Should the Partial Defence of Provocation to Murder be Reformed?:
The Case for Rebalancing the Scales of Justice

1. Introduction
This essay addresses the issue of whether Hong Kong should reform the controversial statutory partial-defence of provocation to a charge of murder, under Section 4 of the Homicide Ordinance (the “Ordinance”) and, if so, how.¹ The principal issue is how to weigh and balance the blameworthiness of the deceased against the culpability of the accused in purported situations of provocation, in order to produce an optimal juridical scheme for achieving social justice. To achieve this aim, the issue of domestic and street homicide generated by the passion of anger or the emotion of fear must be evaluated against the particular sociocultural context and legal tradition of Hong Kong.

Originally found in England as a common law defence, the doctrine of provocation was seen as indicating the probability that the offense was caused by understandable human frailty rather than the true wickedness of the accused.² The doctrine thus operates to reduce the offence to manslaughter, the penalty for which lies at the discretion of the sentencing judge.³ However, a connotation of “the victim asks for it” is implied regarding the deceased’s contributory fault. In other words, the “paradigm of provocation” recognizes the complicity of the dead and indulges the moral wrongs committed by both parties.⁴ This doctrine is lamented for containing “serious logical and moral flaws”⁵ and justifying the “angry exaction of vengeance”,⁶ but variously

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¹ Homicide Ordinance Cap 339.
³ Per HK SAR v Liang Yaoqiang FACCA9/2016, [6].
⁴ Ashworth (note 2 above), 307.
⁵ R v Smith [2000] 3 WLR 654, p. 27, per Lord Hoffmann.
acclaimed for specifying the degree of culpability of individuals who kill under extreme emotional pressure.\(^7\)

In its present statutory form of Hong Kong law, the defence of provocation is interpreted as resting on a *subjective condition*, that the accused was provoked to lose his self-control, and an *objective condition*, that the provocation was sufficient to make a reasonable man act as he did.\(^8\) Section 4 of the Homicide Ordinance is indeed identical in terms to section 3 of the UK’s Homicide Act 1957.\(^9\) Most recently, in 2017, the Court of Final Appeal (the “CFA”) reiterated that the Hong Kong courts continue to follow the authority from the House of Lords and the Privy Council.\(^10\) However, the UK Parliament in fact repealed the law in October 2010, over concerns about: i) provocation being applied too generously; ii) the insufficient recognition of the realities of domestic abuse; and iii) the prevailing law’s complexity and uncertainty.\(^11\) In its place stands a new partial defence of “loss of control”, which retains the subjective element of loss of self-control at the very heart of the defence, whilst also adding and excluding specific conditions as a qualifying trigger.\(^12\) English case law has since developed,\(^13\) interpreting the new provisions as engendering a higher threshold for assessing loss of control manslaughter.\(^14\)

In certain other common law jurisdictions, substantive reviews have also been conducted in the past decade or so, resulting in either an outright abolishment, as in New Zealand and the Commonwealth of Australia; or substantial emendation for its restrictive application, as in Canada and New

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9 Homicide Act 1957.
12 Coroners and Justice Act 2009, ss 54-55.
14 *R v Caddick* [2018] EWCA Crim 865, [5].
South Wales. The consensual primary objective of the reforms is concomitantly to ensure that jealous or possessive men who kill women are more likely to be convicted of murder, and provide vulnerable women who kill their abusive partners with a better chance of defence. Notwithstanding the various reform trajectories, they all exhibit practical and ethical dilemmas that call for sensible and sensitive consideration with regard to both the legal principles and public opinion in each and every case.

Drawing on Hong Kong case law, and with particular reference to the UK approach, this essay focuses on expounding provocation defence’s dubious moral imperative and inherent procedural unfairness, concluding with a recommendation for the radical reform of the law and legal procedure.

