

INSIGHT

Ruling with an iron fist

Ong Yew-kim says China's progress over the years towards a professional and independent judiciary is being rolled back by its top judge, who insists on putting politics above the law

As one among the first generation of judicial personnel of the People's Republic, I have a deep understanding of judicial reform in China. We started in the early 1950s, when there was no law. All Kuomintang laws were repealed. Judges were party cadres, peasants and soldiers. It was not until 1954 when the Chinese constitution was introduced that we began to have judges. That was the year I graduated from college, and was sent to the provinces to be a judge.

We had to rely on three law books – the Land Reform Law, the Marriage Law and the Counter Revolution Law – for all cases. Frankly, law reform went quite well, even though it was extremely difficult. There was no corruption among judges and the presidents of courts.

We started from the ground up. There was no judicial process, no criminal or civil law. We relied on those three books of law and on party policy – which was very good in those days. It should be said that some aspects of land reform, such as the execution of land owners under the Counter Revolution Law, were a black mark on the record. But, overall, legal reform and land reform were on orderly tracks, using methods borrowed from the Soviet Union.

When we received a case, I and a few others who had received legal training drafted the trial procedures. There were only two or three of us for each province. The objective then was to build laws and procedures. The trial procedures of today's China are probably linked to the procedures we drafted.

Compared to those days, I can say that Xiao Yang (肖扬), the former president of the Supreme People's Court (the equivalent of a chief justice), made tremendous progress. In the years after China adopted its open-door policy, Xiao brought a "judicial system with socialist characteristics" to China.

There are now thousands of law books, judges, prosecutors and defence lawyers. There are also detention laws, trial and prosecution procedures in writing. All these things had a Soviet origin and the Soviet Union took them from the West.

Today, China is not learning from Russia any more, but directly from the West.

A "socialist legal system with Chinese characteristics" has been officially declared. This makes clear that sovereignty resides with the people. This is very different from sovereignty that rests with the emperor, government officials, capitalists or anyone who has power. Whether such a concept has been put into practice is debatable, but at least there is now an open acknowledgement.

There are also human rights guarantees, which was a taboo subject until seven or eight years ago. Those who have not lived on the mainland might not fully appreciate how im-

portant human rights are. We have been very lucky and enjoy many freedoms in Hong Kong.

Xiao also established that everyone is equal before the law. This was not talked about before; communist parties have always thought of capitalists and petits bourgeois as enemies of the state.

Supremacy of the law and of the constitution was established. Official power was restrained and supervisory concepts were also established.

This, in effect, established the concept of separation of powers and spelled out the roles of the legislature, judiciary and the State Council. In theory, the legal supremacy concept enables citizens to take officials to court, even though it is still extremely difficult in practice. But at least it was a progressive concept.

Procedural justice was beginning to matter. This was a departure from the previous emphasis on substantive laws – specifying the offence and punishment only.

Xiao also established many law schools and encouraged scholars to study overseas. Students were trained to become lawyers, prosecutors and judges. Many judges have doctorate degrees. This was a system to guarantee that trials would be conducted properly. Judicial independence was beginning to take shape. Xiao encouraged it.

In 2008, Wang Shengjun (王胜俊), who has had no formal legal training, became president of the Supreme People's Court, replacing Xiao. He went to Zhuhai soon after his appointment and proposed a new policy on the death sen-

tence to the Intermediate People's Court, saying: "Court decisions need to be based on the feelings of the people and not necessarily according to the law".

This was different from Xiao's proposal that the number of death sentences should be minimised and they should be handed out with great care. Wang's comments were seen as a step backwards.

In June 2008, Wang proposed the "three supremes" as the foundation of his "legal reform": supremacy of the party's interest, supremacy of the people's interest and supremacy of the constitution and law. The party's interests come first; constitution and law, last. This is in fact unlawful and unconstitutional. But Wang continued to promote his policy.

In 2009, he announced that courts should be more proactive in promoting "judicial activism". This is the core concept of his legal reform. In effect, judicial activism mixes up the separation of the executive and judicial arms of government and gives an administrative role to courts. Judicial activism often means the court plays a political role.

If such 'legal reform' continues, the effect would be disastrous for Hong Kong



Duty of care

Kylie Uebergang says the plight of pregnant migrant women obliges us to ensure they have access to medical services and sex education

Children born to migrant women are among the most vulnerable and deprived of all Hong Kong-born children. The majority are of mixed ethnic parentage, are being raised by single mothers, or both, factors which foreshadow a rocky path ahead. To help them, we need to help their mothers.

The majority of female migrant workers in Hong Kong are the 240,000 foreign domestic helpers. They play a critical role in the economy, enabling dual-income families to function. They are also an integral part of Hong Kong family life.

