Judiciary has always been a major actor in common law jurisdictions. Judges have not only developed the immense body of common law jurisprudence, but also reshaped and sometimes rewritten legislation in the exercise of their interpretive function. They have also played a major role in interpreting constitutional provisions to suit changing times and circumstances, although some would have the judiciary adopt a strict originalist approach.¹

Common law judges have always been guided by the idea of the Rule of Law as a counterweight against legislative supremacy and executive authority to uphold the autonomy and freedoms of the individual. Drawing inspiration from England and working within the Westminster model – later modified by Presidentialism especially represented by the USA – courts in common law jurisdictions had to administer common law in harmony with non-common law systems and indigenous laws. Common law judges approached these “new” legal systems with a firm commitment to upholding the sanctity of individual freedom and keeping the government within its legitimate sphere while infusing common sense into law so much so that they left the indelible imprimatur

¹ See Grant Huscroft and Bradley W. Miller (eds), The Challenge of Originalism: Theories of Constitutional Interpretation (Cambridge University Press: 2013).
of English law, with its unique canons of interpretation, in the mixed jurisdictions. This common law influence prompted Hahlo and Kahn to observe that 'like a jewel in a brooch, the Roman-Dutch law in South Africa today glitters in a setting that was made in England'.

When the British administration occupied Hong Kong, it did not have to compete with any rival system of law or judicial tribunals, unlike Sri Lanka, India or South Africa. It was a barren land and Hong Kong's first ever institutionalised system of law and government was of the British colonial model. Until 1997, when Hong Kong ceased to be a British Crown colony, the judiciary – which was truly international – had succeeded in developing an impressive local jurisprudence well supported by excellent law schools and an equally excellent legal profession.

The resumption of Hong Kong's sovereignty by the People's Republic of China in 1997 has introduced a new jurisdictional challenge, namely that Hong Kong is not an independent country but a Special Administrative Region of the PRC, albeit with a high degree of autonomy. The Basic Law of Hong Kong, while providing for the State-region relationship in respect of the exercise of legislative and administrative powers, has given the Hong Kong judiciary a virtually free hand in the administration of justice. The only limitation is that the constitutional jurisdiction of Hong Kong courts is not exclusive: The Standing Committee of the National People's Congress – a legislative and not a judicial organ of the PRC – has the general power to interpret the Basic Law while Hong Kong courts may interpret the provisions of the Basic Law 'which are within the limits of the autonomy of the region'. Hong Kong's Court of Final Appeal must defer to the Standing Committee's rulings in respect of other provisions of the Basic Law.

Apart from the restriction placed on constitutional interpretation, there are no constitutional restrictions on the exclusive judicial power of Hong Kong courts. Nor do courts have to operate a mixed legal system with Chinese national laws existing side by side with laws of Hong Kong.

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The reference in Simon Young and Yash Ghai's book title 'Law in China's Hong Kong' is possibly a subtle pointer to tensions that arise from the unique relationship between China and Hong Kong and how that impacts administration of justice in Hong Kong. It is, however, not just a book about the judiciary's position in the constitutional set up. It is the result of an ambitious project examining the first 13 years of Hong Kong's apex court, its judges and its jurisprudence, with chapters contributed by Hong Kong's leading scholars, practitioners and judges.

It examines how the Court of Final Appeal came to replace the Privy Council as Hong Kong's apex court and evaluates its impressive record in diverse areas such as human rights, criminal law and civil procedure.

Intended as an examination of the 13 years of the court under the stewardship of Chief Justice Andrew Li, it offers a critical appraisal of the court’s contribution. Part III of the book on 'Judges and Judging' is a refreshing evaluation of the contribution made by the Chief Justice and the other judges towards building a collective identity for the court while enabling individual judges to express their opinion as concurring or dissenting voices.

The book sets out how the Court of Final Appeal has quickly established its reputation as a well-respected and leading judicial tribunal in the common law world. The collection of a vast wealth of material in the book will facilitate further research on the work of the Court of Final Appeal and Hong Kong judiciary in general.

Yash Ghai and Simon Young have succeeded in bringing out an excellent book, an indispensable guide to the working of the judiciary in Hong Kong's new constitutional and legal system.

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