

IBA Bar Breakfast Co-Hosted by the Law Society of Hong Kong and Hong Kong Bar Association (26 September 2019) Hong Kong's Unique Role as an Asian International Legal Hub under "One Country, Two Systems"

I am going to say something about HK's unique legal system. It is a common law system functioning largely autonomously in the PRC with an independent judiciary and a strong legal profession.

Its uniqueness lies in the fact that it is just a part of an imaginative solution to a historical problem that crystallised in 1997 when GB returned HK to the PRC.

That problem was how to accommodate some 6 million people living in the former colony and used to political, legal and social values within a country with very different values and yet maintain its distinctiveness. Maintaining the common law was one part of the solution.

I want to take just a little of your time with a slice of history about the common law in HK.

The common law has been the chief law of the land in HK since 1841. It has underpinned all manner of commercial transactions since then—manufacturing, banking, intellectual property, insurance, shipping, land deals. It has also protected the rights and freedoms of the people that lived there as Her Majesty's subjects.

Until 1997 the Privy Council in London was the court of final appeal. The law reports are full of HK cases decided by that court. The decisions affected not merely individuals in HK but people in other lands because the Privy Council's decisions developed essential principles in the common law across the world.

What has happened to the common law in HK since 1997? Well, not a lot has changed. Its status is enhanced.

The Basic Law, HK's constitutional document under the PRC Constitution, guarantees its status as the primary source of everyday law governing private law relationships. Another provision of the Basic Law prohibits the application of Mainland Laws except those law relating to symbols of nationality such as the national anthem and flag.

As for the courts, the Court of Final Appeal that replaced the Privy Council continues hearing the same kind of cases. The judges follow the same legal principles and precedents. The court maintains the court's link to the common law world by including in its ranks judges who have sat in courts of final appeal in major common law jurisdictions. Canada, Australia, NZ and the UK.

If the judges navigate the ocean of the common law than the mechanics who work in the engine room of the law are solicitors and barristers.

As I introduced myself, I am the Chairman of the HK Bar, which branch of the profession supplies most of the advocates in the higher courts. Our members continue English legal tradition by wearing wigs and gowns.

Some wish-including me-that we might recognise we are in the C21 and give up our stuffy wigs. However, in spite of an institutional addiction to Eighteenth-Century hair styling, we also keep abreast with the modern legal world and occasionally excel in it. As I speak now, two of my members, Martin Lee S.C. and Margaret Ng, are receiving the IBA Award for Outstanding Contribution to Human Rights in a concurrent session.

So the common law continues to function as the engine that moves HK along, nearly 180 years after the British first introduced it to this small island off the South Coast of China. The Basic Law goes further than the common law. It provides written guarantees of rights and freedoms. But the old common law procedures and remedies-actions on writs, habeas corpus, judicial review, injunctions to name a few-are how these rights and freedoms are protected.

What are you to make of the recent disturbances you have seen on the TV for the past few months? Are they a sign that the 1C2S is coming apart?

I have worked as a lawyer in HK in both the public and private sectors for 35 years. Like Mark Twain reading his own obituary in a newspaper in 1897, I can say that rumours of the death of 1C2S have been greatly exaggerated.

Yes, the disturbances are by no means trivial. There have been shocking instances of violence and vandalism. But the underlying reasons for the protests have everything to do with the constitutional model of 1C2S.

HK people are demanding the 1C2S model should be adjusted so that the distinctive identity of HK be maintained. They want a bit less of the 1C and more of the 2S, much as it was ten years ago.

The HKSARG has admitted it lost its way over the past few years in its handling of growing discontent. It has promised to try and put things right.

I cannot say whether the Government's attempts to pour oil on troubled waters will bear fruit in a few weeks or a few months. Or whether we must look even longer to the future.

What I can say is that the most precious commodity of HK under the post-1997 constitutional order is that which existed before then. That is its people. They are resilient, resourceful, redoubtable and, above all, jealous of their freedoms and rights under the Basic Law.

With such qualities, I believe they will surely find a way out of the current situation. They have to.

PJDSC

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