De Lege Lata
The law as it is

- Our new exhibition and display of court attire
- Oxford IP Moot Championship
- Welcome Professor Michael Hor
- 45th Anniversary: Let’s celebrate!
Message from the Dean

This will be my last Dean’s Message before I step down from the Deanship after serving in this position for 12 years. I have been kindly invited to many farewell lunches and dinners (even though I am not leaving the Faculty), and am really touched by all the kind words that you have said about me, which I doubt if I deserve. As I honestly believe, the success of the Faculty today is the result of the hard work of many colleagues, both in academic and administrative position. Without the commitment and dedication of every colleague in the Faculty, we would not have become where we are today. It is reassuring to know that the Faculty has once again come 18th in the world in the latest QS ranking for law.

Embracing Competition: a Global Vision

There is of course no room for complacency. The academic world has become increasingly competitive. Academic institutions compete for excellence, for ranking, for staff, for students, and for resources, and these competitions are no longer local but increasingly regional and global in nature. Competition is not a bad thing; it pushes everyone to work harder. Competition also enhances global collaboration. Despite severe competition, there is ever closer interaction and collaboration among different law schools. With technological advances, the world is getting smaller, and no law school, no matter how outstanding it is, can afford to be left alone. Thus, it is important to keep in mind this global vision. The Faculty is no longer the local law school mindful of only what happens in Hong Kong as it used to be. It has to engage in wider issues that may transcend local borders. Not everyone has to do this, but the Faculty as an institution should always try to make itself relevant not just locally, but regionally and globally.

In this regard, the Faculty has started to engage in research collaboration on issues on national agenda, such as the legal aspects of the Shanghai Free Trade Zone and Qianhai Development. With our international experience and expertise, we hope to contribute to a better understanding of how they work (or not work, and if so, why), what can be learned from the experience, how far the model is transferrable and what are the pre-conditions. We have also launched an ambitious Judicial Advancement Programme under which we intend to provide continued training programmes for members of the judiciary in the Region. In this regard, I would like to extend a warm welcome to Sir Richard Field, a leading commercial silk and a judge of the Royal Court of Justice, London, who will be joining the Faculty in August 2014. Sir Richard will be the second full time member of the Faculty who has judicial experience. This is home-coming for Sir Richard, who has taught in the Faculty in the early days of its establishment. In spring 2015, Professor Lech Garlicki, a former judge of the European Court of Human Rights, will be teaching for a semester at the Faculty a second time. His course on the European Convention on Human Rights offered
during his last visit was extremely popular. I am also pleased to announce that Mr Justice Henry Litton and Mr Justice Frank Stock have accepted our appointment as Honorary Professors. Among other things, Mr Justice Litton will be delivering a series of lectures in the coming fall term in which he will reflect on leading cases that have shaped legal practice and jurisprudential development, whereas Justice Stock will help us on our Judicial Advancement Programme. As Professor Anselmo Reyes, our first Professor of Legal Practice, recently remarked in his Inaugural Lecture, the Faculty is now “a vibrant and variegated institution and I find myself constantly enchanted by the kaleidoscope of activities (lectures, forums, movies) which happen here on a daily basis, often (alas) simultaneously”. As an institution of higher learning, it should be like that and should continue to be like that.

A Vibrant Hub of Knowledge and Ideas: Engaging with Controversies

The University is a place not just for transmission of knowledge, but also a place for interaction of ideas, even radical and controversial ones. The University should never be worried about engaging in controversies. Otherwise it will be a very boring place. In this issue we try to confront the controversial idea of Occupy Central. What’s better than to hear from the horse’s mouth of what it is all about? After all, Benny Tai, one of the promoters of Occupy Central, is a member of the Faculty. Like any other member of the Faculty whose views are fully respected, his view of course does not represent the Faculty’s position. Indeed, there is a full range of views on this issue in the Faculty. Yet the movement does raise serious issues on civil disobedience, on the difference between rule of law and rule by law, on what should be done if the law fails to honour the shared core values of a society, on what the conditions for civil disobedience and whether Occupy Central satisfies these conditions, and on what role Occupy Central should or will play in the history of democratic development in Hong Kong. The Faculty, as opposed to its members, does not and will not have a view on any of these issues, except that we encourage our students to engage with these issues, to consider the full range of arguments on both sides, and then to make an independent judgment about these issues. Rational and independent analysis is the hallmark of university education. It is also the hallmark of academic freedom, a value that makes universities worthy of their existence, and a Faculty of Law worthy of its name.

A New Beginning

Finally, let me thank all of you for your support that you have given me as Dean, and your friendship and encouragement over the years. I would like to take this opportunity to warmly welcome Professor Michael Hor, my successor, who will assume Deanship on 1 July 2014 and will no doubt bring insightful leadership to the further development of the Faculty. I strongly believe that the Faculty will continue to grow from strength to strength under Michael’s able leadership. Some friends have described my stepping down from the Deanship as the end of an era. This is probably too dramatic; I would prefer seeing it as a new beginning.

Professor Johannes Chan SC (Hon)
Dean, Faculty of Law
June 2014

Dinner in honour of the Dean by colleagues of the Faculty on 3 June 2014.
First in Asia

In the 2014 World University Ranking by Subject by Quacquarelli Symonds (QS), Faculty of Law HKU is ranked top in Asia and 18th in the world.

Events


2. Peter Willoughby Memorial Lecture “Registering Title: Commons Problems, Different Solutions” by Dr Charles Harpum on 21 January 2014.


4. Sharing by The Hon Mr. Justice Bokhary, Non-Permanent Judge, The Court of Final Appeal, Hong Kong on 13 February 2014.

5. Talk “Bringing Life to Medicine, Law, Meditation and Ethics” by Dr Barry Kerzin, MD on 19 February 2014.

6. Common Law Lecture “When will the Court grant relief for trustees’ mistakes?: Pitt v Holt and Futter v Futter” by The Rt Hon The Lord Walker of Gestingthorpe, Non-Permanent Judge, The Court of Final Appeal, Hong Kong on 24 February 2014.

7. Public Lectures on the Constitutional Role and operation of the Legislative Council by Dr Margaret Ng in February and March 2014.

