**CITIZENS AND Criminal Justice**

**Lecture 1: Introduction**

**1 What do we mean by the criminal justice system?**

**1.1 Introduction**

Criminal justice has been defined as “society’s formal response to crime and is defined more specifically in terms of a series of decisions and actions taken by a number of agencies in response to a specific crime or a criminal or crime in general”.[[1]](#footnote-1) The problem with such a definition, which is a fairly common one in academic textbooks, is that it merely identifies the steps taken toward achieving this end rather than suggesting what ‘justice’ in this situation might entail. Of course, such a notion is likely to be value laden and will differ greatly, depending on the viewpoints and experiences of the person who is rendering the opinion.

What is probably generally accepted is that there are various competing notions of criminal justice which have fashioned discourse in this area in the developed world. On the one hand, there are those that place emphasis on the rights of individuals to have their rights and freedoms respected and to be in a position to clearly present their case in court and not to be judged too harshly if convicted. On the other hand, the view might be criminals are treated too leniently and the focus should be on taking measures to prevent crime even if these impinge on their rights.[[2]](#footnote-2)

**1.2 Is it a system?**

A criminal justice system could be succinctly described as “the set of processes, bodies and institutions that aim to secure or restore social control”.[[3]](#footnote-3) Social control in this context is directed at reining in unacceptably deviant behaviour,[[4]](#footnote-4) such behaviour being classified as crimes.

While the various features which govern such a system vary between different cultures, essentially all societies, from hunter and gatherer nomadic tribes to the most highly economically developed societies, incorporate a system of criminal justice into the rules which govern them.

Other important influences on the level of crime and criminality include wider social issues such as levels of income, access to education and housing conditions. Although these issues generally fall within a related area of study called criminology, some consideration will be given to these theories in Lecture 2.

The following is a very basic conceptualization of such a system in Hong Kong:

* Detection and investigation/protection of the public – the Police Force
* Prosecution of serious crimes - the Department of Justice
* Defence of the accused – the Legal Aid Department, the private bar and solicitors
* Adjudication and punishment – the judiciary
* Incarceration and monitoring of offenders – the Department of Correctional Services
* Creation of laws– the Legislative Council and on occasion, the common law.

In deciding whether these different organs and processes can be regarded as a system, White[[5]](#footnote-5) has stated that:

*The complexity of what passes for a criminal justice system is such that some might challenge whether it is a system at all. But in any modern society, criminal justice is certain to be complex. Once the complexity is recognized, then the nature and operation of the system can be discerned more readily.*

**1.3 What are the objectives and underlying principles of such a criminal justice system?**

As noted above, the primary objective of a criminal justice system can be distilled into one key performance indicator; namely, the reduction of crime. Views differ of course as to what should be constituted as crimes and what are the best methods of achieving such a goal.

Commonly accepted principles of what constitutes an effective criminal justice system would include methods and organs which lead to the effective:

1. Prevention of crime.
2. Detection of crime.
3. Punishment of crime.

Tensions exist between liberal and conservative commentators as to whether common law criminal justice systems are either too harsh or too lenient on offenders when it comes to passing down sentences. Similarly, some commentators consider that the elements of a criminal justice system dealing with the detection and prosecution of crime may lead to infringements of civil liberties, while others may feel that these parts of the system are not robust enough. We can note for example, the tensions and possible conflicts between the need to prevent crime and individual liberties and human rights; stop and search and interviews of suspects. We will consider this aspect of the criminal justice system later in the course.

During the course we will look at each of these areas in turn, paying particular attention to the theories and purpose of the criminal law and the procedures by which offenders are brought to the courts and punished. These include:

* Theories and principles upon which the criminal justice system operates
* The processes by which the authorized law enforcement agencies investigate wrongdoers and bring them before the courts for punishment
* Determinations as to what constitutes a wrong
* Ascertaining what we are trying to do by bringing wrongdoers before the courts
* Identifying the theories and objectives of punishment.

We will also look at the personnel involved in the investigation of crime and the apprehension of offenders.

**1.4** **Contemporary views on aspects of criminal justice in Hong Kong in relation to court proceedings**

The following is an extract from Chief Justice Geoffrey Ma’s Speech– Opening of the Legal Year (January 14 2019).[[6]](#footnote-6)

***…at all times, the court is concerned with dealing with one aspect and one aspect only: a resolution of the legal issues arising in the dispute before it****….*

*Following some judgments in the type of controversial case to which I have been referring – whether civil or criminal –* ***there have over the past year been criticisms levelled against decisions of the courts and sometimes even personally against judges.***

*The fifth important characteristic of Hong Kong's legal system is* ***transparency, a facet I had dealt with in last year's speech.*** *In order to begin to earn the community's confidence in the legal system, the work of the courts has to be transparent. Here, the following points are relevant:  
  
1.* ***Court proceedings at every level are open to the public***

***2. The reasoning of the courts in arriving at their decisions, in the form of written judgments, is open for the public to read. The judgments of the court reveal in great detail the precise steps taken by the court to reach its conclusion in any case****…..*

*3. The written judgments of our courts are readily accessible whether in hard or soft form. Save in exceptional situations, they are available on the Judiciary's website.*

1. Malcolm Davies, Hazell Croall and Jane P Tryer, *An Introduction to the Criminal Justice System of England and Wales* (Third Edition London: Pearson Longman 2005) 8. [↑](#footnote-ref-1)
2. Frank Schmallenger, *Criminal Justice Today: An Introductory Text for the 21stCentury* (7th Edition Upper Saddle River: NJ Prentice Hall 2003) 15. [↑](#footnote-ref-2)
3. Francis Pakes, *Comparative Criminal Justice* (Cullompton, Portland: William Publishing 2004) 1. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Robin C A White, “The Structure and Organization of the Criminal Justice System in England and Wales” in Mike McConville and Geoffrey Wilson (eds.) *The Handbook of the Criminal Justice Process* (Oxford: Oxford University Press 2002) 5. [↑](#footnote-ref-5)
6. This was previously published on the Hong Kong Judiciary Website circa January 2019. [↑](#footnote-ref-6)