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Bending to Beijing

Compromising its judiciary, Hong Kong risks becoming just another Chinese city

THE NEAR CLASH BETWEEN CHINA AND HONG KONG'S Court of Final Appeal has ended—"for now," in the words of Vice Premier Qian Qichen—in an uneasy truce brokered by the Hong Kong government. The dust may have settled, but the drama has set a dangerous precedent. Hong Kong's courts are now politicized, their integrity compromised. By bullying the CFA, China ran the risk of turning it into a banana-republic institution that swings with the mood of political leaders. If that was the intention, China certainly made an important move towards that objective.

China's ire stemmed from its mistaken perception that the CFA had sought to supercede the authority of the National People's Congress in a recent ruling on the right of China-born children of Hong Kong parentage to live in the Special Administrative Region. As if that were not enough, the five judges of the CFA also incurred the wrath of many Hong Kong people who worry that a flood of young immigrants would swamp already crowded schools and hospitals.

As if on cue, Beijing loyalists in the territory launched into a chorus of criticism. Lily Chiang, a noted industrialist, called the decision a "stupid mistake." Kung-fu novelist Louis Cha berated the CFA for acting as a "grandchild" offending "grandfather" China. Raymond Wu, a medical doctor and NPC delegate, ridiculed the judges in court robes and wigs and warned against the tyranny of law. The Chinese leadership should beware of the many self-declared patriots, mostly non-lawyers, in Hong Kong, for they tend to say what they think their patrons want to hear.

In the end, China tersely accepted an unprecedented "clarification" by the CFA reaffirming the ultimate authority of the NPC over Hong Kong. Any trained lawyer reading the original judgment would see that the court was explicitly conscious of that authority as well as its own constitutional limitations, as could be expected of competent jurists. Students of communism recognize that to clarify means to rectify. It is not the content but the appearance of subservience that is more important. In Beijing's mind, the court has now properly rectified its "mistake."

The episode has served as a reminder that whenever communist leaders feel their power is threatened, they react in the most boorish, imperial fashion—even if it is self-defeating. It also showed that China, a country that is starting to come to grips with the rule of law, has a dismal appreciation of how common-law reasoning works. Chinese experts also lamentably behave as mouthpieces. Four Beijing jurists were trotted out to demand that the CFA "correct its mis-

takes." A judgment by the Court of Final Appeal is, by definition, final and the jurists must have known that.

Ironically, the soon to be adopted amendment to the Chinese constitution legitimizing private ownership rights, once in place, will have at last demolished the *raison d'être* of communism. With that honest act China will be on a firmer footing to become a modern civil society, where precepts such as contract law, torts and due process should one day become habits in a country heretofore run by decree. Hong Kong, with its long experience of common law, could actually help Beijing realize its ambition to make China great again by showing how rule of law works.

Since July 1997, the "two systems" of the "one country, two systems" relationship have been drawing ever closer. While China is laudably moving towards Hong Kong in im-

portant ways, Hong Kong is being pushed to resemble, increasingly, a mainland Chinese city. The Hong Kong government, which should know better, has shown itself ready to compromise legal integrity in the service of misplaced patriotism.

Recently, Elsie Leung, Hong Kong's top law officer, refused to press corruption charges against newspaper tycoon Sally Aw, a Beijing supporter and friend of Chief Executive Tung Chee-hwa, because Leung claimed a conviction would cause Aw's newspaper to fail, putting thousands of people out of work. Three of Aw's top aides are already behind bars for falsifying circulation data. Either Leung is

incompetent or the rule of law is in her mind second to social harmony, or both.

In the CFA saga, the government, concerned with soothing Beijing's tantrum, asked the high court for a clarification of its controversial judgment. In so doing, the government has insulted its own intelligence; it told the court it had fully understood the judgment, but was only asking the court to express itself in a way that would placate "opinions and comments from Hong Kong and Beijing." The court should have replied: "If you understand the judgment, why don't you explain it to those who don't?" Instead, the five judges gave in to political pressure and issued a clarification—albeit by simply reiterating key passages from the original judgment—affirming the supremacy of the NPC. The high court performed a kowtow.

The consequence is troubling. Hong Kong already confronts its biggest economic challenge ever. To now lose the legal integrity of its courts will surely condemn it to becoming just another Chinese city. This is not a proud moment for the Pearl of the Orient. ■

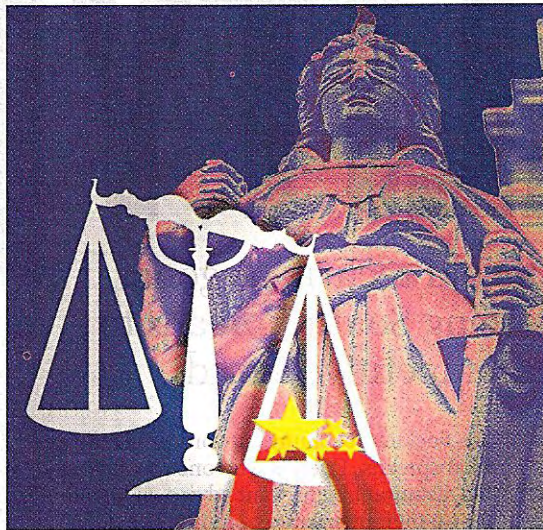


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