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The Legal Complex Fractured:

Legal Professional Coalition and Collision in Taiwan's Judicial Reform

Abstract

Sociolegal studies have identified a collectivity of legal actors – the legal complex – and its association with political liberalism in varying power settings. However, little attention has been paid to how such collectivity evolves with regime change; or if, and when, such collectivity may dissolve. Studying the case of Taiwan, this article demonstrates how legal professions – lawyers, judges and prosecutors – unite and divide during and after state transition. Democratization has the *unsettling effect* that brings out the internal dynamics of the legal profession, who initially aligned to defend judicial autonomy from authoritarian control, but confronted one another in judicial policy-making in democratic times. Each legal profession bases its policy orientations on a normative commitment, which leads to three lines of confrontations: the ways in which the judiciary is held accountable, the extent to which the procuracy enjoys investigative power, and the institutional division between the judiciary and procuracy.

Key words: legal profession, legal complex, judicial reform, Taiwan, democratization

Table of Contents

I. Introduction 1
II. Situating the Legal Complex in Post-transition Judicial Policy Making 2
III. Judicial Reform in Taiwan: Background and Data 8
IV. An Underlying Coalition Against Political Intrusion 10
V. Intra-professional Collision in a Democratized State 16
A. People's Court vs. Judges' Judiciary 17
B. Alienation between Judges and Prosecutors 22
C. Guardian of Justice vs. People's Attorney 27
VI. Conclusion 32

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I. Introduction

How do legal professionals act in policy-making in a transitional context? Prior scholarship on the legal profession in politics has identified a collectivity of legal actors in facilitating political liberalism – the legal complex – both in authoritarian and democratic times. Studies of cause lawyers worldwide have also pointed to the unconstrained agency of lawyers in varying power settings, even in a revolutionary context. Relaxing the definition of the legal profession, research on courts in democratization has shed light on how judges respond to shifting political tides, interact with politicians, and act upon normative ideals. Taken together, however, the internal politics of the legal profession remain unclear in the critical juncture of state transformation, as well as the policy consequences thereof. Specifically, how such a collectivity of the legal complex evolves along with regime change, requires further discussion.

This article follows the Taiwanese legal complex through the island nation's democratization to make two arguments, one empirical, the other theoretical. Firstly, the legal complex fractures as democracy consolidates. The three legal professions – judges, lawyers and prosecutors – aligned to defy authoritarian control, but in democratic times, they contested one another to further respective policy goals. Secondly, regime change has a profound impact on the politics of the legal profession. This article highlights the *unsettling effect* of democratization that changes the institutional structure in which legal practitioners collaborate and allows intra-professional conflict to materialize. Nevertheless, it is also democratization that encouraged each legal occupation to develop respective policy orientations and stay consistent with that specific policy commitment.

This article is structured as follows. The next section provides a critical review of existing studies on the legal actors in regime change, with a special note on judicial reform in the post-transition context. Section III introduces the background and data for the case. Section IV and V trace the Taiwanese legal complex in judicial reform. The Taiwan case advanced the comparative studies by first confirming the principle of judicial autonomy as the node of cooperation, and then specifying the three sets of policy confrontation among three legal professions in democratic times, which were inflicted by their respective commitments devised in the authoritarian era. The final Section concludes with two contributions to the literatures: this paper explicates the legal complex in the aftermath of political liberalization. Intriguingly, however, the instrumental concepts that the legal complex choose to defy the authoritarian rule also lead to the internal power struggles amongst them.

II. Situating the Legal Complex in Post-transition Judicial Policy Making

Studies on the political roles of the legal profession abound. Specifically, the analytical concept of the *legal complex* insightfully captured the collective nature of legal professionals' political actions in moderating state power, supporting the civil society, and promoting basic legal freedoms (Halliday, Karpik, and Feeley 2007). Developed as a concept to trace the dynamic mobilization in relation to the state in varying power settings (Halliday and Karpik 1997; Halliday, Freeley, and Karpik 2012), the legal complex is composed of different legal occupations "that belong to the legal and judicial institutions of a given society and whose tasks are to create, elaborate, transmit and apply the law." (Halliday 2010) Varieties of combination for or against liberal politics are possible (Karpik and Halliday 2011, 222, 225), which may be dyadic (bar and bench) or triadic (bar and bench and others): lawyers may act alone (Feeley and

Miyazawa 2007) or the bar and bench may act together for political liberalism (Epp 2012; Ginsburg 2007; Moustafa 2007); yet lawyers and judges may also act passively in defense of core civil rights (Barzilai 2007), or they may even act against basic legal freedoms (Ledford 1998; Scheppele 2019). The analytical edge of the concept is two-fold: first, it is a structural notion applicable to practically all jurisdictions, allowing researchers to identify study subjects in accordance with the occupational structure and political development in case-specific contexts (Karpik and Halliday 2011, 221). Second, the concept is action-oriented, specifically targeting those legal occupations who are "mobilizing law in one or more of its many modalities" (Karpik and Halliday 2011, 221), which allows flexibility on the forms of mobilization as well as comparison across jurisdictions. This literature offers the analytical anchor of this article, that is, to structure the analysis along with the legal professions' structural relationship – lawyers, judges and prosecutors, the three major legal occupations in the Taiwanese case – and to focus on the legal complex's collective actions for or against particular policy orientations.

Shifting focus from *who* to the *how* question, the ways in which legal actors act in political transition is another critical topic that has attracted much scholarly attention. Two well-developed literatures have addressed, respectively, lawyers' mobilization in regime change, and the dynamic role of courts for or against political power. Firstly, case studies of cause lawyering have noted the varying impact of fundamental state transition on lawyers' mobilization. In the last decades of the 20th century, democratization creates new legal opportunities and resources that facilitate cause lawyering, such as land rights litigations in South Africa (Klug 2001); intriguingly, however, political retrocession to authoritarian rule also creates momentum and opportunities for legal mobilization to take place, as in post-colonial Hong Kong (Tam 2013). Of particular interest to this article is how regime change shapes legal activism: by comparing

disability rights movements in Japan and South Korea, Arrington & Moon (2020) found that critical junctures in regime history shaped the tactical repertoires that lawyers brought to the movement's actors, whose interactions further produced divergent movement tactics. In the 2010s, the world witnessed yet another wave of political upheavals, from the Arab Spring to Hong Kong's anti-extradition protests. Lawyers were not absent. State repression triggers rather than constrains lawyers, as in Ukraine, where the political movement offered necessary social resources for lawyers to succeed (Wilson 2017). In fact, repressive laws motivate lawyers to reinvent their daily practices, in order to stay active in the domestic courts as well as the international forum of human rights (Vet 2018).

Secondly, comparative judicial politics offers rich theories and empirical studies on the political activities of courts in transitional context (Ginsburg and Moustafa 2008; Helmke and Rios-Figueroa 2011). Three founding approaches focus on the interests, strategies and ideals of the court and related political actors: the court may stand strong in ground-shaking regime change to insure the ruling elites' interests (Ginsburg 2003; Hirschl 2007); it may act strategically to defect against the government when it begins losing power (Helmke 2002; 2005); or it may conform to a seemingly apolitical ideology that, in turn, has great impact on its (in)ability to oppose the authoritarian rulers' human rights infringement (Hilbink 2007; 2012). This line of inquiry, recently, has reoriented its focus on *off-bench* mobilization, as political scientists adjusted assumptions of unidirectional regime change. Judges play complex roles in resilient hybrid regimes: off-bench resistance to political interference is supported by vibrant social networks and appears in various forms (Trochev and Ellett 2014). In fact, judges are able mobilizers who seek to maintain or transform judicial institutions, strategically influence the public and build alliances with political and social actors (Bakiner 2016). Some other judges,

however, may serve clientelism well, whose autonomous mobilization functions as patronage networks and extends power struggles among politicians or judicial officials (Trochev 2018).

