Justice Inc.: The “how” and “why” of the death sentences in Taiwan 2006-2015

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Summary

Chapter One Manufacturing Justice in Capital Cases

I. The research question and academic relevance

If the judicial system is to be seen as a corporation, its main product is undoubtedly judgment, with justice as its selling point. When a dispute happens, the parties involved seek justice in court, delivered in the form of a judgment. Analogically, the judicial system is a monopoly backed by state force aimed at carrying out justice. “Justice Inc.”, to be short. My research aims at examining whether Justice Inc. fulfills its mission and manufactures satisfying products to carry out justice. Focusing on the flagship product of Justice Inc., the judgments of death sentence, I explore the “how” and “why” of death sentences.

Regarding the “how”: How do the judgments look like, in a sociological point of view? What is the characteristics of the narrative that Justice Inc. uses to take lives? What is the cultural implication of the judgments of death sentences? Is rectitude achieved by Justice Inc. in death sentences?

Regarding the “why”: In what way the production line allows or encourages the employee to produce such a judgment? In what dynamics Justice Inc. fails to detect the mistakes and what kind of organizational culture help facilitate it?

The death penalty is a vantage point to study society in both legal and cultural aspects. The judicial systems in modern polities take various shapes, but all of them invariantly boast of their ability to produce “justice” for the people. (Whether this is a successful claim or not varies from state to state, though.) Among Justice Inc.’s many products, the more serious the penalty, the more caution is taken in manufacturing the judgment. In other words, the type of ruling that delivers the most serious punishment is Justice Inc.’s flagship product, consuming the most resources. Hence, examining such a judgment can provide an indication
of the quality of the judicial system’s production line. In this sense, the death penalty is a vantage point for viewing the judicial system as a whole. A close look at the death penalty in Taiwan offers not only specific knowledge about the topic itself, but also a general understanding of how the right to life is dealt with in a democratic polity.

II. The historical and cultural background

Taiwan entered modernity under Japanese reign from 1895 to 1945. The inquisitorial judicial model was introduced to and applied in Taiwan during these 50 years — until the end of World War II brought an end to Japanese rule. Starting from the war’s end — and reinforced by the Cold War that followed — Taiwan came under strong influence by the United States. This eventually led to a gradual shift from an inquisitorial to an adversarial system. The 2003 revision of the Code of Criminal Procedure was the cornerstone of the “modified adversarial system”. The modified adversarial system features a criminal procedure driven by the prosecutor and the defense, yet unlike the Anglo-American system, there is no jury and the judge is the fact finder and legal decision maker.

In the course of transitioning from an inquisitorial to an adversarial system, many habits of legal practice, as well as historical residue, remained entrenched in the judiciary’s operations and mindset. The most salient phenomenon relevant to our topic is the unity of the judge and the prosecutor, in which they share the same qualifications, the same training, and the same office building, and form teams that develop a special affinity.

The death penalty in Taiwan is not reserved for murder. The last time the Supreme Court finalized a death sentence for a non-murder offense was in 2002 for drug trafficking. But the district courts and High Court have doled out the death penalty to 14 defendants since then for crimes other than murder, even if the Supreme Court ultimately commuted the sentences to lesser penalties (Chang, 2015). Most of the offenses punishable to the death penalty do not involve intent to kill, and many of them do not result in the loss of life.

In the past 10 years, from 2006 to 2015, 62 cases were finalized with the death penalty. A short moratorium was quietly carried out from 2006 to 2009, then came to an end when a legislator brought it up and successfully attracted a lot of public attention that resulted in a strong opinion in favor of the death penalty and regular executions. The number of executions each year is usually no more than 10. There are no written rules regarding the
amount of time an inmate shall spend on death row, and the criteria for selecting who will be executed when remains mysterious.

III. The scope

My research includes all finalized death penalty cases from 2006 to 2015 in Taiwan. Each case has multiple judgments — as few as three or as many as 25. The binding judgments are the last one, which is issued by the Supreme Court and deals with the application of law rather than fact-finding, and the second to last one, which is issued by the High Court and deals with factual issues. This High Court ruling is sustained by the Supreme Court and is also referred to as “the last factual judgment.” In most cases, the last factual judgment overrides the first ruling and adjudicates the case itself. Since the Supreme Court handles appeals of legal points and does not involve itself in fact-finding or evaluation of evidence, the last factual judgment best suits my research because it is rich in “stories.” For this reason, the major source for my research is the last factual judgment of each case. My supplemental sources include (1) other judgments before and after, where tracing changes in the stories is relevant; and (2) court files, where more information is desired to examine the coherence, fidelity and selectiveness of the story’s construction.

