In a recent article titled “Five signs Taiwan is emerging, not developed,” journalist Ralph Jennings made a series of observations — some of them almost apocalyptic — about Taiwan’s “blind spots” that have undermined its reputation as a developed country. Among those were illegal buildings lacking construction code compliance, the negligence of preserving green space and environmental conservation, passive and underperforming law enforcement, a diminished quality of life due to air and noise pollution, and the uncivilized conduct of its people toward strangers. These inconvenient truths were put to the test on Feb. 6, one night before Asian lunar New Year Eve, when a 6.4 magnitude earthquake rattled Tainan, resulting in more than 110 deaths and 500 injuries. Building construction, law enforcement, and quality of life topped the list that failed the stress test.

Improving Taiwan’s Global Competitiveness: Toward a Safer, Internationally Friendlier Society

Civility, more permissive laws for foreign employment and a more diverse educational environment will help Taiwan along the road to modernity

By C. Ed Hsu
February 15, 2016

http://thinking-taiwan.com/improving-taiwans-global-competitiveness-hsu/
Beyond the debate over “emerging” versus “developed” implicit in Jennings’ article, broader and more essential questions emerge: if disasters are inevitable, what can Taiwan learn from this recent tragedy, and how can it prepare for future ones? To improve its global competitiveness, what can Taiwan do to create a more open, friendlier society to both attract and retain international talent, and thereby enhance its global competitiveness? I do not intend to address all of Jennings’ points, only to suggest a few, relatively simple things that Taiwan can do to improve its position internationally.

**Emergency response: Risk avoidance v. fatalism**

Taiwan experiences more than 500 earthquakes every year, including a few strong ones. Natural disasters caused by typhoons and earthquakes are the norm rather than the exception. Like epidemics such as Dengue Fever, disasters respect no boundaries. Residents of Taiwan must therefore learn to cope with this reality.

Unfortunately, there is a serious lack of risk awareness across Taiwanese society. Many classrooms and conference rooms have only one exit, and the absence of regular drills makes emergency responses grossly inadequate. Fatalism is pervasive and further contributes to uncertainty and preventable casualty when disaster strikes.

These inadequacies call for an immediate plan. To avoid or minimize damage, it is imperative for schools to consider incorporating emergency preparedness and response into educational training. For instance, as Taiwan enters the new spring semester this week, in the very first class session instructors should explain how to recognize signs of an earthquake, where to find shelter for minor quakes, and what to do when a major quake hits. For easy evacuation, they should consider clearing exit row seats near the exit door, and explain where the exits and stairways are, and the reconvening place when the emergency is no longer in effect.

**Employment authorization for international talent**

International talent (e.g., guest workers) are a unique asset for Taiwan, because this community brings fresh training, skills, and diverse perspectives that are complementary to the “island mentality” known to characterize some local residents who have never traveled overseas. After graduating from Taiwan universities, many international students return to their home country and continue to advocate for Taiwan’s meaningful participation in the international system. Therefore, Taiwan should commit to making
its society more open to international talent so that they may reciprocate and offer their strengths whenever the chance arises.

Unfortunately, current laws create substantial barriers that limit the ability of international talent to work and compete against locals. Guest workers are often frustrated in obtaining work permits due to limitations stemming from their foreign status. For example, current laws restrict employment of Taiwan-trained international students, permitting up to only six-month internships after graduation, thus reducing their equal opportunity to transition to gainful employment in Taiwan. As a result, many Taiwanese employers are unable to reap the benefits of locally trained international talent.

For illustration, Article 5-1 of the “Qualifications and Criteria Standards for foreigners undertaking the jobs specified under Article 46.1.1 to 46.1.6 of the Employment Service Act” provides a point system for approving skilled guest workers in 15 job categories of work permits. The minimum-wage test for approval is based on an average wage of NT$48K/month for all job categories. The system of sliding-scaled salary for point assignments should be re-considered. Specifically, the salary scale should be based on the prevailing wages for every professional category (i.e., teachers vs. college professors), not on a mean salary of NT$48K. Moreover, several weighted indicators of the point system for work permit approval, such as “Chinese language proficiency,” “third-language proficiency” and “government’s interest/policy” indicators, are not the most relevant and should be abolished.

In addition, the length of stay for employment after graduation should be extended. Article 34 of the “Regulations on the Permission and Administration of the Employment of Foreign Workers” provides that Type C workers, i.e., international students trained in Taiwan, are only allowed to work for up to six months after graduation. Most developed countries — the U.S. included — offer foreign students of advanced degrees up to one year of practical training after graduation. The six-month work authorization should be extended to benefit students gaining experience, and for local industries needing international talent.

**Diversity in the classroom and society**

The recently elected executive and legislative branches of government bring in a renewed commitment to diversity and equity, with president-elect Tsai Ing-wen (蔡英文) pledging that “...no one, on this land, should apologize for our chosen identity.” This philosophy should be extended to ensure a safer and friendlier
environment for all people in Taiwan, regardless of their national origins.

In education, having diverse viewpoints in the classroom helps stimulate innovation, and later on, may help promote reforms in society. For instance, the NCKU Graduate Institute of International Management has one of the most culturally diverse student bodies in Taiwan’s higher education, represented by more than 26 countries, including Taiwanese students. To develop students’ appreciation for diversity, the faculty proactively encourages students to work in groups of diverse cultural backgrounds to gain intercultural experience. Opportunities exist to honor cultural heritages, promote respects for individual autonomy and freedom of belief. Learning through free exchange of worldly viewpoints helps prepare students, local and international, for a corporate world in local society and in the international arena.

To realize the diversity pledge by the future Tsai administration, as Taiwan becomes more globalized with an increasing diverse international workforce, it should prepare a safe and friendly environment to protect international workers. Hate-motivated crimes must be penalized. There have been increasing reports of physical or verbal attacks against guest workers and international students recently. Taiwan does not have “hate crimes” regulations to discourage hatred-motivated acts, such as verbal abuse or violent behavior resulting from cultural intolerance. To ensure a safe and internationally friendly society, it might be necessary to consider the introduction of “hate crime” laws to discourage such behavior.

**Civil conduct as a way of life**

Local residents can help improve Taiwan’s international competitiveness without either traveling overseas or spending a dime. A good point of departure is in daily activities here at home, by practicing what people in developed countries perform on a daily basis. These could be as simple as:

*Observing the rules of order.* Wait in line while taking public transportation or waiting to purchase tickets. Observe traffic signals and rules. Avoid running red lights or driving/riding in the wrong lanes.

*Respect for and sensitivity to personal, private space.* Lower your voice when in a conversation or at a public venue. Be punctual. When talking to people or attending class, avoid sending e-mails, talking on the phone, or playing on your smartphone at the same time.
This is pure common sense, the kind of civil behavior that people in developed countries engage in daily. By so behaving, one can contribute to the quality of life in society and help move this country from "emerging" to truly developed status.

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In her recent proposal for educational reform, president-elect Tsai Ing-wen announced a plan that would allow Taiwan's fresh high school graduates to directly enter the workforce after they turn 18. The reform package includes an educational savings account with matching state funds, as well as a "flexible work schedule" with benefits and compensation. This form of assistance would help young students who do not have the financial means to attend college while equipping those who embark on a higher education program with more focused goals, more maturity, and a better understanding of the relationship between theory and practice.

Such initiatives mark a small yet significant step in educational reform that could help transform the currently ineffective educational system and create a more equitable, civil society. However, educational reform is not (or should not) be limited to...
enabling employment. A much more fundamental question is whether our schools are preparing young minds to face a complex future. And for this to come about, several other aspects of our education system — the very basics — need remedying. Here we look at two of them: the academic ranking system, and the tension between teaching and research.

**Obsession with rankings**

Taiwan’s fixation with *ranking* as a mark of excellence is a longstanding issue. Many parents compete to send their children to *ranked* schools, while academics compete over *top peer-reviewed* journals for their publications. Unfortunately this ranking-crazy mentality does not help Taiwan’s educators prepare future graduates for a constructive role in society. Instead, it discourages creativity and independent thought. Moreover, those who fail or are de-selected by the educational system bow out reluctantly and often end up marginalized.

The ranking-myth in Taiwanese academia is manifest in the advocacy and requirement for publications in SCI/SSCI peer-reviewed journals (Social Science Index and Social Science Citation Indexed, collectively known as the “*I*” journal). *I* journal publications are required for academic performance and promotion, as well as research grants (e.g., by the Ministry of Science and Technology).

While ignoring numerous other publicly available indices, the *I* journal creates a potential conflict of interest in favor of Thomson Reuters (the creator of the journal databases), as well as listed journals and publishers, some of which come with high publication fees. Furthermore, the *I* journal collection is biased against applied scholarly work (SCI is known to select predominately basic-science journals, with less journals on applied sciences). Lastly, this system encourages a buddy network: some “honorary” co-authors literally loan their names for publication, taking credits from the first author’s work, with the latter expecting returned favors. The *I*-journal game tends to perpetuate a culture of *quid pro quo*, or literally *guanxi*. It is not *what* one knows, but *who* one knows.

The existing *I* journal submission requirement for scholarship review is clearly not working. Taiwan should consider allowing professional society and subject matter experts to decide and recommend public-supported, open-access journals (e.g., the U.S. medical community decision-making role in Medline-indexed journals).

