

Reflections on a Master of Laws in Human Rights Program in Asia

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THIS ARTICLE provides some reflections on a specialized master of laws (LL.M) program in human rights based in the Faculty of Law at The University of Hong Kong. During the past decade, the LL.M program has worked within the relative freedom of the Hong Kong environment to promote the values of human rights, rule of law and democracy in Hong Kong and elsewhere in the region; to develop and enhance expertise in human rights law and practice; to engage with Asian scholars, lawyers, activists, advocates, independent human rights bodies, and government officials on human rights issues; and to create and promote a network of human rights experts throughout the Asia-Pacific region.

The article begins with some background about how and why the program was established in 1999 and the particular context of Hong Kong and Asia where it has developed. This context has influenced the approach taken by the program to teaching about human rights and the issues discussed with students both in and outside of the classroom. It then describes the program's curriculum, teaching philosophy, the background of its students, its impact in the region, and some issues encountered in its implementation.

Background and Context

The program was initiated in 1999 partly in response to Hong Kong's transfer from British to Chinese sovereignty in July of 1997 which created concerns about the future of human rights in Hong Kong under Chinese rule - especially in light of continuing criticism of China's human rights record and fears that the rights and freedoms of Hong Kong residents would be jeopardized. The program, therefore, provides an interesting case study of human rights education at the tertiary level in a particular post-colonial

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environment which is unique since unlike most former colonies the decolonization process in Hong Kong did not result in independence. Instead it involved the creation of a new political entity—a special administrative region—which was granted a high degree of autonomy within a sovereign state but without real consultation with the Hong Kong people on the terms and nature of the agreement.

In the immediate run-up to 1997, the colonial government paid greater attention to the legal framework for the protection of human rights than in the past, mainly in response to international and local pressure on the British administration after Beijing's crackdown on student protests in Tiananmen Square in June 1989. At that time, people in Hong Kong provided a great deal of financial and moral support for the students in Beijing and after the massacre on June 4th, one million people in Hong Kong protested on the streets against the Chinese government's actions. The recent treatment of Liu Xiaobo, a political prisoner in China, winner of the 2010 Nobel Peace Prize, and a prominent participant in the protest movement in 1989, demonstrates the continuing suppression of peaceful speech in China.

After the events of 1989, the colonial government in Hong Kong introduced limited political reforms and allowed direct elections for some seats in the local legislature. It also implemented the International Covenant on Civil and Political Rights (ICCPR) into Hong Kong law by enacting a Bill of Rights in 1991. This led to an enhanced role for the courts in the protection of human rights and the development of a body of human rights jurisprudence which has continued especially since the ICCPR's status was further reinforced by the Basic Law—Hong Kong's constitutional document—after 1997. The courts have demonstrated their willingness to invalidate legislation which contravenes internationally recognized human rights standards and have ruled against the government in a number of constitutional cases. Civil society organizations have relied on these standards to further promote human rights in Hong Kong and have advocated for more comprehensive democratic reforms and better protection of the rights of marginalized groups such as ethnic minority communities, refugees, and persons with disabilities.

The LL.M in human rights program has also developed amid growing interest in human rights and human rights education in the Asian region more broadly. The Asia Pacific Forum of National Human Rights Institutions, for example, was established in 1996 and the numbers of na-

tional human rights institutions in the region have grown significantly since the mid-1990s. Both local and regional developments led to greater need for human rights education in Asia, including Hong Kong, and the program was one response to that increasing demand for practical and theoretical knowledge about human rights.

This context of a small, post-colonial, capitalist, autonomous entity which enjoys a high degree of freedom within the world's largest state, notorious for its human rights violations, and its centrally located position within the Asian region, has influenced the make-up of the student body, their experiences and concerns, and the program's teaching methods and curriculum content.

Students

The program is one of the most internationally diverse in the university and attracts a range of students each year from Hong Kong, China and countries throughout the region as well as Europe, the United States and elsewhere. Students have come from a number of Asian countries, including the People's Republic of China, Bangladesh, Cambodia, India, Indonesia, Japan, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, South Korea, Sri Lanka, Taiwan, Thailand and Vietnam. It has also attracted students from Europe (the Czech Republic, the United Kingdom, Romania, Turkey, France, and the Netherlands), the Pacific (Australia, New Zealand and Fiji) and the Americas (Canada, the United States, and Puerto Rico).