2. Disabling the Defence of Anger-Killings?
In introducing the new partial defence of loss of self-control and abandoning sexual infidelity as constituting sufficient provocation, the UK government made it clear that the old law of provocation was “too generous in cases where defendants kill in anger”.15 In Singapore, where its mandatory death penalty for intentional murder forbids the relegation of provocation to a mere mitigating factor, the Penal Code Review Committee nonetheless acknowledged that provocation has been strenuously criticized for tending to favour the “typical male reaction to provocation of instantaneous reaction”.16

In the context of Hong Kong, there has never been any report of violent religious or ethnic confrontations, and the society is far from being either deeply religious or conservatively traditional. This means that negligible structural political or cultural factors exist for which the law must cater. Rather, the entirety of provoked murder cases happens instantaneously in the most

15 See n 11 above.
mundane everyday life. For instance, in *HKSAR v Ngan Lak Kwong*, two groups of young people on the beach confronted each other over the volume of the music.\(^{17}\) The accused attacked the victim with a pair of scissors that penetrated his spinal cord. In *HKSAR v Tam Ho Nam*, an 18-year old man harboured suspicions that his girlfriend was having an affair with his brother; so he struck her with a kitchen knife.\(^{18}\) Even more incredulously, in *HKSAR v Lo Chun Siu*, a 24-year old man cut his mother’s neck with a knife, blaming his mother for asking about his girlfriend’s potential abortion.\(^{19}\)

From the perspective of the victims’ families and the public at large, there is the perpetual moral question regarding what sort of things can be said or done, short of violent or illegal acts, that could ever constitute a provocation so grave that the “aggrieved” murderers would be allowed to plea partial defence for their sudden and uncontrolled lethal reactions.

a) The Law of Indulging Human Frailty

In the statutory construction of the law, the preliminary question for the trial judge is whether there exists “any” evidence that the accused himself in fact lost his self-control in consequence of “some provocation however slight it might appear”; if so, the judge is obliged to leave the determination to the jury.\(^{20}\) Thus, when, in *Ngan Lak Kwong*, the prosecution argued that the assaulted woman was not closely connected to the defendant and that the deceased did not say or do anything to provoke him, the trial judge nonetheless left the issue to the jury to decide.\(^{21}\) This decision was endorsed by the Court of Appeal, which held that provocative conduct or words need not be confined to a single discrete event or only come from the victim.\(^{22}\) With due respect, this reading of the law is hardly

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\(^{17}\) See [2012] HKEC 1485, on appeal.

\(^{18}\) [2010] HKEC 2992.

\(^{19}\) [2012] HKEC 1114, [15].

\(^{20}\) *DPP v Camplin* [1978] AC 705, at 716.

\(^{21}\) *Ngan Lak Kwong* (n 17 above), [88]-[90].

\(^{22}\) Ibid, [101].
persuasive, as it appears to be exactly the anti-thesis of the common law rule of “sudden and temporary loss of control”.23

Then, in *Tam Ho Nan*, the jury’s verdict of conviction was quashed on the ground that the trial judge’s direction to the jury regarding the evidence of provocation was too restrictive.24 On occasion, even though no reliance was placed on the defence, if consideration of which arose from the accused’s out-of-court statements, the judge can direct it for the jury’s consideration, as in *HKSAR v Leung Fun Shing*.25 Even more unusually, the trial judge may decide against the defence’s wishes, if “sufficient” evidence arises from the defence’s testimony, as in *HKSAR v Nancy Ann Kissel*.26 Otherwise, the trial judge runs the risk of being overruled by the appeal courts, as in *R v Pang Bing Yee*.27 These factors indicate how difficult a task trial judges’ role as a gatekeeper can be.28

This application of the law is absolutely unquestionable, as the judge is not absolved from his duty of placing before the jury all possible alternatives.29 However, the defence of provocation is unique, in the sense that the reception of provocativeness is entirely a matter of the subjective perception of the accused. How does the judge construe and justify its existence, if the defendant himself did not take note of it at the outset and the defence has not even regarded such a defence as permissible or preferable in due course?

On the contrary, trial judges’ lawful imagination and intervention must reinforce public suspicion of the court’s inordinate generosity and asymmetrical deliberation of justice. While defendants are undoubtedly entitled to a fair trial,

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23 *Per R v Duffy* [1949] 1 All ER 932.
24 *HKSAR v Tam Ho Nam* [2011] 2 HKLRD 436, [41].
26 [2008] HKEC 1652, [19].
28 Michael Jackson, *Criminal Law in Hong Kong* (Hong Kong: Hong Kong University Press, 2003) p 507.
29 *Ho Hoi Shing* (n 8 above), [12].
as a fundamental human right, must the law and the court, crucially, also owe an inescapable duty of fairness to the community at large?

b) The Inconvenient Truth of Domestic Killings

Typically, in a domestic homicide where the accused attacked the victim ferociously and mercilessly in the heat of rage, the only direct evidence is the defendant’s sole testimony, augmented with possible circumstantial evidence and expert witnesses for the court’s deliberation. This is unlike the case of self-defence, wherein traces of fierce fighting or struggle, as well as weapons of offence are commonly discoverable at the crime scene.

