

律

道

香港大學法律系



一九九八年

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篇首語

某日碰上兩位朋友正在為所徵引的詞句而爭論不休：事緣某甲從蘇軾的《定風波》中引出「回首……也無風雨也無晴」之句，說鍾情於它的飄逸與寧謐。而乙君則大肆抨擊，說這是斷章取義，扭曲了詞人的用意，對該詞寫作背景和寓意懵然不知云云。

當然，文學欣賞是極之主觀的。甲君大可依其喜好去選取前人佳句來表達個人的情感。但客觀地說，他的剪裁較之原文「回首向來蕭瑟處，歸去，也無風雨也無晴」，實在是欠缺了走過風雨飄搖，從而大徹大悟的豁然開朗——即如《律呂》復刊一樣。

《Law Media》自1975年開始由法律學會印行，於1985年通過公開徵集而定《律呂》為中文刊名。期間幾歷變革，而於九十年代初杳然消逝（編者手頭上最後一期乃1992年出版，多番訪尋仍未知確實停刊日期）。在她的輝煌日子，不論是內容或美術設計均十分出色，地位幾可超越《學苑》。此番恢復出版，編者心中有種說不出的堅持與期望，卻長久找不到適當的言語表達。直至拜讀善喻（就讓我開創先河吧！）的作品時，赫然入目的八個字終將它一語道破：



究竟生命中有什麼可以分享？它當然可以是針對世局時事的真知卓見，卻又何妨是碌碌塵世中剎那凝眸所捕捉到的溫柔！

對社會，我們有不可推卸的嚴正使命，既然真理是愈辯愈明，就總得公開各自之見解，以求取長補短，互相進益。若說君子應「訥言敏行」，亦無礙嬉笑怒罵，討論政情。與此同時，七情六慾皆是與生俱來，正所謂「少年哀樂過於人，歌泣無端字字真」，只要是從心而發，大可暢所欲言，抒其胸臆。

世界之可愛，生活之斑斕，皆因有不一樣的你，我，他／她。能夠做到「百花齊放，百鳥爭鳴」，就是《律呂》的最終目標。

CHAIRMAN'S WORDS

Selwyn Chan (I), Chairman

On 21 January 1998, the Association launched its first function at the Theatre of Chong Yuet Ming Amenities Centre during the lunch period. It was the Inauguration Ceremony which marked the beginning of the term of office for the Executive Committee of the session 1998.

We were honoured to have the Dean of the Faculty of Law, Professor Albert H.Y. Chen; the Head of the Department of Law, Mr. Richard Glofcheski; all the Executive Committee of the session 1994-95; the current Executive Committee of the Law Departmental Society of the City University of Hong Kong; and the representatives from other faculty societies, halls, and of course, our fellow members.

Alas, 2 months after the polling, we were able to organize a function officially! Though the Ceremony meant much more to the Executive Committee than to the members, we still adopted a superb attitude of dedication in the preparation period beforehand in order to offer what was best to the members. Indeed, this is our promise in this forthcoming year but what is the use if there's no support and feedback? The success of an organization not only becomes fruitful by the hard work of the organizers. Without participation and involvement from the base, no achievements can be yielded.....

The present situation is not that inspiring from

the perspective of the organizer. We know that there is infinite chores to operate. We know that there is much to aim at. But you're the boss — if you don't give response, how are we supposed to serve your needs? Cry out for your wants! Strive for your rights! Fight for your interests! Demand with all your might!

We may not grant everything you ask for but it's definite that we listen and consider. This year, the Association provides many channels in allowing members to manifest opinions. It is significant that you

make good use of the email system, the office hour of the Exco Room, the mailbox outside the Exco Room, and the comment boards for expressing your concerns for the well-being of both the Association, and, most important, you.

It is delighted that every member should

utilize all the facilities and welfare provided by the Association. Nonetheless, we hope that you all take up certain responsibilities as well. These may include attending the Association's General meetings or even using properly the D.R. and other services provided. We believe that only through such a system would there be a mutual beneficial relationship.

Lastly, it is our responsibility to promote the welfare of the members and I hope that the interaction between us will build up tremendously in the coming year! ☺



OUR CHAIRMAN HAS LEFT US!!!

The Trip to Japan (Tokyo): 15-25 Feb, 1998

Organiser: The Asian Law Students' Association (ALSA)

President: Masamitsu Nomoto

Aim: Increase communication of different student law associations in Asia. Guests from Asia sum up to about 20. Limited guests are from Europe. Most participants are from Japan (about 90).

Format: Discussion tables, presentations, visits, lectures, social days, living with locals.



MEETING WITH YLP

Susan Li (I), Internal Vice-chairman

On 10 February, the LA Exco together with our counterparts of CityU had a dinner gathering with representatives of the Young Legal Professionals Association Ltd. The YLP, established in May last year, comprises members of the legal profession and law students. They felt that although there is already the Law Society and the Bar Association, there is not enough linkage between legal practitioners and prospective successors, i.e. law students. Therefore, one of their objectives is to build up linkages between these two. They hope that they can act as a bridge to enhance communication and help the law students. For instance, law students may experience difficulty in finding jobs, summer jobs in particular, so they

are working on this aspect and currently collecting opinions about its feasibility. Moreover, the YLP arranged activities and forum for its members. They also have their monthly Bulletin to keep members abreast of their activities held and act as a channel for communication with its members.

Furthermore, during the gathering, we benefited from their sharing in both life and working experience which was informative and inspiring.

The YLP is now recruiting student members. For those who are interested, application forms are available in the DR. For further details, please call the YLP association secretary, Mr. Michael S.W. Wong at 2867-1312.

會見大律師公會主席

本幹事會於二月十二日下午拜訪了香港大律師公會主席余若薇小姐。在約一小時的談話中，她簡介了大律師行業的情況及提出對法律專業的意見。

她表示，目前大律師公會有六百六十多名會員，這數年來，會員人數保持穩定，新入行者與流失的大致平衡。由於近年大學畢業生增多，整個行業有年輕化的跡象。她同意，大律師是講求表現的一行，律師聘請大律師主要視乎大律師的往績和信譽，大學有良好成績雖有幫助，但個人的勤奮與否，表達能力強弱以及性格都是重要的因素。

她勉勵法律學生提升自己的分析能力及語文能力來裝備自己。我們謹此多謝余小姐撥冗與我們見面，增進了解，並希望在將來會繼續加強溝通。

Annual General Meeting 1997

Important Motions Carried

Date: 19 Jan. 1998

1. To adopt the declaration by Ms Christina Ng with regard to the motions carried at the AGM 1997.
2. To adopt the minutes of the EGM dated on 19-3-97.
3. To adopt the minutes of the EGM dated as 21-10-97.
4. To adopt the minutes of the EGM held on 29-10-97.
5. To adopt the declaration by Mr. James Fong and Ms Priscilia Lam with regard to the motions carried at the EGM held in February, 1997.
6. To receive and adopt the work report of the Election Committee 1998.
7. To receive the Financial Report 1997. The amended and re-amended Financial Report shall be adopted in an EGM which shall be held on or before 15-2-998.

THE CRUISE PARTY

Sylvia Zee (I)

Last Saturday was simply a perfect day for cruise party. The weather was beautifully fine (Thank God. We had not prepared ourselves for anything as fatal as the "Titanic Horror"). All of us were already dreadfully excited at the thought of the fun (And we did manage to flush the oh-so-unforgettable Legal System Assignment out of our mind for a moment).



It was 11:00 am when we set off. The programme began with a couple of light-hearted and fun-filled games. Enormous laughter filled the boat. Our smiling faces were just as bright and radiant as the sun high above. Lunch, no, I mean the Great Feast, kicked off at about 1 pm. A wide variety of food (which had been specially prepared by the OC the night before) was served to cater starving and thundering bellies.

Right after that we went to the upper deck of the boat and there we chat, relaxed and even sun-bathed (!) a bit. We got to know more about each other, too. Shortly afterwards, the Captain CA (very gorgeous one, for God's sake!) announced we had finally reached Po Tai Island.

The island, personally I think, would have been a marvellous place for mass games and fun. But we left the place and hurried back to the boat just a minute



after we set foot on it. Believe it or not, it was the wild dogs which possessed this inexplicable compelling force and drove us up a wall. Yeah, I admitted that some of us did scream at the top of their lungs and looked as if they were treaking out. But it wouldn't be fair to say that we got into a panic. Not at all! It was just the plain fact that we tried to pull up the good and respectful image of law students. A tough fight with wild dogs is out of question.

What did we do then? Of course the Captain (yeah, the very gorgeous one) would never dare disappointing us. He took us to this great place called Tai Miu Wan where we had some other games like traffic light Miss Fox (It had been ancient history since I last played these games). All of us had a great time.

Dusk had fast approached us. On our way back, we brought ourselves to the front deck and relaxed. Strangely, none of us looked too worn out. I guessed we were too merry to feel exhausted. It was really a joyful day. ☺



SPORTS DAY

Suen Wai Yu (I), Sports Captain

On 17 January 1998, in the main hall of Flora Ho Sports Centre, we had our Volleyball Sports Day, which is a very, if not strange, special day. In normal course, we would use our hands to hit the ball. On that day, however, one would see the participants hitting the ball, or being hit, on all parts of their body: shoulder, chest, elbow, and even the head. Perhaps it was their first experience to playing volleyball, but everyone was so involved that they forgot the pain which came with it.

Some may wonder if you don't even know the sport, why bother to participate in it? But that's SPORTS: at the beginning no one knows anything about it, but once you've got started, you just can't stop yourself. The satisfaction through improvement gives you the motivation and energy to continue. That's also why our participants played non-stop the whole day, especially our Social Convenor who showed her exceptional "re-bouncing" skill.

It is great to be able to engage in sports, when we can relax and laugh with others. What we need is your support. On the Volleyball Sports Day it was our honour to have our lecturer Ms Alice Lee to attend and it is our sincere hope that we would have more students and even lecturers to come and join us! ∞

HEALTH COLUMN

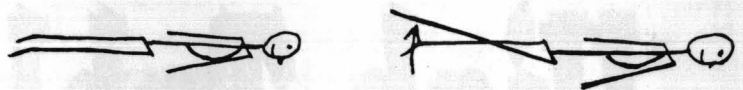
Suen Wai Yu (I), Sports Captain

Introduction to Injuries: Needless to say, playing sports is susceptible to all kinds of injuries. Perhaps it is only a trace of pain from your muscles, but the real injury you've suffered may not be as superficial as you imagine. Here are some exercises to strengthen the most important part of your body in playing sports — the back.

