Beate Tränkmann
Demokratisierung und Reform des politischen Systems auf Taiwan seit 1990
Saarbrücker Politikwissenschaft, Band 22
Peter Lang Verlag, Frankfurt a.M., 1997, 202 S., SFR 53.00

Gunter Schubert / Axel Schneider (Eds.)
Taiwan an der Schwelle zum 21. Jahrhundert
Gesellschaftlicher Wandel, Probleme und Perspektiven eines asiatischen Schwellenlandes
Mitteilungen des Instituts für Asienkunde, No. 270
Institut für Asienkunde, Hamburg, 1996, 338 S., DM 38,--

Jean-Marie Henckaerts (Ed.)
The International Status of Taiwan in the New World Order
Legal and Political Considerations
Kluwer Law International, London, 1996, 337 pp., £ 60.00

Contemporary visitors to the coastal city of Amoy (*Siamen*) in the province of *Fujian* in mainland China can admire, atop a rock on the small off-shore island of *Gulangyu*, a huge concrete statue of Koxinga (*Zheng Chenggong*), the *Ming* loyalist who, after the *Ming* Dynasty had been overrun by the conquering *Manchu* in 1644, drove the Dutch from their last redoubt in Taiwan, the Castle *Zeelandia* in the south of the *Ilha Formosa*, in February 1662, not long before his own death, in Taiwan on 23 June 1662, and subjugation, by the nomad *Manchus'* newly established *Qing* Dynasty, of the remaining elements of *Southern Ming* resistance still active in Taiwan and *Fujian*.[1] Koxinga's stern modern likeness curiously faces the Amoy shoreline, rather than the open seas whence naval relief for the Dutch on Taiwan was once to be expected to arrive from Batavia, as if the builders of the monument had wished to commemorate Koxinga more for his doomed last stand against the new *Manchu* power in Peking than for his ouster of the "red-haired barbarians" (*hong-maofan*).
Moreover, a tourist's day on *Gulangyu* would nowadays not be complete without climbing a hill from which, for a few *Renminbi*, he may glimpse through a telescope the nearby Island of Quemoy (*Jinmen*), still held by the "Republic of China (ROC) on Taiwan. On clear days, Nationalist slogans can be deciphered on the beaches of *Jinmen*; mainlanders peer through the glasses and giggle. The days when artillery fire was frequently exchanged between *Jinmen* and coastal *Fujian* now seem long forgotten but Koxinga's monument and the Taiwan stronghold a mere stone's throw from Amoy serve as reminders that this corner of China, then and now, has seen struggle for supremacy between the government at the centre and forces at the periphery of the country.

[1] For a history of loyalist resistance to the *Qing* as well as Koxinga's part in it, cf. *Lynn A. Struve*, The Southern Ming 1644-1662, New Haven & London, Yale University Press, 1984.

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Almost fifty years after the founding of the People's Republic of China (PRC), the ROC still exists on Taiwan as a separate political entity and has developed a thriving modern economy as well as a pluralist, if occasionally quite rumbustious, democracy. At the same time, the ROC has been pushed to the fringes of international relations, after being replaced by the PRC in the United Nations in 1971 and following diplomatic "de-recognition" in favour of Peking by erstwhile allies such as the United States of America and Japan. Much has changed in modern Taiwan since the ROC recovered the island from Japan in October 1945. Cold-War pretensions of representing all of China including the mainland (and, for good measure, Outer Mongolia) were finally discarded with the death of *Chiang Kai-shek* in 1975; political liberalisation allowed local Taiwanese a larger role in domestic affairs vis-à-vis the theretofore dominant mainlanders who had followed *Chiang's* beaten armies from the continent in 1949, while economic liberalisation in the PRC after the death of *Mao Zedong* in 1976 recreated links with the PRC through massive private investment from Taiwan, not least in the Province of *Fujian* whose local dialect is also the language of the native Taiwanese. Diplomatic ostracism by the majority of states, rising domestic pressure to assert Taiwan's independence both against Peking's adamant pressure and against post-'49 ROC governments' traditional "one-China" policy, as well as a large national economy's needs for government participation in numerous international fora have placed Taiwan in a difficult position in a region whose political and economic evolution remains both fast and uncertain. The three books reviewed below analyse the constitutional, socio-political and international aspects of modern Taiwan's search for a place in a post-Cold-War world.

