

A Special Standing in the World

The Faculty of Law
at The University of Hong Kong, 1969–2019

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Foreword

History helps us understand how we have become what we are today, and it gives us meaning and direction as we face the challenges of the future. We believe that the best way to celebrate the fiftieth anniversary of the founding of the Faculty of Law at the University of Hong Kong (HKU), and the admission of its first cohort of students in 1969, is for us to commission and publish a history of the Faculty's first fifty years. We are immensely grateful to Dr Christopher Munn, a distinguished historian of Hong Kong legal institutions, for taking up this great challenge and the solemn responsibility of writing this history.

In 1972, thirty-three Bachelor of Laws (LLB) students became the first HKU law graduates. The teachers, administrative staff, and students in those days could hardly have imagined that the Faculty of Law would, in 2018, produce a total of 767 students who had successfully completed one of its increasing suite of programmes: the original LLB degree, three LLB double degrees, the Juris Doctor degree, the Postgraduate Certificate in Laws, eight Master's Degrees, and a set of research degrees. Legal education at HKU has indeed prospered and matured in the last five decades, achieving its dual mission of educating generations of solicitors, barristers, judges, academics, and other members of Hong Kong's legal community – and increasingly graduates who embark on callings which are not strictly legal – and producing works of legal scholarship which have received local, regional, and international recognition.

This book is published in loving memory of all those who have taught, studied, or worked in the Faculty of Law, or in some way supported or contributed to its work but are no longer with us today in this world, and in solidarity with all the teachers, staff, students, alumni, benefactors, and friends of the Faculty who have the fortune to personally witness the celebration of its fiftieth anniversary this year. The book is dedicated to future members of the community of teaching, learning, and scholarship that the Faculty of Law will continue to be in the next fifty years, in the hope that the Hong Kong they live in and contribute to building will remain a special city where the rule of law and human rights flourish.

'Law, Justice and Humanity: 50 Years and Beyond' was chosen as the theme of the Faculty's Golden Jubilee celebrations in recognition of law in the service of justice and the

best values of humanity. May a future historian, perhaps fifty years in the future, look back and marvel at the first and glorious hundred years of the HKU Faculty of Law, where the study of law was harnessed in the service of justice and humanity.

Professor Michael Hor, Dean of the Faculty of Law, HKU
Professor Albert H.Y. Chen, Chairman of the Faculty Board
April 2019

Introduction

The Faculty of Law at the University of Hong Kong (HKU) is a cornerstone of the rule of law in Hong Kong. Graduates of the Faculty make up over half of Hong Kong's legal profession, and of the Judiciary. Some hold prominent positions in government, politics, and business. A few have even made their mark in arts and culture. The Faculty was the first institution to establish Hong Kong law as a field of serious study. It also quickly became a leading centre of research into Chinese law. Its staff and alumni contributed widely to the transformation of Hong Kong law from its origins as a sluggish backwater of English law into a flourishing field of activity, where fundamental rights, freedoms and obligations are tested almost daily against the Basic Law – the centrepiece of 'one country, two systems' under which Hong Kong maintains its common law system as a special administrative region (SAR) of the People's Republic of China (PRC). The Faculty has been instrumental in establishing a legal profession trained in Hong Kong law, firmly rooted in Hong Kong, and able to function bilingually – a vital feature of Hong Kong's modern legal system.

It is therefore a surprise to some that the Faculty of Law is only fifty years old – half as old as HKU itself, decades younger than the leading law schools in other parts of China, and younger by several years than those in some of Britain's other late colonial possessions, in Africa and Malaya. It is still more remarkable that in each of the past seven years the Faculty has been ranked among the top twenty law schools in the world, commended for both the quality of its teaching and the breadth of its research. This research now extends beyond Hong Kong and Chinese topics to cover comparative legal studies and transnational issues, such as the globalization of trade and finance, the rise of information technology, and human migration. The promoters of a school of law at HKU predicted in 1965 that there was 'a real possibility that it could develop into a law school with a special standing in the world.' Today that prediction has been exceeded in ways they could hardly have imagined.

This book explores the history of the Faculty of Law at HKU from its foundation as a small Department of Law in 1969 to its fiftieth anniversary in 2019. It places the Faculty in the context of the broader history of Hong Kong and, in addition to tracing its institutional growth, pays special attention to contributions by Faculty members and alumni to Hong Kong's development over the past fifty years.

The book's first two chapters deal with the Faculty's prehistory. *Chapter One* examines the growth of Hong Kong's legal profession in the century or so before the creation of the Department of Law. At this time it was neither a prerequisite nor a custom for solicitors to take a university degree, and, although most were trained in London, a small but growing number took their articles and exams in Hong Kong. For barristers the route to practice was through attendance at an Inn of Court in London or Dublin. The chapter describes the introduction of legal topics as part of the general Arts degree at HKU in the early twentieth century. This was pursued energetically in the 1920s. However, a lack of funds and interest prevented legal studies from taking root, and by the late 1930s they had fizzled out. The chapter concludes with calls in the 1950s and 1960s for a law school at HKU. *Chapter Two* takes up these calls and examines proposals put forward in the 1960s. These rested on concerns that the colony had too few lawyers and on claims that Hong Kong law had diverged so far from its English roots that the legal training provided in England was inadequate for local needs. In seeking to make a career in law available to men and women who could not afford to go to England, the idea was also founded on a strong appeal to social justice. The chapter discusses resistance to the idea among some officials and lawyers, as well as an attempt at a stopgap measure through extramural teaching of the University of London Bachelor of Laws (LLB) at HKU during 1964–1969. This had only limited success. But it was a key step towards the establishment of the Department of Law in 1969.

The remaining six chapters explore the fifty-year history of the Department, the School, and finally the Faculty of Law at HKU. The fifty years are divided into three broad periods, for which paired chapters alternately discuss the institutional development of the Faculty and its wider impact on law, politics, and society. Fortuitously or not, the three historical periods are framed by important events and transitions for both the Faculty and Hong Kong.

Chapter Three discusses the first fifteen years of the Department of Law (1969–1978) in the Faculty of Social Sciences, its separation into a School of Law (1978–1984), and the creation of a full-fledged Faculty of Law in 1984. The LLB degree and Postgraduate Certificate in Laws (PCLL) became the main qualifications for entry into Hong Kong's legal profession. Taught initially in a makeshift building some distance from the main campus, law students developed their own distinct culture and traditions, growing in numbers from an initial intake of 40 in 1969 to about 120 in the mid-1980s. The staff, recruited mainly from the United Kingdom (UK) and Australasia, developed courses to meet Hong Kong's needs, focusing on the primary purpose of training lawyers to practise in Hong Kong. The early impact of graduates and staff is the theme of *Chapter Four*. Graduates began to enter the legal profession in the mid-1970s. Staff produced the first modern texts on Hong Kong law, publishing them as books or as articles in the *Hong Kong Law Journal*, a town-gown initiative aimed at stimulating scholarship in this new field. The colony was then 'a legal backwater', and much of the research focused on unreformed labour laws, draconian police

powers, and the vigorous campaign against corruption launched in the early 1970s. Then, in 1984, after two years of negotiations, the governments of the PRC and the UK issued the Sino-British Joint Declaration on the Question of Hong Kong, a blueprint for it to maintain its way of life and common law legal system as an SAR of the PRC from 1997. This was to be a catalyst for far-reaching reforms.

Chapter Five describes how the Faculty developed its curriculum and resources to prepare students for the transition to and beyond 1997. This was a time of consolidation. Student numbers continued to increase, but at a less rapid pace. Staff were recruited, and retained, from a wider range of jurisdictions, including Mainland China and Hong Kong itself. Although the primary aim continued to be to train lawyers, the LLB was reformed to provide a more liberal education with greater attention paid to public law. New post-graduate degrees were introduced, some focusing on Chinese law – then undergoing rapid reform – and some teaching common law to scholars from Mainland China. *Chapter Six* explores how Hong Kong law became a subject of intensive research as it was reformed to reflect the idealized picture of Hong Kong set out in the Joint Declaration. Much of this reform was stimulated by the Hong Kong Bill of Rights Ordinance 1991, an official response to anxieties about the future under Chinese rule: the ordinance swept away many old colonial laws and became a bulwark of freedom before and beyond 1997. The vital role played by Faculty members in the inception, drafting, implementation, and analysis of the Bill of Rights forms a case study in how legal academics, in partnership with the community, can have a profound impact on law reform. The other key historic achievements in these years were the production of a fully bilingual statute book – one of most ambitious projects of its kind anywhere – and the promulgation of the Basic Law of the Hong Kong SAR, an enactment of the PRC to implement the Joint Declaration and provide a constitutional framework for post-1997 Hong Kong. The chapter discusses the Faculty's contributions to these projects. It also examines its role in cultivating an understanding of the rule of law by disseminating research to the wider community.

Chapters Five and Six both conclude with something approaching a crisis of confidence in the quality of legal education in the late twentieth century. This was the result partly of too rapid an expansion of legal education in the 1980s and 1990s, not only at HKU but also in a new law school at the City University of Hong Kong and at HKU's School of Professional and Continuing Education. It reflected concerns that, after years of shortages, Hong Kong now had too many lawyers. The crisis produced the first full review of legal education in Hong Kong since the 1960s. This controversial exercise recommended substantial reforms, including abolishing the PCLL. The Faculty responded with a root-and-branch reform of the PCLL and a complete remodelling of the LLB, extending it from three years to four. *Chapter Seven* explores these changes and describes how the Faculty, through its teaching and research, and its partnerships with other institutions, emerged as

a leading law school not only in Hong Kong and Mainland China and the East Asia region, but also in the world. A milestone in these years was the Faculty's move in 2012 into its own building on HKU's new Centennial Campus, which has state-of-the-art teaching facilities and has become a centre for the Faculty's many activities.

The final chapter, *Chapter Eight*, examines the Faculty's engagement with law, politics and society in modern-day Hong Kong. Some of this has been controversial, dealing with encroachments on academic freedom and unfinished business under the Basic Law, notably the requirement for Hong Kong to enact its own national security laws, and the policy of progressive democratization with the ultimate aim of achieving universal suffrage. The Faculty played an influential role in these processes. Its connection with the Occupy movement, a prolonged and unsuccessful protest in late 2014 to demand genuine universal suffrage, brought it notoriety in some people's eyes. The chapter also briefly surveys a range of activities in which the Faculty has had an impact on the development of law and policy through research, advocacy, and partnership with other organizations. It ends with a brief survey of the events marking the Faculty's fiftieth anniversary year.

Fifty years is a short span. It is barely more than half a lifetime in a city that now has the world's longest average life expectancy – eighty-eight years for women (the majority of the Faculty's alumni) and eighty-two for men. Many of the Faculty's earliest graduates are still active in legal practice, public affairs, and other pursuits. Most of its early teachers are still alive. This has allowed me to interview a good cross-section of people connected with the Faculty's history – an enjoyable exercise that has yielded many helpful insights. However, finding perspective, continuity and balance for so recent a period – and one packed with such momentous events – presents special difficulties. In its twenty-second year as an SAR of the PRC, Hong Kong, like many other communities around the world, is grappling with deep social problems and seemingly intractable political division. Its legal system, though remarkably robust, faces many challenges. While no one can predict how events will unfold in the future, it is almost certain that the Faculty of Law at HKU will continue to play an influential part in Hong Kong's destiny in the years and decades to come.

Chapter 1

A Veneer of English Juristic Ideals

Lawyers and Legal Education in Hong Kong, 1841–1963

The colony of Hong Kong, according to one of its early attorneys general, was designed to be ‘a little miniature representative of Great Britain, its laws, its manners, its institutions.’¹ Colonial Hong Kong imported its legal system and nearly all of its lawyers and judges from England. For most of the 156 years of British rule (1841–1997) the qualifications for practising law followed those in England. As in England, the profession had two branches: barristers, who argued cases in the courts, and solicitors, who advised clients, instructed barristers, and handled contracts, wills and other transactions requiring legal expertise. Law was taught at the University of Hong Kong (HKU) for twenty-five years, from 1915 to 1940, but only as a small and shrinking part of a general arts degree, not as training for the profession. A few solicitors served their articles and took their examinations in Hong Kong under local regulations. However, before the introduction of formal legal training in the late 1960s, most of Hong Kong’s solicitors and all of its barristers trained and qualified in England. The legal profession was thus mainly the preserve of a privileged elite: men born and educated in Britain who sought a career in the colonies, and the sons and daughters of local families who could afford an expensive overseas training.

1. Thomas Chisholm Anstey, Attorney General 1856–1859, speaking at a public meeting in Newcastle, June 1859. Disillusioned with the colony, and having recently been suspended from office, Anstey was speaking ironically. *Newcastle Chronicle*, 25 June 1859, in The National Archives, Colonial Office: Original Correspondence Hong Kong, 1841–1951 (hereafter ‘CO’), series 120/75, 228.

During the fifty years after the founding of HKU in 1911, various proposals were put forward for a school of law. None was successful, largely because of a lack of funding. By the 1960s, however, the urge to establish a school was strong enough for the university, the government and the legal profession to take the idea seriously. The demand for lawyers was increasing as the population grew and prospered; this demand was poised to increase further with a planned expansion of legal aid. Some areas of Hong Kong law had diverged so far from English law as to render much of the training provided in England irrelevant. Although legal qualifications in Hong Kong were now tied more closely than ever to those in England, places in law schools for overseas students were in short supply. In the egalitarian spirit of the age it also seemed wrong to restrict the practice of law to the wealthy few or to people from overseas, when other professions – notably medicine and engineering – had for many decades been filled by people trained in Hong Kong. Conditions were ripe for legal training to begin in Hong Kong on a formal footing. This began in 1964 with external courses for the University of London taught at HKU's Department of Extra-Mural Studies. It progressed in 1969 to the creation of a Department of Law with courses tailor-made for Hong Kong and a degree recognized for entry into the local legal profession.

This chapter explores legal training in Hong Kong up to the 1960s. It discusses the backgrounds of lawyers, and their training, in the colony's first hundred years. It then describes the reform of legal training in England, where most of Hong Kong's early lawyers obtained their qualifications. Finally, it examines the various half-hearted initiatives in legal education at HKU before World War II and the coalition of demands in the decades after the war for the introduction of comprehensive legal education suited to Hong Kong's special needs.

The Introduction of English Law

The British acquired Hong Kong Island by conquest in 1841. Early British administrators issued proclamations – the famous 'Elliott proclamations' – assuring Chinese inhabitants of free exercise of their customs and telling them that, pending Her Majesty's pleasure, they would be governed according to the laws and customs of China. Officials then considered the possibility of separate legal systems for Chinese and Westerners. However, by the time the island was formally declared a British colony in 1843 they had decided that all inhabitants would be governed under a single system – one that was applied to Kowloon and (with modifications) to the New Territories when the colony was extended in 1860 and 1898 respectively. The law of England, as it stood on 5 April 1843, was to be in full force, except where inapplicable to local circumstances or where altered by local legislation or imperial legislation applied to Hong Kong.²

2. The reception date of 5 April 1843 – the day on which the colony obtained its own legislature – was fixed in 1846. Supreme Court Ordinances, Nos. 15 of 1844, 6 of 1845, and 2 of 1846.