- (1) Lie straight. Pull your knee towards your head. Lie straight and repeat with another leg.



- (2) Lie face down and rest your head on your arms. Raise the right leg with the knee straight and lower. Repeat with the left leg.



- (3) Lie face down, with your hands on your forehead. Lift your head and arms and shoulders and both legs off the floor. Try to hold this position for 5 seconds, and then lower.



- (4) Lie on your back with your arms by your side. Bend both knees up towards your chest and then with your knees over to the right and then to the left, without putting your feet on the floor.



INTERFLOW TOUR

NATIONAL UNIVERSITY OF SINGAPORE ↔ UNIVERSITY OF HONG KONG

Date : Hong Kong Trip - 21 to 31 May 1998
Singapore Trip - 4 to 13 June 1998

Programme : Academic Interflow, sight-seeing, etc.

No. of participants : 25 - 30

FURTHER INFORMATION WILL BE ANNOUNCED SOON

High Table Dinner

Date : 18 March 1998

Time : 18:00 - 21:00

Venue : Senior Common Room (14/F KKL Bldg.)

Guest Speakers : Ms Audrey Eu, S.C.,
Chairman of HK Bar Association

Ms Sylvia Siu,
President of HK Federation of Woman Lawyers

「昔作少年遊，翠廊深處認回眸，
縱使相逢非故我，以後……」

大家好！我已很久沒提筆，寫一些毋須「用腦」的文章了。現在實是興奮萬分！我不是說笑的，我是比上任何的課堂還認真的！那天，你們的Pub. Sec. 猛力敲門，把原先在跟我談話的同學也「趕」走了。他單刀直入問我侵權法的功課，跟着他說：「好了，這只是題外話。我想跟你談一些更重要的問題……」噢，有什麼比趕功課更重要呀？當他道明來意，我不得不佩服你們的Pub. Sec.，把徵稿的事看得比功課更重要，大家可想他對庄的熱誠！了不起！當他走後，我的思緒立即失控。終於、竟然、有人向我徵稿！

事實上，我已「籌備」了三年！我初來「報到」時有很多衝激，很想把所思所想寫下來出一本書。我把書名、筆名、封面……也想了，唯獨欠內容！我甚至認為我最大的成就並不是在三十歲前拿到博士學位，不是在什麼《哈佛期刊》發表文章；我只想出本小說、詩集、甚至散文集去分享生命，觸動人心罷了！當然這一切也太晚了，散文集和博士學位也降到同等地位，落得被無了期押後的下場。

Pub. Sec. 突如其來的邀請令我「舊患復發」，他走後，我的思緒一發不可收拾。最後我得到太古堂的餐室坐下，喝杯苦澀的咖啡，拾回那些零碎的記憶。那夜，躺在床上，思潮起伏，又擔心你們的Pub. Sec. 是否認真。輾轉反側，過了一夜無眠，幸好Pub. Sec. 又猛力敲門！跟着要寫的並不是一些自辯的話。我只想說說自己的感受和感謝那些曾助我一把的人以及難忘的事。

當老師後，人家最常問我的問題是：「你想我們怎樣稱呼你？Anne 或 Ms Cheung？」這實在是一個有趣的問題。第一年教書時，從沒有人問過我。但有一次在導修課中，當我在黑板上書寫時，有同學叫了我的英文名字。當時，我真的沒有「知覺」，當笑聲漸起，我才意會到是何事。大概那時從沒意料到被學生直呼其名。後來，我習慣了才有人問我應當怎樣稱呼我。隨你吧！只是不要直呼 Anne Cheung 就好了。連名帶姓，很「鈍」很「倔」！多難聽！可否叫我中文名字？那……暫時也沒有人用喚中國學者的親切態度叫我「善喻」，你試試吧！





至於較少人問我的問題是：「可否介紹一下自己？說說為何當老師、修法律……」我來了第二年，才有人在上課時提這個問題。那時的心情跟現在的有點相似，終於也有人問了！也許當時太雀躍，說得「眉飛色舞」，事後有同學認為我之所以判若兩人，一定是我喜歡教「Law and Soc.」，而對「Legal System」不大有興趣！錯了！我之所以能滔滔不絕用上半小時來訴說自己，是因為「突然」有人對我作為一個人感興趣。我也得承認自己很少問學生「生活如何？」，「日子好過嗎？」，只是偶然在公車上遇到才問問。

我感激，是真心、衷心地感激那些把我當作一位「人」來看的同學。當初我能回港任教，確是很高興。還記得初到外國讀書時，在外吃了點苦頭，心裡很氣憤。那時想：「我一定要學會，吸取外來的好東西，帶回香港，讓『自己人』真的『醒』起來。」回港後，「滿懷大志」，但很快又被現實打沉了！人家都說教書好，活在象牙塔，受保護。但只要你幻想一下，每次上課也有一百五十名顧客，甚至老板在等待你的服務，你便可想而知！加上那時對自己的「老板」認識不多，「誤解」愈積愈深。有一個時期曾很沮喪。但有一天，上畢導修課，有一位同學問完有關的題目後，突然又變得更嚴肅（又令人想起 Pub. Sec. 了！）問我有沒有空。有什麼比明白信託法更重要！？那同學跟我說：「你是否不開心？我知道很多同學不喜歡你……但我知你已改善了……你不是最好的老師，但已不錯了……」請大家幻想一下，說話的那人是位男同學，語調誠懇且極其嚴肅，他的話絕不是讚美的話，但很具“震撼”力。那時我像是很委屈，但又不能說，說不出，加上我本身反應緩慢，真的有點不知所措，但又感激萬分。至今我仍清楚記得那人，那情境，那早上，那課室……

曾幾何時，我不相信老師會進步的。當我是學生時，我已放棄了相信用 Evaluation Form 的制度。學生寫了評語又如何，老師有老師教。到我當上老師後，竟有同學直接向我說我已進步了，我應如何改善……除了那位同學給我「認真」鼓勵外，也有較為惹笑的版本。又有同學大膽直言說：「你知嗎？這樣下去不好！我知你是好人，但老師不應如此。老師應如貓，『不論是黑貓或白貓，捉到老鼠便是好貓』……只要說得我們明白，令大家生活好過點便是好老師……」那人說得認真，又「搞笑」。以往我當學生，常聽人家說：「那老師

是好人，但教書不行，是悶蛋！」心想若我當老師，我絕不做那些婆婆媽媽，有「缺陷」的好人老師。乾脆做個徹頭徹尾的「壞人」。如今，奈何？貓也做不成？

除了大膽直言，間中也有閒言閒語自動送上。這與小人無關，只是偶然在洗手間會收到有關自己的第一手資料。加上本身其貌不揚，衣著平凡，混入學生中也勉強可以。有一次在升降機內，我前面的同學跟他的朋友說：「你知嗎？新來的那個什麼 Anne Cheung 很『吋』的！」我當時啼笑皆非，那人一直也沒發現我就在她身後。事後我也有反省自身的態度。試問我又怎「吋」得起！？我犯的其中一項「大罪」莫過於笑容欠恭！



當學生的心態跟當老師的心態真的截然不同。我以往不喜歡老師幹的事，大概現在已做了。老師怕那些學生，我就是那些學生。學生喜歡那類老師，我卻偏做不到！老師怕那些學生？莫過於那些「十問九不應」、不說話、不主動、沒反應、沒表情的學生。下課後遇上，還得詐作沒看見，不打招呼……或是那些「無事不登三寶殿」，每次出現也有事相求，之後遇上卻仿如陌路人……唉……那類人一定是我。「風水輪流轉」，到自己吃苦了。但也正因如此，我也學會對那些「深藏不露」的人不加以批評。至於大家喜歡的老師莫過於那些「聲色藝俱全」的老師，要風趣幽默、文采飛揚、口才了得，最好樣貌吸引，但最緊還是要評分寬鬆吧！本人也遺憾我不是。事實上，曾打動過我的老師也非那類老師。我很慶幸有緣在港大遇上令我認真對待學問和做人的老師。在這裏只能略說。

令我印象深刻的老師大部份也是那些不直接回答問題，但能啟發思考的老師。其中一位是大家熟悉的何老師。她教我的法律已忘得一乾二淨！但她的態度實在令人印象難忘。我二年班時，何老師初來。她個子矮小，但說話和走路急促，氣勢迫人。大家上了差不多一個月的課後，終於有同學「冒死進諫」。在導修課中，那同學竟大膽道出大家沒法跟上，沒法看完所有判例……老師即時反應是：「請問同學一天用上多少小時溫習？」空氣立時凝着，鴉

雀無聲，大家一定漲紅了臉，誰也沒膽量說一天已用上八小時溫習。這問題對我來說很深刻，到了現在，我不時也反問自己。如果有同學有足夠的膽量私自「請教」老師，那人一定「啞口」而回。若說你對案例不明白嗎？好！首先說說有什麼不明白，為何不明白、那法官怎說、學者怎說、你自己有什麼意見……好，現在再說你有什麼不明白……除非你預備充足，「真的」不明白，不然一會兒你便會慚愧再站在老師房門外！這並不是想嚇大家。也許老師變了，又也許同學聰明了，這情境不一定

會出現。我對這訓練極為欣賞，也親身當過受害人和受惠者。

另一位老師是外籍人士。由於他身形高大，外貌有點像架了眼鏡的書生版史太龍，大家背後稱他為Rambo。我們對他又愛又恨。「愛」

是基於他外形很帥；「恨」則是他的導修課。信託法本身已是學生的剋星，加上Rambo從不正面回答問題，當年的可憐境況真是「苦不堪言」！他只會不停問我們、追問、逐問、再問。到我們問他時，他只說：「不知道……視乎……看過Law Quarterly Review嗎？」每次上課前也像預備「受刑」，上完後則被一種挫敗感和不甘的情緒佔有着。最後只好到圖書館再找什麼期刊了。奇怪的是每次也有一兩艘「深海潛艇」跟Rambo戰艦拼搏，令旁觀者嘆為觀止。日後，在外國遇到這類老師則更多。我們「恨」Rambo最大的原因不是被人打敗了，而是他實在不近人情。那年也許是六四的前夕，學生會辦了全民大會。同學很想去，而老師們也同意下午不用上課，唯獨Rambo不批准！他的理由是：「學生活動重要，但上課同樣重要。人生是如此，你們一定要選擇！」當時大家很氣忿，最後只有兩個同學上了那節課。現在回想，人生確如此，在真實世界中誰給你讓步？世事難完美！

