Assessing the Effects of Political Factors on Court Decisions in Corruption Litigation in Taiwan

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- 台灣人民對司法改革有很高的期待。人民希望司法更公正，不要有「恐龍法官」，也不要發生「有錢判生、無錢判死」的情況 (*Taiwanese people have high expectations for judicial reform. People expect the judiciary to be more just, they don't want to have "dinosaur judges," and so do not want "those with money to be let off and those without money to be sentenced to death."*)

  -- President Tsai Ing-wen's remarks to the preparatory committee for the national conference on judicial reform,

  November 25, 2016

- 吳澧培：司法辦綠不辦藍(Wu Li-pei said: The [Taiwanese] judiciary only charges the Green camp not the Blue one) (Xiang 2012, A8).

- 蘇治芬遭檢方求刑15年、褫奪公權8年（自由時報，2008）

雲林地檢署偵辦雲林縣長蘇治芬涉嫌貪污案，蘇治芬被控在璟美案中，向璟美環保科技公司收賄300萬，另收受長庚案1800萬元，合計犯罪所得2100萬元，檢方今天下午偵結起訴，以貪污重罪，具體將蘇治芬求處15年有期徒刑，並褫奪公權8年，且必須追繳犯罪所得2100萬元。

- 嘉義縣長張花冠涉貪 一
  審判2年6月

嘉義縣長張花冠（民進黨）與其胞妹張瑛姬，涉嫌嘉義縣政府21件大小標案收賄780多萬元。高雄地院歷經3年審理，今(15日)上午宣判，依16個洩密罪判張花冠2年6月，得易科罰金。

- 貪污入監2年　前永康市長獲准假釋

（蘋果日報，2013年06月17日）

目前在台南市明德外役監獄服刑的台南鄉永康市（現為台南市永康區）前市長曾文錡，犯貪污圖利等罪，2010年9月28日入監執行6年，因適用舊法1/3假釋規定，累進處遇達二級，矯正署在上周五核准假釋，將由台南高分檢向法院聲請假釋中交付保護管束裁定，經法官裁准即可出獄。

- 焚化廠弊案纏訟**11**年　張榮味又發回更審

（蘋果新聞，2015年7月17日）

雲林縣前縣長張榮味（國民黨籍）涉林內垃圾焚化廠收賄弊案，一審被依《貪污治罪條例》重判14年，二審及更一審改判無罪，但更二審與更三審又逆轉判刑刑9年，再度上訴三審後，最高法院認為全案審理至今逾8年，更三審卻漏未審酌被告有無應依《速審法》減刑的事由，今第4度撤銷發回台南高分院更審。

- ## 東信掏空案郭廷才等判賠**23.5**億

（自由時報，2005年12月30日）

前立委郭廷才逃亡5年 蒞回台

屏東縣東港信用合作社88年間爆發掏空案，屏東地院民事庭昨天判決，前立委、當時的理事主席郭廷才（國民黨）等11名理監事，必須共同賠償接管信合社的台灣銀行23億5千餘萬元。

- **吳健保遭解職 法院判解職違法**

根據判決書指出，吳健保因涉貪污案，遭台灣高等法院台南分院以結夥竊盜罪、行賄罪判刑，行政院於民國100年間依地方制度法規定，解除吳健保台南市議會議員職權。

- 雙子星貪污案 二審改判賴素如9年

前台北市議員賴素如（國民黨）被控在台北雙子星案索賄，民國103年遭一審北院判處有期徒刑10年、褫奪公權5年，二審高院今天依貪污治罪條例改判9年、褫奪公權9年，全案可上訴。

- 銅鑼案 何智輝判13年

（中央社，2016年8月31日）

前國民黨立委何智輝涉及新竹科學園區銅鑼基地弊案，高等法院更三審昨天依觸犯貪污治罪條例「藉勢藉端勒索財物罪」，判何有期徒刑十三年、褫奪公權八年，所得贓款五千二百零九萬五千元須與共犯熊名武、溫世才連帶追繳後，發還新竹科學園區管理局。全案可上訴。

- 宋楚瑜還欠國民黨一個公道
（中國時報，2015年07月12日）

宋楚瑜於民國99年向台北地院聲請取回興票案提存款2.46億元；取回理由是：提存錯誤云云。本人係宋楚瑜委任免費辦理興票案的律師。關於興票案2.46億元的所有權歸屬問題，本人有必要向國人說明法理與事實。

- 逆轉！林益世涉貪案　二審重判13年半

（蘋果新聞，2016年2月26日）

　行政院前秘書長林益世（國民黨）被控自2010年起共向爐渣業者陳啟祥收賄6300萬元、索賄8300萬元，一審認定他沒貪污，僅依公務員假借職務恐嚇得利、財產來源不明兩罪輕判他7年4月徒刑。高院今宣判逆轉改認定林益世收賄，依違背職務收賄改判13年6月，併科1580萬。

- Those engaged in behavioral research on comparative politics have employed a variety of measures and found that political corruption is significantly associated with a wide range of political activities and governmental decisions. Corruption—"the misuse of public office for private gains"—appears to be one of the gravest challenges faced by industrializing countries, and it afflicts some advanced ones too.

