

# COVID-19 and Democratic Governance in Taiwan: Challenges and Opportunities

By [Chuan-Feng Wu](#)

Geographically and economically close to China, Taiwan seemed likely to be badly affected at the onset of the global crisis of novel coronavirus (COVID-19). But the island nation with a population of 23 million so far [has reported just 895 confirmed COVID-19 cases, of which 785 are classified as imported](#), suggesting limited levels of community transmission. Taiwan's success in containing the pandemic has been widely acclaimed.

[Advanced risk assessment, effective and efficient risk communication, proactive risk management, big data analytics, and new surveillance technology have been highlighted as the keys to Taiwan's successful pandemic response.](#) Both formal and informal channels (such as social media platforms and messaging apps) have been employed to facilitate two-way communication between the government and the public on a daily basis. Additionally, democratic governance and open society have been deployed as the foundation for

safeguarding the rule of law and human rights during the state of emergency, [as elucidated in the Constitutional Court's landmark decision in response to regulatory failure during the 2003 SARS outbreak.](#)

With a high degree of transparency about the legal bases of public health measures, the government has built trust within affected communities and strengthened the legitimacy of its decisions. Promulgation of the Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens (COVID-19 Special Act), where the expansion of technocratic governance and its legitimacy were re-examined by the legislature, reflects the young democracy's attempt to maintain its democratic legitimacy. For example, [concerns were raised about technocratic biases, democratic accountability, and civic participation when decision-making power is concentrated in the hands of appointed bureaucrats or experts during the pandemic.](#) The combination of democratic and technocratic legitimacy has facilitated social cohesion and compelled an almost universal level of community cooperation in the midst of the pandemic. In short, [Taiwan's relative success in fighting against the pandemic has demonstrated its capacity to deal with a public health crisis in a swift manner within a transparent, democratic and legal framework.](#)

*Taiwan's proactive response to COVID-19 may still pose a threat to democracy and human rights*

And yet, Taiwan's proactive and precautionary response to COVID-19 may still pose a threat to democracy and human rights. First, the COVID-19 Special Act, which grants the government open-ended authority to take "all necessary measures" to address the pandemic, [has raised concerns about legal clarity and proportionality](#). For example, the Central Epidemic Command Center (CECC) cited its power under the COVID-19 Special Act to ban teachers, students, and medical personnel from traveling abroad – far exceeding its authority under prior legislation to restrict the freedom to travel abroad only of persons involved in national security. This move was criticized as verging on arbitrariness or abuse of power. [Some legislative members responded by proposing to amend the COVID-19 Special Act](#) to strengthen democratic oversight. Their opponents argued that [a proactive, preemptive regulatory strategy, based upon trust in democratically elected officials and appointed bureaucrats, is essential](#) at a time when scientists know very little about COVID-19. The result: unsettled debates about whether it is justified to entrench the administrative state in favor of a swift emergency response at the expense of democratic legitimacy, and whether the government can harness the administrative state with only traditional safeguards such as due process, proportionality, and judicial review.

Second, the "big data" technologies employed by the government to assist the implementation of quarantine and contact tracing have not been carefully scrutinized for legality. A good example is the integration of multiple databases and mobility data beyond what is covered by original consent or [legal exemptions](#), potentially breaching data minimization and purpose limitation requirements. Health records, real-time movement, and other relevant information from potential COVID-19 patients, obtained through government databases, surveillance cameras, vehicle license plate recognition, and mobile phone tracking, are collected, processed, and shared. By integrating individuals' travel records from the National Immigration Agency with the National Health Insurance database, which contains medical records of the entire population, physicians are given access to a patient's occupation and travel history. In another example, using the GPS detected in individuals' mobile devices, a [so-called digital fencing system](#) connected to the Police Cloud Computing System (M-Police) monitors individuals' compliance with quarantine orders. The [decision to disclose to the public COVID patients' daily routes and the names of individuals quarantined because of "unnecessary" travel to worst-affected countries](#) has been challenged for lacking a legal basis and disproportionately invading individuals' privacy. But questions about the lawfulness of these uses of personal data so far [have been sidelined in the policy-making process. Human rights advocacy groups have urged the government to review whether](#)

[these big-data-driven practices of disease surveillance qualify as “necessary measures.”](#) They have also expressed concerns about the lack of any notification process, revision mechanism, or appeal process for those affected.

Last but not least, with respect to the vertical separation of powers, [significant executive power has been vested in central authorities during the pandemic](#), and a centralized platform (CECC) has been established to coordinate disease control measures across various agencies. Disputes have sometimes emerged when a local government tries to adopt its own, more stringent disease control measures. In August 2020, the local government of Chang Hua County decided to test all visitors from outside the county for COVID-19, regardless of whether they had symptoms. The CECC overruled the initiative, concerned that false positives could overwhelm the country’s medical system and jeopardize its COVID-19 prevention measures. The CECC had its way, ignoring local governments’ role as the democratic bodies designed to respond to citizens’ needs. In response to criticism, the central government promised to improve its communication with local governments and to take more account of local concerns when developing disease-control measures.

[Democracy and rule of law have been tested by the COVID-19 crisis](#), and governments around the world have adopted exceptional measures that bend or break fundamental legal principles to address imminent threats. Taiwan is not immune from this dilemma. Its

successful experience in countering COVID-19 so far [shows that a stronger democracy is still the key to boosting society’s trust in institutions in the face of a pandemic](#). A pre-established legal framework, where democratic processes can function even under emergency restrictions to ensure accountability, civic participation, and due process, is capable of mitigating the tension between containing the coronavirus on the one hand, and safeguarding democracy and human rights on the other.

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