曾幾何時，我很想用我欣賞的老師那套傳授給學生，但由於功力不足，弄巧反拙，差點「走火入魔」，也就作罷了！我還有很多話想說，（積了三年的思緒嘛！）但還是算吧！我在此想謝謝我的學生們。教學一年後，我的中

學老師問我在教學上最開心是什麼，我道：「當學生跟我說聲『謝謝』！」現在，也許我會說：「一個微笑，一個點頭便是了。」今年對我來說是特別的，因為我曾教過的一年級同學已畢業了！看着大家轉變和成長是件蠻有趣的事情。

但也不得不承認「歲月老人」！當我回港大任教時，確是滿腔熱誠。那天我還走到學生會平台，吸吸大學的空氣，緬懷以往的日子，跟自己說：「我終於回來了！」暫時結束了我三年的「遊牧」留學生涯。到現在，不是我在不停追趕生命，便是被生命在催迫我。生活磨人，人也變得踏實了。嘗過當學生的滋味，也嘗過當老師的味兒。我深知自己不是「暴雨驕陽」或Mr Holland那類老師；但當你正以為我又木無表情，雲遊太虛之際，我仍在。在學生年代，有一次我的好友拿着Morris的「Conflict of Laws」跟我說：「哇！你看！Morris一定是位好老師，他把書本獻給學生！」這確是令人感動，不是給父母、子女、甚至愛人，而是學生們！我還未有功力寫書，僅以此「小文」，給那些用心生活過的學生，用心跟我交往過的人。待我的感覺蒸發前，在我步入Mid-Life Crisis前記下點點感受。即使理想真的一天給磨平了，心還在！特以Auden的詩完了此文，因他道了法律、人生、以至情愛的無常與無奈。願仍能各自奮鬥，互勉之！

“Law……

Like Love I Say

Like Love We Don't Know Where Or Why

Like Love We Can't Compel Or Fly

Like Love We Often Weep

Like Love We Seldom Keep……”

W. H. AUDEN



A Few Words of Wisdom — The Law Media Interviews Dr Shen Jianming and Dr Fu Hualing

The students at the Law Faculty of the university are some of the best students in Hong Kong and have a great deal of potential. An important contributing factor to this is the fact that there has always been a close bond between students and their tutors.

Such a relationship is essential since students need to know what is expected of them so that they know precisely where to go. At the same time, tutors need to be friendly and easy-going so that they can be confided in.

To encourage as such, the Law Media conducted interviews with a number of tutors and found out about their feelings and expectations so as to enable students to get to know them better.

Both Dr Shen Jianming and Dr Fu Hualing were chosen since they have only recently come to the University and we thought it would be nice to know about their first impressions of the place and its students.

In the interview with Dr Shen Jianming, we learnt a lot, not only about the way he feels about the university and its students but also about the other side of his life — the family side.

Dr Shen has only joined the university this academic year. After getting his LLB degree at the Peking University, he went on to study Law Library Administration at the University of Denver, and later on, he went to study International Commercial Law and other subjects at the University of Pennsylvania, where he obtained his LLM and SJD.

His teaching experience too has been varied. Not only has he taught in Hong Kong, but also in China and the USA. At Peking University and at St. John's University (New York), he

taught both undergraduates and postgraduates. He specializes in the field of International Law and International Business Law.

Being happily married, he has a lovely eight-year old daughter and spends a lot of time with his family. During his leisure time, he engages himself in a wide variety of activities ranging from attending concerts to playing table tennis and sightseeing.

Being a lecturer, it is amazing how he manages to spend so much time with his family while at the same time setting aside time for himself. At the university, one would be fooled into thinking this was a man who was all serious only, but clearly it seems not.

When asked what he thought about HKU students, he replied that they were generally good and that their best qualities are "class participation, active expression of opinion and showing of individual intellectual abilities".

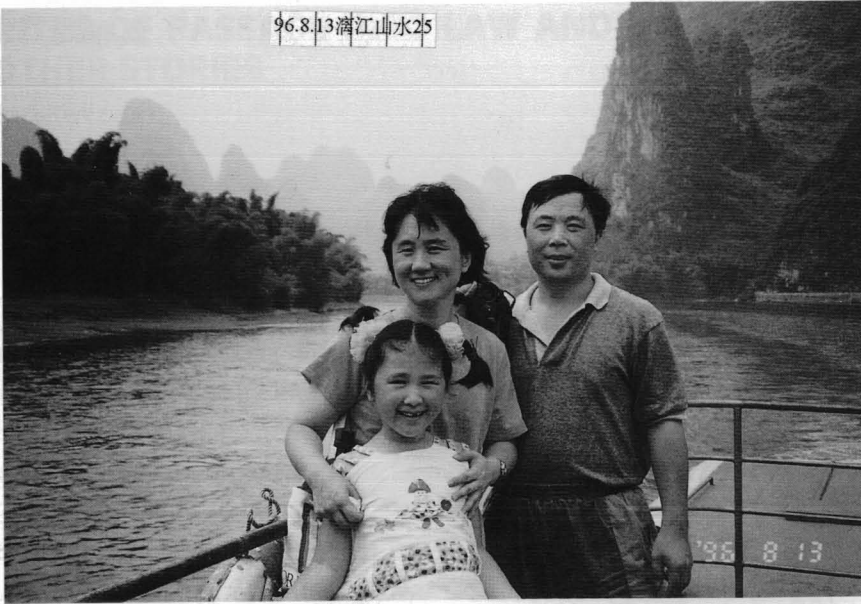
In his opinion, active class

participation is one of the most important qualities for students, law students in particular, since it is a must for successful lawyers. Being a lawyer involves a lot of speaking out and tutorials are good exercises to encourage this.

The importance of having a good and efficient library during the study life of a university student was also stressed. However, he strongly seemed to believe that our law library is far from perfect. "I can make a comment on the inadequacy of our law library. It is small and does not have enough materials for both the faculty members and the student body". According to him, law libraries in the US are better partly because they are more decentralized in the sense that the law faculty and not the university board controls them. Hence, the staff has priority over the use of materials.

"The management of the library needs to be improved too. Faculty members should have easier access to the items and should be allowed to take them back to their offices for a longer period of time unless and until there is a request for the items from another user of the library".

During his student life, he was involved in a number of things. He was a member of the Student League and helped in organizing performances and tours. While at the Southern Methodist University as a visiting scholar, he was the President of the association of Chinese Scholars and Students. This reflects his desire to convince students to participate in extra-curricular



Dr. Shen with his family

activities. However, he emphasizes that grades are not to be neglected and “it is important to strike a balance” between the two.

As a student, a large part of his free time was spent in the library. This was because he lived in a dormitory and found it much easier to concentrate in the library. According to him, a library is an essential place for students during their study years, especially because “the study of law has to do with the extensive use of materials and only in a library can these be conveniently found”.

His advice to students is “work and study hard, try to be more competitive and try to strike a balance between grades and extra-curriculars. Grades are important so maintain them and try to use your time well in the library and elsewhere. But it is equally important to broaden and deepen your knowledge and skills that are not going to be reflected in your grades.”

Dr Fu Hualing...

Since obtaining his LLB degree

at the South Western University in Canada, Dr Fu has pursued his teaching career at a number of places. After teaching in China for a while, he went on to continue at the City University of Hong Kong for a few years and finally came to HKU. He specialises in the field of Criminal Law.

With the change in sovereignty and all the other economic and political ongoings, Dr Fu believes that Hong Kong is a place of challenges and hence, legal education is a wonderful field to go into. It helps individuals to understand better what is happening in the world around them.

“There are lots of areas that can be researched into such as Public Law.” As a legal education personnel, he believes that the future is open to challenges of this sort but he welcomes them.

Being able to talk to him and to be critical of his views has helped students relate to him much more easily. He strongly believes in his students and has high expectations of them. The greatest merit of the

students, in his view, is “their high language proficiency particularly their advanced level of English” and he feels that with this, they rank just as high as students anywhere else he has taught.

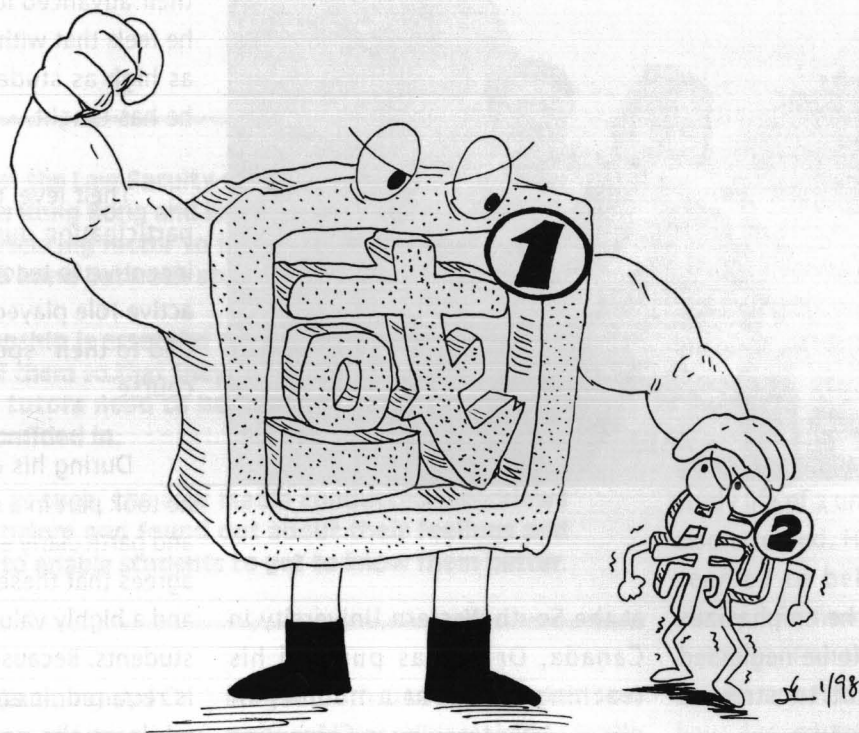
Their level of activity and their participation during tutorials is his incentive to teach. He feels that this active role played by the students is tied to their “special interest in the course”.

