

Interview with Prof Johannes Chan SC (Hon)

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Q: Could you share some background about yourself and your family?

JCSC: I was born in Hong Kong and grew up, like many others then, in a public housing estate. My parents came from Mainland China in the late 1950s and worked in factories. My maternal grandfather, who spoke fluent English, had served in the United States Air Force during the Second World War. Being a small landlord, he later suffered badly during the Land Reform, when he was classified among the “Five Black Categories”. He was mock-executed three times, some of which was witnessed by my mother, lost everything, and suffered again during the Cultural Revolution.

That is my family background in brief. Like most Hong Kong families at the time, we believed in hard work and study. Education was the main route to social mobility, but only about 1–2% of students entered university, so competition was fierce. I have two younger brothers, and we all worked our way through the system.

Q: Which secondary school did you attend?

JCSC: St Joseph’s Anglo-Chinese School. For a long time, the school was not allowed to offer matriculation courses because its principal, the late Brother Paul Sun, refused to pay bribes to the Education Department in the 1960s. Corruption was then a hard fact of life in Hong Kong: people have to pay bribes in order to obtain basic, minimal services, to protect their small businesses and even their livelihood. That is why I believe the establishment of the ICAC has been a blessing for Hong Kong and I have always held the ICAC in great respect.

Q: What was your impression of the legal profession before university?

JCSC: My family had a poor impression of law because of their experience in the Mainland. They associated law with power politics, which they regarded as bad and dirty. They did not interfere with my choice, though they were concerned when I applied to the law school. At that time law was not popular, and law school was still new and unheard of. Until the mid-1970s, law was alien to the ordinary people and was often associated with crimes, criminals and prisons all of which should be avoided.

When I was in matriculation, I joined a voluntary project that took young people to visit detainees in a detention/training centre. That was my first real encounter with law. We met first-time young offenders convicted of relatively minor offences. They received physical training and stayed for six to fifteen months. We visited fortnightly to play football or basketball with them, so they could feel that the community still cared about them.

Because of a popular television programme, social work was then highly sought after. I wanted to understand how young people became delinquents. I learnt that many of them were not bad by nature; but that they had been failed by the system. They came from poor families, didn’t do well in school and left early. With very few opportunities ahead of them, some began with minor shoplifting and moved on to more serious offences. It was almost impossible for them to find any proper work because of their criminal records, and they inevitably have got back to the previous environment and peer groups, and trapped in their previous lives again.

That made me question the effectiveness of correctional services and of law itself. Too often, those truly responsible for criminal enterprises were not arrested, while resources were spent on catching minor players. I felt that was not what criminal law should be.

I also began thinking about how life could be changed by law when I looked at workmen's compensation. I was struck by how precisely the ordinance set out compensation for different injuries: for example, the law set out the level of compensation for the loss of an index finger and so on. I thought that by simply changing the figures in the statute, it could immediately improve people's lives. Law seemed more effective than social work, which felt like endlessly mending a broken piece of furniture. Law might be more effective to improve the system. It was probably an ideal and naïve way of thinking, but for a youngster, that idealistic and simplistic view led me to study law.

Q: How did you persuade your parents about your choice?

JCSC: I didn't! I simply told them this was my decision. They knew they could not change my mind.

Q: Did you meet any lawyers before entering university?

JCSC: Not really. I may have met one or two probation officers through social work, but not lawyers. Even in the mid-1970s, lawyers were rarely visible outside the profession. They were seen as elitist, expensive, and not readily accessible or affordable by ordinary people.

Q: If that was the case, what kind of lawyer did you imagine you wanted to become?

JCSC: I thought I wanted to know more about the law and the legal profession, but I had not seriously imagined becoming a lawyer. Even after completing my LLB, I had not yet decided whether to enter the legal profession or not.

When I was a student at the university, the boat people incident in the late 1970s had a great impact on me. Boat dwellers living in poor conditions at Yaumatei Typhoon Shelter sought resettlement in public housing, but the government said they could not jump the queue. Social workers and church groups arranged for them to petition the Governor. Their coach was stopped by the police at Causeway Bay and they were told to disperse. When they refused, thirteen leaders were charged with the offence of unauthorised assembly. The law was then draconian: it was an offence for any three or more persons to discuss any public affairs in public without prior police permission. Technically it could mean when a family of three began to comment on some social affairs at their weekly yum cha gathering on Sunday in a Chinese restaurant, they could commit an offence unless they had obtained prior permission from the police! The law was so unfair and unjust that it later led me to write my dissertation on its reform. Interestingly, in the course of my research, I found that similar sentiments were expressed by a senior in his dissertation some 6 or 7 years ago. That senior was no less than Mr Justice Patrick Chan who became a Permanent Judge at the Court of Final Appeal many years later!

Q: Which course was most memorable in LLB?

JCSC: I can remember only the more boring courses! Well, Criminal law was of interest to me, partly because of its nature, and partly because Bob Ribeiro was a great teacher whose meticulous approach and analysis of statutes were eye-opening for me. At times, however, the subject felt artificial: arguments could become highly technical and as the famous saying

goes, a man's life could hang on a full stop or a comma! The legal analysis is fascinating, but it sometimes produces results that are so technical and do not always accord with the sense of justice of the ordinary people. The course made me think deeply about justice, even though that question was not pursued in the course as fully as I would have liked.

I expected that I would enjoy constitutional law, but it was different from what I had imagined. Peter Wesley-Smith was a great scholar whom I very much admired (and an excellent mentor when I first joined the law school to whom I am forever grateful), but the course content at that time was rather remote from everyday life in Hong Kong. We followed an English constitutional law syllabus, studying prerogative powers and seventeenth-century constitutional history, while leaving out local controversies such as the Governor's powers, democracy, corruption, censorship, or unauthorised assembly. The course has since evolved, thanks to Peter and many others, and is now far more relevant to Hong Kong.

Q: Did you participate in any extracurricular activities?