Within Hong Kong, the Supreme Court, established in 1844 with a Chief Justice, exercised a jurisdiction similar to that of the highest courts in England, with a route of appeal to the Judicial Committee of the Privy Council. English procedures, with certain modifications, were followed. The Supreme Court admitted lawyers to practise in the colony mainly on the basis of their training and qualifications in London, Dublin and Edinburgh. It could also admit, for three-month periods, ‘fit and proper persons’ who had no qualifications ‘to appear and Act as Barristers, Advocates, Proctors, Attornies and Solicitors.’³ This was a practical recognition of the dire state of early British Hong Kong – a remote, unhealthy, and crime-ridden place which many critics of imperial policy believed to have been a bad choice. ‘You can go to Hong Kong for me’ became a saying of contempt in nineteenth-century England. ‘What barrister would leave a decent practice, to endure, even as a Judge, the climate and society of Hongkong?’ asked a London newspaper in 1851.⁴

Seven London barristers turned down the offer to serve as Hong Kong’s first Chief Justice, despite a generous annual salary of £3,000. The eighth choice, John Walter Hulme, son-in-law and collaborator of the renowned jurist Joseph Chitty, arrived in Hong Kong in 1844. His wretched fifteen-year term was plagued with debt, illness and quarrels, culminating in a seven-month suspension in 1848 on charges of drunkenness, of which he was subsequently exonerated. No colonial judge had had ‘so hard a time of it’, he claimed in his (unsuccessful) request for a knighthood in 1860.⁵ Despite the crowded state of the London Bar and the opportunities offered by the colonies,⁶ Hong Kong hardly possessed any barristers in its first decade other than the Attorney General, who was allowed private practice.

3. In England barristers acted as advocates in the higher courts. Various terms were used for the other branches of the profession: attorneys practised in the common law courts, solicitors in the Court of Chancery, and proctors in the Admiralty and Ecclesiastical Courts. The Supreme Court of Judicature Act 1873 referred only to barristers and solicitors, and, with certain exceptions, the terms ‘attorney’ and ‘proctor’ then lapsed. The professions of solicitor, attorney, and proctor – along with that of barrister – were all recognized in Hong Kong in the Supreme Court Ordinances of 1844, 1845, and 1873 and in the Legal Practitioners Ordinances, Nos. 13 of 1856 and 3 of 1871, where the term ‘attorney’ was defined to embrace ‘solicitor’. The first Solicitors Ordinance, No. 9 of 1899, aligned formal terminology with that current in England, and with common usage in Hong Kong, by classifying all attorneys, solicitors, and proctors as ‘solicitors’.

4. As late as 1885, when defendants in ‘a trial of considerable magnitude’ in Hong Kong sought the services of a prominent Queen’s Counsel (QC) from England, ‘some gentlemen declined to go out on any terms; others demanded prohibitive fees.’ John A. Turner, *Kwang Tung, or Five Years in South China* (London: S.W. Partridge & Co., 1894), 99; *Weekly Dispatch*, 15 June 1851, quoted in *China Mail*, 24 August 1851; *Law Times*, 3 October 1885.

5. Hulme was an unfortunate choice. He gained a reputation for laziness and severity, particularly towards non-European defendants. His quarrels with governors – notably Sir John Davis, who engineered his suspension on trumped-up charges – arose partly from professional differences but were mainly the manifestations of personality clashes. Hulme to Fortescue, 8 March 1860, CO 129/79, 473–6; G.B. Endacott, *A Biographical Sketch-Book of Early Hong Kong* (Hong Kong: Hong Kong University Press, 2005), Chapter 9; May Holdsworth and Christopher Munn, *Dictionary of Hong Kong Biography* (Hong Kong: Hong Kong University Press, 2011), 202–3.

6. Daniel Duman, *The English and Colonial Bars in the Nineteenth Century* (London: Croom Helm, 1983), Chapter 1.

The early Supreme Court was reduced to admitting an assortment of attorneys and clerks – ‘Quarter Sessions pettifoggers’ prone to ‘vulgar pot house oratory and looser professional principles,’ according to the colony’s earliest historian, William Tarrant, a former ship’s steward who was himself admitted to practise with no legal training whatsoever.⁷ Among these practitioners was the Irish-Australian Percy McSwyney – journalist, opium dealer, deputy registrar of the Supreme Court, coroner, and temporary attorney – who, according to Tarrant, committed ‘swindling and barefaced robbery’ on Chinese litigants to ‘an extent difficult to be conceived.’ McSwyney ended his days in a hospital for destitute seamen, where he died of dysentery in 1851.⁸

The most successful early barrister was W.T. Bridges, a rapacious character who combined official positions with a flourishing legal practice (1851–1861): this he advertised on a ‘gorgeous’ bilingual gilt and black signboard hung outside his chambers on Queen’s Road: a Doctorate of Civil Law he had recently obtained from Oxford University was rendered in Chinese as an official rank. From these premises he also ran a money-lending business, taking balls of opium and other ‘questionable goods’ as security. Bridges left Hong Kong after being tainted in a string of official scandals, shortly before a powerful enquiry into civil service abuses was to hear evidence. He retired to Devon, became a country magistrate, and published *A Handy Book for Justices of the Peace* in 1877. His legacies were the Hong Kong Cricket Club, of which he was a founding member, and (some believe) the partnership that later took the name of Deacons, Hong Kong’s oldest solicitors’ firm.⁹

From the 1860s a more settled and respectable legal profession emerged, although shortages of lawyers were a recurrent problem. After an unhappy short-lived experiment from 1858 to 1864, engineered for their own benefit by William Bridges and Attorney General Thomas Anstey, the two branches of the legal profession rejected successive proposals for amalgamation, a policy adopted in most other colonies.¹⁰ Barristers enjoyed a monopoly on

7. William Tarrant, *Hongkong: Part 1, 1839 to 1844* (Canton: Friend of China, 1861), 89. Tarrant, an employee in the Surveyor General’s Department, was admitted for three months in 1846. He was deprived of his government position in 1847 after exposing corruption. In 1850 he took over the newspaper, *The Friend of China*, an organ fiercely critical of government. Later in the 1850s he was fined and imprisoned for criminal libel after accusing senior officials of corruption. Endacott, *Biographical Sketch-Book*, Chapter 19.

8. *Friend of China*, 7 May 1851; Holdsworth and Munn, *Dictionary of Hong Kong Biography*, 319–20.

9. Holdsworth and Munn, *Dictionary of Hong Kong Biography*, 48–50; Norton-Kyshe, *History of the Laws and Courts of Hongkong*, Vol. II, Chapter 34; *Deacons: Celebrating 160 Years of Legal Services* (downloaded from Deacons’ website).

10. Bitterly opposed by the Hongkong Law Society, the amalgamation of 1858–1864 was part of Bridges’s scheme to exclude attorneys from the Supreme Court: it was, observes Norton-Kyshe, ‘neither more nor less than an Ordinance to empower barristers to act as attorneys.’ It was repealed on the initiative of John Smale (Attorney General 1860–1866, Chief Justice 1866–1882), who claimed that, far from reducing costs, the system had been ‘prostituted by the profession’ and had triggered a flight of attorneys from the colony. Proposals for amalgamation continued to be advanced up to the late twentieth century. In a partial fusion from 1873 to 1925, barristers were permitted to hold

most forms of advocacy in the Supreme Court. But they dealt with litigants through attorneys or solicitors, who also had rights of audience in the lower courts. A third ‘branch’ of the profession – informal and barely regulated – could be said to exist in the powerful class of interpreters and clerks, indispensable intermediaries between English-speaking solicitors and their Chinese clients. Enriched by commissions, these men were often accused of touting for work and of generally exploiting the courts, even to the extent of forging evidence and financing speculative lawsuits.¹¹ Yet it was from this rising class of middlemen that many of Hong Kong’s earliest home-grown lawyers emerged. Most of these lawyers, like their Western counterparts, were trained in England under a system then undergoing extensive reform.

Legal Training in England

The century and a quarter between the British colonization of Hong Kong and the establishment of the Department of Law at HKU was framed by two large inquiries into legal education in England and Wales. The first, by a House of Commons Select Committee reporting in 1846, revitalized the teaching of law by stimulating professional training at the universities and the introduction of qualifying examinations.¹² The second inquiry was by a committee appointed by the Lord Chancellor in 1967. Reporting in 1971, the Ormrod Committee (named after the judge who chaired it) reviewed legal education in England and Wales and made recommendations for its expansion, building on the elaborate mixture of university and professional training that had developed over the previous century.¹³

In its historical survey the Ormrod Committee saw this dual system, in which both the legal profession and the universities played a part, as the most striking feature of legal training in England, in contrast to the university-based systems of continental Europe.

consultations with clients and take fees without the intervention of a solicitor, though in practice the dual system was maintained. Wesley-Smith, ‘Nineteenth-century Fusion of the Legal Profession in Hong Kong’; Norton-Kyshe, *The History of the Laws and Courts of Hong Kong from the Earliest Period to 1898* (Hong Kong: Noronha & Co., 1898, reprinted by Hong Kong: Vetch and Lee, 1971), Vol. I, 494.

11. Concerns about abuses by solicitors’ clerks and interpreters persisted into the late twentieth century. The problem came to a head earlier in the century when an attempt by the government to deport the (alleged) leader of a network of champerters resulted in an appeal to the Privy Council that became Hong Kong’s first constitutional case. Christopher Munn, ‘Margins of Justice in Colonial Hong Kong: Extrajudicial Power, Solicitors’ Clerks, and the Case of Li Hong Mi, 1917–1920,’ *Law and Humanities* 11, no. 1, (2017): 102–120.

12. *Report from the House of Commons Select Committee on Legal Education 1846* (hereafter the ‘1846 Report’).

13. *Report of the Committee on Legal Education 1971* (the ‘Ormrod Report’). The discussion in this section draws mainly on the *Ormrod Report*, Chapter 1, Duman, *The English and Colonial Bars*, Harry Kirk, *Portrait of a Profession: A History of the Solicitor’s Profession, 1100 to the Present Day* (London: Oyez Publishing, 1976), Chapter 3, and William Twining, *Blackstone’s Tower: The English Law School* (Hamlyn Lectures; 46th Ser. London: Stevens & Sons, 1994), Chapter 2.

Since the middle ages, universities had concentrated on civil law: derived from Roman law, this was the foundation of most continental legal systems. In England the evolution of a distinctive indigenous system of common law had encouraged the growth of specialized institutions – the Inns of Court – to train and regulate the profession. The Inns of Court, close to the courts in London, concerned themselves with the common law, while the universities, like their continental counterparts, confined their teaching to civil law, to the exclusion of local law. Early efforts to establish the study of English law, notably by William Blackstone at Oxford in the mid-eighteenth century, were not sustained, although his *Commentaries on the Laws of England* became a staple legal text, and a point of reference for colonists intent on protecting their rights as ‘freeborn Englishmen.’ The first modern law school – established at University College, London in 1826 – produced only 135 law graduates in the whole of the nineteenth century.

By the 1840s, when English law was planted in Hong Kong, legal training in England was in a torpid state. The 1846 Select Committee found that ‘no legal education worthy of the name, of a public nature, is at this moment to be had’ in England or Ireland. Except for a few courses at University College, London, there was virtually no teaching of law of any kind at the universities. The Inns of Court – once centres of learning rivalling the great universities – had long since ceased to provide effective training. Although they still controlled admission to the Bar, they were little more than social clubs. Intending barristers joined an Inn of Court, where they were required to keep a certain number of terms and eat a certain number of dinners, studied law in the chambers of a senior practitioner, and performed ‘exercises’ – a kind of debate which by the 1840s had degenerated into a ‘mockery’, a ‘mere farce’. There was no formal instruction or test before the call to the Bar. The student was simply thrown ‘on such chance instruction or studies as might fall in his way.’¹⁴

The other branch of the profession – the solicitors and attorneys – was subject to greater control. Since 1731 they had been required to serve a five-year apprenticeship with a senior practitioner, or ‘articles’, supplemented in the early nineteenth century by lectures organized by the Law Society of England and Wales. Under the Solicitors Act 1843 the period of articles was reduced to three years for those with a degree from a reputable university: this was unlikely to be a law degree, since by the 1840s the teaching of law at the universities had practically ceased.¹⁵ From 1836, attorneys were required to pass a final law examination supervised by judges: the Solicitors Act 1843 made this a statutory requirement, necessary, along with an oath of allegiance, for enrolment and admission by the courts. Yet, observed the 1846 Select Committee, the examination was ‘altogether inadequate’, and served ‘merely as a guarantee against absolute incompetency.’¹⁶ A typical question was ‘What is the

14. *1846 Report*, xi & lvi.

15. Attornies and Solicitors Acts 1728 and 1843.

16. *1846 Report*, xiv & xvi.

difference between a verdict and a judgment?’ The pass rate was over 95 per cent.¹⁷ Seen from this perspective, the admission of ‘fit and proper’ persons without qualifications to practise law in early Hong Kong might not have been so extreme an expedient.

The 1846 Select Committee’s report triggered reforms aimed at improving training and raising standards. The universities revived the teaching of law, beginning with the establishment of the Bachelor of Civil Law degree at Oxford in 1852, followed in the mid-1870s by the BA in Jurisprudence, and the Bachelor of Law (LLB) degree at Cambridge in 1855. By the early twentieth century there were eight law faculties in the country. Although the universities now taught common law, most treated it as one of the liberal arts rather than purely as a preparation for the profession. Although a university degree reduced the required period of articles by two years, the majority of solicitors continued to train without a degree. From 1860, solicitors’ examinations were split into preliminary, intermediate, and final examinations. In 1877 control of examinations passed from the judges to the Law Society, which gradually expanded the rules for articulated clerks and the provision of vocational training. The society established a School of Law for articulated clerks in 1903, which in 1962 merged with the tutorial firm (the ‘law crammer’) Gibson and Weldon to form the College of Law. Those who passed university entrance exams were exempted from the preliminary exams. From 1922, graduates with recognized law degrees were exempted from the intermediate exams (later known as ‘Part I’); articulated clerks were required to take an academic year either at the School of Law or through university courses subsidized by the Law Society.¹⁸

The Bar – the ‘senior’ branch of the profession and a vocation for gentlemen – stubbornly adhered to its ancient forms of self-regulation and was slow to reform. The Inns of Court controlled admission to the Bar and prescribed educational standards and training. Most candidates already held university degrees: this shortened the time in which they had to keep terms at an Inn from five years (twenty terms) to three (twelve terms), and the number of dinners they had to eat each term from six to three. In 1852 the four Inns of Court established a Council of Legal Education to organize lectures and examinations, though most candidates continued to study privately. A Royal Commission on the Inns of Court in 1854–1855 urged the need for a proper system of examinations. Compulsory Bar final examinations were introduced in 1872, against objections from some senior barristers.¹⁹ With modifications, this remained the main qualification for the next hundred years.