**Teaching v. research**
In its current shape, Taiwan’s higher education system does little to reward good instructors. Faculty members often are advised against “wasting time” working with students. What is needed (and is currently lacking) is a balance between teaching and research, which can only be accomplished if faculty is assigned roles in either the teaching or research tracks. Incentives must be created for good teaching by placing equal, if not more, emphasis on quality of teaching in performance evaluations. As many American universities already do, separate research and teaching faculties must be created so that faculty can do their best job in either field. They simply can’t be expected to do both simultaneously, as is often the case in Taiwan.

In this new, complex age, students must think outside the box on contemporary issues, such as Taiwan’s history and relationship with China. Younger generations are expected to exercise critical thinking when challenged by conventional wisdom. Students should be trained to voice dissenting opinions sensibly, by not only articulating problems, but by researching solutions to the problems. To stimulate classroom interactions, instructors should require students to ask questions, and provide comments in every class as the basis for participation grades. Doing so will help foster a culture of proactive participation for future meaningful civic engagement.

Ed Hsu is a professor at the NCKU Institute of International Management in southern Taiwan. A Tainan native, Hsu returned to Taiwan after decades of academic life in the U.S. He is interested in improving cultural understanding between southern and northern Taiwan, and Eastern and Western societies. He can be reached at cedhsu@mail.ncku.edu.tw
Ending Bad Oil: Deterrence and Compensation

Current regulations pertaining to food safety are insufficient, and repeat offenders often get away with their crimes. What can be done to fix the system?

By C. Ed Hsu
November 26, 2014

The recent tainted food oil scandals in Taiwan have highlighted the ineffectiveness of the nation’s legal system and poor government oversight in regulating food products. The system fails to deter repeat violators of food safety laws, and do not duly compensate victims of the crimes, who might develop
long-term, adverse health conditions over time as a result of consuming contaminated products.

Failure to ensure food safety and administrative oversight discredits the government at a high price. It damages domestic and export markets. The government predicts that the scandals will have a sizeable toll on Taiwan’s exports, with estimates of NT$124 billion (US$4.02 billion) this year. At the other side of the spectrum, compensation for the victims is insufficient; legal remedies for the victims are limited, with the result that many consumers can only resort to passive reactions such as boycotts and street protests. Fines payed by offenders often go to the government, rather than to injured consumers. Finally, failure to prove immediate, manifested physical injuries from the food consumption makes it nearly impossible for victims to receive compensation.

Repairing the legal loopholes is central to safeguarding public health and avoiding future violations. This article explores the challenges of the tainted oil scandals, including problems with current laws, and discusses opportunities for legal reform and compensation mechanisms.

Legal challenges: scope of violations and repeated offenses

Ineffective regulatory oversight of food oil products is underscored by the scope of violations and increased culpability, and repeated offenses commited by the manufacturers. This is alarming, given that the recently amended governing authority, the Governing Food Safety and Sanitation Act (食品安全衛生管理法, GFSSA), stipulates broader protections. However, the law remains unable to deter major offenses. Several
manufacturers, such as Ting Hsin International Group and Chang Chi Foodstuff Factory Co have committed repeat offenses of increasing severity. These offenses range from adulteration of food oil products (e.g., olive oil mixed with soybean oil), fraudulent misrepresentation (by adding banned ingredients such as preservatives or emulsifiers into consumption food products, and labeling oil intended for animal consumption as for human consumption), to strict liability offense (e.g., plasticizers found in beverages, or polychlorinated biphenyl, or PCB, added to cooking oil).

The loopholes in food safety regulations may therefore have incentivized perpetrators to “game the system.” Repeat offenses that recently made the headlines have underlined the reality that the GFSSA is neither a proper deterrent nor an effective means to end recidivism: Ting Hsin, which 30 years ago was caught adding PCB, a dioxin compound and carcinogen, to its products, was allowed to return to Taiwan after a long exile in China. The Act is also not effective in deterring repeat offenses due to its failure to ensure proper compensation for victims, and the statute of limitations furthermore complicates matters.

**Problems with legal loopholes**

Loopholes in the GFSSA may therefore have contributed to increased offenses. First, current labeling requirements fail to ensure that additives in food oil products are appropriately labeled; as a result, consumers do not have all the information they need to make informed decisions. For example, Article 32 of the Act requires all food manufactures to keep records of ingredients for five years. However, it does not require the disclosure of all additives in the products, possibly due to trade secrets or to comply with international
trade regulations. Meanwhile, Articles 22 and 24 require disclosure with clear labeling of ingredients and additives, but violators face only a combined five-year prison term and a fine of no more than NT$8 million, or seven years with less than NT$10 million for causing physical injuries. Such moderate penalties are clearly ineffective in preventing violations.

Second, barriers to trial discovery and proof. The GFSSA does not provide pecuniary awards to the victims: Even if the victim(s) sue to recover, and even if the defendant has demonstrably been negligent in his duties by using poisonous additives; absent material bodily injuries the victims are unlikely to succeed in the action. For example, court action two years over the addition of plasticizers in President Enterprise’s sports drink Bao Chien failed due to the inability of the plaintiffs to demonstrate bodily injuries or injuries to health.

Third, the statute of limitations often undermines the viability of a claim. An associated problem with the difficulty of proof — common to cases involving exposure to contaminated food and environmental toxins — is lag time between the exposure (consumption of tainted food) and onset of the disease. Several chronic diseases, including cancers that are known to be triggered by such carcinogens as PCBs and dioxins, usually take years to decades to develop clinically. Consequently, clinical manifestations can occur well after the statute of limitations has expired.

The GFSSA provides a statute of limitations of up to 20 years, but the latency of disease development may exceed that period: several PCB-related legal cases in the U.S. found it took between 15 and 40 years for PCB to develop clinical manifestations (916 F.2d 829, 852 (3d Cir. 1990)).
Fourth, given the substantial time lag between tainted food consumption and clinical manifestation, there are limited legal remedies for the victims to monitor the long-term health effects or the slow progression of the diseases as a result of the exposure/consumption.

**Medical monitoring/surveillance torts**

There are usually two ways for victims to receive relief in public health-related actions: the government exercises *parens patriae* to press charges against the manufacturers for a prison term and fine (to the government), or the plaintiffs bring a civil action under tort such as negligence, only to fail, as we have seen, due to the lack of physical injury.

Lacking proof of material injuries renders recovery unlikely. Therefore, compensation of medical monitoring of disease development should be taken into account. Starting in the 1990s, U.S. courts have ordered such financial compensation with increasing frequency in PCB-related tort cases and in cases involving second-hand smoke in tabacco settlements. To date, almost half of the U.S. states recognize medical monitoring torts.

Medical monitoring originated in common law to compensate plaintiffs exposed to various toxic substances, while the diseases caused by this exposure are often latent. It is well justified and should be considered in Taiwan to protect public health. It is a cost-effective means to avoid future costly medical expenses, and does not require courts to speculate on the probability of future injury. It merely requires that the courts ascertain the probability that the far less costly remedy of medical supervision is appropriate.
The four-prone test of a medical monitoring claim is easier to satisfy than a traditional negligence tort:

(1) Plaintiffs were significantly exposed to a proven hazardous substance through the negligent actions of the defendant. In the tainted food oil case, the victims (the “plaintiffs”) consumed tainted oil products and were exposed to the toxins;

(2) As a proximate result of exposure, plaintiffs suffer a significantly increased risk of contracting a serious latent disease. Court-appointed technical experts (e.g., epidemiologists or physicians) provide either testimony or deposition that plaintiffs are subject to an increased risk of developing disease X.

(3) That increased risk makes periodic diagnostic medical examinations reasonably necessary. A court-appointed technical expert acting as an expert witness would attest to the efficacy of periodic diagnostic exams, and discuss the potential gains (in savings of long term health effects or medical expenses, etc) that warrant the allocation of resources for the examinations.

(4) Monitoring and testing procedures exist which make the early detection and treatment of the disease possible and beneficial. Tests should be in place to screen or monitor early onset of the diseases resulting from consumption of the tainted food.

A prerequisite for the “medical monitoring” tort to become successful is the professional testimony delivered by expert witnesses, who are “technical experts” (鑑定人) as defined by Taiwan’s civil and criminal procedure laws. These are not exactly the
same expert witnesses as those in U.S. courts. In Taiwan, technical experts’ qualifications, education and experience have yet to be formalized in law.

Opportunities for legal reform on food safety

The first step would be to require the mandatory registration of all additives in food products. Current practices of reporting of food additives do not work, since many manufacturers fail to register critical food additives. Consumers have the right to know what additives are present in the food they purchase, and the laws should reflect that right.

A second requirement would entail amending the GFSSA to relax the statute of limitation for public health violations such as the intentional tainting of food.

Lastly, regulations should be amended to facilitate compensation for the medical monitoring of victims of tainted food crimes. Moreover, an expert witness law should be introduced to prepare and incentivize technical experts to provide reliable and admissible evidence to aid trials of tainted food cases.

C. Ed Hsu is adjunct professor teaching policy and health management in California. He is currently on leave in Taipei and can be reached at: chsu@faculty.umuc.edu

2 Responses to “Ending Bad Oil: Deterrence and Compensation”

November 26, 2014 at 5:28 am, TaiwnLawBlog said:
What would be a memorable way to celebrate Valentine’s Day this year? For many residents of the Neihu and Nangang districts in Taipei, it will be to exercise their constitutionally guaranteed right as citizens to recall an incompetent lawmaker — Alex Tsai (蔡正元) of the Chinese Nationalist Party (KMT). The irony is, the government asks you to act by recalling only in secrecy: Don’t ask, and don’t tell anything about the recall campaign.

