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TOH HAN SHIH  
*Independent Scholar*

## **Lessons from Justice Bao Zheng: Hong Kong's Judicial Independence Would Benefit China and the World**

*As pro-China entities are exerting increasing pressure on the Hong Kong judicial system, it is worth remembering a judge who lived about one thousand years ago during the period of the Northern Song dynasty. Justice Bao Zheng was known for his honesty, and he has an important message for present-day China.*

**L**ately, Hong Kong judges have taken flak from some pro-Beijing figures resident in the city who have accused the judges of not being patriotic enough to their motherland. Rightly or wrongly, these attacks on the judiciary of China's freest city have raised fears that Hong Kong's rule of law is being undermined since Beijing imposed the controversial National Security Law in Hong Kong on June 30, 2020.

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If Hong Kong's judicial independence continues to be upheld, it will benefit China and even the world, as some countries are getting increasingly uneasy with China's growing international clout. Moreover, the notion of judicial independence harkens back to a Chinese judge who lived one thousand years ago and remains venerated among Chinese around the world today.

## Pressure on Lawyers

Chinese government agencies and pro-Beijing figures in Hong Kong have been pressuring lawyers who are perceived as not patriotic enough. One target is the Hong Kong Bar Association, which has been vocal in criticizing both the National Security Law, and Paul Harris, who has been the association's chairman since January 21, 2021. On February 11, the *South China Morning Post*, Hong Kong's main English-language newspaper, ran an article demonstrating that pressure was mounting on the Bar Association's governing council to decide whether Harris should remain as its chairman after it was reported he is a member of the British Liberal Democratic party. Prominent pro-Beijing barristers argue that Harris, a senior counsel and human rights lawyer, has damaged the credibility of the Bar Association.<sup>1</sup>

In late January, two Chinese government agencies, the Hong Kong and Macau Affairs Office and the Hong Kong Liaison Office, castigated Harris. A spokesman of the former, which manages ties between mainland China and Hong Kong and Macau, stated: "Harris is hostile towards the Communist Party. . . He said 'Hong Kong independence' can be publicly discussed, and has used his British nationality to collude with foreign forces in interfering with Hong Kong

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<sup>1</sup> Tony Cheung, "Pressure builds on Hong Kong Bar Association to remove new chairman over ties to British political party," *South China Morning Post*, February 11, 2021.



affairs.”<sup>2</sup> The spokesman alleged that the Bar Association had deviated from the role of a professional group “because it was hijacked by a minority of anti-China troublemakers.” The Hong Kong and Macau Affairs Office spokesman added: “It is time to make things right,” without elaborating, which raises the question of what will happen to Harris and the Bar Association.

The Liaison Office, the Chinese government’s representative in Hong Kong, alleged that Harris’ remarks “completely lost the spirit and principle of the rule of law.”<sup>3</sup> The office added that Harris’ statements “fully exposed his personal arrogance and ignorance and will further drag the Bar Association down into the abyss, which has aroused the anger of all sectors of Hong Kong society, including the legal profession.”

On February 3, in response to these criticisms, the Hong Kong Bar Association said that the association and its chairman, Harris, attains with “integrity and professionalism” their objectives including the independence of the judiciary and the rule of law. The association said it would engage in “constructive and rational dialogue” with all authorities. Harris’ offence was his call on January 21 to amend the National Security Law so certain countries could resume their

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<sup>2</sup> “The spokesperson of the Hong Kong and Macau Affairs Office of the State Council asked: What does Xia Boyi intend?” Hong Kong and Macau Affairs Office, press release, January 29, 2021.

[https://www.hmo.gov.cn/xwzx/xwfb/xwfb\\_child/202101/t20210129\\_22369.html](https://www.hmo.gov.cn/xwzx/xwfb/xwfb_child/202101/t20210129_22369.html).

<sup>3</sup> “Spokesman of the Liaison Office of the Hong Kong Central Committee: Resolutely Maintain the Constitutional Order of the Hong Kong Special Administrative Region, Xia Boyi Challenged the National Security Law at his own Discretion,” Hong Kong Liaison Office, press release, January 29, 2021.

[http://www.locpg.gov.cn/jsdt/2021-01/29/c\\_1211003021.htm](http://www.locpg.gov.cn/jsdt/2021-01/29/c_1211003021.htm).

extradition treaties with Hong Kong.<sup>4</sup> For example, in July 2020 the United Kingdom suspended its extradition treaty with Hong Kong due to the National Security Law which took effect in the city last year.