Students have included government officials, judges, prosecutors, practising lawyers, academics, journalists, doctors, civil society activists and staff of national human rights institutions. Not all have prior legal backgrounds, but most have encountered human rights issues in the course of their work and want to learn more about the legal standards and protection mechanisms available. Their participation deepens their knowledge and develops their skills, allowing them to work effectively at the forefront of the promotion and protection of human rights. After graduation, they have continued to contribute to human rights promotion and protection in many ways and form part of a larger community working to improve the quality of life in the region. Graduates regularly return to teach or speak about their work on human rights with current students. For example, Govinda Sharma Banda, a 2006 graduate of the program, a prominent human rights

lawyer in Nepal, and a senior legal advisor for the International Commission of Jurists spoke to students in January 2011 about Nepal's efforts to address past human rights violations.

The program has cultivated this diversity by securing funding for scholarships to support students from developing countries in the region who would otherwise not be able to participate. The use of English as a medium of instruction has also enabled the gathering of students from a variety of countries. The drawback, of course, is that it limits the program's ability to reach people who are not able to achieve the minimum English standard required for admission. The program has partly addressed this issue through collaboration with the University's English Center which has provided courses and individual instruction on writing a dissertation in English. It has also worked with an organization which runs academic English, Test of English as a Foreign Language (TOEFL) and International English Language Testing System (IELTS) courses for some students before they arrive in Hong Kong.

Students have reflected on their experiences during the program and its impact on their work and the development of their own values.¹ For example, Tek Kunwar, a judge in Nepal who graduated from the program in 2008, explained his belief that as a judge, he should obtain a fundamental understanding of human rights. He observed that during his time as a student on the program he enjoyed an "interesting range of subjects from both practical and theoretical perspectives", an "inspiring" method of teaching, and "abundant discussions, workshops, case studies and sharing [of] knowledge". He noted that "[s]tudents from diverse countries contributed to stirring ideas and academic interactions during and out of class."

Devi Novianti, a 2007 graduate who has worked with migrant workers in Hong Kong and is now a member of staff at the Hong Kong Equal Opportunities Commission said that she "grew both personally and professionally" during the program. She realized that her job involved "not merely assisting individual migrant workers with each of their problems but also the far more important task of helping to improve the plight of all migrant workers in accessing justice and getting the redress that they deserve". She reflected that the course gave her "more confidence in demanding protection and equal treatment" for her clients because she grew to realize "that the obligation to treat people from all walks of life with dignity and respect is not a charitable gesture by a country but rather a fundamental right of

every single human being and every country has the obligation to protect those rights”.

Jocelyn Reyes, a 2006 graduate from the Philippines, had been confident before embarking on the program that her knowledge of human rights was adequate to perform her job as an employee of the Commission on Human Rights in the Philippines. She realized once she began the human rights program, however, that there was more to human rights that she needed to learn. She observed that “the program taught [her] to think independently and analyze deeply, always referring to applicable laws”. She also realized that she “could never know enough about human rights: there are always new things to learn and apply”. The program allowed her to move forward from a more “solid foundation and have a deeper understanding” of what she was doing. She planned to not only base her work “solely on past experiences and practice but [would] also ... apply and refer to the laws and standards [she] learned about and discussed so thoroughly in class.”

Sharif Islam, a 2010 graduate and political science teacher at a university in Bangladesh, reflected that the program “left a deep imprint on [his] mind, in favor of the deprived, suppressed and oppressed people across the world”. He added that in his classes now, he “not only teaches [his] students to comprehend things in terms of political realism, but also inspires them to see things through a human rights lens.”

Curriculum and Pedagogy

The program aims to achieve this impact by equipping students with a thorough understanding of the relevant international, regional and domestic human rights norms and mechanisms, and how to use them effectively. The curriculum focuses on substantive and procedural law as it relates to the practice of human rights, but also draws on international relations, history, politics, philosophy, sociology and other disciplines to provide a complete and contextual grounding in the study of human rights. It also emphasizes practical skills related to conducting human rights research and advocacy. While the program is international and encompasses human rights developments around the world, it pays close attention to issues of particular importance in Asia.

