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On January 29, 1999, the Court of Final Appeal (CFA) of the Hong Kong Special Administrative Region (HKSAR) delivered one of its most important decisions in *Ng Ka Ling v. Director of Immigration.*[1] It was initially warmly applauded and regarded as an affirmation of a strong independent judiciary, but when four Mainland legal experts launched their severe attack on the judgment, the climate was changed. The judgment was then strongly criticized. Various methods were proposed to reverse the effect of the judgment, including inviting the Standing Committee of the National People's Congress (NPCSC) to intervene. This eventually led to an unprecedented clarification by the CFA on its judgment on February 26, 1999, shortly before the annual meeting of the National People's Congress (NPC) in Beijing. This article focuses on an analysis of the comments of the Mainland legal experts, which were later transpired to be representing the views of the Central People's Government. Their criticisms on the judgment of the CFA highlight some fundamental differences between the two very different legal systems in Hong Kong and in the Mainland, which is rooted in the inherent conflict in the principle of "one country, two systems," namely when the two systems interact with one another, when "two systems" ends and "one country" begins.

I. The Judgment

Over the years many Hong Kong permanent residents set up families in the Mainland. Under the immigration law prior to July 1, 1997, their children born in the Mainland had no right of abode in Hong Kong. A quota of 150 persons per day to settle in Hong Kong under a one-way permit scheme was agreed upon by the Mainland and the Hong Kong authorities. A substantial portion of the quota was allocated to children joining their parents

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1. Ng Ka Ling v. Dir. of Immigration, 1 HKC 425 (Court of Final Appeal, Feb. 26, 1999).

in Hong Kong. The one-way permit scheme was administered entirely by the Mainland authorities. There were numerous criticisms that the scheme was not operated fairly or transparently.

On July 1, 1997, the Basic Law came into operation. Under article 24 of the Basic Law, children born to a Hong Kong permanent resident outside Hong Kong have the right of abode in the HKSAR. Many children came to Hong Kong prior to July 1, 1997, either through unlawful means or by over-staying under a two-way permit system (which is a visitor scheme). They surrendered to the immigration authorities in Hong Kong after July 1, 1997, claiming that they were entitled to stay in Hong Kong under article 24 of the Basic Law. On July 10, 1997, the Provisional Legislative Council passed the Immigration Amendment No. 3 Ordinance that introduced a certification system. Under this system any person who claims to have a right of abode in Hong Kong can only prove this status by showing a certificate of right of abode issued by the Director of Immigration of the HKSAR. This certificate can only be applied for in the Mainland, and will not be issued until the applicant has obtained a one-way permit. The amendment legislation took effect retrospectively on July 1, 1997. As a result, all these children who had come to Hong Kong, even when the Director of Immigration admitted that they satisfied the requirements under article 24 of the Basic Law and should have enjoyed a right of abode in Hong Kong but for the possession of the certificate, which was not even in existence, should be removed. This retrospective deprivation of a right of abode by administrative means triggered a number of test cases in court, which eventually came before the CFA in *Ng Ka Ling*.[2] The applicants argued, inter alia, that the certification system contravened article 24 of the Basic Law and was unconstitutional, and that the Immigration Amendment No. 3 Ordinance, which was passed by the Provisional Legislative Council, a body not recognized under the Basic Law, was null and void.

The CFA held that the Basic Law was a living instrument that, like any other constitution, should receive a generous and purposive approach to interpretation. Gaps and ambiguities were bound to arise, and the courts were bound to give effect to the principles and purposes declared in, and to be ascertained from, the constitution and other relevant extrinsic material, including the Sino-British Joint Declaration. In considering the purpose of any particular provision, the court should take into account the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong. It affirmed that the right of abode was a core right. Relying on the ICCPR and other international treaties, it held that to take away a core right by retrospective legislation was unconstitutional, and in this regard no distinction should be drawn between legitimate and illegitimate children. Insofar as the certification scheme was concerned, the court accepted that a scheme to verify the claim of a right of abode was itself constitutional. However, the linkage of the certification system to the one-way permit system, which was essentially concerned with the right of exit from the Mainland and had nothing to do with the right of abode in the HKSAR, was unconstitutional. The court further emphasized that the certification scheme must be administered in a fair and reasonable manner, including a duty to give reasons for any refusal and a duty to act without unreasonable delay. In another decision delivered on the same day,

