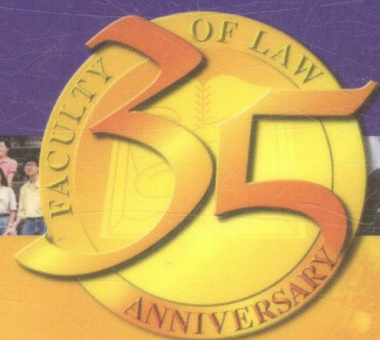


*Building for Tomorrow on  
Yesterday's Strength*



1969 1970 1971 1972 1973 1974

***Faculty of Law***

The University of Hong Kong

1975 1976 1977 1978 1979 1980

1981 1982 1983 1984 1985 1986

1987 1988 1989 1990 1991 1992

1993 1994 1995 1996 1997 1998

1999 2000 2001 2002 2003 2004

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*This book was a gift*  
*from*  
Faculty of Law  
The University of Hong Kong

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## PHOTO VCD

## Message from the Chief Justice



*I take great pleasure in congratulating the Faculty of Law of the University of Hong Kong on its 35th anniversary. The Faculty of Law has made a great contribution to legal education and has played an important role in maintaining the rule of law.*

*As a prestigious faculty built with dedication, foresight and hard work, the Faculty of Law has provided quality legal education over the years and has produced a pool of highly competent legal professionals who are serving the community in different capacities. Many graduates from the Faculty of Law are leaders of the legal profession and the community and some of them are distinguished members of the Judiciary.*

*Like other institutions, the legal profession is facing challenges arising from the community's rising expectations of professional integrity and excellence in a world of rapid change and increasing globalization. The Faculty of Law has a crucial role to play in training graduates who can rise to meet these challenges. I am confident that the Faculty of Law will continue to provide high quality legal education for the benefit of the legal profession and the society of Hong Kong as a whole.*

**Andrew Li**

Chief Justice

## Message from the Secretary for Justice



*On the occasion of the thirty-fifth anniversary of the establishment of the University of Hong Kong's Law School, I offer my warm congratulations on all that the School has achieved.*

*Ever since its modest beginnings in Caine Road, what was once a department, then a school, and now a faculty, has been progressively expanding the courses offered to members of the community. After the law degree and PCLL came the LLM (of which I have fond memories), postgraduate studies in common law, research and mooted programmes, and now joint degrees. Each of these courses has enriched the educational environment.*

*Graduates from these programmes are now leaders in many key fields in Hong Kong, including the Judiciary, the Government, the Legislative Council, private practice and the business world. It is no exaggeration to say that Hong Kong University's Law School has played a pivotal role in developing Hong Kong as an international centre based on the rule of law.*

*But this has not led to complacency. When, in recent years, concern was expressed about the quality of some law graduates, the Law School was quick to embrace change. The new four-year law degree is now in place, and the PCLL is being substantially reformed in order to emphasize practical legal skills rather than black letter law.*

*I am also pleased to note that the Law School is developing its links with Mainland legal institutions. This is a very positive way in which mutual legal understanding can be developed. The Hong Kong of today is vastly different from the Hong Kong of 1969, when the Law School was established, and the Law School is adapting in the way it should.*

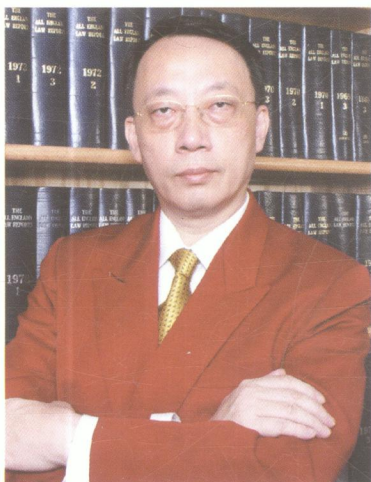
*Once again, I congratulate the Law School on its great contribution over the past thirty-five years and wish it every success in the years to come.*

**Elsie Leung**

LLM 1988

Secretary for Justice

## Message from the Bar Association



*This year marks the 35th anniversary of the establishment of the Law Degree course in the University of Hong Kong.*

*It is to be recalled that in 1969 the only practical way of getting qualified to practise in the Bar in Hong Kong was to get qualified in the U.K. This was both costly and inconvenient. In consequence a career in the law would appear to be beyond the reach of most young students in Hong Kong.*

*I have the pleasure and pride to be one of the first forty students admitted to the Law Degree course of the University in 1969 and one of the thirty-three LLB graduates in 1972. In those days the teaching of law was done in the Department of Law, being a department of the Social Sciences Faculty located at Caine Road away from the main campus of the University. Since 1972 the University also offered the course of the Post Graduate Certificate*

*of Laws (PCLL) which is a qualification which would enable the holder to join the two legal professions. Since then there is a great expansion of the law teaching, and the Department of Law has developed into the Faculty of Law. Apart from the LLB degree and the PCLL course, now the Faculty also offers double-degree courses and also post graduate degree courses.*

*In line with the growth of the Law Faculty of the University, the demand for legal services and the size of the two legal professions have also grown tremendously in the last 35 years. The size of the practising Bar in Hong Kong at the beginning of 1969 was 43. The size of the practising Bar now is 852. Indeed the demand for legal services and the growth of the two legal professions in the last 35 years is such that nowadays apart from the University of Hong Kong there is also the City University providing law degree and PCLL courses for the training of lawyers. In fact there is going to be a third university also providing for the teaching of law in the coming year. However, it is fair to say that the University of Hong Kong is still the main source of the supply of PCLL graduates joining the Bar.*

*The great change of the political, social and economic situation in Hong Kong over the last 35 years would demand Hong Kong to have its own local training for lawyers and also a new set of admission rules for entrance into the legal professions. Since 28 March 2003, it is no longer possible to gain admission to the Hong Kong Bar on the strength of qualification abroad. To all intents and purposes the only way of gaining admission to the Hong Kong Bar for a law student is to obtain the PCLL qualification in one of the two universities in Hong Kong. Also the PCLL course is no longer a course designed and run by the universities alone. The two legal professions have a lot of input in the admission criteria and also the design, teaching and assessment of the course. The co-operation between the Bar and the Faculty of Law is getting ever closer than before.*

*The University of Hong Kong has produced many brilliant lawyers in the past 35 years. Throughout all these 35 years the relationship between the Bar and the Law Faculty has always been harmonious. I am sure that the close and harmonious working relationship between the Faculty of Law and the Bar will continue in the years to come.*

**Edward Chan S.C.**

LLB 1972

Chairman

Hong Kong Bar Association

## *Message from the Law Society*



*On behalf of the Law Society of Hong Kong I would like to express our congratulations and best wishes on the occasion of the 35th Anniversary of the Law Faculty of the University of Hong Kong. The Faculty has been the training ground for the majority of solicitors in Hong Kong and has provided them with a sound knowledge of the law to enable them to embark upon successful careers. They have much for which to thank the Faculty and I am confident that the Law Faculty will continue to play a role in the training of lawyers in the future.*

**Michael Lintern-Smith**

*President*

*Law Society of Hong Kong*

## Message from the Vice-Chancellor



*It is gratifying for me to witness as Vice-Chancellor the 35th anniversary of the Faculty of Law, and to congratulate the faculty on reaching another milestone in its development.*

*From its humble beginnings as a Department, it quickly outgrew itself to become a 'School' and eventually a Faculty. Student numbers now far exceed those when you started, while the greater variety of courses on offer reflects the increasing sophistication of legal education. Just as Hong Kong has developed from a manufacturing centre to a value-added, service-based economy, the Faculty of Law at the University of Hong Kong has progressed from the mere dispensation of legal education to young men and women, to treating the law as a truly intellectual discipline. Moreover, we have established a relevance to our community. Many of our faculty members work closely with the government, the business community and the media to render their expert assistance. In return, socio-economic and political changes in Hong Kong have played a vital role in shaping the Faculty of Law and what it offers today. In a time of challenges the Faculty of Law has continued to serve Hong Kong with the provision of not only graduates skilled in the legal discipline, but in maintaining an independent intellectual stance. This legal academy has often provided the beacon that steered Hong Kong out of murky waters. While 35 years do not seem a long stretch of time in the continuum of history, at some point in the future, we will look back and realize what critical juncture we are at today. We will judge then, as we judge now, that the Faculty of Law has served our community well. Congratulations.*

**Professor Lap-Chee Tsui**

*Vice-Chancellor*

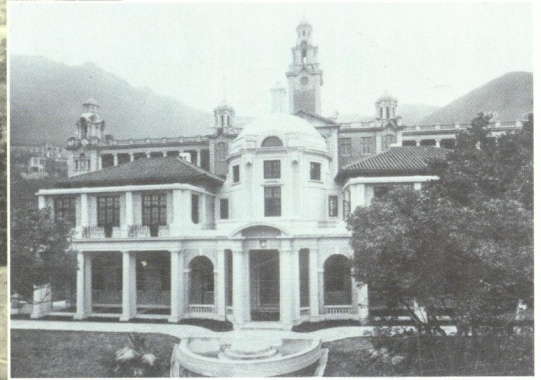
*University of Hong Kong*







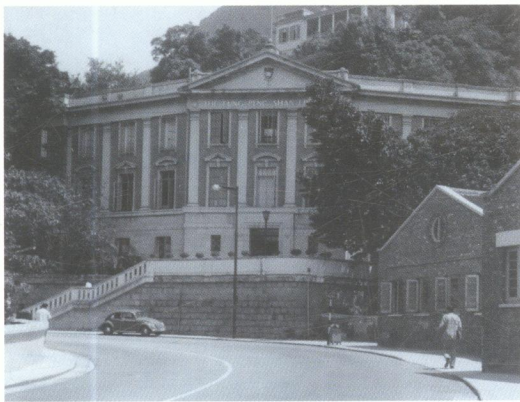
*Lily Pond circa 1950 where kids used to play and parents used to picnic.*



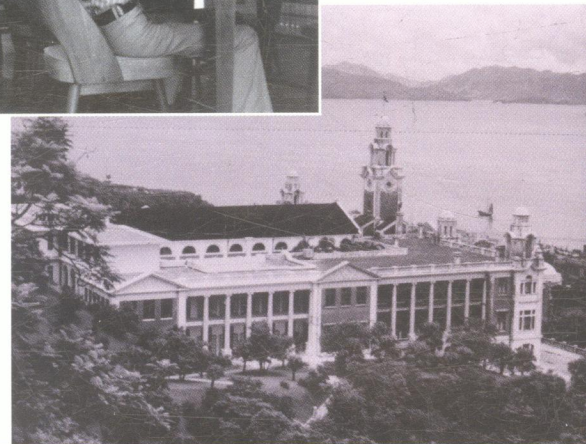
*Main Building circa 1930.*



*Caine Road premises of the Law Department 1969-73.*



*East Gate on Bonham Road circa 1930.*

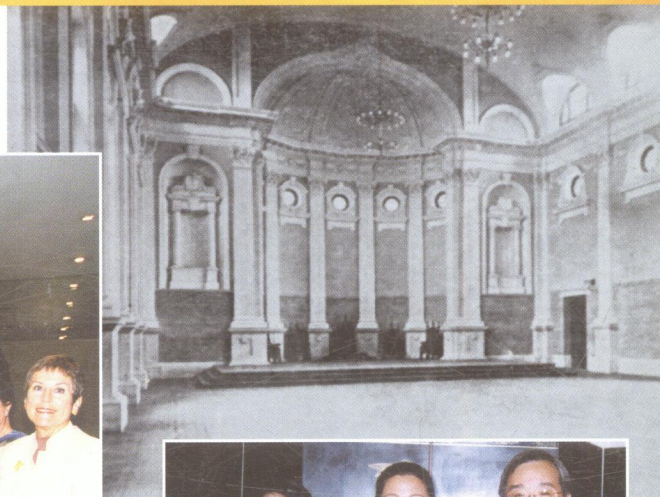


*Main Building looking to the Western Harbour circa 1960.*

# *The Department of Law 1969-72*



The interior of Loke Yew Hall in 1921



Dinosaurs & guinea pigs, Hong Kong 1999. (Front row from left): Tam Yuen King Amy, Wong Lai Kuen Rosanna, Yen Shang Wen Lucy, Mrs & Mr Bernard Downey, Professor & Mrs Dafydd Evans, Professor & Mrs John Rear, Mrs Alan Smith. (Back row from left): Mok Yeuk Chi, Cheng Wui See Henry, Wong Pui Hon, Young Chuk Lun Jack, Chan Yiu Chong Christopher, To Hin Tsun Gerald, Kwok Hing Wai Kenneth, Tong Ka Wah Ronny, Cheng Mo Chi Moses.



(From left) Cheung King Yu, Jennifer, Yen Shang Wen, Lucy and Cheng Mo Chi, Moses in Beijing 2004.



Liu Te Lan Therese  
New York 2004.



Wong Lai Kuen Rosanna  
Vancouver 2004.



A reunion of five ladies from Class 1972 in 2002: (from left) Lucy Yen, Jennifer Wong, Daisy Tong, Amy Liu and Catherine Fung.



## *Law Anthem*

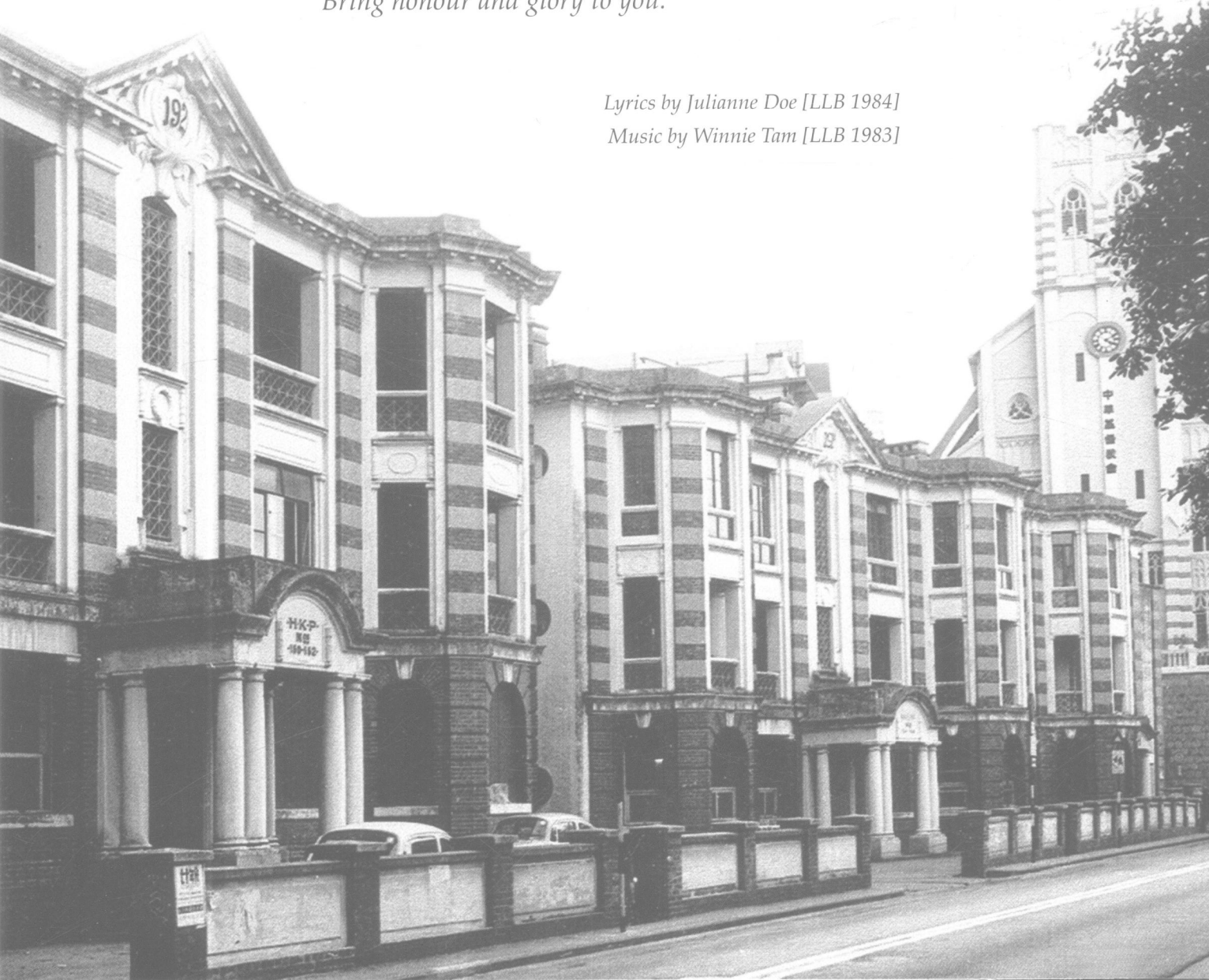
*Here tall it stands in proud tradition,  
Adherence to values true,  
Here nurtures hope and aspirations,  
For fairness and law to rule.*

*With unity, diversity,  
Fraternal care within us,  
We look to far horizons,  
And challenges we pursue.*

*And ever proud are we Law Faculty,  
Your spirit is ours to prove,  
And as custodians of justice  
Bring honour and glory to you.*

*Lyrics by Julianne Doe [LLB 1984]*

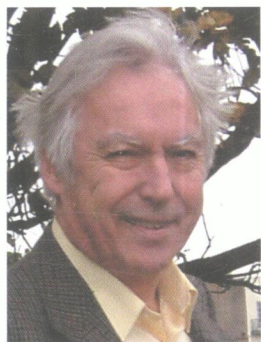
*Music by Winnie Tam [LLB 1983]*



## A Wandering Minstrel Sings

**Professor Dafydd Evans**

*Department Head and Dean 1969-1987*



In my early years in Hong Kong, I sometimes felt rather like the wandering minstrel in *The Mikado*, a lightweight English operetta of charmingly obsolete dimensions. The minstrel sang as a self-confessed 'thing of shreds and patches, of ballads, songs and snatches...', and so on. You see, I and my early colleagues were really of no fixed abode for some time, and had to wander from

place to place, plying our trade.

When I first visited Hong Kong in 1966, I was a lecturer at the London School of Economics, dubbed the 'empire on which the concrete never sets', as its buildings never seemed finished. I certainly changed office several times in my first five years there. And so it was to be in Hong Kong.

The University's then Department of Extra-Mural Studies had leapt at the opportunity of staging an 'experimental' pilot LLB course, based on London's external LLB. The Director saw that he could get a Town Centre for his department out of the deal and so it was to be. Hong Kong's proto-Department of Law was set up in the Chiao Shang Building opposite the Central Market in Queen's Road Central. I and my colleagues had a fruitful time there, but Hong Kong ran into troubled times and politics, the Government's politics, not the University's, dictated that we moved to a 'safer' building, and one was found on Des Voeux Road, almost facing the other end of the Market. We were happy there too, especially as the basement housed a very good Chiu Chow restaurant!

The time came in 1968 for me to return to the LSE, just as the Government made the epic decision to ask the University to set up a law school offering its own LLB degree. In a sense, my job was done, and I fully intended to spend the foreseeable future at the LSE (it was that kind of place). But things never stay the same, and the LSE began to become a place that young teachers left, usually for new and exciting British universities. I left for Hong Kong, for a new and what was to prove an exciting Department.

Astoundingly, the Government fully expected the first intake of 40 students in September, 1969, absolutely the earliest possible time. Yet the degree regulations had yet to be drafted, and the syllabuses written; staff had to be appointed. Only John Rear, also with us for this 35th anniversary occasion, remained in post at the EMS until taking up his new post in the new Department three days before I returned to take up mine.

I was, however, able to spend the Easter vacation, 1969 in Hong Kong, and one task was the identification of a suitable building for the Department. A Government surplus

hand-me-down was on the cards, and it was. We looked a number of places, our despair growing by the day, until we lit on the old police married quarters at 138 Caine Road.

I realise that many of the Faculty's graduates were not born when we moved in there. The quarters consisted of two blocks in a sort-of colonial style, three storeys, with first and second floor verandas. Some rooms were suitable for lecturing purposes and some for small groups. The top floor we designated the Law Library. Staff offices were, perforce, generously proportioned for the most part, and we were all quite comfortable there. On reflection, our isolation about a mile from the main campus did engender a student feeling of togetherness and I am sure that this was responsible for the strength of the 'Law spirit' on which the traditions and aims of the HKU law students over the years have been based.

But it was not to last, though the Caine Road buildings were to remain for a while before becoming a building site. In the 1960s, the University had established a Faculty of Social Sciences and Law became one of its Departments. When provision was made for that Faculty in a brand new building on the campus, we naturally were uprooted from Caine Road and relocated in what was named the Knowles Building. That was just as well, actually, as the Government saw that an intake of 40 students was not enough and upped it to 55. It never stopped rising for practically all of my time in Hong Kong!

So, for the first time we had a more or less custom-designed law school in which we could plan our space and facilities. Best of all, as we saw it then, was a splendid library that, we imagined, would last for years. A proper office accommodation. The teaching rooms were pretty bleak but they did not dampen our spirit.

Of course, the march of progress saw law teaching staff go into double figures, and rising, and law student numbers continued to grow (as did student numbers in the University as a whole). Demands on space generally became acute, not least those by Law. By now, we did not teach simply for an LLB degree but also the Postgraduate Certificate in Laws, with all its differing training needs. Furthermore, desirable expansion in the direction of Masters' degrees was inhibited by space constraints.

The solution arrived in the form of the K K Leung Building, perched on the hill side alongside Knowles. This time, we got *two* floors, much better laid out and presented than our cramped Knowles accommodation. It was in essence much as you see it today - a proper home at last. It all took a lot of fighting for, much of it in-fighting with other Faculties (and it was a fight to become a full Faculty too!).

Was it all worth it? Of course! I wholeheartedly congratulate the Faculty on all its achievements, by both students and staff, and the successful expansion of its activities in the fourteen years since I departed, let alone all of its achievements before that time. I am sure that the Anniversary activities will bring much pleasure to all of you. My thanks to the organising committee for undertaking the quite enormous task of putting together and masterminding the event. Lastly, our thanks for being so generous as to invite the dinosaurs once again to share in these celebrations. 🦖

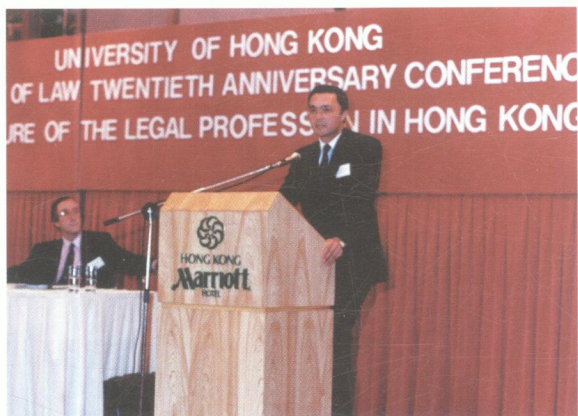
## Faculty of Law Reminiscence of 1987-1993

**Peter Rhodes**

*Dean 1987-1993*

The years 1987-1993 were an extremely important period in Hong Kong's history. During this time many of the key constitutional and legal foundations for today's Hong Kong were being laid.

The Sino-British Joint Declaration on the Question of Hong Kong had been signed on 19 December 1984. The signing of this historic agreement was soon followed by the drafting of the Basic Law, which was adopted by the National People's Congress on 4 April 1990.



These landmark documents led to widespread debate in the community about their meaning, significance and importance to the post 1997 Hong Kong. The debate was heightened by the events in Beijing on 4 June 1989. The faculty of law fully participated in these public debates and organized seminars and conferences on Hong Kong's future constitutional changes.

We also looked at what needed to be done to adapt our research and teaching programmes for the changes which lay ahead. A major review of the LLB programme was undertaken. This review led to the broadening of the LLB to include the study of law in context through courses like Law and Society, the introduction of a Use of Chinese in the Law course and the appointment of a resident English language instructor in the faculty.

To give PCLL students exposure to lawyering skills, like interviewing and advising clients, we worked with the Law Society's Legal Advice and Duty Lawyer Scheme to



open a Legal Referral Centre on campus. This allowed students to sit in with a qualified lawyer and participate in client interviews and to listen to the advice given. Increased emphasis was also given in the PCLL to ethics and professional responsibility.

In the academic year 1986-1987 the LLM programme was introduced. The LLM allowed students to study in depth a number of Chinese Law topics, International Trade Law and Human Rights Law. This proved to be a popular programme and the initial range of courses offered was expanded.

We began to internationalize by broadening our links with academic institutions and other organizations in China and the rest of the world. A distinguished visitors programme was introduced to bring highly regarded scholars and teachers to the faculty.

Throughout this period of great change for Hong Kong and the faculty of law, we were always mindful of the words of Professor Daffyd Evans, who in 1984 on becoming our first dean said:

*"It is our behoven duty to ensure that the faculty of law continues to serve the community of Hong Kong in the best and most contributive fashion, but also in a manner in which the interests of the Hong Kong of the future are best served. Hong Kong's legal system and its laws are, we are assured, to be preserved. A legal system is only as good as the personnel who service it and we have the duty of ensuring that those entering the profession, whether as private practitioners or in the public sector, sitting on the bench or choosing to become law teachers, are educated to standards of excellence in the great traditions of the common law."*

The faculty of law has always been committed to excellence in fulfilling its mission. 🍀

# Good Dean, Rotten Teacher

**Professor Peter Wesley-Smith**

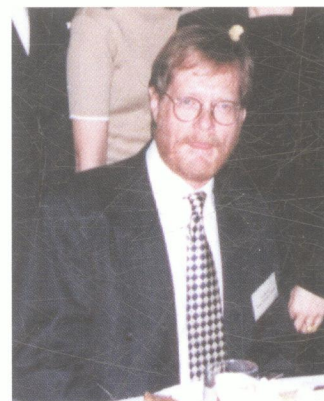
*Dean 1993-1996*

I was Dean for three years from 1993. The Dean's role within the Faculty is very limited: he or she's primary function is to represent the Faculty in the university and the wider community, and I was reluctant to interfere with the prerogative of the Heads in running their departments. (Not every Dean, it must be said, has taken such a narrow view of their role.) Because of the focus I adopted it's difficult to recall any major or lasting internal Faculty developments which occurred on my initiative: much of my time was spent on promotions bodies, Senate, Council, and the Development and General Purposes Committee, and often the interests of the Faculty were involved only marginally or not at all. A decanal job which was growing in importance was fund-raising, upon which my predecessor, Peter Rhodes, had spent a lot of energy. On my watch we established the Friends of the Faculty fundraising scheme, which I believe is still in operation, and I tried to nurture what was then a fairly inactive alumni body. I don't think I otherwise had much success in what is a pretty dismal task requiring skills an academic is unlikely to have. Wilf Cruddock, then Faculty Secretary, and I organised a separate law degree-conferring ceremony in the Loke Yew Hall, saving us from the tedium of the main ceremony in the Coliseum, and this was a great success, but if anyone thought likewise they didn't say so. The university had agreed to it as a one-off for the 25th anniversary of the law school and the experiment was not to be repeated.

During this period the university was rapidly moving towards much greater "accountability" and re-organisation to meet the enhanced demands of the UPGC. Our funding was gravely threatened as we were moved from "historic accounting" (giving us each triennium what we'd had in the past and any more we'd been able to negotiate) to a supposedly more rational system. Under the new regime a funding formula was adopted involving the number of students, research performance, and a multiplier designed for each department. But choice of the multiplier was determined primarily by... wait for it... experience of the cost of education in that department – that is, historic accounting – not our experience, however, but experience primarily in the UK! There were obvious absurdities with this funding model, neo-colonialism being just one of them. Legal education in the UK has always been underfunded: universities there have never quite shaken off the old "trades school" attitude to law teaching, and the lack of resources has often meant that courses had to be taught on the cheap by practitioners. One of HKU's achievements was to see law as part of the liberal

curriculum, worthy of funding as generously as any other part of the arts or social sciences. The first proposed multiplier for Law was the lowest in the whole university, which would have drastically cut our revenue. I fought this furiously – why, I demanded, were we regarded as less worthy of resources than, say, Philosophy or Politics? None of the other eight Deans had any interest in supporting me – the less Law had the more the rest of the university would receive – but I at least managed to get the multiplier raised to the same level (though right on the bottom of the scale) as such other departments. If, however, as I had represented, Professional Legal Education was inherently more expensive than undergraduate law teaching, this meant that the Department of Law was the worst-funded department in the entire university.

On Wang Gungwu's retirement the university appointed Patrick Y C Cheng as Vice-Chancellor, who was an enthusiast for "top-slicing" the grant and using the funds for discretionary schemes. The result was even less money for Law (and every other department). I recall the Deans, including myself, were shell-shocked by this when it was first proposed, without warning, and we meekly agreed to it. The Vice-Chancellor used his slice to experiment with various programmes for visiting scholars and such like; I was never convinced that these were better uses of the money than previously.



My experience as Dean confirmed my view that university governance is a dismal science at best. The top-down, bureaucrats-know-best model to which HKU was moving freezes out academics and multiplies the often meaningless paper-pushing and statistics-gathering tasks which teachers are required to perform. Yet the earlier era of "the God professor" simply assumed that a ranking scholar had the natural authority and people skills to run an academic department – although quite why a researcher at home in dusty archives or a smelly lab should be good at administration was never explained. In some ways universities world-wide have become corporatised. The great attraction of an academic career was for me the sense of individual choice, the pursuit of intellectual curiosity, relative freedom from mundane activities (except marking!) and command structures, and so on, and all these seem to have been diminished by recent reforms. Alas, such developments were accelerating during my time as Dean and I felt powerless to retard them.

Incidentally, the only warm (if somewhat back-handed) praise I ever received as Dean was when a first-year student wrote in the annual questionnaire about my performance as a lecturer: "He may be a good Dean but he's a rotten teacher!" 🍌

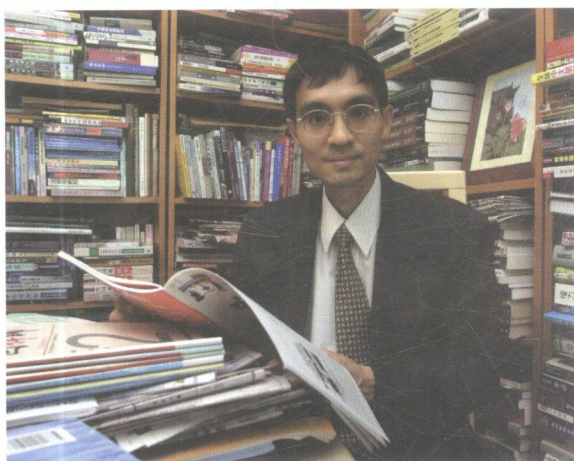
## Reminiscences of Deanship

**Professor Albert H.Y. Chen**

*LLB 1980, PCLL 1981*

*Dean 1996-2002*

It was my privilege to have served as Head of the Department of Law in 1993-96, and then as Dean of the Faculty for two consecutive terms in 1996-2002. It was also my great privilege in these capacities to have worked



together with many colleagues in a spirit of collegiality and solidarity to build upon the work of my predecessors and to further develop legal education at the University of Hong Kong. It has been a wonderful, though sometimes stressful or even painful, experience which I will always treasure in the depths of my heart. It is impossible for me to record fully the many debts I owe to, and my deep gratitude for, the colleagues and friends without whose support and encouragement the Department, the Faculty and I would not have been able to achieve what we did during these years.