During his own student years, he took part in a number of activities and particularly enjoyed mooting. He agrees that these are very beneficial and a highly valuable experience for students. Because so much research is required, it enhances legal skills while at the same time, enables individuals to take a critical view of themselves.

He spent a lot of his time in the library and continues to do so up to the present. In his view, the Law Library at the university is adequate in its functioning and availability of materials. It is not perfect but then “there is no ideal system. No matter where you go, you will have people calling from reform.”

Being single and free from any responsibilities, Dr Fu can afford to spend time not only on his career but also on the things he enjoys doing. He greatly enjoys playing badminton and is also fond of watching movies.

In his advice to students, Dr Fu encouraged them not to accept everything on the face of it. He stressed that we need to be critical. “Challenge teachers: they do make mistakes and have confidence in yourselves. Once you have obtained this key, success is not far away.” ∞



基本法是根據中國政府的「一國兩制」政策而制定的。為了實踐「一國兩制」，基本法的條文一方面要確立中國對香港擁有主權，以達致「一國」；另一方面也要確保香港擁有足夠的自治權力，以使「兩制」能成立。

但從基本法起草開始，直至現在基本法正式實施，我們看到對「一國兩制」至少存在着兩種觀點，而亦因這兩種對「一國兩制」的不同觀點，在香港內部產生了相當大的分歧。這些分歧主要是集中於「一國」與「兩制」之間的關係和相互的比重應是如何。

第一種觀點我們可以稱之為「一國觀」。持這觀點看「一國兩制」者，視「一國」為目的，「兩制」是手段。「一國兩制」的根本目的就是要使中國能和平統一，讓分離於中國大陸的中國領土能重新歸至中國的管轄之下。而這「中國」亦必須是由中國共產黨所領導之下的「中國」，因此在實踐「一國兩制」至香港時，持這觀點者傾向在確保香港能享有高度自治的同時，中央政府必須在香港保留足夠的權力，以使當香港出現任何情況會威脅到中國共產黨所領導的中國政府的權威時，中央政府可以即時採取行動保障「一國」。既然「兩

制」是為了達致「一國」才有的，那麼很自然的是這「兩制」的安排是絕對不可以損及「一國」的。這亦正是中國官方的觀點，也是「一國兩制」的本質。在這點的主導之下，我們看到行政長官的選舉、臨立會的設立、終審庭外藉法官的安排、基本法委員會的組成、人權法的地位等憲制安排都是帶有很重的「一國」基調。

第二種觀點我們可以稱為「兩制」觀。與「一國」觀正好相反，持這觀點看「一國兩制」者，視「兩制」為目的，「一國」是手段。在政治上別無選擇下，若要保持香港人的獨特生活方式和制度，回歸至「一國」是保持「兩制」的唯一可行的方法。因此在實踐「一國兩制」至香港時，持這觀點者傾向要把中央政府在香港的權力減至最少，讓香港人能完全去自行決定內部的事務。但以「一國兩制」的本質去看，持這一種觀點的人是處於一個弱勢的地位，因為「兩制」是沒有可能凌駕「一國」的，而「兩制」的存在和所能容許的空間都完全是由「一國」所主導的。以「兩制」去壓止「一國」的干預是不可能的。「兩制」只能依賴「一國」的良好意願才有生存的空間。

RITEs OF PASSAGE INTO LAW AND OTHER STORIES

Bart Rwezaura

But how often do we get the time to recall our nebulous past? Are we not too busy thinking about the present and how it affects our future? Are our minds not overcrowded with the cares of daily life? The deadlines that have passed! Oh, the urgent e-mail from the Dean! What of the extra-urgent meeting of this or that Committee? But, as it happens, what we least remember is what others must know. Hence, when I was invited by Daniel, a dear friend, to recall something of my lost past, this request transformed my misty memories into the cares of the day. It transformed history into the present: alas, a part of the deadline!

My early days at the Makerere Law

Strange what time can do to man. Of the five Tanzanian men and two women who went to the Makerere School of Law in Uganda, there are now four and two. One of the two is married and lives in Botswana. Little is known about her recent past. The other is the Ombudsman in Harare, which makes me wonder why she is not an Ombudsperson or Ombudswoman. But then, the rule of 'man' is everywhere in Africa. Hong Kong too has its share of manhood. Have you ever stopped to wonder why 'man' includes woman in most legal systems? What is going to happen when all the Hong Kong women lawyers rise? Will there be a gender war at the Law Draftman's Office?

But, I must move on with my mission. Yes, the other four have thrived. A High Court judge, a former Deputy Attorney General, now in politics. A former government Minister, now out of politics, and an Advocate. Mark you, there are no Barristers or Solicitors in most of Africa unless they trained in England. Even then, soon after returning to Africa, they quickly lost their English labels. They became advocates to many causes. You see, ours was and is a fused profession. We were so unfamiliar with a divided profession that our English professor was often frustrated at our failure to grasp his regular flow of stories. For example, he was fond of saying, "Ah, a woman solicitor without



Everyone remembers his or her first day at law school. Do we all remember our first lecture? Do you recall your first test and the grade you made; or your most favourite first year lecturer?

briefs is a barrister." No one would react. It was two years later while in London that I encountered a woman Barrister. Must you know if she had been briefed? I do not remember; she probably had them in her briefcase.

Yet, often times professorial jokes tend to fall on barren rock. I keep wondering why? Could it be a cultural difference disguised as a language barrier? Very recently, after having done 'Judges and Judging', I thought I would indulge my legal system group with a pre-owned joke. I began: "Counsel was making a forceful submission when the judge interrupted him. His Lordship intervened the second time. Then the third time. Counsel hardly unable to conceal his chagrin said to the judge: "My Lord, if it pleases your Lordship to insist on intervening while I am making my submissions, I will have to withdraw from the case." After adjusting his grey wig to the left and then a little to the right; and pointing at his temple, the Judge said, "Counsel, very well then, whatever you say will enter through my right ear and out through my left." "Ah, your Lordship," said Counsel, "What is there in your head to stop it?" There was silence.

"You may proceed Counsel" the Judge announced, waiting for his chance to strike back. Counsel then cited a case. The Judge, who had never heard of the case, and thinking that Counsel was making it up, raised his voice saying, "Let me look at the case." Counsel approached cautiously and passed the book over to him. Note, at this time, bundles of skeletons were unknown. Having examined the case, the Judge remarked, while passing the book back to Counsel, "Well, Counsel, there is a bug in your book." Very respectfully, Counsel replied, "Sorry your Lordship, it is not the first time a bug has moved from the Bar to the Bench."

A few of our teachers were American, British and Australian. They loved to tell innocuous jokes. The American always cited cases from judge Learned Hand. It did not matter what subject he was teaching. He would say, "Mr Justice Learned Hand held this, or observed that or the other." Many of us called him Mr Justice Learned Hand. Our English teacher never stopped referring to the Master of the Rolls, Denning. Once we asked him whether the Master of the Rolls was a part-time Car dealer? "No" he said benignly, "he herds judges". Ah, he must be the one who makes the roll call then; a sort of a prefect or maybe, a house captain? The lecturer whom we loved most was Australian. Besides his jokes about African Kangaroo courts, he also liked to cite from Mr Justice Goddard. In the end, we named him Mr Kangaroo God. Mind you, we could never call a teacher by his first name. Besides, they always liked to use initials. Thus, we had Mr UNO, and Mr AOU and Mr DDT. The whole faculty was completely male. It seemed as if law was primarily



When we challenged him to explain this, he said, "You see, although your father and grandmother may live in the same house, they will never sleep in the same bed."

said; "although the waters of common law and equity flow in the same stream, yet they never mix". When we challenged him to explain this, he said, "You see, although your father and grandmother may live in the same house, they will never sleep in the same bed." We kept thinking and wondering.

We had to remember all the English, American, and Australian names of judges and the famous cases they had decided. We made hilarious songs and stories from them to help us in our enterprise. In our study group of five, each of us was assigned to read and make summaries of three cases by one judge. The reader was to be known by the name of the presiding judge. For Wednesday night, we had to read the assigned cases in Contract and Tort.

Strange as it now seems, but a recent letter from one of the five, tells it all. It is undersigned; "Your old friend, Donoghue and Stevenson". Another classmate, now a senior judge in Uganda, is called Carbolic Smoke Ball. Next Summer we plan to visit him in Kampala. Mr and Mrs Hedley Byrne will receive us at the Entebbe

a man's rites.

As you can gather, we were, like most initiates of our day, troubled and fascinated by alien names and the history of alien rule. We worked for many nights on end, trying to decipher the separation of powers, wondering also what was meant by the rule of law. What of the repugnant clause? Mr DDT attempted to give a local meaning to common law and equity. He said, "the two were like your dad and grandma. Common law is very strict and exacting like most of your dads. However, consider equity to be like your grandma; firm, but fair". Another time he

airport. In the evening we will have dinner and drinks with Mr and Mrs Foakes Beer at the Uganda Club. These two are really unforgettable.

The African teachers had their own way of keeping us amused. They told us stories of their experiences at Harvard, Columbia, Yale and London. One was married to an English wife who was fond of holding his hand as they walked. We used to call him the Conqueror of the British Empire. Mr Mens Rea was our criminal law teacher. He often joked about being lost in the London tube. What? How could a whole post-graduation man be lost in a tube! Even a London test tube, for that matter! It took time to recognise what he meant was the underground train.