A critical topic in this line of inquiry is judicial reform. It is a logical action item for many governments and legal communities to add to the reform list in the post-transition context, either as part of broader societal engineering to consolidate democracy, or just as a nice gesture. Studies on judicial reform in transitional states tend to adopt a top-down, developmentalist perspective, assuming change is driven by external donors or the state administration. Legal and judicial reforms are either introduced to build effective and stable institutions in response to international investors' concerns (Domingo and Sieder 2001; Dakolias, Freestone, and Kyle 2002), or induced by a global governance system in the region to encourage convergence of rights protection (Dallara 2014). Judicial reform also reflects political dynamics in power transition, as courts do. For example, judicial reform implementation may serve as an insurance strategy when politicians are losing power (Finkel 2008), or as Uildriks (2010) finds in Mexico, the embedded power constellation and social distrust prevent democratization from transforming the criminal system.

Prior research on legal profession and comparative studies on courts and regime change has offered informative discussions on how ideas, interests and strategies account for legal actors' actions for or against illiberal rule. Two issues stand, however. Firstly, while the legal complex literature successfully establishes the collectivity of legal actors in various political contexts, its investigation is incomplete on how such collectivity *evolves*. What happens after the state liberalizes? Does their co-operation change over time, and why? The legal complex literature identifies the moderate state as one of the key pursuits, and yet, the moderate state

encompasses complementarities and tensions in different historical moments. We need a refined approach to investigate the legal complex's role.

Secondly, while both literatures of cause lawyering and comparative judicial politics have studied legal activism in the period of fundamental power reconfiguration, a strong court-centered focus (litigations or mobilization *for* litigation) overlooks *other* legal actors' mobilization in *other* arenas. It is until recently, as the legal profession worldwide has again stepped in political turmoil, that scholars begin to examine the extrajudicial activities by heterogeneous actors. Judges no longer only speak in court proceedings; rather, they "discover politics" and their internal conflict determines the ideational as well as strategic contentions they make (Bakiner 2016). Courts respond to multiple "audiences", not just the executive branch, and take assertive actions in relation to the preferences of institutions and networks the court interacts with (Kureshi 2020). Lawyers are on the frontline confronting the highest authority, whose mobilization triggers social momentum from across sectors (Ahmed and Stephan 2010; Gobe and Salaymeh 2016; Shafqat 2018). Lawyers' politics strongly echoes the broader political development. In Turkey, for example, lawyers' associations grow with political organizations and fragment along ideological lines, but their strategic activism also constitute a "grassroot appropriation of law" in an authoritarian-corporatist structure (Parslow 2018). More legal actors have emerged on the political horizon: the public defenders in Brazil made two attempts to secure autonomy and resources, but only acquired support after their alignment with bar and bench reconfigured (Nunes 2020). Simply put, legal actors have become more able and flexible in politics. This development calls for scholarly attention to better capture political change via the legal complex's action.

This article highlights the "unsettling effect" that democratization brings to the legal complex. An authoritarian state limits the political space and imposes various forms of control on the legal actors, but such a limitation in effect creates a focus for the legal complex to target. That is, a common enemy that unites the legal complex. A common goal to break free brings the branches of the legal complex together, and allows each legal occupation to develop respective strategies according to their structural position and model of containment. Democratization, subsequently, opens up the political space, restructures the institutional forums for action, and hence shakes the ground for cooperation. That is, democratization allows the intra-professional differences to surface and disagreement to materialize as policy issues. Situating this analysis in the legal complex literature, the moderate state that the legal complex struggles for has different defining characteristics in different political stages. While judicial autonomy is key to liberalization, more nuanced normative commitments guides the legal complex's action *after* democratization.

Two critical characteristics of the Taiwanese legal complex's policy confrontations further our understanding. Firstly, action is norm-driven but adheres to respective occupational interest. While judicial autonomy is the generic principle that mobilizes cross-sectional support (Halliday, Karpik, and Feeley 2007), each profession has developed a core identity in accordance with their own resistance of authoritarian control (XXX). Such identity manifests as a specific policy orientation in the post-transition period. Combined with practical interests, the normative orientation becomes concrete reform objectives, resulting in policy conflict. For instance, in Taiwan, lawyers aimed to further accountability of the judiciary, suggesting an evaluation system to remove incompetent judges. Such reform critically contradicted the judges' professional autonomy, and severe policy confrontation followed. As the three major professions had a core

policy orientation, three lines of conflict became long-lasting and unresolved debates in judicial reform.

Secondly, the legal complex acts in a variety of political arenas, in a variety of forms. In an authoritarian context, movement mobilizers form loose networks and innovative strategies (Chua 2014), and utilize, even create, various platforms to advance their cause. Legal professionals act the same way, lawyers, judges and prosecutors alike. Taiwanese judges and prosecutors mobilize their fellows from within the bureaucratic system: the reformists use the internal communication channels to identify and locate supporters, spread information on media and by word of mouth, and collect signatures and votes in judges' chambers and prosecutors' offices. The legal complex acts like activists do: its members travel across the country to socialize, reach out to politicians on opposite sides, and seek an audience with the President or the National Assembly to officially petition. In democratic times, Taiwanese lawyers, judges and prosecutors create organizations and align with political parties, leverage their institutional position to advance or halt legislations, and contest on media, in parliament, and inside and outside the high courtrooms. Simply put, the legal profession is a heterogeneous group of strategic actors committed to a normative policy goal, who are sensitive and responsive to political structural change. The legal complex unites to defy the authoritarian rule; it divides to contest in democratic times.

III. Judicial Reform in Taiwan: Background and Data

Taiwan's democratization began in the 1980s and experienced its first party turnover in 2000. In the two decades, from the legal point of view, Taiwan radically changed its government structure and improved basic rights protection in seven rounds of constitutional amending and by

substantiating the functions of the legislature and court system. Judicial reform was part of the grand transformation, "aimed at rebalancing the power of the people vis-à-vis the government in favor of the citizenry" (Chisholm 2020, 1). While sporadic attempts erupted frequently in the legal communities in the 1980s and 1990s, judicial reform officially surfaced in the policy stream in 1999, when the Judicial Yuan (the central judicial administration) held a national forum of judicial reform that gathered 125 legal elites and civil society leaders and reached 49 conclusions for reform objectives. The scope and diversity of the discussion was immense, involving three panels of deliberation on 12 thematic issues[i], ranging from personnel reform, organizational reform, legal aid, criminal and civil procedural laws, and all kinds of physical and conceptual changes to judicial proceedings. The resolutions required cross-agency actions and support, some to be addressed by the Constitutional Court, some to be followed up by the judicial administration and the executive department, and some to be realized as legislation (Chisholm 2020; Tang and Huang 2010). As the reform involved actors from across the government, the process of reform became non-linear and development fragmented. In 2017, another national forum of judicial reform was held with a larger scope of participation and a wider range of issues, and hosted by the Presidential Office, rather than the Judicial Yuan (The President's Office of Taiwan 2017). The continuous and higher level of political attention, however, only demonstrates the complexity of judicial reform but not the success of previous attempts.

To offer a focused and theoretically informed analysis, I choose to follow the three major legal professions[ii] in the decades-long history of reform. I rely on the following data to construct a dynamic picture across time: (a) 133 interviews with 164 legal practitioners, including 35 judges, 14 prosecutors, and 103 lawyers[iii], in addition to legislators, academics, policy officials,

and non-governmental organization (NGO) staff, and (b) archival data, including news, press statements, periodical publications, practitioners' memoirs, meeting minutes and policy memos open to public or provided by interviewees. I conducted a seven-month fieldwork study in Taiwan between September 2016 and March 2017, and three returning trips in summer 2017, winter 2017, and summer 2018. Formally I visited law firms, courts, prosecutors' offices, detention centers, NGOs, and major governmental agencies in charge of judicial administration to conduct interviews and access archival material. Informally, I attended closed-door forums, project meetings, and social events between judges and prosecutors to observe their interaction and experience the unwritten but perceptible communal norms. Equally importantly, on social media, I was also invited into private discussions or friended with different types of legal professionals of varying seniority and capacity. With intensive field immersion, I was able to collect a large volume of information and develop the sensibility to read the "insider's script" to capture the intra-professional dynamic.

