

**The Bar Council of England and Wales**  
**Annual International Rule of Law Lecture 2015**

**Speech by the Hon Chief Justice Geoffrey Ma:**  
**Strength and Fragility in tandem: The Rule of Law in Hong Kong**

1. It is 40 years almost to the day since I last spoke in this Hall. It was then a mooted competition between universities. I remember talking about exemption clauses, *Suisse Atlantique*<sup>1</sup> and *Lep Air Services*<sup>2</sup>. That evening, I spoke in front of nine Benchers including Lord Cross of Chelsea, Lord Edmund Davies, Mr Michael Mustill QC<sup>3</sup> and others. This evening the task is a challenging one because the topic is one that is critical in Hong Kong, has been for a number of years (indeed ever since 1 July 1997) and will continue to be so. The rule of law is seen by many as being Hong Kong's strength and regarded by some as an economic advantage enjoyed over the rest of China, indeed the

---

<sup>1</sup> *Suisse Atlantique Societe d'Armement SA v NV Rotterdamsche Kolen Centrale* [1967] 1 AC 361

<sup>2</sup> *Lep Air Services Ltd v Rolloswin Investments Ltd* [1973] AC 331.

<sup>3</sup> The late Lord Mustill.

whole of the South East Asia region. And yet, seemingly increasingly so in the light of recent events, it has been called into question. One asks rhetorically: is the rule of law in Hong Kong really so fragile that it starts to totter in the wake of certain events? Or is it in reality a strong institution, one of the cornerstones of Hong Kong's success?

2. Much of course depends on what those events are and recent events over the past year in Hong Kong provide useful case studies in order to illustrate broader considerations:-

- (1) The Occupy protests in Hong Kong which lasted 79 days last year from September to December.<sup>4</sup> The protests effectively ended when injunctions were ordered by the court arising out of private law suits based on public nuisance initiated by nearby building

---

<sup>4</sup> The flyer to this evening incorporates a photograph of the protesters occupying main roads in the centre of Hong Kong. The equivalent in London would be the occupation of Piccadilly in the West End or Bishopsgate and Cannon Street in the City.

owners, and bus and taxi operators. The concerns expressed regarding the rule of law were that the protestors, although they were legally represented in the court proceedings, did not comply with the injunctions ordered by the court, waiting instead until the bailiffs enforced the court orders before vacating the streets.

- (2) The White Paper published in June 2014 stated the views of the State Council of the PRC<sup>5</sup> regarding the constitutional model for Hong Kong of “one country two systems”. Of particular note were the references to judges being “administrators” and having to be “patriotic”. This was viewed as affecting the rule of law in that it indicated an attempt to undermine the independence of the Judiciary.

---

<sup>5</sup> Under Article 85 of the Constitution of the People’s Republic of China, the State Council is the executive body of the highest organ of state power and is the highest organ of state administration.

- (3) Pressure groups and others including legislators have continually been complaining publicly about the acquittal of persons prosecuted in the Occupy protests. The concerns over the rule of law are that the courts, by acquitting the persons charged, have been acting inconsistently with public opinion and against the public interest.

3. These incidents have called into question the existence of the rule of law in Hong Kong, as to whether it really exists, at least whether it has been undermined. And what of the future: even if the rule of law now prevails in Hong Kong, is there a risk that it will only become increasingly eroded? These are relevant questions, justified and relevant not least because they are of genuine concern to Hong Kong people. If the Hong Kong community regards the rule of law as a fragile institution, this is obviously of some concern because the existence of the rule of law

and its legitimacy in any community is entirely dependent on the respect in that community for the concept as a core value of society.

4. Before addressing these points in the context of the events earlier mentioned, we must first agree on just what the concept of the rule of law means. The lectures previously delivered by those illustrious jurists in the Bar's Annual International Rule of Law Lectures have referred to "The Rule of Law" by Lord Bingham of Cornhill<sup>6</sup> and I will do likewise. I always consult two books first whenever I am asked to speak about the rule of law: Lord Bingham's book, and the inspirational collection of lectures and talks given by Sir Sydney Kentridge QC contained in "Free Country".<sup>7</sup> In his lecture on the Rule of Law: Ideals and Realities,<sup>8</sup> Sir Sydney pays tribute to Lord Bingham's

---

<sup>6</sup> Allen Lane, 2010.

<sup>7</sup> Hart Publishing, 2012.

