



放眼世界

法官愛國完全無損司法獨立——

四論「『一國兩制』在香港特別行政區的實踐」白皮書（上）

中英社評

「全面準確理解和貫徹『一國兩制』方針政策」，是國務院新聞辦公室「一國兩制」白皮書第五章的標題，這一部分，是整份白皮書與當前特區形勢結合得最緊密的核心內容，特別值得重視和關注。

文中第三節就「堅持以愛國者為主體的『港人治港』」作出了深入的論述，其中具體提到：「在『一國兩制』之下，包括行政長官、主要官員、行政會議成員、立法會議員、各級法院法官和其他司法人員等在內的治港者，肩負正確理解和貫徹執行香港基本法的重任，承擔維護國家主權、安全、發展利益，保持香港長期繁榮穩定的職責。」

同一章節明確提出：「愛國是對治港者主體的基本政治要求。」

文章接着還列舉了愛國者治港的法律依據，包括基本法規定特別行政區行政長官、主要官員、行政會議成員、立法會主席及立法會百分之八十以上的議員、終審法院和高等法院的首席法官，都必須由在外國無居留權的香港永久性居民中的中國公民擔任；行政長官、主要官員、行政會議成員、立法會議員、各級法院法官和其他司法人員在就職時必須依法宣誓擁護基本法，效忠中華人民共和國香港特別行政區。

就有關問題，任何人只要不帶偏見，相信都會同意，論述是言之成理和不難認同的。然而，本港反對派政客卻對之百般歪曲和攻擊，而香港大律師公會也就各級法院法官和其他司法人員被列為「以愛國者為主體的治港者」提出異議。他們認為司法獨立，並非政府管治的一部分，強調法官判案只會以原告和被告的證供為依歸，不會理會政府管治需要和愛國等政治要求。



基本法列明愛國者治港的法律依據

大律師公會這一「聲明」，如果作為重申特區司法獨立的重要性，可以理解；但正如白皮書此章題目所示：「全面準確理解和貫徹『一國兩制』方針政策」，則「聲明」對愛國者治港和各級法官、司法人員也是治港者的解讀，則恐有有失偏頗以至「劃地為牢」之嫌了。

事實是，白皮書此章提出，行政、司法、立法皆為特區管治架構的組成部分，特首、行會成員、主要官員、立會議員、各級法官都是治港者，絕不是什麼新的要求或「新發明」。特區當然司法獨立，法官當然據實判案，這都是基本法已經白紙黑字作出的明確規定，白皮書有關章節絕無觸及甚或改變司法獨立之意，而且恰恰相反，白皮書在其餘章節，包括前言、第一章「回歸歷程」、第二章「特區制度的確立」，都有多處明確重申「司法獨立」……

（未完待續）

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Judges being patriotic does not hurt judicial independence at all - Fourth commentary on the "One Country, Two Systems" White Paper

"Fully and Accurately Understanding and Implementing the Policy of 'One Country, Two Systems'" – this is the title of Chapter V of the White Paper on The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region released by the Information Office of the State Council. This part presents a core content that combine the whole White Paper the most closely with the current situation in the SAR, which therefore is particularly worthy of attention.

Section 3 of Chapter V fully **expounds** the viewpoint that "The Hong Kong People Who Govern Hong Kong Should Above All Be Patriotic." It specifically points out: "Under the policy of 'One Country, Two Systems,' all those who administrate Hong Kong, including the chief executive, principal officials, members of the Executive Council and Legislative Council, judges of the courts at different levels and other judicial personnel, have on their shoulders the responsibility of correctly understanding and implementing the Basic Law, of safeguarding the country's sovereignty, security and development interests, and of ensuring the long-term prosperity and stability of Hong Kong."

It is also pointed out in the same section that "loving the country is the basic political requirement for Hong Kong's administrators."

