





# **Understanding Criminal Justice in Hong Kong**

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**Edited by**

**Wing Hong Chui and T. Wing Lo**



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## Preface and acknowledgements

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The principal aim of initiating this book project is to provide students reading criminal justice, criminal procedure, police studies, public administration, and social work with an updated account on selected issues surrounding the administration of justice in Hong Kong. We are aware of the growth of criminological and criminal justice literature in Hong Kong in the last few years. However, our edited volume draws together a diverse group of talented academics and active researchers, each of whom brings a wealth of knowledge and experience in various practice areas and aspects of criminal justice. They are Roderic Broadhurst of Griffith University, Rebecca Ong, Wai To Chan, Tony Upham, and Lena Zhong of City University of Hong Kong, Raymond Lau of The Open University of Hong Kong, and Simon Young, King Wa Lee, and Ching Yee Chan of the University of Hong Kong. We are especially humbled by the contribution to this collection from the Director of Public Prosecution, I. Grenville Cross, in spite of his busy schedule. We sincerely hope that the outcome of our work is helpful to practitioners and students alike in the fields of criminal justice, social work, and law.

The impetus of this book was stimulated by a professional colleague and friend, Mark Israel, who is currently Professor in the School of Law at Flinders University, Adelaide. In his capacity as an external examiner of a law course entitled Criminal Justice between 2003 and 2005, he commented on the lack of indigenous teaching materials in delivering the course and drew attention to the utilization of dated textbooks – *Crime and Justice in Hong Kong* (edited by Jon Vagg and Harold Traver) and *Introduction to the Criminal Justice System* (edited



by Mark S. Gaylord and Harold Traver) – which were published in 1991 and 1994 respectively. In this respect, another aim of this book is to analyze the changing nature and context of crime and its control in Hong Kong by referring to local news reports, research data, and authorities whenever and wherever possible.

Each chapter includes an introduction, structured coursework on a particular topic, concluding remarks by contributors, links to external resource information, review questions, and a chapter bibliography. While each contributor had a primary objective for their chapter, we have made every effort to ensure that the contributors applied a common style and provided cross-referencing across chapters. We have striven to ensure consistency and high quality in the material of the book, despite the fact that this was a challenging and time-consuming task. We do hope that readers find the book accessible and coherent.

Last but not the least, we are grateful to Dr Tina Rochelle, David Tuk Wai Leong and Sarah Laimayum who have assisted in proof-reading earlier drafts of various chapters. We also wish to express our deep gratitude to those contributors who were so diligent and willing to give their time and expertise in contributing to this publication. Without their support, the task of producing this book would have been neither fun nor enjoyable. Finally, we would like to thank Emma Gubb and Brian Willan for their encouragement in motivating us to complete this project.

Wing Hong Chui  
T. Wing Lo



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## Chapter I

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# Introduction and overview

*Wing Hong Chui and T. Wing Lo*

This book is an introduction to the administration of various agencies of the criminal justice system. It outlines some basic concepts in criminal law, which is a common approach of defining crime in Hong Kong, and analyzes the process of the criminal justice system, ranging from the report of a crime to the correctional system. Another aim of this book is to examine how the criminal justice personnel or actors work in practice, and how they deal with the offender and victim during the criminal justice process. This edited volume is designed as a prescribed or recommended text to both undergraduate and postgraduate students undertaking criminal justice and law as they embark on their studies. It may also be of interest to those individuals who would like to learn about arrangements for law enforcement, crime control, crime prevention, and methods for dealing with convicted offenders in Hong Kong. While this book is meant to be introductory, its ultimate goal is to persuade readers to adopt a more critical approach in order to understand the workings of the system and to encourage more empirical research on crime and justice. Instead of simply focusing on how different criminal justice organizations operate and function, throughout the text readers are encouraged to consider the arguments and debates that surround the controversial issues in the Hong Kong criminal justice system. For instance, how should we define crime? How can the legal system protect the rights of the victims? Should the police be given more powers to maintain law and order in society? How do judges make a decision in adjudicating the guilt of the defendant and sentencing? What is the best method of punishing criminals and preventing



them from further offending? These issues are not only academic concerns but also ‘the daily diet of much of our media’ (Muncie and Wilson 2004: ix). In this introductory chapter, we will provide some background information about Hong Kong for the benefit of non-Hong Kong readers; Hong Kong is a former British colony and is now a special administrative region of the People’s Republic of China (hereafter referred to as HKSAR). Selected themes and topics which subsequent chapters examine will be briefly considered in this opening chapter.

