

Chapter 4

Transitional Environmentalism: Democratic Institutions, Courts, and Civil Society in Taiwan

Jiunn-rong Yeh

Introduction

Taiwan's post-World War II development path provides one of the clearest development models in which political democratization, economic development, and environmental protection have been so closely related that they have reinforced one another (Yeh, 1996). Taiwan demonstrates that economic and political systems are both the causes of and the solutions for environmental problems. In the context of transition, timely political and economic reforms must be coupled with environmental consciousness to provide the foundation necessary for long-term sustainability.

Taiwan's unique post-colonial position and the resulting supremacy of the political sphere had a major impact on the country's development path. Instrumentalism, power consolidation, and the legitimacy crisis created both short-term and long-term environmental consequences, because economic development had to satisfy political needs. Interestingly, this politically motivated economic development provided the impetus for political liberalization, which in turn fostered environmental awareness and a grassroots demand for environmental conservation. However, increased liberalization was prone to money politics, which created another round of environmental threats. The fate of environmental concerns is dependent upon further institutional reforms beyond political liberalization, such as constitutional reform, rule of law, and an environmentally caring economy that works together with technology. Recent environmental awareness brought about

by political liberalization and economic prosperity has provided feedback for the political and economic systems, resulting in a tendency toward early integration of environmental concerns with political and environmental development.

While democratic institutions have facilitated environmental concerns in general terms, the scope for a judicial environmental agenda has been substantially curtailed, resulting in a polarization between extreme political manipulation and scientific myth in environmental decision-making. In recent years, however, many groundbreaking judicial decisions in favor of environmentalism have changed the paradigm. This paper argues that the development of a vibrant civil society taking advantage of democratic institutional reforms, particularly the creation of a citizen suits clause and citizen participation in environmental impact assessment (EIA), has been the reason for the emergence of a new environmentalism in Taiwan.

Environmentalism in the Dynamics of National Development

Taiwan's post-war economic-political development bears strong connotations for sustainability. The nation has gone through instrumentalism, inborn development, and environmental awareness, marking the trend of paradigmatic change in the development path (Yeh, 1996: 229–272).

Taiwan's Destiny as a Base for National Recovery

After the end of World War II, Taiwan underwent a transformation from a Japanese colony to a Chinese territory. During this same period, institution-building was limited to the Kuomintang (Nationalists) taking over the infrastructure and resources left by the Japanese colonial regime. It was not until 1949, when the Kuomintang—who had recently been defeated in the Chinese Civil War—fled mainland China to Taiwan, that Taipei was “upgraded” to the temporary national capital. Although the Kuomintang effectively controlled only Taiwan, they claimed sovereignty over the whole of China and hoped to regain that sovereignty. Every policy contemplated by the national government was evaluated in terms of achieving that goal. Accordingly, capital and strategic resources were saved for the ultimate mission, resulting in a general neglect of Taiwan's infrastructural development. Indeed, Taiwan served only as an instrument for the recovery of the mainland. The “instrumentalism” that dominated the spirit of national development during this period inevitably resulted in a distortion of political representation and misallocation of resources. This instrumentalism undermined Taiwan's

long-term sustainability until the mission of national recovery was deemed infeasible in the 1960s.

Taiwan as a Developmental State

In 1971, the Kuomintang government suffered a serious diplomatic blow when the United Nations voted for membership of the People's Republic of China (PRC). This setback not only triggered a new period of diplomatic isolation for Taiwan, but also, domestically, frustrated the integrated goal of national recovery. The authorities decided to shift from a long-standing policy of political mobilization to a goal of economic prosperity through intensive investments in infrastructural establishments and extended international trade. These factors marked a fundamental change in the perception of national development.

As instrumentalism abated in Taiwan, state vitality was directed toward serving the interests of citizens. This inner-renewal development was implemented with strong government control under the decree of martial law, resulting in a clear separation of economic prosperity and political suppression. This developmental state secured economic growth at the expense of human rights and the environment (Yeh, 2008: 35–39). Citizen complaints over environmental harm were severely controlled in order to secure social and political stability.

Taiwan in Democratic Transition and Beyond

Environmental awareness among Taiwanese started with the path of democratization. The end of martial law and the emerging political/social movements triggered various environmental protests around the country. These changes moved the government to address substantive issues, including environmental degradation and global environmental responsibility. In an effort to respond to the public outcry, major environmental legislation and a regulatory framework were established. However, legal institutions seemed incapable of dealing with the outcry for environmental compensation.