It then explains that it is well grounded in laws for Hong Kong to be governed by patriots, such as that "the Basic Law requires that the chief executive, principal officials, members of the Executive Council, president and over 80 percent of the members of the Legislative Council, chief justice of the Court of Final Appeal and chief judge of the High Court shall be Chinese citizens who are permanent residents of Hong Kong with no right of abode in any foreign country; that, when assuming office, the chief executive, principal officials, members of the Executive Council and Legislative Council, judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with the law, swear to uphold the Basic Law and swear allegiance to the HKSAR of the PRC (People's Republic of China)..."

On this, anyone who holds no prejudice will agree that such **exposition** sounds reasonable and is not hard to be agreed upon. However, Hong Kong opposition politicians have tried to distort and attack this **by any means**. Hong Kong Bar Association has also **raised objection** to the view that "The Hong Kong People Who Govern Hong Kong Should Above All Be Patriotic". The Association maintains that the Judiciary is independent, not part of the government team, stressing that judges decides cases upon hearing adversarial arguments between the parties and considering the facts and evidence placed by the parties before the Court, ignoring political requirements such as the need for governance and patriotism.

It might be understandable if the Hong Kong Bar Association issued the statement in order to reiterate the important of judicial independence. Nevertheless, when "Fully and Accurately Understanding and Implementing the Policy of 'One Country, Two Systems'" – as the title of Chapter V of the White Paper suggests – is concerned, then the Bar Association's understanding about patriots running Hong Kong and judges of the courts at different levels and other judicial personnel being among those who administrate Hong Kong could be said as biased and in an attempt to **confine themselves to a self-restricted area**.

As a matter of fact, when this chapter in the White Paper says the execution, judiciary and legislature are all components of the SAR's administrative structure, and the chief executive, principal officials, members of the Executive Council and Legislative Council, judges

of the courts at different levels and other judicial personnel are all who administrate Hong Kong, it absolutely raises no new requirement and makes no "new invention". In the SAR, the judiciary is surely independent and judges decide cases based on evidence, which is clearly stipulated in black and white in the Basic Law. The context in the White Paper has no intention to touch or even change judicial independence. On the contrary, other parts of the White Paper – including the Forward, Chapter I. Hong Kong's Smooth Return to China and Chapter II. Establishment of the Special Administrative Region System in Hong Kong – unambiguously reiterate judicial independence in various contexts... (To be continued)

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WORDS AND USAGE

Expound (verb) – To explain in detail. (闡述，詳細解釋)
Examples: 1.If you expound an idea or opinion, you give a clear and detailed explanation of it.
2.The speaker expounded the approach of positive thinking.

Exposition (noun) – A clear and full explanation of an idea or theory. (闡述，說明)
Examples: 1.An exposition is typically positioned at the beginning of a novel or a movie because the author wants the readers to be fully aware of the characters in the story.
2.It purports to be an exposition of Catholic social teaching.

By any means (idiom) – By any way possible. (以任何方式，不擇手段)
Examples: 1.I need to get there soon by any means.
2.I must win this contest by any means, fair or unfair.

Raise (an) objection (to sb or sth) (idiom) – To mention an objection about someone or something. (對某人或某事) 提出反對)
Examples: 1.I hope your family won't raise an objection to my staying for dinner.
2. I'll raise no objections to your proposed bill if you promise to support me next time.

Confine sth/sb to sth (phrasal verb) – To keep someone / something inside the limits of a particular subject, area, activity, etc. (將...局限於，把...限制在)
Examples: 1.Can we confine tonight's discussion to the agenda?
2.By closing the infected farms we're hoping to confine the disease to the north of the region.

時人名句



鄭耀棠：白皮書能釐清港人對「一國兩制」不清楚的地方
資料圖片

社會各界認同白皮書

「全面準確理解和貫徹『一國兩制』方針政策」，是國務院新聞辦公室《「一國兩制」在香港特別行政區的實踐》白皮書第五章的標題，這一部分，是整份白皮書與當前特區形勢結合得最緊密的核心內容，特別值得重視和關注。社會各界對國務院及時發表白皮書深表認同。

