

Introduction to
CRIME, LAW and JUSTICE
in Hong Kong

Edited by

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Introduction to Crime, Law and Justice in Hong Kong

Mark S. Gaylord, Danny Gittings and Harold Traver

Hong Kong's criminal justice system is large and complex enough to bewilder even many of those directly responsible for its administration. There are now so many departments, often with conflicting interests and goals, that it is difficult to understand the system as a whole. As a result, it is tempting to focus on, for example, the police or the judiciary and to deem such limited scope as defining the entirety. But important though both organizations are, there is far more to Hong Kong's criminal justice system, as the different chapters in this book seek to demonstrate.

When it comes to law enforcement, for instance, it is important to look not just at police (see Chapter 4) but also other law-enforcement agencies, particularly the Independent Commission Against Corruption (ICAC, see Chapter 6) and Customs and Excise Department (see Chapter 5). While the judiciary (see Chapter 9) may impose sentences, it is equally important to consider how these sentences are carried out by the prisons and other institutions and rehabilitation services run by the Correctional Services Department (CSD, Chapter 11) and Social Welfare Department (SWD, Chapter 12).

Adding to the confusing picture is that these different parts of Hong Kong's criminal justice system often work at cross purposes to each other, and pursue very different goals. Even among the various law-enforcement agencies there can be tensions. As Ian McWalters and Anne Carver explain in Chapter 6, the very creation of the ICAC in 1974 was a reaction to the failures of the Royal Hong Kong Police Force, specifically in tackling corruption within its own ranks.

Further along the criminal justice process, those different goals intensify. Under Article 63 of the Hong Kong Basic Law, the constitutional document which serves as the highest source of law in Hong Kong, the Department

of Justice “shall control criminal prosecutions, free from any interference.” As Simon Young explains in Chapter 7, that means the department makes its own judgment on whether or not to proceed with a prosecution, and may refuse to do so if the evidence submitted by a law-enforcement agency is insufficient. If the prosecution does proceed, the Legal Aid Department often comes into play, working at cross-purposes to the Department of Justice. While government prosecutors seek a conviction, its job is to provide a defence for those defendants who meet the merits and means tests that P. Y. Lo outlines in Chapter 8.

Once the case reaches the courts, an independent judiciary comes into play. Under Article 85 of the Hong Kong Basic Law, the courts “exercise judicial power independently, free from any interference.” As Danny Gittings explains in Chapter 9, the judiciary sees one of its most crucial roles as being “to administer the law impartially,” whether in disputes among members of society, or when they come into conflict with the machinery of the state.

That is as it should be. In courtrooms, specifically, grave injustices would be done if judges, prosecutors, defence counsel, and others were all under the command of a single officer; if all judges were told by a chief judge that they must decide cases in a specified way; if all prosecutors were told that they must prosecute in a specified way, and so on. The courtroom is above all a place where each judge, juror, prosecutor, and defence counsel is expected to be wise, compassionate and judicious, thus in practice mitigating some of the harsh punishments the legislature has stipulated as appropriate for various crimes (Sutherland et al., 1992).

Nature of Criminal Justice

The exact nature of justice is subject to considerable debate. Many regard the reduction or elimination of crime as the rightful goal of justice. According to this view, the criminal justice system is supposed to suppress or deter criminal behaviour; or failing that, to process the guilty. This conception views the criminal justice system as a filter through which suspected offenders pass. Judgments of guilt and innocence are seen simply as a series of routine operations whose success is determined by their ability to quickly and efficiently move the deserving onto the next stage and ultimately to a fitting punishment.

Others, however, contend that the end product of the criminal justice system should be due process rather than the reduction of crime. This position assumes an adversarial model of criminal justice. Rather than being

seen as a smoothly functioning assembly line, criminal justice is instead conceived as a series of hurdles, each specifically designed to provide formidable obstacles that prevent the state from inappropriately moving an innocent citizen further along the criminal justice decision-making process. The protection of the rights of the individual and the limitation of state power, rather than the efficient processing of the accused, are primary concerns according to this view of criminal justice.