- Corruption takes many different forms, including graft, bribery (offering and accepting bribes), embezzlement, nepotism, cronyism, theft, and misappropriation of public resources.

- Corruption is much more firmly entrenched in developing and authoritarian societies than it is in advanced democracies. For example, Ferdinand Marcos's reign in the Philippines, the countries of Central America (former presidents of Nicaragua, Guatemala, and Costa Rica) and Africa (Zaire, Kenya, Nigeria, and the Central African Republic), and others.

- While political corruption is both widespread and significant around the world, it has received comparatively little attention from a judicial perspective. For decades, the judicial system in Taiwan has been entangled in political conflict, and the public does not seem to trust the judiciary to be independent of political influence.

- A number of popular sayings about the courts reflect this widespread negative impression of judicial verdicts:

➢ "the courts are dominated by the Kuomintang (KMT)" (法院是國民黨開的);

➢ "those who are elected will be let off, but those who lose the election will be imprisoned" (當選過關，落選被關);

➢ "those with good sociopolitical connections won't have any problem, but those without connections will be in big trouble" (有關係就沒關係，沒關係就有關係); and,

➢ "at the first trial a heavy sentence is passed, at the second trial the sentence is halved, and at the third trial 'they eat pig's trotter noodles'" (一審重判，二審減半，三審吃豬腳麵線 [a Taiwanese saying meaning the case has been quashed]).

These sayings reflect the widespread lack of confidence in the judiciary.

- This study uses corruption litigation as a litmus test to examine whether court decisions in Taiwan are politically biased. Using panel data of Taiwan district court verdicts and sentencing from 2000 through 2015, this study examines whether court decisions in corruption cases are affected by political factors, consisting of partisanship, political position, and socioeconomic status.

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Corruption Issues in Taiwan

- Political corruption is rampant and endemic in some of the less advanced industrial societies, and Taiwan is no exception.

➢ In 1949 the KMT government retreated to Taiwan from the mainland after being defeated by the Communists in the Chinese civil war. There were many reasons why the KMT regime lost the civil war, but one major reason was the widespread corruption within the ruling party. In Meisner's (1977, 37) words, "The Japanese invasion undermined the foundations of the Kuomintang regime…the ravages of war resulted in incredible economic chaos and bureaucratic corruption—and, eventually, in almost total demoralization."

- The "February 28 incident" of 1947: there were many reasons for this incident, and it was closely associated with corruption within KMT political and military circles. General Chen Yi brutally oppressed the Taiwanese and made sure that most political posts and economic resources went to mainlanders.

- Since the 1970s, Taiwan has experienced the rapid socioeconomic development that is conducive to democratic transition; even the KMT leadership had to respond to social change by incrementally modifying its policies and tackling the issue of corruption. One example was the collapse of the Taipei Tenth Credit Cooperative Association headed by the KMT legislator Tsai Chen-chou in March 1985, which resulted in thousands of individuals losing their savings. This financial scandal involving KMT party and government officials laid bare the KMT's connections with big business.