In *HKSAR v Wong Fung*, a 50-year old man asphyxiated his wife in bed as she lay unconscious, and caused sustained lacerations and cuts to her forehead, ears, face and lips. During his trial, he testified that her wife had confessed that she was having an affair with another man, and said, “Let me tell you, he gave me much pleasure when we have sex. You and him are not on comparative terms”. The accused claimed that, because of these words, he felt as if someone was squeezing the back of his head very hard, yet insisted that he had no memory of his actions.

Similarly, in *HKSAR v Liang Yaoqiang*, a 41-year old man stabbed his cohabitee to death 213 times on suspicion of her infidelity. Then, instead of calling for help, the accused took a shower before leaving the premises. According to the defence, the woman taunted the accused regarding his sexual prowess compared to the other men she had slept with, and even suggested that he was not in fact the father of his daughter with his former wife. Under cross-examination, the accused denied any intention either to kill the deceased or to

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30 Hong Kong Bill of Rights Ordinance Cap 383, Art 10 and 11.
31 [2016] HKEC 1868; also see [2017] HKEC 2556, on appeal.
32 [2018] HKEC 1242; also see [2013] HKEC 1723 on first appeal, and [2014] HKEC 2779, on second trial.
cause her serious injury. At the first trial and two subsequent retrials, the jury rejected his plea of provocation and returned a unanimous verdict of murder.

This sort of savage domestic homicides is not a rare occurrence but a familiar story of jealousy and brutality. It commonly accounts for the majority of modern provoked murder cases, and accurately reflect the perils of privileging the anger of the perpetrators over the misery and sorrow of the victims and their beloved. While the defence has the absolute right to accuse the victim of wrong saying or doing in court, sadly, the deceased are unable to stand up to protect their honour and innocence. Bearing in mind that, once the issue of provocation has been raised based on (any) evidence capable of supporting it, the prosecution bears the onus for disproving the defence beyond reasonable doubt. One must ask, as the presumption of the defendant’s innocence no longer exists, having proved the elements of actus reus and mens rea of committing murder, then why should the legal burden not be borne by the defence?

In New South Wales, a defendant’s conviction for the manslaughter of his wife prompted mounting community concern surrounding the inadequacy of the legal responses to male suspects, leading to an altered partial defence of “extreme provocation.” Even more dramatically, in New Zealand, the mere (unsuccessful) invoking of provocation as a defence in the murder case of 22-year old Sophie Elliott by her ex-boyfriend incited public support for legal reform. In introducing the bill, the Justice Minister stated that the law “effectively provides a defence for lashing out in...violent, homicidal rage” and “rewards lack of self-control by enabling an intentional killing to be categorised as something other than murder.”

34 Crimes Amendment (Provocation) Act 2014.
As for Hong Kong, to date, there has been little social discontent regarding this particular arena of legal application, as provocation is rarely accepted by the jury, as in all of the cases cited in this section. Thus, on the one hand, it is logical to argue that there is no urgent need for legal reform to right a putative wrong. On the other hand, the overwhelming jury verdicts throughout the years, the illustrative Liang Yaoqiang case no less, culminate in a couple of compelling observations. Firstly, the plea of provocation is too readily permissible in court, with trial judges compelled to perform a mere formality. Secondly, the law per se has fallen short of representing the will of the people and arguably failed to vindicate the core value of respecting the inherent right to life, above all else, including the right to blame the dead.

3. Enabling the Defence of Fear-Killings?

In addition to the moral peril of privileging anger-based defences, the law of provocation also invites the perceived favouring of a jealous, enraged male murderer\(^{37}\) vis-a-vis a battered, frightened female who resorts to homicide in desperate circumstances.\(^{38}\)

In the English case of \textit{R v Ahluwalia}, the accused claimed that she had suffered abuse and violence from her husband for several years.\(^{39}\) One evening, following a violent attack, she poured petrol that she had stored in a garage into a bucket, lit a candle, went to her husband’s bedroom and set it on fire. The plea of provocation proved unsuccessful, as it failed to satisfy the common law rule of a “sudden and temporary loss of control due to the conduct of the deceased”.


