



Journal of Current Chinese Affairs

China aktuell

Wang, Chin-shou (2010),
The Movement Strategy in Taiwan's Judicial Independence Reform, in: *Journal of
Current Chinese Affairs*, 39, 3, 125-147.

ISSN: 1868-4874 (online), ISSN: 1868-1026 (print)

The online version of this and the other articles can be found at:
<www.CurrentChineseAffairs.org>

Published by

GIGA German Institute of Global and Area Studies, Institute of Asian Studies
in cooperation with the National Institute of Chinese Studies, White Rose East Asia
Centre at the Universities of Leeds and Sheffield and Hamburg University Press.

The *Journal of Current Chinese Affairs* is an Open Access publication.
It may be read, copied and distributed free of charge according to the conditions of the
Creative Commons Attribution-No Derivative Works 3.0 License.

To subscribe to the print edition: <ias@giga-hamburg.de>

For an e-mail alert please register at: <www.CurrentChineseAffairs.org>

The *Journal of Current Chinese Affairs* is part of the GIGA Journal Family which includes:
Africa Spectrum • Journal of Current Chinese Affairs • Journal of Current Southeast
Asian Affairs • Journal of Politics in Latin America • <www.giga-journal-family.org>



The Movement Strategy in Taiwan's Judicial Independence Reform

Chin-shou Wang

Abstract: Judicial independence reform in Taiwan was pioneered by a group of reform-spirited judges from Room 303 of the Taichung (台中, Taizhong) District Court, in 1993. Rather than joining the mass movement that was unfolding on the streets, the reformers formed a coalition with other judges to trigger reform from within the judiciary. The reformers appealed to the rule of law and democracy as a movement strategy for mobilization. As a result, the movement strategy turned out to be a great success, and Room 303 became the chief engine for further judicial reforms in subsequent years. However, the movement strategy in itself also presents some limitations. This paper examines why the movement strategy was successful and how its limitations eventually created problems that hinder further judicial reforms in Taiwan.

■ Manuscript received 13 July 2010; accepted 22 October 2010

Keywords: Taiwan, judicial independence reform, movement strategy, rule of law, democracy

Dr. Chin-shou Wang is an Associate Professor in the Department of Political Science and the Graduate Institute of Political Economy, National Cheng Kung University, Taiwan. His research focuses on judicial politics.

E-mail: <wangc@mail.ncku.edu.tw>

Introduction

Judges are the protectors of judicial independence. Unless judges consciously protect judicial independence, judicial institutions alone do not ensure the absence of political encroachment on a given judiciary. Judges have also played an essential role herein by the issuing of certain rulings during trials, particularly those trials that have taken place under a corrupt or controlled judicial system. “Ultimately, ensuring the development of judicial independence is the responsibility of the judiciary itself; it is up to the judiciary to act independently” (Dakolias 1995-1996: 172-173). However, not everyone (including some judges themselves) recognizes the importance of having judicial independence (Fiss 1993: 57). Even though judges are often protected by law, Ferejohn makes a similar argument about their potential stance: “providing personal protection is no guarantee that they will respond to law and the constitution in desirable ways” (Ferejohn 1999: 354).

In reality, judges rarely lead judicial independence reforms since those judges themselves might be the target of the reform. After all, they might enjoy some advantages in a non-independent judicial system, and they might have been trained and disciplined to serve a particular regime. German judges legitimized Hitler’s power and the Holocaust (Müller 1991). In Chile, the Supreme Court gave a green light to the military to carry out a coup d’état when tensions arose between the Justices and President Salvador Allende. The court even legitimized the subsequent military regime (Prillaman 2000: 140; Barros 2002). In the United States of America, where the judiciary enjoys relatively high levels of independence, Supreme Court Justices tried to avoid the controversial issue of slavery even though they knew that slavery was morally unrighteous (Cover 1975). Therefore, it might be quite naïve to expect judges to initiate a judicial reform process.

Regarding developments in the judicial independence reform movements, the major differences between the case of Taiwan and that of other Third Wave democracies are as follows: first of all, unlike the experiences of many countries – as well as the findings of judicial independence theories that emphasize the importance of politicians or international organizations (Ramseyer and Rasmusen 2003; Maravall and Przeworski 2003; Chavez 2004; Domingo and Sieder 2001) – politicians rarely play an important role in the process of Taiwanese judicial independence reform. There might be different reasons for them to carry out judicial reform. However, the reason that is most commonly known is

the prevention of the judiciary becoming a political weapon for their political rivals to utilize after a regime change. Also, some politicians might break their own promises of judicial reform and re-gain their control over the judiciary. To some other politicians, the motivations and strategies for judicial reform are more subtle. By the process of judicial reform, a regime might come to share power with political and judicial elites who hold the same ideology or political beliefs, in order, ultimately, to strengthen its own hegemonic rule.

The second characteristic of Taiwan's judicial independence reform was that it was carried out within the judiciary. Taiwan was not a member of the United Nations and did not have a diplomatic relationship with many other countries. These international organizations can offer not only resources but also help devise a plan for judicial reform (Dakolias 1995-1996; Prillaman 2000; Domingo and Sieder 2001). Because the government and judiciary in some countries are seriously corrupt, they need external aids in order to be able to carry out judicial reform. International organizations that play a key role in the judicial reform in many Third World countries did not appear in Taiwan. The major activists of judicial reform were judges and prosecutors from within the judiciary itself. Third, these reform-minded judges and prosecutors occupied almost the lowest rungs of the judicial system; that is, District Courts and District Public Prosecutors Offices.

