

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

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## Introduction

To most casual observers, the victory of Tsai Ing-wen and the Democratic Progressive Party (DPP) in the January 2016 general elections appeared to mark the start of a new political era in Taiwan. For the first time, the DPP won both the presidency and a comfortable majority in the Legislative Yuan, bringing 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 not only to policy but also to core political institutions. The DPP's ambitious political reform agenda ranged from the symbolic, such as changing the national flag and redefining 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.

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 President Tsai and the DPP leadership have in practice continued this pattern of slow consensus-building and piecemeal reform of institutions. The new ruling party has moved hesitantly on even minor changes to the political regime: as of this writing, proposals to revamp the electoral system, the judiciary, campaign and party finance regulations, assembly and protest laws, the organization of the legislature, and Legislative Yuan oversight of cross-Strait relations remain only at the discussion stage. The lack of any 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 proposals with broad, cross-party consensus have any chance of passing. Thus, the success of the DPP's broader 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 this chapter, 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 the party system* and a concurrent *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 has become 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, political power has been 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 appears to give the president extraordinary influence 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 constitutional 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 greatest institutional puzzle of the post-Chen Shui-bian era: despite the enormous concentration of formal power in their hands, both President Ma and President Tsai have struggled to get their policy priorities passed by the legislature and adopted into law. The most obvious example from the Ma era is the review of the now-infamous Cross-Strait Services Trade Agreement (CSSTA), which triggered a backlash, first by the legislature, and then by the student-led protest known as the Sunflower Movement that occupied the Legislative Yuan. But Ma’s government also struggled to pass changes in a number of other high-profile areas as well: in taxes, pension reform, and agricultural imports, for instance. Tsai Ing-wen thus far has won passage of some notable high-profile legislation, including bills vociferously opposed by the KMT dealing with “ill-gotten” party assets, transitional justice, labor law amendments, and civil servant and military pension reforms. But overall, her government’s success rate in the legislature has not been any higher than Ma Ying-jeou’s during his first term, and she, too, has struggled with low public approval ratings, frequent turnover of cabinet ministers, intra-party criticism, and continued slow progress on many elements of an ambitious agenda. The political difficulties that both Ma and Tsai have faced indicate that there is more to the story than an analysis of the first-order institutions of the regime can tell us, and they draw 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 especially the legislature. Among these is 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, prosecutorial, and Control Yuan.

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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).

In the fourth section, I consider what the Tsai administration has actually prioritized during her first three years in power, and how the DPP's political reform agenda has fared. In contrast to the party's high-minded rhetoric during the Ma era, the issue at the top of the DPP's agenda in practice has been dealing with the remaining legacies of the party-state era, or to put it less charitably, on crippling the KMT. The DPP's preoccupation 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 have languished 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: Towards a Nationalized, Majoritarian Political System**

Over the last 30 years, Taiwan's political regime has evolved in two important but subtle ways: electoral competition and the party system have become increasingly nationalized, and single-party rule with unified executive-legislative control of the central government has become much more likely.

### *Toward a Nationalized Party System*

By a *nationalized* party system, 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, factional ties, and other personal and idiosyncratic factors.<sup>2</sup> Since the early 2000s, a voter's partisan identification has been the strongest predictor of how she will vote in any given race, and split-ticket voting, once common in Taiwanese elections, is now relatively uncommon, especially in central elections and across political camps.<sup>3</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. Note that by "split-ticket voting" I am referring here to casting a vote for one party's candidate in the executive election, and another party's candidate in the legislative district race. Splitting one's district and party list votes is now possible and, apparently, fairly common in legislative elections. See T.Y. Wang, Chang-chih Lin, and Yi-ching Hsiao, "Split-Ticket Voting under MMM,"

The second element is the uniformity of the party system across districts and jurisdictions. Scott Morgenstern has termed this feature “static” nationalization: the parties nominating candidates are the same across the country, and the shares of the vote they get are similar as well.<sup>4</sup> Although Taiwan’s two major parties have long had clear regional strongholds—the KMT in parts of the north, east, and offshore islands, and the DPP in the south<sup>5</sup>—they also are each 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 races.<sup>6</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 the new single-member districts to coalesce around one of two party nominees.<sup>7</sup> Small parties have survived and persisted in the legislature, thanks mostly to the proportional representation tier of seats, but even after 2016 they held only 9 of 113 seats, or less than eight percent.

The third element is that the swings in vote share from one party to another across different elections are *also* increasingly uniform (what Morgenstern calls “dynamic nationalization”). The last three presidential elections in Taiwan have featured remarkable geographic consistency in the two-party swing at the county level.<sup>8</sup> Many observers have noted the monotonic increase in the DPP’s presidential vote share<sup>9</sup> from 2008 to 2012 to 2016, but

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in *Mixed Member Electoral Systems in Constitutional Context: Taiwan, Japan, and Beyond*, (Ann Arbor: University of Michigan Press, 2016), pp. 194-226.

