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Tracing the obstacles to further democratic development**

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State of democracy in Taiwan: Tracing the obstacles to further democratic development

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In 2000, the international community praised Chen Shui-bian's electoral success as a major step towards a consolidated democratic Taiwan. In Taiwan itself, different interpretations surfaced soon after the election and have dominated the domestic and international intellectual discourse since then. In 2004, Taiwan witnessed the rise of "fascist dictator" Chen Shui-bian and the birth of the so-called new democracy movement. Two years later, the movement achieved new momentum when the Red Movement spread through the island, vowing to restore democratic order and to bring society back to its "core values." And in 2008, people again took to the streets, expressing their fear of a rebirth of KMT authoritarianism. In this paper, I would like to look behind these challenging developments and outline the key obstacles to further democratic development in this island-state.

Consolidation of democracy and historic legacies

In political science there is broad interest in whether a newly established democracy succeeds in overcoming the perils of democratisation and matures into a consolidated democracy or regresses to authoritarianism (Linz and Stepan 1997). Taiwan was under martial law for almost four decades. Democratic consolidation, therefore, is primarily a question of how to overcome the legacies of the former authoritarian regime. Han nationalism and dysfunctional political institutions are some of the legacies that limit Taiwan's democratic development. The study of these destructive elements is important in the attempt to interpret Taiwan's most recent political history and to formulate effective democracy-building policies. In the following, I would like to briefly address the aforementioned legacies, before explaining their role in Taiwan's democratic regression.

Han nationalism

During World War II, the United States reached an agreement with President Chiang Kai-shek providing that Taiwan would eventually be returned to China. Soon after the war, Chiang Kai-shek appointed a committee headed by Chen Yi to take over the island's administration. The Taiwanese could not, however, identify with the new government and considered it a foreign regime that had come to Taiwan to "loot" the island (Peng 1972, 61). The Chinese nationalist (KMT) government under Chiang Kai-shek and later his son Chiang Ching-kuo promoted Han nationalism with the aim of eventual "liberalization" of the mainland. The future Han nation would consist of "one state, one people, [and] one language" (Windrow 2005, 412). As part of this attempt, the KMT government was determined to assimilate the native population of Taiwan through social control and education. The Han-nation-building process severely affected the daily lives of the native population. Regulations forbade the use of Japanese, aboriginal and Sinitic languages other than Mandarin. Ethnic origin and the ability to speak Mandarin worked as keys to power and became instruments of social control. The KMT government purged state institutions of the local people, the Taiwanese, and within a few years the Mainlanders, the ethnic minority, held the majority of key positions in government and state-run industries (Chen 2006, 110).

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The Han nationalists justified the purges with the claim that the “primitive prostitute culture” of the “local population” lacked the ability to govern the island (Windrow 2005, 411).

Social and political injustices caused by the Han-nationalists’ dogma of racial superiority and widespread bureaucratic inefficiency led to the 228 Massacre of 1947, in which Chiang Kai-shek’s troops brutally killed thousands of Taiwanese. Two years later, the Han nationalists lost the Civil War on the mainland and retreated to Taiwan. Martial law was imposed the same year and remained in effect until 1987. The defeat on the mainland and Mao Ze-dong’s subsequent proclamation of the People’s Republic of China, the de-facto and de-jure successor state of the KMT’s Republic of China, caused a crisis of legitimacy for the Chiang Kai-shek regime. On the international stage, the USA assisted Chiang Kai-shek in maintaining the myth that the KMT government was the sole legitimate government of China (Lin 1986). Domestically, the myth was kept alive by promoting Han nationalism and persecuting any opponent thereof. The KMT regime under Chiang Kai-shek and his son Chiang Ching-kuo set up a network of informants to monitor the political and social activities of co-workers, neighbours and even family members at home as well as abroad. Secret police units, interrogation centres, political prison camps and execution grounds existed throughout the island. Torture and (extra-judicial) executions were widespread and systematic until the late 1970s. The total number of victims is difficult to gauge, since a large number of executions were extra-judicial and thus mostly without any records. According to declassified information, the majority of extra-judicial executions were carried out in the 1950s, when about 130,000 people were reported missing.² As of today, there are over ten thousand well-documented cases of gross human rights violations committed by the KMT regime,³ but none of the perpetrators has been indicted.⁴ On the contrary, a large number of perpetrators still hold key positions in the KMT and government.

Political institutions

Political institutions comprise those that are constitutionally mandated, such as the parliament and judiciary, and those outside the constitutional framework. The latter type consists of the media, education sector, law-enforcement agencies, and similar institutions. These were politicised during the authoritarian period and transformed into instruments of social control. Both types of institutions are relics of either the Hsinhai Revolution of 1911 or the Chinese Civil War. They were designed to work under a one-party KMT dictatorship rather than in a modern democracy. This is particularly true for those institutions mandated by the constitution. Since the lifting of martial law in 1987, there have been several constitutional amendments in the form of revisions of additional articles superseding the original ones. The original constitution itself has never been altered and thus still lays territorial claims to Mainland China, Tibet and Mongolia. The additional articles are applicable to what is termed “free area of the Republic of China,” that is Taiwan and several smaller islands. The Han nationalists and their political wing, the KMT and its splinters, have never given up their belief that there is only one China and that Taiwan is part of it. Apart from the rather obscure territorial claims, the revisions have mostly been pork-barrel deals between the KMT and the DPP, the two largest parties. In total, the additional articles have been replaced on four occasions and revised three times. The first two revisions (1991 and 1992) substantially contributed to Taiwan’s democratisation, since they paved the way for direct elections of all parliamentary members (National Assembly and Legislative Yuan) and the president.