The 62 cases finalized in the past ten years all involve murder. Among them, 30 were judged to be premeditated and 32 non-premeditated. Fifty were considered direct intent and 12 either indirect intent, unspecified, or ambiguous (Chang, 2015). A non-premeditated murder or murder with indirect intent cannot be considered “the most serious crime.” Therefore, 37 of the 62 cases are outright violations of the United Nations’ ICCPR, which stipulates that the death penalty is applicable only for “the most serious crimes.” My research finding suggests 10 of the 62 cases are seriously flawed: The core of the murder story is not supported or else is negated by the evidence.

Chapter Two  The Judgment: A story as well as a product

I argue that a judgment is a judicial act achieved through the use of language, borrowing insights of speech act theory. In order to analyze the judicial act, one must therefore examine its use of language, because that is how the act is achieved. This also means that when
examining the use of language in the judgment, one cannot forget that it is a judicial act in which each word brings about legal consequences.

Drawing upon previous literature (Umphrey, 1999; Rideout, 2008), this research will critically read judgments issued in capital cases using the following criteria: (1) fidelity (whether the establishment of facts in the judgment is firmly grounded in evidence); (2) coherence (whether the narrative in the judgment is internally consistent and logical, corresponding to one’s experiences); and (3) my own addition, the selection of materials.

Literature regarding miscarriage of justice is another important arena which is highly relevant to my research. After reviewing the factors involved in wrongful convictions, an obvious characteristic of the list is that it implies all mistakes come from external institutions or individuals, rather than the court. This suggests courts do not make any mistakes and have nothing to do with wrongful convictions. Another void that needs to be addressed is WHY wrongful convictions happen.

In order to understand the social process by which errors accumulate and interact with one another in the judicial system, I turn to the study of organizational wrongdoing. A trial outcome emerges through a process in which commitment to convicting the suspect escalates and mistakes accumulate and interact, thus strengthening the bias against the defendant. The cause of a miscarriage of justice should be analyzed both statically and dynamically, both legally and sociologically, because “individual decision making is nested within organizational structures and cultures, which are themselves nested within larger institutional and societal environments. Carefully reconstructing and closely examining these contexts makes it possible to understand the knowledge and policies that guide decisions and meaning assigned to decisions by those making them” (Lofquist, 2001, p. 192).

Chapter Three  Methodology

My research holds a twofold perspective of capital judgments. The research scrutinizes the content of judgments and views them as narration pieced together by legal decision-makers to form a coherent story based on information and arguments gathered during the criminal justice process. This research therefore seeks to describe what capital judgments look like
and offer a static analysis of these “stories”. It also focuses on the process by which judgments take shape. It views judgments as a product of the judicial system and wrongful convictions as “normal accidents” caused not by unlawful behavior on the part of mean-spirited individuals, but rather by routine operation on the part of actors in the system.

In order to understand the capital judgments in the past ten years (2006-2015) in Taiwan, my research utilizes document analysis, trying to look “through” the text of the judgments to grasp the cultural meaning demonstrated in the legal stories they tell. I develop a three-phase methodology in this research. In phase one, coding is used to reduce the text to grasp and identify analytical themes. In phase two, summarizing is used to reduce the text to identify the structure of the story, the arguments that pave toward the conviction and sentence, and the evidence introduced and used to build the story. The above two phases are essential for basic understanding, or static analysis, of the texts. Then in phase three, themes are organized to reconstruct the process by which mistakes occur and survive all the way to the end.

In the past 10 years of legal practice in Taiwan, all finalized death sentences involved murder charges. The crimes differed, but at the core of each was this: “The defendant used some tool to cause the victim’s death on purpose.” In every murder case there is a murder weapon that can be linked to the victim’s death at one end and to the defendant at the other. The “defendant—weapon—victim” chain is omnipresent in every murder case with a solid conviction. If this evidence chain is broken in any given conviction, that ruling is considered flawed because it lacks the material elements of murder.