In my last speech to colleagues as Dean of the Faculty in June 2002, I spoke of the "passing of the torch". My predecessors in the position of Dean of the Faculty --- Daffyd Evans, Peter Rhodes and Peter Wesley-Smith --- are all my former teachers and pioneers, founders and giants of legal education in Hong Kong, and in their footsteps I trod. The "torch" of legal education at HKU which they passed onto one another and then to me is a solemn and sacred responsibility associated with the maintenance of the Rule of Law in Hong Kong; it has been a series of challenges for me to live up to the calling. Having done my utmost, I then passed the "torch" to my colleague and former classmate, Johannes Chan, who

has since devoted himself admirably to carrying on the proud tradition of the Faculty.

It is sometimes said that being a Dean or Head is a thankless task. This is probably true to a large extent, because it is not easy for colleagues (or at least those who have never been Dean or Head themselves) to understand fully and appreciate truly the work of a Dean, and because the performance of the Dean's duties inevitably results in some colleagues feeling aggrieved or unhappy from time to time. It is never possible for a Dean or Head to please everyone. Ultimately the Dean or Head is answerable only to his/her conscience, and what sustains his/her work is a sense of purpose, a sense of mission, and commitment to the ideals of education and scholarship. These ideals depend for their fulfilment on an effective system for, and a high quality of, management and leadership in the university and its faculties and departments. In his/her capacity as Dean, the Dean is not a teacher or a scholar, but contributes to the maintenance and improvement of an appropriate academic environment in which, and favourable conditions under which, education and scholarship can prosper. In this sense those in charge of university management are servants of the teachers and scholars in the university. But they can also provide leadership regarding the direction of development of the work of the teachers and scholars. They are therefore leaders as well as servants.

I would like to share with you some of the most memorable episodes of my Headship and Deanship. During my Headship, the most memorable event was the "battle of the relativities of law". The University, under the leadership of Vice-Chancellor Wang Gungwu, introduced in 1993 a new system of resource allocation among faculties and departments which was supposed to be more "transparent" than before (under the previous system of allocation on the basis of "historical costs"). The total amount of available financial resources would be distributed according to student numbers and "cost relativities" of the academic discipline. Thus medicine, the teaching of which is expensive, would have a high relativity value, and architecture, which is less expensive, a lower relativity value than medicine. The University borrowed from the UK their relativities figures, according to which law is the cheapest among all disciplines, cheaper even than humanities and social sciences. As Head of the Department at that time, I pointed out that if the University's plan were implemented, the budget of the Faculty of Law would have to undergo severe and continuous cuts during the next few years, with a massive redistribution of resources within the University in favour of those faculties and departments that were assigned high relativities. I worked hard with Peter Wesley-Smith, Dean at that time, to lobby against the proposal, and ultimately the University agreed to give the discipline of law the same relativity figure as humanities and social sciences. The





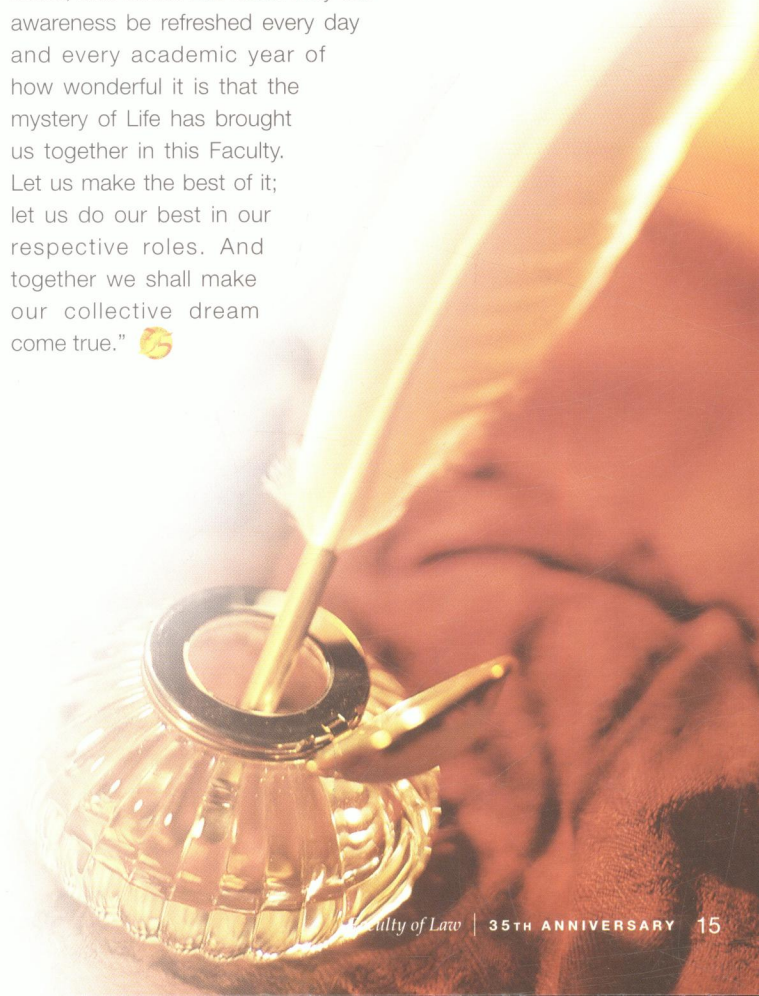
battle for “parity with the humanities and social sciences” was won.

During the first 3-year term of my Deanship, I had the opportunity to initiate a number of new academic programmes in the Faculty. The Postgraduate Diploma/Master in Common Law (PDCL/MCL) was introduced in 1997. This programme is mainly designed for law graduates from mainland China to enable them to study basic common law subjects. Before this programme was launched, our Faculty had a small number of students from the mainland in the M Phil, Ph D and LLM programmes, but I believed that these programmes were not ideal for many mainland students because the programmes either require writing of a thesis (M Phil or Ph D) or the study of Master level courses (in the LLM) which presupposes a foundational training in common law, which is what mainland students need most but lack. The creation of the PDCL/MCL, coupled with the raising of funds to support scholarships for the programme, led subsequently to significant increases in our student population from the mainland. Another development at postgraduate level was the introduction in 1998 of the SJD (Doctor of Legal Science), modelled on its American counterpart. This is a doctoral degree with a significant coursework component in addition to dissertation. I believe is more suitable for many students than the traditional Ph D which only requires the writing of a thesis. At the undergraduate level, the major development was the launch of the mixed degree programmes (BBA(law) and BSocSc(government & laws)) in 1999. For the first time in the history of legal education in Hong Kong, it became possible for students to do a “double major” degree in law and another discipline, and then (if they so wish) to obtain double degrees (an LLB in addition to the first mixed degree). I am glad to note that the mixed degree programmes have since been among the most successful undergraduate programmes at HKU in attracting good students.

During the second 3-year term of my Deanship, the most challenging task was to handle the review of legal education in Hong Kong, initiated by the Law Society and conducted by a steering committee chaired by the Solicitor General. The steering committee commissioned a consultancy study which ultimately recommended the transformation of the 3-year LLB into a 4-year programme, the abolition of the PCLL and the creation of a new vocational training course operated by the Law Society. We in the Faculty supported the 4-year LLB but believed that there were no good reasons for the abolition of the PCLL. I tried my best to explain to all parties our fundamental reforms to the PCLL to the profession’s concerns instead of its abolition. Fortunately the steering committee finally accepted our proposals.

This academic year 2004-05 sees the launch of the new 4-year LLB, the 5-year double degrees and a

reformed PCLL which incorporates, as demanded by the profession, optional courses for intending solicitors and barristers respectively. They represent the fruit of the hard work and dedicated efforts of many colleagues in both Departments of the Faculty, particularly Johannes Chan as Dean, and Roda Mushkat and Michael Wilkinson as Heads of the Departments. I am happy to see that they have built upon the foundations laid earlier, and the Faculty has continued to move forward steadily. The life of the Faculty as an institution feeds on the daily work and efforts of its members and leaders; reciprocally, the life of its members and leaders is enriched by the life of the Faculty. As I used to write in the Dean’s Message published in the Faculty Prospectus: “A community is a group of people who come together from different directions, and join together to pursue a collective vision, and to realize a common dream. *What community are we, the Faculty of Law at the University of Hong Kong?* We are a body of teachers, students, and supporting staff who come together to pursue the cause of legal education in Hong Kong. ... *Which elements of this Faculty of Law am I most proud of as its member?* I am most proud of the high quality of its people --- the distinguished scholars who teach here, the competent and dedicated administrative and clerical staff who work here, the outstanding graduates who were educated here, and, above all, the bright, conscientious and earnest students who are currently gathered here to learn about the law, about Hong Kong, China, and the world, and about Life itself. May our awareness be refreshed every day and every academic year of how wonderful it is that the mystery of Life has brought us together in this Faculty. Let us make the best of it; let us do our best in our respective roles. And together we shall make our collective dream come true.” 🌟



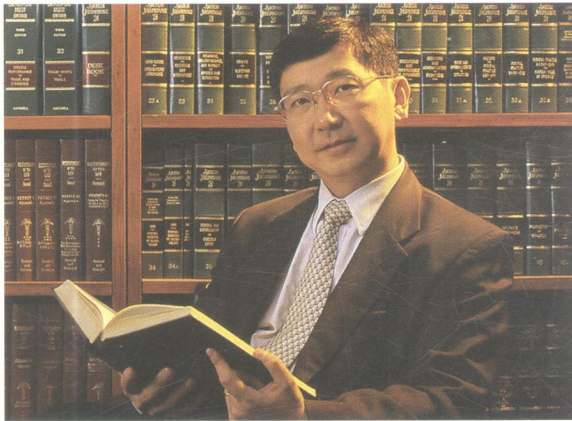
## *Building upon a Noble Tradition*

**Professor Johannes Chan SC**

*LLB 1981, PCLL 1982*

*Dean 2002–*

It was in a modest Victorian style building that was situated next to a church that the Law Department began its life thirty-five years ago. We started with 40 students and about 4 teachers in the first year, and none of the students knew at that time whether their LLB degree would be recognized, and what they would need to do after completion of the LLB degree in order to be qualified



as a lawyer in Hong Kong. Thirty-five years later, we are now a Faculty with two departments, four research centres, over 900 students and about 52 teaching staff. Our teaching staff comes from over 13 countries. Apart from our LLB programme, we also run 3 double-degree programmes, 4 specialized LLM programmes, alongside our research degrees in MPhil and PhD. Our programmes have attracted students from all over the world. The Faculty also receives a large number of distinguished visitors and scholars every year, and has collaborative projects with a number of international and regional organizations such as WTO, Asian Bank, World Bank and so on.

I took over the deanship from Professor Albert Chen in July 2002. I was fortunate to inherit a Faculty with a noble tradition and many outstanding and committed staff. At the same time, our community has undergone many major changes. There was an increasingly high expectation, and rightly so, from the community of the Faculty and the University. The comprehensive review of legal education and training conducted by Professor Paul Redmond and Mr Christopher Roper ("Redmond-Roper Report") has sparked off almost unprecedented debates on the nature of legal education and what the best structure and system should be. One of the most controversial

recommendations of the Report was to take out PCLL from the University and replace it by a short Legal Practice Course that would be run and assessed by the professional bodies. As a now retired senior judge said, once we touched on the sensitive subject of legal education, there "would be blood all over the place". This is probably an exaggeration, but we did have many hours of heated debates on how legal education should develop. My predecessor Professor Albert Chen had indeed taken up most of the heat. Albert has skillfully steered the course so that by the time I took over from him, all the stakeholders had agreed in principle to keep PCLL at the two universities, provided that the PCLL course is able to meet the various benchmarks set by both branches of the profession. My challenge is how to reform our PCLL course so that it can meet the two very different sets of benchmarks set by the two branches of the profession within the time constraint of a one-year PCLL. We had numerous lively and vigorous discussions both inside and outside the Steering Committee on Legal Education which was naturally the forum where we tried to reconcile these differences. Both branches of the profession have been very supportive, and I have to thank in particular the excellent leadership of Bob Allcock as Chairman of the Steering Committee and Anna Wu as Chairperson of our new PCLL Academic Board.

There are of course many positive aspects of the Redmond-Roper Report, such as its recommendation to extend the LLB programme from 3 to 4 years. As a Faculty, we have for many years aspired to introduce a 4-year LLB programme, and the Redmond-Roper Report provided us with the impetus to start the tortuous negotiation with the University Grants Committee for funding. It has not been an easy process, especially at a time of economic depression. The Government has more or less shelved its plan to introduce 4-year undergraduate studies, and our proposal was moving against the tide. Well, as the good old saying goes, once there is a will, there is a way. In mid-2003, we were given the approval to introduce the 4-year LLB in 2004-05. What followed was then another hectic period of refining and implementing the programme, for what we see in the new 4-year programme is not a mere extension of the existing 3-year programme, but a change in teaching approaches and philosophy. We are moving towards students-centred teaching. We would like to focus on the training of legal and transferable skills and try to map them onto the teaching and learning of core, substantive law courses. In particular, we would like to strengthen students' communication skills as these are valuable assets which our graduates can take with them no matter what they will do in their future careers. Apart from the core law subjects in the first two years, students are able to specialize in certain areas of the law through their choice of electives. We have also actively encouraged students to take up to 20% of non-law studies so as to enable students to learn the law on the one hand, and know the operation of the



law in context on the other. In addition to the normal curriculum, we have actively encouraged our students to extend their horizons and enrich their international perspectives by going abroad on exchange in an overseas university. The new programme gives us both space and time to do many things which are impossible to be done within a 3-year curriculum. However, it also poses great challenges in terms of securing adequate resources, persistence in carrying through the reforms, as well as upholding our vision of ideal legal education. I am very pleased to see that many colleagues have embraced the challenges in the most positive and supportive way.

Another major event in the last three years is our success in partnering with the WTO to organize the first ever Asia-Pacific Regional Trade Policy Course. The WTO has been looking for a partner university in this Region to run an official training course for senior government trade officers. We learned about this in the summer of 2003. A colleague went to Geneva to discuss further with the WTO; extensive bidding documentations had to be prepared, and eventually, in October 2003, we were told that we were shortlisted, together with National University of Singapore, and a site visit would be conducted to make a final decision. I can still vividly remember how we mobilized almost half of the University in preparing for the site visit. The University has given us the strongest support we could ever expect, and it was touching to see that everyone was working so hard to achieve a common goal. The site visit was perfect, and we were eventually designated by the WTO as its official partner in this Region. The hectic part then followed. Within 4 months, we had to organize a 3-month intensive training course for senior government officials from 32 countries, to plan the course and to co-ordinate a large number of experts from WTO and the Region for teaching. The logistics were incredibly complicated. The course ran from 9 to 4 everyday and 5 days a week, without a break even on public holidays. The participants came from a wide variety of geographical locations and cultural backgrounds, culture, stretching from mid-west Asia to the farthest south of the Pacific Ocean. Most of them had to leave behind their families for 3 months. It was not easy to keep up the spirit of the team in such a lengthy intensive course. Fortunately, we had a wonderful group who was very supportive of one another. The course went on very well. Both the participants and WTO were very pleased. At the farewell dinner, participants wearing their national costumes made speeches after speeches, expressing their gratitude to WTO and HKU and sharing their anxiety, pressure and satisfaction. They brought back home not only knowledge but also life-long friendship and a memorable part of their life. The whole evening was filled up with laughter and tears, and even officials from the WTO said that they had never seen such a touching farewell, and one of them was, rather unusually, tearful when she made her speech!

China is another major focus of our development in the last few years. We continued to expand our Master of Common Law programme which has, since its establishment 7 years ago, offered training in common law to many judges, government officials and promising young scholars and graduates from the Mainland. We have also strengthened our collaborative ties with top leading Chinese universities such as Peking University, Tsinghua University, Renmin University of China, Fudan University, China University of Politics and Law, East China University of Politics and Law, and Sun Yat-sen University. We have received uncountable Mainland academic visitors, organized the annual HKU-Peking U Conference, and instituted a number of student exchange programmes with prestigious Mainland universities. More importantly, we have engaged in offering joint master's programmes with both Tsinghua University and Peking University. We firmly believe that in the following decades, China needs lawyers who are proficient in both the Mainland legal system and the common law system, and being the only common law jurisdiction within China, we have a unique role to play in training lawyers of tomorrow for China and in laying the ground for the future development of the legal system in China.

Looking back, the last three years were not just any three years in the life of this Faculty. What have taken place are of critical importance to the Faculty in an era of huge transformation accelerated by technological advancement, cross socio-economic and cultural developments, and the increasing heat of globalization. Our Faculty is competing day after day with the best in the world. If there is any lesson to be learned, it is that the University could no longer be an ivory tower. It is part of the community. It has to contribute to the well being of the community, and at the same time, be responsive to the changes in the community and the world. In the coming years, it is likely that Government funding will continue to shrink. Notwithstanding the economic recovery, the Faculty and the University will have to operate in a continuing declining budget and yet increasingly demanding expectation from the community. How could we continue to maintain our excellence in recruitment, teaching and research in light of the ever declining budget? How could we attract the best students and the best academics? The 4-year LLB and the new PCLL are still in their formative years. The Chinese University is going to set up a new law school in Hong Kong, whereas our Faculty has still not had our own law school building. In light of all these factors, how could the Faculty continue to thrive and to realize its vision to become one of the leading law schools in the world? We are fortunate that our predecessor has already laid down a solid foundation for us. Building upon a noble tradition, I can feel both honour and anxiety – the honour to be part of this distinguished tradition, and the anxiety that all of us have to work immensely hard to do better than the best in order to live up to, if not surpass, its distinction. 🍀



A happy reunion of some of the Classes 1973 and 1974 celebrating the 30th year of graduation.



East Gate on Bonham Road circa 1930.



(From left) Fanny Fung, Maria Ip and Cheung Wai-hing.



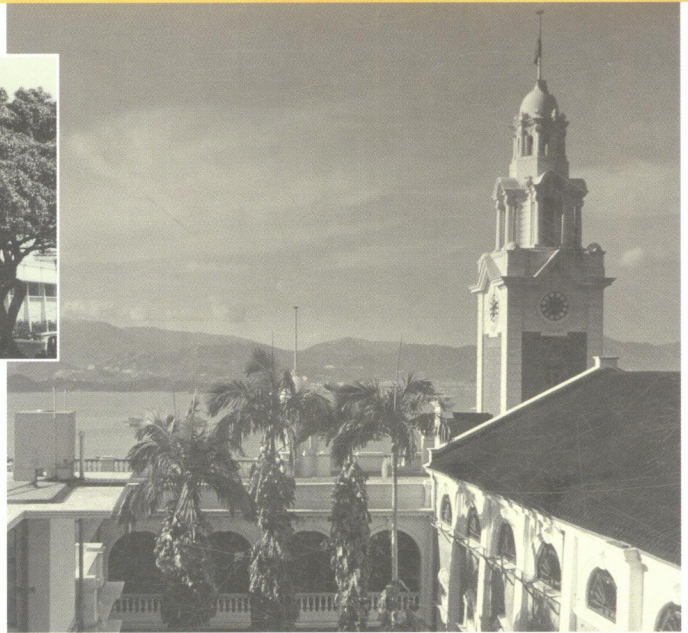
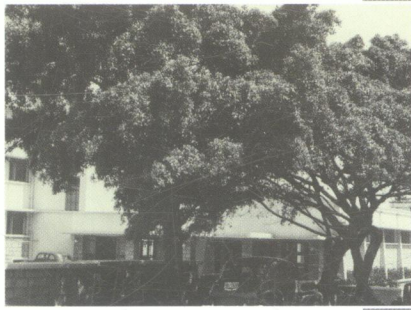
(From left) Augusto N. da Roza, Au Miu-po, Edwin Neo and Lucile Au.



Helen Ip, LLB 1974.

## The Department of Law 1973-74





A gathering of some of the Class 1974.



Some members of Class 1975 at one of their dinner gatherings.



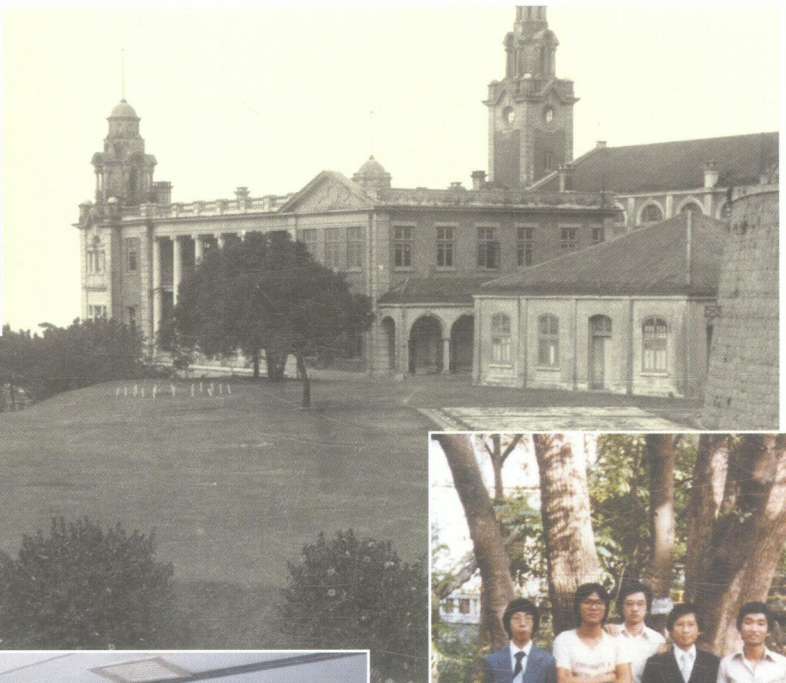
Patrick Chan (left) and Wally Yeung.



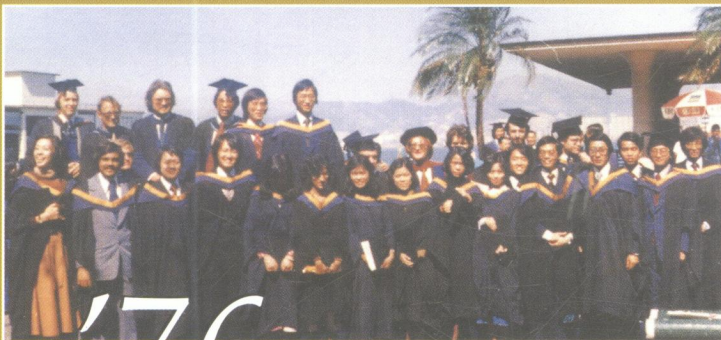


LLB 1977: (from left) Winston Leung, Clarence Cheng, Grace Fung, Yvonne Chua, Amy Wong, Helen Tang, Patrick Tsui and Tong Yee Chun.

25th Anniversary reunion of the law graduates of Class 1977, held at the Chariot Club in December 2002.



LLB 1979: photo taken in 1979 by Lily Pond. (Back row from left) Benjamin Chain, Andrew Leung, Lawrence Cheung and Christopher Li; (front row from left) Jessica Chan, Connie Tsui, Janice Kwan and Winnie Siu.



'76





Morning exercise at Sports Centre 1978.



LLB 1979: Taken in X'mas 1979 (from left) Henry Lai, Lawrence Cheung, Katherine Lo, Connie Tsui, Benny Yeung and Eric Au.



A group of law students (from Classes 1979 & 1980) took a break and posed for a photo outside the Law Library, 5/F, Knowles Building.



'78



'79

## Then and Now

Professor Roda Mushkat



On the balcony of the (then) Bella visit Hotel in Macao Circa 1978.

I have been affiliated with the Faculty of Law, at the University of Hong Kong, in its various forms, for over a quarter of a century. This is a long period of time by any standard. Today's universities do not necessarily encourage long service on financial grounds and the academics themselves have been less inclined to form permanent institutional attachments. I may thus be considered as a "contrarian", something of an exception to the norm and a member of a rare species.

I joined Hong Kong University as a young, and a relatively inexperienced academic, who was essentially a newcomer to Hong Kong. At the time of writing, I am the Head of the Department of Law and its longest serving member. The Department has grown by leaps and bounds during this period and has become academically more diverse, formally organized and pedagogically sophisticated entity. By the same token, Hong Kong has evolved from a light manufacturing base into one of the world's leading international financial centres. Across the border, China has dramatically proceeded to dismantle rigid economic structures and has embraced a market-based economy. A convergence of sorts is taking place

and the Department of Law no longer serves just its domestic constituency but tries to position itself as the leading centre of legal learning in the Greater China region.

This profound transformation has been the dominant feature of the academic environment in which I have operated. I joined a school of law which was quintessentially English in nature, and colonial to boot. The atmosphere was highly informal, verging on conviviality. The rules of the game were neither written nor transparent. Members of the teaching staff were larger than life characters. It would be possible to write a book, with a comic bent, about virtually each and every one of them. Special leave was often sought in order to enhance one's musical skills, engage in literary pursuits or simply to search for spiritual enrichment, loosely defined.

The School was relatively modest in size. This, coupled with the nature of the people involved, made it a distinctly congenial place. We enjoyed each other's company, amused each other, related well to each other, both within



With LLB graduates: Françoise, Cherrie, Eric and Anderson (Michael Jackson and Peter Rhodes, each beasting a mustache) Nov. 1986.

and without the confines of the institution, and were a highly cohesive bunch. The students too displayed a measure of individualism and projected an air of urban sophistication. They often represented

upper middle class families which straddled the local and Anglo-Saxon/colonial worlds. My first class ("the class of 1980") included the likes of Albert Chen, now a distinguished and a high profile member of our Department, Agnes Allcock, currently the Deputy Director of the Social Welfare Department of the HKSAR Government; and Barbara Mok, the first female Managing Partner of an international law firm in the region and the recipient



In the first interview granted to students as a newly-arrived member of the School of Law in 1979.

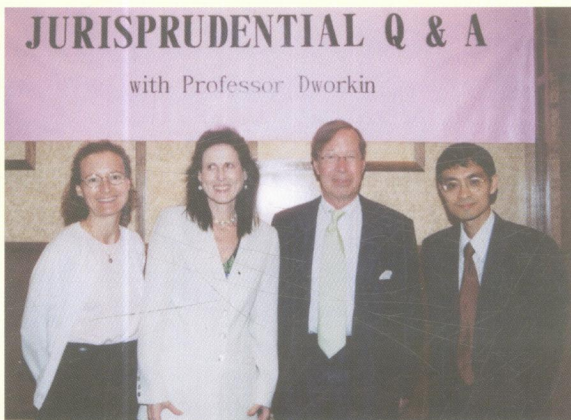




of Asian Legal Business award for “Managing Partner of the Year” in 2003.

Paradoxically, many of my early-day colleagues, notwithstanding their flamboyant personalities and extra-curricular interests, have proceeded to become “pillars of the community.” You will find them occupying judicial positions at the highest possible level, overseeing the Government’s legal machine, leading some of the world’s most established investment banks, and playing a prominent role in the management of large multinational law firms.

The Department now enjoys “economies of scale”, well beyond those seen during my “initiation period.” Achieving intimate personal contacts is inevitably a rather elusive goal in such circumstances. There are also greater disparities in age, experience, personal background and outlook. The broader institutional milieu has undergone a metamorphosis too. The University and its component parts have become more rule-driven and hence more formal. Colonial affluence has given way to post-colonial resource constraints. Money is scarce and the pressure to extract as much as possible from limited resources is relentless. Being the Head of Department nowadays is more akin to serving as the captain of a ship trying to accomplish its constantly changing mission, while navigating through stormy waters, rather than enjoying the limelight as the lead singer of the Beatles.



With a “Jurisprudential Giant”- Prof. Ronald Dworkin (May 2002).

On the other hand, there are numerous challenges that bring a degree of professional satisfaction. The Department is increasingly acting as a magnet for distinguished legal academics and practitioners. It may no longer qualify as a “pleasure island” but its international academic status is beyond dispute. The students are part of this expanding equation. They represent the Department successfully at prestigious international events, such as the Jessup International Law Moot Court Competition, Red Cross International Humanitarian Law Moot Competition, and International Maritime Law Arbitration Moot. By the same token, legal education is being broadened and deepened, as evidenced by the recent introduction of a 4-year LLB, the proliferation of the Mixed-Degree programmes and



At the 1999 Final Round of the Decons Cup Mooting Competition with mooters..... and co-judges Bob Riberio and Alan Leong.

the attempt to enhance systematically students’ communication skills.

In the first interview granted to students as a newly-arrived member of the School of Law in 1979 (reproduced here), I highlighted my foreign background. My roots are now firmly in Hong Kong, both in the personal and professional sense of the term. I share local aspirations and concerns. It seems that I had the foresight in 1979 to suggest that Hong Kong’s transition from British to Chinese “rule”, against the backdrop of radical economic reforms on the Mainland, would be a relatively smooth affair, culminating in the emergence of the territory as a “semi-respectable member of the international community, a kind of a quasi-state.” One may choose to see the “glass” as “half-empty” or one may opt to view it as a “half-full.” I prefer the latter perspective and hope that -- despite the many frustrations encountered in the context of the “one country, two systems” configuration -- Hong Kong will enjoy steady progress towards autonomy, genuine self-government and liberty. 🍀



At the Reunion of the “Class of 1980”.

## Twenty-one Happy Years at HKU

**Professor Michael Wilkinson**

Richard Wu has kindly invited me to write a few words about my 21 years of teaching in the Law Faculty. Although my memory is dimming with age and an excess of gin and tonics, I do have very many clear and happy (and a few clear and unhappy!) memories. I arrived in Hong Kong after spending 13 years in Africa teaching law. I had originally gone to Africa full of enthusiasm and high ideals of being able to help potential lawyers in developing countries. I left somewhat disillusioned. Many of the students I had taught had been imprisoned (or worse) under the excesses of the regime of President Amin in Uganda; others had been imprisoned under the somewhat less harsh, but nonetheless idiosyncratic, regime of President Banda in Malawi, who came to see lawyers as outspoken troublemakers. I remember that my leaving party with my Malawi students had to be held in an open field to avoid any possibility of hidden microphones or cameras. During this period I had been serving as a British overseas aid which was not well paid; bringing with me a wife and four children, I was hopeful that my future job would be less politically sensitive and would be better paid! I am pleased to say that this has proved true.

I arrived with my son in September 1983 a few days after Typhoon Ellen had landed. At Kai Tak airport I was met by Peter Wesley-Smith and Jill Spruce, the latter having arrived on an earlier flight that afternoon to take up a teaching position in the Faculty. I was wearing my best suit and carrying a heavy overcoat which was highly inappropriate in the September humidity. Twenty years later I have still never worn that overcoat. On my first visit to the campus next morning the taxi could not enter the University because of fallen trees; looking out of my bedroom window in Scenic Villas I could see boats wrecked on the beach; I wondered whether it would be safer to return to Africa!

Jet-lagged and disorientated I attended my first day at work and was informed that I would be teaching civil procedure and conveyancing; twenty years later I am still teaching civil procedure and conveyancing, albeit without

jet-lag and with a little more confidence! In those days Professor Dafydd Evans was the Dean of the Law School and Professor Peter Willoughby Director of Professional Legal Education. My colleagues included Peter Wesley-Smith, Bob Allcock, Peter Rhodes, Bill Clarke, Peter Morrow, Judith Sihombing, Sarah Nield, Malcolm Merry, Roda Mushkat, Colin Cohen, Paddy Sheehan, Michael Olesnicky, Leonard Pegg and Michael Sandor. Of this list only Roda remains in the Faculty, although Bob Allcock, Peter Rhodes, Colin Cohen, Michael Olesnicky, Bill Clarke, Judith Sihombing and Malcolm Merry still work in Hong Kong and Michael Sandor pays frequent visits as a visiting lecturer. There were no local members of the teaching staff, although Albert Chen joined us shortly after I arrived, with Johannes Chan joining a little later. In the general office Cecilia Chan and Monnie Lee were in post; they are still in post as the two departmental senior secretaries and have been the backbone of the Faculty for more than 20 years. What wonderful servants of the Faculty they have both been, showing smiling efficiency and kindness to so many teachers and students. They are the unsung heroines whose work we should celebrate. Henley was also working at that time in the printing office; he now supervises others to operate the machines whose predecessors he himself used to operate. It is hard to believe that these were the pre-computers days when typewriters were still used.