² Interview with senior official, Ministry of Interior Affairs, Taipei, May 2007.

³ Interview with senior representative, Compensation Foundation for Improper Verdicts, June 2007.

⁴ The current criminal law would allow the prosecution of most of the crimes committed by the Han nationalists. For a detailed analysis see Chi-long Chen, “The Legal Responsibility for 2-28 Massacre: Criminal Law” [ererba shijian tusha xingwei de xingshi falue zeren], in Yan-hsian Li, Zhen-long Yang and Yan-xian Zhang (eds.) Report on The Responsibility for the 228 Massacre [ererba shijian zeren guishu yanjiu baogao] (Chonghe: 228 Memorial Foundation, 2006), p. 491-533.

Subsequent amendments primarily dealt with the electoral system applied in parliamentary elections, the powers and impeachment of the president, and the abolition of the National Assembly (Hsieh 2001). Unlike the important 1992/1992 amendments, the later revisions did not pursue long-term democracy-building goals but paid considerable attention to the short-lived political gains of their drafters. The lack of commitment to long-term democracy-building policies is also reflected in the fact that there has been a remarkable flip-flop in the arguments put forward to justify amendments. In 1997, for example, the drafters argued that the number of Legislative Yuan members should be increased from 161 to 225 as to better represent the people. As a matter of fact, however, the number was increased to accommodate unemployed provincial assembly members. (The 1997 revision also called for the dissolution of the provincial assembly.) Several years later, the same group of politicians justified the reduction of parliamentary members by making claims of overrepresentation in the Legislative Yuan.

A further serious problem of the amendment process is the fact that there has been limited involvement by constitutional scholars. The revisions have mostly been the product of deals reached by politicians and thus tended to be counterproductive to Taiwan's long-term democratic development. The 1999 revision and its subsequent annulment by the constitutional court exemplify the lack of professionalism in the amendment drafting process (Constitutional Court Interpretation No. 499).

Moreover, the authoritarian KMT rule for over four decades brought about several misconceptions about the obligations of political institutions, which has contributed to a number of disputes and public distrust. For example, it is a common belief that the president has extensive powers and that he or she is the chief executive. Under the original constitution of 1947, the president is only the head of state. Apart from the figurehead role, he or she is expected to act as a mediator between parliament and government (Article 44). The constitution vests few real powers of control into the presidency. A president, for example, cannot dissolve parliament. The president may only ask parliament to reconsider legislation, which it could uphold by a two-thirds majority. Chiang Kai-shek, however, extended his constitutional powers by promulgating the so-called Temporary Provisions, which superseded the Constitution. In addition, he applied extra-constitutional methods to take control over every single political, social and economic institution. The strong presidency under Chiang Kai-shek and his son led to a public misconception about the constitutionally mandated powers of the president. In 1991, the Temporary Revisions were replaced by another set of regulations superseding the constitution, the so-called Additional Articles. Their latest revisions de-facto weakened the status of the president. The revisions mandate the president to appoint a premier without parliamentary consent. This new constitutional arrangement fails to produce enough incentives to enter cross-party negotiations with the objective of forming coalition governments. Powerless minority governments, such as those during Chen Shui-bian's terms in office, are the result. Minority governments are confronted with the problem of not having enough legislative power to implement their policies. Other instruments, such as the president's right to veto legislation or to dissolve parliament, may assist minority governments in pushing through required legislation. The revisions, however, curtailed the presidential veto-power (vetoed legislation now only requires a majority vote to uphold it) and the president may now dissolve parliament but only upon a vote of no confidence in parliament.

Moreover, the post-martial law constitutional revisions neglected several important institutions, such as the Control Yuan. Under the constitution, the Control Yuan is the highest government body with the constitutional right to investigate wrongdoings of public officials (Article 90). In practice, this institution has had a rather limited impact on improving the democratic environment. On the contrary, it has on several occasions hindered the establishment of other investigative bodies, such as parliamentary committees of inquiry and a national human rights commission. Opposition to additional investigative bodies partly stems from the misconception that Control Yuan is the 'only' control organ of the State. Any other investigative body would thus per se violate the constitution.

Apart from constitutionally mandated institutions, there are others whose reform is of vital importance to the process of democratic consolidation in Taiwan. This set of institutions includes the media, the education sector, and law enforcement agencies. Each of these previously played an important role in the KMT's attempts to control society. Since the lifting of martial law, they have not yet fully adapted to the new, democratic environment.

Media: The number of media outlets has increased dramatically over the last two decades, but journalists and other media professionals have failed to understand their role in a democratic society. Media outlets have mostly been active in promoting sensationalism and political persecution. Journalists and political television personalities have contributed to the deterioration of serious public debate and undermined the authority of courts. Show-trial journalism as a relic of the martial law period has increased over the past few years. It is a common journalistic practice to pursue political opponents and criminal suspects to the point of mental breakdown, which usually constitutes a major part of news programmes. In several cases this practice ended with a victims' suicide. Journalists and other media professionals tend to feel no regret over their conduct. On the contrary, there is the belief that it is the fundamental right of media professionals in a democratic society to report what people 'want to know,' no matter how inhuman their actions or what the consequences thereof may be. Two decades after the lifting of martial law, only few media professionals see a necessity to change current practices (Wang 2005).

