

ANNUAL REPORT

July 2019 - June 2020

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About CCPL

The Centre for Comparative and Public Law (CCPL) was established in 1995 as a non-profit virtual research centre in the Faculty of Law, The University of Hong Kong. Its goals are to (1) advance knowledge on public law and human rights issues primarily from the perspectives of international and comparative law and practice; (2) encourage and facilitate collaborative work within the Faculty of Law, The University of Hong Kong, and the broader community in the fields of comparative and public law; and (3) make the law more accessible to the community and more effective as an agent of social change.

The Centre's projects and events generally come within one of the following areas of focus: Comparative Human Rights; Empirical Legal Studies; Equality and Non-discrimination; International Law in the Domestic Order; Judicial Studies; and Public Law and Governance.

The variety and depth of the expertise of CCPL members and CCPL's links with international institutions and law faculties enable CCPL to contribute significantly to academic scholarship and public debate across a diverse range of areas. These include the practice and future of one country two systems in Hong Kong, constitutional and administrative law of Hong Kong, discourse on global and regional governance, the content and implementation of human rights obligations in contemporary times, global constitutionalism and identity politics, to name a few.

The Centre's research focus regularly attracts proposals to collaborate on cutting edge research projects, develop training materials and advance skills and knowledge through its activities and events. CCPL has also been engaged in channelling students' interest to provide mentorship, develop their skills and further their understanding through interactive work experiences that expand their legal education beyond the classroom. In addition, CCPL has been using technology to reach a broader audience. By using social media platforms such as *Facebook*, *Twitter*, *Instagram*, *LinkedIn* and *YouTube*, the Centre has widened its demographic reach, achieved greater visibility, and engaged larger audiences in its activities.

These initiatives have helped strengthen and encourage collaborative and interdisciplinary research and capacity-building work within the Faculty, across the University, the community of legal professionals and civil society organisations in Hong Kong and beyond. Additionally, they have helped CCPL's branding, defining its expertise in producing high quality academic research and outputs as well as cementing its reputation as an organiser of events and activities with wide-ranging reach and impact.

Board of Management

Po Jen Yap

Director of CCPL
Professor
Faculty of Law
The University of Hong Kong

Anna Dziedzic

Associate Director of CCPL
Global Academic Fellow
Faculty of Law
The University of Hong Kong

Albert Chen

Cheng Chan Lan Yue Professor in
Constitutional Law
Faculty of Law
The University of Hong Kong

David Law

Sir YK Pao Chair in Public Law
Faculty of Law
The University of Hong Kong

Simon NM Young

Professor and Associate Dean (Research)
Faculty of Law
The University of Hong Kong

Alex Schwartz

Deputy Director of CCPL
Assistant Professor
Faculty of Law
The University of Hong Kong

Cora Chan

Associate Professor
Faculty of Law
The University of Hong Kong

Fu Hualing

Warren Chan Professor in Human Rights
Dean of the Faculty of Law
The University of Hong Kong

Anna Wu

Honorary Professor
Faculty of Law
The University of Hong Kong

International Advisory Board



Professor Rosalind Dixon is a Professor of Law, at the University of New South Wales, Faculty of Law. She earned her BA and LLB from the University of New South Wales, and was an associate to the Chief Justice of Australia, the Hon. Murray Gleeson AC, before attending Harvard Law School, where she obtained an LLM and SJD. Her work focuses on comparative constitutional law and constitutional design, constitutional democracy, theories of constitutional dialogue and amendment, socio-economic rights and constitutional law and gender, and has been published in leading journals in the United States, Canada, the United Kingdom and Australia, including the *Chicago Law Review*, *Cornell Law Review*, *George Washington Law Review*, *University of Pennsylvania Journal of Constitutional Law*, *International Journal of Constitutional Law*, *American Journal of Comparative Law*, *Osgoode Hall Law Journal*, *Oxford Journal of Legal Studies*, *Federal Law Review* and *Sydney Law Review*. She is co-editor, with Tom Ginsburg, of a leading handbook on comparative constitutional law, *Comparative Constitutional Law* (Edward Elgar, 2011), and related volumes on *Comparative Constitutional Law in Asia* (Edward Elgar, 2014) and *Comparative Constitutional Law in Latin America* (Edward Elgar, 2017), co-editor with Mark Tushnet and Susan Rose-Ackermann of the Edward Elgar series on *Constitutional and Administrative Law*, on the editorial board of the *International Journal of Constitutional Law*, *Revista Estudos Institucionais* and *Public Law Review*, and editor of the *Constitutions of the World* series for Hart Publishing.

Professor Dixon is a Manos Research Fellow, Director of the Gilbert + Tobin Centre of Public Law, Deputy Director of the Herbert Smith Freehills Initiative on Law and Economics, Co-Director of the UNSW New Economic Equality Initiative (NEEI), and academic co-lead of the Grand Challenge on Inequality at UNSW. She previously served as an assistant professor at the University of Chicago Law School, and has been a visiting professor at the University of Chicago, Columbia Law School, Harvard Law School and the National University of Singapore. She was recently elected as co-president of the International Society of Public Law: <https://www.icon-society.org/>.



Professor Victor V. Ramraj joined the University of Victoria as Professor of Law and CAPI Chair in Asia-Pacific Legal Relations in 2014, after sixteen years at the National University of Singapore (NUS). As an Associate Professor in the NUS Faculty of Law, he twice served as the Faculty's Vice-Dean for Academic Affairs (2006-2010, 2011-2012). He was also twice seconded to the Center for Transnational Legal Studies (CTLs), a consortium of global law schools in London, and served for one year (2010-2011) as its co-director. Professor Ramraj holds five degrees from McGill University, the University of Toronto, and Queen's University Belfast, served as a judicial law clerk at the Federal Court of Appeal in Ottawa and as a litigation lawyer in Toronto, and remains a non-practicing membership in the Law Society of Upper Canada. He has held visiting teaching appointments at Kyushu University and the University of Toronto.

Professor Ramraj has edited/co-edited several books published by Cambridge University Press, including *Emergencies and the Limits of Legality* (2009) and *Emergency Powers in Asia: Exploring the Limits of Legality* (2010). His work has been published in leading journals around

the world, including Chicago-Kent Law Review, Hong Kong Law Journal, ICON: International Journal of Constitutional Law, Singapore Journal of Legal Studies, South African Journal on Human Rights, Tilburg Law Review, and Transnational Legal Theory.



Professor Adrienne Stone holds a Chair at Melbourne Law School where she is also a Kathleen Fitzpatrick Australian Laureate Fellow, a Redmond Barry Distinguished Professor and Director of the Centre for Comparative Constitutional Studies. She researches in the areas of constitutional law and constitutional theory and holds an Australia Laureate Fellowship (2017-2021). She has published widely in international journals including in the Vienna Journal on International Constitutional Law; International Journal of Constitutional Law, Constitutional Commentary, the Toronto Law Journal and the Oxford Journal of Legal Studies. With Cheryl Saunders AO, she is editor of the Oxford Handbook on the Australian Constitution; and with Frederick Schauer, she is editor of the forthcoming Oxford Handbook on Freedom of Speech.

Professor Stone is the President of the International Association of Constitutional Law and is an elected Fellow of the Academy of Social Sciences in Australia and Australian Academy of Law. Through the Centre for Comparative Constitutional Studies she is extensively engaged with government and non-governmental organisations on constitutional questions including freedom of speech, constitutional recognition of Indigenous Peoples, and bills of rights. She has held visiting positions in the United States, Canada and France. She has delivered papers and lectures by invitation at many universities in Australia, North America, Europe and Asia.



