

THE CURRENCY EXCHANGER: TAIWANESE PUBLIC INTEREST LAWYERS IN THE 21ST CENTURY

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ABSTRACT

The rights discourse has become a common and powerful currency in the public sphere. Public interest lawyers, who reason in law and facilitate the movements of legal rights, are *the* currency exchanger that converts power and political momentum, symbolic and formal, between different public entities. This paper adopts a relational framework to understand the presence of public interest lawyers in Taiwan and the complexity of their involvement in promoting, defending, or mobilizing for public good. I systematically analyze the bidirectional relationships that lawyers develop with government (both the administration and the parliament), political party, civil society (including NGOs and the general public), and the court. By examining two types of operation, lawyers in organizations and lawyers in mobilizations, I use the development of four NGOs and four social movements in Taiwan—gender, environment, labor, and China watch—to argue that the expertise of *exchange* leads to the prevalent role that public interest lawyers are able to play in the twenty-first century.

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INTRODUCTION:

PUBLIC INTEREST LAWYER AS THE CURRENCY EXCHANGER

Lawyers advocate, represent, defend and advance public interests. In the twenty-first century, lawyers in Taiwan permeate all camps and arenas of politics and civil society. It has become difficult to identify a public issue, a political party, or a nongovernmental organization in Taiwan without the presence of or connection to lawyers and the rights discourse that they deliver. To understand the strong presence of public interest lawyers in Taiwan and the complexity of their involvement, this Article adopts a relational framework focusing on the *exchange* of power and momentum, symbolic or formal, that lawyers facilitate between different public entities. That is, this Article systematically analyzes the bidirectional relationships that lawyers develop with government (both the administration and the parliament), political party, civil society (including NGOs and the general public), and the court. As rights discourse becomes a common and powerful currency of the public good, lawyers who operate in this framework are indispensable exchangers to carry causes for organizations, build linkages between actors, and convert social and political momentum between public spheres.

Public interest lawyers in Taiwan are frequently and deeply involved in two exchange processes with the government: policymaking and legislation drafting/development/creation. Lawyers may stand outside the administration and request the government to act or refrain from acting in a certain way, or they may join the administration and play a role in the apparatus, designing or implementing policies. As we see in gender and environmental movements in Taiwan, lawyers long involved in mobilization accumulate reputation and expertise, and very often become governmental officials as a gesture of reform when a new administration takes the office. Similarly, lawyers also have a bidirectional relationship with the parliament: lawyers' requests may be external to the parliament, lobbying for legislation, or they may be internal to the parliament, providing counsel or becoming elected members themselves. As the following investigation on marriage equality suggests, feminist lawyers originally

advocated outside parliament in the 1990s and became members of parliament themselves in 2010s; the resulting embedded network connects feminist lawyers outside and within the institution and creates a channel that filters, and sometimes amplifies, the political momentum from general citizenry to the legislature.

Structured by the lawyer-government relationship, the exchange between public interest lawyers and political parties depends on (a) how much access the political party has to power, and (b) how much access lawyers have to the party elites. In examining the Judicial Reform Foundation (JRF) in Taiwan, lawyers in this line of advocacy are traditionally close with the Democratic Progressive Party (DPP), but the dynamics were fairly different before and after 2008, when DPP lost the presidency to the Kuomintang (KMT). In mid 2000s, seeing that the ruling DPP did not control a majority in the parliament, the JRF joined bill-drafting meetings to advise the judicial administration, but also framed three judicial reform bills as nonpartisan, “civic” legislations to acquire support from the opposition KMT. After 2008, however, the KMT won both the presidency and the parliament, the JRF lawyers turned to an adversarial approach, vocally criticizing the government on media and mobilizing the civil society to pressure the legislature, as they had no direct connections to the KMT ruling elites.

As for the intertwined relationship between public interest lawyers and the civil society, two bidirectional processes are discernable in Taiwan: (a) mobilization, and (b) support. Undoubtedly the legal profession includes skillful mobilizers, but lawyers, as citizens, are often politicized by mobilization. This is most evident in Taiwan’s recent legal movement for marriage equality. Lawyers are crucial to the mobilization: they propose legislative change, bring the discussion to mainstream politics, and join activists and NGOs to organize demonstrations of hundreds of thousands of people. But the legal profession is also mobilized by this movement: more than 200 judges and prosecutors signed an open petition to support the marriage equality bill. By contrast, the mutual support between public interest lawyers and the general public also establishes a two-way street. Taking the collective pursuit of criminal justice as an example, lawyers provide legal representation to a wide range of disadvantaged clients via the Legal Aid Foundation and to specific innocent defendants via rescue missions organized by NGOs. Yet conversely, these lawyers also acquire political momentum for legislative lobbying, or they leverage the (semi-) charity work into legitimacy and authority.

The exchange process between public interest lawyers and the court is persuasion. Intuitively, exchange of legal reasoning takes place in litigation where lawyers work to convince a judge. A number of key labor and environmental cases suggest that judges are passively fixed in a hierarchical institution and inflexible jurisprudence. In public interest litigation, which engender significant political meaning, judges do not step in the role of making a sociopolitical change easily, although they

are given the task from time to time. Persuasion in court, hence, is the exchange process in which lawyers convert a political pursuit into the legal system. The court, conversely, relying on the very and only language of law, persuade two camps of lawyers representing different stakeholders. As the *Houli Science Park* case, discussed later in the Article, indicated, the symbolic recognition and enforcement power afforded by the court tends to generate another wave of contestation between government and the citizens.

Law is a powerful currency in the public sphere. Public interest lawyers are *the* currency exchanger in the multidirectional processes. To demonstrate the exchange process between public interest lawyers and different public entities, this Article traces two types of actions: (1) lawyers in organizations, specifically the NGOs predominantly founded, staffed, and supported by legal practitioners; and (2) lawyers in mobilizations through the examination of three social movements in Taiwan with strong traditions of legal mobilization. The major time frame of the investigation is the first two decades of the twenty-first century, yet for analytical clarity and historicity, some discussions extend to the foundation era in the 1990s. By examining a wide variety of advocacy work, including lobbying, litigation, street demonstration, rescue missions, and policy initiatives, the Article aims to present a comprehensive yet coherent image of public interest lawyers in Taiwan.

I. STANDING BETWEEN LAW AND POLITICS: LAWYERS IN ORGANIZATIONS

A. *Judicial Reform (1997–Today)*

The Judicial Reform Foundation (JRF), founded by a group of liberal lawyers in 1997, has become one of the most influential legal advocacy organizations in Taiwan. Born during democratization of the 1990s,¹ the core mission of JRF is moderating state power via legal and judicial reform. The JRF mobilizes for two primary objectives: (a) institutional change, including policy initiation and legislative lobbying, and (b) legal representation for special cases, such as innocence rescue or public interest litigation. Well embedded in the network of social movement organizations in Taiwan, the JRF also serves as a hub to connect lawyers to the civil society. Partially owing to its ideological affinity, the JRF employed different action strategies under different administrations: (a) when the conservative and pro-China Kuomintang was in power (1998–2000; 2008–2016), the JRF was more inclined to public advocacy and community mobilization, yet (b) when the pro-independence, and relatively liberal Democratic Progressive Party (DPP) has been in power (2000–2008; 2016–today), the JRF pays more attention to lobbying, compliance watch and policy negotiation. The JRF exerts influence in three

1. JUD. REFORM FOUND., <https://english.jrf.org.tw> [<https://perma.cc/YBM6-47BL>] (last visited Nov. 28, 2018).

ways. First, the JRF has the capacity to set an agenda. As its name suggests, the JRF has played a key role in setting and advancing the policy agenda of judicial reform in Taiwan in both the parliament and the administration. Second, the JRF initiated a wide range of programs to enhance transparency and integrity of the judiciary. Third, the JRF has a long tradition innocence rescue mission, which serves two functions in relations to the civil society: filter information and outreach to the society.

A brief chronological history of judicial reform in Taiwan will help clarify the JRF's role in policy making. The 1990s marked the first stage of JRF, which focused on advocacy and mobilization outside the government. Since 1994, liberal lawyers linked through the Taipei Bar Association and the JRF (then only a preparatory office) have openly called for a national forum for judiciary reform and appealed to both the judiciary and the KMT administration. Aligned with a minority of reformist judges, liberal lawyers contributed to a new constitutional amendment on independent judicial budget. In 1996, the Judicial Yuan, the central administrative agency of the Taiwanese judiciary, set up a Judicial Reform Committee. While some lawyers in the JRF network were invited to this official committee, they deemed the top-down, self-initiated approach inefficient in responding to the mounting criticism of the obedient and bureaucratic judiciary. Subsequently, in 1997, the JRF organized the first street demonstration of lawyers in Taiwanese history, "Walkout for the Revival of Judicature,"² ushering in another wave of support for judicial reform. In 1999, with the support of the President, a new head of the Judicial Yuan finally held the National Forum for Judicial Reform to include hundreds of legal practitioners and examine 54 policy proposals from legislative amendments and institutional modification.³ The attempt covered a wide variety of issues—organizational reform of the judiciary, change in civil and criminal procedural law, and personnel reform of all three legal professions. Lawyers in the JRF network played two important roles in this process. First, the JRF lawyers actively participated in the preparatory stage.⁴ Seated at the staff meeting, along with other legal practitioners, these lawyers fundamentally shaped the agenda of the forum. Second, before and during the forum, the JRF also actively connected judicial reform to other social issues, such as gender, labor, and disability, in an effort to broaden the societal base. It issued statements

2. JUDICIAL REFORM FOUND. (司法改革基金會), LI YU LU: SHI NIAN FASHENG, SHI NIAN SIBIAN (理與力:十年發聲,十年思辨) [REASON AND FORCE: TEN YEARS OF VOICE, TEN YEARS OF SPECULATION] 320 (2005).

3. SIFA YUAN (司法院) [JUDICIAL YUAN], QUANGUO SIFA GAIGE HUIYI SHILU (全國司法改革會議實錄) [NATIONAL JUDICIAL REFORM CONFERENCE] (1999).