17. Kirk, *Portrait of a Profession*, 53.

18. The final examinations were replaced by the Common Professional Examination in 1980.

19. The opponents argued that a barrister’s competence was continuously assessed by the solicitors who engaged him and by the judges before whom he appeared. Moreover, the introduction of examinations would discourage gentlemen amateurs from entering the Inns, not with the aim of practising law, but to acquire knowledge to help them manage their estates and fulfil their duties as JPs or MPs. Duman, *The English and Colonial Bars*, 79–80.

Barristers were ‘called’ to the Bar in ceremonies held at their Inns. A newly minted barrister was expected to serve a pupillage of one or two years with an experienced barrister, but was not required to do so until 1959. As with the articles served by prospective solicitors, the amount and quality of training through apprenticeship varied widely. Premiums were payable for entry into pupillages (200 guineas) and articles (£200). Bar students had to pay admission fees and call fees to their Inns, and incurred expenses for dinners, books, wigs and gowns, and general maintenance, since they were prohibited from most forms of paid work. Upon being called, a barrister had to find chambers and establish a practice through patronage and connections, a process which might take several years, and which in many cases never happened. Solicitors also paid premiums for their articles, and had to pay stamp duty of £100 on qualification; this was abolished in 1947, and from the 1960s premiums disappeared in England and articulated clerks began to receive salaries.

Legal Training in Early Colonial Hong Kong

In Hong Kong the Supreme Court controlled the admission of both barristers and solicitors, mainly on the strength of qualifications obtained in England.²⁰ From 1845 the Supreme Court could also admit ‘Solicitors, Attornies and Proctors’ who had served as articulated clerks in Hong Kong for three years (five years from 1871). This was the first recognition of local legal training. Although it extended only to solicitors, the training helped launch the careers of some of the earliest of Hong Kong’s barristers to be appointed Queen’s Counsel (QC), a recognition of excellence awarded by the Crown to senior barristers.²¹ The first was Edward Pollard, an Australian, who was articulated locally to the attorney Norton D’Esterre Parker in 1847 after having served briefly as a judge’s clerk. From that year Pollard was admitted to practise as attorney as an unqualified ‘fit and proper person’ in a series of end-to-end three-month periods up to September 1853, when the Supreme Court decided the colony had enough qualified attorneys. He then went to England to train as a barrister and was called to the Bar by Middle Temple in 1858. He was admitted to practise as barrister in Hong Kong in 1859 and in 1865 he became the colony’s first QC.²²

20. Early Supreme Court Ordinances (Nos. 15 of 1844 & 6 of 1845) and the Legal Practitioners Ordinance (No. 3 of 1871) empowered the court to admit as barristers persons who had been admitted as barristers or advocates in Great Britain or Ireland, and to admit as attorneys (solicitors) persons admitted as such in courts at Westminster, Dublin, or Edinburgh or as proctors in any ecclesiastical court in England. From 1845 to 1871 the court could also admit persons who had been admitted to practise as solicitors, attorneys, or proctors in other British colonies.

21. In England, on the recommendation of the Lord Chancellor; in Hong Kong, on the recommendation of the Chief Justice, through the Governor and Secretary of State. The title was changed to ‘Senior Counsel’ in 1997, and appointments since then have been by the Chief Justice, after consultation with the chairman of the Hong Kong Bar Council and president of the Law Society of Hong Kong, under section 31A of the Legal Practitioners Ordinance.

22. Pollard was a cocky character. He clashed with the irascible Chief Justice Smale, who, in a celebrated case in 1867, summarily convicted him of contempt of court, fined him \$200, and suspended him from practice for fourteen days.

Chapter 5

A Liberal Education in the Law

Consolidation, 1984–1999

In the autumn of 1989 the Faculty of Law celebrated its twentieth anniversary. It marked this occasion with a dinner dance, two conferences – on Constitutions in a Modern Setting and Legal Education – and three books, *The Future of Legal Education and The Legal Profession in Hong Kong*, *The Law in Hong Kong 1969–1989*, and *The Future of the Law in Hong Kong*, with contributions from twenty Faculty members.¹ Among the guests at the celebrations was the Lord Chancellor of Great Britain, Lord Mackay of Clashfern. The anniversary year saw the establishment of the Sir Y.K. Pao Chair in Public Law, the founding of the HKU Law Alumni Association, and the launch of a fundraising campaign. It coincided with the graduation of HKU's 1,000th LLB student and the appointment of the first Queen's Counsel with law degrees from HKU – Edward Chan and Andrew Liao (both LLB 1972) and Robert Kotewall (LLB 1974).² In the same year Dafydd Evans, the founding head of the Faculty, was awarded the Order of the British Empire for his services to legal education.

The twentieth anniversary came during 'an extremely important period in Hong Kong's history,' in which the key legal foundations for Hong Kong's future were being laid, recalls Peter Rhodes, Dean of the Faculty of Law 1987–1993. It was 'an exciting time' for legal studies, as the Faculty adapted curricula to a changing legal landscape and offered new

1. Raymond Wacks (Ed.), *The Future of Legal Education and The Legal Profession in Hong Kong, The Law in Hong Kong 1969–1989* (Hong Kong: Oxford University Press, 1989), & *The Future of the Law in Hong Kong* (Hong Kong: Oxford University Press, 1989).

2. All three had taken the English route, rather than the Hong Kong PCLL, to practise at the Hong Kong Bar, having qualified in London after receiving their LLBs from HKU.

courses that looked beyond Hong Kong.³ In the years leading up to the anniversary the Faculty began a full-scale review of the LLB degree and introduced a Master of Laws (LLM) degree. Towards the end of 1988 it exchanged its cramped quarters in the Knowles Building for spacious new premises on five floors of the new K.K. Leung Building. Two floors were devoted to the Law Library: its collection of 25,000 volumes more than doubled over the next decade, enriched by online databases. The new premises were opened by the Chief Justice, Sir Ti Liang Yang, on 28 October 1989 as part of the anniversary celebrations.

These years also saw the opening of a second law school, founded in 1987 at the City Polytechnic of Hong Kong (City University of Hong Kong, from 1994), which took in its first sixty students in 1988 and produced its first LLB graduates in 1991. A solution to the perceived shortage of lawyers, the decision by the University and Polytechnic Grants Committee (UPGC) to fund a new law school reflected a view that the Faculty of Law at HKU had reached its optimum size and could not continue to grow indefinitely. ‘We have been expanding since we were established and have never had a chance to consolidate,’ said Peter Wesley-Smith in 1989. ‘Every year we’ve had to accommodate more students and more staff, with all the disruption caused by remodelling premises, temporary offices, inadequate library provision, and overcrowded facilities generally. At last we now have satisfactory premises and an end to the havoc caused by constant expansion. Why should we expand again?’⁴ This view, reflecting consensus in the Faculty, was respected by the UPGC. The main burden of expansion in the 1990s fell on City University and HKU’s Department of Extra-Mural Studies, which was restructured in 1992 and renamed the School of Professional and Continuing Education (SPACE).

Full-time student enrolment in the Faculty for all courses increased from 385 in 1984 to over 650 in 1990; it then rose more gradually to over 700 in the late 1990s. The annual LLB intake stabilized at around 150 in the 1990s before falling to 130 in 2000. The annual PCLL intake grew from 140 in the late 1980s to over 200 in the mid-1990s, before being gradually reduced to 155 by 2000; another 100 or more students enrolled in the HKU SPACE PCLL programme were taught by Faculty members. Student numbers were maintained through the introduction of joint degrees with other faculties and an increase in postgraduate students, many of them part-time. Broad stability in student numbers gave the Faculty breathing space to review curricula and introduce new degree programmes. An increasingly diverse and stable complement of staff helped advance this process and established the Faculty as a reputable centre of research.

Research and teaching matured during what became known as the ‘transition period’ (1984–1997), as Hong Kong loosened and then cut its constitutional ties with the United

3. Rhodes, ‘Faculty of Law Reminiscence of 1987–1993’ in Faculty of Law, HKU, *Building for Tomorrow on Yesterday’s Strength*, 12; Message from the Dean, Faculty of Law, HKU, *Prospectus 1989/90*, 3.

4. Wesley-Smith to Rhodes, 1 November 1989, HKUA: Board of the Faculty of Law – Minutes (1989).

Kingdom (UK) in preparation for its new status as a special administrative region (SAR) of the People's Republic of China (PRC). Leading Hong Kong lawyers and politicians took part in drafting the Basic Law of the Hong Kong SAR, enacted under the Chinese Constitution by the National People's Congress and taking effect on 1 July 1997. The Basic Law provided for continuity of a separate legal system and conferred independent judicial power on Hong Kong. Chinese constitutional law thus became relevant to Hong Kong's future and a topic of interest to legal scholars. By declaring Chinese to be Hong Kong's official language from 1997 (while also allowing the use of English), the Basic Law stimulated an ambitious project to translate the whole of Hong Kong statute law into Chinese and to increase use of Chinese in court proceedings. The Hong Kong Bill of Rights Ordinance (1991) incorporated the International Covenant on Civil and Political Rights in domestic law: since there was at the time no direct equivalent in England, scholars, lawyers, and the courts began to look to jurisprudence from other parts of the world as they sought to understand it.

These fundamental changes to the legal system aroused a new interest in public and comparative law in all its aspects. The Hong Kong transition – a constitutional experiment without parallel – became the focus of international attention. The Basic Law 'makes us a part of the legal and constitutional system of the PRC,' said Yash Ghai in his inaugural lecture from the Sir Y.K. Pao Chair in Public Law in 1991. 'We must strengthen our efforts to learn and teach the PRC legal system. We must explore the various ways in which the Basic Law will enmesh the two legal systems and what must be the satisfactory solutions to the various legal challenges implicit in that.'⁵ The need now, observed Christopher Sherrin in his inaugural lecture as Professor of Professional Legal Education in 1995, was 'not simply to educate lawyers for the hitherto cosy little jurisdiction of Hong Kong but to provide for the forthcoming status of special administrative region and the relationship with the PRC.'⁶ Changes in curricula reflected and anticipated this transformation. A stream of conferences and publications analysed the implications of constitutional change, the first judgments under the Bill of Rights, and the impact of bilingual laws. Many of these activities were organized by the Faculty's first specialized research body, the Centre for Comparative and Public Law, founded in 1995. The centre attracted experts from around the world and soon became one of HKU's 'areas of excellence.'

Interest in public law was also stimulated by the growth of judicial review, a process by which the courts, upon application by an aggrieved party, ensure the lawfulness, reasonableness, and procedural propriety of decisions made by administrative bodies acting in a public capacity and by lower courts and tribunals. Influenced by the greater readiness of judges in England to intervene in relations between citizen and state, this procedure – 'the

5. *University of Hong Kong Gazette (Supplement)*, 6 May 1991.

6. Sherrin, 'Practice Makes Perfect', reproduced in 13 *Journal of Professional Legal Education* (1995), 131–45.

new equity', as Peter Wesley-Smith described it⁷ – took root in late twentieth-century Hong Kong; it acquired a new efficacy when used to test legislation and executive acts against the Bill of Rights from 1991 and the Basic Law from 1997. Other developments, not directly connected with 1997 or with trends in English law, had an impact on law and legal education. Increasingly, the Law Reform Commission looked to other countries than the United Kingdom for solutions to legal questions, drawing in part on the research and experience of Faculty teachers and graduates.

As Hong Kong played a key role in the new industrialization of China and its re-emergence as an export economy, not only undergraduates but also experienced lawyers required training in China's rapidly developing legal system. In parallel, the shift within Hong Kong from manufacturing to re-exports, finance, and services, as well as the globalization of trade and finance, stimulated demand for training and research in topics such as international law, shipping law, and arbitration. These demands were answered in part by the new LLM degree, introduced in 1986 and focusing at first on international trade law and the law of the PRC, and by the establishment of the Asian Institute of International Financial Law within the Faculty in 1999. Links with Mainland China were fostered by institutional collaborations, visits and exchanges, and by a growing number of students and teachers from different regions and provinces of China. In 1997 the Master of Common Law (MCL) programme was introduced for graduates in law from non-common law jurisdictions, in particular those from universities in Mainland China.

'Who, in 1969, could have foreseen the extraordinary developments that lay ahead?' asked Raymond Wacks, Head of the Department of Law, in his introduction to one of the anniversary books of 1989. Looking to the next twenty years, however, he noted that 'dystopian visions' were becoming increasingly common. 'Some despair that, in the face of an obdurate government in Beijing, the prospects for the common law are grim. The Rule of Law will, in the minds of some, survive only as a memory after 1997.'⁸ This pessimistic vision was not borne out by events. On the contrary, attachment to the rule of law became a prominent feature of civic identity in Hong Kong. Yet the transition to 1997 brought anxieties and disruptions. Many people doubted the guarantees made in the Joint Declaration by a fading colonial power only too ready to cast off its responsibilities for the people of Hong Kong and by a communist state that had only recently emerged from the chaos of the Cultural Revolution.

During the Faculty's twentieth anniversary year student-led protests gathered momentum in Tiananmen Square in Beijing. They were at first tolerated by the authorities and then, on 4 June 1989, violently suppressed. These events profoundly affected

7. Wesley-Smith, 'Licensing and Judicial Review', *Law Lectures for Practitioners* (1982), 31.

8. Wacks (ed.), *The Law in Hong Kong 1969–1989*, 1 & *The Future of Legal Education and The Legal Profession in Hong Kong*, 1.

confidence in Hong Kong's future and led to a deterioration in relations between Britain and China at a crucial stage in Hong Kong's transition. For HKU, the June 4th incident occurred after teaching had ended, near the end of examinations. But students, including many in the Faculty of Law, had actively supported their counterparts in China throughout the protests in April and May. 'They really believed China was opening up politically,' recalls Alison Conner, who was teaching a course on Chinese law at the time. 'Their hopes were dashed bitterly. It was devastating for them.'⁹ The university declined to defer examinations. But the twenty-seven law students who failed their exams were allowed to retake them on the basis that their performance may have suffered as a result of the events.¹⁰ Many staff attended a mass rally on 7 June organized by the HKU Staff Committee on Current Chinese Affairs.¹¹

Three Faculty members – Rick Glofcheski, Nihal Jayawickrama and Andrew Byrnes – formed a research group to collect evidence of human rights violations in the June 4th incident. Together with various non-governmental organizations (NGOs), they took their report to Geneva, where they helped one of the student leaders, Li Lu, prepare his statement to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities: Li and other dissidents had been helped to leave Mainland China by Operation Yellowbird, a clandestine exercise based in Hong Kong. In August 1989 the sub-commission adopted a resolution expressing concern and appealing for clemency by the Chinese government. This unprecedented censure of a permanent member of the Security Council, in the face of strenuous opposition from Chinese officials, owed much to the timely and detailed reports from the NGOs.¹²

Tiananmen spurred some of the more idealistic law students to greater efforts to contribute to 'the human rights revolution' in China and Hong Kong.¹³ But it may also have been a factor in the decline in the numbers of applicants for the LLB programme as fears deepened about the continuance of the rule of law beyond 1997.¹⁴ It prompted many

9. Alison Conner, interview with the author, 17 July 2017.

10. Faculty Review Committee: Annual Reports for 1988–1989 & 1989–1990, HKUA: Board of the Faculty of Law – Minutes (1989 & 1990).

