

University at Buffalo School of Law

Digital Commons @ University at Buffalo School of Law

Contributions to Books

Faculty Scholarship

1-11-2018

The Songs of Other Birds

Anya Bernstein

University at Buffalo School of Law, anyabern@buffalo.edu

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/book_sections



Part of the [Comparative and Foreign Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Anya Bernstein, *The Songs of Other Birds* in *Insiders, Outsiders, Injuries, and Law: Revisiting The Oven Bird's Song* 219 (Mary Nell Trautner, ed., Cambridge University Press 2018)

This material has been published in *Insiders, Outsiders, Injuries, and Law: Revisiting The Oven Bird's Song*, edited by Mary Nell Trautner. This version is free to view and download for personal use only. Not for re-distribution, re-sale or use in derivative works. © Cambridge University Press 2018.



This Book is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Contributions to Books by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

The Songs of Other Birds

ANYA BERNSTEIN

“This stuff about Taipei is very interesting,” David Engel told me when we first met, “but wouldn’t things look roughly the same in Chicago?” We were discussing my work on Taiwanese government administrators’ attitudes toward the laws they administered.¹ These attitudes were, in short, not positive. Administrators were apt to treat law and legal process as an impediment to their work, not a driver of it. When they did invoke the law, they often did so for external, non-Taiwanese audiences. Pulling law on compatriots was liable to be interpreted – by administrators and laypeople alike – as a cover-up for a bald power play.

David phrased his question in a half-joking way, with “Chicago” standing loosely for a government administration that distributed benefits on the basis of political affiliations and loyalties rather than legal entitlements. But he was, of course, posing deeper questions. Wasn’t the most parsimonious explanation of

¹ Anya Bernstein, “The social life of regulation in Taipei City Hall: the role of legality in the administrative bureaucracy,” *Law & Social Inquiry*, 33 (2008), 925–54. I spent roughly nine months working with administrators in the Taipei City Government Bureau of Urban Development, including six months as a full-time volunteer translator in the Bureau’s City Hall office. During this time, I talked with administrators; sat in on their meetings with other government employees, consultants, and members of the public; and accompanied them on inspections, off-site meetings, lunch outings, weekend hikes, dinners, and other activities. I observed hundreds of meetings and less formal interactions, and had hundreds of conversations with administrators from across the Bureau, as well as from other departments. I also recorded roughly thirty hours of open-ended, semi-structured interviews with administrators at every level of the organization, from Bureau head to low-level functionary. Before working in the city government, I spent roughly one year doing ethnography with community activists in the Dali Street neighborhood, one of the oldest, poorest, and most crowded in Taipei. My ethnographic work took place in Chinese (mostly Mandarin, with some Taiwanese). I render Mandarin quotations in hanyu pinyin transliteration (without tones). Where I do not have exact wording, I give the gist of an utterance in English translation only. I use pseudonyms for all speakers.

administrators' distaste for law simply that law would obstruct their ability to wield power? And didn't my findings in Taiwan simply replicate what others had found elsewhere – that many people do not like to invoke legal process? After all, David's own research had found that people purposely avoided recourse to the law in places as different as northern Thailand and middle America.²

The impulse to see similarities or differences across cases is sometimes glossed as a matter of preference: lumping versus splitting. From that perspective, the decision is mostly a question of whether one attends more to what unites or what divides. Here, I want to explore a different dimension to difference and similarity. Drawing on my own work in Taiwan, I want to raise some questions about how we determine what seemingly similar phenomena mean in, and for, their surrounding social contexts. This means thinking explicitly about how we situate what we encounter in our research. It may be that lumping and splitting are not so much different ways of understanding phenomena as of contextualizing them.

When seen at higher levels of abstraction or generality, attitudes toward law among Taipei administrators, American farmers, and Thai migrants can indeed be described as similar. When viewed at a more specific and concrete level, situated within geographically, temporally, and culturally more proximate contexts, these same attitudes can appear quite distinct. Not every bird that mistrusts the law sings the same song. And any song rings in a chorus of other chirps. This suggests, as Carol Greenhouse has written, that the study of law in society is always at least implicitly comparative.³ We compare our object of study with how we imagined it would be, with surrounding objects in the same social field, with separate objects that we know or imagine, and with what we see at other levels of generality. Here, I dive into some local contexts to unwrap the distinct significance of people's attitudes about laws and the governments that supply them, then swim back up to consider what implications this might have for the study of legal consciousness across times and places.

COMPLEXITY, COHERENCE, AND DEMOCRACY'S DISCONTENTS

Systems of governance are highly topicalized in Taiwan. Before even reaching the question of what people think about democracy, one is struck by how

² See, e.g., David M. Engel, "The oven bird's song: insiders, outsiders, and personal injuries in an American community," *Law & Society Review*, 18 (1984), 551–82; David M. Engel, "Globalization and the decline of legal consciousness: torts, ghosts, and karma in Thailand," *Law & Social Inquiry*, 30 (2005), 469–514.

³ Carol Greenhouse, "Courting difference: issues of interpretation and comparison in the study of legal ideologies," *Law & Society Review*, 22 (1988), 687–708.

actively many people are thinking about it. It was not a topic that flared up among political junkies or during elections. In an intensely social environment, people in every class and group I encountered routinely discussed the nature of Taiwan's democracy, the quality of its political culture, and the relationship of its contemporary state to its martial law past.

This did not mean, of course, that people were satisfied with their nation, government, or legal system. On the contrary, the political conversation that suffused social life was characterized by an often gloomy dissatisfaction. Common themes were instability, incoherence, and multiplicity. Many people described Taiwan's problems as rooted in an unmanageable multifariousness that had been exacerbated with the advent of democracy.

