

## CCPL Newsletter Fall 2020

What a year 2020 has been! In these difficult times, CCPL will continue to curate and showcase our events via Zoom. In this Newsletter, we are also pleased to share with you highlights from the events we held last semester as well as information on upcoming events for Fall 2020.

### Past Events

21 January 2020

#### Civil Unrest in Hong Kong Conference

Since June 2019, Hong Kong has been rocked by months of civil unrest. The protests originally arose in opposition to the Hong Kong government's attempt to pass an extradition law that would allow for Hong Kong residents to be extradited to China to face trial for alleged offences committed in the Mainland. Even though the bill was eventually withdrawn, the unrest continued as protestors pressed on for other demands, including universal suffrage in the city that has been governed by Beijing under a 'One Country, Two Systems' constitutional framework.

On 21 January 2020, the Centre for Comparative and Public Law at The University of Hong Kong's Faculty of Law, convened a one-day Conference that brought together historians, sociologists, political scientists, lawyers, and law students to discuss different facets of this unrest, and explore ways in which Hong Kong might move forward and heal as a community.

The first panel examined the historical and sociological aspects of this unrest. It analysed three significant protest movements in Hong Kong's recent history, i.e. the 1967 riots, the Umbrella Movement of 2014, and the current crisis, and compared and contrasted the connections between them. **Historian Gary Cheung** began the Conference by explaining that while the 1967 riots were influenced primarily by the Cultural Revolution in China,



the riots exposed deeper social issues neglected by the British colonial government. In the next presentation, **Associate Professor John Wong**, also a historian, argued that the colonial government's legitimacy was strengthened after it addressed these issues after the riots, but this narrative of 'prosperity and stability' no longer rings true in Hong Kong today as economic mobility has decreased and the gap between rich and poor in Hong Kong has grown. **Professor Laikwan Pang** examined the Umbrella Movement of 2014. She argued that protest is not just a message, but a process of people coming together, and explained how the law is not only abstract rules to be obeyed, but actively created by citizens in a democracy. **Professor Ching Kwan Lee** explained that the critical difference between the Umbrella Movement and the current protests pertains to the scope of protesters' demands. The Umbrella Movement focused on universal suffrage, where protestors sought reforms within Hong Kong's existing constitutional structure. The ongoing movement, however, questions the very meaning of the rule of law and justice, and the identity of Hong Kong as a community. **Associate Professor Agnes Ku** explored how the 'decentralisation' of human agency in the ongoing protest - especially among young people - placed ethical questions about non-violence and militancy at the front and centre of the current social movement. **Professor Eliza Lee** concluded the panel with her observations about the political dimensions of the civil unrest, arguing that Beijing's strategy of 'indirect rule' through pro-government elites has resulted in a significant rift between the Hong Kong leadership and the society at large.

The second panel centred on matters relating to young people, policing, and transitional justice. **Professor Eric Chui** began by delving into his ongoing empirical research on youth activism and radicalisation in Hong Kong. Professor Chiu presented quantitative evidence suggesting a correlation between young people who are most engaged in legal forms of civic activism and those who engage in 'radical' extra-



legal forms of protests. **Professor Tim Newburn** then spoke about his role in a study of the 2011 riots in England, produced in collaboration with *The Guardian* newspaper. Professor Newburn highlighted the potential for academics and journalists to work together to produce timely research in the context of social unrest and he went on to summarise some of the key findings of his research, including the role that poor police-community relations played in England's riots. He also highlighted the need to study social unrest more 'in the round', focusing not only on questions of aetiology but also on the dynamics and aftermath of unrest. **Professor Kieran McEvoy** then spoke about the various types of transitional justice mechanisms that can be used to help a society move on from conflict or unrest. Drawing in particular on his expertise of the Northern Ireland context, Professor McEvoy highlighted examples of both good and bad practice in truth recovery, amnesties, institutional reform, and apologies/acknowledgement. He further stressed the importance of leadership and careful choreography in delivering meaningful transitional justice. **Professor Maggy Lee** concluded with commentary and questions on the issues raised by the speakers. In particular, Professor Lee suggested that social scientists might do better if they pay more attention to understanding the conditions of social order and why social unrest is not more frequent than it is.