11. *Hong Kong Law Society Gazette*, July 1989.

12. Rick Glofcheski, interview with the author, 8 October 2018; Ann Kent, *China, The United Nations, and Human Rights: The Limits of Compliance* (Philadelphia: University of Pennsylvania Press, 1999), 56–60.

13. Comments by students in various years in 1991 quoted in Hong Hing-cheung, 'A phenomenographic investigation of student experiences of learning in the context of the Law Faculty at the University of Hong Kong' (HKU PhD thesis, 1997) 181–2.

14. The number of HKU applicants putting down law as their first choice dropped from 826 in 1989 to 514 in 1990, 437 in 1991, and 392 in 1992. Another reason was the opening of the second law school at City Polytechnic in 1987. Rhodes to Smyth, 11 May 1992, & Minutes of the Admissions Committee (LLB), 14 May 1991, HKUA: Board of the Faculty of Law – Minutes (1991 & 1992); Report by the Faculty of Law, HKU to the Australian Law Teachers' Association (1992), 158.

lawyers to consider emigration: a survey of solicitors, barristers, government lawyers, and articulated clerks in November 1989 found that 63 per cent of the 1,687 respondents planned to leave Hong Kong before 1997.¹⁵ In the event, the numbers leaving were not so great. Lawyers had no advantages under the points-based immigration schemes used by Canada and Australia, the main destinations for Hong Kong migrants, and the barriers to entry into the legal profession were high in most jurisdictions.¹⁶ A special British passport scheme, introduced in 1990 to encourage key professionals and others to remain in Hong Kong, reserved 3,700 places for legal professionals.¹⁷ But the possibility of an exodus of lawyers and other professionals made the task of planning for the future even more uncertain. In the late 1980s the government was still convinced that Hong Kong had a dire shortage of lawyers. A decade later, in the late 1990s, when over 450 graduates per annum were completing the PCLL at either HKU or City University, some in the profession now believed that Hong Kong had too many lawyers, and that the general quality of entrants to the profession was declining. These concerns prompted the first full review of legal education in Hong Kong since the 1960s.

Teaching Staff: Growing Diversity and Expertise

The Faculty's permanent teaching staff grew from about thirty in 1984 to around fifty in the 1990s. The Faculty also relied on a network of part-time honorary lecturers, particularly for the PCLL, and on course consultants, external examiners, and other advisors. With the attainment of faculty status in 1984, deans were now elected for three-year terms by the permanent academic staff. The first Faculty Dean, Dafydd Evans, Head of Department since 1969 and Dean of the School of Law since 1978, was elected unopposed in 1984. Evans put himself forward again in 1987 but another candidate, Peter Rhodes, successfully contested

15. *New Gazette*, February 1990.

16. The main exceptions were England and Singapore. From 1981, Hong Kong qualifications were recognized for admission to the English Bar. Solicitors admitted in Hong Kong had, since 1901, been eligible to practise in England and Wales subject to certain conditions; in 1991 they became eligible for automatic admission following the removal of the requirement of three years' prior practice in Hong Kong. From 1984 to 1994 Singapore gave recognition to Hong Kong legal qualifications. During that decade a total of 452 Hong Kong lawyers were admitted, although not all actually practised in Singapore. Qualified Lawyers Transfer Regulations 1990 (UK); Legal Profession (Amendment) Act, No. 17 of 1984 (Singapore); *New Gazette*, August 1991 & March 1995; *SCMP*, 19 February 1995.

17. Under this scheme, full British citizenship was granted to 50,000 eligible persons and their families according to occupations and other criteria, without the need to reside in the UK. The aim was to encourage key professionals and public servants to remain in Hong Kong while assuring them of a place of refuge if things went wrong. Following lobbying by the professional bodies amid reports that lawyers would be excluded from the scheme, 3,700 places were eventually reserved for legal professionals and associate professionals. British Nationality (Hong Kong) Act 1990; British Nationality (Hong Kong) Bill 1990 and Explanatory Note (Hong Kong: Government Printer, 1990); *SCMP*, 29 November 1989; Bar Association, *Annual Statement* 1990–1991, 5–6.

Chapter 6

The Faculty and the Transition, 1984–1999

The planned return of Hong Kong to Chinese rule in 1997 presented exceptional challenges. Decolonization required a more complete dismantling of constitutional links than most other former British colonies had experienced. The creation of the Hong Kong Special Administrative Region (SAR) of the People's Republic of China (PRC) envisaged an unparalleled relationship between a communist sovereign power and a city held up as a paragon of capitalism. Promises of 'a high degree of autonomy' in the Joint Declaration 1984 required an urgent strengthening of institutions in a crown colony which, alone among Britain's overseas possessions, had no experience of representative government, still drew many of its civil servants and judges from overseas, and enjoyed only an embryonic civil society. Nevertheless, despite doom-laden predictions, the transition from colonial rule to SAR status took place peacefully and smoothly on 1 July 1997.

Severing constitutional links with Britain required adaptation and localization of laws and treaties and the substitution of a Court of Final Appeal (CFA) in Hong Kong for the Privy Council in London. Despite the emphasis on continuity between British and Chinese rule, this was an age of reform. Great projects, undertaken with urgency and against formidable difficulties, transformed the legal landscape. The successful introduction of bilingual laws and justice – seen by some as a near-impossibility – was accompanied by rapid localization of the legal profession and the Judiciary. A Bill of Rights, enacted in 1991 as a measure to secure Hong Kong's freedoms after 1997, had the more immediate effect of sweeping away oppressive colonial laws and fostered a rights-based legal culture.

The Basic Law for the Hong Kong SAR, promulgated by the Chinese government in the same year, became both the fulcrum for a smooth transition and a source of disagreements. Foremost among the latter was a prolonged dispute over how the new CFA should be constituted, which scuppered plans to establish the court before 1997, and controversies about where the ultimate power to interpret the Basic Law should lie, culminating in a constitutional crisis in 1999. Some of the controversies gathered momentum during a phase of rapid but short-lived democratization of the Legislative Council, initiated by Hong Kong's last Governor, Chris Patten, without agreement from China. They also took place at a time of ferment within the legal profession and reforms in many areas of Hong Kong law that had little or nothing to do with the transition through 1997.

Staff and graduates of the Faculty of Law at HKU participated in all of these processes. This chapter focuses on their involvement in two projects that were to fundamentally change Hong Kong's legal system: the Bill of Rights, which entrenched in local law international standards of human rights, and which succeeded in part because of Faculty expertise and advocacy; and the Basic Law, which prescribed the constitutional arrangements for Hong Kong beyond 1997, and became a subject of intensive analysis. A final section examines controversies in Hong Kong's fast-expanding legal profession. The chapter begins with a brief survey of the growth of legal research in the Faculty and beyond, and its contribution to an emphasis on the rule of law during the transition period.

The Expansion of Legal Research

One of the objects in establishing the law school at HKU was to produce scholarly research on Hong Kong law, not only for students but also for the wider legal community. This had got off to a slow start. In a survey in the late 1970s Peter Wesley-Smith dwelt on the paucity of literature on Hong Kong law, the reliance on English textbooks, and the 'tiny size of the potential market' for works specifically on Hong Kong.¹ In his inaugural lecture as Professor of Law in 1989 he catalogued the many ways in which his 'mild-mannered' crusade for reforms in the *Hong Kong Law Journal* had failed to influence either the legal profession or the courts. Early efforts by teachers to generate legal literature were not always appreciated. The *Journal* was notoriously undersubscribed. The multi-author surveys produced for the Faculty's twentieth anniversary in 1989 received mixed reviews: one critic acknowledged that half of *The Future of the Law in Hong Kong* consisted of stimulating chapters, but said that the 'single unifying factor' of the chapters in the rest of the book was their pointlessness and lack of imagination; a companion volume, *The Law in Hong Kong 1969–89*, was dismissed by another reviewer as 'more an indictment against legal scholarship, or its absence,

1. The survey was prepared for a seminar on legal literature in small jurisdictions organized by William Twining in Toronto in 1978. Wesley-Smith, *Legal Literature in Hong Kong* (1979).

in this territory’ than a ‘vista of legal academic achievement.’² Five years later, to the dismay of Faculty members, the first Research Assessment Exercise (RAE), commissioned by the University and Polytechnic Grants Committee (UPGC), found too many edited volumes, too much ‘textbook-type output’, and too few articles in international journals; it assessed output in Law as below the HKU average.³

These appraisals were perhaps unduly harsh. The RAE report, opaque about its methods and vague in its observations, prompted an indignant response from the Faculty, which concluded that the exercise was ‘fundamentally flawed.’ Law and legal literature were largely territorial in nature, the Faculty pointed out. It could not be assumed that one type of legal research was necessarily superior to another, or that journals published in England and the US were as ‘international’ as some of them claimed to be. The ‘automatic denigration’ of textbooks and edited collections failed to acknowledge that scholars had only begun to study Hong Kong law twenty-five years earlier. Nor did it recognize the huge appetite for literature on Hong Kong law among practitioners, students, officials, and academics in other fields. Theoretical or comparative research was of great value. ‘But much of the research labour of a Faculty engaged in the teaching of Hong Kong law – law in a jurisdiction with its own special characteristics – must be involved with Hong Kong law. Scholars from elsewhere are not going to do it.’⁴

After the slow start in the 1970s, law teachers at HKU, along with other academics and practitioners, produced legal literature in growing quantities. By the late 1980s the preconditions for producing works on Hong Kong had markedly improved. In the 1990s publications proliferated on all aspects of Hong Kong law, past, current, and prospective. The market within Hong Kong grew in tandem with the expansion of the legal profession and legal education. Hong Kong and Chinese law became topics of global interest during a time of rapid reform. From the 1980s local publishers took a growing interest in legal literature. International publishers started to focus on Hong Kong: among these, Oxford University Press and Longmans published several works on Hong Kong law. Legal publishers such as Butterworths and Sweet & Maxwell brought out series and serials on Hong Kong law. The scope of law reporting expanded. Encouraged by more widely available research funding and the RAE, Hong Kong academics published widely in international journals. The Faculty itself became a prolific publisher of new research in key areas of law.

From the 1980s Faculty members produced textbooks covering large swathes of Hong Kong law, often for the first time. Topics included revenue law (Peter Willoughby, 1981),

2. Reviews by Mark Findlay & Andrew Raffell, *The Lawyer*, December 1989 & January 1990: Findlay and Raffell were teachers at the new law school at the City Polytechnic.

3. Antony Leung, UPGC Chairman, to Vice-Chancellor Wang Gungwu, 22 June 1994, HKUA: Board of the Faculty of Law – Minutes (1994).

4. Wesley-Smith to Spooner (draft), October 1994, HKUA: Board of the Faculty of Law – Minutes (1994).

family law (Leonard Pegg, 1981, Athena Liu, 1999), personal injuries (Robyn Martin & Peter Rhodes, 1982), constitutional law and legal system (Peter Wesley-Smith, 1983 & 1987), intellectual and industrial property law (Michael Pendleton, 1984), tenancy law (Malcolm Merry, 1985), tort (Robyn Martin, 1987), conveyancing (Sarah Nield, 1988), contract law (Carole Pedley-Chui, 1988, Betty Ho, 1989), criminal law and procedure (Gary Heilbronn, 1990, Michael Jackson, 2003), business law (Anne Carver, 1991), the Chinese legal system (Albert Chen, 1992), taxation law (Andrew Halkyard & Jefferson VanderWolk, 1993), conveyancing (Judith Sihombing & Michael Wilkinson, 1994), professional conduct of lawyers (Michael Wilkinson & Michael Sandor, 1996), company law (Philip Smart, Katherine Lynch, & Anna Tam, 1997), and land law (Say Goo, 1998). Faculty members collaborated on multi-author volumes on current legal topics, for example, the Basic Law (Albert Chen & Peter Wesley-Smith, editors, 1988), civil liberties and human rights (Raymond Wacks, editor, 1988 & 1992), and the three collections for the twentieth anniversary in 1989. Such enterprises were encouraged by the Dean, Peter Rhodes, as a quick way of generating legal literature and launching younger scholars into publishing.⁵ The late 1980s also saw substantial works in Chinese, beginning with topical books on Hong Kong's legal system and the Basic Law (Albert Chen, 1986) and human rights during Hong Kong's transition (Albert Chen & Johannes Chan, 1987), and including a Chinese edition of Betty Ho's book on contract law (1990).

The pace of publication accelerated in the 1990s and extended to new or developing areas of law, such as privacy law, anti-discrimination laws, alternative dispute resolution, financial law, environmental law, and construction law. A survey of the published research of Faculty members during the four-year period 1996–1999 listed over 120 journal articles or book chapters and a dozen books, not including new editions, editorships, professional manuals, or contributions to conferences and seminars.⁶ The second and third RAEs in 1996 and 1999, conducted more transparently than the first, found great improvements in the Faculty's output, and awarded scores well above the HKU and sector-wide averages.⁷ Strong results in the RAEs produced more funding for future research projects: the 1996 exercise led to the allocation of two research fellow posts 'as reward.'⁸ By early 2000, Faculty members were holding nearly fifty ongoing research grants on topics ranging from contested confessions in Hong Kong courts to globalization and Chinese law.⁹

5. Peter Rhodes, interview with the author, 23 February 2018.

6. Faculty of Law: Submission for the Review Panel, (January 2000), Appendix 22.

7. UGC Research Assessment Exercise 1999: Results for Law Cost Centre, 15 May 2000, Annex II, HKUA: Board of the Faculty of Law – Minutes (2000).

