

Commentary

# HK leaders must avert rule-of-law decline



Alfred M. Wu

The biggest challenge confronting central-local government relations around the world today is checking on local governments and preventing the abuse of power by the central government.

In recent years, a common issue many countries face is an increasingly assertive central power at the expense of local autonomy.

Hence, the issue is balancing central-local relations and curbing central government expansion.

If we look at some of Hong Kong's current controversies with this perspective, they would be more easily understood, and potential solutions may be found.

At the start of the debate on the Bill to amend the Fugitive Offenders Ordinance, Chief Executive of the Hong Kong Special Administrative Region (SAR) government Carrie Lam stressed that the proposed amendment stemmed primarily from the murder of Hong Kong resident Poon Hiu-wing in Taiwan, and was not a directive from the central government.

Mrs Lam said it was needed to enable the extradition of the suspected murderer, a Hong Konger, to Taiwan to be tried.

However, a fact-finding mission to Taiwan by pro-democracy members showed that without the amendment, cases such as this could be resolved eventually.

The focus then shifted to extradition to the mainland, which worried Hong Kongers. Almost two million people turned out to protest against the Bill on June 16. For the Bill would also allow the extradition of criminal suspects to the mainland, which is not possible under the current law.

If Mrs Lam was doing this of her own volition, she was attempting to deal with a complicated judicial cooperation problem in increasingly challenging central-local relations.

Or she could have received an order from the central government but was unwilling to speak out and instead leveraged Ms Poon's case to advance the central government's order.

If the latter was the case, there would be a disastrous scenario in central-local government relations.

When the central government hopes to promote a particular goal, the local chief executive disguises it as something else to achieve the goal of the central government.

Once this execution model is carried out, the local chief executive becomes a de facto member of the

central government and is not constrained by the structure of dual accountability wherein the chief executive is accountable towards both the central government and the local constituency.

Not only will the local government lose its governance capacity, it is discredited by the different stakeholders in the local community. This is a significant threat to the governing authority.

If Mrs Lam was carrying out the order from the central government, her credibility would also be significantly damaged.

Is the Bill worth the trauma?

If the central government worked with Mrs Lam to advance the agenda, what was its intention?

Although Chinese ambassador to Britain Liu Xiaoming told the BBC on June 13 that the central government did not give any order to the SAR government on this matter, the possibility of joint efforts by the central and SAR governments on amending the Bill cannot be ruled out.

First, Beijing hopes to more effectively crack down on mainland corrupt officials. Some have escaped legal sanctions after fleeing to Hong Kong.

Second, it hopes to extradite some dissidents or people with differing views from the official stance of the mainland or Hong Kong government, that is, government critics. Once government critics – especially



It would be a disastrous scenario for central-local government relations if Hong Kong Chief Executive Carrie Lam was carrying out an order from Beijing to amend the Fugitive Offenders Ordinance, the writer says. PHOTO: BLOOMBERG

those with relatively moderate stance – are extradited to the mainland to stand trial and are sentenced, this would serve as a warning for others.

Third, the central government would be relieved to be rid of the existing case-by-case, lengthy and rather disorderly method of extradition and judicial collaboration.

From a legal perspective, there are some advantages to the Bill given increased trade and personnel exchanges between Hong Kong and the mainland.

Whether these are compelling reasons to undergo such trauma to amend the law remains a question.

First, cracking down on corrupt officials does not require amending the fugitives law. After the amendment, the Chinese government will still be unable to stop corrupt officials from fleeing. In the past, the Chinese law

enforcement departments have successfully persuaded many corrupt officials living in Europe, the US and others to return to China or extradited them.

Based on the cases exposed recently, very few corrupt officials choose to live in Hong Kong. The extent to which the amendment can help the mainland's anti-graft drive is thus negligible.

Second, cracking down on dissidents is an obvious objective. Any person criticising the government transferred to the mainland will likely result in a chilling scenario.

Third, the routine extradition of criminals would be the Bill's greatest achievement.

However, both Hong Kong and mainland governments have little evidence to prove the urgency of this Bill. They also lack evidence to prove that Hong Kong is a "haven for fugitives". The city's

pro-government lawmakers have emphasised that the Bill is linked to the fact that Hong Kong is a haven for fugitives but it is not a solid statement.

If the Bill were passed, Hong Kong would most likely experience the following changes.

Major developed nations like the US, Germany and others will likely abolish their extradition treaties with Hong Kong as they are concerned that the city would become a bridge for the Beijing government to extradite relevant persons.

Hong Kong's rule of law ranking would decline sharply. Its press freedom will also be affected as this and the rule of law are interrelated.

Hong Kong's current state of development is definitely a cause for serious concern in the future.

Against the general backdrop of deteriorating China-US relations, Hong Kong, which is "neither the East nor the West" (or both the East and the West), should be prudent when it comes to handling its relations with the outside world.

Many in the US believe that Hong Kong is increasingly losing its autonomy, and its neutral position is being challenged. Once the turning point is reached, Hong Kong will lose its separate customs territory status.

Hong Kong and many countries in the world are currently confronted with a similar situation – after the central government expands its power, central-local relations are in a dilemma.

Hong Kong's political leaders should also examine themselves, and not be instrumental in the deterioration of the rule of law and press freedom in Hong Kong, or they will put themselves and their future generations in a quandary.

• Alfred M. Wu is assistant dean and associate professor at the Lee Kuan Yew School of Public Policy, National University of Singapore.