

**Speech by The Honourable Chief Justice Geoffrey Ma  
at The Hong Kong Association of the  
Heads of Secondary Schools  
55<sup>th</sup> Anniversary  
Education Colloquium 2019  
30 October 2019, Hong Kong**

**Today's Students, Tomorrow's Leaders**

1. As we reach the end of the first two decades in this millenium and over 22 years since 1 July 1997, it is inevitable that one should reflect a little on fundamental values and concepts that underlie institutions in Hong Kong. There is perhaps no institution of greater relevance to our youth than our schools and the education they provide. This leads one to think a little more about the aims of education and what schools seek to achieve. You are about to hear a keynote speech from the President and Vice-Chancellor of the University of Hong Kong about education for future generations and another keynote speech from Professor Hau

will also deal with the future. For my part, I wish to focus on fundamentals and just what it is that today's students, who really will be tomorrow's leaders, should be thinking.

2. The whole of my working life has been in the law and it is in this context that my remarks today should be seen. I do not of course work in the field of education and am not qualified to speak on most aspects of it, but I hope it is not controversial to assume as one of the premisses of education the preparation of our youth for integration into the community. There is nothing complicated about this premiss; it is a fact of life or, as Jane Austen put it a truth universally acknowledged, that one day our students will have to be a part of the community in which they live and work.

3. But just how important is the community? Earlier this year, in April, I had the honour of receiving from the

University of Hong Kong the honorary degree of Doctor of Laws. I had the privilege of delivering the speech on behalf of the honorary graduates that day. In the speech, I spoke of how the law reflected the basic assumptions in society of tolerance, respect and compromise. These are the assumptions behind a sense of community. It is this aspect which must be the key to living and working in a community – a sense of community is what our students of today should be gaining from their education.

4. One of the main theories of education is humanism in which learning represents the challenge that faces an individual (the student) to fulfill his or her potential. In order to meet this challenge, the student is guided by a person (the teacher) whose responsibility is to point the student in the right direction. This can involve a pragmatic approach to learning in which the student is provided with experiences,

whether his or her own or the experience of others, that will help the student to arrive at the answers to questions regarding his or her future. Questions regarding one's future enable a person to realise his or her potential.

5. The potential that I wish to dwell on today is not the potential of fulfilling one's ambition from a career point of view. It is the potential of a sense of belonging to a community, a sense of community that everyone who is a part of the community should feel.

6. But how does one go about teaching a student about a sense of community? Here, the conundrum posed by Plato comes to mind. He asked: how is a person able to learn something new when that something is new to that person? Plato did not, I think, mean this to be some insoluble puzzle. Rather, he was posing a practical question in asking how one

can most effectively impart a new idea to a student. Learning by rote is one method but while effective in certain situations (such as the multiplication table I had to learn as a youth), it is unsatisfactory in many other areas. The best method of teaching a concept like a sense of community is to encourage the student to think for himself or herself in order to be convinced that the concept is a worthwhile one. In order to do this, the student must be provided with the tools and the information to allow him or her to think the matter through themselves. In the law, one hears all the time about the need to have evidence before any legal decision can be made. It is no different an approach when attempting to teach a concept like a sense of community: success in teaching this concept is not done merely by making bald assertions, it is achieved by convincing the student of the correctness of it by cogent and persuasive means. Only then can the lesson be truly learnt and the concept truly accepted.

7. But how does one begin to do all this? The answer is, as with most arguments, to begin with fundamentals.

8. Allow me to go back to my comfort zone in order to provide an example of what I have been trying to convey for the past few minutes. I am often asked about the rule of law in Hong Kong and I speak often about it. The most frequently asked questions are: what is the meaning of the rule of law in Hong Kong and how do we know it truly exists? The challenge I face is to explain the concept of the rule of law to my audience and to try to convince them. It is not unlike the challenge which faces a teacher when trying to convey to a student the concept of a sense of community.

9. As I earlier mentioned, one starts with fundamentals. The fundamentals of the rule of law boil down to the existence and recognition of the rights and freedoms of members of a

community, and their enforcement by an independent judiciary. At the heart of the rule of law is the respect not only of the rights of the individual but a respect for the rights of others. We can thus see a direct link between the rule of law and the concept of a sense of community. This makes my example of referring to the rule of law perhaps a useful one.

10. What are the rights that exist and that should be recognised and enforced? Rights which protect the person and property readily spring to mind. We therefore have criminal laws which can result in criminal sanctions being imposed, including imprisonment, and these laws are there to protect private persons, the public as a whole and their property. Civil laws achieve the same purpose. If we are injured as a result of an injury caused to us by others, we can claim in a civil action. Similarly if our property is damaged.

11. However, there are other rights which are particularly relevant in the consideration of the rule of law. These are what we call human rights and fundamental freedoms. Many jurisdictions around the world have constitutional documents which guarantee such rights and freedoms, and Hong Kong is no exception. There are two stages in making out a cogent case to convince people that the rule of law exists in the context of rights and freedoms: the first stage is to identify the infrastructure, the second is to ask whether the reality matches the theory.

12. The constitutional document applicable to Hong Kong is the Basic Law.<sup>1</sup> For the first time in Hong Kong's history, there are set out guaranteed rights and freedoms:-

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<sup>1</sup> Its full title is the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. And, as the Preamble states, the document ensures the implementation of the basic policies of the PRC regarding Hong Kong.

- (1) These rights are set out in Chapter III of the Basic Law under the heading “Fundamental Rights and Duties of the Residents”.
- (2) The right to equality before the law is stipulated in Article 25.
- (3) Article 26 refers to the right to vote and the right to stand for election.
- (4) Article 27 refers to the freedom of speech, of the press and of publication, freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form trade unions, and to strike.