The Appendectomy Project — a campaign initiated by civic groups, students and academics — has an ambitious mission: To ensure accountability by reviewing campaign promises by elected officials, and removing incompetent ones from office. This has never been
done in Taiwan, at least not in the past 40 years, since the amended Election and Recall Law came into force. Late last year, the campaign satisfied requirements for the first two stages of the process: a signature drive and endorsements (2% and 13% of the constituents from the electorates, respectively). The next step is the recall itself, which needs approval by 50% of the constituents of the two districts on Feb. 14.

Responding to the recall campaign is highly legitimate on both moral and legal grounds. By overcoming both legal and human-created barriers to the recall, the people of Taiwan are likely to break new ground in democratic progress.

**Tsai’s failures on moral grounds**

Morality, broadly defined, is the quality of acts being in accordance with standards of right or good conduct. By many accounts, Tsai has failed to meet those standards, such as in the delivery of his campaign promises to his voters; his unethical and unprofessional behavior in the Legislative Yuan; and mismanagement of KMT candidate Sean Lien’s (連勝文) mayoral election campaign.

Mr. Tsai has failed to fulfill his promises to represent the constituents in his districts. According to a congressional watchdog, Tsai has among the lowest attendance records at the legislature (54%) since 2008 and has been at the bottom of the attendance records in the past 12 legislative sessions. In the 2004 legislative sessions, not only was he also on the lowest attendance watch list, his numbers were even lower than that of legislators representing remote districts. For that period, he was at the very bottom in terms of sponsorship of new laws or introduction of amendments (n=2).

In addition, in recent years Tsai has consistently voted exclusively along the party line, and failed to deliver his promises to represent the constituents in his districts.

As Lien’s campaign manager during last year’s Taipei mayoral election, Tsai made public independent candidate Ko Wen-je’s (柯文哲) confidential campaign strategies, which he acquired via unnamed sources and perhaps even by illegal means.

Moreover, Tsai has often made discriminatory and inflammatory remarks, highlighting his intolerance against new immigrants and individuals with special needs.

In a legislative session on the children of immigrants, Tsai said, “The second generation of new immigrants will be a hidden threat to society.” Several advocacy groups accused Tsai of making “abusive accusations” under the umbrella of freedom of speech in the
legislature. On the campaign trail for Mr. Lien, Tsai jokingly alluded to Ko's alleged condition (Asperger's Syndrome) as the three “Fakesperger's symptoms,” comments that were grossly insensitive to people living with such disabilities.

**Borderline illegal acts**

Of the laws that Mr. Tsai did introduce, many represented the objectives of the wealthy and vested interest groups. Among other things, he co-sponsored a gambling law in Taiwan, and was extremely supportive of the violent removal of students and journalists during protests over the Cross-Strait Services Trade Agreement (CSSTA) with China last year.

With regards to the gambling law, Tsai and fellow legislator Chen Ching-chang (陳慶堂) jointly introduced a controversial law aiming to profit the developers of the so-called “Taoyuan Airport City,” a troubled endeavor approved by former Taoyuan county commissioner John Wu (吳志揚) that is now under investigation.

Tsai also stands accused of abusing his legislator's privileges on budgeting. He took advantage of such instruments to silence his opponents. Among other things, he threatened to reduce the budget for Academia Sinica, the nation's top research institute, by half, in an attempt to silence Huang Kuo-chang (黃國昌), an active advocate against the monopolization of the media and Chinese influence in the sector, as well as a strong supporter of the Sunflower Movement. By doing so, Tsai infringed on free speech and abused the powers and privileges that were granted him by the people.

**Barriers to recalling elected officials**

Several barriers exist to prevent a recall.

First, Taiwan legislature has set a high bar to avoid the recalling of legislators becoming a reality. As discussed earlier, there are three stages to make a recall happen: the 2%, 13% and 50% requirements. Such a high bar constitutes an unreasonable barrier for citizens to exercise their right to recall unfit elected officials.

Second is the reduced availability of voting stations and booths. The number of voting booths and locations in Neihu and Nangang has shrunk by more than 40% — from 258 in the 2014 elections to 135 at present. By doing so, the Central Election Commission (CEC) has created another barrier for the voters in Nangang and Neihu who wish to exercise their recall rights on Feb. 14 (between 8am and 4pm).
Third, neither advertisement nor promotion of the exercise is allowed. The CEC emphasized that although the recently amended Election and Recall Law authorizes advertisement for a recall campaign, it will not be effective until after Feb. 14, 2015. That is to say, advertising or promoting the recall event, in any shape or form, remains strictly prohibited.

A milestone in Taiwan’s democracy

If successful, the recall campaign will mark a milestone for Taiwan’s democracy. The campaign is the very first time that the Taiwanese public exercises its right of recall guaranteed by the Constitution. The unreasonably high requirements to initiate a recall are a barrier, and as such a reminder that further amendments to the law are needed to render recalls more feasible and thereby increase the accountability of elected officials.

Though Tsai is the first target, voters should closely monitor all elected officials and hold them accountable. Politicians should know that winning an election no longer means entitlement and access to power and privileges alone. As the Chinese saying goes, it’s not just a golden rice bowl, but also a commitment to deliver public services.

All campaign promises should be carried out to the extent possible and highly scrutinized by the public. We are in the first miles of a journey to demand accountability from all elected officials, a journey that is long overdue.

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One Response to “Total Recall: A Demand for Accountability From Elected Officials”

February 05, 2015 at 11:17 am, Philip Liu said:

Yes! A milestone indeed! Wishing you a successful campaign!

Reply
The explosion in social movements in Taiwan’s dynamic society in recent years has sparked intense debate on the appropriate use of police force and increased demand on its justifications. In a recent article on Thinking Taiwan, J. Michael Cole expressed legitimate concerns on new guidance from the police regarding designated “press areas,” purportedly to “accommodate” journalists but evidently intended to restrict the freedom of speech guaranteed under the

The Case Against the Legality of ‘Press Areas’

The idea that ‘press areas’ are needed to protect the physical safety of journalists may sound sensible, but it is not legally defensible

By C. Ed Hsu
January 7, 2015

The explosion in social movements in Taiwan’s dynamic society in recent years has sparked intense debate on the appropriate use of police force and increased demand on its justifications. In a recent article on Thinking Taiwan, J. Michael Cole expressed legitimate concerns on new guidance from the police regarding designated “press areas,” purportedly to “accommodate” journalists but evidently intended to restrict the freedom of speech guaranteed under the
Constitution [Editor’s note: heavily criticized by media and Taipei Mayor Ko Wen-je, law enforcement authorities have announced that the new rules will not be implemented for the time being].

At the heart of this initiative is a delicate balance between protection of people’s right to know and enforcement of law and order. Lessons drawn from the Western world, which has some experience with designated press areas, can contribute to informed discussion.

To this end, this article first evaluates the use of “press areas” to protect members of the press. With a review of relevant U.S. case law and Taiwan’s legal system, it discusses the manners and conditions for designating such areas, and secondly argues the need for “medical areas” in cases where activism persists for an extended period of time.

Protecting the physical safety of journalists: a valid account?

A major cause advanced by Taiwanese police for establishing the “press areas” was to “protect the physical safety of journalists.” The cause has intuitive appeal since public safety is within the police’s responsibility. However, this protection may not appear valid based on the following analysis.

First, freedom of speech protections are guaranteed in Article 11 of the Republic of China (ROC) Constitution — Taiwan’s de facto constitution. Based on the legal hierarchy of the Constitution commensurate with the U.S. Supremacy Clause, any attempt to restrict speech — such as dissemination of free speech by restricting members of the press in designated press areas, even in the name of protection — should be subject to
heightened scrutiny, unless provisions in the Constitution otherwise override such protection.

Second, the account of “protection” was rejected in a landmark case in the U.S. In LEISERSON v. CITY OF SAN DIEGO, 184 Cal. App. 3d 41 (1986), a camera crewman sued the city for his arrest by a police officer for filming the site of a plane crash in a San Diego, California, suburb, in which 150 people were killed. The court had found that when police had reason to believe, with probable cause, that criminal activities were underway pending investigation, it could restrict the general public, including the press, from entering the scene. However, after the appeal, the court ruled that the public’s right to know outweighs the need to restrict journalists’ access to a zone of danger, on grounds of the “assumption of risk.”

Here, after receiving the proper warnings issued by the police, if a journalist still insisted on entering a zone of danger, he assumed the risk of any foreseeable injuries associated with the voluntarily entry for performing his duty. Such “assumption of risk” is a complete defense against any liability attached to the police’s inaction, for any and all potential injuries inflicted from a journalist’s voluntary acts.

Several cases in California, in addition to LEISERSON, have shown that the police was relieved of liability given proper warning and on victims’ assumption of risk. (Davidson v. City of Westminster (1982) 32 Cal.3d 197 (no duty to protect potential crime victim); Harris v. Smith (1984) 157 Cal. App.3d 100 (no duty to protect other motorists from drunk driver.).