8. Minutes of meeting on 10 September 1997, HKUA: Board of the Faculty of Law – Minutes (1997).

9. Faculty of Law: Submission for the Review Panel, (January 2000), Appendix 21.

The 1999 RAE panel noted that academics from the two law schools had ‘published almost all the leading treatises on Hong Kong law.’ One of the schools had ‘managed to reach an internationally respectable level of performance.’¹⁰ Apart from producing academic works, teachers continued to contribute to magazines such as the *Law Society of Hong Kong Gazette* and its successor, the *New Gazette*. They joined with practitioners to compile large-scale reference works, such as *Hong Kong Current Law* (1984–1993),¹¹ the *Annotated Ordinances of Hong Kong* (1995–) and *Halsbury’s Laws of Hong Kong* (1995–), a multi-volume statement of the law modelled on the English original first published in the early twentieth century. As technology advanced, the Faculty took a lead in building electronic databases of legal materials. These began with the Hong Kong Unreported Judgments Database (1990–1995), led by Gary Heilbronn, and the Law-On-Line Database (1991–1996), managed by JoJo Tam with the help of postgraduate students, covering Chinese law and Bill of Rights materials. Along with the official Bilingual Laws Information System (BLIS, introduced in 1991) and commercial databases such as LEXIS (which from 1999 included the *Hong Kong Law Journal*), these services made legal reference more accessible, comprehensive, and up to date.¹² At first, access to these databases was restricted to special terminals, including some in the Law Library at HKU, or CD-ROMs. But, starting with Law-On-Line and BLIS in the mid-1990s, some services were opened to free public access through the Internet. Some of the initiatives were later merged into the freely accessible database of judgments, legislation, and other materials launched in 2001 by the Hong Kong Legal Information Institute (HKLII).¹³

A City of Law: Disseminating Legal Research to the Wider Community

The web-based projects marked a stage in the opening up of legal information to the wider community. The process had its roots in unofficial efforts to provide cheap Chinese translations of the laws of Hong Kong earlier in the twentieth century, and in official pamphlets explaining new laws.¹⁴ Early efforts by law teachers and students to inform the general

10. UGC Research Assessment Exercise 1999: Results for Law Cost Centre, 15 May 2000, Annex II, HKUA: Board of the Faculty of Law – Minutes (2000).

11. Renamed the *Hong Kong Law Digest* 1989–1993.

12. Graham Greenleaf, Philip Chung, Andrew Mowbray, Ka Po Chow, & K.H. Pun, ‘The Hong Kong Legal Information Institute (HKLII): Its Role in Free Access to Global Law via the Internet’, 32 *HKLJ* (2002), 401–27: Greenleaf was a visiting professor at HKU. For a survey of Hong Kong legal literature in the late 1990s see Jill Cottrell, *Legal Research: A Guide for Hong Kong Students* (Hong Kong: Hong Kong University Press, 1997).

13. This and other more recent web-based initiatives are discussed in Chapter 8.

14. Foremost among the translations were those by Ma Yuen and a team of translators from the *Wah Kiu Yat Po*: these were consolidated into two unofficial Chinese editions of the ordinances of Hong Kong, in 1936 and 1950, the first of which contained essays on Hong Kong’s legal system and endorsements from Chinese barristers: 馬沅編：香港法例彙編 (1936 & 1953).

public about the law had included radio broadcasts and newspaper articles and exhibitions and other activities organized by the HKU Law Association. These efforts expanded in the 1980s and 1990s. Teachers engaged closely with newspapers, writing letters, opinion pieces, and accessible articles on their areas of interest, and making themselves available to reporters for informed comment.

Various civic bodies, formed in the late 1970s and monitored at first as ‘pressure groups’ by a nervous colonial government, targeted shortcomings and abuses in the law. These included the Society for Community Organization, the Association for the Promotion of Public Justice, founded by Elsie Elliott and Andrew Tu, and the Hong Kong Observers, whose early members included Christine Loh, Anna Wu (LLB 1974), Frank Ching, and Leung Chun-ying.¹⁵ Newspapers employed journalists with legal qualifications to analyse developments in the law. Among these were HKU graduates Margaret Ng (BA 1969, MA 1975, PCLL 1988), a columnist for *Ming Pao* and the *South China Morning Post*, and Kevin Lau (LLB 1986), who wrote on legal topics for the *Hong Kong Economic Journal* 1989–1995 and then became an editorial writer for *Ming Pao*.

Encouraged to study law by his elder brother’s schoolmate James To (LLB 1985), Kevin Lau had enjoyed the more theoretical LLB courses, such as Sociology of Law, Jurisprudence, and Civil Liberties – subjects which his more practical classmates found less appealing. Reading books by Denning and other jurists had shown him that practising law was not just about making money but also about helping people. Yet the formalities surrounding the legal profession made him hesitant about joining it. Having obtained his LLB, he went on to the PCLL at HKU, worked as an assistant for Martin Lee QC, the first representative of the legal functional constituency on the Legislative Council, and took an LLM at the London School of Economics. After seeing first-hand the punishing daily routine of a classmate now working as a junior barrister, Lau postponed plans for pupillage and took up journalism instead. This launched him on a newspaper career during a dramatic period in Hong Kong politics.¹⁶

The intense focus on law by the press during the transition was ‘all because we lived in a period of rapid and major changes in our legal system,’ Lau recalls. Throughout the 1990s, he adds, journalists usually asked ‘the two Chans’ (Albert Chen and Johannes Chan) for comments on current legal issues.¹⁷ Other lecturers also contributed to a broader understanding of the law through comments to the press, participation in public seminars, and service on official committees and NGOs. Raymond Wacks, Head of the Department of Law 1986–1993, was a presenter of RTHK’s English-language ‘The Week in Politics.’ A list

15. For government monitoring of these and other groups see Suzanne Pepper, *Keeping Democracy at Bay: Hong Kong and the Challenge of Chinese Political Reform* (Lanham: Rowman & Littlefield, 2008), 176–9.

16. Kevin Lau, interview with the author, 1 March 2018.

17. Kevin Lau, interview with the author, 1 March 2018.

from the late 1990s records Faculty participation in over fifty official and non-official bodies, ranging from the Law Reform Commission and the Central Policy Unit to the Council of the Red Cross and the Human Organ Transplant Board.¹⁸ Professional bodies, such as the Bar Association, the Law Society, and the Hong Kong branch of JUSTICE, also intensified their research and advocacy on legal issues, particularly in relation to the problems of the transition. Lawyers participated widely in policy formulation.

The more people understood the law, the better the chance for securing Hong Kong's legal system, said the Chairman of the Bar Association, Robert Tang QC, in 1990. 'We need education at homes and schools to inculcate into the people of Hong Kong as well as potential lawyers an understanding of our legal system and the importance of the rule of law.'¹⁹ Senior officials – including British ministers on their now frequent visits – engaged more widely with the press and the public. In 1991 RTHK produced a series of thirteen TV programmes explaining how different laws affected the public, concluding with a one-hour public forum in which Johannes Chan debated human rights with Andrew Wong, a legislator, and Simon Li, a retired judge and a member of the Basic Law Drafting Committee.²⁰ In 1992 the government's Committee on the Promotion of Civic Education took on responsibility for human rights education. Several legal experts, including Johannes Chan (1992–1995) and Benny Tai (1995–2003), were appointed to it. The committee commissioned teaching kits, games, and other materials for schools, many of which unfortunately remained in teachers' drawers or in dark corners of libraries.²¹ The professional bodies made special efforts to promote understanding of the law. In the first annual 'Law Week', organized by the Law Society in April 1991, over 200 lawyers, judges, lecturers, and students took part in school visits, court tours, seminars, and other activities culminating in a variety show on TV.²² New NGOs, such as the Hong Kong Human Rights Commission (founded in 1988) and the Hong Kong Human Rights Monitor (founded in 1995), promoted law reform through advocacy and public education. Political parties, forming in the late 1980s and early 1990s as representative government expanded, all stressed the importance of the rule of law.

Representative government came late to Hong Kong, partly because officials came to believe that the Chinese government would not tolerate elections in the colony²³ but also

18. Performance Profile for the Assessment of the Faculty (draft), HKUA: Board of the Faculty of Law – Minutes (1994).

19. Speech at the Ceremonial Opening of the Legal Year, 8 January 1990, Hong Kong Bar Association, *1989/90 Annual Statement*, Appendix IV.

20. SCMP, 27 April 1991.

21. Benny Tai, interview with the author, 12 October 2018.

22. *New Gazette*, April & June 1991.

23. For a discussion of how this belief came to dominate British official views see Steve Tsang Yui-sang, *A Modern History of Hong Kong* (Hong Kong: Hong Kong University Press, 2004), 206–7.

because there was no strong public demand for it. This sustained an idea that Hong Kong people were 'apathetic' about politics and fed into a still more pernicious view, prevalent among business elites, that they were not ready for democracy. With the opening of negotiations on Hong Kong's future in the early 1980s the government embarked on a gradual progress towards representative government. In 1982, district boards – local advisory bodies – were created in Hong Kong's eighteen districts with unofficial majorities and some elected members. In 1985, for the first time, twenty-four of the Legislative Council's fifty-seven members were returned by an electoral college or by functional constituencies representing business and professional sectors; the rest were appointed. In 1991 direct elections in geographical constituencies were held for eighteen of sixty seats on the council; of the remainder, twenty-one were elected by functional constituencies, eighteen were appointed, and three were *ex officio*. Greater accountability made all unofficial members, elected or appointed, more ready to challenge policies and criticize government performance.

The agreements between Britain and China envisaged a 'legislative through-train', in which the same Legislative Council would bridge 1997. However, in 1994–1995 the through-train was derailed when Governor Patten proposed a massive extension of the franchise of existing functional constituencies and new functional constituencies with large electorates. As a result, the elections in 1995 were to be on a near-democratic basis. This arrangement breached secret understandings between Britain and China limiting the pace of reform. Against opposition from the Chinese government, Patten secured passage of his reforms in 1994. But, in response, the National People's Congress (NPC) appointed a Preliminary Work Committee and then a Preparatory Committee to make plans for the Hong Kong SAR. The Preparatory Committee appointed a Provisional Legislative Council, which, holding session across the border, existed in parallel with the colonial legislature before becoming an interim legislature on 1 July 1997. Patten's reforms were reversed and more limited elections to a new Legislative Council took place in mid-1998.

The reforms in the 1980s and 1990s radically changed the composition and operation of the Legislative Council. Pro-democracy members came to dominate proceedings, particularly after the 1995 elections. The council took on a more parliamentary style. Sittings were longer. Genuine, sometimes heated, debate replaced scripted ritual. Scrutiny of bills and policies was opened up to public participation. Members with legal qualifications included several from HKU. Among these were the solicitor Chung Pui-lam (PCLL 1977); two of the earliest LLB graduates, Moses Cheng (LLB 1972), an independent, and Albert Ho (LLB 1974), a leading member of the Democratic Party; James To (LLB 1985) and Andrew Cheng (PCLL 1992), both members of the Democratic Party; and Margaret Ng (PCLL 1988), an independent. Along with some half a dozen other lawyer-members of these years – notably Martin Lee, Ronald Arculli, and Simon Ip – they were energetic in debate and committee work.

Through this process of democratization the Legislative Council achieved greater legitimacy and relevance in the last decade of British rule. In partnership with a liberalizing administration, the council experienced a golden age, vigorously proposing, debating, and passing laws which improved many aspects of life. But its impact was limited. Some of its enactments – for example the electoral reforms of 1994, or the removal of certain restrictive provisions in the Societies and Public Order Ordinances, were cancelled by the non-adoption in 1997 of provisions deemed to be in conflict with the Basic Law, or repealed by the Provisional Legislative Council.²⁴ And, despite plans for continued democratic reform after 1997, including ultimately the election of the Chief Executive by universal suffrage, functional constituencies, some with narrow franchises, have continued to return half of the Legislative Council. Chief Executives have been nominated and elected by a small election committee appointed by the Central People's Government (CPG).²⁵

In the absence of full democracy, or a democratic tradition, faith in the future settled on a cluster of values encapsulated in the rule of law, an idea which permeates the Joint Declaration and Basic Law, has deeper roots in Hong Kong, and is seen daily in action in the courts. Modern jurists have defined the rule of law as embracing several core principles: the law must be accessible and intelligible; it should apply equally to all; questions of legal right and liability should be resolved by application of the law and not by discretion; officials should exercise their powers within the law and not unreasonably; means should be provided for resolving bona fide civil disputes without prohibitive cost or inordinate delay; the law should be adjudicated fairly, and as far as possible in public, by an independent and impartial judiciary aided by an independent legal profession; in criminal trials the accused should be presumed innocent until proved guilty, told clearly the nature of the accusation, and given legal representation, time to prepare a defence, and the opportunity to call witnesses and examine prosecution witnesses; the law should adequately protect human rights.²⁶

There were some who held that the rule of law required a democratically elected legislature to avoid repressive laws which judges had no choice but to enforce.²⁷ There were others whose research suggested that the rule of law had shallower roots in Hong Kong

24. For the non-adoption of legislation see Chen, 'Legal Preparation for the Establishment of the HKSAR: Chronology and Selected Documents', 27 *HKLJ* (1997), 405–31.

25. The intricate selection system is explained in Simon Young & Richard Cullen, *Electing Hong Kong's Chief Executive* (Hong Kong: Hong Kong University Press, 2010).

26. This is a precis of the eight principles set out by Lord Bingham, former Chief Justice of England and Wales. Bingham's analysis, much of it historical, has become a key point of reference in the common law world, not least in Hong Kong. T.H. Bingham, *The Rule of Law* (London: Allen Lane, 2010).

27. See, for example, the speech by the Chairman of the Bar Association, Robert Tang QC, at the Opening of the Legal Year in 1989, Hong Kong Bar Association, *Annual Statement 1988–89*, Appendix I.

than some enthusiasts claimed.²⁸ Nevertheless, the concept of the rule of law became both a central feature of the rhetoric of British withdrawal and a focus of hopes for a stable, prosperous, and free Hong Kong beyond 1997. The last British Governor, Chris Patten, described the rule of law as ‘perhaps this community’s most prized possession ... the very essence of our way of life.’²⁹ Businessmen saw the protection of private property and the enforceability of contracts under the rule of law as essential for Hong Kong’s status as an international city. Those with liberal views looked to it as a means of holding officials to account, a tool for promoting equality, and a guardian of rights and freedoms. Those who stressed order understood it simply as obedience to the law. ‘We strive for liberty but not at the expense of the rule of law,’ said Tung Chee-Hwa in his first speech as Chief Executive of the Hong Kong SAR.³⁰ The rule of law, in its shades of meaning, thus became a rallying cry across the political spectrum.