My first group of colleagues were a colourful bunch; perhaps in those days we had more time for extra-curricular activities. Peter Wesley-Smith and Bob Allcock used to play in a band; Dafydd Evans was often to be seen on the cricket pitch (I recall in his younger days he used to do the long jump for Wales!); Peter Willoughby was a keen sailor taking days off to race to the Philippines. We had our own Faculty soccer team which Colin Cohen used to terrorise as referee. There was also less pressure to publish and student evaluations, whereby students mark their teachers on their teaching skills, were unknown. One nameless colleague used to express pride in the fact that he had not updated his lecture notes since he first wrote them. The good old days, perhaps! How things have changed. The pressure on teachers has increased enormously; publish or perish; get good teaching assessments or look for a job elsewhere. Gone are the days when teachers came to the office wearing shorts! Gone are the days when a glass of wine at lunchtime was

thought to improve performance! Gone are the days when the materials you needed to do research could all be found on the library shelves! Gone are the days when you wrote a leisurely letter and waited a few days for a reply! Gone are the days when students could only ask you questions when you attended class! Gone are the days when you did not live in daily fear of a telephone call from your publishers reminding you that your publication deadline expires next week! Computers, word processing, data bases and e-mails have a lot to answer for.

Also, and perhaps of greater significance, is the regret that I no longer know most of my students. The greatest pleasure of a teaching career is interaction with students. They are lovely and so rewarding. There is nothing so satisfying than being thanked for teaching; and it happens often. Life becomes worthwhile again. I suppose over the years I have taught, in some form or another, about two-thirds of the legal profession; I hope not all their mistakes are directly related to my incompetence. Classes in the old days were small and intimate and I used to know at least a large proportion of my students; now nearly 300 students are admitted to the PCLL annually and I only know the naughty students; so if I greet you by name in the street, you know what category your behaviour fell within!

Many significant changes have occurred within the Faculty over the last 20 years. Perhaps most pleasing is the fact that we now have a large and dedicated team of local teachers. Although I believe that it is important to retain a cosmopolitan mix of staff (this stimulates both good teaching methods and research productivity), I am delighted that so many of my present colleagues have given up the lucrative temptations of practice in favour of an academic life. They have come to enjoy the immense satisfaction that can be derived from instilling knowledge, skills and high ethical standards into our future lawyers. Indeed the management of the Faculty now firmly rests in the hands of our new generation of law teachers. Albert Chen, and after him Johannes Chan, have proved inspirational Deans and we now are energetically and efficiently served by four local Associate Deans in Wilson Chow, Richard Wu, Benny Tai and Zhang Xianchu.

Most of my time in Hong Kong has been happy; there have, however, been some bad times. I am pleased to say, however, that even the bad times had lighter moments. A few years ago I was under great stress when the future of the PCLL was in doubt. I was giving a conveyancing

lecture in Central when I slumped to the floor. My students rushed forward, picked me up and carried me to the washroom solicitous as to my health; unfortunately, the lecture was being recorded on video and I was wearing a wireless microphone. There is now a permanent record of what transpired in the men's toilet! I spent the next two



years on tranquillisers, sleeping tablets and gin, but I am relieved to report that I seem to have survived and still turn out for the staff soccer team every Sunday. Of course, my soccer technique (just like my teaching) has had to undergo changes. In the old days I positively wanted the ball. Now I try and avoid receiving it!

I have reached 59 years of age and this is my last year before retirement. I was thinking of buying a house in the Welsh mountains, but I have now decided to stay in Hong Kong after retirement. I must say, however, that I feel too young to spend my days in leisurely pursuits so I hope to retain a connection with the Faculty, perhaps as a part time teacher. I also want to keep writing. So, if you see me on the street or in a restaurant, do come over and say hello. The main reason I am staying in Hong Kong is because of my friends and you all come within that description. Please keep in touch. 🍷

# Reforming Legal Education at the University of Hong Kong

**Bob Allcock**  
*Solicitor General*

As a former law teacher at the University of Hong Kong, and the current Chairman of the Steering Committee on Legal Education and Training, I have a keen interest in the ongoing reforms in legal education.

## The early days

2. Before 1969, there was no local system for qualifying as a lawyer. Instead, those wishing to practise law would qualify as an English solicitor or barrister, and that qualification would be recognized locally.
3. Then, in the late 1960's and early 1970's a local route to qualification was created. That was when the LLB and Postgraduate Certificate in Laws ("PCLL") were created at the University of Hong Kong. The LLB

course was modelled on English law degrees, and extended over three years. However, the PCLL departed from the English model, which had separate courses for solicitors and barristers, neither of which were then taught at universities. The PCLL was established as a university course; it extends over one academic year; and it is a common course for those planning to be solicitors or barristers.

4. The creation of the local LLB and PCLL, and the retention of

previous avenues to qualification, occurred at a time when the Mainland was isolated from the rest of the world, including Hong Kong, and was going through the Cultural Revolution. Hong Kong was a British colony; was primarily a manufacturing centre; and was served by a few hundred solicitors, barristers and foreign lawyers. The initial annual intake of law students at the University of Hong Kong was about 40.

5. Today, the Mainland benefits from an open door policy, and it stands ready to play a full part in the world economy. Reunification has been smoothly implemented. And Hong Kong is a world centre for finance, transport, telecommunications and other services. There are currently about 5,000 practising solicitors, over 700 practising barristers, and over 600 registered foreign lawyers. Although student numbers fluctuate from year to year, the recent total annual intake of LLB students at the two universities

has been in the region of 160, and of PCLL students about 360.

6. Hong Kong did well in expanding the size of its legal profession. But, until recently, the system of legal education remained largely unchanged despite the momentous changes that have taken place.

## Concerns

7. In the past decade or so, serious concerns were raised about local legal education by the two branches of the profession. These included -
  - 1) concern that the courses were not sufficiently practical;
  - 2) concern that the courses were not developing to meet the needs of the twenty-first century; and
  - 3) concern about the quality of some of the PCLL graduates.
8. In April 1998, the Advisory Committee on Legal Education recommended that a full scale review of legal education in Hong Kong should be conducted by a panel, which should include an expert or experts from another common law jurisdiction.

## The Steering Committee

9. Funding was obtained for such a full scale review, and an informal Steering Committee on Legal Education and Training was established to oversee it. This committee consists of representatives of the law schools, the two branches of the profession, the Judiciary, the Government, and also lay members.
10. In November 1999, the Steering Committee appointed two Australian consultants to undertake the comprehensive review. Those consultants published a Consultation Paper in September 2000, and a final Report in August 2001 (the 'Roper/Redmond Report'). The Report contained recommendations about all stages of legal education and training.

## The PCLL under threat

11. So far as the PCLL is concerned, the Report was highly critical. In fact, it concluded that the PCLL should be discontinued and replaced by a legal practice course run by a free-standing institution. And it recommended that the institution should be governed by a board on which the two branches of the profession would have substantial representation, but which would also include people drawn from the judiciary, government, the universities, and the wider community.
12. This proposal for a governing board with substantial representation from the two branches of the profession reflected the consultants' view that the PCLL had been developed and taught by academics with insufficient regard to the needs of the profession.
13. The University of Hong Kong fought hard to retain its PCLL. In particular, it accepted the need for substantial change in the courses and teaching methods, and the need to teach skills rather than substantive law.





14. However, the profession needed to be convinced that these changes would occur, and that its voice would continue to be heard if the PCLL were to remain at the universities. A solution was found. It was agreed that a formal Academic Board should be established at the university to advise on all aspects of the PCLL. That board includes substantial representation from the legal profession, as well as representatives from the Judiciary, Department of Justice and the community.
15. On this basis, the PCLL continues in existence, although the Law Society will review the situation in a few years' time to see if its concerns have been met. The possibility that a new legal practice course will be offered by an institution other than the universities has not been completely abandoned.

#### **PCLL reforms**

16. Meanwhile, the PCLL Academic Board is now functioning at the university. It provides a formal channel through which the profession can influence important decisions on matters such as admission standards, curriculum content, and assessment methods and standards. In addition, the Academic Board has established sub-committees, on which there are again representatives from the profession, to give detailed consideration to such issues at the working level.
17. As a result of these initiatives, the PCLL is undergoing substantial change on a continuing basis. It is already moving away from subject-based courses to a practice-based approach. The course is divided into two modules. A non-contentious programme focuses on what 'conflict-blockers' do, using conveyancing, commercial, wills, estate planning and probate as contexts for learning how to advise clients, write letters, and analyze and draft documents. The contentious programme focuses on what 'conflict-players' do, using civil and criminal litigation as contexts for learning how to write opinions, draft pleadings and affidavits, and argue cases in non-trial situations.
18. Further changes to the PCLL are planned, including the introduction of some elective courses, and of streaming within some small group seminars – one stream being more suitable for potential solicitors and the other more suitable for potential barristers. There are plans to offer a part-time PCLL course as from the 2005-06 academic year.

#### **Concerns about the LLB**

19. The Roper/Redmond Report emphasized that an undergraduate law degree should develop both generic intellectual skills and professional skills and that, accordingly, it should expose students to disciplines outside law. It recommended that the primary model for the academic stage of legal education in Hong Kong should be a four-year LLB, and that law schools should adopt a more interactive



- mode of teaching, with a lower staff/student ratio than in the past.
20. The University of Hong Kong accepted these recommendations and worked energetically to implement them. The four-year LLB will begin in the 2004-05 academic year, with a completely new curriculum. The programme requires a total of 240 credits, including a minimum core of 117 credits of law subjects and 15 credits of compulsory non-law subjects. Those who wish to specialize in a particular area of law can choose and complete electives in a particular cluster, namely "Chinese law", "commercial, corporate and financial law", or "international trade and economic law". In order to address concerns about the language ability of some law graduates, English proficiency is built into the new curriculum. Students are also encouraged to take clinical programmes as part of their elective requirements, which involve placement at organisations such as the Legislative Council, Consumer Council and Equal Opportunities Commission. The four-year curriculum will provide greater opportunities for law students to take part of their courses in a university outside Hong Kong.
  21. Other initiatives at the undergraduate level include the introduction of double degrees in law and another discipline, and a way to acquire two law degrees, one from the University of Hong Kong in common law and one from a prestigious Mainland university in PRC law.

#### **Comments**

22. The process of reforming legal education has been a difficult one for the law faculty but, in my view, it has risen to the challenge in an impressive way. However, this is not a one-off exercise. All concerned accept that legal education must constantly evolve to meet the changing needs of the community. With that in mind, a new statutory Standing Committee on Legal Education and Training will be established on 1 September 2004 to oversee that continuing evolution. I have no doubt that the University of Hong Kong will play a full part in that process, and will continue to serve the community and the legal profession well.

July 2004

## Postgraduate Programmes in the Faculty

**Wilson Chow**

LLB 1991, PCLL 1992, LLM 1998

Associate Professor



### Taught postgraduate programmes

Since first being introduced in 1986, the taught postgraduate programmes offered by the Faculty have undergone several phases of development. Below are some of the salient features of the current programmes.

1. Specialization – Since 1997, in addition to the general Master of Laws (LLM) degree, the programmes have been consolidated and developed into several specialist 'streams': LLM in Human Rights Law, LLM in Corporate and Financial Law, LLM in Chinese Law, LLM in Information Technology and Intellectual Property Law (formerly known as LLM in Information Technology Law). Except for LLM in Human Rights Law, other specialized LLM programmes have their corresponding, but shorter, Postgraduate Diploma (PDip) programmes. Moreover, the Faculty also runs PDip programmes in Arbitration and Dispute Settlement as well as in Public Law. The large number of specialized programmes reflects not only the Faculty's diversity in areas of excellence, but also our timely response (sometimes indeed foresight!) to the ever-changing needs locally, regionally and even internationally.
2. Flexibility – We have taken measures to render our taught postgraduate programmes more flexible; we have introduced modularization and extended the maximum period of study permissible.
  - i. Modularization focuses on the timetabling of classes. While some courses are taught by Faculty members usually extending over a number of weeks, some modules will be arranged to be taught by overseas instructors or practitioners over a two to three weeks intensive period, say, in January, June or even the summer months. Consequentially, the composition fee is charged and paid according to the number of modules enrolled in a semester or an academic year.
  - ii. On another front, instead of prescribing for the precise number of years as constituting the duration of study, a maximum period is now provided for. The current maximum period for studying a PDip part-time remains at two years whereas that for an LLM is extended to four years. This means that students, in particular part-time students, can formulate their study plan at a pace which fits best with their work and other commitments.
3. Comprehensiveness of courses offered – Students are required to complete a total of 8 modules for the LLM (and 4 modules for a PDip). Whereas a small number of compulsory modules are prescribed for the various specialized LLMs, a total of more than 50 different elective modules have been offered in the past five academic years starting from 2000/01. Some of these elective modules are cross-listed in more than one stream. Moreover, apart from choosing the electives within the student's chosen stream, a student can choose up to two modules which are listed under any other stream or even run by other departments of the University subject to Faculty approval. Students are, therefore, free to decide the extent of specialization that he or she would like to have without necessarily sacrificing the benefit of the comprehensiveness which the programmes as a whole aim to provide.
4. International outlook – Our Faculty members come from a wide variety of jurisdictions. So does our student body, which includes students from Australia, Belgium, Canada, Germany, Japan, Malaysia, the



Netherlands, the Philippines, Singapore, Spain, the United Kingdom, the United States and, in recent years in particular, the Mainland. We trust that, with such a mix, the programmes we provide will prove to be intellectually rewarding and enjoyable.

5. Broadening the student base – While the Faculty continues to see nurturing future lawyers as one of its primary objectives, we also believe that opportunities to study law should be open to well-qualified non-law graduates. A non-law graduate can be directly admitted to our LLM in Human Rights programme provided he or she possesses the relevant background and experience. In fact, the programme has been attracting officials from, for examples, Southeast Asian countries, who may or may not have a law degree. Recent years have also seen a number of non-law graduate applicants to our specialized programmes in Corporate and Financial Law, Information Technology and Intellectual Property Law and Arbitration and Dispute Settlement. This clearly indicates a strong demand for our courses from qualified, experienced but non-legally trained people, particularly those with good working experience in IT, the corporate and financial sectors, as well as the surveying and construction industries. Rarely, however, do we admit non-law graduates directly into our LLM programmes. Instead, non-law graduates are now eligible for admission to, and therefore encouraged first to seek admission to a Postgraduate Diploma programme. Upon satisfactory performance in the examinations for the diploma, they may apply to continue their studies for the corresponding or the general LLM degree.

### Research postgraduate programmes

Apart from those taught postgraduate programmes described above, the Faculty also offers research postgraduate programmes including the Master of Philosophy (MPhil), the Doctor of Philosophy (PhD) and an American model of research programme known as the Doctor of Legal Science (SJD) which comprises both coursework and research.

Legal issues associated with China's accession to the World Trade Organization appear to have attracted the most attention of researchers recently, particularly those from the Mainland. Areas often taken up as worthy of further research and deeper legal analysis also include those relating to Human Rights, various aspects of the corporate and financial law, the constitutional development of Hong Kong, the future development of the legal system in the Mainland, intellectual property law and arbitration and dispute resolution. The expertise of the Faculty members, together with our first-class law library and research databases, have attracted and continue to attract an increasing number of applications over the years. In the past, the Faculty used to be allocated with just a few publicly-funded places for research postgraduate students but the situation has improved because of the continuing excellence of the Faculty in its research performance. 🍵



**問：羅永聰** 2000 年法律系畢業後，沒有跟隨大隊報讀 PCLL，跑到當時仍然是實驗階段的港大新聞及傳播中心修讀新聞碩士，同年加入〈明報〉，從事新聞工作至今。

**答：李以諾 (Enoch)** 今年完成政治學與法學 (Government and Laws) 雙學位課程後，亦沒有報讀 PCLL，剛獲匯豐銀行聘請出任國際經理 (International Manager)，已有心理準備過居無定所的「國際人」生活。

**黃一山 (Yves)** 工商管理及法學 (BBA and Laws) 雙學位課程三年級生。中六時曾經考慮到美國著名的商學院升學，但後來被精英味道極重的工商管理及法學 (BBA and Laws) 雙學位課程吸引，於 2002 年獲拔尖入讀。對於是否報讀 PCLL，仍在考慮之中。

## 雙學位專訪

羅永聰

LLB 2000

### 前言

第一屆的法律雙學位課程，是在我大學三年級那一年出現，那一年又跑了到蘇格蘭做交換生，故對它們的認識相當有限，印象中只記得完成 4 年課程後可以得到兩個學位\*，完全符合香港人對成本效益的要求，加上包裝又充滿精英味道，兩個課程的收生人數都不多，據說為港大吸回了一批原打算負笈外地名校的尖子。

訪問當天，校園的平台上擺滿了電子產品的特價攤位，圖書館前面又有某學會在為咖啡文化活動舉辦試飲。那一個下午，港大變了一個大市場，完全切合了當日的訪問內容：經濟效益，國際化，個人增值，競爭力……。

### 「為甚麼選雙學位？」

認識一山的時候，他還是一個中六學生，記得當年曾有多間著名美國大學的商學院向他招手，他亦曾經一度躊躇，後來我知道他選擇被拔尖來到港大，心裏不免滴沾。

### 「為甚麼選港大雙學位？」

「坦白說，在香港可以選擇的 Business School (商學院) 其實不多，當時我一心已打算去美國升學。」不過，最後港大的雙學位課程卻留下了這位尖子。「抵囉，4 年可以取兩個學位。但今年之後會加多一年，變成 5 年兩個學位，唔抵喇。」原來都是成本效益的計算。

一山又說，雙學位當時的收生人數仍未擴充，「相信



黃一山 (左) 和李以諾 (右)

都會收到一班幾好的學生」，他就因此對工商管理/法學這個雙學位課程感到興趣。

比一山高兩級的 Enoch，當年選擇雙學位的原因其實都大同小異，很大程度是基於雙學位的「成本效益」，而要數二人的共通點，最有趣的要算是在他們選科之前，原來都未想過會加入法律專業。

「其實我由始至終都沒有想過當律師。」Enoch 告訴我，修讀政治才是她選擇政治學/法學雙學位課程的理由，「律師始終都只是 advisory (給予意見) 的工作，我想幹些別的。」Enoch 月前於網上見到了匯豐招聘國際經理的資料，她對工作的國際性質感到相當興趣，於網上報名後就一擊即中，將要到英國受訓。

二人都認為，雙學位的工作量表面上雖然是比傳統學位高，但仍不算難應付，不過，根據 Enoch 的經驗，實際運作上就真的出現過問題。「當法律這邊要準備考試，政治那邊可能還要交功課，溫習的時間會受影響，據我所知之前還發生過兩邊『撞堂』的情況出現，不過現在情況都改善了。」

無論你喜歡不喜歡，港大法律系內一直存在強烈的「身份認同」，「法律學生」(law student) 這一個身份成為了同學之間溝通的密碼，Enoch 和一山這些「兩棲動物」，對於這個身份，又有甚麼感受？

「在課程的頭三年，其實我們都是社會科學院或商學院的學生，直至第四年才算回到法律學院，所有法律學生的福利有如獎學金等，我們都是沒有資格申請的，就算是法律學院學生會，我們亦只是 affiliated members (附屬會員)，更加不可「上莊」(擔任法律系學生會幹事)。我們都不會覺得自己是法律系的人。」

Enoch 說，雖然與法律學院談不上有甚麼「感情關係」，但多年來與法律系的同學一同上課，亦認識了不



少好朋友，她亦曾兩度加入法律學院的 Jessup Team，到美國華盛頓參加 Philip C. Jessup International Law Moot Court Competition，其中一次還拿了個全球第三。

### 走向國際

我膽敢做證，5年前的法律系裏面，不是很多同學有興趣參加交換生計劃，而大部份到了海外做交換生的，心態都是要去開開眼界，或是過一個特別的悠長假期，估不到5年之後，做交換生竟會變成搵好工的必要條件，同學爭相爭取的一個機會。

「有公司招聘時說明要應徵者有交換生經驗，否則就連面試的機會都沒有。」告訴我「雙學位是搵好工的必要條件」之後，一山再爆出這個近乎匪夷所思的訊息。而他在二年級的時候，亦到了加拿大的 Western Ontario University 作一年的交換生，其中一個目的當然是為了令自己的履歷更加「好看」，更重要的，就是一完自己出國留學的夢想。

Enoch 於 2001 年亦取得了法國領事館的獎學金，到了巴黎政治學院作一年的交換生。她說，在巴黎選修的課大部份都與歐盟有關，對於香港學生來說確實價值有限，不過，一直夢想要跳出本地框框，走進國際舞台的她來說，卻是一個很好的起步點。到巴黎進修之後，Enoch 還在今年暑假到了荷蘭海牙的國際刑事法庭 (International

Criminal Court) 當暑期工，Enoch 說，找這一份工的方法簡單不過，都是在網上找到的。

### 「法律變成配菜？」

二人都承認，雙學位中的法律課程，對他們來說其實都只是「配菜」，不過，這個配菜在卻發揮了相當作用。

「像我去年在投資銀行做暑期工，涉及有關證券法例的工作，都會比較容易理解，上手。」一山又指，可能是過去幾年雙學位的畢業生表現出色，令不少過去不會聘請過香港畢業生的公司，無論是法律界還是商界，都改變了一直以來只相信「來佬貨」的傾向，不過就指明要聘請雙學位畢業生。

有過面試經驗的 Enoch 就說，她亦察覺到僱主偏愛雙學位畢業生，「面試的時候，最起碼不會令人覺得你只得一方面的知識，分析問題的 perspective (視野) 亦會比較闊，我相信這是我們的優勢。」一山亦說：「對我們來說，都可以算是 'law as a tool' (法律當為應用工具)。」

二人都說，雙學位的出現對原來的法律系學生或多或少都構成了些壓力，除了多了一批有質素的同學於成績上作比較，找工作亦出現了直接的競爭，而雙學位亦佔了相當的優勢，因為法律專業並不是他們唯一的出路，若選擇向其他行業發展，法律訓練本身亦為他們創造了相當有利的條件。🍀

\* 編者按：香港大學法律學院與商學院及社會科學學院於 1999-2000 年度開始合辦雙學位課程。學生修畢三年本科課程後獲頒工商管理學士(法律)學位 (Bachelor of Business Administration (Law)) 或社會科學學士(政治與法律)學位 (Bachelor of Social Sciences (Government & Laws))。學生可選擇修讀其後一年的法律課程進而取得法學學士學位 (LLB)。即四年取得雙學士學位。由 2004-05 年度開始，法學學士課程由三年制改為四年制，學生在取得本科學士學位後需修讀其後兩年的法律課程以取得法學學士學位。即五年取得雙學士學位。除以上所述的雙學位課程外，另一與工程學院合辦的土木工程(法律)學位課程 (Bachelor of Civil Engineering (Law)) 亦於 2004-05 年度起開辦。



Orientation Camp in Cheung Chau.



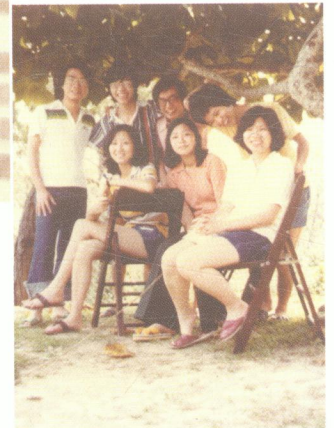
Committee members of a large-scale law exhibition held in Oct 1979.



Some lady mooters on the Moots Day in January 1980.



LLB 1980: (from left) Agnes Chan, Cleresa Wong, Josephine Ng, CL Wong and Samuel Yu.



LLB 1980: (from left) Dickson Pang, Cleresa Wong, Samuel Yu, CL Wong, Agnes Chan, Terence Wai and Josephine Ng sitting under a tree before leaving the Boyscout camp site at Yim Tin Tsai.



'80



Graduation dinner party of Class 1981.



Law Choir singing at the Union Festival in 1980.



Graduation Party at Lily Pond, 1981.



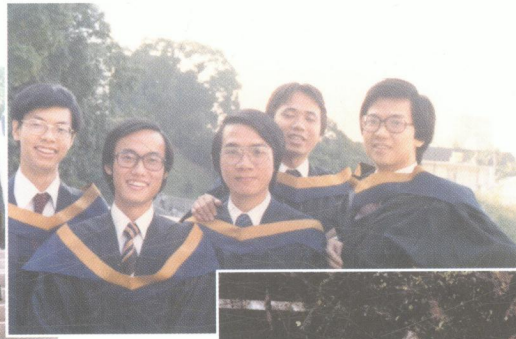
LLB 1980: (from left) Dickson Pang, Cleresa Wong, Agnes Chan, Terence Wai, Jonathan Cheung, Josephine Ng and CL Wong on the bridge to the Swire Hall after the graduation cocktail reception.



Class 1981 went for an outing to one of their classmates' home in Shan Pui Village, Yuen Long (now a well-known place because of the crocodile "Pui Pui").



'81



LLB 1980: (from left) Samuel Yu, CL Wong, Dickson Pang, Jonathan Cheung and Terence Wai coming together for a photo.



(From left) Miguel Martin Delgado, Johannes Chan, Jacklyn Ng, Joseph Tsang and Austin Wong of PCLL 1982.

The class of 1980 getting ready for a class photo.



Law Association ExCo 1980-81: Alan Leong (Chairman), Clara Wong (IVC), Carlye Chu (EVC), Susan Lee (Sec.), Louis Tong (Social Convenor), Bernardine Lam (Publication Sec.), Uriah Tse (Treasurer), Fanny Ip (External Sec.), Carol Chen (Legal Education Sec.) and Wong Man Kit (Sports Captain).



Class 1982 at one of their regular class lunch in 2003.



'82



Albert Chen (third from the left) and some classmates on the Peak.



(From left) Carol Chen, Marlene Ng and Alan Leong of LLB 1982 with E.T.



Class 1982: (from left) Lester Huang, Ernest Lin, (back) Daniel Chan, (front) Albert Tsang, Alan Leong, Carmelo Lee, John Yan and Uriah Tse in their first year.



Class 1981: A happy outing.



The School of Law teaching staff in 1983.



'83

# A Journey Around Constitutions —

## Reflecting on Contemporary Constitutions

Professor Yash Ghai<sup>1</sup>

*The SirY K Pao Chair Professor in Public Law*

The invitation to write an article to mark the 35th anniversary of the Faculty of Law provides me an opportunity to reflect on key developments in the principal area of my research, constitutional law. A year ago, in the inaugural Beinart Lecture at the University of Cape Town, I examined some differences between classical modern



*In Papua New Guinea: Professor Ghai was an advisor to the governor of Bougainville during negotiations to end the Bougainville rebellion. The front row is the Bougainville team. Professor Ghai is at the back with the technical team.*

constitutions and the variety of contemporary constitutions, and used the contrasts to illustrate the changing nature of the state, politics, and identity. There have truly been remarkable changes in the ways constitutions are perceived and prepared since I first became interested in the subject nearly five decades

ago. I propose, in accordance with the brief given to me by the editors, to reflect on these changes, and to illustrate, where possible, by own research or consultancies and personal anecdotes—which it seems to me the brief requires!

If a constitutional lawyer is to help frame real solutions to contemporary problems facing states and people, his or her role must go beyond the conventional approach of merely concentrating on drafting a text appropriate to the particular circumstances of a country. In my experience, this has involved introducing decision makers to comparative research on what has worked (and what has not) in other countries, helping to narrow down the available options and encouraging broader understandings of contentious concepts such as self-determination. It has also involved processes of conflict resolution: opening up discussion between people who have been at war with each other in an attempt to find common ground where none may be apparent to start with. As well as facilitating negotiations and suggesting suitable compromises between positions of different sides, teaching negotiating skills is an important aspect of working towards constitutional solutions. A commitment to democratic procedures is crucial to identifying and addressing the issues in the society in question, and thus broadening participation has been a key element of my approach to constitution-making<sup>2</sup>.

The first constitution I encountered, as a child, was the colonial constitution in the racially mixed and hierarchical society of Kenya, which inflicted on the majority of its people a double subordination—to the interests of the empire and of the white settlers. By the time I was finishing my university studies, western colonial empires were collapsing and my research as I finished my undergraduate degree focussed on independence constitutions negotiated with (or more frequently imposed on) local political leaders. I was too young to play any role in the making of independence constitutions in my country or its neighbours—but I did advise on preparing and drafting constitutions for late decolonisation—Seychelles, Papua New Guinea, and some other island states in the South Pacific. The brief and simple colonial constitutions, primarily designed to create an authoritarian and

<sup>1</sup> I want to acknowledge the understanding of my various heads of departments and dean at the Faculty of Law, particularly Professors Albert Chen, Roda Mushkat and Johannes Chan, and the generous funding by the University of Hong Kong, including the Distinguished Researcher Award, which has enabled me to make several of the constitutional journeys discussed in this article.

<sup>2</sup> My practical work on constitution making and litigation has ranged over Africa, Asia, and the South Pacific; and has, among others, concerned independence constitutions (Seychelles, Papua New Guinea, Solomon Islands, Vanuatu), reviews (Tanzania, Kiribati, Cook Islands, Maldives, Zambia, Kenya), constitutional rehabilitation after coups (Fiji), establishing constitutional orders after prolonged internal conflict (Cambodia, East Timor, Afghanistan), facilitating negotiations and consensus in conflict situations (Papua New Guinea, Nepal, Sri Lanka), advising on constitutional implications of setting up special tribunals to prosecute associates of a former dictator (Uganda), advising prime ministers and presidents on their powers, including dissolution of parliaments (Papua New Guinea, Samoa, Solomon Islands), establishing systems of autonomy (Papua New Guinea, Sri Lanka), litigation on the validity of a coup (Fiji), habeas corpus petitions (Kenya), validity of nomination for presidential elections (Kenya) and the legality of a legislature and the validity of laws and budgets passed by it (Samoa). I have also advised some international organisations and states on human rights issues.

undemocratic centre of power, gave way to complex instruments intended, overnight, to disperse power, usher in democracy, establish a regime of human rights, and create intricate relationships between diverse communities and races—the very opposite of the colonial system<sup>3</sup>. Not surprisingly these constitutions collapsed under their own weight—and the impatience of leaders newly introduced to the grandeur and temptations of power.

These neo-liberal constitutions were replaced by either military rule, which made little pretence of respect for democracy or the rule of law, or by one party regimes that attempted to root constitutions in indigenous concepts of governance and legality. When President Julius Nyerere transformed Tanganyika/Tanzania into a one party state, Professor Patrick McAuslan and I (both young law teachers then at the University of East Africa, the first law faculty in that region, only eight years ahead of Hong Kong's) were asked to recommend how the constitution could maximise democracy and constitutional safeguards—within the integuments of a one party regime. (The new constitution established the first ombudsman in Africa, competitive elections under the auspices of the party, and a leadership code which restricted opportunities for senior officials to engage in private business or corrupt deals—some of this due to our advice)<sup>4</sup>. Nyerere was not, like many other advocates of one party regimes, a power hungry politician, and his adoption of a one party regime was an anxious and serious search for a political framework suitable to coerce a fragile state and society into social and economic development and yet uphold freedom<sup>5</sup>. Like many other states (including in Eastern Europe), Tanzania found that these two goals could not be easily balanced. A monopoly of power corrupts, indeed even a modicum of uncontrolled power corrupts absolutely—Lord Acton's aphorism erred on the side of understatement<sup>6</sup>.

