

## CCPL Newsletter

### Spring 2021

Happy New Year from the Centre for Comparative and Public Law! We are pleased to share with you highlights from the events we held last semester as well as information on upcoming events for Spring 2021.

#### Past Events

#### 23 September 2020

##### Zoom Webinar Book Talk - How Constitutional Rights Matter (OUP 2020)

*Prof Adam Chilton*  
Professor of Law; Walter Mader Research Scholar  
University of Chicago Law School

*Prof Mila Versteeg*  
Martha Lubin Karsh and Bruce A. Karsh  
Bicentennial Professor of Law  
University of Virginia School of Law

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.



#### 28 September 2020

##### Zoom Webinar Book Talk - China's National Security: Endangering Hong Kong's Rule of Law? (Hart Publishing 2020)

Chairs & Editors:

*Ms Cora Chan, The University of Hong Kong*

*Prof Fiona de Londras, University of Birmingham;*  
*Hon Prof, Australian National University*



Keynote Speaker:

*Prof Victor Ramraj, University of Victoria*

Speakers/ Authors:

*Dr Paulo Cardinal, University of Macau*

*Prof Lin Feng, City University of Hong Kong*

*Dr Pui Yin Lo, Barrister-at-law*

*Prof Carole Petersen, University of Hawaii at Manoa*

*Prof Simon Young, The University of Hong Kong*

This event marked the publication of Cora Chan and Fiona de Londras (eds), *China's National Security: Endangering Hong Kong's Rule of Law?* 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 reflected 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

**Zoom Webinar Book Talk - Constitutional Revolution (Yale University Press, 2020)**

*Prof Gary Jeffrey Jacobsohn*  
H. Malcolm Macdonald Professor of  
Constitutional and Comparative Law  
Department of Government at the University of  
Texas at Austin

*Prof Yaniv Roznai*  
Associate Professor  
Harry Radzyner Law School, Interdisciplinary  
Center (IDC) Herzliya

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.



27 October 2020

**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)

Panellists:

*Dr Wilfred Chow*

*Assistant Professor*

*Department of Politics and Public Administration  
The University of Hong Kong*

*Prof David S. Law*

*Sir Y.K. Pao Chair in Public Law*

*Faculty of Law*

*The University of Hong Kong*

*Dr Dov H. Levin*

*Assistant Professor of International Relations*

*Department of Politics and Public Administration  
The University of Hong Kong*

On Tuesday, November 3, American voters went to the polls in what has been described as the most consequential US election in a generation. At stake was 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 would determine whether the President can expect cooperation or obstruction on matters such as legislation, Cabinet appointments, and judicial appointments. This event was 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.



29 October 2020

**Zoom Webinar - Thailand Update: Protests  
and Emergency Powers**

(jointly held with Centre for Asia Pacific  
Initiatives in Victoria, Canada)

Speaker:

Phil Robertson  
Deputy Director  
Human Rights Watch's Asia Division

Commentators:

Dr Anna Dzeidzic  
Associate Director  
Centre for Comparative and Public Law  
Faculty of Law  
The University of Hong Kong

Dr Eugénie Mérieau  
Post-Doctoral Fellow  
Centre for Asian Legal Studies  
Faculty of Law  
National University of Singapore

Moderators:

Dr Phil Calvert  
Former Canadian Ambassador to Thailand,  
Cambodia, and Laos;  
CAPI Senior Research Fellow

Prof Victor V. Ramraj  
CAPI Director and Chair in Asia-Pacific Legal  
Relations;  
Professor, Faculty of Law, University of Victoria

Thailand's ongoing pro-democracy student protesters had been calling for fundamental reforms in Thailand's political system, including the monarchy. The government had responded by, among other measures, imposing and then rescinding a state of emergency. The situation was evolving quickly as students demanded the Prime Minister's resignation even as the government sought 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, provided an update of recent developments by Phil Robertson of Human Rights Watch (Asia) with commentary and discussion by experts on the region.



