter, and Instagram. People can construct their own subjective realities. Nevertheless, with the limitation in directly assessing information about care proceedings cases mentioned in the first paragraph of this section, journalists became the major source for constructing the reality of these two care proceedings cases.

#### 4.4 Sampling Procedure

I used purposeful sampling in selecting newspaper articles as the form of data collection. It is a type of non-probability sampling, which only selects cases meeting certain criteria so that those sampled are relevant to answer the research question (Bryman, 2012). There were a large number of newspaper articles related to the two care proceedings cases, but not every article relates to my research question. With purposeful sampling, I was able to ensure having enough but manageable amount of materials to address my research question. I applied inclusion and exclusion criteria strategy of purposeful sampling in selecting newspaper articles (ibid). A total of 22 articles regarding case I and 19 articles regarding case II were selected. The chosen newspaper articles had met all the following criteria:

1. From four selected news media

I chose four news media in Hong Kong as the first criteria of inclusion, which included two paid Chinese newspapers, one paid English newspaper, and one online news media. All the news media were registered newspapers and based in Hong Kong. I chose these media was because of their high creditability. In the survey conducted by The Chinese University of Hong Kong (2019), South China Morning Post (SCMP), the English paid newspaper, had the highest creditability among all the paid newspapers, followed by two Chinese newspapers, Ming Pao Daily News and Apple Daily. The Stand News, an online news media, was included, as it had the highest creditability among all forms of news media in the survey (ibid). SCMP was one of the only two English newspapers based in Hong Kong. Ming Pao Daily News was viewed as an impartial and intellectual newspaper, which had a high penetration rate



in high schools (BBC, 2019; Ming Pao, 2021). Apple Daily was the head of pro-democracy media, which had the highest popularity among all the print or online news media (W. M. Leung, 2020). The Stand News was founded in 2014 as a non-profit online news media. It claimed its report focus was independent and was considered as a pro-democracy news media (BBC, 2019; The Stand News, 2021).

2. Articles published within a specific period

I set the search time frame for two months from the date since the incidents happened, as it is the peak period that the related articles were published.

3. Exclusion of articles other than news reports with facts and voices

I only included newspaper articles that have both facts of the cases' progress and points of views. These articles were usually written in a more neutral tone and report multiple voices from different people in the society. Editorials, columns, and opinions pieces were excluded to keep the type of article selected homogenous.

4. Articles about the two cases focusing on care proceedings

These two cases related to various aspects, including political, child welfare, and juvenile justice. This criterium was set to only include articles of the two cases focused on care proceedings within the child welfare perspective.

#### 4.5 Data Collection

Since there was no single database with all articles of the chosen news media, I used three methods to collect the data required: Wisenews, an electronic database with newspaper articles from Ming Pao Daily News and Apple Daily; Factiva.com, an electronic database with newspaper articles from SCMP; and manual search within The Stand News website. I set the search time frame for two months from the date since the incidents happened, which was 2014.12.23 to 2015.02.23 for case I and 2019.08.29 to 2019.10.29 for case II.

Before I started the systematic search of newspaper articles from the databases, I carried out a pilot search by using different keywords related to the cases. For instance, I tested the databases with the keywords “chalk”, “teenage girl”, “three teenagers”, “care or protection order”, “care order” and “child protection”. Through the pilot search, I knew which key terms

give out most relevant articles. I used these terms to conduct the formal systematic search. I used the key terms “care or protection order” and “care and protection order” in searching newspaper articles from SCMP in Factiva.com, since both terms were used in newspaper articles. Both terms refer to the same subject “care order”. In the Wisenews database, I used the key terms “兒童” which means child or children in Chinese, and “保護令” which means care order in Chinese, to look for related articles. The use of the additional key term “兒童” for searching articles in Chinese because the translation “care or protection order” or “care and protection order” already include the whole meaning of care order. However, in Chinese, “兒童” which means child, must be searched in combination with “保護令” which means care order to represent the whole meaning of care order. For The Stand News, since there was no organized search engine in the website, I used the same key terms as in the Wisenews database, in addition to “少女” and “粉筆”, which refer to young girl and chalk in Chinese respectively, to find articles related to case I. While for case II, beside the same key terms used in the Wisenews database, I used the key term “深水埗” and “三” which refer to Sham Shui Po and three in Chinese respectively.

By searching newspaper articles from the four selected news media and published within the specific period, I got 49 articles about case I and 37 articles about case II. I then applied the exclusion criteria of excluding articles categorised as columns, editorials and opinions. I had 29 articles about case I and 28 articles about case II. After that, I read through each article and excluded those unrelated to and not focused on the care proceedings of the two cases. The outcome number of articles was 22 articles about case I and 19 articles about case II. A total of 41 articles form the data materials for analysis. Table 1 shows the number of articles of the two cases from each newspaper.

**Table 1**

*Number of articles regarding the two cases from each newspaper*

Newspaper	Case I	Case II
Apple Daily (Chinese)	9	9
Ming Pao Daily News (Chinese)	6	5
South China Morning Post (English)	2	2
The Stand News (Online)	5	3
Total	22	19

To avoid losing the data materials because of any changes in the online databases, I downloaded all the newspaper articles and saved them as PDF files. It was a crucial step, since I found that I could not access the Wisenews database remotely anymore at a later stage of my research. I also transferred each article to a separate Microsoft word file and imported them to Nvivo 12. Nvivo12 was the software I used to conduct data analysis of this study.

#### 4.6 Data Analysis

I used qualitative content analysis (QCA) to carry out the data analysis in this study (Schreier, 2012). QCA is a set of techniques for analysing any kind of communication materials including printed media systematically (Abrahamson, 1983, as cited in Hsieh & Shannon, 2005; Mayring, 2014; Schreier, 2012). The origin of content analysis begins with quantitative approach, which focuses on the manifest content and frequency counts (Schreier, 2012). With the criticism of the approach that meaning can be complexed, content may be latent, and the meaning might only appear once in a text, non-frequency analysis was an alternative suggested, which facilitated the development of QCA (Schreier, 2012). QCA is not well known and clearly understood but is widely applied in social work research (Drisko & Maschi, 2015).