4. Quanguo Sifa Gaige Huiyi Choubi Weiyuanhui Di Yi Ci Huiyi (全國司法改革會議籌備委員會第一次會議) [Transcript of the First Conference of the National Judicial Reform Preparation Committee] (Apr. 23, 2008) (transcript available at <https://goo.gl/vwLy57> [<http://perma.cc/LY4Y-DWBD>]).

for many other issues,⁵ such as opposing police torture⁶ and advocating for a legal aid scheme.⁷

Entering the twenty-first century, judicial reform in Taiwan proceeded to a second phase. After the 1999 National Forum, the JRF shifted its focus to legislative lobbying and negotiation, watching the government to implement or comply with the resolutions⁸ made in the forum. This change in action strategy resulted from two factors: (a) the platform for policy debate has shifted to the legislature, or agencies within the judicial administration, as they are the key actors to realize policy resolutions made in the 1999 forum with concrete plans and bills; and (b) party turnover in 2000 also fundamentally changed the dynamics between the government and NGOs like JRF. The DPP, which traditionally has enjoyed a cordial relationship with lawyers, won the presidential office but did not win the majority of the parliament. The JRF worked with the DPP administration to propose bills, yet also promoted judicial reform as a nonpartisan issue to mobilize support from other parties. A good example is legislations facilitating judicial reform: in 2003, along with 36 civic organizations, the JRF formed the Alliance for Three Bills of Judicial Reform,⁹ to lobby for the Judge Act, Legal Aid Act, and Court Organic Act. While the revision to the Court Organic Act did not complete, the Legal Aid Act successfully passed in 2004 and the Judge Act

5. See, e.g., Sun Youlian (孫友聯), *Cong Laozi Zhengyi Kan Taiwan Laogong Fayuan Shezhi Zhi Biyao Xing* (從勞資爭議看台灣勞工法院設置之必要性) [From the Point of View of Labor Dispute to Foresee the Necessity of Labor Court], JUDICIAL REFORM FOUND. (June 15, 1999), <https://www.jrf.org.tw/articles/1154> [<http://perma.cc/M522-V8VP>]; Zhan Shungui (詹順貴), *Zhizhang Zhe Zai Sifa Kunjing de Zhengzha—Quanmin Dongyuan Gaige Sifa “Quanmin Fasheng Xilie”* (智障者在司法困境的掙扎—全民動員改革司法 “全民發聲系列”) [The Struggles of Mentally Challenged People in the Judiciary—The National Mobilization Reform of the Judicial “All Voices”], JUDICIAL REFORM FOUND. (June 15, 1999), <https://www.jrf.org.tw/articles/1161> [<http://perma.cc/VDF6-TUQD>].

6. Wang Shisi (王時思), *Bu Xing Qu, Zenme Po An?* (不刑求, 怎麼破案?) [Without Torture, How Do You Solve the Case?], JUDICIAL REFORM FOUND. (June 15, 1999), <https://www.jrf.org.tw/articles/1157> [<http://perma.cc/PR2Q-44PZ>].

7. Zhang Binghuang (張炳煌), *Buwen Zhuyi, Zhiyao Gongping Zheng Yi—Qing Su Jianli Falü Yuanzhu Zhidu* (不問主義, 只要公平正義—請速建立法律援助制度) [Doctrine Doesn't Matter, Only Fairness and Justice—Please Quickly Establish a Legal Aid System], JUDICIAL REFORM FOUND. (June 15, 1999), <https://www.jrf.org.tw/articles/1156> [<http://perma.cc/2KJA-TLQS>].

8. *Chihuan de Si Gai Lieche, Ruhe Cheng Zai Quanmin Yinjie de Qi Pan?* *Quanguo Si Gai Huiyi San Zhounian Tujian Baogao Ji Sifa Min Diao Jieguo* (遲緩的司改列車, 如何乘載全民殷切的期盼? 全國司改會議三周年體檢報告暨司法民調結果) [How To Carry On the Expectation of People With a Slow Judicial Reform? The Third-year Medical Report of the National Reform Conference and the Results of Judicial Polls], JUDICIAL REFORM FOUND. (Oct. 17, 2002), <https://www.jrf.org.tw/articles/514> [<http://perma.cc/TH6Q-EBZ9>].

9. *Women Weishenme Yao Tuidong Si Gai San Fa* (我們為什麼要推動司改三法) [Why We Want to Reform the Three Laws], JUDICIAL REFORM FOUND. (Dec. 12, 2003), https://www.jrf.org.tw/newjrf/index_new2014.asp?id=1305 [<http://perma.cc/23F6-SVU4>].

in 2011, which demonstrates the momentum the JRF and its allies were able to mobilize.

JRF's second, and perhaps most renowned, project amongst Taiwanese legal community is bottom-up supervision of the judiciary. The JRF first conducted a survey to evaluate judges' court performance in 1996, originally for internal reference yet later expanded the scope. In 1998, using a comprehensive survey of practicing lawyers registered to the Taipei Bar, the JRF released its report on 123 judges in the criminal divisions at the Taipei District Court and the High Court and identified a number of "incompetent" judges.¹⁰ The scale remained the same for three years, limited to the Taipei region, but further expanded to the whole island in 2001, which evaluated 847 judges in both civil and criminal divisions in eleven courts across the country. In 2004, lawyers, judges, and prosecutors¹¹ in Taipei all joined the survey, coordinated by the JRF to allow each profession to assess one another's performance in the new criminal procedure of cross examination in trial. Evidently, the JRF's initial attempt not only expanded to an unprecedented degree, but also was officially recognized by the judiciary during a special policy window of litigation reform.

The JRF went one step further to institutionalize the initiative—the judge evaluation was legislated into law. It argued for further transparency in the judiciary, to allow ordinary citizens to initiate an assessment process challenging judges' competency,¹² and accordingly proposed a judge evaluation system in the JRF's version of Judge Act. However, seeing the potential risk to judicial independence, the judiciary strongly opposed the bill, and the negotiations reached an impasse in mid-2000s. It wasn't until 2010 that the Judge Act received substantial political attention, evoked by a corruption scandal.¹³ The JRF effectively united a number of bar associations¹⁴ across the county to advocate the judge evaluation system. Yet, in this round of negotiation, lawyers faced a complex agenda advanced not only by the judiciary but also by the procuracy.

10. 1998 *Faguan Ping Jian Jieguo Baogao* (1998法官評鑑結果報告) [*Report on Judge Evaluation 1998*], JUDICIAL REFORM FOUND. (Oct. 14, 1998), <https://digital.jrf.org.tw/articles/338> [<https://perma.cc/KLG7-9YZ7>].

11. Not only the JRF, but the Taipei Bar Association, the Taipei District Court, and the Taipei District Prosecutors' Office jointly held the year-long evaluation survey.

12. *Faguan Zhidu Gaige* (法官制度改革) [*The Reform of the Judge System*], JUDICIAL REFORM FOUND., <https://www.jrf.org.tw/keywords/15?k=activities> [<http://perma.cc/NP9U-NFPA>] (last visited Nov. 28, 2018).

13. 7 *Fagaun Shou Hui Zui Zhong Qiu 20 Nian* (7法官收賄 最重囚20年) [*7 Judges Took Bribes, the Most Serious Penalty Would Be 20 Year Imprisonment*], PINGGUO RIBAO (蘋果日報) (Oct. 18, 2013), <https://tw.appledaily.com/headline/daily/20131018/35373137> [<https://perma.cc/876R-5QSK>]; *Da Chouwen 4 Sifa Guan Sheng Ya* (大醜聞4司法官聲押) [*Big Scandal! 4 Judges and Prosecutors Were Detained*], PINGGUO RIBAO (蘋果日報) (July 14, 2010), <https://tw.appledaily.com/headline/daily/20100714/32659417> [<https://perma.cc/K8H4-LVPY>].

14. Including the Taipei Bar Association, Taoyuan Bar Association, Hsinchu Bar Association, and Ilan Bar Association.

While each stakeholder compromised to attain certain policy goals, the JRF conceded to a major revision that mandated only NGOs and bar associations, not individual citizens, are allowed to initiate a case for judge evaluation.¹⁵ The Judge Act came into effect in 2011.

The third accomplishment of the JRF is innocence rescue. “Institutional reform derives from individual cases,”¹⁶ the JRF has been developing reform objectives from rescue missions in its 20 years of activism. One example is the *Hsichih Trio* case, in which three former death row inmates were finally acquitted after two decades of litigation.¹⁷ The alleged murder took place in 1991, where Su Chien-ho and two young men were accused of robbing and murdering a couple in Hsichih and later were sentenced death. By 1995, the case had exhausted all legal appeals, but the minister of justice repeatedly refused to sign their execution orders. The JRF and other organizations¹⁸ formed a network to mobilize for support, including a rescue team of volunteer lawyers. Activists supporting Su and the two defendants contended that the case demonstrates a number of drawbacks in the criminal litigation, including torture, reckless and biased investigation, errors in evidence, heavy reliance on the codefendant’s confession, and more fundamentally, it violates the presumption of innocence. As the *Hsichih Trio* case suggested a sensational story, involved a wide range of advocacy groups, and the timing coincided with the fundamental power reconfiguration in the late 1990s, it had an essential impact on legal mobilization in Taiwan. In fact, the comprehensive revision of the criminal procedural law and the reform of the criminal trial in early 2000s, including adopting cross examination and regulating the usage and investigation of confession, very much resulted from activist lawyers’ firsthand experience in innocent rescue. The JRF still works on innocent cases today, and two organizations strategizing legal mobilization also came out of this line of advocacy (see discussion below).

More specifically, the JRF serves two functions in this line of legal mobilization: outreach and two-way filtering. The filtering effect takes place as the JRF (usually with other aligned NGOs) selects certain innocent cases, constructs the narrative, and brings stories to public attention. Yet the filtering effect also works the other way around—reaction from the general public can guide the JRF in selecting policy components that

15. Fa Guan Fa (法官法) [Judge’s Act] arts. 30–41.

16. *Anjian Biao Lei: Lu Zheng An* (案件表列: 盧正案) [Case List: Lu Zheng Case], JUDICIAL REFORM FOUND., <https://www.jrf.org.tw/keywords/22> [<https://perma.cc/JK7S-MCB3>] (last visited Nov. 28, 2018).

17. Rich Chang, ‘*Hsichih Trio*’ Are Finally Freed, TAIPEI TIMES (Sept. 1, 2012), <http://www.taipetimes.com/News/front/archives/2012/09/01/2003541675> [<https://perma.cc/98GU-4WPN>].

18. A number of NGOs organized a rescue team, including Taiwan Association for Human Rights and Humanistic Education Foundation. Civilmedia@Taiwan, a documentary database, has a short video on the rescue mission of the Hsichih Trio case. See *Su An 21* (蘇案21) [*Su Case 21*], GONGMIN XINGDONG YINGYIN JILU ZILAO KU (公民行動影音紀錄資料庫) [CIVILMEDIA@TAIWAN] (Nov. 20, 2012), <https://www.civil-media.tw/archives/7464>.

can be elevated to an institutional level, accentuate certain aspects of institutional reform, and importantly, public opinion provides leverage for the JRF to lobby and mobilize support from politicians. Innocent rescue also allows JRF bridge the gap between the lawyers' community and the public as cases offer concrete demonstrations of irregular or problematic practice in the legal system, and defendants in the cases are living examples the public can understand. Innocent rescue also allows the JRF to expand the lawyers' network. Rescue cases are, by nature, extremely complicated. Reexamining evidence and constructing legal arguments require sufficient and skilled manpower, which, in fact, allows the JRF to mobilize lawyers. Also, rescue cases take a long time, sometimes decades. While volunteer attrition is an issue, it is also an opportunity to recruit new blood and connect the older activist generation to young talents. Further, working with reporters, who publish in-depth investigative journalism,¹⁹ the JRF also assists the production of rights discourse for public consumption and shapes legal consciousness in Taiwan.