IV. An Underlying Coalition Against Political Intrusion

Consistent with the legal complex literature (Halliday, Karpik, and Feeley 2007), judicial autonomy is a core principle that consolidates cross-sectional support from all three legal professions in Taiwan. Essentially, it is the *professional autonomy* from executive control that they collectively struggled for. Specifically, personnel autonomy and independent practice are two lines of battles bitterly fought in the transition era (Wang C. 2008a; 2008b). In the 1990s, three networks of reformist judges, prosecutors and lawyers mobilized to defy the authoritarian control in respective departments (XXX). The reformist judges strove for an independent space of decision making, including abolishing the pre-screening system of judgments and democratizing the process of case assignment. They openly challenged the judicial hierarchy and

won nation-wide attention. Shocked by the bottom-up momentum, the then judicial administration took steps to release the centralized power, including restoring the functions of board meetings in local courts, adding elected judges to the personnel committee[iv], and inviting young opinion leaders to design reform policies. The reformist prosecutors, on the other hand, similarly fought for the space of independent investigation. They held mock elections of chief prosecutors, advocated for transparency in the promotion process, and lobbied for more resources to investigate corruption cases. The bottom-up mobilization also appeared among Taiwanese lawyers: a group of "civilian lawyers," who were college-attending and bar-passing practitioners, ousted the "military lawyers" in bar association elections, who were former military judges, prosecutors or civil servants, and accredited to the bar via a "back door" policy. The civilian lawyers claimed the bar in the capital city and soon moved onto the national bar association, and then became a forceful voice of the democratization movement towards the end of the 1990s. Simply put, all three legal professions in Taiwan shared a history of challenging top-down authoritarian control.

Although the three legal professions mobilized in respective departments and targeted separate reform objectives, the principle that mobilized their actions was identical. That is, to detach themselves from the party-state regime, and to prevent their legal practices from political intrusion. Three empirical instances underlie a cross-sectional coalition to defend this principle. When judges mobilized for an independent budget, lawyers aligned to support the constitutional amendment; when lawyers named corrupt judges, the judicial community agreed to reject the black sheep. Finally, when the reformist prosecutors defied the President's controversial nomination of the Prosecutor General, lawyers also publicly aligned.

Budgetary independence was a milestone for the Taiwanese judiciary, consolidated in a constitutional amendment via two mobilizations in the 1990s. The first mobilization was a collective petition of 572 judges in 1994. As Taiwan underwent the third round of constitutional amendment[v], Taiwanese judges took the opportunity to mobilize for a constitutional guarantee of an independent budget. The petition was first initiated by a small group of reformist judges in central Taiwan[vi], then joined by dozens of judges from the north[vii], and soon received 572 signatures across the country (Chiang 1994). At the time, only 1107 judges were on the bench, meaning the petition was supported by more than half of the whole judiciary. Ten judges later attended the National Assembly meetings to formally petition (*Record of Judicial Reform*, 1995, p. 167), and received initial support from both the ruling and opposition parties. Although politicians from the two ends of the spectrum put forth proposals, the political momentum did not last. The ruling party eventually turned their back to the judges[viii], and the amendment died with only 27 votes in the assembly of 116 representatives.

The Taiwanese judges mobilized again after three years. In 1997, a number of district court judges in the north took the initiative to lobby in the fourth round of constitutional amendment. A judge who had joined the lobbying team at the time, vividly explained how they reached out to other local judges, to the politicians, and to the lawyers,

> At the time […] the judiciary had a positive outlook on the news for about six months. I thought it was good timing to propose the constitutional amendment of an independent judicial budget. Because the previous wave in 1994 did not succeed, so we thought, we need to look over the previous draft and plan. So we went to Taichung [in central Taiwan] to meet the reformist judges [name three judges]. Then we split the team and went to the three major political parties. […] we also asked the Judge Association to meet with the Speaker of the National Assembly. […] After we had support from the three parties, we thought we should also go to the NGOs. Such as the Judicial Reform Foundation. The momentum came from within the judiciary. (TW201722)

The Judicial Reform Foundation in Taiwan was an organization founded by civic-minded lawyers. After the civilian lawyers reclaimed the bar association, they decided to set up a

separate NGO to better serve their public interest projects, hosting a wide range of activities advocating judicial reform. Budgetary independence was a special issue that united the bar and bench. In a press statement, the lawyers' support of the judiciary was evident,

> "The Judicial Reform Foundation […] endeavors to promote all types of activities and programs to facilitate judicial reform, to establish a healthy judiciary of this country. At the present moment of constitutional amendment, we propose to institute a constitutional provision of a judicial independent budget. We also believe that 'a constitutional guarantee of an independent judicial budget is consensus,' 'separation of powers is void if the judicial budget continues to be included in the Executive Yuan,' 'more national resources are needed to substantiate judicial reform,' and 'to promote judicial independence, the budget should be composed by the judiciary and by the judiciary only.' We call for support from the representatives of the National Assembly to pass this constitutional provision of an independent judicial budget." (Judicial Reform Foundation 1997a)

In fact, lawyers and judges stood side by side when meeting the then ruling party. As the Foundation's statement documented,

> The Judge Association, Bar Association and the Judicial Reform Foundation aligned to visit the President on May 8, 1997. The President promised to call a national and cross-agency 'National Judicial Reform Forum' in six months. The President will also coordinate among Representatives of the National Assembly of the Kuomintang to successfully institute a provision of an independent judicial budget in this round of constitutional amendment." (Judicial Reform Foundation 1997b)

The Taiwanese president at the time was also the chairman of the ruling party, the Kuomintang, which was still an authoritarian party in transition. What the meeting demonstrated was that the bar and the bench aligned to seek strategic support from the party-state that used to control them. As other historical documents revealed, the Kuomintang had already included budgetary independence as one of the major revisions in the fourth round of constitutional amendment in 1997 (Shi 2004, 212, 215). The legal complex's collective actions from bottom up were a final puzzle that completed the big picture, bringing the issue to the surface of the political agenda. Eventually, the constitutional amendment was passed with 251 votes out of a 257-seat assembly. The judiciary, since then, may propose an independent annual budget to the parliament for deliberation, which shall not be reduced or eliminated by the executive department. This was an

essential step for the judiciary to enjoy institutional independence from the government. Particularly, the success of the mobilization demonstrated how the key principle of judicial autonomy brought the bar and bench together.

Another instance indicating the underlying alignment between the bar and bench was in 1998. When lawyers made an unprecedented move to call out the black sheep in the judiciary, the judicial community acquiescently supported the lawyers, some publicly voicing their support. To optimize the judiciary's performance, the Judicial Reform Foundation conducted a survey of 249 lawyers and identified six incompetent judges in the Taiwan High Court (out of 76 criminal court judges) and 47 Taipei District Court judges[ix] (Judicial Reform Foundation 1998a, 17; Independent Daily News 1998; The Commons Daily 1999). This was perceived as an act of distrust and criticism, evoking great agitation from senior judges, and the President of the Judicial Yuan publicly stated that "It is inappropriate for lawyers to evaluate judges" (Judicial Reform Foundation 1998b). Controversy peaked when one of the allegedly incompetent judges sued the two managing lawyers at the Foundation for defamation, and one of the two judges even publicly published his affidavit (Yang 1999).

Nevertheless, it turns out that the evaluation report was not unfounded: out of the six named judges, one was later transferred by the Judicial Yuan because he interceded in a case (Bai 2008); another was admonished in 2000 because of a "violation of litigation procedures and vile attitude in proceedings" and was later dismissed in 2014 because of his unethical investment and legal representation in another court[x]. A senior judge in a high court, who has been an active reformist judge since the early 1990s, witnessed the silent support in the judge community,

> "When the JRF first released evaluation reports on High Court judges, they named the names. Those named were really terrible judges! And those 'maters' from High Court were furious. I supported the Foundation, of course I support the Foundation, I even published articles to support them. The Foundation picked the right target to offend. We all have consensus in the community.

