2014

Resources in English on the criminal justice system of the People's Republic of China

Ellen Sexton
CUNY John Jay College

How does access to this work benefit you? Let us know!

Follow this and additional works at: http://academicworks.cuny.edu/jj_pubs

Part of the Asian Studies Commons, and the Criminology and Criminal Justice Commons

Recommended Citation

This Book Chapter or Section is brought to you for free and open access by the John Jay College of Criminal Justice at CUNY Academic Works. It has been accepted for inclusion in Publications and Research by an authorized administrator of CUNY Academic Works. For more information, please contact AcademicWorks@cuny.edu.
Sensational stories in the Western English language media from the world’s most populous country and second biggest economy have been captivating audiences with glimpses of the contemporary Chinese criminal justice system. Our screens in 2012 showed the arrest and subsequent disappearance of high-flying politician and provincial chief Bo Xi Lai, the unsuccessful attempt of his police chief in seeking asylum, the single-day trial and conviction of his wife for murdering a British “fixer”, and the dramatic escape from rural house arrest of blind activist “barefoot lawyer” Chen Guang Cheng. All of this playing out against a background of mind-blowing income inequality, conspicuous luxury consumption, high-tech goods produced in prison-like conditions, widespread corruption, repression, mass protests, and censorship. The year concluded with the
historically unusual peaceful transition of power among the top leadership. All these raise questions about what exactly the average entrant into the criminal justice system experiences. Is the system as revealed by these few highly publicized cases operating as usual? Or atypical? What is the average citizen’s actual experience of criminal justice in China?

With opportunities for US–China faculty exchanges and student study-abroad programs increasing, we librarians are experiencing a surge of interest in materials about China from users without strong Chinese language skills. Being unable to read Chinese is a serious limitation to those who wish to read about criminal justice in China. Fortunately there are many works published in English in fairly broad circulation. The aim of this bibliography is to identify, for those new to the field, recent valuable contributions to the criminal justice literature on contemporary China, and some classic works useful for setting the historic context. The period covered is generally from the post-Mao reform period, 1976, to the present, but concentrates heavily on the administrations of Hu Jintao and Wen Jiabao, from 2003–12. The focus is on the People’s Republic of China, that is, mainland China.

Some China-based researchers do of course publish in the top English-language journals, either alone or in collaboration with Western authors. But the many journals published by universities, public security (police) colleges, and procuratorates in China are inaccessible to non-Chinese-language readers. However, selected works chosen from academic Chinese-language journals are republished in English translation, in *Frontiers of Law in China* (Springer Verlag) and in *Social Sciences in China* (Taylor & Francis), both of which are indexed in SCOPUS. Unfortunately, the quality of the translation can at times be less than ideal. Some English-language literature reviews do successfully integrate both English- and Chinese-language works.

The print format in which this bibliography is presented limits the entry points to the resources. Thus, each is listed under one heading only, though in many cases, other headings would also have been valid. An attempt has been made to choose the most appropriate single heading. The topics are

not intended as comprehensive, but indicative of the range of publications available, and hopefully have included the most interesting and the most significant.

Introductions to China
General Overviews of the Chinese Criminal Justice System
History
   Non-Period Specific General Criminal Justice Histories
   Pre-1949
      1949 to the Death of Mao Zedong, 1976
      Reform Era to Tiananmen Square, 1989
      Post–Tiananmen Square to 2003
Criminology
Research and Methodological Issues
Police and Policing
Investigation and Interrogation
Administrative Detention
Courts
Corrections
Death Penalty
Juvenile Justice
Forensic Psychology and Psychiatry
Forensic Science
Crime
   General
   Corruption
   Organized Crime & Terrorism
   Drugs, Alcohol & Tobacco
   Sex Crimes
   Intimate Partner Violence
   Environmental Crimes
   Transnational Issues
   Intellectual Property
   Cybercrime
Public Opinion, Attitudes, and Media
Law—General
   Criminal Law
   Rule of Law
   Lawyers
Introductions to China

General Overviews of the Chinese Criminal Justice System

An anthology to be published mid-2013, by Routledge, the *Handbook of Chinese Criminology*, promises to deliver up-to-date surveys of criminal justice topics written by leading researchers, including Margaret Lewis, Liqun Cao, Bakken Borge and more. Currently available is a special issue of the *Journal of Contemporary Criminal Justice* (vol. 26, no. 1), published in 2010. It was “designed to provide readers with a basic understanding of China’s historical development and its current state of criminological research and practice.”