The second change in strategy sparked by the legitimacy crisis dealt with localization. The Kuomintang sought to localize the state machine by recruiting more native Taiwanese elites into a government that, up until then, had been occupied largely by so-called mainlanders. The process of localization further "softened" the authoritarian regime and, inevitably, strengthened Taiwan's self-identity (Winkler, 1984: 481). This localization effort was, however, insignificant in comparison to the political liberalization that occurred during the next stage.

Environmentalism in Democratization and Transition

In the 1960s and 1970s the developed world, led by the United States, sought to modernize the developing world by promoting industrialization and the rule of law. Many Asian states, including Taiwan, received extensive US aid and modernized their institutions. These developmental states were phenomenally successful, and produced the Asian economic miracle.

While contributing to economic success in Taiwan, modernization efforts did not successfully substantiate the rule of law as envisaged. Indeed, the phenomenal economic development was achieved under an authoritarian regime that exerted strong control over society. Law and legal institutions became instrumental, serving the development-driven authoritarian regime but not constraining it. In this context, modernization efforts contributed to the formation of a developmental state that favored economic growth over the environment, and social stability over open democracy (Jayasuriya, 1999: 1–27).

In the first decade of the twenty-first century, many Asian countries began to depart from the developmental state model, exhibiting a transformation from unfettered regulatory discretion to more legal and procedural constraints. Among them, Taiwan is iconic in its illustrative development path from a “milk cow” base for launching national recovery in the 1950s, through the *in situ* economic development in the 1970s and 1980s, followed by democratic transition since the mid-1980s (Yeh, 1996: 233–235). Major legislation, directed to procedural rationality and greater regulatory controls, has begun shaping a regulatory environment that leans toward being more transparent, participatory, and even deliberative (Yeh, 2008: 40–45).

The dominant factor underlying Taiwan’s transformation from a developmental to a regulatory state is democratization. While the state remains focused on development as a central policy goal even after the regime change in 2000, the process of democratization has institutionally transformed the nature of the regulatory regime in the direction of transparency, participation, deliberation, and partnership (Yeh, 2002: 268–291, 2008: 40–45).

Major legislative initiatives pushing toward transparency, participation, and accountability are rooted in the period of democratization beginning in the mid-1980s (Yeh, 1990: 93–97). From the beginning of that period, the Democratic Progressive Party (DPP) as the main opposition force adopted an institutionalist approach by participating in elections and seeking broader representation in the legislature, though it also used demonstrations and street protests at times when public mobilization was helpful. This “reform from within” strategy pushed the Kuomintang into a competition to enact quasi-constitutional legislative measures, such as the Administrative Procedural Act, Act for Property Declaration for Public Servants, and Government Procurement

Act. This dynamic explains why there has been an avalanche of legislation leading to more transparent and accountable governance in the years of democratization. Regime change in 2000 intensified this development, but the momentum was compromised due to gridlock in the legislature as a result of a divided government.

The impact of continuous economic growth was not limited to economic prosperity; it created further pressure for political liberalization. Taiwanese had been active in international trade despite the country's diplomatic isolation. International enlightenment, economic prosperity, and the gradual sophistication of society created increasing pressure for reform. By the end of Chiang Ching-kuo's presidency, political reform was under way. In 1986 the DPP, the major opposition party, was established in defiance of an official ban. This was followed by the lifting of the 40-year-long martial law decree. The lifting of the decree gave new freedom to the press, sparked the formation of political parties and associations of voluntary groups, and encouraged Taiwanese to gather and demonstrate.

In the wake of political liberalization, social pressure increased to revive major issues that had been suppressed due to tight political control. An avalanche of social movements has since spread throughout the island (Shao, 1990: 57) Farmers, veterans, students, indigent people, workers, and environmentalists took their causes to the streets, demanding regulatory reform in their respective areas. More and more voluntary groups were formed to represent competing interests. In the climate of pragmatism, the authorities were forced to focus less on adherence to ideological doctrine and more on substantive issues. To a large extent, this line of development echoed the international dismantling of the ideological barrier between East and West, that is, the fall of the Soviet Union and the deconstruction of Eastern Europe. These changes moved Taiwan toward addressing substantive issues such as global environmental concerns and the development of free trade. Taiwan thus stood as one of the successful examples of third wave democratization (Huntington, 1993).

Despite Taiwan's social movements and regulatory reform, however, a majority of seats in the legislature were still reserved for mainland delegates elected in 1947. Consequently, the legitimacy of the legislature was continuously challenged. This problem was gradually dealt with by a voluntary retirement program, and finally by a wholesale mandatory retirement scheme (Yeh, 2002: 55–57).