8. Professor Nathalie des Rosiers, Dean, Faculty of Law, University of Ottawa; Former General Counsel of the Canadian Civil Liberties Association. Professor Eric Meslin, Associate Dean for Bioethics, School of Medicine, Indiana University and Founding Director of the Indiana University Centre for Bioethics at the Ottawa-HKU Conference “Technology, Law and the Public Interest during 10-11 April, 2014.

9. Professor Gabriel Leung (right), Dean, Li Ka Shing Faculty of Medicine at the talk “Data Sharing in Health and Science: Something to Fear or Embrace?” by Professor Eric M Meslin (left) on 8 April 2014.

10. Professor Zou Pingxue, Associate Dean, Law School of Shenzhen University at Forum “One Country Two Systems and Central Government Policy towards Hong Kong” on 12 April 2014.
CCPL Events on Constitutional Reform and Democratic Development in Hong Kong

During the months of March and April 2014, the Centre for Comparative and Public Law (“CCPL”) hosted a series of events on Constitutional Reform and Democratic Development in Hong Kong. Besides providing a platform for conversations on the constitutional reform exercise at this historic moment in Hong Kong’s democratic development, the CCPL hoped to add academic rigour as well as international and comparative dimensions to the discussion to help advance the conversation and cultivate genuine and open debate on issues that have recently dominated public discussion.

Academic roundtable: “Universal Suffrage and Nomination Procedures: Imperatives from Article 25 ICCPR” on 20 March 2014

In light of the impending electoral reforms in Hong Kong, the Roundtable aimed to garner the views of international and local experts on the requirements of equal and universal suffrage as expressed in Article 25 of the International Covenant on Civil and Political Rights (ICCPR). With their insights, the roundtable developed a set of Guiding Principles, which could serve as a basis to evaluate proposed models of reform emerging from the ongoing public consultation exercise, for electing the Chief Executive and members of the Legislative Council in Hong Kong from 2017.

Panel Discussion on Hong Kong Basic Law and Civil Nomination on 9 April 2014

In light of the heated discussions on civil nominations and the requirements of Hong Kong’s Basic Law pertaining to the upcoming electoral law reform exercise for the election of the next Chief Executive of the HKSAR in 2017, the Panel Discussion is an impartial and organised platform for leading figures to explain their proposals and interpretations.

Political Reform Proposals Seminar Series

In this series of 7 seminars, the CCPL has invited all those who have proposed models for electing the Chief Executive in 2017 to explain their proposals to the public, with further elucidations and insights as to why their models were appropriate for Hong Kong at this juncture.
HKU-UCL-Peking U Rule of Law Conference in Beijing

8 April 2014

Following the great success last year, the Faculty and UCL collaborated again this year on the 2nd Rule of Law Conference in Beijing. We are glad to have Peking University as our Mainland partner. The theme for this year is “Individual, Public Interest and the Rule of Law”. The Conference included a mock judicial review hearing on an environmental law case, involving various aspects of due process. The hearing was presided by the Rt Hon Lord Carnwath of Notting Hill, and was followed by most interesting discussions. The afternoon session focused on various contemporary issues, including abolition of education through labour, personnel and judicial resources, and administrative appeal and the petition system. The discussion was most lively and thought-provoking. It was a highly successful event, thanks to the great collaborative efforts of UCL and Peking University. We are also most grateful to Vinson & Cissy Chu Charitable Foundation, without whose support the event would not have been possible.

UCL-HKU Conference on Judicial Review in a Changing Society

14 April 2014

The University of Hong Kong and University College London were co-hosts of this important discussion aimed at exploring the themes of the rule of law, administrative review and good governance. The conference provided a forum for experts from both institutions and jurisdictions to exchange views on the role of judicial review in a changing society, in the areas of policy making and discretion, separation of powers and due process, and exploring the idea of judicial review as an engine for social change. Keynote Address entitled “Rationality and Proportionality in Modern Judicial Review” was delivered by the Rt. Honourable Lord Carnwath of Notting Hill, Justice of The Supreme Court of the UK.
Congratulations!

Colleagues who joined the Long Service Awards Presentation Ceremony on 17 March 2014.
(From left: Professor Lap-chee Tsui, Professor Zhang Xian Chu, Dr Richard Wu, Professor Say Goo, Mr Wilson Chow, Mr Eric Cheung and Dr Felix Chan)

Congratulations go to following colleagues whose loyalty and excellence are recognized by the University.

Academic Colleague who has served the University for 25 years
• Professor Rick Glocheshki

Academic Colleagues who have served the University for 15 to 24 years
(in alphabetical order)
• Dr Felix Chan
• Professor Anne Cheung
• Mr Eric Cheung
• Mr Wilson Chow
• Professor Fu Hualing
• Professor Say Goo
• Professor Lusina Ho
• Ms Alice Lee
• Dr Li Yahong
• Ms Katherine Lynch
• Mr Malcolm Merry
• Mr Benny Tai
• Dr Richard Wu
• Professor Yu Guanhua
• Professor Zhang Xian Chu

Knowledge Exchange Award
“Human Rights Portal”.

Professor Simon Young (left)
receiving the award from Professor Paul Tam,
Vice-President and Pro-Vice-Chancellor (Research)
Faculty Outstanding Teaching Award

Dr Shahla Ali
Dr Gu Weixia
Ms Vandana Rajwani

receiving the award from Professor Amy Tsui,
Vice-President and Pro-Vice-Chancellor
(Teaching and Learning)

Outstanding Young Researcher Award

Mr Thomas Cheng (left)

receiving the award from Professor Paul Tam,
Vice-President and Pro-Vice-Chancellor (Research)

Research Output Prizes, Faculty of Law

‘Deference, Expertise and Information-gathering Powers’

By Miss Cora Chan

Published in Legal Studies, 33, 4 (2013), 598–620
(Online publication date: October 25, 2012)

Undergraduate Research Fellowship Programme 2014 – Research Internship

Congratulation goes to the following students for receiving the Research Internship awarded by the Undergraduate Research Fellowship of the University.