Professor Stephen Tierney is Professor of Constitutional Theory and Director of the Edinburgh Centre for Constitutional Law. He is also Deputy Head of the Law School. He has held a British Academy Senior Research Fellowship and an ESRC Senior Research Fellowship. He is currently a Senior Fellow of the Centre of Constitutional Change which has attracted approximately £5,000,000 in grant funding over the past four years. He is co-editor of the United Kingdom Constitutional Law blog and a member of the Executive Committee of the UK Constitutional Law Association. He also serves as Legal Adviser to the House of Lords Constitution Committee and is a member of the Judicial Appointments Board for Scotland. He previously served as Constitutional Adviser to the Scottish Parliament Independence Referendum Bill Committee in 2013-14.

Professor Tierney teaches and researches on United Kingdom and comparative constitutional law and constitutional theory. He is committed to research impact and engages widely with government, parliamentary committees and the media on issues such as devolution, referendum law and Brexit. Professor Tierney has recently won an ESRC Brexit Priority grant with two colleagues to study 'The repatriation of competences: implications for devolution'. This project will address how powers returning from Brussels will be located within the United Kingdom's devolved constitution. The project will involve a number of outreach events for government and parliamentary officials and other interested stakeholders. He has published nine books including two monographs with Oxford University Press: Constitutional Law and National Pluralism and Constitutional Referendums: The Theory and Practice of Republican Deliberation. He is currently writing a third book for Oxford University Press on Federalism and editing a book on Federalism and the United Kingdom with Robert Schutze.

Staff



Po Jen Yap is a Professor at The University of Hong Kong, Faculty of Law, where he specializes in Constitutional and Administrative law. He has been the Director of CCPL since October 2019. He graduated from the National University of Singapore with an LLB degree and he obtained LLM qualifications from both Harvard Law School and University College London. He also has a PhD degree from the University of Cambridge. He is an Advocate and Solicitor of the Supreme Court of Singapore and an Attorney at Law in the State of New York (USA). He is the author and editor of over 50 books, book chapters, journal articles, and/ or case commentaries. His first sole-authored monograph *Constitutional Dialogue in Common Law Asia* was published by Oxford University Press in 2015 and was awarded HKU's University Research Output Prize in 2016. He is also the recipient of HKU's 2016 Outstanding Young Researcher Prize. His second sole-authored monograph *Courts and Democracies in Asia* was published by Cambridge University Press in October 2017. He is the Principal Investigator of two General Research Fund (GRF) competitive external research grants, which were awarded in 2014 and 2017 respectively.



Associate Professor **Kelley Loper** was the Director of CCPL from July 2017 to September 2019. She is also the Co-Director of the LLM in Human Rights Programme, and Co-Editor-in-Chief of the *Asia-Pacific Journal on Human Rights and the Law*. She has published extensively on refugee protection in Asia, the rights of persons with disabilities, sexual orientation and gender identity discrimination in Hong Kong, and the implementation of international human rights law in domestic contexts. She is on the Editorial Committee of *Hong Kong Law Journal* and the Editorial Board of the *Australian Journal of Human Rights*. She has served on the boards or advisory committees of several non-profit organizations including the Hong Kong Refugee Advice Centre (as past Chairperson), Justice Centre Hong Kong, and Amnesty International (Hong Kong). She has also advised other international and local organizations including the UNHCR, UN Women, and the Hong Kong Human Rights Monitor on a range of human rights issues.



Assistant Professor **Dr Alex Schwartz** is the Deputy Director of the Centre for Comparative and Public Law. Dr. Schwartz joined the Faculty of Law in July of 2017. His research is focused on courts and judicial behaviour, particularly in the context of deeply divided, transitional, and crisis-prone polities. He was previously Lecturer in Law at Queen's University Belfast, where he was also an Associate Fellow of the Senator George J. Mitchell Institute for Global Peace, Security and Justice. Before that, Dr. Schwartz was a Banting Fellow with the Department of Political Studies at Queen's University (Canada), a visiting scholar at the Centre for the Study of Social Justice at Oxford, and a postdoctoral fellow with the Canada Research Chair in Quebec and Canadian Studies at L'Université du Québec à Montréal. Dr. Schwartz is currently working towards a book on judicial power in 'difficult' contexts.



Dr Anna Dziedzic joined the Faculty as a Global Academic Fellow in 2019 and is the Associate Director of CCPL. She researches in the field of comparative constitutional law, with a particular focus on constitutional change and the role of judges and judiciaries. She will use the Global Academic Fellowship to undertake broader comparative research into foreign judges and the significance of nationality to judicial office. Her publications include analyses of constitutional law and constitution making in Pacific island states and Australia, as well as comparative work on aspects of federalism, courts and parliaments. She has undertaken consultancies on various issues including constitutional implementation, gender and constitutions, and citizenship. Anna is a co-convenor of the Constitution Transformation Network and previously worked as a Research Fellow at Melbourne Law School and in legal policy roles for the Australian government, as an Associate to a Justice of the Federal Court of Australia, and as a volunteer legal analyst at the Samoa Law Reform Commission.



Elizabeth Lui is the Assistant Research Officer of the Centre for Comparative and Public Law. Elizabeth previously worked at Amnesty International Hong Kong (AIHK) as the Human Rights Education Officer, and currently stays at AIHK's LGBTI Group as a volunteer. She earned her Master's Degree in Comparative Social Policy at Oxford University, and Bachelor's Degree in Government and Public Administration at the Chinese University of Hong Kong. Her research interests include sexual orientation/ gender identity/ expression/ sex characteristics, people on the move and artificial intelligence/ machine learning.



Winnie Law is the Executive Secretary for CCPL. She manages the administration of CCPL in respect of all its activities, events and projects. She oversees a small team of part time staff as well as student research assistants and volunteers who assist with CCPL event organisation and research related activities from time to time. Her duties include event management and support for CCPL's conferences and seminars, administration related to grant management, and logistical support pertaining to the reception of Centre-related visitors, among others.

Fellows

Fellows are full-time academic members of HKU, with demonstrated expertise in the fields of comparative and/or public law who take an active interest in the work and activities of CCPL and whose work is aligned with the broader goals of the Centre. Fellows undertake research and partake in the activities of CCPL, typically incubating their research projects at the Centre before publishing their works or launching related knowledge exchange outputs.

The list of CCPL fellows is as follows:

Shahla Ali

Professor, Faculty of Law, HKU

Cora Chan

Associate Professor, Faculty of Law, HKU

Joseph Chan

Professor, Department of Politics & Public
Administration, HKU

Albert Chen

Cheng Chan Lan Yue Professor in
Constitutional Law, Faculty of Law, HKU

Richard Cullen

Professor, Faculty of Law, HKU

Alexander Green

Assistant Professor, Faculty of Law, HKU

James Fry

Assistant Professor, Faculty of Law, HKU

Fu Hualing

Warren Chan Professor in Human Rights,
Faculty of Law, HKU

Rick Glofcheski

Professor, Faculty of Law, HKU

Michael Jackson

Associate Professor, Faculty of Law, HKU

Puja Kapai

Associate Professor, Faculty of Law, HKU

Karen Kong

Senior Lecturer, Faculty of Law, HKU

David Law

Sir Y.K. Pao Chair in Public Law, Faculty of
Law, HKU

Kelley Loper

Associate Professor, Faculty of Law, HKU

Vandana Rajwani

Senior Teaching Consultant
Faculty of Law, HKU

Haochen Sun

Associate Professor, Faculty of Law, HKU

Marcelo Thompson

Assistant Professor, Faculty of Law, HKU

Amanda Whitfort

Associate Professor, Faculty of Law, HKU

Young Researchers, Senior Research Assistants and Research Assistants

Chen Bixin	Cindy Kim	Yukiki Lui
Urania Chiu	Eriko Lau	Isabella Seif
Mandy Chow	Ho Lun Kenneth Lee	Shun Ming Yau
Sheryle Chu	Ou Lei	Crystal Yeung
Alison Code	Raphael Leung	Fang Yichun
Mazelle Etessami	Shelley Leung	Elaine Yim
Jeong Yun Ha	Tzu Yu Amanda Liu	Vanessa Yin
Rex Hui	Harold Lui	Zhu Zichen

For more information on the projects which they assisted with, see **Appendix I**.