2. The earlier decisions are reported under the name of *Cheung Lai Wah v. Dir. of Immigration*, 3 HKC 64 (Court of First Instance, Sept. 18, 1997); 2 HKC 382 (Court of Appeal, May 20, 1998). Another related decision was *Chan Kam Nga v. Dir. of Immigration*, 1 HKC 16 (Court of First Instance), [1998] 2 HKC 405 (CA), [1999] 1 HKC 347.

the court further held that, as a matter of construction of article 24, it was unnecessary that the parent was a Hong Kong permanent resident at the time of the birth of the claimant in order for the claimant to enjoy a right of abode in the HKSAR.[3] These judgments of the court were estimated to give a right of abode in the HKSAR to 1.67 million persons born in the Mainland, and the figure would continue to rise.[4]

However, the most controversial part of the judgment, which eventually led to a constitutional crisis, is the part on the constitutional jurisdiction of the court. As the courts of the HKSAR are bestowed with an independent judicial power within the high degree of autonomy conferred on the HKSAR under the Basic Law, the Court held that it was for the courts of the HKSAR to determine questions of inconsistency and invalidity of any law with the Basic Law, and to declare such law invalid to the extent of inconsistency with the Basic Law. This jurisdiction extended to determining whether an act or decision of the NPC or NPCSC was consistent with the Basic Law, provided that the act or decision fell within the degree of autonomy of the HKSAR. It overruled a previous decision of the Court of Appeal and rejected the relevancy of the English doctrine of supremacy of Parliament after the Basic Law had come into effect.[5]

On February 6, 1999, a week after the CFA delivered its judgment, four top legal experts of the Mainland launched a strong attack on the judgment.[6] Their comments raise three separate legal issues:

a. Whether the CFA has jurisdiction to declare acts or decisions of the NPCSC inconsistent with the Basic Law;
b. Whether the CFA has jurisdiction to review the compatibility of Hong Kong law with the Basic Law; and
c. What is the proper approach to determining when the CFA should refer a question to the NPCSC for interpretation pursuant to article 158 of the Basic Law.

Professor Xu Chong-de also made a passing comment that the CFA had failed to take into account the view of the Preparatory Committee on article 24(2) of the Basic Law. It should be noted that the Preparatory Committee was not involved in the drafting process and is not entrusted with the power to draft or to interpret the Basic Law. Its interpretation of the Basic Law was made after the Basic Law has been promulgated. Under the common law system, its view, at best, does not carry any greater weight than that of any organization or person in Hong Kong, and at worst, is simply irrelevant and inadmissible in the interpretation of the Basic Law.

II. Two Different Legal Systems

Under the People's Republic of China (PRC) legal system, the NPC is the highest state organ that enjoys both the power to pass legislation and to interpret legislation and whose power cannot be challenged by any other state organ. Therefore, if the NPCSC adopts a decision that is inconsistent with a piece of national law, such as Foreign Economic Contract

3. *See* Chan Kam Nga v. Dir. of Immigration, 1 HKC 347 (Court of Final Appeal, Jan. 29, 1999).
4. The figure was released by the Hong Kong Government on April 30, 1999.
5. *See* HKSAR v. Ma Wai Kwan David, [1997] 2 HKC 315.
6. Their comments appeared as a press release issued by the New China News Agency on February 6, 1999, and were reported widely in Hong Kong.

Law, the People's Court of Guangdong Province has no jurisdiction to declare the decision of NPCSC inconsistent with the national law, even when that decision has only had an impact on Guangdong and not in other provinces. The only redress is to invite the NPC or the NPCSC to reconsider its decision. The role of the court is confined to adjudicating cases. Constitutional review by judicial organ does not exist in the Mainland system. This system is based on the socialist theory that all powers emanate from the people and should ultimately rest in the people, whose will is reflected by the NPC, the supreme soviet. Instead of recognizing the doctrine of separation of power, the PRC system is based on a separation of functions and responsibilities, among administrative, adjudicative, and procuratorial organs, under the unified guidance of the organs of state power.[7]

Hong Kong is under a very different system. The common law believes in separation of power. The power of interpretation of law rests solely in the judiciary. Neither the legislature nor the executive has the power to make authoritative interpretation of the law. Indeed, their views on the interpretation of the law were, until recently,[8] inadmissible in court and in any event, cannot contradict the clear wordings of the statute. The Basic Law provides that the common law system shall be preserved in the HKSAR. The sole power of the judiciary to pronounce authoritative interpretation of legislation goes to the very root of the common law system.

