

Siding with the rule of law

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Jerome A. Cohen

This is the start of my third year publishing a biweekly column here. Most of these op-eds have concerned contemporary issues of law and justice in mainland China, Taiwan or both, as well as political-legal questions arising from the cross-strait reconciliation that began in 2008 with Taiwanese president Ma Ying-jeou's inauguration.

I try to play the role of a constructive critic, pointing out problems that require attention and suggesting possible improvements. Regarding mainland China, I am neither pro- nor anti-communist but seek improvements in the government that exists.

On Taiwan, I am neither "green" (pro-Democratic Progressive Party) nor "blue" (pro-Kuomintang) but am a supporter of the island's remarkable democratic and institutional transformation of the past two decades, a momentous development in Chinese history. Of greatest importance to me are open democratic governance, human rights and the rule of law.

However, amid a rising nationalistic tide of late, I was not surprised to read an attack on my standpoint by Zhao Nianyu, a researcher on Taiwan affairs at Shanghai's Institute of International Studies. Like nationalists in many countries, he asks why foreigners who don't agree with him don't "mind their own business".

Why would a foreign commentator suggest that the very important cross-strait Economic Co-operation Framework Agreement (ECFA) ought to receive article-by-article scrutiny before Taiwan's legislature approves it? Why would he maintain that the corruption conviction of Taiwan's

former president, Chen Shui-bian, should be based on a trial that did not raise serious doubts about the actions of prosecution and court?

Why would the commentator urge the Ministry of Justice to stop trying to discipline Chen's dynamic defence lawyer? Why would the commentator call for an independent commission to investigate allegations that corruption prosecutions may have been "selective"? And why would he ask the Taiwanese government to grant an entry visa to Rebiya Kadeer, a leader of the Uygur independence movement living in exile in Washington?

To Zhao, there is only one possible answer. After studying many of my essays, he concludes that I must be "green". He accuses me of appearing to be an objective observer who has Taiwan's best interests at heart, but covertly advocating Taiwan independence and the fall of Ma's KMT government.

Zhao pays little heed to the reasons I have voiced to support my recommendations. To him, strengthening parliamentary democracy and transparency, giving an indisputably fair trial to a former president, protecting vigorous criminal defence lawyers, restoring public trust through independent investigation of allegations about selective prosecutions, and maximising freedom of information by admitting controversial visitors – all such policies are merely false screens designed to frustrate peace and reconciliation between Taiwan and mainland China.

To be sure, Zhao has difficulty confronting inconvenient truths. He cannot find any statements by me in support of Taiwan independence or the DPP. Moreover, he has to

recognise that, in the very article about ECFA that he censures, my colleague and I praised Ma's achievement.

Zhao attributes my recommendations for various legal reforms in Taiwan, which he claims to be covert advocacy of Taiwan independence, to my failure to comprehend Chinese culture. Zhao does, however, hold out hope that "American elite instigators" who live in mainland China and Taiwan for 20 years might become enlightened enough to appreciate the correctness of the "one China" policy.

I, too, share the Confucian belief in the educability of man. Yet I hope it won't take Zhao another 20 years to appreciate the intrinsic desirability of executive branch responsibility to an elected legislature, due process of law, vigorous criminal defence, independent investigative commissions and unrestricted information.

Moreover, as C. V. Chen, a leading Taiwan lawyer and prominent KMT adviser recently emphasised: "The rule of law is the essential foundation of enduring stability and peace in the cross-strait relationship." And he's no "green".

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