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## IDENTITY LAWS AND PRIVACY PROTECTION IN A MODERN STATE: THE LEGAL HISTORY CONCERNING PERSONAL INFORMATION IN TAIWAN (1895–2015)

Yung-hua Kuo & Po-liang Chen<sup>†</sup>

*Abstract:* This article investigates the continuity and transformation of the personal identity and identification legal systems in Taiwan. From 1895 to 2015, Japan and subsequently the Republic of China (ROC) ruled Taiwan and transplanted different legal systems of personal information to Taiwan. This article analyzes how these systems were applied to and impacted Taiwanese society in three periods: the Japanese rule period (1895–1945), the period of strict control by the ROC government (1945–1992), and the rise and evolution of the privacy period (1993–2015).

When Taiwan was ruled by the Qing Empire (1683–1895), there was no precise personal information database in Taiwan. After the Sino-Japanese War, in 1895 the Qing Dynasty ceded Taiwan to Japan, which spent a ten years using its police to conduct surveys to collect person information of all residents in Taiwan. Based on the survey results, Japan established a modern household registration system to govern legal identity and identification affairs in Taiwan. While this personal database facilitated the enforcement of public policies, the main purpose of the Japanese household registration system was to allow the police to closely monitor the residents in Taiwan. After World War II, the ROC government ruled Taiwan since 1945. Using the Japanese household registration records as a foundation, the ROC government was able to quickly construct its own household registration system. Moreover, in order to counter the threats of the Communist Party in Mainland China, the ROC government combined the household registration system with the police system and issued National Identification Cards (National ID Cards) for every Taiwanese adult citizen for mobilization and surveillance. The combination of the police and the household registration systems was in effect until 1992.

However, advanced computer technology made fingerprint databases feasible, which posed new threats to privacy rights. In 1997, the ROC Legislative Yuan amended the *Household Registration Act* to establish a fingerprint database for strengthening social order. Article 8 of the amended act required all Taiwanese adults to provide their fingerprints when they renewed their National ID Cards. This requirement raised heated debates on the issue of whether the government's collection of fingerprints intruded on right of privacy. Responding to such dispute, in 2005 the Constitutional Court struck down Article 8 of the *Household Registration Act* for violating individual privacy rights. The repeal of the *Household Registration Act* signified a landmark event for privacy protection in Taiwan. After about one hundred years of suppression and surveillance, the Taiwanese people ultimately become aware of the value of privacy rights. Yet, due to the threats of terrorism and advanced technology, Taiwan and other countries are facing concerns about the collection of information, improvement of national security, and

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protection of privacy rights. The Taiwanese people, as well as people around the world, must carefully seek to balance these competing interests.

## I. INTRODUCTION

Recent plans by the Taiwanese Ministry of the Interior to create a new version of National Identity Cards (National ID Cards) have re-energized privacy debates in Taiwan. These plans would replace the current National ID Cards with a new type of card incorporating drivers' licenses, health insurance cards, e-purses, tax statements, e-voting, and other functions.<sup>1</sup> While the Ministry of the Interior proposed that equipping cards with a variety of personal information may allow them to serve multiple functions, ministry officials were hesitant to publicize and promptly enforce this plan.<sup>2</sup> After several newspapers briefly reported on the plan, a few members of Taiwanese society, especially legal scholars, made note of the plan and analyzed its potential impacts.<sup>3</sup> But the majority of Taiwanese people paid little attention to the reports concerning the Ministry's plan.<sup>4</sup> To explain the complexity surrounding the identity legal systems in Taiwan, this article aims to clarify the history of personal information legal systems in Taiwan. Specifically, this article poses the following questions regarding the use of personal information in a modern state while considering the particular history of Taiwan: what types of legal systems governing personal information have existed in Taiwan during the past one hundred years? How have the legal systems shaped the Taiwanese society? Does the

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<sup>1</sup> See Chen Yu-hsin (陳雨鑫), *Jingpian Shenfenzheng Neizhengbu: Youxian Zhenghe Shenfenzheng Jiazhao yu Jianbaoka* (晶片身分證-內政部：優先整合身分證、駕照與健保卡) [*Ministry of Interior: Priority Will Be Given to Incorporating National IDs, Driver's Licenses, and Health Insurance Cards onto One Smart Chip Card*], [LIANHE XINWEN WANG] (聯合新聞網) [UNITED DAILY NEWS] (May 11, 2015), <http://money.udn.com/money/story/5648/894319-晶片身分證-內政部：優先整合身分證、駕照與健保卡>.

<sup>2</sup> See Ministry of the Interior, ROC (Taiwan), *Neizhengbu Jingpian Shenfenzheng Yanmi Guihua Baohu Geren Ziliao Anquanxing ji Yinsi* (內政部晶片身分證嚴密規劃保護個人資料安全性及隱私) [*Ministry of the Interior: Smart Cards with Chips are Well Designed to Protect Personal Information Security and Privacy*], Nei zhengbu (內政部) [MINISTRY OF THE INTERIOR], [http://www.moi.gov.tw/chi/chi\\_news/news\\_detail.aspx?sn=9469&type\\_code=02](http://www.moi.gov.tw/chi/chi_news/news_detail.aspx?sn=9469&type_code=02) (last visited Feb. 20, 2016); Wen Gui-xiang (溫貴香), *Jingpian Shenfenzheng Neizhengbu: Bu Maoran Shishi* (晶片身分證 內政部：不貿然實施) [*Ministry of the Interior: No Hasty Enforcement of Smart Cards with Chips*], Zhongyang Tongxunshe (中央通訊社) [CENTRAL NEWS AGENCY] (May 11, 2015), <http://www.cna.com.tw/news/firstnews/201505110061-1.aspx>.

<sup>3</sup> See *id.*; Huang Yang-ming (黃揚明), *Shenfenzheng duoheyi? Neizhengbu: Xian zhenghe jiazhao Jianbaoka* (身分證多合一? 內政部：先整合駕照、健保卡) [*Incorporating Multiple Cards into One National ID Card? Ministry of Interior: Driver's Licenses and Health Insurance Cards Will Be Incorporated First*], PINGGUO JISHI XINWEN (蘋果日報) [APPLE DAILY NEWS] (May 11, 2015), <http://www.appledaily.com.tw/realtime/news/article/new/20150511/607912/>.

<sup>4</sup> See *id.*

development of such legal systems in Taiwan provide any guidance about the value of privacy rights and state power for the future?

In order to answer these questions, this article will investigate Taiwan's history concerning personal identity and identification legal systems from 1895 to 2015, which is divided into three periods and discussed in the following three Parts. Following the Introduction, the Second Part discusses the history of personal information legal system in the Japanese rule period (1895–1945), during which the Empire of Japan (Japan) spent ten years establishing the first rigorous household registration legal system in Taiwan. The Third and Fourth Parts then discuss laws governing personal information in Taiwan during the Republic of China (ROC) rule period. The Third Part illustrates the household registration system and the National ID Cards system under the authoritarian ROC government (1945–1992). The Fourth Part illustrates the transition of the Household Registration Act from an authoritarian regime to democracy and its challenges. The Fifth Part focuses on the constitutional debate over the use of National ID Cards, the fingerprints database, and privacy rights in the information age (1992–2015). Based on the history of legal systems concerning personal information in these three phases, the Fifth Part analyzes the interaction between personal information, privacy rights, state power, and social order. The Sixth Part concludes this article in finding that democracy is necessary but not sufficient to bring about the protection and effective realization of privacy rights.

## II. JAPANESE RULE PERIOD (1895–1945)

### A. *Background: Incomplete and Imprecise Records of Taiwanese Residents*

Before Japan's rule from 1895 to 1945, Taiwan was ruled by the Qing Empire from 1683 to 1895, during which the Qing government collected limited personal information from residents in Taiwan. The Qing government only surveyed and accumulated information of male adults over the age of sixteen, using those personal information records to impose a tax and corvée (labor in lieu of a tax) on them for the purpose of public works. The Qing government refrained from collecting personal information from people not producing revenue, including children and women.<sup>5</sup> Moreover,

<sup>5</sup> See Hou Chia-chu (侯家駒), *Woguo Lidai Liyi Hushui Ji Zashui* (我國歷代力役、戶稅及雜稅) [*The Corvée, Household Tax, and Miscellaneous Tax in China throughout History*], 17(8) TAIPEI SHIZHENG YUEKAN (台北市政月刊) [TAIPEI MUN. ADMIN. MONTHLY] 1, 3, 7 (1986).

due to a lack of strict control and regular updates to the records on Taiwanese residents, the Qing government did not gather complete and precise personal information for most residents in Taiwan. For example, illegal immigrants from Mainland China in Taiwan attempted to use the incomplete coverage to hide from governmental inspection, and some Taiwanese households would report fewer family members for tax evasion purposes.<sup>6</sup> It was estimated that by the early eighteenth century, the Qing government officially recorded only one-tenth of people actually residing in Taiwan.<sup>7</sup> In other words, the Qing government failed to collect personal information for the large majority of Taiwanese residents.

At the end of the nineteenth century, Japan took power in Taiwan and gradually established the first modern legal system governing personal information of all Taiwanese people. In 1895, Japan defeated the Qing Empire in the Sino-Japanese War. Both countries then signed the Treaty of Shimonoseki, under which the Qing Empire ceded Taiwan to Japan. From that point on, the Japanese government attempted to realize the social, economic, geographical, and cultural potential of Taiwan in ruling the new colony. The Japanese government required detailed information about Taiwan in order to achieve effective control and make proper policies based on the actual conditions in Taiwan, including the personal information of the Taiwanese population and individuals.

Yet, during the process of investigating and collecting information from the Taiwanese population, the Japanese government immediately encountered significant difficulties. Within the first nine months of ruling Taiwan, the Government-General of Taiwan (*Taiwan Sōtokufu*), the highest department of Japanese government in Taiwan, conducted three surveys to gather personal information and engaged in a systematic search and seizure of weapons. In July 1895, Japanese military police conducted the first

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<sup>6</sup> See *TAIPEI SHIZHI*, VOL. III, ZHENGZHI ZHI HUZHENG PIAN (台北市志 卷三政制志戶政篇) [TAIPEI CITY HISTORY, VOL. III HISTORY OF INSTITUTIONS: HOUSEHOLD SYSTEM] 48 (Wang Guo-fan (王國璠) et al. eds., 1977); *TAIWAN SHENG TONGZHIGAO*, VOL. II RENMIN ZHI RENKOU PIAN (台灣省通志稿 卷二人民志人口篇) [THE HISTORY OF TAIWAN PROVINCE, VOL. II HISTORY OF THE PEOPLE: POPULATION] 2 (Chen Shao-hsin (陳紹馨) ed., 1964).

<sup>7</sup> See Ino Kanori (伊能嘉矩), *Taiwan Ni Okeru Kokō Hen-shin* (台灣に於ける戸口編審) [Compilation and Examination of Household Registration in Taiwan] 4(11) *TAIWAN KANSHŪ KJI* (台灣慣習記事) [RECORDS OF TAIWANESE CUSTOMS] 31, 31–34 (1904).

survey in part of Taipei Town<sup>8</sup> to gather basic information about the people in each household, including name, age, occupation, and place of birth.<sup>9</sup>

Two months later, as more Japanese police were assigned to Taiwan, the police replaced the military to conduct two increasingly comprehensive surveys in Taiwan.<sup>10</sup> In the second survey, conducted in September 1885, the Japanese police gathered the personal information of every household in Taipei Town.<sup>11</sup> The police forced Taiwanese people to submit their personal information, including name, place of birth, address, types of residence (public, private, or rental property), appellation of each family member, and occupation to the police.<sup>12</sup> Moreover, in order to collect personal information outside of Taipei Town, in February 1896 the Government-General of Taiwan undertook a third survey covering the entirety of the Taiwanese island.<sup>13</sup> However, as the government gradually expanded the scope of each survey, it faced serious resistance stemming from Taiwanese residents attempting to hide or refusing to provide personal information. The ultimate failure of the surveys to collect the comprehensive data sought by the Government-General of Taiwan, as well as the search and seizure of weapons, resulted from language barriers, cultural differences, and Taiwanese citizens' distrust of the police force of the new ruler.<sup>14</sup>

#### B. *Toward a Rigorous Personal Information System Governed by the Police*

Upon encountering strong resistance from the Taiwanese people, the Taiwan Government-General decided to incorporate the traditional Chinese *Baojia* (保甲) system into the Japanese police system to more comprehensively monitor and control Taiwanese society. The Qing Empire had implemented the *Baojia* system in Taiwan prior to Japan gaining control,

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<sup>8</sup> Taipei Town was the castle town where the Taipei prefecture of the Qing government was situated. It was located between Dadaocheng and Wanhua in today's Taipei City.

<sup>9</sup> See TAIWAN ZONGDU FU JINGWU JU (台灣總督府警務局) [POLICE BUREAU, GOVERNMENT-GENERAL OF TAIWAN], TAIWAN SŌTOKUFU JINGCHA YANGE ZHI, VOL. II (台灣總督府警察沿革誌(二)) [THE HISTORY OF THE POLICE OF THE TAIWAN GOVERNOR-GENERAL'S OFFICE, VOL. II] 654–55 (1933); ABE YURIKA (阿部由理香), RI ZHI SHIQI TAIWAN HUKOU ZHIDU ZHI YANJIU (日治時期台灣戶口制度之研究) [FORMATION OF HOUSEHOLD REGISTRATION IN TAIWAN DURING THE JAPANESE PERIOD] 21 (2001).

<sup>10</sup> See POLICE BUREAU, GOVERNMENT-GENERAL OF TAIWAN, *supra* note 9, at 655–58.

<sup>11</sup> *Id.* at 655–57.

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* at 658.

<sup>14</sup> *See id.* at 654–58.

under which ten households constituted one *Pai* (牌), ten *Pai* constituted one *Bao* (保), and ten *Bao* constituted one *Jia* (甲).<sup>15</sup> This *Baojia* system required people in the same *Bao* or *Jia* to help other members when incidents happened, and to report any crimes that occurred within that unit to the government.<sup>16</sup> In addition, if any members of the unit changed their personal status, such as marriage or birth, they were required to duly report to the head of their *Bao* and *Jia*, who in turn reported to the government.<sup>17</sup> Although the *Baojia* system was not perfectly enforced throughout Taiwan, the Qing government nonetheless collected a significant amount of personal information to maintain social order.

After the Japanese government gained control of Taiwan and gradually strengthened its hold on the island, various individuals and groups of Taiwanese people who opposed the government attempted to hide from the surveys and searched for opportunities to attack the Japanese government. In order to suppress these opposition groups, in 1898 the Taiwan Government-General issued the *Regulation of Baojia System (Baojia Jōrei)*, which modified the existing *Baojia* system in Taiwan into an intermediate mechanism with which the Japanese police could penetrate more deeply into local communities.<sup>18</sup> Similarly to the *Baojia* system, the *Baojia Jōrei* system created by Japan required Taiwanese people to promptly report any change of their personal status to police via the heads of their *Bao* and *Jia*.<sup>19</sup> Also, members of a *Bao* or *Jia* were required to report any crimes and suspected criminals within their *Bao* or *Jia*, especially opponents of Japanese authority. Yet, in contrast to the *Baojia*, the new Japanese *Baojia Jōrei* system delegated a degree of state power and public duties to the heads of *Bao* and *Jia*, thereby requiring that leaders of local Taiwanese communities assist the Japanese police in monitoring and controlling their fellow citizens. The mandatory duties assigned to the heads included observing every event within their units and reporting to the

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<sup>15</sup> See TAI YEN-HUI (戴炎輝), QUINGDAI TAIWAN ZHI XIANGZHI (清代台灣之鄉治) [THE VILLAGE GOVERNANCE IN TAIWAN UNDER QING RULE] 233–34 (1979).

<sup>16</sup> See LIAN HENG (連橫), TAIWAN TONGSHI, VOL. II (台灣通史 下冊) [GENERAL HISTORY OF TAIWAN, VOL. II] 428 (Chung Hwa Tsung-su Committee (中華叢書委員會) ed., 1955).

<sup>17</sup> See TAI YEN-HUI, *supra* note 15, at 79, 84.

<sup>18</sup> See LIU WEI-JER (劉維哲), TAIWAN YUANZHUMIN SHENFEN RENDING BIANGE YIANSU ZHI TANTAO (台灣原住民身分認定變革因素之探討) [A STUDY ON THE CHANGES IN THE REGULATION OF INDIGENOUS STATUS] 36 (2006).