JCSC: Yes. In my second year, I became Council Representative, later renamed as External Vice-Chairman, of the Law Association. Law students then had a poor image within the university, being perceived as elitist, proud, unsociable; and probably because a considerable number of us came from upper middle class, unnecessarily well-dressed when going to school !, To be fair, formal dressing was very often required for mootings and other professional events, but at the time when the prevalent spirit of the university was outreach and care for the HK society and understanding China when it first opened its doors after the fall of the Gang of Four, the outlook and demeanour of law students were perceived to be aloof, isolationist and even colonial.

The law school was small —about 200 students in total—so we tended to know everyone. I lived in St John's College and wanted to connect the law school more closely with the wider university and community. I joined the editorial board of *Law Media*, a regular student publication, and published the first Chinese piece in the publication. At the time, there were heated debates on campus about the status of Chinese in society. Six of the seven faculties supported the Chinese Language Movement; Law was the only exception. When I asked the then Chairman of the Law Association why, he said he knew nothing about it. That prompted me and others to run for the Law Association, to change people's image about law and bring law closer to the community.

Q: Did you plan a legal career during your undergraduate years?

JCSC: No. I wanted to learn the subjects and was intrigued by legal reasoning. I had no career plans, and there was a youthful reluctance to join what seemed an exclusive and elitist profession.

I did summer placements with solicitors and barristers. By the end of the LLB, I knew I was not drawn to a solicitor's office-based career. The Bar appealed to me for its independence, freedom, and satisfaction, but I also wanted to see the world. So, I decided to do further study overseas. Overseas study was uncommon and expensive, but my year at the London School of Economics and Political Science (LSE) changed my career path.

Q: Do you think those students' observations were true, that law students tended to come from the upper social class?

JCSC: It is a stereotype, but there is some truth in it. It may vary from year to year, but longitudinal studies by the Students Affairs Office of the University do suggest that law students generally came from more privileged backgrounds, for example, when the majority of people in Hong Kong lived in public housing estates, many law students had their own desks and rooms at home; many lived in private properties and owned family cars. But of course, there are always exceptions.

Q: Which papers did you read at LSE?

JCSC: I am required to do four papers but given such an invaluable opportunity and being hungry for knowledge, I tried to expose myself to as many subjects as possible, and ended up studying eight papers. HKU's curriculum was then modelled on that of the University of London External Programme, which offered little choice, and was leaned more towards the solicitor route than the Bar. As negotiations over Hong Kong's future had just begun, I chose courses that might be relevant to the future of Hong Kong.

I was interested in civil liberties, so I took Human Rights and International Institutions with Professor Rosalyn Higgins QC. I also took Criminology and Comparative Family Law. The latter was especially eye-opening. In Hong Kong, family law was largely taught as black-letter law on divorce, children, and custody. At LSE, these issues were treated as social issues and were approached as solutions to these issues. A comparative approach allowed us to examine the solutions adopted in different jurisdictions, which were shaped by different social conditions, cultures, and ideologies. For example, Scandinavian countries believe that the state should be neutral on institutions like marriage. So they equate cohabitation with marriage and remove the legal differences between these two forms of institutions. Without legal burdens or social stigma, people can then make a free choice of marriage or cohabitation. To me, such progressive approach was really fascinating and stimulating.

I also took Administrative Law at UCL, as the inter-collegiate regulations allowed us to take not more than two courses from other colleges. I even attended a few Intellectual Property classes taught by Professor Bill Cornish, a leading authority in the field, but decided it was not for me. Because of LSE's strength in social sciences, I also audited Social Administration and Social Planning. The latter covered issues such as running a national health system, planning a third runway at Heathrow, manpower planning and so on. It was methodological and complemented my study of administrative law.

Q: Did LSE make you consider academia?

JCSC: Before LSE, I had not considered an academic career. At LSE, Professor Rosalyn Higgins QC and the late Professor Peter Duffy QC had a profound influence on me. Rosalyn was very demanding, extremely hard-working, and a leading silk who then served as the United Kingdom's representative on the Human Rights Committee under the International Covenant on Civil and Political Rights. She was later appointed to the International Court of Justice and became its President. Peter chaired Amnesty International, edited the *European Human Rights Reports*, and later became an Honorary Queen's Counsel. He introduced me to the European Court system and Amnesty International field work. Both showed me how enriching an academic life could be, and how it could combine with legal practice and community services to make a difference.

Three factors drew me towards academia. Firstly, I was looking for a human-oriented career in which I could build relationships, something barristers rarely do with clients. Secondly, I enjoyed research, and London gave me time to read widely and reflect deeply. There were a

lot of research that could be done in Hong Kong. Thirdly, with the negotiations on the future of Hong Kong under way, I felt Hong Kong's legal education could be benefited by a stronger local perspective. Albert Chen was then the only full-time Chinese academic in the Law Faculty. Given my more outgoing personality, I thought I might have greater influence on future generations of law students and lawyers, not just by what I taught in the classroom but also by what I was as a person outside the classroom. To achieve that, I needed to acquire some practical experience about the real world. So I decided to join the Bar before I entered the academic world and tried to follow the footsteps of Professors Rosalyn Higgins and Peter Duffy, to cross between town and gown. In the end, I never leave the Bar and have the privilege to maintain parallel careers in practice and academia, thanks to the inspirations of Rosalyn and Peter.

Q: Where did you get work experience?

JCSC: I served my pupillage with Sammy Lee at Martin Lee QC's chambers. Sammy was an excellent pupil master. Unlike today, we usually had no more than two pupil masters. Sammy's practice was mainly civil, and I learnt some criminal practice from other members of the chambers. The experience gave me a good sense of the life at the Bar, which I enjoyed and was proud to be a member. After qualification, I joined the Annex of Martin Lee QC's chambers. Those early days were memorable: as junior barristers, we shared our anxieties, excitement, and mistakes. I was fortunate to start well and had no shortage of cases. I worked extremely hard, usually arriving in chambers not later than 7 a.m. and taking the last MTR home. Two of my contemporaries in chambers were Madam Justice Marlene Ng and Judge Kwok Wai Kin. Sammy was among the first batch of lawyers to emigrate after the Joint Declaration. In 1991, at Daniel Fung QC's invitation to establish a leading public law set, I joined Denis Chang QC's chambers with Philip Dykes, and I have remained there since.

