

Hong Kong as a Paradigm Case

An Open Market for Corporate Law Firms and the Technologies of Legal Education Reform—as Chinese Hegemony Grows

Hong Kong's historical status as a colonial entrepôt provides a major contrast to India. While the elite advocates and judges in India have resisted foreign competition and new approaches and technologies, Hong Kong overall has tended to embrace international influences. With the neoliberal revolution and the opening up of China to trade and investment, international lawyers and law firms gained strength quickly in Hong Kong and reshaped the balance of legal power there. It is a striking indication of the value assigned in Hong Kong to international legal capital that roughly half the spots in the training program for admission to practice in Hong Kong are kept open for graduates from outside the Hong Kong law schools (Standing Committee 2018). That group includes people from outside but also the children of Hong Kong elites, who study abroad to gain international credentials, which are still more highly valued than local degrees, despite the existence of three prominent law schools in Hong Kong. As of 2018, there were 9,475 solicitors with a certificate to practice Hong Kong law, working in 898 law firms; 85 of the firms were foreign, and 1,498 foreign lawyers were employed in Hong Kong (19). Eighty-two per cent of the solicitors were identified by the Law Society as ethnic Chinese (19). There are also about 1,300 barristers practicing in Hong Kong. Of these, 99 are Senior Counsel at the top of the bar (19).

Hong Kong thus provides a paradigmatic case of how a relatively open and internationally oriented entrepôt has shifted with the new global hierarchies. Hong Kong decades ago moved from its old colonial position serving the British Empire to a central place in the new global order. Its double position—within China but a separate “system” —has also strengthened China's impact on and/or opposition to US-style legal globalization. With respect in particular to *both* China and the

United States, as shown below, international capital associated with global power has led to influence and success locally in Hong Kong. The recent crackdown on dissent and the restrictive changes to the rules governing elections in Hong Kong, in fact, are consistent with Hong Kong's history of local shifts according to global balances of power.

This chapter begins with a brief review of the colonial history of the legal field in Hong Kong, tracing it from the handoff to China in 1997 to the shift in orientation toward US-style globalization even while China's economy grew increasingly powerful. We trace the transition to Hong Kong's current position in between competing and to some extent complementary powers.

We then turn to how this *entrepôt* position and openness to the changing world of corporate law has related to changes in legal education. At the time of the hand-off, legal education was aligned with the British legacy—that is, with relatively low-status faculties (staffed mainly by expatriates) viewed, as in India, mainly as teachers rather than scholars. There was a hierarchy, with places in the bar and bench at the top, and below these a relatively conservative solicitors' profession fed mainly through profits from conveyancing. Expatriates educated abroad still held many of the top positions in the profession, including in the judiciary and at the top of the bar.

The current situation represents a fascinating story of a shift toward “global” practices in legal education and a greater attention to China. Training for corporate law has increased dramatically. At the same time, there is continuity in the relatively subordinate position of Hong Kong's faculties (which are still staffed mainly by expatriates, now in a different mix) and locally produced lawyers.

HONG KONG BEFORE AND AFTER THE HAND-OFF TO CHINA

The period in Hong Kong prior to US-style globalization and the 1997 handoff to China was characterized by a very small solicitors' branch and an even smaller bar. There were only a hundred members of the bar in 1970 (Int. 1–Hong Kong; Hsu 2020). Until 1968, legal education for admission to the bar required a sojourn in the United Kingdom to study for the bar, which only the privileged could afford (Int. 2–Hong Kong). Until 1986, those who qualified in Commonwealth countries were entitled to practice in Hong Kong solely on that basis (Hsu 2020). Expatriates took advantage of this openness, and British expatriates dominated the practice until the 1970s. It was possible for locals to qualify by taking the examinations of the Law Society of England and Wales in Hong Kong (Standing Committee 2018), but the numbers were small. The languages of practice were Cantonese and English, and lawyers could make careers practicing in English.

When legal education came to Hong Kong in 1968 and opened up legal careers to locals without the means to go to London, Hong Kong University (HKU) gained

a quasi-monopoly in the local production of the profession. Today there are two additional faculties of law, at the City University of Hong Kong and the Chinese University of Hong Kong. They now compete for students and faculty, but as noted later, they all follow the same general approach.

As in India, there was a certain complacency in both branches of the small Hong Kong legal profession. Until the 1980s, the bar engaged mainly in criminal defense litigation, while the solicitors prospered through the profits from conveyancing. The bar adapted to the rise of commercial litigation and arbitration, which brought more prosperity to the bar, and the booming Hong Kong real estate market continued to serve the solicitors well. Complacency was seen especially in the local attitude toward China. The local lawyers were not looking to the growth of the Chinese economy. Local Hong Kong lawyers looked down on clientele from mainland China, who were seen as “farmers and peasants” (Dezalay and Garth 1996; Int. 15–Hong Kong). The supply of lawyers was under control except, as noted above, for the ongoing openness to individuals qualified in Britain and its colonies—and later to global law firms seeking to take advantage of expanding international trade and investment (Hsu 2020). Hong Kong’s peripheral position within the British Empire meant also that very important cases often brought British QCs at the apex of the colonial legal order to argue in the Hong Kong courts (Dezalay and Garth 1996). Interestingly, according to Hsu, Hong Kong barristers worried less about foreign competition than about lobbying the British for the right to appear in British courts (Hsu 2020). They measured their own success in terms of success at the British core.