### **Administration of justice before and after 1 July 1997: an overview**

At the outset, it should be emphasized that the following is a brief overview of the government structure in Hong Kong, and readers should consult some comprehensive textbooks on this area such as *Politics and Government: An Introduction* (Lam 1994) and *The Government and Politics of Hong Kong* (Miners 1998) for more details. Hong Kong, a special administrative region of the People’s Republic of China, covers a small area of 423 square miles. However, by 2006 Hong Kong had an estimated population of over 6.9 million (Census and Statistics Department 2007). Hong Kong was a British colony for more than 150 years, from 1842 to 1997. The colonial status was a result of a series of Anglo-Chinese wars and their ‘unequal’ treaties, including the Treaty of Nanjing in 1842; Convention of Beijing in 1860; and the Second Convention of Beijing in 1898 (Lau 1997; Wesley-Smith 1998a; Tsang 2004). Hong Kong was governed by a British-appointed governor, assisted by senior civil servants, including a chief secretary, financial secretary, Attorney-General, and a group of secretaries responsible for various functions, such as education, health, social welfare, and transport (Lo 2000). Broadly speaking, there were two main branches of the government, namely the Executive and Legislative Councils. During the colonial rule, a large proportion of members of these two councils were primarily official and appointed unofficial members. The Executive Council functioned as the cabinet of the Governor, whereas the Legislative Council was responsible for making laws, debating issues of public interest, examining and approving public income and expenditure, and monitoring the work of the executive branches and administration of the government (Miners 1998). Two major constitutional documents handed down by the British Government were the Hong Kong *Letters Patent* and



*Royal Instructions*. These outlined the constitutional arrangements, including the powers and responsibilities of the Governor and the said Councils. In addition to the two branches, the judiciary, led by the Chief Justice, was independent of the central administration and legislature (Wesley-Smith 1998b). Jones with Vagg (2007) commented that in many respects law and organization of criminal justice in Hong Kong has a colonial origin, primarily from Great Britain, but they emphasized that the appointed Governor was given some latitude to address local customs and problems:

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 the 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 (2007: 3).

Despite the lack of democracy, the rule of law has been regarded as a cornerstone of Hong Kong's success as a leading international commercial and financial centre since colonial days. The rights and freedom of citizens were protected, and the rule of law was upheld by the independence of the Judiciary. The functioning of the capitalist system and way of life in Hong Kong indicates that the rule of law had worked very well before the resumption of the exercise of sovereignty over Hong Kong by the People's Republic of China.

In accordance with the principle of 'one country, two systems', the capitalist system of the HKSAR will retain its existing social and economic systems for 50 years from 1 July 1997. The *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (hereafter referred to as *Basic Law*) has replaced *Letters Patent* and *Royal Instructions* as the main constitutional document in Hong Kong. There are several principles enshrined under the *Basic Law*. For instance, Article 5 states that 'the socialist system and policies shall not be practised in the [HKSAR], and the previous capitalist system and way of life shall remain unchanged for 50 years'. Article 2 specifies that the governance of the HKSAR will exercise a high degree of autonomy, except in defence and foreign affairs, and enjoy executive, legislative, and independent judicial power. In many ways, the Hong Kong legal system has survived alongside the political, economic, and social systems. Article 8 states that the laws previously in force in Hong Kong, that is, the common law, rules



of equity, ordinances, customary law shall be maintained, except for any that contravene the *Basic Law* and subject to any amendment by the legislature of the HKSAR. Several provisions are concerned with the rights and responsibilities of the Hong Kong residents. Articles 25 and 26 assure that all residents shall be equal before the law and permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with the law. Article 28 specifies that no one shall be subjected to arbitrary or unlawful arrest, detention, or imprisonment, and arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited.