Q: What made you decide to return to Hong Kong after LSE and your doctoral studies?

JCSC: By the mid-1980s, after the signing of the Joint Declaration, Hong Kong's future was clearer: it would be reunited with China in about thirteen years. The drafting of the Basic Law had begun, and I became involved in constitutional law and Basic Law work. It was an exciting period. The whole community was engaged in constitutional debates and in shaping Hong Kong's future, though no one knew whether the arrangement would work. I took part in public forums, discussions, and television debates almost weekly. By the late 1980s, I felt overwhelmed and needed a break to consider my next step. I took sabbatical leave, returned to LSE, and began doctoral studies with Professor Rosalyn Higgins QC. Then came Tiananmen event in June 1989.

The events of 1989 affected many people. Emigration had begun in the mid-1980s and accelerated after 1989, peaking in 1990 and 1991 at about 60,000 families a year, many of them being well-educated professionals and affluent families. In order to stop the brain drain, the Hong Kong Government introduced, among other measures, the Bill of Rights and direct elections to the Legislative Council. For a public lawyer, what could be more inviting than a chance to shape a constitution at a major constitutional moment in history? I was about 70% through my doctoral thesis on nationality arrangements at the time of territorial change. While it was initially done with very much Hong Kong in mind, my research had led me to numerous studies in Europe after the two World Wars when the map of Europe was drastically redrawn. There were numerous issues of conflicts of nationality laws. It was interesting, but by the early 1990s, the studies looked like to be of interests to only a small number of specialists. Unlike some disciplines, law does not require a doctorate for either academia or practice. At the same time, Hong Kong faced real issues affecting millions of people for years to come. I felt Hong

Kong was where I belonged and that I could contribute to the constitutional development in Hong Kong at that critical moment. I decided to return and was pleased to be able to contribute to many constitutional projects, including the drafting of the Bill of Rights, the development of human rights jurisprudence in Hong Kong, the transition to a bilingual legal system, curriculum reform etc. Rosalyn later told me she knew that once I returned to Hong Kong, I would never have been able to finish the doctorate. There are always difficult choices in life. I do not regret mine and might probably do the same if I were given the choice again, though little could I foresee that the absence of a doctoral degree would haunt me twenty years later in the Pro-Vice-Chancellor nomination.

No one knew what Hong Kong's future would be. People asked why I was optimistic about the future of Hong Kong when many people were planning to leave. I think once you have decided to stay in Hong Kong, the question is no longer optimism or pessimism; you simply have to make it work. That may be the instinct of a barrister: once you take up a case, you just do your best. At the time, it was a challenging opportunity.

Q: How did you balance academia and practice? Why was outside practice so controversial in the University?

JCSC: It was very challenging. As both a junior scholar and a junior barrister, I faced heavy demands on both sides. I was fortunate to start well in practice. In my second year, I represented an MTR engineer in the Hong Kong's first computer fraud case. The case attracted media attention, and a commendation from the bench brought me more work. The difficult question was whether to give up practice. But the academic opportunities were unique, so I tried to keep a foot in court while prioritising teaching and research. The balance became harder as I became more senior as the cases became more interesting. It required discipline and the ability to say "no".

If done properly, practice is complementary to research. Cases generated ideas for academic work, and research informed legal arguments and development. Rosalyn Higgins and Peter Duffy showed me how almost everything in practice could be turned into academic work. There was also a tension between English and Chinese publications. Publications in Chinese, especially those not in traditional academic journals, were basically ignored for assessment and career advancement at the University. It was before the internet era. An English academic article might be read by a handful of people and usually appear months later, sometimes after the issue had gone stale. Chinese writing, especially in popular forum, brought immediate reactions and sometimes government attention. Constitutional issues changed quickly, so public forums mattered. It was a choice between writing for career and intellectual advancement and writing for practical changes at a critical constitutional time. Ideally one should do both, but time is limited. Writing in both Chinese and English, in both academic and popular outlets, while practising at the same time, was extremely exhaustive and demanding.

That balance continued throughout my life. I thought experience would allow me to spend less time on practice, but that was wishful thinking. At the Bar, seniority brings more complex cases; simpler cases go to the juniors. Later in life, I could be more selective, cases are more interesting and could make a real impact, but heavier responsibilities at the Faculty also meant making hard decisions on priority; I would just have to decline the temptation of interesting cases to properly discharge my academic responsibilities.

Outside practice is always controversial. HKU has a few professional faculties, and the tension between academic work and private practice is particularly acute and could at times become quite sensational. Some colleagues at the university thought academics who engaged in

private practice are using university time and resources to make extra earnings for purely personal benefits. Yet those who thrive in practice are often strong and conscientious teachers. They argue that practice enriches teaching and research. Some also said university salaries are too low to attract successful practitioners, so outside practice helps recruit successful practitioners to teach. Given the scarcity of research money, some colleagues used their outside practice income to fund their own research, which money apart, also give them greater autonomy in the use of funding. There are also debates on the control of the time for outside practice and use of practice income, but these controls still rely very much on self-discipline. Some of the control on the use of practice income may impinge on professional requirements not to share income with non-professional members, which include the University! There are no doubt benefits as well as abuses in the system. Similar debates arose in architecture, medicine, dentistry, and engineering. There were even civil and criminal litigation, and every now and then, bad publicity resulted in calls for stricter controls and disciplinary action.

The debates particularly affected our PLE Department, which was practice-oriented and needed teachers with substantial practice experience. Its then head, the late Professor Peter Willoughby, was a brilliant tax lawyer with a successful practice in Hong Kong and the United Kingdom. As university debates intensified, the issue became personal within the Faculty. Some argued that practising academics were excellent teachers, while some non-practising academics neither published nor taught well. Others put it more bluntly: "I went to court every day but is it not better than some of my colleagues who were at the swimming pool every day."

