Asian Journal of Law and Society (2023), **10**, 46–56
doi:10.1017/als.2022.19

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Trust, Democracy, and Hygiene Theatre: Taiwan's Evasion of the Pandemic

Robert B Leflar

National Taiwan University College of Law, National Yang Ming Chiao Tung University, and University of Arkansas School of Law (retired 2020)
E-mail: rbleflar@uark.edu

Abstract

Taiwan's record of preventing infections and deaths from COVID-19 outshines that of almost every other nation, far outstripping the performance of the US, all European countries, and almost all Asian countries. Yet Taiwan is the nation closest to Wuhan, font of the pandemic. Equally importantly, Taiwan's public health achievement has occurred without the government dictates such as business and residential lockdowns that have aroused controversy and caused economic and psychological distress around the globe. This essay relates the story of Taiwan's actions during the crucial early months of 2020 and explores the factors—historical, geographical, legal, institutional, strategic, and cultural—accounting for Taiwan's remarkable success. Prominent among those factors are the legal and institutional infrastructure of preparedness that Taiwan constructed following its unhappy experience with the 2003 SARS outbreak, and the prompt and decisive measures taken upon discovery of the Wuhan outbreak on 31 December 2019. A dialogue between the judiciary and the legislative and executive branches of government following the SARS episode enabled the infrastructure of preparedness to be created through a process consonant with democratic government, respecting principles of individual liberty and fairness. Risk communication techniques were skilfully employed to build public trust in expert advice about measures for infection prevention. Persuasion, not compulsion, was the norm. Cultural factors including customary acceptance of mask-wearing and authoritative advice, and perhaps a high level of risk-aversity, also played an important part. Taiwan's pandemic control policies have drawn criticism of government overreach. Some recommendations, such as for outdoor masking, bear little rational relation to infection prevention and are best characterized as mere "hygiene theatre." Nevertheless, early-2020 government measures received a high level of public approval. Taiwan's successful response to the pandemic illustrates the nation's nature: a disciplined democracy.

Keywords: electronic fence; hygiene theatre; Interpretation No. 690; lockdown; masks and masking; quarantine; risk aversion; risk communication; SARS; WHO (World Health Organization); COVID-19

1. Introduction

During the half-year period preceding submission of this paper, the estimated number of deaths in the US from COVID-19 rose by about 266,000. Other Western nations have experienced similarly grave mortality tolls. During that same half-year period, the number of COVID-19-related deaths in Taiwan, a nation with highly trustworthy health statistics, rose from 846 to 854—a total of eight.[1]

[1] US COVID-19-related deaths on 15 October 2021 were estimated at 721,843, and on 14 April 2022 at 988,121. In Taiwan, COVID-19 deaths on 15 October 2021 stood at 846, and on 15 April 2022 they numbered 854. Our World in Data (2022) (slide cursor across chart).

Taiwan's record of preventing infections and deaths from COVID-19 is vastly superior to that of almost every other nation, far outstripping the performance of the US, all European countries, and almost all Asian countries (only China, with its draconian control measures, is in the same ballpark). As of 15 April 2022, Taiwan had recorded 30,574 confirmed cases of COVID-19 since 1 January 2020 and 854 deaths[2]—that is, fewer than 1/1000 (0.087%) of the approximately 988,000 Covid-related deaths reported in the US. (Taiwan's population in 2020 was 23.6 million, about 7.1% of the US population.[3]) It is an even tinier proportion, per capita, of the more than 6 million deaths reported worldwide.[4] A recent credible compilation of adjusted infection rates per 1,000 people in 177 countries placed Taiwan third-best worldwide at nine per 1,000, compared with 545 in the US, 374 in the UK, 67 in Japan, and 28 in South Korea. Only China (one per 1,000, before a recent spike) and New Zealand (three per 1,000) had lower infection rates, according to this analysis.[5]

Yet Taiwan is the nation geographically closest to Wuhan, the font of the pandemic. The annual bidirectional flow of visitors for personal and business reasons between Taiwan and Wuhan typically has numbered in the tens of thousands annually, and from all China, in the millions.[6] How did what some observers call "the Taiwan miracle"[7] come to pass?

Equally importantly, Taiwan's public health achievement has taken place chiefly without the kinds of government dictates such as business and residential lockdowns that have aroused controversy around the globe.[8] To be sure, Taiwanese authorities' measures have received various criticisms, as outlined below, as one would expect in a thriving democracy. However, on the whole, the public has strongly approved of the authorities' overall approach—and in some cases has even requested greater stringency.

This essay relates the story of Taiwan's responses to the pandemic during the crucial early months of 2020 and explores the factors—historical, geographical, legal, institutional, strategic, and cultural—that have accounted for Taiwan's remarkable success.

