

Following is the speech by the Chief Justice of the Court of Final Appeal, Mr Geoffrey Ma Tao-li, delivered at St Paul's College 163rd Anniversary Speech Day today (December 4):

Dr Cheng, Mr Yuen, distinguished guests. It is a great honour to be asked to say a few words this evening at the School's Speech Day. This is the fifth occasion on which I have had the privilege of being asked to address a school at Speech Day. It gives me particular pleasure to be here; St Paul's College, which was officially founded in 1851, is arguably the oldest school in Hong Kong without any gaps in its history. It has experienced first hand every significant event in Hong Kong's history and its distinguished alumni have often been at the centre of our history as well.

I attended the whole of my secondary schooling in the north of England. The first year I was there happened also to be the last year that class prizes (called Form prizes) were awarded. I still have the prize awarded to me in 1968 - it is a history book, "100 Great Events that Changed the World", covering pre-historic and ancient events right through to what constituted then the modern era. Events such as the origins of Buddhism and Taoism through to the New Deal and the World Wars are covered. One of the chapters was about the Magna Carta (the Great Charter). In 13th century mediaeval England (at the time of Robin Hood and Ivanhoe), the sovereign ruled without much regard for the rights of anyone else. Under the name of the King, taxes were levied at will and there was no equality before the law. Such courts of law as there were hardly dispensed any justice as we know it today. They were not independent and they did not treat everyone equally. In other words, the rule of law simply did not exist. Judges, or those who pretended to administer justice, applied the law only to the extent that they helped promote the injustices perpetrated by the King. For example, the courts would imprison anyone unable to pay the heavy taxes levied by the King and permit imprisonment without trial. In short, the courts did not administer justice. The words of St Augustine (Note 1) rang true, "Take away justice and what are kingdoms but acts of robbery?" (Note 2)

In 1215, the sovereign in England was King John, (Note 3) who succeeded his brother Richard I (Richard the Lionheart). Taking money from his subjects in the form of taxes or fines, became common. This was what led to romantic legends, such as that of Robin Hood, to circulate. The mistake that King John made was not only to inflict his injustices on poor people but also on those in positions of power, in those days the noblemen or barons. But no one in England was prepared to tolerate injustice on that scale anymore. Having made great sacrifices during the Crusades and then having had a small taste of what justice was supposed to be when Henry II (Note 4) introduced the jury system, the people were in no mood to continue to be subjected to injustices. In the spring of 1215, at the height of the tensions between the King and the barons, the barons marched on London. This resulted in the historic event at Runnymede when the barons produced a

charter - the Magna Carta, which had been drafted with the advice of the Archbishop of Canterbury, Archbishop Stephen Langton - for the King to sign.

That document established forever the concepts of equality and justice as we know them today: an independent judiciary administering justice without fear or favour, no one to be punished without a fair trial, punishments to be proportionate to the offence charged, justice was not to be delayed or denied or sold, and other fundamental rights. Most important of all, these rights and liberties applied equally to everyone and would be enforced against anyone, including (or especially) against the King. The charter states, "We grant to all the freemen of our realm, from us and our heirs forever all the under-mentioned liberties to have and to hold for them as our heirs from us and our heirs."

Next year, the 800th anniversary of the signing of Magna Carta is celebrated, with many events taking place in England. I am invited to speak at one such event in London next February. There are celebrations in the USA, for the influence of the principles of Magna Carta on US constitutional law and on its constitution is widely recognised.

So why have I spent so long in making this introduction to the importance of the rule of law in Hong Kong? It is because the underlying principles of the Magna Carta are timeless, as relevant today as they were 800 years ago. There is a concern that the longer an institution has been in existence, that people forget about it and take its importance for granted; worse still, they come not to appreciate its value. Those principles of the Magna Carta I have set out - the independence of the judiciary, equality, respect for fundamental human rights - are fundamental to Hong Kong's well-being. These principles underlie our Basic Law.

The Basic Law, as you will all know from your studies, is Hong Kong's own constitution. Under the Basic Law, the independence of the judiciary and equality are guaranteed. The legal system specified in the Basic Law for Hong Kong is the common law system; thus the link to England, widely regarded as the home of the common law, can readily be seen. The Basic Law also makes reference to international conventions: Article 39 of the Basic Law states, for example, that the International Covenant on Civil and Political Rights (the ICCPR) as applied in Hong Kong shall be in force here. The ICCPR is implemented in Hong Kong under the Hong Kong Bill of Rights Ordinance, (Note 5) which sets out the Bill of Rights for Hong Kong in 23 Articles. The Basic Law and the Bill of Rights set out fundamental rights in Hong Kong:

(1) The right to equality. The right to enjoy rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status.

(2) The right to life.

(3) The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

- (4) The right not to be held in slavery or in servitude.
- (5) The right not to be subjected to arbitrary arrest or detention.
- (6) The right to marry and have a family.
- (7) The right to vote and stand for election.
- (8) Freedom of speech, of the press and of publication.
- (9) Freedom of association, of assembly, of processions and of demonstration.
- (10) Freedom to form and join trade unions and to strike.
- (11) Freedom from arbitrary arrest or detention.
- (12) The right of access to the courts and a fair trial. Within this the important right to institute legal proceedings and seek redress from the courts against acts of the executive authorities.
- (13) The right to seek confidential legal advice.

One of the main themes of the Basic Law is continuity. It was important (and this remains important today) that those institutions that had served Hong Kong well and had contributed to its success, should be in place after July 1, 1997. One of those institutions is the rule of law. A community which is governed by laws that respect human rights, a community which respects these rights and the equal entitlement of everyone in the community to enjoy these rights, a community which has an independent judiciary to administer these rights in courts of law - this is a community that has the rule of law.

The existence of the rule of law is of critical importance in any society and Hong Kong is no exception. The enjoyment of those rights - they can be called fundamental human rights - is dependent on their proper recognition and, if necessary, enforcement by the courts. These rights basically recognise the right of every person to enable himself or herself to lead a decent life. Hong Kong is also a major commercial and financial centre in the world. Her success here is to a very large extent dependent on the existence of the rule of law. Most people will tell you that the rule of law is a great advantage that Hong Kong enjoys over many other places.

But Hong Kong is not just about money. It is about seven million people who all want to be able, for themselves and their families, to lead a decent and dignified life. People will have different priorities, different interests and vastly different points of view. The law and the administration of justice by the courts try to achieve a proper balance of these widely divergent interests and points of view. Ultimately, the objective is to ensure that fundamental human rights are properly enforced, and that individual rights and the rights

of others in our community are respected. This is the challenge that faces me as Chief Justice and the challenge that faces my colleagues in the courts. Fundamental, however, to the work that the courts and judges do is the knowledge that the community respects the rule of law. I believe our community does respect it.

Respect for the rule of law is respect for society itself and this includes in particular a respect for rights belonging to all members of the community. St Paul's College has as one of its main goals the role of its students in the community, to raise civic awareness and to develop every student into a responsible person in our society. This is truly learning based on mutual respect and trust, and a respect for human rights and justice.

I congratulate all those students who will receive prizes today and your families. I salute the College, its staff and students both past and present for their ethos. And, as we approach what is a happy time of year at Christmas, I wish you all good health and happiness.

Notes:

1. Augustine of Hippo, the influential theologian and the philosopher (354-430).
2. From De Civitate Dei (The City of God) Book IV.
3. He reigned from 1199 to 1216.
4. He reigned from 1154 to 1189.
5. Cap. 383.

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