Therefore, “protecting the physical safety of journalists” is arguably a plausible, rather than a legally defensible, rationale for “press areas.” It does not consider journalists’ voluntary assumption of risk. It has
been rejected by several legal precedents and furthermore risks violating the constitutionally guaranteed dissemination of free speech. Therefore, any restriction on press freedom, such as through the establishment of “press areas,” should pass stricter evaluations.

Manners and limitations of ‘press area’ designation

In the U.S., police can by law either close or restrict public access to a newsworthy event, with an intent to protect public health or safety, while allowing specially authorized access for press coverage to satisfy “the right to know” of the general public (CAL. PENAL CODE § 409.5(a)(d)). A review of relevant case law indicates that the U.S. Supreme Court implicitly recognizes that, at least in some circumstances, the press has a constitutionally protected special right of access as specially authorized representatives (Precella, 1990).

The protected access privilege is so granted contingent upon journalists’ not interfering with emergency operations or crime investigations. Unless the police reasonably believe that a site is a crime scene — from which members of the press have traditionally been excluded — freedom of press coverage should be unrestricted.

One such practice is the establishment of a cordoned-off “press area” at the edge of, say, a crash site, from which the general public is excluded. When such measures are necessary, it is incumbent upon the police to show that (1) the designated access area enables the maximum access possible under the circumstances, and (2) the police clearly inform journalists of the availability and location of the designated area(s).
Designated ‘Medical Areas’

Relevant to the “press areas” designation is the establishment of “medical stations/areas” for activist movements that persist for an extended period of time. This discussion is particularly timely, as recent protests have increasingly led to the forceful removal of healthcare providers from the scene by police.

The presence of healthcare providers at a protest site is protected by both international and domestic laws. The United Nations’ social and economic cultural agreements provide guidance forbidding interference with healthcare providers, or use coercive means to threaten, remove, or arrest health station/health workers at a site. Domestically, Article 106 Section 2 of the Medical Treatment Law provides sentencing of up to three years in jail for those “destroy medical institutions and other life-saving facilities, endangering other’s life, body and wellbeing.” Section 3 prohibits the use of coercive force to threaten, remove or arrest healthcare stations/healthcare workers in a way that interferes with service provisions. Additional punitive damages are assessed for actors who are civil servants, such as the police force.

Therefore, in light of the increased threats and coercion seen in Taiwan in recent years — including the forceful removal of healthcare providers — it is important to not only define the terms and conditions for establishing “press areas,” but also “medical areas” to protect the safety and liberty of protesters.

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Restoring trust and confidence in the police force has become increasingly important in light of the highly active civil society that made headlines last year. The Taiwanese public expects accountability from the
police. Imposing “press areas” may not satisfy such expectations; “medical areas” will.

C. Ed Hsu is adjunct professor teaching policy and health management in California. He is currently visiting at NCKU in Tainan and can be reached at: chsu@faculty.umuc.edu

One Response to “The Case Against the Legality of ‘Press Areas’”

January 07, 2015 at 10:00 am, Brian Dawson said:

I think this article just says it all!

Reply

Comments are welcome, but will be moderated. Remarks containing abusive language, personal attacks or self-promotion will not be published. We encourage healthy discussion and, above all, tolerance of other’s views.

MORE SOCIETY & CULTURE

Monday Horror Renews Debate on (and Thirst for) Capital Punishment
J. Michael Cole

Where is the Christian Left in Taiwan?

http://thinking-taiwan.com/the-case-against-the-legality-of-press-areas/
In addition to making a compelling case for Taiwan's self-determination as her inalienable right, a recent article on Thinking Taiwan paid tribute to the recently deceased Oliver Chen, a rising legal professional who played a key role putting international media in touch.
with the Sunflower Movement during the occupation of the Legislative Yuan earlier this year. The article concluded with a resounding affirmation that one should “continue the battle to make sure that Taiwan’s voice is heard.”

On this note, a sensible way to celebrate Chen’s life and passion is to further his work of making sure that Taiwan’s voice — arising from the grassroots — is not only heard, but that it becomes loud enough to bring about change. The timing could not be better, as thousands of people in Hong Kong protest against China’s control of its democracy. Residents of the Special Administrative Region face similar challenges getting their voices heard and rallying international support.

This article explores factors that can contribute to effective grassroots advocacy, with special attention paid to the techniques used by the Sunflower Movement. It critiques recently employed applications of electronic media to bring awareness of civic activism, and offers observations and recommendations on strategic approaches for using these methods to communicate with the international community.

Part I looks at the sign-on petition to the U.S. White House; Part II (to be published separately) will concentrate on the strategies used by citizen journalists, including the use of audio-visual presentations (e.g., the distribution of video material to news outlets by I-Reporters), as well as the production of documentary movies drawn from the author’s recent, empirical experience.

**Petition to the White House**

During the Sunflowers’ occupation, grassroots activists launched a petition using the U.S. White House “We the
People” Website, which engendered active participation from both within Taiwan and abroad. The campaign, which urged the Obama administration to oppose the Cross-Strait Services Trade Agreement (CSSTA) with China, received 110,000 “signatures” within a month from users from Taiwan and elsewhere around the world, exceeding the 100,000 signatures threshold necessary to trigger a response from the White House. In brief, citing violations of procedural and substantive justice by the Ma Ying-jeou administration in the CSSTA approval process, the petition touched on injuries that Taiwan might sustain upon its approval, including a compromised democracy as a result of the incremental influence from China. The full petition read:

“WE PETITION THE OBAMA ADMINISTRATION TO:

Oppose Trade Agreement Between Taiwan and China

President Ma is trying to ignore normal review procedure and enforces to pass the trade agreement between Taiwan and China without any line-by-line review. This agreement will only benefit the China economy. Moreover, Taiwan will be invaded gradually: Taiwanese democracy will erode [sic] by Chinese dictatorship.”

At issue here is how effective — in terms of its impact and relevance — was the advocacy campaign? In other words, with more than 110K signatures gathered, was the petition relevant and impactful, to the extent that it was likely to induce an intervention from the White
House? If not, what are lessons learned that might refine future action?

Although some may be tempted to view the petition as a success based on the number of signatures, others might have reservations as to its impact. My overall evaluation is that at best the petition was effective to the extent that it raised awareness; it was, however, less effective in making a tangible impact by inducing favorable U.S. reactions and bringing about change. Legally speaking, the petition has yet to include the critical elements of effective advocacy: the establishment of due jurisdiction, as well as a proper basis for seeking assistance.

The well-pleaded complaint

One helpful approach drawn from the legal world to advancing an effective grassroots advocacy petition of this nature is to include the elements of a well-pleaded complaint. Under the well-pleaded complaint rule, making a complaint — the petition — effectively should include elements such as a court’s jurisdiction (e.g., federal or diversity); the basis for the relief claimed (i.e., legally relevant laws and alleged facts); and the demanded damages for relief (e.g., declarative relief such as an injunction). Therefore, if the facts alleged in a complaint do not demonstrate an issue involving federal law pertaining to the plaintiff’s right to a cause of action, and if there is no question of federal law, the U.S. can safely ignore the petition, literally.

Although the petition per se is not a formal legal complaint, the nature and extent of the petition involving U.S. laws is. On this note, the well-pleaded complaint doctrine discussed here may serve as a point of reference for understanding the elements that characterize a convincing and persuasive petition.
First is a court’s jurisdiction that establishes the U.S.’ responsibility to respond to the petition. In this case, because what governs the U.S. federal government’s action is the Taiwan Relations Act (TRA) — an act of Congress — it should be clearly stated as such, so as to establish a federal-question jurisdiction for the petition/complaint. In the present case, the petition failed to make any reference to the legal authority that was relevant to the alleged violations. Consequently, the U.S. had no jurisdiction or legal basis to intervene.

Second, the petition should document the legal basis for the alleged violations, and prove the facts of their relevance. The petition should articulate a legal framework for the complaint, i.e., the Taiwan Relations Act, and clearly demonstrate that absent U.S. action, how the parties may be injured — and of an equal importance, how U.S. interests may be adversely affected. The TRA stipulates that the U.S. government should closely monitor developments, and act preemptively, in due course by invoking Taiwan Relations Act of 1979, “… to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan,” when a situation escalates to a level that warrants U.S. intervention. The language seems to underscore that the security and stability of Taiwan is in the U.S.’ best interest.

Here, the petition cited that “… President Ma is trying to ignore normal review procedure and enforces to pass the CSSTA without any line-by-line review”, which “… will only benefit the China economy.” Will this affect Taiwan’s security and stability? Possibly, but the argument lacked clarity, and as such was not very persuasive. On the other hand, the last sentence in the petition may be more relevant, “… Taiwan will be
invaded gradually: Taiwanese democracy will [be eroded] by Chinese dictatorship.” This is clearly more relevant to Taiwan’s security and stability and should be expanded accordingly to establish its relationship with US interests.

Third, the petition should prove any foreseeable injuries that might incur with legally significant facts, and articulate demands for relief, such as a declarative relief in the form of a preliminary injunction. Here, the petition requested the Obama Administration oppose the CSSTA without demanding any form of tangible intervention, such as injunctive relief. To make it effective and impactful, the “opposition” could be reduced to more tangible intervention.

