

## TAIWAN'S POLITICAL REGIME IN THE TSAI ING-WEN ERA

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## Introduction

The victory of Tsai Ing-wen and the Democratic Progressive Party (DPP) in the January 2016 general elections marked the start of a new political era in Taiwan. For the first time in history, the DPP won both the presidency and a comfortable majority in the Legislative Yuan. Combined with the party's unprecedented successes in the 2014 elections, in which its candidates captured four of six special municipalities and 13 out of 22 county and city executive races (and a DPP-allied independent won Taipei as well), the 2016 elections brought a decisive end to more than 70 years of Kuomintang (KMT) control over at least one branch of the Republic of China political system. President Tsai came into office with an unprecedented opportunity to push forward sweeping changes, including to core political institutions, that DPP members had long advocated—reforms that had previously been stymied or kept off the agenda altogether by the KMT.

Nevertheless, the defining characteristic of Taiwan's political evolution from a one-party dictatorship to a vibrant, pluralist multiparty democracy has been its gradualism, and the political reforms that President Tsai and the new DPP leadership have attempted to advance have followed the same pattern of slow consensus-building and piecemeal rather than wholesale changes to institutions. While in opposition, members of the DPP advocated a wide array of reforms, ranging from the symbolic (such as changing the national flag and the definition of the national territory) to the prosaic (lowering the voting age and amending the Assembly and Parade Act) to the fundamental (switching from a semi-presidential to full presidential or parliamentary regime and abolishing the Control and Examination Yuans). But since taking power, the new ruling party has moved slowly and cautiously on even minor changes to the political regime. As of this writing, proposals to revamp the electoral system, the judiciary, campaign and party finance and assembly and protest laws, and Legislative Yuan oversight of cross-strait relations remain only at the discussion stage. The lack of any current consensus even within the DPP on most of these issues, let alone between the four parties now holding seats in the legislature, suggests that major institutional changes are unlikely over the next few years. Moreover, the last round of reforms in 2005 made it much more difficult to

amend the constitution, so that only constitutional reform proposals with broad, cross-party consensus have any chance of approval. Thus, the success of the DPP's ambitious policy agenda will probably be determined by how much President Tsai and her party can accomplish within the existing Republic of China constitutional framework.

In the rest of this essay, I consider the question of what political reforms appear most needed, and contrast them with those that appear most politically feasible in the current era. In the first section I discuss two important, under-the-radar trends in Taiwan's institutional evolution since the first direct election of the president in 1996: the *nationalization of political competition* and a concomitant *shift toward simple majority rule* at the central government level. At the beginning of the transition to democracy in 1986, much of the energy of election campaigns was directed at local offices, and the political power of county, city, and township-based factions was considerable. But today, electoral competition is oriented toward the top posts in the regime—the presidency, the legislature, and the mayors of special municipalities—and the partisan, as opposed to the personal or factional, element in elections to these offices has become increasingly decisive. It is now unusual for independent candidates or factions to be able to obtain many votes above and beyond what the partisan leaning of a constituency is in a given national election. Over the same period, the number of institutional veto players within the central government has been reduced to only two: the president and the legislature. And the introduction of concurrent terms and elections, along with a more majoritarian electoral system, have made unified single-party control of both institutions much more likely than in the past.

Thus, beginning with the 2008 elections, governmental authority has become concentrated at the central government level, at that level within a single majority party, and within that party in the office of the president. Given that the president has also typically chaired the ruling party—true for both President Tsai and her KMT predecessor Ma Ying-jeou—the contemporary Taiwanese political system gives the president extraordinary power over not only executive functions but also over the legislative agenda. In short, the institutional changes of the past two decades have led to a governing framework that is both highly centralized and

majoritarian, and they have created what the former premier Jiang Yi-huah has termed a “super-presidency.”<sup>1</sup>

The second section considers the singular puzzle of the Ma Ying-jeou presidency: despite the enormous concentration of formal power in his hands, President Ma struggled to get much of his agenda adopted into law. The most obvious example is the review of the now-infamous Cross-Strait Services Trade Agreement (CSSTA), which sparked a backlash, first by his own party caucus, and then by the student-led protest known as the Sunflower Movement that occupied the Legislative Yuan. But Ma’s government also struggled to implement changes in a number of other high-profile areas as well: in taxes, pension reform, and agricultural imports, for instance. The Ma administration’s difficulties suggest that there is more to the story than an analysis of the first-order institutions of the regime can tell us, and it draws our attention to some of the second-order rules and informal conventions that blunt the power of the president to exercise control over the executive, the ruling party, and the legislature. Among these are the decentralized and consensus-oriented nature of the Legislative Yuan, and the greater responsiveness of individual legislators to their constituencies and to public opinion rather than to the party leader under the new electoral system.

In the third section, I discuss the political reform agenda of Tsai Ing-wen and the DPP before the 2016 election. The criticisms and reform proposals raised by the DPP and others during the Ma era fell into three broad categories. The first was strengthening legislative oversight of the executive branch, particularly the National Security Council and agencies that handle cross-Strait Relations. The second related to increasing avenues for direct democracy and the influence of smaller groups in the political system, including changes to the electoral system, recall, and referendum laws. And the third was reforms of accountability institutions, especially the judiciary, prosecutoriate, and Control Yuan.

In the fourth section, I consider what the Tsai administration has actually focused on during her first year in power, and how the DPP’s reform agenda is likely to fare under the

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<sup>1</sup> Hsuan-hui Chou, “Zongtong zhixuan yu minzhu Taiwan yantaohui – lai bin dou ‘Da ka’ [Conference on Direct Presidential Elections and Taiwan’s Democracy – Everyone is a Heavyweight]” *Newtalk* September 23, 2017, at <https://newtalk.tw/news/view/2017-09-23/98572> (accessed November 27, 2017).

current political regime. In contrast to its high-minded rhetoric during the Ma era, the issue at the top of the DPP's reform agenda since Tsai Ing-wen took office has been dealing with the lingering legacies of the party-state era, or to put it less charitably, on "getting the KMT." The overriding concern with reducing the KMT's remaining structural and financial advantages is because these measures satisfy three conditions: they are uncontroversial within the DPP, enjoy majority support in public opinion polls, and advance the DPP's political interests at the expense of their major rival. Most other reform proposals, however, do not meet all these conditions, and are likely to languish as a result.

I conclude with some discussion of the likely track of political reform over the next few years. The main takeaway is continuity: President Tsai and the DPP enjoy many of the same advantages that Ma and the KMT did in Ma's first term, but they also face similar constraints on their ability to implement fundamental institutional change. The experience of the Ma era suggests that public opinion and cross-party consensus will decide most of the critical reform issues, and the lack of a clear consensus on most political reform issues makes it unlikely we will see major change to the political system in the near future.

## **1. The Evolution of Taiwan's Political Regime since Democratization: Two Under-the-Radar Trends**

Over the last 25 years, Taiwan's political regime has been reshaped in two important but under-the-radar ways: politics and electoral competition has become increasingly nationalized, and single-party rule with unified executive-legislative control of the central government has become much more likely.

### *Trend 1: The Nationalization of Political Competition*

The first important trend of the democratic era is the increasing nationalization of political competition. By *nationalization*, I mean several things. One element is the increasingly partisan nature of elections: at all levels of electoral competition, but most strongly at the top,

the importance of partisan factors in determining individual vote choice and collective election outcomes has increased at the expense of incumbency and other personal and idiosyncratic factors.<sup>2</sup> A voter's partisan identification is now the strongest predictor of how she will vote in any given race, and split-ticket voting, once relatively common in Taiwanese elections, is now rare, especially across political camps.<sup>3</sup>

The second element is the party system itself, particularly its uniformity across districts and jurisdictions. Scott Morgenstern terms this feature “static” nationalization: the parties nominating candidates in each district and jurisdiction are the same across the country, and the shares of the vote they get are similar as well.<sup>4</sup> While Taiwan's two major parties have clear regional strongholds—the KMT in parts of the north, east, and offshore islands, and the DPP in the south—they each are the principal opposition party almost everywhere they do not hold office. Thus, Taiwan today has a well-institutionalized two-party system that typically provides voters with a binary choice, in both presidential and legislative elections at the national level, and also in local executive and even city and county council races.<sup>5</sup> This pattern has been reinforced since the new mixed-member parallel electoral system was introduced for the Legislative Yuan in 2008, creating powerful incentives in elections in the new single-member districts to coalesce around one of two party nominees.<sup>6</sup>

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<sup>2</sup> Ching-hsin Yu, “Parties, Partisans, and Independents in Taiwan,” *The Taiwan Voter*, ed. Christopher H. Achen and T.Y. Wang (Ann Arbor, MI: University of Michigan Press, 2017), pp. 79-81.

