

Criminal Justice in Hong Kong

Carol Jones with Jon Vagg



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Criminal Justice in Hong Kong

How were Hong Kong's criminal justice institutions and practices formed? What has been its experience of law and order? How has Hong Kong's status as between 'East' and 'West' affected its social, political and legal institutions?

Hong Kong in the twenty-first century is known as a world city, a global financial centre and, for some, the epitome of free market capitalism. Despite its phenomenal economic success and rapid 'modernisation' it has nevertheless been associated with social stability, political tranquillity and one of the lowest crime rates in the world. A clean, safe, modern metropolis, it defies theories of the relationship between crime and 'development'. A liberal capitalist society, it also defied the supposed trajectory of modernity by reverting, in 1997, to Chinese Communist sovereignty.

According to the classic narrative of colonialism, Hong Kong – city of crime, vice, corruption, drugs and lawlessness – was made safe and successful by British rule of law and criminal justice. Drawing on original documents as well as academic commentary, this book attempts to deconstruct this story. It challenges the orientalist and orthodox versions of Hong Kong's past, and seeks to place crime and criminal justice in their wider socio-political context. It argues that, in both the colonial and post-colonial periods, it is politics, rather than crime rates, that have been the main driver of criminal justice.

This careful examination of the criminal justice system in Hong Kong suggests that any understanding of the current system requires dialogue with, and an understanding of, rich and complex narratives of history. It contains a wealth of archival material, statistical data on crime and criminal justice, as well as an analysis of how perceptions of the 'crime problem' have altered over time.

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Introduction

Crime and the institutions of criminal justice are interesting not simply for their own sake, but for what they tell us about society at any given time, how it defines and responds to 'deviant' conduct, and what social, economic, political and cultural factors shape these definitions and responses. This book looks not only at how crime is related to social change in colonial and post-colonial Hong Kong, but also at the forces that have shaped the formation of its criminal justice institutions and practices over time.

Most of the literature on criminal justice is written against a background of broadly Western-style state structures in which governments develop policies and pass laws designed to allow those policies to be implemented, but at the same time broadly accept basic legal principles of human rights and the rule of law. Matters in Hong Kong have been rather differently structured. The kinds of assumptions that lie behind many of the ways we try to understand criminal justice simply do not hold up in discussions of crime and criminal justice in colonial and post-colonial Hong Kong.¹ Consequently, the kinds of theoretical models used in mainstream criminological literature to characterise criminal justice systems cannot be uncritically applied to the territory. The history of colonialism and imperialism also mean that its experience of crime and criminal justice is not simply a replay of the 'West'.

The official record

The story told here of crime and criminal justice in Hong Kong draws on the official record, the internal correspondence of colonial officials, as well as other articles, documents and sources.² They include the official account of crime, recorded in the crime statistics. Though in recent years criminologists have recovered them as useful tools of crime-trend analysis,³ official crime statistics are fraught with well-established problems. But their gaps and silences are as significant as the activities they record, revealing much about official attitudes of the time and indicating the ways in which discretion in official decision-making operates.⁴ Official statistics and internally produced documents tell us much about the assumptions underpinning official thinking

in any given period. They are useful sources of information about the stories governments told about themselves, about the Chinese they colonised, and the world they inhabited.⁵

Criminal justice institutions are partly shaped by how societies see themselves.⁶ The official documents and archives of colonialism are places where historians can examine the ways in which European communities ‘produced themselves through ideas of colonialism and colonial ideologies including race, class and gender’ (Coleborne 2005: 93). Colonial archives reflect and reproduce colonial ways of seeing and thinking, producing colonial populations and identities. They were (and are) themselves sites of contest, where historians ‘make sense’ of how the British exercised their authority (ibid.).⁷ The records of crime and criminal justice are sites of knowledge production about crime and colonised peoples, a ‘monument to particular configurations of power’ (Ritchie and Hermanus 2004).⁸ What official accounts tell us cannot be counted as ‘objective’ or ‘true’ or the complete story, but it does help us understand what drove the past so that we might, as Coleborne puts it, question the accepted versions of that past (Coleborne 2005: 94).