<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> Jinn-Guey Lay, Ko-Hua Yap, and Yu-Wen Chen, “The Transition of Taiwan’s Political Geography,” *Asian Survey* Vol 48 no. 5 (2008), pp. 773-793.

<sup>6</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>7</sup> Chi Huang, Ming-feng Kuo, and Hans Stockton, “The Consequences of MMM on Party Systems,” *Mixed Member Electoral Systems in Constitutional Context*, pp. 25-51.

<sup>8</sup> Kharis Templeman, “The Party System during the Ma Ying-jeou Era,” in Yun-han Chu, Larry Diamond, and Kharis Templeman, eds., *Democracy in Taiwan: The Ma Ying-jeou Era*. (Boulder, CO: Lynne Rienner Publishing, Forthcoming).

<sup>9</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. For representative commentary on the DPP’s gains in elections from 2008 to 2016, see John Fu-sheng Hsieh, “Taiwan’s 2016 Elections: Critical Elections?,” *American Journal of Chinese Studies* (2016), pp. 9-23; Dafydd Fell, *Government and Politics in Taiwan* (Routledge, 2<sup>nd</sup> ed., 2018), pp. 267-282; Michael Hsiao, “2016 Taiwan Elections: Significance and Implications,” *Orbis* (Fall 2016): 504-514.

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 in increase across localities, but she still won at least 5% more in every single jurisdiction than in 2012: her smallest gain was in Penghu, where she captured 5.16% more of the vote, and her largest in Taipei, where she got 12.4% more. This uniformity of swing is another indication that national factors have outweighed local ones in recent presidential elections.<sup>10</sup>

The final element of nationalization is that "national" issues are increasingly important even in local races. 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 county executive races. But partisanship has trickled down to lower levels as well, and national factors increasingly drive voting behavior even in local elections.<sup>11</sup> The KMT's sweeping defeat in the 2014 elections, for instance, was remarkable not only for its breadth—the party lost nine of the 15 executive seats it previously held—but also the uniformity of its decline in vote share across these races. The deep unpopularity of President and KMT party chairman Ma Ying-jeou at this juncture clearly contributed to the broad downturn in the party's electoral fortunes. In another striking parallel, the opposite happened in 2018: wide dissatisfaction with President Tsai Ing-wen and the ruling DPP contributed to the party's rout in the most recent local elections, including defeats in high-profile races in New Taipei and Taichung and stunning losses in localities the DPP had long held such as Kaohsiung City and Yilan and Yunlin Counties.

A significant factor behind this trend is the consolidation of local governments and their election cycles. In the late 2000s, six localities were combined into three: Taichung, Tainan, and Kaohsiung were merged with their namesake counties and, along with Taoyuan and Taipei Counties, elevated to special municipality status. This reform converted the former townships and towns of the counties into municipal districts and abolished the directly elected offices of township heads and representatives in these jurisdictions. Township offices had been important positions of influence and key nodes in local factions, and it is plausible that their elimination has weakened factional influence over elections, policy, and patronage in the new

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<sup>10</sup> Figures drawn from Templeman, "The Party System in the Ma Ying-jeou Era."

<sup>11</sup> Chia-hung Tsai, Chin-shou Wang, and Ding-Ming Wang, "Analysis of a Compound Campaign in the 2005 Three-in-One Election: A Case Study of Loh Tsui County," *Taiwan Political Science Review* Vol. 11 no. 2 (2007), pp. 173-225 [in Chinese]; Chi Huang and Yi-ching Hsiao, "Government Performance and Vote Choice in Local Elections: the Case of 2009 Yunlin County and Township Magistrates Elections," *Journal of Election Studies* Vol. 18 no. 2 (2011), pp. 59-86 [in Chinese], both cited in Austin Wang, "How Do Political Scientists View 'Mother Hen Leading Chicks' in Taiwanese Elections?" [in Chinese], at *Political Marketplace*: <http://whogovernstw.org/2018/07/27/austinwang36/>, July 27, 2018.

special municipalities.<sup>12</sup> At the same time, terms and election cycles for all local officials were synchronized beginning in 2014, so that the nine different kinds of local elections, formerly held at different times, are now all held on a single day every four years. By ensuring the composition of the electorate is the same for each type of local election, and by strengthening incentives for party candidates to coordinate their campaigns, the new format has increased the importance of national partisan trends in local elections, making these more like “midterm” federal elections in the United States.<sup>13</sup>

These elements of a fully nationalized party 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.

### *Toward Single-Party Majority Rule*

The second under-the-radar trend has been the reduction of the number of formal veto players. By *veto players*, I mean actors whose approval is needed for a change in the policy status quo.<sup>14</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 accountable directly to the president via her power to unilaterally appoint and remove its leader, the Premier, and is therefore not an independent veto player in the political system. In addition, because

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<sup>12</sup> For some suggestive evidence of these trends, see Hsu Chao-lin, “The Influences upon Local Factions after the Merger of Kaohsiung City and County,” M.A. Thesis (2011), National Development Graduate Institute, National Chengchi University [in Chinese]; Hsu Chen-yu, “Institutional Change and the Development of Local Factions— A Case Study in the Merger of Tainan City and County,” M.A. Thesis (2013), Department of Political Economy, Chengkung University [in Chinese].

