

# The Procuratorate and the Judiciary in Taiwan

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# A New Law: The Judge Act

- Promulgated on 6 July 2011; to take effect on 6 July 2012.
- The objective of the Act:



To ensure judges can try cases independently, their tenure should be secured and an external rating system for judges should be established. The Act is enacted to protect people's right to a fair trial.

- A new and fundamental law for the judiciary in tandem with the Court Act (effective since 1932), which does not define the role of a judge.



**The new act is a new offensive against two chronic, unsettled issues in Taiwan's legal system:**

- Line between procuratorate and judiciary not clearly drawn
- Whether procuratorate should be institutionally independent



# I. Line between procuratorate and judiciary not clearly drawn

- Historically, separation of the judiciary from executive branch is an alien notion in the Chinese culture and political system.
- Hence the line between the procuratorate and the judiciary has always been blurred since the inception of the Republic

# A Transformative Journey That Begin in 1950: Judicial Yuan Interpretation No. 13 (1953/1/31)

- **Issue:** Does the judge with a tenure stipulated in Article 81 of the Constitution include the prosecutor?
- **Holding:** The judge referred to in Article 81 of the Constitution means the judge that Article 80 of the Constitution refers to and **does not include the prosecutor.** However, guarantee of a tenure for prosecutors, extended by the Court Act, is the same as that of tenured judges.

# Judicial Yuan Interpretation No. 86 (1960/8/15)

■ **Issue:** Are the High Courts and District Courts

The Court Act was amended and Interpretation No. 86 was implemented in 1980.

procuratorate?

In view of the fact that different levels of courts and subsidiary courts below the High Court inclusively hold the judicial power over trials of civil and criminal litigation, **these courts shall be subordinate to the Judicial Yuan.**

<b>J.Y. Interpretation</b>	NO.86
<b>Date</b>	1960/8/15
<b>Issue</b>	Shall the High Courts and District Courts
<b>Holding</b>	Article 77 of the Constitution vests judicial power over trials of civil and criminal cases in the courts of all levels. In view of the fact that different levels of courts and subsidiary courts below the High Court inclusively hold the judicial power over trials of civil and criminal litigation, <b><u>these courts shall be subordinate to the Judicial Yuan.</u></b> All relevant acts and regulations shall respectively be amended to comply with the concept of Article 77 of the Constitution.
<b>Reasoning</b>	Article 77 of the Constitution vests judicial power over trials of civil and criminal cases in the courts of all levels. In view of this fact, the courts of all levels shall be organized in a hierarchical system to ensure the consistency of the judicial system, contributes as a whole to the judicial system. Based on this reason, all levels of courts and subsidiary courts below the High Court shall be subordinate to the Judicial Yuan. All relevant acts and regulations shall respectively be amended to comply with the concept of Article 77 of the Constitution.
<b>Opinion</b>	Translated by Dr. F. T. Liao, Assistant Research Fellow, Institute of European and American Studies, Academia Sinica. <a href="#">Chinese only</a>

# Judicial Yuan Interpretation No. 392 (1995/12/22)

## ■ Issues:

- (1) Does the "court" provided in Article 8 of the Constitution include the "prosecutor's office," hence empowering the prosecutor to detain a person beyond the 24-hour period as authorized by said Article for the court?
- (2) Is the Habeas Corpus Act extending safeguard of Habeas Corpus only to the "unlawful" arrest and detention consistent with Article 8 of the Constitution?

# Judicial Yuan Interpretation No. 392 (1995/12/22)-1

J.Y. Interpretation	NO.392
Date	1995/12/22
Issue	(1) Does prosecutor have the power to issue Habeas Corpus and detainee?
Holding	Criminal process without trial and prosecution from investigation. Therefore, the power to issue Habeas Corpus is on behalf of the judicial organ in criminal process. The term "judicial organ" refers to the prosecutor. The term "competent court" refers to a judge or a panel of judges empowered to try cases.