- 十信風暴　蔡辰洋家族金融版圖瓦解
  　　　（蘋果日報，2016年01月15日）
1985年時台北十信的放款總額超過存款總額比率高達102%，財政部下令停業，由合庫接管整頓。蔡萬春次子蔡辰洲（國民黨）則因人頭違法貸款被捕，1987年病故。數十位高官當時也因此事件而下台。
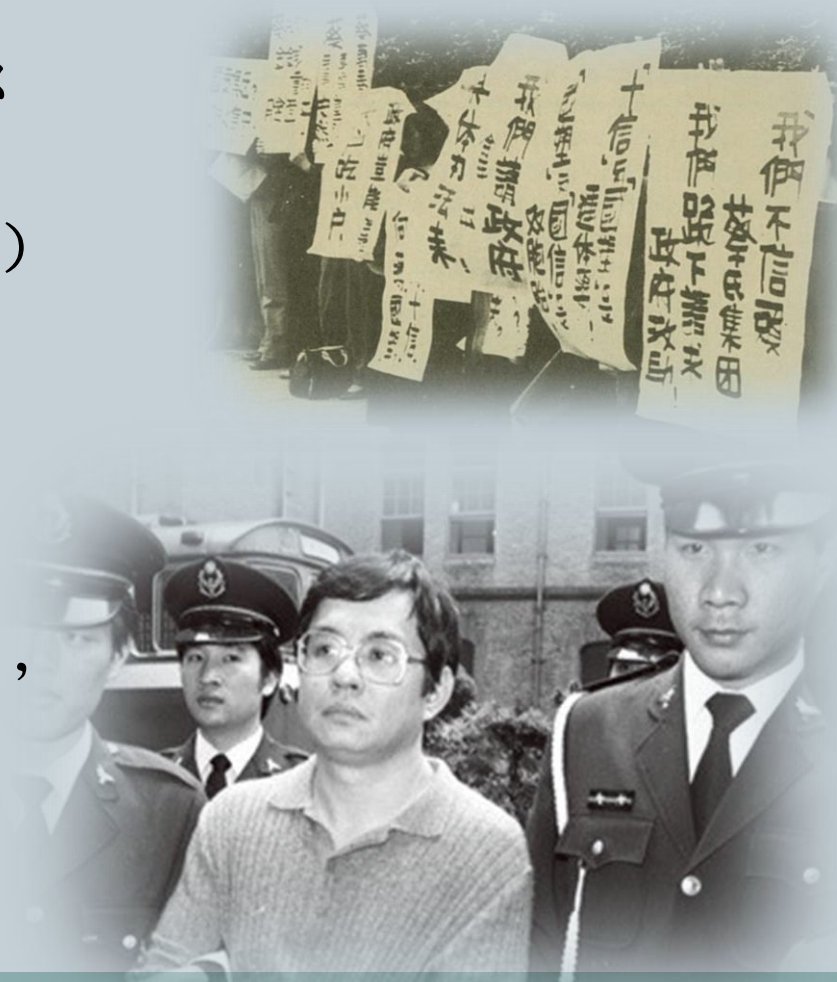
- Taiwan's economic progress brought with it higher levels of education and an explosive growth of the mass media, both of which help people gather more information about social and political issues, including corruption and other scandals involving party and government officials. From the late 1980s through the 1990s, the DPP and the NP continuously raised the issue of KMT corruption, especially during election campaigns.

- The issues of political corruption (known as "black gold" in Taiwan) and negative campaigning were particularly salient in the 2000 presidential contest, when the DPP and its presidential candidate, Chen Shui-bian, exposed the link between "gangster politicians" and Lien Chan and James C. Soong.

- In 2006, Chen's son-in law, wife, and some close personal aides were indicted on charges of embezzling public funds, and Chen himself was accused of embezzlement, bribery, and misappropriation of a specific diplomatic fund to pay personal expenses

- **扁家海角7億 2億入國庫**

  （2015年07月12日，中國時報）

前總統陳水扁家族涉及貪汙案，扁家將存放瑞士多年的2200多萬美金，俗稱「海角7億」匯回台灣後，台北地檢署歷經數年，終於將其中49檔外幣債券、股票全數變現約2億餘元，日前已先執行吳淑珍4案判刑確定的2億罰金，讓國庫進帳2億元。

- The presidential and legislative elections of 2016 took place in an atmosphere of public dissatisfaction with the government and Ma's leadership. Ma had failed to deliver on most of his campaign promises from 2008 and 2012, and that failure combined with a series of socioeconomic problems (including food safety issues and growing social inequality), corruption among KMT government officials and elected representatives, and political scandals brought about the KMT's overwhelming defeat at the polls.

Sociopolitical Influences on Corruption Litigation

- Resource inequality (or termed party capability) theory is the paradigm in the study of judicial politics, and it is generally accepted that courts favor claims advanced by those with greater resources. According to this theory, courts favor claims advanced by those with greater resources.

- During the legal process, the parties involved must mobilize the various resources available to them to resolve their disputes. However, resources are typically allocated unequally in societies, and inequalities of wealth and power could lead to different consequences in legal disputes. The "haves" tend to come out ahead, enjoying an advantage over the "have-nots" in litigation outcomes.