• Chan Hey (LLB 3) on “A Comparative Analysis on the Intensity of Judicial Review of Economic, Social and Cultural Rights in Common Law Countries” under the Centre for Comparative and Public Law, HKU.

• Lau Kin Ling (LLB 3) on “Anti-gay Propaganda Law in Russia – Discrimination or Protection? ” under the National Research University Higher School of Economics (Moscow), and Department of Law, HKU
Oxford International IP Moot Championship

In this year’s Oxford International Intellectual Property (“IP”) Moot, HKU (Tom Ng PCLL; Byron Chiu JD2; Peter Dong JD 2) won its first-ever Championship.

The team won all four preliminary rounds, defeating three-time champion Queensland University of Technology (“QUT”), two-time champion National University of Singapore (“NUS”) and two other teams.

Proceeding to the quarter-final, the team faced QUT again in one of the toughest rounds throughout the entire competition but managed to earn a place in the semi-final. Gaining momentum in the competition, Byron and Tom out-performed the 2010-champion Boston University in the semi-final, and the same pair appeared before Kitchin, Floyd LJJ and Birss J (three very reputable IP judges) in the Grand Final against the University of Toronto.

The 110-minute Grand Final moot proved to be a thrilling and rewarding experience. As counsel closed their submissions, the Bench took time for consideration. The “judgment” was handed down by Kitchen LJ, with Floyd LJ and Birss J agreeing with his Lordship. The Court was unanimous in ruling against us on all issues, but this did not stop the bench from declaring that the University of Hong Kong is the Champion of this year’s Oxford International IP Moot!

Byron, who appeared for both the Appellants and the Respondent in the preliminary rounds, was also awarded the Sir Nicholas Pumphrey Prize for Best Individual Mooter.

Besides congratulations to the team, thanks also go to Ms Alice Lee and Mr Kelvin Kwok for their valuable guidance; Ms Winnie Tam SC, Professor Anselmo Reyes, Mr Jason Yu, Ms Jacqueline Law and Dr Yap Po Jen for serving as judges in practice sessions and providing very helpful comments, without which our great achievement would not have been possible.
An Online Household Legal Guidebook in Hong Kong – FamilyCLIC

The Law and Technology Centre has launched its fourth legal information website developed for those in Hong Kong with no legal background, the FamilyCLIC (www.familyclic.hk).

Sponsored by the Home Affairs Bureau of the HKSAR Government, FamilyCLIC provides free legal information on 19 topics involving legal issues commonly encountered by families in Hong Kong, including disputes with neighbours, domestic violence and assistance, foster care and child adoption, purchasing property together and divorce. The contents were written by legal experts, with the relevant laws and legal concepts being explained in plain language.

FamilyCLIC aims to help citizens acquire a basic understanding of the relevant law before seeking advice from lawyers. Prof. Anne Cheung and Dr. Kevin Pun, co-principal Investigators of the CLIC Project, explain that FamilyCLIC serves as a quick and handy internet guide for those in need to find the relevant legal information. They would also like to acknowledge and thank Ms. Eliza L.S. Chang, Dr. Chen Yong Xi Clement, Mr. Samuel C.H. Yip and Ms. Amanda Whitfort for their valuable contributions to the contents of the website.

The website comprises 100 questions and answers as an introductory guide for viewers. These 100 Q&As are printed in booklets which are available to the public free of charge. To obtain a free copy of the booklet, please send your names and correspondence address via post, fax or email to the Law and Technology Centre.

How to get the “FamilyCLIC 100 Q&As” booklet:

By post: Law and Technology Centre, Cheng Yu Tung Tower; Centennial Campus, The University of Hong Kong, Pokfulam Road, Hong Kong. (No self-addressed envelope is required.)

By fax: 2549-8485

By email: book@familyclic.hk

Booklets which summarize the contents of the website and 100 questions and answers are available to public for free.
The Hon Andrew Li unveiling the display of court dress at the opening of the permanent exhibition “De Lege Lata” on the Hong Kong Legal System and the Legal Profession

It is said that a good law school should teach its students not only what the law is, but also what the law ought to be. But the Faculty of Law, in its permanent exhibition on Hong Kong legal system and the legal profession, entitled “De Lege Lata” (meaning “the law as it is” in Latin) places emphasis on “the law as it is”. Such emphasis is appropriate when referring to the fundamental values of the rule of law and the independence of the judiciary.

From left: Professor Roland Chin, Provost and Deputy Vice-Chancellor; Dr the Hon C H Leong, Council Chairman; The Hon Andrew Li, Chief Justice of the Court of Final Appeal (1997-2010); Mrs Li; Professor Johannes Chan, SC (Hon).
The Faculty is very honoured and privileged to receive and display the court attire donated by the Hon Andrew Li, Chief Justice of the Court of Final Appeal (1997-2010). During the unveiling ceremony, Mr Li thanked the Faculty for providing a “permanent home” for the judicial and professional uniform which he had worn “day in and day out for 37 years: 13 years on the bench and 24 years at the Bar”. The court dress “reminds the judge and the advocate of their important professional duties”. The Former Chief Justice stressed that “the rule of law with an independent judiciary is of pivotal importance to Hong Kong under one country two systems” and “vigilance must be exercised at all times by all of us to ensure that any attempt to undermine our freedoms, freedoms that include, of course, the freedom of speech and the freedom of the press, is overcome and that our freedoms are fully protected.”

Professor Johannes Chan, SC (Hon), Dean of Law, believes that the exhibition will encourage public understanding of the rule of law and our legal system. The display of the court dress will also “serve as a constant reminder to each generation of law students of their important and honoured responsibility to uphold the rule of law and to safeguard vigilantly our freedoms and liberties”.

The occasion also marked the publication of Hong Kong’s Court of Final Appeal: The Development of the Law in China’s Hong Kong, edited by Professor Simon Young and Professor Yash Ghai. This is so far the most comprehensive review of the Court of Final Appeal, and explores how the court, under Mr Li’s able leadership, has discharged its responsibility of preserving the rule of law, especially during the critical period after the transfer of sovereignty of Hong Kong.