**The term "trial" defined in Art. 8, Para. 1 and 2, of the Constitution means trial by court.** He who has no authority to try a case cannot conduct this proceeding. **The "court" defined in Art. 8, Para. 1 and 2, with the power to issue Habeas Corpus, means a tribunal composed of a judge or a panel of judges empowered to preside over trials.** According to Art. 8, Para. 2, of the Constitution, **if any organ other than a court arrested or detained a person, such organ shall surrender the detainee to a competent court for trial within 24 hours of said action.**

of a judge or a panel of judges empowered to try cases. According to Article 8, Paragraph 2, of the Constitution, if any organ other than a court arrested or detained a person, such organ shall surrender the detainee to a competent court for trial within



# Judicial Yuan Interpretation No. 392 (1995/12/22)-2

【釋字第 392 號】

J.Y. Interpretation	NO.392	<p><b><u>...the Constitution...does not impose an "unlawful arrest or detention" condition for surrendering the detainee to court for trial.</u></b> Whereas Article 1 of the Habeas Corpus Act, prescribing that...[i]t does add an extra term "unlawful arrest or detention" as a condition for petitioning the writ, <b><u>violates Art. 8, Para. 2, of the Constitution.</u></b></p>
Date	1995/12/22	
Issue	(1) Does the prosecutor to and detention	
Holding	<p>Criminal process with from investig Therefore, the trial and puni on behalf of t in criminal ju the term "jud "judicial orga prosecutor's</p> <p>The term to try a case of a judge or a panel of judge any cases. According to Article 8, Paragraph 2, of the Constitution, if any organ other than a court arrest or detained a person, such organ shall surrender the detainee to a competent court for trial within</p>	



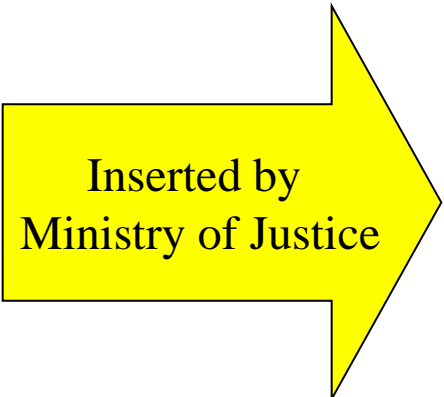
# After Interpretation No. 392

- The Criminal Procedural Act has been revised nearly 20 times since Interpretation No. 392
- The adversarial system is being gradually introduced into the criminal procedure to the inquisitorial system