The constitution of the ROC, originally formulated in 1946, during the closing years of the Nationalists' Nanking regime, served, once *Chiang* and his followers had been driven to Taiwan, as the politico-legal framework for perpetuating the Nationalist government's claim to all of China, including the Communist-ruled mainland. In 1948, the constitution was largely suspended through emergency legislation which extended the powers of the President and suspended all elections to the representative bodies of the government by "freezing" the results of the last election held on the Chinese mainland in 1948. In the wake of diplomatic setbacks and in the face of growing opposition clustering around Taiwanese native groups (*neishengren*), the emergency rules were rescinded in 1991, paving the way for efforts to replace the old, post-1948 constitutional arrangement, which had been decisively stacked to the advantage of the ruling Nationalist Party (*Kuomintang*/KMT).
Ms *Tränkmann*'s study retraces the laborious process of constitutional renewal since the formal end of KMT supremacy in six chapters, on transition towards democracy, the stages of reform efforts, the remaining unsolved constitutional issues, and the abiding factors shaping political reform in Taiwan. An appendix contains the German translations of the constitution of the ROC, the Emergency Rules and further relevant legislation and statistics on elections since 1991.

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The 1947 constitution of the ROC was itself an element within an evolution aimed at slowly emancipating the body politic from the modernising party dictatorship of the KMT which, according to the ideas of the founder of the Republic, *Sun Yat-sen*, would lead though phases of military rule (*junzheng shiqi*) and tutelary guidance (*xunzheng shiqi*) to eventual constitutional government (*xianzheng shiqi*). Power was shared by a President, a National Assembly and five additional high councils (*yuan*), namely an Executive Yuan, a Judicial Yuan, an Examination Yuan, a Control Yuan and a Legislative Yuan. The members of the first three of these *juan* were appointed by the President with the assent of the Legislative Yuan in the case of the Executive Yuan and the assent of the Control Yuan in the case of the Judicial and Examination Yuans, while the Legislative Yuan was elected by popular vote and the Control Yuan by the elected Provincial Assemblies.

Post-1991 constitutional change faced an intricate array of forces exerting push and pull effects on the participants: Increasing economic power and political assertiveness of the native Taiwanese, a need for broad domestic support for future Taiwanese governments in the face of mounting pressure from the Communist-ruled mainland and democratic credentials as a condition of effective backing from the United States in maintaining Taiwan's security militated in favour of steps towards more democratic legitimacy. On the other hand, truly election-based government would need to limit the political bounds of the ROC to the areas in fact controlled by Taipei and this in turn, by setting Taiwan apart from the mainland, would heighten the risk of Peking perceiving such transformation as an attempt to prepare for formal independence of what the mainland rulers continue to consider a mere renegade province of China. Among the political parties in Taiwan, especially the still ruling KMT and the pro-independence *Democratic Progressive Party* (DPP) as the principal opposition group, a new constitutional dispensation involved prospects of losing previous paramountcy for the former and hopes of access to power and its privileges for the latter. The KMT had not only dominated politics on the island but continued to control vast and hugely profitable businesses there; it also faced additional rivalry from the *Chinese New Party*, a KMT spin-off opposed to anything that might smack of abandoning the political lode-star of traditional one-China policy.

Lengthy preparatory discussions among the political parties and KMT-led legislation went through three stages and in 1994 produced a compromise reform package that strengthened the Presidency and the National Assembly at the expense of the Legislative Yuan, but also provided for election of the president and the elective assemblies by popular vote of the electors in the "free areas of the ROC", thus correcting the most glaring distortion of the former system under which petrification of the 1948 seat distribution for all of China had in effect prevented the majority of those ruled by the Taipei authorities from exercising their democratic rights within the area of Taipei's *de facto* jurisdiction. It also enabled elections at local level, where DPP influence would be strongest. The reform package heeded the demands of continuing the one-China policy by rejecting the DPP's project of drafting an entirely new constitution, opting for amendments to the 1947 text instead. It failed, however, to reconcile the claims of the Presidency and the Legislative Yuan on forming the