Law enforcement: The primary function of the police in martial-law Taiwan was to preserve the authoritarian state. Laws were arbitrarily enforced. Close cooperation with the underworld in exchange for favours, e.g. killing of political opponents, was common practice. Police in general refrained from interfering in 'private matters,' such as domestic violence or blackmail. Crime statistics were manipulated in various ways. For example, cases reported to the police were never official documented. Twenty years after the lifting of martial law, law enforcement still retains some of these characteristics. Cases of police officers refusing to investigate domestic violence, rape, sexual harassment, fraud and mafia activities are still in evidence. There are also reports of mayors and county magistrates instructing law enforcement agencies to only accept cases that can easily be solved as to reduce crime rates and boost their personal popularity.

Education: During the martial law era, the education system was designed to control students' thoughts and social activities. Teachers and military personnel played an important role in "guiding" the students and in helping them to "solve" problems. In their free time, students had to take part in social activities that were supervised by so-called military drillmasters (*jiao guan*) and homeroom teachers (*daoshi*). Twenty years after the lifting of martial law, little has changed. There still are homeroom teachers and military officers present at high schools, colleges and universities.

Periods of democratic regression

In Taiwan's recent political history, there have been two periods of democratic regression. The first covers Chen Shui-bian's presidency (2000-2008) and the second began with the inauguration of current President Ma Ying-yeou.

Chen Shui-bian's presidency: the end of democratic gains

Chen Shui-bian was the first president of Republican China who was not a member of the Chinese Nationalist Party (KMT). During the martial law era (1949-1987), he was a key participant in the opposition movement. The international community thus praised Chen Shui-bian's victory in the presidential election of March 2000 as a major step forward in Taiwan's process of democratisation. As a former human rights lawyer, Chen put great emphasis on

improving the democratic environment. A large number of his democracy-consolidating policies were related to transitional justice. The aim of his government policies was to separate the State from the KMT, to make people aware of the wrongfulness of the atrocities committed during the martial law era, to find ways of reconciliation, and to set preventive measures. However, during his two terms, the DPP government could only partially succeed in addressing the issue of transitional justice by:

- Establishing a commission to investigate the responsibility of the 2-28 Massacre
- Drafting laws and holding a referendum on the return of KMT martial law assets to the State
- Renaming Chiang Kai-shek International Airport and Chiang Kai-shek Memorial
- Removing Chiang Kai-shek statues
- Closing Chiang Kai-shek and Chiang Ching-kuo's mausoleums
- Rehabilitating victims' reputations
- Declassifying government documents related to human rights violations

Chen's transitional justice initiatives as well as other measures designed to improve human rights standards encountered several constitutional and societal obstacles. As to the first, the constitution vests very limited power in the president and thus a president lacks means to push through legislation in a parliament where his or her party does not enjoy a majority of seats. Throughout Chen's presidency, the Han nationalists had a clear majority in parliament. Any piece of legislation thus needed their support, which was unlikely primarily for two reasons. First, as pointed out earlier, the major obstacle of Taiwan's democratic consolidation is the KMT legacies. However, removing the KMT legacies inevitably implicates clashes with the KMT and its staunch supporters. Second, Taiwan is confronted with an unfortunate and possibly unique linkage between transitional justice and national identity. Since the lifting of martial law in 1987, demands for transitional justice has mainly come from supporters of Taiwanese nationalism and resistance to it from Han nationalists. Both groups question the other's understanding of transitional justice and harbour different views on three important historical events (see Table 1), namely the 2-28 Massacre, the White Terror and the Japanese aggression during World War II.

As to the 2-28 Massacre, the Han nationalists do not deny its existence but persistently claim that it was caused by "language barriers" and "some corrupt local" (meaning Taiwanese) government officials. Thus, neither the KMT nor Chiang Kai-shek could be held responsible for the massacre. As to the atrocities committed during the White Terror, key supporters of Han nationalism have either kept silent on the issue or justified the offences by claiming that they were

"in accordance with the law and necessary as to protect Taiwan from Communist infiltration. I don't understand what all the fuss is about? They [Taiwanese] should be grateful to Chiang Kai-shek and his son for protecting Taiwan against the Communists and for turning Taiwan into an economic miracle."⁵

Chiang Kai-shek and his son Chiang Ching-kuo are therefore considered heroic leaders who deserve a special place in world history. Every year, thousands of Han nationalists (including the top leadership of the KMT) march to the former dictators' mausoleums to pay homage. Such deification amplifies their conviction that the two dictators' mausoleums and other places commemorating the two dictators' "achievements" should be protected by the State. Moreover, Han nationalists consider any attempt to close, remove, or rename those historic sites as an act of treason.

⁵ Interview with senior KMT official, April 2007.