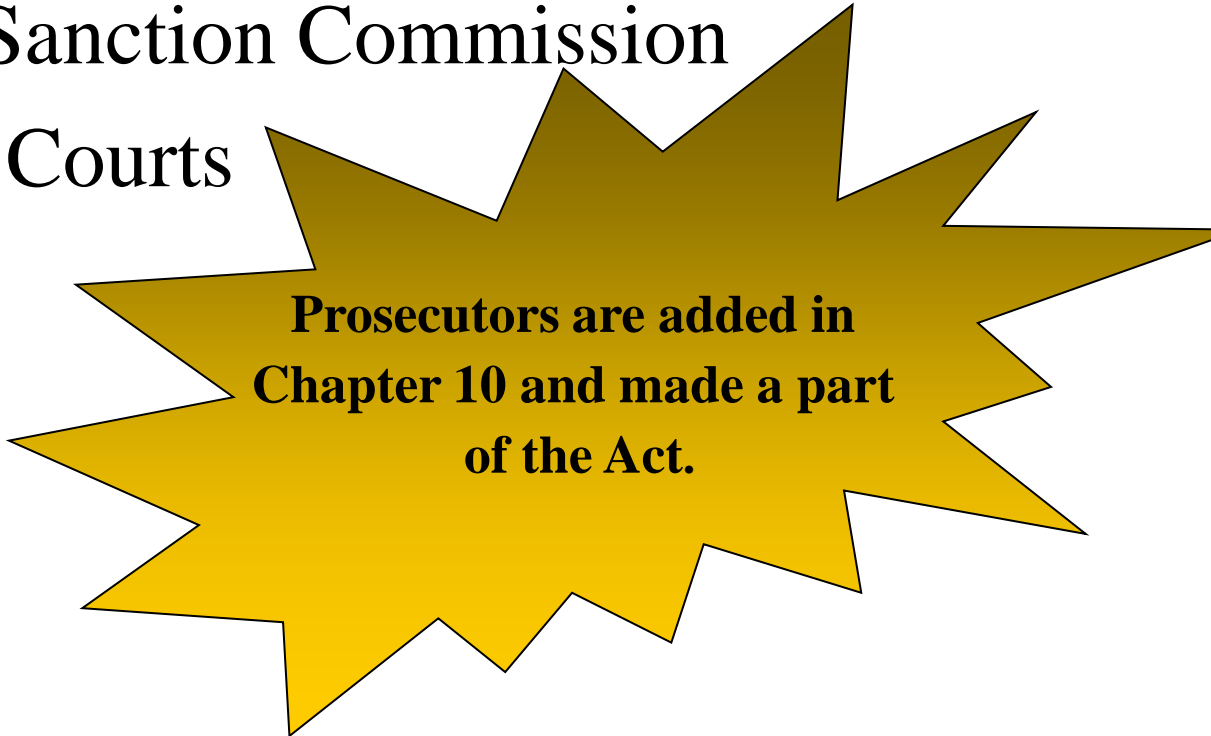
# The Judge Act

Addresses the roles and distinguishes between a prosecutor and a judge

- The definition of a judge under the Act:
  1. Constitutional Tribunal Justices
  2. Commissioners of Public Functionary Disciplinary Sanction Commission
  3. Judges of the Courts



Inserted by  
Ministry of Justice



**Prosecutors are added in  
Chapter 10 and made a part  
of the Act.**


# The Judge Act

Article 1: “In order to ensure that judges could hold trials independently, their tenure should be secured and a rating system for judges should be established. The Act is therefore enacted so as to secure the citizen’s right to a fair trial.”

Article 12: Judges shall be independent and shall be free from any external influence in the exercise of their functions and shall uphold the Constitution and the public interest protected by law, and fulfill the role of the procuratorate independently and prudently.

To have judges act mainly to guard human rights is explicitly stipulated in a law for the first time.

Article 8: The procuratorate shall be independent and shall uphold the Constitution and the public interest protected by law, and fulfill the role of the procuratorate independently and prudently.



II. Whether the procuratorate  
should be institutionally  
independent  
from the Executive Branch



# Prosecutor General (PG) in Taiwan

- The post is stipulated in the Court Act since day one
- The PG supervises and directs prosecutors and prosecution affairs nationwide.
- The PG may file an extraordinary appeal with the Supreme Court for a conclusive criminal judgment if it is discovered that the judgment was made contrary to the laws of the Republic of China.
- Similar to Solicitor General of the U.S. but lacks a role in the Constitutional Tribunal.



# Prosecutor General (PG) in Taiwan

- The Court Act was amended in 2006 to authorize the PG to form and lead a Special Investigation Division with a mandate to prosecute serious crimes committed by high-ranking government officials.
- The PG is nominated by the President and approved by the Legislative Yuan, thereby removed from the supervision of the Minister of Justice, who is a member of the Cabinet.
- Analogy can be drawn with the Independent Prosecutor of the U.S.

# Former President of Taiwan prosecuted by Special Investigation Division under supervision of the PG nominated and appointed by him

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## Taiwan ex-leader jailed for life

Taiwan's former President Chen Shui-bian has been sentenced to life in prison after being found guilty of corruption by a court in Taipei.

Mr Chen was charged with embezzlement, taking bribes and money laundering, involving a total of \$15m (£9m) while in office from 2000-2008.

Mr Chen had denied the charges, saying they were politically motivated.

His wife, Wu Shu-chen, already jailed for perjury in the case, was also sentenced to life for corruption.



Mr Chen chose to stay in detention rather than hear the verdict in person

**BBC**  
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[bbc.com/ld](http://bbc.com/ld)





# Prosecutor General in Taiwan

- **A Latent Issue:** Is the PG appointment procedure under the Court Act constitutional?

