

**Chinese University of Hong Kong  
50th Anniversary Distinguished Lecture**

**Speech by  
the Honourable Chief Justice Geoffrey Ma**

**The Essence of Our Society : From a Written Constitution to  
Reality and into the Future 50 Years**

1. It is a great honour to be invited to speak as part of the Chinese University of Hong Kong's 50<sup>th</sup> Anniversary celebrations. 50 years ago, I was seven years old. No one then gave much of a thought as to what the following 50 years would bring for Hong Kong, least of all what would happen on 1 July 1997. In 1963, 1997 was 34 years away. Today, we are 34 years away from 2047 and many people are already asking questions, at least wondering, about the next 50 years.

2. In this talk, I focus on the law – I have no expertise in any other area to be able to give any sort of considered view – with a special emphasis on the one document I believe contains the very foundation enabling Hong Kong to function: the Basic Law. The Basic Law is not just a document which conveniently

sets out in convenient chapters general principles, fundamental rights and duties, Hong Kong's relationship with the Central Authorities, our political structure, the economy, education, science, culture, sports, religion, labour, social services, external affairs and other matters. The Basic Law provides a guarantee of rights and liberties, enabling everyone who lives and works in Hong Kong to live a full life, pursue happiness and have the peace of mind of knowing that there is an entity – the law – before which everyone is equal and on which reliance can safely be placed to protect them and their families. There is a school of thought much like the Big Mac index in economics<sup>1</sup> except this relates to law, based on the traffic accident scenario when one car hits another. In Hong Kong, apart from some possible temporary irritation, everything falls in order and no complication exists: details are exchanged, the police are contacted, insurance companies then become involved and everything is sorted out in due course. This is the law in operation: everything is in order and is done according to law.

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<sup>1</sup> This is a rough guide to exchange rate economics and purchasing power differentials.

In some countries, the law is but one factor among others when a traffic accident occurs: one worries about the status of and therefore the influence wielded by the person with whom you are involved in the accident and other what might conveniently be called extraneous factors; in other words, there is no guarantee of order, predictability or peace of mind.

3. The law is not only about lawyers and courts. It is partly about them, but most people will not encounter a court or have reason to consult a lawyer in their lives. And yet the law pervades everyone's lives and to a significant extent, governs the way we live. It certainly enables a complex community like Hong Kong to operate as a community, providing the foundation for the 7.5 million or so people who live here to be able to do so side by side. When you think about it, this is no easy feat to achieve at all. A population of 7.5 million people means very many points of view, and when one adds to the mix corporate entities, institutions of all kinds (the government, political institutions, religious institutions or education institutions) and

international connections, the points of view of all who make up a community are multiplied even further. It does not take a person knowledgeable in social sciences to appreciate that society is complex, and that is the law which to a large extent helps keep everything together and helps prevent a breakdown of that society.

4. The law of course has two important facets: content and enforcement.

5. The content of the law should be there for all to see even if at times it can be difficult to understand. The visibility of the law is of course a reminder of the two basic functions of the law: certainty and fairness; these two factors make up for many people the definition of justice itself. Those who follow ancient history will know that in Babylonia (modern day Iraq) at about 1750 BC, one figure loomed large – Hammurabi (such is his importance to law that he appears in the frieze above where the justices sit in the Supreme Court of the United States in Washington DC). Ancient inscriptions in cuneiform describe

Hammurabi as having “put order and righteousness in the land”. He did so by having laws put down in writing. The Code of Hammurabi consisted of 21 columns of writing in cuneiform script extensively setting out 282 laws. The importance of this Code lay not so much in the laws themselves but in that this was the first time in which laws, which were to be universally applied, were made public. The laws dealt with property, family issues (a man could not divorce his wife if she fell sick but was obliged to maintain her), and probate matters. In our eyes, the laws in the Code were crude (a doctor who negligently performed an operation would have his hands cut off) and not altogether fair (slavery was very much seen as a right to be perpetuated and protected). The ancient Romans also had their codes: the great Codes of Justinian (another person immortalised in the frieze of the US Supreme Court) and of Theodosius (on administrative law).

6. The other important facet of the law is its enforcement. Here, and I will soon develop this theme when I

come to deal with the position in Hong Kong, the focus is on the activity of the courts rather than on law enforcement agencies. The enforcement of the law by the courts involves a consideration of the independence of the judiciary, the approach and methodology of the courts and the vigilance within which judges deal with issues of public importance. All these aspects form what I believe to be the integrity of the law, a term I used earlier this year at the Opening of the Legal Year.