One urban planning administrator, for instance, explained to me that, after the end of martial law and the reintroduction of city government elections to Taipei, the city's Bureau of Urban Development had ceased doing large-scale social research on the city it administered.⁴ The main reason, Mr. An said, was that Taiwanese society was just too complicated (*fuzha*). There were too many kinds of people doing too many kinds of things, and one simply couldn't capture it all in a survey. Indeed, the city government itself was complicated. The urban planning department was riven with conflicts between graduates of its two main feeder schools: a Marxist department that emphasized qualitative research and a systems-theoretical one that favored statistical methods. And relations among branches of government had become complicated with the introduction of elected mayors and city councils. The department head now had to please the mayor, the public, the city council, and the experts and scholars incorporated into many decision-making processes – a complicated set of demands that left little time or political capital for comprehensive planning.⁵

In contrast, Mr. An continued, America was “more *danchun* (pure, simple).” In America, he explained, warring factions would be separated, departments had stable duties that endured across administrations, elected representatives would not put pressure on administrators, and even the

⁴ Before democratization, Taipei had elected mayors from 1947 until 1967. In 1967 the central government began appointing mayors after a candidate who did not belong to the ruling party (the KMT or Chinese Nationalist Party) won a second term. See Shelley Rigger, *Politics in Taiwan: Voting for Democracy* (Routledge, 1999).

⁵ As Jeffrey Martin writes with respect to the police, “Taiwanese policing elevates the network-based powers of . . . local elites [such as city councils] over the powers of centralized bureaucracies and the courts, even as it effectively upholds the ultimate authority of a democratically organized state. In other words, it is democratic policing without the rule of law.” Jeffrey T. Martin, “Legitimate force in a particularistic democracy: street police and outlaw legislators in the Republic of China on Taiwan,” *Law & Social Inquiry*, 38 (2013), 615–42, 617.

administrative leadership might stay on from mayor to mayor. In Taipei city hall, a word spoken by one person could mean something different in the mouth of someone from a competing group. In America, on the other hand, whether you read it in the *New York Times* or the *Washington Post*, a word meant the same thing. In Mr. An's America, thus, differences were clearly delineated and compartmentalized, electoral contestation did not lead to political instability, and meaning was stable throughout public discourse. This kind of contrast with an imagined "America," "the West," or "foreign countries (*guowai*)" was not unusual: many of the people with whom I spoke framed their comments about their country with their visions of mine, as a way to illuminate their ideals and disappointments.⁶ The simplicity and stability attributed to America highlighted Mr. An's negative convictions about the complexity and instability of Taiwan.

Fuza, complexity, is a key term of discomfort in Taiwan. An unsolvable situation might be *fuza*, but so might social configurations and demographic arrangements. For instance, many people described the community activists I studied as living in a very *fuza* area of the city. Some people explained their use of this term with reference to the gangsters and prostitutes for which the area is famous. But most explanations had something to do with diversity. "Lower middle classes, middle classes, upper classes, it has them all," one acquaintance said.⁷ Ms. Yuan used a classical idiom meaning "dragons and snakes live together there." In such a place, she explained, everything is all mixed up: Dragons and snakes are the *most* opposite creatures. One person wove both explanations together. The area's well-known sex industry, and the gangsters that go along with it, led to there being many different types of people in the neighborhood – naturally a very *fuza* situation.

As others have shown, the notion of "diversity" can serve ideological purposes beyond mere description. In the United States, it can obscure structural inequalities in circumstance and opportunity with an upbeat insistence on the value of difference.⁸ The valence of multiplicity in Taiwanese political discourse is quite different. A diversity of social types or opinions is often figured as inherently problematic, almost unnatural: *fuza*, an unsolvable situation. This discomfort with multiplicity, which was prevalent both in my fieldsites and among other acquaintances, often had a distinctly historical

⁶ I assume that many such references were made specifically for my benefit, since people knew I came from the United States. However, such contrasts were also common in conversations among administrators, for instance at meetings where I was not a central participant.

⁷ "Zhongdi jieji, zhongceng jieji, gaoceng jieji, dou you."

⁸ Ellen Berrey, *The Enigma of Diversity* (University of Chicago Press, 2015).

implication. It brought the contemporary democratic period into sharp contrast with the long martial law era that preceded it. Martial law, with its well-controlled media and its strict limits on political participation, enforced a stability of meaning and value in political discourse. Its monopoly over the public sphere limited what could be openly asserted to be the public good.

The martial law government implemented this monopoly on legitimate ideology while also supporting a lively system of political competition. Martial law politics divided local factions, which were open to all, from national party politics, which was restricted by ethnicity, biography, and personal relations.⁹ Local-level elections gave people seeking control of resources a way to organize and compete with others. Local factions were further connected to central power brokers, creating a “regime patronage system” – that is, a system in which the regime itself was a patron in a clientelist system.¹⁰ Local elites in turn became patrons at the local level, transferring resources to local clients who lent them political support. This large-scale system kept factions balanced without disturbing centralized party control.¹¹