<sup>3</sup> Chi Huang and T.Y. Wang, “Presidential Coattails in Taiwan: An Analysis of Voter- and Candidate-Specific Data,” *Electoral Studies* Vol. 33 (2014): 175-185.

<sup>4</sup> Scott Morgenstern, John Polga Hecimovich, and Peter M. Siavelis, “Seven Imperatives for Improving the Measurement of Party Nationalization with Evidence from Chile,” *Electoral Studies* Vol 33 (2014), 186-199.

<sup>5</sup> T.J. Cheng and Yung-ming Hsu, “Long in the Making: Taiwan's Institutionalized Party System,” *Party System Institutionalization in Asia: Democracies, Autocracies, and the Shadows of the Past*, ed. Allen Hicken and Erik Martinez Kuhonta (New York: Cambridge University Press, 2015) pp. 108-135.

<sup>6</sup> See, for instance, Chi Huang, Ming-feng Kuo, and Hans Stockton, “The Consequences of MMM on Party Systems,” *Mixed Member Electoral Systems in Constitutional Context: Taiwan, Japan, and Beyond*, (Ann Arbor: University of Michigan Press, 2016), pp. 25-51.

The third element is that the swings in vote share from one party to another across different elections are *also* increasingly uniform (what Morgenstern et al. call “dynamic nationalization”). The last three presidential elections in Taiwan have featured remarkable geographic consistency in the two-party swing at the county level.<sup>7</sup> Many observers have noted the monotonic increase in the DPP’s presidential vote share<sup>8</sup> from 2008 to 2012 to 2016, but the consistency of this increase *across* localities is startling. For instance, Tsai Ing-wen won 45.63% of the vote in 2012, an increase of 4.12% over the 41.55% that DPP nominee Frank Hsieh won in 2008. Incredibly, although she did not win the election, Tsai did better than Hsieh *in every single county and city* on the island, and her increase varied by only about 2 ½ points, from a low of 2.45% in Taipei to a high of 4.94% in Pingtung. Tsai’s big victory in 2016, when she won 10.49% more than in 2012, featured a bit higher variance across localities, but she still won at least 5% more in every single jurisdiction than in 2012: her smallest increase was in Penghu, where she captured 5.16% more of the vote, and her largest in Taipei, where she got 12.4% more (taking her over 50% of the total vote—the first time a DPP presidential candidate has ever won a majority there.) This uniformity of swing is another indication that national factors have outweighed local ones in recent presidential elections.<sup>9</sup>

The final element of political nationalization is that “national” issues are increasingly determinative even in local races. Put differently, the intense partisanship seen in politics at the central government level has trickled down and reshaped voting behavior in local elections as well. In the past, independents and local-faction-linked KMT candidates won a majority of seats in local elections, particularly council elections, even as the DPP made inroads in legislative and some county executive races. But this pattern, too, is finally changing: the “greenest” parts of Taiwan in national level elections—Tainan and Kaohsiung—have also become increasingly “green” at the local level. The chief executive positions and council majorities in both are now held by pan-green (DPP + TSU) majorities, echoing the pattern in the

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<sup>7</sup> Khari Templeman, “Party System Nationalization in Taiwan,” unpublished working paper.

<sup>8</sup> I report the DPP’s swing rather than the KMT’s because of pan-blue splits in these elections. The DPP’s share of the vote gives a more consistent indicator of shifts between green and blue camps than does the KMT’s.

<sup>9</sup> Figures drawn from Templeman, “Party System Nationalization in Taiwan”

last three presidential elections. Conversely, the KMT's presidential and Legislative Yuan candidates tended to fare best in the 2016 elections in the few jurisdictions where they also won local executive and county council elections in 2014: in, for instance, Miaoli, Nantou, and Hsinchu Counties.<sup>10</sup>

These elements of a fully nationalized political system have emerged gradually and almost imperceptibly since the beginning of the transition to democracy in the late 1980s. But the cumulative effect has been to produce a political system in which the parties running in each district and jurisdiction, the issues they campaign on, and the determinants of voting behavior from one election to the next appear similar across most regions and levels of government in Taiwan.

#### *Trend 2: Movement toward Simple Majority Rule*

The second consequential trend in the Taiwanese political system has been the reduction of the number of veto players. By *veto players*, I mean actors whose approval is needed for a change in the policy status quo.<sup>11</sup> These can be both institutional—that is, formal authority to block policy change is granted by the constitution or other basic laws—or partisan—a political party controls one or more institutions such that any decision the party agrees on will be implemented by those institutions. Taiwan today has only two effective institutional veto players in most spheres of policy-making: the President and the Legislative Yuan. The Executive Yuan (the ROC's term for the Cabinet), which directs most of the government ministries, is accountably directly to the president via her power to unilaterally appoint and remove its leader, the Premier. The Executive Yuan is therefore not an independent actor or veto player in the political system. In addition, it is now more likely than not that the party of the incoming president will also control a majority of seats in the Legislative Yuan, giving that party unified control of the central government and reducing the

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<sup>10</sup> Ibid.

<sup>11</sup> George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Russell Sage Foundation, 2003).



number of effective veto players to only one: the ruling party itself. In this sense, then, Taiwan's institutional reforms of the last two decades have produced a political system that tends strongly towards single-party majority rule.<sup>12</sup>

This shift toward majoritarianism at the central government level occurred gradually, and without obvious intention, through a series of constitutional amendments in the 1990s and 2000s. At the beginning of the transition to democracy in the late 1980s, the Republic of China on Taiwan had three representative bodies that could make a claim to be part of the national parliament: the National Assembly (NA), the Legislative Yuan (LY), and the Control Yuan (CY). In addition, the Taiwan Provincial Assembly had traditionally served as the body with the best claim to represent the people of Taiwan, since it was the only one fully elected from Taiwanese constituencies. The reforms of the 1990s and 2000s, however, in turn eliminated each of these bodies as competing power centers, leaving the Legislative Yuan as Taiwan's only national representative assembly.<sup>13</sup>

The first to go was the Control Yuan, whose members were originally indirectly elected by Provincial Assembly and Special Municipality councilors. In the package of revisions to the Constitution adopted in 1992, the President gained the right to nominate members of the Control Yuan with the consent of the National Assembly. The right to approve nominees to the Examination and Judicial Yuans was also transferred from the Control Yuan to the National Assembly.

The next body to lose independent authority was the Taiwan Provincial Assembly, which along with the Provincial Government was downgraded to an appointed body in 1997. Most of Taiwan Province's powers and budgetary resources were distributed to county-level governments or recentralized in the Executive Yuan, and the elimination of the Provincial

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<sup>12</sup> The opposite pattern would be one in which institutions made single-party rule incredibly unlikely, generating instead divided government control of the executive and legislative branches, or preventing any one party from winning a majority within the legislature.

<sup>13</sup> For a good description and analysis of the phases of constitutional reform in Taiwan, see Jiunn-rong Yeh, "Constitutional Reform and Democratization in Taiwan: 1945-2000," *Taiwan's Modernization in Global Perspective*, ed. Peter C.Y. Chow, (Praeger, 2002), pp. 47-77.

Assembly as a representative body further enhanced the stature and importance of the Legislative Yuan.

The National Assembly was the last to go. It had ceded most of its powers during previous constitutional revisions, including the power to select the president (switched to direct election in 1993), to initiate impeachment proceedings against the president or vice-president, to confirm the president's nominations to the Control, Judicial, and Examination Yuans, to select a new vice president if that office becomes vacant, and to initiate constitutional amendments (all transferred to the LY in 2000). But it hung on until 2005, when the NA finally passed a package of constitutional amendments that transferred its remaining powers to the Legislative Yuan and to the voters of Taiwan, and also voted itself out of existence.

Together, these constitutional reforms have left in their place a much more powerful Legislative Yuan. It has steadily accrued additional powers over the last two decades; to its exclusive authority to pass new laws and to approve the government budget, it has added the right to approve presidential nominations to the Control, Judicial, and Examination Yuans, to dissolve the Executive Yuan via a vote of no confidence, to compel government officials to testify under oath to the legislature, and to initiate constitutional amendments. The LY has also ascended to unchallenged preeminence as the national Parliament or Congress of Taiwan, giving its members unparalleled national visibility and a platform to influence public opinion and national debates.