The opportunism and vagaries of the cold war had buttressed military and one party regimes, but with the fall of the Berlin wall, the west had less of a motive, and Russia less of a capacity, to shelter these regimes. The 'harsh' wind of democracy swept through Latin America, Africa, large parts of Asia, and eventually Eastern Europe. The constitutional trajectory of states subjected to the winds of change was not similar in all respects. Some

made a relatively easy transition to liberal democracy (particularly in parts of Europe), but others got mired in internal conflicts, frequently based on ethnic differences. Of the latter, some collapsed into 'failed' states, and had to be taken into international care as 'protectorates' and a process of rehabilitation (Cambodia, East Timor, Guatemala, Namibia, Bosnia-Herzegovina, Afghanistan, soon Iraq?)<sup>7</sup>. Others sought the route to constitutional rule through 'consociationalism', forms of democracy and power sharing which rejected majoritarianism. Post-modernist thinking challenged the liberal state, glorifying



*Listening to the views of a citizen of Kenya on the review of the constitution.*

*difference* and particularistic identities, fragmenting the political community into self-sufficient groups. The struggle was no longer over new territory, but over the internal division of state territory, and with it the diffusion and fudging of sovereignty. The principle of self-determination was turned from secession to autonomy. 'One country, two systems' was my first detailed examination of autonomy, although autonomy has a long lineage<sup>8</sup>. Deng Xiaoping had predicted a critical role for autonomy to solve world problems—and how right he was<sup>9</sup>! States which emerged from colonialism soon after the second world war and had seemed to have achieved some kind of stability, like Sri Lanka and the Sudan, also came under pressure of ethnic and religious claims (even the much older liberal Canada had to confront acute demands from the francophones and the aboriginal peoples).

<sup>3</sup> My first book (co-authored with Professor Patrick McAuslan), *Public Law and Political Change in Kenya* (1970), examined Kenya's colonial structures for exercise of public power and its complicated independence constitution—and foreshadowed the collapse of that constitutional order.

<sup>4</sup> Our memorandum was later published—see 'Constitutional Proposals for a One Party State in Tanzania' (1965) 1 *East African Law Journal*, pp 124–147.

<sup>5</sup> In those early post-colonial years, his emphasis was on development; his more interesting remarks on the role of a constitution were in terms of 'brakes' and 'accelerator'—he argued that the west valued a constitution because it put brakes on power, but what Africa needed was a constitution to accelerate development, for which safeguards might be an impediment.

<sup>6</sup> Lord Acton said, 'All power corrupts, absolute power corrupts absolutely'.

<sup>7</sup> My personal experience of the rehabilitation of 'international protectorates' was in Cambodia where I was consultant to the United Nations, East Timor where I advised on the structuring of the process of constitution making, and Afghanistan where I worked with the Constitutional Commission and the United Nations on the preparation of its new constitution.

<sup>8</sup> *Hong Kong's New Constitutional Order and the Resumption of Chinese Sovereignty* (1997).

<sup>9</sup> Deng's views were expressed to the then British Foreign Secretary, Mr Geoffrey Howe and appear in Deng Xiaoping, *On the Question of Hong Kong* (1993), p. 14. The latest of contenders for autonomy, as I just heard on the BBC as I write this, is Darfur in Sudan whose claim has been advanced by the EU and other international agencies.

It is therefore not surprising that the most creative constitutional innovations of our times derive from the imperative to accommodate diversities and plurality of identities, captured in the cliché of 'unity in diversity'<sup>10</sup>. The collapse of the theory of the nation-state which this post-modern pre-occupation leads to tends to produce a complex, many layered polity, with centrifugal effects on the sites of power. At the same time economic globalisation sucks state power upwards into confederal and perhaps eventually into federal regional structures—and international economic organisations. Not surprisingly, the question: Whither the state?, is on the lips of many. That surely is a fascinating question for scholars and practitioners of constitutions and politics. It compels a re-examination of the functions of a state when, amidst numerous global and local arms bazaars, it can no longer claim a monopoly of power—and thus no longer adequately perform the most basic of state functions, providing security to citizens. The principal parameters of the economy extend well beyond state boundaries. State ideologies are vigorously, and sometimes violently, contested by particularistic claims and interests, for which it is now possible to find support in international norms. Individual rights have to be balanced with group rights.



*Meeting a representative of the Muslims from the coast of Kenya at a public hearing on the review of the constitution.*

But more on this later.

## Generations of Constitutions

### a) Colonies

Over the period of my academic and practical work, the functions of constitutions have changed or acquired an older functionality. Growing up in Kenya, I became familiar with the colonial constitution whose a principal function was domination of the colony and warding off competing imperial rivals (an important function in the early colonial period). The economic interest is overriding, although it finds little expression in the constitution—which is

designed to give maximum discretion to the legislature and the executive, personified in the office of the Governor. The Governor was the centre piece, representing the dominion of the imperial government, operating under the double principle of subordination: the subordination of the colonial executive to the imperial government, and the subordination of the colonial legislature to the colonial executive. The colonial constitution could dispense with democratic pretensions (but relied to some extent on the rule of law, less for political legitimacy than to support the market, albeit a highly administered market). However, political factors could not be wished away, since the dialectics of control and appropriation dictated limits on exploitation and a selective co-optation of local elites into the power structure. Perhaps this balancing was less important in Hong Kong than in Kenya which had a large indigenous population divided by tribe and religion, prone to extreme instability if there was too radical a rupture with previous political economy. Hong Kong was largely seen as a *tabula rasa* and its original role was to mediate world trade with China rather than generating production of its own. The colony became the basis of essentially a new settlement and a new society—this probably explains the generally favourable attitude towards the colonial government in Hong Kong, which was a great surprise to me, as an ardent anti-colonialist, when I first came here.

The absence of a bill of rights and the refusal of courts to recognise any overriding constitutional principles meant that the colonial government was free to organise society and economy as it wished. The colony was organised on basis of racial separation and privilege; races were designated as corporate groups entitled (or as was often the case with Africans and Asians, not entitled) to representation in state institutions or to resources of the country. The political community was thus fragmented, not only as between different races, but frequently also within races. The pluralistic legal system was the expression of the separation of ethnic and cultural communities, each subject to its own personal laws.

### b) Independence

The independence constitutions of the 1960s were driven by two considerations—the definition and consolidation of state sovereignty, cutting off links to the colonial power; and establishing, through the regulation of sovereignty, rules for the co-existence of different communities which colonialism had ensured did not become a nation. The structures of the state were redesigned to introduce democratic forms of representation based on a new concept of citizenship, not always equal or universal, qualified by differentiation and inequality explicit in customary laws. The independence constitutions certainly had liberal aspirations—borrowed heavily from western

<sup>10</sup>Generally neglected is the perhaps even more important concept of 'diversity in unity', for unless there is unity among diverse groups, there can be no diversity.





constitutionalism. Western constitutionalism is based on the theory of the social contract in which liberties and freedoms of individuals occupy a place of honour. Fundamental concepts of authority, jurisdiction, rights and obligations, representation, obedience and resistance, accountability and so on have been developed within a contractual framework. Although the terms of the contract that give body to the constitution may vary between the key ideologies of the modern western state (reflecting the constituencies of the times), its underlying premise is the separation between state (as the apparatus of government) and civil society (representing social and economic institutions and processes autonomous of the state). Captured in the concept of constitutionalism or the rule of law, it is premised on the belief that the primary function of a constitution is to limit the scope of governmental powers and to prescribe the method for its exercise, thereby preserving the autonomy of civil society. In its modern form, the constitution performs these functions typically through the separation of powers, the incorporation of democratic principles, and some form of judicial review. The constitution validates certain fundamental values and, subject to their overriding supremacy, establishes a framework for the formation of government and the conduct of administration. These values are essentially liberal and market related, emphasising individual civil, political and property rights underpinned by the concept of the equality of all citizens under the law.

Important roots of constitutionalism lie in the need of capitalism for predictability, calculability, and security of property rights and commercial transactions. The concept of general rules was particularly well suited to these aims. In part the movement towards general rules was a reaction to special privileges and monopolies accorded in royal charters and instruments of incorporation. There was, and remains, considerable tension between the needs of capitalism in general and the desires of individual enterprises or sections of industry, which modern states resolve in different ways (a dilemma of which the Hong Kong people are well aware).

It should come as no surprise that the independence constitutional orders had extremely limited shelf life. For reasons too complex to explore here, the independent state was characterised more by continuities than discontinuities with the colonial state. Some called them charters of neo-colonialism. This was not entirely fair, for if the logic of the independence constitutions had been allowed to play out, the colonial state might well have been transformed. But nationalist leaders who succeeded the governor were determined to reinvent themselves in the image of the governor with untrammelled powers—the office of the prime minister was replaced by that of the president and colonial laws and administrative structures were kept intact, the courts refusing to acknowledge the primacy of the constitution over statute<sup>11</sup>. The principle of

gubernatorial rule was pressed to its logical conclusion when many states converted themselves into one party or military regimes, the previous parliamentary systems replaced by autocratic presidential systems. The autocratic president became now the centre piece of the new political order.

I have discussed elsewhere the western inspired independence constitutions, using Weberian categories, as examples of a rational-legal state, with legality as its underlying principle and a major source of legitimacy. Authority is impersonal, deriving from a system of rules which also express the purposes for and the ways in which powers must be exercised. The powers of institutions and officials are defined and bounded by the law, and do not arise from the personal qualities of the office holder. The obedience of citizens is thus not to individuals but to lawful commands. Instead, the new leaders transformed the state from rational-legal to patrimonial. The patrimonial state is characterised by highly personal rule. The basis of authority is the overarching powers and discretion of the ruler. Weber discussed two types of patrimonial state: one, normally in a system of estates, in which the ruler governed through some form of sharing and delegation of powers, in which the forms of delegation needed to be secured against arbitrary infringements, and which thus promoted notions of binding rules in certain relationships. In the other type, which he called patriarchal patrimonialism, the ruler governs more directly, without any legal limits on his powers. The wishes, fears, and anxieties of the ruler are paramount determinants of policy and action (consistent with not provoking outright rebellion), with consequent unpredictability. There is no sharp distinction between the public and the private sphere of the ruler—and often frequent raids on the state exchequer. The appointment and tenure of officials depend upon the grace and favour of the ruler. His trust and confidence are the key to power and influence and thus promote court politics, with its intrigues and uncertainty. Although the confederal and clientelist nature of the politics of numerous, then newly independent states may suggest more an estastist than a patriarchal patrimonialism, the trend has been in the latter direction.

The reason for the movement from the legal-rational to the patriarchal is a compound of many factors, more Marxist than Weberian. There is of course the greed of the new rulers, whose principal access to resources is via the plunder of the state (hence the pervasiveness of corruption). But there are also more objective and structural factors. One reason for the failure of constitutions in Africa is simply that they were expected to carry a much heavier burden than, for example, in the west. They were required to inspire a new form of identity, create national unity out of diverse ethnic and religious communities, prevent oppression, promote equitable

<sup>11</sup> I explored this transformation in 'Constitutions and the Political Order in East Africa' *International and Comparative Law Quarterly* Vol. 21 (1972), pp 403-433.

development, inculcate habits of tolerance and democracy and ensure a capacity for administration. These tasks are sometimes contradictory. Nationalism can easily be fostered on the basis of myths and symbols, but in a multi-ethnic state these are often divisive (as the conversion of Ceylon to a 'Sinhala' Sri Lanka so aptly, and horrifyingly, illustrates). Traditional sources of legitimacy may be inconsistent with modern values of equality. Economic development, closely checked and regulated under colonialism, threatens order and ethnic peace by producing mobility and the inter-mingling of communities in contexts where there is severe competition for jobs and economic opportunities amidst scarce resources. Democracy itself can sometimes evoke hostilities as unscrupulous leaders play upon parochialism, religion and other similar distinctions.

This burden was compounded by the nature of third world politics. Although not immune from violence, the state in the west experienced a more organic growth than in the third world, where it was an imposition, dominated the economy, and was instrumental in shaping economic reality. Political factors were consequently relatively more important. In the third world countries, political power is harder to control because, partly as a result of colonial policies, civil society is weaker and fragmented (which has proved congenial to new governments). The western state also enjoyed relative autonomy from international forces, which facilitated indigenous control over society and enabled power to be diffused and institutionalised to a greater degree. The third world state owes not only its genesis to imperialism, but even now its very nature and existence are conditioned by contemporary economics and politics. Hardly in control of its destiny, such a state and its people find it hard to institutionalise power on the basis of general rules, or to resist encroachments upon rights and democracy engineered by more powerful states and corporations (the overthrow of the government of Allende in Chile by the encouragement and material assistance of the United States and its corporations is a classic example; in our own region we have seen how the United States has assisted so many regimes to trample upon human rights). When third world countries moved to independence, the tools of coercion were readily available (from cold war warriors) and made their rulers careless of cultivating the consent of the ruled.

### c) Rise and fall of communism

One of the most spectacular features of the history of constitutions in the last two decades has been the near annihilation of communist constitutions—from a situation in the last quarter of the 20th century when nearly half of

the world was governed by communist regimes. My own familiarity with communist constitutions was through other people's scholarship—and a study of original texts. Writing in 1993, I said that the theory of communist constitutions rests on two bases—the criticism of bourgeois legality and Marxian teleology. Marx exposed the essential class, and exploitative, nature of the liberal state, disguised in the discourse of rights and constitutionalism. The bourgeois constitution itself secured the primacy of civil society through which the capitalist class dominated the state and economy. Clearly this would not do for communists. I wrote: '...unlike bourgeois constitutions which (denying the dynamics of their history) emphasise order and stability, socialist constitutions (inspired more by Lenin's perspective than Marx's) espouse as their mission the egalitarian transformation of society. In turn, this requires the dictatorship of the proletariat, the most progressive elements in society..., to break and appropriate the economic, social and political power of the bourgeoisie. While the bourgeoisie has for long periods used civil society to dominate the state, the proletariat has little alternative to the use of the state to change civil society, for the communist revolution vests it with political power but does not change the underlying economic structure.'

'Communist constitutions therefore become overtly authoritarian instruments of class power. The relative weakness of the proletariat as a class and the magnitude of the task it faces lead to the denial of various political and economic rights to members of the erstwhile bourgeoisie and the strengthening of the state apparatus. The working class must secure domination over and, if necessary, replace civil society so as to transform it. State power must be unified, so that the separation of powers is abandoned in favour of the centralisation of power in representative state institutions. This concentrated monopoly of power in the state body is in turn subject to the supervening authority of the Communist Party, which owes its existence and powers to a mandate higher than the constitution itself: to history itself'. I noted a deep contradiction at the heart of a communist constitution—and stated it in the following way, 'It is thus possible for the liberal constitution to base its legitimacy upon values (such as civil and political rights) and mechanisms (such as pluralism) internal to itself and thereby become a major legitimising device for the state and society. The communist constitution (at least in the early stages, where coercion is written on its face) must seek legitimacy from elsewhere, namely socialist theory. The very emphasis on these external sources of legitimacy demonstrates the secondary and functional nature of the constitution, one not particularly appropriate to legitimacy'<sup>12</sup>. It is fair to say that as the People's Republic of China (PRC) abandons socialism in favour of capitalism, its political and constitutional system will come under great

<sup>12</sup> 'Constitutions and Governance in Africa: A Prolegomenon' in Sammy Adelman and Abdul Paliwala (eds), *Law and Crisis in the Third World* (1993). The quotations appear in pages 57-60.

stress. If evidence is needed, it comes from Eastern Europe, where the collapse of the communist regimes came less as a result of assault by their opponents as due to the total lack of legitimacy of the regimes once the basic tenets of socialism were abandoned<sup>13</sup>.

My active engagement with the PRC constitution (as adviser and scholar) began with my research on Hong Kong's Basic Law and its foundations in the PRC constitution. It was clear to me that no study of the prospects of the Basic Law could be undertaken without understanding the PRC political and legal system in which it was ultimately embedded. I was struck by the very different traditions of law and legality, and the judicial function, on the Mainland and in Hong Kong, which boded ill for the autonomy of Hong Kong (for this reason in my book on the Basic Law, I devote a substantial chapter to the Mainland constitutional and legal system). The dialectics between the liberal legalism of Hong Kong and Leninist 'democratic' centralism of the Mainland would have been a fascinating phenomenon to behold had not the superior political power of the Mainland subdued the technical superiority of the common law—so much, do I hear you say, for constitutions!<sup>14</sup>

#### d) New wave of democratisation

The one party or military regimes could not survive the collapse of the Berlin wall. The new-found zeal in the US for democratisation, now released from the imperatives of the cold war, left many a dictator naked, deprived of the political and material support to continue their regimes of oppression. Under these pressures some countries managed a sort of transition to democratic constitutions, seeking at the same time to cure many of the ills of a bureaucratic and corrupt regime—what we might call the democratic constitution. Others under the weight of internal rebellions and civil conflicts, experienced greater difficulties in a transition of this kind and went on a different trajectory, sometimes being taken into international receivership or protectorates, the escape from which lay through the route of a negotiated constitution designed not so much to overcome these internal divisions as to institutionalise them—what we might call the ethnic constitution.

I do not want to suggest that these two categories exhaust the possibilities of contemporary constitutions, but they are the more highly publicised and perhaps the more interesting. The outstanding example of liberal democratic constitutions are those of East European states. Just as the African independence constitutions were the anti-thesis of colonialism, the East European constitutions are the anti-thesis of communism. They

place a special emphasis on democratic institutions based on free and fair elections. They seek to separate parties and the state, prohibiting direct rule by political parties—in contrast to the Leninist policy of direct and exclusive rule by the communist party. Some constitutions prohibit the adoption of state or party ideologies by the state. The constitution is supreme and has direct application, unlike the previous rule that required statutes giving effect to its provisions. The principal powers of the state have to be separate. All constitutions establish constitutional courts with the ultimate power to interpret the constitution and laws, and to ensure the enforcement of their decisions—a marked reversal of the communist traditions. The market economic system is guaranteed, generally in explicit terms, and the protection of private property is strongly upheld. Despite this commitment to the market economy, the constitutions eschew moral declarations, perhaps



Professor Ghai explaining to the Fiji Constitution Review Commission the proposals of the opposition parties which he was advising. Left: JR Reddy, leader of the opposition party.

mindful of attempts of the previous regimes to promote a New Socialist Man. They are extremely conservative, sparse in their scope, content with setting up political institutions and letting them get on with the business of the state—in the way of classical constitutions. The path to future social and economic policies is left open, but what is made clear that they must be consistent with market economies.

<sup>13</sup> An authoritative book on constitutional changes in Eastern Europe says, 'There was no counter-elite, no theory, no organisation, no movement, no design or project according to whose visions, instructions, and prescriptions the breakdown evolved... Apart from narrow and rather ineffectual circles of dissidents that could never effectively break out of their marginal habitat of academic, artistic, or religious institutions (if not prisons), opposition movements were largely... a product of the regime's decay rather than its antecedent cause'. Jon Elster, Claus Offe and Ulrich Preuss, *Institutional Design in Post-Communist Societies: Rebuilding the Ship at Sea* (1998).

<sup>14</sup> I explored the rise and fall of the common law in post-transfer constitutional litigation in 'Litigating the Basic Law: Principles, Interpretation and Procedures' and 'The NPC Interpretation and its Consequences' in Chan, Fu and Ghai (eds) *Conflict over Interpretation: The Constitutional Debate* (Hong Kong: HKU Press, 2001). The book contains many interesting analyses by leading scholars on the right of abode cases, as well as relevant documents.

This European approach shows a great deal of faith in democratic politics, in contrast with democratic constitutions in Africa and Asia where there is considerable scepticism about politicians and politics, and hence highly regulated political systems. The 1997 constitution of Thailand, drawn up at a time when the reputation of politicians and governments was at a particularly low point, provides a good illustration of this approach. Most devices discussed below feature in that constitution. The key operators and, one may say, the beneficiaries of democracy, that is to say, politicians and political parties, are regarded as the most dangerous enemies of democracy. Consequently the constitution defines in considerable detail what the government may or may not do. What it (and other state agencies) may not do is largely the result of an extensive bill of rights. Areas or jurisdiction prohibited to the state are also defined by vesting responsibilities for those matters in independent commissions or other authorities, such as, for example, over sensitive land issues, or the pursuit of linguistic and cultural rights of minorities. What the government must do is prescribed in what are called Principles of State or Directive Principles, which may require the state to pursue policies of equitable regional development, affirmative action for disadvantaged communities, promote all indigenous languages, safeguard natural resources, protect the environment, ensure access to courts, support science and technology, and so on. Increasingly, positive obligations are placed on state agencies by bills of rights that include economic, social, and cultural rights and thus require the state to ensure the people's basic needs.

Another set of provisions aims at preventing the abuse of office by ministers, legislators and senior administrators. They may be prohibited from engaging in business, especially that which conflicts with their duties. They are required periodically to disclose to an independent agency their assets and liabilities. The conduct of political parties, which is often the cause of violence and corruption, is regulated to ensure that their charters and practices are consistent with fundamental principles of democracy, that they practise internal democracy, and that their accounts are audited and published to achieve transparency—otherwise they forfeit the right to compete in elections. Thailand goes so far as to establish a second chamber where no candidate can be a member of a political party. This chamber has been given critical functions where independence from party politics or the administration is considered necessary, as in appointments to the electoral commission and the constitutional court.

Independent commissions are also established to perform sensitive and critical functions which are essential to ensure an open political and administrative system. Thus the drawing of electoral constituencies, preparation of electoral rolls, and the conduct of elections are the responsibility of an independent electoral commission. In

some countries the management and allocation of state land are done by an independent commission. In order to prevent the abuse of the criminal process, prosecutorial powers are vested in an independent director of prosecutions. Some key elements of monetary policy are removed from the ministry of finance and given to an independent central bank. Various institutions, their independence and resources granted under the constitution, are established to deal with complaints against the administration and to protect people's rights—ombudsmen, human rights commissions, and anti-corruption authorities.

Yet another device is to empower the people and facilitate their participation in public affairs. The constitution requires the state to disclose information and reports that it holds (the freedom of information) and the Kenya draft constitution obliges the government to publish and publicise any important information affecting the nation (in a country where the government routinely suppresses reports of commissions of enquiry or investigations into charges against ministers or others favoured by it). The allocation of airwaves is taken away from the government and given to an independent commission, while state owned media are required to provide equal and fair coverage to all political and social groups. Electors who consider that their MP has failed to discharge her responsibility conscientiously may remove the MP. Parliament and the administration are required to ensure that opportunities are given to the people to participate in law making and in decisions that affect them. Some constitutions, following the Swiss model, give people the right to initiate legislative proposals for consideration by the legislature. And to ensure that all these onerous provisions are observed, constitutional or supreme courts are established with wide constitutional jurisdiction.

As will be obvious, this type of democratic constitution reflects not only distrust of politicians, but also acknowledges the rudimentary nature of the culture of democracy. In the European democratic constitutions, the culture and practices of democracy are taken for granted, and made the basis of the constitution. The 'third world' constitutions seek to make up for the democratic deficit among politicians and political parties and to promote democratic habits and practices.

#### e) Rise of ethnicity

The most interesting developments for a constitutional scholar have occurred in political systems which deal with multi-ethnic diversity—this has been the main focus of my research and advisory work in the last decade or so. Today most states are multi-ethnic, and perhaps always were—it is just that the diversity was not acknowledged. Now under the impetus of globalisation, migrations, rights



consciousness, gender politics, powers of imitation, and suffering, the question of diversity has forced itself on politicians and policy makers, and the international community. Broadly, three approaches have competed for primacy: the hegemonic, liberal and consociational. In the first, stability of society/societies is created through the hegemony or dominance of one ethnic group: examples are whites in pre-apartheid South Africa and pre-independence Zimbabwe, Jews in Israel, Russians in the Soviet Union, the fatal attempts of Slobodan Milosevic to carve out a similar dominance of Serbs in the former Yugoslavia, and the aspirations of fundamentalist Hindus in India. Individuals acquire and exercise rights as members of communities which are given a corporate status; rights are not equally distributed. This approach is discredited now—although it is not without its adherents.

The liberal approach on the other hand is committed to equal rights of all individuals/citizens. Under a regime of rights and democracy, the state is neutral between persons and communities—non-discrimination being its fundamental principle. The state's neutrality is not to be interpreted as hostility to differences in religion, language, social status, or historical traditions. On the contrary the liberal state prides itself on its tolerance, indeed celebration, of difference. But it believes that this tolerance is only possible if these differences do not intrude on the public sphere—the liberal regime depends on a sharp distinction between the private and public spheres, and it is in the private sphere that it sees the exercise of rights, associational and confessional activities, the pursuit of sectarian values and cultures. It also considers that individuals and groups should be free to seek their own conception of the good life (so long as they respect the rights of others), and for this purpose too state neutrality between different conceptions of the good is necessary. This is an attractive framework but it has come under considerable criticism even from those one would expect to support it.

One strand of criticism is that the liberal state does not live up to its claims—that the state is centralised, monopolises power, searches for uniformities in law and administration, which leaves little space for diversity. More empirically, it is argued that in practice the liberal state privileges the culture of the majority community—and there have of course been a close association between liberalism and the theory of the nation state, which is premised on the cultural homogeneity of a people. The dominant mode of political organisation and decision making is majoritarianism, to the obvious disadvantage of minorities. Others say that liberalism underestimates the importance of culture to one's orientation and the development of one's values and moral judgments—or if it does not underestimate it, it tends to ignore the significance of minority cultures vulnerable to extinction under modern pressures of the market and the state.

Many countries which have been regarded as liberal have had to confront the rise of ethnic based claims to political recognition and participation, grounded in their own cultures, languages, religions (Canada being an interesting example which has tried hard to grapple with the dilemmas liberalism faces). Developing countries with acute difficulties of nation building have had to balance the demands of difference with the imperative of unity, and try to transcend ethnicity through genuinely national institutions. For example, the electoral system is designed to create incentives for national rather than regional political parties and if the system is presidential, to ensure that the candidate who is elected president enjoys widespread support in the country, for example by requiring in addition to a majority vote nationally, specified support (say 25% of the votes) in a specified number of provinces (say 65%) (as in Nigeria and Kenya). This can be very integrative. Other devices to promote a broad nationalism can also be adopted, including inter-ethnic equity and redress for past injustices (this is the South African approach).

Those who consider that liberalism cannot do justice to minority cultures have turned to the consociational approach. Two assumptions underlie consociationalism. The first, much contested, is captured by the concept of primordialism, which starts from the presumption of what is often called the given and irrevocable reality of diverse communities and cultures. It assumes that cultural, religious, and linguistic differences are in-born and define our very identity—and are not susceptible to change. It is therefore better and fairer to accept these existing differences and identities and build political structures around them. The second assumption is that it is possible to have a democratic order in a multi-ethnic state—but it is necessary to abandon institutions and procedures of majoritarianism and make room for forms of power sharing which enable each ethnic group to participate in affairs of the state. Consociationalism owes a great deal to the intellect and energies of Professor Arend Lijphart who for decades has been arguing its virtues, and elaborating the detailed constitutional framework to achieve it, central to which is the constitutional recognition of communities as corporate groups and the bearers of political entitlements. These groups should have representation in both the legislature and the executive, with appropriate vetoes to safeguard their key interests, should enjoy territorial, and where necessary, non-territorial forms of autonomy, and the state should observe the general principle of ethnic proportionality<sup>15</sup>.

The concept of 'primordialism' is strongly contested by other social scientists who argue that cultural differences are not in-born and immutable but are socially and politically constructed, often by ethnic 'entrepreneurs' who have a vested interest in politicising these differences. It would be foolish to institutionalise what are temporary

<sup>15</sup> I have discussed some constitutions influenced by Lijphart's ideas in 'Constitutional Asymmetries: Communal Representation, Federalism and Cultural Autonomy' in Andrew Reynolds (ed.), *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* (2002).

and fluid identities—of which there are many in this post-modern and globalising world, and to fragment the political community. The critics also argue that many of Lijphart's institutional prescriptions are prone to instability as compromises among community leaders unravel and are ultimately unworkable (such as coalition governments). Despite powerful intellectual attacks, consociationalism is on the rise. As more and more countries are engulfed in civil ethnic wars, with horrible atrocities, and the world community gets drawn in, consociationalism seems to provide a ready fix. Increasingly the demands of minorities are couched in terms of identity, power sharing, and self-government, the building blocks of consociationalism. As the focus in the principle of self-determination shifts from secession to internal democracy, forms of power sharing have become salient to that democracy.

In this approach, manifested in such recent constitutions as Northern Ireland, Bosnia-Herzegovina, Kosovo, and to a qualified extent Fiji, communities are treated as corporate groups and entitled to rights as such. This separation of communities is reflected in some countries in separate electoral rolls and reserved seats. The legislature operates through a complex system of voting, sometimes by a vote of all the members together, sometimes separate voting by communities, and on sensitive issues, a combination of the two. The form of government is often a coalition of different communities. Sometimes there is a joint presidency, three person or so executive with a rotating chair (as in Bosnia-Herzegovina); and membership of different communities in the cabinet based on proportionality or fixed numbers. Complex voting systems apply even in the cabinet. A general principle of proportionality applies to public service appointments. Where the geographical distribution of population allows, each community has control over its own region. If this is not the case, complex systems of cultural or religious councils are established to exercise community autonomy cutting across the country. Citizenship rights are less important than the entitlements of communities. There are serious restrictions on mobility from one community to another—although some people are allowed to or forced to designate themselves 'others'. Such constitutions, privileging culture over a common or secular nationalism posits a clash between the universal and the particular. This clash is played out in the dialectics of individual and group rights<sup>16</sup>.

A principal device for accommodating diversity, much favoured by minorities and much resisted by majorities, is autonomy. The demand for autonomy can arise because a community does not feel part of the wider political nation

(as with the Swedish speaking inhabitants of the Finnish islands of Åland, or the Banabans of Kiribati) or arises from disenchantment with the state (Sri Lankan Tamils, Southern Sudanese, Bougainville). My first major encounter with autonomy was in the designing of the independence of Papua New Guinea. PNG consists of the eastern half of New Guinea island (the other half being part of Indonesia) and a series of islands. These island communities had not been economically or politically integrated and there was little sense of belonging to a wider state formation. Bougainville most of all, as it was the farthest from the capital and felt greater affinity to its neighbour, Solomon Islands. So it demanded, and the constitutional planning committee recommended, considerable autonomy for it and other communities which desired it. At the final stages of the process, the constituent assembly rejected the chapter on autonomy—and Bougainville launched a rebellion. I was asked back as a mediator and the problem was resolved by the re-statement of the chapter somewhat modified<sup>17</sup>.

In 1982, attending a conference on decentralisation in Colombo, in the aftermath of the worst pogrom against Tamils, I had lunch with two old friends, Lalith Athlumudali, then minister of justice, and Neelan Tiruchelvam, then a leading light in Tamil United Liberation Front (a parliamentary group). They jokingly asked me if I would produce proposals on autonomy since this was high on the list of demands of the Tamils. Both liked the proposals I prepared. Neelan thought that he could persuade his party (then the principal representatives of the Tamils) and Lalith said that he would try to persuade President Jayawardena. The next morning Lalith told me that the president liked the proposals but I had first to explain it to key Buddhist monks. When I met them that evening, they were in no disposition to listen to the proposals but responded with bitter invective against the Tamil community. Next morning the president decided not to proceed with the proposals, which were very modest compared to what the Liberation Tamil Tigers of Eelam (LTTE) are now demanding and which the government is disposed to concede. This incident just reinforces the general lesson that the rejection of reasonable proposals often leads to violence and the stakes are upped. Both Lalith and Neelan subsequently became victims of LTTE suicide bombers.