2. SARS 2003 as "dress rehearsal" for Taiwan's expeditious response to COVID-19

At about 2:30 in the morning of 31 December 2019, a young physician (who has chosen to remain anonymous) with the screen name "No More Pipe" posted a message on "PTT" (an acronym for "Professional Technology Temple"), a student-run social media bulletin board hosted by National Taiwan University. No More Pipe's message reposted an alert she had seen on the Chinese social media platform Weibo from Dr Wenliang Li, a researcher in Wuhan. Dr Li's post: "Seven new SARS cases have been discovered in the Huanan seafood market." Many PTT viewers upvoted No More Pipe's post, and health ministry official Dr Yi-Chun (Philip) Lo checked PTT, noted Dr Li's credibility, and notified the health ministry's team of experts that had been organized following the government's questionable handling of the 2003 SARS outbreak. The team of experts, exercising its authority as

[2] Taiwan Centers for Disease Control (2022a).

[3] The US population in the 2020 census was 331.4 million. Taiwan's population in 2020 was 23.6 million. United States Census Bureau (2022); Statistical Bureau of the Republic of China (2021).

[4] Taiwan Centers for Disease Control, *supra* note 2. Totals reported to the WHO are likely only a fraction of the actual totals.

[5] COVID-19 National Preparedness Collaborators (2022).

[6] More than 7,000 people flew from Wuhan to Taiwan during the first three weeks of 2020, just as COVID-19 infection began to spread worldwide. Liao (2020). In 2019, 2.7 million visitors from mainland China travelled to Taiwan. Wang & Lin (2020). More than 400,000 Taiwanese were working in China at the beginning of the pandemic. Su & Han (2020).

[7] E.g. Yeh (2020), p. 1. Jiunn-rong Yeh, now a leading academic, has served in the Cabinet as Minister of Education and Minister of the Interior.

[8] E.g. Thomson & Ip (2020) (among many others).

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

explained below, instituted health inspections for all passengers from Wuhan beginning the next day, 1 January 2020.[9]

That action marked the beginning of Taiwan's expeditious response to information about the new virus. Underlying the nation's rapid response were institutional and legal reforms sparked by Taiwan's botched handling of SARS infections in 2003.

The SARS outbreak of 2003 had also been an import from China. It resulted in 181 deaths in Taiwan.[10] It was reported that Taiwan had the highest mortality rate—14%—of front-line health-care workers in the world during the 2003 SARS outbreak.[11] Some local hospitals refused to admit patients suspected of SARS infection.[12] Poor co-ordination of national and local authorities and lack of preparedness by health officials provoked widespread criticism. Observers characterized the episode as the "bitter SARS experiences" caused in part by "regulatory failure."[13]

The 2003 SARS episode has often been called a "dress rehearsal" for Taiwan's response to the COVID-19 pandemic.[14] As Dr Chi-Tai Fang, a leader of the team of experts, recalled: "We had awaited this moment for 17 years."[15]

In response to the institutional and regulatory failures of 2003, the Executive Yuan and the Legislative Yuan (the terms for the respective branches of Taiwan's government) moved to repair the cracked foundations of the institutional structures of epidemic control. An early initiative was the establishment of the National Health Command Center in 2004, with the Central Epidemic Command Center (CECC) as one of its components.[16]

The Communicable Disease Control Act (CDC Act), the primary legal basis for measures to combat epidemics, was criticized after the 2003 SARS episode both for its vagueness and for its legitimation of harsh measures such as compulsory indefinite quarantine without clear compensation for resulting damages, and the lockdown of specific hospitals.[17] The highly controversial lockdown of Heping Municipal Hospital in Taipei City, for example, in which more than 1,000 hospital staff, patients, and patients' families were sealed within the hospital for two weeks,[18] led to rancourous confrontations between local and national officials and a lawsuit that reached the Constitutional Court.

In that case, the Constitutional Court, in its highly influential Interpretation No. 690, upheld sanctions imposed on Dr Ching-Kai Chou, a physician who had defied orders to return to Heping Hospital during its lockdown. The city government fined him for insubordination, suspended his medical licence, and fired him.[19] The Court determined that under the conditions authorities faced at the time, the city's order that Dr Chou return to the hospital was within its legitimate discretion, and that such measures as short-term detentions or quarantines and compulsory physical examinations did not violate the principles of legal clarity, proportionality, or due process of law guaranteed in Articles 8 and 23 of the Constitution. However, the Court did recognize that individuals subjected to restrictions during a public health crisis must be accorded procedural protections. The Court also instructed the

[9] Tang (2021); Taylor & Tang (2020). Audrey Tang is Taiwan's Digital Minister, the first openly transgender person to serve in the Cabinet of any Asian nation. She makes all her interviews available online.

[10] Chen et al. (2005).

[11] *Ibid.*; McDonald et al. (2004).

[12] Lee (2021), p. 1123.

[13] Lin, Wu, & Wu (2020), pp. 3–4.

[14] Lee, *supra* note 12, p. 1122.

[15] Fang & Chen (2021). Prof. Chi-Tang Fang is Epidemiology Advisor to Taiwan's Central Epidemic Command Center and a leader in Taiwan's response to COVID-19. Dr Yi-Hsuan (Karen) Chen, Dr Fang's associate, played a critical role in the expert team's actions following No More Pipe's post.

[16] Taiwan Centers for Disease Control (2022b).

[17] Yeh, *supra* note 7, p. 3.

[18] Zhang (2020); Lee, *supra* note 12. Many of those confined in the hospital were infected as a result.