To conclude, the JRF is an organization that hosts a large group of public interest lawyers and cultivates a crucial tradition of legal advocacy in Taiwan. Lawyers working in this community accomplished a number of institutional and legal reforms, advancing the transparency, professionalism, and accessibility of the Taiwanese judicial system. Admittedly, some of the JRF's policy initiatives and actions led to discord with the judiciary, such as the evaluation system. Yet, the JRF's contribution and influence is still recognized both in the legal profession and policy circles.

B. *Criminal Justice: The Taiwan Alliance to End the Death Penalty (2003–Today) and Innocence Rescue (2012–Today)*

Two organization of the legal profession have been pushing for changes in the Taiwanese criminal justice system. The first, the Taiwan Alliance to End the Death Penalty (TAEDP), was founded in 2003, and the second, the Taiwan Innocence Project, was founded in 2012.

The TAEDP branched off from the Judicial Reform Foundation, establishing itself as a separate entity at the turn of the century. The Alliance was first established in 2003, when the JRF was rescuing a death row inmate, Hsu Tzu-chiang. Hsu was accused of kidnapping and murder and sentenced to death in 1996.²⁰ To advocate for Hsu, and to push for change in the criminal justice system, the JRF, the Taipei Bar Association, and the Taiwan Association for Human Rights formed the TAEDP. The Alliance has had steady support from the legal community ever since.

19. See, e.g., LI HAOZHONG (李濠仲), 1.368 PING DE DENGDAI: XU ZIQIANG DE WUZUI ZHI LU (1.368坪的等待: 徐自強的無罪之路) (2016); ZHANG JUANFEN (張娟芬), WU CAI QINGCHUN (無彩青春) (2004); JIANG YUANQING (江元慶), LIULANG FATING SANSHI NIAN (流浪法庭三十年) (2008).

20. Hsu's conviction was reversed, and he was found not guilty in 2016. Jason Pan, *Final 'Not Guilty' for Hsu Tzu-Chiang*, TAIPEI TIMES (Oct. 14, 2016) <http://www.taipeitimes.com/News/front/archives/2016/10/142003657122> [<https://perma.cc/RX82-4JJN>].

Rescue cases require volunteer lawyers, and the Alliance periodically hosts workshops to train lawyers for death penalty defense. Lawyers also help the Alliance through public and government outreach, analyzing cases and issuing policy reports. For instance, in 2015, the Alliance published a comprehensive report reviewing 67 capital cases (with 75 defendants), which was completed by a volunteer team trained by 12 lawyers, judges and legal experts.²¹

Another organization that focuses on criminal justice is the Taiwan Innocence Project (TIP). Created in a clinic course at National Taiwan University law school, the organization was founded in 2011 by lawyers and a criminal law scholar. Currently, the TIP has nine ongoing cases,²² two of which are capital cases. The organization's mission, other than innocent rescue and social outreach, also includes legislation lobbying, holding the state accountable in wrongful prosecution, and assisting with defendants' social integration. Interdisciplinary experts involved with TIP provide defense lawyers additional evidence to support defendants, for instance, forensic science is taken more seriously in evidence examination. Also, because of its background at a law school, the TIP also brings a younger generation of lawyers to the advocacy tradition of criminal justice, and engage them in early stages of their career.

C. *Access to Justice: The Legal Aid Foundation*²³ (2004–Today)

First advocated by the same group of liberal-minded lawyers who established the Judicial Reform Foundation in the late 1990s,²⁴ the Legal Aid Foundation (LAF) in Taiwan is a state-subsidized but independent agency, which started operation in 2004 to provide free legal aid to “socially disadvantaged and minorities.”²⁵ The LAF matches lawyers

21. *Panjue fenxi* (判決分析) [*Judgment Analysis*], TAIWAN FEICHU SIXING TUIDONG LIANMENG (台灣廢除死刑推動聯盟) [TAIWAN ALLIANCE TO END THE DEATH PENALTY], <https://www.taedp.org.tw/topic/10020> [<https://perma.cc/PGV3-H7WC>] (last visited Nov 28, 2018).

22. *Jiuyuan Anjian* (救援案件), TAIWAN INNOCENCE PROJECT (台灣冤獄平反協會), <http://twinnocenceproject.org/cases.php> [<https://perma.cc/XAY5-KWSM>] (last visited Nov 28, 2018).

23. Discussion in Part I.C also appears in Ching-fang Hsu & Yong-ching Tsai, *A Hub, a Knot, and a Power House: Legal Aid Foundation and Access to Justice in Taiwan*, paper presented at the National University of Singapore Centre for Asian Legal Studies Symposium: Lawyers & Access to Justice: Challenging Pro Bono (June 8, 2017). The excerpt reprinted here is with permission by both the coauthor and the editor.

24. *Conference Minutes*, Leg. Yuan Sess. 5–4 (2003), reprinted in 92(6) LIFAYUAN GONGBAO (立法院公報) [LEG. YUAN BULL.], 485 (2003).

Today, in order to substantiate the constitutional protection of equality and right to litigate, the Taipei Bar Association, Judicial Reform Foundation and the Taiwan Association for Human Rights collaborated to form an action group in 1998, calling monthly meetings to gather scholars and lawyers to study comparative institutions. In July 1999, the National Judicial Reform Forum also resolved to ‘institute a legal aid institution’ which shows consistent goals, reaffirming our resolution.

25. Falu Fuzhu Fa (法律扶助法) [Legal Aid Act] §§ 1, 5, 37.

to people in need of legal services, and remunerates lawyers with state funds. Currently the LAF has 22 branch offices with 3,810 lawyers registered to provide service, and as of 2016 LAF has provided assistance in approximately 50,000 cases.²⁶ Providing legal representation in both civil and criminal cases, the LAF takes a holistic approach to promote access to legal services in Taiwan from legal consultation to community mobilization to litigation support. Further, LAF also plays an important role in lobbying and public interest litigations.

Coming from the same tradition of lawyer activism as the Judicial Reform Foundation, the institutionalization of LAF is a crucial part of overall judicial reform engineering, where lawyers aimed to advance right to counsel for the general public.²⁷ The proposal of a legal aid act was initiated in 1999 at the aforementioned National Forum of Judicial Reform, as mentioned in the previous part, and was accepted unanimously by government officials, lawyers, judges, prosecutors and academics. Following this consensus, the Judicial Yuan put forth a draft bill in 2002. The newly elected government had strong incentives to legislate a bill for free legal aid for two reasons. First, liberal lawyers were huge supporters of the new ruling party, and some prominent leaders of the bar took positions in the judiciary to commence judicial reform. Second, the bill to institutionalize legal aid was lobbied as a nonpartisan legislation that enhances social justice. The establishment of the LAF was a collaborative project, supported by all stakeholders and driven by the democratization momentum; the new government needed a gesture of reform, the judiciary was pressured to transform, and the bar pushed for more comprehensive representation in court on behalf of their clients.

In the past 15 years, the LAF has become *the* institution that administers legal aid in Taiwan. Two trends are consistent and demonstrative of its importance. First, the volume of legal aid drastically rose in the past. Applicants who received legal representation in litigation almost doubled in the 2010s. In fact, the increase was not only a natural growth, reflected by the growing number of applications received, but a policy choice, implied by the growing approval rate from approximately 60 percent in 2011 to almost 75 percent in 2016.

26. Legal Aid Found. (Taiwan), Annual Report 5 (2017).

27. See *Conference Minutes*, *supra* note 24, at 380. The Judicial Yuan put forward a statement to advocate for pressing need of the legal aid legislation. In the statement, the Yuan justifies its support of the legislation by referring to the 1999 National Judicial Reform Forum, which resolved to institute a system to defend those financially disadvantaged defendants. In the National Judicial Reform Forum, the Judicial Yuan was asked to fund a legal organization by the 2002 budget year, and gradually stopped the original public defendant system. In fact, at the time, there were only 51 public defendants nationally, and on average, each of them has to defend 26.4 cases every month, while courts in all jurisdictions in Taiwan had 11750 cases to address annually. This showed the urgent need: without a new legal aid institution, no proper legal representation can be afforded to these defendants, especially when the Yuan is also implementing a new criminal litigation policy of cross examination in early 2000s.

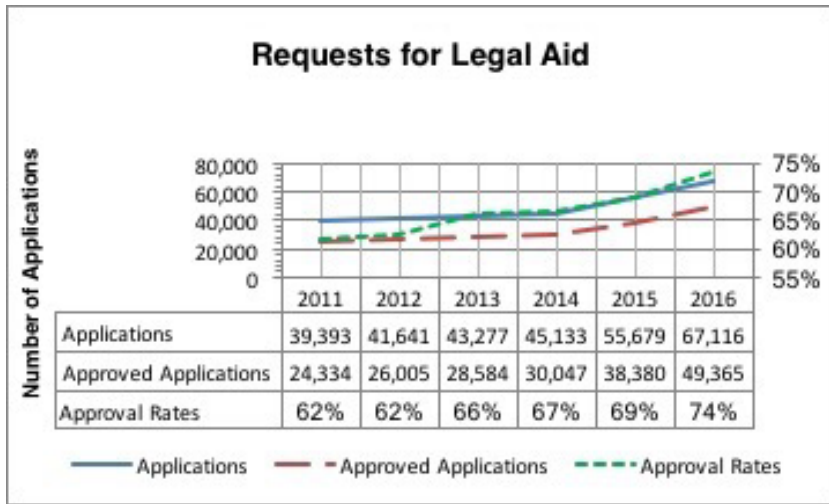


Figure 1: Growth of Legal Aid Applications (2017)

Source: Compiled by the author and Yong-ching Tsai

Second, the LAF diversifies the services it provides, such as free legal consultation, community and public education, and lobbying efforts. The focus of the LAF has expanded from legal representation in court to various relevant public services. Firstly, the LAF started offering legal consultation prior to official litigation process. The number of clients who received free legal consultation service rose drastically by 23 times in the past 11 years, as Figure 2 shows. This is a direct result of the LAF weakening the means test over the year; particularly notable is 2009, when the number of consultation cases quintupled from 6,446 to 35,852, due to a new policy the LAF instituted to deliver legal advice through the Internet, hotlines, and in 60 local community centers (e.g. at household registration offices and district offices) across Taiwan.²⁸ Figure 3 shows further details on the approval rates for free consultation applications; the overall number of applications as well as approval rates are increasing. In 2009, the approval rate rose sharply to 43 percent, and it has remained high at over 50 percent ever since.