Chapter Four  The “How” of Death Sentences: A static picture

I. The start of story

The start of a story has bearing on one’s moral stance and judgment. Like any other narrative, writing a capital judgment involves making a series of selections from available information. My research finds that 29 judgments (out of 62) start with the defendants’ criminal records. This defines them as bad people and implies the murder they are accused of is just one episode among their evil acts.
If a criminal record reveals a person’s character, is the lack of one equally indicative? The answer is no. None of the rulings start by noting that the defendant has no prior record, nor do they describe the defendant using any identities other than “criminal.” Not, for example, the defendant’s occupation. The 33 cases that do not launch their narratives with the defendant’s criminal record fit into four categories: (1) Stories that start by describing a feeling of resentment between the defendant and the victim, resulting for example from a sour relationship or unpaid debts. These stories begin by introducing the defendant’s grudge to help build the assertion that the defendant intended to commit murder. (2) Stories that start by describing a need that drove the defendant to crime, usually an urgent need for money to pay serious debts. This type of beginning also sets up the assertion of a motive. (3) Stories that start by describing opportunity to commit the crime. This could mean, for example, describing how the codefendants met each other or met the victim and intended to commit a crime. Usually the crime is against the victim’s property or sexual autonomy. Again, this bolsters the assertion that the defendant had a motive. It sometimes helps establish the assertion that the defendant conspired with the codefendants. (4) Stories that start with the crime itself, for example by describing the acquisition of tools and other preparations for the crime, or the location and participants. These are cases in which the defendant did not know the victim before the act.

When selecting information to include in capital judgments, judges usually, if not always, ignore societal context. One of the common motives for committing a crime is a shortage of money. The story told in the ruling is simple and easy: The defendant needs money, so he kills to get it. The diversity and complexity of crimes are screened out and structural problems are pushed to the blurred background. This deprives the reader of the possibility to understand crimes contextually.

Judgments that do not start with the criminal record of the defendants begin by introducing them as criminals or jumping right into the motive and means for committing the crime. With or without prior records, most rulings do not document the occupations, nor any other identities, of the defendants. This omission guarantees that the readers know the defendants solely as criminals — no more and nothing else. “Criminal” is the first identity given to a defendant, and in most cases the only identity.
It is natural that the defendants in death penalty cases are described as criminals, since we are looking at convictions. What is worth noting, however, is that the defendants are presented as criminals who committed crimes in a social vacuum. No other identities are mentioned and no structural, societal forces are considered when evaluating the harm done, even when relevant information is available in the court files, as seen above. As a result, the capital judgments tell stories that hold the defendant fully accountable for the crime.

II. The main body of the story

A. The criminal intent

One distinct characteristic of the narratives found in judgments is that they are meticulously tailored to meet legal requirements. Yet the concern is whether evidence and arguments support these depictions, and whether they fulfill the criteria of coherence and fidelity. In general, criminal intent is treated as a given in death penalty cases and is simply declared in the Fact Column without evidence or arguments. Establishing intent to kill is problematic when non-fatal methods were used in a crime, such as strangulation or arson.

In cases where the victim knew the offender, it is common for judgments to claim that the perpetrator’s intent was “to kill to eliminate the witness” (殺人滅口). Twenty-eight of the 62 cases in my research fit this description. Among these, many do not offer any evidence to support this claim, but rather use the expression as a convenient solution to establish intent to kill.

Overall, intent to kill is one of the elements of murder that does not receive adequate attention in capital judgments. The assertion that a defendant intended to kill a victim is sometimes made with insufficient evidence or arguments (this constitutes a weakness in fidelity) or established with feeble arguments (this constitutes a weakness in coherence).

B. The evidence chain in murder cases

As mentioned in Chapter Three, the evidence chain in murder cases consists of “defendant—murder weapon—victim.” This chain is one of the fundamental claims of the murder story, and if it is broken in any given judgment, I characterize that conviction in my research as flawed. My research finds 10 flawed convictions, and provides a detailed discussion on the break in the evidence chain in these cases.
C. Other issues

There are some factors that have an influence on the application of the law in capital cases. If, in some cases, the chain of events is successfully established with evidence and the intent to kill is confirmed, but the defendant committed the crime out of self-defense or delusions resulting from serious mental illness, or the defendant turned himself in before 2006 revisions to Taiwanese law, the death penalty is not applicable. These factors rule out the death penalty. Low IQ or mental illness of the defendant are also mitigating factors in the sentencing, but these factors are downplayed, causing incoherence in the arguments.

