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Introduction - LTC volume 18

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Abstract

At the time of writing, the Occupy Central Movement (or the 'Umbrella Revolution', as it has become known in the international media) is in full swing in Hong Kong. Spearheaded by two professors and a Baptist minister, it dovetailed with local student movements and quickly expanded into a demonstration encompassing people from different walks of Hong Kong society. This movement was sparked by an electoral reform package imposed on Hong Kong by China, under which the only candidates for the city's Chief Executive would be nominated by a committee likely to be composed of members acceptable to Beijing. The Chinese government insists that the system is a democratic one insofar as Hong Kongers would still be able to choose their leader through 'one person, one vote', but the Movement points out that the committee's screening renders the voting process meaningless. The Movement was galvanised by the local police's use of tear gas against the peaceful protestors, who have called for the repeal of the reform package, the re-opening of the dialogue on Hong Kong's constitutional development, as well as the resignation of the city's current, and highly unpopular, leader.

Introduction

Marco Wan and Janny Leung

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The ways in which the ‘rule of law’ has been used in the discourse surrounding the Movement exemplifies the urgency of rethinking the concept’s meaning, scope, and political significance. As the political theorist Judith Shklar has argued, the phrase ‘rule of law’ has been so overused and misconstrued that it has become virtually meaningless,

and nowhere is this more evident than in the Chinese government's response to the Movement (Shklar 1987: 1). An opinion piece in the *People's Daily*, China's official news source and which also functions as a *de facto* mouthpiece for the Chinese government, is a case in point. The op-ed piece notes that since 'Hong Kong boasts a tradition of the rule of law', the local government should 'keep the Occupy Central movement under control in accordance with the law' (*People's Daily* September 29 2014). The same editorial two days later warned that 'a small number of people who insist on resisting the rule of law and on making trouble will reap what they have sown' (*People's Daily* 1 October 2014).

The peaceful gatherings of which the Movement largely consists are condemned as deliberate threats to the legal order. It dismisses comparisons between the Movement and the Tiananmen Square Incident in the international press as 'groundless', and insists on the authorities' duty of 'drawing the red line of Hong Kong's rule of law'. The *People's Daily* piece arguably turns the 'rule of law' on its head: from its origins as a means of preventing the exercise of arbitrary power by the government and of ensuring that public officials cannot place themselves above the law, the concept is now deployed against the people. The 'rule of law' as depicted there has no place for the expression of dissatisfaction against unjust or unpopular laws beyond the framework set by the state, be it in the form of civil disobedience or any other mode of peaceful protest. The hermeneutic malleability of the 'rule of law', together with its susceptibility to political misuse, underscores the need for legal scholars and critics to re-examine it from a different vantage point.

Moreover, while recent events in Hong Kong provide the immediate backdrop to this volume, the question of how the 'rule of law' has been understood, put to use, and circulated within East Asia, a region with growing influence in international forums and institutions, also merits close scholarly attention. One unifying link between the jurisdictions examined here is their colonial past and their post-colonial legacy. In particular, one strand of the debate about the place of the 'rule of law'

in East Asian societies foregrounds its supposedly colonial character and its function as a means of imperial control. Beyond Hong Kong, places such as Singapore, Indonesia, Taiwan, India and Malaysia have their jurisdiction-specific political, social and cultural entanglements with the notion, and the following essays will examine different aspects of such entanglements.

Since at least the publication of Albert Venn Dicey's *Introduction to the Study of the Law of the Constitution*, the 'rule of law' has been the subject of intense scrutiny in legal academia. This collection of essays draws on this impressive body of scholarship, and gives existing discussions a different orientation by focusing on the ways in which the concept has been refracted, resisted, and reimagined in cultural imaginaries beyond the law. As a concept touching the lives not only of lawyers and politicians, but of every citizen, the idea of the 'rule of law' manifests itself not only in legal discourse, but in other discursive spaces formative of a society's culture, such as politics, film, and fiction. The authors in this volume turn their attention to these 'extra-legal' discourses that collectively shape our understanding of what it means for a society to claim that it is subject to the 'rule of law'.

The volume opens with Elaine Ho and Johannes Chan's essay on Chinese opera, one of the most under-examined genres in law and humanities scholarship, and signals the project's aim of re-orienting discussions of the 'rule of law' to other discourses. Co-authored by a literary critic and an advocate and former Law Dean of the University of Hong Kong, it examines *Searching the Academy* as simultaneously a critique of the possible split between procedural fairness and respect for the law, and a vision of how Confucian ethics can provide a basis for connecting law and life.

Film and fiction also constitute cultural spaces for the representation, reflection, and evaluation of ideas about the 'rule of law'. Alison Conner examines the reception of an Indian movie, *Awaara*, in Mainland China, and argues that its depiction of justice, especially procedural justice, resonated with the Chinese audience in light of the legal reforms, especially reforms in criminal procedure, that were taking

place around the time of the film's release in the late 1970s. Janny Leung's piece focuses on the linguistic differences in two versions of the martial arts thriller *Wu Xia*, and situates the languages choices made by the producers in light of the film's depiction of law and justice. Marco Wan's article sets up a dialogue between film and legal theory by examining how Joe Ma's *Lawyer, Lawyer* can be interpreted as a response to Dicey's discussion of the 'rule of law'. Finally, Jeffrey Thomas's examination of the Indonesian novel *This Earth of Mankind* draws on Desmond Manderson's discussion of modernism in his recent book, *Kangaroo Courts and the Rule of Law*, to argue that Pramoedya Ananta Toer's novel provides a means through which the reader can *experience*, rather than passively read about, the concept of 'rule of law'.

The phrase 'rule of law' is often used by politicians. From opera, fiction and film, the essays in this volume turn to the domain of politics. Jothie Rajah examines how ideas about law, justice, nationhood, and foreignness coalesce around the debate about chewing gum in Singapore, and Yun Ru Chen demonstrates how Taiwanese nationalists in the 1920s drew on the notion of the 'rule of law' as a means of creating a distinct identity and as a critique of Japanese colonialism.

Dedicating a volume to the analysis of the 'rule of law' in 'extra-legal' discourses does not mean sidelining the law itself. The final two critical essays return to narratives in the law to examine the relationship between the 'rule of law' and legal discourse. Joshua Neoh focuses on the dispute over whether Christians have the right to the use of the term 'Allah' in Malaysia to probe the difficulties of relying on law to resolve religious disputes, and identifies two competing narratives that both purport to be faithful to the text of the country's constitution. Christopher Hutton's essay scrutinises the myth of linguistic and conceptual unity in the common law by focusing on the tensions between local culture and legal categories in a number of court cases in colonial and postcolonial Hong Kong.

In addition to the essays above, this volume includes contributions by two poets. Tammy Ho offers a personal reflection on Hong Kong's constitutional framework as a piece of 'science fiction', and the playful

erasure of the legal text in Sarah Howe's poem can be read as a stylistic re-enactment of the erosion of the 'rule of law' which many people feel is taking place in Hong Kong. Finally, the photographs by Janny Leung aim to give a sense of what civil disobedience looks like 'on the ground'.

We hope that the contributions in this issue of *Law Text Culture*, which range widely across jurisdictions, genres, and registers, will provide new, critical perspectives on the idea, representations, and practice of the 'rule of law' in East Asia and beyond.

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