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LAW AND ECONOMICS IN TAIWAN

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Abstract

The purpose of this chapter is to show how law and economics has taken roots in Taiwan, which authors have played primary roles in teaching and research, and what have been the recent research topics. The chapter first presents a brief description of Taiwan's economic-social-political background. This is then followed by an introduction to Taiwan's education and research in law and economics.

JEL classification: K00

Keywords: Economics, Law, Taiwan

1. Economic-Social-Political Background

Taiwan has changed from a traditional Chinese agricultural economy to an industrialized economy in the last 50 years. Though geographically remote from Western industrialized economies, the small island succeeded in the late 1970s being their trading partner in textiles, electronics, machine tools, and so on. Today, it is catching on in the information age and has fast-growing industries in computer peripherals and semi-conductors. Because of its economic success many of the citizens have been able to go abroad for business, education and vocation. They return home with aspirations for greater individual freedom and a pluralistic society. Social relationships have thus been transformed in many ways and a life under an authoritarian regime is no longer acceptable. As a result, Taiwan has undertaken a series of constitutional reforms since 1992 and is now moving towards a more democratic society. It is in this dynamic economic-social-political setting that Taiwan's study of law and economics has taken roots.

2. Education

Economics professors in Taiwan are primarily returnees with an American doctoral degree. In contrast, law professors hold law degrees in almost even

proportions from the US, Germany and Japan. In the past, economics students were required to take an introductory law course, but law students were not required to take any economics courses. Laws and regulations enacted since the early 1980s have helped to bring about a change. They were promulgated to meet new economic and social problems in employment, fair trade, finance, environmental protection, and so on. Responding to the development, law departments soon initiated specialized programs in financial and economic law. To prepare students to deal with such legal matters, these programs require first-year students to take four credit hours in economics principles, which are taught by the economics faculty. For the same reason, more economics students would like to start taking elective law courses to help their career development. Both the economics and the law students know that there are substantial differences not only between economics and law but also between the English-American and Continental systems of law. However, not until recently were they able to find a connection between economics and law, because few scholars were familiar with Ronald H. Coase's insights in the firm, the market, and the law.

It was only ten years ago that the modern law and economics field became known in Taiwan. Yu-Min Tang (1987) deserves special credit for translating the first edition of Posner's *Economic Analysis of Law*. The translated work was well-received and reprinted after two years. Another special credit should go to Steven Cheung (1987). His popular writings on private property rights and contracts were published when privatization and economic liberalization were hot issues in Taiwan. They soon became best-sellers and they helped popularize the names of Coase, Alchian and Demsetz with Taiwan's college students.

Taiwan's first undergraduate law and economics course was offered in September 1987 to juniors by the economics department of National Tsing Hua University. A graduate sequel, the economic analysis of law, debuted in 1990. Coase's winning of the Nobel Prize in 1991 further boosted students' interests. A course on economic organization along Oliver E. Williamson's line was started up as a response to graduate students' requests in 1992. However, the demands of freshmen and sophomores could not be met because of a lack of adequate teaching materials and teachers. Hwang and Kan (1994) published a principles textbook emphasizing new institutional economics in the summer of 1994. With the arrival of a new faculty member, the department started to offer courses on new economic history and new institutional economics. In addition to fulfilling these teaching responsibilities, Liu (1994, 1995) translated Douglass C. North's two major books. Finally, with Chen and Li (1995) translation of Coase's book, there are now basic Chinese materials for students of all departments that can open the door to law and economics.

In the meantime several scholars have also contributed to promoting the central message of law and economics. Bing-Yuang Hsiung of National Taiwan

University and George S. Wang of National Chengchi University have included Coase's ideas in their public economics course. Huei-Lin Wu of Chung-Hua Institute of Economic Research has written introductory essays in magazines and newspapers for lay readers. Tze-Chien Wang, who is now a grand justice, arranged a seminar and invited me to introduce law and economics to his colleagues at the law department of National Taiwan University. These educational and promotional efforts are now taking effect. For example, Soochow University's law department, which specializes in common law, has started an undergraduate law and economics course in its night program. The law department of National Taiwan University is now offering a graduate course in tort law along Posner, Landes and Shavell's line. The department is also planning to have undergraduate law and economics courses in the near future.