⁹ Joseph Bosco, “Taiwan factions: guanxi, patronage, and the state in local politics,” *Ethnology*, 31 (1992), 157–84. The KMT (*Guomindang* or Chinese Nationalist Party) took control of Taiwan after World War II, when the Allies ended Japan’s fifty-year colonization of the island (1895–1945). In 1949, the KMT leadership, along with many others, fled to Taiwan, away from the Communist victory in the Chinese civil war. For many years, Taiwan’s national politics was reserved for those who came to island in the 1940s and their descendants, *waishengren* (outside-the-province people, or Mainlanders in English). See Steven E. Phillips, *Between Assimilation and Independence: The Taiwanese Encounter With Nationalist China, 1945–1950* (Stanford University Press, 2003). After a massive, bloody reprisal against a protest of police power, the party state instituted a martial law whose rule would last forty years: George H. Kerr, *Formosa Betrayed* (Houghton Mifflin, 1965). In the late 1970s, the government began to “localize” (*bentuhua*), increasing the number of people descended from those who had come to the island before Japanese colonization in 1895 – the *benshengren* (this-province people) or Taiwanese, who had previously been relegated to local factional politics. This process played a key role in both facilitating democratization and preserving the KMT’s legitimacy: Allen Chun, “Democracy as hegemony, globalization as indigenization, or the ‘culture’ in Taiwanese national politics” in Wei-Chin Lee (ed.), *Taiwan in Perspective* (Brill, 2000), pp. 7–27. Taiwanese make up 84–85.5 percent of the island’s population; Mainlanders 13–14 percent; and indigenous people 1.7–2 percent: Government Information Office, *Taiwan Yearbook 2003* (Government Information Office, Republic of China, 2003); Shuanfan Huang, “A sociolinguistic profile of Taipei” in Robert L. Cheng and Shuanfan Huang (eds.), *The Structure of Modern Taiwanese: A Modern Synthesis (Xiandai Taiwanhua Yanjiu Lunwenji)* (Crane, 1988), pp. 301–31. In my view, the ethnicized distinctions that fueled politics in the twentieth century are waning in importance as more young people grow up in the democratic system.

¹⁰ Nai-teh Wu, *The Politics of a Regime Patronage System: Mobilization and Control Within an Authoritarian Regime*. Unpublished PhD diss. University of Chicago (1987).

¹¹ *Ibid*; Edwin A. Winckler, “Roles linking state and society” in Emily Martin Ahern and Hill Gates (eds.), *The Anthropology of Taiwanese Society* (Stanford University Press, 1981), pp. 50–88;

The language and forms of traditional social values helped naturalize this new political system. Political factions under martial law built on pre-existing ways of cohering social groups: real and fictive kinship, locality, educational background, occupational affiliation, and religious participation.¹² Utilizing a common social valorization of affective links and long-term relations of mutual aid and obligation, factions helped make the personal indistinguishable from the political: “As the entrepreneurs collect money, the politicians collect friends.”¹³ Ideological claims like assertions about the common good were reserved for the ruling KMT, or Chinese Nationalist Party, with its unified front of a tightly organized authoritarian system.¹⁴

External pressures from the international community’s transfer of recognition to the People’s Republic of China in the 1970s, and internal pressures from emergent opposition political groups in the 1980s, supported a vibrant democratization movement. That movement itself utilized the very channels that had sustained local factions under martial law: interpersonally mediated social networks based on pre-existing tropes of affiliation.¹⁵ These personalistic networks sustained groups whose members were connected both by personal relations and by an understanding of themselves as participants in a discourse that exceeds those relations – a political faction, party, or movement. With the democratization movement, politically active participants began insinuating new ideological content into these pre-existing social networks.¹⁶

Many people described the rise of this ideological pluralism with mixed feelings. Democratization opened up channels of political power and allowed people to express their views freely and in their preferred languages.¹⁷ But that

Hung-mao Tien (ed.), *Taiwan’s Electoral Politics and Democratic Transition: Riding the Third Wave* (M. E. Sharpe, 1996).

¹² See Rigger, *Politics in Taiwan*. ¹³ Wu, *Politics of a Regime Patronage System*, 265.

¹⁴ See Bosco, *Taiwan Factions*.

¹⁵ Ibid; Rigger, *Politics in Taiwan*; Susan Greenhalgh, “Networks and their nodes: urban society on Taiwan,” *The China Quarterly*, 99 (1984), 529–52; see also David L. Wank, *Commodifying Communism: Business, Trust, and Politics in a Chinese City* (Cambridge University Press, 1999); Mayfair Mei-hui Yang, *Gifts, Favors, and Banquets: The Art of Social Relationships in China* (Cornell University Press, 1994).

¹⁶ Pictures from the wedding of a founder of the then-opposition Democratic Progressive Party (DPP), for instance, show a veritable Orient Express of the early political underground: A group of people who all just happened to be opposition activists all just happened to gather for this happy occasion, at a time when gathering for other reasons just happened to be prohibited. Martial law strictures prohibited large gatherings of people except for certain ritual events like weddings, so opposition activists seized on the personalistic connections that gave rise to such exceptions. As the founder’s ex-wife told me, “DPP history starts at my wedding.”

¹⁷ Anya Bernstein, “Bureaucratic speech: language choice and democratic identity in the Taipei bureaucracy,” *PoLAR: Political and Legal Anthropology Review*, 40 (2017), 31–34.

freedom also threw the very definition of the public good into question. For many people I talked to, this discursive disarray was the undesirable underside of democracy.