> […] fellow judges also knew these were terrible people, so when lawyers targeted the rotten potatoes to stress their own morality, we supported, […] the internal voice [of the judiciary] approved of the action (one thumb up). We felt the Foundation had guts, real courage, targeted the right people." (TW201624)

An independent and professional judiciary was the policy goal shared by the bar and bench. As the regime transformed from a single-party-state to a competitive democracy, the judiciary was also cutting off political ties and removing problematic personnel from the old regime. On this point, lawyers and judges aligned.

Since personnel autonomy is a top concern for Taiwanese legal professionals, this principle also aligned the prosecutors and lawyers. Long contained by the executive department, a group of reformist prosecutors mobilized from the bottom up to enhance the procuracy's transparency and accountability[xi]. A milestone was to reform the appointment process of the Prosecutor General, who is now nominated by the president and confirmed by the parliament (Art. 66 of the Court Organic Law). Instituting a public deliberation in the appointment process opens up the black box. Backed by elected representatives, the Prosecutor General no longer relied solely on the president for legitimacy. The reformist prosecutors strongly mobilized for this legislation, which was finally written into law in early 2000s.

The institutional reform, however, was not practiced with prudence and respect. In 2004, the then President Chen Shui-bien made a controversial nomination, and was criticized for political manipulation of the system. The nominated prosecutor general, Wu Ing-chao, was a controversial figure. He had been accused of unethical intervention in corruption cases, conduct of conflicting interest, and irregular relationships with financial magnates and politicians (Judicial Reform Foundation 2004a; 2004b). In fact, the prosecutors' community did not welcome Wu as a leader. The Prosecutor's Reform Association (PRA) held a mock vote earlier that year, receiving 335 responses from prosecutors from across the country (out of

approximately 800 prosecutors at the time), and recommended three candidates to the President. In the PRA's report, Wu Ing-chao was ranked the 17th in the first round; he did not even make it to the second round. A renowned prosecutor from the PRA regretfully claimed,

> "We thought President Chen Shui-bien was an idealist of some sort. But his nomination of Wu makes me feel everything's gone back to where we started, all the reform efforts in all these years is gone." (Judicial Reform Foundation 2004b, 29)

The bar soon joined the prosecutors to confront the political authority. The Taipei Bar Association and the Judicial Reform Foundation publicly aligned with PRA, as their joint statement reads:

> "Wu Ing-chao is a traditional bureaucrat, a product of the old system, who has strong characteristics of an administrator […] of obeying political authority. He has unsatisfactory ethical records. Chen Shui-bien should not nominate a controversial figure like this." (Prosecutors Reform Association 2008, 1:279)

Two prominent lawyers affiliated with the Judicial Reform Foundation candidly criticized President Chen. "Unforgivable as a lawyer himself," lawyer Joseph Lin commented, "he knew exactly how we [the judicial reform organization] feel about Wu Ing-chao, but he insists on nominating Wu" (Judicial Reform Foundation 2004b, 29). Another lawyer interpreted the political move, "because Chen wants to show everyone he is the most powerful man" (Judicial Reform Foundation 2004b, 29). Joseph Lin, still chairing the JRF in the mid-2010s, actually had strong personal connections with President Chen, representing him in the 2004 Presidential Election case (Lu 2017). His support of the reformist prosecutors evidently indicated lawyers' support of the prosecutors on principled issues of judicial autonomy. Both the institutional statements and personal accounts of the bar showed a shared resistance towards arbitrary political manipulation.

V. Intra-professional Collision in a Democratized State

The Taiwanese legal complex united in the authoritarian era, but divided in democratic

times. As Taiwan democratized, the government initiated a set of policy agendas under the umbrella concept of judicial reform to transform the institutional infrastructure and to offer comprehensive rights protection. The three legal professions in Taiwan attempted to realize their respective normative commitments in the policy making arena, and collision followed. This section focuses on three sets of intra-professional confrontation to show how lawyers, judges and prosecutors had different policy orientations, and how their respective commitments lead to long-lasting policy contention.

A. *People's Court* vs. *Judges' Judiciary*

Disagreement between the bar and bench is not unheard of in court proceedings, but the fundamental division of policy stance is an understudied subject. The two seemingly compatible commitments that Taiwanese judges and lawyers uphold, judicial independence and rights protection, severely collide in judicial policy making. Taiwanese judges and lawyers have distinctively different views on *to whom* judges should be held accountable: lawyers request a "people's court" (Chen 2011), whereas judges define independence as self-governance. For two decades, Taiwanese lawyers advocated for an accessible and transparent judiciary, allowing the people to participate in the assessment and disciplinary process of the judiciary. Nevertheless, judges categorically reject any mechanisms that might translate into popular influence, and instead carry out internal reform at their own pace.

Confrontation manifested in the policy debate around the "Judge Evaluation System," one of the most contentious judicial reform policies in Taiwan. Seeing the judiciary as part of the authoritarian apparatus in the past (TW201608; TW201715), many Taiwanese lawyers subjected judges to reform first with name-and-shame campaigns and later legislated for an evaluation system. The lawyer-led Judicial Reform Foundation (JRF) commenced its first internal survey

evaluating judges in 1996. Later, from 1998 to 2000, the JRF popularized systematic evaluation of the Taipei District Court and the High Court's 123 judges and released a press report to name the incompetent judges, which caused unprecedented resistance from the judiciary, as the previous section notes. The scale expanded to the national level in 2001. The JRF worked with seven bar associations to evaluate 847 judges in 11 courts, including eight district courts and three high courts, which controlled jurisdictions covering approximately 80% of the Taiwanese population. The expansion took up a different momentum in 2003, when cross examination in criminal case proceedings was newly legislated for, and the JRF and Taipei Bar collaborated with the Taipei District Court and Taipei Prosecutors' Office to conduct a three-way evaluation of all three legal professions practicing in Taipei.

The lawyer-led JRF also started another line of lobbying to legislate an evaluation system in the mid-2000s, and finally successfully instituted a Judicial Evaluation Committee in the Judge Act in 2011. The Judicial Evaluation Committee accepts applications from bar associations and recognizes the power of NGOs to investigate incompetent performance of individual judges in individual cases[xii]. The Committee does not have the disciplinary power, however, only the authority to report a judge to the Judicial Yuan for further disciplinary measures: (a) to discharge the judge, where the Judicial Yuan is to transfer the case to the Control Yuan, or (b) for other disciplinary actions, the Judicial Yuan is to propose a measure to the Personnel Review Committee for approval. Since its inauguration, 21 out of 55 applications successfully made their case at the Judicial Evaluation Committee and were reported to the Judicial Yuan or Control Yuan for further penalty (Judicial Evaluation Committee 2019). In short, Taiwanese lawyers successfully worked a long way towards holding judges accountable to

their performance in court, with a procedure accessible to ordinary citizens via bar associations and NGOs.

This decades-long process, nevertheless, has not been received well by Taiwanese judges. The fundamental belief that judges shall be constrained only by the law and free from any other influence leads to discomfort with and resistance to an externally initiated evaluation. At the individual level, being evaluated is deemed a "persecution" (TW201722) that brings great psychological pressure and chilling effects (TW201729). A senior judge from the Supreme Court described judges' overall agitation about the legislation, "internally, judges are jumping up and down" (TW201609). A mid-career judge, when describing a fellow judge's experience being evaluated, showed great disapproval of the system, "The judge is a good man, and we all felt it was very unfair. He had insomnia, became so depressed because of the pressure" (TW201612). Another senior judge from a high court further explained the disempowering effects that made judges uneasy, "it's like being prosecuted, he'll have to write a memo, he'll have to wait; of course a judge would get insomnia if sent to evaluation" (TW201722). Indeed, the perception is that judges are brought down from the altar, moving from an active, inquiring role in an inquisitorial system to a passive, examined subject in the evaluation process. The reversed power dynamic between judges and ordinary citizens appears to have had an effect on judges' daily practice, as some lawyers in the south invariably observed: "I had a judge who got very nervous and clarified twice to the defendant 'I'm not asking you to confess,' he's afraid of being sent to evaluation" (TW201725). The success of instituting an evaluation system not only signals a new power balance between judges and lawyers (who advocate for ordinary citizens), but also denotes an identity struggle in that judges can no longer base their legitimacy solely on an a priori norm of judicial independence but must accommodate popular support.