Report Overview

This report covers the period from **1 July 2019 to 30 June 2020**. Throughout the year, CCPL has aimed to align its activities with the University of Hong Kong's wider goal of the "3 I's + 1" – Internationalisation; Innovation; Interdisciplinarity; and Impact. In addition to holding academic events and activities, CCPL has engaged in wide-ranging knowledge exchange activities.

During the reporting period, CCPL hosted **a total of 13 academic events**. These events have touched on the following topical issues: discretionary referendums in constitutional amendment; proportionality in constitutional adjudication; transformative constitutionalism; protests and their implications for corporations; climate change; UN Human Rights mechanisms; judicial review and its role in protecting democracy; freedom of assembly and protest policing; commissions of inquiry into police behaviour; and civil unrest in Hong Kong. All of these events are publicly available for view on the CCPL YouTube channel: <https://www.youtube.com/channel/UC26kPkyprcR5r8JGrNlt2sQ>.

CCPL's rich diversity of activities has supported a network of stakeholders, including legal practitioners, government officials, legislative council members, members of the judiciary, international visitors, Centre Fellows, and students, particularly in the Master of Laws in Human Rights Programme. The Centre's research has generated discussions across stakeholder groups (governmental and non-governmental) and led to law reform proposals and debates in a variety of areas within the Centre's remit. CCPL has disseminated this knowledge in the form of scholarship, public lectures, and increasingly through other creative platforms such as case and treaty databases, interactive websites, a *YouTube* channel, and submissions to policy-making bodies. These resources have increased accessibility of information and the visibility of emerging issues, facilitated knowledge exchange, and empowered civil society organisations and other stakeholders to engage in productive dialogue with local, regional and international bodies.

The Centre has produced and supported rigorous, high quality research outputs published in academic and professional journals and books. CCPL's infrastructural support measures such as

housing research grants, supporting Fellows and Visiting Fellows, and thematic lecture series for students, judges, legal practitioners and young scholars have all served as pivotal enablers to achieve CCPL's objectives. CCPL continues to attract local and international research funding, both for Centre-led projects as well as projects of Centre Fellows, which are housed in and administered through the Centre.

During the reporting period, CCPL has housed **21 research projects** funded by internal and external competitive grant schemes, including the General Research Fund, HKU's Global Partnership Seed Fund, the HKU Knowledge Exchange Office, the National Democratic Institute for International Affairs, the Association of Commonwealth Universities and Plan International Hong Kong. CCPL was also commissioned to conduct contract research and develop training materials and workshops. The total funding managed this year was **HK\$6,365,305**. The research projects have led to significant knowledge exchange activities and material as well as several new publications. These are detailed in Appendix I of this Report.

In November 2019, the Centre appointed a new International Advisory Board. The Board members are **Professor Rosalind Dixon**, Professor of Law at the University of New South Wales and Director of Gilbert + Tobin Centre of Public Law; **Professor Victor V. Ramraj**, Professor of Law at the University of Victoria and Director of Centre for Asia Pacific Initiatives; **Professor Adrienne Stone**, Redmond Barry Distinguished Professor at the University of Melbourne and Director of Centre for Comparative Constitutional Studies; and **Professor Stephen Tierney**, Professor of Constitutional Theory at the University of Edinburgh and Director of Edinburgh Centre for Constitutional Law.

Academic Conferences and Seminars

16 July 2019

Discretionary Referendums in Constitutional Amendment

Professor Richard Albert
William Stamps Farish Professor of Law, The University of Texas at Austin

In this seminar, Professor Albert drew from various non-obligatory referendums held around the world to develop a typology of discretionary referendums in constitutional amendment. Professor Albert examined why constitutional actors use discretionary referendums to amend the constitution and situated their use against the backdrop of an increasingly observable phenomenon in



democracies: the circumvention of formal amendment rules.



18 September 2019

Panel Discussion and Book Launch: Proportionality in Constitutional Adjudication

The Normative Necessity of Proportionality

Justice Carlos Bernal Pulido
Colombian Constitutional Court

This presentation offered a normative justification for the migration of proportionality to any jurisdiction. According to Justice Bernal, the migration of proportionality to new contexts is justified because proportionality is normatively necessary for the adjudication of constitutional rights.

Proportionality Balancing & Constitutional Governance

Professor Alec Stone Sweet
National University of Singapore

After introducing the basic features of modern constitutions, with an emphasis on rights and judicial review, Professor Stone Sweet presented a theory of proportionality that explains why constitutional judges around the globe have embraced the theory.



19 September 2019

50th Anniversary Distinguished Lecture Series - Is Transformative Constitutionalism an Illusion?

Justice Carlos Bernal Pulido
Colombian Constitutional Court

This lecture undertook a critical analysis of four puzzles of transformative constitutionalism. Justice Bernal suggested, first, that transformative constitutionalism is, to a remarkable extent, an illusion; and second, that it is largely a restatement of essential tenets. The lecture advanced an alternative model of “collaborative constitutionalism”, highlighting the functions of the legislature and the executive and their respective contributions to the transformation of private and international powers.



26 September 2019

Hong Kong Protests and Corporations: Navigating through Profit, Principles and Pressure

Associate Professor Surya Deva
School of Law, City University of Hong Kong

Corporations have come under pressure from Chinese authorities to adopt a hard line against both protests and protesters. Against this backdrop, this seminar explored several strategies that corporations could adopt to not only make a profit while maintaining certain principles but also guard against unreasonable pressure exerted by the Chinese authorities.



3 October 2019

International Climate Change Law: Views from the Global South

Professor Ruth Gordon
Villanova University

This lecture considered climate change from the perspective of the Global South, including the outsized impact climate change will have on unindustrialized countries; the Paris Agreement, which is the international communities' latest attempt to address the problem; the potential role of technology in mitigation and adaptation; and the potential for South-South cooperation.



11 October 2019

Doing Equality Consciously: Understanding Unconscious Bias and Its Role and Implications in the Achievement Of Equality in Hong Kong and Asia

Puja Kapai
Associate Professor
Faculty of Law, The University of Hong Kong

In this seminar, author of the study, Puja Kapai, launched her research findings and make a number of key recommendations for different sectors. Although the prevalence and impact of unconscious bias has been widely documented in studies across different disciplines and fields, including the education, corporate, healthcare, and legal sectors, the research has predominantly been situated in the United States, the United Kingdom and Australia. This research aims to plug this gap by providing insights on unconscious bias in Asia.



Furthermore, in the wake of suggestions that training and interventions do not address unconscious bias, this study tests this proposition with the research sample and demonstrates the potential of interventions in diverse settings towards addressing such biases.

This study is part of a larger project on unconscious bias and is the first phase of a long-term endeavour to develop a better understanding of unconscious bias in Hong Kong and Asia as well as develop contextualised approaches to effectively tackle such biases. This initial phase of the project was funded by the Hong Kong Equal Opportunities Commission (EOC) and housed at HKU's Women's Studies Research Centre (WSRC) and the Faculty of Law's Centre for Comparative and Public Law (CCPL).



30 October 2019

Human Rights Seminar Series – The UN Human Rights System: Current Challenges and Debates

Sharon Hom
Adjunct Professor of Law
School of Law, New York University

Visiting Professor Sharon Hom examined key current normative and structural debates, with a focus on the UN treaty body system and its special procedures, such as independent experts and working groups.



31 October 2019

Who will Save the Redheads? Towards a Bully Theory of Judicial Review and the Protection of Democracy

Dr Yaniv Roznai

Harry Radzyner Law School, Interdisciplinary Center (IDC) Herzliya

At this lunchtime seminar, Dr Roznai asked a simple question: Can courts protect democracy? Explaining the false dichotomy of those who argue that courts cannot prevent a democratic failure, Dr Roznai considered what courts should do when they are under political pressure.