Our family law teacher, Mr S.I, now comes to my mind. He was African too. He always skipped the consummation of marriage, saying that it was the least litigated topic in Africa. He did not like to discuss wilful refusal or any topic that required a description of sex between married couples. He referred to it as S.I. He would begin; "For a marriage to be valid, the husband and wife must have S.I. It must be complete and natural. It should be done after the wedding, not before." As for divorce, the subject was too upsetting for him to delve into. "Was it examinable?" we would ask him. "Very rarely and very unlikely" he would answer. So we got on with S.I. but without consummation or divorce.

Getting out of the Bush

Three years passed very quickly indeed, despite the military take over, by Dr Idi Amin Dada and the war of words that followed shortly between him and Tanzania. All the seven passed. At the time there were no firsts. It was impossible to get a first. Our teachers often argued over this, saying, "Well, I did not get a first myself, how can any of my students get it?" "A first begets a first" another would add smiling. Was this the first conspiracy? Out of the whole class of forty, only three had a two-one. There were a handful two-

twos and many thirds and passes. A few failures came back for the June summit but all the seven left in March. With the encouragement of Mr AOU and a reference letter from Mr Kangaroo God, I got a teaching job at Dar es Salaam before moving on to Harvard for the second rite.

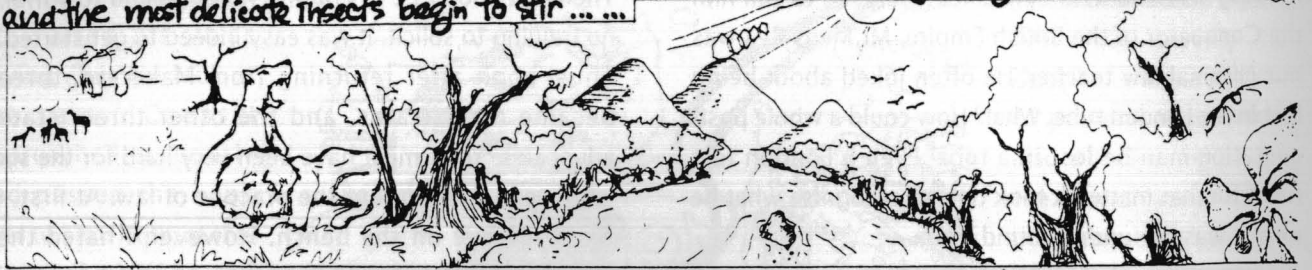
The other six mates were equally on demand. There was no PCLL to endure; no pupillage to suffer, no training to solicit. It was easy indeed to get started. Thus, soon after returning from Makerere, three became magistrates, and the other three, state advocates. Yet it must have been very hard for the six who went straight into the practice of law. At first, I fixed my eye on the bench. However, I hated the frequent transfers from one place to another which all judicial officers have to face.

At the time there were no firsts. It was impossible to get a first. Our teachers often argued over this, saying, "Well, I did not get a first myself, how can any of my students get it?"


Looking back into the tunnel of time and of law, as Daniel demanded of me, I see nothing cool about our time. I remember alien cases to be read, books and journals to digest; and lots of light hours to spend sitting still. But I also see the unforgettable five, going on an expedition into the cavernous chambers of the law library. I see them playing judge against judge. I see them betting on which exam question will come. Not by memorising past scripts, as these were never in stock, but by looking at what has passed to predict what might come. Yet, the art of prediction, we thought, was to be left to astrology rather than law. The sure way was to dig and digging we did. I see them reading and digesting their acts and thinking about alien cases and names. In their free time, and this was far between, I see them playing soccer and going to student clubs. For some, dancing to the Zaire music was a weekend treat. Yes, I see the five at the Upper Lecture Theatre, the boys' memorable watering hole near the Makerere Hill. Yes, I see a lively group of old boys and sadly, not so many girls, playful in their ways while undergoing their first rite into a lifetime of the law. ☺

THE GALLERY

At the break of dawn, as the sun rose to flood the vast lands with her gentle glow, the fiercest of beasts and the most delicate insects begin to stir



★ HAVE YOU

- watched Titanic at least twice, Bought the Titanic Soundtrack & melted into a puddle as a resu H2
- had lunch off-campus (excluding lunch at home) ? 
- Thought about flying/Bungee-jumping/scuba diving ?
- washed your hands before meals ? checked out the latest Heather Nova Album ?
- told people you love that you love 'em? ♡ ♡
- had a lazy Sunday to veg-out ? if you haven't, what are you waiting for?!!





北京政法大學之行感觸良多，欲與諸位讀者分享則談何容易，在此亦只能淺抒愚見，讓各位細意咀嚼，從字裡行間玩味一番此行之

樂趣與得益。

在香港大學唸法律，接觸的是普通法和衡平法，雖然近年與中國有關的法律課程正在不斷增加，但無論在比例上還是普及性上都遠遠比不上其他普通法課程，加上那些都是選擇性課程，與強制性課程實不能相提並論。基於歷史現實，這是無可厚非的。但筆者認為這樣很容易令同學產生單向意識，輕易接受普通法和衡平法，削弱批判性思考，觀察眼光和分析思維亦會因此而受到局限，長遠計絕非好事。而政法大學的短短三星期課程，除了涵蓋基本的法律知識外，還包括法律和法制的背景，當中有很多值得我們深思的地方，正好彌補不足，擴闊視野，開拓更多更新的思想路向。而最重要的還是刺激你的興趣，喚醒你繼續研讀大陸法的動力，在該課程的基礎上發展。

皇帝制度於一九一一年正式完結，距今八十七年，在歷史洪流中只是一瞬間，但對香港年青一代來說，歷史就是歷史，亦即是很久以前的事了。奈何如果你身邊有一位從中國移居香港的人瑞，向你細訴當年情的話，你便會發現，籠罩在皇帝制度陰影下的中國與大家是何等地接近，接近得令你無法無視文化的深遠影響。這樣你便可以從一個嶄新角度出發，理解近代中國的法律體系發展。簡單來說，就是法律與文化有緊密關係，要研究中國的法律便先要了解中國的文化，而中國文化卻深受皇帝制度影響，人民習慣了服從最高領導的指示，嚴刑峻法亦視為平常，這種特點當然會反映在中國的法律和法制中。

因此，正當大家着眼於法律和法制的改革發展時，其實更重要的是將根深蒂固的中國文化導向一個新方向。鄧小平提倡的具有中國特色的社會主義，令經濟和商業迅速發展，在不知不覺間，文化已產生微妙的變化，權利再不只限於衣食住行這種最基本的生存權，而足擴展至人身權（人格權與身份權）、物權、債權、繼承權、知識產權等。這些變化亦反映在法律中，於一九八〇年以後，便頒佈了民法通則，共一百五十六條，而在這通則之下，則是更多的通行法規

（相當於香港的條例），這樣便組成了現在的民商法。而剛於去年十月一日生效實施的新刑法典，亦作出了很多重要的修改，死刑的適用範圍已縮窄，又加進較新的刑法概念，如過失犯罪、預備犯罪、未遂犯罪、中止犯罪、脅從犯罪、教唆犯罪等等，令刑法的覆蓋範圍更適合現實需要。

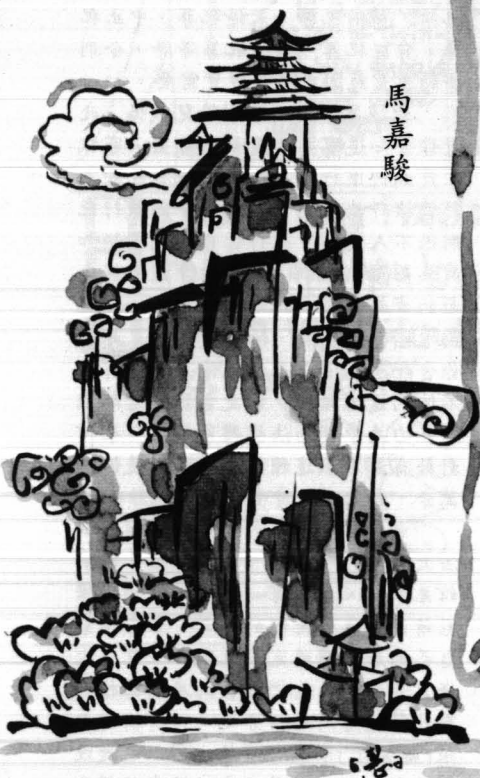
你認為中國的審判很兒戲嗎？此行你會知道審判官是如何產生，審訊又是如何進行的，這樣你才有最基本的資格評論審判。你認為中國執行死刑很不人道嗎？此行你會聽見老師如何為死刑「護航」，這樣你才能掌握全面的資料從而對死刑重新反思。你認為中國無法無天，治安凌亂嗎？此行你會理解這不是無法可依，而是有法不依的遺憾結果。你更會聽見老師雖然極力為中國的法律體系護航，奈何對於有法不依這種社會弊病還是慨嘆萬分，令你感同身受，亦憤慨難抑。

筆者與同學一行十六人投宿於政法大學的「外籍樓」，環境不俗，與賓館差不多，直至有一晚，政法的同學邀請大家參觀他們的宿舍，筆者便對自己的居住環境完全改觀——實在太好太豪華了。他們宿舍的房間面積只有外籍樓房間的四分之一，卻擠進三張「碌架床」和兩張書枱，可以說是沒有活動空間。每層宿舍的燈光設備和

衛生情況也不太好，洗手間和浴室更是一片漆黑。相比之下，外籍樓的房間有獨立洗手間，地方寬敞（幾可進行小範圍的球類活動），環境舒適。起初筆者對於這件事耿耿於懷，總覺得不太自在，好像將自己的快樂建築在別人的痛苦之一樣。但在宿舍內待了一會兒，細意觀察之下，發覺宿舍內充滿青春氣息和無限活力。即使是一支音色不太準的木結他，大家也彈過不奕樂乎，唱着多首流行曲時的愉快表情，可以肯定是發自內心的。知足而常樂，此乃處世之道，筆者在物質世界中浮浮沉沉，差點兒也遺忘了這道理。

你喜愛中國嗎？此行之後你會發覺更愛中國。你沒有愛國這種情操嗎？此行之後你會發現這一片黃土地有很多事物等待你去探索，值得你去欣賞，需要你的貢獻。縱然當中或許有你所鄙視的人和事，奈何樹大也有枯枝，而且黃土地，還是自有其可愛之處，只須剪掉那些枯枝，一棵茂盛燦爛的長青樹便會展現在你的眼前，而花到這個職責則有待大家一起承擔。

