

Article

The Emergence of Modern Constitutional Culture in Taiwan*

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ABSTRACT

Taiwan encountered its first exposure to Western constitutionalism with the advent of Japanese rule in the late 19th century. The Japanese colonial government brought the system of separation of powers to Taiwan through its Meiji Constitution, though its scope was limited early on because the Taiwanese were not familiar with this system. However, during the latter period of Japanese rule, some Taiwanese elites applied the concepts in the Meiji Constitution to their struggles for civil rights, and to a certain degree succeeded. Since 1945, the Chinese Nationalist Party (KMT) government, which lacked experience with constitutionalism, had governed Taiwan for more than 50 years. The KMT government concentrated power in the administrative branch, and specifically in the party and the dictator himself. Nevertheless, for the sake of political expediency, the KMT government nominally abided by the Republic of China Constitution, which was drafted in China before the Communist revolution, though suspended many important provisions. Following the democratization and liberalization of Taiwan in the late 1980s as well as the change

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of the governing party in 2000, the separation of powers and the protection of human rights were greatly expanded in Taiwan. However, because these changes to liberty and democracy have only been in effect for about 20 years, the Taiwanese public does not entirely understand or accept the concept of constitutionalism based on liberty and democracy. The authors argue that only if all of the population groups in Taiwan embrace these values of freedom and democracy can the divided Taiwanese society be healed.

Keywords: *Modernity, Constitutional Culture, Colonial Rule, Rule by Law, Rule of Law, Separation of Powers, Human Rights, Democracy, Liberalism, National Identity*

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I. INTRODUCTION

The main concern in this paper is the extent to which men and women in Taiwan possess the modern constitutional culture. The term “modern constitution” or “modern-style constitution” refers to constitutions developed or promulgated in Western countries since the seventeenth century. For example, the Bill of Rights of 1689 in England, the Declaration of Independence of 1776, the Constitution of 1787 and the Bill of Rights of 1791 in the United States, and the Declaration of the Rights of Man and of the Citizen of 1789 in France.

The key principles underlying these modern constitutions are constitutional governance, separation of powers and protection of basic rights. These three principles are implemented through a legal system, which include statutes, regulations and decisions of the state. The legal system, however, should be defined broadly to also include legal professionals and the ideas and concepts of the general public regarding law.¹ The emphasis of this article is whether a “constitutional culture” exists in Taiwan, thus we will not merely examine the written Constitution of Taiwan and whether it integrates the three key constitutional principals, but rather whether and the extent to which these principles are already rooted in the consciousness and lifestyle of the Taiwanese public. Modern constitutions were born in western societies; these societies went through their own cultural enlightenments and developed capitalist systems which gave rise to a middle class, and these developments informed the creation of the modern constitution. East Asian countries, including Taiwan, have had their own cultural and socioeconomic development, which has tended to emphasize the domination of emperor and father, and likened the relationship between government and citizen to the relationship between parent and child.² Therefore, when considering East Asian societies, we cannot merely ask whether written constitutions guarantee important basic principles, but also must inquire into whether the people in the culture have accepted and understood these principles. East Asian scholars have generally studied constitutional theory as it developed in Western cultures, and have applied this analysis directly to Asian societies without considering the differences between Asian and Western cultures. It might be advisable, then, to examine local constitutional culture before applying Western constitutional theory to East Asian societies. This article attempts to begin this analysis by considering the Constitutional culture in Taiwan.

1. LAWRENCE M. FRIEDMAN, *THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE* 193-94 (1975).

2. *See generally* DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA* 29, 33-38 (1967).

For this purpose, we will describe the cultural context and ideas behind the constitutional laws developed in different historical periods in Taiwan, primarily through the examination of government archives.³ For years, government archives in Taiwan have been kept separately by different government departments and few were open to the public. Systematic perseverance of government archives in Taiwan did not begin until 2001. Archives that are related to constitutional laws are now kept by the National Archives Administration, but these archives are mostly post-war documents. To capture the pre-war constitutional culture, we consulted government archives and private documents from the Academia Historica in Taiwan and the National Archives of Japan. Finally, we also interviewed a number of retired legal professionals.

In examining historical archives concerning Taiwan constitutional law, it is often important to read between the lines and consider the cultural and societal background of the drafter. Through the analysis of the texts and discourse appearing in archives and documents, we want to demonstrate the situation of the applicable period and the ideas of the contemporary population relating to constitutional principles. We will discuss some official or unofficial legal interpretations, but will focus on the social contexts behind these interpretations and their underlying recognition or ideology. We will not, however, comment on the legitimacy of the arguments presented in these legal interpretations.

II. COLONIAL CONSTITUTIONAL CULTURE UNDER THE JAPANESE MEIJI CONSTITUTION

Taiwan was first introduced to the idea of modern constitution under Japanese colonial rule. We will explore whether or to what degree the modern constitutional culture emerged in Taiwan under Japanese colonial rule (1895-1945).⁴ The three principles of modern constitution:

3. We define the constitutional culture to include both the legal culture related to legal professionals and the legal culture as understood by the public. When we examine the governmental archives of Taiwan, however, the documents tend to primarily reflect the constitutional culture involving political elites and legal professionals. For the constitutional culture of the general public in Taiwan, we base our analysis on available large-scale polls and public surveys. There has not been a direct survey regarding constitutional culture in Taiwan, and there are very few reliable surveys on legal culture in Taiwan. This lack of credible surveys does to some extent limit our analysis of the constitutional culture with regards to the Taiwanese public.

4. The Republic of Taiwan, adopting the presidency and parliament system, was established in May 1895 but collapsed in October of the same year. That, however, has almost no influence upon the constitutional development. Tay-sheng Wang, *Tzuyou Minchu Hsiencheng tsai Taiwan te Shihhsien: I ke Lishih te Chiaoh* [*The Realization of Liberal and Democratic Constitutional Order in Taiwan: A Coincidence in History*], 11(1) TAIWANSHIH YENCHIU [TAIWAN HISTORICAL RESEARCH] 167, 175-76 (2004). On the history of Taiwan under Japanese colonial, see Harry J. Lamley, *Taiwan Under Japanese Rule, 1895-1945: The Vicissitudes of Colonialism*, in TAIWAN: A NEW HISTORY 201, 201-60

constitutional governance, separation of powers, and protection of basic rights are the benchmark of our analysis.

A. *Constitutional Governance (Governing People According to the Constitution)*

When Japan acquired Taiwan and considered how to govern its new territory in 1895, the government had already considered the possibility of applying the Meiji Constitution to the newly acquired colony. The Japanese Minister of Justice tried to decide the issue of whether the Meiji Constitution was applicable to Taiwan by seeking advice from foreign experts. William Montague Hammett Kirkwood, an English counselor, advised the following in April and July of 1895:⁵

. . . My opinion on an interesting and difficult constitutional issue resulting from Japan's accepting the cession of Taiwan. . . . The constitutional requirement that the emperor shall exercise his legislative power with the consent of the Imperial Diet merely exists in Japan proper, namely the territory and people therein for which the Constitution was originally designed. . . . It is not unconstitutional that the institutions of Taiwan be enacted by the sole powers of the emperor (*tennō-taiken*; which possessed the powers of the executive branch and military, the writers add) without the consent of the Imperial Diet. . . . If my legal interpretation is adopted, there may be fierce criticism of the executive government by the parliament, which is already not on good terms with the executive government. . . . However, in consideration of the long-term interest of the state, only my interpretation can ensure the survival of the state.

The applicability of the Meiji Constitution to Taiwan became a legal issue because Japan had adopted a Prussian-style constitution, and if the Meiji Constitution was applied to Taiwan, the legal framework of Taiwan would have to follow the provisions in the Meiji Constitution. The constitutional governance provided in the Meiji Constitution conveyed a clear message—state power has to be exercised according to the supreme rule of the land. Counselor Kirkwood apparently thought that the principle of constitutional governance would not promote the Japanese government's

(Murray A. Rubinstein ed., 1999).

5. The paragraph quoted here was submitted in July 1895, but his report submitted in April 1895 had the same argument. See TAIWAN SHIRYŌ [SOURCES RELATED TO TAIWAN] 107, 148 (Itō Hirobumi ed., 1936).

interests. He therefore suggested that the Japanese government not apply the Meiji Constitution to Taiwan, so as to avoid a disadvantageous legal effect on Japan's colonial rule. A French counselor in law, Michel Joseph Roven, on the other hand, suggested that as a new territory, Taiwan should be gradually assimilated with Japan proper. Counselor Roven advised that Taiwan be gradually ruled by the Japanese legal system so that it could become a prefecture of Japan in the future.⁶ Counselor Roven seemed to be of the opinion that applying the Meiji Constitution would promote the Japanese government's interests of assimilation, and that the Japanese Constitution should therefore be applied to Taiwan.

The employment of foreign legal counselors implied that the Meiji statesmen had no confidence in making their own interpretations concerning the fundamental law of their own country. However, regarding the Meiji Constitution as a useful political instrument, the Meiji government still wanted to maintain an appearance of "rule by law." In addition, Counselor Kirkwood's report implies that some Japanese political elites had already benefited from the constitutional governance because they were able to criticize the government from their position in the Diet. It is doubtful, however, that the general public of Meiji Japan felt able to criticize the government in this way. Before 1895, the Taiwanese public, including both Aborigines and Han Chinese settlers, had no contact with Western constitutionalism.⁷ They were not aware of the existence of the Meiji Constitution at all, let alone its possible benefit of allowing criticism of the government. Time was needed for this to change.