So, based on the U.S. response, how effective was the campaign? The petition has yet to prompt a response from the U.S. government. For example, commenting on the movement, a U.S. State Department spokesperson affirmed that Washington supported Taiwan’s “vibrant democracy,” “robust political dialogue” and — in an apparent reference to the Taiwan Relations Act of 1979 — the U.S. reassured its confidence that the (largely student-led) protests against the CSSTA may not “spread and destabilize Taiwan.” Clearly, these are legally relevant facts that could trigger U.S. action against coercive forces that “jeopardize the security, or the social or economic system, of the people on Taiwan” as authorized by the TRA. Judging from the U.S. response, it appears that the petition served a declaratory purpose, as it raised awareness by internationalizing the protest; however, it fell short of making the case to warrant substantive U.S. support for an intervention.

Therefore, as is required for a well-pledged complaint, it is incumbent on the petitioners to make a clear case that the CSSTA approval process, and the ensuring
injuries that Taiwan might sustain, could constitute a coercive force that threatens Taiwan’s security and stability.

Last, a few caveats to the petition on the “We the People” Website. What happens if most of the petitioners are non-U.S. citizens? Can they still file the petition? It is possible, if and when the petitioners can make a case for the nature of the petition to establish a federal-question jurisdiction, and prove material injuries to the U.S. absent U.S. government action. In addition, the delivery of the petition should be improved. As well-intended as the petition is, to be taken seriously the petitioner(s) should exercise due diligence in proofreading the final draft, and make sure that it is grammatically correct by writing conventions before posting it for signing. A polished petition that is error-free would be more likely to be persuasive and convincing, and stands a better chance of being taken seriously and receiving a favourable endorsement.

By strengthening the elements of a well-pleaded complaint, improving on its delivery and selecting an appropriate advocacy forum, the petition could potentially be legally relevant and impactful. Alternatively, petitions of this sort could also be submitted to other advocacy platforms, such as Amnesty International or change.org.

Part II of this article will focus on “citizen journalists” and their approach to effective advocacy, including publishing in media such as I-reporters or presenting documentary films in international festivals.

Ed Hsu is a documentary producer and professor from Tainan, Taiwan. He directed the documentary One Voice–Occupying Taiwan Congress, an official selection...
at the New Taipei Film Festival and California
International Film Fest at Glendale, CA. Hsu studied law
at the University of California, Hastings College of Law.
He is currently an adjunct professor teaching policy and
management in California.

One Response to “Making Grassroots Advocacy Relevant to International Society”

September 26, 2014 at 2:46 pm, Robert Pratt said:

As a huge fan of quality writing and Taiwan myself, I want to
send a MASSIVE compliment to the team at Thinking-
Taiwan!

The editor of this site seems to have a quasi-magical power
to attract submissions from some of the best global minds
regarding Formosa, and what’s in her best interest in the
long term. The stuff posted here at T-T has been some of the
best I’ve seen anywhere. I’ve lived and loved Taiwan for 13
years, and I know the facts on the ground. (literally, watch
my Da Ai TV video)

While there have been substantial numbers of truly brilliant
and well-researched pieces posted here, this time I feel I
must speak out with words of encouragement. This is TOP-
SHELF research, writing, and imagination. This writer has a
very clear grasp on the concept, which flows throughout the
story. Plus, it’s full of Seeds of Thought.

In other words...

YOU’RE DOING A GREAT JOB, THINKING-TAIWAN! KEEP
😊 UP THE GOOD WORK!

Your Fan,

Torch Pratt

(search my name and the TT if you want some learnin’.)
A Toolkit for the Citizen Journalist

In part II of the ‘Making Grassroots Advocacy Relevant to International Society,’ Ed Hsu turns to the new phenomenon of citizen journalism.

By C. Ed Hsu
October 6, 2014

Part I of the series offered advice on how to petition the U.S. White House by introducing a “well-pleaded complaint” (WPC) doctrine drawing from legal practice to illustrate how to present a convincing and persuasive petition to the international community. The WPC doctrine includes the elements necessary for establishing jurisdiction of the courts, as well as the bases and demands for relief.
To appreciate how the doctrine may be applied in action, we now expand it by employing an analysis framework (by the Issue, Rules, Analysis and Conclusion, known as “IRAC”) in the context of the Sunflower Movement in Taiwan.

Furthermore, in light of tightened media controls in China and an imbalanced of coverage in Taiwan, this article focuses on the “citizen journalists” approach to effectively communicate with the international community. Among other things, this includes presenting documentary films in international film festivals and publishing videos in media Web portals (such as I-reporters). It explores other approaches to getting activists’ voices heard through an effective use of new media with easy access. It shares the roads travelled and lessons learned from the author’s empirical experience using these methods.

Lastly, this article concludes with what Taiwanese and Hong Gong expats can do overseas by employing the aforementioned methods to raise international awareness and support for democracy in their home countries.

An IRAC Analysis

A useful conceptual framework for preparing an effective petition by applying the WPC doctrine is demonstrated in the IRAC method. First, a “well-pleaded complaint” could be expanded to include the legal issue in question, the relevant rule (laws) associated with the issue, the legal basis invoked by the alleged violations, followed by an analysis including a breakdown of the rule elements, and a proof of the elements with supporting facts. The result, as to what level and extent of supporting facts prove the rule
elements, will be the basis of the conclusion.

For the purpose of illustration, let us apply the IRAC to the White House petition urging the Obama administration to oppose the Cross-Strait Services Trade Agreement (CSSTA).

To begin with, the issue of legal/law question is whether the CSSTA could induce coercive forces that jeopardize the security, or social and economic system of Taiwan, and as such violate the Taiwan Relations Act (TRA). The next step is analysis. Analysis is the application of facts to the rules. It should focus on proving alleged violations of the law by linking supporting facts to breakdown of law elements. The petitioners should seek to prove that the implementation of the CSSTA will put Taiwan’s security, or the social or economic system, at risk. Here, the original White House petition alleged that the Ma Ying-jeou administration forced through the passage of the agreement, and by so doing grossly violated both substantive justice (i.e., “benefit only China” and “…Taiwan [will be] invaded gradually”) and procedural due process (i.e., “without line-by-line review”) of the law. The corresponding facts and legal elements should be clearly labeled and analyzed. For example, how would passage of the CSSTA undermine the — hereby a breakdown of the major elements of legal language — security, social, and economic system of Taiwan? The petitioners should cite convincing and persuasive evidence drawn from either the literature, reliable reports, or news stories to establish the alleged violations, i.e., their association of foreseeable security, social and economic injuries that Taiwan may sustain to support the petition claim, and based on the foregoing analysis to arrive at the conclusion: that absent counterarguments, an opposition to the CSSTA is warranted.
As an example, the recent documentary *One Voice – Occupying Taiwan Congress* (島嶼之聲) (full movie available [here](http://thinking-taiwan.com/a-toolkit-for-the-citizen-journalist/)) produced by photographer Chauming Tsai and myself illustrated a case of how the IRAC framework is applied in a documentary for advocacy. The movie raised an issue of police brutality — against the protesters and the news media — as a violation of Constitutionally protected rights to assembly, as well as freedom of speech, including freedom of the press. We then interviewed people from 10 communities on their reactions to the CSSTA as testimonial evidence establishing the alleged violation and concluded with a call for opposition to the CSSTA to protect Taiwan’s freedoms and democracy. The documentary was officially selected by film festivals for screening in both Taiwan and the U.S., affording an opportunity to communicate with local and international media on core values of the civil movement.

**Documentary Films and I-Reporter for Advocacy**

The Sunflower Movement has witnessed how new media has transformed the way that conventional advocacy techniques otherwise may not be able to achieve. For example, many short documentaries were made which called for support from the international community on the grounds of emotions (e.g., *Peuple de Bonté, Pays de Beauté* 好國好民”) or reason (e.g., *One Voice* 島嶼之聲”). On the other hand, real-time streaming videos by citizen groups on YouTube, e.g., *The Sunflower Revolt: Protests in Taiwan* and recorded videos that contained personal accounts of the events, such as CNN I-Reporters provide yet another opportunity to get the message out from the grassroots level.
The “citizen journalists” approach, such as publishing videos to Web-based news media sites as i-reporters or producing documentary films, represents a promising advocacy solution for grassroots activists, and it opens additional doors for the means by which advocacy can be done. Thanks to recent advances in technology, the film and production equipment needed to make movies, which may not have been available to ordinary citizens several years ago, have become much less expensive to acquire. One can easily take advantage of the no-overhead, no-to-low-budget filming opportunities to generate awareness within the international community.

In addition, it presents an opportunity for instant video images, often with compelling visual presentations and narratives ready for use in news segment, attesting to the saying that “a picture is worth more than a thousand words.” Finally, one can literally archive the entire advocacy package on the Web, including press kits, FAQs, and promotional products such as trailer and still shots. This gives interested viewers 24/7 access, either home or abroad, online or offline, without spatial and temporal boundaries.

It is noted that the application of Web-based media is subject to time and financial resource restrictions. By default, YouTube users are subject to upload videos no more than 15 minutes in length. After at least one successful upload, one can file a request with the Website for additional space for free, and upload the content with more than one hour running time. Most I-Reporters, however, limit their productions to less than 10 minutes. In documentary, most film festivals categorize film 20-45 minutes in duration as shorts, while those that are 1 hour or more are considered full-featured films. Time usually means money, particularly so when it affects entry fees for screening selection by
film fests. Although most commercial film fests will charge an entry fee, public-interest oriented film fests often waive the fee. A Canadian company (filmfreeway.com) promotes free submissions and hosts a selection of companies that have organized no-entry-fee film fests worldwide.

