

A Visit to Academia Sinica

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In 2016 I was deeply honoured to receive an invitation from Academia Sinica to deliver the ‘Maestro’ lectures. I confess that I did not know much at all about Taiwan at that time, other than the fact that it is a bastion of human rights and democracy and a standard example in international law of a state which, while highly successful in providing for its population, is not recognized as a state because of the long-standing dispute with China. I also knew that a landmark in my Toronto neighbourhood, a statue of Dr. Sun Yat-Sen which stands at the top of a hill in a park close to my home, was somehow bound up with the vexed history of Taiwan and I had been intrigued since I moved into the neighbourhood some 26 years before that no matter what time I ran past the statue there would be a group of elderly Chinese Canadians engaged in a serious session of Tai Chi around the statue. (See <https://mcfcrandall.blog/tag/dr-sun-yat-sen/>.)

I knew even less about Academia Sinica, only that it was part of the system of higher education which gives Taiwan the fine academic reputation it has. What I knew, however, combined with the honour of having received the invitation, was more than enough to make me accept immediately and I then began discussing with Dr. Cheng-Yi Huang, who had issued the invitation, the format and content of my lectures.

A second confession is that I was a little concerned about what lectures I

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<http://publication.iias.sinica.edu.tw/51917012.pdf> (Chinese version).



could give. I received my first legal education in apartheid South Africa and became fascinated then with the problem of understanding the operation of the rule of law under stress. What resource did law itself offer to resist legalized oppression? This question has occupied the whole of my academic career, taking me from work on law during the apartheid era, to a study of the debates among legal theorists in Germany about the Weimar Constitution, to a study of the resources offered by the common law to respond to the flurry of emergency legislation in western democratic countries that followed the attacks on the USA in 2001.

At the time the invitation came I was working on a range of problems that arose out of these various projects, though at a very high level of abstraction; and I had in place a rough draft of a manuscript, which, as it happens, I have just completed and which will be published by Cambridge in 2022 as *THE LONG ARC OF LEGALITY: HOBBS, KELSEN, HART*. My impulse was to talk about my work in progress. But my concern was that it is hard to find an audience interested in these topics, especially when discussed at a high level of abstraction.

I was, however, immediately comforted by a look at the website of the legal studies department of Academia Sinica. Not only is it titled 'Institutum Iurisprudentiae', but also Academia Sinica is a research institution much like All Souls College, Oxford, where I am currently a visiting fellow and, above all, many of the legal scholars were both interested in legal theory, even in the figure I was preoccupied with at the time, Hans Kelsen.

In discussion with Dr. Huang, I decided on three events: a general lecture at the Institutum Iurisprudentiae on 'The Constitution of Legal Authority', which would set out the main themes of my work in progress; a general lecture on 'The Rule of Law Under Stress' at the National Taiwan University, which would deal with the legal significance of the Trump presidency; and a paper '*Thomas Hobbes and the Rule-by-Law Tradition*', to be presented at a workshop at Institutum Iurisprudentiae together with papers by scholars from

the Institute on topics in legal and constitutional theory. I was also provided with a generous schedule of social events as well as visits to important cultural sites. It was thus with great excitement that in November 2017 I got ready for my flight to Taipei, which prompts my third and last confession.

The evening before my flight, which left in the early hours of the next morning, I was checking my flight details in order to decide on what time to order a taxi, when I realized that my flight had in fact left some twenty hours before and that David Chen, Dr. Huang's assistant, was about to arrive at the airport in Taipei to take me to my hotel. I frantically emailed my apologies to both Dr. Huang and David Chen and managed to rebook my flight for 48 hours later. I arrived at the airport at the right time, only to find that because my passport expired in just under six months, I could not enter Taipei, so had to retreat home and send yet more apologetic emails. I finally made it to Taipei with a new passport a month or so later. I mention this self-inflicted debacle only because my hosts in Taipei never showed any irritation despite the great inconvenience I had caused. In fact, they apologized for the inconvenience to me! Never before or since have I been treated with such generosity.

From my perusal of the webpages of the faculty at Institutum Iurisprudentiae I had high expectations of what I would learn on my visit. But these were more than surpassed both in the formal discussions in the question and answer periods that followed both the lectures and the presentations at the workshop, as well as in the more informal discussions at lunches and dinners. From the informal discussions, I remember most clearly my delight at learning that Dr. Huang has a profound knowledge of South African administrative law, which he had compared in his doctoral work to the Taiwanese administrative regime, and in finding out about Dr. Hung-Ju Chen's work on civil disobedience, a topic of considerable interest to anyone who studies the Taiwanese past or apartheid South Africa.

My country's troubled past and the desire to address its wrongs partly through law gave me, I thought, a sound basis for discussion of profound

problems of legal theory with my hosts, informed as they were in their juridical reflections by the problems, past and present, of their own country. When it comes to the past, I also have a very vivid recollection of my visit with Dr. Huang to the National Human Rights Museum, previously the location of the security agencies' detention center and military courts, with our guide a man who had been imprisoned there.

I took from these and other encounters the following lesson. For many students who become interested in graduate work in legal or constitutional theory, what intrigues them is something in their own country's past or present that reveals the intriguing relationship between legal authority, moral obligation, and state power. My advice to such students is to think seriously of following the example which Dr. Chen and I unwittingly set. That is, anchor your theoretical inquiry in some real life, practical issues that seem ripe for exploration and let that guide you along the often arduous path to academic success.

I remain immensely grateful to Dr. Huang, the then Dean, Dr. Tzu-Yi Lin, and everyone else who participated in making my visit so rewarding.