While the exhibition, located on the 7/F of Cheng Yu Tung Tower, is open to the public throughout the years; advanced booking is required to view the court dress. Details are available on www.hku.hk/law. We hope the permanent exhibition proves to bring interest to our secondary school students and serve to educate the general public.
Thank you,  
Professor Reyes

The Faculty is very honoured and privileged to receive from Professor Anselmo Reyes his Ceremonial Dress as a Judge in Civil Division of the Court of First Instance of the High Court, and a collection of antique books on civil and religious law, some dating back to the 16th and 18th Centuries. The unveiling took place right before his Inaugural Lecture on 20 May, entitled “The Future of the Judiciary: Reflections on Present Challenges to the Administration of Justice in Hong Kong”.

Professor Reyes, former Judge of the High Court, is no stranger to the Faculty. After obtaining his doctorate from the University of Cambridge, he taught in the Faculty as Lecturer from 1986 until 1988, when he left the University and joined the Bar. He was appointed Senior Counsel in 2001 and became a judge of the Court of First Instance in 2003. In 2012, he rejoined the University as our first Professor of Legal Practice. In his Inaugural Lecture, he highlighted six major challenges that confronted the Judiciary:

- The need to deal with a systemic shortage of judges.
- The need to implement systems of electronic litigation.
- The need to assess the strengths and weaknesses of CjR over the last five years.
- The need to implement Criminal Justice Reform.
- The need to implement systematic programmes of continuing education and training for judges.
- The need to plan for the infrastructure (court buildings, equipment, human resources) which will be required for the proper administration of justice in the next decade.

While Hong Kong still enjoys a high standard of justice, he argued that this could not be taken for granted and that these issues need to be addressed urgently, in order to maintain a fair, cost-effective and efficient court system.
Welcome, Professor Michael Hor

On July 1, 2014, Professor Michael Hor will take up the Deanship. He is currently a Professor in the Faculty of Law at the National University of Singapore. Professor Hor is no stranger to us. He visited the Faculty in 2008 and 2013; and served as an advisor to the Centre for Comparative and Public Law. He possesses outstanding academic credentials and is a renowned scholar in the fields of criminal law, criminal procedure and constitutional due procedure. Before meeting him in person, let’s share his “Hong Kong story”.

Hong Kong and I
by Professor Michael Hor

I have often been asked what is it about Hong Kong that attracts me. It is never easy to respond although I have, since 1987, visited Hong Kong on several occasions both as a tourist and then for Conferences and Sabbaticals. The most obvious answer is – and this is hardly original – the food. Hong Kong is, of course, one of the great culinary capitals of the world. But when the eating is done, what shines through is the sheer vitality of the human spirit. Hong Kong is simply bursting with life in all its fullness. The phenomenon which is Hong Kong must have seemed improbable. Some ascribe it to historical accident. Others blame colonial ambition. I prefer to see it as a triumph of the energy and enterprise of its people. I see it in the cuisine, in the economy and infrastructure, in film and television, in health and legal services, and in its schools and universities.

Paradoxically, Hong Kong has proven irresistible to me because of the unique challenge it faces in working out its “one country, two systems” relationship with China. Like a child parted from the family and adopted into another very different household, Hong Kong grew up in a manner distinct from the march of history in China. While China went through the upheavals of imperial decay, republicanism, and the different phases of Communism, Hong Kong appeared to bask under the constancy of a relatively benign colonial regime. Reunited with its original home on 1 July 1997, Hong Kong, bearing the hopes and dreams of modern liberal democracy, had to learn to live with and within a China in the early stages of a thaw in its authoritarian political culture. China too must have regarded the return of a somewhat unruly Hong Kong with a degree of apprehension. Life together did not promise to be easy.

Yet I see reasons for optimism. The same drive and initiative which built Hong Kong has within it the resources to find a mutually acceptable resolution. Take the example of the most prominent source of friction - universal suffrage and electoral reform. While I have still much to learn about the undercurrents and nuances, I can see members of the Faculty of Law of the University of Hong Kong out there in the conceptual frontlines. Between Albert Chen, Johannes Chan, and Michael Davis, doyens of constitutional law in Hong Kong, and a generation of younger scholars like Simon Young, Benny Tai and Eric Cheung, they cover the entire spectrum of positions. That is where University and the Faculty should be and that is where it is, focusing its intellectual resources on the most pressing issues of the day and presenting Hong Kong, and China, with a variety of reasoned viewpoints. What’s more, in the broader HKU Law community, its alumni read like a “who’s who” in the universal suffrage debate – Rimsky Yuen, Elsie Leung, Alan Leong, Audrey Eu, Ronny Tong, and Tanya Chan, just to name a few.

It is with both pride and humility that I join the Faculty of Law as Dean on 1 July 2014, the 17th anniversary of HKSAR Establishment Day. Pride, because of the record of what the Faculty has achieved and continues to do, and humility because I have very large shoes to fill. But if the HKU Law Faculty and its Alumni are representative of the depth and diversity of talent in Hong Kong itself, and there is every reason to believe so, I know that Hong Kong will not just survive, but thrive.
Kevin Lau: FOLLOW YOUR HEART

Kevin Lau 劉進圖 (LLB 1986, PCLL 1987), former Editor in Chief of Ming Pao, was attacked in the morning of 26 February 2014. He suffered stab wounds to his back and legs. After the surgery, he has been staying in a rehabilitation hospital to undergo physiotherapy and receive training on how to manage his day-to-day life. Some of his classmates and colleagues from Ming Pao formed a concern group to monitor police progress in investigating the case and to raise public awareness of press freedom in the city.

Kevin is a role model for many law students as a showcase of a successful alternative career to law. He is always generous in sharing his experiences. Here we hope you enjoy them and join us in wishing Kevin a speedy recovery.