[19] The story of this case is told in Chang (2020) and also summarized in Lee, *supra* note 12, pp. 1119–20.

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

Legislative Yuan that the CDC Act must be amended to set a definite time limit for compulsory quarantines, to formulate an adequate compensation mechanism for those adversely affected, and to adopt other measures to mitigate quarantines' adverse effects.[20]

The Court's decision in Interpretation No. 690 was not without its critics. Notably, Justice Tzong-Li Hsu, dissenting, observed that

> [w]hether or not they are specialists, leaders can abuse their authority. There are many historical examples of authorities using mental illness as a justification for purging political dissidents .... [citing practices of the KGB and discrimination against homosexuals and religious minorities]. But as there are cases of dissidents persecuted in the name of treating mental illness, this judge cannot help but be wary of compulsory isolation decisions during times of infectious disease.[21]

The Legislative Yuan proceeded to enact various amendments to bring the CDC Act in line with the strictures of Interpretation No. 690, according greater protections for individual liberties and human rights. Article 10 of the CDC Act now protects patients' privacy interest by forbidding disclosure of their names and medical data. Article 11 now provides for the protection of the dignity of patients with communicable diseases and prohibits discrimination against them. Article 53 authorizes compensation for classes of quarantined or isolated individuals.[22]

The CDC Act amendments—enacted with bipartisan support, an unusual occurrence in Taiwan's often rambunctiously partisan legislature—also strengthened the legal foundations for control of future epidemics. Article 8 now gives the minister of health legal authority to declare the existence of an epidemic, in which case the health minister can establish a CECC. Article 17 consolidates power to the executive branch, addressing the problem of confusion between central and local authorities during the 2003 SARS outbreak and streamlining decision-making authority.[23]

The Executive Yuan implemented a series of important reforms consonant with the amended CDC Act, with a view toward better preparedness whenever the next epidemic might strike—creating what has been called the "SARS playbook."[24] The most significant of these reforms was the strengthening of the personnel structure of the CECC and the clarification of its authority. The CECC, chaired by the health minister but with participation by other relevant ministries, co-ordinates not only the health ministry's public health initiatives related to the pandemic, but also calls the tune for other ministries' initiatives concerning (for example) immigration controls, surveillance, and risk communication to the public. As one international team of scholars put it, "in Taiwan responsiveness to pandemic diseases and similar threats is embedded in national institutions."[25]

Promptly after Dr Philip Lo (now deputy director-general of the Taiwan CDC) recognized, from the information posted by No More Pipe on PTT, the seriousness of the public health threat, the government's response team initiated measures substantially predating the World Health Organization's responses to COVID-19,[26] and contrasting radically with the dithering, disjointed approach adopted by the Trump administration in the US.

[20] Constitutional Court R.O.C. (Taiwan), Interpretation No. 690 (2011).

[21] Justice Hsu's dissent is translated into English in Chang, *supra* note 19, and reprinted in Lee, *supra* note 12, pp. 1120–1.

[22] Communicable Disease Control Act, as amended.

[23] Communicable Disease Control Act, as amended; Lee, *supra* note 12, p. 1123; Lin, Wu, & Wu, *supra* note 13, p. 5.

[24] Tang, *supra* note 9.

[25] Summers et al. (2020), p. 3.

[26] Grimley (2021); The Independent Panel for Pandemic Preparedness and Response (2021). Taiwan's CDC dispatched an expert investigative team to Wuhan on 16 January 2020, for example, long in advance of WHO action. Su & Han, *supra* note 6, p. 2 (Fig. 1).

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

President Ing-Wen Tsai called a Cabinet meeting for 20 January 2020 to co-ordinate the government's strategies for controlling the pandemic. Each ministry was assigned tasks that were to be accomplished with immediacy. Mei-Hua Wang, now minister of economic affairs, recalled that President Tsai directed each ministry to "meet the goal. Don't fight."[27] The CECC was activated and given responsibility, under the minister of health and welfare, for co-ordinating control measures by all the ministries.[28]

The Ministry of Economic Affairs was assigned the job, for example, of ensuring an adequate supply of personal protective equipment. At the time, mask supplies fell far short of spiking public demand.[29] Wang recalled meetings "from morning to night" with mask manufacturers to gear up production.[30] By March, Taiwanese mask production was sufficient that excess supplies were sent to other countries suffering shortages, including the US, in a campaign labelled "Taiwan Can Help."[31]

Keenly conscious of government failings during the 2003 SARS episode, CECC officials adopted a "highly precautionary approach" when COVID-19 appeared.[32] Restrictions on travellers took first priority. The CECC barred entry to travellers from Wuhan on 23 January, suspended tours to China on 25 January in advance of the high-travel lunar New Year festivities, and banned all Chinese visitors on 6 February. On 19 March, entry by all foreigners was suspended. In light of burgeoning infection rates abroad, overseas travel by Taiwanese teachers and students at the high school level and below was interdicted, as well as by all medical care providers. Taiwanese returning from abroad were subjected to a 14-day compulsory quarantine.[33]