3. Research: Activities and Scope

A few institutions and foundations have in recent years sponsored the visits of distinguished foreign scholars to promote academic research in economics. For example, the visitors included Gary Becker, James Buchanan, Issac Ehrlich, Douglass North and Gordon Tullock. Their visits have helped stimulate research in law and economics. A special day was marked on January 19, 1991 when Cyrus C. Chu successfully organized Taiwan's first academic conference on the economic analysis of law. The conference not only brought together various researchers in law and economics but also opened up a dialogue between legal scholars and economists. The effect of these activities is clear in that legal scholars and professional lawyers are now invited to help with an economics student's thesis. Likewise, economists are invited to be members of a law student's thesis committee. As a result, there is more vigorous research in law and economics and more research results are appearing in professional journals.

The law and economics research community in Taiwan is small. There are two types of research related to law and economics. The first type deals with financial and economic laws and is mainly conducted by legal scholars. It is related to law and economics because more of the substance is involved but less of the methodology is used. The second type of research involves rigorous economic analysis and belongs to the narrowly defined field of law and economics. It is conducted by economists and several areas of law have been taken up. To illustrate Taiwan's recent interest in law and economics a select bibliography is appended at the end of this overview. The bibliography shows that recent research topics can be classified into four groups: financial and economic law, criminal law, environmental law and others. While the volume cannot warrant a full survey, I will try in the following to give a brief guide and

show that Taiwanese scholars can actively contribute to law and economics research.

4. Research: Some Recent Research Topics

In the area of financial and economic law, research topics are concerned with current economic conflicts. Li and Chen (1995), Hwang (1995, 1996) and Chen (1997) focus on antitrust issues of intra-industry alliance in product designs, intra-industry mutual holdings of stocks, vertical mergers, and collusive pricing. The issues of foreign competition and financial disclosure have been investigated by Juang (1997) and Tseng (1996). Fong (1997) and Tan (1991) discuss issues related to intellectual property rights such as the corporate name, the trademark, and counterfeits. Aoki and Hu (1997) have also investigated the effect of a legal system on incentives to innovate. They are mostly written in Chinese and some of their research results have wider implications that are not limited to Taiwanese cases. However, no law and economics research related to employment laws is being published, perhaps reflecting the fact that Taiwan has been able to maintain full employment.

The most active law and economics research is on criminal law and purely conducted by economists. The results of this line of research are especially interesting and some of them have been published in international journals. They are interesting because the researchers have utilized Chinese cases to shed light on some less attended topics in Western literature. For examples, two articles by Chu (1990a, 1990b) explicitly consider venal tax officials and plea bargaining with respect to the problem of tax evasion. As law enforcement efforts in Taiwan have been oscillatory, Chu (1991) makes a case that oscillatory enforcement is optimal under some conditions. On the proposition that fines are more efficient than imprisonment, Chu and Jiang (1993) present an opposite case by considering wealth. Imprisonment serves the dual functions of deterrence and incapacitation; yet little work has been done to address the latter function. For criminal offenses involving bodily parts that cannot be deterred, Kan (1996) finds that imprisonment is less efficient than corporal punishment because it incapacitates other productive parts as well. As a life sentence involves a permanent incapacitation of the whole body, he also finds that its abolition would hinge on whether a society accepts temporary incapacitation as a substitute punishment. Chu (1991), Chu et. al. (1997), Chen et al. (1997), Koo (1991) and Shea and Wu (1994) have embarked on other important topics such as criminal proceedings, litigation procedure, repeat offenses, the allocation of legal costs and anti-monitoring activities. There are also empirical studies written in Chinese. Adopting a Bayesian approach, Yang and Chen (1996) find that a life sentence had no deterrence effect.

An unfortunate aspect of Taiwan's economic development is that it was achieved at the expense of its environment. Despite the environmental regulations that are now in place, much remains to be done. There are significant law and economics papers on the problems related to environmental law. Taking hints from Taiwan's poor enforcement of environmental regulations, Huang (1996a, 1996b) has explicitly considered incomplete enforcement, a firm's avoidance behavior and hierarchical governments in his studies. He sheds new light on the effectiveness of environmental regulations and the complex relationships among legislators, regulators and firms. Yeh (1992) used a special Taiwanese case, in which the central government set up a compensation fund for the victims nearby a petroleum cracking plant, to discuss the problems associated with the de facto sales of pollution rights. Shaw (1992) compared Pigovian taxation and strict liability as methods to control externalities in Taiwan. Fu et. al. (1993), on the other hand, adopted the property rights and contractual approach to discuss sustainable development. Shaw (1995) has also translated Anderson and Leal's *Free Market Environmentalism*.