Newspaper articles were the materials for this research. Understanding meanings of the articles required a certain degree of interpretation, as data does not speak for itself, unless the recipients actively take part in meaning construction (Schreier, 2012). QCA is a suitable method for describing data that requires some degree of interpretation, as it has steps to deal with meaning that is less obvious (ibid). Hsieh and Shannon (2005) identified three approaches of QCA for interpreting the meaning of text data: conventional, directed, and summative. I chose the conventional approach which coding is derived directly from the data without using any existing theories (ibid). The data-driven way of coding can also be called as inductive approach (Graneheim et al., 2017). Knowledge is generated from the analysis based on various perspectives reported and presented in data, with the use of analysis techniques to capture the complexity of a phenomenon (Drisko & Maschi, 2015). It was the most suitable approach for my research, as the discussion of care proceedings in Hong Kong was a new phenomenon with very limited researches conducted. The inductive approach of QCA was useful for exploring the descriptions of care proceedings found in the newspaper articles.

In the analysis, I chose to omit parts of the articles that children or families shared their personal experiences outside the care proceedings. The experiences of children being arrested and detained by the police, their stay in the juvenile home, and views of the social movements were not included in the analysis. Although their personal experiences gave insights into improving the whole child protection system, they did not offer additional information regarding my research area in care proceedings. My coding frame was mainly inductive. I applied a progressive summarising strategy to build the coding frame (Schreier, 2012). This involved that I began with reading through each article and created paraphrases of the sentences that interested me. If a sentence in the article gives a new idea, I would generate a new paraphrase. When I encountered another sentence found similar to any previous sentences I had paraphrased, I put it under the first paraphrase. I continued my whole first coding process by adding new paraphrases or putting sentences under paraphrases that shared high similarities in meanings. After going through all the articles with the above step, I read through the paraphrases and compared them. Paraphrases appeared to share similar idea were grouped to form a subcategory. With all the paraphrases put into subcategories, I further reviewed the subcategories, and I made up categories and topics. Table 2 shows my coding frame.

**Table 2**

*Coding frame*

Topics	Categories	Subcategories
Aspects of decision-making in care proceedings	Information and evidence put before court	- Attention to the critical incident - In the interest of the child - Child's background
	Involvement of the child and family	- Participation of the child - Participation of the family
	Accountability mechanism	- Documentation - Procedure to object to the decision - Social Welfare Department intervention
Concerns raised by the public regarding the two cases	Police use of discretionary power	- Practice standard - Purpose
	Child rights	- Parent-child separation

		<ul style="list-style-type: none"> <li>- Detention</li> <li>- Freedom of expression</li> <li>- Right to education</li> </ul>
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It is important to mention that since a juvenile court can exclude any representative of newspapers or news agencies to be present for the consideration of the interest of the child in question, some evidence and information put before court found in the articles were not from the journalists' first-hand data. The evidence and information could be provided by solicitors and barristers of the children, police officers, the children, and their families when they were interviewed by the journalists after hearings. The data could not reveal the complete care proceedings, but it was valuable data to use, as different stakeholders presented in courts shared their experiences to emerge the decision-makings in care proceedings.

#### 4.7 Trustworthiness

Three key concepts are commonly used in evaluating social research, namely validity, reliability and replication (Bryman, 2012). Yet, since these concepts are grounded in quantitative research with the assumption of a single reality, I chose trustworthiness proposed by Lincoln and Guba (1985, as cited in Bryman, 2012) to assess the quality of my analysis. Trustworthiness is developed for the use with hermeneutic paradigms, where QCA belongs (Graneheim et al., 2017). There are several aspects of trustworthiness, which include credibility, transferability, dependability, and confirmability (Lincoln & Guba, 1985, as cited in Bryman, 2012). To enhance the trustworthiness of the research, each stage of the research process was designed and carried out carefully.

Credibility refers to how well data collection and analysis processes match with the intended focus of the research (ibid). To shed light on the research question from various aspects, I set inclusion and exclusion criteria for article selection, included articles with different voices reported to reach variation in content. I only included newspaper articles from four news media, but these articles issued in either of the two major languages in Hong Kong (English and Chinese) and issued either in the online platform or traditional printed paper form. The variety of articles from credible news media enhanced the credibility of the research findings. The articles also provided a sufficient amount of information to cover the variations in understanding the phenomena. Due to the limitation of using secondary data, it

was not possible to check with the original interviewees reported by the news media or the journalists regarding my interpretation.

Transferability refers to the extent that findings are transferrable to other settings (ibid). Since the research was oriented to be context-specific, it would be the reader's decision on the level of transferability (ibid). Yet, to facilitate the judgement on the transferability possibility, I provided a thick description with rich details of the culture and backgrounds of the two chosen care proceedings cases. I also presented the findings with quotations.

Dependability concerns the consistency of data collection over time and the researcher's analysis process (ibid). Since different databases were used to collect newspaper articles, I strictly followed the set of criteria for data collection to ensure the consistency of data collection. To ensure my coding frame was clear and consistent over time, I used double-coding suggested by Schreier (2012). I randomly chose four articles from each care proceedings case and recoded them after one week since my first round of coding (ibid). Although the second round of coding was not identical to the first round, the similarity was high.

Confirmability emphasizes that researchers should act in good faith while conducting the research without overtly allow personal values to affect the conduct of the research (Lincoln & Guba, 1985, as cited in Bryman, 2012). Since qualitative content analysis requires a certain degree of interpretation, during the coding process and making other analytic decisions, I tried to be reflective and aware of my personal values or assumptions. I accounted for them in the paper to inform readers of my choices for their review.

#### 4.8 Ethical Concerns

Since my research design was newspaper article analysis without involving direct contact with any participants, I could avoid the common ethical issues raised when conducting qualitative research. Yet, I took into account the ethical issue of using the internet and newspaper databases to collect data published in media and on websites. The selected newspaper articles were published publicly online or imprint. The data was considered to be public, as everyone can have access to it. However, I reflected on to what extent people involved in the chosen data were aware of the fact that their information expressed in the media would be used for research purposes (British Psychological Society, 2017). With this

concern, I decided to remove the names of individuals from the data published in the quotes I used for analysis.