In the third and final panel of the Conference, the legal profession, the legal academy, and law students came together to dialogue on the legal dimensions relating to the current unrest. The Panel was moderated by **Professor Fu Hualing**, Dean of Law Faculty, and the participants included **Anna Wu**, Chair of Competition Commission of Hong Kong; **Jat Sew-Tong**, a Senior Counsel; **Professors Po Jen Yap and Simon Young**; and four law students (**Adrienne Lam, Luo Jiajun, Joanna Wong, and Aaron Yam**). The panellists addressed questions raised by the students on the



justification for the civil disobedience of perceived unjust laws, the constitutionality of the measures passed by the government to prohibit face-covering at public protests, the role of the courts in the ongoing crisis, and what part the legal profession and law students can play to heal this rift in society.

In sum, the Conference highlighted several issues that are likely to attract further debate going forward, particularly with respect to the modalities of amnesties for criminal offences and the establishment of an independent inquiry into the unrest. The Centre for Comparative and Public Law will continue to organise events to foster dialogue on these and other related issues.



2 June 2020

**New Empirical Studies on the Supreme Court of the United Kingdom: A Book Talk with Chris Hanretty (author of A Court of Specialists) and Rachel Cahill-O'Callaghan (author of Values in the Supreme Court)**

**Discussant:** Lewis Graham, University of Cambridge

**Chair:** Dr Alex Schwartz, Assistant Professor, The University of Hong Kong

**Rachel Cahill-O'Callaghan** is a Senior Lecturer at Cardiff University School of Law. Her new book, *Values in the Supreme Court* (Hart 2020), examines the significance of values in Supreme Court decision making. Drawing on theories and techniques from psychology, it focuses on the content analysis of judgments and uses a novel methodology to reveal the values that underpin decision making. The book centres on cases which divide judicial opinion: Dworkin's hard cases 'in which the result is not clearly dictated by statute or precedent'. In hard cases, there is real uncertainty about the legal rules that should be applied, and factors beyond traditional legal sources may influence the decision-making



process. It is in these uncertain cases – where legal developments can rest on a single judicial decision – that values are revealed in the judgments. The findings in this book have significant implications for developments in law, judicial decision making and the appointment of the judiciary.

**Chris Hanretty** is a Professor of Politics at Royal Holloway, University of London. His new book, *A Court of Specialists* (OUP 2020), offers the first quantitative study of decision-making on the UK Supreme Court. Covering the court's first ten years, it examines all stages of the court's decision-making process—from permission to appeal to the decision on the final outcome. The nature of the UK's court system means that judges arrive on the court as specialists in one or more areas of law (such as commercial law or family law), or even systems of law (the court's Scottish and Northern Irish judges). The book shows how these specialisms markedly affect behavior on the court. Specialists in an area of law are more likely to hear cases in that area, and are more likely to write the lead opinion in that area. Non-specialists are less likely to disagree with specialists, and so disagreement is more likely to emerge when multiple specialists end up on the panel. Although political divisions between the justices do exist, these differences are much less marked than the divisions between experts in different areas of the law. The best way of understanding the UK Supreme Court is therefore to see it as a court of specialists.



24 June 2020

## Contemporary Topics in Public Law

**Chair:** Cora Chan, Associate Professor, HKU

### Court Curbing and Populist Rhetoric

*Dr Alex Schwartz, Deputy Director of CCPL*

So-called "populist" governments are associated with attacks on judicial power and judicial independence. It is assumed that populists are likely to target the courts because an independent judiciary is an obstacle to illiberal populist policies. In other words, court curbing is seen as instrumental to populist objectives. This paper proposed a different relationship between court curbing and populism; drawing on cross-national data, Dr Schwartz argued that governing elites who become frustrated by recalcitrant courts are likely to employ "populist" rhetoric to legitimate their attacks on the judiciary. In short, Dr Schwartz argued that populism is instrumental to court-curbing objectives.