B. *Separation of Powers*

Debate over the validity of the Meiji Constitution in Taiwan persisted among legal scholars throughout the entire Japanese colonial rule, but the government soon decided to claim that the Japanese Constitution did apply to Taiwan for the political goal of integrating the island into the Japanese empire.⁸ As called for in the Meiji Constitution, some form of separation of powers should exist in colonial Taiwan. The governance of Taiwan under a framework of separation of powers would have functioned as follows: the executive power would be exercised by a Governor-General appointed by the Meiji government. The legislative power would be exercised by the Diet

6. *See id.* at 407-09.

7. *See* Wang, *supra* note 4, at 170-75.

8. *See generally* TAY-SHENG WANG, LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE, 1895-1945: THE RECEPTION OF WESTERN LAW 39-41, 219 nn.19-20 (2000). *See also* Edward I-te Chen, *The Attempt to Integrate the Empire: Legal Perspectives*, in THE JAPANESE COLONIAL EMPIRE, 1895-1945, at 240, 246-54 (Ramon H. Myers & Mark R. Peattie eds., 1984).

in Japan and the statutes enacted would be applied to Taiwan. The judicial power would be exercised by courts established by the Meiji government in Taiwan. In contradiction to this framework, the Meiji government invented a few special measures for the governance of Taiwan, in order to facilitate the colonial rule. The first measure involved the executive branch taking over the legislative power. The second measure involved the executive branch taking over part of the judicial power.

The first measure was instituted through the Japanese Diet delegating its legislative powers over Taiwan to the executive branch; that is, the Governor-General of Taiwan. Under Statute No. 63 of 1896 of the Japanese Diet and similar laws afterward, the Governor-General of Taiwan was granted a general authorization by the Diet to issue Special Ordinances (*ritsurei*). Special Ordinances issued by the Governor-General of Taiwan, once approved by the Japanese Cabinet, became legislation in Taiwan. Diet-enacted statutes were not applied to Taiwan unless the Japanese Cabinet approved. In other words, Japanese Diet-enacted statutes became effective in Taiwan only if they were designated by the Japanese Cabinet.⁹ Through the application of these rules, law could only become effective through the power of the executive branch, although the executive branch did receive an initial and general authorization from the legislative branch. According to the Meiji Constitution, certain matters involving rights and obligations of subjects must be stipulated by the statutes of the legislative branch. In Taiwan, however, such a separation between executive and legislative powers was quite boldly violated. Some Japanese legal scholars considered this measure, including statute No. 63 and similar laws afterward, unconstitutional. Despite these arguments, the legislative delegation to the Governor-General of Taiwan remained in place throughout the Japanese rule in Taiwan. On the other hand, the Governor-General was never authorized to take over judicial power. Judicial power was exercised by the colonial courts, although the Governor-General could control the administration of these courts (for example, the appointment of judicial officials). In all, it is fair to say that there existed a limited degree of separation of powers in Taiwan under Japanese rule.¹⁰

The reason why only a limited degree of separation of powers was realized in Taiwan is that the Japanese colonial officials did not believe in the idea of separation of powers. At a hearing in 1902 of the Japanese Diet, Kentarō Kodama, the Governor-General of Taiwan from 1898 to 1906, pointed out that newly acquired Taiwan had previously been ruled by China and said:

9. For the details of this argument, see WANG, *supra* note 8, at 38-39, 42-43.

10. Tay-sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531, 540 (2002).

The politics of China is different from that of Japan, in which the executive, judicial and legislative branches is separated. In China's local level of government, the legislative, judicial and executive powers are placed in the hands of so-called "officials" (*yakunin*). . . . Such a custom is not able to change immediately; therefore, the local official assigned by Japanese government to govern the Taiwanese people must maintain this custom as it was before. If . . . a part of legislative and judicial powers is delegated to the Governor-General, who governs these people, the authority of the Governor-General, who represents the authority of the Japanese government, would be highly respected. Since respecting the authority of the Japanese government is our most important goal, Statute No. 63 was enacted to accomplish this goal.¹¹

Governor-General Kodama knew that the Taiwanese ("Islanders" as he termed them, including Han Chinese settlers and Aborigines who had been assimilated by Han Chinese)¹² were influenced by the Chinese imperial law. Therefore, he felt, the Taiwanese had no concept of separation of powers, which merely existed in "advanced" Japan. While Governor-General Kodama took pride in the advanced system used in Japan, he fully understood that the separation of powers would be disadvantageous to his authoritarian rule in Taiwan. He thus rejected the application of this advanced system, using the excuse that the Taiwanese were familiar with the old custom in which there was no separation of powers. During the early period of Japanese colonial rule, almost no Taiwanese had ever studied modern constitutional law. Nor were Taiwanese aware of the benefit of the separation of powers as an important tool to limit the power of the government.

In the 1920s, however, many educated Taiwanese dissenters began to struggle towards establishing a colonial parliament, called the Taiwan Parliament, in order to check the power of the executive branch in Taiwan. In respect to the relationship between the rulers and the ruled, traditional Chinese law considered that a benevolent sovereign and his officials would bestow favors upon the common people that he governed, and that these subjects would have to accept obediently the guidance of the sovereign. In contrast, modern Western law was founded on a distrust of those in power, and a belief that people might demand that the state not infringe on their

11. TAIWAN NI SHIKŌ SUBEKI HŌREI NI KANSURU HŌRITSU SO NO ENKAKU OYOBİ GENKŌ *RITSUREI* [THE LAW RELATING TO LAWS AND REGULATIONS TO BE ENFORCED IN TAIWAN AND ITS DEVELOPMENT AS WELL AS PRESENT *RITSUREI*] 132, 134 (Naikaku Kirokuka ed., 1915).

12. Wang, *supra* note 10, at 533.

basic rights and freedoms.¹³ From their experiences of being suppressed by an alien government, namely, their Japanese rulers, the Taiwanese intellectuals easily admired the Western theory of checks and balances in constitutional law. These Taiwanese intellectuals began to question or forsake the traditional Chinese constitutional idea of centralizing authority in the government. Unfortunately, the movement supporting the establishment of a colonial parliament failed and finally ended in 1934.¹⁴ Nevertheless, after 1935, assemblies of local governments existed to supervise the local governors, but only half of the members of these assemblies were elected while the other half were assigned by the government. As a result, the power of these local assemblies to supervise the executive branch was limited.¹⁵

The police summary judgment system is another example in which the Japanese colonial government violated the idea of separation of powers in colonial Taiwan. This police summary judgment allowed the executive department to exercise part of the judicial power. The system granted high ranking police officers the authority to decide a person's punishment when a person was arrested for misdemeanors or for violating some administrative regulations. The high ranking police officer applied a simple procedure, heard any defense of the arrested as if he were a judge, and then imposed a punishment on the arrested person.¹⁶ This police summary judgment, which did not exist in metropolitan Japan, was a special system designed only for the governance of colonial Taiwan.

The following paragraph is in the "Reasons for Act" prepared by the Governor-General of Taiwan in 1904 regarding the police summary judgment system. As mentioned earlier, the Governor-General of Taiwan could issue Special Ordinances to become legislation in Taiwan. However, before such a special ordinance became effective in Taiwan, it had to be approved by the Japanese Cabinet. For the purpose of being approved, the Governor-General of Taiwan explained why the legislation of police summary judgment was required in Taiwan:

Firstly, the islanders (the Taiwanese) were uncultivated, lacked the concept of human rights, and therefore did not care whether their offences were adjudicated by judicial organs or they were summarily judged by administrative organs. Second, the islanders were accustomed to Chinese law so that they were not interested in understanding that the judiciary should be independent from the

13. Tay-sheng Wang, *The Impact of Modern Western Law on the Chinese in Taiwan*, 1 AUSTL. J. ASIAN L. 202 (Sean Cooney trans., 1999).

14. Wang, *supra* note 4, at 184-86.

15. Wang, *supra* note 10, at 546.

16. See generally WANG, *supra* note 8, at 99-101.

executive branch. The third reason, . . . among the eight thousand convicted in Taiwan each year, half of them were tried by normal criminal procedures. In Taiwan, there are only three district courts and four detached offices to hear criminal cases. If the police summary judgment system is implemented, the 20 local governments and their 89 branches will be able to deal with criminal cases and make decisions. As a result, both the state and the people could save considerable trouble and expenses.

. . . Although implementing the police summary judgment will not encounter resistance from the islanders, we hesitated to completely implement this legal measure in Taiwan for taking into consideration the image of our country (Japan). Therefore, if a convicted person is dissatisfied with the police summary judgment, the system allows the convicted to request a formal trial in the court.¹⁷

According to this official statement, the Japanese colonial government had poured most of its resources into the executive branch and further allowed the executive branch to truncate a part of the judicial power. While the Japanese colonial government took advantage of Taiwanese being “uncultivated,” the colonial government was concerned about the loss of face resulting from an uncultivated system, in which the executive branch would decide a portion of criminal cases instead of the judicial branch. To maintain the appearance of rule of law, the colonial government did provide the judicial system as a final resort for the person who was convicted by the executive branch. However, the police summary judgment system was implemented throughout the entire Japanese colonial rule. Also, the police summary judgment system was quite closely related to the Taiwanese daily life. It was therefore hard for the Taiwanese to learn that judicial power should be separate and independent from the executive power.