While other research topics in law and economics are important as well, they have so far only received limited attention from Taiwanese researchers. For example, Chu and Qian (1995) and Hsieh (1991) seem to be the only two discussing vicarious liability and medical malpractice in the area of tort law. Research in other areas is the same. Koo and Sung (1993) is the only study on the public funding aspect of Taiwan's election and recall law. Wu and Huang (1994) presents the only theoretical work on norms and cultures. Kan and Hwang (1991a, 1991b, 1995) are also alone in considering ancient Chinese economic and legal thoughts in a modern light.

Most of the research works we have introduced so far, however, do not touch on property rights and transaction costs. The fact indicates that Coase, Cheung and Williamson's insights are yet to make a strong impact on Taiwan's research, as Chien (1997) has indicated in his recent book review. Despite being few in numbers, the research results are quite significant. There were two papers on transaction costs and Coase theorem. Kan (1993) elucidates the subjective nature of transaction cost and emphasizes the much neglected entrepreneurship in exchanges. With an effort to reconcile Buchanan's criticism on the celebrated the Coase theorem, Hsiung (1993) was able to clarify several issues of the debate. On property rights, Su (1991) used law and economics argument to discuss the conditions for or against the principle of *numerus clausus*. Other works are involved with the application of transaction cost analysis to Taiwanese cases. The empirical test of Kan and Hsiao (1996) shows that peasants' choices of irrigation contracts in the Tsing Dynasty were consistent with transaction cost economics. The paper also echoes Coase's view that public works need not require government intervention. Chien (1995)

relates the common use and abuse of a condominium's top space to transaction costs and property rights.

Finally, Taiwan's ongoing democratization process has spurred Hwang and Kan's (1995) and Kan and Hwang's (1996, 1997) significant contributions to constitutional law. They adopt a *super-firm* approach to focus on the organization of a democratic government. As there are transaction costs between representatives and officials and between them and the people, they think that checks and balances are mechanisms to prevent the collusion of officials and representatives. However, the costs associated with checks and balances have been neglected. Applying Fama and Jensen's distinction of decision control and decision management powers in the firm, they elucidate that different concerns over the two types of transaction costs can lead to various forms of presidential, parliamentary and hybrid governments. A testable implication of their transaction cost analysis is that the number of check-and-balance mechanisms decreases with the development of competitive mass media and the technological advances in transportation as well as telecommunication. The research not only breaks away from current models in political science, but also shows that transaction cost economics can shed significant insights into the organization of a democratic government.

Acknowledgments

The author would like to thank Sheng C. Hu, Ruey-Hua Liu and Daigee Shaw for their comments and suggestions.

Bibliography on Law and Economics in Taiwan (0375)

- Aoki, Reiko and Hu, Jin-Li (1997), 'Licensing vs. Litigation: Effect of the Legal System on Incentives to Innovate', unpublished manuscript.
- Chen, C.M. (1997), 'Basing-Point Pricing, Parallel Behavior, and Colluding Behavior: From American Anti-Trust Law' (in Chinese), **5(1)** *Fair Trade Quarterly*, 65-96.
- Chen, K.M. and Li, H.H. (1995), Chinese Translation of Ronald H. Coase's *The Firm, the Market, and the Law*, Taipei, Yuan-Liou Publishing Company, Ltd.
- Chen, Kong-pin, Chien Hung-ken and Chu, Cyrus C.Y. (1997), 'Sequential versus Unitary Trials with Asymmetric Information', **26(1)** *Journal of Legal Studies*, 239-258.
- Cheung, Steven N.S. (1987), *The Words of An Orange Seller* (in Chinese) Taipei, Yuan-Liou Publishing Company, Ltd.
- Chien, Tze-shiou (1995), 'A Study on the Property Right of a Condominium's Top Space' (in Chinese), **41(10)** *Military Law Journal*, 8-15.
- Chien, Tze-shiou (1997), 'Coase's The Market, the Firm, and the Law: A Legal Perspective' (in Chinese), **26(2)** *National Taiwan University Law Journal*, 229-246.