Regardless of how one views the criminal justice system, there are a variety of possible routes through the maze and not all of them arrive at the same destination. The path a defendant follows is far from fixed or predetermined. The exact route depends on decisions made along the way, both by the defendant and by officials. One result of these decisions is a considerable attrition rate. As Y. W. Cheung and Nicole W. T. Cheung examine in detail in Chapter 3, many more crimes are committed than are reported or adjudicated. Equally, many more offenders are arrested than actually go to prison. Naturally, attrition results from procedures built into the system that sort out the innocent from the guilty. But attrition can also be traced to a considerable degree of discretion built into the system. From police deciding whether to investigate crime reports (see Chapter 4) to prosecutors choosing whether to take a case to court (see Chapter 7), the exercise of discretion by personnel within Hong Kong's criminal justice system is a recurring theme throughout this book. Such discretion raises the spectre of a criminal justice system governed by whim rather than by law, and has led a number of observers to propose that discretion be greatly reduced if not totally eliminated. Yet despite these concerns discretion continues, for good reasons, to be an integral part of modern criminal justice systems.

Uniformity is a basic element of criminal law because law attempts to provide even-handed justice without respect to persons. This means that no exceptions are to be made respecting criminal liability due to a person's social status. Uniformity also means that the law-enforcement process is to be administered without regard to the status of persons accused of committing crimes. This ideal is rarely followed in practice, in part because it results in injustices. Rigid rule is softened through the discretion of police and judicial authorities. The principle of uniformity demands, for example, that all armed robbers are to be treated exactly alike, but police officers, judges, and others take into account the circumstances of each robbery and the personal characteristics of each offender. This practice is called individualization. Such use of discretion is not unlike equity, a body of rules that supplements law and that has developed as a method of affording justice in situations where ironclad regularity would be patently unjust. Accordingly,

much of what happens to a person accused of crime is determined in a process of negotiation about just what the law is and how or whether it should be applied (Rosett and Cressey, 1976).

In short, criminal justice represents more than just a collection of laws and departments. This is why it may be helpful to view the administration of justice as a series of stages, as we chart our way through the maze that is Hong Kong's criminal justice system in this book. These stages are: (1) entry into the system, (2) commencement of criminal proceedings, (3) adjudication and sentencing, and (4) corrections.

Entry into the Criminal Justice System

For the criminal justice process to begin, a crime must either have been committed or, at least, suspected to have been committed. In most cases, this is a question of considering whether the behaviour in question breaches any of the laws passed by the Legislative Council. Known as ordinances, these set out most of the criminal offences in Hong Kong. Examples include the Crimes Ordinance (Cap 200), Dangerous Drugs Ordinance (Cap 134) and Gambling Ordinance (Cap 148), all of which, together with other important crime-related ordinances, are outlined in an appendix at the end of this book.

But, as Michael Jackson explains in Chapter 2, some criminal offences are not set out in any statutory law. As part of the common law system that has been practiced in Hong Kong for more than 150 years, and which is expressly preserved under Article 8 of the Hong Kong Basic Law, the courts have the power to shape the law, including creating and defining criminal offences. These include, for instance, murder, manslaughter and common assault—none of which are defined in any statute. In these, and many other cases, it is instead necessary to turn to past court decisions to discover whether the behaviour in question constitutes a criminal offence.

For many crimes, the issue never arises. The criminal justice system can only get underway if a law-enforcement agency is aware of at least the possibility that a crime has been committed. While detective series might make for good television, they hardly reflect reality: only in a tiny minority of cases do the police, or other law-enforcement agencies, uncover crimes on their own. As Y. W. Cheung and Nicole W. T. Cheung explain in Chapter 3, in the vast majority of cases entry into the criminal justice system only begins when a victim or witness reports a crime to the police. A victim's decision on whether to report a crime depends on a number of factors: the

perceived seriousness of the offence, value of the loss, confidence in the police, ease of reporting, and sex of the victim. But there is one consistent theme: in many cases—probably amounting to at least 60% of all crimes—the criminal justice system never gets underway, because the police are never notified that a crime has been committed.

Even when crimes are reported, only a minority of cases proceed any further. As Harold Traver explains in Chapter 4, the Hong Kong Police Force has to balance the duty to detect and prevent crime with the numerous other duties placed upon the force under the Police Force Ordinance (Cap 232). These include everything from preventing injury to life and property, to controlling traffic and impounding stray animals. No police force in the world has the resources to investigate all reported crimes or to arrest all suspects. Nor is it clear that it would be desirable to do so, since full enforcement of the law would lead to an ordered, rather than just, society.