7. The foundation of the integrity of the law is of course an independent judiciary. The Codes of Hammurabi, Justinian and Theodosius were of course quite revolutionary in their statement of legal principles, but there was little evidence of an independent judiciary in Babylonia or in Rome. In the Roman Empire, many judges were tribunes under the direct control of the emperor and even when what could be called a jury system was introduced, this consisted of panels of senators (later, jurors were drawn from the privileged classes). Varying degrees of bias were inherent and inevitable. Even in the early days of the

common law in England (in the mid 12<sup>th</sup> Century), although the King was the fountainhead of justice, reliance was placed on local sheriffs to act as judges. A fair and impartial hearing before these judges could not be guaranteed as, often, the sheriffs were open to bribery.

8. It is not necessary to dwell too long on ancient history or medieval history to underline the importance of the independence of the judiciary. More important is to understand what it is and what it means. To many people, it is obvious but worth repetition. An independent judiciary is one where there is an adherence by judges, allegiance some may say, to the letter and spirit of the law, and only to the law. While those who come before the courts are important (they must be because they are the reason for any legal proceedings in the first place), their status and identities are not. And nowhere is this point more apparent than in the treatment of cases involving the government. The phrase “all are equal before the law” is often taken for granted. I think this is good, as long as everyone

realizes just what it means and why it is of such pivotal significance. The significance goes back to what I have mentioned earlier as being the role of the law in our community. There is a quote, of which I am fond, from Dame Sian Elias, the current Chief Justice of New Zealand: “Law then is what convinces. It is the opposite of what is arbitrary.”<sup>2</sup>

9. A reminder of the independence of the judiciary in Hong Kong is contained in the Judicial Oath<sup>3</sup> required to be taken by every judge on assuming office. That Oath requires all judges “to act in full accordance with the law, honestly and with integrity, safeguard the law and administrative justice without fear or favour, self-interest or deceit”. In these words are encapsulated the obligation to adhere to the integrity of the law. It is a powerful reminder of all that the judiciary stands for. However, it is how judges discharge their responsibilities and

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<sup>2</sup> From her speech “Constitutions and Courts” at the Tenth Oration of the Australasian Institute of Judicial Administration delivered on 16<sup>th</sup> June 2000 in Sydney, Australia.

<sup>3</sup> Sections 16, 17 of and Part V of Schedule 2 to the Oaths and Declarations Ordinance Cap 11.

honour their Oath in reality that matters. I shall briefly discuss this later.

10. Hong Kong is recognized world-wide as a common law legal system and is a respected jurisdiction in the common law world. But first, how did Hong Kong come to have the legal system that now exists in the first place?

11. The origins of the common law in Hong Kong date back to 1841 when the British arrived in Hong Kong. The reason for the British presence in the Far East at that time was trade. Very soon, trade became the lifeblood of Hong Kong. With increased trade came sophisticated means of finance and naturally, an international dimension. In 1841, the population of Hong Kong was about 4,000 people with another 2,000 living on boats. Seven years later the population had nearly quadrupled. By 1863, this had quintupled to 125,000 people. In 1925, the population was 725,000. In 1950, the figure was 2.2 million. In 1980, this had become 5 million. At the turn of

the Century, the figure becomes 6.7 million. Today, as mentioned earlier, the figure is about 7.5 million.

12. In a Foreword to a textbook on commercial litigation<sup>4</sup>, I wrote this: “It is, however, not to be forgotten that Hong Kong continues to be one of the most important financial and commercial centers in the world, and much of our community thrives (and depends) on the maintenance of this status”.

13. Trade and finance are complex activities which depend on a series of interconnecting factors – the skill, expertise and industry of people, geographical advantages, and law. It is again law that provides the essential infrastructure and the basis to enable trade and finance to flourish in an environment that promotes these activities. Laws that govern trading activities include the law merchant, sale of goods legislation, banking legislation, shipping legislation and conventions, regulatory codes in share dealing, company law

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<sup>4</sup> Commercial Litigation in Hong Kong (Stone and Brock) (Sweet & Maxwell, 2012)

and so on. With the growth in trade and finance came (as we have seen) a rapid growth in Hong Kong's population. People came to Hong Kong to seek their fortune, many people came simply to make a better life for themselves. With the growth in population, there developed the need for a sophisticated legal system to govern the social and political, and not just economic, aspects of society. Whenever reference is made to the law, it is a reference to the concept of what is commonly referred to as the rule of law. This term sometimes means quite different things to different people. It is used a lot these days and the term appears daily in the press and other forms of media. I often use the term myself. My definition of that term is that the rule of law comprises two connected premises: first, the existence of laws that respect the dignity and rights (whether personal, proprietary or what are known as human rights and freedoms) of the individual; and secondly, the existence of an independent judiciary to enforce these rights and liberties. This is precisely the same two important facets of the law I have mentioned earlier.