Yet, at the same time that legislative, supervisory, and amendment powers have all become concentrated in the Legislative Yuan, party representation in that body has become far less proportional than it used to be. The institutional change that has attracted by far the most attention and study in Taiwanese politics has been the reform of the LY electoral system in 2005, from the single non-transferable vote (SNTV) system in large districts to a mixed-member parallel system with about 70% of the seats elected via plurality rule from single-member districts, and a smaller number of PR seats distributed to parties via a separate, second ballot. At the same time, the size of the legislature was cut in half, from 225 to 113 members, and (as noted above) the term of the legislature was extended from three to four years, to coincide with the length of the presidential term.

These changes made it much more likely that the same party that won the presidency would also obtain a majority of seats in the legislature. This expectation was borne out in the 2008 election, the first held under the new electoral system: the KMT won a supermajority of 81 out of 113 seats, the DPP caucus was reduced to less than a quarter of the seats, and the smaller PFP and TSU were all but eliminated from the legislature entirely. Thus, for the first time since 2001, a single party controlled a majority of the seats in the Legislative Yuan, and for the first time since Chen Shui-bian took office in May 2000, the executive and legislative branches came under the control of a single ruling party.<sup>14</sup>

This pattern has continued under both major parties. When President Ma won re-election in 2012, the KMT maintained control of the legislature, though with a reduced majority. Then in 2016, Tsai Ing-wen's sweeping victory in the presidential race also contributed to the defeat of many incumbent KMT legislators, carrying into office a new DPP LY majority. Thus, the balance of power at the central government level today is not much different from how it was under the Ma administration: President Tsai's party also controls a majority in the Legislative Yuan, and it can, in theory at least, pass its own legislation without support from any other party. In another parallel with the Ma era, the DPP now controls most local governments as well: its sweeping victory in the 2014 local elections put DPP mayors in office in four of the six special municipalities; a fifth, the DPP-backed independent candidate Ko Wen-je, won in Taipei. This situation, too, is much like the early Ma era in reverse: before 2014, the KMT held 15 of 22 localities, including four of the six special municipalities. Thus, each party's fortunes in recent presidential elections have corresponded closely to its fate in legislative and local elections.

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These dual tendencies toward greater political nationalization and majoritarianism have come together to produce a political system in Taiwan which looks markedly different from the

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<sup>14</sup> See Hans Stockton, "How Rules Matter: Electoral Reform in Taiwan," *Social Science Quarterly* Vol. 91 No. 1(2010), 21-41.

one that existed at the beginning of the democratic era. In the 1990s, representative authority was apportioned among at least four different bodies, but there is only one, the Legislative Yuan, today. In the past, the president and the legislature exercised dual authority over the Executive Yuan, but after the elimination of the LY's right to confirm the premier, it lost direct influence over the makeup of the cabinet, which is now entirely under the president's control. In the 2000s, multi-party elections and coalition politics in the legislature were the norm, but single-party majorities are today. During the Chen Shui-bian era, divided government led to an inherently adversarial relationship between the DPP-controlled executive branch and the KMT-led legislature, while under both Ma and Tsai the legislative majority has partisan incentives to work in concert with the Executive Yuan, and opposition parties have had few opportunities to exercise meaningful oversight over the executive branch. And while intra-party factions and local governments have traditionally served as an important check on central government authority, the increase in party-line voting even in local races has weakened the separation of purpose between the local and central government levels.

The overall effect is that in Taiwan's current political system, single-party majorities in the legislature, unified control of the executive and legislative branches, and presidential dominance of the ruling party are the norm. The presidency, in particular, is a remarkably powerful institution. President Tsai, for instance, exercises unquestioned authority over the entire executive branch through her power to appoint and remove the premier, and through her position as DPP chairwoman, she has considerable influence over the legislative agenda there, as well.

Thus, in theory at least, the President of the Republic of China on Taiwan today has the tools to dominate the entire political system. In practice, however, this power has been limited in important ways by other, second-order features of the system, as I discuss in the next section.

## **2. The Ma-Era Puzzle: Legislative Majorities without Majoritarianism**

When Ma Ying-jeou became president on May 20, 2008, he took office with what appeared to be the most favorable hand a president can hold in Taiwan's political regime. Ma won the 2008 presidential election with a large majority of the popular vote, defeating the DPP candidate Frank Hsieh by a margin of 58-42%; members of his KMT made up nearly three-quarters of the new legislature. President Ma's leverage over his party's legislative caucus was further strengthened when he reassumed the chairmanship of the KMT in 2009, a position from which he could dole out favors, threaten punishments and wield significant influence over KMT nominations in the next election. Thus, most observers expected a definitive break with the turmoil of the Chen Shui-bian years and a return of the legislature to its previous, more quiescent role as a junior partner to the Executive Yuan in policy-making, particularly in cross-Strait relations.<sup>15</sup>

Beyond the legislature, President Ma faced remarkably little overt opposition from other formal institutions. The personnel and policies of the Executive Yuan, for instance, closely hewed to Ma's priorities because of his power to appoint and dismiss the premier.<sup>16</sup> The Constitutional Court (officially known as the Council of Grand Justices) enjoyed considerable prestige and a reputation for independence—one that it had built up with a series of landmark

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<sup>15</sup> For instance, see Shelley Rigger, "Taiwan's Presidential and Legislative Elections," *Orbis* (Fall 2008), 689-700.

<sup>16</sup> President Ma initially attempted to implement a division of responsibility with his first hand-picked premier, Liu Chao-shiuan. Ma named the ministers of foreign affairs and defense and the chairman of the Mainland Affairs Council, but left Premier Liu more say on appointments to other positions in the domestic policy realms. President Ma caused a political uproar, however, when he publicly stated that he planned to "retreat to the second line," leaving the unelected premier in full control of the central government. This plan fell apart when a series of crises hit Taiwan early in Ma's first term, including a jump in energy prices, a deep recession caused by the global financial crisis, and a terribly destructive typhoon. President Ma had to take a more active role in response to fierce public criticism of the government's disaster relief efforts, and a month after the typhoon hit in August 2009, Premier Liu and his cabinet offered their resignations to "take responsibility" for the government's poor performance. To replace him, Ma appointed a close ally, Wu Den-yi, as the new premier, and most other important posts were filled with Ma favorites as well. President Ma's plan to remain at a remove from the day-to-day operation of the government collapsed in the face of political reality, and from that point forward the public division of labor between the president and premier simply disappeared.

decisions over the previous two decades.<sup>17</sup> Nevertheless, the term limits on Grand Justices allowed Ma to replace a majority of the court during his first term, and by 2016 every Grand Justice was a Ma appointee. The Control Yuan underwent a similar transformation into a bastion of Blue-leaning officials. It had become dormant during Chen Shui-bian's second term when the Pan-Blue majority in the legislature refused to vote on his nominees; when Ma assumed office, he filled it with his own appointees, who were quickly confirmed by the new KMT majority. Thus, it, too, became broadly deferential to the Ma administration and the ruling party. Finally, during most of the Ma era, the KMT also controlled the majority of local governments. From 2010-2014, for instance, KMT mayors ran 15 of 22 local governments including the cities of Taipei, New Taipei, Taoyuan, and Taichung. The DPP held local governments only in a handful of jurisdictions in the south: Kaohsiung and Tainan Cities, and Pingtung, Chiayi, and Yunlin Counties, along with Yilan County in the northeast.

Thus, through most of President Ma's eight years in office, he enjoyed a concentration of power virtually unprecedented in the democratic era to set a new political agenda and see it carried out over the objections of his opponents. Most observers expected the Ma era to mark a definitive break with the turmoil of the Chen Shui-bian years and a return of the legislature to its previous, more quiescent role as a junior partner to the Executive Yuan in policy-making.

### *The Surprising Weakness of the Ma-Era Executive Yuan*

In practice, things did not quite turn out that way. The enduring impression left by the Ma era is not of executive strength and decisiveness but instead of weakness and paralysis.<sup>18</sup> During Ma's first two years in office, much of the legislative action prioritized by the Executive Yuan was passed by the Legislature, as expected. The efficiency of the legislative process was

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<sup>17</sup> Weitseng Chen and Jimmy Chia-hsin Hsu, "Horizontal Accountability and the Rule of Law," *Taiwan's Democracy Challenged: The Chen Shui-bian Years* (Boulder, CO: Lynne Rienner, 2016) pp. 145-172; Christian Goebel, "Taiwan's Fight against Corruption," *Journal of Democracy* Vol 27 No 1 (January 2016), 214-138.