<sup>19</sup> See ZHENG SHU-PIN (鄭淑屏), TAIWAN ZAI RIJU SHIQI JINGCHA FALING YU FANZUI KONGZHI (台灣在日據時期警察法令與犯罪控制) [THE POLICE REGULATIONS AND CRIMINAL CONTROL IN TAIWAN DURING JAPANESE RULE PERIOD] 58, 91 (1986).



supervising police department.<sup>20</sup> Through the *Baojia Jōrei* system, Japanese police accumulated extensive records of the personal information of Taiwanese people.

As the Japanese police successfully collected extensive information from Taiwanese residents, the police simultaneously strengthened the government's position in collecting and updating personal information in Taiwan. In 1903 the Taiwan Government-General issued the *Regulation of Investigation on Households (Kokō Chōsa Kitei)*, which authorized the police, with the assistance of the *Baojia* system, to frequently check the status, occupation, activities, moral behaviors, and living conditions of a household's members.<sup>21</sup> In June 1905, the Taiwan Government-General issued the *Regulation of Temporary Investigation on Households (Rinji Taiwan Kokō Chōsa Kisoku)* to grant the police authority to carry out the first census of the entire island of Taiwan. While conducting the census, the police collected very broad and detailed personal information from all of Taiwan's residents,<sup>22</sup> except for Taiwanese indigenous people.<sup>23</sup> The police recorded twenty-two types of personal information, including name, relationship with the head of household, race, sex, date of birth, address, marriage, type of main occupation and position, type of side occupation and position, frequently-used language, other language ability, level of education, type and cause of any disability, usage of opium, foot-binding, place of birth and domicile (only for Japanese people from Japanese proper), year of arrival in Taiwan (only for Japanese people from Japanese proper),

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<sup>20</sup> See Chiang Ch'ing-lin (江慶林), *Riju Shiqi Taiwan zhi Jingzhi: Yi Eryu Yuantailang zhi Jingzheng Gaige Wei Zhongxin* (日據時期台灣之警制—以兒玉源太郎之警政改革為中心) [*Taiwanese Police System in Japanese Rule Period: Focusing on the Reform of Police Administration by Kodama Gentarō*], in TAIWAN SHENG WENXIAN WEIYUANHUI CHENGLI SISHI ZHOUNIAN JINIAN ZHUANJI, (台灣省文獻委員會成立四十週年紀念專輯) [SPECIAL VOLUME OF THE FORTIETH ANNIVERSARY OF TAIWAN HISTORICA] 32–34 (1988).

<sup>21</sup> See Kokō Chōsa Kitei Seitei Happu No Ken (戶口調查規程發布ノ件) [The Issue of Regulation of Investigation on Households], TAIWAN ZONGDU FU GONGWEN LEIZUAN Vol. 854 No. 2 (台灣總督府公文類纂) [OFFICIAL DOCUMENTS OF TAIWAN GOVERNMENT-GENERAL] (1903).

<sup>22</sup> See TAIWAN ZONGDUFU GUANFANG TONGJIKE (台灣總督府官房統計課) [TAIWAN GOVERNMENT-GENERAL, STATISTICS DIVISION], MINGZHI SANSHIBA NIAN LINSHI TAIWAN HANYI HUKOU DIAOCHA JISHU BAOWEN (明治三十八年臨時臺灣漢譯戶口調查記述報文) [THE CHINESE EDITION REPORTS OF TEMPORARY INVESTIGATION ON HOUSEHOLDS IN TAIWAN IN MEIJI 38] 7–12, 16 (1909).

<sup>23</sup> During the Japanese rule period, the Japanese government applied special regulations and policies to Taiwanese indigenous people, which differed from those applied to other residents in Taiwan such as Han Chinese and Japanese people.



nationality (only for foreigners), and temporary residence (only for people who were temporarily living in Taiwan).<sup>24</sup>

The two new regulations recognized the Japanese police as the authority responsible for administering the household registration systems in Taiwan after their extensive collection and management efforts. Through the census, the police helped the Japanese government both update the official personal information records concerning the Taiwanese people and expand the breadth and depth of the information collected. Because of the census, the Japan government gained complete control over the personal information of the Taiwanese people. Thus, in December 1905, six months after the census, the Taiwan Government-General issued the *Regulation on Household Registration (Kokō Kisoku)* to formally appoint the police as the exclusive authority governing personal information in Taiwan. The registration confirmed the validity of the personal information records held by police agencies, abolishing the records in other departments.<sup>25</sup> Thus, Japan established the first rigorous legal system governing precise personal information in Taiwan after it had spent roughly ten years gathering, updating, and using personal information from people in Taiwan.

### III. THE PERIOD OF STRICT CONTROL BY THE ROC GOVERNMENT (1945–1992)

#### A. *The Rapid Establishment of the ROC Household Registration Legal System*

In 1945, after Japan was defeated in the Second World War, the ROC government took over Taiwan and quickly reestablished a rigorous household registration legal system. After the Japanese government and its officials retreated from Taiwan, the Taiwan Provincial Administration Office—the highest governing authority in Taiwan within the ROC government—and the county and the municipal governments obtained the materials left by the previous regime, including official records of personal information of Taiwanese residents.<sup>26</sup> Based on these documents, the

<sup>24</sup> See TAIWAN GOVERNMENT-GENERAL, STATISTICS DIVISION, *supra* note 22, at 7–8.

<sup>25</sup> See Kokō Kisoku Oyobi Kokō Chōsa Kitei Seitei No Ken (戶口規則及戶口調査規程制定ノ件) [The Enactment of Regulation on Household Registration and Regulation of Investigation on Households], TAIWAN ZONGDU FU GONGWEN LEIZUAN Vol. 1062 No. 9 (台灣總督府公文類纂) [OFFICIAL DOCUMENTS OF TAIWAN GOVERNMENT-GENERAL] (1905).

<sup>26</sup> See TAIWAN XINSHENG BAOSHE CONGSHU BIANZUAN WEIYUANHUI (臺灣新生報社叢書編纂委員會) [DAILY NEWS COLLECTIONS EDITORIAL BOARD], TAIWAN NIANJIAN (台灣年鑑) [TAIWAN ALMANAC] F40, F48 (1947)

Taiwan Provincial Administration Office conducted a census of the population in Taiwan. The Office collected and verified the personal information of all Taiwanese residents in a three-month period from April to June of 1946.<sup>27</sup> Following the census, the household registration offices of county and municipal governments also completed the first “initial household registration” of all Taiwanese residents from July 1946 to February 1947.<sup>28</sup>

Compared to the Japanese government, which spent almost ten years establishing the first household registration system in Taiwan, the ROC government only spent about one year reviewing and rechecking the personal information of all Taiwanese residents and reestablishing a household registration system. While the ROC government did not have more administrative resources than the Japanese government to collect information, the ROC government could establish its household registration system at a relatively fast pace based on the personal information collected by the previous Japanese regime.

The ROC government efficiently collected personal information and quickly reestablished a household registration system in Taiwan through the use of the extensive data previously collected and lessons learned from the Japanese. In fact, after the war, the ROC government and its household registration offices suffered from a serious lack of officials.<sup>29</sup> Even with such limited resources, the household registration offices in the Taiwan Provincial Administration Office and the county and municipal governments completed the census and the first “initial household registration” of all Taiwanese residents in a relatively short period. While the Japanese government had to gather and correct personal information from each

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<sup>27</sup> See *id.* at I41–I43; TAIWAN SHENG XINGZHENG ZHANGGUAN GONGSHU (台灣省行政長官公署) [TAIWAN PROVINCIAL ADMINISTRATION OFFICE], ZHONGHUA MINGUO DI SANSHILIU NIANDU TAIWAN SHENG XINGZHENG ZHANGGUAN GONGSHU GONGZUO JIHUA (中華民國第三十六年度臺灣省行政長官公署工作計劃) [THE WORKING AGENDA OF THE GOVERNMENT-GENERAL OF TAIWAN IN 1947] 56–57 (1947) [hereinafter WORKING AGENDA OF THE GOVERNMENT-GENERAL OF TAIWAN IN 1947]; TAIWAN SHENG XINGZHENG ZHANGGUAN GONGSHU JINGWU CHU (台灣省行政長官公署警務處) [THE POLICE FORCE, TAIWAN PROVINCIAL ADMINISTRATION OFFICE], TAIWAN YINIAN LAI ZHI JINGWU (台灣一年來之警務) [THE RECORDS OF POLICE AFFAIRS IN TAIWAN FROM 1945 TO 1946] 75–76 (1946); GUOSHI GUAN (國史館) [ACADEMIA HISTORICA], TAIWAN SHENG ZHENGFU DANGAN SHILIAO HUIBIAN—TAIWAN SHENG XINGZHENG ZHANGGUAN GONGSHU SHIQI, VOL. II (臺灣省政府檔案史料彙編—臺灣省行政長官公署時期 (二)) [THE COLLECTION OF THE TAIWAN PROVINCIAL GOVERNMENT’S DOCUMENTS IN THE TAIWAN PROVINCIAL ADMINISTRATION OFFICE PERIOD, VOL. II] 90–91, 164 (Yueh-Shuen Hsueh (薛月順編) ed., 1998).

<sup>28</sup> See DAILY NEWS COLLECTIONS EDITORIAL BOARD, *supra* note 26, at I41.

<sup>29</sup> See WORKING AGENDA OF THE GOVERNMENT-GENERAL OF TAIWAN IN 1947, *supra* note 27, at 56.

Taiwanese resident through its own efforts, the ROC government received vast amounts of well-organized personal information on Taiwanese residents from the Japanese government. Using the existing data as a foundation, the ROC government could examine the data and quickly establish its own rigorous household registration legal system in Taiwan.

*B. The Combination of the Household Registration System and the Police System*

Since 1945, the ROC government has gradually replaced the Japanese laws with the ROC legal system in Taiwan. On July 23, 1946, the Taiwan Provincial Administration Office abolished the Japanese laws governing household registration affairs such as the *Regulation on Household Registration*, and enacted the ROC *Household Registration Act* (戶籍法) in Taiwan.<sup>30</sup> This system differed from the household registration system that was operated by the police in the Japanese rule period in that the ROC household registration system was operated by special personnel of the household registration offices.<sup>31</sup>

In addition to the different rules of the ROC *Household Registration Act*, in practice the ROC government and its officials were keenly aware of the distinction between a household registration system and a police system. For example, in 1946, the Taiwan Provincial Police Administration of the Taiwan Provincial Administration Office declared that household registration system and police system have different functions and purposes: household registration was for identification and authentication of identity of

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<sup>30</sup> See *Feizhi Riben Zhanling Shidai Suo Ban Hukou Guize deng Fagui* (廢止日本佔領時代所頒戶口規則等法規) [*Annulment of Household Rule and Its Related Regulations Enacted in the Japanese Occupation Period*], in XINGZHENG ZHANGGUAN GONGSHU DANG-AN (行政長官公署檔案) [THE DOCUMENTS OF TAIWAN PROVINCIAL ADMINISTRATION OFFICE] (July 15–16, 1946), <http://ds2.th.gov.tw/ds3/app003/list3.php?ID1=00307370019001>; *Feizhi Ri Zhanling Taiwan Shi Suo Banxing Hukou deng Fagui Gonggao An* (廢止日佔領臺灣時所頒行戶口等法規公告案) [*The Declaration of Annulment of Household Rule and Its Related Regulations Enacted in the Japanese Occupation Period*] in XINGZHENG ZHANGGUAN GONGSHU DANG-AN (行政長官公署檔案) [THE DOCUMENTS OF TAIWAN PROVINCIAL ADMINISTRATION OFFICE] (July 17–23, 1946); WANG TAY-SHENG (王泰升), *Taiwan Zhanhou Chuqi de Zhengquan Zhuanti yu Falu Tixi de Chengjie (1945-1949)* (台灣戰後初期的政權轉替與法律體系的承接 (一九四五至一九四九)) [*The Transition of Legal Systems in the Early Period of Postwar Taiwan, 1945–1949*], 29.1 NAT'L TAIWAN U.L. REV., 1, 15–16 (1999).

<sup>31</sup> See DAILY NEWS COLLECTIONS EDITORIAL BOARD, *supra* note 26, at F40.

each Taiwanese person, while police forces were responsible for the pursuit of social order and crime prevention.<sup>32</sup>

Despite the ROC government's acknowledgement of the distinct purposes of the household registration system and police force, in practice separating the two functions proved difficult. While the ROC government did clearly articulate distinction between the two systems, for the purpose of resisting the Communist Party in Mainland China, the ROC government passed or amended laws to blur the distinction.<sup>33</sup> The ROC government first connected the household registration offices and police departments, and gradually combined the two systems to monitor every person and detect any Communist Party spies.

During the long period of National Mobilization in Suppression of Communist Rebellion from 1948 to 1991, the ROC government chose to incorporate the household registration system into the police system in order to surveil and control the Taiwanese people. Specifically, in 1949 the ROC government evacuated to Taiwan when it was defeated by the Chinese Communist Party in Mainland China. Since 1948, prior to its complete loss in the civil war, the ROC government had declared and amended the *Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion* and other special laws to adjust its government organizations, public policies, and legal systems to counter the threats of the Chinese Communist Party.<sup>34</sup> One of the proposed adjustments was the integration of household registration system into the police system, which allowed the government to more comprehensively and easily integrate and analyze data pertaining to the status and activities of each Taiwanese person from different governmental departments.<sup>35</sup>

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<sup>32</sup> See WORKING AGENDA OF THE GOVERNMENT-GENERAL OF TAIWAN IN 1947, *supra* note 27, at 75–76.

<sup>33</sup> See, e.g., Enforcement Rules of the Household Registration Act, art. 5 (1946); Regulation of the Connection between Household Registration Departments and Police Departments in Counties and Cities of Taiwan Province to Check and Record Changes of Households, arts. 4–6, 8, (1946).

<sup>34</sup> See Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–2 (1948); Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–5 (1960); Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–6 (Feb. 1966); Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–8 (Mar. 1966); Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–9 (1972); Temporary Provisions During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 1–9 (1991).

<sup>35</sup> See Ku Tien-chi (古奠基), *Lun Zongdongyuan yu “Hujing Heyi”* (論總動員與「戶警合一」) [Discussing General Mobilization and the Combination of the Household Registration System and the

Beginning in 1953, the Taiwan Provincial Government issued a series of regulations—including the *Experimental Regulation for Cataloging Household Registration in Taiwan Province* (台灣省整理戶籍實驗辦法), the *Regulation for Improving the Examination on Household Registration in Taiwan Province* (改進台灣省戶口查記辦法), and the *Regulation for Connection between Household Registration and Police Systems in Taiwan Region* (台灣地區戶警聯繫辦法)—to create a dual system of household registration offices and police departments that worked cooperatively.<sup>36</sup>

Within the dual system, household registration offices took charge of household registration system administration, and the police departments physically checked and updated information and status of Taiwanese individuals. In addition, under the new regulations, the Taiwan Provincial Government set up joint operation offices for household registration personnel and police to work in the same space, which allowed the groups to easily access and share the personal information collected by the household registration system. The government also appointed officials from one system to serve as vice directors in organizations of the other system.<sup>37</sup>

By the end of the 1960s, the ROC government had completely merged the household registration system and police system. The combination of the two systems allowed the government to use personal information data to monitor and control Taiwanese citizens to a remarkable degree. While the *Household Registration Act* still kept the household registration system distinct from other systems, such as the police system, in May 1969, the *Executive Yuan*, the executive branch of the central government of ROC, issued the *Regulation of Improving Household Registration System in Taiwan During the Period of National Mobilization for Suppression of the Communist Rebellion* (動員戡亂時期台灣地區戶政改進辦法) to

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*Police System*”], 4(3) ZHONGGUO DIFANG ZIZHI (中國地方自治) [CHINA SELF-GOV'T REV.] 11, 11–12 (1955); Kuo Ch'ao-lung (郭朝隆), *Tan Hujifa zhi Xiuzheng Yaoyi ji Dangqian Huzheng shang zhi Wenti* (談戶籍法之修正要義及當前戶政上之問題) [*Discussion of the Principal Meaning of the Amendment of the Household Registration Act and Questions about the Present Household Registration Practice*], 26(8) ZHONGGUO DIFANG ZIZHI (中國地方自治) [CHINA SELF-GOV'T REV.] 6, 6 (1973).