The two documentary films discussed here, namely the *Peuple de Bonté, Pays de Beauté* and *One Voice*, were produced by Taiwanese living in France and the U.S., which provided international perspectives in such a way that may be easier to understand for international society. They also made them available free of charge via the Internet. By so doing, they are echoing many international friends who joined the protests by sending a strong and unequivocal message to the students and their cause. They are endorsing universal values such as liberty, democracy and a free press, which Taiwan and Hong Kong have both fought long and hard to earn.

Therefore, last but not the least, is a personal call to all Taiwanese and Hong Kong expats living overseas to do their part, to confront the challenge of getting more involved in helping their home countries. In addition to making documentary films and being i-reporters, Taiwan and Hong Kong expats can help by organizing rallies in their communities to raise awareness; sending letters to editors and discussing civic events with international media outlets. They can also talk to elected officials in their states or provinces about what protecting democracy in Asia means to the rest of the world. The support will create a strong voice to help people in their native countries get through these most trying times, as they fight the good fight to safeguard their democracy, a gift that is enjoyed, but far too often taken for granted, by a large number of people in the rest of the world.
Ed Hsu is a documentary producer and professor from Tainan, Taiwan. He directed the documentary One Voice–Occupying Taiwan Congress, an official selection at the New Taipei Film Festival and California International Film Fest at Glendale, CA. It is among the first documentary on the Sunflower movement selected by an international film fest. Hsu is an adjunct professor of management and policy based in California.

Future showings of the movie One Voice will be held at the Tainan Cultural Center on 3/14/2015 and 4/11/2015.

Comments are welcome, but will be moderated. Remarks containing abusive language, personal attacks or self-promotion will not be published. We encourage healthy discussion and, above all, tolerance of other's views.

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MORE SOCIETY & CULTURE

Monday Horror Renews Debate on (and Thirst for) Capital Punishment J. Michael Cole

Where is the Christian Left in Taiwan? Gloria Hu

Support for Taiwan’s TPP Bid: It’s All in the Framing Timothy Rich and Lucas Knight
As the year-end nine-in-one elections draw near, the high-profile Taipei mayoral election has entered a new era in electoral politics, characterized by a selective "vetting" of Sean Lien (連勝文) of the Chinese Nationalist Party (KMT) and Ko Wen-je (柯文哲), who is running as an independent, for the candidates’ character and suitability.

Recent opinion polls seem to have exacerbated the phenomenon. Several polls have shown that Ko’s lead
over Lien has narrowed to between 10 and 20 percent, down from more than 20 percent earlier, with more than one-third of voters remaining undecided. As a result, campaign strategists have resorted to intensified rhetorical exchanges in a bid to mobilize undecided voters. Lien’s political and business ties with China, along with his vested interests in major Taiwanese corporations, have come under scrutiny. Meanwhile, Ko’s “creative accounting” of patients’ donations and for a discretionary research account (known as the MG-149 account) at NTU hospital, have also become the subject of intense attention for potential abuse. In addition, several of Ko’s contacts were required to report any and all business transactions with the candidate.

Under such “vetting,” even false accusations and subsequent vindication may influence undecided voters. Consequently, as a matter of campaign strategy it may be important to examine the selective and targeted use of “vetting” practices.

This article offers observations on the legal aspects of “vetting” political candidates, problems with such selective vetting, and how candidates should react. It concludes with advice for the Ko camp and for future Taipei mayors on campaign reforms to improve future elections.

The analysis demonstrates that Mr. Ko, finding himself in a vulnerable position and a likely victim of wrongful “vetting,” has very limited legal remedies to undo the damage done to his reputation from the unfair “vetting” process. Since he is being targeted for “vetting,” it is advisable for Ko to speak publicly on major issues only if and when under the advise of legal counsel, or defer to his spokesperson for public statements.
Vetting: a necessary evil for democracy

As just discussed, Ko’s finances, as well as personal conduct (e.g., discriminatory remarks against a female candidate), have recently been subjected to selective “vetting.” Ko’s campaign office maintains that the accusations were unfounded, and has complained about the “unreasonable” and “selective” enforcement of “vetting” practices. It may be helpful to review whether “vetting” is warranted, the extent to which the practice is unreasonable, and what remedial actions, if any, Ko may turn to in order to rebuild his image.

The vetting of candidates is a necessary evil in democracy. Transparency is a distinctive feature of a democratic society, particularly in elections where voters are entitled to know such items as a candidate’s finances, personal conduct, and previous coverage in the media to make an informed decision. To this end, vetting can theoretically be an effective device to thoroughly investigate candidates to determine whether they are suitable for a job requiring public trust.

The general idea is that if there are skeletons in a candidate’s closet, it is preferable to disclose them earlier than later, and before giving him or her the keys to high office. For example, residents of Hong Kong would certainly have benefited from early knowledge of (through vetting) chief executive C.Y. Leung’s receipt of an alleged US$6 million from Australian companies before his appointment. Unfortunately, no such mechanisms exist in the Special Administrative Region, let alone in China.
In a democracy, vetting is often warranted and not subject to privacy protection. Whining about it is not helpful.

We may then ask whether there exists a boundary of unreasonable vetting, and what remedial actions someone like Ko should take if illegal vetting unduly damages his reputation. In other words, could Ko sue for injunctive relief to stop unfounded, or wrongful, vetting?

Existing laws provide little means to restrict vetting, and even then, what constitutes unreasonable vetting has not been clearly defined. Therefore, the people and the media have almost free rein to vet political candidates.

Candidates’ ability to take legal action remains very limited. Depending on the nature and extent of the incurred damage, a candidate may take action under relevant legal theories, but the lawsuit could easily be dismissed due to his or her status as a public figure and political candidate. For example, to seek injunction or to collect, a candidate can sue under the theory of “defamation” — as either a civil tort or criminal offense for wrongful damage to one’s character — but the bar is very high and the plaintiff is required to prove elements such as the intent of the defendant, including knowingly or recklessly disregard of the facts, to defame the defendant out of actual malice.

“Actual malice,” which could substantiate charges of defamation against a public figure, is often subject to dismissal, largely because it is difficult to prove the defendant’s contemporaneous knowledge of the untruthfulness of the alleged defamation. Alternatively, a candidate can take legal action under the “intentionally and inappropriately causing a candidate’s losing an election” of the Election and Recall Law (選罷
In such a case, the proof would be (a) the intent of the actor and (b) the dissemination/publication of untruthful statements that caused a candidate to lose. Once again, this entails a very high burden of proof that often is difficult to meet.

Having said all this, we can now ask whether the selective vetting of candidate Ko is lawful or not. As unfair as it may seem, it is not illegal. At present, no law exists that prohibits such behavior against a political candidate.

Because of this, two problems present themselves:

1. **The selective vetting of some candidates and not others violates procedural justice which requires that all due process be followed, including fair and comprehensive vetting of all candidates; and**

2. **The candidate nominated by the incumbent government often is a beneficiary of selective vetting, because the incumbent government can exercise its power and influence, and mobilize its administrative resources to influence vetting outcomes.**

The high burden of proof that is required in such cases has resulted in several campaign losses over the years. Several recent candidates from the Democratic Progressive Party (DPP) have lost elections due in part to unfair and biased vetting practices. One notable example was the TaiMed/Yu-chang Biologics case against DPP Chairperson Tsai Ing-wen (蔡英文) during her 2012 presidential bid. (Tsai was eventually cleared of all charges, but only after she had lost the election.)

Current laws provide no remedy whatsoever for injuries to a candidate’s image or loss in an election as a result of wrongful vetting.

**Advice**
What can Ko therefore do to confront the selective vetting practices, particularly those raised by Lien’s camp? Unfortunately, there is not much for him to do. It would nevertheless be advisable for him to stick to a policy of transparency by producing documentation and being receptive to vetting. The more transparent Ko is, the less likely it is that voters will not vote for him.

Just as importantly, Ko must avoid making mistakes, including acts or speeches that can generate confusion or misinterpretation. Lien was trained in law, and his camp is looking closely to take advantage of Ko’s straightforward public speeches. Consequently, the KMT has sought to provoke Ko with questions of all kinds, regardless of their legality or truthfulness. On this note, because Mr. Ko’s campaign has pledged to abide by high moral standards, and because he has a history of misspeaking and being misquoted, it is evident that speaking to the media is not really his strongest suit. Since Ko has been singled out for selective vetting, he would be advised to consider deferring his responses to any and all sensitive questions to his campaign spokesperson, and that he only speak in the presence of a legal counsel for the campaign.

And what could Mayor Ko do after (and if) he is elected? To start with, he could work with legislators to either introduce appropriate laws or amend existing election laws to penalize selective vetting practices targeting specific candidates, or to mandate public disclosure of all candidates on all election-related sources. Ultimately, every effort should be made to close the loopholes and avoid future situations in which the incumbent government can abuse its power by using administrative resources to engage in selective vetting.
Ed Hsu studied law at the University of California, Hastings College of Law. He is an adjunct professor teaching policy and management in California. He is currently on leave in Taipei and can be reached at: chsu@faculty.umuc.edu

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Enter your comment here...
Swaying Undecided Young Voters in Taipei

As newcomers to electoral politics, Ko and Lien have run campaigns that seek to appeal to young people. Will this strategy encourage young skeptics to vote at all?

