

# Taiwan and Hong Kong

## Localisation and Politicisation

Ching-Fang Hsu  
University of Toronto

### I. Introduction

Lawyers are practitioners grounded in local contexts and, inescapably, political advocates. Juxtaposing two fundamentally different jurisdictions, Taiwan and Hong Kong, this chapter aims to show that their lawyers are experiencing localisation and politicisation despite the waxing and waning of liberal politics and different degrees of globalisation. Although both Asian jurisdictions began drastic economic and political transformations in the 1980s, they present stark contrasts, offering analytical leverage to understand the two trends. Taiwan, a civil law system, witnessed democratisation and systematic political liberalisation, but its economy as a multi-national trade hub has stagnated recently, and the legal profession finds itself in a closed market structured mainly by domestic factors. Hong Kong, a common law jurisdiction, enjoyed some civil liberties under British colonial rule, but its political space gradually contracted after retrocession to authoritarian Chinese rule. At the same time, Hong Kong has continued to grow as an international financial centre, which supports a global legal services market. The institutional structures of the two legal professions are also critically different: while Hong Kong has preserved the colonial categories of barristers and solicitors, the Taiwanese legal profession has three principal divisions: lawyers, judges and prosecutors. The fact that the two jurisdictions share few characteristics offers a natural research design to expose the trends of localisation and politicisation.

A brief overview of the political history and evolution of the two legal professions is a necessary preliminary. In Taiwan, democratisation is essentially localisation of a Mainland Chinese government in exile. In 1949, the Chinese Nationalists (Kuomintang or KMT) lost the mainland to the Chinese Communist Party in the civil war and retreated to Taiwan. The island

state and China have been effectively separated as political entities ever since. In the 1970s, however, the KMT regime began to face pressure from the growing Taiwanese population, which never had officially approved the ethnic minority government. It experienced a major legitimacy crisis in 1979 when the US terminated official diplomatic relations with Republic of China, which the KMT claimed to represent. Social and political change induced the KMT to open up governance, instituting local elections, loosening social control, and recruiting Taiwanese as party cadres. As part of this trend, more locally born and educated lawyers were admitted, leading to an ideological transformation in the profession. The localised bar leadership assertively joined the intense contemporary political movements, using their expertise as people's advocates to encourage democratisation.

In Hong Kong, glocalisation of the legal profession is a distinctive social phenomenon. Not all Hong Kong lawyers are locally born, raised or educated, yet most are locally qualified and pursue careers focused on domestic law. First established by the British colonial administration, the Hong Kong legal profession was initially composed mostly of English expatriates. As the economy expanded, however, Hong Kong consciously took steps to liberalise the profession to meet market demand in the 1990s. The growth of the Chinese economy contributed to further expansion, attracting many international practitioners offering services for Chinese enterprises available only in Hong Kong. Trained in different jurisdictions and coming from diverse backgrounds, these lawyers either practise foreign law or are admitted to the local profession through a variety of qualification schemes. Politically, Hong Kong's transition from a British colony to a special administrative region of the authoritarian, idiosyncratic Chinese regime was unique and unprecedented. Yet the principle guiding the transformation, oddly, was continuity – the expectation that Hong Kong would remain 'unchanged for fifty years'. Stakeholders in the transfer negotiations shared the consensus that the city should continue to serve as an economic and financial hub; because political stability was a prerequisite, legal autonomy was preserved. The Hong Kong Basic Law, the jurisdiction's constitution, defined the power structure after 1997. Inscribing a fundamental disparity between the political authority of the central government in Beijing and local citizens in Hong Kong, the Basic Law became a

crucial arena for political mobilisation against the constraints of arbitrary authoritarian power. Lawyers, fluent in the language of law, inevitably became involved in political turmoil.

As its title indicates, this chapter addresses two major issues of the legal professions in Hong Kong and Taiwan, localisation and politicisation, followed by a brief note on feminisation. In each section, the two jurisdictions are compared. Data come from archival research, including newspapers, government gazettes, professional association reports, and other published records, as well as field observations and interviews with legal practitioners during the author's visits between 2016 and 2018.

[for the full chapter, please visit: <https://www.bloomsburyprofessional.com/uk/lawyers-in-21st-century-societies-9781509915156/>]