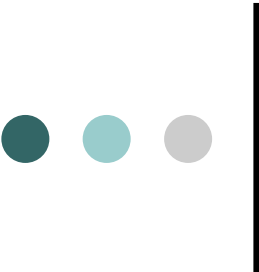




# Runaway Judiciary: Judicial Politics in Taiwan

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「在過去，檢察官就好像關在籠子的睡獅。馬英九將這籠子的門打開了，即使他也不知道籠子裡面到底有沒有獅子」

一位檢察官

In the past, prosecutors were like sleepy lions in the cage. Ma Ying-Chin opened the cage even though he did not know whether there was any lion in the cage.

----One Taiwanese Prosecutor



# Introduction

- The Rising of Judicial Politics in Taiwan.
- The 2004 Presidential Election.
- Chen Shui-bian was charged of corruption.
- Background: civil law tradition; Japan had ruled Taiwan for fifty years.
- Judge is a functionary, a civil servant; the judicial function is narrow, mechanical, and uncreative.
- Hierarchy: District court—High Court—Highest Court



# My Question:

- What is the nature of judicial politics in Taiwan?
- American Model or Italian Model?
- What happened in the judiciary in the past twenty years?



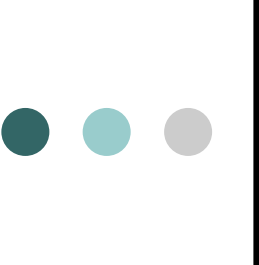
# Constitutional Revolution? Interpretation No. 261

- “My assertion that this was the most important case was corroborated by interviews with law professors, grand justices, judges, and lawyers in Taipei in 1998. In interviews with these members of legal profession, I asked the respondents for their opinion of the most important case in ROC constitutional history. Each respondent answered without any solicitation that Interpretation No. 261 was the most important (Ginsburg 2003: 145)”.



# Silent Revolution in Taiwan's Judiciary

- The Story of Taiwanese Judicial Reform: Judges and Prosecutors revolted from the bottom of the judiciary.



# What can explain the rising of judicial politics in Taiwan?

- The defects of Taiwanese democratic politics.
  - Clientelist Politics: Corruption and Vote-Buying
  - More and more important politicians were prosecuted.
- The rules for democratic competitions were not well developed.
  - No conflict, no court.
  - 2004 Presidential Election; 2006 Kaohsiung Mayor Election
- Judicial Independence Reform made much progress in Taiwan.



# Studies of Judicial Politics in Taiwan

- Few empirical legal studies.
- No judicial politics courses in major universities.
- My Research Method:
  - In-depth interviews with judges, prosecutors, and social movement organizers.
  - Most of them were tape-recorded.



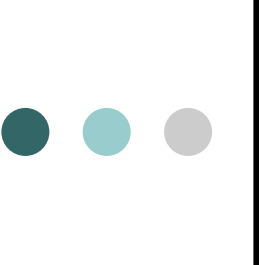
# The KMT used the judiciary for several political purposes:

- Legitimized the KMT's authoritarian rule through the implementation of martial law.
- Oppressed the opposition parties.
- Used the legal system to punish its clientelist elites if they tried to go against it.
- Protected clientelist elites' corruption and vote-buying.



# Dynamics of Judicial Reform

- International Organization
  - World Bank, United States Agency for International Development (USAID)
- Politicians and Political Parties
  - Insurance Theory (Ginsburg; Finkel; Stephenson)
- NGOs
  - Taiwanese Judicial Reform Foundation
- No positive roles for judges and prosecutors



# Judges and the rule of law under pressure

- The Case of Chile:
  - “Why did Chilean judges who had been trained under and appointed by democratic governments facilitate and condone authoritarian policies?” (Hilbink 2007: 4)
- The Case of Taiwan:
  - Why did Taiwanese judges who had been trained under and appointed by authoritarian regime carry out judicial independent reform?



# How to study judicial independence reform?

- “The first key to this approach is to look for evidence of dependence instead of independence.... Too often scholars look for independence when it is quite likely that in its pure form it does not exist anywhere. Judicial dependence, by contrast, exists in virtually every political system and is much more easily identifiable (Larkins 1996:619)”.