III. The moral of the story

After asserting the facts of the case and providing a legal opinion about how to treat the defendant, a judgment is not complete until it offers a moral of the story. What is the death penalty for?

In my research, I found self-justifications consisted of two elements. The first is a specific justification of the death penalty, focusing on explaining the sentence. The accounts offered are usually along the lines that the defendant was violent and vicious, the crime was violent and vicious, the victim and victim’s family suffered, social order was harmed and the public peace was disturbed. Unfortunately the specific justification usually fails to demonstrate the crime in discussion is the most serious crime, hence fails to justify the delivery of death penalty.

The second element is a general justification of the death penalty argued in an assertive fashion (that the death penalty carries a certain function that serves the public good) or a defensive fashion (that neither the Constitution nor the ICCPR prohibit the state from using death as a form of punishment). I argue that human dignity is the utmost core value of constitutionality in all contemporary republics, and everybody’s human dignity is protected, be it a bandit or a saint, good or evil. In Germany, the United States or Taiwan, it is clear that human dignity in the context of these countries’ constitutions does not refer to characteristics that certain people possess, but rather something that belongs equally to all people. Human dignity is descriptive rather than normative, it is a synonym to “humanness,” referring to the quality, state, or condition of being human.
The right to life is the precondition to all other rights, including human dignity. Protecting human dignity is equivalent to protecting the right to life, because there is no way to take away someone’s life and leave his human dignity intact. Since it receives unconditional protection under the Constitution of Taiwan, the precondition of human dignity — the right to life — naturally must also enjoy the same unconditional protection.

Chapter Five  The “Why” of Death Sentences: A dynamic process

I. The affinity between the judge and the prosecutor

The affinity between judges and prosecutors is fundamental in Taiwan’s judicial culture, to the extent that it penetrates every stage of trial and radiates influence over every aspect of the judicial establishment. By reviewing the history of this affinity and describing the contemporary features, I argue that the unity of the judge and prosecutor are characterized by qualifications (they pass the same exam, receive the same training and can switch between the two jobs) and organizational affiliation (the two organizations are usually in the same building, with similar names, and judges and prosecutors are assigned to fixed pairings). Moreover, the close relationship between the judge and prosecutor is infrastructure with public recognition and acceptance. In an opinion poll, 72% of respondents mistakenly thought prosecutors belong to the judicial branch (Lin, 2015). The shift of courts from the executive branch to the judicial branch in 1980 was either a ritualistic move or a reform with limited success. It did not put an end to the conflation of judges and prosecutors and gave rise to a transfer policy that is now entrenched. The separation and independence of judges and prosecutors has not been accomplished. The unity of judges and prosecutors remains the backbone of judicial culture. The unity of the judge and prosecutor sheds light on legal decision-making and the way errors accumulate over the course of the judicial process.

II. The accumulation of errors in the judicial process

I divide the trial process into three phases — pre-trial, trial and remand — and discuss the errors at each stage. I further divide the trial phase into procedural and substantive matters for convenience of discussion. To show how errors take shape from external sources and
survive all the way to the judgment, I discuss for each phase (1) mistakes originating from outside the court, (2) organizational culture and (3) mistakes made by the court.

It is worth noting that by “organizational culture,” I mean the routines and guidelines that serve as instructions to the actors in the judicial system, be they explicit, like the rules or procedures stipulated by law, or implicit, like the atmosphere and traditions of the judicial system surrounding the actors. Such an analysis does not indicate the judicial system is the sole entity responsible for producing judgments, but rather, that multiple social forces converge on the judicial process and formulate an organizational culture that nurtures the accumulation and inheritance of mistakes.

It is equally important to stress again that the “errors” in this chapter are discussed with the understanding that organizational wrongdoing often arises from a set of routinely performed procedures that look harmless. When viewed individually, these arrangements may not always appear to be “wrong,” but when put together as part of the legal decision-making process, they stop being harmless. With dynamic analysis, I try to point out that some arrangements facilitate the accumulation of errors that lead to flaws in capital judgments.

Needless to say, I do not claim these errors exist in every capital judgment analyzed in my research. No implication of frequency is made here. As Charles Perrow cleverly explains, organizational wrongdoing is a “normal accident,” in which “normal” does not imply frequency but rather inevitability: “It is normal for us to die, but we do it only once (Perrow, 1999, p.5).”