The solicitors’ branch, represented by the Law Society, did not initially welcome the foreign law firms that, under pressure from the United States, the Hong Kong government allowed to enter in the late 1980s. According to Hsu, “the Hong Kong Law Society was strongly opposed: in an extraordinary meeting 97 per cent of members voted against this policy” (810). Yet in the context of Hong Kong, the result was not a policy of exclusion. Under rules that went into effect in 1994, firms could enter the market under certain conditions, and “after practising in Hong Kong for three years, foreign lawyers can be qualified as Hong Kong lawyers” (810). In 1995, “135 foreign lawyers from 12 jurisdictions sat for the first Overseas Lawyers Qualification Examination” (810). More than 1,800 lawyers have successfully completed this examination over the past twenty years (Standing Committee 2018), and many others practice foreign law without a Hong Kong qualification.

Because of the relative openness of the Hong Kong legal market, coupled with the relatively free market for foreign trade and investment, Hong Kong makes evident the changes taking place in one way or another globally. The expanded business that came with economic globalization in the 1990s brought new opportunities, especially involving trade and investment in China, that precipitated a shift in the orientation of the legal field in Hong Kong. Both sides of the profession in Hong Kong shifted toward the new players in the global economy, but they also

had to compete with law firms and lawyers from abroad who could gain access to the Hong Kong legal market. Also, the firms from abroad were much more open than the Hong Kong local firms when it came to building a clientele within China.

The number of foreign lawyers increased and kept doing so until today it exceeds 1,500 (Hsu 2020). Hong Kong remains on the periphery in many respects, but the focus of Hong Kong has shifted away from the British center toward the United States and, increasingly, China. The pull of both powers is evident. In fact, according to Hsu, “Chinese lawyers . . . grew rapidly from 7 per cent in the late 1990s to 15 per cent in 2016, and the trend is continuing” (811). Hong Kong thus occupies a kind of in-between position that reflects both the joint interests of and some antagonism between Chinese, US, and other global approaches.

The new opportunities attracted a changing mix of legal skills, which now include knowledge of the civil law (for interpreting Chinese codes), of British and US commercial law (for global trade), of Mandarin (as the language of the mainland), of English (as the lingua franca of globalization in law and commerce), and of the United States and China (as the dominant imperial powers shaping the rules for the governance of the state and the economy). Financialization and the growing presence of investment banks and large corporate law firms were part of the transformation. The transformation has worked well for the bar, which participates in large-scale commercial litigation and in international commercial arbitration. It has worked less well for Hong Kong solicitors.

Hong Kong is now home to international law firms brokering trade between China and the rest of the world. It is also home to law firms from China playing the same role. Almost all international corporate law firms with strong Asian interests have a Hong Kong branch, and these lawyers bring with them the cutting-edge approaches at play in global commerce. Hong Kong also is a very prominent center for international commercial arbitration, again largely involving disputes between China and the rest of the world. The arbitrators include many of the world’s most prominent, and prominent arbitrators who began in Hong Kong are now recognized and used more generally (e.g., Int. 4–Hong Kong). Hong Kong as an *entrepôt*—both legal and financial—continues to thrive, despite the political turmoil that has pitted locals against the Chinese government as it oversees Hong Kong.

The political turmoil in Hong Kong relates also to the traditional bar. Until the handover, the bar, as noted earlier, was not involved in politics. It was small, prosperous, and not threatened until the Chinese began to set the terms for the handover. An activist group emerged at that time, when a number of barristers not necessarily historically active in politics—including, most famously, the now arrested Martin Lee—took strong public stances in favor of Hong Kong autonomy, especially its legal autonomy. This group remains quite important and has found strong support among the Hong Kong public. The solicitors through the Law Society are not vocal, since outspokenness directly affects their legal practices (which

is not the case with the bar). But when the solicitors vote secretly, they have supported the bar (Int. 2–Hong Kong; Lee 2017; Hsu 2020).

The Civic Party, established in 2006, has been a key player in these debates. It is in fact often called the Barristers’ Party, for it includes leading barristers such as Audrey Eu, Margaret Ng, Elvin Kwock, and Allan Leung. This portion of the bar was active, for example, in the Occupy Central and Umbrella demonstrations that began in 2014—the clash between the so-called yellow ribbons of democracy and the blue ribbons of the Hong Kong establishment. The pro-democracy demonstrations and other activities gained adherents in the law schools, especially at HKU, where much of the bar attended law school. In several law schools, including HKU, classes were recorded to allow students to participate in the Occupy demonstration, for example.

