



TAIWAN FOUNDATION  
for DEMOCRACY

財團法人臺灣民主基金會

## Rule of Law vs. Rule by Law in Taiwanese Democracy: A Comparative Analysis

**Speaker:** Dr. Marta Kosmala-Kozłowska, Postdoctoral Visiting Fellow,  
Taiwan Foundation for Democracy; Assistant Professor, Institute  
of Middle and Far East, Jagiellonian University

**Date:** Wednesday, September 6, 2017

**Time:** 2:00 pm – 3:40 pm

**Venue:** Taiwan Foundation for Democracy

Room 510, 5th Floor, No. 4, Alley 17, Lane 147, Sec. 3, Sinyi Rd., Daan District,  
Taipei

**Moderator:** Dr. Ketty W. Chen (陳婉宜博士), Vice President, Taiwan Foundation for  
Democracy

**Discussant:** Dr. Eric Chen-hua Yu (俞振華博士), Director, Domestic Affairs Department,  
Taiwan Foundation for Democracy

### Agenda:

2:00 – 2:10 Opening remarks by Dr. Ketty W. Chen

2:10 – 2:50 Presentation by Dr. Marta Kosmala-Kozłowska

2:50 – 3:10 Comments by Dr. Chen-hua Yu

3:10 – 3:40 Open discussion

※ Please note that this event will be conducted in English.

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### Rule of Law vs. Rule by Law in Taiwanese Democracy: A Comparative Analysis

#### Abstract

The purpose of the presentation is to diagnose the current state of Taiwanese democratic rule of law in its politico-legal aspects by presenting them against the backdrop of their comparative context in the East Asian region, most notably against corresponding cases in Hong Kong, Thailand and the Philippines. The scope of comparison is positioned across two spectrums: substantive and procedural.

The substantive dimension relates to the situations, usually of political crises of societal discontent expressed in demonstrations, in which governmental behaviour vis-à-vis the citizens

is put to the test for its respect of normative pillars of a democratic system. The procedural dimension relates to how the laws applied reflect the level of safeguarding basic standards of civic and political rights, or the will of the government to instrumentalise existing legal regulations to suppress those rights. This allows to expose cases when ‘restoring lawful order’ against the dissent of protesters may be legally correct but normatively fraudulent.

To examine this, three lenses are adopted in the presentation that are directly related to how the government treats those who oppose it by engaging in protests: 1) respecting the right of assembly and related behaviour of law enforcement; 2) the way detention of the apprehended participants is being authorised and conducted and whether other coercive measures are adopted (like torture or other denigrating treatment); and 3) to what extent the trial they face afterwards is fair, and sentences proportional to transgressions. What remains outside of the presentation is the efficacy of pressure exerted by the protests on the change in contested policy – while government responsiveness to the societal demands expressed on the streets and occupied buildings may be some measure of the democratic condition the essence of the democratic rule of law depends far more on the governmental conduct during the protests that reflect the open channels for the civil society to find public expression.

In case of Taiwan, the pool of the selected cases encompasses the main protests of the Sunflower Movement, the 2015 protests against textbook reform and the recent protests against the pensions reform during the Summer Universiade. In case of Hong Kong, the protests of the Umbrella Movement. In case of Thailand, the 2013-2014 anti-abolition and anti-government protests and the 2016 protests related to the constitutional referendum. In case of the Philippines, the 2017 protests against Duterte’s violent anti-drug campaign.

The cases will be analysed selectively, in accord with their relevance to the abovementioned three lenses – some are too recent to make informed judgment on the conditions of detention or the conduct of trials as those are still ongoing and not all facts are available. Freedom House indices on the selected countries will be used as a benchmark for the findings of the comparative analysis.

—by Dr. Marta Kosmala-Kozłowska

### **Speaker Biography**

Dr. Marta Kosmala-Kozłowska is an assistant professor at the Institute of the Middle and Far East, Jagiellonian University in Cracow and a lecturer in Collegium Civitas in Warsaw. She received her PhD in Political Science from the University of Warsaw. She’s the author of “Human Rights Dialogue between East Asia and the West: Visions and Practice”. She specialises in comparative analysis of political systems in East Asia, with emphasis on rule of law and human rights.

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## RSVP

**Please RSVP by Tuesday, September 5, 2017**

**Date:** Wednesday, September 6, 2017

**Time:** 2:00 pm – 3:40 pm

**Venue:** Taiwan Foundation for Democracy

Room 510, 5th Floor, No. 4, Alley 17, Lane 147, Sec. 3, Sinyi Rd., Daan District,  
Taipei

Mr./Ms./Dr. \_\_\_\_\_ Title \_\_\_\_\_

Organization \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Will attend     Unable to attend

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