窄路險途怨無悔 恩澤滿懷寸心知

親愛的科大EMBA 2010班同學:

還記得2011年12月我們在科大上最後一堂課的時候，忻榕老師叫我們畫一幅簡單的圖畫，總結我們的人生歷程，然後用5分鐘和全班同學分享。我畫的生命圖是一條有4個岔口的路，每個岔口都有兩個選擇，一邊是康莊大道、黃金大道，另一邊是羊腸小徑、崎嶇窄路。

我跟同學說，每個岔口代表一次人生路向的抉擇。第一次是在1981年，我在香港中文大學 법학士畢業，法系人材供不應求，加上司法問題觸發移民潮，人才更加短缺。當時中大法學的名氣相對較低，每年只有少數幾個同學順利入大學。當時母親對我說，留學後做醫生或工程師，我卻深知自己喜愛的不是數理化而是文史哲，最後我報考了中文大學，那是我第一次選擇走窄路。

第二次抉擇是在港大念法律學科將畢業的時候，同學們都預備當律師或大律師，當時是1980年代中，法律專業人才供不應求，加上香港問題導致移民潮，人才更加短缺，當時執業律師的收入相當豐厚。但我內心一直掙扎，想找一份自己真正感興趣又能讓大時代社會變遷的工作，最後我選了當記者，這是我第二次選擇走窄路。

第三次是在當了記者大約5年後，當時做出了一點成績，在行內頗有名聲，開始有人邀請我談話，既有商業集團，也有法學機構，人工相當吸引，晉升機會也好，但當時香港九七回歸，香港社會風雲譁譁，我實在捨不得離開新聞界，只好再三推辭。

第四次是在2008年初，當時我身在北京，事緣太太調職到北京工作，我為了家庭團圓，向香港《明報》申請到駐京記者，獲公司同意支持，駐北京兩年，當時正在忙於綜合约大政協兩會，突然接到一位相識的政府官員的急電電話，說政府將會擴大政治開放，開始設立多個副局長職位，想我考慮加入政府。我考慮了一分鐘便回拒了這個邀請，一來是真的答應了報社，駐京兩年後應回港，二來是我很清楚知道自己的使命，是監察政府而非加入政府。逢我第四次給家人一般</em>人眼中的黃金大道，選擇走前線拼殺的窄路旅程。我和同學們說，有一句聖經的話，很能說明我的抉擇，是在馬太福音第十七章14節：「引到永生的門是窄的，路是小的，找著的人也少。」

同學們，科大畢業以後，我們眾多難，但偶然相聚，總能傾心吐意，彼此扶持，人到中年，誰能結交到這樣的知己朋友，夫復何求？我們靠騰訊的WeChat通报消息，問候打氣，過農曆年時一起在網上圍爐包餃，笑咪了面。因傷受損以後，我在港一歲一個月沒開手機，近日重啟打開，一次翻看了同學群組上百幾條的留言，看到同學們為我擔憂和支持，為我祈禱護送，為我送上關懷問候，為我的復康出盡心力，我內心激動不已，久久無法平復，不曉得如何表達感激之情。

有同學在留言中委婉相勸，想我進去避風，意思是離開傳媒這個高風險行業，甚或離開香港這個板塊之城，我完全明白同學的善意，親友中也有好些人有這樣的看法。不過，我這一生走的是窄路，路上同行的人雖然較少，但風景獨好，一路過來心安理得，且深信上帝與我同行，總有死陰幽谷，也無須恐懼庇保。恩愛再三，我在同事群組上留言回應，表明心志：「窄路險途無怨悔，恩澤滿懷寸心知。」盼同學們諒我諒我。

(Source: Ming Pao)
偶結不解緣 如影隨半生

1983年夏天，高考放榜，分數足夠報香港大學文學院、社會科學院和法學院。我們不曉得色樣，向高一屆的九龍華仁師兄請教，剛好找著了港大法法律的涂鴻程，他用了兩小時，教了許多實質的案例，向我介紹普通法制度下法庭判案如何造成先例，推動法律原則不斷演化細化，應用到千變萬化的社會處境上，我聽了覺得饒有興味，開始對這個博識的學科，就選報了法律，當時沒有想過畢業後做什麼，也沒有打算當律師。這個偶然的抉擇，讓法律和我結下了不解之緣，如影隨形半生。

1985年秋天，法學院三年班即將開課，同學們都在準備選科，每人要選五科，意思就是五個全年授課的科目，也可以選四個全年授課的科目，加兩個半年授課科目，但這樣的年終考試時就要考六科。這一年學院開了許多新的科目，像「社會學書籍」、「中國法制初探」，還有較冷門但口碑甚佳的「國際公法」和「公民自由」，這四個都是半年授課科目，我全部都感興趣。我選了四個預設本身意思我只能選三個全年授課科目，而且最終要考七科。幾經思量，我選了「公司法」、「國際貿易法」和必修的「法哲學」三個全年學科，放棄了「證據法」。

放棄「證據法」是一個很不容易的決定，這門課對每個有志從事法律專業的人來說是必修課，不懂證據法，上法庭就會頻頻失敗，寸步難行。我當時的想法是，盡量修讀一些和公共法有關的科目，這類學科和事務較為相關，社會性較強，比較切合自己的興趣，將來如果真正從事法律專業，可以自修證據法。

在同學眼中，我這樣選科對「明智」，考試時也比較辛苦，但東西又不實用。可是，有學年太太是我在港大法律學院唸書最安心的一年，也是成績最好的一年。大一和大二時我常常「走堂」，有些科目連課是教授也摸不清楚，大三那年我一反常態，準時出席絕大部分課堂，每份課業都全力以赴，因為全靠自己學的，而且付出了放棄證據法這樣大的代價，當然不能馬虎。這一年的好成績，對我後後報考政府獎學金去英國深造，起了很大的作用。


1996年，因著一個偶然的機會，獲邀在中大新聞系教傳播法，開啓了我的教學生涯，也促使我不斷更新這個領域的法律知識。1998年，《信報》要成立兩間公司，我因為懂法律，被委任為公司法律顧問，從律師出身中學到的法律沒有學過的東西，2000年，科網熱潮方興未艾，新報網站連結獲得一億元股權投資，明報集團展開了連串的企業發展，收購合併和分拆上市活動，我作為法律顧問，積極參與其中，獲得了很多寶貴的企業法律知識和經驗。

此外，香港報業團因應政府修訂《版權條例》，成立了聯合的版權授權機構（HKCLA），又因應社會大眾對私隱的關注，成立成立報業評議會，我因報業協會都參與其中，把教學時時常的傳播法知識應用到現實生活上，對法律的效用和局限多了一些體會。

如今回過頭看，畢業後二十多年的工作生涯，實在不斷與法律接觸，這還未計算香港大學授業到的思考方法，包括嚴謹的邏輯推理和正反兼顧的辯證思維，對我日後撰寫新聞報道和評論影響深遠。我有涉足的法律領域，也候是一些專注於某類法律事務的律師更寬闊，這一切都是我唸法律時沒有學到的，也是從計算賬的。如果要從中總結經驗，我可以用兩句話來形容，其一是人生法律無處不在，一頂引向另一頂（One thing leads to another），其二是抉擇貴乎得心，認清心之所向（Follow your heart），就能無怨無悔。
Civil Disobedience?