<sup>13</sup> Council seats remain important, though partial, exceptions to these general trends. The more permissive and personalist STNV electoral system is still in use for council seats, which allows small parties and independents a greater shot at winning seats. But here, too, the shifts upward and downward in the two major parties share of council seats is closely correlated with their national performance. For instance, the KMT lost 33 seats in 2014, or 7.9%, while DPP lost 53 in 2018, or 18.2%. In elected offices below the city/county level, such as ward and village chief elections, the small size of electorates seems to render partisan considerations less important, and most winning candidates are independents; see Austin Wang, “Duverger’s Law as Scale Effect: Evidence from Taiwan 2014 Village Elections,” *Journal of Electoral Studies* vol 22 no. 1 (2015), pp. 109-141 [in Chinese].

<sup>14</sup> George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton: Russell Sage Foundation, 2003).

presidential and legislative elections are now held concurrently, it is 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 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>15</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 and giving its members unparalleled visibility and a platform to influence public opinion and national debates.<sup>16</sup> The Legislative Yuan has also accrued many additional constitutional 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.

Over the same time period, party representation in the legislature 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 2008, it was switched from the single non-transferable vote (SNTV) system in high-magnitude 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 the term of the legislature was extended from three to four years, to coincide with the length of the presidential term.

These changes together 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

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<sup>15</sup> Yu-shan Wu, "Comparing Taiwan and the CEE Trio: The Impact of Social and Institutional Factors on Democracy," *Taiwan Journal of Democracy* May (2013): 103-127.

<sup>16</sup> For a good overview 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.

legislative branches came under the control of a single ruling party.<sup>17</sup> 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 contributed to the defeat of many incumbent KMT legislators, carrying into office a new DPP LY majority.

The changes in appointment procedures for the Judicial and Control Yuans has also increased the president's ability to shape the makeup of these nominally independent branches to his or her liking. For instance, term limits on the 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. Tsai has had the same opportunities: by 2019 her appointees will already make up a majority of the court. The Control Yuan has undergone a similar partisan transformation. 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 became broadly deferential to the Ma administration and the ruling party. Similarly, since Tsai Ing-wen took office, she has already been able to replace a majority of the Control Yuan's members with her own nominees, and the CY's activities have come into much greater alignment with the DPP's partisan priorities.

Thus, the overall effect of Taiwan's current political framework is that single-party majorities in the legislature, unified control of the executive and legislative branches, presidential leadership of and judicial deference to the ruling party are the norm. The presidency, in particular, is on paper a remarkably powerful institution, with the tools to dominate the entire political system if wielded by a skillful hand. In practice, however, both President Ma and President Tsai have been much less decisive on policy than expected, which should turn our attention to other, second-order features of the political system which have worked to limit presidential prerogatives and constrain executive authority.

## **2. The Post-2008 Puzzle: Majorities without Majoritarianism**

Both Ma Ying-jeou and Tsai Ing-wen began their presidencies with an immense concentration of formal power in their hands. Both took office after decisive electoral victories, and their own parties won commanding majorities in the legislature. They both held the chairmanship of their respective parties (Ma after 2009, Tsai until 2018), and initially faced a divided and demoralized opposition. Yet both presidents struggled to win legislative passage of bills that their cabinets approved and submitted to the Legislative Yuan for consideration.

The best data we have on this question come from an exhaustive study of legislative proposals in the Chen, Ma, and Tsai eras by Shi-hao Huang and Shing-yuan Sheng.<sup>18</sup> They find

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<sup>17</sup> See Hans Stockton, "How Rules Matter: Electoral Reform in Taiwan," *Social Science Quarterly* Vol. 91 No. 1 (2010), 21-41.

<sup>18</sup> Shi-hao Huang and Shing-yuan Sheng, "Decentralized Legislative Organization and Its Consequences for Policy-Making in the Ma Ying-jeou Era," in Yun-han Chu, Larry Diamond, and Kharis Templeman, eds., *Democracy in Taiwan: The Ma Ying-jeou Era*. (Boulder, CO: Lynne Rienner Publishing, Forthcoming).

that of the Ma administration's more than 1200 bills proposing new laws, major or minor revisions to existing laws, or repeals of laws, only about half were eventually approved in their original form by the legislature during his eight years in office. By comparative standards, Huang and Sheng find, this is an exceptionally low success rate: bills introduced by the government in pure parliamentary regimes are approved at least 85% of the time, and in presidential or semi-presidential regimes as varied as Brazil, Korea, Poland, Portugal and Mexico, passage rates are consistently above 70%. It is particularly striking that the Ma administration's success rate is not that much higher than the previous Chen Shui-bian administration, which saw 42% of its proposals enacted into law despite facing a Pan-Blue legislative majority. A similar pattern is already emerging for the Tsai administration: through the first Legislative Yuan session of 2018, Tsai's government had won passage for only 55% of all the legislation it had formally introduced, despite the presence of a large DPP majority there.