14. Hong Kong, as its history shows, has undergone many changes, even upheavals, but the essence of our society – namely the people and their resilience, their progressive attitude, ambition, social conscience, their international outlook, and the willingness to respect each other and be at peace with one another – has been supported by the law and Hong Kong’s legal system.

15. Take the case of corruption. Prior to the setting up of the ICAC in 1970s, it is no secret that corruption was a problem in Hong Kong, existing in the police force and certain government departments. Yet despite this, at no stage was there any corruption affecting the judiciary. I mention this merely to make the point that the law and the judiciary have, through the very many years since 1841, remained institutions providing peace of mind to Hong Kong people. Our system of law – the common law system of law – had (and has) as its characteristics a respect for the dignity and rights of the individual, an

independent and fearless judiciary to enforce these rights and the ability to instill confidence in our community.

16. And so one comes back to our written constitution, the Basic Law. The origin of that document was of course the resumption of the exercise of sovereignty by the People's Republic of China over Hong Kong on 1 July 1997. The promulgation of the Basic Law on 4 April 1990 was preceded by a series of negotiations between the Chinese and British sides which culminated in the Sino-British Joint Declaration on the Future of Hong Kong signed on 19 December 1984. One of the main points in the negotiations was to ensure that Hong Kong continued to prosper. Those institutions that had served Hong Kong well in the past and which would continue to make Hong Kong a prosperous and stable society, were to be preserved. There was to be no dramatic change in Hong Kong, other than of course the resumption of the exercise of sovereignty, but a continuation of our way of life and what had hitherto contributed to Hong Kong's success. That is why one sees in

the Joint Declaration a reference to “the maintenance of the prosperity and stability of Hong Kong” and account taken of Hong Kong’s “history and realities”, these themes being reproduced in the Preamble to the Basic Law.

17. The continuation of these institutions meant that Hong Kong, though an inalienable part of the PRC, would enjoy a high degree of autonomy under the constitutional principle of “One Country Two Systems”.

18. So what were those institutions regarded as being so essential that, for the common good, they had to be continued in Hong Kong?

19. I have earlier made reference to the aspect of trade and finance. The Basic Law reflects the importance of these facets in clear terms. Chapter V is headed simply “Economy”. In this Chapter of the Basic Law are contained references to:-

- (1) Hong Kong having independent finances (Article 106).

- (2) Hong Kong having an independent taxation system (Article 108).
- (3) The obligation on the Hong Kong government to provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre (Article 109).
- (4) The obligation on the Hong Kong government to formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law (Article 110).
- (5) The Hong Kong dollar being freely convertible, and the continuation of markets for foreign exchange, gold, securities, futures and the like (Article 112).

- (6) The maintenance of Hong Kong as a free port (Article 114) and the principle of free trade (Article 115).
- (7) The maintenance of Hong Kong's previous system of shipping management and shipping regulation (Article 124) and the maintenance of a shipping register (Article 125).
- (8) The maintenance of Hong Kong as a centre of international and regional aviation (Article 128).

20. For me, however, it is those institutions having to do with the law that are significant:-

- (1) The principle of judicial independence which underpins the whole of the legal establishment, is emphasized in four specific articles: in Article 2 (Hong Kong to have "independent judicial power"), Article 19 (Hong Kong to "be vested with independent judicial power, including that of final

adjudication”, Article 82 (the power of final adjudication to be vested in the Court of Final Appeal) and Article 85 (the courts of Hong Kong to “exercise judicial power independently, free from any interference”).

(2) The common law is to continue in Hong Kong, including the rules of equity and customary law (Article 8). The laws previously in force in Hong Kong would be maintained (Articles 8 and 18). National laws, on the other hand, would not be applicable in Hong Kong, save for those provisions specifically listed in Annex III of the Basic Law (Article 18)<sup>5</sup>.