Table 1: Perceptions of human rights abuses in Taiwan

	Han nationalists	Taiwanese nationalists
Political wing	Chinese Nationalist Party (Kuomintang, KMT), People First Party, New Party	Democratic Progressive Party (DPP), Taiwan Solidarity Union, Taiwan Independence Party ¹
2-28 Massacre	Acknowledge existence of the massacre, but persistently deny responsibility: Neither the KMT nor Chiang Kai-shek was responsible for the Massacre. It merely was the result of some corrupt local (Taiwanese) officials and language barriers.	Chiang Kai-shek was the prime culprit of the Massacre. KMT was a foreign regime that came to Taiwan to loot the island.
White Terror	<p>Avoid any discussion about it. There mostly is neither denial nor acknowledgment of the systematic and widespread human rights abuses. There is however a great deal of justification and belittlement:</p> <ul style="list-style-type: none"> - The White Terror was necessary as to protect Taiwan from Communist infiltration. - Only a few communists were killed. - Taiwanese should be grateful to the KMT and its leaders for protecting Taiwan and turning Taiwan into an economic miracle. 	<ul style="list-style-type: none"> - KMT leadership should take full responsibility for the atrocities. - Victims should be compensated using the KMT's party funds. - The KMT's party archives should be confiscated and made accessible to the victims. - There is no justification for the atrocities. The statement "no KMT, no economic miracle" is racist and discriminates against the Taiwanese. - Chiang Kai-shek, his son and the KMT state abused their authority to satisfy their own personal demands rather than merely applying necessary measures to protect Taiwan from the Communists.
Chiang Kai-shek and Chiang Ching-kuo	<ul style="list-style-type: none"> - Men of noble character. According to the current KMT party charter, Chiang Kai-shek still is the Director-General of the party. - Chiangs' mausoleums and other places commemorating the "greed deeds" of the two "heroic" Chinese leaders should be protected by the state. Their closure and the renaming of places commemorating them are acts of treason. 	<ul style="list-style-type: none"> - They were both dictators. - It is immoral and irreconcilable with democratic principles to commemorate dictators. Statues, mausoleums, and other places commemorating the Chiangs must therefore be removed, closed or renamed.
Attitude toward Japanese revisionism	<ul style="list-style-type: none"> - Hostile attitude as result of Japanese aggression during World War Two. - Demand apology and compensation for the Rape of Nanjing and other atrocities committed by the Japanese during the War 	<ul style="list-style-type: none"> - Friendly attitude toward Japan: A large number of influential figures in the Taiwanese nationalist movement were educated in Japan and have close ties to right-wing intellectuals. - Ambiguous position toward Japanese aggression.

Source: Author's own research

¹ The party de-facto ceased to exist in 2002.

The Taiwanese nationalists cannot but disagree with such interpretations of these two tragic events and the positive appraisal of the Chiang family. In their view, the KMT, Chiang Kai-shek, and his son were brutal dictators and therefore do not deserve special status in a modern democratic state. The removal of Chiang Kai-shek statues, the renaming of places named after the former dictator, and the return of all assets the KMT obtained during the martial law period are thus part of their attempt to deal with the past.

Since most of the key perpetrators were ethnic Han nationalists, the issue of national (ethnic) identity is bound to hijack the issue of transitional justice. The permanent military threat posed by the motherland of the Han nationalists has worsened the Taiwanese nationalists' perception of Han nationalism and Mainland China. As a consequence, calls for transitional justice have on several occasions degenerated into calls for de-Sinofication and anti-China sentiment. In the eyes of Han nationalists, de-Sinofication thus equals racial persecution. Since the early 1990s, leaders of the Taiwanese nationalist movement have thus frequently been branded 'fascists,' or compared with the world's most infamous (non-Han) dictators. Leaders and grassroots supporters of Han nationalism share the notion that the most evil of all Taiwanese 'fascist leaders' is none other than former President Chen Shui-bian. The judgement was first made in 1994, when Chen contested the mayoral election in Taipei. Rival candidate and influential Han nationalist leader Chao Shao-kang yelled at Chen during a live televised debate, calling him a fascist. Years later, the KMT compared Chen with Mussolini in an official televised electoral campaign commercial, and in 2004 the KMT-lead presidential election alliance urged the people of Taiwan in official campaign advertisements to oust "Taiwan's Adolf Hitler", Chen Shui-bian, from the presidency.⁶

The perceived persecution of ethnic Han nationalists and the rise of Taiwan's "Adolf Hitler" became the most debated issue among Han nationalist scholars and grassroots supporters in the aftermath of the 2004 presidential election. Publications detailing the 'similarities' between the rise of Hitler and Chen Shui-bian mushroomed and were sold in bookstores throughout the island. One of the most popular publications at that time was *Shuddering Future: Dismantle Taiwan's New Dictatorship*, in which the author discusses in detail the rise of Taiwan's "Hitler" and urges readers to assist the new democracy movement in protecting democracy in Taiwan (Huang 2004). The front cover of the publication shows a silhouette of Chen Shui-bian and a modified DPP party emblem in the shape of a swastika. The book was endorsed by a large number of established intellectuals and civic-rights groups, such as the Democratic Action Alliance, which was founded in 2004 by a group of well-known professors from Taiwan's elite universities.

In addition to the local discourse, the overseas Han nationalist community in the USA expressed their deep concern about the decay of democracy, the perceived persecution of Mainlanders, and the rise of Taiwanese nationalism. The Taiwan Civil Rights Watch Group based in Washington D.C., for example, concluded its 2004 report on human rights abuses in Taiwan with the assessment that, "Taiwan is well on its way toward a dictatorial holocaust" (Taiwan Civil Rights Watch Group 2004, 20).

Moreover, Han intellectuals see flaws in the Taiwanese nationalists' concept of transitional justice:

"What do they know about justice? Don't they support Japanese revisionism? How can they say they want justice, when they don't want to address the crimes their Japanese friends committed in Taiwan and other parts of the world?"⁷

The almost deifying attitude toward Imperial Japan and Japanese right-wing intellectuals, such as that of writer Kobayashi Yoshinori, who denies the existence of the Nanjing Massacre and other crimes committed by the Japanese in the 1930s and 1940s, is a blind spot in the Taiwanese nationalists' concept of transitional justice, which has made it even more difficult

⁶ A scan of the advertisement can be viewed at http://www.eastasia.at/vol3_1/ad1.htm.