<sup>8</sup> Delivered at the 17<sup>th</sup> Commonwealth Law Conference held in February 2011 in Hyderabad. Reproduced in Free Country at page 147-158.

book, to Lord Bingham himself<sup>9</sup> and says it is the starting point for any discussion on the subject.<sup>10</sup>

5. In the Rule of Law, after referring to well-known quotations from works of Shakespeare<sup>11</sup> and Dickens<sup>12</sup> basically disparaging lawyers, Lord Bingham had this to say about the rule of law:-

“But belief in the rule of law does not import unqualified admiration of the law, or the legal profession, or the courts, or the judges. We can hang on to most of our prejudices. It does, however, call on us to accept that we would very much rather live in a country which complies, or at least seeks to comply, with the principle I have stated than in one which does not. The hallmarks of a regime which flouts the rule of law are, alas, all too familiar: the midnight knock on the door, the sudden disappearance, the show trial, the subjection of prisoners to genetic experiment, the confession extracted by torture, the gulag and the concentration camp, the gas chamber, the practice of genocide or ethnic cleansing, the waging of aggressive war. The list

---

<sup>9</sup> A “truly noble and humane judge”: Free Country at page 158.

<sup>10</sup> Free Country at page 148.

<sup>11</sup> Henry VI, Part II spoken by Dick the Butcher: “The first thing we do, let’s kill all the lawyers”.

<sup>12</sup> Oliver Twist said by Mr Bumble: “If the law supposes that ... the law is an ass”.

is endless. Better to put up with some choleric judges and greedy lawyers.”<sup>13</sup>

6. In his lecture on the Rule of Law to which I have just referred, Sir Sidney Kentridge recounted an incident in post-Apartheid South Africa in 1998.<sup>14</sup> The President of South Africa, Nelson Mandela, had appointed a judicial commission to inquire into allegations that the administration of rugby in the country was corrupt and operated on nepotism. He was sued by the person who was then in charge of the sport.<sup>15</sup> It was alleged that the President had failed to consider the matter himself (as required by statute), instead merely rubber-stamping the recommendation made by a minister. President Mandela swore an affidavit in which he stated he had made the decision after full personal consideration of the

---

<sup>13</sup> The Rule of Law at page 9.

<sup>14</sup> Free Country at page 150.

<sup>15</sup> He was the President of the South African Rugby Football Union.

matter. It was, however, not left there. The judge<sup>16</sup> ordered the President to be cross-examined on his affidavit. This no doubt caused much shock to laymen and lawyers alike. No attempt, however, was made by President Mandela to appeal the judge's order nor did he claim executive privilege. However resentful he was at what appeared to many to be an affront to the Office of the President of South Africa, President Mandela stated that an order of the court had to be obeyed by every person. He therefore took the stand on 19<sup>th</sup> March 1998 and was, aged 79, cross-examined for five hours during which time he stood in the witness stand declining to sit and answering all questions with dignity and courtesy. As Sir Sydney describes, "This was a leader demonstrating to his country the meaning of the rule of law".

7. The reason why I have extracted passages from these two books is to lend some backing to what I hope is a simple but accurate definition of the rule of law and it is a definition which I

---

<sup>16</sup> William de Villiers.



have often used as a foundation of any discussion on this topic. For me, the rule of law encapsulates two important but related concepts:- first, there must exist laws which respect the dignity, rights and liberties of the individual in any society and secondly, there must exist an independent institution which enforces rights, liberties and freedoms both in letter and, more important, in spirit. There is nothing original in this definition which I adopt: the two facets of the rule of law constitute in essence the lasting themes of Magna Carta.<sup>17</sup>

8. The first facet is a reference to the contents of the law. In the legal system with which most persons in this Hall are familiar and which is the legal system in Hong Kong – the common law system – the laws are contained of course in statutes, in the case of Hong Kong in a constitution (the Basic Law) as well and also in the cases decided by the courts which form the vast

---

<sup>17</sup> See Lady Justice Arden’s essay “Magna Carta and the Judges: Why Magna Carta matters” contained in *Magna Carta, Muse and Mentor* (Thomson Reuters, Library of Congress, 2014) at page 181-189. As Arden LJ says “Magna Carta is a monumental affirmation of the rule of law”.