28. Legal Aid Found., Annual Report 56–57 (2009).

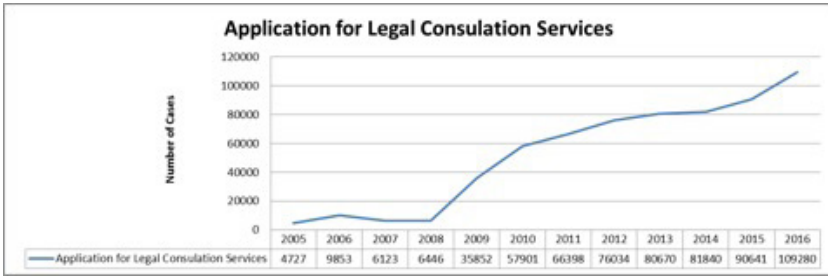


Figure 2: Number of Application Requesting Legal Advice (2017)

Source: Compiled by the author and Yong-ching Tsai



Figure 3: Approval Rate of Legal Consultation Application (2017)

Source: Compiled by the author and Yong-ching Tsai

Third, the LAF engaged in efforts to enhance legal consciousness across the country. For example, in 2015, in order to provide general legal education and publicize LAF’s services, the LAF held 578 events in schools, churches, temples, troops, prisons, and aboriginal communities across Taiwan. Given the fact that Taiwan has only 319 counties, the coverage and intensity of LAF’s efforts were expansive.²⁹

Finally, LAF is also actively involved with nonprofits and lobbying efforts. It played an essential role in a number of issues that involve economically disadvantaged groups, such as laborers and credit card debtors. A good example is the Consumer Debt Clearance Act. In 2005, Taiwan suffered from the worst credit card debt crisis in its history: over 500,000 card debtors went bankrupt and insolvent.³⁰ In 2011, after representing

29. Legal Aid Found., Annual Report 29 (2006).

30. Zi-Yi Lin (林姿儀), *Huigu 2005 Nian—2006 Nian Zhi Taiwan Ka Zhai Fengbao* (回顧2005年—2006年之台灣卡債風暴) [Reflection on the 2005—2006 Credit Card Debt Crisis in Taiwan], CAITUAN FAREN GUOJIA ZHENGCE YANJIU JIJIN HUI (財團法人國家政策研究基金會) [NAT’L POL’Y FOUND.] (Nov. 14, 2007), <https://www.npf.org>.

a number of credit card debtors suffering from high recycling interests, the LAF led a number of NGOs to lobby for legislation to balance the asymmetrical bargaining power between banks and individual consumers. The Act of Consumer Insolvency was successfully enacted in 2012. Another example is the revision to labor law³¹ in 2013, where the LAF advocated for further legal protection for employees whose occupational accidents were not sufficiently covered by the legally obligated labor insurance. Moreover, the LAF played a vital role in drafting a number of bills concerning social welfare and environmental protection including the Water Pollution Control Act (2013)³² and the decriminalization of shotgun possession by aboriginals (2015).³³

In the first decades of the twenty-first century, the LAF took a holistic approach to promoting access to legal resources in Taiwan. Moving from individual representation to systematic provision of legal advice, the LAF pursued roles in the legislature and in local communities to advance legal consciousness and legal protection for the public. This institutional evolution demonstrates a process in which lawyers can use political momentum in the legislative arena to establish an autonomous organization that enjoys both public resources as well as flexibility akin to a civic association. Later on, reinforcing the institutional support from the organization they established, the lawyers continue to acquire support and momentum to strengthen their role in policy making, and most astonishingly, its monopoly in administering access to affordable legal resources in Taiwan.

II. INTERWEAVING STATE AND SOCIETY: LAWYERS IN MOBILIZATION

This Part traces four civic movements to demonstrate the role of public interest lawyers in legal mobilizations: gender, environment, and labor movements, all of which have a decades-long history in Taiwan that goes back to the 1980s, and the China watch, newly emerged in the late 2000s. Each Subpart starts with a short background introduction of the movement, and then analyzes the processes of mobilization with a short discussion clarifying the role of lawyers.

A. *Gender Movement: A Case of Marriage Equality*

Women and the gender movement in Taiwan have a strong tradition of legal mobilization. Feminist lawyers and activists made pathbreaking progress in both the parliament and the constitutional court, removing

tw/2/3558 [https://perma.cc/98UM-RJ9Z].

31. Laodong Jizhun Fa (勞動基準法) [Labor Standards Act].

32. Shun-Gui Zhan (詹順貴), Pin-An Chen (陳品安), *Falu Ren Ruhe Hanwei Huanjing—Cong Shui Wu Fa Xiufa Tan Qi* (法律人如何捍衛環境—從水汙法修法談起) [*How Do Attorneys Protect Environment?—From the Perspective of the Modification of Water Pollution Control Regulation*], 43 *FALU FUZHU* (法律扶助) [LEGAL AID QUARTERLY] 33–38 (2013).

33. Qiang Pao Danyao Dao Xie Guanzhi Tiaoli (槍砲彈藥刀械管制條例) [Controlling Guns, Ammunition and Knives Act].

discriminatory laws and substantiating constitutional jurisprudence on gender equality.³⁴ Lawyers made legislative strides for gender equality, addressing issues from sexual harassment, sexual assault, and domestic violence to gender equity in workplace and education. These legislations in the late 1990s and the 2000s built a legal infrastructure in Taiwan to cover a wide range of gender experience from workplace, education to family. To trace the process and dynamics of public interest lawyers and other institutions/actors, the following Subpart will focus on the most recent legal mobilization for marriage equality.

The first attempt to protect legal rights of same-sex couples took place in 2006, but the endeavor did not result in a concrete legislation. The Same-Sex Marriage Act was proposed by a DPP legislator Hsiao Bi-khim and endorsed by 38 members of the parliament.³⁵ Yet, because of another 23 members' objection,³⁶ the Program Committee did not even include the bill in the agenda for the parliamentary general meeting.

After the foundation of the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR)³⁷ in 2009, social momentum started to mobilize for the next round of marriage equality legislation. Founded by a lawyer, the TAPCPR explicitly advocates for "legal protection for other types of families or intimate relationships."³⁸ In pursuit of this goal, one of the first attempts supported by the legal profession was in 2011; several months before the presidential and parliament election, 232 lawyers jointly signed a statement to appeal to candidates from all political parties to "protect the right to marry for all citizens on the land, irrespective of their gender and sexual orientation."³⁹

In 2012, as the newly elected president and parliament began their terms, a second wave of legal mobilization for marriage equality began. The TAPCPR announced three bill drafts: the Marriage Equality Act, the Civil Partnership Act, and the Multiple-personal Family Act. The TAPCPR also started a mass petition in an attempt to garner one-million signatures to bring the bills to the parliament. Although only the

34. Wen-chen Chang, *Public-Interest Litigation in Taiwan: Strategy for Law and Policy Reforms in Course of Democratization*, in *PUBLIC INTEREST LITIGATION IN ASIA*, 136, 142-44 (Po Jen Yap & Holning Lau eds., 2011).

35. Jenny Hsu, *Taiwan's First Same-Sex Buddhist Marriage: How Much Impact?*, WALL ST. J.: CHINA REAL TIME REP. (Aug. 15, 2012, 7:35 PM), <https://blogs.wsj.com/chinarealtime/2012/08/15/taiwans-first-same-sex-buddhist-marriage-how-much-impact> [<https://perma.cc/7XVL-45SG>].

36. Strangely, there was one legislator who signed statements both for and against the bill.

37. *About*, TAIWAN BANLÜ QUANYI TUIDONG LIANMENG (台灣伴侶權益推動聯盟) [TAPCPR], <https://tapcpr.org/english/about-us> [<https://perma.cc/ZV54-YQKU>] (last visited Nov. 28, 2018).

38. *Id.*

39. Wu Weiting (伍維婷), *232 Wei Lüshi Lianshu Zhichi Banlü Quanyi Lifa Jizhe Hui* (232位律師連署支持伴侶權益立法記者會) [232 Lawyers Petition for the Legislation of Gay Marriage], TAPCPR, <http://bit.ly/2xhuHuE> [<https://perma.cc/57UP-GGYH>] (last visited Nov. 28, 2018).

Marriage Equality Act gained the support of the DPP legislators and passed the first reading in 2013, the step was still a milestone in marriage equality law which, for the first time in the region's history, was debated in parliament. This development, nevertheless, triggered countermobilization from the other end of the spectrum. Deciding that the three bills would “destroy family and abolish marriage,” many religious organizations⁴⁰ aligned to “defend marriage between a husband and a wife,” and pressured politicians to kill the bill. In this round of mobilization, however, another group of lawyers facilitated public discourse for marriage equality. In June 2014, the Taipei Bar and a former Constitutional Court Justice Hsu Yuxiu organized a mock constitutional court to rule on the constitutionality of the relevant civil codes. Ruling in favor of same-sex couples, the mock court confirmed the constitution rights to marry and adopt with extensive reasoning engaging local jurisprudence.⁴¹ As legal discourse moved from parliament to the streets and to (mock) courtrooms, the movement of marriage equality began its multiple fights in different legal platforms.

In 2016, a new election cycle reconfigured Taiwanese politics. As the president-elect openly supported same-sex marriage during her campaign,⁴² and her DPP won the parliament majority, the marriage equality bill surfaced again. In less than a year, several bills were put forth to revise the civil code by members from both the ruling DPP and opposition KMT. Despite passing the first reading, these bills encountered great pushback with the Committee of Judiciary and Organic Law. Defending “traditional” marriage, approximately 170,000 people alongside multiple religious groups protested against the bill.⁴³ These religious groups included church members who were long supportive of the DPP. In response, one week after the protest, proponents attracted an even larger crowd of over 250,000 people in streets.⁴⁴

40. He Xinjie (何欣潔), *Hu Jia Meng, Xinwang Meng, Xingfu Meng . . . Ta Shi Shui? Tamen Weisheme Haipa Tongxing Hun?* (護家盟, 信望盟, 幸福盟 . . . 他是誰? 他們為什麼害怕同性婚?) [*Guardian League, Faith Alliance, Happiness League . . . Who Are They? Why Are They Afraid of Same-Sex Marriage?*], THE INITIUM (Dec. 26, 2016), <https://theinitium.com/article/20161227-taiwan-same-sex-marriage> [<https://perma.cc/L25A-2SGV>].

41. *Mo Xianzi Di 2 Hao Panjue* (模憲字第2號判決) [C.C.S. Judgment No. 2], CONSTITUTIONAL COURT SIMULATION, <https://sites.google.com/site/civilconstitutional-court/judgement/scc2> [<https://perma.cc/RS34-R4GM>].

42. Xingdong Min Diao (行動民調), “*Wo Shi Cai Yingwen, Wo Zhichi Hunyin Pingquan*” (我是蔡英文, 我支持婚姻平權) [“I Am Tsai Ing-wen, I Support Marriage Equality”], YOUTUBE (Nov. 8, 2015), https://www.youtube.com/watch?v=ERzDKQ_mglc [<https://perma.cc/QHL5-3XY9>].

43. *Fan Tong Huodong 17 Wan Ren Shen Yu Haozhao Guan Bao Zhizheng Dang Lian Shu* (反同活動17萬人參與號召灌爆執政黨臉書) [*170000 People Attended the Anti-Gay Marriage Activities, Called for Paralysis Facebook of the Ruling Party*], ZHIYOU SHIBAO (自由時報) (Dec. 13, 2016), <http://news.ltn.com.tw/news/life/breaking-news/1906240> [<https://perma.cc/6EH8-3CD9>].