4 November 2019

Freedom of Assembly and Protest Policing

Dr Michael Hamilton

*Senior Lecturer in Public Protest Law
University of East Anglia*

Drawing on international standards and illustrative examples from around the world, this talk addressed several problems with existing legal framework for the regulation and policing of protests in Hong Kong. Dr Hamilton also highlighted the important work undertaken by legal observers and assembly monitors.



6 November 2019

Getting it right on Commissions of Inquiry into Police Behaviour

Brian Dooley
Senior Advisor
Human Rights First

Brian Dooley from Human Rights First used examples from recent history to discuss conflicts within social movements and how previous commissions of inquiry into police behaviour have succeeded or failed in achieving their goals.



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

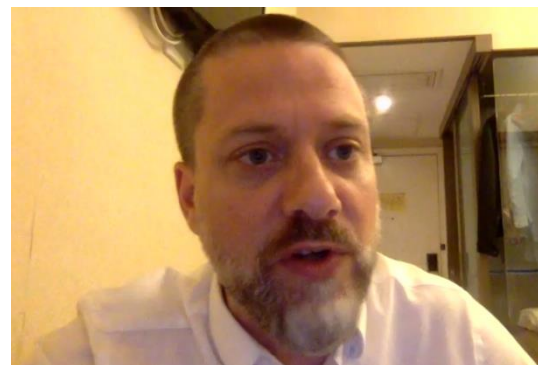
Chair: Dr Alex Schwartz, Assistant Professor, The University of Hong Kong

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.



Publications

CCPL-affiliated scholars have consistently produced high-quality publications in the fields of comparative and public law. In this reporting period, these outputs include:

14 August 2019

CCPL Fellow **Dr Alex Green** published a chapter “Successful Secession and the Value of International Recognition” in *Research Handbook on Secession*. There is a strong positive correlation between secession movements that receive international recognition and those that successfully result in independent states. This chapter asks whether the seeming potency of recognition can be justified, or whether there can be nothing said for it, morally speaking. In so doing it critiques and dismisses putative justifications based on the values of democracy, distributive justice, and international stability, before advancing an alternative and more promising possibility: that formal recognition is conducive to the development of ethically valuable politics. This alternative is argued not only to justify the seeming influence that recognition enjoys over attempted secession, but also the liberty to refuse recognition enjoyed by established states under international law, as well as the duty of such states to engage in collective non-recognition under particular circumstances.

28 August 2019	<p>CCPL Associate Director Dr Anna Dziedzic and Cheryl Saunders published “Constitutional Implementation for Sustainable Peace”, a report undertaken by the Constitution Transformation Network, with funding from the Folke Bernadotte Academy. Constitutions can play an important role in sustaining peace. However, the inclusion, in a constitution, of commitments made in the course of a peace agreement is only one step towards achieving sustainable peace. While it is important for some kinds of commitments made in peace agreements to be reflected in the text of the constitution through a process of ‘textual implementation’, these constitutional provisions must themselves be given practical effect, through ‘substantive implementation’. Sustainable peace requires that constitutional inclusion mechanisms not only are legally enshrined, but that they also are given effect in practice. The purpose of this Report is to explore whether and, if so how, the implementation of constitutional inclusion mechanisms (broadly understood) is significant to sustainable peace. This Report develops an analytical framework to firstly assess constitutional implementation and secondly to identify connections between constitutional implementation and sustainable peace. The case of the Autonomous Region of Bougainville, within the state of Papua New Guinea, is used as an initial case-study to test this analytical framework and to systematically understand the connections between peace-building, constitutions, implementation and sustainable peace.</p>
9 September 2019	<p>Prof Po Jen Yap, Director of CCPL, and Francis Chung published “Statutory rights and de facto constitutional supremacy in Hong Kong?” in the <i>International Journal of Constitutional Law</i>. The article analyzes the cases in which the Hong Kong judiciary has addressed disputes concerning three exclusive rights in the Hong Kong Bill of Rights Ordinance: (i) the right to participate in public affairs; (ii) the right to a fair hearing in civil cases; and (iii) the prohibition against cruel, inhuman, or degrading treatment or punishment. It explains how the courts have conferred de facto constitutional supremacy on all these statutory rights, while simultaneously providing significant leeway and decisional space for the government to craft a considered response in their remedial legislation, thereby promoting a constitutional dialogue between the judiciary and the government on rights-protection in Hong Kong.</p>

23 September 2019	Prof Albert Chen , member of CCPL Board of Management and CCPL Fellow, published an article “A Perfect Storm: Hong Kong - Mainland China Rendition of Fugitive Offenders 2019” in <i>Hong Kong Law Journal</i> . On 9 June 2019, Hong Kong became the focus of international attention as hundreds of thousands of demonstrators marched on Hong Kong Island to oppose the imminent enactment of a legislative bill that would introduce a rendition arrangement, inter alia, as between Hong Kong and mainland China. The Bill not only led to the largest protests in the history of Hong Kong, it has also brought about the most serious crisis of governance since the establishment of the Hong Kong Special Administrative Region. This article seeks to introduce the legal and political background of the Bill, and to explain the nature of the controversy in the context of the tensions and contradictions generated by China's policy of “One Country, Two Systems” which has been applied to Hong Kong since the 1997 handover.
23 September 2019	Cora Chan , member of CCPL Board of Management and CCPL Fellow, published an article “Demise of “One Country, Two Systems”? Reflections on the Hong Kong Rendition Saga” in the <i>Hong Kong Law Journal</i> . This article argues that the controversy over the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 reveals flaws in Hong Kong's political system that, if unrectified, may prove fatal to the operation of China's “One Country, Two Systems” model in Hong Kong. If this model is to be sustained, genuine democracy in Hong Kong is needed.
26 September 2019	CCPL Fellow Dr Alex Green 's article “Our Constitution, Accountability and the Limits of the Power to Prorogue” appeared on the <i>UK Constitutional Law Blog</i> . The piece reflects upon one element of what is expressed by the recent judgement of the United Kingdom Supreme Court in the cases of R (on the application of Miller) v The Prime Minister and Cherry and others v Advocate General for Scotland .
26 September 2019	Prof Fu Hualing , member of CCPL Board of Management and CCPL Fellow, Richard Cullen , CCPL Fellow, Prof Scott Veitch and Benny Tai jointly published “Pursuing Democracy in an Authoritarian State: Protest and the Rule of Law in Hong Kong” in <i>Social and Legal Studies</i> .
27 September 2019	Dr James Fry , CCPL Fellow, and Huang Yining published “The Semisecret Life of Late Mao-Era International Law Scholarship” in <i>Pace Law Review</i> . This article is delimited by a focus on international law scholarship during the late Mao era, not on the PRC's actual approach to or pronouncements on international law, mainly in order to respond directly to the assertion of United States-based

	international law scholars on late Mao-era scholarship. This article uses all three elements—knowledge, independence and originality—to assess whether a particular Mao-era work between 1965 and 1979 represents a scholarly contribution. This is distinguished from non-scholarly contributions, which may relate to education but more closely resemble indoctrination and political propaganda.
30 September 2019	Prof Fu Hualing , member of CCPL Board of Management and CCPL Fellow, and Michael Jackson , also a CCPL Fellow, published a paper “Regime Type, Law, and Protest: A Case Study of Hong Kong, Mainland China and Taiwan”. This article explores the politics of protest law in Hong Kong, Taiwan and Mainland China. Their principal argument is that regime type is determinative of the political meaning and significance of protests, the structure of protest law, and punishment imposed on protesters. Different regimes assign drastically different political meanings and significance to protests; empower or limit courts in offering different degrees of protection of the right to protest; and encourage or prohibit civil society organizations in their function of nurturing a society with the freedom to protest.
30 September 2019	CCPL Fellow and Convener of the Women’s Studies Research Centre Puja Kapai published a new study on “Unconscious Bias and Implications for Equality in Hong Kong and Asia”. In a project funded by the Equal Opportunities Commission, Puja Kapai conducted a study into the levels of unconscious bias on the grounds of gender and race in Hong Kong. She examined who harboured which types of unconscious biases, whether such biases serve as predictors of discriminatory behaviour and whether it is possible to ameliorate these unconscious biases. The results of this research study provide ground-breaking insights into the prevalence, nature and extent of unconscious bias among different social groups as well as the variables which influence such biases negatively or positively in the context of Hong Kong. Furthermore, the study demonstrates the effectiveness of specifically designed interventions in terms of reducing particular biases, while outlining the more challenging categories of unconscious bias which require more complex intervention models to address concretely.
30 September 2019	CCPL Fellow Dr Marcelo Thompson and Zhang Xin published a working paper “Justice and Social Credit”. China’s Social Credit System (SCS) has been characterized as embodying a new, reputation or trust-based paradigm of State authority, said to defy the ideal of the rule-of-law. This paper contests such a view, explaining the SCS, instead, as a response to justice concerns typical of liberal societies in conditions of high modernity. Such concerns spring from the exponentially increasing articulation of identity attributes under circumstances of dominance and lack of trust. To