All students are required to take a total of eight courses. Full time students complete the program in one academic year and part-time students

complete it in two years. There are three compulsory courses which are intended to provide students with 1) a solid foundation in international and regional human rights standards and mechanisms and their national implementation; and 2) an understanding of where human rights came from, including the history of the human rights movement, the philosophical foundations of human rights, and political considerations which human rights advocates inevitably encounter at the international, regional, national and local levels. In the first semester students complete International and Regional Protection of Human Rights, which focuses on the role and functions of international human rights law through the United Nations human rights system, and the African, Inter-American and European regional human rights systems. Selected rights are studied in detail with reference to international jurisprudence, including decisions by the human rights treaty bodies and regional courts. They are also required to take Human Rights: History, Theory and Politics which considers human rights in its historical, theoretical and political context, and uses some of the key issues in human rights today to illustrate the powerful influences that have shaped how we think about and act on human rights. In the second semester, students take National Protection of Human Rights which examines the domestic protection of human rights in constitutional, statutory and administrative frameworks and considers the important role of national human rights commissions, the courts, and other domestic implementation bodies, including civil society actors.

In recent years, the program has offered a wide range of electives, taught by visiting experts as well as permanent members of the faculty, which allow the students to study particular areas of human rights in greater depth. These include courses on Business and Human Rights; a Clinical Legal Education course which allows students to work with a non-governmental organization (NGO) that provides legal representation for asylum seekers in Hong Kong; Comparative Constitutional Law; Corruption in China: Comparative Perspectives; Current Issues in Human Rights; Dealing with Legacies of Human Rights Violations; Economic, Social and Cultural Rights; Equality and Non-discrimination; Ethnicity, Human Rights and Democracy; Human Rights and Governance; Human Rights in China; Human Rights in Cyberspace; Human Rights in Hong Kong; Human Rights Research, Sources, and Methodology; International Criminal Law; International Environmental Law; International Humanitarian Law; International Protection of Refugees

and Displaced Persons; Multiculturalism and the Law; Rights and Remedies in the Criminal Process; and the Rights of the Child.

The diversity among the student body and the combination of both breadth and depth in the curriculum have allowed for meaningful explorations of human rights issues in the classroom. One debate that frequently arises involves the universal applicability of human rights: whether the acceptance of human rights values depends on culture. Do human rights standards need modification in accordance with the situation and, if so, how? How can human rights be implemented at the national level given the variety of social, political, cultural and economic environments in states parties to core human rights treaties? Students ask questions about the applicability of human rights standards in the diverse cultural realities that exist in many Asian countries. These issues arise as they work to ensure human rights on the ground as activists and their efforts to raise the level of human rights education in their own countries. Therefore, methods of dealing with ethnic and religious diversity – and the appropriate role of human rights – become discussion points in the classroom. Although the “Asian values” debates have subsided to a large extent since their heyday in the 1990s, similar cultural relativist arguments continue to challenge human rights activists in the region as they seek to promote the realization of human rights on the ground.

In Hong Kong, undertones of relativism often find their way into conversations about human rights. This has led to opportunities for students and teachers to reflect on these issues and the obstacles a relativist perspective often poses to their work. Relativism in Hong Kong stems from several sources. For example, the business community has sometimes relied on relativist arguments to support a position against democratic reforms; in addition, traditional Chinese and Confucian notions of hierarchy – encouraged, in part by the previous colonial system—have continued to influence the education system.

Teachers on the program have drawn on materials and examples from Hong Kong and throughout the region which allow for reflection on these issues. For example, some classes discussed a Hong Kong judgment² handed down in October 2010 involving a post-operative transsexual woman who was denied the right to marry her boyfriend.³ Hong Kong’s marriage law defines marriage as a union between one man and one woman and post-operative transsexuals are not able to alter their birth certificates to reflect

their acquired sex/gender. The woman claimed that her fundamental right to marriage had been violated and that the term “woman” in Hong Kong’s marriage law should be interpreted to include a transgender woman. In a comprehensive review of comparative law the judge noted that all forty-seven member states of the Council of Europe, all but three US states, Canada, Israel, Brazil, Argentina, Uruguay, Australia, New Zealand, Japan, South Korea, China, Taiwan, and Singapore, all allow legal recognition of a change of gender and respect the right to marry of a post-operative transsexual person in his or her desired gender. In the end, however, the judge rejected her claim on the basis that the social conditions in Hong Kong are different and that there was a lack of consensus in society in favor of a transsexual woman’s right to marry a man.