\(^{39}\) [1992] 4 All ER 306.
This rule is well intended to differentiate circumstances of abnormal difficulty regarding exercising self-control from the mere culmination of a protracted course of revenge or premeditated killing. However, in the case of abused wives, the harmful act is often a result of a “slow burn” reaction. In consequence, the longer the delayed reaction of provocation and the stronger the evidence of deliberation, the less likely it is that the defence will succeed. Indeed, females are thought to be normally calmer and not easily provoked into losing self-control as part of their intrinsic nature. It follows that the entire provision for defence is problematic as a legal remit for the battered-wife. From the feminist perspective, the lives, liberty, and personal security of woman are directly affected, insofar as the law of provocation, together with the interpretation and application of that law, “are shaped by patriarchal values and assumptions based on social experience of males”.40

Provocation *per se* genuinely means swift responses based on sudden incidents, thereby when a woman enslaved in a long-term abusive relationship and fear kills her husband, there simply does not exist a situation for justifying a defence of provocation. 41 In short, women have their defence denied not because of a mere technical defect in the legal provisions but, rather, because they were simply not provoked! The claim that the existing law is unfair to females is empirically correct but, sadly, legally irrelevant. There are also strong contentions that past provocative acts can have a cumulative effect, with the last straw of the provocative act, albeit minor, breaking the camel’s back. However, to expand the ambit of provocation to accommodate a battered-wife’s plight is simply to overstretch the meaning and application of a fundamentally flawed law by righting a wrong with an incorrectly applied wrong instrument.

For instance, in *Nancy Ann Kissel*, after poisoning her husband with four drugs obtained from two doctors, the accused used a lead ornament weighing

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41 Renke (n 7 above) p 766.
3.7 kilogrammes to strike five blows at his head. The defence raised self-defence, on the ground of violence and sexual abuse by her husband, and suicide attempts; but all were found by the court as totally unsupported by evidence. The judge’s leaving the issue of provocation to the jury in such a premeditated murder case serves to exemplify the line of unwarranted legal reasonings and its applications.

In due course, any attempt to remedy the defence’s basic defect may also suffer from the same logical flaw. Take, for example, England’s approach to remove “sudden” from the loss of control and to create a new situation of “fear of serious violence as a qualifying trigger for a loss of control”. By simultaneous framing “loss of control” as the heart of defence yet dropping the qualifying condition of a “sudden loss of control”, the new stipulation may risk recurring the limitation pertinent to the old rule while allowing unmeritorious defendants in more circumstances to sneak under it. Consider the situation of an agitated person who burns down a neighbour’s house after deliberate planning, or a disloyal Mafia gangster who guns down his antagonist after living in constant fear of elimination. An expansive perspective is no less precarious, as it unwittingly and essentially blurs and opens up the boundary of defence. Once Pandora’s box is open, it is a matter of chance that determines whether it will be justice or injustice that is released.

Rather, meritorious defendants who use force preventively to protect themselves, their children or other vulnerable persons should be entitled to ground their cases on the justification rationale of self-defence, rather than an excuse-based partial defence of provocation that connotates a sense of “no rights” but “compassion relief”. If the accused has been living under an unjust circumstance that is so grave that she is compelled to do what she would never

42 See n 26 above.
43 Coroners and Justice Act 2009, ss 54(2) and 55(3).
44 LEAF (n 39 above) p 22
otherwise have contemplated to do, that certainly is a defence that warrants a full acquittal.

Therefore, England’s partial/hybrid approach may seem to be “regressive” in nature, as it, firstly, serves to expand the ambit of excuse-based defence with the risk of unintentionally protecting unmeritorious defendants; and, secondly, it continues to position certain “undeserved” suspects in the same category of anger-killers who should never be allowed to walk away as an innocent person.

