

Speech by Ms. Gladys Li SC at the LLB Opening Ceremony 2005-06,
8 September 2005

Professor Chan, Mr. Kwok, distinguished guests, ladies and gentlemen. It is my privilege and honour to be invited to talk to you this morning.

A few days ago, I was asked by a young student who aspires to read law at university whether I had ever had any role-models or heroes or heroines. My reply was no but the closest would be the little boy in the Hans Christian Andersen story “The King’s New Clothes”. As you will remember when everyone was flattering the King on the exquisite beauty of his new robes made out of a cloth so fine that it was in fact invisible, the little boy publicly declared that the King was dressed in nothing but his underwear.

While it is true that I have never consciously modelled myself after or sought to emulate any particular person, of course, there have been many people who have influenced or inspired me, not least, my parents. But until I was asked that question and considered it a little harder, I had not really appreciated how great an influence one historical figure has had on my beliefs and my approach to life. That person is the Greek philosopher, Socrates.

Socrates spent much of his adult life teaching but teaching by questioning, never claiming to have provided the answers so that those who listened and debated with him were led to a perpetual quest for their own truth. Ultimately, he was charged and sentenced to death for corrupting the youth of Athens. A cup of poison was prepared for him and he drank it in the company of his friends and students. I too am prepared to share briefly my

thoughts with you today on the subject of the study of Law at the risk of there being at the Tea Reception later on a cup of hemlock marked for the Guest of Honour.

Why is the study of Law so important? Aren't we just talking about a set of rules which needs to be maintained to keep society from crumbling and to prevent violence and disorder from breaking out? If so, anyone literate can read the rules for themselves? Why do we need lawyers?

The past few days, I have spent sometime sitting in as a member of the audience listening to the young pianists at the International Piano Competition which is being held for the first time in Hong Kong. As I have listened to them play, it struck me that there is a world of difference between those pianists who play all the notes and follow all the composer's instructions by way of tempo and dynamics yet theirs is not a coherent interpretation of the music. To reproduce literally is not to interpret just as in interpreting the law, one must do much more than just to look at the words.

Context, legislative history and derivation, these are just some of the things that play a part in interpretation. But also, in Hong Kong, we still have the common law system so that not all our law is to be found in the volumes of the Laws of Hong Kong. Our case-law is an important repository of our law and that case-law is judge-made law but not law made on a whim or a fancy or on the basis that the judge had a bad night's sleep (although he may have done). These decisions are informed by a system of values; essentially, democratic values which favour freedom of thought and expression and

liberty of the person and the rule of law. That is the legacy of the common law.

In Hong Kong, we have faced an almost unique challenge of interpreting the Basic Law under the principle of 'one country, two systems'. I say almost unique because Macau faces the same challenge. The Basic Law is a law made by our National People's Congress in accordance with the Constitution of the People's Republic of China. We, in Hong Kong, with our common law traditions have to interpret and apply it. So, for you, as students of the laws and legal system of Hong Kong, you are embarking on a journey which has few, if any markers.

If you have been following the issues of the day, you will immediately appreciate that the Law stands at the interface of some of the most important questions facing Hong Kong today and for the foreseeable future. Political and constitutional development, covert surveillance and the status of the Executive Order, mutual recognition and enforcement of judgments in civil cases between the mainland and Hong Kong to name but a few.

And then there is the matter of interpretation of the Basic Law generally? It is no part of the common law system to look to the recollections or thoughts of individual legislators when construing or deciding on the meaning of legislation. One does not look to them for the legislative intent. An important part of our system is the very limited extent to which it is possible to look at what was said at the time of the passing of the legislation in order to assist in construing it. And let us remember that we are talking about open and officially recorded debate not discussions behind closed doors.

This excludes any wishful thinking on the part of any person “oh, what we meant was this; it just didn’t get written down”.

Even if we are talking about properly maintained and scrupulously recorded discussion, quite apart from any issues of authenticity and accuracy, such records are often of limited assistance precisely because they are inconclusive. Let me give you a specific example.

In one of the first cases on the right of abode issue, the question was whether under Article 24(3) of the Basic Law, children born before their parent had completed seven years’ ordinary residence in Hong Kong nonetheless were entitled to the status of permanent resident once the parent had completed that period of residency. Research of the limited records then available showed to the best of my recollection that the matter was brought up at the time but not resolved. So how can the lack of resolution assist in interpreting Article 24(3)? Can one say that the drafters thought the matter was so clear that it did not need to be spelled out in Article 24 or is it that they decided to leave it ambiguous because they were unable to reach a consensus on it? If one looks to the Basic Law for Macau, this was spelled out in black and white.

These and many more fascinating problems await you. And you will have a special role to play in helping to resolve them. Meanwhile, if my fate is an iced hemlockuccino at the Tea Reception, I embrace it. So I wish you all the very best in your studies and in your careers, whatever they may be. Your fate is to study, to think and to question. Those processes should never end. Remember that your mind is your most precious possession. Never give it over to another person. That is the Socratic message.