全國港澳研究會會長陳佐洱：

香港市民對普選行政長官方法持有不同意見不要緊，大前提是表達方法要守法。香港是自由民主的社會，有各種不同的訴求及意見盡量可以表達出來，但表達的時候都要守法。

全國港澳研究會理事鄧平學：

白皮書最重要是擺正香港的定位，即是國家之下的一個特別行政區。對於香港社會有少數人片面強調「兩制」，特別是香港的「一制」，白皮書澄清了這些錯誤認識，指出「一國」和「兩制」不能等量齊觀，「兩制」是以「一國」為前提的，必須建立在「一國」基礎之上。白皮書明確指出，基本法的依據是中國憲法，憲法作為國家的根本法，在包括香港特別行政區在內的中華人民共和國領土範圍內具有最高法律地位和最高法律效力。

港區人大代表鄭耀棠：

國務院發表的白皮書是「一國兩制」的真諦，能釐清港人對「一國兩制」不清楚的地方。白皮書提到的論點，除了「一國兩制」是中國夢組成部分是新講法外，其他都是重申舊論點。香港實施的「一國兩制」，是一國下的兩制，並不是兩制在一國當中。香港的高度自治權只在於行政權，香港不是獨立國家而是地方政府，應該要清楚自己的位置，以及權力是由中央給予。

新世界發展主席鄭家純：

白皮書的內容只是重申當年中英聯合聲明和基本法的基礎及理念，對「一國兩制」、高度自治沒構成影響。咪好似以前《英皇制誥》咁，一樣咁嘅道理，香港都係咁管治，無咩唔同。法官亦要愛國，重申香港最終達至普選，是政制發展，但要循序漸進，均衡參與，不能一步到位。

鄉議局主席劉皇發：

中央在香港如何忠實按照基本法和人大常委會相關規定，去作出2017年普選行政長官的具體安排之際，發表白皮書是十分及時同對症下藥的舉措，對促進公眾正確認識及理解「一國兩制」和基本法，起到激濁揚清，振聾發聵的積極作用。

香港僑界社團聯會：

該會歡迎及堅決支持國務院日前發表的《「一國兩制」在香港特別行政區的實踐》白皮書，這將有助社會全面準確認識和理解「一國兩制」和基本法，繼續維護香港繁榮穩定的大好局面。

時事英語

英女王成中英外交角力的「卒子」？

理論上，新聞報道應力求客觀公正，但實際上，每家傳媒都有自己的立場，記者編輯也有自己的思想，在處理新聞時難免帶有一些主觀見解。

李克強總理上周訪英之前幾天，英國大報《泰晤士報》（The Times）刊登了一則新聞，標題是：Let me meet Queen or the visit is off, says China PM（中國總理說：讓我見女皇，否則取消訪問），正文開頭便說：The Queen has become a pawn in a secret diplomatic showdown between London and Beijing（女皇成為中英秘密外交角力的籌碼）。Pawn是國際象棋裡的「卒」，為保護更重要的棋子可以隨時犧牲，因此也用來形容可被他人利用的人物。報道說，在雙方談判李克強訪英的安排時，中國官員直接提出威脅，若安排英女王與李見面，便會取消訪問（involved a direct threat of cancellation）。

另一份英國報紙《每日電訊報》（The Daily Telegraph）轉述《泰晤士報》的報道也說：Chinese officials threatened to cancel a senior leader's visit to the UK next week unless the prime minister was granted an audience with the Queen（中國官員威脅說，若其總理不獲女王接見便取消訪英行程）。

中方立即作出反駁。其實，一個國家的元首（head of state）或政府首腦（head of government）訪問另一個國家，行程乃經雙方事先磋商敲定。談判時，雙方自然要提出各自的要求，最後達成「你情我願」的協議。很難想像，此次李克強訪英的行程安排竟是中方「威脅」出來的！或許兩報認為女王是英國國家元首，李克強是中國政府首腦，前者見後者是「屈尊」（condescension），有違外交禮儀（diplomatic protocol），但其實，女王前不久就曾接見到訪的德國總理默克爾。

同為英國報章，《金融時報》（Financial Times）的報道顯得客觀中立，其標題是：Chinese premier to meet Queen Elizabeth during UK visit（中國總理訪英時將會見女王），內文則說此安排顯示英國政府對中英關係的重視。亦 然