Articles focus on policing, corrections and punishment, adjudication and legal reform, corruption, prostitution, Internet issues, and general criminology. Other prominent journals that have published special issues concentrating on criminal justice in China, include *Crime, Law and Social Change* (vol. 50, no. 3, 2008), the *Australian and New Zealand Journal of Criminology* (vol. 37, suppl. 1, 2004), the *British Journal of Criminology* (vol. 42, no. 2, 2002), the *Journal of Contemporary Criminal Justice* (vol. 14, no. 3, 1998), and *Crime & Delinquency* (vol. 39, no. 3, 1993).

“Chinese legal scholars frequently refer to the stages of the criminal process as being completely separate and independent from one another. The police have complete control over the investigative stage of a case. The prosecutors control the charging decision. The courts decide guilt or innocence.”


Broadhurst, R., ed. 2004. Crime and its Control in the People’s Republic of China: Proceedings of the University of Hong Kong Annual Symposia 2000–2002. Hong Kong: University of Hong Kong. Retrieved from http://eprints.qut.edu.au/4264/. An anthology of papers covering a variety of topics including economic crime is available at the digital repository hosted by the Queensland University of Technology. The papers were presented by researchers based in mainland China, Hong Kong, Australia, the United States, and the United Kingdom at symposia held in Beijing and Hong Kong between 2000 and 2002. The thirty papers are in six groups: financial risk control, economic crime, crime patterns and social transition, drugs and crime, organized crime and its control, and crimes and criminals.


History

Non Period Specific General Criminal Justice Histories


Mühlhahn, K. 2009. Criminal Justice in China: A History. Cambridge, MA: Harvard University Press. This highly praised work covers the Late Imperial period through Deng's Early Reform period, paying particular attention to the role of punishment.

Pre-1949


**1949 to the Death of Mao Zedong, 1976**


**Reform Era to Tiananmen Square, 1989**


Post–Tiananmen Square to 2003


Criminology


### Research and Methodological Issues


Two particular themes stand out in the literature on policing: campaign-style enforcement and community policing.

Susan Trevaskes has written extensively about campaign justice, from the first Strike Hard! (yanda) campaign in the early 1980s to the present day (see Tanner’s Strike Hard! in the history section for a thorough review of the period 1979–85, and a discussion of the influence of the Soviet Union). Campaigns “share the characteristics of coordinated operation (tongyi xingdong), which involves interagency bureaucratic mobilization at multiple levels of government.” Campaigns have been waged against serious crime, drugs, prostitution, nonpayment of wages, and other ills. Widely used in the prereform era, typified by mass mobilization and used as a “powerful ideological tool”; at present they operate “without the near complete disregard for legality that was common in many prereform campaigns” as “transformed, depoliticised or technocratic versions of the political mass mobilization campaigns.” Multiple party and state agencies are involved, including the courts, with punishments meted out tending to be harsher than normal.

Formerly an inspector with the Hong Kong Police, Kam C. Wong earned a JD and a PhD in the United States and has held academic appointments in Hong Kong and the United States. He is currently at Xavier University in Ohio. He has written extensively on Chinese policing and is a founding member of the Asian Association of Police Studies. His 2001 paper reviews the background of community policing in China, emphasizing the tradition of localized informal social control.

5. Ibid.
6. Ibid.
7. Ibid., 377.
Additional sections of this bibliography cover the powers of the police to detain people without charge (administrative detention) and interrogation.


**Investigation and Interrogation**

The police (Public Security Bureau) are generally charged with investigating crimes, although government officials are investigated by a section of the procuratorate.8 Under the 1997 Criminal Procedure Law, suspects can be held for interrogation for twelve hours, and further detained (ju liu) for up to thirty-seven days.9 After this time, a formal arrest is required to continue detention. Formal arrests must be approved by the chief procurator’s office. Detention may continue for up to seven-and-a-half months before a decision to prosecute is made.10 Release on bail for up to twelve months is possible but rare.11

---

9. Ibid., 98.
10. Ibid., 99.
11. Ibid., 100.
arrest is another option used. Of suspects, 90 percent are detained during investigation.\textsuperscript{12}

Although “Chinese law prohibits the use of torture and deception to obtain evidence . . . China suffers from a high incidence of confessions obtained by coercion.”\textsuperscript{13}


\textsuperscript{12} Ibid., 98.