At first, during late January 2020, the CECC had not gone so far as to require mask-wearing by the general population in the course of daily life, indoors or outdoors—largely because initially, insufficient masks were available to meet public demand, requiring an initial rationing system allotting three masks per week to each resident at a government-set low price.[34] The CECC's early approach to the issues of mask distribution and mask-wearing provoked considerable public dissatisfaction. As Digital Minister Audrey Tang recalled the prevalent mood in those days, the general public's attitude—so different from public attitudes in many Western nations—was this: "Make us wear masks!"[35]

3. Surveillance, travel bans, risk communication, and soft enforcement

This part of the essay describes key aspects of the Taiwanese government's strategy in addressing the pandemic in the early months of 2020. The extent and nature of the government's measures aroused criticisms regarding both restrictions on individual liberties and interference with residents' daily lives. However, the measures have been effective in protecting public health, and that effectiveness itself has muted the criticisms and solidified initial public approval.

[27] Wang (2021). At the time, Ms. Wang was the deputy minister.

[28] Lin, Wu, & Wu, *supra* note 13, p. 6.

[29] Google searches for the terms "face mask" and "hand sanitizer" are reported to have increased about 100-fold following the report of the first COVID-19 case in Taiwan on 21 January 2020. Galvin et al. (2020); Summers et al., *supra* note 25.

[30] Wang, *supra* note 27.

[31] Fang & Chen, *supra* note 15; Tang, *supra* note 9; Lin, Wu, & Wu, *supra* note 13, p. 9. By August 2020, Taiwan had donated 51 million masks to other nations. Teng (2020).

[32] Lin, Wu, & Wu, *supra* note 13, p. 3.

[33] Wang, Ng, & Brook (2020); Chen & Fang (2021); Lin, Wu, & Wu, *supra* note 13, p. 6; Yeh, *supra* note 7, pp. 1–2.

[34] Su & Han, *supra* note 6, p. 4; Lee (2020), p. 2. An online "Face Mask Map," developed by civic activists, helped the public find locations at which masks were available. *Ibid.*; Lee, *supra* note 12, p. 1131.

[35] Tang, *supra* note 9.

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

First, key elements of the government—immigration, police, and health authorities especially—co-ordinated a set of measures to identify infected persons and their contacts, and to avoid contagion by confining both those who tested positive and those who might have been infected. The first step was amalgamation of Taiwan's separate information storage systems into a single integrated system to which all relevant authorities had access.

Data were integrated into the centralized system from the following sources. Taiwan's National Health Insurance system, covering more than 99% of the country's population,[36] provides an electronically readable card to every member, containing that person's medical records and payment history. The National Immigration Agency maintains electronic records on individual travel to and from other countries, permitting identification of possible infection vectors from abroad. Telecommunication companies' data tracking specified customers' mobile phone use were integrated into the database, together with police camera-based traffic surveillance data. The health ministry and the CECC could thereby access every patient's records for information about their health status and could locate those who were possibly infected.[37] "Big data" analytics techniques were dragooned into the service of public health.

After the first confirmed COVID-19 case (a traveller from Wuhan) was reported on 21 January 2020, CECC introduced "guidelines"—in effect requirements, as a practical matter—for testing or quarantining of individuals deemed at high risk. These included people who had recently travelled or lived abroad, people who had had contact with symptomatic travellers from abroad or with other symptomatic or confirmed cases, and people with pneumonia. For those required to be quarantined, a 14-day home or hotel quarantine period was followed by a 14-day home isolation period.[38]

The quarantines were enforced, starting in mid-March 2020, by an "electronic fence" system. Telecommunications providers received a list of mobile phone numbers (with names redacted) of people required to undergo quarantine or isolation. Operators can determine, within a 50-metre radius, the location of each mobile phone.[39] If phone users left the location of their designated quarantine or isolation, or turned off their cellphones, the system notified police and civil and health authorities. Police determined the names and addresses of the violators and were required to take further enforcement action. This typically entailed warnings, or sometimes fines if the violator had already been diagnosed with symptoms.[40] Flagrant violators could also be forcibly returned to their designated quarantine or isolation location.[41]

The government also enforced temporary international travel restrictions on doctors and other front-line health-care personnel, entirely prohibiting travel to some countries and requiring them to obtain approval from their superiors for travel to others. The rationale was to ensure the presence of sufficient health-care professionals to control the spread of disease.[42] The international travel restrictions extended to primary and secondary school students and to their teachers, to reduce the risks that infections acquired abroad might be spread within Taiwan.[43]

[36] Yeh, *supra* note 7, p. 2.

[37] Lin, Wu, & Wu, *supra* note 13, p. 11.

[38] Su & Han, *supra* note 6, p. 3.

[39] Tang, *supra* note 9.

[40] Yeh, *supra* note 7, p. 2; Lin, Wu, & Wu, *supra* note 13, p. 11; Taiwan News (2020); Tang, *supra* note 9. The author, serving a 14-day quarantine in a hotel room upon arrival from the US, ventured out of his room for a 3 a.m. jog up and down the hotel corridor. Within a minute, his cellphone rang with a warning.

[41] Su & Han, *supra* note 6, p. 4.