Professor Wu Jian-fan said that article 19 of the Basic Law did not confer on Hong Kong courts the power to determine the constitutionality of Hong Kong legislation. Professor XiaoTian-ren said that Hong Kong courts did not enjoy the power of constitutional review before the changeover because of the doctrine of supremacy of Parliament, and that Hong Kong courts could not have this power even after the changeover.

These are clear misunderstandings of the common law system in Hong Kong. Under the common law system, no organ is above the law. Even before the changeover, the doctrine of the supremacy of Parliament did not prevent the court from declaring certain legislation invalid if the Parliament failed to comply with the manner and form requirements of legislative amendments.[9] The doctrine of supremacy of Parliament does not apply fully in Hong Kong because, unlike the United Kingdom, Hong Kong has a written constitution, namely the Letters Patent.[10] Hong Kong courts have the power to declare a legislative provision ultra vires if it is inconsistent with the Letters Patent or the Royal Instructions.[11] In *Rediffusion (Hong Kong) Ltd. v. Attorney General*,[12] the Privy Council held that any bill passed by the Legislative Council which was repugnant to an English act of

7. *See* ALBERT CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 105 (1992). *See also* XIANFA [Constitution] arts. 3, 92, 110, 128, 133 (1982).

8. *See* Pepper v. Hart 1A11ER42 (1993). Hansard material is admissible only if the statutory provision is ambiguous or would lead to absurdity if construed literally, and the statement of the promoter of the bill is clear.

9. *See* Bribery Comm'r v. Ramasinghe, App. Cas. 172 (1964) (royal assent did not cure failure to obtain a two-thirds' majority in the lower House for a measure inconsistent with the constitution); *R (O'Brien) v. Military Governor, NDU Internment Camp*, [1924] IR 32 (failure to submit a bill to a referendum held fatal to the validity of an ostensibly authentic Act). *See also* JOSEPH JACONELLI, ENACTING A BILL OF RIGHTS: THE LEGAL PROBLEMS ch. VI (1980).

10. For a more detailed discussion on the supremacy of parliament, see my article, Johannes Chen, *The Jurisdiction and Legality of the Provisional Legislative Council*, 27 HONG KONG L.J. 374, 376–82 (1997).

11. *See* Rediffusion (Hong Kong) Ltd. v. Attorney Gen., App. Case 1136 at 1157 (1970); R v. Lum Wai Ming, 2 HKCLR 221 (1992).

12. *See id.*

Parliament applicable to Hong Kong was ultra vires and could be struck down by the local court. Since the promulgation of the Hong Kong (Legislative Power) Orders 1986 and 1989, the court may declare an English act repealed if it is inconsistent with a local statute in certain defined areas.[13] Since 1991, the Hong Kong courts have struck down many statutory provisions on the ground that they were inconsistent with article VII(5) of the Letters Patent, which has the effect of entrenching the International Covenant on Civil and Political Rights as applied to Hong Kong.[14] It is therefore quite clear that the Hong Kong courts possess the power to review the constitutionality of local legislation before the changeover, and to this extent, the doctrine of supremacy of Parliament has never applied in Hong Kong with full rigor. On July 1, 1997, save that the Letters Patent and the Royal Instructions were replaced by the Basic Law and the Privy Council was replaced by the CFA, the judicial system previously practiced in Hong Kong is maintained.[15] It is expressly stated in article 158 that the Hong Kong courts enjoy the power to interpret the Basic Law, subject to the limits set out therein. Under the constitution of the HKSAR, the Hong Kong courts are under a duty to uphold the Basic Law. Indeed, the Basic Law puts the matter beyond doubt: under article 11 of the Basic Law, no law enacted by the HKSAR shall contravene the Basic Law. It follows that the power to consider whether any legislation of the HKSAR is consistent with the Basic Law must be vested in the Hong Kong courts, which are indeed under a duty not to uphold any legislation that is inconsistent with the Basic Law.