Another ethical concern was potential harm to participants (Bryman, 2012). It was one of the key ethical concerns which led me to use secondary data instead of collecting empirical primary interview data. There were multiple aspects of harm that could have been caused to participants if I conducted interviews. The experiences of going through care proceedings could be traumatic for both children and families. Interviewing them to talk about their experiences could cause secondary traumatization, which I reflected as unethical when there was no support service available for the participants after they participate in the interviews. Besides, as mentioned previously about the unstable political situation in Hong Kong, the research might cause potential harm to participants if they were recruited to discuss their views on these two care proceedings cases related to social movements.

As mentioned in the previous section of this chapter, selection of materials, the freedom of speech in Hong Kong was curtailed since the NSL came into effect in June 2020 (BBC, 2020; Wu & Yu, 2020). In October 2020, a primary school teacher had been deregistered after being accused of teaching students about the concepts of freedom of speech and independence (Davidson, 2020). With the concern of risking participants' safety and life for participating in research, I decided to use secondary data which had been published instead.

Not only possible harm to participants, but I also assessed how the research might put me, as a researcher, at risk when designing it. The academic freedom index in Hong Kong was decreasing over the years and was declined sharply from 0.47 in 2019 to 0.35 in 2020 (Scholars at Risk, 2021). A professor from Hong Kong University of Science and Technology was criticized by pro-Beijing media as advocating for Hong Kong independence and potentially violating the NSL by saying "Hong Kong belongs to the world" (Apple Daily, 2020). People were arrested under the NSL because of chanting and displaying pro-independence slogans during the graduation protest in Chinese University of Hong Kong (Mudie, 2020). All these incidents implied the academic freedom was restricted. The restricted academic freedom could, on one hand, reflect why this research topic about care proceedings cases in social movements had not been studied before. On the other hand, it also called for my attention to be aware of the risk to carry out the research with methods that require technology or social media usage for connecting people in Hong Kong. I could not guarantee that my data would not be hacked or be traced by the Hong Kong or Chinese

government in any way during my data collection process. Using existing data would be a method to minimize the risk of being traced while conducting the research related to social movements which was a sensitive topic at the time when I conducted my research.

#### 4.9 Limitations

One of the major limitations of this study was the choice of data materials. Due to the ethical considerations, I chose to use newspaper articles as data materials. However, I was not able to reconfirm with the journalists and those who were interviewed by the journalists if I had interpreted their expressions correctly. It might affect the creditability of the research. Besides, most of the newspaper articles were in Chinese, while the research was conducted in English. The original meaning of the quotes presented in the study could be lost due to translation.

Since this research was a case study about a specific context, it could not be generalized into a wider context. Yet, generalization was not my intention to conduct this research. As stated at the beginning of this chapter, I recognized context and knowledge co-construction. A context-dependent knowledge is as valuable as general knowledge to understand an issue (Flyvbjerg, 2006). Besides, not all phenomena can be found over the world, so some knowledge can only be generated and understood in a specific context.

Another limitation addressed here was my subjectivity in data collection and data analysis. Since I was the main instrument of data collection, I decided what data to be focused on and what to be excluded. To be transparent with my selection process, I set out four inclusion and exclusion criteria (details can be found in section 4.4 of this chapter). The first three of them were replicable for other researchers. Only the last criterium involved my interpretation. In data analysis, the whole process was mostly leant on my interpretation. My characteristics, knowledge, and background could affect my interpretation of the data and considerations that some parts of the data were more important than the others. Nevertheless, I tried to be transparent in how I carried out the analysis.



## 5 Findings

This chapter presents the findings from my analysis of newspaper articles about the two care proceedings cases occurred during social movements in Hong Kong. My main research question was to explore what can be learnt about care proceedings practice in Hong Kong from media coverage of the two chosen care proceedings cases. An overall finding was that the newspaper articles regarding case II gave more details in decision-making in the care proceedings process, while the articles regarding case I included more voices about the public's concerns. Findings from the analysis of the two cases were complementing each other to allow a better understanding of the care proceedings practice in Hong Kong. Nevertheless, by comparing the two cases, there were also differences in which topics were addressed. There were two key topics found in media coverage of care proceedings in the chosen cases. Aspects of decision-making in care proceedings is first presented, followed by the concerns raised by the public regarding the two cases.

### 5.1 Aspects of Decision-making in Care Proceedings

Three categories were identified from data analysis of the decision-making in care proceedings in Hong Kong.

#### 5.1.1 Information and evidence put before court to qualify care order

Since both cases had undergone three hearings, there were different information and evidence put before court in each hearing. It will be clearly stated which information was put before court in which hearing below. In general, I found three types of information and evidence put before court: attention to the critical incidents, in the interest of the child, and the child's background.

##### *Attention to the critical incidents*

In the first hearing in the juvenile court, the main issue brought up in court for both cases was the critical incident that led the police to initiate care proceedings. In the first hearing of both cases, the police presented the backgrounds and circumstances that the children were being arrested. As reported by journalist K. M. Wong (2014), the solicitor in case I “quoted

the police's words in court that they pointed out the girl was drawing flowers at that day, and explained drawing flowers with the meaning of flowers blooming everywhere" (para. 2). In case II, journalist Ng (2019) reported that "the chief inspector of police provided the background of when the three children being arrested. Pointing out on 29 August evening [...]" (para. 3).

Information from the children and parents regarding the critical incidents was also put before court. It was not known if any information was provided by the child from case I in the first hearing regarding the critical incident. In case II, the magistrate questioned the children regarding their reasons for appearing at the unlawful assembly spot. As written by a journalist, the 15-year-old girl claimed that "she was not participating in the demonstration at that time, but only waiting for the bus at the nearby bus stop" (The Stand News, 2019a, para. 2). Another journalist reported that the solicitor of the boy "emphasized that the boy was wearing mask owing to the concern of being recognized. He lives near the police station and was caught on the way home" (Ming Pao Daily News, 2019a, para. 3).

However, the children's explanations were rejected by the magistrate. Children's point of view to the critical incident was being judged and not counted. Responding to the boy in case II regarding his explanation of on the way home, the magistrate said that it was "not possible that there are no other routes to avoid" the unlawful spot (Ming Pao Daily News, 2019a, para. 3). The magistrate also considered the children as lack of ability to make judgements in dangerous situations. As reported by journalist Ng (2019), the magistrate pointed out "the two girls ignored the police's warning nine times, chose to stay at the scene, did not know how to take care of their own safety" (para. 4).

