

Opening Address<sup>1</sup>

THE CHINESE UNIVERSITY OF HONG KONG

CONFERENCE ON TEACHING AND LEARNING IN LAW  
“DIRECTIONS IN LEGAL EDUCATION”

The Hon. Mr Justice Joseph Fok, PJ<sup>2</sup>

Professor Lower, Distinguished Speakers, Ladies and Gentlemen,

1. It is a great pleasure to be here today and an honour to have been asked to give an opening address at this conference on legal education and training entitled *Directions in Legal Education 2018*. As stated in the Call for Papers, the object of this conference is to provide a space for dialogue exploring innovative approaches in legal education and considering future directions.

2. When seeking to envision the future, it is sometimes instructive to look to the past for enlightenment. Doing so, it might reasonably be assumed that the teaching of law as an academic subject has had a uniformly distinguished history. But a perusal of the introductory chapter of a recent Festschrift in Honour of Lord Leonard Hoffmann,<sup>3</sup> written by Colin Tapper, Emeritus Professor of Law at the University of Oxford, presents a rather different picture. Commenting on the state of legal education in Oxford in 1934, the year of birth he and Lord Hoffmann share, Professor Tapper writes as follows:

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<sup>1</sup> Delivered at the Chinese University of Hong Kong on Friday, 1 June 2018.

<sup>2</sup> Permanent Judge of the Hong Kong Court of Final Appeal.

<sup>3</sup> *The Jurisprudence of Lord Hoffmann* (Bloomsbury, 2015), edited by Paul S. Davies and Justine Pila.

“At about that time legal education in Oxford was at an extremely low ebb. The subject was widely regarded as lacking academic respectability. Corpus Christi College surrendered the Chair of Jurisprudence to University College for that reason, many Colleges had no Law Fellow and none more than one. Not that having such a Fellow represented any certain guarantee of academic quality since many such Fellows were either unqualified or incompetent. Nor were these categories identical since some of the qualified were incompetent and a very few of the unqualified were competent. My own college, Magdalen, provides an example. The Law Fellow hoped to become Bursar and avoided teaching law to the extent of actually hiding away from students. In Christ Church the relevant Student was regarded as so incompetent by a particularly forceful undergraduate, one JHC Morris, as to provoke a demand to be transferred for tuition to Balliol, where the Fellow, Theo Tyler, was both qualified and competent, despite being blind. These two examples became linked when Magdalen cast off its incompetent and unenthusiastic Fellow, appointing John Morris in his place. Things began to change ...”<sup>4</sup>

3. Even if we assume that there is an element of exaggeration for effect in Professor Tapper’s portrait of Oxford in 1934, it is a far cry from the present day reputation and status of university law degree programmes, for which competition is invariably fierce and for entrance to which a strong academic record is required.

4. One might begin, in looking at new directions in legal education, by asking the question, “Why study law?”

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<sup>4</sup> *Ibid.*, Chapter 1, pp.1-2.

5. When I went to university to read law, one of the books on the recommended reading list in our first year was Professor Glanville Williams' *Learning the Law*. It is a remarkably helpful book for law students and young lawyers alike, having the admirable qualities of brevity, clarity and utility. In a subsequent edition, Professor Williams<sup>5</sup> offered this explanation of "the attraction of Law as compared with the usual Arts subjects":

"Law is the cement of society and also an essential medium of change. A knowledge of law increases one's understanding of public affairs. Its study promotes accuracy of expression, facility in argument and skill in interpreting the written word, as well as some understanding of social values. Unless you want to teach, it is of wider vocational relevance than most Arts subjects. ...".<sup>6</sup>

6. So the provision of legal education is a valuable end in itself, teaching students the substantive content of the law and also, amongst other things, the important skills of legal research techniques, data assimilation and analysis, interpretation of language and logical reasoning. In rule of law based jurisdictions, such as Hong Kong, legal education also provides an important foundation of knowledge of the essential structures and elements of a just society. But legal education is, of course, not only an end in itself but a means of training the lawyers who will constitute the members of the legal professions necessary to give practical life to the rule of law.

7. The way in which law is taught and how lawyers are trained are therefore very worthy subject matters of discussion. That is even truer today, in our increasingly globalised world of rapid technological advances, than ever before.

