

**Law in Political Transitions:
Lessons from East Asia and the Road Ahead for China**

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Written Statement of

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The legal system in Taiwan has been shaped by several factors. First, Taiwan is a Confucian society. In Confucian culture, stability is the paramount concern, and moral examples set by superiors are considered more effective than legal codes in maintaining social and political order. Such an attitude has surely been significantly changed over the years as a result of exchanges with the outside world. However, there are still traces of Confucian culture in Taiwan. In a series of islandwide surveys, for instance, when asked to make a tradeoff between political reform and stability, an overwhelming majority of the respondents chose stability instead of political reform.

The first major change in Taiwan's legal system came with the Japanese in the late nineteenth and early twentieth centuries after Taiwan was ceded to Japan by the Qing Dynasty. The Japanese set up courts and brought in Japanese legal codes as part of the colonial administration.

In 1949, when Kuomintang (Nationalist Party, KMT) fled to Taiwan after being defeated by the Chinese Communists on the mainland, it brought with it many laws it drafted and only partially implemented on the mainland. Indeed, many of these laws remain the backbone of Taiwan's current legal system, notably the Constitution (1947), the civil law (1929-31), and the criminal law (1928).

To be sure, the first four decades of the KMT rule was not democratic, and the laws were often subject to the government's or the party's intervention. It was only after Taiwan became democratic has the independence of the judiciary been better respected. Yet, even today, instances of administrative intervention can still be heard from time to time, and public officials may bypass or violate the laws but can easily get away with it, showing that Taiwan's legal system has improved, but has not lived up to the expectations.

How much did Taiwan's legal system contribute to its democratic transition? Probably not much. There are many other factors which may be more salient in Taiwan's democratization process. For example, the popular support received by the opposition movement among the native Taiwanese as a result of their long exclusion from the political process was certainly a very important factor forcing the KMT government, which was dominated by the minority mainlanders, to make concessions. Other factors such as cultural change and the emergence of a civil society as a result of the remarkable economic development have all paved the way for reshaping Taiwan's political system. The pressure from other

countries, especially the United States, also, to some degree, facilitates Taiwan's political change.

Although the legal system may not directly contribute to Taiwan's democratic transition, it is undoubtedly a very important factor affecting the phase of democratic consolidation. Indeed, a sound legal system supported by an appropriate legal culture is one of the most important guarantees for the well-functioning of a liberal democracy.

Yes, Taiwan's legal system has greatly improved, and its legal culture is now more in line with the Western notions of laws. Nevertheless, there is still room for improvement. For one thing, many people may pay lip service to the notion of the rule of law, but it is doubtful how firmly rooted it is. Indeed, as powerful politicians act in clear violation of the law, their act was often dismissed as, say, election gimmick, and forgotten quickly by the public. The recent stalemate in the political process can be partly attributed to the lack of true respect for laws on the part of many politicians.

Now, can Taiwan's experiences be exported to China? Not really. The development in China, particularly since 1949, was very different from that in Taiwan. The infusion of communism—or more precisely, Maoist communism—to a large extent, changed the very notion of laws and democracy. Although Deng Xiaoping's reform revitalized some Western legal practices to serve the need of economic reform and to prevent the recurrence of the Cultural Revolution type of chaos, the country still has a long way to go before a well-functioning judicial system—not to mention a liberal democracy—can be established.