In Hong Kong’s case, orthodox versions of its history present this as a story of a society marked by low crime, ever-increasing integration, orderliness and stability. Writing of England, what Emsley calls the traditional view of police, law and penal reform characterises them as progressive, driven by ‘far-sighted reformers’ seeking to control crime and disorder, motivated by humanitarianism and rationality towards modern forms.⁹ This (the Whig interpretation of history) suggests that:

With the advance of rationality, humanitarian sentiment and social scientific research, modern society would leave in the past penal brutalities and excesses . . . and move steadily down a long, unending path of penal reform, culminating . . . in the post-war emphasis on the scientific treatment and rehabilitation of criminals. In this way, the past and the present seemed to mutually confirm the inexorable course of history towards a planned, rational and humane penal system (Pratt 2005: 27).

Yet the way in which Hong Kong’s criminal justice institutions were formed, changed and developed was never a matter of linear evolution in the direction of progressive civilization. An alternative view, championed by Foucault, is that penalty in modern society is more ‘regulated and finely tuned’, ‘more secretive, extensive and systematic’, a strategy ‘designed to control entire populations’ (Pratt 2005: 32).

Though it is the traditional view that characterises the official story of crime and criminal justice in Hong Kong, it would be an error to mistake rhetoric for reality. In practice, at any given time numerous local and international factors have shaped the direction and tenor of criminal justice. Many of these – such as international relations and geopolitics – had nothing directly to do

with crime. Even within the Colonial Office itself, visions of colonialism and penalty were inconsistent. Homogeneity of outlook was rarely achieved, partly because conflicts with the Foreign Office subordinated Hong Kong issues to wider foreign policy concerns, and partly because different British administrations had different ideas about how the colonies should be governed. Dissident fractions of the Hong Kong elite were also sometimes able to mobilise to mitigate penal policies that offended their sensibilities, or undercut the mission of colonialism. As we shall see, for the colonial government – and indeed for its post-colonial successor – criminal justice was always a matter of governance more broadly conceived and, equally important, the focus of competing views of governance.

Hong Kong's past

A British colony since the 1840s, Hong Kong was, for many years, regarded as a rather quiet *entrepot* on the South China Sea, less profitable than many of Britain's other colonies but also less problematic. After the Second World War, it was even mooted that the territory be handed back to China, in line with Britain's general policy of decolonisation. But with the Communist victory in the Chinese Civil War in 1949, the colony acquired a new value, as part of the 'Bamboo Curtain', the West's defence against communism in the Far East. In the 1960s, it assumed a new identity as the 'miracle economy', whose cheap manufactured plastic goods and textiles ruled world markets. In the 1980s, it changed again to become an international financial centre and, in the 1990s, a 'world city'. Hong Kong was also a colony that reversed orthodox understandings of colonialism, not least by overtaking the 'motherland' in terms of economic prosperity. For advocates of minimal government and the free market, Hong Kong was also the exemplar; it remains hailed as the classic expression of *laissez-faire* economics. In 1997, it was again reincarnated as an astounding political experiment, the first liberal capitalist society to be handed back to an authoritarian communist state, throwing the supposed trajectory of modernity into total confusion.

The widely accepted orthodox view of Hong Kong's past is that all this sprang from a 'barren rock', ceded to the British in 1841.¹⁰ It is a view that Chan and other historians rightly dispute, but it has powerfully shaped public perceptions of the territory's development. The dominant narrative is of a 'barren rock' transformed into a sparkling diamond by dint of British institutions and Chinese industry. In general terms, the key institutions and principles of English law were introduced and applied, but the introduction of the rule of law probably owed as much to the *realpolitik* of colonial rule as the 'civilising mission' – experience elsewhere had taught the Colonial Office that the best means of establishing the *pax britannica* was by attaching the native population to colonial rule through rule of law and associated institutions.¹¹ Its extension to the colonies supposedly made 'all of the Crown's

subjects, whether coloniser or colonised . . . equally amenable to its force and protection' but, as we shall see, in Hong Kong as elsewhere:

Certain sections of the population . . . were deemed to fall outside its full protection . . . the rule of law represent[ed] the interests of a demographically narrow group of people posited universally [it was] massively attenuated when viewed in relation to colonised populations . . . [it] appealed rhetorically to impartial justice and equality [but] its material interests were comprehensively colonial (Evans 2005: 58).¹²

As other histories of colonialism have shown, the transition to the hegemony of colonial state law was generally 'a slow and often incomplete process in the many and varied contexts of the British Empire'.¹³ In theory, the British government retained overall control but, typically, it allowed its colonial governors considerable latitude in addressing local problems.¹⁴ It was, therefore, not unusual for the substance of the law and the organisation of criminal justice in British colonies to differ from arrangements in Britain, and there were many instances in which law and criminal justice in Hong Kong diverged from that in England and Wales.

In common with many other colonies, the initial role of government was to establish law and order so that trade could flourish. From the earliest days, however, there were those amongst Hong Kong's elite who regarded it as more than a trading outpost of Empire, seeing it as the fulcrum of civilisation in the East and themselves as settlers with a responsibility to bring to the East the fruits of this civilisation. The story they wished to tell about themselves (and about criminal justice) was, as we shall see, quite often at odds with that told by the government and other sections of the ruling elite.

Hong Kong criminology

Orthodox accounts of Hong Kong's past are matched by the orthodoxy of Hong Kong criminology. Chan argues that globalisation and 'reflexive modernisation' have facilitated a 'free trade' in criminological knowledge, 'accelerated the deterritorialisation of culture and politics' and increased challenges to criminology as a discipline (Chan 2005: 337).¹⁵ As yet, there has been little evidence of this in Hong Kong. Hong Kong criminology has a decidedly administrative character. It has a close association with social and public policy, pursuing solutions to officially defined problems, such as juvenile delinquency. For administrative criminologists, explanations and theories of crime are always secondary to the 'practical goal of prevention' (Jefferson 2005: 147).¹⁶ Like Singapore, Hong Kong academics have yet to produce any particularly distinctive local theory, and the framework they use 'does not differ in any marked degree from those in Western democracies'

(Ganapathy 2005: 167).¹⁷ This is despite the fact that Hong Kong's experience of crime has never simply been a 'replay' of the West.

The stories Hong Kong criminologists tell of crime and criminal justice have, therefore, proved a rather weak corrective to those told by the state itself. It has tended to shy away from critical theory and has, instead, acquired a marked preference for American social control theories of crime.¹⁸ The result has been a conservative approach to deviance that emphasises the family as the key source of moral values, the key aid to conformity and social discipline (ibid). As in Singapore, this tends to:

... arrest the development of any alternative discourse ... the state has been very successful in ideologically propagating a criminology that seeks to individualise the problem of criminality ... a consequence of this is the neutralisation of alternative explanations of crime that seek to focus on macro-level social and economic institutions. Whatever potential the explanatory power of social control theory has, the reduction of criminological theory in this way has forced a general abdication of intellectual responsibility to look at equally important structural factors such as those of class, race and gender ... (Ganapathy 2005: 171).

The end result has been what Barton describes as a somewhat unimaginative and individualised discourse that has displaced criminal actors from their broader structural, economic and political contexts (Barton et al. 2007: 3). Crime is conceived as a problem to be solved so that social stability can be maintained, and Hong Kong's economic prosperity preserved.