Apart from that, the magistrate investigated the parents' childcare capacity through the critical incidents. In case I, the father was concerned with the lack of childcare capacity since he allowed his child to go to the place where was occupied during the social movement. The child said, "he cares a lot for me, puts a lot of effort to be a father. Is it allowing me going to the occupied area equals to incapable of care?" (Pak, 2015, para. 4). In case II, the parents were considered lacking childcare capacities as they were not aware that the children might participate in the unlawful assembly. According to journalist Ng (2019), "the magistrate countered that the two girls' families did not know their daughters were suspected of involving in unlawful activities at that time, questioned failed parent-child communication" (para. 4).

### *In the interest of the child*

In both case I and II, the police claimed that they only considered the child's best interest in care order applications and denied having any political concern. According to a journalist, the police spokesman pointed out that "police applying care order was based on the interest of the person [child] without any political concern" (Ming Pao Daily News, 2015, para. 8). When responding to case II inquiry, a senior superintendent said, "we are not doing this to punish them [the children] or their families. We are doing it purely for their own benefits" (K. Leung, 2019a, para. 2). No more clarification was given by the police regarding what was considered as the interest of the child in these two cases particularly.

The interest of the child was also mentioned by judges in the high court in both cases. In case I, the judge mentioned the concern of detrimental impacts to the child. As reported by journalists G. W. Wong et al. (2015), "the high court judge said that the care proceedings was based on the interest of the girl and if the girl would have a detrimental impact. He also explained that it was not a criminal case" (para. 5). The importance of the child's right to liberty and right to schooling was highlighted in case II to illustrate the judge's concern for the interest of the child. According to a journalist, the high court judge "granted leave to apply for judicial review, stated that based on the boy's liberty, the right to receive school education,[...]he granted interim relief that the boy could be released till 27 September" (Ming Pao Daily News, 2019c, para. 1).

### *Child's background*

The child's background was the least reported to be considered in the first hearing for the decision-making of an interim order. In case I, the police mentioned the child's family background to illustrate that the father was incapable of taking care of the child. Journalist K. M. Wong (2014) wrote, "police also submitted the girl's family background, indicated that her father was incapable of care" (para. 2). Some articles mentioned that the child had fair academic performance, poor relationship with the father, and delinquent behaviour; and reported that the child's father was hearing impaired and had criminal records (Ming Pao Daily News, 2015; The Stand News, 2014a). Yet, it was not clarified in the articles if the mentioned information about the child's background was put before court. In the first hearing of case II, the schooling performance of the 13-year-old girl was mentioned in the court. As a journalist reported, the solicitor of the 13-year-old girl "stated that the girl had no conduct issue in school and held leader role" (Ming Pao Daily News, 2019a, para. 5).

In the high court hearing of the 15-year-old boy in case II, the judge in the high court stated that the boy's good conduct was a key consideration to grant interim relief. As reported by journalist Choi (2019), the judge considered "the proof from the boy's school principal of his good conduct" and "decided to grant interim order to release the boy" (para. 5).

In the final hearing of case I, the magistrate expressed that she accepted the social welfare report and considered the child did not require a care order at that time. As said by the magistrate, "I can understand why the police made the application[...] However, after reading the social welfare report, I find that it is not necessary to grant the care order at this stage" (Chu, 2015b, para. 3).

More was revealed about the content of the social welfare reports in case II. The social welfare reports containing positive feedback were key evidence that the magistrate decided to reject all care order applications in case II. The reports' contents included family relationships, schooling, and social performance. As stated by a journalist in an article:

Her [social welfare] report was disclosed that the [15-year-old] female student had good relationships with her family. Although she needed to repeat F.3, she had outstanding performances in art and sports [...] The 13-year-old female student's report showed that her academic performance in her F.1 second semester was slightly worse, but she would put effort into it. (The Stand News, 2019c, para. 4)

### 5.1.2 Involvement of the child and family in decision-making

How children and their families were involved in decision-making at different stages of care proceedings are presented below.

#### *Participation of the child*

Articles did not explicitly mention if the children were present in every hearing, but at least one hearing without the child's attendance was found. As reported by G. W. Wong et al., (2015):

The judge stated that the hearing was originally set in tomorrow [2<sup>nd</sup> January] morning. However, knowing that the prosecuting party did not object to the girl being released on bail, so he considered beginning the court session immediately and not waiting until the girl arrived in court. (para. 7)

It was not known if the police consulted the children's opinions and explained the reasons of applying for care orders before they made the decisions. Articles of case II showed children's participation in courts (Apple Daily, 2019b; Ming Pao Daily News, 2019a; Ng, 2019). The children were asked to provide information about the incident which caused them to be arrested. However, no articles reported that children were asked by the judges regarding their opinions about care orders before decision-making at any of the three court hearings in both cases. As reported by journalist Ng(2019), the three children in case II, through barristers as their representatives, stated their opinions of "objection to be taken over by the juvenile home while waiting for the [social welfare] reports" (para. 4). The barristers mentioned that the two girls "also willed to follow curfew restrictions, so as to be able to stay home pending the next hearing" (Ng, 2019, para. 4). However, the magistrate rejected the children's proposals.

In the final hearing, all children in case II expressed their wishes to return to their families. As illustrated in the writing of a journalist, "three secondary school students, through barristers, revealed [the social welfare] reports showed that they had a good relationship with their families, wished the court to decline the care order application" (Apple Daily, 2019b, para. 4). Yet, it was not stated by the magistrate as a factor of consideration for decision-making.

While none of the children had opportunities to express their views to the care proceedings in courts, the children expressed their views regarding the interim order to the media after being released. The girl in case I expressed a feeling of injustice and disagreed that her father was incapable of parenting. The girl told journalists through Facebook that "so early to be released, I am happy, thank you for the other's support anyway. Anyway, I don't want to compromise to injustice" (G. W. Wong et al., 2015, para. 2). The 13-year-old girl in case II did not understand the reason for the interim order. She told a journalist in an interview, "I am just waiting for the [social welfare] report either inside or outside, do not understand what is the difference" (Ming Pao Daily News, 2019d, para. 4). As reported by the journalist, she also expressed a feeling of unfairness since others charged with rioting could be bailed out (Ming Pao Daily News, 2019d). Besides, the 15-year-old boy claimed himself "innocent" when interviewed by journalist Choi (2019).