The security law was passed by China's parliament, the National People's Congress, without going through the Legislative Council of Hong Kong. This law has been criticised for eroding Hong Kong's liberties guaranteed under the "One Country, Two Systems" which lasts till 2047, by local pro-democracy figures as well as the governments of the UK and the United States. On the one hand, the security law has substantially reduced the level of protests which had rocked the city since the middle of 2019. On the other hand, it has resulted in the arrests of dozens of people, including fifty-three opposition figures on January 6, most of whom have been released on bail.

On July 1, 2020, the Hong Kong Bar Association issued a statement criticizing the security law, accusing the law of undermining "core pillars of the One Country Two Systems model including independent judicial power, the enjoyment of fundamental rights and liberties, and the vesting of legislative and executive power in local institutions." The Bar Association's statement alleged that the independence of the judiciary was undermined by the security law, because the Hong Kong Chief Executive designates a list of judges to hear national security cases and these judges can be removed from the list if their words or deeds are deemed to endanger national security.

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<sup>4</sup> Ng Kang-chung, "New head of top Hong Kong legal body wants government to amend national security law so countries will reinstate extradition agreements," *South China Morning Post*, January 21, 2021.



## Criticism of Judges

Apart from the Bar Association chairman Harris, some Hong Kong judges have also received criticism from pro-Beijing elements. On November 20, 2020, a pro-Beijing newspaper published in Hong Kong, *Ta Kung Pao*, ran a prominent article on its front page casting a High Court judge, Anderson Chow, in a negative light for supporting protestors against the police. Earlier that month, Justice Chow ruled that the failure of police officers to display their identification number at protests violated Hong Kong's Bill of Rights. On November 23, 2020, the Bar Association published on its website a letter it had sent to Hong Kong Secretary for Justice Teresa Cheng expressing its "utter dismay and astonishment" at the way the newspaper reported on Justice Chow.<sup>5</sup> The letter said, "The [Bar] Council considers *Ta Kung Pao* has gone beyond the boundary of acceptable criticism of judicial decisions," and the article "hovers on the margins of a contempt of court."

In its letter to Justice Secretary Teresa Cheng on December 28, 2020 headlined "Re: Attack on Judges,"<sup>6</sup> the Bar Association cited a report published by *Ta Kung Pao* a few days earlier which quoted a person criticizing a Hong Kong judge, Alex Lee, for granting bail to Jimmy Lai, a Hong Kong tycoon who was arrested earlier in December 2020 on charges of fraud and violating the National Security Law. Lai is the proprietor of *Apple Daily*, a local newspaper that is often critical of Beijing. In the Chinese-language newspaper's article, the person

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<sup>5</sup> Letter, Hong Kong Bar Association, to the Secretary for Justice regarding Attacks on Judges, November 23, 2020.  
<https://www.hkba.org/sites/default/files/20201123%20-%20Letter%20to%20SJ%20on%20Attack%20on%20Judges.pdf>.

<sup>6</sup> Letter, Hong Kong Bar Association, to the Secretary for Justice regarding Attacks on Judges, December 28, 2020.  
<https://www.hkba.org/sites/default/files/Letter%20to%20Secretary%20for%20Justice%2028%20Dec%202020%20re%20Attack%20on%20Judges.pdf>.

accused Justice Lee of double standards and “offering protection” to Lai. The Bar Association letter stated: “These statements, on a fair reading, can give the impression to the public that the Judiciary was biased in favour of Mr. Lai and that our Courts were deliberately “protecting criminals”—much in the same way the newspaper attacked Chow J’s [Anderson Chow J] decision on 20 November 2020.”