Academics tried to find out what people understood by the rule of law. A survey in 1987–1988 found little difference in attitudes between people in Hong Kong and people in Norwich, an English city. Traditional ideas had given way to ‘an overwhelming insistence on legal rights and resorts to the courts to settle disputes by the Chinese population.’³¹ Another survey, in 1996, found much support for the idea of equality before the law, and for the presumption of innocence, but noted that 38 per cent of respondents thought that ‘in adjudicating major cases, judges should defer to the views of the executive authorities.’ Hong Kong Chinese, the survey concluded (mistakenly, as it turned out), ‘may be readier to stand up against encroachments affecting legal equality and due process than interference with the rights-based autonomy of law.’³² Some saw the growing attention to the rule of law and the rise of Hong Kong as a ‘city of law’ as an acceptance that democracy, which had played virtually no part in colonial rule, would develop only slowly after 1997. More and more, political discourse dwelt on the protection of the rights and freedoms guaranteed by law. Increasingly, law became a substitute for politics.³³

28. For example, Peter Wesley-Smith, ‘Anti-Chinese Legislation in Hong Kong’ in Ming K. Chan (ed.), *Precarious Balance: Hong Kong Between China and Britain 1842–1992* (Armonk, New York: M.E. Sharpe, 1994), Lethbridge, *Hard Graft in Hong Kong: Scandal, Corruption, the ICAC* (1985), & Ming K. Chan, ‘The Legacy of the British Administration of Hong Kong: A View from Hong Kong,’ *China Quarterly* (1997), 567–82.

29. Patten, Policy Address, *Hong Kong Hansard*, 11 October 1995.

30. *SCMP*, 2 July 1997.

31. Berry Fong-chung Hsu & Philip W. Baker, ‘Law and Opinion in Hong Kong in the Late 1980s,’ 20 *HKLJ* (1990), 345–66.

32. Kuan Hsin-chi, ‘Support for the Rule of Law in Hong Kong,’ 27 *HKLJ* (1997), 187–205.

33. For an analysis see Carol A. Jones, ‘Politics Postponed: Law as a substitute for politics in Hong Kong and China’ in Kanishka Jayasuriya (Ed.), *Law, Capitalism and Power in Asia: The rule of law and legal institutions* (London: Routledge-Cavendish, 2007), & Carol A. Jones, *Lost in China? Law Culture and identity in Post-1997 Hong Kong* (Cambridge: Cambridge University Press, 2015).

Chapter 7

A Special Standing in the World

The Faculty in the Twenty-First Century

By the end of the twentieth century the Faculty of Law had established itself as one of the leading law schools in East Asia. Its graduates were making their mark in a city that was no longer a backwater of English law but a flourishing jurisdiction, where common law intersected with China's civil law system, and where the courts grappled almost daily with fundamental questions under a new constitutional order. Faculty members and alumni were at the forefront of research in Hong Kong law. The Faculty now also contained the largest concentration of expertise on Chinese law outside Mainland China. Thanks to its extensive library, its partnerships with other universities, and its climate of free inquiry, it had become a magnet for research students from across the country and beyond.

'We aspire to be one of the best law schools in the world,' wrote Johannes Chan shortly after beginning his second term as Dean in 2005. 'We set ourselves to compete with the top law schools overseas, not just the local or even regional ones.'¹ With this in mind, the Faculty fixed its sights on building a more international profile. The staff and student body became more diverse. Partnerships with other universities gave students opportunities to take courses outside Hong Kong and brought large numbers of exchange students to the Faculty. Research projects focused increasingly on transnational questions and issues of global interest, clustered in seven broad areas of strategic development: public law and human rights; comparative Chinese law; commercial, corporate, and financial law; World Trade Organization (WTO) and international economic law; intellectual property and

1. Johannes Chan, interview in *Faculty of Law Newsletter*, Autumn 2005.

information technology; dispute settlement and negotiation; and professional legal education. This strategy brought unexpected recognition when, from 2012 onwards, the Faculty was consistently ranked among the top twenty law schools in the world. In 2012 the Faculty marked another milestone when it moved into its own building on HKU's new Centennial Campus.

These achievements came during a turbulent time for Hong Kong as financial crisis, social division and political disputes produced uncertainty, hardship and confrontation. The role of Faculty members in these processes is discussed in Chapter 8. This chapter explores the Faculty's institutional development in the first two decades of the twenty-first century, when it opened up to the world and reformed its curricula to meet the highest international standards. It begins with the Redmond-Roper Report of 2001, a harshly critical evaluation of Hong Kong's system of legal education – and of its legal profession – which concluded that much of it was not fit for purpose. Its key recommendation – to take practical legal training out of the universities – had far-reaching implications for all of the Faculty's teaching and research, confronting it with something approaching an existential crisis. Out of crisis came opportunity. The Faculty kept its legal training role by radically reforming the PCLL programme. Taking up other recommendations in the report, the Faculty also extended its LLB degree to a four-year programme, adding a much wider range of courses to reflect its increasingly global outlook.

Legal Education at the Turn of the Century: The Redmond-Roper Report

Paul Redmond was Dean of the Faculty of Law at the University of New South Wales. Christopher Roper was Director of the Centre for Legal Studies in Australia when the consultancy began, and was appointed Director of The College of Law Alliance while the review was in progress.² The review was initiated by the Law Society but its coordination was taken over by the Department of Justice in 1999, with funding from the government, the professional bodies, HKU, and City University. A steering committee chaired by the Solicitor General, Bob Allcock, a former law lecturer at HKU, was composed of representatives from the profession, the two law schools, the government and the Judiciary, and two lay members. The Faculty of Law at HKU was represented by Albert Chen (Dean) and Michael Wilkinson (Head of the Department of Professional Legal Education (DOPLE)). The consultants began their work in January 2000, issued a consultation paper in September,

2. The College of Law Alliance was a potential provider of the legal practice course recommended by Redmond and Roper as a replacement for the PCLL. At the request of the Steering Committee, Roper disclosed this potential conflict in the final report. Department of Justice, 'Consultation Paper on Legal Education and Training in Hong Kong: Preliminary Review', November 2000, Legislative Council Panel on Administration of Justice and Legal Services, LC Paper No. CB(2)338/00-01 (05); Redmond-Roper Report, 7.

and submitted their final report in August 2001. They made three visits to Hong Kong, held meetings with over sixty organizations and individuals, and received fifty-five written submissions. In a related study, GML Consulting Limited was tasked with identifying trends that would influence the future demand for legal services.³

The reports came at a time of mounting criticisms about the quality of recent law graduates and amid claims that, after decades of shortages, Hong Kong now had too many junior lawyers chasing after too little work. These concerns came in the wake of the Asian financial crisis 1997–1998, which damaged businesses and livelihoods across the region. The crisis had a prolonged impact on Hong Kong. Dramatic but unsuccessful speculative attacks aimed at breaking the peg between the Hong Kong dollar and the US dollar were followed by several years of debilitating deflation, high unemployment, plunging property prices, and retrenchment. The year 1998, observed the president of the Law Society, was one that many lawyers would prefer to forget. Solicitors' firms cut staff and engaged in price wars 'to gain a share of what was left of the conveyancing market.' The following year was even worse, as recession – which was to last until 2003 – began to take its toll, forcing some firms to close.⁴

At HKU, budget cuts, reductions in student and staff numbers, a move to fixed-term contracts for newer staff (in case of further cuts), and a drying up of promotion prospects had undermined morale and limited the Faculty's scope for development.⁵ In a climate of austerity and encroaching managerialism the Faculty was increasingly required to justify its methods and output. The periodic Research Assessment Exercises (RAEs), which had an impact on funding, impressed on staff the importance of research and publication, preferably on topics of international interest: 'the only crucial factor is research performance,' a pro-vice-chancellor told staff at one promotion seminar.⁶ The Faculty's research scored better than university and sector averages in the 1999 RAE. But an otherwise largely positive academic review by the university in 2000 bluntly concluded that, in its key function of educating students for legal practice, 'the Faculty's perception of professional needs was misdirected, and in obliging itself to be influenced by this perception the Faculty had curtailed its academic effectiveness to provide legal education in Hong Kong.'⁷

3. Redmond-Roper Report, 3–6; GML Consulting Limited, *Study on the Manpower Needs of the Legal Services Sector of Hong Kong, Final Report* (2001).

4. Anthony Chow, President's Report, Law Society of Hong Kong, *Annual Report 1998 & 1999*.

5. *Legal Education and Training in Hong Kong: Preliminary Review, Consultation Paper* (September 2000) (hereafter, 'Redmond-Roper Consultation Paper'), 78.

6. Faculty of Law, *Submission for the Review Panel* (2000), I, 25, & 'Department of Law: A Summary' in Redmond-Roper Consultation Paper, 5.

7. HKU, 'Report on the review of the Faculty of Law' (April 2000), para. 6.7, HKUA: Board of the Faculty of Law – Minutes (2000).

Redmond and Roper were concerned with teaching, not research. They were asked to assess the current system of legal education and training, to advise on a system best suited to the needs of Hong Kong in the twenty-first century, and to recommend improvements. Although tasked with assessing strengths as well as weaknesses, they drew a largely negative picture of the state of legal education and the legal profession in Hong Kong. This set the scene for their recommendations for radical changes to the professional stage of legal education in Hong Kong. The consultation paper, issued in September 2000, seemed to be ‘pre-occupied with comments and criticisms of the PCLL curriculum,’ observed one Faculty member.⁸

The consultants heard that students in Hong Kong were less motivated than students elsewhere and took a narrow, utilitarian approach to their education, directed mainly at passing exams. Rote learning, a characteristic of Hong Kong’s schools, extended into the universities, where students still expected to be spoon-fed.⁹ The continued reliance on lectures, tutorials, and examinations was an impediment to active learning and critical thinking. Insufficient resources and the pressure on teachers to research and publish had discouraged innovation in teaching. Budget cuts and mixed messages from university management had undermined staff morale.¹⁰ Within the profession, legal services were too expensive, and the needs of the poor and ‘sandwich class’ were left unmet.¹¹ English-language proficiency, essential for an understanding of the common law, was declining.¹² Newly trained lawyers had difficulty communicating with their clients and lacked knowledge outside their own field of practice. There was an absence of a culture of service to the community and a feeling that law existed only to serve economic development.¹³ An unhealthy preoccupation with conveyancing had spoilt many lawyers, who had lost the ability to develop other areas of law when conveyancing collapsed in the late 1990s.¹⁴ For all these reasons, the larger law firms in Hong Kong preferred to recruit lawyers trained overseas.¹⁵

The consultancy was framed as a *preliminary* review, but plans for a further review were not pursued. As a result, although it made 160 recommendations, many of its prescriptions

8. Minutes of meeting on 14 September 2000, HKUA: Board of the Faculty of Law – Minutes (2000). The consultation paper stressed that it was merely reporting views and not necessarily agreeing with them. However, as the City University Law School pointed out, the reliance on perceptions that were not necessarily backed up by evidence was problematic: ‘it is an unwise policy maker who would proceed on the basis of perception alone.’ City University of Hong Kong School of Law, Response to Consultation Paper, November 2000, in David Smith to Legislative Council Panel on Administration of Justice and Legal Services, 18 April 2001, LC Paper No. CB(2)1321/00–01, Appendix 1, 2.

9. Redmond-Roper Consultation Paper, 9–10 & 66–7.

10. Redmond-Roper Report, 251–4; Redmond-Roper Consultation Paper, 78–9.

11. Redmond-Roper Report, 58 & 72.

12. Redmond-Roper Consultation Paper, 10, 17.

13. Redmond-Roper Consultation Paper, 17; Redmond-Roper Report, 296–8.

14. Redmond-Roper Consultation Paper, 24; Redmond-Roper Report, 72

15. Redmond-Roper Report, 70.

were vague or dependent on further study. There was, for example, little on the content of the LLB, which the consultants believed to be a matter for each university. Much was said about the need to move towards active learning – crucial to the success of a reformed LLB – but how this might be achieved was to be left to a proposed further working group. The consultants were, however, clear in their recommendations on several key issues: the question of numbers, access to the profession, training in values and ethics, the future or otherwise of the PCLL, and the creation of a more robust and representative governance framework to set benchmarks and spearhead reform.

Drawing on the separate study on future demand for legal services, the consultants concluded there was no oversupply of lawyers in Hong Kong. The need for solicitors and law graduates generally was likely to increase as a result of economic expansion, the importance of the rule of law, the emergence of new areas of law, the opening of China to legal services, and a greater readiness of Hong Kong people to seek legal advice and take disputes to the courts.¹⁶ The dramatic decline in conveyancing as a source of income, the consultants observed, could well be a necessary corrective for the legal profession ‘to keep pace with where Hong Kong is now going, and thus continue to have a role to play.’¹⁷ The real issue was ‘quality, not numbers.’¹⁸ One of the concerns in the profession was that there was a ‘through-train’ to legal practice, in which entry into a law school equated with exit into the legal profession. A perceived failure by the law schools to weed out those who should not graduate had led both the Law Society and the Bar Association to consider setting their own examinations – measures which the consultants believed could be seen, and perhaps used, as protectionist mechanisms to control numbers rather than quality.¹⁹

In examining the numbers question, the consultants highlighted some striking facts. Fewer graduates with law degrees were now going into law as a profession: only 68 per cent of those graduating with Hong Kong LLBs in 1996 were now in practice, and 28 per cent of graduates completing the PCLL in 1997 did not proceed to pupillage or a trainee solicitor contract.²⁰ Moreover, the two law schools in Hong Kong were now educating only a minority – less than 30 per cent in 1996 – of those taking the academic stage of their legal education in Hong Kong; the remainder were studying for external law degrees, mostly at HKU SPACE, which had over 5,000 law students at various levels. In 2000–2001, 1,260 SPACE students were enrolled in the external University of London LLB programme – several times the number of LLB students at HKU and City University; another 350 were

16. GML Consulting Limited, *Study on the Manpower Needs of the Legal Services Sector of Hong Kong*, Chapter 1; Redmond-Roper Report, 90–2.