In sum, the Japanese colonial government did establish an independent court system in Taiwan. The reason that a separate judicial power was implemented in Taiwan was mainly to provide the appearance of rule of law, rather than to benefit the Taiwanese people. But the Taiwanese were indirectly benefited, as the modern criminal and civil justice had been, to a certain degree, introduced to colonial Taiwan.¹⁸ Nevertheless, some colonial special measures, such as the police summary judgment system, obstructed the spread of the Western idea of separation of powers.

However, during the war period at the end of Japanese colonial rule in

17. Taiwan Sōtokufu, Taiwan Sōtokufu kōbun ruisan (The archives of the Government-General of Taiwan), 1904, Minsō No. 3309.

18. See WANG, *supra* note 8, at 119-35.

Taiwan, the colonial government disregarded even the concerns of face. Separation of powers was seriously violated in criminal cases involving political dissents. In 1941, the Governor-General of Taiwan issued orders that allowed the government to dictate the actions of prosecutors in cases involving national security and social order. The Governor-General of Taiwan could order the prosecutors to prosecute these cases, and prosecutors were required to report directly to the Governor-General. Even so, the judges in these political criminal cases maintained their independence, except that the head of each court was obliged to inform the Governor-General the result of the court decisions.¹⁹

C. *Protection of Basic Rights*

In the early period of the Japanese reign, most Taiwanese had no idea of what rights they should have in accordance with the Meiji Constitution, so the implementation of the Constitution was meaningless to the general public. In the 1920s, however, with the growth of democracy in metropolitan Japan, some Taiwanese intellectuals learned about and began to pursue basic rights guaranteed by modern-style constitutions, such as the right to vote. After the unsuccessful petition for the establishment of the Taiwan Parliament, local elections were held in some limited areas. Taiwanese who took part in these elections managed to experience the democratic atmosphere for the first time. The Japanese government soon realized that allowing Taiwanese to have some form of elections, and making the Taiwanese feel that they had a representative voice was a desirable thing for the Taiwanese. In order to mobilize the Taiwanese to take part in the war launched by the Japanese government, three Taiwanese were chosen as members of House of Peers in 1945.²⁰ In addition, the Japanese government had planned to hold elections for members of the House of Representatives in Taiwan, an election the colonial authorities had never conducted during their reign. The Japanese government failed to carry out this election plan because of losing the war.²¹

The liberties guaranteed in modern-style constitutions protect people against the unjustified interference of the state. This concept was widely known in Taiwanese society toward the end of the Japanese colonial period, due to the lawyers who fought against the police or other administrative

19 Taiwan Sōtokufu, Taiwan Sōtokufu kōbun ruisan (The archives of the Government-General of Taiwan), 1941, part of Shihō, section of Keiji, Sōhō No. 87.

20. The Diet of Japan, before World War II, consisted of a House of Representatives and a House of Peers. The House of Representatives was directly elected while the House of Peers, much like the British House of Lords, consisted of high ranking nobles.

21. CHAO-T'ANG HUANG, TAIWAN TSUNGTUFU [GOVERNMENT-GENERAL OF TAIWAN] 188-90 (Ying-che Huang trans., 1989).

departments to protect human rights. Before the Japanese colonial rule, lawyers as a profession did not exist in Taiwan. When the Japanese colonial government established the court system, the system of attorneys of law was introduced to Taiwan. In 1934, more than half of the lawyers on the island organized a bar association, and a periodical titled “Public Opinions on Law and Politics,” emphasizing that the purpose of the rule of law was to protect the basic rights of the general public, was first published by the association. However, at the end of 1935, the association was disbanded because of great pressure from the Japanese military.²² After the war broke out in 1937, the rights of Taiwanese were greatly suppressed despite the fact that martial law was never declared on the island.

Yet the suppressed Taiwanese, having experienced this short period of freedom, carried these experiences with them after the war was over. After the war, the Taiwanese originally welcomed the new ruling regime, the Chinese Nationalist Party (Kuomintang or KMT). The new regime began their rule in Taiwan under the name “Republic of China” (ROC).

III. CONSTITUTIONAL CULTURE UNDER THE ROC CONSTITUTION: THE KMT PERIOD AND THE PRESENT DAY

The Chinese Nationalist Party (KMT) began its reign in Taiwan in 1945, and this rule lasted continuously for fifty-five years (1945-2000).²³ Before 1949, the KMT ruled both mainland China and Taiwan, which was considered a province of the Republic of China. After 1949, the KMT lost mainland China to the Communist Party and fled to Taiwan. The area under the rule of the Republic of China (ROC) after 1949 reached only Taiwan, and therefore the ROC constitution became the constitution of Taiwan.²⁴ The KMT regime lost executive control for the first time when the Democratic Progressive Party (DPP) won the presidential election in 2000.

A. *Constitutional Governance*

The ROC Constitution—although applied in Taiwan for most of its existence—was adopted originally in mainland China, so it is essential to explore the constitutional developments in China before 1949. The predecessor of the ROC Constitution was called the Provisional Constitution for the Period of Political Tutelage of the Republic of China (the Provisional

22. See TAY-SHENG WANG & WEN-LIANG TSENG, ERSHIJI SHIHCHI TAIPEI LUSHIH KUNGHUI HUI SHIH [A HISTORY OF TAIPEI BAR ASSOCIATION IN THE TWENTIETH CENTURY] 99-102 (2005).

23. On the history of the fifty-five years of KMT’s rule, see generally DENNY ROY, TAIWAN: A POLITICAL HISTORY 55-231 (2003).

24. Wang, *supra* note 10, at 536-37.

Constitution), which was enacted in 1931. The Nationalist government expressed that the Provisional Constitution was the supreme rule of the state, and that the state had to be ruled in accordance with this Provisional Constitution.²⁵ However, as mentioned below, the Provisional Constitution designated the ruling power to reside primarily in the KMT, a party, rather than a government. In other words, the Provisional Constitution was neither a “rule of law,” nor a “rule by law,” but rather a “rule of party.”

The 1931 Provisional Constitution recognized that the sovereignty of the state resided in the people (Article 2). Nonetheless, it also states that during “the period of political tutelage, KMT representatives who are elected by party members shall represent the nation, and when the KMT representatives are off-session, the KMT executive commission shall exercise the sovereign power” (Article 30).²⁶ In other words, during the period of political tutelage, the right to vote was “under the tutelage of the Nationalist Government” (Article 31), so people in China were unable to elect their representatives under this Provisional Constitution. The executive, legislative, and judicial powers of the state were entrusted to different departments of the Nationalist Government, which were controlled by the KMT, and in practice by a central standing committee of the party (Article 32, Article 72 and Article 85). Some legal scholars in Republican China expressed that this rule of party regime allowed the KMT to override the Provisional Constitution.²⁷

One can argue that the Provisional Constitution does not qualify as a modern constitution because the fundamental law of the nation allowed a party to override and supplant the law itself. The rule of party regime violated the principles of constitutional governance. On the other hand, the full name of this constitution, the Provisional Constitution for the Period of Political Tutelage, signified that this fundamental law was not intended to be a permanent constitution. It is more appropriate to view the Provisional Constitution as a tutelage arrangement between the KMT and Chinese people. Some scholars explained that this tutelage arrangement between government and people was a transition period between martial rule and democracy, and such an arrangement was suitable for Chinese society

25. The Academia Historica comp. Kuoshihkuan Tangan (Archives of the Academia Historica), No. 0460/8060.02-02, May 23, 1944. This document can also be found at 1-2-1, “Exhibition of Constitutional Archives,” the National Archives Administration.

26. The founding father of Republic of China, Dr. Sun Yat-Sen, expressed in his book that a government that wins the revolution should progress from martial rule, proceed through a period of political tutelage, and then people would be prepared for constitutional rule. Dr. Sun Yat-Sen might have thought that these phases would proceed naturally, but in practice, government tends to impose its political tutelage on people, and is not willing to give up power. Thus, the idea of political tutelage ended up to be totally incompatible with democracy.

27. SHIH-CHIEH WANG & TUAN-SHENG CHIEN, PICHIAO HSIENFA [COMPARATIVE CONSTITUTIONAL LAW] 194 (1947).

because Chinese people strongly believed in a superior, knowledgeable leader.²⁸ In practice, the political tutelage rule by the KMT was far from democracy. Since the rule of KMT resembled dictatorship, it was highly questionable that the KMT could educate the Chinese people to be prepared for a modern constitution.

The political tutelage period of the KMT did not last long; from 1937, China was at war with Japan. The war ended in 1945, and the ROC Constitution was enacted in 1946. The ROC Constitution was significantly different from the Provisional Constitution of 1931 because under the ROC Constitution, the Constitution is declared to be the fundamental law of the land, and the government is required to abide by it. The drafting process was not monopolized by the KMT but instead included different parties in China. The drafters of the ROC Constitution had intentionally tried to curb the power of the President, Chiang Kai-shek, who was the KMT leader and rose to the position of a national leader because of the wars. The ROC Constitution also included a judicial review system at the constitutional level, which was an embodiment of the principle of the rule of law.²⁹ Beginning in 1947, however, the Nationalist government was at war with the Chinese Communist Party. In 1949, KMT was overthrown by the Chinese Communist Party; Chiang Kai-shek and the KMT fled to Taiwan. The ROC Constitution was introduced to Taiwan at that time, though it was questionable whether Chiang Kai-shek and the KMT could abide by this more modern constitution when they were accustomed to having more power under the system of political tutelage.