In practice, many crime reports never lead to arrests—even in circumstances where the police know the identity of the suspected offender. Over the years a number of studies have emphasized the amount of discretion police can use in deciding to make arrests. It has been found, for example, that police rely heavily on the circumstances of the immediate situation in making such decisions. Other studies have found that the degree of deference displayed by a suspect has a bearing on the likelihood of arrest. In Hong Kong, for example, the police have discretion to divert juvenile and young offenders directly into police supervision rather than forwarding the case for prosecution.

This exercise of discretion is not unique to the police and mirrors the behaviour of others within the criminal justice system. Similar discretion is exercised by investigators at the Independent Commission Against Corruption, in deciding how to respond to suspected cases of corruption. As Ian McWalters and Anne Carver explain in Chapter 6, the ICAC enjoys a unique degree of independence within Hong Kong's criminal justice system, reporting solely to Hong Kong's Chief Executive, a position constitutionally protected under Article 57 of the Hong Kong Basic Law. Created in 1974, the ICAC has also been one of the most striking successes in the fight against crime, using its special powers of investigation to transform Hong Kong from a society plagued by corruption to a place with one of the world's cleanest public services.

Also of importance is the role of the Customs and Excise Department, which has responsibility for detecting and preventing several important types of crimes. As Mark S. Gaylord explains in Chapter 5, these include drug trafficking, smuggling and the protection of intellectual property rights—

all areas where a vigorous enforcement of the law is vital to Hong Kong's continuing economic well-being.

Commencement of Criminal Proceedings

The second stage, commencement of criminal proceedings, is largely the domain of the Prosecutions Division of the Department of Justice, whose prosecutors initiate almost all criminal proceedings before magistrates and judges. In describing the work of this division in Chapter 7, Simon N. M. Young suggests that it is “arguably the most important component of Hong Kong's criminal justice system” since, in addition to the power to decide whether to prosecute, the division also exercises other important powers—including the granting of immunity and plea bargaining with defendants, as well as playing an important role in a court's decision on whether defendants are granted bail.

Criminal cases almost always commence in the Magistrates' Courts. Most cases, being comparatively minor, remain there until the conclusion of trial. Cases deemed more serious are transferred from the Magistrates' Courts to the District Court for trial before a judge sitting alone while the most serious cases are committed to the Court of First Instance for trial before a judge and jury.

Wherever the defendant is sent for trial, he has a right “to defend himself in person or through legal assistance of his own choosing” (Article 11(2)(d) of the Hong Kong Bill of Rights Ordinance (Cap 383)). And for those who cannot afford to pay for their own legal assistance, publicly funded alternatives are available, as P. Y. Lo explains in Chapter 8. In the Magistrates' Courts and Juvenile Courts, this takes the form of the Duty Lawyer Service, a somewhat assembly line form of justice, where a lawyer in private practice is hired to represent everyone who needs legal assistance in that court on a particular day (or half day). In other courts, legal aid is administered directly by a government department, the Legal Aid Department, which will either assign one of its own lawyers or brief a solicitor or barrister in private practice to handle any criminal case where the defendant passes the means and merits test. The role of these two bodies is so important—in providing the needy with the means to defend themselves against the charges brought by other parts of the criminal justice system—that P. Y. Lo comments in Chapter 8; “it may not be too much of an exaggeration to suggest that they are just as important to the achievement of justice as the Prosecutions Division of the Department of Justice.”

Few criminal cases actually proceed to trial, with defendants pleading guilty in the vast majority of cases that appear before the lower courts. In some cases, this is the result of a bargain in which a defendant agrees to plead guilty in return for prosecutors reducing the number, or severity, of charges that he faces. However, as Simon N. M. Young points out in Chapter 7, in Hong Kong, plea bargains do not include formal guarantees of a lighter sentence, which is a matter for the courts—rather than prosecutors—to decide.

Adjudication and Sentencing

If a case does proceed to trial, it will usually be decided by a single judicial officer—most often a Magistrate in one of Hong Kong's seven Magistrates' Courts. As Danny Gittings explains in Chapter 9, these are the workhorses of Hong Kong's criminal justice system, handling more than 98% of criminal cases. Most are relatively minor crimes, such as road traffic offences, prosecutions of illegal hawkers and littering offences.

