

Book Review

Taiwan and International Human Rights: A Story of Transformation

Edited by JEROME A. COHEN, WILLIAM P. ALFORD and CHANG-FA LO

Singapore: Springer, 2019

xii + 706 pp. £111.50

ISBN 978-981-13-0349-4 doi:10.1017/S030574102200011X

Taiwan is already well known abroad for its twin “miracles” of rapid development and peaceful democratization. But there is a third Taiwanese miracle that deserves more attention: the wholesale transformation of its human rights regime. For much of its post-Second World War history on Taiwan, the Nationalist (Kuomintang) government presided over an oppressive police state justified under the guise of martial law, where violations of civil rights and inhumane treatment of the accused were routine. Today, by contrast, it is a vibrant democracy with broad respect for individual and collective freedoms, and it features one of the most liberal human rights regimes in the Asia-Pacific. The 38 chapters in this massive volume explore many of the key aspects of this remarkable transformation, presenting a wide array of perspectives on Taiwan’s laudable improvements in human rights practices as well as criticism of its remaining flaws.

Several elements of this “story of transformation,” as the editors call it, are unique to Taiwan. First and most prominently featured in the book is the surprising influence of international laws, treaties and conventions. As a state that today falls outside the UN system and has very limited diplomatic recognition, it is rather ironic that international law has been given such pride of place in Taiwan. But as Jacques deLisle explains, this pattern of seeking to conform to international human rights standards has had real instrumental value: by acting the way responsible states are supposed to, Taiwan strengthens its claim to state-like rights and status in the inter-state system where it is currently marginalized. As Yu-Jie Chen discusses, this was the Legislative Yuan’s primary rationale in 2009 when it adopted into domestic law the two major human rights covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and empowered Taiwan’s courts to nullify other legal statutes inconsistent with provisions in the two treaties. Similarly, the call to create a national human rights institution of some kind in Taiwan – the focus of chapters by Mab Huang, Fort Fu-te Liao and Ernest Caldwell, respectively – was inspired by a UN-organized meeting in 1991 in Paris that called for their establishment worldwide. And the movement to advance transitional justice for victims of the martial-law-era regime has drawn much of its inspiration from post-transition practices in other countries with notorious oppressive pasts, including South Africa, Chile and Germany, as chapters by Brad Roth, Chun-Hung Chen and Hung-Ling Yeh, and Cheng-Yi Huang all demonstrate.

Second, the transition to democracy in Taiwan did not result in the creation of a new constitutional order. Instead, the original Republic of China (ROC) constitution adopted in 1947 on the Chinese mainland remained in place, and with it the institutions, rights and legal procedures designed for a continental-sized country over half a century before. Nevertheless, this gradual, institution-preserving transition to democracy in the end led to a relatively liberal and robust human rights regime. As Chang-fa

Lo explains, many of the protections for civil liberties in the original ROC constitution were quite advanced at the time it was adopted, so this continuity gave the Constitutional Court (more accurately translated as the Council of Grand Justices of the Judicial Yuan) an outsized role in shaping the pace and direction of human rights reforms. Starting in the 1990s, the court began to breathe life into constitutional aspirations that went mostly unfulfilled during the pre-democratic era. A court ruling in 1991 famously forced the retirement of the permanent representatives in the National Assembly and Legislative Yuan and sped along the transition to fully contested elections; less well known is that the court has made equally important contributions to the enforcement and expansion of civil rights in other areas, issuing landmark interpretations on freedom of movement, the right to privacy and the right to health. Working in the other direction, it has also consistently upheld the constitutionality of the death penalty in Taiwan, although even here Taiwanese courts have quietly shifted review procedures to conform more closely to the ICCPR, as Rong-Geng Li describes. As a result, the constitutional review process has played a central role in strengthening respect for civil liberties and expanding recognition of other human rights not explicitly mentioned in the constitution.

Third, Taiwan's contemporary human rights regime stands out as a truly unique blend of at least three very different legal traditions: traditional Chinese Confucianism (as Nigel T. Li and Chien-chih Lin detail in their respective chapters); European continental law (much of that itself first refracted through Japanese practice before coming to the ROC, or directly to Taiwan during colonial rule); and Anglo-American practices, most notably in the applications of US First Amendment jurisprudence to libel and free-speech cases. Margaret Lewis describes one aspect of judicial practice where these wildly different influences have come together in a surprising way, in a proposal to have lay participants serve in criminal trials alongside professional judges.

The book also includes individual chapters on several human rights issues that remain hotly contested and in conflict with international laws or norms, including questions about environmental protection, the right to food, intellectual property protection, women's and LGBT rights, recognition and respect for the separate sovereignty of Taiwan's many indigenous peoples, the rights of children, and protections for people with disabilities. The final chapter, by Yi-Li Lee, discusses litigation over the extremely politically sensitive issue of civil rights of non-citizens, especially People's Republic of China nationals living in Taiwan. Scholars looking for well-informed discussions of the legal and political questions connected to these topics will find at least one chapter in this volume relevant and beneficial.

More generally, *Taiwan and International Human Rights* will be a valuable resource for anyone interested in Taiwan's evolution from a serial violator of human rights to one of its most enthusiastic proponents. The list of authors is a veritable who's who of legal scholars writing about Taiwan in English, and it is a major achievement to bring these chapters together in a single volume of original scholarship written in engaging and accessible prose.

KHARIS TEMPLEMAN
kharis@stanford.edu