The classified archive below was kept by the National Security Council in the Presidential Office. This archive demonstrates that in 1952 President Chiang Kai-shek convened a meeting, called a “national defense meeting.” The archive reads:

The Executive Yuan reported (to the President) about reforms of the responsibilities, structures, internal guidance, and personnel system of the administration departments. (“to the President” was added by the authors)

The President instructed that . . .³⁰

28. On the ideology for the Period of Political Tutelage, see TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES 110-11 (2003).

29. *See also id.* at 115-17.

30. One of the authors, Tay-sheng Wang, recorded this document by hand-writing when the National Archives Administration asked him to select documents relating to national security in the National Security Council on May 12, 2003.

Article 53 of the ROC Constitution reads that the Executive Yuan shall be the highest administrative organ of the state, which means that the President cannot supervise the Executive Yuan on administrative matters; however this archive implies that the Executive Yuan in fact reported to the President and was directed by him. The presidential supervision could have been justified because it was a meeting concerning national defense and the President is specified as the commander of the army, navy and air force (Article 36 of the ROC Constitution). However, the matters reported in the meeting had nothing to do with either military or national defense. What this archive reflected is that President Chiang Kai-shek and the KMT ruling class still acted consistent with their powers during the time of political tutelage. For these KMT ruling members, that President Chiang Kai-shek called the Chief of Executive Yuan to the meeting was as natural as in the political tutelage period, when Chairman Chiang Kai-shek called various chiefs in the Nationalist government to meetings. The KMT ruling members were familiar with the political tutelage experience and continued this political tutelage regime even after the ROC constitution became effective. This bold violation of the ROC Constitution demonstrated that KMT members were not at all used to rule of law. This concentration of power in Chiang Kai-shek (explained below) also reflected the traditional Chinese view concerning the role of politics and the law, which emphasized the importance of a superior leader above the importance of the law. This traditional Chinese view of the KMT ruling members was magnified through the deification of Chiang Kai-shek. No Taiwanese dared to question the authority of Chiang Kai-shek for fear of execution, persecution and imprisonment. The ROC Constitution existed only nominally as compared to the pervasive forced worship of Chiang Kai-shek in every corner of the Taiwanese society.

Feeble as it was, the ROC Constitution remained technically in place, though the KMT government managed to suspend it. The primary reason the ROC Constitution was kept in place by the KMT ruling class was that they wanted to be the ally of America. Under pressure from America, the KMT government had to maintain a façade of constitutional governance. The ROC Constitution was suspended or amended whenever it stood in the way of Chiang Kai-shek. In 1960, Chiang Kai-shek was serving his second term of presidency, and he was seeking a third term. According to the ROC Constitution, the President can only serve two terms. The Secretary of the President proposed a plan as follows. In the following paragraph, the term Leader referred to Chiang Kai-shek.

The National Assembly will unanimously elect (a space was created to show respect) Leader to be the President . . . but according to the

Constitution, he is unable to assume the office, which leads to the vacancy in the Presidency . . . Article 49 of the ROC Constitution reads that when there is a vacancy in the Presidency, the Vice President shall succeed until the expiration of the original presidential term. The National Assembly should then elect Leader to be the Vice President. . . . Once Leader is elected, he should succeed to the Presidency. Therefore, Leader will swear in as both President and Vice President. . . . This proposal can maintain the ROC Constitution in form, and does not require any amendment to the constitution. This is a time that no one can live even one day without Leader. I sincerely hope that Leader, with great wisdom, great kindness and great bravery, can bear with this proposal for the sake of the people.³¹

However, Chiang Kai-shek did not like the idea of being elected as Vice President and succeeding to the office of President. He did not adopt this proposal by his secretary. Rather, he made the National Assembly change the two term limitation on the presidency to an unlimited number of terms.³² This is another example that Chiang Kai-shek and the KMT still lived in the political tutelage period. When Chiang Kai-shek and the KMT were implementing the political tutelage system in China, there was no limitation on the term of the national leader, and Chiang Kai-shek and the KMT did not feel bound by the requirements written into the ROC Constitution in Taiwan. Rather, they circumvented the constitutional requirements to fulfill their political needs. These circumventive measures, including the proposal of the Secretary of the President, and Chiang Kai-shek's change to the ROC Constitution, revealed the inconvenience of acting as a dictatorship under a rule of law style constitution. To avoid the appearance of illegitimacy, Chiang Kai-shek and the KMT had to appear to follow the legal requirements of the Constitution. It was important to the KMT government to have the appearance of a democratic and liberal government because the government in Taiwan represented the free China in contrast to the Communist regime in the Mainland China; this was especially important to receive support from the U.S. government.

31. The Academia Historica comp. Kuoshihkuan Tangan (Archives of the Academia Historica), No. 10202/1, December, 1971. This document can also be found at 3-2-2, "Exhibition of Constitutional Archives," the National Archives Administration.

32. This change to the presidential term limitation was done through a change to the Temporary Provisions for the Period of National Mobilization to Rebel Communists (the "Temporary Provision"), which suspended many provisions of the ROC Constitution. Temporary Provisions became effective before the KMT came to Taiwan when the KMT was still at war with the Communists. These temporary provisions, however, originally maintained the limitation on the presidential term. This is why when Chiang Kai-shek was seeking his third term of presidency, he added the unlimited term of presidency to the Temporary Provisions.

In the 1990s, when the former president Lee Teng-hui wanted to revise the ROC Constitution to further democracy and freedom in Taiwan, the discussions about these revisions took place outside of the confines of the National Assembly, through a group called the Forum on National Concerns. The National Assembly delegates voted in conformity with the conclusions reached through this forum. The fact that the National Assembly was able to accept these modifications demonstrated that the concept of the “rule of law” had been widely accepted by political elites and the general public.

B. *Separation of Powers*

While legal scholars differ on whether the government outlined in the ROC Constitution reflects a presidential or a parliamentary system, the practice in Taiwan under Chiang Kai-shek’s rule was more similar to the imperial government found in traditional China. Executive, legislative, and judicial powers were all centralized in the “emperor,” in this case Chiang Kai-shek. The President’s power was enhanced substantially in 1966. Chiang Kai-shek instructed the National Assembly to grant him the authority to establish departments in order to mobilize the country to rebel communists. The President was also authorized to enact regulations governing the elections of additional seats in the parliamentary bodies.

In order to further enhance the powers of the president, the National Security Council was set up in 1967, whose members included the President and ministers of the Executive Yuan. Almost all important policies concerning both domestic and foreign affairs were placed on its agenda, and the national budget had to be submitted to the National Security Council for review and approval before it was presented to the Legislative Yuan. By tightly controlling the executive branches, Chiang Kai-shek ensured that he was the final decision maker on administrative matters. The power to enact regulations governing the elections of additional seats in the parliamentary bodies allowed Chiang Kai-shek to control the composition of these parliamentary bodies. The National Security Council even interfered with judicial matters, such as making proposals for judicial reform. Thus Chiang Kai-shek and his son, Chiang Ching-kuo, as both the President of the Republic of China and the chairman of KMT, controlled all government branches of the state through extending the administrative power. The dictatorship of Chiang was aided by the rule of party regime, through forcing government officials at every level, including judges, to join the KMT. This rule of party was a revival of the Political Tutelage Period in China, a system that the Chiang family was familiar with.

After Chiang Ching-kuo died in 1988, his successor, Lee Teng-hui, inherited the same ruling structure during his Presidency. However, President

Lee, unlike Chiang Kai-shek or Chiang Ching-kuo, was born in Taiwan. He did not possess the same level of support from the KMT as Chiang Kai-shek and Chiang Ching-kuo. Politically, President Lee also possessed much less power. Under President Lee's reforms, and with the grass-roots demands for more supervision over government branches, the power of the government branches began to separate. In the 1990s, as discussed below, the structure of separation of power among different government branches began to emerge.³³

During the rule of Chiang Kai-shek, the parliamentary bodies had no interest in supervising the executive departments because the representatives were not subject to reelection. Chiang Kai-shek insisted that he and the KMT represented China and therefore these representatives, who were elected in China, could not face reelection in Taiwan, causing these parliamentary representatives to be in power indefinitely. This began to change in 1972, when a few seats were added to the parliamentary bodies. These new seats were open to reelection, so the elected representatives were more enthusiastic concerning supervising the executive branches, in part due to the pressure of this reelection. All of the National Assembly Delegates have faced reelection since 1991, and the Legislators since 1992. Democratic elections have been part of the life experience of present-day Taiwanese, and democratic ideas introduced from the West have been spread through these elections. At the present time, Taiwanese are very familiar with the idea that the executive branch, whether in the form of a national government or a local government, is and should be subject to the supervision of elected representatives.

The degree of separation between executive power and judicial power is another important benchmark to examine separation of powers in Taiwan. The traditional Chinese judicial system was that the heads of the executive departments also served as judges to decide disputes among the public. However, during the Japanese colonial period, a separate judicial power was established. At the time that President Chiang Kai-shek took power, it was unclear whether he would follow the traditional Chinese system and attempt to influence judicial decisions, or he would maintain an independent judicial system.