A particularly sad case arose in the early 1990s. Jill Spruce, a colleague with a successful practice, taught criminal law and practice. She arranged all her teaching on Saturdays and spent most weekdays in court. A senior member of the Bar who also served on the University Grants Committee queried how a full-time academic could appear in court every day. Jill's confrontational style did not help. The dispute led to disciplinary proceedings, judicial review, and an appeal to the Privy Council. She lost; her career was ruined; she was bankrupted and disappeared from view ever since.

The controversy has caused some strong academics, especially in law and medicine, to leave. The university remained skeptical of outside practice until the early 2000s, when it became more accepted that practice and academia could complement each other if handled with discretion and restraint. The mood shifted again after convictions of some medical professors over outside-practice income and media reports on senior colleagues serving as independent/non-executive directors of many companies. There are merits and abuses on both sides. Done properly, practice and academia can be genuinely complementary, but only with a high degree of self-discipline.

Q: Would it be different if most of your cases had involved public interests or human rights, such as your participation in the Bill of Rights Ordinance? Would that distinguish you from colleagues who simply ran law firms or appeared in court for money?

JCSC: Probably not. To sceptics of outside practice, the areas of practice make little difference. But, inspired by Rosalyn Higgins and Peter Duffy, I believed academic practice should be specialised, so that one could contribute meaningfully as an expert. That is more valuable than general practice. For a junior barrister, however, there is little choice: you take whatever cases that come to your way. Thus, it is particularly difficult for a lecturer to engage in private practice as a junior practitioner. In my first ten years, I handled a wide range of civil, criminal, and commercial matters. That broad exposure later proved invaluable in building up a specialised practice and bridging the gap between town and gown.

When students ask whether they should specialise in human rights or public law, my reply is that the aim is laudable, but they must understand who uses public law arguments. The first group are defendants in criminal cases, because of the close link between criminal law and human rights. A public lawyer must therefore know the criminal law well. The second group are businessmen, who often invoke human rights arguments only to advance their commercial interests. Only after working with both criminals and the wealthy do you get to the more conventional human rights cases. At least this was my own experience.

My first Bill of Rights case concerned the reversal of the burden of proof and the presumption of innocence in criminal proceedings. It later emerged that Hong Kong law contained more than 300 reverse-onus provisions, and successful challenges led to their overhaul. The first few years of the Bill of Rights were filled with criminal cases, leading some judges and critics to call it a Bill of Wrongs or even a Criminal Charter! My first civil Bill of Rights case involved free speech. I acted for a wealthy businessman whose television station was barred from broadcasting in Cantonese because the Government had granted an exclusive Chinese-language broadcasting licence to a rival station. Although it was not a classic free-speech case, it established useful principles. In the early 1990s, I acted for developers in a series of cases against the Town Planning Board. Because property rights were not protected under the Bill of Rights, we used the right to fair hearing to challenge the planning process as a backdoor to assert property right. The developers' interests were commercial, but the cases established principles later available to the victims of unfair process.

That is why I tell students they must also have a good grasp of civil and commercial law for a public law practice. Take adverse possession as an example. A trespasser who occupies land for long enough may acquire a good title, but why should the lawful owner be compelled, not only to transfer his title on the ground of greater good, but also to transfer his title without any compensation? To mount a constitutional challenge, one must first understand the law of adverse possession thoroughly.

The lesson is that good public lawyers need strong foundations in both civil and criminal law. Specialisation takes years, and exposure in different fields will provide valuable foundation for specialisation.

My other advice is don't be preoccupied with what is "practical". Life is full of unpredictable. Follow your interests; you do best in what you find interesting and meaningful. What is practical depends on what life brings. When I went to London in the early 1980s, I had no idea human rights would become relevant in Hong Kong. During a scholarship interview, I was challenged for wanting to study human rights, which was then seen as radical and even rather "useless". In my early practice, I rarely argued human rights cases, apart from one or two cases on police powers. No one could foresee that Hong Kong would have a Bill of Rights in 1991 and a Basic Law in 1997, creating the conditions for public law to flourish.

Q: What were some major changes to the university and the legal profession before and after 1997?

JCSC: In the legal profession, 1991 was a watershed. The Bill of Rights led to a surge in human rights cases, first in criminal matters, then in commercial and other contexts. Despite controversies, particularly from the Chinese Government, the six years before the Handover gave judges, lawyers, and the community invaluable time to prepare for the Basic Law. Over the next fifteen years, public law flourished, and Hong Kong became an outstanding example of constitutional liberalism. The development into a bilingual legal system was another major

challenge. It was started by the provision in the Joint Declaration and later incorporated into the Basic Law that “in addition to Chinese, English may also be used as an official language...”. The Legal Department considered that this phrase presupposed the existence of a Chinese version of the law, without which the English version alone could not survive the change of sovereignty. I very much doubt the correctness of that interpretation, but a transition to a bilingual legal system is inevitable as a matter of political choice and possibly practical needs. It requires not just a change of language, which is difficult enough in view of the lack of suitable Chinese lexicons, but also a change of mentality. I was a member of a Working Party on Greater Use of Chinese in Court, chaired by Sir T L Yang. Some local magistrates who appeared before us expressed an anxiety of a loss of dignity when the bench and the defendant were speaking the same language!

Talking about Chinese legal lexicon, by the mid-1980s, legislation was drafted only in English. Case law was of course in English. Court proceedings were conducted in English; while lower courts could use Chinese since 1974, this did not happen. There was not a single Chinese law textbook. Taiwan and Mainland China used different legal lexicons; so the same words in Taiwan or the Mainland may bear different meanings and connotations in Hong Kong. Albert Chen and I tried to build up a body of Chinese legal lexicon through our writings and participated in various bodies in their work leading to a bilingual legal system, covering legislation, court proceedings, language of evidence, legal submissions, records, and judgments.

At the University, we think that there were a few priorities. First, we need to revamp our curriculum to prepare our students for a new constitutional era. In a globalised world, knowledge in one single discipline or one single jurisdiction might not be adequate to meet the challenges in the future. Professor Albert Chen should take the credit for introducing the first two double degree programmes (Law and Business and Law and Social Sciences) in the Faculty when he was Dean. I took from him and further expanded these double degree programmes, including double degree programmes with overseas universities.