<sup>36</sup> See *Experimental Regulation for Cataloging of Household Registration in Taiwan Province*, arts. 3–8 (1953); *Regulation for Improving the Examination on Household Registration in Taiwan Province*, arts. 2, 4, 7, 8 (1965); *Regulation for Connection between Household Registration and Police Systems in Taiwan Region*, arts. 2–11 (1966).

<sup>37</sup> See Chang Erh-chang (張爾璋), *Kaiguo Liushi Nian zhi Huzheng* (開國六十年之戶政) [*The Administration of the Household Registration System: Sixty Years Since the Establishment of the Republic of China*], 24(5)–(6) ZHONGGUO DIFANG ZIZHI (中國地方自治) [CHINA SELF-GOV'T REV.] 48, 52–54 (1971).

experiment with a temporary combination of the household registration system and the police system in Taiwan for one year.<sup>38</sup> Effective from July 1, 1969, the regulation integrated the two systems in provincial and county governments as well as municipal and township offices. In provincial and county governments, the household registration offices were moved into the police system. In municipal and township household registration offices, the household registration operation were under the police's charge by assigning police officials to positions of vice directors to manage household registration officials.<sup>39</sup> As a result, the police could access all personal information collected through the household registration system. The police could use the information without any restrictions to determine the status and situation of Taiwanese individuals. This authority was justified on the grounds that the governments needed the information to detect spies and prevent crimes in Taiwanese society.

After the trial year, the ROC government extended the regulation's effectiveness trial period of implementing the regulation for several times, continuing to enforce the combination of household registration system and police system without authorization from the *Household Registration Act* for more than a decade.<sup>40</sup> The *Household Registration Act* did not legally combine the two systems until it was amended by the *Legislative Yuan* in 1973. The amended *Act* not only allowed the police to use personal information accumulated by the household registration system to strengthen social order, but also strengthened the combination of the two systems. Specifically, like the household registration offices in provincial and county governments, the household registration departments in municipal and township offices were completely integrated into the police system. In addition, police officials became directors—not vice directors—of the

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<sup>38</sup> See Regulation of Improving the Household Registration System in Taiwan During the Period of National Mobilization for Suppression of the Communist Rebellion, arts. 2–6, 8, 9, 12 (1969).

<sup>39</sup> See Yang Ching-chiang (楊清江), *Hujing Heyi Zhidu de Gainian* (戶警合一制度的概念) [*The Concept of Combination of the Household Registration System and the Police System*], 9(2) JINGXUE CONGKAN (警學叢刊) [POLICE SCI. Q.] 94, 94–97 (1978); Yang Ching-chiang (楊清江), *Hujing Heyi Shishi Fangan Zhixing Gaikuang de Jiantao* (戶警合一實施方案執行概況的檢討) [*A Review of the Combination of the Household Registration System and the Police System and Its Practice*], 9(4) JINGXUE CONGKAN (警學叢刊) [POLICE SCI. Q.] 52, 52–53 (1979) [hereinafter Yang Ching-chiang, *A Review of the Combination of the Household Registration System and the Police System*].

<sup>40</sup> See Taiwan Sheng Zhengfu Gongbao No. 59, Autumn 33 (台灣省政府公報) [TAIWAN PROVINCIAL GOV'T GAZ.], Aug. 7, 1970, at 2; Zongtongfu Gongbao No. 2287 (總統府公報) [PRESIDENTIAL OFFICE GAZ.], July 13, 1971, at 9; Zongtongfu Gongbao No. 2546 (總統府公報) [PRESIDENTIAL OFFICE GAZ.], Mar. 14, 1973, at 4; Zongtongfu Gongbao No. 2876 (總統府公報) [PRESIDENTIAL OFFICE GAZ.], Apr. 23, 1975, at 9.



household registration departments in municipal and township offices. Also, police conducted many household registration affairs, including, but not limited to, issuing National ID Cards, conducting the census of the Taiwanese people and their economic activities, and checking household statuses.<sup>41</sup>

For over forty years, the combination of the household registration system and the police system allowed the ROC government to closely monitor and strictly control Taiwanese citizens. As the period of National Mobilization in Suppression of Communist Rebellion ended in 1991, combination of the two systems was terminated in 1992 when the *Legislative Yuan* amended the *Household Registration Act*.<sup>42</sup> However, after the systems had been combined for over forty years, the ROC government and most Taiwanese people were already accustomed to the law and its practice. Both the government and the people were not aware that it might be quite abnormal and illegitimate to allow police to use personal information accumulated by the household registration system. Because of the confusion about the distinction between the two systems, when the government later announced its plan to use the household registration system to collect more personal information from Taiwanese people, the plan stirred up considerable legal controversy about personal information among the Taiwanese people.

### C. *The National Identification Card System in Taiwan*

As the ROC government constructed its household registration legal system in Taiwan, a major component of the system was the issuance of a National Identification Card to every Taiwanese citizen, which was made mandatory by household registration laws. The *Household Registration Act* of 1946, the *Regulation for Issuance of National Identification Card to Public Officials in Government Departments in Taiwan Province, Taipei City, and Central Government in the Province* (台灣省台北市省級暨中央

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<sup>41</sup> See Yang Ching-chiang, *A Review of the Combination of Household Registration System and Police System and Its Practice*, *supra* note 39, at 56; TSAI WEN-RU (蔡文如), WOGUO GEREN ZILIAO ZHENGCE ZHI XINGCHENG YU BIANQIAN 1949–2002: YI HUJI ZILIAO WEI LI (我國個人資料政策之形成與變遷 1949–2002—以戶籍資料為例) [THE FORMATION AND CHANGE OF TAIWAN'S PERSONAL INFORMATION POLICY FROM 1949 TO 2002: THE HOUSEHOLD REGISTRATION SYSTEM AS AN EXAMPLE] 59–60 (2004); NEIZHENGBU MISHUSHI (內政部秘書室) [SECRETARIAT OF MINISTRY OF INTERIOR], LIUSHIBA NIANDU NEIZHENG YEWU YANJIU BAOGAO (六十八年度內政業務研究報告) [A RESEARCH REPORT ON INTERIOR AFFAIRS IN 1979] 497 (1980).

<sup>42</sup> See WANG XINHUA (王新華), ZHONGGUO HUJI FALU ZHIDU YANJIU (中國戶籍法律制度研究) [A STUDY ON CHINESE HOUSEHOLD REGISTRATION SYSTEM] 273, 277 (2001).



駐省機關公務員國民身分證頒發辦法) of 1947, and the *Regulation for Issuance of National Identification Card to Citizens in Counties and Municipalities of the Taiwanese Province* (台灣省各縣市國民身分證發給辦法) of 1947 required every Taiwanese citizen above the age of eighteen to apply for a National ID Card.<sup>43</sup>

Generally, the National ID Card policy was effectively enforced. The majority of Taiwanese people applied for a National ID Card, and household registration offices smoothly issued National ID Cards to the applicants. For example, from 1946 to 1947, the household registration offices in Pingtung County issued National ID Cards to all citizens in the county.<sup>44</sup> Moreover, in the following two years, the offices re-issued National ID Cards for citizens who had lost or damaged their National ID Cards.<sup>45</sup>

Since the ROC government began to issue National ID Cards in 1947, the government has tried to use photographs and fingerprints as ways of verifying the identities of Taiwanese people. Under the *Household Registration Act* and the related regulations, the government required Taiwanese citizens to provide either their photographs or fingerprints when applying for National ID Cards. In reality, in 1947, household registration offices only asked Taiwanese citizens to provide their fingerprints because most Taiwanese people could not afford the fee for taking photographs. The household registration offices thus chose to issue National ID Cards with only fingerprints, but no photographs.<sup>46</sup>

However, the fingerprint data on National ID Cards was not a clear visual image of the applicant's fingerprint, but only an indication of the

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<sup>43</sup> See CHOU CHUNG-YI (周中一), *HUJI XINGZHENG TONGLUN* (戶籍行政通論) [THE GENERAL THEORY OF THE HOUSEHOLD REGISTRATION SYSTEM] 120 (1953); *HUJI DENGJI JI HUJI TENG BEN ZHUANAN DIAOCHA YANJIU BAOGAO* (戶籍登記暨戶籍謄本專案調查研究報告) [AN INVESTIGATION INTO THE HOUSEHOLD REGISTRATION SYSTEM AND HOUSEHOLD REGISTRATION TRANSCRIPT] 41 (Nat'l Dev. Council under the Exec. Yuan ed., 1971); THE HISTORY DIVISION, THE MINISTRY OF THE INTERIOR (內政部部史編撰小組), *NEIZHENGBU BUSHI* (內政部部史) [THE HISTORY OF THE MINISTRY OF THE INTERIOR] 454 (1993).

<sup>44</sup> See PINGTUNG CITY GOVERNMENT (屏東市政府), *PINGDONGSHI HUIZHENG SHIFAN GONGZUO BAOGAO* (屏東市戶政示範工作報告) [WORK REPORT OF THE HOUSEHOLD REGISTRATION DEMONSTRATION PROJECT IN PINGTUNG CITY] 21 (1949).

<sup>45</sup> See *id.*

<sup>46</sup> See THE HISTORY DIVISION, THE MINISTRY OF THE INTERIOR, *supra* note 43, at 454; TAIWAN SHENG TONGZHIGAO, VOL. III ZHENGSHI ZHI HUIZHENG PIAN (台灣省通志 卷三 政事志戶政篇) [THE HISTORY OF TAIWAN PROVINCE, VOL. III: RECORD OF GOVERNMENT AFFAIRS : CHAPTER OF HOUSEHOLD REGISTRATION] 89–90 (Lee Ju-he (李汝和) et al. eds., 1971).

fingerprint patterns—loop or whorl.<sup>47</sup> The fingerprint data on National ID Cards only indicated the very basic classification of fingerprint patterns; it was far from an effective and reliable method of verification. In order to solve this problem and significantly improve the identification function of National ID Cards, when the ROC government re-issued National ID cards in 1954, it decided to replace the requirement of submitting fingerprint information with a photograph, even though Taiwanese people generally still regarded the cost for photography as a heavy burden.<sup>48</sup>

While the fundamental purpose of National ID Cards is identification, during the National Mobilization in Suppression of Communist Rebellion, the ROC government also used these cards for two other purposes: preparedness for war and surveillance of people.<sup>49</sup> These purposes were clearly demonstrated by repeated changes to the information contained on the National ID Cards. For example, in 1966, the government added a blood type column on National ID Cards.<sup>50</sup> The assumption was that, if a war broke out between the ROC government and the People's Republic of China, hospitals could immediately treat injured people according to the blood type

<sup>47</sup> YU SSU-CHIN (俞斯錦), XIN HUJIFA SHIYI (新戶籍法釋義) [THE INTERPRETATION OF THE NEW HOUSEHOLD REGISTRATION ACT] 15–16, 21 (1947); WANG XINHUA, *supra* note 42, at 268; CHOU CHUNG-YI, *supra* note 43, at 122.

<sup>48</sup> See CIVIL AFFAIRS DEPARTMENT, TAIWAN PROVINCIAL GOVERNMENT (台灣省政府民政廳), JU QINGSHI WEI QIANRU RENKOU KEFOU ZHUNYU MIANJIANG XIANGPIAN HUO ZHIWEN HEFU ZHIZHAO YOU (據請示為遷入人口可否准予免繳相片或指紋核復知照由) [THE REPLY TO THE REQUEST TO WAIVE THE PHOTO OR FINGERPRINT REQUIREMENT] (1949), <http://catalog.digitalarchives.tw/?URN=3521804>; LI LIAN-FAN (李廉芳), *Taiwan Sheng Zhengli Huji Shishi de Jiantao yu Gaijin* (台灣省整理戶籍實施的檢討與改進) [A Critical Review on Implementing Household Registration Affairs], 3.11 ZHONGGUO DIFANG ZIZHI (中國地方自治) [CHINA SELF-GOV'T REV.] 13, 13 (1954); TAIWAN SHENG LINSHI SHENG YIHUI (台灣省臨時省議會) [THE TEMPORAL PROVINCIAL COUNCIL], Taiwan Sheng Zhengfu Han Song Taiwan Sheng Guomin Shenfen Zheng Ji Hukou Mingbu Fa Gei Banfa Yizhong Qing Taiwan Sheng Linshi Sheng Yihui Shenyi (臺灣省政府函送臺灣省國民身分證暨戶口名簿發給辦法乙種請臺灣省臨時省議會審議) [The Taiwan Provincial Government's Proposal on the Issuance of National ID Cards and Household Registry to Taiwan Provincial Council], Taiwan Sheng Ziyihui Diancang Shuwei Hua Ji Hua: Taiwan Sheng Ziyihui Dangan Chaxun Xitong (台灣省諮議會典藏數位化計畫：台灣省諮議會檔案查詢系統) [Taiwan Provincial Consultative Council Digitalizing Plan: The Taiwan Provincial Consultative Council Searching System] (1958).

<sup>49</sup> TAIWAN GUANGFU SAWUNIAN (台灣光復卅五年) [THIRTY-FIVE YEARS SINCE THE RESTORATION FROM THE JAPANESE RULE] 54 (Info. Serv. Dep't in the Taiwan Provincial Gov't (臺灣省政府新聞處編 ed., 1980).

<sup>50</sup> See Household Registration Office, Daan District, Taipei City (台北市大安區戶政事務所), *Guomin Shenfenzheng Yangze: Guomin Shenfenzheng Yangben Zhanchu Wenjian* (國民身分證沿革：國民身分證樣本展出文件) [History of the National Identity Cards: Exhibition of Samples of the National Identity Cards], Daanqu Huzheng Shiwusuo Dangan Guanli Zhishiwang (台北市大安區戶政事務所檔案管理知識網) [TAIPEI CITY DAAN DISTRICT HOUSEHOLD REGISTRATION OFFICE DATA MANAGEMENT KNOWLEDGE NETWORK], <http://www.gov.taipei/ct.asp?xitem=971761&CtNode=21683&mp=100044> (last visited Feb. 20, 2016).

record on their National ID Cards.<sup>51</sup> In addition, as the government increased the personal information on the National ID Card, the police could examine the increasingly detailed National ID Card to check the identity and intention of a suspicious individual who might be a missing person or an escaped convict.<sup>52</sup>

To further its surveillance and control over every Taiwanese person, the ROC government assigned a National ID Card number to each Taiwanese person when the person reached the age of fourteen and applied for a National ID Card.<sup>53</sup> In 1954, the government began to assign a number to each National ID Card, which simply represented an ordinal number for the card itself, not for the card holder. Yet, in 1966, the government modified and improved the mechanism of generating National ID Card numbers, attaching a permanent number to each Taiwanese person when the person applied for the card at the age of fourteen. The government explicitly claimed that the function of the National ID Card number was to mobilize and tax Taiwanese people. In 1971, the government began to assign National ID Card numbers to each Taiwanese person at birth.<sup>54</sup> In that sense, the National ID Card number was no longer a number for the *card*; instead, it became a number of the *person*.

As many laws and regulations require Taiwanese people to present their National ID Cards in various official procedures, National ID Cards have gradually become an indispensable document for Taiwanese people to prove their identity. For example, according to *the Notary Act*, when making notarial deeds, notaries shall require applicants to provide their National ID Cards to prove their identities.<sup>55</sup> The *Public Officials Election and Recall Act* and the *Presidential and Vice Presidential Election and Recall Act* require that, on an election day, voters present their National ID

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<sup>51</sup> See Liang Kuang-en (梁廣恩), *Taimin Diqu Tongyi Genghuan Xin Guomin Shenfenzheng Choubei Jingguo* (台閩地區統一更換新國民身分證籌備經過) [*The Preparatory Proceedings for Upgrading the National ID Card System in Taiwan and Fujian Province*], 4(3) JINGXUE CONGKAN (警學叢刊) [POLICE SCI. Q.] 67, 67, 72 (1975).

<sup>52</sup> Yang Ching-chiang (楊清江), *Hujing Heyi Zhidu Youguan Wenti de Tanta* (戶警合一制度有關問題的探討) [*Discussion on Issues Pertaining to the Combination of the Household Registration System and the Police System*], 9(3) JINGXUE CONGKAN (警學叢刊) [POLICE SCI. Q.] 20, 26 (1979).

<sup>53</sup> The minimum age requirement to apply for National ID Cards was lowered from eighteen to fourteen when the ROC government re-issued National ID Cards in 1954.