Even beneficiaries of the new cacophony often expressed discomfort with the freedoms that democratization fostered. Mr. Shan was a community activist who had participated for years in protests against the city government. These activities would have landed him in jail during the martial law period. Nonetheless, he told me with disgust that the difference that democratization had made was that now, in the post-martial law era, "it is easier to be a gangster."¹⁸ Another devoted activist, Mother Mei, had also spent years engaging in protests and other activities that were strictly prohibited under martial law. She once summed up a dinner conversation with the comment, "Taiwan is too democratic."¹⁹ After a pause, she burst out, "[People] even cuss out the president!"²⁰

Administrators, meanwhile, generally spoke favorably of the effects of democratization on relations between government employees and the populace under their purview.²¹ But they consistently expressed discomfort with the unstable quality of government practice it brought about. They especially pointed to the destabilizing effects of elections. By making control of the city government unpredictable, elections had made long-term planning impossible. Elections in other cities similarly obstructed regional planning. For the first time, neighboring urban areas could be controlled by different parties, making cooperation politically unpalatable. And the new powers of the elected Taipei City Council impeded the implementation of law and policy. In Taiwan's highly personalistic electoral structure, each councilor was considered somewhat beholden to each constituent. And the City Council controlled the city government's budget. Administrators thus spent much of their time fielding elected representatives' demands to abrogate the rule of law: to protect particular constituents from the enforcement of city policies.

The newly opened stage for ideological assertions of the public good, along with election-induced turmoil in government, contributed to the destabilizing diversity of the post-martial law era. As Mr. Wei, a high-ranking administrator, told me, Taipei could be considered:

¹⁸ "Jieyan gen jieyan de butong? Jieyan hou zuo liumang bijiao hao."

¹⁹ "Taiwan tai minzhu le." Aside from some friends who self-identified as unusual – by sexual activity (e.g., gay men, women who were openly sexually active); profession (e.g., independent filmmakers, actors, writers); and upbringing or experience (e.g., people who had lived long-term in the United States, Australia, or Europe) – members of every group I came into contact with in Taiwan expressed this sentiment to me, often in these exact words.

²⁰ "Dou ma zongtong eil" ²¹ See Bernstein, *Bureaucratic Speech*.

the world's freest city . . . What I mean is, it seems like America is very free but it . . . does still have a dominant culture . . . [In] Taipei . . . if I think I have the ability, then I just do it, so it turns out [that] . . . everybody does his own thing . . . Well this is . . . also one of the origins of Taipei's . . . fun and interesting style. From the perspective of Said's *Orientalism*, of course, this is one of Asia's fascinating aspects, but it's also our predicament. Because this interesting style has been developed by different groups each acting on its own . . . This may be our particular characteristic, but we still feel that . . . this kind of characteristic isn't a good characteristic.²²

Mr. Wei's description of social conduct could have come straight from Adam Smith: In Taipei's free society, each person pursues his or her own interests independently. But the evaluation of the result was quite different. This self-motivated pursuit of interests does not redound, willy-nilly, to the benefit of the whole society. Rather, it gives rise to something more complicated. It creates a city that is "fascinating" and "interesting" to outsiders but which suffers from a "predicament": the lack of the "dominant culture" that characterizes a hypothetical America.

Such lack of cultural coherence is commonly tied to the end of authoritarian rule. For instance, Mr. Ke, an active and enthusiastic administrator, spoke proudly of his ability to negotiate with members of the public, demonstrate his earnestness and rectitude, and forge mutually beneficial compromises.²³ But he also admitted that he sometimes missed the uncomplicated ideological commitments that had pervaded his youth. Under martial law, he told me, "it was all about 'establishing the nation.' Everyone didn't dare talk politics. We just dared to talk about 'establishing the nation.' After martial law, what did we get? We got freedom of speech. But the thing we sacrificed was even more important."²⁴

These might sound like the complaints of power-hungry bureaucrats who wish people would fall in line like they used to. But as I hope I have

²² "Quanshijieshang zui ziyoude chengshi . . . Wode yisi shi kanqilai Meiguo hen ziyou keshi ta . . . you wenhua qiangshide neihanbusen cunzai. Taibei . . . wo renwei woyou zhege nengli, wo jiu zuo, suoyi hui biancheng . . . zijiqiao zijide, ah suoyi . . . zhe . . . yeshi jintian Taibei nage youqude fengmude lai yuan zhiyi . . . Zhege . . . cong Said de Dongfangzhuyi lai jiang dehua dangranshi yige Yazhou de meili suozaide, danshi zhe ye shi women de kunjing. Yinwei zhezong youqude fengmuxing you butong qunti gezi fazhan chansheng de . . . Zhe yexu shi womende tese keshi women haishi juede zhege tese . . . bushi yige haode tese."

²³ On the importance of compromise to government action, see Anya Bernstein, *The Social Life of Regulation*.

²⁴ "Nage shihou dou shi jianguo, dajia bu gan tan zhengzhi, zhi gan tan jianguo. Jieyan ne, women dedaole shenme? Women dedaole yanlun ziyou, keshi women sunshi de dongxi geng zhongyao."

demonstrated, the sentiment was a common refrain among people outside the government, too. A small-scale entrepreneur in his early thirties who took me on a walk around his neighborhood, for instance, spent much of the time bemoaning the sorry state of Taiwanese culture and society. As we passed the fortune-tellers plying their trade outside a famous temple, he remarked that such old-fashioned, superstitious practices were still rampant in Taiwan. In a busy market area, he derided the Taiwanese obsession with fashion and the ephemeral nature of Taiwanese trends. Outside a movie theater, he complained that Taiwanese directors prefer incomprehensibility over relatability. Taiwan's cultural problem, he concluded, is that it *has* no culture.²⁵ Like administrators in the city government, my companion faulted Taiwan for its loss of a unitary, coherent identity – something one could point to and call one's own.²⁶ Many people posed, in their own ways, the disheartened question of the oven bird's song: "what to make of a diminished thing?"²⁷

LAW IS NOT THE ANSWER

As the previous section makes clear, American academics are not the only ones who might see sociolegal analysis as inherently comparative. Many Taiwanese people that I knew used comparisons with the United States as a way to portray what an ideally functional democracy might look like. As their references to simplicity, stability, and dominant culture imply, this ideal included freedom balanced by coherence. Moreover, the strength of American democracy seemed, for many, to inhere not in things like commitments to the rule of law or procedural rights, but in cultural constraints and structural controls that could hold in check a potentially disorderly diversity. Such disorder was

²⁵ This person also brought a comparative approach to our conversation. I proposed another way to sum up the phenomena he described: As a diverse society, Taiwan supports a vibrant ritual tradition along with a cosmopolitan incorporation of foreign aesthetics and a lively arts scene. Yes, he sighed, an American *would* say that. Americans are confident. Taiwanese, he explained, are too down on themselves to ever think that way.