In the past few years, Hong Kong has witnessed an increase in the number of migrant women who have children in Hong Kong. In its first three years of operation, PathFinders, a charity set up in 2008, assisted over 400 migrant pregnant women, mothers and children. Most of these women entered Hong Kong as foreign domestic helpers. It is estimated that there are currently over 6,000 undocumented and documented migrant women in Hong Kong who are pregnant or have a child. Some 75 per cent of those whom PathFinders serves are Indonesian, a population that has dramatically increased, from 10,000 in 1994 to over 140,000 in 2010. Most of these women are between 18 and 25, from rural communities, and have little, if any, sex education.

Once a migrant woman becomes pregnant, the outlook is grim. She often loses her job, even though it is illegal for an employer to terminate her contract because of pregnancy. Foreign domestic helpers are entitled to 10 weeks' maternity leave. Yet, employers often take advantage of a migrant labourer's lack of understanding in law enforcement. Migrant women who do fight for their maternity rights through the Labour Tribunal are usually successful, but their relationship with their employer is destroyed in the process. Suddenly jobless, these pregnant women have only two weeks to secure a new job before their visa expires, which is virtually impossible.

Fearful of returning home with an "out-of-wedlock" and "mixed-race" child, pregnant migrant women often go into hiding, emerging only when they are desperately in need of help. By the time a mother does seek help, it is often too late. Once a migrant overstays her visa, she can neither work nor access much needed social welfare, medical or related government services available to Hong Kong residents. This places her in an easy position to be exploited for cheap labour and sex trafficking, and her child highly vulnerable to child trafficking.

Given the importance of migrant workers in our community, we must ensure that those we invite into our homes have access to family planning services and sex education. This may mean giving them time off to attend government clinics that are not open on Sundays and the opportunity to attend sex education classes at local non-governmental organisations. While this is a sensitive issue in any family, it is one worth tactfully exploring to help avoid mistakes which can ruin lives. Ensuring migrants have access to medical services and education not only benefits Hong Kong's international image of being a fair and just society, but is also consistent with our cultural values of caring for the most vulnerable among us.

Kylie Uebergang is the co-founder and executive director of PathFinders (www.pathfinders.org.hk), an NGO that works with distressed migrant women. This article is part of a monthly series on women and gender issues, developed in collaboration with The Women's Foundation

Collaboration with airports in delta region the way to go

Lau Nai-keung says Hong Kong does not need an expensive third runway

Despite the huge public relations campaign befitting a project estimated to cost a hefty HK\$136 billion, by far the largest in Hong Kong's history, my minority view is that building a third runway is neither urgent, nor necessary.

If official projections are correct, our current airport facilities will reach full capacity in 2020. According to the official story, it will be at least a decade before the new runway can be ready for use. The conclusion officials would like us to reach is that we have to decide now. Given the political climate, this is impossible. So, the best way forward is to expand capacity as soon as possible.

Upgrading the present infrastructure would cost less than half the price of the new runway and is therefore more cost-effective. It can fill the demand gap for now, and at the same time give us room to explore the ultimate solution: co-operating with other airports in the vicinity without unnecessary duplication and competition.

Commercial airports also operate in Macau, Zhuhai and Shenzhen; all vying for the same pie. Shenzhen is already set to add two runways this year to its existing one. So if we do decide to build our additional runway, the end result will be too much capacity and over-competition.

With the Hong Kong-Macau-Zhuhai bridge likely to be completed in the latter half of this decade, and Zhuhai airport under Hong Kong management, it makes economic

sense to consolidate and rationalise both airports' facilities for optimal use. With this trump card in our hand, we can then negotiate with Shenzhen to include its airport under the big umbrella, as this would be the most efficient arrangement, and a win-win solution for all.

This is all the more so if, like me, you are sceptical about the optimistic official traffic projections. Advances in modern communications technology have already made a lot of commercial travelling unnecessary. Much more can be achieved, quicker and cheaper, through basically free internet video conferencing and file-sharing.

For those who do need to travel, high-speed railways will probably be the preferred choice, especially for the busier short- and medium-haul flights. The demand trend for air travel is not relentlessly up; instead, it is likely to flatten or even drop.

As a result, the expanded Shenzhen airport, which will cater more for the domestic market of short- and medium-haul flights, would have to fight for its life.

Should we make the wrong decision, we would be facing a similar situation after our expansion; the only result is going to be cut-throat competition between Hong Kong and Shenzhen, which is by no means a happy outcome for anyone.

But, if we refrain from undue expansion and are near capacity, we would have a lot to offer Shenzhen airport, and we could take the lead role.

After such consolidation and rationalisation, not only would we spend much less, but we would also have a lot more capacity under our management, putting us in a much better position to compete against Baiyun airport in Guangzhou, which is currently also undergoing massive expansion.