<sup>54</sup> See NEIZHENGBU HUIZHENGSI (內政部戶政司) [THE DEPARTMENT OF HOUSEHOLD REGISTRATION IN THE MINISTRY OF INTERIOR], *QUANMIAN HUANFA GUOMIN SHENFENZHENG DASHIJI* (全面換發國民身分證大事紀) [THE CHRONICLES OF NATIONAL ID CARD REFORM] 12 (2007).

<sup>55</sup> The Notary Act, art. 19 (1974).

Cards to receive a ballot.<sup>56</sup> The *Enforcement Rules of the Passport Act* also requires applicants for an ROC passport to submit their original National ID Cards and a copy thereof to receive a passport.<sup>57</sup> According to the *Enforcement Rules of the Labor Pension Act*, when applying for the payment of retirement pensions, laborers must present a copy of their National ID Cards.<sup>58</sup> In most state-administered examinations, examinees have to present their National ID Cards to be permitted into the test sites. When applying for a professional license for business passenger vehicles, applicants must have their National ID Cards ready for inspection. Moreover, Taiwanese people are often asked to present their National ID Cards as proof of their identities in daily private activities, such as opening a bank account and participating in job interviews. Therefore, National ID Cards have become important personal identity documents for Taiwanese people in their public and private lives.<sup>59</sup>

#### D. *Collecting Fingerprints for Crime Prevention and Inspection*

Since the beginning of the ROC's rule of Taiwan in 1945, the government has collected the fingerprints of a large number of Taiwanese people. Initially, as part of Taiwanese criminal procedure, the government collected fingerprints of prisoners through the detention process and prison system. Under the *Detention Act* (羈押法), detention facilities require detainees to provide their fingerprints.<sup>60</sup> Also, according to the *Prison Act* (監獄行刑法) of 1945, prisons record the fingerprints of all inmates at the time of their entry into a facility.<sup>61</sup> Detention facilities and prisons have used the collected fingerprints to verify the identity of detained persons or prisoners following their release. In this sense, the fingerprints were only used to guarantee that the same person entered and then left the detention

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<sup>56</sup> Public Officials Election and Recall Act, art. 21 (1980); Presidential and Vice Presidential Election and Recall Act, art. 14 (1995).

<sup>57</sup> Enforcement Rules of the Passport Act, art. 8 (2002).

<sup>58</sup> Enforcement Rules of the Labor Pension Act, art. 37 (2005).

<sup>59</sup> See SIFAYUAN DAFAGUAN HUIYI JIESHI DI 603 HAO (司法院大法官會議解釋第 603 號) [The Judicial Yuan No. 603 Interpretation] 2005, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (2005) (Taiwan) [hereinafter SHIZI No. 603].

<sup>60</sup> According to *Detention Act* of 1945, detention facilities require detainees to provide their fingerprints to check the identity of the detainees when they leave the detention facilities. This requirement implies that the detention facilities did collect the fingerprints of the detainees when they entered the detention facility, though the statute did not explicitly express the requirement. This legislative omission was later rectified in 1954 by an amendment to the Detention Act. According to the amended Detention Act, detention facilities shall collect and check the fingerprints of detainees when they enter and leave the detention facilities. See Detention Act, art. 35 (1945); Detention Act, arts. 9, 35 (1954).

<sup>61</sup> Prison Act art. 13 (1945).

facility or prison. Yet, later, the ROC government expanded the scope of collecting fingerprints. In 1952, the Ministry of Justice issued the enforcement outlines governing fingerprints of sentenced persons, which required all guilty defendants to provide their fingerprints to prosecutors' offices, regardless of whether the defendant was punished by incarceration in a jail or prison, or paid a fine to the government.<sup>62</sup>

In addition, since 1947, the police system has been collecting fingerprints of suspects to confirm their identities. According to the *Regulation of the Taiwan Provincial Police Administration and Its Subordinate Police Departments Filing Criminal Records* (台灣省警務處暨所屬警察單位辦理犯罪紀錄辦法) and the *Regulation for All Levels Police Departments Filing Criminal Records* (各級警察機關刑案紀錄辦法), police officers should take photographs and record fingerprints of suspects who probably had committed crimes and would be transferred to prosecutors' offices for further investigation.<sup>63</sup> While the regulations only allowed the police to record fingerprints of suspects deemed likely to have committed crimes, the police did not strictly comply with this requirement. In practice, the police would broadly record the fingerprints of *all* suspects who were arrested to collect as much personal information as possible.<sup>64</sup> Through this process, the police system has gradually accumulated more and more fingerprints of Taiwanese people.

As the police system collected huge amounts of fingerprint data from Taiwanese people, the ROC government used the fingerprint data not only to confirm the identity of arrested suspects, but also to investigate the identity of unknown criminals. In order to collect more fingerprints for criminal

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<sup>62</sup> See Hsu Heng-hsi (徐聖熙), *Banli Shouxingren Zhiwen Zhi Mude Yu Shixiao* (辦理受刑人指紋之目的與實效) [*The Purpose and Effect of Collecting Fingerprints from Prisoners*], 16(4) XINGSHIFA ZAZHI (刑事法雜誌) [CRIM. L.J.] 12, 12–15 (1972).

<sup>63</sup> Regulation of the Taiwanese Provincial Police Administration's Criminal Records Filing, art. 15 (1956); Regulation for All Levels Police Departments Criminal Records Filing, art. 14 (1979).

<sup>64</sup> Hsu Sheng-hsi (徐聖熙), *Zhiwen Kapian Zhi Sheji* (指紋卡片之設計) [*The Design of Fingerprints Card*], 2 XINGSHI KEXUE (刑事科學) [CRIM. SCIENCE] 45, 45 (1975); 24 TAIWAN SHENG YIHUI GONGBAO NO. 26 (台灣省議會公報) [TAIWAN PROVINCIAL COUNCIL GAZ. No. 24] 1254 (May 18, 1971); Taiwan Sheng Xingzheng Zhangguan Gongshu Jingwuchu (台灣省行政長官公署警務處) [The Police Force, Taiwan Provincial Administration Office], *Jingwuchu Qianni Xiuzheng Taiwan Sheng Jingwuchu ji Suoshu Geji Jingcha Danwei Banli Fanzui Jilu Banfa Qingti Fu Huishen Yi-an* (警務處簽擬修正臺灣省警務處暨所屬各級警察單位辦理犯罪紀錄辦法請提府會審議案) [*The Proposal to Revise the Measures of Processing Criminal Records in the Police Force from the Police Force Department to the Taiwan Provincial Council*] (June 19, 1967), <http://catalog.digitalarchives.tw/item/00/36/54/fb.html>; 26 TAIWAN SHENG YI HUI GONG BAO NO. 29 (台灣省議會公報) [TAIWAN PROVINCIAL COUNCIL GAZ.] 253 (1972).



inspection, the Ministry of the Interior—not the Ministry of National Defense—has collected fingerprints of draftees through the military system. In September 1952, the police agencies of the Taiwan Provincial Government and its county governments started to collect fingerprints from all Taiwanese males who, as draftees, were required to take physical examinations at the age of eighteen.<sup>65</sup> By 1983, under the instruction of the National Police Agency in the Ministry of Interior, the Criminal Investigation Bureau accumulated the fingerprint data of around six million Taiwanese people, four-fifths of whom were draftees.<sup>66</sup> The officials of the Taiwan Provincial Government never denied that the true purpose of collecting fingerprints was for crime prevention and inspection, and the police agencies currently use the fingerprint database to identify suspects in actual cases.<sup>67</sup> However, the practice has never been clearly authorized by any police law or military law.

#### IV. POST-NATIONAL MOBILIZATION FOR SUPPRESSION OF THE COMMUNIST REBELLION PERIOD

To respond to the Taiwanese people's demand,<sup>68</sup> the period of National Mobilization for Suppression of the Communist Rebellion was ultimately ended in 1991. Since then, the whole Taiwanese legal system was in transition.<sup>69</sup> The *Household Registration Act* also started its new life

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<sup>65</sup> See Taiwan Sheng Xingzheng Zhangguan Gongshu Jingwu Chu (臺灣省行政長官公署警務處) [The Police Force, Taiwan Provincial Administration Office], Jingwuchu Qianni Juban Sishiyi Niandu Yinan Zhiwen Dengji Qingcha He-an (警務處擬舉辦四十一年度役男指紋登記請察核案) [*The Police Force Department's Proposal to Collect Fingerprints from Draftees in 1952*], <http://catalog.digitalarchives.tw/item/00/36/30/0d.html> (last visited Jan. 30, 2016).

<sup>66</sup> See Zhiwen Diannaohua Zhiri Kedai Jianli Guomin Zhiwen Dang-an, Yi Diannao Bidui Tigao Zhenban Xing-An Jixiao Jue Songqing Lifa (指紋電腦化指日可待 建立國民指紋檔案、以電腦比對 提高偵辦刑案績效、決送請立法) [*The Prospect of Digitizing Fingerprints: To Establish the National Database About Fingerprints for Facilitating Inspection*], ZHONGGUO SHIBAO (中國時報) [CHINA TIMES], Oct. 27, 1983, at 6.

<sup>67</sup> See Tang Jing-lan & Li Wen-bang (唐經瀾 & 李文邦), *Bidui Zhiwen Dafei Shoujiao Tuyin Qiang-An Xianru Jiaozhuo* (比對指紋大費手腳 土銀搶案陷於膠著), [Robbery in the Land Bank Stalled Because of the Difficulties of Matching Fingerprints], [LIANHE XINWEN WANG] (聯合新聞網) [UNITED DAILY NEWS], Apr. 26, 1982, at 3.

<sup>68</sup> In March 1990, a student movement, the Wild Lily Movement, sought general elections for all representatives at the central governmental level, successfully awakening the Taiwanese people to the need for wider political participation. Facing the potential pressures of being overthrown, the Kuomintang elites took the lead or took joint actions with the opposition party through negotiations to bring about democracy. See Teresa Wright, *Student Mobilization in Taiwan: Civil Society and Its Discontents*, 39 ASIAN SURVEY, 986–1008 (1999).

<sup>69</sup> The 8th Amendment of the ROC Constitution of 1991 states: "If the revision of laws originally in effect solely during the Period of National Mobilization for Suppression of the Communist Rebellion is not completed by the termination of the Period of National Mobilization for Suppression of the Communist Rebellion, these laws shall remain in effect until July 31, 1992." MINGUO XIANFA art. 8 (1991) (Taiwan).

journey. However, the advance of computer and communication technology, and the public's panic over the social disorder made the protection on rights to privacy more vulnerable.

A. *Separation of Household Administration and Police Administration*

As the process of separating the household administration and police administration systems began in 1992, in theory the police were no longer allowed to access and share the personal information in the household registration database without authorization. However, in reality, the police did not change their existing practices overnight. Throughout the 1990s, the police continued to access the personal information in the household registration system without substantial restriction. Moreover, the development of computer and communication technology compounded the threat to privacy rights presented by the household registration system.<sup>70</sup>

B. *Advances and Impacts of Computer and Communication Technology*

Advances in computer and communication technology dramatically facilitated administrative efficiency, as well as government management for general welfare,<sup>71</sup> but it also strengthened the government's power to extend its arm to grasp the personal information than ever. In the 1990s, pursuing economic growth became the driving goal in Taiwan. The Taiwanese people zealously accepted any policy stimulating economic growth. In order to meet social as well as economic needs, the government proposed administrative reforms and e-government policies. These reforms and

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<sup>70</sup> Taiwan's privacy rights have evolved in two contexts: torts and constitutional law. In the context of torts, unlike the four privacy torts described by William Prosser, the National Development Council under the Executive Yuan in Taiwan concluded the scope of the right to privacy merely covered intrusion and public disclosure. See WONG YUE-SHENG (翁岳生) et al., ZIXUN LIFA ZHI YANJIU (資訊立法之研究) [A STUDY ON LEGISLATING INFORMATION] 35–37 (Research Development and Evaluation Commission ed., July 1985); William L. Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960). In the context of the Constitution, the right to privacy is found in the penumbras of the Constitution. The zone of privacy was inferred from other enumerated rights, like Article 8 (the guarantee of personal freedom), and Article 12 (the freedom of privacy of correspondence).

<sup>71</sup> Paul M. Schwartz, *Data Processing and Government Administration: The Failure of the American Legal Response to the Computer*, 43 HASTINGS L.J. 1321, 1332 (1992) (“But when the individual's pursuit of happiness depends on governmental maintenance of the social, political, and physical environment, the government must gather more and more information from within the boundaries of the supposedly private sphere. Compared to its historic role, the state today depends upon the availability of vast quantities of information, and much of the data it now collects relates to identifiable individuals. Indeed, the fulfillment of many governmental objectives depends on the gathering of such personal information.”).



policies were justified as improving the economic well-being of Taiwanese citizens.<sup>72</sup>

In the context of household registration, as early as 1985 the government planned to completely digitalize the household registration information and established a central, nation-wide digital database to enhance administrative efficiency and accuracy.<sup>73</sup> The implementation of a digital database in October 1997 achieved these goals by lowering the burden of transcribing information, decreasing the processing time for applications, minimizing clerical or mathematical mistakes, and offering more opportunities for people to confirm or correct their personal information.<sup>74</sup>

However, the digitalization also created more opportunities for the abuse of privacy rights by opening an unexpected backdoor to unscrupulous parties, such as hackers and avaricious officials colluding with fraud rings or the mafia.<sup>75</sup> Due to advanced computer technology, the government no longer needed to expend considerable human resources to verify and authenticate information. Instead, an official was capable of operating a computer to completely identify a particular individual. Moreover, the improved communication technology decreased the time required to transmit official documents containing personal information. As a result, these technologies have not only substantially improved the government's capacity to aggregate and process the existing personal data to verify identity, but also offered significant opportunities to a few greedy officials to abuse their office to sell personal information or satisfy their curiosity. As these technologies become increasingly relied upon, it is not feasible to ban the

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<sup>72</sup> For more information on the concept and five-step plan of e-government in Taiwan, see Dianzi Hua Zhengfu Jihua (電子化政府計畫) [The E-Government Plan], (行政院研考會) [NAT'L DEV'T COUNCIL UNDER THE EXECUTIVE YUAN] [http://www.ndc.gov.tw/Content\\_List.aspx?n=E0C48B7F39ACB61F](http://www.ndc.gov.tw/Content_List.aspx?n=E0C48B7F39ACB61F) (last visited Jan. 20, 2016) (official website of the National Development Council under the Executive Yuan).

<sup>73</sup> See Huyizheng Zixun Xitong Tuiguang Jihua (戶役政資訊系統推廣計劃) [The Expansion of the Digitalization of the Household and Military Registration System] (promulgated by the National Development Council, Aug. 8, 1996), [www.ndc.gov.tw/dn.aspx?uid=15064](http://www.ndc.gov.tw/dn.aspx?uid=15064).

<sup>74</sup> The administrative process for people to confirm and correct their personal information in the household registration system before and after Sept. 30 1997. See Tainei Huzi (台內戶字) [The Household Registration Office's Interpretation Letter], No. 1031201790 (第 1031201790 號) [Apr. 2, 2015], [http://chience-hr.kcg.gov.tw/politicsD01\\_f\\_12\\_104\\_2.html](http://chience-hr.kcg.gov.tw/politicsD01_f_12_104_2.html).

<sup>75</sup> Kuo Kuang Chao (郭匡超), *Lanyong ban-an liqi xie ge zi gei zha dai yezhe buxiao diaocha yuan qiantao* (濫用辦案利器洩個資給詐貸業者 不肖調查員潛逃) [*Unscrupulous Investigators Abscond for Leaking Personal Information to Rings*], ZHONGGUO SHIBAO (中國時報) [CHINA TIMES] (Jan. 13, 2016), <http://www.chinatimes.com/realtimenews/20160113002240-260401>.

usage of computer technology in data collection or terminate the e-government policy. In light of this reality, the protection of privacy rights depends on procedural controls, such as specifying the purposes and conditions for collecting personal information to prevent unwanted invasions.<sup>76</sup>

In order to protect privacy rights that were in danger of being challenged by advanced technology, in 1995 the *Legislative Yuan* enacted the *Computer-Processed Personal Data Protection Law* (電腦處理個人資料保護法) to regulate the collection and use of personal information. However, due to the unclear language of the statute,<sup>77</sup> it failed to completely close the loopholes in the protection of individual privacy. Even *Department of Justice* officials conceded that the *Computer-Processed Personal Data Protection Law* did not clearly require the government to specify its purpose and conditions for collecting, processing, and using personal information.<sup>78</sup> As a result, such law failed to provide clear guidance on exceptions, and exacerbated threats to privacy by granting huge discretion to government officials.<sup>79</sup> The legislature's decision has paved the way for government officials to access and share personal information in the household registration database without substantial restriction or imposing corresponding burdens. The law also suggests that the legislation was prepared to sacrifice individual privacy rights in order to gain political capital and reduce administrative inefficiency. Most Taiwanese citizens continued to focus on the positive economic development generated by the

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<sup>76</sup> See Paul M. Schwartz, *Privacy and Participation: Personal Information and Public Sector Regulation in the United States*, 80 IOWA L. REV. 553, 555 (1995).