To put it bluntly, for most of the democratic era in Taiwan, the Legislative Yuan has been the place where government proposals go to die. In practice it has not mattered much whether the president's party holds a majority of the seats in the legislature, or faces a majority from the opposition: her legislative initiatives have little better than even odds of passage even under the best conditions. The idea that a single-party majority confers on the president wide latitude to "get things done" is widespread in Taiwan, even among perceptive observers of the political scene. But that idea rests on a misunderstanding: it is simply not true that executive branch priorities will get an expedited review even when the president is the party chair, and her party holds a large majority of the seats. A single-party majority in the legislature is better than no majority, but it confers far less than full control over legislative business. To understand why, we need to consider the second-order institutions of the Legislative Yuan itself.

### *Second-Order Institutions: Constraints on the President in Government Policy-making*

It was widely expected that the KMT majority in the LY would ensure considerable unity of purpose between the executive and legislative branches during the Ma years, and that the current DPP majority would do the same for President Tsai. Yet the organization of the legislature has served as a consistent check on presidential authority in both administrations, despite ostensible ruling party "control" of the legislative branch. In fact, as Huang and Sheng point out, there are at least five distinct ways in which the rules and organization of the legislature limit 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>19</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

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<sup>19</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.

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 government or majority party advantage over bill initiation; instead, this power is scattered widely across the party caucuses and individual legislators.<sup>20</sup>

Second, the majority party has only *limited control over legislative committees*. The Legislative Yuan includes at least eight permanent standing committees.<sup>21</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>22</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-convenor. 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.

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

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<sup>20</sup> Much of this discussion is based on Huang and Sheng, "Decentralized Legislative Organization and Its Consequences for Policymaking in the Ma Ying-jeou Era."

<sup>21</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>22</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.

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 in the legislature, no matter how small or large its membership, sends two representatives to the CPNC to negotiate on their behalf. 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 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 have in recent years worked 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 chairperson has traditionally enjoyed 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 the Ma era that holding the party chairmanship plus the presidency did not provide him sufficient leverage to bend recalcitrant

KMT legislators to his will. A similar pattern has emerged during the Tsai era so far, where President Tsai has either by choice or by necessity used the chair's position to play a coordinating rather than a whipping role in intra-party debates over legislation.

It is not obvious why the President's influence over his or her legislative caucus has been so limited since 2008. But one plausible explanation is that the change in electoral system made district legislators more sensitive to public opinion, and less dependent on ruling party endorsement and resources, than under the previous SNTV system. Prior to 2008, 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 less willing to support the executive branch's position 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, and to develop a strong personal reputation independent of their parties, to maximize their chances at reelection. Thus, the change in electoral rules has probably weakened the party leadership's leverage over individual legislators and, during the Ma administration at least, led to more frequent defections on government priorities that were unpopular with the electorate.<sup>23</sup>

### **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 unprecedented majority in the Legislative Yuan and its control of most 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 practical items<sup>24</sup> on this institutional reform agenda fall into three broad areas.

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

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<sup>23</sup> In a remarkably prescient article, Nathan Batto predicted this effect of the electoral reform in 2009. See Batto, "Change and Continuity in the Personal Vote after Electoral Reform in Taiwan," *Issues and Studies* 45 no. 2 (2009), pp. 99-123.

<sup>24</sup> I leave aside here any discussion of symbolic issues such as changing the name of the country, redefining the national territory, or adopting a new flag and anthem. Despite passionate views about these issues, the constitutional and geopolitical obstacles to these kinds of reforms, including opposition from the PRC and the United States, are so great as to render them impossible for the foreseeable future.

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 Presidential Office.<sup>25</sup>

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—was 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

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<sup>25</sup> See Chieh-chin Lin, “Taiwan: A Patchwork Constitution,” March 28, 2015, at: <http://constitutionnet.org/news/taiwan-patchwork-constitution>

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. It is striking that 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>26</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 existing laws, only to executive orders, are submitted only “for record” (備查案 *beicha an*), and take effect automatically unless the LY acts within three months to block their implementation. 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 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.

The DPP also 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 included in her 2016 election platform a promise to seek to increase staff support and resources for legislators’ offices to lessen this imbalance.<sup>27</sup>

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<sup>26</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.

<sup>27</sup> “Tsai Ing-wen’s Five Major Reforms,” August 16, 2015, at: <http://iing.tw/en/21> (accessed January 29, 2019).

