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The Role of Lawyers in Taiwan's Emerging Democracy

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1. Introduction

In recent decades, Taiwan[2] has made considerable strides toward democracy.[3] While that democratic transformation may not yet be complete, it is nevertheless beyond question that political and social institutions in Taiwan are dramatically more open and accountable to the public than they were only ten years ago.[4] At the same time that Taiwan's leaders embarked on

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[2]For purposes of this paper, Taiwan refers to the social institutions systems associated with the island of Taiwan. This includes, where appropriate, the government of the Republic of China on Taiwan, as well as the social and cultural institutions and practices that can be observed in Taiwan today. The adjective "Taiwanese" refers to things associated with life in Taiwan today, including individuals who arrived or whose families arrived in Taiwan from mainland China in 1949, individuals whose families came to Taiwan from the Fujian province region in the 17th or 18th century, and individuals who are ethnically distinct from the Han Chinese, such as the Hakka.

[3]Hung-mao Tien and Tun-jen Cheng, Crafting Democratic Institutions in Taiwan, 37 The China Journal 1 (1997).

[4]For example, one criteria for determining that a period of "democratic consolidation" following a period of "democratic transition" has been successfully completed is a peaceful transfer of power that removes the former dominant political group from a position of control over government institutions.

a project to open the government to a broader range of political forces than was the case under martial law, the regulation of the economy was substantially liberalized as well.[5] One element of the program of liberalization included increasing the number of attorneys admitted to practice in the Republic of China (ROC). As a result, the number of attorneys admitted to private practice in Taiwan roughly doubled between 1986 and 1996.[6] Such a dramatic increase in the number of lawyers admitted to practice in Taiwan will clearly have some effect on Taiwanese society. This paper will suggest what some of those effects might be, especially in light of the experience of some of the other East Asian nations whose legal professions are considered in this volume. This paper will also discuss some of the new directions Taiwan's legal profession may take in light of the different pressures now being exerted on Taiwanese society, including the consolidation of democratic and liberal reforms in the domestic government and economy, the still unresolved question of Taiwan's sovereignty, Taiwan's ever greater integration into the Greater China economic region in particular and the global economy in general.

The discussion in this paper is primarily based on interviews with individuals in or with some connection to the legal profession in Taiwan conducted in July 1995.[7] Those interviews

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This happened in Japan when the Liberal Democratic Party left power following the Socialist Party electoral victory, but has not yet happened in Taiwan. Until one of the current opposition parties in Taiwan is able to secure power through democratic elections, it will not be clear whether the ruling Kuomintang will accept such a transfer of power. Tien and Chung at 20.

[5]Taiwan achieved rapid economic growth throughout the 1960s and 1970s through export-oriented economic policies. By the 1980s, Taiwan had achieved such a degree of economic development that it was coming under increasing pressure from trading partners such as the US to open its domestic economy to foreign competition. The liberalization of Taiwan's domestic economy that has taken place since the 1980s has opened the local economy to the forces of global competition in a wide range of markets for goods and services.

[6]As far as I was able to determine after extensive inquiries in 1995, neither government agencies nor bar associations in Taiwan were maintaining the same kind of extensive statistical data regarding the legal profession that some other East Asian nations discussed in this collection of essays maintain. Individual bar associations maintained membership records, but no one I spoke to could direct me to an organized system for aggregating that information. In 1991, the Ministry of Justice provided me with an estimate of 2,254 for the total number of attorneys in total number of attorneys in private practice. Jane K. Winn and Tang-chi Yeh, Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation, 20 Law & Social Inquiry 561 (1995), text at footnote 40. Other observers of the legal system at that time the total number of attorneys in government service as judges or prosecutors to be about the same. Based on the number of attorneys passing the bar, the number of attorneys in private practice would roughly have doubled by 1996, while the number in government service would not have risen so dramatically. During this period, Taiwan had a population of around 20 million.

[7]In July 1995, I met with 35 different individuals to discuss their views on the changing role of Taiwan's legal profession under democratization. These individuals included three legislators, seven academic social scientists in a range of disciplines, eight legal academics, fifteen attorneys in private practice, one judge, and one prosecutor. In general, I met these individuals through alumni connections with either Harvard Law School or Southern Methodist University, or through the personal contacts of

were designed to find out what, if any, connection existed between the major changes the legal profession was undergoing and the progress being made toward liberalization in political and economic spheres at the same time. On earlier trips to Taiwan in 1990 and 1991, I interviewed lawyers in connection with research regarding the operation of Taiwan's informal economy and its relationship to the formal legal system.[8] In 1994, with Professor Tang-chi Yeh of Chung-Yuan University School of Law, I wrote an article on the legal profession in Taiwan for a symposium on lawyering in repressive states. Professor Yeh and I concluded that the concept of cause lawyering was not well enough developed in Taiwan for the danger of legitimating a regime perceived by the lawyers as illegitimate to have arisen.[9] In this paper, I use material gathered from interviews in 1995 and on earlier occasions to suggest a range of different possible directions Taiwan's legal profession may take in coming years.

Taiwan's legal profession may continue to expand and may play a more active role in Taiwanese society without necessarily performing the role of the autonomous, disinterested profession mediating conflicts between the state and society that has been described in sociology of the professions in western societies.[10] While the legal profession in Taiwan has a much greater sense of self-identity and autonomy relative to the state than does the legal profession in the People's Republic of China (PRC) today,[11] it may not rise to the same sense of self-identity enjoyed by legal professions in many western nations today. The legal system of the ROC never underwent the wholesale devastation inflicted on the PRC legal system during the Cultural Revolution. The greater continuity and integrity of ROC legal institutions, including the private bar, have helped produce a legal profession in Taiwan that is closer to the liberal ideal that the one taking shape in the PRC today.

The sudden increase in the number of lawyers admitted to practice, as well as much of the rapid progress now being made toward liberalization of political and economic institutions, are very recent changes in Taiwanese society. These changes, in combination with some of the

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academic colleagues in Taiwan.

[8]I published the findings of that earlier research in Jane K. Winn, Relational Practices and the Marginalization of Law: A Study of the Informal Financial Practices of Small Businesses in Taiwan, 28 Law & Society Review 801 (1994).

[9]Jane K. Winn and Tang-chi Yeh, Advocating Democracy: The Role of Lawyers in Taiwan's Political Transformation, in Symposium on Lawyering Against Injustice and the Danger of Legitimation, 20 Law & Social Inquiry 561 (1995).

[10]See, e.g., Talcott Parsons, "Professions," in David Sills (ed.), International Encyclopedia of the Social Sciences, Vol. XII (1968). See William Alford's paper in this collection for a summary of the major landmarks in this literature.

[11]For a discussion of the limited sense of self-identity and autonomy of the PRC legal profession in William Alford, "Of Lawyers Lost and Found: Liberal Legal Professionalism and the People's Republic of China," and Benjamin Liebman, "Lawyers, Legal Aid and Legitimation in China" in this volume.

profound social and economic pressures being exerted on Taiwanese society by its growing integration into the Greater China economic region and exposure to the forces of global economic competition generally, may change the character of Taiwan's legal profession. It is possible that these pressures will result in a much stronger embrace by Taiwan's legal profession of the classical liberal ideal of an autonomous professional. I think it is more likely, however, that the legal profession in Taiwan will either move toward an entrepreneurial, commercial notion of law practice, or will move toward a hybrid role of mediating between formal and informal coercive orders in order to advance client interests. This is in part because is it difficult to find an actual example of legal profession today operating according to classical liberal theory even in countries where liberal democratic ideas are part of the indigenous political culture. It is also in part because lawyers in Taiwan might find a strategic advantage in leveraging their legal training and credentials by combining them with more informal forms of representing client interests that resonate with local culture and institutions but that are not reflected in traditional theories of professionalism.