However, the case of Taiwan is unique. A group of reform-spirited judges from Room 303 of the Taichung (Taizhong) District Court began the judicial independence reform process in Taiwan, and they adopted a movement strategy in the name of the rule of law and democracy. The reformers of Room 303 hailed from the lowest rungs of the judicial hierarchy in Taiwan. In fact, they were the most vulnerable to punishments and control because the Taiwanese judicial system had inherited the civil law tradition from Japan and Germany. Like other civil law countries, Taiwan has a career judge system. After passing examinations, students accept training for about one and half years in the Judge and Prosecutor Training Institute. Their grades from training will decide whether they will be assigned to be a judge or prosecutor, and in which local court or prosecutor's office they will serve. After being trained, they are ranked as a semi-judge or as a semi-prosecutor. If it goes smoothly, they can apply, after four years, for a review to become a quasi-judge or quasi-prosecutor. After one more year, they can apply for another review to become a full judge or prosecutor. The status of non-full judge and non-

full prosecutor are not protected by the constitution. In the meantime, judges and prosecutors with non-full status can not apply to become lawyers. It was very difficult to pass the bar exam before 1989. “Judicial service is a bureaucratic career; the judge is a functionary, a civil servant; the judicial function is narrow, mechanical, and uncreative” (Merryman 1985: 38). In addition, internal control within the judiciary, particularly regarding the control of personnel matters, is an effective way to discipline judges (Guarnieri 2001; O’Brien and Ohkoshi 2001; Shetreet 1985). Even Japan, a more advanced country in terms of its judicial system, practices internal control on its judges (Ramseyer and Rasmusen 2003).

Notwithstanding this internal control, the judges of Room 303 of the Taichung District Court initiated the judicial independence reform process in Taiwan, and their movement strategy was quite creative. The results of their reform turned out to be both successful and influential. Compared to other judicial reform cases in Third Wave democracies (Dakolias 1995-1996; Prillaman 2000; Hammergren 1998; Domingo and Sieder 2001), the case of Taiwan is notably unique. It is hard to find other examples of successful judicial independence reform that was led by lower-rung judges. In Japan, left-leaning and reform-spirited judges – such as those who joined the “Young Jurists League” – were often assigned to insignificant positions in rural courts. Judges who challenged the government publicly were punished. The famous “Naganuma Jiken Hiraga shokan” incident is one example of judicial control in Japan. Hence, even reform-spirited judges could not exert much influence on the Japanese judiciary (Ramseyer and Rasmusen 2003).

The strategy adopted by the judges of Room 303 is the focus of this paper. The reformers adopted a movement strategy in the name of the rule of law and democracy in order to overcome the dilemma at the heart of reform and in order to justify their actions. On the one hand, the reformers tried to convince other judges to join the reform movement by resorting to the law, the language common to all judges. Through such a strategy, the reformers disguised the political significance of the reform through an emphasis on the law. The judiciary as a whole would be less alert to a depoliticized strategy, and more judges would be likely to accept the reform. On the other hand, the reformers resorted to democracy and reformed the infamous case-assignment practices through voting. However, the strategy was based on the premise of self-governance within the judicial system; that is, the internal democracy of the judiciary. Therefore, the strategy did not substantively address an

issue fundamental to judicial politics, namely the relationship between politics and the judiciary in a democracy.

The current paper will discuss, first, the central dilemma for judicial independence reform in Taiwan. If a discontented judge wants to reform the judiciary, what obstacles will they face? Then, we will briefly describe the reform led by the judges assembled in Taichung District Court's Room 303. We will focus on two of the most important judicial independence reforms: the case-assignment reform and the Personnel Review Council reform. Finally, this paper will shed light on the efficacy and limitations of the movement strategy: that is, the utilization of the rule of law and democracy. These two strategies helped the reform movements to achieve some of its goals. However, they also, ultimately, prevented the reform movements from going further.

In this paper, we use “descriptive inference”, not “causal inference”, to study the case of Taiwan. However, while descriptive inference is less ideal and satisfactory than causal inference (King, Keohane, and Verba 1994: 75), it can still provide a useful understanding of what occurred in the studied cases.

The Internal versus External Dilemma

Judges who are discontented with their given judicial system face three choices: exit the system, voice their discontent or exhibit unquestioning loyalty (Hirschman 1970). Many resentful judges might choose to exit the judiciary and to pursue private careers in law or even elsewhere. Other resentful judges might simply keep quiet and accept the discipline and control existent within the judiciary. Neither choice results in a formal, transparent change to the judicial system. Judges who choose to exit might lose connections to, and influence in, the judiciary, and those who just remain silent help to maintain the status quo. If judges decide to voice their discontent, they will immediately face the dilemma of whether to speak up from within the judiciary or from outside of it. Among these three choices, voicing discontent within the judiciary can be considered the most stressful and difficult choice to make. However, such a choice might also have the most powerful effect on the judiciary and bring about the highest degree of positive change to the whole judicial system.

During the authoritarian rule of the Kuomintang (KMT) (國民黨, Guomindang), internal reforms were impossible because the judiciary was under the strict control of the regime. As a result, external reforms

were logically the choice for reformers prior to Taiwan's democratization. In the beginning, most reformers were lawyers who joined social movement organizations. They attempted to change the judicial system from outside and proposed some plans for these reforms (Hsieh 1987: 97-105). However, since the judiciary was controlled by the KMT, the early reformers were persecuted both politically and judicially. Therefore, opposition groups soon turned their focus away from judicial reform to political reform. They realized that judicial independence reform would be implausible, if not impossible, without first achieving democracy for Taiwan.