## 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 were 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 won 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 have 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.<sup>28</sup> Oddly, however, much of the discussion in the run-up to Tsai Ing-wen's inauguration 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 are chosen.<sup>29</sup> 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 was due to the single-member districts and the lack of any compensatory component in the PR tier of the electoral system.

Some constitutional reform advocates also took aim at two legal threshold provisions that severely limited the use of "direct democracy"—referendums and recalls—to effect political change. The Referendum Act adopted 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 six referendums held during the Chen era to fail. Pro-independence advocates, in particular, took issue with this limitation, and they consistently advocated lowering or abolishing this restriction to make referendums 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 Tsai Ing-wen's 2016 election coalition wanted to see both of these restrictions loosened or eliminated, and signature requirements lowered as well.<sup>30</sup>

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<sup>28</sup> For instance, see Tsai Ing-wen's op-ed in the Apple Daily, "My Positions on Constitutional Reform," May 26, 2014, at: <https://tw.appledaily.com/headline/daily/20140526/35852858/>

<sup>29</sup> Hsiao-ti Chang and Jonathan Chin, "Alliance Touts Constitutional Reforms," *Taipei Times* March 16, 2016, p. 3, at:

<http://www.taipeitimes.com/News/taiwan/archives/2016/03/16/2003641702>

<sup>30</sup> Wei-han Chen, "NPP Tables Amendments to Referendum Act," *Taipei Times* March 23, 2016, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2016/03/23/2003642241>

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 or early voting in elections.<sup>31</sup>

### 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 effective independent oversight of the government and ruling party came not from either the Legislative or Control Yuan 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.<sup>32</sup> Despite still being formally accountable to the Minister of Justice—a presidential appointee via the premier's office—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>33</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.<sup>34</sup> In another case, Liu Cheng-chi, the brother of KMT Miaoli County executive Liu Cheng-hung, was arrested for illegally constructing a mansion on public land in Yangmingshan National Park, and dozens of National Property Administration officials were detained for questioning by the Taipei district prosecutor's office on suspicion of helping Liu obtain the land; the mansion was eventually demolished at Liu's expense.<sup>35</sup> (In a revealing contrast, Liu Cheng-hung himself

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<sup>31</sup> "Democracies around the World are Giving Voting Rights to 18-Year-Olds; Will the Republic of China Follow?," *The News Lens* June 28, 2015, at: <https://www.thenewslens.com/article/19198>

<sup>32</sup> See Weitseng Chen and Jimmy Chia-Shin Hsu, "Horizontal Accountability and the Rule of Law," in Yun-han Chu, Larry Diamond, and Kharis Templeman, eds., *Taiwan's Democracy Challenged: The Chen Shui-bian Years* (Boulder, CO: Lynne Rienner Publishing, 2016), pp. 158-60; and Chin-shou Wang, "Democratic Progressive Party Clientelism: A Failed Political Project," in *Taiwan's Democracy Challenged*, pp. 279-281.

<sup>33</sup> Goebel, "Taiwan's Fight against Corruption." Toward the end of the Ma era, a power struggle broke out between the Minister of Justice Lo Ying-shay and district prosecutors over Lo's discretion over prosecutorial appointments:

<http://www.taipeitimes.com/News/taiwan/archives/2015/07/23/2003623716>

<sup>34</sup> Jason Pan, "Lin Yi-shih Sentenced to More than 13 Years in Jail," *Taipei Times*, February 27, 2016, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2016/02/27/2003640332>

<sup>35</sup> Katherine Wei, "Ex-Official Charged in Land Grab Gets Bail," *China Post* December 5, 2013, at: <http://www.taipeitimes.com/News/taiwan/archives/2013/12/17/2003579213>; Stacey Hsu, "Controversial Yangmingshan Mansion Demolished," *Taipei Times*, December 17, 2013, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2013/12/17/2003579213>

was later impeached by the Control Yuan for breaching local government debt limits, but only in October 2016, after Tsai's first appointees had been seated there and well after he had left office in December 2014).<sup>36</sup>

Nevertheless, in 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 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 publicly criticized the contract for being overly generous to Farglory, and the design of the building as unsafe.<sup>37</sup> After years of accusations and rumors, the Taipei district office finally arrested the Farglory founder in June 2017 for bribing Taipei city officials to win favorable contract terms.<sup>38</sup> Another case that was belatedly investigated only after the change in ruling party was KMT legislator Alex Tsai who was indicted in July 2017 for embezzlement of KMT funds in a corporate ownership transfer scheme.<sup>39</sup> The case eventually ensnared former President Ma Ying-jeou as well; the Taipei District Prosecutor's Office indicted him in July 2018 for his role in the transfer of KMT assets to Tsai, in a move that immediately causes a political uproar.<sup>40</sup> In these and other cases, prosecutors gave the appearance of political favoritism by waiting to act on public corruption cases until after the officials involved had left office.