44. *Ting Tong Yinyue Huizhong Xingyun Ji 25 Wan Ren Zai Kai Dao* (挺同音樂會眾星雲集25萬人在凱道) [*Celebrities Attended the Concert of Pro-Gay Marriage*,

Despite these tensions, however, marriage equality seems to have gained popular support in Taiwan, especially among the younger generations. Survey data from different institutions⁴⁵ tracing back to the 1990s, indicate a growing population endorsing the legalization of same-sex marriage. In the mid-2010s, coinciding with the TAPCPR's lobbying efforts, half of respondents consistently support marriage equality.

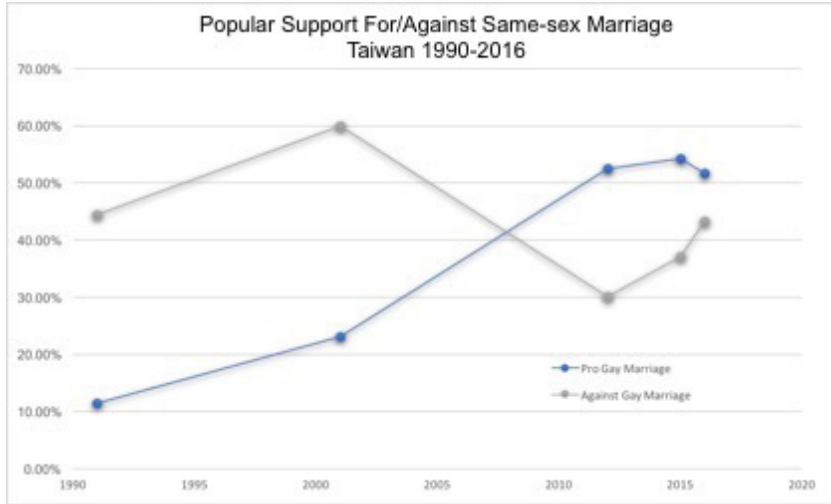


Figure 4: Popular Support for/against Same-sex Marriage (1990–2016)

Source: Compiled by the author

250000 People Gathered at the Boulevard], SHANG BAO (上報) (Dec. 10, 2016), https://www.upmedia.mg/news_info.php?SerialNo=8797 [<https://perma.cc/DVU7-DX94>].

45. See *Yankao Huimin Diao 5 Cheng 9 Minzhong Bu Zancheng Tongxinglian Jiehun* (研考會民調5成9民眾不贊成同性戀結婚) [Research Council Poll: 5 Out of 9 People Do Not Approve of Gay Marriage], TONGZHI XINWEN TONGXUNSHI (同志新聞通訊社) (June 4, 2001), http://gsrat.net/news/newsclipDetail.php?ncdata_id=970 [<https://perma.cc/LX2F-SRR4>]; ZHONGYANG YANJIUYUAN SHEHUI XUE YANJIU SUO (中央研究院社會學研究所) [ACADEMIA SINICA INST. OF SOCIOLOGY], *DI LIU QI DI SAN CI TIAO CHA JI HUA ZHIXING BAOGAO* (第六期第三次調查計畫執行報告) [TAIWAN'S SOCIAL CHANGE BASIC SURVEY PLAN: SIXTH REPORT OF THIRD SURVEY PROJECT IMPLEMENTATION REPORT] 308 (2013), <http://www.ios.sinica.edu.tw/sc/cht/datafile/tscs12.pdf>; ZHONGYANG YANJIUYUAN SHEHUI XUE YANJIU SUO (中央研究院社會學研究所) [ACADEMIA SINICA INST. OF SOCIOLOGY], *TAIWAN SHEHUI BIANQIAN JIBEN DIAOCHA JI HUA DI QI QI DI YI CI TIAO CHA JI HUA ZHIXING BAOGAO* (台灣社會變遷基本調查計畫第七期第一次調查計畫執行報告) [TAIWAN'S SOCIAL CHANGE BASIC SURVEY PLAN: SEVENTH SURVEY PLAN IMPLEMENTATION REPORT] 208 (2016), <http://www.ios.sinica.edu.tw/sc/cht/datafile/tscs15.pdf>. Another 2012 survey done by the Apollo Survey Corporation, an affiliate of the China Times, indicated very similar results. *Guoren Dui Tongxing Hunyin Hefa Hua Kanfa Diaocha* (國人對同性婚姻合法化看法調查) [A Survey on the Legalization of Same-Sex Marriage by Chinese], AIPULUO MINYI DIAOCHA GONGSI (艾普羅民意調查公司) (Aug. 23, 2012), <https://web.archive.org/web/20131211201824/http://blog.chinatimes.com/apollo/apollo/archive/2012/08/23/2604115.html?page=43> [<https://perma.cc/84E4-YM99>].

The generational effect is also clear in the legal community: over 200 judges and prosecutors signed a joint petition in support of the marriage equality bill.⁴⁶ This collective action was unique in that, traditionally, judges and prosecutors shy away from taking stances in ongoing legislative debate. The generational divide is also seen with public interest lawyers involved with the Judicial Reform Foundation. Young board members at the JRF openly challenged their leadership,⁴⁷ chairman Joseph Lin, a well-respected human rights lawyer and a Christian, who is against gay marriage. At least one board member⁴⁸ resigned to protest.

Despite societal and political pressures for the legislature to make a change, constitutional mobilization played an even greater role in pushing toward legal change. A legal team formed by the TAPCPR filed a petition to the Constitutional Court on behalf of a renown gay activist Chi Chia-wei, challenging the civil code that rejected his marriage with his partner. In fact, this was not the first time Chi filed for a constitutional interpretation.⁴⁹ His first attempt was in 2000, but the Constitutional Court rejected his petition on procedural grounds. In 2013, after the administrative court confirmed the ban, he appointed lawyers from the TAPCPR to bring his case all the way to the Constitutional Court. In the second round of constitutional mobilization, the Court changed drastically: five justice appointees to the Court unambiguously expressed support to same-sex couples during their confirmation proceedings in 2016. The Court also had positive signals from the political branches: legislations were under debate in parliament, and the central and local administrations were making changes. Not only the President of the country put forth a promise but many local governments began registering same-sex partners as cohabitants, who are entitle to limited spousal privileges such as family leave and certain rights of medical consent.

46. *Sifa Jie Dapo Chenmo! 200 Duo Wei Sifa Guan Lianshu Ting Tonghun* (司法界打破沉默! 200多位司法官連署挺同婚) [*Breaking the Silence of Judicial Circles, More Than 200 Judges and Prosecutors Petitioned for the Gay Marriage*], SHANG BAO (上報) (Nov. 17, 2016), https://www.upmedia.mg/news_info.php?SerialNo=7556 [<https://perma.cc/7XFB-US7S>].

47. *Lin Yongsong Jiang Chumian Fan Tonghun Si Gai Hui Neibu Da Fantan* (林永頌將出面反同婚司改會內部大反彈) [*Lin Yong Song Faced Backlash from Interior Judicial Reform Foundation When He Was Around the Corner of Acting in Anti-Gay Marriage*], SHANG BAO (上報) (Nov. 23, 2016), https://www.upmedia.mg/news_info.php?SerialNo=7883 [<http://perma.cc/K29A-QGU7>].

48. *Chen Zhiyun* (陳稚云), *Si Gai Hui Dongshi Zhang Fan Tong Hun Lüshi Chenmengxiu "Fenshou" Ci Qu Changwu Zhi Wei* (司改會董事長反同婚律師陳孟秀“分手”辭去常務執委) [*Lawyer Chen Meng Xiu Resigned From Judicial Reform Foundation for the Sake of Anti-Gay Marriage of the Foundation's Chairman*], FENGCHUAN MEI (風傳媒) (Dec. 10, 2016), <https://www.storm.mg/article/199878> [<https://perma.cc/673M-JSNQ>].

49. *Ye Yu Juan* (葉瑜娟), *Cong 1 Ge Ren Dao 25 Wan Ren Qi Jiawei de Tongzhi Yundong Changpao* (從1個人到25萬人祁家威的同志運動長跑) [*From a 1 Person March to 250,000 Strong: Chi Chia-Wei's LGBT-Rights Marathon*], BAODAO ZHE (報導者) (Dec. 14, 2016), <https://www.twreporter.org/a/lgbt-rights-activist-qi-jia-wei> [<https://perma.cc/9UTW-FMCD>].

In May 2017, the Constitutional Court issued Interpretation No. 748 in approval of marriage equality:

The provisions of . . . the Civil Code do not allow two persons of the same sex to create a permanent union of intimate and exclusive nature for the purpose of living a common life. The said provisions, to the extent of such failure, are in violation of constitution's guarantees of both the people's freedom of marriage under Article 22 and the people's right to equality under Article 7. The authorities concerned shall amend or enact the laws as appropriate, in accordance with the ruling of this Interpretation, within two years from the announcement of this Interpretation.⁵⁰

This interpretation not only gave a constitutional mandate for the parliament to accelerate civil code revision, it also made Taiwan the first country in Asia to legalize same-sex marriage.

This marked a huge step forward for the legal protection of gender minority in Taiwan, and the process of political and social mobilization is a classic case, a making of bottom-up jurisprudence. The role that public interest lawyers serve in Taiwan is two-fold: lawyers mobilize and support. First, the TAPCPR aligned lawyers and activists to mobilize rising support for the LGBT community in Taiwan. Second, lawyers created a support system for the LGBT community. On the one hand, the TAPCPR has been an indisputably key actor in both parliament and court. Lawyers and activists in TAPCPR drafted, lobbied, and mobilized for the legislation, and they represented and argued in courtrooms. On the other hand, individual public interest lawyers also played an indispensable role by facilitating the parliamentary agenda in both 2012 and 2016. For example, Yu Mei-nu, a DDP legislator and a feminist lawyer, was herself an activist mobilizing against discriminatory civil codes in the 1990s. She was well recognized in the lawyers' community, elected to presidency at the Taipei Bar Association, and later named legislator-at-large by the DPP as a gesture for reform old, masculine party politics in the 2012 general election. Particularly in the most recent mobilization of marriage equality,⁵¹ Yu's presence in parliament was perceived to be essential in bridging NGOs and politicians (especially those of DPP). As Yu moved from a lawyer-activist to lawyer-politician and effectively translated sociopolitical momentum to lead political institutions, her career suggests a reoccurring pattern that amongst Taiwanese public interest lawyers.

50. Shizi Di 748 Hao: Tongxing Er Ren Hunyin Ziyou An (釋字第 748 號同性二人婚姻自由案) [Judicial Interpretation No. 748: Same-Sex Marriage Case], (Sifayuan Dafaguan Huiyi (司法院大法官會議) [Judicial Yuan Council of Grand Justices] May 24, 2017), https://www.judicial.gov.tw/constitutionalcourt/p03_01_1.asp?expno=748 [https://perma.cc/HRK4-P2ZN].

51. An anecdote may suggest Yu's reputation in the movement. During my own field research, I observed that when Yu was introduced to the crowd at the pro-gay marriage demonstration, the MC presented her as "the only woman who is loved by Taiwanese gay." Demonstrators cheered and applauded while Yu stepped up to the stage.