In 1991, President Lee Teng-hui declared the termination of the Period for Mobilization against Communist Rebellion and repealed the Temporary Provisions Effective during the Period of Communist Rebellion. This declaration

was followed by a constitutional revision. Further, the government declared that the PRC would no longer be considered a rebel faction but would be recognized as a political entity in a period of national separation. This political development paved the way for Taiwan's initiative in internationalization and allowed the nation to pursue a plan of "flexible diplomacy" directed toward increasing its international recognition.

During this period of political reform, however, the conservatives voiced opposition to the political factionalism that had begun to take place. While interest groups had gained greater access to governmental decision-making processes, the absence of a legal procedural establishment allowed the bureaucracy to be corrupted by money politics, particularly in the area of land use policy. By 1994, the price of land had risen to more than five times the 1987 levels, resulting in a crisis of social justice and barriers to industrial investment. The blind expansion of golf courses at the expense of soil and water conservation was also frequently cited as a product of money politics.

Changing Faces of Democratic Environmentalism: Courts, Democratic Polity, and Civil Society

Environmental Benefits of Democratic Institutions

Political liberalization in Taiwan has been both advantageous and detrimental to the environment. Citizen concerns over the environment began with incidents of pollution that threatened health and caused economic losses. Early environmental awareness developed in a closed political system in which mass media, free speech, and civil associations were severely curtailed. As a result, the outcry was confined to individual cases of justice for the pollution victims. It was not until the political liberalization of the mid-1980s that environmental awareness went beyond the quest for individual justice and ex post solutions to directly target the sources of pollution.

Political liberalization did much for environmental protection, not because governmental policies in a democratic regime are necessarily more environmentally conscious, but because there is a higher degree of transparency and public involvement in the decision-making process. Thanks to political liberalization, citizen demands for environmental protection could be voiced. Environmental concerns took the form of sit-ins, blockages, and demonstrations. Often, polluters and government authorities were involved in disputes with communities claiming damage from pollution. In the early phases of democratic reform, from 1988 to 1992, there were 259 public nuisance disputes in Taiwan. This level of citizen action led many domestic and foreign

pollution-intensive industries to relocate (Reardon-Anderson, 1992). Major government-approved or -sponsored construction projects, including nuclear power plants and naphtha-cracking plants, met with strong resistance from local communities and/or local governments. Many single-mission environmental groups were formed during this period. Anti-pollution campaigns became a mainstream social movement.

More significantly, the lifting of the ban on party formation resulted in political competition among the ruling and opposition parties, mainly the DPP, which for the first time was responsive to environmental concerns, including nuclear power plant installation and water basin management.

With environmental awareness supported by social mobilization and institutional oversight, the authorities began to take environmental protection more seriously by establishing a control agency, increasing the environmental budget, promulgating more comprehensive pollution control laws and regulations, and adopting more precautionary measures such as EIAs. EIAs, which require transparency, citizen participation, and agency veto, have produced a structural change in the bureaucratic process. More important, the Environmental Impact Assessment Act requires that the formulation and implementation of government policies be subjected to an environmental impact review.

The Dilemma of Democratic Environmentalism

Money Politics and Development

Though political liberalization has been central to the development of environmental activism, it has also produced some negative side effects, such as encouraging money politics. Land-related development policies that have strong environmental significance are especially vulnerable to political manipulation by interest groups. The golf course industry presents one example. As local governments have begun to gain power formerly held by the central government, pressure for development has increased. Environmental groups in Taiwan have called attention to the impact on critical wetlands from development projects allowed by the local authorities (Shiao, 1990: 163, 1992: 57).

The Court as an Excluded Middle between Scientific and Political Manipulation

As mentioned earlier, environmental awareness among Taiwanese started with the democratization of the country. The end of martial law triggered nationwide environmental protests. In response to the public outcry, the

government established a major environmental legislation and a regulatory framework. However, legal institutions were unable to deal with the demands for environmental compensation.

The vigorous environmental movements did not follow the classical environmental liability paradigm, which is rights-based, court-centered, and tort-oriented. Instead, environmental controversies were resolved between the two poles of politics and science against the backdrop of democratic transition (Yeh, 1997).

Initially, when there were incidents of pollution, residents and environmental advocates took their protests to the streets instead of going to court. In answering these somewhat "violent" claims, state enterprises and responsible authorities resorted to rigid scientific fact-finding. Accordingly, the accused industries refused to take responsibility until the science could prove damage and causation. Since environmental issues are by nature scientifically uncertain, pursuing scientific preciseness in environmental issues is costly and usually futile. In the case of Taiwan, when science met its limits and public outcry built up, political deals were made without any scientific or legal basis. The infamous Lin-Yuan case exemplified this shift.