At the collective level, animosity towards lawyer-led reform has grown. Taiwanese judges direct their frustration towards the lawyer-led Judicial Reform Foundation (JRF). The JRF advocated the evaluation system and has filed the most applications since 2012, accumulatively taking up 71% of applications that the Judicial Evaluation Committee receives (Judicial Reform Foundation 2017). Many judges I interviewed confirmed a common resentment in the judicial community, "a feeling of being attacked" towards JRF (TW201601; TW201602; TW201729), even resentment towards lawyers in general (TW201601). The tension peaked in 2016, when the JRF released a searchable website of almost 2000 judges and prosecutors, making their names, affiliation, academic and disciplinary records available online, with the hope that "[the website] will become a user-review based forum like Yelp" (TW201704). Concerned about personal privacy and security, judges were seriously irritated: the Judicial Yuan issued a press statement denouncing the website as "strongly improper, misleading the public to distrust the judiciary,[xiii]" and many individual judges published strongly worded commentaries. As a young judge described the event to me, "JRF is criticizing and attacking the whole judge community in an undifferentiated manner, so we [judges] see them as enemy" (TW201602). This perception of enemy is prevalent, as another judge explained why he writes articles in newspapers to challenge the JRF, "you just need to write to 'resist the foreign aggression,' you can't let your fellow judges feel unsupported" (TW201729). This hostility is commonly sensed by lawyers too, as when I visited a branch office of the JRF, a staff member introduced another staff to me by joking, "this is the most hated person by Taiwanese judges, because he handles the evaluation application." To sum up simply, "the evaluation system is a realistic conflict: lawyers send judges to evaluation. So they have a tense relationship" (TW201628).

This antagonism between bar and bench manifests in other policies also. An important organizational reform of the judiciary in early 2000s was restructuring the appellate trials of criminal cases. To cut down the caseload, the Judicial Yuan proposed a revision of criminal procedural law to change the second instance from a review trial, reexamining all factual propositions and evidence in the first instance, to a sequential trial, continuing the investigation but not reexamining evidence presented in the first instance. From the judiciary's perspective, the original practice of the second instance is essentially repeating what has been done in the first instance, which is inefficient and uneconomic, and also a waste of human resources. However, lawyers in Taiwan were opposed to the revision, claiming it might limit citizens' access to a fair trial. Lawyers argue that judges in district courts tend to be young and inexperienced, and a review trial of second instance guarantees possibilities of a thorough investigation. As a nationally renowned criminal lawyer Lo Bing-chen vocally argued, "When the cement of the first floor is not dry yet, you cannot build the second floor" (Ministry of Justice 2005, 4), stating that lawyers would continue to advocate for a review trial for its extensive protection of the defendants until the judiciary staffs enough experienced jurists in the first instance. A former CEO of the JRF shared an exchange between the JRF and the judiciary,

> "Correct, we opposed the revision. The Director-General and Vice Director-General of the Criminal Department at Judicial Yuan came to our office to lobby for our support on the revision. The Vice Director-General showed us data, so many cases stacked in the Supreme Court, they need to transfer judges from the second instance to deal with them [so they can't afford to have more cases to go up]. But we asked them […] we need a strong first instance of court, senior and competent judges need to come down to district courts. What is your personnel policy to do that? She can't answer. Because she has no say in personnel policy making. And we know it was the end of the discussion." (TW201715)

His comment accurately demonstrates the confrontation of different commitments of the two professions. Court reform is extremely sensitive because moving judges around by administrative policies risks judges' independence, yet personnel restructuring is indispensable

to court restructuring. Reform of the criminal trial design requires centralized administrative power to give instructions from top-down, but this is exactly what Taiwanese judges opposed. Fully aware of the importance of judicial independence to fellow judges, the judicial administration tries to sidestep personnel reform; yet such reform is essential to lawyers. The absence of personnel reform was a deal-breaker for reform-minded lawyers, resulting in the policy conflict between judges and lawyers, and subsequently the failure of legislative revision. In fact, the revision never surfaced on the reform agenda again, and the restructuring of criminal instance remains incomplete today.

To conclude, lawyers' pursuit of a transparent and accountable judiciary on behalf of the people triggers serious antagonism from the judge community. The tension is fundamental and inevitable, as the underlining anticipation of an evaluation system is to influence judges' behavior, and if necessary, remove an incompetent judge from bench; but this attempt directly contradicts judges' ethos of professional autonomy in being free from intervention.

B. Alienation between Judges and Prosecutors

"The disagreement between judges and prosecutors is even greater than the disagreement between the Kuomintang and Democratic Progressive Party." (TW201628) (TW201613) (fieldnotes 2017 Oct 7)

The quote shows the magnitude of the tension between Taiwanese judges and prosecutors, comparing the discord to the contention between the two major political parties in the country. Empirically, this rarely studied disunity is two-fold: at a practical level, a skirmish emerging from daily practice on criminal cases is unavoidable as prosecutors essentially control the upstream of workload for judges. Disagreement on best practices and division of labor logically generates different stances on criminal policy and administrative measures.

On the other hand, however, the disunity between the two professions actually comes from prior institutional entanglement under the party-state regime (Tsai 2010, 143). That is,

while both judge and prosecutor act to be freed from political control, the judiciary does so not only by appealing to their constitutional primacy of independence, but also partly by alienating the procuracy as a separate and unequal agency. Simply put, the judiciary resumes its peerage as one of the three powers of government, which is independent from, and equal to the legislature and the executive branch, at the expense of the descension of prosecution to an administrative officer answerable to the incumbent administration. Taiwanese prosecutors resist this alienation, logically, as their identity and status protection attached to the title of "judicial officer" are both interest-based and normatively driven. Indeed, prosecutors have an intertwined character of both judicial and administrative power that leads to conflict with the role of the judiciary. They are no bureaucrats as they act independently from direct political instruction, but their actions are, by all means, directed by (criminal) policy concerns; they also receive internal top-down supervision, unlike judges, but they carry coercive disposition power as magistrates do. In other words, judges and prosecutors are homologous as judicial institutions, but prosecutors are amphibious in function.

On policymaking, two features of institutional entanglement further complicate the relationship between Taiwanese judges and prosecutors. First, a single-track recruitment system trains prosecutors and judges as a combined cohort, allows mutual transfers between judgeship and prosecution, and breeds analogous titles and identity as "judicial officers." Because of this shared vocational origin in state bureaucracy, "prosecutors assert that they take the exam with judges, train with judges, go to work with judges, so they want the same power and protection" (TW201613). Second, the judiciary may enjoy independence guaranteed by the constitution, which leads to unique power in maintaining the budget and initiating legislation, but prosecutors are positioned to leverage administrative support to obstruct judicial policymaking. In Taiwan,

judges and prosecutors are organized by different governmental agencies, the Judicial Yuan (independent from the executive branch) and the Ministry of Justice (affiliated to the executive branch). The Ministry of Justice (MOJ), being a subordinate agency to the Executive Yuan, has fewer resources, yet with more strings attached, so it enjoys political leverage to impede policy initiatives from the Judicial Yuan. For example, in the bill drafting process, the MOJ can block the intra-governmental negotiation by pressuring the Executive Yuan, as a senior judge from the Supreme Court experienced in the Judge Act negotiation,

> "Between 2004 and 2007, I was in the Judicial Yuan, the Judge Act was about to be sent to the parliament and the debate was fierce. We [judges] did not want the Act to apply to prosecutors, but the MOJ decisively opposed, so the bill can't even leave the Executive Yuan. So we had to allow the applicability [to prosecutors], and insert a sunset clause." (TW201609)

Prosecutors wanted to enjoy status protections as the judges do, hence they requested the insertion of a clause in the Judge Act to expand the scope to the prosecutors. Also, at the time, the Judge Act was a well-supported bill that was one step away from official enactment. Prosecutors took it as an opportunity to piggy-back, saving the lengthy effort to lobby for a Prosecutor's Act of their own. Judges tried to alienate the prosecutors but in vain, clearly as a result of the political leverage that the prosecutors were able to mobilize from within the administrative branch. In other words, prosecutors have two cards to play: they can claim their *judicial* character because they share an identical professional background as judges do, yet they can also mobilize *administrative* support because they are affiliated to the executive department and implement policies from inside the government.