B. *Environmental Movement: Adjudicating Environmental Impact in Class Action*

Environmental movement in Taiwan has an enduring history, yet it was not until the first decade of the twenty-first century that lawyers started to play a prominent role as the legal structure channeled disputes to courts. Following rapid industrialization, Taiwan started to experience contentious protests and demonstrations against pollution across the island in the mid-1980s. Local residents began opposing constructions of reservoirs, power plants, chemical factories, and industrial parks by taking over the streets, challenging the developmentalist paradigm of economic modernization at the expenses of natural environment and cultural landscape. In the mid-1990s, however, the movement established a new institutional platform for contestation. The Environmental Impact Assessment Act⁵² was enacted in 1994, which requires the government (at different levels) to set up a committee to review possible environmental impact of development activities.⁵³ This law officially designated an institution in which citizens and advocacy groups can participate in the policymaking process. The change in the legal infrastructure, however, did not fundamentally change the ways in which the Taiwanese government carried out “development activities,” or effectuated legal mobilization from the street to the court. As a matter of fact, the administration, be it central or local, and irrespective of partisan affinity, often worked closely with investors throughout the process from proposal, review, land appropriation, to licensing.

It was in the first decade of the twenty-first century that lawyers, activists and citizens started to assemble to challenge the state-capital alliance through the law and the courts. This phenomenon can be attributed to three factors. First, a clause of citizen lawsuit was added in the Environmental Impact Assessment Act,⁵⁴ which soon facilitated a new model of collective action where NGOs and local residents work

52. Huanjing Yingxiang Pinggu Fa (環境影響評估法) [Environmental Impact Assessment Act], translated in DENNIS TE-CHUNG TANG & RICHARD J. FERRIS JR., ENVIRONMENTAL IMPACT ASSESSMENT ACT, <http://idv.sinica.edu.tw/dennis/EIAAct>.

53. *Id.* art. 5.

54.

(8) When the developer violates this Act or related orders determined pursuant to the authorization of this Act and the competent authority is negligent in implementation, victims or public interest groups may notify the competent authority in writing of the details of the negligent implementation. (9) For those competent authorities that have still failed to carry out implementation in accordance with the law within sixty days after receipt of the written notification, the victims or public interest groups may name the competent authority at issue as a defendant and directly file a lawsuit with an administrative court based on the negligent behavior of the competent authority in fulfilling its implementation duties in order to seek a ruling ordering the competent authority to carry out implementation.

Id. art. 23(8-9).

with environmentalist lawyers to dispute unfavorable decisions made by the Environmental Impact Committee (EIC). Second, the judiciary changed attitudes towards environmental contentions. The administrative courts did not deem decisions made by the EICs judiciable, or the local residents had the standing to sue. In a landmark case in 2001 where Yunlin residents filed a lawsuit to challenge the EIC's decision in support of a construction of incinerator, the administrative court did not recognize the decision was an administrative injunction,⁵⁵ and it was the final appeal, the Supreme Administrative Court, that finally removed this procedural obstacle for the residents.⁵⁶ The Supreme Administrative Court also ruled that residents had a standing as an interested party, which lifted another procedural limitation that only the agency carrying out “development activities” was the counterpart of the injunction to have a standing to sue. Essentially, the two changes allowed Taiwanese citizens to crack the government-investor alliance from within the state structure, first through participation in the EIC, and second via the judiciary, which stands independently apart from the administration.

The third factor contributing to the movement flowing from street to court was an agentic one—networks of public interest lawyers emerged, and two key institutional hubs were established. On the one hand, two NGOs that specifically strategized law and legal actions were established. The Wild at Heart Legal Defense Association⁵⁷ was founded in 2003 by Robin Winkler, who came to Taiwan in 1977 as a U.S. corporate lawyer but later a naturalized Taiwanese citizen devoted to green advocacy. The Environmental Jurists Association was organized in 2010 by a group of lawyers, academics and volunteers, whose goal was to “unite legal practitioners who care about environmental protection, as a legal and a social issue, to study and take legal actions.”⁵⁸ On the other hand, the Legal Aid Foundation (LAF), as discussed above, started operation in mid-2000s and undoubtedly provided necessary resources for large-scale class actions to take place.

Institutional and agentic changes allowed two high profile environmental cases to win milestone victories in 2008 and 2015, respectively. The 2008 case was known as the *Houli Science Park* case, which was the first lawsuit in which the court quashed the EIC's decision approving a high-tech investment project in central Taiwan. Houli residents sued the Committee out of the grave concerns on the deficiency revealed the impact review process, and the high risks that they will be exposed to.

55. 90 Nian Du Su Zi Di 1869, 1904 Hao Cai Ding (90年度訴字第1869, 1904號裁定) [2001 Ruling Nos. 1869 & 1904] (Taiwan High Ct. Kaohsiung Branch 2001).

56. 92 Nian Du Cai Zi Di 519 Hao Cai Ding (92年度裁字第519號裁定) [2003 Ruling No. 519] (Taiwan Supreme Admin. Ct. 2003).

57. *About Wild at Heart*, TAIWAN MAN YEXIN ZU SHENGTAI XIEHUI (台灣蠻野心足生態協會) [TAIWAN WILD AT HEART LEGAL DEF. ASS'N], http://en.wildatheart.org.tw/about_us [<https://perma.cc/VJ27-2RN6>] (last visited Nov. 15, 2018).

58. HUANJING FALÜ REN XIEHUI (環境法律人協會) [ENVTL. JURISTS ASS'N], <http://www.eja.org.tw> [<https://perma.cc/5P42-F2FA>] (last visited Nov. 29, 2018).

Environmental lawyer Robin Winkler, via Wild at Heart, initiated a counsel team consisting of experienced lawyers in the field. Lawyers collaborated with NGOs and the residents throughout the process; for example, after they won the first appeal, the network actively and continuously took extrajudicial actions to pressure the authorities to effectively terminate construction. The Environmental Protection Administration (EPA) appealed to the Supreme Administrative Court, yet lawyers and the residents won the final victory⁵⁹ in 2010.

The 2015 case, where former Taiwanese employees sued the Radio Corporation in America (RCA) for occupational injury, was a landmark class action for victims of heavy industrial chemical pollution⁶⁰ and a phenomenal victory in which a network embedded in civil society defeated American/international corporations. RCA set up production lines of televisions and other electronics in Taoyuan City, Taiwan in 1970. Throughout its two decades of operation until 1992, RCA continuously dumped unprocessed toxic chemicals, mainly trichloroethene and tetrachloroethene, first directly on land and later into illegally-dug wells.⁶¹ The waste contaminated both the soil and the groundwater in the region. Without proper protection, RCA employees had direct exposure to, and even intake of, organic solvents used in the manufacturing process. The self-help association documented that at least 1,375 people had been diagnosed with various types of cancer, 221 of them terminal. Another report from the Council of Labor Affairs indicated 829 deaths.⁶²

For the victims, however, holding RCA accountable was a long and difficult journey. Bringing these cases to court in Taiwan raised various procedural and substantive legal barriers. First, collective redress in Taiwan requires that claimants meet strict standing requirements. Victims filed a lawsuit as early as in 2004, but it took the courts three years to grant standing to the self-help association to carry out litigation. Second, the substantive legal issues in this case were extremely complex.

59. 99 Nian Du Pan Zi Di 30 Hao (99 年度判字第30 號) [2010 Ruling No. 30] (Taiwan Supreme Admin. Ct. 2010).

60. Discussion on the RCA case appears in Ching-fang Hsu & Yong-ching Tsai, *supra* note 23. Paragraphs reprinted here are with permission by both the coauthor and the editor.

61. For an official introduction by the Taiwanese central government, see *Taiwan Meiguo Wuxiandian Gongsi (Yixia Jiancheng RCA) Taoyuan Chang* (臺灣美國無線電公司 (以下簡稱RCA) 桃園廠) [*Taiwan American Radio Company (Hereinafter RCA) Taoyuan Factory*], EXEC. YUAN ENVTL. PROT. AGENCY, <https://sgw.epa.gov.tw/public/result/02> [<https://perma.cc/G9LJ-68N9>] (last updated July 12, 2018). For a chronicle of events, please see a short report on the Central News Agency in Taiwan: *RCA An Xiangguan Dashiji* (RCA案相關大事記) [*Events Related to the RCA Case*], (Aug. 16, 2018, 12:37 PM), <https://www.cna.com.tw/news/asoc/201808160110.aspx> [<https://perma.cc/ZM84-P9NB>].

62. Teng Shufen (滕淑芬), *Taiwan Ban “Yong Bu Tuoxie” — RCA Zhi Zai Shijian* (台灣版 “永不妥協” — RCA職災事件) [*The Taiwanese Version of “Never Compromise” — RCA Disaster*], TAIWAN PANORAMA (Oct. 2007), <https://www.taiwan-panorama.com/Articles/Details? Guid=a6016409-b879-4b40-b2ad-3f81b59a2396&CatId=3> [<https://perma.cc/9CDX-4QG7>].

As the plaintiffs in a civil case, the victims had the burden of proving the claims, but the victims and their lawyers encountered a massive volume of evidence requiring extensive knowledge of epidemiology and public health—if they were lucky enough to acquire the needed, decades-old data. Attributing legal responsibility was also difficult as RCA Taiwan was first bought by General Electric Company (GEC) and then Thomson Consumer,⁶³ both multinational technology companies. Little property was left in Taiwan to satisfy a judgment. Lastly, victims had to fight a legal battle regarding the criterion for damage and the amount of compensation.

Ultimately, the victims prevailed. The 445 former workers successfully won the case in 2015. The Taipei District Court ordered the now-defunct RCA and Thomson, its current owner, to pay NT\$564.45 million (US\$18.11 million) for compensation. In October 2017, the Taiwan High Court confirmed judgment in favor of the workers, raising the amount to NT\$718.4 million (US\$23.9 million) and further ordering GEC to jointly compensate. As the victims welcomed the court decision, the volunteer lawyers also took the verdict as a collective victory. Organized by the Legal Aid Foundation, volunteer lawyers played an essential role in this monumental case. In 2007, when the case first entered the substantive review procedure, there were over 400 plaintiffs involved. The supporting network was composed of dozens of experts from law, public health, and environmental engineering, several governmental agencies such as the Ministry of Labor and the Environmental Protection Administration, multiple NGOs, and a movie documentary team. The LAF not only helped the victims reach a common ground for their standing in litigation, but also incorporated and translated the expert knowledge into defensible legal arguments. The size of the team reflected this extensive professional manpower: LAF solicited help from its own in-house lawyers, hired lawyers through legal aid schemes, and mobilized yet another group of volunteer lawyers to provide further legal support. The entire team, composed of 50 lawyers, was led by the charismatic and high profile human rights lawyer, Joseph Lin. As pointed out by an evaluation report, “[a] private firm would not have had the manpower, money, and time to coordinate hundreds of plaintiffs for over 10 years.”

