

The Institutum Iurisprudentiae: Multifaceted Perspectives on Law in China, Law and Cross-Strait Issues, and China and International Law

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The Institutum Iurisprudentiae has much to celebrate as it reaches the tenth anniversary of its founding. Although it has existed as a full-fledged institute for only a decade, its work brings together two legal traditions with deep roots. The Latin chosen for its “English”-language name, its location in the equally Latin-named Academia Sinica, and the scales of justice on its original logo all evoke the Western legal tradition that emerged from classical Rome and that has influenced law throughout the world, including in Mainland China and Taiwan. The Chinese legal tradition with ancient roots is represented as well, in the 金文-style rendering of the traditional character for “law” — 灋 — and the related image of the 廌 or 獬豸 — the mythical single-horned goat-like creature that distinguishes right from wrong. Both graced the lobby of the Institute in its early days, and a statue of the 獬豸 occupies a prominent

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place at my law school in the West, commemorating the first course on Chinese law taught at an American law school.¹

This prowess of the Institute in bringing together East and West is reflected in the training of its scholars, who have been educated in law and related subjects at leading universities in Taiwan and in North America and Europe. It is manifest in the richly comparative legal scholarship that many of the Institute's scholars have produced — whether explicitly addressing multiple jurisdictions or eras, or focusing on Taiwan or a single foreign jurisdiction but enriched by an implicit comparative perspective. These outputs have done much to achieve one of the Institute's foundational goals: expanding the breadth and depth of learning in the law in Taiwan.

The Institute's contributions are so vast that a single, short essay cannot begin to address them, and so varied that much of the research inevitably lies beyond the expertise of any one commentator. I will limit my focus here to work that advances our understanding of law in China and legal issues that matter for Taiwan's place in the world (something that is, of course, significantly affected by China and that can also influence China). Even this seemingly limited scope encompasses a great deal of what the Institute's diverse scholarship and programming cover. Such is the richness of what the Institute produces. Work in these areas includes some that falls within one of the Institute's original six core research areas, such as "legal development in Mainland China, Hong Kong and Macao," but it also extends far into other core fields, including ones that encompass human rights, several public law topics, and comparative legal-institutional studies. In some respects, the relevant studies even touch upon some of the Institute's core research areas that might seem at most marginally relevant to these issues, such as Taiwan's

¹ See DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA: EXEMPLIFIED BY 190 CH'ING DYNASTY CASES WITH HISTORICAL, SOCIAL AND JUDICIAL COMMENTARIES* (1973); W. Allyn Rickett, *Clarence Morris and His Contribution to the Study of Chinese Law*, 121 U. PA. L. REV. 427, 427-29 (1973).

constitutional structure, or law, science, and technology. Much of the work that falls within this scope also has furthered another of the Institute's founding goals: closing the gap between academic research and solving practical problems.

Institute scholars' studies of the law of the People's Republic of China have covered a wide range of important areas, from business law to public law. Some of this work has contributed to important international scholarly debates about how to understand and evaluate China's distinctive — but not entirely unique — model for enterprise organization and finance, corporate governance, and property rights.² Other research has offered noteworthy critical assessments of China's approach to law and human rights and the challenges China's approach poses to international norms.³ Institute scholars also have examined the intersection of law and politics in the disconcerting context of increasingly authoritarian post-reversion Hong Kong.⁴ The Institute also has done impressively well in gathering and stimulating work on law in the Mainland, Hong Kong, Macau — and, of course, Taiwan as well. Among the larger-scale examples are the conference-based collections the Institute produced in its early years under the title 兩岸四地法律發展.⁵ Many other

² See, for example, the work of Yun-chien Chang.

³ See, for example, Chien-Chih Lin, *Constitutions and Courts in Chinese Authoritarian Regimes: China and Pre-Democratic Taiwan in Comparison*, 14 INT'L J. CONST. L. 351, 351-77 (2016); Shwu-Fann Liou, *Comment*, in 2006 CROSS-STRAIT, FOUR-REGION: LAW DEVELOPMENTS IN TAIWAN, CHINA, HONG KONG, AND MACAU 389, 389-96 (Dennis T. C. Tang & Peng-Hsiang Wang eds., 2007); Yu-Jie Chen, *China's Challenge to the International Human Rights Regime*, 51 N.Y.U. J. INT'L L. & POL. 1179, 1179-1222 (2019).