#### *Participation of the family*

Similar to the children, it was not known how the involvement of the parents was before

the police initiate care proceedings. The articles showed that parents had more space to express their views in court directly or indirectly compared to their children. The father in case I had expressed, in the first court hearing in person, the wish to bring the daughter home, and “follow wherever she goes” (Apple Daily, 2015a, para. 2). Parents in case II, through their solicitors as their representatives, shared their views in the first court hearing. As reported by a journalist:

The defence [solicitor of the child] pointed out that the [13-year-old] girl’s mother was housewife, could take care of the girl [...] parents also committed fully taking care of the daughter [...] The defence pointed out that the [13-year-old] girl’s father was retired. He had time to take care of the daughter. (Ming Pao Daily News, 2019a, para 3-4)

However, case I showed that the magistrate did not care much about the father’s involvement. There was no additional assistance to the father who was hearing impaired and was not clear with the hearing content. As reported by a journalist, “the solicitor revealed that the girl’s father had a serious hearing impairment. He was not clear with the hearing content in the court and did not understand the process of the incident” (Ming Pao Daily News, 2014, para. 3).

### 5.1.3 Accountability

I found the media discussed three accountability mechanisms in the care proceedings to understand the use of discretionary power: documentation, procedures to object to the decision, and the SWD intervention.

#### *Documentation*

According to these two care proceedings cases, the police were required to provide information in courts to qualify the care order applications. The police stated that they had multiple factors to consider when handling care order applications, but they did not explain their process of collecting, examining, and interpreting information to reach the decision that a child needs care. As reported by a journalist about case I:

Our newspaper inquired the police on the justification of the care order application with the above case, and asked for past statistics and categorizations on care order applications. The police stated that when handling cases involved child and juvenile, the involved person’s age, schooling performance, health, mental health, family situation, the history of being arrested and criminal record, etc. would be considered[...]. Police claimed that they did not

keep related statistics. (Apple Daily, 2015b, para. 2)

There was also a lack of documentation and statistics on care order applications from the police. Lawmakers requested the Panel on Security of the Legislative Council to discuss the police application of the care order in case I, but no progress was found reported. As reported by journalist Wong (2015), a lawmaker “urged the Legislative Council to discuss the incident, requested the authority to explain the procedure and considerations of handling same category cases in the past, etc.” (para. 2).

#### *Procedures to object to the decision*

The options through a legal procedure to object to the interim order were unclear. This was because the applications that led to the high court hearings in both cases were found different. The journalist wrote that the barrister, representative of the child in case I, “filed for *an appeal* against sending the child to the juvenile home and a bail application” (Ming Pao Daily News, 2015). Yet, an article in case II explained that there was no appeal option for an interim order. As reported by journalist Yeung (2019):

A barrister stated that, according to the Magistrates Ordinance Section 104, the respondent can file for *reviewing the decision of the magistrate*. If the review is unsuccessful, there will be no further appeal possible. Since the magistrate issued the order of detention pending the [social welfare] report, which was not equal to granting a care order, it *cannot be appealed*. (para. 5)

In case II, both 15-year-old children’s fathers, on behalf of their children, filed for *writ of habeas corpus* that the children could be released immediately if it is issued, and *leave to apply for judicial review* of the interim order. If a person is believed to be detained without lawful justifications, an application of *writ of habeas corpus* can be made (High Court Ordinance, 2017). The court could grant interim relief if the leave to apply for judicial review is obtained, which was the case progress of case II in the high court. The court granted interim relief that the two children could be released immediately, but with curfews restrictions and restrictions of participating in unlawful assemblies (Apple Daily, 2019b; Choi, 2019). Yet, these applications would not be available for those who could not afford legal costs, which was the situation of the 13-year-old girl in case II. As written by a journalist:

The 13-year-old girl said that she was born in a grassroot family and lived in public housing. If the leave to apply for judicial review was failed, she might need to pay for

almost one million legal costs. Therefore, she had no other choice but to give up the application and continued to be detained while waiting for the [social welfare] report.

(Ming Pao Daily News, 2019d, para. 6)

### *Social Welfare Department intervention*

The major involvement of social workers or the SWD found in both cases was through the social welfare report. An NGO executive secretary stated that a social welfare report could tell if the decision of granting the interim order was “reasonable and just” (Ming Pao Daily News, 2014). Another NGO requested the SWD to assess the case “objectively and professionally” (The Stand News, 2014b). While in case II, an NGO pointed out that the SWD had the responsibility to proactively assist the parents regarding the care order application by the police. The SWD was accountable for the children being detained in the juvenile home. As journalist K. Leung (2019) reported, “HKSWGU Chairperson criticized the SWD was sitting on the sideline, intentionally avoided their responsibility because of fear of police power, which led to at least one of the two 13-year-old detained persons was still detained in the juvenile home” (para. 5).

## 5.2 Concerns Raised by the Public

The following findings are two major concerns raised by stakeholders in the society regarding care proceedings of the two cases: police use of discretionary power and child rights. The stakeholders who voiced out included the general public, social workers, lawyers, lawmakers, NGOs formed by students, parents, social work professionals, activists, and political parties.

### 5.2.1 The police use of discretionary power

A key concern found in both cases was the police use of discretionary power to handle minors. This concern was mentioned in almost two-third of the articles. There were two sub-categories of criticism to the police using their power to apply for care orders: practice standard and purpose.

#### *Practice standard*

Questioning the practice standard of the police was mainly found in case I. In case I, a lawyer, lawmaker, and social workers commented that the police applying for a care order



was unusual. They suspected that there was a different standard for care order applications when a child was involved in politically-related matters. A lawmaker asked, “if the girl had not drawn on the Lennon Wall but somewhere else in the street, would they [the police] have made the same application?” (Chu, 2015a, para. 12). The police were questioned about using their discretionary power different from the usual procedure. A lawmaker commented that the initiation of care proceedings by the police was “extraordinary” and “unusual” (Chu, 2015b). Social workers expressed that the police were handling case I unusual compared to other child delinquent cases, wherein the common practice was that the police consulted social workers before care order applications. As written by a journalist:

An outreach social worker pointed out that the police’s usual practice was ordering the child to return home waiting for the social worker to write the report, or ordering [the child] to stay in a small group home [non-institutional care] which allows the child to attend school as usual. It was rare to order [the child] entering the juvenile home. (Apple Daily, 2015b, para. 3)

Only one article from case II commented on the unusual practice, but with an expression that the police had the intention not to follow the usual procedure, which in effect rendered “passing a judgement before the trial”. As written by journalist K. Leung (2019):

HKSWGU chairman stated [...] three minors [...]were arrested because of participating in Sham Shui Po screening, followed by the police bypassed the SWD and applied for a care order in the court [...] The chairman suspected that the police abused the power in disguise to pass a judgement before the trial. (para. 3)

A less mentioned practice standard was the urgency to initiate care proceedings. It only appeared in case I articles. Journalist Chu (2015b) reported, “a lawmaker said it was very rare for police to make such an urgent application” (para. 8). The girl’s solicitor said, “I cannot see any urgency in this case that requires them [the police] to apply for the order” (Chu, 2015a, para. 10).