A. Pretrial

At pretrial stage, the mistake made by the court is the bias toward inculpatory evidence and testimonial evidence.

A High Court judge, Chen Xianyu, once made this comment on the trial process: “It’s like something is drawn on the board, then the defense tries to wipe it off of the board (Lee, N. T., Chen, X. Y., & W. prosecutor, 2012).” From when the judges receive the case to when they hold the first hearing, they are exposed solely to the prosecution, which offers mainly inculpatory rather than exculpatory evidence (otherwise the charges would have been dropped), and mainly testimonial rather than scientific evidence (due to common practices
among police and prosecutors for handling cases). At this stage, the judge’s understanding of the case is mainly based on testimony unfavorable to the defendant. This is what I call “the bias toward testimonial evidence” and “the bias toward inculpatory evidence.” Some judges are, no doubt, able to remain open-minded and restrain themselves from developing a bias. Individuals might have the capacity to resist the influence of organizational culture. But this does not mean the time lag before the defense can present its case has no bearing on the fairness of the trial. Constitutional Court ruling No. 737 clearly demonstrates the imbalance of information is a violation of the defendant’s fundamental right to a fair trial (Judicial Yuan Interpretation No. 737, 2016, April 29). It is hard to imagine the prosecution would tolerate it if the arrangement was flipped, such that the judge would immerse herself/himself for months solely in the defense.

During that time lag, a wrongly prosecuted case looks exactly the same as other capital cases — the defendant confessed. The police and prosecutor slack off after obtaining the confession, and so does the judge. Compare the defendants in Cases Nos. 3 and 11. They both “confessed” during the time lag, but later on, the former was taken by the Control Yuan, the chief prosecutor and the Prosecutors Office of Taichung to be wrongly convicted, while the latter was considered guilty beyond reasonable doubt.

Both the time delay that holds back the defense and the unity of judges and prosecutors hamper the judges’ ability to detect erroneous testimony. Mistakes — such as confessions coerced through torture, false statements given by codefendants out of conflict of interest, or misleading statements by the witnesses out of undue influence by investigators — have time to root in the judges’ minds. The exculpatory evidence has yet to surface due to the defense’s absence at this stage, so no information is available to reveal the mistakes. Therefore, chances are that the mistakes will not be spotted, but rather continue to the next stage.

B. Procedural errors at trial

The mistakes listed here regarding procedure are typically taken for granted as “protocol,” and considered neutral toward the prosecution and the defense. It may seem odd to characterize, say, “the order of investigation” as a “mistake,” but I argue what emerges from this research is that these seemingly innocent arrangements serve to strengthen the bias
toward inculpatory evidence developed in the pretrial phase and to contribute to the accumulation of errors.

At the trial stage, the procedural mistakes include: (1) the immoderate reliance of testimony, (2) the fragmented presentation of exculpatory evidence, and (3) unfair instructions from the judge.

Imagine the trial as a basketball game with two teams competing against each other and a referee that enforces the regulations, and it will be comprehensible. Testimonial evidence enters the court first, and non-testimonial later. This is like having substitute players as starters, while the top players enter the game after the die is cast. Consequently, the judgment relies immoderately on testimony. Secondly, the inculpatory evidence is presented all at once, while the exculpatory evidence is presented in fragments. This is like allowing one team to have five players on the court at the same time, while the other team is confined to sending in one player at a time. At any given moment, it is a game of five against one, even if each team technically has five players. Consequently, the probative value of exculpatory evidence is systematically underrated. Thirdly, the judge plays the role of both accuser and decision maker. This is like having a referee who cannot resist also coaching one of the teams. Consequently, the judge fails to conduct the trial in an impartial manner, and hampers the defendant’s rights. The bias nurtured in the pretrial phase toward inculpatory and testimonial evidence is likely to carry on at trial and solidify.

C. Substantive errors at trial

Substantive errors involve mismatches or inconsistencies in some form, and as observed in this research, they include (1) errors in expert examination, (2) errors in testimony, and (3) failure to collect evidence. The three substantive mistakes in trials are interconnected. The judges are not knowledgeable about forensic science, so they do not spot mistakes in forensic tests. Meanwhile, testimony appears on the judge’s desk from the very beginning, pieced together by the prosecutor into a coherent story with no rival narrative. Naturally, the judge tends to rely on testimony to formulate her/his understanding of the crime at hand. Furthermore, the recklessness in collecting and preserving physical evidence makes forensic tests impossible, which leaves the judge little choice but to rely on testimony even more.