In 1973, a petrochemical industrial district in the south of Taiwan allegedly caused air and water pollution, resulting in damage to the surrounding Lin-Yuan township in terms of fishery loss and residents' health issues. On September 20, 1988, a storm caused sewage to spill over into the canal and pollute the harbor, resulting in huge damage to the local fishery. Residents demanded immediate action through large-scale blockages that paralyzed the operation of Lin-Yuan Industrial Park, home to some 18 major petrochemical companies. However, factories in Lin-Yuan refused to take responsibility without sufficient scientific evidence. High-level officials from the Ministry of Economic Affairs, the magistrate of Kaohsiung County, and legislators representing local factions got involved. They initiated negotiations and reached a compromise on the fifth day of the demonstration. The compromise involved a re-operation agreement and compensation amounting to TWD1.3 billion (US\$43 million). Politics was the effective and expedient way to resolve the conflict in the absence of scientific fact-finding. The law played no role in the resolution.

In another case of public nuisance in North Tao-Yuan, a thermal power plant was blamed for damaging windbreak forests and agricultural crops. Residents quarreled with the company from time to time, but no deal was concluded. With the help of the Council of Agriculture, the Taiwan Power Company asked for scientific authentication in order to determine its own liability. However, repeatedly divided scientific opinions and foot-dragging

in the search for a resolution resulted in profound public dissatisfaction, which erupted in a protest rally. The Taiwan Power Company refused to negotiate with or compensate alleged victims, because of the divided scientific opinion on damage and causation. In the end, several legislators, the head of the county, and the Minister of Economic Affairs, together with the Taiwan Power Company and protestors, reached a deal to establish a TWD80 million “neighbor-friendly fund” and an annual TWD8 billion “local subsidy” in return for operating the power plant.

In this case, alleged polluters and the authorities first insisted on scientific evidence. When science was not able to satisfy the desire for environmental justice, however, people sought political ways. The responsible party and official authority switched between scientific and political solutions. Again, the law was absent.

The Taiwan Alkali Corp. pollution case also illustrates this sequence of events. The Taiwan Alkali plant in Tainan allegedly polluted soil and coastal fisheries through its use of dioxin. Residents believed Taiwan Alkali should be held responsible for their illnesses involving the skin, liver, and nervous system. Fish and crops surrounding the factory were also poisoned, resulting in serious economic losses. The local environmental control authority discovered the seriousness of the dioxin pollution in 2001. It was then established that the pollution was directly related to the plant’s proximity to the China Petrochemical plant. Again, the scientific fact-finding mission was used as an excuse for foot-dragging. An agreement of TWD1.3 billion was reached without legal basis, and the authorities claimed that the resolution would not be taken as a precedent. Although some legislation, such as the Freedom of Information Act and the Soil and Groundwater Remediation Act, were used as the bases for fact-finding, environmental liability was resolved through a political mechanism.

The abovementioned cases indicate that the resolution of environmental disputes always shifts between politics and science in Taiwan. In the North Tao-Yuan case, the government kept emphasizing the importance of “fact” and claimed to take scientific reports as the sole basis of its decision-making. The Taiwan Power Company and Environmental Protection Agency (EPA) spent large sums of money on scientific research, and insisted on not dealing with the case in private.

On the other hand, the complex interests involved can sometimes transform environmental disputes into political conflicts. If the science-oriented paradigm takes “truth” as its guiding value, then political resolution emphasizes compromise, negotiation, and trade-offs. Getting public support without triggering harsh resistance from interest groups requires political strategizing.

Especially in the face of its limits, science cannot sustain the legitimate basis required in tort law; people prefer to deal with the controversies in a political way. Politics sometimes becomes the alternative when law and science meet their limits. In the Lin-Yuan case, for example, a political deal was reached without any support from law or scientific evidence. In the North Tao-Yuan case, the government gave up its insistence on scientific proof in the hope of restoring social order and maintaining the operation of industry when discontented villagers mobilized and attempted to paralyze the factories. Despite the claim of liability, the government transformed the compensation into a local subsidy.

Environmental issues involve people, enterprises, experts, governmental agencies, environmental groups, and courts. Insisting on the absolute legitimacy of authentication can result in a deadlock. In the alliance between science and politics, authentication becomes the excuse not to take any action. The dissatisfied public turns back to politics.

In the abovementioned environmental dispute resolutions, law and legal institutions were the excluded middle between scientific authentication and striking a political bargain. Among the 186 environmental disputes that took place during 1988–90, more than 124 were resolved without the involvement of a responsible governmental agency. More than two-thirds of the cases were handled without official mechanisms. Although many of these environmental disputes involved tortuous or unlawful acts, the courts were absent from the scene.