This correctionalist emphasis focuses study on ways in which deviant individuals can be 're-adjusted' to re-join the ranks of consensual and contented society.¹⁹ As Young says, positivism is 'the handmaiden of social engineering' (Young 2005: 71). Administrative criminology assumes that the social order 'is underscored by consensus, that its policing is unproblematic and the legal definition of crime uncontested' (Carrington and Hogg 2002: 3), whilst the subject presumed by administrative criminology is 'purely rational/voluntaristic' (ibid.). This view chimes well with the dominant discourse of *laissez-faire* capitalism in Hong Kong, with its emphasis on minimal state intervention in social and economic affairs, hard work, rational choice, self-help and the 'just deserts' theory of social inequality.²⁰ It also dovetails with the government's monopoly on what counts as consensus. Hong Kong is not and never has been a democracy. It has, instead, a vast network of consultative channels, established in the 1970s. The government:

... is able to maintain its position by interpreting what it says is the consensus. This has been rationalised in the past as the outcome of the process of consultation and consent. In practice, government has rarely been required to take action contrary to the direction in which it wishes

to move. The interpretation of consensus is an enormously important aid to legitimising its decisions . . . The inference might be drawn that government thought it [had] a monopoly on the judgement of public opinion. It has certainly often acted on that premise. In times of stability, when there has been consensus or at least acquiescence, this has not caused major problems. At a time of division and uncertainty, however, a claim to interpret a consensus, which is not a consensus, may simply lead to cynicism about the way in which decisions are made (Scott 1989: 329).

The absence of a loyal opposition in the territory's legislative assembly (LEGCO) has also made it possible for government to claim a monopoly on interpreting consensus on crime issues. In addition, and for a variety of reasons, the Hong Kong academy has seldom been in a position to challenge the government's account. Instead, it has tended to go along with the widely accepted modernisation theory of crime and development, which sees crime as a regrettable but inevitable side effect of Hong Kong's economic success. Modernisation theory holds that societies follow an evolutionary path from tradition to modernity. Crime and social disturbances are seen as the side effects of economic growth, urbanisation and industrialisation, to be contained and controlled through measures reinforcing social and cultural consensus (Harrison 1983: 25). On this view, as societies 'modernise' not only do they become more prosperous but their old institutions of social control break down; new conflicts and social problems occur, and they experience rises in crime. Hong Kong fascinates comparative criminologists because, in common with the other 'little dragons' (Taiwan, South Korea, Singapore) it is a 'modern' capitalist society which has not replayed this experience of crime and development.²¹ Its recorded crime rate is significantly lower than much of Europe, the USA, Australasia, other newly developed countries, or 'developing' countries.

Successive Hong Kong governments have regarded the territory's low crime rate and social stability as proof that their explanations for, and solutions to, crime are broadly correct. One consequence of this has been a lack of interest in the social, economic and political contexts that produce and reproduce both crime and the state's response to crime (see Barton et al. 2007: 4).²² A general antipathy towards politically sensitive issues has also tended to depress social structural interpretations of crime. Hong Kong's economic success since the 1960s has, moreover, also generated a rather unfortunate tendency to value knowledge principally for utilitarian purposes, reinforcing the currency of administrative criminology and insulating the study of crime from more critical disciplines, such as politics, sociology, anthropology and history. One result has been a lack of the kind of inter-disciplinary studies of crime and criminal justice found elsewhere. It is difficult, however, to see how one can understand the story of crime and criminal justice in Hong Kong without an appreciation of the periodic political upheavals in China, Hong Kong's

own geopolitical position during the Cold War, the tremors which Indian and Malaysian Independence provoked throughout the British Empire, the problems of legitimacy in a post-colonial world, the events of 4 June 1989 or Hong Kong's retrocession to China in 1997.

In government circles, criminal justice has long been conceived of in terms of such wider socio-political drivers, and particularly regime legitimacy. The state's response to crime was seldom simply seen in narrow terms, such as solving particular crime problems or responding to rising crime rates. Yet in the academy, theories which hold that definitions of crime owe much to the social constructions of the powerful, ask questions about the 'cultural and institutional contexts in which certain acts become defined as criminal',²³ or discuss the class and power dimensions of law and order have (with very few exceptions) failed to secure serious attention. Research on crime has focussed, for example, on juveniles and youth, but has generally glossed over the fact that the youths processed by the Hong Kong criminal justice system are typically working-class (principally males from urban areas).²⁴ There is also remarkably little data on the socio-economic composition of Hong Kong's 'underclass' (Thomas 1999: 31).