Lawyers in Taiwan today face a range of alternative models for developing their practice or contributing to the further development of Taiwanese society. These alternatives include some models of legal practice that are found in the same western societies that developed the theory of the autonomous professional, where the actual work of lawyers diverges in significant degree from theoretical models of the legal profession. These alternatives also include combining a license to practice law with other, less formally defined social roles that have been traditionally valued in Taiwanese society. The sociology of the legal profession today does not yet provide robust analytic tools for determining when lawyers as individuals will do a sort of regulatory arbitrage between formal legal representation and mobilizing more informal forms of social capital to represent clients. Should such analytic tools be developed, it might assist in analyzing the roles played by legal professions in developing countries. The ability to predict when a lawyer will select informal processes to advance client interest would also be useful in studying the roles played by lawyers in western nations, where such arbitrage is performed as well but where the study of formal institutions and processes may occupy a more central position in the sociology of the legal professional.[12]

As Taiwanese society becomes increasingly open to the social forces exerted by economic activity in global arenas, the legal profession is well placed to play a pivotal role in mediating the interests of local and global actors.[13] Foreign business interests may prefer to work with local lawyers whose style of practice most closely resembles that of attorneys in their

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[12]For example, the emphasis in the "new institutional economics" on identifying criteria for selecting between formal and informal ordering systems and dispute resolution mechanisms could benefit from a study of how attorneys in developed market economies such the US decide whether to steer clients toward formal or informal systems for protecting their interests.

[13]For a discussion of the role the legal profession plays in the process of globalization, see generally, David M. Trubek, Yves Dezalay, Ruth Buchanan and John R. Davis, Global Restructuring and the Law: Studies of the Internationalization of Legal Fields and the Creation of Transnational Arenas, 44 Case Western Reserve L. Rev. 407 (1994).

home countries to represent their local interests in Taiwan. Taiwanese businesses wishing to participate in the Greater China economic region may prefer to work with local lawyers with a knowledge not just of the formal PRC legal system but also an understanding of how to mobilize informal social relations to protect investments in mainland China.[14] Whether in fact Taiwanese lawyers are able to build these kinds of bridges between local Taiwanese interests and interests rooted in the global economy, and if so, what impact that activity would have on processes such as the consolidation of Taiwan's democratic reforms, is not yet clear.

2. Different possible directions for Taiwan's changing legal profession

From the early days of the ROC following the 1911 Revolution in China and continuing through its relocation to Taiwan in 1949, a modern legal profession has always been assigned some role in the administration of justice in the ROC.[15] The magnitude of resources allocated to establishing a strong, modern legal profession was limited by the extreme social and political dislocations China suffered in the decades following the founding of the ROC through the triumph of the Chinese Communist Party (CCP) in 1949. The Japanese colonial administration in power in Taiwan from 1895 to 1945 likewise established a modern legal system to aid in its administration of Taiwan.[16] In a manner similar to that of the governments of Japan,[17] the PRC[18] and Korea[19] at various times in recent history, the decision to create a modern legal profession by the ROC government did not necessarily demonstrate a commitment to granting that legal profession any significant powers that could be exercised independently of the political powers of government leaders.[20]

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[14]For a recent account of the importance of informal networks in business activities carried on in the PRC today, see David L. Wank, Commodifying Communism: Business, Trust and Politics in a Chinese City (1999); see also, Mayfair Mei-huiYang, Gifts, Favors and Banquets: The Art of Social Relationships in China (1994) and Yunxiang Yan, The Flow of Gifts (1996).

[15]This is in marked contrast with the situation that prevailed for centuries prior to the late 19th century, in which the representation of others in Imperial law courts was generally treated as a crime. See Melissa Macauley, Social Power and Legal Culture : Litigation Masters in Late Imperial China (1999).

[16]Tay-sheng Wang, Legal Reform in Taiwan under Japanese Colonial Rule (1895-1945): The Reception of Western Law (Ph.D. thesis, University of Washington, Seattle, 1992).

[17]See Setsuo Miyazawa, Lawyering for the Underrepresented and the Changing Political Environment of the Bar in Japan in this volume.

[18]See Alford and Liebman, this volume.

[19]See Jae-Won Kim, Legal Profession and Legal Culture during Korea's Transition to Democracy, this volume.

[20]The structural limitations on the autonomy of the ROC legal profession are discussed in more detail in the following section, and also in Winn and Yeh (1995).

One possible direction that Taiwan's legal profession might take would be to embrace more fully the classical model of the autonomous professional that is associated with a liberal social and political order. Such a professional is uniquely equipped to mediate between the competing interests of the state and civil society, and among the members of a civil society, when its exercise of power is divorced to the greatest extent possible from those exercises of power it is called upon to control. The maintenance of the rule of law requires that those subject to the enforcement of legal obligations believe that enforcement is carried out in a neutral, impartial manner. By shielding the legal profession from both the coercive power of the state and of private institutions such as the market, the interpretation and application of the law may take place dispassionately and fairly.

This role of autonomous professional is one that only in recent years has become theoretically possible for attorneys in Taiwan to adopt, and the extent to which that theoretical possibility can be realized remains unclear even today. Taiwan's transition to democracy has been largely peaceful for a variety of reasons. One of the most important has been the skillful manipulation of increasingly open and competitive political processes by the ruling Nationalist Party (Kuomintang or KMT), which has permitted the KMT to retain power throughout the democratization process. As a result, it is not yet clear whether the KMT would actually permit a transfer of power to the leading opposition party, the Democratic Progressive Party (DPP).[21] As long as that issue remains unresolved, related questions such as the ability of lawyers to use the legal system to challenge social injustice as an alternative to more direct forms of political action, or the defense of the integrity of the legal order even when the political repercussions of that defense may cause problems for the current regime, will remain unresolved. To some degree, however, the continuous operation of modern legal institutions as part of the ROC government and on Taiwan for many decades has laid a foundation for the legal profession to play this role. This is in marked contrast with current situation of the legal profession of the PRC, where modern legal institutions were effectively eviscerated during the Cultural Revolution and more recently have only slowly been rebuilt.

Another possible direction that Taiwan's legal profession might take is that of the entrepreneurial lawyer. An entrepreneurial lawyer is one who self-consciously exploits the license to practice law in a manner calculated to achieve the highest possible economic return for the lawyer. It is beyond the scope of this paper to consider whether this kind of lawyering is a recent innovation or even an aberration. In any event, the commercialization of the legal profession clearly represents a distinct alternative conception of the legal profession to the classical liberal ideal. In the US, where this approach to the practice of law is clearly widespread, the discussion of this notion of law practice has questioned whether existing rules governing the legal profession are appropriate or adequate. In addition, the notion of zealous advocacy of the client's interests held by some US lawyers would be seen in some other countries with different standards for advocacy as a failure to exercise the independent judgment that is supposed to characterize the legal profession.

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[21]See Tien and Cheng (1997) for a fuller discussion of these processes.

This model of entrepreneurial lawyering may prove attractive in Taiwan, especially in light of the erosion of the market value of admission to the bar caused by the sudden increase in the number of lawyers in private practice. These economic pressures combined with the historical lack of autonomy prior to democratization may mean that the classical liberal idea of lawyer as exercising judgment independent of both state and private pressures may never be widely or deeply assimilated by Taiwan's lawyers. Further research would be necessary, however, to determine whether the notion of entrepreneurial lawyering is as popular today in Taiwan as Alford's research in mainland China suggests it is there.