Why do Taiwanese people choose the street, politics, and science instead of courts? Perhaps more important, what is the consequence of this shifting between politics and science? Is it a bad thing?

The dynamic civil society that developed in Taiwan after democratization became aware of environmental problems. The resultant outcry did not automatically transform itself into rational resolutions and guidelines for future conflicts. In order to sustain the public's awareness and prevent turbulence, political passion needs proper channels and responsive mechanisms to be transformed into practical resolutions.

At the same time, the capacity of the legal system and relevant laws are underdeveloped in a young democracy such as Taiwan. The lack of a sound legal system of environmental liability and the notorious history of the courts under the authoritarian regime—where courts were more a tool of oppression than a way to realize justice—reduce people's incentive to seek remedies through legal means. People distrust courts and the law, but they believe in democracy and politics. As a result, various protests and environmental movements have replaced litigation, and expedient political deals have crowded out legal judgments in environmental disputes.

It has been argued that environmental issues are thorny because they involve scientific uncertainty and complex interests. Thus, it is almost inevitable to consider the law, science, and politics at the same time when dealing with environmental problems. However, politics, science, and the law are not just three elements that are crucial to establishing environmental liability; they also indicate three paradigms of decision-making.

Although governmental regulation should have a scientific basis, the government cannot take action until scientific evidence is presented. The law provides a mechanism for properly dealing with problems caused by the abovementioned uncertainties. In the face of scientific uncertainty, the law can legitimize substantive insufficiency with procedural rationality. The procedural rationality of the law can legitimize decisions and avoid the dilemma between “do nothing in the absence of science” and “arbitrary action despite science.” The allocation of the burden of proof is one example of how substance may be legitimized with process. Presumed causation and the shifting burden of proof can redistribute the risk of scientific uncertainty.

To sum up, despite the importance of science and politics, the law can not only mediate conflicts through rational procedures, but also provide precedents for future disputes.

Insisting on scientific evidence can be a smokescreen when fact-finding is extremely difficult or excessively costly, and political resolution depends on political power rather than truth or any sense of justice. Authorities in the above cases have claimed that their resolution is exceptional and that there will be “no next time,” leaving all future environmental issues in uncertainty. Ideally, between science and politics, the law should provide a middle ground.

The Emergence of Judicial Environmentalism

Guardian of Democratic Environmentalism: Science Park Case

One of the major achievements in environmental protection in the course of Taiwan's democratic transition was the creation of the environmental impact assessment system through the promulgation of law and institutional settings. Starting from 1994, when the Environmental Impact Assessment Act was promulgated, the function of the established system has sometimes been challenged. With the existing administrative litigation system, which has been narrowly constructed, citizen monitoring of the integrity of the EIA process through judicial procedures has constantly been watered down, resulting in on-site protests in front of the EPA's EIA Review Board, which has the power of veto over construction projects. A series of decisions rendered by the

Administrative Court on the Central Taiwan Science Park III Construction project, however, has brought the judicial system out of its inertia.

The expansion of the Science Park to Central Taiwan was considered as a sign of the government's goodwill toward industrial investment and local development. With many big-name high-tech companies committed to investments, the Executive vowed to speed up construction of the Central Taiwan Science Park III, including the EIA process. Not surprisingly, the EIA Review Board voted yes, with many conditions, in the first phase of the review, exempting the project from a second and more elaborate review. Area residents with health concerns, aided by environmental lawyers working on a pro bono basis, filed a suit against the EPA for failing to consider health and environmental impacts in the review process. The Taipei High Administrative Court, for the first time in EIA history, ruled that the decision of the EIA Review Board was void because of procedural flaws. The Review Board had relied on simple voting for its resolution, which was institutionally advantageous to the government, without seriously deliberating on major health concerns, as advocated by some expert board members. Not surprisingly, the decision dealt a tremendous blow to the development-driven government, in particular to the EPA. The director of the EPA openly condemned the court for irresponsibility. Despite this, the decision was upheld by the Supreme Administrative Court.

Judicial intervention in the Central Taiwan Science Park III construction project was considered by the Executive as surprising, unbelievable, even irrational. But the court has been widely perceived as the guardian of the EIA system.

The Embodiment of Environmental Citizen Suits: Beautiful Bay Case

The creation and operation of citizen suits in environmental regulation has strong implications for civil society in terms of social capacity-building.

The burgeoning democratization in Taiwan over the last two decades has seen robust citizen participation in major areas of government regulation. Among these, environmental conservation has been the issue that attracts the most public involvement in diverse forms, including representation in decision-making bodies, participation in public hearings, demonstrations, sit-ins, and litigations. In recent years, concerned citizens or environmental groups have, more frequently than ever before, taken the litigation route to address their environmental concerns (Chang, 2010). This has resulted from, among other factors, legislative efforts that make it possible for citizens to sue in the courts on environmental issues.