Professor Benny Tai, considered the key organizer of the Occupy demonstrations, taught at HKU until he was fired for that activism in the summer of 2020. The dean prior to Michael Hors, who came from the National University of Singapore, was Johannes Chan, who is also associated with the democracy movement. Others, including the current dean and another former dean, Albert Chen, have taken a much more moderate stance toward China and issues such as elections. HKU’s supportive relationship with the demonstrators had its costs. It also led to some retaliation against Johannes Chan, even though he had not participated directly. The Chief Executive of Hong Kong, Leung Chun-ying, who is the Chancellor of HKU (as a continuation of the colonial policy whereby the governor served formally as Chancellor of every university), reportedly retaliated largely because Benny Tai was a student of Johannes Chan. The result was that Chan was rejected after being recommended for a position as a pro-Vice-Chancellor of HKU (Int. 5–Hong Kong). The situation was highly controversial and led to more demonstrations and public outcry (Cheng 2015).

The bar is divided politically. One part of the bar has embraced China and the leadership role of the Chinese Communist Party. The larger group, however, identifies strongly with the democracy movement and the relative independence of Hong Kong and its courts from China (Lee 2017). The bar’s pro-democracy activities do not significantly affect its members’ prestige as advocates, but there are other impacts that interviewees noted (Int. 2–Hong Kong). Political alignment affects matters such as promotion to judge (or even temporary judge), appointment to governance committees, and even membership in the prestigious Jockey Club. The activist group has lost access to some of the traditional perks and prestige positions of the Hong Kong legal establishment.

The in-between position of Hong Kong has encountered some tension as a result of these developments. Most notably in recent years, the prosecution of police who beat an Occupy sympathizer—caught on video—who had poured water on a police officer generated considerable controversy. An expatriate judge sentenced the police officers to two years in prison, setting off a campaign among many (who

generated “vicious” Facebook traffic) to question these “white” judges and call for their monitoring (Wong 2017; Leung and Cheung 2017). Chinese delegates at a key national parliamentary meeting in China, for example, questioned the role and judicial neutrality of expatriate judges (Huang 2017).

Chinese law professors also weighed in: “Beijing University law professor Rao Geping urged a ratio be set to ensure more ethnic Chinese judges. ‘Hong Kong is not short of local talents,’ he said” (E. Lee 2017: 3). Local professors responded. “Simon Young Ngai-man, a professor at the University of Hong Kong’s law faculty, said the expatriate Court of Final Appeal judges included some of the most senior and experienced judges in the common law world (4). “Their valuable insights could enhance the Hong Kong courts,” he said (4). He said law would become stagnant if all judges shared the same background or gender: “HK is still very much an international city” (4). The numbers are not clear, but according to the Justice Department in Hong Kong, “although the judiciary could not provide statistics on the nationalities of the city’s 157 full-time judges and judicial officers, it stressed that 89 per cent of them were bilingual—English and Chinese. Only 6 per cent, or about 10 by a *Post* calculation, are monolingual” (5).

One of the proposals offered by Chinese professors was to restrict the expatriate judiciary, as in Singapore, to commercial cases. Interestingly, the debate did not question the role of the English language in the high courts and in the teaching of law in Hong Kong (3). And as noted, it did not question the propriety of expatriate judges trying commercial cases. Hong Kong remains in a delicate balance as broker between different powers that converge with respect to commercial matters but may diverge with respect to politics. The current demonstrations that began over a new law on extradition to China have only heightened these tensions, now further exacerbated by arrests and changes in the rules for eligibility for elections. The leaders of the bar have gained a remarkable prominence in protecting the courts and local governance. They have embraced the US and global legal revolution of the late twentieth century, and they are strongly resisting the increased role China is asserting in Hong Kong law.

The *American Lawyer* noted that there is concern about the clashes in Hong Kong but that global law firms cannot realistically leave: “As challenging as it is, global firms can’t stay away from the Hong Kong legal market. Of the 100 highest-grossing law firms in 2017, 63 operated a Hong Kong office, and 44 of the top 50 are in Hong Kong. Similarly, 48 of this year’s Am Law 100 are in Hong Kong, mostly concentrated in the top 50 (39 out of 50). Moreover, 25 of the 45 top-grossing Chinese firms are also in Hong Kong. Most of these firms focus on China-related work in Hong Kong, and it’s unlikely they will leave anytime soon” (Zhang 2019: 2). The role Hong Kong plays for China makes it likely that, despite the increased political pressure from China on the politics of Hong Kong, Hong Kong’s unique economic role is not likely to change.