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<sup>5</sup> Formerly Rouse Ball Professor of English Law in the University of Cambridge.

<sup>6</sup> Glanville Williams, *Learning the Law*, (Stevens, 11<sup>th</sup> Edition, 1982), pp.1-2.

In delivering the Birkenhead Lecture at Gray's Inn in October last year, entitled "Online Courts and the Future of Justice", Professor Dame Hazel Genn<sup>7</sup> noted that:

"We are said to be nearing the end of the Third industrial revolution and entering what has been referred to as the Fourth Industrial Revolution. The First used water and steam to mechanize production; the Second used electric power for mass production; the Third used electronics and IT to automate; and the Fourth will use artificial intelligence, nanotechnology, and biotechnology, to replace and augment certain kinds of labour and knowledge work. This 4<sup>th</sup> revolution is characterised by a rate of change that is exponentially faster than in preceding revolutions."<sup>8</sup>

Clearly, then, those of you involved in the teaching of law need to identify those trends to which it is necessary to react and must adapt to them – and adapt to them promptly – in order to continue to ensure that legal education and training remains relevant and effective.

8. It is nearly 37 years since I started my law studies and no one would expect the content of my LLB course and the methods by which that content was imparted to be exactly the same today as it was then. To give but one example, in my first year as a law student one of the subjects we were required to take was Roman Law. Interesting though this was as an academic exercise, even then it was difficult to see the subject's potential usefulness to us as future lawyers, and I have a clear recollection of our lecturer conceding to us at the beginning of the year that none of us were ever likely to have a client walk into our offices to seek advice on how to manumit a slave. It may not be a matter of

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<sup>7</sup> Professor of Socio-Legal Studies and former Dean, Faculty of Laws, University College London.

<sup>8</sup> Birkenhead Lecture, Gray's Inn, 16 October 2017, *Online Courts and the Future of Justice*: [https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead\\_lecture\\_2017\\_professor\\_dame\\_hazel\\_genn\\_final\\_version.pdf](https://www.ucl.ac.uk/laws/sites/laws/files/birkenhead_lecture_2017_professor_dame_hazel_genn_final_version.pdf)

surprise therefore that Roman Law is no longer on the list of compulsory subjects at my alma mater, nor is it a compulsory subject of the undergraduate courses in any of the three law schools here in Hong Kong. But you would hardly expect the teaching of law to be exactly the same today as it was three decades ago, any more than you would expect the teaching of surgery to be the same now as it was then.

9. And it is not just the content of legal courses that changes over time. The volume of material that it may be necessary to cover is also growing. In common law jurisdictions, where much of the law is elucidated in the decisions of the courts, the passage of time means that the sheer number of legal precedents potentially relevant to any particular area of the law will inevitably increase. Just look at the Law Reports on the shelves of your law libraries and reflect on the number of new volumes that have been added since the start of your careers. There is just that much more law which it may be necessary to consider, analyse and absorb.

10. There is now also a greater recognition that, for many students, law is a vocation as well as an academic subject and requires the development of practical skills and expertise. As Lord Reed, a Justice of the Supreme Court of the United Kingdom and a Non-Permanent Judge of the Hong Kong Court of Final Appeal, recently said in a speech to the Law Association of the Hong Kong University Students' Union:

“... someone who is only a lawyer isn't much of a lawyer. Law is about how people live together in society. Much of it is applied common sense, but you have to have experience of life to understand why it makes sense. And in order to be an effective lawyer, you have to have developed the social skills and experience to be able to inspire confidence in clients and

in the court, to look people in the eye, to speak confidently and articulately, to deal with people when they are disappointed, angry or upset. Law firms know this. They know that the best lawyer isn't necessarily the person who got the highest marks in the law exams. They are looking for people with rounded skills.”<sup>9</sup>

11. I would add, too, that the process of learning the law never stops no matter what stage you have reached in a legal career. There is a constant need to refresh one's knowledge of particular subjects in the law to keep up with amendments, new legislation and court decisions. That is as true for the final appellate court judge as it is for a solicitor or barrister with a few years' post-qualification experience. Since one never stops learning the law, it must follow that there is a need to structure and provide ongoing professional education for those in the practice of law.