An archive of a secret meeting held at the Presidential Office in 1960 helps to answer the above question. Besides the President, there were 14 officials attending this meeting to discuss the case of Lei Chen.³⁴ Lei Chen

33. See also Wang, *supra* note 10, at 543-46.

34. Lei Chen (1897-1979) was born in China. He came to Taiwan with Chiang Kai-shek and the KMT when the KMT was thrown out by the Chinese Communist Party in 1949. Lei Chen opposed communism and served as the main editor of a popular periodical, "Tzu-yu Chung-kuo [Free China]," in the 1950s. He opposed the KMT's despotism, and advocated liberalism and democracy. In 1960, he

was facing military trial for publishing an article in which he spoke against the totalitarian regime of Chiang Kai-shek, in a popular periodical titled "Free China." This secret meeting in the Presidential Office was to decide Lei Chen's punishment. The attendants included the Vice President, the Secretary of the President, the Secretary of the Executive Yuan, the Secretary of the KMT, the Minister of Foreign Affairs, the Minister of Judicial Administration, the Chief of the Appellate Military Court, and the Head of the Secret Service. These attendants discussed three proposals regarding Lei Chen's punishment. The President, Chiang Kai-shek, finally ordered that, first, the verdict of Lei Chen should be written in dull language, in order to avoid attracting too much attention from the public. Second, Lei should receive a sentence of at least ten years. Third, the periodical, "Free China," would be deregistered and dissolved. Forth, if Lei Chen should appeal the decision, the appellate court should not change the original decision. At the end of the archive, it was recorded that President Chiang Kai-shek inquired of the attendants whether they could guarantee that Free China would be deregistered, and that the appellate court would honor the original decision. The Chief of the Appellate Military Court stood up and replied to Chiang Kai-shek, "both can be done."³⁵

In the afternoon of the same day, the military court declared its judgment, and Lei Chen was sentenced to ten years in prison. Lei Chen did in fact appeal to the Appellate Military Court, but the court, as it had guaranteed to the President, maintained the original decision.

Throughout the KMT period, the intrusion of the executive branch into judicial power was more severe than at any time since the modern judicial system was established in Taiwan. At the end of the Japanese colonial rule, the Governor-General was authorized by law to instruct prosecutors to prosecute political criminals. The Governor-General did not have the power, however, to instruct judges to make a certain decision. In the KMT period, the KMT government enacted martial law; political activities were often tried in the military court according to the military tribunal law. The military tribunal law required that any judicial decision made in the military court, including appellate decisions, be approved by heads of the military tribunal.³⁶ This approval requirement granted the President, who was the

tried to organize an opposition party and was prosecuted in the same year. He was later sentenced to ten years in prison. On the Free China and 1960 Lei Chen incident, see SHELLEY RIGGER, *POLITICS IN TAIWAN: VOTING FOR DEMOCRACY* 103-06 (1999).

35. See Assembly Discussing Lei Chen at the Presidential Office (Oct. 8, 1960), in LEI CHEN SHIHLIAO HUIPIEN: KUOFANGPU TANGAN HSUANCHI [DOCUMENTARY COLLECTION ON THE LEI CHEN CASE: THE SELECTED ARCHIVES OF THE MINISTRY OF DEFENSE] 331-32 (Shih-hung Chen ed., 2002).

36. Accordingly, the trial level decision should be approved by the Head of the Secret Service, who was the head of the first instance military tribunal. The appellate decisions should be approved by the President, who was the head of the appellate military tribunal.

commander in chief, a final say in trial cases of political dissents. Cases involving political dissents, such as the case of Lei Chen, were often decided not through judicial process, but through the type of meeting demonstrated in the archive. President Chiang Kai-shek convened executive officials, judicial officials and even KMT members to discuss what kind of judgment should be given to the defendant, but President Chiang Kai-shek was clearly the final decision maker.

The intrusion of executive power into judicial power during the KMT period was even apparent in criminal cases not involving political dissents. The police summary judgment system established during Japanese colonial rule was not maintained by the KMT. The KMT police officers were not granted authority by law to serve as a judge to decide what punishment arrested persons should receive unless they committed a Police Offense.³⁷ However, as mentioned below, the most severe intrusion into the judicial power during the KMT period was by the executive departments, which attempted to influence the judicial process.

Interviews of retired judges and prosecutors in Taiwan also support the fact that judges were pressured by the executive departments to change judicial decision, and prosecutors were pressured to withdraw prosecutions.³⁸ If judges or prosecutors refused to change their decisions, the heads of the judicial administration got into political trouble, and were forced to resign or take the blame from government officials. It is impossible to know precisely how many judges or prosecutors succumbed to the pressure from the executive department, and how many of them refused to succumb. In one incident, the Minister of Finance openly complained that judges did not cooperate with the government to capture tax evaders—the judges in these cases overruled the higher taxes imposed by the Minister of Finance. The Minister of Finance complained about these judges at a KMT meeting attended by the central standing committee members of the party.³⁹

The interviewed judges and prosecutors tried to explain that they attempted to stay independent from the influence of the executive branch, despite pressure. What their stories reflect, however, is that the executive

37. According to the Police Offenses Act (this Act was abolished in 2001), police could decide the punishment of an arrested person if the arrested person committed a “police offense.” Most of the police offenses were disturbances to tranquility or order of the society, such as unlicensed street performance, sleeping on the street or riding double on a bicycle.

38. These interviews of retired judges and prosecutors were conducted by Academia Sinica as part of the oral history project launched by the Judicial Yuan in Taiwan. We use these interviews to present the thoughts and opinions of the judiciary. We do not intend to rely on these interviews to demonstrate intrusion into the judicial power, as the interviews here were not specifically intended to address the issue of the independence of the judiciary during the KMT rule.

39. 1 TAIWAN FACHIEH CHISU KOUSU LISHIH [THE ORAL HISTORY OF THE ELDER IN THE LEGAL COMMUNITY IN TAIWAN], 68-69, 192, 226 (Department of Judicial Administration, the Judicial Yuan ed., 2004).

departments in Taiwan have long believed that judges should cooperate with the executive departments, and that the executive departments should have the power to order judges and prosecutors. This lack of distinction between executive and judicial power was a remnant of traditional Chinese culture, but the executive branch in Taiwan continued to believe in the idea of ordering the judicial branch as late as the 1980s.

After the 1990s, and especially after the year 2000 when the DPP, the main opposition party in Taiwan, first won the Presidential election,⁴⁰ it became more and more difficult for the executive branch to control the judicial branch. This is primarily because most Taiwanese judges have received Western-style training during their education. Also, the authoritarian regime of the KMT government has gradually lost its influence. After the KMT period ended, the DPP had to respect judicial independence, which it strongly advocated when it was the opposition party. In fact, the majority of Taiwanese judges continue to be KMT members. If the executive departments under the DPP government attempted to influence the judicial branch, judges would surely complain and make these attempts public in order to harm the executive department. Thus it is not surprising that the DPP's president, Chen Shui-ban, could not stop the prosecutor from charging his son-in-law and his wife for alleged crimes or from investigating the president himself after leaving the position of president.

The development of judicial review in Taiwan also reflects the degree of judicial independence from the executive branch that has emerged over time. In Taiwan, the power of judicial review is vested only in one institution, the Council of Grand Justices. The decisions made by the Council of Grand Justices before the mid-1980s rarely declared any government action to be unconstitutional. Legal scholars pointed out that, throughout the period of Chiang Kai-shek and his son's rule, the Grand Justices' only role was to legitimize, rather than supervise, government action.⁴¹ After the 1990s, the Council of Grand Justices began to deliver interpretations that invalidated laws on the grounds of unconstitutionality,⁴² as well as to deliver interpretations that reflected contemporary democratic reforms.⁴³ As Grand Justices took a more active role and were not afraid to declare government action to be unconstitutional, the judicial review system has successfully pressured the government in Taiwan to follow the rule of law.

40. See generally ROY, *supra* note 23, at 227-40.

41. Sean Cooney, *A Community Changes: Taiwan's Council of Grand Justices and Liberal Democratic Reform*, in *LAW, CAPITALISM AND POWER IN ASIA* 253, 256-57 (Kanishka Fayasuriya ed., 1999).

42. J.Y. Interpretation No. 251 (1990) (declaring the Punishment of Police Offences Act to be unconstitutional and proclaimed that the law had to be revised by July 1, 1991).

43. J.Y. Interpretation No. 261 (1990) (interpreting art. 28 of the ROC Constitution to require a comprehensive reelection of the parliamentary bodies).

The power of judicial review by the Council of Grand Justices was demonstrated in Interpretation No. 499 in 2000. In September, 1999, the Third National Assembly extended their term two additional years by secret vote, while they were in session for the purpose of drafting amendments to the ROC Constitution. This extension of term was added to an amendment so it technically became part of the ROC Constitution. Neither the Executive Yuan nor the Legislative Yuan could stop this self-serving law from becoming effective. Therefore, the Executive and Legislative Yuan turned to the judicial branch for help. In Interpretation No. 499, the Council of Grand Justices declared the Fifth Amendment unconstitutional because it violated "certain fundamental principles upon which the ROC Constitution is based." The Grand Justices in Taiwan gradually established their authority and gained trust from the Taiwanese public through their newly established independence.

Since the 1990s, the structure of the government branches has been reformed by Constitutional Amendment several times. The ROC Constitution enacted in 1946 adopted a five-Yuan system with three parliamentary bodies: the Legislative Yuan, the Control Yuan, and the National Assembly. Because the legislative branch was divided into three bodies, their power to fight against abuses in the administrative branch was severely limited. After the Second Amendment of the ROC Constitution in 1992, the Control Yuan, whose job was to investigate public servants suspected of illegal actions, became an administrative branch. Furthermore, after the Sixth Amendment of the ROC Constitution in 2000, the National Assembly was modified into a non-permanent institution that would be convened to vote only when the Legislative Yuan submitted a constitutional amendment proposal. In June 2005, the National Assembly passed the Seventh Amendment of the ROC Constitution, which abolished the National Assembly. Since then, Taiwan has become a unicameral country. This gradual streamlining of government institutions prompted legal scholars to wonder whether the government specified by the ROC Constitution would be modified further over time to more closely model the Western three-branch style of government. However, the five-Yuan system has not been changed in recent years because the KMT, who introduced the five-Yuan system from China, won the 2008 presidential election of Taiwan and continues to dominate the Legislative Yuan.