	address these, the SCS institutionally reconfigures an important conceptual relationship – that between trust, identity, and the law – which, far from new, is found at the roots of modern societies.
10 October 2019	CCPL Fellow Kelley Loper published “Human Rights and Substantive Equality: Prospects for Same-Sex Relationship Recognition in Hong Kong” in the <i>North Carolina Journal of International Law</i> . The article considers judicial approaches to the adjudication of the rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) persons in the Hong Kong Special Administrative Region of the People’s Republic of China (Hong Kong). Hong Kong provides a notable case study of litigation strategies and court responses in a jurisdiction open to international human rights law. Sodomy was decriminalized in 1991 under the former British colonial regime, and, since 2006, Hong Kong courts have decided a number of cases concerning a range of issues including transgender marriage, different ages of consent for vaginal and anal intercourse, other discriminatory criminal provisions, restrictions on television broadcasts about relationships between gay men, the rights of incarcerated transgender persons, and the rights of same-sex couples.
22 October 2019	CCPL Fellow Dr Shahla F. Ali published an article “Transnational Law and Global Dispute Resolution” in <i>The Many Lives of Transnational Law: Critical Engagements with Jessup’s Bold Proposal</i> . Philip Jessup’s ground-breaking work <i>Transnational Law</i> (1956) identifies the evolution of law as emerging from a concern with regulation of events confined within national boundaries to events “transcend[ing] national frontiers.” His identification of this new realm of interaction, absent the corresponding existence of a world state, has led to a useful analytic framework for a number of important issues extending Cardozo’s observation that “we must enlarge [law] until it is broad enough to answer to realities.” This article discusses the important implications for the study of developments in transnational dispute resolution and corresponding questions of adaptation, harmonization and diversity in global practice.
25 October 2019	Prof Fu Hualing , member of CCPL Board of Management and CCPL Fellow, published an article “The Power to Detain in a Dual State Structure” which appears on <i>Made in China Journal</i> .
26 October 2019	CCPL Fellow Dr Shahla F. Ali and Wilson Mbugua published an article “Dispute Resolution in International and Bilateral Agreements” in <i>Intellectual Property and International Dispute Resolution</i> . The paper first sketches the fabric and the structure ISDS in bilateral investment treaties and how it is applied in practice. It then examines how arbitration tribunals have dealt with the subject

	of intellectual property rights by focusing on two standards of protections - expropriation and fair and equitable treatment. Lastly, the paper concludes with a discussion on the criticisms facing ISDS and possible paths for reform.
26 October 2019	CCPL Fellow Dr Shahla F. Ali published a chapter “Transnational Commercial Law of Arbitration - Developments and Controversies” which appears in the <i>Oxford Handbook of Transnational Law</i> . The chapter explores developments in the field of transnational arbitration by examining the evolution of relevant substantive commercial laws and procedure, key forces including global soft law-making bodies, relevant actors including the nation state, arbitrators, parties and institutions, and relevant norms and governance processes influencing the continued evolution of transnational arbitration.
4 November 2019	CCPL Fellow Amanda Whitfort published “Wildlife Crime and Animal Victims: Improving Access to Environmental Justice in Hong Kong” in <i>Journal of International Wildlife Law & Policy</i> . Wildlife crimes are often argued to be victimless, due to the anthropocentric view of crime that dominates policy and policing discourse. Falling outside the normative criminal justice lens, wildlife crimes are not frequently brought to court, and a lack of expertise in policing and prosecuting cases impairs their recognition as serious crimes. When wildlife offences are prosecuted, the tendency to try cases in the magistrates’ courts compounds problems with a lack of judicial exposure to this specialised form of crime and limits development of judicial expertise in the field. Lacking legal standing in the court process, harms caused to endangered animals (as individuals or species) are often marginalised from consideration in sentencing decisions. Recognised only as legal property, animals may be forfeited or returned to their lawful owners, in accordance with the court’s findings. Focusing on recent developments in criminal justice in Hong Kong and Scotland, this article argues that a more effective justice response to wildlife crime permits recognition of the interests of animals, as victims, in wildlife offences. In both jurisdictions, statements establishing the impact of wildlife crimes are utilised by prosecutors in their presentation of cases at court. Armed with knowledge of the role of animals as individual and species victims of crime, sentences may be passed that take appropriate regard of wild animal suffering, their monetary and conservation value, and the impact of their loss on biodiversity. The use of these statements is allowing for better-informed sentencing decisions in individual cases and improved environmental justice.

19 November 2019	Prof Fu Hualing , member of CCPL Board of Management and CCPL Fellow, John Gillespie , Pip Nicholson and William Partlett published an article “East Asian Socialism and East Asian Legality: A Response to Ewan Smith” in <i>Asian Journal of Comparative Law</i> .
24 November 2019	Cora Chan , member of CCPL Board of Management and CCPL Fellow, published a book chapter “A Principled Approach to Judicial Deference for Hong Kong” in <i>Deference to the Administration in Judicial Review</i> . This chapter outlines the approach to deference that Hong Kong courts adopt, evaluates whether such approach is justified, and proposes an approach that should be adopted in light of Hong Kong’s unique constitutional and institutional landscape.
28 November 2019	CCPL Fellow Kelley Loper and Isabella Seif published an article “How the UN Compact on Refugees Can Address the Rohingya Crisis” which appears on <i>Asia Global Online</i> . In the article, Loper and Seif examine the impact of the non-binding framework and how it might be applied to address the Rohingya crisis in Bangladesh and Myanmar.
2 December 2019	CCPL Director Prof Po Jen Yap published an article “Remedial discretion and dilemmas in Asia” in the <i>University of Toronto Law Journal</i> . Prof Yap argues that Asian courts have mitigated the individual harms and institutional uncertainties associated with the judicial use of delayed remedies by incentivizing the government to comply with the court’s ruling or putting in place judicial safeguards against any legislative delinquency. He further points out that expedited remedies like remedial reinterpretation and judicial directives in certain contexts may also be necessary or desirable, even if the judicially imposed result may not be what the enacting legislature had originally intended. Insofar as the legislature can respond and amend these judicial reinterpretation or directives by ordinary legislation, the judiciary does not have the final word and has merely facilitated a constitutional dialogue on rights with the current legislature.
10 December 2019	Dr Alex Schwartz , CCPL Deputy Director, published an article “An Agent-Based Model of Judicial Power” in <i>Journal of Law</i> . Using a method of computer simulation called agent-based modelling, this article explores how new constitutional or supreme courts can act strategically to build their power while mitigating the risk of retaliation by the political branches. The simulations suggest that a court that avoids challenging the preferred policies of the political branches in high salience disputes will, ultimately, tend to exert more influence on constitutional law than a court that moves to establish its power early on in landmark cases. These findings vindicate the intuition that the growth of judicial power will normally depend on “baby steps”, i.e., relatively restrained and