# Prosecutor General in Taiwan

- Judicial Yuan Interpretation No. 613 and No. 645 declared the National Communications Commission's and the Referendum Screening Committee's appointment procedures unconstitutional, for reviewing the nomination power from the Prime Minister to the President and subjecting the appointment to the consent of Congress.
- It is not clear whether the PG appointment procedure, similar to those of the NCC and the RSC, will stand if challenged in front of the Constitutional Tribunal.



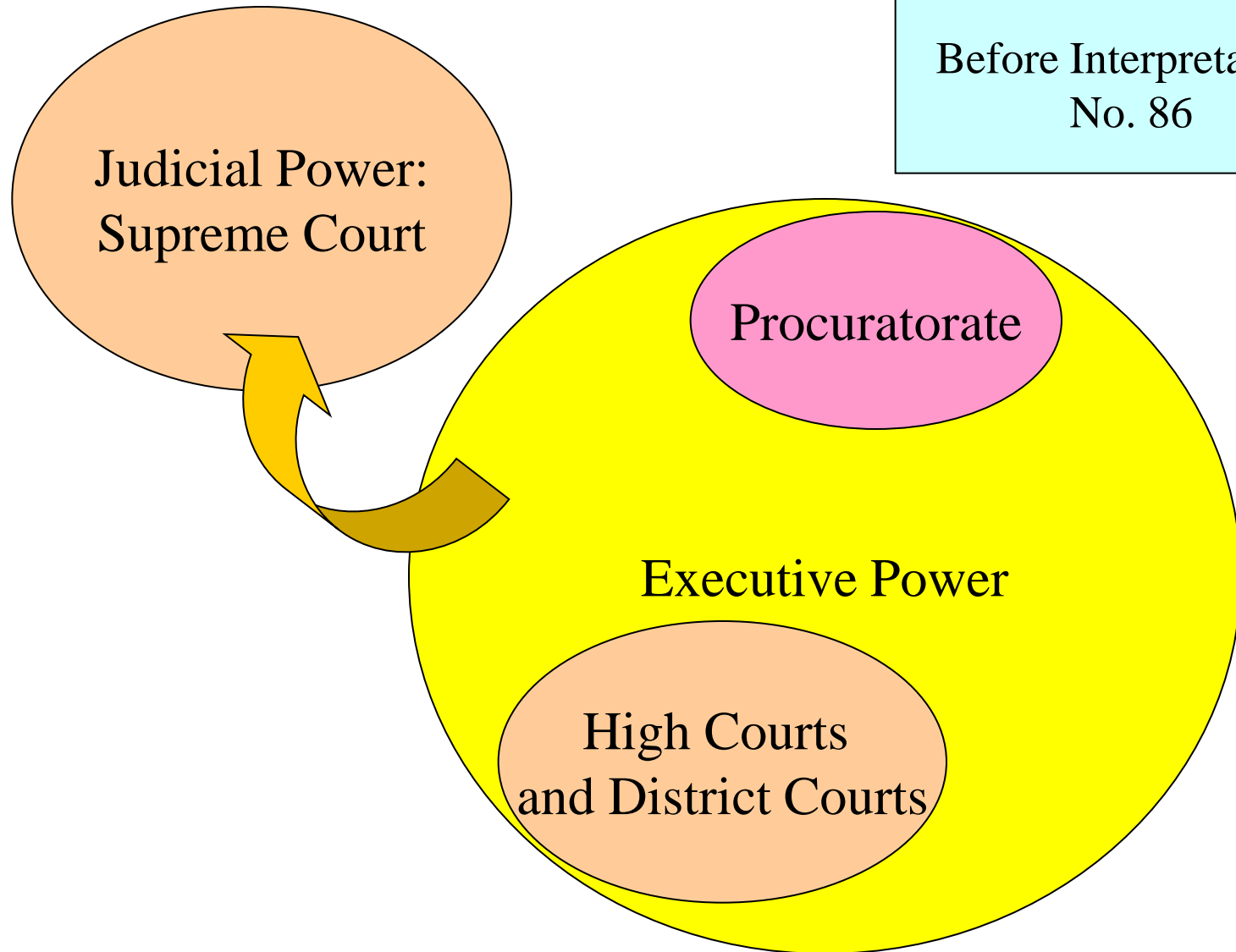
# Concluding Remarks

- Separation between the procuratorate and the judiciary has reached a point of no return and the journey will continue
- Issues of making the procuratorate an independent government institution will continue to be explored.