# Three branches of the judiciary

- The least controlled and dangerous part of the judiciary system is easier to defend against the KMT's control. The first reform in the judiciary took place in the lawyers' association. On the contrary, the prosecutorial system is most controlled by the KMT, and is the most difficult to change.
- Lawyer Reform Movement in 1988 -Taking control of the leadership of Lawyer Association.
- Reform in Court in 1993.
- Reform in Prosecutorial System in 1998.



# Reform in the court system

- Case-assignment Reform
  - Tai-Chung District Court in 1993
  - The First Collective Action for Reform-Minded Judges
- Reforming Personnel Review Council of Judge in 1994:
  - Controlled judges' promotion, punishment, and transfer.
  - The leader of reform movement 呂太郎 was promoted as the Director of Judicial Personnel Affair (人事處長) in 1998.



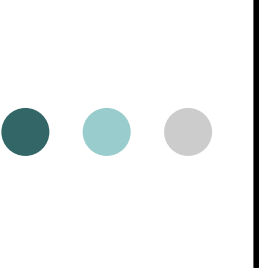
# Characteristics of court reform

- Major reformers were young judges. Their ages were less than forty then.
- They were from the bottom of the judiciary: the district courts.
- Several reforms were successful.
- Unlike the past failed reforms led by prosecutors, these reform judges stayed in the judiciary. In contrast, several corrupt judges resigned or were censured. However, the overall judicial personnel structure was not radically changed.
- The KMT and the Judicial Yuan made little effort to resist these reforms.



# The Consequences of Judicial Independence Reform in Taiwan

- No important role for political parties.
- Two reform-minded judges as the Director of the Bureau of Personnel Affair (呂太郎、周占春)
- Several reform-minded judges were promoted as chief judges of the district courts (呂太郎、康素正、蕭廣政、黃瑞華)
- Compare Taiwan with Japan:
  - In Japan, judges who joined leftist organizations were likely to receive less attractive position.
  - In Taiwan, reform-minded judges have been promoted to several important positions and still have some influence on many judicial issues.



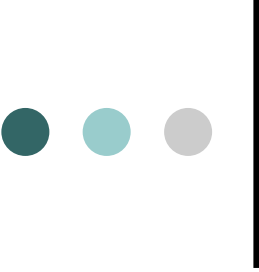
# Reform in the prosecutorial system (1)

- Similarities between the court and prosecution reforms:
  - The major actors of both reform movements were from the bottom of the judiciary system.
  - Young prosecutors.



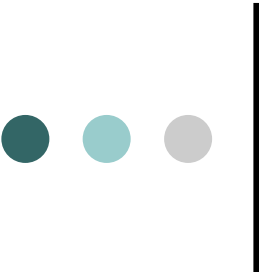
# Reform in the prosecutorial system (2)

- Differences between the court and prosecution reforms:
  - The prosecution reforms occurred later than the court reforms.
  - The court reforms faced little resistance from the Judicial Yuan, but the KMT and the Ministry of Justice attacked maverick prosecutors several times and resisted many reforms which were suggested by reform prosecutors.
  - The prosecution reforms made much less progress than the court reforms until 2006.



# Reform in the prosecutorial system (3)

- The Emergence of the New Generation
  - 呂太郎 searched the KMT County Office in 1990 because of vote-buying case.
- Attacks from the KMT
  - Attempted to negate the prosecutor's power of issuing the committal warrant. ( 羈押權 )
  - Attacked Ma Ying-Chiu.
  - Attacked eight maverick prosecutors, including 朱朝亮.



# Reform in the prosecutorial system (4)

- Prosecutors Reform Association (PRA) in 1998
  - The most important leader was Prosecutor Eric Chen (陳瑞仁), who was in charge of the State Special Fund Case and prosecuted the former First Lady.
  - Participated in the Prosecutor Personnel Council (檢審會).
  - Broke down the “promotion map” in the prosecutorial system.
  - Protected maverick prosecutors from punishment by the Ministry of Justice.