D. The errors in remands
There are errors that survive all the way through trial without being discovered, although the purpose of remand is to correct errors that might occur. In some cases, new errors are created in the process of remand. There are two factors in the organizational culture which contributes to errors in remands: 1) Trial de novo is not carried out in remand. 2) The job evaluation of the judges encourages conformity.

III. Summary of chapter five

Regarding the dynamic process of Justice Inc., my research finds that the raw material that Justice Inc. receives is riddled with all kinds of errors: fabrications, misinterpretations, biases, imprecisions and outright lies. Unfortunately, although one of the major missions of Justice Inc. is to detect these errors, it is not equipped or configured to do so.

Research on organizational wrongdoing shows fatal errors begin as trivial, harmless episodes, but escalate over a process and interact with other irregularities, accumulating to the point of eventual disaster. Examining the process of decision-making in death penalty cases shows that the routine functions of the judicial system tend to foster the accumulation of errors and discourage their discovery and correction. Holding discontinuous hearings for any given trial, for example, is a seemingly harmless and neutral arrangement, but when we add more factors to the equation, such as the unity of the judge and prosecutor, the time lag for the defense, and the bias toward inculpatory evidence, it puts the defendant at a disadvantage. Furthermore, the mistakes do not occur randomly: The judicial system is biased in favor of the prosecution and against the defendant. This matches with what Perrow calls “normal accidents” — “normal” is coined not in the sense that accidents happen every day, but in the sense that they result from normal functioning. Similarly, at Justice Inc., a rightful conviction and a wrongful conviction are dealt with in the same manner, passing the same procedures, and being tried and judged with the same mentality.

The dynamic process of decision-making at Justice Inc. is characterized as an incremental investment in conviction, instead of quality control and correction of errors. Firstly, the vision of the judge is biased toward conviction because of the affinity between the judge and prosecutor and routines of the trial in practice. Secondly, the bias grows and evolves into a conviction over a gradual process, and this incremental escalation consolidates the judge’s
confidence in her/his vision. The escalating investment prevents Justice Inc. from fulfilling its most important calling — discovering errors and correcting them.

Chapter Six Mistakes Happen

I. Challenge the public belief

My research challenges the popular belief that the death sentence is reached with tons of solid, undisputable evidence; is only imposed on deserved people; and is carried out by persuasive arguments and narratives. A close look at the capital judgments shows that the death penalty is not exempted from the various mistakes that happen in Justice Inc. In Chapter Four, I argue that death sentences in Taiwan tend to offer a one-sided crime story in which the defendant does not deserve mercy (even if the court files suggest there is cause for it), and that in a considerable number of the cases, it’s unclear whether the stories put forth by the court are true. In Chapter Five, I argue that capital judgments are produced through a process in which bias toward inculpatory evidence and testimonial evidence accumulates incrementally, leading to a one-sided story unfavorable to the defendant.

II. Suggestions for Justice Inc.

Based on the research findings, I propose changes to be made in Justice Inc., be it technical or fundamental. It includes: (A) indictment without dossier, (B) continuous hearings, (C) reforms regarding expert examinations, (D) order of investigation, and (E) format of the judgment-writing.

To summarize the above suggestions, if the courts adopt recommendations A and B, the time lag for the defense will be eliminated, and the injustice of fragmented presentation of exculpatory evidence will be corrected. The procedures of the trial will not foster bias toward inculpatory evidence and will not give privilege to either of the two parties. And by adopting C, D and E, the courts can tackle procedural and substantive errors: Non-testimonial evidence will be weighted to balance immoderate reliance on testimonial evidence. This will not eliminate errors in expert examination and testimony, but measures C, D, and E can increase the chances of detecting the errors.
More profoundly, based on my research findings, I would like to point out the direction Justice Inc. should take. As argued in Chapter Five, the unity of the judge and prosecutor penetrates the organizational culture at Justice Inc. and enjoys an intense impact on every aspect of Justice Inc. Since organizational wrongdoing often goes beyond individual agency, arising instead from the unique setting of organizational culture, the larger picture has to change if Justice Inc. intends to reduce the risk of organizational wrongdoing. Judge and prosecutor should be viewed as two separate roles, and the qualifications and pre-occupational training for judge and prosecutor should be different. Otherwise, the flow of personnel between these two roles just seems natural because they have the same qualifications and training. Furthermore, I strongly suggest abandoning the practice of pairing teams of judges and prosecutors to guarantee the judge’s neutrality toward the prosecution and defense.