Democratization has been the driving force behind the burgeoning number of environmental citizen suits. Citizen participation via public interest litigation can not only safeguard the environment but also empower civil society in caring for “our common environment.”

In Taiwan, it was not until 1999 that the first citizen suit clause was written into law, and not until 2008 that an environmental group plaintiff won in a citizen suit case for the first time. This landmark case is known as the Taidong Beautiful Bay litigation.

In December 1994 the Taidong County government, hoping for further development of local tourism, signed a BOT (build-operate-transfer) contract with the Beautiful Bay Resort Company, according to which the latter would build a resort hotel on Sanyuan beach, situated on the eastern coast of Taidong County. Under the terms of the agreement, the Beautiful Bay Resort Company would pay the Taidong County government TWD5 million, plus 2 per cent of annual revenue.

According to the contract, this project would take up 59,956 square meters, well over 1 hectare, the threshold set by the regulations of the Environmental Impact Assessment Law (EIAL), and therefore it had to go through an EIA. The Beautiful Bay Resort Company, however, applied in February 2005 to merge and resegment the land, which the Taidong County government permitted. This resegmentation allocated an area of 9,997 square meters (3 square meters short of the set threshold) for the construction of the hotel, so the company could shield itself from the legal requirement of the EIA. The ruse was later exposed by some legislators and environmental groups. In May 2007, in accordance with Article 23 of the EIAL, the Taiwan Environmental Protection Union (TEPU) filed a citizen suit at the Kaohsiung High Administrative Court against the Taidong County government, demanding an order from the court that would require the county government to impose a fine on the Beautiful Bay Resort Company and suspend construction right away.

The court first confirmed that the TEPU qualified as a public interest group for filing a citizen suit, and then moved on to further reasoning on substantive matters. The very purpose of the EIAL, the court pointed out, was to lessen and prevent possible adverse environmental impacts by major construction projects. Given the fact that this BOT project was to take up 59,956 square meters, not just the 9,997 square meters for the hotel construction, merging and resegmenting the land in order to avoid an EIA was a violation of the legal requirement of an EIA. Having failed to enforce the nondiscretionary EIA requirements, so ordered the court, the Taidong County government was asked to suspend the construction of the project. The court

also awarded TWD60,000 as attorney fees to the plaintiff, the first decision of its kind in history.

The very idea of a citizen suit—of citizens filing a lawsuit in the public interest—signifies a breakthrough from traditional “right-based” thinking. Certain institutional factors, such as citizens, information, participation, and courts, are required to back it up. Right in the moment of democratic transition, the case of Taiwan draws a clear distinction. In Taiwan before the democratic transition, with freedom of association oppressed, information unable to be fully disclosed, participation in public affairs discouraged, and courts suppressed in their function, citizen suits were all but impossible. Nowadays, a vibrant civil society has become the core capacity-building mechanism in public interest litigations for a better environment.

Most of the earlier citizen suits in Taiwan involved a variety of issues such as air pollution, water pollution, dumping, reservoir-building, and so on. More recent cases have been mostly EIA cases, and the number is on the increase. Up to now, the courts have ruled on nine citizen suits, brought by concerned citizens or environmental groups against relevant authorities; six were EIA cases. Of these, four were filed by environmental groups and two by concerned citizens, signaling that environmental groups have taken on the role of pioneers in environmental litigations.

Notably, what those cases have in common is that there were lawyers arguing in the litigation, in a ratio far higher than in normal cases. Besides, it appears that some cases shared the same lawyers. This is noteworthy because there was rarely a distinct division of labor among lawyers in these matters. Some sort of social nexus must thus have played a role. Besides, EIA cases are more complex than others because their main issues usually contain high-tension political and economic factors. The trend of environmental citizen suits in Taiwan, therefore, implies that the country’s social mechanisms concerning environmental issues are working and that they are gaining momentum.

Environmental issues, in essence, involve citizen participation. The burgeoning democratization in Taiwan provides the foundation for public interest litigation in citizens’ pursuit of a better environment. The Taidong Beautiful Bay case is the best example. Furthermore, the growing number of citizen suits involving EIAs reaffirms the public nature of the citizen suit, in its assurance of procedural rationality in decision-making. By filing a suit for the public interest, citizens give the court a chance to review the legality and rationality of environmental decision-making. Taiwan’s experiences show that, in practice, citizen suits, with the momentum of democratization, safeguard the environment and at the same time empower civil society in caring for “our common environment.”