- Chu, Cyrus C.Y. (1990a), 'A Model of Income Tax Evasion with Venal Tax Officials: The Case of Taiwan', **45(3)** *Public Finance*, 392-408.
- Chu, Cyrus C.Y. (1990b), 'Plea Bargaining with the IRS', **41(3)** *Journal of Public Economics*, 1319-1333.
- Chu, Cyrus C.Y. (1991), 'An Economic Analysis of the Criminal Proceedings in Civil Law Countries', **11(1)** *International Review of Law and Economics*, 111-116.
- Chu, Cyrus C.Y. (1993), 'Oscillatory vs. Stationary Enforcement of Law', **13(3)** *International Review of Law and Economics*, 303-315.
- Chu, Cyrus C.Y. and Jiang, Neville (1993), 'Are Fines More efficient Than Imprisonment?', **51** *Journal of Public Economics*, 391-413.
- Chu, Cyrus C.Y. and Qian, Yingyi (1995), 'Vicarious Liability under a Negligence Rule', **15(3)** *International Review of Law and Economics*, 305-322.
- Chu, Cyrus C.Y., Sheng-Cheng Hu and Ting-Yuan Huang (1997), 'Punishing Repeat Offenders More Severely!', IEAS Working paper No. 9703, Academia Sinica.
- Fong, Jerry G. (1997), 'Corporate Name, Trade Name, Trade Mark, and Domain Name' (in Chinese), **5(2)** *Fair Trade Quarterly*, 65-96.
- Fu, Tsu-tan, Shaw, Daigee and Yu, B.T. (1993), 'A Property Rights and Contractual Approach to Sustainable Development', Discussion Paper No. 9334, The Institute of Economics, Academia Sinica.
- Hsieh, Chee-Ruey (1991), 'Medical Liability, Dispute, and Litigation: Theory and Evidence of Taiwan' (in Chinese), **19(1)** *Taiwan Economic Review*, 87-114.
- Hsiung, Bing Yuang (1993), 'The Scale of the Market and the Scale of the Heart: Reconciling Coase and Buchanan on the Coase Theorem' (in Chinese), **21(2)** *Academia Economic Papers*, 331-356.
- Huang, Chung-Huang (1996a), 'Hierarchical Government, Environmental Regulations, Transfer Payments, and Incomplete Enforcement', in Mendelsohn, Robert and Shaw, Daigee (eds), *The Economics of Pollution Control in the Asia Pacific*, 253-272. Vermont, Edward Elgar Publishing Company.
- Huang, Chung-Huang (1996b), 'Effectiveness of Environmental Regulations under Incomplete Enforcement and the Firm's Avoidance Behavior', **8** *Environmental and Resource Economics*, 182-204.
- Hwang, Chun-Sin and Kan, Steven S. (1994), *Principles of Economics-Cooperating for Mutual Prosperity and Progress*, Vol. 1 (in Chinese), published by the authors and distributed by Shin Lu Bookstore, Taipei.
- Hwang, Chun-Sin and Kan, Steven S. (1995), 'Democracy and the Principle for the Division of Labor in Government Organization' (in Chinese), in Chien, Sechin Y.S. and Tai, Terence H. (eds), *Philosophy and Public Norms*, Book Series 34, Sun Yat-sen Institute for Social Sciences and Philosophy, 163-200. Taipei, Academia Sinica.
- Hwang, L.T. (1996), 'The Anti-Competitive Effect of Intra-Industry Mutual Holdings of Stocks: A Discussion on Fair Trade Law' (in Chinese), **4(2)** *Fair Trade Quarterly*, 1-14.
- Hwang, L.T. (1995), 'The Paradoxical Regulation of Fair Trade Law on Vertical Merger: An Economic Analysis' (in Chinese), **3(3)** *Fair Trade Quarterly*, 19-31.
- Juang, C.F. (1997), 'Foreign Competition and the Demarcation of Geographical Market' (in Chinese), **5(1)** *Fair Trade Quarterly*, 1-47.
- Kan, Steven S. (1993), 'Entrepreneurship, Transaction Costs, and Subjectivist Economics', **1(2)** *Journal of Enterprising Culture*, 159-182