Law can never be the exclusive coercive ordering system in any society, but the boundaries between legal ordering and private ordering are difficult to determine and difficult to analyze. Private ordering systems in a society consist of alternative institutions maintained through the activities of individuals that in turn are in competition to some degree with the legal profession. The sociology of legal professions in countries with strong liberal democratic traditions does not generally focus on the boundaries between informal and formal coercive ordering systems in defining either at a theoretical or normative level the roles played by attorneys.[22] In countries where liberal democratic traditions are not indigenous, as is true for the East Asian societies considered in this collection of essays, defining the relationship between formal and informal ordering systems may be crucial in understanding the roles played by attorneys in those societies.

In the English vernacular, the concept of "fixer" is widely recognized, although it has not to date been the subject of any sustained sociological analysis.[23] In this paper, I use the colloquial term as a general rubric for someone who mediates between competing interests within informal coercive ordering systems. A fixer is offering a service that competes with the kind of services lawyers offer in administering formalized coercive ordering systems. A lawyer may choose to act as a fixer in achieving his or her client's goals if that lawyer has the ability to invoke the possibility of informal rewards or sanctions to cause another party to meet the client's objectives. The use of personal relationships or other informal forms of social organization may under some circumstances be more effective than addressing the problem in terms of legal rules and institutions. Any sociology of the legal profession in a society in which informal ordering systems create important alternatives to reliance on the legal system should be able to account

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[22]Although most research on the sociology of legal institutions may take formal dispute resolution processes and formal legal institutions as its primary focus, there have been also many noteworthy studies that do focus on the boundaries of formal and informal ordering. See, e.g., David B. Wilkins, Legal Realism for Lawyers, 104 Harv. L. Rev. 469 (1990), Sally Engle Merry, Legal Pluralism, 22 Law & Society Review 869 (1988); Marc Galanter, Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law, 19 J. Legal Pluralism 1 (1981), Sally Falk Moore, Law and Social Change: the Semi-autonomous Social Field as an Appropriate Subject of Study, in Moore, ed., Law as Process, (1978); Felstiner, Influences of Social Organization on Dispute Processing, 9 Law & Society Review 63 (1974).

[23]See, e.g., Beyond the Schumer Victory, New York Times, November 4, 1998 at A26 ("In the national G.O.P. [Alfonse D'Amato] was a force too, known as a hard-headed ***fixer*** and deal-maker and one of the most effective money-raisers in Washington." (emphasis added)).

for decisions by attorneys to take advantage of informal relationships in lieu of legal relationships in pursuing client objectives. As a practical matter, however, analyzing such decisions is problematic because locating and evaluating informal alternatives to law may be more difficult than studying formal legal institutions.

Questions arising out of the interplay between formal and informal coercive systems take on a particular urgency with regard to any country where liberal institutions are not indigenous.[24] While formal legal institutions operate (or at least appear to operate[25]) with some efficacy in societies where the basic norms of the legal system harmonize with other social norms such as religious values, in societies where legal models have been quite recently imported from foreign legal traditions, formal legal institutions may be less effective. Large scale reliance on informal ordering is likely to persist in societies with legal systems based on imported models for some time even after liberal institutions have established. Informal coercive orders may even operate more efficiently in a given society than the ordering created through liberal market institutions, depending on the relationship between imported liberal institutions and competing indigenous social, political and cultural institutions.[26]

Researching the proclivity of lawyers to substitute the role of fixer for the role of attorney at law first requires identifying when in fact informal alternatives compete with liberal institutions in a given society. Ideological filters embedded deep in modern social theory may highlight the functioning of liberal institutions while obscuring the functioning of competing informal social ordering systems. The presence of such perceptual filters creates a pervasive risk of bias in the collection such facts. Even assuming such biases can be controlled and such information can be collected, it remains unclear whether any appropriate criteria can be found with which to evaluate such informal coercive systems. Conventional liberal notions such as self-determination, transparency, or universality that are used in evaluating the legitimacy of formal legal institutions cannot be applied directly to informal institutions without some difficulty. While this asymmetry in criteria for evaluating legitimacy makes critical assessment of the interplay between formal and informal coercive ordering systems difficult, such issues should not therefore simply be omitted from the analysis. For example, Dezalay and Garth try to demonstrate that under certain conditions, elements of traditional East Asian models may be combined with elements of western liberal legality in order to create institutions that repress rather than promote self-determination for the citizens of a country importing the forms of

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[24]See Winn, Marginalization of Law.

[25]The debate over the actual effectiveness of legal institutions as opposed to informal ordering within societies with liberal democratic traditions is beyond the scope of this paper. See, e.g., Stewart Macauley, Non-contractual Relations in Business: A Preliminary Study 28 American Sociology Review 55 (1963); Northwestern University Law Review Symposium on relational contracting (forthcoming 1999).

[26]Avner Greif, Contracting, Enforcement, and Efficiency: Economic beyond the Law, Annual World Bank Conference on Development Economics 1996 (1997).

western liberal legality.[27] While Dezalay and Garth's conclusions are very suggestive, the research they use to support them they acknowledge is sketchy and amenable to more than one interpretation, and their criteria for recognizing illegitimate exercises of power through informal means are not fully articulated.[28]

The standard problems that arise in any inquiry into the legitimacy of legal institutions, and of competing informal processes, are compounded in a comparative context. It is difficult to identify the objective source of the legitimacy of a legal order within a cultural tradition shared by both the researcher and the research subjects, and it may be difficult to identify objective criteria for evaluating the legitimacy of a legal order operating in a cultural tradition outside the researcher's own indigenous tradition. Given the current level of controversy surrounding the appropriate criteria for evaluating the operation of the legal profession within countries such as the US with liberal democratic traditions, it is even more difficult to try to articulate under what circumstances it would be appropriate for an attorney in Taiwan to substitute the role of fixer in mediating informal coercive orders for either the role of disinterested autonomous professional or entrepreneurial professional. In his analysis of contemporary PRC legal profession, Alford calls for a new sociology of lawyers that can adequately take account of the interplay between lawyers and the state in settings that are more diverse than either a classical western liberal democracy or a modern authoritarian regime. While the relevance of such new directions in the sociology of the profession might be most immediately obvious in the study of legal professions of countries for which liberalism is not an indigenous tradition, they might also provide new insights into the actual operation of legal professions even within countries with liberal democratic traditions.

Within Taiwanese society, it is safe to assume that there will be individuals playing the

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[27]Yves Dezalay and Bryant G. Garth, International Strategies and Local Transformations: Preliminary Observations of the Position of Law in the Field of State Power in Asia, in this volume.

[28]Because Dezalay and Garths's work is in a neomarxian tradition, they tend to presume rather than explain how the social processes they observe produce oppression by some inchoate ruling elite, which in turn may encourage them to gloss over difficult questions about the reliability of certain allegations made by their informants. For example, they conclude that within the legal profession in Korea, admission to Harvard Law School has come to serve as a surrogate for the traditional examination system as a channel for access to participation in government. While graduation from Harvard Law School may be analogized by some members of the Korean legal profession to success in the traditional examination system, such observations may be better understood as metaphors than as a claim that there is a concrete equivalence. The use of such metaphors in speech does not establish that in fact the actual authority conferred on Korean graduates of Harvard Law School is equivalent to the authority of successful candidates of the traditional examination system, or that access to a US legal education at any other leading US law school does not have the same practical effect as a Harvard Law School degree. For a classic study demonstrating how easy it is to jump to fallacious conclusions based on apparent similarities in the deep structure of western and non-western societies, see Gary Hamilton, Patriarchy Patrimonialism and Filial Piety: A Comparison of China and Western Europe, 41 British Journal of Sociology 77 (1990).

role of fixer within informal ordering systems for some time, notwithstanding the recent dramatic progress made in democratizing Taiwan's political system and liberalizing its economy. The question with regard to the study of the legal profession is whether those individuals will include a large number of lawyers. Lawyers may find that their membership in the profession can be used as a point of entry into informal ordering systems and that playing the role of fixer is more rewarding, materially or otherwise, than playing one of the roles more commonly assumed by lawyers in western countries. If lawyers migrate in large numbers to a hybrid role of lawyer as fixer, this may have implications for the future character of Taiwan's democracy, and the further integration of Taiwan's local economy into global economic arenas.

