

CSCC Podcast Ep. 20: “The Rule of Law in Hong Kong (Part One) – Johannes Chan”

Introduction:

Welcome to the podcast of the University of Pennsylvania’s Center for the Study of Contemporary China. I’m your host, Neysun Mahboubi, and in today’s episode, you’ll hear the *first part* of my extensive conversation with Johannes Chan, professor and formerly Dean of the Faculty of Law at Hong Kong University, on the especially timely subject of the “The Rule of Law in Hong Kong”.

As I record this introduction, on Thursday June 13, front pages of newspapers around the world have been carrying dramatic photographs all week of demonstrators in Hong Kong, who are protesting a draft law that would permit extraditions to mainland China. On Sunday, hundreds of thousands—perhaps even more than a million—marched from Victoria Park through many of the same thoroughfares famously occupied by Hong Kong’s Umbrella Movement in 2014. On Wednesday, not long after news broke that lawmakers would postpone a scheduled reading of the draft law came reports of violent clashes between protestors outside the Legislative Council building and riot police, deploying tear gas and rubber bullets. Today brings news that organizers of last Sunday’s demonstration are planning yet another march this coming Sunday. By the time you hear this episode tomorrow, who knows what else will have occurred, in what appears to be a fast moving situation, that has captured the world’s attention.

As we all wait and see what happens next, it is a particularly opportune time to reflect on the complex history which has brought Hong Kong to this point. So I’m delighted to be sharing with you this episode with Professor Chan about the development of Hong Kong’s legal system, before and after the 1997 handover, and the challenges now before it. We recorded our conversation in early April, when Johannes returned to the University of Pennsylvania to participate in a law school conference on “Courts, Law, and Politics in the United States and Asia”. We knew the episode would be timely ... but I’m not sure either of us anticipated it would be quite as timely as this!

In any case, I’m glad that our discussion was as extensive as it was ... starting from the introduction of the British legal system to Hong Kong in the mid 19th century ... through its maturation in the 20th century and especially after World War II ... and then to the implications of the British handover of Hong Kong to the People’s Republic of China in 1997 ... and how Hong Kong’s Court of Final Appeals has navigated its unique role in the years since, including with its interpretations of Hong Kong’s Basic Law under Chinese rule. The conversation got especially detailed as we reached the developments of the past 10 years—when the principle of “One Country, Two Systems”, enshrined in the Basic Law for a period of at least 50 years from the handover, has come under increasing strain, across a wide range of legal issues.

As many listeners will know, Johannes has felt that strain acutely himself, as a university administrator, who served for 12 years as Dean of the HKU Faculty of Law, including in the leadup to the Umbrella (or “Occupy”) Movement; and who later was nominated to become the pro-vice-chancellor of Hong Kong University, but not confirmed, under circumstances that

appeared suffused with undue political interference. I'm so grateful to him for discussing with me his personal experiences as well, possibly in greater depth than you'll find elsewhere.

Altogether, as you can probably tell by now, it was quite a lengthy conversation, and as much as I believe in sharing with you longer podcast episodes than may be the norm, it does make sense to release this episode in two parts. So, today you'll hear the first part, which conveys the story of Hong Kong's legal system through about 10 years after the handover; and then next week you'll get the second part of our conversation, which reached to just about the present day. You'll notice that Johannes and I spoke right before the conviction of nine of the leaders of the 2014 "Occupy" movement, including HKU law professor Benny Tai, of various charges like "conspiracy to cause public nuisance" and even, in some cases, "incitement to incite". But it will not be hard for you to guess our feelings about the West Kowloon court's judgment, or its sentencing a few weeks later (which included 16 months' imprisonment for Benny Tai).

Similarly, we didn't address the draft extradition law in our conversation, even though we knew it was looming on the horizon and was sure to provoke some kind of reaction. I think it's fair to say, however, that the drama we are seeing play out in Hong Kong right now has less to do with the precise details of the draft law, and is more a reflection of broader fears amongst Hong Kong residents that their city is losing its distinctive characteristics, that were supposedly to be preserved under the rubric of "One Country, Two Systems". When I last visited Hong Kong in December, a close friend who also serves on the faculty of HKU Law School, said to me that a critical juncture in the history of Hong Kong was fast approaching, where the basic character of the city's legal and political order would be set for the foreseeable future. It may be that we are witnessing that juncture now, and with ramifications far beyond the onetime "barren rock with hardly a house upon it." If you seek to better understand the stakes involved, and how they have been shaped over time and by recent events, you are sure to enjoy my conversation with Professor Johannes Chan. Here, now, is part one.