

Introductory Essay by the Editors

This book, as its title indicates, is based on the proceedings of a conference which took place in Hong Kong. The conference, which was held on 10th to 12th December 2008, was convened jointly by the Faculty of Law of The Chinese University of Hong Kong and the University of Cambridge Centre for Public Law. It took place in the spectacular surroundings of the ballroom of the Kowloon Shangri La Hotel in Tsim Sha Tsui. It brought together an array of speakers from around the world, drawn from the academy, the judiciary, and the profession. As the organizers of the conference, as well as the editors of this book, we were delighted that it proved possible to assemble such a galaxy of talent. The result was a conference distinguished by the breadth of the issues covered; the depth (as well as liveliness) of analysis provided by speakers and participants; and the range of perspectives brought to bear on contemporary issues in administrative law by contributors from diverse legal and political systems.

We hope that this book succeeds in reflecting those qualities of the conference. We also hope that we have managed to capture something of the dynamism of the exchanges which took place at the conference; as well as constituting a record of many of the formal papers delivered at the conference, the book includes shorter contributions from participants in an attempt to convey a range of perspectives upon and reactions to the arguments advanced by speakers.

This book is already a substantial work and it comes nowhere near providing a comprehensive record of everything said at the conference. Space could not be found for every paper delivered and the editors had to make difficult decisions. Some papers had to be shortened and even so space could not be found for all. We thank all participants most sincerely for their contributions even if we were unable to publish in the way they might have liked or at all.

On every day of the already crowded programme the early morning was filled with a series of open forums where papers were presented by young scholars from all over the world attending the conference. There were open forums on 'Access to Administrative Justice', 'Deference and the Judicial Role' and the 'Functions of Judicial Review'. Many of these papers and the associated discussion were excellent and some will doubtless be published elsewhere. Regrettably none of these papers finds a home in this book, but it is right that we should acknowledge here what was an important part of the conference.

The title of the conference was 'Effective Judicial Review: A Cornerstone of Good Governance'. More than one participant commented that the absence of a question-mark at the end of the title rendered it a normative statement rather than a description of the conference's subject-matter. Yet given the right circumstances, normative statements serve to provoke, not to constrain, debate; and so it proved in Hong Kong. It was as inevitable as it was intentional that the title of the conference would precipitate debate not just about *how* judicial review might facilitate the promotion of good governance, but about *whether* it should be placed centre-stage in that endeavour and about the very nature of good governance itself. The conference therefore addressed not simply the form that judicial review should take, but sought critically to question its role, its constitutional basis and its relationship with other mechanisms for securing administrative justice.

Consistent with this basic point the structure of the conference and, of course, this book emerges. The detail will, of course, be found on the contents page. But the various parts of the book show how not only the foundations of judicial review are explored (Part Two), but also the scope and functions of administrative justice (Part Three) are discussed and debated. The discussion then shifts to the conditions for effective judicial review (Part Four) with the focus falling strongly, but not exclusively, on the independence of the judiciary. The grounds of judicial review are then explored (Part Five), with particular reference to traditionally problematic and newly emerging grounds such as jurisdictional error and also to the debate over proportionality. Special attention is paid in Part Six to administrative law in the HKSAR and China (and we will make some further remarks on this aspect of the conference and this publication below). The book ends (Part Seven) with the closing addresses of Lord Justice Laws and the late Sir David Williams which each, in their own way, give a taste of the atmosphere of the proceedings.

This formal account of the structure of this book does not do justice to the several themes that flow back and forth from chapter to chapter. Mention has already been made to the debate over proportionality and deference, but there were many other themes touching most aspects of judicial review. Justice cannot be done to every paper here. But mention may be made of the discussions of the relationship between judicial review and other parts of the administrative justice system, such as tribunals (chapters 8, 9) and the extent to which the content of administrative law in a given legal system (for instance, jurisdiction in Canadian law (chapter 18) or statutory fictions in US administrative law (chapter 19)) is influenced by its underlying constitutional and institutional framework. Discussion will also be found on the utility of the codification of the principles of judicial review in different jurisdictions (chapters 4, 5). Judicial independence is, of course, a vital part of effective judicial review and is explored in several contributions (chapters 11, 12, 13).