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**Occupy Central** is a highly controversial subject in Hong Kong. Some said that it is a form of civil disobedience, and could be justified by the lack of progress on democratic reforms for almost 30 years. Others said that it is unlawful, and whatever be the justifications for civil disobedience, Occupy Central fails to meet the requirements of civil disobedience. Some said that as law students, we should never engage in activities that aim at defying the law. That goes to the very opposite of the rule of law. Others said that the rule of law is different from the rule by law. If the law defies the core basic values of the community, the law loses its legitimacy. The laws passed by the Third Reich are a prime example. Some said that civil disobedience is a form of protest, and that it is an acceptable means of freedom of expression in a civil society so long as it is carried out in a peaceful and non-violent manner. Others said that there are no unrestricted rights and freedoms, and given its drastic and far-reaching consequences to the community, civil disobedience is a disproportionate form of freedom of expression and could not be justified. In this feature article, we decided to explore the different dimensions of civil disobedience by interviewing Benny Tai, one of the three promoters of Occupy Central, and two of the constitutional law experts in the Faculty, Professor Albert Chan and Professor Simon Young, who have shared with us their different perspectives on this controversial issue.

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**What is civil disobedience?**

Henry Thoreau first coined the term in 1848 in his essay, “Civil Disobedience”, which was largely inspired by his distaste of slavery in America and the Mexican-American War at that time. The main thrust of his argument was that laws should not be blindly adhered to, and citizens should follow their conscience and dissociate themselves from their governments if they were unjust.

Famous examples of civil disobedience include Mahatma Gandhi’s resistance to British rule in India, the Civil Rights Movement led by Martin Luther King Jr. in the USA, as well as the resistance to apartheid in South Africa led by Nelson Mandela.

**Features of civil disobedience**

What is it that renders an act representative of civil disobedience? One main essential feature of civil disobedience is that there must be a law-breaking act, because lawful protests are not “disobedient” under the law, no matter how vigorous they are.

The act must also necessarily be public and known to the community at large, as civil disobedience aims to affect public discourse in order to provoke some change in the community. A clandestine act will not do. As maintained by Rawls, legal authorities must have been notified about the act of civil disobedience. Bedau supplements this by contending that it is essential to the protesters’ purpose that both the government authorities and the public know about the act and the intentions behind it.

Moreover, the act must be intended as a protest against an object, be it a government decision or legislation. An illegal act in gross cannot constitute civil disobedience.

Whether civil disobedience is essentially non-violent is debatable. Rawls advocates non-violent methods because, according to him, violent acts are likely to enhance the negative effects of breaching the law, and obscures the “civil” feature of civilly disobedient acts. However, according to Mccloskey, “if violent…disobedience is more effective, it is, other things being equal, more justified than less effective, nonviolent disobedience”. Thus, violence may be an element of civil disobedience, but whether it is utilized in acts of civil disobedience will depend on the context and purpose to be achieved.

**Parameters of the right to civil disobedience**

When can the right to civil disobedience be exercised then? Rawls contends that the following three conditions must be satisfied before the right can be exercised: first, it must be undertaken in response to substantial and clear injustice; second, it must be conducted in coordination with other minorities; third, it must only be utilized as a last resort. On the other hand, Raz takes the view that civil disobedience can only be exercised in a liberal regime. Thus, in liberal regimes, citizens should not have the right to civil disobedience, because political participation is adequately protected by law under these circumstances.
Yet another alternative view can be found from the writings of Dworkin, who maintains that citizens have the right to disobey laws if that law infringes upon their rights against the government. This is premised on the notion that citizens have fundamental rights against the government, such as the freedom of expression and assembly. Disagreements abound over the parameters of the right to civil disobedience, and similarly problematic are the justifications for civil disobedience, in light of the general proposition that citizens have a general obligation to obey the law.

With the existence of legal methods, why should one resort to illegal means such as civil disobedience? Perhaps one justification for this is that it is employed as a last resort, when legal means are no longer effective in curing an injustice to the people.

**Views from Mr. Tai, Professor Young and Professor Chen**

Ever since the launch of the Occupy Central movement, there has been a myriad of concerns concerning its purposes and effectiveness. Below are interviews with Mr. Tai, Professor Young and Professor Chen on these issues.

**Mr. Benny Tai**

Q: Please tell us about the Occupy Central movement in Hong Kong?

A: The objective of Occupy Central movement is to champion for universal suffrage in Hong Kong in 2017. The plan is to mobilize citizens to occupy the main roads in Central, in order to paralyze the economy as a means of pressuring Beijing Authorities to grant universal suffrage to Hong Kong in accordance with international democratic standards.

The three core beliefs of the Occupy Central movement are as follows:

1. Hong Kong’s electoral system must comply with the requirements of the international community on universal and equal suffrage, including the following: each citizen enjoys an equal number of votes with equal weight, and each enjoys the right to stand for election with no unreasonable restrictions.

2. The process of determining Hong Kong’s electoral system must be democratic and include elements of deliberation and citizen’s consent.

3. Although acts of civic disobedience are illegal, their actions for universal suffrage in Hong Kong must be and remain non-violent.

Participants uphold the above beliefs at four stages of the Occupy Central movement, namely, (1) civic forum to discuss proposals for political reform, (2) voting for one of those proposals, and (3) presenting the most popular proposal to the Authorities. It is only if the Authorities turn back on their promises of genuine universal suffrage that (4) civil disobedience will be carried out.