- Kan, Steven S. (1996), 'Corporal Punishments and Optimal Incapacitation', **25(1)** *Journal of Legal Studies*, 121-130.
- Kan, Steven S. and Hsiao, Ding-Way (1996), 'Contracts in Tsing Dynasty to Build Irrigation System at Lan-Yang Plain: A Transaction Cost Analysis' (in Chinese), **59** *Journal of Agricultural Economics*, 111-157, National Chung Hsing University.
- Kan, Steven S. and Hwang, Chun-Sin (1991a), 'Hsun-Tzu's Theory of Justice' (in Chinese), in Tai, Hua T. and Cheng, Hsiao-Shih (eds), *Justice and Related Concepts*, Monograph Series 28, Sun Yat-sen Institute for Social Sciences and Philosophy, 93-130. Taipei, Academia Sinica.
- Kan, Steven S. and Hwang, Chun-Sin (1991b), 'Economic Thoughts of Law in Ancient China', unpublished manuscript.
- Kan, Steven S. and Hwang, Chun-Sin (1994), *Principles of Economics-Cooperating for Mutual Prosperity and Progress*, Vol. 2 (in Chinese), published by the authors and distributed by Shin Lu Bookstore, Taipei.
- Kan, Steven S. and Hwang, Chun-Sin (1995), 'The Break and the Link between Confucius' and Mo-Tzu's Public Norms' (in Chinese), in Chien, Sechin Y.S. and Tai, Terence H. (eds), *Philosophy and Public Norms*, Monograph Series 34, Sun Yat-sen Institute for Social Sciences and Philosophy, 135-162. Taipei, Academia Sinica.
- Kan, Steven S. and Hwang, Chun-Sin (1996), 'A Form of Government from the Perspective of Transaction Cost Economics', **7(3)** *Constitutional Political Economy*, 197-220.
- Kan, Steven S. and Hwang, Chun-Sin (1997), 'Check-and-Balance or the Separation of Decision Control and Decision Management Powers' (in Chinese), **25(3)** *Economic Essays*, 375-406. Taipei, Academia Sinica.
- Koo, Hui-Wen (1991), 'Allocation of Legal Costs: American Rule vs. British Rule', **19(2)** *Taiwan Economic Review*, 197-218.
- Koo, Hui-Wen and Png, I.P.L. (1994), 'Private Security: Deterrent or Diversion?', **14** *International Review of Law and Economics*, 87-101.
- Koo, Hui-Wen and Sung, Yusen D. (1993), 'The Public Financing of Private Election Expenditures: An Economic Analysis of the Taiwanese Election and Recall Law' (in Chinese), **21(1)** *Taiwan Economic Review*, 25-44.
- Li, Y.M. and Chen, H.M. (1995), 'An Economic Analysis of Intra-Industry Alliance in Product Designs' (in Chinese), **3(4)** *Fair Trade Quarterly*, 109-125.
- Liu, Ruey-Hua (1994), Translation of Douglass C. North's *Institution, Institutional Change, and Economic Performance*, Taipei, China Times Publishing Company.
- Liu, Ruey-Hua (1995), Translation of Douglass C. North's *Structure and Change in Economic History*, Taipei, China Times Publishing Company.
- Shaw, Daigee (1992), 'Controlling Environmental Externalities: Pigouvian Tax vs. Strict Liability' (in Chinese), **2(1)** *Humanities and Social Sciences*, 35-44.
- Shaw, Daigee (1995), Translation of T.L. Anderson and R. Leal's *Free Market Environmentalism*, Taipei, Chu Liu Book Company.
- Shea, Jia-Dong and Wu, Jy-Wen (1994), 'Tax Evasion, Anti-Monitoring Activities, and the Impacts of Government Policies' (in Chinese), **22(1)** *Academia Economic Papers*, 81-100.
- Su, Yeong-Chin (1991), 'Rethinking of the Principle of Numerus Clausus-in the light of Development of Civil Law and Economic Theory of Property Right' (in Chinese), **19(2)** *Taiwan Economic Review*, 219-257.

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- Tan, Leslie L.T. (1991), 'Informative Advertising with Counterfeits' (in Chinese), **19(2)** *Academia Economic Papers*, 217-231.
- Tang, Yu-Min (1987), Translation of Richard A. Posner's *Economic Analysis of Law*, Taipei, Commercial Press.
- Tseng, Wang-Run (1996), 'Capital Structure and the Regulation of Disclosure', **25(4)** *National Taiwan University Law Journal*, 279-317.
- Yang, Hao-Yen and Chen, Jong-Rong (1996), 'A Bayesian Approach of the Deterrent Effect of Life Sentence' (in Chinese), **24(1)** *Academia Economic Papers*, 115-133.
- Yeh Jiunn-rong (1992), 'Selling Environmental Rights: From the Fifth Cracking Project to the Compensation Fund' (in Chinese), **2(1)** *Humanities and Social Sciences*, 17-34.
- Wu, Ho-Mou and Huang, Peter (1994), 'More Order without More Law: A Theory of Social Norms and Organizational Cultures', **10** *Journal of Law, Economics and Organization*, 390-406.