The separation of powers in Taiwan had been greatly strengthened in recent years because in 2000, the DPP won control of the executive branch, while the KMT and its derivative party, the People First Party, continued to control the legislative branch. Conflicts between parties transformed into a power stalemate between the executive and legislative branches. In the name of separation of powers, politics in Taiwan became extremely partisan and

political. During this time, the judicial branch tended to keep itself out of the stalemate, rather than attempting to resolve these political disputes. For example, in Interpretation No. 520 (2001), the Executive Yuan halted the implementation of a budget bill which funded the building the fourth nuclear power plant in Taiwan, passed by the Legislative Yuan. The Legislative Yuan challenged the constitutionality of the Executive Yuan's action. The Grand Justices held as follows:

[T]he present statutory budget item that the Executive Yuan meeting resolved to withhold is indeed a change of a critical national policy that the above procedural requirement must be met as soon as possible. Having received the above report from the Executive Yuan, the Legislative Yuan is obligated to listen [to it]. The Executive Yuan, having submitted the above report, may carry on the previous budget withholding if and when such policy change acquires support from the majority of members of the Legislative Yuan. It should also be pointed out that if the Legislative Yuan should decide to oppose or form other resolutions, depending upon the contents of the resolution, all related agencies should then negotiate a solution based upon the meanings and purpose of this Interpretation, or to select a proper channel within the current constitutional mechanism to end the stalemate.⁴⁴

In sum, the Grand Justices merely proclaimed that this dispute should be negotiated between the executive department and the Legislative Yuan, or alternatively, be resolved by the mechanisms prescribed in the ROC Constitution. The mechanisms the ROC Constitution offer to resolve political stalemate include the Legislative Yuan overriding a veto, and a no confidence vote towards the Executive Yuan that forces the dissolution of the Legislative Yuan. However, none of these mechanisms were put into practice.

Some Taiwanese, however, began to question the necessity of separation of powers, since the Taiwanese society suffered a great deal from the extremely partisan politics arising in the name of separation of powers. In 2008, after the KMT gained control of more than three-fourth seats in the Legislative Yuan, the presidential candidate of the DPP tried to appeal to the idea of separation of powers to gain support. This effort ultimately failed; the KMT's candidate still won a sweeping victory in the 2008 presidential election.

44 J.Y. Interpretation No. 520, available at http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03_01.asp?expno=520. For other official English translations of the Judicial Yuan interpretations, see <http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03.asp>.

C. *Protection of Basic Rights*

The language in the Meiji Constitution and the 1931 Provisional Constitution in China to protect basic rights and liberties allowed legislators to restrict these basic rights when necessary. The ROC Constitution, on the other hand, protected basic rights by not allowing legislators to restrict basic rights unless necessary. Article 23 of the ROC Constitution reads that, “all the freedoms and rights enumerated in the preceding articles shall not be restricted by laws except when necessary for preventing infringement upon the freedoms of other persons, averting an imminent crisis, maintaining social order or advancing public welfare.” One of the important aspects of protecting human rights is by which standard the judicial review defines these necessary conditions. In Taiwan, the Council of Grand Justices is in charge of judicial review. If the Grand Justices use a loose level of scrutiny to review laws that restrict rights, then the protection of basic rights will be equal to that under the Meiji Constitution and the 1931 Provisional Constitution.

The Grand Justices in the early KMT period tended to use a loose scrutiny for judicial review. Therefore, the judicial branch in the early KMT period was not able to guard the Taiwanese people from severe violations of liberties and freedoms by the executive branch. For example, Interpretation No. 105 (1964) held:

Administrative acts of interlocutory injunction against publication and deregistration under the Publication Act, Articles 40 and 41, fall within the scope of “necessary” restriction stipulated in Article 23 of the Constitution. Restriction on freedom of publication dealt with by administrative agencies for purposes of effective restriction can hardly be regarded as infringing upon the Constitution.⁴⁵

This negative attitude toward the protection of the liberties and freedoms ostensibly granted to the people had been largely influenced by the feelings and experiences of the Grand Justices in the early KMT period. Most of these Grand Justices came to Taiwan with Chiang Kai-shek and his military, known in Taiwan as “Mainlanders,” who had just lost their country and their homes.⁴⁶ They were therefore much more concerned with the interest of the state and tended to sacrifice individual freedoms for the security of the state. Taking another example, Interpretation No. 68 (1956)

45 . J.Y. Interpretation No. 105, *available at* http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03_01.asp?expno=105.

46. Mainlanders, literally, refer to people from other provinces. Mainlanders are distinguished from the native Taiwanese who lived in the island before 1945.

held that anyone who joined a rebellious organization should be criminally punished, even if he or the organization had never taken any action. In Interpretation No. 68, the Grand Justices expressed that the accused, once the prosecutor had proven that he or she had joined in a rebellious organization, would be deemed to continue to be a member of the rebellious group if the accused did not voluntarily submit himself or herself to the authorities or could not prove that he or she had withdrawn from the organization. In the early KMT period, joining a rebellious organization was considered treason, and the accused was often sentenced to death or life in prison. The rebellious organization could be nothing but a book meeting, in which the participants read books about communism.

Interpretation No. 129 (1970) further asserted that a person who had participated in a rebellious organization when he or she was under fourteen years old would be criminally liable when he or she became fourteen years old, provided that he or she had not voluntarily submitted himself to the authorities, and that there was no evidence to prove that he or she had withdrawn from the organization. It is not surprising that among the 134 interpretations published before 1972, there were very few interpretations concerning human rights, and none of laws that seriously violated human rights were declared unconstitutional. Among the interpretations published from 1972 to 1985, only Interpretation No. 166 (1980), which held that the Punishment of Police Offences Act violated Article 8 of the ROC Constitution, can be seen to protect human rights.⁴⁷ In Interpretation No. 166, the Grand Justices did not invalidate the entire Punishment of Police Offenses Act; rather, the Grand Justices advised the legislators to amend a number of provisions in the Punishment of Police Offenses Act in order to follow due process.

In the 1980s, empirical surveys of Taiwanese public opinion found that Mainlanders tended to agree more with the government restricting individual rights in order to maintain social order.⁴⁸ The root of Mainlanders' attitudes probably came from their identification with China and their supports for the KMT.⁴⁹ The attitudes of Mainlanders, who make up about 13-14% of the Taiwanese population, were not always shared by most other Taiwanese, including Hokkien (Holo), Hakka and the Indigenous Peoples, all of whom were native Taiwanese and governed by the Japanese authorities before

47. See also GINSBURG, *supra* note 28, at 124-27.

48. HUNG-MAO TIEN, TA CHUANHSING: CHUNGHUA MINGKUO TE CHENGCHIH HO SHEHUI PIENCHIH [THE GREAT TRANSITION: THE POLITICAL AND SOCIAL CHANGES OF THE REPUBLIC OF CHINA] 58 (Chin-hui Lee & Lien-tsai Ting trans., 1989).

49. Mainlanders also suffered from the White Terror during the early period of the KMT's rule in Taiwan and therefore did not dare to criticize the KMT at that time. In addition, it should be noted that a small number of Mainlanders, such as Lei Chen, advocated individual basic rights and publicly dissented from the KMT government's actions.

1945. However, the voice of the majority was not homogeneous, and was often suppressed by the government. Many native Taiwanese did not voice out because they did not understand their rights. Except for those who had experienced democracy during the Japanese colonial period or those who were highly educated in the postwar period, most native Taiwanese lacked the concept of basic human rights. Moreover, many native Taiwanese witnessed the 228 Incident, in which the KMT military massacred thousands of native Taiwanese, or experienced the White Terror era that followed. It was natural that the majority of native Taiwanese did not dare to criticize the government during the KMT period.

The democratic movement in Taiwan began to gradually emerge in the late 1960s and early 1970s, first by Taiwanese intellectuals who attended graduate schools of law or political science in Western Europe, Northern America, or Japan. After these Taiwanese intellectuals returned home, they taught at universities and wrote articles advocating for individual freedom and democratic ideas. These intellectuals were only a small portion of the population, but their influence was relatively profound. Their students later became judges and politicians, and the ideas of democracy and liberty were spread step by step to the Taiwanese society. These intellectuals encouraged their students to continue going abroad to study, and these students in turn continued to advance democratic ideas to Taiwan.⁵⁰ Once the Taiwanese society accumulated enough momentum for democratic reform, it was just a matter of time before democracy began to flourish.