With the narrowing margin between the two top candidates in the Taipei mayoral election, undecided voters — whose numbers have increased in recent weeks — will likely be the deciding factor in the election. How to win over voters who are still on the fence, especially the young ones who may not be as easily swayed by old-style politics, will be a crucial component of each camp’s strategy ahead of Nov. 29.
According to recent statistics by Taiwan Indicator Survey Research (TISR), independent candidate Ko Wen-je (柯文哲) was leading Sean Lien (連勝文) of the Chinese Nationalist Party (KMT) by less than 10% (Ko: 33.8% vs. Lien: 24.4%). More than 12% (12.6) said they did not intend to vote, while more than 25% did not provide an answer. Though observers are of the opinion that younger voters (namely those in the 20-49 age bracket) are more likely to vote for Ko, many members of the younger generation are thought to be members of a silent majority within the undecided group, one that is too skeptical to vote. Consequently, campaign strategies that encourage young skeptics to turn up and check the box later this month could, depending on their success, make or break the election.

What, therefore, constitutes a sensible campaign strategy to sway the undecided, particularly younger voters? This article provides some perspectives on potential reasons for the increase in the population of undecided voters, what might work to a candidate’s advantage, and concludes with some advice on campaign strategy.

The undecided: **Normative vs. positive** election platforms

The Taipei mayoral election is an unconventional campaign. The two main candidates have little (if any) political experience (Ko and Lien have never been elected to anything). This lack of experience may in fact have compounded the indecisiveness among a large segment of potential voters. Common to many political newcomers, Ko and Lien have tended to run on a less realistic, or *normative*, campaign platforms, in direct contrast with the politically savvy, sophisticated
candidates who usually offer more practical, or positive, campaign platforms.

Normative–perspective holders provide prescriptive, value-based statements, and consider what actions should be taken in a perfect world. In the present Taipei campaign, due to their lack of political sophistication, Ko and Lien’s normative election platforms on major policy issues — urban renewal among them — have often sounded naïve and are therefore subject to criticism for their idealism and (perceived) lack of practicality.

In contrast, positive-perspective platforms tend to be more fact based, and are likely more mindful of political realities and the interests of stakeholders. Lien’s “entertaining” role-playing and Ko’s decision to run as an independent may be an outcome of this.

In practical terms, a normative campaign platform seems to have intuitive appeal for the younger generation over a positive one, as this group is likely more idealistic than its senior (and more “sophisticated”) counterpart.

How, then, can such an approach to campaigning be improved?

**Motif as a rhetorical device**

A common tool employed in a campaign to get a message across is a motif. As a rhetorical device, a motif uses the repetition of a concept to heighten the importance of, and draw attention to, an idea. A not-so-distant example from the U.S. was presidential candidate Barak Obama’s campaign motif of change and hope, which was repeated throughout his campaign.
In the Taipei mayoral election, campaign motifs have been loud and clear: Ko’s involves a pledge of benevolence and personal integrity, whereas Lien’s is “pro business” and “pro economy.” Although such strategies can appeal to younger voters, they can, as we shall see, also be double-edged swords.

When used appropriately, motifs can be very effective in appealing to younger people. Motifs were skillfully employed in Ko’s campaign to characterize Lien. For instance, Ko’s camp has taken advantage of a Lien’s status as rich and privileged.

Youth language

Efforts at cultural like-mindedness and demonstrating one’s ability to speak a foreign language (the latter serving as a proxy for a candidate’s international vision) also appear to be important. For example, in an ostensible attempt to attract younger voters, Lien has been seen dancing with street artists and has played different hard-labor roles for photo ops. He also had lunch with international youths in Taipei where he discussed his vision for the city. He has also challenged Ko’s English-speaking capability.

After all has been said, performed, and done, are these tactics effective in courting young voters and turning the election around? That is unlikely.

Dancing with the younger generation, engaging in role-play and speaking English are nice additions to a mayor’s personality, but in and of themselves they are not sufficient or necessary qualifications for a competent mayor. Today, young people in Taiwan are understandably far more concerned about job opportunities and freedom of expression, about their hopes and dreams for the future of Taiwan, and are
worried about changing the “status quo” in the Taiwan Strait for uncertain economic gains, then whether a potential mayor can speak proper English or appear comfortable holding a shovel. They want answers to these fears and anxieties eased — sooner rather than later — through a change in the city’s leadership. This was made evident by the Sunflower protests in the spring and the wide participation of youngsters in civil activities in Taipei and across Taiwan.

As the old saying goes, “it is not what you say, but how you say it.” Lien’s conversational English (acquired in part through his early childhood, from private school to an overseas education) isn’t what really matters; rather, whether he can deliver his views in a way that inspires and connects his passions with younger voters does. At the end of the day, attitude and a personable touch can say a lot about a person. On this note, polls have consistently shown that Lien has serious problems turning his image as a playboy around; with less than a month ahead of the election, his manufactured image as a hard worker is unlikely to pay dividends.

**Carrots and sticks**

Both candidates have made extensive use of carrots and sticks — promised rewards and scare tactics — to attract young voters. For instance, Lien has vowed that if he were elected he would reward the residents of Taipei with raised unemployment benefits and retirement pensions, while Ko has promised expanded budgets for education and culture. The scare tactics, meanwhile, have seen Lien warning that if he did not win the election, Taiwan’s industry and economy could be severely undermined, and that pensions for the military and public servants would be in jeopardy.
Although the effect of promised rewards have yet to be felt, the scare tactics are probably the least (if at all) effective in attracting young voters, particularly among younger generations that often are resistant to authority and threatening language. In general, voters should never be made to feel that they are under pressure or obligation to vote for any candidate making threatening remarks.

The moral high ground vs. the business agenda

Ko’s camp has claimed the moral high ground and pledged solid and unquestionable integrity to distinguish itself from Lien’s pro-business, network-and-connection-based agenda. The moral high ground pledge, including Ko’s overcoming personal limitations (on his own admission, he suffers from attention deficit disorder, or ADD), may intuitively appeal to younger people who may seek inspiring figures and a model to follow. This is indeed a distinguishing campaign theme, and one that may have given Ko an edge against his opponent, who seems to have it all.

On the other hand — and this is the aforementioned other side of the double-edged sword — the touting of one’s moral high ground ensures that a candidate’s words and deeds will be under heightened scrutiny and weighed for their consistency. This was evidenced by the selective vetting of Ko’s professional conduct, which we discussed in a previous article.

In addition to worrying about selective vetting, Ko’s campaign should be mindful of the potential pitfalls of taking the moral high ground: self-imposed moral high standard are not always universal, or even legally acceptable (for example, the internal protocols involved in establishing research account standards versus what
is permissible by the law). In addition, in times of an economic downturn, young people may be inclined to look more positively on policies to improve the economy than on the abstracts of high morality.

On this note, there was discussion of whether the Taipei mayoral candidate should take a stance on business with China (or for that matter, whether Chinese students in Taiwan should pay the same health insurance rate as locals do, and so on). Although this issue may be particularly relevant for Lien’s campaign, which has pushed an aggressive China agenda to court Taiwanese investors and new immigrant voters from that community, it is not an issue that will have substantial traction in the elections, as a city does not really have subject-matter jurisdiction on cross-strait issues. Since there is no study to support how a China policy would affect young voters, it remains unknown whether candidates’ taking a stance on the China issue would affect young voters.

**Final thoughts**

With less than a month before elections day, it is still not too late to try to motivate undecided, young people to turn out to vote. Some advice on how to do so:

For Lien, who is running on a pro-business platform: continue to improve market prospects by giving young people hopes and dreams with equal opportunities for success, without changing the nation’s democratic way of life. Specifically, get young voters’ input when proposing any business policy involving China. In addition, avoid engaging in negative campaign tactics, such as making threatening remarks, or using networks of power and influence against his primary campaign competitor.
For Ko, who has sought to inspire supporters, including younger voters: engage in error reduction and avoid making mistakes for the remaining campaign period. Continue to hold the moral high ground (younger voters seem to like it); exercise judgments and control your emotions (e.g., stop being defensive or shoving journalists aside when you are asked tough questions) and defer all non-essential, personal, or trivial questions to your campaign spokespersons; talk under the advice of your legal counsel; and lastly, provide policy solutions that will have a tangible impact on the lives of the city’s residents.

As often demonstrated in the NBA, the team with the least number of fouls/errors will often win the game. Sometimes the same applies to politics.

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Comments are welcome, but will be moderated. Remarks containing abusive language, personal attacks or self-promotion will not be published. We encourage healthy discussion and, above all, tolerance of other's views.
The reasons why co-director Chauming Tsai of Taipei and I made the Chinese-subtitled, English movie *One Voice – Occupy Taiwan Congress* documentary (movie trailer available [here](http://thinking-taiwan.com/deconstructing-one-voice/)) was to introduce to an international audience, particularly English-speaking countries, the occupying movement in Taiwan through the voices of the diverse communities that chose to
participate in the March 30 mass rally supporting the Sunflower occupation in Taipei. This short documentary explores why the movement gathered great momentum among many Taiwanese at home and abroad.

To me the “occupy congress” act was a natural extension of the “occupying movements” worldwide, in that it demanded substantive and procedural justice, and sought to avoid the marginalization of vulnerable communities. The occupiers hoped to bring the voices from Taiwan to the attention of the Taiwanese government, voices that it had otherwise failed to respond to, or chose to ignore. Through this brief introduction to our project, we hope to raise awareness on the levels and scale of the “Chinese factors” that are affecting Taiwan — and other countries worldwide that are tempted to enter into business agreements with China, for that matter — and draw attention to the potential compromises in terms of living conditions that might ensue from further engagement with China.