This 'blind spot' in Hong Kong criminology reflects the state of sociology more generally. It has significant implications for how authoritative sources of knowledge on the nature and extent of crime and crime control are constructed in any given socio-historical period (Hardie-Bick et al. 2005: 8).

The dominant discourse of Hong Kong represents it as an economic city of politically apathetic seekers after wealth. On this view, 'delinquent' acts do not, on the whole, require a class or political interpretation. Theories that explain crime and criminal justice in terms of the fundamental conflicts and inequities underlying capitalism are ignored, as is the coercive role of the state in maintaining capitalist interests and/or the possibility that states govern *through* crime and its control (ibid.).²⁵

Hong Kong: colony and capitalist society

Another narrative that has powerfully influenced accounts of crime and criminal justice holds that Hong Kong is an essentially stable, peaceful and safe place. Moments of resistance, protest, riots and demonstrations are here reduced to mere 'blips' on a supposedly tranquil past. However, as recent academic studies have revealed, Hong Kong has a long if 'little tradition' of political activism and resistance. Equally, recent studies have been critical of the fact that the territory's social, political, legal and economic orders have long been designed to protect the interests of the business and commercial elite. Successive administrations have been very open about this. The colony was conceived as a capitalist society, first as a merchant city and *entrepot*, then a centre for manufacturing, and more recently as a global financial centre. Throughout, it has been governed by an undemocratic elite which (though its

composition has altered) has unswervingly pursued the interests of capital. In the early years, the clear and explicit role of the police and the criminal justice system was to protect the private and commercial property of the elite – the police, courts and prisons were from the start intended to maintain the status quo. Law, order and stability were seen as necessary prerequisites for enterprise to flourish. This remains the view of the post-1997 government as much as for the early colonists. Hong Kong has acquired a reputation at home and abroad not only as a hugely successful economy, but also one of the safest cities in the world. The maintenance of this reputation for stability and low crime permeates its institutions of criminal justice, and underpins much of the ruling regime's legitimacy.

It is by no means the case that the economically powerful always order society and define crime in their own interests. In Hong Kong, cross-cutting alliances between members of the colonial and colonised populations always made for a more complex story than this. Within the ruling elite, for example, there was never complete support for repression. Local cross-cutting alliances, as well as links with London, enabled disparate groups to oppose authoritarian measures. In the colonial period, London's policy towards Hong Kong was also variously influenced by changing views of colonialism, and by the utilitarian ideas of Bentham and the liberal theories of Mill, as well as leading penal administrators such as du Cane. Dissenters were often able to draw support from evangelical, humanitarian and liberal voices within Britain itself, and the Empire more broadly. In this way they occasionally managed to restrain the more illiberal tendencies of the British – and later the Chinese – ruling elite.

The shared capitalist interests of these elites also meant that the Chinese elite sometimes had more in common with the Europeans than with the native population. Between the 1880s and 1930s, for example, they made common cause against Hong Kong's nascent working-class movement. Since 1997, common cause has again been joined between the pro-China conservative fractions of this elite and the post-colonial administration, producing an oligarchy that once more rules in elite interests. The use of law and order, and criminal justice measures during these periods of conflict suggests that on occasion the colonial and post-colonial state has, indeed, been the managing committee of the bourgeoisie, though in contemporary Hong Kong it faces new challenges from below.

The good citizen and the civilised society

The pervasive narrative of Hong Kong (as a meritocratic, economic city, a free and open economy based on the rule of law and *laissez-faire* principles) has as its hero the 'bootstrap capitalist', who came to Hong Kong as a refugee with nothing but, by virtue of hard work, thrift and self-reliance rose to become a millionaire. This, the Hong Kong version of the American Dream,