<sup>77</sup> See Diannao Chuli Geren Ziliao Baohu Fa (電腦處理個人資料保護法) [Computer-Processed Personal Data Protection Law] (1995) (Taiwan) (the first law regulating the personal information); 83 LIFAYUAN GONGBAO NO. 45 (VOL. 2719-2), (立法院公報 83 卷 45 期 2719 號下) [LEGIS. YUAN OFFICIAL GAZ.], at 523 (1994) (in 2010, the legislature revised a large amount of provisions to try to close the loopholes and changed the law name to "Personal Information Protection Act").

<sup>78</sup> Liu Tso-kuo (劉佐國), *Woguo Geren Ziliao Yinsi Quanyi Zhi Baohu—“Diannao Chuli Geren Ziliao Baohufa” Zhi Lifa yu Xiufa Guocheng* (我國個人資料隱私權益之保護—電腦處理個人資料保護法之立法與修法過程) [*The Protection on Taiwanese Personal Information—The Legislative History of Computer-Processing Personal Data Protection Law*], 307 LUSHI ZAZHI (律師雜誌) [TAIPEI BAR J.] 42, 42 (2005); 86 LIFAYUAN GONGBAO NO. 21, VOL. 2913-1 (立法院公報 86 卷 21 期 2913 號上) [LEGIS. YUAN OFFICIAL GAZ.], at 115 (1997).

<sup>79</sup> Liu Tso-kuo, *supra* note 78, at 44–46. For example, Article 8 provides, “the information may be used outside the scope upon the occurrence of one of the following conditions: 1. Where in accordance with law; 3. Where it is for national security; 4. Where it is to promote public interests; 5. Where it is to prevent harm on the life, body, freedom or property of the Party; 6. Where it is to prevent harm on the rights and interests of other people; 7. Necessary for academic research without harm to the major interests of others. 8. Where such use may benefit the Party.” Diannao Chuli Geren Ziliao Baohu Fa (電腦處理個人資料保護法) [Computer-Processed Personal Data Protection Law] art. 8 (1995).

government's policy and were unaware of the potential risks attendant in expanding government power and access to their personal information.<sup>80</sup> Thus, the combination of advances in computer technology, Taiwan's administrative framework, and the lack of adequate procedural controls on government agencies substantially diminished privacy rights in Taiwan.<sup>81</sup>

C. *Social Disorder in the 1990s and the Amendment of the Household Registration Act*

In addition to public perceptions of positive economic growth and administrative efficiency, public concerns over reduced social order further undermined privacy rights and delayed the development of privacy protections in Taiwanese society.

1. *Three Grave Criminal Incidents in 1996 and an Outcry over Social Disorder*

As the National Mobilization in Suppression of Communist Rebellion period ended, the government's ability to supervise and control social order gradually faded. As a result, the mafia and the big corporations rapidly filled the power vacuum, leading to social unrest.<sup>82</sup> In light of this collective fear of personal safety, a flagrant criminal incident could easily trigger public outrage. In 1996, a number of unsolved violent crimes, including murders<sup>83</sup> and kidnappings,<sup>84</sup> occurred in Taiwan and further and aroused

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<sup>80</sup> See Chou Kuie-tien (周桂田) & Chang Chun-mei (張淳美), *Chizhixing Gaokeji Fengxian Shehui xia zhi Dianfan Douzheng—Yi Huanfa Shenfenzheng Anna Zhiwenan Wei Fenxi* (遲滯型高科技風險社會下之典範鬥爭--以換發身分證按捺指紋案為分析) [*Paradigm Conflict Within Hidden and Delayed High-Tech Risk Society: With Special Focus on the Case of "New ID Card Application with Fingerprint Submission"*], 17 SOCIETAS: A J. FOR PHIL. STUDY OF PUB. AFF. (政治與社會哲學評論) 127, 127-215 (2006).

<sup>81</sup> For example, the Internal Revenue office is able to carry out tax collection and tax law enforcement via accessing the personal information data in the household registration system. See Chiu Ying-Ming (邱英明), *Daiban jieshui zhuan siren qian xingbutong le* (代辦節稅賺死人錢行不通了) [*Tax Agents Will No Longer Use the Dead for Tax Evasion*], LIANHE XINWEN WANG (聯合新聞網) [UNITED DAILY NEWS] (Sept. 11 2006), <http://city.udn.com/54543/1848486>.

<sup>82</sup> The former minister of Justice, Liao Cheng-hao, conceded, in 1994, 5%-10% of representatives at the central government level had mafia backgrounds, and around one thirds of local council members had mafia related records. See Liao Cheng-hao (廖正豪), *Wushi Nianlai Liang-an Xingfa Xhi Fazhan* (五十年來兩岸刑法之發展) [*The evolution of criminal law in the cross-strait*], 51 FALING YUEKAN (法令月刊) [LAW MONTHLY] 2, 596-604 (2000); Wu Chin-en (吳親恩), *The Evolution of Money Politics in the Local Assembly: An Analysis of Verdicts*, 12(2) TAIWAN POL. SCI. REV. 165 (2008).

<sup>83</sup> Irene Lin, *Man Claims to Have Killed Peng Wan-ru*, *TAIPEI TIMES* (Sept. 16, 1999), <http://www.taipeitimes.com/News/front/archives/1999/09/16/0000002755>.

<sup>84</sup> Richard Lloyd-Parry, *Celebrity Killings Stir Rage in Taiwan*, *INDEPENDENT* (July 12, 1997), <http://www.independent.co.uk/news/world/celebrity-killings-stir-rage-in-taiwan-1250497.html>.

public concern. Tens of thousands people marched and protested perceived failures of the criminal justice policy, demanding that Premier Lien Chan resign.<sup>85</sup> In addition, many Taiwanese people were dissatisfied with police inefficiency in solving the cases, leading to nostalgia for the police state in the period of National Mobilization in Suppression of Communist Rebellion.<sup>86</sup> They requested the government to re-extend its power to identify suspects by collecting personal information for fingerprint comparison, and to enforce the law rigorously.<sup>87</sup>

## 2. *The Amendment of the Household Registration Act in 1997*

In response to the strong public desire for a restoration of social order, in 1996 the Ministry of the Interior proposed a bill to amend the *Household Registration Act* to again collect the citizens' fingerprints and set up a central national database.<sup>88</sup> According to Article Eight of the proposed bill, when re-issuing the new version of National ID Cards, the government would require citizens at fourteen or older to submit their fingerprints during the application procedure.<sup>89</sup> Under the atmosphere of anxiety over social order,<sup>90</sup> the bill was promulgated and implemented on May 21, 1997 without

<sup>85</sup> *Marchers Demand That Premier Resign*, THE SPOKESMAN-REVIEW (May 19, 1997), <http://www.spokesman.com/stories/1997/may/19/marchers-demand-that-premier-resign/>.

<sup>86</sup> See *supra* Part III; Wu Naiteh (吳乃德), *Reformer or Dictator? Reassessing the Role of Chiang Ching-kuo in the Democratic Transition* (回憶蔣經國，懷念蔣經國), in GUOSHI GUAN (國史館) [ACADEMIA HISTORICA], ERSHI SHIJI TAIWAN MINZHU FAZHAN (二十世紀台灣民主發展) [TAIWANESE DEMOCRATIC DEVELOPMENT IN THE 20TH CENTURY] 467, 502 (2004).

<sup>87</sup> See Chien Yeong-Shyang (錢永祥等) et al., *Laodage-Zhuliu Minyi-Nide Zhiwen: Ziyou Zhuyi yu Wanjin Renquan Zhengyi* (老大哥—主流民意—你的指紋：自由主義與晚近人權爭議) [*The Big Brother Mainstream Thinking—Your Fingerprints, Liberalism and Recent Controversies over Human Rights*], 59 TAIWAN: A RADICAL Q. SOCIOLOGICAL STUDIES, 223, 229–231 (2005).

<sup>88</sup> See 85 LIFAYUAN GONGBAO NO. 65 (VOL. 2887-3) (立法院公報 85 卷 65 期) [LEGIS. YUAN OFFICIAL GAZ.], at 350-368, 374–78 (Nov. 28, 1996) (Interior Minister Fong-cheng Lin stated the necessity to collect fingerprints for social order in his opening statement in the Legislative Yuan. Then the minister changed his tone, focusing on verification, and mentioned maintaining social order was just “contingent benefits,” instead of main objectives).

<sup>89</sup> Article 8, Section 2 of the *Huji Fa* (戶籍法) [Household Registration Act] provides, “While applying for an ROC identity card pursuant to the preceding paragraph, the applicant shall be fingerprinted for record keeping; provided that no national who is under fourteen years of age will be fingerprinted until he or she reaches fourteen years of age, at which time he or she shall then be fingerprinted for record keeping.” Art. 8 sec. 3 provides, “No ROC identity card will be issued unless the applicant is fingerprinted pursuant to the preceding paragraph.”

<sup>90</sup> See 86 LIFAYUAN GONGBAO NO. 21 (VOL. 2913-1) (立法院公報 86 卷 21 期 2913 冊 上冊) [LEGIS. YUAN OFFICIAL GAZ.], at 115 (Apr. 29, 1997) (during the legislative deliberation, some legislators argued that the national fingerprint database was capable of integrating the police records for maintaining social order and facilitating police identification of suspects).

substantial objections from the Legislature.<sup>91</sup> Yet, due to budget limits and technology difficulties, the government did not enforce the new policy of re-issuing National ID Cards until 2005.

### 3. *Human Rights Organizations and Bar Associations Dissented*

From 1997 to 2004, the dissenting voices against the amendment of the *Household Registration Act* did not draw much public attention, but the concern about privacy rights attracted human rights activists' attentions and aroused public debates in response to other policies.<sup>92</sup> Before issuing the new fingerprint version of National ID Cards, in late 1997, the government proposed issuing "smart IC cards,"<sup>93</sup> which integrated the conventional National ID Cards, driver licenses, health insurance cards, and financial transaction records, in a single IC card.<sup>94</sup> This proposal immediately raised considerable public concern about data secrecy.<sup>95</sup> The government withdrew the proposal in November 1998 due to a series of protests from human rights organizations and a failure to reach an agreement with the potential coordinating partner.<sup>96</sup>

This social movement against the smart IC cards plan was a turning point for Taiwanese society in advocating for citizens' privacy. It was the

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<sup>91</sup> In the same year, the Xing Qin Hai Fanzui Fangzhi Fa (性侵害犯罪防治法) [Sexual Assault Crime Prevention Act] (2012) was implemented, which granted the police the power to collect DNA sample from sexual offenders without warrant. Art. 7 § 1 of *Sexual Assault Crime Prevention Act*: "the central authorities should set up a national archive of sexual offenders, and it should contain name, gender, date of birth, national identification number, domicile or place of residence, photograph, criminal information, fingerprints, DNA, and other information."

<sup>92</sup> For the disputes on the Bill on "The Guideline on National Civil Servants to Declare Their Loyalties" (公務員對國家忠誠申報作業要點), see Zhongcheng Dang-an Bixu Lifa Guifan Shi Neng Zhixing (忠誠檔案必須立法規範始能執行) [A Due Process Requirement on the Loyalty Archives] ZHONGGUO SHIBAO (中國時報) [CHINA TIMES], Aug. 6 1998, at A3.

<sup>93</sup> Guomin Shenfen Jianbao Heyi Zhihui Ka (國民身分健保合一智慧卡) [Smart IC Card].

<sup>94</sup> See He Cyuan-de (何全德), *Qiantan Guominka Zhi Anquan Linian* (淺談國民卡之安全理念) [The Concept of Security in the Smart IC Cards], ZIXUN ANQUAN TONGXUN (資訊安全通訊) [5(1) COMMUNICATIONS OF THE CCISA] 15–24 (Dec. 1998).

<sup>95</sup> *Id.* But unfortunately, the public concern was not about the expanding power of the government, but mainly about the risk of data leakage.

<sup>96</sup> The winning bidder, The Smart Card Alliance, led by Rebar Group, refused to sign the final agreement with the government because of the concern of enhanced and unpredicted costs of issuing the smart card on Nov. 26, 1998. See Wu Jingyi (巫靜宜) Lvli Qin (呂麗琴), & Li Hongzhang (李鴻璋), *Guomin Ka Celue Guihua yu Qi Yunzuo Anquan yu Fayuan Guihua* (國民卡策略規劃與其運作安全與法源規劃) [Planning the Strategies of the Smart IC Cards and Their Security and Legal Basis], 中華民國資訊學會 [INSTITUTE OF INFORMATION & COMPUTING MACHINERY], [http://www.iicm.org.tw/communication/c2\\_1/page03.html](http://www.iicm.org.tw/communication/c2_1/page03.html) (last visited Jan. 21, 2016) (official website of the Institute of Information and Computing Machinery).



first time that the public in Taiwan was aware of the risk of data leakage and raised concerns about data secrecy. Henceforth, the need to protect privacy rights has taken root in the minds of many intellectuals and created a critical mass of Taiwanese lay people who monitor the government's attempts to expand its power without adequate restrictions.

Due to additional public attention to privacy rights after the failure of the IC Card legislation, in 2004 Taiwanese citizens began to express greater concern over the National ID Card's fingerprint requirement.<sup>97</sup> The government stated that the new National ID Card policy, requiring citizens to be fingerprinted and establishing a central national database, would be put into practice in July 2005.<sup>98</sup> Following the example of the social movement against the smart IC cards in 1998, human rights organizations and bar associations immediately formed *The Rejection of Being Fingerprinted Coalition*,<sup>99</sup> and strongly opposed the policy.<sup>100</sup> They were concerned about revival of the police state and creation of a grave risk of information leaks.<sup>101</sup> Additionally, Vice President Hsiu-lien Lu and her leading Human Rights Council under the president's office<sup>102</sup> criticized the collection of fingerprints as being outside the authorized scope of "household administrative management."<sup>103</sup> The dissenters raised concerns about the legitimacy and constitutionality of two core provisions of Article Eight of

<sup>97</sup> TAIWAN ASSOCIATION FOR HUMAN RIGHTS (台灣人權促進會), 2005 NIAN TAIWAN RENQUAN BAOGAO (2005 年台灣人權報告) [TAIWAN HUMAN RIGHTS REPORT 2005].

<sup>98</sup> See *Xingzheng Yuan di 2941 Ci Yuan Hui Jueyi* (行政院第 2941 次院會決議) [*Premier's Resolutions from Executive Yuan Meetings No. 2941*] EXECUTIVE YUAN (June 1, 2005), [http://www.ey.gov.tw/News\\_Content.aspx?n=4F2A6F26A44C68AC&sms=FF87AB3AC4507DE3&s=98B10311D8099FAD](http://www.ey.gov.tw/News_Content.aspx?n=4F2A6F26A44C68AC&sms=FF87AB3AC4507DE3&s=98B10311D8099FAD) (official website of the Executive Yuan).

<sup>99</sup> Ju-an Zhiwen 524 Xingdong Lianmeng (拒按指紋 524 行動聯盟) [Anti-Fingerprint Card Coalition], *Fan Guominka Xingdong Lianmeng* (反國民卡行動聯盟) [Anti-Smart IC Card Coalition] <http://taiwan.yam.org.tw/nonid/analysis.html> (last modified Sept. 15, 1998).

<sup>100</sup> See Syong Aicing (熊愛卿), *IC Ka Yingyong de Falu Zhengyi Yu Lifa Yuanze Jianyi, You Guominka Tanqi* (IC 卡應用的法律爭議與立法原則建議，由國民卡談起) [*The Disputes on the Use of the IC Cards and the Proposal for Legislative Principles, Smart IC Cards as a Starting Point*], 5(1) ZIXUN ANQUAN TONGXUN (資訊安全通訊) [COMMUNICATIONS OF THE CCISA] 88 (Dec. 1998).