	incremental (as opposed to sudden and bold) assertions of constitutional supremacy.
19 December 2019	CCPL Fellow Richard Cullen published an article "Chinese Constitution is Fundamental to Hong Kong's Basic Law" in the <i>China Daily</i> .
23 December 2019	Dr Anna Dziedzic , Associate Director of CCPL, and Julius Yam published a CCPL <i>Policy Paper</i> "Amnesties in Hong Kong: Preliminary Discussion Paper". This paper presents a case for the use of amnesties to address the current civil conflict in Hong Kong. It argues that amnesties for offences committed in relation to public protests in Hong Kong would be an exceptional but justified measure to de-escalate conflict and rebuild trust between people and government. It explains how immunities from prosecution and pardons might be implemented within Hong Kong's existing legal framework. Drawing on experiences in other parts of the world, it also suggests how issues such as who should be eligible and what kinds of offences could be included or excluded can be addressed in the design and operation of an amnesty. This paper sets out the range of issues to be considered in relation to amnesty in order to provide a basis for informed discussion of amnesty in the current context of Hong Kong.
13 January 2020	CCPL Fellow Amanda Whitfort published "China and CITES: Strange Bedfellows or Willing Partners?" in the <i>Journal of International Wildlife Law & Policy</i> . Using the lens of international norm dynamics, this article explores increasing contestation around the global norm to protect endangered species from over exploitation. Focusing on China's recent announcement that it may lift its 25-year moratorium on the use of rhino horn and tiger bone in traditional Chinese medicine, and calls from some African states for increased international trade in rhino, this article explores current threats to the norm. As international discourse around the norm moves from debates about its applicability to fundamental challenges to its validity, the norm is weakening. To protect the norm, it has become necessary to adopt less traditional approaches to the interpretation of the United Nations Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by member states. Going forward, CITES debates about how best to protect endangered species should emphasise both conservation and animal welfare concerns.
17 January 2020	Prof Simon Young , member of CCPL Board of Management and CCPL Fellow, published a new book chapter "Policing and Prosecution of Money Laundering" in <i>Research Handbook on Transnational Crime</i> . This chapter identifies some of the salient considerations relevant to high and low effectiveness in policing

	<p>and prosecution outcomes. The chapter begins with a brief discussion of the distinctive features of policing and prosecuting the money laundering offence. It then outlines the Financial Action Task Force (FATF)'s international standards on money laundering and its method of mutual evaluation, particularly after the extension of the methodology to effectiveness assessments in 2013. The focus in this chapter is on the standards of policing and prosecution of money laundering. In the FATF methodology, three outcome standards are directly relevant: the use of financial intelligence, the enforcement of the money laundering offence, and the confiscation of criminal property. After providing an overview of the results in the 48 jurisdictions reviewed for effectiveness thus far, this chapter looks more closely at the evaluations of three jurisdictions obtaining high effectiveness ratings and three jurisdictions obtaining low ratings. From this analysis, a list of relevant considerations is identified. The chapter concludes with some reflections on the future of FATF mutual evaluations.</p>
2 February 2020	<p>CCPL Director Prof Po Jen Yap and Jiang Zixin published an article "Electoral Disqualification, Political Allegiance, and the Courts: A "Fruitless Debate?" in the <i>Hong Kong Law Journal</i>. In the article, Prof Yap and Jiang disagree with the Court of First Instance's decision in Chow Ting v Teng Yu Yan Anne to confer upon the Returning Officer (RO) the power to evaluate the authenticity of election candidates' intentions to uphold the Basic Law and to disqualify those who are deemed disingenuous. In their view, neither the text of s 40(1)(b)(i) of the Legislative Council Ordinance (Cap 542) nor its history indicates that the RO has this power. The authors argue that The Court of Appeal's decision in Chief Executive of HKSAR v President of the Legislative Council is not precedent for this position. The 2016 Standing Committee of the National People's Congress Interpretation also does not mandate this result.</p>
5 March 2020	<p>Cora Chan, member of CCPL Board of Management and CCPL Fellow, co-edited a new book <i>China's National Security: Endangering Hong Kong's Rule of Law?</i> Contributors to this book include Prof Albert Chen, Prof Fu Hualing and Prof Simon Young, also members of CCPL Board of Management and CCPL Fellows. All states are challenged by the need to protect national security while maintaining the rule of law, but the issue is particularly complex in the China-Hong Kong context. This timely and important book explores how China conceives of its national security and the position of Hong Kong. It considers the risks of introducing national security legislation in Hong Kong, and Hong Kong's sources of resilience against encroachments on its rule of law that may come under the guise of national security. It points to what may be needed to maintain Hong Kong's rule of law once China's 50-year commitment to its autonomy ends in 2047.</p>

<p>13 March 2020</p>	<p>Prof David Law, member of CCPL Board of Management and CCPL Fellow, published “Constitutional Amendment Versus Constitutional Replacement: An Empirical Comparison” in <i>Routledge Handbook of Comparative Constitutional Change</i> (Routledge 2020). The distinction between constitutional amendments and constitutional replacements figures prominently in the study and practice of constitutional change, but it is also deeply problematic. Scholars have struggled to distinguish between mere “amendments” and true “replacements” in a manner that is both conceptually satisfying and amenable to empirical study. A common approach is simply to look to whether particular constitutional changes are formally labeled as “amendments” or “replacements.” It is widely known that the application of these labels can be arbitrary or idiosyncratic, with the result that the labels do not necessarily correspond to the actual importance or magnitude of the changes in question. Little is known, however, about how reliably—or unreliably—these formal labels reflect the actual degree of change. Nor do the methods traditionally used by empirical scholars offer convenient alternatives for gauging the magnitude of constitutional change.</p> <p>Natural language processing techniques drawn from computer science offer powerful new tools for measuring textual change and investigating various aspects of constitutions, such as the empirical difference between amendments and replacements. Latent semantic analysis of 1,000+ constitutional changes in the world over a fifteen-year period shows that the formal “amendment” and “replacement” labels paint a systematically misleading picture of the magnitude of constitutional change and cannot be used to reliably distinguish between major and minor changes. On average, so-called “amendments” involve changes of a lesser magnitude than so-called “replacements,” measured in terms of the proportion of the text that changes. However, these labels are prone to both overstating and understating the degree of constitutional change. In some cases, amendments can be massive and amount in substance to stealth replacements. More frequently, replacements can be inconsequential and amount in substance to overblown amendments. In reality, most constitutional changes—regardless of how they are labelled—are relatively minor in textual magnitude.</p> <p>Automated analysis of the constitutional texts also reveals an empirical relationship between the magnitude of constitutional change and the passage of time. The more time that elapses between constitutional changes, the bigger that the changes tend to be. At one end of the spectrum, some constitutions evolve in a gradual way through incremental and frequent tinkering. At the opposite end, other constitutions are characterized by punctuated equilibrium, or long periods of stasis interrupted by spurts of drastic change. These</p>
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	findings support the view that the need or demand for constitutional change tends to accumulate over time and leads to periodic major changes if it is not instead satisfied by smaller, more frequent adjustments.
29 April 2020	Dr Shahla Ali , CCPL Fellow, co-authored a new book “UNCITRAL Model Law on International Commercial Arbitration - A Commentary”. This book provides a comprehensive commentary on the UNCITRAL Model Law on International Arbitration. Combining both theory and practice, it is written by leading academics and practitioners from Europe, Asia and the Americas to ensure the book has a balanced international coverage. The book not only provides an article-by-article critical analysis, but also incorporates information on the reality of legal practice in UNCITRAL jurisdictions, ensuring it is more than a recitation of case law and variations in legal text. This is not a handbook for practitioners needing a supportive citation, but rather a guide for practitioners, legislators and academics to the reasons the Model Law was structured as it was, and the reasons variations have been adopted.
12 May 2020	Kelley Loper , CCPL Fellow, co-authored “The European Union as Promoter of Equality in Asia: Beyond Economic Tools of Influence” in <i>The European Union as Protector and Promoter of Equality</i> (Springer International Publishing 2020). The European Union’s (EU’s) foreign policy objectives include promoting equality rights around the world. Commentary on such efforts in Asia has focused on the EU’s application of economic pressure to influence Asian states. This chapter seeks to shift the focus to a range of non-economic tools that the EU uses to promote equality rights in Asia. These “soft power” options include, but are not limited to, conducting official “human rights dialogues” with Asian leaders, providing technical assistance to government and civil society actors, developing social media campaigns, and setting positive examples through progressive law reforms in the EU. This chapter first explains why it is important for the EU to support equality rights through the exercise of soft power. It then specifically considers the EU’s highest court, the European Court of Justice (ECJ), as a source of soft power. Some Asian courts cite the ECJ as persuasive authority. The ECJ thus indirectly promotes equality rights in Asia by setting examples. It is problematic, however, that Asian courts learn from the ECJ while the ECJ and other EU institutions fail to reciprocate by learning from rights-protective Asian courts. This unidirectional flow of information reflects and reinforces neocolonial dynamics. The EU could allay concerns about neocolonialism, and perhaps increase its influence in Asia, by engaging Asian courts in a two-way dialogue on equality rights.