Even for the more serious crimes that are sent to the District Court for trial, these are still heard by a single judicial officer, in this case a District Judge with the power to impose prison sentences of up to seven years, sitting without a jury. Only when a crime is so grave—such as murder, manslaughter, rape, armed robbery, major commercial frauds and serious drugs offences—that it is sent up to the Court of First Instance for trial will it be heard by a judge sitting together with a jury.

It is a curious feature of Hong Kong's criminal justice system that Magistrates and judges decide nearly all criminal cases, with the right to trial by jury—so often seen elsewhere as a central element in ensuring fairness—restricted to fewer than 500 trials annually. In contrast to many other jurisdictions, a defendant has no say whatsoever in whether his case will be tried before a Magistrate, a District Judge, or a judge and jury.

Defendants do, however, have the right to address the court in the language of their choice and have the court proceedings translated for them, if they do not understand the language in which the case is heard. This is where the Court Interpreters' Office, which—with 167 full-time interpreters—is one of the largest sections of support staff within the judiciary, plays such an important role. As Ng Kwai Hang explains in Chapter 10, Hong Kong is one of the most interpreted legal systems in the world. Although an officially bilingual legal system since 1997, the presence of a large number of legal personnel, especially judges, who are not fluent in

both English and Chinese means that court interpreters are still essential in a large number of cases.

In addition to deciding most cases, magistrates and judges have the primary responsibility for determining sentences. In Hong Kong, sentencing options range from imprisonment and other forms of detention to non-custodial sentences such as fines, probation and community service orders. As Danny Gittings notes in Chapter 9, the Court of Appeal provides sentencing guidelines for some offences, in an attempt to ensure that sentences are proportionate to the offence committed and consistent for defendants who plead guilty to, or are found guilty of, the same offence.

Corrections

Once the sentence has been imposed, the offender moves on to the correctional stage of the criminal justice system. This stage is dominated principally by prison officers, probation officers, and other personnel concerned with the custody, treatment and rehabilitation of offenders. Indeed an important feature of the correctional system in Hong Kong is the extent to which the rehabilitative ideal, if not always the reality, shapes its operations, especially in relation to both young and first-time offenders.

If a custodial sentence is imposed, in most cases the offender will be placed in the hands of the Correctional Services Department (CSD). As Karen Joe Laidler explains in Chapter 11, CSD operates a wide variety of different types of custodial facilities and the decision on where to place a particular offender is determined principally by their age, gender and security classification. Drug addicts, for instance, may be housed in special treatment centres, while juvenile and young offenders are usually kept in separate institutions from adult offenders.

Imprisonment, the most extreme form of custodial sentence, entails the complete loss of liberty. Prisons are governed by an elaborate system of formal rules intended to achieve the organization's official aims and to maintain social distance between offenders and staff. They are organized to protect the community against what are conceived to be intentional dangers. In prisons large groups of persons live together, day and night, in a fixed area and under a tightly scheduled sequence of activities imposed by a central authority (Inciardi, 2007).

Under Hong Kong law, no one under the age of 14 can be sent to prison, and even those aged 14–24 can only be sent to a correctional setting if the court is satisfied that there is no other suitable alternative. In practice, this

means that juveniles and young offenders are usually placed in training, detention or rehabilitation centres run by the CSD. Even younger offenders, aged 10 or above, can be placed in separate custodial institutions operated by the Social Welfare Department (SWD), such as a reformatory school.

Although it operates some custodial facilities, as Francis Wing-lin Lee explains in Chapter 12, the SWD's primary role is in the treatment and rehabilitation of the majority of offenders who are sentenced to non-custodial sentences. Depending on the seriousness of an offence, rather than impose a custodial sentence a magistrate or judge may instead choose one of the following alternative options: (1) issue a "binding over order" in which an offender enters into an agreement to "keep the peace" for a specified period of time, (2) impose a fine in lieu of incarceration, (3) order the forfeiture of an offender's property or assets, or (4) suspend a term of imprisonment already imposed on the condition of continued good behaviour on the part of the offender or any other condition a judge feels to be necessary.

The most common of these conditions is probation, which is usually used for first- or second-time offenders convicted of less serious crimes, where the offender's behaviour is monitored by a designated probation officer from the SWD for a period of up to three years. But other types of non-custodial sentences administered by the SWD are also becoming more common, such as Community Service Orders, where offenders are required to spend their leisure time performing community services as reparation for the harm they have done to the community.