Although some reform-spirited judges stayed within the judiciary, they had to withstand peer pressure and face possible punishment from top officials. Meanwhile, these reform-spirited judges also had to face criticism from civil reform groups, who blasted the judges for being part of the problem, and not part of the solution. As a result, many reform-minded judges eventually decided to exit the judiciary. Of these, only very few afterwards remained active supporters of any judicial independence reform. A few reformers – such as prosecutors Kao Hsin-wu (高新武, Gao Xinwu) and Lee Zi-chun (李子春, Li Zichun) – chose to stay within the judiciary but also to carry out external reforms, through their joining in with street-level mass movements or through their disclosure of scandals involving the judiciary to the press. While their actions might draw significant public attention, these external reforms might, however, have been more effective in sparking interest in the issue than at making substantial changes to the judicial system per se. Besides, most judges and prosecutors favoured internal and legal means for catalysing changes because external reforms were neither ethically acceptable nor justifiable in relation to their professional practices. At the same time, however, internal and legal means were also quite implausible. Abiding by the internal rules of conduct would mean the acceptance of the flawed judicial system.

As a result, reform-spirited judges faced a dilemma. They had to choose whether to stay within the judiciary or whether to exit it. Because of their positions as judges, they could not join with other civil reformers to lobby the Legislature, to demonstrate on the streets or to cooperate with the press. They had to maintain their impartiality, as Taiwanese society expected them to. Although, in reality, judges were under the strict control of the KMT, they could not just cooperate with particular politicians. They were obliged to not engage in politics as long as they

still held the status of judge. Meanwhile, they had to choose, for their movement strategy, whether to reform internally or to fight externally.

Although the reform-spirited judges were restrained by their positions, they were nevertheless heroes for judicial independence reform in Taiwan. The reform was initiated and achieved by bottom-level judges. Unlike many of the other civil reform organizations that were founded later, these judges made a direct impact on the Taiwanese judiciary. Among them, the most prominent pioneers came from the Room 303 cadre, which became the principal catalyst for further judicial reforms in the following years.

The Historical Background of Taiwanese Judicial Reform

The judiciary may be the most conservative institution in Taiwanese society. Almost all areas of Taiwanese society – including political reform movements, environment movements, student movements, worker movements and the media – started to change either before or around 1987. The judiciary itself did not make much progress until the end of 1993. Nevertheless, there are several pioneers whose failed actions enlightened some other judges and prosecutors who would become activists in the later judiciary reform movements.

Before the story of Room 303 unfolded in 1993, the efforts for judicial independence reform came from individual and isolated prosecutors and judges. Taiwanese prosecutors have a similar status to that of a Taiwanese judge. Many regulations for judges also apply to prosecutors. In fact, before 1980, judges in the High Court and the District Court were affiliated under the Ministry of Justice, not the Judicial Yuan. To date, future judges and prosecutors still accept the same training in the same institute. Judges' and prosecutors' salary is almost the same. However, there are still some major differences; for example, the degree of independence that they enjoy is different. Judges can not be asked to turn in cases while prosecutors can be. Judges face far less administrative supervision and regulation than prosecutors do. However, some of the prosecutors' reforms might also be mentioned, because judges and prosecutors are within the same judiciary in Taiwan, they have many similarities and, more importantly, their reform movements affected each other.

Three common characteristics could be found among the individual reformers. First, they were all very young prosecutors and judges who

had not been fully disciplined or moulded to fit into the corrupt judicial bureaucracy. Second, all of them were later punished or forced to resign. Third, they all failed to attain their goals for reform. Nevertheless, their dauntless actions inspired more prosecutors and judges to support and to pursue reform, and the public as a result began to become aware of the corruption existent within the judiciary. Among these earliest pioneering individual reformers, three are most notable: Kao Hsin-wu (高新武), Peng Shao-chin (彭紹謹, Peng Shaojin) and Hsie Shuo-jong. (謝說容, Xie Shuorong).

Kao was in charge of the “Wu-Su” case in 1989. Without first consulting his superior, Kao decided to arrest both Wu T’ian-hui (吳天惠, Wu Tianhui) and Wu’s wife, Su Kang (蘇岡, Su Gang), for bribery and corruption. Ironically, Wu was a chairperson in the ethics department of the judiciary, while Su was a lawyer. The day of their arrest was “Judicial Day” in Taiwan.

Peng Shao-chin was in charge of the infamous “Hsiao T’ien-chan” case in 1989. The Minister of Justice at that time, Mr. Hsiao T’ien-chan (蕭天讚, Xiao Tianzan) was suspected of being involved in a corruption scandal. Peng insisted on carrying out the investigation regardless of the pressure coming from top government officials. Finally, Peng, isolated by the judiciary, decided to leave Taiwan and was eventually also forced to resign his post.

Hsie Shuo-jong was a young judge in the Tainan District Court, and she secretly tape-recorded her conversation with the Chief Judge who tried to interfere with one of her trials in 1991. Hsie refused to capitulate to the Chief Judge’s interference and instead handed the tape over to the Taiwanese media. The “Hsie Shuo-jong” case exemplified the problems in the Taiwanese judiciary’s case-review system. The case-review system gave Chief Judges the power to review and to interfere with a trial before the judge could render his or her verdict. Although Hsie was later punished for violating judicial ethics, her actions helped create media pressure, which in turn helped to force the Judicial Yuan in to making some changes to the case-review system. Because of the reformers of Room 303, the case-review system was later abolished, in 1995.

Room 303 in the Taichung District Court

The story of Room 303 in the Taichung District Court began in 1993. Three of the major leaders of the Room 303 reformers were Kao Si-da

(高思大, Gao Sida), Chen Han-zhou (陳漢洲, Chen Hanzhou) and Lu Tai-lang (呂太郎, Lu Tailang). More judges joined the group later, and Room 303 eventually became a legendary name as well as the locus for judicial independence reform in Taiwan. However, despite being a place where reform-spirited judges assembled, Room 303 nevertheless remained an unofficial reform group throughout the reform process. Besides these three major leaders, less prominent members of Room 303 came and went at various stages during the reform movement. Hence, it is very difficult to name all of its members.