⁴ See, for example, Jimmy Chia-Shin Hsu & Anne S.Y. Cheung, *The Ultimate Test of Fidelity: Judicial Responses to Civil Disobedience in Hong Kong and Taiwan*, in DEMOCRACY AND RULE OF LAW IN CHINA'S SHADOW 33, 33-63 (Brian Christopher Jones, ed., 2021); Chien-Chih Lin, *Legal Mobilization Under Authoritarianism: The Case of Post-Colonial Hong Kong*, 16(1) TAIWAN DEMOCRACY Q. 163, 163-70 (2019) (book review); Yu-Jie Chen & Jerome A. Cohen, *Freedom from Arbitrary Detention in Asia: Lessons from China, Taiwan, and Hong Kong*, in OXFORD HANDBOOK OF CONSTITUTIONAL LAW IN ASIA, (David Law, Holning Lau & Alex Schwartz, eds.) (forthcoming).

⁵ INSTITUTUM IURISPRUDENTIAE ACADEMIA SINICA, <https://www.iias.sinica.edu.tw/en/>

instances of fine scholarship on legal developments in these areas can be found in the pages of the *Academia Sinica Law Journal*, which has published nearly thirty issues in less than fifteen years.⁶

Much of the Institute's work has engaged with often politically contentious and legally complex questions related to cross-Strait relations. In some cases, the focus has been specifically on legal issues between Taiwan and the Mainland.⁷ More often, Institute scholars' work has spoken more obliquely but very powerfully to Taiwan's relationship with the Mainland through the study of Taiwan's own example and its contrasts with the PRC's. The extensive research outputs by Institute scholars on Taiwan's legal ideals and experience with human rights, constitutionalism, government accountability under law, and much more, have addressed — sometimes explicitly and often implicitly — salient differences across the Strait. These include questions of fundamental “values” and differences in “system type” that make the cross-Strait issue so fraught and intractable, that vividly demonstrate how a democratic, rights-protecting, rule-of-law order is possible in a broadly Chinese cultural context, and that are a vital asset in Taiwan's quest for international status and the autonomy and security such status helps to provide.⁸

publication/11 (last visited Aug. 11, 2021).

⁶ INSTITUTUM IURISPRUDENTIAE ACADEMIA SINICA, https://www.ias.sinica.edu.tw/en/publication_list/9 (last visited Aug. 11, 2021).

⁷ See, for example Yu-Jie Chen & Jerome A. Cohen, *China-Taiwan Relations Re-examined: The “1992 Consensus” and Cross-Strait Agreements*, 14 U. PA. ASIAN L. REV. 1, 1-40 (2019); Chien-Liang Lee, *Human Dignity, Freedom of Adoption, and System Protection in Cross-Strait Relations — Interpretation No. 712*, 250 TAIWAN L.J. 29, 29-52 (2014); See also Fort Fu-Te Liao, *After Ratifying the ICCPR — Implementation of Right to Self-Determination, Right of Privacy, and Right of Family* (2012). commissioned by the National Science Council.

⁸ Among the Institute scholars who have made significant contributions in this area are Tzu-Yi Lin, Dennis Te-Chung Tang, Yen-Tu Su, Jimmy Chia-Shin Hsu, Tzung-Mou Wu, Chien-Chih Lin, Chien-Liang Lee, Cheng-Yi Huang, Peng-Hsiang Wang, Tay-Sheng Wang, Ching-Yi Liu, and Chwen-Wen Chen. On why these issues matter for Taiwan's international status and, in turn, autonomy and security, see Jacques deLisle, “*All the*