### *Purpose*

The major discussion on the purpose of the police using discretionary power was that the cases were politically related. The society had a similar concern for both cases, but the concern was more explicitly expressed and intense in case I compared to case II. The term “white terror” appeared only in case I articles. This term is used to describe violent repression

usually led by the conservative parties against the left-wing regime (Lexico, 2021). In application to the situation in Hong Kong, writer Sham-Shackleton (2019) defined it as “a systematic attack on the norms without always directly dismantling the Basic Law” (para. 9). The term was specifically used in the articles when describing care orders as a tool or strategy to create threats or fear to dissidents and their families. NGOs, lawmakers, the child’s solicitor from case I, and citizens criticised the police for creating white terror through abusing care orders. Some example of the articles written by the journalists are shown as follow:

Citizens gathered outside the juvenile home, where the girl was in, used chalk to write “release” and “while terror, everyone is in danger” (Wong et al., 2015, para. 3)

Multiple NGOs initiated support action [...] dismissed the authorities of creating white terror by using care order to threaten dissident families” (K. Y. Cheng, 2015, para. 1);

HKSWGU suspected that the police abused [care] proceedings to create white terror. (Ming Pao Daily News, 2015, para. 3).

Civil Party leader said, “the police ought not to apply for care order as a method to bring white horror to a young offender” (Chu, 2015b, para. 8). He used the term “white horror” instead of “white terror”. It could be a different translation by the journalist or the civil party leader between Chinese and English regarding the term, but I interpreted both terms shared the same meaning.

In case I articles, words like “oppression”, “prosecution” and “threats” were used by different voices including activists, social workers, and lawmakers to question the police’s purpose of care proceedings initiation. Activists shouted “political prosecution, shameful” when they were showing support to the girl outside the juvenile home (K. M. Wong et al., 2015, para. 3).

In case II, fewer voices were found reported by the journalists to comment on the concern of the police’s purpose in care proceedings initiation. The expressions were also different comparing to case I. A solicitor used the word “deterrent”. As reported by journalist Chan (2019), “the solicitor doubted [...] through care order applications to deterrent protestors under 16 participating in demonstrations, which was contradicted to the original aim of child protection in the legislation” (para. 4). A lawmaker expressed in another way, as reported by journalist Y. T. Cheng (2019), “a lawmaker stated that from an objective perspective, the

police’s act of care order application might threaten the students and their family” (para. 4). The word “oppress” was only used by journalists from Apple Daily. An example is shown here: “the police oppressed minor protestors through applying care order, which in effect made them under detention before charges were being laid” (Apple Daily, 2019a, para. 1).

Questioning if the care order applications met legal basis was found in a few articles and mainly related to case II. Professionals questioned if the police had sufficient evidence showing that their applications met the purpose of the PCJO and if the children fell within any of the four statutory criteria as set out in Section 34(2) of the PCJO to be defined as in need of care (Y. T. Cheng, 2019; Ming Pao Daily News, 2019b; Yeung, 2019). Only a lawmaker had an expression of affirmation that the police was lack of legal basis. When the journalists referred to the other voices, terms used were “might not be appropriate” and “doubting”. The following two quotes show how the journalists referred to the lawmaker and a barrister’s words to illustrate the differences in expression:

The lawmaker said [...] their family did not neglect the children, some [children] even had outstanding academic performance and good habits. It was unnecessary to separate them from their family. He described the action of the police as[...] going against the original meaning of the law. (Y. T. Cheng, 2019, para. 3)

She [the barrister] questioned the police’s care order application might not be appropriate. (Ming Pao Daily News, 2019b, para. 1)

### 5.2.2 Child rights concerns

NGOs and professionals raised four major child rights concerns after both cases were known to the public: parent-child separation, detention, freedom of expression, and right to education. Some concerns raised were referenced to the UNCRC.

#### *Parent-child separation*

One of the most mentioned concerns was separating children from their parents, with only one voice in case I but more were found in case II. A barrister, lawmaker, professionals, and The Committee on Children’s Rights (CCR) voiced out the violation of a child’s right to family life and parental rights. See the following three examples of how the journalists report:

The CCR pointed out [...] during the period of detention, the three youth [...] also deprived of family life and the right to be taken care of by their parents. (The Stand News,

2019b, para. 2)

The social worker pointed out that in the UNCRC articles [...] children also should not be against their wills to separate from their parents. (C. Y.Wong, 2019, para. 2)

The barrister pointed out parents were the primary legal guardian of their children. Government should not randomly substitute the role of the parents unless parents were unable to exercise the responsibility of protection or care [...] (Ming Pao Daily News, 2019b, para. 1)

### *Detention*

Another commonly raised concern found in both cases by NGOs, activists, and politicians was the violation of the UNCRC article 37 that detention “shall be used as a measure of last resort” (UN, 1989). As said by a well-known activist, “it totally violates the guideline of using minimal judicial proceedings” (K. Leung, 2019b, para. 15).

### *Freedom of expression*

Freedom of expression was less found yet appeared in both cases. Multiple NGOs emphasised the children’s right to express their political stands and participate in assemblies. These should not be the reason for the children to be detained. As reported by a journalist, “the CCR considered that youths have the right to express their political stands. They should not be punished because of exercising the right” (The Stand News, 2019b, para. 3).

### *Right to education*

Right to education was the least mentioned and only existed in comments to case II by a lawmaker and an NGO. As written by journalist K. Leung (2019a), “education lawmaker said the police applications for care orders deprived them [the children] of their right to receive education and separated them from their families” (para. 16).