Elections in Taiwan have played a crucial role in spreading democratic ideas to the Taiwanese society. A few native Taiwanese politicians rose in the early 1970s because of new seats opening up in the parliamentary bodies. These politicians fought against the KMT government's repression of free speech and advocated western constitutionalism, claiming that the people have inalienable rights. In the 1980s, more and more native Taiwanese, especially those who suffered from quasi-apartheid treatment under the KMT government, became aware of this unfair treatment and began to oppose the undemocratic reign of the KMT government. Since this time, the democratic movement in Taiwan has continued to gain ground. According to the empirical survey of Taiwanese public opinion in the 1980s mentioned above, native Taiwanese, significantly more than Mainlanders, identify with a Taiwan nationality. The native Taiwanese also feel significantly more favorable than Mainlanders about the local culture, and show much greater support for values such as liberty, freedom of speech, participation in politics, and equality for the native Taiwanese in their political and social

50. See Wang, *supra* note 4, at 201-02.

lives.⁵¹

In the late 1980s, Lee Teng-hui became the first Taiwanese chairman of the KMT. Mainlanders in the KMT suddenly realized that they had to become supporters of sharing power and of liberty so that they could weaken Lee's power.⁵² It was under this background that the Grand Justices began to publish a great number of interpretations promoting human rights in the 1990s. After the 2000 presidential election, the KMT became the opposition party. Protecting liberty and democracy suddenly became a slogan of KMT politicians. In the name of supervising the DPP government, the KMT politicians wielded their control in the Legislative Yuan and in the mass media to successfully boycott many DPP government policies. The DPP, now the governing party, could not suppress this supervision by the KMT because the DPP was the pioneer of democratization and liberalization. The DPP were faced with the difficult situation of defending its democratic achievements, in part by allowing vicious attacks by its opponents. From this point on, however, the concept of protecting basic rights has become commonly accepted in Taiwan society. In 2008, the KMT became the governing party once again. It is therefore necessary to watch whether the KMT will support the idea of liberty and democracy as much as they claimed previously.

At this point it is proper to add some notes on the development of basic rights protection in Taiwan. The main stumbling block in the road to protect basic rights in Taiwan had been martial law and the Temporary Provisions for the Period of National Mobilization to Rebel Communists (the "Temporary Provisions"). The Period of National Mobilization to Rebel Communist began in May 1948, and martial law was put into force in Taiwan a year later. The KMT government was willing to apply the ROC Constitution to Taiwan partly because the articles protecting human rights were suspended by martial law and the Temporary Provisions. Western democracies do in fact enact martial law from time to time, but martial law is intended to be temporary, and is issued under emergency circumstances. However, the KMT imposed martial law on Taiwan for almost forty years. The KMT made use of martial law to secure its rule on Taiwan. In 1987, martial law was finally lifted by President Chiang Ching-kuo. He lifted martial law partly because of pressure from America as well as from grass-roots opposition groups in Taiwan. The main reason, however, was that during Chiang Ching-kuo's reign, his party, the KMT, won all of the elections for the central government level in Taiwan. President Chiang Ching-kuo believed that the KMT government could not be threatened

51. See TIEN, *supra* note 48, at 58.

52. See generally ROY, *supra* note 23, at 184-88.

democratically.⁵³ After martial law was lifted in Taiwan, Taiwan was considered to no longer be in a state of war. Regulations that had severely restricted basic rights lost their grounds for existence. In 1991, the period of National Mobilization was ended by President Lee Teng-hui.

After the basic rights provided for in the ROC Constitution became real in the daily lives of Taiwan's people, including native Taiwanese and Mainlanders, it would have been almost impossible for the DPP, a young governing party in Taiwan to suppress individual basic rights protected by the Constitution.

IV. CONTEMPORARY CONSTITUTIONAL ISSUES IN TAIWAN

A. *Free but Divided Society*

In a society committed to individual liberty, divisions of opinions among individuals, interest groups and social groups are quite common. In Taiwan, national identity has been one of the most divisive issues, and thus is a good example to illustrate how the people in Taiwan deal with conflicts of opinions.⁵⁴ The identity issue does not completely originate from the distinction between native Taiwanese and Mainlanders in the past decades, though this distinction is certainly relevant. After the KMT reign began in Taiwan in 1945, the Taiwanese (including native Taiwanese and Mainlanders, hereinafter) were educated that their national identity was Chinese. The Chinese identity imposed by the KMT government was a nationality based on a territory which included both mainland China and Taiwan,⁵⁵ which together constituted the Republic of China. Since the Chinese Communist Party has ruled mainland China since 1949, a statehood based on a Republic of China which included mainland China and Taiwan was not only incompatible with reality, but unrecognized by the international community, especially after the 1970s. However, any Taiwanese who openly and publicly advocated that Taiwan was an independent state or that Taiwan

53. Chiang, Ching-kuo was almost correct in predicting the result of the future elections. In 2000, the KMT lost the presidential election because of the splitting of the vote of the KMT supporters, who were still the majority in Taiwan. Until 2008, the Pan-KMT, including the KMT, the People First Party, and the New Party, always won the majority of seats in Legislative Yuan, even though the DPP controlled the administrative branch of the central government from 2000 to 2008. The only exception was the 2004 Presidential election, in which the vote for the DPP candidate was slightly more than 50%. *See also* ROY, *supra* note 23, at 227-31.

54. In Taiwan, identity politics are not limited to national identity, but national identity is the most crucial of such issues.

55. The term "Taiwan" is not restricted to the island of Taiwan, but refers also to the Pescadore Islands and other subordinated islands, including Kinmen and Matsu. *See also* Tay-sheng Wang, *Taiwan*, in *ASIAN LEGAL SYSTEMS: LAW, SOCIETY AND PLURALISM IN EAST ASIA* 125 (Poh-ling Tan ed., 1997). Taiwan as defined above is called "Taiwan area" in the ROC law.

should become a nation-state was considered to have committed the crime of sedition before the 1990s.

After the DPP won the Presidential election in Taiwan in 2000, national identity and statehood both became issues valid for open debate. The DPP has long advocated a nationality of Taiwanese, based on a territory including only Taiwan (including the island of Taiwan, the Pescadore Islands, Kinmen and Matsu). Since the KMT still controlled the Legislative Yuan, it was impossible for the DPP to change the official name of the nation. Therefore, the DPP has maintained the name of the nation to be the Republic of China, sometimes also including Taiwan as a notation. The DPP government allows freedom of national identity, which it considers as part of freedom of expression and speech. In Taiwan, a person may express his or her national identity to be Taiwanese or Chinese based on his or her attachment to the land and its people, life experiences, economic interests and political interests. It should be noted that people who identify themselves as Chinese in Taiwan usually refer to their statehood as the Republic of China, rather than the People's Republic of China.

During this time, the People's Republic of China has promulgated its own version of the national identity of Taiwanese—they claim that Taiwanese are Chinese, under the rule of the Chinese Communist government. The name of this hypothetical nation is the People's Republic of China, with a territory including both mainland China and Taiwan. In 2005, the PRC government enacted an Anti-secession Law, which provided the PRC government with legal authority to take any possible measure (including launching a war) to prevent the secession of Taiwan. The Chinese Communist government has long prohibited the expression of Taiwanese as a national identity, and outlawed any expression that implies that Taiwan is not part of China.

A key idea of liberalism is, "I disapprove of what you say, but I will defend to the death your right to say it." Liberalism regarding national identity would allow people to express their own identity, and require the government to tolerate different expressions of a national identity. Nevertheless, when the Chinese Communist government enacted the Anti-secession Law in 2005, the KMT in Taiwan did not "defend to the death the right of Taiwanese-identity supporters to say it," though they constantly demanded that the DPP government honor their freedom to identify themselves as Chinese. The KMT, led by Ma Ying-jeou, surprisingly announced on February 14, 2006 that it was one of possibilities selected by the Taiwanese for their own future to become an independent nation-state, but this was not the choice or policy of the KMT.⁵⁶ The concept of

56. The KMT bought an advertisement to make this announcement in Liberty Times, many

liberalism has compelled the KMT to honor, at least in form, the freedom of national identity.⁵⁷

B. *Democratic but Polarized Politics*

Consensus in a diverse and divisive society must be reached through a democratic process. Once democratic consensus is reached, individuals should respect the result and seek changes through the next round of elections. Since the 1990s, Taiwan has become a democratic country, but the culture of respecting democracy has not been embraced by the entire Taiwanese society.

In 2000, the DPP for the first time won the Presidential election, and the KMT and its derivative party, People First Party (PFP), became opposition parties. The KMT and the PFP constantly boycotted the DPP government's policies. Such partisan politics is further complicated by the divergence of national identity between the DPP and KMT supporters. During the first four year of the DPP's presidency, the political stalemates were encountered as never before in Taiwan, and partisan politics became routine and impacted all facets of national policy. At the eve of the 2004 Presidential election, the KMT supporters were expecting a victory because the KMT and the PFP successfully merged to nominate one set of presidential candidates. However, despite a slim margin, the KMT and the PFP still lost to the DPP. The presidential and vice presidential candidates of the KMT and the PFP launched continuous protests—their supporters occupied the streets for months; legislators from the KMT and the PFP passed special legislation to form a truth committee to investigate the election, and the candidates filed legal complaints with the courts. A recount of ballots demonstrated that the DPP did in fact win the 2004 Presidential election, but the KMT and the PFP insisted on protesting until they were declared the victors. Supporters of the KMT and the PFP did not accept the result of the election even after the Taiwanese courts had again and again supported the original results. After 2004, politics in Taiwan became even more polarized. The opposition party opposed the DPP government on almost every issue.

The political polarization in Taiwan has been further complicated by the disagreement concerning national identity between the DPP and KMT supporters. The existence of democratic elections in Taiwan allows the national identity to be flexible; that is, people in Taiwan can choose to be Taiwanese under the name of the Republic of China or Chinese under the

readers of which were the DPP supporters. See KMT, *The Pragmatic Way of Taiwan*, LIBERTY TIMES, Feb. 14, 2006, at A1.