<sup>101</sup> See Cin Meihua (秦美華), *Ange Zhiwen Shi Qinfan Sheme Renquan? Hexian You Yilu, Baomi Shi Wenhao* (按個指紋是侵犯什麼人權？合憲有疑慮，保密是問號) [*What Kinds of Human Rights Are Infringed by Being Fingerprinted? Concerns of Constitutionality and Doubts of Data Security*], 952 XIN XINWEN (新新聞) [THE JOURNALIST] 15 (Jun. 2005).

<sup>102</sup> The Human Rights Council is an agency under the President's office that drafts annual human rights protections reports, researches the latest international human rights treaties, and provides related consultation. See generally HUMAN RIGHTS IN TAIWAN, <http://www.humanrights.moj.gov.tw/mp205.html> (last visited Feb. 20, 2016).

<sup>103</sup> See *Lü Xiulian Hong An Zhiwen Weixian* (呂秀蓮轟按指紋違憲) [*Vice President Lu: Requiring Fingerprinting Is Unconstitutional*], PINGGUO JISHI XINWEN (蘋果日報) [APPLE DAILY] (May 18, 2005), <http://www.appledaily.com.tw/appledaily/article/headline/20050518/1785697/>.

the *Household Registration Act* because of the infringement on human dignity, privacy rights, principles of proportionality, legal reservation, and due process of law. Section Two of Article Eight provided that “[w]hile applying for an ROC identity card pursuant to the preceding paragraph, the applicant shall be fingerprinted for record keeping; provided that no national who is under fourteen years of age will be fingerprinted until he or she reaches fourteen years of age, at which time he or she shall then be fingerprinted for record keeping.”<sup>104</sup> Section Three declared that “[n]o ROC identity card will be issued unless the applicant is fingerprinted pursuant to the preceding paragraph.”<sup>105</sup> Thus, the revisions clearly require all citizens fourteen or older to submit their fingerprints via applying for new ID Card.

#### 4. *The Final Attempts to Repeal in the Legislature*

Responding to these controversies, in 2005 several legislative members of the ruling *Democratic Progressive Party* (民進黨) (DPP), attempted to repeal Sections Two and Three of Article Eight of the *Household Registration Act*. However, the attempts to repeal the Sections were soon frustrated in the procedure committee of the *Legislative Yuan*, because of resistance from the government, members of conservative opposition parties,<sup>106</sup> and strong supports from the public.<sup>107</sup> Hence, on June 6, 2005, eighty-five legislators initiated a petition for a constitutional interpretation and preliminary injunction,<sup>108</sup> claiming that Article Eight of the *Household Registration Act* violated Articles Twenty-Two<sup>109</sup> and

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<sup>104</sup> Household Registration Act, *supra* note 89.

<sup>105</sup> *Id.*

<sup>106</sup> See 94 LIFAYUAN GONGBAO NO.28, (立法院公報 94 卷 28 期) [LEGIS. YUAN OFFICIAL GAZ.], at 319 (2005); 94 LIFAYUAN GONGBAO NO. 40, (立法院公報 94 卷 40 期) [LEGIS. YUAN OFFICIAL GAZ.], at 290 (2005).

<sup>107</sup> See Liu Jhi-yuan (劉志原), Da Faguan Guandian-Zhuanfa Guifan Zhiwen Dang-an (大法官觀點-專法規範指紋檔案) [*Chief Justices: Fingerprint Data Should Be Regulated by Special Laws*], ZIYOU SHIBAO (自由時報) [LIBERTY TIMES] (Jul. 2, 2005), <http://news.ltn.com.tw/news/politics/paper/23727/print> (according to a TVBS survey poll on Aug. 9, 2001, 71% of the survey responders support government collection of the fingerprint and building up of the central database to ensure the public security. On May 13, 2005, 74% of the responders supported such policy. Under the survey poll from the Interior Ministry, 83% of the responders supported such a policy).

<sup>108</sup> See Lifa Weiyuan Laiqingde Deng 85 Ren Jiu Huji Fa Di Ba Tiao You Weixian Yiyi Shengqing Jiesshan (立法委員賴清德等 85 人就戶籍法第八條有違憲疑義聲請解釋案) [Petition for the Interpretation of the Constitution Involving Article 8 of the Household Registration Act by Legislator Lai Qingde and 84 other Legislators], ROC JUDICIAL YUAN, [http://www.judicial.gov.tw/constitutionalcourt/P03\\_01\\_detail.asp?expno=603&showtype=%AC%DB%C3%F6%AA%FE%A5%F3](http://www.judicial.gov.tw/constitutionalcourt/P03_01_detail.asp?expno=603&showtype=%AC%DB%C3%F6%AA%FE%A5%F3) (last visited Feb. 20, 2016) (official website of the ROC Judicial Yuan).

<sup>109</sup> MINGUO XIANFA, art. 22 (Taiwan) (“All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.”).



Twenty-Three<sup>110</sup> of the ROC Constitution for its infringement of the right to privacy, right to autonomous control of information, violation of the principles of proportionality, legal reservation, and due process of law.

*D. Judicial Yuan Interpretation No. 603*

*1. The Recognition of Information Privacy Rights as a Constitutional Right*

Privacy rights were neither naturally developed by Taiwanese society nor enumerated in the ROC's constitutional law. Instead, the concept of individual privacy rights was a new species of human rights transplanted from the Western world in the 1980s. The concept of privacy rights gradually influenced Taiwanese judicial decisions in tort cases in the 1990s, and resulted in amendments to Taiwanese criminal law to protect intrusions of individual privacy.<sup>111</sup>

The Constitutional Court initially recognized privacy rights as a constitutional right in 1992, in the context of protecting bank customers' confidential information from disclosure to the city council.<sup>112</sup> Thereafter, the Constitutional Court also recognized privacy rights in cases involving conflicts between defamatory libel and freedom of speech,<sup>113</sup> the limits of

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<sup>110</sup> *Id.* art. 23 ("All the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except by such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare.").

<sup>111</sup> See WONG YUE-SHENG (翁岳生) ET AL., *ZIXUN LIFA ZHI YANJIU* (資訊立法之研究) [A STUDY ON LEGISLATING INFORMATION] (Research Development and Evaluation Commission ed., 1985); LIU JIANGBIN (劉江彬), *ZIXUN FA LUN* (資訊法論) [DISCUSSION ON INFORMATION LAW] (1986) (the right to privacy was initially introduced to Taiwanese society by legal scholars in the 1980s. Most of these scholars earned their law doctoral degree in the United States or the Federal Republic of Germany.).

<sup>112</sup> See SIFAYUAN DA FAGUAN HUIYI JIESHI DI 293 HAO (司法院大法官會議解釋第 293 號) [The Judicial Yuan No. 293 Interpretation], 1992, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court], (SHIZI 1992) (Taiwan). The Taipei city council attempted to enforce its power to investigate the bad debts in 1992. In order to protect the customers' privacy, the state-owned bank declined the motion from the city council. Thereafter, the city council petitioned the Constitutional Court to review the case.

<sup>113</sup> See SIFAYUAN DA FAGUAN HUIYI JIESHI DI 509 HAO (司法院大法官會議解釋第 509 號) [The Judicial Yuan No. 509 Interpretation] 2000, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI 2000) (Taiwan).

police power on search and seizures,<sup>114</sup> and the limits of legislative investigative power.<sup>115</sup>

In the dispute over issuing National ID Cards requiring citizens to be fingerprinted (hereinafter the fingerprint case), the Constitutional Court followed judicial trends and expanded protection of privacy rights. In Interpretation No. 603, the Court provided,

Regard[ing] the self-control of personal information, . . . to guarantee that the people have the right to decide whether or not to disclose their personal information, . . . to what extent, at what time, in what manner and to what people such information will be disclosed. It is also designed to guarantee that the people have the right to know and control how their personal information will be used, as well as the right to correct any inaccurate entries contained in their information.<sup>116</sup>

The Constitutional Court not only reaffirmed privacy rights as a constitutional right protected by the ROC constitutional law, but also clarified its policy rationale, stating the importance of “preserving human dignity, individuality and moral integrity, as well as preventing invasions of personal privacy and maintaining self-determination of personal information.”<sup>117</sup> Accordingly, the Court extended the protected zone of

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<sup>114</sup> See SIFAYUAN DA FAGUAN HUIYI JIESHI DI 535 HAO (司法院大法官會議解釋第 535 號) [The Judicial Yuan No. 535 Interpretation] 2001, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI 2001) (Taiwan).

<sup>115</sup> See SIFAYUAN DA FAGUAN HUIYI JIESHI DI 585 HAO (司法院大法官會議解釋第 585 號) [The Judicial Yuan No. 585 Interpretation] 2004, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI 2004) (Taiwan) [hereinafter SHIZI No. 585]. (This was the first time the Taiwanese constitutional court mentioned the concept of information privacy rights. Although the court in SHIZI No. 585 did not make a clear outer sketch of the information privacy rights, it paved the way for SHIZI No. 603).

<sup>116</sup> SHIZI no. 603, *supra* note 59. See also LI CHEN-SHAN (李震山), RENXING ZUNYAN YU RENQUAN BAOZHANG (人性尊嚴與人權保障) [THE HUMAN DIGNITY AND THE PROTECTION OF HUMAN RIGHTS] 275–318 (2001); ALAN F. WESTIN, PRIVACY AND FREEDOM 7 (1967) (indicating that “privacy is . . . to determine for themselves when, how, and to what extent information about them is communicated to others.” Westin seemed to argue people have the right to control their personal information); DONALD P. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 332–36 (2d ed. 1997) (in Germany, the principle of informational self-control is inferred from Article 1(1) and Article 2(1) of the Basic Law). Based on the delayed development of the concept of right to privacy in Taiwan, the Taiwanese Constitutional Court referred to these two foreign concepts and attempted to form a new practical standard for the information privacy rights.

<sup>117</sup> SHIZI no. 603, *supra* note 59.

privacy rights by declaring a general principle: self-determination of personal information.<sup>118</sup>

## 2. *The Paradigm Shift of Information Privacy Rights?*

After affirming the right of privacy and declaring a general principle of personal information protection, the Constitutional Court then faced the debate of the paradigm shift of the privacy rights in the information age. Conventionally, the right of privacy is protected under the “secrecy paradigm,” which means there is no claim to privacy when information appears in public.<sup>119</sup> However, since justices from both sides could not form a majority coalition,<sup>120</sup> the majority of the Constitutional Court kept silent on the following issues: whether the secrecy paradigm should be abandoned, and whether the right to privacy should be redefined beyond the characteristics of secrecy or sensitivity.<sup>121</sup>

The Court did conclude that fingerprints fell within the scope of protected privacy rights because fingerprints are “in a key position to opening the complete file of a person by means of cross-checking the fingerprints stored in the database.”<sup>122</sup> The Court also recognized the right of privacy not only prevented invasion of private space, but also “maintained self-determination of personal information.”<sup>123</sup> As for this dispute, the concurring Justice Lin argued that, in the information age, as technology has advanced, the totality of information aggregates together, which leads to the possibility of establishing a digital biography or digital personal profile via

<sup>118</sup> See *id.* (Yu-shiu Hsu, J., concurring) (許玉秀大法官協同意見書). See also Hsiang-yang Hsieh, *Locating the Value of Information Privacy in a Democratic Society: A Study of the Information Privacy Jurisprudence of Taiwan's Constitutional Court*, 7(1) NAT'L TAIWAN U.L. REV. 293, 309 (2012) (commenting on this rationale).

<sup>119</sup> See *Perkey v. Dep't of Motor Vehicles*, 42 Cal. 3d 185, 191 (1986); Daniel J. Solove, *Access and Aggregation: Privacy, Public Records, and the Constitution*, 86 MINN. L. REV. 1137, 1177 (2002).

<sup>120</sup> SIFA YUAN DA FAGUAN SHENLI ANJIAN FA (司法院大法官審理案件法) [CONSTITUTIONAL INTERPRETATION PROCEDURE ACT] art. 14 (1993) (Taiwan) (requiring that a majority of two-thirds of the Justices present at a session having a quorum of two-thirds of total number of the Justices for passing an interpretation of the Constitution. However, only more than one-half of the Justices present at the same session is required for declaring a regulation or ordinance unconstitutional).

<sup>121</sup> See SHIZI no. 603, *supra* note 59 (Tzu-Yi Lin, J., concurring) (林子儀大法官協同意見書); SIFAYUAN DA FAGUAN HUIYI JIESHI DI 689 HAO (司法院大法官會議解釋第 689 號) [The Judicial Yuan No. 689 Interpretation] 2011, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI 2011) (Taiwan) [hereinafter SHIZI No. 689]. Although the court in SHIZI no. 603 failed to completely move away from the secrecy paradigm, the court ultimately moved forward from the secrecy paradigm six years later in SHIZI no. 689.

<sup>122</sup> SHIZI no. 603, *supra* note 59 (reasoning).

<sup>123</sup> SHIZI no. 603, *supra* note 59.

processing non-secret information.<sup>124</sup> Because of these social changes, the traditional dichotomy between public and private information has blurred, and judicial thinking should move away from the secrecy paradigm.<sup>125</sup> Thus, Justice Lin regarded fingerprints as highly sensitive information and argued for the application of strict scrutiny, rather than the majority's intermediate scrutiny.<sup>126</sup>

In contrast to Justice Lin, the dissenting Justice Yu referred to *Perkey v. Department of Motor Vehicles*<sup>127</sup> as well as *Whalen v. Roe*,<sup>128</sup> and argued for applying the conventional secrecy paradigm.<sup>129</sup> She argued that the fingerprints remaining on tangible objects were public and neutral information similar to an individual's facial appearance, photograph, or name. The fingerprints did not reveal the personal prior history, political ideology, medical records, or financial situation of an individual. Based on the characteristics of fingerprints, Justice Yu viewed fingerprints as low-sensitivity information, and argued for rational basis scrutiny.<sup>130</sup>

### 3. *The Legislative Purposes*

In the process of constitutional interpretation, the Justices not only articulated the protected rights, but also tried to identify and consider government interests.<sup>131</sup> As for the government's interests in this case, the legislative reasoning<sup>132</sup> of the amended *Household Registration Act* did not

<sup>124</sup> See SHIZI no. 603, *supra* note 59 (Tzu-Yi Lin, J., concurring) (林子儀大法官協同意見書).

<sup>125</sup> *Id.*

<sup>126</sup> In SHIZI No. 578, Justice Hsu introduced three levels of judicial review: rational basis, intermediate, and strict scrutiny. SIFAYUAN DA FAGUAN HUIYI JIESHI DI 689 HAO (司法院大法官會議解釋第 578 號) [The Judicial Yuan No. 578 Interpretation] 2004, SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] (SHIZI May 21, 2004) (Taiwan) (Tzong-Li Hsu, J., concurring) (許宗力大法官協同意見書). In order to pass the intermediate scrutiny, the law or administrative order should further important government interests by substantially related means. But the burden of proof is controversial among Taiwanese Justices. See Jou-juo Chu, *Global Constitutionalism and Judicial Activism in Taiwan*, 38 J. CONTEMP. ASIA 515, 516 (2008); Dennis T.C. Tang, *Judicial Review and Transition of Authoritarianism in Taiwan*, in CHANGE OF AN AUTHORITARIAN REGIME: TAIWAN IN THE POST-MARITAL LAW ERA 439–70 (Institute of Taiwan History, Academia Sinica ed., 2001).

<sup>127</sup> *Perkey*, 42 Cal.3d at 187 (holding that “fingerprinting alone does not improperly infringe on an individual's right of privacy.”).

<sup>128</sup> See *Whalen v. Roe*, 429 U.S. 589, 605 (1977).

<sup>129</sup> See SHIZI no. 603, *supra* note 59 (Syue-ming Yu, J., dissenting) (余雪明大法官不同意見書).

<sup>130</sup> *Id.*

<sup>131</sup> SHIZI no. 603, *supra* note 59.

<sup>132</sup> See 85 LIFAYUAN GONGBAO no. 65, (立法院公報 85 卷 65 期), (VOL. 2887–3) [LEGIS. YUAN OFFICIAL GAZ.], at 350–68, 374–78 (1996); 86 LIFAYUAN GONGBAO No. 21, (VOL. 2913–1), (立法院公報 86 卷 21 期 2913 號上冊), [LEGIS. YUAN OFFICIAL GAZ.], at 115 (1997).

specify the government's purposes.<sup>133</sup> In the oral debate procedure, the Ministry of the Interior claimed that there were three functions of the Act: to verify personal identity; to identify stray people, roadside patients, feebleminded senior citizens, and unidentified corpses; and to prevent false claim of another's identity card.<sup>134</sup> While the officials of the Ministry denied that the amendment was aimed at preventing crime, the oral debates in the Constitutional Court still focused on the issue pertaining to fingerprints and crime prevention.