III. Jurisdiction to Determine the Compatibility of Hong Kong Legislation with the Basic Law

Professor Xiao Wei-yun further argued that the only power of review of compatibility of Hong Kong legislation with the Basic Law was vested in the NPCSC under articles 17 and 160 of the Basic Law. Article 17 provides that any law enacted by the HKSAR legislature shall be reported to the NPCSC for the record. If the NPCSC, after consulting the Basic Law Committee, considers any law enacted by the legislature is not in conformity with the provisions of the Basic Law regarding affairs within the responsibility of the central authorities or regarding the relationship between the central authorities and the HKSAR, it may return the law in question but shall not amend it. Thus, the power under article 17 is limited. It is a supervisory power to ensure that the legislature of the HKSAR does not exceed the internal autonomy of the HKSAR. Its supervisory power is not extended to scrutinize the compatibity of any legislation with *all* provisions of the Basic Law. Besides, the process of reporting is largely administrative. The mere fact that a statute is not returned for consideration does not mean that it is consistent with the Basic Law. This is indeed confirmed by article 160, which authorizes the NPCSC to declare any law to be in contravention of the Basic Law upon and after the establishment of the HKSAR. On the other hand, the mere fact that articles 17 and 160 authorize the NPCSC to invalidate any new legislation of the HKSAR or not to adopt any previous legislation as the law of the HKSAR that is inconsistent with the Basic Law do not, and cannot, deprive the power of the Hong

13. Civil aviation, merchant shipping, admiralty jurisdiction, or implementation of an international treaty that applies to Hong Kong.

14. *See, e.g.*, Lum Wai Ming, *supra* note 11.

15. *See* Basic Law, arts. 2 & 81.

Kong courts to consider whether any specific legislative provision is inconsistent with the Basic Law. For otherwise the Hong Kong courts will be bound to give effect to a law that is patently inconsistent with the Basic Law, and this falls foul of article 11 of the Basic Law, which provides that no law of the HKSAR shall contravene the Basic Law. Indeed, if Professor Xiao were correct, it would lead to great practical problems: it would effectively mean that any challenge to the constitutionality of any legislative provision in Hong Kong has to be resolved by the NPCSC. It would thus become the constitutional CFA whenever compatibility with the Basic Law is in issue in any legal proceedings. Not only is this consequence unwarranted, but it would seriously undermine the principle of "one country, two systems" and the high degree of autonomy promised to Hong Kong.

IV. Jurisdiction to Determine the Compatibility of the Acts or Decisions of the NPCSC with the Basic Law

The CFA held that it has the power to determine the validity of any act or decision of the NPCSC. However, this statement was made in the context of the legality of the Provisional Legislative Council and in light of the judgment of the Court of Appeal in *HKSAR v. David Ma*,[16] which held that the Hong Kong courts had no jurisdiction to determine whether the decision of the NPCSC in setting up the Provisional Legislative Council was consistent with the Basic Law. Indeed, the CFA accepted that in matters of foreign affairs and defense and affairs, which are the responsibility of the Central People's Government, the CFA is duty bound to refer the question of interpretation to the NPCSC. The Court derives its jurisdiction from the Basic Law, which in turn derives its legality from the PRC Constitution. It cannot be the intention of the CFA to put itself above the NPC or its Standing Committee, nor is this constitutionally possible. The Mainland legal experts may have taken a few sentences of the judgment out of context and as a result, unjustifiably broadened the scope of the holding of the CFA.

Looking from another perspective, the question is not whether the CFA puts itself above the NPCSC. Instead, the question is whether the NPCSC is bound by the Basic Law. If it is bound by the Basic Law, which seems not to be disputed by the Mainland legal experts, and if the NPCSC carries out an act or adopts a decision which is contrary to the Basic Law, which is the body to declare its invalidity? Under the PRC legal system, the power to declare invalidity is vested solely in the NPCSC. Under the common law system, the power is vested in the court, not the law-making body. The difference between the Mainland scholars and the CFA is a difference in the two legal systems. One of the central themes of the Basic Law is the maintenance of the previous legal system, which is perceived to be a founding pillar to the economic success of Hong Kong. The Basic Law has not exempted the decision of the NPCSC from the jurisdiction of the Hong Kong courts, provided that the decision governs a matter falling within the limits of autonomy of the HKSAR. Nor is there any indication that the Basic Law intends to apply the doctrine of infallibility and unchallengeability of the NPCSC, which seems to apply in the Mainland system, to the HKSAR, at least on matters that fall within the limits of autonomy of the HKSAR. This is not putting the CFA above the NPC or the NPCSC. It is about the supremacy of the law—the fundamental principle in our legal system that no one is above the law, and that the

16. *See* HKSAR v. David Ma, [1997] 3 HKC 315.

judiciary is the guardian of the law. After all, the decision of the CFA has no legal effect outside the jurisdiction of the HKSAR.