3. Characteristics of Taiwan's legal profession

Specific characteristics of Taiwan's legal profession can only be considered within the larger context of the relationship between Taiwanese society and the ROC legal system. The role of formal legal institutions in Taiwanese society has been affected by a variety of factors, some of which have had the effect of undermining the effectiveness of those institutions. These factors include the unresolved issues surrounding the relationship between Taiwan and mainland China, which place de facto limitations on the sovereignty of the ROC, and the ethnic conflicts among the people of Taiwan, which limits the legitimacy of the KMT regime. In addition, larger social and cultural factors favoring greater reliance on informal ordering systems under certain circumstances have effected the degree to which formal legal institutions are able to achieve their stated objectives.

The current ROC Constitution dates back to 1947 and purports to apply to all of China, not just the island of Taiwan, but after the 1949 Communist victory in the Chinese civil war, it has only been effective in Taiwan.[29] A martial law regime was instituted by the KMT regime while it was still in control of mainland China. Justified by reference to the still unresolved civil war, martial law was retained in Taiwan until 1987. Executive orders suspending the effectiveness of portions of the 1947 Constitution were not repealed until 1991. During the period of martial law, political power was concentrated in the executive branch of government, the armed forces and internal security organs, and the KMT party, subverting the division of power set forth in the 1947 Constitution. Until 1992, the legitimacy of the national legislature was limited by the suspension of elections to replace representatives elected before the CCP victory from regions in mainland China that came under CCP control in 1949. Many forms of dissent were treated as sedition, and politically sensitive trials were conducted as court martials.[30] Many attorneys gained admission to the bar following service as a lawyer in the

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[29]For a discussion of the 1947 Constitution and its recent reforms, see Hwang Jau-yuan, SJD thesis

[30]The most celebrated of these trials is described in John Kaplan, The Court-Martial of the Kaohsiung Defendants (1981). In December 1979, a political demonstration organized by the opposition turned violent, with large numbers of police officers suffering injuries. Many leaders of the political opposition were rounded up, court-martialed, convicted on charges of sedition and given sentences of up to life in prison. See Winn and Yeh for a fuller discussion of how the Kaohsiung Incident and the

armed forces, which had the effect of minimizing the number of attorneys in private practice who might contest the legitimacy of the KMT regime through the courts.

Relations between the Taiwanese majority and the Mainlander minority in Taiwan today remain problematic and may create limits to the further progress of democratization.[31] The majority of the people living in Taiwan today are the descendants of Chinese settlers who came to Taiwan before the 19th century from Fujian province and who speak a Fujian dialect of Chinese.[32] Although these residents of Taiwan originally welcomed retrocession from Japanese colonial rule in 1945, many swiftly grew disillusioned with the KMT regime. An uprising against the KMT governors in Taiwan in February 1947 was ruthlessly and violently suppressed with thousands of deaths, and was followed by decades of exclusion of the Taiwanese from full participation in the government of Taiwan. The refugees who came to Taiwan in 1949 following the defeat of the KMT on mainland China and their children generally speak the standard Mandarin dialect of Chinese. Following its retreat to Taiwan, the KMT regime originally relied heavily on Mainlanders, only moving to integrate large numbers of Taiwanese into its ranks in the 1970s. Taiwanese opposition to KMT rule coalesced first into a loose affiliation known as the "Tangwai" (i.e. "Outside the Party") when no opposition parties could be formed, and then into the Democratic Progress Party ("DPP") in the late 1980s once the formal prohibition on organizing new political parties had been lifted. One of the primary objectives of some members of the DPP has been the declaration of an independent "Republic of Taiwan" and the rejection of the KMT's aspirations to reunite with mainland China at some point in the future. PRC's opposition to such a move is unequivocal, and it has often reiterated its willingness to use force to prevent Taiwanese secession. With this threat in the background, the degree of public support for the independence of Taiwan, and the willingness of the KMT to surrender control to a DPP government should the DPP win power in a future election is unclear today and is unlikely to be clarified soon. The unresolved tensions between the KMT regime and the CCP regime, and between the two largest ethnic groups inhabiting Taiwan today put some limits on the full realization of constitutional rule in Taiwan, although the precise dimensions of those limits is impossible to determine.

ROC legal institutions enjoy a distinctive place in Taiwanese society that reflects a particular culturally and historically influenced conception of the appropriate role for legal institutions. Chinese culture and history have been very significant among the many influences

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subsequent trials had the effect of galvanizing Taiwanese opposition to the KMT regime.

[31]The relationship between sub-ethnic divisions in Taiwan and political transformation are complex, however. While the KMT may resist the transfer of power as a result of sub-ethnic divisions, it may also have motivated the KMT to pursue actively a policy of "Taiwanization" of the KMT in lieu of more formal democratization in an effort to diffuse some of those tensions.

[32]Today there remain on Taiwan few descendants of the original aboriginal inhabitants of Taiwan, although other ethnically distinct groups such has the Hakka people constitute significant minorities. The tension between Taiwanese and Mainlanders in Taiwan is technically sub-ethnic because both groups are members of the same Han Chinese ethnic group who speak different dialects of Chinese, but for stylistic reasons, but for convenience will be referred to as ethnic in this paper.

on Taiwanese society. The ideological emphasis on the importance of human relationships and ethical behavior in Chinese thought militates against assigning legal institutions the same role they play in legitimating the social order in western societies.[33] Yet no society of the magnitude and complexity of traditional Chinese society could operate without some role for legal institutions. The Chinese legal historian Ch'u T'ung-tsu has argued that the resolution of these conflicting impulses in traditional Chinese society was the "Confucianization of law," whereby legal institutions were administered with a view to reinforcing rather than displacing less formal social norms as the basis of the social order.[34] I have argued elsewhere that this same process of reserving a place for legal institutions while subordinating them to the operation of less formal social norms is also operating in contemporary Taiwanese society, and can be thought of as the "marginalization of law."[35] This process of marginalization can be observed in Taiwanese legal institutions in such processes as the persistent, pervasive use of highly abstract, formalistic language to draft laws that are markedly out of step with local social conditions. Where there is a disconnect between the formal requirements of statutory law and normal social practice and government officials have inadequate resources to enforce the law, then they may be in effect authorized to use the law selectively to mete out legal sanctions against individuals who have been singled out for enforcement action based on criteria not specified in the law.

A. Admission to the bar

Following the reform carried out in the late 1980s, the primary avenue for admission to the ROC bar has been examination. In the 1990s, of the several thousand applicants who annually sit the exam, several hundred are admitted to the bar. This represents an increase from an average through 1987 of several dozen each year. In addition, magistrates or prosecutors who have passed a separate examination still enjoy the right after several years to convert their position as a government legal professional into admission to the private bar. While the large increase in the number of candidates passing the bar examination is having a major impact on the legal profession, these increases nonetheless pale in comparison with the astonishing growth in the legal profession in the PRC. Therefore, it would be reasonable to expect that in Taiwan, the legal profession may adapt relatively quickly in response to these changes. Changes in Taiwanese society at large occurring as a result of the increased number of attorneys in private practice, however, may be less significant than those occurring in mainland China due to the much larger growth in absolute terms of the legal profession there. Because the magnitude of the change is smaller both in relative and absolute terms, existing ROC institutions may adapt more easily than PRC institutions struggling to accommodate much greater changes.