# DPP and Judicial Reform(1)

- Court on its own road regardless of regime shift
- Judicial Reform is a slogan not an agenda. The DPP and President Chen did not take the prosecutorial system seriously. They did not have any plans or agendas for the prosecutorial system.



# DPP and Judicial Reform(2)

- DPP did not understand what happened in the judiciary in the past ten years. The DPP did not promote many reform-minded prosecutors who had many conflicts with the Ministry of Justice. On the contrary, the DPP relied on conservative prosecutorial bureaucrats to run the prosecutorial system.
- Big achievements of prosecutorial system during the period were mainly attributed to the efforts of Prosecutors Reform Association.
- The short honeymoon between the DPP and the Prosecutors Reform Association.



# The DPP Government and the Prosecutorial System(1)

- First Period (2000-2001): The Honeymoon period between Chen Ding-nan and the Prosecutor Reform Association
  - Set up a special investigation team, Investigating Black Gold Center (查緝黑金中心).
  - Chen also promoted two members of Prosecutor Reformation Association, Liu Wei-tsung (劉維宗) and Chu Chao-lian (朱朝亮), as district attorneys.



# The DPP Government and the Prosecutorial System(2)

- Second Period(2001-2004): The First Great Conflict between Chen Ding-nan and PRA
  - Unexpected transfer of District Attorney in April, 2001.
  - The official reasons for the unexpected transfer was the controversy from the events of searching *China Times Express* (中時晚報) and National Cheng Kung University.
  - The real reasons: Chung Hsing Bills Finance Case (興票案) and prosecution of the DPP politicians.
  - PRA only gave Chen a tactic support.



# The DPP Government and the Prosecutorial System(3)

- Third Period(2004-2005): Wu Ying-chao (吳英昭) as Prosecutor in General
  - DPP tried to control the prosecutorial system.
  - President Chen invited Prosecutor Eric Chen (陳瑞仁) into the Office of Presidential to discuss potential candidates for Prosecutor in General. Wu was never mentioned during the meeting. He was too disqualified to be discussed.
  - Prosecutor Reform Association and Judicial Reform Foundation had little expectation on the President Chen.



# The DPP Government and the Prosecutorial System(4)

- Fourth Period (2005-): Morley Shih (施茂林) as the Minister of Justice
  - The Rising of Administrative Faction.
  - DPP did not have any qualified politicians to deal with the prosecutorial system.
  - DPP needed the help of the prosecutorial bureaucrats to run this system.
  - Although two DPP politicians, Lee Chin-yung (李進勇) and Tang Jinn-chuan(湯金全), had been appointed as the Deputy Minister of Justice, they did not have many influences within the prosecutorial system.



# The DPP Government and the Prosecutorial System(5)

- Fifth Period (2006): The Revision of Court Organization Law
  - The Historical Progress of Prosecutorial Reform.
  - First, the method of appointment of Prosecutor in General was changed.
  - Second, the Prosecutor Personnel Council (檢察官審議委員會) became an official and lawful organization. Its members elected by different ranked prosecutors were nine and certain members were just eight.
  - Third, Special Investigation Team (特偵組) was established.
  - In short, the prosecutorial system became much more independent and powerful. However, this historical development did not receive much attention from the public.



# What Happened after 2008?

- Court:
  - The President of Judicial Yuan 賴英照 as invisible man.
  - His first important personnel case: 馬祖 district court.
  - Reform-minded judges did not have much influence.
  - Conservative judges came back to the power center.
- Prosecutorial System:
  - Special Investigation Team was in chaos.
  - Politicians and the media attacked the court and the prosecutorial system.
  - The Legislative Yuan has not passed the Judge Law (法官法) for more than ten years.



# Questions again:

- Who controlled the judiciary in Taiwan?
  - The judiciary as a highly autonomous organization.
- Who really cared Taiwan's judicial reform?
  - No politicians cared.
  - There were few cooperation and dialogues among reform-minded judges, prosecutors, and lawyers.
  - Who is the bad guy? Who is the good guy? The Case of 林輝煌: Lin was the prosecutor in charge of Formosa Magazine Event (美麗島事件). Chen Din-Nan recommended him as a Justice of Supreme Court. Next Minister of Justice?