4. The Way Forward

As seen in the table below, in several populous common law jurisdictions, the removal of provocation is conditional upon the abolishment of the mandatory life sentence, such that there is a leeway for provocation or loss of control to become a mitigating factor in sentencing. As such, this essay also advocates a two-pronged approach, depending on the permissible scope for the review of the law of homicide.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Mandatory Life Sentence?</th>
<th>Provocation defence</th>
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<tbody>
<tr>
<td>England and Wales</td>
<td>Yes</td>
<td>Retain: &quot;loss of self-control&quot;; remove &quot;sudden&quot; and &quot;sexual infidelity&quot;</td>
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<tr>
<td>Canada</td>
<td>No</td>
<td>Retain: “indictable offence” trigger; evidence of an &quot;air of reality”</td>
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<tr>
<td>New Zealand</td>
<td>No</td>
<td>Abolish; as mitigating factor in sentencing</td>
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<tr>
<td>Ireland</td>
<td>Yes</td>
<td>Common law offence: under review</td>
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<tr>
<td>Singapore</td>
<td>Death sentence</td>
<td>Retain: new directives under review</td>
</tr>
<tr>
<td>Federal Australia</td>
<td>No</td>
<td>Abolish; as mitigating factor in sentencing</td>
</tr>
<tr>
<td>New South Wales</td>
<td>No</td>
<td>Retain: &quot;extreme provocation&quot;; “indictable offence” trigger; remove &quot;infidelity&quot;;</td>
</tr>
<tr>
<td>Victoria</td>
<td>No</td>
<td>Abolish: &quot;excessive defence&quot; as partial defence</td>
</tr>
<tr>
<td>Queensland</td>
<td>No</td>
<td>Retain: violence or extreme &amp; exceptional circumstances</td>
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</tbody>
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a) Option One / Stage One: Reform of Provocation

Prior to the opportunity for a complete review of the law of homicide, radical amendments limited to the law of provocation are recommended as an interim or partial reform:

i) Presumption of the capacity for self-control;

ii) Reverse onus of the legal burden to the accused;

iii) Only indictable offences qualify as a trigger for the defence;

iv) Minimum sentencing of eight years for voluntary manslaughter.

To begin with, a statutory presumption of self-control elevates the moral imperative that every person is obliged to respect the right to live and autonomy. Following this line of reasoning, the logic of provocation may become more tenable if the legal burden lies on the accused rather than the prosecution, as both the facts of offence and the accused’s malice aforethought are not in dispute, meaning that the presumption of innocence is no longer an issue. Unfortunately, the common law tradition does not conform with this commonsensical approach and has become inherently inequitable against the actual victim. This is also in sharp contrast to the other partial defence of diminished responsibility, which is an express statutory exception to the Woolmington rule.45 England’s new partial defence appropriately puts in place a higher threshold of evidential burden,46 but falling short of dealing with the fundamental defect. Given the immense controversy surrounding provocation, it is proper that the legal procedure should be changed accordingly, so as to impose a momentous deterrence to the unmeritorious application of the defence.

45 Homicide Ordinance Cap 339, s 3.
46 Coroners and Justice Act 2009, s 54(6).
England’s new partial defence also categorically abandoned sexual infidelity as constituting sufficient provocation. Still, in *R v Clinton*, the Court of Appeal reintroduced the substance of the defence under a new guise, holding that “where sexual infidelity is integral to and forms an essential part of the context in which to make a just evaluation whether a qualifying trigger properly falls within the ambit”.\(^{47}\) I suggest that, as a simple but more effective alternative, only indictable offences should be allowed as trigger, so as to automatically and substantively limit the ambit of provocation for offenders of anger-killings and fear-killings alike. Noticeably, a separate trigger, tailor-made for battered-women, is not recommended, on account of its dubious moral basis, practical inefficacy, and possibly unintended consequences. The issue of killings that occur in response to a fear of serious violence should be handled following a broader legal review that encompasses an extension of self-defence.

b) Option Two/Stage Two: Broader Reform of the Homicide Law
To tackle the institutional and moral problem of blaming the victim and a so-called gendered operation of the law, a holistic approach is recommended, including reforms on the substantive law of homicide and sentencing discretion:

i) Abolish the mandatory life sentence for murder;

ii) Presumption of life sentence for murder; minimum sentence of 20 years in the absence of statutory categories of mitigation;

iii) Abolish the self-defence of provocation;

iv) For murder with mitigation on the ground of provocation/loss of control, a minimum imprisonment of eight years;

v) Statutory provision for self-defence as a complete defence for homicide arising from a situation of “fear of serious violence from the victim against the defendant”;\(^{47}\)

\(^{47}\) *R v Clinton* [2012] 2 All ER 947, [39].
vi) Statutory sentencing guidance to *exclude* non-indictable offences as a trigger for mitigation.