In its editorial on December 28, 2020, *Ta Kung Pao* also criticized Justice Lee’s decision to grant bail to Lai. The Bar Association’s letter on the same day alleged *Ta Kung Pao*’s editorial effectively said that Justice Lee’s decision to grant bail to Lai was “not only contrary to the Rule of Law but had a shadow of foreign interference behind it.” Such an opinion piece would be perceived by the public as exerting pressure on the judiciary, the letter argued. The Bar Association urged Justice Secretary Cheng to “staunchly defend the independence of the Judiciary.” On January 5, Hong Kong Chief Justice Geoffrey Ma said, days before retiring on January 11, “What we need most is judicial independence in Hong Kong.”<sup>7</sup>

## Legendary Chinese Judge

The notion of judicial independence should not be seen as only a legacy of British colonial rule of Hong Kong, but fits a Chinese judge who lived about one thousand years ago during the Northern Song dynasty. Bao Zheng, who lived from 999 CE to 1062 CE, had a reputation of incorruptibility that persists today. The fearless and upright image of Justice Bao, who is also called Bao Qingtian, has spawned many movies and television programs in mainland China, Hong Kong and Taiwan. Television series on Justice Bao are also

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<sup>7</sup> “Retiring top judge pleads to maintain Hong Kong’s judicial independence,” *Hong Kong Free Press*, January 5, 2021.



popular in Singapore, Malaysia, Indonesia, Cambodia, Thailand and Myanmar.

Why is this ancient Chinese judge so popular in so many Asian countries? One likely reason is that upright judges have been rare in China in past centuries, so Chinese people hanker after an honest judge like Justice Bao. While there is no reason to question the integrity of the judiciary in Asian countries like Singapore, his popularity in such nations testifies to the value which people in Singapore and other Asian nations place on incorruptibility among judges and government officials.

Exemplifying judicial independence, Justice Bao impeached Zhang Yaozuo, an uncle of the favorite concubine of Emperor Renzong, as well as Prime Minister Song Xiang and other senior officials, reported the *China Daily* on March 2, 2019.<sup>8</sup> The *China Daily* article contained a photograph of a stone tablet engraved with a statement by Justice Bao, forbidding the burial in the Bao family cemetery of any descendant who was a corrupt government official.<sup>9</sup> A thousand years may have passed, “but Bao is still remembered for his integrity,” said the Chinese state-owned newspaper.

## **Corruption in China’s Judiciary**

Unfortunately, China’s judiciary today falls short of Justice Bao’s standards. In February 2017, a Chinese court jailed for life Xi Xiaoming, a former vice president of China’s Supreme People’s Court, Chinese state media reported. Xi Xiaoming was one of the most senior Chinese judges found guilty of corruption amidst the anti-graft

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<sup>8</sup> Wang Ru, “A Tribute to Honesty”, *China Daily*, March 2, 2019.

<sup>9</sup> *Ibid.*

campaign launched by Chinese President Xi Jinping (no relation) in 2012.



Justice Bao Zheng. This image, published by the courtesy of Wikimedia Commons, is in the public domain.

The glass half-full way of viewing the imprisonment of this former top Chinese judge is that the Chinese government is serious about cleaning up the country's judiciary. The glass half-empty way of looking at it is that corruption is a serious problem in China's legal system.

Wang Xiangwei, a former chief editor of the *South China Morning Post*, wrote in a commentary in the newspaper on January 9: "Systemic corruption in Chinese courts is an open secret. This is particularly so in





commercial litigation cases in which judges are known to rule in favor of the plaintiff or the defendant, largely based on whoever can offer the bigger bribe.”<sup>10</sup> Wang cited Zhang Jiahui, a former vice-president of the Hainan Provincial Higher People’s Court, who was sarcastically dubbed “the richest judge in China” for taking massive bribes and bending the law to favor those who bribed her. In December 2020, Zhang Jiahui was sentenced to eighteen years in prison for bribery, fraud, and perverting the law while making judgements. “Her case has offered a rare but vivid account of the systemic corruption permeating the highest court in Hainan Province, the island that last year announced its intention to become a world-class free-trade port by 2050,” Wang added.

## **Will Hong Kong remain a major financial hub?**

The relatively clean nature of Hong Kong courts is a major reason the city is a popular venue for resolving legal disputes between Chinese firms and multinationals operating in China. A major pillar supporting Hong Kong as one of the world’s leading financial centers is its judiciary. Multinational companies will be willing to establish operations in Hong Kong only if they are confident its legal system is honest and impartial.

For now, U.S. firms still have faith in Hong Kong’s legal system, according to a survey of the American Chamber of Commerce in Hong Kong published on its website on January 11, 2021.<sup>11</sup> The poll of 181 members of the chamber found 53.2 percent rating Hong Kong’s legal

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<sup>10</sup> Wang Xiangwei, “China’s crackdown on a corrupt judiciary has a long way to run. Zhang Jiahui is Exhibit A,” *South China Morning Post*, January 9, 2021.