**4 November 2020**

**Zoom Webinar Book Talk - City, State: Comparative Constitutionalism and the Megacity (OUP 2020)**

Author:

*Prof Ran Hirschl*  
*Professor of Political Science & Law, University of Toronto;*  
*Alexander von Humboldt Professor in Comparative Constitutionalism*

Discussants:

*Professor Lorenzo Casini*  
*Scuola IMT Alti Studi di Lucca*  
*IMT School for Advanced Studies Lucca, Italy*

*Dr Shitong Qiao*  
*Associate Professor*  
*The University of Hong Kong*

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.



**24 November 2020**

**Zoom Webinar Book Talk - Constitutional Change in the Contemporary Socialist World (OUP 2020)**

Author:

*Prof Ngoc Son Bui*  
*Assistant Professor*  
*The Chinese University of Hong Kong*

Discussant:

*Prof Albert Chen*  
*Chair Professor in Constitutional Law*  
*The University of Hong Kong*

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

2 Dec 2020

**Peter Allan Memorial Lecture: LGB Human Rights in Europe, Taiwan, and Hong Kong (via Zoom)**

*Prof Robert Wintemute*  
*Professor of Human Rights Law*  
*School of Law, King's College London*

Since the 1981 judgment of the European Court of Human Rights in *Dudgeon v. United Kingdom*, 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 *Q.T.* (same-sex partner immigration), *Leung Chun Kwong* (recognition of a New Zealand same-sex marriage), and *M.K.* (absence of marriage or an alternative for same-sex couples in Hong Kong)?



## Upcoming Events

Date	Details
<p>6 January 2021 12:00 - 13:15 (HK Time)</p>	<p><b>Zoom Webinar Book Talk - Welfare for Autocrats: How Social Assistance in China Cares for its Rulers (OUP, 2020)</b></p> <p><i>Dr Jennifer Pan</i> <i>Assistant Professor of Communication</i> <i>Stanford University</i></p> <p>What are the costs of the Chinese regime's fixation on quelling dissent in the name of political order, or "stability?" In <i>Welfare for Autocrats</i>, Jennifer Pan shows that China has reshaped its major social assistance program, Dibao, around this preoccupation, turning an effort to alleviate poverty into a tool of surveillance and repression. This distortion of Dibao damages perceptions of government competence and legitimacy and can trigger unrest among those denied benefits. Pan traces how China's approach to enforcing order transformed at the turn of the 21st century and identifies a phenomenon she calls seepage whereby one policy – in this case, quelling dissent – alters the allocation of resources and goals of unrelated areas of government. Using novel datasets and a variety of methodologies, <i>Welfare for Autocrats</i> challenges the view that concessions and repression are distinct strategies and departs from the assumption that all tools of repression were originally designed as such. Pan reaches the startling conclusion that China's preoccupation with order not only comes at great human cost but in the case of Dibao may well backfire.</p>
<p>27 January 2021 12:30 - 14:00 (HK Time)</p>	<p><b>Zoom Webinar Book Talk - Constituent Power and the Law (OUP, 2020)</b></p> <p><i>Prof Joel Colón-Ríos</i> <i>Professor of Law</i> <i>Victoria University of Wellington</i></p> <p>Constituent power is the power to create new constitutions. Frequently exercised during political revolutions, it has been historically associated with extra-legality and violations of the established legal order. This book examines the relationship between constituent power and the law. It considers the place of constituent power in constitutional history, focusing on the legal and institutional implications that theorists, politicians, and judges have derived from it. Constitutional courts have also at times employed constituent power to justify their jurisdiction to invalidate constitutional amendments that alter the fundamental structure of the constitution and thus amount to a constitution-making exercise. Some governments have used it to defend the legality of attempts to</p>