Institutional Capacity-building: Democratic Institutions, Courts, and Civil Society

Authoritarian regimes rarely support, and usually suppress, civil society. To the extent that civil society includes business organizations and labor unions, a developmental state must manipulate its relationship with these organizations, treating them as instrumental in state-centered development. Taiwan before 1987 was often described as a corporatist state, in which the party-state extended and entrenched its influence over civic and business organizations, professional associations, and academic institutions (Schmitter, 1974; Ziegler, 1988). Not until the mid-1980s did voluntary social organizations begin emerging. Even the National Bar Association was controlled by lawyers who had served as military judges. This was the legacy of the notorious “back door” policy for admitting lawyers: the National Bar exam admitted less than 1 per cent of applicants who had graduated from law schools, while creating a “back door” channel for far larger numbers of retired military judges or senior bureaucrats to enter the Bar each year.

Since 1987, liberalization has led to the creation of a vibrant civil society in Taiwan. With the abrogation of outdated laws that restricted civil organization, citizen activism has begun to increase. The media have enjoyed freedom of the press in the most profound way, in contrast to the severely controlled situation before the transition. More and more civic entities, many of which are organized by lawyers or other professionals, enjoy full-scale freedom and organizational autonomy. The corporatist state has begun to erode. While the old pattern of tight relationships between certain corporate organizations and the government continues, relational influence upon policy formulation has been on the decline. It should also be noted that the rise of civil society in Taiwan has gone hand in hand with globalization and the increasing density of international networks. An increasing number of civil organizations have international partners and express their activism beyond borders. What effect this will have on the emerging regulatory state in Taiwan is yet to be seen.

Toward a General Assessment of Democratic Environmentalism

Although environmental awareness in Taiwan began as late as the early 1980s, issues and decisions affecting the environment were apparent from the first stage of national development. The development path previously analyzed demonstrates the interactions between international intervention and domestic reactions and between political and economic systems. In summary, these interactions were brought about by four consecutive driving forces: political supremacy, the legitimacy crisis and economic development, political

liberalization, and dependency and internationalization. The environmental consequences derived from Taiwan's development path should be assessed against each of these segments of development.

While the Taiwanese experience supports the proposition that certain levels of economic development foster political liberalization and environmental awareness, it does not follow that political liberalization, economic development, and environmental conservation cannot occur simultaneously. Indeed, the three must go hand in hand. Given economic planning and other policy evaluations and projections in the governmental process, no one can claim that the development path was well planned in advance. Indeed, as the development path demonstrates, economic development, political liberalization, and environmental conservation did not take place in discrete stages. Nor did they emerge and function separately. Rather, they interacted with one another from the beginning of national development, resulting in a delicate balance in a transitional society.

Conclusion

Taiwan's development over half a century has been characterized by intensive changes and active institutional interaction among the political, economic, and environmental spheres in the context of sustainable development. What is known as the "economic miracle" should be extended in light of recent political reform and its implications for environmental protection. While political manipulation was behind the tragic conflict between economic development and environmental protection in the early stages of national development, the emerging social forces triggered by recent political liberalization may provide an indispensable foundation for Taiwan's sustainable development.

An inquiry into the causes of existing environmental problems and the institutional forces attempting to solve them is especially relevant to countries experiencing rapid growth or transition, where environmental concerns are embedded in the dynamics of economic and political development.

In some cases, environmental problems have been linked to national policies of economic development. Hasty and irresponsible economic development has often been blamed for environmental degradation, especially in Third World countries (Ascher, 1990; Mikesell, 1992: 36–63). Ironically, the economic prosperity brought about by development-driven policies has facilitated measures for environmental conservation because it gives countries the financial capability to address global environmental issues (Porter and Brown, 1995). Thus, developing countries with relatively successful economic development are usually in a better position to protect their own environment and to shoulder their due share in protecting the global environment. Although

economic development and environmental protection may form a vicious circle in one country, they can coexist in a mutually supportive system in another. The crucial question may not be whether economic development occurs per se, but rather, how it is pursued.

Similarly, the relationship between environmental problems and political development cuts both ways. On the one hand, corrupt political institutions (especially in the Third World) and disjointed incrementalism (Ophuls, 1977: 191–193) (particularly in liberal democracies) have been held responsible for both environmental deterioration and failure to respond to that deterioration. On the other hand, strong political leadership and the existence of liberal democracy have been cited as essential foundations for pro-environment reforms (Elliott *et al.*, 1985).