Criminal Justice in Hong Kong and Mainland China

On the surface, modern criminal justice systems seem much alike. In addition to possessing a formal body of law, modern jurisdictions, including Hong Kong, have police and other agencies such as the ICAC to enforce the law, a system allowing for the prosecution of defendants, courts for trying them and prisons to hold convicts. Closer inspection, however, reveals that criminal justice systems differ in significant ways. Perhaps nowhere is that truer than in the huge differences that divide the criminal justice system in Hong Kong from that of the rest of the country with which it has been reunified since 1 July 1997.

Despite considerable advances in recent years, respect for basic principles that have long been taken for granted in Hong Kong, such as the presumption of innocence and the right to due process, remain embryonic at best in mainland China. As Choy Dick Wan and Fu Hualing explain in

Chapter 13, such fundamental differences complicate efforts at cooperation between Hong Kong and mainland Chinese law-enforcement agencies in tackling the growing number of cross-border crimes. They also pose particular problems in those cases where both jurisdictions claim the right to try suspects under such radically different criminal justice systems. As a result of these differences, the two sides remain unable to reach an agreement on crucial matters such as the transfer of fugitive offenders between Hong Kong and mainland China, despite more than a decade of discussions on the issue.

In contrast to Hong Kong, the Mainland has been shaped by quite different historical forces and as a result finds itself caught between the acknowledged need for a stable and codified system of law and the principle that Chinese Communist Party leadership is supreme. Under this principle, it is likely that legality will be sacrificed whenever it is deemed to interfere with party dictates. Under such circumstances, the law then becomes merely an administrative tool wedded to the requirements of power.

While the Mainland professes to be building a “socialist rule of law state,” so retaining the ultimate supremacy of the Chinese Communist Party over all aspects of its legal system, the Hong Kong criminal justice system is founded on fundamentally different, though seldom articulated, assumptions about the role of law in society and the rights of the accused. Hong Kong’s colonial experience has been a major force in determining both its structure and its operation. As a result, in order to understand how Hong Kong’s criminal justice system functions today, it is first necessary to look back at how the system developed over 150 years of colonial rule.

Establishing Law and Order in Hong Kong

One of the most influential theories of law creation was put forth by Emile Durkheim in the nineteenth century. Durkheim postulated that the criminal law represents the synthesis of the most deeply felt morality of a people. This morality is a reflection of the religious and customary values “found in all healthy consciences” (Durkheim, 1933:73). It would be naive, though, to assume that in all societies the criminal law reflects a widely shared moral consensus. Hong Kong is a case in point. The origin of law in Hong Kong is quite different from that suggested by Durkheim, and the historical record in Hong Kong contains many examples of how the law was used to protect, first and foremost, the lives and property of European residents rather than those of the Chinese.

From the beginning of colonial rule in Hong Kong, British authorities faced a problem of establishing law and order among an alien and often recalcitrant population. The situation was so serious that by August 1841, a Magistrates' Court and jail were nearing completion while permanent business buildings and a home for the colonial governor were still in the planning stages. In the colony's first year, legislation was enacted providing for the establishment and regulation of a police force and the creation of a supreme court. After the Legislative and Executive Councils were established in 1843, legislation was passed to prohibit triad societies, control gambling, and require the registration of persons residing within the colony. In the nearly 170 years since, Hong Kong's criminal justice system has grown from its humble beginnings into what is now a large, complex and sophisticated structure.

The development of this system has been shaped by at least two factors associated with Hong Kong's origins. First, in contrast to Britain's colonies in Africa and the Indian subcontinent, the Hong Kong colonial administration did not face a large or hostile resident population. In 1841, Hong Kong Island's population, mostly engaged in agriculture and fishing, was less than 8,000. The absence of a large indigenous population made Hong Kong Island an attractive site for a colony. Thereafter, many Chinese from southern China moved to Hong Kong to take advantage of the employment opportunities created by the entrepot trade and the industries subsequently established to serve the trading community (Endacott, 1973). Thus, in terms of developing a criminal justice system, the absence of a large resident population meant the authorities were provided initially with a blank slate. Second, again in contrast to British colonies elsewhere, there was no need to establish control over a geographically large territory. Hong Kong Island, the site of the original colony, was merely 28 square miles in area, and even with Britain's subsequent acquisition of Kowloon and the New Territories, the colony did not exceed 275 square miles in area.