⁷ Interview with senior KMT party official, June 2007.

for the DPP government to address transitional justice without risking their call for it becoming pure anti-Chinese sentiment.⁸

Moreover, given the fact that the DPP lacked a majority in parliament and the KMT still had substantial financial and social resources, Chen's attempt was ill fated from the beginning. During the first few months of his term, Chen tried to find a compromise by appointing a KMT member as premier. The cooperation proved to be fragile and the premier resigned ostensibly for health reasons after a few months in office. The resignation was widely seen as a result of the DPP-led government's attempt to halt the construction of the fourth nuclear power plant. The KMT was outraged about the DPP's actions, since the construction had already been approved by parliament. Chen's disregard of parliamentary decisions was viewed as a violation of the constitution and the KMT initiated a recall motion against President Chen in parliament. The motion failed, however, since the KMT and its allies did not have the required two-thirds majority in parliament. Notwithstanding, the incident marked the beginning of deepening antagonism between Han and Taiwanese nationalists. Consequently, Chen Shu-bian more and more became the personal target of Han nationalists. This antagonism also contributed to Han nationalist opposition to every single policy related to the enhancement of democracy.

In his inaugural speech, Chen Shui-bian made clear his intention to set up an independent national human rights commission and to codify two international human rights covenants (UN conventions on Civil and Political Rights and Economic, Social and Cultural Rights) into national legislation. A human rights advisory council was set up at the presidential office and several international organisations, such as Amnesty International and the International Commission of Jurists, were invited to assist the president in formulating and implementing his policies. The codification of international humanitarian laws into national legislation was blocked in parliament by the KMT. The DPP government asked for legislative approval of the two above-mentioned UN conventions during the fourth, the fifth, and the sixth terms of the legislature in 2001, 2002 and 2005. Draft statutes of a national human rights commission based on the Paris Principles were submitted to parliament several times, but each time encountered strong opposition from KMT parliamentarians. They did not see the need for such a commission and mainly argued that the Control Yuan as the 'sole' investigative body was responsible for investigating human rights abuses. Neither the Constitution nor the Control Yuan statutes, however, explicitly mandates the Control Yuan to investigate human rights abuses. Moreover, the Constitution itself only mandates that the Control Yuan "shall be the highest control body of the State and shall exercise the powers of impeachment, censure and audit." It does not define the Control Yuan as the sole investigative body of the State and thus does not rule out the establishment of other organs, such as parliamentary committees of inquiry.

Apart from the Han nationalists' staunch opposition to the establishment of a national human rights commission and other policies, there were also other reasons for the stagnation of Taiwan's democratic development during Chen's presidency. Vested interests and lack of understanding among party and government officials, for example, hampered Chen's transitional justice efforts:

Who wants to become an enemy of the KMT? They [DPP party and government officials] just want to secure their jobs under a possible future KMT government. Others simply lack the knowledge that everything they [the KMT] did [during the martial law period] was a crime by any possible definition.⁹

⁸ For a detailed account on the close relationship between Taiwanese nationalists and Japanese revisionists see Phil Deans, "Taiwan in the Japanese Nationalist Imagination: The Positive Other," paper presented at the *International Convention of Asia Scholars 5*, Malaysia Convention Centre, Kuala Lumpur, 2-5 August.

⁹ Interview with senior policy advisor to President Chen Shui-bian, March 2007.

Human rights activists complained that the term ‘human rights’ had degenerated during Chen’s presidency to a mere “synonym for a modern and progressive consumer society just like other phrases found in advertising, such as ‘low fat’ or ‘no sugar added.’”¹⁰ Moreover, several democracy activists who at first assisted the DPP government in drafting policies soon became disgruntled and strongly criticised the DPP for misusing human rights issues for campaign purposes. The presidential human rights advisory council, for example, was often seen as a self-promotional vehicle for its chairperson, Vice President Lu Hsiu-lien. Several advisors consequently left the council and attacked the vice president for her abuse of it and her lack of professionalism.¹¹

In other cases, public opinion and the possible loss of electoral support caused the DPP to attenuate its original policies. The death penalty is an example here. As the majority of people believe in its necessity, the government lacked courage to abolish it. Nevertheless, the DPP government exercised restraint in its application. Consequently, the number of executions dropped significantly. Since 2006, none of the 19 defendants on death row have been executed because of the newly appointed minister of justice’s refusal to sign any death warrant during his term. In 2008, public opinion was still disfavouring any government attempt to abolish the death penalty.¹²

Media reform is another example of policy adjustments due to public opinion. The reform aimed at improving the quality of news reporting (less sensationalism, more intellectual discourse) and at decreasing political control over it. Apart from the widespread misconceptions about the role of media professionals in a democracy, politicians from all political parties have been very influential in the agenda-setting process, which further contributes to a dysfunctional media environment. Politicians have either been hosts of political talk shows, held management positions in media outlets, or have been their stockholders. Chen’s reform intended to ban politicians from exercising control over the media through these channels. The proposed media reform, however, met considerable resistance and was interpreted as a means to persecute political opponents and thus failed to materialize.