[42] Lee, *supra* note 12, p. 1128. The restrictions on foreign travel by health professionals were lifted in about four months.

[43] Yeh, *supra* note 7, pp. 1–2.

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

These measures aroused controversy from the standpoints of both civil liberties and practical interference with daily life.[44] To head off such criticisms and to provide a more solid legal basis for the measures it had taken and was contemplating, the Executive Yuan proposed, and the Legislative Yuan speedily enacted, the "Covid-19 Special Act."[45] This law reaffirmed the broad delegation of power to the executive branch during exceptional health-threatening circumstances that the Constitutional Court had approved in Interpretation No. 690: Article 7 provides that the CECC may "for disease prevention and control requirements, implement necessary response actions or measures." (The concept of "necessary" is undefined.) The law also authorized compensation and financial subsidies to individuals, businesses, and medical institutions for economic disruptions they suffered, including compensation for time spent in quarantine.[46]

These statutory provisions gave the government extensive enforcement tools for pandemic control, but for the most part, the government chose not to employ them in draconian fashion. Rather, the primary strategy was persuasion and the construction and strengthening of a social consensus advancing good public health practices.

The key element in this strategy was risk communication—chiefly employing fact and humour, rather than threat and fear. CECC held daily live-coverage press conferences to provide accurate up-to-date information on Covid incidence and prevalence and on control policies, followed by open Q&A sessions, and employed social media for these purposes as well.[47] Dr Shih-chung Chen, health minister, and Vice-President Dr Jen-Ren Chen, an epidemiologist, were the public faces of the government's risk communication efforts in a manner kin to that of Dr Anthony Fauci in the US, setting out the facts and dispelling misconceptions rather than threatening sanctions for disobedience of enforceable rules.[48]

Vice-President Chen and Health Minister Chen were not the only public faces of the government's risk communication tactics. Putting into practice the slogan "Humour over rumour," the CECC also had an actual spokesdog—a Shiba Inu named Zongchai. As Digital Minister Tang explained it:

> Whenever CECC rolls out a measure [such as social distancing], their participation officer walks back home, ... takes a new photo of the dog and says, "When you're indoors, keep three Shiba Inus away. When you're outdoors, keep two dogs away." It's very creative and people share that all the time.[49]

Taiwan is not immune from the worldwide plague of misinformation about health. Part of the government's risk communication strategy has been to counter false rumours about COVID-19 and the shortage of household necessities by sanctioning individuals under the Social Order Maintenance Act, a practice that has drawn criticism alleging a chilling effect on free speech.[50]

[44] E.g. Taiwan Association for Human Rights (2020); Lin, Wu, & Wu, *supra* note 13; Lee, *supra* note 12.

[45] Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens, enacted 25 February 2020. The law had retrospective effect to 15 January.

[46] Lee, *supra* note 12, p. 1124. Implementing this provision of the law, the Regulations Governing Compensation for Periods of Isolation and Quarantine for Covid-19 (promulgated on 10 March 2020) set out procedures under which individuals and businesses adversely affected by quarantine restrictions could apply for compensation. Yeh, *supra* note 7, p. 3.

[47] Lin, Wu, & Wu, *supra* note 13, p. 7; Wang, Ng, & Brook, *supra* note 33, p. 1342.

[48] E.g. rather than banning mass religious gatherings, Health Minister Chen carried out dialogues with religious leaders, persuading them to postpone the Dajia Matsu Pilgrimage (the largest annual religious procession in Taiwan) and later expressing his personal gratitude in a visit to the Jenn Lann Temple on Matsu's birthday. Lee, *supra* note 34, p. 3.

[49] Tang, *supra* note 9.

[50] Lin, Wu, & Wu, *supra* note 13, p. 8.

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

On the whole, however, the Taiwanese government's approach to pandemic control has been to favour persuasion over compulsion. That approach has succeeded remarkably well. The next part of this essay explores some reasons for that success.

4. Factors contributing to Taiwan's success

A confluence of factors has aided Taiwan's relative imperviousness to the ravages of the COVID-19 pandemic. The first is geographic: insularity provides insulation. Immigration controls, strictly applied, have prevented most of the cross-border importation of infection that has plagued nations with long land borders and less rigorous screening of incoming travellers. The second is Taiwan's preparation of a legal and institutional infrastructure to cope with future pandemics following the country's bitter experience with the SARS infection in 2003, as detailed above.

A third possible contributing factor, in this writer's view, is perhaps counterintuitive: Taiwan's exclusion from the World Health Organization due to opposition from the People's Republic of China (PRC).[51] Many Taiwanese have long distrusted official information emanating from the PRC;[52] one reason for that distrust is the lack of credibility of PRC-provided information during the 2003 SARS episode. Thus, unlike many WHO member nations that tend to rely on WHO recommendations before instituting public health measures, Taiwan adopted a "self-help" approach, taking immediate action after Dr Philip Lo assessed the information that No More Pipe had gathered from independent researcher Dr Wenliang Li in Wuhan early in the morning of 31 December 2019.[53] Had Taiwan waited on the WHO for advice, perhaps travel to and from China during the lunar New Year holidays in 2020 would have worsened the situation significantly—and fatally to many.