## 6 Discussion

In the previous chapter, I presented the topics identified through analysing the data. This chapter aims to discuss the findings in relation to the existing knowledge about care proceedings in Hong Kong and the theoretical framework presented in chapter two. This chapter consists of the following sections: 5.1 discussion of the findings, 5.2 implications for practice, and 5.3 recommendations for further research.

### 6.1 Discussion of the Findings

Knowledge regarding street-level bureaucracies and discretion was used to discuss and consolidate my findings.

#### 6.1.1 Rubber stamping practice of street-level bureaucrats

In the data analysis, I found that judges relied heavily on the police's views and the social welfare reports provided by social workers, while the children and parents' opinions were not found to be considered in any court hearing. This finding was consistent with P. Leung's (2002) study, in which she stated that the court seldom rejected police's care order application, while contradicted with what was mentioned by HKCS. HKCS stated that it was hard to override parental right from court's perspective unless the care proceedings was with parental consent or parents lost contact (HKCS, 2018). Yet, the situation mentioned by HKCS was regarding social workers as decision-makers to initiate care proceedings. It was not known if it would be the same if the police initiate care proceedings. According to the finding in this study, when the police are the ones who initiate care proceedings, the juvenile court relies on information provided by the police.

The judge's reliance on other professionals' reasoning for decision-making can be understood with a procedure called rubber-stamping, as termed by Lipsky (2010). It is a screening procedure used by street-level bureaucrats as a basis for decision-making. Street-level bureaucrats simply "adopt judgements of others as their own" (Lipsky, 2010, p. 129). It is common for judges to accept and ratify police officers' decisions when they are making adjudication for criminal cases (Handler, 1965, as cited in Lipsky, 2010). With the

assumption that other professionals are responsible for making appropriate assessments about a case, their suggestions would offer significant and legitimate cues for the decision-maker to make the decision (Lipsky, 2010). Yet, there can be a profound influence on individuals involved in a case if the decision-maker does not make a proper assessment with information from all sides but only rely on one professional's recommendation. In Marinetto's (2011) study analysing child protection failure of a child in the United Kingdom, she argued that a police officer from the child protection team rubber-stamped the judgement of a doctor that a child's injury was not a child abuse issue. Such rubber-stamping led to the child being removed from the police protection and subsequently being abused to death. In the two cases of this study, the magistrates from the first hearing rubber-stamped the police's judgements that the children were in need of care while disregarding children and their parents' information and opinions. It implies that the magistrates did not make use of their positions to hear and consider information from all parties. Such an improper assessment led to the children suffered from a lack of liberty for a period.

#### 6.1.2 Influence of organizational context on street-level bureaucrats

In the finding, an NGO pointed out social workers' accountability in proactively assisting the families. Social workers from the SWD had also been commented regarding not being proactive in safeguarding a five-year-old girl who was being abused to death (HK01, 2021). As found in Jordan et al.'s (2020) study, government agents in Hong Kong were apathetic in building regulations that protect and advance social justice for children and families. The SWD is an organization from the government, which involves social workers as the street-level bureaucrats to implement care proceedings or child protection. According to Lipsky (2010), a key factor that influences the acts of street-level bureaucrats is the organizational context. In this case, the SWD is embedded in the government. How the government addresses child welfare issues has an impact on the social workers' interaction with their clients. The finding of social workers being commented not active in assisting the families could be closely related to the influence of the government's orientation towards child welfare.

Another street-level bureaucrats' decision-making that can be explained with the influences of their organizational context is the magistrates. In the data analysis, I found that magistrates from the first hearing of both cases paid the most attention to the incidents that the children were being arrested for. Since the juvenile court was originally developed mainly to

deal with juveniles who are against law, it is possible that the magistrates overlook children's welfare as the purpose of care proceedings and orientated the cases as criminal cases. This finding also implies that care proceedings cases are not running smoothly under the juvenile courts as claimed by the Hong Kong government (UN, 2012). I believe the UN's suggestion of moving care proceedings cases to the family courts should be seriously considered by the Hong Kong government. The family courts in Hong Kong mainly handle divorce cases and related matters including custody and welfare of children (Hotten, 2021; Judiciary Hong Kong, 2018a). In terms of the major purpose of care proceedings, it is about safeguarding children's welfare rather than determining children's criminal liability. With the family court's orientation to deal with matters within a family, care proceedings would be suitable to be handled under the family courts since a child's welfare cannot be separated from his family.

Police officers' decisions of initiating care proceedings can also be understood within their organizational context. "In the interest of the child" was claimed by the police as the only consideration in exercising the discretion of care proceedings in both cases. However, no more details could be found about what the police meant by "interest of the child". As found in P. Leung's study (2002), care proceedings initiation was used for crime control purpose that the police diverted children without sufficient evidence for charges to care proceedings. With the organization of the police force and their collaborations with the juvenile courts as part of the criminal justice system, crime control can be an implicit reason accepted by the juvenile courts with police officers initiating care proceedings.

### 6.1.3 Quality of discretion reasoning

The public, particularly professionals who were familiar with care proceedings, had raised their concern on the police use of discretionary power and commented lacking child rights consideration in the care proceedings process regarding these two cases. This finding can be understood from the concept of discretion reasoning. These cases caught wide attention from the public, as the discretion reasonings given by the police to initiate care proceedings and the magistrates to grant interim orders were not counted as qualified by the public.

The police, who are the state authorities, ought to justify if their discretion use is within discretionary space. Section 34(2) of the PCJO gives out four circumstances which can consider a child as in need of care and lead the police to exercise discretions (details of the four circumstance please refer to chapter 2), but I cannot find any evidence that the police

initiated care proceedings were due to the considerations that these children of the two cases were under any of the four circumstances. Instead, the police claimed the care proceedings initiation as “in the interest of the child” with an absent explanation of the term’s concrete meaning. As stated by Molander et al. (2012), good reporting refers to giving adequate descriptions, while accountability requires good reasons. In the analysis of the two chosen cases, the police were not only failing to be accountable for their actions, but their reports were also bad, since no detailed descriptions were given.