body of what are called legal precedents. The importance of case law in the common law system cannot be downplayed. It is case law that reflects the true spirit of the law. The reference to dignity may at first seem odd given the vagueness of the term. It is, however, a recognized concept in the human rights context. Thus, we see the word “dignity” used in a number of modern constitutions,<sup>18</sup> in the Preamble to the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948), in human rights conventions such as the International Covenant on Civil and Political Rights (1966) (“ICCPR”). The nature of dignity as a right, and this reflects the spirit of the law, was articulated by Justice Kate O’Regan of the Constitutional Court of South Africa in *Dawood v Minister of Home Affairs*<sup>19</sup>:-

“The value of dignity in our Constitutional framework cannot therefore be doubted. The Constitution asserts dignity to contradict

---

<sup>18</sup> Such as in Germany, Israel, South Africa and Switzerland. Section 10 of the Constitution of South Africa states the constitutional right as follows: “Everyone has inherent dignity and the right to have their dignity respected”. The jurisprudence on dignity is advanced and plentiful in Germany and South Africa.

<sup>19</sup> 200 (3) SA 936.

our past in which human dignity for black South Africans was routinely and cruelly denied. It asserts it too to inform the future, to invest in our democracy respect for the intrinsic worth of all human beings. Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights.”

9. The second part of my definition is a direct reference to an independent judiciary enforcing the law both in letter and in spirit. One may perhaps sometimes take this for granted and it certainly reflects the reality in many places – I certainly believe Hong Kong is such a place – but perceptions are important. A judiciary, even if in reality truly independent but which is not perceived as being independent, loses the confidence of the community and has its work cut out to convince the population that it truly does deliver what is expected of it. It is easy to see why. If the rule of law is a cohesive force which binds a society enabling it to function as such, a lack of respect for it will obviously undermine this essential cohesion.

10. And so I return to the recent events in Hong Kong earlier outlined. Do they indicate that the rule of law in Hong Kong is at risk? Certainly, the spotlight is on the rule of law but do these incidents demonstrate a fragility in its existence? In order properly to answer these questions, one of course needs to refer back to the definition of the rule of law and asks what I think is the fundamental question to be asked: how does one show objectively and empirically whether or not the rule of law exists in any place? I will attempt to do so largely by reference to the position in Hong Kong. Only when this fundamental question is satisfactorily answered can a community start to have a respect for the law and the rule of law. So how does one go about proving the existence of the rule of law?

11. I ought to start by discussing a factor which, in my view, should be irrelevant to answering the fundamental question:- merely looking at the outcome of cases that go before the court.

This is the fallacy that underlies most discussions on the rule of law, as to whether it exists or not. Many people including many lawyers and legal academics, however, regard the result of cases as a reliable barometer. A ready and simple example of this can be found in public law cases: whenever the government loses a case, it is said that the rule of law is alive and well; the opposite when the government wins. In a case decided by the Court of Final Appeal last year<sup>20</sup> in which it was held that persons who were in the position of mandated refugees<sup>21</sup> and the screened-in torture claimants<sup>22</sup> did not have the constitutional right to work whilst in Hong Kong, immediately after the handing down of the judgment of the court, the lawyer for the unsuccessful applicants faced the media and was reported to have said that the judgment was “an embarrassment for the legal system” in Hong Kong. Similar

---

<sup>20</sup> *GA v Director of Immigration* (2014) 17 HKCFAR 60.

<sup>21</sup> Persons who have established their claims as refugees under the 1951 United Nations Convention Relating to the Status of Refugees, together with the 1967 Protocol.

<sup>22</sup> Claimants who have established themselves as torture claimants under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

sentiments are expressed by pro-government groups when the result of court cases goes against the government. In a case determined by the Court of Final Appeal in 2013,<sup>23</sup> the court held that the Government had failed to satisfy the proportionality test in its policy to restrict social security assistance to persons who have resided in Hong Kong for a minimum of seven years (in practical terms this policy excluded many new immigrants from the Mainland). This led to groups of Hong Kong residents demonstrating their dissatisfaction in the streets. Assertions that the rule of law had been undermined by the court were made. In the third case study referred to earlier where pressure groups complain about the acquittal of persons involved in the Occupy protests, it is clear that when it is said that the rule of law is undermined, what is really meant is that the outcome of the cases has not been to certain people's liking. And yet, if one is analyzing cases determined by the courts, the more pertinent question must of course surely be whether the court has applied the

---

<sup>23</sup> *Kong Yunming v Director of Social Welfare* (2013) 16 HKCFAR 950.

law and acted in accordance with law, as opposed to applying extraneous factors (meaning non-legal matters such as political considerations). Put shortly, the existence or non-existence of the rule of law cannot be gauged by the outcome of a case alone. After all, and this is particularly so in public law cases, the individual parties or a portion of the public (even the majority) may wish for a particular result, but whether or not the result is achieved is entirely dependent on the legal merits, and the result alone provides no clue as to whether the court has acted independently or in accordance with its constitutional mandate of applying the law and its spirit, and nothing else. It is perhaps convenient that this point to make reference also to the Judicial Oath in Hong Kong<sup>24</sup> which requires a judge to uphold the law, act in full accordance with the law, and safeguard the law and administer justice without fear or favour, self-interest or deceit.

