

Civic Constitutionalism and Tax Law

An Exploration of Civic Engagement in Taiwan

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Abstract

This paper explores the relationship between taxes and civic constitutionalism in modern welfare states. The author discusses the importance of tax consciousness and compliance, as well as the role of the rule of law in the fiscal domain. The paper also examines the practice of civic constitutionalism in Taiwan’s tax law, including the constitutional interpretation and the actions of civic organizations. The author concludes by reflecting on the importance of civic-centered approaches to fiscal law.

Keywords: Civic Constitutionalism, Tax Law, Tax Consciousness, Civic Engagement

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1 Introduction

1.1 Motivation

In the context of China, when you see the word "artist" and "tax" together, you are probably reading about the cases where celebrities or influencers evade or avoid income taxes illegally. In severe cases, individuals and the companies involved are blacklisted by the regulatory authorities.¹ However, in Taiwan, people who concern with tax law or public law in general, definitely know about the Constitutional Court Interpretation No. 745 that arose partly from the tax cases involving well-known artists: Lin Chi-Ling and Novia Lin. Declaring the tax law (article 17, paragraph 1 of the Income Tax Code) at the time unconstitutional, the Interpretation promoted Taiwan's tax law to comply with the principle of equality.

Famous artists are commonly considered to be the groups that can achieve high income levels, thus have a higher tax burden capacity in the context of John Rawls' theory of justice. As above, the difference in the roles the group play in the field of tax law inspires this study. This paper wants to find out the relationship between the environment of civic constitutionalism and tax consciousness in modern welfare states.

1.2 Background

1.2.1 The Idea of Civic Constitutionalism

Civic constitutionalism is a concept that the maintenance and sustainability of constitutional democracy depend heavily on a robust understanding of civic duty and citizenship as well as an ambitious and deeply democratic project of civic education in the principles and commitments central to a constitutional way of life.² According to the civic constitutionalist perspective, the people have a central role in the formal process of amending the constitution, and in its ongoing maintenance, interpretation, evolution, and even termination.³ This idea has been applied in various contexts, including Taiwan, where it has been used to describe the transformative constitutional changes that have taken place in recent decades.⁴

Civic constitutionalism can be manifested through the following characteristics.⁵ Firstly, civil society actively participates in the democratic process by engaging Congress and promoting representative democracy through constitutional reforms. This involvement allows civil society to contribute to the interpretation, understanding, and shaping

¹"Viya: Top Chinese Live-Streamer Fined \$210m for Tax Evasion". In: *BBC News* (Dec. 2021).

²John E Finn. "The Other Preamble: Civic Constitutionalism and the Preamble to the Bill of Rights". In: *Concordia L. Rev.* 2 (2017), p. 7.

³David C Williams. "Civic Constitutionalism, the Second Amendment, and the Right of Revolution". In: *Ind. LJ* 79 (2004), pp. 379–392, at 382.

⁴Jiunn Rong Yeh. "Marching towards Civic Constitutionalism with Sunflowers Focus: Taiwan's Sunflower Movement". In: *Hong Kong Law Journal* 45.1 (2015), pp. 315–330.

⁵*Ibid.*, at 320.

of the constitution by exerting indirect or direct influence on their elected representatives.

Secondly, since the democratization process, civil society remains vigilant and engaged, even when there is a trusted Constitutional Court in place. On one hand, civil society serves as a driving force for judicial review, advocating for the protection of rights and government accountability by bringing relevant issues to the courts for resolution. This process contributes to the strengthening and consolidation of constitutional principles and values. On the other hand, while the court interprets and applies the constitution, it remains attentive to public sentiment and opinions regarding constitutional adjudication matters.

Thirdly, engaged citizens and civic groups play a crucial role in initiating, deliberating, and steering constitutional reform agendas, despite the institutionalized processes for constitutional amendments. Their active participation enriches our understanding of constitutions and how they function within post-democratized societies.