<sup>18</sup> See Yun-han Chu, "Coping with the Challenge of Democratic Governance under Ma Ying-jeou," paper presented at the conference on "The Politics of Polarization: Taiwan in Comparative Perspective," Stanford University, October 17-18, 2014.

aided by the KMT's comfortable majority, the initially high public opinion ratings for the executive branch and President Ma, broad support for the president's cross-Strait agenda, and a demoralized and disorganized DPP—the only remaining opposition party in the LY. Most notable was the legislature's approval in 2010 of the Economic Cooperation Framework Agreement (ECFA), which created the legal basis for subsequent cross-Strait agreements on a wide array of topics. But after this initial burst of activity, much of the Executive Yuan's agenda stalled. The delay, modification, or outright defeat of many of the Ma administration's top legislative priorities, even during the latter sessions of his first term, revealed how limited the majority party's power in the LY was—or at least, how limited President Ma's power as party leader was.

One can get a sense of how little success the Ma administration had over its full two terms in office by looking at the passage rate of its priority legislation. The Executive Yuan has the formal power to submit complete bills to the Legislature for consideration, and at the beginning of each legislative session, it designates a certain number of these “high priority bills.” During the Ma era, most of these were never passed. During the 7<sup>th</sup> Legislative Yuan term (2008-2012), the passage rate for these bills was only 37.0%; it ranged from 9.6% to 49% across individual sessions, never breaking half of all bills despite the KMT's enormous legislative majority. During the 8<sup>th</sup> term, when the KMT's majority was reduced by a dozen seats, the passage rate was even lower, at only 22.2% of all EY high-priority bills.<sup>19</sup>

These struggles are overshadowed by the most high-profile, consequential, and surprising legislative defeat of the Ma era: the Cross-Strait Service Trade Agreement (CSSTA). This agreement would have lifted restrictions on PRC business participation in a subset of Taiwanese service industries including banking, publishing, and insurance. After it was signed and made public in June 2013, the CSSTA ignited a firestorm of domestic criticism in Taiwan, although this appeared initially to be limited mostly to the pan-Green opposition and to civil society groups. The Executive Yuan submitted the agreement to the legislature “for record”

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<sup>19</sup> Kao Lang, “Cross-Strait Agreements and Taiwan's Executive-Legislative Relationship, 2008-2016,” paper presented at the conference on “Reflections on the Ma Ying-jeou Era,” Stanford University, March 16-17, 2017.

only, meaning it, like most of the other cross-Strait agreements, would take effect automatically unless the legislature explicitly rejected it within three months (see below). But for the first time, the KMT caucus in the legislature refused to go along with this passive approach to approval. Some combination of President Ma's personal unpopularity, declining public support for cross-Strait negotiations, and private opposition from industry groups who would be affected led to increasing resistance within the caucus, and some KMT legislators even began to voice their concerns in public. In reaction, rather than allow the agreement to take effect without LY action, Speaker Wang instead negotiated new terms of review for the CSSTA: the legislature would deliberate separately over each line of the agreement and hold individual votes on each element of the bill. The terms also simply declared: "Without substantive deliberations by the LY, the agreement shall not be approved and the entry-into-force clause shall not be triggered."

These terms created two huge obstacles to the approval of the CSSTA, in effect ensuring it would suffer a slow death in the LY. First, the legislature asserted that it had the right to review and vote separately on each of the items in the agreement, rather than as a package. Thus, for the agreement to be approved and take effect, it would potentially have to win dozens of separate votes in the LY. If any of those votes failed, the bill as passed by the legislature would be different from what was in the signed agreement, forcing the Ma administration to reopen negotiations with the PRC. That, in turn, would all but guarantee the agreement's failure. Second, the announcement explicitly changed the reversion point in executive-legislative bargaining, from approval to rejection. The legislature asserted that the three month "entry-into-force clause" that the Ma administration had relied on to get previous agreements adopted "shall not be triggered." Without "substantive deliberations" followed by an affirmative vote for the CSSTA, it would not take effect—full stop. Time would no longer be an ally, but an enemy, to President Ma.

This action by the legislature was a critical turning point in Cross-Strait relations, the Ma administration's political fortunes, and partisan politics in the LY. The Ma administration was clearly upset by the change in the review procedure, and the Executive Yuan initially took a hard line, insisting that the letter of the Cross-Strait Relations Act prevented the LY from either



extending the deadline for review or holding line-by-line deliberations, and that without a vote the agreement would still come into force in three months. But this position was harshly criticized by legislators from across party lines, including prominent members of the KMT caucus, and the executive branch quietly retreated. The later, much better-known confrontations over the CSSTA—particularly the declaration in an LY committee meeting by Legislator Chang Ching-chung, a Ma ally, that the terms of review simply did not apply and that the CSSTA would therefore take effect without LY action, and the occupation of the Legislative Yuan by what became known as the Sunflower Movement—were in fact precipitated much earlier, in June 2013, by the KMT legislative caucus's refusal to go along with the Ma administration's demand that they allow the CSSTA to take effect without a vote.

### *Second-Order Institutions: Sources of Opposition Influence in Government Policy-making*

One explanation for the Ma administration's struggles to pass legislation is the rise of an increasingly vigorous and assertive civil society sector, which pushed back against the administration's tendency toward centralizing decision-making within the Presidential Office. The independence and critical reporting of Taiwan's free-wheeling media are legendary, and while media outlets remained fiercely divided along partisan lines during the Ma era, they also remained a potent source of criticism and oversight feared by many public officials. In addition, the Ma era coincided with a remarkable resurgence of social activism, including a spike in the number of street demonstrations against the government, the ruling party, and Ma himself. In some critical cases, such as the Anti-Media Monopoly rally against the purchase of Apple Daily and Next Magazine by the pro-PRC Want Want media group, this activism ultimately succeeded in reshaping the Ma administration's policy proposals or in blocking new initiatives entirely. And as Ma Ying-jeou and the KMT became deeply unpopular in his second term, these activist movements gained additional energy, eventually culminating in the Sunflower Movement protests that occupied the Legislative Yuan and succeeded in blocking approval of the CSSTA.

Clearly, then, an important part of Taiwan's democratic resilience is due to its diverse, active, and highly critical civil society and media sectors.<sup>20</sup>

Nevertheless, the KMT majority in the LY should have ensured considerable unity of purpose between the executive and legislative branches during the Ma years. The fact that it did not suggests that a single-party majority was not enough to give President Ma full control over the Legislative Yuan. Indeed, the legislature's organization is decentralized to the point that minority parties, and even individual legislators, enjoy significant influence over the legislative process. In fact, there are at least five distinct ways in which the rules and organization of the legislature limits the majority party's ability to control the agenda and pass legislation important to its leadership.

First, the hurdle for *introducing legislation* in the LY is quite low. In addition to bills proposed by the other branches of government<sup>21</sup>, bills can also be initiated in the legislature. Since 1999, individual party caucuses have had the power to propose legislation as well; because the minimum for forming a caucus is three legislators, this means that parties with as few as three seats can introduce legislation on their own, giving disproportionate influence to legislators from these parties. In addition, bills can also be introduced with the co-sponsorship of 15 individual LY members (13.3 percent of the total membership). In practice, legislators simply do not have the resources or expertise to draft long, complex pieces of legislation, so they typically attempt to introduce bills that differ only slightly from Executive Yuan or party caucus proposals. Nevertheless, there is no majority party advantage over bill initiation; instead, this power is scattered widely across the party caucuses and individual legislators.<sup>22</sup>

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<sup>20</sup> For an extended discussion of social movements during the Ma era, see *Taiwan's Social Movements during the Ma Ying-jeou Era: From the Wild Strawberries to the Sunflowers*, ed. Dafydd Fell (London, UK: Routledge, 2017).

<sup>21</sup> Bills can also be introduced by the Judicial, Control, and Examination Yuans, although in practice the Executive Yuan submits more than 90 percent of all bills that originate from another branch of government.

<sup>22</sup> Much of this discussion is informed by Shih-hao Huang and Shing-yuan Sheng, "Decentralized Legislative Organization and Its Consequences for Policymaking in the Ma Ying-jeou Era," paper presented at the conference on "Reflections on the Ma Ying-jeou Era," Stanford University, March 16-17, 2017.