Today there are many examples of autonomy, defined as the special relationship of a part of the country to the whole. Most of these are successful<sup>18</sup>. However autonomy of this kind is problematic. The autonomous area is generally a small part of a much

<sup>16</sup> An issue I examine in, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Inter-ethnic Claims' (2000) 21(4) *Cardozo Law Review* 1095-1140

<sup>17</sup> Subsequently I advised on various aspects of the implementation of this and other parts of the constitution and reviewed the implementation of autonomy. A] Regan and I have described PNG's experience of autonomy at length in *The Law, Politics and Administration of Decentralisation in Papua New Guinea* (1992). Autonomy arrangements secured peace for several years, but in 1988 (12 years after the initial agreement on autonomy), Bougainville staged another rebellion which was only resolved in 2001 through negotiations in which Regan and I were involved. See our joint article, 'Bougainville and the Dialectics of Ethnicity, Autonomy and Separation' in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (2000). I found similar longings for island based autonomies in other South Pacific states I worked or studied in — some devices adopted for this purpose are discussed in my paper 'Reflections on Self-Determination in the South Pacific' in Donald Clarke (ed.), *Self-Determination* (1996).

<sup>18</sup> See my paper, 'Autonomy as a Strategy for Diffusing Conflict' in Paul Stern and Daniel Druckman (eds), *International Conflict Resolution after the Cold War* (2000).



larger centrally governed state (for example, Åland-Finland, Hong Kong-China, Kashmir-India, Puerto Rico-US, Zanzibar-Tanzania, Corsica-France). There are often no strong constitutional guarantees of autonomy. The autonomous area has to protect itself against larger forces (for this reason, ironically the much greater degree of sharing of power through federalism is often more effective). Self-restraint on the part of the central authorities is critical. This may be possible when the autonomous area is really small compared to the overall size of the state (Finland leaves Åland alone, as does the US with respect to Puerto Rico—most the time). Hong Kong's small size has however been less protective—it has amazed me how much Hong Kong's politics are tied to the central government, despite the much greater degree of Hong Kong's theoretical autonomy compared to these other examples. But there may be special reasons, including the lack of a proper concept of autonomy in PRC constitutional thought<sup>19</sup>.

To give a fuller picture of an ethnic constitution, I turn to Bosnia-Herzegovina ('Bosnia'). Bosnia was a republic in the former Yugoslav Federation, but unlike other republics, its population was ethnically mixed with no community in a dominant position. So the solution of declaring itself as an independent 'national' state was not feasible (the path chosen by other republics). Leaders of the three major communities, Serb, Bosniac and Croatian, incited their followers to violence against others, partly to drive them out of particular areas where they hoped to form their own state. The international community had a vested interest in maintaining Bosnia as a united state—and to achieve this, the sponsors of these communities in Serbia (including Slobodan Milosevic) and Croatia were taken off to Dayton military base in Ohio, US, to craft a constitution for Bosnia. The Federation of Bosnia-Herzegovina is composed of two Entities: Bosnia and Srpska. Bosnia itself is a federation of Bosniacs and Croats, while Srpska is a Serbian entity. Most powers are vested in the Entities (in the case of Bosnia, in the constituent part of the Entity), the federation being left largely with those powers which are necessary to constitute and exercise external aspects of state sovereignty. The constitution is built around the concept of ethnic communities as separate corporate bodies. Arrangements for representation and power-sharing take the communities as building blocks, carrying forward the proposition stated in the preamble of the Constitution that Bosniacs, Croats, and Serbs are 'constituent peoples' of Bosnia and Herzegovina, 'others' and 'citizens' being mentioned only in passing—effectively making these three communities, rather than the people as a whole, the source and bearers of sovereignty.

The federal parliamentary assembly consists of five Croats and five Bosniacs from Bosnia and five Serbs from Srpska; they are elected by voters of their own communities (Art. 4). Nine of them constitute a quorum, so long as there are at least three from each community. The House of Representatives is constituted on the same principle and in similar proportions. The result of these arrangements is that politics are entirely communal, and almost perforce all political parties are ethnically based. Parties get together in parliament or government only after the elections. The system creates incentives for parties and their leaders to intensify appeals to narrow ethnic interests, linked to their kinfolk in other states, which does little for the unity of the country. In the 1996 elections, the most extreme ethnic party in each community won, leaving their leaders the impossible task of finding sufficient common ground to govern together.

The constitution also provides for extensive power sharing. The Presidency, in which executive power is vested, consists of three persons, chosen directly by each of the three main communities. Decisions are made by consensus, giving each community a veto. Similar provisions apply for appointments to other public bodies, including the Constitutional Court and the Board of the Central Bank. The chair of the legislative chamber rotates among the representatives of the three constituent peoples. Voting rules ensure that each of the three main ethnic communities is involved in all decisions. Any one of them can declare that a proposed decision affects its vital interests, triggering special procedures for mediation and reconciliation. If that fails, the matter is referred to the Constitutional Court.

Both parliaments and Entity governments are required to have a proportional ethnic balance, and the distribution of key political functions is along ethnic lines. Ironically, in this preoccupation with ethnicity, the rights of national minorities are seriously downgraded or ignored (as for example the restriction of the office of the Presidency, or legislative vetoes, to Bosniacs, Croats and Serbs). Rights of citizens, as citizens rather than as members of particular ethnic groups, are also limited. Given this complex process of decision-making, it is not surprising that the result has been numerous deadlocks. The state level government is seriously handicapped in its capacity to make or execute policy. The constitution provides a key role for foreigners. Three judges of the Constitutional Court are foreigners (for rather different reasons from those that led to a foreign element in the Hong Kong Court of Final Appeal), appointed by the President of the European Court of Human Rights; and eight of the 14 members of the Human Rights Chambers are also from outside. The

<sup>19</sup> I argue this point in 'Autonomy Regimes in China: Coping with Ethnic and Economic Autonomy' in Ghai (ed), *Autonomy and Ethnicity* (2000).

first governor of the Central Bank had to be a foreigner, appointed by the IMF. The highest executive and key policy powers are vested in the Office of the High Representative (appointed in accordance with UN resolutions), whose mandate covers monitoring the implementation of the Dayton Accord. Due to differences within the collective presidency and the unwillingness of any of its members to take decisions that might be resented by his or her community, many matters end up on the desk of the High Representative who then has to make the decision.

For some, this presents a bleak picture for the future of multi-ethnic states. For someone like me who grew up



*People listening to Professor Ghai's presentation of proposals to the Fiji Constitution Review Commission.*

in a colony in which races were segregated, it evokes memories of a colonial society which had little to redeem it. South Africa resisted being cast into a Lijphartian model as it negotiated its post-apartheid constitution while at the same time recognising the need for social justice and ethnically based affirmative action. Fiji, which like South Africa, had a colonially imposed racial constitution which persisted well into independence, made bold but incomplete moves towards a non-racial constitution in the aftermath of the coups of 1987. Canada has taken several steps to accommodate the claims of its indigenous people, through autonomy arrangements that sustain traditional modes of governance and tribal society, as well as other measures to foster its increasing ethnic and cultural diversity. All of these measures have involved some breach of classical liberalism, without a compromise of its essential principles of tolerance and human rights—and national unity. These

developments show that liberal values can be combined with various forms of political and constitutional recognition of diversity. This, it seems to me, is the way of the future.

### Conclusions

Let me now bring together the directions and by-ways of this personal journey through constitutions. Let me begin with some contrasts between the classical and contemporary constitutions. I have already stated that the new European constitutions have a closer relation to the classical than do the new democratic or the ethnic. The classic constitutions were content to set up political institutions; the contemporary are highly interventionist seeking to change society and the structure of power. They are inventive and oriented towards social engineering. Old constitutions were a means of consolidating and centralising the power of the state that had been secured in other ways. The constitution registered class or ethnic victory. The major impulses of the nature and operation of the state—and of politics, were to come from society. (The US constitution, although classified as the product of the American Revolution, is for this reason an extremely conservative document, designed to weaken the capacity of the state to intervene in civil society.) But some revolutionaries fear even this degree of constitutionalisation of power, for they believe that no impediments should be placed on revolutionary objectives, themselves the source of legitimacy (echoes of this debate are to be found in the contemporary period in the Chilean debates during Allende's access to and exercise of state power on the path to socialism—Allende arguing for a democratic path, others opposing him).

Contemporary constitutions are not based on clear victories of this kind. Indeed they become necessary because no side has won a clear victory. A particular feature of contemporary constitutional processes, especially their adoption, is the role that negotiations over a constitution play in resolving conflict—rather than making a constitution after conflict has ended. A great deal of my own advisory work in recent years has been of this type. I remember that in the conflict between Papua New Guinea and the breakaway province of Bougainville a few years ago, the longer we took to conclude a framework for constitutional negotiations, the more combatants, and civilians, on each side were killed. A constitutional consultant frequently needs a manual on conflict resolution in her kit. Various consequences flow



from this role of constitution making. First, they are not an imposition, but products of negotiations (a persistent difficulty is determining who sits at the negotiating table—just the warring factions, as in the Sudan, or a wider cross section, as is demanded in both Sri Lanka and Nepal). Secondly, they are less final or definitive than older constitutions. Constitutions deal with complex and mutating realities. Frequently, within broadly acceptable provisions and parameters, they provide the framework for future negotiations and change. The Papua New Guinea settlement gives the people of Bougainville the option to raise the issue of secession after a suitable period when new autonomy arrangements have been given a chance. Fourthly, because contestants bring not only different claims but also differing sources of authority and precedent for the claims, the new instrument may rest on several sources of moral and legal authority, which gives flexibility but also forces the competing groups to continue their dialogue and consensus making (as illustrated in the discussion below on sovereignty). Fifthly, these constitutions are more delicate instruments than the traditional: the latter were based on dominance well established in civil society/economy, and thus less susceptible to counter pressures (the role of the constitution was procedural rather than substantive); the former are based on a balance of power, and can subsist only so far as that balance is maintained—this kind of constitution is therefore both more important and more vulnerable than the older variety.

The older constitutions (e.g., the French but also 20th century independence constitutions) were based on absolute sovereignty<sup>20</sup>. The function of the constitution was to aggregate and consolidate this sovereignty against outsiders. In modern parlance we would say that the constitution is an act of self-determination—the external aspect of self-determination which defines itself by relation to other states. Several of today's constitutions are based on what has been called internal self-determination and aim to disaggregate state sovereignty into distinct packages (not merely in the form of federalism but complex forms of dividing and sharing power). Once it is accepted that sovereignty lies with the people, not the monarch or the party or an ethnic group, it is possible to visualise sovereignty in dispersed and pluralistic forms. The skill required for contemporary constitution making is to diffuse or obfuscate sovereignty. Indeed some recent constitutional settlements have been possible only by keeping open the option of sovereignty—in French New Caledonia and in Papua New Guinea, both in the South Pacific and in the recent (yet to be ratified) settlement for the Sudan, a group has reserved or been granted the right (the formulation depending on who you are) to exercise the

right of external self-determination (i.e., secession and separate sovereignty) after a suitable period (around 10 years or so, which may be interpreted as a variant of the 1937 constitution of the Irish Republic which proclaimed the unity of Ireland, thereby claiming but postponing sovereignty over Ulster). Sometimes, as in Northern Ireland today, sovereignty is diffused through a form of condominium, or as it is known in Ireland, co-sovereignty (a solution recently suggested for the conflict in and over Kashmir). This is another way to say that old constitutions were based on or aimed to establish state nationalism; newer constitutions recognise and build on difference.

There are many impulses behind the new constitutionalism: perhaps the failure of earlier centralised constitutions; the collapse of communism in Eastern Europe (moving away from statist to market orientation); the collapse of multinational states, particularly the former Yugoslavia, giving fresh impetus to the theory of nationalism; post-modernist theory celebrating difference, defining and protecting specific rather than national identities—a tendency reinforced by new international rights instruments targeting specific communities such as women and indigenous peoples; reformulations of liberal theory arguing for the importance of culture and traditions to identity and self-respect; the increasing heterogenisation of populations of states; the difficulty of maintaining a sovereign centre of power in the face of ethnic rebellions (assisted by the easy availability of arms and other weapons, small and large). These are internal pressures—but they are not unconnected with that series of economic, political, technological, and social changes, often externally driven, that pass under the rubric of globalisation. These increase the vulnerability, and weaken the capacity, of the state. Globalisation, with its tendency towards larger and larger scale of operations, has forced states to surrender parcels of sovereignty to regional associations, spectacularly in Europe, where key indicia of statehood like notes and coins, passports and in due course even flags, the quintessential symbols of nationhood, are beginning to disappear.

New constitutions are torn between the twin impulses of globalisation—on the one hand responding to greater transnational dependence and integration (e.g. transnational constitutions are superseding national constitutions, as in the EU); or being forced to defer to transnational decision making, under which a modern form of *lex mercatoria* is being produced, with private law making encroaching upon what were previously regarded as prerogatives of the state. Globalisation produces tension between the imperatives of the market (manifested most clearly in the constitutions of Eastern Europe) and the commitment to social justice, just as the capacity of

<sup>20</sup> The French Constitution of 1791 stated: 'Sovereignty is one, indivisible, inalienable, and imprescriptible; it belongs to the nation'. This theory of sovereignty was to justify the power of the 'nation', of 'imagined' people, antecedent to the constitution.

the state is weakened. Constitutional globalisation has another consequence: it weakens the state, not only vis-à-vis global forces, but also in relation to its domestic economic constituencies. For the effect of global economic integration is, in the interests of freer competition, to obliterate the earlier neater distinctions between the private and public, the regulation of which comes increasingly under inter-state regulation. It also enhances the authority of the executive vis-à-vis the legislature, and this change in the relationship helps global forces, for they can more easily bind state executives than legislatures. Aspiring constitutional scholars would be advised to pay at least as much, if not more, attention to charters and practices of the WTO, WIPO and international financial institutions as to the traditional notions of state sovereignty and the separation of powers. On the other hand, as discussed above, constitutions (freed by globalisation from the grip of the state) have to accommodate (to use Tully's expression) the 'strange multiplicity'<sup>21</sup> of the people, principally through territorial autonomies.

There are other ways in which globalisation affects contemporary constitution making. Constitutions must respond to developing international norms, especially as they are embodied in human rights treaties; they become embroidered as they weave their way into national constitutions (the longest chapter in the Kenya draft constitution is the Bill of Rights). States are under pressure of conditionalities to adopt rules of 'good governance' (although quite what this means is not clear). Experts like me travel hither and thither purveying their goods. The Internet assists in a massive trade in constitutional provisions (and I have to confess to some plagiarism myself!). Constitutions have become major carriers of values, institutions, and procedures around the world. Constitutions are losing their national specificity.

This flurry of constitution making raises fundamental questions about the role and forms of constitutions on which there is no necessary consensus. It is increasingly accepted that the widest possible participation of people is necessary to produce constitutions that are both relevant and legitimate, yet others raise questions about the risks of such participation in elaborating a large and complex agenda which may create acute controversies and overburden the state. Participation may result in constitutions that the politicians will reject or negate—because they seek to define the purposes of the exercise of state power and make government accountable and participatory. There is also controversy on how ambitious should be the scope of the constitution. Those who favour the austere and brief constitutions of the new

European democracies point to the longevity of the US constitution which eschewed a social agenda, like many contemporary constitutions. Others argue that in the midst of poverty, squalor, and corruption, a constitution which does not engage with social justice will not serve the people. Perhaps sparseness of text is possible (even necessary) if the underlying assumption is an essentially unregulated market. In my work on the new constitution of Kenya, I was concerned to make fundamental changes in the structure and orientation of the state, to free it from the grip of the logic of the colonial state, as well as to respond to the wider concerns of the people, who, mired in poverty, felt hopelessly marginalised. So our draft provides for a broad ranging agenda of social, economic, and political change—in part to counter the pressures and tendencies of globalisation. The politicians did not like it and the government is refusing to implement it. Might it have been wiser to have opted for less radical change and carried the politicians—even if it meant ignoring the people?

We can see that the methods of drafting and adopting the constitution have wide consequences—on which there is a lot to say if there were space! There is also the danger that an over-ambitious constitution will be honoured more in breach than observance, and thus it will gradually lead to frustration and loss of legitimacy—as has indeed been the fate of many constitutions, perhaps including the 1997 constitution of Thailand. There is also controversy about the planned durability of the constitution. The US regards it as a matter of pride that its constitution, having lasted more than 200 years, is the oldest existing constitution. Perhaps the pride is justified, but we have to remember that formal change has been averted precisely because the Supreme Court has altered it to suit changing mores and values (and so the people have to be prepared to put more faith in judicial rather than popular politics). Sometimes it is wise not to plan too far ahead, either because the circumstances do not allow a participatory and meaningful process of constitution making, as in Afghanistan in 2002, where my advice that the constitution be reviewed in five years time when conditions might be more settled was rejected—but Fiji's military constitution of 1990 had provided an automatic review within seven years—, and that provision led to a good process and an infinitely better constitution. To these and many other critical questions of the orientation of the constitution and the mode of making it, there may be no answer in the abstract, as all would depend on the context<sup>22</sup>. And it would depend on what is perceived to be the function of the constitution.

<sup>21</sup> James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (1995)

<sup>22</sup> Take the case of the review of the constitution of Cook Islands in 1998 for which I was a consultant. Cook Islands had been taken into receivership, in a manner of speaking, by the Asian Development Bank which insisted that savings should be made in the cost of operating the constitution. Successive drafts should be faxed to its headquarters in Manila where they would be pored over by dismal accountants. Replies would come back that the review committee still had to make further savings of specified sums! Among other provisions, we had to drop the public broadcasting of parliamentary proceedings, much to my sadness, for this was the only way people in far flung islands could keep in touch with national affairs.



Over the centuries, constitutions have been differently conceptualised and served many purposes—instruments for law and order or some deliberate ‘stirring up’; for liberation or oppression; for self-government or co-optation; for legitimacy; defence against imperialism (the first constitutions of Hawaii and Tonga were enacted to ward off colonists by presenting themselves as civilised and organised, in every way equal to foreigners); to limit government or to enhance its capacity to promote development or social justice. When I assisted in the drafting of independence constitutions in the late decolonisation period (in relatively small South Pacific colonies), I became very conscious of the manifold purposes of the constitution. Mostly archipelagic, with the bulk of the population spread over a vast area, living in traditional and separate communities, largely untouched by both market relations and state administration, the new state itself was established by the constitution, inventing modalities of grouping and governing diverse peoples, and creating institutions which would give it credibility as a member of the international community of states. A new national identity, transcending, if not superseding, particularistic, traditional identities, had to be established, one could almost say, decreed. The constitution making process was the chosen device for achieving this. So the constitution making process had to be fully participatory for purposes of legitimacy, but also for creating a consciousness of belonging to a larger entity, all pursuing the same goals<sup>23</sup>. There seemed some irony in giving people with little literacy or knowledge of state political systems opportunities of fashioning their constitutions denied to the citizens of more ‘advanced’ countries—but these processes foreshadowed the participatory processes that have now become *de rigueur* in many parts of the world<sup>24</sup>. But the task of integration through the state was handicapped by the suspicion of a powerful state (lessons learnt from the African experience). There was a preference for the constitution as brakes rather than as accelerator.

Finally, a lesson from the highly participatory process of Kenya. The process empowered people, for we took them seriously. It greatly increased public knowledge of constitutional issues. It

seemed to strengthen a consciousness of being a Kenyan. It expanded the agenda for constitutional reform. But such a degree of participation may raise expectations that cannot be satisfied; the constant emphasis on culture may result in constitutions which are no longer congruent with dominant international political ideas or economic forces, widening the gap between the constitution and realities. But a proper assessment of the impact of popular participation cannot be made if the concept of ‘people’ is not disaggregated, nor without some moderation of the romanticism about the ‘people’. There is no such thing as the people; there are religious groups, ethnic groups, the disabled, women, youth, forest people, pastoralists, sometimes ‘indigenous peoples’, farmers, peasants, capitalists and workers, lawyers, doctors, auctioneers, and practising, failed or aspiring politicians, all pursuing their own agenda. They bring different levels of understanding and skills to the process. Sometimes the composition or procedure of constituting bodies privileges one or another of these groups. Unless one believes in the invisible hand of the political marketplace, not all these groups can be counted to produce a ‘good’ constitution—certainly not the politicians. The French had a rule when they made the constitution after the revolution: no member of the constituent assembly could stand for elections or occupy a public office for ten years after the adoption of the constitution. How I longed for such a rule in Kenya! 🍌



People listening to Professor Ghai's presentation of proposals to the Fiji Constitution Review Commission.

<sup>23</sup> Those familiar with Benedict Anderson's *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (1983) will recognise in this the attempt at instilling a sense of nationalism in the absence of the integrative effects of the market, state authority, literacy, and the general difficulties of communication.

<sup>24</sup> I have explored the role and impact of constitution making on state formation and legitimacy in the South Pacific in two essays, 'Constitution Making and Decolonisation' and 'Political Consequences of Constitutions' in Yash Ghai (ed.), *Law, Politics and Government in the Pacific Island States* (1988).



*High table dinner held by the Law Association ExCo 1984-85, with Martin Lee QC as guest of honour.*



*Law Faculty's football team at one of their matches in 1985.*



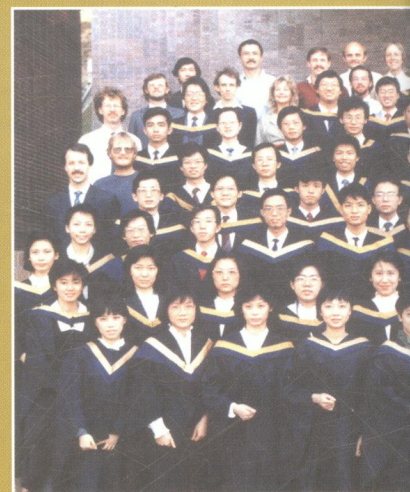
*LLB 1984 in their graduation gowns.*

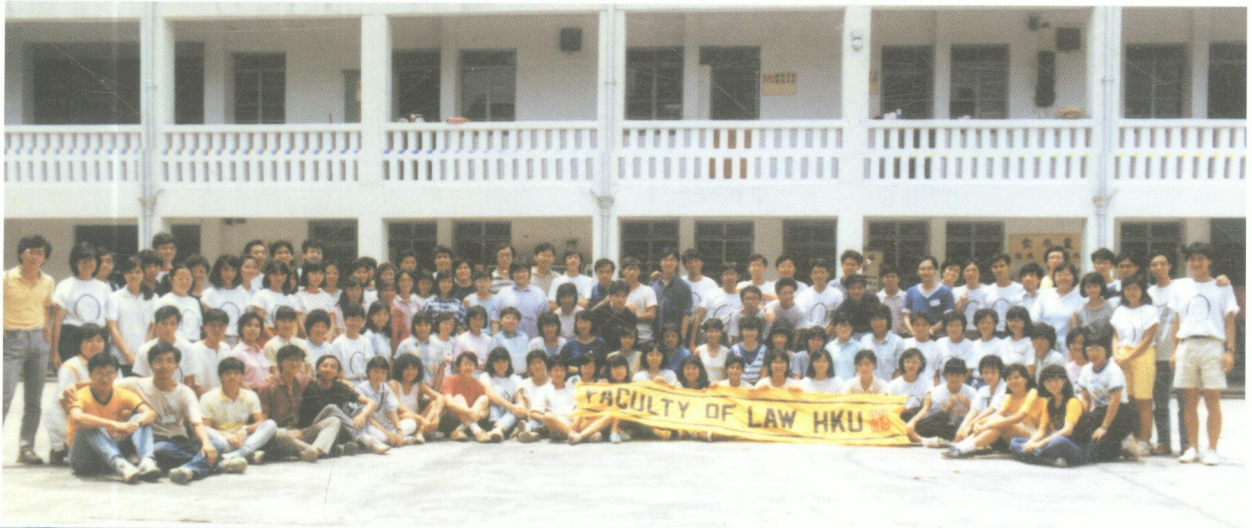


*Law students from Class 1985-87 looking cool at one of the Ricci Hall's functions.*

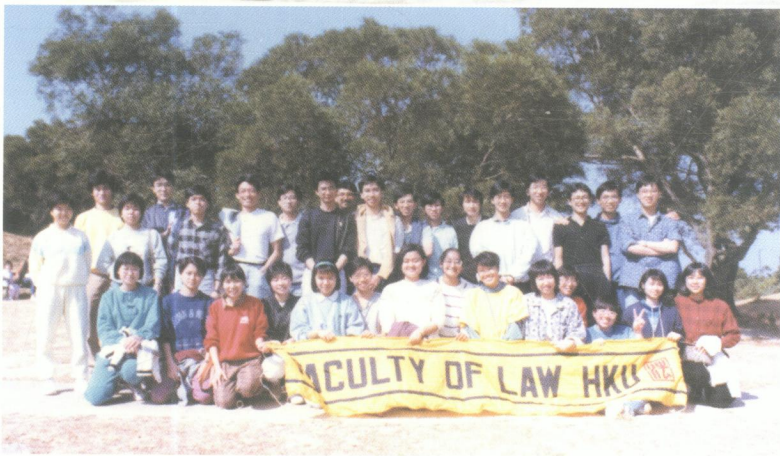


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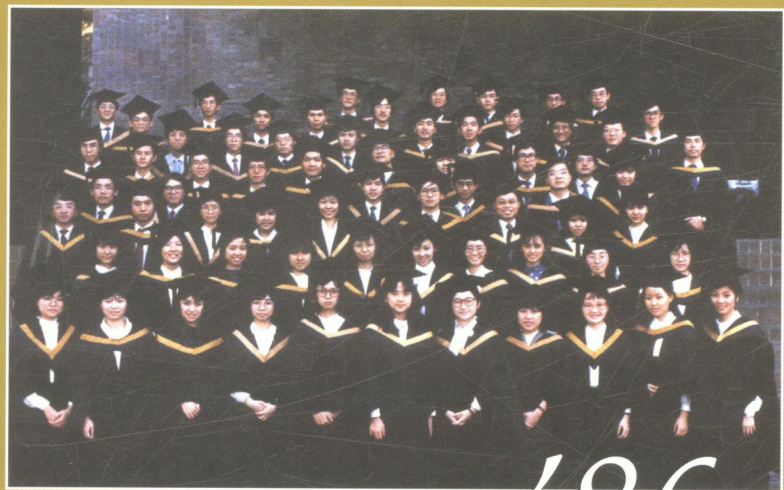
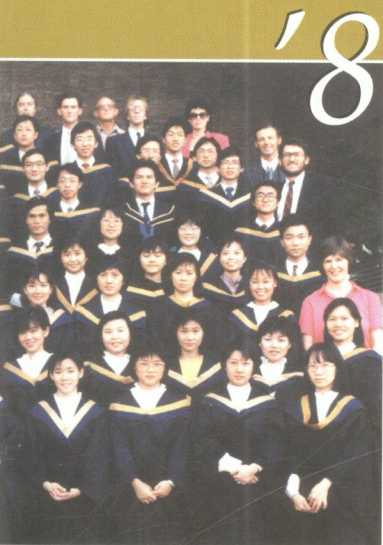
*Freshmen Orientation 1985.*



*At an outing organized by the Law Association ExCo 1985-86.*



*LLB 1987: Let's all cruise!*



# UNDERGRAD U N I O N

Kwok Hing Wai Kenneth<sup>1</sup>

LLB 1972, PCLL 1973

Q What editorially independent publication became the voice and power of the University's student movement in the 1970s?

A The *Undergrad*.

*Summer Issue 2004, Convocation Newsletter*

## Background

The *Undergrad* became editorially independent in 1968. According to the minutes of the meeting of the Council ("the Council") of the Hong Kong University Students



Kenneth Kwok SC with his mother on the day of his being admitted as Queen's Counsel.



Kenneth Kwok SC with his two children.

Union ("the Union") on 30 December 1968, the *Undergrad* was the official publication of the Union in that the editorial board of the *Undergrad* was a standing committee appointed directly by the Council; that it served as the official channel of communication between the Council and all affiliated clubs, societies, associations; and that the editors were entrusted with the power to select all articles for publication. It was the policy of the Council not to exercise any censorship over the *Undergrad's* editorial policy, as the Council felt that only in this way could the *Undergrad* function properly as observer, reporter and critic of both the Union and the outside world. Being a democratic organisation and in the interest of the free expression of ideas, the Council respected all views expressed through the *Undergrad*<sup>2</sup>. Chan Yuen Ying (Winnie)<sup>3</sup> was the Editor-in-chief and Ho Man Wui<sup>4</sup> was the Publications Secretary of the Union at the time.

Up to 14 pages per issue, the *Undergrad* was published on the 1st and 16th of each month except during the summer when it was published monthly.

Wong Siu Lun Stephen<sup>5</sup> succeeded Chan Yuen Ying (Winnie) as Editor-in-chief. Ng Tung Wah John<sup>6</sup> was one of his Assistant Editors-in-chief. Hui Si Yan Rafael<sup>7</sup> was the Publications Secretary in session 1969.

Ng Tung Wah John was elected the President in session 1970 and ceased to be an Assistant Editor-in-chief. Liang Ann Lee Annie<sup>8</sup> was the Publications Secretary.

In July 1970, Wong Siu Lun Stephen retired as Editor-in-chief and the Council passed a unanimous vote of thanks on him<sup>9</sup>.

Luk Man Keung Joseph<sup>10</sup> became the next Editor-in-chief.

## Freshmen Queen & Captain

The 1 October 1970 issue<sup>11</sup> of the *Undergrad* reported the election of Cheung Yuen Ting Mabel<sup>12</sup> as the Freshmen Queen and Lam How Mo Ignatius<sup>13</sup> as the Freshmen Captain.

## Hornell Hall Incident

At a preliminary meeting<sup>14</sup> held on 16 October 1970, the board of adjudicators of the Drama Competition, 2nd Union Nite, decided that each hall would provide one adjudicator to judge the performance of all the other halls and that they should mark according to the following scheme<sup>15</sup>:

Presentation	40
Content	30
Costume & scenery	15
Sound & lighting	15
<b>Total</b>	<b>100</b>

<sup>1</sup> LLB(1972) PCLL(1973) <sup>2</sup> *Undergrad* 4 December 1970 p. 3 quoting the minutes of the Council meeting on 30 December 1968 <sup>3</sup> BSocSc(1970) <sup>4</sup> BA(1969) MPhil(1972)

<sup>5</sup> BSocSc(1971) <sup>6</sup> BSocSc(1971) <sup>7</sup> BA(1970) <sup>8</sup> BA(1971) <sup>9</sup> *Undergrad* 1 August 1970 p. 3 <sup>10</sup> BSocSc(1973) <sup>11</sup> p. 3 <sup>12</sup> BA(1973) <sup>13</sup> MBBS(1975)

<sup>14</sup> Hornell Hall's representative did not attend this meeting <sup>15</sup> *Undergrad* 23 November 1970 p. 5



At the drama competition, the following scores were awarded<sup>16</sup>:

	Marks received by						
	Hornell	Ricci	Old Halls	U. Hall	D.K.	Hotung	St John's
Marks given by Hornell	-	9	11	9	8	8	4
Marks given by Old Halls	38	39	-	35	29	23	20
Marks given by Ricci	54	-	60	58	52	51	44
Marks given by U. Hall	55	58	58	-	50	59	44
Marks given by D.K.	48	62	51	46	-	34	28
Marks given by Hotung	76	79	66	63	65	-	62
Marks given by St John's	64	62	59	53	57	60	-
<b>Total marks</b>	<b>335</b>	<b>309</b>	<b>305</b>	<b>264</b>	<b>261</b>	<b>235</b>	<b>202</b>

On the night of 30 October 1930 and the early hours of 31 October 1970, the common room of Hornell Hall was ransacked<sup>17</sup>. This was what came to be known as the "Hornell Hall Incident".