From the standpoint of the colonial administration there were good reasons for keeping the criminal justice system out of Chinese hands. A government enjoys legitimacy only when it is accepted by its citizens. In the absence of legitimacy, the government, in order to rule, has to rely on coercion. A colonial government forcibly superimposed from outside is unlikely to gain legitimacy, at least not initially. Colonization therefore must be sustained by coercion (Ng-Quinn, 1991; Ngo, 1999). Even in democracies the state is reluctant to relinquish its monopoly over the use of force, and Hong Kong was not a democracy. Hong Kong was first and foremost a British

colony wrested from imperial China. Although formally ceded to Britain in 1842 in the Treaty of Nanking, Hong Kong remained geographically and culturally part of China. The colonial government faced the real possibility that China might at some point seek to recover its lost territory, or at least attempt to interfere with Hong Kong's internal security.

Controlling the Chinese

Throughout much of its history Hong Kong's criminal justice system has been used to control the Chinese population (Wesley-Smith, 1994; Munn, 1999, 2001; Carroll, 2007). The first such step occurred in 1844 when the legislature passed an ordinance establishing a "Registry of the Inhabitants of the Island of Hong Kong and Its Dependencies." This ordinance was justified on the grounds that it was necessary to "secure tranquility and good order in the colony..." However, while aimed principally at the Chinese population, the ordinance was written such that it inadvertently applied to Europeans as well. Following its passage, the Europeans vehemently protested the requirement to carry a registration card.

Protest over registration came from the Chinese as well. On 31 October 1844, the day before the ordinance was to take effect, Chinese workers staged a general strike and a meeting of compradores, the native-born agents who served as intermediaries for foreign businesses, resolved that they should leave Hong Kong Island. On 2 November 1844 the government gave notice that the ordinance was suspended.

Registration as a means of controlling the Chinese did not end, however. In January 1845, a Census and Registration Office was established to "[number] the native population of the colony." A new ordinance, passed in 1846, was directed specifically at the colony's Chinese population. Its stated goal was to establish a more effective "registry of Chinese inhabitants and a census of the population of Hong Kong." Its real purpose, however, was to "[rid] the island of the swarms of pirates and common thieves who have made Hong Kong their chief place of resort, having found probably that with the ignorance of their persons and language they were pretty sure to escape detection" (Norton-Kyshe, 1971:126).

Beginning in 1857, and coincident with the Second Opium War, registration of the Chinese population was supplemented by a series of so-called "light and pass" laws. The first such ordinance, No. 9 of 1857, set the tone. It imposed a curfew on Hong Kong's Chinese inhabitants between 8 p.m. (later changed to 9 p.m.) and sunrise. Any Chinese wishing to be

on the streets between these hours was required to obtain a night pass from the police. An 1870 amendment added the condition that Chinese residents should carry lanterns at night as well. In 1888 “light and pass” provisions were incorporated into a new ordinance forthrightly entitled “Regulation of the Chinese.”

The latter half of the nineteenth century saw the emergence of a Chinese middle class and with it a growing sense of resentment toward laws directed specifically at the Chinese (Sinn, 2003). Consequently, in 1897 an ordinance was passed that henceforth required Chinese to carry a night pass and a light only in emergencies declared by the governor. After this date, the “light and pass” system was never again used.

Registration and “light and pass” laws were manifestations of the continuing official concern over triads and their perceived potential for threatening the colony’s stability. The first ordinance aimed at the “suppression of triads and other secret societies” was No. 1 of 1845. As with the first registration ordinances, however, there were problems. The anti-triad law was written so that it applied to legitimate organizations as well as triads. More importantly, under this law conviction could entail branding, which even in 1845 was considered excessive. Following objections from London, the ordinance was amended (No. 12 of 1845) to exclude branding and to apply solely to triads.

While the anti-triad ordinance has been revised and amended many times, the original ordinance established principles that have been carried forth to the present day. First, it established the principle of attempting to control triad organizations by declaring membership in them to be illegal. Thus it is no accident that the word “suppression” appears in the title of the first ordinance. The current law dealing with the control of triads, the Societies Ordinance (Cap 151), continues the tradition of attempting to suppress organizations deemed to be undesirable by declaring them unlawful. Second, it established the principle that the Commissioner of Police would be the Registrar of Societies (a post now known as the Societies Officer). All public and private organizations must seek approval, or exemption, from the commissioner before they can be legally established.