(3) The structure of the courts is maintained. Accordingly, the judicial system previously practised in Hong Kong is to be maintained, including the two

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<sup>5</sup> 12 national laws are listed dealing with matters such as the capital, the National Flag, the National Anthem, diplomatic privileges and immunities, the continental shelf etc.

tier system of appeals, the only difference being the establishment of the Court of Final Appeal to replace the Judicial Committee of the Privy Council as the highest appellate tribunal for Hong Kong. The jury system is also maintained (Article 86).

- (4) Judges are to be appointed with regard only to their judicial and professional qualities and can be recruited from other common law jurisdictions (Article 92). There is no nationality requirement for judges apart from the Chief Justice and the Chief Judge of the High Court (Article 90). The appointment of judges will be made by the Chief Executive (in the same way it was previously made by the Governor in Hong Kong as the representative of the Sovereign) but only on the recommendation of an independent commission<sup>6</sup> comprising local judges,

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<sup>6</sup> This is the Judicial Officers Recommendation Commission set up under the Judicial Officers Recommendation Commission Ordinance Cap 92.

persons from the legal profession and eminent persons from other sectors (Article 88).<sup>7</sup>

- (5) So far as the legal profession was concerned, “on the basis of the system previously operating in Hong Kong, the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region” (Article 94).

21. The theme of continuity pervades the Basic Law as a clear manifestation of all those institutions and facets of Hong Kong which were seen to be important to be continued in maintaining Hong Kong’s prosperity and stability. I have earlier referred to Article 94 of the Basic Law in which are contained the words “on the basis of the system previously operating in Hong Kong”. This phrase or similar words (such as “previously

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<sup>7</sup> There are nine members of the Commission comprising the Chief Justice, the Secretary for Justice and seven members appointed by the Chief Executive of whom two are judges, one barrister, one solicitor, and three persons not connected with the practice of law (Section 3 of the Ordinance).

in force” in relation to laws<sup>8</sup>, “previously practised in Hong Kong” in relation to the judicial system<sup>9</sup>, “maintain the previous system” in relation to the appointment and removal of judges<sup>10</sup>, “Hong Kong’s previous system of recruitment, employment, assent, discipline, training and management” in relation to public servants<sup>11</sup>, “shall continue to be recognized” in relation to land leases<sup>12</sup>, “on the basis of the previous education system” relating to education policy<sup>13</sup>, “may retain” in relation to academic autonomy and freedom<sup>14</sup>, “according to their previous practice” in relation to religious organizations running seminaries, schools, hospitals, welfare institutions and social

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<sup>8</sup> Article 18.

<sup>9</sup> Article 81.

<sup>10</sup> Article 91.

<sup>11</sup> Article 103.

<sup>12</sup> Article 120.

<sup>13</sup> Article 136.

<sup>14</sup> Article 137.

services<sup>15</sup>, “on the basis of maintaining the previous systems” in relation to the qualifications needed in Hong Kong professions<sup>16</sup>, “maintain the policy previously practised in Hong Kong” in relation to subventions in areas such as education, medicine and health, culture, art, recreation, sports, social welfare and social work<sup>17</sup>, “on the basis of the previous social welfare system” regarding welfare<sup>18</sup>) all point to this theme of continuity. The courts have consistently held this to be the theme of the Basic Law.<sup>19</sup>

22. Of course, what perhaps stands out as being specially significant in the Basic Law is that it identifies constitutionally guaranteed rights and freedoms. These rights and freedoms are set out in Chapter III of the Basic Law under the heading

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<sup>15</sup> Article 141. This article was dealt with by the Court of Final Appeal in *the Catholic Diocese of Hong Kong v Secretary for Justice*, FACV 1 of 2011, 13 October 2011.

<sup>16</sup> Article 142.

<sup>17</sup> Article 144.

<sup>18</sup> Article 145.

<sup>19</sup> See, for example, *HKSAR v Ma Wai Kwan David* [1997] 1 HKLRD 761.

“Fundamental Rights and Duties of the Residents [of the HKSAR]:-

- (1) The right to equality before the law is stipulated under Article 25.
- (2) Article 26 refers to the right to vote and the right to stand for election.
- (3) 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.
- (4) 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.

- (5) Article 31 refers to the freedom of movement, and freedom of emigration to other countries and regions.
  
- (6) 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.
  
- (7) Article 34 states that Hong Kong residents shall have the freedom to engage in academic research, literary and artistic creation, and other cultural activities.
  