Second, the majority party has only *limited control over legislative committees*. The Legislative Yuan includes at least eight permanent standing committees.<sup>23</sup> Seats on these committees are assigned in proportion to each party's seat share in the legislature as a whole. These committees in turn elect at least two<sup>24</sup> co-chairs or "conveners" who preside over committee meetings and collectively share control over the committee's agenda. Conveners are elected anew each legislative session under SNTV rules; if all party members coordinate and vote strategically, then a minority party with at least 1/3 of the seats in the committee can ensure the selection of one of its own as co-convener. The convener position rotates between the co-chairs on a weekly basis, so during at least some meetings of the committee, the opposition party is in control of the committee's agenda and can decide what legislative business to take up. As a consequence, the majority party can only exercise control over committee business half the time, unless they have at least 2/3 of the seats on the committee needed to secure both convener positions.

The presence of dual (and dueling!) committee conveners can create major delays in the consideration of bills that are of high priority to the majority but opposed by the minority, since the opposition's convener can block their review for the weeks he or she is in charge. This authority is especially important in the LY's Procedure Committee, which decides the agenda for each legislative session, including the items to be considered, the order in which they will be reviewed, and the committees to which they will be assigned. With a minority party member sometimes in charge of this role as well, a unified and dedicated opposition can use creative tactics to delay, if not indefinitely block, the review of legislation that it opposes and to advance bills opposed by the ruling party.

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<sup>23</sup> Article 10 of the Legislative Organization Act, following Article 67 of the Constitution, establishes the following permanent committees in the Legislative Yuan: Interior, Foreign Affairs and Defense, Economics, Finance, Education and Culture, Communications/Transportation, Justice and Law, and Social Welfare and Environmental Health. Others may be created as needed. The Organization Act also establishes a Procedural Committee (Article 7), a Records Committee (Article 8), and a Constitutional Reform Committee (Article 9).

<sup>24</sup> When the size of the legislature was cut in half in 2008, from 225 to 113 members, the number of co-conveners in each committee was reduced from 3 to 2.

Third, a requirement for cross-party deliberations is enshrined in a super-committee that effectively supersedes all other formal legislative committees: the *Cross-Party Negotiation Committee* (政黨協商 *zhengdang xieshang*). Also known as the inter-party caucus mechanism (黨團協商 *dangtuan xieshang*) or ruling-opposition negotiation mechanism (朝野協商 *chaoye xieshang*), the CPNC exists as a kind of “committee of last resort” that handles all inter-party disputes over any part of the Legislative Yuan’s business. Every party caucus or group in the legislature, no matter how small or large its membership, sends two representatives to the CPNC to negotiate on their behalf. Although negotiations are required by statute to be recorded and made public, this requirement is routinely violated, and negotiations typically take place behind closed doors, often in the Speaker’s office. An agreement in the CPNC must be reached by unanimous consent; once all party caucus representatives sign off, the agreement is read into the legislative record and becomes binding on all party caucuses and their members. This provision gives every party caucus a temporary veto over all legislation. To prevent total gridlock, the CPNC statute specifies that if an agreement is not reached within a month, the Speaker can bring the legislation in question to the floor for a formal vote, breaking the deadlock and resolving the disagreement in favor of the majority party. In practice, however, KMT Speaker Wang Jin-pyng was very reluctant to take this step over the opposition of the DPP. Thus, the CPNC during the Ma era acted as a real veto gate, providing the opposition party caucus leaders, especially those from the DPP, the ability to indefinitely delay legislation they opposed.

Fourth, the most potent minority weapon, and the one on which the previous three ultimately rest, is the systematic *violation of the rules of order*. As strange as it might seem to outsiders, disorderly conduct has evolved into a rational, strategic, and routine part of the legislative process in Taiwan. These violations can range from actions as simple as interrupting a colleague’s speech to elaborate organized demonstrations on the legislature’s chamber floor, complete with placards and slogans aimed at a TV audience. But the single most common and effective form of disruption is a “blockade” or “occupation” of the speaker’s podium (*zhanling zhuxitai* 佔領主席台) to prevent him from officially gaveling the session into order and bringing items up for consideration by the floor. These disruptions work in practice something like a

filibuster in the U.S. Senate, giving the opposition parties additional leverage in negotiations within the CNPC.

During the Ma era, the occupation of the speaker's podium became a potent weapon that the DPP and other opposition parties routinely employed to prevent the KMT from advancing legislation out of the CPNC for a floor vote. By one count, the DPP resorted to this tactic at least 80 different times during President Ma's second term. As a consequence, the one-month limit for cross-party negotiations was effectively rendered moot by these opposition blockades, which in turn served to convert the DPP's ability to stall legislation into something closer to a full and permanent veto in the CPNC. The KMT leadership was forced to bargain in good faith with the DPP, because the opposition could credibly threaten to blockade the podium and tie up all legislative business if legislation was brought out of cross-party negotiations without its consent.

A final weakness of the majority party is the limited power that the party chair wields over the legislative caucus. In both the KMT and the DPP, the party chair's authority has waxed and waned across the years. But in both parties, the chairmanship has traditionally provided enough authority in combination with control over the party's Executive Committee to threaten real, negative consequences against sitting legislators if they cross the party leadership. Punishments include not being re-nominated, being denied funding for campaigns, being shut out of decision-making and denied influence over policies of personal interest, or even being expelled from the party. Thus, it was a surprise in Ma era that holding the KMT chairmanship plus the presidency did not provide him sufficient leverage to bend recalcitrant KMT legislators to his will.

It is not obvious why Ma's influence over the KMT legislative caucus was so limited. But one plausible explanation is that the change in electoral system in 2008 made district legislators more sensitive to public opinion, and less dependent on ruling party endorsement and resources, than under the previous system. Under the previous SNTV system, incumbent legislators had to compete for votes with other members of their own party in each election; and all but the most well-known ones depended on the party's nomination and vote equalization strategies to maximize their chances of reelection. The switch to single-member

districts, however, changed this calculus in two ways. By creating a number of relatively safe deep green and deep blue districts, most incumbent legislators who represented these districts no longer faced intra-party threats to their seats. That, in turn, made them less dependent on the party center for reelection, and thus less willing to toe the party line on difficult votes in the legislature. In competitive single-member districts, by contrast, the median voter tended to be a swing voter whose views closely reflected national public opinion; incumbent legislators in these districts needed to be responsive to these voters to maximize their chances at reelection. Thus, electoral incentives made many incumbent KMT legislators reluctant to go along with Ma administration initiatives, including the CSSTA, that were very unpopular. Thus, the KMT leadership's leverage over individual legislators was probably weakened by the change in electoral rules.

The final point to make here is that the new DPP majority is susceptible to these same factors as the old KMT one. Nothing about the electoral system, the Legislative Yuan's decentralized organization, or the influence of minority parties should be obviously different under a different ruling party. The only potential difference is the DPP's internal organization and collective policy coherence: to the extent these are more aligned with President Tsai's own goals, then the new ruling party may enjoy more success under the current political regime than did her predecessor. It is to this topic that I turn next.

### **3. A Political Reform Agenda for the Tsai Ing-wen Era**

The victory of Tsai Ing-wen in the January 2016 general elections handed her and her party an unprecedented opportunity to remake the political regime of the Republic of China on Taiwan. With its comfortable majority in the Legislative Yuan, and its control over a majority of local municipalities, the DPP came into office with a rare opportunity to push forward sweeping changes, including to core political institutions, that DPP members had long advocated— reforms that had previously been stymied or kept off the agenda altogether by the KMT. The items on this potential reform agenda fall into three broad areas.

### *1. Strengthening Legislative Oversight of the Presidential Office and Cross-Strait Relations*

First, the DPP as well as social movement activists, academics, media personalities, and the smaller political parties all criticized to varying extents the “super-presidency” that emerged under unified government during the Ma era, and in particular the lack of effective oversight by the legislature and other bodies over the presidency.