Public opinion has in other cases been constructive in the DPP’s attempt to establish democratic institutions. The sudden KMT support for a referendum law several months prior the 2004 presidential election was the result of public opinion. Despite the fact that the Constitution grants people the right of political participation through referenda and that it stipulates that such participation be regulated by law (Article 136), the KMT had for over 50 years blocked any attempt to pass legislation. In 2003, the KMT presidential candidate first described calls for a referendum law as “nonsense,” but soon changed his opinion after having learned that there was strong public support for it and after Chen Shui-bian had already turned it into a salient campaign issue. The KMT subsequently passed a referendum law and successfully presented itself as a strong supporter of democratic institutions, whereas images of proud KMT parliamentarians holding banners with anti-referendum slogans had covered TV screens and newspaper front pages several months earlier.

The referendum law itself and the application thereof exemplify the problems of democratic consolidation in Taiwan. Despite the fact that the DPP had always wanted to see a referendum law passed, none of its draft statutes submitted to parliament was substantially different from the KMT version concerning the crucial threshold definition. The current law as well as the DPP drafts require that any referendum be declared void unless more than half of all eligible citizens cast their votes. A total of six referenda have been held so far, but none

¹⁰ Interview with senior human rights activist, March 2008, Taipei.

¹¹ Interview with senior human rights activist, March 2008, Taipei.

¹² In March 2008, it became an issue in a presidential election for the first time. Pai Ping-ping, an influential local TV actress and host, expressed her anger at Frank Hsieh, the DPP presidential hopeful who supported the abolishment of the death penalty. She considered it immoral to let perpetrators “enjoy their lives,” when they had destroyed those of the victims and their relatives. (A decade earlier, kidnappers had murdered the actress’ daughter).

have passed the threshold. The high threshold turned the law into a rather meaningless piece of legislation.

Apart from this design flaw, the six referenda partly degenerated into mere electoral campaign tools and failed to fulfil a democracy-building purpose. The first two referenda took place in 2004 and were initiated by President Chen. They asked the people to voice their opinion on the nature of future relations with China and the procurement of weapons to defend Taiwan. Three years later, the DPP government made public its plan to hold referenda concurrently with parliamentary and presidential elections in 2008. The first asked the people whether there should be legislation to deal with the KMT's property obtained during the martial law era and the second focussed on a future UN membership. The referenda of 2004 and 2008 were important since they addressed issues the KMT-controlled parliament had previously refused to negotiate or consider for legislation. In each case, Chen Shui-bian and the DPP respectively saw in the referenda an opportunity to raise public awareness and to assert pressure on the KMT. Apart from that, they served as a strategically important campaign tool. In 2004, the KMT and its allies were at a loss when President Chen announced his intention to hold two referenda concurrently with the presidential election and subsequently claimed that the referenda were illegal. In spite of such claims, no legal action was taken to prevent the holding of the 'illegal' referenda. Instead, Han nationalist leaders launched a massive media campaign urging the electorate to boycott them.

The DPP's 2008 referendum on Taiwan's UN membership was viewed as a further attempt of Chen Shui-bian to promote Taiwan's permanent status as an independent state. The KMT countered it by initiating its own referendum on a future UN membership preferable under the name of Republic of China, which did not make much sense since the Republic of China had ceased to exist in 1949 when it was succeeded by the People's Republic of China. In 2008, the Han nationalists saw in the DPP referenda on the KMT assets an attempt to persecute the opposition and retaliated by initiating a referendum requesting the punishment of "national leaders" for "causing harm to the nation:"

Do you agree on the establishment of legislation holding the national leaders and subordinates legally responsible for causing harm to the nation, deliberately or through major error; that any investigation be conducted by legislative investigative committee; and that government departments must cooperate and may not refuse to do so, all in the public interest, and that those who break the law or are derelict in their duties of office be punished and required to return any improperly obtained income? (Referendum, 23 March 2008)

The motives behind the referendum are highly questionable for several reasons. The Han nationalists, for example, had a majority in parliament and could thus have passed such legislation without a referendum. Moreover, the proposed legislation would infringe upon the rights of the judiciary. A parliamentary committee of inquiry should be an institution determining political rather than legal responsibility. The creation of a supra-judicial body outside the constitutional framework violates constitutional concepts and the basic principles of democratic rule.

It is unclear whether the KMT used its two 2008 referenda for strategic purposes right from the beginning or whether the party leaders began to worry about their implications and meaning later on. Whatever the motive was, the KMT requested its supporters to boycott all referenda including its own.

The proposed referendum on future legislation to punish political opponents was the second time during the Chen presidency that the Han nationalists tried to use supra-judicial bodies to persecute political opponents. The first attempt was made after the 2004 presidential election defeat, when the KMT and its allies pushed through legislation to establish a truth commission, which was to investigate whether Chen Shui-bian masterminded the failed assassination attempt on his life to attract votes. With the commission, the KMT created an institution that replaced the judiciary. It was granted investigative powers that even exceeded those of state prosecutors. In addition, the statutes of the commission practically allowed

retrials of any related court case the commissioners deemed to be a miscarriage of justice. Moreover, the establishment of the truth commission was a hypercritical act since its founders had previously claimed that it would be unconstitutional to form any investigative body, such as a national human rights commission, in addition to the Control Yuan. Critics of the commission questioned its legality and wondered whether the KMT had previously fooled the people with its claim that the Control Yuan was the sole legal investigative body. Consequently, DPP parliamentarians asked the Constitutional Court for an interpretation, which rejected in its interpretation the Han nationalists' claim that any investigative body outside the Control Yuan would be unconstitutional per se (Constitutional Court Interpretation No. 585). Although the establishment of the truth commission itself was not considered unconstitutional, several of its provisions were. The court ruled that the statutes circumscribed the authority of other constitutional organs, such as the judiciary, and thus violated basic principles of constitutional democracy. The court's interpretation was important because it could help human rights activists to pressure the KMT to establish a national human rights commission and parliamentary committees of inquiry. Opponents to such institutions can no longer base their objections upon the claim that additional investigative bodies would violate the constitution.