Students were asked in class to analyze the case and respond to the judge’s arguments. The discussion quickly became a debate about human rights and relativism which was enriched by the diversity of the students in the class. It sparked a conversation about how human rights are implemented in the domestic context and how the social and cultural values of a community – or even a particular judge – can influence the acceptance or rejection of certain interpretations of human rights norms.

Other teaching methods include experiential learning opportunities. Both undergraduates and post-graduates can participate in a clinical legal education program in which they work with an NGO that provides legal representation for asylum seekers. Last year one of the human rights students from Burma, who had previous experience working with Burmese refugees in South Korea, collaborated with other students from Hong Kong and Australia to represent asylum seekers from Africa and South Asia. These students brought these experiences to bear on what they were learning in the classroom in their more academically-oriented course on international refugee law. The learning experience involved a mix of complementary approaches which helped students acquire practical skills, such as interviewing clients, working with interpreters, preparing legal briefs, and doing legal research, as well as theoretical knowledge of current debates in the field of refugee law.

Many of the LL.M students have worked with Hong Kong NGOs before and during the program and after graduation and representatives from NGOs have spoken with students as part of an informal series of “Rights Talks”. The strong interaction between the program and civil society was highlighted in

August 2009 when the LL.M program director joined a Hong Kong NGO delegation to Geneva to brief the United Nations (UN) Committee on the Elimination of Racial Discrimination on Hong Kong's implementation of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The delegation included four graduates of the program and met with three other graduates: two of whom were working with the UN Office of the High Commissioner for Human Rights and one with an international NGO based in Geneva.

The LL.M program also organizes events outside the classroom that supplement seminar discussions. For example, students benefit from the series of Rights Talks and human rights-related conferences that are regularly organized by the Faculty and the Centre for Comparative and Public Law,⁴ as well as visiting experts who conduct research and contribute to the program through talks and guest lectures.

To celebrate its tenth anniversary, the program held a symposium on "Alternative Visions of Human Rights" during the 2009-2010 academic year. The premise underlying the event was that it is not sufficient to teach students about human rights mechanisms and legal standards in a vacuum; it is also necessary to recognize that the proliferation of human rights norms and the growing accession by states to core human rights treaties has occurred alongside continuing human rights violations. It is crucial for both students and teachers to honestly and critically consider the foundations of human rights – especially when the concept of human rights is under threat. The event intended to contribute to the development of coherent theories of human rights that can suggest solutions grounded in greater legitimacy and a clearer understanding of the obstacles faced by human rights advocates.

A few weeks before the symposium, *Newsweek* magazine published a cover story called "The Death of Human Rights". For many in Hong Kong this headline called to mind another infamous cover story published in 1995 by *Fortune*, just two years before Hong Kong's handover to Chinese sovereignty, entitled "The Death of Hong Kong". In that article, the journalist, Louis Kraar, compared Hong Kong to the emperor with no clothes and wrote that "the naked truth about Hong Kong's future can be summed up in two words: 'It's over'". "The Death of Human Rights" may conjure similar images. Apparently Kraar had originally proposed adding a question mark to the end of the title of his article on Hong Kong ("The Death of Hong Kong?"), but the editors rejected this suggestion. Without question marks

at the end, both of these headlines invoke a sense of finality and fatalism rather than hope.

The handover in 1997 did not mark the death of Hong Kong or its freedoms, however. Human rights are also, arguably, still alive despite the discouraging conditions and lack of human rights protection in so many countries around the world. Many of the LL.M students and graduates face such conditions in their countries but seek to redress violations through meaningful, effective human rights work. Indeed the importance of pursuing human rights advocacy especially in such an environment and the passion and hope of the students who undertake the challenge have provided the inspiration for the LL.M program and fuel its efforts to enhance expertise in human rights law in the Asian region.

Endnotes

1. The quotes from graduates of the program are drawn from “Master of Laws in Human Rights: Student Insights” available at: www.hku.hk/ccpl/human_rights/documents/studentinsightllmhr_000.pdf.

2. *W v Registrar of Marriages* [2010] 6 HKC 359.

3. The case was also the topic of a human rights seminar attended by nearly one hundred people from the university and the broader Hong Kong community.

4. See www.hku.hk/ccpl.