1.2.2 The Fiscal System of the Modern Welfare State

The fiscal system of the modern welfare state is characterized by a combination of taxation and social security contributions to fund public expenditures on social welfare programs such as education, healthcare, social security payments, and housing.⁶ Taxation serves as a crucial source of government revenue in the modern welfare state. Even anarchists may consider taxation as a necessary source of public funds for essential public goods and services in the short term.⁷

The introduction of modern taxes took the state's fiscal capacity to a completely new level, expanding its revenue potential beyond anything previously conceivable and furnishing it with a rich toolkit of redistributive instruments.⁸ For example, progressive taxation is often used to redistribute wealth and reduce income inequality.⁹ Without a robust tax system, the modern welfare state would not have the necessary funds to provide social welfare programs and other public goods and services to its citizens. In short, a robust tax system is necessary for the modern welfare state to function effectively.

2 Tax Consciousness and Civic Constitutionalism

In this paper, taxation is considered to be a field of civic engagement, where people actively participate in the democratic process by contributing to the functioning of the government and public services. This section examines the importance of tax consciousness from the perspective of civic constitutionalism. "Tax consciousness", or "tax aware-

⁶"Welfare State". In: *Wikipedia* (June 2023).

⁷Noam Chomsky. *On Anarchism*. The New Press, 2013, p. 30.

⁸Philipp Genschel and Laura Seelkopf. *Global Taxation: How Modern Taxes Conquered the World*. Oxford University Press, Sept. 2021, p. 1.

⁹Junko Kato. *Regressive Taxation and the Welfare State: Path Dependence and Policy Diffusion*. Cambridge Studies in Comparative Politics. Cambridge: Cambridge University Press, 2003.

ness",¹⁰ refers to individuals' awareness and understanding of taxation. This includes taxpayers understanding their tax obligations and recognizing the importance of taxation to society and their contributions.

2.1 Tax Compliance

One of the most tangible aspects of tax consciousness is tax compliance, which refers to individuals' adherence to tax laws and regulations by voluntarily fulfilling their tax obligations. It involves timely and accurate reporting of income, assets, and relevant information, as well as the payment of taxes as required by law. Tax compliance is crucial for the proper functioning of the tax system, as it relies on taxpayers' willingness to comply with tax laws and fulfill their obligations.

2.2 Fundamentation of Tax Compliance

Some scholars in the natural or social sciences may simplify tax compliance into a simple network model, focusing only on interpersonal influences while overlooking factors related to the specific tax system or the rule of law.¹¹ However, this paper argues that tax compliance should be regarded as a product of civic constitutionalism. Tax compliance, as the outward manifestation of tax consciousness, depends significantly on the level of civic engagement.

Tax consciousness exhibits various dimensions. It involves not only the awareness of tax obligations and responsibilities but also the attention given to the fairness and equality of the tax system. Taxpayers' concern for the fairness and equality of tax laws reflects their expectations of the rationality and justice of the fiscal system. This can be separated into two sides, the tax burden and the utilization of public funds. Taxpayers are expected to be attentive to whether taxes are distributed fairly and whether there are preferential or unfair tax treatments. utilization and allocation of tax funds. Besides, taxpayers are also concerned about how the government utilizes tax revenues, ensuring alignment with the public interest, and expressing a desire for fair and reasonable distribution of funds.

Under the rule of law of fiscal taxation, a state with sufficient civic participation is an important and necessary prerequisite for tax compliance. Please recall Section 12 of the Magna Carta, which states that no scutage or aid (tax) shall be imposed without the consent of the common council of the realm. This means that the monarch could not levy taxes without the barons' approval, establishing the principle of obtaining consent for taxation and setting the stage for the development of civic constitutionalism. The concept of "no taxation without representation" became a fundamental principle of civic constitutionalism. It asserted that individuals should have a say in the imposition of taxes and the

¹⁰ Alfred G. Buehler. "The Tax System and Tax Consciousness". In: *The Bulletin of the National Tax Association* 25.8 (1940), pp. 237–246. JSTOR: 41788059, at 237.