---

<sup>24</sup> Similar in wording to all oaths commonly taken by all judges in most jurisdictions.

12. In looking for objective indications of the existence of the rule of law comprising the two facets earlier identified, one starts with an examination of the legal infrastructure in place; in other words, the position on paper. This requires mainly looking at the protections guaranteed under the relevant constitution (if there is one) and relevant statutes.

13. In Hong Kong, by no means unique in this regard, we find the following. Reference can conveniently be made to the Basic Law of the Hong Kong Special Administrative Region, which, as I have said earlier, is Hong Kong's own constitution.<sup>25</sup>

The Basic Law contains the following important provisions: -

- (1) The independence of the Judiciary is set out in three different provisions: Articles 2, 19 and 85.

---

<sup>25</sup> This year is the 25<sup>th</sup> anniversary of the promulgation of the Basic Law, although it did not take effect until 1 July 1997.



(2) Fundamental rights are expressly set out: equality before the law;<sup>26</sup> the right to vote and stand for elections;<sup>27</sup> freedom of speech, of the press and publication, freedom of association, of assembly, of procession and of demonstration, the right and freedom to form and join trade unions and to strike;<sup>28</sup> freedom of conscience;<sup>29</sup> the right to access to the courts;<sup>30</sup> the right to social welfare;<sup>31</sup> the freedom of marriage.<sup>32</sup>

(3) Article 39 is of immense importance. That article provides that the ICCPR (mentioned earlier<sup>33</sup>) as

---

<sup>26</sup> Article 25.

<sup>27</sup> Article 26.

<sup>28</sup> Article 27.

<sup>29</sup> Article 32.

<sup>30</sup> Article 35.

<sup>31</sup> Article 36.

<sup>32</sup> Article 37.

<sup>33</sup> See para. 8 above.

applied to Hong Kong shall be in force and implemented through the laws in Hong Kong. The ICCPR is implemented in Hong Kong<sup>34</sup> through the Hong Kong Bill of Rights Ordinance,<sup>35</sup> which reproduces almost word for word the provisions of the Convention. Thus, one finds contained in Hong Kong's Bill of Rights, the right to equal treatment (Articles 1 and 22), the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment (Article 3), the right not to be held in slavery or servitude (Article 4), freedom of thought, conscience and religion (Article 15), the right to hold opinions without interference and the right to freedom of expression (Article 16), the right of peaceful assembly

---

<sup>34</sup> This is necessary to give effect to the Convention under the common law dualist principle (that international treaties are not self-executing unless made part of domestic law by legislation): *Ubamaka v Secretary for Security* (2012) 15 HKCFAR 743, at para. 43.

<sup>35</sup> Cap. 383.

(Article 17), the right to freedom of association (Article 18), and other rights.

- (4) Article 8 states that the laws in force in Hong Kong prior to 1 July 1997, that is, “the common law, rules of equity, ordinances, subordinate legislation and customary law” are to be maintained. Article 18 reiterates this. Article 81 states that the judicial system previously practised in Hong Kong shall be maintained. Article 82 provides that the Court of Final Appeal in Hong Kong may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal.<sup>36</sup> In the adjudication of cases, Hong Kong courts can refer to precedents of other common law

---

<sup>36</sup> In every substantive appeal (except one) heard by the Court of Final Appeal since the Court was established on 1 July 1997, the Court has included a judge from another common law jurisdiction. There are at present twelve judges, called Non-Permanent Judges, on the panel of judges from other common law jurisdictions:- Australia: Sir Anthony Mason, Justice Murray Gleeson, Justice James Spigelman, Justice William Gummow; England: Lord Hoffmann, Lord Millett, Lord Neuberger of Abbotsbury, Lord Walker of Gestingthorpe, Lord Collins of Mapesbury, Lord Clarke of Stone-cum-Ebony, Lord Phillips of Worth Matravers; and New Zealand: Sir Thomas Munro Gault.

jurisdictions (Article 84). Apart from the Chief Justice and the Chief Judge of the High Court, who must be Chinese citizens who are permanent residents of Hong Kong with no right of abode elsewhere, there are no nationality restrictions for any other judge in Hong Kong (Article 90). Judges are to be appointed only on the basis of their judicial and professional qualities and judges may be recruited from other common law jurisdictions (Article 92). I have mentioned these provisions to make one point: that Hong Kong is a common law jurisdiction, together with all the obligations, characteristics and judicial approach that this entails.