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[33]In western societies, the legitimacy of legal institutions is tied up with the evolution of the relationship between church and state from medieval times through the present. See Harold Berman, Law & Revolution book for an introduction to these issues.

[34]Ch'u T'ung-tsu, Law and Society in Traditional China (1961) at 267.

[35]Jane K. Winn, Relational Practices and the Marginalization of Law: A Study of the Informal Financial Practices of Small Businesses in Taiwan, 28 Law & Society Review 801 (1994).

Before the recent reforms to the bar admission system in Taiwan, there were several avenues to admission to the bar that were at least as important as, if not more important than, the official bar exam. These included service as an attorney for one of the armed forces, and passage of a minimal bar examination for those holding positions above a certain rank for a certain period of time within a law faculty in Taiwan. These "backdoors" to admission to the bar were very important when the passage rate for the official bar examination averaged around 1-2% a year, as it did before 1989. For many years, obtaining a J.D. or other advanced law degree in the US before returning to Taiwan to take up a position teaching part-time in a law faculty was a more certain path to admission to the ROC bar than sitting the official bar examination, at least for those with the resources to study abroad.

Those who pass the official bar examination are now required to undergo one month of practical training and five months of working under the supervision of an admitted attorney before being permitted to practice independently. In comparison with the quite high incomes newly qualified attorneys could enjoy in the 1980s when only a tiny number of individuals joined the bar each year, the pay to new members of the bar during their practical training is quite modest.[36] In 1995, it was unclear how dramatic the impact of the sudden increase in the number of attorneys admitted to practice would ultimately be on the incomes of attorneys during the early years of their careers. Attorneys with large firms reported that recently hired recently admitted attorneys often had unrealistic expectations regarding the degree of autonomy they should be granted in their work, which might also reflect conflicting ideas regarding an appropriate rate of compensation for newly admitted attorneys working in large firms as well. Many attorneys reported that it was unclear what impact the increasing number of attorneys admitted to local practice would have on the incomes of attorneys generally because so many recently admitted attorneys had gone to study abroad, had reported for their compulsory military service (in the case of male attorneys), or had moved to the south of Taiwan to establish practices in areas traditionally underserved by the legal profession. Some attorneys speculated that the rising level of demand for legal services caused by the growing sophistication of Taiwan's economy would more than offset the increase in the number of attorneys, so that attorneys capable of delivering the kind of legal services more sophisticated clients were demanding would enjoy rising incomes in any event.

A large amount of legal work is done in Taiwan by legal assistants (fawu zhuli or falu zhuli), who are individuals who have degrees in law, but have not passed the bar examination. While a bar pass rate of 10% is high by historical standards for Taiwan, it is still far below the pass rate of any state in the US, for example. As a result, many individuals wishing to gain admission to the bar must sit the exam several times before passing, and other individuals fail to pass notwithstanding many attempts to do so. Some of these individuals, and others who are content to work in effect as paralegal rather than aspiring to work as attorneys, do a great deal of legal work in Taiwan either as an employee of a business organization or within a law firm.

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[36]In 1995, individuals estimated the normal rate of pay during practical training with a law firm to be the equivalent of US$1,000 to 1,500 a month. This was less than half of what a recently admitted attorney might have expected to earn ten years earlier.

A large amount of legal work is also done by individuals admitted to practice law in jurisdictions other than the ROC. Some of these individuals are foreign nationals, and some are Taiwanese who have studied abroad and gained admission to the bar of some other country before returning to Taiwan. Recent reforms in the regulation of foreign licensed attorneys clarified their right to provide advice to local residents on foreign law.[37] These reforms were made in response to pressure from trading partners such as the US for greater openness of the local Taiwanese economy to trade in services, although local attorneys with no connection to foreign law firms or foreign licensed lawyers had been pressing to restrict their access to the local market. The resistance of local lawyers to any formally recognized role for foreign licenses lawyers in Taiwan stems in large part from a widespread perception that many of the ROC citizens with law degrees earn in Taiwan who are only admitted to foreign jurisdictions are in fact practicing ROC law in Taiwan. This market for "informal" legal services is possible because clients often do not attach much significance to the fact that an attorney may be advising on local law but is only admitted to practice in a foreign jurisdiction.

B. Litigation practice

ROC legal system was modeled originally on the German and Japanese legal systems, although in recent years legislation from the US and other countries in the common law tradition has been quite influential.[38] One consequence of following the continental European civil law tradition in establishing ROC legal institutions has been a relatively greater emphasis on litigation as the core of private practice rather than the more general business counseling function performed by many US lawyers in private practice.[39] In keeping with the different procedural and evidentiary conventions of the common law and civil law systems, the ROC legal system places less emphasis on oral advocacy, oral testimony of witnesses, and procedural requirements for introducing evidence in court.

Attorneys interviewed all agreed that most attorneys in Taiwan practice in the Taipei metropolitan region, most attorneys in Taiwan are in solo practice, and that both civil and criminal litigation is a major component of the work of attorneys in solo practice. Attorneys associated with law firms serving major local companies or major foreign investors, including both local law firms and local offices of foreign law firms, reported that local lawyers who had

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[37]Darryl D. Chiang, Foreign Lawyer Provisions in Hong Kong and the Republic of China on Taiwan, 13 UCLA Pacific Basin L.J. 306 (1995).

[38]See generally, Richard L. Abel, Lawyers in the Civil Law World, in Richard L. Abel and Philip S.C. Lewis, Lawyers in Society, Vol. 2 (1988) at 1.

[39]For a general discussion of the differences between the US and continental European legal professions, including the development of the distinctive US large law firm practice with an emphasis on general business counseling rather than a narrow focus on litigation, see Mark Osiel, Book Review: Lawyers as Monopolists, Aristocrats and Entrepreneurs, 103 Harv. L. Rev. 2009 (1990) (reviewing Richard L. Abel and Philip S.C. Lewis, Lawyers in Society (1988)).

not practiced with the handful of large corporate law offices established in Taipei or received any legal training outside Taiwan had almost exclusively litigation-oriented practices, although this observation was not confirmed by local attorneys. Attorneys in large law firms, whether locally owned or owned by foreign law firms, were also almost uniformly dismissive of the sophistication of locally trained attorneys in solo practice or small firms in dealing with complex business matters.

Attorneys in Taiwan charge clients a lump sum fee for litigation matters, with representation in each instance subject to a separate lump sum payment. Local bar associations publish suggested fee rates, but an individual attorney and client are free to negotiate the amount of the fee either up or down using the bar association figures as a starting point. Only attorneys in local branches of US or other foreign law firms, or in the small number of local law firms organized along the lines of US corporate law firms and service foreign clients are able to charge hourly fees for their work. Contingent fees are not permitted in Taiwan.

The large number of attorneys in Taiwan whose prior practice experience was in legal work for the military were generally reported to focus on criminal litigation in their private practice, although I was unable to interview any attorneys whose legal training was provided through the military to confirm these generalizations. I also had no way to evaluate the reliability of reports that attorneys with military backgrounds were more likely than other attorneys to have clients who expect their attorney to make improper ex parte contacts with magistrates or prosecutors, including offering bribes. In 1994, a survey by the popular newsweekly, Commonwealth Magazine (Tianxia Zazhi), found that the perception that bribery was common and could be effective in influencing the outcome of litigation was widespread in Taiwan, although the perception was more common among persons with advanced degrees and less common among persons with only primary school education.[40]

Some individual attorneys in Taiwan take on selected litigation matters on a pro bono basis, although there is no evidence that such efforts are having any noteworthy successes.[41] An attorney with an advanced degree in law from the US working for a large local firm reported to have close ties to the KMT was permitted by his partners to take appellate cases raising important constitutional law issues on a pro bono basis.[42] The attorney was hoping to establish a ROC constitutional law jurisprudence, although by 1995, he had not managed to achieve any precedent-setting cases. The fact that his law firm, which also has very close ties to the foreign investor community, was willing to support his work, might be an indication that the classical

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[40]Shen Xuying, “Hongbao dan dao, qingtian rang lu?” [Will bribery push justice aside?], Tianxia Zhazhi, July 1, 1994 at 27.