13 May 2020	Prof Richard Cullen , CCPL Fellow, published “When Universal Rights Meet a Universal Virus” in <i>Social & Legal Studies & Public Jurist</i> .
14 May 2020	Dr Anna Dziedzic , Associate Director of CCPL, published “Foreign Judges: Pacific Practice and Global Insights” in the <i>Commonwealth Judicial Journal</i> . The use of foreign judges is an exceptional phenomenon in world experience. That judges, particularly on a state’s highest courts, will be citizens is often taken for granted in academic and practice-oriented literature on judging. However, foreign – or non-citizen – judges sit on domestic courts in over 30 jurisdictions across the world. Given the majority of these jurisdictions are Commonwealth states in Africa, the Caribbean and the Pacific, readers of the <i>Commonwealth Judicial Journal</i> might be one of the rare audiences for whom the use of foreign judges is a familiar practice. The use of foreign judges is a largely under-studied phenomenon. It raises a host of practical and theoretical questions. Just how does foreign judging work in practice? How might the constitutional and judicial systems of states accommodate the use of foreign judges? To what extent, if at all, does the nationality of the judges on a domestic court matter? This short article outlines some responses to these questions, drawing on insights from the practice of foreign judging in Pacific island states.
14 May 2020	Dr Anna Dziedzic , Associate Director of CCPL, published “Comparative Regional Report on Citizenship Law in Oceania States” in <i>GLOBALCIT, Robert Schuman Centre for Advanced Studies, European University Institute, Comparative Report 2020/01</i> . The citizenship laws of Oceania reflect the complexities of colonisation, decolonisation, nation building and globalisation. In Oceania’s citizenship laws, we can see the significance of the connections between land and peoples in Indigenous custom and law; trace the movement from self-governing peoples to colonies to independent states; and discover innovative responses to the exigencies of small states in a globalised world. The region of Oceania encompasses the island states and territories situated in the South Pacific Ocean. It includes fourteen member states of the United Nations. This report compares the citizenship laws of twelve of these states: the Federated States of Micronesia (FSM), Fiji, Kiribati, Nauru, the Marshall Islands, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Australia and New Zealand, the two other United Nations member states of Oceania, have their own Country Reports in the <i>GLOBALCIT</i> series. ¹ This comparative regional report is divided into five parts. Following this Introduction, Part 2 outlines the historical and geographic features of Oceania that have informed the development of its citizenship laws. Part 3 compares the citizenship laws of the twelve states, highlighting general approaches to the acquisition and loss of

	<p>citizenship, as well as significant differences between states. Part 4 discusses three current trends in the region: the increasing acceptance of dual citizenship, citizenship by investment programs, and the gradual removal of gender discrimination. Part 5 concludes with some reflections on the contribution that the study of Oceania can make to global and comparative debates on citizenship.</p>
21 May 2020	<p>Dr Haochen Sun, Fellow of CCPL, published "Corporate Fundamental Responsibility: What Do Technology Companies Owe the World?" in the <i>University of Miami Law Review</i>. In this digital age, technology companies reign supreme. However, the power gained by these companies far exceeds the responsibilities they have assumed. The ongoing privacy protection and fake news scandals swirling around Facebook clearly demonstrate this shocking asymmetry of power and responsibility. Legal reforms taking place in the United States in the past twenty years or so have failed to correct this asymmetry. Indeed, the U.S. Congress has enacted major statutes minimizing the legal liabilities of technology companies with respect to online infringing acts, privacy protection, and payment of taxes. While these statutes have promoted innovation, they have also had the unintended effect of breeding irresponsibility among technology companies. Against this backdrop, this Article offers a new lens through which we can deal with the ethical crisis surrounding technology companies. It puts forward the concept of corporate fundamental responsibility as the ethical and legal foundation for imposing three distinct responsibilities upon technology companies: to reciprocate users' contributions, play their role positively, and confront injustices created by technological development. The Article further considers how these responsibilities could be applied to improve protection of private data and to encourage responsible exercise of intellectual property rights by technology companies. The tripartite conception of corporate fundamental responsibility, this Article shows, is built upon the ethical theories of reciprocity, role responsibility, and social justice. Therefore, corporate fundamental responsibility paves the way for technology law to embrace ethics whole-heartedly, creating new legal and ethical guidance for the benevolent behavior of technology companies. In developing technologies, collecting data, and regulating speech, technology company leaders must act responsibly for the future of humanity.</p>
11 June 2020	<p>CCPL Fellow Amanda Whitfort published "Wildlife Forensic Science in Hong Kong" in <i>Wires Forensic Science</i>. In the past decade, Hong Kong has seen an increase in volume and diversity of endangered wildlife imported through its borders. Recent amendments to legislation concerning wildlife crimes in Hong Kong allow for increased sentencing and prosecution of the crimes. This calls for an increased forensic capacity to aid enforcement</p>

	<p>efforts. Wildlife forensic science in Hong Kong is generally performed ad hoc via a confidential tender-application process. Additionally, minimal communication between forensic scientists, the prosecution and the judiciary on the use and production of wildlife forensic analyses has compounded the problem of wildlife crimes not being addressed as “serious” crimes. Improving communication and collaboration between relevant stakeholders, including the development of a wildlife forensic reference database, shared forensic practices, and shared information concerning expertise and analyses available within Hong Kong, would provide benefits to wildlife crime investigations. This article addresses some of these concerns in more detail and provides suggestions for improvements to the overall wildlife forensic capacity in Hong Kong. Increasing Hong Kong's capacity for wildlife forensic science will not only facilitate law enforcement efforts but also help to change Hong Kong's status as a regional hub for wildlife trade to one for excellence in wildlife crime deterrence.</p>
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Asia-Pacific Journal on Human Rights and the Law

<http://booksandjournals.brillonline.com/content/15718158>

The *Asia-Pacific Journal on Human Rights and the Law* is an international law journal published by Brill for more than a decade. In 2013, Professors Simon Young and Kelley Loper took over the editorship of the journal, which is now housed in CCPL. This is the second international law journal (next to the *Hong Kong Law Journal*) managed and published out of the HKU Faculty of Law.