Other elements contributing to Taiwan's success might be ascribed to the general heading of "cultural factors." One is the traditional acceptance of mask-wearing. In the US, a person wearing a mask (pre-pandemic) was presumptively viewed as seeking to avoid detection because of engagement in some nefarious activity such as bank robbery. By contrast, in Taiwan (as in other East Asian countries), people with colds or other diseases transmissible by airborne particles, and people seeking protection against air pollution, customarily masked themselves on a routine basis for self-protection and as a courtesy to others.[54] This difference in custom and perception accounts for much of the difference in resistance to mask-wearing between Taiwan (and other East Asian countries) and the US.

A second cultural factor, one that this observer admits is speculative,[55] may be a higher level of risk aversion in the health sphere in Taiwan than in many Western nations. In reaction to occasional increases in infection incidence of low-to-moderate gravity that would be viewed as ordinary in Western nations accustomed to far larger infection inci-

[51] That exclusion is a continuing source of dismay and irritation to many officials and academics in Taiwan, in this observer's experience. The fact that Taiwan's recognition of and response to the likely dangers of COVID-19 considerably outpaced that of the WHO seems a source of a certain lightly concealed *Schadenfreude*, in the minds of some interviewees.

[52] E.g. Lin, Wu, & Wu, *supra* note 13, p. 7.

[53] Su & Han, *supra* note 6; Tang, *supra* note 9.

[54] Chan (2020); Summers et al., *supra* note 25.

[55] Some academic studies have compared risk aversion in the *financial* sphere in Taiwan as opposed to that in Western nations, and have found Taiwanese to be more risk-averse. E.g. Cheng (2009). Whether that attitude of risk-aversity carries over to other areas of life has not yet been empirically demonstrated in convincing fashion, to this writer's knowledge. However, some non-academic observers have reported anecdotally their views, similar to this writer's, that Taiwanese risk-aversity on health matters is high. E.g. Faulkner (2021).

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

dence statistics, alarm bells have sounded in Taiwan and CECC-recommended restrictions have been tightened, despite only a relatively small increase in the island's mortality statistics.[56] The public has generally responded to these alarm bells by acceptance of the increased restrictions. The prevalence of public fear of the risk of COVID-19 infection—even low-to-moderate infection—is borne out by the high demand for vaccinations. Many who could afford it even travelled at personal expense to the US or other nations where vaccinations were more readily available than in Taiwan.

A third cultural factor has to do with values of trust and respect for hierarchical authority and for family solidarity. Respect for expertise embodied in government recommendations for hygienic practices, announced by renowned medical leaders, has enormous influence. Allied to this widespread (but by no means universal) respect for authority seems to be a perception that people failing to follow authorities' advice are acting contrary to social expectations—they are *deviants*. Few wish to be tarred with that brush.

5. Hygiene theatre

The historical, legal, and cultural factors discussed above have combined to create the foundation for an attractive stage on which the Taiwanese government has not hesitated to perform what Sirin Kale and Derek Thompson have aptly labelled "hygiene theatre."[57] Authorities have instituted or recommended measures that have virtually no rational scientific relation to the prevention of infection transmission. A few examples: masking even in parks and other well-ventilated venues; plastic coverings on touchable surfaces such as elevator buttons; plexiglass barriers dividing one table or desk from the next without interfering with airflow; spraying alcohol disinfectant solution on arriving travellers from their shoulders to the soles of their shoes, and their baggage as well—measures characterized, with a cocked eyebrow, by a perceptive observer from Cambridge University (among many others) as "OTT."[58]

Many Western observers may be surprised at the degree of public adherence to the norms of Taiwanese hygiene theatre. Mask-wearing, for example, is almost universally practised in Taipei as of this writing, outdoors as well as indoors, except when a person is eating or drinking, smoking, or strenuously exercising. The risk of transmitting or receiving infection in well-ventilated outdoor venues is very small, so the health benefit of masking in such circumstances is hard to identify, and masking comes with a social cost: difficulty in recognizing others' moods, veracity, and even identity.

Nevertheless, public adherence to hygiene theatre norms does have a connection to the success of this democratic society's battle against the pandemic. As Tsung-Ling Lee observed, it has created a "powerful signal for vigilance at the individual and societal levels. Wearing face masks is less a stigma but [is] commonly perceived as a sign of solidarity."[59] This solidarity is an essential component of the trust in government and government-sourced expertise that has enabled Taiwan to maintain its admirably low level of COVID-19 morbidity and mortality.

6. Conclusion

Taiwan's remarkable success in evading most of the ravages of the COVID-19 pandemic that have plagued most of the world's nations is attributable to a confluence of factors

[56] *Supra* note 1.
[57] Kale (2021); Thompson (2021).
[58] "Over the Top"; Lindley (2021).
[59] Lee, *supra* note 34, p. 2.

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

—historical, geographical, legal, institutional, strategic, and cultural. Prominent among those factors are the legal and institutional infrastructure of preparedness that Taiwan had constructed following its unhappy experience with the SARS outbreak in 2003, and the prompt and decisive measures taken by government authorities upon discovery of the outbreak in Wuhan on 31 December 2019.