[41] In addition, attorneys reported that the Taipei Bar Association has a pro bono program and some organization such as the KMT provide financial support to legal aid clinics established to represent the poor. I did not investigate these organizations while I was in Taiwan in 1995.

[42]This attorney was also serving as a KMT member of the National Assembly.

liberal ideal of autonomous professional is gaining ground in Taiwan.[43] Another indication that the notion of professional autonomy was gaining some ground came from an attorney who had represented one of the Kaohsiung defendants in 1979[44] and had gone onto represent many more dissidents over the years. This attorney was a recognized expert in maritime insurance law, and had enjoyed a successful private practice with a minimum of interference from the government as a result of his work representing political dissidents even during the period of martial law. He was active today in such organizations as the Human Rights Committee of the Taiwan Bar Association. He also noted, however, that he had not enjoyed any significant successes to date in litigation involving either political dissent under martial law, or more recently, humans rights issues following the repeal of martial law. He observed that although the magistrates before whom he has appeared in such cases seem to be taking his clients' claims seriously, the results have always been disappointing. He also observed that while an individual judge might not have any party affiliation or political bias that would affect the outcome of a politically sensitive case, the opinions of individual judges had to be approved by their supervisors (yuanzhang) before they could be issued, and the risk of political bias among judicial personnel grew at higher levels in the judicial bureaucracy.

C. Legal counselor

Notwithstanding the insistence of lawyers in Taiwan practicing in large US style firms that local attorneys in solo practice or small firms handled litigation matters exclusively, there is apparently a longstanding tradition of local attorneys establishing general legal counseling relationships (falu guwen) with local businesses and individuals and being paid a sort of retainer fee in monthly installments for this service. One attorney estimated that a well known attorney with an established practice might receive a fee of NT$100,000 on an annual basis for a falu guwen relationship with a business whereas a young lawyer new to law practice might only be able to ask for $10,000 a year to establish a similar sort of relationship with a business.[45] The attorney presents the represented business with a framed plaque announcing the relationship which is hung conspicuously in the client's place of business. In return for the fixed fee, a client might expect to be able to call the attorney without charge and receive answers to simple questions; to receive a discount on the lump sum fee set in litigation matters, writing opinions, or drafting contracts; to have the attorney write a letter or two on behalf of the client to resolve disputes short of litigating them; or to receive a newsletter discussing recent legal developments.

D. Transactional and regulatory practice

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[43] It might also be evidence of the sophistication of some lawyers at cultivating a liberal public image for the legal profession that distracts from more critical evaluation of the actual social purposes being served by the work of attorneys. See generally, Steven Ellmann, Law and Legitimacy in South Africa, 20 Law & Social Inquiry 407 (1995).

[44] See supra note xx [cite to Kaplan].

[45] At the time in question, the exchange rate was approximately NT$35/US$1.

Attorneys with foreign legal education or with practice experience at the large firms in Taipei also generally reported that local attorneys in solo practice could not represent clients in what might be large and complex business transactions. This generalization was not wholly inaccurate, but overlooked the degree to which local attorneys in solo practice or small firms might represent local businesses in business transactions such as real estate developments. Many attorneys reported that with the tremendous growth in Taiwan's economy since the 1950s in general, and the high prices for real estate in recent decades in particular, local business people were recognizing the need for lawyers even in transactions between two local parties. One distinction between the transaction practice of local attorneys in solo practice or small firms and that of attorneys in US-style Taipei firms was the ability to charge clients by the hour for legal work rather than being obliged to negotiate a fixed sum at the time the representation was undertaken. Even transactional work done for fixed amounts was increasing in profitability, however, because clients were generally prepared to base the fee at least in part on the value of the transaction which with rising real estate values, had considerably increased in recent years.

With regard to business transactions involving more complex forms of business regulation, however, there appeared to be a consensus that this work was done largely by the large, locally-owned law firms organized like US corporate law firms or by the branches of foreign law firms. This includes work in areas such as securities and bank regulation, foreign investment, intellectual property rights, and international tax. Attorneys working for these firms reported that the increase in the bar pass rate may have been in part a response to the trouble such firms were having hiring local attorneys. In the 1980s, when severe restrictions on the number of attorneys admitted to practice each year were in effect, an attorney who passed the bar exam could immediately set up a solo practice and enjoy a substantial income. Such an attorney joining a US-style firm, whether locally- or foreign-owned, would be expected to work as an associate under the supervision of a partner for several years before being allowed to practice independently. The short-term prospect of working under the supervision of partners for a salary, even when the long-term prospect was access to the lucrative market for representing multinational firms in complex corporate and regulatory practice, was simply not appealing enough to attract many licensed attorneys. As a result, US style firms had an even more hierarchical structure than they have in the US, with a tiny number of partners admitted to local practice supervising a very large number of locally educated and foreign educated legal assistants who were not admitted to practice, and foreign admitted attorneys who were not admitted locally.

E. Lobbying

Many people recognized the concept of lobbying in general, but very few thought that the western idea of lobbying aimed at producing specific legislative provisions to advance a client's interest had much currency in Taiwan. Most observers felt that individuals in Taiwan were very familiar with the idea of asking an elected representative to intervene in some government process in order to improve the odds of a favorable outcome. Such lobbying was thought to be commonplace and generally not to involve lawyers. The local political culture of Taiwan is very well developed, because for years before the lifting of martial law and recent constitutional reforms went into effect, elections at the county and provincial level were vigorously contensted.

The political culture of Taiwan has also been influenced by the single non-transferable vote system, which encourages candidates to take whatever actions are necessary to develop a personal following among voters. Allegations of vote-buying and corruption in political processes are widespread in Taiwan, and clientalist relationships between individual citizens and their elected representatives are common.[46] The strength of this political culture will mitigate against the development of lobbying as a professional service attorneys can provide to their clients, at least in the short term.

The lack of interest among many in Taiwan in the process of lobbying to influence the content of legislation also reflects the relative lack of power of legislative bodies in Taiwan prior to the lifting of martial law and recent constitutional reforms. Until the early 1990s, important political decisions were taken within the KMT and within the executive branch of government, and their formal recognition by the national or provincial legislatures did not involve the exercise of any power independent of KMT controls. With the deepening of democratic reforms in Taiwan, elected representatives have more opportunities to determine the content of legislation within open legislative processes.

A small handful of attorneys with advanced degrees in law from US law schools reported isolated cases of successfully influencing the outcome of legislation through participation in legislative processes. These attorneys reported an uphill battle both in terms of convincing their clients of the value of this form of representation and in terms of gaining effective access to legislators who historically played little or no role in determining the text of legislation. If the success these attorneys enjoyed in persuading lawmakers to reconsider the text of legislation from their clients' perspectives is translated into favorable outcomes for their clients when the legislation is enforced, it stands to reason this type of lobbying might rapidly gain wider acceptance in Taiwan in the future.

F. Local bar associations

Until the repeal of martial law in the late 1980s and the electoral reforms instituted in the early 1990s, bar associations in Taiwan were little more than agencies of government control over lawyers in private practice. Membership in at least one officially registered bar association was mandatory under the Lawyer Law, although attorneys might join more than one bar association. No bar association as such could be formed without being registered with the government.