²⁶ To be sure, not everyone wishes Taiwan were more uniform. Some people I knew used the same lamentational style to bemoan Taiwanese society's *lack* of diversity. Notably, however, I only heard this relatively uncommon view of multiplicity expressed by people who described themselves as somewhat unusual in their behaviors, professions, or experiences (see n 19 of this chapter).

²⁷ I refer here, of course, both to the poem by Robert Frost and to David Engel's reference to it in his article "The Oven Bird's Song." Robert Frost, "The Oven Bird" in *The Poetry of Robert Frost*, ed. Edward Connery Lathem (Holt, Rinehart, Winston, 1969 [1916]); Engel, *The Oven Bird's Song*.

then figured as released in Taiwan with the fragmentation of the previously presumable cultural unity enforced under martial law.²⁸

Furthermore, the transition from martial law to democracy left in place many ideas about how the general will is expressed and how the general good is fulfilled. Taiwanese education, for instance, has long emphasized appropriate behavior by model individuals as a motivating force in social development.²⁹ This notion continues to be prevalent in discussions of politics: People in Taiwan talk much more about the power of exemplary individuals than about the benevolence of invisible hands. As Mr. Wei's description of Taipei as an excessively free city suggests, the notion that political equilibrium could be achieved through the combination of otherwise uncoordinated activities by self-interested individuals would have seemed quite strange to most people with whom I spoke. A society in which each person acts in his own interest would result not in the fulfillment of world spirit moving through history, but in chaos.³⁰

²⁸ My aim here is to explain people's understandings of their society, not to evaluate their accuracy. Still, it may be worth mentioning that Taipei was rated one of the safest cities in the world by *The Economist* magazine in 2015. See <http://safecities.economist.com/whitepapers/safe-cities-index-white-paper/>. In other words, perceptions of disorder likely did not refer to things like crime waves or violent unrest in the wake of democratization, but to more complex, nuanced understandings of social structure and cultural values.

²⁹ In his study of Taiwanese elementary schools, done around the time when a number of my informants were in school, Richard Wilson noted that children typically asserted that any group needs a leader to act as a model for its members. Richard W. Wilson, *Learning to Be Chinese: The Political Socialization of Children in Taiwan* (1970). This value can loosely be seen to derive from the Confucian tradition, although of course Confucianism itself has taken many forms over the centuries. For more on how loosely Confucian ideals permeate Taiwanese concepts of legitimate authority, see Martin, *Legitimate Force*.

³⁰ Taiwan's remarkable twentieth-century economic success was similarly rooted in "a system of industrial land transfer and development that was tightly controlled by the state" and largely funded by the United States. Martha Fitzpatrick Bishai, "The development of industrial land in Taiwan: a legal framework for state control," 26 (1991), *Journal of Developing Areas*, 53–64, 62. After giving the KMT about \$2 billion between 1945 and 1949 to fight the Communists, the United States cut off aid, "disgusted with [the KMT's] incompetence and insatiable appetite for funds that simply vanished": Thomas B. Gold, *State and Society in the Taiwan Miracle* (M.E. Sharpe, 1986), p. 53. Then "North Korea's Kim Il-sung entered the story as the [KMT's] *deus ex machina* by invading South Korea," and aid resumed: *ibid.*, 55. Taiwan's mid-century land reform, which enabled rapid industrialization by distributing farmland to small producers and encouraging large landlords to urbanize and invest, proceeded under the auspices of the US Agency for International Development (USAID) and the Sino-American Joint Council on Rural Reconstruction, a US-KMT organization. A. Y. C. Koo, *Land Reform in Taiwan*, United States Agency for International Development: Country Papers, Spring Review (1970); Alice Amsden, "The state and Taiwan's economic development" in Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (eds.), *Bringing the State Back In* (Cambridge University Press, 1985), pp. 78–106. These agencies provided conduits for the river of

One could imagine one way such illegitimate disorder might be tamed: through laws passed by democratically elected representatives. But in my three years of language study, fieldwork, and intensive socializing, no one ever suggested such a possibility. Law was often markedly extraneous to discussions of government practice. For instance, shortly before I started my fieldwork, agents from the Ministry of Justice raided the offices of a popular magazine that was about to publish leaked documents revealing that a former president had bypassed the national security apparatus with secret diplomacy and espionage funds. I asked the questions that seemed obvious to me: On what legal grounds was the magazine shut down? Were the secret funds illegal? The teachers and friends with whom I then spent most of my time found these questions interesting only in an ethnographic sense, as an illustration of how Americans think. They were not relevant to local discussions of the incident, which focused on whether publishing such a story actually posed a threat to national security.