V. The Proper Approach to Determining When the CFA Should Refer a Question to the NPCSC for Interpretation Pursuant to Article 158 of the Basic Law

Professor Xu Chong-de said that since article 22 falls within the chapter on the relationship between the central authorities and the HKSAR, its interpretation must fall within the meaning of "affairs which are the responsibility of the Central People's Government"[17] under article 158 and the CFA must refer the question of interpretation to the NPCSC.

This is an over-simplified view. The CFA rightly pointed out that the test must be one of substance rather than one of labelling.

Professor Wu Jian-fan is more sophisticated in his analysis on this issue. He challenged the CFA's approach that the CFA was not required to refer the question of interpretation to the NPCSC if the issue involved a number of provisions of the Basic Law and some of the provisions fell within the limits of autonomy of the HKSAR. This is a misreading of the judgment of the CFA and has taken the test out of context. The test is:

> As a matter of substance, what *predominantly* is the provision that has to be interpreted in the adjudication of the case. If the answer is an excluded provision, the Court is obliged to refer. If the answer is a provision which is an excluded provision, then no reference has to be made, although an excluded provision is arguably relevant to the construction of the non-excluded provision even to the extent of qualifying it.[18]

The CFA decided that the predominant provision to be interpreted in the right of abode case was article 24, which was a non-excluded provision. It accepted that article 22 might arguably be relevant, but it was not the predominant provision that the CFA was called upon to interpret. The issue was whether children born to Hong Kong permanent residents in the Mainland enjoyed a right of abode in Hong Kong under article 24. Whether these people need an exit permit to leave the Mainland, which is the subject of article 22, is not the issue before the CFA and being a matter of administrative measure to be adopted by the Mainland authorities, the CFA would have no jurisdiction on this question. The Court then rejected the argument of the government that once an excluded provision was relevant, the matter had to be referred to the NPCSC. This must be correct, for otherwise the CFA will be bound to refer a question of interpretation to the NPCSC when the excluded provision is only of marginal relevance to the interpretation of other non-excluded provisions to be determined by the CFA. As the CFA rightly pointed out, such a reference would withdraw from the jurisdiction of the CFA the interpretation of the non-excluded provisions that are within the limits of the autonomy of the Special Administrative Region (SAR) and would be a substantial derogation from the autonomy of the SAR.

VI. Judicial Independence

The essence of "one country, two systems" is that one will have to be tolerant of things done in one system that may be totally unacceptable in the other system. The role of the

17. Basic Law, art. 158.

18. *David Ma*, 3 HKC at 330–31.

judiciary is very different in the two systems. One of the most cherished characteristics of the common law system is the ability of the judges to interpret the law solely based on legal considerations without fear or favor. A legal decision that produces unpalatable economic or social conditions does not, by itself, suggest it is either "wrong" or needs to be "corrected." As Mr. Justice Kirby of the Australian High Court put it:

> The judiciary provides an occasional brake on the resolute action of the other branches of government. The agenda of the judiciary tends to be longer term. Although not entirely impervious to popular opinions, aspirations and moods (for judges are also members of the community), the judiciary is often deflected from passion by the instruction of forebears, who remind current office-holders of the need to protect the individual, defend minorities and uphold proper procedures, even where doing so may frustrate the achievement of the democratic will.[19]

It will be difficult to uphold judicial independence if the government does not show any respect for it. In this regard the attitude of the HKSAR government is hardly encouraging. As soon as the CFA delivered its judgment, the administration adopted an approach that tries to undo the judgment rather than give effect to it. While the CFA clearly held that the one-way permit should be delinked from the certificate of the right of abode, the administration still insisted that a one-way permit was required and suggested that the effect of the judgment was that it was unnecessary for the one-way permit to be stapled to the certificate of the right of abode! It is the SAR government that brought an unprecedented motion to court asking the CFA to clarify its judgment when the SAR government admitted that there was no ambiguity in the judgment.[20] It repeatedly emphasized the possible negative impacts that an influx of migrants would have on our economic and social resources, thereby generating the support of public opinion to seek an interpretation from the NPCSC so as to reverse the judgment of the CFA.[21] It has not shown what administrative measures it has considered to contain the possible influx of migrants; nor has it attempted to devise any incentive scheme to encourage these migrants to stay across the border.[22]

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19. M. Kirby, *Human Rights: The Role of the Judiciary*, *in* THE HONG KONG BILL OF RIGHTS: A COMPARATIVE APPROACH 225, 230 (J. Chan & Y. Ghai eds., 1993).