- (5) Article 28 refers to the freedom of the person and to the principle that no one should be subjected to arbitrary or unlawful arrest, detention or imprisonment.
- (6) Article 31 refers to the freedom of movement, and freedom of emigration to other countries and regions.
- (7) Article 32 refers to the freedom of conscience. It stipulates that residents shall have the freedom of religious belief, and the freedom to preach and to conduct and to participate in religious activities.
- (8) Article 34 states that Hong Kong residents shall have the freedom to engage in academic research,

literary and artistic creation, and other cultural activities.

(9) Article 35 refers to the right to confidential legal advice, access to the courts and the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

(10) Article 39 provides that the International Covenant on Civil and Political Rights<sup>2</sup> (“**ICCPR**”) should be implemented in Hong Kong. The ICCPR is in force in Hong Kong under the Bill of Rights Ordinance Cap 383. That Ordinance sets out in 23 articles the Hong Kong Bill of Rights, setting out basic rights and fundamental freedoms which complement the rights and freedoms set out in the Basic Law.

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<sup>2</sup> This is a multilateral treaty adopted by the UN General Assembly in 1966.

13. Any legislation inconsistent with the Basic Law or with any of the rights and freedoms set out in the Bill of Rights can be declared invalid by the courts. This is the effect of Section 6 of the Bill of Rights Ordinance and of Article 11 of the Basic Law, and obviously gives considerable power to the courts in Hong Kong: its effect is to enable the courts to make authoritative rulings on the meaning of the constitution that would bind the legislature in terms of what it can or cannot do. The Hong Kong courts have in the past declared legislative provisions unconstitutional and therefore void.

14. So far, I have dealt with the position on paper under the Basic Law and the Hong Kong Bill of Rights Ordinance, but one must always answer the critical question of the reality behind the theory. Just how real and effective are the rights and freedoms, and the principles and institutions to which I have just referred?

15. The real test of whether reality matches the theory is to see how the courts actually deal with the day to day business of adjudicating disputes, how they discharge in practice their constitutional responsibilities and just how transparent their work is. In this context, the type of case that often provides the litmus test is the case that arouses public controversy. Public law cases are of such a type.

16. Public law cases provide perhaps the best examples because very often, they involve controversial issues where the court is faced with a number of diametrically opposite views, each of which is passionately held and all of which may appear to be entirely reasonable. In most other areas of the law, the answer to a legal problem is often fairly clearcut, even though getting there may at times be complex. In the area of public law, however, and in particular cases which involve issues of constitutional importance, very often the

interest of the public in general is engaged. Here, the views of the public (and I include here the government as well) will be as diverse as the society itself in which the legal dispute before the court originates. When one is dealing with, for example, issues involving the freedom of expression, or perhaps immigration issues or indigenous rights, public controversy is almost certain to arise.

17. The way in which courts deal with such issues – and I am not here referring to the actual result of any litigation – is critical. It is critical because the way in which a court approaches such cases – its methodology and most important of all, its reasoning – will demonstrate whether those principles which provide the foundation of the common law, have been applied.

18. An independent judiciary is key. It is the key to the fundamental principle of equality before the law. The meaning of an independent judiciary is reflected in the Judicial Oath taken by judges. The precise words may differ from jurisdiction to jurisdiction but the effect is the same. In Hong Kong, the Judicial Oath requires each judge to adhere to the law in discharge of their duties. Judges are required “to act in full accordance with the law, honestly and with integrity, safeguard the law and administer justice without fear or favour, self-interest or deceit”. You may think it unnecessary to dwell on this for it is so obvious but it is not evident to some people and therefore necessary to be constantly reminded of it. As for equality before the law, when judges decide cases, of course the parties before them matter (after all they are the reason for the litigation in the first place) but their identities, and their status (even if or especially if they are the government) do not.

19. Adherence to the law means much more than just looking at the words of the law. As important, if not more so, one must look to the spirit of the law. A ready example of this is in the way fundamental rights and freedoms are interpreted by the courts. These are in similar form and one will instantly recognise their content: the right to life, to equality, freedom of speech of expression, of political or religious belief, and so on. I have earlier set out some of these rights. But it is the way in which they are construed that is of great importance. When it comes to fundamental rights and freedoms, they should be construed purposively and generously, avoiding a literal, technical, narrow or rigid approach.

20. The spirit of the law is by its very nature an imprecise concept, even at times elusive. Owing to this imprecision, it becomes a somewhat flexible concept and this can occasionally give rise in certain cases to difficulties. The

difficulties arise when the purported exercise of rights and freedoms are taken to their limits and meet head on the legitimate and reasonable interests or points of views which go the opposite direction. This type of situation provides a ready example of what I was discussing earlier when I referred to the difficulties faced by the courts when confronted with diametrically opposite, yet on their face, reasonable views. This is where a fine balance needs to be struck, and controversies in the outcome of a case may be unavoidable. The need to strike a balance is a recognition that there must be respect not only for individual rights but also respect for the rights of other people in the community.

21. And so I return to the theme of my talk this morning. It is not controversial that we should all have a sense of community. It must surely be that one of the main objectives of education is to provide our students with the tools to enable

them to decide for themselves and be convinced just how vital it is to embrace this concept. The rule of law is rightly one of the cornerstones of our community and implicit within that concept is the sense of community I have been discussing. If today's students are to justify their role as tomorrow's leaders, a sense of community – rooted in the fundamentals of tolerance, respect and compromise – is something they (and all of us) must possess.

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