There were several significant changes in terms of the government structure in Hong Kong after the transfer of sovereignty. The following are some examples. Firstly, the Governor is replaced by the Chief Executive who is elected by a representative Election Committee in accordance with Annex I of the *Basic Law*, and the Chief Executive is appointed by the Central People's Government in Beijing. The Chief Executive is responsible for implementing the *Basic Law*, signing bills and budgets, promulgating laws, making decisions on government policies, and issuing Executive Orders. Secondly, the Attorney-General is now called the Secretary for Justice. Other features of the Government have remained basically the same. The Secretary for Justice, now appointed by the Central People's Government upon nomination by the Chief Executive, is the principal legal advisor to the Chief Executive, to the Government, and the individual government departments and agencies. Thirdly, the Court of Final Appeal was established to replace the United Kingdom's Privy Council as the highest appellate court which is headed by the Chief Justice (see Chapter 9). Despite these changes, the administration of criminal justice has remained unchanged. In addition to the Judiciary, several key government departments that are responsible for maintaining law and order, fighting crime, enforcing law, and rehabilitating offenders include: Department of Justice, Hong Kong Police Force, Immigration Department, Independent Commission Against Corruption, Customs and Excise Department, Labour Department, Fire Services Department, Legal Aid Department, Social Welfare Department, and Correctional Services Department. It is worth pointing out that while crime control is still very much the state's business and privatization of criminal justice organizations is not common in Hong Kong, there has been a birth of private policing in places such as banks, shopping malls and private residential areas.



## Laws, crimes and victims

This book can be divided into two main parts. Chapters 2 to 4 deal with the nature of law, crimes, and victims, whereas the remaining chapters examine different themes and issues surrounding the criminal justice system in Hong Kong. While acknowledging the varied definitions of crime (Hagan 1987; Williams 2005), Rebecca Ong defines crime primarily from a legal perspective. Chapter 2 provides a general overview of criminal law in Hong Kong by examining the function and purposes of criminal law and elements for criminal liability. Using case law, three basic elements of crime, including *actus reus*, *mens rea*, and defence are discussed. The chapter then goes on to deal with a number of specific offences, including offences against the person, offences against property, offences against public order, offences against public interest, and offences against morals and public policy. It is a well-known fact that the formal legalist definition of crime is commonly adopted in most industrialized countries, and 'no matter how immoral, reprehensible, damaging or dangerous an act is, it is not a crime unless it is made by the authorities of the State' (Williams 2005: 12). In this respect, the legal conception of crime determines how we measure the level and volume of crime.

In Chapter 3, Roderic Broadhurst, King Wa Lee and Ching Yee Chan conclude that Hong Kong has become one of the world's safest metropolises. They argue that this is reflected in the low official crime and victimization rates – confirmed by both government and United Nations crime victim surveys. Various sources of official data such as police records and prison statistics were used to analyze crime trends. In addition to the United Nations crime victim surveys, several crime victimization surveys conducted by the Census and Statistics Department were also used as an alternative method of measuring the nature and extent of crime. Despite the low crime rate, Hong Kong's anti-crime efforts and support of law enforcement are reflected in the relatively high incarceration rate (176.8 per 100,000 in 2005) and a large police service (486.6 police per 100,000 in 2000). An average of 10 per cent of total public expenditure is devoted to security. The role of the Government and other factors in contributing to a relatively safe environment is discussed in this chapter. Cultural factors such as utilitarian familism, Confucianism and extended kinship structures are often cited as contributing factors to the low crime rates. Analysis indicates that most Hong Kong citizens are conformist and public attitudes favour a government that is hostile to crime and supportive of severe punishment to adult offenders.