Discord appears in three major arenas of judicial decision making. To begin with, judges and prosecutors inevitably have disagreement in daily practices. Sequential positions in the case pipeline are an important factor, as a junior judge explained the dynamics to me,

> "I get really angry with some prosecutors sometimes. The evidence is a mess. Attaching all the transcription [of the defendant's tapped communication] and no indication on which part is for which charge. I'll have to spend a lot of time. They don't do their job well, we on the downstream are doomed." (TW201614)

In controversial cases, the judiciary passively takes up the responsibility to clear a case recklessly, if not wrongly, handled by the prosecution. When public pressure mounts, judges feel like a wronged scapegoat (TW201624). For example, in 2016, a residential building collapsed in an earthquake, causing 115 deaths. The construction company was later prosecuted for negligent malpractice manslaughter. The court sentenced the director to five years in prison, but the public criticized the leniency. A senior lawyer explained to me:

> "Like the Wei-guan case [the name of the building]. The prosecutor did not charge him with uncertain intention manslaughter, but malpractice manslaughter. Five years is the harshest sentence the law permits. So what do you want the judge to do? But all the public pressure ends up on the judge, not on the prosecutor." (TW201715)

Typically, the division of labor in criminal cases leads to contradiction on criminal policies. Two pieces of legislation stand out as exemplary instances: confiscation of criminal benefits and electronic monitoring. The former legislation was drafted by the MOJ in 2008 and 2009, and later the Judicial Yuan was involved to design the procedural aspects. As a senior judge from a high court observed, "The MOJ had a draft bill for the Judicial Yuan, but the Yuan was not willing: whatever adds work to the judiciary, the Yuan won't propose the legislation" (TW201628). By contrast, legislation on electronic monitoring was supported by the Judicial Yuan but opposed by the MOJ:

> "Judicial Yuan doesn't think electronic monitoring is a bad idea. But they got stuck in the question, 'who will be responsible?' Currently there is a monitoring system of sexual offenders under the prosecution, because they're the investigative agency. But when you actually ask the prosecutors to do electronic monitoring, the MOJ objects as it increases work and responsibility. This discussion has been going on for over ten years now." (TW201628)

Indeed, it is common that the MOJ and the Judicial Yuan issue opposing press statements on policy initiatives. As an activist lawyer who has been advising on judicial reform policies since the 2000s observed:

> "From technical issues to big policy change, they cannot coordinate or communicate. The Director-general of the Criminal Division at Judicial Yuan has a press conference in the morning, the minister of MOJ has another in the afternoon saying the policy is useless. Their offices are next door! A judge tells you to go right, then a prosecutor tells you to go left, what kind of public image is that?" (TW201613)

The "big policy change" points to the most fundamental tension between the two Taiwanese legal professions. That is, prosecutors consistently and intensively react to a role change in criminal trials. The prototypical fight took place in 1999 at the National Judicial Reform Forum when the criminal litigation structure was to move from an inquisitorial system to an adversarial system. The conventional inquisitorial practice in Taiwan expects prosecutors to only send completed files to court, leaving the investigation to the judiciary, and the prosecutors' presence is not essential on the trial date. In fact, lawyers in Taiwan joke about prosecutors being absent-minded in trial in that they only need to say six words in trial, "Just as we prosecuted in file." A reform of the adversarial system expected that prosecutors were to take up more responsibility: to present evidence, cross examine witnesses, and argue in court. While both judges and lawyers supported the revision, the MOJ, representing the prosecutors, objected categorically. In fact, the MOJ led over 20 representatives to vote against 10 (out of 13) proposals on criminal issues, making consensus difficult to reach (Fan, Wang, and Lin 2010, 365).

Another open conflict between the court and the prosecutors demonstrates the entanglement between practical concerns of labor and identity as to who is *the* legitimate judiciary. In a 2012 resolution, the Taiwanese Supreme Court ruled that judges are legally required to investigate evidence in favor of the defendant, but favorable evidence only. This

decision in practice shifted the burden of proof to the prosecution. Prosecutors fiercely protested: the Supreme Prosecutor Office issued a dissenting statement, 1078 prosecutors signed a joint letter, and a nationally respected prosecutor Wu Shin-lung held a one-man sit-in protest in front of the Supreme Court where approximately one hundred prosecutors showed up to support his action. A young prosecutor explained why he signed the joint statement, "Judges also share the responsibility with us, you have to do the work as well" (TW201611). And yet, another sharp comment from a senior prosecutor pointed out the deep alienation that prosecutors felt, "it's judicial monopoly, judges want to monopolize the concept of judiciary" (TW201637).

In Taiwan, transformation of legislation and case law in the past decades fundamentally changed the role of prosecution in the criminal trial. Many reform policies in this post-transition context intend to redefine the role of judiciary and prosecution, to limit the latter's investigative power and to ensure the former's impartiality and independence. Yet it is clear this line of judicial reform brought a sense of alienation, even negation, upon many Taiwanese prosecutors. They held onto the title of "judicial officers," and insisted they were an integral part of the judiciary and equals to their judge counterparts. The Taiwanese judges' commitment in a transitional context, where judges establish independence by alienating the prosecution, is sensitively detected by the latter and evokes obstruction. The estrangement between the two legal professions unfortunately results in drawbacks that are described as "lethal to judicial reform" (TW201613).

C. Guardian of Justice vs. People's Attorney

Taiwanese prosecutors and lawyers disagreed, fundamentally, on the extent to which prosecutors enjoy investigatory power, where lawyers are deeply concerned about potential

rights violations as a result of the unaccountable and instrumental function of a powerful prosecution, but prosecutors require legal and institutional prerogatives to support their commitments in cracking down on crime and corruption. Two policy objectives have been heatedly contested in the past 20 years: (a) removal of the coercive disposal power, and (b) the foundation and dissolution of the Special Investigation Unit. Partially driven by professional interests as designated by respective positions in litigation, lawyers and prosecutors in Taiwan also act upon their normative commitments: for the former, legal reforms *should* prioritize peoples' rights; yet for prosecutors, pursuance of justice *should* be at the core of policy design.

The first objective of reform where Taiwanese prosecutors ran into conflict with the lawyer-politician alliance was the coercive disposition power. Prosecutors used to have very powerful investigative tools in Taiwan, with detention, seizure and search being the most forceful. Two critical events marked the change, or loss, of this power: the removal of the power to detain in 1995 and the removal of the power to search in 2000. The Taiwanese Constitutional Court ruled in 1995 that the judiciary is the only authority denoted in Article 8 of the Taiwanese Constitution to detain citizens beyond 24 hours (*Interpretation No. 392*, *Constitutional Court of Taiwan*, 1992). This interpretation clarifies the role of the procuracy as an "judicial institution" but not *the* judiciary that affords the prerogative to order a detention. It was a critical constitutional debate at the time and petitions came from various sources: a reformist judge, a group of lawyer-politicians, and individual politicians from the opposition. The Constitutional Court unprecedentedly held two proceedings of oral argument. The MOJ, representing prosecutors in Court, argued for the possession of the detention power as an essential investigatory tool, and emphasized prosecutors' "responsibility to social security" (W. Wang 1997, 60, 65). "How could excluding prosecutors from the power to detain be a method to realize

and secure justice?" (W. Wang 1997, 74). Aligned with legal scholars and reformist judges, lawyers argued against prosecutors' excessive and allegedly unconstitutional power. By contrast, a lawyer-congressman eloquently spoke in court in a voice of the people, "I feel and observe more pain for the people who are illegitimately detained" (W. Wang 1997). The debate was so critical to the due process doctrine and practice in Taiwan, that it was later referred as "the Debate of the Century" by the Taiwanese media (W. Wang 1997).