Of crucial significance was the dialogue between the Taiwanese judiciary and the legislative and executive branches of government following the SARS episode. This dialogue enabled the infrastructure of preparedness to be created through a process consonant with democratic government, with respect for principles of individual liberty.

Also of significance was the skilful employment of risk communication techniques to build public trust in expert advice about personal measures for infection prevention. Persuasion, not compulsion, was the norm. Taiwanese experienced no mandated lockdowns, minimizing the adverse economic and psychological consequences suffered in other nations.

What does its response to the COVID-19 pandemic have to say about the nature of this island nation's political system? This writer cannot improve upon the observation of former Cabinet minister Jiunn-rong Yeh: "There's a social solidarity in this nation. We have our disagreements. Our parliament is rambunctious. But we keep to the rules out of a sense of community. This is a disciplined democracy."[60]

Acknowledgements. The author thanks Eric Chang of NTU for his excellent research assistance.

References

Chan, Benjamin Y. T. (2020) "Addressing Conflicting Views on Wearing of Facemask by the Public to Combat COVID-19: Experiences from the East Asia Region." 4 *Journal of Global Health Reports* e2020049.

Chang, Sze-Wu (2020) "The SARS Doctors: How Three Doctors Survived Taiwan's Worst Quarantine," *The Reporter*, 12 March, https://www.twreporter.org/a/sars-memories-life-under-quarantine-in-heping-hospital-english (accessed 15 April 2022).

Chen, Yi-Hsuan, & Chi-Tai Fang (2021) "Combined Interventions to Suppress R0 and Border Quarantine to Contain COVID-19 in Taiwan." 120 *Journal of the Formosan Medical Association* 903–5.

Chen, Kow-Tong, Shiing-Jer Twu, Hsiao-Ling Chang, et al. (2005) "SARS in Taiwan: An Overview and Lessons Learned." 9 *International Journal of Infectious Diseases* 77–85.

Cheng, Chia-Hsin (2009) "Are the Chinese Really More Risk Averse? A Cross-Cultural Comparison of the Risk-Return Relationship," *Journal of Global Business Management*, http://www.jgbm.org/page/4%20Chia-Hsin%20Cheng.pdf (accessed 15 April 2022).

COVID-19 National Preparedness Collaborators (2022) "Pandemic Preparedness and COVID-19: An Exploratory Analysis of Infection and Fatality Rates, and Contextual Factors Associated with Preparedness in 177 Countries, from Jan 1, 2020, to Sept 30, 2021," *The Lancet* online, 1 February 2022, ––https://doi.org/10.1016/S0140–6736(22)00172–6 (accessed 15 April 2022).

Fang, Chi-Tang, & Karen Chen (2021) "Interview with Robert B Leflar," 11 March.

Faulkner, Lee (2021) "Taiwan Must Pursue Risk Management to Overcome Future Challenges," *Taiwan News*, 19 October, https://www.taiwannews.com.tw/en/news/4318996 (accessed 15 April 2022).

Galvin, Cooper J., Yu-Chuan Li, Shwetambara Malwade, et al. (2020) "COVID-19 Preventive Measures Showing an Unintended Decline in Infectious Diseases in Taiwan." 98 *International Journal of Infectious Diseases* 18–20.

Grimley, Naomi (2021) "Covid: Serious Failures in WHO and Global Response, Report Finds," *BBC*, 12 May, https://www.bbc.com/news/world-57085505?piano-modal (accessed 15 April 2022).

Independent Panel for Pandemic Preparedness and Response, The (2021) "Covid-19: Make It the Last Pandemic," https://theindependentpanel.org/wp-content/uploads/2021/05/COVID-19-Make-it-the-Last-Pandemic_final.pdf (accessed 15 April 2022).

Kale, Sirin (2021) "Hygiene Theatre: How Excessive Cleaning Gives Us a False Sense of Security," *The Guardian*, 12 July, https://www.theguardian.com/society/2021/jul/12/hygiene-theatre-how-excessive-cleaning-gives-us-a-false-sense-of-security (accessed 15 April 2022).

[60] Yeh (2021).

https://doi.org/10.1017/als.2022.19 Published online by Cambridge University Press