The notion that law might play a central role in legitimating political action or in cohering political positions was similarly dismissed by my fieldwork participants. As one urban planning administrator explained to me, Western laws grew out of Western social norms, leading to a natural connection between legal systems and social realities. In Taiwan, in contrast, laws were imported from elsewhere – Japan, Europe, America. That led to a big “gap” – he used the English word – between law and society. In keeping with this image, administrators routinely talked about Taiwanese law as irrelevant and non-responsive to the society it purported to regulate, and as “hard (*ying*)” or unyielding in ways that amplified that irrelevance.

For instance, one administrator with whom I worked dealt with an area zoned for agricultural use whose landowners had recently built a plethora of consumer-oriented tea-houses. He blamed the laws, not the landowners, for the situation. These leisure establishments, he explained, answered a growing demand from an increasingly rich populace. The law had been too slow to acknowledge this demand; it could not keep up with social changes. Insofar as they saw their job as implementing laws at all, administrators tended to phrase it in terms of *convincing* members of the public to come around to legal strictures. But for the most part, administrators did not describe their work in

US economic aid that flowed into Taiwan with the beginning of the Korean War. They “had de facto veto power [over policy] through their control of the [KMT’s] economic lifeline”: Gold, *State and Society*, 68. They also probably wrote many of the Taiwanese policies on which US aid was contingent: Bruce Cumings, “The origins and development of the northeast Asian political economy: industrial sectors, product cycles and political consequences,” *International Organization*, 38 (1984), 1–40, 25.

these terms in the first place. Rather, they tended to talk about it in terms of negotiation and consensus-building.³¹

Again, this attitude toward law was not limited to government administrators. When the community activist group with which I worked heard that the electric company was to break its pledge not to enlarge a local electric station without residents' agreement, my questions again revealed my own assumptions. What was the legal status of that pledge? Had anybody signed anything? The people I studied waved aside these irrelevant questions. They were busy planning to meet the electric company on the field of public values, looking for ways to emotionally connect to government administrators, demonstrate their own sincerity, and convince others of the righteousness of their cause. They did not doubt the strength of the state, but they did not speak of the state's role in terms of laws.³²

The irrelevance of law to state-society relations emerged even on those unusual occasions when laws were invoked for political projects. The activists I studied, for instance, originally came together to protest a proposed land sale that would create a large retirement home in the already crowded neighborhood. Residents agitated for the land to be converted into a park instead. They soon discovered that Taipei's zoning law required a minimum amount of green space per capita in residential areas – a requirement that had quite obviously not been fulfilled in this crowded neighborhood. Years later, participants still chuckled over this coincidence. Administrators also commented on the creativity of invoking the law. But neither group treated it as decisive or dispositive. Activists never presented the legal stricture as a conclusive basis for a demand – a right the law conferred on them by virtue of taking them as its object. Rather, they used their adherence to other local values to demonstrate that they deserved to benefit from the application of the law.³³

For instance, activists emphasized their earnest investment in their community, their emotional relationship with its history, and their contributions to the nation. This way of using the law to support a larger claim to desert made sense to the government administrators who were the group's primary targets. Mr. An, who would be pivotal to the group's success, shrugged: "They used the wrong law. I could have given them a better law, if they'd asked me." This was a minor objection, though. Choosing the wrong law did not affect either

³¹ See Bernstein, *The Social life of Regulation*, Martin, *Legitimate Force*.

³² For a fuller discussion of this process, see Anya Bernstein, "Parameters of legitimation and the environmental future of a Taipei neighborhood," in Sylvia Washington et al. (eds.), *Echoes from the Poisoned Well: Global Memories of Environmental Injustice* (Routledge, 2006), pp. 311–31.

³³ See *ibid.*

the legitimacy or the efficacy of the group's approach, precisely because the law itself was not very important. Rather, it was by showing their comportment with broader social values – community cohesion, historical attachment, and national contribution – that they justified themselves and got the job done.³⁴ What those residents were really good at, Mr. An explained with evident approval, was moving (*gandong*) others by showing how united (*tuanjie*) they were.

This moving unity came into play when activists wanted to go beyond the law as well. The proposed park land held two structures built during the Japanese colonization of Taiwan (1895–1945), when the area had grown sugar cane.³⁵ The activist group wanted these buildings preserved as a tribute to the area's history and its contribution to Taiwan's culture and economic development. Taiwan's historical preservation law, however, did not protect structures built under Japanese rule. As the KMT violently consolidated control over Taiwan in the late 1940s, it discouraged even discussing – much less valorizing or preserving – relics of the Japanese colonial era.³⁶ This situation reversed itself with democratization, when Japanese colonialism became a hot topic for scholarship and a common object of nostalgia.³⁷ The changing status of colonialism in public discourse has led to movements to preserve Japanese-era structures on grounds other than simple age, such as historical importance, architectural quality, and local significance. The activist group I studied successfully mobilized such arguments, convincing city administrators to extend historical status to the buildings despite the absence of a legal requirement to do so.

The invocation of law was, thus, at best icing on a cake of otherwise appropriate social belonging. At worst, it could signal breakdown: a failure of social engagement; of social norms; of other, more legitimate, values. For instance, some violations of zoning ordinances in Taipei are so widespread as to be considered standard. Owners of top-story apartments routinely build extra living space on the roof even though zoning laws strictly prohibit it.

³⁴ See *ibid.*

³⁵ On the role of sugar in Taiwan's history, see Jack Williams, "Sugar: the sweetener in Taiwan's development" in Ronald G. Knapp (ed.), *China's Island Frontier: Studies in the Historical Geography of Taiwan* (University Press of Hawaii, 1980), pp. 219–51.