It was in contexts such as these that debates about the nature of good governance and of judicial review's capacity to secure it intersected in a particularly striking

way with the diversity of legal traditions represented at the conference. Although the conference's methodology was not an explicitly comparative one—speakers were asked primarily to reflect upon questions concerning judicial review and good governance with respect to their 'home' jurisdictions—it was the organizers' intention that the conference should provide a forum for discussion between legal systems. While the core values of administrative law protected via judicial review, such as fidelity to the rule of law, procedural fairness and respect for fundamental rights, transcend many of the constitutional and other differences between legal systems, the conference was convened in recognition of the fact that such transcendence is qualified by the different political, institutional and cultural assumptions that inform the interpretation and application of judicial review principles around the world, as well as by differing conceptions of the notion of good governance itself. Even so, the common language and grammar of administrative law provided the means of dialogue and understanding between different legal systems.

Against that background, it is worth noting that the legal and political traditions represented at the conference and in this book extend beyond the common law world. Although an international conference in the sense that it included participants from around the globe and cast its net widely in terms of the legal systems that were the subjects of discussion, the conference was influenced, quite rightly, by its geographical setting.

This was apparent from the very beginning, the opening ceremony having commenced with a lion dance—a traditional, and colourful, Chinese dance performed with vigour, energy and skill to summon luck and fortune. The influence exerted by the conference's physical location went beyond the purely ceremonial, however. The fact that the conference took place in the Hong Kong Special Administrative Region of China afforded a unique opportunity for exchange between speakers and other participants steeped in the western legal traditions and those—of whom there were many—from mainland China who are engaged in the process of building a developed system of administrative law in that country as it changes economically and politically. The conference was convened in a spirit of inquisitiveness and in anticipation of the potential fruits of discourse between representatives of divergent legal and political cultures. Lawyers from common and civil law jurisdictions learned much about the nature of administrative law in China and about the extent to which debates about judicial activism and the constitutional propriety of judicial review which are familiar in the common and civil law worlds have analogues in contemporary China. The universality of the challenges faced by administrative lawyers—if not of the solutions they adopt, in the light of the constraints imposed by the particularities of any given constitutional and political system—was striking.

Inevitably with a project of this nature, thanks are due to—and richly deserved by—the many individuals who have helped to bring it to fruition. We are, of course, indebted to everyone who attended the Hong Kong conference, often

travelling significant distances to do so, and who helped to make it such a memorable and significant event. Particular thanks go to those who gave papers at the conference and who have produced chapters for this book, meeting ambitious deadlines in the course of doing so. But special thanks must be reserved for Diana Ying and her team at the Faculty of Law of the Chinese University of Hong Kong. They worked tirelessly and meticulously to put on an event that was, in the experience of many if not all who were present, unparalleled in its execution, in its attention to detail, and in the warmth of the hospitality extended to those who were attending. Particular thanks are also due to Chief Justice Andrew Li of the Court of Final Appeal and Lord Woolf of Barnes whose support of the conference was much appreciated. They both addressed the conference and attended every day. The Secretary of Justice, the Hon. Wong Yan-Lung, also addressed the conference and his support of the venture contributed to the success of the conference. We would also like to thank Ally Lan Wing, Manyui Li, Tang Man Wai, Sean Lai, and Lo Ka Shan for their assistance during the editing process.

As well as being a celebration of the importance of judicial review and of the fundamental values of good governance which it protects, the conference was a celebration of the grant of Faculty status to the School of Law of The Chinese University of Hong Kong effective from 1 August 2008, under the leadership of its Dean, Professor Mike McConville. The attainment of Faculty status is recognition of the remarkable progress made by the School of Law since its establishment in 2004. The Faculty of Law is the newest Faculty at CUHK and evidence of the University's mission to serve as a comprehensive research University with eight constituent Faculties, including now that of Law. The Faculty's ambitions remain to become renowned as a centre for excellence in teaching, learning and research. We trust that this book, like the conference on which it was based, will be judged a fitting portent of the long and distinguished contribution to legal education and research in China which the Faculty of Law of the Chinese University of Hong Kong is, we are certain, destined to make.

Finally we record here with deep sorrow the death of Professor Sir David Williams QC, Emeritus Vice-Chancellor of the University of Cambridge, on 6 September 2009. At the time of his death Sir David was Chairman of the Committee of Management of the Centre for Public Law. He had also been Chairman of the Legal Academic Advisory Committee of The Chinese University of Hong Kong, much involved in establishing the Faculty. In both these capacities he was a stalwart supporter of the conference and was as well a leading participant in it. Sir David was, of course, a public law scholar with a worldwide reputation. Many of the speakers at the conference and the contributors to this volume had been taught by Sir David and freely acknowledged in their contributions to the conference his considerable influence on their work. We all miss him keenly.

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