12. For all these reasons, and no doubt many others, the regular review of legal education and training is an essential exercise. This conference has been designed to build on the inaugural Conference on Teaching and Learning in Law held in 2016 as part of the celebrations to mark the 10<sup>th</sup> anniversary of the Chinese University of Hong Kong's Faculty of Law. So this is the second occasion on which academics and legal professionals have gathered here to consider and discuss innovations in legal education and its future directions. But I was surprised to learn, when preparing these remarks, that the process of reviewing legal education has a very much longer history, the first major

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<sup>9</sup> The Rt Hon Lord Reed NPJ, Inauguration Ceremony of the Law Association, Hong Kong University Students' Union, 15 March 2018: <http://www.hkcfa.hk/filemanager/speech/en/upload/1203/Lord%20Reed's%20Speech%20at%20Inauguration%20Ceremony%20of%20the%20Law%20Association%20HKU.pdf>

inquiry in England having been undertaken by a House of Commons Select Committee as long ago as the 1840s.<sup>10</sup>

13. Indeed, there have been numerous benchmark reviews and reports on legal education across a number of common law jurisdictions in the past three decades, including Hong Kong.<sup>11</sup> In 2001, the Steering Committee on the Review of Legal Education and Training in Hong Kong published its preliminary report,<sup>12</sup> which is more commonly referred to as the *Redmond Roper Report*. That report led to the establishment of the Standing Committee on Legal Education and Training (“SCLET”) which has a statutory role to keep under review, evaluate and assess the system and provision of legal education and training in Hong Kong and, in particular, the academic requirements and standards for admission to the Postgraduate Certificate in Laws programme and to monitor the provision of vocational training of prospective legal practitioners in Hong Kong by organisations other than the Law Society or Hong Kong Bar Association and to make recommendations.<sup>13</sup>

14. Very recently, in April this year, the SCLET published a report entitled *Comprehensive Review on Legal Education and Training in Hong Kong: Final Report of the Consultants (“Final Report”)*.<sup>14</sup> This lengthy report examines and makes a number of recommendations on: the existing structure of legal education and training in Hong Kong; the reform of legal education and training and international trends and practices; the academic stage of legal education; the Postgraduate Certificate in Laws; the proposal for a common entrance

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<sup>10</sup> House of Commons (UK), *Report from the Select Committee on Legal Education*, H of C, No. 686, 25 August 1846.

<sup>11</sup> See the Standing Committee on Legal Education and Training (“SCLET”), *Comprehensive Review of Legal Education and Training in Hong Kong, Final Report of the Consultants* (April 2018) (“*Final Report*”), Chapter 3, Table 3.2.

<sup>12</sup> *Legal Education and Training in Hong Kong: A Preliminary Review: Report of the Consultants*.

<sup>13</sup> Legal Practitioners Ordinance (Cap.159), section 74A.

<sup>14</sup> <http://www.sclet.gov.hk/eng/pdf/final2018.pdf>

examination for those seeking to enter a trainee solicitor contract in Hong Kong; and the training contract, pupillage and the overseas qualifying examinations.

15. The Final Report identifies a number of reasons for the greater intensity of reviews of legal education in the main common law jurisdictions.<sup>15</sup> These include: (1) the growing complexity and multi-functionality of legal education and training marked by the key trends of growth in student numbers, internationalisation and the expansion of new markets; (2) the development of a better and broader understanding of preparation for legal practice including new approaches to vocational training and clinical models of legal education; (3) the need to respond to the diversification and segmentation of legal work and the pressure towards greater flexibility in qualification pathways; (4) the growing demand for ‘practice-ready’ graduates and trainees, particularly in the context of cost pressures from both private clients and legal aid funders; (5) doubts about the quality and consistency of the provision of education and training; and (6) the impact of increased student numbers and the role of legal education in the context of gatekeeping, progression and quality assurance for the professions.

16. I have read with great interest the Book of Abstracts for this conference and I see that many of these matters will be the subject of discussion at your conference sessions. These discussion topics raise important questions about the future directions in legal education not just in this jurisdiction but also across a number of jurisdictions. The parallel panel sessions to follow these opening remarks are sure to be stimulating and productive and I wish you all the best in your discussions today and tomorrow.

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<sup>15</sup> SCLET, *Final Report*, section 3.1, pp.37-39.