#### Abortive attempt to change the *Undergrad's* constitution

On 3 November 1970, Hui Si Yan Rafael gave written notice as Council Chairman of the First Extraordinary General Meeting to be held on 13 November 1970<sup>18</sup>. There were 2 items on the agenda:-

- a) To read and adopt the Union Council's report on the constitutional changes related to the structural changes of the "*Undergrad*".
- b) To discuss and resolve on matters relating to the University's policy on Voluntary Affiliation to Halls/Colleges.

Some Union members challenged the validity of the notice and of the intended meeting on 3 grounds. Hui Si Yan Rafael, having graduated and not being registered in any approved post-graduate course, was not eligible for full membership of the Union and thus not eligible to be Council Chairman. They further argued that constitutional amendments could not be discussed at an extraordinary general meeting with any other matter. Lastly, they pointed out that the proposed amendments had not been posted seven clear days before the meeting as required by the constitution.

The Council met on 11 November to consider the challenge. Hui Si Yan Rafael told the meeting that his position as Council Chairman had already been considered at an Emergency Council Meeting on 25 September at which the Council resolved that he "shall continue to be the Chairman of the Union Council for the rest of the session and that this shall not be quoted as precedence in the future"<sup>19</sup>. The Council dealt with the other objections by resolving to make the item on the *Undergrad's* constitution an item for adoption of a report, without proposing any constitutional amendment.

Hui Si Yan Rafael resigned as Council Chairman after the 11 November meeting.

#### President's resignation

The President, Ng Tung Wah John, was strongly criticised at the 11 November Council meeting over the Disciplinary Committee matter. On 12 November, he resigned as President. The Deputy President, Chow Chi Keung Sidney<sup>19</sup> was appointed acting President<sup>20</sup>.

#### "The Hornell Aftermath"

The *Undergrad* intended to publish an article on the Hornell Hall Incident. Liang Ann Lee Annie, Publications Secretary, conveyed a message to the editorial board that the *Undergrad* should not publicise the Hornell Hall Incident. The board nevertheless continued work on the article.

4 Council members called an Emergency Council Meeting "to discuss and resolve on matters relating to the Hornell Hall Incident". The Council met on 18 November, requested, saw a draft of the article and resolved:



*"that the Council strongly recommends to the Undergrad Editor-in-chief that the article titled 'The Hornell Aftermath' be revised in the light of the points raised during the discussion just held".<sup>21</sup>*

#### More executives resigned

A motion of confidence on the Editor-in-chief was moved but this motion was construed as a vote of no confidence on the Executive Committee. The meeting was adjourned for about an hour and Chow Chi Keung Sidney, Wong Joe Yiu Thomas<sup>22</sup>, General Secretary, Liang Ann Lee Annie, Publications Secretary, and the Social Secretary tendered their resignation.

Wong Joe Yiu Thomas was convinced that the Hornell Hall Incident "should not be too much publicised at this stage during the course of [the University's] investigation" and concluded his resignation letter by saying that<sup>23</sup>:



<sup>16</sup> *Undergrad* 23 November 1970 p. 5    <sup>17</sup> *Undergrad* 23 November 1970 front page & p. 5    <sup>18</sup> *Undergrad* 23 November 1970 p. 6    <sup>19</sup> BSocSc(1971) DipManStud(1978)

<sup>20</sup> *Undergrad* 23 November 1970 front page & p. 3    <sup>21</sup> *Undergrad* 23 November 1970 p. 7 & 4 December 1970 p. 2    <sup>22</sup> BSc(Eng)-Elec(1971) DipManStud(1977)

<sup>23</sup> *Undergrad* 23 November 1970 p. 7

"...I could no longer bear this discoordination within this Union. With this in [mind], I deem it most fit to tender my resignation as the General Secretary of the Hong Kong University Students' Union."

Liang Ann Lee Annie explained in her resignation letter why she found her position "a difficult and an embarrassing one" and continued as follows<sup>24</sup>:



"Still, the Union Council refuses to consider the common stand of the Ex-co, nor does it pay any attention to the requests from the University authorities on this issue. In short, it is my personal opinion that since the Council does not exercise rightful authority over its sub-units in a case that is of extreme importance to the entire Student body, I deem it perfectly justifiable to refrain from serving any longer as an Executive and as a Councillor."

I cannot figure out whether Chow Chi Keung Sidney was resigning as Acting President, Deputy President or both. The following is his letter in full, as published in the *Undergrad*<sup>25</sup>:



"Three members of the remaining Executive Committee have tendered their resignation to the Council from their respective posts. As the acting chairman of the Executive Committee, I assume that it is understood nothing can be proceeded on in the Union even I stand away from their common and united action.

As for the proposed vote of confidence on Mr. Joseph Luk, the *Undergrad* Editor-in-Chief, the Executive Committee members still insist that what we formerly suggested be put down in the minutes as stated.

Concerning the present situation, it is obvious that the original Executive Committee has been dissolved through the resignation of 6 other members. I find no reason for me to stay as the acting chairman of the Ex-co in which there is only one other member left. I hereby, Sir, submit my resignation from the post of the HKUSU as the Deputy President, session 1970.

Yours sincerely,  
Sidney Chow  
Acting President, HKUSU"

The meeting was adjourned at 2:00 a.m. and continued at 6:30 p.m. on 19 November 1970. The resignations of Wong Joe Yiu, Thomas and Liang Ann Lee Annie were accepted. The Social Secretary was requested to withdraw her resignation. Chow Chi Keung Sidney was requested to reconsider his resignation. The Executive Committee was mandated to co-opt an Acting General Secretary and an Acting Publications Secretary for rectification at the next Council meeting. Votes of thanks were passed on Wong Joe Yiu Thomas and Liang Ann Lee Annie "for all their undertakings during their terms of office for the general good of the Union".

A vote of confidence was passed on Luk Man Keung Joseph, the Editor-in-chief. At the voting of this motion, the only member of the executive committee present was the ICA President<sup>26</sup>.

A vote of confidence was also passed on Chow Chi Keung Sidney, the Acting President.

Undaunted, the *Undergrad* published the article "The Hornell Hall Aftermath" without any change in the 23 November 1970 issue<sup>27</sup>.

#### Election of session 1971 executives

Meanwhile, the annual election general meeting of the Union was held on 27 November 1970 to elect the Executive Committee members of the Union for session 1971<sup>28</sup>. There was only one candidate for each post. Fung Siu Por Lawrence<sup>29</sup> was elected as President and I as Publications Secretary.

#### Resigned executives returned

On the Thursday following the election, the Council met. The 1970 session had slightly more than one month left.

The proposal by Yip Hak Kwong<sup>30</sup>, Financial Secretary, that the Council could have access to all news articles on matters concerning the Union as a whole before they were published was passed with clear majority<sup>31</sup>.

Chow Chi Keung Sidney reported that Wong Joe Yiu Thomas (who found the discoordination within the Union intolerable and had deemed it most fit to tender his resignation as the General Secretary) was appointed Acting General Secretary (yes – he was filling the post left vacant by his own resignation)! Chow Chi Keung Sidney further reported that Ho Man Wui was appointed Acting Publications Secretary. The Social Secretary had agreed to stay on. Chow Chi Keung Sidney withdrew his resignation as Deputy President "since one more ex-co member has consented to stay". He then informed the Council that he had been nominated as President in the by-election of the President for the remaining 1970 session and resigned as Deputy President so that he would be eligible for the Presidency. The Council confirmed "explicitly" that he was still the Acting President until the by-election on 4

<sup>24</sup> *Undergrad* 23 November 1970 p. 7    <sup>25</sup> *Undergrad* 23 November 1970 p. 7    <sup>26</sup> *Undergrad* 23 November 1970 p. 7 & 4 December 1970 p. 2    <sup>27</sup> *Undergrad* 23 November 1970 p. 5  
<sup>28</sup> *Undergrad* 4 December 1970 p. 3    <sup>29</sup> BSocSc(1972)    <sup>30</sup> BSocSc(1971) MSocSc(1981)    <sup>31</sup> *Undergrad* 4 December 1970 front page & p. 3





Kenneth Kwok SC delivering a speech at the LLB Opening Ceremony 2004.

December 1970. On his recommendation, Liang Ann Lee Annie (who had deemed it perfectly justifiable to refrain from serving any longer as an executive and as a councillor and had resigned as the Publications Secretary) was appointed Acting Deputy President<sup>32</sup>.

An item was added at the meeting. The Council met behind close doors and read a confidential paper. Ho Man Wui supplied background history of the then set up of the *Undergrad* and a confidential paper concerning past issues of the *Undergrad*. After an 1½ hour confidential session, Luk Man Keung Joseph was queried and criticised. Yip Hak Kwong proposed a vote of regret on Luk Man Keung Joseph (despite the vote of confidence passed by the Council on 19 November). This rather mild motion was withdrawn. Lam Wah Kit<sup>33</sup> proposed and Chow Chi Keung Sidney seconded that a vote of censure be passed on Luk Man Keung Joseph, the *Undergrad* Editor-in-chief, and that he be recommended to resign from his present post. The Council accepted the proposal of Chow Chi Keung Sidney that voting be by secret ballot. 9 voted in favour of the censure motion, 5 against, with 1 abstention<sup>34</sup>.

### The two paper system

On 2 December 1970, the Council held an emergency meeting to consider Ho Man Wui's proposed 2 paper system within the Union<sup>35</sup>. After a 5-hour discussion, the proposal that the 2 constitutions of the 2 papers be adopted with effect from 17 December 1970 subject to Council's review in a month's time was passed unanimously<sup>36</sup>.

The Publications Secretary By-Laws adopted in 1968 governing the *Undergrad* were also nullified with effect from 17 December 1970<sup>37</sup>.

Under the new constitution, the maximum number of pages per issue for the *Undergrad* was reduced to 8; the Publications Secretary ceased to be the *ex officio*

Chairman of the editorial board; the Editor-in-chief would be an observer of the Council with full speaking right and the *Undergrad* should "function as the observer, reporter and critic of both the Union and the outside world" and ceased to be an official publication of the Union<sup>38</sup>.

The other paper was to be called the "*Union*", with the Publications Secretary as the *ex officio* Editor-in-chief and Chairman of the board. It might publish up to 8 pages on the 8th and 23rd of each month except during the summer. It "shall act as the official link between the Council and the Union members; it shall be known as the 'official publication of Hong Kong University Students' Union' "<sup>39</sup>.

The Council also resolved to publish a 2-page "Supplementary" to be inserted in the 4 December 1970 issue of the *Undergrad*<sup>40</sup>.

Before I knew, I was appointed Chairman and Editor-in-chief of the *Union* as from the following month and was removed as Chairman of the *Undergrad* editorial board before taking up office. The *Undergrad* editorial board knew as much as I did – nothing<sup>41</sup>.

### First issue of the *Union*

The first issue of the *Union* was published on 23 December 1970. Ho Man Wui was the Editor-in-chief and Ng Tung Wah John and Lam Soon Kong<sup>42</sup> were the Assistant Editors-in-chief. Page 3 carried a 22 cm by 9.5 cm photograph of Cheung Yuen Ting Mabel, the Freshmen Queen, with "a little introduction of her [which] would be appealing to some gentle-minded people".

### Editors' (purported) resignation

By letter dated 29 December 1970, members of the "old" *Undergrad* editorial board tendered their resignation<sup>43</sup>.

The Council met on 30 December 1970 and was of the view that as the "old" *Undergrad* editorial board had been dissolved upon the revocation of the Publications Secretary By-Laws with effect from 17 December 1970, there was no valid resignation. However, the Council thought that the case of Luk Man Keung Joseph (who had just been censured by the Council and been recommended to resign from his post as Editor-in-chief of the "old" *Undergrad*) was different because the Council had appointed him the Editor-in-chief of the "new" *Undergrad*. The Council considered that his case would be better "solved" in his presence and deferred his case to the next meeting. The Council also requested Luk Man Keung Joseph to locate members of his *Undergrad* editorial board to be approved by the Council at an emergency meeting to be held at his request<sup>44</sup>.

At this meeting, the Council passed a vote of thanks on the outgoing Executive Committee for the outstanding service during their term of office<sup>45</sup>.

<sup>32</sup> *Undergrad* 4 December 1970 front page & p. 3 <sup>33</sup> MBBS(1972) MD(1986) <sup>34</sup> *Undergrad* 4 December 1970 front page & p. 3

<sup>35</sup> pp. 1 & 2 Supplementary to the 4 December 1970 issue of *Undergrad*, published by order of the Council

<sup>36</sup> pp. 1 & 2 Supplementary to the 4 December 1970 issue of *Undergrad*, published by order of the Council <sup>37</sup> *Union* 23 December 1970 p. 5

<sup>38</sup> pp. 1 & 2 Supplementary to the 4 December 1970 issue of *Undergrad*, published by order of the Council

<sup>39</sup> pp. 1 & 2 Supplementary to the 4 December 1970 issue of *Undergrad*, published by order of the Council <sup>40</sup> *Union* 23 December 1970 p. 5 <sup>41</sup> *Union* 8 January 1971 p. 4

<sup>42</sup> BSc(1972) <sup>43</sup> *Union* 8 January 1971 p. 4 & *Union* 23 January 1971 p. 6 <sup>44</sup> *Union* 8 January 1971 front page & *Union* 23 January 1971 p. 6 <sup>45</sup> *Union* 8 January 1971 front page

### 8 January 1971 issue of the *Union*

I was Editor-in-chief of the second issue of the *Union*, the first for session 1971. The front page of this 8 January 1971 issue featured a 14.5 cm by 10 cm photograph of the councillors who were present at the 30 December meeting.

The editorial was called "Ultra vires By-Laws and the two paper system". It started by saying that in line with the decision of the Council, it was time to review the two paper system. It argued that the constitution of the "new" *Undergrad* was beyond the powers of the Council in that it contravened the clause in the Union's constitution which provided that "the Publications Secretary shall be responsible for producing magazines and any other publications of the Union". The editorial went on to explain why "we are not in favour of the two paper system as proposed".

This editorial incurred the wrath of Ho Man Wui and he wrote the following letter to the Chairman of the Council<sup>46</sup>:



*"With reference to the Editorial of the 'Union' issue No. 1, Session 1971, I deem it my duty to inform Council that since the intention of Council's publishing the 'Union' is to have its views and policies reported and explained, the Editorial should therefore be in line with them: and since Council still thinks the Two-paper system good, the Editorial should not say otherwise. The Editor-in-Chief of the 'Union', therefore, has made a grave mistake. Furthermore, I wonder if the Editorial was published with the consent of other members of the Editorial Board. If Council is competent, such a violation of Council's decision should be dealt with seriously.*

*If Council wishes to continue the publication of the 'Union', it should exercise as much supervision as possible over the paper in order to prevent it from being the Publication[s] Secretary's paper rather than Council's publication.*

*Yours sincerely,  
Ho Man Wui,  
Acting Publications Secretary, 1970"*

### Combined issue of the *Undergrad* and the *Union*

At the third session of the first Council meeting held on 1 February 1970, I reported to the Council that in the considered opinion of the new executives, the two paper system was unsatisfactory and that some of the reasons were stated in the editorial<sup>47</sup>. I also indicated my intention

to move a motion to go back to the "old" *Undergrad* system with minor changes. Ho Man Wui's letter was considered. The Council felt that it was more important to discuss about the future and formed an ad hoc committee consisting of the Council Chairman<sup>48</sup> as chairman, the President and the Publications Secretary as *ex officio* members, together with two councillors, namely Shiu Yeuk Yuen (Stephen)<sup>49</sup> and Ho Kwok Hung Aeneas<sup>50</sup>, and two non-councillors, namely Wong Siu Lun Stephen and Lau Shek Yau John<sup>51</sup>. The meeting was adjourned for a short while to facilitate discussion. After further discussions, I proposed the following motion:



*"that a combined issue of 'Union' and 'Undergrad' with a maximum of 16 pages be published on the 1st and 16th of each month until a decision be reached by the Annual General Meeting 1971, that the Publications Secretary be the Editor-in-Chief of the paper and be authorised to locate the members of the Board..."*

My motion was carried unanimously. At the 4th session on 3 February 1971, I presented consents signed by 16 persons to the Council and the Council was satisfied with them as members of the editorial board<sup>52</sup>.

Publication of the *Union* then ceased. The *Undergrad* had not been published since 4 December 1970.

The first combined issue of the *Undergrad* and the *Union* was published on 16 February 1971. The next 2 issues were published on 1 March and 1 April.

In the 1 April 1971 joint issue, the *Undergrad Union* reported the recommendation of the ad hoc committee as endorsed by the Council at its third meeting held on 19 March 1971. The committee held 9 meetings, considered 2 letters, met with 2 persons and interviewed 8 persons. It recommended that the *Undergrad* should be the only one regular paper and the official publication of the Union. It could publish up to 16 pages. It retained its usual publication dates. The Publications Secretary would chair the editorial board and the Editor-in-chief would be an observer of the Council. Editorial autonomy was subject to some restrictions. It could not go against the Council's policy. Where a decision by the Council or by the Union in general meeting was pending, the editorial should publish the reservation of the possibility of a different conclusion by the Council or by the Union in general meeting. The Council, through the Chairman might require an article to be published in full. The Chairman might also require a news item, statement or

<sup>46</sup> *Undergrad Union* 16 February 1971 p. 3    <sup>47</sup> *Undergrad Union* 16 February 1971 front page  
<sup>51</sup> BSocSc(1971)    <sup>52</sup> *Undergrad Union* 16 February 1971 front page

<sup>48</sup> Tsoi Tai Sang Tony BSocSc(1972)    <sup>49</sup> BA(1971)    <sup>50</sup> BSc(Eng)-Mech(1972)



Kenneth Kwok SC with the HKU Law Alumni Association Executive Committee: (front row from left) Augusto N. da Roza, Françoise Lam, Kenneth Kwok SC, Cleresa Wong, The Hon Mr Justice Patrick Chan; (back row from left) Richard Wu, Joseph Tse, Carol Chen (Faculty), Bonnie Chan, SK Lam, Yeda Hong, Wendy Chan, Denise Chan, Youn Ling (Faculty) and Rebecca Lee who is not in the picture.

clarification from the Executive Committee or any of its members to be published in full. The Editor-in-chief was obliged to inform the Chairman of his intention to publish any article which criticised any decided policy of the Council and the Chairman or any executive committee member would have a right of reply in the same issue if the reply should reach the publications room within the specified time limit<sup>53</sup>.

On 15 April 1971, the combined the *Undergrad Union* published an "Extra" issue on Diaoyutai.

### The "new" *Undergrad*

Chan Man Hung Thomas<sup>54</sup> was appointed Editor-in-chief of the "new" *Undergrad*.

The first issue appeared on 23 May 1971 in the form of an "Extra" issue calling for rejection of the University's proposal to charge the same fees for Hotung, Old and University halls.

From 16 September 1971, the *Undergrad* was offered for sale to the public.

### Election of 1972 executives

The annual election of Union executives was held on 26 November 1971<sup>55</sup>. There were 2 cabinets and voting was by secret ballot. Luk Man Keung Joseph won by 745 votes to 388 and was elected President for session 1972 which meant that he had to defer his studies for one year. 6 other members of his cabinet won but 3 lost. I was one of them. I lost in the Vice-President (Internal) election and went on to pass my LLB examinations.

### The *Undergrad* Commentary

This may have been an appropriate place to end this article but for the fact that I cannot resist quoting from an *Undergrad* Commentary<sup>56</sup> "Where they look from where they stand" published in the 16 June 1973 issue, after 19 HKU LLB graduates had taken the first PCLL examinations in May 1973:



"We see in this new breed of lawyers a role and a hope that they will play it well.

...In short, we condemn any mechanical following of English examples.

What we see in a 'Hong Kong lawyer' is one who has a working knowledge of Hong Kong and its inhabitants; who will strive to get to know the society and the people better; who realises the potential and impact of a law in Hong Kong; who will utilise the potential and impact of a law only for the betterment of the community and the people that he is serving and who will forever seek to do what is just right and fair.

...

In conclusion, we will join Professor Evans in exhorting our graduates [to] 'strive towards a greater feeling of responsibility as citizens in Hong Kong and by that we mean that they should develop a sense of having to play a role in Hong Kong, of wishing to play that role and a determination to play it well.' "

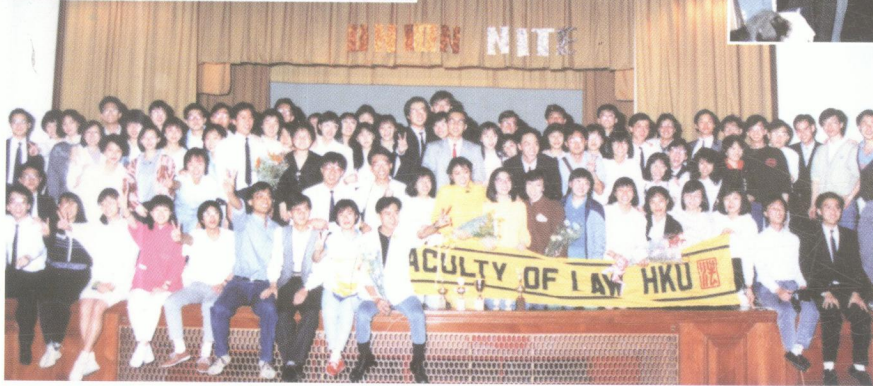
<sup>53</sup> *Undergrad Union* 1 April 1971 front page <sup>54</sup> BSocSc(1973) <sup>55</sup> *Undergrad* 5 December 1971 p.3 <sup>56</sup> *Undergrad* 16 June 1973 p.4



Some of the Class of 1987 in their graduation gowns.



Class of 1987: Hot pot gathering.



Union Nite 1987.



"Gang of Four" from Class 1988.  
(From left): Steve Woo, Joyce Chan, Kenneth Wong and Samuel Chan.



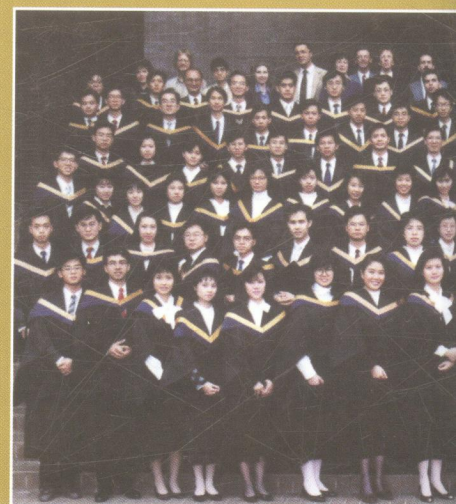
Some members of Class 1987.



LLB 1987: our first Chinese New Year gathering.



'87



LLB 1988: taken at a reunion function held on 3 Sept 2004.



Class 1989 at the 30th Anniversary Dinner with the Secretary for Justice, Ms. Elsie Leung, at Loke Yew Hall, HKU.

PCLL 1987.



Chow Lap San Edward (at the right) of LLB 1989 - In the turbulent year, the HKU team still focused on their work and went to Kuala Lumpur, Malaysia, had a friendly match with the team from the University of Malaysia. Our team members, two of them, joined the Bar. Their team member, not appearing here, took the photo.



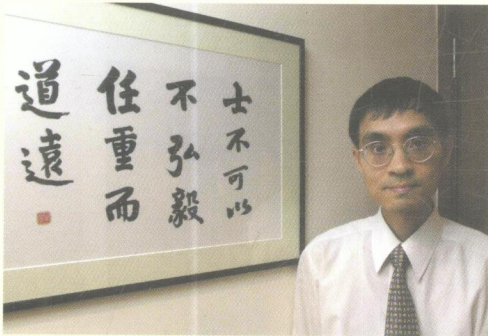
## 中國法與我： 一些回憶點滴

陳弘毅教授

LLB 1980, PCLL 1981

我是在1977年入讀港大法律系的。當時是“四人幫”倒台後不久，鄧小平剛剛復出。我們在法律系的同學不大了解

中國內地的情況，也不大關心它，雖然港大學生會當時的口號是“認中關社”，即認識中國、關心社會。法律系沒有任何關於中國法的課程，我們的老師全是外國人，唯一例外是我唸二年級時



來了一位在我們法律系畢業、並剛在倫敦完成LL.M.的Alexa Cheung老師，她曾是我的侵權法導修課的導師，但很可惜，她任教一年後便離開了港大，改為當執業律師。（Alexa現在是證監會的高層人物。）

記得當時港大學生會曾經邀請張鑫先生作一次關於中國法的演講，我參加聽講，但是由於我的普通話程度太差，收穫不大。1979年，我是二年級的學生，我從《明報》讀到中國一次通過了七部重要法律，其中包括中華人民共和國1949年建國以來首部《刑法》和《刑事訴訟法》。後來我才認識到1979年在中國現代法制史中的意義，這七部法律的通過，其實是中國社會主義法制在經過五十年代後期的“反右運動”和六十年代下半以後十年“文革”浩劫後重建的起點。法學教育也是在七十年代末開始重建的，1977年，中國內地的大學恢復通過高考來招生，1978年，內地的主要法律院校招收了文革後第一批的法學本科生。原來文革後首批法律人才是和我在幾乎同樣時間開始唸法學的。

不記得是我在唸三年級還是PCLL的那年，美國哈佛大學的Jerome Cohen教授訪問港大，法律系安排了他為學生作一次關於中國法的講座，這是我與中國法的早期接觸之一，我和同班的一些同學對他作為外國人竟對中國法（包括中國的法制史）有這麼深的研究，為之肅然起敬。另一次接觸是廖瑤珠律師來港大講課，好像是講中外合資企業法，她的愛國情懷給我留下很深的印象。後來，我有緣與Cohen先生和廖女士有進一步的交往，這是我人生中的榮幸。

1981年，我PCLL畢業，越洋至哈佛大學唸LLM。當時Cohen教授剛辭去全職教授的位置，轉到紐約的一所律師事務所執業，但仍以兼職身份在哈佛教授中國法。我選修了他的課，課程中對中國法律的歷史傳統和當代中國社會主義法制的基本框架的介紹，使我開始對中國法有了系統化的認識。但是，當時中國的立法寥寥可數，百分之九十五以上的現行中國法律在當時是不存在的，由此可見，中國法在過去二十多年的發展，可說是滄海桑田，面目全非。在立法的層面，中國法制的進步和繁榮是有目共睹、無可置疑的。

從哈佛回港後，我開始了為期十八個月的見習律師的生涯。除了律師事務所的工作外，我還參加了兩個課程，對後來我學習中國法是有幫助的。一個是普通話的初階課程，另一個是港大校外課程的當代中國研究文憑課程，後者的老師主要是楊意龍博士（後來不幸因交通意外去世）和Leo Goodstadt先生。課程中要求學生寫一篇研究論文，我寫的題目是「發展中的中國法制」，後來投稿並刊登於1983年的Hong Kong Law Journal。在寫這篇論文的過程中，我閱讀了不少中文的材料，加深了自己對中國法制的當前狀況（尤其是1982年的新憲法所規範的法制）的認識。

1984年2月，我完成了在律師事務所的實習，開始任教於港大法律系。當時中英兩國關於香港前途的談判進行得如火如荼，我的研究興趣很自然地集中在關於香港前途的法律安排——即後來1984年9月公佈的《中英聯合聲明》中提到的香港特別行政區基本法。1985年，基本法起草委員會成立，起草工作正式展開。我不是起草委員會、也不是諮詢委員會的成員，我只是以學者身份發表關於基本法所涉及的法律問題的文章。在參與關於香港前途和基本法的研究和討論的過程中，我有幸認識了一些中國內地的法學家，如鄭成思教授（現在是內地知識產權法的權威）、徐炳教授（後來成為知名律師）、蕭蔚雲教授、許崇德教授、王叔文教授等。

1991年，在當時港大法律系主任Raymond Wacks教授的推動下，我們法學院正式開展了與內地法學界的學術交流：我們學院的教師（包括我自己）第一次組團訪問了北京的中國人民大學。在1992年，我出版了一本系統介紹中國法制的英文著作（An Introduction to the Legal System of the People's Republic of China, 第三版剛在2004年出版）。在九十年代，由陳小玲女士創辦和主持的香港法律教育信託基金每年都贊助一些內地法學學者來港大訪問，因此我們與內地法學界的接觸得以進一步增加。

在1993-96年擔任系主任和在1996-2002年擔任院長的期間，我很高興有機會進一步加強我們和內地以至澳門和台灣法學界的交流和合作，如邀請學者來講學、合辦研討會、贊助學者、學生或官員來港進修或進行研究等。每件事情都有它的第一次，如第一次在港大法學院舉辦以普通話進行的學術講座，第一次在港大法學院以普通話進行研討會，第一次設立獎學金給內地來港學習普通法的學生。我自己也經歷了第一次以普通話在內地大學講學，第一次以普通話在內地的研討會上宣讀論文，第一次在內地出版文章或書籍。第一次後，便能慢慢習以為常，建立起新的學術生活型態。

在“一國兩制”的安排下，香港和內地仍是兩個截然不同的法制。雖然內地法制在過去二十五年的進步是巨大的，法治國家、人權以至私有財產權等重要理念也寫進憲法，但內地法治的水平仍與香港有很大距離。我們不能單看紙上的大量立法，我們更須關注法制在司法、行政、執法等領域的具體運作情況。我們越多了解這些情況，便越會發覺流弊叢生，事情強差人意，法治的崇高理想與法制的嚴峻現實之間的鴻溝太大太深，難以跨越。

但是，我們決不能放棄，也不能絕望。畢竟這是我們自己的國家，我們自己的民族。還有無數的人，在他們各自的崗位上，為我國法制的建設默默耕耘，把自己奉獻給我國的法治事業。我們不認識他們之中的大多數，但我們會認識他們其中的一些人，並了解和支持這些朋友的努力和奮鬥。讓我們站在同一陣線，攜手合作，不畏困難，堅持理想，迎接挑戰，邁進於漫漫前路。

## A Short Story

**Professor Johannes Chan, SC**  
LLB 1981, PCLL 1982

*The recent ICAC's raid on a number of newspaper offices reminds me of my last encounter with the ICAC. This is a story in memory of the late Mr Justice Charles Ching, one of the best advocates in the legal history of Hong Kong.*

It was in the year 1994, a heyday of Hong Kong's property market. The price of real property kept soaring from one height to another, and there was no sign of its reaching the peak yet. On 26 May 1994, a land auction took place at the City Hall, which was, as usual, packed with all major developers and reporters. As the bidding went on, messages were apparently passed among various developers. The following day, many newspapers carried a story that major developers joined hands to keep down the price of the land sold. In most newspapers, the developers involved were identified by name and photographs. Some newspapers described the event as a 'cartel', 'an unholy alliance', and even a 'gang-up of the big boys'. Some magazines recited every details of the incident, including who was talking to whom and what the various messages were. The extensive coverage of this event led to a review of the auction process in due course.

About 2 months later, the ICAC, upon receipt of a complaint, began to investigate the matter. On 2 August 1994, as part of the investigation, two ICAC investigators went to the headquarters of Ming Pao. They were apparently too early as most senior members of the press industry would not be back to the office until late afternoon. So they left a message with the secretary of the Editor-in-Chief that they were 'investigating the conduct of the land auction' in question and wished to interview the reporters who had been assigned by Ming Pao to cover the story of the auction on the material day. There was no mention of any offence or of the evidence of any suspect.