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.<sup>41</sup> The accusations hung over Tsai during the last part of the election campaign;

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<sup>36</sup> Liang-sheng Lin, Tseng-hsun Cheng, and Chan-yi Hsu, "Control Yuan Impeaches Former Miaoli Official," *Taipei Times*, October 6, 2016, p. 3, at:

<http://www.taipeitimes.com/News/taiwan/archives/2016/10/08/2003656740>

<sup>37</sup> Abraham Gerber, "Taipei, Farglory Negotiations on 'Dome' Fall Apart," *Taipei Times* January 24, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2015/01/24/2003609954>

<sup>38</sup> "Property Tycoon Detained on Bribery, Embezzlement Allegations," FocusTaiwan, July 1, 2017, at: <http://focustaiwan.tw/news/asoc/201707010013.aspx>

<sup>39</sup> "Prosecutors Seek to Hold Alex Tsai in CPMC Case," *Taipei Times* July 19, 2017, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2017/07/19/2003674845>

<sup>40</sup> Stacy Hsu and Sean Lin, "Ma Rejects His Indictment as 'Absurd'," *Taipei Times* July 11, 2018, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2018/07/11/2003696476>

<sup>41</sup> Kuo-wen Yang, and Ching-chuan Lin, "2012 Elections: SID Probe May Influence Voters, Legal Experts Say," *Taipei Times*, December 16, 2011, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2011/12/16/2003520855>

only well after the election, in August 2012, did the SID announce that it had cleared Tsai of any wrongdoing.<sup>42</sup>

In September 2013, the division came under even more intense scrutiny and criticism, this time from across the political spectrum. Huang Shih-ming, the director of the SID, reported directly to President Ma about a wiretap 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 earlier 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.<sup>43</sup>

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 to 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.<sup>44</sup>

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<sup>45</sup> 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**

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<sup>42</sup> Rich Chang, "Tsai Ing-wen Cleared of Yu Chang Allegations," *Taipei Times*, August 15, 2012, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2012/08/15/2003540320>

<sup>43</sup> Ma was later indicted for his handling of classified information in this case. See Chris Horton, "Taiwan's Ex-President Ma Ying-jeou Indicted in Wiretapping Case," *New York Times*, March 14, 2017, at: <https://www.nytimes.com/2017/03/14/world/asia/taiwan-president-ma-ying-jeou-charged.html>

<sup>44</sup> Here, too, the Control Yuan failed to exercise effective oversight: a proposal to impeach Huang Shih-ming for leaking classified information went down to defeat in January 2014. See Ching-ming Chen and Stacy Hsu, "Top Prosecutor Escapes Punishment," *Taipei Times* January 8, 2014, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2014/01/08/2003580788>

<sup>45</sup> Ying-yu Tseng, Kuei-hsiang Wen, and Y.L. Kao, "Opposition Pushes for Abolition of Control Yuan," *Central News Agency*, August 19, 2013, at: <http://focustaiwan.tw/news/aipl/201308190030.aspx>

Now that Tsai Ing-wen and the DPP majority have been in office nearly three years, the patterns of this era 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.<sup>46</sup> In addition, Tsai retained the party chairmanship as she took office, and she rather than the premier served as the direct link between the DPP's caucus in the Legislative Yuan and the Executive Yuan for her first year in office. As her polling numbers fell precipitously, she turned in September 2017 to a popular rising star in the DPP, the Tainan mayor Lai Ching-te, to replace Lin Chuan as premier and to shore up support within the party, but most of the rest of the cabinet remained unchanged or were shuffled between posts. 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 under both premiers.

Second, the institutional reform proposals to strengthen legislative oversight that were so enthusiastically supported by party elites and in DPP-friendly media before the election, detailed above, have all but disappeared from the party's 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>47</sup> Nor has talk of introducing formal LY oversight of the National Security Council and other bodies that are currently outside its constitutional purview 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

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<sup>46</sup> Lauren Dickey, "Team Tsai Ing-wen: A Who's Who of the New Cabinet," *China Brief* 16(9), June 1, 2016, at: <https://jamestown.org/program/team-tsai-ing-wen-a-whos-who-of-the-new-cabinet/>

<sup>47</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)

candidate on the 2012 ticket), and his elevation has helped ease the way for smoother executive-legislative coordination. 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.<sup>48</sup>

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 reforms that appear to have any near-term chance at passage are lowering the voting age from 20 to 18, and reducing the PR list threshold from 5 percent to 3 percent—a change 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.