### Comparing Foreign Judges

*Dr Anna Dziedzic, Associate Director of CCPL*

Foreign judges sit on domestic courts in over thirty jurisdictions across the world. However, these jurisdictions use foreign judges in different ways and for different reasons. Drawing on global comparative experiences, this paper develops a framework for comparing the use of foreign judges across three fields: legal regulation, rationale and effect. Understanding the similarities and differences between jurisdictions, and the degree of concurrence between regulation, rationale and effect, can assist jurisdictions to tailor the use of foreign judges to their particular contexts.



**Constitutional Convergence in East Asia**

*Professor Po Jen Yap, Director of CCPL*

Hong Kong, Taiwan, and South Korea have the only courts in Asia that regularly use the Proportionality Analysis to invalidate laws. They also have the only courts in Asia that routinely apply innovative constitutional remedies such as Suspension Orders and Remedial Interpretation to rectify constitutionally flawed legislation. In a forthcoming monograph (co-authored with Chien Chih Lin) that will be published by Cambridge University Press, Professor Po Jen Yap will explain and explore this constitutional convergence in East Asia.



**Upcoming Events**

Date	Details
23 September 2020  21:00 - 22:30 HK Time	<p><b>Zoom Webinar Book Talk - How Constitutional Rights Matter (OUP 2020)</b></p> <p><i>Prof Adam Chilton</i>  <i>Professor of Law; Walter Mader Research Scholar</i>  <i>University of Chicago Law School</i></p> <p><i>Prof Mila Versteeg</i>  <i>Martha Lubin Karsh and Bruce A. Karsh Bicentennial Professor of Law</i>  <i>University of Virginia School of Law</i></p> <p>Does constitutionalizing rights improve respect for those rights in practice? Drawing on statistical analyses, survey experiments, and case studies from around the world, this book argues that enforcing constitutional rights is not easy, but that some rights are harder to repress than others.</p>