- (5) Finally, in relation to the Basic Law, I would draw attention to Article 11 which states in part that “no law enacted by the legislature of the Hong Kong Special

Administrative Region shall contravene this law". Further, section 6 of the Hong Kong Bill of Rights Ordinance provides that where there is a violation of any of the provisions in the Bill of Rights, a court can grant any relief which it considers appropriate and just. These provisions in the Basic Law and in the Ordinance empower the courts to declare statutes void if held to be unconstitutional. This is not a power that exists in many jurisdictions, the United Kingdom and New Zealand included.

14. I now deal with the second – and more important – half of the exercise to demonstrate, objectively, that the rule of law exists. Put bluntly, it really amounts to this: even with what I have referred to as a sound legal infrastructure exists, is the position on paper matched by the reality? In other words: do the courts in reality protect fundamental rights and are they truly independent?

After all, we have all had experience of some jurisdictions which, on the surface, have acceptable laws in place but where, sadly, the reality differs, sometimes dramatically.

15. In my view, there are six factors which are relevant to this exercise.

16. First, transparency of the legal system. The idea of open justice whereby most court proceedings are open to the public to observe,<sup>37</sup> is an obvious indication of the rule of law. The fact that any member of the public is able to observe court proceedings provides an effective supervision of the whole of the judicial process. Closely connected to this is the ability, save in exceptional and recognized circumstances, of the press to report. This is embodied in Article 14.1 of the ICCPR (Article 10 of the

---

<sup>37</sup> Save for the most sensitive cases, such as certain matrimonial proceedings (especially where children are concerned) or Mareva injunctions or Anton Piller orders.

Hong Kong Bill of Rights)<sup>38</sup> and is a common characteristic of common law jurisdictions.

17. Secondly and this for me provides a crucial indication of the existence of the rule of law, the reasoned judgments. This is an important characteristic of the common law. Reasoned decisions demonstrate not only to the parties to the particular suit but also to the world at large, the precise thought process of the court in arriving at any decision. It exposes for detailed analysis and scrutiny the reasons for a decision and, where these reasons are not convincing, the judgment will enable the losing party to consider an appeal. In jury trials, there is of course no requirement on a jury to provide reasons but a jury's verdict is always preceded by a detailed summing-up, from which one can often work out the reasons to justify or explain a jury's verdict. A reasoned judgment will demonstrate that a court has discharged its responsibility of determining the outcome of cases strictly according to law, and

---

<sup>38</sup> Public hearings and the requirement that judgments be made public.

legal principles, and has acted independently. Put another way, where the decision of a court is not accompanied by any reasons at all or wholly inadequate reasons, this may give rise to speculation as to whether a court has really acted strictly according to the law or whether it has instead taken into account extraneous and illegitimate factors. Of course, it does not follow that where judgments do not contain reasons or have inadequate reasons that the court is not independent but certainly, the existence of the reasoned judgments will go a long way to dispel any such speculation. And if the relevant proceedings are behind closed doors, adverse speculation is even more intense.

18. Thirdly, connected to the second factor just discussed, a reasoned judgment will indicate clearly the court's approach to the law. In the area of human rights, one can then see the approach of the court as to whether human rights are generously construed and applied, or not. In Hong Kong, numerous cases, some of which



have resulted in statutory provisions being declared void for unconstitutionality, have stated and reiterated that in dealing with fundamental rights, they are to be purposively and generously interpreted so as to give persons the full benefit of constitutionally guaranteed fundamental rights and freedoms.<sup>39</sup> Correspondingly, any restrictions on rights should be narrowly construed. There is nothing surprising or controversial in this approach; it is in line with other common law jurisdictions.

19. Fourthly, the appointment process of judges is also a relevant consideration in determining the independence of the Judiciary. I have already referred earlier to that provision in the Basic Law which mandates the judges should be appointed on the basis of their judicial and professional qualities. The appointment procedure in Hong Kong is that although the Chief Executive<sup>40</sup>

---

<sup>39</sup> This point was emphasized early on in the judgments of the Court of Final Appeal. See, for example, *Ng Ka Ling v Director of Immigration* (1999) 2 HKCFAR 4, at 28-29.