- (8) 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.

(9) Article 39 provides that the International Covenant on Civil and Political Rights<sup>20</sup> 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.

23. I should just mention the reference to “Duties” in the title to Chapter III of the Basic Law. There really appears to be only one Article which can be construed as containing a duty. Article 42 states “Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws in force in the Hong Kong Special Administrative Region”. There is also a reference to duties in the ICCPR. In the Preamble to the ICCPR, it is stated: “Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”.

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<sup>20</sup> The ICCPR came into force on 23 March 1976. The PRC became a signatory to the Covenant in 1998.

24. The position on paper is, however, but one half of the equation. As important, as stated earlier, is how the law operates in practice, and specifically within this, how the law is enforced by the courts. This is where the integrity of the law assumes a critical role. Just how real and effective are the rights and freedoms to which I have just referred?

25. The real test, however, of an effective and respectable judiciary is how the courts actually deal with the day to day business of adjudicating disputes, how they discharge in practice the constitutional responsibilities and how they apply that sometimes elusive concept, the public interest. In this context, the type of case that often provides a useful litmus test is the case that arouses public controversy. I am mainly talking about those cases that engage issues of public law.

26. 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 the discovery of the answer 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 immigration issues, public controversy is almost certain to arise.

27. The way in which courts deal with such issues – and I am here not just talking about 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 our legal system, have been applied.

28. Just what are these principles to which courts must adhere?

29. Adherence to the law means much more than just an adherence to 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 constitutional rights and freedoms are interpreted by the courts. Most constitutions or bills of rights are in similar form and one will instantly recognize the references in them to the right to life, to equality, freedom of speech, of expression, of political or religious belief, and so on. But it is the way in which such rights and freedoms are construed that provide the essential test. Even if one starts from the standard premise that constitutions are living instruments which are intended to meet changing needs and circumstances, when it comes to fundamental rights and freedoms, they are to be construed purposively and generously, avoiding a literal, technical, narrow or rigid approach.

30. The spirit of the law is by its very nature an imprecise concept, even at times elusive. Because of its imprecision, it is obviously a flexible concept and can give rise in certain cases to difficulties for the courts. 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 in 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.

31. Cases dealing with the freedom of speech provide common scenarios in which difficulties of reaching the correct balance are faced by the courts. In 1999, in *HKSAR v Ng Kung Siu*<sup>21</sup>, the Hong Kong courts and ultimately the Court of Final Appeal were faced with determining the extent of the freedom

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<sup>21</sup> (1999) 2 HKCFAR 442.

of expression in the context of flag burning. There existed legislation which criminalized the desecration of both the Hong Kong flag and the national flag (the National Flag and National Emblem Ordinance and the Regional Flag and Regional Emblem Ordinance). The question for the courts was: did such legislation which criminalized flag burning as a means of political protest (or for any other purpose) breach the constitutional guarantee of the freedom of expression? The Court of Final Appeal upheld the constitutionality of the legislation (the Court of Appeal having held otherwise). The Court was there faced with two diametrically opposed arguments but each argument in its own way, cogent and powerful. The Court of Final Appeal ultimately came to the view that the legislation constituted only a limited restriction on the freedom of expression, whereas the criminal offence protected the unique symbolism of the national and regional flags which it was felt was important to be preserved particularly at the early stages of the resumption of the exercise of the sovereignty over Hong Kong.

32. Other areas in which the courts will sometimes face difficulties in balancing competing interests include challenges made to government decisions where socio-economic factors come into play. In a recent case decided by the Hong Kong Court of Final Appeal (*Fok Chun Wa v Hospital Authority*)<sup>22</sup>, consideration was given to the conflict between the constitutional right to equality (in that case in the context of social welfare) and the socio-economic policies of the government. While some leeway will always be accorded to the government where socio-economic policies are involved, there are clear limits. There is no question of any sort of *carte blanche* being given to the government. Where core-values or core-rights are affected, the courts will always be vigilant in their protection.

33. These types of decisions made by the court can, by their very nature, be extremely controversial. I have already made reference to immigration cases. They are controversial in that a sizeable proportion of the community will have very

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<sup>22</sup> [2012] 2 HKC 412.

strong views one way and an equally sizeable proportion of the population will have just as strong a view the opposite way. Sometimes, the vast majority will have strong views against only a tiny minority. What do the courts do in such situations where, whichever way they decide, a sizeable number of people will disagree with, if not protest against the result that is reached?