Secondly, we seek to draw attention to the Taiwanese government’s alleged violations of justice and public trust, including the issues surrounding police brutality. We encourage Taiwanese expatriates, wherever they are, to contribute to democracy in Taiwan.

Lastly, we discuss the rationale, and potential, of employing visual arts (such as this documentary or other mini-movies) and new media to change public policy in Taiwan.

We took up this film project because the occupy movement touched us intimately on many levels. Most of all, as a member of the “Wild Lily” generation, I was among the student activists who protested against the Taiwanese government on several policy issues in the 1980s and 1990s. I was a drill sergeant in the military,
instructing soldiers to defend Taiwan's democracy against “Communists.” Then I was a legislative aide in the legislature, and now I am an academic working with college students. Therefore, I was naturally sympathetic to the cause and inclined to participate in the student-initiated protests. The documentary is therefore my pledge of commitment to ensuring Taiwan’s freedom. Students and colleagues at home and abroad: get involved, and change the societies in which you live, because as the saying goes, “A threat to justice somewhere, is injustice everywhere.”

*One Voice*, as the name implies, is in fact four voices in disguise that are heard throughout the movie. The first is the voice delivered by diverse communities in Taiwan; the second is that of the strongly business-driven, China-centric Taiwanese government and the “one voice” that it chooses to hear; the third are the “international voices” that the Taiwanese government has paid particular attention to; and the fourth voice is the inner calling of overseas Taiwanese, and the dialogue between them and that inner voice. That voice says, “No one is truly free, until all are free.”

The movie touches on several subject matters in Taiwanese society, including racial/ethnic diversity, the police powers of the state, and the influence of the media.

The first issue is *diversity*. Matters relating to ethnic groups and diversity are almost always politically volatile, hot button issues both in the U.S. and Taiwan. Ironically, as in the U.S., it is often not an easy subject to talk about until election time, when candidates feel they need to address the issues to attract votes. Inspired by the challenge, we made this movie with the idea of giving the government and the people the opportunity to hear the voices of diverse communities,
to attend to their concerns, and to better understand their reactions.

The U.S. government has used a top-down, relatively transparent approach to addressing racial tensions. After living in the U.S. for several years, I have observed how the Obama administration operates on diversity issues: In selecting candidates for his Cabinet members, Obama often actively recruits from other minority groups. Instead of choosing among his "own" people from the African American community, he tries to avoid appointing individuals with known connections and access to him who might later be subject to political challenges. At the end of the day, the majority of American constituents are not African Americans. By choosing to select qualified individuals outside of his "own" group, Obama not only makes policies more well-rounded by incorporating different voices, it also helps reinforce the legitimacy of his administration. Such inclusivity and responsiveness to diverse voices brings hopes and dreams to the people. The genuine commitment to embracing diversity could be an underlining reason for a stronger Western world. The fact is, whether one came earlier or later to the country, anyone and everyone who entered the country legally and spent time and energy on the land should not be left out, and should be afforded equal opportunities to become successful.

Conversely, the Taiwanese government has yet to make a genuine commitment to diversity. For example, between 80 percent and 90 percent of President Ma Ying-jeou’s (馬英九) appointments to Cabinet positions came from "his" community, which represents less than 50 percent of the Taiwanese population. The administration is often preoccupied with its own agenda, supported by a small group of homogeneous people, and is at times the victim of "group think" —
powerful people sharing similar political leanings and ideology. As such, the legitimacy of Ma's administration in ruling the people of Taiwan is constantly subject to heightened scrutiny. In addition, because the administration is not closely aligned with the majority of constituents, the disconnect leads to a decline in confidence, as Ma's poor approval ratings have shown. The policies advanced by the Ma administration on education, employment, the economy, and China are largely detached from the expectations of the majority of Taiwanese constituents.

Our documentary therefore attempts to convey the importance of respecting diverse voices. The film itself is an example of how to do so. Specifically, we strive for a representative sample of participation to make a convincing case for legitimacy.

We chose a purposive sample of interviewees. By this I mean that we selected a specific group of people to meet the purpose of our study (i.e., legitimacy and diversity). Interviewees include four women and six men from different communities, including native Taiwanese, international visitors from Europe and other part of Asia speaking a total of eight natural languages. Lastly, because I am from the Min-Nan community, I consciously arranged for my native group of interviewees to appear last. Through this deliberate sampling and order of appearance, we hoped to make the film more sensitive to and respectful of other groups within Taiwanese society.

Purposive sampling reinforces the concept of legitimacy and representativeness, and hopefully makes our movie more convincing and representative of the voice of Taiwan — at least among those who chose to participate on March 30.
On the other hand, *One Voice* represents the voices that the current administration is highly responsive to. Ma’s Cabinet consists of an excessive amount of U.S.-educated scholars. However, they are also known for being remote and disconnected from the constituents. At one point in the movie, someone says, “President Ma can only understand English,” meaning that he only pays attention to international media; and “... the Minister of Cultural Affairs can only read English newspapers.” This is just the tip of the iceberg. It suggests that this government, by and large detached from public expectations, is more responsive to international media than to indigenous voices. Its officials are paid by Taiwanese taxpayers, but they regard themselves as being on a different level in the hierarchy, superior to the people.

We then turn to the government’s violation of the laws, namely procedural and substantive justice, as well as excessive police force and the removing of media from the scene. These are issues of freedom of assembly and...
of speech, as protected by the Constitution. I had a hard time coming to terms with the gross violations of the constitutionally provided rights of the people to assemble and speak up that occurred during the occupation of the legislature.

Freedom from fear is an essential element of citizenship. Like access to clean food, water, and air, freedom from fear — including freedom of speech — is a basic human right, not a privilege. The constitution protects people's freedom of speech. Therefore, no police and judicial forces should be employed to violate those constitutionally protected rights without due process. The illegal acts by the government, including police action that used disproportionate force against unarmed protesters, and the unwarranted arrest of unarmed protesters, should be subject to heightened public and international scrutiny. The forced removal of members of the press (such as during the occupation of the Executive Yuan on March 24) was equally unacceptable.

Using images to inspire

Last year, the New Taipei Film Festival introduced the catchphrase “creativity (of visual arts) is a form of resistance, so employ imageries to change the world.” It is quite truly the way it is. To make this documentary, we used a simple iPad and digital camera to capture the events, and to demonstrate how, using simple equipment, we can effectively communicate historical events to the rest of the world. By doing so, we hoped to motivate citizen journalists who, like us, are motivated by a desire to improve society.

In addition, through showings at film festivals we hoped to communicate with U.S.-based media and help media in other countries understand the occupy movement in Taiwan. Ironically, by working through international
media, we could be helping the Taiwanese government realize that it must change its tactics. While the use of “foreign influence” to change domestic politics is not uncontroversial, the current government has mastered the art and has practiced it with great success. Let’s use elections (including presidential ones) as an example. On several occasions, weeks before the vote and when it is illegal by law to release the results of public opinion polls (which could unduly influence voting decisions), international heavyweights have come to Taiwan to “observe” the elections. One regular figure is former American Institute in Taiwan director Douglas Paal (now at the Carnegie Endowment for International Peace), who was in Taiwan twice in 2004/2008 before president elections, and warned of “social instability,” of “provoking” China or of alienating the U.S. if Taiwanese elected the “wrong” candidate. [Editor’s note: Mr. Paal did it again in 2012.]

Taiwan’s destiny has often been influenced by international forces and foreign media. However, this can be changed if we succeed in convincing the government to no longer seek to scare Taiwanese by influencing voters through unfair and unjust externalities.

The new model of disseminating news through citizen journalists, by directly communicating with international media to influence domestic policies, could be an effective way to change the government and its policies. It could, in fact, be more effective than attending numerous public hearings. At the end of the day, the Taiwanese government must pass muster with the open scrutiny of international media on its treatment of public protest, and avoid preventing journalists from doing their jobs.

Several people made this film possible, including 10 protesters/interviewees on the scene; more than 10
volunteer translators; as well as the many individuals who provided pictures and video material; and the many who offered comments on how to improve our product during post-production. All are acknowledged at the end of the film. The process was tedious, with dozens of hours of flight between the U.S. and Taiwan, and as many driving, for filming, and several months of post-production by a crew of two. It was worth it all.

Except for receiving a nominal copyright fee from the New Taipei Film Fest, we received no financial support to produce this documentary. It was a completely self-financed production. Why did we do this? Our only reason was to serve and protect this country’s freedom and democracy. The French-speaking interviewee in the film sums it up nicely:

"Because I care for this country!"

C. Ed Hsu is a movie director and professor from Tainan, Taiwan. He co-directed the documentary One Voice – Occupying Taiwan Congress, which will premiere at the New Taipei Film Festival on Sept. 18 and Sept. 27. Hsu studied law and policy at the University of California College of Law and the University of Texas. He is currently an adjunct professor in California.

One Response to “Deconstructing ‘One Voice’ the Movie: Diversity, Justice, and the Media in Taiwan”

September 03, 2014 at 7:20 pm, mike said:

I am unsure where to begin with this because it is one of those articles which, though written by somebody from the