<sup>11</sup> “2021 Hong Kong Business Outlook Survey, ”American Chamber of Commerce in Hong Kong, January 11, 2021.  
<https://www.amcham.org.hk/sites/default/files/content-files/Survey/2021%20Business%20Outlook%20Survey%20Result%20-%20Final.pdf>.

and regulatory system “most competitive” or “very competitive,” while 26 percent said Hong Kong was on par with other cities in this respect.

Notwithstanding criticism of the National Security Law by the U.S. government and some Hong Kong quarters, U.S. companies are largely staying put in Hong Kong for now. Only 4 percent said they would move their regional headquarters from Hong Kong within three years, while 40 percent said Hong Kong would remain their regional headquarters during this period, and 21 percent were not sure. The chamber’s survey quoted an unnamed member saying, “Absent any drastic degradation of the existing business environment—particularly the rule of law through the independent courts, the non-politicization of the civil service in business and personnel related dealings and fair law enforcement, HK remains attractive.”

If the integrity and independence of Hong Kong courts are seriously compromised, multinationals may think twice about investing in China, which will be detrimental to China’s economy. The city accounted for two-thirds of the foreign direct investment into China in 2019, according to China’s Ministry of Commerce.

Although the National Security Law has not deterred U.S. companies, it has apparently seen off one foreign judge. An Australian judge, James Spigelman, resigned from Hong Kong’s top court in September 2020, two years before the end of his term.<sup>12</sup> The Hong Kong government gazette on September 18, 2020 announced that his appointment as a non-permanent judge of the Court of Final Appeal had been withdrawn by the Hong Kong Chief Executive, Carrie Lam

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<sup>12</sup> Gary Cheung, Jeffie Lam and Jack Lau, “Veteran Australian judge James Spigelman resigns from Hong Kong’s top court, citing national security law,” *South China Morning Post*, September 18, 2020.



Cheng Yuet-ngor, from September 2, 2020. Spiegel man told Australian media he had resigned for reasons related to the National Security Law. Foreign judges have been long part of Hong Kong's judiciary, with over ten from the UK, Australia and Canada.

The Chinese government has an ambitious plan to connect China with other countries through infrastructure projects like roads, ports and airports through its Belt and Road Initiative. For the businesses of other countries to be comfortable with joining the Belt and Road, they need assurance that any legal disputes they might have over this initiative will be fairly resolved. If foreign judges are discouraged from adjudicating in Hong Kong for any reason, that will not be reassuring to foreign businesses. This is pertinent, since over 58 percent of Chinese nonfinancial overseas direct investments passed through Hong Kong in 2018, according to China's Ministry of Commerce.

The Hong Kong Chief Executive at that time, Leung Chun-ying, told a forum in 2017 that Hong Kong's role in directing mainland China's outward investments would be further cemented by the Belt and Road Initiative.<sup>13</sup> *China Daily* quoted Li Wei, director of the Development Research Center of China's State Council, saying Hong Kong can provide legal arbitration services for Belt and Road projects.<sup>14</sup> The independence and high quality of Hong Kong's legal system will encourage more Belt and Road projects, thus benefitting China's global project. Conversely, if the independence and integrity of Hong Kong's

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<sup>13</sup> Oswald Chan, "HK's chief: City to play pivotal role in ODI flows through B&R," *China Daily*, June 16, 2017.

<sup>14</sup> *Ibid.*

judiciary should ever deteriorate in future, it may spur people to watch more movies and television shows on Justice Bao in Hong Kong, to compensate for their lack of independent and upright judges in real life.

### ***Note on the Author***

**Toh Han Shih** holds a B.S. in physics from the California Institute of Technology, and a doctorate in physics from Oxford University. He also has a Master's in Southeast Asian Studies from the School of Oriental and African Studies in London, and has completed a part-time Master's in Economics at Hong Kong University. Han Shih is a Singapore-born writer resident in Hong Kong with twenty years of experience reporting on business and economics related to China, including ten years as a reporter with the *South China Morning Post*. In December 2016, he published the book, *Is China an Empire?* From 2007 to 2008, he worked at Kroll, and in the late 1990s, he was a reporter at the *Business Times* in Singapore. He was also a senior correspondent of MLEX, a regulatory risk news agency, and senior reporter of *Finance Asia*, a financial trade publication. He is currently chief analyst of Headland Intelligence, a Hong Kong risk consultancy.