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government: The President cannot impose his choice of Prime Minister, or chief of the Executive Yuan, on a Legislative Yuan dominated by an opposing party, a distinct possibility now that the KMT only enjoys a slim majority in that assembly. Accountability of the executive branch, the Executive Yuan, to the legislative branch, the Legislative Yuan, remains incomplete as the Legislative Yuan has no power to remove the cabinet unless it overrides the Executive Yuan's proposals by a two-thirds majority which would compel the Prime Minister to step down. Legislative power is further dispersed between the Legislative Yuan and the National Assembly, the latter body electing the President and enacting changes to the constitution.
The new ROC constitutional framework has undoubtedly succeeded in largely accomodating the democratic aspirations of the population – no mean feat given the numerous conflicting interests – but remains to be tested in heavier waters, as when the KMT should be replaced as the majority party or if frictions with the mainland should worsen. The book version of this study would have benefitted from editing out numerous passages containing rather pedestrian typological comparisons of political systems that may be an inevitable part of academic presentation but shed little light on the matter at hand (e.g., pp. 17 ff., 39 f.). Some slipshod diction might also have been avoided (e.g. p. 86 "abgeschmettert").

In spite of its uncertain legal and political position, the ROC has emerged as a major regional and even global player in trade and certain industrial sectors, such as computers. Taiwan, in short, is speedily moving towards advanced modernity, but the ballast of the mainland threat, intra-Taiwan controversy over the ROC's political identity and the social pressures of rapid industrialisation remain heavy while institutional transformation – as indicated above – proceeds slowly and marred by many imperfections. The anthology edited by *Gunter Schubert* and *Axel Schneider* comprises articles on domestic affairs (constitutional reform, the role of elections, the evolution of political parties, the legacy of post-war *Kuomintang* authoritarianism and ethnicity in contemporary politics), external relations ("flexible foreign policy", relations with the mainland and with Germany), the economy (preparations for joining the World Trade Organisation, institutional and sociological effects of Taiwan-mainland economic relations, environmental degradation) and social developments (education, aborigines, literature and film).
The numerous essays vary widely in scope and depth. Briefest among them is *Marie-Luise Näth*'s paper on relations between Germany and Taiwan, with its fervent advocacy of closer official ties with Taiwan and its bold claim that it was the wave of pro-democracy demonstrations in mainland China during the spring and early summer of 1989 which triggered the demise of Communist rule in Europe and gave Germany the opportunity of regaining national unity.
Axel Schneider`s opening contribution provides a brief and very readable précis on the tortuous progress of constitutional reform. *Gunter Schubert*'s and *Stephen Grauwels*'s essays on the *Kuomintang* and the DPP sketch out the pitch of Taiwan politics which remains bounded by the defining antagonism with the PRC.

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Carsten Hermann-Pillath's account on Taiwanese business's "mainland fever", i.e. enthusiasm for commercial ventures in the People's Republic, offers a wealth of interesting detail on the manifold arrangements between mainland authorities, often at local level, and Taiwanese business with the aim of safeguarding practical economic interaction between Taiwan and mainland partners in a political environment where the lack of PRC recognition of ROC statehood precludes creation of the customary framework of investment protection and taxation. The article also highlights how the maze of overt and covert business ties between Taiwan, Hong Kong and the mainland has increasingly frustrated attempts of the ROC authorities to control, or at least reliably monitor, commercial intercourse with the PRC in order to avoid dependence which might one day work to the disadvantage of Taiwan's security – but even independence-minded Taiwanese investors are drawn to the opportunities of mainland business in spite of the hazards for the ROC of stumbling into a mainland trap of "*yi shang wei zheng*" (encircle politics through trade). Calmer souls may be less disconcerted than the author (p. 229) by the "very serious phenomenon" of Taiwanese 'kept women' (colloquially referred to as *jinsiniao*, i.e. "birds kept in golden cages") on the mainland: Hong Kong compatriots have been at it for years...
This diverse collection of papers provides a vivid description of a small country, burdened by internal contradictions and closely faced by a powerful rival which claims the island as his own, trying to secure its future position in a region where outside support may yet prove lacking when needed. It is a situation in which no other modern country of a comparable level of development is finding itself. It is also a measure of how much removed East Asia still is from security arrangements that will at least help to avoid clashes whose possible destructive consequences cannot be overestimated. The editors' decision (p. 3) to allow two different transliterations of Mandarin Chinese to be used in the texts is to be deplored: Non-sinologist readers will simply have to chew through two unfamiliar sets of Latin-script rendering of Chinese instead of only one.