\textsuperscript{13} Ibid., 101.
Administrative Detention

The police (Public Security Bureau) have the power to detain people without trial. *Laojiao*, or reeducation through labor, is used “to tackle petty crime, prostitution and drug addiction without damaging defendants’ ‘criminal records’” and “to preserve social order and maintain political control,”\(^{14}\) Reeducation through labor may be imposed for up to three years without any judicial procedure.\(^{15}\) *Shuanggui* refers to the detention of Communist Party officials for questioning, which may last for months. Communist Party members suspected of crimes are generally dealt with outside the general criminal justice system, unless they are expelled from the party.


---


Courts

The courts in China are not considered independent. “The workings of courts are overseen by Chinese Communist Party political legal committees. Courts are also beholden to local governments as their budgets and personnel decisions are controlled by them.”16 The courts cannot make

16. Ibid., 92.
law, have no authority to invoke the Constitution, and likely do not have the authority to overturn administrative rules. Trials are generally very short—often lasting no more than a day and usually include a confession by the defendant. There is no separate sentencing hearing. There is no right to silence, and witnesses are rarely present in person.


17. Ibid.
18. Ibid., 91.


Corrections

This section includes works on postcriminal conviction punishment, but does not include the death penalty. Works on the death penalty have their own section. Laogai, or reform through labor, is the term given to punishment imposed after a criminal conviction.


Death Penalty

The numbers of people put to death each year is a state secret, but interested organizations do estimate numbers. The Dua Hua Human Rights Group has observed a dramatic reduction in the estimated annual capital punishment deaths, from 12,000 to 15,000 in 2000, to an estimated 4,000 occurrences in 2011.19 (Dua Hua Foundation, 2012).

Matas, D., and D. Kilgour. 2009. Bloody Harvest: The Killing of Falun Gong for their Organs. Ontario, Canada: Seraphim. Although this piece is not

a scholarly work, it has received considerable attention in Canada since its publication.

Matas, D., and T. Trey, eds. 2012. State Organs: Transplant Abuse in China. Woodstock, Ontario, Canada: Seraphim. Although this piece is not a scholarly work, it has received considerable attention in Canada since its publication.


Juvenile Justice


**Forensic Psychology and Psychiatry**


---

**Forensic Science**

A complete bibliography of Chinese forensic science is beyond the scope of the work. This section illustrates the scope, if not the extent, of recent forensic science work carried out in China.


Crime

General


Corruption


Organized Crime and Terrorism


**Drugs, Alcohol, and Tobacco**


**Sex Crimes**


**Intimate Partner Violence**


**Environmental Crimes**


Transnational Issues


Intellectual Property


Cybercrime


---

**Public Opinion, Attitudes, and Media**


There are many works written about the law in China, especially about business law and the rule-of-law debate. The following have been selected as useful introductions to Chinese law and contemporary legal issues.

The *China Quarterly* has had two special issues on the Chinese legal system, one in 1995 (volume 141) with a follow-up in 2007 (volume 191), which included articles on the courts and policing. A special issue of the *Columbia Journal of Asian Law* in 2005 (volume 19, no. 1) included articles on Chinese law from a conference honoring eminent legal scholar Stanley Lubman. In 2003, the *NYU Journal of International Law and Politics* dedicated an issue (volume 43, no. 3) to the eminent China scholar, and New York University professor, Jerome A. Cohen; its articles focused on the exclusionary rule. Volume 24, no. 2 of the *Columbia Journal of Asian Law* published articles from the symposium “Reforming China’s Criminal Procedure Law,” discussing the state of the law before the 2012 amendments.

Both the *Asia Pacific Law Review* and the *Columbia Journal of Asian Law* focus on China, the latter to the point of exclusivity.


Criminal Law

For thirty years after the founding of the People’s Republic of China, there was no formal comprehensive criminal code or criminal procedure law, although there was a Police Act passed in 1957. In 1979, two years after the death of Mao, a criminal law and a criminal procedure law were put in place to “set forth the framework for the operation of criminal justice” and were “written at a relatively high degree of abstraction.” The 1979 CPL did not include the presumption of innocence and instead directed that courts, procuratorates and public security organs ‘must rely on the masses and must take facts as their basis and law as their criterion’ when conducting criminal proceedings.” In 1995, a new Law on People’s Police replaced the 1957 Police Act. The criminal procedure law was significantly revised in 1996. In 2001, the criminal law was amended to include antiterrorism legislation. In 2010, new rules on evidence and confessions were disseminated. In 2012, a widely anticipated new criminal procedure law was passed, which “largely incorporates the 2010 evidence rules,” and went into effect in January 2013.