The retooling of Hong Kong and its relations with competing powers can be seen also in the institutions of legal education. Issues about legal education reform

in Hong Kong squarely reflect the pressures associated with the transformation now taking place. Reforms in legal education are inscribed with the British legacy but clearly show the mark of the emerging new global order of the United States and increasingly China. The impact of the that new order on the faculties of law and on the style of teaching and research is quite evident. We see both the impact of the legal revolution emanating from the United States and the growing influence of China.

LEGAL EDUCATION IN HONG KONG

Hong Kong's recent revamping of legal education began in 2001–2. It drew on the work of two Australian consultants, Professor Paul Redmond, Dean of the Faculty of Law at the University of New South Wales, and Christopher Roper, formerly Director of the Centre for Legal Education. Their focus was on how to keep Hong Kong's local graduates competitive in the global legal services market (Steering Committee 2002). The consultants noted: "The situation appears to be that the large commercial law firms are relying to a significant extent on law graduates trained in overseas law schools or they are recruiting qualified lawyers from overseas jurisdictions. Although there are no centrally available data, it appears that the large firms, whilst they seek to recruit those with the very best results from Hong Kong's law schools, rely heavily on those trained outside Hong Kong" (70). They noted "a perception that Hong Kong's law schools are not producing, or not producing enough, lawyers trained to a level that equips them for employment and practice across the full range of professional activity in Hong Kong" (70).

The review directly confronted the question of what should be done to train Hong Kong lawyers to facilitate legal services suited for US-style globalization and the increase in the importance of corporate law firms. Results of the reform agenda that emerged included the addition of one year of study, from three to four years, for the undergraduate LL.B. and a stronger emphasis on English-language proficiency (Jones 2009: 112). In addition, "all the law schools introduced some degree of United States-style credentials (such as JD programs), United States-style teaching methods, and United States-style law and business courses" (111). These reforms highlighted what the reviewers and the Hong Kong reform committee thought essential to produce lawyers able to compete for positions in corporate law firms.

The law schools in Hong Kong are not very different from one another in terms of programs and the students they serve, but they have a kind of division of labor in relation to the interests that shape Hong Kong. Hong Kong University is the oldest, the most British in orientation, and also the most focused on constitutional law and local issues around Hong Kong's relative independence from China (Int. 6–Hong Kong). As noted earlier, it is the faculty of law historically most strongly identified with Hong Kong and with the pro-democracy movement. The other schools—City University and Chinese University—stake out orientations more

toward the contending powers, China and the United States. Again, however, they are all much more similar than different in their responses to the global influences pervading Hong Kong.

Since HKU's law school is relatively old, it has gained a stronger reputation locally and globally. It is also the most resistant to the changes arising with the new era of globalization and Chinese dominance of Hong Kong. Its graduates make up a large percentage of the bar, and indeed the bar is the first choice for graduates; by contrast, the other schools are oriented more toward the corporate law firms (Int. 6–Hong Kong). The LL.B. is the main degree sought by HKU graduates; the JD has become more important in the other two schools in response to recent reform pressures.

The research orientation at HKU is more traditionally British, and its hiring criteria fit the British system. HKU, for example, has long required that all professors have at least two *law* degrees, which excludes top scholars with a law degree and a PhD in the social sciences, as well as most US law professors, who have only the JD. The focus of hiring is on British-trained law graduates or individuals with existing ties to HKU. Still, HKU has hired expatriates from many jurisdictions besides the UK. It has more than sixty full-time academic staff, comprised of professors from the UK, Australia, Canada, Hong Kong, the United States, and China. Traditional HKU professors, we were told, see no reason to change the curriculum in relation to the changing context, preferring to stick with the traditional curriculum dictated by the Law Society (Int. 7–Hong Kong).

City University, the second law school established in Hong Kong, has historically been more open than HKU to middle-class students, and it has recently moved more to emphasize Chinese law. It boasts some thirteen Chinese law professors, reportedly the largest group of Chinese law professors outside of China. The research emphasis at City University is relatively recent (Jones 2009). There is considerable overlap with HKU, given that all universities are responding to the same changes. For example, one City U professor described the faculty as relatively “transient” and still mostly connected to the UK, despite the orientation to China (Int. 8–Hong Kong). And HKU itself has ten full-time Chinese faculty and emphasizes its strength in Chinese law.

Chinese University, the newest of the three law schools, having been founded in 2006, nods toward the emerging context, with a focus on globalization and especially global trade and economic law (Int. 9–Hong Kong). It is the most foreign-oriented of the three schools, and according to a professor at one of the other Hong Kong schools, it has done the best recent hiring in terms of research (Int. 7–Hong Kong). Its research is also more highly rated than that of the other faculties of law by the government-mandated Research Assessment exercise.