Fourth, President Tsai and the DPP have moved cautiously on proposed reforms to the ROC's accountability institutions: the judiciary, the prosecutariate, 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 was dogged by accusations that the outcome was predetermined, and several members quit in protest<sup>49</sup>; little that it has recommended has yet to become law.<sup>50</sup> 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 did the same for the Council of Grand Justices. True to form, the Control Yuan has now taken on a decidedly green political tint—in February 2018, for instance, one of its newly-confirmed members vowed to open an investigation into a derogatory skit about ex-president Chen Shui-bian performed by local prosecutors in 2009<sup>51</sup>, and in January 2019 Control Yuan members voted to impeach newly-seated National Taiwan University president Kuan Chung-min for writing paid opinion pieces while he was a cabinet official in the Ma administration.<sup>52</sup>

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<sup>48</sup> Jake Chung, "Legislature Approves Law on Ill-Gotten Party Assets," *Taipei Times*, July 26, 2016, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2016/07/26/2003651800>

<sup>49</sup> Jason Pan, "Jury System Advocates Call for Inclusion in Package," *Taipei Times*, August 12, 2017, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2017/08/12/2003676377>; Hsin-po Huang and Jake Chung, "Second Judicial Reform Member Quits," *Taipei Times*, April 29, 2017, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2017/04/29/2003669625>

<sup>50</sup> "Tsai Doubles Down on Justice Issues and Reform," *Taipei Times*, December 30, 2018, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2018/12/30/2003707049>

<sup>51</sup> Li-hua Chung and Jake Chung, "Control Yuan to Investigate Chen Skit," *Taipei Times*, February 23, 2018, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2018/02/23/2003688073>

<sup>52</sup> Sherry Hsiao, "Control Yuan Votes to Impeach Kuan," *Taipei Times*, January 16, 2019, p. 1, at: <http://www.taipeitimes.com/News/front/archives/2019/01/16/2003708007>

Tsai Ing-wen's 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>53</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 prosecutariate: the Prosecutor-General, a political appointee nominated by the President and confirmed by the Legislative Yuan, still directly oversees all prosecutor's offices.

President Tsai and the DPP's desultory institutional reforms have had the greatest impact in the area of "direct democracy," by making it easier to recall elected officials and to hold national referendums. In December 2016, the ruling party supported an amendment to the Elections and Recall Act that lowered signature and turnout thresholds 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.<sup>54</sup> 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 was directed against the leader of the NPP himself, Huang Kuo-chang, who had championed the rule changes when it appeared they were thwarting efforts to unseat unpopular KMT incumbents.<sup>55</sup>

A year later, again facing pressure from the NPP caucus as well as pro-independence and direct democracy advocates, the DPP supported a similar amendment to the Referendum Act.<sup>56</sup> The political downsides for the DPP (and Taiwan's democracy) of this ham-fisted reform quickly became apparent: activists and politicians from across the political spectrum, including opponents of same-sex marriage, nuclear power advocates, and the opposition KMT, rushed to take advantage of the new tool to bypass the central government and commandeer the national political agenda. The flurry of controversial referendum proposals, many of which were opposed by the Tsai administration and never would have seen the light of day in the legislature, immediately put the DPP on the political defensive. The Central Election Commission (CEC), which had to work out practical procedures to determine which had qualified for the ballot under the vague terms of the Referendum Act, also was suddenly subjected to intense partisan pressure as well. When it found signature fraud in several cases

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<sup>53</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).

<sup>54</sup> Wei-han Chen, "NPP Tables Amendment to the Referendum Act," *Taipei Times* March 23, 2016, p. 3, at: <http://www.taipeitimes.com/News/taiwan/archives/2016/03/23/2003642241>

<sup>55</sup> Hsiao-ting Fang, Yu-fu Chen, and Jake Chung, "Legislators Laud New Recall Provisions," *Taipei Times*, November 30, 2016, p. 1, at:

<http://www.taipeitimes.com/News/front/archives/2016/11/30/2003660265>; J. Michael Cole, "The Recall Attempt against Huang Kuo-chang: What's at Stake," *Taiwan Sentinel*, October 26, 2017, at: <https://sentinel.tw/recall-huang-whats-at-stake/>

<sup>56</sup> "Legislature Passes Amendment Bill to Lower Referendum Thresholds," *Focus Taiwan*, December 12, 2017, at: <http://focustaiwan.tw/news/aip/201712120011.aspx>

and disqualified proposed questions as a result, it faced harsh attacks from the KMT; when it approved several anti-same-sex marriage questions, it was roundly criticized by gay rights activists. The CEC was faced with yet another difficult situation when, as a result of a clause in the Referendum Act, it was required to hold a vote on the 10 referendum questions on the same day as the 9-in-1 local elections in November 2018. Thus, voters were ultimately faced with a set of 10 extra ballots, each with a confusingly worded referendum question, in addition to as many as five separate ballots for local races; as a result, the voting process took much longer than usual, and voters faced lines of two hours or more to cast their ballots. In some cases they were still waiting in line as other polling places began announcing their vote totals.