Secondly, we need to introduce the study of Chinese law into our curriculum. We introduced basic Chinese law courses for the undergraduates, created specialised LLM in Chinese law programmes for the practitioners, and launched the Master of Common Law programme, which brings mainland students to Hong Kong and exposes Hong Kong students to the Chinese legal system. Interaction with China was intensified. In the early 1990s, as China sought to develop its legal system, it looked to Hong Kong for guidance. We gave talks, demonstrated judicial review, and arranged internships for mainland judges and officials to observe the work of our common law courts.

Thirdly, we expanded our public law and financial law programmes. On public law, we were fortunate to attract Professor Yash Ghai, our first Sir Y K Pao Chair in Public Law, and Professor Andrew Byrnes. We introduced a Human Rights Programme which would meet the standards and rigour of similar programmes in the West and which focuses on issues that are of special concern to Asia, such as social and economic rights, poverty, women and children, human trafficking and refugees etc. It was interesting that we were in a unique position to offer that kind of programmes: Australia did offer similar programmes, but they were not perceived to be part of Asia. Singapore could do this, but this would not be their priority. Japan could do this, but she was hampered by her language. India could be messy. So Hong Kong is ideally placed to do this kind of programme. With the support of some donors, we soon built up the reputation of the programme, which attracted students from many Asian jurisdictions, covering most of the countries that are now within the One Belt One Road Initiative, except that we did it thirty years earlier. Some of our graduates have later become human rights champions,

Ombudsmen, Equal Opportunities Commissioners, Attorney General, and even Chief Justice in their own countries.

I strongly believe that the success of One Country, Two Systems lies in our being able to maintain our uniqueness. Hong Kong's value to China lies in our being different and in preserving our distinct legal system, and not in becoming just another Chinese city. We have to maintain that differences, or otherwise we are doomed! One of our strengths is our international links and experience, which the law school needed to reflect. By the late 1990s, we were mainly a good local teaching institution. We had to reach out to the world. When I became Dean in 2002, I pushed for internationalisation with a view to putting the Faculty on the global map while continuing to contribute to China. Exchange and double-degree programmes are common places now, but we were among the pioneers.

Q: Were there any other major achievements or developments during your twelve years of deanship?

JCSC: The early and latter parts of my deanship were different. At the beginning, the PCLL was the immediate challenge. The Roper-Redmond Report recommended abolishing it and replacing it with short profession-run courses. The issue was really who should control entry to the profession, how that control should be exercised, and what best served the public interest. It was difficult and complex issues that need to reconcile different interests. It is necessary to recognize the legitimate interest of the profession in our PCLL programme, and at the same time strike a proper balance between quality and control on the one hand and institutional autonomy on the other, bearing in mind what public interest, and not just professional or institutional interests, demand. We resolved the problem by revamping the PCLL programme, giving up some institutional control over the programme by creating a balanced academic board, retaining full control over our LLB and undergraduate programmes, while strengthening and enriching the undergraduate curricula. It was frankly a long and painful process. At the end it has worked out reasonably well, and I was grateful for the support of the profession and the judiciary. Yet after I stepped down from the Deanship, the issue came back again, albeit in different forms, as the underlying issue of who controls the entry to the legal profession could never be fully resolved.

Another major challenge was internationalisation. As noted before, we had to move from primarily a local teaching faculty to an international research faculty, encouraging stronger research, and putting ourselves on the world map.

At the turn of the century, everyone talked about internationalisation, but the question is how to achieve it. It is something more than just signing collaboration agreements with overseas institutions.

Many collaboration arrangements failed because they were just a paper exercise. Real collaboration depends on people knowing and trusting one another. My approach was to begin with building up relationship with selected universities. We needed willing partners with shared interests and at a similar stage of development, and we needed to bring the staff and students together. When we assessed partners, they were assessing us too. Every good university guards its reputation carefully. To go beyond routine politeness, we needed concrete projects and sustained interactions. It took years to build that trust. We had excellent colleagues in different fields; we encouraged them to reach out. We created opportunities for international collaboration, and secured funding to support international visits and collaborations. Once people knew and trusted one another, sustainable collaborations became possible. We had

strong partnerships with UCL, the University of Pennsylvania, NUS, and UNSW, and less successful ones elsewhere.

Another priority was Asia. Like many Asian universities, we knew more about the West than about our own region. We understood Singapore as a competitor; we knew little about the legal system of Japan, South Korea, or Thailand, let alone other less popular tourist countries in Asia. Singapore also wanted to take a lead, and we worked together to establish the Asian Law Institute. It brought leading Asian law schools together through fellowships, conferences, and academic exchanges. That was a valuable endeavour. It helped me understand Asia much better, but it also revealed wide differences in academic standards and expectations. Singapore, Australia, and Hong Kong were generally strong; standards in Malaysia and India varied, while Pakistan and the Philippines faced greater difficulties. There were excellent individuals everywhere, but institutional strengths varied greatly. The challenge was how to work constructively with many different institutions. We also brought China into the consortium, which helped us establish ourselves in Asia and, in the early years, support some Chinese institutions in reaching international academic standards.

The third focus was China. From the mid-2000s, China was changing rapidly, and we had good relationships with all key mainland institutions. I believed that Hong Kong should contribute where it could, while remaining distinct. Our value to China lies precisely in being different.

The Master of Common Law programme has served a useful purpose of training young and capable Mainland graduates, but it was limited in scale and in its reach because of the English language requirement. I hoped to do something broader with a wider impact on the rule of law in China. I tried to work with the Chinese judiciary. We nearly reached an agreement with the Supreme People's Court on a systematic short training programme for all national judges: a regular two-week programme in Putonghua, combining exposure to common law values with specialised courses in areas such as tax, evidence, children's law, intellectual property, and finance. Unfortunately, the proposal fell through after the outbreak of Occupy Central in Hong Kong.

