

Taiwan's top minds need to speak out on law reforms to help achieve the best democratic solutions, writes Jerome A. Cohen

Silence of the lambs

Anyone who cares about law and government has to be impressed by visiting Taiwan. Its democratically elected president and legislature, spurred by the interpretations of its independent Constitutional Court, have just ended the power of the police to imprison people without affording them the full protections of the newly revised judicial process.

They have also incorporated the standards of the two major international human rights covenants into Taiwan's domestic law. The government – in open court – is vigorously prosecuting the reportedly massive corruption of the previous administration.

The long moribund Control Yuan, whose function is to ferret out official misconduct, has come to life, and Taiwan's lawyers' associations and civic groups continue to press for further improvements in criminal justice. The island's free and

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hyperactive media, essential to the development of the rule of law, enjoy a field day reporting all this.

Yet, surprisingly, a recent intense week in Taipei, spent mostly with legal scholars, left me a bit depressed. As usual in a healthy society, I heard many stimulating critiques of the current situation. Some friends claimed: that ex-president Chen Shui-bian, now a criminal defendant, is being unfairly confined to a miserable detention cell for many months, while others under investigation and indictment for corruption remain free; that the Kuomintang administration of President Ma Ying-jeou is zealously bringing corruption charges against politicians of the Democratic Progressive Party while ignoring the many instances of similar misconduct by KMT officials; that the judge who was ultimately put in charge of the trial of Chen and his family has repeatedly ruled arbitrarily against them; that the legislature failed to enact necessary criminal justice reforms; and so on.

These allegations are troubling, of

course. Yet, when I asked my academic friends why more of them – there are a few distinguished exceptions – did not speak out, publish essays and document their concerns, all too often I heard: "What good would it do? We can't change anything. They won't listen. Besides, we don't want to be controversial. People will accuse us of 'being too Green' or sympathising with corruption." Some seem to be too busy with important research, consulting work or family responsibilities. A few hinted at hopes for government appointments that might be thwarted by controversy.

Such sentiments are understandable, especially in a busy, successful but bitterly divided political environment in which mutual trust and respect are in short supply. Yet Taiwan's evolving democracy confronts multiple challenges and needs the benefit of all the expertise and wisdom that is available.

It will be difficult to achieve optimum solutions to many major law reform issues without the informed, objective contributions of the island's best minds. If many of them hold back, for whatever reason, if they fail to take advantage of their hard-earned freedoms to speak out, they put their society's precious accomplishments at risk.

If Taiwan's law professors, legal scholars, social scientists and others with unique qualifications to promote public understanding keep silent, they actually exercise fewer freedoms than their counterparts on the repressive mainland, some of whom risk their physical safety, their careers and their family's well-being by "speaking truth to power".

As I listened to Taiwan law professors explain their aversion to the public arena, I thought of mainland friends who are paying dearly for having voiced opposition to dictatorial rule. Kidnappings, beatings, imprisonment, disbarment, loss of jobs, exile and harassment of their spouse and children plague activist academics, as well as lawyers. Yet some persist. Should Taiwan's legal scholars sit on their hands and seal their mouths? What price private pursuits?

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