The Legislative Yuan is equipped with broad powers to monitor and sanction the Executive Yuan: it can compel testimony in front of legislative committees by any member of the cabinet, including the premier, and legislators can cut (although not add or reallocate) items in the executive’s budget proposal and freeze portions of executive ministry budgets to compel responses from the Executive Yuan. Nevertheless, these powers of supervision do not reach into the Presidential Office or to its key policy-coordination body, the National Security Council (NSC). Since President Chiang Kai-shek created it as a body within the Presidential Office in 1967, the NSC has played a critical coordinating role in domestic as well as foreign policy. It is chaired by the President and includes the Vice President, the President’s Chief of Staff and Chief Military Aide, Chairman and Vice Chairman of the President’s Strategic Advisory Committee, the Premier and Vice Premier, Defense Minister, Foreign Minister, Minister of Economic Affairs, Finance Minister, Chief of the General Staff of the Armed Forces, the NSC Secretary-General (typically a political “handler” for the President), and anybody else the President wants.

The National Security Council has remained extremely powerful because of its membership and the breadth of its policy responsibilities. Although in theory it meets only for issues and policy domains related to “national security,” in practice the NSC can claim dominion over virtually any government function through an exceptionally broad definition of that term. For example, in 2014 the NSC labeled both a food safety scandal and the global Ebola pandemic as issues relevant to national security, allowing President Ma to take direct control of the response to these issues. What made this development especially problematic from a constitutional standpoint was that the NSC—and indeed, all of the executive functions housed in the Presidential Office—were beyond the reach of the Legislative Yuan. Once an issue is

categorized as involving national security, the decisions taken by the President and executed through the NSC are not subject to direct scrutiny and review by the LY, although legislators can question the heads of the Executive Yuan ministries involved in implementing NSC decisions.

These limits on the legislature's role in overseeing executive branch actions are particularly fraught in the case of cross-Strait relations. Under the Act Governing Relations between the People of the Taiwan Area and the Mainland Area—often shortened to the “Cross-Strait Relations Act”—the Cabinet-level Mainland Affairs Council (MAC) is responsible for handling research, planning, review, and coordination of mainland policies and affairs. The Cross-Strait Relations Act also establishes a “semi-official” body, the Straits Exchange Foundation (SEF), to handle cross-Strait negotiations, meetings, and other activities authorized by the MAC, in order to get around the thorny sovereignty problems that afflict all cross-Strait interaction. While in theory the MAC chairman is supposed to formulate and oversee the implementation of cross-Strait policies under the supervision of the Premier, in practice the President has taken a strong direct role in cross-Strait relations, exercised through the NSC, the premier, and even via direct instructions to individual ministries. The negotiations and implementation of ECFA, for instance, were supervised closely by President Ma through the NSC. While legal, this practice at the very least contravened the spirit of the Cross-Strait Relations Act, which delegates power over such matters to the MAC and guarantees a formal oversight role to the legislature.

A related complaint was the way that cross-Strait agreements were reviewed by the Legislative Yuan after being signed by the Ma administration. Strikingly, most agreements were not even subject to the same standard of scrutiny and approval that formal treaties were under the ROC Constitution: of the 27 formal agreements<sup>25</sup> signed between the cross-Strait bodies during the Ma era, only three required an affirmative vote from the Legislative Yuan to take effect. The reason is that the Cross-Strait Relations Act specifies three different procedures under which agreements will be considered by the legislature. Those requiring no changes to

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<sup>25</sup> One other agreement was a supplementary statement of “Consensus Reached” on Mainland Investment in Taiwan; this statement was apparently not codified in executive orders or sent to the Legislative Yuan at all.



existing laws, only to executive orders, are submitted only “for record” (備查案 *beicha an*), and take effect automatically unless the LY acts to prevent their implementation within three months. Those that require changes to existing laws must be submitted to the legislature “for review” (審查案 *shencha an*); there is no time limit for the LY to act on these agreements, and no legal requirement that they be reviewed as a single package and given an up-or-down vote. And those that deal with sea and air links and immigration require that the legislature actively “approve” (決議 *jueyi*) them; however, if no vote on the agreement is held within a month, it will be considered to have been approved. So in practice, this procedure has the same effect as filing a change for record—it requires positive action by the Legislative Yuan within a set time limit to *prevent* the agreement from taking effect.

The weakness of LY rights of oversight of highly sensitive cross-Strait interactions, combined with rules that make the reversion point the approval rather than rejection of an agreement, attracted a great deal criticism from the DPP and other opponents of the Ma administration’s cross-Strait initiatives. In response, a number of proposals to strengthen the legislature’s ability to monitor and scrutinize cross-Strait negotiations were floated during the late Ma era, ranging from requiring legislators from all party caucuses to be included in any cross-Strait negotiations, to simply tightening the procedure by which agreements would have to be approved by the LY. But they had in common a desire to increase the Legislative Yuan’s power to affect cross-Strait relations.

In addition, the DPP highlighted another hidden source of the power imbalance between the executive and legislative branches: policy expertise. The Executive Yuan has traditionally dominated policy development and execution, while the legislature has had few independent sources of expertise and information with which to evaluate EY policy claims. Thus, Tsai Ing-wen and the DPP included in the party’s 2016 election platform a promise to seek to increase staff support and resources for legislators’ offices to lessen this imbalance.

## *2. Reforming the Electoral Process*

A second area of complaints from civil society, academics, and especially smaller third parties was the Legislative Yuan electoral system. Although used for the first time only in 2008,

this system quickly became the target of bitter complaints from activists and politicians from smaller parties, who are clearly disadvantaged under its more majoritarian features. The DPP, too, criticized this system after it exacerbated the party's sweeping defeat in the 2008 elections, when it got only 23 percent of the seats with 38 percent of the district vote. In addition to disproportionality, the system is also potentially skewed toward the KMT: because each county must have at least one representative, the KMT strongholds of Jinmen and Matsu and the east coast counties of Hualien and Taitung all elect their own legislators despite being significantly less populous than other districts. The six seats elected from special indigenous districts had a similar effect: they are overrepresented relative to overall population and also tend to elect pan-blue representatives.

Thus, from the first time it was used, the electoral system became a major focus of reform proposals. Oddly, however, much of the discussion in the run-up to the 2016 election was not about the district components of the system but instead concerned the Proportional Representation party-list tier of seats, through which only about a quarter of all seats. New parties formed after the 2014 Sunflower Movement wanted a better shot at winning seats, and the easiest way to do that from their perspective was to lower the five percent threshold to qualify for party list seats. This proposal ignored the fact that the legislature's disproportionality is due to the single-member districts and the lack of any compensatory component in the electoral system.

Some constitutional reform advocates also took aim at two legal threshold provisions that have severely limited the use of "direct democracy"—referendums and recalls—to effect political change. The referendum law passed during the Chen Shui-bian era includes a stringent turnout requirement: at least 50% of all registered voters must cast ballots for a national referendum to be considered valid. This requirement caused all four referendums held during the Chen era to fail. Pro-independence advocates, in particular, took issue with this limitation, and they have consistently advocated lowering or abolishing this restriction to make direct votes easier to pass. Activists associated with the New Power Party had similar complaints about the recall law, which had the same turnout requirement; this threshold prevented a

recall campaign against three KMT legislators in 2014 from succeeding. Thus, elements of the DPP's 2016 election coalition wanted to see both of these restrictions loosened or eliminated.

An assortment of other proposed changes fall into this category as well, from strengthening campaign reporting requirements and enforcement to relaxing or eliminating the permit requirements in the Assembly and Protest Law. Reform advocates on both sides of the partisan spectrum also supported lowering the voting age to 18, from 20, and introducing some kind of absentee balloting in elections.

### *3. Strengthening Accountability Institutions*

A third area of concern to reformers was Taiwan's accountability institutions—that is, the court system in the Judicial Yuan, the prosecutor's offices under the Ministry of Justice, and the Control Yuan. During the Ma era, the most important source of independent oversight of the government and ruling party came not from either the Legislative or Control Yuans but instead from the judicial branch, particularly local prosecutors. The independence and professionalism of prosecutors' offices was one of the most important, and hard fought, achievements of Taiwan's young democracy during the Chen Shui-bian era. Despite still being formally accountable to the Minister of Justice—a presidential appointee—prosecutors remained for the most part free of direct political control during the Ma era, and took on a number of politically sensitive cases that ensnared ruling party officials.<sup>26</sup> In one prominent instance in 2012, for example, after media reports exposed his involvement in a bribery case, the Taipei District Prosecutor's Office detained and charged with corruption Lin Yi-shih, a former vice-chairman of the KMT and the sitting Secretary General of the Executive Yuan. He was eventually convicted and sentenced to more than 13 years in prison for bribe-taking while he was a KMT legislator.