*i. Crime Prevention Objectives*

After reviewing the legislative records and government proposals, the Court recognized that Article Eight of the *Household Registration Act* was amended in pursuit of the *de facto* interest of crime prevention.<sup>135</sup> Then the Court rejected the constitutionality of crime prevention as a permissible purpose of the amendment because amendments to the *Household Registration Act* may not serve criminal justice purposes after the police system and household registration system were separated in 1992. Justice Lin was also concerned about the effects of slippery slope and panopticon.<sup>136</sup> As a result, in the digital age, the government might extend its power to an un-precedented level without fair notice via monitor and data aggregation and restoration technology, leading to a diminished individual right to privacy.

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<sup>133</sup> See *id.*; SHIZI no. 603, *supra* note 59. ("The failure of the Household Registration Act to specify the purpose thereof is already inconsistent with the constitutional intent to protect the people's right of information privacy.")

<sup>134</sup> See *id.*

<sup>135</sup> See 85 LIFAYUAN GONGBAO no. 65 (VOL. 2887-3) (立法院公報 85 卷 65 期 2887 號 下) [LEGIS. YUAN OFFICIAL GAZ.], at 350-68, 374-78 (1996); 86 LIFAYUAN GONGBAO No. 21 (VOL. 2913-1), (立法院公報 86 卷 21 期 2913 號 上冊), [LEGIS. YUAN OFFICIAL GAZ.], at 115; SHIZI no. 603, *supra* note 59 (1997).

<sup>136</sup> See SHIZI no. 603, *supra* note 59 (Tzu-Yi Lin, J., concurring). The design of the panopticon, proposed by Jeremy Bentham, is a circular building with an observing room in the center surrounded by an outer wall, containing cells for inmates. This design would enhance security by facilitating effective surveillance. This architectural design is to allow inmates to be observed by a supervisor. The inmates are not capable of telling whether they are observed or not. However, Michel Foucault criticized this concept and it became a metaphor for the modern disciplinary mechanism and anonymous power. See MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 195-228 (Alan Sheridan trans., Vintage Books 2d ed. 1995).

ii. *Objectives to Verify Identity or to Identify Stray People, Roadside Patients, Feebleminded Senior Citizens, and Unidentified Corpses, or to Prevent False Claims of Another's Identity Card*

After rejecting the constitutionality of the implicit crime prevention objective, the Court also refused to uphold other explicit objectives raised by the Ministry of the Interior. Regarding the objective of “verifying identity” and “the prevention of false use of the national ID cards,” the majority censured the government for its failure to show any reliable statistics or data to establish the claimed interests, and was concerned about the substantial risk of data leakage due to the lack of adequate precautionary measures.<sup>137</sup> Moreover, the majority also determined that the goal of anti-counterfeiting might be substantially achieved by installing other anti-counterfeit measures in the National ID Card without collecting fingerprints. With respect to the legislative purpose of “identifying stray imbeciles, roadside unconscious patients, psychotic invalids and unidentified corpses,”<sup>138</sup> the Court also viewed collecting fingerprints as unnecessary because such nationals were already unidentified or hard to identify.<sup>139</sup>

V. THE FOLLOW-UP EFFECTS OF THE FINGERPRINT CASE AND NEW CHALLENGES TO THE RIGHT OF PRIVACY: IS DEMOCRACY THE MAJOR HINDRANCE TO THE PRIVACY RIGHTS?

A. *Divergent Thoughts Within Taiwanese Society*

The fingerprint case in 2005 clearly exposed the cleavage in Taiwanese society about personal information, privacy rights, social order, and state power. The controversy itself meant that, under the wave of democratization and digital revolution, some people, including legal scholars in the official Human Rights Council under the President's office and human rights organizations, were fully aware of the threats of expanding government power via collecting fingerprints and building up a central national database in the name of crime prevention.<sup>140</sup> Conversely, the

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<sup>137</sup> SHIZI no. 603, *supra* note 59 (“[T]he competent authority shall engage in the aforesaid collection in a manner that is sufficient to ensure the accuracy and safety of the information, and take any and all necessary protective measures both organizationally and procedurally as to the files of fingerprints so collected so as to be in line with the constitutional intent to protect the people's right of information privacy.”).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> See Liu Ching-yi (劉靜怡), *Shuwei Shidai Jiben Renquan de Sifa Dingwei: Lijing Yichang Xianfa Fating de Bianlun Zhihou* (數位時代基本人權的司法定位：歷經一場憲法法庭的辯論之後) [*The*

dispute also reflected the tendencies of most Taiwanese people still under the shadow of authoritarian ruling. As a result of being trapped by the experience of “good social order,” most Taiwanese people agreed to sacrifice their privacy in exchange for the social order promised by the government. They still embraced the government’s ability to collect personal information in the name of maintaining social order.

### 1. *Legal Profession and Human Right Activists*

In the late twentieth century, a limited number of Taiwanese citizens were aware of issues relating to the value of individual privacy rights, strong constitutionalism, and the risks of expanding government power without adequate restrictions. In the 1980s, the introduction of Western constructions of privacy rights and personal information protection from legal scholars who studied abroad offered opportunities for intellectuals to reevaluate the separation of public and private, emphasize the basic value of constitutional rights and encourage the separation of power. Those scholars argued for more protection of personal information, most likely because they were naturally liberal and tended to support broader protection, and were reinforced by citations to foreign scholars’ opinions that leaned toward strong protection.<sup>141</sup> These ideas of promoting human rights and distrusting authoritarian government gradually spread to the public along with social movements for democracy in the late 1980s and the early 1990s.

The increasing awareness of privacy rights ultimately reached a critical mass of human rights activists, including lawyers, scholars, and NGO workers, giving rise to a series of social movements beginning in the late 1990s.<sup>142</sup> The movements against the smart IC cards in 1998 further drew public attention and caused more citizens to view governmental power critically<sup>143</sup>.

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*Jurisprudence of Fundamental Rights in the Digital Era: After a Debate in the Constitutional Court*], [https://www.jrf.org.tw/newjrf/rte/myform\\_detail2.asp?id=1038](https://www.jrf.org.tw/newjrf/rte/myform_detail2.asp?id=1038).

<sup>141</sup> See WONG YUE-SHENG (翁岳生) ET AL., *ZIXUN LIFA ZHI YANJIU* (資訊立法之研究) [A STUDY ON LEGISLATING INFORMATION LAW] (Research Dev. and Evaluation Commission ed., 1985); LIU JIANG-BIN (劉江彬), *ZIXUN FA LUN* (資訊法論) [DISCUSSION ON INFORMATION LAW] (1986).

<sup>142</sup> See Liu Ching-yi (劉靜怡), *Ruguo, Gezi Waixie Jiashang Zhiwen* (如果，個資外洩加上指紋) [*In Case of Leakage of Personal Information and Fingerprints*], [LIANHE BAO] (聯合報) [UNITED DAILY NEWS] (June 3, 2004), available at <http://intermargins.net/Forum/2001%20July-Dec/privacy/nation/na07.htm>

<sup>143</sup> See *supra* Part IV.C.



In 2000, the long-term opposition party DPP and its nominee Shui-bian Chen campaigned and won on a human rights platform. Chen completed the first peaceful political transition in Taiwanese history. Subsequently, human rights advocates gained opportunities to hold public office as Human Rights Council members or Justices, leading to an ideological and jurisprudential shift within the judicial branch. Thereafter, the Court played a more active role in scrutinizing the legislative process and the claimed public interests.

As controversy surrounding the fingerprint case rose in 2005, the DPP-ruling government insisted on enforcing the new National ID Cards policy.<sup>144</sup> Members of the DPP and human rights advocates were deeply split on this issue.<sup>145</sup> On the one hand, some DPP legislators, most Human Rights Council members (including Vice President Lu), most legal scholars,<sup>146</sup> and human rights organizations strongly disputed the legitimacy of expanding the government's power. Thus, eighty-five DPP legislative members initiated a petition for constitutional interpretation.<sup>147</sup> In the opening arguments, four of five *amici curiae* pointed out the essentiality of the household registration system and the National ID Card.<sup>148</sup> However, they all recognized the widespread criticism of the new National ID Card policy of collecting fingerprints without offering specific objectives or adequate restrictions. The newly-appointed Justices promptly responded to the alarm. The court suspended the application of Article 8 of the

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<sup>144</sup> *Premier's Resolutions from Executive Yuan Meetings No. 2941*, *supra* note 98.

<sup>145</sup> See Guomin Zheng & Hu Lizong (郭敏政&胡立宗), *An Zhiwen Zhengyi Bian Yun Chong Renquan* (按指紋爭議 扁允重人權) [*President Chen Promised to Respect Human Rights About the Fingerprints Case*], PINGGUO JISHI XINWEN (蘋果日報) [APPLE DAILY] (May 17, 2005), <http://www.appledaily.com.tw/appledaily/article/headline/20050517/1783465/>; Chiu Hei-yuan (瞿海源), *Cuoluan de Zhengfu—Ling Shenfen Zheng An Zhiwen de Zhengce Wenti* (錯亂的政府—領身份證按指紋的政策問題) [*The Disordered Government: the Public Policy Issues on the Government's Collection of Fingerprints*], MINZHONG RIBAO (民眾日報) [THE COMMONS DAILY] (Aug. 8, 2005), <http://www.ios.sinica.edu.tw/hyc/index.php?p=columnID&id=64>

<sup>146</sup> Chien Yeong-Shyang et al., *supra* note 87.

<sup>147</sup> Petition for the Interpretation of the Constitution, *supra* note 108.

<sup>148</sup> See Li Chien-liang (李建良), [*Huji Fa Dibatiao An Zhiwen Guiding Shixian An Jianding Yijian Shu*] (戶籍法第八條捺指紋規定釋憲案鑑定意見書) [*Amicus Brief on Constitutional Interpretation of Article 8 of the Household Registration Act*], 73 TAIWAN BENTU FAXUE ZAZHI (台灣本土法學雜誌) [TAIWAN L.J.] 38–56 (2005); Yen Chueh-An (顏厥安), [*Huji Fa Dibatiao An Zhiwen Guiding Shixian An Jianding Yijian Shu*] (戶籍法第八條捺指紋規定釋憲案鑑定意見書) [*Amicus Brief on Constitutional Interpretation of Article 8 of the Household Registration Act*], 79 TAIWAN BENTU FAXUE ZAZHI (台灣本土法學雜誌) [TAIWAN L.J.] 145–77 (2006); Syu Jheng-Rong (徐正戎), [*Huji Fa Dibatiao An Zhiwen Guiding Shixian An Jianding Yijian Shu*] (戶籍法第八條捺指紋規定釋憲案鑑定意見書) [*Amicus Brief on Constitutional Interpretation of Article 8 of the Household Registration Act*], 75 TAIWAN BENTU FAXUE ZAZHI (台灣本土法學雜誌) [TAIWAN L.J.] 57–81 (2005).

*Household Registration Act* by issuing a preliminary injunction,<sup>149</sup> then struck down the core provisions authorizing the government to collect fingerprints.<sup>150</sup>

On the other hand, some legal scholars,<sup>151</sup> and DPP legislators<sup>152</sup> supported the President, either in support of the myth of maintaining social order or economic development in order to gain political capital. These voices showed that the value of privacy rights was not firmly rooted in the minds of most political intellectuals. Even though most DPP politicians had undergone undue surveillance by the authoritarian government, the unconscious goal of pursuing social order still convinced them that maintaining social order or improving policy makers' capability to promote the general welfare might outweigh the value of the privacy rights. This support for the fingerprint requirement suggests that intellectuals and politicians are not reliable protectors of these rights if there is no broad public support for the value of privacy rights and awareness of the risks of biometric technologies.

## 2. *The Majority of People: Unawareness of Right to Privacy*

The fingerprint case hinted that broad public support would be required to protect privacy rights. However, the case also demonstrated that most Taiwanese people were still under the shadow of the authoritarian ruling, and desired a strong government to maintain social order or promote general welfare.<sup>153</sup> Moreover, compared to the risks of violent criminals, the

<sup>149</sup> See SIFAYUAN DA FAGUAN HUIYI JIESHI DI 599 HAO (司法院大法官會議解釋第 599 號) [The Judicial Yuan No. 599 Interpretation], 2005 SIFAYUAN DAFAGUAN HUIYI (司法院大法官會議) [Council of Grand Justices: constitutional court] 2005, (SHIZI 2005) (Taiwan).

<sup>150</sup> See SHIZI no. 603, *supra* note 59.

<sup>151</sup> Liu Zhiyuan (劉志原), *Shixian Shuoming Hui Zhiwen Jiandang Zhengce Guoban Zhichi* (釋憲說明會 指紋建檔政策 過半支持) [*The Majority of People Support Being Fingerprinted*], ZIYOU SHIBAO (自由時報) [LIBERTY TIMES] (July 1, 2005), <http://news.ltn.com.tw/news/focus/paper/23612> (statement of Professor Meng Hsien-Hui in Liu Chih-yuan).

<sup>152</sup> Li Shinfang (李欣芳), *Huan shenfen zheng chaoye xieshang yao na zhiwun* (換身分證 朝野協商 要捺指紋) [*The Congressional Cross-Party Negotiation Still Required People to Submit Their Fingerprints for New National ID Cards*], ZIYOU SHIBAO (自由時報) [LIBERTY TIMES] (May 22, 2004), <http://old.ltn.com.tw/2004/new/may/22/today-p5.htm>

<sup>153</sup> See Wu Nai-teh (吳乃德), *Zhuanxing Zhengyi He Lishi Jiayi: Taiwan Minzhuhua de Weijing zhi Ye* (轉型正義和歷史記憶: 台灣民主化的未竟之業) [*Transitional Justice and Historical Memory: The Undone Works in Taiwan Democracy*], 2 SIXIANG (思想) [REFLECTION Q.] 1, 21 (2005), <http://www.ios.sinica.edu.tw/ios/people/personal/wnd/轉型正義和歷史記憶.pdf> [hereinafter Wu Nai-teh, *Transitional Justice and Historical Memory*] (in 2003, based on a survey poll from Academic Sinica, 46% of survey responders still cherished the authoritarian ruling and viewed it as a better political system for Taiwan).

public failed to fully understand the complexity of biometric technologies and their risks. Those combined factors caused the public<sup>154</sup> to easily accept official propaganda campaigning for the accuracy of biometric verification, and ignore the risk on the technology of verification and storage.<sup>155</sup> Two months after the fingerprint case decision, a survey poll conducted by the Sociology Department of Academic Sinica showed a contradiction: while more than 55% of responders were concerned or seriously concerned about the threat of the government's collecting personal information, more than 68.5% responders still agreed to submit their biological features to promote the social order.<sup>156</sup>

This contradiction presented an important crossroad in the political consciousness of the Taiwanese people. As democracy came in the 1990s, the government's history of human rights infringements was disclosed.<sup>157</sup> As a result, the public no longer trusted the police to collect any personal information to build up its central database. However, the public was constrained by their memory, and cherished the perception of overall social order.<sup>158</sup> Hence, although the public was concerned about the abuse of government power and the risk of data leakage, the value of the privacy rights was still unconsciously subject to abstract public interests: social order and administrative efficiency.

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<sup>154</sup> Based on a survey poll from Liberty Times on July 1, 2005, 79% of survey responders agreed or strongly agreed to submitting their fingerprints to set up a national database. See Chou Kuei-tien (周桂田), *Quanqiu Zaidihua Fengxian Dianfan zhi Chongtu—Shengwu Tezheng Bianshi Zuowei Quanqiu de Laolong* (全球在地化風險典範之衝突—生物特徵辨識作為全球的牢籠) [*"Glocalized" Conflict in Risk Paradigm—Recognition of Biological Characteristics as a Global Iron Cage*], 24 ZHENGZHI YU SHEHUI ZHIXUE PINGLUN (政治與社會哲學評論) [SOCIETAS: A J. FOR PHIL. STUDY OF PUB. AFF.] 101–89 (2008) (indicating that the fingerprint case revealed two competing paradigms of risk perception: simple modern and reflexive modern).

<sup>155</sup> See *id.*

<sup>156</sup> *Id.* at 165 (this survey poll showed that after a series of social movements and the constitutional interpretation, around 10% of responders changed their attitudes toward the collection of fingerprints. However, around 70% of responders still chose to agree with this policy.).