The following day, Ming Pao carried an article, the relevant part of which read: 'ICAC took steps to meet reporters in its investigation in relation to the developers' joint bidding (for) land' and 'The ICAC is investigating whether anyone had infringed any Ordinance in a land auction held on 26 May this year in which over 10 developers combined to bid for land.' The article went on to explain that in order to collect information ICAC investigators had approached media organizations with a view to meeting reporters and others who had attended the bidding process. It then added: 'The target of this ICAC investigation has not yet been ascertained.'

As a result of this article, Ming Pao and its 3 most senior chief editors were charged with an offence of unlawful disclosure of the details of an ICAC investigation under section 30 of the Prevention of Bribery Ordinance.

Section 30(1) provides that 'any person who, without lawful authority or reasonable excuse, discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance the fact that he is subject to such an investigation or any details of such investigation.... shall be guilty of an offence....'

I was briefed as a junior to the late Charles Ching QC. It was one of his last cases in practice at the Bar, as there were then rumours (subsequently confirmed) that he would soon join the Bench. As soon as I got my coffee at his conference room, Charles flipped through the Ordinance and fired his series of questions at me. 'Section 30 said 'an offence alleged or suspected'. 'Alleged' by whom? 'Suspected by whom?' 'What were the 'details' of an investigation that have been disclosed?' As usual, Charles had already done a full analysis of the case and had a full picture in mind how he wanted to conduct the defence, and was merely testing how well prepared the junior was! We had a good hour of discussion, and I found that I didn't even have a chance to sip my coffee. Charles seemed satisfied and was prepared to conclude the conference when I brought up the Bill of Rights defence. Charles slightly raised his eyebrows: 'Johannes, we have a good case. I think it is a sign of weakness that we need

to rely on the Bill of Rights.' 'Not necessarily', I feebly began my mission impossible to convince Charles that there was a respectable case under the Bill of Rights as well. I had worked with Charles before and knew his view on the Bill of Rights. Nonetheless, Charles was exceptionally patient, and after some good quarters of an hour, Charles thought for a while and said, 'You will prepare this part of the submission.'

The prosecution took place at Eastern Magistrates' Court. I offered to pick up Charles from his chambers to the court. A lover of racing cars, Charles kept telling me that my car-lock was absolutely useless as it would take only 10 seconds to open it, and he kept saying the same whenever he saw my car. His persistence certainly wasn't limited to law and courts.

The courtroom was packed with reporters, members of the public, and even some members of the Bar who wished to see Charles' cross-examination, which is rightly considered to be the 'Jewel in the Crown' of the legal profession.



In front of the formidable Charles, the ICAC officer appeared to be rather timid and nervous.

'Mr Officer, I have great respect for the ICAC. So please relax. I have just a few question to ask you about a letter. Do take your time to think before you answer my question. The prosecution may object to some of my questions. You may wish to answer after the prosecution does not indicate any objection.' Charles started his cross examination in a gentle tone.

'Is it true that the ICAC has received a letter complaining about the land auction?'

'Yes.'

'As a result of this letter, the ICAC began an investigation?'

'Yes.'

'Did the letter refer to any offence or suspected offence?'

'No.'

'Was the letter written by a member of the public?'

'Yes.'

'Is it correct that the author of the letter was not present at the land auction?'

'Yes.'

Charles finished his cross examination in about half an hour and got everything he wanted. There was no tear, no bloodshed.

The hearing lasted for two days. At the end of the prosecution case, we submitted no case to answer. Our main argument was that the offence was not made out, that there was no allegation or suspicion of any offence by any person, that no details were disclosed, that the disclosure had caused no prejudice to the investigation, and that section 30 of the Prevention of Bribery Ordinance was inconsistent with the Bill of Rights. The Magistrate adjourned the hearing for ruling, and we had a good lunch when Charles enjoyed all the unhealthy food.

It took the Magistrate a month to deliver the ruling. In a carefully reasoned decision, the learned Magistrate rejected all our arguments on the interpretation of the offence, but held that section 30 was inconsistent with the Bill of Rights and therefore repealed to the extent of inconsistency. The information was accordingly dismissed. Not surprisingly, the Attorney General appealed by way of case stated, and the appeal, which was confined to the constitutionality of section 30, was reserved to the Court of Appeal.

By this time Charles' appointment to the Bench was announced. He has distinguished himself as the second member of the Bar who was appointed directly to the Court of Appeal. Of course, on 1 July 1997, he was made a Permanent Judge of the Court of Final Appeal and continued to make his mark on the legal development in Hong Kong.

The Bar held a special Bar Mess in honour of Charles for his appointment. Charles was in a very good mood that evening. He started his speech on the meaning of 'barrister'. 'I look up the Oxford Dictionary, and find that 'barrister' lies between 'bankruptcy' and 'bastard', so he went on.

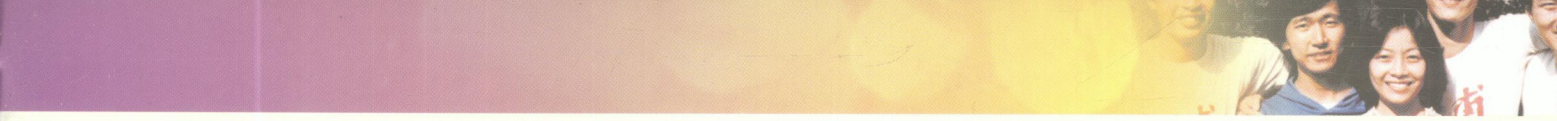
Gladys Li QC led me on the appeal. In her eloquent and majestic English, Gladys opened her case by launching a full scale attack at the extremely wide reach of section 30 and the chilling effect it had had on freedom of expression. Section 30 prohibited disclosure of the details of an investigation of an offence under the Prevention of Bribery Ordinance. What if the investigation turned out not to relate to an investigation under the Prevention of Bribery Ordinance at all, but, for instance, under the Corrupt and Illegal Practices Ordinance? This was something within the peculiar knowledge of the ICAC, which would never confirm what offence it was investigating. Not knowing what offence the ICAC was investigating, section 30 would be held in *terrorem* over the heads of newspaper editors, and the safest course was not to report on anything about ICAC, not even any abuse of power by the ICAC.

The arguments were completed in the early afternoon. The Court of Appeal adjourned for about 20 minutes and gave judgment at 3:30 pm. The appeal was allowed. The judgment was given by Litton VP (as he then was). The Court found that the primary purpose of section 30 was to protect the reputation of persons under suspicion and to protect the integrity of investigations into offences alleged or suspected under the Ordinance. Since it pursued a legitimate objective, it was consistent with the Bill of Rights. This is a classic example that the Court failed to consider proportionality at all. The mere fact that the offence pursued a legitimate objective did not by itself justify the offence if the scope of the offence was disproportionate to the objective to be pursued. This is perhaps the danger of an *ex tempore* judgment. In consolation, Litton VP held that if the purpose of disclosure was to reveal an abuse of power by the ICAC officer, this would be covered by the defence of 'reasonable excuse'.

Section 30 has long been criticized for being a piece of press gagging law. As a matter of principle, Ming Pao decided to further appeal to the Privy Council. Leave to appeal to the Privy Council was required, as such an appeal was not as of right. Surprisingly, the Court of Appeal refused to grant leave, and the only recourse was to apply for leave from the Privy Council itself. The Crown decided to oppose the leave application, so we had to start another battle in London.

It was a cold winter morning when my instructing solicitor and I arrived in London for the leave application. We arrived at Heathrow before 5 am, and reached the hotel at Westminster around 6 am. I thought I might take a short rest before the conference with Anthony Lester QC (subsequently Lord Lester QC), my leader, and then realized that I had forgotten to collect at the airport a





baggage which I agreed to bring to a friend in London. It was still on the luggage belt when I returned to Heathrow (so much for London's efficiency!).

The Privy Council is situated at Downing Street. The Prime Minister's Residence at No 10 is of course a well known tourist spot. The entrance to Downing Street is blocked by an iron gate and guarded by a policeman. Tourists can only get a glimpse of Downing Street from behind the iron gate. Yet if you tell the policeman that you are going to the Privy Council, he will let you through!

The court of final appeal of the British Empire is housed in a rather dull Georgian building. Counsel waited outside the courtroom to be called. The judges are not robed. Counsel table, which is a very narrow and uncomfortable wooden panel, lay perpendicularly to the bench, and counsel had to walk to the middle of the courtroom before a standing lantern and in a rather exposed position without assistance from his junior or instructing solicitor to address the court. We had a good hour of argument, and leave was granted.


It was in early Spring of 1996 when I was in London again for the substantive hearing. The morning breeze at Heathrow was as always refreshing and welcoming. This time I collected all my luggage and managed to have a fulfilling English breakfast at a side walk cafeteria near Lincoln's Inn before the conference with my leader, who had since our last conference been conferred peerage.

Chambers in London are not much different from chambers in Hong Kong, except perhaps that they are less modernized in their outfit. Anthony Lester QC is a leading human rights counsel as well as a visiting professor in public law at University College London. I have known Anthony since the late eighties, but this was only my second time to his chambers. We were greeted by his clerk, an old gentleman with a pair of golden rimmed spectacles and in dark pinned-stripped jacket. As typical of many leading counsel, Anthony's papers were scattered all over the place, and I was delighted to see the red ribbon tying his briefs and even the seal at the top of his paper, a tradition which has long lost in Hong Kong. We went through the respective cases of both the Appellant and the Respondent, and gave a final touch to our submissions. We were all set for the final stage of the hearing.

In contrast to the half-day hearing before the Court of Appeal, the hearing before the Privy Council lasted for two days. It took no time for the Bench to engage with counsel. The law lords were well versed with the case and one question after another was fired at counsel before counsel could even develop his argument. The questions also went well beyond our submission and counsel and the bench freely engaged in detailed arguments on cases that were not cited at all. Judgment was reserved.

At the end of the case, Anthony took us to the nice terrace at the House of Lords for coffee. There was a private path which could take you from the Privy Council to Parliament – so much for separation of powers! The terrace overlooks the Thames. It was very enjoyable, particularly after a full day in court, to be able to relax under the sun at the grassy terrace and to be greeted by the warm breeze from the Thames. No wonder the law lords opposed strongly removing the House of Lords to another venue so that the highest court in England would not form part of Parliament – another anomaly in English constitutional law about separation of powers.

Judgment, or more accurately, the Opinion of the Judicial Committee was handed down on 20 May 1996. Their Lordships reaffirmed certain fundamental principles on freedom of expression, and after conducting a balancing exercise between the evil of corruption and the scope of section 30, and giving due regard to the margin of appreciation, decided that section 30 was a proportionate restriction on freedom of expression. In so doing the Privy Council also limited the scope of section 30. Among other things, it held that section 30 could only apply when there was a suspect or an allegation of a bribery ordinance offence against a specified person. As there was no evidence that at the date of publication of the newspaper article anything other than a general investigation was being carried on by the ICAC with no suspect in view, no offence could have been committed. Thus, in a finely balanced judgment, their Lordships laid down sufficient general principles on freedom of expression that were of great importance to Hong Kong, confirmed the acquittal of the Respondents by restricting the scope of section 30, and yet left sufficient room to protect the integrity of ICAC investigation. After two years of legal battle, everyone got something back from the judgment.

Although the point that section 30 could only operate with an identified suspect was not taken at first instance, it was Charles' cross examination that laid the factual basis for such a finding by the Privy Council. I wrote to Charles about the judgment, and he sent me a nice reply saying 'it proves how wrong I am at first instance.' I held the letter for a long while. It has been a great privilege to be able to work with three of the best leading counsel in one case. They have different styles, different approaches, and yet they share one thing in common: the fine and yet almost paradoxical combination of humility and nobility. In the Great Hall of Justice, we are just a humble part of it, but it is precisely such humility that enshrines the nobility of the Great Hall. In the few words of Charles' letter, I again see the great virtue of modesty, a virtue which seems to have been paled with many other fine traditions in our community. 

## *A Peripatetic Law Lecturer*

Professor Chris Sherrin



### **Burwalls, Bristol**

It was a cold wet day on a Saturday in January 1984 at Burwalls, Bristol University's residential conference centre; a routine day that I little realized would change my life. Tony (now Professor Tony Dugdale, Deputy Vice-Chancellor of Keele University) and I had just finished the first session of the morning. We were teaching courses for London External LLB students; Tony doing Tort, and me doing Land Law. We were enjoying the coffee break in the Lounge and contemplating, not with great pedagogical enthusiasm, the further sessions to come during the rest of the day with more to follow on Sunday. In truth our enthusiasm for teaching at Burwalls weekends was motivated more by a desire to supplement our meagre university salaries than by a burning desire to spend our leisure time explaining the mysteries of the rule against perpetuities or the *volenti non fit injuria* rule, but anyway that is what we did.

These residential week-end courses had started, a few years earlier, as courses for 'Teachers of A Level Law', a brightened group of persons desperate for some exposure

to quality law teaching and the opportunity to network with other similarly placed lonely souls. Under that banner we had been approached one day by Butterworths who wanted to publish a new 'A Level Law Textbook' and asked us if we, the team teaching the relevant A level subjects at Burwalls, would be interested in writing it. We were, and we did; the book was a great success and is now in its fourth edition and has earned its authors some decent royalties! So that was the first product of our commendable dedication to pedagogical weekends and unknown to us then the second product, which was about to be presented to us, was to be far more exciting and profitable.

The 'A Level Courses' spawned the fuller and more structured courses for London External LLB degree students, again in the 80s a neglected body who were keen to participate in residential courses designed for them. And it was on one such course, in the circumstances mentioned above, that we were approached by two Chinese ladies. The first, slim, medium height, immaculately dressed and groomed (which distinguished her from the rather scruffy Saturday attired students) introduced herself as Priscilla Tso of the Extra Mural Department at Hong Kong University. Her shorter but no less neatly attired colleague was introduced as NP Ng. We shook hands, invited them to join us and enquired whether they would like a coffee. They declined and after a few preliminary courtesies, Priscilla, with characteristic directness, came straight to the point.

"We are from Hong Kong University where we have recently started law courses for Hong Kong students who are taking the London External LLB degree. There are many such students and previously there were no courses for them to take to assist in preparing them for the exams. We started last year with courses for first year students given by a team of lecturers from SOAS, and I am now looking for lecturers to teach the second year courses which include Land Law and Tort."

We made some encouraging remarks and I explained that these courses in Bristol, which I was organizing, were designed for a similar purpose and had proved to be very popular.

"Yes, indeed and we have been recommended by London University External Division to come and see you. We have studied your materials and sat in on your sessions and I am very impressed with the way you have conducted them. Would you both be prepared to come to Hong Kong and do something similar for me?" She asked.

I exchanged a quizzical look at Tony who responded with an interested raise of his eyebrow. If we were hearing correctly we were being asked if we would like to go to Hong Kong, an exotic place which we knew only from the iconic Richard Mason and the film of Han Suy-in's book.

We tended to approach all invitations to lecture or to examine with some suspicion since they usually involved nominal fees, minimal travel expenses, poor lunches and masses of work, at places such as Swindon or Stoke-on-Trent, neither of which could by any stretch of the imagination be regarded as exotic. Anyway as the thought sunk in, and feeling that we had to say something, Tony enquired as to the dates when her courses would be held and how long they would be.

"Easter," she replied promptly. "I intend to organize the courses around the Easter holidays when the students have some free time and they will be about 15 hours for each subject."

We indicated, somewhat cautiously still not yet being very clear as to what was being proposed or as to the seriousness of the proposal, that we also would be free then. Priscilla hastened on.

"We will provide return air tickets to Hong Kong and of course accommodation and a per diem for the time you are there. I will also pay you a lecture fee though I cannot say how much that will be until I see how many students enrolled."

The mention of a lecture fee caused a perceptible increase in our interest. The coffee break ended and there was time for only a few more brief exchanges as there was a general move back to the classrooms. I hastily thanked Priscilla for her invitation and, more out of politeness than expectation, Tony and I indicated that we would certainly be interested in going to Hong Kong to teach courses for her if she wished. Priscilla thanked us and said she would be in touch. We stood up, shook hands and they were gone - hastening to catch a train back to London and the evening flight to Hong Kong. Tony and I went back to our lecture rooms with a heightened sense of interest - even a touch of excitement - which we disguised with a bemused shrug of our shoulders as we continued with the routine of our lectures.

Several weeks passed and we had heard no more. We had more or less dismissed the incident as one which would come to nothing. Then in late March I received a Telex (in the days before Fax and email Priscilla always communicated with me by Telex). The Telex was in cryptic telegraphic style and read something along the lines of: "Further to our conversation in January, I have enrolment for Land Law (Sherrin) and Tort (Dugdale) LLB courses in April. Please confirm your availability to teach these courses between *(dates in mid April)*. Air-tickets will follow. Reply soonest."

I read it twice and then hastened to Tony's office.

"You remember the lady from Hong Kong University who said she was going to invite us to teach courses in Hong Kong? Well blow me if she hasn't sent us an invitation to do so!"

I showed him the Telex. "Sounds interesting and it could be fun", he commented.

We briefly discussed this surprising turn of events and agreed that I should reply accepting the offer subject to agreement on the arrangements and the fee. And so it happened exactly as Priscilla had said. The air-tickets arrived; Eupo Air tickets on BA 19 and return on BA 20. In the early days Priscilla always used Eupo Air which was a sort of cut price charter London to Hong Kong ticket on BA, stuffed with exclusions, non-refundable, non-exchangeable; non-re-routable; valid only on flight shown, you might get a seat if you were lucky etc. Eupo Air had a separate check-in at Heathrow and the seats were invariably in a block at the very back of economy, the smoking section in those days, next to the toilets. We had to wait several years until Bill Howarth was in charge of the courses before we got a full economy BA ticket!

### Hong Kong

So we arrived in Hong Kong in Easter 1984. The British Airways 747 (series 100) made a transit stop in Bombay which on the first occasion added general interest to the trip but later proved tedious by adding two hours (if you were lucky, three or four, if not) to the trip. The fighter pilot banked approach into Kai Tak over the roof tops of Kowloon, being every bit as thrilling (or scary) as it was reputed to be. Tired and confused we emerged from Arrivals and walked slowly down the ramp which was crowded on all sides by a mass of people, all shouting and calling out excitedly, a characteristic Kai Tak scene and the first taste of Hong Kong which no-one arriving at Kai Tak, ever forgot. We spotted our names being held up on a board, joined the driver who took our luggage and indicated for us to follow him. Up the lift into the car park and we were installed in a gold Mercedes. Forty minutes later we arrived at Robert Black College. It was the car that did it - a gold Mercedes sent to pick us up - we were impressed with that!

The two weeks or so that we spent in Hong Kong on that first trip were most enjoyable. We were honoured as important guests, flattered as distinguished academics, appreciated as teachers and royally entertained. And we were paid a generous fee! Priscilla always paid us our full fee and per diem on the first day which was a typically generous and thoughtful touch which we appreciated. At the end of the courses Priscilla asked us to come again and we had no hesitation in saying that we would love to. Thus it was that I first came to Hong Kong, returning every year for the next ten years, as a peripatetic lecturer on the London External LLB courses. These years were dominated by two marvelous personalities; the first half by Priscilla in the Extra Mural Department; the second by Bill Howarth, as the Extra Mural Department metamorphosed into SPACE.


**Priscilla**

Priscilla was the initiator of the courses and she went to endless trouble, with her characteristic charm and efficiency, to ensure that they were an immediate success. She was exacting in her standards and quite a few lecturers came out once but were not invited again! But those of us who survived were treated with great charm and care and enjoyed, not only the best possible facilities and environment in which to teach, but also her boundless hospitality. During the week she would often invite us to join her for tea in the old Senior Common Room, where she would entertain us with sandwiches and cakes and enquire solicitously whether we had every thing we needed for our evening classes to follow. She sat-in on many of our sessions and often used these teas to make constructive and helpful comments and suggestions about the way we had conducted the sessions. She introduced us to the delights of Dim Sum at Maxim's typically noisy and crowded restaurant in Chi Fu, where Priscilla, whilst eating little herself, would select delicacies for us and putting them in our bowls urge us to eat them – with varying degrees of success as colleagues suspiciously poked the transparent packets whilst seeking reassurance that it wasn't snake. Always a charming and attentive host, on other occasions she entertained us to splendid lunches down town – swanky restaurants in Central or the Jockey Club. On our (few) days off she would make sure that we had something interesting to do and sometimes on free days she would hire a boat, and with her husband and two daughters, we would set off for a cruise to a scenic cove in the New Territories where, after an excellent lunch on the boat, she would organize a swim or a hike and never take no for an answer from the slackers!

**Bill Howarth**

The courses thrived and so did the Extra Mural Department which rapidly outgrew its staff and premises in the Main Building. Once firmly and successfully established Priscilla was content to take a less prominent role; a full-time staff Tutor in Law was clearly required to cope, not only with the LLB courses, but the burgeoning other law courses which the LLB spawned. At this crucial juncture they found the perfect person in Bill Howarth, who, along with other Manchester colleagues, had been coming out to teach for several years. The second half of

my ten years teaching on the LLB was dominated by Bill. Incidentally I claim credit for being indirectly instrumental in bringing Bill – who became the hugely successful Director of the External Division for SPACE – to Hong Kong. A couple of years into the courses Priscilla asked me if I would come out in January to give lectures on Land Law. I was already fully committed to other courses and I knew that the London LLB Land Law (then) course was a brute – redolent of arcane and technical topics (seisin; settled land; perpetuities; rule in *Shelley's* case etc) which mystified and despaired the best of students. So I declined and they looked elsewhere. NP Ng then said that she knew an excellent Land Law lecturer at Manchester Poly called Bill Howarth. So he was invited and he proved to be a brilliant and popular lecturer - the students nicknamed him 'the big man' as much for his dominating personality as for his physique! If ever a person was in the right job at the right time it was Bill, a brilliant initiator, motivator, organizer and administrator he immediately recognized and grasped the opportunities offered for law courses in Hong Kong and pursued them with enormous energy and initiative. The Extra Mural Department became SPACE; Bill introduced the Diploma in Law, the CPE, the PCLL, the top-up Manchester Metropolitan LLB, and the rest is SPACE history. He also, as poacher turned game keeper, greatly improved our lives as visiting lecturers. Out went Eupo Air to be replaced by full cost BA tickets giving a choice of seats and of routing. The lecture fees went up and when Robert Black was full we were accommodated in down town hotels, with swimming pools and coffee shops! He introduced some excellent colleagues from Manchester including Mick Fisher and thus provided for the perfect succession when he finally decided to move on.

As to the Law Faculty, in truth we didn't have a great deal of contact with them in the early years; I think there was some suspicion on their part as to what we were up to in the Extra Mural Department! But over the years I met most of the Faculty at lunches hosted by Daffyd Evans, who was always kind and welcoming, and at Faculty Seminars and Conferences which we sometimes attended. At one of these in 1992 I learnt that Ted Tyler had resigned his Chair to take up an appointment on the Bench. I decided to apply and was in due course invited for an interview – but that as they say is another story! 

# Tales of Lion Rock and Tung Lung: Light My Way, Jet Roar, and Wonderful Souvenir

Professor Halkyard AJ

As many of my colleagues, and some of my former students, know, I have a particular passion for rock climbing. So, in my 24 years here, I have got to know the geography of Hong Kong pretty well. I am more familiar with the country parks and outlying islands than with Tsim Sha Tsui and Causeway Bay. The names of some of my favourite climbs, such as Wonderful Souvenir and Ultra-violet Light My Way (both on Tung Lung Island), and Jet Roar (on Lion Rock high above the old Kai Tak), are as familiar to me as those of famous Hong Kong tax cases, read many times, such as Hang Seng Bank, Orion Caribbean and the wonderfully titled Beautiland.

The title of this piece (or reminiscence) on the 35th Anniversary of our Law Faculty, is not, however, about rock climbing – although it is definitely about Hong Kong. At this stage in our history, a time for reflection as well as action, from a personal perspective it seems the right time for me to honour the three most treasured memories of an academic life at the University.

First, come my colleagues at the Faculty, a band of eclectic individuals who have made me both laugh – and cry. Ritual coffees and teas, numerous dim sum, academic argument, jokes and humour and, paradoxically, stubbornness and prickliness, are only a few of the elements that make academic life here rewarding in so many ways. We (like most Faculties I suppose) have a reputation for ‘doing your own thing’ and, to a certain extent, ‘living in an ivory tower’ (where one can throw stones). It would not surprise readers to confirm that all this is true. But it may surprise readers outside the Faculty to state that in all my time here I have *never* been rebuffed in asking a colleague for assistance, whether in relation to teaching or research, undertaking administrative chores, or simply helping out for a Faculty activity both on and off the campus. And, most importantly from a personal perspective, I cannot count the times that you have encouraged and supported me in all endeavours involving my own teaching and research. Thank you all for helping “Light My Way”.

Second, academics don’t teach and research in a vacuum. Hong Kong has been my home for well over 20 years, most of which has been spent in academic pursuit at the Faculty. The energy, enthusiasm and desire to

improve, that one sees from people every day in Hong Kong, is so obvious that occasionally we tend to neglect it. And whenever I do, I just have to remember the stories of my friends and people met from all walks of life. The most numerous and compelling of these are from those who come not from a privileged background, but from one where life was not at all easy. To watch your house burn to the ground, as did one of my friends who lived in a now-razed squatting village near Hung Hom, seems unimaginable for a small boy going to school. That small boy is now a very highly qualified senior civil servant.

Yet we all know that life is not like that for everybody. That was the case of my climbing partner, AYK, who suffered a terrible accident at Clearwater Bay and was then promptly dismissed from his job the day he returned to work after a month in hospital. But AYK was a man of unconquerable spirit whom I never saw despondent in even his darkest days. He is now working on community projects in Kwun Tong and living with his family in Ngau Tau Kok, the very same district where his father and mother brought up their family two generations ago.

Three generations living in a small public housing flat cannot be the ideal study environment for young men and women who travel considerable distance and time to savour the pleasure of being engaged in the full-time pursuit of learning. Yet many of HKU’s students fit this profile. I have never heard one complain. The desire and thirst for knowledge and learning is just too great. Reflecting on all this, I cannot do better than to recall the “Jet Roar”, when looking down on a vibrant city high on Lion Rock.

Finally, but foremost in my mind, comes the student body – the very soul of HKU. Often I have been short, peremptory and grumpy with you all. It is entirely my fault. Good teachers should not act in this way and my only excuse is that in my desire to teach you more than I know, I have pushed too hard and impatience has been a constant companion. I realise now, and have known for many years, that it is not what you know, but how you go about finding and discovering knowledge, and then applying it, that makes a good lawyer and scholar. Most of us, not least myself, can strive to improve in this regard.

Our students at the University of Hong Kong come from wide, varied backgrounds. All too often have I forgotten how difficult it has been for many of you to enter and pass through this wonderful institution. I have learned more from you than ever I have taught you. In this, our 35th year of teaching and learning law at the Law Faculty, our students are still our greatest asset. You have all bequeathed to me a “Wonderful Souvenir”, which I will never forget. 🍌





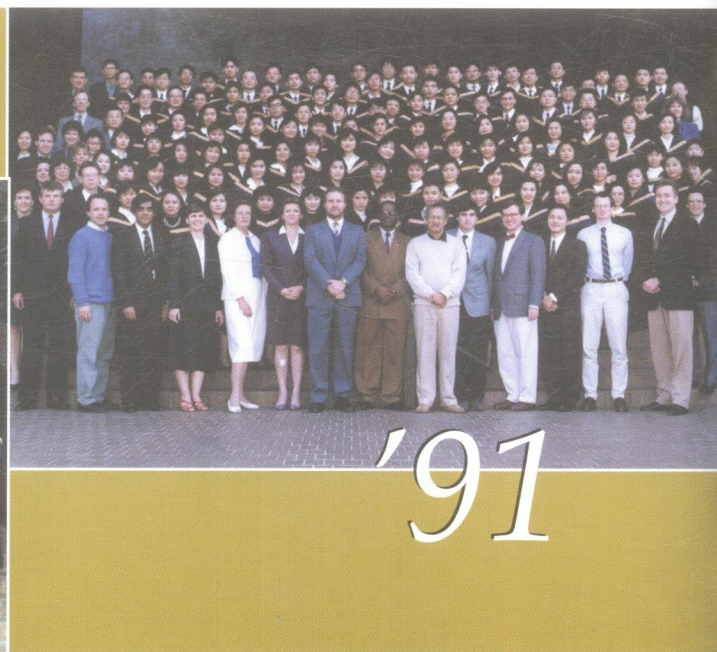
Photo taken in 1987 Orientation Camp.



Graduation dinner party of Class 1991.



Gathering of some of the Class 1992.





Some graduates of LLB 1991 in their graduation gowns.

Orientation Camp in autumn 1989.



A group of students from LLB 1989 and 1990 including Zebra Kwan, Cecilia Ng, Betty Cheung (lady in pink) and Brian Chan.

Class of LLB 1992: a visit to David Murphy's home during the winter term break.



'92



'93



The following essay was a joint effort of LLB Class 1982, with Marlene Ng playing a prominent part

## In Memory of Flora

When the Law Faculty started to plan its 35th anniversary publication, there is little doubt that we as a class will carry on the fine tradition from the 30th anniversary celebrations and make a contribution. The last article was a fun-filled throwback to our Law School days chronicling our past as a class. This year, whilst not forgetting the past, we want to look beyond to the future.

We are not sure whether it is a sign of the turmoil of the times or whether we are trying to adjust to the different demands of middle age. It is not difficult to recapture the carefree easiness that ran through our last contribution and yet it is not easy to put a finger on our present mood. It is therefore with some trepidation but also with honesty and hope that we now try look into ourselves as a class and celebrate the Law Faculty's anniversary.

Much of this inward looking has been spurred by the great sorrow we all suffered from Flora Cheung's passing. Nothing can lessen the sadness of one of us being taken away, particularly one so good as Flora, except for our firm belief that she is now in a better place with her Lord. Her

passing has helped to nurture the ideas that we as a class should be ready to reach out to one another. We started a bi-monthly class lunch at the HKU Alumni Club and have kept up with it since.

It is always good to see long-lost classmates whose paths diverged over the years. Funnily though, classmates unseen for years never seem to be strangers, a sure sign that the bonds of our friendship are strong enough to withstand the lashings of time. Thanks to the efforts of our class representatives (whose roles have stuck for 20 years), we have also together a good e-mail list and we would really like to see more communications, e-mails, phone calls or, better still, more of each other in person, to bring us closer.

Work-wise, the economic climate has not been exactly exuberant over the past 5 years and has added to the burden of being a practitioner. For those of us who are still practising as a solicitor, it is a never-ending story of being burdened with the tasks of rain-making, running the office, delivering quality work, making ends meet and guiding the young. With gradual movement to middle or even senior management in our firms, we find ourselves being looked upon as the backbone of the firm and sometimes it really



Lester Huang (first from left) and Carmelo Lee (second from right, standing at the back) have been our class representatives for over 20 years.

takes a lot of will to do all that we are called upon to do. There are always nice dilemma warring in our hearts. Do we expand or do we not? Do we look towards to the PRC market or do we not? Do we lay off anyone this year or do we not? Yet with all these responsibilities, there is also the joy of being in a position to shape our firm's direction and future, of being able to do what we think is right.

Barristers in our class have not escaped the metamorphosis that growth in seniority brings. Seniority brings greater refinement to advocacy skills but it is also time to find the right niche or specialty whilst ensuring a steady practice. Our barristers have now become more senior members of their chambers and are tasked with nurturing the younger members. Some have taken on a number of pupils and are now enjoying the camaraderie that master-pupil relationships bring, that is, the generous friendship and support that our pupil masters have unselfishly given us when we served pupillage with them.