I served three terms as Dean from 2002. My first three-year term was elected. Around 2005, the University moved to an appointed senior leadership system, which some colleagues saw as a step backward. We reached a compromise: the University made the appointment, but the selection process was open and largely conducted within the Faculty. I was then appointed for a further five-year term after a competitive process. The appointed-dean system was not easy. The University expected the Deans to act as part of senior management and to implement institutional priorities, while faculties expected their deans to represent and defend their interests. Balancing those roles required persuasion, creativity, and careful manoeuvring. It is particularly challenging in an institution like a university, when one can only lead by examples and persuasion rather than powers and hierarchy. One of the problems with University management is that it gave no training to any members of the senior management. It assumed that a good academic would necessarily be a good leader at the senior management level, an assumption that often proves wrong than right. Academic research requires one kind of skills; managing an institution requires quite different skills, especially when the job of a Dean had been dramatically expanded at the beginning of the millennium, covering a whole range of activities such as budgeting and financial planning, human resources management, institutional building, fundraising, public relations, even building management! The list can go on, but many of which has nothing to do with research ability! I have been advocating for years that there should be proper management training for all academics who are to take up senior leadership positions and a clearly defined administrative

career for those who are good in administrative leadership, but this has fallen on deaf ears. In Hong Kong, university is probably the only institution where an academic could be given the most senior administrative/leadership position without any administrative experience!

Allow me to divert a bit here. In many traditional universities, ours included, there are three types of members: the researchers, the teachers, and the administrators. The research professors are of course the key members of the universities, as they are the one who build up the reputation and research excellence of the universities. Teaching is of course also a key mission of any good university. While we all admire professors who are both excellent researchers and teachers, and there is no shortage of them, there are undeniable excellent researchers who are hopeless teachers, and there are excellent teachers who are only average researchers. While teaching and research are often said to be of equal importance, and while HKU has gone some way to recognize good teaching, it is, more often than not, research rather than teaching that matters when one comes to tenure or promotion. Relief from teaching is seen as an award for good researchers, whereas relief from research is perceived to be for those who are unable to excel in research, or even punishment for those who could not meet the requirements of research assessments, no matter how good they are in teaching! In a large and modern university with hundreds of academic staff, I believe there are rooms for recognizing good teaching independent of research. Good research benefits the community; good teaching inspires and may change the life of an individual. Students remember their teachers as caring and inspiring teachers rather than excellent researchers long after they graduate.

In contrast, administrators are a class of their own. They are regarded as supportive staff and are often treated that way. They do not take part, or at least not encouraged to take an active part in decision-making by the academics, and yet from time to time they have to make good the messy situations that the academic staff have made. They are rarely given credits for success but have to take the blame if anything goes wrong. We tend to know and welcome the most junior new academic member, but few academics know the name of administrative colleagues who may have worked in the Faculty or University for many years. I think this is utterly wrong and unhealthy; and it reflects poorly on the institution. Many administrative staff are experts in their own field, with vast experience of how to run the institution. Over the years, I have the privilege of working with many excellent administrative colleagues at the University and indeed learn a lot from them. They are an equally important part of the University and deserve the same respect as any academic staff. There is a saying that a Faculty could run for months without a Dean but would come to a standstill within days without the administrative staff! There are of course both good and bad administrative staff, just like there are good and bad academic staff. Yet what is important is a change of attitude to recognize and respect each other as equal colleagues who play an equally important role in the success of the University.

There is of course the fourth category of members: the students. It is sad to see that active students are treated with hostility by university administration these days. They may be idealistic or naïve; they may make mistakes, but who didn't? We all have been students and might be even more naïve at that time. As educators, our role is to listen, to discuss, and to lead them to the right path, to make allowances for their mistakes, and to give them opportunities to reflect, rather than resorting to police, criminal prosecution or disciplinary action as the first port of call!

By the end of my second term of my Deanship, around 2010, I thought it was time to step down. No one should remain in leadership position for too long; an institution will become

stagnant and lacking in creativity if leadership remains unchanged for too long. But two major challenges persuaded me to stay longer.

The first was Hong Kong's major secondary-school curriculum reform. The 7-year A-level and O-level secondary school curriculum was to be changed to a 6-year DSE curriculum, which change requires the universities to extend most of their undergraduate degrees to four years. There were major debates in the University on what the 4-year curriculum should look like, and how to cope with two cohorts of students who would be admitted to the University at the same time in 2012. For us, as a result of the PCLL controversy in the early 2000s, our LLB programme was already a 4-year programme. The question was whether law should become five years, with implications for double degrees and overseas collaborations. I thought a five-year LLB was out of the question. With the PCLL, double degrees, and traineeship, a legal qualification could take eight or nine years, which was simply too long and impractical.

We therefore had to resolve the structure of the LLB. I persuaded the university to keep it as a four-year programme. We also had to manage the transition, because the final cohort of Form Seven students and the first DSE cohort entered university at the same time. That meant a double intake for the PCLL, with consequences for curriculum planning and the job market. It was unfair to that year's graduates, and we tried to alleviate any negative impact as much as possible.

The second challenge was the move to the new premises. The University had decided to build the Centennial Campus, which would house Law, Arts, and Social Sciences. Construction was on a tight timetable because the campus had to be ready by 2012, when two cohorts of students would be on campus. As Dean, I had to oversee the construction of Cheng Yu Tung Tower. Because of these two major projects, I agreed with the Vice-Chancellor to stay for another term, at least until the projects were completed. In the end, I remained until 2014, becoming one of the longest-serving deans. Both initiatives were important and were implemented smoothly. The building became, in some sense, a legacy for the Faculty, while the curriculum reform was crucial for students.

At that time, I also developed another programme of which I am even more proud than the new building: clinical legal education.

Q: Why was the clinical programme important for you, as you mentioned in your book *Paths of Justice* that it was your proudest achievement?

JCSC: It served three major purposes. First, clinical education gives students a form of learning that cannot be replicated in the classroom, especially in practice and ethics. Students must confront real problems and take up real responsibilities. Second, it helps nurture a pro bono culture. Students learn that legal knowledge can be used to serve the community, and that experience may make them more willing to provide pro bono service later in their career. And thirdly, it meets an unmet demand for legal services in the community. Indeed, our legal clinic has offered valuable services to the public who would otherwise have very limited or even no access to legal services and justice.