³⁶ Phillips, *Between Assimilation and Independence*. Tensions between the local population and the incoming mainlanders flared with the "2-2-8 Incident (*Ererba shijian*)" of February 28, 1947, an island-wide protest or riot (depending on where one stands) that involved KMT troops killing thousands of Taiwanese, and particularly targeting elites educated in Japanese schools. Although the total number killed is not known, there is a "rough consensus among scholars [of] 10,000 killed and 30,000 wounded": *ibid.*, 83.

³⁷ Scholars at the recently founded Institute of Taiwan History in Academia Sinica, Taiwan's leading research institution, for instance, focus largely on the Japanese era.

(Condominium-style housing is the norm throughout urban Taiwan.) Unlicensed street stalls offering goods and services line many streets, generally acknowledged as having a claim on the space without any legal right to it. One of my informants, who ran a car wash by setting up her supplies and waiting for customers to pull into a parking space on an alley corner, once shook her head over a young man who had actually parked his car in the space: "Doesn't he know I'm running a business? Some people are really strange."³⁸ Occasionally, a person would object to such informal use of space with a complaint on the city government's internet complaint board. When that happened, administrators would inform the objects of complaint that someone was unhappy, so that they could figure out who the complainants might be and negotiate with them privately. What an anonymous complaint about a legal violation signaled to government administrators, in other words, was a breakdown in social relationships. A further complaint, however, pushed administrators to address the offending structure, lest the department itself became an object of complaint.³⁹

The proper role for government was thus not to neutrally enforce the law, but to act as a neutral broker for private parties' social relationships. If that did not resolve the situation, administrators would find themselves unpleasantly entangled with a botched social relationship. They would then have little choice but to take recourse to law.⁴⁰ If law occupied the periphery of people's understandings of government, then, it was not so much because government was hopelessly corrupt, unresponsive, or disorganized.⁴¹ It was because, most people agreed, legality was not the proper focal point for government concern in the first place.

WHY MARGINALIZE LAW?

I want to return to the questions I attributed to David Engel at the beginning of this chapter. First, was administrators' distaste for law not best explained by

³⁸ "Ta buzhidao wo zai zuo shengyi ma? Youderen zhen qiguai." The young man, it turned out, had just returned from a year studying in England.

³⁹ Bemstein, *The Social Life of Regulation*, 948.

⁴⁰ Jeffrey Martin similarly explains how Taiwanese police routinely act as social peace brokers and push recalcitrants toward interpersonal negotiation even as they nominally enforce the law. Jeffrey T. Martin, "A reasonable balance of law and sentiment: social order in democratic Taiwan from the policeman's point of view," *Law & Society Review*, 41 (2007), 665–97.

⁴¹ Taipei had its share of corruption, unresponsiveness, and disorganization, but these were not generally described in terms of legality. Rather, they too were discussed in terms of the social norms that were used to characterize other aspects of political life.

the potential restraints it imposed on their power? And second, wasn't a widespread societal distaste for law an instantiation of the same distaste we have found all over the world? The devaluation of legality in Taiwan is certainly reminiscent of the devaluation of litigation in Sander County and in northern Thailand that Engel himself has described.⁴² Yet seen within its sociohistorical context, it highlights important differences as well. These differences, in turn, illuminate the way that understanding the roles of law in society depends on historically informed, culturally embedded, and locally specific research (the sort that Engel himself does).

The irrelevance of law to democratic governance in Taipei, for example, was probably exacerbated by the unpleasant associations law has in philosophy and political theory. Throughout most of Chinese philosophy, law has been presented as "punitive, coercive, and morally debased in comparison with the uplifting spiritual influence of ritual practices and human relationships."⁴³ No etymological link connects legality with legitimacy in the style of Indo-European languages. On the contrary, the only philosophical school to champion law as a source of governance, the Legalists, advocated for a strict, punishing government that kept people in line through "generous rewards and severe punishments" – an explicit challenge to the Confucian emphasis on modeled ethical conduct that did not garner the Legalists a good reputation.⁴⁴ In contemporary times, meanwhile, laws are often seen as foreign transplants best used for performing modernity before foreign audiences rather than for either ordering or expressing the social norms of Taiwan itself.⁴⁵

However, this attitude toward law did not necessarily place private parties at the mercy of government agents' whims, or subject them to dependence on government agents' largesse, as one might expect if the city were run by a political machine that enforced fealty through the distribution of opportunities. On the contrary, one reason why administrators emphasized the importance of consensus may have had to do with how they were themselves constantly involved in ongoing negotiations with various sectors of the public. The apparent impossibility of simply enforcing a law did not hold just for

⁴² See Engel, *The Oven Bird's Song*, Engel, *Globalization*.

⁴³ Jane Kaufman Winn, "Relational practices and the marginalization of law: informal financial practices of small businesses in Taiwan," *Law & Society Review*, 28 (1994), 193–232, 200.

⁴⁴ Wing-tsit Chan (ed. and trans.), *A Sourcebook on Chinese Philosophy* (Princeton University Press, 1963), p. 251.

⁴⁵ Winn writes that her interviewees "routinely presumed that the invocation of law involved suppression and punishment and often dismissed the idea that law could empower participants in realizing their objectives": Winn, *Relational Practices*, p. 201. See also Bernstein, *The Social Life of Regulation*.

community activists whose demands found support in a zoning ordinance. Government administrators, too, often operated by trying to convince the people under their purview that accommodating a law or policy was a good thing for them to do.⁴⁶ If law is somewhat meaningless in a number of places, then, the meaning of that meaninglessness can still be different.