Much of this scholarship that helps to present Taiwan as an implied legal contrast to the PRC also speaks to another set of key questions for our time — ones also engaged by Institute scholars whose research focuses on international law (primarily human rights),⁹ or on the regulation of some of today's most pressing transnational legal issues, including the environment, cyberspace, and public health.¹⁰ Such work, of course, makes contributions on multiple fronts, many beyond the scope of the discussion here. But it also speaks to the vital question of how much China can be influenced by, and will influence, international law and law-related norms that matter for Taiwan, for China, and for the wider world.¹¹ How much will China destabilize and reshape international human rights norms? How extensively can the emerging international and transnational law of the internet, artificial intelligence, and climate change be shaped by — or shape — China and its domestic legal order? How will the international legal regime for global public health and the domestic regulatory regimes of China and other affected countries adapt in response to the terrifying weaknesses shown by the COVID-19 pandemic? On these issues, we all can learn much from the voluminous and wide-ranging research by the Institute's scholars or presented at the Institute's events and

World's a Stage": Taiwan's Human Rights Performance and Playing to International Norms, in *TAIWAN AND INTERNATIONAL HUMAN RIGHTS: A STORY OF TRANSFORMATION* 173, 173-206 (Jerome A. Cohen, William P. Alford & Chang-Fa Lo eds., 2019); Jacques deLisle, *Taiwan's Quest for International Space in the Tsai Era: Adapting Old Strategies to New Circumstances*, in *TAIWAN IN THE ERA OF TSAI ING-WEN: CHANGES AND CHALLENGES* 239, 239-83 (June Teufel Dreyer & Jacques deLisle, eds., 2021).

⁹ See, for example, works by Jimmy Chia-Shin Hsu, Fort Fu-Te Liao, Yu-Jie Chen, and Chien-Liang Lee.

¹⁰ Institute scholars doing valuable work in these areas include Dennis Te-Chung Tang, Tzu-Yi Lin, Shun-Ling Chen, Ching-Yi Liu, Wen-Tsong Chiou, and Chuan-Feng Wu.

¹¹ See generally, Jacques deLisle, *The Chinese Model of Law, China's Agenda in International Law, and Implications for Democracy in Asia and Beyond*, in *DEMOCRATIZATION, NATIONAL IDENTITY, AND FOREIGN POLICY IN ASIA* 38, 38-59 (Gilbert Rozman ed., 2021); Jacques deLisle & Shen Kui, *Lessons from China's Response to COVID-19: Shortcomings, Successes, and Prospects for Reform in the Chinese Regulatory State*, 16 *U. PA. ASIAN L. REV.* 66, 66-149 (2020).

conferences and in its publications.

I have left out much that deserves recognition in the Institute's work, and have given none of the Institute's scholars their due while omitting some entirely. That is a regrettable but inevitable feature of any brief overview of prodigious accomplishments, and a product of my inadvertence and limited familiarity with some aspects of the Institute's undertakings.

The foregoing also fails to capture one of the Institute's greatest strengths and scholarly contributions. The Institute is a remarkable locus for intellectual exchange. To walk through the elegant lobby and into offices and conference rooms of the Institutum Iurisprudentiae is to join a discussion of important and often timely ideas with insightful and erudite colleagues who are eager to engage. To return to the theme of the Institute's fruitful melding of Chinese and Western traditions, the Institute echoes the Ἀκαδημία — Plato's Academy — and the 東林書院 — the Donglin Academy.¹² Those two earlier academies — one in the birthplace of Western democracy and critical thought, and the other a source of what, to today's ears, sounds like political engagement by reformist intellectuals challenging an inequitable order — were seminal to traditions that inform the modern-day work of the Institutum Iurisprudentiae at the Academia Sinica. During its young life, the Institute has been impressively entwined with, and made academic and practical contributions to, Taiwan's remarkable development of a liberal-democratic, constitutional rule of law — a point nicely underscored by the Institute's early proponents and recent leaders, from Herbert H.P. Ma, to Dennis Te-Chung Tang, and Tzu-Yi Lin, serving as eminent Grand Justices of Taiwan's Constitutional Court. Like so many friends of the Institute, I look forward to the day — hopefully soon — when I can return and resume in person the collegial conversation with the Institute's scholars.

¹² The Institute also sees itself as party of the broad Chinese “academies” tradition. When the Institute opened, the 院規 of 白鹿洞書院 — founded two dynasties earlier than the 東林書院 hung in the Institute's entrance.

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