

Dynamics of Authoritarian Legalism in Taiwan: State-directed Development and the Administrative Court in the 1950s and 1960s

Cheng-yi Huang 黃丞儀

Institutum Iurisprudentiae, Academia Sinica, Taiwan

中央研究院法律學研究所

Twenty-five years ago, Chalmers Johnson's research on MITI spurred a great deal of debates over the role of bureaucracy in the creation of East Asian economic miracles. However, it was less noted in the debate that how bureaucrats in East Asia got around the rule of law. Recently, as Tamir Moustafa and Tom Ginsburg suggested, the authoritarian states also try to rule their countries by law or at least, by myriads of rules. This paper aims at articulating the dynamics between development-oriented bureaucrats and the rule of law through the lens of judicial cases regarding administrative regulations and archival research in bureaucratic operation in economic realm during the 1950s and 1960s. I argue that contrary to conventional wisdom, bureaucrats did care about requirements of legality, which was imposed by the inner logic of its operation. The court was designed to accommodate this need of consistency in bureaucratic operation which turns the court into a means of control by the authoritarian leaders. Though there was no notice-and-comment-styled rulemaking and the court did not require for substantive rule of law, the internal control mechanism of bureaucracy entailed an even more complicated process of decision-making and bound the administrative branch as law of rule. The logic behind this kind of procedure was not to control bureaucracy by the legislature, as the Positive Political Theory suggests, but to make bureaucrats accountable to their bosses. The court played the role of watchdog, alarming the government when the bureaucrats violated its own rules. Meanwhile, from the perspective of bureaucrats, keeping in line with these internal rules, they might avoid being entangled with political battles among different political actors. This pattern of administrative rulemaking and judicial control turns out to be a legacy of the authoritarian regime, which further influences the enactment and practice of Administrative Procedure Law after democratization. The emphasis on the formalistic idea of rule of law has somehow impeded the court to proceed on more substantive inquiry into the legality of administrative action.