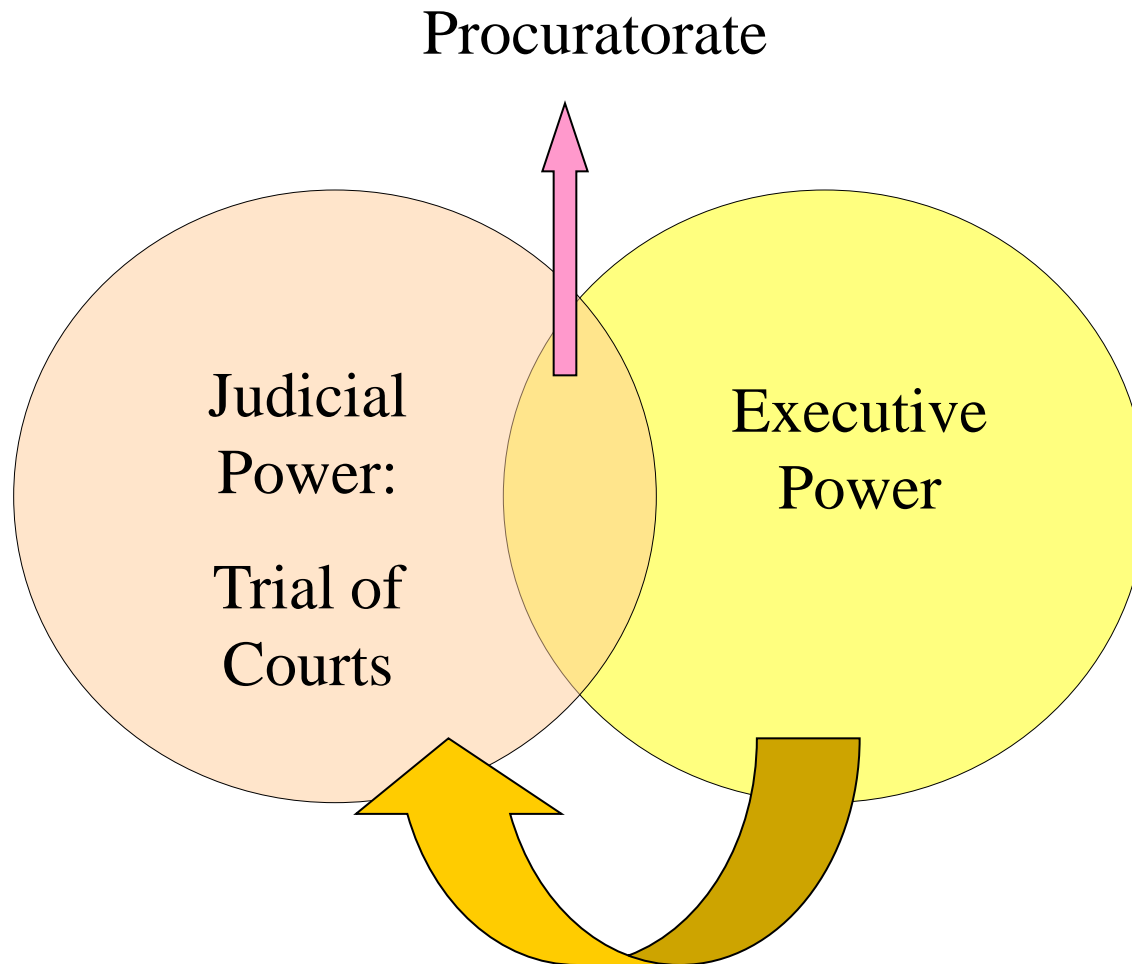
Before the enactment of  
the Constitution