17. Redmond-Roper Report, 87.

18. Redmond-Roper Report, 85.

19. Redmond-Roper Report, 80–1.

20. Including those graduating with external degrees through HKU SPACE. Redmond-Roper Report, 83.

enrolled in the English Common Professional Examination (CPE) course.²¹ This was ‘an unusual state of affairs for a developed legal and educational system such as Hong Kong.’²² Combined with graduates who had studied overseas, it rendered pointless any plan to control entry to the profession by reducing numbers in the two law schools.²³

The division of law undergraduates between HKU SPACE and the two law schools raised questions about access to legal education. Although entry into full-time University Grants Committee (UGC)-funded LLBs at the two law schools was open to all Hong Kong school-leavers, those with higher socio-economic status and access to the best English-medium schools inevitably had a competitive advantage.²⁴ Most SPACE courses were part-time: it was ironic, remarked the consultants, that the only way to study law part-time in Hong Kong was through courses essentially in English law. SPACE courses, run on commercial lines, were financed by the students themselves, who were mostly mature students, many from less affluent families: some hoped to enter the legal profession, others simply wished to improve prospects in their current job.²⁵ To increase access, the consultants recommended introducing a part-time LLB at one or other of the two law schools. They also recommended the introduction of a six-month conversion course for persons seeking to enter vocational training on the basis of law degrees other than a Hong Kong LLB or the English CPE: its main purpose would be to fill gaps in Hong Kong law not covered by overseas law degrees.²⁶

Questions of equity and access also applied to the PCLL. Although the external London LLB graduates with Honours 2:2 degrees or above (and even some with thirds or passes) were guaranteed places on the SPACE PCLL programme, taught by the Faculty of Law, they paid over two and a half times the fee paid by HKU’s own UGC-funded PCLL students to be taught in the same way by the same teachers: this uneasy cohabitation produced complaints about poor value for money and raised doubts about the viability of ‘small-group sessions.’²⁷ The guarantee of places for most graduates from HKU and SPACE presented a further problem of access: there was intense competition for the few remaining places among law graduates returning from study overseas, many of whom, despite having obtained jobs with large international firms, were unable to obtain the PCLL qualification

21. Redmond-Roper Report, 261–2.

22. Redmond-Roper Report, 232.

23. Redmond-Roper Report, 91–2.

24. Redmond-Roper Report, 256–9.

25. The total cost for a student of taking a three-year part-time London LLB at SPACE (\$63,000) was about half that for a full-time LLB at HKU or City University, where the amount payable by a student for all three years, even with UGC-funding support, was \$126,300. Redmond-Roper Report, 263.

26. Redmond-Roper Report, 239–42.

27. SPACE students paid the full fees of \$104,000 for the full-time PCLL, compared with \$42,100 paid by HKU students: Redmond-Roper Report, 177 & 191.

necessary to enter practice.²⁸ The consultants made no recommendations to address this problem: for other reasons, they proposed to abolish the PCLL entirely and replace it with a new qualification.

Redmond and Roper examined the concerns raised about the PCLL. Some – such as inconsistent treatment of those seeking places, or its availability only as a full-time course – were already being addressed.²⁹ But others were fundamental, and, they believed, fatal. The purpose of the PCLL was unclear: intended to provide practical instruction, in reality it was ‘primarily an additional year of law studies – with a distinct academic emphasis in its goals, content, teaching methods and assessment.’ The division between the LLB and the PCLL was artificial: topics that were part of the LLB in other jurisdictions were taught in the PCLL in Hong Kong. The PCLL lacked coherence: instead of offering a holistic programme for developing the ability to be a practising lawyer, it was simply a combination of seven subject-centred courses, with ‘no overall schema for the systematic development of skills.’ Teaching and assessment methods were inadequate, relying mainly on lectures and examinations, some with a heavy emphasis on multiple-choice questions. Development of more interactive teaching was inhibited by lack of funding and by the PCLL’s placement within universities: this, the consultants believed, was inappropriate for what was, in effect, vocational preparation, since the pressure on university teachers to develop careers as academics distanced them from the day-to-day practice of law and made their teaching of practice ‘increasingly “book learnt” and quite possibly outdated.’³⁰

Redmond and Roper concluded that ‘the PCLL does not provide, nor is capable of providing, the essential element of practical training which enables academic training to be used in practical ways.’ It was a ‘house divided against itself.’³¹ It was ‘frozen in time,’ not because there was any great attachment to it, but because, taught by universities, it was seen by the profession ‘as that part of the legal education process which is in their particular domain.’³² They dismissed efforts at reform from within, notably in plans advanced by Stephen Nathanson of HKU for a skills-based structure ‘reflecting a coherent theory of legal practice.’³³ Instead, they proposed replacing the PCLL with a new sixteen-week ‘legal practitioners course’ (LPC) to be taught at a separate institution governed with strong representation from the profession. The LPC was to be an intensive course to develop the skill of ‘lawyering,’ meaning ‘the *bringing together* of knowledge and understanding of substantive and procedural law, general and legal skills, and professional and ethical attitudes – in

28. Redmond-Roper Report, 265.

29. Redmond-Roper Report, 261.

30. Redmond-Roper Report, 185–195.

31. Redmond-Roper Report, 185, 186.

32. They did, however, note how City University’s attempts to introduce an innovative PCLL in the early 1990s had been harshly criticized.

33. Redmond-Roper Report, 195, 184, 188.

order to be able *to do* what is required of a lawyer in various aspects of practice.' It would be funded by the UGC, built around practical exercises, and taught mainly by practising lawyers using innovative methods. Students would be assessed according to whether they 'could do' rather than by exams.³⁴

The consultants recommended that all substantive law subjects taught in the PCLL should be 'folded into' a reformed LLB, lasting four years instead of three. About a quarter of the syllabus of the new LLB would consist of non-law subjects from the humanities and social sciences, taught mainly in the first two or three years. This would strengthen the role of the degree as an education for non-lawyers. An emphasis on generic skills as well as core professional skills would encourage students to think logically, creatively and critically. A system of active learning would place 'a strong and rigorous' emphasis on the use of English, which would be a factor in assessing work; English-language skills could also be strengthened by exchange programmes and other forms of immersion.³⁵ To counter what many saw as a decline in ethical standards under the pressure of market forces, they recommended greater emphasis on ethics and values, clinical legal experience, internships with community and government agencies, and a mandatory pro bono work requirement.³⁶

The consultants made recommendations on training beyond the universities. These included reforms to training during pupillage and trainee solicitor contracts, and improvements to the Law Society's mandatory Continuing Professional Development scheme and the Bar Association's Advanced Legal Education programme, which they advised should be mandatory.³⁷ They were particularly critical of existing governance arrangements for legal education, which they found to be fragmented and lacking a structure in which all stakeholders could play a role: the various requirements for admission were set (indirectly) by the universities, the Legal Practitioners Ordinance, and the professional bodies. This, combined with the conservatism of ACLE, where stakeholders tended to protect their own interests, tended to inhibit reform, particularly of the PCLL. The Joint Examination Board, set up in 1991 to oversee the PCLL in the two law schools, was practically defunct. The consultants therefore recommended the creation of a legal qualifying council, modelled on similar bodies elsewhere, with prescriptive rather than merely advisory functions. The council would set, monitor and govern the process of education and qualification for admission to practice, taking over some of the existing powers of the professional bodies under the Legal Practitioners Ordinance.³⁸

34. Redmond-Roper Report, 197–210 & Appendix F.

35. Redmond-Roper Report, Chapter 7.

36. Redmond-Roper Report, Chapter 14.

37. Redmond-Roper Report, Chapter 8.

38. Redmond-Roper Report, Chapter 16.

Chapter 8

Contemplation and Action

Faculty and Society in a Changing World

In his inaugural lecture as HKU's first Professor of Legal Practice, on 20 May 2014, Anselmo Reyes reflected on how much the university had changed since he left the Faculty of Law in 1988 to pursue a career as barrister and later as a judge of the Court of First Instance. HKU was now 'a vibrant and variegated institution,' a place "full of noises, sounds and sweet airs, that give delight and hurt not," he said, borrowing a description of Prospero's island in Shakespeare's *The Tempest*. The university and the Faculty of Law had been transformed 'from an introverted, parochial institution to a gregarious, generous-spirited community of scholars.' Reyes saw his role as 'to engage with the concerns of everyday life and to suggest how law can be applied in practical ways to alleviate those concerns.'¹ He started the Faculty's Judicial Studies Programme, an initiative launched in 2013 to help build capacity among judges in Asia through training and conferences. The programme is based on the belief that, in an increasingly complex world, where judges have to deal with many specialist issues, the old method of learning on the job is no longer adequate. At a time of chronic shortages of judges and challenges to judicial independence, the programme seeks to bridge the gap between academy and judiciary – to send to judges the message that 'you are not alone.'²

In recent years the Faculty has engaged increasingly with judicial topics, a reflection of the important role of the courts under Hong Kong's post-1997 constitutional order and the

1. Anselmo Reyes, 'The Future of the Judiciary: Reflections on Present Challenges to the Administration of Justice in Hong Kong,' text reproduced in 44 *HKLJ* (2014), 429–46.

2. *The University of Hong Kong Bulletin*, March 2017, 31–2.

growing interest in comparative judicial studies. These activities have produced a stream of articles and books, ranging from a multi-author study of Hong Kong's Court of Final Appeal (CFA) under its first Chief Justice, Andrew Li (1997–2010), edited by Yash Ghai and Simon Young, to a recent study by Po Jen Yap of the relations between courts and political power in Asia.³ Another key work, *The Law of the Hong Kong Constitution*, edited by Johannes Chan and Chin Leng Lim, has contributions from over twenty Faculty members. Cora Chan (Bachelor of Social Sciences (Government & Laws) & LLB 2005) has written extensively on proportionality and judicial deference in human rights adjudication in Hong Kong and the UK.⁴ He Xin has co-authored a book on the decision-making process of Chinese courts.⁵ Two recently appointed Faculty members – David Law, the Sir Y.K. Pao Professor of Public Law, and Ryan Whalen – make use of data analysis to understand judicial thinking in other jurisdictions. Within Hong Kong, Michael Wilkinson sat on the Working Party on Civil Justice Reform (2001–2004), a comprehensive review of civil procedure aimed at increasing efficiency in the courts: the many rules, practice directions, and judicial decisions arising from this exercise have become a key focus of recent editions of *Civil Procedure in Hong Kong*, an authoritative professional guide by Wilkinson and his colleagues Eric Cheung and Gary Meggitt.⁶ Most recently, another Faculty member, Shahla Ali, has published a groundbreaking study of court mediation in ten jurisdictions.⁷

This survey of recent projects on judicial topics – together with the Judicial Studies Programme and the ongoing training of judges from Mainland China – is a mere sample of the Faculty's impact on a wide range of legal issues through research, external training, and public engagement. The Faculty's Legal Scholarship Blog – an online chronicle of research since 2014 – lists dozens of subjects that have attracted the attention of Faculty members, including access to justice in China (Anne Cheung and Michael Ng), WTO rules and conflicts (Zhao Yun and Chin Leng Lim), academic freedom (Fu Hualing, Michael Davis, and Carole Petersen), and women's rights (Puja Kapai and Kelley Loper). The blog covers books, journal articles, newspaper reports, conferences, and other activities in which

3. Simon Young & Yash P. Ghai, *Hong Kong's Court of Final Appeal: The Development of the Law in China's Hong Kong* (Cambridge: Cambridge University Press, 2014); Po Jen Yap, *Courts and Democracies in Asia* (Cambridge: Cambridge University Press, 2017).

4. Two of her articles on these subjects have won prizes: Cora Chan, 'Deference, Expertise and Information-Gathering Powers,' *Legal Studies*, Vol. 33 No. 4 (2013), 598–620, (winner of 2012–2013 HKU Research Output Prize), 'Proportionality and Invariable Baseline Intensity of Review' (2013) 33(1) *Legal Studies*, 1–21 (winner of 2012 Society of Legal Scholars Best Paper Prize).

5. Ng Kwai Hang and He Xin, *Embedded Courts: Judicial Decision-Making in China* (New York: Cambridge University Press, 2017).

6. Michael Wilkinson, Eric T.M. Cheung and Gary Meggitt, *Civil Procedure in Hong Kong Sixth Edition* (Hong Kong: LexisNexis, 2017).

7. Shahla F. Ali, *Court Mediation Reform: Efficiency, Confidence and Perceptions of Justice* (Cheltenham: Edward Elgar Publishing Ltd, 2018).

Faculty members contribute to scholarship and community affairs. The hundreds of postings since 2014 show that, while the Faculty may indeed be a place full of noises and sounds, it is not, like Prospero's island, disconnected from the world around it. There is much to be said for the 'need of the academic to rise above the hubbub and hurly-burly of the "real world" in order to contemplate the deeper and more lasting aspects of life and living,' wrote the Dean, Michael Hor, in 2016. But 'an institution which has little or no effect on the society or the world it is found in is bound to struggle with the question of what it is there for.' The Faculty of Law, he was proud to say, was 'very much out there with shirt-sleeves folded' in projects combining 'contemplation and action' that 'touched the lives of people in Hong Kong, Asia and the world.'⁸

Yet, like Prospero's island, the Faculty is surrounded by storms. Law can be a contentious matter, affecting as it does practically all of human activity, private and public. Since 1997 the law and the courts have played a larger role than ever before in holding the balance between citizen and state. The Basic Law not only safeguards citizens' rights and freedoms but also lays down the system of government and the fundamental policies for Hong Kong. Crucial to the full implementation of the Basic Law – and, many have argued, to the vitality of the rule of law – is the policy that the Chief Executive and the legislature should ultimately be elected by universal suffrage in accordance with democratic procedures. Progress towards this objective has been beset with tension as the SAR government has attempted unsuccessfully to square the aspirations of many Hong Kong people for genuine democracy with the determination of the Central People's Government (CPG) that Hong Kong should not become a base for subverting the rest of China. In 2014 this tension reached a climax in the 'Occupy movement', a prolonged street protest against proposals for a restricted system for electing the Chief Executive from 2017: the failure of both sides to come to terms put an end to hopes of any form of universal suffrage for the time being. Because one of its members, Benny Tai, was an architect of the Occupy movement, the Faculty found itself at the centre of the fiercest political storm in its history.

This final chapter examines the various parts played by Faculty members in the civil society of modern Hong Kong through research, advocacy, and occasional activism. It explores the controversies over political reform against a background of growing friction in the implementation of 'one country, two systems' and rising concerns about freedom of expression and academic freedom in particular. Taking examples from current and recent research projects, it examines how the work of Faculty members has influenced the development of law and policymaking – and how in some cases it has not. Hong Kong is a unique place, enjoying, under its separate legal system, many rights and freedoms that are not extended to the whole of the country to which it belongs. As an open, cosmopolitan city it is also exposed to the same challenges that affect people everywhere: these include

8. Michael Hor, introduction to Faculty of Law, HKU, *Knowledge Exchange and Impact* (2016).

the globalization of trade and finance amid rapid technological change; environmental degradation; growing gaps between rich and poor; disillusion with traditional governing elites; and periodic financial and political crisis.