Q: Civil disobedience is a form of protest against injustice. What is the injustice that Occupy Central targets?

A: The Occupy Central movement is premised on the notion that the Beijing Authorities might not fulfill their promises of genuine universal suffrage. This is not unjustified; indeed, although the Beijing Authorities have promised to grant Hong Kong universal suffrage in 2017, there is little indication from senior Chinese officials that true and genuine democracy forms part of the package. Senior officials, such as Premier Li Keqiang, have condemned the Occupy Central movement, and reiterated the need for the Chief Executive to love the country and Hong Kong, which many take as an euphemism for saying that the Chief Executive must blindly obey the Chinese Communist Party’s orders.

Article 45 provides ample room for the Beijing Authorities to manipulate the Chief Executive nomination process, which may have the effect of precluding genuine choices from voters, such that, although every registered voter may be eligible to vote, their choices in the election would be grossly limited due to political reasons.

Indeed, Article 45 is vaguely worded, excerpted as follows:

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures."

Article 45 speaks of “nomination by a broadly representative nominating committee”, the formation of which may follow that of the Election Committee in
the past, i.e. comprising the four functional sectors, with members from the (1) industrial, commercial, and financial; (2) professional; (3) labour, social services and religious; and (4) politics sectors. This may be problematic in striving for genuine democracy because the nominating committee does not necessarily represent the majority of people in Hong Kong. Its members are chosen largely from functional constituencies, and the large majority of people in Hong Kong has no right to elect these members. The representation of different groups varies a lot, with some groups better represented than others, and the elderly, the housewives and the unemployed will have no say in the election process. Moreover, how broadly representative the committee should be largely depends on how it is construed by the Beijing Authorities.

Apart from Article 45, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) which takes effect in Hong Kong, provides that Hong Kong people are entitled to universal suffrage that complies with international democratic standards.

Q: One of the three conditions for civil disobedience, as argued by Rawls, is that civil disobedience must only be used as a “last resort”. The Beijing Authorities, as well as the Basic Law, have indicated that “the arrangement of 2017 CE election will not be an ultimate one due to the orderly progress provision”, from which one may infer that there might be room for better arrangements in the future. Do you think that Hong Kong has reached the critical point such that “civil disobedience” should be used as a “last resort” to strive for universal suffrage, or should we first observe the implementation of “one person, one vote” in 2017 and then decide whether to take action or not?

A: We have to understand that universal suffrage does not just mean that citizens have the right to vote in an election. The election system implementing universal suffrage must also guarantee that electors have genuine choice of candidates. Article 45 of the Basic Law provides sufficient room for the Beijing Authorities to manipulate the nomination process precluding such genuine choice from voters in the Chief Executive election in 2017 even though every registered voter could still have the right to vote but an incomplete right to vote. From the stance expressed by senior officials in Beijing, my prediction is that it is very likely that the Beijing Authorities have no genuine intention to allow Hong Kong people to enjoy the full right to vote and there may not be other effective ways to strive for true democracy in the Chief Executive election in 2017. As a result, drawing from the experiences of the democratization processes of other countries, I believe that a movement of civil disobedience involving thousands of Hong Kong citizens may be able to generate sufficient political pressure on the Beijing Authorities under the unique political and social context of Hong Kong. There could then be a chance, though it may still be slim, that the Beijing Authorities, after careful and rational calculation of political costs and benefits would grant Hong Kong people the true democracy that they deserve and have waited for its realization for so long.

Q: Most people equate the term “civil disobedience” with “non-violence”. However, in “Conscientious Disobedience of the Law: Its Necessity, Justification, and Problems to Which It Gives Rise”, McCloskey said, “if violent, intimidatory, coercive disobedience is more effective, it is, other things being equal, more justified than less effective, nonviolent disobedience.” Will you consider changing the nature of Occupy Central if public opinion supports a more radical means of resistance?

A: It is true that the generally accepted definition of civil disobedience does not require the relevant act to be non-violent, but it is also generally accepted that the non-violent nature of the relevant act may enhance the chance of the act being accepted by others as justifiable. In addition, a civil disobedient act to be justified must also be proportionate to the goal it wants to achieve. Under the unique political and social context of Hong Kong and given that the goal of the Occupy Central Movement is to strive for achieving genuine democracy in Hong Kong, the non-violent nature of the movement is critical for its success.

Q: Most instances of civil disobedience are directed at changing unjust laws or discriminatory systems imposed on certain classes. Since the aim of Occupy Central is to ask the Central Government to comply with international standards in granting Hong Kong universal suffrage, how would you persuade Hong Kong people that the act of derailing from international democratic standards should be considered as unjust, and therefore justify the use of civil disobedience?

A: Hong Kong citizens’ political rights are guaranteed and protected by the Basic Law through Article 39, which provides that the provisions of the International Covenant on Civil and Political Rights (ICCPR) shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. As provided under Article 25 of the ICCPR, political rights include the right to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage, and there shall not be any unreasonable restrictions on such rights. Justice requires that every citizen’s fundamental rights including their political rights be protected. Failing to offer such protection is an unjust constitutional arrangement that would justify civil disobedience acts.
Q: You once emphasized that “it is not worthwhile to sacrifice any life if the PLA cracks down on the whole movement”. While some may agree that this cause is not worth anyone sacrificing their lives, some may consider that casualties are more effective as they can exert stronger pressure on the Central Government and act as a more effective means than just having promoting “love and peace”. What are your views on this?

A: Human life is invaluable and cannot be used or risked as a tool to achieve any goal, no matter how noble the goal is. Democracy is important but it is not absolute. As mentioned above, political movements must satisfy the principle of proportionality on practical as well as normative grounds. Peacefulness expressed in and through the love of human life and dignity is an appropriate theme and spirit for a Hong Kong’s democratic movement.

Q: At the present stage, is it possible or under what circumstances would Mr. Tai and other Occupy Central organizers be guilty of an offence, e.g. conspiracy?