以上所言頗有高談闊論，陳腔濫調之感，或有吹噓中國而一抒愛國情懷之嫌。然而本文之首亦已道明一事——分享感想與得益談何容易。最終還是得靠親身體驗，細意玩味，才能切實地觸動人心。閱讀此文章的你，與政法大學亦有一點緣，何不好好珍惜良機，自己感受一番呢？



談上莊

廖佩儀

每年各個院會、宿生會、學會幹事會的幹事在九、十月都忙於找同學上莊，去維持會的日常運作。而每年亦有不少同學甘願犧牲自己私人時間，去為同學服務。他們上莊的目的是甚麼？而現今幹事會與以往又有什麼分別？

我個人就沒有上莊的經驗，不太清楚箇中的情況，但我認為上莊的最主要目的是出於一片熱誠和學習課堂以外的東西吧。

我聽過不少人都說過上莊可學到課堂以外的東西；如組織活動的技巧、待人接物等等。我相信當中所學的真的很多。如在籌備活動過程中，莊員都要與不同的人合作。每個人都有自己的做事方式，有時意見分歧是在所難免。他們就要去學會尊重和接受別人的意見。在工作不如意的時候，他們亦要去忍耐和控制自己的情緒。這的確能使他們待人接物變得成熟，懂得去體諒和尊重別人。

有些人上莊亦是出於一份「熱誠」，願意為同學服務。但我覺得上莊除了熱誠之外，亦需考慮自己的條件和能力。上莊並不是一項個人活動，而是與他人合作，需要對其他會員負責。有些學會幹事在上莊時為會員作出很多承諾，但往往不能兌現，令到會員不滿。若果他不能在學習在莊務中作出平衡，空有熱誠又有何用？不久之前，有報導指嶺南學院學生會幹事會之間發生「大罵戰」，內容是關於其中一個幹事不負責任，未能完成自己的工作。由此可見，上在除了熱誠，還要有一份強烈的責任感。

有些人覺得現今大學生上莊與

以往的有很多分別。我也十分認同。其中一個分別是以往幹事會除了提供福利、舉辦文娛活動之外，還肩負一個社會責任，就是關心社會和反映大學生的意見給社會人士。以往「捉葛柏」、「釣魚台」都反映出大學生是十分關心社會，願意推動社會的進步。但現今的幹事會比較忽略培養會員關心社會和身邊的事，只流於是一個提供福利和辦活動的組織。

另外一個分別就是會員的冷淡。每年的諮詢大會，會員大會，參與的人數真是少之又少。例如最近學生會「海關」諮詢大會，很多時間參與的人數都只有七、八人，反應之冷淡，難免令人心灰意冷。就算舉辦活動時，會員也極少參與，只有幹事參與自己籌辦的活動。

我就覺得原因可能是幹事會忽略與會員溝通的重要性。他們雖然努力做好莊務，但缺乏將消息發放給會員，令會員難以對會務有所關心，自然投入感和歸屬感也減低。但從另一方面看，會員不關心會務也完全不是幹事會的責任。現今大學生有那麼多事物引誘他們，拍拖、兼職、玩樂等，要他們抽時間去質詢幹事和關心會務也十分困難。但若幹事能加強與會員的聯繫，我相信會員的投入感也會增加。

以上是我個人的一點意見。我覺得幹事若能把握這一年時間，去為同學服務，去培養自己，這一年生活就不會枉費。

從香港看中國大陸的法律教育和司法制度

溫紅石（吉林大學法學院講師，現為香港大學法律學院普通法深造文憑學生。曾在中國大陸基層法院檢察院實習）

法律學會約我圍繞以下內容寫一篇文章：

(1) 從大陸到香港經歷兩種不同教育制度的所感與所想；(2) 從感受到的香港社會對中國司法制度的誤解，簡介中國司法制度的概況。

其實，香港社會對大陸的很多看法，不能算是「誤解」，因為有很多確實是大陸的實情。我想說的一點是對大陸的法學教育和司法制度——擴大一點，以至於民主制度，人權狀況等，都應該以發展的眼光來看，而不應反之局限於目前。

在文革中，大部分大陸的法學院系都被迫停辦，因為法學校被認為是「偽科學」。到七十年代末，恢復高考制度，法律系開始重建，法學教育中斷了近十年時間。在八十年代中期，我上大學時，法學教育基本上已全面恢復了，但師資、教材、學術研究、教學方式等仍存在着很多問題。我的老師很多都是在文革中轉行做其它工作，在法院系恢復後又重操舊業的。我聽說有一位教授，文革前翻譯了一部法學著作，在當時未及出版。文革後出版社找到他校閱譯文準備出版時，他發現自己已讀不懂原著了。

我們有所謂的統編教材，由司法部組織專家統一編號，為大部分法學院系所採用。我記得當時使用的《法學基礎理論》教材，內容主要是圍繞着「法是統治階級意志的反映」來講的，觀點十分陳舊。教學方式主要是講座式的，學生總結為「上課記筆記，下課看筆記，考試考筆記」。大部分教師沒有獨立的辦公室，沒有辦公時間，教師和學生的溝通受到一定限制。從學生負擔來看，大陸法律院校的學生比港大法學院學生要輕。平時不看書的學生，只要考前「突擊」，就可以過關。但學生中有一些人會廣泛涉獵。我上大學是在八十年代中後期，正值大陸思想較為活躍的時

候，出版了很多西方學術著作。同學對閱讀這些書籍和中國古典的興趣都比較濃。相比之下，港大學生課業較重，活動又多，閱讀課外讀物的時間相對少一些了。

我所說的大陸法學教育的問題，現在仍然存在，但正在向好的一面轉變。有很多在國外進修、學習的學者陸續回國從事教學，研究工作。他們的地位越來越重要，對學術研究的風氣也發揮着越來越大的影響。

儘管在這裡的報紙上讀到過批評香港法律教育的文章，但就我自身的體會來說，港大的法律教育是成功的。任課教師多對自己教學領域有深入的研究和領悟。課程內容也都有較強的針對性。我很喜歡這裡的一些小組討論課，有時在課上很受啟發。記得剛開學上「法律學習指南」課，其中有一節「法律、政策、和傳媒」，讓學生模擬不同利益集團的代表在議會中就與各自利益相關的法案進行爭論，然後達成妥協。這種方式能讓學生對法律有更全面深入的理解。在大陸，長期以來，利益集團的作用很有限，「人大代表」對代表本人來說不過是一個榮譽稱號。在這種情況下，立法可以說應是「欽定」式的。這種情況也正在改變。

給我印象深的另一點是這裡一些老師的敬業精神。我剛到港大時就聽到這裡畢業的一位研究生談起她的導師對其論文悉心指導，連每個語法錯誤也不放過的情形。給我授課的老師有的經常犧牲自己個人時間來解答我們的問題。這種敬業精神，在大陸的法律院系是不多見的。

我想談一下香港社會對大陸司法制度較為關注的兩個問題：司法的獨立性和公正性問題和司法人權保障問題。其實每個問題都需要做專門研究，而這裡只能憑印象泛泛而談了。

對於司法機關是否可以獨立辦案，答案應該是否定的。很明顯的一個例子是如果中共中央不動陳希同，檢察院是無能為力的，他們也從來不會想到要去調查一個政治局委員。黨組織可以對法院、檢察院院長的任命起決定作用，同時黨的政法委還可以直接影響一些案件的處理結果。司法沒有獨立性，就很難談上公正了。影響司法公正的還有其它一些因素，如地方保護主義、人情網等等。有些事是很荒唐的：如檢察院除代表國家對犯罪嫌疑人提起公訴外，還行使對貪污、受賄等罪進行偵查的職責。

但檢察院的辦案經費極其有限，根本無法承擔去外地調查案件的開支。所以，檢察機關到外地查案的話，往往要到發生案件的單位報銷旅費，有時發案單位還派人隨同檢察院的人員一起出差。這種做法不可能不影響到司法的公正性。

大陸確實存在一些司法機關侵犯人權的現象。但總的來說，這方面情況在逐漸改善。我有一個舅舅，於一九七六年春以反革命罪被秘密處死。他的家人一直沒有找到他的屍體。這件事不過發生在二十多年前，但現在想來，恍若隔世。在幾年前，「收容審查」——不經任何手續，公安局可以將犯罪嫌疑人逮捕，拘押長達幾年時間——還被廣泛採用，現在也已經逐漸廢除了。

中國是有很多的問題，置身其中，有時確實令人心灰意冷。但也應該承認，中國各方面的發展是相當快的。前些天我在《亞洲週刊》上看到了一篇寫北朝鮮的遊記，使我想起了二十年前的中國：物質的匱乏，對領導人的頂禮膜拜，封閉——外國旅遊者要由「導遊」步步緊跟，以防其和當地人接觸。對比一下現在的中國，不能不承認中國發展、變化之快。而對中國的法學教育和司法制度也應置於這個發展中的角度去認識。

九八直選在即，對各政黨來說可謂新的開始。儘管中方努力唱好香港，竭力維持本港一切如常之說，但無容置疑的是，首屆立法會選舉已採用了新的遊戲規則。

可是，在亞洲金融風暴擾攘多時之際，政制民主已難再引起港人興趣。曾力陳比例代表制乃針對他們而精心炮製的民主黨，亦已收拾心情，積極備戰以求重返建制。至於矢言不以民主原則交換政治利益的前綫，亦因梁耀宗、李卓仁二人未能就出賽選區安排達成共識而忙得不可開交。畢竟香港人是善忘的，甚麼比例不比例的爭拗，早已在無聲無息中被市場消化了。

然而，選舉基制能影響選舉賽果乃是不爭的事實。要體現「港人治港、高度自治」，立法會的組成方法亦是不可忽視的一環。只有當港人明白選舉辦法的意義，他們才會更積極投入，本港的政治氣氛始會改變。