<sup>157</sup> THE MEMORIAL FOUNDATION OF 228 [二二八事件紀念基金會], ER-ERBA SHIJIAN ZEREN GUISHU YANJIU BAOGAO (二二八事件責任歸屬研究報告) [RESEARCH REPORT ON RESPONSIBILITY OF 228 MASSACRES] (2006), <http://issuu.com/naiweicheng/docs/228-01?e=5196527/2643089> (the online version is available on the official website of the Memorial Foundation of 228).

<sup>158</sup> Wu Naiteh (吳乃德), *Reformer or Dictator? Reassessing the Role of Chiang Ching-kuo in the Democratic Transition* (回憶蔣經國, 懷念蔣經國), in GUOSHI GUAN (國史館) [ACADEMIA HISTORICA], ERSHI SHIJI TAIWAN MINZHU FAZHAN (二十世紀台灣民主發展) [TAIWANESE DEMOCRATIC DEVELOPMENT IN THE 20TH CENTURY] 467 (2004).

### 3. *The Revision of the Personal Information Protection Act and the DNA Sampling Act*

The top-down judicial ruling in the fingerprint case and its inspiring words have not substantially changed the public's mind nor the legislature's attitudes towards the individual right to privacy. In the fingerprint case of 2005, human rights organizations and the Constitutional Court forced an amendment to the *Household Registration Act* and prohibited the government from broadly expanding its power to collect, process, and use personal information without specifying its purpose. In addition to the amendment of the *Household Registration Act*, the fingerprint case also urged the legislators to amend other laws to reflect the spirit of Interpretation No. 603.

In 2010, the legislature materially revised the content of the *Computer-Processed Personal Data Protection Law* and changed its title to the *Personal Information Protection Act*.<sup>159</sup> At first glance, the new law ultimately corresponded to the social needs in the information age and substantially broadened its coverage to all personal information, rather than just "computer processing information."<sup>160</sup> Additionally, the law included special provisions on sensitive personal information to prevent the government's unnecessary collection or processing.<sup>161</sup> However, after close examination, the language was neither clear nor sufficiently limiting and may grant wide discretion to the government agency, leading to an over or under-inclusive interpretation of the scope of specific purpose or exception to collect, process,<sup>162</sup> or use<sup>163</sup> the personal information.

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<sup>159</sup> Geren Ziliao Baohufa (個人資料保護法) [Personal Information Protection Act] (2010).

<sup>160</sup> See 97 LIFAYUAN GONGBAO NO. 28 (VOL. 3639), (立法院公報 97 卷 28 期 3639 號) [LEGIS. YUAN OFFICIAL GAZ.], at 212–52 (2008); 97 LIFAYUAN GONGBAO NO. 48 (NO. 3659–1), (立法院公報 97 卷 48 期 3659 號 上) [LEGIS. YUAN OFFICIAL GAZ.], at 114–218 (2008).

<sup>161</sup> GEREN ZILIAO BAOHUFU (個人資料保護法) [PERSONAL INFORMATION PROTECTION ACT], art. 6 (personal information concerning medical treatment, genetic information, sexual activity, health examination, and criminal record should not be collected, processed, or used).

<sup>162</sup> *Id.* art. 15 (the government agency should not collect or process personal information unless there is a specific purpose and should satisfy one of the following conditions: 1) it is necessary to carry out the duties prescribed by laws and regulations; 2) the Party has consented; or 3) the rights and interests of the Party will not be harmed).

<sup>163</sup> *Id.* art. 16 (the information may be used outside the scope upon the occurrence of one of the following conditions: 1) where prescribed by law; 2) where it is necessary for national security or the promotion of public interests; 3) where it is to prevent significant harm to the life, body, freedom, or property of the Party; 4) where it is to prevent harm to the rights and interests of other people; 5) it is necessary for the government agency or an academic research institution to conduct statistical or academic research based on public interest, respectively. The information may not lead to the identification of a

The *DNA Sampling Act* also demonstrates the public and legislature lacked concern about the privacy rights of criminal suspects.<sup>164</sup> In 1999, based on the same social background of the amendment of the *Household Registration Act*, the legislature enacted the *DNA Sampling Act* to authorize prosecutors or judges to collect, identify, analyze, and store DNA samples of suspects or those accused of violent felonies or sex crimes. Under this law, prosecutors were neither required to receive a search warrant for the DNA samples, nor adequately restricted from storing or analyzing the remaining data. Following the revision of 2012, based on public anxiety over rising crime and the development of technology to analyze and store DNA samples, the legislature dramatically increased the scope of those subject to mandatory DNA sampling, expanding the list of crimes beyond violent felonies and sex crimes to an astonishingly long list without considering its necessity and the potential threat to the right to privacy.<sup>165</sup>

*B. The Reason for the Gap: The Public Unawareness and Its Historical Context*

Historically, Taiwanese people have obediently accepted the authority's rules for pursuing social order and economic development. Privacy rights have not yet been embedded into Taiwanese culture. Based on the long-accepted methods of government surveillance and limited opportunities to learn about constitutionalism, most Taiwanese are

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certain person after the treatment of the provider or the disclosure of the collector; 6) where such use may benefit the Party; or 7) the Party has consented).

<sup>164</sup> Quyang Hetang Hesuan Caiyang Tiaoli (去氧核醣核酸採樣條例) [DNA Sampling Act] (1999).

<sup>165</sup> *Id.* at art. 5 (those accused or suspected of committing any of the following offenses shall be subject to mandatory DNA sampling: 1) offenses against public safety as provided in paragraph 1 and 3 of Article 173, paragraph 1, 2, and 4 of Article 174, and paragraph 1 of Article 175 of the Criminal Code of the Republic of China; 2) sexual offenses as provided in Articles 221 to 227, 228, and 229 of the Criminal Code of the Republic of China. 3) offenses of homicide as provided in Article 271 of the Criminal Code of the Republic of China; 4) offenses of causing injury as provided in paragraph 2 of Article 277 and Article 278 of the Criminal Code of the Republic of China; 5) offenses of abrupt taking, robbery and piracy as provided in paragraph 2 of Article 325 and Articles 326 to 334-1 of the Criminal Code of the Republic of China; 6) offenses of extortion and kidnapping for ransom as provided in the Criminal Code of the Republic of China. The accused or suspects who are convicted of any of the following offenses and recommit any offenses provided in this paragraph shall be subject to mandatory DNA sampling: 1) offenses against public safety as provided in paragraph 1 and 4 of Article 183, paragraph 1, 2, and 5 of Article 184, Article 185-1, Article 186, paragraph 1, 2, and 4 of Article 186-1, Article 187, 187-1, 188, paragraph 1, 2, and 5 of Article 189, paragraph 1, 2, and 4 of Article 190, Article 191-1, and any intentional offense against Article 176 of the Criminal Code of the Republic of China; 2) offenses against freedom as provided in Article 296, 296-1, and 302 of the Criminal Code of the Republic of China; 3) offenses of larceny as provided in Article 321 of the Criminal Code of the Republic of China; 4) offenses of abrupt taking, robbery and piracy as provided in paragraph 1 of Article 325 of the Criminal Code of the Republic of China; 5) offenses as provided in Article 7, 8, 12, and 13 of the Firearms, Ammunition and Knives Control Act; and 6) offenses as provided in Article 4 to 8, 10 and 12 of the Narcotic Control Act).

accustomed to complying with the government's rules and are willing to overlook the risk of disclosing their personal information to authorities.

With the end of the National Mobilization in Suppression of Communist Rebellion and the revival of the constitutional order in the 1990s, Taiwanese society underwent a transitional period from the previous authoritarian regime to a democratic system, and fell into a restless and perplexed situation. The acceptance of constitutional rights and democracy gradually spread among citizens via a series of social movements. On the one hand, intellectuals had opportunities to access more information than ever without censorship because of attendant relaxing of restrictions. The digital revolution also changed the landscape of communication, facilitating the transmission of all sorts of ideas into Taiwan. Those changes allowed the ideas of human rights and constitutionalism to be introduced to the Taiwanese public much more easily, and as a result these ideas enlightened some scholars and led them to actively advocate for the value of human rights and democracy. Because of the numerous social movements and the development of democracy, many citizens were awakened and started assembling together to fight for their rights.

On the other hand, with the dramatic political and social changes, the public perceived the old social order to be ruined. However, it was not immediately replaced with a new social norm, causing most people accustomed to relying on the authority of the government to feel awkward and confused. The retreat of government intervention and the growth in the power of the mafia and big corporations increased the perception of disorder, resulting in a pervading collective anxiousness. Under this collective fear for personal safety, a flagrant criminal incident on the TV screen would easily trigger a massive response from the public. Furthermore, most citizens had limited awareness due to long-term censorship,<sup>166</sup> and instead cherished social order, demanding the government to expand its power.

This divide was not drawn simply along categories of race, class, age, or gender. Instead, the divergence was based on different personal life

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<sup>166</sup> See Lin Qi Yang (林淇瀾), *Zhan Hou Taiwan Bao Jin Zhengce zhi Xingcheng* (戰後臺灣報禁政策之形成) [*The Formation of Post-War Policy on Newspaper Restrictions in Taiwan*], 85 TAIWAN XUE TONGXUN (台灣學通訊) [TAIWAN SCI. COMM.] 20, 20–21 (2015), <http://www.ntl.edu.tw/public/Attachment/512910151526.pdf> (the ROC government claimed to save paper resources and carried out the policy of restricting newspaper licensing and its issuance amount from May 20, 1949 to Jan. 1, 1988).



experiences, memories,<sup>167</sup> and perceptions of the risks<sup>168</sup> of unintended consequences.<sup>169</sup> In a democratic society, diverse views with all possible variations were common and usual. But Taiwanese society was still under the shadow of its authoritarian ruling history<sup>170</sup> and held different viewpoints on important political issues like the 228 Incident,<sup>171</sup> and the subsequent government suppression.<sup>172</sup> Moreover, although the National Mobilization for Suppression of the Communist Rebellion period ended more than two decades prior, bureaucrats were still used to the practices in use during that span. As a result, the government focused on administrative efficiency and scientific assessment of risk, rather than full disclosure of the implicated risks as well as cost to the public to form a new public consensus. This delayed disclosure of risks from the government broadened the gap between both sides.<sup>173</sup> The complexity of privacy rights in Taiwanese society is rooted in the tension between the historic background and administrative structure and the recent rise of constitutionalism and privacy rights.<sup>174</sup>

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<sup>167</sup> See, e.g., Jeffrey K. Olick & Joyce Robbins, *Social Memory Studies: From Collective Memory to the Historical Sociology of Mnemonic Practices*, 24 ANNU. REV. SOCIOL. 105 (1998); see also Chen Wei-Hong (陳瑋鴻), *Renquan, Zhengti Zhuanxing yu Jiyi Zhengzhi: Yige Zhuanxing Zhengyi Zhijiao de Jiantao* (人權、政體轉型與記憶政治一個轉型正義視角的檢討) [*Human Rights, Transition of Regime, and Politics of Memory: An Examination of Transitional Justice Perspectives*], [40 SOCIETAS: A J. FOR PHIL. STUDY OF PUB. AFF.] 95 (2012).

<sup>168</sup> See e.g., ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* (1992).

<sup>169</sup> The unintended consequences include, but are not limited to, the risk of incidental data leakage, the abuse of government power, and the reinforcement of stereotypes.

<sup>170</sup> See e.g., Wu Nai-teh (吳乃德), *Transition Without Justice or Justice Without History: Transitional Justice in Taiwan*, 1 TAIWAN J. DEMOCRACY 77 (2005), <http://www.ios.sinica.edu.tw/ios/people/personal/wnd/TransitionWithoutJusticeOrJusticeWithoutHistory.pdf>.

<sup>171</sup> The 228 Incident was initially a protest in Taipei against police abuse of power, starting on February 27 1947. The protest then spread widely to the whole island and became a popular uprising against public corruption and economic mismanagement. However, the ROC government violently suppressed the uprising in March. The number of deaths was estimated to be between 18,000 and 28,000. After the incident, the ROC government declared martial law, leading to the disappearance, death, or imprisonment without a fair trial of thousands people during the following forty years. See WAKABAYASHI MASAHIRO (若林正丈), *ZHANHOU TAIWANSI (戰後台灣史)* [THE HISTORY OF POSTWAR TAIWAN] 11, 57 (1994); Tillman Durdin, *Formosa Killings Are Put at 10,000*, N.Y. TIMES (Mar. 29, 1947), <http://www.taiwandc.org/hst-1947.htm>.

<sup>172</sup> This spanned from May 18, 1949 to July 14, 1987. As estimated, 29,407 Taiwanese were accused of treason and imprisoned without a fair trial. Around 4,500 persons were secretly executed for their alleged dissent against the government. See RESEARCH REPORT ON RESPONSIBILITY OF 228 MASSACRES, *supra* note 157; WAKABAYASHI MASAHIRO, *supra* note 171, at 103.

<sup>173</sup> Chou Kuie-tien & Chang Chun-mei, *supra* note 80.

<sup>174</sup> See Wu Nai-teh, *Transitional Justice and Historical Memory*, *supra* note 153, at 21.

### C. *An Unanswered Question: Democracy and Privacy*

As the fingerprint case showed, in Taiwanese practical experience the tension between information privacy rights and democracy<sup>175</sup> by majority rule in a post-authoritarian society is not easily resolved. It also indicated that judicial independence, rather than democracy, played the role of being the final protector of privacy rights. A decade after the fingerprint case, this article examines several questions. First, whether without thorough public awareness of the value of privacy rights, will Taiwanese people always expect the judicial branch to play an active role, limiting the legislative power and resisting the public yearn for social order? Second, in the modern information society, will the marriage of computer technology and democracy further erode and diminish the protected zone of privacy rights? Finally, without rigorous and complete personal information protection laws, how will Taiwanese society ensure that individuals' freedom will not be destroyed by state surveillance or community intimation?<sup>176</sup> In order to resolve these questions, we should closely observe the spread of the valuing of privacy rights and constitutionalism among the general populace in Taiwan, and the judicial branch's future attitudes towards the evolution of privacy rights in the information age.

## VI. CONCLUSION

Since the late nineteenth century, Japan and ROC have adopted distinct legal systems governing personal information in Taiwan. Although Taiwan transformed its political regime into democracy in the 1990s, the memory of authoritarian rule and good social order still shapes the public's expectation of the governmental function. This historic and social background substantially postponed the rise of constitutionalism and privacy rights taking root in the Taiwanese society. As a result, most Taiwanese people still expect the government to promote the general welfare and guard

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<sup>175</sup> In the United States, a similar debate focused rather on the tension between an open government and information privacy rights. See Wallace Parks, *Open Government Principle: Applying the Right to Know Under the Constitution*, 26 GEO. WASH. L. REV. 1, 3 (1957). The debate also focused on the free flow of information and information privacy. See Richard A. Posner, *An Economic Theory of Privacy*, in PHILOSOPHICAL DIMENSIONS OF PRIVACY: AN ANTHOLOGY 337–38 (Ferdinand David Schoeman ed., 1984); Eugene Volokh, *Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People from Speaking About You*, 52 STAN. L. REV. 1049, 1050–51 (2000).

<sup>176</sup> See Paul M. Schwartz, *Privacy and Participation: Personal Information and Public Sector Regulation in the United States*, 80 IOWA L. REV. 553, 563 (1995); Danielle Keats Citron, *Fulfilling Government 2.0's Promise with Robust Privacy Protections*, 78 GEO. WASH. L. REV. 822, 842–43 (2010); Julie E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 STAN. L. REV. 1373, 1423–28 (2000).

the social order, and then tend to re-invite the government to expand its power without adequate restrictions. Moreover, as the government dramatically expands its capability to collect, store, and process the personal information in the information age, the issue of individual privacy rights faces a new urgent challenge.

These social changes shaped the divergent views on privacy rights within the Taiwanese society. On the one hand, some legal professions and human rights activists began to cautiously contemplate the role, power, and capacity of the government in governing personal information. On the other hand, being influenced by their past experience, the majority of Taiwanese people opted to subject their privacy rights to the government without considering the likelihood of the government's abuse of its power in collecting or processing personal information. The fingerprint case revealed these conflicting values within modern Taiwanese society. This case demonstrated that even though Taiwan has successfully transformed its political regime into democracy and finished the peaceful political transition, its history and memory still influence the public choice and constrain the evolution of the privacy rights.