Twenty-First-Century Hong Kong

On 2 July 1997, one day after the establishment of the Hong Kong SAR, a debt and currency crisis erupted in Thailand. It spread quickly throughout East Asia, bursting bubbles that had been inflated by rampant speculation and crony capitalism. Foreign lenders withdrew credit, currencies collapsed, asset prices plummeted, and businesses went bankrupt. In Hong Kong, speculative attacks in 1997–1998 aimed at breaking the link between the Hong Kong and US dollar were defeated. But in 1998 the economy shrank for the first time since GDP statistics began in 1961. The next five years saw high unemployment, colossal falls in property values, and general deflation. In 2003, when unemployment reached a peak of 7.9 per cent, Hong Kong was one of the cities worst affected by severe acute respiratory syndrome (SARS), a mysterious viral disease originating in Guangdong Province. SARS killed 299 people, caused widespread alarm, and for a few weeks turned Hong Kong into a ghost town. The end of the SARS outbreak heralded the beginning of economic recovery. But it was also followed by a protest by some 500,000 people on 1 July 2003 against the government's plans to introduce national security legislation. The protest stopped the legislation and led to resignations by senior officials. But a pervasive mood of discontent had set in. This has continued to the present, culminating most recently in mass demonstrations in 2019 against proposed legislation that would allow the extradition to Mainland China of people alleged to have committed offences against Mainland law.

Much of the discontent springs from growing economic inequality and social injustice. Despite a return to economic growth, full employment, and gains in productivity, the average real wages for most workers, particularly younger workers, have not kept pace with inflation or with real GDP growth.⁹ The gap between rich and poor has widened.¹⁰ After plunging by 66 per cent in the early 2000s, property prices have since risen to nearly twice their level during the bubble of the mid-1990s. Yet public housing programmes were drastically cut after the Asian financial crisis 1997–1998.¹¹ Despite nearly full employment, over

9. For an analysis see John D. Wong, 'Between two episodes of social unrest below Lion Rock', in Michael H.K. Ng and John D. Wong (Eds.), *Civil Unrest and Governance in Hong Kong: Law and Order from Historical and Cultural Perspectives* (Abingdon: Routledge, 2017), 101–6.

10. The Gini coefficient for households, a measure of wealth inequality, rose from 0.453 in 1986 to 0.518 in 1996 and 0.539 in 2016, a record high for Hong Kong and one of the highest in the world.

11. An ambitious plan by the Hong Kong SAR's first Chief Executive, Tung Chee-hwa, to build 85,000 new units a year was abandoned when private property values plummeted after the Asian financial crisis. By 2012 the annual average supply of new units was 62 per cent lower than in 1997.

1.3 million people – nearly a fifth of the population – now live in officially defined poverty, many paying exorbitantly to rent cubicles in dilapidated private buildings – Hong Kong’s ‘hidden slums.’¹² A policy of retrenchment after the financial crisis and an ingrained official reluctance to spend money on social services, despite a massive accumulation of fiscal reserves, have worsened their plight. In contrast, the government has devoted considerable resources to business-friendly policies and costly infrastructure projects, the benefits of which have been doubted: among these are large-scale reclamations, a bridge across the Pearl River estuary, and a high-speed rail connection to the Mainland.

The failure to address the basic needs of a hard-working, peaceable population in one of the world’s wealthiest cities has deepened disillusion with government and politics. Successive chief executives and their principal officials have mismanaged Hong Kong, argues a recent study by Leo Goodstadt. The city’s survival has been threatened by disastrous policy decisions. Good governance has collapsed.¹³ A close identification between the governing class and business has led to allegations of cronyism. A former Chief Executive, Donald Tsang (2005–2012), was convicted of misconduct in office by failing to declare a conflict of interest; the conviction was quashed by the CFA on the ground that the jury had been misdirected.¹⁴ Tsang’s deputy, Raphael Hui, was convicted of accepting millions of dollars in bribes from a property developer. A ministerial system, introduced to make government more accountable, has placed inexperienced people in positions of great responsibility; some have proved incompetent. Persistent conflict between an unelected executive and a partially democratic Legislative Council has resulted in legislative paralysis in many policy areas; this is aggravated by the prohibition on a serving Chief Executive from being a member of a political party.¹⁵

Increasingly, the burden has fallen on the courts, which have been asked to decide questions that might otherwise have been resolved by the other branches of government. The surge in judicial reviews – a major topic of research at the Faculty’s Centre for Comparative and Public Law (CCPL) – has been linked by some experts to a ‘democratic deficit’, a lack of confidence in the political process, or simply ‘plain bad governance.’ It represents a ‘negative verdict’ on Hong Kong’s ‘democratic development, or more accurately, the lack of it,’ concludes Johannes Chan.¹⁶ Many of these actions, nevertheless, have been test cases

12. Oxfam Hong Kong, *Hong Kong Inequality Report* (2018), 9.

13. Leo F. Goodstadt, *A City Mismanaged: Hong Kong’s Struggle for Survival* (Hong Kong: Hong Kong University Press, 2018). Goodstadt, an economist and former journalist, was head of the Hong Kong government’s Central Policy Unit 1989–1997. He was an honorary law lecturer at HKU 1979–1985.

14. In the interests of justice, the CFA decided not to order a retrial, noting that Tsang had already served a prison sentence for the offence for which he would have been retried. *HKSAR v Tsang Yam-kuen, Donald* [2019] HKCFA 24.

15. The prohibition is in the Chief Executive Election Ordinance, Cap. 569, section 31.

16. Philip Dykes, ‘The Functions of Judicial Review in Hong Kong’ & Mark Daly, ‘Judicial Review in the Hong Kong Special Administrative Region’ in Christopher Forsyth, Mark Elliott, Swati Jhaveri, Michael Ramsden, &

in which disputes between citizen and state have been adjudicated for the first time under the Basic Law on issues ranging from town planning and the award of TV franchises to access to social welfare and the status of transgender persons. ‘Some day you will be telling your grandchildren that you were a law student when these foundational cases were being decided,’ Carole Petersen, Director of the CCPL 2001–2004, would tell her Constitutional Law class. ‘We wish we lived in less interesting times,’ was the response from one student.¹⁷

Academic Freedom: Faculty and University in the Hong Kong SAR

The Basic Law of the Hong Kong SAR states that educational institutions ‘may retain their autonomy and enjoy academic freedom’ and may continue to recruit staff and use teaching materials from outside Hong Kong.¹⁸ Like most other institutions, the Faculty of Law passed through 1997 with little change. In the prospectus for the year, the Dean, Albert Chen, reflected with pride on ‘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.’¹⁹ Although a few teaching staff left for various reasons in 1996, only one departed in 1997: Nihal Jayawickrama, one of several human rights experts in the Faculty, told the press that he had been let go because of his political views.²⁰

Many doubted Jayawickrama’s claim, and over the next few years the Faculty’s expertise in human rights and public law was in fact strengthened with several new appointments, including Fu Hualing, Carole Petersen, Robyn Emerton, Simon Young, Puja Kapai, Richard Cullen, Kelley Loper, Po Jen Yap, Cora Chan, Michael Davis, and Eric Ip. But the story merged with other concerns about academic freedom. A plan by the Vice-Chancellor, Cheng Yiu-chung, to transform HKU into a ‘world-class’ university aroused anxieties among staff, particularly when one of his consultants began to talk of redundancies, though

Anne Scully-Hill (Eds.) *Effective Judicial Review: A Cornerstone of Good Governance* (Oxford: Oxford University Press, 2010); Johannes Chan, ‘Administrative Law, Politics and Governance: The Hong Kong Experience’ in Tom Ginsburg and Albert Chen (Eds.), *Administrative Law and Governance in Asia: Comparative Perspectives* (London & New York: Routledge, 2008), 142.

17. Carole Petersen, interview with the author, 6 December 2017.

18. Basic Law, Article 136.

19. Message from the Dean, Faculty of Law, HKU, *Prospectus, 1997–1998*, 3.

20. Jayawickrama had reached the retirement age of sixty. His application to extend his appointment beyond retirement was rejected by the university, which at the time rarely granted such extensions. Jayawickrama, one of many outspoken human rights advocates, believed that his provocations of the Chinese government – for example, by encouraging students in his class to discuss whether Tibet had a valid claim for self-determination – were behind the decision. *SCMP*, 8 June 1997.

Afterword

I am honoured to be asked to write this afterword. What a journey it has been for legal education in Hong Kong and what a difference it has made to Hong Kong and our individual lives.

If the Department of Law had not started in 1969, it would not have been possible for me to study law in Hong Kong and become a practising lawyer thereafter. I did not start with any interest to study law. Many of my friends know that my dream career was to be an archaeologist, a town and country planner, a reporter, or even to have a job with the United Nations (UN). It was anything but law. In the event, I learned to like law and it has become a lifetime passion.

I am so glad that today the Bachelor of Laws (LLB) is a four-year course with a general liberal foundation and the Postgraduate Certificate in Laws (PCLL) has been dramatically transformed in the last fifteen years. The Faculty of Law now provides a significant range of core and specialist studies. It has also moved into emerging issues, like financial technology (fintech), medicine and ethics, as well as law and technology.

I went through the earlier three-year degree course 'zombie-like' because I did not see how law was connected to the rest of society. All the pursuits that I had found interesting had been outside the Department of Law then and my legal practice, but those pursuits have ultimately taken me back to law. Today I actually find the academic environment at the Faculty of Law appealing because of the diversity and depth of knowledge it provides, as well as the freedom to push the boundaries and explore future issues.

The law prescribes how people should live and behave. Having to live within its confines can be suffocating at times. However, we in the legal community play an important role in shaping the law and positively influencing outcomes, which can be liberating. Legal decisions can change individual lives. Academic research, advocacy, and reform can help the law catch up with changes in society. And on the rare occasions that we can participate in the process of lawmaking, we can help to change public policy. And if we ever get hung up with the dryness of law, not knowing what to do with it or hating it, we have the privilege of debating anything until kingdom come because that is part of our God-given domain and

talent. We can open up the whole field of discussion from ethics and values to the sheer drudgery of technicalities. Either way we can debate it to death.

Building up legal education in Hong Kong to what it is today has been exhilarating, turbulent, and challenging against a forever-changing landscape. At the University of Hong Kong (HKU) what began as the Department of Law evolved into the School of Law before becoming today's Faculty of Law. Those involved in its various phases are either its products or its progenitors, and occasionally both.

'One country, two systems' is a visionary and pragmatic policy but by definition contradictory. Hong Kong is the only Chinese city where common law is practised. During the Sino-British negotiations over the future of Hong Kong, I raised with the British side the possibility of the establishment of a constitutional court for determination of conflicts between the Mainland socialist and the Hong Kong capitalist systems. This was flatly turned down by the British negotiating team. I recognized that the constitutional arrangements for Hong Kong were not based on federalism and, with the Standing Committee of the National People's Congress having the ultimate right of interpretation over the Basic Law, much would depend on the wisdom of those developing the constitutional interphase – and there were no precedents to go by.

I was born a British subject in colonial Hong Kong and I became a Chinese citizen under the Basic Law when China resumed the exercise of sovereignty over Hong Kong in 1997. I stopped breathing for a split second the moment I heard the British conceding sovereignty to China. Like many in my generation, I was born in Hong Kong after my parents had fled here as refugees. Could anything be more traumatic? Now we were about to start on a different journey, into a new constitutional order and through an identity change.

Despite the uncertainties and the challenges faced by us both as a community and individually in the run-up to 1997, it was also a time when Hong Kong was at its most engaging, collaborative, and participatory; for better or for worse, we had to put in the effort to make things work.

Many of us studied the future constitutional framework; we pushed for the rule of law, an independent judiciary, protection of human rights, a government with a high degree of autonomy, a free market, a separate customs area, no exchange controls, protection of private property rights, and numerous other issues.

Many also actively engaged the Beijing authorities on these issues. Large numbers of delegations were invited to visit Beijing during the 1980s. I was part of a Law Society delegation and separately led a delegation of the Hong Kong Observers, Hong Kong's first political pressure group, to Beijing to give views on questions that we considered to be of significance to our future.

If anything, these events sharpened our legal sense as to what the law should be and what it could do. And these events touched every single individual, not just some and not others. It was everybody.

As a core member of the Hong Kong Observers, I was subject to monitoring and surveillance by the Special Branch of the Hong Kong Police, although I was not aware of this until years later. The Hong Kong government feared the calls for greater participation in the governance of Hong Kong and for faster localization of the civil service. These challenged the status quo and, in the government's mind, verged on subversion.

Internationally, the status of Hong Kong as a British colony was challenged in the 1970s, shortly after the People's Republic of China entered the UN. One of the first things the new Chinese delegation did was to demand the removal of Hong Kong from the UN decolonization agenda on the ground that Hong Kong was not a British colony but a part of China. This was followed by Britain's renaming of Hong Kong's Colonial Secretary as Chief Secretary and the reform of the British Nationality Act, which, when it came into effect, downgraded the status of Hong Kong British subjects. The Hong Kong colonial government during this period perceived itself as being under siege, externally and domestically.

Other activists were similarly subject to monitoring and surveillance, although they, like me, were not aware of this until years later. We were all very conscious of the need for social justice, liberty, and rights.

The establishment of the Department of Law in 1969 was truly a watershed in Hong Kong's history: it helped to foster a sense of Hong Kong identity as well as empowerment among its graduates. Beginning in the early 1970s, Hong Kong began to produce its own lawyers, many of whom were highly sensitive to political and social issues, and together we began to build the legal infrastructure necessary for Hong Kong's future development. Where would we be today if this development had not taken place then?

Christopher Munn provides a brick-by-brick and blow-by-blow account of how the Faculty of Law was built, and the immense courage and persistence of the founders, their successors, and supporters in establishing legal education at HKU. The history of legal education is a fascinating social history of Hong Kong and this account will touch everyone who shares a common past through legal education at HKU.

Against the background of the immense changes that Hong Kong has faced throughout its history, it is little wonder that HKU Law's faculty, students and alumni became active participants in building up the legal infrastructure from practically virgin territory, in strengthening legal institutions and the administration of justice, and in building up jurisprudence in every facet of our lives. The faculty, students and alumni of HKU Law have contributed to many cases that have made a difference in individual lives, and to systemic reforms and changes in public policy essential to Hong Kong's development. Awareness of

the law and access to justice have continuously been promoted. Bilingualism, legal clinics, and the use of information technology are all crucial tools being developed.

I believe strongly that law drives change and the study of law should not be thought of as slogging through dull rule books gathering dust on a shelf. Law is a living code and is meant to be used to change lives. Law is also an empowerment tool. When our individual rights are violated, we seek the law's protection and nothing can be more powerful than to be able to say, 'I have been wronged and you have broken the law.'

In conclusion, I wish to express deep-seated gratitude to Dafydd Evans for his vision of the future of the Department of Law and his conviction that we would succeed. The vibrancy of our legal community today owes much to him. I also wish to voice my appreciation to John Rear, who on one occasion did me the honour of telling me that I had asked a question from a perspective that he had not considered. It is so important for lecturers to encourage students to think for themselves, and in my case he succeeded in keeping my legal curiosity alive. Finally, I wish to thank my former classmates, many of whom have become friends for life.

Anna H.Y. Wu (LLB 1974)

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