比例代表制與最大餘額法

去年九月二十八日，臨立會以近半數通過立法會條例，確定九八直選將採用比例代表制中的最大餘額法。究竟這是什麼？

就讓筆者舉例說明一下：

在這制度下，全港被分成五個選區，議席數目由三至五個不等。假設某一選區共有議席四個，那麼不同的政黨便需要草擬一份四人候選名單，並決定名單上各人的排名先後次序。選民將會投自己屬意的名單一票，而不能就名單上的個別候選人作出選擇。假設共有甲、乙、丙三個政黨參選，而全區選票共有一百。甲黨得到45票、乙得30

而丙得25票。這時，黑爾基數法(Hare Quota)將被採用，亦即等於在全數選票中除以該區的議席數目。在以上的例子，基數就等於100除4，即是25。由於甲、乙、丙黨分別擁有滿一整基數之選票，故它們各得一席，其名單上的首位候選人均告當選。餘下一席，則視乎各黨所剩選票而決定，獲最大餘額的即能奪取此席。經過首輪分配後，甲有餘票20，乙有5而丙有0票。所以甲能獲得該議席，換言之其選舉名單上的首兩位候選人均已當選。

這個制度的特點在於它令各政黨所獲議席數目與其得票率基本相稱，因為在第一輪分配中，每黨必

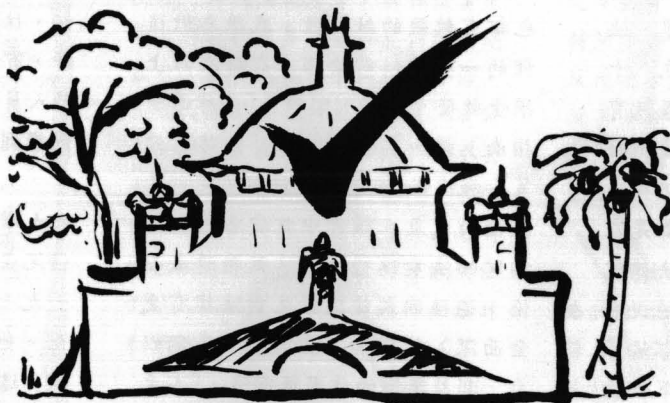
而漢狄法(d'Hondt)對小政黨最為不利。(其他有關制度，筆者容後再談)蔡講師進而相信，特區所制訂的最大餘額法是一種對大政黨具有殺傷力的選舉制度方程式。儘管筆者認為蔡講師所提論據均屬實情，但其結論卻有待斟酌。大家必須明白，一種方法相對於其他某些方法而言，對小政黨較為有利，並不代表它就是偏幫小政黨而傷害大政黨。就如David M. Farrell在他的九七新作《Comparing Electoral System》——書中指出，採用黑爾基數的最大餘額法是最能如實地按政黨的得票比例分配議席的方法。相反，漢狄法則偏幫大政黨，令它們獲取比例上較得票率為高的議席數目。必須澄清的是，以上所言並非

代表筆者認同最大餘額法，又或覺得此法較諸其他更為優勝。事實上，一個將得票率原原本本地全盤反映的制度並不同於一個好的制度。只是筆者覺得，若以此制會偏幫小政黨為由而予以否定，卻未免有欠公允。

民主觀

無疑，要決定像最大餘額法按比例代表制度可取與否，必然牽涉到我們對民主二字的理解。一種論調認為，民主就是少數服從多數，因此「票多者勝」的單議席單票制最為合理。有人甚至認為，比例代表制美其名是均衡參與，說破了不過是對號入座的「分豬肉」遊戲。另一種意見則覺得，所謂以民為主，就是要讓不同市民的需要和聲音得到反映，體現議會多元化而非一黨獨大。就如九五年立法局直選中，儘管民主黨只獲得百分之四十二點三的選票，卻已囊括了六成的議席。因此，若沿用單議席單票制，將可能導致多數人的獨裁，甚至最大的小數(largest minority)的獨裁，與民主的理念相違背。

依筆者之見，民主理應體驗一



須具備滿一個基數的選票方能奪得議席。但是，由於有部份議席是由餘額分配，意味着某些政黨可以不足於基數的選票而得到議席，因此某程度上的偏差是在所難免的。

學者對此制度可謂意見不一。中大亞太研究所副所長劉兆佳(籌委會第一屆立法會產生辦法小組召集人)認為，最大餘額法的偏差是隨機性的，沒有固定規律，無論大小政黨均有機會以不足黑爾基數的選票獲取議席。但城大社會科學部講師蔡子強則表示，這種最大餘額法是相對於其他比例代表制變種中，對小政黨最為有利的。當中居次位的是聖拉格法(Saint Lague)，隨後是單一可轉換票制(Single Transferable Vote)，

種包容性。所謂民主，正正是不欲犧牲個別的聲音和造成權力的壟斷。就如民主黨亦認同，假如立法會全面直選，比例代表制將會是更合適的制度。

因此，長遠而言，香港是理應朝著比例代表制發展的。

其他的比例代表制

其實，上文曾提及過的漢狄法和聖拉格法，與最大餘額法可謂轆出一轍，因為大家同屬名單提名制，只是其計算議席分配的方法不同罷。就如漢狄法中，會將政黨的得票除以1、2、3、4等數字。某政黨的第一候選人會分得該黨一分之一的選票，第二候選人會分得二分之一的選票，第三候選人則分得三分之一的選票，如此類推。假如一個選區有四個議席，則經計算後票數最多的四位候選人即告當選。而聖拉格法的原理亦相同，只是它會將選票除以1.4、3、5、7等罷了。至於為何漢狄法有利大政黨，由於篇幅所限，在此不贅。

雖然這幾種制度的計算不盡相同，他們都有共通的缺點。由於是名單提名制，選民只能投政黨一票，而非投候選人一票。即使選民只支持名單上個別的候選人，他們亦被迫支持名單上所有候選人而投該黨一票。若他們所支持的候選人排在名單末尾，則勝算近乎零，純粹陪跑。再者，名單的排名次序由政黨自行釐定，一來市民的選擇權利減少，二來亦導致因排名而引起的黨內角力和紛爭。猶有甚者，此種制度會陷獨立候選人於兩難之間：一是不同的獨立候選人組成一張名單參選，但這種臨時性的組合

肯定有礙其叫座力；二是自行參選，擠身於不同黨派的名單之間，其不利位置呼之欲出。

然而，這些制度是可予以改善的。在名單提名制中，有所謂「封閉」和「開放」之分。後者容許選民利用其選票去決定名單上候選人的排名次序，當中以盧森堡及瑞士所奉行的最為「開放」。選民擁有與選區議席數目相同的選票，並可自由投給不同黨派的不同候選人，制度甚具彈性和自由。選民甚至可將最多兩票投注在同一候選人上，以增加其取勝機會。每個政黨名單的得票，就等於旗下候選人所得選票的總和，而候選人在名單上的排名次序，則按其個別獲得選票的多寡而決定。此法一方面可以按比例讓不同政黨獲取議席，但同時沒有扼殺市民的選擇和獨立候選人的生存空間，確有其可取之處。

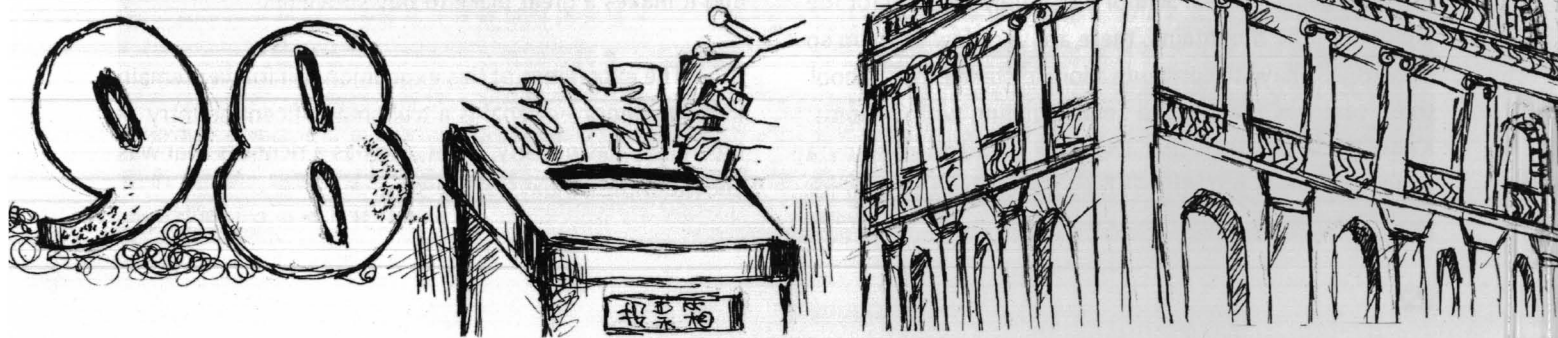
單一可轉換票制

這種與眾不同的比例代表制，實在不可不提。它所採用的是杜普基數(Droop Quota)。譬如在一個四議席的選區，一名候選人只需得到超過五分之一的選票就能必然當選，因為已沒有可能同時有四名候選人比他獲得更多的選票了。在這制度下，雖然市民只能投一票，但這一票是充滿選擇的。市民可將區內所有候選人按喜好而排名，如一、二、三等；若某候選人得到超過基數的選票時，就會自動當選。然而，超過這基數的選票是無助該候選人的當選的。因此，這些多餘的選票會被轉介到第二選的候選人身上。由於無法指明當選者的選票中那些是多餘的，所以會將該當選者

的所有選票轉換給第二志願的候選人，並乘以多餘選票在當選者總得票中的百分比。接着，得票最低、無望勝出的候選人會被篩除，但其選票會被轉介到第二志願的候選人身上。此兩個過程會不斷重覆，直至議席分配完畢為止。

此制度的好處是，勝利者多餘的選票及落選者的選票均不會被浪費，而是讓選民有第二、第三等等的選擇去幫助其他仍有希望的候選人出線。另外，由於選票是投給個別候選人，所以獨立候選人亦有公平參與的機會。而且，政黨亦不用擔心派多人參選同一區會分薄票源，因某落選者的得票多會被轉換至同一黨的候選人身上。

因此，單一可轉換票制亦是值得考慮的。儘管有不少人認為，在現時功能組別充份保障少數利益及政黨政治尚未成熟的情況下，單議席單票制還有其保留意義，但如欲放大直選議席中的主流民意，則有利大黨的漢狄法亦未嘗不可。無論如何，以比例代表制為終極目標卻已是不爭的事實。至於採取何種比例代表制，則市民亦應有權決定。然而現時大部份港人對選舉制度均認識有限，故港府實應加強宣傳和改善公民教育，及效法外國行模擬選舉，讓市民能親身體驗，從而明白選舉制度的真正意義而作出理性的抉擇。



TREKKING IN NEPAL

Kristen Kwok (I)

In Hong Kong, when most of us plan for holidays, the kind of trips that we have in mind are 5-star hotels, shopping sprees, beautiful beaches and perhaps historical sites. It was not until around a year ago that I had the opportunity to go on a rather different trip. Every year my secondary school organises a trip to Nepal for form six students and it was finally my turn. My knowledge of Nepal at the time was a very poor and undeveloped country, with high rates of disease and illiteracy. At first, I wasn't sure whether I would be able to handle the excursion, aware that the main thrust of it was to be a 9-days hike in the Himalayas. Plus, I had to get around 9 injections before going!

