

The Rule of Law and Disobedience in a Polarized Polity:

How Taiwanese Courts Respond to Disobedience

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Jimmy Hsu
*Research Professor
the Institute of Law
Academia Sinica*



Abstract

Contemporary literature on civil disobedience heavily concentrates on the proper definition and scope of this concept and the conditions of its justification in terms of political morality. Relatively little has dealt with how the judiciary should respond. Taiwan has experienced a surge of social and civil movements after 2008, which culminated in the Sunflower movement. This period of surging disobedience led to a groundswell of judicial decisions showcasing the courts' dynamic interactions with civil society. Based on an analysis of dozens of judicial decisions in the decade preceding the Sunflower movement, I identify four models of judicial responses, which include "static formal law," "conflict management," "tolerance," and "dynamic formal law." I show that the Sunflower movement created great pressure on the court, leading it to adopt a new model, namely "adjudicating change." I argue that the emergence of the last model is premised on a special meta-narrative of the rule of law held by a significant segment of Taiwan's civil society and legal profession. I conclude this talk by critically assessing the merits and limits of all five models in a liberal democratic society plagued by deep political polarization.

About the Speaker

Jimmy Chia-Shin Hsu is a Research Professor at the Institute of Law, Academia Sinica, Taiwan. He received LL.B. from National Taiwan University, LL.M. and J.S.D. from the University of Chicago Law School. He was Harvard Yenching Scholar 2016-2017. His research includes legal philosophy, comparative constitutional law, civil disobedience, and transitional justice. He is widely published in international journals and books. He is the President of IVR (International Association for the Philosophy of Law and Social Philosophy) Taiwan Section. He recently published edited volumes such as *Human Dignity in Asia: Dialogue between Law and Culture* (Cambridge University Press, 2022) and *The Ethics of Historical Memory: From Transitional Justice to Overcoming the Past* (National Taiwan University Press, 2024, in Chinese).