57. After Ma, Ying-jeou was elected to be the President in 2008, he has rarely mentioned this announcement again.

name of the Republic of China. Democracy demands that people in Taiwan respect the election results, as long as the election system remains in place and there is always a chance of change in the future. Unfortunately, some of the KMT and its supporters do not accept the possibility that people in Taiwan may choose to be Taiwanese,⁵⁸ to the extent that these KMT supporters would rather choose the People's Republic of China, the official name of mainland Communist China, to be their national identity. However, choosing the People's Republic of China to be their national identity would mean that there would be no freedom of election. Under the People's Republic of China's communist regime, disagreements about the issue of identity cannot be resolved through democracy. Therefore, a nationality choice to align Taiwan's identity with the People's Republic of China is not compatible with the democratic system currently in place in Taiwan.

Another threat to democracy in Taiwan, along with blending the national identity with the People's Republic of China, is the idealization and glorification of the "good old times." Some Taiwanese are troubled with the current political conflicts and disturbances in the Taiwanese society, and they yearn for a leader like Chiang Ching-kuo. These Taiwanese prefer the traditional Chinese ruling methods, in which the relationship of the government with the governed patterns the relationship between parent and child. This traditional and parental method of ruling exempted the ruling class from all challenges because the ruling class was always considered to be acting for the benefit of the ruled. This traditional ruling method is especially advocated by the past KMT ruling class, as they openly glorify Chiang Ching-kuo and yearn for a future sage leader who will be an open-minded dictator. The rhetoric that an open-minded dictator is superior to democracy is appealing to certain Taiwanese who are troubled by the partisan politics in modern Taiwan.⁵⁹ The influence of this type of rhetoric greatly challenges the constitutional development in Taiwan.

In the 2008 Presidential election in Taiwan, the KMT candidate, Ma Ying-jeou, won. To a certain degree, the majority of Taiwanese citizens voted for "the image of Chiang Ching-kuo," which had been shaped by the mass media, which have been friendly to the KMT for a long period of time. Fortunately, unlike the KMT and the PFP supporters in the 2004 Presidential election, the DPP supporters peacefully accepted the victory of President

58. After the KMT lost the 2000 Presidential election, many KMT supporters demanded Lee Teng-hui resign as KMT chairman through an illegal demonstration. Regarding this incident, a commentator expressed, "In a deeper sense, Mainlanders were expressing their frustration over the Taiwanization of politics and the loss of the KMT's old agenda[.]" See ROY, *supra* note 23, at 230-31.

59. A famous Taiwanese scholar in constitutional law, Jiunn-Rong Yeh, described the modern constitutional culture in Taiwan as a shallow plate. Judging from the modern constitutional history of Taiwan, he is correct. JIUNN-RONG YEH, MINGCHU CHUANHSING YU HSIENFA PIENCHIEN [DEMOCRATIC TRANSITION AND CONSTITUTIONAL CHANGE] 448 (2003).

Ma, who strongly advocated a nationality of Chinese. Nevertheless, the DPP supporters began to worry that Taiwan would be merged with the People's Republic of China under the Ma Ying-jeou administration and therefore lose the possibility to legally change the national identity in the future.

V. CONCLUSION

The constitutional culture of a country develops under its specific historical background. Taiwan did not encounter a modern constitutional regime until the late nineteenth century. The modern constitutional regime was introduced to Taiwan by the Japanese empire when China ceded Taiwan to Japan after China was defeated by Japan in war. The Japanese Meiji government consulted western experts about whether the colonial government should apply the Meiji constitution to Taiwan. At least in appearance, Taiwan began its modern constitutional history because of the Meiji constitution.

The Japanese colonial government tried to curtail the application of the Meiji constitution in Taiwan, partly because the colonial government did not believe in the efficacy of a constitution applied in a colonial land. The colonial government limited the application of separation of government powers in Taiwan. Such limitations did not encounter much resistance because the Taiwanese were not familiar with the rights granted by modern constitutions. In the 1920s, Taiwanese intellectuals became aware of the ideas granted by the Meiji and other constitutions and began to criticize the government for violating the separation of powers. Although the Meiji constitution was applied to Taiwan only on a limited basis, this application nonetheless helped the Taiwanese to understand some of the basic frameworks of a modern constitution. For example, the judicial branch in Taiwan was always a separate branch from the colonial executive government.

Likewise, in the 1920s, Taiwanese intellectuals began to fight for their rights and the freedoms granted by the Meiji and other constitutions. Most of the Taiwanese public, however, were not able to fully understand the ideas behind the fight for human rights. The human rights movement which began in the 1920s was unable to continue because toward the end of the Japanese colonial rule, World War II broke out. After fifty years of Japanese colonial rule, the Taiwanese had a limited understanding of a modern constitution. After World War II, the native Taiwanese faced the rule of another foreign regime, the KMT, also called the Nationalist Party, from China.

The KMT government had only had the experience of political tutelage when it began its rule in Taiwan. The KMT government was not familiar with the rule of a country under the framework of a constitution. In 1949, the

KMT government lost mainland China to the Chinese Communist Party, so the KMT withdrew to Taiwan, and the ROC constitution became the constitution in Taiwan. However, at this point martial law had already been imposed in Taiwan, which acted to suspend many constitutional rights. The KMT government further suspended the ROC constitution by imposing the Temporary Provisions for the Period of National Mobilization to Rebel Communists. Martial law and the Temporary Provisions allowed the leader of the KMT, Chiang Kai-shek, to rule as a dictator in Taiwan. The dictatorship of Chiang Kai-shek and his son lasted for forty years. The long suspension of the ROC Constitution was arguably justified by the war with the Chinese Communist Party and by the KMT's assertion that Taiwan needed a strong leader to lead the war effort. A strong leader, under the Chinese tradition, would enjoy enormous and almost unlimited power.

Although the KMT tried to maintain the appearance of constitutional rule, the suspension of the ROC constitution for over forty years revealed the KMT's obvious violation of constitutional principles. These violations by the KMT offered anti-KMT intellectuals easy grounds on which to urge for political reform. In the 1990s, when the democratic movement in Taiwan began to take off, demands for reform followed the constitutional framework and worked through modifying constitutional provisions. The political elites urging for reform first reached a consensus of changes outside the confines of the National Assembly, and then the National Assembly delegates voted in conformity with the conclusion reached through these outside meetings.

Although the ROC Constitution offered a framework for the separation of government powers, during the KMT rule the ruling power was concentrated in the executive branch. The legislative branch and even the judicial branch were both under the control of Chiang Kai-shek and the KMT. Since Lee Teng-hui became president in 1988 after the death of Chiang Ching-kuo, and continuing after the DPP won its first presidential election in 2000, the legislative and judicial branches began to establish their independence. The legislative branch first gained its independence by allowing democratic election of the legislators, and continued to gain more power to balance the executive branch by merging the three congressional bodies into one. The judicial branch manifested its independence by interpreting the law in opposition of government interests when appropriate, and by judges no longer being forced to follow the KMT's instructions. The problem of political stalemate between the executive and legislative branches arose from the fact that the DPP controlled the executive branch while the KMT continued to control the legislative branch after the 2000 Presidential election. Facing this stalemate, the judicial branch often took a neutral position, which allowed the stalemate to continue but eventually hurt the progress of the state.

Protection of basic rights is also guaranteed by the ROC Constitution. However, during the KMT rule, especially the early period, violation of basic rights by the KMT government was free from challenge. Most people in Taiwan during the KMT rule were not equipped with the expertise to challenge these violations, and dared not challenge the government action regardless. The judicial branch in Taiwan, which was purportedly the last frontier of protecting basic rights, had remained silent in the face of severe human rights violation during the KMT rule for a long period of time. During the later period of the KMT rule, some Taiwanese intellectuals began to advocate freedom and democratic ideas. These democratic ideas emerged just in time for the development of a democratic political movement in Taiwan, and were widely quoted in political activities. After Lee Teng-hui, the first native Taiwanese to become the KMT chairman, the KMT ruling class who lost power in the party also began to advocate freedom in order to be able to freely criticize and challenge Lee Teng-hui and his supporters. After the DPP won the Presidential election, the KMT and its supporters ironically became the biggest advocates for freedom. Meanwhile, martial law and the Temporary Provisions were lifted in the late 1980s and the early 1990s, respectively. At least in form, the concept of protecting basic rights therefore has become commonly accepted in Taiwan society.

However, it has only been one hundred and fourteen years since a modern constitution was first introduced to Taiwan in 1895. The realization of freedom and democracy in Taiwan has been much shorter, for only about twenty years since the late 1980s. While the current Taiwanese society enjoys abundant freedom, these freedoms also lead to a divisive society. The issue for modern Taiwan is whether everyone on the island can respect a consensus which is reached through the democratic process. The key to respecting the result of democracy would be for Taiwanese to fully integrate the ideas underlying the modern constitution into their legal culture and public opinions.

Constitutional culture needs to further progress in Taiwan. We need to understand history and be critical of the past so that we can tolerate different standpoints and create a better constitutional culture in the future. Understanding the past in Taiwan does not mean that the government action in the past is justified. Rather, we should insist on using the current values of freedom and democracy to criticize the injustices of the past. Insisting on current values of freedom and democracy will help us to avoid repeating these same mistakes in the future. In the face of the divergent interests and values reflected in the Taiwanese society, we should stand firm on the acceptance and advancement of diversity, democracy, and constitutionalism.

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