The location of the Taichung District Court might have affected the outcome of the judicial independence reform process. Taizhong is the third-biggest city in Taiwan. Some of the judges of Room 303 suspected that they might face strong resistance and hostility from the Judicial Yuan and the KMT if the reform movement was to happen in Taipei (Taipei) District Court. Taipei city is the capital of Taiwan. Central government is in Taipei and many national-level politicians also lived in Taipei. If Taipei District Court was to become out of control, it might have caused huge problems for the KMT and for the Judicial Yuan. As an indication of this, Taipei District Court and the Taipei District Prosecutors Offices were two of the most controlled units within the entire judiciary.

In general, most of the members of Room 303 were aged under 40 when they began to participate in the reform movement in 1993, and had, on average, served in the judiciary for about three to six years. As a result, while they had not yet been fully disciplined about how to fit into the corrupt bureaucracy, they still understood how the Taiwanese judiciary functioned. Most of them came from: (1) the lower-middle class (their parents had been farmers, industrial blue-collar workers and taxi drivers) and (2) the rural and suburban southern or middle parts of Taiwan, rather than from metropolitan Taipei. Most of them were also Taiwanese. The members had diverse political outlooks. Some of them supported Taiwanese independence while others supported the idea that Taiwan should be a part of China. Despite their difference of political opinions, though, they had a common goal; namely, to pursue the rule of law and judicial independence in Taiwan. It should also be noted that all of the prominent members of Room 303 were male, with the exception of Chen Xian-hui (陳賢慧, Chen Xianhui).

The judges of Room 303 accomplished five significant reforms. These included: case-assignment reform (to promote the self-governing

movement for judges), Personnel Review Council reform, judicial budget reform, detention reform and case-review reform. The last three movements also involved other actors, including the National Assembly, the Constitutional Court and political parties. The last three cases were more complicated. The former two reforms were essential to judicial independence – therefore only these two reform movements will be discussed in this paper. The KMT controlled the judiciary mainly by two means: case control and personnel control. In order to control lawsuit case assignments, the KMT had to also control personnel matters within the judiciary. Thus, case-assignment reform and case-review reform were intended to abolish the case control. The Personnel Review Council reform was intended to eliminate political interference in personnel matters. In the end, the reformers achieved substantial progress and success as a result of the five judicial reforms. Of these five reforms, the most important were the case-assignment reform and the Personnel Review Council reform, because they both adopted a unique movement strategy.

The Case-assignment Reform

The Court Organization Law provides the legal regulations governing case assignment and other judicial administration matters. The regulation requires a year-end meeting to be held by the Chief Judge, and all the judges in a court are granted the right to decide on case-assignment matters by vote. However, the Taiwanese judiciary had disregarded the regulation over the course of six decades. Before the case-assignment reform took place in 1993, the Chief Judge at each court had the power to assign lawsuit cases to judges. The Chief Judge could assign some criminal cases – particularly corruption cases – to the judges he or she favoured. Consequently, those judges would rule on the cases according to the will of the Chief Judge. Some judges even had to bribe or flatter the Chief Judge in order to be assigned to a particular case.

Therefore, case assignment was a key obstacle to judicial independence. If certain particular cases were assigned according to the Chief Judge's will, then judicial independence and a fair trial would be inconceivable. Both case control and personnel control undermined judicial independence in Taiwan. Thus, restoring the judge's own power of decision over case assignment would be the first step for the eventual success of the judicial independence reform movement.

On 16 December 1993, nine judges from Taichung District Court held a press conference and proclaimed that the power over case-assign-

ment decisions should not belong to the Chief Judge. Instead, it should be returned to all of the judges. In addition, they requested the democratization of case-assignment decisions, as stated in the founding Court Organization Law. Some media called the reform a “self-governing movement”. On 29 December 1993, the judges at Taichung District Court voted 41 to 34 in favour of passing a resolution to return the power over case-assignment decisions to all judges. Inspired by the success of Room 303, judges at other District Courts immediately emulated the movement strategy. Thereafter, Room 303 became the leader for further judicial reforms in Taiwan.

The Personnel Review Council Reform

The problem of judicial personnel control is a serious one in Taiwan because the initial appointment is a relatively easy occurrence. If someone can pass the judicial exam as well as the training, then he/ she will be assigned to be either a judge or prosecutor. This does not mean that the KMT did not control the judicial exam. During the authoritarian era, the oral exam was a part of the judicial exam. As such, it was impossible for someone with an anti-KMT ideology to pass the exam (Winn and Yeh 1995: 576-578). Also, some parts of the training were similar to certain aspects of military training. The Judge and Prosecutor Training Institute could also change students' grades, which would decide their subsequent assignment. The Judge and Prosecutor Training Institute also employed a few agents from the intelligence apparatus to investigate and monitor students.

During the authoritarian rule of the KMT, personnel control was an effective way to also control the judiciary. Almost all of the important positions within the judiciary were held by party members of the KMT. Peter Russell (2001) once argued that, in general, the danger to judicial independence may stem more from the career-advancement processes than from the process of judicial appointments. The reformers realized that judicial independence would be impossible unless they could break the KMT's control of personnel matters. Even Japan, a relatively mature democracy possessing a relatively advanced judiciary, still relies on personnel control to command its judiciary (Ramseyer and Rasmusen 2003; Guarnieri and Pederzoli 2002; Magalhaes 1999). It was easy for the KMT to control judicial personnel matters as long as it still controlled the training and appointment of judges and prosecutors.

In the early 1990s, during Taiwan's burgeoning democratization, a "promotion map" existed within the judicial system. The promotion map laid out the plan for a judge's career advancement. According to the promotion map, every new judge would be appointed to a rural court after the completion of judicial training. However, positions in Taiwan's big cities were considered more prestigious than those in the rural areas. Among urban-based positions, those in Taipei City were considered to be the best. In order to climb up the bureaucratic ladder, a young judge needed to take a number of steps. First, the young judge had to pass two evaluations in order to be recognized as a full judge. Following on, the young judge then had to climb to the position of High Court Judge or of District Court Section Chief. After that, the judge would have the opportunity to be promoted to the Highest Court or to become Chief Judge at a District Court.