Lee, Tsung-Ling (2020) "Legal Preparedness as Part of COVID-19 Response: The First 100 Days in Taiwan." 5 *BMJ Global Health* e002608.
Lee, Tsung-Ling (2021) "The Rise of Technocracy and the COVID-19 Pandemic in Taiwan: Courts, Human Rights, and the Protection of Vulnerable Populations." 22 *German Law Journal* 1115–32.
Liao, George (2020) "7,515 People Left Wuhan for Taiwan before Lunar New Year," *Taipei Times*, 28 January, https://www.taiwannews.com.tw/en/news/3865860 (accessed 5 February 2022).
Lin, Ching-Fu, Chien-Huei Wu, & Chuan-Feng Wu (2020) "Reimagining the Administrative State in Times of Global Health Crisis: An Anatomy of Taiwan's Regulatory Actions in Response to the COVID-19 Pandemic." 11 *European Journal of Risk Regulation* 1–21.
Lindley, Elizabeth (2021) "Interview with Robert B Leflar," 18 June.
McDonald, L. Clifford, Andrew E. Simor, Ih-Jen Su, et al. (2004) "SARS in Healthcare Facilities, Toronto and Taiwan." 10 *Emerging Infectious Diseases* 777.
Our World in Data (2022) "Cumulative Confirmed COVID-19 Deaths," https://ourworldindata.org/explorers/coronavirus-data-explorer?zoomToSelection=true&time=2020-03-01.latest&facet=none&pickerSort=desc&pickerMetric=total_cases&hideControls=true&Metric=Confirmed+deaths&Interval=Cumulative&Relative+to+Population=false&Color+by+test+positivity=false&country=~TWN (accessed 15 April 2022).
Statistical Bureau of the Republic of China (2021) "Statistical Yearbook of the Republic of China 2020: Population and Housing, Table 3," https://eng.stat.gov.tw/public/data/dgbas03/bs2/yearbook_eng/y003.pdf (accessed 6 February 2022).
Su, Sheng-Fang, & Yueh-Ying Han (2020) "How Taiwan, a Non-WHO Member, Takes Actions in Response to COVID-19." 10 *Journal of Global Health* 1.
Summers, Jennifer, Hao-Yuan Cheng, Hsien-Ho Lin, et al. (2020) "Potential Lessons from the Taiwan and New Zealand Health Responses to the COVID-19 Pandemic." 4 *The Lancet Regional Health—Western Pacific* 100044.
Taiwan Association for Human Rights (2020) "Protecting Civil Liberties During a Public Health Crisis," 19 March, https://medium.com/@tahr1984/protecting-civil-liberties-during-a-public-health-crisis-1de3c6d8e724 (accessed 15 April 2022).
Taiwan Centers for Disease Control (2022a) "COVID-19," https://www.cdc.gov.tw/ (accessed 15 April 2022).
Taiwan Centers for Disease Control (2022b) "NHCC," https://www.cdc.gov.tw/En/Category/MPage/gL7-bARtHyNdrDq882pJ9Q (accessed 15 April 2022).
Taiwan News (2020) "Taiwan Implements Electronic Security System to Track Individuals under Quarantine," *Taiwan News*, 18 March, https://www.taiwannews.com.tw/en/news/3899718 (accessed 15 April 2022).
Tang, Audrey (Feng) (2021) "Interview with Robert B Leflar," 4 March, ––https://sayit.pdis.nat.gov.tw/2021-03-04-interview-with-robert-b-leflar (accessed 15 April 2022).
Taylor, Matthew, & Audrey Tang (2020) "The End Goal Is to Get People into the Culture of Listening to One Another." 166 *RSA Journal* 16–9.
Teng, Sylvia (2020) "Taiwan Has Donated 51 Million Surgical Masks Worldwide Amid Coronavirus Pandemic," *Taiwan News*, 11 August, https://www.taiwannews.com.tw/en/news/3984834 (accessed 15 April 2022).
Thompson, Derek (2021) "Hygiene Theater Is a Huge Waste of Time," *The Atlantic*, 27 July, https://www.theatlantic.com/ideas/archive/2020/07/scourge-hygiene-theater/614599/ (accessed 6 February 2022).
Thomson, Stephen, & Eric C. Ip (2020) "COVID-19 Emergency Measures and the Impending Authoritarian Pandemic." 7 *Journal of Law & Biosciences* lsaa 64.
United States Census Bureau (2022) "Decennial Census of Population and Housing by Decades," https://www.census.gov/programs-surveys/decennial-census/decade.html (2020 census figures) (accessed 6 February 2022).
Wang, C. Jason, Chun Y. Ng, & Robert H. Brook (2020) "Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing." 323 *JAMA* 1341–2.
Wang, Mei-Hua (2021) "Interview with Robert B Leflar," 9 February.
Wang, S., & K. Lin (2020) "Foreign Visitors to Taiwan Up 7% in 2019," *Focus Taiwan*, 6 January 2020, https://focustaiwan.tw/society/202001060014 (accessed 15 April 2022).
Yeh, Jiunn-rong (2020) "Four Legs to Stand on: Taiwan's Fight against COVID-19," *Melbourne Forum on Constitution-Building*, https://law.unimelb.edu.au/__data/assets/pdf_file/0006/3476535/MF20-Web4-Taiwan-Jiunn-rong-FINAL.pdf (accessed 5 February 2022).
Yeh, Jiunn-rong (2021) "Interview with Robert B Leflar," 25 May.
Zhang, Ziwu (2020) "The SARS Doctors: How Three Doctors Remember Taiwan's Worst Quarantine," *Taiwan Reporter*, English edn, 3 March, trans. Harrison Chen, https://www.twreporter.org/a/sars-memories-life-under-quarantine-in-heping-hospital-english (accessed 5 February 2022).

Cite this article: Leflar, Robert B (2023). Trust, Democracy, and Hygiene Theatre: Taiwan's Evasion of the Pandemic. *Asian Journal of Law and Society* **10**, 46–56. https://doi.org/10.1017/als.2022.19