I saw clinical legal education as a long-term project. The new building was designed to include office space for the clinic, but to launch it properly I needed support from the profession.

I secured support from the Chief Justice, the Bar, the Legal Aid Department, and the Department of Justice, but faced opposition from the Law Society. They seemed concerned that we would compete with solicitors. I explained that the clinic would be a partner, not a

competitor, and would mainly assist people who could not afford lawyers. Even so, they made the process difficult.

At one committee meeting, I explained the rationale, drew on examples from other jurisdictions, and addressed concerns about ethics and insurance. I was prepared to comply with all professional requirements and to submit voluntarily to the Law Society's disciplinary jurisdiction. Quality would be our foremost concern, and the clinic would be run professionally. Yet no one seemed interested. The Law Society suggested that we establish a law firm, but that made little sense. A law firm is profit-oriented and then had to be registered in an individual's name. Who would that person be, and what would happen if that person left the university? No other clinical legal education scheme required such an arrangement.

Eventually, the then President of the Law Society, a good friend, helped. He saw the value of the scheme but told me privately that he could not get it through his committee. His advice was to proceed, and he would support us if problems arose. Eric Cheung and I then devised the current model, based on the Law Society's Free Legal Advice Scheme, with modifications.

The Chief Justice was also very supportive and suggested that we speak to the Small Claims Tribunal. It had only civil jurisdiction; parties appeared in person, and lawyers had no right of audience. It therefore seemed an ideal starting point. The Tribunal welcomed the idea because it had a heavy backlog and hoped our students could help parties comply with procedures and prepare for hearings, work that otherwise took up considerable judicial time. The difficulty was fairness: we could not act for both parties. If we assisted one side, the other would remain unrepresented.

We therefore worked on the basis that the other side had to consent to our involvement. The Department of Justice agreed to that: when it was the opposing party, it would consent to our representing the other side. But it had few Small Claims cases. Large corporations, such as the MTR, had many cases and were represented by in-house lawyers, but we could not obtain their general consent. I tried to persuade my counterpart at CUHK Law to establish a similar pro bono scheme so that each side could be assisted, but that has yet to happen.

HKU remains the only Hong Kong law school running such a clinic, and I am proud we established it. We built our reputation through referrals from voluntary agencies, words of mouth, and good publicity. Eric oversaw the clinic and, together with Edmond Lam and Edward Chan, did a wonderful job. With the assistance of many practitioners, they provided hands-on training and supervision. The clinic handled many important cases, some by us and some in collaboration with practitioners, including cases where legal aid had been refused and some that reached the Court of Final Appeal. Students found the course meaningful, and many returned to help after completing it. Although I failed in persuading other Hong Kong law schools to follow suit, I did influence my good friend Dame Hazel Genn QC (Hon), then Dean of the Faculty of Law of University College London, to introduce a similar programme at UCL.

Q: Early on, you said that during your deanship, one of your goals was to turn HKU Law from a teaching school into a research law school. What do you think are important in making a good research law school?

JCSC: A good research law school needs a strong research culture and an open, conducive research environment; a passion for research for betterment of society; an eagerness to share and bombard one another with ideas. As Dean, I encouraged colleagues to present their work in progress, introduced mentoring so senior colleagues could support junior ones, funded conference attendance and distinguished visitors, allowed more flexible teaching

arrangements for major research projects, strengthened administrative support, and tried to reduce the administrative burden on academic staff. There were successes: colleagues produced excellent work, we attracted visitors and conferences, and interdisciplinary collaboration increased. However, maybe we focus too much on the external side, we tend to overlook or downplay the internal environment. I would like to see more internal discussions and sharing. It takes time to build the kind of vibrant academic atmosphere that I have seen in many other distinguished universities overseas. A good research law school can never be driven by research assessment or just motivations for career advancement, but a genuine passion, interest and open-mindedness for knowledge for the betterment of the global world.

There is no shortage of support from the University on research these days. The danger is that we may adopt a rather myopic view on what constitutes research and tend to focus on short-term results

Q: Universities now place heavy emphasis on research, including external assessment exercises that affect funding and internal assessments for promotion and tenure. What is your view of these exercises?

JCSC: Research assessment exercises are useful because they force universities and academics to take research seriously. Hong Kong's universities have produced far more publications and excellent research in recent years. But "publish or perish" also creates tremendous pressure, especially for junior colleagues seeking promotion and tenure.

There are drawbacks. First, the usual three- or four-year review cycle is too short. Given the lead time for publication, it encourages short-term projects aiming for quick, visible outcomes. Second, the emphasis on international publication can undermine the value of research on important local issues. To publish internationally, some colleagues focus on topics more relevant to other jurisdictions. But if everyone does that, who will study Hong Kong law? There are research issues that are unique to Hong Kong, and these works have to be done if we are to develop our law. Hong Kong law can also be internationally significant if it is written in a way that speaks to a wider audience. Private law and family law also offers many opportunities for comparative work.

Third, the current assessment relies too heavily on metrics. We have all kinds of indexes and rankings these days. Some universities have even drawn up a list of high impact journals and would not recognize publications outside these journals. Some may even offer monetary awards for successfully publishing in these journals. While I respect work published in top-ranked journals, that should not be the only criteria for assessing values or impact. The *Federalist Papers*, now a classic and mandatory reading in constitutional law for every US law school, began as newspaper articles. Today, such work would not be given any value in our research assessment exercise.

I also have reservations about judging publications by the journal in which they appear. There are many reasons to publish in one journal rather than another, including human considerations such as courtesy to an institution that invited you to speak. A lower-ranked journal does not mean an article is poor, just as a prestigious journal does not guarantee quality. The value of an article must be judged by the work itself, not by its venue.