<sup>40</sup> The head of the Government in Hong Kong.

formally appoints judges, he does so on the recommendation of an independent commission comprising judges, members of the legal profession and lay persons.<sup>41</sup> Removal of judges at District Court level and above can only be by reason of inability to discharge his or her duties or misbehaviour, and only on the recommendation of a tribunal appointed by the Chief Justice consisting of no fewer than three judges; in the case of the Chief Justice, a tribunal appointed by the Chief Executive consisting of no fewer than five judges.<sup>42</sup> For judicial officers below the level of the District Court (magistrates), they can be removed only by reason of inability to discharge duties or misbehavior after an investigation by a tribunal comprising two High Court judges and a public officer.<sup>43</sup> Removal is by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission.

---

<sup>41</sup> Article 88 of the Basic Law. The relevant commission in Hong Kong is the Judicial Officers Recommendation Commission.

<sup>42</sup> Article 89 of the Basic Law.

<sup>43</sup> See the Judicial Officers (Tenure of Office) Ordinance Cap 433.

20. I mentioned as one of the concerns about the rule of law in Hong Kong the White Paper published in June last year.<sup>44</sup> The concerns were over the reference to judges as “administrators” and having to be “patriotic”. These remarks were seen to be an interference or undermining of judicial independence. For me, quite simply, whatever was intended, meant or not meant, the constitutional and legal position is as stipulated under the Basic Law in the provisions I have identified. They state and reiterate clearly the independence of the Judiciary in Hong Kong. And the reality matches this. At the end of the day, the meaning of a word can be debated endlessly. As Lord Neuberger of Abbotsbury said in a speech he delivered in Hong Kong<sup>45</sup> when discussing the same issue “Well, like many legal issues, the argument is ultimately about the meaning of a word, and words are slippery things.”

---

<sup>44</sup> Para 2 (2) above.

<sup>45</sup> “The Third and Fourth Estates: Judges, Journalists and Open Justice” delivered on 26 August 2014 at the Hong Kong Foreign Correspondents’ Club.

What is more important is a recognition of fundamentals. One might say judges administer the law or are patriotic to their jurisdiction, but what this does not mean is that in the discharge of their judicial function, they will be somehow partial or biased towards anyone or anything.

21. Fifthly, effective access to the courts or justice. The second facet of the rule of law, namely, the existence of an independent institution (the court) to enforce laws, implicitly carries with it the necessity of ensuring effective access to justice. The Occupy movement in Hong Kong effectively ended when the court granted injunctions to remove the protesters from the streets. But the protesters had their day in court and argued their case at length, albeit eventually unsuccessfully. They were all represented by teams of experienced counsel, with a number of leading counsel as well. All except perhaps one or two were on legal aid. This is not the occasion to go into legal aid in detail, whether in Hong

Kong or elsewhere. The only point I wish to make is that in Hong Kong, the availability of legal aid is seemed to be an important factor in ensuring access to justice.

22. Sixthly and lastly, and this is perhaps the most nebulous factor in relation to the determination of the existence of the rule of law, the views of the users of the courts (mainly being perhaps the lawyers) towards the courts and their confidence in the system, provide some indication to support (or, as the case may be, not support) the existence of the rule of law.

23. I would like to think that Hong Kong passes the test after these six indicators have been properly considered. But that is of course not really for me to say but for the public to decide for itself. It is essential that the community does take a stand on this, for, as I have said earlier, public confidence in and respect for the rule of law is critical. If a jurisdiction passes this test, it will then

have earned the respect that the rule of law needs. And where the rule of law does exist, it is undoubtedly a strength and becomes an institution that will have a long term future. This is by no means to say that it is not healthy to have concerns from time to time about the rule of law. I am not saying that, quite the contrary. Discussions and debates over such an important topic are healthy; after all, to adopt an old saying, the price for enjoying the rule of law is eternal vigilance. If fragility has the same meaning merely as concern, then strength and fragility can co-exist in tandem. If fragility has a more alarmist connotation, then one should best analyze the arguments and examine the facts objectively and dispassionately.

24. Finally, I profoundly thank the Bar for this opportunity to address you this evening. It is an emotional return to this great Hall. I am honoured to be back and I thank you all for that.