Nevertheless, victory in court does not automatically lead to change in administration. In more than one instance, the Taiwanese governmental agency has bluntly rejected the court’s ruling. The most concrete yet alarming example is the same *Houli Science Park* case in 2008. The EPA, after losing the suit, publicly denounced the court’s decision as “not

63. A year after the takeover of RCA by General Electric (GE) in 1986, the firm was sold to Thomson Consumer Electronics, the US subsidiary of France-based Thomson Multimedia, which is now called Technicolor SA. For more historical background on this case, please see Yi-ping Lin (林宜平), Hsin-hsing Chen (陳信行), & Paul Jobin (彭保羅), *The Real ‘Best Friend of the Court,’* TAIPEI TIMES (June 20, 2018), <http://www.taipeitimes.com/News/editorials/archives/2018/06/20/2003695170/1> [<https://perma.cc/753Y-HQLT>].

binding, meaningless, and undermines the current institution of environmental impact assessment.”⁶⁴ EPA also stated that the judgment does not bind the third party, referring to the investors and factories, hence “the park construction would stop but the factories would not cease production,”⁶⁵ and initiated another new review to circumvent the court decision.

Judicialization of environmental politics became a trend in Taiwan, and environmentalist lawyers made substantial progress in courts. However, even in the leading cases, the administration would not necessarily concede to the judiciary. In this respect, the extent to which environmentalist lawyers are able to impact development activities is limited via public interest litigations. Nevertheless, the state apparatus may be another platform where green-minded lawyers exert influence. It is not uncommon for the current ruling DPP to nominate environmental activists to official posts: in 2004, a physics scholar and long-term antinuclear environmentalist Chang Kuo-lung was made Director of the EPA, and in 2016, a lawyer and well-respected environmental activist Thomas Chan was named Deputy Director of EPA.⁶⁶ Although the EPA does not play a leading role in development projects, environmentalist lawyers may initiate regulatory change to implant more procedural requirements to hold the administration accountable, or affording layman citizens or NGOs legal mechanisms to challenge policy decisions. This shall be a subject of future research for law and society scholars interested in the Asian context.

C. *Labor Movement: A Case of the United Workers in National Factory Collapses*

In addition to contentious collective actions and bargaining, the labor movement in Taiwan also has a history of legal mobilization in which unions and labor organizations collaborate with legislators to pressure the administration, suggesting legislation or budget increase. Since the 2000s, labor law infrastructure gradually developed. First, right after the party turnover in 2000, the Democratic Progressive Party administration enacted a number of laws, including the Act for Protecting Worker of Occupational Accidents (2001),⁶⁷ Act of Gender Equality in Employ-

64. *Zhongke San Qi Huanping Susong An Q&A* (中科三期環評訴訟案Q&A) [*Zhongke Phase III Environmental Assessment Lawsuit Q&A*], XINGZHENG YUAN HUANJING BAOHU SHU

(行政院環境保護署) [ENVTL. PROT. ADMIN., EXEC. YUAN, R.O.C. (TAIWAN)] (Apr. 26, 2010), https://enews.epa.gov.tw/enews/fact_HotFile.asp?InputTime=0990426182840 [<https://perma.cc/5LW2-3GLN>].

65. *Id.*

66. *Dr. Ying-Yuan Lee Takes Office as EPA Minister*, XINGZHENG YUAN HUANJING BAOHU SHU (行政院環境保護署) [ENVTL. PROT. ADMIN., EXEC. YUAN, R.O.C. (TAIWAN)] (May 1, 2016), <https://www.epa.gov.tw/ct.asp?xItem=61791&ctNode=35637&mp=e-paen> [<https://perma.cc/9ZE7-66FU>].

67. *Zhiye Zaihai Laogong Baohu Fa* (職業災害勞工保護法) [Worker Protection from Occupational Disasters Act].

ment (2002),⁶⁸ Employment Insurance Act (2002),⁶⁹ Act for Worker Protection of Mass Redundancy⁷⁰ (2003), Labor Pension Act (2004),⁷¹ National Pension Act (2007),⁷² and amended the Collective Agreement Act (2008).⁷³ Overall, in the 2000–2008 period, attempts were made to construct a protection net for laborers and mechanisms to equilibrate the power relation between the employer and employees. Second, after the former authoritarian Kuomintang came back to power in 2008, policy continuity was discernible. The KMT administration completed several key legislations with its super majority in parliament, such as policies on the labor insurance annuity, amendments to the Labor Union Act⁷⁴ and the Act for Settlement of Labor-Management Disputes.⁷⁵ Although criticism from labor unions remained, institutional building continued.

This Subpart focuses on a series of labor lawsuits starting in 2012, collectively termed as the case of *United Workers in National Factory Collapses*, in which the Ministry of Labor sued more than a thousand laborers to pay back loans, originally released in late 1990s as compensation to recover their losses in fraudulent factory collapses. The labor-management dispute dated back to 1996, when a number of textile and garment factories in Taiwan unexpectedly collapsed, and thousands of employees lost wages, remittance and pension overnight. To claim the arrears and pressure the employers, workers from different factories organized the National Alliance for Workers of Closed Factories. The contention escalated as workers held hunger strikes, and even a mass recumbent protests on railway. The Council of Labor Affairs (now Ministry of Labor) decided to step in with a grant, funding the protestors so they may seek alternative careers. Perceived as compensation and/or state subsidy, funds were allocated via a Guideline of Loans to Facilitate Employment for Employed Laborers in Closed Factories. The Council of Labor Affairs approved 1,105 cases and loaned approximately 440 million NTD.

Almost two decades later, as the statute of limitation for claiming loan payments was about to start, the Ministry of Labor issued payment orders to lenders⁷⁶ in July 2012 and started hiring counsel for civil litiga-

68. Xingbie Gongzuo Pingdeng Fa (性別工作平等法) [Act of Gender Equality in Employment].

69. Jiuye Baoxian Fa (就業保險法) [Employment Insurance Act].

70. Daliang Jiegu Laogong Baohu Fa (大量解僱勞工保護法) [Act for Worker Protection of Mass Redundancy].

71. Laogong Tuixiu Jin Tiaoli (勞工退休金條例) [Labor Pension Act].

72. Guomin Nianjin Fa (國民年金法) [National Pension Act].

73. Tuanti Xieyue Fa (團體協約法) [Collective Agreement Act].

74. Gonghui Fa (工會法) [Labor Union Act].

75. Laozi Zhengyi Chuli Fa (勞資爭議處理法) [Act for Settlement of Labor-Management Disputes].

76. Lao Wei Hui Yuqing 'Guan Chang Xieye Shiye Laogong Cujin Jiuye Daikuan' Yuqi Hu Yi Guiding Changhuan Daikuan (勞委會籲請 '關廠歇業失業勞工促進就業貸款' 逾期戶依規定償還貸款), TAIWAN JIUYE TONG (台灣就業通) [TAIWAN JOBS], <https://www.taiwanjobs.gov.tw/internet/jobwanted/docDetail>.

tions. This legal action created a great controversy, as workers did not perceive the funds as loans but compensations from the state on behalf of the malicious employers at the time. Yet again, workers took to the streets, occupied the rail, and went on hunger strike.

Volunteer lawyers soon formed a team in August 2012, and the number of volunteer lawyers grew from single digits to almost fifty. The legal argument they put forth was novel; they claimed that the loan, coming from the Employment Stability Fund and approved with great leniency, was essentially state compensation.⁷⁷ This is a state action of public law nature between the state and a citizen, and therefore, the right to claim expired five years after the fund was released. Reasonable as it was for the workers, the legal argument was not accepted by most courts. First, it was a loan and a civil contract on paper, as the Minister of Labor named the funds as “loans” and workers signed contracts accordingly. Second, no precedents or prior judgements supported this argument. Hence, when the first Taoyuan judge accepted the lawyers’ reasoning in August 2013 and transferred all twelve cases on her docket from a civil court to the administrative court,⁷⁸ the volunteer lawyers were extremely surprised. One month later, another judge adopted the same reasoning,⁷⁹ and with the first judge, transferred 69 cases to the administrative court. A domino effect soon took place: in November, civil courts in Taoyuan, Miaoli and Taichung transferred 159 cases, about 70 percent of all lawsuits of the *United Workers*, to the administrative court.⁸⁰ A key decision was released in March 2014 by the Taipei High Administrative Court, which ruled in favor of the workers in all five cases that the “loan” was compensation by nature, and the government’s right to claim, indeed, expired, and no payment shall be made. The final victory came fast in three days. The Ministry of Labor decided to withdraw all the cases in proceedings, and for those who already made payments, the Ministry would return the money accordingly.

aspx?uid=27&docid=22100 [https://perma.cc/2QWV-V8PX] (last visited Dec. 4, 2018).

77. Cai Zongen, *Nizhuan Sheng: Guan Chang Gongren An Shiwu Fenxiang* (逆轉勝：關廠工人案實務分享) [A Reversed Victory: Litigation Tactics in the United Workers], CAITUAN FAREN FALÜ FUZHU JIJIN HUI (財團法人法律扶助基金會) [LEGAL AID FOUNDATION], http://www.laf.org.tw/index.php?action=media_detail&p=1&id=150 (last visited Nov. 15, 2018).

78. Minshi Caiding 101 Niandu Tao Jian Zi Di 947 Hao (民事裁定101年度桃簡字第947號) [Civil Ruling of 2012 Taoyuan Summary Judgment No. 947] (Taiwan Taoyuan Dist. Ct. 2012).

79. *Guan Chang Gongren An You 69 Jian Zhuan Xingzheng Fayuan* (關廠工人案又69件轉行政法院) [69 Cases of Factory Workers Were Transferred to the Administrative Court], ZIYOU SHIBAO (自由時報) (Sept. 14, 2013), <http://news.ltn.com.tw/news/life/paper/713593> [https://perma.cc/7J6W-U44V].

80. But the court in New Taipei City did not follow the trend. *Guan Chang Shiye Gongren Xinbei Baoyuan Yin* (關廠失業工人新北報怨音) [The United Laborers Report Agony at New Taipei District Court], CHINATIMES (Dec. 24, 2013), <https://www.chinatimes.com/realtimenews/20131224005021-260402> [https://perma.cc/7PZY-DFCK].

Judge Julie Wen, who was the first judge in Taoyuan ruling in favor of the workers to transfer case, later shared her experience as to why she decided to accept lawyers' perspective and the pressure she faced, in a public speech at Soochow University.⁸¹ She expected to see criticism from the public, but still made the judgements she made. In her opinion, and much to her surprise, the major source of pressure did not come from outside but inside the judiciary. The internal pressure she experienced was two-fold: On the one hand, she felt pressured by the caseload when the United Workers cases reached her desk. With almost 300 cases in the pipeline on a monthly basis, she hardly had time and energy to investigate the real dynamics in the workers case. She had to work overtime, and consciously ignore the internal guidelines regulating time limits, to figure out the workers case. Yet she willingly did so because "I chose to follow my conscience," and "to solve the problem, not just getting rid of documents on my desk." On the other hand, she did not feel supported by the judge community. In fact, she felt alienated from her own colleagues, some of who alleged that she took the reasoning because she wanted to decrease the number of cases on file. Although transferring cases from civil courts to administrative courts did ease her caseload, workload reduction was the effect but not the cause of her action. What such critique demonstrates, nevertheless, is cynicism that discourages innovation in the judiciary. Judge Julie Wen appreciated the workers who believed in the judiciary, and the volunteer lawyers, student activists, many NGOs and ordinary citizens who contributed in class action, which finally allowed the judiciary to solve this decade-long labor dispute. She agreed to speak publicly out of gratitude.