On top of the prestige, the caseload was another important reason that explains the judges' decision to climb the bureaucratic ladder. Caseloads were unfairly distributed and assigned among judges. The caseload of a Section Chief might be only one-sixth or one-eighth of the caseload of an ordinary District Court judge, and the Chief Judge was not obliged to hear any trials at all. Most importantly, judges might remain at the position of Section Chief or Chief Judge for a very long time. Hence, some of them were satirically called "thousand-year" Section Chiefs or Chief Judges.

In order to receive a recommendation for a career promotion, a judge needed to shine brightly in any evaluation that was conducted by the Chief Judge. In addition, the evaluation affected the scrutinized judge's year-end bonus. One of several important evaluation criteria was the length of service of a judge. It was a significant indicator that predicted what position a judge might hold, at least according to the promotion map. As a result, some reform-spirited judges believed that the promotion map was the natural enemy of judicial independence in Taiwan.

The Personnel Review Council within the Judicial Yuan has the ultimate power to decide on personnel matters within the judiciary. By 1994, the council consisted of 21 representatives. Of them, eleven were appointees and they were holding top positions within the judiciary. They included the President of the Judicial Yuan and the Chief Judge of the Highest Court; they were not elected by judges. The other ten representatives had been elected by judges. Before 1994, most candidates for

election were recommended by the Chief Judge at District Courts. In 1994, seven members of the Personnel Review Council should have been elected from among the judges in the District Courts, two from among those in the High Courts and one from among those in the Highest Courts. Three reform-spirited judges – Lin Hui-huang (林輝煌, Lin Huihuang), Kang Shu-zheng (康素正, Kang Suzheng) and Huang Rui-hua (黃瑞華, Huang Ruihua) – decided to undertake their reform campaign in 1994, and all of them had been elected to their posts. In the following years, more reformers were elected to judicial positions. Before the reformers' entry into the Personnel Review Council, however, only a few people in the Judicial Yuan knew how the council worked. In reality, the council had long been a rubber stamp. Nobody outside the body really knew how it arrived at decisions regarding personnel matters.

The three reformers actively participated in the Personnel Review Council and tried to make changes. Although they were only a minority, they vehemently opposed any promotion of dis- or unqualified personnel. Although they were often unable to determine or influence the outcome of a given personnel decision, they successfully blocked some disqualified or ethically-defective judges from gaining promotion. These reformers' vehement protests lasted until Judge Lu Tai-lang (呂太郎, Lu Tailang) – one of the major leaders of Room 303 – became the director of the Personnel Department in the Judicial Yuan in 1998.

The Personnel Review Council reform eventually demolished the promotion map. Additionally, two other reforms weakened the KMT's control over personnel. In 1994, the three reformers on the Personnel Review Council handed out survey forms to all judges in order to evaluate Chief Judges. Surprisingly, the results showed that most Chief Judges at District Courts had failed the evaluation. The average score for all of the Chief Judges was 54.5 out of 100, and the lowest score received by a Chief Judge was 21.9 (Wang 1994). After these results were disclosed, several chief judges decided to retire. In the same vein, another important reform that is worthy of brief note was the election of the Section Chief. After the reforms that served to break down the regime's control over personnel, judges no longer relied solely on the Chief Judge's recommendation for their career advancement.

The Rule of Law as a Strategy

There are five characteristics that are attributable to judicial independence reform in Taiwan. First, most of the reformers came from the local District Courts, and they were all aged under 40. Second, most of the reforms were successful. Third, most of the reform-spirited judges remained in the judiciary. They believed that judicial reform was feasible only if they stayed within the judiciary. Fourth, the KMT and the Judicial Yuan did not resist the reforms. As long as the KMT was able to control the prosecutors an independent court could not do much harm to the regime. And, as long as the KMT controlled prosecutors, the latter would not be able to prosecute many KMT politicians and thus there would be few cases sent to courts. The court might become independent but powerless. As a result, when reform-minded prosecutors started to act, the KMT attacked them several times. Fifth, the reform was an internal reform led by judges; the reformers did not seek to cooperate with other civil reform groups.

Rather than pass new laws to rectify the judiciary, the reform-spirited judges, as a movement strategy, asked instead for a return to the rule of law. For example, they referred to the Court Organization Law as the legal foundation for their proposed case-assignment reform. Article 79 of the Court Organization Law clearly states that “the Chief Judge, Section Chief and judges should hold a meeting to decide on the matter of lawsuit case-assignment by the end of each year”. Article 80 states that “decisions on the case assignment should be made by vote at the meeting. If the yeas and nays are equal in number, the Chief Judge, serving as the chairperson of the meeting, has the right to make the final decision” (Lu 1994: 2). When the reformers brought up the issue of case-assignment reform, they questioned the legitimacy of the judicial branch insofar as the branch had failed to abide by the Court Organization Law. In the pamphlet entitled “Our Intentions” issued by the reformers, they wrote, “We are concerned about the illegitimate process of case assignment, which undermines judges’ jurisdiction” (Lu 1994: 3).

Three advantages could be found in the strategy of the rule of law. First of all, law is the common language for all judges. In order to mobilize the masses for social reform, the reformer has to appeal to the masses with the kind of language, ideology or social framing that is comprehensible and familiar to them (Ho 2005). In the case of judicial independence reform, judges are the ones to be mobilized. Law is not only their profession but also the language familiar to them. Therefore, the

appeal to the rule of law would be the best strategy for the mobilization of judges. Besides, judges tend to reject other types of movement strategies due to legal formalism and legalism. However, the anti-reform judges also adopted the same strategy and counteracted the reformers with referral to laws such as the Court Organization Law and the Regulation of the District Court and Its Branches. The anti-reform judges argued that the Court Organization Law does not ask judges to take part in administrative tasks, which they argued included case assignment. The Regulation of the District Court and Its Branches states that "The chief judge can call a meeting in order to communicate about administrative tasks". In short, judges can give their opinions to the chief judge, but the power to decide the case assignment ultimately belongs to the chief judges alone. After all, the two groups that confronted each other consisted of judges. Therefore, it is natural that the two groups appealed to the law as their movement strategy.