The second vital loss for prosecutors was the power to search. Taiwanese prosecutors used to have the power to issue search warrants, but the prerogative was removed after two high-profile investigations. In 2000, a prosecutor in Tainan searched the parliament hotel to investigate a legislator's forgery case; two months later, a head prosecutor in Taipei District Court searched the offices of the China Times to obtain data regarding an ongoing military corruption case, which allegedly involved information of national security. The two searches sparked a great controversy about infringing press freedom and parliamentary privilege, where a number of human rights organizations, bar associations, press publishers and many academics were jointly opposed to the unchecked power of prosecutors. The parliament immediately drafted a revision of the criminal procedural law to designate the search power to courts. The minister of MOJ argued in parliament, "search and seizure were prosecutors' two 'claws,' and if the power goes back to the court, it will create great difficulty for the government to eradicate corruption and crime" (Liu 2000). And the reformist prosecutors also argued that "to eliminate corruption in Taiwan, it is not yet the time to take the power to search away from prosecutors." Eventually the parliament transferred the power to issue search warrants to the court, but in response to the reformist prosecutors' opposition, an article was added to allow emergency search with strict conditions to apply.

This second piece of legislation points to a deeper confrontation: it reveals strong political momentum to transform the role of prosecutor, as the preceding section also notes, where lawyers align with politicians and other civil society actors to limit the prosecution's power and curb their proactivity. A pivotal instance to demonstrate this dynamic is the establishment and dissolution of the Special Investigation Unit (SIU)[xiv]. Aiming at investigating major fraud by tycoons and corruption of high-level officials, including the president, legislators and other party figures, the SIU (and its preparatory centers before formal enactment) played a vital role in the investigation and prosecution of a number of high-profile, contentious scandals involving influential entrepreneurs and politicians since 2000. The reformist prosecutors saw the institution as a milestone of their reform, affording outstanding resources and jurisdictional prerogative. In 2017, however, the SIU was dissolved because of "excessive, unconstitutional power" (TW201628; TW201613).

The tipping point that terminated SIU was a political scandal in September 2013, when the Prosecutor General heading the SIU instructed the unit to illegally tap the parliament, and used the information to aid the then President to attack the Parliament's Speaker. A transcription of a phone call indicating influence peddling between the Speaker and the opposition leader was sent to the then President, who was later briefed by the Prosecutor General, to initiate a political attack that, if it succeeded, would work in favor of the President to further consolidate his position in the ruling party. This scandal became a constitutional crisis in Taiwan, specifically because both the President and the Speaker are KMT members, and the attack implies that the President attempted to eradicate other powerful intra-party figures to fully control the parliament, essentially removing and surpassing constitutional checks. The public fiercely questioned the lack of independence of the prosecutor general, and more critically, the SIU's instrumentality

towards politics. After the President stepped down in 2016, the newly elected parliament unanimously dissolved the SIU.

Lawyers used to support the SIU, sharing a common goal with prosecutors to eliminate corruption embedded in the party-state; yet they also saw that the proactive role of prosecutors in investigation can be instrumental to politics. Two senior lawyers, who both worked for the JRF and were familiar with the lobbying process, confirmed the lawyers' initial positive stance:

> "In 2007, I just started my post in the JRF. The JRF supported the reformist prosecutors to set up the SIU. JRF had the capacity to lobby at the time, if we didn't support, the SIU wouldn't have been instituted. […] but now the time is different. SIU is a product of the past, using extreme measures at extreme times." (TW201613)

However, as democracy in Taiwan has consolidated, lawyers no longer see the necessity for a special unit with extra resources and institutional prerogatives to prosecute those in power.

> "[…] the SIU has a problem of power concentration. […] the JRF, and the Democratic Progressive Party, initially supported the SIU but only found out later that it falls instrumental to political struggle because of unchecked power. The September Scandal is a bloody example. SIU also has differentiated treatment when investigating different politicians. When I advise the Democratic Progressive Party, I also argue that SIU is an institutional monster we set up ourselves, we need to normalize the prosecutors' system." (TW201714)

To conclude the discussion of the collision between lawyers and prosecutors, disagreement between lawyers and prosecutors appears to be logical, as the adversarial structure in litigation inevitably leads to their difference in policy making. Tracing two important developments in criminal procedural law and judiciary organization in Taiwan, however, a consistent trend of constraining state prosecution is clear. The coordination between lawyers, lawyer-politicians and other civil society actors translates through representative politics, resulting in the legal and institutional change to normalize prosecutors' investigative power. Prosecutors consistently referred back to their commitment to tackle crime and corruption. The

confrontations on judicial policies accurately reflect that different legal professions act in accordance with respective normative commitments, and policy divergence follows.

VI. Conclusion

The legal complex disassociates as the state democratizes. Tracing the three Taiwanese legal professions during and after state transition, this article demonstrates how they aligned to consolidate judicial autonomy against the political control, and how they confronted one another in democratic times. It should be noted that the three legal professions in Taiwan have still cooperated on specific occasions in democratic times. The Judge Act, initially proposed in the 1999 judicial forum and finally signed into law in 2011, was a coordinated project that addressed concerns of all three legal professions. As previous sections note, lawyers successfully instituted an evaluation system to remove incompetent judges, prosecutors secured status protection as judges do, and the judges acquired comprehensive regulations to uphold their autonomy. Analytically, however, this collaboration is of a different nature compared to the alignment in the pre-transition era. The branches of the legal complex did not stand behind each other to support the other's objective; rather, they sat together at the negotiation table to advance their own cause. The cross-sectional cooperation in the Judges Act again supports the findings in this paper: responding to the authoritarian legacies, the legal professions align for judicial autonomy free from political intervention; later, as the democratizing state sets up agendas for judicial reform, the legal professions act to pursue respective ideals and cooperate for joint stakes.

With an in-depth analysis of the Taiwanese case, this paper furthers two lines of scholarly discussions. First, the legal complex literature has investigated collective actors in liberal and illiberal times, but stops short at the *aftermath* of liberalization. Taiwan confirms the legal complex's liberal tendency on defending judicial autonomy; however, such collectivity is

contingent on the external political environment. As the legal complex enters a democratic system, their internal differences surface quickly, and conflicts are concrete. In other words, the collective actions of the legal complex encompass much political complexity to be unpacked. The collectivity may be a response to intrusive power holders, rather than an indication of cohesion of the legal community. In fact, the internal variation is suppressed and concealed by the authoritarian imposition; and soon surfaces once politics allows. The legal complex's mobilization may also develop along the professional divisions and proliferate along the organizational structure. That is, the *off-bench* mobilization may be *intra-judicial*. As the Ukraine case demonstrates, judges network outside the courtrooms but mobilize along with the bureaucratic platforms and jurisdictional divisions (Trochev 2018). Future research should attend to the unconventional forms of collective actions, which may be break crumbles leading towards critical phenomenon of regime transformation. Attention should also be paid to ideational variations internal to the legal complex, as the intra-professional heterogeneity shapes the trajectory of legal transformation.

Second, the legal actors capitalize legal concepts to curtail political power during regime transition; however, the conceptual instruments they choose also lead to power struggles of their own profession. Judicialization of politics has been recognized as a widespread phenomenon in the 21st century, whose driving forces have been identified as (political) ideologies, politicians, or agentic courts with interests of self-preservation. The Taiwan case points to another set of actors: the branches of the legal complex are coordinating to siphon power to themselves and away from other power centers of the state. As this paper finds, different legal professions developed different principles to rebuilt autonomy and acquire power. The conceptual tool is used to resist authoritarian rule, but it is also used to enact policies in a democratic system,

adjusting to cater popular support and consolidate legitimacy. Obviously, choosing these conceptual instruments are not without consequences: internal confrontation of the three legal professions is one evident instance. In fact, these conceptual tools are of limits and may fall short on governance issues in democratic times. For example, the Taiwanese judiciary is now in need of raising capacity to digest large number of cases, but neither the lawyers' or the judges' ideational principle helps. Judges are only concerned about independence from external intervention, but such resistance easily becomes isolation, and fails to effectively respond to challenges (or receive momentum) from the society. Lawyers take pride in their duty advocating for the people, but take limited roles in preventing abuse of the litigation system. In fact, if the bar actively facilitates mediation and settlement, the bench may face a reasonable caseload; and yet, this is never a policy focus of the bar. Simply put, the fundamental regime change marked a conceptual turn for all legal professions, and inscribed an ideational point of reference to the legal complex, which later pointing to colliding trajectories.