All three law schools compete for faculty with other globalized law schools that have similar orientations—in Australia and Singapore in particular. None of the three in Hong Kong have many locally trained faculty. Expatriates dominate

the numbers, reflecting the continuing lack of local prestige for law professors and the relatively peripheral role of Hong Kong faculties that has continued through colonial to postcolonial relationships. Notwithstanding the recent emphasis on research, the historical model of law professor in the UK appears quite salient. While this is changing, the focus is still largely on the lower-status role of teacher rather than scholar.

The general reliance on expatriates as law professors has raised recruiting challenges. In particular, it is difficult to attract women and mid-career professors to Hong Kong—in contrast to very senior and very junior faculty. Starting pay for assistant professors is comparable to starting pay at US law schools (except for the elite US law schools). Assistant professors at one school reportedly made about HK \$76,000 per month plus \$11,000 as a housing allowance—about US \$130,000 in total (Int. 10–Hong Kong). But it is very expensive to live in Hong Kong.

The approach of the law schools, with the relative division of labor, is a new version of the strategy of the past. They import expertise by hiring expatriates who cannot find places in their own countries for their cosmopolitan investments. Those expatriates include, for example, a number of Scottish academics facing limited places in Scotland, as well as others seeking adventure in Hong Kong or who do not fit into their domestic academic markets. The academics in Hong Kong are oriented toward scholarly markets outside of Hong Kong, as before, except the orientation is no longer solely toward Britain. They respond to the new scholarly hierarchies. As evident from the description so far, the situation is quite unlike what was seen in India, where strong barriers remain to the revamping of the legal market to align with the new global order. The relatively free market of Hong Kong has been able to make changes in the traditional colonial model without major difficulties.

The number of law students in Hong Kong remains small, and the number admitted into practice from that group is smaller still. The number of applications nevertheless remains very high, with law second only to medicine in terms of demand for places (Int. 11– Hong Kong). Control of local enrollment remains strong. The size of each LL.B. program is set by the universities, and those sizes range from HKU, which produces about 250 LL.B. graduates (most combined with non-law degrees), to City U and Chinese U, which range from 50 to 100 LL.B.s. HKU keeps its two-year JD program small, limited to 40, with City U at 115 and Chinese U at 200. All of the programs also offer LL.M.s. The move from LL.B.s to JDs has increased costs, which range from about HK \$40,000 (about US \$5,000) per annum for the LL.B. to over HK \$300,000 (about US \$38,000) per annum for the JD.

All graduates who wish to be admitted to practice in Hong Kong must go through the Postgraduate Certificate in Laws (PCLL) program that each law school runs (costing about US \$10,000, though 100 students receive subsidies). In total, HKU graduates about 290 students seeking admission to practice; City

University about 150; and Chinese University about 280. The numbers have grown but not substantially.

The local law school total is therefore about 720 graduates annually. They compete for only about half that number of available slots in the PCLL programs of the three schools combined. As discussed below, roughly half of the PCLL slots are kept open for graduates from outside the three Hong Kong schools, although it appears that the number has gone down somewhat in recent years. In total, there are about 1,300 applicants for the 700 open slots. The overall supply remains controlled through numerical limits—in stark contrast to India, for example. Despite this control over supply, the power of local legal elites is much weaker than in India and in our other case studies. The focus of the reforms in 2001–2 on elevating the interest of Hong Kong corporate law firms in the graduates of the local law schools has not had much success.

CONTROL OF THE SUPPLY OF LAWYERS

There is some controversy today about what the number of new lawyers should be and who should determine it. First, there is the question of how many students from mainland China should attend the Hong Kong law schools and practice law in Hong Kong. According to one law school administrator, there was a perception at one time that one or more of the Hong Kong law schools was “lining its pocket with self-finance fees” of mainland Chinese, especially in the JD programs (Int. 9–Hong Kong). The more general problem was the sheer number of high-quality Chinese who might qualify for admission to the Hong Kong law schools, which could make it much more challenging for locals to gain places in law schools and in practice. As a result, the Hong Kong law schools now strictly control the number of Chinese admitted. HKU, for example, takes only five to seven undergraduate Chinese from some 11,000 applicants to the LL.B. program. Chinese University similarly limits the number of mainland Chinese undergraduates to at most 10 percent, and the number of JDs to about 15 percent. The LL.M. enrollments, by contrast, are as high as 60 percent Chinese, but these programs do not qualify for admission into the Hong Kong profession.

More controversial within Hong Kong is the control of the numbers admitted into the PCCL and accordingly to local practice. Since the time of the review of legal education in 2001–2, the Law Society has expressed concern about who controls that number. Since then, the number admitted into the PCCL has been determined through a committee representing the judiciary, the law schools, and the practicing profession. There is substantial tension, however, between the Law Society and the academy over this process. The President of the Law Society in 2012, in particular, sought to establish a common bar examination to be administered after the PCCL, and this issue links once again to the question of who controls the number of students able to enter practice.