¹¹ Debora Di Gioacchino and Domenico Fichera. "Tax Evasion and Tax Morale: A Social Network Analysis". In: *European Journal of Political Economy* 65 (Dec. 2020), p. 101922.

allocation of public resources through their elected representatives. This idea was later echoed in the American Revolution and the drafting of the United States Constitution, further solidifying the relationship between civic constitutionalism and taxation.¹²

In summary, civic engagement has long been an important factor in shaping the fiscal system. In modern welfare states, citizens' active participation and engagement in the democratic process can influence the design of taxation policies, the allocation of public funds, and the priorities of government spending. A trusted fiscal system with enough civic engagement serves as the foundation of tax compliance.

3 Practice of Civic Constitutionalism in Taiwan

In Taiwan, the constitutional experience of the past few decades has been filled with violations and reconstruction of rights. Since democratization, the fundamental rights enshrined in the Constitution have been undergoing a process of constant argumentation. This dynamic development of rights has been primarily following three main paths that intertwine: civil society, the judicial path, and constitutional reform, corresponding to the main characteristics of civic constitutionalism mentioned earlier.

In the field of taxation, the practices of argumentation could also follow the above patterns. In this section, examples are illustrated to demonstrate the practice of civic constitutionalism in Taiwan in the field of tax law, following two of the main paths above.

3.1 Constitutional Review

Constitutional Court Interpretation No. 745 was caused by Litigations filed by a tax law professor Chen Ching-Shiou and a model Novia Lin. The two taxpayers are considered to be earners of salary income and are not allowed to deduct the full amount of their expenses according to the tax law at that time. This leads to a greater amount of tax burden, compared to the taxpayers who are considered to be practitioners, which may be against the principle of equality from the Constitution. Therefore, they asserted that taxpayers categorized to be earners of salary income should also be allowed to deduct the full amount of their expenses.¹³ After suspending the litigation procedure, the Judge applied for a constitutional interpretation.

The interpretation found that salary earners are allowed to deduct from their personal incomes only a fixed amount of the Special Deduction Amount for Salary Income. When the necessary expenses exceed the statutory Deduction Amount per year, salary earners are not allowed to deduct necessary expenses either by enumeration or other methods, which is inconsistent with the right to equal treatment under Article 7 of the Constitution. The relevant authorities were instructed to review and amend the Income Tax Act and rel-

¹²"No Taxation without Representation". In: *Wikipedia* (June 2023).

¹³Professor Chen also asserted that the hourly pay for his teaching at a university in 2008 should be categorized as income earned by a practitioner, rather than salary income.

evant regulations in line with this Interpretation within two years from the announcement of this Interpretation¹⁴.

This Interpretation serves as a perfect and reassuring example of effective civic constitutionalism in action, in the field of tax law. In response to taxpayers' persistent claim for rights, the constitutional court's decision helps to shape and reform the tax law in accordance with constitutional principles. This Interpretation signals the Constitutional Court's shift from the formal review of tax legalism to the substantive review of the rule of law. It has shaped and enriched the connotation of the constitution, embodied the argument of citizens' rights in the judicial channel, and realized the citizens' imagination of the constitutional order.

Although Taiwan is now a relatively mature constitutional society with a rule of law, there are still instances where the preceding legal system is not conducive to the fundamental human rights of the Constitution. The indispensability of citizen participation lies in its capability to identify and rectify these scattered flaws throughout the legal system.

3.2 Contining Actions of Civic Organizations

From time to time, people can encounter a group of protestors with yellow vests and flags in the main streets of Taipei, conducting tax-related speeches and demonstrations. They are associated to Tai Ji Men Qigong Academy, a spiritual and cultural organization in Taiwan. The protests are raised from the protracted tax disputes they have, called Tai Ji Men Tax Case.

In 1992, the Taiwanese government initiated an investigation into the tax status of the Tai Ji Men Qigong Academy. The tax administration claimed that the academy owed substantial taxes and imposed heavy fines and penalties. The tax administration considers this organization to be a profit-making business in essence. Tai Ji Men disputed these claims, arguing that it qualified for tax exemptions as a non-profit religious organization. The supporters advocate that the money is a gift of thanks to the teacher (master), not tuition fees. The case went through a protracted legal battle, spanning more than two decades. Tai Ji Men sought to defend its tax-exempt status based on its religious nature and the social contributions it made through its cultural and charitable activities.