The legal complex's mobilization - emergence and continuation, in court or extrajudicial – sends critical messages of the regime's rise and fall. Furthering this line of inquiry, this paper invites more investigations on the diverse formats of collective actions, where and how they take place, or the absence thereof. The analytical flexibility of the legal complex also allows inclusion of unconventional legal actors, such as government lawyers (Dotan 2014), public defenders (Nunes 2020), and legal academics (MacLean 2017). The political meaning of legal complex's activities requires careful interpretation and conceptual refinement, and future research awaits.

Appendix

As noted in the Data section, the fieldwork for this project was composed of four trips to Taiwan. The first trip lasted seven months from September 2016 to March 2017; the second trip was between June and August 2017; the third trip between December 2017 and January 2018, then the fourth trip in June 2018. Interviews are coded according to the order they took place in a given year: for example, TW201601 refers to the first interview I conducted in the year of 2016. As some interviews were group interviews, and interviewees may be of different professional backgrounds, I assign a letter to specify their vocation and a number to each interviewee, and also according to the order I met them in the given year. The letter "L" refers to lawyer, "P" refers to prosecutor, "J" refers to judge, and "O" refers to other specialists. For example, TWL2017-12 refers to the 12th lawyer I talked to in the year of 2017, or TWJ2016-21 refers to the 21st judge I talked to in the year of 2016. The table below is a list of interviews and interviewees whose experiences are directly referred to or quoted in this paper, following the order they appear in the paper.

Table A1 Personal Characteristics of Interviewees

Interview No.	Interviewee	Interviewee's vocation	Gender	Year of Practice (as of 2019)	Region	Workplace (at the time of interview)
TW201722	TWJ2017-09	Judge	Male	32	North	High Court
TW201624	TWJ2016-14	Judge	Male	29	Central	High Court
TW201608	TWJ2016-05	Judge	Male	10	North	District Court
TW201715	TWL2017-07	Lawyer	Male	20	North	Mid-sized law firm/NGO professional
TW201612	TWJ2016-07	Judge	Female	21	North	High Court
TW201729	TWJ2017-10	Judge	Male	9	Central	District Court
TW201609	TWJ2016-06	Judge	Female	40	North	Supreme Court
TW201725	TWL2017-13	Lawyer; 3 lawyers in this group interview	Male	4	South	Mid-sized law firm
TW201725	TWL2017-14	Lawyer; 3 lawyers in this group interview	Male	3	South	Mid-sized law firm/former district court staff
TW201601	TWJ2016-01	Judge	Male	3	South	District Court
TW201602	TWJ2016-02	Judge	Male	7	South	District Court
TW201704	TWL2017-03	Lawyer	Male	17	North	NGO professional / legal aid lawyer
TW201628	TWJ2016-11	Judge	Male	18	North	High Court
TW201613	TWL2016-03	Lawyer	Male	28	North	NGO professional / political advisor
TW201614	TWJ2016-08	Judge	Female	6	North	District Court
TW201611	TWP2016-02	Prosecutor	Male	12	Central	District Prosecutor's Office
TW201637	TWP2016-08	Prosecutor	Male	17	North	District Prosecutor's Office
TW201714	TWL2017-06	Lawyer	Male	10	North	Small law firm/political advisor

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NOTES

[i] The 125 participants were designated to three panels. Panel one addressed five issues: (1) the role of the Judicial Yuan, (2) improving people's rights to litigation, (3) civil participation in court proceedings, (4) civil procedure reform, and (5) facilitating deliberation between panel judges. Panel two focused on criminal trials: (1) adopting

adversarialism in the criminal procedure, and (2) enhancing the trial function of the first-instance court. Panel three focused on the judges' and prosecutors' development: (1) personnel reform for judges (especially on appointment and self-governing measures) (2) personnel reform for prosecutors, (3) enhancing the evaluation, supervision and removal process, (4) enhancing judicial independence (for example, anti-corruption), and (5) training improvement. For detailed discussion, see Chisholm 2020 at pp.14-16.

[ii] Legal academics are not a *collective* player in the judicial reform policy. It is not to say that legal academics are not critical in the law-making process in Taiwan; on the contrary, law professor are essentially the external counsel deeply involved in drafting, amending and repealing the law, working closely with a wide range of governmental agencies. However, in both rounds of judicial reform making, legal academics participated as individuals and no mobilizing networks or organizations were built. Some of them have been very influential as opinion leaders, and yet, no collective actions took place in the name of legal scholars as a profession.

[iii] As of 2019, the total number of Taiwanese judges is 2,161, and the total number of prosecutors is 1,357. As for lawyers, the total number of licensed lawyers is 18,028, but only 11,217 lawyers are registered with courts nation-wide, and only 10,305 lawyers are registered with bar associations. Hence, it is fair to say there are about 10,000 to 11,000 lawyers active in practice; and I suspect the difference between court registration and bar registration may be interpreted as the difference between in-house counsel and litigators.

[iv] The review committee that decides on promotion and disciplinary cases was initially composed of members only designated by the Judicial Yuan. Changes started in 1992, when ten elected judges from all instances of the courts were added to the committee. It was viewed as an important step to the judiciary's self-governance.

[v] The Taiwanese constitution was amended seven times. The major changes in the third round of constitutional amendment were direct election of the president and the procedure of recall. The president's appointment power was further consolidated: when the president appoints officials confirmed by the legislative bodies, s/he no longer needs the premier to countersign. This moves the Taiwanese government structure further away from the dual-executive system, and closer to presidentialism.

[vi] The petition included three statements: first, the judicial budget shall be proposed by the Judicial Yuan and reviewed only by the Legislative Yuan. Second, the judiciary shall be administered by the judges only. Third, the president and the vice president of the Judicial Yuan shall be elected by the grand justices themselves, with a term of three years and may be consecutively elected once.

[vii] Sixty-nine judges from the first and second instances of court initiated the petition. According to the memoir of a senior judge (who was on the bench of the Taiwan High Court), the mobilization started in the central part of Taiwan and echoed by the judges in the north. Fan & Lee, 2013, p.299.

[viii] The proposers were even absent in procedural meetings, failing to defend the bill KMT proposed.

[ix] One year later, two "unqualified" judges reappeared on the report.

[x] See the Judicial Yuan press release about this judge: http://bit.ly/2hRjlDn

[xi] The Prosecutor Reform Association was formed in 1998. It had four goals: to safeguard the prosecutor's status as "judicial officers," to establish a co-investigation organization, and to set up voting systems for prosecutors to endorse head prosecutors and an evaluation system for prosecutors to assess the chief prosecutors' performance.

[xii] The law assigned certain NGOs working with the justice system to file applications on people's behalf. JRF was one of the assigned NGOs. In 2020, however, the new law allows plaintiffs to file applications on their own, no need to reroute through bar associations or NGOs.

[xiii] The Ministry of Justice accused the JRF of being "destructive," and prosecutors actually signed a collective petition with 972 signatures (out of 1380 prosecutors nationally) to protest against the JRF.

[xiv] For those who are interested in Taiwanese government organization, the SIU served different functions from the Control Yuan. The SIU was designed to investigate corruption and severe criminal acts of the high officials, including the president and the vice president, and the case would be sent to the court. Whereas the Control Yuan is in charge of impeachment of civil servants, *not* including the president and the vice president. The Control Yuan's investigation would be sent to the Public Functionary Disciplinary Sanction Commission, which is a special trial of the judiciary. The impeachment of the president and the vice president is within the parliament's power.