Besides, the police failed to justify their actions of not following a common way of handling care proceedings, which was known to some professionals who were familiar with care proceedings. In P. Leung’s study (2002), she also mentioned that the police usually considered three main factors theoretically: the child’s missing record, peer connection, and family condition, but she did not mention that it was a standard procedure to go through by the police before care proceedings initiation. I did not find any standard procedure guiding the police in making discretion reasoning regarding care proceedings. The finding revealed that there was also no documentation regarding the police initiating care proceedings. Documentation was emphasized in the Finnish Child Welfare Act, as it can be considered as a crucial measure of accountability (Berrick et al., 2015). Documentation can also be considered as a kind of decision-support system, which can be relied on for making judgements (Molander et al., 2012). This study indicates that there is no epistemic measure to make sure the police would give out qualified discretionary reasoning to initiate care proceedings.

Although I did not find the public directly commented on the magistrates’ decision of granting interim orders, they showed dissatisfaction that multiple child rights were violated with the decision of detaining the children temporarily in the juvenile home. This finding indicates that the magistrates from the first hearing of both cases were neither considered as accountable with their discretionary reasoning. It could be explained with the problems of using non-specialized courts and judges lacking specific knowledge. As found in P. Leung's (2002) study, the juvenile courts focused on determining the criminal liability of the child brought before court. Magistrates might lack specific knowledge and experiences in considering cases from a child welfare perspective. A Research done in Ireland had similar findings (O’Mahony et al., 2016). Non-specialist courts failed to take comprehensive cognisance of the special needs of care proceedings cases and inconsistencies in practice for care proceedings cases (ibid). Since magistrates do not have specific knowledge on child



welfare, the discretionary reasoning can vary based on their own preference in considering what evidence provided is a better argument. There is no quality control over the discretionary reasoning use.

#### 6.1.4 Influences of wide discretionary space

From a child welfare perspective, the two chosen cases called for media coverage was to a large extent due to the discretionary reasoning of the magistrates and the police. Yet, the wide discretionary space of the child protection system in Hong Kong also contributes to the low quality of reasoning or even misuse of discretion, as these two aspects of discretion are interrelated. Discretionary space, as a matter of control to specify the discretionary power a professional holds, may have effects on the quality of discretionary reasoning (Molander et al., 2012). While there was no controversy about the use of care proceedings in the past, analysis of these two cases in this study revealed that such a wide discretionary space could lead to unqualified discretionary reasoning or even misuse of discretion.

With the current care proceedings framework in Hong Kong, the only threshold criterium for social workers and police officers to initiate care proceedings is that the child appears to be in need of care, which the definition of it is in Section 34(2) of the PCJO (details can refer back to chapter two). While social worker has the Guide to guide their decision-making (details of the Guide is provided in chapter two), there is lack of statutory guidance or evidence-based tools for the police to guide their decision-making on care proceedings initiation. As shown in the finding of this study, the police could base on a single incident, which children appear in social movements spots, to determine the children as in need of care without further inquiries or assessments about the children's family circumstances. Low threshold criterium for care proceedings initiation in combination with no measure to ensure the quality of judgement may cause misuse of discretion.

Besides, Section 34(1) of the PCJO (2021) states that the juvenile court may but not necessarily require the child to be brought before court after the care order application. The PCJO as the discretionary space clearly lays out the non-essential involvement of children may have an effect on the court to passively ignore and exclude children's opinion or view. Similarly, Section 34 (1AA) (b) of the PCJO only states that parents should be notified regarding the care proceedings initiation, but I could not find anywhere mentioned the significance of parents' participation in the care proceedings. It may result in the ignorance of

parents' views in court, as found in this study.

Lastly, the finding shows that the right for children to file for judicial review or appeal has the effect of requiring judges to give details on their discretionary reasoning of granting interim order, and reconsider the decision. As stated by Molander et al. (2012), review procedure is a structural measure, but it can have effects on the quality of discretionary reasoning, as actors who use discretion are forced to put out better arguments. Yet, the finding of the 13-year-old girl from case II was not able to apply for judicial review as the other children. It reveals that there is a lack of equal opportunity for children to carry out their rights of calling the judges and the police, actors of the care proceedings, to be accountable for their decision-making. Although the Hong Kong government already introduced Legal Representation Scheme for children who are involved in care proceedings (UN, 2012), this finding indicates that the scheme does not include order objection. Children without financial capacity should not become a reason for them to carry out their rights regarding their own welfare.

## 6.2 Implications for Practice

With limited knowledge about care proceedings practice in Hong Kong, I believe this study has far-reaching implications for persons interested in care proceedings in Hong Kong. This study found out aspects of decision-making in care proceedings and the public's criticism of the care proceedings practice in the two chosen cases. I argued how these findings might relate to the practice of street-level bureaucracies and discretions. This study can offer insights for street-level bureaucrats, particularly police officers and judges, to reflect on how they exercise discretion and how certain characteristics of street-level bureaucracies may influence their decision-making in care proceedings. As discussed, the orientation of the organizations to care proceedings cases and rubber-stamping practice may result in a poor care proceedings practice. For policy and lawmakers, the analysis of the two cases tells the inadequacy of current care proceedings policy. Some aspects of decision-making in care proceedings were found not neglected, for instance, emphasis on children and parents' involvement, and child rights. Also, the public showed aspects of dissatisfaction with the use of discretion in these two care proceedings cases. The findings give policymakers and lawmakers directions to review and improve the care proceedings framework.

### 6.3 Recommendations for Future Research

The goal of this study was to explore the care proceedings practice in Hong Kong through the analysis of two critical cases and extend previous knowledge. Although significant findings were discovered from examining newspaper articles of the two cases, the findings have limitations. Further researches should be carried out to improve and advance the knowledge of care proceedings in Hong Kong. A limitation of this study was that the findings cannot be generalized since it was only based on two critical cases. To expand the knowledge of common care proceedings practice in Hong Kong, I suggest that typical and other categories of care proceedings cases can be studied. Besides, since this study was only based on the information available from the newspaper articles, I did not have insights into the details about how police officers or judges come to the conclusion of initiating care proceedings or granting care orders. I suggest researches to explore procedures police officers would go through before care proceedings initiation and concerns of judges when encountering care proceedings cases. How social workers carry out their decision-making on care proceedings should also be studied. I would also recommend research to understand challenges faced by these front-line workers when dealing with care proceedings cases. It may give insights into how to improve the care proceedings framework for a more feasible implementation of the policy.

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