The KMT referendum on the punishment of national leaders was only one of the numerous concerted efforts of Han nationalists to bring an end to Chen's presidency. Han nationalists consider Chen Shui-bian a traitor who has destroyed their home nation, the Republic of China. The perceived rise of Taiwanese nationalism during Chen's first term also made them worry about their future. Chen's determination to push for transitional justice endangered their existence and there was concern that they would one day end up in court to explain their involvement in the martial law atrocities. As their strategy to turn the 2004 presidential election campaign into a nationwide protest movement against Chen Shui-bian as "fascist dictator Taiwan's Hitler" failed to secure victory at the polls, the attack on Chen Shui-bian intensified. The KMT leaders accused President Chen of vote rigging and having staged an assassination attempt on his life to win public support. A variety of tactics were applied in the immediate aftermath of the election to oust Chen from the presidency. The struggle for power took place in three different arenas:

Courtrooms: The KMT presidential candidate filed two lawsuits, one demanding the annulment of the election and the other asking the court to declare the election result void. The Han nationalists based their lawsuits on claims of massive vote rigging and the application of improper campaign methods (staged assassination attempt). The first claim did not make much sense, since the supporters of the KMT and its allies had been involved in the ballot counting procedure and been present at all polling stations. Moreover, there were no reports by international observers indicating vote rigging. Even if the assassination attempt had been staged, it would have been rather difficult to prove that it had significantly influenced the election result.¹³ None of the two lawsuits was thus likely to put an end to Chen Shui-bian's presidency.

Streets: Large-scale demonstrations took place. The protesters and their Han nationalist leaders demanded an immediate recount and branded President Chen a "cheater." Later students and other civic organisations joined the protests. Local and Mainland Chinese media outlets and political commentators saw in the protests the birth of a new democracy movement in Taiwan (Chen 2004, 91).

State apparatus: There were claims that Han nationalists attempted to force Chen out of office by staging a 'soft coup.' High-ranking military officials were reportedly asked to resign

¹³ Despite their claims that they would already have substantial evidence to prove their claims, the KMT and its allies placed several ads in leading newspapers stating their intention to offer NT\$ 50 million to those who could provide the "truth" behind the shooting incident and NT\$ 20 million for offering evidence that the election was rigged.

or fake illness after the 2004 presidential election in order to create social instability and negate the legitimacy of Chen's re-election. The defence minister did indeed resign shortly after the election citing an eye disease. Other officials reportedly refused the request. Han nationalist leaders denied the claims of a 'soft coup,' but military officers confirmed the allegations. High-ranking military officials, for instance, stated in government reports and during legislative interpellation that supporters of the anti-Chen movement had asked them to fake illness so that they could "carry out their plan to oust" President Chen (Legislative Yuan Record 95/14, 274).

The Han nationalist campaign against Chen and the DPP brought about several other highly questionable actions, which undermined the rule of law and seriously endangered basic principles of democratic rule, such as the separation of powers. The judiciary, for example, was punished for not delivering the right verdict in the KMT-sponsored lawsuit demanding the annulment of the 2004 presidential election. Han nationalist legislators retaliated by cutting the financial benefits of the involved judges in a parliamentary budget-screening session. The legislators commented on their action with the statement that the judges had obviously not done a good job and thus did not deserve the taxpayers' money. Despite the fact that the Constitutional Court (Interpretation No. 601) subsequently ruled the legislators' action as unconstitutional, the involved legislators defended their action as being fully justified. A further example is the attempt to recall parliament members who opposed the Han nationalist motion to impeach President Chen. After losing the 2004 presidential election, the KMT and its allies tried several times to initiate impeachment proceedings against Chen, but failed each time because the required two-thirds majority could not be obtained. Han nationalists exerted pressure on DPP parliamentarians to support the impeachment motion in parliament. They did not give in, however, and Han nationalist legislators subsequently asked their supporters to collect signatures to recall the 'traitors.'

In a more recent case, two senior KMT legislators forced their way into the campaign headquarters of DPP presidential hopeful Frank Hsieh. They trespassed on private property on the pretext that as legislators they had the right to investigate whether Hsieh had illegally used office space on the upper floors of the building.

Ma Ying-jeou's presidency: the beginning of democratic deficits

Ma Ying-jeou's victory in the presidential election 2008 was praised by the international community as a major step towards peace and security in East Asia. Eight years earlier, the world had praised Chen Shui-bian's victory as a major step towards a consolidated democratic Taiwan. But Chen's call for transitional justice and his attempts to safeguard Taiwan's sovereignty as an independent state caused domestic and international uproar and shifted the world's view on the importance of democratic consolidation. Ma Ying-jeou's rapprochement with the People's Republic of China and his ability to converse in English earned him far more popularity with the international community. Local and international human rights activists, on the other hand, predicted a democratic regression under the new pro-Beijing government. With the KMT's return to power, a number of policies adopted by the previous government were reversed, especially those dealing with transitional justice, which will seriously undermine the national reconciliation process.