	<p>transform the constitutional order through procedures not contemplated in the constitution's amendment rule, but considered participatory enough to be equivalent to 'the people in action', sometimes sanctioned by courts. Building on these findings, <i>Constituent Power and the Law</i> argues that constituent power, unlike sovereignty, should be understood as ultimately based on a legal mandate to produce a particular type of juridical content. In practice, this makes it possible for a constitution making body to be understood as legally subject to popularly ratified substantive limits.</p>
<p><b>3 February 2021</b> 21:30 - 23:00 (HK Time)</p>	<p><b>Zoom Webinar Book Talk - Administrative Competence: Reimagining Administrative Law (CUP, 2020)</b></p> <p><i>Prof Elizabeth Fisher</i> <i>Professor of Environmental Law</i> <i>Corpus Christi College, University of Oxford</i></p> <p><i>Prof Sidney A. Shapiro</i> <i>Frank U. Fletcher Chair in Administrative Law</i> <i>Wake Forest University</i></p> <p>This book, by two of the world's leading administrative law scholars, reimagines administrative law as the law of public administration by making competence the focus of administrative law. Grounded in extensive interdisciplinary, historical, and doctrinal analysis, Fisher and Shapiro show why understanding both the capacity and authority of expert public administration is crucial to ensure the legitimacy and accountability of the administrative state.</p>
<p><b>February 2021</b> (exact date TBC)</p>	<p><b>China and Africa: Governance for Growth Web Conference</b></p> <p>There will be a joint conference with the University of Victoria in February 2021 entitled "China and Africa: Governance for Growth". The conference features three issues relating to the governance of Chinese economic engagements in Africa: 1) debt sustainability, 2) dispute resolution, 3) transparency and corruption. The discussion will also have broader implications for understanding the opportunity and challenge underlying the Belt and Road Initiative. This conference is organized by Dr Xia Ying.</p>

<p>1 March 2021 17:00 - 18:30 (HK Time)</p>	<p><b>Zoom Webinar Book Talk - Open Democracy: Reinventing Popular Rule for the Twenty-First Century (Princeton University Press, 2020)</b></p> <p><i>Dr Hélène Landemore</i> <i>Associate Professor of Political Science</i> <i>Yale University</i></p> <p>To the ancient Greeks, democracy meant gathering in public and debating laws set by a randomly selected assembly of several hundred citizens. To the Icelandic Vikings, democracy meant meeting every summer in a field to discuss issues until consensus was reached. Our contemporary representative democracies are very different. Modern parliaments are gated and guarded, and it seems as if only certain people—with the right suit, accent, wealth, and connections—are welcome. Diagnosing what is wrong with representative government and aiming to recover some of the lost openness of ancient democracies, <i>Open Democracy</i> presents a new paradigm of democracy in which power is genuinely accessible to ordinary citizens. Hélène Landemore favors the ideal of “representing and being represented in turn” over direct-democracy approaches. Supporting a fresh nonelectoral understanding of democratic representation, Landemore recommends centering political institutions around the “open mini-public”—a large, jury-like body of randomly selected citizens gathered to define laws and policies for the polity, in connection with the larger public. She also defends five institutional principles as the foundations of an open democracy: participatory rights, deliberation, the majoritarian principle, democratic representation, and transparency.</p>
<p>4 March 2021 (exact time TBC)</p>	<p><b>Zoom Webinar Book Talk - Constitutional Statecraft in Asian Courts (OUP, 2020)</b></p> <p><i>Dr Yvonne Tew</i> <i>Associate Professor of Law</i> <i>Georgetown University Law Center</i></p> <p><i>Constitutional Statecraft in Asian Courts</i> explores how courts engage in constitutional state-building in aspiring, yet deeply fragile, democracies in Asia. Yvonne Tew offers an in-depth look at contemporary Malaysia and Singapore, explaining how courts protect and construct constitutionalism even as they confront dominant political parties and negotiate democratic transitions. The book explores the judicial strategies used for statecraft in Asian courts, including an analysis of the specific mechanisms that courts can use to entrench constitutional basic structures and to protect rights in a manner that is purposive and proportionate. Tew's account shows how courts in Asia's emerging democracies can chart a path forward</p>