Legacy of Colonialism

While colonial Hong Kong’s anti-Chinese legislation is a thing of the past, its legacy is still felt today. The Hong Kong Special Administrative Region (HKSAR) government’s approach to control of organized crime is influenced

by the Societies Ordinance's overriding concern to stamp out potentially subversive organizations. Similarly, the registration of persons, though now expanded to include all Hong Kong residents and aimed principally at control of illegal immigrants from the Mainland, is clearly a remnant of anti-Chinese sentiment.

The effects of this legacy, however, extend beyond these examples. First, police in Hong Kong continue to exercise sweeping powers of arrest, detention, and search. Police are still able to enter premises without a warrant to search for dangerous drugs, and they also retain the power to issue or withhold permits for demonstrations and rallies. Second, coercive traditions continue to be expressed in anti-crime practices such as "saturation policing," in which the police patrol in large groups in classic paramilitary manner; street-level stop and search procedures; and roadblocks. Another routine practice is the use of "carpet searches," on some occasions involving hundreds of police. In these operations, the police enter nightspots for inspection during which the venue's normal activities may be suspended for over an hour. As a result, many hundreds (sometimes thousands) of patrons are inconvenienced, if not treated as suspects, with males ordered to stand to one side, females to the other, and everyone ordered to produce his or her Hong Kong identification card "for inspection" (Lau, 2004).

Third, the law in Hong Kong still largely reflects English law, from which it originated, although the previous dependency on English law was severed when the Basic Law of the Hong Kong Special Administrative Region came into effect on 1 July 1997. Articles 18 and 8 of the Basic Law provide that in addition to the Basic Law ("this law") and Hong Kong legislation ("the laws enacted by the Legislature of the Region"), the laws of the HKSAR include "the laws previously in force in Hong Kong." Article 8 declares that this includes the body of common law and rules of equity originating in English law. In addition, the Criminal Procedures Ordinance (Cap 221) specifies that the "practice and procedure in all criminal cases and matters...shall be, as nearly as possible, the same as in force for similar cases in England" (s 9[3]). Further, the Hong Kong Bill of Rights Ordinance (Cap 383), a law deemed essential only in the final years of British rule, provides a means by which English and other international case law on human rights now play an increasingly important role in Hong Kong's legal system.

Fourth, the language of Hong Kong's courts is still primarily English. Although all court proceedings, in principle, may be conducted in either Chinese or English, in reality English remains by far the more important of the two. Evidence for this assertion may be cited in the following three areas:

First, most court proceedings in the higher courts are still conducted in English. The Court of Final Appeal is a *de facto* English-only court. Since its inception in 1997, no trials have been conducted in Chinese in Hong Kong's highest court. Second, English is the primary language of Hong Kong's case law. Decisive precedents are predominantly written in English. Most of them have yet to be translated into Chinese. Also, most of the cases reported in Hong Kong's two professional law reports are written in English. Under Article 84 of the Basic Law, Hong Kong courts are permitted to refer to precedents from other common law jurisdictions. This provision has been used by the courts primarily to continue relying on English court judgments, although it has also led to the adoption of developments elsewhere in the common law world (e.g. Canada, Australia and New Zealand). In the area of case law it is fair to say that the difference between before and after 1997 is one of "English only" versus "English mostly." Third, there continues to be a scarcity of high quality Chinese legal reference books, the most glaring of which is the lack of casebooks written in Chinese.

The British government created a colonial administration in Hong Kong for which broad-based public support, or legitimacy, could not be assumed to exist. This situation began to change only in the years following the 1967 riots, when its legitimacy was emphatically called into question and the colonial administration introduced an extensive public housing program and other social welfare measures in an effort to secure greater public support. Despite modest attempts to improve matters, colonial rule continued to support a two-tier criminal justice system in which staff promotions were based on racial/linguistic criteria rather than merit. One can only guess at the effect this system had on staff morale and organizational efficiency, but it is difficult to imagine that it was positive. Although much effort has been directed at increasing public support since 1997, Hong Kong has yet to achieve representative government and most citizens remain disenfranchised. For historical reasons, Hong Kong did not undergo a thorough-going process of decolonization during the pre-1997 transition. In fact, decolonization has only recently begun for Hong Kong (Cheung, 2006). Allocation of power and authority within Hong Kong continues to be made on the basis of political loyalty to the mother country rather than functional or professional merit or political popularity.

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