During the past 5 years, we have seen with much pride and joy that another member of our class called to the inner bar. The appointment marks not only a deserved recognition of professional ability, but a reminder of wider responsibilities, not just the silks in our class but all of us, to the profession and community, and of upholding the rule of law.

Our class is now five-strong in the judiciary, from Magistracy to the District Court and the High Court. Hopefully our class will in its own way contribute to the jurisprudence of Hong Kong.

But not all of us are involved in front-line practice and yet their contribution is a growing presence in the legal scene. Over the years, some of our class have decided to go in-house and some have even moved laterally into business operations. An in-house role calls on that special ability of a good practitioner, the harmonious marriage of the legal perspective and business development. Our experience in private practice has enabled us to meet the wide-ranging scope of duties which an in-house role encompasses. Some have moved into the academia and revel in giving the same guidance, enlightenment and friendship we have received in the Law School in our early formative years. This is a re-affirmation of the close ties amongst the academia, profession and community.



Flora Cheung (first from left in the front row) at our class graduation party in 1982.



We received early grounding in law from the Law School and the lecturers and professors, which formed the foundation of our careers. It is no wonder that most of us participate in the Law Mentorship programme. We hope to give a guiding hand to those about to join the profession and, not surprisingly, we also gained and learned from that interaction. Many barristers in our class have maintained close-knit contact with their pupils and taken up leadership roles at the Bar. Solicitors from our class have also



Szwina Pang (first from left) and Marlene Ng (second from right) with law students at a dinner gathering under the Law Mentorship Programme 2003-04.



Another pair of mentors from our class: Albert Yau and Brenda Lee (third from the right) in the Law Mentorship Programme 2003-04.

contributed unstintingly to helping the profession, such as being involved in legal education reform and served with the Law Society and the Society of Notaries.

But we are not just legal professionals. More importantly, we are members of the community and each in our own way finds the time to champion the causes close to our hearts. Some worked tirelessly and joyfully for their church, seeking faith and helping others. Others participate in professional bodies within and outside the legal circle or become involved in charities for the under-privileged. Some have engaged in novel fund raising ventures whilst others have admiring given support. One of us actively participated in the September Legco elections and won himself a seat amongst the legislators. He drew our support, not because we all necessarily agree with his views, but for being a man who is prepared to stand up for his thoughts and for his dedication to serve the community.

Yet no matter how many mountains we climb, our family is our bedrock. There are also some of us who have given up professional careers to look after the family full or part-time. All our achievements are due in no small

measure to the constant care and encouragement which we have received from our family.

These years have also made subtle changes to our lives. Some of our children have entered university. When we look at them, we see a mirror of ourselves when we first met and got to know each other at Law School. They look very much like us and yet they are different. They have the same stars in their eyes, the same dreams and energy of youth that have inspired us years ago. But they are well and truly of this generation and we are all learning how to hold on and at the same time let go our children now poised on the threshold of adulthood. Some with young ones will treasure a few more years of children by their sides, some will be learning to adjust to an equally meaningful life filled with other things but with children studying overseas. There is the inevitable niggling worry of a parent seeing their children spread their wings, yet there is the great joy of seeing the glorious colour of their

feathers. It is the same family, the same closeness and yet a different life.

Not only do our children open our eye to change. All of a sudden, we find ourselves as the pillar in the family. We see the frailty of our parents and there is an innate urge to spend time with them. We plan for our children's future and education. We support our younger siblings. We think about what we want to do on retirement. There is still enjoyment to be found in some of the wilder

things we favoured in our youth and at the same time comfort is found in the simplicity of the family.

A 35 year old teaching institution is but a babe in academia. But for us, these are the years of change, of being the same Law School classmates of yore but carrying new responsibilities in the profession and in the community and experiencing our families' evolution. We face this challenge, yes, with a bit of uncertainty, but always with hope and trust in ourselves as a class, as professionals and ultimately as members of this community we call home.

Lastly, we seek peace in our hearts, as we are sure that Flora in her place next to the Lord is smiling on us.

*I have been put to death with Christ on his cross,  
so that it is no longer I who live, but it is Christ who lives in me.*

*This life that I live now, I live by faith in the Son of God,  
who loved me and gave his life for me.*

Galatians 2:20 

## Splendour in the Grass

**Mimmie Chan**

*LLB 1980, PCLL 1981*

There were no windows in the library, but we could see glimpses of blue sky through the tiny bits of glass high above the book shelves. The law library was on the fifth floor of Knowles Building, and that was where 30 young souls spent the greater part of their days and nights, for 4 years, while they studied law and prepared a career for themselves as lawyers.



We had dreams. We had hopes for the future. We were part of an elitist group of students who had been admitted to law school in the oldest University in Hong Kong. There were only two universities then, and of course, we thought ours was the better. And of course, it was an honour to be a law student. We looked up to our seniors and to those who had walked before us and had graduated from a relatively

young law school to become successful practitioners – aspiring Queens' Counsel, bright young partners and solicitors in leading law firms. We felt proud to be part of this tradition, and we were eager to graduate and to join them in the brave new world.

And whilst we bide our time at law school, we made the most of our tight schedule - of classes, tutorials, case reading, research, and preparations for tutorials and assignments - to enjoy our University days. So although there were no windows in the library, we would take breaks to go down to the lotus pond for fresh air and for a view of the white clouds, for a welcomed visit to the canteen (French toast and tea), for a lunch excursion to Wah Fu for dim sum, or, when we were particularly lazy or had just handed in a difficult assignment, a few of us would drive and we would go for rides to Repulse Bay or the Peak. Oh to be able to spend an afternoon out of doors. John Lennon's music from the car radio. The sun shining down on our youthful faces (now lined and to be shielded from strong light). An inexpensive means to while

away an hour or so on the beach before returning to our books and cases.

And there were the endless matches at the Sports Centre. There was a lawn, and grass, at the Flora Ho Sports Centre in those days. The boys from Law would be scampering around, chasing the soccer ball to the girls' cheers of "Kwa li kwa li kwa la la", while a week later that same group of boys would be armed with hockey sticks or lacrosse nets, trying to beat the Engineering team or the Medical team. After a hard match, and the occasional victory, we would lounge around the low tables facing the lawn, and have our treats of Cream Soda and Milk, that rare local favourite. In our final year, the Sandy Bay sports ground was "opened". That meant a vast stretch of grass behind wire netting, with nothing else but the sea and the wind behind our backs whilst we stood in the mud in the cold and bleak winter afternoon, warming our hands between each shout as we cheered our brave team on.

Remember the times in which we lived. Billy Joel was crooning "Honesty". Our icons were Simon and Garfunkel (pray, who are the Twins?). Karaoke was unheard of, and music came in cassette tapes. We hummed to a Spanish guitar, strummed under the stars. The harbour was crossed by taking the tunnel bus if not the ferry – and there was time to sit, and watch the seagulls scale the waters, between our embarking and disembarking.

We were a tightly knit group, because of our size of slightly more than 30 in a class, and because we saw the same familiar faces in the Law Library day after day. A choir that needed to be formed for the inter-department singing contest, a basketball team that had to be grouped at the last minute for a match, the cheering team that was ever in demand, were all assembled by a tour around the library. Case reports were put aside, at times by force, bags were packed, and off we would go – to a cheering practice dressed up as Chinese phantoms, to an inter-year arm-wrestling tournament, to an "airplane chess" game which took place with musical chants of "右面俾" in the background.

We had no complaints. Those were the days when we saw "splendour in the grass, glory in the flower". And now, despite the passing of years and whilst we may look back fondly on those youthful and carefree days, at times with tugs at our heartstrings, we must regret not, and take solace from the fact that we must be wiser. Our hearts are older. Please, let us be wiser. 🍀

# The Path of the Law

**Cleresa Wong**

LLB 1980, PCLL 1981, LLM 1988

*Oh, that was scary!  
The very thought of probing questions from  
seniors  
Had left all freshmen with great fears.  
No wonder there were no orientation discourses  
But foolish perorations of "raspberries"!*

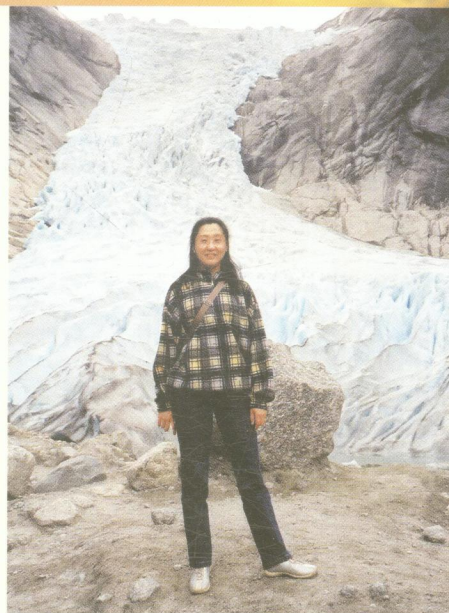
*Gee, it was the usual flurry!  
Why was the bus moving so slowly?  
Didn't it understand  
That I had Professor Evans' "AOTE"\*  
Starting this moment at eight-thirty?!*

*Hey, let's copy!  
The lecture notes taken so neat and tidy  
And so generously shared,  
By none other than pretty Winnie  
Were what you must possess to pass "Family"!*

*May be! May be!  
Faces frowned and prowls all around,  
For Jurisprudence was toilsome yet its concepts  
profound.  
But thanks to Mrs Mushkat's lectures on  
"Uoo of Law",  
Obscurity of the subject could assault no more!*



Cleresa with her husband and two children.



In Norway at the bottom of a glacier.

*Revenue Law was easy!  
The lectures were lively to say the least.  
And Dear old Professor Willoughby  
loved to teach accounts and balance sheets  
With his hilarious jokes as treats.*

*Young and full of energy!  
Embracing aspirations and blessings of grace,  
Former students turned legal experts in their  
own ways.  
Exalted by legal training and experience,  
They carried on with the profession's noble  
tradition.*

*What's happening lately?  
Not only have business shrunk and fees been  
slashed,  
Tenders for pricing are now common requests.  
And as if these were not disheartening enough,  
Nobody is spared the PIS top-ups!*

*But still we have unity!  
Groans and moans notwithstanding,  
We shall continue to live and serve with  
endurance.  
No matter what challenges ahead are for us  
destined,  
Our values and beliefs will always be  
unchanged! 🍀*

\* Administration of Trusts and Estates.



LLB 1994: (front row from left) Claudia Yiu, Anna Mok, Sandra Lee; (back row from left) Rebecca Tse, Karen Chan, Lily Wong, Linda Lam, Veronica, Lee Sze Mina with Eugene Choi flying at the back.



Mainly graduates of 1997 (with the exception of Stephen Wong, Stephen Chan, Davy Wu, Catherine Tai and Janice Kwan). It was taken at Patricia Yung's wedding in March 2004.



LLB 1995 & 1996: (front from left) Margaret Liu, Simon Chan, Pearl Chan, Josephine Chow; (middle from left) Derek Chan, Elsa Cheng, Patrick Yung; (back from left) Jonathan Ho, Agnes Cheng and Eric Chiu.



Birthday Party of Stephen Wong (LLB 1996) at McDonald's - those in the picture include some alumni in LLB 1996 and 1997.



LLB 1994.



'94



'95



'96



"Cheers!" — Freshman giving a big grin in the Orientation Camp 1999.



Casual class dinner of LLB 1999 taken in September 2004.



A happy gathering of some of the students in class 1994.



Looks like they are having one of the most popular programmes in Orientation Camp - the Camp Fire. Picture shows Martin Wong, Chairman of Law Association HKUSU Session 1998-1999.



'97



'98



'99

## The Unforgettable Friends

Ng Kin Yuen

LLB 1982, PCLL 1983

As the Faculty of Law is celebrating her 35th anniversary, I keep thinking of four friends with whom I became acquainted in the Law Fellowship ("LF") and the Lawyers Christian Fellowship ("LCF"), the former being an association of Christian law students in HKU while the latter is a fellowship among Christian legal practitioners.



Photo taken in a retreat in 1980. Back (from left to right): Thomas Kwan, Flora Cheung, Ng Kin Yuen, Mak Hon Chiu, Albert Chen; Front (from left to right): Paul Wong, Janice Kwan, Louisa Tso, Judy Tsang, Yuen Sze Sze.

These four persons were unique in their characters and aspirations. Incidentally, they all passed away at young age. Yet their lives have impacted many others in the legal circle.

I came to know Iris Tsang (LLB 1979) when I was a freshman in the then School of Law. Iris was extremely caring to us. She not only advised us on how we should embark on the study of law, but encouraged us to think and see beyond the law. The late 70's saw various social movements in Hong Kong in which students and Christians played a significant role. Iris was a vibrant person with a strong social conscience. She perceived the study of law not just as a means to gain social status or money, but to serve the under-privileged and safeguard the rule of law.

With these social and political dimensions, Iris, upon admission as a solicitor, formed a Christian opinion group to study how the legal system of Hong Kong should evolve in view of the impending handover of the territory. Eventually, she quit her job as a solicitor and worked

in the Hong Kong Christian Council, devoting herself to legal issues for the Church, particularly the drafting of the Basic Law.

Iris, however, was not able to witness what she had always strived for. She died of cancer in December 1988 shortly after the birth of her beloved daughter.

Karen Yao (LLB 1972) had been practising as a solicitor before I joined the profession. She specialized in conveyancing and had commanded high respect in the profession for her expertise. As a senior, she always shared with us the importance of upholding professionalism, maintaining integrity and not to compromise principles for money, power or otherwise. She reminded us to produce "first-class" work as we were accountable not only to clients but to God. She was definitely an exemplary solicitor.

After she was diagnosed to suffer from cancer, Karen went through protracted treatments. She did so with immense courage and unflinching faith. I remember visiting her in hospital on one occasion. Despite her frailty, she was still busily drafting an "M & A" for a church. She did not grumble about her illness, but lived her life graciously and whole-heartedly. Apart from active Church work, she was never hesitant to offer help to other lawyers, not only in conveyancing, but in other daily issues, involving family, career and life. She was eager to encourage those in difficulty and always held others' needs in her heart. Karen passed away in February 1989.

I met Jeffrey Lung (LLB 1983) when he returned from Canada to study law in HKU. He was a dynamic person, with the vitality of youth and the steadfastness of maturity. As a freshman, he had a clear vision about the study of



Photo taken in the LLB Orientation Programme 1980. (From left to right): Paul Wong, Mak Hon Chiu, Ng Kin Yuen, Jeffrey Lung, Alex Lee.



Photo taken in an outing in 1985. (From left to right): Katherine Ng, Petula Wong, Iris Tsang, Ng Kin Yuen, Mau Chi Wang.

law. Besides, he had a strong sense for social justice. With an incisive and critical mind, he always tried to integrate law with Christianity and politics. He was erudite and with his depth of knowledge, he shared the Gospel among his fellow students in a manner that inspired and caused people to embrace social causes in the name of Jesus Christ.

Not surprisingly, in an attempt to serve the public, he applied for the post of Administrative Officer of the Hong Kong Government twice, the first time after obtaining his LLB and then after finishing his PCLL. He was successful on both occasions. This, if not unprecedented, would be exceedingly rare. Nevertheless, he finally decided to join the Bar.

Jeffrey, though a stern and demanding person, was affectionate and considerate. I remember having tried to instruct him to help a worker who had been wrongfully dismissed by his employer. Jeffrey readily agreed to take up the case on a pro bono basis. Unfortunately, he was soon discovered to have suffered from cancer. Again, he had to go through the ordeal of medical treatment.

He faced life and death with an undescrivable peace of mind. Perhaps he realized the limitations of humankind and was convinced that even though he could not achieve all his goals in this world, he would enjoy eternal life in the Kingdom of God. Jeffrey left us in February 1991.

Last but not least is Flora Cheung (LLB 1982). I had known Flora for many years as we came from the same secondary school and the same Church. Unlike the other three, Flora did not, as far as I know, approach the study of law with any sophisticated system of thinking. In the Law School, she organized the LF, actively sharing her faith with others. She became a patient listener and a good counselor to many fellow students as a result of her cheerfulness, warmth and personable manners.


Flora joined the civil service after her traineeship and in a few years' time, was promoted to the position of Deputy

Director in the Intellectual Property Department. She, however, did not acquire the assertive, forceful and formidable characters which were common among lawyers. Instead, she maintained the same personality qualities as in the old school days.

At the peak of her career, she resigned and became a full-time housewife. She told me that the money she would otherwise earn could hardly exchange for the care she could render to her children after her resignation.

Upon discovery of the deadly tumour, Flora endured the tough treatments with exceptional stamina and enviable dignity. When her conditions improved, she still found her way to hospital to visit patients with similar illnesses and to prison to see a former law classmate, supporting them with the Words of God. Flora passed away in April 2003.



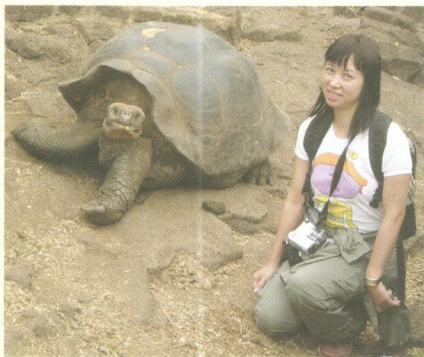
Whether in LF or LCF, I have come across people who have taken an approach in their lives and careers different from what I would call the "mainstream". Many have demonstrated a joy for life, a passion for others and an unflinching dedication to ideals which stem from the Christian faith. The Fellowships have certainly been inspiring to different generations of law students and practitioners. Although the above friends were taken from us so young, I must learn to be grateful to God that they came along at all and brightened the lives of so many. 

## Women in the Legal Profession – Law Books or Cookbooks?

Angela Ho

LLB 1984, PCLL 1985

The memories of my interview for a place at Law School are still vivid in my mind. My elder brother asked me to arrive earlier at the Law Library so that he could introduce his buddy, a “dai sin” in PCLL., to offer some tips for me. I



had already carefully rehearsed the incidents that had occurred during my summer job at a barristers' chambers, thinking that they would interest the interviewers most. So I was, naturally, taken aback when the “dai sin”, after glancing me from head to toe, shook his head disapprovingly

and remarked “aiyaah, no make-up!” He then rushed up to another female “dai sin” to borrow some make-up. The female “dai sin” helpfully took out the only make-up she had – a lipstick. My brother and his friend urged me to apply it not only on my lips but on my face as a blush too. They must have heard beforehand that I was to be interviewed by three men and felt that extra marks would be rewarded for women applicants with make-up on. The interview was successful and I had my first lesson in makeup and first taste of gender manoeuvring in the legal field.

Actually, studying law was not as gender-biased as I was initially led to believe. In my class, female students outnumbered male students and most of them were performing well due to their superior language ability and concentration power. The gender ratio of LL.B graduates from the University of Hong Kong\* shows that since 1987, the number of female students has significantly exceeded that of male students, except for 1992 when the numbers for both were equal. This rising trend of women's participation in the legal field is mirrored in the number of lawyers admitted as solicitors. For the past four years, more women had been admitted as solicitors than men. As disclosed in the annual report of the Law Society for 2003, the ratios for women admitted as solicitors for 2000, 2001, 2002 and 2003 are respectively 56%, 54%, 55% and 57%. If this trend continues, then the legal

profession, which used to be a male precinct, might finally be overtaken by women.

Practising law, however, is more complicated as women lawyers have to handle relationships with their superiors, assistants and, in particular, their clients. With more women entering the legal profession, our male colleagues have become accustomed to our presence. However, our male clients in the predominantly male business world might take longer to adopt a more gender-neutral mindset. Male clients, for example, are particularly interested in playing the guess-your-age game with women lawyers. When faced with the blunt reply of “it's a secret”, they refuse to give up and, suddenly assuming advocacy techniques, rephrase the question by asking which animal of the Chinese calendar we belong to. I myself would always give the standard answer of that of “the cat”.

It has often been said that women lawyers have to work twice as hard in order to attain success. Some have even gone to the extreme of negating their femininity, believing that to be a hindrance on their career advancement while rumours abound on some usurping it to their advantage. One thing is universal though – that married women lawyers with children have to struggle in order to fulfill their dual roles as lawyer and housewife. This is an area which gender mainstreaming can play an important role.

Gender mainstreaming is one of the priority areas of the Women Commission. It aims to incorporate women's needs and perspectives in policy making in government and other sectors. It recognizes that women are different from men both genetically and culturally and, therefore, strives to have these differences accepted by society and policy-makers as the mainstream in order to promote harmony and accord. With women lawyers fast becoming the norm rather than the exception, it is easy for the legal profession to be lulled into a false sense of complacency, thinking that it has done enough to achieve sexual equality. No wonder there is hardly any study done on women lawyers in Hong Kong. It is only through acceptance by the legal profession of the differences peculiar to women lawyers, which engender problems with their career, that policies can be tailor-made to address those problems.

The Federation of Women Lawyers attempts to fill in the gap by offering support, whether in the form of sharing past exam papers of our kids, organizing family functions or simply exchanging tales of misery, which can provide effective moral support. However, as a voluntary organization, perennially short of funding and resources, there is a limit to the services we can provide. For example, in Hong Kong, there is no returner course for women lawyers who intend to resume legal practice after years' of absence. In the UK, the course has been initiated by the Association of Women Solicitors and heavily subsidized by the UK Law Society. Women lawyers, after

\* Editor's Note: Please see the chart in the “Interesting Statistics” appearing on the next page.



having taken a career break in order to care for their families, often find themselves lacking in confidence to resume legal practice. The program, which include all major legal areas and highlight the changes in the law in a range of subjects, will not only update women lawyers on the law but also boost their confidence so that they can be better equipped for job-seeking and for advising clients.

A Government Report attributes improved education attainment, marriage postponement and increased prevalence of spinsterhood among women as being conducive to the growing participation of women in the labour force. I believe this phenomenon is equally applicable to the legal profession and lurking behind this, there is a concern of low birthrate and declining quality of family childcare we can provide to the future generation of Hong Kong. The birthrate in Hong Kong already ranks as one of lowest internationally. Singapore has a more serious problem, so much so that a Singaporean lawyer told me that she was amongst a group of women lawyers invited by the Singaporean government to a gathering. The main objective of the gathering was to urge the smart lawyers to serve the country by giving birth to smarter babies and to do it successively. Whilst the Hong Kong Government adheres religiously to its laissez faire policy in this respect, a little encouragement can go a long way in improving the situation. The contribution of women lawyers to the

household should be recognized as being valuable to the society. The argument that women always have a choice of remaining single or not having babies is specious. Policies such as that requiring a law firm to retain the position of a pregnant lawyer for, say, up to a year of her absence from work, can certainly help. Other smaller benefits such as, exempting women lawyers from paying for their practising certificates during their mandatory maternity leave and the voluntary leave thereafter should be explored.

One of the measures of the advancement of a society is an index to gauge how well the society treats its women. Currently, efforts in this regard in Hong Kong are targeted towards non-professional women. Hong Kong should prove itself to be a vibrant and advanced economy by expediting the introduction of gender mainstreaming to the professions, including the legal profession. Whilst the legal profession is commendable in providing an environment of equal opportunity for both sexes in their career, not catering to the special needs of women lawyers can be a more subtle form of discrimination. Conducting in-depth research to ascertain such needs is necessary. As long as women lawyers are afraid to give birth or marry for fear of affecting their career, as long as women lawyers have to sacrifice their career to fulfill their family responsibilities, we are still a long way from being truly liberated. 🍌

## Interesting Statistics

Total number of students



An acknowledgment is made with thanks to Ms. Carol Chen of the Law Faculty of the University of Hong Kong for providing the data required for the preparation of the above chart.

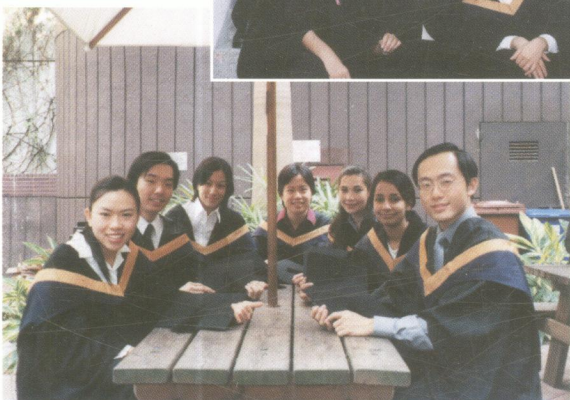


Freshmen of the year 2000 putting up a team effort in the Orientation Camp 2000.



Inauguration Ceremony 2001, the new Chairman Arman, and a few of his Executive Committee members took pictures with guests from the City University of Hong Kong.

Some of the graduates of LLB 2001.



Wake up! It's time for some working exercise!  
(Orientation Camp 2000)

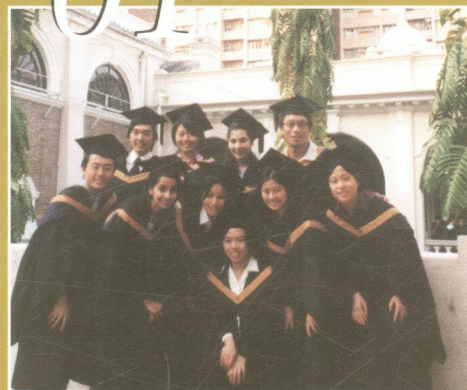


Freshmen put up a fabulous show in the Freshmen Show 2000.



2000

'01





*Legal Interflow 2002 participants on a boat cruise in Shanghai.*



*Good old days... (Picture shows LLB graduates of the year 2002 back when they are still students)*



*Executive Committee members of "Resonance", Law Association, HKUSU, Session 2001-2002.*



*Quests and law students are enjoying the performances in the High Table Dinner 2001.*



*Legal Interflow Tour 2002, destination - Shanghai.*



# 25th ANNIVERSARY



2004-  
2005

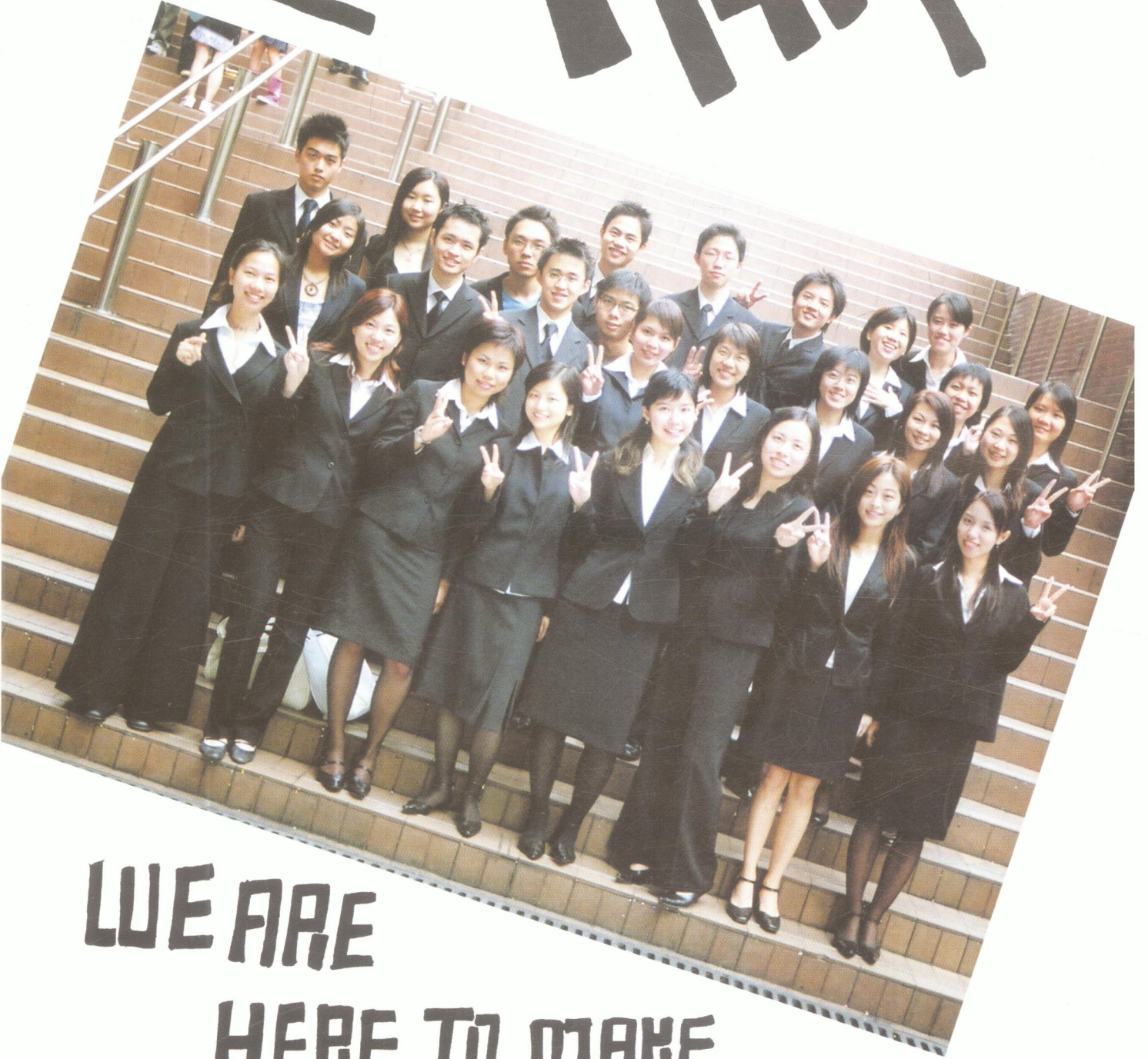
FRESH FERVENT - FULL of ZEST & READY to BITE.  
DON'T UNDERESTIMATE.

ARMOR



SOME SOLDIERS DON'T  
NEED ARMOR

# WE ARE HERE



**WE ARE  
HERE TO MAKE  
AN IMPACT —**

# PCU

ARMED TO TAKE THE WORLD

BEEN THERE  DONE THAT





Academic and administrative staff 2004



Academic Staff in the Department of Law: (first row from left) Xue Hong, Athena Cheung, Li Yahong, Roda Mushkat, Katherine Lynch, Carole Peterson, Janice Brabyn, Albert Chen, Donald Lewis; (second row from left) Benny Tai, Yu Guanghua, Zheng Ge, Simon Young; (back row from left) Douglas Arner, Rick Glofcheski, I-Ping Soong, Johannes Chan SC, Say Goo, Desmond Greenwood, Michael Jackson, Anne Cheung and Athena Liu.





Academic staff in the Department of Professional Legal Education: (front row from left) Jessica Young, Michael Wilkinson, Chris Sherrin, Charles Booth, Eric Cheung; (back row from left) Felix Chan, Wilson Chow, Stephane Hui, Julienne Jen, Andrew Halkyard, Norman Hui and Richard Wu.



Administrative Staff in the Department offices: (front row from left) Monnie Leung, Alice Iu, (Professor) Roda Mushkat, Nancy Choi, Estella Ng, Eliza Li, Veronica Yiu, Cecilia Chan, Poon Yin Ngan, (Professor) Michael Wilkinson; (back row from left) Rita Wai, Ting Sui Kai, Wong Kam Leung, CK Lam, Raymond Lam, (Professor) Johannes Chan SC, Henley Chan, Priscilla Wong, Cho Chung Cheung, Eddie Leung and Michael Chan.



Administrative Staff in the Faculty office: (front row from left) Doris Ng, Nancy Ng, Maria Lau, (Professor) Johannes Chan SC, Youn Ling, Tse Chuen Fung, Shirley Wong; (back row from left) Carol Chen, Anna Ng, Vivian Wong, Agnes Cheng and Pamela Tam.





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