得獎專書：《去法院相告：日治台灣司法正義觀的轉型》

得獎專書摘要

在 1895 年的 11 月，跟「病院」一樣來自西方、具有所謂「現代性」的「法院」，出現於台灣。此後人們可能會「去法院相告」，而不再僅知「去衙門打官司」。於今一般人生病時，大概會想找「病院」，但發生糾紛或身體、財產受侵害時，卻不一定想找「法院」；且相當信任西式醫院的診斷，卻不一定信任西式法院的判案。推究其故，可能從 1895 年以來，西式法院的實際運作，就沒有像西式醫院那樣逐漸獲得人們廣泛的支持與信賴。本書擬探究日治時期人民如何使用法院，以致司法正義觀有怎樣的轉變。按「去衙門打官司」與「去法院相告」，代表兩種不同法制底下相異的司法正義觀。就制裁犯罪與解決紛爭，傳統中國法在「君父權統治」架構下，由子民訴冤、父母官糾問後為裁斷；自近代西方傳入的現代法，則在個人主義、自由主義法理念下，以當事人相互控訴（刑案原告為檢察官）、法官居中依法裁判的訴訟程序處理。

日本統治當局僅導入一部分的現代法院制度，以減少殖民地司法經費支出。其引進採取「判調分立」的現代法院訴訟制度，但將父母官聽訟的傳統，轉譯為地方行政官的民事爭訟調停，由調停官強求爭議者接受不一定依法所做的裁斷，混淆判、調之分際。引進用以搭配「審辯分立」的律師制度，但日治前期曾將由男性親屬或受雇人代為呈控的傳統，轉譯為不具律師資格的親屬或受雇人經法院許可得為訴訟代理人，且在民事爭訟調停始終不准律師為代理人。引進本於「審檢辯分立」的檢察官制度，但將由廳縣官裁斷輕罪的傳統，轉譯為由地方高階警官為犯罪即決，以致大多數刑事案件並非由檢察官處理。引進司法審判權與司法行政權二分，但不施行最可彰顯行政司法分立的行政訴訟制度。

日治下台灣人依社會階層別、地域別、性別等，透過不同的使用法院經驗，其司法正義觀已有不同程度的轉變。本書將日治時期台北地方法院 48,338 件民事判決、82,407 件刑事判決的當事人各項資料，以及訴訟的年代、類型、參與者、結果等作為變數，進行編碼後為交叉分析。此實證研究發現，較易發生現代商業糾紛的商人階層，較傾向於使用法院，而感受到判調分立。住所距法院遙遠者，雖為避免舟車勞頓等而較常聘請律師，但因而須負擔高額律師費用，導致較少使用法院，尤以經濟弱勢者為然，從而少有機會接觸律師而體會審辯分立。民事案件當事人絕大多數為男性，其較有機會改採現代司法觀，但不乏女性將家族紛爭帶入法院而受現代司法影響。在大多數刑案未進入法院的情形下，日治後期法院內刑案近三成是以未曾與檢察官對辯的方式終結，故一般人難以理解審檢辯分立下檢察官的角色。

Like the hospital, the court which originated from modern West emerged in

Taiwan in November of 1895. From then on, Taiwan's people can go to the court, rather than the local government, for judicial affairs. Today, the general public always go to the hospital when feeling sick, but do not necessarily go to the court when they are involved in disputes with others or invaded by others. The diagnosis of doctors is always respected, but the decision of judges is not fully respected in current Taiwan. Unlike the hospital, the court probably had no enough support and trust from the general public since it began to operate in Taiwan in 1895. In fact, the practice of going to either courts or local government offices (*yamen*) represents different judicial consciousness. On sanctioning crimes and resolving disputes, a complaint about the wrong of others should be decided by "parent-officials" with his appropriate discretion under Chinese legal traditions. In contrast, a lawsuit litigated by both parties (a prosecutor in the criminal case) should be decided by a neutral judge according to the law under the modern law based on individualism and liberalism.

The colonial judiciary merely adopted a part of modern court system for saving judicial expenditure of the government in Taiwan during the Japanese administration period (1895-1945). The Japanese authorities brought in Taiwan the modern procedure in the court, based on the distinction between adjudication and mediation. The tradition of parent-officials' resolving disputes, on the other hand, was translated into an institution in which local administrative officials were empowered to decide civil disputes in name of mediation so that officials were allowed to make their "decisions," not necessarily abiding by the law. The modern lawyer, based on the distinction between judges and lawyers, was introduced as well. The tradition of sending his or her employers or male relatives to participate the trial, on the other hand, was translated into a provision allowing a person who had no legal training to be an agent of party in civil procedure. Moreover, the lawyer was prohibited in the local administrative officials' "mediation" procedure. The modern prosecutor, based on the distinction between judges, lawyers, and prosecutors, was also introduced. The tradition of parent-officials' punishing minor crimes, on the other hand, was translated into an institution in which high-ranking police officers were empowered to decide statutory minor crimes. As a result, most of criminal cases were dealt with by the police, rather than prosecutors in the court. Finally, the separation of judicial administration and judicial adjudication was implemented, but the administrative litigation in which a court could review the legality of decisions made by the administrative branch was never enforced in Taiwan.