34. The answer is of course ultimately quite a simple one in terms of the court's approach. Whether or not a case is a high-profile one, or involves controversial topics, or is just a run-of-the-mill one handled on a daily basis by the courts, the approach is exactly the same, and it is a principled one. The court will simply apply the law to the facts and the judge or judges will do so adhering to their judicial oath. No regard will be paid to whether the result will or will not be a popular one (not that this can be gauged in the first place), certainly not to whether it will accord with what the majority of the community wishes. Indeed, to have regard to such matters is really quite out of the question. In public law cases, the protection of core-

values or core-rights, as I have earlier mentioned, and the need to adopt a principled approach, represents what I hope is a commonly held view of the public interest as far as the courts are concerned.

35. On occasion, the courts will be the last refuge open to a minority in society pitted against the excesses of the majority. This is inevitable given the proper operation and application of the law. And for me, this is what is meant by a principled approach to the discharge of a judge's constitutional role: the adherence to the letter and the spirit of the law, and its proper application, protecting those who need protection.

36. It is therefore inevitable that the courts will face criticism, sometimes quite fierce from sections of the public. Unlike in times long passed, it is nowadays common for criticism to be publicly ventilated over the activities of any institution, and the judiciary is not immune from this.

37. Criticism of the decisions of the courts is therefore a fact of life and one must live with it. Hong Kong is no different in this respect and with the power to strike down legislative acts as being unconstitutional, it is perhaps little wonder that there may be some additional sensitivity in this power given to the Hong Kong courts. And the Hong Kong courts have, on a number of occasions, struck down legislation as being unconstitutional, pursuant to the power mentioned earlier. Criticisms and discussion of the activities of the courts are indeed healthy to this extent: if such criticism is justified, then improvements can be made or lessons learnt; if not, at least people are taking on an interest in matters of considerable importance. No doubt some people will only look at the actual result of cases determined by the courts in order to evaluate the integrity or effectiveness of a legal system. Perhaps that is fine as far as it goes but in my view it does not go far enough. One ought to be more concerned with fundamentals and matters of principle. For many people, while a decision of the court may be an unpopular one, this is not as important as an assurance that

every time a judicial decision is made, the court has acted in accordance with principle, according to the law and proper procedure and above all, has acted independently.

38. Without this assurance, one can have very little confidence in the integrity of a legal system. In Hong Kong where we aspire to maintain the common law tradition, and I daresay this will be the same challenge faced in other common law jurisdictions, how is this integrity of the law demonstrated in a tangible way?

39. The answer lies in what is generally acknowledged to be one of the fundamental characteristics of the common law: the reasoned judgment. It is only by looking at the reasoning of the court in any judgment that one can see the processes that have led to the judicial decision that is made. One can see, in considerable detail sometimes, the application of the law, of legal principle and the spirit of the law, and an adherence to those fundamental principles of the common law to which reference has already been made. The integrity of the law is

there for all to see. When one talks these days about transparency, this is the transparency of the law: not just the public and open nature of court proceedings and judgments, but the public display of the very thought processes that make up a court decision. While everyone is free to criticize the decisions of the courts, surely no criticism can be levelled at our courts for a failure to reveal the full extent of the reasons that made up court decisions. It is for this reason I believe the doctrine of precedent forms such an important feature of the common law: the more compelling and cogent the reasons are to justify a result, the more attractive it becomes to follow such reasoning in a later case when a similar situation presents itself.

40. The importance of the reasoned judgment can also be seen by imagining a system in which proper legal reasoning does not exist. Where proper reasoning is lacking, speculation then is fuelled as to what may have motivated a legal result; even judicial independence may be questioned.

41. I would like to think that most people in our community, whether lawyers or not, believe that the legal system which exists in Hong Kong, is a good one. I for myself believe it is, although it is one that is, like any other legal system, capable of improvement and advancement.

42. What of the next 50 years? It is perhaps not too early now to begin to think about this. At some stage, important decisions will have to be made. In my present position, I am concerned with Hong Kong's system of law. One of my main responsibilities is for the judiciary to continue to earn the respect and confidence of the community and all who are concerned with Hong Kong. If the judiciary can continue to do what is expected of it, this then is a system that is worth preserving. As the community faces whatever challenges appear in the future, it will want to retain all those institutions that have served the community well in the past and which will do so again in the future.