20. For further discussion on this point, see J. Chan, *What the Court of Final Appeal has Not Clarified in Its Clarification: Jurisdiction and Amicus Intervention*, *in* THE DEBATES ON THE CONSTITUTIONAL JURISDICTION OF THE HKSAR ch. 7 (J. Chan & Y. Ghai eds. 1999).

21. In early May, the government released its interim estimate that as a result of the CFA judgment, 1.675 million people will have a right of abode in Hong Kong in ten years time and would cause great strains on the medical, housing, and social welfare system in Hong Kong. It has been suggested that these figures are on the high side. Among them only about 700,000 were born to parents who were Hong Kong permanent residents at the time of birth. The remaining 900,000 were born to parents who were not Hong Kong permanent residents at the time of birth and would only acquire a right of abode in Hong Kong after their parent has settled in Hong Kong for seven years. The government has at least seven years to consider the impact of the so-called second generation, and one of the possible options is to amend the law before their right crystallizes. Unfortunately, instead of seeking an amendment to the Basic Law, which the government has seven years to do, the government decided to go along a more controversial route of achieving this objective by seeking an interpretation from the NPCSC pursuant to article 158 of the Basic Law. The figure also includes about 500,000 children born out of wedlock, and it is extremely unlikely that a significant number of their fathers would apply for these children to come to Hong Kong.

22. For instance, it is possible to give a definite date for mainland migrants to come to the HKSAR. Many migrants want their children to come to Hong Kong because of better education and better opportunities. There is no reason why we cannot set up schools outside Hong Kong that provide education similar to and form part of the education system of Hong Kong. Social assistance has already been provided to Hong Kong's

To seek an interpretation from the NPCSC, which seems to be the favorite option of the HKSAR government, will severely undermine the rule of law and erode the integrity and authority of the judiciary. The CFA is the court of final adjudication in Hong Kong. It has expressed its view on the proper interpretation of article 24 after full arguments and careful consideration. An interpretation from the NPCSC on article 24 that runs contrary to the decision of the CFA will be an affront to articles 2 and 81 of the Basic Law, which enshrine the independence of the judiciary. It will create a dangerous precedent that the decision of the court of final adjudication is not final, and this is particularly worrisome when the invitation to the NPCSC is seen in the context of the government, having lost its arguments in the case, seeks to overrule the CFA by political rather than legal means. The CFA has already decided that article 24 was not an excepted provision and therefore it was unnecessary to seek an interpretation of this article from the NPCSC under article 158 of the Basic Law. This must be right, as the strains brought by immigration pressures on the HKSAR must be a matter of internal affairs. To invite the NPCSC to reverse the judgment of the CFA on a matter of internal affairs is to sacrifice the principle of "one country, two systems" and the principle of "Hong Kong people ruling Hong Kong." If there is a social and economic need to change the law as regards the right of abode of the people of Hong Kong, the proper course is to amend the Basic Law. However, being the supreme law of the HKSAR, amendment should only be considered as a last resort and should only be resorted to when other administrative measures have failed. This the HKSAR government has not shown.

In this regard it is sad to see influential figures using political or threatening language, such as that the court will have to bear the historical responsibilities, or making personalized attacks against individual judges. One may disagree with the decision of the courts, but making political charges confuses law and politics and is neither a rational nor a responsible attitude. Judicial independence is an indispensable part of the legal system of Hong Kong and a vital pillar to the success of Hong Kong. It is tested, not in cases of indifference, but in cases of controversies which may cost the government dearly. There are no doubt cases that may have political consequences, but the value of judicial independence is that our judges will approach these cases in a neutral and impartial manner. They rest their decisions on legal reasoning, not on political consideration. If our courts fail to do so, and if our courts begin to second-guess political motives or to take account of political consequences, they will soon become another political body, which will mark the end of the rule of law. It is difficult to establish judicial independence, yet it can wither easily if it is not treasured and not perceived to be treasured. Without judicial independence, the legal system will soon fall apart.

elderly who choose to live across the border because of the lower living expenses. On the other hand, eligibility for public housing or medical benefits in Hong Kong may be restricted only to those who have been resident in Hong Kong for a certain period of time, whereas social assistance may be available to those who decide to remain across the border. Cross-border control can be relaxed to facilitate people with a right of abode to come to Hong Kong at any time in order to assure them that it is not necessary to come to Hong Kong to secure this right. It does not appear that the administration has looked across the border and explored the feasibility and effectiveness of these administrative measures; instead, its primary tactic is to close the door to the migrants.