The judicial consciousness of Taiwanese, judging from their social class, residence, gender etc., had already changed to different degrees by their experiences of access to court during the Japanese period. This book examined 48,338 civil cases and 82,407 criminal cases in the Taipei District Court under the Japanese rule. Various personal

data in these cases as well as time, type, participants, and results in the proceedings are variables in this research, which are carefully coded and seriously analyzed. According to this empirical study, those merchants who were often involved in disputes relating to modern commercial laws had more frequently access to the court so as to understand the distinction between adjudication and mediation. Those people whose residence were far from district courts were surprisingly the parties who more frequently hired an attorney-at-law in the court. That means, however, they must pay more attorney fee for their lawsuits. Consequently, they less filed a case in the court and therefore had less chance to understand the distinction between judges and lawyers because of their contacting lawyers. Super-majority of parties were male in the colonial court, and thus men had more opportunity to adopt modern judicial consciousness than women did in colonial Taiwan. Nevertheless, it was also true that a few women had filed a lawsuit for resolving family disputes. They definitely had possibility to change their judicial consciousness. Not only the majority of criminal cases were dealt with by the police in colonial Taiwan, but also near 30% of defendants could not make arguments against prosecutors in a trial in the court during the latter period of Japanese rule. As a result, it was difficult for the general public in Taiwan to understand the role of prosecutors under the distinction between judges, lawyers, and prosecutors.

得獎簡評

本書旨在探究日治時期的法院活動，以及當時民眾正義觀之轉型，亦即探討社會與經濟等脈絡因素，對於司法實踐與正義觀的影響。具體而言，本書嘗試以作者所命名及整編的《日治法院檔案》內，台北地方法院民刑事判決原本為史料，以兼顧量化及質性之研究，探究日治時期人民經由使用或接觸現代型法院，而產生怎樣的司法正義觀的蛻變。有別於史學界藉由日記、小說等素材窺知人們的法律觀念，本書透過記載法院內活動及其裁判結果的司法檔案，推論出社會整體及各個次群體在文化觀念上的變遷。本書結論認為，日治時期的台灣人雖已有「去法院相告」的經驗，但到日治後期，多數台灣人民仍受到傳統刑事司法正義觀的影響，因此整體而言，司法正義觀的轉型程度有限。

本書透過跨學科的視野，以及兼顧量化與質性分析的研究方法，為司法正義觀在台灣社會如何發展與變遷的問題，提供了十分具有參考價值的學術觀點。本書的意義不僅在於探究法制轉換歷程中，人民是否及如何切身體驗法制轉換的影響，更在於提出司法制度發展之相關社會條件的省思。本書的研究發現及研究成果，除了帶來學術上的貢獻，對於從事司法與法制改革者而言，也能促進一定的啟發。

得獎感言

這是第一次以專書得獎。雖是單獨的一本書受到肯定，但若沒有提供基礎知識的一個學術領域、相互幫忙的一群朋友，就沒有這本書。論其緣由，仍須從 1990 年談起，當時在西雅圖華盛頓大學追問只有到了海外、本於台灣主體觀才有的疑惑：日本統治下台灣的法律是什麼？沒有想太多，毅然為此捨棄律師，轉行做研究。於是 20 世紀 90 年代起，出現當今國內外學界所知、台灣觀點的台灣法律史，及其研究社群。這本《去法院相告》（可用台灣福佬話唸），正立足於台灣日治時期法律史的研究成果。

此書的創作亦出於偶然。剛好深知我學術興趣的劉晏齊教授提議，可請陳若蘭教授以其統計專業協助我探究《日治法院檔案》。基於台灣司法史的研究，一直認為今之司法改革應先了解人民的司法觀念是什麼，因此再次「沒有想太多」，即邀請陳若蘭教授一方面實際操作，另一方面教我認識從編碼開始的統計分析方法。恰巧研究能力甚佳的林實芳律師回台大當博士生，故可協助蒐集及爬梳各項史料，並參與對實證分析結果之詮釋。原先無意寫成專書，是在中研院人社中心發表後，始萌生此念頭。

同樣偶然的是，獲得中央研究院人文社會科學學術性專書獎。衷心感謝院方不吝於鼓勵愛尋夢的學術人，也希望與家人、學生及好友分享這份榮耀。