In addition, Ma's election victory brought back to power a number of conservative Han nationalists at key government positions, which led to a revival of several martial-law practices and institutions. The ministry of education, for example, has reversed the DPP policy of gradually phasing out military personnel at secondary schools and institutions of higher education. The previous government regarded the so-called military drillmasters a relic of the authoritarian period and tried to pass legislation removing all military personnel from schools, colleges, and universities. As the KMT blocked such legislation in parliament, the DPP government adopted the policy of not filling vacancies left by retired personnel. The number of drillmasters thus dropped from 1,627 to 1,058 during Chen's presidency.¹⁴

¹⁴ Interview with former senior official, Ministry of Education, November 2008.

Furthermore, the ministry of justice sent formal notices to all government branches asking schools, government agencies and state-run enterprises to recruit personnel to supervise the government's 'ethical standards.' Since such personnel were used to spy on public servants during the martial-law era, the KMT government's policy has been criticised as being inappropriate in a modern democratic society.

Moreover, there has been a drastic change in the way the police and national security agencies handle demonstrations. During Chen's term in office, the police was instructed not to use excessive force when dealing with demonstrators. A number of large-scale demonstrations took place during Chen's presidency, most of which were either organized or supported by the KMT. In some cases, demonstrations became violent with participants throwing petrol bombs, stones, and garbage at police officers. In November 2008, China's top negotiator arrived in Taiwan to meet with government officials, which sparked numerous protests. This time, police applied unnecessary force to disperse protesters— including physical assault, arbitrary detention, and destruction of property. People were reportedly detained and physically assaulted for waving national flags or for wearing T-shirts with slogans, such as 'I love Taiwan.' International organizations, such as Freedom House, called on Ma Ying-yeou and his government to set up an independent commission to investigate the clashes between the police and demonstrators. President Ma, however, saw no need to establish a special commission arguing that there already existed an investigative body, the Control Yuan. His statement came as a surprise since he had been a strong supporter of an independent committee to investigate the failed assassination attempt on Chen Shui-bian in the past. Despite the encouraging Constitutional Court interpretation on the legality of independent committees of investigation, the new government has ruled out legislation allowing the establishment of any such committee including a national human rights commission.

A further development of concern has been the preventive detention of an unprecedented high number of former government officials, including President Chen. Human rights activists have acknowledged the necessity of preventive detention to prevent the suspects from fleeing the country and colluding with witnesses, but questioned the intentions of prosecutors and wondered why the judiciary specifically targeted members of the former DPP government and neglected cases involving KMT politicians. The handling of former President Chen's detention has raised several questions about the independence of the judiciary. Judge Chou Chan-chun, for example, released Chen without bail arguing that he was unlikely to flee the country since he was under 24-hour protection by state-funded security detail. KMT legislators subsequently threatened to impeach the judge who, unimpressed by the threat, confirmed his decision on appeal. The court then inexplicably removed the judge from the case and the newly assigned judge reversed the original ruling. The impartiality of the Ministry of Justice in the handling of Chen's prosecution has also been disputed. The ministry has targeted Chen's lawyer by requesting the Taipei Bar Association and Taipei District Court to investigate whether he violated ethical rules. The Ministry argues that the lawyer revealed details of the case to the public. The Taipei Bar Associations said in an official statement that the lawyer had only talked about his client's political stance and love for his wife and thus had not violated any ethical rules. Political analysts saw the ministry's request as a form of "punishment" and opposition figures wonder why there has not been any investigation into allegations that the state prosecutors investigating Chen's case have illegally passed on information to the media. For several months, political talk shows on cable networks have been "prosecuting" former President Chen. KMT legislators and other anti-Chen activists have elaborated on the work of the state prosecutors investigating the case almost daily. Talk shows have become a sort of soap opera series with each episode revealing further crimes allegedly committed by Chen Shui-bian and his family. This trial-by-media approach has further deteriorated the quality of news reporting and undermined the rule of law.

Conclusion

In the 1990s, Taiwan transformed from an authoritarian state into one of Asia's most vibrant democracies. The election of former human rights lawyer Chen Shui-bian as president in 2000 was appraised as an important step towards democratic consolidation and there were great expectations that the transfer of power would further enhance Taiwan's democratic environment. Unfortunately, democratic developments stagnated during President Chen's two terms in office for manifold reasons. National identity proved to be the major obstacle in President Chen's attempt to turn Taiwan into Asia's most democratic state. During Chen's presidency, the KMT ceaselessly attacked the president who by calling for transitional justice was feared to endanger the existence of leading Han nationalists. The Han nationalist approach to dealing with the identity conflict and transitional justice has seriously undermined Taiwan's democratic development and exemplified the lack of understanding of democratic principles. In their efforts to preserve the Republic of China, the KMT and its allies have on various occasions failed to respect democratic institutions and procedures. The situation has considerably worsened since the inauguration of President Ma Ying-jeou in May 2008. His campaign promises to bring about ethnic harmony and to foster democratic institutions were abruptly dropped upon his election, and his term in office has quickly become a revival of Han nationalist nostalgia.

The perceived erosion of democratic principles has caused several international human rights groups and observers to urge President Ma to improve the situation.¹⁵ President Ma Ying-jeou's rapprochement with the People's Republic of China will probably have limited positive effects on Taiwan's future democratic development. Notwithstanding, it should be pointed out that Taiwan still is one of the most vibrant democracies by international standards and that in several areas, the human rights conditions excel those of advanced democracies, especially those of the US under the Bush administration.

¹⁵ A group of prominent scholars and writers in the US, Canada, Europe and Australia have, for example, expressed their concern about the perceived erosion of justice under President Ma Ying-jeou in three open letters published in the Taipei Times between November 2008 and January 2009.

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