An informal independent bar association was formed in the 1970s as the Comparative Law Association (Bijiao Faxue Hui). The Comparative Law Association was a voluntary association of progressive-minded attorneys that included lawyers and law professors, including many individuals that became active in the Tangwai and the DPP. More than one attorney

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[46]For an overview of contemporary Taiwanese political processes and an explanation of how the single non-transferable vote system tends to favor well-known candidates at the expense of internal party discipline, see Tien & Cheng.

recalled that government attorneys who apparently wanted to join were prevented from doing so by pressure from the government. Many members of the Comparative Law Association had received some legal education outside Taiwan. One lawyer recalled that the Asia Foundation provided the Comparative Law Association with financial support to send a group of lawyers to the US to study legal aid programs there, leading to the establishment of the first legal aid program in Taiwan.

In the late 1980s, after the repeal of martial law and as the tempo of liberalization accelerated, there was growing pressure within formal bar associations to achieve greater practical autonomy from government or KMT oversight. In 1990, some leading Taiwanese attorneys from major Taipei law firms convinced M.S.Lin, the head of the Taiwan International Law and Patent Office, one of the largest, oldest, locally owned law firms, to lead a successful movement to take control of the board of directors of the Taipei Bar Association away from lawyers with close connections to the government. Following this sudden change in fortunes for the leadership of the Taipei Bar Association, in 1993, progressive lawyers led by M.S. Lin went on to take control of the national federation of bar associations. While the leaders of this movement clearly felt that they were advancing the cause of an autonomous legal profession, many attorneys with mainlander backgrounds or connections to the KMT noted that M.S. Lin did not seem concerned by the apparent conflict of interest arising from his support of the D.P.P. and the newly autonomous Taipei Bar Association's opposition to the appointment of General Hau Po-ts'un as Prime Minister in 1990 under his leadership. Supporters of M.S. Lin's leadership defended the position he took by pointing out that keeping the armed forces and constitutional organs of government separate is an essential element of liberalization and democratization, and that the Taipei Bar Association's opposition to Hau's appointment need not be seen as linked to partisan motivations.

4. Limits to liberalization within Taiwanese society

While considerable progress has been made toward democratizing and liberalizing Taiwanese society, it is also clear that considerable obstacles to further deepening those reforms remain, and that those obstacles may prevent the further progress of Taiwan's legal profession toward the classical liberal ideal of an autonomous profession. The most prudent political outcome regarding the unresolved issues surrounding Taiwan's sovereignty and its relationship to the PRC, and the unresolved issues surrounding ethnic tensions in Taiwan may be to avoid any resolution of those issues. The leadership of the KMT has already substantially devolved to Taiwanese control under the leadership of Taiwanese politicians such as Lee Tenghui. The current KMT leadership has also shown itself to be particularly adept at maneuvering between the more conservative New Party (Hsin Tang) and the more radical DPP and coopting enough of their initiatives to retain its power through elections. It is unclear the degree to which the DPP could divorce itself from the kind of factionalism and money politics that have characterized KMT rule in Taiwan for many years should the DPP actually achieve a clear electoral victory and be permitted to assume power in Taiwan. If DPP uses its political power to advance the interests of certain factions of theTaiwanese majority rather than to advance the liberal ideal of the rule of law in much the same manner that the KMT used its political power to safeguard the interests of the mainlander minority, this would diminish the prospects for further deepening of

democratic reforms. The threat of the use of military force by the PRC is a powerful countervailing force to any impulse on the part of the Taiwanese majority to declare the formation of the Republic of Taiwan, yet few in Taiwan can see any conditions under which Taiwan would voluntarily reunite with mainland China in the near future. The best prospects for continuing advances in political self-determination and economic well-being of the people of Taiwan appears to require leaving these major issues unresolved indefinitely.

One force that for decades has pressed for greater autonomy for legal institutions and greater respect for formal law in Taiwan is the foreign investor community in Taiwan, although it is unclear how this pressure correlates with the deepening of democratic reforms. Multinational enterprises that have invested in Taiwan are accustomed to working through law firms in dealing with ROC government agencies and to having their concerned addressed within the framework of current laws and regulations. None of the individuals I spoke with in 1995 made any reference to foreign corporations feeling pressured to resort to bribery or to mobilizing personal relationships in order to accomplish their objectives in Taiwan. Many individuals reported instead that the observance of legal formalities by foreign corporations created an environment within which local businesses might also enjoy the protections of modern laws and regulations. On the other hand, descriptions of bribery, vote buying or other improper uses of private influence in public processes were common in describing how local people might try to influence the outcomes of legal or political decisions.[47] If these anecdotal descriptions reflect a deeper social reality, it seems likely that legal institutions in Taiwan are currently stratified to some degree, with some layers embodying the ideals of liberal legality to a much greater degree than others. If such stratification is significant and persistent, it might create an important obstacle to the deepening of liberalizing reforms in Taiwan.

While some participants in Taiwanese society (which seems to include more than just foreign investors and political dissidents) may perceive their self-interest to be advanced better by relying on their formal legal rights than on informal networks of personal relationships, there will inevitably be those in Taiwan who believe their self-interest can be better advanced by the continued marginalization of legal institutions. Such individuals might include political leaders of whatever party affiliation who believe that the best form of government for Taiwan is one in which the most important powers of government are concentrated in the executive branch with many fewer powers being exercised by the legislative and judicial branches. Such individuals might include those who believe that control of the government by a single party, whether KMT or DPP, is in their best interests as individuals, and who are not particularly concerned about any larger conception of the public interest. A large number of individuals who prefer marginalized

[47]None of the individuals I spoke with admitted to any first-hand knowledge of bribery or corruption in the administration of the law in Taiwan, but no one suggested that the widespread reports of such practices were simply false. For example, one lawyer explained that prospective clients knew which lawyers could be expected to help make improper offers to judges and prosecutors and which would not, so an attorney with a reputation for being clean would not receive such offers. The same lawyer noted that judges were referred to as “carnivorous” or “vegetarian” based on their reputation for being amenable to improper influences.

legal institutions are likely to be those who feel they can resolve their problems more effectively through informal networks of relationships. If legal institutions in Taiwan remain marginalized, then some individuals in Taiwanese society will play the role of fixer to mediate between interests defined by the informal coercive systems that perform the functions associated with legal institutions in other societies. These individuals may leverage political, social or economic power in order to perform this function effectively. If attorneys in Taiwan are willing to combine the more traditional role of fixer with the more modern role of attorney, then the legal profession may continue to grow in numbers and enjoy considerable economic success without promoting the deepening of democratic and liberalizing reforms. For example, hiring a lawyer to bribe a magistrate or prosecutor because the lawyer has personal connections to the magistrate or prosecutor represents hiring the lawyer to act as fixer, and tends to subvert the effectiveness of legal processes.

To the extent that Taiwanese society is predominantly composed of individuals with a limited commitment to or understanding of classical liberal notions such as individual autonomy, civil society, the public sphere, or the rule of law, it is entirely possible that any attorney who relied too heavily on the classical liberal ideal of disinterested professional might have trouble attracting clients due to a lack of interest among prospective clients in the services such a lawyer would offer. On the other hand, even individuals with a limited appreciation for liberal ideals might appreciate the notion of lawyer as committed, combative advocate or as flamboyant, glamourous agent enough to pay for legal services from such an attorney. Alford has noted the recent rise of this kind of entrepreneurial lawyering in the PRC. As the number of lawyers in private practice continues to grow rapidly in Taiwan, it is possible that this kind of entrepreneurial lawyering will also grow more common there, too, as attorneys seek new ways to enhance the market value of admission to the bar. If the entrepreneurial model of lawyering gains currency in Taiwan, then the same debate over whether the regulation of the legal profession should be modified to take account of the commercialization of law practice could be expected to spread from western nations to Taiwan.