The Law Society is dominated by the 70 percent of solicitors who practice in firms of fewer than five lawyers. They have not prospered in recent years, and their plight has led them to try to gain more control over the market, which includes seeking to expand their own potential market through rights of audience in the courts, which so far have not been extended. The boom in conveyancing ended in the 1990s, and these firms have not participated greatly in the expanding international business. Their language is Cantonese, whereas Chinese transactions require Mandarin, and as noted earlier, they did not move quickly to embrace Chinese clients in any event. Shrinking the numbers would appeal to many of these solicitors. Others, however, are unhappy for different reasons, including the difficulty of getting their children admitted into the PCCL. Some want rule changes that may make it easier for those who have job offers (which favors family ties) to gain entry into practice (Int. 12–Hong Kong). But the power of the Law Society and its agenda in internationalized Hong Kong is limited.

In 2013, the Standing Committee on Legal Education and Training set out to study these issues. The Law Society highlighted the problems of its membership in a statement to the consultants: “The increase of overseas lawyers and law firms, and those qualified through the OLQE [Overseas Lawyers Qualifying Exam] may fill the gap in legal services for specialized areas . . . but they also intensify the competition for work, and for the smaller local practices whose businesses and income may be more volatile to socio-economic changes, they may be put at a particularly disadvantageous position as they will inevitably be measured against their international counterparts in terms of experience, talent, network of offices, skills, specialization” (Standing Committee 2018).

The consultants initially were Woo Kwok-Hing, QC (Chair), formerly Vice-President of the Court of Appeal of the High Court; Tony Smith, Professor of Law at the Victoria University of Wellington, New Zealand, and a former Chair of the Faculty of Law at the University of Cambridge; and Julian Webb, Professor of Law and Director of the Legal Professions Research Network at the University of Melbourne, Australia. Following Woo’s resignation in October 2016, the chair became Anthony Rogers, QC, Chair of the Clearing and Settlement Systems Appeals Tribunal, Hong Kong, and former Vice-President of the Court of Appeal. The group produced a lengthy final report in 2018 (Standing Committee 2018), which assessed the entire system of legal admission and admission into practice and came out against the Law Society’s effort to impose an examination for all law graduates. In this respect, this international report sided with the law schools. The law schools noted that they were already upholding standards, with “no complaint on quality” about the graduates of the PCCL (Int. 5–Hong Kong).

The report was critical, however, of the quality of education in global terms: “It is not clear to us that Hong Kong is showing the same appetite for innovation that has been apparent in the US and, to a lesser extent, Australia. The relative lack of competitiveness in the domestic market may account for some of that difference

(though that also brings advantages). . . . If the Hong Kong law schools are to maintain relevance and competitiveness in the global market, more needs to be done, not just to bring the academic curriculum and learning design into a ‘2020 vision’ but to prepare the way for the law school of 2050” (Standing Committee 2018). The report then went into a lengthy discussion of the importance of the US-promoted idea of “outcome measures” to evaluate legal education.

INTERNATIONAL STRATEGIES AS LOCAL CAREER OPTIONS

The strategy of *entrepôt* brokering trade and relationships between China and the rest of the world continues, supported by Beijing and critical constituencies in Hong Kong, despite political controversy. The comprador role of double agency remains quite prominent. The law schools in Hong Kong have bent toward China with new programs and centers, a much larger group of professors from China, more students from China, more offerings of common law instruction for Chinese, and programs to promote more proficiency in Mandarin. But they also continue to teach in English, require proficiency in English for admission, and encourage non-Chinese expatriates not only to teach but also to serve as judges.

The expatriate professors also obviously connect to China, the West, and international and transnational law. They may use their Hong Kong experience to build their international capital and bolster their careers outside of Hong Kong. The subordinate position of Hong Kong in these relationships is apparent in the pull toward the West and China. Hong Kong has embraced the new legal order and its relationships with China, but complex relationships of core and periphery have long been associated with its peripheral *entrepôt* status.

One strategy, for example, has been to invest more in Chinese capital to make a career in and around Hong Kong and its issues. Another is to use Hong Kong expertise to make a career through China. The examples of professors and lawyers supporting the pro-China business establishment are obvious. But there are also more striking examples in legal education that potentially leave Hong Kong’s local institutions in a relatively marginal position.

An early example after the handoff is Betty Ho, a professor at the University of Hong Kong in the 1990s who trained at the University of Toronto. She died in 2010 and was celebrated in a memorial issue of the *Tsinghua China Law Review* (Alford et al. 2010). She taught at Tsinghua from 2002 until her death. Prior to that she had practiced law in Hong Kong. She was also an active “Hong Kong animal” seeking to protect law, democracy, and the rule of law in Hong Kong around the time of the handover (Dezalay and Garth 1996: 266–67). Despite her prominence in Hong Kong, she left in 2002, “as she believed that she could make a greater impact by teaching the future leaders of China” in Tsinghua (as noted by J. Chan 2010: 6). She also later obtained a tenured position at the University of Toronto, and she continued to teach at both places. According to the then-Dean of the Tsinghua