Second, the strategy depoliticized the reform movement. In his analyses of Latin American judiciaries, William C. Prillaman (2000) argued that the nature of judicial reform is a political construction. The strategy of the rule of law somehow conceals the political implications of these reform movements. It not only weakens the political elites' and the judicial elites' vigilance but also helps other judges accept the appeals made by these reform movements. What is ironic is the fact that the rule of law strategy was effective in Taiwan because the judiciary did not abide by the laws. In the case-assignment reform example, power was redistributed between the Chief Judge and the judges. However, the rule of law as a strategy subtly disguised the power redistribution part at the mobilization stage. As a result, the anti-reform judges were less alert while judges of a more neutral disposition might have been attracted to the reform.

Third, the strategy provided a solution to the dilemma that the reformers faced. The reform-spirited judges were able to stay within the judicial system, and they, hence, would not be accused of encroaching on judicial independence. Meanwhile, they were also able to form a coalition with other judges. The rule of law as a strategy thus served as a mobilization tool within the judiciary. It not only justified the reformers' actions but also reflected the abnormality of the judicial system; that is, the system's disregard of the law. Moreover, the reform appeared to be a call to return to the normal judicial institution that was depicted by the law, and not as a challenge to reconstruct the judiciary.

Nevertheless, even the reform-spirited judges did not understand or explain the essence of the rule of law at the very beginning of their efforts. Although these reform-minded judges admired the rule of law and democracy, they nevertheless did not give these ideas clear definitions or boundaries. They just used them as plain symbolism. Regarding the legal regulations for case assignment, some reformers from Taichung District Court's Room 303 later admitted their own unfamiliarity with the regulations prior to 1993. However, the judicial training system in Taiwan can be held accountable for the judges' ignorance of the legal regulations. Most judges in Taiwan lack adequate knowledge of judicial administration, and they know very little about the legal regulations governing the judiciary. The reformers only began to study the Court Organization Law after they had initiated the reform. Only after they learned about the regulatory aspect did they realize that the rule of law could serve as a tool for mobilization.

Although the rule of law as a strategy helped the reformers to achieve their reform-oriented goals, the strategy in itself has since exhibited some limitations. Because the reformers themselves knew little about the essence of the rule of law, they simply borrowed the idea as a tool for mobilization and did not facilitate further discussions on how to enforce the rule of law. In addition, the strategy tackled the problems in the judiciary only one at a time; hence, it lacks a macro-view on how to improve the overall judicial branch.

Furthermore, the strategy prevented the reformers from collaborating with other reform supporters outside of the judiciary. William C. Prillaman (2000) once reminded judicial reformers that politicization might not be necessary for judicial reforms. However, reformers do also need political support to eventually achieve greater success. And, whereas depoliticized judicial reforms might achieve reformers' goals, these accomplishments are usually limited. The Room 303 reformers adopted a depoliticized movement strategy. Though the strategy was less politically-sensitive and was more acceptable to the judges, it failed to incorporate other reform supporters into the movement. The reform-spirited judges rarely worked together with pro-reform lawyers, prosecutors, politicians, scholars and non-governmental organizations. Therefore, the judicial reform was limited in scope to operations within the judiciary and failed to accumulate wider social support for an overall change to the judicial branch.

Finally, the strategy could accomplish only a limited range of goals. It has been unable to function successfully in targeting other important judicial reforms – such as those pertaining to judicial democratic accountability and the appointment of judges – both of which require wider political and social collaboration. As a result, the Room 303 cadre eventually lost leadership in the subsequent reform processes.

Democracy as a Strategy

Alongside the rule of law, democracy also served as a strategy for the reformers. Both the case-assignment reform and the Personnel Review Council reform were accomplished with this strategy. For example, the reformers requested democracy and transparency for each case assignment, and they demanded that all judges should have the right to decide on a given case-assignment matter by vote (Lu 1994).

Before the case-assignment reform, the Chief Judge alone had the power to decide on case-assignment matters and the caseload of each judge. However, the assignment was usually unfair. The Chief Judge as well as certain Section Chiefs did not need to hear any trials at all. However, the reformers eventually changed this unjust situation by the invocation of democracy. After the case-assignment reform, all the judges enjoyed the right to decide on case assignment by vote.

Although the reform-spirited judges of Room 303 were not directly involved in the democratization of Taiwan, many of them witnessed the long history of it. Since the beginning of Taiwan's democratization process in the 1980s, democracy had become a widespread social value. Hence, democracy as a strategy for the judicial reform easily attracted and received public support. When the case-assignment reform began, the media reported it as a self-governing movement for the judges. The public might not have known the details of the reform; however, the appeal to democracy and to self-governing within the judiciary was readily supported by the public.

In other words, the reformers fought against the judicial bureaucracy by their appeal to democracy, which challenged the rules of conduct within the judiciary. Democracy as a strategy successfully mobilized many neutral judges for participation in the reform process. In addition, democracy would allow lower-rung judges to have more power. The Judicial Yuan's control would weaken, and the judges would enjoy more

autonomy. Consequently, the strategy was welcomed and supported by a considerable number of judges.