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- *Jane Richards* - ‘It was you who taught me that peaceful marches did not work’, Uncivil Disobedience and the Hong Kong Protests: Justification, Duty and Resistance
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- *Vahida Nainar* - Law in Service of Illegal Ousting of the Largest Religious Minority in Bangladesh

Media Presence

Scholars associated with the Centre were widely cited in local and regional media outlets during the reporting period. Examples of these interviews and coverage include:

Cora Chan

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Upcoming Events

Date	Details
23 September 2020 21:00 – 22:30 HK Time	<p>Zoom Webinar Book Talk - How Constitutional Rights Matter (OUP 2020)</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>
28 September 2020 13:00 – 15:20 HK Time	<p>Zoom Webinar Book Talk - China's National Security: Endangering Hong Kong's Rule of Law? (Hart Publishing 2020)</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</p>

	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.
7 October 2020 19:00 - 20:30 HK Time	<p>Zoom Webinar Book Talk - Constitutional Revolution (Yale University Press, 2020)</p> <p><i>Prof Gary Jeffrey Jacobsohn</i> H. Malcolm Macdonald Professor of Constitutional and Comparative Law Department of Government at the University of Texas at Austin</p> <p><i>Prof Yaniv Roznai</i> Associate Professor Harry Radzyner Law School, Interdisciplinary Center (IDC) Herzliya</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>27 October 2020</p> <p>12:30 – 13:45 HK Time</p>	<p>Zoom Webinar - The 2020 United States Elections: What's Happening? (jointly held with the Department of Politics and Public Administration, The University of Hong Kong)</p> <p><u>Panellists:</u> <i>Dr Wilfred Chow</i> Assistant Professor Department of Politics and Public Administration The University of Hong Kong</p> <p><i>Prof David S. Law</i> Sir Y.K. Pao Chair in Public Law Faculty of Law The University of Hong Kong</p> <p><i>Dr Dov H. Levin</i> Assistant Professor of International Relations Department of Politics and Public Administration The University of Hong Kong</p> <p><u>Chair:</u> <i>Dr Courtney J. Fung</i> Assistant Professor Department of Politics and Public Administration The University of Hong Kong</p> <p>On Tuesday, November 3, American voters will go to the polls in what has been described as the most consequential US election in a generation. At stake is not only the contest between Donald Trump and Joe Biden for the Presidency, but also control of the US Congress and several hotly contested races for the narrowly divided US Senate that will determine whether the President can expect cooperation or obstruction on matters such as legislation, Cabinet appointments, and judicial appointments. Please join us for a live roundtable discussion and question-and-answer session conducted by faculty members from the Department of Politics and Public Administration and the Department of Law with expertise in US politics and US law.</p>
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<p>29 October 2020</p> <p>10:00 – 11:30 HK Time</p>	<p>Zoom Webinar - Thailand Update: Protests and Emergency Powers (jointly held with Centre for Asia Pacific Initiatives in Victoria, Canada)</p> <p><u>Speaker:</u> <i>Phil Robertson</i> <i>Deputy Director</i> <i>Human Rights Watch's Asia Division</i></p> <p><u>Commentators:</u> <i>Dr Anna Dzeidzic</i> <i>Associate Director</i> <i>Centre for Comparative and Public Law</i> <i>Faculty of Law</i> <i>The University of Hong Kong</i></p> <p><i>Dr Eugénie Mérieau</i> <i>Post-Doctoral Fellow</i> <i>Centre for Asian Legal Studies</i> <i>Faculty of Law</i> <i>National University of Singapore</i></p> <p><u>Moderators:</u> <i>Dr Phil Calvert</i> <i>Former Canadian Ambassador to Thailand, Cambodia, and Laos;</i> <i>CAPL Senior Research Fellow</i></p> <p><i>Prof Victor V. Ramraj</i> <i>CAPL Director and Chair in Asia-Pacific Legal Relations;</i> <i>Professor, Faculty of Law, University of Victoria</i></p> <p>Thailand's ongoing pro-democracy student protesters have been calling for fundamental reforms in Thailand's political system, including the monarchy. The government has responded by, among other measures, imposing and then rescinding a state of emergency. The situation is evolving quickly as students demand the Prime Minister's resignation even as the government seeks to de-escalate tensions. This webinar, co-hosted by the Centre for Asia Pacific Initiatives in Victoria, Canada, and the Centre for Comparative Public Law in Hong Kong, provides an update of recent developments by Phil Robertson of Human Rights Watch (Asia) with commentary and discussion by experts on the region.</p>
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<p>4 November 2020</p> <p>20:30 – 22:00</p> <p>HK Time</p>	<p>Zoom Webinar Book Talk - City, State: Comparative Constitutionalism and the Megacity (OUP 2020)</p> <p><i>Prof Ran Hirschl</i> <i>Professor of Political Science & 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 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.</p>
<p>24 November 2020</p> <p>17:00 – 18:30</p> <p>HK Time</p>	<p>Zoom Webinar Book Talk - Constitutional Change in the Contemporary Socialist World (OUP 2020)</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>

<p>2 Dec 2020</p> <p>17:30 – 19:00 HK Time</p>	<p>Peter Allan Memorial Lecture: LGB Human Rights in Europe, Taiwan, and Hong Kong (via Zoom)</p> <p><i>Prof Robert Wintemute</i> Professor of Human Rights Law School of Law, King’s College London</p> <p>Since the 1981 judgment of the European Court of Human Rights in <i>Dudgeon v. United Kingdom</i>, the Court has developed a body of case law requiring equal treatment of lesbian, gay and bisexual (LGB) individuals and same-sex couples in the criminal law, in access to employment, education, housing and services, and in family law. At the national level, 16 of 47 Council of Europe member states (one third) provide equal access to marriage to same-sex couples, even though the Court does not yet require this. Over 60% (29 of 47 member states) now offer same-sex couples “a specific legal framework” for their relationships (which the Court does require), either marriage or an alternative with a different name. This trend, which began in Denmark in 1989, reached Taiwan in May 2019, when the law implementing the Constitutional Court’s May 2017 decision entered into force, and same-sex couples began to marry for the first time in Asia. What legal reforms are required to achieve equality for LGB individuals and same-sex couples in Hong Kong? Which could be granted by the Hong Kong legislature, and which are more likely to be granted by the Hong Kong courts, in light of the recent decisions in <i>Q.T.</i> (same-sex partner immigration), <i>Leung Chun Kwong</i> (recognition of a New Zealand same-sex marriage), and <i>M.K.</i> (absence of marriage or an alternative for same-sex couples in Hong Kong)?</p>
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APPENDIX I
Projects housed within CCPL
(July 2019 – June 2020)

Title of Project	Investigator(s)
Constitutional governance in "Greater China" and the Unfinished Project of Chinese Constitutionalism	Albert Chen
Clinical Legal Education: Community Legal Empowerment	Lindsay Ernst
Human Rights Investigation in the Internet Age: An International and Interdisciplinary Experiential Learning Opportunity	Lindsay Ernst
Internationalization at Home through Experiential Education: Creating Global Citizens by Pursuing Access to Justice for Migrant Workers in Hong Kong	Lindsay Ernst
Street Law - Human Rights Community Education	Lindsay Ernst
Torture Rehabilitation Symposium 2018	Lindsay Ernst
CCPL Public Opinion Survey: Hong Kong's Journey Towards Democratisation and 2047	Puja Kapai
CCPL Public Opinion Survey 2020: Hong Kong's Journey Towards Democratisation and 2047	Puja Kapai
Child Impact Assessment in Hong Kong: Opportunities and Entry Points	Puja Kapai
Gender Initiatives for WSR Works	Puja Kapai
Impact Study Submission in the Mock RAE exercise	Puja Kapai
Start-up for HKU Global Strategic Partnership Fund	Puja Kapai
Developing an Asian Economic, Social and Cultural Rights Networking using online social media	Karen Kong
International Human Rights Law and Refugee Protection in Asian States not Party to the 1951 Convention Relating to the Status of Refugees	Kelley Loper
U-Lead: University of Leeds East Asia Disability Forum	Kelley Loper
Court Curbing: Elites and Judicial Power in the Age of Populism	Alex Schwartz
Predicting Judicial Power: Compliance, Court Curbing and Public Support	Alex Schwartz

Constitutional Development in Hong Kong and Rule of Law Education and Rule of Law Education	Benny Tai
Courts and Democracies in Asia	Po Jen Yap
An Empirical Study of Money Laundering Offering in Hong Kong	Simon Young
Asia-Pacific Journal on Human Rights and the Law	Simon Young and Kelley Loper