

THE LEGAL CULTURE AND SYSTEM OF TAIWAN

BY
CHANG-FA LO

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Preface

I am delighted to have the book published. The book is actually the teaching materials that I use at the College of Law of National Taiwan University for the course of Introduction to Taiwanese Legal System. There are always foreign students coming to Taiwan to study law. They intend to know the law of Taiwan from broader perspective in a very quick manner so that they can focus on more specific areas or subjects. I have been writing the materials for some time and the students consider the information very useful. So I decided to publish it as a book to benefit more people.

I trust that readers will find the legal system of Taiwan being unique from many perspectives. There is really a mixture of Chinese and Taiwanese traditions and western legal values. When introducing the western legal system into the society of Taiwan, there were always modifications and adjustments. The modifications and adjustments are to reflect the local perceptions of law and the local values. These adjustments might be positive for the purpose of making the law-transplantation more smoothly. However, there could be negative implications arising from the modifications. In addition to introducing western systems, there are also very important locally developed systems which have remarkable achievements. The book tries to identify these and makes its observations so as to allow readers to make their own judgments.

I would like to thank my good friend Thomas Yeh for helping me to edit the book. Those participants of my course on Taiwanese legal system in the past years had also helped in improving the contents of the book.

Since this is only an introduction of Taiwanese legal system, the explanation is rather general and is not designed to give advice on specific legal issues or problems in a comprehensive manner. But I still hope to use this book as a means to interact with colleagues and friends from different countries. Therefore feedbacks from the readers will be highly appreciated.

Chang-fa Lo
January 2006

About the Author

Professor Chang-fa Lo was a practicing lawyer in Taiwan. He was awarded a Doctor of Juridical Science (SJD) degree from Harvard University Law School in 1989 and began teaching at the College of Law of National Taiwan University from 1990. His focus researches include international trade and economic law (especially WTO), competition law, government procurement law and international health law. Professor Lo also teaches introduction to the legal system of Taiwan. He has participated actively in academic conferences and activities on trade and competition issues and published several papers.

In addition to this book, he is also the author of the following books:

- Bill of Lading and Private International Law (in Chinese);
- Reciprocity Principle in the International Regulation of Economic Relations (in English);
- Import and Other Trade Relief under United States Trade Law: International Economic and Trade Law Studies I (in Chinese);
- Legal Problems of Trade Relations: International Economic and Trade Law Studies II (in Chinese);
- Legal Interaction between Trade and Competition Policy: International Economic and Trade Law Studies III (in Chinese);
- GATT/WTO and Taiwan's Foreign Trade: International Economic and Trade Law Studies IV (in Chinese);
- New Legal Order Under the WTO: International Economic and Trade Law Studies V (in Chinese);
- New Agenda of WTO Rules and Taiwan's Relations with Hong Kong: International Economic and Trade Law Studies VI (in Chinese);
- Government Procurement Law and Government Procurement Agreement: International Economic and Trade Law Studies VII (in Chinese).

Professor Lo was the dean of National Taiwan University College of Law between October 2003 and July 2006. He established the 'Centre for WTO and International Health Law and Policy' at the College of Law and is the director of the Centre. He is a Member to the Bid Challenge Review Board of Government Procurement under Public Construction Commission. He was appointed as a National Chair Professor, an academic grant with the highest honor in Taiwan, from August 2001 to July 2004 by the Ministry of Education. He was the Convener of the Discipline of Law of National Science Council between January 2004 and December 2006. He was a commissioner of the Fair Trade Commission, a competition authority in Taiwan; and a commissioner of the International Trade Commission, an authority in charge of safeguard and anti-dumping measures. He was also a legal advisor to the Ministry of Economic Affairs for Taiwan's accession to the WTO. He was appointed as a panelist by WTO Director General for a WTO dispute between EC and Brazil in 2006. He was a visiting professor at Tokyo University in June 2005 and in June 2006.

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Chapter I

A Brief Legal History and Branches of Powers of Government: Transplantation and Creation

I. A BRIEF HISTORY OF THE LEGAL FRAMEWORK OF TAIWAN

Taiwan is located on the eastern edge of the Asian Continent on the western rim of the Pacific Ocean and is close to the south-eastern part of the Chinese Mainland. It has a population of 23 million people spread throughout 76 islands, with a total area of approximately 36 thousand square kilometres. The main island straddles the Tropic of Cancer, and is shaped like a yam or sweet potato, a favourite food of many Taiwanese. The country's geographic location contributed partly to the evolution of its history, including the history of its legal system.

The legal system of Taiwan and the practice thereof was extensively exposed to external influences. Therefore, it is relatively simple to trace the sources of the legal framework and provisions in many fields of law. However, it also has unique characteristics based on tradition, experience and practice.

Prior to the Han people populated Taiwan, there had long been Aborigines living on the island. Thus, the system was dominated by Aboriginal rules until Japanese and Mainland Chinese influences were brought to Taiwan. The aboriginal norms featured a number of characteristics: firstly, a breach of rules could result in more than one punishment; second, the notion of 'paying off a debt of blood' as found in traditional Chinese society was not evident in the aboriginal form; and third, people were not as critical toward traditional custom and rules, rather they tended to accept these.

Taiwan's history begins during an age of more concrete and reliable record-keeping four hundred years ago. In the sixteenth century when Portuguese took over Macau and sailed through the Taiwan Strait, they saw Taiwan and named it 'Formosa', Portuguese for beautiful island. In its early history,