Among 62 cases, 10 of them contained serious flaws at the core of their narratives. Well-cited statistics show a similar ratio: In the United States, for every seven executions since 1976, one death sentence has been reversed (Vago, 2016, pp. 210-211). The finding in my research is that nearly one out of six of death sentences is seriously flawed. And it is worth noting here that it is no guarantee the other 52 cases are flawless. As documented earlier, in addition to those 10 problematic ones, many other cases contain procedural or substantive errors. Moreover, it is likely I could not detect some wrongful convictions because of the lack of information. Not all the court files were available for the cases, and so far no one has found a 100% accurate method for detecting miscarriages of justice. Research into miscarriages of justice demonstrates the percentage of wrongful convictions is high enough to generate serious concerns about the death penalty, and my research shows errors do not just appear in problematic cases, but in many others, too. Errors exist in death sentences as well as in other legal decisions made by Justice Inc.; they exist not as exceptions, but as part of the routine. Errors are normal rather than abnormal.

My research findings suggest the death penalty should be abolished, if not for the sake of human dignity, then because humans have not been able to develop a mechanism that can guarantee accuracy in imposing an irreversible punishment. Considering that life sentences are effective at preventing incurable, violent perpetrators from committing more crimes, the
death penalty poses an unnecessary risk of taking innocent lives and should be considered excessive.

III. The contributions and challenges

Being fully aware that the academic community is a huge talent pool, I would like to mention what this research may contribute to academia and what limitations it bears.

Firstly, the methods developed in my research may be applied to other legal or social research and bridge the gap between these two disciplines. Considering that fact establishment is poorly taught at law schools in Taiwan and many other countries, the methods used in this research may serve to counter this neglect and spur more discussion and research on fact establishment. Secondly, my research situates the judgment within a dynamic process rather than just scrutinizing a static document. The dynamic analysis in my research is an attempt to formulate an explanation that, on the one hand, does not oversimplify organizational wrongdoing as human error, and on the other, eases the public’s cognitive dissonance when learning about miscarriages of justice. More importantly, only once we identify the structural factors responsible for the failures at Justice Inc. can we further improve the system. Thirdly, my research examines all the death sentences over the past 10 years in Taiwan without sampling. This avoids the criticism commonly leveled at the abolition movement: “You focused only on the miscarriages of justice, which is the exception among death sentences rather than the rule.” By doing a blanket review, my research helps show that errors are not confined to wrongful convictions or a few exceptions.

The challenges of the research come partly from the inaccessibility of information and partly from the difficulty of detecting errors. The incomplete access to information defines what can and cannot be accomplished. What I can do is examine all the judgments with criteria inspired by previous literature on narrative analysis: coherence, fidelity and selectiveness. Next, I can spot problematic cases by checking the evidence chain of “victim—murder weapon—defendant”, to see if the core narrative is broken. What I cannot do is sort out all 62 cases and put them in the categories of “wrongful conviction” and “rightful conviction” and make comparisons between the two.
Another limitation is the small number of “near misses.” As mentioned in Chapter Two, methodologically speaking, the factors that play a role in miscarriages of justice can be found only by comparing wrongful convictions and “near misses.” From 2006 to 2015, there were 62 death sentences, but only five “near misses” or cases where the recipient of a death sentence was later exonerated. The tiny sample makes it impossible to draw a conclusion from a meaningful comparison.

IV. Challenging the death penalty

After reading the past decade’s capital judgments in-depth, I have found the overall quality of Justice Inc.’s flagship product far from satisfying. When including quotes from the rulings in my thesis, I repeatedly felt the need to stress that they were faithful to the original Chinese texts, for fear that my readers would interpret the gibberish as lousy translations. In an email exchange, my proofreader could not help commenting: “Half the time it seems probably even the judges don’t know what they mean and they don’t particularly care! Reading the examples in your thesis is totally shocking.” Very often I found myself explain to my proofreader what the judges meant, knowing that their writing does not make sense at all.

Mistakes happen in death sentences — the punishment that deprives people of the right to life and all other rights altogether, and the only sentence that is irreversible. This simple fact should not be overlooked in any discussion of the death penalty.