However, the strategy also confined democracy to a limited space within the judiciary. The reformers also only narrowly defined what was meant by “democracy”. They did not intend to extend the ideal of democracy to the relationships between the judicial branch and other social-political sectors. They did not even intend to discuss the role of the judicial branch in a democratic state. Apparently, the issue of the democratic accountability of the judicial branch was not the main concern of the reformers. When they campaigned for seats on the Personnel Review Council for the first time, two candidates – Lin Hui-huang and Kang Shu-zheng – suggested that the Personnel Review Council should create more seats for representatives elected by judges and decrease the number of seats for Judicial Yuan-appointed representatives. The two reformer candidates did not ask that the Personnel Review Council host more seats appointed by political institutions, such as the President or the Legislature. It is not easy to determine what caused the judges to not be concerned with the issue of judicial accountability in a democracy. There is, however, at least one possible reason. That is that Taiwan’s legal education did not extensively study political science, and particularly the issue of the role of judiciary in a democracy.

President-appointed or Legislature-appointed representatives might threaten the autonomy of the judiciary because the aforementioned representatives would have received their appointment from the authoritarian regime. Taiwan in the 1990s was still very much in the midst of transition to democracy. The judges could not fully trust those representatives appointed by the President or the Legislature; therefore, it was logical for the reformers to call for an increase in the number of judge-elected representatives on the Personnel Review Council. However, the problem of the judiciary’s undemocratic nature, with its lack of accountability, became even more severe later, when fewer reform-spirited judges joined the Personnel Review Council.

On the issue of self-governance, a judge’s character, particularly their personal pro-democracy traits, is essential to the continued effective functioning of the Personnel Review Council. However, democracy as a movement strategy has gradually lost its effectiveness in recent years, as fewer and fewer reform-spirited judges have remained on the Personnel Review Council. Although democracy within the judiciary was institutionalized through the initial judicial independence reform, fewer judicial

reform leaders and lower-rung judges have been running for seats on the Personnel Review Council in recent years. Instead, more elected representatives come from the District Courts in major cities. As a result, the quality of democracy within the judiciary has deteriorated as the representatives have, by and large, cared more about their own interests than they have about further judicial reforms.

Personal qualities that support democracy are very important for a judge to protect judicial independence and democracy. Judging is not a mechanism. There are several factors besides law which may affect judicial decision-making, including a judge's attitude and character (Posner 2008). However, it is unfortunate that the kind of personal qualities needed can hardly be found in the representatives on the Personnel Review Council now. The appeal to self-governing used to be an ideal to avoid political encroachment on the judiciary. Sadly, it has become an excuse for judges to remain conservative and anti-reform as the judiciary is now protected and isolated from external political forces. Democratic accountability is one of the most important issues for the future of just judicial politics in Taiwan.

Conclusion

The judicial independence reform movement in Taiwan is unique, since it was pioneered by the lower-level judges. Among them, the judges from Room 303 in the Taichung District Court played the most significant roles. Their contribution included the advance of: case-assignment reform, of Personnel Review Council reform, of detention reform, of judicial budget reform and of case-review reform. Because of their endeavours, the judicial independence reform processes in Taiwan made substantial progress and obtained considerable success.

The strategies used were one of the key elements in the success of the reforms. However, strategy alone does not determine the outcome of the reforms. Both the prosecutorial reform and the court reform in Taiwan shared similarities in strategy, and even the professional backgrounds of the reformers were quite similar. Nevertheless, the two reforms turned out to be relatively different in their developments.

The strategy for the judicial independence reform movement in Taiwan was not the same as the strategy for other social reforms, which often involve mass movements and labour strikes. The reformers adopted a strategy whereby they would reform from within the Taiwan-

ese judicial system rather than a strategy that involved demonstrations on the street. Ironically, their strategy, which resorted to the rule of law and democracy, was carried out successfully because the Taiwanese judiciary disregarded both as crucial parts of the judicial branch.

Although the invocation of the rule of law and democracy strategically helped the reformers to justify their actions, the strategy itself also, ultimately, imposed limits on the judicial independence reform movement. The public was not aware of the reform because it was carried out within a somewhat isolated judiciary. As a result, the reform did not aggrandize itself to become a greater social-political movement. Consequently, important issues – such as the role of the judiciary in a democracy and the role of legislation in improving the judiciary – attracted little public attention.

Room 303 in the Taichung District Court has been a historical symbol not only for the success of the reforms but also for the very first emergence of collective introspection from within the Taiwanese judiciary. The judicial independence reform movement in Taiwan could not have achieved the substantial progress it did without the collective action that emanated from Room 303. Most previous individual efforts in this regard had ended, tragically, in vain; that is, until reformers assembled and adopted a more unified movement strategy for reform. However, their strategy also eventually imposed limitations on further subsequent reform. Unless these reformers change their conceptions of democracy and movement strategy, and cooperate with politicians and Non Governmental Organisations to change the law as well as the overall judicial institution, they will not be able to radically reform the judicial system in Taiwan.

Taiwan's judiciary became much more independent because of these reform movements. Previously, case-assignment matters were almost decided by random. All members of the Personnel Review Council came from with the Judicial Yuan and the District Courts. No politicians participated in the Personnel Review Council. In fact, Taiwanese judiciary may right now be too independent because there is no institutional arrangement to make the courts accountable to democratic politics.

Some members of Room 303 quit their jobs as judges and became lawyers after these reform movements were over in the late 1990s. However, two important members of the court reform movements, Lu Tailing and Chou Chan-chun (周占春, Zhou Zhangchun) were appointed as the Directors of the Personnel Bureau in the Judicial Yuan, from 1998

to 2004. The Personnel Bureau was in charge of the administration of personnel affairs and prepared personnel cases for the Personnel Review Council to decide upon. The reform-minded judges had much influence on the issue of judicial personnel. However, no reform-minded judges occupy important judicial administration positions today. The dynamics and spirit of the initial reform movement within the judiciary has right now become lost. With reliance only their own movement and power, the reform-minded can not carry the reform further unless they work together with the other reformers operating outside of the judiciary.