- The relationship between the judiciary and the KMT was revealed during a July 1995 meeting between the secretary-general of the KMT, Hsu Shui-de, and delegates attending the party's 14th Congress in Kaohsiung County. Three of the delegates expressed dissatisfaction with the then minister of justice Ma Ying-jeou's vigorous investigation of vote buying. Hsu reassured them, saying "It will be O.K., since the courts also belong to the ruling party."

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Research Hypotheses and Data Collection

- HYPOTHESIS **1.**

If the defendant in a corruption case is a KMT member, then he/she is more likely to be found not guilty by the court, or if found guilty, is more likely to be placed on probation.

- HYPOTHESIS **2.**

In corruption cases, national-level elected officials or political appointees, national-level civil servants, local-level elected officials or political appointees, or local-level civil servants are more likely to be found not guilty than defendants who are ordinary members of the public, or if they are found guilty, they are more likely to be placed on probation.

- HYPOTHESIS **3.**

In a corruption case, the more lawyers a defendant can employ, the greater his/her probability of being found not guilty, or if found guilty, the greater his/her probability of being placed on probation.

- The data analyzed in this study were collected using the keywords "corruption" (貪污), "graft" (瀆職), "bribery" (賄賂), and "embezzlement of public funds" (侵佔公款) from the Law and Regulations Retrieving System, Judicial Yuan of the Republic of China (中華民國司法院法學資料檢索系統) (http://jirs.judicial.gov.tw/Index.htm). Research assistants then examined all the court cases from 2000 to 2015 and excluded those unrelated to corruption involving government resources.

- During this period, district courts reached judgments in 13,733 such cases. For the courts' decisions in corruption cases, the dependent variable is divided into two categories: guilty or not-guilty verdicts. If there is a conviction, it is dichotomized into two types: probation or imprisonment.

- For the courts' decisions in corruption cases, the dependent variable is divided into two categories: guilty or not-guilty verdicts. If there is a conviction, the dependent variable is dichotomized into two types: probation or imprisonment.

- The three independent variables in this study are party affiliation (to tap partisanship), political status (for sociopolitical connections), and the number of lawyers employed in court (for resource inequalities). Party affiliation is divided into four categories: KMT, DPP, other parties (including NP, PFP, Taiwan Solidarity Union, Taiwan Independence Party, Non-Partisan Solidarity Union, and others), and independents.

- Defendant political status is divided into five categories: national-level elected officials (including elected representatives and public executives) and political appointees, national-level civil servants, local-level elected officials (including elected representatives and public executives) and political appointees, police and military, and ordinary individuals.

- Under the Code of Criminal Procedure, a defendant is only permitted to use a maximum of three lawyers in court; if he/she cannot afford an attorney, a public attorney-at-law is provided. Otherwise, a defendant can decide to defend him-/herself in court, and in that case no lawyer is needed. Therefore, the number of lawyers employed in court ranges from zero to three.

- To examine whether sociopolitical factors affect court decisions in cases involving political corruption, this study collects data on judgments in relevant litigation during the period January 2000–December 2015 from twenty-one district courts located in Taipei, Shihlin, Panchiao, Taoyuan, Hsinchu, Miaoli, Taichung, Nantou, Changhua, Yunlin, Chiayi, Tainan, Kaohsiung, Pingtung, Taitung, Hualien, Ilan, Keelung, Penghu, Kinmen, and Lienchiang.

- To control for the effect that courts in different regions might have different preferences, I divide the abovementioned district courts into four regions: "north," "central," "south," and "east."