The firsthand testimony indicates an important exchange process consistent with and supplementary to the observations above. Persuasion is a not only a reciprocal process between public interest lawyers and judges, as in the *Houli Science Park* that lawyers convinced the court and the court judgements generated further momentum for the lawyer-citizen alliance to mobilize; persuasion also takes place within the judiciary, as in the *Workers United* cases that one individual judge persuaded her colleagues and the judicial hierarchy to change conventional jurisprudence and, to some extent, to change a culture of conformity. The domino effect after Judges Julie Wen transferred her case suggests that the judiciary is able and willing to be innovative, yet a module is required, at the cost of considerable pressure that the first innovator bore. Public interest lawyers, in this case, played a crucial role to not only provide a legal reasoning in favor of the socially disadvantaged, but also demonstrate the legitimacy that the laborers pertain. It is the overall societal momentum indicated by lawyer-citizen alliance, and the exchange of

81. The following discussion is based on a public Facebook post by a law student named Wei Hungru. I took notes when I was doing field research in Taiwan in 2016. See Wei Hungru (HungRu Wei), FACEBOOK (June 3, 2014), <https://www.facebook.com/Wei.HungRu/posts/10152202304564353>.

such momentum that takes place in public interest litigations, that allows the judiciary to check the administration.

D. *Cross-strait Watch*

The core political cleavage in Taiwan concerns its entangled relationship with China, and lawyers are not absent in this debate. In 2010, a network of civic associations⁸² was formed to carry out crucial functions to supervise the cross-strait economic cooperation as China and Taiwan developed closer trade relations. Long chaired by a lawyer, Lai Chung-chiang, the network focused on raising legal consciousness among citizens and legislation lobbying, which eventually triggered a large-scale street demonstration: the Sunflower Movement in 2014 which occupied the Taiwanese parliament for 24 days.

In 2008, the Kuomintang assumed power of both the presidency and the majority of Taiwanese parliament. As the government started a series of economic and trade negotiations with China, this policy turn triggered some deep seeded tension in the Taiwanese civil society and led to sporadic protests. In 2010, Taiwan and China officially signed the Economic Cooperation Framework Agreement, but the KMT government showed reluctance to bring the agreement to the parliament for comprehensive and detailed examination for rectification. This avoidance invited criticism and prompted mobilization: about 30 civic organizations formed the Cross-strait Agreement Watch, chaired by a lawyer Lai Chung-chiang. The Watch targeted all cross-strait treaties and agreement. Procedurally they demand democratic accountability, bringing all agreements to the parliament for appraisal and approval, and if necessary, agreements are to be recognized by general referendum. Substantively, they argue for rights protections for Taiwanese citizens in the cross-strait cooperation, especially protection of those economically disadvantaged and advancement of social justice. For example, they scrutinize the mobility of cross-strait personnel, goods and capital, “if it infringes human rights, harms the environment, or impacts labor rights;” or, they “supervise if the Chinese government or Chinese capital influences the autonomous operation of the democratic system, the freedom of speech, or the subjectivity of Taiwan.”⁸³ Clearly, the attempt is to structure partisan abuse of power with the legal system and rights-based discourse.

In 2013, the network expanded as the two governments entered complex negotiation for more extensive economic cooperation and

82. *Lianmeng Zongzhi Yu Chengyuan* (聯盟宗旨與成員) [Alliance Purpose and Members], LIANGAN XIEYI JIANDU LIANMENG (兩岸協議監督聯盟) [CROSS-STRAIT AGREEMENT SUPERVISORY ALLIANCE], <http://www.csawa.org/home/guan-yu-liang-du-meng/lian-meng-zong-zhi-yu-cheng-yuan> [<https://perma.cc/UV6J-REUL>] (last visited Dec. 3, 2018).

83. *Zhang Cheng* (章程) [Charter], LIANGAN XIEYI JIANDU LIANMENG (兩岸協議監督聯盟) [CROSS-STRAIT AGREEMENT SUPERVISORY ALLIANCE], <http://www.csawa.org/home/guan-yu-liang-du-meng/liang-an-xie-yi-jian-du-lian-meng-zhang-cheng> [<https://perma.cc/L6JY-JVGA>] (last visited Dec. 3, 2018).

further the ties in trade. In June, the Cross-Strait Service Trade Agreement was signed in Shanghai, causing grave concern, as it allows Chinese capital to enter a wide range of service industries, from transportation, communication, construction, health and social service, tourism and entertainment, to sensitive financial industries. The scope of impact was unprecedented, eliciting another round of civil society mobilization. The Cross-strait Agreement Watch immediately connected with a number of NGOs concerning labor, women, health and welfare, the disability, many academics and human rights activists.⁸⁴ Lobbying under a new banner of “Democratic Network Against Black Box Service Trade Agreement,” the network actively protested against the ruling party, and closely worked with the opposition, Democratic Progressive Party (DPP). One month later, the network of civic associations expanded again: several environmental and educational NGOs, as well as a couple of community collages also joined the alliance. The scale of organizational mobilization reflects the societal momentum concerning China’s potential intervention, and the parliament indeed conceded to adopt stricter procedure for ratification under public pressure. The Legislative Yuan resolved that the Service Trade Agreement will be examined by the Committee of the Whole Yuan, which is a task-based meeting of all members of parliament, and that 16 public hearings would be held in the next six months.

A wave of bottom-up mobilization rose, and the Democratic Network became part of this growing movement. On the one hand, the Network, along with many other local community workers and associations, reached out to the general public. They held workshops, protests, and “soapbox campaign” across the country. Social media played a crucial role in disseminating information. The debate of cross-strait commerce gradually travelled from the parliament meeting room in the capital onto streets and community centers in many parts of the island. On the other hand, more and diverse civil society organizations also took actions to raise public awareness, including two industrial unions in the south, and a netizen group, Citizen 1985 Action Coalition, which just hosted a mass demonstration of 250,000 to support a soldier died of military abuse. While these two groups are of divergent nature that the union is interest-based, disciplined, and tradition yet the netizen coalition is sporadic, ideationally-driven and loosely-connected, the involvement of these two types of organizations accurately shows that the degree of concern that the Service Trade Agreement evokes. The Taiwanese civil society was growing an alignment standing in opposition to the ways in which the government handles cross-strait issue. Among all the newcomer and old comrades, the Democratic Network’s strategy of legal

84. *Jian Je: Jing Ji Min Zhu Lian He* (簡介: 經濟民主連合) [Introduction: Economic Democracy], DEM. FRONT AGAINST CROSS-STRAIT TRADE IN SERVICES AGREEMENT (Dec. 9, 2014), <https://dfactsa.wordpress.com/2014/12/09/%E7%B0%A1%E4%B-B%8B%EF%BC%9A%E7%B6%93%E6%BF%9F%E6%B0%91%E4%B8%B%E9%80%A3%E5%90%88> [<https://perma.cc/2VRU-TKFG>].

mobilization stands out: at the time, they proposed four bills for the parliament to ensure democratic procedure is fulfilled, and all treaties to be comprehensively evaluated to minimize impact on Taiwanese economy, especially potential political impact that might penetrate through economic cooperation. Their focus is consistent and clear: to bring the negotiation in line with the constitutional legal framework.

On March 17, 2014, the Legislative Yuan hastily ratified the Service Trade Agreement in amidst of meeting chaos. The next day, a number of students and activists burst into the Legislative Yuan, later occupied the parliament for 24 days and brought 500,000 people to streets. The civic movement, named "Sunflower Movement," became one of the largest and most renown demonstration since Taiwan's democratization. Essentially, citizens in this movement argued that the government should acquire higher democratic legitimacy when carrying out cross-strait negotiation, and the demands include rejection of the trade pact, the passing of legislation allowing close monitoring of future agreements with China, and citizen conferences discussing constitutional amendment. Evidently, the requests were primarily procedural, and the demanding legislations of agreement supervision has been the request of the Democratic Network. In 2015, more civic associations born in the Sunflower Movement joined the network, which later renamed as "Economic Democracy Union (EDU)" to include more issues regarding democratic accountability and social justice. Still in operation today, the EDU continues to lobby for the Cross-Strait Agreement Supervision Bill, and closely follows policy on China investment after the DPP unseated the KMT in 2016.

Cross-strait Agreement Watch is a new civic movement emerged in the past decade. Interestingly, during this critical time period, it was the civil society, rather than the opposition party, that took up the position against the pro-China and pro-free-trade ruling party, and effectively shouldered the task of supervision and mobilization to argue for local political economy. Strategies of this network constitute a model of legal mobilization: the target was the legislature, the goal was official legislation, and the normative principal was adherence to democratic procedure and promotion of social justice. The soul figure in this network, lawyer Lai Chung-chiang, chairing the network from 2010, demonstrate a prototype of public interest lawyer in Taiwan: framing a political concern in legal language, utilizing the rights discourse to appeal to the citizen. As the Taiwanese government intensified its cooperation, and issues involved became extensive, the strategy appealing to procedural accountability and targeting the representative institution was widely accepted by the civil society and the general republic. In the 2014 Sunflower Movement, while the network and Lai retreated to the background, their proposal, originally unattended, became a consensual and mainstream demand widely accepted by the public and vocally advocated by the citizen movement.

CONCLUSION

Situating the Taiwan experience in this issue, both case studies on Taiwan and China focus on the processes in which public interest lawyers engage and persuade power-holders, and “educate and empower the public.”⁸⁵ A critical difference, however, is that lawyers in Taiwan, although similarly vocal, proactive, and skillful, are in fact in a more equal footing as the public in knowledge and political capacity. Legal practitioners are initiators who mobilize the public, but are themselves mobilizable by the public at the same time. While in China, public interest lawyers take up leadership roles to empower and are natural spokespersons to educate, their counterparts in Taiwan are agents of fellow citizens who are part of the political and social change.

To reiterate, as rights discourse becomes a common and powerful currency in public sphere, lawyers, by nature of their profession, are the currency exchanger who carry causes in organizations and convert political momentum across institutional and conceptual boundaries in legal mobilization. As proceeding analysis shows, public interest lawyers in Taiwan grew to be an active, diverse, and indispensable community in a wide range of policy making and legislating. The expertise of *exchange* explains the prevalent role that public interest lawyers are able to play, and the complexity of their involvement. This *relational framework*, focusing on the *bidirectional relationship* that lawyers exchange with government (both the administration and the parliament), political party, civil society (including NGOs and the general public), and the court, allows us to command analytical clarity in overwhelming complicated development on the ground in the twenty-first century Taiwan.

85. Fu Hualing, *Social Organization of Rights: From Rhetoric to Reality*, PAC. BASIN L.J., Jan. 2019, at 1, 30.