It was the end of March when we set off so the weather was beautiful and it was not too hot. My first impression of the country was as I expected of the Third World: inefficient custom control, beggars on the streets, shanty houses and unlit streets. However, as I got to see more of the country I found that the people are very friendly and that away from the city, it is a very peaceful and beautiful place. The 9-days hike was quite an achievement on my part as I was never a very sporty person. It was made easier for us since our party consisted of guides, porters and chefs so all we had to do was walk. I felt really guilty about this since the porters were usually left behind to struggle with their heavy load. At first, we were told that each porter will carry the bags for 2 persons, but it turned out that they were carrying for 3 persons. The people living in the Himalayas depend greatly on Hike parties, so it is not a surprise that the porters will settle for wages as low as US\$1 per day. To us, it may seem like a minimal amount, but to the local people, it is considered as an acceptable income. But can we just leave it at that? These people are undoubtedly being exploited, acceptable does not necessarily mean it is fair. Even if the trekking company does charge the tourists more, it is unlikely that the increased amount will trickle down to the porters' pockets. I guess, at the end of the day, what tourists can do is to give them more tips when the trip ends.

As the trip unfolds, I got to see more and more of the local people's lives. School is certainly a luxury for the children in the mountains, there are very few of them so they usually have to commute a long distance. The 'school' that I saw was really just a small building with 2 rooms. Knowing in advance that we were going to pass by a school, all of us brought with us pencils and sweets for

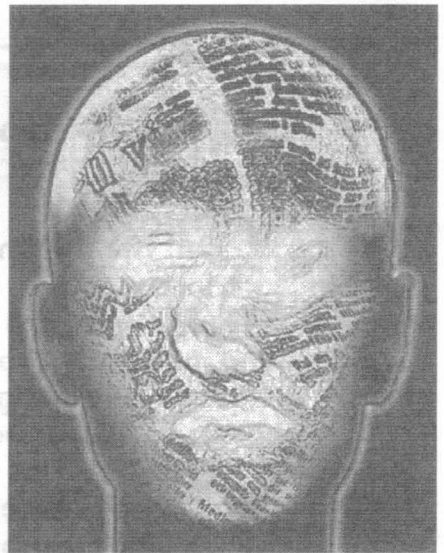
them. But what we didn't know was that the children were going to abandon their teachers in the middle of the lesson while they came out to meet us! I guess the children in the mountains are used to meeting tourists, so whenever we entered a village, they would come out to meet us and asked us for sweets. Another thing that I noticed was that normal business practice applies even in undeveloped places like the Himalayas. People take every opportunity to make money, little stores stocked with soft drinks, water and even souvenirs are scattered all over the Himalayan range! Also, the prices of goods were parallel with the altitude that we were climbing.

Some of the things which I had to get used to when going on the trek were the problems of no proper showers and other goodness of civilisations. The 'toilet' turned out to be a tent with a hole in the ground and if you wanted a shower, you either pay for buckets of water or pay by the minute that you spend in the shower! Walking in the snow was a new and painful experience for me as we struggled towards our goal at altitude 4100m. Luckily, we were able to avoid getting altitude sickness.

After the hike, the next stop was the Chitwan Jungle where we stayed in bamboo tree-houses. After expecting the worse, the flushing toilet and hot showers were a pleasant surprise. Other than that, the stay in the jungle really made me feel close to nature. There were no electricity so the huts were all lit with gas lamps. I was able to see a variety of wild life including tigers, deer, rhinos, elephants and crocodiles when we went on the elephant ride in the jungle. I guess there are drawbacks to the primitive environment, that is we encountered a close call with nature — one of the huts went on fire together with the trees around it. Since we were in the middle of a jungle, there were no proper facilities. Fortunately, the staffs were experienced enough to cut the trees around it.

The rest of the trip was spent shopping and sightseeing in the capital city, Kathmandu. Since living standards are very low in Nepal, everything is very cheap and it makes a great place to buy souvenirs!

The experience of this expedition will forever remain in my memory — Nepal is a truly magnificent country — it certainly has poverty, but it also has a richness that was shown in the 17 days of my stay. ☺



前言：中文作為法定語言的路已走了相當一段日子，若果說1974年通過的《法定語言條例》替它奠定了基礎，而1987年的《法定語言（修定）條例》及《釋義及通則》注入實質的生命力，那麼亦已是十數年的事。

再者，這課題在Newsletter中的歷史亦不短：首先有陳文敏講師的感性呼召，再有陳弘毅教授的理性分析。此番舊話重提，皆旨在從專業教育，刊物印行，立法進程與司法應用等不同角度作客觀報導，加深各同學對此事的認識。

（一）香港大學法律學院之「中文法律應用」課程——訪問主講者何美歡女士

回顧

此中文課程最初為不計算學分之選修課，而演變成學分課程已有五年歷史——首兩年由陳弘毅教授主持，何美歡女士則於三年前開始接辦。當時此課程尚未規模化，何女士面對「平地起高樓」的困難，就利用了半年的學術休假在加拿大進行研究，並確立以下目標：

1. 通過演辯及寫作練習，建立同學以流暢中文具邏輯性、系統性論理技巧。
2. 提高同學對法律條文中英文版本所出現歧義的辨別和處理能力。
3. 培養同學對中文專業應用之敏感度(Sensitivity)，啟發將來在有關方面多下功夫。

儘管如此，何女士仍謙稱表現未如理想，甚至課程大綱也要到學期中才向同學發佈，「當時多得各同學有『問道於盲』的勇氣，與我一同探索！」

現況

經過三年摸索，課程大體已趨成熟。為求重點加強同學的練習機會，每週安排約50名選修的同學上一節大課，另外分級進行兩節的小組討論。何美歡女士坦言，在課程內容方面有自己一套的想法，「內容並非十分重要，重要的反而是基本技巧，正所謂『一理通，百理明』，懂得合同法，只要對侵權法有基本認識，同樣可以將技巧應用。」

以今年為例，約一半時間是放在香港法例中英文版本所出現的歧異。一方面與同學分析案例，一方面佈置習作，訓練如何辨別、確認歧義及建議解決方法。

對參與同學的表現，何女士表現相當滿意：不僅是上課時積極參與，主動性亦很強，所以因中英夾雜而被罰款的同學已漸漸減少。同學在模擬上訴時的表現，不僅比受邀來「主審」的法官流暢，亦沒有以英語進行時被法官即席提問至「口啞啞」的情形出現。

「在高年級的模擬訴訟中，同學表現最差的就是與法官的即席問答，同學一是聽不懂提問，以至答非所問，再就不是組織凌亂，令旁人難以掌握。」

何女士自言對同學翻譯時要求的「順、達、雅」三種元素，她只要求做到「順」和「達」，至於「雅」就未有苛求。雖然同學的中文表達能力沒有問題，但理解英語原文時仍有可以改善的地方。

「給你英文的材料，用英文答題，必要時可勉強將原文拼砌交差；換成中文答題，不能完全掌握材料的準確內容，就難做得好。所以說：英文好，譯文未必一定好；英文不好，譯文一定不會好！」

不過，何女士亦諒解同學在繁重的必修課之餘再報讀這個課程的難處，始終在時間和精神上都有額外的要求。

前瞻

面對來年的轉制，此課程將會何去何從呢？

當然，課程會務精益求精，但轉換成必修科目的限制頗多，單是人力資源的困難亦頗難克服，而且勉強同學修讀亦會減低他們的積極性。何女士亦補充說，若干年後會出現一定數目在母語教育下成長的學生，那時候相信會就此課程作較大規模的檢討。短期而言，她相信這個課程的結構和大方向毋須改變。

她指出，在將來日子中牽涉雙語條文的機會將一定大幅增加，無論是商業上的合同問題，抑或是刑法的條文釋義，作為一名專業人員必須好好裝備自己的語文能力，把住這一關。何女士更勉勵大家，長遠來看致力爭取我們的語言權——即是在法律界使用中文的權利。她認為中華文化具五千年的悠久歷史，中文對法律專業應用的承受力不存在問題，這點台灣就是最好的例證。最要緊的是同學應廣泛閱讀和練習，提升自己的語文水平，為將來作好準備。

How Do I Love Thee
Athena Cheung

On the balance of possibilities
You asked me
How much am I involved with you
The burden of proof is entirely mine
The weight of history
Time won't be lost

Don't know much about legal history
Nor criminal mentality
But I do know
Some Latin terminology
Amo ergo sum
So that under this language-stricken
sky
I can demonstrate my pale pride

I moved from Sophie's World
Into Socrates' mould
I read no more Oscar Wilde
Instead towers of case files
How I miss Shakespeare
Yet there is only Oceania

Will a poetic walk along a wild beach
Constitute a fundamental breach
Of a reasonable lady's duty?

My vulnerability breeds a thin-skull
rose

A delicate decoy awaiting
Your unforeseeable negligence
Once you offer
I have no intention to be bound

To be a law student dissatisfied
Than a pig satisfied?

This is a luxury we can't afford
Even your insurance won't help

Me, a lawyer maybe
To be or not to be?
Depends on my PCLL quality

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