3.2.1 The Conflict between High Tax Burden and Freedom of Belief

The Tai Ji Men Qigong Academy, founded in 1966, promotes the practice of Qigong, a traditional Chinese discipline focused on cultivating physical and mental well-being. The organization's leader, Dr. Hong, has been actively involved in promoting Qigong internationally. Supporters of Tai Ji Men rallied behind the organization, emphasizing the importance of religious freedom and fair treatment in tax matters. They highlight the potential implications of the case on religious organizations and their ability to fulfill their social and cultural missions.

¹⁴*Constitutional Court Interpretation No. 745 (Feb. 08, 2017) - Constitutional Court R.O.C. (Taiwan).*

Since the dispute, various social groups and activists have been expressing their support for Tai Ji Men and participated in public demonstrations, petitions, and awareness campaigns. They argue that the case is not just about Tai Ji Men's tax obligations but also about upholding the principles of equality, religious freedom, and fair treatment under the law. These social actions are aimed to raise public awareness about the Tai Ji Men Tax Case, garner support from the general population, and put pressure on the government to reconsider its stance.

The Tai Ji Men Tax Case has prompted broader discussions and debates about tax fairness, religious freedom, and the appropriate treatment of non-profit organizations in Taiwan. It has led to calls for comprehensive tax reform and clearer guidelines regarding the tax status of religious and non-profit organizations.

These protesting activities are not only centered around the tax obligations of the Tai Ji Men Qigong Academy but has also ignited social activism related to tax fairness and religious freedom. Freedom of belief encompasses the freedom to practice, observe, and express one's religious convictions without undue interference from the state. When taxation policies unduly burden religious practices or force individuals to compromise their religious beliefs, it can be seen as a violation of their freedom of belief. The case has catalyzed discussions on tax reform and the treatment of non-profit organizations, contributing to a broader dialogue on these important social issues.¹⁵

3.2.2 Government's Attitude of Inclusiveness towards Civil Society

In such cases, conflicts arise between the government's tax policies and the fundamental right to freedom of belief. The Taiwan government has demonstrated an attitude of inclusiveness towards civil society, recognizing the importance of active civic engagement and the valuable role that civil society organizations play in democratic governance. This shows the great progress of Taiwan's rule of law society since democratization.

This example also demonstrates that the rights of taxation also interact with other constitutional rights, such as freedom of belief, freedom of expression, the right to assemble and march, and the right of association. This shows that fundamental rights are interconnected and indivisible, meaning that they are interdependent and mutually reinforcing. Each right contributes to the realization and protection of other rights, forming a cohesive framework for human dignity and equality. These rights function as a cohesive system, with each right strengthening and complementing the others. The peaceful implementation of these rights in this example is also a practice of citizen constitutionalism.

As to whether these actions can ultimately promote tax law amendments, it still depends on the attitude of Congress, which represents public and professional opinions.

¹⁵Kenneth A. Jacobsen. "Abrogating the Rule of Law: The Tai Ji Men Tax Case in Taiwan". In: *The journal of CESNUR* 4.5 (2020), p. 101.

4 Civic-centered Reflection upon Fiscal Law

4.1 Implications of Tax Disputes

There's an interview with Noam Chomsky that talks about taxation.¹⁶ In the interview, he emphasizes the importance of a positive attitude toward taxes as an indicator of a healthy and functional democratic society, while expressing concern about the perceived decline in democratic functioning based on the current negative perception of Tax Day in the U.S. nowadays.