Nevertheless, in many other cases, prosecutor's offices appeared reticent to investigate suspect practices within the executive branch and in local governments controlled by KMT officials. One of the most prominent instances was in Taipei, where the KMT mayor Hau Lung-bin had overseen the awarding of a lucrative construction contract to Farglory Land

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<sup>26</sup> Goebel, "Taiwan's Fight against Corruption."

Development Company to construct the Taipei Dome, a 40,000-seat, publicly-funded indoor stadium. After the independent mayor Ko Wen-je took office in 2014, he criticized the contract for being overly generous to Farglory, and the design of the building as unsafe. After years of criticism, the Taipei district office finally arrested the Farglory chairman in June 2017 for bribing Taipei city officials to win favorable contract terms. Other cases that were belatedly prosecuted only after the change in ruling party include that of former Miaoli County Magistrate Liu Cheng-hung (censured by the Control Yuan in August 2016 for breaching debt limits, after Tsai's first appointees had been seated there), and KMT legislator Alex Tsai (indicted in July 2017 for embezzlement of KMT funds in a corporate ownership transfer scheme.) In these and other cases, prosecutors gave the appearance of political favoritism in the public corruption cases they pursued.

Perhaps the most alarming example of the politicization of investigative bodies during the Ma era was the Special Investigative Division (SID) of the Supreme Prosecutor's Office. The SID was created during the late Chen Shui-bian era to prosecute corruption by high-level public officials, including Chen himself. It opened a new case against then-candidate Tsai Ing-wen in December 2011, less than a month before the 2012 presidential election, to investigate Tsai's ties to a government-backed company that she had helped create in 2007, when she was still deputy premier. The accusations of wrongdoing hung over Tsai during the last part of the election campaign; only well after the election, in August 2012, did the SID announce that it had cleared Tsai of any wrongdoing.

In September 2013, the body came under even more intense scrutiny and criticism, this time from across the political spectrum. Huang Shih-ming, the director of the SID, reported to President Ma on wiretapping of the Legislative Yuan Speaker, Wang Jin-pyng, that recorded an apparent attempt by Wang to influence a local prosecutor's office not to proceed with an appeal of a case against the DPP caucus leader, Ker Chien-ming. Although Wang was a KMT member, he had become by that point a major problem for the Ma administration: he had consistently worked to preserve LY autonomy from the executive branch, and he had only two months before negotiated stricter rules of review for the CSSTA that made its approval unlikely. Thus, Ma quickly went public with the SID's accusations against Wang, and used the

information to try to force Wang out of the party. At least three aspects of this incident were problematic. First, the SID was caught wiretapping phones of the legislature without appropriate warrants, raising questions about illegal procedure and potential intimidation of legislators. Second, the SID was supposed operate as an independent prosecutorial body, not directly under the control of and reporting to the President. Yet Huang informed Ma as soon as he learned the details of the wiretapping. Third, Ma immediately used this information for a transparently political purpose: to try to replace the speaker of the LY with someone friendlier to his administration's agenda.

Thus, when Tsai took office, accountability institutions were one of the top items on the DPP's political reform agenda. Members of the party leadership openly advocated replacing or removing judges, enhancing the independence of prosecutors, and reforming or abolishing the Control Yuan and Special Investigative Division of the Supreme Prosecutor's Office, both of which had gotten entangled in the 2012 election campaign and partisan politics.

#### **4. New Boss, Same as the Old Boss?: The Domestic Political Regime under Tsai Ing-wen and the DPP**

Now that Tsai Ing-wen and the DPP majority have been in office more than a year, the patterns of the DPP regime have started to come into focus. Most striking is the strong continuity with the previous government of Ma Ying-jeou and the KMT. In several important ways, President Tsai's management style and her policy priorities, successes, and failures are remarkably similar to her predecessor's.

First, policy-making under the new DPP administration has remained centralized within the Presidential Office. Tsai's first cabinet was staffed mostly with non-partisan technocrats rather than party officials, exemplified by her choice of Premier, Lin Chuan, an academic without a power base in the DPP or previous experience in electoral politics. In addition, Tsai retained the party chairmanship as she took office, and she rather than the premier has served as the direct link between the DPP's caucus in the Legislative Yuan and the Executive Yuan. DPP

party leaders, including prominent legislators, have been brought into regular decision-making meetings but have clearly played a secondary role in the formulation of the administration's priorities.<sup>27</sup>

Second, the institutional reform proposals to strengthen legislative oversight that were so prominently discussed by party elites and in DPP-friendly media before the election, detailed above, have all but disappeared from the party's legislative agenda. Most notably, the DPP legislative caucus's strident demands for greater oversight of cross-Strait negotiating bodies, including over the MAC and SEF, have faded away now that a DPP member is in the Presidential Hall and there is little near-term prospect of meaningful new cross-Strait negotiations. Tsai herself signaled even before she took office that she would oppose new legislation creating a greater role for the LY in the conduct of cross-Strait affairs.<sup>28</sup> Nor has talk of introducing formal LY oversight of the National Security Council and other bodies that are currently beyond its reach been turned into concrete change. More fundamental reform proposals, such as moving toward a more fully presidential system, have also been stalled by partisan objections, this time from the KMT. Instead, the LY's main avenues of influence over the executive branch continue to be via interpellation of Executive Yuan officials and budget freezes or cuts; the NSC remains in a legal grey area, and individual legislators are still at a distinct disadvantage in the policy-making process in terms of expertise, resources, and information.

In fact, the modest changes that have been introduced into the legislature since the DPP assumed control have, on balance, strengthened the Tsai administration's hand rather than the legislature's. First, in February 2016, Su Jia-chyuan was elected the new speaker, replacing Wang Jin-pyng. Su is a DPP loyalist and an ally of Tsai Ing-wen (he ran as the vice-presidential candidate on the 2012 ticket), and his elevation has helped ease the way for smoother

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<sup>27</sup> In September 2017, President Tsai replaced Lin Chuan with William Lai, the popular DPP mayor of Tainan City and a rising star within the DPP. It is not yet clear whether Lai's appointment will fundamentally change the way the Tsai administration interacts with the DPP legislative caucus and the rest of the party center.

<sup>28</sup> Jiing-wen Tzou, "Interview: DPP's Oversight Bill Flawed, Sunflower Activist Says," *Taipei Times*, April 25, 2016, p. 3.

<http://www.taipeitimes.com/News/taiwan/archives/2016/04/25/2003644780> (accessed November 27, 2017)

executive-legislative coordination. Su has also started following the requirement that CPNC “official” negotiations be televised or otherwise recorded and made available to the public. In addition, it is now clear that minority parties cannot indefinitely use the CPNC to wield an effective veto over all legislation in the current LY. The KMT has tried to adopt the same tactics that the DPP used with such success during its years in the minority, but it has often overplayed its hand, and though it has succeeded in stalling consideration of individual bills for weeks or even months, it has ultimately lost almost every prominent legislative fight to date. When the DPP caucus is unified behind a bill and prioritizes its passage, the party’s legislative majority has been enough to force a vote on legislation opposed by the KMT, most notably on the law creating the Ill-Gotten Party Assets Committee to investigate the transfer of public resources and property to the KMT during the martial law era.

Third, most other institutional reforms have been strikingly absent from Tsai and the DPP’s first-term agenda. For instance, changes to the electoral system that would reduce the disproportionality of the legislature face poor prospects, since they would require support from three-quarters of the LY as well as approval in a referendum, and the DPP now is the biggest beneficiary of the current system. The only reform that appears to have any near-term chance at passage is lowering the PR list threshold from 5 percent to 3 percent—a reform that would have no effect on the 70 percent of seats that are currently elected from single-member districts, and thus would do almost nothing to improve proportionality or make single-party majorities less likely.

The Tsai administration has also kept off the legislative agenda any discussion of amending the referendum law. Pro-independence and direct democracy advocates, led by the long-time activist Lin Yi-hsiung, have taken up hunger strikes in front of the DPP headquarters to put pressure on the Tsai administration to lower the 50 percent turnout threshold, because it effectively renders most referendums null and void unless they attract extraordinarily wide support across the partisan divide in Taiwan.<sup>29</sup> But President Tsai clearly wants nothing to do with this issue, because it is a no-win situation for her. On one side, the proposed changes to the referendum law would create major problems in Taiwan’s relations with the PRC and the

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<sup>29</sup> <http://www.taipeitimes.com/News/taiwan/archives/2017/05/12/2003670430>

United States, as they did during the Chen Shui-bian era. On the other, a referendum on independence is a long-cherished goal of deep green activists who make up part of Tsai's base, and she does not benefit from being seen as the primary obstacle to making this kind of vote a reality. Thus, as long as Tsai is in office, changes to the referendum law are likely to remain off the agenda altogether.