Judging quality by journal ranking is a lazy shortcut. It treats scholarship like luxury brands and fashion: if the brand is famous, the product must be good. That may have some place in certain disciplines, but in arts and humanities, there is no substitute for reading the work. Unfortunately, universities increasingly apply science-based metrics across all disciplines.

At the same time, we must avoid becoming too inward-looking. Universities should also ask how they can contribute to global issues. I was impressed when LSE, in celebrating its centenary, asked alumni to identify three global challenges to which it could contribute. It eventually focused resources on poverty and discrimination. That was a visionary approach: looking beyond immediate local concerns to the wider impact on the world.

We are unlikely to be able to escape from assessment by metrics, so we have to learn to live with them. Do what is required, but do not let metrics define academic life. As academic leaders, we should create space for colleagues, recognise genuinely valuable work, and support important and valuable work whether it fits the conventional research requirements or not.

Q: If some of the points you raise in court have value, but the court dismisses them as academic arguments without seeing the essence, how would you deal with it?

JCSC: Keep trying. Every barrister knows the frustration of making a strong argument that the court ignores or brushes aside. First ask whether the argument is flawed or whether you failed to convey its force. It is easy to blame the judge, but the better question is whether you explained it clearly enough. If the point is good but does not arise, it remains live; if it is good and relevant but ignored, find another case and another opportunity.

As an academic, I can criticise judgments in writing, and judges do read what is said about their decisions. The point is to keep the dialogue going. Do not be discouraged by one defeat; rejection can help refine the argument. Many leading cases emerged because lawyers challenged settled views repeatedly. In my early town-planning cases on fair hearing, I lost most arguments, with varying reasons. Years later, in a police disciplinary case, I revisited the issue and the Court of Final Appeal established important principles. It took a decade of losses, refinement, and persistence.

This also reflects the divide between town and gown, which I tried to bridge. Before the 1980s and into the 1990s, academia and practice often seemed separate. Some academics thought practitioners cared only about practicalities, while some practitioners thought academics lacked realism. Having lived in both worlds, I think the truth lies somewhere in between.

Academics sometimes underestimate the effort involved in arguing a case, especially on appeal. As cases move up the hierarchy, arguments become more refined and often more academic. Good lawyers test every point against possible counterarguments before entering a court; opponents and judges then scrutinize them relentlessly. That rigour sharpens arguments in a way sometimes lacking in academia. One regret from my deanship is that I did not do more to foster rigorous internal exchanges. The intellectual challenge of high-level practice is something universities should cultivate.

A lesson from the Bar is to put a lost case behind you, recover, and prepare for the next one. If you believe you are right, find another case and try again. Temporary defeats are part of life; what matters is how quickly you recover. Accept defeat, but do not give up, and be ready when the next opportunity comes.

Q: What will be the challenges of the Hong Kong legal profession in the near future?

JCSC: A major challenge is to maintain Hong Kong's standards while engaging with Mainland China.

Take IPOs. Hong Kong remains valuable because it is trusted as a place to raise capital. If gatekeepers lower scrutiny to attract more Mainland listings, they undermine the standards that sustain Hong Kong as an international financial centre. The same applies to universities, professional ethics, and other areas: Hong Kong's value lies in maintaining standards, not compromising them.

Another risk is complacency. China is important, but the world is larger. We call ourselves international, yet many "international" students and managed assets come from the Mainland, and Hong Kong is becoming increasingly monolingual. We seek Middle East funding but know little about Muslim societies. Singapore attracts international litigation with a legal system comparable to ours. Why choose Singapore over Hong Kong? Partly because we increasingly resemble mainland China. Hong Kong's value to China lies in being different—legally, intellectually, and institutionally—not in becoming another Shenzhen or Shanghai.

That requires the courage to be different. People respect principled dissent more than excessive accommodation. We should speak honestly and uphold Hong Kong's standards and values, because our strength lies precisely in our being different.

When lawyers lost their monopoly over conveyancing, some feared it would have a disastrous effect on the profession. It did not. The UK Bar has survived intense competition by expanding into former colonies and other markets. Hong Kong lawyers are capable enough, but we often overlook opportunities beyond our immediate market. What we lack is the vision and entrepreneurship we once had, as well as greater ambition beyond Hong Kong and China.

Q: What is your advice for our current law students?

JCSC: Competition is tough, and today's law students face challenges my generation did not. AI tools for litigation are now powerful enough to replace much of a junior's routine work, from compiling chronologies to preparing evidence tables, analysing judgments, and drafting grounds of appeal. These drafts still need refinement, and AI can make mistakes, but students must learn to use it well and offer value beyond what technology can do.

Secondly, it is easy to feel discouraged by what is happening around us. Human rights lawyers need faith, optimism, and resilience because human rights are often violated more than respected. You continue in this field because of the values you believe in. Accept defeat, stay humble, keep your eyes open, and learn from others.

Thirdly, do not overlook common sense. Read judgments as stories about real people, not just technical legal texts. Ask whether the result is just or fair and let injustice fuel your passion. Behind every doctrine and judgment is a human side, and if an outcome defies common sense, something may be wrong with the law.

More broadly, legal education is about values. Without them, law is only tools for naked power. Students must understand the values behind the rules, and good lawyers need common sense, which is increasingly rare.

Fourthly, read widely. Law alone is not enough in a rapidly changing world. Good lawyers need knowledge from other fields—medicine in personal injury cases, or construction practice in industrial accident cases. A good lawyer, and a good person, needs wider interests.

Lastly, follow your heart and do not worry too much about what is practical. Career paths are far less defined today, and people may change direction several times. Law is a powerful intellectual tool: if you develop strong legal knowledge and analytical skills, you can excel in many different fields.

Recently, I met a former chamber-mate who had emigrated to Denmark with her husband some 10 years ago. She did not know the Danish legal system or speak Danish. She ventured into the field of human resources. Her legal training turned out to be her great asset. She is now head one of the largest HR departments in one of the world's largest logistics firms, dealing with issues such as fleets in the Middle East facing terrorist threats or changing customs tariffs from the United States. That is very different from legal practice, but her legal training gave her strong analytical and problem-solving skills to succeed in her new position.