The results of the referendums were a broad repudiation of DPP leadership. The seven referendums associated with anti-DPP or anti-Tsai positions, including three anti-LGBT questions, all passed, while the three questions put forward with DPP-aligned groups failed. But the referendum results also highlighted flaws with the way the referendum law was written, as well as with the broader direct democracy agenda of the ruling party and the NPP. For one, despite stating that votes will be binding, the Referendum Act contains no compulsory self-execution clause that would compel government agencies to comply with the results.<sup>57</sup> The vagueness of many of the questions that qualified for the ballot meant that, even if the government sincerely intended to respect and follow the results, there was still no simple way to proceed with policy changes. Furthermore, the LGBT questions were in obvious conflict with a previous constitutional court ruling from 2017 that decided same-sex marriage should be legal in some form; shortly after the results were announced, the chief justice unilaterally announced that referendums could not overturn court decisions, creating additional legal and constitutional confusion about Taiwan's same-sex marriage policies.<sup>58</sup>

Overall, then, the amendments to the Referendum and Elections and Recalls Acts have introduced a volatile new element to Taiwanese politics, creating a set of legal and policy challenges that will not be easily resolved. These reforms have also further complicated the policy-making process, leaving at best a mixed legacy for Taiwan's democracy.

### *The DPP Reform Agenda in Practice: Crippling the KMT*

In practice, rather than pursuing a broad reform agenda, Tsai and the DPP have instead placed the greatest priority on addressing the lingering legacies of the party-state era, or to put it less charitably, on crippling 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 many 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

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<sup>57</sup> "Taiwan's Referendums Binding, But May Not Be Enforceable: Experts," *Focus Taiwan*, November 20, 2018, at: <http://focustaiwan.tw/search/201810200004.aspx?q=referendum>

<sup>58</sup> <https://www.theguardian.com/world/2017/may/24/taiwans-top-court-rules-in-favour-of-same-sex-marriage>

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.<sup>59</sup> 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 disrupting 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.<sup>60</sup> 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.<sup>61</sup> More recently, the LY passed a new NGO law that banned political parties from running businesses, a move which disproportionately affects the KMT.<sup>62</sup> The DPP majority in the legislature approved a Tsai administration proposal to make the heads of local farmer's associations appointed, rather than elected, positions, potentially breaking KMT-leaning factions' grip on these positions.<sup>63</sup> And the ruling party has proposed eliminating elections for township leaders, who traditionally served as crucial links in factional structures in rural areas.<sup>64</sup>

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<sup>59</sup> "From Riches to Rags: Taiwan's Kuomintang party is broke and adrift," *The Economist* Dec. 15, 2016. <https://www.economist.com/asia/2016/12/15/taiwans-kuomintang-party-is-broke-and-adrift> (accessed Jan. 18, 2019).

<sup>60</sup> Alison Hsiao, "Local Government Act Reform Passed," *Taipei Times* May 28, 2016: <http://www.taipeitimes.com/News/taiwan/archives/2016/05/28/2003647313> (accessed Jan. 19, 2018).

<sup>61</sup> Sean Lin, "Civil Servants' Pensions Bill Approved," *Taipei Times* June 28, 2017: <http://www.taipeitimes.com/News/front/archives/2017/06/28/2003673441> (accessed Jan. 18, 2019).

<sup>62</sup> Matthew Strong, "Taiwan Law Bans Political Parties from Running Businesses," *Taiwan News*, November 10, 2017: <https://www.taiwannews.com.tw/en/news/3294842> (accessed January 19, 2018).

<sup>63</sup> "Leaders of Irrigation Association to be Appointed by Government," *Central News Agency*, January 16, 2018: <http://focustaiwan.tw/news/aip/201801170001.aspx> (accessed January 18, 2019); Hsiao-kuang Shih and William Hetherington, "KMT Plans Change on Irrigation Body Political Neutrality," *Taipei Times*, May 8, 2018: <http://www.taipeitimes.com/News/taiwan/archives/2018/05/08/2003692711> (accessed Jan. 18, 2019).

<sup>64</sup> Aaron Tu, "Proposal Aims to End Election of Township Mayors," *Taipei Times*, March 28, 2016, p. 3: <http://www.taipeitimes.com/News/taiwan/archives/2016/03/28/2003642622> (accessed Jan. 18, 2019).

Most 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 them, by contrast, let alone a cross-party consensus, will probably never see the light of day.

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

In the previous sections, I have argued 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. Changes to the electoral system, to the terms and appointment procedures of members of the Judicial and Control Yuans, and to the constitutionally muddled relationship between the executive and legislative branches 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, such as reorganization of the Legislative Yuan to give the ruling party greater control over the agenda or to privilege government bills, are more likely, but again, only if they aid the DPP's own interests and can be introduced over vociferous opposition from the other parties. It remains an open question whether Tsai and her party will manage to adopt significant judicial reforms, but these certainly look 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 reforms. The experience of the Ma era suggests that public opinion and cross-party consensus will decide most of the critical policy issues, and the lack of a clear consensus on constitutional reforms 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. The amendments to the Referendum Act have made this situation even worse: the lack of a binding execution clause and clear wording in referendum questions have introduced yet more ambiguity into the policy-making process, not less. 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 so far despite all these flaws in the regime's institutional "hardware." 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 the right to voice alternative points of view, and freedoms of media and assembly 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.