University School of Law, Zhenmin Wang (2010), she played a role in China as a broker between the common law and China:

Her last public speech at Tsinghua was: “Save the Country by Commercial Law.” She told students, “the purpose to study the law is not for yourself, but to serve your country and your people.” That’s exactly what she had been doing. She once told Hong Kong friends that her research, her scholarship is for China. She translated all her books into Chinese and published in China, so that more Chinese people could afford to buy and read the books. In early 1990s, upon invitation from the Chinese government and the then Vice Premier Zhu Rongji, Betty helped China draft the legal framework and policies on listing Chinese State companies at Hong Kong stock market. She made fundamental contributions to the rule of law development in China. (14)

For Betty Ho, despite her activism in Hong Kong, the main event was in China, and she used the latter part of her career to invest in the globalization of the Tsinghua School of Law.

The strategy of investment in China is also evident elsewhere in Hong Kong. Hong Kong, as noted, is a prominent center for international commercial arbitration, and the Hong Kong law schools offer programs in arbitration and dispute resolution. Yet one arbitration specialist noted that the academic centers within Hong Kong do not really link to the core of the international commercial arbitration world. The teaching at HKU, for example, does not involve arbitration “big shots connected to business,” but instead emphasizes mediation (Int. 13–Hong Kong). The same interviewee noted that perhaps the leading Hong Kong arbitrator, Teresa Chang, a Vice-President of the ICC Court of International Arbitration in Paris, is a recurring visiting Professor at the Law School of Tsinghua University. There she is the co-director of Tsinghua’s Master of Law Program (LL.M. Program) in International Arbitration and Dispute Settlement (Tsinghua University School of Law 2020). Tsinghua’s relative openness to the outside, including Hong Kong, has facilitated this international strategy of orientation to China.

The opportunity to go around Hong Kong and its law schools for success in Hong Kong is evident in other ways. As noted earlier, half of the PCLL positions go to those who study outside the three Hong Kong law schools. In addition, many of those who attend the Hong Kong law schools are ethnic Hong Kong Chinese who went to high school outside Hong Kong. They reportedly have the opportunity to take a different entrance examination, which is not as competitive as the one for Hong Kong high school graduates.

As noted, many of the sons and daughters of well-to-do Hong Kong residents go abroad for their law degrees. One professor noted, for example, that after the academic year starts in Hong Kong, a number of students leave when they gain acceptance to a British program. With respect to the PCLL, one administrator notes the “traffic” abroad that comes to practice here (Int. 9–Hong Kong), and others note that the international law firms also bring in applicants from abroad for the PCLL, further diminishing the role of the Hong Kong law schools. External

educational capital identified with the core of the currently internationalized legal field remains valued in Hong Kong, just as it was under the British Empire.

A recent article on law student mobility by Swethaa Ballakrishnen and Carole Silver highlights a revealing interview with a Hong Kong student with a Hong Kong undergraduate degree in psychology and politics:

And at that time I was thinking, do I want to stay in Hong Kong for a legal education [with] a ton . . . of other people? So a lot of my friends, they attend LL.B. in Hong Kong, so they already have their law degree and their undergraduate study. And Hong Kong also provided JD programs as well, but I was thinking, you know, I received my undergrad location in kind of the best university in Hong Kong and I know how this education is like. And also if I receive a JD degree in the States I can always go back to Hong Kong if I want, because they really welcome to American JD. So, and if I'm lucky enough, I can stay in the US. So going to, to pursuing a JD degree in the US gives me more choices, and also I think that US has the best legal education so that's why I want to come here. (Silver and Ballakrishnen 2018: 62)

The student recognized the value of the US JD within Hong Kong and as a way to maximize options. The student had internalized the location of Hong Kong and its law schools on the periphery of the legal world.

Hiring is intensely competitive in Hong Kong, producing an “oversupply” of graduates seeking positions in the international law firms. Hong Kong law school graduates are not necessarily favored in the competition to gain entry into the international law firms in Hong Kong. One long-time partner in international firms in Hong Kong noted the inclination to look outside, to seek candidates with a broader knowledge than what those who studied law “to please mom and dad” possessed (Int. 14–Hong Kong). She further noted that the “best associates are not from here.” The large firms typically seek graduates from Oxford and Cambridge and other leading British faculties of law, which often means individuals originally from Hong Kong who go abroad. The Hong Kong natives who study at the London School of Economics, from this perspective, “read better” in the words of a leading partner in an international law firm. In addition, the US firms reportedly do not do traineeships, so they wait within Hong Kong until year two or three of a young career before “poaching” associates (Int. 14–Hong Kong).