Many attorneys within Taiwan have shown a commitment to advancing the classical liberal ideal of the rule of law. One attorney was instrumental in establishing the Rule of Law Foundation, which he hoped would become a force for positive change in Taiwanese society. Several attorneys reported having worked in an anti-corruption campaign after martial law was lifted that was aimed at cleaning up the electoral process. One of these attorneys emphasized that in the course of this involvement, he discovered that the stereotype of rural Taiwanese as indifferent to corruption in government was untrue.

Many attorneys, however, still show relatively little interest in or appreciation of the notion of a legal sphere divorced from political pressures. In 1995, the then current case of Chen Shui-bien was much discussed as an example of the failure of many involved in the administration of law to appreciate this idea. Several years earlier, Chen had torn up some ballots while serving as a DPP legislator in the Legislative Yuan. The Legislative Yuan, apparently acting through the KMT majority, later referred the matter to an investigating magistrate as a possible violation of the criminal law. When the investigating magistrate later subpoenaed Chen, who by then had been elected mayor of Taipei, Chen refused to respond on

the grounds that the destruction of the ballots had been a political act and that he should be covered by some sort of theory of legislative immunity. Eventually the investigating magistrate issued an arrest warrant to try to force Chen to submit to his jurisdiction, but since Chen was the mayor, none of the local law enforcement personnel were willing to execute the warrant. Chen eventually made a voluntary appearance before the magistrate but refused to answer any of the magistrate's questions on the grounds the matter was political, not legal. The case was extremely controversial at the time, and suggests that either the administration of Chen's case was influenced by the party loyalties of at least some of the legal personnel involved, or that ROC law on legislative immunity needs to be strengthened to be more consistent with Taiwan's vigorous party politics.

5. The effect of forces for regional integration and globalization on Taiwan's legal profession

If Taiwan's lawyers want to play a central role in the next stage of Taiwan's development, that role may be different if that next stage is more dependent on the PRC than on trading partners such as the US, European Union, Australia and other countries with developed modern legal systems. The historical connection between US-style law firms in Taipei, multinational corporations investing in Taiwan, and the promotion of stable, relatively autonomous legal institutions could play a pivotal role in the future shape of Taiwan's democracy if Taiwan continues to grow closer to countries with western-style legal systems, and the foreign interests in Taiwan exercise their influence responsibility. If the interests of foreign corporations in Taiwan are seen as primarily predatory or opportunistic, then their support for more vigorous legal institutions in Taiwan would be limited to protecting their self-interest and not extend to a more general support for liberalization. I raised this possibility with almost everyone I met in 1995, and was unable to find a single individual who would agree that this was a serious concern for the people of Taiwan. It may have been true at one time that some foreign corporations might have sought out trade and investment opportunities in Taiwan precisely because of less rigorous law enforcement or dramatically lower legal standards than would apply to their operations elsewhere, but by 1995, such concerns had apparently been allayed. Many individuals argued that far from being a force of oppression, foreign corporations and foreign law firms had been an important force in supporting liberalization. That influence would become less relevant to the political economy of Taiwan if individual Taiwanese perceive their long-term self interest in closer relations with mainland China rather than in closer relations to North America, Europe, Australia and New Zealand.

Taiwan's economy is growing ever more intertwined with the economy of the PRC. If Taiwan's investors can protect their interests in the PRC and are allowed to enjoy their profits, they will continue to invest. It is unlikely PRC legal system will attain the same level of integrity and stability as than of the ROC legal system in the near future. Taiwanese investors must be finding substitutes for formal legal protections of their interests, given that the PRC legal system is not yet providing Taiwanese investors with the same degree of legal recognition they enjoy under the ROC legal system. While the PRC welcomes Taiwanese investors with open arms, individuals with PRC passports do not currently enjoy the same degree of freedom to move to Taiwan and establish operations there. It is therefore unclear what direct impact, if any, the

growing involvement of Taiwanese investors in mainland China would have on the integrity and stability of ROC legal institutions so long as there is no formal recognition of PRC sovereignty over Taiwan. The relative underdevelopment of PRC legal institutions may have a considerable indirect impact on the practice of law in Taiwan, however, if Taiwanese lawyers actively seek out opportunities to represent local interests in their activities in mainland China.

Taiwanese investors in mainland China may be relying on networks of personal relationships to protect their investments. If so, Taiwanese investors may be relying on the services of fixers on mainland China for protection rather than depend on PRC or ROC lawyers. ROC lawyers may, nevertheless, be able to play an important role as intermediaries facilitating Taiwanese investment in PRC where Taiwanese investors are not content to rely on personal connections alone to protect their interests in the PRC. Liberalization in China may be bringing the PRC practice of law roughly into line with the practice of law in Taiwan ten, twenty or thirty years ago during the heyday of Taiwan's export-led industrialization. Just as many Taiwanese investments in China consist of moving sunset industries from Taiwan to China to take advantage of lower labor costs, ROC lawyers familiar with an earlier generation of more informal business and government practices may find uses in China for skills that may be growing outmoded in Taiwan due to the more rapid pace of liberalization there.

6. Conclusion

This paper has identified three possible future directions for Taiwan's legal profession and considered the likely impact any of those three directions would have on the future of Taiwan current progress toward more liberal economic, political and legal institutions. One future direction would be continued movement toward an independent profession that would enhance the rule of law in Taiwanese society. While Taiwan's legal profession was hindered in the past from playing this role by martial law and one party rule, the process of democratization and liberalization in Taiwan generally is creating more opportunities for lawyers to move the legal profession further in the direction of autonomy and the ideals of professionalism. As long as Taiwan's transition to democracy remains incomplete, whether because of Taiwan's unresolved issues surrounding sovereignty or ethnic relations, or due to the strength of the forces supporting factionalism and corruption in Taiwan's political processes, it seems unlikely that the profession will make dramatic strides in this direction, however.

Taiwan's legal profession is more likely to embrace the model of the entrepreneurial lawyer. The commercialization of the legal profession may be subversive of many classical liberal political ideals, but it is not inconsistent with further advances in the liberalization of Taiwan's economy, and its continued opening to the forces of global competition. Western liberal democracies are struggling with what appears to some to be a rising tide of entrepreneurial thinking within the modern professions, so it seems implausible to think that as Taiwanese society becomes more closely integrated into the global economy, the same forces will not be at work in Taiwan. With less of a history of liberal professionalism to fall back on, however, the idea of exploiting a professional license as a commercial property may prove very compelling in Taiwan. This is especially true if the number of lawyers continues to increase at a rapid pace, creating a large number of newly licensed attorneys competing in a relatively small

market for legal services.

Another possibility is that attorneys will use their license to practice law merely as a point of entry into a relationship with a client and will mobilize a variety of other, more informal forms of coercive social ordering where necessary to achieve a client's objectives effectively. While the sophistication and diversity of Taiwan's connections to the global economy grow, lawyers in Taiwan will have more opportunities to practice law according to modern, western norms. As Taiwan's connections to mainland China grow, however, it is unclear how Taiwanese attorneys will try to define their role in protecting client interests. Taiwanese investors in China will need some form of informal protection of their interests until PRC legal institutions become more sophisticated and more effective. Taiwanese lawyers may be able to parlay their familiarity with both formal legal processes and less formal processes common to both Taiwan and China into a hybrid role as fixer for Taiwanese interests in mainland China.