The process of convincing that administrators discussed, moreover, was typically not bilateral but multinodal. It did not starkly oppose a unified body of administrators to a unified contingent of the public, but often involved multiple sets of each. A typical meeting about the neighborhood park discussed in the previous section, for instance, involved representatives from the community activist group; the electric company; the newspaper headquartered in the neighborhood, which had pledged some funding; the Taiwan Sugar Corporation, the formerly party state-owned enterprise whose status had become ambiguous with the disaggregation of party and state, and which owned the land at issue; the borough head, a neighborhood-level elected office independent of the city government bureaucracy; and several city government departments, each with its own policy orientations, personnel, and interest in the land. These groups were aligned and divergent in ways that were neither all-or-nothing nor completely predictable. Each was also deeply integrated into multiple social spheres and institutions. And each had different amounts of, and different kinds of, power.⁴⁷

This multiplicity of personnel, positions, and powers meant that the inevitably long-term process of building consensus required flexibility and compromise on the part of all participants – both the subjects and the objects of government action. I do not mean to suggest that nobody lost out in the negotiations that characterized so much of the department's work. But there were a number of routes that could lead to political efficacy, and no one position that trumped all others. That meant that who would lose in any given instance was not necessarily predictable on the basis of easily discernable characteristics such as employment by government or control over economic resources. Government bureaucrats, in other words, were not in a strong position to simply impose whims or offer largesse; they too were negotiating parties, along with everyone else. If law was absent as an organizing force in political action in Taipei, then, it was not because some other single organizing force – such as party machinery – had muscled it out and stood in its stead. Rather, a plurality of organizing forces provided different people with different potential ways of getting things done.

⁴⁶ Bernstein, *The Social Life of Regulation*. ⁴⁷ *Ibid.*

Moreover, disinterest in the law was a widely shared attitude. It was common to government employees, activists who made demands of the government, and wide swaths of the public at large. To be sure, the law cast a shadow in which people negotiated. But it cast that shadow from the periphery of the social. Where recourse to the law was efficacious, it usually indicated a breakdown in social functioning and a breach of social norms. So when bureaucrats avoided, ignored, or maligned the law, they did not violate local values; they enacted them.

Finally, and crucially: Among the people I met, rejecting legal process did not imply that people should accept injustices or refrain from making demands of others. On the contrary. The activists with whom I worked knew that a favorable zoning ordinance would not suffice to mandate the creation of a park; they successfully pressed for the park using more acceptable strategies. They knew that historical preservation law did not extend to the neighborhood's Japanese-era buildings; they successfully demanded preservation through other means. Administrators similarly did not connect the weakness of law to a diminution of demands from the public. While administrators did not always enjoy negotiating with activists who made demands or landowners who resisted government policy, neither did they suggest that such actions were illegitimate.⁴⁸

Forgoing recourse to the law, then, did not mean "lumping." Nor did people think it should. Engel found that his Thai participants cited religious convictions, grounded in Thai Buddhism, as a reason to refrain from making demands on others.⁴⁹ Buddhism is an important part of social life in Taiwan,⁵⁰ but the people with whom I spoke never invoked religion to suggest that someone should not be recompensed for an injury or should refrain from making a demand. In Sander County, Engel found that "insiders" cited social norms of righteous self-sufficiency to censure those who used law to seek redress for their injuries.⁵¹ Self-sufficiency was not a strong value among the people I knew in Taiwan, who were much more likely to figure a righteous

⁴⁸ Moreover, when law did force the government's hand, it was likely to be at the urging of one private party who considered himself injured by another, as with the internet complaint system for zoning violations.

⁴⁹ Engel, *supra* note 2. David M. Engel, "Globalization and the decline of legal consciousness: torts, ghosts, and karma in Thailand," *Law & Social Inquiry*, 30 (2005), 469-514.

⁵⁰ Robert P. Weller, *Alternate Civilities: Democracy and Culture in China and Taiwan* (Westview Press, 1999). Taiwan is home to a syncretic mix of religious traditions, but Buddhism is sufficiently well integrated into everyday life that just about every neighborhood has at least one restaurant catering to Buddhist-style vegetarians, who refrain from eating animal flesh as well as garlic and ginger.

⁵¹ Engel, *supra* note 2. *Oven Bird's Song*.

person as deeply embedded in ongoing relations of mutual aid and mutual obligation. Although social norms played a key part in people's distaste for law, they did not militate complacency. In fact, they often facilitated the opposite, as activists' deep connections to community, locality, and nation served to justify their demands.

Like those whom Engel studied in Sander County and Thailand, the people in my study could be both suspicious and dismissive of law. But the flavor of their distaste was different, specific to the interacting strands of their historical background, their social values, and their political experiences. Just as importantly, the effects of that distaste differed too. Engel's Sander County residents disapproved of those who made demands of others – demands that would have been legitimate within the legal system but were not legitimated by local values. In my research sites, in contrast, local social values provided more useful avenues for making demands of others than did law.

What does this suggest for the study of law in society? A range of scholarship has amply demonstrated that people everywhere have a complicated, often unhappy, relation to law. But it also suggests that, as a sociolegal Tolstoy might tell us, each unhappy relation to law is unhappy in its own way. It emerges from particular histories of social, political, and normative organization. And it fits into particular constellations of practice – that is, ways of getting things done.

Part of evaluating legal consciousness in any particular place involves evaluating broader social values and norms. But it also involves considering the other ways people have of doing things they might sometimes do through law, such as resolving disputes, pressing demands, and legitimating political claims. In a way, this recognition diminishes the centrality of law to a socio-legal study. Law turns out to be just one of numerous methods available for getting things done: one song weaving in and out of other songs, sung by other birds.