A: Occupy Central organizers say that they will organize at least 10,000 people to assemble peacefully and publicly in Central if the government’s proposal on universal suffrage is unacceptable. Whether the organizers can be charged with an offence of conspiracy sometime before the occupy date depends on the sufficiency of evidence to prove (a) an agreement; (b) to pursue a course of conduct; (c) that if carried out necessarily involves the commission of an offence; (d) with the intention for the offence to be carried out; and (e) the inapplicability of any relevant defences. That the plan is conditional does not preclude it from being a conspiracy (R v O’Hadhmagh [1996] CrimLR 509; SCMP, 2 July 2013, C2). Without sufficient clarity on when, where and how the assembly is to take place, it cannot be said at this time that the organizers have agreed on a course of conduct that “will necessarily amount to or involve the commission of any offence” (Crimes Ordinance (Cap. 200), s. 159A(1)(a)).

Even when the occupy date and place have crystallized, no conspiracy need be committed if three conditions exist. First, stating that organizers will act in accordance with any relevant statutory notice and permission requirements takes away any grounds to suspect that offences under Part III of the Public Order Ordinance (Cap. 245) (“POO”) will be committed. Second, by stating that the sole purpose of the assembly is to exercise fundamental freedoms in a reasonable manner, defences of reasonable excuse and/or justification (where available) will likely be engaged (see Yeung May Wan v HKSAR (2005) 8 HKCFAR 137, [44]). Third, by having measures in place to ensure that the assembly will be peaceful and orderly, it cannot be said that there is a plan to act in a disorderly manner or cause a breach of the peace (see Part IV offences of the POO; HKSAR v Chow Nok Hang [2014] 1 HKC 241 [CFA]). By setting these conditions, however, Occupy Central will start to relegate its civil disobedience motto. It does not mean however that on the occupy day no arrests will be made and no offences will be committed.
**Professor Albert Chen**

Q: What is the relationship between civil disobedience and rule of law? Do they contradict each other? Moreover, in Hong Kong, it is widely perceived that the NPCSC will interpret Basic Law provisions relevant to universal suffrage in a narrow manner such that genuine universal suffrage cannot be implemented. In your opinion, is civil disobedience justified and/or desirable in the context of fighting for genuine universal suffrage in Hong Kong?

A: Rawls suggests that civil disobedience is not necessarily inconsistent with fidelity to the rule of law because those who engage in civil disobedience do so peacefully and are willing to accept the legal consequences of their breach of the law (e.g., being arrested, prosecuted and convicted for the relevant breach of the law). The relationship between civil disobedience and the Rule of Law raises the question of why people have an obligation to obey the law. In legal and political philosophy, there are many theories which explain why we ought to obey the law. For example, one view is that the existence of a system of laws that enable us to live together peacefully in society and engage in social cooperation is for our common good. The system will only work well if members of society obey the law. Since we all benefit from having a legal system, we have the moral obligation to obey the law and to submit to legal restrictions on our freedom of action. Some theorists argue that civil disobedience is justified as a last resort (where other lawful means fail) to protest against clear and substantial injustice in society, for the purpose of promoting legal or policy change so as to address such injustice. However, they also recognize that in assessing whether civil disobedience is justified, one should consider the consequences of engaging in such action. For example, would it be effective in bringing about the desired legal or policy change? Would it cause more harm to society (e.g. by encouraging general disrespect for the law) than the good that it is likely to bring about?

Some people now advocate civil disobedience for the purpose of fighting for genuine universal suffrage for the election of the Chief Executive in Hong Kong. Since the National People’s Congress Standing Committee already decided in 2007 that universal suffrage for the election of the Chief Executive may be introduced for the first time in 2017, the current debate is about what should be the model (including the nomination procedure) to be used in such election. I believe that the model should be worked out in the course of rational discussion between political parties and actors with different views and interests on the basis of the framework set out in the Basic Law. There should also be dialogue between pro-democracy politicians in Hong Kong and the authorities in Beijing, since Hong Kong is not an independent country and the Central Government has a legitimate role to play in the design of the model of universal suffrage to be adopted in Hong Kong. I do not think that it is useful and constructive in the course of this dialogue to threaten to inflict harm on the stability and prosperity of Hong Kong (by, for example, paralyzing its central business district) if one’s demands are not met. As former Chief Justice Andrew Li pointed out some time ago, even the large-scale demonstration against the Article 23 bill in 2003 was conducted within the limits of the law, no civil disobedience was engaged in.

**Afterthoughts**

As Martin Luther King Jr. wrote in the Letter from the Birmingham Jail, “one has not only a legal, but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws.” Despite his praiseworthy aspiration, the views on civil disobedience are very divisive in Hong Kong. Supporters’ and opponents’ views can generally be demarcated from a motivation-based and consequence-based perspective. On the one hand, advocates for disobedience argue that everyone has a moral obligation to obey just laws. By deploying this as a means to protest, they are directly achieving the commendable ends by non-violent means. At the same time, the general public will be informed and educated about the issue. Therefore, civil disobedience can eventually be conducive to a dialogue with society which facilitates deliberative democracy. On the other hand, opponents are suspicious of the probability and practicality of achieving these ends by simply causing chaos and disorder to society. If the movement fails, there will be irreversible and tremendous political, economic and social impacts on society. There is no lack of examples of such failure where the government does not retreat from its position and submit to the people’s wishes.

Worse still, it imposes even more stringent control to society to avoid the same from happening in the future. Their fundamental difference of perception to civil disobedience underpins why this issue is always controversial, whether in academia or among political activists.

Following the conclusion of the first constitutional development public consultation, many stakeholders have put forward different proposals on 2017 universal suffrage. Mr. Tai reaffirmed that Occupy Central will only be deployed as the last resort if the Beijing Authorities and the Hong Kong Government fail to fulfill the promise of a genuine universal suffrage, so as to give Hong Kong greater leverage in future negotiations with Beijing. It is still too early at this stage to estimate if the movement will ultimately be successful. But what is certainly true is that this is a dynamic experiment in deliberative democracy, paving the way to the breakthrough in engineering local civil and democratic development. All this point to the fact that it is too simplistic to assert that civil disobedience is merely a legality issue; rather, it is a navigation of the web of relationship between law, morality and politics. At that same time, it will remain a controversial issue.

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*The views expressed here are those of the interviewees only and the authors and do not represent the Faculty’s views.*
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