Many interviewees mentioned the issue of language. As noted earlier, with a few exceptions, the local firms, especially those practicing mainly in Cantonese, have not prospered in recent decades. And the attitude that the Chinese are “peasants and farmers” continues to linger (Int. 15–Hong Kong), even though the tide has turned in terms of economic power and Chinese firms have built alliances with Hong Kong firms (Liu and Au 2020). The linguistic requirements for the international firms are Mandarin and English, and as noted, “cultural competence” with the mainland Chinese is relevant. International firms especially recruit those who speak native Mandarin and have studied overseas.

Administrators noted that among the local graduates with JDs, which seems to be the preferred degree for the large firms, the preference is for individuals from the mainland with a Chinese undergraduate degree provided that the individual speaks good English (Int. 12–Hong Kong). Such an individual may use admission into Hong Kong as a way to gain a foothold in the international firm—perhaps at some point seeking to transfer to the Shanghai or Beijing office. The next preferred group is ABC or BBC (American- or British-born Chinese) who come to Hong Kong after education elsewhere. And the lowest preference is for Hong Kong “local–local” undergraduates and JDs. There are also Chinese law firms in Hong Kong who can now hire from China or Hong Kong (Liu and Au 2020). Finally, international law firms hire individuals who only work in English but have desired specialties, such as intellectual property.

As a result, the part of the corporate law firm market controlled by the Hong Kong “production of producers” is small. The Hong Kong global and Chinese-oriented corporate market has grown substantially, but the means for market control are not through the Hong Kong faculties of law, which have very limited enrollments, or through the professional training programs. Those trained closer to the core of the global hierarchy, which for those coming from Hong Kong requires considerable family resources and scarce linguistic skills, have advantages in securing coveted positions in Hong Kong. Cantonese-speaking, public school-educated (not likely to be in English), and locally trained individuals without the resources to travel and study abroad—or perhaps even to pay the fees for the JD—lack realistic opportunities to join the global law firms. And those trained abroad can come and compete in Hong Kong. Locals lacking family capital and linguistic expertise also have little chance to compete at the bar. Those most embedded in Hong Kong are therefore limited as to what practice settings they can aspire to.

INTERNATIONALIZED SCHOLARLY PRODUCTION

The position of the Hong Kong law schools in the production of expertise is similarly limited. Seeking to gain credibility in a global market in which their rankings matter as a means to attract foreign students to Hong Kong schools of law, new deans come in with a mandate to have a “stronger focus on research” and to “differentiate” themselves in the market (Int. 6–Hong Kong; Int. 12–Hong Kong). There is a mission now to “get more quality research out.”

The collective efforts of these academies of relatively marginal professors on the periphery serve to promote the quality and importance of legal knowledge in the relationships involving China and Hong Kong and international businesses. But there are very few Hong Kong locals teaching in the law schools. The law schools do not attract (or perhaps do not promote) local recruitment into the academy. The challenge of promoting research is compounded by the fact that law

professors in Hong Kong, despite the increased focus on research, remain more like British or Indian “teachers” than US “law professors.” The expatriate professors serve as brokers of imported expertise, but the mainly young professors are uncertain what kinds of research and what kinds of publications and journals are best for their careers. The Hong Kong academy remains in a subordinate position between China and the academic capitals of the West.

CONCLUSION

Hong Kong presents a very different picture than India. It is not for the most part a matter of an old guard resisting the importation of new approaches linked to international law firms, financialization, and US-style globalization. The Chinese and international orientation of Hong Kong serves and reflects its position as a relatively open entrepôt. It is open to new balances of power and to scholarly learning that relates to that balance. In many respects, therefore, despite current turmoil, it is thriving as one of the major global cities in the world economy, and the services sector, including law, is part of that prosperity.

This globalization in Hong Kong also dramatizes a phenomenon seen in India, albeit less clearly. Because of the factors that have made Hong Kong a success in brokering relationships, elite careers in Hong Kong are disproportionately available to those able to bring valued foreign capital into Hong Kong, be it familial, linguistic, or cultural. “Chinese-Chinese” law graduates and those educated in Britain or elsewhere have substantial advantages in the peripheral Hong Kong market.

Furthermore, for both the Hong Kong-educated population and those educated abroad, the question of financial resources is much more important than in the past—reminiscent of the time when only education in Britain qualified one for practice. The costs of a legal education are one thing, the costs of getting a primary and secondary education that leads to fluency in English, much less Mandarin, are another, and the kind of travel abroad that leads to cultural competence in those external worlds represents a third way in which access to the top positions in Hong Kong is highly stratified—realistically available only to a very small percentage of potential and actual law graduates.

Finally, the position of Hong Kong as a relatively open entrepôt opens it up to participate in profitable global markets and global exchanges, and also to participate in hierarchical relationships of core and periphery. Scholarly agendas, faculty recruitment, and career strategies all are embedded deeply in the competing and complementary relations with China on one side and the US-style global core on the other. Unlike India, Hong Kong has in effect embraced the new legal revolution, but the beneficiaries are not necessarily the graduates of the Hong Kong law faculties.