And if Hong Kong and Shenzhen do not join hands, both will end up losers in the race. That is all the more reason we should not go it alone and build an expensive runway that is doomed to be underutilised.

Last, but definitely not least, is the environmental consideration. Reclaiming a large piece of land in the river estuary – no matter how you look at it and no matter what remedial measures would be undertaken – is environmentally harmful and will certainly face very loud objections from the public, especially green groups.

Viewing the problem from this angle, if we do have a choice – a better and more viable one in our case – why dump a lot of unnecessary and expensive dirt into the sea? Surely, it is best to leave the waters and the dolphins alone.

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Hard power still counts in the global order

Joseph Nye says the rise of economic powerhouses hasn't made military might irrelevant, and it won't

At the cold war's end, some pundits proclaimed that "geo-economics" had replaced geopolitics. Economic power would become the key to success in world politics, a change that many thought would usher in a world dominated by Japan and Germany. Today, some interpret the rise in China's share of world output as signifying a shift in the balance of global power, but without considering military power. They argue that a dominant economic power soon becomes a dominant military one, forgetting that the US was the world's largest economy for 70 years before it became a military superpower.

Observers have long debated whether economic or military power is more fundamental. Military power requires a thriving economy. But whether economic or military resources produce more power today depends on the context. A carrot is more effective than a stick if you wish to lead a mule to water, but a gun may be more useful if your aim is to deprive an opponent of his mule. Many crucial issues, such as financial stability or climate change, are simply not amenable to military force.

Today, China and the US are interdependent economically, but many analysts misunderstand the implications of this for power politics. True, China could bring the US to its knees by threatening to sell its dollar holdings. But that would not only reduce the value of its reserves as the dollar weakened;

it would jeopardise US demand for Chinese imports, leading to job losses and instability in China.

The balance of asymmetries in this case resembles a "balance of financial terror", analogous to the cold war military interdependence in which the US and Soviet Union each had the potential to destroy the other in a nuclear exchange.

Economic resources are increasingly important, but it would be a mistake to write off the role of military power. Even if the probability of the use of force among states, or of threats of its use, is lower now, the high impact of war leads rational actors to buy expensive military insurance. If China's hard power frightens its neighbours, they are likely to seek such insurance, and the US is likely to be the major provider.

A well-ordered modern state is one that holds a monopoly on the legitimate use of force, and that allows domestic markets to operate. Internationally, residual concerns about the coercive use of force can have a stabilising effect.

Indeed, metaphorically, military power provides a degree of security that is to order as oxygen is to breathing; little noticed until it becomes scarce. In the 21st century, military power will not have the same utility it had in previous centuries, but it will remain a crucial component of power in world politics.

Joseph Nye, a former US assistant secretary of defence, is a professor at Harvard. Copyright: Project Syndicate

Asia must safeguard the benefits of growth

Noeleen Heyzer and **Nagesh Kumar** call for action to mitigate the impact of rising food and fuel prices

Asia and the Pacific, more than any other region in the world, will experience a great transformation in the coming years as it plays a greater role in the global economy, and its population centres struggle to overcome the burdens of poverty, hunger, natural disasters and social inequalities. The region's economic growth figures, recently released by the UN Economic and Social Commission for Asia and the Pacific, indicate just how powerful Asia's economy is for the world already.

The region's developing economies grew at 8.8 per cent last year, and are forecast to grow at 7.3 per cent this year. Asia-Pacific remains by far the most dynamic growth region in the world, according to the Escap survey.

Despite these promising figures, Asia-Pacific remains vulnerable to the risks posed by volatile short-term capital flows and the resurgence of food and fuel price inflation, and, as the tragedy in Japan underscores, natural disasters.

High food prices have a direct impact on the region's poor. Escap estimates show that as many as 42 million additional people in the region are impoverished this year by high food and energy prices. For the poorest and most populated countries, these high prices will slow the effects of high growth helping families out of poverty.

But countries can take immediate steps to moderate the impact of rising prices.

At the national level, lowering tariffs and taxes will reduce prices, and social protection measures should be undertaken in the form of food vouchers, income transfers and school feeding programmes to reduce the burden on the poor.

Over the longer term, countries must focus on enhancing support for agricultural research and development, and rural credit, to foster a new green revolution.

Global initiatives, regional and sub-regional groupings should back up national strategies. The G20, the world's major economic policy forum, could act to discipline speculative activity in food and fuel commodities and conversion of cereals into biofuels.

Another challenge for Asia-Pacific economies is to generate more aggregate demand in the region to mitigate some loss of demand from developed economies. Furthermore, the emergence of the region as the growth pole of the world economy means the importance of regional economic integration cannot be overemphasised.

Working together, the region can shape the forces of the economic recovery by investing in its people, and by implementing social protections as a mainstay of national development.

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