<p>28 September 2020</p> <p>13:00 - 15:20          HK Time</p>	<p><b>Zoom Webinar Book Talk - China's National Security: Endangering Hong Kong's Rule of Law? (Hart Publishing 2020)</b></p> <p><u>Chairs</u></p> <p><i>Ms Cora Chan, The University of Hong Kong</i>  <i>Prof Fiona de Londras, University of Birmingham;</i>  <i>Hon Prof, Australian National University</i></p> <p><u>Speakers/ Authors</u></p> <p><i>Prof Victor Ramraj, University of Victoria</i>  <i>Dr Paulo Cardinal, University of Macau</i>  <i>Prof Lin Feng, City University of Hong Kong</i>  <i>Dr Pui Yin Lo, Barrister-at-law</i>  <i>Prof Carole Petersen, University of Hawaii at Manoa</i>  <i>Prof Simon Young, The University of Hong Kong</i></p> <p>This event marks the publication of Cora Chan and Fiona de Londras (eds), <i>China's National Security: Endangering Hong Kong's Rule of Law?</i> and places the book—written in 2019—into the context of events since its publication, including the passage of the Hong Kong National Security Law. In this collection, contributing authors explored the potential and limits of Hong Kong's laws, institutions and civil society in maintaining the rule of law in light of China's national security imperatives. The collection was published shortly before the Chinese government introduced a security law for Hong Kong. In this event, some of the authors in the collection will reflect on to what extent are the safeguards identified in the book displaced or rendered ineffectual by recent events, and whether China's national security law endangers Hong Kong's rule of law.</p>
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<p>7 October 2020</p> <p>19:00 - 20:30 HK Time</p>	<p><b>Zoom Webinar Book Talk - Constitutional Revolution (Yale University Press, 2020)</b></p> <p><i>Prof Gary Jeffrey Jacobsohn</i> <i>H. Malcolm Macdonald Professor of Constitutional and Comparative Law</i> <i>Department of Government at the University of Texas at Austin</i></p> <p><i>Prof Yaniv Roznai</i> <i>Associate Professor</i> <i>Harry Radzyner Law School, Interdisciplinary Center (IDC) Herzliya</i></p> <p>Few terms in political theory are as overused, and yet as under-theorized, as constitutional revolution. In this book, Gary Jacobsohn and Yaniv Roznai argue that the most widely accepted accounts of constitutional transformation, such as those found in the work of Hans Kelsen, Hannah Arendt, and Bruce Ackerman, fail adequately to explain radical change. For example, a “constitutional moment” may or may not accompany the onset of a constitutional revolution. The consolidation of revolutionary aspirations may take place over an extended period. The “moment” may have been under way for decades—or there may be no such moment at all. On the other hand, seemingly radical breaks in a constitutional regime actually may bring very little change in constitutional practice and identity. Constructing a clarifying lens for comprehending the many ways in which constitutional revolutions occur, the authors seek to capture the essence of what happens when constitutional paradigms change.</p>
<p>4 November 2020</p> <p>20:30 - 22:00 HK Time</p>	<p><b>Zoom Webinar Book Talk - City, State: Comparative Constitutionalism and the Megacity (OUP 2020)</b></p> <p><i>Prof Ran Hirschl</i> <i>Professor of Political Science &amp; Law, University of Toronto</i> <i>Alexander von Humboldt Professor in Comparative Constitutionalism</i></p> <p>More than half of the world's population lives in cities; by 2050, it will be more than three quarters. Projections suggest that megacities of 50 million or even 100 million inhabitants will emerge by the end of the century, mostly in the Global South. This shift marks a major and unprecedented transformation of the organization of society, both spatially and geopolitically. Our constitutional institutions and imagination, however, have failed to keep pace with this new reality. Cities have remained virtually absent from constitutional law and constitutional thought, not to mention from comparative constitutional studies more generally. As the world is urbanizing at an extraordinary rate, this book argues, new thinking about constitutionalism and urbanization is desperately needed. In six chapters, the book considers the reasons for the "constitutional blind spot" concerning the metropolis, probes the constitutional</p>

	relationship between states and (mega)cities worldwide, examines patterns of constitutional change and stalemate in city status, and aims to carve a new place for the city in constitutional thought, constitutional law and constitutional practice.
November 2020 (exact date TBC)	<p><b>Book Talk - Constitutional Change in the Contemporary Socialist World (OUP 2020)</b></p> <p><i>Prof Ngoc Son Bui</i> <i>Assistant Professor</i> <i>The Chinese University of Hong Kong</i></p> <p>After the collapse of the Soviet bloc, there are only five socialist or communist countries left in the world - China, Cuba, Laos, North Korea, and Vietnam - which constitute about one-quarter of the world's population. Yet, there is little scholarship on their constitutions. These countries have seen varying socioeconomic changes in the decades since 1991, which have led in turn to constitutional changes. This book will investigate, from a comparative and interdisciplinary perspective, how and why the constitutional systems in these five countries have changed in the last three decades.</p>
November 2020 (exact date TBC)	<p><b>CCPL 25<sup>th</sup> Anniversary Conference - Book Launch of Four Faculty Research Outputs</b></p> <ul style="list-style-type: none"> <li>◇ China's National Security: Endangering Hong Kong's Rule of Law? (Hart 2020) <i>Editors: Cora Chan &amp; Fiona de Londras</i></li> <li>◇ Authoritarian Legality in Asia: Formation, Development and Transition (CUP 2020) <i>Editors: Weitseng Chen &amp; Fu Hualing</i></li> <li>◇ Judging Regulators: The Political Economy of Anglo-American Administrative Law (Edward Elgar 2020) <i>Author: Eric Ip</i></li> <li>◇ Proportionality in Asia (CUP 2020) <i>Editor: Po Jen Yap</i></li> </ul>

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