The one significant reform adopted so far to enhance "direct democracy" was an amendment that eliminated a turnout threshold for recalling elected officials. The bill was heavily promoted by the New Power Party, who saw it as a way to increase the feasibility of recall of unpopular officials. But by changing the recall law to require only 25 percent approval of all registered voters in a district, and lowering the share of signatures required to qualify a recall for the ballot, the amendment made it easier for any intensely motivated group to mount a serious recall challenge against elected representatives. Ironically, the first case of a recall under the new rules has been directed against the leader of the NPP himself, Huang Kuo-chang, who had championed the rule changes when it appeared they were thwarting his movement's efforts to unseat unpopular KMT incumbents.

Finally, President Tsai and the DPP have moved cautiously on proposed reforms to the ROC's accountability institutions: the judiciary, the procuratorate, and the Control Yuan. Early in her first year, Tsai appointed an advisory committee to review and recommend reform proposals for the judicial branch, but it has been dogged by accusations that the outcome is predetermined, and several members have quit in protest; it has yet to finish its work. Rather than abolish or radically reform the Control Yuan, President Tsai nominated a new slate of candidates to replace the Ma appointees whose terms were ending, and she has done the same for the Council of Grand Justices. The one reform achievement to date has been the abolition of the Special Investigation Division of the Supreme Prosecutor's Office, a move which had broad backing within the DPP.<sup>30</sup> This change handed authority for high-level prosecutions back to ordinary prosecutor's offices, but did not change the lines of authority within the

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<sup>30</sup> Yu-fu Chen and Jake Chung, "SID Abolished as Legislature Hands Prosecutors the Reins," *Taipei Times* Saturday, November 19, 2016, p. 1, <http://www.taipeitimes.com/News/front/archives/2016/11/19/2003659559> (accessed November 27, 2017).



prosecutoriate: the prosecutor-general, a political appointee nominated by the President and confirmed by the Legislative Yuan, still directly oversees all prosecutor's offices.

*The DPP Reform Agenda in Practice: Getting the KMT*

In practice, rather than pursuing a broad agenda of institutional reform, the ruling DPP has instead prioritized addressing the lingering legacies of the party-state era, or to put it less charitably, on "getting the KMT." Even as it oversaw a transition to liberal democracy in the 1990s, the KMT retained considerable structural and financial advantages that it accumulated during the authoritarian period, when party and state personnel, financing, and other resources were opaquely intermingled. These legacies of the martial law era have, in the view of most DPP members, given that party an unfair electoral advantage, one that needs to be eliminated to complete Taiwan's democratic consolidation. Even before Tsai Ing-wen took office in 2016, the new DPP majority in the LY had begun work on legislation that would ensure a thorough review of the KMT's assets and force the disgorgement of properties and funding that legitimately belonged to the public coffers. The bill was passed over strenuous KMT objections in July 2016, and the committee it created has since brought a number of controversial cases to light and put pressure on the KMT to provide a fuller accounting of party assets. It also imposed a temporary freeze on several KMT bank accounts, rendering the party temporarily unable to pay party worker salaries. The committee has also gone after the assets and personnel of other organizations linked to the KMT in the authoritarian era, including the China Youth League, the China Red Cross, and the National Women's League.

Beyond the party assets issue, Tsai and the DPP have taken other steps to undercut the KMT's traditional advantages, from reducing pension payments to KMT party workers to weakening the KMT's longstanding ties to local patronage networks. Early in 2016, for instance, the DPP-majority LY passed a bill requiring elections for council speaker and deputy speakers to be on the record, a reaction to an infamous case of vote-buying in the Tainan City Council speaker's race that cost the DPP control of that position. Later, after a long and acrimonious debate, the legislature cut and reformed civil servant pensions, which had disproportionately benefitted retirees who served the KMT during the martial law era. More recently, the LY

passed a new NGO law and banned political parties from running businesses, a move which disproportionately affects the KMT.<sup>31</sup> The Tsai administration has also floated a proposal to make the heads of local Farmer's Associations appointed, rather than elected, positions, potentially breaking KMT-leaning factions' grip on these. And it has proposed eliminating elections for township heads, who traditionally served as crucial links in factional structures in rural areas.

All of these initiatives have moved forward because they satisfy three conditions: they are uncontroversial within the DPP, enjoy majority support in public opinion polls, and advance the DPP's political interests at the expense of their major rival. Most other reform proposals, however, do not meet all these conditions, and are likely to languish as a result. Thus, for the rest of Tsai Ing-wen's first term, at least, we are likely to see this pattern repeat itself: legislation that reforms the political regime in a way that benefits the DPP's interests, and harms the KMT's, will remain at the forefront of the agenda in the legislature. Reform proposals that do not have an intra-DPP consensus behind it, by contrast, let alone a cross-party consensus, will probably never see the light of day.

#### **4. The Future of Taiwan's Domestic Political Regime**

The previous discussion implies that President Tsai Ing-wen and the DPP are likely to change the political regime of the ROC around the edges in some ways, but not fundamentally reform it. The greatest impact of the DPP's reforms may well be on the KMT itself, rather than on the broader sets of institutions that make up the Republic of China.

The DPP's overriding concern with reducing the KMT's remaining structural and financial advantages is because these measures satisfy three conditions: they are uncontroversial within the DPP, enjoy majority support in public opinion polls, and advance the DPP's political interests at the expense of their major rival. Most other reform proposals, however, do not meet all these conditions, and are likely to languish as a result. For instance, amendments to

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<sup>31</sup> <https://www.taiwannews.com.tw/en/news/3294842>

the referendum law are a political minefield for President Tsai, one she would rather avoid, and are therefore unlikely to ever see the light of day in the LY. Changes to the electoral system reform look almost impossible to achieve, because they would require passing a constitutional amendment: winning a three-fourths vote of the legislature in addition to a referendum. Reforms that require only statutory changes are more likely, but again, only if they aid the DPP's own interests. It remains an open question whether Tsai and her party will manage to adopt significant judicial reforms, but it certainly looks more feasible than changes to the electoral system or executive-legislative relations.

Nevertheless, the most likely track of political reform over the next few years is one of continuity, not dramatic change. President Tsai and the DPP enjoy many of the same advantages that Ma and the KMT did in Ma's first term, but they also face similar constraints on their ability to implement fundamental institutional change. The experience of the Ma era suggests that public opinion and cross-party consensus will decide most of the critical reform issues, and the lack of a clear consensus on most political reform issues makes it unlikely we will see major change to the political system in the near future.

In many ways, this is unfortunate for Taiwan's democratic development. The current political system has fundamental flaws: it is highly centralized and majoritarian, its institutions of accountability are widely distrusted and insufficiently autonomous, non-partisan, and professional, and the minority parties in the legislature are incentivized to engage in grandstanding and obstruction rather than constructive criticism or cooperation with the ruling party and the executive branch. The current configuration is a worst-of-both-worlds kind of outcome: it neither ensures proportionality of representation, nor decisive majorities, and it suffers from poor clarity of responsibility. Without addressing these weaknesses, the potential is there for the Tsai administration to go the way of the Ma era: to suffer a sharp reaction as it becomes more unpopular, gets swept out of power, and is returned to opposition. The best way for the DPP to guard against this experience, and to improve Taiwan's democratic hardware, is to increase the impartiality, autonomy, and professionalism of the ROC's accountability institutions. It is an open question whether Tsai and the DPP have the wisdom, the will, and the ability to meet this need.

Yet, on a more positive note, Taiwanese leaders of all political stripes have muddled through despite those flaws to date. The commitment of the political elite, and the mass public, to democratic ideals—its “software”—appears firm. The strong traditions of political debate, respect for alternative points of view, and freedoms of media, assembly, and speech have not been compromised and remain a critical part of Taiwan’s democratic resilience. The fact of Taiwan’s long institutional continuity is an important part of the regime’s underlying strength—the defining characteristic of Taiwan’s political evolution from a one-party dictatorship to a vibrant, pluralist multiparty democracy has been its gradualism, and that bodes well for the regime’s long-term sustainability.