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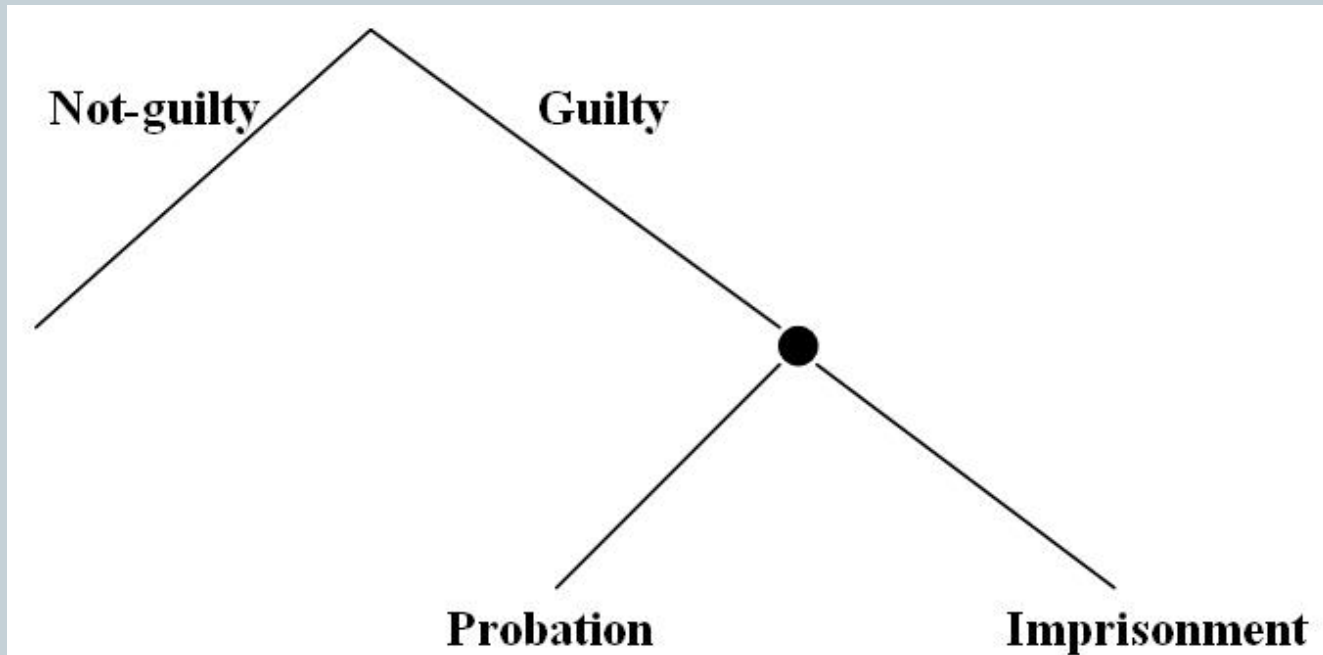# Figure 1. The Analytical Order of the Hierarchical Logistic Model

Table 1. Verdicts in Corruption Litigation

Independent variable	$\hat{\beta}$	Odds Ratio
Partisan factor (independents=0)		
KMT	.129	1.138
	(.115)	
DPP	-.037	.963
	(.190)	
Other parties	.274	1.316
	(.383)	
Political status of defendant (ordinary individuals=0)		
National-level elected officials and political appointees	.568*	1.765
	(.223)	
National-level civil servants	.376***	1.457
	(.065)	
Local-level elected officials and political appointees	.108	1.114
	(.077)	
Local-level civil servants	.109*	1.115
	(.046)	
Military and police	-.058	.942
	(.056)	
Number of Lawyers (1 lawyer=0)		
No lawyer	-.501***	.605
	(.062)	
2 lawyers	.098*	1.103
	(.045)	
3 lawyers	.278***	1.320
	(.054)	
Region where corruption took place (north=0)		
Central	.215***	1.239
	(.047)	
South	.233***	1.262
	(.043)	
East	.257***	1.292
	(.068)	
Intercept	-.582***	
	(.040)	
-2 Log likelihood=-9,166.0678		
n=13,733 χ^2=246.35 df=14 $p \leq .001$		

Notes: Estimated robust standard errors are shown in parentheses.
*$p \leq .05$; **$p \leq .01$; ***$p \leq .001$.

Table 2. Logit Estimates for the District Courts' Probation Decisions in Corruption Litigation

Independent variable	$\hat{\beta}$	Odds Ratio
Partisan factor (independents=0)		
KMT	-.641** (.219)	.526
DPP	-.401 (.333)	.670
Other parties	.021 (.673)	1.022
Political status of defendant (ordinary individuals=0)		
National-level elected officials and political appointees	-1.267** (.457)	.282
National-level civil servants	-.736*** (.093)	.479
Local-level elected officials and political appointees	-1.260*** (.121)	.283
Local-level civil servants	-.241*** (.060)	.786
Military and police	-.930*** (.075)	.394
Number of Lawyers (1 lawyer=0)		
No lawyer	.471*** (.073)	1.602
2 lawyers	-.280*** (.061)	.756
3 lawyers	-.690*** (.081)	.501
Region where corruption took place (north=0)		
Central	-.165** (.062)	.848
South	.286*** (.056)	1.332
East	-.452*** (.095)	.636
Intercept	-.161*** (.050)	

-2 Log likelihood=-5,265.757
n=8,246 χ^2=786.91   df=14 $p \le .001$

Notes: Estimated robust standard errors are shown in parentheses.
*$p \le .05$; **$p \le .01$; ***$p \le .001$.

Comments are welcome!