As this cursory discussion indicates, economic and political explanations fail to provide an adequate framework for understanding the causes of environmental problems, because they mix the causes with the solutions. Although the causes of environmental degradation and the driving forces behind preventative measures are conceptually different, they may mean the same thing in the context of some cases of national development. While environmental degradation has been attributed to economic policies and political forces, continuous economic prosperity and various political reforms have also reinforced environmental awareness and institutional establishments.

Evaluating the environmental consequences of economic and political systems is useless unless one considers the built-in interactions of human institutions. A holistic approach that includes a multi-dimensional examination of the dynamics of national development is needed. Such an approach might be founded on the concept of sustainable development—a global legal vehicle that pinpoints normative goals in environment and development debates.

References

- Ascher, William and Robert Healy. 1990. *Natural resource policymaking in developing countries: Environment, economic growth, and income distribution*. Durham: Duke University Press.
- Chang, Wen-chen. 2010. "Public-interest litigation in Taiwan: Strategy for law and policy reforms in course of democratization." In *Public interest litigation in Asia*, ed. Po Jen Yap and Holning Lau, 136–160. New York: Routledge.
- Daniels, J. Ronald and Michael Trebilcock. 2004. "The political economy of rule of law reform in developing countries." *Michigan Journal of International Law* 26: 99–140.
- Elliott, E. Donald, Bruce A. Ackerman and John C. Millian. 1985. "Toward a theory of statutory evolution: The federalization of environmental law." *Journal of Law, Economics and Organization* 1: 313–340.

- Hsiao, Michael. 1990. "Emerging social movements and the rise of a demanding civil society in Taiwan." *Australian Journal of Chinese Affairs* 24: 163–180.
- . 1992. "The rise of social movements and civil society." In *Political change in Taiwan*, ed. T. Cheng and S. Haggard, 57–72. Boulder: Lynne Rienner.
- Jayasuriya, Kanishka. 1999. "Introduction: A framework for the analysis of legal institutions in East Asia." In *Law, Capitalism and Power in Asia: The rule of law and legal institutions*, ed. Kanishka Jayasuriya, 1–27. London: Routledge.
- Mikesell, Raymond F. 1992. *Economic development and the environment: A comparison of sustainable development with conventional development economics*. New York: Mansell.
- Ophuls, William. 1977. *Ecology and the politics of scarcity*. San Francisco: Freeman.
- Porter, Gareth and Janet Welsh Brown. 1996. *Global environmental politics: Dilemmas in world politics*. 2nd ed. Boulder: Westview.
- Reardon-Anderson, James. 1992. *Pollution, politics, and foreign investment in Taiwan: The Lukang rebellion*. Armonk: M.E. Sharpe.
- Schmitter, Philippe C. 1974. "Still the century of corporatism?" *Review of Politics* 36 (1): 85–131.
- Winckler, Edwin. 1984. "Institutionalization and participation on Taiwan: From hard to soft authoritarianism?" *China Quarterly* 99: 481–499.
- Yeh, Jiunn-rong. 1990. "Changing forces of constitutional and regulatory reform in Taiwan." *Journal of Asian Law* 4: 83–100.
- . 1993. "The structure and nature of public nuisance case in Taiwan: 1988–1990." In *Environmental policy and law*, ed. Jiunn-rong Yeh, 269–312. [In Chinese.] Taipei: Angle Publishing.
- . 1996. "Institutional capacity-building towards sustainable development: Taiwan's environmental protection in the climate of economic development and political liberalization." *Duke Journal of Comparative & International Law* 6: 229–272.
- . 1997. "A case study on North Taoyuan public nuisance compensation: Towards procedural rationality in the shadow of scientific myth and political maneuver." In *Environmental Rationale and System Choice*, 199–230. [In Chinese.] Taipei: National Taiwan University.
- . 2002a. *Confronting Administrative Procedure Act: Taiwan's procedural capacity-building*. [In Chinese.] Taipei: Yuan-Chao Publishing.
- . 2002b. "Sustainable development indicators for island Taiwan." In *Sustainable development for island societies: Taiwan and the world*, ed. Hsin-huang Michael Hsiao, Chao-han Liu, and Huei-min Tsai, 339–352. Taipei: APARP and SARCS.
- . 2002c. "Constitutional reform and democratization in Taiwan: 1945–2000." In *Taiwan's modernization in global perspective*, ed. Peter Chow, 47–77. Westport: Praeger Publishers.
- . 2008. "Democracy-driven transformation to regulatory state: The case of Taiwan." *National Taiwan University Law Review* 3: 31–59.
- Ziegler, Harmon. 1988. *Pluralism, corporatism, and Confucianism: Political association and conflict regulation in the United States, Europe, and Taiwan*. Philadelphia: Temple University Press.