	to help safeguard a nation's constitutional core and to build an enduring constitutional framework.
15 March 2021 17:00 – 18:30 (HK Time)	<p><b>Zoom Webinar Book Talk - China, the UN, and Human Protection - Beliefs, Power, Image (OUP, 2020)</b></p> <p><i>Prof Rosemary Foot</i> <i>Senior Research Fellow</i> <i>Department of Politics and International Relations;</i> <i>Emeritus Fellow, St Antony's College</i> <i>University of Oxford</i></p> <p>Over a relatively short period of time, Beijing moved from dismissing the UN to embracing it. How are we to make sense of the People's Republic of China's (PRC) embrace of the UN, and what does its engagement mean in larger terms?</p> <p>This study focuses directly on Beijing's involvement in one of the most contentious areas of UN activity – human protection – contentious because the norm of human protection tips the balance away from the UN's Westphalian state-based profile, towards the provision of greater protection for the security of individuals and their individual liberties. The argument that follows shows that, as an ever-more crucial actor within the United Nations, Beijing's rhetoric and some of its practices are playing an increasingly important role in determining how this norm is articulated and interpreted. In some cases, the PRC is also influencing how these ideas of human protection are implemented. At stake in the questions this book tackles is both how we understand the PRC as a participant in shaping global order, and the future of some of the core norms which constitute that order.</p>
19 April 2021 16:00 – 17:30 (HK Time)	<p><b>Zoom Webinar Book Talk - Science and Judicial Reasoning The Legitimacy of International Environmental Adjudication (CUP, 2020)</b></p> <p><i>Dr Katalin Sulyok</i> <i>Lecturer</i> <i>ELTE University, Budapest</i></p> <p>Science, which inevitably underlies environmental disputes, poses significant challenges for the scientifically untrained judges who decide such cases. In addition to disrupting ordinary fact-finding and causal inquiry, science can impact the framing of disputes and the standard of review. Judges must therefore adopt various tools to adjust the level of science allowed to enter their deliberations, which may fundamentally impact the legitimacy of their reasoning. While neglecting or replacing scientific authority can erode the convincing nature of judicial reasoning, the same authority, when treated</p>

	<p>properly, may lend persuasive force to adjudicatory findings, and buttress the legitimacy of judgments. In this work, Katalin Sulyok surveys the environmental case law of seven major jurisdictions and analyzes framing techniques, evidentiary procedures, causal inquiries and standards of review, offering valuable insight into how judges justify their choices between rival scientific claims in a convincing and legitimate manner.</p>
<p>6 – 7 May 2021 (exact time TBC)</p>	<p><b>Foreign Judges on Domestic Courts: Anachronism, Anomaly, Archetype</b></p> <p>Foreign or non-citizen judges sit on domestic courts in over 50 jurisdictions around the world, but the practice of foreign judging and its significance is underexplored in comparative legal studies. This workshop will bring together judges and scholars from across the globe to discuss the use of foreign judges on domestic courts in Africa, Asia, the Caribbean, Europe, the Middle East and the Pacific, as well as historical precedents and new innovations such as international commercial courts and hybrid criminal courts. Mr Justice Joseph Fok, Permanent Judge of the Court of Final Appeal of Hong Kong, will give a keynote presentation. Through comparison and analysis, the workshop will interrogate the rationales for the use of foreign judges, the effect of their presence on judiciaries and adjudication, and the benefits and challenges of drawing judges from outside the jurisdiction.</p> <p>The Workshop is organised by Dr Anna Dzedzic and Professor Simon Young. Academics from universities in Hong Kong, HKU students and members of the legal profession will be invited to participate.</p>

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