In Taiwan, the average fraction of the number of tax cases to all administrative appeals cases terminated by the Supreme Administrative Court is around 30% for the last decade.¹⁷ This, to a certain extent, means that there is still a lot of room for improvement in the current tax legal system. Reflection is required not just about the level of compliance, but more importantly the whole fiscal system, including the legislation. The practice of civic constitutionalism can have a substantial impact on the system. Of course, the impact is not limited to the field of taxation. As discussed in the sections above, the effects of civic constitutionalism could be comprehensive and far-reaching. Remember the case of *Moritz v. Commissioner* in 1972, the true case Ruth Bader Ginsburg argues in the film *On the Basis of Sex*? It is also remarkable in the context of civic constitutionalism because it was a landmark case in which the United States Court of Appeals for the Tenth Circuit held that discrimination based on gender constitutes a violation of the Equal Protection Clause of the United States Constitution.¹⁸ This case helped to establish the principle that laws that discriminate based on gender are unconstitutional and set a precedent for future cases challenging gender-based discrimination, advancing the cause of equal rights.

4.2 Solution for Tax Consciousness

For the instances where people lack awareness of tax obligations and seek to evade taxes through illegal transaction arrangements (of course not only in China), one of the main reasons may be the absence of civic engagement. People who have a negative attitude towards tax payment, in general, are not well-informed about the functions of public finance or do not identify with the fiscal system (due to insufficient supervisory review).

Therefore, the effective way to promote tax compliance, or tax morality, is to make sure that the fiscal-tax system is based on the will of the people, and the principles of rule of law are followed completely. To be specific, the revenue and the spending of the public finance funds should be sufficiently transparent under the supervision of the people. The design of the tax policy is fair and just. The government budget review mechanism follows proper procedures and is subject to checks and balances of power. This means that the process of reviewing and approving the government's budget is subject to oversight and scrutiny by different branches of government, as well as by the public, to ensure that it is

¹⁶Citizensgateway. *Noam Chomsky Explains Taxes in 40 Seconds*. Feb. 2013.

¹⁷*Judicial Statistics Yearbook*. Mar. 2022.

¹⁸"*Moritz v. Commissioner*". In: *Wikipedia* (June 2023).

transparent, fair, and in the best interests of the people. When citizens perceive that their taxes are being used responsibly and for the betterment of society, they are more likely to willingly comply with their tax obligations.

5 Conclusion

Taxpayers' rights are civil rights, that is, human rights. The practice of civic constitutionalism in the field of tax law is a crucial component of Taiwan's comprehensive democratization and serves as a significant reflection of civic engagement in the construction of the rule of law.

This paper highlights the contributions of civic engagement to shaping tax policies and guaranteeing their alignment with the tenets of fairness, equality, and justice. By providing open and unhindered paths for civic engagement, Taiwan enables individuals to actively engage and exert influence in the formulation of tax policies, thus ensuring fairness and equality as much as possible. Embracing a civic-centered approach to fiscal legislation allows Taiwan to further strengthen its democratic institutions and uphold the principles of justice and fairness within its tax system.

This approach can serve as an inspiration for other countries, including China, to embrace a more democratic and inclusive approach to fiscal policy-making. If one day, in China, people are empowered to engage with their government and advocate for their rights, unobstructedly, they can strive to ensure that their voices are heard and their interests are represented. Tax compliance then can be expected to improve as people know that the fiscal system is being optimized to efficiently utilize and generate public wealth, providing public services and assisting those in need.

By investigating these dynamics, the study intends to contribute to the existing literature on tax compliance and civic engagement, providing insights into how the environment of civic constitutionalism can foster a culture of tax consciousness and further promote the overall level of social justice. Ultimately, the findings of this research can inform policy discussions and initiatives aimed at enhancing tax compliance and promoting a more participatory and informed approach to fiscal matters.

The fiscal system is the cause, not the end. fiscal-induced civic engagement will bring about dynamic revolutions in pursuit of the ideal of democracy and rule of law, and realize social justice.

For further studies, the paper suggests that qualitative research or quantitative analysis is expected to be conducted focusing on the relationship of number of tax disputes, level of tax compliance, level of social welfare and level of democracy. Time-series and multinational materials are required for a comprehensive study. By conducting such research, a deeper understanding can be gained regarding the complex dynamics among the factors, shedding light on the factors that shape taxpayers' behaviors and the effectiveness of tax systems in modern societies.

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