The ROC's space on the international stage has progressively shrunk in the wake of PRC entry into the United Nations. The volume edited by *Jean-Marie Henckaerts* discusses aspects of Taiwan's existence on the diplomatic sidelines. Five chapters deal with "The international legal status of Taiwan", the ROC's "Responses to Diplomatic Isolation" (through informal diplomacy and participation in international organisations), intra-Chinese "Relations Across the Taiwan Strait", and "Concluding Observations". An appendix contains a 1950 memorandum prepared for the Secretary General of the UN on "Legal Aspects of Representation in the United Nations", the General Assembly Resolution of 25 October 1971 on the representation of China in the United Nations which led to the ROC being displaced by the PRC in the UN, Mainland and Taiwan White Papers, of August 1993 and July 1994 respectively, on Cross-Straits relations, and requests made to the UN Secretary General by certain Central American states in 1993 to study the situation of the ROC with a view to allowing her participation in the UN. A bibliography lists numerous works in a variety of languages excluding, unfortunately, sources in Chinese.

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The ROC may well display all the incidents of statehood in her international conduct as far as third states are willing to entertain full relations with her, but the majority of states including the US, have now acquiesced to Peking's claim that there is only one 'China' and that the authorities in Peking are her sole legitimate government. Notwithstanding alleged incongruities in legal claims of PRC sovereignty over the island, as pointed out in *Hungdah Chiu*'s succinct presentation, or the hortatory pleas in *Hans Kuijper*'s and *Michael C. Davis*'s papers for more coexistential approaches on the part of the PRC, the ROC on Taiwan has, since 1971, had to fend for herself in growing diplomatic isolation, through informal channels and purchase afforded by overseas development aid given in exchange for diplomatic recognition. The chapter on international organisations outlines avenues for a return of the ROC to the UN system and of possible *locus standi* for being heard during proceedings of the UN Security Council.

Many of the pieces in this volume sagely advocate conciliatory solutions between the two opposing parts of China, often adducing as supporting precedent reasons for which dependent entities, such as Britain's American colonies or the Spanish-ruled Netherlands, historically sought freedom from outside domination (e.g. p. 253). Soberingly enough, these were cases when men, pressed beyond what they would bear, rose with the courage of their convictions and won – not in debate, but in battle.

Wolfgang Kessler

Astrid Zilm

Das Kastensystem in der Rechtsordnung Indiens

Eine Studie zur Frage des Einflusses sozialer Gruppenzugehörigkeit auf die Rechtsstellung des Einzelnen und zur Überwindung sozialer Desintegration unterprivilegierter Gesellschaftsschichten mit rechtlichen Mitteln

Europäische Hochschulschriften, Reihe II, Rechtswissenschaft

Peter Lang Verlag, Frankfurt a.M., 1997, 230 S., DM 69,--

Die Entwicklung uralter Rechtsübung hin zum Rechtssystem eines modernen Großstaates ist ein überaus spannendes – nicht nur juristisches – Thema. In einer Berliner Dissertation hat Astrid Zilm als Teilaspekt untersucht, ob und wenn ja, welche Rolle die alte Kastenordnung noch im heutigen indischen Recht spielt.

In über 3000 Jahre alten Schriften Indiens (*Rigveda*) wurde die Gesellschaft als Organismus betrachtet. Die gesellschaftlichen Gruppen entsprechen der Vielheit der Funktionen, die die Menschen vollziehen müssen. Diese "soziologische" Betrachtungsweise wurde später unglücklicherweise religios-mythologisch untermauert und artete in das Kastenwesen aus. In der alten Form war das Berufsprinzip die Grundlage der Einteilung. Der ersten Gruppe oder Kaste gehörten die Priester, Weisen, Philosophen, Gelehrten an. Die Politiker, Soldaten, Feldherren und die weltlichen Machthaber bildeten die zweite Gruppe.

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