Mixture of Judicial and Executive Powers

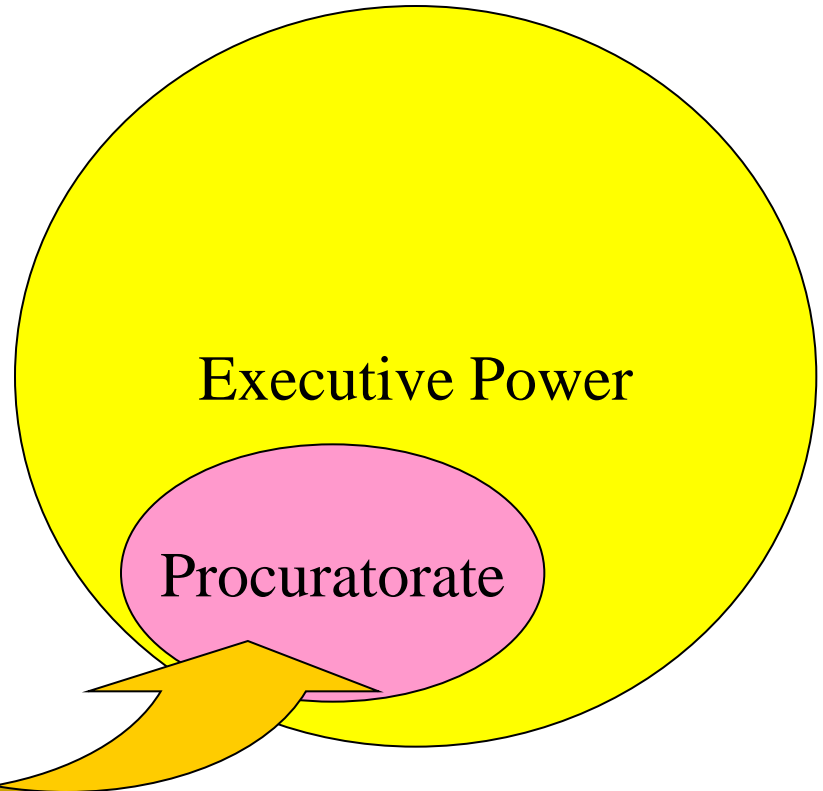
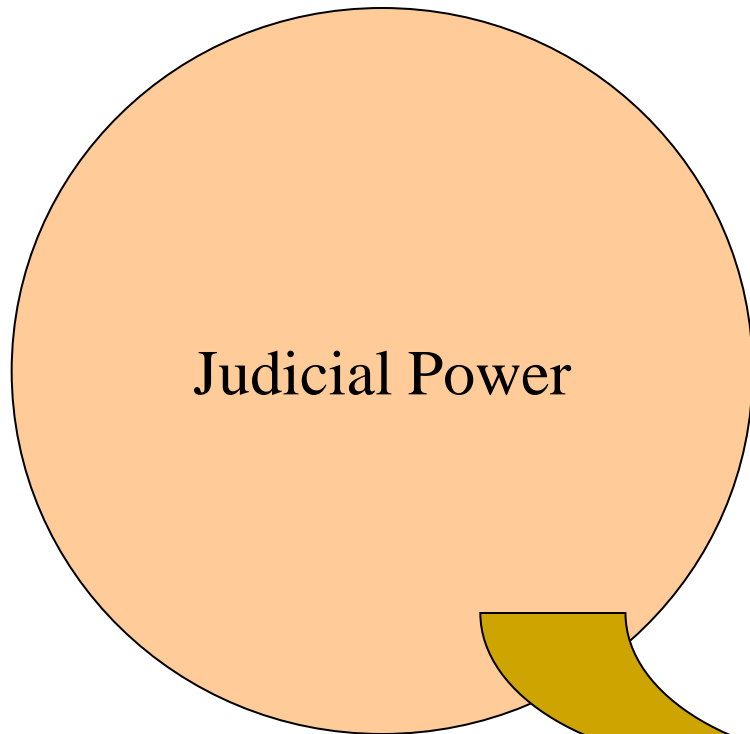
Before Interpretation  
No. 86



After Interpretation  
No. 86 in 1980



After Interpretation  
No. 392 and the Judge Act



Ideal Model  
for the future?