The first set of changes are made principally to allow provocation or loss of control as a mitigating factor to cater for “circumstances of an extremely grave character that cause the accused to have a justifiable sense of being seriously wronged”, without the need to adopt a complicated, three-tier structure in the law of homicide as endorsed in Canada or originally recommended by the UK Law Commission. With the relegation of provocation as a mitigating factor, unlawful homicide triggered by provocation shall be appropriately labelled as murder, not manslaughter. This is justified on the presumption of the capacity for self-control, and serves to attribute responsibility and signal denunciation of the conduct. After provocation has been relegated to the realm of sentencing mitigation, the trial judge can focus on the nature and gravity of the provocation and its impact on the offender, instead of putting the burden on the jury to apply a notoriously complex and confusing subjective-objective dual test.

Crucially, a new statutory complete defence of self-defence shall ensure that meritorious defendants, who have desperately or despairingly responded to domestic violence, do not receive a guilty verdict at all. This reform is based on the principle that each person has a right to take the steps necessary to protect his/her life and physical well-being. However, there must be specific exclusions, such as premeditated murder (as in *Nancy Ann Kissel*) or cases where the accused is the provocateur of the deceased’s assault.

Finally, in relation to this legal regime change, a new, stringent statutory sentencing directive should be in place to alleviate public concern that undue leniency will be granted to convicted murderers, having seen mandatory life sentences abolished.
5. Conclusion

This essay contends that the moral ground for permitting a defence of provocation and/or loss of self-control is fundamentally flawed due to its privileging of the sudden, uncontrolled lethal reactions of murderers who blame the victims’ words or acts, which are short of being violent or illegal. This is particularly the case in Hong Kong, where there are no particular political or cultural elements that warrant a special legal consideration of the latent, systemic instigation of hatred and fears. Furthermore, in the particular context of raising provocation as a defence in court, our legal system has inadvertently revealed its inherent nature of inequity, paradoxically via a revered, rigorous criminal procedure. As such, this essay advocates a radical and holistic reformulation of the law of provocation.

In the early morning of 20 July 1981, a two-year old girl, unwanted by her mother, was killed by a 26-year old female child minder. According to the accused, the child was unable to talk, reluctant to eat, and totally unresponsive to any sort of treatment. Having expressly disclaimed provocation at trial, the defence applied for special leave to appeal out of time on the ground that the trial judge erred in directing the jury to disregard the issue of provocation.\(^{48}\) A close neighbour had previously testified that the accused beat the child every night with a stick and once threatened to use hot water to scald her to death. According to the forensic pathologist, the cause of death was the rupture of the liver and the inferior *vena cava*; and that the child, “upon receiving those injuries, would have had severe pain over the abdomen, gone into shock and, while capable of moving, would prefer to stay still because of this severe pain”.\(^{49}\)

Citing English authority, the Hong Kong Court of Appeal accepted that the infant’s crying could be taken as linked causally with the provoked response,

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\(^{48}\) *R v Pang Bing Yee* (n 27 above).

\(^{49}\) Ibid, [45].
and that the accused’s own repeated beatings a short time before the death was held as evidence of her loss of control. The accused’s conviction was quashed, without further order for retrial. She was released after spending eight years in prison. As such, the perpetrator of routine mistreatment and serious violence metamorphosised by law into a victim of provocation, while the defenceless infant was cursed as a provocateur, blamed for her inexplicable sin of innocence.

*Pang Bing Yee* is truly an atypical case of provocation, defying conventional classifications. Neither the accused’s rage was provoked by hostility or insulting words and acts, nor had she been living under long-term abuse or fear of serious violence. For all its surreality, *Pang Bing Yee* duly represents an illuminating case for students of criminal procedure, albeit a sobering one.

Time flies, and the infant’s excruciation has long been stifled in the thickness of procedural reasoning. But the Court of Appeal’s judgement shall continue to torment many of us, as contravening our entire intuitive sense of conscience and righteousness. Should we not ask: what caused the Scales of Justice to tilt so unfairly against a voiceless girl?

Such is the law as it stands. A graver question becomes: *can our civilized society afford to endure even one more aggrieved soul?*