21. Ibid., 318.
22. Ibid., 319.
23. Ibid., 325.


**Rule of Law**

States that operate under a “rule of law” legal system theoretically hold no person above the law, but all are supposedly treated equally. In a “rule by law” system, the governing elite use laws to maintain their control and status, and enforce their wishes upon the population. Tanner refers to the legal system in China as “an instrument with which the Party leadership was to carry out the historical project of socialist transformation,” involving both “moral as well as material transformation.”24 In 1997, the Fifteenth Congress of the Communist Party of China adopted the program of “ruling the country according to law.”25 Whether China is moving toward a rule-of-law system, and with what speed, is a hotly debated topic. Also subject to debate is whether rule of law is desirable and appropriate for China.


**Lawyers**

The tools and strategies available to criminal defense lawyers in China are much more limited than are those in the United States. Access to the client
is limited. “A suspect may hire a lawyer only after the initial interrogation.”26 There is no separate sentencing stage of a trial. The accused is strongly encouraged to confess and to show remorse during the short trial, and he or she may be rewarded with a mitigated sentence. Lawyers seen as mounting too vigorous a defense may be charged with a crime themselves and/or have their or their firm’s license revoked. Belkin reports that most criminal defendants are not represented by a lawyer during their trial.27


27. Ibid., 104.


Special Administrative Regions: Hong Kong and Macau

Hong Kong and Macau, colonies of Great Britain and Portugal, respectively, until the late 1990s, have retained a large amount of autonomy from the Chinese government. Both have their own constitutions (the Basic Laws). The social environments, criminal justice systems, and procedures are very different from those on the mainland.

The University of Hong Kong Centre for Criminology is home to a number of active researchers, holds regular conferences, and disseminates results of research about both Hong Kong and mainland China. Doctoral dissertations are housed on the institutional repository, and available for public viewing at www.crime.hku.hk/HKUcrime 4/HKUcrime/index.html.


Gaylord, M. S., and H. Traver. 1994. *Introduction to the Hong Kong Criminal Justice System*. Hong Kong: Hong Kong University.


**Websites and Social Media**

This section lists current-affairs resources, including news sources, blogs, and websites of think tanks, research institutions, government organizations, and some professional and academic organizations with English-language websites.

**Professional and Academic Organizations**

*ABA Section of International Law, China Committee.* http://apps.american-bar.org/dch/committee.cfm?com=IC860000&edit=1. This source publishes the *China Law Reporter*, which is available on its website.

*Asian Association of Police Studies.* http://www.aaps.or.kr/. The association publishes the *Asian Pacific Journal of Police & Criminal Justice*, articles from which are available on its website.


**Human Rights Nongovernmental Organizations**


*Dui Hua.* http://duihua.org/wp/. Founded in 1999, this San Francisco– and Hong Kong–based NGO focuses on political and religious prisoners, juvenile justice, women in prison, and other criminal justice issues.

Human Rights in China. http://www.hrichina.org/. This NGO, with offices in New York, Hong Kong, and Brussels, was founded by Chinese students and scholars in March 1989.


Academic Sites


China Media Project, a project of the Journalism & Media Studies Centre at the University of Hong Kong. http://cmp.hku.hk/.


University of Hong Kong Centre for Criminology. http://www.crime.hku.hk/HKUcrime 4/HKUcrime/index.html. Reports and other publications are hosted at this site.

University of Hong Kong Scholars Hub. http://hub.hku.hk/. This institutional repository includes the full texts of doctoral theses from the criminology department.

News Sites

Caixin Online. http://english.caixin.com/. This Beijing-based news site provides business, financial, and other news; its editor earned fame and notoriety for her investigative journalism.

China Daily Online. http://english.peopledaily.com.cn/. This is the online English-language version of the government-supported People’s Daily, very much an organ of the Communist Party.

South China Morning Post. http://www.scmp.com. This site is an English-language Hong Kong newspaper.


Government Sites


Blogs


Chinese Law and Politics Blog. http://sinolaw.typepad.com/chinese_law_and_politics/. This blog is edited by Carl Minzner, Associate Professor of Law, Washington University in St. Louis.