References

- Barros, Robert (2002), *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution*, Cambridge: Cambridge University Press.
- Chavez, Rebecca Bill (2004), *The Rule of Law in Nascent Democracies: Judicial Politics in Argentina*, Stanford, CA: Stanford University Press.
- Cover, Robert M. (1975), *Justice Accused: Antislavery and Judicial Process*, New Haven: Yale University Press.
- Dakolias, Maria (1995-1996), A Strategy for Judicial Reform: The Experience in Latin America, in: *Virginia Journal of International Law*, 36, 172-173.
- Domingo, Pilar and Rachel Sieder (2001), *The Rule of Law in Latin America: The International Promotion of Judicial Reform*, London: University of London, Institute of Latin American Studies.
- Ferejohn, John (1999), Independent Judges, Dependent Judiciary: Explaining Judicial Independence, in: *Southern California Law Review*, 72, 353-384.
- Fiss, Owen M. (1993), The Limits of Judicial Independence, in: *Inter-American Law Review*, 25, 57-76.
- Guarnieri, Carlo (2001), Judicial Independence in Latin Countries of Western Europe, in: Peter H. Russell and David M. O'Brien (eds.), *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, Charlottesville and London: University Press of Virginia, 111-130.
- Guarnieri, Carlo and Patrizia Pederzoli (2002), *The Power of Judges: A Comparative Study of Courts and Democracy*, Oxford: Oxford University Press.
- Hammergren, A. Linn (1998), *The Politics of Justice and Justice Reform in Latin America: The Peruvian Case in Comparative Perspective*, Boulder, CO: Westview Press.

- Hirschman, Albert O. (1970), *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, Cambridge, MA: Harvard University Press.
- Ho, Ming-sho (何明修) (2005), 社會運動概論 (Shehui yundong gailun, Introduction of Social Movement), Taipei: San Min (三民, San Min Book Cooperation).
- Hsieh, Chang-ting (謝長廷) (1987), 法治的騙局 (Fazhi de pianju, The Fraud of the Rule of Law), Taipei: Jiuda Wenhua (九大文化, Jiuda Cultural Press).
- King, Gary, Robert Keohane, and Sidney Verba. (1994), *Designing Social Inquiry: Scientific Inference in Qualities Research*. Princeton, NJ: Princeton University Press.
- Lu, Tai-lang (呂太郎) (ed.) (1994), 司法改革實錄 (Sifa gaige shilu, The Record of Judicial Reform), unpublished.
- Magalhaes, Pedro C. (1999), The Politics of Judicial Reform in East Europe, in: *Comparative Politics*, 32, 43-62.
- Maravall, Jose Maria and Adam Przeworski (2003), Introduction, in: José María Maravall and Adam Przeworski, *Democracy and the Rule of Law*, Cambridge: Cambridge University Press, 1-26.
- Merryman, John Hernry (1985), *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, Stanford, CA: Stanford University Press.
- Müller, Ingo (1991), *Hitler's Justice: The Court of the Third Reich*, Cambridge, MA: Harvard University Press.
- O'Brien, David M. and Yasuo Ohkoshi (2001), Stifling Judicial Independence from Within, in: Peter H. Russell and David M. O'Brien, *Judicial Independence in the Age of Democracy: Critical Perspectives from Around the World*, Charlottesville and London: University Press of Virginia, 37-61.
- Posner, Richard (2008), *How Judges Think*, Cambridge, MA: Harvard University Press.
- Prillaman, William C. (2000), *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*, Westport, CT: Praeger.
- Ramseyer, J. Mark and Eric Rasmusen (2003), *Measuring Judicial Independence: The Political Economy of Judging in Japan*, Chicago, IL: University of Chicago Press.
- Russell, Peter H. (2001), Toward A General Theory of Judicial Independence, in: Peter H. Russell and David M. O'Brien, *Judicial Inde-*

- pendence in the Age of Democracy: Critical Perspectives from Around the World*, Charlottesville: University Press of Virginia, 1-24.
- Shetreet, Shimon (1985), Judicial Independence: New Conceptual Dimensions and Contemporary Challenges, in: Shimon Shetreet and Jules Deschênes, *Judicial Independence: The Contemporary Debate*, Dordrecht and Boston: Martinus Nijhoff, 591-681.
- Wang, Chi-You (王己由) (1994), 法官評鑑地院院長結果出爐 (Faguan pingjian diyuan yuanchang jieguo chulu, Evaluation of District Court Chief Judges is Out), in: 中國時報 (*Zhongguo Shibao, China Times*), 27 September, 7.
- Winn, Jane Kaufman and Tang-chi Yeh (1995), Advocating Democracy: The Role of Lawyer in Taiwan's Political Transformation, in: *Law and Social Inquiry*, 20, 2, 561-599.

Contents

Introduction

- Ming-sho Ho
Understanding the Trajectory of Social Movements in Taiwan (1980-2010) 3

Research Articles

- Anru Lee and Wen-hui Anna Tang
The Twenty-five Maiden Ladies' Tomb and Predicaments of the Feminist Movement in Taiwan 23
- James W. Y. Wang
The Political Economy of Collective Labour Legislation in Taiwan 51
- I-lun Tsai and Ming-sho Ho
An Institutional Explanation of the Evolution of Taiwan's Disability Movement: From the Charity Model to the Social Model 87
- **Chin-shou Wang**
The Movement Strategy in Taiwan's Judicial Independence Reform 125

Discussion

- Stephen Phillion
The Impact of Social Movements on Taiwan's Democracy 149

Research Articles

- Dong Wang
China's Trade Relations with the United States in Perspective 165

Research Articles

- Kay Hearn
Official/ Unofficial: Information Management and Social
Association 211

Contributors 243